**INTERNATIONAL FRAMEWORK FOR MARITIME SECURITY :**
**CURRENT SITUATION AND PROBLEMS**
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**Disputes in the Asia Pacific Region**

Broadly speaking, there are plenty of disputes in the Asia Pacific region that, if not well-managed, can develop into conflicts that may affect maritime security in the area:

There are still some remnants of ideological and political conflicts in the area between communism and capitalism, although the intensity of these conflicts is now substantially diminished. North Korea, China and Vietnam are still "communist" countries, although they are already practicing a substantial degree of "market" economy in place of "planned" economy. The need for global economic, trade and investment developments seems to have abated this conflict. Yet, a new "political" rivalries and equation seem to be emerging in the Asia Pacific region, particularly between the United States and China. This political "rivalries", if not well-managed, could have the effects of increasing tension, particularly in the Korean Peninsula, Taiwan Straits, or even in the South China Sea, all of them could affect maritime security in the region.

There are also plenty of territorial and jurisdictional disputes in the region that, if not well-managed could erupt into conflicts and perhaps armed conflagrations. There is a dispute between Russia and Japan on the "Northern Islands", between Japan and Korea on the Tokdo/Tsushima Islands, between Japan, China and Taiwan on the Diaoyutai/Senkaku Islands, between Vietnam and China on the Paracels, between China, Taiwan, Vietnam, the Philippines, Malaysia and Brunei on all or some of the Spratly Islands, between Indonesia and Malaysia on the Sipadan and Ligitan Islands, between Malaysia and Singapore on the Batuputih Rock, between Malaysia and the Philippines on Sabah, between Cambodia, Vietnam and Thailand on some islands in the Gulf of Siam, etc. In addition, there are also plenty of land boundary disputes between them as well as disputes over maritime zones, partly due to the different interpretations and applications of the provisions of the UNCLOS 1982. Most of these disputes are being managed bilaterally through direct negotiations, and some of them are being settled. There are also disputes that are being brought to the ICJ in The Hague, such as between Malaysia and Indonesia and between Malaysia and Singapore. In many cases the management of these disputes has been made more complicated by the traditional animosity and rivalries between and among states in the region, although lately the habit of confrontation has been somewhat overcome by the development of the habit of cooperation in the region.

Moreover, the enactment of national legislations to solidify and consolidate maritime claims have not been helpful in seeking solution to the problems.

In addition to ideological, political, territorial, and jurisdictional disputes mentioned above, there are also plenty of technical and practical issues in the region that may affect maritime security. Some of them, as indicated above, deal with different interpretation and application among states with regard to the provisions of the UNCLOS 1982. Those issues are not necessarily in the form of disputes or conflicts but could lead to them. In some cases the lack of ability of some states to deal with the problem or due to lack of cooperative efforts among the states in the region, could also result in conflict. Some of the issues have been the subject of various studies and discussions in the various forums in the Asia Pacific region, formal and informal, such as in the ARF, ASEAN-China Dialogue, APEC, CSCAP, South China Sea Workshops, and various other academic and think-tanks institutions.

**Maritime Security Issues**

There are plenty of issues in the Asia Pacific region, primarily illegal acts at sea, that could easily develop into disputes and conflicts, thus affecting maritime security in the region. The CSCAP in its Memorandum No. 5 has enumerated some of those illegal acts at sea, such as piracy, maritime terrorism, drug trafficking, human smuggling, maritime theft and fraud/"phantom" ship, illegal fishing, and environmental offenses. The Memorandum also indicated various measures that have been taken to deal with these issues as well as the various Agreements and Conventions to manage them.

The South China Sea Workshop have also dealt with this issue since the last several years. Within the context of promoting safety of navigation, shipping and communication in the South China Sea, a Group of Experts on Search and Rescue and Illegal Acts at Sea in the South China Sea, within the aegies of the South China Sea Workshops process, has been convened in Kota Kinabalu, Malaysia in June 1999. The Group of Experts among others agreed to recommend the following:

- To encourage participating authorities to strengthen the existing bilateral and multilateral SAR arrangements in the region and to develop and implement new arrangements with relevant authorities, particularly in the northern part of the South China Sea.
- To urge participating authorities to become party to the relevant IMO Conventions, particularly the 1979 International Convention on Maritime Search and Rescue and the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation.
- To request the Fourth TWG on Legal Matters to study the relevant aspects of the ASEAN SAR Agreements and the IMO SAR 1979 Convention, and the UNCLOS 1982, with a view to making a regional SAR arrangement.
- To request each participants to submit to SCSIWG/Pusat Studi their national contact points for SAR to be disseminated by these organizations with a view to

promoting information exchange and intensifying co-operation between participants.

- To encourage participating authorities to foster communication and co-operation between and among national contact points.
- To request the SCSWIG/Pusat Studi to collate and disseminate information on national arrangements and agencies responsible for SAR and the suppression of illegal acts against the safety of maritime navigation.
- To encourage more intensive co-operation between the agencies of participating authorities involved in SAR and the suppression of illegal acts against the safety of maritime navigation, and their relevant counterpart agencies, including the possibility of dialogue partnerships with police agencies in the South China Sea region.
- To encourage participating authorities to take measures to implement the provisions of the UNCLOS 1982, regarding SAR and illegal acts at sea, particularly Article 98 on SAR; Article 100, 105, 107 and 110 on piracy; Article 108 on illicit trafficking in drugs; and Article 99 on the prohibition of the transportation of slaves.
- To encourage the participating authorities to identify clearly their enforcement agencies at the local level for reporting acts of piracy and other illegal acts at sea, with a view to expediting and facilitating measures against illegal acts at sea.
- To recommend that the Fourth Meeting of the TWG on Legal Matters examine the Draft Regional Agreement on Co-operation in Combating Acts of Piracy and Armed Robbery Against Ships, contained in Annex 5 of the Report of the IMO Regional Seminar and Workshop on Piracy and Armed Robbery against Ships, held in Singapore in February 1999, and consider its relevance to the South China Sea region.
- To request that the SCSIWG/Pusat Studi obtain more information with regard to illegal acts at sea from the IMO and the International Maritime Bureau, to be circulated to all participants.

The position taken by the Expert Group has been supported by the Fourth Meeting of the Technical Working Group on Legal Matters in Koh Samui, Thailand, in September 1999 and endorsed by the Tenth Workshop of the South China Sea held in Bogor, Indonesia in December 1999. The Workshop agreed to give priority to combating piracy and armed robbery against ships, and enhancing SAR arrangements in the South China Sea region. At the same time the Workshop emphasized the importance of hydrographic data and information exchange for the safety of navigation in the South China Sea.

In fact, since the First Meeting of the TWG on Safety of Navigation, Shipping and Communication in the South China Sea in Jakarta in October 1994, there was already an agreement that Singapore should lead the study on education and mariners, Malaysia on unlawful activities and SAR, Chinese Taipei on exchange on hydrographic data on information, and China on contingency plans for pollution control. Some progress have been made on these topics within the context of managing potential conflicts in the South China Sea.

Despite some progress in dealing with the issues of illegal acts at sea, new problems seem to be emerging in greater extent in the Asia Pacific region. The problems of human smuggling by sea of refugees have been increasing significantly in recent years, particularly as the result of the situation in South Asia and the Middle East. Illegal fishing has also multiplied significantly, despite some efforts to deal with this matter in the West and Central Pacific, particularly with regard to the implementation of the UNCLOS provisions on High Sea Fisheries as well as the UN Implementing Agreement on Conservation and Management of Straddling and Highly Migratory Fish Stocks (1995) in the region. Another issue that is emerging is the problem of ballast water and tank cleaning which can result in the discharge of oily sludge or even the introduction of marine pests. Due to the heavy traffic of oil tanker and other shipping in the Asia Pacific region, these problems could become serious, particularly because they are difficult to monitor and, so far, lack of cooperative arrangements between states in the region on these matters.

There are other unresolved problems of the Law of the Sea that could affect maritime security in the Asia Pacific region. One of them is the problem of innocent passage in territorial sea for warships and ships carrying nuclear weapons or nuclear or other hazardous cargos, in the sense that whether the regime of prior notification or prior authorization is applicable to them in this context. There are states in the Asia Pacific region that require prior notification or prior authorization for those ships before they exercise the right of innocence passage through the territorial sea. There are also states that do not agree with this condition. The UNCLOS 1982 is silent on this point. This problem could become serious in the future in the Asia Pacific region.

There are also problems of navigation and over-flight on and above the EEZ. There are at least four problems that could result in maritime security problems in the Asia Pacific region, particularly in semi-enclosed seas which are practically enclosed by the EEZ of the neighboring countries. Those problems are : (a) with regard to over-flight and air espionage by military aircraft, (b) the conduct of hydrographic survey and military intelligence gathering while navigating the EEZ, (c) the conduct of military exercises in the EEZ of other countries, and (d) the emplacement of detecting devises or other military equipments on the continental shelf of other countries. While there are Asia Pacific countries that require prior authorization for these purposes, there are also countries that would regard them within the general meaning of the freedom of navigation and over-flight guaranteed by UNCLOS 1982.

**Indonesian Situation.**

Indonesia is a large maritime and archipelagic state in the Asia Pacific region. It controls about 3 million square km of archipelagic waters and territorial sea, plus another 3 million square km of EEZ and Continental Shelf. It also controls several important sealanes for the communications between the Pacific and the Indian Oceans. While these extensive maritime zones offer enormous economic potentials for the development of the

country, they also bring with them enormous tasks of protecting them as well as in maintaining law and order at sea and the national unity of the archipelagic country.

According to some studies, Indonesia requires more than 300 vessels, large and small, to protect its maritime space and resources, as well as plenty of port facilities, human resources and technology for that purpose. So far it has only about 115 vessels, and out of these there are only about 25 vessels that are operating at sea at a particular moment. The current political, economic and financial crisis in Indonesia aggravated the problem of law enforcement at sea as well as of maintaining maritime order to prevent the disintegration of Indonesia as a unitary and as an archipelagic state. Consequently, there have been substantial slackening in the law enforcement and security at sea.

The major problem at the moment, however, are (a) to prevent armed robberies at sea and to promote cooperation with the neighbouring countries to fight against armed robbery and piracy, (b) to prevent illegal fishing by foreign vessels which are depleting the resources of the Indonesian seas as well as depriving Indonesian government of its legitimate income, (c) to protect and patrol Indonesian archipelagic sea lanes which are so important for regional and global maritime and military strategy, especially in time of regional and global crisis, (d) to prevent the use of Indonesian maritime zones for illegal acts at sea, including for the purpose of illicit traffic in drugs, armed smuggling, maritime terrorism, illegal human and refugees transit to third country, etc.

Indonesia would require enormous resources to protect its maritime zones. Yet, at this moment it does not have enough of the financial resources. As an example, Singapore, a country of about 700 km2, spent US$ 4.2 billions for military spending in 1999 or roughly 24.9% of the total government spending at that time, while Indonesia, a country of about 8.000.000 km2 of territory and maritime zones, spent only US$ 1.5 billion in 1999, or roughly 5.9% of the total government spending at that time. It is fully aware that piracy and armed robberies have arisen significantly in 2000 in comparison with 1999. Most of the armed robberies in 2000 in South East Asia occurred in the Indonesian waters, particularly in the archipelagic waters between Singapore and the Java Sea, in the Malacca Straits, and in the South China Sea.

- With regard to the western waters, particularly the approach to Singapore through the Karimata Straits, there has already been a plan to strengthen Indonesian law enforcement capabilities in the area particularly by increasing surveillance and monitoring system as well as response capabilities. The study indicated that it would cost Indonesia about 38,5 million US$ for anti piracy command and control center between Strait of Singapore and Jakarta. Unfortunately, Indonesia, particularly at this moment, does not have the fund for that purpose, especially since now it is already accumulating billions of dollars in foreign debt.
- With regard to the Straits of Malacca and Singapore, Indonesia, Malaysia, and Singapore have been cooperating to promote safety of navigation with the support of Japan within the last 20 years. The cooperation have resulted in improved navigational aids and hydrographic charts as well as other safety measures. The

- three coastal states, through bilateral mechanism, have also cooperated and coordinated their patrol to deal with illegal acts at sea particularly armed robberies.
- With regard to the South China Sea, Indonesia together with other littoral authorities have taken the initiative to promote cooperation on safety of navigation, shipping and communication as indicated above.

It should be noted that article 43 of UNCLOS stipulates cooperation between users states and states bordering a strait, (a) "in the establishment and maintenance of necessary navigational and safety aids or **other improvements in aid of international navigation,** (b) for the prevention, reduction and control of pollution from ships". So far only Japan that has cooperated with the three coastal states with regard to installing navigational aids, hydrographic survey, and other means to promote safety of navigation. Yet, not much cooperation or assistance have been forthcoming from the user states to prevent, reduce, and control pollution from ships. Moreover, practically no help or cooperation is forthcoming from other users states to help the coastal states, particularly Indonesia, to fight against piracy and armed robberies in the area, despite the fact that these measures could be regarded as "other improvements in aid of international navigation". In addition, although article 43 deals with the promotion of safety of navigation and control of pollution in straits used for international navigation, there is no reason not to apply it to archipelagic seal-lanes as well if the archipelagic state concerned so requires.

There is no doubt that Indonesia needs help to maintain law and order at sea and to protect its maritime resources and national unity. It is my understanding, however, that Indonesia would not welcome the initiative of maritime countries to escort their vessels by their Coastguards in navigating Indonesian waters. Neither Indonesia would welcome the policy of the maritime powers to arm their commercial or cargo vessels as well as tankers when navigating Indonesian waters. These acts could create problems and complications in the field rather than solution. On the other hand Indonesia would welcome initiative from the user states as well as other stake holders to assist Indonesian law enforcement and security apparatus at sea to maintain and strengthen their capabilities either through providing aids, equipments and trainings or on helping to organize, coordinate cooperative efforts and linkages with other regional or other interested parties, as well as in intensifying training program for law enforcement and security officers at sea.

It should be noted that the CSCAP (Council for Security Cooperation in the Asia Pacific Region) in its Memorandum No. 5 has also identified some scope for regional cooperation in combating illegal activities at sea, such as: (1) harmonizing maritime laws of the states in the region, (2) encouraging flag states to discharge their responsibilities with regard to vessels flying their flags, particularly in case of illegal fishing, drugs and armed trafficking, offenses against marine environment and human smuggling, and (3) resolution of areas of uncertainty in the Law of the Sea, particularly on the definition of "piracy", and on enforcement principles in the EEZ for offenses other than those related to resources and the environment. The memorandum also indicated prospective cooperative measures on **bilateral level** (boundary delimitation, border control agreements, information exchange and coordination, reciprocal enforcement), and on

**regional level** (piracy, flag states responsibility, EEZ jurisdiction, training and education, information and data exchange, harmonization of maritime laws, monitoring of ships pollutions, and possibility of joint enforcement).

**Conclusions**

There are many issues and disputes in the Asia Pacific region that could develop into maritime conflicts that would endanger maritime security, either of political and strategic nature, or due to conflicting territorial and jurisdictional claims at sea, or due to different interpretation and application of existing rules of international law on specific subject. There are also issues that may not be in dispute but due to lack of enforcement, they may also create maritime security problems, such as illegal acts at sea drug trafficking, human smuggling, etc

There are already plenty of international instruments and conventions as well as bilateral and regional arrangements to deal with some of these issues. Various international organizations and agencies are working to draft various legal instruments to clarify and regulate the issues. Again, the problem in many areas is basically the ability to implement the agreements or conventions, especially due to the limited capacities and resources of many developing countries in the Asia Pacific region and the lack of actual supports and assistances from the developed maritime countries.

Indonesia as a big maritime, archipelagic, developing country is fully aware of the problems, at least some of them. Yet, due to its domestic political, economic and financial difficulties at this moment, it finds itself in difficulties to strengthen its law enforcement and security apparatus not only on land but also at sea. Unless some assistance is forthcoming, it would be sometimes before Indonesia could devote sufficient amount of resources for the law enforcement and security at sea.

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*C: maritime security*