Japan’s Response to Somali Piracy

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1. Introduction

0 The Harvard Draft Convention and Comment on Piracy states as follows:

0 “The reason for the startling lack of international case authority and modern state practice is apparent, as soon as one remembers that large scale piracy disappeared long ago and that piracy of any sort or over the high seas is sporadic except in limited areas bordered by states without the naval forces to combat it. Piracy lost its great importance in the law of nations before the modern principles of finely discriminated state jurisdictions and of freedom of the seas became thoroughly established.” (26 A.J.I.L. (Supplement 1932), p.764. (emphasis added)
1. Introduction (cont.)

- However, unexpected situations occurred between the late 20th century and the early 21st century.
- Since the 1980s, rampant piracy has troubled the international community. Earlier, the piracy threatened the maritime transportation in the Straits of Malacca and Singapore, and now has threatened the transportation off the coast of Somalia and in the Gulf of Aden.
- Thanks to the international cooperation for the anti-piracy, the number of piracy incidents off the coast of Somalia and in the Gulf of Aden has drastically decreased from 237 in 2011 to 75 in 2012. Furthermore, the number of the dead as result of piracy has been reduced by half, from 28 in 2011 to 14 in 2012.
1. Introduction (cont.)

- According to IMB, some factors led to the drastic reduction of the number of piracy incidents; the naval forces dispatched for anti-piracy duties in the area; privately contracted armed security personnel (PCASP) onboard; the Best Management Practice implemented by the crew.

- However, the world-wide number of piracy attacks in this area accounts for 25% of the number of piracy attacks. The breakdown of the attacked vessels by category shows that bulk carriers are most commonly attacked (66 vessels), followed by chemical tankers (54), containers (39) and tankers (32).

- Looking at the attacked vessels by nationality of their owners, 71 were Singapore’s vessels, 40 were German, 31 were Greek, and 15 were Japanese.
Reported Piracy Attack Statistics (World)

- Somalia & Gulf of Aden
- South & East Asia

MOFA (2013)
Important Sea Lanes for Japan

- The sea lanes off the coast of Somalia and in the Gulf of Aden link Japan with Europe and Middle East and 2,000 Japanese-related vessels annually sail along these lanes. So these lanes are important for Japan.

- The Japanese Ship-owners’ Association and others have urged the Japanese government to reinforce its measures against acts of piracy, including the development of legislation.
Limits of the “Maritime Police Actions” Clause in the SDF Law

On 14 March, 2009, the government sent two MSDF destroyers to escort Japanese commercial ships in this sea area. The expression of “human lives and properties” in Article 82 of the SDF Law has been interpreted as lives of Japanese or properties owned by them.

Under the “maritime police actions” clause of the SDF Law, only Japanese registered vessels or foreign ships with Japanese crew or cargo on board are guarded. Therefore, the MSDF cannot protect the ships of other countries.
2. Enactment of the Piracy Act

Japan has enacted the Act on Punishment of and Measures against Acts of Piracy ("Piracy Act") in 2009, which, among other things, stipulates the protection of not only the vessels of Japan, but those of all countries.

The object of the Piracy Act does not confine itself to solely providing legal grounds for the specific activities by the MSDF for combating the incidents of pirates off the coast of Somali. The Piracy act has a wide coverage so far as providing for the definition of acts of piracy, enforcement measures against them, the criminal jurisdiction of Japan, punishment of the crime of piracy and so on.
Why Should Japan Protect Foreign Vessels?

On this point, Mr. Yasuo Oba, the then Secretary General on the Headquarters for Ocean Policy of the Cabinet Secretariat, said as follows:

"Assurance of the safety of navigation is critical for Japan, which in terms of energy supply heavily depends on imports. The Japanese commercial fleets working on that are 2,300 in number and among them only 90 are flying a Japanese flag. Thus, the Japanese commercial fleets contain a large number of foreign vessels. Taking into consideration such situations, to protect foreign vessels forms an important interests to Japan." (emphasis added)
Weighted Target of Realization of the Piracy Act

When asked whether the Japanese government intended to combat piracy permanently in all the sea areas of the world. In the Diet, Mr. Taro Aso, the then Prime Minister, answered as follows:

“While basically this Act applies to both high seas and Japanese territorial waters, it is not realistic that Japan combats piracy beyond Japanese territorial waters in all the high sea areas. Whether or not to take steps based upon the Act will be decided considering the impact of the concrete situation upon Japan’s economic society and nationals’ life.” (emphasis added)
Committee on Foreign Affairs and Defense on 2 June, 2009 (171st Diet)

Mr. Koji Tsuruoka, the then Director-General of International Law Affairs Bureau of MOFA provided the following explanation:

“While, in principle, the acts of piracy under the Piracy Act are the same as those under UNCLOS, the Piracy Act, as a domestic law, concretizes the concept of acts of piracy. In that sense, the definition of the acts of piracy under the Act is more detailed than those under the UNCLOS.” (emphasis added)
Special Committee on Combating Piracy and Terrorism on 22 April, 2009 (171st Diet)

In response to the question whether the obstructive acts against Japanese vessels for scientific research whaling that had been carried out for several years fell under one of the acts of piracy under the Piracy Act, Mr. Kaneko, Minister for Land, Infrastructure, Transport and Tourism (then) answered as follows:

“Considering the current debate in international society concerning scientific research whaling and protesting activities against it, we believe that inclusion of such obstructive acts in acts of piracy is difficult to be generally understood in international society. Thus, we decided to exclude such obstructive activities from the acts of piracy in the Piracy Act.” (emphasis added)
Japanese Government’s Interpretation of “Private End”

Sea Shepherd Conservation Society’s obstructive behaviour against Japanese ships for research whaling on the high seas does not fall under the definition, so the Japanese government cannot apply this Act to the behaviour.

In other words, the government didn’t think that the embarrassing activities by this militant conservationist group met the requirement of “private end” referred to in the definition of pirate under UNCLOS.
3. Decision of the 9th Circuit of the US Court of Appeals

In the case of Institute of Cetacean Research et al v. Sea Shepherd Conservation Society, Chief Judge Kozinski of the 9th circuit of the United States Court of Appeals found the act of the Sea Shepherd to be piracy and stated as follows:

“You don’t need a peg leg or an eye patch. When you ram ships; hurl glass containers of acid; drag metal-reinforced ropes in the water to damage propellers and rudders; launch smoke bombs and flares with hooks; and point high-powered lasers at other ships, you are, without a doubt, a pirate, no matter how high-minded you believe your purpose to be.” (23 February, 2013)
Erroneous Interpretation of “Private End” by the District Court

0 The Washington District Court’s analysis adopted an erroneous interpretation of “private end” and “violence”.

0 The district court construed “private ends” as limited to those pursued for “financial enrichment”. But the common understanding of “private” is far broader....The context here is provided by the rich history of piracy law, which defines acts taken for private ends as those not taken on behalf of a state.
Facts: Members of the environmental group “Greenpeace” took action on the high seas against two vessels engaged in the discharge of noxious waste, in order to attract attention to the harmful effects of such discharge at sea. The action included boarding, occupying and causing damage to the two vessels. The operators of the vessels instituted proceedings before the Belgian courts for injunctions to prevent interference with the discharge operations on the high seas.
Decisions of Belgian Courts in 1986 (cont.)

0 Decisions: The judge at first instance held that he had no jurisdiction to prevent interference with such operations since vessels on the high seas were exclusively subject to the jurisdiction of their flag State, in this case the Netherlands. The Court of appeal of Antwerp held, however, that the Belgian court was entitled to exercise jurisdiction over their own nationals in such circumstances because the action at issue amounted to piracy for which the exclusive application of the law of the flag State could not be claimed. The defendants appealed
Decisions of Belgian Courts in 1986 (cont.)

On 19 December 1986, Court of Cassation held that the action at issue had been taken in order to alert public opinion to the dangers inherent in the discharge at sea of waste products harmful to the environment. As such the acts were committed in furtherance of a personal point of view on a particular problem, albeit with a political perspective, rather than in the interests or to the detriment of a State or States system, and were therefore committed for private ends within the meaning of Article 15 of the Geneva Convention on the High Seas. Having resorted to violence and done so for private ends, ...the members of Greenpeace had committed piracy and were not, therefore, entitled to claim the application of the law of the flag State of their vessel.
Positive Assessment of the 9th Circuit of the US Court of Appeals

The 9th Circuit of the US court of Appeals held that “Belgian courts, perhaps the only ones to have previously considered the issue, have held that environmental activism qualifies as private end.” and “This interpretation is ‘entitled to considerable weight.’”
The interpretation of the term “private end” by the 9th Circuit of the US Court of Appeals

“We conclude that ‘private end’ include those pursued on personal, moral or philosophical grounds, such as Sea Shepherd’s professed environmental goals.”

“That the perpetrators believe themselves to be serving the public good does not render their ends public.”
Erroneous Interpretation of “Violence” by the District Court

“Citing no precedent, the district court held that Sea Shepherd’s conduct is not violent because it targets ships and equipment rather than people. This runs afoul of the UNCLOS itself, which prohibits ‘violence...against another ship’ and ‘violence...against persons or property.’”

“Ramming ships, fouling propellers and hurling fiery and acid-filled projectiles easily qualify as violent activities, even if they could somehow be directed only at inanimate objects.”
Erroneous Interpretation of “Violence” by the District Court (cont.)

“The district court also considered the interest in keeping U.S. courts out of the international political controversy surrounding whaling. “

“Refusing the injunction sends the far more troublesome message that we condone violent vigilantism by U.S. nationals in international waters.”
Significance of the Decision of the 9th Circuit of the US Court of Appeals

0 The court clearly defined the meaning of “private end” and “violence” as the requirements for piracy.

0 According to the court, it could be deemed as “private end” to express one’s own view on political issues, such as research whaling. This is remarkable, because the court found activities for environmental protection, or protection of whales as “private end.”

0 It concluded that the term “violence” included activities threatening directly and physically to the vessels concerned. Given the fact that “illegal acts of violence” is not defined clearly under Article 101 of UNCLOS, this decision could establish important precedent for future cases.
4. IMO’s Agreement on the Use of PCASP onboard

- Maritime Safety Committee of IMO agreed that:
  - 1. The carriage of firearms by seafarers continues to be strongly discouraged;
  - 2. The use of PCASP was an exceptional measure to be used only in exceptional circumstances in the high-risk area and that use of armed personnel on board ships should not become institutionalized;
  - 3. (omitted)
  - 4. (omitted)
IMO’s Agreement on the Use of PCASP onboard

0 5  (omitted)

0 6  further guidance is needed to assist policy development at the national level and facilitate greater harmonization of policies at the international level related to the issue of arms on board. The development of such guidance does not constitute a recommendation or an endorsement of the general use of PCASP;  

0 7  the guiding principles for standards for PMSC and PCASP on board ships should be developed by IMO; and

0 8  (omitted)
Increasing Number of States Allowing PCASP onboard

Many maritime powers (Bahamas, Belgium, Cyprus, Denmark, Germany, Hong Kong, Italy, Korea, Liberia, Malta, Marshall Islands, Norway, Singapore, Spain, Panama, UK, USA) have already enacted their domestic laws to enable vessels to have PCASP onboard, and there is, so far, no case where the vessels with PCASP have been attacked by pirates.

The Japanese government found it necessary to develop legislation in order to prevent Japanese vessels without PCASP onboard from becoming targets for pirates.


The draft act requires the ship-owners who intend to take security measures, to prepare security plans showing the names of private maritime security companies (PMSC) they hire for each vessel, as well as the implementation method of security. The ship-owners are also required to submit the plans for approval by the Minister of Land, Infrastructure and Transportation.

Upon the approval of this bill, the Draft Act allows the shipowners to have personnel with rifles onboard.

The owners of Japanese vessels can embark PCASP off the coast of Saudi Arabia or Oman, and disembark them off the coast of Sri Lanka. It means the owners are only allowed to embark PCASP on the vessels navigating the high-risk area.

Japan has the Swords and Firearms Control Law strictly regulating civilian possession of firearms. Under the Draft Act, however, the Swords and Firearms Control Law is not applicable to any Japanese vessel navigating the high-risk area.
6. Conclusion

Based on the belief that the safe maritime navigation is crucial for the economic society and lives of the Japanese people, Japan enacted two Acts concerning piracy. The Piracy Act criminalises acts of piracy and provides necessary legal grounds for appropriate and effective response to acts of piracy. The Draft Act on Special Measures for Security of Japanese Vessels in the High-Risk Area allows the Japanese vessel to use the PCASP. These represent Japan’s response to the duty to cooperate in the repression of piracy set force in Article 100 of UNCLOS and show its willingness to maintain public safety and order at sea.
The Guanabara Case in 2011

On 5 March, 2011, the Guanabara, a Mitsui O.S.K. Line tanker registered in the Bahamas and operated only by 24 non-Japanese crew members, was attacked by the alleged Somali pirates.

None of the crew was injured, and the four suspects, who claimed to be Somali, were captured by U.S. naval units the following day and transferred to Japan to face trial.
The Tokyo District Court sentenced two Somali defendants to 10-year term.

On 25 February, 2013, the same Court sentenced another Somali, whose name had been withheld because of being under age, to five to nine years, in accordance with Japanese Juveniles Act. The remaining defendant was sentenced to 11-year term on 12 April, 2013.

Japan is spending time and money to try them, because it is the nation’s duty, as a member of the international community, to suppress Somali pirates.
Thank you for your attention!