

The University of Sheffield

Lindsay Black

**All at Sea? Japan's Response to the Contemporary
Maritime Security Threats Posed by Infidels, Pirates
and Barbarians**

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Abstract

This thesis examines Japan's response to contemporary maritime security issues that adversely affect Japanese national interests. The maritime threats studied in this thesis are posed by actors deemed to be on the periphery of, if not wholly outside, the interstate society as defined by the English School. Because the actions of these actors cannot be justified according to the laws and norms of the interstate society they are termed outlaws. In order to understand Japan's response to maritime security threats it is necessary to determine the motivations and characteristics of the outlaws under investigation. Those outlaws who are politically motivated, but can be bargained with, have been designated barbarians. Outlaws who are politically driven and seek the overthrow of the interstate society are deemed infidels. Finally, maritime outlaws who operate for economic gain are labelled pirates.

This thesis is concerned with how the different outlaw types affect order in the interstate society and how Japan works to maintain order in the interstate society. This raises the question of whether order in the interstate society is to be upheld at the expense of justice and how the balance of order versus justice determines whether the interstate society is pluralist or solidarist. This thesis finds that Japan's response to contemporary maritime security threats has not balanced issues of order and justice in the interstate society. Only by responding to the maritime threats posed by barbarians, infidels and pirates from a perspective of justice that takes Human Security issues into account can order in the international society truly be sustained.

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All Japanese names in this thesis have been written with the surname first, except when an individual's English language work is cited. Macrons have been used to denote long-vowels in Japanese words.

I accept full responsibility for any mistakes in this thesis.

Glossary

ADIZ	Air Defence Identification Zone
AFP	Armed Forces of the Philippines
AIS	Automatic Identification Systems
APEC	Asia Pacific Economic Conference
ASDF	Air Self-Defence Force
ASEAN	Association of Southeast Asian Nations
ASG	Abu Sayyaf Group
ATSMML	Anti-Terrorism Special Measures Law
CAP	Combat Air Patrol
CBP	Customs and Border Protection (US)
CIA	Central Intelligence Agency (US)
CPP	Communist Party of the Philippines
CSCAP	Council for Security Cooperation in the Asia Pacific
CSI	Container Security Initiative
C-TPAT	Customs-Trade Partnership Against Terrorism
DEA	Drug Enforcement Agency (US)
DPRK	Democratic People's Republic of Korea
EEZ	Exclusive Economic Zone
FBI	Federal Bureau of Investigation (US)
FPDA	Five Power Defence Arrangements
GAM	Gerakan Aceh Merdeka (Free Aceh Movement)
GPS	Global Positioning System
GSDF	Ground Self-Defence Forces
ICBM	Intercontinental Ballistic Missile
ICC	International Chamber of Commerce
IIRO	Islamic International Relief Organization
ILO	International Labour Organization
IMB	International Maritime Bureau
IMF	International Monetary Fund
IMO	International Maritime Organization
IRA	Irish Republican Army
ISPS Code	International Ship and Port Security Code
ISWG	Intersessional Working Group on Maritime Security
ITF	International Transport Workers Federation
JCG	Japan Coast Guard
JDA	Japan Defence Agency
JI	Jemaah Islamiya (the Community of Islam)
JICA	Japan International Cooperation Agency
JSA	Japan Shipping Association
KEDO	Korean Peninsula Energy Development Organization
LDP	Liberal Democratic Party
LLAR	Low-level armed robbery
LNG	Liquid Natural Gas
LPG	Liquid Petroleum Gas

LWRs	Light Water Reactors
MCHJ	Major criminal hijack
MDA	Maritime Domain Awareness
MECC	Maritime Enforcement Coordination Centre
METI	Ministry of Economy Trade and Industry
MI5	The UK's domestic intelligence agency
MILF	Moro Islamic Liberation Front
MLAAR	Medium-level armed assault and robbery
MLIT	Ministry of Land, Infrastructure and Transport
MMEA	Malaysian Maritime Enforcement Agency
MNLF	Moro National Liberation Front
MOFA	Ministry of Foreign Affairs
MOP	Maritime Operation Planning team
MOT	Ministry of Transport
MSA	Maritime Safety Agency
MSC	Maritime Security Council
MSDF	Maritime Self-Defence Force
MSIS	Maritime Safety Information System
MTSA	Maritime Transportation Security Act of 2002
NGO	Non-Governmental Organization
NPA	New People's Army
NPT	Nuclear Proliferation Treaty
ODA	Overseas Development Assistance
PCG	Singapore Police Coast Guard
PLO	Palestinian Liberation Organization
PSI	Proliferation Security Initiative
RAF	Red Army Faction
RECAAP	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia
RFS	Remote Firing System
RMMP	Royal Malaysian Marine Police
RMSI	Regional Maritime Security Initiative
RPG	Rocket Propelled Grenade
SLOCS	Sea Lines of Communication
SOLAS	International Convention for the Safety of Life at Sea
SSO	Ship Security Officer
STAR	Secure Trade in the APEC Region
SUA Convention	Convention for the Suppression of Acts Against the Safety of International Maritime Navigation (1988)
TMD	Theatre Missile Defence
TNC	Transnational Corporation
TNI	Tentara Nasional Indonesia (the Indonesian military)
UNCLOS	United Nations Convention on the Law of the Seas
UNHCR	United Nations High Commissioner for Refugees
VLCC	Very Large Crude Carrier
VTS	Malaysian Vessel Traffic System
WMD	Weapons of Mass Destruction

1. Introduction

1.1 Contemporary Maritime Security Threats to Japan

The Japanese government is alert to the risks presented by contemporary maritime security threats. As Japan is a major maritime power and an island nation, the Japanese economy (the world's second largest) and trade are reliant upon the safe passage of shipping through Southeast Asian waters, in particular 80 percent of Japan's oil resources transit the Malacca Straits (Yamada, 2003: 143-144). A blockage of the Malacca Straits caused by an intentional terrorist incident or an accident resulting from a piratical incident would significantly damage Japan's economic interests (Graham, 2006: 1-7).

The cost of deterring would-be pirates or terrorists alone is substantial for the Japanese shipping industry. For example, avoiding conflict zones, like Somalia, means extending the distance ships travel, which in turn costs freight companies more in terms of wages and fuel.¹ Alternatively, the price of installing anti-piracy devices, such as ShipLoc² (a location device) or Secure Ship³ (an electric fence that runs around the deck of a ship) must be borne by shipowners. These costs are ultimately passed down to the consumer. Furthermore, piracy and maritime terrorism puts the lives of Japanese seafarers at risk and, in the case of terrorism, potentially creates a threat to Japanese ports and harbours.

Spy ships from the Democratic People's Republic of Korea (hereafter North Korea) have posed another maritime security threat to Japan. These ships have engaged in clandestine activities around the Japanese coast, hijacking Japanese citizens, conducting an illegal narcotics trade and carrying out intelligence gathering operations. Such missions have augmented existing tensions between Japan and North Korea which

¹ For information on Somali piracy, see "Unprecedented increase in piracy attacks off Somalia" www.icc-ccs.org/main/news.php?newsid=57, London 20 October 2005, and "Piracy increasing on Somali Coast" www.icc-ccs.org/main/news.php?newsid=53, London 15 August 2005. Accessed 28 October 2005.

² See website www.shiploc.com.

³ See website www.secure-marine.com.

centre upon the development of North Korea's missile and Weapons of Mass Destruction (WMD) capabilities (Yamada, 2003: 25, 31-36; Richardson, 2004: 102-107).

Considering the substantial risk to Japanese shipping, as well as to Japan's national interests, particularly as regards energy and economic interests, the fact that Japan has responded to contemporary maritime security threats is of little surprise. This thesis will examine three maritime security threats to Japan. These threats are North Korean spy ship incursions into Japanese waters, pirates in Southeast Asia and terrorists worldwide. Investigating these three case studies enables us to conduct a comprehensive study of how Japan treats maritime security threats in its domestic waters, in the Southeast Asian region and across the globe.

1.2 Hypothesis

This thesis will test the following hypothesis:

Japan's response to maritime security threats posed by barbarians, pirates and infidels, is conducted through the institutions of the interstate society.

In order to test this hypothesis, seven questions will be answered in each of the case studies. These questions are:

- What are Japan's goals?
- How is Japan acting to achieve those goals?
- Are Japan's actions based on coercion, calculation or belief?
- How can the interstate society in which Japan is acting be defined?
- What are the key interstate institutions affecting Japan's actions in each case?
- What interhuman and transnational societal factors influence Japan's response?
- How does Japan respond to these interhuman and transnational societal factors?

Answering these seven questions will reveal how the constraints and opportunities of the interstate, interhuman and transnational societies act upon Japan's response to contemporary maritime security threats.

1.3 Contribution to literature

Japan's maritime security is an understudied subject. There is nothing in English on Japan's response to North Korean spy ships or maritime terrorism and only one article on Japan's response to piracy. Addressing each of these issues will provide detailed and timely information on a significant subject in international affairs. Japan's response to maritime security threats enables an interpretation of Japan's changing stance towards security issues in global affairs since the end of the Cold War.

This thesis will also contribute to the important work of drawing diverse International Relations Theories together by adopting the English School as its theoretical framework. In particular, this thesis will examine three different kinds of interstate society, those of North and Southeast Asia, as well as the global interstate society, in order to enrich the geographical scope of the English School. Furthermore, this work on Japan's response to contemporary maritime threats intends to deepen the English School's understanding of maritime affairs, as well as the links between interstate, interhuman and transnational societies through the adoption of the barbarian, infidel and pirate categories, as the definitions chapter will demonstrate.

1.4 Chapter Outline

Chapter 2 - Theory

International Relations theories offer a variety of standpoints from which Japan's response to maritime security issues can be viewed. The theory of realism notes the

importance of material concerns, national interests and the balance of power in Southeast Asia. It is in Japan's national interests to ensure the stable supply of energy resources and trade to and from Japan. Furthermore, building security links with Southeast Asian states to safeguard the oceans enables Japan to balance against the rise of a Chinese blue water navy (Zha, 2001: 33-51). Liberalism provides a conceptual lens that highlights the significance of multilateral cooperation, international institutions and international law. As Japan spearheaded the creation of a piracy reporting centre in Singapore on 11 November 2004, committed itself to upholding international law and collaborated multilaterally in the fight against maritime security threats, so Liberalism can be of significant value as a theoretical framework. Norms and values, as emphasized by Constructivist theory, also explain elements of Japan's approach to maritime security issues. Anti-militaristic norms limited Japan's response to incursions by North Korean spy ships into Japanese waters in March 1999, and respect for ASEAN norms of non-interference in the internal affairs of ASEAN states has also restricted the extent to which Japan has been able to intervene to prevent piracy and maritime terrorism in Southeast Asia. Moreover, the adoption of the Japan Coast Guard model in Malaysia and the Philippines has enabled the norms which infuse the Japan Coast Guard (JCG) to be exported to Southeast Asia. Overall, no single theory can adequately explain Japan's response to maritime security threats. Instead a conceptual lens, which bridges the differences between the principal International Relations theories, is needed (Katzenstein and Sil, 2004: 1-33).

The English School provides such a theoretical framework, in that the School's holistic interpretation of international relations incorporates realist conceptions of an International System, Rationalist notions of an International Society and Revolutionist ideas about a World Society. Recent work by Barry Buzan of the London School of Economics has opened up new avenues for understanding the scope of the English School, by understanding international relations in terms of interactions between different types of interstate, transnational and interhuman societies. In Buzan's work, interactions between states are stressed and these interactions occur through the medium of the interstate institutions. Interactions between states are based on coercion, calculation or belief (Buzan, 2004a) and have the potential to alter the framework of the

international society. As Headley Bull, one of the founders of the English School, argued, the international society would have to adapt its rules in order to confront threats from non-state actors, he termed, barbarians, infidels and pirates (Bull, 2002: 192-193, 264-265). Finally, the English School emphasises dialogue between academics and practitioners of international relations indicating the desire of many English School theorists to influence policy directly.

Chapter 3 - Definitions

The terms infidels, pirates and barbarians refer to Bull's interest in the international society and the groups that operated beyond the boundaries of the international society (Hurrell, 2002: x-xi). Whilst Bull, in his book *The Anarchical Society*, is primarily interested in establishing how order is maintained between states in the international society, he is also concerned with the challenge posed by state and non-state actors outside the international society. When these actors threaten the order of the international society by usurping the state's legitimate use of force, they are termed barbarians, infidels and pirates.⁴ In responding to such threats, states in the international society are constrained by the dictates of the international society, while barbarians, infidels and pirates operate freely across the globe (Bull, 2002: 192-193, 259, 264-265).

Bull compares relations between Greek city-states on the one hand with Persia and Carthage on the other to elucidate his use of the term barbarian. Whilst the Greek city-states always considered Persia and Carthage as either potential enemies or allies, they both lay outside the boundaries of the society of Greek city-states. This is because neither Persia nor Carthage held Greek values (including the Greek language, the pan-Hellenic games or the consultation of the Delphi oracle) in common, they were not constrained by rules regarding conflict amongst Greek city-states, and they did not benefit from either institutionalised cooperation (*amphictyoniae*) or diplomatic institutions (*proxenoi*). Thus, from a Greek perspective, both Persia and Carthage were

⁴ Just war, according to Bull, is conducted by states in the international society in order to maintain the balance of power and enforce international law (Bull, 2002: 178-183).

barbarians (Bull, 2002: 14). As this example demonstrates, membership of the international society depends not only upon obeying the dictates of the society, but also being recognised as a member of the international society by existing members themselves. The responsibility for judging membership of the international society falls most keenly on the most powerful states in the international society, the Great Powers (Bull, 2002: 33).⁵

In fact, the existence of barbarians provides a rationale for the establishment of international societies. Bull postulates that powerful and independent states that share common values, institutions and languages, and that enjoy close economic and political relations, band together against barbarian threats (Bull, 2002: 161).⁶ Nonetheless, the label barbarian does not preclude diplomatic relations of a kind. Indeed, deals could be struck between members and non-members of the international society, whether these non-members were state or non-state actors (Bull, 2002: 14-15, 157). Moreover, illegitimate violence employed by secessionist groups, such as Gerakan Aceh Merdeka – Free Aceh Movement (GAM) and Moro Islamic Liberation Front (MILF), which will be explored in Chapter 6, does not threaten the existence of the international society, but in fact upholds the principle of sovereign state actors in the international society, as secessionist groups aim to create separate states (Bull, 2002: 258, 260). The possibility of diplomatic interaction coupled with the desire to create and be accepted as a legitimate state actor is what distinguishes barbarians from infidels in the international society.

The term infidel is employed in this thesis to refer to actors in international relations whose conduct places them outside the bounds of international law and who are not recognized by the international society as legitimate actors. Furthermore, infidels attack states belonging to the international society for a political purpose; namely to disrupt or overturn the international society in a region of the world and to create new regional

⁵ Greece is regarded as a Great Power in the example given in the text. The terms Superpower, Great Power and Regional Power will be defined in more detail in the second chapter of this thesis.

⁶ This point has been echoed by Buzan and Little who examined the development of international society from hunter-gather bands to the international society at the turn of the twenty-first century (Buzan and Little, 2000: 53, 66, 136, 177, 200, 210).

societies based on their beliefs. Hence, infidels are synonymous with certain terrorist organizations, such as Al Qaeda or the Red Army Faction (RAF).⁷

This definition marks a break from Bull's understanding of infidels in the international society, which he believed were identical to barbarians (Bull, 2002: 42-43, 67). This thesis contends that in the post-9/11 world, understanding maritime threats posed by state and non-state actors requires that a distinction be made between barbarians and infidels. This distinction may yield significant policy ramifications for states that attempt to tackle security threats posed by other states as well as non-state actors, as it becomes possible to conceptualise those groups that are prepared to bargain in order to join the international society from those who intend to destroy the international society. As Chapter 3 will demonstrate, however, some researchers have attempted to group more frequent pirate and maritime barbarian acts with more devastating infidel threats in order to dramatise a security issue (Luft and Korin, 2004).

Piracy, the third and final category employed in this thesis, is defined in Article 101 of the United Nations Convention on the Law of the Seas (UNCLOS).⁸ According to Article 100 of UNCLOS, all states are required to respond to the threat of piracy. Hence, as Bull notes, pirates are deemed *hostes humani generis* (literally enemies of mankind)⁹ by international law, one of the key institutions of the international society. Bull believes that Article 101 demonstrates the solidarity of the international society in

⁷ Though the Red Army Faction will not be discussed further in this thesis, the RAF is mentioned to highlight the potential of the infidel label to understand revolutionary groups across time and space. For more on the RAF, see Hoffman, 1998: 80-84, 157-184. It is possible for states, such as Nazi Germany, and even entire international societies to be infidels also. For example, because both the American and Soviet dominated international societies during the Cold War armed themselves to be able to destroy their opponent, so they perceived their opponent as an infidel international society. The existence of an infidel is always negative from the perspective of the international society at a particular point in history, even though with time the existence of an infidel may be seen to have brought certain benefits to later international societies. The French Revolutionary Wars (1792-1802), for example, spread the ideals of liberty, fraternity and equality, though France could be understood to be an infidel state from the perspective of the international society at the time.

⁸ See http://www.un.org/Depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm, accessed 14 March 2006. See also Appendix I for relevant piracy articles in UNCLOS.

⁹ The term *hostes humani generis* is an ancient epithet, attributed to Cicero, a Roman philosopher (Herrmann, 2002: 444). See also Erik Barrios, "Casting a Wider Net: Addressing the Maritime Piracy Problem in Southeast Asia" http://www.bc.edu/schools/law/lawreviews/meta-elements/journals/bciclr/28_1/03_FMS.htm, accessed on 24 October 2005.

combating economically motivated violence, but this article also points to the lack of international consensus to establish a single, unified international law tackling politically motivated violence perpetrated by barbarians and infidels. This, Bull maintains, is because states define the politically motivated behaviour of other actors according to their own interests and political objectives (Bull, 2002: 259, 264).¹⁰ Whilst this international consensus to create an anti-piracy law is significant, the reality of contemporary piratical violence is such that the definition offered in Article 101 is no longer sufficient to cover the majority of economically motivated violent acts at sea, which range from petty robbery through officially complicit acts to the murder of whole crews and the theft of an entire ship. Moreover, states in the international society, particularly those states where maritime violence and robbery are prevalent, disagree over the definition of piracy. The Definitions Chapter will address these issues in greater detail, however, in order to distinguish between pirates, barbarians and infidels from an international society perspective, pirates are those who undertake an act of violence or robbery at sea or in port for their own personal gain.

Chapter 4 - Barbarians: North Korean Spy Ships

The term barbarian refers to an actor considered legitimate by the international community, even though the actor's behaviour does not always conform to standard international practices, such as transgressions of Japanese territory by North Korean spy ships. Though developments within the English School since Bull's *Anarchical Society* will entail a revision of this initial definition of barbarians in the Theoretical and Definitions Chapters, North Korea's status as a barbarian actor in the international society can now be ascertained. North Korean spy ships pose numerous threats to Japan, including the illegal importation of narcotics, the abduction of Japanese citizens, the insertion and extraction of spies, as well as covert missions to provide the North Korean military with intelligence against Japan and US forces based in Japan. These activities,

¹⁰ This is a point that the barbarian and infidel definitions seek to overcome, as barbarians and infidels are objectively determined according to their actions vis-à-vis the interstate society and not according to the interests and political objectives of individual states.

with the possible exception of intelligence gathering, are illegal according to international law and therefore are actions outside the boundaries of international society.

Yet, whilst conducting illicit activities, North Korea is also engaged in a diplomatic process with five members of the international society, comprising China, Japan, South Korea, Russia and the United States, whereby Pyongyang is negotiating for aid and security guarantees in return for conceding the right to develop a WMD programme. Hence, North Korea is recognized as a sovereign state by the international society, even though the state does not observe many of the international society's rules and norms. Furthermore, North Korea promotes a *juche*, or self-reliance, ideology which underscores the desire of the ruling party leadership to remain isolated from the international society.¹¹

Incursions of North Korean spy ships have occurred both during and after the Cold War, but received little attention from the Japanese government until August 1999, when Maritime Self-Defence Force vessels chased two North Korean spy ships out of Japan's sovereign maritime territory. Explaining this event, as well as the sinking of a North Korean spy ship which JCG vessels had pursued into China's Exclusive Economic Zone (EEZ) in December 2001, will provide a unique insight into Japan's relationship with North Korea from a maritime perspective. The key questions that this thesis seeks to answer concerning North Korean spy ships are: why did Japan respond more aggressively towards North Korean spy ships in March 1999 and December 2001, and to what degree do the institutions of the international society provide a significant restraint on Japan's use of force against a barbarian power? By answering these two questions, Japan's response to maritime security threats in its own waters can be juxtaposed with threats outside its territorial waters, such as piracy and terrorism, in order to comprehend Japan's motivations vis-à-vis tackling barbarians, infidels and

¹¹ Indeed a further question in this thesis will be to ascertain not only Japan's reaction to maritime security threats posed by barbarians, pirates and infidels, as a member of the international society, but also to examine how actors defined as barbarians, pirates or infidels view Japan and the international society. For example, in the aftermath of the sinking of a North Korean spy ship in China's EEZ in December 2001, the North Korean leadership referred to the conduct of the Japan Coast Guard (JCG) as "an act of modern-day terrorism" and "piracy" (*Sekai Editorial Board*, 2002: 280).

pirates at sea and to what extent the international society restricts Japan's actions outside its domestic waters.

Chapter 5 - Pirates: Piracy in Southeast Asia

Despite the formulation of domestic and international anti-piracy laws, such as Article 101 of UNCLOS, a problem of perception persists in the sense that classical novels, as well as Hollywood and Disney movies about the Golden Age of Piracy (1692-1725), have romanticised the image of the pirate to the extent that piracy is thought of as analogous to early eighteenth century highway robbery. The result is ignorance of the fact that piracy exists in a contemporary and violent form.

The case of the *Hai Sin*, a 17,000-ton cargo vessel, is indicative of both the reality of, as well as people's lack of knowledge, about contemporary piracy. In January, 1993, at a breaker's yard of the Guandong Shunde Shipwrecking Company in Southern China, ten badly decomposed, severely charred cadavers were discovered in the *Hai Sin*'s walk-in refrigerators as the vessel was being inspected. No authority has yet investigated how ten dead bodies wound up in the vessel, though the incident did prompt Eric Ellen, founder of the International Maritime Bureau (IMB), to suggest a correlation with the missing crew of the *Nagasaki Spirit*; a crude oil carrier that had collided with and sunk the 27,000 ton container vessel, the *Ocean Blessing*.¹² Officials did uncover that the *Hai Sin*'s identity had been altered. Records proved that the *Hai Sin* was none other than the *Erria Inge*, an Australian vessel pirated a year earlier.¹³ Ellen noted that the lack of investigative interest in the case of the *Hai Sin* was revealing:

¹² Investigators concluded that the collision between the *Nagasaki Spirit* and the *Ocean Blessing* could have been prevented had one or both ships not been pirated (Burnett, 2002: 136). An interview with Captain Potengal Mukundan, director of the International Maritime Bureau, revealed that this possibility had only been discussed, not officially confirmed (Mukundan interview, 22 April 2003).

¹³ Changing a ship's identity (the name of the ship is repainted, as are significant features of the vessel, such as the funnel, and documents regarding ownership are forged) makes it appear as though a vessel has simply disappeared, albeit mysteriously; such a vessel is therefore referred to as a 'phantom ship'. A case of a phantom ship usually indicates the involvement of transnational criminal groups. The true identity of a phantom ship is often ascertained by checking its engine number. Section 3.3b 'Transnational Criminal Organizations' will examine the phantom ship phenomenon in more detail.

If ten rotting corpses were found in an apartment in New York or London, police inquiries would be relentless. If a crime is committed in international waters, then life is a cheap commodity... Nobody is interested in what happened to the crews – they are not even statistics (Ellen quoted by Burnett 2002: 141-142).

Piracy has flourished in Southeast Asia since the end of the Cold War.¹⁴ The conditions that have facilitated this increase in piratical incidents in Southeast Asian waters raise important questions about economic development, sovereignty issues, security, interstate competition as well as cooperation in one of the world's most economically significant regions. Examining responses to contemporary piracy in Southeast Asia will provide a window through which to better comprehend how and to what extent states can collaborate to resolve common security problems.

Japan has taken the leading role in tackling piracy in Southeast Asia, as Japanese ships have suffered on numerous occasions from acts of piracy in the Southeast Asian region. Major incidents against Japanese ships include the hijacking of the *Tenyu* in 1998 and the *Alondra Rainbow* in 1999, as well as the kidnapping of the Japanese Captain and Chief Engineer from the *Idaten* in March 2005. The Japanese government has responded to the threat of piracy by dispatching JCG vessels to Southeast Asia on anti-piracy exercises as well as hosting major anti-piracy conferences and the training of Southeast Asian authorities in anti-piracy measures at Japan's Coast Guard College in Hiroshima.

Japan has responded to piracy in Southeast Asia in spite of a well-documented reluctance on the part of the Japanese government to confront security issues, beyond granting aid, owing both to Article 9 of the Japanese constitution that prohibits the dispatch of military forces abroad and a perceived anti-militarist norm prevalent amongst Japanese society and politicians (Hook *et al.*, 2001: 65). Instead, since the end of the Cold War, calls to amend the constitution and contribute to international peacekeeping efforts have led to Japanese forces playing an ever-greater role in security issues outside Japan (Midford 2000). Prime Minister Koizumi's support for the US and

¹⁴ Erik Barrios, "Casting a Wider Net: Addressing the Maritime Piracy Problem in Southeast Asia" http://www.bc.edu/schools/law/lawreviews/meta-elements/journals/bcicl/28_1/03_FMS.htm, accessed on 24 October 2005.

the 'war on terrorism' even enabled the dispatch of troops to Iraq, a *de facto* combat zone. It is therefore necessary to locate where Japan's response to maritime piracy lies vis-à-vis Japan's developing role in tackling other international security issues.

Chapter 6 - Infidels: Maritime Terrorism

Since the terrorist attacks on the World Trade Center and Pentagon on 11 September 2001, governments and the shipping industry throughout the world view the possibility of maritime terrorism with growing concern, arguing that global terror networks might employ commercial vessels to inflict mass destruction and casualties.¹⁵ Because these global terror organizations employ violent means in order to transform the interstate society, they are termed infidels in this thesis. The intentional targeting of vessels carrying explosive cargo, including oil and Liquid Natural Gas (LNG) tankers, or radioactive materials to strike a major port or close a congested international sea lane, such as the Malacca Straits, is perceived as increasingly likely amongst governments and analysts alike. Indeed, Al Qaeda attacks against the *USS Cole*, a US Aegis destroyer, in October 2000, and the French tanker, the *Limburg*, in October 2002 demonstrate the devastating consequences and threat of maritime terrorism (Richardson, 2004: vi, 18, 41-48).

Japan's response to maritime terrorism has focussed on the Southeast Asian region, primarily because of the importance of the Malacca Straits for Japan's economic and energy security, but also due to evidence that Jemaah Islamiya operatives were targeting the US navy in Singapore in December 2001 (Richardson, 2004: 23-24). Furthermore, the routing of Al Qaeda and the Taliban government from Afghanistan following intervention there by the US and its allies displaced large numbers of terrorists. Many of these terrorists relocated to Southeast Asian states where they blended with indigenous terrorist or separatist movements with whom they shared their experience and knowledge of waging political violence (Abuza, 2002: 427-465; Cruz De Castro, 2004:

¹⁵ Of course, an accidental catastrophe involving a pirated tanker could equally cause substantial damage to a shipping lane or port, as the case of the *Nagasaki Spirit* and the *Ocean Blessing* made clear.

193-195). The Southeast Asian region has become potentially more dangerous since this influx of terrorists from Afghanistan and therefore is a new battleground in the 'war against terrorism'.

Nonetheless, this thesis argues that it is necessary to distinguish between maritime violence perpetrated by international terror organizations, such as Al Qaeda, and separatist groups. Political violence against shipping has existed in Southeast Asia since the lure of the spice trade drew the first European colonialists to the region. In the early sixteenth century, for example, local villages around the Malacca Straits would resist imperial powers by attacking their merchant ships (Yamada 2003: 162). The multi-ethnic status of many Southeast Asian states as well as the existence of competing religions and cultures has also prompted resistance movements to challenge central authorities through violent means, since the departure of the colonial powers in the years after the end of the Second World War. Separatist movements in Southeast Asia have pursued their cause both on land as well as at sea; targeting ships as a means of demonstrating their territorial claims or to garner additional funds for their political objectives. Though separatist groups engage in political violence at sea, their motives differ from global terror organizations, like Al Qaeda, in that separatist groups seek to gain control of a specific territory to which they can make some legitimate claim. Therefore, a separatist group will often aim to gain the support and recognition of the international society. It is more appropriate to classify separatists under the title barbarian rather than infidel, as discussed in the previous definitions section.

Finally, whilst Japan has concentrated on maritime terrorism in Southeast Asia, it has also cooperated with states beyond the Southeast Asian region in the fight against terrorism. Maritime Self-Defence Force (MSDF) vessels have been dispatched to supply the US campaign in Afghanistan, and Japan is participating in the Proliferation Security Initiative (PSI) designed to limit the proliferation of WMD. Hence, examining Japan's response to maritime terrorism in the international society widens the focus of the thesis to the global level.

Chapter 7 - Conclusion

The conclusion to the thesis reveals that Japan has responded robustly to contemporary maritime threats posed by barbarians, infidels and pirates. With the exception of the December 2001 North Korean spy ship incident and possibly in its involvement in the PSI, Japan has acted in accordance with the dictates of the interstate society, thereby supporting the hypothesis of the thesis. Nevertheless, Japan has focused on the symptoms of maritime security threats posed by barbarians, infidels and pirates, in its response. As a result, the underlying causes of barbarian, infidel and pirate violence and crime remain untreated. The thesis argues that by examining contemporary maritime security threats from interhuman or transnational societal perspectives, explored in recent work by Buzan (2004a), reveals potential avenues for addressing the causes of outlaw maritime threats. However, such a bottom-up approach to resolving security issues in both regional and global interstate societies increases cooperative interstate interactions, encouraging the development of a more solidarist interstate society. The thesis now turns to the theoretical issues concerning contemporary maritime threats posed by outlaws.

2. Theoretical Framework

This chapter will profile the three main theories of International Relations:¹⁶ Realism, Liberalism and Constructivism. Each of these three theories will demonstrate alternative ways in which Japan's response to maritime outlaws can be interpreted. However, each theory can only explain one area of Japan's maritime foreign policy, as critiques of the three theories illustrate. As Buzan has stressed, "International Relations already knows how to tell Hobbesian, Kantian and Grotian stories. But as things stand, it prefers to tell these stories in opposition to each other. International Relations needs to shift perspective so that it sees these stories not as alternative, mutually exclusive, interpretations, but as a linked set, each illuminating a different facet of reality" (Buzan, 2001: 480). This theoretical chapter will demonstrate how the English School provides an eclectic theoretical approach to understanding Japan's response to contemporary maritime security issues.¹⁷

Developments within the English School have enabled the construction of an analytical framework that can blend the three principal theories of International Relations. In particular, Buzan's separation of the interstate, transnational and interhuman societies, coupled with his notion of a pluralist-solidarist spectrum along which regional interstate societies are aligned allows for a deeper conceptualization of structural, actor-based, and normative approaches in International Relations. Furthermore, the English School's focus on sectoral differentiation allows for a more flexible approach to understanding the different capabilities of actors in the international society. Also, the evolution of interaction capacity enabling ever more complex processes within international societies over time and space points to the possibility of progress in international affairs. The matter of ever improving international societies hangs, however, on the issue of whether the purpose of the interstate society is to ensure order amongst its member states or

¹⁶ The words International Relations will be capitalised when they concern the theories of International Relations or the field itself. The words international relations will remain in lower case when referring to relations between nations.

¹⁷ Katzenstein and Sil have both argued in favour of analytical eclecticism to understand Asian security (Katzenstein and Sil in Suh, Katzenstein and Carlson (eds.), 2004: 1-33).

justice for all peoples and transnational groups in the transnational and interhuman societies.

In its examination of Japan's response to maritime security issues, this thesis shows that a state-centric approach concentrating on maintaining order, through maritime patrols for example, fails to treat the causes of maritime threats, such as piracy and terrorism, that lie in the transnational and interhuman quarters of Buzan's structural model (Buzan, 2004a: 159). Indeed, a lack of justice in the transnational and interhuman societies is a cause of disorder in the interstate society. In other words, poverty, demographic stress, social problems, and environmental issues combine to encourage many types of maritime violence, as Chapter 3 will demonstrate. This disorder is manifest in the tensions that emerge between different international institutions, such that comprehensively tackling maritime security issues requires nothing less than a revision of the international institutions themselves. Hence, an English School approach, that remains state centric in spite of Buzan's inclusion of the transnational and interhuman domains in his theory, must be tempered with a contribution from a Human Security perspective that emphasises human equality and justice.¹⁸ Cooperation amongst states on issues of both order and justice can overcome the tensions between international institutions, thereby generating more inclusive and progressive interstate societies. This chapter commences by exploring the need for a theoretical framework to guide the argument in this thesis.

2.1 Why theorize?

No matter what scholars research in the broad field of International Relations, they are bound to approach their topic from a particular mindset or theory. Such a theory of global affairs is essentially a series of reflections upon past and current world events and phenomenon that seeks to explain how these events and phenomenon are related and for

¹⁸ Cronin and Ludes have stressed the need for a grand strategy that targets the causes as well as the symptoms of contemporary terrorism; noting the importance of foreign aid as much as law enforcement or military means in confronting terrorism (Cronin and Ludes (eds.), 2004).

what purpose. By understanding the connections between events and phenomenon in world affairs, scholars can propose theories that indicate how a state will act or why a state acted in a particular way (Burchill, 1996: 8). Theories act as the lens or filter through which an analyst views the world or understands the workings of a single issue in the world (Snyder, 2004: 55). Without a theory to guide the scholar, a problem area becomes too complex in that all possible causes and consequences are intermixed and no apparent connections between these causes and consequences can be fathomed, making useful inferences sparse. Therefore, it is up to the scholar to select what he or she perceives to be the most appropriate theory to understand the issue being studied.

An unfortunate drawback of tackling a problem through an individual theoretical lens is that it is biased. It is for academics to specify how the complex reality of global interactions should be simplified in order to be understood. The scholar's work is, therefore, a perception not of how the world actually is, but of how they would choose to imagine the world to be. As Cox suggested, "theory is always for somebody and for some purpose" (Cox, 1981: 128).¹⁹

The notion that academics promote their particular world-view would be of no purport were theories to exist in a vacuum. However, theories introduce people interested in international relations to particular ways of thinking about the world and therefore have the potential to shape how international relations proceed. Hence, theories are not simply reflections upon past and current world events, but also a means of influencing how international relations evolve. For example, world leaders who possess a mindset approximate to and coloured by realist theory will perceive their relations with other states as being primarily concerned with security issues and the relative power of each other's countries. By way of contrast, a head of state with a view of the world conditioned by liberalist theory will be more inclined to emphasise economic issues and the importance of transnational institutions than security matters. Hence theory can interfere with and potentially mould the very world it attempts to describe (Burchill,

¹⁹ This criticism is primarily directed at explanatory theories, which test hypotheses, propose causal explanations, describe events and explain general trends and phenomena in order to construct a plausible image of the world, as opposed to constitutive theories that question the inherent biases in scholarly work and the ways in which academics approach their subject.

1996: 1-5).²⁰ The potential for international relations theory to influence the mindsets of political actors also highlights the significance of the competition that exists between theories of international relations. After all, theorists tend to extol the virtues of their theory over rival theories in the belief that it provides the best means of responding to as well as understanding an issue in the field of International Relations.

The question then becomes which theory provides the best account of an issue. Kang proposes an answer to this question in the context of analyses of post-Cold War Asia, by saying that everyone has adopted the wrong theoretical frameworks. Kang argues that too much emphasis has been placed upon Western International Relations theories²¹ and not enough stress has been put on comparative case studies that comprehend the unique features of individual countries in their regional context. This has been to the detriment of the International Relations' field as a whole. Too often facts are made to fit a specific theory rather than to illuminate significant anomalies that pose problems for individual theories. Investigating the sources of such anomalies is of far more interest and relevance to both International Relations academics and policy-makers in government alike (Kang, 2003: 63, 82-85).²²

This position has been echoed by Wallace who is in favour of more policy-relevant studies that move away from pure theory and 'speak truth to power' by presenting decision makers in government with thorough analysis of contemporary issues (Wallace, 1996). Considering the history of the International Relations discipline, which evolved in response to the carnage of World War One to provide governments with the means of avoiding inter-state conflicts (Buzan and Little, 2001: 24), Wallace's proposition deserves consideration as it questions the purpose of academic work directly. Nevertheless, as critics have noted, how can anyone be sure that they are speaking the

²⁰ Of course there are multiple factors which influence the ways in which world leaders perceive international relations with which they are involved on a day to day basis, including religion, media, culture, education and upbringing. Hence, the influence of scholarly work upon the execution of international relations should not be overemphasised.

²¹ For a thorough account of how Western (in particular American) academia dominates the field of International Relations, see Wæver, 1998.

²² Katzenstein and Okawara have similarly argued for combining analytical frameworks when addressing international issues in Asia. See Katzenstein and Okawara, 2001-2002; and Suh, Katzenstein, and Carlson, (eds.), 2004.

'truth' and will those in 'power' actually listen (especially if the 'truth' is against the self-interests of those in 'power')? Is it the case that 'power' is so diffuse in vast governments that no one has the 'power' to do much about the 'truth' even if they could hear it (Booth, 1997; Smith, 1997; Nicholson, 2000)?

However, different theories do serve to group scholarly analysis into bodies of thought that can be compared and contrasted with the work of other academics. Whilst some analysis may be more thorough than others, determining whose work most accurately describes the current status of an issue in international relations is more subjective. Scholars therefore adopt a specific theoretical framework as the most appropriate vantage point to comprehend a particular issue based upon the evidence that they have collected.

Yet, the academic approach to understanding contemporary issues remains a distortion of reality. State leaders do not deal with contemporary issues by selecting what they perceive to be the correct theory and acting accordingly. Instead, heads of state are closer in their thinking to Walt's conception of the 'complete diplomat' who keeps the wisdom of several theoretical frameworks in mind when acting in global affairs (Walt, 1998: 44).²³ Instead, combinations of theories that account for both continuity and change in world politics provide a more complete and holistic view of current issues. Buzan and Little note that the English School, also known as Rationalist Theory, by integrating different theoretical concepts within its framework, can be adapted to furnish richer and more thorough explanations of global affairs (Buzan and Little, 2001: 34-39).²⁴

This thesis takes Buzan and Little's criticisms of International Relations theory into account and thereby argues that the English School provides the best means of

²³ Nevertheless, two contending politicians may reference the same theories whilst articulating alternative policy options. In the 2004 US Presidential elections, for example, both the incumbent President, George Bush, and the Democratic candidate, Senator John Kerry, argued that their foreign policy visions combined both Liberalism and Realism (Snyder, 2004: 54).

²⁴ Whilst Steve Smith has described Rationalism as encompassing both Neo-realism and Neo-liberalism, but separate from Wendt's Theory of Social Constructivism (Smith in Baylis and Smith, 2001: 228), recent work by Buzan has sought to incorporate Constructivism into Rationalist Theory (Buzan, 2004a).

understanding Japan's response to contemporary maritime security issues. In particular, the adoption of an English School framework, with its focus on historical and cultural issues and perspectives, overcomes Kang's concerns pertaining to Western bias in International Relations Theory. The remainder of this chapter will examine why a rationalist position has been adopted as a theoretical lens to best comprehend Japan's response to North Korean spy ships, piracy and maritime terrorism. The cultural and historical specifics of the Southeast Asian region and Japan will be investigated in detail in subsequent chapters.

2.2 Conceptualising Japan's International Relations - Structure, agency and norms

Japan's response to contemporary piracy and maritime terrorism in Southeast Asia can be understood by examining the effects of structure, agency and norms upon Japan's foreign relations. Structure, agency and norms comprise the three main elements emphasised in the four dominant theories of International Relations: realism, liberalism, constructivism, and domestic policy making approaches (Hook *et al.*, 2001: 37-69). Structure comprises "the external environment in which a state and its people are enmeshed and interact. It consists of other states, global institutions, regional frameworks and organizations, TNCs, NGOs and other political actors", and acts to constrain as well as provide opportunities for agents (Hook *et al.*, 2001: 39). Agency refers to the domestic policy-making groups and individuals (for example, political parties, bureaucracies, businesses and politicians) as well as a wider range of political actors (including the media and the public) that interact to produce Japan's foreign policy. These actors are said to "possess their own perceptions of individual and national interests which may both conform to and conflict with the pressures arising from the structure of the international system" (Hook *et al.*, 2001: 40-41). Finally, norms "create new interests and categories for action, and order and govern the behaviour of actors" (Hook *et al.*, 2001: 65) and are comprised of internationally embedded norms (bilateralism, asianism, trilateralism, and internationalism) and domestically embedded norms (anti-militarism, developmentalism, and economism) that are essential to understanding Japan's foreign policy.

Analysts can employ the theoretical lenses of structure, agency and norms (either individually or in combination with one or both of the other lenses) to comprehend what Japan's foreign policy is concerning a specific issue, as well as how and why a certain foreign policy is pursued. Collectively these theoretical lenses provide an extensive means of interpreting Japan's foreign policy regarding contemporary maritime security issues. For example, Japan's response to maritime piracy in Southeast Asia can be understood through the lenses of structure, agency and norms. In terms of structure, the

withdrawal of US naval forces from Southeast Asia following the end of the Cold War in 1989, provided the opportunity for states to reassess the security dynamic of the region. This occasion enabled maritime cooperation to evolve amongst regional actors, including Japan, that encompassed specific matters, including piracy and maritime terrorism. The agencies involved in promoting and implementing Japan's response to piracy and maritime terrorism include bureaucracies (specifically the Ministry of Foreign Affairs (MOFA), the Ministry of Land Infrastructure and Transport (MLIT), the Ministry of Economy Trade and Industry (METI) and the Japan Defence Agency (JDA)), political parties (particularly the Liberal Democratic Party and, since 1993, its coalition partners), the Prime Minister's Office, as well as lobbyists and interest groups (such as the Japan Shipping Association (JSA)). International organizations, such as the International Maritime Organization (IMO) and the International Maritime Bureau (IMB), and foreign governments, have also influenced Japan's stance vis-à-vis piracy and maritime terrorism.²⁵ Finally, international and domestic norms have affected Japan's response to piracy and maritime terrorism in Southeast Asia. The internationally embedded norm of Asianism has facilitated cooperation between Asian states that have defined piracy as a common problem that they seek to resolve together. The domestic norm of economism, which stresses the expansion and protection of Japan's economic interests including maritime trade, has been off-set by the anti-militarist norm, which discourages the use of Japanese military forces abroad. Through a combination of these conceptual lenses, a clearer picture emerges as to what Japan's response to contemporary maritime piracy is, as well as how and why Japan has responded to this issue.

However, two questions remain concerning which of these theoretical lenses best describes Japan's response to maritime security issues and how these theoretical lenses interact with one another. Should, for example, a structural approach to Japan's response to North Korean spy ships, piracy and maritime terrorism be favoured over an

²⁵ Although international organizations comprise part of the international structure (Hook *et al.*, 2001: 39), international organizations should also be perceived as actors in and of themselves that interact with domestic agents (Krasner, 1995, Keohane, 1984). For example, the International Maritime Organization supervises the implementation of the Law of the Sea which establishes the structure for inter-state relations concerning maritime issues. However, the IMO is also involved in bargaining and mediating with domestic agents at conferences and meetings concerning piracy and maritime terrorism.

actor based method or normative explanation? Alternatively, if all three lenses are significant in comprehending Japan's treatment of maritime issues in Southeast Asia, then how does each theoretical aspect affect its partners? Answering these questions means delving into the theories upon which the frameworks of structure, agency and norms have been built. In doing so, the dialogue between different theoretical traditions will be briefly explored, before assessing in what ways the theoretical lenses of structure, agency and norms combine to explain Japan's response to piracy and maritime terrorism in Southeast Asia.

2.3 The Three Dominant International Relations Theories

2.3a Realism and Neo-Realism

Realism developed after the First World War, but draws on a rich theoretical tradition including Machiavelli's *The Prince* (1532) and Thucydides' account of the Peloponnesian War. The theory is rooted in the notion that states must take whatever action is necessary to sustain themselves against their rivals and that a blind faith in institutions and cooperation with potential rivals only endangers the security of the state.²⁶ Realist scholars seek to understand the continuities of international politics that have led to perpetual war between states. Carr, for example, emphasised that the pursuit of national power was the primary goal of any state and war is inevitable in an anarchical system with no overarching authority in international relations to govern the affairs of states. Morgenthau tied the continuities that led to war down to human nature and a natural human desire to pursue power.²⁷ Hence, all international politics can be reduced to the competing interests of states with different power capabilities. There is no room for ethics in international relations and all moral language employed by statesmen merely masks a hidden agenda to advance the interests of the state. Morgenthau postulated that to improve the world one must work with rather than against these forces. Although peace would never be permanent in an anarchical international system, states could mitigate the chances of conflict through an understanding of the basic laws of politics and by upholding the balance of power between the Great Powers (Burchill, 1996: 69-77).²⁸ Because Morgenthau perceived

²⁶ Whilst realist arguments have traditionally attacked the idealism of scholars writing between the two World Wars, more recent scholarship has identified a great deal of common ground between the realist and liberalist theories. Significant 'realist' conceptions, such as anarchy, sovereignty and the balance of power, are frequently referred to in earlier liberalist literature. Osiander argues that what truly differentiates liberalist and realist scholarship is liberalism's belief in "an inescapable, directional historical process" (Osiander, 1998: 409). Accordingly, liberalism is interested in understanding how current aspects of the international system will evolve over time, whilst stressing the difficulties inherent in an international system in which self-interested actors prevail (Schmidt, 1998: 443, 449).

²⁷ Both Morgenthau and Carr were unclear as to what they meant by power. Morgenthau failed to distinguish between power as a resource (in terms of both tangible and intangible assets) and power as a means of influencing other's behaviour (Keohane, 1986: 11).

²⁸ Whilst realists may be pessimistic regarding the possibility of emancipation or global justice, many realists do suggest ways to ameliorate the conditions in which humans live within the confines set by the anarchical system of states (Desch, 2003: 415-426). Unfortunately, Desch's argument centres upon the primacy of order over justice, instead of examining the interplay of order and justice as adherents to the English School have done. In doing so, Desch fails to consider the ways in which a lack of justice can

states as rational actors, which order their foreign policy preferences and take action according to the option that will provide the best possible outcome, so states are able to maintain the balance of power effectively (Keohane, 1986: 11).

Waltz sought to build on the writings of earlier realist thinkers, publishing his *Theory of International Politics* in 1979. Waltz felt that previous theories of realism had been 'reductionist' in that they had failed to calculate the effects of the international system upon individual states. In seeking to understand how a state's foreign policies rarely matched the desired intentions of the decision makers who framed the policies, Waltz concluded that whilst the internal processes of a state had some significance in determining foreign policy, it is the presence of other states and interactions among them that shape foreign policy decisions (Waltz, 1986: 47-52; Hollis and Smith, 1990: 105-106). The structure of the international system therefore acts as a constraining force upon states that makes the foreign policy outcomes of states similar as states compete amongst themselves and are socialised by the international structure to act alike (Linklater, 1995: 245; Burchill, 1996: 85; Brown, 2001: 43-48).

Waltz described the structure of the international system as having three important characteristics: (i) the ordering principle of the system, (ii) the character of the units in the system, (iii) the distribution of capabilities in the system. The ordering principle of the system is anarchic as there is no overarching authority to preside over the actions of states. In an anarchical or a self-help system all states are concerned only with their own national interests and the most powerful states establish the conditions by which lesser states function. Whilst states may have other national interests, survival is a prerequisite to the pursuit of alternative goals and the accretion of military power is the key to ensuring a state survives. States that adhere to the accepted and successful practices determined by the international structure are more likely to prosper in that structure.

undermine order. For example, Desch lambasts the claims of proponents of the Vietnam war, who argued that the Vietnam war was undertaken to spread democracy, ensure human rights and check unprovoked aggression (Desch, 2003: 424-425). However, he neither perceives rationale for the Vietnam war in realist terms, as a means of maintaining order in the international system, nor does he acknowledge that the way the Vietnam war was fought, including carpet bombing, the use of napalm and the Mai Lai massacre, undermined any legitimacy that the US intervention might have had. The way in which wars are fought matters as much as which wars states fight.

Those states that do prosper will also possess greater capabilities enabling them to have a more prominent role in international relations. The character of the units is identical or 'functionally similar' as the constraints of the system work upon all states in a similar manner. States do, however, have different capabilities, in that states may be able to perform tasks or have the power to force other states to carry out tasks (Waltz, 1986: 57-92; Hollis and Smith, 1990: 108-109; Burchill, 1996: 86-87).

Neo-realists, led by Joseph Grieco, also stress, in direct opposition to neo-liberal theory, that states seek relative gains rather than absolute gains, as they are concerned with their position relative to other states. The effect of this pursuit of relative gains is that states do not work to improve the international system in which they exist lest a rival state take advantage of their actions (Gilpin, 1984: 289-291, 303-304; Waltz, 1986: 98-106; Brown, 2001: 49-51). In this way the international system persists indefinitely (Linklater, 1995: 241). The importance of relative gains is echoed in the work of both offensive realists, who underline the importance of state power in relation to other states and regard war as inevitable within the international system, and defensive realists, who argue that whilst cooperation between friendly states is possible, states must always hedge against the prospect of a dominant power emerging in the international system (Lamy in Baylis and Smith, 2001: 183-188).

A Realist Account of Japan's Response to Maritime Security

Broadly speaking, realist interpretations of Japan's response to maritime security issues highlight Japan's attempts to realize two key national interests, the protection of Japanese territory against foreign states and the enhancement of Japan's power. Hence, whilst Japan may aim to suppress piracy in Southeast Asia, Japan has broader objectives. These goals include the maintenance of a regional balance of power directed at stabilising growing Chinese economic and military strength, the protection of Sea Lines of Communication (SLOCs) through Southeast Asia on which Japan's trade and energy needs depend, and the development of Japanese naval capabilities to enhance Japanese military security. Bilateral anti-piracy exercises involving the JCG and the maritime

authorities in Southeast Asian states serves as a pretext to further security cooperation directed towards China, as well as protecting Japanese trade from pirate attacks. Furthermore, the US-led 'war on terrorism' has provided a rationale for the MSDF to increase its operational scope and military hardware through new campaigns, such as Operation Arabian Rainbow, and commitments, like the PSI. Finally, realism can also explain Japan's response to a North Korean spy ship incursion in December 2001. In this instance, the North Korean spy ship was deemed a threat to Japanese security, so Japan Coast Guard vessels forcibly tried to board the spy ship. The action of the JCG resulted in a firefight that culminated in the North Koreans scuttling their ship. Neo-realism regards the actions of the JCG as justified in that Japan's national interests were being protected against a rival state in the East Asian region.

Criticisms of Realism

This account of Japan's response to piracy and maritime terrorism in Southeast Asia, whilst instructive, should be tempered by several criticisms. First, a realist interpretation fails to take domestic actors into account.²⁹ This thesis will show in Chapter 4 that failures of crisis management in the Prime Minister's Office were responsible in part for the sinking of the North Korean spy ship in December 2001, for example.³⁰ Second, though realism does admit certain aspects of international law, such as the inviolability of state sovereignty and upholds the principle of non-interference, international law as a whole is viewed sceptically as it may interfere with a state's pursuit of its national interest. Japan's strategy for tackling piracy, however, has always emphasised the centrality of international law. Third, realism is regarded as a theory which endorses the status quo in world politics in that it allows little or no possibility of change of the

²⁹ Rosenberg also comments that realists, such as Carr, sideline multinational firms and transnational monetary exchanges that act and occur independently of governments (Rosenberg, 1990: 287-288). Recent developments within the English School, however, would locate these economic activities and actors in the transnational society (Buzan, 2004a: 125-128).

³⁰ This criticism also highlights that Morgenthau's understanding of the state as a rational actor is contentious. Instead misperceptions, a lack of information, bargaining between policy-makers and irrationality frequently govern the making of foreign policy decisions. More often than not, foreign policy decision makers have to make do with a satisfactory outcome rather than an optimal one.

international system (Rosenberg, 1990: 291; Linklater, 1995: 256-257; Burchill, 1996: 78-81).³¹ Fourth, by placing the blame for international conflict upon human nature, more benign human qualities are overlooked, thereby undermining the importance of cooperation in international affairs (Keohane, 1986: 11). Based on these third and fourth criticisms a realist interpretation does not concede that enhanced cooperation between states can alter the security dynamic of the Southeast Asian region, despite the establishment of an Information Sharing Centre to combat piracy.³² Fifth, Dunne and Schmidt identify that realism's definition of power fails to comprehend diplomatic influence, economic and ideological sources of power (Dunne and Schmidt in Baylis and Smith, 2001: 150-151). The US government mobilised substantial diplomatic, economic and ideological influence in founding the maritime anti-terror initiatives, such as the International Ship and Port Security Code (ISPS Code), PSI, Container Security Initiative (CSI) and Customs-Trade Partnership Against Terrorism (C-TPAT). Such discrepancies between realism and reality emphasise the utility of a neo-liberal position whereby mutually cooperative outcomes are possible and indeed likely between states in cases, such as Japan's response to maritime threats, where the states cannot realise their self-interests alone (Keohane, 1984; Powell, 1994: 327; Stein, 1995).

2.3b Liberalism and Neo-Liberalism

Liberalism can be divided into three camps: the liberal internationalists, the liberal idealists and the liberal institutionalists. Liberal internationalists are mainly interested in

³¹ This criticism is perhaps slightly unfair. Both Morgenthau and Carr do allow for the possibility of other structures in the international system, though they maintain that only by working within the current confines of the international system can new structures emerge. Besides, the primary concern of realists is not to theorise change in the international system, but to instruct the policy-making community as to how best comprehend and manage threats to the security of their states in the present day (Keohane, 1986: 11). This sentiment is echoed in the writings of Machiavelli who noted, "it has appeared to me more fitting to go directly to the effectual truth of the thing than to the imagination of it. And many more have imagined republics and principalities that have never been seen or known to exist in truth; for it is so far from how one should live that he who lets go of what is done learns his ruin rather than his preservation... Hence it is necessary to a prince, if he wants to maintain himself, to learn to be able not to be good, and to use this and not use it according to necessity" (Machiavelli, Mansfield (trans.), 1998: 61). Ruggie notes that the omission in neo-realist theory of an explanation of the effects of increasingly diverse, rapid and numerous transactions between states, or what Ruggie terms 'dynamic density', accounts for the absence of factors explaining systemic change in Waltz's theory (Burchill, 1996: 88, 90).

³² This will be examined in section 5.3b 'Coordination: the Information Sharing Centre'.

how the promotion of liberal-democracy and national self-determination may help generate a more peaceful world, as the citizens of constitutional governments do not want war and possess the rights to express this desire to their governments. Liberal idealism focuses on how international relations should be and is grounded in the belief that the carnage of the First World War should not be repeated. Finally, liberal institutionalists are primarily concerned with the international institutions that exist and what their roles and impacts are (Dunne in Baylis and Smith, 2001: 165-171). Liberalism, therefore, emphasises a conviction in the peaceful nature of constitutional government, the necessity to build international relations on legal foundations and that states have mutual interests to avoid war (Brown, 2001: 21-24).

Liberals place faith in the power and spirit of commerce. They claim that free trade and comparative advantage enables economies to prosper, but also serves to forge stronger and more lasting relations between states thereby increasing understanding between peoples and dependence upon one another for trade, resulting in reduced chances of conflict among states. The interaction of states can also be self-sustaining as the more states cooperate, the greater the costs become of disengaging from processes which bind state policies to each other (Dunne in Baylis and Smith, 2001: 169). For liberals, the European Union represents the most advanced example of economic integration and political cooperation between states. Mitrany notes that the cooperation between EU members commenced with coordination in technical areas before 'spilling over' into functional areas where it is to the benefit of the countries concerned (Burchill, 1996: 35-37).

Neo-liberal internationalists, idealists and institutionalists echo the concerns of their forebears. For neo-liberal internationalist Francis Fukuyama, the end of the Cold War signalled the end of history, in that the democratic, liberal capitalist bloc, having triumphed over the centrally governed communist foe, represented an ideal form of state. The dominance of democracy and liberal capitalism signalled a new era in which global affairs would increasingly be managed through multilateral arrangements and international organizations. Fukuyama's conception of the post-Cold War era is firmly rooted in the liberal tradition, which perceives the history of mankind as progressive,

linear and directed towards the realisation of democratic, liberal capitalist countries worldwide (Fukuyama, 1993; Burchill, 1996: 28).³³ The cause for celebration at the end of the Cold War, for liberals such as Fukuyama, was the victory of a superior system of government; peace would now reign in international relations as it is widely held that democracies, which depend upon free trade, do not fight each other (Doyle, 1995: 100; Burchill, 1996: 29, 31-33). This notion of progress in international affairs is mirrored in the work of neo-liberal idealists who propose means of advancing global peace. Richard Falk, for example, identifies human rights institutions and NGOs as the key to resolving tensions between the forces of globalisation and the global community. David Held, on the other hand, argues that such tensions can be treated through the establishment of a global democratic government as well as an International Court of Human Rights (Held, 1995; Dunne in Baylis and Smith, 2001: 175).

Neo-liberal institutionalism appears less optimistic than either of the two previous neo-liberal variants. Neo-liberal institutionalists doubt the extent to which states can provide both order and justice in the international system and criticise the neo-liberal internationalist position that cooperation is a given and that the growth of free trade promotes peace. While accepting the structural condition of anarchy and the state as the main actor in international relations, neo-liberal institutionalists do stress that cooperation in international relations is possible through international institutions and regimes.³⁴ Regimes and institutions are constructed so as to realise the interests of the actors that created them or of those who are members of them in conditions when these actors are not able to maximise their interests individually, or because collective interests and problems are better addressed in a collective forum. According to the neo-

³³ Fukuyama has therefore advocated the spread of liberal regimes through humanitarian intervention, in Somalia and the former Yugoslavia for example. Democracy can also be expanded through institutional leverage, whereby states adopt the political, economic and social institutions of the liberal West in return for the material benefits gleaned from wider access to markets, and conditionality, whereby incentives, such as loans and investment, are offered in return for compliance with economic or political programmes dictated by liberal Western states (Dunne in Baylis and Smith, 2001: 171-173).

³⁴ Krasner defines international regimes as “the principles, norms, rules and decision-making procedures around which actor expectations converge in a given issue area of international relations”, whereby norms are “the standards of behavior defined in terms of rights and obligations”, rules are “the specific prescriptions or proscriptions for action” and decision making procedures are “the prevailing practices for making and implementing collective choice” (Krasner, 1995a: 1-2). Keohane defines institutions as “persistent and connected sets of rules that prescribe behavioural roles, constrain activity, and shape expectations” (Keohane, 1995b: 290).

liberal institutionalist argument, states are interested in absolute rather than relative gains, meaning that states will cooperate even if they do not gain as much as their partners (Dunne in Baylis and Smith, 2001: 176-177). Moreover, by establishing a framework that orders inter-state relationships, regimes and institutions have the potential to influence how actors define and pursue their interests (Krasner, 1995a: 7-11; Keohane in Der Derian, 1995: 283). Since the end of the Second World War, there has been a growing emphasis on negotiated arrangements between states (Young in Krasner, 1995: 106), due both to the increasing interaction and interdependence amongst states, as well as the effectiveness of regimes and institutions in dealing with inter-state relationships and interests (Keohane in Krasner, 1995: 165-166). The neo-liberal institutionalist position notes that as the economic sphere of international relations has expanded through interaction and interdependence, and war has become a less acceptable form of pursuing state interests amongst liberal democracies, so the distinction between high and low politics has evaporated (Lamy in Baylis and Smith, 2001: 188-191). Contrary to hegemonic stability theory, neo-liberal institutionalists maintain that regimes and institutions can be established even without hegemonic support (Keohane, 1984).

A Liberal Account of Japan's Response to Maritime Security

Liberalism emphasizes both the importance of economic factors and the possibility of cooperation in Japan's response to maritime threats. Hence, Japan has sought to secure the SLOCs upon which Japan depends for its trade and energy imports. The neo-liberal institutionalist approach highlights Japanese efforts in the creation of the Information Sharing Centre in Singapore to manage the problem of piracy in Southeast Asia. Furthermore, agreements, such as the ISPS Code, PSI, CSI and C-TPAT, underline the necessity for international efforts to combat terrorism. Six-party talks, involving North and South Korea, the US, Russia, China and Japan, provide the cooperative framework in which North Korea's WMD programmes can be discussed. Finally, Indonesia and Malaysia's rejection of Admiral Fargo's suggestion that the US navy could assist in

patrolling the Malacca Straits indicates that only multilateral efforts can help to overcome maritime threats.

Criticisms of Liberalism

Of course there remain examples that run counter to this notion of international institutions preserving peace. The second Gulf War between an American-led alliance and Iraq, in which the dominant global power declared war on Iraq despite the fact that the UN did not legitimise the action, is indicative of the strength of the neo-realist rather than the neo-liberal argument. Neo-realist critiques of the neo-liberal viewpoint centre upon the extent to which states feel secure and free from military competition with one another as a precursor to international cooperation. Furthermore, it is argued that neo-liberalism is the embodiment of this international system dominated by Western states and is therefore a theory that imposes its Western values upon developing states for the benefit of the pre-eminent Western society, deepening the inequalities between the global North and the global South (Burchill, 1996: 38; Thomas, 2001: 159-175). This undercuts the neo-liberal internationalist position that the triumph of liberal democracy after the Cold War indicates progress in international affairs (Dunne in Baylis and Smith, 2001: 173). Moreover, constructivists argue that both neo-realism and neo-liberalism are status quo theories that do not explain the significance of sociological factors in world politics (Ashley, 1984: 256-257; Lebow, 1994: 249-277; Linklater, 1995: 250-251; Dessler, 1999: 126).³⁵

2.3c Constructivism

The principal theme in constructivist literature is the human construction of the international system. This raises two important questions for international relations:

³⁵ Neo-realism and neo-liberalism are status quo theories in the sense that they take anarchy for granted. Linklater argues for the possibility of transformation of the system noting the ability of the industrialized core states to transcend the systemic limitations of anarchy (Linklater, 1995: 247-248, 253).

how does what people believe affect what they do; and, if the current world system has been created by people, how can individuals and groups act to change the system (Vasquez, 1997: 667)? Constructivists argue that International Relations Theory has to develop an understanding of the social interaction between states in the international system. It is through this interaction that intersubjective meanings are created which in turn enables social practices between states to be fashioned. These social practices, or broadly speaking, international relations, help create actor identities as one state defines itself in terms of others in the international system. In accordance with its identity, a state formulates interests that it seeks to achieve through interaction with other states in the system (Wendt, 1995: 132-135; Hopf, 1998: 175).³⁶ Furthermore, interests and identity determine what policy instruments a state can use, or will tend to use, in dealing with another state (Kowert and Legro, 1996: 462-465).³⁷

Over time and through continued interaction between states, social practices, or norms that define how actors relate to each other, and identities, which specify who an actor is and how actors are expected to behave, may be institutionalised (Wendt, 1995: 136; Kowert and Legro, 1996: 453). States create institutions or conventions that specify rules to better govern the affairs between states and these institutions in turn can generate new interests for states. For example, the 1949 Geneva Conventions are an expression of the values and behaviour that actors deem important in international affairs. The norms, rules and conventions that determine appropriate action between states are shared by all states belonging to the international system and explain why

³⁶ For example, the need for states to interact with each other has led to the establishment of intersubjective meanings regarding embassies, diplomats and diplomatic immunity. The creation of diplomatic posts, embassies to house them and rules, such as diplomatic immunity, enables the relations, or social practices, between states to be conducted smoothly. Governments receive information through their embassies that allows the government to determine the best course of action to take vis-à-vis another state. Hence, specific government outcomes will reflect whether the identity and interests of a state they are dealing with is a belligerent, autocratic state or a liberal, democratic state, as well as the identity and interests of the government in question.

³⁷ In the case of evidence of torture at the Abu Ghraib prison by US troops on Iraqi prisoners following the second US-led war against Iraq, the state instrument of torture was deemed inappropriate in accordance with the 1949 Geneva Conventions and the UN Convention against Torture, which the US had signed, and the cases of torture were investigated. This indicates that even a state with the material power of the US must take into consideration the international rules and norms that help regulate international relations. By September 2005, 230 US troops had been punished for offences against prisoners in Iraq and Afghanistan (www.nytimes.com/2005/09/24/politics/24abuse.html, accessed 25 September 2005).

actors behave in similar ways. Failure to comply with the rules, norms and conventions of the international system amounts to a state being ostracised from the majority of states that comprise the system.³⁸ As a result, action may be taken against the rogue state in accordance with the rules, norms and conventions of the system.³⁹ Hence, by institutionalising norms, notions of cooperation, duty and obligation in international politics are elevated so that they are at least equivalent in value to concepts of self-interest and gain (Finnemore, 1996: 1-29, 129; Katzenstein, 1996a: 2, 25) and an international society is constructed that is more predictable and therefore more stable (Hopf, 1998: 175-178).

A Constructivist Account of Japan's Response to Maritime Security

Constructivism highlights Japan's reliance upon a multilateral approach and the dispatch of the JCG rather than the MSDF to Southeast Asia to combat maritime violence. The presence of Japan Coast Guard vessels as opposed to Maritime Self-Defence forces on anti-piracy patrols denotes a reluctance on the part of Southeast Asian states to accept Japanese naval vessels around their territorial seas. That Japan has acquiesced in the hesitancy of Southeast Asian states by only sending Coast Guard ships shows a sensitivity to regional concerns and denotes a level of bargaining between Japan and Southeast Asian states that neo-liberal and neo-realist theories overlook.⁴⁰ By adopting a multilateral approach, Tokyo is able to assuage the fears of Southeast Asian

³⁸ Though it seems straightforward to label any state that disobeys the tenets of the international system as a 'rogue state', the practice is more complicated. As the only Superpower in global affairs at the end of the Cold War, the US has mobilized its material and normative capabilities against the states it believes threaten the interstate society. The US has therefore delineated the states that flout international rules and destabilize global affairs (through WMD proliferation, for example) in regions deemed key to US national interests as rogues. As a result, charges of inconsistency and selectivity have been leveled against successive US governments for excluding states, like Syria, which defy international rules, from the list of rogues (Litwak, 2000: 1-8). The criteria for defining actors that disregard the rules of the interstate society will be addressed in the next chapter on definitions.

³⁹ It is notable that the actions of certain states are delineated as 'rogue', such as Iranian and North Korean attempts to acquire a nuclear weapon, whereas other states' possession of weapons of mass destruction, such as the US, are deemed just. The key to understanding such divergence is in viewing the widespread US-led interstate society dominating both the world society, as well as those states that do not obey the tenets of the US hegemonic interstate society.

⁴⁰ This sensitivity has been classified as an anti-militarist norm that forms part of Japan's international identity and stems from Japan's defeat in World War Two (Berger, 1996).

states that Japan may be remilitarizing.⁴¹ Japan's reliance upon a multilateral approach to East and Southeast Asian regional security issues stems from the Nakayama proposal that recognised the need for Japan to play a greater role in international affairs following the first Gulf War, but also took account of the concerns of Asian states that the involvement of Japan's military in peacekeeping operations, policing actions and humanitarian efforts would not constitute a remilitarisation of Japan (Midford, 2000: 388-390; Katzenstein and Okawara, 2004: 103-109). Japan's approach to maritime security issues in Southeast Asia demonstrates that Japanese policy makers care enough about how Japanese foreign policy is perceived for those perceptions to shape the making of Japan's foreign policy itself. This echoes Buzan's opinion that in a society of states, "sentience makes a difference, and that social systems cannot be understood in the same way as physical ones. When units are sentient, how they perceive each other is a major determinant of how they interact" (Buzan, 2001: 476).⁴²

Nonetheless, constructivism also takes into account the potential for actor identities and relationships between actors to change. Constructivists note the interrelated nature of structure, identity, interests and policy, and stress that changes in one can occasion alterations of the others (Jepperson, Wendt and Katzenstein, 1996: 52-65). Thus, a change in the structure of international relations, from a bipolar structure to a multipolar structure dominated by the US, particularly in technological and military fields, resulting from the conclusion of the Cold War enables identities and interests to be reassessed. In this new international structure, Japan has been encouraged to play a greater role in international affairs by committing its Self-Defence Force troops to United Nations Peacekeeping Operations, even dispatching ground forces to aid in the reconstruction of Iraq, since March 2004 (Marten Zisk, 2001; Singh, 2002a).⁴³ In the

⁴¹ Japanese expansionism during the 1930s to the conclusion of the Second World War throughout Southeast Asia has left Southeast Asian states fearful of Japanese military power. This is in spite of the fact that in the aftermath of World War Two, Japan embraced democracy, signed a constitution with an anti-war clause (Article 9) and limited the growth of its armed forces. Since the end of the Cold War, Japan's increasing participation in United Nations Peacekeeping Operations has caused some concern among Southeast Asian states that Japan sought a greater role for its military forces beyond the defence of Japanese shores (Hook *et al.*, 2001: 14-15, 156-157, 208-209). See also, Singh, 2002.

⁴² See also Jepperson, Wendt and Katzenstein, 1996: 33-37.

⁴³ For details on the dispatch of Japanese Self-Defence Forces to Iraq, see <http://www.mofa.go.jp/whats/2004/index3.html> (accessed 29 June 2004).

post-Cold War context, Japan's changing security role in world affairs has been largely accepted by Southeast Asian states, though not yet fully endorsed (Singh, 2002b). Japanese involvement in the fight against piracy and maritime terror in Southeast Asia may therefore be understood as one part of Japan's new strategy in global affairs (Graham, 2006: 201, 225).⁴⁴ This new strategy may well transform the norm of anti-militarism which characterised Japan's involvement in international security operations during the Cold War.

Criticisms of Constructivism

It is unclear, however, as to where the identities, norms, practices and social structures that constructivism emphasises come from and how they are generated. Without a clear understanding of the way in which identities are created, constructivism is only able to make predictions in a given social context with the additional caveat that the social interactions between the actors they are examining are impermanent and liable to change at some point (Kowert and Legro, 1996: 469; Hopf, 1998: 196-198). Indeed, if norms can account for both continuity and change in the behaviour of actors in the international system, then the explanatory value of norms is suspect as norms can potentially be employed to explain whatever the analyst chooses (Legro and Kowert, 1996: 482-497). Furthermore, it is uncertain how the manifold social structures examined by constructivists relate to each other. In fact, when social elements are investigated they tend to be limited to a single-issue area (Finnemore, 1996: 16).

A potential pitfall in employing a constructivist theoretical framework to comprehend an issue is that in stressing the importance of social factors, constructivism creates a dichotomy between social and material explanations, encouraging researchers to perceive one set of forces as being more potent than the other (Dessler, 1999: 127). Finnemore, for example, gives prominence to international conventions that define the kind of world that people want to live in (Finnemore, 1996: 129), without recognising

⁴⁴ Graham's work echoes Michael Green's contention that Japanese security policy has shifted towards a more realist doctrine, which focuses on containing China and North Korea (Green, 2001).

that such conventions are frequently violated or ignored because of material factors.⁴⁵ Krasner accuses constructivists of having too much faith in norms, such as sovereignty, which are in fact more fragile than constructivists understand them to be when materially powerful states disregard the sovereignty of states to realise their own interests (Krasner, 2000: 132-134). Critics argue that it is necessary to ask how both material and social forces work in tandem to produce outcomes in international politics, rather than stressing one set of causal variables over another (Keohane, 2000: 126-130; Smith, 2000: 153-156).⁴⁶

Critics also contend that constructivism shares too much with traditional theories, such as states as rational actors or the notion that states exist prior to the system (Keohane, 2000: 125). Zehfuss asserts that if constructivism merely posits a particular form of reality, then actors will necessarily respond to that reality in specified ways. By doing so, responsibility is removed from an actor's decisions that will be articulated in such a way that the actor had no choice but to respond to the realities of international politics. By accepting a reality that is in fact fabricated, constructivism enforces the status quo, rather than fulfil the central tenets of constructivist theory, which is to comprehend how the current world order came about and suggest possibilities for change (Zehfuss, 2002: 208-262). A possible means of overcoming this deficiency of constructivism is to wed constructivist theory with the international society conception propounded by the English School, which examines the evolution of international societies throughout history and explores the possibilities for change via Buzan's vanguard theory, whereby groups of states in a region integrate to the extent that the creation of "a single hierarchical political entity" becomes possible (Buzan, 2004a: 107, 222-227). Such work has been influenced by structural realism, which will now be presented before tackling more recent developments in English School theory.

⁴⁵ The Kyoto agreement on environmental standards is a case in point, as the US is a signatory, but has not ratified the treaty because of the effects the agreement would have upon constraining material factors, such as conditions placed upon industrial output, as well as limitations on energy and fuel use. See <http://edition.cnn.com/2001/WORLD/europe/italy/03/29/environment.kyoto/> (accessed 26 June 2004).

⁴⁶ The same charge of splitting issues between social causes and materialist causes could be levelled at both realism and liberalism. However, Keohane argues that traditional theories take account of both material and ideational arguments in their work, whereas constructivism attempts to sideline material forces (Keohane, 2000: 127-128). Hence, some realist and liberal scholars are examining how material and social forces interact.

2.4 Structural Realism

2.4a The Logic of Anarchy

In *The Logic of Anarchy*, Buzan, Jones and Little develop what they refer to as structural realism, but adopt many of the central features of both neo-liberalism and neo-realism.⁴⁷ First, they perceive the political sphere and in particular, the anarchical nature of the international system as being central to an understanding of international relations. Second, they believe the state to be the most important unit in the international system and that the primary interest of the state is its preservation against internal and external threats. Third, they accept Waltz's framework for the international structure as defined in Waltz's *Theory of International Politics*. However, in contrast to Waltz's work, Buzan, Jones and Little argue that the international structure is generated and can be transformed by the interaction and capabilities of states within the system (Buzan *et. al.*, 1993: 9-16).⁴⁸

Little examines the possibility of change within the international system by noting that Waltz himself believed that a system comes into being through the interaction of its units.⁴⁹ He also makes reference to Ruggie's concept of 'dynamic density', which asserts that the amount, speed and range of interactions within a system will influence the nature of that system (Keohane, 1986: 148). However, the concept of 'dynamic density' is then expanded into the notion of interaction capacity which is the sum total of technical capabilities within the system, shared norms between actors and

⁴⁷ Structural realism is closely related to Rationalist Theory, which incorporates both liberal and realist conceptions within its framework.

⁴⁸ Buzan outlines the structural realist theory by first elaborating upon the notion of a system. For Buzan, Jones and Little, a system is comprised of units, the interaction between those units, and the structure of the system. They argue that the international system does not have a conscious design and therefore it does not exist for a specific purpose or function (Buzan *et al.*, 1993: 29-33).

⁴⁹ Hence, Buzan and Little characterise structure in terms of organization (whether units are located in an anarchical or hierarchical order), the functional differentiation of the units (how like or unlike are the units and how are the units designed to fulfil their purpose), and the distribution of capabilities (the number of Great Powers in the system). However, they also stress the socially constructed nature of the international structure (Buzan and Little, 2000: 84-85). For a full account of the neorealist position, see Waltz, 1990: 29, 34, 36.

organizations that regulate actor behaviour. The interaction capacity determines the social and technological possibilities for engagement between the units in the international system, and is contrasted with process in the international system, or the ways in which units actually interact. Interaction capacity is a prerequisite of both process and structure, and it is determined by geographical factors, as well as by the extent to which social and physical technologies impact upon communication and transport.⁵⁰ As the interaction capacity of the international system increases, so the quality, scale and intensity of international relations may expand. The interaction capacity can thereby alter the international system by encouraging new processes, such as the development of common interests between states, improving the ways in which states correspond with each other and by providing a greater sense of stability between states (Buzan *et al.*, 1993: 69-73; Buzan and Little, 2000: 79-83).

By incorporating interaction as a systemic feature, Buzan, Jones and Little point to the significance of sub-state actors that mediate on behalf of the state in its relations with other units in the international system.⁵¹ These human agents set out to intentionally reproduce the system through interaction with other agents so that common norms can be adopted which in turn facilitates the construction of institutions.⁵² Through this process of interaction, norm sharing and the creation of organizations, the interaction capacity of the system develops (Little in Buzan *et al.*, 1993: 155-166).

Interaction between states in the system occurs within four sectors: economic, political, societal and strategic. Hence, it is possible to comprehend the system as a whole or in

⁵⁰ Examples of physical technology include the horse drawn cart, steam ships, jet airliners, telegraph and phone systems, and the Internet. Social technologies include shared language and ideas, rules and institutions, money and bills of exchange (Buzan and Little, 2000: 82-83).

⁵¹ In structural realist theory the state is the main source of explanation for behaviour and outcomes in the international system. According to Buzan, states are comprised of their attributes and interactions and these provide the best means of explaining change in the system. Attributes are referred to as domestic characteristics, components and processes; these can be understood according to foreign policy analysis which proposes that a state's foreign policy is the sum of the interactions of its bureaucracy, the personalities of a state's leadership, the organization of government and the ideology of the state. Interaction denotes the process whereby actors respond to and accommodate or confront the actions and attitudes of other actors (Buzan *et al.*, 1993: 48-49).

⁵² This contrasts well with Waltz who believed that the system was reproduced unintentionally and therefore did not change as no actors sought alternatives to the existing structure of international relations.

terms of specified subdivisions (Buzan *et al.*, 1993: 29-33).⁵³ Structural realist theory thereby enables much more flexibility in interpreting international relations than realism does, as structural realism can explain differences between states by referring to the capabilities each state may possess in each sector of the system. Whereas Waltz describes all states as alike, Buzan, Jones and Little note the different capabilities of states which they are then able to compare. For example, Japan's strong economic power can be contrasted with its weaker military power, as opposed to the US which possesses both a potent military as well as a strong economy (Buzan *et al.*, 1993: 44).⁵⁴

For Japan, the problems of piracy and maritime terrorism concern all four sectors. The potential for terrorists or pirates to close the Malacca Straits, through which 80 percent of Japan's energy resources and trade pass (Emmers, 2004: 49), would have a detrimental effect upon Japan's economy and could affect Japan's strategic security. Protecting Japan's economic interests involves the application of strategic resources: dispatching Japan Coast Guard vessels to Southeast Asia on anti-piracy exercises; and political means: cooperation with Southeast Asian states concerning anti-piracy measures. Social, economic and political factors combine within Southeast Asian states to create the problems of piracy and maritime terrorism in that a lack of economic opportunity and political power, as well as social disruption caused through immigration to coastal areas can encourage individuals to seek illegitimate means of sustaining themselves, such as piracy, or may make extremist solutions proposed by terrorist and separatist groups more attractive. Environmental factors could form a fifth sector in the structural realist conception of a system. Over-fishing and pollution cause a loss of maritime livelihood as well as deforestation which compels inhabitants of the hinterland to seek employment in overpopulated coastal regions further exacerbating the tensions that generate piracy and terrorism. Chapter 3 will examine these issues in greater detail.

⁵³ Buzan and Little note the possibility of an environmental sector also (Buzan and Little, 2000: 91).

⁵⁴ Power is defined by Buzan as "the capability of units to perform specified tasks as a result of the attributes they possess" (Buzan *et al.*, 1993: 44). Depending upon their attributes states can or cannot perform certain actions, such as construct nuclear weapons. State power is also constantly changing and is relational in the sense that it depends on how much power a state has in relation to other states.

Because interaction capacity is affected by geography, engagement between actors is easier, and often more significant, over short distances, structural realists note that regional issues should have priority within international affairs (Buzan *et al.*, 1993: 77). This is instructive in the case of Japan's response to piracy and maritime terrorism as it places stress upon regional cooperation. This helps explain why Japanese policy-makers have been eager to promote regional institutions for dealing with piracy rather than rely on global frameworks for cooperation. Furthermore, structural realists' emphasis upon the interaction capacity of the system indicates that Japan's efforts to generate inter-state means of collaboration in the fight against piracy is an attempt to mediate anarchy in the international system by the promotion of common values, norms and institution building. This may ultimately encourage systemic change in the Southeast and East Asian region (Buzan *et al.*, 1993: 76-78). Finally, structural realism's focus upon sub-state actors, such as bureaucrats and representatives of domestic and international shipping and maritime organizations, reveals that investigating Japan's response to piracy and maritime terrorism requires assimilating the views of those actors who represent the Japanese state in its cooperation with Southeast Asian countries in the fight against piracy and maritime terrorism.

2.4b Structural Realism and the English School

Structural realist theory notes that structure is not the overriding force in international relations, but one of many factors, including the importance of actors in the international system. The structural realist approach enables a deeper understanding of the study and practice of international relations as well as a means of interpreting continuity and transformation in global affairs as the interaction capacity of the international system may reach a level whereby processes that mitigate anarchy are realized. Hence, whereas neo-realists point to a system of competitive anarchy, structural realists indicate a system of cooperative anarchy (Buzan *et al.*, 1993: 9-16, 78, 165-167). The notion of cooperative anarchy is comparable with the English School's conception of an anarchic society which shares many structural realist assumptions. However, the emphasis placed upon the influence of the interaction capacity and the

processes of the system, the significance of sub-state actors in conducting interaction between states and the division of the international system according to specific sectors, can help develop a better understanding of the English School's theory concerning the anarchic society.

2.5 International Society – The Contribution of the English School

2.5a Grotius and the Anarchic International Society

Rationalist theory, also known as the English School, is concerned with how institutions and norms combine to maintain order in an anarchical international system. By doing so, rationalism seeks to provide the *via media* between realism and liberalism.⁵⁵ From realism, rationalism adopts the notion of an anarchical system with no overarching authority governing the behaviour of states and the principle that states in this anarchical system will be self-interested actors working primarily to ensure their own security by increasing their capabilities vis-à-vis rival states in the system. However, rationalism also holds the cosmopolitan concern for humanitarian justice in common with liberalism as well as an understanding of ‘process’ or the interaction between units⁵⁶ in the system. Recent contributions by Buzan aim to bridge the gap between rationalism and constructivism enabling an even more comprehensive theory of International Relations.⁵⁷ It is essential, then, to examine how the English School has evolved as a theory of International Relations in order to establish how the theory can be employed to understand Japan’s response to contemporary maritime security issues.

Bull and Watson define international society in their joint work, *Expansion of International Society*, as:

a group of states (or more generally, a group of independent political communities) which not merely form a system, in the sense that the behaviour of each is a necessary factor in the calculations of the others, but also have established by dialogue and consent common rules and institutions for the conduct of their relations, and recognise their common interest in maintaining these arrangements (Bull and Watson, 1984: 1).

⁵⁵ Articles that emphasise the merger of realist and liberalist theories include Nye, 1988; Niou and Ordeshook, 1994; Powell, 1994; Keohane, 1995; Buzan and Little, 2001.

⁵⁶ A unit within the system may be either a state or any sub-state actor.

⁵⁷ Hurrell applauds the scope of the English School’s research programme, which, he argues, can examine a vast number of questions in international relations (Hurrell, 2001: 489). Yet, Bull, one of the co-founders of the English School, placed more emphasis on the realist aspects of rationalism, such as the maintenance of order in the international society, in his seminal work: *The Anarchical Society* (Nye, 1988: 249; Linklater, 1996: 94; Buzan, 2001: 474-476).

States can mutually establish rules and institutions via a 'diplomatic culture' that governs the transactions that occur between them to mitigate the effects of the anarchical system. The incentive for states to contribute to this 'diplomatic culture' lies not in a common culture that exists between states, but simply in the need for states to co-exist.⁵⁸ However, once these rules and institutions evolve to the extent that states are aware of common values that they share with fellow states, so the international system becomes instead, an international society. The notion of an international society is rooted in the work of Grotius, the seventeenth century Dutch jurist (Bull, 1995: 13, 23-26).

Bull lists the core institutions of the international society as the balance of power, international law, diplomacy, war, and the Great Powers. On a global level, the purpose of the balance of power is to prevent a hegemon emerging, whilst at the local or regional level, the balance of power serves to secure the independence of states. International law provides the rules that guide the conduct of states in their interaction with each other.⁵⁹ The fact that states generally conduct their relations with one-another peacefully, house diplomatic missions of other states, and trade between themselves demonstrates the salience of international law.⁶⁰ Diplomacy involves the interaction of designated actors of recognised political entities, which includes separatist groups and international institutions as well as states, in order to facilitate agreements, negotiate,

⁵⁸ Bull does suggest, however, that 'diplomatic culture' could be strengthened by the existence of a common global culture.

⁵⁹ The term 'guide' is chosen instead of 'govern' as there is no international power above the state in international relations. The international law referred to here denotes both primary rules where human communities collectively determine to avoid certain actions, such as war or slavery, and secondary rules which bestow specific rights and duties upon states, for example sovereignty and non-intervention (Bull, 2002: 122-130, 134-136).

⁶⁰ When a state violates one aspect of international law, it usually does so whilst conforming to most or all other aspects of international law. Furthermore, conformity to and violation of international law exist upon a scale from total conformity to unambiguous violation. Even once a state has violated a specific law, it will make efforts to show that it still feels itself bound by that law. This thesis will show in Chapter 4 how the actions of the Japan Coast Guard may be viewed as unlawful in firing on a North Korean spy ship in China's EEZ. In this instance the Japanese government went to great lengths, including salvaging and displaying the North Korean spy ship, to prove that the JCG's strategy was justified. Nonetheless, when international law, such as the principle of non-intervention, conflicts with the other institutions of the international society, such as the balance of power or war, international law may be set aside to ensure that order is maintained (Bull, 2002: 131-134, 136-139).

collect information and maintain friendly relations between those political entities.⁶¹ The purpose of war as an institution of the international society is to uphold international law and the balance of power, though engaging in war is curtailed by the rules set down by international law. Finally, the Great Powers set the course of the international society by establishing its rules, maintaining the balance of power, containing international crises and wars, respecting the spheres of influence of fellow states and acting as a collective when the rules of the international society are violated (Bull, 2002, 111-112, 122-130, 134-136, 156-166, 180-183, 194-201).

Whilst the achievement of an international society is significant, rationalists note that it is a fragile international configuration that could be over-turned by the emergence of an aggressive state. At the same time, international society is perceived to be an interim arrangement in world politics that could progress into a new international order amongst states wherein cosmopolitan issues of freedom and equality between all peoples are considered. The central concept for the advancement of international society is the provision of order amongst states that will then allow justice and affluence to spread globally (Linklater, 1996: 95-97).

International society exists once three primary goals are secured. First, war between states must be restricted. Second, the property and territory of states must be respected by other states in the international system. Finally, agreements between states must be upheld (Bull, 1995: 4). Recognition of a state's sovereignty denotes a state's membership to the international society and sovereignty is conditional upon a state obeying the three goals of international society (Linklater, 1996: 98-100). The recognition of sovereignty coupled with the principle of non-intervention in another state's affairs represent the minimum purposes upon which states can agree to create an international society. Bull referred to these minimum criteria for an international society as the pluralist conception of international society as opposed to a solidarist conception of international society, whereby the use of force in world politics is subordinated to the

⁶¹ Bull notes that increasingly, diplomacy is conducted by technical experts rather than by diplomats alone (Bull, 2002: 170-171). This is important for Japan's involvement in tackling piracy and maritime terrorism in Southeast Asia, as agreements have centred on the work of technical experts from the MLIT, as well as from MOFA.

common will of all states. In a solidarist international society, states agree to take 'policing action' against law breaking states or in defence of human rights. Whereas the pluralist account of international society places emphasis upon the rights and duties of states, the solidarist position emphasises the rights and duties of individuals in the international system (Wheeler and Dunne, 1996: 94-95). Hence, the higher number of interventions in the post-Cold War world indicates a shift from a pluralist Cold War international society to a solidarist post-Cold War international society where a greater focus on justice enables the number of legitimate interventions to increase (Buzan, 2001: 486-487).⁶²

2.5b Order and/or Justice

The evolution of international society hinges upon the balance between order and justice in world politics. For Bull, a pluralist, achieving this balance required emphasising order over justice. In *The Anarchical Society*, whilst acknowledging that there are some forces committed to the attainment of a more just global political arrangement, as reflected in the creation of the office of the United Nations High Commissioner for Human Rights, justice is only possible with world order. In fact, though the development of a cosmopolitan international society centring on the concepts of individual and human justice is possible in the long term, attempts to create such a society in the present day are labelled 'disruptive' or 'revolutionary'. Bull, therefore, stresses the importance of national interests and agreements between states formulated through bargaining and compromise and notes the lack of cosmopolitan notions of justice in the international society (Bull, 1995: 78-89).⁶³

⁶² Buzan understands both pluralist and solidarist international society to be linked and as two ends of a spectrum along which the international society moves (Buzan, 2001: 479). In more recent work, Buzan has further developed this concept to examine the interaction between interstate society (which combines the international system and international society sectors) and world society (Buzan, 2004a).

⁶³ Whilst *The Anarchical Society* has a more realist bent, Bull's later writings and lectures expressed a solidarist tone. The essence of Bull's solidarism towards the end of his career was that the international society should be judged according to its contribution to human justice, that states are responsible for global welfare and that there should be a global redistribution of wealth in return for a commitment amongst all states in the international society to human rights. The conclusion of these solidarist

Bull's pessimism concerning the construction of a cosmopolitan international society places rationalist theory too close to realism, as it emphasises strategic considerations of states and national interests above the possibilities for human cooperation.⁶⁴ Adopting such a position omits the extent to which there must be a degree of solidarity concerning acceptable and unacceptable conduct in international affairs and how such conduct is framed in international law (Cutler, 1991: 55-57). However, Bull's cynicism may be justified in light of the repeated failure of developed countries to protect human rights in Africa, the slow response of developed countries to the ethnic cleansing in Bosnia and the degree of self-interest implicit in the 1991 Gulf War. It is clear that in the post-Cold War world the concepts of non-interference and sovereignty are often more important than cosmopolitan notions of justice (Wheeler and Dunne, 1996: 101-106). Yet, the number of interventions in the sovereign affairs of other states has increased since the end of the Cold War and has recorded several notable successes, such as Cambodia and East Timor. The international community's failures vis-à-vis intervention could well be described as initial attempts at intervention in a new solidarist era for the international society that should be learned from rather than chastised.

Little expresses the possibility of a thicker international society evolving in the aftermath of the Cold War, as the demise of the Soviet international society left only the American dominated international society in 1989. For example, interventions in the US-led international society have examined whether the principles of sovereignty necessarily trump the rights and protection of human beings raising issues of justice in the post-Cold War world (Little, 2003: 452-453). Furthermore, the rise of transnational actors, such as NGOs, coupled with an increased concern for the welfare of human beings across the globe, as evidenced by the growing number of interventions since the end of the Cold War, may slowly challenge the supremacy of the state in international affairs (Buzan, 2004a).

sentiments was that an international society without justice would not achieve order (Wheeler and Dunne, 1996: 99-100).

⁶⁴ The fact that Bull wrote *The Anarchical Society* during the Cold War may explain his pessimism vis-à-vis the construction of a cosmopolitan society.

Nevertheless, just as the creation of an international society based upon sovereignty and non-intervention was a protracted process, so the construction of a more cosmopolitan international society comprising a greater degree of human justice could prove even more complex. Altering social practices and identities may disrupt the stability of international relations, so states are unlikely to alter the status quo. Only when existing social practices and identities cannot solve current problems and when the rewards of transformation outweigh the costs of doing so, will states attempt to alter the system (Wendt, 1995: 148-158). States in the international system have not agreed upon the means of defining and enforcing human rights globally. Many states have also acquired negative sovereignty, in that they are free from external intervention in their affairs, but fail to satisfy the economic and political requirements of their citizens. The current international society therefore privileges order over justice in that states are recognised as the principal actor in global affairs (Linklater, 1996: 104-109), a fact reconfirmed following the 9/11 terrorist attacks. As Little notes, “[t]he debate now centres on tensions between systemic order and the societal rights of states when the threat to the international society is coming from within world society” (Little, 2003: 453).

The pre-eminence of order over justice remains one of the core issues inhibiting responses to maritime security threats. In the case of Indonesia, for example, ethnic and religious conflict and separatist claims have been dealt with by government forces which have consistently employed repressive measures to ensure the territorial integrity of the state. The actions of the Indonesian military (the TNI) have often been rationalised in terms of maintaining order, yet the conduct of the TNI has tended to fuel conflicts and separatist causes (Huxley, 2002). As a result, internal violence, such as fighting between Aceh rebels and government forces, has spilt over into the seas surrounding Aceh where increased cases of piracy and maritime terrorism have been reported.⁶⁵ Conflict in the Aceh region indicates that a more solidarist approach which recognises the legitimacy of secessionist claims and upholds principles of religious tolerance may have more impact upon resolving Indonesia’s security problems. Indeed, since the December 2004 tsunami hit the Aceh region, the Indonesian government has

⁶⁵ http://www.iccwbo.org/ccs/news_archives/2004/aceh_2004.asp, accessed 29 June 2004.

negotiated with representatives of the GAM separatist group to settle the conflict in the northern Sumatran province.⁶⁶

2.5c The Limits of International Order

Constructivism and critical theory⁶⁷ provide a possible link between the international society of today and the evolution of a cosmopolitan world society of the future. The task of critical theory and constructivism is to examine ways of moving beyond the current confines of the state system to provide better political arrangements for governance, international citizenship and reforming international institutions.⁶⁸ By combining rationalism and constructivism, areas that remain understudied in the international society, such as ethics in political society and gender issues, could be addressed from the perspective of the current international society, but with a view to the development of a cosmopolitan international society (Dunne, 1995: 138-142). Essentially, this is what Buzan suggests when he describes the concept of the international society as progressive and layered. The present international society is merely one global political arrangement on a scale between a Hobbesian state of nature and a Kantian society of Perpetual Peace (Buzan, 1993: 332, 337-340). This echoes Wendt's claim that different kinds of international anarchy are possible and that by

⁶⁶ For more information, see the Editorial in the *Japan Times* "Hope for Peace in Aceh" 30 July 2005, www.japantimes.co.jp/cgi-bin/makeprfy.pl5?ed20050730a1.htm, accessed 25 October 2005.

⁶⁷ Constructivism and critical theory are two International Relations theories which both examine how the current international order came about and how this order may be changed. Both theories emphasise social factors as explanatory causes in international relations.

⁶⁸ Cosmopolitan and communitarian theorists represent two constructivist camps that have tackled the question of transformation of the international system. The cosmopolitan position emphasizes the need for human beings to develop a world community based on global rather than state governance. The communitarian argument, by contrast, notes the importance of states as the ultimate community in world politics and the need to work within the society of states in order to expand moral inclusion and reconstruct social relations amongst actors. Cochran argues that the debate between cosmopolitans and communitarians has reached an impasse in that the differences between state and human conceptions of justice cannot be resolved as both positions fail to perceive norms as contingent. Only by identifying ethical claims as temporary and provisional, rather than as universal and absolute as cosmopolitans and communitarians do, can investigations and potential transformations of existing political arrangements be attempted (Cochran, 1999: 1-18, 273). Recent developments in English School theory, led by Buzan, allow for ethical claims to be developed in the transnational and interhuman societies as well as the interstate society. Moreover, social relations amongst actors vary depending upon the nature of the interstate society along the pluralist-solidarist spectrum (Buzan, 2004a). Hence the notion of universal and absolute norms is abandoned in contemporary rationalist theory.

altering the social practices between states, systems of cooperative security may emerge whereby states identify positively with one another and take care of each other's security (Wendt, 1995: 138-144; Hopf, 1998: 174).⁶⁹ Buzan restates the connections between the English School and constructivism when he notes that Wendt's conception that anarchy is what states make of it ties in with the construction of the international society by its units (Buzan, 2001: 487), a connection which is made even more explicit in Buzan's *From International to World Society?* (Buzan, 2004a).

Nevertheless, there remains a degree of pessimism as to whether the present limits of the international society can be breached. Demands for an elaboration of concepts and practices of human justice in world politics require states to adapt the principle of non-intervention and redefine the conditions by which states can claim sovereignty. Such action would entail a leap of faith for states to willingly erode the fundamental principles of the existing international society and replace these principles with ones based on concepts of human justice agreed upon by all members of the international society. Whilst such a dramatic change appears unlikely and thereby seems to confirm Wæver's criticism that reflectivism is a 'status quo' theory (Wæver, 1992: 121), the transformation of the international system may occur progressively as states collaborate to overcome common problems and realise common interests. Even the central tenets of the international society - sovereignty and non-intervention, are dynamic notions in that sovereignty may be understood in manifold ways (Krasner, 1999; Makinda, 2001) and the conditions by which states intervene in each other's affairs is evolving, particularly in the degree to which the UN is consulted in order to justify international intervention in a sovereign territory. Whilst the international society is the dominant framework in which states conduct their relations, the need to respond to new security threats and transnational phenomena on a case-by-case basis may slowly refine the rules and norms

⁶⁹ States may develop a system of cooperative security by perceiving the welfare of other states as being the best means of securing their basic interests and thereby transforming their identity to one that is collective in form. Rising interdependence coupled with the perception of common problems facilitates the construction of collective identities, as actors recognize that unilateral means will not suffice in an international context where each state is reliant upon the actions of other states in the system. In such an environment states may even come to see their identities as well as their interests as alike and therefore become more aware of other's vulnerabilities and needs. The more states interact with each other the greater the potential for common identities to evolve (Wendt in Der Derian, 1995: 384-391).

of international society itself, rather than simply reproducing these rules and norms as structural realism suggests.

The structural realist notions of interaction capacity and process, as well as the stress structural realism places upon sub-state actors, such as bureaucrats and NGOs, can help rationalism explain how this transformational process might occur in different sectors of the international system.⁷⁰ For example, cooperation between sub-state actors in multilateral forum on security issues, such as piracy and maritime terrorism, is indicative of richer social processes enabled by higher interaction capacity. As piracy and maritime terrorism are problems for international society that are woven into a myriad of other security threats and transnational phenomena, such as environmental degradation, economic disparity and transnational crime, there is the potential for maritime cooperation to generate new cooperative opportunities which further expands the interaction capacity. Understanding the ways in which Japan's response to piracy and maritime terrorism is contributing to the development of collaborative frameworks in Asia is one of the core aims of this thesis.⁷¹

Nonetheless, the international society exerts a powerful influence upon the ways in which Japan can respond to maritime security issues. The current rules of international society, such as the law of the sea, and the reluctance of sovereign states to have foreign powers patrol their waters or even pursue pirates into their territorial sea limits the extent of an international response to the problem. Only by raising the level of cooperation concerning maritime security issues might the current constraints of the international society be broached. Such was Bull's hope when he perceived that only by working within the current international society could contemporary issues of security, environment, inequality and justice be overcome (Bull, 1995: 284).⁷²

⁷⁰ The notion of international relations occurring in different sectors simultaneously has strong links with Bull's image of international politics being conducted on different chessboards, such as a strategic nuclear deterrence chessboard, a conventional military chessboard, international monetary affairs and international trade and investment chessboards, and a chessboard where influence derives from ideological appeal (Bull, 2002: 108).

⁷¹ Marie-Anne Slaughter examines the phenomenon in her work: *A New World Order*.

⁷² It should be noted that a decrease in the level of cooperation between states can occur when states disregard international rules and norms. Japan's response to North Korean spy ships in December 2001 is

2.5d Buzan and Recent Developments within the English School

In his 2004 work, *From International Society to World Society? English School Theory and the Social Structure of Globalization*, Buzan seeks to clarify and elaborate on the current state of English School theory. In doing so, he re-examines the role and composition of world society, differentiates between global and sub-global developments, emphasises the economic sector, and redefines the boundaries between different kinds of international society (Buzan, 2004a: 11-22). Buzan also addresses the concerns of some American scholars that the English School's notion of the international society does not comprise a theory as it fails to produce testable hypotheses (Copeland, 2003: 427-428), by locating the English School within a European understanding of theory whereby theory "organises a field systematically, structures questions and establishes a coherent and rigorous set of interrelated concepts and categories" (Buzan, 2004a: 24).

In redefining the boundaries of the international system, international society and world society, Buzan merges the international system and international society, which he then terms the interstate society. His rationale for doing so is that there is a need to distinguish between the different types of interstate societies that exist along a pluralist/solidarist spectrum. Hence, interstate societies range from asocial at the extreme pluralist end of the spectrum, progressively through power political, coexistence, cooperative, and convergence interstate societies, until confederative interstate societies are reached at the extreme solidarist end of the spectrum. Buzan argues that Bull's international system would be located in the power political interstate society and that Bull's international society would be found in the coexistence interstate society. The term 'international society' is dropped in favour of the interstate society because states - not nations - are the primary actors in English School theory. World society is divided between transnational and interhuman societies, where the principal

a case in point whereby JCG ships, in firing at the North Korean spy ship in China's EEZ, were not heeding international law.

actors are transnational groups and human beings respectively (Buzan, 2004a: 100, 107, 158-160).

Constructivism plays a central role in Buzan's understanding of interstate and world society. By postulating that the units formulate interstate society, Buzan is employing Wendt's notion that "anarchy is what states make of it" (Buzan, 2004a: 95). Buzan goes on to incorporate Wendt's concept of mode/depth socialization, which focuses on whether societies are formed by coercive means employed by actors, the calculation of actors or the beliefs of actors. The more belief plays a role in creating a society the more stable that society becomes. It is therefore necessary to ask about mode/depth socialization for every interstate society (Buzan, 2004a: 102-108). The concept of calculation can be associated with pluralism in English School theory, in that states determine rules amongst themselves that will enable them to better co-exist. These basic rules were embodied in Bull's institutions of the international society. The notion of belief is connected with solidarism in that as the institutions of the interstate society become more elaborate, so states realize that by evolving common values between themselves interstate society can be further strengthened beyond pluralism (Buzan, 2004a: 143-146).⁷³ This process can be observed in the creation and development of the European Union, which progressed through a series of increasingly sophisticated institutions to become what Buzan describes as "the thickest, most ambitious and most highly developed interstate society ever seen" and "the only example of a convergence interstate society ever seen, and the only one that even begins to approach a world society" (Buzan, 2004a: 211, 208-209).⁷⁴

⁷³ Buzan associates calculation with the term *gesellschaft* (society) and belief with *gemeinschaft* (community), whereby "society [*gesellschaft*] becomes essentially about agreed arrangements concerning expected behaviour (norms, rules, institutions), and community [*gemeinschaft*] becomes essentially about shared identity (we-feeling)" (Buzan, 2004a: 111). Hence the construction of the interstate society is more a combination of societal factors (rule, norm and institution making) and communal factors (creating shared forms of identity). This differs from Buzan's earlier work in which he marginalized communal factors and emphasised societal factors, arguing that the *gesellschaft* conception of society, which is the conception that society is formed by acts of will, as opposed to the *gemeinschaft* notion of society, that comprehends society as emerging naturally, is at the heart of the evolution of international society (Buzan, 1993: 331-336).

⁷⁴ For more on the development of the EU see Christiansen in Baylis and Smith, 2001, 495-500.

The institutions of an interstate society determine both the attributes and the *raison-d'être* of that interstate society. These institutions have evolved over time to comprise the actors of the interstate society as well as to define how the actors relate to each other. Buzan identifies primary institutions,⁷⁵ which are “durable and recognized patterns of shared practices rooted in values held commonly by members of interstate societies, and embodying a mixture of norms, rules and principles” (Buzan, 2004a: 181) and their derivatives,⁷⁶ as well as secondary institutions (Buzan, 2004a: 166-167, 179-182).⁷⁷ The functional role of these institutions is to determine ‘membership’ of the interstate society, establish norms of ‘authoritative communication’, define the “limits to the use of force’, ‘allocate property rights’ within the society, as well as to ensure the ‘sanctity of agreements’ (Buzan, 2004a: 187-189).

An important place in regulating interstate affairs, is, however, reserved for the Great Powers. In Buzan’s book *The US and the Great Powers*, he examines how the current configuration of one Superpower,⁷⁸ the US, four Great Powers,⁷⁹ Russia, China, the EU and Japan, as well as numerous Regional Powers⁸⁰ interact and combine to control interstate relations (Buzan, 2004b). It therefore becomes clear that in responding to maritime security threats, Japan is fulfilling its role as a Great Power whose duty it is to work through the institutions of the interstate society to ensure that order is maintained in the interstate society.

The institutions of an interstate society can change over time and vary in the extent to which they influence a particular interstate society (Buzan, 2004a: 181; Buzan, 2005:

⁷⁵ Primary institutions comprise sovereignty, territoriality, diplomacy, market, Great Power management, equality of people, environmental stewardship, and nationalism (Buzan, 2004a: 187).

⁷⁶ For example, international law and non-intervention are derivatives of sovereignty (Buzan, 2004a: 184).

⁷⁷ The UNHCR is an example of a secondary institution designed to uphold the primary institution of the equality of people (Buzan, 2004a: 187).

⁷⁸ Superpowers have the political, economic and military capabilities that can be extended to the global level. Furthermore, Superpowers play a role in upholding the security of all, or most, regions, as well as providing the core values of the interstate society. The legitimacy of the Superpower depends on these values being acceptable to all members of the interstate society (Buzan, 2004b: 69).

⁷⁹ Interstate actors react to Great Powers on the global and regional levels, as if that Great Power were able to acquire the military, economic and political resources to make a bid to become a Superpower (Buzan, 2004b: 69-70).

⁸⁰ Regional powers possess sufficient capabilities to determine how the security between states in any region is organized, but cannot extend these resources to a global level (Buzan, 2004b: 71).

185). For example, the primary institutions of sovereignty, territoriality and nationalism influence the interstate society of Southeast Asia more than they do the European Union (Buzan, 2004a: 237-238). Furthermore, the institutions of interstate society do not necessarily exist in harmony; in fact, pressures between them may lead to important developments in interstate societies (Buzan, 2004a: 186; Buzan, 2005: 187). In the case of maritime piracy in Southeast Asia, the institutions of the market and sovereignty are in conflict, as piracy threatens the free movement of goods, but sovereign boundaries prevent effective cross-border patrols. Resolving this tension has been one of Japan's main aims as a Great Power tackling maritime piracy in Southeast Asia and has the potential to reconfigure how Southeast Asian states conceptualise their maritime sovereignty.

An English School perspective results in a far more layered and complex account of Japan's response to maritime security issues than other international relations theories. Realists, like Krasner, for example, argue that the rulers of states follow a logic of consequences, whereby rulers can ignore international laws and principles, which he terms the logic of appropriateness, when it is in their interests to do so (Krasner, 1999: 9, 24, 42, 238). Whilst the English School acknowledges the possibility that the logic of consequences can trump the logic of appropriateness, rulers are also aware that the laws and principles of the interstate society work in their interests. Though Japan could dispatch warships to the Malacca Straits to protect Japanese mercantile interests, thereby transgressing the sovereign borders of littoral states in Southeast Asia, Japan has instead respected the sovereignty of states in the region. Great Powers have gone to great lengths to adhere to the logic of appropriateness, even when the adversary is an outlaw of the interstate society, as will be demonstrated in Chapters 4, 5 and 6.

2.6 Human Security

Buzan's work on the world society opens up a number of possibilities for exploring the relationship between the interstate society and the transnational actors and individuals who comprise the world society. One such prospect is to examine how security is viewed from the perspective of the world society and to explore ways of incorporating these perceptions of security into interstate security policies. Despite Acharya's comment that each International Relations theory has something to offer Human Security theorists (Acharya, 2004b: 355-356), the connection between the interparadigm framework of English School and Human Security has not yet been made. The advantage of amalgamating interstate and world society images of security is that the policies produced by such interaction will treat not only the symptoms of a problem, but also its causes. Hence, in the case of maritime piracy in Southeast Asia, the interstate response has been to increase coordination between and training of maritime security forces in the region, as well as to create frameworks for anti-piracy patrols. These policies do not tackle the underlying causes of piracy which include poverty, over-population, environmental degradation, and cultural factors (Vagg, 1995: 63-80). Hence, there is a failure to address human security from the standpoint of justice, in terms of the human right to economic opportunities, food, adequate health provision, a clean environment, personal safety, the right for a particular community to exist, and political representation (Edström, 2003: 211-213; Ogata, 2004: 25-28). Interstate attempts to address common security concerns, such as piracy, by enhancing order will be unable to resolve the fundamental causes of the specific security concern unless issues of human justice are addressed.

2.6a Defining Human Security

Human Security takes human beings, rather than states, as the referent object of security. A security threat to an individual negatively affects the individual's quality of life. From the perspective of individuals existing within a state, an interstate society or a world

society, justice takes precedence over order. Non-state actors, including citizens groups and international NGOs, have a vital role to play in upholding the security of individuals and groups (McDonald, 2002: 279; Hampson, 2004: 350; Leaning, 2004: 354-355). As globalisation and transnational conflicts impact on the lives of human beings in the post-Cold War world, so Human Security questions the primary interstate institution of sovereignty by striving to develop international humanitarian standards (Axworthy, 2004: 348-349; Hubert, 2004: 351).⁸¹

The key definitional problem for Human Security is in determining which security threats are included. There is division amongst Human Security scholars as to whether insecurity includes both freedom from want (insufficient food and clean water, environmental degradation, inadequate provision of health and education) and freedom from fear (violence perpetrated upon individuals). Such debates centre upon whether to keep development in international relations distinct from human security and when intervention should be sanctioned (Hubert, 2004: 351-352). Critics of Human Security argue that in casting the definitional net of security too wide, the concept of security loses its analytical value. Instead different issues, such as war, poverty and governance, should be treated separately in order for them to be understood (Mack, 2004: 367) and that Human Security should be focussed on freedom from fear if it is to have any utility for policymakers (Krause, 2004: 367-368).⁸²

Yet, separating freedom from fear and freedom from want does not reflect trends in the post-Cold War world where conflicts, poverty, inequality and abuses of human rights combine to disrupt relations within and between states (Thomas, 2001, 162-164).⁸³ Such

⁸¹ Though advocates of Human Security wanted to take advantage of changes in the international system at the end of the Cold War to promote their agenda, the concept of Human Security has its origins in the 1980s notion of common security (Timothy, 2004: 19-24).

⁸² Though Macfarlane agrees that the Human Security agenda is too wide for it to be useful for policymakers, he also notes that “[p]rotection from violence gives little solace to the starving or those threatened by potentially fatal preventable diseases or when individuals lack the resources to control their lives” (Macfarlane, 2004: 369).

⁸³ Thomas elucidates her point by quoting Smith, “When a privileged elite defends its too large share of too few resources, the link is created between poverty, inequality and the abuse of human rights. The denial of basic freedoms – to organise, to express yourself, to vote, to disagree – forces people to choose between accepting gross injustice and securing a fairer share by violent means. As conflict unfolds, the political leaders that emerge often find that the easiest way of mobilising support is on an ethnic basis.

interconnected threats to human beings have lead Thomas and Tow to conclude that integrated policies need to be implemented to respond to the military, economic, societal and political dimensions of a human security crisis. Furthermore, when domestic and international security concerns overlap, the international community has a right to intervene to restore order and justice, such as the use of military personnel in peacebuilding programmes (Thomas and Tow, 2002a: 188-189). These issues have been taken up by English School proponents, such as Little (Little, 2003: 452-453), and further by Buzan, who argues that in a solidarist interstate society, which is more concerned with justice than a pluralist interstate society, interventions are possible because the institution of sovereignty is weaker (Buzan, 2004a: 219-220).

2.6b Critique of Human Security

The aim of Human Security as a framework was to create a policy-relevant approach to dealing with the protection and well being of individuals. However, it is difficult to see how a policy could be put into effect considering the multitude of issues that Human Security examines, as well as potential areas of conflict that exist between Human Security issues. How should states reconcile environmental concerns with the need for economic development, for example, if the one undermines the other? States are left to develop a response to such problems raising the criticism that states will only seek to address the human security concerns that benefit their national interest rather than attempt to secure all individuals everywhere.⁸⁴ There is a general belief running through the arguments of Human Security advocates that all people value security in the same way, thereby discarding cultural, ethnographic, social and religious understandings people may have of security (McDonald, 2002: 280-283). Furthermore, by leaving human security in the hands of states, the fact that states are often the entity that

Thus do the various causes of conflict weave in and out. War will only end if, and when, and where its causes are removed.”(Smith, 1997: 15).

⁸⁴ It is worth reasserting Bull’s position emphasized by Wheeler and Dunne, that without justice there can be no order (Wheeler and Dunne, 1996: 99-100). In other words, if the issues of justice that Human Security highlights, such as poverty, starvation and environmental degradation, are not treated, individuals and groups may act in violent ways to sustain themselves, thereby disrupting order. This thesis will investigate the link between order and justice in Chapters 4 to 6.

deprives individuals of their security is forgotten and the potential for human security concerns to generate change from within the state is lost (Bellamy and McDonald, 2002: 373-374; Mack, 2004: 366).

2.6c Human Security and World Society

The English School provides a broad response to these criticisms which is primarily rooted in the interplay between the interstate society and world society. Action groups and NGOs both represent the interests of individuals in the world society, thereby undermining claims that human security is the providence of the state alone. Moreover, Buzan's stress on geography enables the perspectives of different peoples vis-à-vis their security to be taken into account. Finally, though operationalising human security interests may be complex, by encouraging communication between states and actors in the world society, so policy approaches can be advanced. Gilson and Purvis argue that the Japanese government should seek to incorporate NGOs into their foreign policy-making framework. This would benefit Japan's foreign policy because NGOs are better at working at the local level, as well as being able to act as watchdogs and advocates for change (Gilson and Purvis, 2003: 199, 203-205).

Because human security is associated most strongly with the notion of justice rather than order, policies that take individual and transnational perspectives of security into account are more likely to be formulated within confederate interstate societies where solidarism is at its most pronounced. Nevertheless, even in more pluralist interstate societies, concerns with justice can help to draw transnational and human actors into interstate affairs, raising the possibility of the emergence of a more solidarist interstate society over time. A conscientious effort, on the part of state, transnational and human actors, to enhance the interaction capacity between themselves is vital to advance justice and human security projects. Hence, in contrast to McDonald's criticism concerning which area of human security should be privileged when two human security issues clash, such as environmental security versus economic security (McDonald, 2002: 280-283), Buzan has argued that tensions between the primary institutions in the interstate society create opportunities for actors to cooperate and resolve the tensions, thereby

enabling the interstate, transnational and interhuman societies to evolve (Buzan, 2005: 187). This thesis will examine how Japan is interacting with transnational and human actors in tackling contemporary maritime security threats and evaluate what the benefit of this interaction is in terms of resolving issues of justice.

2.7 Conclusion

The three main theories of international relations, realism, liberalism and constructivism, fail to give an adequate account of Japan's response to maritime security issues. This thesis therefore adopts the more comprehensive English School as its theoretical framework. The primary focus of this thesis is upon the tensions created by maritime threats between the institutions of the interstate society and how Japanese policy makers have attempted to resolve such tensions. For example, Japanese policy makers are concerned about piratical attacks hindering trade through vital SLOCs. These pirates thrive in part because they have taken advantage of increased interaction capacity, such as modern weaponry, equipment and transport, and embedded social processes, such as a cultural acceptance of piracy in their native provinces and the norm of sovereignty that prevents foreign naval vessels pursuing maritime criminals across sovereign borders. As outlaws highlight deficiencies in the interstate institutions at managing order, so members of the interstate society, particularly Great Powers like Japan, will seek to transform the interstate society itself. This is not a theme unique to the current world order, as outlaws have plagued the security of international societies throughout history requiring a myriad of responses, from the creation of laws to force exercised by legitimate actors. Rather, resolving the threat posed to the international society by outlaws is a key reason for progress in international societies (Buzan and Little, 2000: 66, 136, 177, 200, 204, 400).⁸⁵ Hence, this thesis is concerned with maritime security cooperation between actors in the interstate, transnational and interhuman societies that leads to institutionalisation and a move towards a more solidarist interstate society in East and Southeast Asia.

Depending upon the maritime security issue at stake, different institutions will play more or less important roles. Hence, as Chapter 5 will demonstrate, in combating maritime piracy in Southeast Asia, Japanese policy-makers place greater emphasis on the institutions of sovereignty, territoriality, and diplomacy, rather than on the equality

⁸⁵ Diplomatic interaction between Greek city-states to tackle the threat of piracy provides an illustrative example. The norm of *proxenoi*, a precursor to the modern-day ambassador whereby an individual would represent their native city-state in another city-state where they would reside, developed in part to counter the scourge of piracy (Buzan and Little, 2000: 210).

of people, nationalism and environmental stewardship. Emphasis on issues of sovereignty, territoriality and diplomacy, has led the response to piracy towards top-down solutions, such as the creation of an Information Sharing Centre in Singapore and the establishment of trilateral patrols in the Malacca Straits, that combat the symptoms of piracy. Japan's financial power and technical expertise in the maritime security field combined with the strength of the Japan Coast Guard as a model institution for Southeast Asian states to adopt, allows for Southeast Asian states to develop their maritime security capabilities in line with the norms and standards of the interstate society. Indeed, anti-piracy and anti-terrorism conferences and exercises sponsored by Japan are changing the practices of cooperation between states (Umezawa interview, 2 April 2004). Japan is therefore playing the role of a responsible regional leader.⁸⁶

Nonetheless, policymakers play down the significance of how human equality issues, nationalism and the environment exacerbate maritime violence and crime. Only by treating these three issues, which are primarily located in the world society, can bottom-up solutions be found that tackle the causes of maritime threats. Accordingly, this thesis will also seek to establish potential areas in which Human Security can contribute to develop the ways in which the interstate and world societies interact.

Establishing links between the interstate and world societies encourages an examination of how the Southeast Asian region is developing. For example, whilst reliance on the institutions of sovereignty, territoriality and diplomacy, in dealing with piracy in Southeast Asia is suggestive of a cooperative interstate society based on order, a greater consideration of equality, nationalist and environmental issues could facilitate the emergence of a more solidarist interstate society based on justice and with more links to the transnational and human societies in Southeast Asia. By doing so, a progressive interpretation of regional politics is proposed in which interstate meetings between policymakers in a certain issue area are key to understanding regional developments. The means adopted by policymakers at these meetings are as important as the ends

⁸⁶ Watson explains core-periphery relations in the interstate society, by stating that the core "provides material goods, or money to buy them; technology, training and know-how; and markets in core economies for goods from the periphery" (Watson, 2001: 469).

those meetings are designed to meet. Hence, establishing links between the interstate society and transnational and human societies leads to ways of eradicating piracy that go beyond merely enhancing interstate patrols. For example, adopting means that enforce stricter environmental controls upon shipping transiting the Malacca Straits and upon coastal industries enables fishermen to take advantage of higher fish stocks and thereby avoid resorting to piratical acts to supplement their income.

For Japanese policy-makers, however, the international structure in Southeast Asia appears unalterable in that the institution of sovereignty and the norm of non-interference inhibit responses to piracy and maritime terrorism.⁸⁷ These policy-makers therefore define their interests and take action in accordance with the conditions of this deep-rooted international structure. The next chapter will define each of the case studies in terms of the interstate, transnational and interhuman societies and determine which institutions exercise the greatest influence over Japanese policy making.

⁸⁷ Wendt notes that rationalists may be correct in their assumptions in stating that the structure of international society is fixed if the transformation of international society proceeds at such a slow pace as to make actor's interests and identities appear as given and if actors act as though their interests and identities are given (Wendt, 1995: 162).

3. Definitions

This chapter defines the three case studies of the thesis as barbarian, pirate or infidel from an English School perspective that emphasises societal groupings in international affairs. By their actions, North Korea, pirates, separatists and maritime terrorists do not conform to the rules and norms of the international society and are therefore determined to exist on the periphery, if not wholly outside, the international society. These outlaws take advantage of tensions between the institutions of the interstate society in order to satisfy their interests. In seeking to rectify these deficiencies, members of the interstate society can combat the symptoms of maritime crime and violence. However, only by confronting the causes of contemporary maritime security threats can outlaw actors be socialized into joining or abiding by the rules and norms of the interstate society. Successful interstate cooperation both to eradicate maritime security concerns as well as to socialise outlaws can serve as an initial step towards the establishment of a more solidarist interstate society.

This chapter begins by providing a broad exposition of how the categories of barbarian, pirate and infidel can be interpreted from an English School standpoint. Then the North Korean actions are explored to show how and why North Korea can be delineated as a barbarian state. Next, contemporary maritime terrorism and piracy are contrasted, so as to identify these activities as being perpetrated by outlaws and to present the causal differences between these two types of maritime offence. Furthermore, the limitations of current international legal definitions will be listed to present why current state-led responses to maritime terrorism and crime are hindered in their scope and impact. Finally, this chapter concludes by returning to the core issue of justice versus order in international relations. The wide ranging interests of the English School demonstrate how interstate responses need to take account of causal factors in the interhuman and transnational societal domains and how outlaw actors must be socialised if maritime violence and crime are to be effectively eliminated.

Defining Outlaws from an English School Perspective

This thesis explores how Japan, a member of the interstate society, tackles maritime security threats posed by actors in, or rather on the periphery of, the interstate society (North Korea), in the transnational society (terrorists, separatists and transnational criminal groups), and the interhuman society (pirates). Yet, despite their location within these respective societies, North Korea, terrorists, separatists and pirates, because of their actions, are not fully-fledged members of the societies themselves. An example of how societies define full membership can be presented by examining the fate of a convicted criminal who, having broken the law, is removed from mainstream society and placed in prison. Similarly, only those actors who are recognized by their fellows to fulfil their responsibilities and obligations within their society can be designated a full member of that society (Adler, 2005: 181).⁸⁸ The criterion for membership of the interstate society entails compliance with the primary institutions of the interstate society (Adler, 2005: 175).⁸⁹ This involves recognition of territorial boundaries, compliance with international law, reliance upon diplomacy, defending the equality of people, adherence to the market, a commitment to safeguard the environment, respect for national identities and a willingness to defer to and support Great Power management (Buzan, 2004a).

Whilst the bar for membership appears high, such that no state may fulfil all criteria at any given time, Buzan denotes six different interstate societies ranging from Asocial (at the extreme pluralist end of the interstate society spectrum) to Confederative (at the extreme solidarist end of the interstate society spectrum).⁹⁰ He delineates the East Asian interstate society, which for Buzan encompasses both Northeast and Southeast Asia, as

⁸⁸ Buzan describes the interstate society as an inclusive society in the sense that any state fulfilling the criteria for membership, should, in theory, be able to join if they so choose (Buzan, 2004b: 22).

⁸⁹ Adler describes interstate institutions as “intersubjective structures” which are “webs of meaning sustained by social communication... [and] constitute the content and boundaries of identities, practices and institutions.” Actors establish these structures and would be purposeless without them (Adler, 2005: 176). In the interstate society, states, or rather sub-state actors representing their state, create primary institutions, not only to regulate interstate relations, but also as a means of constructing reciprocal identities.

⁹⁰ The criteria for membership of the interstate society outlined in the previous paragraph would most closely resemble those of a Confederate society, though membership is contingent upon regional factors and circumstances.

a coexistence interstate society with elements of a cooperative interstate society. The East Asian interstate society is therefore characterized by “little or no overall shared culture beyond that provided by the global level... [a] strong adherence to sovereignty, territoriality and nationalism... [with] a limited version of the market. [Whereby] [e]conomic nationalism remains strong, but with the understanding that the national economic development of each depends on a degree of openness to trade and investment, and acceptance of some market rules” (Buzan, 2004a: 238).⁹¹ Buzan adds that without the US commitment to the security of the region, the interstate institution of war might play a more prominent role in the relations between East Asian states, but that the rise of China may also destabilize the balance of power in the region pushing states to focus on relative rather than absolute gains (Buzan, 2004a: 238). Hence, the key to membership in the East Asian region is observance of sovereignty, territoriality and nationalism, a commitment to fundamental market values, and deference to and acceptance of US dominance in the region.

Defining the outlaws (barbarians, infidels and pirates) of the East Asian interstate society therefore involves identifying those groups that observe none of or act in defiance of these membership criteria. It is important to reiterate how these three broad groups differ, however. Pirates can immediately be separated from the other two categories, as pirates act for economic gains rather than out of a political motive. What differentiates infidels from barbarians is that infidels define themselves and are defined by states in the interstate society in mutually exclusive terms.⁹² Whereas states in the interstate society can negotiate with barbarians, as well as recognise and potentially

⁹¹ In stating that there is little common culture in the East Asian region, Buzan is dismissing, or at least playing down the importance of, the ‘ASEAN way’ as a prevalent norm in the region (Buzan, 2004a: 238). Weatherbee defines the core aspects of the ‘ASEAN way’ as a “mutual respect for sovereign authority and the nonuse of force towards one another” (Weatherbee, 2005: 121). Since these aspects are mirrored in Buzan’s description of the East Asian interstate society, so the ‘ASEAN way’ itself can be perceived as reflecting the nature of the interstate society, rather than a common culture (Bellamy in Beeson (ed.), 2004: 169-170).

⁹² As Abu Bakar Ba’asyir, one of the founders of Jemaah Islamiya, has stated, “Allah has divided humanity into two segments, namely the followers of Allah and those who follow Satan” (Quoted in Abuza, 2003: 127). Such statements can be compared with comments made by President George W. Bush of the United States in the aftermath of the 9/11 attacks that separated states into those that were for the US or for the terrorists. President Bush’s ‘axis of evil’ 2002 State of the Union Address similarly aimed to define which states were outside the interstate society. For historical examples of societies that are mutually opposed to one-another see Buzan, 2004b: 21.

guarantee the rights of those barbarians, diplomacy with infidels, who believe not in the interstate society but in an alternative structure, is impossible. Hence, the means available to states, like Japan, when dealing with outlaws, depends upon the type of outlaw.

The problems caused by the outlaws examined in this thesis create tensions between the primary institutions of the interstate society. In order to resolve these tensions, Great Powers and/or the Superpower establish coalitions with other states through coercion, calculation and belief. These coalitions attempt to tackle the problem created by the outlaw by encouraging the enforcement of interstate society rules through normative means (providing knowledge and training) or material means (providing equipment). However, as Adler notes, in the post-9/11 world, re-examining conceptualisations of 'self' through the enforcement of interstate rules, is as important as reforming images of 'other' (Adler, 2005: 179). Hence, in the context of maritime security threats posed by outlaws in the interstate society, the definition of actors merely as outlaws, without addressing why actors behave in contention with the dictates of the interstate society, needs to be avoided (Buzan, 2004b: 22). Only by comprehending why outlaws act in the ways they do, can the means to socialize outlaws, transforming their identity through either coercion, calculation or belief, be constructed (Buzan, 2004b: 25-28). Whilst Litwak argues in favour of both coercive (sticks) and calculation-based means (carrots) in respectively containing and engaging 'rogue states' in the international society (Litwak, 2000: 1-15),⁹³ ultimately, to join the interstate, transnational or interhuman society as full members, actors must believe in the tenets that bind actors together socially. Only by addressing the concerns of these outlaw actors, through perceiving security from their, a 'human security', perspective, will these outlaws come to believe that social international arrangements best meet their needs. Hence, the strategies available to states in combating outlaws in the interstate society mirror Wendt's mode/depth of internalisation detailed in the previous chapter. The remainder of this chapter will profile the three cases studies in terms of the barbarian, infidel and pirate

⁹³ Whilst Litwak's interest lies in how and why states are defined as rogues, his argument can equally be applied to the definition of any outlaw.

labels, as well as highlighting the causes of outlaw behaviour and the inadequacies of the interstate society's response.

3.1 North Korea and the interstate society

North Korea is often labelled a 'rogue regime' because of its WMD programmes, which could potentially disrupt the balance of power in Northeast Asia or be exported, as well as its ideological, political and economic isolation from the interstate society. Indeed, President Bush counted North Korea among the 'axis of evil' in his State of the Union Address in January 2002.⁹⁴ Whilst the North Korean missile and WMD threats loom largest for Japan, abductions of Japanese citizens, clandestine operations and drug smuggling all conducted by North Korean spy ships, which violate Japan's sovereign territory, have further undermined relations between North Korea and Japan. From an English School perspective, therefore, territoriality and the balance of power are the key institutions influencing Japan's policy vis-à-vis North Korea. Yet, ongoing talks between Pyongyang and five members of the interstate society (Japan, South Korea, the US, China and Russia), as well as bilateral meetings have served to maintain North Korea's links with the interstate society, indicating the importance of the institutions of sovereignty, diplomacy and Great Power management. Relations between Japan and North Korea can be explained in terms of a power political interstate society governed by a mutual animosity which is tempered only by ongoing negotiations.

However, North Korea is the exception in the Northeast Asian interstate society which is a society defined more by formal diplomatic relations, as evidenced by Japanese consulates and embassies in other Northeast Asian states, and a shared acceptance of international law.⁹⁵ Though war remains a possibility in Northeast Asia, evidence of

⁹⁴ David Frum, a Whitehouse speech writer in the first Bush administration, noted that North Korea had been added to the speech "as an afterthought" (Mann, 2004: 318). However, President Bush has also referred to Kim Il Jong as a "pygmy" and a "spoilt child at a dinner table", indicating the degree of hostility felt by the president of the US towards the North Korean leader (*Newsweek*, 27 May 2002). See also, "Now What?" *The Economist*, 13 August 2005.

⁹⁵ The choice to divide what Buzan terms the East Asian interstate society into Northeast and Southeast Asian interstate societies stems primarily from the unique situation in the Northeast Asian interstate

economic and even military cooperation between some states suggests that the Northeast Asian interstate society is best categorised as a coexistence, and even at times a cooperative, interstate society (Buzan, 2004a: 159-160). The term barbarian state can usefully be applied to North Korea in this context, as Pyongyang recognises and is recognised by the interstate society, but whose relations with the interstate society are mostly antagonistic, with the exception of China, with North Korea's leaders choosing to remain apart from the established Northeast Asian interstate society. North Korea's designation as a barbarian state will now be examined in light of the interstate institutions that denote full membership of the interstate society.

North Korea – a barbarian state

North Korea violates several of the key interstate institutions of the Northeast Asian interstate society. First, North Korea does not defer to Great Power management in international affairs, adhering instead to its own isolationist, *juche* ideology to define its foreign policy. Second, North Korea, through its pursuit of WMD and missile programmes, as well as transgressions by its spy ships into foreign territory, does not comply with international law. Finally, the equality of people is not recognized by the North Korean state. This is true both among North Korean citizens, many of whom have suffered from starvation under Kim Jong Il's rule, and for foreign people, such as Japanese abducted by North Korean commandos. Each of these points will be addressed in more detail, before noting the reforms that may open up the possibility of the socialization of North Korea into the Northeast Asian interstate society over time.

North Korea has eschewed full membership of the interstate society through its *juche* ideology. *Juche* is the principle by which Pyongyang asserts its right to exist independently of and defend itself against foreign interference or pressure in its affairs. Whilst Kim Jong Il's government is more than willing to bargain with foreign powers in order to acquire economic, technological, energy and food aid, it has done little to curb

society caused by the presence of North Korea, a barbarian state, as well as antagonism between Taiwan and China.

its illicit activities or end its nuclear and ballistic missile programmes. In fact, North Korea's ability to target foreign antagonists with WMD lies at the heart of the *juche* rationale, as this capability prevents the outright invasion of North Korea (Park, 2000: 544-546; McCormack, 2004: 97-98).

North Korea has also sought to preserve itself through illicit sales of weaponry and drugs as a means of obtaining hard currency (McCormack, 2004: 97-98), whilst pursuing an intercontinental ballistic missile (ICBM) and nuclear weapons programme to ensure its defence against foreign aggressors.⁹⁶ This rationale is ever strengthened as North Korea's WMD programme and ICBM technology develops. The more advanced North Korea's weapons and means of delivering them, the stronger Kim Jong Il's bargaining position becomes, as it provides the communist leader both with deterrence capability (Laney and Shaplen, 2003: 19-21) as well as more military resources to haggle with. Pyongyang is already in the business of selling its long-range missiles to foreign powers for hard cash and it is speculated that as its nuclear stockpile grows, nuclear material will be traded or expended in a missile test (Park, 2000: 542-544; Samore, 2003: 7, 21).⁹⁷ Either of these scenarios entails a further augmentation of tension on the peninsula and emphasises the failure of the interstate society to deal with Kim Jong Il's WMD programme.

Illicit sales of narcotics and missile deals provide one of the few means by which North Korea can obtain capital. The disparity between the North Korean people and the North Korean elite in Pyongyang grew after the end of the Cold War. The demise of trade

⁹⁶ On 12 April 2003, French and German authorities in the Mediterranean interdicted the French cargo vessel, the *Ville de Virgo*. The vessel was transporting 214 ultra-strong aluminium pipes weighing 22 metric tons, which could be used to construct advanced centrifuges for the production of highly enriched uranium, to North Korea. French and German authorities also detained a vessel carrying sodium cyanide to North Korea in early 2003 and in April 2003, Japanese officials asked the Hong Kong authorities to inspect a shipment of high-tech transformers to North Korea that could be used in the production of missiles and nuclear weapons. In August 2003, Taiwanese officials seized 150 barrels of phosphorus pentasulphide, which is used in the production of VX nerve gas, from the North Korean container ship, the *Be Gae Bong*. As far as narcotics are concerned, the Australian authorities arrested the crew, including a senior member of the ruling Korean Workers' Party, and impounded 125 kilograms of heroin from the North Korean ship, the *Pong Su*, in April 2003 (Richardson, 2004: 102-106).

⁹⁷ By 2000, North Korea was already estimated to be the world's largest missile exporter. Between 1987 and 1992, the CIA estimates that North Korea earned US\$580 million from missile deals alone (Park, 2000: 543).

relations with former Soviet bloc states, coupled with severe natural disasters beginning in 1995, exacerbated by years of official mismanagement of the agricultural sector,⁹⁸ hastened the collapse of the North Korean economy by the end of the 1990s. The death toll resulting from starvation and disease is numbered in the millions and set to rise providing that North Korea continues to lack the energy to heat and light its hospitals and the food to feed its people.⁹⁹ Furthermore, visitors to the country note the decaying infrastructure in terms of inactive factories and workers, a distinct lack of transportation, frequent electricity shortages and an absence of most consumer goods in the stores (Oh and Hassig, 1999: 287-289, 296-298; Brown, 1999: 127-129; McCormack, 2004: 97-98).¹⁰⁰ By the turn of the century it had become clear that Kim Jong Il's regime could not provide the most basic human needs without the support of foreign food aid (Kim, 2000: 162).¹⁰¹

Japan has repeatedly pledged foreign aid to Pyongyang in return for the cessation of North Korea's WMD programme, an end to spy ship activities, and the return of abducted Japanese citizens. The abductee issue has remained at the forefront of Japan's North Korea policy, since Kim Jong Il admitted that North Korean commandos ferried by spy ships to the Japanese mainland had captured Japanese citizens to be used to teach Japanese language and culture to North Korean spies (Uriu, 2003: 86-88). This highlights a further human rights violation by North Korea that contravenes interstate society norms. The question remains as to whether North Korea can be socialised into the interstate society through reform.

⁹⁸ It should be noted that North Korea's intensive farming practices during the Cold War destroyed natural ecosystems, such as forested hillsides, which could have lessened the impact of these natural disasters upon the people by limiting the extent of flooding in rural areas.

⁹⁹ By 2000, North Korea had the highest malnutrition rate in East Asia according to a special report by the World Food Programme and the U.N. Food and Agriculture Organization (Kim, 2001: 27).

¹⁰⁰ Economic statistics emanating from Pyongyang are unreliable, both because of the inefficiencies of the system and the desire to disguise the regimes problems. Nevertheless, the GDP is estimated to have fallen 5 percent per year since 1990, half of its GNP is debt, factories (outside the military sector) are said to be running at less than 30 percent capacity, and foreign trade has declined by over 55 percent (Oh and Hassig, 1999: 297).

¹⁰¹ The crisis has even affected North Korea's military forces, which reduced the number of exercises and are believed to have received significantly less military equipment in 1998 (Brown, 1999: 129).

Reform? The Possibilities of Socialization

As the primary, centralised North Korean economy collapsed over the course of the 1990s, so a secondary black market economy evolved amongst the people based on barter, illegal production, robbery and corruption,¹⁰² whilst a further elite or 'court' economy developed amongst the higher echelons of the party. Though there remains little left of the primary economy to reform, these secondary economies, which are based upon such capitalist economic principles as supply and demand pricing, are experiencing and inducing reform. In a sense, the government has lost control of the means of production and must do what it can to organise and regulate the secondary economies which now dominate North Korea's economy (Oh and Hassig, 1999: 289-291). Kim Jong Il has been left with little choice but to reform and adapt to the new economic realities of North Korea.

The reforms instigated to tackle North Korea's ongoing economic troubles may open the country up to foreign investment and encourage competition amongst domestic businesses.¹⁰³ Since 1995, farm workers have been allowed to keep surplus production, which they can sell or eat, after meeting state quotas. People's markets have also emerged as a trading venue throughout the country, enabling the sale of surplus food, manufactured goods, handicrafts and household goods. Even foreign investment projects are increasingly perceived to be a means of obtaining hard currency, particularly since the inauguration of the Hyundai-sponsored Mount Kumgang tourist project, which has brought South Korean sightseers to view this picturesque region of North Korea (Oh and Hassig, 1999: 291-294).¹⁰⁴ By 2001 the reform programme was

¹⁰² The military have always been heavily engaged in the operation of this secondary economy, selling products from military owned industries on the black market (Oh and Hassig, 1999: 290). The use of spy ships to transport shipments of amphetamines abroad could be said to be part of the army run sector of the economy. In this sense it may be possible that certain spy ship operations occur without the knowledge of the government in Pyongyang.

¹⁰³ Although, efforts at reform of the North Korean economy can be dated back to the early 1960s when local responsibility initiatives were encouraged to promote production and reduce bureaucratic interference, Pyongyang's constant meddling prevented any measurable change in business, industry and agricultural practice. It was not until the collapse of the food distribution system in 1995 that centralised government interference in the secondary economies began to wane (Oh and Hassig, 1999: 291-294).

¹⁰⁴ Even this enterprise has experienced hitches, when, for example, a South Korean tourist was arrested and deported for allegedly suggesting their North Korean tour guide defect (Kim, 2000: 161). Further

said to be advancing, with new significance attached to the field of information technology, construction work undertaken to limit the effects of drought and agricultural reorganization to improve food production (Ahn, 2002: 47-48).¹⁰⁵ In 2005, North Korea received \$1 billion in aid from South Korea and substantial energy and food aid from China. The Kaesong special economic zone also continued to develop with 4,100 North Koreans employed by 15 South Korean companies in 2005 and with hundreds more South Korean corporations interested in building factories in the economic zone (Woo, 2006: 51-52).

Yet, the depth and scope of economic reforms have been hindered by fears amongst the ruling oligarchy that greater integration with the global economy, whilst bringing much needed capital, would also allow Western ideas of capitalism and democracy to permeate into North Korea, thereby threatening the existence of the Pyongyang regime. The ideological impact that reforms¹⁰⁶ have had upon the country has necessitated tighter social control from the Pyongyang government which fears the societal instability that may result. Internal volatility, as much as external threats, may be the reasoning behind North Korea's continued insistence on a 'military-first policy' which ensures that financial and material resources are prioritised for the army rather than the people (Ahn, 2002: 47-48).¹⁰⁷ Pyongyang has, therefore, steered a middle course, instigating reforms where necessary, whilst upholding its iron rule over the people,

inter-Korean projects include the promotion of joint ventures, like the Kaesong industrial zone, whereby South Korea invests the capital and provides the technical know-how while North Korea supplies cheap labour (Kim, 2000: 161-162; Park, 2004: 146). However, the development of other economic zones, such as the Shinuiju Special District near the Chinese border, is doubtful, indicating the difficulties of the Pyongyang government in opening up areas of the country to foreign investment and influence (Ahn, 2003: 52-53).

¹⁰⁵ Additional reforms in 2002 and 2003 included: abolishing the rationing system; adjusting the foreign exchange rate to a realistic level so as to close the gap between official and black market rates; the introduction of younger, reform-minded ministers in the government; the issuing of government bonds designed to draw private money circulating in the people's markets back into government coffers; and preparations to adopt a market system, such as changes in management techniques and thinking (Ahn, 2003: 49-53; Park, 2004: 145-146).

¹⁰⁶ It is argued by some analysts of the Korean Peninsula that many of the so-called reforms are merely official acceptance of the current economic circumstances and the need for the people to adapt to them (Ahn, 2002: 47-48).

¹⁰⁷ Woo asserts that North Korean economic reforms are progressing, however, as Pyongyang attempts to combine aspects of both a market and a planned economy (Woo, 2006: 55). Whether Kim Jong Il's regime can develop a successful economy whilst retaining social control over the North Korean people remains to be seen.

obtaining hard cash through weapons and narcotics sales, and threatening foreign powers with its WMD programmes in return for the aid upon which North Korea relies.¹⁰⁸

Owing to violations of human rights, international law and isolationist policy, North Korea can be termed a barbarian state separate from the interstate society. Nonetheless, Kim Jong Il's willingness to initiate reform shows not only the necessity to transform aspects of North Korea's centralised economy, but also signals the possibility that North Korea could reconcile itself with aspects of the interstate society. In doing so, investment and cooperative opportunities may evolve with North Korea's neighbours that engender bonds of reciprocity and interdependence which might over time ease the tensions between Northeast Asian states caused by the stand off on the Korean peninsula, as well as diminish North Korea's reliance upon illicit trade. This is not to say that the reforms themselves have reached an evolved stage, rather that a process of reform has begun which will be difficult to reverse and could if nurtured lead to a fundamental transformation of the North Korean system. The decision of whether to engage or contain North Korea lies in the extent to which the interstate society believes it can trust Pyongyang, which in turn depends upon how a state comprehends the North Korean missile and WMD threats. Japan's foreign policy vis-à-vis North Korean spy ships will take into account the wider issues of WMD in the fourth chapter. The remainder of this chapter defines contemporary maritime terrorism and piracy.

¹⁰⁸ North Korea's fleet of spy ships have been instrumental in enabling Kim Jong Il to steer a middle course between reform and repression, by engaging in the illegal amphetamines trade, as well as ferrying North Korean spies to and from neighbouring countries and conducting surveillance missions to ascertain the intentions of North Korea's enemies.

3.2 Defining Contemporary Maritime Piracy and Terrorism

There are two reasons why the definitions of maritime terrorism and piracy are being considered together in this section.¹⁰⁹ First, whilst the intrusion of North Korean spy ships into Japanese waters is an issue located in the Northeast Asian interstate society, Japan has primarily responded to the issues of piracy and maritime terrorism in Southeast Asia. Second, the way in which international law has evolved in its approach to treating piracy and maritime terrorism needs to be outlined in order to contrast the two forms of maritime violence. At no point are the threats posed by these two distinct forms of maritime violence being conflated into a single threat as some have posited they should be (Luft and Korin, 2004: 61-71). Rather the argument here is that only by understanding how piracy and maritime terrorism differ, can their root causes be tackled.¹¹⁰

This section argues that both pirates and maritime terrorists do take advantage of inadequacies in and tensions between interstate institutions. Namely, both pirates and terrorists perpetrate attacks on ships on the high seas or in another state's sovereign territory, only to retreat within the sovereign boundaries of their own native state where foreign powers cannot legally enter. Such inadequacies of international law and tensions arising from a failure to police sovereign territories, hinder Japan's response to piracy and maritime terrorism. Nonetheless, resolving issues of international law and policing sovereign territory only enable the treatment of the symptoms of maritime violence and crime, not the causes. Understanding and combating the interconnected causes of maritime terrorism and piracy requires adopting a human security perspective, as discussed in the previous chapter. The shortcomings of international law and the issue of hot pursuit across sovereign borders are addressed first. Then the current configuration of maritime terrorism and piracy is outlined, followed by the

¹⁰⁹ The term 'terrorism' will be divided into global terror groups (infidels) and separatists (barbarians) later in this chapter. Maritime terrorism refers to any illegal act of politically motivated violence or crime. The different types of global terror groups and separatists will be examined in Chapter 6 of this thesis.

¹¹⁰ Henmi offers several reasons why piracy is distinct from maritime terrorism. First, unlike terrorists, pirates work for private ends. Second, pirates will target any ship in search of financial reward. Third, pirates are limited to a certain territory. Henmi concludes by noting that there is no evidence of any cooperation between pirates and terrorists (Henmi, 2005: 153-154).

interconnected causes of these two maritime security issues. Finally, attempts at reconciling international law are presented as evidence of how states and international organizations have sought to overcome piracy and maritime terrorism. The case studies in Chapters 5 and 6 then detail Japan's response to piracy and maritime terrorism respectively, arguing that whilst the strategies Japan has proposed have alleviated some of the symptoms of maritime violence and crime, the causes remain to be resolved.

3.2a The Limits of International Law – an Outdated Convention

Anarchy in the international system is regulated by states forming pacts or alliances, establishing international institutions, and through the construction of international law. Although such regulatory phenomena provide evidence that states do make what they can out of anarchy, rules governing the behaviour of states within an anarchic system also construct the boundaries in which states can act. In short, the establishment of laws in international society determines the dividing line between what is normal and what is abnormal behaviour amongst states.

International law defines maritime piracy specifically under Article 15 of the Convention of the High Seas (hereafter referred to as the Convention), formulated in 1958, and partially revised at the United Nations Conference on the Law of the Sea (UNCLOS) in 1982.¹¹¹ Article 101 of UNCLOS states that piracy consists of the following acts:

Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft.
Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;¹¹²
Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

¹¹¹ See Appendix I for all piracy related articles in UNCLOS. See also, Birnie 1987, for a historical account of the development of the law of the sea.

¹¹² Menefee points out that the seizure of a ship by passengers and/or crew could be construed as piracy according to clause 15-(a)-2. An act of piracy need not therefore require another ship to be present (Menefee, 1990: 60).

Any act of inciting or of intentionally facilitating an act described in subparagraph (a) or subparagraph (b) of this article.

This definition serves to constrain what states can do to counter the problems of maritime piracy and terrorism. First, by specifying that acts of piracy occur only on the high seas, the Convention distinguishes between acts of maritime violence that take place within the territorial waters of a littoral state,¹¹³ from those that transpire beyond. Maritime authorities from one state, such as Japan, must therefore honour the sovereign boundaries of other states and not intervene in another's territorial waters, even to pursue and apprehend a pirate ship (Mo, 2002: 347).¹¹⁴ Second, by failing to address the issue of the length of the seizure of a boat by pirates, the Convention does not differentiate between different kinds or levels of piratical activity that arise or refer to how different varieties of piracy may be linked. This hinders the development of an anti-piracy response that deals comprehensively with the roots of different kinds of piracy or the relationships between them. Finally, by classifying acts of piracy as being committed only for private gain, the Convention omits acts of maritime violence, such as the hijacking of a ship, crew or cargo at sea, port or at anchor, for political purposes or the use of a vessel in a terrorist incident (Ronzitti, 1990: 1-2). Japan lacks the legal foundations to respond to an act of terrorism beyond its own sovereign waters, however much such an act might impact upon the economic well-being of Japan or affect the lives of its nationals.¹¹⁵

¹¹³ The territorial waters of a state extend for 12 nautical miles beyond the shoreline of that state. However, a state's contiguous zone lies at 24 nautical miles from the shoreline. Though the contiguous zone is defined as part of the high seas, intervention in another state's contiguous zone is problematic and is usually avoided (Birnie, 1987: 172). A contiguous zone differs from an exclusive economic zone in that a state, which claims a contiguous zone, may enforce domestic laws when vessels either have violated the state's domestic law within the state's territorial waters or threaten to do so (http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm, accessed 3 May 2006).

¹¹⁴ See also, Villar, 1985: 28; Hyslop, 1989: 6-7; Pugh, 1993: 3-8; Vagg, 1995: 64; Chalk, 1998: 95, 103; Renwick and Abbott, 1999: 183; Herrmann, 2002: 444-446. Most accounts of maritime piracy take note of the definitional issue, particularly as concerns Clause 15 (a) which states that an act of piracy occurs on the high seas.

¹¹⁵ There is no basis in international law enabling states to board a terrorist vessel, even if intelligence suggests the vessel may undertake an act of terrorism. This is because terrorists are not judged to be *crimina juris gentium* (criminals of mankind) under either the 1982 LOS Convention or the 1988 SUA Convention (Ronzitti, 1990: 1-11). The SUA Treaty does, however, allow for a vessel to be boarded should that vessel endanger the navigational safety of other ships (Beckman, 2002: 329-330). The case of the *So San*, a vessel bound for Yemen from North Korea is instructive. The *So San*, which was suspected of transporting weapons of mass destruction, could only be boarded and inspected by a Spanish navy unit after it was ascertained that there was no registered ship with the name *So San* and because it was not

The legal definition of piracy framed in 1958 upholds the sovereignty of states and fails to account for the diversity of contemporary maritime crimes. Rather than enabling governments to deal with the problem of piracy and maritime violence in all its forms, the Convention constrains governments. In so doing, the Convention is outdated as it is no longer suited to tackle the problems at hand. The next section will illuminate in greater depth the extent to which the Convention inhibits Japan's response to contemporary piracy and maritime terrorism.

3.2b Sovereignty and Hot Pursuit

The sanctity of state sovereignty in international law, which prevents the authorities of a foreign state pursuing pirates into another state's waters, is a core problem in the fight against piracy, as the majority of piratical incidents occur close to shore, within the national boundaries of states.¹¹⁶ Modern pirates have changed significantly in their modus operandi when compared with their historical counterparts. Today, maritime criminals rely on current technology, such as fast, light boats, advanced radio and sonar equipment and military weaponry, to enable swift attacks on ships at berth or moving slowly through narrow sea-lanes, before the pirates retreat to a hideout on land. Because these pirates enter international waters briefly, if at all, they are difficult to apprehend and subsequently convict according to international law, a fact which pirates have taken advantage of (Pugh, 1993: 7, Frécon, 2002: 53-54, 78-80).

Although states are supposed to deal with acts of piracy that are committed within their own jurisdiction or by pirates who withdraw to that jurisdiction, not all states are willing

flying a flag denoting its nationality. For Spanish troops to have boarded the ship otherwise would have been illegal under international law. Though 15 Scud missiles with conventional warheads were discovered, the cargo was allowed to proceed to Yemen because the shipment could not be deemed illegal according to international law (Richardson, 2004: 100, 106-107). This incident encouraged the formulation of the PSI, which will be examined in Chapter 6.

¹¹⁶ Although not a case of piracy, the December 2001 pursuit and engagement of a North Korean spy ship into China's EEZ by JCG ships was illegal under international law. This case demonstrates that state organizations, the JCG in this instance, have ignored the tenets of international law when they felt it necessary to do so. This example will be addressed in detail in Chapter 4 of this thesis.

or able to do so.¹¹⁷ This may be because: members of the state apparatus are implicated in the act of piracy itself (Vagg, 1995: 68-69; Chalk, 1998: 94-95; Beckman, 2002: 331); the state does not have the resources to deal with the problem or the cost of doing so is prohibitive; the region in which the act occurred is one in which the state does not have adequate control; or the pirates are simply too difficult to catch (Mo, 2002: 350-352). States may also be unwilling to attempt to resolve the problem of piracy because it might transfer a maritime issue that mainly affects major trading nations to a domestic security problem. An increase in anti-piracy patrols may deter acts of piracy on international shipping, but force pirates to continue their criminal careers within their own nation states.¹¹⁸ Hence, Southeast Asian littoral countries may perceive anti-piracy measures as a means for maritime powers, such as the European Union, the US and Japan, to shift the problem of maritime crime that primarily affects their merchant shipping on to developing states in Southeast Asia. An anti-piracy response that comprehends the different types of maritime violence that are perpetrated and considers the development of alternative livelihoods for former pirates would mitigate the fears of Southeast Asian coastal states.

3.3 The Configuration of Contemporary Maritime Violence and Crime

Acts of contemporary maritime violence and crime encapsulate a myriad of criminal styles and motives. To limit the definition of a pirate as one who commits violence or robbery against ships on the high seas or to conflate maritime terrorism with piracy is to miss the subtleties of these phenomena. Pirate gangs and terrorist organizations differ in their size, weaponry, equipment and motivations, and these groups target vessels according to their capabilities. Yet, by adhering to the letter of international law, states fail to adopt comprehensive policies that deal with the root causes of contemporary

¹¹⁷ Kessler and Nyhart note that less-developed countries often are disinclined to enforce international laws that they perceive were fashioned by developed powers for their own benefit (Kessler & Nyhart in Evans and Murphy (eds.), 1978: 190-191). Indonesia, in particular, has been criticised for its failure to deal with piracy in its waters (Mukundan interview 22 April 2003).

¹¹⁸ A possible exception to this would be state-sponsored pirates.

maritime violence and crime. As Makinda has recognised, whilst states may view security in 'traditional' state-centric terms in the post-Cold War world, an alternative approach allows the analyst to understand security from the perspective of people (Makinda, 2001: 404-405). This is fundamental to studying a transnational issue, such as contemporary maritime piracy and terrorism, because those perpetrating the violence are non-state actors, the victims are ships belonging to the country of one state, usually flying the flag of another, with an international crew, and pirates and maritime terrorists transgress state boundaries freely.¹¹⁹ It may therefore be unhelpful to ask 'traditional' security questions, such as what motivates another state to attack or how can the aggression of a rival state be mitigated. Instead, to solve transnational security issues, like piracy and maritime terrorism, people-centred questions must be asked. These questions include who are pirates or terrorists, what are the different kinds of piracy or terrorism and what combination of causes has led people to pursue piracy or terrorism? These questions can be answered by adopting an English School approach that examines piracy and maritime terrorism from an interhuman or transnational perspective.

Yet, even those commentators who have differentiated between different kinds of piracy have done so from the perspective of the victim rather than the perpetrator. Chalk divides piracy into three categories: low-level armed robbery (LLAR), medium-level armed assault and robbery (MLAAR) and major criminal hijack (MCHJ). Low-level armed robbery refers to attacks mounted close to shore, whilst a ship is anchored or at port, with small high-speed craft manned by a lightly armed crew which remove on average between US\$5,000 and US\$15,000 in personal items and cash from the targeted vessel. Medium-level armed assault and robbery refers to theft that occurs on the high

¹¹⁹ The legal status of a vessel at sea that is the victim of a pirate or a terrorist attack is a complicated one. Though ships are under the jurisdiction of the flag they fly on the high seas (Ronzitti, 1990: 7-8), legal responsibility for the well being of the crew ultimately lies with both the crew's nation-state, as well as the shipowner. Furthermore, the cargo may belong to a party other than the shipowner. This is to say nothing of the authorities which might catch a pirate or a terrorist group or the nationalities of the pirates or terrorists captured. All these disparate groups must collaborate in the event of a pirate or terrorist attack. Establishing a framework for doing so has been hindered by the Convention, which specifies no coordinating body to draw these groups together in the event of a violent maritime incident. Yamada Yoshihiko notes that a dual-flagging system to confront this issue has been proposed, though he argues that Japanese ships should adopt a Japanese flag for maximum protection (Yamada, 2005: 48).

seas or in territorial waters by highly organised well-armed gangs prepared to kill or injure in the course of their raid. Major criminal hijack refers to the capture of vessels for the purpose of illegal trading. Boats used in this process of illegal trading are known as phantom ships as they have their identification documents altered or reregistered to give them a new identity. Major criminal hijacks are highly sophisticated operations involving transnational crime networks which make use of large numbers of trained agents equipped and prepared to use force (Chalk, 1998: 88-89). Chalk's classifications remain popular, as can be observed in Herrmann's use of them in his research (Herrmann, 2002: 442-443).

Abhyankar and Ellen both adopt a similar classification to Chalk, but add cases of maritime terrorism; identifying attacks, such as that of the *Achille Lauro*, whereby passengers have been held hostage by armed gangs who sought to realise political objectives (Ellen, 1997: 48-49; Abhyankar, 1998: 184-187). By contrast, Beckman measures various piracy types according to four factors: the type of weapons employed, the treatment of the crew, the value of the property stolen and the level of threat to the safety of maritime navigation. Hence, the more lethal the weaponry employed in an attack is, the worse the crew are treated, the greater the value of the property stolen and the level of threat to other vessels or the marine environment, the graver the pirate attack becomes (Beckman, 2002: 319-320). By focussing upon how much damage was done to the victims, each of these arrangements can tell us what kinds of piratical threat exist, as well as the weaponry, equipment and propensity for violence employed by the pirates. Because these classifications do not identify the kinds of pirates that perpetuate the attacks, the causes of piracy suggested by these commentators are general and not connected to particular types of pirates who perpetrate specific kinds of piracy. Therefore, an examination of the deeper causes of maritime violence and crime is avoided and consequently solutions to the problem remain elusive.

Yamada employs a further classification in his work: *Umi No Terorisumu* (Terrorism at Sea). He examines various acts of piracy and terrorism in terms of the groups perpetrating the act of maritime violence or crime. His categories are termed as follows: Robin-Hood style pirates, transnational criminal organizations, separatist groups, and

terrorists (Yamada, 2003: 96-106).¹²⁰ A further type of piracy mentioned by Yamada, but not separated into an individual category, is that of the participation of state personnel in piratical acts. One reason for the omission of official participation in piratical acts is that, while prevalent during the mid to late 1990s, the involvement of maritime officials and naval personnel in piratical acts has waned significantly as international conferences have paid more attention to the problem of piracy in general. After all, it is difficult for state representatives to attend an anti-piracy meeting, when members of their state's own coast guard, navy, or customs are implicated in acts of piracy. Nevertheless, a degree of official complicity is still alleged to occur in parts of Southeast Asia and so needs to be investigated separately from other kinds of piracy. The next five sections will examine each of these different types of piracy and maritime terrorism in turn to establish the current scope of the issue that policy makers in Asia face.

3.3a Robin Hood Style Piracy

“The piracy in the Malacca Straits is like Robin Hood. In return for food, the pirates share their plunder with the villagers. Because they blend in with the villagers, even the police can't touch them.” The words of Noel Chong, head of the IMB Piracy Reporting Centre, Kuala Lumpur – translated from Japanese by the author (Yamada, 2003: 160-161).

Robin Hood style pirates occupy a specific niche within contemporary maritime piracy. In the Malacca Straits, groups of up to around ten pirates use speedboats to approach their targets or board ships in port. The pirates tend to carry machetes rather than firearms and disguise their boats as fishing vessels to avoid detection. The same group may strike several vessels during the course of the same night. The victims are usually unaware of the attack until it is underway or even not until after the attack has happened and the pirates have fled. Returning to their villages, the pirates are protected by their fellow villagers who conspire to hide them in return for a share of the loot. Yet, the

¹²⁰ These classifications are echoed in an article appearing in the Asahi Shimbun by Stewart MacMillan entitled “nijuiseki no kaizoku wo torishimare” (Controlling 21st Century Piracy) (<http://www.asahi.com/international/aan/column/020403.html>, accessed on 9 March 2004).

modern-day pirates of the Malacca Straits contrast with the brigands of Sherwood Forest. Whilst the legendary Robin Hood stole from the rich and gave to the poor, the pirates of the Malacca Straits target weak trading vessels and fishing boats (Yamada, 2003: 160-164).

Even in the late 1980s, the Malacca Straits were the most piracy prone waterway in the world. However, the attacks on ships were said to be far less violent than they are today. A pirate from the Riau archipelago quoted in the 1988 edition of *Asia Week* proclaimed, “These shipowners are very rich. While they’re passing through the Straits we ask them for a donation. It’s like a toll. We don’t carry guns and we never injure anyone. We just accept whatever money they give us. If they have no money, we leave” (Hyslop, 1989: 12-13). Abhyankar also noted the tendency for attacks in Asian waters to be less violent during the 1990s (Abhyankar, 1998: 184). If the violence now attributable to Robin Hood style piracy is connected with their preference for weaker targets, then it may be that a rise in awareness amongst the international shipping industry concerning the dangers of piratical attack has led to larger, commercial vessels improving their security. Hence, the response of the international shipping community may have made the problem of piracy worse rather than better in terms of weaker boats, and therefore poorer seafarers who cannot afford the costs to protect themselves, being attacked.

The roots of piracy in the Malacca Straits are said to originate from colonial times when European navies began to dominate Southeast Asian kingdoms.¹²¹ Looting European ships was perceived as a form of resisting foreign rule and recapturing the wealth of their lost dominions. There therefore exists a culture of piracy in the Malacca Straits which perceives the robbery of wealthy foreign ships as a legitimate enterprise (Andaya and Andaya, 1982: 92-93, 130-133; Hyslop, 1989: 12; Yamada, 2003: 162-163).

¹²¹ For example, the Kingdom of Malacca was subjugated by Portugal in 1511 (Yamada, 2004: 162).

3.3b Transnational Criminal Organizations

Until 1989, little evidence pointed to the involvement of transnational criminal syndicates in piracy, though INTERPOL was investigating the possibility (Hyslop, 1989: 6). By 1995, however, international crime groups were conducting acts of piracy in East Asia (Yamada, 2003: 96). Furthermore, an increase in the number of ship hijackings from 16 in 2001 to 25 in 2002 highlights the growing interest of transnational criminal organizations in perpetrating acts of piracy (ICC-IMB Piracy Report 2002: 16, 23).¹²² Attacks on vessels by transnational criminal organizations differ in respect of other forms of piracy in their level of sophistication, as well as the equipment used and the level of violence employed.¹²³

The phantom ship phenomenon is often associated with transnational criminal syndicates.¹²⁴ A phantom ship is one whereby the vessel is hijacked, the original crew killed or disposed of (thrown overboard, set adrift or abandoned on a desert island), and the ship is repainted and given a new identity. It is reregistered on the basis of false information about the vessel's prior names, tonnages, dimensions and owners. The ship is given a new name, which is printed on the side of the ship. A phantom ship may change its identity several times over the years with each new cargo it acquires, making phantom ships notoriously hard to trace.¹²⁵ Phantom ships tend to be small bulk carriers

¹²² Despite a decrease in the number of hijackings in 2004 to a total of 11 hijackings, the figures rose again in 2005 to 23 hijackings suggesting an increase in transnational criminal piracy (ICC-IMB Piracy Report 2005: 10). It should be noted that separatist groups, terrorists or even corrupt maritime officials may have carried out these hijackings. However, transnational criminal groups are still always involved in hijackings on some level, whether it be trafficking pirated goods on the black market or selling on a hijacked ship.

¹²³ Contemporary pirates have become increasingly sophisticated over the years in response to new technology. Even in the 1980s, pirates employed radios and informers in receiving warehouses in order to target specific cargoes (Birnle, 1987: 173).

¹²⁴ Phantom ships and falsifying the documents of a vessel are not new phenomena. Hepburn records a case in 1880, whereby Herbert Rennie Smith bought a trading ship named *Ferret* and reported the ship had sunk. The name of the vessel was then changed to *India*, a cargo of coffee beans was bought in Santos Brazil and sold in Cape Town for 11,200 British pounds. The vessel was later discovered in Australia by Lloyds of London (Hepburn, 1994: 196).

¹²⁵ In September 1988, the *Dooyang Jade* disappeared with US\$7 million in cargo, later resurfaced as the *Bona Vista I*, was arrested in Singapore on May 28th 1992, over a dispute in ownership, as the *Jasamas II* and escaped to the Philippines where it sold its cargo of 4,200 tons of cashew nuts to The Far East General Feeds Corp. under the title of *Gina III*. The *Gina III* finally ran aground in a storm in Songhkla,

or twin deckers under Honduran, Panamanian, Belize or St. Vincent flags, of approximately ten to twenty years of age and poorly maintained. Phantom ships are owned by phantom companies and manned by crews that earn two or three times a normal seaman's wage. The cargoes of phantom ships are often high in value, in great demand and easily disposed of.¹²⁶ Alternatively, phantom ships are used for other illegal activities such as drug and people smuggling (Abhyankar, 1997: 58-59, 72; Ellen, 1997: 47).¹²⁷

Such a complex operation involves several well-coordinated groups in order to be conducted successfully. First, a command group is required to organise the hijacking. Second, a gang is needed to hijack the ship and its contents. A third party sells the cargo on the black market and a further unit commands the hijacked ship. The command group alters the ship's documents, name and repaints the vessel. Each group is independent of the others to ensure that if one group is captured the others can escape (Yamada, 2003: 98).

A degree of official complicity is often encountered in the case of a phantom ship. Low wages and a cultural acceptance of bribery are cited as reasons for the extent of official involvement with transnational criminal organizations in the Southeast Asian region (Tagliacozzo, 2001: 258). The pirate crew of the *Celtic Ranger* (previously the *Samudra Samrat*) were tipped off by corrupt local officials in Fengcheng and avoided capture by the maritime authorities, for example (Abhyankar, 1997: 67). In another case, stolen goods from a phantom ship were stored at an army base in Guanxi province until collected by gangsters. The criminal groups involved in these acts of piracy are often Chinese or of Chinese origin and belong to Cantonese, Shanghai or Fukien gangs which are controlled by a small number of highly experienced businesspeople in Hong Kong, Indonesia, the Philippines and Thailand. These syndicates have close links with government and allegedly one of Southeast Asia's royal families (Abhyankar, 1997: 67-

Thailand in October 1992 after its anchor had ripped out the town's power supply (Hepburn, 1994: 201-203).

¹²⁶ Prime cargoes include oil, gasoline, kerosene, palm oil and aluminium ingots (Yamada, 2003: 97-98).

¹²⁷ The use of phantom ships for drug running is reminiscent of yacht piracy in the Gulf of Mexico and Caribbean during the 1980s. The crew would usually be killed or disposed of and the yacht employed for transporting narcotics (Birnie, 1987: 174).

72; Mortishead, *The Times*, 3 May 2003: 49). The hijackings of the *Tenyu* and the *Alondra Rainbow*, two Japanese ships, in particular have influenced Japan's response to piracy in Southeast Asia. These cases will be examined in Chapter 5.

3.3c Official Complicity or State-Sponsored Piracy

From a historical point of view, the greater the official sanctions in place the more piracy will flourish. Whilst state sponsored piracy ended in 1856 with the signing of the Treaty of Paris (Birnie, 1987: 163), some officials in Southeast Asia, still, either engage in or turn a blind eye to acts of contemporary maritime piracy (Tagliacozzo, 2001: 265).¹²⁸ Though difficult to prove, Vagg indicates that the Indonesian military has been involved in attacks on shipping, pointing to the dominance of provincial officials and their potential to employ military personnel for illegal operations. The low salaries of military forces in Indonesia provide a motive for these individuals to engage in piratical acts (Vagg, 1995: 68-69). One instance of official complicity involving the Indonesian navy occurred on 17 March 2004, when an Indonesian naval patrol boat (*KAL YOUTEFA, KAL-I-502*) pirated the *Yayasan Tujuh*, a Malaysian general cargo vessel off Jayapura, Irian Jaya, Indonesia. After firing at the *Yayasan Tujuh* and forcing it to stop, naval officers beat up the Master and Third Officer, kidnapped them and demanded US\$5000 in ransom. The Master negotiated the ransom down to approximately half this amount with provisions (ICC-IMB Piracy Report third quarter 2004: 29).

Chinese officials have also been implicated in acts of piracy during the 1990s. In August 1992, Chinese armed security police harassed commercial ships in the waters around Hong Kong, seizing cargo and in one instance even hijacking a freighter (Pugh, 1993: 2). Attacks involving the Chinese People's Liberation Army continued between 1993 and 1995 (Menefee, 1996: 70; Menefee, 1997: 34-35). Furthermore, the case of the *Anna Sierra*, a ship that was hijacked in September 1995, its cargo (12,000 tons of

¹²⁸ In addition to the involvement of Chinese and Indonesian authorities in acts of piracy, the Thai government has also alleged that the Cambodian military have conducted acts of piracy (Watkin, *South China Morning Post*, 13 May 1998: 14).

sugar) stolen, the crew thrown overboard and the vessel itself later found in the Chinese port of Beihai under the title *Arctic Sea*, is suggestive of Chinese official complicity in piracy (Menefee, 1996: 72-73, 134; Yamada, 2003: 99). Despite capturing the pirates, Chinese officials refused to try them in a court of law, later returning them to their native Indonesia. The Chinese authorities also demanded US\$400,000 from the owner of the *Anna Sierra* for expenses and took part of the cargo instead when the owner refused to pay this sum. Similar incidents involving the Chinese authorities whereby captured pirates were repatriated without facing charges and extortionate fees for the return of pirate vessels, occurred again in 1998 with the hijacking of the *Petro Ranger* and *Tenyu*. Moreover, in the case of the *Tenyu* hijack, two of the repatriated Indonesians had been involved in the attack on the *Anna Sierra* three years previously, while nothing has been heard of the 14 man crew of the *Tenyu* since pirates seized the vessel. Since the *Tenyu* and *Petro Ranger* incidents and the stern criticism China received, the Chinese central government ordered a crackdown on acts of piracy. In 1999, the discovery of a small, pirated Thai tanker, the *Shamshantuai*, led to all the pirates arrested on board receiving death sentences (Yamada, 2003: 100, 114-125; Graham, 2006: 188-189).

It is difficult to ascertain whether the motivations behind acts of piracy involving Chinese officials during the 1990s were for personal profit or amounted to an assertion of Chinese jurisdictional claims (Pugh, 1993: 2-3; James, *International Herald Tribune*, 10 March 1994: 8). However, taking into account the territorial disputes in the region as well as Chinese naval expansion, an act of piracy in which the Chinese military or Coast Guard may be involved amounts to a show of force that makes regional opponents aware of Chinese power (Chalk, 1998: 93-94; Renwick and Abbott, 1999: 186-187). Furthermore, such piratical strikes can compel international shipping to avoid penetrating Chinese maritime boundaries, helping to secure these boundaries and enabling further extensions that might infringe upon the security and territorial claims of other nations (Calder, 1996).

A mix of condemnation at international piracy conferences and a stream of bad press have reduced instances of official complicity in piracy.¹²⁹ Still, it remains the case that many shipowners do not trust some Southeast Asian authorities and are therefore unwilling to report crimes against their ships (Gill, 1995: 1). This wariness of Southeast Asian officials is coupled with a perceived reluctance of the officials to treat the problem of piracy, even if they are not involved in a piratical incident (Ellen, 1995: 9). Considering that an investigation into a piratical incident can take days, costing the shipowner up to US\$25,000 in operating costs and potentially damaging the reputation of the shipping company, incidents are often not reported (Young and Valencia, 2003: 271). This undermines the efforts of the IMB in compiling statistical data that is used to ascertain the extent of the piracy problem and recent trends in maritime crime.

3.3d Global Terror Groups

Politically motivated maritime violence can be defined as: “any illegal act directed against ships, their passengers, cargo or crew, or against sea ports with the intent of directly or indirectly influencing a government or group of individuals” (Young and Valencia, 2003: 270). Such maritime violence would include cases of maritime robbery perpetrated by terrorists, for example the theft of nuclear materials for the purpose of producing a dirty bomb,¹³⁰ the use of vessels for terrorist action¹³¹ and complicity in

¹²⁹ It should be noted, however, that many Southeast Asian states brushed aside cases of piracy involving Chinese officials, eager not to disrupt economic ties with their powerful neighbour (Ellen, 1997: 54-55).

¹³⁰ Newspaper articles have made the association between terrorists and pirates, particularly as concerns the robbery of nuclear materials at sea, though the extent to which these reports can be corroborated is in doubt. The likelihood of nuclear material being stolen at sea is also questionable. Newspaper articles include: “Al Qaeda ‘responsible for piracy’”, *Japan Times*, Tuesday, 23 July 2002, “Terrorists as pirates”, *Japan Times*, Thursday 25 July 2002. A BBC communiqué on 24 July 2002 echoed the content of these articles. Further articles have appeared in the *South China Morning Post* (17 May 2003), *The New York Daily News* (21 September 2003), and the *Korea Herald* (5 March 2004).

¹³¹ The alleged use of a small boat laden with explosives in an attack upon the *Limburg*, a French owned supertanker, off the coast of Yemen is indicative of the kind of strike by a terrorist organization that could be termed an act of piracy. Henley and Stewart, *The Guardian*, 7 October 2002. In a similar attack, a dinghy carrying between 500 and 700 pounds of explosives struck the *USS Cole* on the morning of 12 October 2000, killing 17 US sailors and injuring a further 39. Again, links with the Al-Qaeda organization were presented (Bergen, 2004: 189-196; Clarke, 2004: 222-224). These cases will be examined in Chapter 6.

piratical acts by terrorist organizations.¹³² These examples constitute illegal acts under international law, thereby placing global terror groups outside the bounds of the interstate society. Global terror groups perpetrate such acts in order to destroy the interstate society in specific regions and replace the interstate society with alternative regional societies based on their own beliefs; such groups may therefore be termed infidels.

Since the September 11th attacks on the US mainland, fears have grown over a future attack utilising a vessel laden with explosives or a weapon of mass destruction to strike a major port.¹³³ In particular, Al Qaeda's possession of some 15 cargo vessels has raised alarm at the possibility of such a scenario. Incidents like the ramming of the French supertanker *Limburg* off the coast of Yemen highlight the dangers of contemporary maritime terrorism (Young and Valencia, 2003: 275). In fact, the danger of maritime terrorism has been present for some time.¹³⁴ For example, the hijacking of the *Achille Lauro* by members of the Palestinian Liberation Organization (PLO) in October 1985, led one observer to conclude:

The sea provides the perfect setting for a terrorist drama... [having] the ideal ingredients for a terrorist attack: an exciting and potentially hazardous situation, innocent people in a vulnerable position, and excellent communications (Parritt, 1991: 11).

Considering the ease with which a terrorist incident could be enacted, the rarity of major terrorist incidents at sea is revealing. One reason explaining this scarcity is that destroying a vessel in congested international sea-lanes may have unwanted

¹³² Nyhart and Kessler indicate four causes of maritime terrorism, "First, terrorists often seek publicity for their cause and an opportunity to expound their beliefs. Second, they often attack to extort funds, gain freedom for comrades, or effect policy changes. Third, they usually seek to intimidate the members and supporters of the government they oppose. Finally, terrorists sometimes attack simply to oppose the specific economic activity that the target performs" (Nyhart and Kessler in Evans and Murphy (eds.), 1978: 188).

¹³³ After 9/11, EU representatives stepped up discussions on maritime piracy fearing that one of their ports could be targeted (Herrmann, 2002: 448). The discovery of 750 tons of ammonium nitrate aboard a ship headed for Sudan coupled with threats by Group 272, a terrorist group in Southeast Asia, to destroy an oil tanker in the Malacca Straits highlights the possible dangers of politically motivated acts of violence (Becker, *New York Daily News*, 2003: 26).

¹³⁴ The historical nature of maritime terrorism is noted by Menefee, who mentions the seizure of the *Cagliari* in 1857 by Italian insurgents (Menefee, 1990: 58-59). Villar indicates cases of maritime terrorism in the early in 1980s in both the Philippines and Ireland, for which MNLF and the IRA were respectively responsible (Villar, 1990: 1985).

environmental and economic consequences. Ellen hypothesises that a similar incident to the *Exxon Valdez* in the Phillip Channel caused by an act of piracy or maritime terror could close down Singapore and disrupt fishing for many years (Ellen, 1997: 50). Whilst such a result may appear attractive to terrorist organizations intent on upsetting international trade, the interconnectivity between terrorist and criminal organizations that rely upon international waterways for illegal trade in arms, drugs and people, suggests that closing the Malacca Straits would impede the activities of terrorists and international criminals as much as it would legitimate shipping traffic. The environmental damage caused would also undermine support for terrorist or separatist organizations amongst coastal communities that depend upon fishing to sustain themselves.

3.3e Separatist Groups

A distinction should be made, however, between global terrorist movements, such as Al Qaeda, that conduct actions designed to cause massive loss of life and economic disruption in order to further their aims, and separatist movements that attempt to wrestle control of their region away from a central government, like Aceh rebels or Islamic separatist movements in the Southern Philippines. Although both global terrorists and regional separatist movements are interconnected, differentiating between their aims highlights alternative methods of pursuing their cause through acts of maritime violence. Furthermore, the roots of global terrorism and separatist movements are different, suggesting that governments treat each case differently. Finally, separatist groups aim to secure legitimacy amongst the interstate society that global terrorist organizations shun. Such separatist groups are therefore better described as barbarians.

Attacks by Aceh separatist groups upon small tankers transiting the Malacca Straits, is said to represent a 'new brand of piracy'. In these cases, Aceh rebels have allegedly fired automatic weapons at LPG tankers, gas tankers and oil tankers in attempts to board the vessels. The motive for such acts of 'political piracy' is to finance the Aceh secessionist cause by robbing the crews of these ships and holding them for ransom. Yet,

the fact that ships transporting sensitive cargoes that could explode when fired upon are being targeted raises fears of an impending ecological disaster in the Malacca Straits. Commenting on this new trend, Captain Potengal Mukundan, Director of the International Maritime Bureau, has said, "Political piracy threatens to rewrite the rules of engagement... Authorities need to recognize the motives behind these crimes and adopt new methods of tracking and deterring them" (www.iccwbo.org/ccs/news_archives/2003/piracy_ms.asp, accessed 25 September 2003; Kearney, *South China Morning Post*, 7 February 2004: 10).¹³⁵

On the mainland, breaking the deadlock between government forces and the Aceh separatist movement GAM has proved difficult. The strategies adopted by the Indonesian armed forces, the TNI (Tentara Nasional Indonesia), and the *brimoh* (police mobile brigade) can hardly be said to have won the battle of hearts and minds over the Aceh people. Past atrocities committed by Indonesian armed forces include murder, torture and rape, all of which have encouraged the resistance. Whilst the TNI and *brimoh* are now said to conduct their operations according to stringent legal standards, there is no way of independently verifying this. However, the fact that the GAM network is deeply embedded into Aceh society, allowing them to operate freely within local communities, makes the job of the TNI to separate GAM supporters from the local population a difficult one. Demanding that 'loyalty pledges' be taken by villagers to secure their allegiance to the central Indonesian authorities has not made the task of distinguishing between the enemy and ordinary Aceh people any easier for the soldiers and police on the ground (Aspinall, 2003: 23-24; Budiardjo, 2003: 25-26; Taylor, 2003: 364-367).

Nevertheless, the Aceh conflict appears to have ended with the signing of a peace deal in the aftermath of the 26 December 2004 tsunami. The tidal wave devastated the northern Aceh coastline and over 220,000 Indonesians were killed or are missing. The

¹³⁵ Although Captain Mukundan has referred to 'political piracy', the argument in this thesis is that such a category is confusing for two reasons. First, according to international law, piracy is an illegal act perpetrated for private not political ends. Second, the term 'political piracy' suggests conflating politically motivated acts of maritime violence and crime with piracy. These two phenomena have different causes and therefore should be treated separately. Instead, the categories of barbarian, infidel and pirate are preferred in this thesis.

details of the peace accord included the return of GAM weapons, amnesty for GAM members, the withdrawal of TNI troops from Aceh, the creation of a truth and reconciliation commission, the establishment of an Aceh monitoring mission by the EU and ASEAN and the foundation of legitimate Aceh-based political parties. Despite encouraging signs that the peace will hold, abandoning the secessionist struggle in favour of a civilian life may be difficult for former GAM members. As the surviving population of the ravaged Aceh region struggle to rebuild their communities, the lure of quick financial gains through criminal activities, such as piracy, may prove to be irresistible. Furthermore, the Indonesian parliament has shown some resistance to the setting up of political parties in Aceh (*BBC News Online*, <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/asia-pacific/4561922.stm>, accessed on 25 June 2006). Nonetheless, the reconciliation between GAM and the Indonesian government indicates the potential to bring barbarian groups back into the fold of the interstate society through diplomacy.

Rebel groups in the southern Philippines have also been involved in acts of maritime violence and crime. The Moro National Liberation Front (MNLF), which aims to create a Muslim state in the southern Philippines, has been implicated in attacks on shipping since the 1970s. On 26 September 1975, members of the group hijacked the cargo vessel *Suehiro Maru* and demanded US\$133,000 for the release of the ship and its crew. In 1978, the MNLF began targeting inter-island ferries. Following a cease-fire between the Filipino government and the MNLF in 1996, splinter organizations, such as the Moro Islamic Liberation Front (MILF) and Abu Sayyaf have continued to target shipping to further their political aims (Menefee, 1996: 82-83; Menefee, 1997: 35-36). Advanced weapons, including M16s and rocket-propelled grenades, retrieved from pirates captured off the Sabah coast in Malaysia by the Royal Malaysian Marine Police also suggests a link with MILF (Renwick and Abbott, 1999).¹³⁶

¹³⁶ Interviews with the captured pirates could not confirm nor deny the connection between the weaponry they acquired and the MILF. Members of the MILF have also fired upon ships at port and the IMB has also alleged that the MILF and the Abu Sayyaf Group (ASG), a terrorist group in the region, have instigated further strikes (Renwick and Abbott, 1999).

In early 2006, MILF renewed peace talks with the Philippine government centring on the creation of a Muslim homeland and the restoration of former conflict zones. More progress is needed to determine how the region will be governed and MILF's 12,000 strong rebel force be disarmed. Furthermore, MILF has had extensive links to Al Qaeda which has provided funding and dispatched specialists in terrorism tactics to train the Filipino rebels, as well as members of other regional terrorist movements, such as Jemaah Islamiya, at MILF camps in Mindanao, in the southern Philippines. Nonetheless, MILF has tried to distance itself from Al Qaeda since the 9/11 attacks in order to further their aims to create an Islamic state through negotiation. This decision is linked to two factors. First, rebels and Filipino government officials alike believe that if MILF maintains its links with Al Qaeda, the peace talks will be jeopardised and result in an extensive campaign to rout MILF. Second, the Arroyo administration in Manila has received substantial financial support and training from the US for the Philippine armed forces (AFP) in the fight against the Abu Sayyaf Group (ASG), which has been labelled a terrorist organization.¹³⁷ This US aid has strengthened the AFP to the extent that an anti-MILF military campaign would likely succeed (Abuza, 2003: 46-48, 95-99, 159, 169, 202-212).¹³⁸

The key to the peace talks with secessionist groups in Aceh and Mindanao lies in how these groups are defined. Both GAM and MILF have eschewed links with global terrorist movements since 9/11, thereby preserving their ability to negotiate with the Indonesian and Filipino governments respectively. From an English School perspective,

¹³⁷ Factionalism within the ASG combined with the US-trained AFP campaign against the Filipino terrorist organization have disrupted ASG operations and commitment to build an Islamic state. It is questionable as to whether or not the ASG can mount significant terrorist attacks. Instead it appears that the ASG has transformed from an infidel or barbarian group into a criminal organization that specializes in kidnap and ransom activities. It is further alleged that the ASG has paid off military personnel and politicians in order to conduct its illegal operations (Abuza, 2003: 111-114, 207-208). That said, in February 2003, the ASG did mount the largest terrorist attack in the Philippines to date, bombing a passenger ferry in Manila Bay, the Superferry 14, which killed over 100 people (*BBC news online*, <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/asia-pacific/1695576.stm>, accessed on 25 July 2006).

¹³⁸ For more on the conflict in the southern Philippines, see also, *BBC news online*, <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/asia-pacific/1695576.stm>, <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/asia-pacific/3023013.stm>, <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/asia-pacific/4684500.stm>, <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/asia-pacific/4692076.stm>, accessed 25 July 2006.

the terms barbarian, to denote secessionist groups in this instance,¹³⁹ and infidel, to designate organizations that seek the overthrow of the interstate society and cannot be bargained with, are useful as they delineate whether states confront a particular outlaw group with military (coercive) or diplomatic (calculation) means or a mixture of both. Barbarian groups also can understand from these labels that their actions and associations will determine how members of the interstate society treat them.¹⁴⁰ In this sense, to paraphrase Wendt, anarchy is what barbarians make of it.

As far as maritime security is concerned, hostilities between government forces and separatist movements do not stop at the water's edge. The seas surrounding a war-torn region are rife with economic and political opportunities for secessionist groups to further their aims. It is therefore important to note the effect of zones of conflict upon maritime crime (Menefee, 1996: 132), or rather to understand a zone of conflict as encompassing both land and sea. After all, breakaway regions include maritime jurisdictions, which must be secured by political or military means. Acts of maritime crime involving separatist organizations are means of demonstrating authority, albeit of an illegitimate kind, over littoral waters. The fishing communities on the coasts of Aceh and the Southern Philippines are particularly attentive to which group controls the seas upon which the population depends for their livelihoods.

3.4 Interconnected causes of contemporary maritime violence and crime

Different forms of maritime crime and violence, be they piracy, terrorism, or smuggling, are interconnected and therefore demand coordinated national, regional and

¹³⁹ The term barbarian has also been employed to describe North Korea. The advantage of using the terms barbarian, infidel and pirate is that they can describe states in the interstate society, as well as groups and organizations in the transnational and interhuman societies.

¹⁴⁰ The Philippines President Gloria Macapagal Arroyo has threatened MILF that if it did not cease attacks on civilians, the secessionist movement would be labeled a terrorist group (*BBC news online*, <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/asia-pacific/3023013.stm>, accessed on 25 July, 2006). On other occasions, Arroyo has fought to keep MILF off the UN and US terrorist lists (Abuza, 2003: 99). This is indicative of how states use labels to determine the parameters of political debate in the domestic and international realms.

international responses to deal with them (Menefee, 1997: 29). To an extent, the conditions that give rise to piracy and politically motivated maritime violence and that allow them to thrive are linked (Young and Valencia, 2003: 276). For example, Thailand's central position in the international drugs trade is due in part to a culture of money laundering and corruption that benefits transnational criminal organizations as well as separatists and terrorist groups.¹⁴¹ Nevertheless, whilst certain causes may encourage piracy, separatism and maritime terrorism in general, the different kinds of pirate groups, separatists and terrorist organizations listed above are influenced by some conditions over others or in different ways. Hence, there is no blanket treatment for the problem of contemporary piracy and politically motivated maritime violence.

Vagg has proposed a number of causes of piracy. In particular, he points to three main causes: economic dislocation, recognition of piracy as a cultural possibility, and opportunity. In addition, Vagg cites official corruption as engendering piracy. Most analysts of maritime crime have accepted these causes, though official corruption can be expanded as a division to include political instability and ineffective enforcement (Young and Valencia, 2003: 276). More research needs to be completed so that these causes can be fully understood (Johnson and Pladdet, 2003: 2, 8). Finally, the political motivations of terrorist and separatist movements, coupled with the rise of Islamic Fundamentalism can also be construed as bringing about acts of maritime terrorism. The general causes of piracy will be examined before discussing how these causes affect the different kinds of maritime violence and robbery.

3.4a Economic Causes

Vagg stresses economic dislocation as the most significant cause of piracy.¹⁴² In his opinion, migration into developing areas that cannot sustain a large influx of people

¹⁴¹ In fact, Aspinall argues that in the case of the rebel group GAM in Aceh, the separatists and the criminals are often hard to tell apart, if they are not in fact the same group (Aspinall, 2003: 24).

¹⁴² A shipping consultant based in Kuala Lumpur, noted the significance of economic causes of piracy, when he asserted that eradicating maritime crime in Indonesian waters is "almost a mission impossible... you have more than 200 million people living in poverty next to the world's richest commercial shipping lane" (Barling, 2003: 12).

looking for employment, where wages remain low as the cost of living rises, forces individuals to search for alternative means of sustaining themselves (Vagg, 1995: 65-66). Vagg is supported by Renwick and Abbott's account of developmental dislocation in Batam, Indonesia. They note the increasing crime levels around Batam as living costs rise, wages remain low and employment is scarce. Indicative of this trend were the successes of the Indonesian authorities in uncovering 57 smuggling rings in Batam between 1991 and 1992 (Renwick and Abbott, 1999: 192). The 1997 Asian Economic Crisis exacerbated the gap between the rich and poor in Southeast Asia, driving squatters in coastal neighbourhoods to engage in piracy, as well as reducing funds for anti-piracy patrols and prompting more maritime officials to accept bribes in return for overlooking acts of piracy (Frécon, 2002: 65-66; Liss, 2003: 57-59).¹⁴³

Environmental issues are also tied to the economic causes of piracy. Damage to roughly 80 percent of Indonesia's coral reefs has had a negative impact on sea life, decreasing fish stocks. Indonesia's fishermen from poor coastal communities, who also pay higher oil prices and face competition from larger and more advanced commercial boats and foreign poachers, have therefore turned to maritime crime as a means of survival either by hiring themselves out to pirate gangs or by staging their own attacks. The booty from these acts of piracy is often used to fund the pirates' village (Liss, 2003: 60-62; McCawley, *Wall Street Journal*, 26 May 2004: 1).

Whilst economic factors can elucidate a person's motivations for pursuing piracy, they do not specify how. This is a significant question as the emergence of pirate gangs and networks may help to explain the interconnectivity between the various types of piracy. Vagg does mention people needing 'necessary skills', such as handling a boat, using firearms, or scaling a bamboo pole to reach the deck of a ship, in order to be pirates (Vagg, 1995: 66). This then implies the need for recruiting and training. If this is the case then it becomes necessary to ask where pirates are recruited and who trains them. Answering these questions can begin to unravel the complexity of pirate networks.

¹⁴³ Uban, a former pirate originating from East Timor, described how all the pirates he knew on the island of Batam came from poor villages, were unemployed, and became pirates in order to survive (Frécon, 2002: 63).

3.4b Cultural Acceptance of Piracy

A cultural acceptance of piracy as a legitimate enterprise (Wright, 1976: 26; Pugh, 1993: 2-3; Vagg, 1995: 67-68) may provide an answer as to how and where pirates are recruited and trained. In this instance, pirates are recruited and trained by pirate groups that have existed for generations. The norms of certain coastal communities in Southeast Asia condone, if not encourage, individuals to pursue piracy as a means of employment. Menefee mentions the existence of “pirate societies” that are “predisposed to maritime crime” and for whom piracy is “an inherited and unquestioned avocation”. Pirate societies are insular in nature, maritime-orientated, traditionally independent from or resistant to central authority, use firearms and other weapons, and generally prone to glorify violence. Hence, changing cultural traits associated with piratical activity held by certain maritime societies may be necessary to curb the problem of contemporary piracy (Menefee, 1996: 132; Frécon, 2002: 45-51).

An alternative explanation may be that organised crime groups employ and drill pirates to steal from ships. As discussed in the section on Transnational Criminal Organizations, the number of different groups required for the successful execution of a ‘phantom ship’ operation indicates that transnational crime groups need to hire an array of skilled personnel: armed bands to steal a ship, a command group to coordinate an attack, people to sell the merchandise on the black market, navigators to control and steer the vessel, as well as a gang to repaint the ship. There may even be a means for individuals engaged in maritime crime to develop their skills and graduate to more advanced forms of piracy. Menefee states that individuals engaged in attacks against Vietnamese boat people graduated to hijack ships (Menefee, 1996: 135).

3.4c Opportunity

A third cause of piracy: opportunity, offers some explanation as to why certain bodies of water are more susceptible to piracy than are others. Modern-day pirates rely on certain factors, such as fast boats to catch slower, less manoeuvrable container ships, in shallow water near to shore where an escape can be made. The geographical features of parts of Southeast Asia: the narrow Malacca Straits, the Riau archipelago off the coast of Singapore and the waters of the Southern Philippines, provide an ideal environment for pirates to strike quickly and retreat to a sanctuary on land. Furthermore, as these routes become congested due to the amount of shipping passing through them, vessels that have to reduce speed in order to navigate the treacherous shoals and sandbanks become increasingly vulnerable to pirate attacks. This is especially true of the Malacca Straits which provide mariners with the fastest passage from the Indian Ocean to the Far East (Pugh, 1993: 9; Vagg, 1995: 66-67; Menefee, 1996: 131; Chalk, 1998: 91-92; Renwick and Abbott, 1999: 190-191).

3.4d Lack of government control and enforcement capabilities

A lack of government control over the permeability of the borders of their own state, as well as over certain regions within their country, create conditions in which maritime violence and robbery can flourish. A lack of policing around Indonesian shores, in particular, allows criminal syndicates and separatists to operate unchecked.¹⁴⁴ The causes of the failure to enforce the will of the Indonesian government in parts of the state are due to a lack of manpower and equipment, as well as official corruption (Tagliacozzo, 2001: 256-260). Since the Asian financial crisis of 1997, fewer resources have been allocated to finance the police, customs and coast guard in their fight against crime and salaries have remained low. Poor pay has in turn encouraged corruption

¹⁴⁴ The ICC International Maritime Bureau describes the following coastal areas of Indonesia as piracy prone: Aceh, Adang Bay, off Anambas/Natuna Island, Belawan, Balikpapan, Bontang, Gaspar/Bar/Leplia Straits, North Sumatra, Pulau Laut and Tanjung Priok (Jakarta) (ICC-IMB Piracy Report 2005: 15). In the first three months of 2006, the Gaspar/Leplia Straits and Tanjung Priok (Jakarta) were listed as piracy prone areas (ICC-IMB Piracy Report 1st Quarter 2006: 13). Indonesia is not the sole Southeast Asian state that is unable to control parts of its territory and people, Cambodia, for example, is said to be a haven for criminal groups, whilst the Thai-Myanmar border is notorious for arms smuggling (Tagliacozzo, 2001: 258-259).

amongst law enforcement officers as a means of inflating their income. A dearth of resources coupled with official graft have allowed both transnational crime syndicates and terrorist organizations to flourish in Indonesia (Sullivan, *Houston Chronicle*, 13 May 2001: 31).

The Indonesian government seems reluctant to tackle piracy against international shipping at a time when Indonesia still faces internal problems (Valencia, *The Washington Times*, 4 June 2001: A12). By viewing the problem of maritime crime as affecting other countries' vessels, the administration in Jakarta fails to comprehend how maritime violence and robbery is not just an effect of Indonesia's disintegration, but also a cause. Providing a haven for gangsters and terrorists enables a criminal culture to evolve in which government authorities gradually lose their relevance. A rise in cases of lynching in Indonesia are indicative of the people taking matters into their own hands, but this engenders mob rule that further undercuts the legitimacy of the central government (Brown, 2004: 24-25). Indonesia is caught in a vicious circle whereby the government lacks the funds to fight crime and terrorism that undermine the legitimacy of the state and appropriate resources or prevent them from reaching the central authorities. Perceiving various types of violence and crime as interconnected is therefore essential to preserving the integrity of the Indonesian state.

3.4c Separatist movements and Islamic Fundamentalism

A distinct cause of politically motivated maritime violence and crime lies in the nature of the terrorist or separatist movement itself. A terrorist or separatist movement has politically motivated goals that encourage members to attack targets, including ships, either to finance the movement itself, draw attention to the organization's struggle, or because a maritime area is located within a zone of conflict. Political objectives are achieved either through a terrorist event, such as striking the *Limburg* with a speed boat laden with explosives, or by stealing or taking hostages as other pirates would.

Nonetheless, many of the factors stimulating piracy, such as unfavourable economic conditions and high unemployment in some Southeast Asian states, provide recruits both for terrorist cells and separatist groups. The same economic circumstances coupled with corrupt central governments feeds Islamic fundamentalist movements that support terrorist organizations. Failure on the part of central governments to adequately provide for their citizen's education has enabled the same Islamic fundamentalist movements to establish Islamic schools that teach a strict Wahhabist form of Islam and furnishes new initiates into terrorist organizations. The terrorist groups are also connected through personal contacts stemming from participation in the Mujaheddin in the Afghan war, which allows resources to be shared amongst organizations, joint training to be conducted, weapons to be procured and assistance in money-laundering and financial transfers. Individually weak terrorist groups in Southeast Asia benefit from the network that has been established between them. Al Qaeda are said to be at the heart of this network having set out to establish a new base of operations in the aftermath of US attacks on Afghanistan which ousted the Taliban government (Bergen, 2004: 221-223; Clarke, 2004: 233; Abuza, 2002: 427-434, 446). Hence, the rise of terrorist groups and separatist movements in Southeast Asia are tied to the same factors which cause maritime crime.

3.5 Tackling the Interconnected Causes of Maritime Violence and Crime

A combination of economic factors, culture, geography and a lack of government control combine to cause various types and levels of contemporary maritime violence and crime. However, the separation of different causes of piracy and politically motivated maritime violence is artificial. In fact, causes combine in different ways to encourage the various forms of maritime violence and crime. For example, unfavourable economic conditions compel poor fishermen in coastal towns in Southeast Asia to seek alternative sources of income. A cultural acceptance of piracy within the community coupled with geographical factors makes maritime crime a possibility.

These factors have primarily stimulated Robin Hood pirates in the Malacca Straits. These same conditions provide transnational criminal syndicates, terrorists and separatist organizations with recruits, whilst a lack of government control enables these groups to thrive.

Solving the problem of piracy in Southeast Asian states requires comprehensive policies that deal with the root causes of maritime violence and crime. Whilst experts emphasise the need for international cooperation amongst police forces and an amelioration of justice systems in Southeast Asian countries to deal with major criminal organizations (Mukundan interview, 22 April 2003), this does not address the economic and cultural issues that create a favourable environment for crime. Preventing acts of maritime crime and violence will mean improving the economies and environmental resources of coastal areas, so that poverty-stricken citizens have greater opportunities for legitimate employment.

An up-to-date international legal convention that comprehends the complexities and interconnected nature of contemporary maritime violence and crime is required in order to construct a comprehensive response. In light of the above discussion on the roots and actualities of contemporary maritime violence and crime, the reluctance of Southeast Asian states to modify the existing international legislation is telling. The question then is why have states not revised the Convention. Is it because states have not perceived the various kinds of piracy that exist or because issues of sovereignty that lie at the heart of the treaty remain as important today as they did in 1958?

3.6 Redefining Contemporary Piracy and Maritime Terrorism

The UNCLOS Convention fails to define the complex problem of contemporary maritime piracy. However, the Convention itself can hardly be termed 'contemporary'. Formulated in 1958 and only slightly revised in 1982, the Convention is dated and therefore could be amended. The Vienna Convention on Treaties necessitates that a

treaty be reworked should its meaning become ambiguous, so that the treaty may be more effective. This is on the proviso that a revised treaty does not undermine the objectives for which the treaty was first established (Birnie, 1987: 180-181). International law requires that states cooperate to confront common issues or problems concerning the usage of the seas (Brittin, 1989: 165). Hence, states are actually legally bound to update the Convention to bring it in line with current developments in piracy.

3.6a Convention for the Suppression of Acts Against the Safety of International Maritime Navigation

Countries that ratify the 1988 Convention for the Suppression of Acts Against the Safety of International Maritime Navigation (SUA) may circumvent the deficiencies of the UNCLOS Convention's definition of piracy. The specific clauses of the SUA Convention concerned with piracy and maritime violence state those offences whereby a person illegally and deliberately:

seizes or exercises control over a ship by force or threat thereof or any other form of intimidation, or
performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship (Beckman, 2002: 321).

There are five advantages of employing the 1988 SUA Convention as a tool to suppress maritime violence and crime. First, even attempted acts against shipping that threaten the safe navigation of vessels are included in the articles. Second, the SUA Convention applies wherever an act that undermines the safe navigation of a ship occurs, including within the territorial waters of a signatory state to the SUA Convention. Third, states that have ratified the SUA Convention are required to detain alleged offenders found within their territory and either extradite or prosecute them. Fourth, the treaty facilitates extradition procedures and court proceedings even in the absence of a bilateral agreement. Finally, signatories of the SUA Convention are obliged to cooperate with one another concerning any offences committed that are outlined in the SUA Convention (Treves, 1990: 71; Menefee, 1996: 9; Menefee, 1997: 38-42; Beckman, 2002: 329-330).

The drawback of this treaty, as Mukundan points out, is that states in Southeast Asia are not party to the SUA Convention. Therefore, this treaty has no impact in the world's most piracy-prone region (Mukundan, interview, 22 April 2003). Southeast Asian states fear that signing the SUA Convention may allow the navies of foreign powers to encroach upon their sovereign territory in the pursuit of pirates, separatists and terrorists. It has been argued that foreign intervention in the sovereign waters of newly independent Southeast Asian states that have thrown off the yoke of colonialism would undermine popular support for the government and wound national pride. Furthermore, outside intercession in the domestic waters of a state is problematic because of the maritime territorial disputes in Southeast Asia which raise doubts about the intentions of rival powers when pursuing pirates.¹⁴⁵

Young and Valencia therefore propose that by conflating piracy and terrorism, dominant maritime powers, such as the United States, can garner support from Southeast Asian governments eager to suppress separatist groups in their states. However, more diplomatic efforts will be required to assuage the fears of Southeast Asian states as regards American regional ambitions, especially considering the sensitive nature of US involvement in Afghanistan and Iraq, as well as America's newly established alliance with India, which includes cooperative piracy patrols in the Indian Ocean and Malacca Straits (Young and Valencia, 2003: 277-278). Until the ambitions of Great Powers in the region are ascertained, attempting to combine piracy and terrorism as a single issue, as Young and Valencia suggest, will not promote the adoption of the SUA Treaty amongst Southeast Asian states. Moreover, whilst merging the issues of terrorism and piracy may have political benefits, failing to distinguish between the two problems means that the distinct causes of different types of piracy and terrorism are not treated. This is precisely the accusation that was levelled at Article 101 of UNCLOS and why piracy, separatism and terrorism are examined separately in this thesis.

¹⁴⁵ Since the unilateral NATO strikes in Kosovo, less powerful states view sovereignty as their last line of defence against bullying by more powerful states (Valencia, *The Washington Times*, 4 June 2001: A12).

3.6b Working Definitions

As the SUA Convention has not been widely accepted by Southeast Asian states, so it is necessary to examine how alternative definitions of contemporary maritime violence might address the deficiencies of UNCLOS. The International Maritime Bureau, for example, offers a more comprehensive interpretation of contemporary piracy:

an act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act (ICC-IMB Piracy Report 2002: 3).

This definition covers actual and attempted attacks on ships regardless of where the act occurs and includes any act of maritime terrorism, except a case which does not require a ship to be boarded as in the targeting of the *Limburg* or *USS Cole*. The IMB's definition of contemporary maritime piracy is particularly significant because it is employed to determine reported acts of piracy that the organization's Piracy Reporting Centre in Kuala Lumpur has been established to catalogue. The weekly accounts published on the Commercial Crime Service's website by the Piracy Reporting Centre provide up-to-date, relevant information, such as recent piratical trends and current piracy prone areas. By logging on to this website persons involved in the maritime industry can determine the level of threat to their ships from pirates, who, unlike states, make no distinction between territorial and international waters when conducting their activities.

Whilst the IMB's inclusive definition of maritime piracy is useful for compiling statistics that detail the actual condition of piracy worldwide, it has no legal force behind it. An attempt to bridge the gap between international law and the current piracy problem was proposed at the International Maritime Organization's 74th meeting of the Maritime Safety Committee where a draft Code of Practice was established.¹⁴⁶ The draft Code of Practice distinguishes between an act of piracy as defined by the Convention (Article 101) and armed robbery against ships, which "means any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of

¹⁴⁶ The IMO's 74th meeting of the Maritime Safety Committee occurred between 30 May and 8 June 2001. For details, see www.imo.org/home.asp, accessed 26 October 2005.

‘piracy’, directed against a ship or against persons or property on board such ship, within a state’s jurisdiction over such offences” (ICC-IMB Piracy Report 2002: 3). Because agreements between states focus upon the UNCLOS definition of piracy, the IMO’s separation of piracy versus armed robbery against ships significantly avoids the same entanglement with legal terminology that the IMB definition has encountered (Renwick and Abbott, 1999: 192, 196), whilst calling attention to the gap between international legal convention and transnational criminal reality.¹⁴⁷ The definition of piracy and armed robbery against ships proposed by the IMO, therefore, provides a significant alternative to Article 101 of the Convention.

Following negotiations initiated by Japan at the ‘Asia Cooperation Conference on Combating Piracy and Armed Robbery against Ships’ held in Tokyo in October 2001, involving 16 Asian states,¹⁴⁸ the IMO’s definition of maritime piracy and armed robbery was adopted. Southeast Asian states now acknowledge that instances of armed robbery against ships occur in their sovereign waters and are thereby encouraged to tackle these crimes (Umezawa, http://www.soc.nii.ac.jp/jsil/annual_documents/2003/autumn/houkoku-abstr/Panel%20C4%20Umezawa%20paper.pdf, accessed 20 December 2005). An in depth examination of how Japan’s efforts have led to this development will be detailed in Chapter 5.

¹⁴⁷ This is not to say that the IMO definition of piracy and armed robbery against ships has been universally welcomed. Indonesian authorities, for example, argue that statistics for piracy presented by the IMO are too high as they fail to recognise insurance scams on the part of the shipowner or theft by the crew (*Ports World*, 2003: 18).

¹⁴⁸ The states involved in the ‘Asia Cooperation Conference on Combating Piracy and Armed Robbery against Ships’ included the ten ASEAN countries, as well as India, Sri Lanka, Bangladesh, South Korea, China and Japan (<http://www.mofa.go.jp/mofaj/gaiko/pirate/index.html>, accessed on 19 December 2005).

3.7 Conclusion

The United Nations Convention of the High Seas, ratified in 1958 and partly revised in 1982, is out of touch with the realities of Southeast Asian maritime crime and violence. No provision is given in the treaty enabling states to pursue pirates across maritime boundaries despite the fact that most piratical incidents occur in sovereign waters. Furthermore, UNCLOS does not address the problem of politically motivated acts of maritime violence. Yet, this Convention is employed as the framework for negotiations between states attempting to resolve the issue of contemporary maritime violence and crime. The result is that states concerned with the issues of piracy and terrorism are limited as to how they perceive these problems and how they can actually respond. Although alternative definitions of contemporary piracy and maritime terrorism exist that fully comprehend the complexity and interconnectivity of the problem, these have no basis in law, or in the case of the SUA Treaty, have yet to be endorsed by most Southeast Asian states.

The sanctity of state sovereignty and territoriality lie at the nucleus of the issue. Many Southeast Asian states are reluctant to permit foreign powers to intervene in their territorial waters, even when domestic policing fails to treat the present problem of maritime crime. Sovereignty and territoriality need not present a bulwark to overcoming security problems in Southeast Asia, as sovereignty can be split amongst different international institutions and actors, as was the case in Cambodia and East Timor (Makinda, 2001: 408-417).¹⁴⁹ Yet, in the case of contemporary piracy and maritime terrorism the issues of state sovereignty and territoriality remain intractable. Chapters 5 and 6 will examine why Southeast Asian states are unwilling to compromise their sovereignty over a resolution to the present issue of maritime crime and violence.

Overcoming the inadequacies of international law and the denial of hot pursuit to foreign maritime policing organizations, by institutionalising multilateral patrols for example would enable the symptoms of contemporary maritime security issues to be

¹⁴⁹ For more on Cambodia and East Timor, see Weatherbee, 2005: 80-85, 235-236, 242-245.

tackled. However, such strategies focus on maintaining order rather than securing justice in the international society and therefore only begin to combat contemporary maritime violence and crime. Rather, this definitions chapter has demonstrated that a lack of justice in the interhuman and transnational societies, such as economic disparity, repressive state policies in secessionist regions, or a lack of educational and social opportunities, results in disruptions of order in the interstate society. A human security approach that perceives a balance between order and justice is required to resolve the causes of maritime violence and crime. Such a focus on justice emphasises cooperation between states as well as shared interests and identity that may lessen the possibility of conflict in a region creating a more solidarist interstate society. The case studies in Chapters 4 to 6 examine the extent to which Japan has pursued such a policy in its response to contemporary maritime security threats.

However, the existing interstate society and interstate institutions shape how Japan responds to maritime security issues. In the case of piracy and maritime terrorism in Southeast Asia, Japan is operating in a coexistence or cooperative interstate society in which the institutions of sovereignty, territoriality, international law and diplomacy are paramount. Whilst the Northeast Asian society can be similarly categorised as a coexistence or cooperative interstate society, relations between North Korea and Japan are based on power politics. Hence, Japan's response to North Korean spy ships revolves around the institutions of territoriality, war and the balance of power, during periods when Japan seeks to constrain Pyongyang, and sovereignty and diplomacy, when Tokyo engages North Korea. It is to the maritime threat posed by North Korean spy ships that this thesis will now turn.

4. North Korean Spy Ships

4.1a Defining North Korean Spy Ships

The North Korean ships that have entered Japanese waters illegally have been referred to in various ways. The most common references are *kosakusen* (spy ship) and *fushinsen* (suspicious or mystery ship). However, occasionally they are termed *kokusekifumeisen* (unidentified ships).¹⁵⁰ None of these appellations is necessarily incorrect, as at various phases an encounter with an illegal ship usually involves suspicion, mystery, spying and a lack of or a falsified identity. However, Kim Jong Il's admission to Prime Minister Koizumi that spy boats had been dispatched on missions to Japan at their summit meeting in Pyongyang on 17 September 2002 clears up much of the suspicion and mystery surrounding the identity of the North Korean vessels intruding into Japanese waters. Of course, not every infringement of Japan's maritime space by a North Korean ship is necessarily a spy mission in terms of gathering intelligence, as such a vessel could be trading in illicit amphetamines for the Japanese market, for example.¹⁵¹ However, current research indicates that when boats from North Korea are involved in instances of unauthorised entry into Japanese waters they are commanded by covert operatives for clandestine purposes. The term North Korean spy ship is therefore preferred in this chapter, as even when suspicion and mystery remain as to the true identity and purpose of a North Korean vessel trespassing in Japanese waters, North Korean spies are highly likely to be present. Nevertheless, at certain key

¹⁵⁰ Whilst *kokusekifumeisen* literally means a ship of unknown nationality, because a ship's identification centres on its nationality, followed by its registration number and name, so the term 'unidentified ship' is preferred.

¹⁵¹ North Korea's illicit trade in narcotics to Japan is estimated to earn the North Korean regime approximately US\$495 million per year. Until the December 2001 spy ship incident, North Korean spy ships were engaged in trafficking drugs into Japan. After the Japan Coast Guard's robust response in the December 2001 spy ship case, which resulted in the sinking of the spy ship, North Korean drug dealers resorted to shipping their illegal products to Japan via China. Chinese gangs have been engaged in this unlawful trade, encouraging the Japanese police force to crack down on Chinese criminal organizations operating in Japan. Arrests of Chinese dealers have caused the street price of North Korean stimulants in Japan to rise by a factor of five to around US\$123,000 per kilogram. In an effort to garner Japanese financial aid, Pyongyang has detained some of its own narcotics dealers, demonstrating willingness to curtail North Korea's narcotics trade (Tamura, 2004: 89-90). It remains to be seen whether the North Korean government will take sterner measures to decrease its own reliance on the narcotics trade with Japan.

points in spy ship cases, the fact that the nationality of the vessel is merely suspected has important repercussions for international law. In certain instances the terminology ‘suspect ship’ or ‘suspicious ship’ will be employed.

The Japanese authorities know of a total of 21 cases of DRPK spy ships penetrating Japanese sovereign territory. These incidents have mostly occurred in the Japan Sea between Niigata and Fukuoka Prefectures and have involved drug trafficking, abduction of Japanese citizens to serve as teachers for North Korean spies, intelligence gathering, as well as insertion and extraction of North Korean spies to and from the Japanese mainland.¹⁵² The most infamous episodes of North Korean spy vessels entering Japanese territory occurred in March 1999 and December 2001. Though neither case represented a significant break in terms of North Korean maritime espionage, both occasions revealed Japanese intentions to adopt a more robust stance vis-à-vis incursions into its territorial waters. It is these two incidents that will be examined in detail in order to ascertain the threat posed by North Korean spy ships and how Japan has responded to these boats infringing upon its sovereign territory. However, several prior cases will first be treated to build a historical background with which to compare and contrast the more recent confrontations with North Korean spy ships.

4.1b History of North Korean Spy Ship Incursions

North Korean spy ship incursions into Japanese territory before 1999 reveal much about the boat’s appearance, modus operandi and purpose. For example, on 25 April 1985, a fishing industry patrol boat located a suspicious white ship of a 19-ton class, named *Kōei Maru Number 31*, off the coast of Hyūga City, Miyazaki Prefecture. The suspicious ship bore two-loop antenna, and five or six wireless antenna and radar. An investigation into the identity of the vessel revealed that a *Kōei Maru Number 31* did indeed exist, but was operating in a different area. Furthermore, the boat’s identification number, OT2-3311, was false. The vessel was chased for two days by four Maritime

¹⁵² A former North Korean agent indicated that North Korea has 150 spy boats, of which 30 are the same class of ship as the one that sank in December 2001 (Yamada, 2004: 51).

Safety Agency (MSA) planes and 23 ships for 1,100 kilometres and ordered to stop three times. The spy ship, reaching speeds of up to 40 knots, easily outran the MSA vessels which only managed 30 knots at best. During the pursuit of the *Kōei Maru Number 31* it was calculated that the spy ship could travel at top speed for approximately 1,000 kilometres, leading analysts to suspect that most of the hull was fitted with fuel tanks (*Intelligence Affairs Research Group*, 1999: 37; *Mainichi Shimbun Evening Edition*, 24 March 1999: 8; Yamada, 2004: 51). Several characteristics of the suspicious vessel, including the number of antenna, the speed of the vessel, the false identification and its conduct in escaping, bear all the hallmarks of a North Korean spy ship.

Spy ships have also been used in the abduction of Japanese citizens to be employed as Japanese language instructors in North Korea's secret service training camps, and to convey illegal narcotics into Japan. On 20 September 1977, a North Korean spy made the acquaintance of a single Japanese male from Tokyo, who was then taken to Ishikawa Prefecture and transferred to a North Korean spy boat to be taken to North Korea. On 20 June 1985, a Japanese male working in a Chinese restaurant in Osaka was abducted and taken to Aoshima in Miyazaki Prefecture. The Japanese man was then shipped out in a North Korean spy boat, his Japanese passport and identity stolen to enable the spy to collect intelligence on the South Korean military (*Intelligence Affairs Research Group*, 1999: 39). Also in 1985, a North Korean spy ship named the *Matsukami Maru Number 12* and disguised as a Japanese fishing boat was discovered transferring amphetamines to a Japanese fishing boat chartered by a Japanese *yakuza* gang (Ishikawa, 1999: 98).

The *Matsukami Maru Number 12* was involved in a more recent narcotics case, in August 1998. In this instance, Japanese authorities seized 300 kilograms worth of stimulant of North Korean origin, valued at ¥18 billion at street value, off the coast of Kubokawa Town, Kōchi Prefecture. Six Japanese suspects with links to a Sumiyoshi-kai gang were arrested and indicted, following the revelation that a member of the group had entered North Korea with ¥6.4 million to finalise the details of the stimulant shipment. The delivery of the drugs was conducted at 4:30 p.m. on 12 August in

international waters from the North Korean boat.¹⁵³ As the Japanese gang returned to Japanese waters they realised their ship, the *Tama Maru*, was being tailed by an MSA patrol boat, at which point they disposed of the stimulants overboard, with a view to collecting them at a later date. However, authorities from Aichi, Mie and Kōchi Prefectures gathered and impounded the stimulants (Mizoguchi, 1999).

Similarly, in April 1997, a North Korean cargo ship, *Chison Number 2*, was detained in Hosojima Port in Miyazaki Prefecture, after approximately 60 kilograms of stimulant drugs, worth almost ¥10 billion at street value, were uncovered in twelve 18-litre honey cans.¹⁵⁴ Several incidents since the *Chison Number 2* have reconfirmed the use of North Korean spy boats in the drug trade. These include, the seizure of 100kgs of stimulant in April 1999 at Sakai Minato, Tottori Prefecture, 564kgs of stimulant in October 1999 in Kagoshima Prefecture, 249kgs of stimulant in February 2000 at Unotsu Port in Shimane Prefecture, and 151kgs of stimulant in January 2002 in Fukuoka Prefecture. The fact that spy ships were being used for the purpose of shipping drugs after the December 2001 spy ship incident is revealing in that it confirms that even if a number of spy ships are engaged by the JCG, the operation must still be profitable enough for this to be a successful mode of conducting business. Okabe states that only one in four spy ships need reach Japan in order for a profit to be made. The number of exposed cases leads to the assumption that many more shipments must escape detection. Between 1998 and 2002, drugs of North Korean origin amounted to 34.6 percent of the total of imported narcotics into Japan, a figure which represents a total of ¥50 billion for North Korea each year (Okabe, 2003: 57-58).

In a US Department of State report, North Korea was identified as having undertaken the cultivation of opium poppies and stimulant production as a means of acquiring hard

¹⁵³ This is known as delivery at sea or *sedori*. In this case, a US Marines P-3C patrol plane had spotted and taken pictures of the *Matsukami Maru Number 12* as it waited in international waters from the 7 August (Mizoguchi, 1999).

¹⁵⁴ The origin of the stimulants in this case was not identified as the Miyazaki police failed to test the adulterants in the narcotics seizure, favouring the testimony of the smugglers who said the drugs came from China (Mizoguchi, 1999). Nonetheless, the arrest of a North Korean party member, as well as the seizure of his North Korean codebooks, on board the *Chison Number 2* affirmed the involvement of North Korea in drugs trafficking (Okabe, 2003: 57).

currency.¹⁵⁵ The “Strategic Report on International Narcotics Countermeasures” stated that between 4,500 and 7,000 hectares around the North Korean-Chinese border had been designated for the purpose of growing opium poppies, with an estimated yield of 30 to 45 tons a year (though this amount would decrease when refined). It is clear from the amounts of drugs involved that the government in Pyongyang is active in developing its revenue from illegal narcotics sales (Mizoguchi, 1999)

During the Cold War, North Korea had relied heavily upon Russia for cheap oil imports. The collapse of the Soviet Union meant that these oil imports sharply decreased from 40 tons in 1990 to 4.2 tons in 1991. As a result, Pyongyang turned increasingly to illicit means of funding, including narcotics sales, trading in counterfeit money and missile deals, to preserve the existence of the communist regime. Opium poppy growth, for example, rose by a factor of ten between 1992 and 1993. After Kim Il Sung’s death on 8 July 1994, North Korea’s drug industry expanded in terms of the quantity of narcotics produced and distributed abroad. North Korea’s illicit drugs operation became increasingly sophisticated from the mid-1990s, with stimulants attaining 90-99 percent purity (Okabe, 2003: 56-57).

The use of spy ships by North Korea in narcotic trafficking, as well as in the abductions of Japanese citizens and in spy operations against Japan, contravenes international law and transgresses Japanese sovereign territory. Such practices violate the obligations of a member of the interstate society to uphold the sanctity of sovereign borders and international law and therefore place North Korea on the periphery of the interstate society of Northeast Asia. For these reasons, North Korea has been designated in this thesis as a barbarian state with sovereign boundaries recognised by the interstate society and with which states in the interstate society negotiate, but which does not fulfil the criteria to be deemed a member of the interstate society. This chapter will address how Japan has responded to this barbarian maritime threat. The context of Japan-North

¹⁵⁵ Whilst sales in legitimate goods from North Korea decreased by 42 percent from 1997 to 1998, illicit sales from narcotics and stimulants amassed US\$100 million worth of revenue for Pyongyang (Mizoguchi, 1999 – quoting a US Congressional Research Service Report, released in February 1999).

Korea relations in the aftermath of the Cold War will first be addressed to assess how this context has influenced Japan's response to spy ships.

4.1c Japan's Perception of the North Korean Threat

Japan has long viewed developments in North Korea suspiciously and has yet to normalise its relations with the country. This suspicion stems from the fear of a possible conflict on the Korean peninsula. The entire Japanese archipelago is in range of North Korea's missiles which could be armed with chemical, biological and possibly nuclear warheads. Confrontation with Kim Jong Il's 'hermit kingdom' could therefore prove disastrous for the Japanese population, the majority of which is concentrated in densely populated metropolises where the effects of WMD would be at their most devastating. Added to the perception that a conflict on the Korean peninsula could result in the annihilation of much of Japan,¹⁵⁶ is a general apprehensiveness towards North Korea concerning its clandestine operations. North Korea's spy activities include: the abduction of Japanese nationals during the 1970s for the purpose of teaching North Korean operatives Japanese language and culture, illicit trading, and intelligence missions on and around Japanese territory. All of these clandestine operations involve the use of spy ships.

The greater threat by the mid-1990s, however, was arguably the political ramifications of dealing with North Korea. At this point in time, North Korea had yet to test and develop its nuclear and missile programmes sufficiently to be able to target Japan with WMD. The potential for bilateral progress in the relationship between North Korea and the US could divide the existing alliance systems in Northeast Asia. Both South Korea

¹⁵⁶ It should be noted that the accuracy of North Korea's missiles is far from certain (McCormack, 2004). Moreover, the lethality of chemical weapons is contested, leading some to argue that it should be removed from the WMD category altogether (Carter, 2004: 73). However, a chemical weapons attack ordered by Saddam Hussein on the Kurdish town of Halabja in Northern Iraq on 16 March 1988 that immediately killed approximately 5,000 people attests to the lethality of chemical weapons. The death toll reached 12,000 after three days and residents of Halabja continue to suffer the after effects of the attack (<http://old.krg.org/reference/halabja/index.asp>, accessed 10 June 2006). Finally, it is unclear how many missiles North Korea would be able to launch and how many would be downed by Japan's anti-ballistic missile, Patriot batteries in the event of a North Korean missile attack.

and Japan expressed concern that if diplomatic relations were normalised between North Korea and the US, then Seoul and Tokyo would have to follow suit and normalise relations with North Korea on unfavourable terms. Furthermore, substantial easing of tensions on the peninsula would create a rationale for the US to scale down its military forces in Japan and South Korea, prompting US withdrawal from Asian security problems (Hughes, 1996: 85-88). In fact, the US began redeploying some 12,500 troops from South Korea to Iraq in 2004, as part of the Pentagon's global strategy to reduce static troop deployments in favour of rapid response forces. This occurred in spite of a lack of progress being made over North Korea's nuclear weapons programme (Pollack, 2005: 2, 7-8).

Japan's foreign policy towards North Korea has therefore had to take into consideration, not only the threat of missiles and WMD, but also the possibility of a change in the Northeast Asian security environment disrupting existing alliance frameworks. With this in mind, the approach of the Japanese government has tended to oscillate between containment, when the Japanese government perceived the physical threat of missiles and WMD was high, and engagement, when the Japanese government feared being caught out of the diplomatic loop of negotiations with North Korea. In containing North Korea, Japan has focussed its policy through the interstate institutions of the balance of power and territoriality, whereas the interstate institutions of diplomacy and sovereignty have guided Japan's engagement policy towards North Korea.

Japan's policy began with the signing of the Agreed Framework in October 1994. The Agreed Framework evolved in the aftermath of North Korea's stated intention to withdraw from the Nuclear Proliferation Treaty (NPT) in February 1993, in response to demands from the International Atomic Energy Agency to inspect suspected nuclear weapons production sites in North Korea. The US responded with economic sanctions and tensions mounted on the peninsula as a second Korean War loomed. Conflict was averted largely thanks to the efforts of former US President Carter, who met Kim Il Sung and persuaded the supreme leader to resolve the situation diplomatically. In the negotiations that followed in Geneva, 1994, North Korea stopped the Yongbyon reprocessing plant in return for two light water reactors (LWRs) whose spent fuel would

be much harder to reprocess into a weapons form. Japan and South Korea were to fund the project, whilst the US would supply North Korea with oil and remove sanctions. A multinational consortium known as the Korean Peninsula Energy Development Organization (KEDO) would oversee the whole project (Langdon, 2001: 168-171; Martin, 2002: 51-65; Samore, 2003: 8-11).

After the signing of the Agreed Framework in October 1994, which initiated a period of engagement with Pyongyang, four events have signalled a reorientation of Japan's policy towards North Korea. The first of these came in August 1998, when North Korea launched a Taepodong missile over Japanese territory, prompting the Japanese government to pursue a policy of containment with North Korea.¹⁵⁷ Second, following initial progress made on the implementation of the Agreed Framework in 1999, the US Secretary of State Madeline Albright visited North Korea in October 2000, signalling a warming of relations between the US and North Korea (Langdon, 2001: 168-171; Martin, 2002: 51-65; Samore, 2003: 8-11). Japan followed suit, renewing its commitments and increasing its engagement with Pyongyang. Third, the 9/11 terrorist attacks marked a transformation in US foreign policy, which began to take aim at states that harboured or helped terrorists. Of particular concern to the US were 'rogue states', like North Korea, that pursued WMD programmes designed to target the US, its allies or its assets.¹⁵⁸ Once again, Japanese policy regarding North Korea shifted as the

¹⁵⁷ On 31 August 1998, North Korea launched what seemed to be a ballistic missile which soared over the Japanese mainland and disappeared into the Pacific Ocean. Though North Korea insisted that the missile was a failed attempt to send a satellite into orbit, suspicions were raised in Japan that the Taepodong-I long-range missile had been tested. Analysts surmised that the missile could deliver a small payload some 3,300 miles, making the military implications of the launch clear. In response to the missile incident, Tokyo immediately cancelled its US\$1 billion donation to the KEDO project to build two light water nuclear reactors (LWRs), refused to dispatch food aid to Pyongyang and gave up on normalisation talks. Though US pressure pushed Japan to stand by its commitment to fund the LWR scheme, by October, the threat posed by North Korean ballistic missiles, particularly if combined with WMD warheads, to Japanese cities now clouded relations between Tokyo and Pyongyang (Uriu, 1999: 123; Brown, 1999: 129-130; Abramowitz and Bosworth, 2003: 124).

¹⁵⁸ US foreign policy hardened in the aftermath of the 9/11 terrorist attacks, culminating in President Bush's January 2002 State of the Union Address, in which North Korea was tagged, along with Iran and Iraq, as constituting an 'axis of evil' (Gurtov, 2002: 405-407, 411-412). The American stance towards North Korea stiffened as a meeting between Assistant Secretary of State James Kelly and North Korea's Vice-Foreign Minister Kang Sok Ju on 4-5 October 2002, in Pyongyang revealed that Kim Jong Il's regime had been pursuing a uranium enrichment capability since 1997-98. Washington therefore demanded that North Korea dismantle its nuclear weapons programme in a way the US could verify. This deadlocked negotiations on the peninsula as North Korea retorted that by failing to deliver on the LWR

physical threat of North Korea's missiles and WMD were perceived anew. Finally, the meeting between the Japanese Prime Minister Koizumi Junichiro and the North Korean President Kim Jong Il on 27 September 2002, during which Kim Jong Il announced an end to the dispatch of spy ships into Japanese waters, set the two states on a path to engagement that has continued with the return of the six-party talks in February and June 2005 (Pollack, 2005: 2).¹⁵⁹ As both the March 1999 and December 2001 spy ship cases occurred during periods of containment, so Japan's response was more resolute, focusing on military means to protect Japanese territory and to discourage Pyongyang with a show of force.¹⁶⁰ Though this policy necessitated mobilising the MSDF and MSA to chase and inspect any vessels intruding upon Japanese territory, the Japanese electorate were no longer as cautious vis-à-vis confrontation with Pyongyang.

project and by refusing to guarantee the security of North Korea, it was the US that had reneged on the Agreed Framework. Subsequent embargoes on oil bound for North Korea and Pyongyang's response, ordering the restart of nuclear reactors, allegedly for electricity production, has signalled the end of the Agreed Framework (Samore, 2003: 11-16).

¹⁵⁹ Pollack does stress that despite the return of the six-party talks, little progress was made to end North Korea's WMD programme (Pollack, 2005: 2). Moreover, a series of missile tests by North Korea on 5 July 2006 threatens to derail the six-party talks. For international reaction to the launches, see <http://www.japantimes.co.jp/weekly/ed/ed20060715a1.htm>, accessed 18 August 2006.

¹⁶⁰ This contrasts with Japan's response to spy ship incursions prior to March 1999, which had not been countered so decisively by Japanese maritime forces. Though the Japanese Maritime Safety Agency began building faster patrol vessels, such as the *Inasa*, *Mizuki* and *Kirishima*, which can all reach up to 35 knots, in response to the 1985 Miyazaki case (Yamada, 2004: 52), these patrol vessels were still not fast enough to catch their prey in March 1999. Furthermore, the kinds of threat that the spy ships posed, from abduction of Japanese citizens to illegal drug imports and clandestine surveillance, as well as the modus operandi of the spy ships were well known to the Japanese authorities. Of particular note were the increasing reliance of the regime in Pyongyang upon drug shipments for hard currency and the involvement of Japanese *yakuza* gangs in such operations. Clearly the Japanese government knew of the threat posed by North Korean spy ships before the March 1999 incident, but were reluctant to address it.

4.2 The 1999 Spy Ship Incursion

4.2a Summary

In the evening of 18 March 1999 suspicion was raised by American intelligence gathering satellites that indicated two North Korean fishing boats were leaving the port of Chongjin in North Korea in the direction of Japanese waters. The US high command passed this information on to the Defence Information Headquarters of the Japanese Defence Agency in Ichigaya on 21 March. The two North Korean ships were operating off the coast of the Noto Peninsula, when on 21 March 1999, a Japanese SIGNIT station, 400km southeast of the ships' position, at Miho on the Shimane Peninsula in Tottori Prefecture, picked up their encoded radio transmissions.¹⁶¹ On 22 March, the MSDF began an airborne search using P3C planes around the Sado and Noto coastlines. As the chase of the two spy ships developed, an increasing number of US and Japanese aircraft were employed to track the course of the pursuit, to watch for enemy planes and to analyse radio transmissions (Ishikawa, 1999: 101-103; *Asahi Shimbun*, 21 April 1999: 4).

Both ships were disguised as Japanese fishing vessels and named *Taisei Maru Number 1* and *Yamato Maru Number 2*.¹⁶² They had a water displacement of approximately 100 tons, were 30 meters long, carried no visible fishing equipment, but had nine antennas on top of the bridge. A MSDF P-3C Orion confirmed the precise location of the two ships on 23 March, recording that one of the ships was navigating in Japanese domestic waters, 18km west of Sado Island. The MSDF were instructed to take 'maritime security action' on 24 March, in order to subject the two suspicious ships to a stop-and-search inspection. During the chase that ensued, MSDF destroyers fired warning shots

¹⁶¹ The SIGNIT centre at Miho is also known as the elephant's cage because of the structure of the multiple pylons and antenna there (Ishikawa, 1999: 109).

¹⁶² The names were investigated and found to be forgeries. The real *Yamato Maru Number 2* was from Tsuiyama port, Toyaoka City, Hyōgo Prefecture and the *Taisei Maru Number 1*, which was scrapped in 1994, was from Kasumi town in Hyōgo Prefecture. It is believed that a North Korean spy took pictures of ships in the area for the purpose of appropriating the names of real fishing boats, as these two places in Hyōgo Prefecture are within 15 kilometres of each other (Ishikawa, 1999: 98).

and MSDF aircraft dropped bombs to persuade the two ships to stop.¹⁶³ The pursuit of the two spy ships was called off when the *Yamato Maru Number 2* and the *Taisei Maru Number 1* crossed Japan's Air Defence Identification Zone (ADIZ)¹⁶⁴ at 3:20 a.m. and 6:06 a.m. respectively on the morning of 24 March (*Asahi Shimbun Evening Edition*, 24 March 1999: 3). Satellite intelligence later confirmed that the two spy boats entered the North Korean port of Chongjin, a known North Korean spy base mainly for intelligence activities directed towards Japan, at 7 a.m. on 25 March (Ishikawa, 1999: 96-97; *Mainichi Shimbun*, 24 March 1999: 1; *Yomiuri Shimbun*, 24 March, 1999: 1; Ball, 2004: 75-76).¹⁶⁵ While the chase was ultimately unsuccessful, speculation abounded as to what the spy ships had been doing in Japanese domestic waters.

4.2b Purpose of Spy Ship Intrusion

The true purpose of the North Korean spy ships in entering Japanese waters in 1999 is a matter of speculation. However, comparison with earlier events reveals three main probable reasons for North Korean ships intruding into Japanese waters. Pyongyang may have sent the spy ships to collect information by monitoring radio waves, to insert or extract North Korean spies, or to ship narcotics. As there is no need for spy ships to come so close to the Japanese coastline to monitor radio frequencies the first of these hypotheses is the least likely.¹⁶⁶ The fact that two ships were in the same vicinity at the

¹⁶³ The MSDF had not taken such action against a vessel since 8 August 1953, when a Soviet spy ship was engaged off the coast of Cape Soya in northern Hokkaido.

¹⁶⁴ Ships and planes must identify themselves when entering Japan's ADIZ, which is 400-500km from the Japanese mainland. Failure to do so can result in the dispatch of the SDF (*Asahi Shimbun Evening Edition*, 24 March 1999: 1).

¹⁶⁵ A different take on this incident revealed that a total of seven spy ships entered Japanese territory and made for the Noto Peninsula coastline on 21 March. Five of the seven ships departed the same day in the direction of North Korea leaving the *Taisei Maru Number 1* and the *Yamato Maru Number 2*. It is speculated that *Yamato Maru Number 2* was guarding the *Taisei Maru Number 1*, which was experiencing engine trouble, until it got underway. The aim of the mission according to this scenario was to provoke Japan and raise tensions as a means of extracting aid from Japan (*Tokyo Shimbun*, 4 April 1999). Though this account is not backed up by intelligence reports, it is worth taking into consideration as an alternative version of what happened.

¹⁶⁶ That said, Ebata Kensuke, states that it may be that the ships were collecting information from short range radio broadcasts which would explain why they were so close to the shore. After all, it is better for North Korean ships, when smuggling drugs, not to draw too much attention to themselves by having too many antenna (*Asahi Shimbun*, 24 March 1999: 39; *Yomiuri Shimbun*, 24 March 1999: 38).

same time indicates that large quantities of narcotics may have been transported in order to conduct a deal with the Japanese *yakuza*. However, the spy ships used in the 1999 case differed structurally from the narcotics smuggling ship of the August 1998 case, having less and smaller windows as well as a different angle and curvature. Therefore, the spy ships in the March 1999 case may not have been the kind used to convey drugs (*Mainichi Shimbun Evening Edition*, 24 March 1999: 9). Instead, inserting and extracting spies is a more probable reason for the ships presence owing to North Korea's need to gather intelligence on Japan's changing military stance with the US-Japan Guidelines being discussed in the Japanese Diet (Tsuboi, 1999: 15; *Yomiuri Shimbun*, 24 March, 1999: 38). Of course, it is also possible that the ship's missions combined narcotics smuggling, insertion/extraction of spies and intelligence gathering. However, past instances tended to highlight that one ship had one assignment for every time it entered Japanese waters. This practice is only likely to change, if the dangers of sending spy boats into Japanese waters were such that the number of incursions needed to be decreased.

Whatever the purpose of the ships, however, it is clear that the action taken by the North Korean spy ships in March 1999, was wholly in line with North Korean policy. A former North Korean Spy, Hwang Jang Yop, stated in his first interview since defecting from North Korea in February 1997, that Kim Jong Il's aim was to fortify the North Korean state through advancing its military strength, whilst frightening surrounding nations through missile launches and spy boat incursions, in order to obtain aid and to restrain neighbouring states from taking action against North Korea (*Yomiuri Shimbun*, 25 March 1999: 6). Instead the real break with past instances of North Korean spy ship incursions was the largely improvised response of the Japanese security forces and government. It was precisely because the Japanese response was extemporised that inadequacies surfaced in terms of the cooperation between maritime agencies and the ability of the Japanese government to deal with crisis situations.

4.2c Cooperation between the JDA and MSA

Perhaps the most glaring deficiency in the cooperation between the Japan Defence Agency (JDA) and MSA was the delay in processing the information related to the discovery of the spy ships. Even though the JDA had been aware of the presence of suspicious ships since 21 March, it was not until 11 a.m. and 1 p.m. on 23 March that the JDA contacted the MSA about the *Yamato Maru Number 2* and *Taisei Maru Number 1* respectively (Ishikawa, 1999: 95). The JDA blamed this delay on the fact that they only possessed fragmentary evidence that spy ships had transgressed Japanese waters until the morning of 23 March (Watanabe, 1999: 10). However, this excuse hardly squares well with the fact that an MSDF flotilla had already left port in search of the ships on 22 March.

On the afternoon of Monday 22 March, a day after the US informed the JDA Headquarters of the presence of spy ships, a flotilla of three escort ships *Haruna*, *Myōkō* and *Abukuma* headed out to sea from the naval base of Maizuru. As 22 March was a substitute holiday for the Vernal Equinox Day that had fallen on the Sunday, the ships were not fully prepared to set sail. Hence, the morning of 22 March saw sailors from all three MSDF vessels hurrying about the port purchasing extra provisions, mainly vegetables and frozen foods, as they headed for their posts.¹⁶⁷ People in the town remarked that the bustling activity resembled that of a year before during the Taepodong crisis. As the ships had been scheduled to begin a training exercise on 23 March, it is hard to believe that the MSDF escorts had not been adequately supplied, so the hustle in Maizuru on the Monday morning might well be attributed to the sailors anticipating a lengthy expedition at sea. Commandant Yoshikawa attempted to conceal this mobilisation by saying that the vessels were simply heading out a day early for their training mission, but as police activities around the coast of Niigata, Toyama and Ishikawa prefectures were stepped up from 22 March, this pretence became difficult to maintain (Ishikawa, 1999: 99).

¹⁶⁷ Troops were called back to Maizuru port on the instructions that training would begin a day early because of bad weather (*Asahi Shimbun*, 7 April 1999: 2-3).

However, it was not just the fact that the information about the spy ships took too long to reach the MSA that the Japanese maritime authorities' actions were seen to be deficient. During the operation, both organizations lacked the joint training to coordinate their activities. Furthermore, no codes existed in 1999 for the MSA and MSDF to communicate with each other in secret. Instead, transmissions between vessels and the mainland were conducted using radio frequencies that the North Korean spy boats could overhear. The lack of cooperation between the MSA and MSDF is noticeable in the fact that as many as 41 MSA and MSDF vessels share the same name; though this was not thought to have caused problems in the spy ship chase (Taoka, 1999: 14-15).

Members of both agencies blaming each other for the ineffectiveness of Japan's response to the spy ships in March 1999 have not improved the lack of cooperation between the MSA and JDA. Kawamura Sumihiko, a former vice-admiral of the MSDF, for example, argues that not enough was done to protect Japan from North Korean spy ships in 1999. In particular, the incident revealed notable failures of the MSA, which is in charge of guarding Japan's seas and coastlines during peacetime, such as the failure of these ships to stop the spy ships and the slow speed of MSA patrol craft compared to the spy ships. He also notes that the warning shots fired by both the MSA and MSDF had little meaning as they were not followed by shots that targeted the spy ships directly. These shortcomings indicate that the MSDF should, in Kawamura's opinion, play a greater role in the protection of Japan's maritime territory (Kawamura, 1999: 140-146).¹⁶⁸

Whilst Kawamura raises several significant deficiencies in the approach taken by the MSA in this instance, it is hardly fair to blame the MSA entirely. The MSA only received information about the two spy vessels around noon on 23 March, leaving scant opportunity to pursue the intruding ships with faster patrol craft. By comparison, mistakes made by the MDSF are equally prominent, as the MSDF flotilla also did not manage to prevent the spy ships from making their escape, despite setting sail on 21

¹⁶⁸ See also *Yomiuri Shimbun Evening Edition*, 24 March 1999: 2, 23.

March. Of particular interest was the delay in ordering maritime security action which might have allowed the MSDF escort ships to take more expedient efforts in detaining the *Taisei Maru Number 1* when it stopped on the evening of 24 March. It also became clear during the March 1999 spy ship incursion that MSA and MSDF laws were too restrictive in terms of what the Japanese authorities were entitled to do in a spy ship case and that the laws would have to be amended in the aftermath of the event so that future instances could be more thoroughly dealt with (Cossa, 1999).

Clearly a lack of cooperation between the MSA and MSDF hindered the Japanese government's response to the spy ship incursion. Delays allowed the spy ships to sail away from Japanese maritime territory wherein the Japanese response would fall wholly under domestic rather than international law. A similar set of circumstances would unfold in the December 2001 spy ship case, but with the key difference that the Japanese government's response in March 1999 was far more attentive to the opinions of the interstate society. Nonetheless, a failure to tackle the March 1999 spy ship incursion decisively led to criticism that the Japanese government's crisis management was lacking.

4.2d Government Crisis Management

On 23 March 1999, at around 5:30 p.m., Prime Minister Obuchi Keizō met with officials from the Ministries concerned in the spy ship pursuit. These included Chief Cabinet Secretary Nonaka Hiromu, JDA Director General Norota Hosei, Transport Minister Kawasaki Jirō, Foreign Minister Komura Masahiko, Deputy Chief Cabinet Secretary Furukawa Teijirō, and Ministry of Foreign Affairs (MOFA) Foreign Policy Bureau Director General Katō Ryōzō (*Asahi Shimbun*, 7 April 1999: 2-3). At 6 p.m., the Crisis Management Centre was established and headed by the Director of Cabinet Crisis Management Ando Tadao (*Asahi Shimbun*, 24 March 1999: 1). During the meeting, Transport Minister Kawasaki acknowledged that it would be difficult for the MSA to catch the spy vessels because of the high speed at which the two ships travelled. Nevertheless, it was determined that the government should act, as failure to do so

would result in public condemnation for the government (*Asahi Shimbun*, 24 March 1999: 2).

The perfect moment for action came at around midnight on 24 March. It was at this time that the *Taisei Maru Number 1* suddenly stopped due to what may have been engine trouble (Ishikawa, 1999: 96). This provided the nearby MSDF vessels with an opportunity to capture the ship. The MSDF did not, because the order for maritime security action had yet to be given (Watanabe, 1999: 10). Director General Norota gave the order for maritime security action at 12:50 a.m. on 24 March, after the *Taisei Maru Number 1* had gotten underway again (Ishikawa, 1999: 96; Watanabe, 1999: 11). The reasons for this delay highlight the deficiencies of the Japanese government's crisis management skills at the time.

Though Norota was able to detail the plan to order for maritime security action quickly, as the Emergency Countermeasures Committee, which Norota chaired, had already assessed the limits of a possible response to the situation,¹⁶⁹ Prime Minister Obuchi and Chief Cabinet Secretary Nonaka were less positive about ordering maritime security action. Both Obuchi and Nonaka wished to abide by the letter of the law and not upset the Republic of Korea, which might be alarmed if Japanese action went too far by endangering the lives of the North Korean sailors.¹⁷⁰ This hesitancy on the part of Obuchi and Nonaka, coupled with the exodus of Deputy Chief Cabinet Secretary Furukawa and a number of bureau directors general of the relevant ministries on standby from the Kantei as they rushed to catch the last trains home, delayed the order for maritime security action until after the opportunity to capture the *Taisei Maru Number 1* had passed (Watanabe, 1999: 11; *Asahi Shimbun*, 7 April 1999: 2-3; *Yomiuri Shimbun*, 25 March 1999: 3).

¹⁶⁹ Deputy Chief Cabinet Secretary Yoshikawa and Konemura, the prime minister's secretary, supported the JDA director in his wish to have the prime minister order maritime security action (*Yomiuri Shimbun*, 25 March 1999: 3).

¹⁷⁰ Prime Minister Obuchi talked with Kim Dae Jung, the South Korean president on the evening of 23 March, and expressed concern that there might be some connection with a Taepodong missile launch (*Asahi Shimbun*, 24 March 1999: 2).

This reluctance to invoke the order for maritime security action, together with the departure of key officials from the Kantei before the pursuit of the spy ships had ended, greatly undermined the response of the MSDF. The situation underscored a key division in Japanese Foreign Policy, in the sense that there is an unwillingness to employ the MSDF to carry out an operation that may involve an element of danger, even though, as the JDA argued at the time, the MSDF flotilla was the best placed Japanese unit to respond to the incident. Prime Minister Obuchi's concerns about the MSDF sinking the spy vessel indicate a fear that MSDF actions may be badly received by the Japanese people as well as abroad. The prime minister's objective was therefore to abide by the letter of international law and to keep domestic opinion as well as the interstate society's interpretation of events foremost in mind. Yet it is precisely this risk aversion that allows North Korean ships to transgress Japanese territory in the knowledge that no harm will come to them. By 2001, a change of prime minister and Cabinet coupled with new international realities in the aftermath of 9/11 meant that a disinclination to act forcibly against North Korean spy ships was reversed.

Despite the failure to order maritime security action promptly, the preparations of the government and JDA were at least thorough. At 7:55 on the morning of 24 March, four MIG-21 aircraft took off from the Rajin airbase in North Korea. An MSDF E-2C early warning patrol plane detected the movement of these fighters on their radar and two Japanese F-15 jets launched from the Air Self-Defence Force (ASDF) base in Komatsu, Ishikawa Prefecture. The F-15s were ordered to undertake a Combat Air Patrol (CAP) in which they were to intercept any aircraft violating Japanese airspace. Even the Ground Self-Defence Force (GSDF) were called back to barracks to strengthen the guard at military facilities during the spy ship chase (Ishikawa, 1999: 100). The launch of MIGs from Rajin is further evidence for the ships being of North Korean origin (*Yomiuri Shimbun Evening Edition*, 24 March 1999: 1) and it proved to the Japanese government that Pyongyang was prepared to act militarily should the spy ship chase escalate. Nevertheless, the fact that MSDF fighters were on stand-by for precisely such a move and that early warning planes were on patrol throughout the incident demonstrates a success both in terms of the JDA's preparedness and the government's will to respond resolutely.

4.2e Domestic and Foreign Responses

Though the hesitancy of Prime Minister Obuchi and Chief Cabinet Secretary Nonaka were blamed for not approving the order for maritime security action fast enough, their indecision paid off in terms of the favourable responses of the Japanese domestic audience as well as actors in the interstate society. South Korean sources described Japan's response as careful and prudent, though they also stressed concerns that North Korea/Japanese relations may cool in the aftermath of the incident. The South Korean government also asked to know all the facts of the incident including the nationality of the spy ships (*Asahi Shimbun*, 25 March 1999: 2).¹⁷¹ Japan's opposition parties were also mainly in agreement with the government's response to the spy ship incident (*Asahi Shimbun Evening Edition*, 24 March 1999: 2). Finally, the support of the Japanese electorate for the government's actions against the spy ships was notable following the incident. Okasaki Hisahiko, a foreign affairs commentator, Yamamoto Makoto, a former MSDF commandant, and Morimoto Satoshi of Nomura Research Institute, stressed at the time of the incident that had the spy ships entered Japanese waters before the Taepodong missile launch, then public support would have been lacking. The government's ability to read the change in Japanese public opinion vis-à-vis Japanese military action was significant in the case of the March 1999 spy ship incident (*Yomiuri Shimbun*, 25 March 1999: 4).

In fact, disapproval for Japanese actions was quite muted. China, for one, felt that Japan had broken a taboo and expressed both caution and concern for Chinese ships in Japanese waters. Furthermore, Chinese sources were worried as to how the Senkaku islands dispute might be affected by the engagement (*Mainichi Shimbun Evening Edition*, 24 March 1999: 2). Nevertheless, the Chinese government did not condemn the incident. In Japan, Shindō Eiichi, then a Professor in International Politics at Tsukuba

¹⁷¹ After several days of silence, North Korea rebuffed Japan's claim that the spy ships that transgressed Japanese territory were of DRPK origin (*BBC Monitoring Newsfile*, 27 March 1999; *Japan Times*, 29 March 1999).

University, and Umebayashi Hiromichi, a commentator on Citizen's Movements, both argued that Japan should place more emphasis on working through such violations of its territory diplomatically (*Asahi Shimbun Evening Edition*, 24 March 1999: 18). The Socialist and Communist Parties of Japan also expressed their concern that firing warning shots was a step too far considering Japan's so-called 'peace constitution' (*Mainichi Shimbun*, 25 March 1999: 2; *Yomiuri Shimbun Evening Edition*, 24 March 1999: 2). The lack of criticism towards the government in Japan was telling in terms of how the mood towards North Korea had changed in the wake of the Taepodong incident, especially concerning the legal minefield that Japanese maritime authorities had stumbled into.

4.2f Legal Considerations

The main legal considerations to be taken into account during the March 1999 spy ship incident involved the firing of warning shots by both the MSA and MSDF and the order for maritime security action to be taken by the MSDF. Both the MSA and MSDF ships fired warning shots at the two spy ships during the chase. The MSA were given special permission to fire upon the spy ships at 7 p.m. on 23 March. Before ending their pursuit of the North Korean vessels, the two MSA patrol ships, *Chikusen* and *Hamayuki*, fired warning shots with 20mm and 13mm machine guns into the ocean near the stern of the *Yamato Maru Number 2* at 8 p.m. on 23 March and the patrol ship *Naozuki* opened fire with automatic rifles into the ocean near the *Taisei Maru Number 1* at 8:31 p.m. The *Myōkō*, an MSDF destroyer, fired two warning shots with its five-inch guns at 1 a.m. on 24 March (*Asahi Shimbun*, 24 March 1999: 1). The MSDF continued firing warning shots between 1:19 a.m. and 2:24 a.m. against the *Yamato Maru Number 2* and anti-submarine bombs were dropped from a P3C patrol plane. Similar action was also taken against the *Taisei Maru Number 1* (*Mainichi Shimbun Evening Edition*, 24 March 1999: 1, 9). Most of the MSDF warning shots were fired as the spy ships were approaching Japan's ADIZ. At that point in the chase it was clear that the ships would not stop for inspection and that the spy ships themselves would not be directly targeted, so that warning shots themselves were merely symbolic. The action of firing warning shots,

however, had two noticeable results. First, the Japanese public responded favourably to what they perceived to be resolute efforts by the MSA and MSDF to protect Japanese territory from North Korea, which had been demonised in the press since the Taepodong incident. Second, firing warning shots at the spy vessels sent a clear signal to Pyongyang that next time an incursion takes place the Japanese forces might ratchet their response up a level and target the ships directly.

The government considered targeting the spy ships directly to disable their rudders, but it was feared that the five-inch cannons carried by the MSDF escort ships would sink their adversaries (*Japan Times*, 26 March 1999). Furthermore, targeting the spy ships directly might well be seen as excessive, especially considering that the only laws the ships are known to have violated were sailing under a false name and ignoring orders to stop (*Asahi Shimbun*, 25 March 1999: 3).¹⁷² In future instances, the MSDF were said to be considering the use of lighter machine guns that could be used to target unidentified ships directly. However, the use of the MSDF itself could be considered as excessive considering the fears of Rear Admiral Yoshikawa Eiji, commander of the Maritime Self-Defence Force Escort Flotilla 3, who was in charge of the MSDF pursuit of the spy ships, who speculated that even the wake of his escort ships could topple their opponents (*Japan Times*, 30 March 1999).¹⁷³ This shows the extent to which the Japanese government was mindful of how the tactics it employed would be interpreted by the interstate society and that any action that resulted in the sinking of the spy ship would be contrary to international law.

As far as the order for maritime security is concerned, the SDF can undertake necessary maritime security action to preserve the peace, property and life in Japanese waters according to Article 82 of the SDF Law. The prime minister and the Cabinet must approve this action, before the JDA Chief can make the order. Article 82 doesn't allow

¹⁷² It is important to note that while evidence pointed at the ships being North Korean, the fact that the only identification on the ships was Japanese, meant that the incident could not legally be understood as foreign vessels transgressing Japanese maritime territory. It is therefore more accurate from a legal perspective to label the ships 'suspect ships' or 'suspicious ships'.

¹⁷³ In a final attempt to catch the *Taisei Maru Number 1*, a 350 metre long by 1 metre wide net was cast. It was hoped that this net would entangle the spy ship's screws. The *Taisei Maru*, however, deftly avoided the net by swinging the boat out of the way of the net (Ishikawa, 1999: 96; *Japan Times*, 30 March 1999).

the MSDF to fire directly on spy ships, as opening fire is based on Article 7 of the Law Concerning Execution of Duties of Police Officials, which stipulates that a suspect can only be directly targeted in self-defence, once the suspect has fired on the Japanese authorities (Shikata, 1999: 7-8; *Asahi Shimbun*, 24 March 1999: 1).¹⁷⁴ Taoka Toshitsugu, a member of the *Asahi Shimbun* Editorial Staff, asserted that Japan's actions in pursuing the two spy ships had been in full accordance with international law and that firing directly upon the spy ships would also have been permissible.¹⁷⁵ Offering the example of the South Korean armed forces sinking of a North Korean submersible in 1998, Taoka maintained that even had the ship been sunk, it would probably not have brought condemnation from other states (*Asahi Shimbun Evening Edition*, 24 March 1999: 18). However, directly targeting the spy ships was also avoided because of the possibility that a Japanese citizen had been abducted and was on board the ship. Furthermore, the MSDF were concerned that the spy ship might escalate the situation by returning fire with heavy weapons or blowing itself up in order to hide evidence (Shikata, 1999: 8).

Demands for the laws regarding MSDF and MSA involvement in a spy ship chase emerged in the aftermath of the 1999 spy ship incident. Both Liberal Democratic Party (LDP) lawmakers, as well as a number of journalists, argued for the MSDF to be able to stop unidentified vessels without the approval of the Cabinet and to use weapons in such an instance beyond firing in self-defence. Particular reference was also made to the anomaly between the ASDF being able to shoot down an aircraft that invades Japanese territory and the restrictions prohibiting the MSDF from firing on unidentified vessels in Japanese maritime territory (*Japan Times*, 30 March 1999; *Asahi Shimbun*, 30 March

¹⁷⁴ Although the Law Concerning Execution of Duties of Police Officials states that Japanese authorities, including the MSDF in the case of pursuing spy ships, can use weapons "to an extent required to arrest a culprit, prevent the culprit from running away, and to ensure the safety of those involved"; the law also inhibits causing injury except in self-defence (*Asahi Shimbun*, 30 March 1999: 2). Ebata Kensuke, a commentator on military affairs, notes that there is no precise law governing the conduct of the SDF that precisely determines when the SDF can fire warning shots or at an enemy directly (*Asahi Shimbun*, 24 March 1999: 39), which is why the Law Concerning Execution of Duties of Police Officials is used for the SDF.

¹⁷⁵ Article 111 of the UN Convention for the Law of the Sea (UNCLOS) states that an unidentified vessel can be pursued up to the waters of another country (*Mainichi Shimbun Evening Edition*, 24 March 1999: 3).

1999; Nabeshima, *Japan Times*, 7 April 1999).¹⁷⁶ Chief Cabinet Secretary Nonaka Hiromu, however, countered these requests for amendments to SDF and MSA law, by defending the law governing the protection of Japanese territory as appropriate and suggesting instead that the tactics of the MSDF and MSA should be reconsidered (*Japan Times*, 31 March 1999; *Asahi Shimbun*, 30 March 1999). Yet, an examination of the spy ship case in 1999 clearly reveals that at the critical juncture when the *Taisei Maru Number 1* had stopped and the MSDF were on hand to capture the vessel, procrastination amongst Japanese government officials delayed the order for the law regarding maritime security action to be enacted which allowed the *Taisei Maru Number 1* to get away. As Morimoto Satoshi of Nomura Research Institute maintains, incidents like the March 1999 spy ship case are all too common and both the MSDF and MSA lack the legal support they need to carry out effective missions to stop and inspect suspect ships (*Mainichi Shimbun*, 25 March 1999: 2).

4.2g Explaining Japan's Response to the March 1999 Spy Ship Incident

The government's response to the March 1999 spy ship incident is framed entirely by the context of Japan's containment of North Korea in the Northeast Asian interstate society. The spy ship incursion occurred some six months after the launch of the North Korean Taepodong missile over Japanese territory. This fact encouraged the Japanese electorate to favour a robust response which in turn prompted further government containment strategies (*Yomiuri Shimbun*, 24 March 1999: 2). These strategies included the passage of the US-Japan Defence Guidelines, maritime security cooperation with Russia and South Korea, the establishment of constitutional revision committees in the Diet, as well as exploration into the adoption of Theatre Missile Defence (TMD) and spy satellites (Shikata, 1999: 8-9). Each of these points will be examined in greater detail in order to assess the ramifications of, as well as the context surrounding Japan's response to the March 1999 spy ship incident.

¹⁷⁶ In 1987, the ASDF fired tracer and machine guns at a Russian reconnaissance plane that had invaded Japanese airspace. The sinking of a North Korean semi-submersible in December 1998 by South Korean military forces also suggested the MSDF response to the March 1999 spy ship incident had been inconclusive by comparison (*Mainichi Shimbun Evening Edition*, 24 March 1999: 2).

At the time of the March 1999 spy ship incursion, the controversial US-Japan Defence Cooperation Guidelines had been debated in the Diet for 11 months. The core issue under discussion concerned the kinds of non-combat roles the SDF could undertake to support the US military in 'areas surrounding Japan'. The geographically ambiguous phraseology, which failed to define what these surrounding areas were, raised fears in China that an altercation in the Taiwan Straits might involve the Japanese military (Kaji, 1999: 55-57). The Japanese government decided on language in the US-Japan Defence Cooperation Guidelines that was 'situational' rather than 'geographical' in order to keep Japan's defence options open without overtly antagonising China by specifying areas the Chinese regard as within their sphere of interest, notably the Taiwan Straits (Hughes, 2004: 100-101).¹⁷⁷

Yet, in March 1999, the government still had to garner public support for the Guidelines to ensure that the Guidelines Bill would be passed in the Diet. The spy ship incursion combined with the Taepodong missile launch highlighted the North Korean threat, reinforcing in the minds of the Japanese electorate a sense that the 'areas surrounding Japan' were not safe and that legislation would be required to protect Japanese territory. This feeling of insecurity was heightened, as legislation at the time was partly to blame for the failure to catch the spy ships (*Asahi Shimbun*, 24 March 1999: 39; *Asahi Shimbun*, 25 March 1999: 2). By adopting a resolute stance, the actions to apprehend the North Korean spy ships ordered by the Japanese government enabled the prompt passage of the controversial US-Japan Defence Cooperation Guidelines in May 1999.

The Japanese government put a certain amount of spin on the event to ensure the electorate would connect the North Korean military threat with the passage of the Guidelines. Professor Maeda Tetsuo of Tokyo International University noted at the time of the incident that it was somewhat unusual for the government to set up a strategy room and call a press conference for what was essentially a violation of Japanese

¹⁷⁷ On this point Tanaka Akihiko, professor at the University of Tokyo, commented: "It is not wise to pinpoint a geographical area. Taiwan is close to Japan's Yonaguni island. For the sake of Japan's defence, we cannot say that [Taiwan] is excluded. If we declare that Taiwan is part of it, such would make an enemy of China. We need some ambiguity in our security policy" (*Asahi Shimbun*, 2 April 1999: 2).

territory by unidentified ships, which is a frequent occurrence in Japanese waters. Moreover, the fact that the government stressed the need to approve the Guidelines at the same time as emphasising the government's crisis management skills, shows a willingness on the part of the government to use the spy boat incident as a means to boost the administration's popularity whilst encouraging the passage of the Guidelines (*Mainichi Shimbun*, 24 March 1999: 31).

However, the ramifications of the March 1999 North Korean spy ship incursion were not limited to the passage of the US-Japan Security Guidelines. The Japanese government's interest in TMD swelled following the Taepodong missile test and the spy ship incident, with Japan promising to fund US\$174-260 million of a joint project with the US. Tokyo also signalled its desire to develop a satellite-based surveillance programme to garner intelligence from North Korea.¹⁷⁸ The Diet set up special panels to discuss potential revisions to the Japanese constitution, in particular focusing on Article 9, the anti-war clause.¹⁷⁹ Furthermore, there were demands for the use of weapons, based on Police Law, to be relaxed in order for the MSDF to be able to target the spy ships themselves in the future (Watanabe, 1999: 12). Security cooperation between Tokyo and Seoul increased, signalling a new sense of unity between countries threatened by North Korea's missiles and an end to the historic animosity between Japan and South Korea (Park, 2000: 537-538; Uriu, 2000: 146-148; Langdon, 2001: 180-182; Harnisch, 2002: 857-858). Finally, Japan and Russia determined to boost maritime cooperation in the aftermath of the 1999 incident, signalling the potential for Japan to develop further maritime policing ties with other neighbouring countries (*Japan Times*, 1 April 1999; Nabeshima, *Japan Times*, 7 April 1999; *Yomiuri Shimbun*,

¹⁷⁸ At a press conference after the 1999 spy ships incident, Chief Cabinet Secretary Nonaka detailed that the advantages of having a domestic spy satellite were that it would allow the Japanese government to respond quickly to a situation, and that Japan has the technology to produce an effective spy satellite with up to one-metre resolution (*Asahi Shimbun Internet Edition*, 1 April 1999). The development and construction of the satellite would fall to Mitsubishi Electric which stood to gain from the technological spin-offs the project would provide (*Nihon Keizai*, 8 April 1999: 1, 13).

¹⁷⁹ The Lower House Constitution Study Committee, chaired by Nakayama Tarō, is focused on the issue of revising Article 9. For more information on amendments to the Japanese constitution, see the transcript of "The Future of the Japanese Constitution" with Richard Samuels, Leonard Schoppa, Akihiko Tanaka and William Breer, 10 June 2005, CSIS, Washington, D.C. www.csis.org/media/csis/events/050610_constitution.pdf accessed on 25 October 2005.

4 April 1999: 1; *Nihon Keizai Shimbun*, 8 April 1999: 1, 13; Uriu, 2000: 146).¹⁸⁰ In terms of preparations and equipment for future spy ship incursions, the MSDF determined to build two advanced missile boats to be stationed at Maizuru, Kyoto Prefecture. The boats, of approximately 200 tons displacement, would carry four anti-ship missiles and a 76mm machine gun, travelling at a maximum speed of 40 knots (*Tokyo Shimbun*, 6 April 1999: 27).

Japan's determination to deal with North Korea firmly on the spy ship issue, therefore, led to significant transformations of Japan's defence posture and the capacity of the Japanese military to respond to incursions into Japan's sovereign maritime territory. These changes would strengthen Japan's position when negotiating with Pyongyang on missile, abduction and narcotics trafficking matters (Shikata, 1999: 8-9). Nonetheless, the Japanese government was clearly attentive to how its actions would be interpreted by the interstate society and was careful not to order strategies that could lead to the sinking of the spy ships in contravention of international law.

4.2h Japan's Diplomatic Response

Having determined that the spy ships were North Korean, the Japanese government lodged a protest with the North Korean government via diplomatic channels in Beijing and at the UN in New York. Furthermore, Tokyo asked for full details of the operation to be made public and the crews and ships to be handed over to the Japanese authorities (*Japan Times*, 30 March 1999; *Mainichi Shimbun Evening Edition*, 24 March 1999: 1; *The Glasgow Herald*, 26 March 1999). These diplomatic moves were unlikely to have great effect, however, as representatives of the North Korean government in New York and Beijing tend to spin information they relay to Kim Jong Il in a positive light. Hence, the possibility of Japan's desire to see the spy ships extradited and operations ended reaching the ears of Kim Jong Il was remote (*Mainichi Shimbun*, 1 April 1999: 5).

¹⁸⁰ Russia dispatched three patrol boats at Japan's request when the two spy ships crossed Japan's ADIZ and entered Russian waters (*Asahi Shimbun Evening Edition*, 24 March 1999: 2). The Russian patrol boats did not intercept the spy boats, which did not enter Russian domestic waters but headed for North Korea instead (*Yomiuri Shimbun*, 25 March, 1999: 1).

After the incident the Japanese government decided not to implement sanctions against North Korea in an effort to draw a line under the event and continue negotiations with North Korea on normalisation issues (Sato, 1999: 13). An interview with Foreign Minister Komura Masahiko noted that this included abiding by Japan's responsibilities as detailed in the KEDO agreement. Komura did state, however, that Tokyo's approach vis-à-vis North Korea would be one of dialogue and deterrence, whereby constructive discussion would always be welcome, but resolute action would be taken if necessary (*Mainichi Shimbun*, 7 April 1999: 2).

The Japanese government concentrated on normalising relations with North Korea in the aftermath of the spy ship case, so that Japan could communicate its apprehensions about aggressive North Korean activities, whilst using aid as a bargaining chip to dissuade further spy ship instances in the future. Evident in this strategy, though, was a lingering fear, generated in August 1998 by the firing of the Taepodong missile over Japanese territory, of North Korea's military strength that centred upon Pyongyang's WMD and ICBM capabilities (*Yomiuri Shimbun*, 26 March 1999: 1, 18). The 1999 spy incident, therefore, presented a Japan that was trying to flex substantial military muscle, yet constrained by the legal devices that lie at the core of the Japanese constitution and limit the role the SDF can play. In this strategic environment, a contradiction emerged in Japanese diplomacy, whereby a fear of North Korea's military strength, despite being far less potent in technological, equipment and training terms compared with the Japanese military, led simultaneously to the expansion of the SDF's role in protecting Japanese territory, whilst raising the need for negotiation with North Korea to prevent a future missile attack. This position is bound to have sent mixed signals to Pyongyang, encouraging the North Korean leadership to maintain a similar strategy of emphasising their military power, whilst attempting to increase communications with foreign powers. Amongst North Korea's stratagems was also a continued reliance upon the activities conducted by spy ships, signalling the potential for a future maritime debacle between North Korea's covert forces and Japan's maritime agencies.

What was significant about the response of the Japanese government to the March 1999 spy ship case is that the MSDF chased the North Korean vessel to the edge of Japan's EEZ, firing warning shots without contravening international law. The deployment of the MSDF was in line with a state's right to protect its sovereign territory and, in the aftermath of the event, the Japanese government turned to diplomatic means to maintain negotiations with the regime in Pyongyang. Hence, by considering interstate opinion and not violating international law, the Japanese government was able to maintain diplomatic negotiations easily, opening up the possibility of shifting the Japan-North Korea relations from containment to engagement.

There are several reasons that the Japanese response did not transgress the rules of the interstate society. It was the first time the MSDF had been mobilized to chase down North Korean spy ships and the government sought to exercise caution, believing that a more robust response would upset neighbouring governments as well as ongoing negotiations with North Korea. Second, because the MSDF were dispatched, in place of the MSA whose duty it is to police Japanese waters, authorisation permitting the MSDF vessels to target the North Korean spy ships directly was delayed. Finally, in spite of the August 1998 Taepodong incident, the government did not believe that public opinion would support the MSDF directly firing upon the North Korean vessels. By December 2001, however, the Koizumi government combined with an altogether different set of global circumstances allowed for a stronger response to an incursion by a North Korean spy ship.

4.3 The December 2001 Spy Ship Incursion

4.3a Summary

In early December 2001, US reconnaissance satellites discovered three suspicious ships leaving North Korean ports in the direction of Japan.¹⁸¹ On 18 December, a Japanese SIGNIT station on Kikaijima, in northern Okinawa Prefecture, picked up radio transmissions from one of the suspicious boats operating southwest of Kyūshū. The MSDF were unable to locate the suspicious ship from the data collected from the radio transmissions and so dispatched a P-3C to investigate. The aircraft found one of the North Korean ships sailing 250km northwest of Amami Ōshima in Kagoshima Prefecture, within Japan's EEZ (*Yomiuri Shimbun Evening Edition*, 26 December 2001: 1; Ball, 2004: 76).¹⁸² On 22 December 2001, the JDA contacted the JCG to inform them that a suspicious ship had been located navigating in the jurisdictional waters of Kagoshima Prefecture, off the west coast of Amami Ōshima. The JCG responded swiftly by dispatching ships, planes and helicopters to pursue the suspicious ship. At 6:20 a.m. on 22 December, an JCG plane discovered the suspicious ship about 240km northwest of Amami Ōshima and at 12:48 p.m., the JCG ship *Inasa*, assigned to the Nagasaki JCG, began tailing it; ordering it to stop in Japanese, Chinese, Korean and English for inspection according to domestic fishing laws. The spy ship began to zigzag in an attempt to shake off the Japanese authorities. In response the *Inasa* started firing warning shots into the air and sea in accordance with Article 20, Clause 1 of the JCG law. The suspicious ship ignored these shots and continued in its efforts to escape (Yamada, 2004: 34-36).¹⁸³

¹⁸¹ The ship is said to have sailed from Haeju on the west coast of North Korea, stopping at Nampo to collect special warfare soldiers from North Korea's 8th Corps (*Virtual Information Center*, 28 December 2001: 9). The US military were also monitoring radio communications between the suspect ship on a frequency used almost exclusively by the North Korean ruling party (*Virtual Information Center*, 28 December 2001: 6-7). Such intelligence will have raised suspicions that the spy ship was North Korean at an early date.

¹⁸² Despite the information from the US intelligence satellite, the suspicious ship that was found bore Chinese markings and flew a Chinese flag, leading the Japanese authorities to question whether or not the ship was in fact of Chinese origin (*Japan Times*, 23 December 2001).

¹⁸³ The JCG emphasises that warning shots were first fired on the Japanese side of the Japan-China equidistant line (*Sekai Editorial Board*, 2002: 277). The reason for the JCG's insistence on this point is connected with the Japanese government's assurances that the JCG engaged the North Korean spy ship

By three o'clock, the *Inasa* had been joined by the JCG patrol ship *Mizuki*, assigned to the Fukuoka JCG, and began to target the suspicious ship directly using an automatic targeting device to fire at the bow and stern of the ship. The JCG had not aimed at a ship directly since 1948. In spite of the action taken by the JCG, the suspicious ship continued to flee; jettisoning oil drums and packages off the stern of the ship. These oil drums and packages sank to the bottom of the East China Sea and could not be recovered. It is believed that this was an attempt to hide evidence of drug smuggling activity (Yamada, 2004: 36-38).

Two other JCG patrol vessels joined the chase. These were the *Amami*, assigned to the Naze JCG, and the *Kirishima*, assigned to the Kushikino JCG.¹⁸⁴ These two ships drew alongside the suspicious ship in order to board it.¹⁸⁵ As the boats approached, however, the suspicious ship opened fire with automatic weapons and anti-tank RPG launchers on the *Amami*, *Kirishima* and nearby *Inasa*, injuring three members of the JCG crew.¹⁸⁶ The *Amami*, whose bridge was scarred with bullet holes,¹⁸⁷ withdrew from the engagement, whilst the *Inasa* returned fire in self-defence, according to Article 20,

legitimately and that the JCG's actions were systematic. This is important because both the JCG and the Japanese government felt the need to justify the outcome of the chase to demonstrate that the JCG had acted in full accordance with international law. Hence, Japan was responding to a maritime security threat within the boundaries specified by the interstate society. However, the JCG was heavily criticized for ordering its ships to continue to fire on the North Korean spy ship after it had entered China's EEZ. The legal case will be detailed later in this chapter.

¹⁸⁴ *Amami's* role was to film the incident in order to use the film as evidence should the ship be captured and its crew tried in court. The *Amami*, as the largest JCG vessel present in the chase, was also given the task of drawing alongside the spy ship in order to board it (Yaji, 2005: 220). Collecting evidence in order to arrest and prosecute a case in court is one of the most significant factors distinguishing the JCG from the MSDF. This role is the principal reason that the JCG and not the MSDF were tasked with pursuing the North Korean spy ship. For more on the differing roles between the MSDF and JCG, see Hirose and Hayashi, 2003.

¹⁸⁵ There was some concern that if the suspicious ship was not inspected at that point it would be lost amongst a group of Chinese fishing boats (*Asahi Shimbun*, 26 December 2001: 1). At this point the North Korean spy ship was located in China's EEZ.

¹⁸⁶ The injured JCG personnel were Nagatomo Yoshiharu, 54, a navigation officer, and Kinjō Yoshitake, 49, chief mate from the patrol ship *Amami* (*Japan Times*, 23 December 2001; *Asahi Shimbun*, 24 December 2001: 27). Ageno Toyofumi, a crew member on the *Amami*, was later found to have been injured in the right eyelid by a metal fragment (*Yomiuri Shimbun*, 25 December 2001: 1).

¹⁸⁷ The *Amami's* navigation system and Global Positioning System (GPS) were broken and the stern loading door mechanism was also crippled. This damage reduced the speed of the *Amami* as it returned to port (Yaji, 2005: 221).

Paragraph 1 of the JCG law (*Asahi Shimbun*, 23 December 2001: 1; Yamada, 2004: 38-39).

The *Inasa* was able to damage the spy ship with its state of the art weaponry,¹⁸⁸ but the spy ship was unable to respond in kind, its crew finding it hard to target their adversaries in stormy weather.¹⁸⁹ Three minutes after the *Inasa* commenced firing in self-defence, there was an explosion and the spy ship sank within a mere two minutes. The bulkhead between the aft engine room and the section which housed a small boat was detonated and the doors at the back of the boat opened, which allowed the seawater to rush in and sink the ship quickly (*Yomiuri Shimbun*, 25 December 2001: 1). It was later ascertained that the North Korean crew were ordered by wireless radio to scuttle the ship to hide any criminal evidence on board.¹⁹⁰ Though the JCG used infra-red equipment to locate the spy ship's crew who had jumped or been blasted into the water, they were not rescued;¹⁹¹ the JCG having received reports from their South Korean counterparts that North Korean sailors might blow themselves up using hand grenades if taken alive (Brooke, *New York Times*, 24 December 2001: A.9; *Japan Times*, 26 December 2001).¹⁹² Two drowned bodies were lifted from the surface of the ocean the

¹⁸⁸ Two of the three Coast Guard ships in pursuit of the spy ship were equipped with a Remote Firing System (RFS) which improves the accuracy of the 20mm machine guns (*Japan Times*, 25 December 2001).

¹⁸⁹ The waves were 4 metres high or more and the wind speed reached 15 metres per second (Yaji, 2005: 218). In such conditions the accuracy of the JCG's guns must be doubted. Could the JCG patrol ships really be sure that their warning shots would not injure or kill the North Korean crew?

¹⁹⁰ The JDA monitored a radio transmission to the two spy ships during the March 1999 incident ordering them to scuttle themselves if captured (*The Korea Times*, 15 August 1999). This previous case suggests in part why the JCG believed the spy ship in December 2001 had sunk itself.

¹⁹¹ According to some reports, the JCG threw life buoys at the North Korean crew (*Yomiuri Shimbun*, 25 December 2001: 1), however, these would not save the North Korean crew from exposure and hypothermia in the freezing and stormy conditions of the East China Sea. At a press conference after the incident, a coast guard official, Sakamoto Shigehiro, was quoted as saying, "it was unthinkable for the coast guard not to do their best (to rescue the men)" (*Yomiuri Shimbun*, 25 December 2001: 1). Other accounts blamed bad weather for the failure to rescue the North Korean crew (*Asahi Shimbun*, 24 December 2001: 26) or stressed that the JCG were awaiting the arrival of a special guard unit by helicopter to save the North Korean crew, but that the unit did not arrive until 12 a.m. by which time the crew had vanished from the surface of the ocean (*Yomiuri Shimbun*, 24 December 2001: 27). Clearly, the JCG were wary of the fact that despite the North Korean crew being surrounded by armed JCG patrol boats, the JCG had not rescued a single man. This criticism is all the more telling in that, the JCG were not entirely sure, even at that stage, that the ship was North Korean. Also, why would the JCG fear that the crew would blow themselves up, yet, minutes before the sinking of the suspicious ship, JCG officials were preparing to board and inspect the vessel?

¹⁹² 12 coast guard ships, ten aircraft and two MSDF P3C planes were involved in the search for the crew members (*Japan Times*, 29 December 2001). Considering that the JCG were not intending to rescue the

next morning and six, grey, ossified cadavers were pulled from the sunken ship when it was salvaged in September 2002.¹⁹³ The North Korean crew were of strong build and between 20 and 50 years of age (Yamada, 2004: 39-42).¹⁹⁴

The Japanese government immediately sought to justify the action taken by the JCG in the aftermath of the incident. However, the reaction of the JCG had a profound effect upon the expansion of the SDF's role too. The Japanese Cabinet approved a record US\$38 billion defence budget a day after the spy ship sank, and Prime Minister Koizumi called for both the JCG and SDF to be allowed to respond more robustly to violations of its maritime territory (Brooke, *New York Times*, 24 December 2001: A.3). The call for legal amendments to enable the JCG or MSDF to fire upon suspect ships in Japan's EEZ could have important repercussions. South Korean boats are frequently stopped by the JCG for violating Japanese fishing grounds and Chinese survey ships are often forced out of Japanese waters. Bestowing too much power upon Japan's maritime authorities could lead to serious diplomatic altercations with Japan's neighbours (Valencia and Guoxing, 2002: 731). However, as North Korea is regarded by many states in the interstate society as a pariah or rogue state, so determined or forceful action taken against its spy ships are arguably more defensible considering the unique range of threats that North Korean spy ships pose to Japan.

North Korean crew who they had watched disappear from the surface of the ocean through infra-red sighting equipment over the course of an hour after the ship sank, the only reason for engaging so many craft seems to have been to recover evidence from the dead bodies.

¹⁹³ In total, 15 North Korean crew were seen drifting on the surface of the ocean after they scuttled their ship. As only 15 North Korean crew members are required to undertake a mission to transport drugs to Japan, the recovery of a further six bodies from the sunken vessel raises the possibility that the ship's mission included picking up North Korean spies from Japan (Yaji, 2005: 221).

¹⁹⁴ One report notes that one of the bodies pulled from the water after the incident in December 2001 had a bullet wound in his leg (*Japan Times*, 27 December 2001). It is somewhat surprising that the other cadavers did not have bullet wounds considering the number of shots fired by JCG guns at the spy ship. If this is testimony to the skill and technological capability of the JCG crew and weaponry, the JCG claimed they had only put down 'suppressing fire' (*Asahi Shimbun*, 24 December 2001: 27), then it raises the question why the North Korean crew scuttled their ship. After all, scuttling the ship would be a last resort and if they were not endangered by the JCG's highly accurate fire which targeted only the stern of the spy ship, then why not continue fighting using the full range of weaponry aboard? In fact, when the *Inasa* returned fire in 'self-defence' it mainly targeted the pilothouse (*Asahi Shimbun*, 24 December 2001: 26), which is where most of the North Korean crew were. It is therefore incredible that the North Korean crew recovered had no bullet marks on them.

4.3b Purpose of the 2001 Spy Ship

Though the threat posed by the spy ship that entered Japanese waters in December 2001 can only be surmised, a number of factors about the instance indicate several possibilities. To send spy ships out in such heavy seas suggested that the ship was on an important mission, such as inserting a specialized operative into Japan or transporting illegal merchandise, like a large narcotics shipment to help fund the North Korean party through the winter (*Asahi Shimbun*, 24 December 2001: 3; Intelligence Research Group, *Chian Foramu*, 2002: 9). The hypothesis that the ship was transporting drugs is strengthened by the fact that there were a number of reasons that the North Korean regime would need to make a substantial amount of money at that time. Life in North Korea in 2002 would be punctuated by a succession of expensive celebrations. These included Kim Jong Il's sixtieth birthday on 16 February, the commemorative ninetieth birthday of Kim Il Sung on 15 April, and the seventieth anniversary of the foundation of the Korean People's Army on 25 April. Furthermore, from April to June, at the same time as South Korea co-hosted the World Cup, the 'Arirang' mass games would be held involving 100,000 people. With the economy experiencing a prolonged depression, the number of tourists visiting Mt. Kumgang decreasing and action being taken to inhibit the remittance of funds from North Korea nationals abroad, it was difficult to see how Pyongyang would raise the capital for the festivities if not through illicit means.¹⁹⁵ Finally, when the spy ship in this December 2001 debacle and that from the August 1998 narcotics smuggling case were compared, they were found to be the same ship (*Yomiuri Shimbun*, 24 December 2001: 1; Yun Doku Min, 2002: 111; Yaji, 2005: 218).

Moreover, clues to why the spy ship in December 2001 was at sea for a couple of weeks according to US intelligence may lie in a comparison with the 1998 spy ship incident, whereby the spy ship was at sea for several days awaiting a rendezvous with a ship

¹⁹⁵ Japanese maritime authorities were tipped off by Chinese intelligence in early January 2002, some two weeks after the sinking of the spy ship, about a drugs shipment coming from China. The 330 pounds of amphetamines, with a street value of US\$70 million in Japan, on board were found to be of North Korean origin (Brooke, *New York Times*, 14 January 2002: A.2). It should also be noted that there is a custom of raising 'winter funds' for the ruling party (*Asahi Shimbun*, 24 December 2001: 3) and that these drugs shipments coincide with New Year's celebrations in Japan when demand for amphetamines may be higher.

chartered by a *yakuza* gang. It is likely that spy ships inserting or extracting covert operatives to and from the Japanese mainland do not waste time on the ocean, but transit the Japan Sea as quickly as possible. Finally, it is believed that the spy ship was accompanying two other North Korean ships, leading to the suspicion that either the ships were gathering intelligence or smuggling drugs. Spy ships involved in inserting or extracting operatives usually act alone (*Virtual Information Center*, 28 December 2001: 5).¹⁹⁶

The slow speed at which the North Korean spy ship attempted to escape from the Japanese authorities signalled a contrast with earlier instances when North Korean spy ships easily outran their quarry and this may have been due to the purpose of the ship. The slow speed of the spy ship indicates either that it was trying to divert the attention of the JCG away from a more important 'mother ship' or that it was experiencing engine trouble and so had difficulty achieving higher speeds.¹⁹⁷ The fact that the North Korean spy ship crew fired on the JCG ships, before scuttling their ship to hide evidence differs from previous spy ship cases (*Asahi Shimbun*, 24 December 2001: 1; Intelligence Research Group, *Chian Foramu*, 2002: 5). The reaction of the North Korean spy ship in the December 2001 case is largely attributable to the fact that the JCG patrol boats were attempting to board and inspect their ship, a tactic that had not been attempted in previous cases. It is therefore unclear that a last-ditch attempt by the North Korean crew to break away from their pursuers or to sink their ship when all was lost would have been any different had it occurred prior to December 2001.¹⁹⁸

¹⁹⁶ The fact that more than 15 North Korean bodies were believed to have been on board the spy ship does suggest that the vessel was engaged in more than drugs trafficking as only a 15 man crew is usually required to transport narcotics (Yaji, 2005: 221).

¹⁹⁷ US satellite photos revealed that the vessel that was sunk was operating with at least another ship that was able to return to North Korea (*Japan Times*, 31 December 2001). The JCG analysed infrared pictures from one of its planes and was able to calculate the temperature in the engine room of the spy ship leading it to conclude that one of the engines had broken down (*Yomiuri Shimbun*, 29 December 2001: 1). Earlier in the chase, the JCG had fired at the bow of the spy ship causing a fire to break out. This should have damaged the coolant pipes for the engine rooms (*Yomiuri Shimbun Evening Edition*, 25 December 2001: 15). This action may have served to aggravate the engine trouble experienced on board the spy ship.

¹⁹⁸ Indeed, prior cases of North Korean incursions into South Korean waters revealed that the North Koreans would sooner blow themselves up than be captured (Intelligence Research Group, *Chian Foramu*, 2002: 5). It was this information that deterred the JCG from rescuing the North Korean survivors who had jumped or been thrown into the sea as their ship sank. The weather may also have slowed the spy ship down, the high waves and heavy winds lifting the boat out of the water, its propellers spinning in mid-air (*Asahi Shimbun*, 24 December 2001: 3).

Nevertheless, the heavy armament does raise questions of what the North Korean crew had intended the weapons for (*Yomiuri Shimbun*, 25 December 2001: 26), especially considering that much of the weaponry used by the crew of the spy ship was ineffective at sea.

4.3c Cooperation between the JDA and JCG

Once again, in the immediate aftermath of the spy ship incident, while the purpose of the spy ship could only be surmised, the coordination between the JCG and JDA was widely criticised. The JCG were only notified of the presence of the spy ship after an MSDF plane in the East China Sea had confirmed it at 4 p.m. on 21 December, nine hours after an SDF P3C plane had first spotted the suspicious ship.¹⁹⁹ This delay had serious repercussions in the spy ship chase. The *Amami*, as the largest ship involved in the chase, was charged with boarding the spy ship, despite the fact that the *Amami* was equipped with neither RFS guns nor did its bridge have bullet-proof glass. Only the *Inasa* and the *Mizuki* possessed adequate weaponry to open fire on the spy ship. Furthermore, the Special Maritime Police Unit, which was ordered to capture the North Korean crew, were dispatched from Osaka too late to arrive before the North Koreans had disappeared beneath the surface of the water (*Asahi Shimbun*, 29 December 2005: 3).

Even Prime Minister Koizumi stated that the coordination between the two maritime organizations would have to be reviewed (*Japan Times*, 25 December 2001; *Jiji Press*, 27 December 2001: 1; *Asahi Shimbun*, 24 December 2001: 2; *Yomiuri Shimbun*, 23 December 2001: 26). Furthermore, Commandant Nawano Katsuhiko of the JCG exclaimed that as it was now harder to distinguish between a country's use of military force and terrorist action, the JCG, charged with dealing with crimes at sea, and JDA,

¹⁹⁹ The MSDF blamed part of this delay upon the lack of equipment to electronically relay pictures taken by the P3C plane which discovered the suspicious ship to the JDA headquarters in Tokyo. This meant that the P3C had to return to base before the photos were sent to Tokyo to be analysed (*Yomiuri Shimbun*, 24 December 2001: 3; *Asahi Shimbun*, 26 December 2001: 2). This delay signalled a deficiency in the JDA's Information Technology capabilities, particularly the fact that few P3C's were equipped with air-to-ground high resolution digital image transmission apparatus (*Yomiuri Shimbun*, 26 December 2001: 27).

responsible for national defence, would have to work closer together (*Japan Times*, 31 December 2001). Yet, despite these statements, on 5 September 2002, when the JDA detected a North Korean ship flying a North Korean flag, but of the same proportions as the previous spy ships, just outside Japan's EEZ, it took over four hours to notify the JCG (*Japan Times*, 6 September 2002).

A lack of cooperation between the JCG and JDA had been one of the main reasons that the North Korean spy ships had escaped in March 1999 and this failure to coordinate the activities of the two organizations led to the formulation of a guidebook detailing how the JDA and JCG would work together to combat the problem of spy ships.²⁰⁰ However, the reoccurrence of miscommunication between the JDA and JCG in the December 2001 spy ship case made it seem as though no progress had been made (*Yomiuri Shimbun*, 25 December 2001: 2). The time taken by the JDA to inform the JCG of its intelligence concerning the spy ships, meant that the JCG patrol ships only caught up with their adversary as the ship was leaving Japan's EEZ and attempted to board the spy ship in China's EEZ.²⁰¹ Had the JCG received information about the spy ship earlier, the whole affair might have been wrapped up in Japan's EEZ which would have lessened the criticism that Japanese forces had not acted in accordance with international law.

Nevertheless, Japan's maritime authorities did learn certain lessons from the March 1999 incident which they were able to put into practice in December 2001. One amendment that was made to JCG equipment was the introduction of high precision machine guns that could target a ship's stern even in winds up to 20 metres per second and 4-5 metre waves and avoid hitting the crew. The Vulcan 20mm multi-barrelled revolving machine gun fitted to JCG patrol boats after March 1999 is capable of

²⁰⁰ This manual was again to be revised after the 2001 incident to give the SDF a greater role in spy ship instances, enhance coordination between the JCG and SDF, improve the ability of both the JCG and SDF to capture spy ships and improve armaments to deal with such situations (*Virtual Information Center*, 28 December 2001: 5-6).

²⁰¹ An SDF official was quoted as saying that the delay in informing the coast guard was because "we wanted to explore any possible danger and determine whether the ship was armed. We didn't waste six hours" (*Yomiuri Shimbun*, 25 December 2001: 1). Yet, the fact that the SDF did not anticipate the spy ship to fire on the coast guard demonstrates that the danger the spy ship presented was not determined by the SDF.

penetrating the steel plate of a ship or the fuselage of a plane, giving the JCG a much greater potential to damage an illegal vessel (*Asahi Shimbun*, 23 December 2001: 27; *Yomiuri Shimbun*, 25 December 2001: 3).

4.3d Government Crisis Management

The Japanese government's crisis management was also called into question following the December 2001 spy ship debacle. Believing the suspicious ship to be a Chinese smuggling vessel belonging to the snakehead gangster organization, Deputy Chief Cabinet Secretary Abe Shinzō left the prime minister's residence at 8 p.m. on 23 December. Sugita Kazuhiro, the Deputy Chief Cabinet Secretary for Crisis Management, and other government officials who felt that the JCG could handle the situation by themselves followed him soon after. This judgement was taken despite claims by the Defence Agency Director Nakatani Gen at a press conference at 6 p.m. on 23 December, that the ship resembled the spy ships spotted off the Noto Peninsula in 1999. It was not until after the ship had sunk that the officials concerned returned to the prime minister's residence, Abe, himself, turning up at 11:30 p.m., around the time that the North Korean survivors were last seen alive (*Yomiuri Shimbun*, 23 December 2001: 27; *Yomiuri Shimbun*, 25 December 2001: 1). It was clear from the departure of key officials from the prime minister's residence that the sense of crisis had been lost (*Yomiuri Shimbun*, 24 December 2001: 3).

By entrusting the JCG to resolve the incident, the government voluntarily relinquished its ability to check the JCG's strategy. This is a key difference with the March 1999 incident when Prime Minister Obuchi himself did not permit the MSDF to fire on or board the spy ships. The Koizumi Cabinet's failure, in this instance, to reign in the JCG demonstrates that the response of the interstate society was not adequately considered. It was only after the incident that the Japanese government realised the magnitude of the event and decided to raise the stakes with North Korea by determining to salvage the ship.

4.3e Salvaging and Displaying the Spy Ship

The spy ship was salvaged in September 2002²⁰² and put on display at the Maritime Science Museum at Odaiba, Tokyo from 31 May 2003 until February 2004.²⁰³ After the ship was displayed for six months in Osaka, it was finally housed in the JCG Reference Centre in Yokohama from 10 December 2004 (Yaji, 2005: 218). The vessel was bigger than most ordinary fishing boats, measuring 30 metres long by 5 metres wide, and it carried 24 tons worth of fuel. The bow was also unusual, as it was of a V-shape, so the ship could obtain higher speeds, rather than the normal flat-bottomed shape of a fishing boat that gives more stability. There was a Chinese name and port written on the ship's side and back. Close inspection revealed that the salvaged ship was none other than the *Matsukami Maru Number 12* that was involved in a drugs smuggling case in August 1998 (Yamada, 2003: 48; Yaji, 2005: 218).²⁰⁴ At the stern of the spy vessel there were doors that opened to release a small white boat of 2.9 tons, 11.1 metres long and 2.5 metres wide. The small boat was powered by three Swedish made gasoline engines, each with a 300 horsepower capacity enabling a potential top speed of around 50 knots (93km/h), and also carried squid lights on board in order to masquerade as a Japanese fishing boat (*Asahi Shimbun Evening Edition*, 11 September 2002: 1; *Asahi Shimbun*,

²⁰² Before the salvage took place, on the 5 September 2002, a North Korean ship flying a North Korean flag, yet of the same shape and size of previous spy ships, appeared just outside Japan's EEZ (though conflicting sources say it may have entered Japan's EEZ). The purpose of the ship's presence remains a mystery though it may have been a show of force to tie in with both the upcoming summit and the salvage of the spy ship (*Yomiuri Shimbun*, 5 September 2002: 1-2, 39; *Japan Times*, 6 September 2002; *The Statesman*, 6 September 2002: 1; *Yomiuri Shimbun*, 6 September 2002: 1; *Jiji Press*, September 6 2002: 1; *Asahi Shimbun*, 6 September 2002: 3). Once again, the cooperation between the MSDF and JCG was called into question; the JCG complaining that it had taken too long for them to be informed (*Yomiuri Shimbun*, 6 September 2002: 4; *Yomiuri Shimbun*, 7 September 2002: 2). Some analysts also cautioned against the salvage. Most notably, Marc Valencia and Amae Yoshihisa of the East-West Centre in Honolulu, argued in the *Washington Times* that if the ship was raised and turned out to be Chinese or some kind of Chinese connection was uncovered, then it would have severe ramifications upon regional affairs. They also stress that nationalist pressure upon Prime Minister Koizumi may increase if the ship is actually North Korean and that it will provide an excuse for the expansion of Japan's military (Valencia and Amae, *The Washington Times*, 22 March 2002: A16).

²⁰³ The bullet-marked wheelhouse of the patrol ship *Amami* was displayed at the JCG headquarters in Kasumigaseki, Tokyo, so that recruits to the organization would understand the dangers they might face (*Virtual Information Center*, 8 May 2002: 12).

²⁰⁴ See Appendix II for photographic evidence on the salvaged North Korean spy ship.

14 September 2002: 33; *Yomiuri Shimbun Evening Edition*, 10 September 2002: 1; Yamada, 2004: 31-32).

The spy ship sank at a location in China's EEZ,²⁰⁵ thereby requiring the permission of the Chinese government for the ship to be salvaged. Representatives of MOFA and the JCG undertook negotiations with the Chinese authorities at the end of May 2002. Initially, the Chinese demanded several hundreds of millions of yen in compensation for losses to their fishing industry, but settled on a payment of ¥100 million.²⁰⁶ The work to raise the ship from a depth of 90 metres began on 25 June 2002, 400 kilometres from Amami Ōshima Island in Kagoshima Prefecture. Seventy-nine days later, on 11 September, the spy ship was lifted from the ocean bed.²⁰⁷ The salvage work had been delayed by a total of ten typhoons which had forced the salvage crews to return to Kyūshū on each occasion. These delays, coupled with the compensation for the Chinese government, raised the cost of recovering the vessel to ¥5.9 billion (Yamada, 2004: 42-43).

The number of weapons recovered from the spy ship was beyond the expectations of the authorities who had been involved in the chase, though it was acknowledged that even more weapons may have been ditched overboard or lost when the ship sank. The weaponry recovered included a Russian 14.5mm anti-aircraft machine gun, two light machine guns, four automatic rifles, eight hand grenades, two Russian anti-aircraft SA-16 missile launchers, one 82mm recoilless gun, and two PG-7 rocket propelled grenade launchers.²⁰⁸ Though this amounts to a substantial arsenal, it should be kept in mind that many of these weapons are outdated. Nevertheless, commentators have shown particular interest in speculating the purpose of the Russian anti-aircraft SA-16 missile

²⁰⁵ The exact location of the sunken ship was 29 degrees, 31.1 minutes north latitude, 125 degrees, 24.9 minutes east longitude.

²⁰⁶ See also, *Virtual Information Center*, 8 May 2002: 4; *BBC Monitoring Asia Pacific*, 4 May 2002: 1, and *BBC Monitoring Asia Pacific*, 4 June 2002: 1.

²⁰⁷ The private salvage vessel used in the recovery operation was the 15,850 ton Yoshida Maru Number 60.

²⁰⁸ The origin of the weapons is North Korean unless otherwise specified.

launchers.²⁰⁹ Other items on board the ship included badges of Kim Il Sung, North Korean tobacco and sweets.²¹⁰ If this was not sufficient evidence to declare the vessel North Korean, then any lingering doubts about the identity of the craft were put to rest when Kim Jong Il admitted that North Korea employed spy ships at his summit meeting with Prime Minister Koizumi on 17 October, 2002, in Pyongyang. Moreover, the ship that sank on 23 December 2001 was involved in an earlier drug smuggling case in 1998 (Yamada, 2004: 44-49).²¹¹

As well as the weapons found on board the spy ship, a number of other significant items were discovered. Explosives to blow up and scuttle the ship were located in front of the section housing the small boat, lending credence to the theory that the ship had been scuttled to hide evidence.²¹² Camouflaged diving suits and water scooters were also uncovered that were similar in design to water scooters discovered in the estuary of the Kurobe River in Toyama Prefecture earlier in 2001. Japanese high technology equipment, including a pre-paid mobile phone, a pocket computer, a radar and a Global Positioning System (GPS), were recovered from the sunken spy ship.²¹³ It was hoped that these instruments might reveal in detail the contacts, course and plans of the spy ship. However, the records held by the mobile phone company had expired by the time of salvage and JCG officials expressed doubt that information could be retrieved from

²⁰⁹ A heat-seeking missile launched from an SA16 could down a helicopter, plane or seriously damage a warship. The JCG patrol boats sat too low in the water to be targeted by a SA16, which may explain why the weapon was not used by the North Korean crew (Ishii, 2002: 22).

²¹⁰ The professionalism of North Korean spies must be questioned as items bearing North Korean insignia or pictures of Kim Il Sung have been found on spies before (*BBC Monitoring Asia Pacific*, 11 September 2002). The fact that items of clothing had tags with hangul written on them and that sweets and tobacco made in Pyongyang were found, suggests a rather *blasé* approach towards espionage.

²¹¹ The six *yakuza* involved in the drugs shipment case were prosecuted in November 2001 (*Japan Times*, 25 December 2001).

²¹² Intriguingly, when the spy ship was raised, the lack of a blast hole in the hull suggested that the theory that the North Korean crew had caused an explosion to scuttle the ship had been false (*Japan Times*, 12 September 2002). The JCG surmised that the explosion which they had heard had actually been the crew of the spy ship blowing up key equipment, such as the wireless radio and code machines. The ship may have been sunk by opening the door at the stern of the ship (*Asahi Shimbun*, 12 September 2002: 37). Conflicting reports argued, however, that four blast holes found under the bridge were the cause of the vessel sinking together with the stern door being opened (*Yomiuri Shimbun Evening Edition*, 11 September 2002: 19).

²¹³ That North Korean spies were using high technology Japanese manufactured equipment was not surprising. A small North Korean submarine that sunk in South Korea in June 2001, revealed a number of electronic devices and navigation equipment that had been made in Japan (*Virtual Information Center*, 8 May 2002: 7).

the waterlogged gadgets (Ishii 2002: 20-23; *Yomiuri Shimbun*, 6 October 2002: 1). Still, inspection of the mobile phone did uncover the phone numbers of members of Japanese criminal gangs and of a known North Korean narcotics smuggler, Mr. Wu Ji-Young, who was resident in Japan until his arrest by Japanese authorities in March 2004 (Tamura, 2004: 90; Yaji, 2005: 218). This evidence further raised suspicions that the North Korean spy ship was involved in narcotics smuggling.

Considering how much was already known about the ship, the total cost of salvage seems out of proportion to the items that were retrieved from it. According to Transport Minister Ogi Chikage, in the aftermath of the December 2001 spy ship incident, the rationale for raising the ship lay in determining the nationality and goals of the ship (*Japan Times*, 26 December 2001). In fact, whilst the nationality of the ship was more or less ascertained when the spy ship sank and North Korean articles were recovered, the goals of the spy ship remain obscure even after the salvage. This raises the issue of whether or not the exercise in recovering the spy ship had been worthwhile.

Nonetheless, by displaying the ship at Odaiba, the Japanese government was able to present to the Japanese people a tangible example of the North Korean threat. At the Maritime Science Museum, the rusted shell of the North Korean spy ship was aligned with the numerous weapons and the small boat designed for approaching Japan's coast. As a public relations exercise it helped focus the Japanese electorate's attention on the dangers Japan faced and thereby eased public criticism of bills designed to increase the role of the SDF. The reality of the situation on 23 December 2001 was that the spy ship had crossed into Chinese waters pursued by 25 JCG patrol vessels, 14 aircraft and an MSDF destroyer. Even with its armament, the spy ship had little chance of defeating the Japanese forces aligned against it. Therefore, the Japanese government exaggerated the threat posed by North Korean spy ships in its display, by failing to balance the exhibition with a detailed presentation of the strength and capabilities of the JCG and MSDF which guard Japan's waters.

In salvaging and displaying the spy ship, the Japanese government was also able to justify the actions of the JCG to the interstate society. Bull notes that even when a

member of the international society breaks international law, the state will go to great lengths to show that it remains in conformity with the bulk of international law, so as not to be perceived by fellow members of the international society as having a reputation for disregarding international law (Bull, 2002: 131-136). The ¥5.9 billion price tag for raising the spy ship paid for upholding Japan's reputation in the interstate society by assuaging the concerns of members of the interstate society, particularly South Korea and China, that the Japan Coast Guard had violated international law. This again underlines the significance states attach to how they are perceived in the interstate society.

Raising the spy ship just before his summit meeting with Kim Jong Il, gave Prime Minister Koizumi additional diplomatic ammunition with which to begin negotiations (*Japan Times*, 12 September 2002). Koizumi left Pyongyang with a number of key concessions regarding North Korean spy ship incursions into Japanese territory, including an admission of North Korea's involvement both in spy ship operations and abductions of Japanese citizens and a promise that spy ship operations would be discontinued (*Jiji Press*, 4 October 2002: 1). However, the sinking of the spy ship in December 2001 also had substantial diplomatic repercussions in Japan as well as throughout the East Asian region.

4.3f Domestic and Foreign Response

Japanese relations with North Korea since the 9/11 terrorist attacks had been unsteady and can be characterised in terms of containment. Japan's 'H-2a' satellite missile test coupled with the dispatch of Japanese forces to assist the US in the Indian Ocean antagonised Pyongyang, which perceived a remilitarisation of Japan and feared future Japanese territorial expansion. Though the extent to which these apprehensions run deep in the North Korean leadership cannot be known, the siege-like mentality in North Korea, largely cut-off from the interstate society and facing the overwhelming military force of South Korea, the US and Japan combined, is bound to stir up alarm amongst its citizenry and use this sense of dread as a bargaining chip in negotiations with foreign

powers. Therefore, the December 2001, sinking of the North Korean spy ship led to predictable consternation and remonstrance from Pyongyang (Ahn, 2003: 53-54). North Korean spokespeople talked of ‘an unprecedented historical event’ in which ‘Japan was guilty of a criminal act in another state’s territorial waters’. They elaborated that ‘[Japan’s] act of modern-day terrorism is hard to forgive’, especially as the Japanese referred to their ‘act of piracy in terms of self-defence’ (Sekai Editorial Board, 2002: 280). The Japanese government responded to these comments, Chief Cabinet Secretary Fukuda Yasuo asking if such language was appropriate and emphasising that the JCG had acted in accordance with international laws (*Virtual Information Center*, 28 December 2001: 4). Prime Minister Koizumi later elaborated upon the possibility of a North Korean military or terrorist threat on NHK public television, drawing the incident within the bounds of the ‘war against terrorism’ initiated by the US after the 9/11 attacks (*Virtual Information Center*, 28 December 2001: 16).

The South Korean response voiced concern about Japan’s reckless action outside its domestic waters. The South Korean press described the JCG’s involvement in the sinking of the suspicious ship as ‘excessive’ and ‘arrogant’ and that the event would freeze North Korean relations with Japan and isolate North Korea (*Yomiuri Shimbun*, 24 December 2001: 7; Sekai Editorial Board, 2002: 280). In particular, an editorial in the English language newspaper Choson Ilbo, commented that while the Japanese government had proclaimed that the JCG had acted in self-defence, it was in fact the JCG which had fired directly on the suspicious ship first. Furthermore, Japan could not legally justify firing at a foreign vessel in Chinese waters. The editorial piece ended by stating that Japan’s actions in this case should be placed in the context of Japan developing the scope of its military forces, adding that since the 9/11 terrorist attacks, the SDF had been dispatched to a war zone for the first time in its history (*BBC Monitoring Asia Pacific*, 24 December 2001: 1).

The Chinese government also expressed a desire to understand on what legal basis the spy ship was sunk (*Virtual Information Center*, 28 December 2001: 6, originally *People’s Daily*, 28 December 2001; *Asahi Shimbun*, 29 December 2001: 3). Zhang Qiyue, a spokeswoman for the Chinese Foreign Ministry, stated, “China is seriously

concerned about the Japanese side employing arms while pursuing the boat, and about the fact that it sank in China's exclusive economic zone. We are requesting the Japanese side to brief us further on relevant situations. The Japanese side should fully respect China's rights, interests and concerns" (Brooke, *The San Diego Union Tribune*, 26 December 2001: A-35). It was clear from the reactions of the South Korean and Chinese governments that Japanese actions had gone beyond what they considered justifiable by a member of the interstate society.

In Japan the mood towards the JCG's actions were generally positive. Of the 577 messages that the JCG received in the immediate aftermath of the December 2001 incident, 98 percent praised the actions of the JCG patrol boats.²¹⁴ Nonetheless, tensions mounted with an increase of 'phantom' reports of North Korean spies, such as a group of operatives landing on the small tourist island of Enoshima, in Kanagawa Prefecture and a report of a mysterious ship that turned out to be a fishing boat from Nagasaki Prefecture.²¹⁵ Inspections of North Korean merchant vessels, like the *Sonamu* trading ship, were undertaken and the dangers of North Korean narcotics were raised in the nation's weekly papers (Sekai Editorial Board, 2002: 280-281). Furthermore, opposition parties questioned whether firing upon a foreign vessel outside Japan's EEZ was in accordance with international and domestic laws and demanded an investigation (*Asahi Shimbun*, 24 December 2001: 3; *Yomiuri Shimbun*, 24 December 2001: 4).

4.3g Legal Considerations

After the March 1999 spy ship incident, Japanese law was adjusted to allow shots to be fired directly at a ship that was trespassing on Japanese domestic maritime territory.

²¹⁴ The highest praise, however, came from the Vice Secretary of State Richard Armitage (*Sekai Editorial Board*, 2002: 281). Armitage stated that he believed the sunken ship to be North Korean and offered to provide the Japanese government any assistance it might need (Brooke, *New York Times*, 14 January 2002: A.2).

²¹⁵ In the case of the Nagasaki fishing boat, 13 JCG ships and planes and nine helicopters were dispatched (*Asahi Shimbun*, 26 December 2001: 31). This is indicative both of the tension in the immediate aftermath of the spy ship sinking and also the immense resources, and presumably cost, in checking out cases of unidentified vessels in Japanese water.

This legal revision was ratified and enforced from November 2001. Even though shots were fired by the JCG outside of Japanese domestic territory (*Asahi Shimbun*, 23 December 2001: 3; *Japan Times*, 25 December 2001; Sekai Editorial Board, 2002: 278), there are a number of legal statutes supporting the JCG pursuit of and action taken against the spy ship in December 2001. First, operating a fishing vessel without permission in Japan's EEZ is illegal according to Article 5, Paragraph 1 of the laws concerning the execution of sovereign rights and privileges within a country's EEZ. Article 74, Paragraph 3, of the same law code, stipulates that the country concerned can order the unauthorised ship to stop for inspection. If the ship attempts to escape, the JCG has the right to pursue the vessel according to Article 141, Section 2, of the Japanese Fisheries Law. This pursuit can continue up until the suspect vessel enters another country's maritime territory, as specified in UNCLOS Article 111, providing there are sufficient grounds for doing so. In the December 2001 case, the North Korean vessel had transgressed Japanese Fishery Laws and refused to stop for inspection, thereby justifying the JCG's pursuit of the vessel. Furthermore, the use of weapons to fire warning shots is legitimated by JCG Law Article 20, Paragraph 1, as well as Article 7 of the Law Concerning the Execution of Duties of Police Officials. Finally, according to Articles 36 and 37 of the Criminal Law, the Japanese authorities can fire in self-defence or to prevent injury (Yamada, 2004: 49-50). Precedent also backs the action taken by the JCG. Russian maritime patrols fire on illegal fishing vessels from time to time (Valencia and Guoxing, 2002: 727).

Nonetheless, the actions taken by the JCG in December 2001 against the North Korean spy ship were arguably illegal as they occurred within China's EEZ and not in Japanese territory. Invoking domestic laws to permit the targeting of a foreign vessel which had infringed upon Japanese maritime territory and subsequently refused inspection is not legally defensible if that action occurs in foreign waters. Furthermore, the JCG's claim that it was acting in self-defence is questionable on two counts. First, by firing shots directly at the suspicious ship, even if only to try to disable the ship, before the suspicious ship had fired any of its weapons, meant that the suspicious ship itself might have a better claim to self-defence. Second, the patrol ship *Amami*, by disengaging from the pursuit when its crew was fired upon, was acting in self-defence. The fact that the

patrol ship *Inasa* returned fire when it might have easily pulled away from the chase itself, also does not strengthen the case for the JCG having acted in self-defence. Even when the spy ship was within Japan's EEZ, only warning shots are permissible and the use of force "must be avoided as far as possible, and where it is unavoidable, it must not go beyond what is reasonable and necessary under the circumstances" (Valencia and Guoxing, 2002: 728). Finally, whilst the JCG maintain that they targeted the bow and stern of the ship where there were no people (*Asahi Shimbun*, 24 December 2001: 3), the JCG can not be sure that they were not endangering the lives of the crew of the suspicious ship. The JCG was unaware of the two North Korean crew hiding underneath a sheet at the stern of the boat, who appeared suddenly and opened fire on the *Amami* when it approached. Also, the JCG could not have been certain as to the equipment and ammunition aboard that might have exploded if hit.²¹⁶

The actions of the Japanese government in the aftermath of the December 2001 spy ship incident seemed to recognise the absence of legal justifications for the JCG's actions, even whilst the government stressed that the JCG had acted in accordance with international law. Demands to simplify the use of weapons so that maritime security action could be rapidly authorised to enable the MSDF to respond to spy ship incursions, and to develop the details of the emergency law to permit an offensive response to spy ship situations, indicated the shaky juridical ground upon which JCG action stood (*Virtual Information Center*, 28 December 2001: 14). Taoka, of the *Asahi Shimbun*, reported that 'offensive response' would violate the freedom of passage in the open seas, as granted by UNCLOS, and that even in Japan's EEZ, the Japanese response is legally limited to responding to transgressions of fishing and economic rights, which does not

²¹⁶ The SDF were unsuccessful in their attempt to ascertain the level of threat the spy ship posed in terms of the weaponry it was carrying. In spite of this, the JCG Chief, Nawano Yoshihiko, stated that he did not hesitate to order the JCG ships to fire directly at the North Korean spy ship, even when it was outside Japanese waters, providing that 'safe areas of the vessel were targeted' so that the crew would not be harmed. Nonetheless, there is sufficient reason to believe, considering the lack of knowledge the JCG possessed about the spy ship and the rough weather, that the lives of the North Korean crew were placed in danger when the *Inasa* and *Mizuki* fired upon their ship. Should a member of the North Korean crew have been killed or injured by a JCG bullet, then the JCG would have been liable under the National Police Enforcement Law and the Maritime Safety Law because the ships were outside Japan's EEZ (*Asahi Shimbun*, 29 December 2001: 3).

permit the sinking of an illegal vessel (Sekai Editorial Board, 2002: 278-279).²¹⁷ According to Tagawa Shunichi, a maritime lawyer, “The EEZ is basically open water and anyone can sail through it including naval warships” (*Virtual Information Center*, 28 December 2001: 8).²¹⁸ The fact that the rationale for pursuing the spy ship was based upon a violation of the Fisheries Law, suggests the inadequacies of the Japanese laws governing MSDF and JCG action (Intelligence Research Group, *Chian Foramu*, 2002: 3). Despite Japanese government claims to the contrary, the JCG’s actions in the December 2001 case contravened international law.

4.3h Explaining Japan’s Response to the December 2001 Spy Ship Incident

Japan’s response to the December 2001 spy ship incident was conditioned by both the international climate after the 9/11 attacks, as well as the previous response to the March 1999 spy ship incursion in which the North Korean vessels had escaped. Intent upon capturing the spy ship in December 2001, the JCG went to great lengths to try and stop Japan’s adversary, even attempting to board it within China’s EEZ. Though legal revisions in the aftermath of the terrorist attacks in New York and Washington supported the actions of the JCG to an extent, a clear legal basis enabling the spy ship to be targeted directly was absent once the North Korean boat had left Japan’s EEZ. Had the spy ship belonged to any other state, it is likely that the political ramifications would have run much deeper. The conclusion to be drawn here is that members of the interstate society are able to violate international law and avoid punishment for doing so,

²¹⁷ Taoka’s response to the December 2001 incident differs significantly from his claim that the MSDF would have been justified in firing directly on the spy ships in the March 1999 case (*Asahi Shimbun Evening Edition*, 24 March 1999: 18).

²¹⁸ The 1982 UNCLOS allows for: a 12 nautical mile territorial sea where coastal states retain sovereignty over most activities and where only innocent passage is allowed, that is passage which is not “prejudicial to the peace, good order, or security of the coastal state”, a 200 nautical mile EEZ where coastal states retain sovereign rights over resources and related activities, but maritime powers retain most of their navigational freedoms, and the high seas, beyond the EEZ, where navigational and other ‘freedoms’ are unrestricted (Valencia and Guoxing, 2002: 723-724).

if the opponent is widely designated a barbarian state or actor outside the interstate society.²¹⁹

Japan's response to the December 2001 spy ship transgression was resolute. By having the JCG pursue the vessel until it sank, the Japanese government gained the confidence of the electorate that they were prepared to act forcefully in the defence of Japan's shores. Nevertheless, the lack of JCG and JDA cooperation, coupled with the failure of the Japanese government's crisis management undermines much of the faith the government garnered from the Japanese population. Not only did the government fail to grasp the seriousness of the event, but also the JDA impeded the JCG's execution of a swifter response.

Perhaps the greatest achievement of the Japanese government lay in its understanding of and ability to shape Japanese public opinion. Prime Minister Koizumi, in particular, was able to muster popular feeling in his dealings with North Korea. Not only was public opinion supportive of the government after both March 1999 and December 2001 spy ship cases, but also after Koizumi's visit to Pyongyang on 17 September 2002, in which Kim Jong Il admitted to the abductions of Japanese citizens and the dispatch of North Korean spy ships (Uriu, 2003: 86-87; Ball, 2004: 76). It would appear that after the Taepodong missile crisis and the spy ship incidents which followed it, the Japanese public are much more accepting of a stronger foreign policy posture vis-à-vis North Korea.

Behind this stronger posture, however, is the evolving role of Japan's military and security forces. Some commentators have remarked that targeting the spy ship directly was indicative of the extent to which the rules of military engagement for the Japanese authorities had changed (Lincoln, 2002: 79). Indeed, spy ship incursions have provided a repeated security dilemma which Japanese forces could test themselves against. Spy

²¹⁹ This point also has substantial ramifications for Japan's response to contemporary piracy. Chapter 3 noted that maritime authorities belonging to one state cannot pursue pirates across the sovereign boundaries of a foreign state. The different context of the interstate society in Southeast Asia is the key to comprehending why hot pursuit remains an issue in tackling piracy. Japan's response to contemporary piracy in Southeast Asia will be presented in the next chapter.

ship intrusions into Japanese territory must be countered as they pose a security risk to Japan in terms of North Korean agents gathering information about US and Japanese forces, as well as through illicit trade in narcotics with *yakuza* gangs. Because of North Korea's reliance upon spy ship activities, transgressions of Japanese waters occurred frequently until the December 2001 incident,²²⁰ enabling Japan's maritime organizations to probe the legal limits of their response to North Korean spy ships. In the aftermath of an infringement of Japan's maritime territory by a North Korean vessel, the deficiencies of the Japanese maritime authorities' reaction were gauged and the legal limits placed upon their operations altered to allow the JCG and MSDF more room to manoeuvre. In this way, North Korean spy ships provide a test case, whereby a trial and error response enables the role of Japan's maritime security forces to expand. Though ships from other states transgress Japanese territory, such as Chinese survey ships entering the Japanese waters around the disputed Senkaku islands which both Japan and China claim, the response of both the MSDF and JCG is far more muted. It is North Korea's position as a barbarian state detached from the interstate society that has allowed Japan to react aggressively to spy ship intrusions.

²²⁰ North Korean spy ship incursions into Japanese waters have declined significantly, if not ceased, since the December 2001 case.

4.4 Conclusion

Combating Maritime Barbarians, Opportunity and Constraint within the Interstate Society

Whether dispatched to gather intelligence on Japanese and US military manoeuvres or installations, to insert or extract operatives or to traffic narcotics, North Korean spy ship incursions into Japanese waters clearly pose serious threats to Japanese security. However, transgressions of Japanese maritime territory by North Korean spy ships has also provided the Japanese government with an opportunity to use its military and security forces and expand their operational roles. The transformation of public opinion in Japan following the Taepodong crisis has facilitated a more robust response to North Korean spy ships by accepting that tougher measures are needed to constrain North Korea and maintain order in the interstate society.

The Japanese government has, for the most part, operated legitimately through the institutions of the interstate society to safeguard the order of the interstate society in the Northeast Asian region from North Korea. During times of rapprochement between North Korea and Japan, the Japanese government has sought to engage North Korea through diplomacy and Great Power management. Japan has acted bilaterally, through its alliance with the US on the one hand and talks with the Pyongyang leadership on the other, and multilaterally through the six-party talks. When tensions have been raised by North Korean operations deemed illegal under international law, such as spy ship incursions and the Taepodong missile launch, the Japanese government has reacted robustly through diplomatic channels, law enforcement measures and militarily, for example by dispatching the MSDF and JCG to protect Japanese territory. In contrast to the Obuchi government, which stressed the importance of observing international laws in the March 1999 spy ship incident, the Koizumi government allowed MSA vessels to pursue and fire directly at a North Korean spy ship in China's EEZ in December 2001. Ignoring the international legal constraints that are designed to prevent such behaviour sets dangerous precedents which other states might be inclined to follow. Understanding

the different reactions to the March 1999 and December 2001 spy ship cases requires an examination of the interaction between actors, structure and norms in the interstate society.

In the March 1999 North Korean spy ship case, the Obuchi government acted in accordance with the constraints imposed by the structure and norms of the interstate institutions of the interstate society. It did so because whilst Japanese public opinion in the aftermath of the Taepodong missile launch favoured a strong reaction to the spy ship incursion, the Obuchi Cabinet were careful to restrain the response of the MSDF. Reining in the MSDF avoided likely condemnation by members of the interstate society that Japanese military forces had used excessive measures and presented Japan as a responsible actor concerned to obey the dictates of international law. This is in contrast to the December 2001 spy ship case whereby the Japanese government ceded responsibility to top JCG officials and to the commanders of the JCG vessels in pursuit of the spy ship. The failure of Prime Minister Koizumi's crisis management team to recognise the magnitude of the incident enabled JCG ships to fire directly at the North Korean spy ship in Chinese waters contrary to international law.

Nevertheless, once the Japanese government regained control of the situation, it set about justifying the actions of the JCG. Essentially, the Koizumi Cabinet reasoned that as North Korea is not a fully-fledged member of the interstate society, so forceful action taken against it, even if not supported by international law, is possible.²²¹ Hence, order in the interstate society is not necessarily maintained through the institutions of the

²²¹ This is in contrast to transgressions of Japanese territory by Chinese military forces which do not generate aggressive responses by the JCG or MSDF. A case in point was the intrusion of Japanese territory on 12 November 2004 by a Chinese submarine. At a press conference the same day, MOFA's Press Secretary, Takashima Hatsuhsa, replied to the following questions:

Q: In 1999 and 2001, there were two incidents involving North Korea. Some suspicious ships entered the area of Japan. At the time, the Japanese Government said it could fire at these ships. The Japanese Government did not do that this time. What is the difference? Newspaper reports state that the ASDF aircraft asked the submarine to identify itself or at least come to sea level so that it could identify from which country the submarine came from. But it did not respond at all which is actually very serious or dangerous in terms of the nation's security. How come this time the Japanese Government did not take stronger measures toward this submarine? What is the major difference this time?

Mr. Takashima: *The SDF and the Japanese authorities have been taking the necessary measures on a case-by-case basis.* Other than that, I have no comment, and I would like to refer you to the Defense Agency (<http://www.mofa.go.jp/announce/press/2004/11/1112.html#5>, accessed 12 December 2005, italics mine).

interstate society when the threat comes from an actor outside or on the boundaries of the interstate society. Considering the war against Iraq initiated by the US and its allies that did not gain the approval of the UN Security Council, it may be that in the post-September 11 world states may deal with 'rogue regimes' outside the interstate society as they please. Such a development in international affairs threatens to undermine the one of the pillars upon which interstate society is constructed; the principle that rules and laws govern the behaviour of states in their relations with each other (Ignatieff, 2004).²²²

Even though the JCG broke international law in the December 2001 spy ship case, the Japanese government was quick to try to legitimise the pursuit of the North Korean spy ship into Chinese waters. This need to justify the JCG's response demonstrates the significance of international law for states operating within the interstate society, as Bull suggests (Bull, 2002: 131-136), because states regard how they are viewed by their fellows in the interstate society as important (Buzan, 2001: 476-477). Whilst there is a difference between how government organizations respond in crisis and how the government makes the best of the situation after the crisis, there is the sense throughout that the actions of the MSDF and JCG ultimately have to be squared with the rules of the interstate society.²²³

By flouting international law, Japan's actions in the December 2001 spy ship incident may increase tensions in the Northeast Asian region. China, for example, is wary of the expanding role and development of Japan's armed forces in the region. Japan argues

²²² For information on US contraventions of international law in the Iraq war, see *The New York Times*, 24 September 2005, <http://www.nytimes.com/2005/09/24/politics/24abuse.html>, accessed on 25 September 2005. Abuse of prisoners by US troops and officials in the 'war against terror' has generated a debate upon how the US acts in the world and the means states can employ to protect themselves in the interstate society from threats coming from outside the interstate society (*The New York Times*, <http://www.nytimes.com/2005/12/12/politics/12abuse.html>, accessed on 12 December 2005)

²²³ Mendelsohn argues that engaging non-state actors who threaten it can strengthen the interstate society itself. Mendelsohn is quick to point out, however, that state action must be legitimate within the interstate society in order to have such a positive effect (Mendelsohn, 2005: 45, 66-68). Whilst the experience gained by the MSDF and JCG in dealing with North Korean spy ships has been used in training programmes to help Southeast Asian governments treat criminal acts at sea and has supported the JCG's participation in training exercises in these regions to protect international sea-lanes (Hirose and Hayashi, 2003: 166-184), the broader argument that the ends do not justify the means remains. A failure to observe international law to suit the needs of individual states undercuts the normative power of the interstate society (Ignatieff, 2004: 145-146).

that the increasing power of the MSA and MSDF are designed to counter North Korea. However, the fact that Japan's armed forces are vastly superior to North Korea's in technological and training terms, coupled with Japan's security alliance with the US, means that a war between Japan and North Korea would be a complete mismatch. China, therefore, perceives Japanese military developments aimed at countering Chinese armed forces in an attempt to expand Japanese military influence over the Northeast Asian region (Valencia and Amae, 2003: 202-204).

Valencia and Amae, therefore, argue that a better way of approaching the issue of North Korean spy ships might be to build a Northeast Asian maritime security regime involving Japan, South Korea, China, Russia and the US. Such an agreement should cover which actions are legally justifiable in a country's EEZ, measures to prevent the escalation of maritime incidents, augmenting military transparency, emergency consultation mechanisms, establishing rules regarding the apprehension of suspect vessels at sea, anti-piracy resolutions, coordinated joint patrols and cooperation regarding tackling illegal activities (Valencia and Amae, 2003: 204-205). To a certain extent, bilateral maritime coordination between Japan and South Korea suggests a move in the direction of a maritime security regime, as by combining forces, Japanese and South Korean maritime security organizations are able to combat common security concerns, including North Korean spy ship intrusions (Manosevitz, 2003: 821). Such an approach if expanded to a regional scale could greatly increase security in Northeast Asian waters, develop a sense of community between regional powers and diffuse current maritime disputes in Northeast Asia. This strategy would also constrain North Korean maritime activities, thereby decreasing the extent to which Pyongyang can rely upon illicit sales of narcotics and missiles transported by ship. In time, Pyongyang might even be encouraged to accept a dismantling of its WMD programmes in return for aid, as the illegal means of financing Kim Jong Il's regime dry up. Before taking such steps, however, it is necessary for the Japanese authorities to review their response to the spy ship incursions in March 1999 and December 2001 and ask how Japanese actions can be brought within the legal bounds of international justice.

5. Japan's Response to Maritime Piracy in Southeast Asia

In 2003, of the 63,000 vessels that passed through the Malacca Straits, 28 ships reported an actual or attempted attack on their ship. Statistically, as a ship has a 0.04 percent chance of being pirated in the Malacca Straits, piracy does not appear to pose a significant threat to international shipping and trade. Nevertheless, according to Noel Chong, head of the Piracy Reporting Centre in Kuala Lumpur, over 50 percent of piratical attacks go unreported, whilst a regional conference on piracy held in Singapore in 1999 estimated that as few as one eighth of attacks were recorded. Many shippers are reluctant to report instances of piracy that may lead to costly and lengthy investigations that merely serve to increase the financial costs for the victim of a piratical attack (Davis, 2004b: 38). Yet, attacks cost the shipping industry an estimated US\$16 billion per year (Herrmann, 2004: 18) and have the potential to cause even more serious damage, such as a major environmental disaster that could block a sea lane, were an unmanned, pirated oil or liquid natural gas tanker to collide with a reef during a pirate attack.

The Malacca Straits is Japan's most important sea-lane as 80 percent of Japan's oil and a substantial proportion of its trade passes through it.²²⁴ The possibility that a piratical incident could close the Malacca Straits has therefore forced Japan to respond to the problem of contemporary piracy. High profile incidents involving Japanese ships, such as the hijacking of the *Tenyu* in 1998 and *Alondra Rainbow* in 1999, as well as the kidnapping of the Master, Chief Engineer and Third Engineer from the *Idaten* in 2005, have also encouraged the Japanese government to consider the financial and human costs that the Japanese shipping industry has incurred as a result of piracy. In response to the threat posed by piracy in Southeast Asia, the Japanese government has sponsored a number of regional conventions as well as promoted legal measures and dispatched Japan Coast Guard vessels on anti-piracy patrols and exercises.

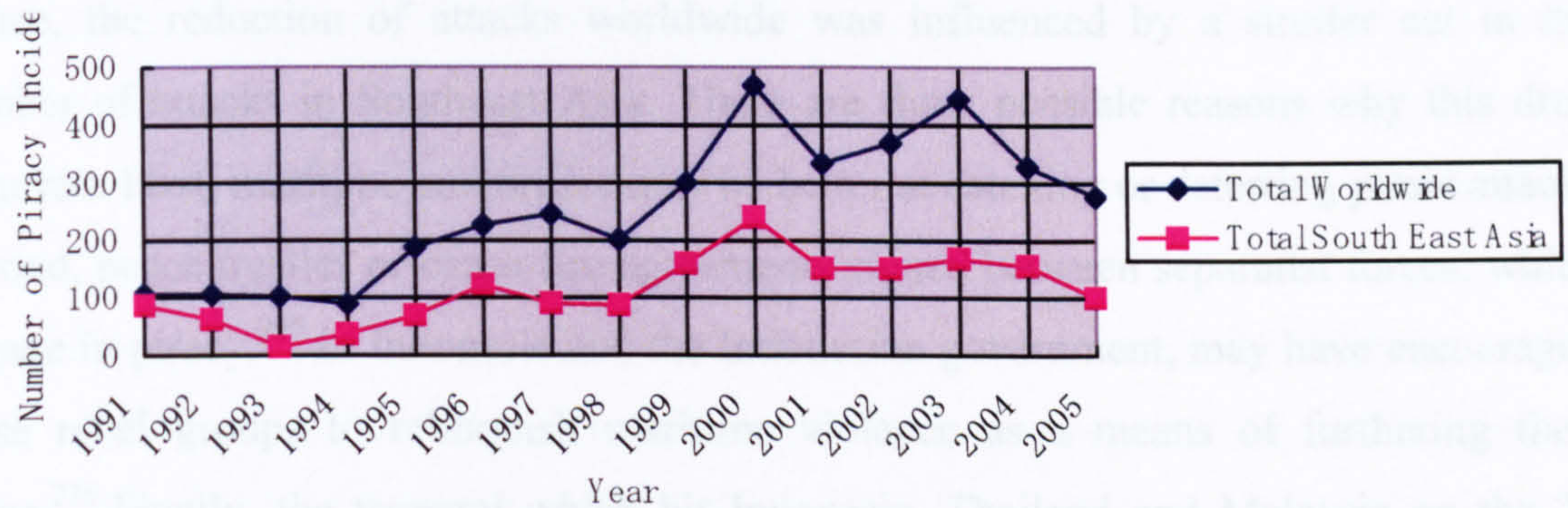
²²⁴ Approximately a quarter of the world's trade, as well as half of the world's oil shipments pass through the Malacca Straits (Richardson, 2004: 38).

This chapter will first assess the scope of the threat posed by piracy in Southeast Asia to Japanese shipping by examining piratical trends since the end of the Cold War. Next, reasons for Japan's response will be dealt with in greater detail by focussing on the hijackings of the *Tenyu* and *Alondra Rainbow*. The manifold ways in which Japan has sought to combat piracy in Southeast Asia will then be addressed together with explanations as to the opportunities and constraints within the interstate society that have conditioned Japan's response to piracy. The issue of sovereignty in Southeast Asia, as discussed in Chapter 3, is identified as the key factor limiting Japan's response to piracy in the region. The response of littoral states in Southeast Asia, as well as the shipping industry and international maritime organizations, will also be considered to outline the wider context in which the Japanese response to piracy should be placed. The Japanese response to piracy will be reviewed in light of the changing nature of maritime piracy in Southeast Asia by focussing on the case of the *Idaten*, a Japanese vessel that was pirated in March 2005, in order to ascertain how Japan's response to contemporary piracy has altered over time. In conclusion, the effect that Japan's response to piracy in Southeast Asia may have had upon the number of instances of piracy in the region will be examined.

5.1 Contemporary Maritime Piracy in Southeast Asia: Current

Trends

Graph 1: Total Numbers of Piracy Incidents Worldwide 1991-2005



Source: International Maritime Bureau Piracy Report 2005

The above graph compares the total number of piracy incidents worldwide with the total number of incidents for the Southeast Asian region (comprising Cambodia, Indonesia, the Malacca Straits, Malaysia, Myanmar, the Philippines, Singapore Straits and Thailand). From this graph, several trends can be ascertained concerning the growth of piracy worldwide since the end of the Cold War. However, the general trend has been for piracy attacks to increase in number. This increase can be broken down into four sections. The first section spans 1991 to 1994 where the worldwide total for piratical incidents was around 100 per year. During the next section, 1995 to 1998, the number of piratical incidents worldwide doubled to an average of about 200 cases per year. The third section, 1998 to 2000, shows a dramatic rise where worldwide cases of piracy double again to reach a peak of 469 piratical attacks in 2000. From 2000 to 2004, the fourth section, the number of piracy attacks have remained high, fluctuating between around 330 attacks and 445 attacks per year.

The figure for 2005 is perhaps the most intriguing, as the total number of attacks worldwide dipped below the 300 mark for the first time since 1998. This decline is

reflected in the numbers for Southeast Asia. An examination of the figures reveals that the total number of worldwide instances of piracy decreased by 53, from 329 cases to 276 cases, and attacks in Southeast Asia dropped by 56, from 158 cases to 102 cases. The only other region to experience a substantial fall in the number of pirate attacks was the Americas, where there were 20 less instances of piracy. All other regions experienced a slight increase in the number of attacks (ICC-IMB Piracy Report 2005: 5). Hence, the reduction of attacks worldwide was influenced by a similar cut in the number of attacks in Southeast Asia. There are three possible reasons why this drop occurred. First, maritime authorities may be better at catching or deterring pirate attacks. Second, peace treaties or cease-fire agreements signed between separatist forces, which engage in piracy,²²⁵ in Indonesia and the Indonesian government, may have encouraged these rebel groups to relinquish maritime violence as a means of furthering their cause.²²⁶ Finally, the tsunami which hit Indonesia, Thailand and Malaysia on the 26 December 2004 may have reduced the number of attacks in Southeast Asia, as pirates perished or suffered the aftermath of the disaster. Indeed, no attacks were reported in the Malacca Straits for two months following the tsunami (ICC-IMB Piracy Report 2005: 15).²²⁷

With the exception of 1993, when Indonesia, Malaysia and Singapore organised joint patrols in their national waters,²²⁸ as well as in the Singapore and Malacca Straits, and 2003, when a large number of cases were reported in Bangladesh (58 cases), India (27 cases) and Nigeria (39 cases), raising the worldwide total,²²⁹ instances of piracy in

²²⁵ This thesis distinguishes between maritime acts perpetrated by separatist groups and instances of piracy, as separatists ultimately seek to secure political objectives rather than economic goals within the interstate society. The figures for the IMB do not make this same distinction.

²²⁶ The same might be said of separatist forces in the Philippines. However, as the number of instances of piracy in Filipino waters only dropped from four cases to zero between 2004 and 2005, compared with a drop of 41 cases in the Malacca Straits and Indonesia where Aceh separatists operate, so the impact of peace deals with Filipino separatists upon acts of piracy appears less significant (ICC-IMB Piracy Report 2005: 5).

²²⁷ For more on the tsunami see

http://news.bbc.co.uk/1/hi/in_depth/world/2004/asia_quake_disaster/default.stm, accessed 15 February 2006.

²²⁸ The national waters of a state extend up to 12 nautical miles from the shore of that state. In addition to a country's national waters, a state also claims sole rights over its Exclusive Economic Zone, or EEZ.

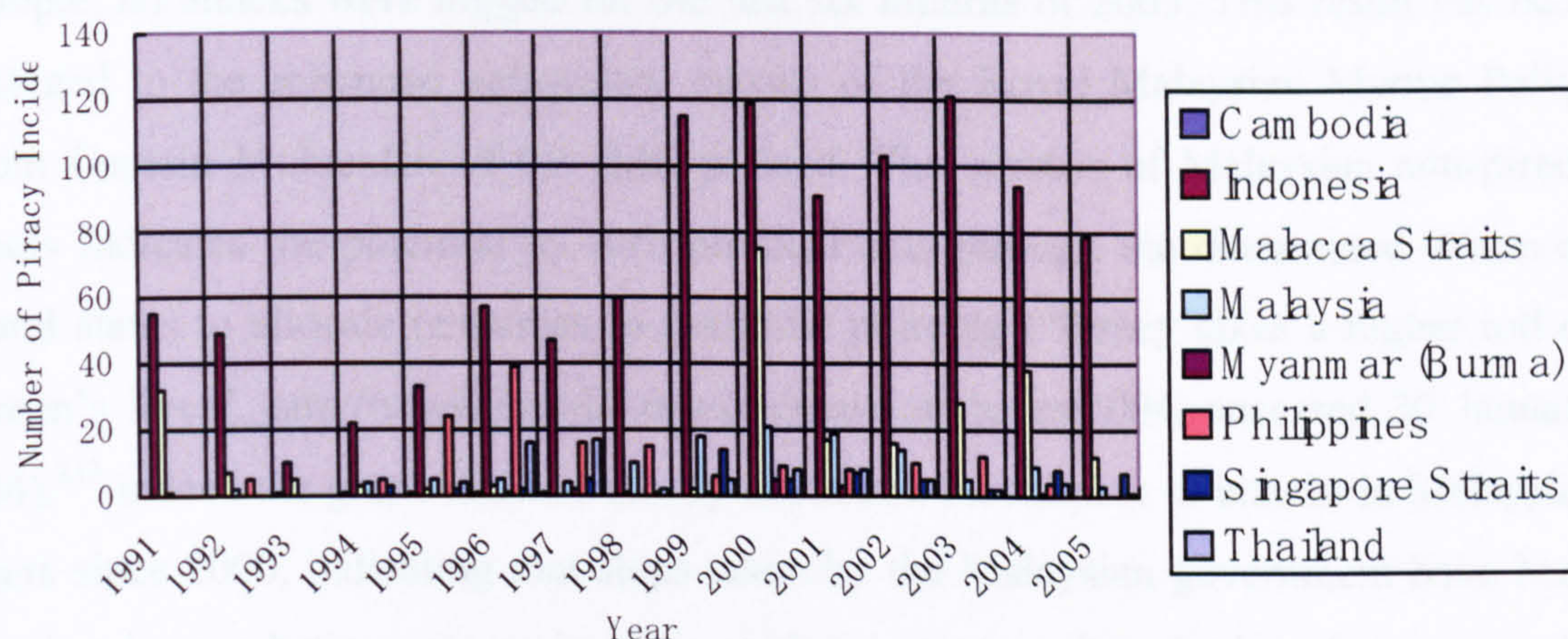
²²⁹ Figures for Southeast Asia remained high in 2003 with 121 instances of piracy reported in Indonesia (the highest number of attacks ever recorded there) and 28 acts in the Malacca Straits (ICC-IMB Piracy Report 2005: 5).

Southeast Asia have amounted to around half the total number worldwide. The fact that the two lines on the graph follow a similar course shows that the total number of instances in Southeast Asia has a powerful affect upon the worldwide total and that it is primarily the increases in piracy in Southeast Asia that have forced the worldwide total to rise.

Two tendencies may explain the rise in piracy in Southeast Asia. First, the rapid rise in piratical instances from 1998 to 2000 may be due to the knock-on effects of the Asian financial crisis in 1997. Following this crisis, poverty expanded through Southeast Asian states, such that growing unemployment might cause individuals to seek an alternative and illegal means of subsistence through committing acts of piracy, whilst national governments in Southeast Asia might be less capable of financing effective patrols in their national waters. Second, the rapid increase in piratical attacks from 1998 to 2000 came to the attention of major maritime states, such as Japan, whose ships traverse Southeast Asia's sea lanes and were therefore the victims of these piratical attacks. The efforts of these major maritime states may well account for the number of instances of piracy stabilising after 2000. Indeed, the number of piracy incidents in Southeast Asia continued to drop in the first quarter of 2006. Captain Mukundan, director of the IMB, suggested that this decrease was due to enhanced cooperation between Indonesia, Malaysia and Singapore in policing the Malacca Straits (<http://www.icc-ccs.org/main/news.php?newsid=67>, accessed 3 May 2006). The recent collaboration between littoral states in the Malacca Straits will be addressed later in this chapter. In order to examine these two hypotheses, the evolution of piracy since the end of the Cold War in Southeast Asia must be understood. In addition, alternative explanations for the rise of piratical crime in Southeast Asia, such as the growing involvement of transnational criminal groups and the impact of state sponsored piracy, will be evaluated.²³⁰

²³⁰ Politically motivated piracy will be examined in the sixth chapter on maritime terrorism.

Graph 2: Locations of Actual and Attempted Piratical Attacks in the Southeast Asian Region, January-December 1991-2005



Source: International Maritime Bureau Piracy Report 2005

The above graph presents the number of Actual and Attempted piratical attacks that were reported by merchant ships in the Southeast Asian Region, for the period 1991-2005. It is clear from the graph that the greatest proportion of piratical attacks in the Southeast Asian region occur in Indonesian waters, followed by the Malacca Straits. The main areas of concern in 2005 were the Indonesian coast line of the Malacca Straits, particularly off North Sumatra, Aceh and Belawan, as well as Adang Bay, Anambas/Natuna Island, Balikpapan, Bontang, Gaspar (Gelasa)/Leplia Straits, Tanjong Priok (Jakarta) and Pulau Laut – all in Indonesia.²³¹ The 79 attacks in Indonesian waters alone represent 28.6 percent of the 276 attacks worldwide for 2005 (ICC-IMB Piracy Report 2005: 5). Furthermore, whilst instances of piracy in Indonesian waters generally rose between 1993 and 2000, and continued to remain high after 2000, the number of cases in other states and maritime zones were low by comparison.²³²

²³¹ Five of these areas were also of concern during the first six months of 2003. These were Balikpapan, Dumai, Gaspar (Gelasa) Straits, Tanjong Priok (Jakarta), and Bintan Islands. Other areas, such as Samarinda and Pulau Laut were not considered piracy prone in the IMB Piracy report for the 3rd Quarter 2004. This shows that in some places piracy decreases whilst in others it remains constant. This is of particular interest to this study if government initiatives are the cause of such changes (Piracy soars as violence against seafarers intensifies, http://www.iccwbo.org/ccs/news_archives/2003, accessed on 25 September 2003).

²³² The exceptions to this were the Philippines in 1995 and 1996 and the Malacca Straits in 2000, 2003 and 2004, though the majority of the attacks of ships in the Malacca Straits were launched from Indonesia. The higher number of attacks in the Philippines in 1995 and 1996 is possibly related to the rise in acts of

Certain states have registered decreasing instances of piracy. In Malaysian waters, for example, no attacks were logged for the last six months of 2003. This result has been attributed to the enhanced anti-piracy patrols of the Royal Malaysian Marine Police whom Captain Mukundan of the IMB praised. The success of Malaysian anti-piracy patrols indicates the potential to curb piratical acts through the determined action of littoral states to allocate resources to maritime policing (“Piracy takes a higher toll of seamen’s lives”, http://www.iccwbo.org/ccs/news_archives/2004, accessed 30 January 2004).²³³ Indeed the graph shows a steady decline in the number of attacks in Malaysian waters since 2000, indicating that steps taken by the Malaysian government have been effective in combating piracy in their national waters, though the pirates may be perpetrating maritime crime elsewhere. In actual fact, the primary aim of the Malaysian Maritime Police in increasing patrols was to prevent the illegal traffic of people from Indonesia to Malaysia following the 1997 Asian Financial Crisis; inhibiting piratical crime in its national waters was merely a side effect (Yamada interview, 10 November 2004).²³⁴ Nevertheless, the efforts of states like Malaysia are marred by the figures for Indonesia, which skew the total number of attacks in the Southeast Asian region. Furthermore, not only are the greatest number of piratical attacks recorded in Indonesian waters, the most violent piratical attacks are also located in Indonesia and the Malacca Straits.²³⁵

piracy in the Hong Kong – Luzon – Hainan Island triangle during the early to mid-1990s. Critics claimed the Chinese government had sanctioned these attacks, see Chapter 3, Section 3.3c, ‘Official Complicity or State-Sponsored Piracy’. However, authorities in Beijing blamed crooked members of the Chinese Customs and Public Security Bureaus (“Piracy Trends in East Asia”, http://nippon.zaidan.info/library/seikabutsu_print_view, accessed 19 December 2005).

²³³ Coordinated patrols between Singapore, Malaysia and Indonesia during the 1990s also had a positive impact upon the number of acts of piracy being perpetrated (Ebata, 1997: 38-39; Hesse, 2002: 60).

²³⁴ Singapore has also made robust efforts to counter piracy in its waters (Emmers, 2004: 42-45). The anti-piracy strategies adopted by Southeast Asian states will be treated later in this chapter.

²³⁵ See ICC-IMB Piracy Report 2005: 10, and “Fatal Attacks on the Increase, ICC report shows http://www.iccwbo.org/ccs/news_archives/2004/Piracy_report_Jan-June_2004.asp., accessed 29 July 2006. The case of the *Global Semesta Satu*, a tugboat, is representative of the violent attacks that occur in Indonesian waters. On Sunday 11 July 2004, the tug was underway in the Selat Bangka Strait, off the south-eastern Sumatran coast, when it was boarded by a pirate gang who threw the ten-man crew overboard and hijacked the ship. Only one of the *Global Semesta Satu*’s crew was rescued and the fate of the other nine remains unknown (ICC-IMB Piracy Report third Quarter 2004: 34; *Business Times*, 16 July 2004).

Other recent trends reveal that whilst hijackings of entire ships has decreased, acts such as commandeering tugs and barges and holding the crews for ransom have persisted (*Xinhua News Agency*, 27 January 2004: 1). International cooperation and measures to prevent piracy are partly responsible for the decline in hijacked vessels, particularly those hijacked by international crime syndicates which perceive less risk in targeting smaller cargo ships and tankers and robbing their cargo rather than capturing the entire ship or relying on drug shipments as a source of revenue (Terashima, 2001: 41). Two further explanations for the decline in the number of merchant vessels being hijacked can also be put forward. First, technological devices such as ShipLoc, a tracking mechanism, make it possible to track a vessel's course in real time, enabling maritime authorities to hunt down pirated vessels. Second, action taken by the Indian and Chinese authorities to prosecute pirates and impose lengthy prison sentences has been applauded by the IMB. Such action is said to deter future piratical attacks, contrasted with the shorter prison terms dolled out to pirate gangs indicted by the Indonesian authorities (Primer: Piracy in Asia, *Virtual Information Center*, 2001: 23; "Pirate attacks have tripled in a decade, IMB report finds", http://www.iccwbo.org/home/news_archives/2003, accessed on 25 September 2003; Glass, *The Independent on Sunday*, 11 January 2004: 8-13).²³⁶ Nevertheless, a 22 percent rise in attacks on tankers also concerns maritime experts who indicate the potential for an environmental disaster should a tanker be unmanned or under the control of unqualified pirates during an attack ("Piracy takes a higher toll of seamen's lives", http://www.iccwbo.org/ccs/news_archives/2004, accessed 30 January 2004). The collision between the Japanese tanker, the *Nagasaki Spirit*, and the *Ocean Blessing*, which is believed to have been pirated and out of control, resulting in the spillage of 13,000 tons of oil in the Northern Malacca Straits, attests to the environmental impact an act of piracy can produce (Carpenter and Wiencek, 1996: 81).

²³⁶ The recent sentencing of pirates by the Chinese authorities contrasts with earlier Chinese responses to piracy. In the case of the hijacked *Petro Ranger* in 1998, the pirates were arrested but set free within a year. Moreover, the Chinese authorities took a quantity of the ship's fuel cargo which they classified as 'evidence' and never returned to the ship's owner, Alan Chan (Glass, *The Independent on Sunday*, 11 January 2004: 8-13). For more on the complicity of Chinese authorities in acts of piracy see Chapter 3.

Southeast Asian waters remain the most piracy-prone of any maritime territory in the world. An increase in instances of piracy since 1998, particularly in Indonesian waters, has driven the worldwide piracy figures upward. Furthermore, an increase in violent attacks and the possibility of an environmental disaster stemming from the hijacking of a tanker has begun to worry policy makers across the Asian region. Despite steps that have been taken to deter piracy – such as an increase of anti-piracy patrols in Malaysia and Singapore, prosecution of pirates in China and India, and the introduction of anti-piracy devices, like ShipLoc, by shipping companies – more effort is needed if piracy in Southeast Asia is to be significantly reduced. As a major maritime power in the Southeast Asian region, Japan determined to augment regional anti-piracy efforts and has played an important role in developing regional cooperation to fight maritime piracy.

5.2 Explaining the Threat to Japanese Shipping

The Malacca Straits have been of strategic importance to Japan throughout the Cold War, during which Japan's economy grew to become the second largest in the world, and remains so today. It is through this body of water that 80 percent of Japan's oil imports are shipped together with a substantial proportion of Japanese trade. For Japan, the rise of piracy from 1998 to 2000 in Southeast Asia was especially alarming, and two incidents involving Japanese ships in particular encouraged Japanese policy makers to develop a response to the problem of piracy. These were the hijackings of the *Tenyu* in September 1998 and the *Alondra Rainbow* in October 1999.

Attacks on Japanese Shipping

The *Tenyu* Incident

In September 1998 the Japanese owned 277 foot *Tenyu* (2,600 tons) left the Indonesian port of Kuala Tanjung carrying 3,000 tons of aluminium ingots worth US\$3 million bound for Inchon, South Korea. The *Tenyu* was crewed by two South Korean sailors, Captain Sin Yong-ju and Chief Engineer Pak Ha-jun, and 13 Chinese (Sullivan and

Jordan, *Buffalo News*, 11 July 1999: A8; Terashima, 2001: 38-39). After leaving the port, pirates hijacked the *Tenyu* and the crew were never seen again.

The disappearance of the *Tenyu* remained a mystery until it was found on 17 December 1998, three months after it was hijacked, in Zhangjiagang port, Jiangsu Province, China. It had been renamed the *Sanei 1*,²³⁷ its fourth name since being hijacked, had an Indonesian crew and a cargo of palm oil. The 14 original crew members remain missing, but are presumed dead (Williams, *South China Morning Post*, 20 January 1999: 3; Sullivan and Jordan, *Buffalo News*, 11 July 1999: A8). The initial cargo of aluminium ingots is believed to have been sold in Burma (Sullivan and Jordan, *The Washington Post*, 5 July 1999: A18).

The Indonesian pirate crew of the *Sanei 1* were arrested, but later released by the Chinese Public Security Bureau and repatriated to Indonesia, despite the fact that at least two of the pirates, the chief officer Gary Elmar Philbert Mandry and the chief engineer, had been involved in the hijacking of another ship, the *Anna Sierra*, near Vietnam in 1995. To add insult to injury, the Chinese authorities even asked that Matsumoto Kisen, the Japanese owner of the *Tenyu*, pay for the pirates to be repatriated (Schloss, *South China Morning Post*, 18 July 1999: 4). Mr Guo Xin, China's permanent representative to the IMO in London, explained the behaviour of the Public Security Bureau in a letter to Lloyd's List in which he stated that the Indonesian pirates that were caught could not have been involved in the original hijacking as their passports were stamped after the ship had been pirated (*South China Morning Post*, 4 October 1999: 2). Nevertheless, it was clear to the Indonesian crew who took over the *Tenyu* that the original markings of the ship had been erased making the *Tenyu* a 'phantom ship' (Schloss, *South China Morning Post*, 18 July 1999: 4). The former captain of another pirated vessel, Australian Ken Blyth of the *Petro Ranger*, even levelled allegations that officials from the Public Security Bureau had been bribed by the crime syndicate

²³⁷ The real *Sanei 1* was actually a cargo vessel of approximately the same size and description as the *Tenyu* and operating legally in the region. The name was therefore chosen by the pirates to avoid suspicion by local authorities (Williams, *South China Post*, 31 December 1998: 3).

responsible for the *Tenyu* incident and would therefore send the pirates home (Schloss, *South China Morning Post*, 21 February 1999: 3).

A South Korean crime group is believed to be behind the hijacking of the *Tenyu*, but the involvement of Indonesian pirates, Burmese dockhands and illegal traders, as well as associates in China, points to the international scope of the operation (Sullivan and Jordan, *Buffalo News*, 11 July 1999: A8). The trail leading to the South Korean gang began intriguingly with the questioning of a former captain of the *Tenyu*, Kim Tae-kuk. Kim Tae-kuk had captained the *Tenyu* between 1988 and 1993, but was now involved in recruiting crews for shipping companies. In 1998, Kim Tae-kuk recruited the crew of the *Tenyu* who have been missing ever since the *Tenyu* was pirated in September 1998. In mid-1999, when the *Tenyu* was returned to Matsumoto Kisen, Kim Tae-kuk was serving a 21-month jail sentence for illegally smuggling people from Southern China into Japan. Kim Tae-kuk's involvement in people trafficking indicates that he had connections with the kinds of triad and *yakuza* gangs in China and Japan that are also involved in piracy (Schloss, *South China Morning Post*, 18 July 1999: 4; Schloss, *South China Morning Post*, 21 February 1999: 3). The involvement of a South Korean gang was further uncovered with the prosecution under Korean law of four Koreans suspected of hijacking the *Tenyu* (Inahara, 2002: 131). Lee Dong-gul was convicted with a three year sentence for illegally purchasing and selling the *Tenyu*'s cargo, and his three accomplices were given suspended sentences (*Lloyd's List*, 1 November 1999: 16).

Despite the prosecution of South Korean members of a criminal gang, in terms of innocent lives lost and the cost to a Japanese shipping company, the hijack of the *Tenyu* was the most damaging attack on a Japanese owned ship in the 1990s. The owners of the *Tenyu*, Matsumoto Kisen, have since avoided sending their ships through Southeast Asian waters, which it regards as too dangerous. The Japanese company recovered the *Tenyu* and put it into service again in June 1999, having paid ¥20 million to a Chinese shipping firm that had acquired the ship (Whymant, *The Times*, 16 July 1999: 17).

Matsumoto Kisen's overall losses in the *Tenyu* case were estimated at ¥60 million (*Lloyd's List*, 30 November 1999: 20).²³⁸

In the aftermath of the *Tenyu* incident, governments were heavily criticised by the Asian Shipowners' Forum for failing to meet the growing problem of piracy and armed robbery against ships (Whymant, *The Times*, 16 July 1999: 17).²³⁹ The Japanese Ministry of Transport and concerned organizations responded by setting up a committee to propose concrete measures addressing piracy. In July 1999 at the ASEAN Regional Forum, Japan called for a cooperative approach to combating piracy (Toneyama, *Asahi Shimbun*, 22 November 1999: 4). However, further efforts were obviously required when, just over a year later, another Japanese ship, the *Alondra Rainbow*, was hijacked from the same port of Kuala Tanjung, carrying the same type of cargo of aluminium ingots.

The Alondra Rainbow Incident

Despite the fact that the fate of the crew of the *Tenyu* remains unknown, it was the *Alondra Rainbow* incident which is most often referred to as the case which galvanized policy makers in Tokyo to develop a thorough response to the problem of contemporary piracy in Southeast Asia (Terashima, 2001: 38). At 8:10 p.m. on 22 October 1999, the *Alondra Rainbow*, a 7,762 ton cargo ship belonging to the Imura shipping company of Ehime Prefecture, departed the Indonesian port of Kuala Tanjung bound for the port of Miike, Fukuoka Prefecture. The *Alondra Rainbow* carried 7,000 tons of aluminium ingots worth between ¥11-12 billion. The 15 man Filipino crew were under the command of a Japanese captain, Ikeno Kō, and chief engineer Ogawa Kenzō. At around

²³⁸ It wasn't until after the *Alondra Rainbow* incident that Sumitomo Marine and Fire Insurance Co. offered a specific insurance policy covering piracy, the first of its kind in Japan (*Lloyd's List*, 30 November 1999: 20). In an effort to make a greater profit selling more expensive insurance, *The Economist* alleges that marine underwriters are encouraging shipowners to purchase war-risk policies as opposed to standard insurance policies (http://www.economist.com/finance/PrinterFriendly.cfm?story_id=6837144, accessed 13 May 2006).

²³⁹ The response and roles of the Japan Shipowners Association and the Asian Shipowners Forum will be addressed in Section 8.4.c, 'The Response of the Shipping Industry to Piracy in Southeast Asia', in this chapter.

10:05 p.m., the ship was seized by a pirate gang of over ten men armed with pistols and knives. The *Alondra Rainbow* was located 50 kilometres southeast of Kuala Tanjung in the middle of the Malacca Straits when it was attacked (Hino, 2000: 104; Terashima, 2001: 38; Takai, 2002: 6; Mukundan, 2002: 62).

The pirates immediately took control of the wheelhouse and disabled the emergency warning device. The crew were bound and blindfolded and the ship was turned around. The following day, around 2 a.m., the crew was transferred to a 1,500-2,000 ton vessel where they were kept for six days, before being set adrift on an eight by two metre rubber dinghy with no life jackets and little food and water on 29 October in the Bay of Bengal.²⁴⁰ Eleven days later the crew were picked up by a Thai fishing boat, the *Yod Duangporn 2*, in the middle of the Andaman Sea 80 miles south of Phuket. All crew members survived (Chuennirun, *The Bangkok Post*, 10 November 1999: 1; Hino, 2000: 104; Terashima, 2001: 38; Takai, 2002: 6; Mukundan, 2002: 62).²⁴¹

There was a delay in the shipping company informing the Japanese Ministry of Transport about the *Alondra Rainbow*'s disappearance and possible hijacked status (Toneyama, *Asahi Shimbun*, 22 November 1999: 4). The reason for the delay was that the *Alondra Rainbow* had been hijacked on Friday night so that the shipping company didn't learn that something was amiss until Monday morning when they, at first, assumed that there was trouble with the communication equipment (Hino, 2000: 105).

²⁴⁰ The 17 men had between them: a day's worth of canned fish, rice and water, 20 concentrated nutrition packs, two 15-litre plastic containers and sixty 0.5 litre bottles of water. They divided the nutrition packs into four 1cm units and every man nibbled 3-4 millimetres of the nutrition packs three times a day. Each day, a crew member received 200cc of water and as it rained only once (on the ninth of November) the crew were nearly reduced to drinking their own urine. On the first and third days, the crew's hopes were raised when they spotted a tanker and large cargo ship respectively. Though they lit smoke candles, their signals were either unseen or ignored (Ishihara, *Yomiuri Shimbun*, 17 November 1999: 39; Ishihara, *Yomiuri Shimbun*, 18 November 1999: 38; Ishihara, *Yomiuri Shimbun*, 19 November 1999: 38; Hino, 2000: 104).

²⁴¹ The crew were lucky to be rescued, as the Captain of the Thai fishing boat was wary that the drifting dinghy was itself full of pirates. The Thai Captain was only convinced when one of the Filipino crew produced a passport that he had managed to keep hidden (Hino, 2000: 104). Captain Ikeno (67 years old) returned to Japan from Bangkok on the 13 November 1999. When asked about his ordeal, he exclaimed, "Every day, we thought we'd die the next, as there was no guarantee that we would be rescued even if we survived. I was constantly thinking of how I could get my crew back to Japan alive". Chief Engineer Ogawa (69 years old) came home a few days later, having been in worse condition than the Captain (*Asahi Shimbun Evening Edition*, 13 November 1999: 14; *Yomiuri Shimbun*, 14 November 1999: 1; Ishihara, *Yomiuri Shimbun*, 19 November 1999: 38).

Therefore, it was not until five days after the disappearance of the *Alondra Rainbow* that the Japanese Maritime Safety Organization and Japanese Shipowner's Association asked coastal states for information pertaining to the whereabouts of the ship. The International Maritime Bureau began its own investigation when it became apparent that the ship had in fact been hijacked by pirates (Takai, 2002: 6). In addition, the Ministry of Transport, through the Ministry of Foreign Affairs, urged the Indonesian government to arrest the pirates; believing that the *Alondra Rainbow* might still be in Indonesian waters (*Asahi Shimbun*, 12 November 1999: 37).²⁴² Finally, a helicopter-carrying patrol boat and surveillance plane were dispatched to locate the ship by the Ministry of Transport. The search was limited to the high seas in the East China Sea and Gulf of Thailand. The Ministry of Transport was careful not to alarm Southeast Asian states that would be wary of an armed Japanese vessel in their waters. Hino believes that an opportunity to publicise the search and call on the help of regional maritime authorities was missed in this instance (Hino, 2000: 105). Nevertheless, the reluctance of the Ministry of Transport to send the patrol boat through the Malacca Straits is perhaps more indicative of the sensitivity towards sovereign borders in Southeast Asia and a determination not to inflame the sentiments of Southeast Asian peoples, keeping in mind Japan's militaristic past (Emmers and Sebastian in Weatherbee, 2005: 175).

Around 4 or 5 November, the *Alondra Rainbow* was seen in the Malaysian port Mili, in Eastern Sarawak, then heading west towards the Indian Ocean. These facts were relayed to the Piracy Reporting Centre in Kuala Lumpur which then publicised the information. On 13 November, the IMB reported that a ship resembling the *Alondra Rainbow* had been spotted en route to the Middle East. The Indian Coast Guard, acting on this information, located a vessel named the *Mega Rama* flying a Belize flag and asked the IMB's Piracy Reporting Centre in Kuala Lumpur for information concerning the authenticity of the ship. The Piracy Reporting Centre replied that the vessel was fake and the Indian navy deployed three ships and two planes to detain and search the *Mega Rama*. On 14 November, a Dornier aircraft from the Indian Coast Guard spotted the *Mega Rama*. The Indian naval frigate the *INS Prahar* fired warning shots from midday

²⁴² Considering the high levels of piracy in Indonesian waters, the Japanese MOT and MOFA officials probably believed the hijackers to be Indonesian.

on 15 November to before dawn on 16 November when the pirates stopped the vessel, set fire to the stern and tried to scuttle the ship by opening a valve to let in sea water. The pirate's attempts failed and Indian naval officers boarded the ship and arrested 15 Indonesian pirates at a location 430 kilometres west of Goa (*The Hindu*, 17 November 1999: 1; Orr, *The Times*, 18 November 1999: 21; *The Hindu*, 21 November 1999: 1; *New Straits Times*, 29 November 1999: 29; Hino, 2000: 104-105; Takai, 2002: 6-7; Mukundan, 2002: 62-63).²⁴³

Documents found aboard the *Mega Rama* revealed that the actual identity of the vessel was the *Alondra Rainbow*. The *Alondra Rainbow* was then sailed to the port of Mumbai where the captured pirates were interrogated. Questioning revealed that half the ship's cargo of aluminium had been transferred to another ship whilst the rest was bound for Fujairah in the United Arab Emirates (UAE). As India lacked a law on piracy at the time and had not ratified the SUA Treaty, the pirates were tried for foreign offences, robbery, endangering life at sea, interference with the execution of official duty, attempted murder, disobeying an official order and falsification of documents (Suzuki, *Yomiuri Shimbun*, 26 November 1999: 1; Takai, 2002: 7, Mukundan, 2002: 63). The pirates were sentenced to seven years of hard labour on 25 February 2000 (Yamada, 2003: 136; Hirose, <http://nippon.zaidan.info/library/seikabutsu>, accessed 19 December 2005).

There were several aspects of the *Alondra Rainbow* hijacking case that distinguishes it from previous incidents, such as that of the *Tenyu*. First, it was specifically the fact that two Japanese lives were at risk that the incident caught the attention of the Japanese media and government. Though the hijacking of the *Tenyu* the previous year, in which the crew remain missing, undoubtedly added to a growing sense of apprehension regarding maritime crime, it did not have the same impact as the *Alondra Rainbow* incident (Terashima, 2001: 38-39).²⁴⁴ Furthermore, the dramatic chase and capture of

²⁴³ All signatory states to the UNCLOS have an obligation under Article 100 to assist in suppressing piracy on the high seas. The details concerning how states may proceed under international law in seizing a pirate ship are noted in Articles 105-107. See Appendix I for articles in UNCLOS on piracy.

²⁴⁴ Terashima also notes that the fact that the *Alondra Rainbow* was bound for Japan was significant in the sense that the ship was hijacked on Japan's main transport route (Terashima, 2001: 38-39). However, as

the ship, which was described as being in “almost scrap condition” when it arrived in Mumbai, having received significant damage to its decks and engine room (*Yomiuri Shimbun*, 24 November 1999: 1), coupled with the survival story of the crew adrift at sea, made for compelling reading in the Japanese press. It became clear as the news story developed that Japanese lives and shipping were at risk in the Malacca Straits, the most important sea-lane for Japan.

It was not just the government that took note of the hijacking of the *Alondra Rainbow*; Japanese shipowners also took action, taking out insurance policies to protect their ships financially should they be pirated, though these policies cost a mere ¥200,000 to ¥300,000 per year. Japanese shipping companies paid the Indonesian navy an undisclosed sum to protect their ships transporting aluminium ingots from the Indonesian port of Kuala Tanjung, the same port the *Tenyu* had sailed from a year earlier. This scheme was founded by 12 Japanese shipping companies with the support of the Japanese and Indonesia governments. The Japanese Ministry of Transport negotiated on behalf of the Japanese shippers. Japanese aluminium importers even considered changing their supply sources should piratical attacks continue in Indonesian waters (*Lloyd's List*, 30 November 1999: 20). Hence, the *Alondra Rainbow* incident significantly raised awareness amongst the Japanese shipping industry about the dangers of piracy and encouraged the industry to adopt a more proactive approach.

The main reason for the Japanese shipping industry's action was the fact that the hijacking of the *Alondra Rainbow* was so similar to that of the *Tenyu* the previous year, pointing both to lawlessness and inadequate policing of the Malacca Straits. Not only were similar ships, both carrying aluminium ingots, attacked leaving the same port of Kuala Tanjung, but also one of the hijackers involved in the *Alondra Rainbow* hijacking was identified as having been involved in the attack on the *Tenyu* the previous year (Mukundan, 2002: 63; Mortishead, *The Times*, 3 May 2003: 49). Moreover, the hijacking of the *Alondra Rainbow* was the work of a transnational criminal organization that had the capacity to organise the hijacking of a ship off the coast of Indonesia, have

the *Tenyu* was attacked near the same port as the *Alondra Rainbow* in Indonesian waters and heading towards South Korea, so the *Tenyu* was also hijacked on Japan's main transportation route.

half the goods transferred to another ship and sold in the Philippines, whilst the remaining half travelled to the UAE to be traded, and operate another ship to manage and dispose of the original legitimate crew off the coast of Thailand. Considering that forged documents were used as a means of changing the identity of the ship and origin of the cargo, the *Alondra Rainbow* incident also suggests official compliance in this piratical act (Mukundan, 2002: 63). The pirates were well organised, with different positions on board ranging from captain and chief engineer to cooks, clerks and storage crew. The captain and chief engineer were found in possession of credit cards and a range of foreign currencies, including US dollars, Japanese yen as well as currency from Switzerland, Colombia, Indonesia, Taiwan and Brunei. The captain and chief engineer were also certified, the captain being in possession of a master's certificate from Belize and the chief engineer having passed a marine engineering examination at an Indonesian university (Suzuki, *Yomiuri Shimbun*, 26 November 1999: 1; *Lloyd's List*, 23 November 1999: 5). For criminal organizations to carry out this kind of highly organised attack upon Japanese shipping placed the whole industry at risk.

The Japanese government did, however, learn the importance of international cooperation from the hijacking of the *Alondra Rainbow*. Not only did the Indian navy capture the pirated *Alondra Rainbow*, but also Filipino Intelligence also later seized 3,000 tons of aluminium ingots from a warehouse in the suburbs of Manila. According to the investigative records, within one month of the *Alondra Rainbow* incident, a ship named the *Victoria* landed at Olonza Po in Subic Bay and unloaded the stolen aluminium ingots using falsified documentation. Fifteen trucks then transported the aluminium to the warehouse. The involvement of Japanese, Indian, Filipino, Indonesian and international organizations indicated the need for international cooperation to deal with the scourge of contemporary maritime piracy (Takai, 2002: 7) and prompted the Japanese government to become more deeply involved in the fight against maritime violence and crime. The rapidity with which the Japanese government took action to deal with the problem of piracy could be observed in the dispatch of a Japan Coast Guard ship and plane to seek out the hijacked *Alondra Rainbow*.

Serious pirate attacks against Japanese ships continued with the hijacking of the *Global Mars* on 24 February 2000. It was attacked by 20 pirates two days after departing port Klang in Malaysia with a cargo of 6,000 tons of palm oil. The crew of the *Global Mars* were transferred to a fishing trawler in a similar manner to the crew of the *Alondra Rainbow*. The *Global Mars* was later identified near Hong Kong, whereby the Chinese authorities captured the pirated vessel and returned it with some of its original cargo to its Japanese owners (Wong Joon San, *South China Morning Post*, 14 August 2000: 1).

Summing up the Threat: The Protection of Shipping, Trade and Lives

From an English School perspective, acts of piracy in Southeast Asia affect Japan's economy by threatening Japanese trade in addition to potentially disrupting the interstate institution of the market should an act of piracy block a vital sea lane. The importance of Southeast Asia's sea-lanes for Japan's national security cannot be underestimated. Any disruption to these sea-lanes, particularly the narrow Malacca Straits,²⁴⁵ would be detrimental to Japan's trade and economy as shipping costs would rise, delivery of vital resources would be postponed causing delays in production. This in turn could have knock-on effects upon Japanese companies, workers and the wider Japanese society in general, should an economic downturn lead to unemployment. With this in mind, the Nippon Foundation, a Japanese NGO, has paid ¥10 billion over the past 30 years to set up, inspect, repair and replace beacons and channel marks in the Malacca Straits to ensure the safe passage of shipping. In the same vein, Japan has taken the lead in bringing Asian states together to cooperate in the fight against piracy and armed robbery against ships in Southeast Asia.²⁴⁶ Yet more financial and technical support is still needed from other states that make use of Southeast Asia's sea-lanes to ensure the safety of trade and the ocean environment (Terashima, 2001: 41).

²⁴⁵ Approximately 20 percent of ships traversing the Malacca Straits are related to Japan in some way (*Kaiyōhōanchōkokusaijika*, 2002: 144).

²⁴⁶ All ASEAN countries, as well as India, Sri Lanka, Bangladesh, South Korea and China, attended the Japan sponsored 'Regional Conference on Combating Piracy' held on 27-28 of April 2000.

Even if shipping is not disrupted in the Malacca Straits, piracy in Southeast Asian waters continues to be a concern for the Japanese shipping industry and Japanese seafarers. In the mid-1990s piratical attacks against Japanese ships increased rapidly from an average of ten attacks per year to over 20 (Toneyama, *Asahi Shimbun*, 22 November 1999: 4). In early 2003, the Japanese Ministry of Transport conducted a survey on piratical attacks to Japanese shipping. According to this survey, piratical attacks on Japanese vessels decreased from a peak of 39 cases in 1999,²⁴⁷ to 31 in 2000, 10 in 2001 and 16 in 2002. Most attacks were of a low level, occurring at night when the ships were in port or at anchor and resulting in the theft of the ship's stores or items found on deck, such as ropes and life jackets. Nonetheless, a Chinese captain was wounded in one of the attacks in 2002 and crews were threatened and tied up in four of the attacks. Seventy-five percent of the attacks on Japanese ships in 2002 occurred in Indonesian waters and Japanese sailors were only on board a pirated ship in two out of the 16 cases (http://www.mlit.go.jp/kasha/kisha03/10/100206_.html, accessed on 21 October 2003). In 2003, attacks against Japanese ships declined again to a total of 12, reflecting the efforts of Southeast Asian states in combating piracy (*Jiji Press*, 6 February 2004: 1). Despite the decline in piratical attacks against Japanese vessels, Southeast Asian seas remain dangerous for Japanese vessels and have affected the Japanese shipping industry in a variety of ways, including increases in transport and insurance costs (Richardson, *International Herald Tribune*, 23 November 1999: 10).²⁴⁸

The threat from piracy in Southeast Asia to Japan is not what the international relations theory of realism would define as a traditional threat, whereby a state is threatened by another state. Instead, piracy amounts to a non-traditional security threat, whereby non-

²⁴⁷ The 1999 figure represented a five fold increase in attacks on Japanese ships compared with attacks in 1996 (*Virtual Information Center, Primer: Piracy in Asia*, 2001: 7).

²⁴⁸ The highest insurance payment made for an act of maritime violence was to the owners of the *Limburg*, a French oil tanker, that was rammed by a speedboat laden with explosives off the coast of Yemen in October 2002. The payment totaled US\$70 million (*The Economist*, 20 April 2006). Insurance premiums soared by 300 percent for ships transiting Yemeni waters after the *Limburg* incident (Barkham, *The Guardian*, 25 July 2006). This case is examined in greater detail in section 6.2a. There is some uncertainty amongst shipowners as to which insurance packages will cover them in the event of an act of piracy. An example of marine insurance available that will cover an act of kidnap and ransom, such as the act perpetrated against the *Idaten*, addressed in Section 5.5 of this chapter, is the CrewSEACURE policy offered by Seacurus Ltd. (*The Shiptalk Newsletter*, http://www.shiptalk.com/newsletter/isps_special_text_only.html, accessed 27 July 2006).

state actors, pirates, target ships for their own personal gain. These pirates may have connections with international crime gangs involved in the illegal trafficking of drugs, humans or arms, they may rely upon military or official connections to ensure they are not caught, or they may be fishermen who, having suffered as a result of the Asian financial crisis or because ecological damage has reduced fishing stocks in their waters, have turned to piracy as a means of survival (Webster and Vadukul, <http://www.southstseaport.org/magazine/articles/1997b-05.shtm#top>, accessed 17 June 2006), as Chapter 3 demonstrated. Responding to each of these different kinds of piracy requires a variety of different policies aimed at targeting the financial transactions of international criminal groups, overcoming graft amongst government officials in Southeast Asian states, as well as improving the living standards of coastal communities and the ecology upon which they depend in order to live. Nevertheless, whilst such a human security based approach would be possible within a nation, sovereign boundaries prohibit interference by foreign states in Southeast Asian countries, as stressed in Chapter 2. Hence, despite the threat of piracy originating from non-state actors, Japan must slowly build cooperation amongst Southeast Asian states when responding to the problem of piracy.

5.3 Examining Japan's Response to Maritime Piracy in Southeast Asia: What has Japan done?

It is clear from an analysis of contemporary maritime piracy and armed robbery at sea that Japan cannot take unilateral action because of the sanctity of sovereignty in international law. Though certain coastal states, like Indonesia, lack the ability and resources to tackle piracy in their national waters, major maritime states are unable to deploy their naval forces to pursue pirates when they escape to a foreign territory. The pirates themselves are well aware of these limitations on states and therefore take advantage of them. In Takai's view, coastal states need to redefine piracy and cooperate with other states to suppress it. Nonetheless, the IMO's attempt to reinterpret piracy by distinguishing between piratical acts that occur on the high seas according to

international law and armed robbery against ships, which may be identical in form but occurs within national maritime boundaries, has been resisted by some littoral states in Southeast Asia, particularly Malaysia and Indonesia (Takai, 2002: 10). The issues concerning how piracy is defined according to international law, as well as by international organizations, were addressed in Chapter 3. The primary reason why Southeast Asian states spurned a more inclusive definition of piracy is that it increases the number of piratical acts in their waters which reflects badly upon the state and thereby forces the state to act. State complicity in acts of piracy combined with the fear that the deployment of the naval forces of major powers to tackle piracy in Southeast Asia will allow the major powers to dominate the domestic affairs of Southeast Asian states has also encouraged the rejection of alternative definitions of piracy that might permit hot pursuit.²⁴⁹

However, since the piracy 'peak' in 2000, the extent of the piratical threat in Southeast Asia has become known and Southeast Asian states have been less able to deny that acts of piracy occur in their waters. Japan has therefore attempted to build regional cooperation in Southeast Asia by re-examining how piracy is defined. In 2001, Japan sponsored a conference entitled: The 'Asia Cooperation Conference on Combating Piracy and Armed Robbery at Sea', marking a significant step towards dealing with piratical incidents as defined by international law and acts of armed robbery that occur within a state's jurisdiction. The definitional problem appears to have been overcome with the establishment of the Information Sharing Centre in Singapore on 11 November 2004. This Centre which was promoted by Japan works on the agreed principle that the signatory states, the ten ASEAN states, Japan, China, Korea, India, Bangladesh and Sri Lanka, must tackle both piracy on the high seas, according to UNCLOS, and armed robbery at sea, based on the IMO's code of practice (http://www.soc.nii.ac.jp/jsil/annual_documents/2003/autumn/houkoku-abstr/Panel%20C4%20Umezawa%20paper.pdf, accessed on 20 December 2005). The

²⁴⁹ An interesting parallel can be drawn with the JCG's pursuit of the North Korean spy ship that transgressed Japanese waters in December 2001. The main difference between hot pursuit in Northeast Asia and Southeast Asia is that tensions between Japan and North Korea, centring upon North Korea's status as a barbarian power, warranted hot pursuit from the Japanese perspective. More cooperative relations in the Southeast Asian interstate society promote greater respect for sovereign maritime boundaries.

way in which this agreement was reached will be outlined in the legal section of Japan's response in this chapter.

The international dimensions of contemporary shipping and the widespread use of flags of convenience further complicate piracy in Southeast Asia. The countries that issue a flag of convenience, such as Panama, the Bahamas, Liberia, the Maldives and Malta, have jurisdiction over a ship, but have no means to enforce their jurisdiction (Takai, 2002: 1). The case of the *Star 4*, a bulk carrier flying the flag of land-locked Mongolia, is indicative of the problem of flags of convenience. On 7 February 2004, whilst anchored at Chittagong, Bangladesh, a group of armed pirates boarded the *Star 4*, shot and killed two watchmen and made off with some of the ship's property (ICC-IMB Piracy Report third Quarter 2004: 40). It is far from clear that Mongolia can truly exercise jurisdiction in this case or indeed would want to (Yamada, 2005: 48), especially as the Mongolian Ship Registry lacks the resources and the manpower to become involved in an investigation.²⁵⁰ Flags of convenience are easily and cheaply bought and come with few regulations that ships must obey. The difficulty comes when a ship flying a flag of convenience is pirated and there is no authority to turn to in the flag state. Furthermore, the crew, shipowner, shipper and receiver of the goods may all be of different nationalities, thereby complicating a legal resolution of a pirated ship. Considering the international dimensions of contemporary piracy and armed robbery against ships, a cooperative international response is imperative. International law also dictates that states should cooperate to resolve piracy (Article 100 UNCLOS). Japan has recognised the need for an international approach, and since former Prime Minister Obuchi's call for an international conference on piracy in November 1999, Japan has been at the forefront of efforts to build international cooperation to tackle piracy in Southeast Asia (Takai, 2002: 1-2, 8).

The response of the Japanese government to piracy is briefly outlined in MOFA'S Diplomatic Bluebook, Section 4: "Global Problems", Chapter II: "Japan's Foreign

²⁵⁰ Intriguingly, North Korean ships seeking to avoid inspections under the PSI may look to acquire a Mongolian flag to hide the ship's connection with North Korea. See, Brooke, "Landlocked Mongolia's Seafaring Tradition", <http://www.globalpolicy.org/nations/flags/2004/0702landlocked.htm>, accessed 6 August 2006.

Policy in Major Diplomatic Fields”, Part C: “Transnational Organized Crime, Illegal Drugs, and Piracy” (MOFA Diplomatic Bluebook 2002, <http://www.mofa.go.jp/policy/other/bluebook/2002/index.html>, accessed on 19 December 2005). The information given in this report can be divided into three main areas: political measures, operational measures, and legal measures. Political measures include regional meetings sponsored or promoted by Japan to raise awareness or build cooperation in the fight against maritime piracy. The principal meetings are the ‘Regional Conference on Combating Piracy and Armed Robbery against Ships’ held in Tokyo in April 2000, at which the ‘Asia Anti-Piracy Challenge 2000’ statement and ‘Model Action Plan’ were announced, and the ‘Asia Cooperation Conference on Combating Piracy and Armed Robbery against Ships’ held in Tokyo in October 2001, attended by representatives of 16 Asian states and Hong Kong, as well as IMO and IMB delegates. Operational measures comprise hosting training programmes, conducting anti-piracy patrols and exercises, and establishing systems and centres for enhanced information sharing. Finally, legal measures include attempts to address and promote international anti-piracy laws and agreements. All of Japan’s efforts at promoting regional cooperation for the creation of an anti-piracy policy have been welcomed by the IMB (Nakamura, 2001: 18). These efforts will now be addressed in detail.

5.3a Political Measures

International Conferences

Since Japanese Prime Minister Obuchi proposed that a ‘Regional Conference on Combating Piracy’ should be held at the ASEAN Post-Ministerial Conference convened in the Philippines in November 1999, Japanese prime ministers have consistently taken the lead to promote international conferences to resolve the problem of piracy and armed robbery against ships in Southeast Asian waters. Obuchi also suggested that a regional coast guard be established and although this idea was spurned, it did indicate the willingness of the Japanese government to see key sea-lanes protected. At the November 2000 ASEAN+3 meeting in Singapore, Japanese Prime Minister Mori advocated that a Cooperation Conference on Combating Piracy and Armed Robbery at

Sea be held in Tokyo in 2001. Prime Minister Koizumi also used the occasion of the ASEAN+3 summit in Brunei in November 2001 to stress the importance of a governmental experts' meeting to devise a regional agreement on combating piracy and armed robbery at sea (Herrmann, 2002: 447; Emmers, 2004: 51-52; <http://www.mofa.go.jp/mofaj/gaiko/pirate/index.html>, accessed on 19 December 2005). Koizumi repeated his intention to build regional cooperation to fight piracy whilst touring the Philippines, Malaysia, Thailand, Indonesia and Singapore in January 2002, stating at the Institute of Southeast Asian Studies in Singapore on 14 February 2002:

I believe we need an agreement for regional cooperation on piracy, and I will promote consultation to achieve that end. We must band together to eradicate the plague of piracy. In addition, I would like to strengthen cooperation between the Coast Guard of Japan and [its] ASEAN counterparts (quoted in Emmers, 2004: 52).

Each of these regional conferences and meetings will be examined in turn.

The Regional Conference on Combating Piracy

The 'Regional Conference on Combating Piracy', which was held on 27-28 April 2000, represented the first gathering of governmental and maritime officials throughout Asia to discuss the problem of piracy. The conference was jointly sponsored by the Ministry of Foreign Affairs, the Ministry of Transport, and the Maritime Safety Agency with the backing of the Nippon Foundation. The meeting comprised government representatives concerned with maritime affairs and members of the shipping associations of ten ASEAN countries, as well as India, Sri Lanka, Bangladesh, South Korea, China, Hong Kong and Japan. Delegates from the IMO were also in attendance. As a result of this conference a resolution was declared entitled the 'Tokyo Appeal' (Appendix III) together with guidelines for combating piracy and armed robbery against ships titled the 'Model Action Plan' (Appendix IV). Furthermore, the 'Asia Anti-Piracy Challenge 2000' (Appendix V) was adopted (*Asahi Shimbun*, 28 April 2000: 3; *Kaiyōhōanchōkokusaijika*, 2002: 145; <http://www.mofa.go.jp/mofaj/gaiko/pirate/index.html>, accessed 21 October 2003). The 'Tokyo Appeal' stressed the need to better understand and combat piracy in Asian waters by encouraging the reporting of piratical instances, improving the preventative

measures adopted by the shipping industry, strengthening the capacity of maritime enforcement agencies to aid pirated ships and counter pirates in the territorial waters of Asian states, enhancing multinational cooperation in the fight against piracy, and encouraging the adoption of the SUA Convention, to encourage greater interstate cooperation as Chapter 3 demonstrated (http://www.mlit.go.jp/english/mot_news/mot_news_000428, accessed on 27 October 2003). The 'Model Action Plan' provided a step-by-step guide to how the aspirations outlined in the 'Tokyo Appeal' should be carried out (http://www.mlit.go.jp/english/mot_news/mot_news_000428, accessed on 27 October 2003).

The 'Asia Anti-Piracy Challenge 2000' has five principal aims. First, to promote and strengthen cooperation and coordination between maritime authorities in the region. Second, to exchange views and information quickly through the creation of a directory containing the contact details of maritime personnel in the Asia region. Third, to strengthen regional anti-piracy measures. Fourth, for governments in the region to provide assistance to pirated vessels and crews. Fifth, for maritime officials to participate in a regional experts meeting enabling the furtherance of cooperation and coordination between each country. The measures taken by regional states following the 'Regional Conference on Combating Piracy' were proven effective when, on 25 May 2000, less than a month after the conference had taken place, a distress signal was picked up from a ship sailing east of the Philippines via the INMARSAT satellite system. The cargo ship flew a Panamanian flag and is referred to simply as "H". In accordance with the proposals outlined in the 'Model Action Plan' and 'Asia Anti-Piracy Challenge 2000', the directory of contact information on maritime authorities in the region was consulted. The Philippine Coast Guard then sent a unit to investigate and placed patrol boats and planes on stand-by. By 12:30 p.m. on the 26 May the ship "H" was guided safely into the port of Tabao, the Philippines. As it happened the emergency transmitter had been activated by a crew member by mistake, though the response of the Philippine maritime police indicated the extent to which Asian maritime authorities were mobilised to act in the aftermath of the 'Regional Conference on Combating

Piracy' (<http://www.kaiho.mlit.go.jp/info/books/report2001/special/o1.html>, accessed on 21 October 2003).

The 'Regional Conference on Combating Piracy' was the first occasion for Coast Guards and maritime authorities throughout the Asian region to make concrete efforts at cooperation (Terashima, 2001: 39). The involvement of representatives from all ASEAN states, as well as six other countries and Hong Kong, showed the extent to which participants were prepared to engage in a truly region-wide meeting to address the problem of piracy. Furthermore, the drafting of the 'Tokyo Appeal', the 'Model Action Plan' and the 'Asia Anti-Piracy Challenge 2000', all indicated that the first steps to resolve the problems of piracy in Asia were being taken. The shortcoming with the conference was that no state had really committed itself to doing anything, despite having voiced a general agreement concerning the contemporary threat of piracy.²⁵¹ Japan, therefore, advanced bilateral operational steps, such as the dispatch of Japan's Coast Guard ships to conduct anti-piracy exercises with Coast Guards and maritime police throughout the Asian region, which will be detailed in Section 8.3.b, labelled 'Operational Measures', and sponsored a second regional anti-piracy conference entitled 'The Asia Cooperation Conference on Combating Piracy and Armed Robbery'.

The Asia Cooperation Conference on Combating Piracy and Armed Robbery

On the 4-5 October 2001, the 'Asia Cooperation Conference on Combating Piracy and Armed Robbery' was held. The conference was sponsored by Japan's Ministry of Foreign Affairs and involved attendees of the same 16 countries and the region of Hong Kong as the 'Regional Conference on Combating Piracy' the year before. A broader range of delegates participated at the October 2001 conference, including government representatives, members of shipping associations, as well as researchers and representatives of both the IMO and IMB. The conference addressed the increasingly

²⁵¹ In fact, China spurned Japanese proposals for multilateral patrols in the Malacca Straits because of concerns that anti-piracy cooperation led by Japan might build maritime alliances balancing China's growing naval power (Bradford, 2004: 491).

violent and organised instances of piracy in the Southeast Asia region and proposals for information sharing and enhanced regional cooperation were discussed. There were four main results of the conference. First, it was agreed that a regional response, spanning government, citizen and international organization levels, was indispensable to deal with the problem of piracy and armed robbery at sea. Second, the initiatives of Asian states to combat piracy in the Asian region were emphasised. Third, a government experts' meeting was inaugurated to formulate concrete plans to tackle piracy and armed robbery against ships. Fourth, the need to develop regional cooperation and publicise the results of the conference were stressed (<http://www.mofa.go.jp/mofaj/gaiko/pirate/index.html>, <http://www.mofa.go.jp/policy/piracy/state0110.html>, accessed 27 October 2003).

Despite the wider participation at the 'Asia Cooperation Conference on Combating Piracy and Armed Robbery', there remained precious little in terms of concrete measures to deal with the growing problem of piracy. Once again a regional response was stressed and the individual efforts of states were highlighted, but no plan to develop coordinated patrols targeting piracy was evolved (*Mainichi Shimbun*, 5 October 2001: 5).²⁵² The main two achievements were perhaps the title of the conference itself, which suggested that states now agreed that the problem was not simply one of piracy in international waters, but also a matter of armed robbery within the sovereign maritime boundaries of littoral states, and the creation of a Maritime Policy Bureau's Expert Meeting to Tackle Piracy.

The Maritime Policy Bureau's Expert Meeting to Tackle Piracy

The Maritime Policy Bureau's Expert Meeting to Tackle Piracy was held on 12-13 March 2002, and was comprised of representatives from 16 countries in the Asian

²⁵² Critics advocated the need to enhance understanding about piracy and armed robbery at sea in the Asian region and therefore encouraged the Japan Coast Guard and Ministry of Foreign Affairs to engage in more information sharing, exchange of personnel and technical aid (*Mainichi Shimbun*, 5 October 2001: 5).

region as well as members of the IMB and IMO.²⁵³ The agenda of the Maritime Policy Bureau's Expert Meeting to Tackle Piracy was threefold. First, representatives from the IMO and IMB elaborated upon the current problem of piracy and armed robbery against ships in the region, focussing in particular upon the increasing number of hijack and ransom cases. Second, each maritime bureau presented its policies and efforts in implementing the steps specified in the 'Model Action Plan', proposed at the 'Regional Conference on Combating Piracy and Armed Robbery against Ships' held in Tokyo, April 2000, and especially praised the shipping industry's efforts in employing measures to protect their ships.²⁵⁴ Third, participants put forward concrete efforts to improve the regional response to the problem of piracy. These efforts included: a continuation of international cooperation through information exchange, an improved system to coordinate the transfer of information between states regarding pirated ships, domestic measures to tackle current trends of hijacking and ransom cases, and the promotion of studies that examine the connections between piracy and maritime terrorism (<http://www.mlit.go.jp/kisha/kisha02/10/100228.html>; <http://www.mlit.go.jp/english/news/news02/100313>; <http://www.mlit.go.jp/kisha/kisha02/10/100313.html>, accessed on 21 October 2003).

In addition, negotiations on the Agreement to Cooperate in the Asian Region to tackle Piracy were held regularly every month to two months in 2003 to hammer out concrete measures that Asian states could take to combat piracy and armed robbery against ships in the region. Participants included section chiefs and department heads of Foreign and Maritime Agencies and Ministries from the same 16 countries that convened for the Maritime Policy Bureau's Expert Meeting to Tackle Piracy. Japan took the lead in these negotiations drafting a common proposal text and a common negotiation text on the subject of a regional Information Sharing Centre on piracy and armed robbery against ships (http://www.mofa.go.jp/mofaj/gaiko/kaiyo/kaizoku_3.html, accessed on 21 October 2003). By the sixth round of negotiations held in Tokyo from the 23-26 September 2003, discussions were conducted at the bureau chief level. At the sixth

²⁵³ The 16 countries were Bangladesh, Brunei, Cambodia, China, India, Indonesia, Japan, South Korea, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Vietnam and Sri Lanka.

²⁵⁴ The contribution of the shipping industry to tackling piracy is detailed in section 8.4.c 'The Response of the Shipping Industry to Maritime Piracy in Southeast Asia'.

meeting, a complete draft of the functions and operation of the Information Sharing Centre was accepted and bargaining began on where the centre should be established (http://www.mofa.go.jp/mofaj/gaiko/kaiyo/kaizoku_6.html, accessed on 21 October 2003). On 11 November 2004, over a year after this sixth meeting, Singapore was chosen to host the Information Sharing Centre (*BBC Monitoring Asia Pacific*, 11 November 2004: 1; <http://www.mofa.go.jp/mofaj/gaiko/pirate/index.html>, accessed 19 December 2005).

The establishment of the Information Sharing Centre marked a significant achievement in the regional dialogue process initiated by the Japan-sponsored anti-piracy conferences. During the process of the negotiations, the 16 participant countries agreed to include the IMO's definition of armed robbery against ships as a means of tackling piracy within their sovereign waters, thereby overcoming a fundamental definitional issue that had stymied international cooperation on piracy (Umezawa, http://www.soc.nii.ac.jp/jsil/annual_documents/2003/autumn/houkoku-abstr/Panel%20C4%20Umezawa%20paper.pdf, accessed 20 December 2005). Furthermore, the Information Sharing Centre moved Asian measures to tackle piracy and armed robbery against ships to the operational level, whereby real-time information would be used to aid littoral maritime organizations pursue and capture pirates. This achievement took over four years since the initial 'Regional Conference on Combating Piracy' was held in April 2000. For the shipowners and crews who suffered at the hands of pirates during this period, the time spent discussing measures to deal with piracy seems long. However, considering the sensitivity to foreign interference in sovereign affairs in Southeast Asia, as examined in Chapter 3, that regional consensus concerning a jointly operated anti-piracy centre was reached at all is quite remarkable. Moreover, the dialogue process, because of its attention to detail and sensitivity towards the positions of the member states, helped to establish an informal regional network of maritime officials committed to tackling the problem of piracy (Mukundan interview, 22 April 2003). Finally, the creation of an Information Sharing Centre saw the consolidation of Japan's political, operational and legal measures to deal with piracy and armed robbery against ships. Until the establishment of the multilateral Information Sharing Centre, Japan's operational efforts had largely been bilateral in nature and the

legal aspects of tackling piracy continued to be hampered by the outdated UNCLOS Convention, detailed in Chapter 3. Japan's operational and then legal measures will be dealt with in turn.

5.3b Operational Measures

Training and Financial Assistance

Following the 'Regional Conference on Combating Piracy' in April 2000, the Japan Coast Guard Academy in Hiroshima began to accept exchange students for training in combating maritime crime including piracy and armed robbery against ships (*Asahi Shimbun*, 29 April 2000: 38). These students are following a six-year curriculum, including one year of Japanese language training, and are expected to return to their country of origin upon graduation in order to improve the capacity of their national maritime authority to fight piracy. A Maritime Crime Seminar was also held at the Kyūshū international centre involving 11 researchers from nine countries across the Asian region between October and November 2001 (*Kaiyōhōanchōkokusaijika*, 2002: 145; *Kaijyōhoandaigaku Kokuaijōryūkikakushitsu*, 2006: 38-41). Japan also agreed to help Southeast Asian states financially to build the capacities of their maritime authorities to be better able to confront the problem of piracy and armed robbery against ships (*Asahi Shimbun*, 29 April 2000: 38). In the aftermath of the *Idaten* incident, a piracy case examined towards the end of this chapter, the Japanese government proposed giving patrol ships to Indonesia to help in the fight against piracy. These efforts show the resolve of the Japanese government in dealing with piracy, but progress has also been achieved through the Nippon Foundation, a non-governmental organization.

The Nippon Foundation has taken the initiative in combating piracy and armed robbery against ships by following a simple formula. First, political leaders must be made aware of the problem and be determined in their efforts to confront it. Second, the cooperation of the media is required to disseminate information. Finally, international organizations, governments and NGOs must work together to formulate a comprehensive response to

piracy and armed robbery against ships. Nevertheless, in order to develop an effective response to maritime crime, the capacities of Asian coast guards must be strengthened. The Nippon Foundation has facilitated the expansion of coast guard capabilities across Asia by funding scholarships for the personnel of maritime organizations and authorities. By June 2004, almost 300 students from 40 countries had received Sasakawa fellowships to attend the World Maritime University in Sweden. Not only have these students acquired valuable knowledge pertaining to their field, but also interpersonal networks have been created amongst the maritime authorities in the Asian region. Further scholarship programmes have been initiated with the International Maritime Law Institute in Malta, the Seafarers International Research Centre of Cardiff University and at the Division for Ocean Affairs and the Law of the Sea of the UN Office of Legal Affairs. A specialized curriculum has also been introduced at the Partnership for Observation of the Global Oceans (<http://www.Nippon-foundation.or.jp/eng/speeches/2004658/200446582.html>, accessed on 8 July 2004). It is anticipated that students at both the Japan Coast Guard Academy and those benefiting from Nippon foundation sponsorships will develop the skills and knowledge needed to fight piracy and armed robbery against ships. At the same time, however, Japan has also engaged in bilateral patrols and exercises to improve cooperation and coordination between regional maritime authorities in dealing with piracy and armed robbery against ships.

Patrols and Exercises

From 19 to 26 September 2000, the Japanese government ordered the dispatch of an “anti-piracy survey mission” comprising MOFA, MOT and MSA officials to the Philippines, Malaysia, Singapore and Indonesia. The survey mission was intended to follow up the work of the April 2000 ‘Regional Conference on Combating Piracy’. The survey exchanged ideas concerning areas of cooperation and support, including visits of Japan Coast Guard patrol vessels and exercises, as well as the exchange of personnel, education, technical assistance (comprising the acceptance of exchange students to the

Maritime Safety Agency's Academy starting April 2001)²⁵⁵ and seminars on combating piracy (beginning in October 2001).²⁵⁶ Following this mission, a Coast Guard patrol vessel visited India and Malaysia in November 2000 to conduct joint anti-piracy training missions (*Kaiyōhōanchōkokusaijika*, 2002: 145; <http://www.mofa.go.jp/mofaj/gaiko/pirate/index.html>, accessed 27 October 2003).

Since the anti-piracy survey mission, the Japan Coast Guard has regularly conducted patrols and exercises with the maritime authorities of Asian states on a bilateral basis (see Appendix VI). The following examples give an overview of the details of two of these missions. In October 2001, the JCG vessel, *Mizuho*, was dispatched to the Philippines to conduct joint exercises with the Filipino Coast Guard. The exercise involved a mock hijacking of a Filipino patrol vessel which the *Mizuho* pursued and boarded with armed personnel. Until this operation, the Japanese and Filipino Coast Guards had exchanged opinions and the Filipino students had been sent to study at the Japan Coast Guard Academy in Hiroshima. The roots of this evolving bilateral cooperation lie in the 'Regional Conference on Combating Piracy and Armed Robbery against Ships' held in April 2000 in Tokyo (*Asahi Shimbun*, 1 November 2001: 39). In March 2002, the *Yashima* patrol boat was sent to Jakarta, Indonesia, and a Falcon 900 was dispatched to Brunei and Jakarta on an anti-piracy patrol as well as to aid in a search for pirated vessels upon request (*Kaiyōhōanchōkokusaijika*, 2002: 145). The *Yashima*, accompanied by two rotor-blade aircraft, conducted a joint training exercise with one Indonesian naval patrol ship and one Indonesian maritime police patrol vessel on 6 March 2002, in Jakarta bay. The contents of the exercise included the pursuit and capture of a fleeing pirated ship, as well as the rescue of the pirated ship's original crew. The *Yashima* also collected information on piracy from various national maritime bureaus in Asia as well as patrolled and maintained communications with Japanese ships to ensure their safety. The dispatch of both the *Yashima* and the Falcon 900 in March 2000 was set to coincide with the holding of an Expert's Meeting on Piracy and

²⁵⁵ A total of five students from Indonesia, Thailand, the Philippines, Vietnam and Malaysia were accepted as exchange students at the Coast Guard Academy in April 2001 (<http://www.kaiho.mlit.go.jp/info/books/report2001/special/o1.html>, accessed on 21 October 2003).

²⁵⁶ The seminars included other kinds of maritime crime, such as dealing with stowaway cases and illegal trafficking (<http://www.kaiho.mlit.go.jp/info/books/report2001/special/o1.html>, accessed on 21 October 2003).

Armed Robbery against Ships in Jakarta
(<http://www.kaiho.mlit.go.jp/info/kouhou/h14/k200220215/index.html>, accessed on 21 October 2003).

The fact that Japan has not been able to go beyond bilateral cooperation is significant (Emmers, 2004: 53). Japan has also yet to conduct patrols in the Malacca Straits (Takai, 2002: 21), the maritime region which most concerns Japanese interests. Three reasons may account for this. First the issue of national sovereignty is important in the Southeast Asian region, as noted in Chapter 3. States refuse to allow foreign maritime powers the right to patrol their sovereign waters (*Mainichi Shimbun*, 5 October 2001).²⁵⁷ Second, there is the question of Japan's militaristic past and a reluctance to see Japan evolve as a more proactive maritime power (Emmers and Sebastian in Weatherbee, 2005: 175).²⁵⁸ Finally, Southeast Asian states are also aware that too much cooperation with Japan in the fight against piracy may upset China, which suspects that Japan's involvement in anti-piracy patrols and exercises is merely the first steps in building regional alliances pitted against China (Bradford, 2004: 491; Emmers, 2004: 53-54).

The types of maritime patrols and exercises are also significant in that they mostly resemble the hijackings of the *Tenyu* and *Alondra Rainbow*.²⁵⁹ Whilst such exercises are

²⁵⁷ Umezawa argues that joint training and annual anti-piracy exercises are the limit of Japan's operational response to piracy and armed robbery against ships in the Southeast Asian region (Umezawa interview, 02 April 2004). Despite the rise in piratical incidents, the sanctity of Southeast Asian state's sovereign territory remains paramount, inhibiting attempts to develop joint patrols between states (Kuribayashi, 2003: 39).

²⁵⁸ That said, Indonesia's Ambassador to the United States, Soemadi D.M. Brotodiningrat, has argued that Japan's constitution, which restricts the export of military hardware from Japan, obstructs sale of essential equipment in the fight against piracy and terrorism to the Indonesian Coast Guard (Shorrock, <http://www.ips.org/asiaamerica/asianvoices/japan5.html>, accessed 15 December 2005). Leavitt argues against the collective memory explanation that posits a fear of Japanese militarism in Southeast Asia. Instead, she maintains that realist accounts combined with ASEAN's strategic culture better explain the limited security cooperation between Japan and Southeast Asia (Leavitt, 2005: 229-230, 232-237). This thesis supports Leavitt's view in the sense that maritime security cooperation has been increasing between Japan and Southeast Asian littoral states and because Southeast Asian states have not been critical of Japan's involvement in contentious maritime incidents, such as the sinking of the North Korean spy ship in December 2001, as noted in Chapter 4. Nonetheless, Japan's militaristic past still influences relations between China, North Korea and South Korea on the one hand and Japan on the other. In seeking to balance growing Chinese power in Southeast Asia, Southeast Asian states are wary of being too supportive of Japan's growing maritime role.

²⁵⁹ The response of the Japanese government to maritime piracy has, therefore, mainly focussed on what Chalk refers to as medium-level armed assault and robbery (MLAAR) and major criminal hijack (MCHJ)

multi-purpose in nature, in that they involve the search, pursuit, capture, and rescue of a hijacked ship, making them applicable to various other piratical scenarios, the fact that hijackings of the *Tenyu* and *Alondra Rainbow* type have more or less ceased raises the question of whether exercises that reflect the current trends in piracy and armed robbery against ships would be more applicable to expanding the capabilities of littoral maritime organizations. For example, attacks off the Aceh coast generally involve heavily armed pirates in speedboats, executing fast, military-style operations in which crew members are seized, taken to strongholds on land and held for ransom. It is unclear whether the perpetrators of such attacks are associated with international crime groups, members of littoral navies or members of the Free Aceh Movement, GAM. The case of the *Idaten*, a Japanese tugboat from which three crew members were kidnapped and ransomed in March 2005, will be examined later in this chapter and the involvement of GAM fighters will be treated in the next chapter on politically motivated maritime violence and crime.

Whichever group is responsible for such kidnap and ransom cases, exercises incorporating this kind of attack would be useful because the pursuit of the pirates could be coordinated between Japan Coast Guard ships in international waters and the maritime forces of a littoral state as the pirates quickly cross into the sovereign maritime zone of the littoral state. Such exercises would thereby address the issue of hot pursuit, as identified in Chapter 3, and would no doubt involve the coordination of the Information Sharing Centre in Singapore. Furthermore, the exercise could even involve police or military authorities on land, thereby developing better cooperation between land and sea authorities in the fight against piracy. The fact that exercises with the Japan Coast Guard tend to be of the *Alondra Rainbow* hijacking mould is indicative that this style of piratical attack is the one that has most concerned the Japanese government. Yet, Southeast Asian states, particularly Malaysia and Indonesia, limit their participation in maritime policing exercises to those designed to tackle piracy on the high seas, such as

rather than cases of low-level armed robbery (LLAR) (Chalk, 1998: 88-89). This suggests a top-down response to maritime piracy and terror that attempts to tackle major criminal and terrorist organizations, but largely ignores the low level criminals who make a living from maritime crime and violence. This omits important connections between the lower levels of piracy and the more major incidents, as well as failing to treat the social, political, cultural and economic problems of littoral communities who engage in piracy or protect pirate gangs, as noted in Chapter 3.

those centring on hijacking, rather than take part in exercises that cross their own sovereign waters. This indicates a significant gap between Japan's interests in tackling piracy, which take into account the transborder nature of contemporary piracy, and those of littoral states.

Not only has Japan's involvement in the fight against maritime piracy and armed robbery against ships improved the capabilities of maritime authorities in Southeast Asia, but it has also prompted a number of changes to the make-up of the Japan Coast Guard. For instance the Coast Guard decided to introduce two large jet planes with the capacity to fly 12,000 kilometres for twelve and a half hours to conduct search and surveillance missions in the Malacca/Singapore Straits because of the rise in piracy in the 1990s (*Asahi Shimbun Evening Edition*, 10 August 2000: 1).²⁶⁰ Such modifications hint at the possibility of an enlarged role for the Japan Coast Guard over time. Nevertheless, the role of the Japan Coast Guard in Southeast Asia will largely depend upon how existing regional approaches to dealing with the problem of piracy evolve. The Information Sharing Centre has become the cornerstone of these regional approaches.

Coordination: The Information Sharing Centre

Delegates at the 'Asia Cooperation Conference on Combating Piracy and Armed Robbery against Ships' held in Tokyo in October 2001 recognised the need to develop a framework that would allow maritime organizations to cooperate effectively in tackling the problems of violent maritime crime. The framework has four aims. First, the national laws of states in the Asia region are to apply national and international laws regarding the suppression of piracy.²⁶¹ Second, states are to make every effort to enact effective measures to combat piracy facilitated through the assistance of regional states

²⁶⁰ The pursuit of North Korean spy ships in March 1999 and December 2001 also influenced changes to the composition of the JCG fleet, as Chapter 4 detailed, including three waterjet patrol ships that can reach over 40 knots (Nawano, 2002: 47-49).

²⁶¹ The states involved in the 'Asia Cooperation Conference on Combating Piracy and Armed Robbery against Ships' included the ten ASEAN countries, as well as India, Sri Lanka, Bangladesh, South Korea, China and Japan (<http://www.mofa.go.jp/mofaj/gaiko/pirate/index.html>, accessed on 19 December 2005).

to build the capacities of national maritime authorities in Asia. Third, maritime officials from across the region are to help establish an Information Sharing Centre.²⁶² Fourth, maritime bodies are to respond proactively to the requests of their counterparts in other Asian states (Umezawa interview 2 April 2004, Umezawa, 2004: 109-110). Of these four aims the establishment of an Information Sharing Centre became a focus for anti-piracy efforts in the Asia region.

The creation of an Information Sharing Centre for combating piracy and armed robbery against ships is at the heart of regional attempts to tackle violent maritime crime. It is through this centre that the requests of maritime authorities to deal with an instance of piracy will be channelled so that another maritime authority can respond. As the 'Asia Cooperation Conference on Combating Piracy and Armed Robbery against Ships' upholds the sanctity of sovereign boundaries, hot pursuit is not permitted. However, by establishing a system by which maritime authorities can request assistance from neighbouring maritime organizations, a chase can be continued that would, in the past, have ceased at a country's maritime boundary. Hence, there is a need for the JCG to conduct exercises that focus on pursuing pirates across maritime boundaries, as discussed in the previous section. Furthermore, the information centre can create statistics that allow trends in maritime crime to be understood and thereby dealt with more effectively (Kuribayashi, 2003: 39; Umezawa interview 2 April 2004). On 11 November 2004, 16 Asian states at a regional anti-piracy meeting held in Tokyo signed the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (RECAAP) and decided to set up the Information Sharing Centre in Singapore (*BBC Monitoring Asia Pacific*, 11 November 2004: 1; *MOFA Press Conference*, <http://www.mofa.go.jp/announce/press/2004/11/1112.html>, accessed on 12 December 2005).

Two issues arise concerning the creation of an Information Sharing Centre regarding piracy and armed robbery against ships. The first issue concerns transparency. The

²⁶² The Information Sharing Centre appears to have been largely modelled on the information exchange system in the Baltic Region which was established by Norway, Finland, Estonia, Latvia, Lithuania, Poland, Germany, Denmark, Sweden and Russia, in June 1997 (<http://www.kaiho.mlit.go.jp/info/books/report2001/special/o1.html>, accessed on 21 October 2003).

operations and efforts of maritime bodies throughout the Asian region that were hitherto secret, are now explicit and open to criticism. States cooperating in dealing with common maritime security issues therefore risk being pressurised to enhance their operations if their efforts are deemed insufficient. This could stretch the budgets of Asian states still recovering from the economic damage of the Asian financial crisis and the December 2004 tsunami, siphoning off resources to fight piracy which many Asian states still perceive as primarily a problem for major maritime powers. Alternatively, Southeast Asian budgets might already be stretched so thin that diverting funds to fight piracy may not be possible. Hence, even with the Information Sharing Centre it may be that states will simply lack the capacity to fight piracy and armed robbery against ships. Furthermore, cooperation is difficult to manage, especially in the Asian region where territorial claims are disputed and maritime territory overlaps make patrolling zones difficult to determine. It remains to be seen whether in the long-term, the information centre for combating piracy and armed robbery against ships will not be undermined or rendered obsolete by a lack of resources or the sheer difficulty of building maritime cooperation in Southeast Asia.

The second issue concerns the extent to which the role and functions of the Information Sharing Centre overlaps with the duties of the IMB's Piracy Reporting Centre in Kuala Lumpur. The IMB is apprehensive that the Information Sharing Centre will simply duplicate the work of the Piracy Reporting Centre in Kuala Lumpur rendering the establishment of the Information Sharing Centre meaningless (Mukundan interview, 22 April 2003). However, there may be further cause for concern, as captains reporting piratical incidents may favour one centre over the other, such that neither institution will receive complete information from which to compile statistics. Alternatively, the Piracy Reporting Centre may lose the private funding which enables it to keep running as shipping firms and organizations place their trust in the state-funded Information Sharing Centre.²⁶³ Inaccurate statistics or the loss of the Piracy Reporting Centre's expertise would hinder the ability of states and the shipping industry in its fight against

²⁶³ Yamada argues that the shipping industry are more likely to continue to rely on the Piracy Reporting Centre, rather than trust the intergovernmental Information Sharing Centre which is perceived by the shipping industry to be plagued by national rivalries between Indonesia, Singapore and Malaysia (Yamada interview, 10 November 2004).

violent maritime crime, particularly since substantial information concerning the whereabouts of hijacked ships is disclosed to the Piracy Reporting Centre that might not be divulged to an intergovernment body. Yamada Yoshihiko of the Nippon Foundation believes the Piracy Reporting Centre to be a better forum for fighting piracy than the Information Sharing Centre as ships transiting Asian waters tend to fly non-Asian flags, such as Cypriot, Panamanian and Nigerian flags, and are therefore not subject to the domestic laws of Asian states. It is therefore better to deal with the issue on an economic level (Yamada interview, 10 November 2004).

However, Umezawa Akima, who drafted the plan for the Information Sharing Centre, notes that, unlike the Piracy Reporting Centre, one of the benefits of the Information Sharing Centre is that it can handle confidential criminal juridical issues (Umezawa interview, 2 April 2004). Furthermore, the establishment of the Information Sharing Centre is useful in terms of creating an intergovernment network of maritime experts combating piracy on a real-time basis. Nevertheless, the compilation of statistics on piracy and armed robbery against ships by the Information Sharing Centre seems to unnecessarily copy the work of the IMB's Piracy Reporting Centre. This situation is further complicated by the fact that Southeast Asian states already disagree as to how statistics on piracy and armed robbery are compiled ("Indonesia disputes IMO report" *Business Times*, 14 July 2003). Governments have publicised the creation of the Information Sharing Centre without having given enough thought as to how the Piracy Reporting Centre and the Information Sharing Centre could work together, with the Piracy Reporting Centre collating and analysing data and the Information Sharing Centre distributing requests for action to be taken by littoral states.

5.3c Legal Measures

As Chapter 3 noted, perhaps the most difficult area to address in terms of fighting piracy and armed robbery against ships in Southeast Asia has been that of legal measures. Two legal deficiencies in particular have inhibited constructive solutions to

the problems of piracy and armed robbery against ships. These are firstly the lack of national laws in Southeast Asian states regarding piracy to complement the definition of piracy according to UNCLOS. Secondly, Southeast Asian states have failed to ratify the SUA Treaty.²⁶⁴ The norm of non-interference in Southeast Asian states' internal affairs makes dealing with either legal issue problematic. At the heart of this problem lies the definition of piracy in international law which stipulates that an act of piracy can only occur on the high seas outside the jurisdiction of a state. By adopting a national law on piracy, Southeast Asian states would be admitting the need for a legal measure to deal with piracy or armed robbery against ships in their national waters. In doing so, littoral states would be legally bound by their own laws to take action to resolve maritime crime in their own maritime territory (Takai, 2002: 11-13). The SUA Convention also poses problems for littoral states, as it allows for hot pursuit to be carried out across maritime boundaries and the extradition of criminals to a victim's state (Beckman, 2002: 329-330). Littoral states feel that both these factors could undermine their sovereignty (Emmers and Sebastian in Weatherbee, 2005: 170-175). Nevertheless, the negotiations leading to the creation of the Information Sharing Centre enabled the 16 participant states to adopt the IMO's definition of armed robbery against ships, allowing for pirates to be pursued and arrested within a state's own sovereign waters (Umezawa, http://www.soc.nii.ac.jp/jsil/annual_documents/2003/autumn/houkoku-abstr/Panel%20C4%20Umezawa%20paper.pdf, accessed 20 December, 2005). As a result, Southeast Asian states have been more active in responding to piracy and armed robbery in their waters and beyond.

It still remains to be seen whether or not Southeast Asian states will actually impose stricter sentences upon pirates they catch within their waters. China's response to piracy in its waters by prosecuting pirates and imposing the death sentence according to its national laws, demonstrated the significance of adopting legal means to suppress piracy (Takai, 2002: 13). Malaysia has also taken robust measures to arrest pirates in its own

²⁶⁴ The hijacking of the *Achille Lauro* in 1985 by members of the PLO which resulted in the death of one American prompted the IMO to develop and adopt the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (*Virtual Information Center, Primer: Piracy in Asia*, 17 April 2001, 16). This incident will be examined in more detail in Chapter 6.

waters and bring them to justice. Nine Indonesians who pirated the tanker, the *NT Nepline Delima*, pleaded guilty and have received seven-year sentences from a Malaysian court. A further Indonesian, who pleaded not guilty for the same offence, will face trial by the end of 2006 (ICC-IMB Piracy Report first Quarter 2006: 17-18). Nevertheless, there is little that Japan can do except to encourage other littoral states to adopt a more robust legal response to prosecuting pirates.

5.4 The Response of Other Powers and the Shipping Industry

5.4a The Response of Southeast Asian States to Maritime Piracy in Southeast Asia

Malaysia and Indonesia, in particular, have been reluctant to allow anti-piracy patrols led by foreign forces to patrol their sovereign waters. Because the issue of sovereignty remains paramount in Southeast Asia, as discussed in Chapter 3, so Southeast Asian states have made the most encouraging efforts in fighting piracy. Anti-piracy cooperation between Indonesia, Malaysia and Singapore began in the early 1990s and culminated in extensive trilateral patrols in June 2004. However, the work of individual states has also had a positive effect on combating maritime violence and crime.

During the 1990s a number of bilateral patrols were set up in the Malacca Straits and Phillip Channel by littoral states. In 1992, INDOSIN patrols, consisting of a battleship and patrol ship from the Indonesian navy as well as the Singaporean navy, were held four times per year for a period of 60 days each. Similar patrols in 2000 suppressed the number of attacks taking place in the Singapore Straits (Nakamura, 2001: 18).²⁶⁵ MALINDO patrols, comprising of two ships from both the Malaysian and Indonesian navies, held four times per year for a period of ten days and OPTIMA MALINDO patrols, involving four Indonesian naval vessels and one Malaysian naval ship, conducted once a year for a period of seven days further bolstered maritime policing in the Malacca Straits, though it was not possible to enter each other's sovereign territory

²⁶⁵ Nonetheless, five attacks were recorded from September to December 2000 in the Singapore Straits (Nakamura, 2001: 18).

in order to pursue pirates according to these agreements (Takai, 2002: 16-17; Emmers, 2004: 47-48). Moreover, in 1992, Malaysia and Indonesia established a Maritime Operation Planning team (MOP) designed to conduct maritime patrols in the Malacca Straits, and in 1993, Indonesia, Malaysia and Singapore agreed to provide armed police teams for ships if requested. Noel Chong notes that the combined efforts of Malaysia, Indonesia and Singapore in the early 1990s nearly eradicated piracy in the Malacca Straits (Yong Tiam Kui, *New Straits Times*, 17 August 2003: 4). Further examples of Asian states cooperating to fight maritime crime include the 1967 Anti-Smuggling Cooperation agreement and the 1995 Second Protocol between Malaysia and the Philippines to conduct joint sea border patrols, the 1975 Border Patrol Agreement between Indonesia and the Philippines which included the exchange of liaison officers, and the 1997 joint naval patrols held by Thailand and Vietnam that resulted in a decline in piracy (Emmers, 2004: 47-48; Herrmann, 2004: 24).

Nonetheless, the Malaysian government argued that whilst the response of Singapore and Thailand was good in relation to combating piracy, Indonesia was not fulfilling its duties, the Philippines could not commit enough ships, and Myanmar and Vietnam's efforts were deemed insufficient (Takai, 2002: 16-17). Furthermore, the majority of anti-piracy patrols were restricted to a state's territorial waters (Takai, 2002: 18) inhibiting hot pursuit. Clearly, sovereignty issues prevented the creation of trilateral patrols whereby naval patrols in one state could make up for the deficiencies in terms of resources in a neighbouring state.

Not only were the anti-piracy maritime patrols in Southeast Asia inadequate, there has also been a lack of coordination between maritime authorities and police to hunt down pirates as they leave or return to their bases on land (Hersutanto, *The Jakarta Post*, 31 July 2004: 1). The failure to target pirate bases is largely responsible for the lack of arrests; pirates were only apprehended in two or three of the 344 cases of piracy in 2003 (Webster, *The Times*, 31 October 2003: 25). Even when pirates are captured, the absence of national laws regarding piracy in Southeast Asian states often inhibits pirates being convicted. Only Thailand (Piracy Act 1991), India (Navy Act of 1957) and the People's Republic of China have laws regarding maritime piracy (Herrmann, 2004: 24).

Nevertheless, the inadequacies of anti-piracy patrols in Southeast Asia may be reversed following the inauguration of a system of joint patrols comprised of maritime authorities from Indonesia, Malaysia and Singapore in June 2004. These patrols involved seven Indonesian battleships and five battleships from both Malaysia and Singapore. A month later an emergency piracy hotline was installed between the maritime authorities of these three countries to enable better cooperation in the fight against piracy and armed robbery against ships and to enable the pursuit of pirate ships to be continued across maritime boundaries (Kaneda, 2005: 46).

The development of this trilateral joint patrol initiative evolved following Admiral Fargo's (US Navy) announcement in April 2004 that the US navy would be prepared to intervene with marines and Special Forces on stand-by should a pirate or terrorist incident occur in the Singapore or Malacca Straits (*Nihon Keizai Shimbun*, 19 September 2004: 13). Fargo's proposal was linked with the American-led 'war on terrorism' which began in the aftermath of the terrorist attacks in New York and Washington on 11 September 2001. Though welcomed by Singapore, the offer was rejected outright by both Indonesia and Malaysia who feared that their sovereignty would be infringed upon and that US naval involvement might actually encourage terrorist acts rather than deter them.²⁶⁶ Malaysia and Indonesia countered Admiral Fargo's proposal by developing joint patrols in tandem with Singapore. Nonetheless, Malaysia's Defence Minister Najib Razak and Admiral Fargo did agree to sharing information regarding the security of the Malacca Straits in June 2004 and the US Secretary for Defence Donald Rumsfeld determined to limit US involvement in securing the Malacca Straits, so as not to antagonise Malaysia and Indonesia, stating that the US would not forget that the ultimate responsibility for the safety of the Malacca Straits would lie with the three littoral states (*Maritime Industry Research Centre*, 2004: 57). Franklin Lavin, US Ambassador to Singapore, echoed Rumsfeld's comments at a conference sponsored by the Singapore Shipping Association by

²⁶⁶ Malaysia and Indonesia's rejection of Fargo's offer caused a rift to develop with Singapore (Hendropriyono, *The Jakarta Post*, 25 August 2004:2). It is significant, therefore, that trilateral patrols have been put into effect.

welcoming the trilateral patrols, stressing the non-involvement of US forces, but adding that more needed to be done to secure the Malacca Straits against piracy and terrorism (Rao, *Fairplay*, 30 September 2004: 9). Rumsfeld's message could also be read as a veiled threat, in the sense that while ultimate responsibility may lie with the littoral states now, should a terrorist event occur in the future which disrupts the safety of navigation through the Malacca Straits, then the US might be prepared to intervene. The impact of the trilateral patrols and Japan's response to terrorism will be examined in the next chapter.

Though the development of trilateral patrols is expected to have a significant impact upon the reduction of piracy in the Singapore and Malacca Straits, there are concerns that a lack of resources may hinder the effectiveness of the joint patrols. Noel Chong, noted that international society should provide the three littoral states with resources and technical assistance to help combat piracy in the region (*The BBC monitoring Asia Pacific*, 21 July 2004: 1; Hersutanto, *The Jakarta Post*, 31 July 2004: 1; Hendropriyono, *The Jakarta Post*, 25 August 2004: 2; *Nihon Keizai Shimbun*, 19 September 2004: 13). There is the opportunity to bolster the trilateral patrols in the Malacca Straits by providing a UN-led maritime force to protect the international sea lane until such a time when the three littoral states are better able to protect the Straits by themselves. Unfortunately, there is little political will on the part of major maritime powers to push for UN patrols and there would be little acceptance of them from Malaysia and Indonesia, if the rejection of Fargo's proposal by Indonesia and Malaysia is any indication. Nevertheless, the trilateral patrols will have the support of the Information Sharing Centre which should help the three coastal states provide more effective anti-piracy patrols.

The issue of sovereignty has certainly hampered numerous efforts at effective multilateral cooperation in Southeast Asia. It was only after US Admiral Fargo suggested US marines might be deployed in the Malacca Straits that Indonesia, Malaysia and Singapore agreed to conduct trilateral patrols, suggesting that trilateral patrols amount to the lesser evil compared with having US forces patrolling the maritime boundaries of littoral states. Nonetheless, coupled with the creation of the

Information Sharing Centre, trilateral patrols have had a significant effect upon piracy and armed robbery against ships in the Southeast Asian region (<http://www.icc-ccs.org/main/news.php?newsid=67>, accessed 3 May 2006). Equally important, however, are the individual efforts of Singapore, Indonesia and Malaysia in combating piracy and armed robbery against ships in Southeast Asia.

Singapore

Of all the states in Southeast Asia, Singapore has taken the most extensive measures to suppress piracy in its waters. Anti-piracy patrols in Singapore's waters are undertaken by the Singapore Police Coast Guard (PCG) which consists of six patrol squadrons comprised of over 80 modern vessels, equipped with the latest digital communications and surveillance systems. The PCG also works closely with the Singaporean Navy and Air Force in tackling piracy in its waters (Emmers, 2004: 42-44). Patrols in the Singapore Straits in 2000 cut the number of piratical attacks from fourteen to five (Primer: Piracy in Asia, *Virtual Information Center*, 2001: 7). Piracy in the Singapore Straits has remained low as a result of the PCG's anti-piracy patrols, as shown in the section on piracy trends at the start of this chapter. Singapore has even deployed unmanned drones for surveillance purposes to tackle piracy in the Singapore Straits (Primer: Piracy in Asia, *Virtual Information Center*, 2001: 25).

Malaysia

Malaysia has followed Singapore's example and made efforts to crack down on piracy in its waters. A decrease in piratical incidents in the Malacca Straits between 2000, when there were 75 cases, and 2001, when there were 17 cases, is attributable to the Malaysian government's investment in anti-piracy patrols (Mukundan, 2002: 62; Yong Tiam Kui, *New Straits Times*, 17 August 2003: 4). In 2000, a special anti-piracy unit was set up and was responsible for the capture of two pirate groups by April 2001 (Nakamura, 2001: 18). In addition, Malaysia also operates numerous security systems

including the Malaysian Sea Surveillance System (Swasla), the Malaysian Vessel Traffic System (VTS), and the Mandatory Ship Reporting System (Straitrep) (*BBC Monitoring Asia Pacific*, 12 October 2004: 1).

Piracy in Malaysian waters and beyond is dealt with by the Royal Malaysian Marine Police (RMMP) patrols, together with a 20 man anti-piracy unit and surveillance planes. The Malaysian navy has also played a complementary role, pursuing the pirated ship, the *Selayang*, with the help of ShipLoc, for example. The Malaysian navy mostly leaves patrols around the Malaysian peninsula to the Malaysian maritime police, focussing instead their efforts on the Sabah region from which the Abu Sayyaf terrorist organization operates. Though Malaysia's efforts at tackling piracy are managed by the Maritime Enforcement Coordination Centre (MECC), Malaysia's response is complicated by the involvement of 22 organizations in the fight against piracy and armed robbery against ships. It is anticipated that this state of affairs will change once the Malaysian Maritime Enforcement Agency (MMEA) is created, for which 2-3 vessels and several helicopters have already been allocated (Takai, 2002: 15-16). The Japan Coast Guard has provided the model for and has therefore been consulted on the creation of the MMEA. The JCG has provided training for the MMEA and dispatched a maritime security specialist to Malaysia (Bradford, 2004: 500; Terashima interview, 22 July 2004).

Finally, both Malaysia and Singapore have welcomed the expansion of the Five Power Defence Arrangements (FPDA), which also includes Britain, Australia and New Zealand, to tackle non-traditional security issues such as piracy and terror. At the 2004 Shangri-La dialogue, the FPDA increased their joint anti-terror exercises and information sharing activities with a view to including other military forces as well. The first of these exercises was scheduled for September and October 2004 in the South China Sea. Nevertheless, this arrangement would not include foreign patrols of the Malacca Straits (*Virtual Information Center*, 2004: 17-20; Weatherbee, 2005: 169). Since 2004, the FPDA has organized exercises between its navies, as well as Singapore's Police Coast Guard and the Malaysian Maritime Enforcement Agency (<http://www.iiss.org/index.asp?pgid=13941>, accessed 29 July 2006).

Indonesia

In contrast to the efforts of both Singapore and Malaysia, Indonesia's economic troubles have exacerbated poverty in the country leading to an increase in instances of piracy (Young and Valencia, 2003: 269), whilst the maritime police and the Ministry of Transport are not able to pay for the fuel for patrol and rescue missions in Indonesia's domestic waters. Indonesia's chief of rescue operations of the Ministry of Transport's General Office of Shipping has stated that one patrol ship has enough fuel to patrol for six hours a month. Both the Ministry of Transport's General Office of Shipping and the maritime police are constrained by the lack of medium-sized patrol vessels needed to combat piracy and armed robbery at sea.²⁶⁷ Furthermore, there are a lack of cooperation and coordination mechanisms between different maritime organizations, such as the navy, customs and maritime police (Hesse, 2002: 60, Mizutori interview 2 April 2004).

The Indonesian navy, which is in charge of Indonesia's maritime security, undertakes the majority of patrols, but is itself under-resourced. It is said that the Indonesian navy can only operate 30 percent of its fleet of 113 ships because of a lack of funds. The Indonesian navy has 24-hour patrols around Banga Island and responds to emergency calls in other areas. Nevertheless, it takes two to three days for information on an act of piracy to reach the Indonesian navy as ships are worried that an investigation will result in delays and that pirates might exact revenge upon the ship (Takai, 2002: 14-15; Emmers, 2004: 44-46). Rectifying these deficiencies involves developing surveillance capabilities, improving command and control and enhancing the patrol vessels and aircraft (Herrmann, 2002: 451-453).

There have also been allegations of corruption concerning the Indonesian navy. Terashima of the Nippon Foundation stresses that pay for maritime personnel was

²⁶⁷ Of the 120-125 boats under the command of the Ministry of Transport's General Shipping Office, only nine vessels are of a medium size (approximately 40 metres in length). Moreover, these boats only work out of five bases throughout the country (Takai, 2002: 14).

reduced following the fall of Suharto, making it difficult for them to subsist. As a result, maritime officials engaged in illicit means of obtaining capital, such as passing on information to pirates, or overlooking acts of piracy in return for cash (Terashima interview, 22 July 2004). In the case of the *Selayang*, for example, the shipowner was asked to pay the Indonesian navy an extortionate amount for the return of the ship and there have been incidents where the Malaysian maritime police have caught Indonesian naval personnel committing acts of piracy (Takai, 2002: 14-15; Glass, *The Independent on Sunday*, 11 January 2004: 8-13; Hidayat and Mallet, *Financial Times*, 30 June 2004: 2; *The Jakarta Post*, 22 July 2004: 6). The case of the *KAL YOUTEFA*, an Indonesian naval patrol vessel that pirated a Malaysian cargo ship on 17 March 2004, was mentioned in Chapter 3 (ICC-IMB Piracy Report third Quarter 2004: 29). Furthermore, Indonesian officials have frequently denied the extent of the piracy problem in their waters, dismissing the IMB's figures or suggesting that only petty criminals operate in Indonesian territory (Primer: Piracy in Asia, *Virtual Information Center*, 2001: 8).

Nevertheless, the Indonesian government has shown a greater interest in fighting piracy. The Megawati administration committed six battleships to patrolling the Malacca Straits (Yong Tiam Kui, *New Straits Times*, 17 August 2003: 4) and Indonesia is cooperating with both Malaysia and Singapore in coordinated patrols. Indonesia has attempted to rectify deficiencies in its approach and ability to combat piracy and armed robbery at sea. In November 2001, with financial assistance from the Japan International Cooperation Agency (JICA), Indonesia was able to establish the Maritime Safety Information System (MSIS). This system is a means for sharing information concerning piracy, rescue operations, and marine accidents, between the maritime strategy headquarters in Jakarta and branches in Belawan, Domai and Tanju Uban, as well as concerned organizations and agencies in foreign states (Takai, 2002: 19). In December 2005 MOFA was also considering an ODA project to fit out nine Indonesian Coast Guard fast patrol boats, as well as providing consultancy and training to enhance Indonesia's maritime security to the tune of US\$46.8 million (<http://www.mofa.go.jp/policy/oda/longlist/indonesia.html>, accessed 18 January 2006).

Whether or not Indonesia's response to piracy and armed robbery against ships continues to evolve depends largely upon the efforts of the Yudhoyono administration which gained power in 2004. As noted in Chapter 2, the Yudhoyono government has succeeded in brokering a peace deal with Aceh separatists in the aftermath of the 26 December 2004 tsunami. By the end of 2005, TNI troops had withdrawn from the Aceh region and decline in piracy prompted the IMB's Piracy Reporting Centre to remove Aceh from its list of piracy prone areas (ICC-IMB Piracy Report first Quarter 2006: 13). Furthermore, an Indonesian anti-piracy initiative, Operation Gurita, has resulted in the capture of several pirate gangs in known piracy hot-spots and regional anti-piracy cooperation has reduced the number of piracy cases in the Malacca Straits (<http://www.icc-ccs.org/main/news.php?newsid=67>, accessed 28 July, http://www.bkpm.go.id/en/news.php?mode=baca&info_id=4086, accessed 28 July, 2006). However, despite these successes, the devastation caused by the tsunami and five major earthquakes have derailed the Indonesian government's reform agenda (*BBC online*, http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/asia-pacific/country_profiles/1260544.stm, <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/asia-pacific/4357096.stm>, accessed 25 July 2006). Until the Indonesian economy improves and the economic causes of piracy are treated, robust anti-piracy patrols alone will not eradicate maritime crime and violence.

Nevertheless, the willingness of Southeast Asian states to police piracy in their waters is paramount. This is because of a reluctance amongst Southeast Asian states, specifically Malaysia and Indonesia, to allow their sovereignty to be transgressed. Japanese calls for multilateral patrols to tackle piracy in Southeast Asia, such as Prime Minister Obuchi's suggestion at the ASEAN+3 meeting in 1999 to create a regional Coast Guard, have, therefore, been unsuccessful. Hence, Japan has had to work bilaterally with Southeast Asian states, restricting the input of Japanese specialists and Coast Guard officials to enhancing the technical and operational capabilities of Southeast Asian maritime bodies, rather than actively patrolling to eradicate piracy (Bradford, 2004: 490-493; Emmers, 2004: 52-53). Japan has taken an active role in responding to piracy in Southeast Asia,

yet it is not the only major power to be affected by the problem. A comparison between Japan's efforts and those of other states in the following survey demonstrates that Japan has been the most influential in leading efforts against maritime piracy in Southeast Asia.

5.4b The Response of Other Powers to Maritime Piracy in Southeast Asia

In general, the response of other maritime powers to dealing with piracy and armed robbery against ships in Southeast Asia has been lacking (Takai, 2002: 18). With the exception of Admiral Fargo's proposal for US marine patrols of the Malacca Straits, the US has largely shied away from becoming involved in fighting piracy in Southeast Asia, focussing instead upon its military operations in Afghanistan and Iraq. The European Union has also declined from becoming directly involved in the fight against piracy and armed robbery against ships in Southeast Asia. For example, despite the resources, training and capability of the Royal Navy, the British Shipping Minister David Jamieson stated: "Given [piracy's] geographical spread it would be almost impossible for the Royal Navy to make even a minor impact on such a situation" (Crawford, *Sunday Herald*, 21 March 2004: 9). Whilst the minister's comments are realistic in the sense that the Royal Navy cannot tackle the global problem of piracy alone, the Royal Navy could have a major impact on specific piracy-prone areas like the Malacca Straits where British ships and seafarers are at risk. Such support in tackling piracy and armed robbery against ships from a non-Asian country would certainly be welcomed by Japan (Umezawa interview, 2 April 2004). Britain's involvement in combating piracy may yet increase, as, in addition to Britain's participation in the FPDA, a Parliamentary transport select committee has criticised the lack of an anti-piracy response by the Blair government. The select committee hopes that its report will spur the British government to take action.²⁶⁸

²⁶⁸ See, Barkham, "Stormy Waters", *The Guardian*, <http://www.guardian.co.uk/print/0..329537439-103680.00.html>, accessed 27 July 2006.

Australia, a fellow FPDA member, has taken some steps to combat piracy.²⁶⁹ The Australian navy has taken on maritime policing roles around its waters and held maritime security exercises with a number of regional states (Bradford, 2005: 10). The Australian government has also provided financial assistance to Southeast Asian states to improve security in their ports (Banlaoi in Ho and Raymond (eds.), 2005: 71-72). Nevertheless, Australia's anti-piracy efforts remain modest in comparison to Japan's endeavours. This can be partly explained by the poor security relations between Australia and piracy-prone Indonesia, which stem from Australia's leading role in the UN Peacekeeping Operation in East Timor from 1999 to 2000 (Weatherbee, 2005: 46-48).

India has also been active in tackling the problems of piracy and armed robbery against ships. The Indian navy arrested the pirates on board the Japanese ship *Alondra Rainbow* on 14 November 1999. This event signalled the possibility for Japanese and Indian naval cooperation, as Japan began to perceive the joint role that both India and Japan's Maritime Self-Defence Forces could play in Southeast Asian waters. The timing of a naval dialogue developing between India and Japan was especially significant, as it followed the nuclear tests in India. Japan could therefore be seen to place the security of its ships and trade above its non-nuclear principles following the hijacking of the *Alondra Rainbow* (*The Hindu*, 23 November 1999:1).

In addition to capturing the pirated *Alondra Rainbow*, the Indian navy has also pressed its Asian neighbours to cooperate in the fight against crime. A former Indian Defence Minister George Fernandes even stated that the Indian navy could have a role in combating piracy as far as Japanese waters (Primer: Piracy in Asia, *Virtual Information Center*, 2001: 23). Such a role would also bolster Indian security over its island territories that lie closer to the troubled Indonesian region of Aceh than to the Indian mainland (*The Statesman*, 9 August 2004: 1). With this in mind, India and Japan have

²⁶⁹ A report accessed from the Australian Department of Foreign Affairs and Trade details the actual and potential costs of maritime violence in Southeast Asia and stresses the need for states in the region to cooperate to combat piracy ("Costs of Maritime Terrorism and Piracy and the Benefits of Working Together", http://www.dfat.gov.au/publications/catalogue/costs_of_maritime_security.pdf, accessed 8 August 2006). Australian trade is particularly dependent on the Straits of Lombok, through which it exports iron ore to China (Raymond in Ho and Raymond (eds.), 2005: 186).

strengthened naval ties by conducting a joint exercise on 2 September 2004. Ultimately, the respective navies hope to broaden cooperation and make their fleets interoperable. Furthermore, India is cooperating with Malaysia, Indonesia and Singapore with a view to involving its navy in anti-piracy patrols in the Malacca Straits. American officials have approved of Indian involvement in the fight against piracy, as they perceive that robust anti-piracy patrols involving the Indian navy could also help ward off potential terrorist attacks (*The Hindu*, 16 September 2004: 1).

Indian involvement in the fight against piracy does raise concerns of Indian military ambitions. Since the 9/11 terrorist attacks in America, India has sought to ally itself with both Japan and the US in the fight against terrorism. Hence, India has sought to build reciprocal training exercises between the Indian and Japan Coast Guards with a view to creating a future naval alliance with Japan. Such a naval alliance between India and Japan would be most threatening to China, which is itself constructing a blue water navy.

Beijing has ordered concerted efforts to develop the quality of the Chinese military. Expenditure on the People's Liberation Army (PLA) has risen from 121 billion yuan in 2001 to 220 billion yuan in 2004 and is set to increase further. Pentagon officials argue that these figures for Chinese military spending may be a third to a half of the actual total. The PLA has also endeavoured to enhance its military technology, adapt from a conscription-based to a professional military, adopt modern strategies and training methods and expand its special forces. The Chinese navy, in particular, has been enhanced with the purchase of 23 new amphibious assault vehicles and 13 conventional attack submarines, as well as developing the type 093 nuclear powered attack submarine (Hu, 2005: 23-27).

In light of China's expanding navy, some analysts have argued that Japan's involvement in fighting piracy in Southeast Asia is designed to balance China militarily. Zha argues that an anti-piracy exercise in the South China Sea, involving Japan, India and Vietnam, was designed to show that the three countries involved in the exercise were determined to protect their national interests in an energy rich maritime zone which the region's

naval powers contest (Zha, 2001: 42-44). Mo has also detailed the concerns of Asian states concerning the potential rise of Japanese militarism and the beliefs of Western observers that Japan intends to enhance the power of its armed forces through the dispatch of Japanese missions to combat piracy in Southeast Asia (Mo, 2002: 350-351).

Such action can be interpreted according to English School theory in terms of power balancing, which is a derivative of the primary institution of Great Power management (Buzan, 2004a: 187). However, whilst bilateral exercises to tackle piracy have enhanced security relations between Japan and Southeast Asian states, the key to these exercises is maritime policing and not alliance building. This is why the JCG, a law enforcement body, rather than the MSDF, Japan's navy, has been dispatched to help in the fight against piratical violence in Southeast Asia.

Instead, the problem of piracy in Southeast Asia raises the possibility for cooperation between Japan and China. The JCG and the Chinese maritime authorities already agree on national laws and policing rights as concerns maritime law enforcement to combat piracy (Yamada interview, 10 November 2004). Furthermore, China has participated in the conferences sponsored by Japan, as well as pursuing maritime cooperation with Southeast Asian states. China signed the Joint Declaration on Cooperation on the Conduct of Parties in the South China Sea, in November 2002, and joined the Treaty of Amity and Cooperation in Southeast Asia (TAC), in October 2003, indicating China's willingness to work with Southeast Asian states to resolve security matters peacefully and uphold international maritime norms and laws (Zhongchun and Yaqiang, 2005: 187-193; Richardson, 2005: 198-207). These steps have encouraged further maritime cooperation, such as the Memorandum of Understanding on Maritime Cooperation between China and the Philippines, signed on 27 April 2005. This memorandum covers the issues of maritime safety, maritime environmental protection against pollution, port state control, human resources development, and information exchange, as well as allowing for further areas of cooperation in the future (Appendix VII). Maritime cooperation between China and Southeast Asian states could arguably be geared to counter Japan's efforts in the fight against maritime violence and crime in Southeast Asia, but this maritime cooperation also indicates that both Japan and China have a

shared interest in enforcing international law to protect trade passing through the Malacca Straits.

Building a cooperative framework between Japan and China to fight maritime violence and crime would be complex, requiring that the two states overcome their mutual concerns about the other's military power and strategy in the Southeast Asian region.²⁷⁰ However, Japan and China could shift the debate concerning maritime security in Southeast Asia away from naval balancing, by focussing on the interhuman and transnational aspects of maritime crime, such as the environmental, economic and social causes of crime detailed in Chapter 3 of this thesis. Collaboration between Japan and China has the potential to alter the dynamic of the Southeast Asian interstate society in favour of more solidarist interactions, as Chapter 2 indicated. In fact, in addressing the interhuman and transnational areas of piracy, Japan has supported the Japan Shipping Association and the global shipping industry, as well as international maritime organizations.

5.4c The Response of the Japan Shipping Association and the Global Shipping Industry to Maritime Piracy in Southeast Asia

The Japanese Ministry of Foreign Affairs and the Ministry of Land Infrastructure and Transport are aware that while they can play a role in cooperation with other Japanese Ministries and Agencies as well as Regional Governments in promoting and strengthening anti-piracy measures, much of the work in deterring acts of piracy and armed robbery against ships must come from the shipping industry itself. With this in mind, the shipping industry has been asked to implement safety measures against maritime crime at each of the international conferences sponsored by the Japanese government (Umezawa interview, 2 April 2004). The Japanese shipping industry,

²⁷⁰ Enhancing transparency of military spending and intentions between Japanese and Chinese naval forces would be one means of reducing this mutual animosity. However, Japan has criticized China in its 2006 Defence White Paper precisely on its lack of transparency as regards its military strategy and spending (Yoshida, "Paper hits North's missiles, China buildup", *The Japan Times on line*, <http://www.search.japantimes.co.jp/print/nn20060802a2.html>, accessed 2 August 2006).

represented by the Japan Shipping Association, has responded to these requests by fitting their ships with anti-piracy devices and training their crews to deter piratical attacks.

The work of the Japan Shipping Association (JSA)

The JSA has been instrumental in promoting anti-piracy strategies among its membership. A rise in piracy in Southeast Asia during the 1980s led the JSA to start taking action on the issue of piratical violence, disseminating proposals to protect members against piracy in 1983 (<http://www.jsanet.or.jp/e2-3/pi0.html>, accessed on 24 March 2005). In July 1997, the JSA held the Piracy Prevention Measures Meeting, which was designed to draw up security plans for ships. A list of contact numbers was also circulated amongst members so that the proper authorities could be contacted in the event that a Japanese ship suffered an act of piracy (<http://www.jsanet.or.jp/e2-3/pi2-4-1.html>, accessed on 1 December 2004). In addition to pushing shippers to hold piracy watches in piracy-infested seas, the JSA in conjunction with the Nippon Foundation have promoted “Toranomom”, a security detector device mounted on vessels (<http://www.jsanet.or.jp/e2-3/pi2-4-3.html>, accessed on 1 December 2004). At the 2001 Asian Cooperation Conference on Combating Piracy and Armed Robbery against Ships, JSA officials emphasised the need to report all cases of piracy and for states to take measures to prevent the diffusion of small firearms, which are often used in piratical instances. Furthermore, the JSA has participated in anti-piracy exercises with the JCG in order to ensure that the JSA can mediate effectively on behalf of Japanese merchant ships in the event of a piratical incident (*JSA Annual Report 2002*, <http://www.jsanet.or.jp/c/shipping-e/index.html>, accessed on 1 December 2004). In addition to this, the JSA has supported the Japanese shipping industry to accept new technological developments and to make operational changes in order to deter piratical acts against Japanese merchant vessels.

Technological Developments: ShipLoc and Secure Ship

Over the period of January 1999 to March 2000, 14 percent of piracy attacks worldwide were against Japanese ships for a calculated total loss of ¥21 billion. Furthermore, according to the Nippon Foundation, after the *Alondra Rainbow* incident, the Japanese shipping industry became more acutely aware of the threat posed by piracy and armed robbery against ships (*Asahi Shimbun*, 30 May 2000: 19). As a result, Japanese shippers have turned to a number of technological developments that have been marketed to fight the continuing problem of piracy and armed robbery at sea. These include tracking systems, sensors, and electric fences. The shipping industry has taken advantage of these developments and invested in innovative methods of protecting their crews, ships and cargoes.

Tracking systems, including ShipLoc,²⁷¹ the Ship's Position Indicating System from the IMB and the Fleet Remote Monitoring System made by a Japanese company NYK, work off an independent electricity source and are hooked up to Global Positioning Systems (GPS) and the Internet. The tracking systems are difficult to locate and can be installed without the crew's knowledge so that even under duress the whereabouts of the tracking system cannot be known. The location of a ship can be monitored in real-time by the shipowner as well as maritime authorities and deviations from plotted courses can thereby be investigated. Such tracking systems have all but eradicated major cases of seajacking, such as the case of the *Alondra Rainbow* (Primer: Piracy in Asia, *Virtual Information Center*, 2001: 20-21; Herrmann, 2002: 452).

The effectiveness of tracking devices in capturing pirate gangs and deterring ship hijacks is noted in the case of the *Selayang*. On 19 June 2001, the *Selayang*, a tanker transporting fuel oil, was hijacked whilst en route to Labuan, Malaysia. As the *Selayang* was equipped with ShipLoc, it was possible to track the ship's whereabouts in real-time. Initially, the *Selayang* was taken towards Singapore, presumably to take advantage of high prices there to sell the fuel oil on board. Its course then became more erratic

²⁷¹ ShipLoc is currently the cheapest tracking system available. Information on ShipLoc can be found at www.shiploc.com (*Virtual Information Center*, Primer: Piracy in Asia, 2001: 20).

weaving in and out of Indonesian and Singapore territory before turning South towards Java. On 27 June, the *Selayang* was boarded off the Samarinda coast by the Indonesian navy and ten pirates were arrested thanks to the ShipLoc device's detailed information, which the IMB was able to provide to the Indonesian navy (Mukundan, 2002: 63-64; Takai, 2002: 18).

A further technological development that has been propounded by the IMB is an electrical fence, called Secure Ship that surrounds the deck of a ship. Would-be attackers are deterred from boarding by receiving an electric shock as they attempt to board. The problem with Secure Ship is that it cannot be fitted to volatile cargoes, such as oil and liquid natural gas (LNG), which could ignite (Mukundan interview, 22 April 2003). An alternative device designed to deter pirates from boarding a ship is a sensor. Sensor mechanisms work when pirates reach the deck of a ship by activating an alarm. However, such devices are expensive and cannot always be relied upon to work (Herrmann, 2002: 452-453). Though the range of technological devices offers shipowners several means of deterring pirates from pirating their ships, cost and reliability issues, not to mention whether the type of device is suited to a particular ship or cargo, means that technology alone is not the answer to preventing pirate attacks. Therefore, shipowners have made efforts to train their crews to protect themselves and their ships from attacks at sea.

Operational Changes: Training, Exercises and Practice

Having the crew keep watch for pirates is an effective way of deterring pirate attacks. The increase in the number of attempted attacks in 2000 was largely attributable to the increased vigilance of crews.²⁷² Had watches not been kept, the attempted attacks which ended in the pirates fleeing would instead have added to the number of actual attacks, which in turn would have resulted in increased damage to shipping companies and crews (Nakamura, 2001: 18). Nevertheless, manning watches diverts crews from normal

²⁷² Attempted acts of piracy are those where an attempt to board to commit robbery is made, but is not successful.

duties and ultimately requires extra personnel to cover aspects of security on board. Despite the pleas of mariner's unions, such as the British Numast, shipping companies are reluctant to pay the added costs of securing their ships (McQuillan, *The Glasgow Herald*, 13 May 2004: 17). In fact, the automation of ships has led to a decrease in the number of crew manning a vessel, further inhibiting the defensive measures a ship can take (Glass, *The Independent on Sunday*, 11 January 2004: 8-13). This situation may change, however, with the implementation of the International Ship and Port Security Code (ISPS Code) on 1 July 2004, as the code stipulates that ships should have a crew member in charge of the ship's security and a detailed security plan. The ISPS Code will be examined in the next chapter.

An alternative to keeping watches is to arm crews with weapons. Both Russian and Israeli commercial fleets have done so, greatly reducing the number of attacks against their ships. Russian and Israeli ships are manned by national crews, however, and are therefore not subject to the same tensions and communication problems that arise from having international crews. Moreover, representatives of the IMB and IMO have voiced a concern that arming crews will only cause pirates to engage in more violent attacks (Mukundan interview, 22 April 2003).

Much of the work undertaken by the shipping industry has come about because of the efforts of the IMO and the IMB. Both the IMO and IMB have been instrumental in promoting efforts and passing resolutions to deter and combat piracy, as well as to publicise acts of piracy and armed robbery against ships. The work of the IMO and IMB has, in turn, received a boost from regional responses to piracy and the conferences sponsored by Japan.

5.4d The Response of International Organizations

International Maritime Organization (IMO)

The origins of the IMO date back to 6 March 1948 when the Convention on the Intergovernmental Maritime Consultative Organization was adopted. The Convention

came into force on 17 March 1958 and the institution began functioning on 6 January 1959. The organization later changed its name to the International Maritime Organization to match amendments made to the Convention implemented on 22 May 1982. The IMO's involvement with piracy began in 1983 when Resolution 545, which asked for states to respond to the problem of maritime piracy, was endorsed.²⁷³ A rise in instances of piracy in the Malacca Straits between 1988 and 1989 encouraged the IMO to formulate two circulars, MSC 622 and 623, offering advice to governments and the shipping industry on combating or deterring piracy and armed robbery against ships (Hesse, 2002: 59-60). Two further resolutions were later enacted to tackle the growing problem of violent maritime crime in accordance with the United Nations Convention on the Law of the Sea. These were Resolution A.683(17) on "Prevention and suppression of acts of piracy and armed robbery against ships" in November 1991 and Resolution A.738(18) on "Measures to Prevent and suppress piracy and armed robbery against ships" in November 1993 (Primer: Piracy in Asia, *Virtual Information Center*, 17 April 2001: 15). In 1999, MSC 662 called on governments to establish a system whereby the IMO would be informed of the type, location and method of piratical instances in order to make statistics, and MSC 663 gave detailed instructions for ships concerning what action to take in the event of a piracy attack. In November 2001, an investigation code for piracy was formulated (A.922(22)) which included a definition of armed robbery against ships as well as training details for ships' crews to deter and cope with piracy and armed robbery against ships (Hesse, 2002: 60-61). The IMO's anti-piracy efforts since 1998 have been part of a long-term project to tackle maritime piracy. This project has comprised anti-piracy seminars and workshops, as well as evaluation and assessment missions to different regions. The signing of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (RECAAP) in November 2004, establishing the Information Sharing Centre in Singapore, which was discussed earlier in this chapter in Section 5.3b on Japan's operational measures to tackle piracy, is testimony to the success of the IMO's anti-piracy work (<http://www.imo.org/home.asp>, accessed 19 January 2006).

²⁷³ The IMO did adopt Resolutions A.461 (XI) and A.504 (XII), which both addressed barratry and the unlawful seizure of ships, prior to Resolution 545, but Resolution 545 was the first to concentrate on piracy. (http://www.imo.org/InfoResource/mainframe.asp?topic_id=435&doc_id=3717#4, accessed 19 January 2006).

International Maritime Bureau (IMB)

The IMB was established in 1981 to combat fraud in the maritime industry, tackle piracy, confirm that vessels arrive at scheduled ports, assist and offer advice to governments and corporations in confronting crime, provide training to counter crime, as well as to offer legal support and advice to shipping companies (Primer: Piracy in Asia, *Virtual Information Center*, 17 April 2001: 16-17). In addition to these duties the IMB established the Piracy Reporting Centre in Kuala Lumpur on 1 October 1992, which is funded by donations from the shipping and insurance industries. The services offered by the Centre are free, available to all vessels and accessible twenty-four hours a day, 365 days a year. The services include: the daily broadcast of reports of suspicious ships, pirate attacks and armed robbery against ships worldwide, the collection and analysis of data on piracy and armed robbery against ships culminating in the publication of quarterly reports, and the maintenance of contacts with law enforcement bodies to aid in the suppression of maritime crime (Primer: Piracy in Asia, *Virtual Information Center*, 17 April 2001: 17-18).

The Council for Security Cooperation in the Asia Pacific (CSCAP)

In addition to the efforts of the IMB and IMO, the Council for Security Cooperation in the Asia Pacific (CSCAP) has also discussed measures to combat piracy and armed robbery at sea. CSCAP is comprised of representatives from strategic studies centres from throughout the Asia Pacific region and aims to “provide a more structural regional process of a non-governmental nature... to contribute to the efforts towards regional confidence building and enhancing regional security through dialogues, consultation and cooperation.” A Maritime Cooperation Working Group has been established within CSCAP and this group has formulated Guidelines for Regional Maritime Cooperation which contains a clause encouraging Asian states to address the problem of maritime piracy (Primer: Piracy in Asia, *Virtual Information Center*, 2001: 19).

Japan's response to piracy in Southeast Asia must therefore be seen in the context of the collective efforts of international organizations, as well as littoral and other regional states. The achievements of these efforts include Japan's provision of technical and financial assistance to Southeast Asian states, as well as hosting regional anti-piracy conferences and conducting bilateral exercises and patrols. Yet in spite of all these attempts to combat piracy and armed robbery against ships, maritime crime in Southeast Asian waters remains prevalent and dangerous, as the pirating of the *Idaten*, a Japanese tugboat, illustrates.

5.5 The Case of the *Idaten*

Pirated!

On Monday, 14 March 2005, between 6:00 and 6:30 p.m. (7:00 to 7:30 p.m. Japanese time), the 323-ton, 42.55 metre *Idaten*, a Japanese tugboat belonging to the Kondo Kaiji company based in Kitakyūshū, was pirated in the Malacca Straits. The *Idaten* was towing the barge the *Kuroshio 1* from Batam Island, Indonesia, to an offshore oil field mining project near Myanmar,²⁷⁴ and was surrounded by 20 to 30 fishing boats when suddenly one of the fishing boats sped towards the *Idaten*. Pirates in the approaching fishing boat fired warning shots at the *Idaten* on the port side and five of their number boarded the tugboat. The crew of the *Idaten*, who were either eating or sleeping at the time, immediately surrendered. The Japanese captain, Inoue Nobuo (56), the chief engineer, Kuroda Shunji (50), and the Filipino third engineer, Edgardo Sadang (31), were kidnapped by 15 pirates armed with AK-47 and M16 rifles and rocket propelled grenade launchers in Malaysian waters. In addition to the hostages, the pirates stole between ¥700,000 and ¥800,000, as well as the ship's documents. The attack took about ten minutes in total, after which the pirates fled to Indonesian maritime territory.

²⁷⁴ The *Kuroshio* is a pipeline laying ship. At the time of the attack on the *Idaten*, the *Kuroshio* had 154 people aboard (*Asahi Shimbun*, 15 March 2005: 1).

The remaining 11 members of the *Idaten's* crew, of whom six were Japanese and five were Filipino, were unhurt. Malaysia immediately dispatched three patrol boats to locate the *Idaten* upon hearing about the attack. One of these patrol boats found the *Idaten* at 8:45 p.m. on the Monday evening. The ship was inspected upon arrival at port Butterworth in Penang Province, Malaysia, at 4:00 p.m. on Tuesday, 15 March, where five bullet holes were found in its hull and the incident was reported to the IMB's Piracy Reporting Centre. On the Tuesday, the Indonesian navy dispatched three vessels to search for the three kidnapped members of the *Idaten* and a Malaysian marine police spokesman stated that it was likely the pirates had fled to a hideout on North Sumatra, Indonesia (Takahara and Shimizu, *Japan Times*, 16 March 2005; *Asahi Shimbun*, 17 March 2005: 39). It was the third major piratical incident in the Malacca Straits since the 26 December 2004 tsunamis (*Yomiuri Shimbun Evening Edition*, 15 March 2005: 1; *Asahi Shimbun*, 16 March 2005: 1; *Japan Times*, 17 March 2005).

Police interviews with the *Idaten* crew who had made it safely to Butterworth port revealed the identification number of the pirate vessel as PFKB1223 (*Asahi Shimbun*, 17 March 2005: 39). The pirates were believed to belong to a criminal gang which hijacked fishing vessels to cover their tracks. One of these fishing boats, which was hijacked on 13 March, returned to the port of Utan-Marintan in Pera Province, Malaysia on 17 March. According to the crews of the hijacked fishing boats, the pirates were fishermen who wielded guns and stole 2000 ringit (approximately ¥55,000), 2,000 litres of fuel, the ship's Global Positioning System and the crew's mobile phones, as well as the owner's catch of fish. Ultimately, three hijacked fishing vessels, along with their kidnapped crews, that had been used in the *Idaten* attack, were returned to their Malaysian owners once the *Idaten* had been pirated. The engine of one of these fishing vessels had broken down due to the pirates forcing the vessel to travel at excessive speed during and after the *Idaten* attack. The pirates escaped with their hostages, the three crew members of the *Idaten*, after transferring to a boat waiting at the maritime border between Indonesia and Malaysia (*Asahi Shimbun*, 18 March 2005: 39; *Asahi Shimbun Evening Edition*, 18 March 2005: 15; *Yomiuri Shimbun*, 18 March 2005: 38; *Asahi Shimbun*, 20 March 2005: 38).

The Japanese Foreign Minister Machimura Nobutaka requested that Singapore, Indonesia and Malaysia help to secure the release of the captives unharmed, whilst the Defence Minister Ono Yoshinori appealed to the littoral states of Southeast Asia to do more to fight piracy. The Japanese Transport Minister Kitagawa Kazuo announced that the Japan Coast Guard would dispatch a vessel to aid Malaysian authorities in the search and rescue mission if requested. Though Chief Cabinet Secretary Hosoda Hiroyuki noted that the Japanese government had not yet been contacted by the pirates (Takahara and Shimizu, *Japan Times*, 16 March 2005), Prime Minister Koizumi ordered the establishment of a liaison room (*Yomiuri Shimbun Evening Edition*, 15 March 2005: 1) and MOFA set up a situation headquarters' at 12:30 a.m. on 15 March (*Asahi Shimbun Evening Edition*, 15 March 2005: 1). The Japanese government also contacted the Philippine maritime authorities for help in tracing both the victims and perpetrators of the piratical act (*Japan Times*, 23 March 2005).

The managing director of the Kondo Kaiji company relayed to the press that it was not until 7:40 p.m. (Japanese time) on 14 Monday that the company received a message from the *Kuroshio I* that the *Idaten* had been attacked. The company immediately attempted to contact the vessel and confirmed the ship had been attacked at 8:00 p.m. By 12:00 p.m. on Tuesday, 15 March, representatives of the Kondo Kaiji company's Tokyo branch office, headed by Hashimoto Shoji, the director of the Tokyo branch office, had met with officials from MOFA and MLIT to discuss the situation (*Asahi Shimbun Evening Edition*, 15 March 2005: 19). The president of the Kondo Kaiji shipping company, Kondo Kanji, travelled from Japan to Malaysia on the Wednesday to assist in the release of the three captives (*Japan Times*, 17 March 2005). From the start of the incident, employees of the Kondo Kaiji company as well as the victim's families did not speak to the press (*Yomiuri Shimbun Evening Edition*, 15 March 2005: 19).

Ransom and Release

The initial ransom demands, made on 16 March, totalled US\$250,000, but the Kondo Kaiji shipping company asked for the ransom to be reduced to US\$100,000, before finally paying the sum of US\$120,000 (*Japan Times*, 23 March 2005; *Shukanshincho*, 7 April 2005: 56). Even still, this ransom was high compared to usual ransom demands that are usually in the tens of thousands of US dollars, rather than the hundreds of thousands (*Asahi Shimbun Evening Edition*, 15 March 2005: 1).²⁷⁵ According to an anonymous MLIT official, Kondo employed a Thai negotiator to reduce, then pay, the ransom by bank transfer (*Shukanshincho*, 7 April 2005: 56).²⁷⁶ Regarding this ransom, Somkiat Chiotan, the senior marine police officer who headed the operation to rescue the hostages, stated that “[Kondo Kaiji] has set a bad precedent. The pirates would start looking for foreigners, especially Japanese” (*Japan Times*, 23 March 2005).

In fact, it is unlikely that Japanese crews will be singled out in spite of the high ransom paid for the crew of the *Idaten*. Since the *Idaten* incident, Kondo Kaiji has stopped operating in the Malacca Straits and there are no other Japanese shipping companies running tugboats in the Malacca Straits. Whilst Japanese on tankers or container ships could be targeted, tugboats remain the victim of choice for pirates, as they can easily board tugboats.

The three crew members were given US\$200 by their captors and released on Saturday 19 March after four days in captivity. They were subsequently questioned by the Malaysian police concerning their internment to generate evidence regarding the

²⁷⁵ A risk management company executive has been quoted as saying that ransoms in Southeast Asia can reach up to US\$100,000 per person, so Kondo must have had a good negotiator (*Shukanshincho*, 7 April 2005: 56). Other accounts place an initial demand made by pirates at US\$180,000, which can be negotiated down to under US\$10,000 (Aoki, Wakasa, Honda, 2005: 34).

²⁷⁶ A Japanese government source has estimated that the final payment made by the Kondo Kaiji company amounted to US\$200,000, of which US\$125,000 were the negotiator’s fees and the remaining US\$75,000 was for the release of the hostages themselves (the fee for each of the Japanese captives being approximately US\$30,000 each and the remaining US\$15,000 being for the Filipino engineer). The negotiator in question was a Singaporean resident of European origin. The Kondo Kaiji company spent a further US\$300,000 on flights, hotel fees, port expenses and other miscellaneous costs. The final ransom was higher than the usual amounts paid to pirates in such hijacking cases, for which the highest known amount was US\$16,000 (personal correspondence).

identity of the pirates. In a press conference on Monday, 21 March, the three *Idaten* crew members revealed that they had been treated respectfully by their captors. They also stated that the pirates acted like soldiers and that they were moved around seven ships after their kidnap (*Asahi Shimbun*, 22 March 2005: 1). When walking across beaches, the captives were ordered to cover their tracks. The fact that none of the victims was harmed in the initial attack indicates the importance for the pirates to avoid injuring their source of income in ransom cases (*Asahi Shimbun*, 15 March 2005: 39; Aoki, Wakasa, Honda, 2005: 32).

The testimonies of the captives and of the crew revealed that the pirates spoke Indonesian, some reports indicate that the pirates spoke in Aceh dialect, and looked Indonesian in origin (*Asahi Shimbun*, 16 March 2005: 1, *Japan Times*, 17 March 2005). The case of the *Idaten* was described by the director of the IMB, Captain Mukundan, as being typical of Indonesian crime groups, adding that it was unlikely that the Japanese crew were specifically targeted (*Asahi Shimbun*, 15 March 2005: 1). An Indonesian naval spokesman blamed GAM for the attacks noting the similarity with prior incidents that the separatist group is alleged to have perpetrated (*Yomiuri Shimbun*, 16 March 2005: 1; *Yomiuri Shimbun*, 18 March 2005: 9).²⁷⁷ Nevertheless, Saeki Natsuko, the Secretary General of Indonesia's Democratization Network, stated that it is hard to imagine that GAM was behind the incident considering the extent to which TNI operations had restricted their activities (Aoki, Wakasa, Honda, 2005: 33).

Other possible suspects include organized criminal gangs, the Indonesian navy or the Indonesian maritime police. Organized criminal gangs in the region are usually run by Malaysian Chinese and concentrate their illicit activities on trafficking illegal immigrants across the Malacca Straits and into Malaysia. An increase in the illegal traffic of humans into Malaysia after the 1997 Asian economic crisis forced the Malaysian authorities to strengthen maritime surveillance of their waters. As well as improving Malaysia's capacity to deter illegal immigrants, more Malaysian maritime patrols led to a decrease in other forms of maritime crime in Malaysian waters, such as

²⁷⁷ The attack on the *Idaten* was similar to an attack on the *Mitorautama*, a vegetable transporter, whose Captain was taken hostage and ransomed for about US\$11,000 (*Yomiuri Shimbun*, 18 March 2005: 9).

piracy (Yamada interview, 10 November 2004; Aoki, Wakasa, Honda, 2005: 33-34). Evidence that elements of the Indonesian navy were involved in piracy surfaced in the case of the *Yayasan Tujuh*, a Malaysian general cargo vessel pirated by the *KAL YOUTEFA*, an Indonesian naval vessel on 17 March 2004, as detailed in Chapter 3 (ICC-IMB Piracy Report third quarter October 2004: 29).

Implications for Japan's Anti-Piracy Policy

Until the case of the *Idaten*, the Japanese government's response to piracy aimed to improve the capabilities of the littoral states of Southeast Asia. The means of doing so included the dispatch of MOFA and MLIT surveys to Southeast Asia on an annual basis, training maritime personnel from the region and conducting exercises. Following the attack on the *Idaten*, talk of granting ODA to Indonesia in the form of patrol ships was revived. The patrol ships in question were CL type patrol boats of 20 metres in length with a cost of ¥700 million per ship. The CL type patrol boats have a small turning circle and are fast. The head of the Japan Coast Guard declared it the perfect craft to navigate the Malacca Straits' numerous islands. Though weapons were not included in the deal being negotiated, as this would be an infringement of Japan's Export Control Ban, training in Japan and the dispatch of personnel to teach the Indonesian maritime authorities how to pilot the boats was being considered. Initially, larger 30 metre patrol vessels were proposed, but the idea was dropped due to concerns that the boats could easily be militarized and deployed to quell internal conflicts with separatists or for military purposes (*Asahi Shimbun*, 16 March 2005: 1). On 15 June 2006, the Japanese government decided to donate ¥1,921 million to Indonesia for the purpose of constructing three patrol vessels. The patrol vessels will be bequeathed to the Indonesian Marine Police based in Riau, North Sumatra and Jakarta. As the patrol boats are bullet-proofed, they are considered as military vessels. The Japanese Cabinet were therefore required to make an exception to the Export Control Ban in this instance (<http://www.mofa.go.jp/announce/announce/2006/6/0616-3.html>, accessed 16 July 2006).

The case of the *Idaten* highlights a number of issues concerning Japan's response to piracy in Southeast Asia. First, the donation of patrol boats indicates a ratcheting up of cooperation between Japan and Indonesia as such measures begin to overcome the operational deficiencies of Indonesian anti-piracy patrols. Second, the swift payment of the ransom for the three captured *Idaten* crew shows Japan's sensitivity to the welfare of its citizens, a human security issue, especially when compared with the *Alondra Rainbow* incident. Third, the Indonesian and Malaysian response to the *Idaten* case proved that cooperative measures initiated by Japan had taken root in the Southeast Asian region. A comparison with the hijacked *Selayang*, detailed in the technological developments section of this chapter, in which the Indonesian maritime authorities took eight days to find and board the vessel, despite the fact that the *Selayang* was equipped with a ShipLoc tracking device, reveals the transformation of the littoral state's response to piracy. Finally, the extent of organization, equipment and weaponry required to board and kidnap three of *Idaten's* crew illustrates the continuing threat to international shipping posed by pirates in Southeast Asia.

5.6 Conclusion: What affect have Japanese initiatives had?

Both Malaysia and Indonesia share concerns that multilateral security cooperation to combat piracy in their waters will result in transgressions of their sovereign territory by Superpowers and Great Powers in the interstate society. This apprehension reflects a long standing focus on domestic security issues and development in order to strengthen the government's command of material and normative power to govern their respective polities, as specified in Chapter 2. Consequently, the onus on fighting maritime crime has been placed on littoral Southeast Asian states. It is therefore no surprise that these states have taken the most encouraging steps to combat piracy, notably the commencement of trilateral patrols between Indonesia, Malaysia, and Singapore in June 2004. Though sufficient resources will need to be provided for these patrols to be effective.

As Japan has not been able to intervene unilaterally to combat piracy, so Japanese assistance has been limited to political measures, such as international conferences to raise awareness and build cooperation, and limited operational assistance, such as training and anti-piracy exercises. Building international cooperation and conducting bilateral exercises between states in Southeast Asia has taken over four years since the first 'Regional Conference on Combating Piracy' was held in Tokyo in April 2000. Nevertheless, Japanese initiatives, including the creation of an Information Sharing Centre, technical and financial assistance, as well as the creation of an informal network of maritime experts across the Asian region, have all begun to tackle many of the deficiencies of littoral maritime authorities in addressing the problem of piracy. In particular, the institutionalisation of the Information Sharing Centre in Singapore led to the acceptance by Southeast Asian states of a broader legal framework that included acts of armed robbery inside littoral state's domestic territory, thereby countering the deficiencies of the UNCLOS piracy definition outlined in Chapter 3. The Japan Coast Guard has also provided a model for Southeast Asian states to copy, as Malaysia has done. It is anticipated that the growth of national coast guards throughout Southeast Asia will facilitate interstate cooperation, as it is easier for law enforcement bodies, like the JCG, to collaborate with similar organizations and matching objectives as opposed to navies (Terashima interview, 22 July 2004). Furthermore, as the response to the *Idaten* piracy case demonstrated, littoral states in Southeast Asia are more motivated to cooperate with extra regional powers to confront piracy than they were before Japan initiated the series of international conferences on piratical violence that this chapter detailed.

Japanese anti-piracy proposals have therefore built and sustained momentum in fighting maritime crime in the Southeast Asian interstate society and no other state can be said to have led the anti-piracy fight with the same vigour as Japan. Increasingly, experts attribute the levelling off of pirate attacks in Southeast Asia, as detailed at the start of this chapter, to anti-piracy strategies rooted in the series of international conferences proposed, organized and sponsored by the Japanese government, shipping industry and NGOs (<http://www.icc-ccs.org/main/news.php?newsid=67>, accessed 3 May 2006). The

achievements of Japanese initiatives must also be understood in the wider context of the efforts of the Japanese and global shipping industries, as well as international institutions in tackling the problem of piracy. The anti-piracy endeavours of these organizations have all been promoted by Japan.

The endeavours of the shipping industry and seafarers have had an impact on curbing the threat of piracy through the adoption of anti-piracy technology and by stressing security measures for vessels. The use of technological devices, such as ShipLoc, for example, have significantly reduced piratical acts, akin to the hijacking of the *Alondra Rainbow* and *Tenyu* which galvanised the Japanese policy making elite into taking action to suppress piracy and armed robbery against ships in Southeast Asia. Strategies to secure vessels against piratical attack, such as keeping watches, have also deterred acts of piracy, although the ISPS Code, which was implemented in the aftermath of the 9/11 attacks, has engendered the most significant changes in terms of vessels protecting themselves. The ISPS Code will be examined in greater detail in the following chapter.

Whilst anti-piracy initiatives have had an impact on the problem, much more effort is required to counter the basic causes of piracy. Poverty and high unemployment are two of the main causes of contemporary piracy and armed robbery against ships worldwide. With this in mind, at the 'Regional Conference on Combating Piracy and Armed Robbery against Ships' held in Tokyo, 27 April 2000, then Senior State Secretary for Foreign Affairs, Esaki Tetsuma, voiced the Japanese government's intention to continue to give financial and technical assistance to enable Asian states to develop in the aftermath of the Asian Financial Crisis of 1997 (<http://www.mofa.go.jp/policy/piracy/speech0004.html>, accessed 27 October 2003). Yet, whilst Japan continues to grant aid to Southeast Asian states, there is no link made between piracy-prone areas and the provision of this aid (Mizutori interview, 02 April 2004). In other words, Japan does not use its financial assistance to Southeast Asian states to target economically impoverished coastal zones where piracy is rife, in spite of the connection between poverty, unemployment and piratical crime. Japan could also do more to tackle environmental degradation in Southeast Asian seas, and to promote reforms that discourage official complicity and corruption in Southeast Asian states.

However effective Japan's response to maritime piracy has been, the perceived and actual threat of maritime terrorism has augmented. The perceived threat is the possibility of a terrorist attack on vulnerable shipping in vital international waterways or ports; in particular, experts point to the attacks on the *Limburg* and *USS Cole* as examples. This perception was greatly bolstered by the September 11 terrorist attacks on New York and Washington. However, the actual threat may come from Aceh and Filipino separatist groups, who have stepped up their engagement in acts of maritime terrorism. Japan's response to these threats will be dealt with in the next chapter.

6. Japan's Response to Maritime Terrorism

This thesis has focussed on Japan's response to maritime outlaws of the interstate society and has defined these actors as barbarians, infidels, and pirates in order to better understand the methods and motives of these outlaws. In turn, these new definitions may improve interstate responses to the threats these actors pose. In this chapter, the definition of terrorism will be examined in greater detail and in light of the 9/11 attacks. This chapter contends that since the 9/11 attacks, the US-led 'war on terror' has created tensions between the interstate institutions of Great Power management on the one hand and international law on the other. Should alleged terrorist detainees at the US military facility at Guantanamo Bay be held without charge or a date of trial? What is the legality of CIA 'black-site prisons' or the invasion of Iraq? To what extent can the US-led 'war on terror' be described in terms of maintaining order in the interstate society at the expense of justice? This thesis has argued that responding to outlaw behaviour involves both maintaining order, by organizing maritime patrols for example, as well as tackling issues of justice that are the key to treating the causes of maritime violence and crime, such as environmental or economic factors, as Chapter 3 demonstrated. It is equally important, however, to distinguish whether an outlaw is categorized as a barbarian, an infidel or a pirate, in order for states to devise an appropriate response.

The argument in this chapter is that 'terrorists' can be split into two groups in terms of the interstate society depending on whether a terrorist is motivated to destroy the current interstate society, an infidel, or whether they are an actor who can be negotiated with and ultimately encouraged to renounce acts of illegitimate violence in order to join the interstate society, a barbarian. As this chapter will demonstrate, this division is far more useful than the term 'terrorism' to understand the methods and motives of maritime outlaws, as well as being more accurate in terms of the state responses to maritime outlaws. Although US-led efforts in the 'war on terror' have global ramifications, Japan's response to maritime barbarians and infidels is primarily focussed on key SLOCs in the Southeast Asian region and WMD proliferation by North Korea. This chapter will identify key barbarian and infidel actors in the Southeast Asian region, address the North Korean WMD proliferation issue in the section on the Proliferation

Security Initiative (PSI), as well as the threat maritime barbarians and infidels pose to Japanese citizens, trade and interests. Finally, US initiatives to fight maritime terrorism will be reviewed with a view to understanding Japan's participation in them and their ramifications for Japan.

6.1a Responding to Terrorism post-9/11

The 9/11 attacks on New York and Washington have had a significant impact upon the conduct and content of international affairs. The images of the event transmitted live worldwide remain embedded in the conscience of all who observed the catastrophe unfold. The tragedy of 9/11 engendered the reorientation of the Bush administration regarding US foreign policy from an isolationist agenda to a dynamic unilateralist strategy designed to ensure international security against Al Qaeda and its affiliate organizations. Yet, it is argued, by some, that no fundamental change in the structure of the international system occurred. Instead, US supremacy and its role in ensuring international stability was confirmed through the swift victory of the American forces and their, primarily Afghan, allies in Afghanistan routing both the Taliban and Al Qaeda (Cox in Booth and Dunne, 2002: 153-160; Gray in Booth and Dunne, 2002: 226-234; Waltz in Booth and Dunne, 2002: 348-353; Woodward in Calhoun *et al.*, 2002: 212-237; Zolberg in Calhoun *et al.*, 2002: 285-299; Berzins and Cullen, 2003: 8).²⁷⁸ Acharya, in noting the tendency for Asian powers to support the US in the 'war on terror' even in spite of the anti-US sentiments among their populations, was among the numerous scholars to declare that individual state interest encapsulated by the realist theoretical tradition governed post 9/11 international affairs (Acharya in Booth and Dunne, 2002: 195-202).

Nevertheless, whilst the academics mentioned above argue for the dominance of the tenets of realism in guiding the decisions of national policy-makers, Keohane asserts

²⁷⁸ Woodward actually refers to the failure of states in the international system to reconsider security in terms of 'human security' as dictated by the Copenhagen School (Woodward in Calhoun *et al.*, 2002: 234). Japan's human security agenda was briefly examined in Section 2.7 of this thesis.

that realism has no means of explaining the attacks themselves which were perpetrated by non-state actors. States that respond only to the symptoms of terrorism by relying upon military power as dictated by realism, leave themselves open to future and potentially more destructive terrorist attacks (Keohane in Calhoun *et al.*, 2002: 77-91). Instead, explanations of the 9/11 attacks lie in understanding the root causes of terrorism which can be identified in the motivations and tactics of the terrorists themselves. Doing so requires a different theoretical lens, that of 'human security' as proposed by the Copenhagen School of security studies. Focusing on human as opposed to state security enables the political, economic and cultural grievances of Islamic radicals to be addressed (Kuran in Calhoun *et al.*, 2002: 71), whilst maintaining international legitimacy by upholding international law, defending global human rights and bolstering the power of the International Court of Justice. In sum, the key to establishing international security lies in promoting global justice by melding the progress of economic globalization with the development of social justice worldwide (Held in Calhoun *et al.*, 2002: 92-105; An-Naim in Booth and Dunne, 2002: 162-168; Rogers in Booth and Dunne, 2002: 215-225; Linklater in Booth and Dunne, 2002: 303-312; Sassen in Booth and Dunne, 2002: 313-324).²⁷⁹ As Held puts it, "Kant was right; the violent abrogation of law and justice in one place ricochets across the world. We cannot accept the burden of putting justice right in one dimension of life – security – without at the same time seeking to put it right everywhere. A socio-economic order in which whole regions and peoples suffer serious harm and disadvantage independently of their will and consent, will not command widespread support and legitimacy" (Held in Calhoun *et al.*, 2002: 92-105).

Whilst pleas for a more equitable distribution of global wealth might ultimately reduce the threat posed by terrorism to states in the international system, this did not occur in the aftermath of 9/11. Instead, it is states which have adjusted the rules and laws of the international system in light of the events of 9/11 to protect their collective interests. In the domain of maritime trade, for example, states have enacted a series of measures,

²⁷⁹ Fukuyama notes that it is not simply the poverty, political grievance and social disorientation of globalization that is to blame, but instead points to the role that Islamic societies have to play in modernizing their societies by opening their economies up to the global economy and using wealth gleaned from the sale of oil to establish industrial states (Fukuyama in Booth and Dunne, 2002: 32-34).

which this chapter will detail, designed to enhance security at sea and in port against terrorism. Hence, whilst unbiased forms of globalization may be discussed, it remains the responsibility of, chiefly the most powerful, states in the international system to maintain global security against terrorists (Halliday in Booth and Dunne, 2002).

6.1b Defining Terrorism

The pivotal question for states fighting the ‘war against terrorism’ is to ascertain who the enemy really is. To do so requires differentiating between the terrorist groups that operate in the world by defining what is meant by the term terrorism. Defining terrorism has always been a complicated task; there is a great deal of disagreement amongst both academics and policy makers as to what constitutes an act of terrorism.²⁸⁰ Furthermore, politically motivated actors never perceive their actions to be those of a terrorist, rather they justify their actions in terms of their situation and motivations (Martin, 2003: 2, 9-10; Silke, 2004: 59). Nonetheless, a number of key features appear in most definitions of terrorism. Those categorized as terrorists are politically motivated non-state actors who perpetrate or threaten violence with a view to influencing an audience, use unconventional methods and often target civilians or “passive military targets” (Martin, 2003: 6, 31-32).²⁸¹

Goldstone has further divided terrorism into three types. First, national, regional or ethnic liberation movements that employ strategies of terror against a state or power that the movement perceives as illegally occupying its territory. Examples of ethnic liberation movements in Asia include (GAM), the Aceh separatist movement, and the

²⁸⁰ Alex Schmid identified over 100 different definitions for terrorism in 1988 (Schmid, 1988, quoted in Martin, 2003: 31).

²⁸¹ Even a general definition of terrorism fails to comprehend the motivations of individuals who, having been denied their human rights by a repressive state or group, see no alternative other than to take up arms in defence of their cause (Martin, 2003: 229). Nonetheless, the distinction between barbarians and infidels can help to differentiate between those politically motivated actors who employ terror-tactics in order to overthrow the international system (infidels), with those politically motivated actors who, in spite of their terror-tactics, can be negotiated with because their objectives can be legitimized in the eyes of the interstate society (barbarians).

MILF, based in Mindanao in the Southern Philippines.²⁸² Second, international movements that desire the destruction of a political order spread across several state systems, or even globally, and replaced with what they determine to be an improved political order. One example of such a movement in Asia would be the Japanese Red Army which engaged in several acts of terror in support of a communist political order during the Cold War. Finally, Goldstone refers to hybrid movements which combine the first and second types of movement. In the case of a hybrid movement, the national liberation movement gains financial and military support, whilst the international or global movement receives new areas to recruit, as well as bases for their operations, expansion and training. Goldstone refers to the third, hybrid type as “International Islamic Terrorism”, the prime example of which is Al Qaeda (Goldstone in Calhoun *et al.*, 2002 139-149).²⁸³

Both the first and third types of terrorist organization described by Goldstone are operational in Southeast Asia. However, because the lines between different terrorist movements in Southeast Asia are blurred it is more accurate to perceive Al Qaeda as the dominant International Islamic Terrorist organization with which other terrorist movements are affiliated to a greater or lesser extent. The movements involved in maritime terrorism with closer ties to Al Qaeda include Jemaah Islamiya (JI) and the ASG. The MILF is more of an independent ethno-nationalist group, though it maintains operational ties with Al Qaeda. Finally, GAM has the least close association with Al Qaeda (Abuza, 2002: 427-465). Despite these links, distinguishing between these organizations is important as far as Japan’s response to terrorism is concerned, as the different motivations of these terrorist movements lead them to adopt alternative tactics which require specific counter-strategies. Ethno-nationalist movements, Goldstone’s first type, tend to use conventional weapons to undertake selected missions to highlight and ultimately rectify the actual or perceived injustices against a specific class or ethno-

²⁸² Both of these movements were introduced in Chapter 3 of this thesis.

²⁸³ Al Qaeda has been described in terms of ‘New Terrorism’. This term, employed by a number of experts in the field of terrorist-studies including Walter Laqueur, Bruce Hoffman and Ian Lesser, describes the global nature of the ‘New Terrorist’ threat, whose tactics include the use of WMD. The term ‘New Terrorism’ is confusing, however, as the Al Qaeda movement emerged from the Afghan war with Russia in the 1980s, and because an affiliated group attempted to blow up the World Trade Center in 1993 using a mix of chemical weapons and conventional explosives.

nationalist group. International Islamic Terrorist organizations are generally comprised of a loose structure of terrorist cells, motivated by vague religious or mystical goals, the use of asymmetrical methods²⁸⁴ and a willingness to acquire and deploy Weapons of Mass Destruction (WMD). Hence the tactics employed by ethno-nationalist terrorists are likely to be conducted on a smaller scale, though more frequently, than those of or affiliated with an International Islamic Terrorist organization which require more manpower, planning, technology, intelligence and equipment. Before examining the above mentioned terrorist groups in greater detail, the contemporary state of maritime terrorism will be assessed.

6.2 Contemporary Maritime Terrorism

There is virtually no security for what is the primary system to transport global trade. The consequence of a terrorist incident using a container would be profound... If terrorists used a sea container to conceal a weapon of mass destruction and detonated it on arrival at a port, the impact on global trade and the global economy could be immediate and devastating – all nations would be affected. No container ships would be allowed to unload at U.S. ports after such an event (Bonner, R. 2002, 26 August, Presentation before the Center for Strategic and International Studies, quoted in Szyliowicz, 2004: 353-354)

Since the 9/11 terrorist attacks in New York and Washington, states worldwide have been more alert to the threat that terrorism poses. In particular, the use of commercial aircraft in those attacks points to the potential further use of commercial shipping in a terrorist incident as the above quotation by Robert Bonner, the Commissioner of the US Customs Service, attests. Four possibilities for a maritime terrorist event have been propounded. The first involves the hijack of a cruise ship and holding the crew and passengers to ransom until certain political demands are met. A second scenario concerns attacks on commercial shipping, involving robbery or the hijack of crew, in order to finance a political agenda. The third possibility is that speedboats laden with

²⁸⁴ Asymmetrical methods are described as “tactics, organizational configurations, and methods of conflict that do not use previously accepted or predictable rules of engagement” (Martin, 2003: Glossary G-3). These methods represent the strongest possible means for a weaker actor to attack a stronger actor’s most vulnerable points.

explosives are driven into the side of a cruise ship, a naval vessel or a tanker.²⁸⁵ A final scheme is that a Very Large Crude Carrier (VLCC), Liquid Natural Gas (LNG) or Liquid Petroleum Gas (LPG) tanker, or a vessel containing a Weapon of Mass Destruction (WMD) is sailed into a major port or shipping lane and blown up (Weeks, 2003: 16; Okabe, 2004: 148-152).²⁸⁶ Of these potential attacks, only the final scenario has not been actualised.²⁸⁷

These terrorist schemes can be divided into two categories according to the intentions and aims of the terrorists themselves. In the first two scenarios, the terrorists are either intent upon gaining certain political concessions, such as the release of political prisoners, international recognition of their cause, the return of some disputed territory, or acquiring capital to fund their activities. Both the first two scenarios therefore tend to be acts perpetrated by ethno-nationalist movements (type-one terrorist groups). Though both of these cases involve violence or the threat of violence, the intention is to bargain

²⁸⁵ A study compiled by Sandia National Laboratory noted that terrorists could hijack an LNG tanker, or blast a hole in the side of an LNG tanker with rocket propelled grenades or missiles or a speed boat laden with explosives causing a massive fire with a damage radius of 1.6km (*Japan Times*, 22 December 2004). The low-tech nature of these terrorist scenarios is noteworthy when compared with the 9/11 attacks, as it indicates how mass-destruction can be achieved using simple methods and weapons. Critics have argued, however, that the damage caused by an attack on an LNG tanker has been exaggerated, as reports on the vulnerability of LNG tankers to a Cole-style terrorist attack have not taken the multi-hull construction of LNG tankers into account (Hussein, "LNG fights scare tactics", *Fairplay*, 21 October 2004: 16-18). Whilst LNG tankers have an excellent safety record, when changing from liquid to gas form, LNG is a highly flammable fuel. An explosive device could breach the tanks on an LNG tanker, releasing a vapour cloud, which if ignited could cause extensive damage to people and property nearby (Richardson, 2004: 43-45).

²⁸⁶ Should a tanker be blown up in the shallowest and narrowest point of the Malacca Straits, which is approximately 1 nautical mile wide and 82 feet deep (fully laden VLCCs nearly reach this depth), the costs to the international economy would be substantial (En-Lai, *The Patriot – News*, 4 June 2004: A11). Over 50,000 vessels a year transit the Malacca Straits, transporting half of the global oil supplies and two-thirds of the world's LNG to East Asia (Burton, *Financial Times*, 18 May 2004: 9). Tankers would have to be rerouted around the northern coast of Australia at a daily cost of up to US\$125,000 per tanker and approximately 80 extra tankers would have to be chartered to cope (Ellis, quoted in Shutzer, 2003: 3; Akimoto and Weaval, 2004: 63). Some estimates range between US\$200,000 and US\$300,000 per ship (Graham, 2006, 25-31). As a result, freight rates and the cost of new ships would rise and insurance premiums would increase exponentially (Lloyd Parry, *The Times*, 26 April 2004: 12; Burton, *Financial Times*, 18 May 2004: 9; Noer, 1996, http://www.ndu.edu/inss/strforum/SF_98/forum98.html, accessed 1 November 2005). It has been alleged that a group of Indonesians who fought with the Taliban in Afghanistan and call themselves: Group 272, have plans to attack a tanker in the Malacca Straits (Becker, *New York Daily News*, 21 September 2003: 26).

²⁸⁷ On 14 March 2004, two terrorists entered Israel hidden in a container ship and carried out a suicide attack against the port of Ashdod that left ten civilians dead and 12 injured (Watson, *Fairplay*, 9 September 2004: 18). This attack demonstrated that a vessel could be used to deliver weapons or terrorists in order to execute an act of terrorism in a port. For more on terrorist attacks against Israel, see <http://www.mfa.gov.il>, accessed on 24 May 2006.

and therefore the victims of the attack are only useful alive. The exception to this is a case of armed robbery, but even then, it is unlikely that the terrorists would intentionally set out to murder commercial seafarers. An act of armed robbery by a terrorist group is very similar to most piratical attacks, the key difference being that the spoils are used for political rather than private aims. There is little point in killing crews in a pirate-like attack, as this would be more likely to galvanize states into taking action against the terrorists by strengthening patrols or diverting commercial shipping. If states were to take such measures it would make it more difficult for terrorists looking to fund their cause through armed robbery against ships in the future. Hence, acts of terrorism in this category involve the restricted use of violence by type-one terrorist organizations to fund or further their cause.

In the third and fourth scenarios, however, the objectives of the terrorists are different. In these cases, the target ship, port or sea lane belongs to or benefits an enemy state or states and therefore the intention is to cause the enemy state the maximum potential destruction primarily through massive loss of life and economic damage, though also with the added purpose of politically unsettling a regime or affecting its social cohesiveness. For example, the Madrid train bombings on 11 March 2004, in addition to the number of casualties and financial costs, also helped cause the defeat of the leading political party, the Popular Party, in subsequent national elections held three days after the bombing. Madrid was targeted in this instance because of its support for the US in the 'war against terrorism' and the dispatch of Spanish troops to Iraq (<http://news.bbc.co.uk/2/hi/europe/3512222.stm>, accessed on 2 February 2006). The third and fourth scenarios are therefore more likely to be the work of an International Islamic (type-three) terrorist group. The maritime threat posed by International Islamic Terrorist groups in Southeast Asia will first be considered, before examining the involvement of Ethno Nationalists in maritime terrorism.

6.2a The Maritime Threat from International Islamic Terrorist Movements

The *USS Cole*²⁸⁸

On the 12 October 2000, the *USS Cole*, an Arleigh Burke Class Aegis Destroyer (8,300 ton displacement) was taking on fuel a short distance from the port of Aden in Yemen. The *Cole* was returning to its home port of Norfolk, Virginia, USA, via the Suez and Mediterranean after serving in the Gulf and Arabian Sea. At around 11:35 a.m., as the *Cole* was finishing refuelling, a small boat containing two Arabs approached the destroyer on the port side. Because it was not unusual for the local community to approach a US naval ship to sell goods to the crew, the alarm was not raised. The small boat hit the side of the *Cole* under the funnel and the 500 pounds of explosive it carried were detonated causing a 40x45 foot hole that rapidly let in water. The crew managed to put out the fires caused by the explosion preventing further damage to the ship, and were lucky that the explosion had not reached the ammunition dump or missiles. In total, 17 US naval personnel were killed and 42 were injured in the attack. The *Cole* was towed back to its home port where it underwent repairs for one and a half years, from 13 December 2000 to 19 April 2002 (Nogi, 2004: 38-39, 46). A House Armed Services Committee report of the incident could not find fault with the captain of the *Cole*, central naval command or the admiral of the fifth fleet. The report also noted that the incident could not have been predicted. The FBI arrested six men in connection with the attack on the *Cole*, including one repatriated Afghan militiaman (Nogi, 2004: 39-40).

After the *USS Cole* incident, the US navy developed a number of responses to prevent a further act of terrorism being perpetrated on one of its ships. Anti-terrorist training of naval personnel has improved in tandem with procedures to warn of and react to a potential terrorist incident, including the introduction of onboard weaponry to eliminate

²⁸⁸ Prior to the attack on the *Cole*, Muslim extremists attempted to destroy the *USS Sullivans* in January 2000. The attack failed as the extremists' boat, over-loaded with explosives, sank in Aden harbour (Richardson, 2004: 18; Glass, *The Independent on Sunday*, 11 January 2004: 8-10).

close proximity targets.²⁸⁹ Port security has also been enhanced to hinder terrorist access to naval docks (Weeks, 2003: 17). In November 2002, Al Qaeda's head of maritime operations, Abdul Rahim Mohammed Hussein Abda Al-Nasheri, who had masterminded the attack on the *Cole*, was arrested and confessed to plotting a series of terror events at sea including striking US and British warships in the Straits of Gibraltar (Becker, *New York Daily News*, 21 September 2003: 26).

The Limburg and Basra Oil Terminal

Another case of an International Islamic Terrorist movement executing a maritime terror attack is that of the *Limburg*, a French oil tanker, which was struck by a speedboat carrying explosives on 6 October 2002 in Yemeni waters. The blast killed one crew member and set 55,000 tons of fuel alight (Glass, *The Independent on Sunday*, 11 January 2004: 8-10). The terrorist strike on Iraq's Basra oil terminal on 24 April 2004, which involved three speedboats laden with explosives, caused US\$28 million in lost oil profits and killed three US military personnel. This attack could also be included amongst acts undertaken by hybrid movements, as the motive of the attack was not to extract political concessions but cause maximum economic and political damage to the US-backed Iraqi regime in Baghdad and convince the US to withdraw from Iraq (*South China Morning Post*, 16 May 2004: 11; Herbut-Burns, 2005: 155-156).

6.2b International Islamic Terrorist Groups in Southeast Asia

The terrorist attacks on the *USS Cole*, the *Limburg* and the Basra oil terminal raise the possibility of similar incidents occurring in Southeast Asian waters. There are a number of International Islamic Terrorist organizations operating in the Southeast Asian region which might perpetrate such an attack. The principal organization is Al Qaeda, which in turn maintains ties with Jemaah Islamiya (JI), Kumpulan Mujaheddin Malaysia (KMM)

²⁸⁹ For example, Mk38 25mm Chainguns and M2 12.7mm automatic rifles are attached to Oliver Hassard Berry Class Frigates of the US Navy (Nogi, 2004: 47-48).

and the ASG. Though terrorist organizations in Southeast Asia have different agendas and no proven link has been established between these different groups, Al Qaeda's capacity to equip, finance and train like-minded individuals and groups indicates that there is a strong possibility that terrorist groups in Southeast Asia cooperate (Okabe, 2004: 150-152). Furthermore, members of all of these organizations include former Mujaheddin veterans who had fought in Afghanistan, enabling a network of personal contacts to develop amongst various terrorist groups in Southeast Asia (Abuza, 2002: 428-431; Fealy in Beeson, 2004: 152-154). Connections between terrorist groups also facilitates involvement in the illegal trade in drugs and weapons, which move across national borders between terrorist groups and help to fund the terrorist's activities (Martin, 2003: 201). These illegal trades are conducted in the absence of stringent visa restrictions, a lack of checks on financial transactions, insufficient border patrols, official corruption and abundant stocks of illegal arms. However, the growth of radical Islam in the Southeast Asian region has not simply relied upon transnational Islamic networks, but has also increased due to economic hardship, political repression, and the deterioration of state education compared with the rise in *madrasah* (Islamic schools) aligned with Wahhabism and Salafi Islam (Abuza, 2002: 428-434). Therefore, the combination of economic and social factors coupled with the bonds of cooperation between different terrorist organizations have served to bolster the strength and capabilities of International Islamic movements in Southeast Asia.

Fears that International Islamic groups will use their capabilities to target international waterways and ports have been voiced in maritime security circles. On 18 February 2004, Dominic Donald, an analyst at Aegis Defence Services, a security and crisis management consultancy firm based in London, hinted in a communiqué with Reuters that Al Qaeda was already planning a maritime terrorist spectacular. His fears have been echoed by Tony Tan, the deputy prime minister of Singapore,²⁹⁰ and Michael Richardson of the Southeast Asia Research Centre based in Singapore. Richardson has suggested that Al Qaeda operatives could use forged documents to gain employment on

²⁹⁰ At the 2004 Shangri-La dialogue, Singaporean Prime Minister Goh Chok Tong noted that Northeast Asia's help would be needed if a terrorist attack on Southeast Asia's waterways is to be prevented (*Virtual Information Center*, 2004: 7).

board a container ship that the terrorist organization could use to deliver a radiological weapon, also referred to as a dirty bomb, atomic device or other WMD. The fact that a total of 230 million containers are transported worldwide every year makes guarding against the threat of a major terrorist incident a security nightmare. Furthermore, a terrorist event in a large international port, such as Singapore or Hong Kong, could bring international trade to a standstill, in addition to causing large numbers of civilian casualties and destruction (Okabe, 2004: 150-152). In fact, Al-Faruq, a Kuwaiti-born Al Qaeda financier who rose to become Al Qaeda's chief of operations in Indonesia, told US intelligence officers after capture that he had planned suicide attacks against US naval vessels in Surabaya in May 2002, but was unable to gather sufficient operatives to carry out the attack (Abuza, 2002: 448-449). In addition, an attack on the Indonesian tanker, the *Devi Madrim*, on 26 March 2003, suggests that terrorists are preparing for a major maritime incident. The *Devi Madrim* was commandeered in the Southern Malacca Straits by ten pirates armed with automatic weapons, knives and VHF radios. After sailing the *Devi Madrim* for about an hour, the pirates abandoned the vessel, hinting that the attack was a form of practice run for a future terrorist attack (Davis (b) 2004: 41). Whilst it is clear that a wide range of threats emanating from International Islamic Terrorism have been discussed, it still remains to ascertain the extent to which the hybrid terrorist network in Southeast Asia has the capacity to carry out such attacks. To do so requires that each organization be analysed individually.

Al Qaeda²⁹¹

Al Qaeda, led by Osama Bin Laden of Saudi Arabia and the late Muhammed Atef from Egypt, is different from most other terrorist groups in five respects.²⁹² First, the

²⁹¹ Al Qaeda is often translated as "The Base" in the media. However, Islamic radicals usually understand *qaeda* to mean "precept" or "method" (Burke, 2004: 18).

²⁹² Martin actually notes six unique aspects of the Al Qaeda network, however, one of these is the assertion that the movement's political goals are ill-defined. This point is contentious in that, although the movement may not have any legitimate claims over a particular space unlike a separatist terrorist organization, their aim to remove the US presence from the Middle East and the establishment of a caliphate throughout the Middle East serve as the organizations' main over-arching aims, which Martin himself acknowledges (Martin, 2003: 234). The objective to replace the interstate society with a caliphate

organization does not hold territory, but is instead a fluid network of like-minded groups that can operate in any given territorial space. Second, being a fluid network of groups, Al Qaeda is horizontally structured in that there is no vertically aligned system of hierarchical ranks to which individuals are promoted. Third, Al Qaeda does not represent the political ambitions of a particular ethno-nationalist group, but rather fights for all militarily and politically repressed Muslims throughout the world. Fourth, the organization receives virtually no state funding. Finally, the organization's understanding of world affairs is entirely religious. The estimated total number of Al Qaeda operatives ranges between 35,000 and 50,000, though the precise figure is difficult to determine owing to the impact of the American led 'war on terrorism' on the group. On the one hand, the success of the 9/11 attacks, coupled with the insurgency in Iraq following the fall of the Hussein regime, will have potentially increased Al Qaeda's recruits. On the other hand, the fall of the Taliban government in November 2001 in Afghanistan disrupted Al Qaeda's operations and led to many of their number being killed or captured (Martin, 2003: 115, 194-195). Burke maintains that until the US-led 'war on terror', "Al Qaeda functioned like a venture capital firm", by donating funds, resources and training to militant Islamic fighters. Following the exodus of the Taliban from Afghanistan, Al Qaeda's central base of operations were severely disrupted, but the goals Al Qaeda pursues have grown in strength and popularity. These goals include the expulsion of the West from the Middle East and the establishment of a caliphate (a single Islamic state) extending across Islamic countries worldwide (Burke, 2004: 18-19).

The proclivity for Al Qaeda to employ asymmetrical forms of warfare, such as the use of commercial aircraft in the 9/11 attacks, as well as the use of chemical weapons by an affiliated group in an attempt to destroy the World Trade Centre buildings in 1993 coupled with a desire to inflict mass casualties indicates that future strikes may involve WMD (Martin, 2003: 5-6, 15-16).²⁹³ Kweilen Kimmelman, an analyst at the

in the Middle East is the core reason why Al Qaeda are viewed as infidels rather than barbarians in this thesis.

²⁹³ The extent of the WMD threat is debatable, however. The Aum Shinrikyo attacks against the Japanese subway system in March 1995 are usually stated as the prime example of the threat posed by WMD wielding terrorists, in spite of the fact that explosives used in terrorist attacks have a far higher kill-ratio compared with the sarin gas attacks in the Tokyo subway which ultimately killed 12 people. The Aum strike did injure 3,796 others, however, indicating the wider, non-lethal affect that WMD can have

Washington-based think-tank, the Maritime Intelligence Group, argues that Al Qaeda are said to possess between 15 to 25 ships which are used to transport people and weapons worldwide (En-Lai, *Oakland Tribune*, 4 June 2004: 1). Moreover, Al Qaeda's connections with the attacks on the *Limburg* and *Cole* demonstrate that Al Qaeda has both the motive and means to perpetrate acts of maritime terror on its own. However, the US-led attacks on Afghanistan, which destroyed Al Qaeda's central base of operations, may have seriously disrupted the operational capabilities of the group. The true extent of the maritime threat posed by Al Qaeda in the aftermath of 9/11 lies in its ties with other Islamic terror groups in Southeast Asia.

Jemaah Islamiya (JI)

Jemaah Islamiya (JI – the Community of Islam) first evolved in Indonesia in the 1960s when the radical cleric Abu Bakar Bashir founded a pirate radio station propounding the establishment of *Shariah* law. Bashir, with the help of another cleric, Abdullah Sungkar, went on to create Islamic schools (*madrasah* and *pesentren*) where students would be instructed in the strict Islamic philosophy of Salafi Wahhabism. Selected pupils from these Islamic schools would then be sent to Afghanistan and Pakistan for training in Al Qaeda bases or to MILF camps in Mindanao, where they would learn terrorist strategy and organization. Between 1994 and 1995, JI was formally established and developed cells in the Philippines, Malaysia, Singapore and Indonesia and received funding from Al Qaeda. Arrests made by the Singaporean authorities in December 2001 and August 2002 revealed that the Singaporean JI cell was planning *USS Cole*-style attacks on US

(Hoffman, 1998: 92, 120-127). The 11 March 2004 train bombings in Madrid, Spain, which killed 191 and injured 1,800 people, and the 7 July 2005 bombings in London, England, which killed 52 and injured 700 people, were a clear indication that terrorists could achieve their aims through conventional means (<http://news.bbc.co.uk/2/hi/europe/3597885.stm>, and http://news.bbc.co.uk/1/shared/spl/hi/uk/05/london_blasts/what_happened/html/default.stm, accessed 1 February 2005). Indeed, recent reports indicate that the threat posed by WMD is much lower than is generally reported in the media or over the course of political campaigns. This is because of the difficulties faced in acquiring and detonating many different kinds of WMD (Rothstein, Auer and Siegel, 2004: 36-41, 44-47, 73; Burke, 2004: 24).

naval vessels and personnel in and around Singapore.²⁹⁴ On 12 October 2002, JI executed the Bali bombings in which nearly 190 people were killed (Abuza, 2002: 450-459; Glass, *The Independent on Sunday*, 11 January 2004: 8-10). JI leaders that have been arrested have testified that the group also considered attacks on Malacca shipping (Nakashima and Sipress, *The Washington Post*, 2 June 2004: A12; Hendropriyono, *Jakarta Post*, 25 August 2004: 2).²⁹⁵ Despite these clear links to terrorism, the Indonesian government has not outlawed JI, as it is believed such a move would rally the wider Muslim community against the Yudhoyono administration (Benvenuti, 2006: 283-284).

Abu Sayyaf Group (ASG)

A further group with links to Al Qaeda are the ASG. The ASG was founded in 1991 by Ustadz Abdurajak Janjilani, a Moro fundamentalist who had served as a Mujaheddin fighter and trained at the Khost camp in Afghanistan, and Ramzi Yousef, a bomb maker who had been an instructor at the Khost camp and was responsible for the 1993 World Trade Centre bombing.²⁹⁶ The aim of the group is to create a Muslim state in the southern Philippines.²⁹⁷ Bin Laden, who wanted to expand Al Qaeda's global operations, sent funds to support the establishment of the Abu Sayyaf group in the southern Philippines. Al Qaeda and Jemaah Islamiya have both provided the ASG with technical planning and expertise. Since its creation, the ASG has been responsible for numerous terrorist attacks in the Philippines, including the bombing of Philippine Airlines 747-

²⁹⁴ The Singapore JI cell apparently intended to procure 21 tons of ammonium nitrate to attack targets in Singapore (compared with between one and two tons of ammonium nitrate used in the terrorist strike against the Federal Building in Oklahoma City in 1995). In fact, the group only purchased four tons of ammonium nitrate, though this disappeared from the warehouse where it had been stored (Glass, *The Independent on Sunday*, 11 January 2004: 8-10).

²⁹⁵ Bashir himself was arrested in connection with the Bali bombings, though he was not convicted for participating in the attacks. Instead, Bashir received a four year prison sentence for sedition, as a number of the Bali bombers had studied at his school (Smith Kipp, 2004: 63).

²⁹⁶ The title 'Abu Sayyaf' derives from the name of the Islamic scholar, Abdur Rab Rasul Sayyaf, who taught Wahhabi Islam at the Khost training camp in Afghanistan which he also ran (Abuza, 2002: 440). Ramzi Yousef later developed a separate cell that he used to conduct terrorist missions independently of ASG, which he believed lacked the ability to 'carry out serious terrorist acts' (Abuza, 2002: 443).

²⁹⁷ The main reason for not delineating the ASG as a separatist group in spite of its aims are its strong ties to Al Qaeda which means that it functions more as an agent for Al Qaeda than an independent separatist movement that could renounce its struggle in return for political concessions (Abuza, 2003: 99-101).

200 Flight 434 from Cebu to Tokyo which killed a Japanese businessman (Abuza, 2002: 439-443; Martin, 2003: 195). The group has also been active in the Sulu Sea, kidnapping ship's crews for ransom.

The ASG is comprised of 300-400 Filipino members based on islands in the Sulu and Basilan provinces of the Philippines. ASG also possesses fast-vessels and well-armed crews able to seize ships. Members of ASG usually form raiding gangs of 10-20 men armed with M16 rifles and occasionally M79 grenade launchers and general purpose machine guns. In April 2000, an ASG operation targeted the Sipadan diving resort in the Celebes Sea, south of the Sabah port of Semporna. In this raid, 21 Western tourists and resort employees were kidnapped, their ransom raising US\$25 million dollars for ASG (Davis (b) 2004: 39-41). Abu Sayyaf also exploded a bomb on board *Superferry 14* on 27 February 2004.²⁹⁸ The blast and subsequent fire claimed the lives of over 100 of the 899 passengers on the ship (Rivera, 2005: 130; Banlaoi in Ho and Raymond (eds.), 2005: 67). Though the attack on the *Superferry 14* proved Abu Sayyaf's ability to carry out a major act of terrorism, an article in the Economist reported that the bombing was in response to a failure to extort money from the ferry company (*The Economist*, 19 February 2005: 33). The indication here is that, since the death of Janjalani in 1998 and the capture of key commanders, such as Ghalib Andang, Abu Sayyaf have broken into little more than a criminal syndicate with ties to official collaborators in local government, the military and police (Abuza, 2003: 111-113, 207-208; Rogers, 2004: 15-20; Rivera, 2005: 130). From an English School perspective the ASG might be better characterised as pirates or criminals than barbarians or infidels, as the ASG's goals appear to have become economic rather than political.

Nevertheless, whilst Al Qaeda funding to the group has been cut, foreign jihadists still train at ASG camps. The ASG is also perceived as an organization that could forge deeper links with Al Qaeda, especially as Al Qaeda's top leadership has been on the run since the 9/11 attacks (Abuza, 2003: 113-114). Therefore, stronger ties with Al Qaeda would draw ASG into the infidel category. With this in mind, the US and Filipino

²⁹⁸ Abu Sayyaf had attacked a ferry prior to this incident killing 45 passengers and crew (Glass, *The Independent on Sunday*, 11 January 2004: 8-10).

governments designated the ASG as a terrorist group and a successful campaign against Abu Sayyaf has been launched by the Filipino military, with US special forces advisors, greatly reducing the capacity of the group to commit major acts of terrorism (Martin, 2003: 196). Filipino troops were even pulled from their mission against Abu Sayyaf on the Southern Island of Jolo and dispatched to fight the greater threat posed by New People's Army (NPA) of the Communist Party of the Philippines (CPP) on the island of Samar (Montesano, 2004: 95-96). Conversely, this may lead to the ASG undertaking lower-level acts of maritime violence (akin to action taken by type-one movements) more frequently in a bid to finance their activities in the wake of the military campaign to root them out as separatist movements in Southeast Asia have done.

6.2c The Separatist Threat

The *Achille Lauro*

One of the most significant separatist incidents to occur at sea was that of the *Achille Lauro*. On 7 October 1985, 400 passengers and crew aboard the *Achille Lauro* cruise ship, which was travelling from Alexandria to Port Said in Egypt, were taken hostage by four members of the Palestine Liberation Front (PLF).²⁹⁹ The separatists demanded the release of 50 of their comrades held prisoner in Israel and killed one wheelchair-bound US citizen. After two days the hostages were released and the separatists flown out of Egypt on a 737 jet, only to be diverted by US navy F-14 Tomcats to Sicilia, Italy, where the separatists were arrested.³⁰⁰ The mastermind behind the attack, Abul Abbas, was later captured after the fall of Baghdad in April 2003. The ease with which the

²⁹⁹ It is frequently reported that the PLF members had intended to attack the Israeli port of Ashdod, but a waiter on board the *Achille Lauro* disturbed the separatists as they were cleaning their weapons forcing them to act prematurely and take control of the vessel. However, contradictory testimonies given by the separatists in court coupled with the inadequacy of the separatists' weaponry for attempting an attack on Ashdod, indicates that Abul Abbas was attempting to conceal the separatists' true intentions to capture the ship itself. The need for this smokescreen can be explained by the need to make the act legitimate in the eyes of the Palestinian Liberation Organization (PLO), with which the PLF was affiliated. The PLO only sanctioned attacks on Israelis (Cassese, 1989: 109-113).

³⁰⁰ The interdiction of the 737 jet in international airspace has been described as illegal, as it was a violation of international airspace. This raises doubts as to the legality of inspections conducted under the Proliferation Security Initiative, described later in this chapter (Valencia, 2005: 44).

separatists were able to hijack the *Achille Lauro* raised serious concerns about maritime security issues and consequently the Suppression of Unlawful Acts at Sea (SUA Treaty), which was examined in Chapter 3, was signed in March 1988 and went into effect in March 1992. The SUA Treaty covers any act that damages or threatens the control or management of a ship, its crew or cargo. The act represented the first multinational response to international maritime terrorism (Young and Valencia, 2003: 275; Jesus, 2003: 388; Nogi, 2004: 44-45).

6.2d The Ethno-nationalist Terrorist Threat in Southeast Asia

Separatists or ethno-national communal terrorists differ from what Goldstone refers to as International Islamic Terrorism. Ethno-national communal terrorism involves the conflict between a group striving to maintain its cultural, historical, social, religious and ethnic identities against an opposed group. This type of terrorism often takes the form of a separatist or independence movement who wish to protect a specific people by breaking away from what the movement perceives or experiences to be an oppressive state (Martin, 2003: 124-125). The two main examples of ethno-national communal terrorist movements in Southeast Asia which target maritime traffic as a means of furthering their political goals are the Moro Islamic Liberation Front (MILF) based in Mindanao in the southern Philippines and the Free Aceh Movement (Gerakan Aceh Merdeka - GAM) in northern Sumatra, Indonesia.

Aceh Attacks

In 1976, Hasan di Tiro, a businessman and descendant of pre-colonial sultans, established the Aceh-Sumatra Liberation Front, which later became GAM, in response to the siphoning off of Aceh's natural resources by the central government as well as to assert historical independence from Jakarta. Though chiefly involved in publicising their movement's cause, GAM were swiftly defeated by military action ordered by the Suharto regime in Jakarta. By the end of the 1980s, however, the group had re-created

themselves as a liberation movement and began a bitter underground struggle against government forces in the province. Talks between Jakarta and GAM began after the fall of the Suharto regime in 1998, but have stalled frequently, resulting in a return to violence in the province. The military measures undertaken in Aceh since 9/11 have involved as many as 50,000 government forces against an estimated 5,000 rebels (Taylor, 2003: 364-367; Carey, P. 2004: 39). The Indonesian military (TNI) is one of the main causes of this renewed conflict, having engaged in abuses of human rights that fuel the dispute, but also because it is not in the TNI's political or economic interests to resolve the conflict. Aceh separatism is a *raison d'être* for the TNI, which portrays itself as the only force capable of holding the fractious Indonesian state together and demands ever greater resources from the Indonesian government to be able to do so. Moreover, security contracts for protecting oil and gas fields in the Aceh region, as well as alleged military activity in extortion, drug tracking and illegal logging, all provide the TNI with substantial additional wealth (Huxley, 2002: 34-41, 45-46; Collins, 2002: 603). The case of the *KAL YOUTEFA*, examined in Chapter 3 (ICC-IMB Piracy Report third Quarter 2004: 29), is evidence of the TNI's involvement in maritime crime; a connection that has often been alluded to (Shutzer, 2003: 9). A lack of political will to reform the Indonesian military coupled with the strength of the TNI, which pervades all levels of government and even has the power to determine up to 75 percent of its own budget, has ossified the political situation in Indonesia (Muna, 2004: 6-7).

Continued TNI campaigns in Aceh have forced GAM to lie low. In doing so, GAM has had to develop covert means of obtaining capital to fund its cause. In 2003 a number of trends concerning piratical attacks evolved. These trends included the increased use of automatic weapons, attacks involving multiple ships and military style operations. There is a range of evidence that points to the involvement of Aceh separatists in these attacks on shipping. First, GAM, under pressure from Indonesian military forces on land coupled with the freezing of terrorist financial assets since 9/11, have had an incentive to establish alternative means of acquiring capital, such as armed robbery against ships

(Herrmann, 2004: 24).³⁰¹ Second, Aceh guerrillas possess the training and resources to conduct the kind of well organised maritime operations that were recorded in 2003 and 2004. Third, the majority of these well organised attacks occurred within 30 nautical miles of the Aceh coastline. Fourth, the objective of the attacks is to rob ships and seize individual crew members who are held for ransom in Aceh (Okabe, 2004: 148-149).³⁰² For example, on 2 February 2004, Aceh separatists armed with M16 rifles boarded a Malaysian fishing trawler near Pulau Jerajak in the Malacca Straits. The skipper of the trawler and nine crew members were held hostage and taken to Aceh where they were beaten. As well as stealing ship's documents, equipment and the catch of fish, Aceh guerrillas were paid to release their hostages on 5 February by the owner of the trawler (ICC-IMB Piracy Report third Quarter 2004: 16).³⁰³ Malaysian and Indonesian police also allege that Aceh guerrillas have been involved in a number of other attacks, including that against the *Penrider* in August 2003, the *MT Cherry 201* in January 2004 and against barges and tug boats in the Malacca Straits (Bradsher, *International Herald Tribune*, 16 August 2003: 1; Yong Tiam Kui, *New Straits Times*, 17 August 2003: 4; *Asahi Shimbun*, 22 August 2003: 6; Okabe, 2004: 149-150; Mortishead, *The Times*, 29 January 2004: 33; http://www.iccwbo.org/ccs/news_archives/2003/piracy_ms.asp, accessed on 25 September 2003; *Nihon Keizai Shimbun*, 19 September 2004: 13).³⁰⁴

³⁰¹ Following the declaration of martial law in the Aceh region on 19 May 2003, 45,000 Indonesian troops were dispatched to defeat the 3,000 to 5,000 Aceh guerrillas. Although this operation proved unsuccessful at destroying the GAM resistance, it did force the separatists underground and proved the dominance of the military in Indonesian politics (Kipp Smith, 2004: 67-68).

³⁰² A typical ransom for a hostage held by GAM starts at around US\$100,000, but is often negotiated down to US\$10,000-\$20,000. Many ransom cases go unreported because shipowners will be blamed if they pay for the release of their crew or if the crew is killed (Davis 2004b: 39).

³⁰³ Ransoms paid are negotiable and usually bartered down to a price affordable for the shipping company. This has led to a degree of acceptance amongst shipowners that paying off the pirates is part-and-parcel of doing business in Indonesian waters. Nevertheless, four kidnapped crew members of an oil tanker were killed when their owner failed to pay their ransom. In another case, the ransoms for 13 crew were bargained down from 400 million rupiah to 70 million rupiah, but when this sum was not delivered a month after the kidnapping incident four of the crew were killed and the rest jumped overboard to escape (Urquhart, 16 June 2004, <http://business-times.asia1.com.sg/storyprintfriendly/0,4568,119862,00.html?>, accessed on 22 June 2004). The case of the *Idaten*, addressed in the previous chapter, is an example of Japanese crew members being taken hostage and held for ransom. The involvement of GAM in the *Idaten* hijacking has not been confirmed.

³⁰⁴ The Indonesian consulate in Penan, Malaysia, has nonetheless argued that pirate attacks are unlikely to be the work of Aceh guerrillas due to the extensive patrols undertaken by the Indonesian navy around the Aceh coast (*Asahi Shimbun*, 22 August 2003: 6). This statement echoes that of the Indonesian Admiral Bernard Kent Sondakh who proclaimed that the IMB's piracy figures greatly overstated the extent of piracy in and around Indonesia. He noted that whilst the IMB put the total number of piracy incidents at 121 for 2003, he believed the actual figure to be 20 attacks (Rao, *Fairplay*, 2004: 4). The IMB has also

The hijacking of tugs and barges in the Malacca Straits is a recent trend. The slow speed and the low height of the deck from the waterline makes tugs and barges easy for pirates to board. Tugs and barges are also targeted as they are so commonplace that they can be used to transport illicit goods or people without arousing suspicion (Davis (b), 2004: 39). This suggests that engaging in maritime crime can benefit separatist groups like GAM by supplying the movement with capital, through the seizure of goods and ransom of crew, as well as providing a means for the group to conduct further illegal activities to fund their political objectives. However, as tugboats are used to pull a variety of vessels, including tankers and naval ships, in to port, so it is feared that hijacked tugboats might be rigged with explosives and used by terrorists in a clandestine strike on one of Southeast Asia's main ports (Akimoto and Weaval, 2004: 61).³⁰⁵ Such a strike would be unlikely to involve GAM as they are adverse to establishing alliances with terrorist groups in the region, as these organizations do not share the same political goals. Instead GAM has focussed on targeting ships and facilities in areas that it claims as its own sovereign territory. For example, ExxonMobil assets have been attacked at Lhokseumave (Davis (b), 2004: 41), forcing one gas plant to close for five months (Glass, *The Independent on Sunday*, 11 January 2004: 8-10). Nevertheless, two leading figures in the Al Qaeda movement, Ayman al-Zawahiri and the late Mohammed Atef, have both travelled to Aceh where they were reportedly impressed by the environment in which GAM operated and the local support GAM received (Abuza, 2002: 446). GAM operatives have also trained abroad in Libya between 1986 and 1989 and in Moro Islamic Liberation Front camps in the Philippines (Dillon, *Asian Wall Street Journal*, 20 October 2004: A.7).

noted the possibility of criminal organizations copying the modus operandi of Aceh separatists and engaging in hijack and ransom cases (http://www.iccwbo.org/ccs/news_archives/2003/piracy_ms.asp, accessed on 25 September 2003). This further complicates assessments of the true extent of politically motivated piracy.

³⁰⁵ The IMB's Piracy Reporting Centre has been instrumental in recovering hijacked ships on a number of occasions. For example, on 8 January 2005, Malaysian authorities acting on information provided by the Piracy Reporting Centre discovered the hijacked Indonesian tug *Christian* and barge *Flora* at the port of Tawau in East Malaysia. The Royal Malaysian Police detained four individuals in connection with the hijacked vessels though the nine crew remain unaccounted for. A total of 23 attacks against tugs and barges occurred in 2004. Five of these incidents involved criminal gangs who kidnapped the master and crew and demanded ransoms (<http://www.icc-ccs.org/main/news.php?newsid=38>, accessed 20 January 2005).

Indonesia has responded to the maritime threat posed by GAM by deploying four warships and two Nomad surveillance aircraft around the Aceh coast under the Sabang Jaya Operation. These military forces have been given the additional task of identifying vessels smuggling weapons into the Aceh region (*Virtual Information Center*, 17 April 2001). Yet while such moves have been welcomed by the IMB whose members have repeatedly stressed the impact that Indonesia's naval forces can have on deterring piracy when they take sufficient action (Rao, *Fairplay*, 2004: 4; http://www.iccwbo.org/news_archives/2004/aceh_2004.asp, accessed on 1 July 2004), the presence of these warships have failed to stem the tide of maritime violence in the region. This is primarily because the conflict in Aceh is mired in an economic and social quandary that is mirrored throughout the Indonesian archipelago. Poverty combined with public demand for improved standards of living as well as debt as high as 140 percent of Indonesia's GDP have served to destabilise Indonesia (Huxley, 2002: 7-27; Bulworth, 2004: 8-9). Responsibility for this debt does not lie merely on the shoulders of the Indonesian government, but also on the International Monetary Fund (IMF) and World Bank that have imposed inappropriate reforms and generated more debt (Setiawan, 2004: 12-13).

The dangers posed by Indonesian instability are regional in scope. Taking the maritime actions of GAM as an example, threats posed by the separatist group to the ExxonMobil natural gas production plant in Aceh forced the facility to close in early 2001. As a result, ExxonMobil's Japanese and South Korean customers were forced to seek supplies from alternative sources. Furthermore, continued piratical and politically motivated maritime crime has forced insurance premiums upward to the extent that Japanese shipping companies have devised alternative routes for their vessels. However, it is not only piracy and terrorism, but also human and narcotics trafficking, the possibility of separatist fervour spreading and intensifying in the region, as well as ecological issues associated with the nexus between Indonesia's political, military and criminal elites that threaten the political, ecological and economic well-being of Asia (Huxley, 2002: 74-85). Hence, responding to the myriad of problems faced by Indonesia is an international as well as domestic matter.

However, the position of the international community led by the US has been ambiguous. On the one hand, the US State Department labels GAM as a separatist movement, despite recognition that the movement is involved in diverse crimes, including murder, kidnapping and blackmail, and therefore meets the State Department's criteria to be categorised as a foreign terrorist organization. The criteria are that a group is foreign, and engaged in terrorist acts that threaten the lives of US citizens or US security, as GAM attacks on ExxonMobil personnel, facilities, transport and its involvement in armed robbery against ships all demonstrate. Furthermore, GAM rebels have trained in Libya between 1986 and 1989, have connections with both Al Qaeda and Jemaah Islamiya, and train in Moro Islamic Liberation Front camps (Dillon, *Asian Wall Street Journal*, 20 October 2004: A7). On the other hand, the global community has not sought to intervene in the Aceh conflict, fearing that Indonesia will fragment should the province be allowed to secede. Instead, the global community has hailed the moderation of Indonesian democracy whilst largely ignoring the repression of separatist forces in Aceh by the Indonesian army (TNI). This is in spite of the fact that the actions of the Indonesian military and the paramilitary groups they recruited have been slated as causing numerous human rights violations (Collins, 2002: 589; Burchill, 2004: 4-5).

The impact of the 26 December tsunami which hit north Sumatra, including the troubled Aceh region, led to hopes that the extent of the devastation and human loss might reconcile GAM and the Indonesian government in Jakarta. With this in mind, cease-fire talks between GAM and the Indonesian government began in early February 2005 in Finland (*The Economist*, 1 January 2005: 18; *The Economist*, 29 January 2005: 28), which resulted in a potential referendum for Acehnese independence to be held by 2015 (Chow, 2005: 306-307). As Chapter 2 noted, the peace deal has ended the conflict in Aceh, though it remains to be seen whether economic and social improvements in the region will result in an end of piratical violence.

MILF Attacks

A further separatist organization that continues to threaten international shipping through its maritime operations is the Moro Islamic Liberation Front (MILF). The MILF is reputed to have between 12,000 and 15,000 fighters and is involved in a war of secession from the Philippines. Prior to the US occupation of the Philippines, the Moro region of the southern Philippines had existed as an independent sultanate. The MILF emerged in 1946 to demand the secession of the Moro region from the newly independent state of the Philippines. Despite its secessionist aims, the MILF benefits from links with international terrorist organizations (Akimoto and Weaval, 2004: 62). In 1988, Osama Bin Laden sent his brother-in-law Mohammed Jammal Khalifa to the Philippines to enlist combatants in the war in Afghanistan. By 1991, Khalifa looked to build an Al Qaeda network in the Philippines, and, under the official guise of director of the Islamic International Relief Organization (IIRO) for the Philippines, began to fund and train MILF rebels. Though MILF denies links to Al Qaeda, an interview with Al Haj Murad, the MILF vice-chairman for military affairs, revealed that MILF did receive “help and assistance” from Bin Laden and Khalifa. Furthermore, the existence of Middle Eastern and Pakistani trainers was confirmed when the Armed Forces of the Philippines (AFP) overran the MILF headquarters, Camp Abu Bakar, in 2001 and uncovered passports and visa documentation belonging to the foreign instructors. MILF camps have also been used to train other *jihadis* in Southeast Asia, suggesting widespread links between separatist groups and international terrorist organizations (Abuza, 2002: 435-439).

The MILF remain active, though a ceasefire called in the second half of 2003 and ongoing negotiations hold the key to resolving the 30 year old separatist dispute in the south of the Philippines (Montesano, 2004: 97-98). In October 2004, a peace monitoring team comprised of 51 Malaysian and ten Brunei officials arrived in Mindanao to oversee the continuing peace process (Rivera, 2005: 129-130). As noted in Chapter 3, since early 2006, continued peace talks between the Arroyo government and the MILF separatists have raised hopes that the conflict in Mindanao, which has claimed 120,000 lives over the course of three decades of fighting, will finally be resolved

(http://news.bbc.co.uk/1/hi/world/asia-pacific/country_profiles/1262783.stm, accessed 15 July 2006).

The Ethno Nationalist maritime threat has been addressed in three ways that this thesis has already examined. Ethno Nationalist attacks at sea are similar in method, though crucially not in terms of motivation, to pirate attacks. Therefore, acts of maritime violence perpetrated by GAM are hindered by the coordinated anti-piracy patrols between Indonesia, Malaysia and Singapore (examined in Chapter 5), and attacks by MILF are impeded by enhanced cooperation between the US and Philippine militaries (addressed in Chapter 3). Furthermore, the ISPS Code, which is examined later in this chapter, in demanding security plans for commercial vessels enhances their protection against boarding by barbarians, infidels or pirates. Finally, diplomatic responses to the Aceh separatist issue in Indonesia and the Mindanao secessionist problem have begun to tackle the political demands of GAM and MILF respectively that have motivated these groups to resort to maritime violence.

6.2e Shipping Terrorist Weaponry and Equipment

A final concern for states since the advent of the 9/11 attacks has been the shipping of terrorist goods and materials belonging to either ethno-nationalist movements or International Islamic Terrorist organizations. Just as containerization has facilitated the illicit trade in drugs, weapons, people and goods, so too could terrorist materials be shipped to a country where a terrorist incident is planned or to support separatist groups in conducting their activities (Johnston and Nath, 2004: 255; Price, 2004: 329).³⁰⁶ For example, the capture of the *Baltic Sky*, which was carrying 680 tons of explosive and 8000 detonators, in the Mediterranean Sea in June 2003 by Greek authorities suggests that terrorist groups may be plotting an attack on a major port (Akimoto and Weaval,

³⁰⁶ In 2000, 90 percent of the world's freight was transported in containers and 50 million containers were used to carry cargo between the world's ports (Slater, 2000, quoted in Szyliowicz, 2004: 353).

2004: 63-64).³⁰⁷ Of course, the large number of detonators found indicate that the *Baltic Sky* may have been transporting bomb materials to be used in several smaller-scale terrorist attacks on land. Therefore, maritime transportation networks provide both a medium with which to perpetrate terrorist acts as well as the means by which terrorists convey their resources. Considering the volume of global maritime traffic, it is difficult for states to protect themselves from terrorists using maritime transportation networks to perpetrate acts of terrorism (Szyliowicz, 2004: 351-368).

Whilst the maritime terrorist scenarios envisaged as being planned by International Islamic Terrorism are certainly more devastating than action taken by ethno-nationalist movements, they are both less frequent and far more difficult to anticipate than ethno-nationalist maritime acts. Maritime terrorism perpetrated by ethno-nationalist movements poses a far greater threat to international shipping on a daily basis. Furthermore, enhanced patrols coupled with diplomatic negotiations with separatists could significantly decrease the threat of ethno-nationalist maritime terrorism. Though deals have been brokered between the separatist movements and the governments they oppose, international attention remains focused on countering International Islamic Terrorist organizations as demonstrated by the response of countries like the US and Japan in the aftermath of 9/11.

6.3 US-led Maritime Security Initiatives and Japan's Response

US policy regarding Southeast Asia has always tended to centre on military factors. The events of 9/11 revitalised US foreign policy towards this region by honing in on the threat from expanding terrorist organizations in Southeast Asia. As a result, the US has signed agreements with ASEAN powers designed to combat regional terrorism and even dispatched special forces to the Philippines as advisers to help indigenous forces defeat the MILF and ASG in the south of the country. Furthermore, the US has

³⁰⁷ NATO had compiled a blacklist of suspect terror vessels to aid with the interdiction of ships like the *Baltic Sky*. However, the *Baltic Sky* was not on this blacklist (Becker, *New York Daily News*, 21 September 2003: 26).

maintained its forward-deployed military presence in the Southeast Asian region through its alliances with Japan, South Korea, Thailand, the Philippines and Australia, with a view to uphold regional stability and the safety of Southeast Asian SLOCs (Montesano and Hwee, 2004: 321-328).

The US has also sought to encourage regional cooperation and active participation on the part of littoral Southeast Asian states to protect their domestic and adjacent international waters against the threats of piracy and terrorism. The US has persistently asked for Southeast Asian states to secure the Malacca Straits against piracy and terrorist attacks (*Business Times*, 27 July 2004). US naval vessels have even been dispatched to the Malacca Straits and participated in joint patrols of the Malacca Straits with the Indian navy in mid-April 2002 to act as a deterrent against terrorists or pirates (Weeks, 2003: 17). Nevertheless, the US itself has found it difficult to insert its own naval presence into the domestic waters of Southeast Asian states. In particular, the US has raised concern that the domestic maritime territories of Malaysia and Indonesia are under policed, leading to the assertion by Admiral Thomas Fargo, commander of US forces in the Pacific, on 31 March 2004 that a Regional Maritime Security Initiative (RMSI) be adopted whereby US marines on high speed vessels could be employed to secure the Malacca Straits. Admiral Fargo's statement was quickly retracted following strong rebuttals from Malaysia and Indonesia which both claimed that Fargo's proposal would infringe sovereignty rights and that the presence of marines in the Malacca Straits would draw more terrorists to the region (*Business Times*, 22 June 2004).³⁰⁸

In addition to military deployments, the US has initiated a series of measures to upgrade security at its ports. These measures include the introduction of security zones, Naval vessel protection zones, advance notice of arrival of ships and the publication of guidelines for port and vessel security. The Naval vessel protection zones inhibit a ship from sailing within 100 yards of a US Naval vessel in US waters and ships within 500 yards of a naval vessel must proceed at no-wake speed. This measure is undoubtedly in

³⁰⁸ It has been argued that Admiral Fargo's comments were taken out of context. However, his assertion that the "RMSI was still embryonic and that it was *mainly concerned* with sharing information rather than the deployment of US forces in the region [my italics]" (Bronson, 2005: 21), is hardly convincing in that it does not rule out the deployment of US forces.

response to the attack on the *USS Cole* and the threat of a similar strike in the aftermath of the 9/11 terrorist attacks. The advance notice of the arrival of a ship must be submitted 96 hours before the ship actually enters a US port and includes information on the port of embarkation and the destination of the vessel, complete biographical details of the crew members (including date of birth, nationality and passport number), a description of the cargo, and the vessel's name, registry and ownership details. Based on this information, the US Customs authority can determine whether or not to board the vessel for inspection (Roach, 2003: 354-361).³⁰⁹ Whilst the inclusion of the crew's biographical details has raised alarm in certain quarters (amongst seaman's unions, such as Numast, for example) that crews are being unfairly targeted, the inclusion of registry details may have a significant impact upon flags of convenience. Ships fly flags of convenience because they are cheaper and easier to acquire than those of major maritime shipping powers, such as the UK, Japan or the US. However, if vessels from a particular flag state are regularly targeted by US Customs and delayed for inspection at port, it may prove cheaper over the long-term to fly the flag of a recognised maritime power. Allowing flags of convenience to be slowly phased out in this way is one of the best means of securing international waterways against terrorism, as the registration of vessels would be tightened (Luft and Korin, 2004: 70; Boutilier in Raymond and Ho, 2005: 26).

The US has also introduced measures to secure transportation networks from the threat posed by maritime terrorism. Before 9/11, the tendency regarding securing transportation networks, primarily aviation networks, against international terrorism was reactive rather than proactive. International transport organizations tended to put prevention measures in place after a particular terrorist incident had occurred, such as infra-red devices or metal detectors, installed after the use of the suitcase bomb which exploded on Pan Am flight 103 in December 1988 over Lockerbie, Scotland (Hoffman, 1998: 18; Price, 2004: 330; Szyliowicz, 2004: 356). The measures put in place by the US since 9/11 have been far more robust, however, spanning the four security domains of: prevention, detection, response and recovery. Prevention entails the construction of

³⁰⁹ Ships carrying hazardous cargo, such as explosives, oxidizing cargo, poisonous material or radioactive material, must detail the name, amount and location in stowage on the ship (Roach, 2003: 356).

security mechanisms and systems which stop a terrorist event from occurring. Detection refers to the use of intelligence to disrupt terrorist attempts to stage an attack. Response involves minimising the human and structural damage caused by a terrorist incident. Finally, recovery concerns the physical rebuilding of infrastructure and psychological rehabilitation of human survivors after a terrorist incident (Price, 2004: 331). Perhaps the most significant development for enhancing the security of the US was the creation of the Department of Homeland Security, which amalgamated a number of key US Departments and Agencies in order to improve evaluation of and response to terrorist threats. These include the Coast Guard, the Customs and Border Patrol, the Immigration and Naturalization Services, Federal Bureau of Investigation (FBI), Central Intelligence Agency (CIA) and Drug Enforcement Agency (DEA) (Weeks, 2003: 18-19; Naikoukaiun, 2003: 26-27).

Of particular importance for Japan's response to maritime terrorism, however, were the steps initiated by the US in relation to the prevention and detection of terrorist maritime activity on an international scale. The events of 9/11, coupled with the terrorist attack on the *Limburg*, revealed to American policy makers the vulnerability of the US and global transport systems to attack. In order to strengthen US defences against terrorists carrying out an attack on US soil, either by transporting materials to be used in a terrorist attack by ship or by using a ship itself to perpetrate a terrorist strike, a series of international agreements and initiatives were drawn up. The US government prompted international organizations, such as the IMO, to formulate agreements like the International Ship and Port Facility Code (ISPS Code) and revisions to the Suppression of Unlawful Acts Against Ships (SUA) Treaty. Initiatives originating in Washington, however, intended to establish coalitions of willing states to respond to threats posed to the interstate society by terrorists (Beckman, 2005: 215). These initiatives included the Maritime Transportation Security Act of 2002 (MTSA), the Container Security Initiative (CSI), the Customs-Trade Partnership Against Terrorism (C-TPAT) and the Proliferation Security Initiative (PSI). Since 9/11, the US has been able to use its hegemonic position to pressure members of the interstate society to respond to maritime threats posed by terrorists (Naikoukaiun, 2003: 29). Japan has participated whole-

heartedly in these agreements and initiatives both as a staunch ally of the US and because Tokyo perceives the threat posed by global terrorism in common with the US.

6.3a Explaining Japan's Response to Maritime Terrorism

Prior to the events of 9/11, Japan was party to a number of initiatives and international agreements established to help secure the safety of the world's international Sea Lanes of Communication (SLOCs). These include CSCAP (Council for Security Cooperation in the Asia-Pacific) Memoranda 1, 4 and 5, which encourage states to join the 1982 United Nations Convention for the Law of the Sea (UNCLOS), advocate cooperation to secure SLOCs, such as maritime surveillance and search and rescue operations, as well as to fight maritime crime. Although the CSCAP documents had no legal force, they do provide evidence, in addition to UNCLOS and the SUA Treaty, that efforts to enhance maritime security were in effect before the terrorist strikes on New York and Washington (Song, 2003a: 451). Nevertheless, Japan's response to maritime terrorism has received a significant boost by joining the international agreements and initiatives proposed by the US since 9/11.

Several factors have encouraged the Japanese government to adopt firm measures in the fight against terrorism. These factors include the readiness of Prime Minister Koizumi to take resolute action, as witnessed by the Japanese government's response to the December 2001 spy ship incident, as discussed in Chapter 3, as well as the acceptance of a more robust Japanese military role by Southeast Asian states. However, prior experience with terrorism in the form of Aum Shinrikyo,³¹⁰ the humiliation of Japan's chequebook diplomacy after the 1991 Gulf War (whereby Japan offered to foot the bill of the campaign but failed to dispatch the SDF until after major hostilities had ended), threats to Japan's sea lanes by pirates, as detailed in the previous chapter, and the dangers of weapons' proliferation, particularly related to North Korea, have prompted the Koizumi government to develop its global security role (Midford, 2003: 329-330,

³¹⁰ The Aum Shinrikyo attack was mentioned in section 6.2b. For more information, see Hoffman, 1998.

337-341; Hughes 2004: 41-48).³¹¹ Such sentiments were echoed by Ishiba Shigeru, then Japan's Defence Minister, at the 2004 Shangri-La dialogue where he stated: "In today's world, where terrorist attacks and the act of war are more difficult to be distinguished, we should further contemplate on the possibility of utilizing military power for policing" (*Virtual Information Center*, 2004: 6). Hence, the diversity of threats posed by both terrorism and North Korea have conspired to change the position of the Japanese government vis-à-vis the SDF's security role.

The response of the Japanese government included the swift passage of the Anti-Terrorism Special Measures bill, which was passed on 29 October 2001,³¹² as well as grants of economic aid to both India and Pakistan to help them in the fight against terror, the donation of US\$10 million to the families of the victims of 9/11 and to facilitate the clean-up operation respectively. Of these, the Anti-Terrorism Special Measures bill, in enabling the dispatch of the SDF to the Arabian Sea to provide logistical support for coalition troops during the war to oust the Taliban in Afghanistan and the subsequent reconstruction of Afghanistan, has had the greatest ramifications for the development of Japan's global security role (Midford, 2003: 330-333). However, in terms of maritime security against terror, Japan's adoption of the revised SUA Treaty, the International Ship and Port Security Code (ISPS Code), as well as the Container Security Initiative (CSI), the Customs-Trade Partnership Against Terrorism (C-TPAT) and the Proliferation Security Initiative (PSI) agreements have been central.

³¹¹ Midford notes that a change in the security environment that Japan faces did not alter the opinions of the Japanese public regarding the dispatch of SDF troops to combat operations abroad (Midford, 2003: 340). Other scholars have emphasized, however, that the Taepodong missile launch by North Korea in 1998 has increased the Japanese public's perception of the threat of war (Agakimi, 2006: 4-5), as indicated in Chapter 3 of this thesis.

³¹² The Anti-Terrorism Special Measures Law (ATSMML) was passed after only three weeks and 32 hours of Diet debate, an unprecedented time for a security related bill to move through Parliament (Hughes, 2004: 15).

6.3b Maritime Agreements Prompted by the US

ISPS Code

In the aftermath of the 9/11 attacks, the US government proposed that the IMO dedicate its 212th meeting held in December 2002 to international maritime security. In response, the Intersessional Working Group on Maritime Security (ISWG) and the Maritime Security Council (MSC) determined to revise Chapter XI of the SOLAS treaty by devoting Chapter XI-2 to maritime security, and formulated the ISPS Code, which was put into force on 1 July 2004.³¹³ The ISPS Code contains articles and guidelines to strengthen ship and port security, establish domestic and international responsibilities and roles in ensuring maritime security, guarantee information exchange between the concerned authorities and to propose ways of appraising security.³¹⁴ The ISPS Code contains a number of provisions that are aimed at improving maritime security in the post-9/11 world. First, the 24 hour rule necessitates that 24 hours before a container is loaded on to a cargo vessel bound for a foreign state, a manifest of the cargo is sent electronically to the department, bureau or ministry responsible for screening in-bound cargoes. This information is then analysed and the possibility of a container being used to carry out a terrorist plot is assessed. To do this, current law enforcement information, the level of terrorist threat and a vessel's history are compared with the electronic manifest received. Second, ships that enter ports which are not compliant with the ISPS Code are labelled 'infected' and thereby subject to inspection and delays when the ship

³¹³ The deadline for shipping companies to detail security plans for cargo vessels and international passenger ships above 500 tons was 1 July 2004 (*Naikoukaiun*, 2003: 27). APEC countries, in conjunction with the private sector, introduced the Secure Trade in the APEC Region (STAR) initiative in October 2002 in order to hinder financial transactions by terrorists and safeguard key trade facilities. The STAR initiative essentially amounted to APEC's acceptance of the ISPS Code and the deadlines set within the ISPS Code (Wibisono, *The Jakarta Post*, 15 September 2003: 1; Song, 2003a: 453-454). The Organization of Economic Cooperation and Development has estimated the cost of implementing the ISPS Code to be over two billion US dollars for shipping worldwide (Wibisono, *The Jakarta Post*, 15 September 2003: 1).

³¹⁴ Such measures include a detailed security plan for both ports and ships, training and exercises to maintain and improve the knowledge and abilities of concerned personnel, to record security information and to have these measures verified by a national authority (MLIT in the case of Japan, see <http://www.mlit.go.jp/seisakutokatsu/solas/e-index.html>, accessed 7 February 2006; Uyama, 2004: 67-68). Ports are also developing further facilities in response to the demands of the ISPS Code. The port of Manila in the Philippines, for example, has established a hazardous cargo control area (HCCA) to improve its security (Labita, *Business Times*, 1 September 2004).

leaves for an ISPS-compliant port. (*Marine Log*, October 2003: 32-34; *Marine Log*, July 2004: 11-13).

The ISPS Code also details three security levels (level three indicating the highest level of threat) and specifies progressive steps to be taken at each level. The security levels are based upon the reliability of security information, conclusive evidence of a specific threat and the probability of injury in the event of an incident. Shipping companies must designate security personnel to develop and instigate security plans aboard their ships. These plans form the body of an International Ship Security Certificate, which must be carried by all ships and be authorized by a national body. Responsibility for the security of any given vessel must also be clearly defined. The Code demands that ships, ports and offshore facilities possess detailed security plans and conduct vulnerability assessments concerning possible terrorist attacks. Automatic Identification Systems (AIS) are attached to larger ocean-going vessels so that their movements can be monitored in real-time.³¹⁵ The International Labour Organization (ILO) has also fingerprinted and issued security cards to over one million mariners worldwide since 9/11 (Weeks, 2003: 18). States are entitled under the ISPS Code to deny entry to any vessel that does not satisfy the details of the ISPS Code and may even take forceful measures against ships if a ship is deemed an urgent security threat. As Japan is aware of the disruption that a maritime terrorist incident could cause to international sea lanes, the Ministry of Land Infrastructure and Transport has organized project teams to promote measures for the adoption of the ISPS Code (Jesus, 2003: 371, 389-390; Song, 2003a: 461-462; Hesse, 2003: 331-336; *Ninushi and Yuso*, 2004: 15; Uyama, 2004: 66-70). By focussing on improving the security of ships and ports the ISPS Code aims to

³¹⁵ Ships in the APEC region installed AIS equipment by December 2004 (Wibisono, *The Jakarta Post*, 15 September 2003: 1). The deadline for the installation of AIS systems and security inspections for ships over 50,000 tons was 1 July 2004. For ships between 300 and 50,000 tons, security inspections had to be conducted by 1 July 2004 and AIS systems adopted by 31 December 2004 in accordance with the amendments to the SOLAS treaty (*Naikoukaiun*, 2003: 28-29). AIS cost between US\$5,000 and US\$10,000 per ship and inform coast authorities of the name, course, speed, destination and cargo of foreign ships. However, AIS can be switched on and off by crew members or even transferred to a different ship, indicating that AIS alone cannot prevent a maritime terrorist attack. Furthermore, by the end of 2004, only ten of the 36 major US ports possessed the equipment to monitor AIS transmissions, which use VHF radiowaves on two frequencies and are liable to interference. Finally, Ebata argues that terrorists are more likely to use smaller vessels than larger ones equipped with AIS in a terrorist attack (Ebata, 2005: 44-45).

deter maritime terrorist attacks and prevent shipments of terrorist material by sea. However, Richard Davey, a security consultant to MI5 (the UK's domestic intelligence agency), believes that the ISPS Code will also identify what the terrorist threats to global shipping are by illuminating areas where security is lax both on board ships and in port (*Business Times*, 30 June 2004).

Yet, when, on 1 July 2004, the ISPS Code came into force, 14 percent of ships and 31 percent of ports remained uncertified after the deadline, leading to fears that international trade would suffer from delays (Meade, *Fairplay*, 1 July 2004: 6; http://www.iccwbo.org/ccs/news_archives/2004/ISPS.asp, accessed 24 September 2004). This was in spite of the efforts of shipping companies, state authorities and the IMO. In the first two weeks after the ISPS Code was implemented worldwide, 45 ships were detained and eight were denied entry to US ports (*Ninushi and Yuso*, 2004: 15; *Business Times*, 8 July 2004). Nonetheless, by 22 September 2004, 89.5 percent of ports and 90 percent of ships had been certified, proving the significance of the ISPS Code for international trade (http://www.iccwbo.org/ccs/news_archives/2004/ISPS.asp, accessed 24 September 2004).

That said, the shipping industry noted that the ISPS Code had had no impact upon the increasing instances of piracy in ports. Hence, in a number of ports worldwide, security had not been significantly improved. Shipowners were also anxious that incorrect or fake identification was being presented to their crews in order to board and undertake inspections of the ship and that criminal organizations could, potentially, use such identification to enter and rob a berthed vessel. Fears have also been voiced that the ISPS Code unnecessarily targets ships crews. Both Peter Raes, managing director of TECTO³¹⁶ and John Bainbridge of the International Transport Workers Federation (ITF)³¹⁷ have argued that a concern for maritime terrorism has led to instances whereby ship's crews have been denied permission to go ashore simply because a crew member has an Islamic sounding name or because the ship has stowaways on board. This unfair

³¹⁶ TECTO is a European ship management company. Its homepage is:

<http://www.tecto.be/pages/home.asp?Page=1&LanguageCode=D>, accessed 8 February, 2006.

³¹⁷ See <http://www.tfglobal.org/index.cfm>, accessed on 7 February 2006, for more information on the International Transport Workers Federation.

treatment marginalizes seafarers whose expertise should be harnessed in the fight against terrorism (International Chamber of Commerce, Commercial Crime Services, http://www.iccwbo.org/css/news_archives/2004/CCS_conference.asp, accessed 30 June 2004).³¹⁸ Furthermore, cases where ships with personnel of certain nationalities were kept under armed guard at the expense of the vessel, cargoes being destroyed without sufficient reason, as well as unlawful threats by port authorities to detain ships were all recorded by the shipping industry since the implementation of the ISPS Code (Wilson, *Fairplay*, 28 October 2004: 16-17). A report by a UK-based security firm, Aegis Defence Services, argued that a committed hijacking attempt on a tanker or other high value target would probably succeed in spite of the ISPS Code (Burton and Huband, *Financial Times*, 1 July 2004: 7). Whilst it is clear that the ISPS Code alone cannot combat the myriad of possibilities for maritime terrorism that exist, the code does raise security awareness in the maritime industry that may well hinder or prevent some terrorist acts (*The Jakarta Post*, 29 July 2004: 6).

Japan adopted the ISPS Code, publicising its Maritime Security Law in April 2004.³¹⁹ The ISPS Code affects 128 ports in Japan, all of which have port security plans and defence measures. Furthermore, all Japanese ships over 500 tons engaging in the international transport of goods or people must possess a Ship Security Plan, a Ship Security Alert System and an International Ship Security Certificate issued by the Japanese Maritime Association. A Ship Security Officer (SSO) must be on board the ship and a Company Security Officer must be designated as in charge of the security of a company's fleet. Ship Security Officers must undertake a three day training course at a Japanese University of seamanship, or if the SSO is a foreigner, the officer may take a course in the officer's own country providing a certificate is issued by the Ministry of Transportation of the country's flag the ship flies (Song, 2003a: 464-466; *Ninushi and*

³¹⁸ Transport security cards for seafarers established by ISPS Code and MTSA help customs authorities analyze information concerning crews entering their country (*Naikoukaiun*, 2003: 28).

³¹⁹ The readiness of the Japanese government to accept the ISPS Code is evidenced by the fact that by the end of May 2002, the Japanese Ministry of Land, Infrastructure and Transport was already in the process of examining how to fit Automatic Identification Systems (AIS) to Japanese ships, develop ship security plans and train officers, secure ports, ascertain the biographical data of crews in a manner that could not be counterfeited, safeguard containers and equip ships with alarm devices (<http://www.mlit.go.jp/kisha/kisha02/10/100527.html>, accessed on 21 October 2003).

Yuso, 2004: 15-16). Ships intending to dock at Japanese ports must inform the Japan Coast Guard, which can carry out on-board searches and detain vessels deemed to be a threat to Japanese security (<http://www.mlit.go.jp/seisakutokatsu/solas/e-index2.html>, accessed on 24 March 2005).

There were some delays in establishing the ISPS Code in Japan's national law, in spite of the passage of the related bill through the national Diet.³²⁰ As a result, the applications of some Japanese companies for certification were held up. Furthermore, Japanese companies referred their security plans to consulting firms which had little experience of security-related matters. The recommendations of these consulting firms focussed on the ship's weak points while at sea, in port or at anchor, as well as advising the introduction of Automatic Identification Systems (AIS) on board (*Ninushi and Yuso*, 2004: 17). As a result, whilst certification remained high amongst Japanese shippers, an enhanced maritime security awareness had not been established in the Japanese shipping industry (Meade, *Fairplay*, 1 July 2004: 7).³²¹

It is believed that the ISPS Code will develop over time, even to the point where ships' designs will incorporate security features (*Ninushi and Yuso*, 2004: 17). Compared with the US post-9/11 tendency to act unilaterally and without the authorization of international organizations, the rapid implementation of the multilateral ISPS Code indicates the importance of the interstate society in fighting terrorism (Watson, *Fairplay*, 1 July 2004: 17).³²² Nevertheless, whilst the ISPS Code is an important first step, Captain Mukundan, Director of the IMB, asserts that the ISPS Code alone cannot combat the multiple security threats the shipping industry faces. Instead, Mukundan stresses the need to further develop the security capacities of ships' crews and port

³²⁰ Delays in implementing the ISPS Code were not uncommon and mostly foreseen, however. One month before the deadline for implementing the ISPS Code, only 9 percent of the 20,722 ships requiring certification had been certified (though 57 percent had tendered their security plans and were awaiting certification) and 5.4 percent of ports' security plans had been authenticated (http://www.iccwbo.org/home/news_archives/2004/ISPS.asp, accessed 1 June 2004).

³²¹ The case of Indonesia is far more troubling, however, as it is believed that it will take until 2007 before the ISPS Code is fully implemented there (Meade, *Fairplay*, 1 July 2004: 7).

³²² Though the ISPS Code was implemented rapidly, much of the code, especially as concerns enhancing port and ship security, has its origins in prior agreements, such as the Measures to Prevent Unlawful Acts Against Passengers and Crew on Board Ships (MSC/Circ.443), which were approved in the aftermath of the *Achille Lauro* incident (Hesse, 2003: 328).

authorities in order to combat maritime crime and terror (http://www.iccwbo.org/ccs/news_archives/2004/ISPS.asp, accessed 24 September 2004).

SUA

The SUA Convention was initially established in the aftermath of the *Achille Lauro* incident to create international extradition and prosecution laws in order to facilitate the capture and trial of maritime terrorists. The 9/11 attacks on New York and Washington highlighted the fact that certain groups and individuals were willing to give their lives for their cause through the execution of a destructive act. The IMO therefore endeavoured to revise the SUA Convention in line with the development of International Islamic Terrorism. The primary area for revision has been to enlarge the juridical scope of the treaty to allow national police authorities to board, search, seize and detain suspect vessels in any maritime territory in the world. The SUA Convention may be further broadened to include acts that aim to destroy the marine environment, that target crew or passengers exclusively and that use a vessel as a weapon (Jesus, 2003: 387-398; Richardson, 2004: 100).³²³ Additional crimes have also been added to the original list of offences in the SUA Treaty. These include the presence of WMD related materials onboard ships. On 14 October 2005, the Ministry of Foreign Affairs announced that Japan would adopt the protocol on the SUA amendments, specifically noting the Treaty's potential impact on curbing WMD proliferation and acts of maritime terrorism (<http://www.mofa.go.jp/announce/announce/2005/10/1014-3.html>, accessed 9 February 2006). Although the SUA Convention remains to be ratified by all the ASEAN states with the exception of Vietnam (Song, 2003a: 467-468), by expanding the scope of national authorities to interdict vessels suspected of carrying WMD, the revised SUA Treaty has begun to assuage the fears of the interstate society regarding the use of WMD by terrorists, as well as providing a solid legal basis upon which to establish the PSI, one of the key maritime initiatives introduced by the US.

³²³ See also, http://www.un.org/Depts/los/consultative_process/documents/no5_imo.pdf, accessed 9 February 2006.

6.3c Maritime Initiatives Introduced by the US

The MTSA, CSI and C-TPAT

The Maritime Transportation Security Act (MTSA)³²⁴ has been effective since 25 November 2002 and works together with the ISPS Code. MTSA enables the US Coast Guard to deny entry of foreign vessels to US ports, should those vessels have originated from a port deemed susceptible to terrorist infiltration. Furthermore, the bill calls for the creation of identification and screening systems to ensure the safety of cargo transported to the US (Weeks, 2003: 18; *Naikoukaiun*, 2003: 28; Carey, C.E. 2004: 295-297). The cost of implementing the security systems specified by the MTSA have mostly been borne by the maritime industry (Price, 2004: 340-341), raising fears that security measures will be compromised by what the industry can afford to pay.³²⁵ However, the passage of the MTSA through Congress means that shipping firms are now liable to compensate victims in the event of a terrorist incident involving one of their ships, if it is deemed that their security measures were insufficient or incorrectly implemented. Whilst it might be unreasonable to expect shipping companies to prepare for every possible threat to their ships, making companies liable for damages does create a significant incentive for the private sector to ensure that security plans are put into place (Carey, C.E. 2004: 307-313).

Prior to MTSA, the CSI was initiated in January 2002 and allows US customs officials and the US Coast Guard to inspect and certify containers at 25 ports worldwide (20 of

³²⁴ The MTSA is the amalgamation, in June 2002, of Senator Hollings' Bill concerning port and maritime transportation safety, passed in 2001, and Congressman Young's 2002 maritime transportation against terrorism bill (*Naikoukaiun*, 2003: 26).

³²⁵ The same is largely true of security devices. For example, VIP systems of Houston have developed a remote control device that can monitor ships by video in real time and stop and disable a ship equipped with the VIP Ship Security System that has been sabotaged by terrorists. The VIP Ship Security System costs between US\$100,000 and US\$200,000 for a tanker, which, considering the cost of running a tanker as well as its cargo, is described by the company as minimal (Hensel, *Houston Chronicle*, 13 October 2004: D1). However, shippers see this as an additional expenditure to be added to the running costs of their vessels. For some companies, such devices are luxuries.

these ports account for 70 percent of all container cargo to the US). The aim of the US government is to increase the number of ports protected by CSI to between 40-50 (Watson, *Fairplay*, 9 September 2004: 17). High risk containers are assessed and screened by the inspector on-site in collaboration with the National Targeting Centre, using a variety of technologies, information databases and data from US intelligence agencies, before they are shipped to the US.³²⁶ The US perceived the need to develop the CSI as no international legal measure existed to counter the possibility of terrorists transporting materials by container ships, and inspections of containers after they had arrived in the US could be too late to prevent a terrorist event at a US port (Romero, 2003: 599; Roach, 2003: 344-345). Prior to the initiation of the CSI, security regarding the six million containers entering US ports every year, representing half the value of US imported trade, was almost non-existent (Roach, 2003: 342).

The CSI agreement deters terrorists from targeting major international ports by developing security at these ports. It is anticipated that CSI ports will be able to maintain levels of global trade even in the event of a terrorist attack against a port outside the CSI. The bilateral CSI pacts may expedite global trade by removing the need to screen containers on arrival at US ports by instead inspecting cargoes during the two or three day period that containers await loading on to cargo ships in foreign ports (Roach, 2003: 353-354). Ultimately, the US Customs intends to fit all US-bound containers with identification tags, anti-tampering devices and GPS equipment to further inhibit the use of containers to transport terrorist materials and resources (Roach, 2003: 345-346; Weeks, 2003: 18-19; Price, 2004: 337; Szyliowicz, 2004: 358-359).³²⁷ Such measures promote America's global Maritime Domain Awareness (MDA) or the ability of US Customs and coast guard officials to gather information, conduct surveillance, intercept and detain suspect vessels (Garrett,

³²⁶ Information employed by the National Targeting Centre to detect suspect cargo includes the latest intelligence on terrorist activity and technology used by US customs officials, as part of the CSI agreement, comprise large-scale x-ray, gamma ray and radiation detection equipment that can scan a container for illegal goods, radioactive materials and even people, all in under 90 seconds. The CSI should not therefore inhibit trade (Roach, 2003: 345).

³²⁷ The US Customs Services are developing electronic seals for containers that will indicate whether a container has been interfered with during its voyage. Such seals may incorporate motion, light or heat detectors to make them 'smarter' in the fight against terrorism (Roach, 2003: 345).

http://www.sof.or.jp/topics/2003_e/usecg.html#top, accessed 19 August 2004). Whilst it is too early to anticipate the impact of the bilateral CSI, US designs to expand CSI agreements indicate that maritime security threats to US economic interests are significant enough to entail further infringements upon foreign sovereign states through inspections of containerised trade (Romero, 2003: 605; Watson, *Fairplay*, 11 November 2004: 10-11).

The Customs-Trade Partnership Against Terrorism (C-TPAT) was created in conjunction with the CSI as a means of encouraging companies involved in the shipping trade to strengthen their security measures. The number of companies involved in C-TPAT increased from seven in 2001 to over 7,000 by the third anniversary of 9/11 in 2004. Action taken by these companies to improve security is verified by customs, enabling the companies' goods to pass through custom's inspection processes faster, as well as allowing the companies to benefit from lower insurance rates and increased security for their cargoes (Watson, *Fairplay*, 9 September 2004: 17). Nonetheless, the C-TPAT agreement does little to prevent shipping agents outside the US taking bribes to place terrorist related materials in US-bound containers (Price, 2004: 338). The key to encouraging states and companies to be involved in both the CSI and C-TPAT initiatives lies in the preferential treatment a cargo will receive if the state is a CSI member and the company a C-TPAT participant (Richardson, 2004: 81). Hence, the US, as the world's largest economic player, has deployed its economic muscle to encourage participation in these two maritime security schemes, knowing that countries and businesses cannot afford the potential delays should they not belong to CSI or C-TPAT. However, in doing so, the US has also acknowledged the need to work on a multilateral basis within the interstate society in order to protect the US homeland from terrorist attack (Henmi, 2005: 152).

The four largest Japanese ports of Yokohama, Tokyo, Nagoya and Kobe all entered into the CSI agreement on 26 September 2002, receiving US Customs and Border Protection (CBP) officials to inspect US-bound cargoes. These four ports represent 8 percent of the total volume of containers coming into the US. In return, Japanese Customs officials have been dispatched to the US to screen Japan-bound containers (Roach, 2003: 346,

349; *Marine Log*, July 2004: 13).³²⁸ APEC countries, including Japan, have made efforts to secure trade in the region by introducing electronic manifests for containers in line with the Container Security Regime (Wibisono, *The Jakarta Post*, 15 September 2003: 1; Song, 2003a: 474-475). Moreover, Japan aims to introduce electronic seals, and container tracking devices, as well as conduct checks on empty containers in line with the revised SOLAS Treaty. Such measures are intended to prevent the illegal transportation of WMD or tampering with containers on route (*Naikoukaiun*, 2003: 28). Nevertheless, the Japanese government has raised concerns with the US government that Japanese companies still face delays in importing their goods into the US, despite belonging to C-TPAT (<http://www.state.gov/p/eap/rls/rpt/49017.htm>, accessed 9 February 2006).³²⁹

PSI

The Proliferation Security Initiative was established to counter the perceived threat posed by the illegal traffic of WMD by land, sea or air. It evolved in the aftermath of the 9/11 terrorist attacks and following the failure to seize a cargo of Scud missiles, warheads and missile fuel from an unflagged North Korean ship, the *So San*, bound for Yemen in December 2002. As the purchase of ballistic missiles by Yemen did not violate international law, the ship was released on condition of a verbal agreement made by the Yemeni President Ali Abdallah Saleh to US Vice President Dick Cheney that no more missiles would be purchased from North Korea (Joseph, 2004: 7; Richardson, 2004: 106-107).³³⁰

³²⁸ The Japanese Customs and Tariff Bureau has determined which US ports to station its officials at (Roach, 2003: 349). The World Customs Organization is also discussing a similar programme to the CSI agreement to check container cargoes before they leave their port of embarkation regardless of their final destination (Watson, *Fairplay*, 9 September 2004: 17).

³²⁹ These complaints have been made despite the introduction of the 'Green Line Status' for C-TPAT members at the end of 2005. The 'Green Line Status' allows cargoes from C-TPAT companies to freely enter the US without undergoing inspection providing the containers have sufficient security seals and sensors, are shipped from a CSI port and arrive with documentation assuring that the container has not been tampered with (*Fairplay*, 20 January 2005: 13).

³³⁰ Yemeni support for the US war in Iraq was alleged to have been the deciding factor in the agreement, however. Despite the establishment of PSI, were a similar incident to that of the *So San* involving

After the *So San* incident the need to intercept ships transporting WMD on international Sea Lanes of Communication became apparent. In response, US President Bush announced the creation of the PSI on 31 May 2003. States that are party to the agreement thereby mobilised their navies to intercept illegal shipments of WMD. PSI involves frequent meetings, intelligence sharing, as well as conducting regular stop-and-search exercises among members. The Statement of Interdiction Principles underlines the approach of PSI states, which is to board and search ships suspected of carrying WMD. Such searches are permissible if a suspect ship has violated any national or international laws, including customs violations or failure to fly a national flag. To date, the greatest publicised success of the PSI agreement was the detention of a vessel transporting uranium centrifuges to Libya in October 2003 (Joseph, 2004: 6-8).

Because of the speed with which the PSI arrangement was put into place, there are a number of deficiencies with the initiative. First, a suspect ship on the high seas must have broken an international or national law in order for a naval ship to inspect it; otherwise the naval vessel would be violating the right of 'innocent passage' for ships.³³¹ As a result, naval ships have tended to inspect only ships docked at their own national ports. Second, PSI focuses primarily on the threats posed by both Iran and North Korea, whilst largely ignoring the potential of states like Pakistan to ship WMD, as occurred through A.Q. Khan's trading network. Third, the informal nature of the PSI agreement means that requests made by states within the PSI group to inspect a ship in their waters may still be turned down. Fourth, the absence of South Korea and China from the PSI group weakens the agreement by failing to grant PSI a wider acceptability amongst the interstate society. Fifth, it is difficult to assess the success of PSI as officials involved in the agreement remain tight-lipped as to any operations that have been undertaken (Joseph, 2004: 8-13; Yamada interview, 10 November 2004; Richardson, 2004: 104-105). Sixth, the definitions permitting interdictions are

ballistic missiles to occur again, the shipment would still be allowed to proceed according to international law (Joseph, 2004: 7).

³³¹ Under the revised SUA Treaty the presence of WMD aboard a vessel would provide legal grounds for boarding. However, this is difficult to prove and would be complicated if the suspect vessel was not in waters belonging to a SUA Treaty state.

contentious. The terms ‘delivery systems’ and ‘related materials’ could refer to dual use materials that can be legally traded according to UNCLOS.³³² Having ‘good cause’ or to ‘reasonably suspect’ a ship of transporting WMD to or from a country of ‘proliferation concern’ depends on the subjective decision of a PSI state. Seventh, by indicating additional circumstances under which a vessel on the high seas may be boarded, the PSI is undermining UNCLOS which permits interdiction “if the country under whose flag the ship is sailing gives its permission; if the ship is stateless; if it is a pirate vessel; if it is transporting slaves; or if it is being used for unauthorised broadcasting” (Valencia, 2005: 38-44). Finally, US Secretary of Defence Donald Rumsfeld has indicated that the lack of cooperation by Southeast Asian states with the PSI measures leaves the world’s busiest sea-lane, the Malacca Straits, vulnerable to a sea-borne attack (*Virtual Information Center*, 2004: 24).

The future success of the PSI agreement depends upon whether it becomes more institutionalized and has greater international acceptance through the expansion of the initiative to include states that are not currently PSI members. However, high levels of institutionalization may prove difficult in Northeast Asia, due to South Korea’s and China’s position in the six-party talks concerning North Korea’s WMD programme (Richardson, 2004: 104-105),³³³ as well as tensions between Japan and China regarding disputed territories and Japan’s militaristic past. Hopes that the PSI will expand beyond its initial membership have increased following Russia’s adoption of the initiative, in spite of tensions between Japan and Russia vis-à-vis the Northern Territories (*The Economist*, 30 October 2004: 65-66).³³⁴ Nonetheless, in terms of international maritime security, the ISPS Code has been far more revolutionary.

³³² The seizures of the cargo of aluminium pipes from the *Ville de Virgo* and phosphorus pentasulphide from the *Be Gae Bong* are two cases where dual use materials were impounded under the PSI. These examples were detailed in Chapter 3.

³³³ Richardson notes that while China desires a nuclear-free North Korea, it does not want to antagonise Pyongyang by participating in what North Korea perceives as a maritime blockade (Richardson, 2004: 104-105).

³³⁴ For more information on Japan’s dispute with Russia over the Northern Territories, see <http://www.mofa.go.jp/region/europe/russia/territory/index.html>, accessed 8 February 2006.

From a Japanese perspective, the PSI primarily targets illicit weapons shipments from North Korea. In this regard, the Japanese government has taken a number of steps in line with its PSI obligations. North Korea allegedly receives 90 percent of its technologically advanced missile parts from Japan via illegal shipments on a North Korean cargo ship, the *Mangyonbon*. The same ship was employed to transport unlawful quantities of Japanese Yen into North Korea from the port of Niigata. In 2004 alone, an estimated ¥190 million was conveyed to Wonsan in North Korea. Japanese citizens movements, enraged by the abduction issue,³³⁵ pressured the Japanese government to pass two bills regulating Japanese money entering North Korea and preventing specific North Korean ships from docking at Japanese ports. The adoption of the PSI has enabled Japanese authorities to conduct more intrusive inspections and surveillance of North Korean vessels (Richardson, 2004: 103; Takano, 2005: 118-121). The Japanese police arrested five businessmen involved in a deal to ship a massive trailer to North Korea. It was believed that the trailer could be employed to carry a ballistic missile launcher.³³⁶ The Japanese government has also endeavoured to further non-proliferation initiatives in Asia. For example, at a meeting held in Tokyo, the United States, China, South Korea, Australia, Singapore, Thailand, Hong Kong, and Japan all agreed to impose more robust controls over the export of WMD related technology and materials (Richardson, 2004: 102-103).

Nevertheless, the Japanese government is concerned that inspections on the high seas could infringe upon the sovereignty of other states and has been far less enthusiastic about expanding the mandate of the JCG or the MSDF to board suspect vessels on the high seas. In the 2004 “Team Samurai” PSI exercise held in Sagami Bay, the participation of the JCG was limited to tracking and pursuing suspect vessels (Takano, 2005: 118-121).³³⁷ Valencia notes that there is disagreement between MOFA and the

³³⁵ See Chapter 4 on North Korean spy ships for more on the abduction of Japanese citizens to North Korea.

³³⁶ On 10 August 2006, Japanese police arrested Kim Young Gun the former president of a trading company in Tokyo for exporting a freeze dryer to North Korea in 2002 that could have been used in the production of biological weapons (<http://search.japantimes.co.jp/print/nn20060811a1.html>, accessed 11 August 2006). This case demonstrates the Japanese authorities’ determination to enforce export controls related to WMD trade with North Korea.

³³⁷ See also, <http://www.mofa.go.jp/policy/other/bluebook/2004/chap3-a.pdf>, accessed 9 February 2006.

JDA as to the scope of the PSI. Whereas MOFA sees the PSI as an adjunct to existing export control agreements, the JDA perceives the PSI to have a much broader role in the security of Japan. Japan's reluctance to interdict vessels on the high seas under the PSI may change following the participation of the *Shirane*, an MSDF destroyer, and two P3-C patrol planes in a PSI exercise in August 2005 in Singapore (Valencia, 2005: 61-63). Furthermore, the firing of missiles by North Korea into the Japan Sea on 5 July 2006 may prompt Japan to take a tougher stance on North Korean WMD possession and proliferation through the PSI.

6.4 Conclusion

The US has taken action in the maritime domain to enhance the security of international trade and the defence of the US homeland in the aftermath of 9/11. Beckman postulates that the US response has been 'two-pronged', firstly encouraging the IMO to fortify international maritime law (the ISPS Code and SUA Treaty, for example) and secondly by fostering 'coalitions of the willing' that target WMD proliferation (the *raison d'être* of the PSI) or the use of vessels to carry out a terrorist attack (the rationale behind the CSI and C-TPAT) (Beckman, 2005: 215). These initiatives can all be located within Buzan's conception of the interstate society. The ISPS Code and SUA Treaty reinforce international law to protect the security of the market, whilst the 'coalitions of the willing' are examples of Great Power or hegemonic management and diplomacy, designed to rectify deficiencies in international law without violating sovereign boundaries.³³⁸

Such initiatives are designed to enhance order in the interstate society (as discussed in Section 2.6b 'Order and/or Justice'). However, in the case of the PSI, a lack of concrete definitions have led to double standards in determining which states are WMD 'proliferators', and a lack of transparency has led to fears that UNCLOS may be

³³⁸ For more on Buzan's separation of the interstate society into institutions, which include Great Power management, sovereignty, boundaries, diplomacy and the market, among others, see Buzan, 2004a: 161-204.

undermined when vessels are interdicted under the PSI (Valencia, 2005: 39-45, 73-74). The pursuit of order by Great Powers fighting terrorism can erode international confidence in international law or, in English School terminology, justice. A failure to balance justice with order weakens the cohesion of the interstate society as a whole, as states perceive self-help measures as a better means of achieving their interests than international cooperation and norms creating an increasingly pluralist interstate society.

As maritime terror poses the greatest economic threat to Japan in terms of the damage a successful attack on international SLOCs could have on Japan's trade, not to mention concerns that Japanese ports themselves might be attacked, the Japanese government has accepted US proposals to uphold maritime order. Through the PSI, CSI and C-TPAT agreements, Japan has sought to pre-empt threats stemming from the transportation of terrorist weapons and equipment, with specific focus on the traffic of WMD. The Japanese government's adoption of the ISPS Code improves the security of vessels and ports against potential terrorist attacks.³³⁹ These agreements have primarily targeted International Islamic Terrorists (infidels) and WMD proliferating states (barbarians), in the case of the PSI.

Maritime violence perpetrated by Ethno Nationalist Groups (barbarians), which has posed a more frequent threat to Japanese shipping,³⁴⁰ has been tackled through enhanced anti-piracy patrols and diplomatic initiatives, such as those encouraged by Japan that have resulted in a peace process for the Aceh region. The ISPS Code also addresses the problem of Ethno Nationalist maritime violence by strengthening vessels against attack. The interstate society's divergent responses to the maritime threats posed by International Islamic Terrorists and Ethno Nationalist Movements thereby justifies the adoption of the infidel and barbarian labels, rather than defining all political violence under the terrorism banner.

³³⁹ Yamada notes, however, that an attack similar to that on the *USS Cole* or *Limburg* involving a speed boat laden with explosives is likely to succeed in spite of the ISPS Code which buttresses the security of certified vessels (Yamada interview, 10 November 2004).

³⁴⁰ As section 5.5 of the previous chapter indicated, GAM separatists have allegedly been involved in numerous attacks against ships in the Malacca Straits, including the hijacking of three crew members of the *Idaten*, a Japanese tugboat.

Yet, the appellation the 'war on terror' fails to take this distinction between barbarians and infidels into account. The advantage of this for the Great Powers in the interstate society is that they can define their enemy at will. Examples include those noted in the examination of the PSI above or in the designation by the US of Hamas as a terrorist group even after the organization became the dominant political party in the Palestinian parliament by means of a democratic election. However, categorizing all maritime violence under the label of terrorism encourages different politically violent groups to identify their causes as being similar and network their resources and capabilities. Isolating the organizations and movements which can be negotiated with (barbarians), from those which refuse to bargain (infidels), weakens the infidel threat. To do so requires that states in the international system simultaneously mobilise both hard (military) and soft (cultural) power to eradicate the infidels on the one hand whilst neutralising the support for infidel organizations on the other (Burke, 2004: 26).

As Young and Valencia suggest, state strategies in the aftermath of 9/11 that have merely targeted terrorist finances and leadership may only be effective as a short-term measure. Unless complex questions concerning religion, ideology, sovereignty and foreign policy are addressed, the maritime terrorist threat in Southeast Asia will continue to grow. Long-term solutions therefore require the establishment of indigenous maritime enforcement and surveillance capabilities, as well as the creation of a political environment in which religious and ideological positions and concerns can be voiced (Young and Valencia, 2003: 281). Maritime expert Brian Jenkins has noted, "There are an inexhaustible number of young people willing to kill and willing to die, and there have to be answers beyond killing them" (Jenkins, *Fairplay*, 19 August 2004: 31). Such an approach to treating maritime terrorism could be theoretically understood in terms of the Copenhagen School's conception of 'human security'. From the standpoint of the English School, this focus on 'human security' and terrorism in the maritime domain entails examining the position of transnational and human actors in the transnational and interhuman societies that Buzan identifies. By doing so, the concerns of these actors can be addressed by balancing order in the interstate society with justice. In the case of maritime terrorism, greater justice can be delivered through Buzan's primary

institutions in the interstate society, principally equality of people, nationalism, market and environmental stewardship institutions.

A 'human security' response to maritime terrorism in Southeast Asia necessarily centres around the political and economic situation in Indonesia and the Philippines. Instability in both these states has provided numerous terrorist groups with a base from which to recruit and conduct sea-borne operations and is the primary cause of many of the terrorist instances that have occurred in Southeast Asian waters. Managing the health of Indonesian and Filipino democracies is therefore the key to confronting the problem of maritime crime and terrorism in Southeast Asia (Huxley, 2002: 89-91; Rivera, 2005: 127-133).

It is anticipated that by 2020 the volume of maritime trade will be double the amount of maritime trade in 2004.³⁴¹ As the global economy becomes increasingly reliant upon goods shipped by sea, so it will be easier for terrorists to inflict ever greater damage upon the international economy by targeting maritime transport routes and major ports (Weeks, 2003: 17). Maritime targets will therefore become progressively attractive to terrorists who intend to harm or threaten the global economy in order to achieve their political goals (Szyliowicz, 2004: 353). In this environment, Japan can safeguard its maritime trade and the lives of its seafarers in the face of international terrorism by balancing order with justice in the interstate society. Japan can achieve this by elaborating strategies to end ethno-nationalist conflict, such as that in the Aceh region, as well as maintaining a continued emphasis on maritime patrols.

³⁴¹ In 2004, there were approximately 4,000 ports and 46,000 vessels engaged in the global maritime transport system (Weeks, 2003: 17).

7. Conclusion

7.1 Japan's Approach to Maritime Security Issues – Hypotheses and Theoretical Framework

Why is maritime security important for Japan?

As an island nation, Japan must guard its maritime territory against a myriad of threats which include intrusions by foreign vessels, illegal imports and migrants, the transportation of WMD, as well as violations of Japanese law. Equally, Japan must look beyond its EEZ to protect the passage of trade to and from the island nation from pirates and separatists who seek economic enrichment at Japan's expense and terrorists who aim to disrupt global trade in the name of jihad. The Malacca Straits, through which one third of global trade and 80 percent of Japan's oil shipments are transported annually, lies at the heart of Japan's maritime security (*Asahi Shimbun*, 15 March 2005: 39; Graham, 2006: 25-27). An accident resulting from a piratical attack or the intentional destruction of a vessel by a terrorist group to block the Malacca Straits or wreck a major international port would have serious repercussions upon the global economy (Richardson, 2004: 2-4, 38-39). Furthermore, the Japanese shipping industry has experienced economic loss and Japanese crews have endured undue suffering at the hands of pirates in Southeast Asia. The Japanese government has been driven as much by Japan's economic and energy interests, as it has by a desire to safeguard the lives and property of its seafaring community.

This study has examined Southeast Asian piracy and maritime terrorism; two of the major maritime security threats to Japan, as well as Japan's response to the North Korean spy ship incursions in March 1999 and December 2001. The scope, impact and the reasons behind the Japanese response to these three maritime security issues has been detailed. In doing so, this thesis has demonstrated that Japan's response to the maritime security issues examined has not only been conditioned by the constraints of the interstate society, as defined in Chapter 2, but also that Japan has purposefully

sought to enrich the interstate society by addressing these maritime security issues. That said, in response to North Korean spy ships and in its involvement in the PSI, Japanese actions have conflicted with international law. The repercussions of disregarding international law in these instances will be identified in this chapter. This concluding chapter will outline the overall argument of the thesis, as well as highlight the importance of Japan's efforts in confronting maritime security issues and the ramifications these efforts will have for Japan as a major world power. Finally, future avenues of research will be put forward.

7.2 The English School and International Relations Theory

No single international relations theory can fully capture the scope of Japan's response to maritime security issues. Realism explains the difficulties associated with international naval cooperation in Southeast Asia which is mired in territorial disputes and Japan's desire to balance the growing Chinese power in Southeast Asia. Yet, realism has difficulty describing why the advanced Japanese MSDF and Coast Guard have not been dispatched to protect Japanese shipping in international waterways. Liberalism is better placed than realism to address the growing cooperation between regional maritime authorities or the institutionalization of the Information Sharing Centre on piracy in Singapore. Finally, Constructivism can elucidate the importance of the Japan Coast Guard as an ideational model for the development of Southeast Asian maritime authorities and the adherence of Southeast Asian states to the rules and norms of the International Society.

The English School's conception of an interstate society based on primary interstate institutions provides an overarching framework that can be used to comprehend the interplay between the three primary International Relations theories. In terms of Japan's response to maritime security, Japan has been motivated to protect SLOCs on which Japan's economic interests, or 'market' interests as the English School would term them, depend. The stress placed upon diplomacy in the interstate society is mirrored in

Japan's efforts to build human networks of maritime experts throughout the Asian region as a basis for cooperation on maritime security issues. The laws and norms of the interstate society provide ideational standards which are instilled in Southeast Asian maritime officials who attend the Japan Coast Guard University in Hiroshima. Containing and engaging North Korea provides evidence of Great Power management at work, whilst periodic confrontations between Japanese maritime forces and North Korean spy ships demonstrates Japan's readiness to protect its sovereign territory. What is less evident, however, is how Japan's response to maritime security issues and Japan's obligations as a Great Power in the interstate society interact with and affect the state, transnational and human groups which perpetrate maritime violence and crime.

These outlaw groups have been categorized into three types in this thesis: barbarians, infidels and pirates. The inspiration for these divisions has come from Bull's interest in actors who operate outside what he termed the international society. However, whilst Bull referenced these actors as historical bands that threatened the international society, this thesis has adopted Buzan's conception of interstate, transnational and interhuman societies in order to comprehend the interplay between states and the barbarians, infidels and pirates that challenge the contemporary interstate society. The advantage of these categories is that states can better distinguish between adversaries in the interstate society in order to both avoid conflating threats and to encourage appropriate policy measures. In order to be politically expedient, the barbarian, infidel and pirate categories have been defined so as to circumvent the same deficiencies as the 'rogue state' label that Litwak attacks in his book *Rogue States and US Foreign Policy*. States, Litwak argues, are inconsistently and selectively labeled as rogue states by Great Powers who perceive their interests threatened by these states. Once a Great Power has labeled a rogue state as such, the Great Power can only pursue a policy of isolation and containment towards that rogue state (Litwak, 2000: 8-9).

Unlike 'rogue states', barbarians, infidels and pirates are defined in terms of the actor's relationship with and behavior within the interstate society. Pirates, which are designated as enemies of mankind, *hostis humani generis*, in international law, differ from the other two categories owing to their exclusively economic motivations.

Resolving piracy is therefore a question not only of enhanced patrols, but also of tackling the economic causes of piracy, such as unemployment and poverty in Southeast Asian coastal regions. Though both barbarians and infidels are described as actors driven by political goals, they are separate in the interstate society owing to the infidel's desire to replace the interstate society with an alternative system, as opposed to barbarians, who, whilst disobeying the rules of the interstate society, do not seek to overthrow the interstate society and, therefore, can be negotiated with.

Litwak posits that socializing outlaws back into the international community through policies of engagement and containment³⁴² should figure as a principal policy aim of any Great Power (Litwak, 2000: 10-11). This thesis argues, however, that there are certain actors, infidels, who by their very definition, are beyond the pale of the interstate society, because they aspire to destroy the interstate society. Infidels can only be contained or eradicated, until such a time when they renounce their revolutionary intentions. Pirates too must abandon maritime crime and choose to return to society by selecting a legitimate livelihood. This choice is of course made easier by the existence of legitimate alternative occupations. Finally, barbarians can decide to and be encouraged to enter the fold of the interstate society by rejecting illicit practices and embracing the dictates of the interstate society.

The determinations of barbarians, infidels and pirates to join the interstate society, as well as the policy choices available to states aiming to socialize outlaws all hinge on Wendt's mode/depth socialization concept, which is comprised of coercion, calculation and belief. Buzan has taken up Wendt's notion of mode/depth socialization to enable the English School to interpret how actors in global politics act in and accept the interstate society. States may therefore coerce barbarians, infidels and pirates into joining the interstate society through force and containment, or calculate that negotiation is possible and devise policies that engage with the outlaw in question. Likewise, outlaws may calculate that more can be gained through cooperation with the

³⁴² Litwak adopts Alexander George's term 'conditional reciprocity' whereby states demand "meaningful changes in policy and behavior in return for each concession or benefit" (George quoted in Litwak, 2000: 11).

interstate society, Libya being an obvious example, or outlaws may come to believe in the principles of the interstate society (Brinkley, 16 May 2006, *The New York Times Online*, <http://www.nytimes.com/2006/05/16/world/africa/16diplo.html>, accessed 17 May 2006). Because of the asymmetry in terms of material power between Great Powers in the interstate society and outlaws, it is unlikely that outlaws will be in a position to coerce the interstate society to do their bidding or that the interstate society would come to believe that outlaws could be socialized into the interstate society without altering their behavior. Significantly, however, the acquisition of a substantial coercive instrument, such as WMD, by outlaws could affect the asymmetry of material power between Great Powers and outlaws to the extent that states redefine their belief in the scope and purpose of the interstate society.

The behavior of outlaws in the interstate society creates tensions between the primary institutions of the interstate society. Piratical acts threaten the security of commerce and the market, but these acts can not be tackled without first resolving issues of sovereignty to enable hot-pursuit. Incursions by North Korean spy ships into Japanese waters compel Japanese maritime organizations to protect their territorial boundaries. In so doing, engagement of North Korea by the Japanese government that occurs under the rubric of Great Power management may be threatened and even international law challenged. Finally, the creation of international coalitions by the Great Powers to combat the proliferation of WMD may exist in tension with international law. Nonetheless, by responding to outlaws, Great Powers may resolve these tensions between the primary institutions enabling the interstate society to evolve. The following section of this conclusion will address how Japan's response to maritime violence in each of the three case studies corresponds with the primary institutions of the interstate society and Wendt's conception of mode/depth socialization.

7.3 Japan's Response to North Korean Spy Ships

The Changing Response Between 1999-2001

A comparison between the March 1999 and December 2001 North Korean spy ship intrusions centres upon the disparate responses of the Japanese government and maritime authorities in the two cases. In the March 1999 spy ship case, the Japanese government was evidently reluctant to have the Maritime Self-Defence Forces target or attempt to board the North Korean ships. The Japanese government's vacillation over how to respond to the spy ship intrusion restricted the actions of the MSDF to the rigid bounds of domestic and international law. The response of the Japanese government in March 1999 was juxtaposed with the December 2001 spy ship case, in which the Japan Coast Guard chased the spy ship into China's EEZ and attempted to board the spy ship. The North Korean vessel resisted and the JCG retaliated causing the North Korean crew members to scuttle their ship. The action of firing upon the North Korean vessel in China's EEZ contravened international laws regarding safe passage through international waters and could not be justified by referring to Japanese national laws, which only legitimised JCG action up to the boundary line of Japan's EEZ. In this instance, a failure upon the part of the Japanese government to clearly assess the level of crisis, coupled with the freer rein given to the Japan Coast Guard to capture the suspect vessel led to the JCG firing on the spy ship within China's EEZ where the vessel sank. Yet, several factors influenced these two divergent responses to the spy ship intrusions in March 1999 and December 2001.³⁴³

The failure of crisis management was evident in both spy ship cases. A lack of communication between the MSDF, which located the North Korean spy ships, and the JCG, which had jurisdictional authority in both incidents, prevented a more satisfactory outcome for the Japanese government, navy and maritime authorities. In March 1999, MSDF vessels chased the North Korean spy ships, despite the fact that the MSDF

³⁴³ North Korean spy ship intrusions prior to 1999 had not provoked the same robust response to which the Japanese government sought recourse in March 1999, particularly with the invoking of the maritime security action, or the Japan Coast Guard directly targeting the North Korean vessel in December 2001.

lacked the authority to apprehend the North Korean boats. Whilst the Japanese government demonstrated its determination to stand up to infringements of Japanese territory, the Obuchi Cabinet, which was not united in its North Korea policy, hesitated to order the MSDF to take maritime security action that could have prevented the two spy ships escaping. Yet, the Japanese government was seen to have shown restraint in the 1999 case and subsequently received praise from neighbouring countries.

Despite this international praise, the views of Japanese citizens were hardening towards North Korea. Worsening relations with the North following the launch of the Taepodong missile on 31 August 1998 provided the pretext for Japan to flex its muscles. The determined action taken by the Japanese government to order the MSDF to pursue the North Korean spy ships in 1999 was primarily due a change in Japanese public opinion, as the surveys in Chapter 4 show. In the wake of the Taepodong missile crisis and the March 1999 spy ship incursion, the Japanese people had become increasingly hostile towards North Korea and more willing to see Japan take a firm stance in defence of its territory. Whilst the mood of the people took government policy makers somewhat by surprise, the JCG promptly commenced live-fire exercises in anticipation of further North Korean spy ship transgressions of Japanese waters (Yamada interview, 10 November 2004).

As a result of the March 1999 spy ship incursion, cooperation guidelines between the JCG and MSDF were drawn up making it clear that the MSDF would have to inform the JCG in a timely fashion of incursions into Japanese waters and that the JCG would take charge of any pursuit of North Korean spy ships. Faster patrol boats were ordered so that the JCG would be able to keep up with vessels that attempted to flee Japanese waters. Hence, the response to the December 2001 incident was bound to be more robust than that of the March 1999 spy ship incursion because of amendments to the role and equipment of the Japan Coast Guard in light of the earlier spy ship event.

In December 2001, the MSDF's delays in informing the JCG of the existence of the spy ship stalled the JCG's pursuit of the North Korean vessel. Because of this delay, the JCG patrol ships were not able to attempt to board the North Korean spy ship until it

had entered China's EEZ. The exchange of fire which resulted from the JCG's attempt to board the North Korean vessel ended with the spy ship scuttling itself with the loss of all hands. Whilst members of the Koizumi Cabinet, most notably Prime Minister Koizumi himself and Abe Shinzō (the LDP Secretary General), were pushing for a more robust response to the threat posed by North Korea and taking a stronger diplomatic line, one of the main reasons for the sinking of the North Korean spy ship in China's EEZ lies with the failure of the Japanese government to fully understand the crisis. Believing that the foreign vessel was manned by Chinese Triads, the Koizumi government left the response to the spy ship in the hands of the JCG, reconvening only after the spy ship had scuttled itself (*Yomiuri Shimbun*, 25 December 2001: 1; Yamada interview, 10 November 2004). Both the South Korean and Chinese governments viewed the Japanese measures as excessive. The objections of both South Korea and China concerning Japan's actions in the December 2001 spy ship case meant that only by salvaging the wreck of the spy ship could Japan prove to the interstate society the ship's identity and demonstrate that the purpose of the spy ship had been illegal.

A further reason that encouraged the Japanese government's tough stance in the December 2001 case was the significance of the 9/11 terrorist attacks on the US mainland. In the post-9/11 'war on terrorism', membership of the interstate society has been influenced by whether a country was with or against the US. Those states that stood against the US, primarily North Korea, Iraq and Iran, were labelled 'rogue states' whose actions were equated with terrorism and were positioned outside or on the fringes of interstate society. In this environment, Japan was able to pass the Anti-Terrorism Special Measures Bill in record time, as well as to act more decisively against a North Korean spy ship which transgressed Japanese waters in December 2001. In the December 2001 case, the Japan Coast Guard felt able to fire directly at an unidentified vessel, that had resisted Japanese attempts to stop and inspect it, in China's EEZ. Had the unidentified vessel belonged to a state that was part of the international society, such as China or South Korea, the ramifications would have been quite different, as Valencia and Amae point out:

If the vessel were suspected of being almost any other nationality other than North Korean, firing directly at a suspected illegal fishing vessel, endangering it and its crew, would most

likely be considered an overreaction and an excessive use of force by the international community (Valencia and Amae, 2003: 200).

Despite the fact that the response of the JCG to the December 2001 spy ship incursion lay outside the bounds of international law and therefore interstate society, both Japan and North Korea returned quickly to the negotiating table after the incident, with Prime Minister Koizumi visiting North Korea in September 2002. At this meeting Kim Jong Il determined to cease spy ship operations against Japan, as well as to release abducted Japanese citizens from North Korea in return for increased aid from the Koizumi government (Uriu, 2003: 86-88). Hence, in terms of Wendt's concept of mode/depth socialization, Japan employed coercive measures to halt North Korean spy ship intrusions, before engaging in diplomatic means, calculation, to resolve tensions with North Korea.³⁴⁴

Japan's firm stance vis-à-vis vessels transgressing its sovereign territory was demonstrated again in November 2004, when a Chinese submarine crossed through Japan's EEZ. This incident also showcased the extent to which cooperation between the MSDF and JCG had improved since the March 1999 spy ship case (Yamada interview, 10 November 2004; *Japan Times*, 11 November 2004: 1; *Asahi Shimbun*, 11 November, 2004: 1). This level of coordination between the MSDF and JCG is instructive for the navies and maritime authorities of Southeast Asian states in combating both piracy and terrorism. By specifying that Coast Guards protect national territory against illegal activities and naval forces guard a state against foreign invasions, so cooperation can be fostered amongst maritime authorities in the field of maritime violence and crime, even whilst Southeast Asian navies remain hostile to each other because of the territorial disputes in the region. Nonetheless, the significant difference between the incursion of the Chinese submarine and that of the North Korean spy ship in December 2001 is that the MSDF took no offensive action towards the submarine, whereas when confronting maritime barbarians, in the form of a North Korean spy ship, international law could be disregarded.

³⁴⁴ In spite of the spy ship incident, it is believed that North Korea continues to ship illicit drugs into Japan via the Russian mafia (Yamada interview, 10 November 2004).

7.4 Japan's Response to Piracy

The Significance of the *Alondra Rainbow* – Launching Japan's Approach to Piracy

In 1999, the case of the pirated *Alondra Rainbow* launched Japan's response to piracy. This is in spite of the fact that, the previous year, the crew of the pirated *Tenyu* was never found. Nonetheless, there are several reasons why the case of the *Alondra Rainbow* was more significant for Japan's response to piracy. First, whereas none of the *Tenyu*'s crew was Japanese, two members of the *Alondra Rainbow*, the captain and chief engineer, were. This fact alone drew the media's attention which was sustained by the length of time the crew were missing at sea and speculation about their wellbeing. Second, because of the similarities between the *Alondra Rainbow* and the *Tenyu*, which both carried the same cargo of aluminium ingots from the same Indonesian port, the Japanese shipping industry recognised that piracy in Southeast Asia was a continuing threat to its industry rather than just an isolated incident. This encouraged the Japanese shipping industry to lobby the Japanese government (Takase and Tanaka, <http://www.okazaki-inst.jp/piracy2001/pira2001.etakatanaka.html>, accessed 28 February 2006) as well as to take out insurance against piratical attacks. Third, indications that international criminal syndicates had been involved in both the *Tenyu* and the *Alondra Rainbow* cases raised the issue of responding to the problem of piracy on an international level and therefore required that the Japanese government take the initiative.

It was the *Alondra Rainbow* incident that encouraged Prime Minister Obuchi to announce an international cooperation meeting to tackle the issue of piracy in Southeast Asia at the ASEAN+3 summit held in the Philippines in November 1999. The 'Regional Conference on Combating Piracy', which was held in Tokyo on the 27-28 April 2000, did not result in firm commitments by the 16 states attending to collectively eliminate the problem of piracy. However, the conference set in motion regional dialogue on the issue of piracy between maritime experts in and outside governments, which was built

upon in the subsequent 'Asia Cooperation Conference on Combating Piracy and Armed Robbery', held on 4-5 October 2001 in Tokyo.

It was from this second anti-piracy conference and the Maritime Policy Bureau's Expert Meetings to Tackle Piracy which followed, that the creation of an Information Sharing Centre on piracy and armed robbery against ships was put forward. The establishment of the Information Sharing Centre in Singapore in 2004 represented the first step in operationalising a region-wide response to the problem of piracy. Until this point, Japan's operational efforts to tackle piracy had largely depended upon bilateral exercises as well as financial and technical assistance. In terms of the interstate society, the institutionalization of the Information Sharing Centre is key, as it demonstrates Japan's ability as a Great Power to generate consensus amongst states in the Southeast Asian region through diplomacy to transform the anti-piracy approach of Southeast Asian states which had hitherto been hindered by sovereignty issues.

The Ramifications of Japan's Response

Bilateral exercises, technical and financial assistance have been extremely influential in pushing Japan's anti-piracy agenda forward. Japanese financial assistance has covered the international conferences, as well as the training of maritime officials and joint exercises. By footing the bill, Japan has been able to set the agenda in combating piracy in Southeast Asia (Yamada interview, 10 November 2004). The fact that the number of piratical attacks against ships stabilized after a peak number of incidents in 2000 owes much to the efforts of countries like Malaysia and Singapore spurred on by Japanese technical and financial assistance.³⁴⁵ Bilateral means have included receiving foreign students at the Japan Coast Guard University in Hiroshima, scholarships from the

³⁴⁵ The Malaysian Maritime Enforcement Agency commenced operations in November 2005 with 20 of the 72 vessels that will ultimately comprise the MMEA's fleet. The Malaysian government approved 4,035 posts for the agency which would have nine bases spread through 17 regions (www.bernama.com/bernama/v3/printable.php?id=139208, accessed 13 June 2005, <http://www.mmea.gov.my/mmeaBI/page.php?filename=output.php&option=view&newsid=22>, accessed 10 August 2006). Singapore has evolved a navy comprised primarily of corvettes and patrol ships designed to combat piracy and terrorism in its waters (Kikuchi, 2005: 165).

Nippon Foundation to attend the World Maritime University in Sweden, as well as joint patrols and exercises. Such measures have helped demonstrate the Japanese interest in eradicating piracy in the Southeast Asian region, whilst improving relations between Japan and Southeast Asian states (*Kaiun*, 2005: 48).³⁴⁶

Interaction between maritime authorities in Southeast Asia and the Japan Coast Guard has encouraged the creation of Southeast Asian Coast Guards based on the Japanese model. As a result, Southeast Asian maritime authorities are coming to rely more heavily upon the Japan Coast Guard for advice. The Japan Coast Guard is the most advanced in the region and ideally suited to instruct other maritime authorities in Southeast Asia on how to improve their capabilities (Yamada interview, 10 November 2004; *Kaiun*, 2005: 49; Kikuchi, 2005: 167-168). The Japanese government was able to develop an Asian regional network of maritime officials through its bilateral exercises, technical and financial assistance, and sponsorship of conferences. By focusing on cooperation between non-military maritime organizations in Southeast Asia, emphasising the role of international law and developing the capabilities, awareness and knowledge of maritime officials, the Japanese government plays a pivotal role in discussions on maritime security in the Southeast Asian region.³⁴⁷ Hence, from a Wendtian perspective, Japan's efforts are based not only on calculation, in that it is in the interests of littoral states in Southeast Asia to combat piracy, but also on fostering the belief amongst non-military maritime organizations that enforcing international and domestic laws holds the key to tackling piracy.

However, Japan has developed bilateral relations with India's navy and maritime authorities in order to tackle the problem of piracy in the Malacca Straits. As well as the role of the Indian navy in the capture of the pirated *Alondra Rainbow* in 1999, India shares Japan's concerns about the safe passage of its trade through the Malacca Straits. That said, there is clearly a strategic element to the cooperation between Japan and India.

³⁴⁶ That said, many of the exercises undertaken with the JCG have been of the *Alondra Rainbow* ship-hijacking type, which may no longer be as appropriate considering the fall of such instances of piracy since 2000.

³⁴⁷ Japan's anti-piracy efforts have avoided dealing with some Southeast Asian navies, such as the Philippines and Indonesian navies, which are viewed as corrupt and would find cooperation with other Southeast Asian states difficult considering the territorial conflicts in the region.

On the one hand, India is interested in acquiring advanced weapon systems that are interoperable with Japanese ships. The acquisition of such technology would serve to greatly enhance the capabilities of the Indian navy. On the other hand, both Japan and India are concerned by the rise of China and the emergence of a Chinese blue water navy. This demonstrates that Japan's involvement in fighting piracy is also premised on balancing China, or, in English School terminology, the Wendtian notion of calculation.

Chinese expenditure on military assets has increased from ¥121 billion in 2001 to ¥220 billion in 2004 and is set to increase to ¥247 billion in 2005, though Pentagon officials estimate the actual figures to be between twice and three times as high. China has made efforts to improve its C4I2 capabilities,³⁴⁸ developed a professional military, acquired advanced military equipment and technology from Russia and studied US strategies during the conflicts of the 1990s and early twenty-first century. The Chinese navy in particular has been increasing its strength through the purchase of 23 new amphibious assault vehicles, as well as conventional, electric-diesel and nuclear submarines (Hu, 2005: 23-27). Whilst the Chinese authorities have administered tougher punishments to pirates and thereby decreased instances of piracy in their waters, concerns have been raised that China will look to protect its maritime interests in Southeast Asia by deploying its naval forces. On 27 April 2005, China signed a memorandum of understanding with the Philippines to develop maritime cooperation (see Appendix VII). Through such agreements, China could undermine Japan's efforts to cooperate with Southeast Asian states in the field of maritime security and create tensions between the Great Powers of the region.

Japan's anti-piracy efforts have also had implications for the shipping industry. Because of the international attention being focussed on the problem of piracy due to a series of international conferences sponsored by the Japanese government and Japanese organizations, shipping companies adopted a number of technical means of protecting their ships, most notably the tracking device ShipLoc. The adoption of ShipLoc, which was employed successfully in the retrieval of the pirated ship the *Selayang*, was mostly

³⁴⁸ C4I2 refers to the command, control, communication, computers, intelligence and information systems of the military.

responsible for the decline in ship hijackings similar to that of the *Alondra Rainbow*. Nevertheless, such measures have encouraged alternative forms of piracy, such as hostage taking and the targeting of tugs and barges, which increased after 2000, rather than the hijacking of merchant container or cargo vessels (Yamada, 2005: 46). The Japanese shipping industry has been training its crews to better protect their vessels from pirates. Security training for crews has been given added impetus with the implementation of the ISPS Code which necessitates that one crew member is responsible for security on board the ship and that detailed security plans are drawn up. Whilst such training and plans are beneficial, they do little to protect ships from armed pirates intent on kidnapping crews for ransom, as the case of the pirated *Idaten* revealed. Instead, coordinated patrols by the maritime authorities of littoral states hold the key to suppressing cases of kidnapping and ransom.³⁴⁹

The establishment of regular patrols since 2004 between Indonesia, Malaysia and Singapore has raised hopes amongst the shipping community that piracy will once again be contained, especially as the patrols are more expansive than earlier efforts.³⁵⁰ However, a lack of resources may limit the effectiveness of these patrols (Percival, 2005: 28-30, 35). Furthermore, it remains unclear as to whether or not the Information Sharing Centre established in Singapore will be a success or if the centre will be able to effectively complement the work of the IMB's Piracy Reporting Centre in Kuala Lumpur. Considering existing animosities between Singapore, Malaysia and Indonesia, as well as the international nature of global shipping, the shipping community will probably continue to rely on the independently financed IMB Piracy Reporting Centre, rather than the government funded Information Sharing Centre (Yamada interview, 10 November 2004; *Kaiun*, 2005: 47).

³⁴⁹ Yamada Yoshihiko has argued that Japanese ships should fly a Japanese flag or be able to fly a second flag that would enable the ship to receive the protection of that second state in the event of a piratical incident (Yamada, 2005: 48). Whilst this would allow the Japan Coast Guard to participate more actively in searching for crews and vessels that go missing, it remains to be seen whether the Japanese Shipping Association would be willing to pay higher fees for a Japanese flag, especially as once a vessel has been attacked or a crew kidnapped, search and rescue operations are difficult to mount.

³⁵⁰ During the early 1990s coordinated patrols between Indonesia, Malaysia and Singapore were effective in suppressing piracy.

Whilst states have been content to receive financial and technical aid to help fight piracy, there has been little progress made in the area of hot pursuit. Furthermore, Noel Chong of the IMB Piracy Reporting Centre in Kuala Lumpur has noted the absence of piracy arrests for years in the northern Malacca Straits where the *Idaten* was pirated, and a former maritime official in Southeast Asia has stated that littoral states merely pretend to police their waters, as they are fearful that the pirates are more heavily armed than they are. The maritime authorities of Southeast Asian states believe that even if crews are kidnapped, shipping companies can secure their release, especially if their insurance policy covers piracy (*Yomiuri Shimbun*, 23 March 2005: 17). In particular, the lack of improvement vis-à-vis eradicating piracy in Indonesian waters, where the majority of, as well as the most violent, piracy attacks occur in Southeast Asia, is notable. Indonesia's failure to impose tougher sentences upon pirates coupled with an absence of investigating pirates on land clearly undermines the international efforts designed to eradicate piracy in Southeast Asia.

Since Susilo Bambang Yudhoyono became Indonesia's President in 2004, hopes have been raised that the piracy problem will be addressed, as he has stated that this is one of the aims of his presidency. However, secessionist conflict in Aceh, the devastation of the December 2004 tsunami and the power of the TNI all serve to undermine Yudhoyono's efforts.³⁵¹ Yudhoyono's intention to create an Indonesian Coast Guard that would take the best officers and equipment from the TNI and attract the brightest recruits, could substantially weaken the TNI (Yamada interview, 10 November 2004). An Indonesian Coast Guard, with an ethos that centres upon international law, would also be able to patrol for TNI vessels perpetrating piracy.³⁵² By promoting Yudhoyono's efforts, supporting the reconstruction efforts in Northern Sumatra in the aftermath of the tsunami and encouraging peace talks in Finland between the Aceh Separatists and

³⁵¹ Piracy figures declined in the aftermath of the tsunami. This was mainly due to the presence of international navies which were supporting the relief effort, coupled with the devastation the tsunami caused to pirates and their vessels (Yamada, 2005: 46).

³⁵² The incident involving the pirating of the *Yayasan Tujuh* by the Indonesian naval patrol boat, the *KAL YOUTEFA*, was presented in Chapter 3 (ICC-IMB Piracy Report third quarter 2004: 29).

Jakarta, the Japanese government has played a significant role.³⁵³ As Chapter 3 noted, the conflict in Aceh has been resolved as a result of these peace talks.

Overall, diplomatic moves and conferences initiated by Japan coupled with financial and technical assistance to Southeast Asian states have enhanced both the perception of the threat posed by piracy and the response of littoral states to that threat. Nonetheless, questions of sovereignty remain embedded in the Southeast Asian interstate society (Stubbs in Beeson, 2005: 223) preventing the Great Powers from playing a more robust role in defending the Malacca Straits. Indonesia and Malaysia, in particular, have remonstrated against external interference in their internal affairs since their independence (Sukma in Tan and Acharya (eds.), 2004: 71-87; Mak in Tan and Acharya (eds.), 2004: 127-137). The Indonesian and Malaysian prompt rejection of US offers to help patrol the Malacca Straits in 2004, as well as the failure to allow hot pursuit of maritime criminals and terrorists across maritime boundaries is indicative of how sovereignty issues affect maritime security in Southeast Asia (Valencia, 2005: 12-14).³⁵⁴ As hypothesized in the introduction, Japan has had to conduct its response to maritime crime and terror according to the dictates of the interstate societies in which it operates, as determined by English School theory. In Southeast Asia, the interstate institution of sovereignty remains paramount.

³⁵³ Japan's sponsorship of "The Preparatory Conference on Peace and Reconstruction in Aceh" held in Tokyo on 3 December 2002 was central in Japan's diplomatic efforts to resolve the separatist conflict in Northern Sumatra. For more, see <http://www.mofa.go.jp/region/asia-paci/indonesia/aceh/pre0212-3.html>, and <http://www.mofa.go.jp/region/asia-paci/indonesia/aceh/pre0212-4.html>, both accessed on 27 February 2006.

³⁵⁴ Both Malaysia and Indonesia claimed the Malacca Straits as their own sovereign territory in 1971. However, major maritime powers, led by both the US and the former Soviet Union, ensured that all states had transit passage through the Malacca Straits, so that neither their commercial nor their military maritime interests would be impeded. The alternative was to define navigation rights through the Straits in terms of innocent passage. This would have delineated the Malacca Straits to be Indonesian and Malaysian sovereign territory over which they would have had complete authority (Valencia, 2005: 12-13).

7.5 Japan's Response to Maritime Terrorism

Maritime terrorism can be separated into two groups: International Islamist Terrorist organizations and Ethnonationalist Terrorist movements. The principal aims of International Islamist Terrorist organizations, primarily led by Al Qaeda, which has strong connections with Jemaah Islamiya and the Abu Sayyaf Group in the Southeast Asian region, is to mount a global struggle against the leaders of Middle Eastern states and their Western allies headed by the US. The International Islamic Terrorist organizations hope their jihad will result in the liberation of the Middle East from foreign influence so that an Islamic caliphate based on strict interpretations of the Koran may be established. In terms of maritime security, International Islamic Terror organizations focus on symbolic targets and intend to inflict the maximum number of casualties possible both to affect political change amongst foreign powers and to weaken the capacity and will of their enemies to fight back. Examples of International Islamic maritime terrorism include the attacks on the *USS Cole*, the *Limburg* and the Basra Oil Terminal. These instances point to the strong links between different International Islamic Terrorist groups. The implications for Southeast Asian maritime security are that International Islamic Terrorist organizations continue to benefit from conducting illegal trade through existing networks between terrorist movements. Furthermore, economic hardship, political repression and the rise of strict Islamic schools, *madrasah*, have served to bolster membership in such International Islamic Terrorist movements. JI plots uncovered in Singapore coupled with the *Dewi Madrim* incident, in which a gas tanker was captured by an unknown group and sailed down the Malacca Straits, as well as the belief that a major maritime terrorist incident could be undertaken relatively easily, has convinced some analysts that a maritime terrorist attack is due (Richardson, 2004: 32-33). It is because of the revolutionary motivations of International Islamic Terrorist movements in challenging the status quo in the interstate society that such groups are termed infidels in the interstate society.

Ethnonationalist Terrorist Movements, such as GAM in Indonesia and MILF in the Philippines, aim to wrest a distinct territory from the authority of a central government

in order to establish an independent state. The intention to build a state coupled with the capacity for states to negotiate with Ethnonationalist Terrorist Movements makes the term barbarian an appropriate designation for these groups in the interstate society. Acts of maritime terrorism are undertaken by GAM and MILF to either finance their cause, through the kidnapping and ransom of merchant seafarers, or through attacking targets associated with the government, such as GAM attacks on an oil facility in Lhokseumave which was leased to ExxonMobil by the Jakarta government (Huxley, 2002: 81-82; *Kaiun*, 2005: 46). By distinguishing between these two different kinds of terrorism, governments can develop appropriate responses to each kind of terrorism. Hence, negotiating with Ethnonationalist Terrorist groups whilst increasing police patrols in piracy or maritime terror-prone areas can effectively curb Ethnonationalist maritime violence. Increasing multilateral cooperation between police and maritime authorities, greater attention to ship and port security and monitoring of vessels suspected of transporting WMD can diminish the threat posed by International Islamist Terror organizations.

Yet, while it is important to separate these two types of terrorism, there has been a tendency amongst governments and analysts alike when discussing the 'war on terror' to conflate the two terror-types with a whole myriad of piratical attacks. By doing so, states fail to perceive what the real threats to maritime traffic are. Not only does such an approach lead to stringent measures that curtail the rights of citizens both on land and sea (for example, cases whereby mariners of certain nationalities are singled out as potential terror threats), they can also affect the free passage of trade (for example, increasing checks on cargoes delays shipments). Furthermore, opportunities to isolate pirate gangs and terror groups are missed by conflating piracy and terrorism. In other words, Ethnonationalist groups in Southeast Asia, like GAM, are less likely to associate with, rely on and aid other terror organizations if they are encouraged to make and abide by a political settlement.

Whilst a maritime terrorist attack by an International Islamic Terror organization might be more destructive, acts of Ethnonationalist maritime terrorist violence are far more frequent. In particular, the targeting of tugs and barges in the Malacca Straits inhibits

trade and leaves shipping firms with little choice but to pay extortionate ransoms or condemn their crew members to be killed. Following the devastation caused by the December 2004 tsunami in Indonesia's Aceh region, Susilo Bambang Yudhoyono, the Indonesian President, inaugurated peace talks with GAM that have led to the withdrawal of the TNI from Aceh and an end to the conflict there. The success of similar peace talks held between the Filipino government and the MILF are also likely to reduce the threat of Ethnonationalist maritime terrorist violence, as Chapter 3 detailed.

The Impact of 9/11 upon Japan's Maritime Security

Realist analyses of the US-led response to the 9/11 attacks on New York and Washington have centred on the actions of US-led military coalitions in Afghanistan and Iraq. Nevertheless, in terms of improving maritime transport systems globally, the US has initiated a great deal of change to international laws and within international frameworks. These changes have included the implementation of the ISPS Code, and revisions to the SUA Treaty. The US has also advanced measures supported by 'coalitions of the willing', such as PSI, CSI and C-TPAT (Beckman, 2005: 215) that are designed to provide enhanced protection against maritime security threats. Hence, the US has worked both wholly within the framework of international law, fostering belief in international law from a Wendtian perspective, as well as through the primary institution of Great Power management, adopting calculation and even coercive means to achieve its objectives.

Japan's Evolving Response – Pushing the Boundaries of the Constitution

Japan has been heavily involved in the 'war against terrorism'. The swift passage of the Anti-Terrorism Special Measures Bill through the Japanese Diet, combined with the dispatch of the MSDF to support coalition forces fighting in Afghanistan and the GSDF to aid in the reconstruction of Iraq. In terms of maritime security, the Japanese government and the Japanese business community have played an active role by

participating in the PSI, CSI and C-TPAT, as well as the Japanese government's adoption of the ISPS Code and the revisions to the SUA Treaty.

The combination of the revised SUA Treaty and the PSI agreement has enabled Japan to play an integral role in the interdiction of WMD. By signing up to the CSI and C-TPAT, the Japanese government and Japanese businesses are protecting international shipments from being used as a means to transport or deliver terrorist weapons and equipment. Finally, in agreeing to the conditions set out in the ISPS Code, Japanese ports and shipping have enhanced their security measures against a possible terrorist attack.

Nevertheless, the extent to which such measures will resolve the problem of maritime terrorism is debatable. The ISPS Code alone cannot prevent attacks such as those perpetrated against the *USS Cole* and the *Limburg*. Instead it remains vital to improve the capabilities of states throughout the world so that they can deal with the threat of maritime terrorism by themselves (Yamada interview, 10 November 2004). The PSI, meanwhile, requires that ships violate international law before they can be boarded, is not institutionalized, lacks the support of China and is focussed on shipments from North Korea and Iran. Furthermore, because of the secrecy surrounding PSI interdictions, the capture of legally traded dual use materials and the double standards in defining PSI target states, there is concern that the PSI will undermine UNCLOS if the initiative is not reformed (Valencia, 2005: 39-44, 73-74). Because of this there is friction between US efforts to strengthen international law through the establishment of the ISPS Code on the one hand and unilateral measures, such as the PSI, which undercut international law on the other. Resolving this friction entails determining whether the international society is united in its response to maritime outlaws through instituting stringent international laws and norms, or whether it will fall wholly to Great Power coalitions to resolve the maritime outlaw threat.

Japan's response to maritime terrorism perpetrated by infidels and barbarians in the interstate society has primarily followed the US lead. The Japanese government has supported US efforts to revise international law, as well as to work within Great Power led coalitions to prevent acts of catastrophic terrorism. However, whilst such measures

tackle the symptoms of maritime terrorism, they fail to treat the causes of terrorism in the interhuman and transnational societies.

7.6 Towards a Human Security Framework for Treating Maritime Security Issues

Going beyond the Confines of the International Society – Human Security and the International Community

The limits of Japan's response to piracy and maritime terrorism are apparent in the difficulty of Southeast Asian states to adopt mechanisms enabling the hot pursuit of criminals and terrorists across maritime boundaries. The inviolability of sovereign territory in Southeast Asia, rooted in the decolonization and state-building process in this region over the course of the Cold War, gives both pirates and terrorists opportunities to attack ships and transport illicit goods. There is therefore a need for transnational responses to deal with maritime security issues in Southeast Asia (Hughes, 2001: 420). Japan's efforts to evolve human networks of maritime officials across the Southeast Asian region have resulted in the development of a transnational response to maritime security. Whilst patrols of the Malacca Straits by Singapore, Indonesia and Malaysia are encouraging, littoral states require more equipment and expertise to combat terrorists and pirates at sea. The JCG could fill this operational gap were it not for Japan's inability to transgress the limits of sovereignty in the International Society. This indicates that a reliance upon intergovernmental approaches to maritime security issues in Southeast Asia alone will not solve the problem.

If Japan is to develop a more potent response to maritime violence and crime in Southeast Asia, then it must not only address the symptoms but also deal directly with the causes. In order to do so, Japan has to go beyond treating Southeast Asian states as the key security referent and address the security needs of human beings in the coastal regions of Southeast Asia. Such an approach would adopt the concept of human security

resulting in policies that target development issues in Southeast Asia, ranging from economic deprivation in littoral areas to pollution at sea, land-based crime, rising immigration from hinterlands, education and health deficiencies. Doing so may necessitate that the Japanese government do more to work with NGOs which are able to operate more effectively than governments at the grassroots level (Gilson and Purvis, 2003: 203-205; Kuroda, 2003: 237-240). Understanding where these development issues coincide with maritime security problems can start with a more detailed analysis of the IMB's piracy data.

7.7 Policy Implications

Developing a Response to Piracy Based on Available Statistical Data

One way of evolving Japan's response to piracy would be to sort the available IMB statistics on piracy according to the type of piracy perpetrated. In Chapter 3, maritime violence was divided into five different categories. These were Robin Hood Style Piracy, Transnational Criminal Organizations, Piracy Perpetrated by State Authorities, Separatist Groups and Global Terrorist Groups. As has been noted, each of these types of outlaws exhibit different levels of violence in an attack depending upon the group's aims. Hence, Robin Hood Style Pirates perpetrate low-level acts of theft, usually eschewing violence and in which little of value is stolen. Transnational Criminal Organizations, State Authorities and Separatist Groups, while having various aims, tend to display more violence and steal more of value. Because of their different aims these three groups should not be clumped together, however, existing data are not sufficient to distinguish accurately between these three groups. Therefore, Chalk's division of piracy into low-level armed robbery, medium-level armed assault and robbery and major criminal hijack has been employed. Acts of Robin Hood Piracy as well as Kidnap and Ransom cases have been added to Chalk's definitions to give a clearer account of contemporary maritime violence in Southeast Asia. Global Terrorist Groups, whilst engaging in acts of piracy for economic gain, are connected with major acts of maritime

violence designed to harm the economic interests and military capabilities of states they have defined as their enemies, as well as to have a major political impact.

The existing data can therefore be grouped into categories and mapped (see Appendix VIII) according to the criteria as follows:

- Robin Hood Piracy (RHP) – an attack involving little or no violence, in which under US\$5,000 in cash and valuables is stolen.
- Low-level Armed Robbery (LLAR) – an attack by an armed piratical gang, which is prepared to employ moderate to high levels of violence and remove between US\$5,000 and US\$15,000 from the victims.
- Medium-level Armed Assault and Robbery (MLAAR) – an attack by a well organized and equipped piratical group willing to injure and kill. The amount of goods and valuables stolen by such pirates would tend to exceed US\$15,000 in a single raid.
- Major Criminal Hijack (MCH) – an attack aimed at capturing a vessel in order to use it for illicit purposes. Such an attack is most often perpetrated by Transnational Criminal Organizations and often involves high levels of violence.
- Kidnap and Ransom (K&R) – an attack in which crew members are targeted with the purpose of holding them for ransom. The execution of the crew usually follows an unpaid ransom.
- Global Terrorist Act (GTA) – an act of major maritime violence designed to damage the economic or military assets of an enemy state and have a significant political impact. High casualties are often desired in order to have the greatest political impact.

The piracy map for the first quarter of 2006 (Appendix VIII) reveals a number of important points. First, acts of Robin Hood Piracy and Low-level Armed Robbery are concentrated around major Indonesian ports, such as Tanjung Priok (Jakarta), Balikpapan and Samarinda. These piratical acts occur when a vessel is anchored in port, suggesting that enhanced port security could deter these acts. Second, acts categorized as Medium-level Armed Robbery or Major Criminal Hijack are much rarer and

therefore harder to defend against. Nonetheless, a series of piracy maps detailing the different types of piratical attack over a number of years may reveal trends or piracy hot spots. This data can be used to warn merchant vessels of specific threats. A similar approach could be adopted towards protecting seafarers from acts of Kidnap and Ransom, though the piracy map shows that no Kidnap and Ransom case occurred in the first three months of 2006. Finally, the piracy map indicates that few acts of piracy occurred in the Malacca Straits during the first quarter of 2006. This confirms that trilateral, coordinated piracy patrols undertaken by Indonesia, Singapore and Malaysia in the Malacca Straits appear to be having an impact upon piracy.³⁵⁵

The ramifications of developing anti-piracy policies based on detailed piracy maps would be as follows.³⁵⁶ First, if coordinated through the Information Sharing Centre in Singapore, regional maritime authorities would be better informed of the state of piracy in their waters. Second, examining the available statistics in this way indicates the scale of each particular piracy problem in any part of Southeast Asia. Third, patterns in the existing data could be identified and maritime authorities throughout Southeast Asia could employ the maps generated from this study in order to design their patrols. Fourth, a closer analysis of the piracy data might point to certain types of piracy being perpetrated in particular regions and inhabited coastal cities and towns. By comparing the data concerning where different piratical acts occur, prediction becomes more possible and causes may be identified. Thus, strengthening port security in areas which experience a high level of Robin Hood Style Piracy would plausibly lead to a reduction in that type of piratical incident, as the review of the piracy map for the first quarter of 2006 suggests. Furthermore, since Robin Hood Style Piracy is associated with economically deprived zones, targeting the area with ODA and granting loans to build the infrastructure of that location might be one way that Japan could develop its response to piracy.

³⁵⁵ Nonetheless, piracy figures for the second quarter of 2006, combined with attacks from June to August 2006, indicate that piracy in the Malacca Straits has only slightly declined from the previous year (<http://www.icc-ccs.org/main/news.php?newsid=69>, accessed 18 August 2006). More time will be needed to assess the extent to which trilateral piracy patrols in the Malacca Straits are working.

³⁵⁶ Piracy maps provided by the IMB only present the number of piracy attacks in each Southeast Asian country, though the IMB does release more detailed maps of piracy prone areas, such as the Malacca Straits (see http://www.icc-ccs.org/prc/piracy_maps_2006.php, accessed 18 August 2006).

7.8 Avenues for Future Research

This thesis has examined Japan's response to maritime security threats posed by barbarians, infidels and pirates in the Northeast and Southeast Asian interstate societies. By grouping outlaws that remain on the boundaries of the interstate society, but affect the functioning of the interstate society, the interactions between the interstate society and the interhuman and transnational societies in English School theory can be comprehensively understood. Nonetheless, there are four broad areas for future study that will enable the concepts of barbarians, infidels and pirates to be refined.

First, the response of other Great Powers to threats posed by barbarians, infidels and pirates in other regions could be examined. The rise of piracy off the coast of Somalia, for example, provides a significant case study, not least because the distinction between pirates and barbarians can be explored in the context of Somalia, a failed state. Such a case study raises important questions concerning membership of the interstate society. At what point does a state disintegrate to the degree that it becomes no more than competing groups of criminal fiefdoms, where only pirates, not barbarians, thrive? How do Wendt's conceptions of coercion, calculation and belief serve to motivate warlords to reestablish a state entity? Furthermore, intervention by the guided missile destroyer, the *USS Winston S. Churchill*, on 21 January 2006, denotes Great Power interest in safeguarding international waters, as well as showing the potential of sophisticated naval forces in deterring pirates (<http://www.icc-ccs.org/main/news.php?newsid=62>, accessed 7 February 2006). A study of piracy in Somalia could be contrasted with Iraq, which since the end of the US led invasion, has emerged as a piracy hotspot (<http://www.icc-ccs.org/main/news.php?newsid=63>, accessed 7 February 2006).

Second, the concept of barbarians, infidels and pirates could also be employed to discuss primarily land-based actors in the interstate society, though the term pirate would be substituted with criminal. Again, interesting definitional issues would arise,

such as whether to designate the Palestinian group Hamas as infidels, desiring the destruction of Israel, a member of the interstate society, or barbarians that have legitimately risen to political power in a national election despite their involvement in acts of political violence. What dilemmas will Hamas face should it choose to transform itself into a political party that eschews violence and accepts the existence of Israel? Or, as a special report in *The Economist* inquired, how would doctrinal issues such as control of Jerusalem be resolved and how would Sharia, or Islamic, law be incorporated into a democracy (*The Economist*, 4 February 2006: 22-24, 40)? Such a study might suggest comparisons with terrorist organizations, like the Irish Republican Army, that have accepted a political process and publicly renounced violence. Would such a comparative study reveal that groups of former terrorists, or barbarians, who forswear violence for a political cause, keep their guns and engage in criminal enterprises, as elements of the IRA have done (*The Economist*, 4 February 2006: 51-52)?

A study that mirrors the work of this thesis by examining the causes of, rather than the responses to, maritime violence and crime in the interstate society could also be undertaken. This would allow for the interaction between the interstate, interhuman and transnational societies to be understood from the 'bottom up'. From a theoretical perspective, such a study could help develop the links between Human Security and the English School, particularly by examining environmental issues, separatist conflicts and human rights violations through primary institutions of the interstate society, such as environmental stewardship, nationalism and the equality of people (Buzan, 2004a: 187). These research areas could collectively enable more sophisticated policy approaches to be adopted by Great Powers in their relations in the interstate, interhuman and transnational societies.

Additional research can be conducted to examine the roles of the JCG and MSDF in combating maritime barbarians, infidels and pirates. As this thesis has shown, there have been tensions between the JCG and MSDF in combating North Korean spy ships. How will such tensions play out as the PSI, in which both the JCG and MSDF are involved, develops? Will Japan's maritime policy come to rely increasingly on the JCG, which can be dispatched around the globe as a maritime policing organization without

raising constitutional issues related to Article 9 unlike the MSDF? Since the end of the Cold War, as international relations have shifted from a bipolar to a multipolar world dominated by the US, a Superpower, the JCG has expanded its role, equipment and training. To what extent has this expansion come at the expense of the MSDF? Finally, this thesis has raised questions concerning the Japanese government's ability to respond to crises, thereby providing the basis for a more thorough assessment of the Japanese government's crisis management.

7.9 The Future of Japan's Response to Maritime Security

Japan's approach to each of the maritime security issues examined in this dissertation demonstrates a tendency amongst Japanese policy makers to seize opportunities to reform the duties of Japanese maritime authorities based upon dramatic events. The response of the Japanese government to the incursions of North Korean spy ships, at a time when tensions between Japan and North Korea were high following the launch of the Taepodong missile over the Japanese mainland, led to expansive new rules of engagement and improved weaponry for the Japan Coast Guard, as well as better coordination between the Japan Coast Guard and the Self-Defence Forces. The hijacking of the *Alondra Rainbow* in 1999 persuaded the Japanese government to initiate a series of region-wide forums to develop a response to piracy. Following the ransom case of three crew members of the *Idaten* in March 2005, Japan's commitment to evolving this response to piracy throughout the Southeast Asian region has strengthened. Finally, the 9/11 attacks prompted a re-evaluation of the maritime security practices of the International Society. These maritime security practices have been transformed by a number of international agreements, all of which Japan has signed, designed to strengthen ships, ports and maritime trade from terrorist attacks. Furthermore, the Koizumi government has seized the chance to reform the conditions under which the Self-Defence Forces are deployed, enabling them to play a rear-support role to US and coalition forces in the 'war against terrorism'.

The Japanese response to maritime security threats, with the exception of Japan's response to North Korean spy ships, has been conditioned by Japanese policy-makers' understanding of the interstate society and what is possible within it. That is to say, laws governing international conduct between states have been strictly adhered to, diplomatic channels and international forum have provided the focus for the evolution of the Japanese response, and exercises undertaken abroad have been approved bilaterally or multilaterally. Only in the case of the North Korean spy ships could Japan's actions be described as abrogating international norms. Still, by limiting itself to an approach set within the confines of the interstate society, Japan's approach to maritime security issues deals only with the symptoms and not the causes of the security issues themselves.

In order to tackle the underlying causes of piracy and maritime terrorism, a human security approach needs to be developed in tandem with the current response designed along the lines established by the International Society. To do so, the Information Sharing Centre established in Singapore could be used to produce more thorough analyses of piratical and maritime terrorist incidents based upon the data provided by the IMB. Such analyses should first focus upon the level of the piracy or terrorist attack as specified by Chalk and Yamada, so that the different types of piratical attack can be separated from each other. Then, the areas where different levels of piratical attack occur can be determined. By doing so, the areas which are most prone to piratical attack can be ascertained and more heavily policed. Finally, the information on piratical attacks can be compared with economic, environmental, social and criminal data from littoral states to try and establish connections between the piratical incidents and the situations or conditions in Southeast Asian states that lead certain individuals to perpetrate acts of piracy or maritime terrorism. In so doing, international ODA donors and NGOs can look for opportunities to improve the conditions within the coastal regions that produce pirates.

There are three reasons to believe that this is in fact occurring. First, the motivation for Japan's involvement in combating piracy was based not only on the opportunity to develop the duties and reach of the Japan Coast Guard, but also with the aim of

protecting Japanese lives at sea and to secure Japanese trade, which entails protecting both the economy and the standard of living of the Japanese people. Hence, human security concerns existed from the start of Japan's response to piracy following the attack on the *Alondra Rainbow*. Second, the establishment of Coast Guards throughout the Asian region based upon the Japanese model as well as the continuing dialogues, initiated by Japan, between maritime authorities from across the region have created a human network of non-military personnel. It is of some significance that Coast Guards, whose primary duty is the protection of human life and the marine environment, are replacing navies and being put in charge of tackling maritime violence and crime. Third, increases in ODA directed at improving regional coast guard capabilities following the hijacking of three members of the *Idaten* crew, two of whom were Japanese, indicates that the Japanese government is willing to adapt its aid policies to confront maritime piracy and terror.

The tasks of the Japan Coast Guard are more numerous and increasingly vital to Japan's safety. Though the equipment and personnel of the JCG are gradually increasing, they are still insufficient to tackle the myriad of duties the JCG must fulfill (Miyahira interview, 24 February 2004). The March 1999 and December 2001 incursions by North Korean spy ships, the transgression of Japan's EEZ by a Chinese submarine on 10 November 2004, the global 'war on terror' and the dispatch of the SDF to Afghanistan and Iraq, as well as the case of the pirated *Idaten* in March 2005 have helped raise awareness amongst Japanese citizens and policy makers alike of the maritime security issues that Japan faces.³⁵⁷ Such incidents have encouraged the Japanese government to finance improvements in the capabilities of the JCG, such as the development of 2,000-ton ships able to travel at 40 knots and armed with 40mm cannons that can target vessels from 5km away. In addition, the Nippon Foundation has established *umimori*, a citizens' group designed to raise awareness about maritime affairs and take action to protect Japanese waters (Yamada interview, 10 November 2004). The creation of such a citizens' organization coupled with the capabilities, knowledge and experience of the JCG provides a powerful combination to ensure the safety of Japan's seas. Japan has

³⁵⁷ 1,620,000 people came to see the North Korean spy ship which had been salvaged and was exhibited in Tokyo and Osaka (Yamada interview, 10 November 2004).

been promoting the replication of these institutions in Southeast Asian states which, because of the importance of the Malacca Straits as a shipping lane and the significant international ports of the Asian region, have become central in the fight against terrorism and maritime crime. Japan's success in forming regional networks of maritime officials is only the first step in this process.