



## Issues Concerning Territorial Security —How to Counter the Challenge of the China Coast Guard— FY2021 Maritime Security Study Group Research Interim Report

Saito Takashi  
Chairman, NPI Maritime Security Study Group  
Admiral (Ret.), former Chief of Staff, Joint Staff, JSDF

### Introduction

In Japan, an island nation with no land borders, the importance of territorial security (border security) is not yet established as something familiar. In the past, the cases of an unidentified vessel off the Noto Peninsula in 1999, an unidentified vessel in the sea southwest of Kyushu in 2001, and a submerged submarine navigating under Japanese territorial waters in 2004 temporarily aroused public interest, but it seems that the nature of territorial security has not been discussed in a substantive manner.

However, the confrontation between Japan and China over the Senkaku Islands is an urgent security issue that Japan must address as it is an issue of territorial security.

The core of this issue of territorial security is to clarify how and by whom Japan's territory is to be guarded in the event of territorial aggression by state or non-state actors that does not lead to a full-scale armed attack.

In order to solve this problem, it is essential to strengthen the Japan Coast Guard (JCG) and to more effectively demonstrate the nation's comprehensive capabilities including strengthened cooperation between police agencies and Japan Self-Defense Forces (JSDF). At the same time, there is an urgent need to review the legal system for defense and security.

Based on this recognition of the problem, the research group has been conducting research and discussion on the issue of territorial security and has come up with several options for solving the problem. However, these options are still in the process of research and are not yet complete as policy proposals. Nevertheless, with the aim of raising public awareness, this paper, although in the form of an interim report, summarizes the issues of territorial security in Japan and indicates a certain direction.

This study focused on the land, sea, and air domains, but depending on the form of future conflicts (competition), territorial security issues such as hybrid conflicts involving cyber and space domains that cannot be solved by the legal framework discussed in this study are expected to surface.

In addition, when considering the security of the bases of U.S. forces in Japan, especially during a Taiwan crisis, not only the security around U.S. military facilities but also the security of the surrounding sea and airspace is also important.

### Specific examples of “non-state actors” and “state actors”

First of all, as stated above, the core of the problem of territorial security is territorial infringement by state or non-state actors that does not lead to a full-scale armed attack. Here we provide specific examples of “non-state actors” and “state actors” discussed in developing our argument.

#### **Examples of non-state actors**

Private fishing boats and the fishermen on board, or maritime militias disguised as fishermen, may be in this category, but if it is not clear that it is a maritime militia, it should be positioned as a non-state actor.

#### **Examples of state actors**

Maritime militias are positioned as army (armed forces) under the revised China National Defense Law, and if they can be clearly identified as maritime militias in the field, they are positioned as state actors.

The China Coast Guard (CCG) (中国海警) which is part of the People’s Armed Police Force is also positioned as an army (armed forces) under the revised China National Defense Law. It is not clear at present whether it has the status of a warship, but it is of course positioned as a state entity.

### Issues related to the response posture over territory security

It is obvious that close cooperation between JCG, police, and JSDF is indispensable in dealing with the problem of “how” to deal with territorial infringements by foreign vessels, and this section analyzes the issues inherent in the response posture.

#### **Difficulties in building a centralized organization to implement territorial security**

There is a debate as to whether territorial security is a “police action” or a “defense action.”<sup>1</sup> However, if we analyze the essence of territorial security, the territorial infringement to be dealt with can be roughly divided into two forms: “territorial infringement by non-state actors” and “territorial infringement by state actors.” In order to respond effectively to both, it is necessary to combine the functions of “police action” and “defense action.” However, Japan’s domestic law is based on the dualism of defense and police, and, for this reason,

---

<sup>1</sup> Eifuku Seiya, “Territorial Security: Its Concept and Legal System,” (Japanese) NIDS Commentary No. 169, The National Institute for Defense Studies, June 8, 2021.  
<http://www.nids.mod.go.jp/publication/commentary/pdf/commentary169.pdf>

switching from police action to defense action is subject to strict procedures in the legal system, which is a major issue.

In addition, it is impossible to set up a new organization that combines both police and defense functions, i.e., purely territorial security, in terms of investment of limited national resources. In order to solve this problem, close cooperation between police agencies (including JCG) and JSDF is essential.

### **Issues in cooperation between police agencies and JSDF**

Past cases of cooperation between police agencies and JSDF include the cases of an unidentified vessel off the Noto Peninsula and the penetration of territorial waters by a Chinese submarine. In each of these cases, Maritime Security Operations (MSO) were issued, but, because the former case involved the particular regime of North Korea, and the latter case was a covert action of a submarine, it was not necessary to consider the possibility of escalation in JSDF response.<sup>2</sup>

However, the situation surrounding the Senkaku Islands can no longer be approached in the same way as before. In the following, we will distinguish between “infringements by non-state actors such as fishing vessels” and “infringements by state actors such as vessels of CCG” in the Senkaku Islands area.

### **Issues in cooperation against infringements by non-state actors such as fishing vessels**

The use of JSDF (military force) against non-state actors, such as fishing boats, must take into account the possibility that the other side, in order to escalate the situation, will propagandize the action as sending out troops against innocent civilians. The current dilemma is that even if the need to use JSDF to supplement JCG is recognized, it cannot be used lightly.

### **Issues in cooperation against infringements by CCG vessels as state actors**

In addition to strengthening the military capabilities, the newly introduced concept of law enforcement in China’s Coast Guard Law seems to have centralized both the right of protection and law enforcement (维权执法), or “territorial security” missions in CCG. This means that CCG has become capable of carrying out “territorial security” missions that combine police and defense functions in the waters under its jurisdiction without the direct support of the People’s Liberation Army Navy. The color of CCG ships is similar to that of JCG, but their attributes are different. (Table)

---

<sup>2</sup> In December 1996, the National Security Council and the Cabinet decided to relax the requirements for issuing MSO in order for the Japan Maritime Self-Defense Force (JMSDF) to take action against foreign submarines submerged in Japan’s territorial waters and inland waters.

Table: Relevant organizational attributes

Japan Coast Guard (white hull)	A non-military organization engaged solely in police action
U.S. Coast Guard (grey hull @ wartime)	Military organization engaged exclusively in police action and possibly in defense action.
China Coast Guard (grey hull)	Military organizations engaged in police action and defense action
Japan Self-Defense Forces (grey hull)	Engaged exclusively in defensive action, and occasionally in police action.
Royal Navy (UK) (grey hull)	Military organization engaged in both police and defensive actions.
U.S. Armed Forces (grey hull)	Military organization engaged exclusively in defensive action

In order to respond appropriately to CCG ships that have both police and defense functions, there are two ways of thinking.

In the case of CCG vessels as state actors, CCG is clearly a military organization (armed force), and CCG vessels belonging to it are considered to be military vessels,<sup>3</sup> so there is no need to be restrained in sending out self-defense vessels against it. Further, when looking at the form of disputes in the South China Sea there are cases where warships have been used to respond to CCG vessels, and it has been pointed out that there has been no escalation of the situation. This point of view is meant to sound the alarm that the conventional way of thinking that we should be restrained in using JSDF is no longer in line with the situation.

Therefore, if Japan deploys its own naval vessels into the territorial waters around the Senkaku Islands first, Chinese naval vessels will respond, and Japan Maritime Self-Defense Force (JMSDF) and Chinese navy will confront each other. If this were to lead to the use of weapons, the risk of escalation to a military conflict would be great. Therefore, while restraining the deployment of JMSDF vessels, it is necessary to pursue measures to ensure their effectiveness in the event that they must be deployed.

### **Legislative issues surrounding territorial security**

With regard to the question of “who” should deal with a territorial infringement by a foreign vessel, the legal basis in Japan is the Act of Navigation of Foreign Ships through the Territorial Sea and Internal Waters and the Japan Coast Guard Law. According to these laws, if the subject of the territorial infringement is a non-state actor (such as a merchant vessel or fishing vessel) or an unknown actor (such as a poaching vessel or a stowaway vessel), JCG or police will respond.

<sup>3</sup> So far, it is unclear whether or not China regards CCG vessels as warships.

However, among the foreign vessels covered by the law, warships and government ships operated for non-commercial purposes are excluded,<sup>4</sup> and it is not clear to what extent coercive measures can be used against military vessels in particular.

### **Problems of Maritime Security Operations against non-state actors and Public Security Operations**

If there is a risk that the other non-state actor will use a weapon with a force greater than the capabilities of JCG, deployment of JSDF in the current MSO will not only give the other party the excuse that Japan has escalated the situation, but also will not allow for an effective response due to the legal restrictions (application of Japan Coast Guard Law). If an effective response is judged to be essential even after taking into account the fear of giving a pretext, the appropriate measure under the current circumstances is to issue Public Security Operations (PSO), which allows JSDF for the exercise of greater authority.

However, this does not preclude the case of issuing MSO to supplement JCG in terms of quantity and technology (e.g., to deal with undersea targets).

### **Problem with using police powers against state actors**

Under international law, there is no problem for JCG and police to respond with their police authority to foreign state actors (armed forces, etc.) that intrude into territories and territorial waters.

The problem with police authority in Japan seems to lie in the fact that JCG's response to state actors (warships and government vessels) is legally unclear. ("Foreign warships and government vessels are excluded from reporting obligations, on-site inspections, recommendations, and orders to leave under the Act of Navigation of Foreign Ships through the Territorial Sea and Internal Waters and from the use of weapons to stop vessels under the Japan Coast Guard Law.")

According to a Cabinet decision, MSO are to be taken against warships, but in this case, JCG Law is to be applied *mutatis mutandis*, so the same problem as above exists.

The reason that domestic law excludes the application of relevant laws and regulations to foreign warships and government vessels is that they retain their sovereignty as state entities under international law and are exempt from the jurisdiction of other states. However, Article 21 of the United Nations Convention on the Law of the Sea stipulates that a coastal state may enact laws applicable to all ships for the purpose of harmless passage in its territorial waters, and Article 30 clearly stipulates that even a warship may be required to leave if it does not comply with the laws and regulations of the coastal state. However, under the current Japanese legal system, when a foreign warship or government vessel that is making a non-innocent passage in territorial waters does not comply with a request to leave and shows violent resistance, it is not stipulated whether measures beyond a request to leave, including firing a warning shot, can be taken, making it impossible to take effective measures. Therefore, in order to distinguish it from ordinary police action and to

---

<sup>4</sup> Act of Navigation of Foreign Ships through the Territorial Sea and Internal Waters, Article 2.3. Japan Coast Guard Law, Article 20.1.

enable effective response to state actors, it is necessary to clearly define it as a “territorial security mission” by JCG.

In this case, it is necessary to consider possible measures under domestic law from the perspective of how to view the sovereignty of foreign warships and government vessels as state entities under international law, and it is necessary to take into account that the content of such measures may be subject to certain restrictions.

### **Whether or not to issue PSO against state actors**

In the case of a situation where the other party, which is clearly a state actor, threatens or uses weapons against JCG or police, it is of course subject to evaluation under international law as to whether the result of the response was excessive or appropriate. However, whether the domestic legal basis for the invocation is PSO as a police power or the right of self-defense, it is the choice of the state and there should be no particular restrictions.

However, considering the legal purpose of the original PSO and the impression given by the term, it is questionable whether the public will really understand the concept.

### **How to mitigate escalation through Defense Operations**

If JCG is attacked by a foreign warship or government vessel while responding to a “territorial security mission,” as described above, it would be recognized as the occurrence of an armed attack by another country and Defense Operations (DO) would be activated. However, a full-scale DO in response to an extremely limited armed attack is too narrow a range of options, and it is necessary to devise a way to mitigate the escalation of the situation as much as possible.

Under the law, JSDF can be mobilized “in part or in full,”<sup>5</sup> but the concept of “limited DO” needs to be clarified.

On the other hand, it is also possible to establish a new category of action for invoking a limited right of self-defense other than mobilization for defense. As a new category of action as a form of the right of self-defense, if the procedures are made easier than those for invoking the right of self-defense, it can be expected that a quicker invocation will be possible. On the other hand, if activation new category is made easier, JSDF’s authority in this new type of action must be more limited than in the case of DO, and it is somewhat questionable whether it is possible to create a category of action that is truly capable of effective response and deterrence. It is also necessary to take into account that the complexity of the legal system surrounding JSDF will increase the difficulties in public understanding and in the training and operation of JSDF.

### **Characteristics of Japan’s defense legislation**

It will take considerable effort to gain the understanding of allies and others about the characteristics of Japan’s defense legislation, namely, the complex process of recognizing situations that necessitate granting the authority to act. It is essential to take advantage of every opportunity to communicate this to gain their understanding.

---

<sup>5</sup> Self-Defense Forces Law Article 76.

## Immediate measures and issues to be addressed

### **Response to violations by non-state actors**

In response to sovereignty violations in territorial waters by forces that cannot be identified as state actors, JCG and police will strengthen their response capabilities. If capability beyond that is required, JSDF will respond with MSO and PSO.

However, when considering the dangers of the current MSO as described above, it is necessary to consider the option of immediately issuing PSO without going through MSO.

### **Response to violations by state actors**

Regarding the response to state actors, at present JCG is responding to vessels of CCG in Senkaku Islands territorial waters. If the situation escalates, there are options to issue PSO or DO, but it is unclear at present to what extent police authority should be used against state actors and when defense authority should be used.

Therefore, the response may be delayed, and depending on the situation, it may not be possible to deal with the situation.

## Measures and issues that should be initiated for consideration

### **Clarification of territorial security mission**

Clarify the territorial security mission (e.g., authority to exclude) as part of law enforcement operations so that JCG and police can respond appropriately to violations of sovereignty violations by state actors. At the same time, it is necessary to delete the part of the Act of Navigation of Foreign Ships through the Territorial Sea and Internal Waters that states “except for warships and government vessels.”

### **Related considerations**

#### **Response to violations by state or non-state actors with police powers**

However, depending on the severity of the situation, if the capability of JCG to respond to infringements by state-sponsored CCG vessels in Japan’s territorial waters with a new territorial security mission is quantitatively and technically insufficient, it will be necessary to secure the option for JSDF to respond with police authority. In such a case, the authority granted to JCG as part of its territorial security mission would be applied *mutatis mutandis*, i.e., JSDF would deal with the situation on the basis of new MSO.

In the case of JCG’s territorial security mission or JSDF’s “new MSO,” even if one or both of JCG or JSDF use weapons accidentally or sporadically while responding to a foreign warship or government vessel, if both sides immediately move to restrain themselves from further escalation, the situation is considered to be the result of both sides taking police action. In this case, the situation is the result of police action by both sides, and is not subject to the right of self-defense.

In addition, if JSDF is ordered to take MSO in response to non-state actors, it will be a new MSO, and the scope of its action will be greater than the current MSO, and can be

expected to avoid the choice of immediate PSO, as described in the immediate response measures.

### **Consideration of the right of self-defense to respond to the use of force by state actors**

In the event that a foreign state actor uses force against JCG or police, who are engaged in the above-mentioned territorial security duties within the territory or territorial waters, in a manner that JCG or police cannot handle, this is recognized as an armed attack, and JSDF will respond by invoking the right of self-defense as a state, while taking care not to cause the situation to escalate. At this time, a national debate should be started as soon as possible on whether to prepare for the prompt issuance of DO that is limited in scope and scale, or whether to establish a new type of action for the limited activation of the right of self-defense that is different from DO.

## **Various measures to enhance the effectiveness of territorial security**

### **A government-led Table Top Exercise (TTX)**

In order to break through the ideological debate and highlight issues before they become a reality, it is necessary for police and JSDF as well as the government to conduct joint TTX to examine and develop solutions to any situation that may arise with an organization that has a different mindset and mission than that held by Japan.

At this time, it is necessary to seek the participation of U.S. officials to promote understanding of Japan's legal system and basic policy for response, and to confirm the guidelines for cooperation with the U.S. armed forces include U.S. Coast Guard.

### **Ensure that communications between the field and the central government are secure and uninterrupted**

The obstruction of accurate information transmission from the field to the central government could lead to confusion in government decision-making or preempt the provision of guidance of international public opinion. Dealing with cyber-attacks and security of communications infrastructure is extremely important. In particular, the importance of the security of submarine communication cable relay stations should be pointed out.

### **Real-time information sharing between JCG and JSDF in the field**

In a territorial security situation, since JSDF cannot be deployed lightly, it is extremely important to share information in real time between JCG patrol vessels that directly respond to the situation and JSDF aircraft and warships that are on alert and monitor the situation.

### **Record evidence of response to the situation**

In the same way, automatic recording of the use of various equipment and weapons is extremely important, as well as video recording as a basis for asserting legitimacy to the international community. It is necessary to consider equipment that can automatically record the response to a situation.



### **Mutual security challenges**

Currently, a framework has been established that allows for the protection of U.S. warships as part of the protection of weapons, but the protection of JCG patrol vessels also needs to be considered.

### **Development and sharing of non-lethal weapons**

The need for non-lethal weapons that can be used in less than DO will increase in the future as a means of stopping an opponent's movement and minimizing the escalation of a situation. Joint development and acquisition of such weapons by police agencies and the Ministry of Defense should be promoted.

### **Transfer of mid-aged destroyers and use of retired JSDF officers**

In order to strengthen the cooperative posture between police agencies and JSDF, the transfer of mid-aged destroyers to JCG and the recruitment of retired JSDF officers to JCG and police should be considered.

### **Supply of fuel and food to patrol vessels**

From the perspective of ensuring flexibility in the actions of patrol vessels, it is necessary to strengthen the system for the transfer of fuel and other supplies from JMSDF warships.

### **Violation of airspace around the Senkaku Islands by aerial drone etc.**

Airspace incursions by aerial drones etc. in the vicinity of the Senkaku Islands are intended to make a pre-existing fact of territorial possession and to exhaust Japan Air Self-Defense Force (JASDF)'s coping capabilities. A framework for "airspace invasion measures" should be considered that would allow not only JASDF but also JCG patrol vessels and JMSDF warships to take warning actions against airspace invasions by airborne drones etc. to prevent such incidents from becoming established facts.

### **Obstruction of navigation by underwater obstacles, underwater drones, etc.**

It is necessary to consider how to respond to obstruction to the ship's propulsion system and other equipment caused by underwater obstacles such as fishing nets, or to obstruction to the ship's navigation caused by underwater drones.

### **Application Mutatis Mutandis of the Special Signal Flags Specified in the Agreement on the Prevention of Marine Accidents**

An accident prevention agreement between Japan and China has not yet been concluded. On the other hand, the special signal flags set forth in the Annex to the Agreement on the Prevention of Incidents at Sea (INCSEA), which was concluded between the defense authorities of Japan and Russia to prevent accidents, are published in commercially available international signal books and have been common public knowledge since the 1972 agreement between the United States and the Soviet Union.

In addition to promoting the conclusion of INCSEA between Japan and China, special signal flags should be shared as soon as possible to complement international signals and facilitate mutual communication.