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# Military Rescue Operation for the Hostages Taken by Somali Pirates: Was the Korean Navy's "Daybreak in the Gulf of Aden" Legitimate?

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Eric Yong Joong Lee \*

*On January 21, 2011, the Korean navy commandos rescued the twenty-one crewmen abducted and detained by Somali pirates in the Indian Ocean. The pirates captured alive were brought to Korea for trial and the prosecutor's office of Pusan sentenced the leader of the Somali pirate group to life-imprisonment. The other four pirates received imprisonment terms from 12 to 15 years. Regardless of these domestic legal punishments, this rescue operation has raised a few critical international legal questions. The primary objective of this paper is to answer these questions. This research analyzes the international legal characteristics of the Korean Navy's rescue operation. Then, a few case-studies of military rescue operation are carried out in order to justify the Korean Navy's rescue operation. The Korean Navy's rescue operation may be regarded as an act of forcible self-help and realization of existing international legal right.*

## Keywords

Somali Pirates, Daybreak in the Gulf of Aden, Forcible Protection of Nationals Abroad, UNCLOS, Self-Defense, Self-Help, Entebbe Raid

\* Professor of International Law at Dongguk University, Seoul, Korea; President of YIJUN Institute of International Law. B.A.(U. Washington), M.P.A.(Seoul N. U.), LL.M.(Leiden), Dr.iur.(Erasmus). The views reflected in this article are his own. Readers' comments are cordially welcome. The author may be contacted at: [grotian@hotmail.com](mailto:grotian@hotmail.com) / Address: 56 Migaro, Kwangjin-gu #302, Seoul 143-825 Korea.

## I. Introduction

At the dawn of January 21, 2011, twenty-two commandos of the Republic of Korea (“ROK”) Navy’s UDT/SEAL began a special operation about 1,300 kilometers off northeast Somalia in the Indian Ocean. Under the codename, “Daybreak in the Gulf of Aden,” the purpose of this operation was to rescue twenty-one abducted crewmen of the SAMHO Jewelry, an 11,500-ton oil/chemical tanker which had been hijacked by some Somali pirates six days before. With cover from the Lynx helicopter and the *Choi Young*, a 4,500-ton destroyer of the ROK’s *Chunghae* (Blue Sea) unit, those commandos raided the hijacked ship and finally rescued all hostages on board composed of 8 Koreans, 2 Indonesians and 11 Burmese. With this 5-hour long special operation, the commandos killed 8 pirates by shooting and captured 5 pirates alive. The captain of the ship was shot by a pirate and immediately taken to a hospital by a U.S. helicopter. There was no human loss in the commando unit.<sup>1</sup>

The pirates captured alive were brought to Korea for trial on January 30, 2011 because the third countries in this region such as Oman, Kenya and Yemen, in spite of Korea’s proposal for extradition, refused to try them in their countries. The prosecutor’s office of Pusan, Korea, filed suits against them for the crimes of ship-kidnapping, assault, maritime robbery, maritime murder attempt, etc.<sup>2</sup> By way of the proceedings, the Pusan District Court applied the domestic criminal laws (not directly related to piracy under international law) and sentenced the leader of the Somali pirates group to life-imprisonment. The other four pirates received imprisonment terms from 12 to 15 years.<sup>3</sup>

Legal punishment against foreign pirates in a domestic court is a very exceptional case in the contemporary world. Just a few cases have been reported so far.<sup>4</sup> This adjudication was realized by the forcible transfer of convicted pirates captured by special raid of the Korean Navy on the high seas. It was mainly based on Article 105 of the United Nations Convention on the Law of the Sea (“UNCLOS”) which lays down: “On the high seas, or in any other place outside the jurisdiction of any State, every State

<sup>1</sup> Tae-hoon Lee, *Navy rescues all 21 abducted sailors*, KOREA TIMES, Jan. 21, 2011 available at [http://www.koreatimes.co.kr/www/news/nation/2011/01/116\\_80096.html](http://www.koreatimes.co.kr/www/news/nation/2011/01/116_80096.html) (last visited on Jan. 29, 2012).

<sup>2</sup> Jung-ryul Lee, *Somali Pirates Case from a Domestic Legal Standpoint* (available only in Korean), THE 30<sup>TH</sup> INTERNATIONAL HUMANITARIAN LAW SEMINAR PROC.(Korea Red Cross), Nov. 18, 2011, 56. He was a member of prosecutors in this case.

<sup>3</sup> Pusan District Court, Judgment 2011KoHap93 (May 27, 2011). This case was finally adjudicated at the Supreme Court of Korea on Dec. 22, 2011.

<sup>4</sup> The Netherlands and the United States tried Somali pirates in their domestic courts in 2009 and 2010, respectively.