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# **The Reach of Responses to Gray-Zone Situations and Their Legal Nature\***

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## **Introduction**

On September 19, 2015, the plenary session of the Upper House of the Japanese Diet enacted the Law concerning Partial Amendments to the Self-Defense Forces Law and other Existing Laws for Ensuring Peace and Security of Japan and the International Community (Peace and Security Legislation Development Act) and the Law Concerning Cooperation and Support Activities to Armed Forces of Foreign Countries, etc. in Situations where the International Community is Collectively Addressing for International Peace and Security (International Peace Support Act),<sup>1</sup> marking the completion of the Abe administration's reconstruction of the legal basis for security. These two pieces of legislation are designed to implement the Cabinet Decision on Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People (Cabinet Decision on Development of Security Legislation) adopted on July 1, 2014 under the same administration, which lays out the government's basic policy on the development of security legislation in line with the three planks of (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. The first of these, "response to an infringement that does not amount to an armed attack," which relates to gray-zone responses that are the subject of this paper, was partly legislated in September 2015, but responses to gray-zone situations (territorial security, etc.) themselves, conventionally considered to be the heart of this issue, were left off the legislating table this time around.

Below, Part 1 delineates these so-called "gray-zone situations" as a concept unique to Japan. Part 2 lays out and analyzes the main points of dispute in relation to responses to these that emerged in the course of Diet deliberations on the 2015 legislation, focusing particularly on points of divergence between the ruling and opposition parties. Drawing on the above, Part 3 considers the legal nature of responses to gray-zone situations.

## **1. What are gray-zone situations?**

Because gray-zone situations are not a legally-defined concept, it is not necessarily clear to which situations the term refers. For example, the Ministry of Defense's *Defense of Japan* defines gray-zone situations

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as “neither pure peacetime nor contingencies over territory, sovereignty, and maritime economic interests,” or, more specifically, “1) conflicting assertions between states, etc., over territory, sovereignty, economic interests including maritime interests, and other forms of rights and interests; 2) not relying only on diplomatic negotiation among parties for a party to make its country’s assertions or demands, or to have the other party accept said assertions or demands; and 3) 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 amount to an armed attack, in order to appeal a party’s assertion or demand or to force acceptance of it.”<sup>2</sup> While these cases are no more than examples, they merit attention for the fact that restrictions are attached to the definition of gray-zone situations, limiting them to those situations arising from conflicting assertions “over territory, sovereignty, economic interests.”

While the July 1, 2014 Cabinet Decision on Development of Security Legislation might not use the expression “gray-zone situations,” it does use the “neither pure peacetime nor contingencies” language comprising part of the *Defense of Japan*’s definition of gray-zone situations to explain “an infringement that does not amount to an armed attack.” Two specific examples are given in this context: (1) the situation “where an infringement from the outside that does not amount to an armed attack occurs in areas surrounding remote islands, etc., and police forces are not present nearby or police agencies cannot respond immediately (including situations in which police agencies cannot respond because of the weapons possessed by the armed groups, etc.),” and (2) “a situation where an attack occurs against the units of the United States armed forces currently engaged in activities which contribute to the defense of Japan and such situation escalates into an armed attack depending on its circumstances.” While (1) is the same as the example of a gray-zone situation given in the *Defense of Japan* as arising from “conflicting assertions ... over territory, sovereignty, [and] economic interests,” (2) envisages not cases of “an infringement that does not amount to an armed attack” directly against Japan, but rather cases of an infringement against the United States armed forces “currently engaged in activities which contribute to the defense of Japan,” a much broader concept that includes situations of a different nature from those envisaged in the *Defense of Japan* report.

Obviously, the concept of “an infringement that does not amount to an armed attack”<sup>3</sup> used in the Cabinet Decision on Development of Security Legislation could be regarded as separate from the “gray-zone situations” used in the *Defense of Japan* report, with (2) in the Cabinet Decision sitting outside the concept of gray-zone situations. In this regard, however, Defense Minister Gen Nakatani explained to the Diet that “Japan’s security environment is changing, and it is important that we are fully prepared to deal with so-called ‘gray-zone situations.’ Therefore, it is also important in terms of Japan’s safety that in a situation where an infringement that does not amount to an armed attack occurs against units of the United States armed forces currently engaged in activities which contribute to the defense of Japan, Japan’s Self-Defense Forces (SDF) and the United States armed forces coordinate to respond to said situation.”<sup>4</sup> From this statement, it is evident that the concept of “gray-zone situations” is in use within the Japanese government as a broadly-defined concept that includes cases such as (2).

From the above, we can say that the concept of gray-zone situations refers to those situations that are “neither pure peacetime nor contingencies,” and encompasses not only cases of “an infringement that does not amount to an armed attack” that arises out of “conflicting assertions ... over territory, sovereignty, [and] economic interests,” but also situations in which an infringement occurs against units of the United States armed forces currently engaged in activities which contribute to the defense of Japan. Broadly categorizing gray-zone situations into situations of these two different natures, then, below we look at the measures which the government devised in the course of the development of the 2015 legisla-

tion to deal with each of these, as well as the points which emerged through Diet debate.

## **2. Measures in relation to responses to gray-zone situations**

### **(1) Protection of weapons, etc. of units of the United States armed forces, etc.**

The Cabinet Decision on Development of Security Legislation notes that in order to deal with “a situation where an attack occurs against the units of the United States armed forces currently engaged in activities which contribute to the defense of Japan and such situation escalates into an armed attack depending on its circumstances,” ... “the Government will develop legislation that enables the SDF to carry out very passive and limited “use of weapons” to the minimum extent necessary to protect weapons and other equipment of the units of the United States armed forces, if they are, in cooperation with the SDF, currently engaged in activities which contribute to the defense of Japan (including joint exercises), in line with the provisions of Article 95 of the SDF Law, premised on request or consent by the United States.” As part of the development of the 2015 security legislation, Article 95 *bis* was added to the SDF Law through the Peace and Security Legislation Development Act.

The original Article 95 allows the use of weapons “to the extent judged to be reasonably necessary depending on the situation” by the assigned JSDF officers in order to protect people or weapons and other equipment against destruction or seizure, with said weapons and equipment defined as SDF weapons, etc. (weapons, ammunition, powders, vessels, airplanes, vehicles, wire telecommunication facilities, radio facilities or liquid fuels) which are crucial material means making up Japan’s defensive power. The new Article 95 *bis* expands this to permit the protection of people and weapons and other equipment of the units of the United States armed forces and the armed forces of other countries and similar organizations (“units of the United States armed forces, etc.”) currently engaged, in cooperation with the SDF, in activities which contribute to the defense of Japan (including joint exercises but excluding activities in the scene of ongoing combat) (Article 95 *bis*.1). SDF officers can only engage in such protection in cases where there has been a request from units of the United States armed forces, etc., and where it is deemed necessary by the Japanese Defense Minister (Article 95 *bis*.2).

In The Guidelines for Japan-US Defense Cooperation created on April 27, 2015 (“New Guidelines”<sup>5</sup>), one of the “cooperative measures from peacetime” noted in the section entitled “Seamlessly Ensuring Japan’s Peace and Security” refers to “asset protection,” noting that “the Self-Defense Forces and the United States Armed Forces will provide mutual protection of each other’s assets, as appropriate, if engaged in activities that contribute to the defense of Japan in a cooperative manner, including during training and exercises.” When asked if the addition of Article 95 *bis* was for the purposes of providing this asset protection, while admitting that consistency with the New Guidelines had been part of its considerations, the government responded that such a provision had been “deemed necessary for the purposes of Japan’s security,” and was the product of “Japan’s independent judgement.”<sup>6</sup>

In the Cabinet Decision on Development of Security Legislation, the scope of those units entitled to protection of weapons, etc., was restricted to units of the United States armed forces, but Article 95 *bis* expanded this to “units of the US Forces, armed forces of other countries and similar organizations.” In terms of the specific scope, the government noted that “given the nature of the conditional situation that the organization contributes to the defense of Japan by protecting our weapons, etc., the scope will be limited to countries with which we have a close cooperative relationship in the defense area including intelligence-sharing,” observing in response to a question on the specific countries to which such protection would apply that this could not be pre-determined but rather that “the Defense Minister will decide on each particular case based on the purpose and content, etc., of the activities being conducted by the unit in question.”<sup>7</sup>

The scope of protection is limited to “assets currently engaged in activities which contribute to the defense of Japan,” and “activities which contribute to the defense of Japan” means activities that “contribute to protecting Japan with a view to the use of force and other capabilities and,”<sup>8</sup> specific examples of which include (1) intelligence-gathering, warning, and patrol activities contributing to Japan’s defense, including ballistic missile warnings; (2) joint training envisaging activities in which the SDF and the United States armed forces, etc., engage in partnership in response to various types of situations and circumstances; and (3) transport and supply activities undertaken in situations that could have an important influence.<sup>9</sup> The “situations that could have an important influence” in (3) refer to “situations which, if not addressed, could have an important influence on the peace and security of Japan, such as situations that lead to a direct armed attack on Japan or the threat thereof.”<sup>10</sup> By definition, therefore, the premise is that an armed conflict has not yet arisen in the relationship with Japan, but it also envisages cases in which an armed conflict has already arisen between the United States and a third country. As to whether or not Japan can protect the weapons, etc., of units of the United States armed forces, etc., pursuant to Article 95 *bis* in these cases where an armed conflict has already arisen between the United States and a third country, the government replied that “there is thought to be a high likelihood that infringements against units of the United States armed forces, etc., dealing with armed conflict will arise as part of armed attacks on the United States, etc.,” it is not envisaged that the Defense Minister will decide to provide protection of the weapons, etc., of said units pursuant to Article 95 *bis*.<sup>11</sup>

Next, the scope of the “weapons, etc.” subject to protection is the same as the SDF “weapons, etc.” prescribed for protection under Article 95, including, for example, stealth fighters and all other fighter planes.<sup>12</sup> However, “it is not expected that the United States will request the SDF for protection of aircraft or ships, etc., carrying nuclear weapons.”<sup>13</sup>

On the other hand, in terms of the scope and requirements of weapons that can be used by SDF officers when protecting weapons, etc., while there are “no particular rules setting restrictions” as to the scope, five limitations are imposed in terms of the requirements when using weapons, namely: (1) weapons may be used only by SDF officers tasked with protection as part of their duties; (2) weapons cannot be used except in cases where there is no other means and the use of weapons is unavoidable, such as where protection is not possible through evacuation of weapons, etc.; (3) the use of weapons shall be limited to the extent judged to be reasonably necessary based on the principle of proportionality of police action; (4) weapons cannot be used in cases where the weapons subject to protection have been destroyed, or where the other party abandons the attack or flees; and (5) harm may not be caused to people except in cases that satisfy the requirements for legitimate self-defense or necessity.<sup>14</sup> To that extent, for example, if a United States ship comes under a missile attack while United States naval ships and SDF Aegis destroyers are engaged in a joint exercise, the possibility has not been ruled out that the SDF might use missiles to intercept the attacking missiles pursuant to this rule.<sup>15</sup>

If there are no restrictions on the scope of weapons that can be used for the protection of weapons, etc., and the SDF can use missiles for interception in the case of missile attacks, the problem is whether if this might not constitute “use of force.” The government’s explanation is that including in Article 95 *bis* the language “excluding activities in the scene of ongoing combat” ensures that the conduct of SDF officers will not constitute the use of force forming an “integral part” of the use of force (“ittaika”) by the US armed forces, etc., while because the use of weapons is not permitted in response to combat operations by state actors or similar organizations, Article 95 *bis* will not induce the use of force by SDF, and that the use of weapons under this Article will also not escalate into combat operations.<sup>16</sup> By observing this premise, “there will be cases in which missile infringements on the weapons held by units of the United States armed forces, etc., that are the subject of Japanese protection do not constitute acts that cause harm to

people or destroy property as part of combat operations (in other words, as part of an international armed conflict)—for example, where terrorists use missiles,” and it is not beyond possibility that such cases could be dealt with under Article 95 *bis*.<sup>17</sup> In this regard, if state actors or similar organizations, for example, “if the warships or military planes of a third country actually attack the United States armed forces, etc., this will basically be regarded as a combat operation, or, in other words, as behavior that harms people or destroys property as part of an international armed conflict,” but “even exceptional cases of infringements that do not amount to armed attacks and do not constitute combat operations (behavior that harms people or destroys property as part of an international armed conflict) could potentially fall within the scope of Article 95 *bis*.”<sup>18</sup>

## **(2) Dealing with infringements that do not amount to an armed attack in areas surrounding remote islands, etc.**

The Cabinet Decision on Development of Security Legislation notes in relation to “cases of responding to a situation where an infringement from the outside that does not amount to an armed attack occurs in areas surrounding remote islands, etc., and police forces are not present nearby or police agencies cannot respond immediately,” the government will “thoroughly examine the application of related provisions to order public security operations or maritime security operations in advance and establish a common understanding among relevant agencies. At the same time, in order to avoid the spread of damages caused by unlawful acts while internal administrative procedures are taken, the government will also make concrete considerations on measures for issuing orders swiftly and accelerating procedures in light of circumstances.”

Unlike cases of protection of weapons, etc., of units of the United States armed forces, etc. legislation was not developed on this point, with Cabinet decisions instead made on three related items on May 14, 2015: 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; 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 Said Acts against Japanese Private Ships on the High Seas. The purpose of all these Cabinet decisions is for “government institutions to work more closely together to ensure a full and seamless response to all forms of illicit behavior from the perspective of protecting Japan’s sovereignty and ensuring the safety of the people of Japan.”

The first of these, which lays out how Japan will respond 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,<sup>19</sup> requires taking measures against foreign naval vessels, such as calling on the vessels to leave Japanese territorial waters in accordance with international law. This measure is basically expected to be undertaken by SDF units in response to an order for maritime security operations issued pursuant to Article 82 of the SDF Law. The second decision deals with responses to illegal landing on a remote island or its surrounding seas by an armed group. When it is deemed that the situation cannot be adequately addressed by the Japan Coast Guard and police agencies, a maritime security operations order or a public security operations order pursuant to Article 78 of the SDF Law shall be issued to SDF units to deal with the situation. The third decision deals with responses when a foreign ship that is committing piracy or any other illegal act of violence or detention, or an act of depredation against a Japanese private ship (a private ship registered in Japan) on the high seas, which does not fall under armed attack against Japan by an external party. When it is deemed that the act of infringement cannot be addressed by the Japan Coast Guard alone, a maritime security operations order, or an order for counter-piracy operations

as provided in Article 7.1 of the Act of Punishment and Countermeasures against Piracy (Piracy Countermeasures Act),<sup>20</sup> shall be issued to SDF units.

What these three Cabinet decisions share is that when a maritime security operations order, public security operations order, or counter-piracy operations order is issued, if a Cabinet meeting needs to be convened to receive the Prime Minister's authorization, and if the situation requires a particularly urgent decision and an extraordinary Cabinet meeting attended by all Ministers of State cannot be promptly held, a Cabinet decision can now be made with the consent of the Ministers of State by telephone or other means, presided over by the Prime Minister. (In such cases, any Ministers of State who could not be contacted shall be promptly contacted after the fact.)

New legislation was therefore not developed for government responses to infringements in the surrounding seas of remote islands, etc., that do not amount to an armed attack, with the government instead maintaining the existing laws and improving operational aspects, such as introducing the possibility of making Cabinet decisions by telephone, in order to expedite responses. The opposition Democratic Party of Japan (DPJ) and Japan Innovation Party countered this decision by jointly submitting to the Diet an alternative bill on territorial security.<sup>21</sup> The key feature of this bill was that the Prime Minister would "set a period of less than two years within which to issue a notification designating as a territorial security zone those elements of territory, etc.,<sup>22</sup> where there is a risk that the state of police agency deployment, the distance from the mainland, or other factors could hamper an appropriate response to situations whereby persons suspected of being armed engage in illicit actions, or to other situations in which a response entailing the exercise of actual force is unavoidable" (Article 5.1), with the Defense Minister able to have SDF units "engage in intelligence-gathering, prevent illicit actions from occurring, respond to illicit actions, or take any other necessary measures" within that zone (Article 7.1). The bill also granted the SDF the new competence to engage in "territorial security operations" in peacetime, thereby opening the way for some security operations within the territorial security zone even prior to the issuance of a maritime security operations order or a public security operations order.

Diet member Akihisa Nagashima from the DPJ noted that while the operational improvements made in the government's proposals certainly reduced the amount of time involved, the problem was how to expedite the shift to action. It was extremely important "how much the SDF can do before the issuance of a maritime security operations order or a public security operations order."<sup>23</sup> In other words, Nagashima was critical of the government going no further than operational improvements, and emphasized the need to grant the SDF the competence to engage in "territorial security operations" in peacetime. The government responded to the bill with the criticism that setting up a territorial security zone from the outset "contained the problem of declaring to the international community that this was such a type of territory (with issue of territorial sovereignty to be resolved)"<sup>24</sup> and that "if the SDF exercises police powers as a police agency in peacetime, it would give other parties the excuse to say that Japan escalated the situation to a military level," arguing that at this point in time, a new law did not need to be developed for infringements that do not amount to an armed attack given the current security environment.<sup>25</sup>

### **3. The legal nature of responses to gray-zone situations**

As seen above, Japan's response to gray-zone situations as revealed in the course of developing the new security legislation is a concept that embraces diverse measures to handle diverse situations, but in all cases, they are responses to an infringement that does not amount to an armed attack. The government has traditionally defined an "armed attack" as "the planned and organized use of force."<sup>26</sup> In the case of the planned and organized use of force from the outside, if the attack is on Japan, under international law

Japan has the right to individual self-defense, while if the attack is on another country with a close relationship with Japan and constitutes a situation posing a threat to Japan's survival, Japan is entitled under international law to respond with measures including the use of force by SDF units on the grounds of the right of collective self-defense. In that sense, responses to gray-zone situations premised on responding to an infringement that does not amount to an armed attack can be said to exclude measures including the use of force on the grounds of the right to self-defense under international law.

On the other hand, the envisaged "infringements that do not amount to an armed attack" in fact embrace a wide range of situations. First, in relation to the victim of said infringements, in the case of protection of weapons, etc., of units of the United States armed forces, etc., even if the legal fiction is that this is indirectly an infringement on crucial material means making up Japan's defensive power, the direct targets are the units of the United States armed forces, etc. What the three Cabinet decisions of May 14, 2015 envisage, however, are infringements on Japanese territory and on ships sailing under the Japanese flag, with Japan as the direct victim.

Next, because responses to foreign warships carrying out navigation that does not fall under innocent passage in international law are premised on the agent of the infringement being a foreign warship, clearly the agent engaging in the infringement is the state actor. Whereas in the case of protection of weapons, etc., of units of the United States armed forces, etc., it has emerged from remarks to the Diet that the agent of infringement is basically not a state actor or similar organization. In the case of responses to illicit landings on remote islands, etc., as well as to infringements against Japanese private ships, however, the agent of infringement is not so clear. While the former addresses "infringements that do not amount to an armed attack" committed by "armed groups," it is unclear whether these armed groups are simply groups of private individuals or groups in which the state is involved in some form. The latter defines acts of infringement as "piracy or any other illegal act of violence or detention, or an act of depredation which does not fall under armed attack against Japan by an external party," but while an act of piracy is by definition conducted by private individuals, it is not clear whether the agents committing "an illegal act of violence or detention, or an act of depredation" are private individuals, or state actors or similar organizations. If one of the features meant by "gray-zone" situations is that the non-specificity of the infringing agent, the latter two examples could certainly be described as more typical gray-zone situations than the first two cases, where the nature of the infringing agent is specified beforehand.

Due to the diverse nature of infringements envisaged in gray-zone situations, the nature of measures responding to these infringements is also diverse. In the case of protecting the weapons, etc. of units of United States armed forces, etc., SDF units rather than police agencies are the agents of response from the beginning. According to the government, elimination at the scene by units of the SDF of infringements against other countries' units that do not amount to an armed attack is grounded in state practice, including the Guidelines for Japan-US Defense Cooperation and the *Rules of Engagement Handbook*, and can be permitted under international customary laws,<sup>27</sup> but the legal nature of this is not necessarily clear.<sup>28</sup>

In the case of responses to foreign warships carrying out navigation that does not fall under innocent passage, while the Japan Coast Guard is charged with gauging the situation and informing and reporting to the Prime Minister, the basic line is to issue a maritime security order and have SDF units respond. Even if SDF units engage in a maritime security operation, this is considered under domestic law to be an administrative police activity and not a military activity. While the envisaged "measures such as calling on the vessels to leave Japanese territorial waters in accordance with international law" conducted as maritime security operations appear to be measures based on the rights of protection of the coastal State in Article 25.1 of the United Nations Convention on the Law of the Sea, these measures must be

“within a scope that does not infringe immunity of warships, and must be proportionate to the seriousness of the ship’s act of infringement.”<sup>29</sup>

In contrast to these two cases, in the cases of responses to illegal landings on remote islands, etc., and responses to acts of infringement against Japanese private ships on the high seas, police agencies are primarily expected to handle the situation, with SDF units stepping in only when police agencies cannot handle it alone or cannot respond immediately. The particular feature 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.<sup>30</sup>

## Conclusion

The “neither pure peacetime nor contingencies” language used to explain gray-zone situations is a metaphorical description of situations in which Japan is not a party to an armed conflict, and while these are not situations in which units of the SDF exercise the use of force on the grounds of the right to self-defense, they are situations that cannot be handled only with ordinary police capacity. The examination in this paper reveals that gray-zone situations in fact encompass a wide range, while the nature of responses to these is similarly diverse. In the recently developed security legislation, responses to gray-zone situations were added only in the context of protecting the weapons, etc., of United States armed forces, etc., with other situations addressed only through operational improvements designed to expedite procedures for the issuance of orders for maritime security operations, public security operations, and counter-piracy operations by the SDF, all of which were already permitted. The government took a constraining stance on the Territorial Security Bill jointly submitted by the DPJ and the Innovation Party, noting that it would “give other parties the excuse to say that Japan escalated the situation to a military level,” possibly having in mind the Senkaku Islands situation, but this point crystallizes the difficulty of balancing the call for ensuring a full and seamless response with the impact this will have on international relations.

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1. For an outline of these two acts and the background to their submission to the Diet, see Yasuo Nakauchi *et al*, “The Peace and Security Legislation Development Act and the International Peace Support Act: Outline of the Two Security-related Bills Submitted to the Diet,” Rippō to Chōsa No. 366 (July 2015), pp 3-23
  2. *Defense of Japan 2016*, p.2, [http://www.mod.go.jp/e/publ/w\\_paper/pdf/2017/DOJ2017\\_1-1-1\\_web.pdf](http://www.mod.go.jp/e/publ/w_paper/pdf/2017/DOJ2017_1-1-1_web.pdf)
  3. The report submitted by the Advisory Panel on Reconstruction of the Legal Basis for Security, which was established under the first Abe administration and resumed under the second Abe administration, and which influenced the Cabinet Decision on Development of Security Legislation, presents the cases of (1) foreign submarines that continue sailing in Japan’s territorial waters despite being requested to leave and (2) a special unit, etc., making a surprise landing on remote islands on Japan’s borders, etc., as specific cases of “an infringement that does not amount to an armed attack,” but does not include the example of (2) given in the Cabinet Decision. Report of the Advisory Panel on Reconstruction of the Legal Basis for Security (May 15, 2014), p. 44, [http://www.kantei.go.jp/jp/singi/anzenhosyou2/dai7/houkoku\\_en.pdf](http://www.kantei.go.jp/jp/singi/anzenhosyou2/dai7/houkoku_en.pdf)
  4. Defense Minister Gen Nakatani, Remarks before the Special Committee of the House of Representatives on the Bills for Peace and Security of Japan and the International Community (Peace and Security Special Committee of the House of Representatives), 189th Diet Sess. Official Record of Proceedings, No. 18 (July 8, 2015), p. 38
  5. Guidelines for Japan-US Defense Cooperation ([http://www.mod.go.jp/e/d\\_act/anpo/shishin\\_20150427e.html](http://www.mod.go.jp/e/d_act/anpo/shishin_20150427e.html)) were also created in November 1978 and September 1997, with the New Guidelines comprising the third set in the series. Refer to Ku-

- rita Masahiro, “Current Status and Issues in Relation to the Deterrent Posture of the US-Japan Alliance,” *Chōsa to Jōhō: Issue Brief* No. 860 (March 25, 2015), pp 1-13, for references to dealing with gray-zone situations from a Japan-US defense cooperation perspective.
6. Defense Minister Gen Nakatani, *supra* note (iv), p. 38
  7. Defense Minister Gen Nakatani, Remarks before the Special Committee of the House of Councillors on the Bills for Peace and Security of Japan and the International Community (Peace and Security Special Committee of the House of Councillors), 189th Diet Sess. Official Record of Proceedings, No. 6 (August 3, 2015), p. 27
  8. Director General of Defense Policy Bureau Kuroe Tetsurō, Remarks before the Peace and Security Special Committee of the House of Representatives, 189th Diet Sess. Official Record of Proceedings, No. 7 (June 5, 2015), p. 24
  9. Parliamentary Secretary for Defense Hirotaka Ishikawa, Remarks before the Peace and Security Special Committee of the House of Councillors, 189th Diet Sess. Official Record of Proceedings, No. 4 (July 29, 2015), p. 4-5
  10. The Law Concerning Measures to Ensure Peace and Security of Japan in Situations that will Have an Important Influence on Japan’s Peace and Security, Article 1. This law is an amendment of the former Law Concerning Measures to Ensure the Peace and Security of Japan in Situations in Areas Surrounding Japan, removing the limitation of “situations in areas surrounding Japan” from the definition of “situations that will have an important influence on Japan’s peace and security.”
  11. Defense Minister Gen Nakatani, *supra* note (iv), p. 40
  12. Defense Minister Gen Nakatani, Remarks before the Peace and Security Special Committee of the House of Councillors, 189th Diet Sess. Official Record of Proceedings, No. 11 (August 21, 2015), p. 5
  13. Remarks by Foreign Minister Fumio Kishida, *supra* note (vii), p. 21
  14. Defense Minister Gen Nakatani, *supra* note (vii), p. 27
  15. Defense Minister Gen Nakatani, *supra* note (xii), p. 5
  16. Defense Minister Gen Nakatani, Remarks before the Peace and Security Special Committee of the House of Councillors, 189th Diet Sess. Official Record of Proceedings, No. 8 (August 5, 2015), p. 20
  17. Defense Minister Gen Nakatani, *supra* note (xii), p. 5
  18. Defense Minister Gen Nakatani, Remarks before the Peace and Security Special Committee of the House of Councillors, 189th Diet Sess. Official Record of Proceedings, No. 16 (September 4, 2015), pp 7-8
  19. Among foreign naval vessels, foreign submarines that pass submerged through the territorial sea or the internal waters of Japan are to be dealt with pursuant to the Cabinet decision of December 24, 1996 entitled Responses to Foreign Submarines Navigating Submerged through the Territorial Sea or the Internal Waters of Japan. This decision opened the way for approval to be given for maritime security operations based on the judgement of the Prime Minister without requiring a Cabinet decision every time an incident occurs.
  20. For details of SDF responses to piracy pursuant to the Piracy Countermeasures Act, see Koichi Morikawa, “Policing of Piracy and Japanese Law: Significance and Background of Enactment of the Piracy Countermeasures Act,” *Kokusai Mondai* No. 583 (July-August 2009 issue), pp 49-64
  21. Bill No. 27, 189th Diet Session (as submitted to the House of Representatives) <[http://www.shugiin.go.jp/Internet/itdb\\_gian.nsf/html/gian/honbun/houan/g18901027.htm](http://www.shugiin.go.jp/Internet/itdb_gian.nsf/html/gian/honbun/houan/g18901027.htm)> [Japanese only], Bill No. 25, 189th Diet Session (as submitted to the House of Councillors) <<http://www.sangiin.go.jp/japanese/joho1/kousei/gian/189/pdf/t071890251890.pdf>> [Japanese only].
  22. “Territory, etc.” is defined as “the internal waters and territorial sea of Japan, surrounding seas as determined by government order, as well as those elements of Japanese territory comprising remote islands on Japan’s national borders and other land determined by government order.” (Article 2.1 of the bill)
  23. House of Representatives member Akihisa Nagashima, Question to the Peace and Security Special Committee of the House of Representatives, 189th Diet Sess. Official Record of Proceedings, No. 19 (July 10, 2015), p. 28
  24. Prime Minister Shinzo Abe, Remarks to the Peace and Security Special Committee of the House of Representatives, 189th Diet Sess. Official Record of Proceedings, No. 4 (May 28, 2015), p. 11
  25. Prime Minister Shinzo Abe, Remarks to the Peace and Security Special Committee of the House of Councillors, 189th Diet Sess. Official Record of Proceedings, No. 20 (September 14, 2015), p. 8
  26. Written Response to a Question Submitted by House of Representatives Member Seiichi Kaneda on Armed Attack Situations (May 24, 2002)
  27. Written Response to a Further Question Submitted by House of Councillors Member Kenzo Fujisue on Protection of the Weapons, etc. of the United States Armed Forces, etc. (August 28, 2015)
  28. Masahiro Kurosaki looks at this point in detail in another paper in this edition.
  29. Masafumi Ishii, Director-General of the International Legal Affairs Bureau, Ministry of Foreign Affairs, Remarks to the Peace

and Security Committee of the House of Representatives, 186th Diet Sess. Official Record of Proceedings, No. 3 (March 27, 2014), p. 5. See also Shizuka Sakamaki, “Measures that May be Taken against Non-Innocent Passage of Warships and Other Public Ships, *Journal of the Japan Society of Ocean Policy* No. 5 (November 2015), pp 48-60, for an analysis of the legal nature of the right of protection of coastal states in relation to the immunity of warships, and seeking to clarify the scope of measures that can be taken by coastal states.

30. For details on regulatory frameworks under international law on responding to acts of violence at sea and the enforcement regime under Japan’s domestic law, see Koichi Morikawa, “Acts of Violence at Sea” in Sōji Yamamoto (ed.) *Maritime Security Legislation: The Intersection of Law of the Sea and Domestic Law*, Sanseido, May 2009, pp 293-328