

Indonesia – vessel detentions

Indonesia

We have at Spica recently seen an increase of incidents where the Indonesian Navy have detained vessels anchored in waters around the island of Bintan, in the Eastern portion of the Singapore Straits. Bintan is the island furthest to the East on the chart below and a popular place to anchor (“waiting for orders”) because it is close to shipping lanes, and believed to be OPL Singapore. However, these waters are within Indonesian territorial waters!

Our Jakarta office is currently aware of 20 detentions in Indonesia (not just around Bintan). Each case is different, but there are a majority of cases where it is alleged, or we suspect that the charge is or will be, ‘illegal anchoring’.

This is a recent development and the correct procedure of how to deal with this once the vessel is detained is not yet established. This is frustrating for Members and the Club because of the delays and the lack of information/directions. It must be stressed that each case is different, so we follow the directions given by the Navy and it usually requires the appointment of lawyers to deal with the statutory aspects of detentions.

The typical reasons for the infringement are (i) misunderstanding of where territorial waters of Indonesia legally begins and ends and (ii) what local laws require. Be advised:

Innocent passage (i)



Once a vessel is southbound in the Malacca Strait (past Port Klang) and through the Singapore Strait until entering the South China Sea, either Malaysia, Singapore or Indonesia will claim territorial waters. It has perhaps been (mis)understood in the past that there are waters in these Straits not claimed by any of the three countries. This would be a mistake. There are no OPL anchorages in the area.

Only if a vessel is passing through territorial waters without stopping, will it not be subject to the jurisdiction. The right of “innocent passage” is secured in article 17 of the United Nations Convention on the Law of the Sea (UNCLOS). The passage, however, needs to be *continuous* and *expeditious* (art. 18.2). In practice, this means the vessel cannot stop except when forced to *incidentally* stop for reasons of safety, danger or distress.

Ship-to-Ship (STS) operations is a good example of this. It is not an incidental stop and the right of innocent passage is ‘lost’. Slowing down (crew change or taking stores) also disqualifies the right of innocent passage.

Local law (ii)

When a vessel is located within the territorial waters, it needs to be cleared in and out of Indonesia. This also applies if the vessel is only anchored and has no intention of ‘interacting’ with Indonesia, such as cargo operation, taking supplies, crew change, etc. An agent needs to be appointed.

It has often been overlooked that activities such as transshipment, crew change and cargo operations within Indonesian waters can only be performed by an *Indonesian shipping company*, operating an

Indonesian flagged vessel and manned by Indonesian crew.

Transshipment activities (including launch boats carrying stores or crew) are categorised as activities that may violate Indonesian Law No. 17 of 2008. The Indonesian Navy have recently been upholding this rule strictly. We have been made aware that live ammunition has been fired by the Indonesian Navy towards a commercial vessel for an undisclosed reason

Recommendation

Do not anchor in/around Indonesian territorial waters, without checking the position with local agents and, if necessary, clearing in.

Should your vessel be detained we suggest you contact our Jakarta office immediately. They are dealing with a number of vessels, act for numerous Clubs already and have contacts in the relevant branches of the Navy.

The sooner we know, the quicker we can assist and work on getting the vessel released.

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