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Gray Zone Situations in Japan: Focusing on Differences in Understanding between the Ministry of Defense and the Japan Coast Guard

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Introduction: Can Gray Zone Situations be Categorized as War?

When considering how to respond to gray zone situations in the security environment, it is extremely important to theoretically understand the real nature of such gray zone situations. Unless gray zone situations can be clearly defined, it is impossible to formulate effective countermeasures.

One to bear in mind in terms of a gray zone situation is the standoff between Japan and China in the East China Sea, including the area around the Senkaku Islands. Since the Japanese government acquired the ownership rights to the Senkaku Islands¹ in 2012, Chinese government and naval vessels have intermittently intruded into Japanese waters surrounding the Senkaku Islands. In response, Japan dispatches Japan Coast Guard and Maritime Self-Defense Force vessels to the area, shares information, and carries out warning and surveillance activities.

In *Defense of Japan 2018* (Defense White Paper), published by the Ministry of Defense, this is explained in the following way. “*There has been also a tendency towards an increase in and prolongation of so-called gray-zone situations, that is, neither pure peacetime nor [wartime] contingencies over territory, sovereignty, and maritime economic interests.*” Within that, so-called gray zone situations are described as a “*broad range of situations that are neither pure[ly] peacetime nor [wartime] contingencies. For example, conflicting assertions between states, etc., over territory, sovereignty, economic interests including maritime interests, etc., and at the least one party showing physical presence frequently, or attempting or making changes to the status quo in an area related to the dispute by using armed organizations or other means to the extent that it does not constitute an armed attack, in order to appeal a party’s assertion or demand or to force acceptance of it.*”²

On the other hand, there is no definition of gray zone situations in the *Japan Coast Guard Report* (*Japan Coast Guard White Paper*), which is published each year by the Japan Coast Guard,³ and no mention of awareness concerning any threat relating to gray zone situations as indicated by the Ministry of Foreign Affairs or the Ministry of Defense. Furthermore, even in interviews with maritime safety officials, it was revealed that the concept or term “gray zone situations” was not in use within the Japan Coast Guard.

¹ This refers to the three islands Uotsuri-Shima, Minami-Kojima and Kita-Kojima.

² Japan Ministry of Defense, *Defense of Japan 2018*.
[http://www.clearing.mod.go.jp/hakusho_data/2018/html/n11100000.html] (Last accessed on December 5, 2018.)

³ Japan Coast Guard, *Japan Coast Guard Report 2001–2017*.
[<https://www.kaiho.mlit.go.jp/doc/hakkou/report/top.html>] (Last accessed on December 5, 2018.)

In the *Cabinet Decision on Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People* that was released on July 1, 2014, three basic policies for security framework development were announced: (1) Response to an Infringement that Does Not Amount to an Armed Attack, (2) Further Contributions to the Peace and Stability of the International Community, and (3) Measures for Self-Defense Permitted under Article 9 of the Constitution. In terms of semantics, (1) Response to an Infringement that Does Not Amount to an Armed Attack is related to “responding to gray zone situations, and it is conceivable that this prompted the clarification of the definition of gray zone situations.” However, in the deliberation process in the Diet, etc., these things are not considered from the perspective of both the Self-Defense Forces and the Japan Coast Guard.

So, why is this understanding of gray zone situations not shared with the Japan Coast Guard, which is the first to respond on the front line in gray zone situations?

In this paper I would like to address the difference in understanding [regarding this matter] between the Ministry of Defense and the Japan Coast Guard. In addition to focusing on this issue, I will also clarify Japan's perspective on gray zone situations by collating information regarding the gray zone situations of the US, China and Russia. This will provide us with a new perspective regarding gray zone situations that in the future have the potential to become a major form of international conflict.

1. Research regarding Gray-Zone Situations

Previous research regarding gray zone situations was analyzed from four different perspectives: (1) Definition of terms, (2) approach from a legal perspective, (3) concept development, and (4) overseas research regarding gray zone situations.

(1) Definition of Terms

In this paper I am going to use “gray zone situations” as this is somewhat broader and is the phrase that is actually used by the Ministry of Defense and other government institutions. As there is no legal concept of gray zone situations, as the words themselves indicate, this is a straightforward expression indicating a wide range of circumstances. Therefore, it is inappropriate to clearly declare whether or not each individual incident falls into the category of a gray zone situation.⁴

⁴ Reply by Minister of Defense Itsunori Onodera, 186th Diet, Upper House Committee on Foreign Affairs and Defense No.10, April 10, 2014. [<http://kokkai.ndl.go.jp/SENTAKU/sangiin/186/0059/18604100059010a.html>] (Last accessed on December 5, 2018.)

(2) Approach from a Legal Perspective

In terms of papers written by individuals, the first time that the issue of gray zone situations was raised was by Security Discussion Group researcher Kazuki Yano. In December 2013, Japan for the first time adopted a National Security Strategy in place of the Basic Policy for National Defense, which was enacted in 1957. In light of this, Yano (2014) points out that although seamless response to gray zone situations is mentioned repeatedly in the National Security Strategy, based on the awareness that there is almost no mention of problems in defense legislation and how to respond, it does not matter how much gray zone situations flare up. It is because as long as they are not recognized as a war contingency, they are a peacetime contingency, and as the Self-Defense Forces are not conferred with the right of self-defense during peacetime, as long as the existing defense framework is not improved, it is impossible to respond to gray zone situations.⁵ Yano mentions constitutional reform in relation to the ultimate solution to these problems, taking the position that gray zone situations arise because there is a legal loophole.

Koichi Morikawa (2016) delineates these so-called “gray-zone situations,” maintaining that “these gray-zone situations are ‘situations that are not pure[ly] peacetime or [wartime] contingencies’ and include not only situations involving ‘infringements that do not amount to an armed attack’ on Japan that arise against a backdrop of conflicting assertions ‘over territory, sovereignty, economic interests, etc.,’ but could also be said to include the notion of situations that arise whereby the same kind of infringement occurs with regard to US forces, etc., which are at present engaged in activities that contribute to the defense of Japan.”⁶ On the other hand, in terms of the definition of gray-zone situations, it has been pointed out that care is required when certain this definition is applied to “situations that arise against a backdrop of conflicting assertions ‘over territory, sovereignty, economic interests, etc.’”⁷

Based on this, consideration is being given to the gray zone situations that are expected to arise with regard to the three items determined in the May 14, 2015 Cabinet Decision: “Responses to Foreign Naval Vessels Carrying out Navigation through the Territorial Sea or the Internal Waters of Japan that Does not Fall under Innocent Passage in International Law,” namely, “The Government’s Responses to Illegal Landing on a Remote Island or its Surrounding Seas by an Armed Group” and “Responses to Acts of Infringement When Self-Defense Force Ships or Aircraft Detect Foreign Ships Committing

⁵ Kazuki Yano, "Defense Problems and Countermeasures (through new fundamental policy)," Security Discussion Group, *Anzen Hosho wo Kangaeru*, No.709, 2014, p. 3.

⁶ Koichi Morikawa, "The Reach of Responses to Gray Zone Situations and Their Legal Nature," *Kokusai Mondai*, No.648 (2016), p. 30.

⁷ *Ibid.* p. 30.

Said Acts against Japanese Private Ships on the High Seas.” Consequently, from the perspective of both international law and Japanese law, while gray zone situations are expected to include a wide range of situations, one of the characteristics of these situations is that “with the exception of piracy, a response is made at the stage where it cannot be determined whether or not the agent of infringement is an individual or a state actor or similar organization. Accordingly, maritime security operations and public security operations are likely to be of the nature of administrative police activities initially premised on the infringement being committed by an individual, even though the possibility that the agent of infringement is a state actor or similar organization cannot be completely excluded at that stage,”⁸ thus referring to administrative police activities.

(3) Research for Concept Development

Based on the notion that awareness of gray zone situations was inadequate, Aihito Yamashita (2017) sought to clarify their characteristics. In response to Morikawa defining “situations that cannot be handled only with ordinary police capacity” as “gray zone situations,” Yamashita says that there is no really compelling argument for using this figurative expression for such situations when “action-type public security operations and maritime security operations have already been developed under the Self-Defense Forces Law,”⁹ and he sought to clarify the reasons for using “gray” rather than “white” or “black” to describe them.

As a result of analyzing the case of the East China Sea, Yamashita is of the opinion that the gray zone situation developing in the East China Sea is not the kind of situation referred to by Morikawa using that figurative expression, but something confusing and of rather more substance where it is difficult to distinguish black from white. The reasons that it is gray are that: (1) The waters of the East China Sea are governed by law enforcement, while the airspace above is protected by the military, meaning that there are two different bodies in operation. (2) It is difficult to understand or determine whether the China Coast Guard is, by nature, a law enforcement body or a military organization. (3) It is difficult to determine in some cases whether the activities of the China Coast Guard constitute the exercise of force under international law.

(4) Research into Gray Zone Situations Overseas

Among earlier research, there are those that point out that gray zone situations are unique to Japan. On the other hand, on April 24, 2014, at a Japan-US summit meeting between Prime Minister Abe and

⁸ Koichi Morikawa, "The Reach of Responses to Gray Zone Situations and Their Legal Nature," *Kokusai Mondai*, No.648 (2016), pp. 35-36.

⁹ Aihito Yamashita, “Gray Zone Situation' Analysis – Case Study: Chinese Operations in the East China Sea and Japan’s Response,” *Air Power*, No. 4 (2017), p. 90.

President Obama, it was verified that the Senkaku Islands come under the scope of operations of Article 5 of the Japan-US Security Treaty. There are those that are of the opinion that clarifying the position of Japan and the US with regard to the Senkaku Islands restrains the action of China in the East China Sea and is effective as a means of dealing with gray zone situations.¹⁰ Understanding the concept of gray zone situations in the US, which is an important partner in terms of the security of Japan, is extremely important in order to be able to jointly deal with gray zone situations in the surrounding Japan.

In terms of the US, a white paper titled *The Gray Zone* was published by the US Special Operations Command (USSOCOM) on September 9, 2015. This report by USSOCOM, which is one of the Unified Combatant Commands of the US, formed the basis for subsequent US research (in the US) regarding gray zones. In that report, gray zones were defined as follows: “Gray zone security challenges, existing short of a formal state of war, present novel complications for U.S. policy and interests in the 21st century. We have well-developed vocabularies, doctrines and mental models to describe war and peace, but the numerous gray zone challenges in between defy easy categorization. For purposes of this paper, gray zone challenges are defined as competitive interactions among and within state and non-state actors that fall between the traditional war and peace duality. They are characterized by ambiguity about the nature of the conflict, opacity of the parties involved, or uncertainty about the relevant policy and legal frameworks.”¹¹

Moreover, the conflict in Eastern Ukraine is presented as an example of a case in which each of the US, Russia and Ukraine interpreted the conflict in different ways, and states that it is important to understand the different perspectives of the parties involved in the gray zone.¹²

This report focuses on the actions of Russia in Eastern Ukraine in relation to the US, but does not mention the actions of China in the East China Sea.

Michael Mazarr (2015) points out that “Nor does this analysis contend that gray zone tactics are entirely new. States have been using these kinds of approaches for centuries, in some ways for millennia. Concepts such as political destabilization, support for proxies and militias, information

¹⁰ James R. Holmes, “When China Rules the Sea,” *Foreign Policy*, September 2015. [<https://foreignpolicy.com/2015/09/23/when-china-rules-the-sea-navy-xi-jinping-visit/>] (Last accessed on December 5, 2018.)

¹¹ US Special Operations Command White Paper, “The Gray Zone,” September 2015, pp. 1. [<https://info.publicintelligence.net/USSOCOM-GrayZones.pdf>] (Last accessed on December 5, 2018.)

¹² U.S. Special Operations Command White Paper, “The Gray Zone,” September 2015, pp. 3–4. [<https://info.publicintelligence.net/USSOCOM-GrayZones.pdf>] (Last accessed on December 5, 2018.)

campaigns, and much more have been a staple of statecraft since the city states of ancient Greece were vying for influence,”¹³ emphasizing the fact that this is a concept that has been around for some time. On the other hand, he emphasizes that in recent years cyber warfare is one of the nontraditional tools that has come to be employed in the gray zone.

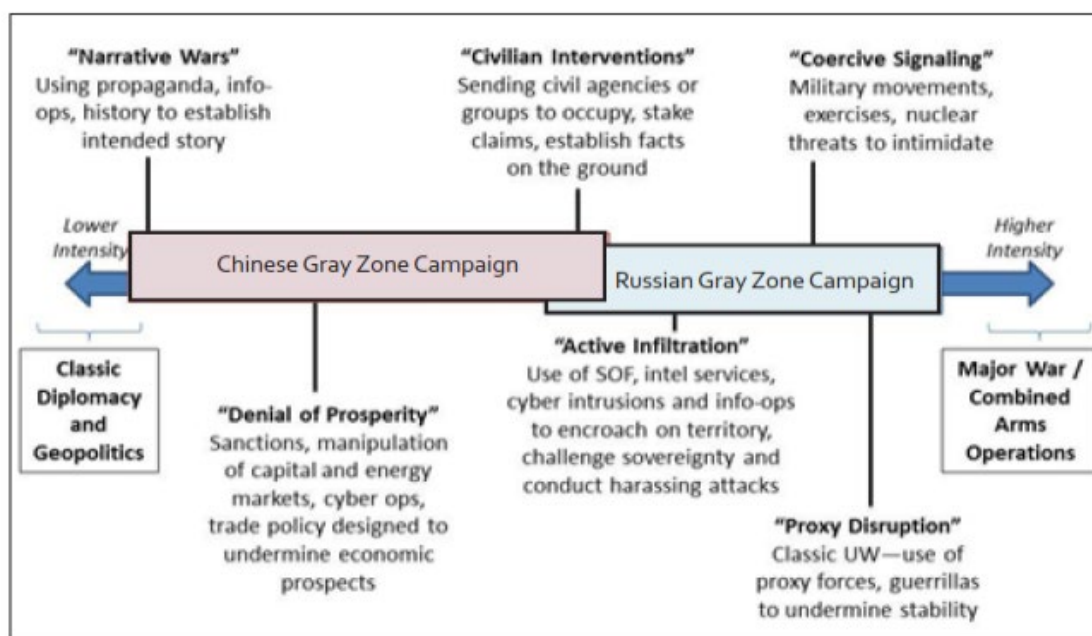
Building on the USSOCOM report mentioned above, Mazarr defines the concept of gray zone and associated terminology, compares them with related theory, and outlines the different means employed by China and Russia according to their degree of intensity. While it can be said that the approach taken by Russia in Ukraine is far more aggressive and militarized than the approach taken by China in the South China Sea, this enables us to understand that there is some degree of overlap between China’s use of the Chinese Maritime Militia and Russia’s use of paramilitary incursions, which is characteristic of gray zones. By emphasizing different places on the spectrum, both fall into the broad concept of gray zone strategies.

As the authors of US literature about gray zones have the actions of China in the South China Sea and the actions of Russia in the Crimea in the back of their minds, their concept of gray zones differs slightly from Japan’s concept of gray zone situations in the East China Sea, and yet the importance and degree of urgency in considering how to respond to the threat of gray zones is the same. That is because the United Nations Charter prohibits armed attacks against other nations in order to achieve the important UN goal of preventing breaches of the peace. However, as the means employed in the gray zone are not accompanied by the clear use of military strength, this is why they are recognized as having the potential to cause major problems from an international legal perspective.

Much of the earlier research carried out within Japan discusses the lack of development of laws for responding to gray zone situations, and there is much research on legal theory regarding issues such as the balance between the right of self-defense and police authority. Although in the waters surrounding Japan there are, in fact, many conceivable gray zone situations – infringements that do not amount to an armed attack – when considering the time frame involved in transition from peacetime to wartime, it is normal for responsibility for these situations to be passed from the Japan Coast Guard to the Self-Defense Forces. However, in previous research, there is no consideration of the response of the Japan Coast Guard to gray zone situations. Because the concept of gray zone situations does not exist within the Japan Coast Guard, a gap in awareness arises between the Japan Coast Guard and the Self-Defense Forces, meaning that there is the possibility that it is difficult to initiate a seamless response.

¹³ Michael J. Mazarr, “Mastering the Gray Zone: Understanding a Changing Era of Conflict,” The United States Army War College Press, December 2015, p. ix.

Figure 1. Chinese and Russian Gray Zone Campaigns



Based on Michael J. Mazarr (2015)

2. The Sophistication of Conflict

In the 2002 National Security Strategy of the United States of America, the Bush administration suggested that classical national security theory is outdated due to the benefit of sharing in many fields such as economic activities and antiterrorism measures.¹⁴

In the Spratly Islands in the South China Sea, because China is engaged in aggressive actions that give priority to Chinese domestic law ahead of international law, it is succeeding in constructing new man-made islands. On the seven landforms,¹⁵ since 2014, rapid and large-scale reclamation¹⁶ has been carried out. In July 2016, in the final ruling by the Permanent Court of Arbitration on the dispute

¹⁴ The National Security Strategy of the United States of America,” September 2002.

[<https://www.state.gov/documents/organization/63562.pdf>] (Last accessed on December 10, 2018.)

¹⁵ Johnson Reef, Cuarteron Reef, Gaven Reefs, Hughes Reef, Fiery Cross Reef, Mischief Reef and Subi Reef.

¹⁶ In its “Annual Report to Congress: Military and Security Developments Involving the People’s Republic of China” in June 2017, the US Department of Defense pointed out that as of the end of 2015, China expanded the Spratly Islands by 3,200 acres (approx. 13 km²) and completed reclamation work.

regarding the South China Sea brought against China by the Philippines under the United Nations Convention on Law of the Sea (UNCLOS), the Tribunal concluded that there was no legal basis for China to claim historic rights to resources within the sea areas falling within the “nine-dash line” and also acknowledged the illegal nature of Chinese activities, such as land reclamation. However, China has made it clear that it has no intention of complying with the ruling, and even now, in addition to constructing military installations such as batteries, is proceeding with the construction of various forms of infrastructure that can be used for military purposes, including runways and harbors, hangars and radar installations and is continuing with the militarization of those waters.¹⁷

With regard to this situation, Mazarr (2015) points out that “Step by forceful step, China is laying the groundwork for a new order in the region that recognizes Beijing’s unquestioned primacy, and for an international system whose norms and institutions reflect China’s interests and preferences.”¹⁸

Post-World War Two strategy theorists, such as Thomas C. Schelling (2008), suggested using the concept of “deterrence and compellence” as a new way to use nuclear weapons. As neither deterrence nor compellence involve physically violent actions, they are not war. It could be said that large-scale war has not occurred because this balance is being maintained. Nuclear weapons strike fear into the hearts of people throughout the world, and it is all but impossible to use them.

The fact that large-scale war does not occur does not mean that countries are satisfied with the present state of affairs. Nations that are planning to change the status quo do not launch a strong attack all at once, but seek to use strong tools to cross their opponent’s red line without stimulating their opponent, and slowly seek to change the present state in a way that will be beneficial to them. This method matches the characteristics of the gray zone conflicts mentioned by Mazarr (2015). With this tactic, the other party is confronted with a *fait accompli*, and not only does this allow the instigator to take leadership by seeking the other party’s response, but depending on the response or status of the other party, it enables the instigator to back away from or stop the means employed. Although interest in gray zones has become more widespread in recent years, as mentioned in previous research, the use of tactics such as proxies, militias, fifth columnists and permanent denial, etc., are classic examples. One of the characteristics of a gray zone situation is the potential to achieve a goal by combining these tactics without revealing militaristic options or taking a high risk.

¹⁷ Japan Ministry of Defense, *White Paper on Defense*, 2004. [http://www.mod.go.jp/j/publication/wp/wp2018/html/n12302000.html#s12302604] (Last accessed on December 5, 2018.)

¹⁸ Michael J. Mazarr, “Mastering the Gray Zone: Understanding a Changing Era of Conflict,” The United States Army War College Press, December 2015, p. 1.

Mazarr (2015) mentions three reasons why attention must be paid to gray zones, which are by no means a new tactic. “First, a number of leading aggressive powers – notably China, Russia, and Iran – appear to be making extensive use of these strategies. Second, the cost of major aggression has become so severe, and economic and social interdependence so powerful, that states with some degree of aggressive intent arguably will be in the market for alternative ways to achieve their goals. These realities increase the incentive to use gray zone approaches. Finally, while some gray zone tools have been used since ancient times, others – such as cyber weapons, advanced forms of information campaigns, and elaborate civilian tools of statecraft such as coast guards – are relatively recent and lend growing intensity to these campaigns. For all these reasons, a very old and well-established set of strategic tools has taken on increasing importance.”¹⁹

The use of cyber warfare and information warfare, and other new approaches used in the gray zone, including the use of energy or trade, are all classical strategy disguised with different technologies. Previously known as salami slicing tactics, the same kind of concept has come to be referred to today by some as “hybrid warfare.” Although the US Department of Defense defines conflict where state or nonstate actors influence related peoples as irregular warfare (IW), the fact that there are various terms that are similar to irregular warfare (IW), such as unconventional warfare (UW), unrestricted warfare, hybrid warfare, reveals how complicated and complex the security environment has become.

China can also employ the strategy it used in the South China Sea in the East China Sea. Unilateral attempts to change the existing state of affairs against a backdrop of power based on their own assertions that are incompatible with the existing international order could be said to be an approach that seeks to achieve goals by causing new conflicts. This ongoing approach by China and Russia suggests that gray zone strategies may be an important option for states that want to reconstruct the 21st century world order.

3. Resetting the Definition of “Gray Zone Situations”

Collating previous research enables us to see a number of problems. Of special note is the question posed by this research: “Are gray zone situations war?” Unless we can clarify the root of the issue then major mistakes can be made.

At this point I would like to clarify the definition of gray zone situations put forward by the Ministry of Defense and the US Special Operations Command.

¹⁹ Michael J. Mazarr, “Mastering the Gray Zone: Understanding a Changing Era of Conflict,” The United States Army War College Press, December 2015, p. 3.

“So-called 'gray zone' situations concisely describe a broad range of situations, that is, neither pure peacetime nor contingencies. For example, conflicting assertions between states, etc., over territory, sovereignty, economic interests including maritime interests, etc., and at the least one party showing physical presence frequently, or attempting or making changes to the status quo in an area related to the dispute by using armed organizations or other means to the extent that it does not constitute an armed attack, in order to appeal a party's assertion or demand or to force acceptance of it.”

— Ministry of Defense, *Defense of Japan 2018*

“Gray zone challenges are defined as *competitive interactions among and within state and non-state actors that fall between the traditional war and peace duality*. They are characterized by ambiguity about the nature of the conflict, opacity of the parties involved, or uncertainty about the relevant policy and legal frameworks.”

— US Special Operations Command, *The Gray Zone*

The definition in Japan lacks a broad perspective, giving the impression that it was written bearing in mind the threat to the Senkaku Islands. On the other hand, the US definition, if read too broadly, “would embrace practically all international interaction, most of which is directed in some degree at affecting the actions or view of other countries.”²⁰ In reality, it is conceivable that China and Russia, as actors, are unaware that they are using such gray zone means. However, in order for Japan to properly understand the threat, and formulate effective countermeasures, it is necessary to deepen understanding regarding gray zone situations. Therefore, using the definition provided by the Ministry of Defense, I have reset the definition of gray zone situations.

“Situations in which complex actions are carried out over the long-term using nonmilitary means to achieve political objectives that do not end up in military confrontation.”

Gray-zone situations achieve objectives while avoiding military confrontation. Therefore, mainly nonmilitary means are used in a complex manner and planned in such a way that they do not cross any red line that has the possibility of causing a large-scale war. Accordingly, the achievement of long-term objectives is always kept in mind. Taking this into account, it could therefore be said that gray zone situations are not war.

As the situation surrounding the Senkaku Islands is always taken into consideration when debating gray zone situations in Japan, the definition ends up being extremely narrow when compared with

²⁰ International Security Advisory Board, *Report of Gray Zone Conflict*, January 2017, p. 1.

overseas definitions. I will not analyze some of the problems that are raised when considering gray zone situations in Japan.

4. Awareness regarding “Gray-Zone” Situations in Japan

(1) Situation Levels

Since January 2009, The Council on Security and Defense Capabilities (“the Council”) has met a total of nine times to consider from a broad perspective the overall framework for the kind of security and defense capabilities that are needed to protect Japan and its people. At the Council’s ninth meeting they stated, “When considering the role of defense, although this was formerly discussed based on the basis of whether it was peacetime or wartime, in the future, as various situations may arise that are neither peacetime nor wartime but fall somewhere in between, it is necessary to be able to respond seamlessly, not just in peacetime or wartime, not limited to black or white [situations], but also gray zone [situations].²¹” The report of the Council also stated that, “In the future, not only from the perspective of crisis management but in terms of overall security, a comprehensive approach is required that includes functions such as defense, foreign relations, policing and economic measures. In particular, how to respond to gray situations that are somewhere in between peacetime and wartime will be a major theme for consideration.”²² This statement brought attention to gray zone situations.

In February 2010, the year following the start of the government led by the Democratic Party of Japan, the government decided to hold “The Council on Security and Defense Capabilities in the New Era” in order to review Japan’s defense policy from the perspective of the Democratic Party of Japan. In all, a total of nine sessions were held. Although there was no discussion regarding gray zones, in their report “Japan’s Visions for Future Security and Defense Capabilities in the New Era: Toward a Peace-Creating Nation” they state: “The following trends can be discerned in the current global security environment: (1) economic and social globalization which created transnational security challenges and increased conflicts in the “gray zones” between peace and crisis.”²³ They also reveal an awareness of the threat of gray zones: “It is not all-out war but disputes over sovereignty, territory, resources,

²¹ The Council on Security and Defense Capabilities, Summary of the Proceedings of the 9th Meeting, May 15, 2009, pp. 2. [<http://www.kantei.go.jp/jp/singi/ampoboue2/dai9/gijiyousi.pdf>] (Last accessed on December 10, 2018.)

²² The Council on Security and Defense Capabilities Report, August 4, 2009, p. 20. [<http://www.kantei.go.jp/jp/singi/ampoboue2/200908houkoku.pdf>] (Last accessed on December 10, 2018)

²³ The Council on Security and Defense Capabilities in the New Era, Japan’s Visions for Future Security and Defense Capabilities in the New Era: Toward a Peace-Creating Nation, 2009, pp.51. [<https://www.kantei.go.jp/jp/singi/shin-ampoboue2010/houkokusyosyo.pdf>]

and energy “in between peacetime and wartime” that are on the rise. We need to be [adequately] aware of risks that may arise from disputes in these ‘gray zones’ and their potential to provoke confrontation between major powers beyond the intentions of the countries concerned.”²⁴

Subsequently, the “Dynamic Defense Force” concept was revealed by the government led by the Democratic Party of Japan in the *Cabinet Decision: National Defense Program Guidelines for FY 2011 and Beyond* (hereafter referred to as the “22 Guidelines”). This new concept emphasizes the use of “dynamic deterrence” not only to respond to situations when they occur, but also to deploy defense forces on a permanent and ongoing basis, focusing on “deployment” with the aim of realizing these defense capabilities. This was therefore interpreted as meaning that it is necessary to develop dynamic defense capabilities and maintain spontaneity and continuity in order to cope with the increasing threat of gray zone conflicts that lie between peacetime and wartime contingencies.

Since the policy of building “dynamic defense capabilities” was revealed in the 22 Guidelines, there has been lively debate regarding gray zone situations in Japan. Sugio Takahashi (2013) pointed out the difficulty of gray zone-related innovation, stating that research regarding military innovation to date has been divided into peacetime and wartime research, but gray zone-related innovation is centered around innovation for crisis management, so it is a problem that will take more than the military sector to solve.²⁵ To solve this lack of innovation, Takahashi suggests that innovation should be promoted through the combined efforts of the Ministry of Defense, the Japan Coast Guard, and administrative bodies, such as the Ministry of Foreign Affairs and the Official Residence of the Prime Minister.

Ken Jimbo (2017) suggests that awareness regarding “situation levels,” including those in the gray zone, has become a core issue since the release of the 22 Guidelines.²⁶

In fact, at the time when discussion regarding gray zone situations started, gray zones were understood to be “situation levels” in between peacetime and wartime.

²⁴ The Council on Security and Defense Capabilities in the New Era, *Japan’s Visions for Future Security and Defense Capabilities in the New Era: Toward a Peace-Creating Nation*, 2009, p. 5. [https://www.kantei.go.jp/jp/singi/shin-ampobouei2010/houkokusyo_e.pdf]

²⁵ Sugio Takahashi, “Building Dynamic Defense Capabilities” edited by the National Institute for Defense Studies, “Strategic Management of Defense Capabilities: The Direction of Reform and its Challenges,” 2013, p. 211.

²⁶ Ken Jimbo, “Seamless Security Framework and the Challenge of Escalating Gray Zone Situations, the Japan Institute of International Affairs, “Reality Check for Security Measures”, 2017, pp. 31-38.

(2) Gray Zones in Legislation

On September 11, 2012, the Japanese Government purchased three of the Senkaku Islands that were privately owned (Uotsuri-Shima, Kita-Kojima and Minami-Kojima) and nationalized them. On December 26 of the same year, the Liberal Democratic Party took the control of the government from the Democratic Party of Japan and Shinzo Abe became prime minister for the second time.

At the sixth meeting of the Advisory Panel on Reconstruction of the Legal Basis for Security held on February 4, 2014, Prime Minister Abe stated, “There is now a recognized need for dealing with so-called ‘gray zone’ situations. These situations include cases in which foreign national submarines navigating underwater intrude into Japan’s territorial waters and continue to navigate the waters, refusing Japan’s request to leave, or incursions occurring in remote islands or sea areas that are several hundred kilometers away from the mainland, making it difficult for the police or the Japan Coast Guard alone to respond quickly. We must carry out a thorough review to see if there are no ‘gaps’ that need to be filled in by introducing legislation from the perspective of whether the Self-Defense Forces have sufficient authority and are able to respond in a timely manner.”²⁷

This statement by Prime Minister Abe suggests that he was aware of the need for legislation that would enable the Self-Defense Forces to act with sufficient authority in a timely manner to deal with gray zone situations, because the Self-Defense Forces can act only on the basis of the right of self-defense, and gray zone situations fall into an area in which the right of self-defense cannot be applied. This means that he was aware of the existence of gray zones in legislation.

In Japan, although there is a tendency for police authority to be used as a basis for the use of weapons against a country engaged in military actions, it is unthinkable for normal military to take action on the basis of police authority. This is because police authority is considered to be something that is valid and to be exercised within one’s own country and has no validity with regard to international disputes.²⁸ In Japan, due to restrictions under the Constitution, the use of arms by the Self-Defense Forces is forbidden unless the country is under attack, police authority is applied to Self-Defense Forces actions. Therefore, although the Self-Defense Forces possess equipment that is different from that of the Police, during peacetime they can only take action as approved under police authority,

²⁷ “Advisory Panel on Reconstruction of the Legal Basis for Security”, Summary of Proceedings of the 6th Meeting, February 4, 2014, [<https://www.kantei.go.jp/jp/singi/anzenhosyou2/dai6/gijiyousi.pdf>] (Last accessed on 31 December, 2018.)

²⁸ Although there is such a thing as maritime law enforcement on the high seas under international law, other than the Piracy Countermeasures Act, Japan has yet to develop corresponding legislation.

meaning that there is a gray zone that falls outside the scope of police authority to which even the Self-Defense Forces cannot respond unless the criteria for a war contingency is met.

On the other hand, for other countries, this gray zone does not exist because under their domestic laws they can exercise the right of self-defense during peacetime. A sovereign nation exercising the right of self-defense during peacetime is an internationally accepted practice.

Whether or not the Self-Defense Forces should be given the right of self-defense during peacetime was intensely debated during the course of subsequent discussions concerning peace and security-related legislation. However, there was no discussion concerning responding to gray zone situations by upgrading the capabilities of the Japan Coast Guard.

(3) Hand-off (Deployment) Gray Zones

At the meeting of the Budget Committee of the House of Councillors held on April 2, 2015, in response to a question concerning the fact that there was no longer any discussion regarding the development of legislation for island defense, Defense Minister Gen Nakatani stated “based on the premise of the division of roles between law enforcement agencies and the Self-Defense Forces we are going to improve the deployment side of things, including streamlining procedures, to ensure that further damage due to illegal activities does not occur while waiting for deployment orders for public security and maritime patrol operations, etc., to be issued.”²⁹

Up to that point, although it was normal for the duties of law enforcement agencies and the Self-Defense Forces to be discussed from a legal perspectives, the statement above revealed awareness concerning the need to improve aspects of deployment relating to the hand-off of duties. In other words, a hand-off (deployment) gray zone exists.

On May 14, 2015, three cabinet decisions³⁰ were made with regard to streamlining procedures for issuing deployment orders for public security and maritime patrol operations. It was to introduce a

²⁹ Reply by Defense Minister Gen Nakatani, “189th Diet Session, Budget Committee of the House of Councillors, No. 16,” April 2, 2015. [<http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0014/18904020014016a.html>] (Last accessed on December 3, 2018.)

³⁰ The three instances were: “The Government’s Responses to Incidents Involving Illegal Landing, etc., on a Remote Island, etc., by an Armed Group,” “Responses to Foreign Naval Vessels Carrying out Navigation through the Territorial Sea or the Internal Waters of Japan that Does not Fall under Innocent Passage in International Law,” and “Responses to Acts of Infringement When Self-Defense Force Ships, etc., Detect Foreign Ships Committing Said Acts against Japanese Private Ships on the High Seas.”

system in which cabinet approval can be obtained for cabinet decisions over the phone, meaning that some improvements were made in terms of procedures within the scope of existing laws.

With regard to responses to foreign naval vessels carrying out navigation that does not correspond to innocent passage as found in the three instances in the cabinet decision, as the vessels in question are foreign naval vessels, this is outside the scope (police authority) of the Japan Coast Guard in the first place. As stipulated, such cases are handled by units of the Self-Defense Forces. In the second instance involving acts of infringement against Japanese private vessels, as the prerequisite is that Self-Defense Force ships, etc., have detected such actions, no effective response has been formulated to deal with the hand-off (deployment) gray zone that can conceivably arise due to the hand-off process from the Japan Coast Guard to the Self-Defense Forces that has been debated in various councils and the Diet, etc. With regard to the government's response in cases where armed groups make illegal landings, etc., on remote islands, etc., which is considered to be the most likely scenario, as the prerequisite is that this involves cases where deployment orders for public security or maritime patrol operations are expected to be issued, no changes have been made to the content of the response but the chain of command has been streamlined.

That is to say, in considering the content of the cabinet decisions, although things were improved in terms of procedures, there has been no improvement in terms of deployment, including hand-off.

(4) Responding Institution Gray Zones

Discussions to date have focused on reviewing existing legislation and rectifying inadequacies or gaps, based on the idea of ensuring “peace and security in Japan amid the severe security environment surrounding the country, Japan will efficiently develop a highly effective and joint defense force, adapting to the change in strategic environment with consideration of its national power and the political, economic, and social situations; and strive to ensure operations with flexibility and readiness based on joint operations. Japan will also advance not only the coordination within the government, but also coordination with local governments and the private sector. In doing so, even in peacetime, Japan will maintain and improve a comprehensive architecture for responding seamlessly to an array of situations, ranging from armed attacks to large-scale natural disasters³¹” as stated in the “National Security Strategy” that was passed by the Cabinet on December 17, 2013.

³¹ National Security Strategy (Provisional Translation), National Security Council Resolution and Cabinet Decision dated December 17, 2013, p. 13.
[<https://www.cas.go.jp/jp/siryou/131217anzenhoshou/nss-j.pdf>] (Last accessed on December 30, 2018.)

These concepts were summed up in two new peace and security-related laws that were enacted on September 19, 2015. However, these laws still do not feature new improvements to legal provisions for responding to gray zone situations.

This means that the issues pointed out above, such as situation levels, gray zones in legislation and hand-off (deployment) gray zones, have not been addressed.

With regard to the reasons why the three decisions made by the Cabinet ended up improving procedures, rather than improving legislation as was initially intended, Prime Minister Abe explained as follows: “As a government, we consider that further improvement is necessary in the way we handle various illegal activities that are suspected to cause infringement but do not involve armed attack, by taking appropriate and necessary measures in various fields, including streamlining the procedures for issuing deployment orders in cases of maintaining peace and public order or conducting maritime patrol. For the maintenance of peace and order over our territorial land and sea, the Police and the Japan Coast Guard will have the primary responsibility. They have the primary responsibility. The Self-Defense Forces will, in cases where it is impossible or extremely difficult for the Police to respond, receive deployment orders for public security and maritime patrol operations, and deal with the situation by coordinating with law enforcement agencies. On the premise of such basic division of roles, at this point in time, as we have not come to recognize that there is a need to develop legislation to cope with cases where no police are available in close proximity or the police are unable to respond immediately, we are going to consider improving deployment procedures, including streamlining procedures for issuing deployment orders that are appropriate to each situation, in order to ensure that there is no increase in the extent of the damage due to illegal activities while protocols for issuing deployment orders for public security and maritime patrol operations are being followed.”³²

In his explanation, Prime Minister Abe mentioned the development of legislation to cope with cases where there is no police force in close proximity or where law enforcement agencies are unable to respond immediately. He stated that there is no need for new legislation to deal with the problem of not having law enforcement agencies in close proximity, which is a new “responding institution gray zone.” Previously in the discussion regarding the development of legislation, there were no conditions, such as no police force in close proximity, etc. When explaining the need to develop legislation, terms, such as “gray zones in legislation” or “gray zones in hand-off (deployment)” were used. However, in the end, it was concluded that it is not necessary to develop legislation for cases of responding

³² Reply by Prime Minister Shinzo Abe “189th Diet Session, Budget Committee of the House of Councillors No. 1,” July 15, 2014 [<http://kokkai.ndl.go.jp/SENTAKU/sangiin/186/0014/18607150014001a.html>] (Last accessed on December 3, 2018.)

institution gray zones, such as where there is no police force in close proximity or where law enforcement agencies are unable to respond immediately.

As we can see from the above, other than the three cabinet decisions regarding streamlining deployment order procedures for public security and maritime patrol operations, etc., in May 2015 and the enactment of security-related laws in September of the same year, no effective measures for dealing with gray zone situations have been formulated.

Table 2. Gray Zones in Japan

	Peacetime		Situation Level	Wartime
Situation	Situations Handled by Law Enforcement Agencies	Hand-off Gray Zone	Public Security Deployment	Defense Deployment
			Maritime Patrol	
Applied Authority	Police Authority		Gray Zone in Legislation	Right of Defense
Responding Institution	Law Enforcement Agencies	Responding Institution Gray Zone	Self-Defense Forces	

Source: Created by the author.

5. The Japan Coast Guard’s Understanding of Gray Zone Situations

I was unable to clearly verify why the Japan Coast Guard does not recognize gray zone situations as threats. Even in an interview with a Japan Coast Guard officer, I was told that the term “gray zone situation” is not used within the Japan Coast Guard. However, from the perspective of the Japan Coast Guard, I can understand to a certain degree why they consider there to be no gray zone up to the point where public security and maritime patrol operations are handed-off [to the Self-Defense Forces] because they respond in accordance with the police authority, etc., that is vested in them by the law,

etc. This may be due to the fact that, as I mentioned earlier, the gap in jurisdiction between the Japan Coast Guard and the Self-Defense Forces lies outside the jurisdiction of the Japan Coast Guard.

In recent years the Japan Coast Guard is clearly improving every aspect of their operations. However, I assume that such improvements are being made within their organization. The basis of my assumption is the fact that since the annual Meeting of Cabinet Members concerned with the Strengthening of the Maritime Security Framework was first held in December 2016, it has been held a total of three times (December 18, 2017 and December 18, 2018). These meetings were held only once a year and each meeting lasted about 10 minutes,³³ meaning that they were not for discussing anything, but rather for the Director General of Maritime Safety Agency to present the annual report regarding the activities of the Japan Coast Guard to the Prime Minister.

Although I analyzed the officially released training records of the Japan Coast Guard and the Maritime Self-Defense Force, which are the primary responders to gray zone situations, I was unable to confirm any record of training that was clearly announced as being specifically for handling gray zone situations. On the other hand, joint response training for handling suspicious vessels is conducted about once a year in accordance with the Joint Response Manual Concerning Suspicious Vessels that was formulated by the Japan Coast Guard and the Maritime Self-Defense Force.

This joint training is carried out in accordance with the basic concept that “although the Japan Coast Guard responds primarily to suspicious vessels as an administrator of police authority, in cases where it is acknowledged to be impossible or extremely difficult for the Japan Coast Guard to deal with such situations, a maritime patrol deployment order shall be issued without delay and situations shall be dealt with jointly by the Self-Defense Forces and the Japan Coast Guard.”³⁴ Specifically, the response protocol is: (1) A line of communication is established and maintained to keep all parties informed right from the initial stage through to the end of action. (2) The Japan Coast Guard deploys necessary force initially to deal with suspicious vessels, while the Maritime Self-Defense Force provides all possible cooperation to the Japan Coast Guard at their request, and the situation is handled as a joint effort prior to the issuance of a maritime patrol deployment order. (3) In cases where a maritime patrol deployment order has been issued as part of a joint response, the Maritime Self-Defense Force works together in collaboration with the Japan Coast Guard to detain suspicious vessels.

³³ See the website of the Prime Minister of Japan and His Cabinet for the minutes of the Meeting of Cabinet Members concerned with the Strengthening of the Maritime Security Framework. [<http://www.kantei.go.jp/jp/singi/kaihotaisei/>] (Last accessed on December 30, 2018.)

³⁴ Ministry of Defense, *Defense of Japan 2004 (Defense White Paper)*. [http://www.clearing.mod.go.jp/hakusho_data/2004/2004/html/163211.html] (Last accessed on December 22, 2018.)

In July 2015, it was reported that the first joint training for dealing with gray zone situations had been carried out for Japan Coast Guard and Maritime Self-Defense Force personnel, but this too would appear to be joint training concerning how to deal with suspicious vessels. That is to say, from the records of the joint training that was carried out it can hardly be said to have been any awareness on the part of the Japan Coast Guard with regard to gray zone situations.

The front cover of *Responding to Gray Zone Situations on the Water and in the Air – Problems and Countermeasures*, which was released by the Gray Zone Research Committee of the Nakasone Peace Institute on June 26, 2018, features vessels of the Maritime Self-Defense Force and the Japan Coast Guard sailing side by side. This photo supplied by the Ministry of Defense gives the impression that they are training for gray zone situations. However, from the number “PL21” on the vessel of the Japan Coast Guard, we can see that it is, in fact, the training vessel “Kojima,” which is used by the Japan Coast Guard Academy. As it is hardly likely that a training vessel will join training for gray zone situations, I assume that this photo does not imply that they conducted training for gray zone situations.

In light of the above, I conclude that no training has been conducted in relation to gray zone situations as discussed in the Diet. It is conceivable that the reason for this is that the Japan Coast Guard has no awareness of the concept of gray zone situations.

Conclusion

In Japan, “gray zone situations” have been discussed from four different perspectives: (1) Situation level, (2) Legislation, (3) Hand-off (deployment) and (4) Responding institutions. This is why there has been no convergence into policy theory. There has been hardly any debate regarding gray zones since the establishment of peace and security-related legislation.

As we can see, there is a difference in awareness regarding “gray zones” between the Ministry of Defense and the Japan Coast Guard, and each of the actors have different views. Therefore, as a country, it is still difficult for Japan to develop a seamless system for dealing with gray zone situations. Furthermore, based on this difference in awareness, if situations are handled in the wrong way, then there is the danger that Japan may give an opponent a reason to escalate the situation level.

In order to solve this problem, there must be ongoing debate in the government regarding policies for gray zone situations, including legislation. In discussions to date, there were no calls for the development of legislation, and when a specific example of a gray zone situation was raised, the opinion was voiced that the situations could be dealt with through public security and maritime patrol operations. With gray zone situations, one of the characteristics is that many different tactics are

employed, so even if a specific protocol is established on the premise of a specific case, it is necessary to be aware that there is still the possibility that a new type of gray zone situation may arise for which that protocol is invalid. Consideration needs to be given to developing legislation so that a framework can be developed that enables any foreseen situation to be dealt with simultaneously so that the Self-Defense Forces do not have to intrude into the domain of the Police.

A state must coordinate the management of complex situations, such as gray zone situations, in a uniform manner. More specifically, Japan should follow the lead of the National Security Council and establish a shared understanding regarding gray zone strategies whereby strategies for handling specific situations can be formulated and a system developed in which law enforcement agencies are able to handle situations based on the premise that such situations do not amount to military conflict. One of the facets of this is an integrated approach across different ministries and agencies, including the improvement of related capabilities.

In conclusion, I believe that the Japan Coast Guard should not turn a blind eye to the presence of gray zone situations, but consider with the Ministry of Defense how to improve deployment methods and equipment and in so doing foster greater mutual understanding. The content of joint training should also be more practical so that the link between the two organizations can be strengthened, and they should continue to strengthen collaboration while together identifying challenges and potential solutions.