

“Gray Zone Situation” Analysis

- Case Study: Chinese Operations in the East China Sea and Japan’s Response

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It must be noted that the English version does not necessarily reflect the original Japanese text.

1. Introduction

The term “gray zone situation” has recently been used in the field of national security and it can be heard frequently in Diet proceedings and seen in newspaper articles. The author of this paper, too, has published another paper entitled *Crisis Management as a Means to Respond to “Gray-zone Situations”* (hereafter, “previous paper”).¹ However, the author did not review the characteristics of “gray zone situation” in depth, as the previous paper only touched upon the term “gray zone situation” slightly. This is because the previous paper focused on the utility of “crisis management” when considering national security policy and the limitations, by comparing the concept and approaches to “crisis management” to the words “deterrence” and “defense.” However, the author was left questioning whether the concept that applies to “gray zone situation” is fully understood. The author believes that, indeed, at present there is inadequate understanding of the concept behind “gray zone situation.” To correctly comprehend the term “gray zone situation,” the concept behind it must be understood after elucidating the characteristics of the term “gray zone situation.”

As a result, this paper attempts to understand the characteristics of “gray zone situation” in the geographical space of the East China Sea,

focusing on the word “gray” with the awareness that the problem lies with determining the reason for using the vague color of “gray,” which is neither “black” nor “white.” In this sense, this paper can be viewed as a preface to the previous paper.

2. Examples of “Gray Zone Situations”

Let us first examine the situation by considering how the term “gray zone situation” has been used in Japan. The current version of the *National Defense Program Guidelines* states the following:

[There has been] an increase in the number of so-called “gray-zone” situations, that is, neither pure peacetime nor contingencies over territory, sovereignty and maritime economic interests. Amid the increasingly severe security environment surrounding Japan, the SDF, in addition to its regular activities, needs to respond to various situations, including “gray zone” situations which require SDF commitment. The frequency of such situations and the duration of responses are both increasing.²

In addition, *Defense of Japan*, Japan’s annual white paper on defense, states the following:

So-called “gray-zone” situations concisely describe a broad range of situations, that is, neither pure peacetime nor contingencies. For example, they could involve the following circumstances:

- 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 constitute armed attack, in order to appeal a party’s assertion or demand or to force acceptance of it.²

Koichi Morikawa assesses the above explanation as follows:

The phrase “neither pure peacetime nor contingencies” used to explain “gray zone situation” does not indicate a situation such as when Japan is a participant in armed conflict and a unit of the Self Defense Forces employs the “use of force” based on the right to self-defense recognized in international law, but it does express figuratively a situation that cannot be addressed with normal police force.³

Morikawa understands “gray zone situation” equals “neither pure peacetime nor contingencies” as “does not indicate a situation such as when Japan is a participant in armed conflict and a unit of the Self Defense Forces carries out the ‘use of force’ based on the right to self-defense recognized in international law, but it does express figuratively a situation that cannot be addressed with normal police force,” but this raises the question of whether he correctly understands the characteristics of “gray zone situation.” This is because the Self-Defense Forces Act already contains types of actions, such as public security operation and maritime security operation, with regard to a “situation that cannot be addressed with normal police force,” and it is not necessarily a persuasive answer to the question of why does the “figurative expression” of “gray zone situation” have to be used. This suggests that the explanation behind why the word “gray” has to be used in the expression, which is neither “black” nor “white,” is less than adequate.

3. Basic Structure in the East China Sea - Chinese Operations and Japan’s Response

In this paper, I’d like to attempt an analysis based on case studies of Chinese operations in the East China Sea, taking into account the explanations given in the *National Defense Program Guidelines* and

Defense of Japan to determine why the word “gray” is used in the phrase “gray zone situation.” Ultimately, this paper finds that the figurative expression “gray” clearly must be used as described in the the *National Defense Program Guidelines* and *Defense of Japan* when holistically considering recent Chinese operations, Chinese operations that could take place in the future, and Japan’s response. The paper’s full discussion is presented below.

China’s sea operations are mainly carried out by the China Coast Guard,⁴ a law enforcement agency. Meanwhile, China’s air operations are mainly conducted by the People’s Liberation Army (PLA) Navy and PLA Air Force. This indicates that there are fundamental differences in the actors carrying out sea and air operations.

That is, law enforcement operations (strictly speaking in the case of China such activities should be referred to as law enforcement operations and for the purpose of this paper the operations of the China Coast Guard will be expressed as law enforcement operations) are used for the sea and military operations for the air. A structural understanding lends itself to comprehending this division of duties. Japan responds to China’s operations in these areas with the Japan Coast Guard, a law enforcement agency, for the sea and the Japan Air Self-Defense Force (JASDF) for the air as measures against intrusion of territorial airspace⁵ pursuant to Article 84 of the Self-Defense Forces Act, a parliamentary law.

Organizing these formats into a table yields the following.

Table 1 – Actors Conducting Chinese Operations in the East China Sea and Actors Carrying Out Japan’s Response, etc.

Domain	Actors conducting Chinese operations	Actors carrying out Japan’s response
Air	PLA Navy and PLA Air Force	JASDF
Sea	China Coast Guard (law enforcement agency)	Japan Coast Guard

Source: Prepared by the author.

Table 1 indicates that both sea and air operations are carried out simultaneously and concurrently by different actors. Here, focus should be given to the heterogeneity of these actors and that their operations are carried out simultaneously and concurrently.

4. Assessment using International Law

The operations of Japan and China in the sea and air, distinguishing the two and focusing on the differences of the two spaces, can be viewed as the relationship involving law enforcement agencies for the sea and the relationship between the PLA Navy and PLA Air Force and the JASDF for the air. Operations conducted in the sea and air by different actors are largely carried out in the same domain at the same time. This reveals one of the characteristics of the security environment of the East China Sea. Because operations are carried out simultaneously in the same sea and air domains by fundamentally different actors, when understanding the sea and air as integrated and three-dimensional, the sea and air appear “gray.” This becomes particularly clearer when applying international law to such situations.

Where does the problem lie? The assessment using international law based on classification of whether an act is a use of armed force or a use of force. For example, if the PLA Navy or PLA Air Force attacked an aircraft of the JASDF in the air, international law would almost certainly assess this situation as a use of armed force, while dependent on scale and objective.

What about the situation where the China Coast Guard uses force against the Japan Coast Guard? Would International law likely regard such a use of force as a use of armed force? That is, this represents the question of whether a law enforcement agency can engage in an armed

use of force.

A law enforcement agency is not a military organization. Therefore, one school of thought may hold that a law enforcement agency cannot be an actor in the use of armed force. However, is it reasonable to say that if the China Coast Guard carried out a highly intense use of force against the Japan Coast Guard, or it engaged in operations that repeatedly and excessively violate territorial waters around the Senkaku Islands, such actions should not be considered a use of armed force? Here, grayness can be observed in the assessment of acts by law enforcement agencies under international law. In regard to this point, there is one recent case, which I introduced below, which suggests that whether the actor belongs to a law enforcement agency or military organization might not be the deciding factor in determining whether the operation is a use of armed force or not. This case was the ruling of the Permanent Court of Arbitration on *Guyana v. Suriname*. The following quote from Koichi Morikawa summarizes the point of this case succinctly.

A Suriname patrol ship issued a warning to the C.E. Thornton to leave Surinamese waters within 12 hours, “or the consequences would be theirs.” The C.E. Thornton (American flagged and chartered by a Canadian company) was conducting drilling operations based on an oil concessions contract with Guyana in the disputed area of the continental shelf off Guyana and Suriname. Guyana asserted that this threat by the Suriname patrol ship constituted a use of armed force against Guyana in violation of obligations under the United Nations Convention on the Law of the Sea and the Charter of the United Nations. Suriname claimed that the measures taken by its patrol ship were law enforcement activities, and that were both reasonable and balanced in order to stop unapproved drilling in the disputed area of the continental shelf.

The Permanent Court of Arbitration acknowledged Suriname’s claim that the use of force is permitted in law enforcement activities under international law when unavoidable, reasonable and necessary, but found that Suriname’s action constituted a threat of use by an

armed force under the United Nations Convention on the Law of the Sea, the Charter of the United Nations and international law, because the nature of the threat was closer to that of military action than that of a simple law enforcement operation.⁶

This means that the operations of the China Coast Guard in the East China Sea could in certain situations be determined to constitute a use of armed force, taking into account the ruling of the Permanent Court of Arbitration concerning *Guyana v. Suriname*.⁷

Moreover, this raises the suspicion of whether the China Coast Guard exhibits the qualities of a military organization even though it is considered a law enforcement agency. Here, the author would like to point out that the characteristic of the China Coast Guard is vague, or in other words “gray.” That is to say, the China Coast Guard is not genuinely a law enforcement agency, but rather exhibits the qualities of a military organization. Katsuya Yamamoto of the Japan Maritime Self-Defense Force (JMSDF) points out the following.

A search of Chinese government websites such as China Military and Chinese People's Armed Police Force indicates that the new China Coast Guard constitutes an armed police force as before, and thus, it is no surprise to view the China Coast Guard as part of China's armed capabilities. If it is considered a part of the armed police, we must understand that the law enforcement activities of the China Coast Guard could transform into military operations (defense operation) due to a certain impetus at a certain point in time.⁸

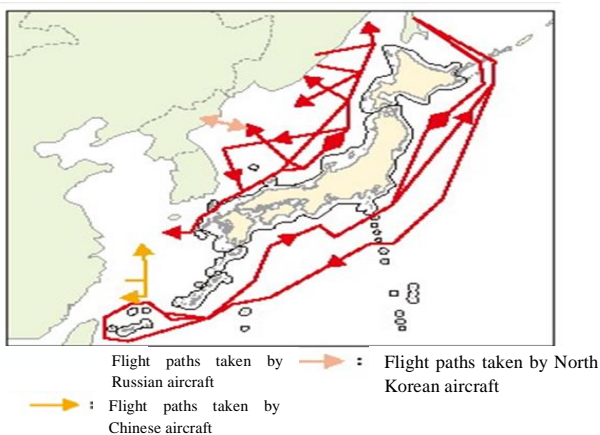
To summarize, a “gray” area must be acknowledged regarding whether the operations of the China Coast Guard should be considered to be a use of armed force or a simple use of force under international law. Furthermore, it has been pointed out that the China Coast Guard exhibits the traits of a military organization, and so the classification of this organization, too, is “gray.” Next, China's actual operations will be

examined.

5. the Reality of Chinese Operations

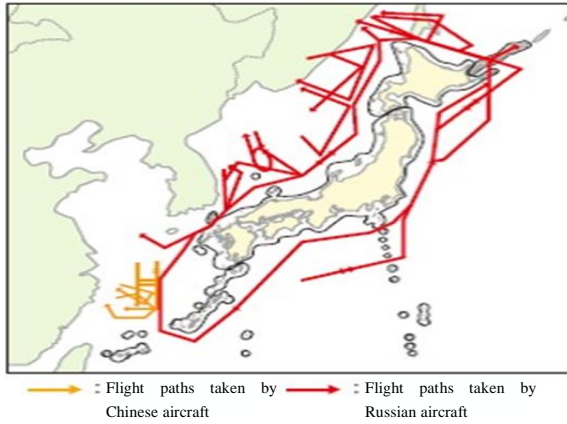
I will use *Defense of Japan* to examine Chinese operations. The following diagrams present the flight paths of aircraft shown in editions of *Defense of Japan* for fiscal 2010, fiscal 2012, fiscal 2014 and fiscal 2016.

Figure 1 – Flight Path Diagram (Fiscal 2009)



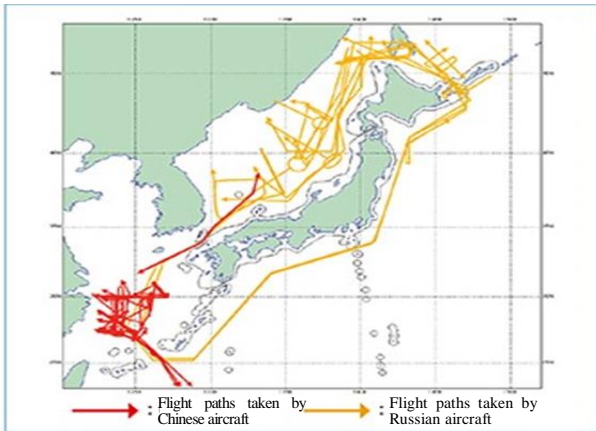
Source: *Defense of Japan 2010*

Figure 2 – Flight Path Diagram (Fiscal 2011)



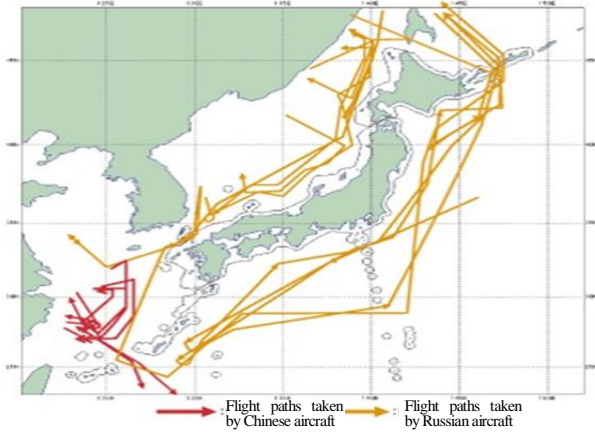
Source: *Defense of Japan 2012*

Figure 3 – Flight Path Diagram (Fiscal 2013)



Source: *Defense of Japan 2014*

Figure 4 – Flight Path Diagram (Fiscal 2015)



Source: *Defense of Japan 2016*

It is assumed that the white paper counts aircraft other than military aircraft as Chinese aircraft. To understand the meaning of these flight path diagrams, aircraft of the PLA Navy and PLA Air Force are included here in Chinese aircraft collectively.

The flight paths shown in *Defense of Japan* confirm that the flight patterns of Chinese aircraft have become more complex. Figure 1 shows the flight paths taken by Chinese aircraft to be extremely simple. In contrast the flight paths taken by Chinese aircraft in Figure 4 have clearly become more complex compared to Figure 1. The reasons for this change can be found in the increasing number of flights and the use of various flight patterns based on the purpose or the equipment. Additionally, Figure 3 and Figure 4 illustrate that some Chinese military aircraft have flown all the way to the Pacific Ocean.

Comparing these diagrams, from oldest to newest, clearly reveals that the operations of Chinese military aircraft have become more active. The JASDF has responded strictly to these Chinese military aircraft operations as part of its measures against intrusion of its territorial airspace.

Table 2 below presents the number of scrambles associated with scrambles against aircraft intruding into Japan’s territorial airspace and the number against Chinese aircraft.

Table 2 - Number of Scrambles

	Fiscal 2010	Fiscal 2012	Fiscal 2014	Fiscal 2016
Total	386	567	943	1168
Against Chinese aircraft	96	306	464	851

Source: Prepared by the author based on *Defense of Japan* and other Ministry of Defense documents

Scrambles against aircraft intruding into Japan’s territorial airspace represent a passive operation conducted based on the movements of another country; they are not a provocative action carried out by Japan. Consequently, it bears reminding that the ever-intensifying operations by China in air space are not in reaction to the JASDF’s scrambles against aircraft intruding into territorial airspace.

And we should not forget that in November 2013 China established the East China Sea Air Defense Identification Zone, which declared that flights within this area must abide by the Chinese rules, and failure to do so would result in emergency defense measures, which would be outside the scope of international law.

Next, let us turn our attention to Chinese operations at sea.

The following table presents the recent activities of the China Coast Guard, etc. in the waters surrounding the Senkaku Islands.

Table 3 - Number of Activities within Japan's Contiguous Zone and Number of Activities in Japan's Territorial Waters by China Coast Guard Vessels in the Waters Surrounding the Senkaku Islands.

	2016				
	August	September	October	November	December
Number of sailings within Japan's contiguous zone	147	54	29	56	35
Number of sailings in Japan's territorial waters	23	8	8	12	10

	2017					
	January	February	March	April	May	June
Number of sailings within Japan's contiguous zone	37	49	47	82	94	56
Number of sailings in Japan's territorial waters	10	7	10	12	12	12

Source: Prepared by the author based on Japan Coast Guard documents

According to Table 3, the number of activities in Japan's territorial waters has stabilized at the same level after peaking at 23 vessels in August 2016. The number of sailings within Japan's contiguous zone appears to have leveled out after peaking at 147 vessels in August 2016, but the number increased in April and May 2017. Both activities within Japan's contiguous zone and activities in Japan's territorial waters cannot possibly be a coincidence, as they are believed to be intentional. Under such circumstance, Japan must now closely monitor China Coast Guard operations.

A notable characteristic of the East China Sea is that while it appears that movements of the China Coast Guard at sea have eased, there is growing activity of Chinese military aircraft operations in the air.

Therefore, there is a need to examine beforehand countermeasures in case of an accident involving aircraft or dangerous actions attributed to China’s assertive intentions in the sky. When considering the high speed and agility of aircraft, particular attention must be given to the aerial movements of Chinese military aircraft.

6. Conclusion

In this paper, this writer has so far analyzed the term “gray zone situation” using the East China Sea as an example. The problem posed by Koichi Morikawa’s understanding of the term “gray zone situation” that “it does express figuratively a situation that cannot be addressed with normal police force” for which doubt was cast in the introduction has at the very least been elucidated. The “gray zone situation” found in the East China Sea is not a “figurative expression” for “a situation that cannot be addressed with normal police force.” There is more detail to it. In other words, this situation clouds our understanding and it cannot be referred to simply as a “figurative expression.” Such a situation that is difficult to see clearly in black or white and appears gray is a “gray zone situation.”

I will now summarize the facts of the matter that cannot be clearly seen in black or white or situations difficult to make clear in terms of events in the East China Sea, using the results of the analysis above.

- The overarching characteristic of the East China Sea is that operations at sea are carried out by law enforcement agencies while operations in the air are conducted by military organizations. The traits of actors in the air and sea differ, making it difficult to grasp the situation in a united manner.
- There is some uncertainty about whether characteristically speaking the China Coast Guard is purely a law enforcement

agency or whether it should be understood as an organization that exhibits traits of the military.

- Taking into account the ruling of the Permanent Court of Arbitration with regard to Guyana vs. Suriname, it is difficult to determine whether some of the operations of the China Coast Guard can be understood to comprise the use of armed force under international law. Also, from this correlation, it remains to be seen whether the use of armed force in the air can be seen simply as the use of force in the sea or whether it can be seen as a use of armed force.

I have looked at some of the characteristics of “gray zone situations” in the East China Sea. Whether or not the current system is adequate is a question that will need serious consideration. In my previous paper, I brought up a related subject, which I would like to revisit here.

Crisis management comprises all the complex and fluid activities to prevent a war in which threats are used to convince, and on occasion concessions are to be made with regard to the politics, diplomacy and military actions of the country that has made the provocative action. The author feels there is room to examine whether the parliamentary law can be applied or whether rules in the law are appropriate when defining the legal basis of the Self-Defense Force, which has such traits and engages in crisis management...omission... In the meantime, there may be a need to reexamine the type of actions and situational zones today’s Self-Defense Force deals with.⁹

Although this is outside the scope of examination in this paper, an even more complex confrontational structure will be created if a conflict in space and cyberspace arise under the above definition of “gray zone situation.” There is also the issue of how to grasp the overall picture. Mirosław Banasik of Poland has argued about this point as follows.

It you look at an armed conflict from a theoretical point of view, gray zone warfare does not necessarily satisfy the definition of war. However, today’s gray zone situation has already occurred before an official doctrine or theory were formulated. Theoretically speaking, distinguishing between what is black and what is white is relatively simple. Nevertheless, the discovery of new technology, the importance of information, and the domain of national functions and people’s lives are moving to the virtual world, which has made it difficult to clearly distinguish between peace and war in modern conflict. Also, uncertainty has made it more difficult to predict models of future warfare. It is difficult to point out how the combination of today’s warfare formats and methods will be applied in the future. One thing remains clear. Unconventional war in the gray zone cannot be ignored. We must make efforts to deepen the understanding of the gray zone paradigm, which will be useful to face the challenges that stem from the gray zone situation. Skillful operation in the gray zone will certainly improve the security of the nation and protection of our interests.¹⁰

The gray zone concept discussed by Banasik does not take into account the situation in the East China Sea, and therefore, the gray zone concept targeted in this paper does not necessarily match Banasik’s, but his findings are worth noting. This is because the importance of understanding and directly monitoring issues concerning gray zone problems pointed out by Banasik is also a problem facing Japan. Also, the author cannot help but agree with Banasik’s argument, “Skillful operation in the gray zone will certainly improve security and protection of interests.” From the standpoint of achieving higher level of security, first, the real situation of the gray zone must be made clear and then why the situation looks gray, and not black or white, must be determined within the context of Japan’s own situation. I hope this paper has helped to throw some light on the issue.

Finally, I will conclude this paper by raising some issues. Japan must figure out what exactly is meant by the intensifying operations by the Chinese military aircraft in the East China Sea and in some cases as far

as the Pacific. It is a fact that Chinese military aircraft and the China Coast Guard have been escalating their activities. With the understanding of China's intentions, there are some concerns worth noting. They go as follows.

Additionally, as China's reinforcement of its military capabilities without transparency, along with active maritime advancement, has been rapidly altering the regional military balance, China's attempts to change the status quo in the East and South China Seas based on its own terms as well as its risk of causing unintended consequences due to misunderstanding or miscalculation have become security concerns to the region including Japan and to the international community.¹¹

In order to ensure the security of the nation, Japan must thoroughly examine the strategies and measures for every phase, including deterrence, crisis management and its deense, in order to deal with Chinese operations. In particular, with regard to crisis management, Japan must establish a unified approach, concerning the role of diplomacy and the SDF, and on top of this, establish a comprehensive and consistent strategy that takes into account the traits and characteristics of assets operating at sea and in the air, from the standpoint of integrated operations.¹² Furthermore, for both China and Japan to avoid "misunderstanding or miscalculation," China's intentions should be elucidated,¹³ and at the same time, it is desirable to look into the decision-making process and how the recognition system works in China¹⁴.

¹ Yamashitaa Aihito, "Gray Zone Jitai eno Taishohoho toshiteno Kikikanri – Sono Yuyosei to Genkai -" [Crisis Management as a Means to Respond to "Gray Zone Situations"], *Air Power Studies*, 3rd Issue, 2016, pp. 38-58.

² *Defense of Japan 2016*, p. 2, note 1.

³ Morikawa, Koichi, Gray Zone Jitai Taisho no Shatei to sono Hoteki Seishitsu [Range of Gray Zone Response and Legal Disposition], *Kokusai Mondai [International Affairs]*, No. 648, 2016, p. 36.

- ⁴ See footnote 9 of this paper about the traits of the China Coast Guard.
- ⁵ The legal nature of measures against intrusion of territorial airspace can be largely divided into the camps of police action and one type of defense action. In the past, the author argued that measures against intrusion of territorial airspace were one type of defense action from a theoretical standpoint. See Yamashita, Jieitaiho 84jo no Igi ni Kansuru Jakkan no Kosatsu [Slight Observation on the Meaning of Article 84 of the SDF Act], Yamashita, *Kokka Anzenhosho no Kohogaku* [Public Law of National Security] (Tokyo: Shinzansha, 2010) (first appeared in 1999). The following remarks made by former Minister of Defense Satoshi Morimoto on the legal nature of measures against intrusion in airspace have garnered attention recently. “Airspace is above a country’s territorial land and territorial waters, and thus, any incursion constitutes a violation of the sovereignty of said country. Given this thinking, responses to airspace intrusions appear to be a police action, but in actuality such responses go beyond police actions and should be considered close to defense actions. This is why it is customary internationally for countries to respond to incursions of airspace using fighter aircraft. The reason why fighter aircraft are used is because it is not a police action” (Morimoto Satoshi, Ishiba Shigeru and Nishi Osamu, *Kokubogun toha Nanika* [What Constitutes a National Defense Force?] (Tokyo: Gentosha Renaissance Shinsho, 2013), pp. 185-186).
- ⁶ Morikawa, Koichi, *Buryokukoshi toha Nanika* [What Constitutes Armed Conflict], *Hogaku Seminaa* [Legal Seminar], Vol. 661, 2010, p. 13.
- ⁷ The problem therein lies with the standards used to demarcate the use of armed force from the simple use of force. Approaches to such demarcation include one belief based on “scale and effect” which emphasizes the amount of force used and another based on “clear hostile intention” which is not based on the amount of force used. Further research is needed regarding this point. In addition, taking into consideration *Guyana v. Suriname*, Kurosaki, Masahiro, “Jieitai niyoru ‘Buki no Shiyō’ wa ‘Buryoku no Koshi’ toha Chigau?” [Is the SDF’s Use of Weapons Different from the Use of Armed Force?], Morikawa, Koichi et al. eds., *Kokusaiho de Sekai ga Wakaru* [International Law Changing the World] (Tokyo: Iwanami Shoten, 2016), pp. 272-286, point out that in addition to the SDF, other Japanese agencies and private individuals can become an actor of the use of armed force under international law.
- ⁸ Yamamoto, Katsuya, *Chugoku Bochukan no Mita Chugoku (Sono 15)* [China as Seen by a Defense Attache in China (No. 15)], JMSDF Command and Staff College website:<http://www.mod.go.jp/msdf/navcol/ssg/topics-column/col-059.html> (accessed on March 21, 2017).
- ⁹ The author’s own work, see footnote 1, p. 58.
- ¹⁰ Miroslaw Banasik, *Unconventional war and warfare in the Gray Zone*, Journal of Defense Resources Management, 7, 2016, p.44.
- ¹¹ *Defense of Japan*, above-mentioned footnote 3, p. 2.
- ¹² See National Institute for Defense Studies, *Shogaikoku Gunjikiko niokeru Yokushi Senryaku ni tsuite (FDO no Kanten kara)* [Deterrence Strategy of Countries and Military Organs (From an FDO Perspective)] (Fiscal 2015 Special Research Results Report). The acronym FDO appearing in parentheses in the title of this National Institute for Defense Studies research refers to “Flexible Deterrent Options” (page 1), which is further explained as “the option to use various actions for

deterrence by commanding the various powers of the state in peacetime or in crises” (same page). Comparing the relationship of this point to this paper indicates that FDO appears to be effective as a tool for crystallizing approaches for not only the deterrence phase, but also the phase whereby crisis management after failure of deterrence equals compulsory diplomacy. However, in formulating and establishing an effective form of FDO, first the roles of diplomacy and military, characteristics of the domain and assets from the standpoint of integrated operations, and approaches to decision making of the other country must be organized as pointed out in this paper. It is preferable that only then should FDO be established.

¹⁴ In terms of the intention or true motive behind Chinese operations in the East China Sea, there is the hypothesis of using the so-called salami slice strategy to establish existing facts for the expansion of the country’s interests. Masayuki Masuda argues the following. “Still, there is also the possibility that much of China’s action is related to the combination of reinforcing its past claims of sovereignty over the Senkakus and a new phase of seeking to demonstrate its “effective control” over the islands,” (National Institute for Defense Studies, *East Asian Strategic Review 2017*, 2017, p. 85). However, it still remains unclear why China has applied this belief.

¹⁵ For academic perspective on this point, see Tsuchiyama, Jitsuo, “Seisakukettei no Shinrigakuteki Apurochi” [Psychological Approaches to Policy Decisions], Shiratori Rei, ed., *Seisakukettei no Riron [The Theory of Policy Decisions]* (Kanagawa: Tokai University Press, 1990), pp. 88-118