

AN INDEPENDENT DEPLOYER IN INFORMAL ORGANIZATIONAL STRUCTURES: JAPAN'S CONTRIBUTION TO THE CGPCS

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SUMMARY

Japan has participated in the counter-piracy mission off the coast of Somalia and the CGPCS from the very beginning in 2009. Although Japan has been among the most active countries in the fight against piracy, this engagement and Japan's experience might not always be fully reflected in the proceedings of the Contact Group. Japan has so far only chaired one meeting, and, in the third session, initiated the IMO Djibouti Code of Conduct Trust Fund. This paper analyses Japan's contribution to the CGPCS, the Trust Fund and regional capacity building, assessing how domestic constitutional and legal constraints limited its activities, and examining possible issues with the informal corridor negotiation styles or information sharing techniques at the CGPCS plenary and working group sessions.

Japan has participated in the counter-piracy mission off the coast of Somalia and the CGPCS from the very beginning in 2009. Although, Japan has since then been among the most active countries in the fight against piracy, flying the highest number of reconnaissance missions and spending the longest time on sea, escorting ships along the International Recommended Transit Corridor (IRTC), this engagement and Japan's experience might not always be fully reflected in the proceedings of the Contact Group.

The relationship between Japan and the CGPCS did have a certain “boomerang effect” on both institutions.¹ On one hand, the Japanese experience in the implementation of ReCAAP, and its knowledge about the significance of intelligence sharing and the importance of an Information Sharing Centre (ISC), facilitated the implementation of a counter-piracy infrastructure off the coast of Somalia and the improved effectiveness of the CGPCS itself. On the other hand, it had a strong influence on Japanese domes-

¹ For an example in the area of human rights advocacy, see Keck, M. E, Sikkink, K. 1998. *Activists Beyond Borders*. Ithaca and London: Cornell University Press, pp. 12-14.

tic policy-making, laws concerning the deployment of its defence forces, capacity enhancement of the Maritime Self-Defence Force (MSDF) and the Japanese Coast Guard (JCG). The success of the counter-piracy mission further influenced domestic laws and eventually even the interpretation of the Japanese constitution.

DEVELOPMENT OF THE JAPANESE COUNTER-PIRACY MISSION

The Japanese active participation in the counter-piracy mission off the coast of Somalia began on 28 January 2009, when the Japanese Minister of Defence (MoD) issued an order to the Commander in Chief of the Self-Defence Force (SDF) Fleet and the Director General of the Defence Intelligence Headquarters to begin preparations for a mission against piracy off the coast of Somalia and in the Gulf of Aden.² The outline of the instructions ask the SDF to (1) prepare for the formation of the unit, (2) information gathering, (3) training for the mission, (4) the procurement, replenishment, storage, maintenance of necessary means, and the (5) coordination with relevant organizations.

Shortly thereafter, in February 2009, a MOD and SDF personnel field investigation team was sent to visit Yemen, Djibouti, Oman, and Bahrain. In March 2009, the MoD and SDF were similarly commis-

sioned to review possible bases for Japanese troops, aircraft and vessels,³ and only three weeks later, on 14 March 2009, the first two destroyers, the DD Sazanami and the DD Samidare left MSDF Kure Base with about 400 MSDF troops and 8 JCG officers left for the Gulf of Aden.⁴ The destroyers also carried two rotary wing aircrafts. The legal framework of this first dispatch was Article 82 of the SDF Law, which allowed the deployment of MSDF troops without Diet approval when “*special measures are deemed necessary to protect lives and property or maintain order at sea*”.⁵

Domestic legal and normative constraints

Because of the generally anti-militarist sentiment among the Japanese public, which is shared in some political parties including, among others, the governing LDP coalition partner Komeito, out-of-area missions have always, at least initially, triggered critical public discourse and, depending on the mission, also public protest. The government decision for prior missions had required a special law, which made initial Diet approval a prerequisite alongside an annual vote should a mission require extension. Article 9 of the Japanese constitution puts additional constraints on SDF out-of-area missions, because the official government interpretation, at least until 2014, was that article 9 prohibits the right of collective

² Japanese Ministry of Defence (28th January 2009b), *Press Conference by the Defence Minister*, <http://www.mod.go.jp/e/pressconf/2009/01/090128.html>

³ Japanese Ministry of Defence (5th February 2009), *Press Releases: Field Investigation in Countries around the Gulf of Aden*, at: <http://www.mod.go.jp/e/pressrele/2009/090205.html>

⁴ Japanese Ministry of Defence (13th March 2009a), *Press Releases: Issuance of Order for Operation of the*

Self-Defence Forces concerning Maritime Security Operations, at:

<http://www.mod.go.jp/e/pressrele/2009/090313a.html>; Japanese Ministry of Defence (13th March 2009b), *Press Releases: Departure of the dispatched maritime force for response to piracy*, at: <http://www.mod.go.jp/e/pressrele/2009/090313b.html>

⁵ Government of Japan (1954), *Self-Defence Forces Law*, Article 82

self-defence. Both issues were at least potentially problematic and would have severely limited any Japanese participation in the counter-piracy mission off the coast of Somalia.

The opposition parties were very critical of the imminent dispatch in March 2009. The leader of the Social Democratic Party (SDP) Mizuho Fukushima said in a rally on March 5, 2009 in Tokyo that "the dispatch could very well induce the first use of armed force overseas by the Self-Defence Forces" and that "to allow the dispatch under the circumstances would become a precedent that would allow the dispatch of the SDF anywhere, anytime, at any cost."⁶

On 15 April 2009, the Japanese House of Representatives (the Lower House of the Japanese National Diet) began negotiations about a permanent law that would allow the Japanese Maritime Self-Defence Force (JMSDF) to protect ships from any nationality.⁷ In these debates, the-then prime minister, Taro Aso, insisted upon a swift passage of the law, highlighting the "dramatic increase" of piracy attacks off the Somali coast and in the Gulf of Aden, which for Japan was a "life and death matter" because of its high reliance on international trade by ships and especially oil from just a few countries in the Middle East.⁸ While the two governing parties, the LDP and Ko-

meito, both sought a permanent law, the opposition party in the Lower House moved an amendment to the draft law so that each mission would require prior Diet approval. After only one week of debate, the Japanese House of Representatives approved the bill on 23 April 2009. Since the opposition DPJ had the majority in the Upper House of the Diet (the House of Councillors) and continued to insist on Diet approvals prior to every dispatch of MSDF ships (the government insisted that it might have to deploy ships on short notice, but agreed to report an outline of each mission to the Diet), getting approval from the Upper House looked, at least at the outset, a more difficult proposition for the governing coalition.⁹ For the Japanese government, passing the Anti-Piracy Law, enabling full participation in the counter-piracy activities off the coast of Somalia, was so important that it was able to finally pass it in a second vote on June 2009 in the Lower House, overriding a rejection by the Upper House on 19 June 2009.¹⁰ The Ministry of Defence immediately ordered the Chiefs of Staffs and the Director General of the Defence Intelligence Headquarters to take necessary measures, such as organizing a force, procurement, replenishment, storage and maintenance of equipment, training, the coordination with related organizations, and information gathering, in order to promptly implement the anti-piracy measures.¹¹ The

⁶ The Japan Times (6th March 2009), SDF Somalia dispatch slammed by opponents at rally, *The Japan Times* [online], <http://www.japantimes.co.jp/news/2009/03/06/national/msdf-somalia-dispatch-slammed-by-opponents-at-rally/#.VAgmWxCa98E>

⁷ The Japan Times (15th April 2009), Debate starts on bill to free up MSDF, *The Japan Times* [online], <http://www.japantimes.co.jp/news/2009/04/15/national/debate-starts-on-bill-to-free-up-msdf/#.VAg1RCa98E>

⁸ The Japan Times (15th April 2009), *Debate starts on bill to free up MSDF*

⁹ The Japan Times (28th May 2009), Upper House frets dispatch authority in antipiracy bill, *The Japan Times* [online], <http://www.japantimes.co.jp/news/2009/05/28/national/upper-house-frets-dispatch-authority-in-antipiracy-bill/#.VAgneBCa98E>

¹⁰ The Japan Times (19th June 2009), Antipiracy bill set to be enacted, *The Japan Times* [online], <http://www.japantimes.co.jp/news/2009/06/19/national/antipiracy-bill-set-to-be-enacted/#.VAgOQRca98E>

¹¹ Japanese Ministry of Defence (19th June 2009), *Press Releases: Issuance of Instructions and Orders for Preparation of the Self-Defence Forces for Anti-Piracy*

MSDF officially joined the surveillance duties in June 2009 with two P-3C surveillance aircraft and two destroyers, both based in Djibouti.¹²

Anti-Piracy Specials Measures Law

The *Law on Punishment of and Measures against Acts of Piracy* or Anti-Piracy Law came into force on 24 June 2009. It finally allowed the MSDF to protect ships owned by countries other than Japan, which made Japan a fully functioning independent deployer. The law provides a clear definition of acts of piracy, or attempted piracy, and the penalties which such acts incur.¹³ Japan considers piracy a criminal offense and, therefore, regards the anti-piracy mission as a matter of policing and law enforcement, which is why the JCG plays the central role in enforcing the law. However, since the JCG does not have ships that would allow passage from Japan to Somalia, the MSDF is in charge of providing the necessary support activities such as observation and transportation of JCG officers, while the JCG takes “necessary measures pursuant to the provisions of this law” in line with the Japan Coast Guard Law (Law No. 28 of 1953).¹⁴ Only JCG officials, and not the MSDF, may use weapons, provided the “*perpetrator or the ship disobeys other measures to deter and continues the acts of piracy and that there is probable cause to believe in the lack of any other appropriate measures to stop the navigation of that*

Measures off the coast of Somalia and in the Gulf of Aden,

<http://www.mod.go.jp/e/pressrele/2009/090619.html>

¹² See also analysis in: Black, Lindsay (2012). *Debating Japan's Intervention to Tackle Piracy in the Gulf of Aden: Beyond Mainstream Paradigms*, International Relations of the Asia-Pacific 12 (2), pp. 259–285

¹³ Government of Japan (2009), *Law on Punishment of and Measures against Acts of Piracy*, Articles 1 to 4

*ship*¹⁵ regulated by existing policing laws.¹⁶

¹⁷ This law is different from special measures laws such as the Anti-Terrorism Law (October 2011), or the Refuelling mission in the Indian Ocean (2001-2010), in that it gives the Minister of Defence, with the approval of the prime minister, the right to order units of the JSDF to take “*actions against acts of piracy at sea in the case where there is extraordinary necessity to take measures against acts of piracy*” and to “*draw up and submit to the Prime Minister the guidelines for response operations*”¹⁸.

JAPAN'S CONTRIBUTION TO THE COUNTER-PIRACY MISSION

Japan's Role in the Plenary Session

Japan was a founding member of the CGPCS and has participated in all of its plenary sessions beginning on 14 January 2009. Early on, it became clear that the maritime component of the counter-piracy mission discussed in WG1 had to be flanked by the development of a financial support mechanism to facilitate the setting up of a legal framework in the countries of the region. In the Contact Group's 2nd plenary session on the 17th March 2009, Japan supported and worked towards WG2's agreement to establish an International Trust Fund, to “*help*

¹⁴ Government of Japan (2009), *Law on Punishment of and Measures against Acts of Piracy*, 2009, Article 5

¹⁵ Government of Japan (2009), *Law on Punishment of and Measures against Acts of Piracy*, 2009, Article 6.

¹⁶ Such as: Government of Japan (1948), *Law concerning the Execution of Duties of Police Officials*, Article 7

¹⁷ Government of Japan (2009), *Law on Punishment of and Measures against Acts of Piracy*, 2009, Article 7

¹⁸ Government of Japan (2009), *Law on Punishment of and Measures against Acts of Piracy*, 2009,

defray the expenses associated with prosecution of suspected pirates."¹⁹ The trust fund was endorsed at the third plenary, on the 29th of May 2009 in New York.²⁰ Japan has a long history of providing financial and capacity building contributions to military operations from the First Gulf War (1991) and disarmament in Afghanistan, to support for coast guards under the ReCAAP framework in South East Asia. This was probably a central reason why Japan strongly supported the International Trust Fund and the development of better regional capability in the third CGPCS plenary meeting. Subsequently, Japan was asked to chair the fourth CGPCS plenary meeting on 10 September 2009.

As a chair, Japan could welcome the effective implementation of the International Maritime Organisation (IMO) Djibouti Code of Conduct, a multi-donor trust fund, initiated by Japan. Japan considers the establishment of the IMO Djibouti Trust Fund to be one of the most important achievements of its activities in the Contact Group.²¹ The core objective of this trust fund was the establishment of an information sharing center in Kenya, Tanzania and Yemen, as well as a regional Coast Guard training center in Djibouti.²² While the IMO Djibouti Trust Fund was initiated by Japan, it was stressed that it was open to financial support from all participants.²³

Another area where more funds were needed was in making sure that arrested pirates could be processed, prosecuted, and jailed. Those capacities were considered insufficient in many countries in the region.

Therefore, the Contact Group approved the draft of the Working Group 2 (Legal Aspects of Counter-Piracy) for the establishment of an CGPCS International Trust Fund to "help defray the expenses associated with prosecution and detention of suspected pirates and imprisonment of pirates"²⁴ and encouraged all parties to make contributions.

While the CGPCS International Trust Fund was set up in January 2010, by the UN Secretary-General Ban Ki Moon, following up on the decisions made in the CGPCS, it was originally considered to be under the control of the WG2 (but was eventually administered by WG1). The IMO Djibouti Trust Fund, established and administered by the IMO, which is a stakeholder in the CGPCS, is a simpler structure with only one fund and governing body. This author suggests, that it might have been advantageous to better coordinate or even integrate the funding mechanisms for the capacity building for the prosecution of pirates with those of the information sharing centres and training facilities for coast guard personnel, since both share a similar objective.

At the time of the 10th CGPCS plenary session held on the 17th of November 2011, Contact Group members saw the necessity to react to increased public anger about the large number of seafarers who had been held captive and the physical and psychological suffering which was increasingly reported in the media (although the number of

¹⁹ CGPCS Communiqué of the Second Plenary, 17th March 2009, Cairo

²⁰ CGPCS Communiqué of the Third plenary, 29th May 2009, New York

²¹ Interview with Yoshihiro Katayama, July 2014

²² CGPCS Communiqué of the fourth plenary, 10th September 2009, New York, p. 2

²³ CGPCS Communiqué of the fourth plenary, 10th September 2009, New York, p. 2

²⁴ CGPCS Communiqué of the fourth plenary, 10th September 2009, New York, p. 3

crew being held hostage had actually already declined).²⁵ Despite the increasingly close international coordination of the military forces, these efforts were still considered to be insufficient.

While an increase in the number of deployed maritime force vessels was considered desirable, the CGPCS also recognized the growing use of privately contracted armed security personnel (PCASP) and the fact that “*no vessel with PCASP on board had been successfully pirated.*”²⁶ However, it also saw the necessity to increase regulation and oversight by the IMO of PCASPs.

The counter-piracy operation provided valuable opportunities for cooperation, especially between independent deplorers, which would have either not have happened outside of this mission, or on a much more limited scale. An example can be seen in the cooperation between Japan, China, India, Russia, and the Republic of Korea in the convoy operations in the Gulf of Aden, which was specifically mentioned in the 12th CGPCS plenary session on 25 July 2012.²⁷

The CGPCS does not only facilitate closer cooperation, it also encourages its member states to increase cooperation of their maritime forces with the three main counter-piracy missions: the EU NAVFOR mission ATALANTA, the Combined Maritime Forces, and the NATO Operation Ocean Shield (OOS). In one example of this cooperation, the Japanese government decided in June 2013 that the MSDF's destroyer JS

Samidare would join the CTF151 beginning in December 2013, allowing it to prevent piracy attacks outside of the International Recommended Transit Corridor (IRTC). After CGPCS participants had visited the JSDF operational facility in Djibouti in November 2013, this move by Japan received words of appreciation in the 15th CGPCS plenary session.²⁸

On the 14th of July, 2013, the Commander of the Combined Task Force (CTF) 151, Commodore Muhammad Ihsan Qadir from the Pakistan Navy, met the Commander of Escort Division Six, JMSDF Captain Tsutomu Iwasawa, in Djibouti to discuss future cooperation between the Japanese and CMF forces. In June 2013, the Japanese had provided air support by helicopter when a Turkish Coast Guard vessel was following a potential piracy ship. Commander Qadir noted during this meeting, that “*any additional support that the Japanese could provide CMF would be a significant development. The Japanese have experience operating in the CMF area of operations and are a proficient naval force that will be a great asset to CMF*”,²⁹ and the CTF 151 Planning Officer, Navy Commander Onno Boshouwers (Dutch Navy) stressed that “*CTF 151 and the Japanese Escort Division share a common purpose - defeating piracy in this area.*”³⁰

Japan's ReCAAP ISC Experience

Japan's experience in setting up the Agreement on Combating Piracy and Armed

²⁵ CGPCS Communique of the tenth plenary, 17th November, New York, p. 1

²⁶ CGPCS Communique of the tenth plenary, 17th November, New York p. 2

²⁷ CGPCS Communique of the 12th Plenary Session, 15th July 2012, New York

²⁸ CGPCS, Communique of the fifteenth plenary, 11 November 2013, Djibouti

²⁹ Combined Maritime Forces (4th August 2013), *CTF 151 meets with Japanese Escort Division 6 in Djibouti*,

<http://combinedmaritimeforces.com/2013/08/04/ctf-151-meets-with-japanese-escort-division-6-in-djibouti/>

³⁰ Combined Maritime Forces (4th August 2013), *CTF 151 meets with Japanese Escort Division 6 in Djibouti*,

<http://combinedmaritimeforces.com/2013/08/04/ctf-151-meets-with-japanese-escort-division-6-in-djibouti/>

Robbery against Ships in Asia (ReCAAP) Information Sharing Center in Singapore has become a central contribution to improving the effectiveness of the counter-piracy mission off the coast of Somalia. The IMO has established three Information Sharing Centres (ISCs), in Sana'a, for the Northern area, in Mombasa, for the central area, and in Dar es Salaam, for the Southern area. All three have an information exchange mechanism and have learned from, and share experience with, the ReCAAP ISC. This close cooperation between the ISCs based on the Djibouti Code of Conduct and the ReCAAP ISC has also been facilitated by Japan, the IMO (and its director Koji Sekimizu), as well as Yoshiaki Ito, who had previously worked at ReCAAP and in December 2012 became the Special Advisor to the IMO Secretary-General and Head of Task Force for the Implementation of the Djibouti Code of Conduct. Both Sekimizu and Ito are Japanese nationals.³¹ The Djibouti Code of Conduct was inspired by and has been drafted based on the experience of the ReCAAP ISC, and ReCAAP has actively contributed to the setup of the Djibouti Code of Conduct.³² The ReCAAP ISC actively participated in the April 2008 meeting to draft of the Djibouti Code of Conduct Agreement, where it was an observer. Furthermore, many articles of the Djibouti Code of Conduct were based on

the ReCAAP ISC Agreement of 29 November 2006, which was then credited in the Djibouti Code of Conduct preamble.³³

Before the official start of operations, ReCAAP shared its experience at the IMO Sub-Regional Meeting to Progress Implementation of the Djibouti Code of Conduct in the Seychelles in October 2009, and in November that year through a Program for Djibouti Code of Conduct Focal Points organized by ReCAAP ISC in Singapore and a ReCAAP ISC's Capacity Building Workshop in the Philippines³⁴.

Governing Council Meetings of the ReCAAP Information Sharing Centre (ISC) and its Japanese executive director Yoshihisa Endo (reappointed from April 2013 to March 2016) have frequently expressed concerns about the deterioration of the piracy situation in the Gulf of Aden, while stressing that success in recent years is, in part, the result of close cooperation between the ReCAAP ISC, the IMO, and the CGPCS, and a willingness to "share experience and expertise with the Djibouti Code of Conduct to combat piracy off the coast of Somalia."³⁵

The ISCs have taken part in live maritime counter-piracy exercises, acting as the trigger for an operational response to reports of piracy. Expertise has been developed through a successful partnership with ReCAAP ISC in Asia, while the EC MARSIC

³¹ International Maritime Organization (2013), *Djibouti Code of Conduct: Project Implementation Unit Edition 3: September 2012 – March 2013*, London: IMO

³² ReCAAP Information Sharing Centre (ISC) (2013), *Contribution to the Djibouti Code of Conduct*, Singapore, p. 3.

³³ ReCAAP Information Sharing Centre (ISC) (2013), *Contribution to the Djibouti Code of Conduct*, p. 4.

³⁴ ReCAAP Information Sharing Centre (ISC) (2013), *Contribution to the Djibouti Code of Conduct*, pp. 5-7

³⁵ 7th Governing Council Meeting of the ReCAAP Information Sharing Centre (ISC), March 2013), but also 6th

and 8th Meeting in March 2012 and March 2014 respectively, see: ReCAAP Information Sharing Centre (ISC) (8th March 2012), *Press Release: The Sixth Governing Council Meeting of the ReCAAP Information Sharing Centre (ISC)*, Singapore; ReCAAP Information Sharing Centre (ISC) (7th March 2013), *Press Release: The Seventh Governing Council Meeting of the ReCAAP Information Sharing Centre (ISC)*, Singapore; ReCAAP Information Sharing Centre (ISC) (4th March 2014), *Press Release: The Eighth Governing Council Meeting of the ReCAAP Information Sharing Centre (ISC)*, Singapore

Project works closely with the Sana'a ISC (ReMISC).³⁶ The ReCAAP ISC and Djibouti Code of Conduct ISCs regularly share information about their tactics to intercept pirates and how to improve the information sharing process. This information is then disseminated to ReCAAP Focal Points and its partner organizations.³⁷

The ReCAAP ISC has also shared its experience at the Workshop and High-Level Meeting in Djibouti, 28-30 May 2011, when the decision on the Djibouti Training Center (DRTC) was adopted. The central role of Japan in setting up the ReCAAP and its ICS, which has long been under Japanese directorship, the move of Japanese senior officials from ReCAAP to the IMO to oversee the implementation and improvement of the DCC, and its three ISCs, the weekly updates from the ReCAAP ICS and focal points to the Djibouti Code of Conduct ICS since 2009, based on a Standard Operating Procedures (SOP), all demonstrate that the initiatives of one country has made an important difference in improving information sharing procedures under the Djibouti Code of Conduct and in the end for the CGPCS.³⁸

IMO Djibouti Code of Conduct Trust Fund

Early on, Japan considered capacity building, and a financial contribution to the countries to build or rebuild their own coast guard capacities and legal and government institutions, as central in the fight against piracy. The IMO Djibouti Code of Conduct Trust Fund was established to “financially

support capacity-building activities aimed at implementing the provisions of the Djibouti Code of Conduct concerning the repression of piracy and armed robbery against ships in the western Indian Ocean and the Gulf of Aden.” Japan considers the implementation of the IMO Djibouti Code Trust Fund as one of its major achievements, which is why, according to Yoshihiro Katayama, “*Japan expressed its intention to contribute US\$13.6 million to the future IMO Djibouti Code Trust Fund, in order to help build the maritime security capacities in Somalia and its neighbouring countries*”³⁹ in the 3rd CGPCS Plenary Meeting, and finalized the establishment of the Trust Fund in the 4th Plenary Meeting in September 2009 (the first, and so far only, plenary that was chaired by Japan)⁴⁰.

Japan diversified its financial contribution to support the counter-piracy mission off the coast of Somalia. On the one hand, Japan donated US\$ 14.6 million to the Djibouti Code of Conduct Trust Fund after its establishment in 2011, by far the single largest amount.⁴¹ This reflects Japan's traditional support for financially supporting humanitarian, reconstruction and capacity building missions. The significant financial contribution from Japan enabled the IMO to implement effective capacity building measures in the region in cooperation with UN agencies and the EU, after the signing of an agreement following the Conference on Capacity Building to Counter Piracy off

³⁶ ReCAAP Information Sharing Centre (ISC) (2013), *Contribution to the Djibouti Code of Conduct*

³⁷ ReCAAP Information Sharing Centre (ISC) (2013), *Contribution to the Djibouti Code of Conduct*

³⁸ ReCAAP Information Sharing Centre (ISC) (21st March 2013), *Executive Directors Report*, Singapore

³⁹ Interview with Yoshihiro Katayama, July 2014

⁴⁰ Interview with Yoshihiro Katayama, July 2014

⁴¹ Denmark in 2012 with US\$ 560,000 was the second largest (IMO (2013), *Djibouti Code of Conduct*)

the Coast of Somalia in London on 15 May 2012.⁴²

For the Japanese government, it was also very significant, that it was closely involved in the planning and construction of the Djibouti Regional Training Centre (DRTC), not least because US\$ 2.5 million of the required funds of US\$ 2.628 million were provided by Japan⁴³ through the Djibouti Code of Conduct Trust Fund. This project was managed by the IMO, but the actual site and the construction companies were decided by, and were the responsibility of, the government of Djibouti, and all details had been agreed upon in a Memorandum of Understanding (MoU) between the IMO and the government of Djibouti.⁴⁴ The MoU even mentions that “*The Government shall be making, in consultation with IMO, appropriate arrangements for embedding in an appropriate location a plaque (...) recording that the Centre was constructed with funds provided by Djibouti Code of Conduct Trust Fund, with recognition that the major donor was the Government of Japan*”.⁴⁵

The strong Japanese financial and logistical support for the DRTC is certainly also due to its closeness to the MSDF base (near Djibouti International Airport) and Djibouti harbour, the home port of the two MSDF destroyers. This will allow MSDF and JCG personnel to be directly involved in the training and capacity building sessions in the DRTC.

CGPCS Trust Fund

The Japanese contribution to the CGPCS Trust Fund, which was established in January 2010, was, with US\$ 1.6 million, the second largest after Germany, which provided support of US\$ 2 million (as of 2014). Japan promised its first contribution of US\$ 2 million before the 10th Board meeting in March 2012.⁴⁶ One reason for the timing of the Japanese contribution might have been the CGPCS's decision to nominate Japan to join the Trust Fund Board of Directors again from 2014 to 2015. Japan was a board member in 2012 (Shoichi Nagayoshi, MOFA)⁴⁷ but in 2013, Japan (Hiroyuki Kobayashi and Ryo Kaneko, MOFA) had only observer status.⁴⁸

⁴² International Maritime Organization (IMO) (17th May 2012), *IMO signs strategic counter-piracy capacity building partnerships with UN agencies and EU*, <http://www.imo.org/MediaCentre/PressBriefings/Pages/15-capacitypartnerships.aspx#.VAEN-NIBdVPZ>

⁴³ Capacity-Building Coordination Platform (1st January 2010) *Construction of Djibouti Regional Training Centre building*, Decision Date: 1.1.2010

⁴⁴ International Maritime Organization (30.5.2011), *Memorandum of Understanding between the Government of Djibouti and the International Maritime Organization*

⁴⁵ International Maritime Organization (30.5.2011), *Memorandum of Understanding between the Government of Djibouti and the International Maritime Organization*, section 13.2.

⁴⁶ CGPCS Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia, *Minutes of the 10th Meeting of the Board*, 28th March 2012, New York) but paid US\$ 1.6 million only in 2014 (UNDP,

Multi-Partner Trust Fund Office (2014a), *TF to Support Initiatives of States Countering Piracy off the Coast of Somalia*, <http://mptf.undp.org/factsheet/fund/APF00>).

However, according to the WG1 Capacity-Building Coordination Platform, as of November 2012, Japan was the largest contributor to the CGPCS Trust Fund with US\$ 3.5 million, followed by Norway with US\$ 2 million, and the Netherlands, the USA, UAE, Kuwait and Germany with each between US\$ 1 million and US\$ 1.5 million

⁴⁷ CGPCS Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia, *Minutes of the 10th Meeting of the Board*, 28th March 2012, New York

⁴⁸ CGPCS Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia, *Minutes of the 10th Meeting of the Board*, 28th March 2012, New York; CGPCS Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia, *Minutes of the eleventh meeting of the Board*, 24th July 2012, New York

At the CGPCS 15th plenary session, the chair praised the “*efforts of donors such as Japan for work in building regional capacity, including through contributions to the establishment of the DRTC*”.⁴⁹ While Japan's financial contribution to the CGPCS Trust Fund makes up about 14% of the overall budget of US\$ 11.3 million (2013 and 2014), it has provided over 90% of the IMO Djibouti Code Trust Fund. Since December 2012, the trust fund is managed by the UN Development Programme's Multi-Party Trust Fund (UNDP MPTF) office.⁵⁰

Japan has donated separate funds, in addition to the CGPCS Trust fund, to UNDP Somalia to support the building of prosecution capacities, especially for piracy trials by training personnel in Puntland and Somaliland, strengthening of police forces, and immigration management,⁵¹ and the UNDP Rule of Law and Security Program for legislative reform in Puntland.⁵² In March 2014, Japan made an additional contribution of US\$ 1 million to the CGPCS Trust Fund and announced a package of almost US\$ 40 million as a means of “supporting the peace and nation building of Somalia.”⁵³

On the whole, Japan has provided very significant financial resources to assist in the training of coast guards and the prosecution of suspected pirates in Somalia, Puntland, Djibouti, Kenya, and the Seychelles. It also supports these operations with matching official development assistance (ODA) projects in the region. Japan, therefore, prefers

to keep at least indirect control about the decisions of how the funds are used and appreciates recognition of its contribution in the region.

OPPORTUNITIES AND CHALLENGES FOR JAPAN

For Japan, the counter-piracy mission off the coast of Somalia in general, and its engagement in the CGPCS in particular, has become an important exercise in joint operations outside of UN Peace Keeping Operations (UNPKOs) and provided new opportunities for future out-of-area missions for Japan. Yet the decision-making process of the CGPCS, and the way the Japanese Ministry of Foreign Affairs is organized, has also provided some challenges for Japan. These challenges could be considered for future operations.

Japanese assessments about the significance of the CGPCS

With regards to the set up and organizational structure of the CGPCS, Shoichi Nagayoshi, the then head of the Japanese delegation,⁵⁴ noted in January 2013 that the Contact Group “*is the very best platform for countries and organizations concerned to have a comprehensive picture of those activities . . . and [that] helps us to formulate our own policies*” and the best mechanism

⁴⁹ CGPCS Communiqué of the 15th plenary, 11th November 2013, Djibouti

⁵⁰ United Nations (21st December 2012). *Memorandum of Understanding between the United Nations and the United Nations Development Program regarding the Management of the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia*, New York: United Nations

⁵¹ Capacity-Building Coordination Platform, March 2013, UNDP: Somalia

⁵² Capacity-Building Coordination Platform, May 2013, CGPCS Trust Fund

⁵³ CGPCS Communiqué of the sixteenth plenary, 14th May 2014, New York

⁵⁴ Head of the Japanese delegation to the CGPCS between April 2013 and March 2014 and Director of the Japanese Ministry of Foreign Affairs Maritime Security Policy Division

to provide a “*broader perspective with regard to counter-piracy activities conducted both bilaterally and multilaterally*”.⁵⁵ Nagayoshi also emphasized the importance of trust building between CGPCS member states and delegations, which facilitates the flow of information and is “*useful for us to know each other, who are involved in activities to counter piracy*”.⁵⁶

Japan had initiated, and successfully helped to set up, the ReCAAP to counter piracy in South East Asia (see above) and understood the importance of intelligence exchange and of having a central body to coordinate all counter-piracy activities in a multilateral setting. The current (since April 2014) Director of the Japanese MOFA Maritime Security Policy Division reiterated that “*piracy off the coast of Somalia is a matter of international concern that many stakeholders, such as countries concerned in and outside the region, international organizations*”, and that the “*maritime business, should cooperate to tackle (it)*” but that because of the large number of stakeholders, it was “*not easy to grasp a whole picture of how the international community has responded to deal with the piracy issue*”, which is why the CGPCS as such a “*useful forum which plays an important role in promoting information sharing, awareness of the issue and cooperation among participants*”.⁵⁷

Stakeholder participation

In his contribution to the Lessons Learned Project (LLP) of the Contact Group on Piracy off the Coast of Somalia, William

Smith (2014) mentions actual or potential problems of stakeholder participation, given the diverse field of government and non-governmental stakeholders with different levels of financial abilities to participate in plenary sessions or working group meetings.⁵⁸ The Japanese delegation does not consider this a significant problem at this point. It argues that specific contributions of the stakeholders vary and reflect their respective size and capacity, and that the CGPCS chairmanship has so far facilitated the varied involvement of all parties. The mix of stakeholders in the CGPCS, which could be perceived as at least challenging to its discourse culture and styles of decision-making, is, therefore, not considered a problem by Japan.⁵⁹ All stakeholders share the same goals and the flexible and open structure of the CGPCS is the best suited to pursue the task at hand.⁶⁰

Japan itself, for example, which has been among the largest financial contributors to the CGPCS, the IMO trust fund, and regional capacity building, has only chaired one plenary meeting and until April 2014 had not co-chaired any of the working groups. However, its position is that chairing the plenary session or the working groups is not considered as a position of leadership but of a moderator. While this might not be unique to the CGPCS, the Japanese government has no intention to play a larger formal role because the current set-

⁵⁵ Shoichi Nagayoshi quoted in Zach, D., D. C. Seyle, and J. V. Madsen (2013), *Burden-sharing Multi-level Governance: A Study of the Contact Group on Piracy off the Coast of Somalia*, One Earth Future, p.30

⁵⁶ Zach et al. 2013, p. 32.

⁵⁷ Interview with Yoshihiro Katayama, July 2014

⁵⁸ Smith, William. 2014. *Dimensions of Legitimacy: Evaluating the Contact Group*. Cardiff: Cardiff University

⁵⁹ Interview with Yoshihiro Katayama, July 2014

⁶⁰ Interview with Yoshihiro Katayama, July 2014

ting allows all parties to express their concerns and make suggestions in a conciliatory manner.⁶¹

Without the political and legal legitimacy provided by the CGPCS, a diplomatic body affiliated with the UN and sanctioned by UNSC Resolutions, it would have been far more difficult for the Japanese government to get support for its gradually increasing engagement in the counter-piracy mission among members of the Japanese Diet and the general public. The fact that the CGPCS is a multi-stakeholder body and its main aim is the coordination of a rather broad range of activities and objectives, which go far beyond the military operations, but include policing, legal, and capacity building aspects, has prevented any serious accusation in Japan that the Japanese participation in the counter-piracy mission could be interpreted as a measure of collective self-defence, which is still widely considered unconstitutional in Japan.⁶²

Piracy the big equalizer

Japan, with its strong anti-militarist values and severe constitutional constraints (see above) has not only contributed its experience in the ReCAAP ISC, and the exceptionally active contribution to the military mission and the decisions in the CGPCS, but has also been the recipient of a 'boomerang effect',⁶³ meaning that Japan's involvement in counter-piracy initiatives has, in turn, affected Japanese policy-making.

The successful mission was at least one reason why the current Abe administration was able to further "normalize" its international role and military contribution to global or regional challenges, such as maritime piracy. In a recent press conference in February 2014, Donna Hopkins (Coordinator for Counter Piracy and Maritime Security, U.S. Department of State) stressed that "... *Japan changed its laws and created for the first time since World War II a counter-piracy base out of its own immediate regional sphere. (...) piracy is a great uniter because it's a common enemy. Everybody hates pirates*".⁶⁴

Therefore, Japan can be seen as an example of a country, where the CGPCS participation has not only helped to legitimize a five-year mission more than 9000 km away from home (involving the continued deployment of two destroyers and two planes and the setting up of the first out-of-area (military) base since 1945, in Djibouti), but has facilitated a domestic debate and a series of new laws and regulations that will lead to more active engagement in out-of-area missions in the future. This growth in military engagement can be seen in the establishment of a new National Security Council (December 2013), a new force doctrine with a Dynamic Joint Defence Force, an increase of defence spending in 2014 and 2015, and the increasingly force-focused and assertive defence policy announced in the then National Defence Program Guidelines for 2014 and beyond and the Five-year Defence Program for 2014 through 2018, both

⁶¹ Interview with Yoshihiro Katayama, July 2014

⁶² See explanation under: *Domestic legal and normative constraints*

⁶³ Boomerang pattern or boomerang effect, as described by Keck, M., and K. Sikkink (1998), *Activists Beyond Borders*. Ithaca and London: Cornell University Press, pp. 12-13.

⁶⁴ U.S. Department of State (20th February 2014), *Counter-Piracy Update*, U.S. Department of State [online], <http://iipdigital.usembassy.gov/st/english/text-trans/2014/02/20140221293810.html?CP.rss=true#axzz3BrVISzut>

passed in December 2013, and the June 2014 cabinet decision to re-interpret the Japanese constitution to allow the use of collective self-defence measures (see above).

By May 2014, the two Japanese destroyers who are usually deployed for about four to five months had escorted 3461 vessels in the International Recommended Transit Corridor (IRTC), none of which had been attacked by pirates.⁶⁵ Since December 2013, one destroyer has been conducting zone defence in coordination with the CTF 151 headquarters. Counter-piracy is, therefore, a very significant contribution from the Japanese MSDF. While two destroyers are deployed, two are on course to and from the theatre, and two are in preparation and training in Japan. This means that six destroyers are constantly assigned for the counter-piracy mission off the coast of Somalia. The two maritime patrol aircraft (P-3Cs), stationed in the Japanese SDF base in Djibouti, which began operation in June 2011, conduct surveillance operations in the Gulf of Aden, in coordination with the CTF 151 headquarters. Since the beginning of their operation, these aircraft have flown 8820 hours in 1140 missions.⁶⁶ Although being an independent deployer with long distance to the theatre, Japan has developed into one of the most active military forces

in the counter-piracy mission off the coast of Somalia and the Gulf of Aden.

The CGPCS and Private Security

On the 10th of December 2013, a special law allowing Privately Contracted Armed Security Personnel (PCASP) on board Japanese-flagged ships in high risk areas, following the Best Management Practice (BMP), came into effect in Japan.⁶⁷

While the execution of the law and the hiring of PCASP ran into some problems six months later,⁶⁸ this was still a very significant step for Japan, a country where privately owned guns are strictly regulated and therefore in very restricted use.⁶⁹ One reason why the Japanese Diet passed this law after some opposition, but still relatively quickly, was certainly that an increasing number of other CGPCS states passed similar laws, the repeated mentioning of the effectiveness of PCASP in the CGPCS plenary sessions and WG2 meetings, and the 2011 IMO interim guidance on the use of privately contracted armed security personnel on board merchant ships.⁷⁰ This can be seen as another example where the Japanese participation in the CGPCS undermined long-held beliefs about the use of weapons, even in the case of self-defence,

⁶⁵ Japanese Ministry of Defence (2014), *Defence of Japan 2014*, Japanese Ministry of Defence: Tokyo, Chapter 3, Section 3: Counter-piracy Operations.

⁶⁶ Japanese Ministry of Defence (2014), *Defence of Japan 2014*

⁶⁷ Special Measures Act for Security of Japanese Vessels in Pirate Infested Waters 20th November 2013, Tokyo (otherwise known as Japanese Ship Guarding Act), also mentioned in CGPCS Communique of the sixteenth plenary

⁶⁸ Williams, S. O. (1st July 2014), *Deciphering the Japanese Ship Guarding Act*, Maritime Executive [online],

<http://www.maritime-executive.com/article/Deciphering-the-Japanese-Ship-Guarding-Act-2014-07-01>

⁶⁹ See: Japanese Swords and Firearms Control Law, 1958.

⁷⁰ CGPCS Communique of the ninth plenary, 14 July 2011, New York; CGPCS Communique: of the tenth Plenary Session of the Contact Group on Piracy off the Coast of Somalia; CGPCS Communique of the eleventh plenary, 29 March 2012, New York; CGPCS Communique of the twelfth plenary, 25th July 2012, New York; CGPCS Communique of the thirteenth plenary 11th December 2012, New York; CGPCS Communique of the fifteenth plenary, 11th November 2013, Djibouti

and to some degree, the above mentioned public preference for non-militarist norms.

Overcoming regional adversary

Counter-piracy operations and participation in the CGPCS has been relatively uncontroversial and has been virtually universal. In the Japanese case, it is particularly noteworthy that it could have allowed closer cooperation with the People's Republic of China (PRC) and Republic of Korea (RoK), its two closest neighbours, with which it has, nevertheless, one of the most difficult relationships. Core problems have long been the different views about war responsibility and the diverging interpretation of their histories, and more recently, the territorial disputes concerning the Senkaku/Diaoyu islands between China and Japan, and the Takeshima/Dokdo Island between the RoK and Japan.

Closer cooperation on the political level in the CGPCS and between the maritime forces in the Gulf of Aden triggered the hope of international functionalist theory of a deepening of trust and shared understanding between these regional adversaries. However, a close reading of all publicly available documents and interviews with CGPCS participants and independent observers do not give the impression, that cooperation, even a flexible one with strongly shared objectives, has significantly improved the general relationship between these countries. On the contrary, one gets the impression that there has been a certain level of rivalry between the RoK and Japan about influence in the CGPCS. There is

very little evidence that Japan and the RoK have worked closely together, either in the plenary sessions or in the WG. While this might have never been expected, and certainly goes beyond the objective of the CGPCS, it would have been a welcome side-effect and could have facilitated closer cooperation in other areas in the future.

POTENTIAL PROBLEMS

While the opportunities and the success of the CGPCS certainly outweighs its challenges, there at least are some potential issues, with regard to the Japanese participation, which might be worth considering in the future.

Potential problems with frequent personnel changes in Japan

When it comes to the building of trust and personal relationships between delegations, not just in the CGPCS but in other similar institutional settings with Japanese involvement, one problem could be the very frequent replacement of the heads of the delegations, which in the Japanese case, is usually the Director of the Maritime Policy Division within the Ministry of Foreign Affairs. The Maritime Security Policy Division was specifically set up in November 2008 to better organize the "*safety of the world's sea lanes*" and to "*plan external policies to ensure maritime security including navigational security and countermeasures against terrorism and piracy*".⁷¹ Since March 2009, it had five directors, each for only one year.⁷² This in no way undermines

⁷¹ Ministry of Foreign Affairs, Japan (MOFA) (6th November 2008), *Organizational Reform Concerning the National Security Policy Division*, Ministry of Foreign Affairs

[online], http://www.mofa.go.jp/announce/announce/2008/11/1184565_1070.html

⁷² Michio Harada, March 2009 - April 2010; Ichiro Maruyama, May 2010/ - March 2011; Masatsugu Seo,

the effectiveness of the Japanese delegations as a whole, since the senior ministerial staff keep close records of all proceedings and brief the members of the Japanese delegations, but it might make it potentially more difficult for these delegations to fully engage with other delegations and to develop their own perspective of the procedures in the CGPCS.⁷³ This might not be a unique issue for the Japanese delegations, but it gives a very high level of responsibility to the senior ministerial staff.

Flexible structure and decision-making

Christoffersen (2009) has argued that “*a primary lesson from the initial efforts of Re-CAAP, CTF-151, and CGPCS is that coordination may happen at the working level without formal membership in a maritime regime*” and that “*informal coordination is driven by practical considerations.*”⁷⁴ The flexible and comparatively informal decision-making of the Contact Group, which is usually considered as one reason for its success and a lesson for other similar problem-oriented institutional arrangements, is potentially more problematic for countries with more hierarchical, formal, and less flexible decision-making cultures such as Japan.

Corridor diplomacy and informal discussions outside official meetings might, at least potentially, be more challenging to Japanese delegations, and because of the

traditionally more formal and reserved conversation and negotiation style, Japanese intentions and reservations might not always be obvious to other delegations.⁷⁵ It has to be said, however, that the Japanese delegation acknowledged that its proposals to the CGPCS plenary meetings have been fully reflected.⁷⁶

Victims of their own success?

The number of attempted and successful piracy attacks have significantly decreased between 2011 and 2014, which is certainly due to the efficiency and coordinated response by all stakeholders, the three counter-piracy missions (ATALANTA, CMF, and OOS), and the close and harmonious multi-stakeholder cooperation in the Contact Group. However, because of this success, there is a strong concern in Japan, that the activities of the CGPCS might be decreased or eventually discontinued.⁷⁷ Japan, and the current Japanese government in particular, has a strong interest in continuing these missions and Japanese engagement in them. While all stakeholders have, over the course of July 2014, decided to continue their missions until the end of 2015, Japan is concerned that the recent significant increase of piracy activities in West Africa, where Japanese interest are far less at stake than in the Gulf of Aden, might lead to a gradual decline of the three missions off the coast of Somalia and in the Western Indian Ocean.

April 2011 - March 2012 Hiroyuki Kobayashi, April 2013 - March 2014, and Yoshihiro Katayama since March 2014

⁷³ Interview with senior NATO MARCOM official, 3rd June 2014

⁷⁴ Christoffersen, G. 2009. “Japan and the East Asian Maritime Security Order: Prospects for Trilateral and Multilateral Cooperation.” *Asian Perspective* 33(3), p.144

⁷⁵ Impression based on interviews with NATO MARFOR official (June 2014) and an independent UK-based consultant in military affairs with close links to Japan (July 2014).

⁷⁶ Yoshihiro Katayama (2014-)

⁷⁷ Interview with Yoshihiro Katayama, July 2014

Japan has very strong intentions to not only continue cooperating in the counter-piracy missions off the coast of Somalia, but considers the CGPCS a core element in this endeavour. Japan's objective is to play an even larger role in promoting cooperation and information sharing. The re-organization of the Working Groups in May 2014 was strongly supported by Japan precisely because it sees it as an important step on the way to more flexible and effective coordination, intelligence exchange, and capacity building in countries in the region.⁷⁸

CONCLUSION

The core lessons for Japan and the CGPCS, outlined in this article are the following:

1. The experimental governance approach has allowed Japan to become more active and deploy more resources to the counter-piracy mission than it otherwise might have done.
2. Stakeholders with prior experience might find it easier to share their own experience in similar uncontroversial missions. It was important that individual stakeholders could contribute as much or as little as they themselves felt comfortable with. The flexible and experimental governance allowed Japan to volunteer very high financial contributions to capacity building, especially the Djibouti Regional Training Centre (DRTC).
3. The multi-stakeholder institutional setting of the CGPCS depoliticized the issue of piracy and facilitated the parliamentary debate concerning a law that allowed Japan to protect non-Japanese ships and later the deployment of PCASP on Japanese vessels.
4. The process of collective deliberation requires that most stake holders, the countries themselves and the actual session participants, have comparable experience and feel equally at ease with adopting this less formal style. While the Japanese delegation itself has not raised any concerns towards the author, the different deliberation styles in Japan and potentially other member states has to be taken into account by the chairs of plenary and WG meetings.
5. Innovative and experimental governance approaches work best when the participating members also have a chance to get to know other participants personally. However, Japanese MOFA participants were replaced every year, which potentially undermines Japan's contribution in the plenary and WG discussions.

⁷⁸ Interview with Yoshihiro Katayama, July 2014

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