

THE INTERNATIONAL LEGAL FRAMEWORK FOR RESCUE AT SEA

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1. According to customary international law, the states, through the ships flying their flag, are obliged to help rescue people in danger of their lives at sea. This obligation falls upon states regardless whether they are party or not to specific international treaties or conventions.
2. The UNCLOS 1982, in Article 98, stipulates that states have to carry out 2 obligations, namely to require the captains of the ships flying their flag to help the rescue, and to establish an effective search and rescue mechanism for that purpose.
3. Specifically Article 98 reads as follows:

“1. **Every State shall** require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

 - (a) To render assistance to any person found at sea in danger of being lost;
 - (b) To proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;
 - (c) After a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.”

2. Every **coastal State shall** promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose.”
4. It should be noted that the provisions contained in this Article are very similar to the provisions of Article 12 of the 1958 Geneva Convention on the High Seas, which was ratified by Indonesia in 1961.
5. It should also be noted that the application of Article 98 is for people in distress “found at sea”. Thus, it also covers the internal waters, archipelagic waters, territorial seas, Contiguous Zones, EEZ, and the High Seas beyond, whether or not a certain state have specific legislation or not with the various maritime areas. Indonesia, for instance, has not yet enacted specific legislation with regard to the Contiguous Zone; yet the provisions of Article 98 also apply to the Contiguous Zone of Indonesia as inscribed in the UNCLOS 1982. It should be noted that

practically all ASEAN countries, except Cambodia, have ratified the UNCLOS 1982.

6. With regard to other international conventions that are of relevant in this context, some of them could be mentioned, such as the IMO Safety of Life at Sea (SOLAS) Convention, particularly regulation V/33.1, Chapter V, regulation 7; ICAO (International Civil Aviation Organization) Convention, particularly Annex 12, and the SAR (Search And Rescue) Convention 1979. All these conventions indicated that prompt assistance is essential in term of saving life at sea, thus it should be given a top priority, particularly because most states are already parties to these conventions.
7. Specifically, with regard to the IMO SAR Convention 1979, which entered into force in 1985 and revised in 1995 which entered into force in January 2000, the need for regional approach and coordination of SAR regions was emphasized.
8. The obligation to assist stipulated in this Convention, applied individually, nationally, or in cooperation with other state or states.
9. With regard to its application, as indicated above, it is applied to cases of distress and incidents at sea, no matter where it happens. It is applied to territorial sea in accordance with Article 18 (2) of the UNCLOS, to straits used for international navigation (in accordance with Article 39 (1) c, to Archipelagic Waters in accordance with Article 54, to ZEE in accordance with Article 58 (2) in reference to the application of Article 98 to the EEZ and to the High Seas in accordance with Article 98.
10. It should be noted also that there are various persons that need to be rescued at sea in view of dangers to their lives. They could include asylum seekers, undocumented migrants, refugees, and stowaways, regardless of their nationalities. Ships that rescue should be able to deliver them to a place of safety. Specifically with regard to the asylum seekers, they should not be returned to their country of origin or to a place where their lives could be in danger (the principle of 'non-refoulement').
11. There are still some problems, however, with regard to certain issues. For instance, there are still problems with regard to stowaway, particularly since the

1957 Stowaway Convention, apparently still not yet in force. Illegal migrants also create some political problems. The problems of distress persons found at fixed installations at sea, is also not yet clearly regulated, just as the problems of search and seizure at sea beyond the territorial sea has not yet been clearly regulated.

12. Indonesia is bound to respect the principle of rescue of the distress people found at sea, regardless of their nationalities. The Preamble to its 1945 Constitution, which stipulates the Pancasila (5 principles) as the basis for the State, stipulates that Indonesia (1) believe in God, (2) civilized humanity, (3) democracy, (4) national unity, and (5) social justice. The principle of the “just and civilized humanity” should therefore be observed in this case of helping and rescuing people in distress at sea.
13. Indonesia has had a number of experiences in this context. In 1980s Indonesia even offered one island in Riau province (Pulau Galang) to help cater the ‘boat people’ of Vietnam that left Vietnam, some of them for political and economic reasons, that are stranded at sea on their way to their destinations, particularly to Australia and the US. I understand that some of these people later on become successful businessmen in the new country of their destination.
14. The issue of rescuing distress people at sea is a very important issue for Indonesia, particularly because it is an “archipelagic country” situated between two oceans and two continents and it becomes a major route for migrants due to various maritime straits and its porous coastlines. These geographical factors have also exacerbated some of the problems, particularly of some undocumented migrants and refugees passing through Indonesia.
15. In this context, it should be noted that unfortunately Indonesia has not yet enacted legislation with regard to the management of the Contiguous Zone around its archipelagic waters and territorial seas, for the application of control of its immigration, sanitary, fiscal, and customs regulations that are relevant to the problems of controlling migrants and refugees, in view of the general rules that the problem of rescue at sea as well as SAR activities should also pay ‘due regard’ to sovereignty of a state.

16. In order to fulfill the obligation enumerated in Article 98 of UNCLOS 1982, Indonesia, through long process, has established national Search and Rescue Agency (BASARNAS). This is important in order to avoid impression as if Indonesian waters are 'black areas' that are not safe for navigation. At this moment, BASARNAS is a NON-Ministerial Agency under and report directly to the President of the Republic of Indonesia. Some of the functions of the BASARNAS are:

- Conduct SAR operation, including at sea;
- Develop education process to build up capable human resources;
- Device legislations to promote SAR activities;
- Develop capabilities as well as the necessary equipments and infrastructure;
- Socializing and informing the society of its functions and activities; and
- Work out coordination with other SAR activities, domestically, regionally, and internationally, as well as cooperation and coordination with the various other law enforcement agencies in the country.

17. There are other regulations in Indonesia that facilitate Search and Rescue at sea, such as:

- Government Regulation No. 36/2002 on Innocent Passage through Indonesian waters, namely through archipelagic waters and territorial seas. Article 3 (4) of the Regulation stipulates that: "in exercising the right of innocent passage through Indonesian waters, foreign ships shall not anchor, stop, zig-zagging, except necessary because of force majeure or in distress, or because of helping persons, ships or aircraft in condition of distress".
- Government Regulation No. 37/2002, with regard to navigation through the Archipelagic Sea Lane Passage (ASLP) stipulates similar provisions in Article 4 (6). This provision is based on Article 54 and 39 of the UNCLOS 1982.

18. In conclusion, I would suggest:

- a. Helping persons found in distress at sea or in danger of being lost is the rule of international law, either customary or conventional.
- b. Those people can be 'illegal migrants', 'undocumented migrants', 'refugees', asylum seekers, etc., that enter a country, including by sea, and hoping to go

- to the country of their destination (in the case of Indonesia, primarily to Australia and New Zealand, and the US and Canada).
- c. Indonesia is bound to help save human life and in fact has done so. Yet a lot of problems remain, particularly because Indonesia is a 'transit country', and a country with a lot of domestic problems that limit its capacity to handle the case.
 - d. BASARNAS has done a lot, but it needs a lot more attention and capacity building in view of the very large and diverse maritime space of Indonesia in the crossroad between 2 continents and 2 oceans, thus has made Indonesia a certain main road for the purpose of migrants and refugees.
 - e. BASARNAS needs to intensify cooperation and coordination with other law enforcement agencies in Indonesia, such as Bakorkamla (National Coordinating Agency for Law Enforcement at Sea)
 - f. There is a need for a more intensive cooperation between the country of origin of the migrants at sea, the transited country/countries, and the country/countries of destination.

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