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Kentaro Furuya

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THE ARCHITECTURE OF JAPAN'S MARITIME-SECURITY SYSTEM IN THE EAST CHINA SEA

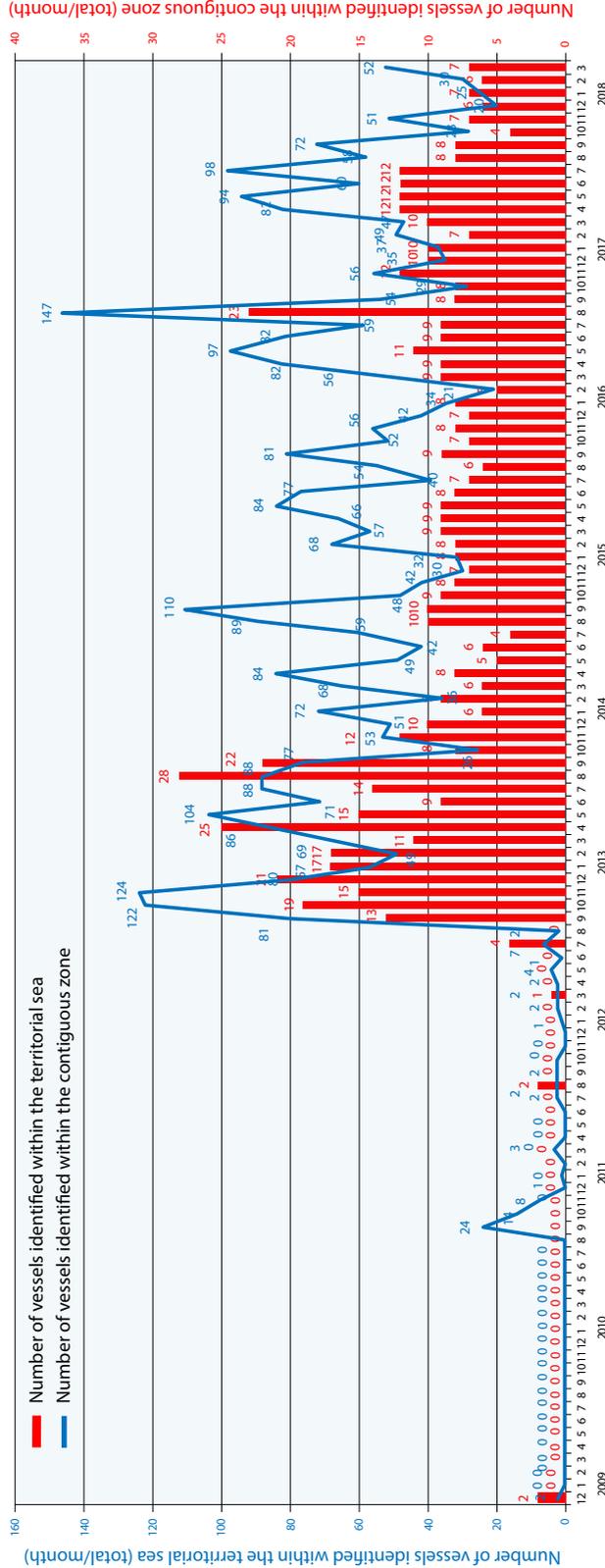
The Dual-Layer Security System and the Role of the Japan Coast Guard

Kentaro Furuya

Security operations in the East China Sea (ECS), particularly around the Senkaku/Diaoyu Islands, have become a very high priority for the Japanese government. Its stance on the Senkakus is that the islands constitute an integral part of Japanese territory, both historically and under international law, and that the Japanese government has administered the islands effectively.¹ In contrast, the Chinese government began to assert ownership over the islands after the United Nations (UN) Economic Commission for Asia and the Far East conducted research in 1968 that indicated the possibility of oil and gas resources beneath the seabed in the area.² Additionally, the Chinese government steadily expanded its dispatch of China Coast Guard (CCG) ships to the islands after 2012, when the Japanese government decided to transfer ownership of some of the islands from private parties to the Japanese government (see the figure). Since then, bigger, strengthened, and armed CCG ships frequently have shown their presence by approaching and intruding into territorial seas off the Senkaku/Diaoyu Islands.³

How does the Japanese government peacefully secure and guard its maritime border against ships operated by a foreign authority? Since Japan is an island nation, it has no land borders, only maritime ones. Two organizations are responsible for securing and guarding Japanese territorial seas and maintaining order at sea around Japan: the Japan Coast Guard (JCG) and the Japan Maritime Self-Defense Force (JMSDF). The JCG is a nonmilitary, civilian law-enforcement agency, whereas the JMSDF is a military and naval agency. This article includes analysis of the different functions of the two organizations.

THE NUMBER OF SHIPS INTRUDING INTO JAPAN'S TERRITORIAL SEA AROUND THE SENKAKU/DIAOYU ISLANDS (BARS) AND THE NUMBER INTRUDING INTO THE CONTIGUOUS ZONE (LINE) SINCE DECEMBER 2008



As of March 31, 2018

Source: Japan Coast Guard, www.kaiho.mlit.go.jp/.

The Japanese government considers that CCG ships in the Japanese territorial waters under discussion are not exercising the right of innocent passage under international law, and it regularly deploys JCG ships to counter the CCG ships. The JCG patrol ships are the primary actors during peacetime, exercising their police powers at the maritime borders by conducting guard and security operations. In exceptional cases, JMSDF ships are deployed to counter threats; however, such measures still fall within the scope of law-enforcement operations governed by Japanese domestic law. This Japanese policy—of having two layers of protection that normally confine their functions to law enforcement—is unique, including in the way in which it applies in the East China Sea.

In the East China Sea, although JCG and CCG ships face off against each other almost every day, tensions in the vicinity have remained relatively low. Although the ships of the two services often operate close together, even side by side, in the contiguous zone and territorial sea, there has been no collision, shouldering, or bumping between patrol ships. According to JCG statistics, in 2015 the CCG intruded into Japan’s territorial sea thirty-five times, involving ninety-five ships, and cruised in the contiguous zone on 240 days, with a count of 709 ships.⁴ Overall, this means that CCG ships showed their presence within the contiguous zone on almost every nonstormy day, while they intruded into the territorial sea occasionally. Beyond that, the situation deteriorated further in 2015 as, for the first time, CCG ships fitted with arms aboard were continuously present on the scene.

In August 2016, the JCG found a swarm of Chinese fishing boats—some two to three hundred—escorted by thirteen CCG ships, approaching the Senkaku Islands; subsequently, a record number of CCG ships—eleven—intruded simultaneously into the territorial sea. During this incident, even though JCG and CCG ships operated close together, even side by side, not a single incident or accident occurred of patrol ships colliding with or shouldering each other, nor did the situation escalate into a military confrontation.⁵

The JCG is the primary organization charged with conducting operations to guard and secure the Senkakus. Many consider it to be more than a “mere” law-enforcement organization. Richard J. Samuels describes the JCG as being “quasi-military” and constituting the “fourth branch” of the Japanese military, and points out that Japan altered its security policy to integrate police and military functions at sea.⁶ Lyle J. Morris further concludes that the JCG has become capable of using force for defensive purposes. He drew this conclusion after studying the law-enforcement operation that the JCG conducted off Amami-Ōshima in Japan’s Ryukyu Islands in 2001, in which JCG ships exchanged fire with a spy boat from North Korea until its crewmembers apparently blew up their own boat.⁷ Regarding the roles of the JCG and JMSDF in the security system, David Leheny describes the JCG as “the canary in the coal mine,” using that

metaphor to suggest that the JCG is used to test public opinion on whether an extension of the JMSDF's role would be found acceptable.⁸ Céline Pajon further points out that, barring an exceedingly clear and well-established legal framework for separate roles of the JCG and JMSDF in providing maritime security, the two services need to extend and expand their interoperability—which would mean the JCG playing more of a military role.⁹ None of these analyses, however, addresses the distinction between the functions and roles of the JCG and JMSDF in guarding and security operations. Furthermore, it appears that no published articles have analyzed the architecture of the Japanese maritime-security system.

This article analyzes the Japanese maritime-security architecture by using operations in the East China Sea as an example. First, it examines the legal framework of maritime-security operations, the duties the JCG and JMSDF perform, and the interrelations between the services. Under Japanese law, the JCG is a civilian law-enforcement agency only, with no military role. Thus, it is prudent for the Japanese government to be ready to mobilize JMSDF assets even for law-enforcement operations. This requires careful study of mechanisms to avoid military confrontations, especially any escalation of the situation in the East China Sea. The Japanese government endeavors to maintain the rule-based order at sea by exercising the police power—regardless of which agent, the JCG or JMSDF, it uses to do so. In furtherance of its policy, the Japanese government clearly separates the roles and functions of the JCG from those of the JMSDF. The two services are the constituent parts of the Japanese dual-layer maritime-security system. The JCG, a civilian law-enforcement agency, goes on scene as the primary actor to take necessary measures, while the JMSDF becomes the primary actor only when the situation goes beyond JCG capabilities. This architecture contributes to the maintenance of order in the East China Sea.

AN OVERVIEW OF THE DUAL-LAYER SECURITY SYSTEM

The JCG is tasked to perform law enforcement and maintain good order at sea. The JCG's duties and functions are laid out in articles 2 and 5 of the Japan Coast Guard Act.¹⁰ The service is the first responder for various incidents at sea. Guarding and security operations in the vicinity of maritime borders and remote islands constitute a major duty of the JCG. But when the Japanese government deems a situation involving maritime security at sea to have exceeded the capabilities of the JCG, it may initiate a maritime security operation (MSO), as provided under article 82 of the Japan Self-Defense Forces Act (JSDF Act).¹¹ When this second layer is reached, units of the Japan Self-Defense Force (JSDF) are tasked to respond. When an MSO is ordered, the JMSDF, as the naval arm of the JSDF, becomes the primary actor during the operation and takes over from the JCG the function of maintaining good order at sea.

It is noteworthy that MSOs are defined as law-enforcement operations even though Japan's naval organization becomes the actor. Therefore, the general rules for the use of force by police officers apply. However, when an armed attack from outside the country is threatened or it becomes clear that Japan is in imminent danger of suffering an armed attack, the Japanese government may switch from conducting a law-enforcement operation to a defense operation, under article 76 of the JSDF Act.¹² Until that point, it is merely a matter of which service, the JCG or the JMSDF, is designated to take the necessary measures; either way, the operation remains within the paradigm of law enforcement. The Japanese government prefers to use the law-enforcement power to maintain good order at sea and adheres to this policy as strictly as possible.

The First Layer: The JCG

The Role of the JCG. The JCG is a nonmilitary law-enforcement organization. When the service was established in 1948, Japanese ports and ships, having been the primary targets during World War II, were still devastated. In addition, over seventy thousand underwater mines had been left behind after the war's conclusion, which hindered the safety of navigation in coastal areas.¹³ Moreover, political confusion and the disestablishment of the Imperial Japanese Navy (IJN) allowed heinous criminal activities at sea, such as the smuggling of people, drugs, and other commodities. Because the prewar maintenance of good order and the conduct of law-enforcement operations at sea had been heavily dependent on the IJN, there was no police force to deploy at sea after the war. The need for a maritime police force to maintain good order at sea was obvious and became a matter of interest to the General Headquarters of the Supreme Commander for the Allied Powers (GHQ) as well. On April 27, 1948, the first version of what is now the JCG Act was promulgated, and on May 1 the agency was inaugurated officially.¹⁴ Thus, under the occupation of Japan, it became the responsibility of the Japan Maritime Safety Agency (JMSA), which was renamed the JCG in 2000—not the navy—to enforce laws and regulations for the maintenance of good order and safety at sea.

The Korean War broke out in 1950. Soon after, the GHQ ordered the Japanese government to establish the National Police Reserve and the Maritime Security Force.¹⁵ Since the Allied force essentially departed for the Korean Peninsula, the need to fill the vacuum back in Japan made the establishment of a new defense organization essential. The Maritime Security Force was organized as a department within the JMSA. In August of that year, the Maritime Security Force was reorganized as one department of the National Safety Agency, an independent organization. In 1954, the National Safety Agency was renamed the JMSDF as a result of establishing the JSDF.¹⁶ Thus, historically the JCG and the JMSDF were created as

parts of the same body, but subsequently were separated and have developed independently into organizations exercising police and military powers, respectively.

Duties and Functions of the JCG. The duty of the JCG to maintain safety and security at sea is set out in article 2 of the JCG Act. The service fulfills various roles and performs various functions, including maintaining good order at sea, patrolling the territorial seas, suppressing and investigating crimes, conducting search and rescue, protecting the marine environment, carrying out hydrographic surveillance, and ensuring the safety of maritime traffic. In this provision, *sea* means not only the Japanese territorial seas and the exclusive economic zones (EEZs) that are under Japanese sovereignty and sovereign rights, respectively, but also seas in general, including the high seas.¹⁷

It also is salient that JCG officers are authorized to act as judicial police

In August 2016, the JCG found a swarm of Chinese fishing boats . . . approaching the Senkaku/Diaoyu Islands. Escorting them were . . . CCG ships—triple the usual number. . . . CCG ships intruded into Japan’s territorial sea. . . . Nevertheless, the Japanese government did not order an MSO to supplement the JCG ships with JMSDF destroyers.

officers—reinforcing the characterization of the JCG as a law-enforcement authority.¹⁸

JCG officers are authorized to exercise such police powers as conducting investigations, performing arrests, executing search-and-seizure warrants, conveying the results to the public prosecutor’s office, and

contributing to follow-up investigations.

It also is noteworthy that the JCG Act was amended to clarify that the maintenance of maritime order is a primary duty and function of the JCG. In 2011, the Japanese government initiated a review of the JCG’s maritime police power to meet the needs of the modern security environment off the Senkaku Islands. It decided to amend the JCG Act to enable the service to exercise its police power more rapidly and effectively. Previously, establishing a legal basis to warn, say, CCG ships that they were not exercising the right of innocent passage was a shared function among government institutions, not a primary responsibility of the JCG. The Ministry of Foreign Affairs (MFA) determined whether the activity constituted a breach of international law, and if it did so the MFA could ask the JCG to warn the offender and request that the activity stop. This process was often time-consuming and redundant. An amendment passed in 2012 made “the maintenance of good order of ships’ navigation” a primary duty and function of the JCG.¹⁹

This amendment was significant in the context of the possibility of taking measures against Chinese ships operated by Chinese authorities in the ECS.

Japanese domestic law cannot be applied against these Chinese ships owing to exemption clauses, and such vessels enjoy immunity from enforcement jurisdiction under international law. Under such circumstances, the JCG could not take enforcement measures on the basis of domestic law, even though these activities breached rules under international law and disrupted good order at sea. But while activities such as public ships not exercising the right of innocent passage in Japanese territorial seas do not constitute a violation of Japanese domestic laws, because of the exemption clause, when ships do not comply with the rules for exercising the right of innocent passage their activities do, in fact, constitute a disruption of the good order of ships' navigation. Another example is when a foreign ship operated by a foreign authority conducts maritime scientific research within Japan's EEZ without the consent of the government; this is considered a breach of international law.²⁰ However, it does not constitute a violation of Japanese domestic law, owing to a similar exemption clause in the relevant act. This amendment clarified that the JCG could take administrative measures against these activities, in accordance with relevant provisions in the JCG Act, even though the breach was not of national laws but of international laws.

As stressed in the JCG Act, the salient aspect of the JCG is its nonmilitary nature. Even though the service was modeled after the U.S. Coast Guard, which is one of the armed services of the United States, article 25 of the JCG Act explicitly denies that the JCG is a military institution or that it may function as such, since at the time of the JMSA's establishment the Allies did not want it to be part of any remilitarization of Japan. Today this nature of the service is well established—and it becomes more important when the JCG is put under the control of the Ministry of Defense, as may happen in exceptional circumstances.²¹ Even then, the operations of the JCG remain restricted to the duties and functions defined in the JCG Act, and the service is prohibited from engaging in any military operations. In such cases, the JCG is expected to restrict its role to countersmuggling and search-and-rescue operations and the like. Thus, the JCG legally is a civilian law-enforcement agency at all times.

Relevant Statutory Authority of the JCG and Its Officers. For the JCG to pursue its duties and functions, the JCG Act provides its officers with statutory authority.

Among other things, article 17 of the act provides the authority to board and visit a ship, ask questions of its captain and other relevant persons, request documents and certifications for verification, and inspect both vessel and cargoes. When a ship is under way, JCG officers may order it to stop for boarding and inspection. If the ship does not comply, and if deemed necessary, the officers may board the ship coercively.

However, to be subject to inspection, ships need to be under Japanese jurisdiction. For example, when sailing on the high seas a foreign ship remains under the exclusive jurisdiction of its flag state; JCG officers are allowed to board it only with the authorization of the flag state or in accordance with international law, such as in cases of piracy. Foreign ships may exercise the right of innocent passage through Japan's territorial sea; therefore, the officers need to exercise caution in considering whether the situation allows boarding and inspection under international law as well as domestic law.

Second, when it is determined that a crime is about to be committed at sea or that the public order at sea is likely to be seriously disturbed, JCG officers may take measures immediately, without waiting for warrants or decisions from a court. When officers find—on the basis of “a reasonable judgment, from the appearance of the vessel, manner of navigation, abnormal behavior of the crew members, and other surrounding circumstances”—that no appropriate alternatives exist, article 18(2) allows JCG officers to take measures such as stopping the ship, altering its course, or moving it to a designated area. Thus, this article provides the JCG with some of the powers necessary for maintaining good order at sea.

Use of Force by JCG Officers. Regarding the use of force by JCG officers in law-enforcement operations, the general rule applicable to the use of force by police officials applies. Article 20(1) of the JCG Act prescribes that “Article 7 of the Law Concerning the Execution of Duties of Police Officials (Act No. 136 of 1948) shall apply *mutatis mutandis* to the use of arms by Coast Guard officers.” Article 7 of that law reads as follows: “A police officer may use his weapon in case there is reasonable ground to deem it necessary for the apprehension of a criminal or the prevention of his or her escape, self-protection, or protection of others, or suppression of resistance against the execution of his official duty, within limits judged reasonably necessary in the situation.”²²

An additional element is necessary to meet the requirement for any use of force that may injure a person. Such exceptions apply in cases of legal defense (article 36 of the Criminal Act [Law No. 45 of 1907]) and emergency refuge (article 37 of the same law), and when a person who has committed a serious crime—one rendering him eligible for the death penalty or imprisonment for more than three years—resists officers in the execution of their duties, including arrest, and when no alternative measures are deemed to exist.²³ In short, the general rules on the use of force, including the standards on proportionality and necessity, always apply to the use of force by JCG officers, and only when no alternative measures exist may officers use force against a person. Thus, the use of force by police officials, including JCG officers, is strictly controlled under domestic law.

However, there are two situations in which JCG officers may use force beyond the general rules discussed above: when countering spy-boat operations and in the course of counterpiracy operations. In the former case, article 20(2) of the JCG Act applies. This provision allows for an expanded use of force if JCG officers find grounds—applying reasonable judgment to the given situation—to believe that no other means are available to stop a suspicious boat that ignores orders to heave to and resists JCG personnel in the performance of their duties. Under such circumstances, the JCG commandant may find—given the appearance of the boat, its mode of navigation, the behavior of its crewmembers, other surrounding circumstances, or related information—that it is reasonable to apply the provision. Under the provision, the following conditions apply: (1) the vessel in question is a foreign ship not exercising the right of innocent passage, but is not a warship or a ship owned or operated by a foreign government and used only for noncommercial purposes; (2) such navigation is likely to be repeated in the future; (3) it cannot be excluded that the purpose of the navigation is to prepare to carry out heinous criminal activities in Japan; and (4) unless the JCG conducts a boarding and inspection of the boat and takes necessary measures, the criminal activities cannot be avoided in the future.²⁴ This provision was drafted very carefully, and cannot be applied to any incident other than a spy-boat case. Thus, no matter how serious the current guard and security operations in the ECS become, this provision would not apply, since spy boats are not the issue there.

In the case of counterpiracy operations, article 6 of the Act on Penalization of Acts of Piracy and Measures against Acts of Piracy (Law No. 55 of June 24, 2009, as amended, hereafter the Japanese Counterpiracy Act) applies a general rule for the use of force by police officers, then further provides that JCG and JMSDF officers engaged in counterpiracy operations under the act may use weapons to “the extent judged to be reasonably necessary by the circumstances if there are sufficient grounds to believe that there are no other means to stop the pirate boat.”²⁵ This provision enables the firing of warning and disabling shots against a pirate boat, even if such use of force may cause injury to people on board. The underlying rationale is that once pirates successfully board another ship, measures to secure the lives of the seafarers on the ship being attacked become significantly restricted—pirates likely would use seafarers as human shields.²⁶ This provision, however, does not apply to guard and security operations against public ships that do not qualify as pirate vessels under international law.

The Second Layer: The JMSDF

MSOs and the Role of the JMSDF under the JSDF Act. The JSDF has two kinds of duties. First, article 3 of the JSDF Act prescribes the primary duties of the JSDF as

defending Japan's peace, independence, and security. Second, the act prescribes as a secondary duty the maintenance of security and good order, thereby enabling the second layer of the Japanese maritime-security system, in the form of MSOs.

However, until the Japanese government activates the MSO provision, a JMSDF unit has no legal authority to conduct security operations at a scene. The JSDF Act provides a "positive list" of legal bases for mobilizing JMSDF units to counter threats. Unless and until one of the provisions listed in the act is applied, the JSDF has no legal basis to mobilize for particular purposes. The act's article 82, *inter alia*, is relevant to security operations at sea. "[W]hen especially necessary to protect life or property or maintain public order at sea, the Minister of Defense may, with the approval of the Prime Minister, order Self-Defense Forces units to undertake the necessary operations at sea."²⁷ Under this article, "especially necessary" is construed as a situation that requires capabilities beyond those of the JCG.²⁸ Moreover, the mention of "life or property" in this provision is interpreted to refer to those of Japanese citizens.²⁹ However, the geographical area of the operation is not restricted to Japan's territorial seas but includes the country's EEZ as well as the high seas.³⁰

Examples of MSOs. From the establishment of the JSDF in 1954 to the end of 2017, only three MSOs have been ordered. The first case occurred in 1999.³¹ On March 23 of that year, the JMSDF discovered two suspicious fishing boats in its territorial sea, in the Sea of Japan. As the first responder, the JCG dispatched patrol ships and airplanes to the vicinity for identification, boarding, inspections, and detention, as necessary. When patrol ships and helicopters spotted these boats, the spy boats started to flee at high speed from the JCG units' pursuit. The patrol ships fired warning shots to stop the boats, but they were ignored, and the JCG could not stop the boats. The Japanese government decided to order the first-ever MSO to pursue and stop the boats. JMSDF destroyers and airplanes pursued the boats and fired repeated warning shots, but the boats left the Japanese air-defense identification zone (ADIZ) and escaped toward North Korea. At this stage, the Japanese government terminated the MSO, since it hesitated to use air assets beyond the ADIZ; it sought to avoid unexpected encounters or incidents with other military airplanes.³²

The second case occurred in 2004. On November 10, the JMSDF spotted a submerged submarine, later identified as a Han-class Chinese submarine, near Japan's territorial sea off Ishigaki Island in Okinawa Prefecture. Once the submarine entered Japan's territorial sea between Miyako and Ishigaki Islands, the Japanese government initiated an MSO. The intent was to request that the submarine surface or to expel it from the territorial sea and watch its subsequent direction of travel. Later, the Japanese government lodged a diplomatic protest with the Chinese government, which expressed regrets in response.³³

In the third and most recent use, an MSO was invoked to counter Somali piracy in 2009. Since the Gulf of Aden and the western Indian Ocean constitute vital shipping lanes for Japan and acts of piracy had affected the Japanese shipping industry, the Japanese government determined to take actions to prevent criminal activities targeting both Japanese and other ships. The government ordered the JCG to conduct a feasibility study of the service’s capability to deploy patrol ships to the vicinity, in its role as Japan’s primary law-enforcement authority at sea. The study determined that the JCG Act contained no geographical limitation, so law-enforcement operations in the Gulf of Aden could fall within the JCG’s scope of duties. However, it was not feasible to deploy the JCG’s assets to the Gulf of Aden since the JCG had too few patrol ships capable of performing counterpiracy operations on the high seas at that distance from Japan for months

If the Japanese government does not provide sufficient explanation and information regarding the justification for and appropriateness of its invocation of an MSO, it will not obtain support from the Diet and the public, which are particularly sensitive to the mobilization of JSDF units.

at a time. Besides, the design, construction, and subsequent structure of the patrol ships (e.g., the damage-control systems) were not appropriate for use against pirates’ possibly heavy weapons, nor were the communication systems of the patrol ships appropri-

ate for interchanges with warships deployed to the vicinity for joint operations. Therefore, the Japanese government ordered that an MSO be conducted until adoption in June 2009 of the Japanese Counterpiracy Act, which made counterpiracy operations a new function of the JSDF.³⁴

In two additional circumstances an MSO may be initiated, through a cabinet order. In the first scenario, a need arises to counter a submerged submarine in the territorial sea or internal waters of Japan. The first such order was promulgated in 1996, prior to the actual case of the Han-class submarine in 2004, at the time of Japan’s ratification of the UN Convention on the Law of the Sea (UNCLOS).³⁵ Article 20 of UNCLOS provides that, in such circumstances, a submarine is required to navigate on the surface and show its flag. The Japanese government decided to set out the procedures through which JMSDF units could be mobilized smoothly should a submerged submarine be found within the territorial sea in the future. After the 2004 Chinese submarine incident, the government reviewed its policies and adopted accelerated procedures for conducting the decision-making process by phone.

The second cabinet order for an MSO applies to scenarios involving noninnocent passage of foreign “warships.”³⁶ This change followed the increase in activity by China’s People’s Liberation Army Navy ships *around* Japan’s remote islands

(including the Senkaku/Diaoyu Islands)—not necessarily within the territorial sea.³⁷ When the Japanese government determines that foreign warships in Japan's territorial sea are not exercising the right of innocent passage, it requests that the warships leave the territorial sea immediately, in accordance with international law. The cabinet orders the MSO immediately, pursuant to article 82 of the JSDF Act. This cabinet order aims to ensure that necessary measures are taken against unlawful activities, they are executed in a seamless manner, and the closest cooperation and coordination are facilitated, including the exchange of relevant information among different government agencies. As of the end of 2017, there has been no case in which the Japanese government has needed to initiate an MSO in this manner.

Conditions for Initiating an MSO: A Preliminary Assessment. The foregoing discussion of the instances in which MSOs have been ordered and the two cabinet orders laying out other possible scenarios shows that the Japanese government takes a cautious approach to invoking MSOs. It addresses each possibility objectively and on a case-by-case basis.

For example, the government does not decide whether to initiate an MSO on the basis only of the level of intensity of activity, even though it is an influential factor. Note that it ordered an MSO in the spy-boat incident in the Sea of Japan in 1999, whereas it elected not to order an MSO in the similar spy-boat case in 2004, in which the boat sank in an explosion during a shoot-out with the JCG off Amami-Ō-shima.³⁸

Moreover, since the 1999 spy-boat incident, JCG patrol ships' capabilities have been enhanced in terms of speed, maneuverability, and armament. So that JCG ships could stop spy boats in the future, the Japanese government decided to introduce new patrol ships capable of higher speeds and with more-accurate fire-control systems. The availability of these patrol ships, along with the 2001 amendments to the JCG Act that permitted extended use of force against spy boats, enhanced the JCG's ability to respond, which led to a higher bar for the invocation of an MSO. This explains, in part, why no MSO was invoked in the later spy-boat case, even though the intensity of the second case was higher.

Other elements, such as the number of ships and boats subject to law-enforcement measures, would be considered when deciding whether to order an MSO, but would not be decisive factors either. In August 2016, the JCG found a swarm of Chinese fishing boats—on the order of two to three hundred—approaching the Senkaku/Diaoyu Islands. Escorting them were thirteen CCG ships—triple the usual number. A record-high eleven of the CCG ships intruded into Japan's territorial sea simultaneously.³⁹ Nevertheless, the Japanese government did not order an MSO to supplement the JCG ships with JMSDF destroyers.

The next month, more than two hundred Chinese fishing boats, allegedly engaged in coral poaching, were spotted off the Ogasawara Islands, south of Honshu, the main island of Japan, but no MSO was invoked.⁴⁰

However, should the scenarios anticipated in the cabinet decisions—namely, submarines operating submerged or warships operating in Japanese territorial seas in a manner not in keeping with the exercise of the right of innocent passage—occur, an MSO will be ordered. The decisions establish situations already deemed to be beyond the capability of the JCG to respond. JCG patrol ships cannot detect and issue a warning to a submerged submarine and demand that it surface, so the counteroperation is best conducted by the JMSDF. In a case of noninnocent passage of warships—again considering the weaponry systems and other equipment fitted aboard the respective ships and the signals traditionally used between naval ships—the JMSDF would be the best choice to conduct any counteroperation.

Political sensitivity adds another element to interpreting and applying what is considered to be beyond the capability of the JCG. If the Japanese government does not provide sufficient explanation and information regarding the justification for and appropriateness of its invocation of an MSO, it will not obtain support from the Diet and the public, which are particularly sensitive to the mobilization of JSDF units. In addition, the government needs to consider the signals it might be sending to other states and international society, and related implications.

Therefore, the government will initiate an MSO only when both technical and political conditions are met. Until then, the basic policy of the Japanese government is to take full advantage of the JCG and its police power. As much as possible, to avoid political turbulence, the service works autonomously, in accordance with established laws and regulations, with no need to seek or invoke political decisions in particular cases.

Statutory Authority of JMSDF Units under an MSO. Under the JSDF Act and in an MSO, JMSDF units at sea can take “necessary measures,” but those are restricted to law-enforcement measures. First, the JSDF Act clearly distinguishes the MSO from defense operations. Therefore, the law-enforcement principles of proportionality and necessity apply strictly to actions taken pursuant to an MSO. For example, article 93 of the JSDF Act provides that article 7 of the Police Duties Execution Law—the general rule on the use of force by Japanese police officers, incorporating the principles of proportionality and necessity—applies *mutatis mutandis* to the use of force by JSDF officers in an MSO. In addition, under article 20(2) of the JCG Act, while force may be used by those engaged in countering a spy-boat incident, that latitude does not apply to other cases.

Second, other police powers that JCG officers are authorized to exercise under article 17, such as conducting boardings and inspections and asking questions, and the coercive measures with immediate effect authorized under article 18, apply to units (whether maritime, air, or even ground) conducting an MSO as well. However, since JMSDF officers are not authorized to act as judicial police officers under the Criminal Procedure Act (Law No. 131 of 1948), they cannot investigate, conduct interrogations, or execute judicial warrants; JSDF officers engaged in an MSO must cooperate with JCG officers when an investigation is necessary.

Interoperability between the JCG and JMSDF. It is worth noting that the JCG and JMSDF barely have interoperability. First, the equipment and design of JCG patrol ships and of JMSDF destroyers represent different operational concepts. Article 4(1) of the JCG Act stipulates that patrol ships should have the structure, equipment, and function appropriate to pursue coast guard roles and functions—in other words, not for military purposes. The assets and equipment available to the JCG emphasize the service's identity as a civilian police agency. For example, the operating systems and equipment of JCG patrol ships are similar to those on merchant ships, whereas the JMSDF applies military specifications (specs), which often require more sophistication. The information a commercial system obtains may not satisfy military specs. The weapons systems on JCG patrol ships are for warning and disabling purposes, not for destroying ships. These differences in structure and equipment make it difficult for the two types of ships to operate together even when in the same theater.

Second, the different functions, operations, and cultures of the two organizations influence their potential interoperability.⁴¹ The JCG, as a dedicated maritime law-enforcement organization, must comply with the necessity and proportionality principles whenever it takes coercive measures that include the use of force. Its operations are restricted by human rights law, including the right to life and liberty. The ultimate purpose of police activity is to suppress criminal activities and maintain good order. Doing so at sea typically involves stopping and boarding ships and arresting—alive—those aboard bearing responsibility and delivering them for prosecution by a criminal court. Article 25 of the JCG Act does not allow operations of the JCG to include military functions, and JCG officers do not identify themselves as military personnel. In contrast, the JMSDF is a military organization, and its function is to defend the nation and its political independence and territorial integrity from external threat. Although certain norms must be observed even during armed conflict, including humanitarian law, the JMSDF may be called on to destroy enemy ships when necessary. These differences in functions, operations, and cultures hinder sharing between the command-and-control systems of the two organizations, so interoperation between the two organizations rarely occurs.

However, there are indications that these two organizations are moving toward operating in closer cooperation. First, after the 1999 spy-boat incident that initiated the first MSO, the JCG and JMSDF began drafting what subsequently became a joint-operation manual.⁴² This process provided opportunities to understand both the differences between and the similarities in JCG and JMSDF operations. Later, counterpiracy operations in the Gulf of Aden provided increased opportunities to work together. Assignment of JCG officers to law-enforcement detachments (LEDs) embarked in JMSDF destroyers to facilitate judicial procedures continues to improve the relationship between the two organizations.

Accomplishing a seamless and smooth transition from the JCG to the JMSDF when an MSO is ordered is the key to a successful operation. Since the command-and-control mechanisms and the maneuverability of the ships of each organization are so different, and since by definition the threat posed extends beyond the capability of the JCG assets, JCG vessels are likely to withdraw from the theater once JSDF units arrive on the scene. In such cases, on-site information exchange—including possession of a common operational picture and shared understandings of intended strategy—is essential.

SECURITY OPERATIONS IN THE EAST CHINA SEA

As noted, the Japanese government attempts to contain guard and security operations in the East China Sea within a law-enforcement paradigm. To do so, it first evaluates any entrance of CCG ships into Japan’s territorial sea around the Senkaku/Diaoyu Islands under international and national law. Then it analyzes the options it may choose to pursue as law-enforcement measures in accordance with international and national law.⁴³

Rights and Actions

The Japanese government acknowledges the right of innocent passage by warships and foreign ships owned and operated by other governments for noncommercial purposes (except those carrying nuclear weapons).⁴⁴ So, legally speaking, CCG ships may exercise the right of innocent passage through Japan’s territorial sea.⁴⁵ However, the stance of the Japanese government is that when CCG ships encroach into Japan’s territorial sea around the Senkaku/Diaoyu Islands they are not exercising the right of innocent passage under the provisions of UNCLOS.⁴⁶

For instance, in December 2008, CCG ships entered into the territorial sea around the Senkaku/Diaoyu Islands and cruised, hovered, and drifted for approximately nine hours. The Japanese government did not consider this behavior to comply with the definition of *passage* under article 18 of UNCLOS. Moreover, the Chinese government announced that the CCG ships were conducting “law-enforcement activities.”⁴⁷ Law-enforcement activity by foreign ships in Japan’s territorial sea can be regarded as “any other activity not having a direct

bearing on passage,” which is the formula given in article 19(2), item (1) of UNCLOS—if not a violation of Japanese sovereignty—thus rendering the passage not innocent. Therefore, the Japanese government determined that the CCG ships in the territorial sea were not exercising the right of innocent passage.

As of the end of 2017, the Japanese government continued to maintain this interpretation. It considers the frequent encroachments by and continuous presence of CCG ships in Japan’s territorial sea to constitute neither an invasion nor a state of hostilities.⁴⁸ As far as the Japanese government is concerned, the behaviors of the CCG ships constitute a failure to exercise the right of innocent passage in keeping with international law, making it a law-enforcement matter, to which it is the consistent policy of the government for the JCG—its primary maritime law-enforcement actor—to respond with appropriate measures.

However, what those available measures are is debatable. First, article 25 of UNCLOS provides the coastal state a right of protection, allowing it to “take nec-

In December 2008, CCG ships entered into the territorial sea around the Senkaku/Diaoyu Islands and cruised, hovered, and drifted for approximately nine hours. The Japanese government did not consider this behavior to comply with the definition of passage under . . . UNCLOS.

essary steps to prevent passage which is not innocent” in its territorial sea. Although this provision of the convention does not define *necessary steps* in detail, the term may be interpreted within a broader context, leading to the conclusion that such steps against a

vessel not properly exercising the right of innocent passage include requesting that the ship stop for inspection, arresting persons on board, and detaining the ship; shouldering and bumping the ship to expel it from the territorial sea; and even, as a last resort, using force against it.⁴⁹ Such ships would fall under the full jurisdiction of the coastal state.⁵⁰ The conditions governing these measures in the article are that they are aimed at preventing noninnocent passage and are to be performed within the territorial sea.

Second, article 32 of the convention recognizes the immunity of warships and other government ships operated for noncommercial purposes. Since patrol ships are categorized among the latter, they enjoy immunity from the enforcement jurisdiction of the coastal state. Therefore the coastal state cannot exercise its enforcement jurisdiction, including the stopping, boarding, arresting, and seizing functions discussed previously. Significantly, the use of force would not be allowed except for domestic law-enforcement purposes. Article 301 of UNCLOS, which reflects article 2(4) of the UN Charter, prohibits any threat or use of force against the territorial integrity or political independence of any state when a party state exercises its rights and duties under UNCLOS. In

addition, Japanese domestic law substantially restricts the use of force in a law-enforcement operation. As explained in the previous section, a JCG officer may use force only (1) to apprehend criminals or prevent criminals from escaping, (2) for self-protection or the protection of others, or (3) to suppress resistance to the execution of his official duties. Since CCG ships, as patrol ships, are exempted from Japanese domestic laws and regulations and thus fall outside the scope of their application, the conduct of these ships does not constitute a criminal violation; therefore, case (1) above does not apply. Case (3) is construed to apply only when officers must take coercive measures to suppress resistance. Because CCG ships enjoy immunity, the JCG would have little cause to exercise its enforcement jurisdiction and take coercive measures in support thereof, so case (3) hardly applies either. Thus, only case (2) represents a realistic scenario in which JCG officers might use force. And if all the officers on scene carefully observe the rules of national and international law, including the immunity of warships and patrol ships, the likelihood that force would end up being used would be quite low.

Considering these rights under international law and the relevant restrictions, the measures the Japanese government would take may not include the exercise of enforcement jurisdiction. Under UNCLOS, a coastal state has a right of protection, but CCG ships enjoy immunity from enforcement jurisdiction. Therefore, if CCG ships do not exercise innocent passage, JCG ships issue warnings and request that they leave the territorial sea immediately.⁵¹ They may sail side by side with such ships to prevent them from approaching the territorial seas and the islands. However, they do not board, inspect, search, seize, or arrest, since such activities would be construed as exercising enforcement jurisdiction. If CCG ships perform any further malicious activities, such as risking lives on Japanese ships, the stance of the Japanese government is that the JCG ships may take proportional measures against that conduct, as far as is permissible under international law. In such cases, the Japanese government does not consider the use of force to be excluded, but it nonetheless is severely restricted, as discussed above.⁵²

Evaluation of Past and Ongoing ECS Security Operations

From the point of view of maritime-security strategy, it sounds reasonable for a coastal state to use its navy—the most robust power at sea—to maximize the power of guard and security operations in its maritime border zones. The Chinese government is procuring more, and more heavily armed, patrol ships. This implies that more-capable CCG ships may be deployed in the East China Sea. It would become more difficult for JCG ships to deal with these CCG ships. However, employing JMSDF assets—Japan's second layer—in the East China Sea likely would lead to deterioration of the situation, since the Chinese side likely would feel the need to counter by deploying its naval assets to restore the balance.

A regional arms race probably would ensue, involving further deployments of much larger and more-sophisticated warships, and the confrontation would escalate. Thus, this balance-of-power strategy does not work for maintaining the status quo.

Alternatively, if relevant states remain within the paradigm of law enforcement—by exercising self-restraint and restricting their actions—they can maintain the status quo. In the East China Sea, the Japanese government exercises self-restraint by maintaining its law-enforcement approach and by refraining from advertising the presence of the JMSDF, the system's second layer. Remaining within the paradigm of law enforcement means that the measures taken are governed and restricted by international and national law that reflects the basic principles of law enforcement.

As long as China follows a similar policy, with the states merely maintaining order by observing international and national law in the East China Sea, it is reasonable for Japan to remain within the paradigm of law enforcement. Unless a Chinese ship takes further dangerous actions, such as risking life at sea, international law during peacetime barely allows the employment of robust measures, including the use of force, because of the immunity that patrol ships enjoy. Even when exceptional circumstances permit the use of force, such use still must follow strictly the principles of necessity and proportionality. Besides, the weaponry systems fitted on Japanese patrol ships are minimal, intended solely to enable law-enforcement operations, not war fighting and ship sinking. Therefore, the JCG, as a civilian law-enforcement authority, does not represent a threat of hostilities, so it can serve as a buffer, helping to avoid a military confrontation in which a single miscalculation could lead to rapid deterioration of the situation. Adherence to the law-enforcement paradigm—by observing both international and national law and exercising a coast guard police power—can contribute to maintaining the rule-based order in a more suitable way.

The essential intent of the dual-layer system is to keep military elements away from the scene of confrontations whenever possible. There are at least three good reasons to attempt to do so. First, the presence of JCG patrol ships implies that Japan is governing and administering the islands effectively. Since the precondition of *exercising* jurisdiction is that the islands properly *fall under* Japanese jurisdiction, the presence of patrol ships enforcing domestic laws implies that the Japanese government administers and governs the islands. This is in conformity with the Japanese policy position that there is no territorial issue in the East China Sea. In contrast, a continuous presence of JMSDF destroyers would suggest the possible existence of a territorial issue, thereby evidencing a discontinuity with Japanese policy. So the absence of military elements and the presence of

civilian law-enforcement patrol ships represent a constant reinforcement of the government's position.

Second, the dual-layer system allows the allocation of a single function to each layer—a significant advantage. If the system had only a single layer, the navy would have to provide both functions: deterrence and active measures. The navy indeed has the capabilities to do both; however, the presence of excessive power at the scene is not desirable in politically sensitive circumstances. The other side would adjust its capabilities to the same level, escalating the situation to a navy-on-navy confrontation. The advantage to a state of using a dual-layer system is that it can deploy, as the first layer, assets with capabilities appropriate to dealing with situations at the scene, while it uses the second layer as a deterrent while reserving its remaining power farther from the scene. In this manner, the Japanese government keeps on-scene confrontations manageable.

Third, the role of coast guards is to provide protection and maintenance of the rule-based order, and such services are expected to work for safety; they often are likened to a shield. One function of the police power is to enforce national laws to materialize legal interests. When a domestic law is enforced in the maritime arena by a coast guard, the coast guard exercises its power in accordance with international law, including respecting the scope of states' jurisdiction and the immunity of warships and public ships operated by governments for noncommercial purposes. Under international law, proper exercise of the police power does not harm any foreign state. Therefore, a coast guard functions as a defensive shield and is not offensive at all. By using the JCG to maintain the legal order in the East China Sea, the Japanese government shows that it intends to do so in a way that avoids escalation and military confrontation. In contrast, the use of a military organization, which is likened to a pike, may render provocative and offensive implications, including a suspicion that future escalations are possible.

Besides, coast guards cooperate substantially with neighboring states in pursuit of performing their duties better. Coast guards need to cover vast areas of oceans with a relatively small number of assets. Therefore, international cooperation among coast guards is essential, such as when coordinating search-and-rescue operations and suppressing transnational crimes at sea; maintaining dialogue, building confidence, and expanding mutual understandings are significant interests for coast guards. For example, the JCG and CCG have a history of cultivating cooperation and mutual understandings in the performance of their duties. To cultivate international cooperation further, the JCG added to existing bilateral dialogues by initiating multilateral frameworks, such as the North Pacific Coast Guard Forum and the Heads of Asian Coast Guard Agencies Meeting, to both

of which the CCG is a party. Notwithstanding tensions in the East China Sea, communication and dialogue among coast guards are maintained through these meetings, and mutual understandings are fostered through joint exercises and joint fishery-surveillance patrols. The respective services expect these confidence-building structures and activities to assist in avoiding rapid escalation.

This article has analyzed Japan's maritime-security architecture in the East China Sea. It portrayed that Japan's policy is to endeavor to remain within the paradigm of law enforcement and thereby keep the overall level of confrontation in the East China Sea manageable. To do so, it employs a dual-layer system whose constituent parts are the JCG and the JMSDF.

The JCG represents the first layer of the system and the primary actor in confrontations with Chinese counterparts in the East China Sea. The JMSDF, the second layer of the system, displaces the JCG as the main actor only when the Japanese government determines that a situation has extended beyond the capabilities of the JCG, and implements an MSO. Until then, the JMSDF's main role is deterrence; this maximizes the flexibility of Japanese strategy.

The analysis found the current guard and security operations that the JCG performs in the East China Sea to be law-enforcement operations conducted in accordance with existing domestic and international law. The Japanese government deems the current overall confrontational situation to constitute not hostilities but a breach of international law, and in response takes measures that remain within the limits of national and international law. This approach reflects Japan's maritime-security strategy, which respects the rule of law and freedom of navigation.

The article also analyzed the mechanisms that work to maintain tensions at a manageable level. The situation suggests that Tokyo and Beijing do not want any further escalation in the East China Sea, and that they understand that coast guards are more appropriate for supporting the rule-based order than maintaining a balance of power using naval assets would be.

Nonetheless, challenges to the effective working of the system remain. First, the assets of the JCG and its personnel need to be enhanced. Even with the deterrent effect of the second layer, the Japanese government needs to maintain a continuous presence of JCG units around the Senkaku/Diaoyu Islands. Given the Chinese government's "salami-slice tactics," by which it pursues its interests and asserts its claims step by step, the Japanese government must be able to demonstrate that the islands are under continuous Japanese governance.⁵³ To counter salami slicing, such as the use of drones from patrol ships and the use of maritime militia disguised as fishermen, the JCG needs to review its capabilities; JCG assets

deployed in the vicinity must have sufficient capacity to perform guard and security operations while countering whatever Chinese assets are present.

Second, to maximize the deterrent effect of the second layer, close cooperation between the JCG and JSDF is essential. Until the second layer is activated under an MSO, the JSDF's primary role is deterrence. Added to the capabilities of the JCG, the thick and robust second layer of the JSDF provides collective deterrence. So even when JSDF assets do not participate directly in on-scene confrontations, the deterrence they provide helps with the implementation of Japanese policy and contributes to its flexibility. Yet the JSDF may need to strengthen this deterrent effect further through its close alliance with the U.S. Navy. This alliance has been the linchpin of the security environment in Northeast Asia. Making the link

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between the two navies even closer would reinforce collective deterrence.

Third, the JCG and the JSDF, as well as other governmental institutions, need to develop their collective capability to gather and analyze

the information necessary to determine whether an MSO should be activated. Almost any activation of an MSO would lead to the conclusion that the Japanese government had escalated the situation. After that, decision-making becomes much more difficult. Therefore it is essential to support policy makers' determination of whether to initiate an MSO by exchanging information and contributing to analysis within an appropriate time frame. The relevant institutions need a system through which all actors can provide, pool, and draw on information so that the necessary decisions can be made without delay.

Fourth, as the Japanese government endeavors to maintain the rule-based order in the East China Sea, it should maintain its policy of relying on the police power as much as possible. In March 2018, the Chinese government announced a restructuring of various governmental bodies.⁵⁴ Although governance of the CCG is not yet fully clarified, the service was placed under the People's Armed Police, a paramilitary organization, and under the direction of the Central Military Commission. With this change, CCG ships might be deemed naval ships, making it more likely in future confrontations that the Japanese government would implement an MSO under the existing cabinet decision. The Japanese government has not revealed its stance on this matter, but it should continue to exert the police power of the JCG as its first response. The government should continue to profit from the dual-layer system in which the JCG and the JMSDF each plays

a single role until the situation escalates beyond the capabilities of the JCG. When the situation reveals that use of the JMSDF has become more appropriate, the government may activate an MSO, in line with the cabinet decision. Until then, the JCG is the more suitable tool for maintaining order in the East China Sea.

NOTES

1. For an example, see Chief Cabinet Secretary, record of press conference, June 9, 2016, available at japan.kantei.go.jp/.
2. "Trends in Chinese Government and Other Vessels in the Waters Surrounding the Senkaku Islands, and Japan's Response: Records of Intrusions of Chinese Government and Other Vessels into Japan's Territorial Sea," *Ministry of Foreign Affairs of Japan*, www.mofa.go.jp/; Masahiro Miyoshi, "Seabed Petroleum in the East China Sea: Law of the Sea Issues and the Prospects for Joint Development," *Wilson Center*, www.wilsoncenter.org/.
3. "Japan Coast Guard Annual Report 2016," *Japan Coast Guard*, p. 15, www.kaiho.mlit.go.jp/.
4. *Ibid.*, p. 16.
5. "Status of Activities by Chinese Government Vessels and Chinese Fishing Vessels in Waters Surrounding the Senkaku Islands," *Ministry of Foreign Affairs of Japan*, August 26, 2017, www.mofa.go.jp/; "Japan Coast Guard Annual Report 2017," *Japan Coast Guard*, pp. 15–17, www.kaiho.mlit.go.jp/.
6. Richard J. Samuels, "New Fighting Power! Japan's Growing Maritime Capabilities and East Asian Security," *International Security* 32, no. 3 (Winter 2007/2008), pp. 84–112.
7. Lyle J. Morris, "Blunt Defenders of Sovereignty: The Rise of Coast Guards in East and Southeast Asia," *Naval War College Review* 70, no. 2 (Spring 2017), pp. 75–112.
8. David Leheny, *Think Global, Fear Local: Sex, Violence, and Anxiety in Contemporary Japan* (Ithaca, NY: Cornell Univ. Press, 2006), p. 165.
9. Céline Pajon, "Japan's Coast Guard and Maritime Self-Defense Force in the East China Sea: Can a Black-and-White System Adapt to a Gray-Zone Reality?," *Asia Policy*, no. 23 (January 2017), pp. 111–30.
10. Originally the Act of the Japan Maritime Safety Agency, Law No. 28 of 1948, as amended, and since renamed the Japan Coast Guard Act.
11. Japan Self-Defense Forces Act, Law No. 165 of 1954, as amended.
12. A 2016 amendment to the JSDF Act added a provision permitting initiation of a defense operation when an armed attack occurs against a foreign country with which Japan shares a close relationship and the threat poses a clear and imminent danger to Japan. This provision allows the exercise of collective self-defense.
13. Takeo Ohkubo, *Uminari no hibi* [Days of sea roar] (Tokyo: Kaiyou Mondai Kenkyukai, 1978), p. 66.
14. In 2000, the Japan Maritime Safety Agency was renamed the Japan Coast Guard.
15. Douglas MacArthur to Prime Minister Shigeru Yoshida, July 8, 1950, available at www.ndl.go.jp/.
16. A 1952 amendment to the JMSA Act (Law No. 97 of 1952) added provisions permitting the establishment of the Maritime Security Force as a department of the JCG (then called the JMSA).
17. Committee on the Cabinet, 113th House of Councillors (October 20, 1988) (testimony of Tsuyosi Kodama, Director, Guard and Security Division, Japan Maritime Safety Agency), No. 7. In this and all subsequent similar citations, "No. x" represents a serial number that refers to the different pieces of legislation each committee considers during a session of the Diet. This number is necessary for finding the identified testimony in the records of the committee.

18. JCG Act, art. 31.
19. Committee on Land, Infrastructure, Transportation, and Tourism, 180th House of Representatives (August 3, 2012) (testimony of Osamu Yoshida, Vice-Minister of Land, Infrastructure, Transportation, and Tourism), No. 10.
20. Article 246(2) of the United Nations Convention on the Law of the Sea prescribes that “[m]arine scientific research in the exclusive economic zone and on the continental shelf shall be conducted with the consent of the coastal State.”
21. Article 80 of the JSDF Act provides that when a defense operation under article 76(1) or a public security operation under article 78(1) is ordered and it is deemed necessary, the prime minister may authorize the minister of defense to take command and control of the JCG. Public security operations under article 78(1) may be ordered when police forces cannot maintain public security in cases of aggression and the like. An example would be an “indirect invasion,” or what many today would call *hybrid warfare*. In a case where a foreign military force uses informal combatants to lead a large-scale armed rebellion or create a large-scale disturbance in Japan, only the police force would be permitted to respond, because the Japanese constitution prohibits JSDF units from using force except for self-defense against an organized, armed attack by a foreign state or states, and the use of such informal combatants would not constitute such an armed attack. However, if the situation went beyond the capability of the police force, the JSDF could be mobilized to maintain public order.
22. This is known as the Police Duties Execution Act (Law No. 136 of 1948, as amended). An unofficial translation into English can be downloaded at *Police Policy Research Center*, www.npa.go.jp/.
23. *Ibid.*, art. 7.
24. Article 20(2) of the JCG Act.
25. Article 2(5) of the Japanese Counterpiracy Act.
26. Kentaro Furuya, “Japanese Anti-piracy Law: Protection of Flagged-Out Ships,” in *Piracy at Sea*, ed. Maximo Q. Mejia Jr., Chie Kojima, and Mark Sawyer (Berlin: Springer, 2013).
27. Article 82 of the JSDF Act.
28. Special Committee concerning the Guidance for Japan-U.S. Defense Cooperation, 145th House of Representatives (March 31, 1999) (testimony of Hiromu Nonaka, Chief Cabinet Secretary), No. 4.
29. National Security Committee, 171st House of Representatives (March 13, 2009) (testimony of Hideshi Tokuchi, Director General, Bureau of Operational Policy, Ministry of Defense), No. 2.
30. National Security Committee, 154th House of Representatives (April 4, 2002) (testimony of Gen Nakatani, Minister of Defense), No. 5.
31. As main references regarding the spy-boat incident off the Noto Peninsula and Amami-Ōshima, see Euan Graham, *Japan’s Sea Lane Security, 1940–2004* (New York: Routledge, 2006); Lindsay Black, *Japan’s Maritime Security Strategy: The Japan Coast Guard and Maritime Outlaws* (London: Palgrave Macmillan, 2014); Mark J. Valencia and Ji Guoxing, “The ‘North Korean’ Ship and U.S. Spy Plane Incidents: Similarities, Differences, and Lessons Learned,” *Asian Survey* 42, no. 5 (September/October 2002), pp. 723–32; Morris, “Blunt Defenders of Sovereignty.”
32. The ADIZ does not delimit state jurisdiction at all; however, it is often used as a threshold for security operations, since aerial operations are not always available beyond the ADIZ. See Black, *Japan’s Maritime Security Strategy*, pp. 99–102.
33. Masahiro Miyoshi, “The Submerged Passage of a Submarine through the Territorial Sea: The Incident of a Chinese Atomic-Powered Submarine,” *Singapore Year Book of International Law* 10 (2006), pp. 243–49.
34. *Act on Punishment of and Measures against Acts of Piracy: Deliberations on the Draft in the Committee on the Land, Infrastructure, Transportation, and Tourism*, 171st House of Representatives (March 11, 2009) (testimony of Teiji Iwasaki, Commandant of the Japan Coast Guard), No. 4; Lower House Special Committee Meeting on Anti-piracy Measures, Prevention of International Terrorism, and Japan’s Cooperation and Support, 171st Diet Session (April 17, 2009) (statement of Kazuhiro Kaneko).

35. United Nations Convention on the Law of the Sea, December 10, 1982, 1833 U.N.T.S. 397 available at treaties.un.org/. Entered into force: November 16, 1994; number of parties: 167.
36. Wagakunino ryoukai oyobi naisuide kokusaihoujouno mugaitukouni gaitousinai koukouwo okonau gaikokukansen eno taishonituite [Measures against warships not exercising innocent passage under international law within the Japanese territorial seas and internal waters], cabinet decision, 2015.
37. Gen Nakatani, press conference, *Minister of Defense*, June 17, 2016, www.mod.go.jp/.
38. Graham, *Japan's Sea Lane Security*; Black, *Japan's Maritime Security Strategy*; Valencia and Ji, "The 'North Korean' Ship and U.S. Spy Plane Incidents"; Morris, "Blunt Defenders of Sovereignty."
39. "Status of Activities by Chinese Government Vessels"; "Japan Coast Guard Annual Report 2017."
40. "Japan Coast Guard Annual Report 2003," *Japan Coast Guard*, www.kaiho.mlit.go.jp/; "The Issue of Chinese Coral Vessels in the Seas Close to Japan, Including around the Ogasawara Islands," *Ministry of Foreign Affairs of Japan*, www.mofa.go.jp/.
41. Fumio Ota, "The Relationship between the Japan Coast Guard and the Maritime Self Defense Force," in *Navies, Coast Guards, the Maritime Community and International Stability*, ed. Ian Bowers and Collin Koh (Singapore: S. Rajaratnam School of International Studies, 2017).
42. "Japan Coast Guard White Paper 1999," *Japan Coast Guard*, www.kaiho.mlit.go.jp/; "Defense of Japan 2004 (Annual White Paper)," *Ministry of Defense*, www.mod.go.jp/. Recently the Japanese government recognized that the relationship between the JCG and JMSDF had improved. Special Committee on Peace and Legislation of Our Country and the International Community, 189th House of Councilors (July 28, 2015) (testimony of Shinzo Abe, prime minister), No. 3.
43. Foreign fishing boats fall outside the scope of this section since they are subject to general law-enforcement operations, in accordance with applicable laws and regulations.
44. Atsuko Kanehara, "The Japanese Legal System concerning Innocent Passage of Foreign Vessels (1990–1998)," *Japanese Annual of International Law*, no. 42 (1999), pp. 90–110; Yoshifumi Tanaka, *The International Law of the Sea* (Cambridge, U.K.: Cambridge Univ. Press, 2012).
45. Since 1968, the Japanese government has held the view that warships have the right of innocent passage, resting on the deliberations preceding approval of the Convention on the Territorial Sea and Contiguous Zone of 1958. Committee on Foreign Affairs, 58th House of Representatives (April 17, 1968) (testimony of Takeo Miki, Minister of Foreign Affairs), No. 12. On July 15, 2017, CCG ships entered Japan's territorial sea between Kyushu Island and Tsushima Island. Since no particular behaviors rendered the passage noninnocent, the Japanese government did not protest it to the Chinese government but instead conveyed its "expression of interest" in the case. "Press Conference by Deputy Press Secretary Toshihide Ando on July 19, 2017," *Ministry of Foreign Affairs*, www.mofa.go.jp/.
46. Committee on the Land, Infrastructure, Transportation, and Tourism, 180th House of Representatives (August 3, 2012) (testimony of Kunihiko Muroi, Vice-Minister of Land, Infrastructure, Transportation, and Tourism), No. 13.
47. "Diaoyu Dao, an Inherent Territory of China," *Ministry of Foreign Affairs of the People's Republic of China*, September 26, 2012, www.fmprc.gov.cn/.
48. A coastal state may deem the behavior of a foreign warship to constitute use of force when it maintains its presence in the territorial sea and does not comply with a request to leave. Wolff Heintschel von Heinegg, "The Difficulties of Conflict Classification at Sea: Distinguishing Incidents at Sea from Hostilities," *International Review of the Red Cross*, no. 902 (2016), pp. 449–64.
49. Ivan A. Shearer, "Problems of Jurisdiction and Law Enforcement against Delinquent Vessels," *International and Comparative Law Quarterly* 35, no. 2 (April 1986), pp. 320–43; Donald R. Rothwell, "Coastal State Sovereignty and Innocent Passage: The Voyage of the *Lusitania Expresso*," *Marine Policy* 16, no. 6 (November 1992), pp. 427–37.

50. Daniel Patrick O’Connell, *The International Law of the Sea*, ed. Ivan Anthony Shearer (Oxford: Clarendon, 1984), vol. 2; Robin Rolf Churchill and Alan Vaughan Lowe, *The International Law of the Sea*, 3rd ed. (Oxford, U.K.: Manchester Univ. Press, 1999).
51. As mentioned, the Japanese government regards activities of CCG ships in the territorial sea around the Senkakus as not constituting exercise of the right of innocent passage. See, for example, Ministry of Foreign Affairs, “Vice-Minister for Foreign Affairs Kenichiro Sasae Made Representations against the Chinese Ambassador to Japan H. E. Cheng Yonghua,” press release, July 12, 2012, www.mofa.go.jp/.
52. Special Committee on Peace and Security Legislation in Japan and International
- Community, 189th House of Representatives (May 28, 2015) (testimony of Yuji Sato, Commandant, Japan Coast Guard), No. 12.
53. Sugio Takahashi, “Challenges to Extended Deterrence in the Japan-U.S. Alliance: From Gray Zone to Nuclear Deterrence,” in *American, Australian, and Japanese Perspectives on a Changing Security Environment*, ed. Thomas G. Mahnken (Washington, DC: Johns Hopkins School of Advanced International Studies, 2016).
54. Liu Zhen, “China’s Military Police Given Control of Coastguard as Beijing Boosts Maritime Security,” *South China Morning Post*, March 21, 2018, available at www.scmp.com/.



Kentaro Furuya is an adjunct professor at the National Graduate Institute for Policy Studies (GRIPS) and a professor at the Japan Coast Guard Academy (JCGA). He received an MSc from the World Maritime University in Malmö, Sweden, and an MA, with distinction, from the University of Greenwich in London, United Kingdom. Service in the Japan Coast Guard through the rank of commander included duties performing maritime search and rescue, criminal investigation, and planning and implementation of maritime-security operations. He also served as a delegate from Japan to the International Maritime Organization and various international conferences relating to maritime safety and security and counter-piracy measures. He joined the JCGA in 2012 as an associate professor, teaching international law and law of the sea to students from ASEAN countries. In 2015, he joined GRIPS to teach law of the sea and case studies to graduate students from Japan and abroad.

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