

## **Chapter 2**

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# **Maritime Security Cooperation in Asia— Ocean Governance and Ocean-peace Keeping**



Today, the international community has increasingly become aware of the necessity for ocean governance. In order to effectively promote sustainable development of the oceans, it is essential to establish ocean governance through international cooperation under the United Nations Convention on the Law of the Sea (UNCLOS). Multilateral cooperation is also needed to preserve the marine environment and to suppress piracy. Against this background, the concept of ocean-peace keeping (OPK) was proposed at an international conference in 1996 sponsored by the National Institute for Defense Studies (NIDS) of Japan. The OPK concept covers the high seas and exclusive economic zones (EEZ) in the Asia-Pacific region and is designed to conserve and manage marine resources, protect and preserve the marine environment, maintain sustainable development of the oceans, and ensure the safety of the sea-lanes. This is an international cooperative activity carried out by national agencies with legal enforcement powers, such as the navies and maritime police of the countries in the region.

There has been a growing interest in these challenges in recent years. Concerned about the safety of the region's sea-lanes, Indian Minister of Defense George Fernandes proposed to Japanese Minister of State for Defense Shigeru Ishiba, who was then visiting India, to discuss the safety of the sea-lanes connecting Japan with the Middle East through Asian seas and the Indian Ocean.

In a speech delivered at the Asia Security Conference held in Singapore on May 30–31, 2003, Minister of State for Defense Ishiba touched on the basic ideas underlying UNCLOS and commented on OPK as an activity conducive to the stability of the region. He said that in the Asia-Pacific region, where countries have diverse cultural and ethnic backgrounds, it would be difficult to move rapidly toward the construction of a cooperative security framework like the North Atlantic Treaty Organization (NATO). He then expressed hope that the countries in the region will positively discuss the possibility of joint maritime operations which, by making use of naval vessels for policing purposes, aim to maintain an orderly use of the sea, prevent armed conflicts, and ensure the stability and sustainability of the oceans.

## **1. Ocean Governance in Asia**

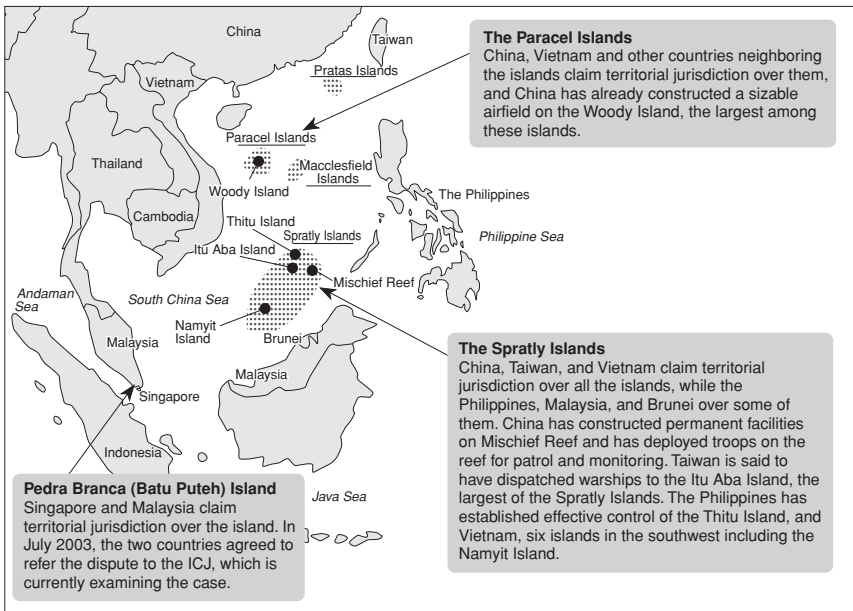
### **(1) Sea-lanes in the Asia-Pacific Region**

There are many maritime countries in Asia, which faces the Pacific Ocean, the

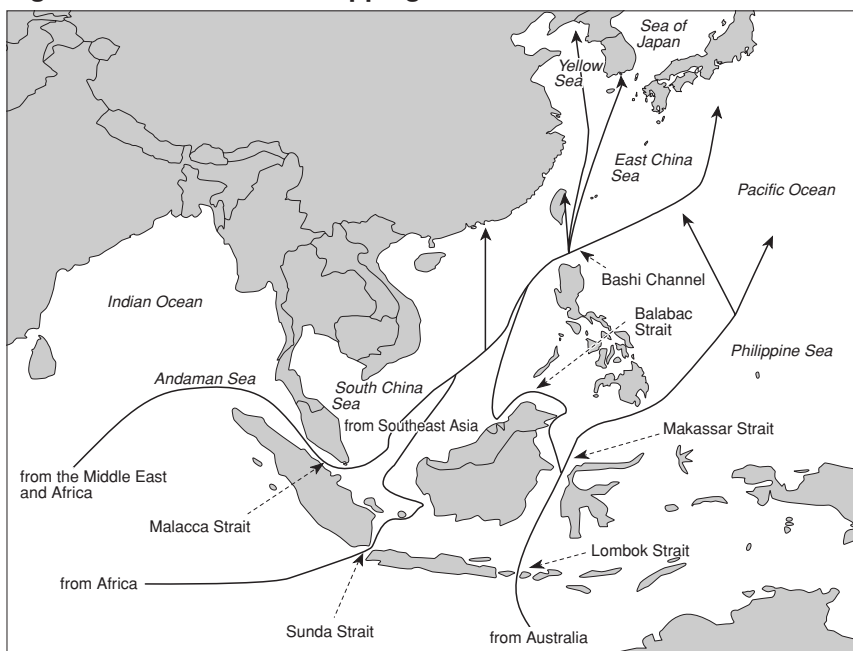
Indian Ocean, the Sea of Japan, the East China Sea, the Yellow Sea, the South China Sea and others. Problems involving Asia-Pacific waters are a concern widely shared by Asian countries. These seas and oceans are connected by narrow strips of water, such as the Bashi Channel, the Lombok Strait, and the Strait of Malacca, and they have been used by ships transporting raw materials and finished products. As a transportation route, the seas have supported the economic activities of Asian countries whose economies have increasingly become global.

Issues involving islands whose territorial dispute remains unsettled, such as the Spratly Islands and the Paracel Islands, make it difficult to demarcate continental shelves and the delimitation lines of EEZs in Asian waters. Demarcation of the territorial jurisdiction of the islands is difficult due to the competing claims from different countries over continental shelf resources and fishery resources, and finding a peaceful solution will take a long time. Sea-lanes run from northeastern Asia, through the South China Sea, to the Indian Ocean via the Strait of Malacca, the Lombok Strait or the Sunda Strait. These

**Figure 2.1. Major territorial disputes in Southeast Asia**



Sources: Data from relevant issues of Defense Agency of Japan, *Defense of Japan* and the International Court of Justice Web site.

**Figure 2.2. The main oil shipping routes**

sea-lanes pass through the waters around the Spratly Islands and the Paracel Islands. Armed conflict over these islands could become an obstacle to a secure sea-lane.

The availability of secure sea-lanes in Asia-Pacific waters is important for countries that are heavily dependent on international trade. For instance, Japan, China, and South Korea import most of their crude oil from the Persian Gulf region through the Malacca Strait, and the bulk of liquefied natural gas (LNG) consumed in Japan and South Korea is produced in the countries comprising Insular Southeast Asia. Therefore, the deterioration of sea-lane security caused by piracy in and around the Malacca Strait is a matter that should be dealt with jointly by these countries. However, unlike the pirates referred to in UNCLOS, most “modern piracy” or marine armed robbery occurs within the territorial waters of countries along the sea-lane. A country is responsible for the piracy that occurs in its own waters, and therefore only that country can crack down on it. Despite their rivalry for control of marine resources, countries using the sea-lane are now faced with a problem that requires multilateral cooperation.

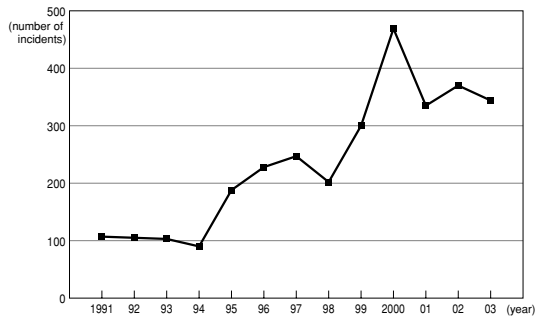
As shown in figure 2.3, incidents of modern piracy are on the rise. During the first six months of 2003, the number of reported incidents of piracy across the world rose to 234, the highest since the International Maritime Bureau (IMB) started compiling reports on piracy in 1992. During that period, sixteen crew members of the ships

attacked by pirates were killed, twenty went missing, and fifty-two were injured. The number of those taken hostage by pirates doubled from the same period in 2002 to 193. The number of piracy incidents in Asia was remarkable: one can note in particular the occurrence of sixty-four piracy incidents in Indonesia waters alone—more than a quarter of the worldwide total.

Incidents of modern piracy in Asian waters include cases where pirates attack ships that are at anchor in a port or passing through a strait, robbing them of money and goods. Merchant ships or freighters have also been robbed of large cargos while at sea, and there have even been cases of robbery that target ships themselves. In this third case, a large international crime syndicate is suspected of involvement, and the cargo and ship have been sold in a short space of time. Incidents of this type include the *Alondra Rainbow* incident where the Japanese-owned ship and the cargo were hijacked and eventually seized by the Indian navy (1999); the *Arbey Jaya* incident in which three Japanese crewmen went missing (2001); and the case of the *Selayang*, which was seized as a result of joint operations by the Malaysian and Indonesian navies (2001).

Obviously, many countries are involved when a ship is victimized by piracy—the flag state of the pirated ship, the ship's country of origin, the domicile of the company that owns the ship, the home countries of its crew, and the home countries of the shipper and the consignee. Also involved are the countries that the pirates visited, the countries in which the pirated cargo was

**Figure 2.3. Number of piracy attack cases**



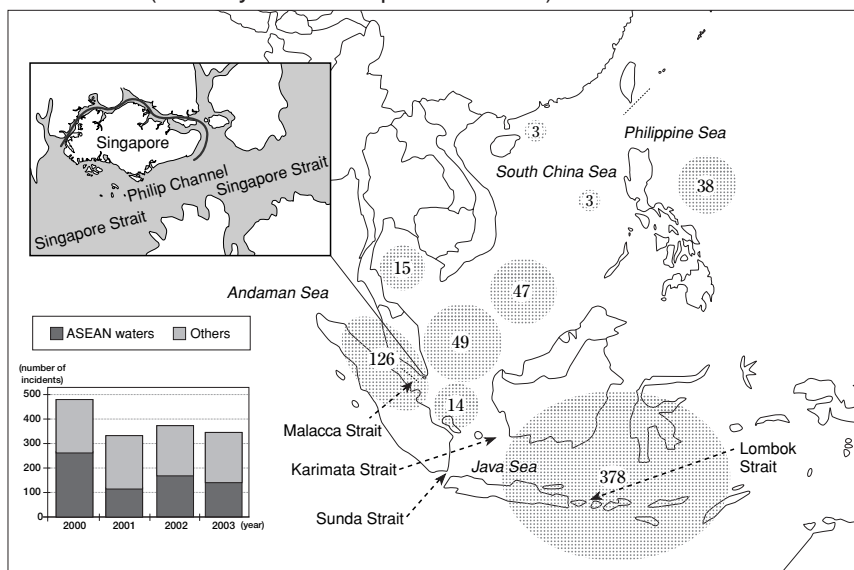
*Sources:* Data from International Maritime Bureau Web site and relevant issues of International Maritime Bureau, *Piracy and Armed Robbery against Ships Annual Reports*.

*Note:* Data for 2003 includes piracy attack cases that took place from January through September.

landed and kept, the home countries of the purchasers (individuals and companies) of the pirated cargo or the ship, the home countries of the pirates, the countries where the piracy case will be tried, and the countries to which the pirates fled. This underlines the importance of multilateral cooperation in suppressing modern piracy.

As the Malacca Strait lies in the territorial waters of both Indonesia and Malaysia, the flag state of a ship, when it is subjected to an act of terrorism or modern piracy in the strait, cannot exercise its police authority unless both Malaysia and Indonesia consent to it. Despite tougher crackdown efforts by Malaysia, incidents of modern piracy in the strait have increased. This is largely attributable to the fact that the piracy occurred within Indonesia's territorial waters. There is an international treaty dealing with modern piracy, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention). However, Asian countries such as Indonesia, Malaysia, and Singapore are not parties to the treaty, and many doubt its effectiveness. Since the September 11 terrorist attacks on the United

**Figure 2.4. Incidents of piracy in ASEAN waters**  
(January 2000 – September 2003)



Sources: Data from International Maritime Bureau Web site and relevant issues of International Maritime Bureau, *Piracy and Armed Robbery against Ships Annual Reports*.

## **United Nations Convention on the Law of the Sea (UNCLOS)**

With a view to promoting sustainable development of the oceans, and believing that ocean development and the preservation of the marine environment are inseparable, UNCLOS aims to collectively manage the seas instead of preserving the freedom thereof. UNCLOS decided on a 12 nautical mile territorial sea and recognized the right of coastal states to establish an EEZ that stretches 200 nautical miles from their baselines of the territorial sea (or from the archipelago baselines of an archipelagic state). While coastal states are authorized to exercise their sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources lying in their EEZs, they must recognize the freedom of passage of ships of foreign countries through their EEZs. Contracting parties have a prior right to exploit fishery resources within their EEZ, as well as a duty to conserve and manage these resources and those migrating in the waters lying between their EEZ and those of their neighboring countries or the high seas. Coastal states also have a duty to conserve the marine environment of their territorial seas, EEZs, and the high seas. UNCLOS divides the causes of marine pollution into five categories—land-based sources, deep-seabed activities, vessels, ocean dumping, and air pollution—and it imposes an obligation on coastal states to protect the oceans as a single ecosystem. From the standpoint of preventing the depletion of fishery resources and of preserving the ocean ecosystem, UNCLOS has strengthened the power of coastal states to crack down on violations of the treaty.

On the question of passage through international straits, Article 43 of UNCLOS provides for cooperation based on agreements between countries utilizing the strait and coastal states bordering on such strait regarding (a) the establishment and maintenance of necessary navigational and safety aids or other improvements in aid of international navigation, and (b) prevention, lessening, and regulation of the pollution from vessels passing through it. The SUA Convention, adopted in 1988 to deal effectively with attacks on ships passing through and oil facilities established on land facing the Malacca Strait, lists the following acts to which the treaty is applicable as those posing a threat to international sea-lanes: (a) seizure or exercise of control over a ship by force or threat thereof or any other form of intimidation, (b) performance of an act of violence against a person on board of a ship, (c) an act that destroys a ship or causes damage to a ship or to its cargo, (d) placement of a substance likely to destroy that ship or cause damage to its cargo, (e) destruction of maritime navigational facilities or serious interference with their operation, (f) communicating false information, and (g) injuries to or killing of any person aboard the ship by persons involved in the above-mentioned acts.

When a contracting party to the SUA Convention receives an allegation of an unlawful act committed within its territorial sea, it will consider such unlawful act as a criminal act, and will be responsible to apply its laws and regulations to it. Even if an alleged unlawful act was committed in the territorial sea of another country, and if the suspect stays in its territory or territorial sea, the contracting party must exercise its jurisdiction over the unlawful act. The SUA Convention has thus established a universal jurisdiction over all its contracting parties.



States, many fear the possibility of collusion between modern piracy and international terrorism in the Malacca Strait, and there have been calls to take more effective measures to deal with the proliferation of weapons of mass destruction (WMD).

Aware of these shortcomings, the International Maritime Organization (IMO) is considering expanding the list of crimes subject to the SUA Convention include the transport of certain materials, such as those related to WMD, that are banned by other treaties. The IMO is also considering a modification of the flag state principle by which other parties will be empowered to conduct, on the basis of reasonable grounds, boarding and inspection of a suspicious ship, even if that ship is outside the territorial waters of the state the nationality of which is possessed by the ship.

In order to ensure safe use of the sea-lanes in the Asia-Pacific waters, it is necessary to implement relevant measures through multilateral cooperation among the countries in the region that are exposed to the threats of modern piracy or terrorism.

## **(2) The Conservation and Management of Marine Resources, and the Preservation of the Marine Environment**

In considering problems related to the ocean in the Asia-Pacific, one cannot overlook the possibility of depletion of marine resources. The population of coastal states neighboring the South China Sea, the largest sea in Asia, is expected to increase from 475 million in 1993 to 726 million in 2025, and today, 270 million people are living in the coastal areas of the South China Sea. According to statistics of 1992, fishery products harvested by these countries accounted for 23 percent of the catch of the entire Asia or about 10 percent of the world. Depletion of fishery resources of the South China Sea would cause a problem for the livelihood of inhabitants in the area.

According to Article 61 of UNCLOS, coastal states are under an obligation to take proper conservation and management measures in such a way as to determine the allowable catch of the living resources within their EEZs, prevent over-exploitation and maintain a sustainable maximum catch. They must determine the allowable catch by taking into account, in addition to the best scientific evidence available to them, the economic needs of their coastal fishing communities, the special requirements of developing countries, and the effects on species associated with or dependent upon

harvested species. In such cases, this article is not applicable to species sedentary to a continental shelf.

Moreover, when a coastal state does not have the capacity to harvest its entire allowable catch, it is under an obligation to give other states access to the surplus of the catch. While Articles 63 through 67 provide coastal states with wide-ranging entitlements and regulations for the preservation of fishery resources, they obligate these states to conserve and manage fishery resources and promote optimum utilization of their allowable catch so that they can maintain the sustainable maximum catch. Coastal states that have established EEZs have an obligation not only to determine the allowable catch of fishery resources within their respective EEZs but also to cooperate with neighboring coastal states for the development and preservation of highly migratory species, straddling species (those which live in the EEZs of more than one country or on the high seas), marine mammals, anadromous stocks and catadromous species. With regard to the anadromous species such as salmon and trout, the Convention adopts the principle that the states in whose rivers these stocks originate shall have the primary interest in and responsibility for them, and in principle prohibits the harvesting of these species on the high seas. Articles 116 through 118 provide that, while all states have the right for their nationals to engage in fishing on the high seas, they also have the duty to take, or cooperate with other states in taking, such measures for their respective nations as may be necessary for the conservation of the living resources on the high seas.

Many treaties are expected to be concluded in coming years regarding the conservation and management of fishery resources such as highly migratory species and straddling fish stocks. However, as these species inhabit the EEZs of several coastal states, fishing of such species is largely regulated by flag states. As a result, the existing system of conservation and management, which is based on the implementation of their treaty obligations, is necessarily limited. In order to effectively promote sustainable development of the oceans, the establishment of ocean governance through international cooperation pursuant to UNCLOS, together with the implementation of provisions of relevant international treaties, is essential.

Along with the problem of dealing with the depletion of ocean resources, an important task facing the countries of this region is the preservation of the marine environment. When viewed from a long-term standpoint, a failure to

maintain the ocean ecosystem is a problem of not just the coastal states but one facing the entire Asia-Pacific region. This problem has grown increasingly grave in recent years. For instance, mangrove forests in the South China Sea are threatened with extinction on account of proliferating prawn farming, over-cutting of mangroves for pulp use and urban development. Coral reefs, an important feeding ground, are gradually dwindling due to man-made reasons. The marine environment in the South China Sea has steadily been worsening due to over-fishing, pollution caused by spilled crude oil, and the inflow of pollutants from land-based sources.

Article 192 of UNCLOS states, in part, that coastal states have the obligation to protect and preserve the marine environment. They are obligated to prevent, reduce and control pollution of the marine environment by enacting laws consistent with international regulations and standards and by taking necessary measures. As this provision does not specify to whose rights these obligations are supposed to correspond, the conservation of the marine environment is generally considered as a public good common to all signatories.

As the economies of developing countries, not to mention industrial nations, grow, various types of hazardous materials such as urban, industrial, and radioactive waste are generated. Where these wastes cannot be disposed of on land, they are likely to be dumped directly in the sea causing a serious impact on fishery resources and the marine environment. Also worrying are accidents involving carriers of oil, chemicals, or LNG, the deterioration of such carriers, and their clashes with small boats. No less worrisome is the possibility of polluting the marine environment by terrorist activities in which, for instance, WMD hidden in a container are detonated at a destination. With the technology now available, it is difficult to restore a badly damaged marine environment. Therefore, prevention takes on a growing importance.

Destruction of the marine environment is destruction of the ecosystem of the seas and oceans that could imperil the very survival of mankind. Contracting parties to UNCLOS and the IMO treaties have a duty to recognize the destruction of the marine environment as a global problem and cooperate through a global or regional framework. In order to achieve a sustainable development of the oceans, they are called on not only to prevent ocean pollution through the framework of the IMO treaties but also to preserve the marine environment through comprehensive, UNCLOS-based management of the seas—in other words, through ocean governance.

### **(3) The Importance of Ocean Governance**

In solving problems involving a number of countries, the conventional method has been to work out an agreement on areas of common interest and to solve individual cases within the framework of such agreement. In other words, the international community has been building a separate treaty framework for the solution of each issue. As the international community does not have a unified authority, order has been established through an agreement of sovereign states. More recently, however, the international community became aware of the necessity to establish the rule of public law transcending the conflicting interests of states, and hence the necessity to solve various problems through international cooperation for the maintenance of global order. There has been a growing interest in building a legal framework that attaches importance to maintaining public order in international society and restrains interests of individual countries.

In today's international community, interdependence among countries has deepened and science and technology have developed dramatically. The occurrence of events difficult to solve through the existing, issue-by-issue treaty frameworks calls for a new approach. While making efforts to maintain order through the conventional treaty frameworks, the current situation has thus raised the need for international cooperation based on a concept of governance and implemented by sovereign states in their common interest following a set of common standards and purposes. In this respect, issues relating to the oceans contain many suggestions. For instance, countries have tried to achieve an orderly use of the oceans through conventional frameworks such as treaties for the protection of fishery resources in the high seas or regional seas and those relating to the passage of ships and the prevention of marine pollution. However, these individual treaty frameworks lack the perspective that views the sea as a single ecosystem and intends to solve these problems from the standpoint of the sustainable development of the oceans for the foreseeable future.

In pre-UNCLOS years, jurisdiction over marine resources in territorial waters was exercised by the coastal state concerned and those in the high seas by flag states. In other words, under the flag state principle fishing in the high seas is basically open to all countries, and any country can freely carry out fishing activity as long as it gives reasonable consideration to activities by other countries. Countries that are concerned about depleting fishery resources have concluded fishery treaties providing for the period of fishing operation, the

types of fishing equipment and the allowable catch in order to properly manage and conserve fishery resources in the high seas. However, as there are countries that are freely engaged in fishing activities without joining in such treaties, the effectiveness of conserving and managing fishery resources of the high seas is called into question. There has emerged a growing realization that to prevent the depletion of fishery resources requires measures beyond the conventional ones; and this is where the concept of ocean governance based on UNCLOS is called for.

The international community has also been trying to preserve the marine environment through various treaty frameworks relating to the prevention of pollution. However, these treaties are designed to restrict specified pollutants dumped by ships only. There are no treaties that deal with pollutants from land sources that are responsible for about 80 percent of the sea pollution. This has something to do with the fact that treaties were drawn up mainly by the IMO, which is not competent to deal with land-based pollutants. Therefore, the frameworks of the existing anti-marine pollution treaties alone cannot effectively preserve the marine environment. Furthermore, even if the obligations of these individual treaties are implemented, the problem is rather one of how to ensure the prevention of pollution by non-signatories. Regarding this issue also, there has been increasing awareness of the necessity for ocean governance.

Contracting parties to UNCLOS are required to enact domestic laws in conformity with international standards and take necessary measures to perform their treaty obligations. As coastal states can freely enact domestic laws to maintain the maritime order to suit their domestic situations, the standards set forth in their laws tended to be relatively generous. UNCLOS is an attempt to implement ocean governance by requiring state parties to enact domestic laws in conformity with international standards so that these individual laws can embody unified standards as a whole.

Conservation of marine resources and preservation of the marine environment are problems that transcend national borders. There are many coastal states and flag-of-convenience ships that are not affiliated with these treaty frameworks. With a view to overcoming the limitations of the flag state principle that have come to light, Article 220 of UNCLOS has adopted the coastal state principle. When a foreign vessel within the territorial waters or EEZ of a coastal state is suspected of having violated its laws and regulations relating to the preservation of the marine environment, the coastal state may

institute proceedings against that vessel, including inspection and seizure. In addition, Article 218 provides that when a vessel suspected of violating the discharge standard outside the internal waters, territorial waters or EEZ of a coastal state is within a port or at an off-shore terminal of another state, this port state may undertake investigation and institute proceedings against the vessel upon request from the coastal state, the flag state, or the state damaged or threatened by the violation. Violations committed in the EEZ of another country or in the high seas are not exempted from this provision.

As mentioned above, UNCLOS requires coastal states establishing EEZs to protect and manage optimum utilization of the living resources there. "Optimum utilization" in this context implies the discretionary power that takes into account not only the maximum sustainable yield but also the economic interests of coastal states as well as foreign countries in exploiting these resources. Under the conventional flag state principle, countries engaged in ocean fishing are not keen about conserving fishery resources in waters far removed from their own. It is possible to see that UNCLOS is intended to remedy these shortcomings by delegating to states establishing EEZs a public function of the international community by which to enable sustainable development of marine resources for the maximum benefit of mankind.

UNCLOS has thus provided a legal framework to promote ocean governance relating to the conservation and management of fishery resources and the preservation of the marine environment; imposed various obligations to accelerate sustainable development of the oceans; and strengthened the regulatory competence of its contracting parties. Furthermore, when a dispute arises as a result of the failure by a coastal state to apply to its EEZ the international rules and standards established by UNCLOS, it may be solved, upon appeal by other state parties to that effect, through the procedures set out in this convention and other rules of international law. In the case of a dispute caused by a coastal state failing to take proper conservation or management measures for the maintenance of the living resources in its EEZ, it will be submitted to conciliation under Annex V of UNCLOS.

In sum, coastal states are responsible for the fulfillment of their international obligations concerning the management of fishery resources and the preservation of the marine environment and are liable to damages in accordance with international law; they must follow necessary procedures pursuant to the flag-state principle, the coastal-state principle and the port-of-entry principle;

and they are responsible for making prompt and adequate compensation for, and taking other measures to remedy, the damage caused by the pollution of the marine environment on the part of natural or legal persons under their jurisdiction. UNCLOS has thus sought to harmonize sustainable development of the oceans with the preservation of the marine environment. However, it does not provide any legal framework for ensuring the stability of sea-lanes. This raises the necessity to create a new legal framework, in addition to UNCLOS, for securing the safety of sea-lanes in Asia-Pacific waters. It is important to study the feasibility of instituting such a legal framework.

## **2. Maritime Security Cooperation and the Ocean-peace Keeping Concept**

### **(1) The Roles of the Marine Police and the Navy**

With the legal framework for ocean governance based on UNCLOS in place, and with coastal states enacting domestic laws concerning the conservation and management of marine resources and the preservation of the marine environment, these states are obliged to enforce such laws. Enforcement agencies in their territorial waters are mostly the marine police, but the system varies from country to country. For instance, in the case of the United Kingdom, the Royal Navy, and in the case of Japan, the Japan Coast Guard (JCG), exercise the power of policing their respective territorial waters and EEZs.

Though it does not have a specialized agency with sufficient marine policing powers to crack down on modern piracy, Indonesia has established the National Coordination Board for Maritime Security. The board has drawn personnel from the marine police of the national police, the Directorate of Guard and Rescue of the Department of Sea Communications of the Ministry of Communication, the navy, customs office, and the immigration bureau; and the commander of the navy serves as its head. The EEZ is policed mainly by the navy, and the territorial waters including ports and harbors are under the jurisdiction of the marine police. In Malaysia, a special unit of the marine police specializing in policing piracy is in charge of policing its territorial waters, and its areas of operation extend beyond its territorial waters. The Malaysian navy is responsible for cracking down on modern piracy. It provides the marine police with intelligence and communication services, pursues suspected pirates, and carries out operations for arresting pirates through a

special unit.

The duty of the navy changes with the times. In addition to defending the country, it has carried out peace enforcement activities as part of a multinational force, pursuant to the objective of Chapter 7 of the United Nations (UN) Charter to restore international peace and security, as well as nonenforcement activities such as UN peacekeeping operations (PKO). In the twenty-first century, the list of the navy's tasks will be expanded to include not just activities dealing with armed conflicts in the seas but also those relating to ocean governance, which will be designed as policing activities to prevent conflicts or to enforce laws and regulations in the seas. Incidentally, OPK activities that are carried out pursuant to a regional agreement or a memorandum of understanding are entirely different from PKO carried out under a resolution of the UN Security Council.

As an exception to the flag state principle the Convention on the High Seas authorizes warships, acting together with vessels of its government (such as those of the marine police), to perform policing activities against piracy, slave trade, or unauthorized broadcasting. As long as they are capable of conducting joint operations across national boundaries, it can be the navy of a country, its marine police, or a combination of the two that can perform the duty of enforcing ocean governance. Apart from land-locked states, countries that do not have a marine police do have a navy. In some countries, the marine police are engaged in the maintenance of order in their territorial waters, and the navy in the maintenance of order outside them. In carrying out joint activities with their counterparts of other countries, they need common rules and standards. As such activities often use vessels and aircraft, the navy might be seen as better suited for such activities.

In the 1970s, Malaysia, Thailand, Indonesia, the Philippines, and Singapore concluded bilateral agreements dealing with modern piracy, and their defense ministries have since been holding regular meetings of joint border committees to discuss mutual cooperation measures. The navies of these countries have carried out coordinated patrol and joint exercises. However, these exercises are carried out not on a constant basis but for a limited period. When the navy of a country carries out a patrol jointly with its counterpart of another country, they coordinate the timing and the area of the patrol beforehand and carry it out in waters bordering on these two countries: the vessels of a country, therefore, never enter the territorial waters of the other.



Of these, three countries (Malaysia, Indonesia, and Singapore) concluded new bilateral agreements in 1992 to deal with modern piracy, and have carried out joint patrols and exercises for the purpose of maintaining order on their waters. Indonesia and Singapore have been carrying out a sixty-day joint patrol of the Singapore Strait and the Philip Strait four times a year. Malaysia and Indonesia have been carrying out a ten-day joint patrol of the Malacca Strait four times a year. Navy vessels of one of these three countries sometimes enter the territorial waters of the other in pursuit of pirates, but such action is accepted under the bilateral agreement.

In addition, the marine police of Malaysia, Indonesia, Thailand, and the Philippines have, as their navies did before them, concluded bilateral arrangements for the security of their territorial waters against modern piracy. They have been carrying out coordinated patrols and joint exercises and exchanging intelligence. Some of the Southeast Asian countries have thus been promoting international cooperation through the activities of their navies and marine police to enforce domestic laws and regulations against piracy. But such cooperation is limited to the bilateral basis and has not been expanded to the multilateral one.

## **(2) Ocean-peace Keeping: The Conceptual Framework**

In view of the existence of countries victimized by modern piracy, and the fact that depleting fishery resources and the deteriorating marine environment are posing threats common to all coastal states in the Asia-Pacific, it can be recognized that ocean governance and multilateral security cooperation could play a crucial role for the region. Against this background, in 1996 the NIDS proposed at an international conference it sponsored OPK as a new concept of maritime security cooperation. A factor underlying the proposal is the realization that the architecture of a security framework for the Asia-Pacific region composed of countries with such diverse religious, cultural, economic, and political backgrounds requires first of all the development of a collective will to deal with problems that are not only common to all of them but also critical to the survival of mankind in the long run. More specifically, they need to (a) secure safe and stable sea-lanes, (b) promote rational utilization of marine resources, and (c) tackle the problem of preserving the marine environment.

OPK refers to a set of international cooperative activities by the navies and the marine police of coastal states in the region. By implementing in this way

laws and regulations enacted in accordance with their international obligations under UNCLOS, these states aim to maintain order in the seas, prevent the occurrence of armed conflicts, and secure stable and sustainable utilization of the oceans. OPK's main purpose is to secure commercial sea-lanes. It is performed through joint policing activities by the navies and the marine police of the countries in the region, and it also serves to stabilize the seas in the region by conserving and managing marine resources as well as preserving the marine environment there.

Securing sea-lanes is the main task of navies and the marine police of coastal states when engaged in OPK operations. They can enforce the domestic laws of a coastal state within its EEZ when vessels are suspected of having violated the same. For this to happen, coastal states must be granted jurisdiction under a regional agreement or a bilateral or multilateral memorandum of understanding. In other words, the agreement or memorandum empowers the coastal state to crack down on vessels suspected of having violated its laws and regulations even when these vessels are within the EEZ of another country. As a coastal state can exercise exclusive jurisdiction on economic resources only within its EEZ pursuant to its sovereign rights, it may be said that OPK operations are a form of security cooperation carried out independently from the sovereignty of the coastal states involved.

The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 1995 that supplements UNCLOS urges countries engaged in fishing in the high seas to make an effort to agree on preventive measures for conserving straddling fish stocks and highly migratory fish stocks. The agreement thus intends to remedy the ineffective regulation of fishing based on the flag state principle. It provides for a set of measures to be taken by state parties for the implementation of UNCLOS provisions to ensure the management of these fish stocks in the fishing grounds. It empowers its state party to have its inspectors board and inspect a vessel of another state party. If there are clear grounds for believing that the vessel has engaged in activities contrary to the conservation and management measures under this agreement, a signatory is empowered to notify the flag state of the alleged violation. The flag state thus notified will be obligated to investigate immediately and report back the outcome to that state party.

Such measures are applied only to the state parties to the agreement, and fishing on the high seas by non-state parties is subject to the laws and

regulations of the flag state concerned. State parties to the agreement are authorized to board and investigate foreign vessels engaged in fishing on the high seas, which means that the inspection agency designated by a signatory can board and inspect such foreign vessels as a treaty agency. Under this agreement, its state parties have thus come to have dual functions—an important step toward an effective implementation of ocean governance—namely, the function of cracking down not just on vessels flying their flag but also on those flying the flag of other contracting parties.

OPK operations are activities to implement the laws and regulations of coastal states by allowing the navies and marine police of one state party to board a patrol boat of another state party for the purpose of carrying out measures of ocean governance. This idea is intended to build on the potential for further action offered by the agreement of 1995, which, as noted, provides for a set of measures to ensure the management of fish stocks in the fishing grounds. That is to say, by concluding a regional agreement or a memorandum of understanding, the scope of crackdown the state parties can carry out would be extended beyond violations of the conservation and management measures of fishery resources to include violations of the conservation of the marine environment and piracy that hinders the safe and stable use of sea-lanes. The agreement would elevate the crackdown on such violations to the level of international cooperation for the conduct of ocean governance in this region.

Contracting parties to UNCLOS are required to enforce their domestic laws and regulations based on international standards in order to perform their duty under UNCLOS for the purpose of ocean governance. However, as mentioned above, when state parties cannot draw a line of demarcation between EEZs or continental shelves due to a dispute over the dominium, they might find it difficult to perform such duty. In other words, harmful effects—the inability to carry out measures for the management and protection of marine resources by contending coastal states, or to enforce the laws and regulations for the conservation of the marine environment—may conceivably arise due to the vagueness of the line dividing the area of responsibility under the treaty. The existence of such “vacuum waters” may give rise to large-scale ocean dumping of industrial or radioactive waste that cannot be disposed of on land.

Moreover, there are coastal states that cannot effectively enforce their laws and regulations due to the vastness of their EEZ or a shortage of naval vessels or aircraft to police it. The existence of such waters may encourage ocean

dumping of pollutants or indiscriminate exploitation of fishery resources. OPK operations are international cooperative activities for supporting the countries in the region to ensure stable use of sea-lanes and to cover the oceans where measures to prevent indiscriminate exploitation of fishery resources or the destruction of the marine environment cannot be enforced.

### **(3) Ocean-peace Keeping: The Implementation**

As an effective implementation of ocean governance requires routine patrol over a wide-ranging area by naval vessels and aircraft (such as P-3C maritime patrol aircraft), joint and coordinated actions between the navies and marine police of the coastal states of the region are essential. Personnel of multinational navy or marine police cross-board navy vessels or aircraft provided by countries with extra vessels or aircraft (it may be possible to make use of those too old or decommissioned for this purpose), patrol certain areas of the oceans, and approach and inspect vessels suspected of having violated laws and regulations of a given coastal state, to gather information concerning alleged violations. When a patrol is conducted by an aircraft, personnel of different countries aboard such aircraft take photos of a vessel suspected of having violated the laws and regulations of a given coastal state, and after locating suspicious vessels, the aircraft notifies a navy vessel then patrolling an adjacent area of its location. Information thus collected is used as important evidence when the suspected vessel is arrested or when the signatory that does not fulfill its duty under UNCLOS is brought to proceedings in accordance with international law or referred to a mediation process.

Patrol activities under OPK can be carried out within bilateral arrangements, but it is desirable to have the navies and marine police of three or more countries participate in joint activities. The more countries that participate in such activities, the more effective the security of the area. For instance, a fishing boat of Country A accidentally drifts into, and is unwittingly engaged in fishing in, the EEZ of Country B. It is spotted by an OPK patrol aircraft that then passes the information on to an OPK vessel, which, in turn, approaches the fishing boat. Law enforcement officers of Country A and Country B, and those of Country C approach and investigate the suspicious fishing boat, and gather evidence. The advantage of having law enforcement officers of these three countries board and inspect jointly—and in the presence of their counterparts from other countries—is that the crewmen of the suspected fishing boat can

explain the situation to, and win the understanding of, the law enforcement officers of his own country (Country A) in his mother tongue, and that those of Country C can check to see that no illegal investigation takes place. Therefore, the more countries that participate in the investigation, the more effectively they can deal with the suspected vessel, and the fairer the investigation.

Moreover, OPK operations can play a role conducive to the Proliferation Security Initiative (PSI). The PSI was first broached in May 2003 by U.S. President George W. Bush during his visit to Poland. He called on ten countries including Japan, the United Kingdom, France, and Australia to participate in the PSI and proposed to study measures that can be taken jointly by participating countries to check the proliferation of WMD-related equipment and materials that could pose a threat to international peace and security. In September 2003, the first maritime interdiction exercise was carried out off the coast of Australia, where the Shikishima, a JCG patrol vessel and a special security team from the JCG and observers from the Japanese Defense Agency participated in the exercise. In the belief that the PSI is in line with the policy it has been following to check the proliferation of WMD and missiles, Japan hopes to play an active part. It also plans to appeal to Asian countries to join and cooperate with PSI activities. If this movement gains momentum, OPK operations could become interrelated with PSI activities in a constructive manner.

OPK operations are multilateral activities that could contribute to the stability of sea-lanes, the sustainable development of marine resources, and the maintenance of the ocean ecosystem. Therefore, personnel from the navies and marine police of the regional countries who carry out joint patrols may develop a sense of solidarity that they are engaged in activities for the shared purpose of maintaining peace in the Asia-Pacific region. Article 276 of UNCLOS also calls for the establishment of a regional center that conducts research on problems relating to the seas and oceans. If a research and training center for ocean governance is

**A vessel of the Japan Coast Guard conducting an exercise on December 4, 2003, in conjunction with the coast guard of Singapore on the supposition of a seajack occurred in the Singapore Strait (Japan Coast Guard Photo)**

established in the region, it will become a forum of exchange not only among the personnel of the navies and the marine police of the regional countries but also among researchers interested in these issues. If it becomes possible to organize joint training for and maintenance of navy vessels and aircraft and, further, joint training of personnel for approaching and inspecting vessels, such a center is likely to become a base for activities relating to the sustainable development of marine resources of the Asia-Pacific region. This in turn can enable ocean governance to serve as a catalyst for achieving comprehensive maritime security of the region.

While taking into consideration the ability and situation of each country, it is highly significant to deepen the debate over various issues arising in the process of turning the OPK concept into action—the roles of individual navies and marine police forces for instance, is one such issue. As problems such as natural resources, the environment, food, refugees, the stability of sea-lanes and counterterrorist measures pose wide-ranging threats that go beyond the capability of individual countries, they must be dealt with through cooperation on a global scale. Building a more stable Asia-Pacific region that continues to grow through peaceful use of military power and confidence building is an important task for all countries of the region. It presages how maritime security cooperation should look in the twenty-first century.

### **The OPK concept beyond the Asia-Pacific: the case of the Mediterranean**

Because the Mediterranean Sea is semi-enclosed, it has slow water circulation. Pollution of its waters could cause serious damage. Concerned about such a possibility, twenty coastal states bordering the Mediterranean concluded the six-protocol Barcelona Convention in 1976 with the support of the United Nations Environment Program (UNEP). (It has since been amended in 1995 after it was adopted by the European Union.) Under the Convention, its signatories established the Mediterranean Action Plan (MAP). To facilitate mediation of disputes among the signatories of MAP over the pollution of the marine environment, the Mediterranean Action Plan Mediation Unit (MEDU) was established in Athens with the support of the Greek Government. In 1996, the Committee on the Sustainable Development of the Mediterranean was established as an advisory body to MAP. The marine environment action plan drawn up by MEDU for carrying out sustainable development of marine resources covers wide-ranging problems such as accidents at sea involving tankers and their outlawed effluence, pollutants discharged from land, factory effluence, the management of coastal areas, and the preservation of living marine resources. These problems are being dealt with by the relevant coastal states, and no joint action has been taken by these countries as a whole.

MEDU activities have ameliorated pollution problems in the Mediterranean if only gradually. It may be said that while these activities are primarily directed toward dealing with problems of marine pollution, they have been instrumental in promoting various treaties among the coastal countries of the Mediterranean and in trying to establish ocean governance through international joint management. Most of the coastal states facing the Mediterranean are signatories of UNCLOS. When one considers their duty to preserve the marine environment, and the necessity to carry out comprehensive and sustainable development of the Mediterranean including the conservation and management of its marine resources, the concept of ocean governance cannot be overlooked. The Mediterranean will need OPK in the future to implement the laws and regulations of its coastal countries in accordance with international standards.

