

THE NATIONAL BUREAU *of* ASIAN RESEARCH

NBR SPECIAL REPORT #90 | MAY 2021

# The Gray Zone in the Definition of Gray-Zone Warfare: Challenges for Japan-U.S. Cooperation

*Hideshi Tokuchi*

**HIDESHI TOKUCHI** is a Visiting Professor at the National Graduate Institute for Policy Studies (GRIPS) in Tokyo. He can be reached at <h-tokuchi@grips.ac.jp>.

## EXECUTIVE SUMMARY

This essay examines the differences between the Japanese and U.S. definitions of “armed attack” and “gray zone,” discusses Chinese gray-zone activities in the East China Sea around the Senkaku Islands, and considers options for the two allies to address this evolving threat.

### MAIN ARGUMENT

China’s approach to asserting its claim over the Senkaku Islands through gray-zone activities seems intended to circumvent the U.S. defense commitment under the Japan-U.S. Security Treaty. As a result, the concept of “gray zone” must be understood so as not to block alliance cooperation to achieve common security goals. Gray-zone warfare violates the sovereignty and national interests of foreign countries in a manner that does not rise to the level of armed attack. The challenge for Japan and the U.S. is how to effectively cooperate with each other outside the commitment of Article 5 of their security treaty. Given the allies differing interpretations of the term “armed attack,” they should devise a practical way for operational cooperation, including coordination of their rules of engagement. With the rapid development of the China Coast Guard and China’s problematic new Coast Guard Law, cooperation to address China’s gray-zone warfare has become even more pressing for the Japan-U.S. alliance.

### POLICY IMPLICATIONS

- Japan and the U.S. must not be complacent about the current robustness of the alliance but should squarely face the security challenge that China has been posing, particularly in the East China Sea.
- The allies need to develop a better understanding of each other’s relevant security institutions, regulations, and processes.
- A whole-of-government and whole-of-alliance approach must be pursued under the strong political leadership of the two countries.

China often expresses an aversion to the Japan-U.S. alliance, which it considers a relic of the Cold War and anachronistic. This characterization, however, ignores the fact that the alliance was redefined a long time ago to be adapted to the post-Cold War era.

Neither Japan nor the United States views the alliance as a remnant of the Cold War. Instead, for more than two decades, both countries have viewed it as relevant to the post-Cold War environment. However, they now face a new reality for which a new definition of the alliance is necessary. In the case of an “armed attack” against Japan, Article 5 of the Japan-U.S. Security Treaty requires the two countries to act to meet the common danger. The U.S. government has repeatedly declared that this article covers the Senkaku Islands in the East China Sea.<sup>1</sup> However, the gray-zone warfare China has been engineering against Japan over the islands is not believed to constitute an “armed attack” against Japan, even though China keeps violating Japan’s sovereignty. It is an obstinate but quiet invasion.

The Senkaku Islands (called the Diaoyu Islands in China) are part of the southwest island chain that stretches from the south of Kyushu Island toward the direction of Taiwan. The strategic importance of the island chain amid China’s expansion toward the oceans in the age of Sino-U.S. rivalry is geographically obvious. The security of the Senkaku Islands is important not only for Japan but also for the regional security order. A Chinese attack on the islands would pose a critical test for the durability of the Japan-U.S. alliance as the cornerstone of the U.S. alliance network in the region. The two allies thus must squarely face this security challenge that China has been posing.

In 1954, when then prime minister Shigeru Yoshida visited Europe before visiting the United States, he emphasized that European nations should pay more attention to East Asia, where the Communist bloc would likely go on the offensive, striking at the liberal bloc’s vulnerable point.<sup>2</sup> Although the Cold War ended around three decades ago, his view has not lost its relevance. There are two salient points here. First, Europe and Asia must be more conscious that the gray-zone warfare Russia has been engineering on Eastern European soil and the gray-zone warfare China has been engineering in East Asian waters have commonalities. Transregional cooperation will generate the synergy necessary to address these threats. Second, Asia’s weakness today is in both the South and East China Seas, but China is more assertive in the South China Sea. While the Japanese and U.S. military presence in Northeast Asia is considerable, Japan and the United States have no permanent military presence in Southeast Asia, where regional military capabilities are very limited.<sup>3</sup> Therefore, a lack of Japanese and U.S. efforts to strengthen their alliance cooperation would put the security of the Senkaku Islands and the broader East China Sea at risk, militating against the stable and robust U.S. military presence and the regional balance of power.

---

<sup>1</sup> President Barack Obama stated in Tokyo on April 24, 2014, “And let me reiterate that our treaty commitment to Japan’s security is absolute, and Article 5 covers all territories under Japan’s administration, including the Senkaku Islands.” See “Joint Press Conference with President Obama and Prime Minister Abe of Japan,” White House, Office of the Press Secretary, April 24, 2014, <https://obamawhitehouse.archives.gov/the-press-office/2014/04/24/joint-press-conference-president-obama-and-prime-minister-abe-japan>. Likewise, the joint statement from President Donald Trump and Prime Minister Shinzo Abe on February 10, 2017, reads, “The two leaders affirmed that Article V of the U.S.-Japan Treaty of Mutual Cooperation and Security covers the Senkaku Islands. They oppose any unilateral action that seeks to undermine Japan’s administration of these islands.” See “Joint Statement from President Donald J. Trump and Prime Minister Shinzo Abe,” February 10, 2017, available at <https://kr.usembassy.gov/021017-joint-statement-president-donald-j-trump-prime-minister-shinzo-abe>. The “U.S.-Japan Joint Leaders’ Statement” on April 16, 2021, reads, “It [the United States] also reaffirmed the fact that Article V of the Treaty applies to the Senkaku Islands. Together, we oppose any unilateral action that seeks to undermine Japan’s administration of the Senkaku Islands.” See “U.S.-Japan Joint Leaders’ Statement: ‘U.S.-Japan Global Partnership for a New Era,’” April 16, 2021, <https://www.mofa.go.jp/mofaj/files/100177718.pdf>.

<sup>2</sup> Shigeru Yoshida, *Kaiso 10-nen I* [10-year Reflection Vol. 1] (Tokyo: Chuo-koron-sha, 1998), 237.

<sup>3</sup> Hideshi Tokuchi, “Fighting in Maritime Gray Zone Warfare in East Asia,” Sasakawa Peace Foundation USA, September 12, 2018, 6, <https://spfusa.org/wp-content/uploads/2018/09/Fighting-a-Maritime-Gray-Zone-Warfare-in-East-Asia.pdf>.

With these points in mind, this essay discusses the scope of the “gray-zone” concept from a Japanese perspective and examines how China conducts gray-zone warfare in the East China Sea over the Senkaku Islands.

## The Scope of the Japanese Concept of “Gray Zone”

“Gray zone” is an elusive term. It is not a legal term and does not generate any legal effects as such. Instead, the term is used to express a feature of the current international security environment. Japan’s most recent defense white paper describes it as follows: “So-called gray-zone situations, which are neither purely peacetime nor contingency situations, are becoming persistent over a long period of time, playing out as part of inter-state competition. They may possibly further increase and expand. Such gray-zone situations harbor the risk of rapidly developing into graver situations without showing clear indications.”<sup>4</sup> The white paper then elaborates on the concept of a gray zone:

The so-called gray-zone situations simply represent a wide range of situations that are neither peacetime nor wartime. In a gray-zone situation, for example, a country that confronts another over territory, sovereignty or maritime and other economic interests uses some forceful organization to demonstrate its presence in the relevant disputed region in a bid to alter the status quo or force other countries to accept its assertions or demands.<sup>5</sup>

This translation lacks a very important phrase that is found in the original Japanese version just after the phrase “some forceful organization.” The omitted text in the English version is “to the extent in which the action does not constitute an armed attack.”<sup>6</sup>

“Armed attack” is a legal term that establishes a trigger for joint operations as stipulated in Article 5 of the Japan-U.S. Security Treaty. The long-established interpretation of this term by the government of Japan is “the organized and planned use of force.”<sup>7</sup> As Tomohisa Takei argues, the definition of this term differs between Japan and the United States.<sup>8</sup> Although his argument is somewhat misleading, his point is well-taken that the variance of the definition could undermine bilateral alliance cooperation to address gray-zone contingencies.<sup>9</sup>

Takei contrasts the Japanese interpretation of armed attack with the U.S. position that the inherent right of self-defense potentially applies against any illegal use of force.<sup>10</sup> If, however, the present issue between Japan and the United States concerns the scope of the armed attack

<sup>4</sup> Ministry of Defense (Japan), *Defense of Japan 2020* (Tokyo, 2020), 41, [https://www.mod.go.jp/e/publ/w\\_paper/wp2020/pdf/R02010100.pdf](https://www.mod.go.jp/e/publ/w_paper/wp2020/pdf/R02010100.pdf).

<sup>5</sup> Ibid.

<sup>6</sup> Ministry of Defense (Japan), *Reiwa 2-nenban Nihon-no bouei: Boueihakusho* [Defense of Japan 2020: Defense White Paper] (Tokyo, 2020), 41.

<sup>7</sup> This English translation of the interpretation is based on page 42 of the English translation of “Report of the Advisory Panel on Reconstruction of the Legal Basis for Security” on May 15, 2014, which became a basis of the reinterpretation of the constitution of Japan with regard to use of force. The English version is available at [https://www.kantei.go.jp/jp/singi/anzenhosyou2/dai7/houkoku\\_en.pdf](https://www.kantei.go.jp/jp/singi/anzenhosyou2/dai7/houkoku_en.pdf).

<sup>8</sup> Tomohisa Takei, “Gray Zones and Vulnerability in the U.S.-Japan Alliance: Operational and Legal Dimensions,” *Asia Policy* 15, no. 3 (2020): 23–24.

<sup>9</sup> According to Takei, Japan’s interpretation of armed attack is unique because of the constraints of the Japanese constitution. However, according to Ichiro Komatsu, the former director-general of the International Legal Affairs Bureau of Japan’s Ministry of Foreign Affairs and former director-general of the Cabinet Legislation Bureau, the point of the Japanese interpretation is that the situation is objectively recognized as obvious to anyone. On this reading, the objective of such an interpretation is to emphasize that there is no risk that the U.S. side will unilaterally recognize the occurrence of an armed attack against Japan to activate Article 5 of the treaty. See Ichiro Komatsu, *Jissen kokusaihou* [Practical International Law], 2nd ed. (Tokyo: Shinzan-sha, 2015), 412. Even if the Japanese interpretation of armed attack is as narrow as Takei believes, the narrowness should not be attributed to the Japanese constitution.

<sup>10</sup> Takei, “Gray Zones and Vulnerability in the U.S.-Japan Alliance,” 23.

as the trigger to activate Article 5 of the security treaty, his point is not necessarily relevant. In addition, according to the Japanese interpretation of the constitution of Japan (not of international law), the right of self-defense is permitted only when an armed attack has taken place, but measures of defense of a lesser degree are not prohibited against contingencies that do not amount to armed attack.<sup>11</sup>

The phrase “armed attack” is used in Article 51 of the UN Charter as well as in Article 5 of the Japan-U.S. Security Treaty. As the latter article is based on the former, there is no reason to interpret the term “armed attack” differently. According to Ian Brownlie, the records of the San Francisco Conference that crafted the UN Charter in 1945 do not include an explanation of the term. He presumes that the reason is that the words were regarded as sufficiently clear.<sup>12</sup> Sir Humphrey Waldock viewed only a grave breach of the peace or intrusion by a large organized force acting on the orders of a government as constituting an armed attack.<sup>13</sup> The above-mentioned interpretation by the government of Japan was possibly influenced by this view, given that the country joined the United Nations in the 1950s when the view was presumably pronounced.

The Japanese government has held for a long time that the interpretation of an armed attack as an organized and planned use of force is shared by international lawyers and the international community more broadly.<sup>14</sup> If in fact Japan and the United States differ in their interpretations, as Takei argued, it will cause a problem for the implementation of Article 5.

However, addressing this issue in abstract legal terms would not be constructive because it is practitioners and policymakers rather than academics that need practical guidance for action. What kind of military or nonmilitary measures will each country take in specific circumstances, and how will they coordinate their measures to generate efficacy of joint action? It is indispensable for Japan and the United States to hammer out clearer answers to these specific questions. Differences in domestic institutions, regulations, and processes are likely to affect their respective answers. Thus, a better understanding of each other’s relevant institutions, regulations, and processes is more necessary than ever.

As far as Japan is concerned, if the government recognizes the contingency as an armed attack against Japan, the country will exercise its right of self-defense. In this case, the government is legally required to obtain approval by the National Diet, which in principle must be granted in advance of actual use of force. If both Japan and the United States recognize the contingency as an armed attack against Japan and accordingly invoke Article 5 for joint action, the Japanese mechanism to coordinate the use of Japanese sea ports and air ports will be activated for use by the Japanese and U.S. military forces in accordance with legislation to deal with such contingencies. If the Japanese government does not recognize the situation as an armed attack and handles it as a matter of law enforcement, the National Diet’s approval is not necessarily required. In this case, the above-mentioned coordination mechanism for the use of Japanese ports would not be available. These institutional and legal issues will affect the Japan-U.S. joint response. In order to ensure

---

<sup>11</sup> For example, use of weapons as law-enforcement measures under the threshold of “use of force” is permitted. The use of weapons by the Japan Maritime Self-Defense Force against North Korean spy boats in the Sea of Japan in March 1999 falls into this category.

<sup>12</sup> Ian Brownlie, *International Law and the Use of Force by States* (Oxford: Oxford University Press, 1963), 278.

<sup>13</sup> The teachings of Sir Humphrey Waldock in 1952, quoted in *ibid.*, 279.

<sup>14</sup> In response to a question on the occurrence of “armed attack” in the Special Committee on Security of the House of Representative of the Japanese National Diet in 1981, Takakazu Kuriyama, then director-general of the Treaties Bureau of the Japanese Ministry of Foreign Affairs, stated: “When use of force is conducted in an organized and planned manner, the exercise of the right of self-defense against it is permitted. I think that this recognition or interpretation is shared by international lawyers and in the international community.” Shuugiin, “Anzenhoshou Tokubetsu-iinkaigiroku Dai-2-go” [Minutes of the Special Committee on Security, No. 2], November 9, 1981, 2, <https://kokkai.ndl.go.jp/minutes/api/v1/detailPDF/img/109503818X00219811109>.

smooth decision-making (including necessary intelligence cooperation) and implementation of decisions, better mutual understanding between Japan and the United States is indispensable.

Gray-zone warfare is a violation of national sovereignty and the national interests of foreign countries in a manner that does not amount to an armed attack. If the violation of Japan's sovereignty takes the form of an armed attack, then Japan-U.S. cooperation is the obligation set forth in Article 5 of the security treaty. If the infringement does not take such a form, however, the treaty obligation will not arise. Even in such a scenario, it is still legally possible that the United States could help if Japan were to request assistance. In this case, the United States might regard any use of force as the exercise of the right of collective self-defense, whereas the Japanese side will regard its own response as a matter of law enforcement under its domestic legal system. That would be the case even if the Japanese defense forces were involved in the operation. As a matter of international law, the Japanese action might be construed as a lawful countermeasure. This scenario shows that the international legal principles invoked by the two countries may not be consonant with each other. Yet a more important point is the coordination of their rules of engagement to effectively respond to a situation, even though it may be difficult to reach a full agreement. If the situation becomes more serious and both Japan and the United States recognize it as an armed attack, then the situation will not be in a gray zone any longer but in a deep black zone, for which Article 5 of the security treaty is fully implemented.

The armed attack requirement should not be regarded as an impediment to alliance cooperation for common security. It would be counterproductive for both countries, including politicians, practitioners, and intellectuals, to get bogged down in the legal technicalities involved with invoking Article 5. Just like cooperation between the law-enforcement organizations and military forces of one country is possible in a time of war, collaboration of operations undertaken through different legal interpretations between the allies to address the same gray-zone contingency will be possible. In other words, the salient issue is not correspondence of respective legal bases but the operational coherence of the two sides through closer coordination. Full correspondence of legal bases would not be guaranteed simply because of the decentralized nature of the international community, which lacks any organization to officially decide (not only interpret) what the international law tells. A practical way to enable such collaboration between Japan and the United States must be worked out, based on better understanding of each other's relevant institutions and regulations. If it is successfully done, the advantage will be hopefully on the side of the alliance in a gray-zone situation. Therefore, both countries must look more deeply into specific cases of China's gray-zone activities rather than focusing on their own legal differences.

## Examples of China's Gray-Zone Activities in the East China Sea

China's gray-zone warfare in the East China Sea over the Senkaku Islands is unflagging. It is no exaggeration to say that Japan is invaded almost every month. Such Chinese intrusions are a blatant violation of Japan's territorial sovereignty, but they are not considered to constitute armed attacks against Japan. This view would not be changed even in light of the international legal doctrine of accumulation of events. This is neither a cold war nor a hot war, but a quiet invasion.

Just as a matter of fact, Chinese government vessels entered the contiguous zone adjacent to Japan's territorial waters around the Senkaku Islands for 333 days in 2020. It is a record far above the previous year's 282 days. Also, a total of 78 Chinese government vessels intruded into

the territorial waters around the Senkaku Islands on 24 occasions in 2020. The number of ships and the frequency of entries were lower than in 2019, but the vessels stayed for a longer period in the Japanese waters. For instance, between October 11 and 13, 2020, Chinese vessels remained in Japanese waters for a total of 57 hours and 39 minutes, breaking the previous record.<sup>15</sup>

However, when we look into the recent history, there is a fluctuation in the magnitude of the contingency depending in large measure on the political environment involving Japan and China. The following four occasions attracted special attention and caused grave concerns in Japan.

First, a Chinese fishing boat operating in the vicinity of the Senkaku Islands rammed a Japan Coast Guard cutter that demanded the Chinese ship to leave the surrounding waters on September 7, 2010. The captain of the Chinese boat was arrested by the Japan Coast Guard, and the Chinese government responded by demanding the release of the captain. On September 24, some Japanese media reported that the Chinese government had stopped the export of rare earth elements to Japan in retaliation for the arrest of the Chinese captain, though China denied the allegation. The Chinese captain was released in less than a month, but the rare earth exports to Japan remained at an unusually low level until November of that year. While other factors may have been at work behind the scene, there is a reasonable suspicion that the arrest triggered the export restrictions.<sup>16</sup> This is gray-zone warfare fought by the use of economic means for political purpose.

In terms of the alliance response to this incident, the then foreign minister Seiji Maehara met with the then secretary of state Hillary Clinton in New York on September 23, and the two exchanged their views on the incident in the East China Sea. On this occasion, Clinton conveyed the U.S. position that Article 5 of the Japan-U.S. Security Treaty applies to the Senkaku Islands.<sup>17</sup> Later, when they met again in Honolulu, Clinton reiterated this position at a joint press conference.<sup>18</sup>

Second, the Japanese government acquired ownership, from a Japanese private citizen, of three of the Senkaku Islands on September 11, 2012. In response, the Chinese government, based on its own assertions, intensified its claims and unilaterally drew territorial baselines, submitted a coordinate and marine chart of the claimed baselines to the United Nations, gave its own “names” to them, and published a “white paper” to propagate its claims to the international community. Chinese vessels traversed within the waters surrounding the Senkaku Islands almost daily, resulting in more than twenty separate occasions of territorial water intrusions between September 11 and the end of the year. Immediately after the change in ownership, large-scale anti-Japan demonstrations broke out across China, causing acts of violence against Japanese nationals and destruction of assets of Japanese companies and diplomatic establishments.<sup>19</sup> In this incident, Chinese citizens were involved as a means to put pressure on Japan, though the Chinese government denied this allegation.

As far as the Japan-U.S. alliance response is concerned, on September 28, when the then foreign minister Koichiro Gemba met with Secretary Clinton in New York, he explained Japan’s basic position that while it cannot concede China’s claims to the Senkaku Islands, Japan intends to

<sup>15</sup> “Record Activity by Chinese Ships around Senkakus,” NHK World-Japan, January 2, 2021.

<sup>16</sup> Marukawa Tomoo, “2010 nen no rea aasu kiki” [Rare-Earth Crisis of 2010], Social Sciences of Crisis Thinking project, June 23, 2016.

<sup>17</sup> “Nichibei gaishou kaidan gaiyou” [Japan-U.S. Foreign Ministerial Meeting (Summary)], Ministry of Foreign Affairs (Japan), September 23, 2010, [https://www.mofa.go.jp/mofaj/area/usa/visit/1009\\_gk.html](https://www.mofa.go.jp/mofaj/area/usa/visit/1009_gk.html).

<sup>18</sup> “Joint Press Availability with Japanese Foreign Minister Seiji Maehara,” U.S. Department of State, October 27, 2010, <https://2009-2017.state.gov/secretary/20092013clinton/rm/2010/10/150110.htm>.

<sup>19</sup> Ministry of Foreign Affairs (Japan), *Diplomatic Bluebook 2013* (Tokyo, November 2013), 11, <https://www.mofa.go.jp/files/000019037.pdf>.

respond in a calm manner without losing sight of the broader context of Japan-China relations. Both sides confirmed that Japan and the United States will cooperate under the bilateral partnership based on the Japan-U.S. alliance.<sup>20</sup>

Third, the Chinese government announced on November 23, 2013, that it had established an air defense identification zone over the East China Sea, including the airspace over the Senkaku Islands. China described the islands as if they were Chinese territory and stated that its armed forces would take “defensive emergency measures” in the case of aircraft that do not follow the required procedures.<sup>21</sup> Even apart from the sovereignty issue, implementation of such enforcement measures is a dangerous act that might cause unintended consequences and is against the principle of the freedom of overflight over the high seas. Soon after the Chinese announcement, Japan strongly protested the decision to China, and the United States also expressed deep concern and urged China to exercise caution and restraint. The two allies consulted with each other on this matter.<sup>22</sup>

Finally, approximately two hundred to three hundred fishing boats entered the contiguous zone around the Senkaku Islands in early August 2016. At that time, a maximum of fifteen Chinese government vessels navigated within the contiguous zone simultaneously, and over a period of five days a large number of Chinese government vessels and fishing boats repeatedly intruded into the Japanese waters. Many of the government vessels that advanced into those waters were armed.<sup>23</sup> This incident occurred less than a month after the ruling of the Permanent Court of Arbitration on the South China Sea dispute between the Philippines and China. It is speculated that China’s actions near the Senkaku Islands were in retaliation against Japan’s support for the ruling of the international tribunal against China.<sup>24</sup> If so, the South China Sea disputes and the Senkaku Islands dispute are interconnected and must be addressed holistically. When G-7 foreign ministers (of course including Japan and the United States) met in New York, they issued a joint statement on the recent developments. The two allies reiterated their opposition to any unilateral actions that raise regional tensions and expressed concern over recent incidents that had occurred in the East China Sea. They also expressed their strong opposition to unilateral actions that raise tensions in the South China Sea.<sup>25</sup>

All these provocative actions were threats to Japanese sovereignty, interests, or lives and property. It makes no difference what the true intention of the Chinese side was or what instruments China utilized. These actions escalated the tension between the two countries, even though none was considered an armed attack against Japan.

---

<sup>20</sup> “Japan-U.S. Foreign Ministerial Meeting (Summary),” Ministry of Foreign Affairs (Japan), September 29, 2012, [https://www.mofa.go.jp/region/n-america/us/meeting\\_s1209\\_fm.html](https://www.mofa.go.jp/region/n-america/us/meeting_s1209_fm.html).

<sup>21</sup> Ministry of Defense (Japan), *Defense of Japan 2014* (Tokyo, August 2014), 42, [https://www.mod.go.jp/e/publ/w\\_paper/pdf/2014/DOJ2014\\_1-1-3\\_web\\_1031.pdf](https://www.mod.go.jp/e/publ/w_paper/pdf/2014/DOJ2014_1-1-3_web_1031.pdf).

<sup>22</sup> “Statement by the Minister for Foreign Affairs on the Announcement on the ‘East China Sea Air Defense Identification Zone’ by the Ministry of National Defense of the People’s Republic of China,” Ministry of Foreign Affairs (Japan), November 24, 2013, [https://www.mofa.go.jp/press/release/press4e\\_000098.html](https://www.mofa.go.jp/press/release/press4e_000098.html); and John Kerry, “Statement on the East China Sea Air Defense Identification Zone,” U.S. Department of State, November 23, 2013, <https://2009-2017.state.gov/secretary/remarks/2013/11/218013.htm>.

<sup>23</sup> Ministry of Defense (Japan), *Defense of Japan 2017* (Tokyo, August 2017), 100–101, [https://warp.da.ndl.go.jp/info:ndljp/pid/11591426/www.mod.go.jp/e/publ/w\\_paper/2017.html](https://warp.da.ndl.go.jp/info:ndljp/pid/11591426/www.mod.go.jp/e/publ/w_paper/2017.html).

<sup>24</sup> A Chinese academic told the author of this article in late August 2016 that the incident had been “retaliation.”

<sup>25</sup> “G7 Foreign Ministers’ Statement on Recent Developments in Asia,” Ministry of Foreign Affairs (Japan), September 20, 2016, <https://www.mofa.go.jp/mofaj/files/000189791.pdf>.



## Conclusion

As shown in the four examples discussed in the preceding section, China is attempting to assert its claim to the Senkaku Islands by conducting gray-zone activities in the surrounding waters. Its actions are both covert and overt. China employs not only maritime law-enforcement vessels and military forces but also fishing boats. Its coercive actions have even taken the forms of economic sanctions and violent demonstrations.

By employing fishermen and locals, the Chinese government can easily deny that it is directing activities from behind the scene. With regard to this point, Sam Tangredi argues, “International lawyers and academics have continued to agonize over how to ‘prove to the world’ that gray-zone tactics are part of the official strategies of China, Russia, or other perpetrators.”<sup>26</sup> It is thus a priority for Japan and the United States to disclose the evidence of China’s gray-zone activities to both their own constituencies and the international community.

China has a variety of instruments to use in its maritime gray-zone warfare, including the China Coast Guard. It is rapidly becoming bigger and stronger and has acquired a new “legal” tool. The new Coast Guard Law took effect on February 1, 2021, and allows the China Coast Guard to take compulsory measures against foreign naval and other government ships in “the waters under the Chinese jurisdiction.”<sup>27</sup> The term “the waters under the Chinese jurisdiction” had been defined to include the contiguous zone, the exclusive economic zone, and the continental shelf in the draft released in November 2020.<sup>28</sup> However, the definition was deleted in the final text, and thus the scope of the law is ambiguous. If the Chinese side maintains the original definition found in the draft, the rule violates the principles of both sovereign immunity and freedom of navigation. Japan’s foreign minister Toshimitsu Motegi stated at a news conference on January 29, 2021, that China “must not apply the law in a way that goes against international law.”<sup>29</sup> It is not clear if the rule is new or just a codification of the existing rule because of a lack of transparency on the Chinese side. At least, China’s assertiveness has become more overt. The international community must be united and keep objecting to actions that run counter to the rule of law. They have multiple tools. In light of this and other developments, cooperation to address China’s gray-zone activities has become more pressing for the Japan-U.S. alliance.

In the end, gray-zone warfare presents a situation in which national sovereignty or national interests are violated in a manner that does not rise to the level of an armed attack. It may employ various means, both military and nonmilitary, including law-enforcement organizations and civilians under disguise. Economic means are also employed to put pressure on the domestic society of the targeted state to accede to the violating country’s political position. Although a commitment to joint defense based on Article 5 of the Japan-U.S. Security Treaty may serve as the final bulwark, the article does not create a sufficient deterrent against the present threat. A whole-of-government and whole-of-alliance approach should be pursued to rectify this deficiency.

---

<sup>26</sup> Sam Tangredi, “Tax China for Gray-Zone Infractions,” *Proceedings Magazine*, May 2017, <https://www.usni.org/magazines/proceedings/2017-05/tax-china-gray-zone-infractions>.

<sup>27</sup> Article 21 of the China Coast Guard Law.

<sup>28</sup> Article 74 of the draft China Coast Guard Law.

<sup>29</sup> “Japan Braces for Moves in East China Sea after China Coast Guard Law,” *Japan Times*, February 1, 2021, <https://www.japantimes.co.jp/news/2021/02/01/national/japan-china-coast-guard-law-senkakus>.

Military-to-military cooperation is indispensable, but only one part of a broader approach. In order to generate synergy of the bilateral efforts necessary to deter and counter China, Japan and the United States need to muster and coordinate all their security instruments, including military, diplomacy, law-enforcement, intelligence, economics and trade, science and technology, and even academic research and public education under strong political leadership.