

“Policy Proposal Regarding Japan’s Response to Emerging Piracy off the Coast of
Somalia”

Announced at the Emergency Conference
On Measures to Thwart Somali Offshore Pirates

Japan, as a nation, in order to secure the safety of the sea-lane that is the lifeline for the country’s existence, and from the viewpoint that Japan cooperates with the international community for its peace and security, must positively grapple with preclusion (prevention, repression, and abatement) of the piracy frequently occurring in the area of offshore Somalia.

Accordingly, Japan would be wise to take or continue the following postures:

- 1 Japan should appeal for a further grappling toward prevention of the piracy occurring frequently off the coast of Somalia to the international community at such forums as United Nations Security Council and United Nations General Assembly.
- 2 Japan should dispatch its troops composed of such as ships and airplanes of the Japan Maritime Self- Defense Force (JMSDF) to Somali offshore areas taking into consideration the Somali offshore situation and the United Nations Security Council Resolutions 1816 and 1838.

In view of the piracy off the coast of Somalia increasing in number of occurrences and continuing to exhibit atrocity, dispatch of the JMSDF fleet ships must be executed as soon as possible.

a) Accordingly, at first, under the laws in force, JMSDF ships must be detached immediately to the open sea off the coast of Somalia to investigate and grasp the situation. In action predetermined by Article 100 of the United Nations Convention on the Law of the Sea (UNCLOS) (“Duty to cooperate in the repression of piracy”), the dispatched ships and airplanes are to provide information to other countries’ warships and vessels. In addition, there is no special limitation for the vessels subjected to investigation and research activities.

b) Concurrently, the government -- grasping the circumstances of piracy committed by pirate boats against other ships at spotting areas, and confirming the requisites to issue the “maritime security operations” order provided in Article 82 of the Self-Defense Forces Law -- should issue such a mobilization order.

By applying the provision of Article 16 of the Japan Coast Guard Law, a request for cooperation to ships in the vicinity could be made in cases of sea rescue, criminal

arrest and other emergencies; the first clause of Article 17 of the same law provides for stopping vessels, doing on-the-spot inspection, and questioning the crew; moreover, Article 18 of the same law entitles embargo on departure of those vessels, forcing them to change route, or moving them to designated places. These interventions are recognized by international law in Articles 105 and 107 of the UNCLOS.

As to the use of arms, applying Article 7 of the “Police Execution of Duties Law (KSS Hou)” to such cases -- criminal arrest, prevention of desertion, and having satisfying reasons to admit the necessity of protecting self or other people, or for repressing defiance at spot checks -- entitles use of arms to the limit to be judged rationally necessary in accordance with actual aspects of the affairs.

Given the JMSDF ships’ actions, subjected vessels are to be those of Japanese registry, Japanese embarking ships, flag-of-convenience falling under the control of Japanese shipping companies, and freighters forwarding and supplying Japan.

c) Since the period of issuance of “Maritime Security Operations” order will predictably be protracted, or as it can not be thought that international cooperation aimed at checking piracy could fully take effect within the jurisdiction at the time of activities, the government should respond to a piracy case by enacting as soon as possible a Special Law such as a “Piracy Regulatory Law (provisional name)” to effectively respond to the piracy emerging off the coast of Somalia.

The Special Law is to stipulate that warning shots into the waters in vicinity of the vessels intent on piracy, warning shots onto their hulls, and shooting to render them unable to operate for navigation (innavigable), should be possible following in that sequence. The Law is also to provide that effective activities could be implemented within the framework of international cooperation for maritime security by allowing shooting to endanger any pirates who resist with arms against embarked inspection.

By the Special Law, even foreign vessels not loaded with cargoes relative to Japan are subjected to crackdown.

In addition, taking up the enactment of the Special Law, necessary study should be conducted so that judicial jurisdiction together with executive jurisdiction could be exercised to enable substantial piracy preclusion activities.

With naval vessels from other countries deploying in the same sea area, JMSDF ships should coordinate actions to impede piracy and also make efforts to share information.

- 3 A major factor of emerging piracy around Somalia is Somali chaotic domestic politics as well as the worsening public order. Japan should appeal to the international community to grapple with aid for Somali restoration, and advocate assistance to stabilize the lives and public order inside Somalia by funding and offering technology to cope with destitution by way of building up industrial infrastructure in Somali coastal areas which have become a hotbed of piracy, and of providing radar installations and other materials and equipment useful for surveillance and cracking down on piracy.
- 4 Taking this situation into consideration, the supply operations by JMSDF ships in the Indian Ocean, an international cooperation activity, should be continued still more.
- 5 Measures to be decided based on this advocacy are not limited to piracy in Somali offshore, and they should be applied to other areas when necessary. In this case, it is a matter of course that dispatch of the Japan Coast Guard ships will have to be taken into consideration.
- 6 Pirates taking actions crossing a national boundary are the common enemy of all humankind, and thus, they jeopardize world peace and security. Japan must put forth an initiative to appeal to the United Nations Security Council that coping with piracy should be grasped as an international peace enforcement activity or a law enforcement activity.

The above-mentioned advocacy was announced in Tokyo on November 14, 2008 at the Emergency Meeting on Measures to Thwart Somali Offshore Pirates.

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