

Outline of the draft Anti-Piracy Measures Law
(Law on Punishment of and Measures against Acts of Piracy)

1. Purpose

Mindful of the vital importance of safe maritime navigation to the economic society and lives of the people of Japan and the purpose of the United Nations Convention on the Law of the Sea, the draft Anti-Piracy Measures Law (hereinafter referred to as "the Law") criminalises acts of piracy and provides necessary legal grounds for appropriate and effective response to acts of piracy, and the Law thereby aims to maintain public safety and order at sea.

2. Definition of acts of piracy

The Law defines the following acts committed for private ends on the high seas or territorial sea as well as internal waters of Japan by the crew or the passengers of a ship (except for warships and other government ships) as "acts of piracy":

- (a) seizing another ship in navigation or taking control of the operation of another ship by rendering persons irresistible by assault, intimidation or any other means;
- (b) robbing property on board another ship in navigation or obtaining or causing others to obtain an unlawful profit by rendering persons irresistible by assault, intimidation or any other means;
- (c) kidnapping a person on board another ship in navigation for the purpose of taking the person hostage to demand a third person to deliver any property or to take any other unobligated action or to waive that person's right;
- (d) demanding a third person to deliver any property or to take any other unobligated action or to waive that person's right by taking a person, on board a robbed ship or a ship whose control is taken or kidnapped on board another ship in navigation, hostage;
- (e) breaking into or damaging another ship in navigation for the purpose of committing the acts of piracy as referred to in subparagraphs (a), (b), (c) and (d) above;

- (f) operating a ship and approaching in close proximity of, beleaguering or obstructing the passage of another ship for the purpose of committing the acts of piracy as referred to in subparagraphs (a), (b), (c) and (d) above;
- (g) preparing weapons and operating a ship for the purpose of committing the acts of piracy as referred to in subparagraphs (a), (b), (c) and (d) above.

3. Measures of the Coast Guard against acts of piracy

- (a) The Law provides that the Coast Guard takes necessary measures against acts of piracy.
- (b) A Coast Guard Official may use weapons as stipulated in Article 7 of the Act concerning the Execution of Duties of Police Officials (see notes).
- (c) The Law also permits the use of weapons in order to deter the acts of piracy as stipulated in 2 (f), provided that the perpetrator or the ship disobeys other measures to deter and continues the act of piracy and that there is probable cause to believe in the lack of any other appropriate measures to stop the navigation of that ship, to the extent reasonably necessary and according to the situation.

4. Measures of the Self-Defense Forces against acts of piracy

- (a) The Law provides for the Minister of Defense, with the approval of the Prime Minister, to order anti-piracy response operations in case there is extraordinary necessity to take measures against acts of piracy. In obtaining the approval of the Prime Minister, the Minister of Defense draws up and submits to the Prime Minister the guidelines for response operations. In case of emergency, the Minister of Defense may only notify the outline of response operations to the Prime Minister.
- (b) The Prime Minister will report to the Diet without delay when he/she has given approval and when the operations have ended.
- (c) The relevant provisions for use of weapons by Coast Guard officials apply, *mutatis mutandis*, to the Self Defence Forces.

Notes: Article 7 of the Act concerning the Execution of Duties of Police Officials (unofficial and tentative translation)

A police official may use weapons where there is a probable cause to deem it necessary in order to arrest the perpetrator or to prevent the perpetrator from escaping, to defend oneself or another person or to deter resistance against performance of one's duty, to the extent reasonably necessary and according to the situation. However, a police official may not harm a person unless Article 36 of the Penal Code (self-defence), Article 37 of the Penal Code (necessity) or one of the following subsections applies.

(1) when a person perpetrating or being suspected on sufficiently reasonable ground to have committed a heinous crime, punishable by death or imprisonment of a long term of more than three years, is resisting the performance of the duty of a police official or is trying to escape or a third person is resisting the police official to let the person escape, and where there is sufficient probable cause on the part of the police official to believe it necessary in order to arrest the perpetrator or to prevent the perpetrator from escaping;

(2) when an arrest under warrant is being made or a subpoena or a detention warrant is being executed and its subject is resisting the performance of the duty of a police official or is trying to escape or a third person is resisting the police official to let the person escape, and where there is a sufficient probable cause on the part of the police official to believe it necessary in order to arrest the perpetrator or to prevent the perpetrator from escaping.

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