

Chapter 3

Maritime Security Environment in East Asia

In March 1999, two unidentified vessels intruded the territorial waters of Japan. The incident came as a vivid reminder that Japan has been as exposed to sea-borne threats as has its neighbor South Korea, which in 1998 was menaced by frequently intruding spy ships. Japan took firm action against the suspicious ships, but the action brought to light several problems, calling into question the way in which Japan maintains the security of, and maintains peace and order in, its territorial waters. True, since the end of the Cold War, the threat of a naval confrontation like the one that existed between the United States and the Soviet Union during the Cold War has faded. Nevertheless, the situation of the sea in East Asia is far from peaceful and stable. Since the beginning of 1999, marine scientific research vessels of China have been quite actively operating in the exclusive economic zone (EEZ) of Japan. As of the end of June, they had been sighted operating in the EEZ of Japan on an all-time high of 24 occasions. The movement of Chinese naval vessels has thus become increasingly active.

During the past several years, piracy attacks have threatened the safety of maritime traffic in East Asia, causing concern among regional countries. Countries in the region have yet to find a clue to solving the territorial issue of the Spratly Islands. Ensuring unhindered use of sea lanes and the maintenance of peace and order on the high seas have become one of the major challenges for the security of East Asia.

1. The Pursuit of Suspicious Ships in the Sea of Japan

(1) Launching of the Pursuit

On March 23, 1999, two unidentified ships were spotted in the territorial waters of Japan. The infiltration of these vessels believed to be North Korean triggered questions about the guard of Japan's territorial waters.

Before noon, March 23, a P-3C maritime patrol aircraft (MPA) of

the Maritime Self-Defense Force (MSDF) of Japan, which was on a warning and surveillance flight, spotted one unidentified ship cruising west of Sado Island and another east of the Noto Peninsula, both of which were found in the territorial waters of Japan. Upon receipt of a report from the MPA, an MSDF destroyer rushed to the scene and spotted the two suspicious ships. The one spotted in the territorial waters east of the Noto Peninsula had the marking “Daini Yamatomaru,” as its name and the one spotted west of Sado Island “Daiichi Taiseimaru.” Alerted by the MSDF, the Maritime Safety Agency (MSA)^(Note) dispatched aircraft and patrol vessels to the scene, and at the same time, checked the ships’ names against the data in its possession, and found that the real Daini Yamatomaru was then operating off Hyogo Prefecture in the Sea of Japan, and the name of the Daiichi Taiseimaru was stricken off the fishing boat register in 1994.

Having thus verified that these two ships were impostors, the MSA instructed its patrol aircraft to order the ships to halt. As



A suspicious ship “the Daini Yamatomaru”



A suspicious ship “the Daiichi Taiseimaru”

they defied the order and attempted to flee northward, the patrol boats and aircraft pursued them. And the three destroyers and one P-3C of the MSDF, which were on the scene, continued the surveillance operations. Primarily, guarding territorial waters against infiltration of unauthorized foreign vessels is the responsibility of the MSA.

The two suspicious ships were small, each with a displacement of about 100 tons, and were equipped with a relatively large number of antennas. There was nothing on their decks that even remotely resembled fishing equipment. And the MSA patrol boats sent radio and flashing light signals calling them to halt but they defied the order and continued to flee northward. Therefore, the patrol boats fired warning shots across the bows of the “Daini Yamatomaru” with a machine gun and the “Daiichi Taiseimaru” with a rifle. These were the first warning shots that an MSA patrol boat had fired since 1953.

(2) An Order to Conduct “Maritime Security Operations”

The government of Prime Minister Keizo Obuchi set up an operation center within the Crisis Management Center to deal with the incident. At dawn, March 24, 1999, Minister of Transport Jiro Kawasaki sent word to Minister of State for Defense Hosei Norota to the effect that as the situation had taken on the proportions that were beyond the capability of the MSA, decisions relating to actions to be taken from then on should be made by the Cabinet. Defense Minister then asked the prime minister for the deliberation by the Cabinet on authorizing him to order the MSDF to conduct “maritime security operations.” In response, with the consent of the Security Council of Japan and the Cabinet, the prime minister approved the request of the defense minister, who in turn ordered the MSDF to conduct maritime security operations. The order was the first one issued since the establishment of the MSDF in 1954.

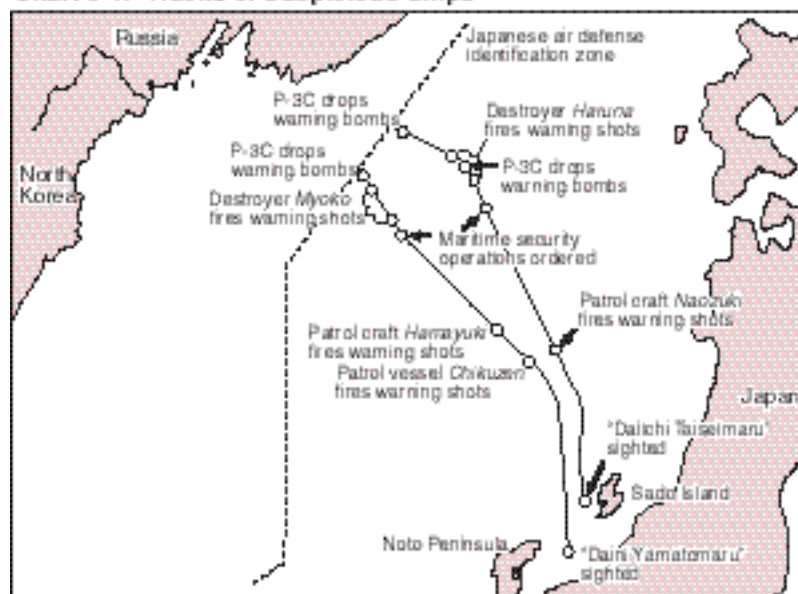
Maritime security operations are a measure taken pursuant to Article 82 of the Self-Defense Forces Law. If the minister of state

Note: As of April 1, 2000, the Maritime Safety Agency, or Kaijohoancho in Japanese, changed its English name to the “Japan Coast Guard (JCG).”

for defense feels it particularly necessary for the protection of lives or property at sea, or for the maintenance of public peace and order, the minister may, with the approval of the prime minister, order units of the Self-Defense Forces (SDF) to take necessary actions at sea. When the units of the SDF take action during the maritime security operations, Article 7 of the Police Duties Execution Law is applied to such action, and they are authorized to use a weapon only for protecting themselves or others, or for overcoming the resistance to the execution of their official duties. Under no circumstances, should they inflict an injury on any person except for self-defense or in case of an emergency evacuation.

The MSDF destroyers pursued the suspicious vessels in compliance with the order for maritime security operations, and called

Chart 3-1. Tracks of Suspicious Ships



Source: Data from Defense Agency of Japan, *Boei Hakusho* [Defense White Paper] (Tokyo: Ministry of Finance Printing Bureau, 1999); and Maritime Safety Agency of Japan, *Kaijohoen Hakusho* [Annual Report on Maritime Safety] (Tokyo: Ministry of Finance Printing Bureau, 1999).

the ships to halt by radio and flashing light signals. However, as they defied the order, the destroyers fired warning shots from rapid-firing guns. In addition, the P-3C dropped warning bombs at a certain distance from these ships. An option of crippling them by firing shots at their screws was considered. However, as these ships were too small and a shot might damage not just the ships but injure men aboard them, the idea was given up.

The ships continued to flee and went out of the Japanese air defense identification zone early in the morning of March 24, and the destroyers and the patrol boats stopped pursuing them. Even after they went out of the zone, the P-3C continued to monitor these suspicious ships on its radar. However, as they moved beyond the range of the radar, and as no extraordinary phenomenon was observed in the sea areas surrounding Japan, Defense Minister Norota called off the maritime security operations in the afternoon of March 24.

The factor at work behind the decision to call off the pursuit of these suspicious ships when they moved out of the air defense identification zone of Japan was the judgment made as of the morning of March 24 that a continued pursuit beyond that point might unnecessarily provoke other countries. Meanwhile, Russia had sent two patrol vessels of its Frontier Force in case the ships entered its territorial waters, but these suspicious ships steered clear of Russian territorial waters and turned their course west and sailed toward North Korea.

The Ministry of Foreign Affairs of Japan asked North Korea, from the evening of March 24 to the early dawn of March 25, via the North Korean Embassy in Beijing and the Permanent Mission of North Korea to the United Nations to seize the suspicious ships and hand them and their crews over to Japan if they entered the territorial waters of North Korea. Subsequently, the Japanese government made the same representation to North Korea on the basis of its judgment that the two suspicious ships had arrived at ports in the northern part of North Korea. In response, North

Table 3-1. Principal Events Relating to the Suspicious Ships Incident of March 23–24, 1999**March 23 (Tuesday)**

06:42	A P-3C finds a suspicious ship within the territorial waters of Japan, about 10 nautical miles west of Sado Island.
09:25	The P-3C finds another suspicious ship within the territorial waters of Japan, about 25 nautical miles east of the Noto Peninsula.
11:00	Destroyer <i>Haruna</i> confirms that the suspicious ship spotted east of the Noto Peninsula bears a marking reading “Daini Yamatomaru.” (A check conducted by the MSA finds that the real <i>Daini Yamatomaru</i> is then operating off Hyogo Prefecture in the Sea of Japan.)
12:10	Destroyer <i>Haruna</i> confirms that another suspicious ship spotted west of Sado Island bears a marking reading “Daiichi Taiseimaru.” (A check conducted by the MSA finds that the name of the real <i>Daiichi Taiseimaru</i> had been stricken off the fishing boat register.)
13:18	An MSA aircraft calls on the “Daini Yamatomaru” to halt. As it begins to flee, the patrol boats and the patrol aircraft pursue it.
14:00	The MSA patrol aircraft calls on the “Daiichi Taiseimaru” to halt, but as it begins to flee, the patrol boats and the aircraft pursue the vessel.
20:00–21:03	Patrol boats <i>Chikuzen</i> and <i>Hamayuki</i> fire warning shots over the “Daini Yamatomaru.”
20:31–21:25	Patrol boat <i>Naozuki</i> fires warning shots over the “Daiichi Taiseimaru.”

March 24 (Wednesday)

00:30	The transport minister sends word to the defense minister to the effect that as the situation has taken on the proportions that are beyond the capability of the MSA, decisions relating to actions to be taken from then on should be made by the Cabinet. The defense minister asks the prime minister for the deliberation by the Cabinet on authorizing his ordering the MSDF to conduct maritime security operations.
00:45	The prime minister authorizes the defense minister to order the MSDF to conduct maritime security operations.
00:50	The defense minister issues an order to the MSDF to conduct maritime security operations.
01:00	The <i>Haruna</i> calls on the “Daiichi Taiseimaru” to halt, but it defies the order.
01:18	Destroyer <i>Myoko</i> calls on the “Daini Yamatomaru” to halt, but it defies the order.
01:19–02:24	The <i>Myoko</i> fires warning shots over the “Daini Yamatomaru.”
01:32–04:38	The <i>Haruna</i> fires warning shots over the “Daiichi Taiseimaru.”
03:12–03:13	A P-3C drops warning bombs near the “Daini Yamatomaru.”
03:20	The “Daini Yamatomaru” leaves the air defense identification zone of Japan, and the pursuit was called off.
04:01, 05:41	P-3C's drops warning bombs near the “Daiichi Taiseimaru.”

06:06	The “Daiichi Taiseimaru” leaves Japan's air defense identification zone, and the MSDF calls off the pursuit of the suspicious ships.
15:30	The maritime security operations are called off.

Source: Data from Defense Agency of Japan, *Boei Hakusho* [Defense White Paper] (Tokyo: Ministry of Finance Printing Bureau, 1999); and Maritime Safety Agency of Japan, *Kaijohoan Hakusho* [Annual Report on Maritime Safety] (Tokyo: Ministry of Finance Printing Bureau, 1999).

Korea denied its connection with the suspicious ships by saying that it had nothing to do with the incident. And a spokesman of the Foreign Ministry of North Korea released a statement announcing that the incident was a fabrication concocted by Japan designed to railroad bills relating to the Guidelines for Japan-U.S. Defense Cooperation through the Diet. Judging from various circumstantial evidence, the Japanese government believed that these two suspicious ships were North Korean spy boats and presented a protest once again to North Korea, but it insisted that it had nothing to do with the incident.

(3) Countermeasures against Suspicious Ships: Japan and Other Countries

Certain quarters in Japan expressed concern that the steps taken by the government in response to the suspicious ships that had infiltrated Japan's territorial waters — the issuance of an order to conduct maritime security operations and the firing of warning shots — went beyond the limits of prudence. Overall, however, it may be said that its steps were taken promptly and firmly, and were designed to prevent the incident from escalating into an international crisis. On the diplomatic front, the spokesman of the U.S. State Department said that “we expressed our concern about this intrusion [into the territorial waters of Japan] and indicated we were working closely with our Japanese allies.” Minister of Foreign Affairs and Trade Hong Soong Young of South Korea commented that South Korea appreciated the firm but restrained reaction shown by Japan. A spokesman of the Foreign Ministry of China merely said that though facts relating to the incident were

not clear, China would hope that Japan would act calmly and avert the escalation of the situation. China did not criticize the action taken by Japan.

The term “suspicious ships” includes smuggling boats, boats for illicit trafficking or illegal immigrants and spy boats. In the case of spy boats, they may conceivably infiltrate the territorial waters of other countries to help their personnel infiltrate another country for spying, for carrying out subversive activities, for receiving funds raised there or for kidnapping local inhabitants. Up to now, a table of random numbers was found in 1990 from a wrecked boat washed ashore in Fukui Prefecture and two dead bodies of those who were presumably North Koreans were found near the boat. Another incident in which a large-scale pursuit of a suspicious ship like the one conducted in March 1999 had occurred off Nichinan City of Miyazaki Prefecture in 1985. A small suspicious boat disguised as a Japanese fishing boat with a marking the “Daisanjuichi Koeimaru” was found operating in the territorial waters of Japan. And patrol boats and patrol aircraft of the Maritime Safety Agency (MSA) and aircraft of the Maritime Self-Defense Force (MSDF) rushed to the scene and pursued the suspicious ship for a distance of about 1,000 kilometers until it fled to the East China Sea.

Other countries are dealing with spy boats infiltrating their territorial waters as follows. In the United States, it is basically the responsibility of the U.S. Coast Guard. The U.S. Navy sometimes participates in the action where necessary. In the case of the United Kingdom, the Royal Navy traditionally has the responsibility for guarding its territorial waters. In Russia, the Frontier Forces patrol its territorial waters and when the vessel infiltrating its territorial waters happens to be a foreign submarine, the navy is called out to deal with the situation. In South Korea, it is the responsibility of the National Maritime Police Agency, and when the infiltrating boat is believed to be an spy boat of North Korea, the navy takes charge of the situation.

Although the Japanese government had taken a firm step by is-

suings an order to conduct maritime security operations against the suspicious ships, it actually failed to halt and inspect them, and the failure provoked a lively argument about what should be done to ensure the nation's maritime security. Major points raised by critics were the necessity for relaxing the criterion of using weapons during maritime security operations, for giving MSA patrol boats capability to navigate at a higher speed, for strengthening the coordination and cooperation between the MSDF and the MSA, and for assigning the duty of what is called “guard operations in the territory” to the Self-Defense Forces (SDF). For its part, the government has drawn up a report titled “Lessons Learned from, and Afterthoughts about, the Suspicious Ship Incident That Took Place Off the Noto Peninsula” on the basis of the lessons learned from the incident and a review of steps taken against the suspicious ships.

The report has confirmed that actions should be taken in line with the framework provided for in the existing law — that suspicious ships infiltrating Japan's territorial waters shall be dealt with by the MSA, and that in case the agency finds it extremely difficult or impossible to deal with a given incident by itself, the SDF shall deal with it by conducting maritime security operations. Having confirmed the statutory framework, the government decided to review the existing arrangement with a view to strengthening the capability of vessels and aircraft of the MSA and the MSDF. The measure was designed to make them be able to effectively halt and inspect suspicious vessels. While confirming that the use of weapons is governed under the Police Duties Execution Law, the report said that its policy was to be considered with a view, for instance, to determining the advisability of amending the law so as to authorize patrol boats to fire a crippling shot at a suspicious ship. In addition, the report states that the government will maintain close contacts with the U.S defense authorities and its armed forces stationed in Japan, and strengthen its cooperation with coast guards of countries concerned and that between the foreign affairs

and defense authorities of Japan and South Korea. The government plans to promptly implement measures as soon as the review of each of these questions is completed.

2. Increasing Activeness of Marine Scientific Research and Naval Vessels of China

(1) Activities of Chinese Vessels in the Japanese EEZ

China has stepped up its marine scientific research activities in the East China Sea. According to the Annual Report on Maritime Safety for 1999, released by the Maritime Safety Agency (MSA), Chinese research vessels were sighted on 16 occasions in 1998 operating within the exclusive economic zone (EEZ) of Japan in the East China Sea. In 1999, the number was already an all-time high of 24 as of the end of June. Four of these were conducted in the territorial waters of Japan near the



Marine scientific research vessel *Dongfang Hong-2* of China



Marine scientific research vessel *Kan-407* of China

Senkaku Islands. Patrol vessel of the MSA demanded on repeated occasions that the Chinese vessels leave Japan's territorial waters and stop the research. But they refused to comply, insisting that they were engaged in legitimate

research activities and that such activities should pose no problem. Ostensibly, their objectives are to survey marine resources and collect oceanographic data necessary for the operations of their navy. However, such activities are suggestive of a design to develop marine resources in the sea areas in which they are operating.

In addition to these maritime scientific research vessels, Chinese naval vessels have become quite active. On May 14, 1999, 12 naval vessels, including a Jianghu I-class frigate, operating in Japan's EEZ about 110 kilometers north of the Senkaku Islands, were observed. On July 15, 10 Chinese naval vessels, including three Luda I-class destroyers, were seen operating in Japan's EEZ 130–260 kilometers north of the Senkaku Islands.

The activities of these Chinese naval vessels may be interpreted, when viewed from a short-term perspective, as moves designed to restrain the passage of bills related to the Guidelines for Japan-U.S. Defense Cooperation, support the survey activities then carried out by Chinese marine scientific research vesselship, or show China's disapproval of the "special state-to-state relationship" statement made by President Lee Teng-hui of Taiwan. However, the implication of their activities should be analyzed and assessed from long-term perspectives. The naval power of a country can establish its presence and exercise its influence on international affairs only by showing the flag in the sea and by repeating exercises and other operations over a long period. The significance of establishing a presence in the sea lies basically in demonstrating a nation's power to win or protect its maritime interests. In the case of



A *Jianghu* I-class frigate in action

China's advance to the Paracel Islands and Spratly Islands, first, it declared its sovereignty on these islands, and after conducting marine scientific research, the navy carried out an exercise and then landed on the islands.

Supported by the activities of marine scientific research vessels and naval vessels, combined with its increasingly active fishing industry and marine transportation, China may consolidate its position as a full-fledged sea power in the future.

(2) Competing Claims to the Jurisdiction over the Sea

While the EEZ in the East China Sea is divided by a midline between Japan and China according to Japan's position, China claims that its continental shelf extends to the Okinawa trough and that it has the sovereign right to the continental shelf. The United Nations Convention on the Law of the Sea (UNCLOS) provides that coastal states, in the exercise of their jurisdiction, have the right to regulate, authorize and conduct marine scientific research in their EEZ, and other states may not conduct such research in the EEZ of a coastal state without the consent of the coastal state having jurisdiction over such EEZ. Japan and China have been discussing the boundary dividing the EEZs of the two countries, but so far, they have not yet reached agreement.

At a meeting of Japan-China foreign ministries' talks held in Beijing on June 14, 1999, Wang Yi, assistant minister of foreign affairs, argued that as the boundary of the EEZs of Japan and China had not been established, marine scientific research activities conducted by Chinese vessels posed no problem. At a meeting with Premier Zhu Rongji in Beijing last July, Prime Minister Keizo Obuchi took up the recent activities of Chinese marine scientific research vessels and naval vessels in waters close to Japan, and stated that persistent efforts should be made toward a fundamental solution to sea utilization issues based on international law and that both sides should not let the sea between Japan and China become an area of confrontation. In response, Zhu Rongji said that he

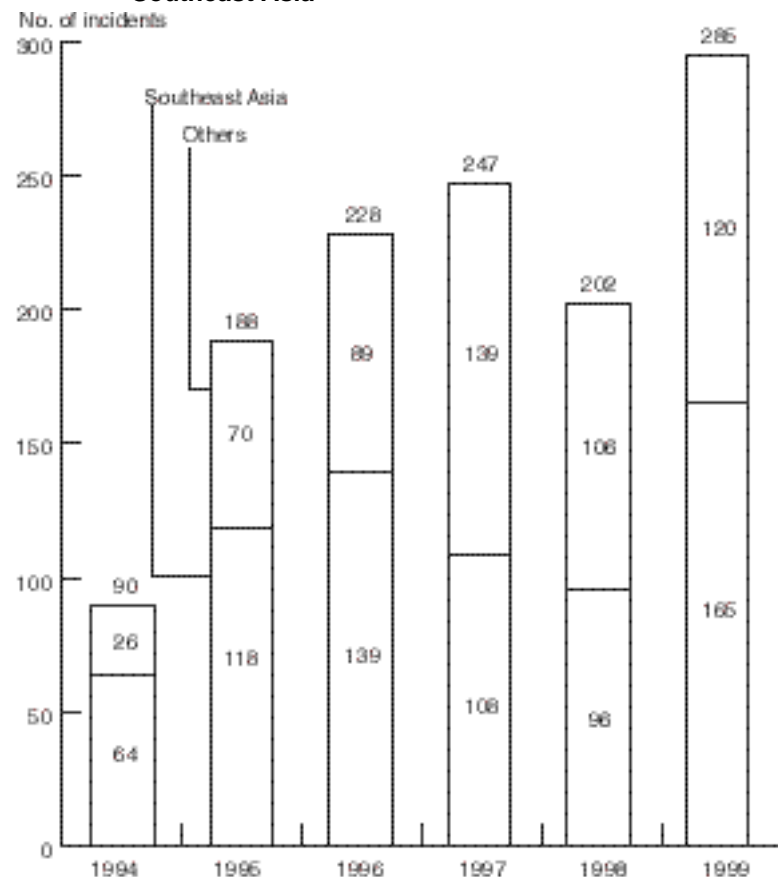
wished to see full discussion between Japan and China in regard to the peaceful use of maritime resources, and noted that the Chinese marine scientific research vessels were engaged in legitimate research activities.

During the Cold War, the United States and the Soviet Union vied with one another for the dominance in the seas around the world. In such circumstances, it may be said that the security of sea lines of communication, the vital economic infrastructure, was a paramount concern to Western countries. However, under the UNCLOS that came into force in 1994, sea areas under the jurisdiction of coastal states have been established, and the expansion and protection of the sovereign rights of coastal states in their respective EEZs has become a major concern in guarding their marine interests.

3. The Growing Rampancy of Piracy in Asian Seas

(1) The Actual State of Piracy

According to a report released by the International Maritime Bureau (IMB) of the International Chamber of Commerce (ICC), the number of reported piracy attacks worldwide continued to increase sharply from 90 in 1994 to 188 in 1995 to 228 in 1996 to 247 in 1997. After declining to 202 in 1998, it jumped to an all-time high of 285 in 1999. Region-wise, the largest number of piracy attacks occurred in the seas of Southeast Asia, and roughly one half of those reported worldwide took place in the Malacca and Singapore Straits, and in the waters around Malaysia, the Indonesian archipelagic waters and the waters around the Philippines. Of late, pirates have become highly organized and the methods they employ have become increasingly violent and ruthless. They are armed with automatic rifles, and some of them are equipped with high-performance radio equipment, radar and satellite navigation equipment. They approach their target vessel aboard a high-speed boat under cover of night, climb aboard, rob

Chart 3-2. The Number of Reported Piracy Attack, Worldwide and Southeast Asia

Source: ICC International Maritime Bureau, *Piracy and Armed Robbery against Ships, Annual Report, 1 January–31 December, 1999* (Essex, UK: ICC IMB, January 2000).

Note: "Southeast Asia" includes sea areas south of Taiwan, those lying east of China and Vietnam, the Indonesian archipelagic waters and those lying north thereof, the Philippine archipelagic waters, the Strait of Malacca and the Andaman Sea.

the crew of money and valuables, and in some cases, throw the crew overboard and make away with the vessel.

Japanese vessels have been victimized by pirates. The Tenyu, a

Panama-flagged general cargo vessel owned by a Japanese shipping company, left an Indonesian port with a cargo of 3,000 tons of aluminum ingots one day in September 1998, and went missing on its way to South Korea. Three months later, in December 1998, the vessel, renamed as "Sanei 1," put in at a port in China with a cargo of palm oil, and it came to light that the Tenyu had been hijacked by pirates. The entire original crew were replaced by Indonesians and the whereabouts of the original crew and the aluminum ingots aboard the Tenyu remain unknown. On October 22, 1999, the Alondra Rainbow, a Panama-flagged general cargo vessel owned by a Japanese shipping company, left an Indonesian port with a cargo of about 7,000 tons of aluminum ingots and went out of contact on its way to Japan. Its crew were rescued from a lifeboat in waters south of Thailand in the Andaman Sea on November 9. From the testimony of the rescued crew, the authorities learned that the vessel had been hijacked by a band of armed pirates three hours after it left the Indonesian port. An Indian patrol boat spotted the Alondra Rainbow on November 13 in the sea south of India, and after a three-day chase with the help of Indian naval vessels, the freighter was retrieved.

It is said that piracy attacks and the sale of stolen goods are carried out through a well-organized network and that the vessels and their cargoes stolen by pirates are disposed of by large-scale international syndicates. And some suspect that local authorities are involved in the operation of such a syndicate. A case in point is the Petro Ranger. After leaving the port of Singapore on April 16, 1998, with a cargo of gas oil and kerosene, it was hijacked by a gang of 12 pirates and entered the Chinese port of Hainan Island. Some of the 22 crewmembers were killed and others were found locked up in the mess room. The authorities of Hainan Island took its crew into custody for more than two weeks on suspicion of smuggling and impounded the vessel and its cargo. However, 12 pirates have been repatriated to Indonesia.

(2) Causes of Piracy and Countermeasures of Countries Concerned

Piracy dates back to the very beginning of shipping. Since the turn of the decade of the 1990s, incidents of piracy attacks have increased sharply, and their causes varied widely depending on the region in which they occurred. In the Asian sea areas, an increase in sea traffic, which resulted from economic growth in the region, and the widening gap between rich and poor have been major causes breeding piracy. It is said that the poor have combined with crime organizations, such as mafia, to undertake piracy. As the security of territorial waters has become lax on account of economic crises and worsening domestic public peace and order, piracy has become increasingly rampant. More recently, it is even said that some of the elements of the navies and maritime police forces of certain countries are involved in piracy and that their local authorities turn a blind eye to their illicit activities. And there are cases in which anti-government organizations resort to piracy. For instance, it is said that the Liberation Tigers of Tamil Eelam of Sri Lanka, who aims at building a Tamil state, are engaged in piracy to raise funds for their activities.

The Malacca and Singapore Straits and the Indonesia archipelagic waters are strategic points that connect the Pacific and Indian oceans through which about 80,000 vessels pass a year. A weak presence of maritime defense force in these sea areas may be responsible for encouraging piracy there. As the years wore on into the 1990s, three countries in the area — Singapore, Malaysia and Indonesia — have strengthened piracy patrols in their respective territorial waters. Indonesia and Singapore have set up a hot line between them to exchange information concerning piracy, and Indonesia and Malaysia have established an operation planning team to coordinate their patrol operations in the Strait of Malacca. Thanks to such efforts, the number of reported piracy attacks in the Malacca and Singapore Straits has decreased, but it increased in the Indonesian archipelagic waters. This serves to show that

when security is tight, pirates merely move to other sea areas where patrols are conducted sparingly. These sea areas are too expansive for the maritime force of these three countries to effectively cover. The IMB Piracy Reporting Centre based in Malaysia had proposed regional multilateral operations, but its proposal has not been implemented on account of a disagreement on the sovereign rights over the sea areas.

4. Role of Maritime Defense Capability, and Multilateral Cooperation

(1) Maritime Security and Emerging Role of Maritime Defense Capability

Acts threatening the security, or destabilizing the environment, of the sea — infiltration of a country's territorial waters by a spy boat, encroachment on the sovereign right to marine resources or piracy on the high seas — sometimes cannot be adequately dealt with merely by strengthening the maritime constabulary capability and the maritime defense capability, the latter designed to meet a sea-borne armed aggression. In peacetime, it is necessary to build a maritime defense capability that can meet the task of maintaining public peace and order in the sea, and ensuring unhindered utilization of the sea, and to make multilateral arrangements to help these capabilities function effectively.

The incident of infiltration by the two suspicious ships into the territorial waters of Japan in March 1999 was suggestive in this regard. These suspicious ships were first spotted by maritime patrol aircraft of the Maritime Self-Defense Force (MSDF), patrol boats and aircraft of the Maritime Safety Agency (MSA) pursued them for the purpose of conducting a boarding inspection. Subsequently, the MSDF dealt with the situation by sending its destroyers to conduct maritime security operations.

An infiltration of spy ships into a country's territorial waters generally does not take the form of direct armed aggression, and at

the initial stage of action taken by the country against the ships, it treats them as “unidentified and suspicious vessels.” Therefore, it is normal to deal with the situation initially by the national constabulary function. However, if it took a forceful investigative action on these spy ships, shooting might occur, and the possibility of the situation taking on serious proportions cannot be ruled out. Espionage is nothing less than a direct threat to the nation’s peace and security, and may cause a situation that the constabulary function alone cannot cope with.

In South Korea, before dawn, on September 18, 1996, one Sang-o-class coastal submarine of North Korea was found stranded off Kangnuug on the east coast of South Korea. Subsequently, a unit of the South Korean armed forces exchanged fire with armed agents of North Korea who had landed from the stranded submarine, causing number of casualties on both sides. In 1998, similar incidents of infiltration into South Korea by North Korean armed agents occurred frequently. On June 22, the South Korean Navy captured a crippled submarine that got caught in a fishing net off Sokcho in the eastern shore of South Korea. It was a Yugo-class midget submarine of North Korea and sank while it was being towed to a naval base by a South Korean naval vessel. Subsequently, it was refloated, and nine bodies apparently of crew members and agents were found inside the submarine.

On July 12, a male body clad in a diving suit, one Czech-made machine gun and a bag containing one hand grenade and one radio transmitter and receiver were found washed ashore, and one three-five-men underwater scooter believed to have been used for the infiltration was found off the shore of Tonghae City on the east coast of South Korea. Suspecting that a plural number of agents might have infiltrated South Korea, the South Korean armed forces conducted a search for them but to no avail. This occurred only 20 days after the infiltration of July 22 by the Yugo-class midget submarine. On November 19, a South Korean patrol boat detected signs of a small unidentified ship on its radar in the territorial wa-

ters of South Korea off Kanghwa Island located in the northwestern part of the country and tracked the unidentified ship but lost sight of it. It was highly likely that the ship was a North Korean submersible spy ship.

Shortly after 11 p.m., December 17, South Korean guard units spotted a suspicious vessel at a point about 2 kilometers off the southern coast of South Korea, and it turned out to be a North Korean semi-submersible craft. Thereupon, South Korean navy-air force joint task force tried to seize it and shooting took place. Although the semi-submersible craft tried to escape, the joint task force pursued and fired at, and sank the craft at a point about 80 kilometers southwest of Tsushima Island near the territorial sea of Japan.

The suspicious ships that were spotted in Japan’s territorial waters west of Sado Island and east of the Noto Peninsula in March 1999 may be considered to have connection with these North Korea’s operations of infiltration into the territorial waters of South Korea that had occurred frequently in 1998. As the infiltration of the territorial waters of Japan and South Korea by spy boats and suspicious ships is a security problem common to both countries, it calls for a review of the role played in peacetime by the maritime defense capability of the two countries to maintain public peace and order in the sea areas surrounding them.

To give an example of the United Kingdom, the Royal Navy has three tasks to perform: military, constabulary and benign operations (humanitarian assistance and civic cooperation). Its constabulary duty includes the enforcement of embargoes, surveillance of fisheries and dealing with piracy and terrorism. And the international community has begun to attach importance to these operations. The constabulary duty of the Royal Navy is to deal with various forms of threat and situations occurring in the sea in peacetime and has significant relevance to maintaining today’s stable security environment.

In the case of the United States, the number of joint/interagency

operations conducted by the U.S. Navy and the U.S. Coast Guard to check illegal migration and drug smuggling from Latin American countries and cases of joint work regarding boarding inspection has been increasing. For instance, the U.S. Navy and the U.S. Coast Guard have formed a joint task force to intercept drug smugglers coming from Latin American countries. In the Persian Gulf and in the Adriatic Sea, U.S. Navy vessels and U.S. Coast Guard cutters participated in the maritime intercept operations in support of U.N. sanctions against Iraq.

In September 1998, the chief of naval operations and the commandant of the U.S. Coast Guard signed a National Fleet — Joint Navy/Coast Guard Policy Statement. The term “National Fleet” is a concept born of the necessity for synchronizing planning, training and procurement of the navy and the coast guard to improve their overall capabilities. Previous to that, the Department of Defense and the Department of Transportation, which has jurisdiction over the Coast Guard, concluded in 1995 a Memorandum of Agreement on the Use of Coast Guard Capabilities and Resources in Support of the National Military Strategy. The memorandum requires the Coast Guard to execute in support of the navy the following four duties, namely, maritime intercept operations, deployed port security and defense operations, peacetime military engagement and environmental defense operations.

Bearing in mind the lessons learned from, and afterthoughts about, the incident of suspicious ships in March 1999, the Defense Agency and the MSA of Japan studied the procedures in which the two agencies should coordinate the actions they take against the suspicious ships, and they conducted a command-post exercise and an at-sea exercise twice on October 20 and November 30. On December 27, the two agencies formulated a Manual on Joint Operation Relating to Suspicious Ships that sets forth instructions about initial actions to be taken when a suspicious ship is first found and division of duties and joint actions to be taken by the MSDF and the MSA preceding and following the issuance of an

order for maritime security operations. And these agencies are planning to conduct interagency exercises in accordance with the manual to improve their effectiveness.

Coordination between the defense and constabulary capabilities has taken on growing importance not just for guarding against the infiltration of territorial waters by suspicious ships but for dealing with piracy. One has to exercise due caution in using defense and constabulary capabilities for solving disputes over the right to utilize marine resources. However, in enforcing the jurisdiction of a state over waters, it must have the will and power to safeguard its rights and to fulfill its obligation in the waters. It is necessary to reconsider the role of maritime defense capability to deal flexibly with encroachment of its sovereign rights, while paying due attention to building confidence with the countries concerned.

(2) International Cooperation, the U.N. Convention on the Law of the Sea and Peace in the Sea

When the two suspicious ships fled northward in the Sea of Japan in March 1999, Russia's Frontier Force was put on alert and dispatched two patrol vessel to guard its territorial waters against the infiltration of its territorial waters by these suspicious ships. When a North Korean semi-submersible craft infiltrated South Korea's territorial waters in December 1998, the craft pursued by South Korean naval vessels could have fled to the territorial waters of Japan. The Sea of Japan and the East China Sea border on the territorial waters of a number of countries, and when an spy boat of a country flees to the territorial waters of any of these countries, it could affect the security of many countries — so much so that actions taken by one country could conceivably disturb the maritime security of other countries. Therefore, it is necessary for the affected country to coordinate the actions it takes against such spy boats with those of other countries concerned. Following the incident of the suspicious ships in the Sea of Japan, the Maritime Safety Agency (MSA) of Japan and the National Maritime Police Agency

of South Korea agreed to set up a hot line to exchange information, including that concerning suspicious ships. Hotlines were established between the defense authorities of the two countries, and when a gun battle occurred between naval vessels of North Korea and South Korea on June 15, 1999, in the sea area near the Northern Limit Line (NLL), the defense authorities of Japan and South Korea actively exchanged information via the hot line.

The United Nations Convention on the Law of the Sea (UNCLOS) prescribes for territorial sea, archipelagic waters, exclusive economic zones (EEZ) and continental shelves, and grants coastal states sovereignty over their territorial sea, sovereign rights to natural resources in their EEZ and continental shelf, and jurisdiction over the environmental protection of their EEZ. Since the establishment of EEZs by coastal states, roughly one half of the sea areas of the globe have become subject to the jurisdiction of one country or another. Most of the infiltration by spy boats, disputes over maritime resources, or acts of piracy have occurred in sea areas over which one coastal state or another claims sovereignty, sovereign rights or jurisdiction. Therefore, conflicting claims of sovereignty, sovereign rights or jurisdiction over a piece of sea area by different countries have profound impacts on the security of the seas.

Pirates move to sea areas, regardless of sea boundaries, where patrols and surveillance are lax. At a special conference on piracy held on February 4, 1999, with the participation of maritime transportation agencies and shipping companies of countries concerned under the auspices of the International Maritime Organization, formation of an international anti-piracy patrol and other anti-piracy measures were proposed. However, piracy often occurs in sea areas bordering on the territorial seas of a plural number of countries or in archipelagic waters, and in such cases the maritime security agency of a country cannot pursue the pirates when they flee into the territorial sea of another country. This is an example of a case when the very idea of "sovereignty" brings about difficulty to coop-

eration among countries whose maritime sovereignty intricately intertwines with one another. Likewise, when a suspicious ship flees into the territorial sea of a third country, pursuit of the suspicious ship gives rise to a similarly troublesome problem.

In conducting multilateral discussions about various problems affecting the maritime security of many countries, if the UNCLOS is interpreted merely as a law governing relations between sovereign states, such an approach sometimes makes it difficult to solve such problems. When countries too rigidly demand the protection of their sovereignty over their territorial waters, chances will be lost for developing avenues of international cooperation to combat their common threats.

As regards the thorny question of demarcating EEZs, which touches off conflicting claims to maritime interests, coastal countries are called upon to deal with the question, observing the basic spirit of the UNCLOS. Basically, the sovereign right granted to coastal states by the convention is the power to perform the duty of managing marine resources, not the right to exclusively exploit them. However, under the current circumstances, the existence of EEZs have not helped solve the question of natural resources and have instead caused disputes over them. Perhaps, progress could be made in fixing boundaries of the EEZs by stressing the performance of duties with respect to the management of resources and environmental protection rather than arguing about the right to exploit marine resources or the sovereignty over islands.

The territorial dispute of the Spratly Islands had been discussed on various occasions — for example, recently at the Ministerial Meeting of the Association of Southeast Asian Nations (ASEAN) held in Singapore on July 23, 1999, and the ASEAN Regional Forum (ARF) held on July 26 in the same city — but no progress has been made. As long as they insist on sticking to the question of the sovereignty over the islands, there is little chance of making progress on the question of South China Sea. If the disputing countries accept the management of resources and environmental pro-

tection as their common interest, and discuss the role their maritime defense capabilities can play to protect such common interests, the focus of their discussions will shift to a fair distribution of marine resources, environmental protection and the stabilization of the security environment of the sea area, and pave the way for the formulation of a Code of Conduct designed to prevent disputes in the South China Sea, which have long been a pending question for ASEAN countries and China.

The Independent World Commission on the Oceans — a body established for the purpose of devising a formula to ensure sustainable utilization of marine resources and a peaceful solution to disputes over the ocean — submitted to the U.N. General Assembly in December 1998 a set of proposals recommending the establishment of an international rule for a comprehensive management of the ocean, where issues of a ship's right of passage, the utilization of marine resources and the protection of sea environment, and maritime security are intertwined. It also recommended defining the role to be played by maritime defense capabilities of the countries concerned within that framework. To maintain public peace and order in the sea, which is often disturbed by attempts of different countries to secure marine resources, and ensure thereby unhindered use of the sea, such a forward-looking arrangement may be necessary.