

Suppression of Modern Piracy and the Role of the Navy

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Introduction

In recent years there have been several cases of vessel or cargo robbery that threaten the safe and stable use of sea lanes and marine transportation routes indispensable to maintaining the livelihood of the Japanese people. These incidents are commonly referred to as acts of “modern pirates¹” who are quite different from the pirates of the past. Hitherto, piracy attacks occurred on the high seas. Today, the seas where pirate attacks occur are territorial waters or exclusive economic zones of coastal states, particularly in the vicinity of the Strait of Malacca.

The Strait of Malacca is an 800-kilometer-long waterway with abundant coral reefs and shoals. The strait is extremely narrow - only 400 meters in some parts. It is connected to the South China Sea through the Philip Channel and the Singapore Strait. Neither of these two straits are on the high seas; the borders of territorial seas are delimited in their centers. Coastal states near the Straits have established separated traffic routes. Vessels of coastal states and maritime industrial countries² navigate the traffic routes without haste.

Coastal states are responsible for exercising control over criminal acts that occur within their territorial seas, while flag states are responsible for controlling criminal acts committed on high seas. The coastal states in the region, however, do not have sufficient power to exercise this responsibility. Similarly, in the case of ships navigating under flags of convenience, the flag states may also not possess sufficient power. Furthermore, maritime states do not exercise jurisdiction over marine crimes committed in territorial seas of other nations. They only have the authority to control piracy under international law. This situation makes it extremely difficult to suppress the modern piracy that occurs frequently on the seas of South-East Asia.

This lack of sufficient power to control crime on the seas is a matter of great inconvenience to maritime industrial countries using the waters near the Strait of Malacca. The situation makes it necessary to consider specific measures and systems for dealing with modern piracy through international cooperation. According to the United Nations Convention on the Law of the Sea (UNCLOS), all states are responsible for cooperating as much as

¹ Modern piracy that occurs frequently in the waters near the Strait of Malacca is not covered under the United Nations Convention on the Law of the Sea, and is defined by various terms such as piracy, ship-jacking, armed robbery, petty theft, and opportunist. The expression “Modern Piracy” is used here as a broad concept including all acts of robbery, seizure of cargo, and seizure of vessels in ports and harbors, territorial waters, exclusive economic waters, and on the high seas.

² The expression “Maritime Industrial Countries” is used to describe the flag state of a vessel, the native country of a ship owner and crew, the forwarder and receiver of cargo, and the navigator, and is the general term for countries that directly suffer losses from modern pirates.

possible in the suppression of acts of piracy committed on the high seas and seas that are not under the national jurisdiction.³ The criminals active in the waters of Southeast Asia, however, cannot be defined as pirates under international law. Nevertheless, the damage caused by these “modern pirates” is becoming more serious than the damage caused by “traditional” pirates in the past. The suppression of these modern pirates is a matter of great urgency in the region.

Japan held an “International Conference for the Control of Piracy,” calling for regional cooperation to suppress pirates. At the ASEAN Plus 3 meeting held in Manila in November 1999, the Model Action Plan for Measures against Piracy⁴ proposed by Prime Minister Obuchi of Japan was adopted. The Japan Coast Guard is actively promoting international cooperation, holding meetings with coast guards from four countries, including the United States and Russia. It has also been agreed to hold regular meetings once a year, including Canada and China, and to establish means to exchange information with each other.

Certain coastal states near the Strait of Malacca do not possess coast guards like the Japan Coast Guard. In some countries, the navy is responsible for carrying out measures against piracy. If the problem of the “sovereignty of coastal states⁵” can be solved, joint operations between the navies of maritime industrial countries and the navies of coastal states may be considered. Joint piracy suppression operations between the navies of pairs of countries have been carried out in Southeast Asia, but these joint naval operations have been limited to coastal states in the region.

When considering measures to secure marine transportation routes, and the use of “self-defense forces” in peace time, it may be necessary to consider in advance joint operations between the Maritime Self-Defense Force and the naval forces of coastal states in Asia. This ongoing research will contribute to the security policy of Japan in regards to promoting the construction of a stable security environment in Asia, and reveal the reality of the modern piracy frequently occurring in the waters near the Strait of Malacca.

I. Waters near the Strait of Malacca and Modern Pirates

A. Characteristic Features of Modern Piracy

1. Reality of Modern Pirates

The historical origins of piracy are not clear, but probably arose with the advent of coastal

³ United Nations Convention on the Law of the Sea, Article 100.

⁴ The plan provides for strengthening the ability to suppress and control modern piracy through the use of a ship location indication system (ShiLoc) and facilities, the provision of reports to concerned competent authorities, coordination between related competent authorities, construction of an international network for the exchange of information on pirates, and analysis of that information.

⁵ ASEAN countries maintain that they are carrying out sufficient measures to suppress piracy with the related agencies of the respective countries, and do not welcome the entry of foreign warships and government vessels into their territorial waters.

shipping. The first reported pirates were Greeks and Phoenicians. Much of the development of the technology of shipbuilding and navigation was driven by military imperatives rather than the requirements of peaceful trading activities. In ancient times, navigators who launched expeditions to exploit “women and treasures” on the high seas, evolved into pirates.⁶ Today, even disregarding the purpose of exploiting women, piracy is a global phenomenon.

The end of the Cold War resulted in the reduction of the navies of both the United States and the Soviet Union. The presence of these navies in Southeast Asian waters was accordingly greatly reduced compared to their level of activity there in the 1980s. As the time of the end of Cold War coincides with a rise in modern piracy, it may be assumed that the reduction of the naval presence in the Southeast Asian region weakened society’s ability to deter acts of piracy. Furthermore, the economic depression that has afflicted Southeast Asian countries since 1997 is also a likely contributing factor to increased acts of piracy. The number of piracy incidents in the waters of Southeast Asia has continued to show an increasing trend since 1991.⁷ Vicious organized incidents threatening human lives also began to occur at that time.

The suppression of piracy within territorial seas is primarily the responsibility of the national security forces of the coastal states, and the problem lies in their ability to guard their territorial seas. However, due to the economic depression, Southeast Asian countries have been compelled to delay naval construction programs to a large extent, resulting in a lack of sufficient ability to guard their waters. These circumstances confirm that it will be difficult to lay the responsibility of suppressing modern piracy on Southeast Asian countries alone.

The International Maritime Bureau (IMB), a special anti-piracy organization of the International Chamber of Commerce (ICC), has established the Piracy Information Center (PIC)⁸ in Kuala Lumpur, Malaysia as part of its activities to suppress modern piracy. According to a Center report, in calendar year 2000, 153 cases of piracy occurred in Southeast Asian seas, 14 cases in Far Eastern seas, 76 cases in Indian seas, 33 cases in American seas, 41 cases in African seas, and 1 case in other sea areas⁹. In regard to attempted piracy, 88 cases occurred in Southeast Asian seas, 7 cases in Far Eastern seas, 18 cases in Indian seas, 6 cases in American seas, 28 cases in African seas, and 4 cases in other sea areas.¹⁰

⁶ Tadao Iida, *Kaizoku Koui no Houritsuteki Kenkyu (Legal Study of Acts of Piracy)* (Japan Coast Guard 1967), p. 9.

⁷ 107 cases occurred in 1991, 106 cases in 1992, 103 cases in 1993, 90 cases in 1994, 188 cases in 1995, 228 cases in 1996, 247 cases in 1997, 202 cases in 1998, 300 cases in 1999, and 469 cases in 2000. (ICC International Maritime Bureau, “Piracy and Armed Robbery against Ships: Annual Report, 1 January-31 December 2000,” (January 2001), p. 3.

⁸ The duty of the Piracy Information Center in regard to combating modern pirates is to supply information about pirates, to send warnings to all agencies concerned upon receipt of urgent information about the occurrence of acts of piracy, to give replies to inquiries about suspicious vessels, to investigate incidents, and to make reports based on the analysis of the incidents. The number of incidents of modern piracy given in the report are the numbers reported by vessels, but the actual number of incidents is a larger number when the number of incidents that are not reported is taken into consideration.

⁹ *Ibid.*, pp. 20-57.

¹⁰ *Ibid.*, pp. 58-75.

In the nine months from January to the end of September 2001, it was reported that 88 cases of piracy occurred in Southeast Asian seas, 5 cases in Far Eastern seas, 34 cases in the seas surrounding the Indian subcontinent, 10 cases in American seas, 44 cases in African seas, and 3 cases in other sea areas.¹¹ It was also reported that 32 cases of attempted piracy repelled by victims occurred in Southeast Asian seas, 5 cases in Far Eastern seas, 8 cases in Indian seas, 4 cases in American seas, 19 cases in African seas, and one case in other sea areas.¹²

Southeast Asian seas constitute a vast sea area extending from the East China Sea through the Strait of Malacca, and from the Andaman Sea to the Indian Ocean. In the year 2000, 119 cases of piracy occurred in waters around Indonesia, 75 cases in the Strait of Malacca, and 21 cases in waters around Malaysia. This vast sea area serves as a maritime transportation route for foreign trade for various countries such as Japan, South Korea, Russia, and China, so to secure the safe and stable use of these sea lanes is a matter of great concern not only to the aforementioned countries, but also to ASEAN countries which supply raw materials and parts of industrial products, and who buy manufactured goods, utilizing these transportation routes.

2. Characteristic Features of Modern Pirates

The modern pirates active in the waters near the Strait of Malacca may be classified into three types according to their purposes and objects of attack. The pirates are commonly armed with knives, pistols and rifles. They approach merchant vessels, cargo vessels and tankers in high-speed small craft, and complete their attacks in an extremely short period of time. (One group of pirates who committed robbery in waters around the Somalia Peninsula was armed with a bazooka, but the use of such a heavy weapon is a rare exception.)¹³

The first type of pirates, attack vessels anchored in ports in the darkness of night, slow moving freighters and tankers passing through the Strait of Malacca, the Philip Channel and the Singapore Strait. Their attacks are simple robbery at sea, stealing cash or electrical appliances. They are referred to as opportunists¹⁴ or petty thieves. This type of piracy shows an increasing trend due to the economic depression and unstable political situation in Indonesia, and accounts for more than 90 percent of all incidents of piracy and robbery.¹⁵

Some of these petty pirates distribute some of their loot of cash and goods to the villagers along the coasts of the Strait of Malacca. Certain pirates are respected as Robin Hoods in these villages. It is said that these circumstances make it difficult for the police to arrest the pirates.¹⁶ The IMB deals with robbery attacks on vessels anchored in ports as acts of piracy,

¹¹ ICC International Maritime Bureau, "Piracy and Armed Robbery Against Ships: Report for the Period 1 January – 30 September 2001," (15 October 2001), pp. 20-46.

¹² *Ibid.*, pp. 47-56.

¹³ Hearing from the Director of the Piracy Information Center of the International Maritime Bureau (November 19, 2001).

¹⁴ Opportunists are so called because they normally engage in agriculture and other work, and at times board vessels passing through in small groups and steal money and goods. Local people are reluctant to cooperate with the police in the search for these pirates, making it more difficult to arrest them.

¹⁵ Director of the Piracy Information Center Quote, *op.cit.*

¹⁶ Report of the Embassy of Japan in Malaysia (2001), *The Occurrence of Acts of Piracy in Southeast Asia*,

but Malaysia and other countries are not in favor of defining these acts as piracy. They argue that these crimes are matters to be handled by the local police, and that it would be advisable for local public authorities to deal with their respective cases.¹⁷

The second type of piracy is classified as armed robbery. Pirates attack cargo vessels navigating these waters and seize their heavy loads of cargo. These raids are usually conducted under a carefully worked-out plan, which includes disposing of the cargo in a short period of time. It is assumed that international criminal syndicates and corrupt local authorities have a hand in such acts, making it extremely difficult to search for the cargo.

The third type of pirate seizes not only the cargo, but the vessels as well, in an act of piracy called “ship-jacking.” Large-scale international syndicates are assumed to participate in this type of piracy; the hijacked vessels are painted in different colors on the sea, and then they have their names changed. The pirates issue forged certificates of ship nationality, similar to those of actually existing vessels. The vessels are quickly sold to prospective purchasers whom they have approached with contracts in advance. The cargo will be unloaded in some port temporarily to be disposed of through various routes.

The occurrence of this third type of piracy in Southeast Asian seas increased rapidly between 1997 and 2000, but then showed a decline. However, the number of occurrences increased again in 2001, with seven cases by September. Examples of this third type of piracy include the April 25 *Arbey Jaya* incident,¹⁸ in which three Japanese crew members went missing, the June 19, the *Selayang* incident,¹⁹ in which the Malaysian Navy and the Indonesian Navy cooperated in the capture of the pirates, and the August 25 *Ocean Silver* incident,²⁰ in which ransom for the six crew hostages was demanded.

In addition to the above three types of piracy, a new fourth type of piracy with the object of kidnapping has occurred successively in the waters around North Sumatra since 2001. The first case occurred in the waters off Banda Aceh, when a coal-transporting vessel registered in Thailand was attacked and ransom money was demanded. This type of piracy of hijacking and ransom is said to have close connections with the *Gerakin Aceh Merdeka* (GAM), or Free Aceh Movement. GAM's spokesman says, “Ships using the Malacca Strait should seek permission from the separatist rebels in Indonesia’s Aceh Province.²¹”

The hijack and ransom type of pirates seize the vessel and crew, and at the same time demand a ransom of a sum that the ship owners can easily pay. The vessel and crew are released upon completion of the payment of the ransom. The ship owners consider the number of days required to reach the destination, and tend to comply with the demand to save the time required to settle the situation. After the occurrence of three cases of kidnapping piracy, the Indonesian Navy reinforced security in the waters around Aceh, and further cases have not

p. 2.

¹⁷ Dato’Noor Azuman Othman, “*Malaysia’s Perspective*,” presented to the 4th Meeting of the ICC International Maritime Bureau Meeting on Piracy and Phantom Ships (June 2001), p. 7.

¹⁸ ICC IBM Report for the Period, op.cit., p. 24.

¹⁹ *Ibid.*, p. 27.

²⁰ *Ibid.*, p. 30.

²¹ *Ibid.*, p. 18.

occurred since. By sharing information with the Indonesian Army, they are able to watch the movements of the GAM. It is said that further symptoms of a recurrence of these cases have not been detected.²²

B. The *Alondra Rainbow* Incident

The *Alondra Rainbow* incident²³ is a typical example of ship-jacking piracy. The incident was particularly shocking to Japan, as the victim was a vessel registered in Japan. It occurred at the time when former Prime Minister Obuchi appealed for regional cooperation in fighting against piracy at the meeting of ASEAN plus 3, and proposed to hold an international conference.

The cargo vessel, *Alondra Rainbow* (7,762 tons), owned by the Imura Kisen Company with a Japanese captain and chief engineer and a crew of 15 Filipinos, and loaded with approximately 7,000 tons of aluminum ingot (worth approximately 1.2 billion yen), left the port of Kuala Tanjung on the Indonesian island of Sumatra on the night of October 22, 1999, bound for the port of Miike in Japan's Fukuoka prefecture. Approximately two and a half hours after departure, the vessel was attacked by more than 10 pirates armed with pistols and knives, who approached in a high-speed small boat.

The pirates took over the cabin and the rescue signal apparatus, tied up the crew and confined them blindfolded in one portion of the vessel. The pirates sailed the vessel in a direction away from its original destination. The next morning, the crew was transferred, still blindfolded, into an antiquated cargo ship with a displacement of about 1,500-2,000 tons. They were confined in a small cabin for six days, after which they set adrift in an inflatable life raft in the early morning of October 29. The entire crew of 17, after drifting for 11 days, was fortunately rescued by a Thai fishing boat, which happened to chance upon them in the sea south of Thailand's Phuket Island.

During this period, the Japan Coast Guard and the Japan Ship Owners' Association appealed to coastal states to offer information about the missing *Alondra Rainbow*, and the IMB issued a search warning.

At noon on November 13, the Indian Coast Guard discovered a suspicious vessel, the *Mega Lama*, sailing under a Belize flag off the southern tip of Indian sub-continent. The Coast Guard inquired by radio as to the vessel's name, nationality and destination, and at the same time, queried the PIC about the vessel's registration. The *Mega Lama* replied to the Indian Coast Guard that the vessel was registered in Belize, and that, after leaving the port of Manila, was heading for the port of Majayara in the United Arab Emirates. However, the Center reported that the suspicious vessel was not registered in Belize, and that there was no record

²² Hearing from the Western Fleet Commander of the Indonesian Navy (November 22, 2001).

²³ For details refer to Jayant Abhyankar, "Piracy and Ship Robbery," in Hamzah & Ogawa, ed., *Combating Piracy and Ship Robbery: Charting The Future in Asia Pacific Waters*, (Okazaki Institute 2001), pp.38-41, and the report of the Embassy of Malaysia, *Alondra Rainbow Gou Jiken no Keika (The Proceedings of the Alondra Rainbow Incident)*, 2001.

of its entry into the port of Manila. The Indian Coast Guard ordered the vessel to stop, but the vessel ignored the order and tried to escape, increasing speed.

The Coast Guard, together with the Indian Navy, pursued the suspicious *Mega Lama* with three warships and two aircraft. On the morning of November 16, a warship in the Indian Ocean at a point approximately 430 kilometers west of the State of Goa fired at the engine room of the suspicious vessel, bringing it to a stop, and captured the crew of 15 Indonesians. The captain of the suspicious vessel attempted to set fire to and sink the vessel as a means to destroy evidence, but failed. The suspicious vessel had the name *Mega Lama* marked on the hull. However, a search revealed documents of the *Alondra Rainbow* and the Indian authorities concluded that the suspicious vessel was indeed the *Alondra Rainbow*. The vessel was taken to Moonby where the prisoners subsequently confessed that half of the cargo of the *Alondra Rainbow* had been transferred to another ship, and after changing the name of the vessel to the *Mega Lama*, they had been captured while in the process of transporting the remaining cargo of aluminum ingots to the United Arab Emirates.

The confined pirates were handed over to the Indian police, indicted according to the UNCLOS and the Criminal Law of India, and were imprisoned in India. As there are no provisions for piracy in the criminal code of India, the pirates were prosecuted for crimes committed abroad, robbery, destruction of a vessel, damage to the navigating power of a vessel, interference with government officials in the performance of their duties, attempted murder, objection to official orders, and forgery of official documents.

Meanwhile, in the Philippines, an investigation team discovered approximately 3,000 tons of the cargo of aluminum ingots from the *Alondra Rainbow* in a warehouse on the outskirts of Manila and confiscated the cargo. According to investigation records, the aluminum ingot had been unloaded in Olongapo in Subic Bay from a cargo ship, *Victoria*, within one month of the date of the ship-jacking of the *Alondra Rainbow*. Using a forged certificate, the aluminum ingot had been transported to the warehouse in 15 trucks.

In the case of the *Alondra Rainbow*, it was only possible to capture the pirates by discovering a suspicious vessel in the Indian Ocean by chance. This underlines the difficulty of controlling the ship-jacking type of piracy. Various countries, such as Japan, Indonesia, India, the Philippines and Thailand were all involved in the suppression project. The results indicate that international cooperation is indispensable to suppress modern piracy.

C. Necessity of Multinational Cooperation

Piracy on a large scale involving international syndicates benefits from innovative use of science and technology. By installing powerful engines intended for larger vessels on small craft, pirates are able to escape from slower warships. Using satellite navigation systems, they are able to accurately determine their positions, greatly enabling close teamwork and precise operations.

In addition, cargo vessels and tankers are increasingly sailing under flags of convenience, with smaller multi-national crews. Vessels have become larger and more automated, and their

operational and personnel systems have undergone great changes. Circumstances have made these vessels more vulnerable to attacks from pirates.

According to the flag state doctrine, the flag states can enforce their own laws when their vessels are on the high seas or in the exclusive economic zones of other states. However, the shipping industry has undergone a great change and now has diversified and complicated operational and personnel boarding systems. Under the circumstances, it has become difficult to rely entirely on the flag state doctrine. Moreover, in the case of vessels navigating under a flag of convenience, the flag states cannot be said to have fulfilled their responsibility to enforce the laws. In the case in which the captain of the vessel and the crew, the owner of the vessel, the navigator, the forwarder, and the receiver of the cargo are from different countries, the damage due to modern piracy will be diffused, as will the enthusiasm of the respective countries to embark on a positive initiative to suppress modern pirates.

The changes in operational and personnel systems which have brought about a reduction in ships' crew sizes, have resulted in a decline in the ability to take preventive measures against piracy while anchored in ports, to keep watch while on duty, and to patrol aboard ship. The capacity to maintain lookouts while sailing, and to resist by using force has also been reduced. Ships that have been robbed of their cargo in ports and harbors of developing countries, or vessels that have been attacked by small-scale pirates, have a tendency to refrain from reporting the incidents to the PIC. Apparently, the time required to report and incident to the PIC and to mount follow-up action significantly increases in the cost of a voyage.

The particular characteristics of the geography near the Strait of Malacca also necessitate international cooperation in the suppression of modern piracy. There are no high seas in the Strait of Malacca, and in the seas nearby. Territorial seas and exclusive economic zones are closely connected with each other in a complicated manner. Pirates pursued by competent authorities may easily escape into territorial seas or the archipelagic waters of neighboring countries.

The Rome Treaty²⁴ of 1988 regarding the punishment of hijackers, with a basis in the criminal law of the respective countries, recognizes the right of a competent authority to pursue, arrest and inflict penalties on pirates. It also puts the countries concerned under an obligation to extradite foreign criminals, and indict and punish them as well. Japan, South Korea and Australia are the only countries in Asia that have ratified the treaty. The actual state of the shipping industry, and the real condition of the modern pirates who are supported by the latest science and technology, make a multinational cooperation system an indispensable matter for the suppression of modern piracy.

²⁴ 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

II. Legal Status of Pirates

A. Pirates under International Law

“Lawful piracy” is said to have existed since ancient Roman times. Throughout the Middle Ages and during modern times, pirates were authorized by governments of the day as a means of helping secure national supremacy of the seas. Maritime states issued *letters of marque* to individual ships as measures for political means and warfare. From the point of view of their native country, piracy was an act to be encouraged, as they would not attack vessels of their native country, but rather attack vessels and plunder colonies of their rival countries. In times when the confrontation of states existed in the basis of world law and order, acts of piracy were legitimate immoral acts.

Some acts of piracy were handled as criminal acts, while others were a lawful means of plundering in warfare, and for a long period of time, these acts could not be distinguished theoretically from one another. It was only after modern states came into existence and the principle of freedom of the seas was established that acts of piracy were criticized universally. After an international law denoting acts of piracy as a crime common to all mankind and dealing with the suppression of those acts was enacted, particular states or societies were no longer allowed to utilize acts of piracy for their own benefit.

In order to deal effectively with piracy incidents such as the *Alondra Rainbow*, it will be necessary to clarify the legal status of pirates and the competence to arrest the pirates. The problem is whether acts of piracy committed in territorial seas should be considered as a crime under criminal law, giving the competence to arrest the criminals only to the coastal states, or regarded as crimes committed under international law, giving the competence to arrest pirates to any country. Limiting the case to modern piracy, it may be possible to regard the incidents as criminal acts which may become targets of pursuit into the territorial seas of other states.

The 1958 Convention on the High Seas provided a definition of acts of piracy. The regulation was provided in regard to the necessity to place the responsibility for the suppression of piracy to all countries. According to international law, pirates may be defined, in principle, as criminals putting vessels and property owned by others under their own control for private ends on the high seas. The definition of acts of piracy under Article 15 of the Convention on the High Seas is:

1. Any illegal acts of violence, detention or any acts of depredation, committed for private ends by the crew or passengers of a private ship or a private aircraft, and directed:
 - a) On the high seas, against another ship or aircraft, or against persons or property on board a ship or aircraft;
 - b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any state;

2. Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
3. Any acts inciting or of intentionally facilitating an act described in sub-paragraph 1 or sub-paragraph 2 of this article.

The articles defining pirates in the Convention of the High Seas, with a slight revision of the wording of sub-paragraph 2, have been incorporated into the UNCLOS, and have today become the definition of piracy under international law. That is, piracy as defined in the UNCLOS consists of all illegal acts of violence, detention, or any acts of depredation, committed for private ends on the high seas or areas not under national jurisdiction. Excluding the high seas, “areas not under national jurisdiction” are waters excluding inland waters, territorial seas and archipelagic waters²⁵; in other words, exclusive economic zones²⁶ and the waters around the South Pole.²⁷

All countries are under an obligation to cooperate in the suppression of piracy on the high seas according to international law. Every state may arrest pirates on the high seas or in any other place outside of a national jurisdiction.²⁸ The courts of the state that carried out the seizure may decide the penalties to be imposed.²⁹

Ships and aircraft of respective countries vested with this competent authority may carry out operations to seize pirates only when the incidents occur on the high seas or in their own exclusive economic zones, but must cease pursuit when the vessels of the pirates enter the territorial seas of another coastal state. When the acts of piracy occur within their own territorial seas, as in the case of modern pirates, only vessels and aircraft of the competent authorities of the respective coastal state may continue to pursue the pirates into exclusive economic zones and onto the high seas beyond their territorial seas. When a pirate vessel enters the territorial sea of its own country or of a third state, the hot pursuit ceases.³⁰ In this case, the coastal states, unless the vessel under hot pursuit is suspected of a violation of domestic law, may not conduct hot pursuit. In order to suppress modern pirates, it is important that the coastal states enact the piracy provision in their criminal law in advance.

Factors which make the suppression of modern pirates difficult include: (1) maritime industrial countries are able to confront piracy beyond the waters of their national jurisdiction

²⁵ The sovereignty of the archipelagic state extends over the archipelagic waters of the respective countries, the skies above, the sea bottom below, and underground (UNCLOS, Article 49).

²⁶ Coastal states may exercise sovereignty over economic resources in the exclusive economic zones, but may exercise exclusive jurisdiction only on artificial islands, installment and operation of facilities and structures, investigation of marine science, and the protection and preservation of the marine environment (UNCLOS, Article 56); the enforcement of jurisdiction on the right of way of foreign vessels is largely limited.

²⁷ In areas south of latitude 60 degrees, (including icebergs), according to the Antarctic Treaty, territorial claims of every country are frozen, (Article 6), and countries cannot exercise jurisdiction over the area.

²⁸ UNCLOS, Article 105.

²⁹ *Ibid.*, Article 107.

³⁰ *Ibid.*, Article 111.

only in cases of piracy as defined under international law, (2) unless an international agreement is concluded, it is impossible to pursue pirates who have entered the territorial seas of their own or third countries, and (3) modern pirates are well aware of these difficulties. In order to overcome the difficulties, it will be necessary to clarify the definition of pirates and the competent authority to control piracy, and conclude an agreement for suppressing piracy among neighboring countries, or between coastal countries and maritime industrial countries. The IMB has independently defined “Pirates and Armed Robbery” as including robbery in territorial waters and in ports and harbors.³¹ The Bureau is requesting the countries of Southeast Asia to accept this definition, but countries near the Strait of Malacca are refusing to accept it.

B. Pirates and Domestic Criminal Laws

In suppressing and controlling pirates from the principle of legality, it is necessary for coastal states to provide regulations in regard to penalties for acts of piracy in the provision of criminal law, as mentioned above. The *Alondra Rainbow* incident is the first case in which the Indian Navy captured modern pirates, but as criminal law to be applied to the case had not been prepared in India, the authorities have not been able to impose penalties on the pirates as yet.

In punishing acts of robbery committed within vessels in territorial seas, if the criminal law of the respective countries does not provide a penalty for acts of piracy, it is impossible to deal with pirates as the common enemy of mankind. Acts of piracy will be punished as mere robbery or burglary on the sea with insufficient prison terms. As a result, the pirates who have served their terms of imprisonment will get out shortly and engage in acts of piracy again.

The procedures provided for in the criminal law of the respective countries in regard to piracy may be roughly classified into the following three methods: (1) to enact general criminal law of without mentioning the concept of acts of piracy, (2) to enact criminal law dealing with acts of piracy under civil law that coincide with the acts of piracy defined under international law, and (3) to enact criminal law defining acts of piracy regardless of the concept of acts of piracy under international law.³²

The first method strictly distinguishes elements of international law from elements of criminal law. The concept of acts of piracy under international law indicates the legal prerequisites of marine police in regard to acts threatening public order on the high seas such as robbery, blackmail, murder, injury, damage of property, and other objects of general regulations. In other words, particular regulations are not considered to be necessary to deal with acts of piracy.

³¹ Piracy and armed robbery against vessels have been defined as “An act of boarding or attempting to board any ship with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act.”

³² In regard to the regulations on piracy in the criminal law of various countries, see: Iida, *op.cit.*, pp.78-110, and Alfred P. Rubin, *The Law of Piracy*, 2nd ed., Transnational Publications, 1998.

This method of enacting criminal law may be observed in several countries of northern Europe with legal systems modeled after those of Germany. These countries may be divided into three types: (1) countries such as Belgium, Finland, (and Japan),³³ which do not have particular provisions for acts of piracy in their criminal law, (2) countries such as Germany, Denmark, and Sweden with regulations regarding acts of piracy at the same level as robbery attacks with the purpose of robbery on the high seas, and (3) countries such as Norway (and Chile) which provide that acts of piracy are robbery on the seas with regulations providing for penalties even for preparatory measures.

The second type regarding acts of piracy under international law and acts of piracy under criminal law on the same level is the form of legislation observed in the United Kingdom and the United States. This type of legislation entrusting the definition of acts of piracy to international law may be said not to follow principles of legality. However, it may be a superior type of legislation since legal conditions for marine police coincide with criminal codes, making it possible to acknowledge the demands of international law and the mission of criminal law.

Great Britain claims to possess jurisdiction over criminal acts committed in their territorial seas even in cases involving foreigners. In order to hold trials for crimes committed on the high seas or in foreign lands according to the common law, it is necessary to use a legal fiction that the crime was committed in England. However, in the case of piracy, as an exception to the principle of territorial jurisdiction, with consideration for international law, it is possible to impose penalties on crimes under international law as crimes violating criminal law.

Thus, in Britain, regarding acts of piracy as crimes violating the criminal law of the country, and at the same time, as crimes violating international law, principal offenders of foreign nationality as well are submitted to the national jurisdiction. In other words, in British law, the authority for the arrest of pirates on the high seas is recognized as the legal result of acts of piracy. It is understood that this recognition is based on the establishment of legal jurisdiction³⁴.

The United States, in its Federal Criminal Code, does not entrust the definition of acts of piracy to international law, avoiding the contradiction of legal requirements under international law and constructive requirements of criminal law. The Federal Criminal Code of the United States applies the criminal code for pirates to the so-called privateers in principle. The lack of political purposes is not considered as a legal condition to provide for acts of piracy in the criminal code. Problems of whether the crimes must be limited to acts

³³ In the case of Japanese criminal law, the principle of personal jurisdiction is applied only to the assailant. It is difficult to perform the duties of the marine police under international laws, and it is also difficult to protect Japanese nationals on the high seas. In other words, it will be possible to punish Japanese nationals by applying Article 236 of the criminal code providing regulations for robbery, and Article 2 providing regulations for crimes committed abroad. However on the high seas, it will be possible to punish crimes committed by foreigners on board a vessel registered in Japan by applying Article 1, sub-paragraph 2, but nothing can be done in the case of crimes committed on board vessels sailing under a flag of convenience.

³⁴ Iida, *op.cit.*, p. 76.

committed on vessels or other means of water transport, or whether the crimes must be committed by the crew of the vessels, or whether the crimes must be related to the high seas, have not been considered as objective prerequisite matters.³⁵

Since the third type of criminal law considers acts of piracy as violations of the safety of the country against external forces, violations of the public safety, or violations of the safety of marine transportation, the method provides for a particular system of constructive requirements under the name of acts of piracy, including not only acts of piracy under international law, but also crimes of a similar nature. The criminal codes of France, Italy, Mexico, Portugal, Brazil, Argentina, and countries with the Latin American legal system have adopted the third method. China, Holland and Greece have also adopted this system of criminal codes.

For example, in France, the main characteristic of the crime of piracy is connected with privateers. In other words, the criminals do not possess vessel documents, or possess forged documents, attack and seize merchant vessels in times of peace, control vessels by violence, and hand over the vessels to pirates. If the criminals fulfill any one of the above conditions, their actions will be judged as acts of piracy.³⁶

Coastal states engaged in the suppression of acts of piracy in the waters of Southeast Asia, such as Malaysia, Singapore, Indonesia, and the Philippines, have a tendency to adopt the first type of legislation. With a basis on the definition of acts of piracy under international law, they firmly maintain the position that modern acts of piracy that occur in their territorial seas are not acts of piracy under international law, but are illegal acts under criminal law, with only the coastal states possessing the competent authority to suppress the modern piracy. These countries are quite sensitive to the problem of the infringement of their sovereignty. Even with the necessity of suppressing acts of piracy, they are cautious about patrols by foreign vessels, and the pursuit of pirates within their territorial seas, seeing these as infringements of their sovereignty.

The definition of modern piracy according to the IMB does not specify the waters where the piracy occurs, indicating that the IMB is dealing with the problem of acts of piracy from the standpoint of maritime industrial countries. Southeast Asian countries with a strong sense of nationalism and expression of national pride are reluctant to accept the definition of piracy of the IMB, causing difficulty for international cooperation in regard to the suppression of piracy.

In China, until recently pirates were routinely released soon after their arrest. A revision to the criminal code to provide a death sentence for piracy resulted in a sharp decrease of acts of piracy in waters around China.³⁷ This fact indicates that providing criminal laws for acts of piracy and inflicting severe punishment will lead to the suppression of modern acts of piracy.

³⁵ *Ibid.*, p. 89.

³⁶ *Ibid.* p. 97.

³⁷ Director of the Piracy Information Center, op.cit. Quote.

III. Modern Pirates and Naval Policing Activities in Southeast Asia

A. Control of Piracy in Indonesia and Malaysia and their Navies

1. The Indonesian Navy and the Control of Pirates

In the waters around Indonesia, acts of piracy frequently occur in the Singapore Strait, the Philip Channel, and particularly in the Strait of Malacca. The frequency of these incidents may be largely attributed to the weak Indonesian economy. The decline in the economic condition of the country has brought poverty to the people, who in turn have resorted to illegal acts, including piracy. The Directorate of Guard and Rescue (DGR) of the Directorate General of Sea Communications (DGSC) of Indonesia, and the Marine Police of the National Police Organization of Indonesia cannot afford the cost of fuel required to patrol their area. At present, sufficient fuel for only six hours is distributed to each patrol boat for one month, and sufficient patrol activities cannot be carried out in their respective areas.³⁸ As for the piracy control system in Indonesia, a special organization to carry out sufficient guard operations on the sea does not exist. In matters related to the security of the sea, the navy is responsible for adjustments with the competent authorities concerned. In other words, the Coordinating Body for Security at Sea (CBSS) consisting of the marine police, the DGR, and customs office, under the coordination of the navy, controls anti-piracy operations, and the navy is responsible for the coordination of maritime security.³⁹

Information regarding pirates is handled by the CBSS of the DGSC in accordance with the recommendations of the International Maritime Organization (IMO). The DGR of the DGSC is responsible for international conferences and international affairs in regard to the piracy problem. With respect to police activities on the sea, the navy is mainly responsible for security in the exclusive economic zone, while the marine police are responsible for security in territorial seas, including ports and harbors.⁴⁰ The DGR of the DGSC has established marine guard bases in five locations, and has 120 to 125 vessels for various activities. Nine of these vessels are medium sized vessels of the 40-meter class. The marine police also possess vessels, but of smaller size with limited range.⁴¹

The western fleet of the navy has established patrol bases on the island of Batam south of Singapore, in Belawan, the largest port on the island of Sumatra, east of Medan city in the province of North Sumatra, and on the island of Banka in the eastern part of the province of Riau. These sites serve as bases for patrol activities in pirate-infested waters such as the Strait of Malacca. In patrolling the Banka Island waters, a 24-hour (three shift) system is used, but in other locations, the patrol boats only sail in response to reports of pirate activity. The

³⁸ Hearing from the Chief of Rescue Operations of the Department of Sea Communications of the Ministry of Transportation of Indonesia (November 22, 2001).

³⁹ Western Fleet Commander, *op.cit.*

⁴⁰ Chief of the Ministry of Transportation, *op.cit.*

⁴¹ Western Fleet Commander, *op.cit.*

eastern fleet mounts similar operations to those of the western fleet, but since piracy is less common in their waters, they do not have patrol bases as the western fleet does.⁴²

The most important problem in providing piracy control measures in Indonesia lies in the fact that it takes two to three days for information from the PIC of the IMB to reach the marine police base in the three locations. Reasons for this phenomenon may be that victims or eyewitnesses fear retaliatory action by pirates, or from an unwillingness to put up with the inevitable delays that accompany investigations.⁴³

Secondly, there is the problem of the bureaucratic process of delivering information in Indonesia. The information from the PIC is delivered to the DGR of the DGSC, and the report finally reaches the navy. The government and the navy are currently attempting to reduce the time delay. The accuracy of information about the occurrence of acts of piracy also presents a problem that must be ascertained at the site.⁴⁴

Another problem has led to the Indonesian Navy been criticized by neighboring countries. Hitherto, the navy had arrested pirates, but since the police became independent from the navy, the latter have been responsible for the arrest of pirates. However, corruption in the navy makes international cooperation difficult. For instance, in the tanker *Selayang* incident, after repeated requests from Malaysia, through international cooperation, the Indonesian Navy captured the pirates, but the navy demanded illegal money from the ship owner. The tanker *Selayang* was hijacked by the pirates, and it is said that it was as though it was hijacked by the Indonesian Navy. Furthermore, in the beginning of 2001, when the marine police of Malaysia captured certain pirates, some criminals happened to be officers of the Indonesian Navy, and they were secretly handed over to the authorities of Indonesia.⁴⁵

2. The Malaysian Navy and the Control of Pirates

In Malaysia, the Government organ in charge of piracy control is the marine police. The marine police possess a special squadron of about 20 members specializing in the control of pirates, patrolling mainly in the waters around the Strait of Malacca. The primary duty of the marine police is the enforcement of laws in Malaysian territorial seas, but according to the Police Act of 1967, they have been invested with the authority to control all types of criminal acts, including piracy in territorial waters and beyond. Vessels of the marine police engaged in activities to control piracy in waters around Malaysia are supported by the air force of the marine police.⁴⁶

The role of the Malaysian Navy in regard to piracy control is a supplementary role carrying out activities on a limited scale. In other words, the Malaysian Navy is in a position to support the marine police by offering intelligence, communication services, the pursuit of

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Director of the Piracy Information Center, op.cit.

⁴⁶ Dato'Noor Azuman op.cit., p. 4.

pirate vessels, and special squadron operations in the stage of the arrest of the pirates.⁴⁷ On the occasion of the aforesaid hijacking incident of the tanker *Selayan*, which occurred in June 2001, the navy committed two ships to the pursuit of the tanker that escaped into the territorial waters on the east coast of the Malay Peninsula. The *Selayang* was equipped with the receiving apparatus of the Ship Location Indication System (ShipLoc). As it was possible to ascertain the actual position of the tanker, the navy was able to conduct a very effective pursuit.⁴⁸

The Malaysian Navy continues to patrol mainly in the waters on the east coast of the Malay Peninsula and the east coast of the province of Sabah, with priority on the latter area which is exposed to the Abu Sayyaf threat. Not many warships remain in the Strait of Malacca, but as the threat of piracy is not so serious in the area, it is thought that the marine police will have sufficient capability to cope with the situation.⁴⁹

There are 22 separate competent authorities with some role in the control of piracy, including the marine police and the navy, making the problem of the control of piracy in Malaysia a complicated matter. The Malaysian Government has established an organ in the President's Office to coordinate the activities of the various agencies, the Marine Enforcement Coordinating Center (MECC). The MECC is the main contact point for the exchange of information, operating the 24-hour Malaysia Marine Surveillance System for the Strait of Malacca with the directive center at Lumut, and branches at Port Klang, Johor and Langkawi.⁵⁰

Even with the establishment of the MECC, it is still difficult to coordinate matters effectively among the 22 agencies in a short period of time. Therefore, it is under consideration to establish a coast guard as an organization to be responsible for all matters related to acts of piracy in the future. There is also a movement to provide for a Coastal Zone Policy, including policy for the control of pirates by the year 2002.⁵¹ If the Coast Guard is established, the marine police will be in charge of the 12 nautical mile territorial sea, while the Coast Guard will be in charge of waters beyond 12 nautical miles up to 200 nautical miles. The Coast Guard will be equipped with two to three vessels and several helicopters. The navy will be relieved from the duty to support activities against pirates, and will be able to concentrate on their primary duty of the defense of the waters around the Spratly islands.⁵²

⁴⁷ Hearing from a researcher of the Malaysia Institute of Maritime Affairs (MIMA) (November 19, 2001).

⁴⁸ Director of the Piracy Information Center, op.cit. Quote.

⁴⁹ Hearing from the Assistant Chief of Staff for Operations, Royal Malaysian Navy HQ (November 21, 2001).

⁵⁰ Dato' Noor Azman, op.cit., p. 3.

⁵¹ Hearing from the researcher of MIMA, op.cit., (November 19 2001).

⁵² Assistant Chief of Staff, op.cit.

B. The Suppression of Modern Piracy and International Cooperation in Southeast Asia

1. Cooperation in Coastal States by the Navy and Other Maritime Forces

Countries in Southeast Asia such as Malaysia, Thailand, Indonesia, the Philippines, and Singapore have concluded the agreements for the suppression of modern piracy between two countries through the Department of Defense in the 1970s. They hold Joint Border Committee meetings periodically, discussing mutual cooperation measures to be taken to counter piracy. The navies of these countries make adjustments at the pace of the schedules of each of the two countries, and carry out joint training and coordinated patrols. However, the activities are not on a continuous basis, but rather only for a limited period of time.⁵³

The agreements for cooperation for the suppression of modern piracy are concluded between each pair of countries in many cases, because the interests of the countries in Southeast Asia do not always coincide. It is difficult to achieve multinational cooperation in the region, but easier to conclude agreements between pairs of countries. In the case of a coordinated patrol with the navy of another country, each country may coordinate the time and water area, and the neighboring countries carry out coordinated patrolling in their respective territorial seas, without entering the territorial seas of the other country.⁵⁴

The three countries of Malaysia, Indonesia, and Singapore concluded bilateral treaties between each pair of countries for the suppression of armed robbery in 1992, and are carrying out coordinated patrols and joint training to secure the safety of the sea. In the Singapore Strait and the Philip Channel, Indonesia and Singapore are carrying out coordinated patrols (INDOSIN) at a rate of four times per year, with 1 warship and 1 marine police vessel from Indonesia and Singapore for 60 days per coordinated patrol.⁵⁵

Malaysia and Indonesia are carrying out a coordinated patrol (MALINDO) in the Strait of Malacca, with two warships from each country participating for 10 days per coordinated patrol at a rate of four times per year. One warship of the Indonesian Navy, one vessel of the marine police, one patrol boat of DGR, one boat of the customs office from Indonesia, and one warship from the Malaysian Navy are carrying out a coordinated patrol (OPTIMA MALINDO) for seven days once per year.⁵⁶

With respect to Indonesia, Malaysia and Singapore, as the warships of each country may happen to enter territorial seas of other states in the course of controlling pirates, they concluded bilateral agreements between each pair of countries in 1992, indicating their understanding of such acts.⁵⁷

Similarly, the marine police and their counterparts in Malaysia, Indonesia, Thailand, and the Philippines have concluded agreements for security between each pair of countries; they

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Report of JICA stationed in Indonesia, "Indonesia kyowakoku niokeru kaizoku taisaku (Measures to Combat Piracy in the Republic of Indonesia)", p. 2.

⁵⁶ Ibid.

⁵⁷ Western Fleet Commander, op.cit. Quote.

are carrying out coordinated patrols and joint training, and are exchanging intelligence on piracy.⁵⁸ In regard to the control of pirates in neighboring countries, from the viewpoint of Malaysia, Indonesia is not fulfilling its obligations and fails to carry out appropriate measures. The Philippines does not possess enough vessels for effective control of pirates. The control systems of Myanmar and Viet Nam cannot be said to be satisfactory, while Singapore and Thailand have favorable control systems.⁵⁹

2. Cooperation among Maritime Industrial Countries and Coastal States

The PIC was established at the proposal of the IMB of the ICC to promote the investigation of piracy incidents. It is supported by the International Maritime Organization (IMO) and the International Maritime Satellite Organization (INMARSAT). Since its establishment in 1992, it has been collecting information related to piracy from all over the world on a 24-hour basis. Providing information to vessels on the sea, and to competent organizations of various countries, it has played an important role in the suppression of piracy. However, in regard to the maritime industrial countries, it is difficult to promote multinational cooperation in the controlling of modern piracy, as there is a legal limit to their activities.

Under these circumstances, maritime industrial countries have adopted the Ship Loc, contributing to the suppression of piracy of the coastal states in cooperation with the PIC. The Ship Loc is a system to collect information on the location of vessels with a small receiving apparatus on board, with four satellites launched on a low orbit at a height below 1,000 kilometers tracking the vessels. In other words, a shipping company or ship owner will be able to collect information by Ship Loc using navigation satellites as to whether the vessel is navigating its arranged course, or whether the vessel will arrive at its destination on schedule.⁶⁰

In case the vessel is attacked and hijacked by pirates, the ship owner will allow the PIC to gain access to the ship location indicating system. The PIC will send a warning to competent authorities in charge of the control of piracy in the surrounding areas, and report the location information of the hijacked vessel, tracking the location from the satellites. The competent authorities concerned, in cooperation with other agencies and the authorities of other nations will be able to take appropriate measures to seize the pirates.⁶¹

The Malaysian-registered tanker *Selayang* was attacked by 20 pirates on June 16, while navigating near Plau Iyu Kecil in the Strait of Malacca, and the crew were all captured and tied up. The Malaysian Navy pursued the *Selayang*, but the tanker escaped by going around the territorial seas of Malaysia, and the exclusive economic zone, territorial seas and archipelagic waters of Indonesia. The Indonesian Navy seized the tanker in waters near

⁵⁸ Dato'Noor Azman, *op.cit.*, p. 4.

⁵⁹ Assistant Chief of Staff, *op.cit.* Quote.

⁶⁰ Collective Localization Satellites & International Maritime Bureau, *ShipLoc Technical Overview & User Manual, Revision 1.1* (May 1999), p. 3.

⁶¹ *Ibid.*

Samarinda on June 27, and took the ship to the port of Balikpapan. The crew of 14 was released and the cargo was saved.⁶²

The *Selayang* incident is an example of the effective use of Ship Loc. The navies of Indonesia and Malaysia were able to carry out a joint operation and succeeded in capturing the pirates by obtaining accurate information on the location of the fleeing pirates. The pirates escaped cleverly by avoiding waters under the national jurisdiction of the two countries, but could not evade the surveillance from the satellites.

The Indonesian Navy pursued the tanker *Selayang*, which was escaping at a speed of 11 knots, with a warship that had a speed of only 8 knots.⁶³ Fortunately, the pirates were captured, but even if the pirates had succeeded in evading the pursuit, they would have eventually entered some port, and the port and harbor would have been identified using Ship Loc.

The Government of Indonesia, in November 2001 decided to adopt the Marine Safety Information System (MSIS) for the purpose of providing information necessary for the suppression of pirates, search and rescue, and assisting marine casualties. The introduction of the system was realized through the cooperation of Japan International Cooperation Agency (JICA), to be used for the exchange of information between the Operations Headquarters in Jakarta, the Belawan branch, Dumai branch, Tanjung Uban branch, various agencies in the country, the PIC and other foreign agencies.⁶⁴ In the future, branches of the MSIS will be established in various locations in Indonesia. In the second step, they will be established in four locations, in Priok, Ambon, Samarinda, and Tanjung Priok on the islands of Java and Timor. In the third step, they will be established in approximately 20 locations on the islands of Kalimantan, Srauesshi, Seram and New Guinea.⁶⁵

Conclusion

The frequency of modern piracy near the Strait of Malacca has gradually increased with the decline of the economies of the countries of Southeast Asia. From the original simple robbery to the seizure of entire vessels of today, the method employed has become of an ever-greater scale, now involving expensive cargo and threatening the lives of ships' crews. As modern piracy occurs mostly in the territorial seas of coastal states, the definition of acts of piracy under international law has not been accepted, and only coastal states possess the competence to suppress modern pirates.

Excluding small-scale modern piracy, in the case of the second and third types of piracy with international syndicates participating, a large number of countries are involved in the

⁶² ICC IMB Period Report, p. 27.

⁶³ Director of the Piracy Information Center, op.cit.

⁶⁴ For details, see: Directorate of Guard and Rescue of DGSC, "Maritime Safety Information System" (November 2001), pp. 1-4.

⁶⁵ Ibid., pp. 5-6.

course of a single incident. The countries include not only the flag states of the attacked vessels, the native country of the ship owner, the state of registration of the vessel, the native country of the crew, and the countries of the forwarder and receiver of the cargo, but also the country of call of the pirates, the country where the seized cargo is unloaded, stored, and sold, the country of the purchaser of the cargo and company of the seized vessel, the country of the navy which pursued the pirates, other agencies related to the control of pirates, the country where the trial will be held, the country of the seized pirates, and the country where the pirates took refuge.

It is quite clear that multinational cooperation is indispensable for the suppression of modern pirates. To this end, a number of countries in Southeast Asia have concluded bilateral agreements, and their navies and marine police are carrying out joint training and coordinated anti-piracy patrols. However, with a few exceptions, the activities are carried out only by naval forces within their own territorial seas.

On the other hand, in regard to the cooperation for the control of pirates between maritime industrial countries and coastal states, the latter states do not welcome the patrol of foreign vessels in their territorial seas because of issues of sovereignty. Each country in Southeast Asia has a slight difference attitude with respect to joint activities in suppressing modern piracy.

In the case of the Indonesian Navy,⁶⁶ if their government should decide to carry out joint patrols with Japan, their navy will welcome the participation of Japan for the common mission of controlling pirates. In the case of the Philippines,⁶⁷ their navy carried out a joint maneuver with the Japan Coast Guard for the first time in 2001. Assuming that the Philippine patrol boat was a Japanese vessel attacked by pirates, the Japanese patrol boat seized the pirates in the course of the joint training. Malaysia is carrying on joint training with the Japan Coast Guard for the mutual improvement of competence and skill. But, if a Japanese patrol boat should propose to hold a joint patrol in the Strait of Malacca, it may not be easily accepted.⁶⁸

Under these circumstances, international cooperation for the suppression of modern pirates is still in the beginning stage. Countries with shipping industries are depending on the PIC and the operation of ShipLoc as measures to control pirates.

In the coastal states near the Strait of Malacca, the joint measures against piracy by navies is at present carried on by bilateral agreements between pairs of countries. It will take time to conclude multinational agreements among three or more countries. It will take further time to conclude multinational agreements among maritime industrial countries and the coastal states near the Strait of Malacca to carry out joint naval operations.

The most drastic and effective scheme for the suppression of modern pirates is to present the case of coastal states which take insufficient measures for the suppression of modern

⁶⁶ Western Fleet Commander of the Indonesian Navy, *op.cit.*

⁶⁷ Three patrol boats of the Maritime Safety Agency of Japan and one patrol boat of the Coast Guard of the Philippines, on October 31, 2001, as part of measures to combat piracy, carried out joint piracy control training for the first time. (Reported in the November 1 issue of the *Yomiuri Shimbun*).

⁶⁸ Assistant Chief of Staff, *op.cit.*

pirates to the International Tribunal on the Law of the Sea, and make the responsibility of the coastal states quite clear. The coastal states have international responsibilities to control the territorial seas under the UNCLOS. They must fulfill their responsibility to secure the stable right of innocent passage. If a judicial decision of the International Tribunal were to clarify the responsibility of the coastal states to seek assistance as a means to supplement their insufficient ability to guard their respective countries, there may be an opportunity to conclude international cooperation among maritime industrial countries. However, it must be considered that such a drastic scheme may contain the risk of offending the national pride of coastal states.

In regard to the coordinated operations of the navies of the coastal states near the Strait of Malacca, and the navies of maritime industrial countries, instead of limiting the purpose of operations to the control of modern piracy, the scale might be enlarged to include other purposes. For example, Ocean Governance is an activity to promote the sustainable development of the oceans by carrying out the various responsibilities of the UNCLOS. If activities to suppress modern piracy may be considered as Ocean Governance operations, the responsibility of the Convention will be fulfilled, and it may be easier to obtain the understanding of the coastal states. If an international patrol boat with competent government officials of coastal states on board, based on regional agreements, as a part of Ocean Governance activities, should engage in the suppression of modern pirates, it would be in line with the Ocean-Peace Keeping (OPK) initiative.⁶⁹ Actually, there is some opinion that it would be difficult to realize the initiative in Southeast Asia.⁷⁰ But, if coastal states should come to hold a thorough understanding of the Convention, and begin to consider means to fulfill the responsibilities of the Convention, the OPK initiative would take shape, and the opportunity may come unexpectedly in the near future.

⁶⁹ In regard to the OPK initiative, see: Susumu Takai, "Prevention of Armed Conflicts and OPK: New Activities for Stable Utilization of the Oceans," *Journal of National Defense*, Vol. 25, No. 2 (September 1997), pp. 32-4.

⁷⁰ Assistant Chief of Staff, op.cit.