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Saving Lives at Sea: Everyone's Responsibility

By Sam Bateman

Synopsis

Responsibility for saving lives at sea is not a matter of sovereign jurisdiction. It is the responsibility of all countries and all seafarers regardless of where a ship might be in distress.

Commentary

RECENT TRAGEDIES involving the deaths of hundreds of asylum seekers in the waters between Indonesia and Australia have focussed attention on responsibilities for maritime search and rescue (SAR).

In December 2011, a boat sank south of Java and over 200 asylum seekers drowned. Another 90 people died when a boat capsized between Java and Christmas Island on 21 June 2012. An incident with a happier outcome occurred several days later when 123 people were rescued by Australian patrol boats from a sinking vessel although some may still have drowned. The worst incident in these waters occurred in 2001 when an asylum seeking vessel sank and about 350 men, women and children died.

Media reports have suggested delays and some lack of coordination between Australian and Indonesian authorities in responding to asylum seeker vessels in distress. The situation might have been aggravated on the Australian side because different agencies are responsible for border protection and maritime SAR. A change of lead agency is required when a refugee boat being tracked towards Australia gets into distress. SAR emergencies are occurring more frequently as most refugee boats are over-loaded and unseaworthy.

Following a meeting between Australia's Prime Minister Gillard and Indonesian President Yudhoyono after the June incidents, coordination between the two countries in managing the asylum boat problem will be improved. It has been reported that Indonesia may allow Australian vessels to enter "Indonesian waters" to rescue asylum seekers in distress without first asking permission of the Indonesian authorities. It is not clear, however whether the waters referred to are part of Indonesia's search and rescue region (SRR), or part of Indonesia's maritime zones of jurisdiction under the international law of the sea.

Jurisdictional Issues

It would be incorrect to imply that a country has exclusive jurisdiction over search and rescue in its national SRR, or that a country is required to seek permission for its ships and aircraft engaged on a rescue mission to enter the SRR of another country. Rather it is everyone's responsibility to save lives at sea. An SRR by itself is

not a zone of maritime jurisdiction where a country has any exclusive rights or obligations. Conversely, a country's responsibility to save lives does not end at the limit of its SRR.

Jurisdiction varies between different maritime zones and is unrelated to whether or not a country has an SRR overlapping these zones. The maritime zones constituting "Indonesian waters" are Indonesia's internal waters, archipelagic waters, territorial sea, contiguous zone, exclusive economic zone and continental shelf. Freedoms of navigation and over flight apply in the latter three zones and rescue units of another country may enter these zones to save lives without first seeking permission regardless of whether the waters are part of an SRR.

However, it would still be appropriate to inform the SAR authority of the coastal country if the area involved overlapped with its SRR. Permission would only be required if entry to archipelagic waters, territorial sea, and internal waters was required, although this would be automatic if the country concerned was a party to the International Convention on Maritime Search and Rescue (1979) (SAR Convention). That convention requires that unless otherwise agreed between the States concerned, parties should authorize immediate entry into their territorial sea or territory of rescue units solely for the purpose of SAR.

In Southeast Asia, only Singapore and Vietnam are parties to the SAR Convention. One reason why other regional countries have not joined the convention is because becoming a party would bring with it the obligation to allow rescue units of other parties to enter territorial waters on a SAR mission. Unfortunately sensitivities to sovereignty appear to have over-ruled the fundamental responsibility for the safety of life at sea,

Responsibilities

The responsibility to save lives at sea is enshrined in several international conventions, including the 1982 UN Convention on the Law of the Sea (UNCLOS).

In SAR situations, there are legal and moral responsibilities. In the case of the recent tragedies in the waters between Australia and Indonesia both countries have a moral responsibility to act, if they are able to, in an SAR incident, but because Australia is a party to the SAR Convention, it also has a legally binding responsibility to act in its own SRR.

Indonesia is not a party to the SAR Convention, and thus is not legally bound to act in its SRR. Its potential inability to fulfil any binding responsibility to act in its SRR due to a lack of resources is one reason why Indonesia is not a party to the convention, along with the sovereignty concern already mentioned.

A further problem arises because SRRs established under the auspices of the International Maritime Organization (IMO) generally bear no relationship to a country's maritime boundaries or its zones of maritime jurisdiction. SRRs can also overlap. Singapore, for example, has a large SRR covering part of the South China Sea and overlapping in some areas with the SRRs of other countries.

Lessons to be learned

Cooperation between neighbouring countries is essential for the conduct of SAR missions to save lives at sea. Tragically, many lives have been lost in the waters between Indonesia and Australia before at long last the two countries are establishing effective cooperation.

There are lessons here for other parts of Southeast Asia. Saving lives at sea is everyone's responsibility and the ability to do so should not be hindered by narrow nationalistic concerns of sovereignty. All regional countries should become parties to the SAR Convention and ensure they have the necessary cooperative agreements with their neighbours.

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