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The Process of Heroizing the Holdout Japanese Soldiers in Indonesia

Hayashi Eiichi*

Abstract

The purpose of this paper is to clarify the process by which holdout Japanese soldiers in Indonesia have become heroes since the 1980s. The majority of the holdout Japanese soldiers were young, low-ranking soldiers who were mobilized to the occupied territories of the Empire of Japan in World War II and did not return to their homeland after losing the war. Some 903 holdout Japanese soldiers participated in the Indonesian War of Independence (1945 to 1949), mainly in western Java and northern Sumatra. This paper classifies the reasons why they remained in Indonesia into 15 categories, based on the 47 cases confirmed by documents. It also points out that 324 of them wished to live there after the War of Independence, but the local government was hesitant to grant them nationality. When *Fukushi Tomo no Kai* (*Yayasan Warga Persahabatan*), a benevolent society, was established in 1979, led by some of the successful who had achieved economic prosperity through the re-entry of Japanese companies to Indonesia, they revealed that the holdout Japanese soldiers were opposed to being identified as war victims by the Japanese people over their “homecoming” to Japan, and instead represented themselves as “heroes of independence.” After tracing such backgrounds surrounding the holdout Japanese soldiers, the author examines the case of Ono Sakari, a holdout Japanese soldier who was called the “last hero,” based on description in his “battlefield diary” written during the War of Independence and the author’s interview with Ono and suggests that the reasons for the holdout Japanese soldiers for remaining behind were not uniform.

Introduction

The year 2023 marks the 50th year of ASEAN-Japan friendship and cooperation as well as the 65th anniversary of Japan-Indonesia diplomatic relations, and the first official visit to the Republic of Indonesia by Their Majesties the Emperor and Empress of Japan since 1991. The first “Imperial Diplomacy” by the Emperor and Empress of Japan since ascending the throne attracted the attention of the Japanese public, and their every move was reported by the mass media. Among them, the fact that Their Majesties met with the descendants of the holdout Japanese soldiers and offered flowers at the capital Jakarta’s National Main Heroes Cemetery in Kalibata, where the holdout Japanese soldiers are also laid to rest, was

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particularly emphasized.¹ Why did the holdout Japanese soldiers, who had largely been neglected during the Emperor's visit in 1991, come to attract such attention? Hereafter, using notes, memoirs, relevant documents, documentaries, films, and oral histories of the holdout Japanese soldiers, this paper will examine the changes in the environment of the holdout Japanese soldiers over the past 30 years or so, from an intrinsic perspective based on their narratives.

Classification of reasons for remaining

Holdout Japanese soldiers are those who were mobilized to various parts of Asia during World War II and remained there after the collapse of the Empire of Japan, and their total number is estimated to be in the 10,000s.² They are called “holdout Japanese soldiers” because many of them were young, low-ranking soldiers. In reality, however, there were military officers and military civilians as well as civilians.³

The reasons why they did not return to Japan vary greatly, from staying voluntarily to being coerced to remain. In the case of the holdout Japanese soldiers in Indonesia, the following 47 cases were identified through documents and videos.

(a) Army Lieutenant Komatsu Takashi,⁴ Army Lieutenant Maeda Hiroshi,⁵ Army Sergeant

¹ The author's story was featured in the June 18, 2023 society page of *the Sankei Shimbun* morning edition, “Indoneshia zanryū Nipponhei no shison: Heika ni ‘chichi no kokoro’ tsutaetai—Ryōkoku yūkō no negai, jisedai ni [Descendants of holdout Japanese soldiers in Indonesia: Wishing to convey ‘my father's spirit’ to the Emperor—Passing on the wish for friendship between the two countries to the next generation],” the June 21, 2023 society page of *the Nihon Keizai Shimbun*, “Ryōheika, zanryū Nipponhei nisei ra to menkai: Kunan no rekishi ni hikari keiki ni / Indoneshia—Kenkyūsha ‘kanshin takamari kitai’ [Their Majesties meet with second-generation holdout Japanese soldiers, shedding light on their history of hardships / Indonesia—Researchers ‘expect increase in interest’],” and in “Rekishi: Shirarezaru ‘zanryū Nipponhei’—Indoneshia dokuritsu sensō ni sankā [History: The unknown ‘holdout Japanese soldiers’—Their participation in the Indonesian War of Independence]” in Yomiuri TV's news program “Wake Up” broadcast on June 24, 2023. Additionally, an editorial article written by the author “Ryōheika no Indoneshia hōmon: Zanryū Nipponhei kunan no rekishi—Bidan ni kakureta jitsuzō chokushi wo [Their Majesties' visit to Indonesia: The history of hardship of the holdout Japanese soldiers—Facing the reality behind the moving tales]” was distributed by Kyodo News, and was published in the July 6, 2023 culture page of *the Tokyo Shimbun* evening edition, etc.

² Hayashi Eiichi. *Zanryū Nipponhei* [Holdout Japanese soldiers]. Chuokoron-Shinsha. 2012. pp. 32–37.

³ Some researchers call them “holdout Japanese,” taking into account the civilians.

⁴ Komatsu Takashi was born in 1922 in Oita Prefecture. He graduated from Waseda University after attending a commercial school. Following his graduation from a reserve officers' cadet school in Kurume and the Air Communication Corps, he was assigned to the 35th Anti-Aircraft Radio Squadron and was in Palembang in southern Sumatra when the war ended in defeat. Oku Genzō. *Dassō Nihonhei* [Japanese deserters]. The Mainichi Newspapers. 1980. pp. 83–95.

⁵ Maeda Hiroshi was born in 1920 in Kobe City, Hyogo Prefecture. He graduated from Osaka Pharmaceutical College and began working for Tanabe Seiyaku in 1941 but joined the 66th Central Unit the following year. After graduating from reserve officers' cadet school in Kumamoto, he was assigned to the Southern Expeditionary Army Group. He served in the 15th Independent Garrison in North Sumatra in 1943 with the 57th independent infantry battalion and was stationed in Aceh as the commander of the 1st Company of the Volunteer Army with the 25th Army Headquarters when the war ended in defeat. Maeda Hiroshi Sufian. *Sumatora, waga funbo no chi* [Sumatra, the land of my grave]. Maeda Hiroshi kun shuki kankōkai. 1986. pp. 1–59.

Ono Sakari,⁶ Army Superior Private Miyayama Shigeo,⁷ Navy Commissioned Officer Yoshizumi Tomegorō,⁸ Army Commissioned Officer Ichiki Tatsuo,⁹ Army civilian Suzuki Hideo,¹⁰ and trading company employee Shirakawa Masao¹¹ wanted to “make Indonesia independent.”

(b) Army Superior Private Yoshinaga Hayao¹² “wanted to make a name for himself and clear the stigma of being a ‘fugitive soldier.’”

⁶ Ono Sakari was born in 1919 in Minamifurano, Hokkaido. He joined the 28th regiment of the 7th Division. He volunteered to be a replacement personnel for the Southern Expeditionary Army Group and went to Java. He was then transferred to the 27th Independent Mixed Brigade Headquarters of the 16th Army. He was further transferred to the General Staff Department, where he was in charge of handling classified documents, etc. when the war ended in defeat. Hayashi Eiichi. *Zanryū Nipponhei no shinjitsu* [Truth about the holdout Japanese soldiers]. Sakuhinsha. 2007. pp. 34–64.

⁷ Miyayama Shigeo was born in 1914 in Dalian and raised in Tokyo. After graduating early from Tokyo Imperial University, he joined the Imperial Guards Search Regiment. After going to Berastagi in northern Sumatra, he moved to Aceh to guard the coastline when the war ended in defeat. Kinoshita Michisuke. *Miyayama Shigeo kun den* [Biography of Miyayama Shigeo]. Private edition. 1995. pp. 2–18.

⁸ Yoshizumi Tomegorō was born in 1911 in Yamagata Prefecture. He went to Sumatra with the help of distant relatives, but work did not go well and he returned to Japan. The following year, he went to Java and became a reporter for *the Nichi-Ran Shōgyō Shinbun* [Japan-Dutch Journal of Commerce] but returned to Japan again due to deportation. He smuggled into Bangka Island on the day the war started but was arrested and sent to Australia on a detained ship. Upon returning to Japan through detainee exchange, he led southern personnel from the navy’s Special Service Agency and landed on Celebes (present-day Sulawesi) Island. After the Special Service Agency was disbanded, he was appointed as the Chief of Section 3 of the Jakarta Naval Office when the war ended in defeat. Hayashi Eiichi. *Tōbu Jawa no Nipponjin butai* [Troops made of Japanese soldiers in East Java]. Sakuhinsha. 2009. pp. 56–85.

⁹ Ichiki Tatsuo was born in 1906 in Kumamoto Prefecture. After working for a local bank in southern Kyushu, he went to Palembang in southern Sumatra to become a photographer. He then moved to Bandung in western Java and changed jobs before landing a job at *the Nichi-Ran Shōgyō Shinbun*. He was denied re-entry after returning to Japan temporarily, and transferred to the South Seas Bureau of the Ministry of Foreign Affairs, Commissioned Officer of Section 6, Department 2 of the General Staff Department. He returned to Jakarta as a member of the 16th Army Propaganda Team when the war began and was commissioned as an officer for the Translation Office (later, Leadership) of PETA (*Pembela Tanah Air*, Defenders of the Fatherland) when the war ended in defeat. Ibid. *Tōbu Jawa no Nipponjin butai* [Troops made of Japanese soldiers in East Java]. pp. 92–113.

¹⁰ Suzuki Hideo was born in 1916 in Akita Prefecture. The war ended in defeat while he was working as an army civilian at the North Sumatra Fuel Arsenal. Hayashi Eiichi. *Zanryū heishi no gunzō* [Groups of soldiers who stayed behind]. Shinyosha. 2023. p. 103.

¹¹ Shirakawa Masao (real name: Konno Hisashi) was born in 1923 in Lüshun. He became an army special apprentice officer, but was discharged locally due to paralysis from a torpedo attack by a submarine on the ship transporting him to the south. He later was employed locally by the Singapore branch of a Japanese trading company and was transferred to the Medan office where he faced defeat one week later. Honda Tadahisa. *Paran to bakuyaku* [Parang and explosives]. Nishida Shoten. 1990. pp. 5–7.

¹² Yoshinaga Hayao was born in 1920 in Kochi Prefecture. He went to the mainland as a member of the Special Advance Team of the Youth Volunteer Corps for Manchuria-Mongolia. He was called into the 44th Infantry Regiment and assigned to the Southern Territory Support Unit of the Kwantung Army. He then moved to Cimahi in Bandung in western Java and was digging holes in the mountains in the 27th Independent Mixed Brigade Artillery when the war ended in defeat. Ibid. *Zanryū heishi no gunzō* [Groups of soldiers who stayed behind]. p. 27.

- (c) Army Captain Inoue Tetsurō¹³ had “a wife and children” there.
- (d) Army Second Lieutenant Otsuto Noboru,¹⁴ Army Superior Private Narita Genshirō,¹⁵ Army First Class Private Hirooka Isamu,¹⁶ and Tanaka Yukitoshi,¹⁷ Commissioned Officer of the Southern Territory Scrap Metal Control Association “thought it was better to remain than return to Japan.”
- (e) Navy Chief Warrant Officer Chiyomori Michiharu¹⁸ “sought a place to die.”

¹³ Inoue Tetsurō was born in 1903 in Fukuoka Prefecture. After graduating from Hokkaido Imperial University’s Faculty of Agriculture, he enlisted in the 12th Cavalry Regiment of the 12th Division in Kokura and became an army lieutenant. He then went to Brazil to establish a farmer’s *dojo* to develop agricultural leaders. Returning to Japan after moving from one place to another in South America, he worked at a textile equipment manufacturing factory in Osaka before running a farm in Aichi in failure. He was drafted into a cavalry regiment and experienced front-line combat in Shanghai and Hangzhou. He then went to southern China and served in the Divisional General Staff Department in Guangdong. He was involved in political maneuvering in the local Special Service Agency. After entering Singapore as a member of the Yamashita Corps headquarters, he transferred to eastern Sumatra as military administration personnel and served as the general-affairs manager of Sumatra East Coast Province, then as secretary to the governor, police chief, and assistant-resident. He was later appointed to the governor and then to director of a farmer training institute. At the time the war ended in defeat, he was mobilizing the Indonesians to organize a nation-founding volunteer corps to prevent the Allied Forces from landing. Hayashi Eiichi. *Indonesia zanryū Nipponhei no shakaishiteki kenkyū 1942–2014* [Research on the social history of the holdout Japanese soldiers in Indonesia: 1942–2014]. Doctoral dissertation, Graduate School of Social Sciences, Hitotsubashi University. 2016. pp. 103–112.

¹⁴ Otsuto Noboru was born in 1918 in Tokyo. After graduating from the Specialty Division Commercial Course, Waseda University, he joined Showa Aircraft Industry. He enlisted in the 3rd Infantry Regiment of the Imperial Guards and went to Medan in northern Sumatra. When the war ended in defeat, he was guarding the west coast of Sumatra as a machine gun platoon leader. Ibid. *Dassō Nihonhei* [Japanese deserters]. pp. 111–120.

¹⁵ Narita Genshirō was born in 1918 in Aomori Prefecture. He joined the 5th Infantry Regiment of the Imperial Guards and went to Sumatra, which is where he was when the war ended in defeat. Ibid. *Zanryū heishi no gunzō* [Groups of soldiers who stayed behind]. p. 104.

¹⁶ Hirooka Isamu was born in 1921 in Oshima, Yamaguchi Prefecture. He relied on his brother who ran an iron factory in Java, and took over the factory after his death, but returned to Japan due to the worsening relationship between Japan and the Netherlands. He later went to Jakarta as a commissioned officer for the Java Military Administrator’s Department and joined the 20th Field Air Repair Depot in Bandung as a local conscript, his position when the war ended in defeat. Hayashi Eiichi. “Ran-In hikiagesha no raifu hisutori [Life History of Dutch India Repatriates].” In *Ajia yūgaku: Teikoku hōkai to hito no sai-idō* [Asian studies: Collapse of the empire and the re-migration of people] No. 145, edited by Araragi Shinzo. Bensei Publishing. September 2011. pp. 150–157.

¹⁷ Tanaka Yukitoshi was born in 1907 in Hokkaido and raised in Tokyo. He was employed at the Osaka branch of Arima Yōkō, which had its headquarters in Java. He went to Bandung in western Java as a Commissioned Officer of the Southern Territory Scrap Metal Control Association, which was set up by the Vital Commodities Corporation’s War Preparation Division. The war ended in defeat while he was there. Oku Genzō. *Indoneshia dokuritsu sensō wo ikinuite* [Surviving the Indonesian War of Independence]. Sanshintoshō. 1987. pp. 120–122.

¹⁸ Chiyomori Michiharu was born in 1917 in Kagoshima Prefecture. He volunteered for the navy and joined the marines in Sasebo. He later became a crew member of the Shōnan Maru No. 17, a patrol boat converted from a small whaling ship. He was attacked by U.S. aircraft off the coast of Ambon Island and thrown overboard, and was hospitalized in Java when the war ended in defeat. Ibid. *Zanryū heishi no gunzō* [Groups of soldiers who stayed behind]. p. 58.

- (f) Army Sergeant Taira Teizō¹⁹ was solicited by an Indonesian who said he would be “treated as an officer and given a house and a woman.”
- (g) Army Second Lieutenant Koga Masayoshi²⁰ and Army Corporal Nakamura Tsunegorō²¹ “grew tired of the military.”
- (h) Kempei (military police) civilian Iwamoto Tomio,²² Army employee Kumazaki Shōzō,²³ and Navy civilian Ueda Kaneo²⁴ “did not want to be a prisoner of war.”
- (i) Army Paymaster Sergeant Yamanashi Shigeru,²⁵ Army Corporal Fujiyama Hideo,²⁶ Army

¹⁹ Taira Teizō was born in 1920 on Miyako-jima, Okinawa Prefecture. After working at various small town factories in Osaka, he was invited by his younger brother to work at a sake factory in Taipei. Later, he was assigned to the 1st Infantry Regiment in Taiwan and went to Manila, Philippines, Tarakan Island in northeastern Borneo (present-day Kalimantan), and then to guard Palembang, Sumatra. The war ended in defeat while he was stationed on Sumbawa Island. Sakano Narutaka. *Samurai, Bari ni junzu* [Samurai, martyred in Bali]. Kodansha. 2008. pp. 16–35, 46–59.

²⁰ Koga Masayoshi was born in 1920 in Tokyo. After graduating from Meiji University's Specialty Division, he enlisted in the 3rd Infantry Regiment of the Imperial Guards. He was sent to northern Sumatra and assigned to a machine gun company, and was positioned on the coast in Langsa when the war ended in defeat. Murakami Hyōe. *Ajia ni makareta tane* [Seeds sown in Asia]. Bungeishunju. 1988. pp. 101–123.

²¹ Nakamura Tsunegorō was born in 1924 in Tokyo. The war ended in defeat while he was serving as a detachment leader of the 6th Company, 2nd Battalion, 3rd Regiment of the Imperial Guard in Aceh, Sumatra. Aonuma Yōichirō. *Kikan sezu* [No return]. 2014. Shogakukan (paperback). pp. 242–245.

²² Iwamoto Tomio was born in 1917 in Kagoshima Prefecture. After working as a peasant, he went to Manchuria and became a military civilian for the Kempei Training Corps. He was then transferred to the 3rd Field Kempeitai (military police) and was in Java when the war ended in defeat. Fukushi Tomo no Kai (Yayasan Warga Persahabatan, a foundation that unites Japanese descendants in Indonesia). *Geppo* [Monthly bulletin]. May 1985. pp. 1–4.

²³ Kumazaki Shōzō was born in 1918 in Gifu Prefecture. He was in the 7th Company of the Air Brigade Headquarters when the war ended in defeat. Fukushi Tomo no Kai. *Geppo* [Monthly bulletin]. August 1986. pp. 1–4; *Geppo*. September 1986. pp. 1–3.

²⁴ Ueda Kaneo was born in 1915 in Okayama Prefecture. Having worked as a taxi driver in Kobe, he was recruited as an automobile technician in the Kure Naval Munitions Department and went to Davao, Philippines to drive trucks. Later, he moved to Surabaya and worked as a driver for the South-West Area Fleet Headquarters, and then was an automobile delivery section chief for the 2nd Southern Expeditionary Fleet Headquarters in Bandung when the war ended in defeat. Chō Yōhiro. *Ronsō Nonfikushon 12: Kaeranakatta Nipponhei (Zōho kaitei-ban)* [Ronso Nonfiction 12: Japanese soldiers who did not return home (Expanded and revised edition)]. Ronsosha. 2021. pp. 182–188.

²⁵ Yamanashi Shigeru was born in 1920 in Tokyo. After graduating from Chuo University, he worked for Mitsui Trust. He then joined the 3rd Infantry Regiment of the Imperial Guards. He was dispatched to Manchuria. He was stationed in Berastagi, a summer resort in Sumatra, and was assigned to procurement of supplies when the war ended in defeat. Ibid. *Indoneshia dokuritsu sensō wo ikinuite* [Surviving the Indonesian War of Independence]. pp. 105–108.

²⁶ Fujiyama Hideo was born in 1922 in Saga Prefecture. After working as an electrician at a coal mine power plant, at Yahata Steel Works, and at Sasebo Heavy Industries' airplane factory, he volunteered for the Japanese Army and fought for two years in various parts of Burma, but was wounded in combat and transferred to Solo, central Java. He was then transferred to Malang in eastern Java and then to Gorda Airport in Banten Province in western Java, serving as a weekly noncommissioned officer in the maintenance group of the 35th Training Squadron at the time Japan was defeated in the war. Hayashi Eiichi. *Kōgun heishi to Indoneshia dokuritsu sensō* [Soldiers of the Imperial Japanese Army and the Indonesian War of Independence]. Yoshikawakobunkan. 2011. pp. 18–44.

Lance Corporal Ikegami Naruto,²⁷ Army Lance Corporal Motobō Takatoshi,²⁸ Army Corporal Takasu Shigeo,²⁹ Army Superior Private Akaiwa Hideyoshi,³⁰ and Army civilian Tachikawa Shōzō³¹ “believed groundless rumors.”

(j) Army Lance Corporal Shida Yasuo³² struck a superior officer and “feared detention.”

(k) Army Second Lieutenant Itami Hideo³³ felt “responsible for handing weapons” to Indonesian soldiers. Kempei Corporal Tsutsumi Kiyokatsu³⁴ “tried to persuade the people of Aceh to avoid confrontation over weapons.”

²⁷ Ikegami Naruto was born in 1919 in Kagoshima Prefecture and raised in Korea. He transferred from the preparatory course at Meiji University to Nihon University’s College of Economics. After graduating early, he joined the 45th Regiment Replacement Depot in Kagoshima. He served in Burma before being sent to Seram Island, Indonesia by the Airport Security Battalion. He was in the Independent Battalion in Magelang, central Java, when the war ended in defeat. Oku Genzō. *Kaeranakatta Nipponhei* [Japanese soldiers who did not return home]. Seikaoraisha. 1987. pp. 29–31, 63–78.

²⁸ Motobō Takatoshi was born in 1920 in Miyazaki Prefecture. After serving in the Kwantung Army, the war ended in defeat while he was in Cimahi, near Bandung. Fukushi Tomo no Kai. *Geppo* [Monthly bulletin]. May 1987. pp. 1–3.

²⁹ Takasu Shigeo was born in 1924 in Kanagawa Prefecture. While working as a temporary clerk at the first-class post office in front of Yokohama Station, he volunteered for the army and enlisted in the 5th Regiment of the Imperial Guard, Depot Division, East 8th Unit. Later, he was sent as a replacement soldier to Medan, Sumatra where the main unit was located. The war ended in defeat while he was there. Ibid. *Kikan sezu* [No return]. pp. 337–355.

³⁰ Akaiwa Hideyoshi was born in 1921 in Kagoshima Prefecture. He was called up as a mechanic in the Army Air Corps and was in Sumatra when the war ended in defeat. Ibid. *Zanryū heishi no gunzō* [Groups of soldiers who stayed behind]. p. 57.

³¹ Tachikawa Shōzō was born in 1918 in Tochigi Prefecture. After his honorable discharge in Sumatra, he was working as a military civilian in the Training Section of the Military Administration Department in the east coast province of Medan when the war ended in defeat. Fukushi Tomo no Kai. *Geppo* [Monthly bulletin]. September 1985. pp. 1–3.

³² Shida Yasuo was born in 1921 in Miyazaki Prefecture. He joined the West 99th Unit in Kumamoto. He was then transferred to Burma, where he drove trucks as a mechanic, moving from place to place. He was then transferred to the 34th Training Squadron in Java, where he was when the war ended in defeat. Ibid. *Dassō Nihonhei* [Japanese deserters]. pp. 15–29.

³³ Itami Hideo was born in 1923 in Osaka. He was called up while working at an ironworks, and went to Aceh, Sumatra after training with the 3rd Air Army Training Corps. He belonged to a airborne battalion and was leading local volunteer troops to guard the area around the airfield when the war ended in defeat. Fukushi Tomo no Kai. *YWP dayori* [YWP newsletter]. June 1980. pp. 8–9; *Geppo* [Monthly bulletin]. June 1989. pp. 1–4.

³⁴ Tsutsumi Kiyokatsu was born in 1919 in Hokkaido. He joined the 4th Infantry Regiment of the Imperial Guards and was wounded while participating in the Malay Operation. He returned after the Singapore Operation, going to northern Sumatra. Later, after serving in the Kempei Training Corps of the Southern Expeditionary Army Group in Kuala Lumpur, he was sent to Kutaraja, the capital of Aceh Province, as a corporal in the 25th Army Kempei, and was studying at the Kempeitai headquarters in Bukittinggi as a Malay language specialist when the war ended in defeat. Fukushi Tomo no Kai. *Geppo* [Monthly bulletin]. February 1990. pp. 1–6; *Geppo*. January 1991. pp. 1–4.

- (l) Army Warrant Officer Kioka Naoyuki,³⁵ Kempei Sergeant Major Onodera Tadao,³⁶ Kempei Sergeant Major Sugiyama Nagamoto,³⁷ Kempei Sergeant Tanaka Toshio,³⁸ Kempei Sergeant Hasegawa Toyoki,³⁹ and Army civilian Kage Hitoshi⁴⁰ “feared becoming war criminals.”

³⁵ Kioka Naoyuki was born in 1917 in Kagawa Prefecture. He joined the 5th Infantry Regiment of the Imperial Guards and was in Sumatra after serving in Manchuria and the southern front when the war ended in defeat. Ibid. *Zanryū heishi no gunzō* [Groups of soldiers who stayed behind]. p. 64.

³⁶ Onodera Tadao was born in 1916 in Iwate Prefecture. After working at a silk mill in Sendai, he joined the Independent Garrison of the Kwantung Army. He then passed the non-commissioned officer examination and the kempei examination. He was assigned to the headquarters of the Sun Wu Kempeitai and participated in the Nomonhan Incident. After transferring to the 2nd Field Army, he was transferred to the 16th Army and went to Java. He was chief of the Jakarta Pier Kempei Detachment Special Higher Police when the war ended in defeat. Onodera Tadao (edited by Sasaki Taka). *Ojiisan wa Nipponjin datta* [Grandfather was Japanese]. Private edition. 1990. pp. 21–36.

³⁷ Sugiyama Nagamoto was born in 1918 in Niigata Prefecture. He enlisted in the 16th Infantry Regiment of Shibata and was on guard duty at the Soviet-Manchurian border when he passed the kempei examination. He was assigned to the border area between South Manchuria and Korea. He participated in the Dutch East Indies Operation and landed in Rembang in central Java, and was stationed in Malang. Later, he was transferred to Jakarta, where he was preparing for a guerilla warfare in anticipation of the Allied Forces landing when the war ended in defeat. Ibid. *Tōbu Jawa no Nipponjin butai* [Troops made of Japanese soldiers in East Java]. pp. 117–131.

³⁸ Tanaka Toshio was born in 1917 in Fukuoka Prefecture. After working as a craftsman at Yahata Steel Works, he joined the 3rd Railway Regiment in Harbin, Manchuria. He volunteered to become a kempei there and was sent to the Mukden Kempeitai. Later, he was transferred to the 3rd Field Kempeitai and participated in the 16th Army's Java Operation. Later, he was sent to the Semarang Kempei Detachment in central Java, where he was in charge of Indonesians in the Special Higher Police Unit when the war ended in defeat. Tochikubo Hiroo. *Nikkei Indonnesia jin* [Japanese-Indonesians]. Simul Shuppan-kai. 1979. pp. 3–119.

³⁹ Hasegawa Toyoki was born in 1917 in Fukushima Prefecture. After enlisting in Ranam, Korea, he volunteered to become a kempei. He participated in the Malay Operation and traveled through Singapore and Penang to Sumatra, and worked in the General Affairs Section of the Kempeitai headquarters in Bukittinggi. The war ended in defeat while he was on special dispatch for the Medan Detachment. Hasegawa Toyoki. *Sumatora mushuku* [Homeless in Sumatra]. Soubunsha. 1982. pp. 9–88.

⁴⁰ Kage Hitoshi was born in 1913 in Fukuoka Prefecture. He applied for a position with the Southern Territory Military Administration of the Army Ministry and worked in the Enemy Property Management Section of the Medan Military Administration Department, where he was assigned to manage the property of prisoners of war when the war ended in defeat. Ibid. *Dassō Nihonhei* [Japanese deserters]. pp. 57–69.

- (m) Navy civilian Isomura Seitoku,⁴¹ Army civilian Chō Juntatsu,⁴² and Miyahara Eiji⁴³ were Taiwanese Japanese soldiers and “feared persecution in Taiwan, which became part of the Republic of China.”
- (n) Technical Captain Murakami Junjirō⁴⁴ was “left behind” at the Army hospital where he was admitted for mental illness.
- (o) Army Paymaster Warrant Officer Ishii Masaharu,⁴⁵ Army Corporal Doki Tokiji,⁴⁶ Army Sergeant Hayakawa Kiyoshi,⁴⁷ Army Engineer Corps Sergeant Higuchi Osamu,⁴⁸ Army Second Class Private Nanri Isamu,⁴⁹ and Army First Class Private Shimooka Zenji⁵⁰ were “abducted and confined” by Indonesians.

⁴¹ Taiwanese Isomura Seitoku (real name: Kē Shēngdé) was born in 1921. He volunteered at the Takunan Industrial Warriors Training Center of the Imperial Subjects' Public Service Association. He changed his surname to a Japanese name and became a military civilian at the 101st Naval Fuel Depot and went to the northwestern part of New Guinea. Later, he was transferred to the 104th Naval Facility Squadron in Borneo, where he was when the war ended in defeat. Isomura Seitoku. *Ware ni kaeru sokoku naku* [No motherland to return to]. Jiji Press. 1981. pp. 3–162.

⁴² Taiwanese Chō Juntatsu was born in 1922. He was assigned to the 25th Army Headquarters, Unit *Tomi* 8991, in Bukittinggi, Sumatra. The war ended in defeat while he was on a business trip to Palembang. Fukushi Tomo no Kai. *Geppo* [Monthly bulletin]. August 1988. pp. 1–3.

⁴³ Taiwanese Miyahara Eiji (real name ǃ Bóqīng) was born in 1922. He served at the Chinese front as an interpreter for the Japanese Army. He then went to the Philippines and landed in Java as a member of the 48th Division. Returning to Taiwan, he assisted in research on malaria at the Epidemic Prevention and Water Purification Department, Southern Territory Personnel Training Center, Taihoku Imperial University. Later, he was assigned to the Unit *Oka* 9420, an Epidemic Prevention and Water Purification Unit under the direct control of the Southern Expeditionary Army Group, and moved to Singapore. There, he saw the exclusion of Chinese and left the Army, fleeing to Indonesia when the war ended in defeat. Kamisaka Fuyuko. *Minami no sokoku ni ikite* [Living in the Southern Homeland]. Bungeishunju. 1997. pp. 24–25.

⁴⁴ Murakami Junjirō was born in 1918 in Wakayama Prefecture. The war ended in defeat while he was hospitalized in Padang, Sumatra. Mitome Tadao. *Bōkyō* [Nostalgia] reprinted edition in 2005. pp. 101–103.

⁴⁵ Ishii Masaharu was born in 1916 in Hokkaido. After enlisting in the Imperial Guards Cavalry Regiment, he was transferred to the Accounting Department and went to Aceh in Sumatra, and was in the merchant port of Meulaboh on the west coast of Sumatra when the war ended in defeat. Ishii Masaharu. *Minami kara* [From the South]. Nishida Shoten. 1984. pp. 9–135.

⁴⁶ Doki Tokiji was born in 1910 in Ishikawa Prefecture. He worked for Daishōjigawa Suiden Gaisha. He then joined the 1st Telegraph Regiment in Sagami-hara, Kanagawa Prefecture, participated in the Malay Operation, traveled to Palembang, Sumatra, and was stationed in Lahat, where he was preparing to set up a communications station, when the war ended in defeat. Ibid. *Kaeranakatta Nipponhei (Zōho kaitei-ban)* [Japanese soldiers who did not return home (Expanded and revised edition)]. pp. 117–127.

⁴⁷ Hayakawa Kiyoshi was born in 1915 in Gunma Prefecture. The war ended in defeat while he was in Sumatra. Hayakawa Kiyoshi. *Indoneshia dokuritsu senki: Batakaro Gerira* [Chronicle of the Indonesian War of Independence: Batak Karo guerrilla]. Tokyo Bungeisha. 1987. pp. 2–3.

⁴⁸ Higuchi Osamu was born in 1919 in Gunma Prefecture. He was in Aceh, Sumatra, when the war ended in defeat. Ibid. *Indoneshia dokuritsu sensō wo ikinuite* [Surviving the Indonesian War of Independence]. pp. 49–55.

⁴⁹ Nanri Isamu was born in 1924 in Chinnamp'o, Korea and raised in Saga Prefecture. He was in Medan, Sumatra, when the war ended in defeat. Ibid. *Kaeranakatta Nipponhei (Zōho kaitei-ban)* [Japanese soldiers who did not return home (Expanded and revised edition)]. pp. 239–243.

⁵⁰ Shimooka Zenji was born in 1926 in Kyoto. Three months after switching from military civilian to soldier, the war ended in defeat while he was in western Java. Ibid. *Kikan sezu* [No return]. pp. 321–329.

Of these, (a) through (e) were highly voluntary, (n) and (o) were forced, and (f) through (m) fell somewhere between the two. Although the individual reasons must have been complicated and compounded, and are not easy to categorize, it is certain that the holdout Japanese soldiers themselves remembered the past as described above and were represented by the people concerned.

Response by the Indonesian government

With the declaration of independence on August 17, 1945, a republic-type government was established in Indonesia. Nevertheless, in the ensuing month, British troops advanced into Indonesia on behalf of the Allies, triggering armed conflicts in various locations. These conflicts culminated in a War of Independence. What the Indonesian side sought at that time were the weapons and human resources of the remaining Japanese forces. This resulted in 903⁵¹ holdout Japanese soldiers, mainly in western Java and northern Sumatra.

They were involved in the War of Independence by providing military training to the Indonesian army and village youth, repairing and modifying weapons from the Japanese military, and serving on the front lines of the guerrilla war.

On the other hand, being an informal presence, the holdout Japanese soldiers found themselves in a predicament, having to go into hiding during the truce negotiations with the Dutch and being forced out of their units during the reorganization and rationalization of the new republic's army. Even after the Indonesian War of Independence, the republic's government forced the holdout Japanese soldiers in Aceh in northern Sumatra to move,⁵² fearing they would become tied to rebel groups. Furthermore, the Indonesian government passed a cabinet decision in March 1953 requesting all holdout Japanese soldiers to leave, and the Director of the Ministry of Foreign Affairs' Pacific Department lodged a request⁵³ with the Consulate-General of Japan, which indicated that the soldiers were not welcomed with open arms by Indonesia as a nation.

A majority of the 324,⁵⁴ excluding the 45 who temporarily returned to Japan after the War of Independence, were discharged from the Indonesian army and blended into local communities through "rites of passage" such as marrying local women and converting to Islam. However, their status was insecure, being separated from the military in exchange for a simple certificate. Since Indonesia's Ministry of Justice made a move to deport those who did not have local citizenship as "illegal immigrants," many of the holdout Japanese soldiers applied for Indonesian citizenship to the Ministry of Veterans' Affairs in 1957, and were issued provisional ID cards and became "associate Indonesians," but only a few were able to obtain the nationality determination certificates that were issued several times between 1961 and the following year, leaving many without citizenship recognition. The March 4, 1958 edition of the Indonesian-language newspaper *Tempo* reported that "more than 350 holdout Japanese soldiers hope to obtain Indonesian citizenship (naturalization) when the peace agreement between Japan and Indonesia takes effect." The issue of the nationality of the holdout Japanese soldiers was subsequently solved when all re-

⁵¹ Fukushi Tomo no Kai, ed. *Indoneshia dokuritsu sensō ni sankā shita "Kaeranakatta Nipponhei" issen-meī no koe* [Voices of 1,000 Japanese soldiers who participated in the Indonesian War of Independence and did not return home] (Privately printed book). 2005. p. 382.

⁵² Ibid. *Tōbu Jawa no Nipponjin butai* [Troops made of Japanese soldiers in East Java]. pp. 290–291.

⁵³ Goto Kenichi. "Zanryū Nipponhei no sengoshi: Kunpuru Otsudo no ashiato [Postwar journal of a holdout Japanese soldier: Footsteps of Kumpul Otsudo]." In *Tōnan ajia kara mita kingendai Nippon* [Modern Japan from the perspective of Southeast Asia]. Chapter 8. Iwanami Shoten. 2012. pp. 255–259.

⁵⁴ Ibid. *Indoneshia dokuritsu sensō ni sankā shita "Kaeranakatta Nipponhei" issen-meī no koe* [Voices of 1,000 Japanese soldiers who participated in the Indonesian War of Independence and did not return home]. p. 382.

applicants were granted nationality under the special presidential exception in 1963.⁵⁵ However, the fact that they could not obtain nationality for nearly 17 years meant that, for the holdout Japanese soldiers, Indonesia's independence was not synonymous with their own success.

Organization

Rather, what proved to be a turning point in their lives was the presence of Japanese companies that were looking to re-enter Indonesia. Led by the “successful” who had achieved economic uplift through being employed locally by Japanese companies due to the growing demand for trade between the two countries until the diplomatic relations between Japan and Indonesia were restored in 1958, a friendship and benevolent society called *Fukushi Tomo no Kai (Yayasan Warga Persahabatan)* was formed in Jakarta in 1979. The existence of *Fukushi Tomo no Kai* served as an opportunity to change the situation surrounding the holdout Japanese soldiers.

On December 3, 1981, the Osaka evening edition of *the Yomiuri Shimbun* listed 583 deceased or unaccounted for, and 172 survivors of the holdout Japanese soldiers under the headline, “List of former Japanese soldiers who participated in the Indonesian War of Independence completed.” The article said, “The number of those deceased or unaccounted for during the War of Independence was 226 killed in action, 238 missing, and 119 deceased after independence. There were many who were known only by their surnames, such as ‘Suzuki,’ ‘Kawada,’ and ‘Osaki,’ or by their local names, such as ‘Usman,’ ‘Simin,’ and ‘Suroto.’ There were also those who remained known only by their nicknames such as ‘Akachin.’ These were people who were afraid of being identified as war criminals or fugitives and decided to live as locals (...) Although many of the deceased were buried in heroes cemeteries, it is believed that many of those killed or missing in action were left to perish in the fields or were buried without any known surviving relatives.”

In May of the following year, *Fukushi Tomo no Kai Kyoryoku Kai*, a sister organization of the Japan-Indonesia Friendship Group Council, was formed at the Kensei Kinen Kaikan in Nagatacho, Tokyo. Inamine Ichiro, then chair of the Japan-Indonesia Friendship Group Council, was a member of the House of Councilors from Okinawa who had served in the Jakarta Naval Office during the war. He was also chair of the Japan-Indonesia Parliamentary Friendship League, which was inaugurated in March. Taniguchi Shigeki, Executive Director of the Japan-Indonesia Friendship Council, also served as both the Secretary General of the Japan-Indonesia Parliamentary Friendship League and Executive Director of *Fukushi Tomo no Kai Kyoryoku Kai*. *Fukushi Tomo no Kai Kyoryoku Kai* played the role of bringing the holdout Japanese soldiers closer to the comrades' associations in Japan as well as to politics.

“Homecoming”

In response to the “homecoming” of the holdout Japanese soldiers, which *Fukushi Tomo no Kai Kyoryoku Kai* set as its objective, 10 holdout Japanese soldiers were able to return to Japan temporarily in October 1982 and June of the following year under the Ministry of Health and Welfare's special support measures for unrepatriated persons. Osaka Asahi Broadcasting Corporation's program “Big News Show: Holdout Japanese soldiers in Indonesia meet their relatives after 37 years” (broadcast on August 20, 1982) and “Japindo II: Holdout Japanese soldiers in Indonesia 1982” (broadcast in November 1982, awarded the 20th Galaxy Award Grand Prize by the Association of Broadcast Critics, the Excellence Award in the TV Documentary Division of the 37th ACA National Arts Festival, and Encouragement Prize of the ABU [Asia-Pacific Broadcasting Union] Prize), which covered this closely and portrayed old holdout Japanese soldiers struggling with nostalgia, reminded the Japanese people of “abandoned people” deserted

⁵⁵ Ibid. *Kōgun heishi to Indonnesia dokuritsu sensō* [Soldiers of the Imperial Japanese Army and the Indonesian War of Independence]. pp. 134–139.

by their motherland, and touched their hearts. Japan had become a major economy at the time, and self-affirming theories of Japanese culture and the Japanese people were popular, thus many viewers may have viewed the holdout Japanese soldiers struggling in “impoverished” Indonesia as “pitiful.”

However, there was opposition to this from within *Fukushi Tomo no Kai*, which fully cooperated with the interview. *Fukushi Tomo no Kai* initially prepared and submitted a list of interview subjects based on the TV station’s request to feature holdout Japanese soldiers who had never returned to Japan after the war and were at that time suffering from poverty and illness. However, *Fukushi Tomo no Kai*’s Deputy Director Tanaka Toshio, who watched the program, leveled the criticism that “claiming that the ‘war is to blame’ without making efforts to have the holdout Japanese soldiers themselves, who left their wives and children in Japan to go to war and who fled of their own will without fulfilling their responsibilities as husbands (fathers) after the defeat, and who also gave up Japanese citizenship, explain the reasons for their flight and convince the audience, is a sales pitch on the part of the interviewers. I believe that ‘these were consequences of their own actions, and not the responsibility of war.’”⁵⁶ He asked Mr. Okihara, Executive Director of *Fukushi Tomo no Kai Kyoryoku Kai*, who visited Jakarta in March 1983, that “TV and other mass media coverage should be selected based on the impact on the members, and any coverage that would damage the image of the members should be rejected for the sake of their honor. It should be noted when dealing with them that the members are not Japanese but Indonesian nationals.”⁵⁷

Due in part to these developments, the “homecoming” did not attract as many applicants as expected and ended after only two rounds. Ishii Masaharu, Chief Director of *Fukushi Tomo no Kai*, who had promoted the “homecoming,” expressed his regret at the time, saying, “It was selfish of us to abandon our hometowns and our country, but the people back home never thought of us as such. The parents, siblings, wives, and children must have been longing to see us and were waiting for us to come home one day. Even if their nationality is different and family registers deleted, the connection between them cannot be cut. When will they return? What should they say to neighbors who ask? With the passage of time, there may be no one left to ask questions, but what could be said against stories spreading in the background that they cannot return home because they are fugitives? I can only imagine how uncomfortable and vexing the people of our hometowns must have felt each time, not knowing the reason why we stayed behind. I wonder if the unrepatriated brothers have ever thought about their feelings.”⁵⁸ Ishii ran a *konnyaku* and sandal company, and was one of the most successful.

Self-representation as “heroes of independence”

After the “homecoming” efforts stalled, Ishii turned his attention to requesting a military pension from the Japanese government, which was also one of the objectives of *Fukushi Tomo no Kai Kyoryoku Kai*. He was told by Taniguchi Shigeki, Executive Director of *Fukushi Tomo no Kai Kyoryoku Kai*, that it had been recognized in Japan that the holdout Japanese soldiers were aware of their legal status and were prepared to give up their pension and other welfare benefits, but the temporary homecoming brought attention to the new fact that they had remained in a state of confusion. However, since there was still a big gap between the understanding of those who remained and the people in Japan, Taniguchi advised Ishii that first of all, “it is necessary to emphasize the explanation that, at the time, the Japanese soldiers participated in the Indonesian War of Independence out of genuine intentions in a climate that valued trust with Indonesia and

⁵⁶ *Fukushi Tomo no Kai. Geppo* [Monthly bulletin]. October 1982. p. 1.

⁵⁷ *Fukushi Tomo no Kai. Geppo* [Monthly bulletin]. April 1983. p. 1.

⁵⁸ *Fukushi Tomo no Kai. Geppo* [Monthly bulletin]. January 1983. p. 2.

supported independence.”⁵⁹ Ishii then proposed to the members of *Fukushi Tomo no Kai* that he intended to carry out “awareness-raising activities” focusing on Liberal Democratic Party politicians, as soon as materials explaining this were available. Ishii believed that the greatest “memorial” for the more than 400 victims of the Indonesian War of Independence would be to document the role of those who remained behind in the history of the founding of Indonesia, and that “the most meaningful work” for *Fukushi Tomo no Kai* would be to have this information recorded in Japan and translated into Indonesian. As if to make good on his promise, he planned to publish his autobiography and called on members to write or tape-record their own memoirs.⁶⁰

On this, some said, “Indonesia, as an independent country, would not like to say that it became independent with assistance from foreigners, and worse, would not like to write it down as a historical fact and leave it for later generations (...) They might think without saying, ‘Why do they have to submit it to the Japanese cooperative association now, and speak as if they participated in the War of Independence as Japanese and provided assistance?’ If that were to happen, it would be another odd relationship.”⁶¹ In recording the historical facts of the fight for independence, Ishii stated that “it is safe to announce that we proudly picked up our guns and fought as Japanese,” and expressed his strong concern that although the Indonesian public equally recognized the existence of “holdouts” at the time of independence, more than 40 years have passed since then, and with public memory fading and impatience growing, the more than 400 victims who were killed will be buried forever in the darkness of history if their names are not recorded as historical facts now.⁶²

Later, the issue of recording of history was settled by *Fukushi Tomo no Kai* itself keeping a collection of records rather than taking advantage of *Fukushi Tomo no Kai Kyoryoku Kai*.⁶³ Otsuto, the editor of *Geppo* (monthly bulletin), who intended to keep a record of life rather than war experiences, often called for contributions of articles about life after the war, but naturally the contributions tended to be war stories, and *Fukushi Tomo no Kai* members shared each other’s memories of the war by reading the memoirs of the War of Independence published in *Geppo*. As a result, *Fukushi Tomo no Kai* shifted from a mutual support group to a community of memory tied to the experience of the War of Independence, transforming itself into a “comrades’ association.” However, while Japan’s comrades’ associations were formed by people who had served in the same unit during World War II and shared the same experiences, the people who gathered at *Fukushi Tomo no Kai* meetings were from different backgrounds and belonged to different units, and had different circumstances that led them to stay behind. That proved to be a setback, and in the end, *Fukushi Tomo no Kai*’s collection of records of the War of Independence was never published.

Representation on the Japanese side and “restoration of honor”

Even so, the significance of self-representation as “heroes of independence” by the holdout Japanese soldiers themselves in the 1980s as an opposition to the perception in postwar Japan, which viewed them as victims of the war, was not small.

For example, in Kagoshima Television’s “No return: Postwar for the Japanese soldiers who remained in Indonesia” (broadcast on May 31, 1994), Chiyomori Michiharu said, “We must liberate the people of Greater East Asia, this is a fight for national liberation. We accepted what our superiors told us and set out in high spirits. However, nearly 50 years after the end of the

⁵⁹ Fukushi Tomo no Kai. *Geppo* [Monthly bulletin]. April 1983. p. 2.

⁶⁰ Fukushi Tomo no Kai. *Geppo* [Monthly bulletin]. April 1983. p. 3.

⁶¹ Fukushi Tomo no Kai. *Geppo* [Monthly bulletin]. May 1983. p. 2.

⁶² Fukushi Tomo no Kai. *Geppo* [Monthly bulletin]. August 1983. p. 6.

⁶³ Fukushi Tomo no Kai. *Geppo* [Monthly bulletin]. January 1986. pp. 5–6.

Greater East Asia War, we are now hearing for the first time that Japan engaged in a war of invasion, and it is truly shameful. That is not the way we felt when we went to war.” The program also showed a *Fukushi Tomo no Kai* executive stating, “The amount of money was not the issue when we insisted on a pension. Rather, it was the significance of the fact that the image of the soldiers as fugitives and deserters has been cleared and that the government recognized them as holdout soldiers,” indicating that they viewed the Japanese government’s granting of temporary soldier’s pension to 21 survivors in 1991 as a “restoration of honor” from being labeled as “fugitives” and “deserters.”

Additionally, in the documentary video “The Light of Independent Asia: History and the Present of Southeast Asia”⁶⁴ (1995), organized by the National Committee for the 50th Anniversary of the End of the War, the National Main Heroes Cemetery in Kalibata is shown with the following statement: “It is said that after the defeat of Japan, there were about 2,000 Japanese soldiers who remained in Indonesia and fought in the War of Independence. (...) The Japanese who gave their lives in the War of Independence are now respectfully honored in this cemetery as heroes of independent Indonesia. Ono Sakari, who was wounded fighting against the Dutch forces, was one of them.” Ono then appears and says, “When the war started, many people who wanted to get support from the Japanese army came to us, from the Indonesian side. I was also persuaded and joined in Indonesia. (How many people were killed in the war?) About half. At least 1,000 were killed in the war. That is because we provided guidance in the war and were on the front lines. We were easily detected by the enemy. That is why there were so many casualties in the end,” explaining the sacrificial contribution made. In 1995, the year this documentary was released, the Japanese government awarded certificates of commendation to 69 holdout Japanese soldiers in the name of the Japanese ambassador to Indonesia.

Furthermore, Yamaguchi Broadcasting’s “NNN Document 96: Japanese soldiers who did not return home—Current situation of the soldiers who remained in Indonesia” (broadcast on January 29, 1996, winner of the Japan Commercial Broadcasters Association Award [44th Award for Excellence, News Programs Division]), while focusing on the difficult retired lives of Doki Tokiji, the main character in “Japindo II and III,” and Kioka Naoyuki, also mentioned that there were people like Fujiyama Hideo, who “never doubted the liberation of the Asian colonies.” The program quoted Fujiyama’s statement, “We are going to decolonize ourselves from the colonies, they said. We felt their enthusiasm. Why did we fight the war? The Japanese army said they would bring independence. So why not support that?”

Thus, in the documentaries produced in the 1990s, representations of the holdout Japanese soldiers were no longer focused solely on the image of “abandoned people,” but rather reflect the voices of those who remained voluntarily, such as Chiyomori Michiharu, Ono Sakari, and Fujiyama Hideo. This may be due to the fact that the number of survivors was decreasing as the holdout Japanese soldiers aged and the interviewee became more diverse. As a result, however, the previously dominant image of holdout Japanese soldiers as victims of the war was revised.

“Commendation” by the Japanese government

During this period, the Japanese government, which granted a temporary soldier’s pension and presented ambassador’s awards to the holdout Japanese soldiers, presented the Order of the Sacred Treasure, Fifth Class, to four, and the Order of the Rising Sun, Silver Rays (Sixth Class), to one of the executives of *Fukushi Tomo no Kai* from 1991 to 1996, promoting their “commendation.”

⁶⁴ Preceding studies have described “The Light of Independent Asia” as “work based on a typical ‘liberation view of history.’” Goto Kenichi. “‘Kaihō sensō’ shikan/‘dokuritsu kōken’ shikan no kyomōsei [Deceptiveness of ‘liberation war’ and ‘contribution to independence’ views of history].” In *ibid.* *Tōnan ajia kara mita kingendai Nippon* [Modern Japan from the perspective of Southeast Asia]. Chapter 10. p. 333.

In 2001, the Toho film “Merdeka 17805” was released, depicting the Japanese who contributed to Indonesia’s independence. In the film, Japanese instructors who provided military training to Indonesian youths during the Japanese occupation are asked to become holdout Japanese soldiers after the war ended in defeat, and fight in the Indonesian War of Independence against the Netherlands. In the same year, former Defense Agency Director Nakatani Gen, and Prime Minister Koizumi Junichiro the following year, visited the National Main Heroes Cemetery in Kalibata.

When Tokyo Governor Ishihara Shintaro visited the National Main Heroes Cemetery in Kalibata in 2004, he laid a wreath with the words “In honor of the heroes, Governor of Tokyo,” before meeting with Miyahara Eiji, advisor to *Fukushi Tomo no Kai*, and others. He spoke to reporters, saying, “I came here and was able to meet some of the survivors. They fought the guerrilla war with hardly any weapons. They must have been heroes to the Indonesians at that time.”⁶⁵ That year, *Fukushi Tomo no Kai* received the Foreign Minister’s Commendation, and Miyahara personally received the Order of the Rising Sun, Silver Rays 2009.

In 2007 and 2015, Prime Minister Abe Shinzo visited the National Main Heroes Cemetery in Kalibata. On those occasions, Prime Minister Abe poured sake and offered flowers at the gravestone of Eto Shichio, who lies in the Heroes Cemetery. The “ceremony” of joining hands in prayer at the individual gravestones of the holdout Japanese soldiers in addition to offering flowers at the central cenotaph was later followed by Prime Minister Suga Yoshihide in 2020 and Prime Minister Kishida Fumio in 2022 when they visited the National Main Heroes Cemetery in Kalibata.⁶⁶

The Emperor and Empress’s visit to the National Main Heroes Cemetery in Kalibata in 2023 was limited to offering flowers at the central cenotaph and signing the visitor’s book, and did not include a visit to the individual holdout Japanese soldiers’ cemeteries. However, it was reported that at a meeting with people with ties to Japan the night before, they met with four second- and third-generation Japanese descendants who were executives of *Fukushi Tomo no Kai* where

⁶⁵ “Ishihara chiji ga eiyū bochi ni kenka: Fukushi Tomo no Kai kanbu ra to kondan [Governor Ishihara offers flowers at the heroes cemetery, meets with *Fukushi Tomo no Kai* executives].” *The Daily Jakarta Shimbun*, November 22, 2004. p. 1.

⁶⁶ Not all of the soldiers who died in the War of Independence against the Netherlands in the late 1940s are buried in the heroes cemetery where the “patriots” are laid to rest. Many were buried in a type of general cemetery called a national cemetery, for a variety of reasons. Such reasons include not having been in the regular military and not having documentation to prove their participation in the War of Independence, bereaved family members not wishing to have a national military funeral after their death, etc. In interviews I conducted in 2007 with 21 bereaved families of fallen soldiers in Malang Province, eastern Java, I heard stories such as, even though they participated in the War of Independence, “I was too lazy to apply for the guerrilla medal” in the confusion of the reorganization and rationalization of the Indonesian army, and “I was not given the recognition corresponding to my military achievements due to my low educational background” after the War of Independence. Additionally, there were cases where soldiers were eligible to be buried in the heroes cemetery but left a will to be buried in a national cemetery for reasons such as “it is too far from the family grave and it is difficult to visit the grave,” “I do not want to be with my war comrades even in the grave,” “I was requested to make a monetary contribution to be buried in the heroes cemetery,” “I was too poor to afford burial in a heroes cemetery,” and “It was difficult to prepare the certificate both financially and effort-wise.” In some cases, the bereaved family members decided not to bury the deceased in the heroes cemetery. A comparison of the number of holdout Japanese soldiers buried in a heroes cemetery and a national cemetery by region shows that the number of those buried in a heroes cemetery exceeds the number buried in a national cemetery in the metropolitan area, but in western Java, central Java, eastern Java and Bali, and Sumatra, the number buried in heroes cemeteries is less than that buried in national cemeteries. Especially in Sumatra, the number buried in a national cemetery is high. Ibid. *Tōbu Jawa no Nipponjin butai* [Troops made of Japanese soldiers in East Java]. p. 45.

the Emperor said, “You have suffered greatly,” and the Empress said, “Tomorrow, we will offer flowers with all our hearts.”⁶⁷

The meeting between the Emperor and the descendants of holdout Japanese soldiers was not seen during the former Emperor’s visit to Indonesia in 1991.⁶⁸ What this means is that the environment surrounding the holdout Japanese soldiers has changed over the past 30 years, and what triggered this change was the self-representation of the holdout Japanese soldiers themselves, which was amplified as a result of the mutual interaction between the parties concerned and the Japanese side.⁶⁹

In the process, the holdout Japanese soldiers in Indonesia gradually became heroes. For example, journalist Inoue Kazuhiko praised Ono Sakari, who passed away in 2014 and was buried in a national military funeral at the heroes cemetery in Batu City, East Java, as the “last hero.”⁷⁰

The reality of the “last hero”

In the NHK-produced “The Century in Moving Images Butterfly Effect: 3 Years and 8 Months of the Greater East Asia Co-prosperity Sphere” (broadcast on April 24, 2023), following the narration stating that “2,000 Japanese soldiers who remained fought alongside them [author’s note: the Defenders of the Fatherland organized during the Japanese occupation],” the following captions were read: “From the words of a holdout Japanese soldier: The Greater East Asia War was a war to liberate Greater East Asia, and Japan lost without achieving that goal. However, Indonesia is trying to become independent. We fought to show them what Japan could not achieve, even though we were a small force.” These words were spoken in 2004 when the author interviewed Ono Sakari, who was 85 years old at the time. He continued, “So, to say that I tried to succeed in what Japan could not accomplish would be a bit of an exaggeration.”⁷¹

However, Ono’s belief that he remained in the area, considering it to be a “crusade to liberate Asia,” is merely a “memory created” after the fact. In fact, Ono remained in Bandung, western Java, for a combination of reasons including the following. He was ordered to fly back to Hiroshima with the brigade’s military register immediately after the defeat, but was begged by his predecessor, a warrant officer, and switched places out of “kindness”; he felt that unconditional surrender was unacceptable; he was proud to be an active soldier; as a person he was serious and responsible at best, and inefficient and stubborn at worst; and was the third son of a farming family in Hokkaido and had no prospect of getting any farmland to support himself even if he did return to Japan.⁷²

Ono became inspired by the “crusade to liberate Asia,” after leaving the Japanese military and meeting Ichiki Tatsuo, an advocate of Pan-Asianism in Yogyakarta, central Java. He wrote in his “battlefield diary” on March 12, 1946, that “Japan, which liberated Indonesia from Dutch

⁶⁷ “Ryō heika, zanryū Nipponhei no shison ra to gomenkai [Their Majesties meet descendants of holdout Japanese soldiers].” *The Sankei News*. June 20, 2023.

⁶⁸ Emperor Akihito and Empress Michiko met with the families of former holdout Japanese soldiers when they visited Vietnam in 2017, and in 2023, Crown Prince Akishino and Crown Princess Kiko also met with the families of former holdout Japanese soldiers.

⁶⁹ Previous studies tended to downplay this process of intrinsic heroization and simply relate the Asian liberation war theory to the holdout Japanese soldiers. Ibid. “‘Kaihō sensō’ shikan/‘dokuritsu kōken’ shikan no kyomōsei [Deceptiveness of ‘liberation war’ and ‘contribution to independence’ views of history].” pp. 327–329.

⁷⁰ Inoue Kazuhiko. *Nippon ga tatakatte kurete kansha shite imasu 2: Ano sensō de Nipponjin ga sonkei sareta riyū* [We are grateful that Japan fought for us 2: The reason why the Japanese were respected in that war]. Sankei Shimbun Publications. 2015. pp. 150–155.

⁷¹ Ibid. *Zanryū Nipponhei no shinjitsu* [Truth about the holdout Japanese soldiers]. pp. 75–76.

⁷² Ibid. *Zanryū Nipponhei no shinjitsu* [Truth about the holdout Japanese soldiers]. pp. 86–89.

oppression, is a nation of the yellow race. We are brothers belonging to the same Asian race. In order to bring peace to Asia, I hereto pledge to wholeheartedly fight together and die together hand in hand with my Indonesian brothers.”⁷³ and positioned his reason for remaining as a “crusade to liberate Asia” for the first time. On the other hand, in his battlefield diary for May 1946, he mentions that there were holdout Japanese soldiers who had “left the military due to relations with women or for other reasons such as personal success,”⁷⁴ and he encourages them to return to it, fearing that “this will be known by the people of Indonesia in the future or even today, and when the people of Indonesia find themselves in a difficult fight or in social disorder in the future, these Japanese who will not be able to directly participate in the fight for independence may encounter unforeseen disasters.”⁷⁵

Ono’s battlefield diary, a valuable historical document from that period,⁷⁶ shows that he was negative about not fighting for a cause and staying behind to live. However, for many of the holdout Japanese soldiers, it is inferred that their participation in the Indonesian War of Independence was not an ideological decision, but a decision for survival.

⁷³ Ono Sakari (edited and commented by Hayashi Eiichi). *Nampō gunsei kankei shiryō 42: Indoneshia zanryū Nipponhei no shakaishi* [Documents related to military administration in the southern territories #42: Social history of the holdout Japanese soldiers in Indonesia]. Ryuukeishosha. 2010. p. 48.

⁷⁴ Ibid. *Indoneshia zanryū Nipponhei no shakaishi* [Social history of the holdout Japanese soldiers in Indonesia]. p. 58.

⁷⁵ Ibid. *Indoneshia zanryū Nipponhei no shakaishi* [Social history of the holdout Japanese soldiers in Indonesia]. p. 58.

⁷⁶ “Kyū nipponhei no nikki wo hakken: Indoneshia dokuritsu sensō ni sansen [Diary of former Japanese soldier discovered: Joining the Indonesian War of Independence].” Society page of *The Asahi Shimbun* morning edition. November 2, 2005. “Ikita akashi: Indoneshia dokuritsu sensō no nikki, jō—Kesshi no hibi, kokumei ni [Proof of his life: Diary of the Indonesian War of Independence, part 1—Clear record of the desperate days].” General culture page of *The Asahi Shimbun* morning edition. November 2, 2005. “Ikita akashi: Indoneshia dokuritsu sensō no nikki, ge—‘Tsutaetai’ hikitsugu negai [Proof of his life: Diary of the Indonesian War of Independence, part 2—Taking over their wish to ‘pass on’].” General culture page of *The Asahi Shimbun* morning edition. November 3, 2005.

Reshaping the Cultural Heritage Regime: How Japan and China Engage in UNESCO's Heritage Programs

Ryoko Nakano

Abstract

Non-Western rising powers wield significant influence in reshaping the direction of the United Nations Educational, Scientific, and Cultural Organization (UNESCO), ensuring its alignment with the dynamic global landscape and meeting the expectations of both rising states and those in the Global South. This article closely examines how Japan and China, as rising powers in the past and present, have actively engaged with UNESCO to exhibit their rich cultural legacies and histories while harnessing their influence to challenge Eurocentric heritage paradigms and assert their distinct Asian leadership positions. The article also underscores apprehensions regarding China's approach, rooted in a discourse of civilization and transregional connectivity, which might be intricately linked to global geopolitical ambitions and economic interests.

Introduction

The United Nations Educational, Scientific, and Cultural Organization (UNESCO) has long been recognized as a vital cultural organization whose mission is to foster a culture of peace, eradicate poverty, and facilitate intercultural dialogue through education, science, culture, communication, and information.¹ The main architects of UNESCO primarily hailed from Western countries, predominantly Europeans, British, and Americans. They played a pivotal role in shaping the organization, following in the footsteps of its forerunners, the International Institute of Intellectual Cooperation and the International Bureau of Education. From standard-setting to social, cultural, and educational campaigning, a wide range of UNESCO's activities underscore the universal ideal of peace, reflecting the norms, values, and practices of Western enlightenment and humanist traditions.²

However, as multipolarity and pluralism gain prominence in global governance, UNESCO must reflect the new global geopolitical dynamics by working in line with the expectations of developing and emerging states that comprise the Global South.³ This is inevitable for ethical and financial reasons. UNESCO's moral and expert authorities have so much relied on the support from its member states (as of 2023, 194 member states and 12 associate members). Financially, UNESCO severely suffered the loss of funding after the United States decided to halt a planned payment to UNESCO for the recognition of Palestine as a new member in 2011.⁴ Although the

¹ UNESCO, Constitution of the United Nations Educational, Scientific and Cultural Organization, <https://www.unesco.org/en/legal-affairs/constitution>

² J.P. Singh, *United Nations Educational, Scientific, and Cultural Organization (UNESCO): Creating Norms for a Complex World* (London and New York: Routledge, 2010).

³ Willem J. H. Willems, "The Future of World Heritage and the Emergence of Transnational Heritage Regimes," *Heritage & Society*, vol. 7, no. 2, 2014, pp. 105–120.

⁴ The US also made an official withdrawal from UNESCO in 2019 due to the alleged bias of UNESCO against Israel. Joe Hernandez, "The U.S. Says It Wants to Rejoin UNESCO after Exiting during the Trump Administration," *National Public Radio*, June 12, 2023, <https://www.npr.org/2023/06/12/1181687608/united-states-unesco-return-membership-funding>

US declared its return to UNESCO in June 2023, the relative decline of the Western economic powers makes it imperative for UNESCO to cultivate partnerships outside the West to secure its funds for operation. In particular, non-Western rising powers that have gained more resources and advanced technologies hold strategically important positions that no international organizations can ignore.

Likewise, rising powers also care about international organizations like UNESCO to enhance their position in the global hierarchy. As they accumulate economic power, they strive for prestige and respect in the international arena.⁵ Culture is a significant platform for those states that want to showcase their rich history, traditions, civilization, creativity, and achievement. Consequently, it is not surprising that rising powers are increasingly engaging UNESCO and participating in its flagship heritage platforms, such as World Heritage and Intangible Cultural Heritage.⁶

Against this background, this article examines the endeavors of Japan and China to (re-) establish themselves as culturally and historically prominent nations within UNESCO while reshaping the international heritage regime in favor of their interests and perspectives. Japan was the first Asian country to become a major financial contributor to this Western-dominated organization, but China swiftly emerged as an influential actor in the twenty-first century, leveraging its financial power to the fullest extent. Both countries have actively preserved and promoted cultural heritage, challenging the Eurocentric view of heritage by emphasizing Asian or non-Western (Global South) perspectives. However, this article contends that China's recent emphasis on a civilizational discourse in the construction of its transregional cultural heritage is raising significant concerns due to its apparent connection with the country's political ambitions to establish itself as a central player in the global order. Moreover, this discourse is seen as a means to achieve its economic goals, including gaining access to resources and markets on a global scale. In response to the growing dominance of a Sinocentric historical narrative, major powers need to ensure UNESCO's transparency, accountability, and multilateral decision-making to better serve the interests of its diverse membership and the broader global community.

The remainder of this article is organized as follows. First, I will explain the general characteristics of UNESCO's World Heritage, the international platform for safeguarding natural and cultural heritage worldwide. Second, I will examine the efforts made by Japan to expand the Eurocentric concept of cultural heritage. As one of the main contributors to UNESCO, Japan has used its economic leverage to instill non-Western perspectives into World Heritage criteria. Following the changes of UNESCO's heritage concept, the third section focuses on China, the new emerging power that aims to exhibit its presence in UNESCO. Using its financial power, China has contributed to the emergence of new norms regarding heritage conservation and international cultural cooperation. I conclude that those efforts serve to diversify the cultural heritage concept per the needs and perspectives of non-Western nations; however, it is necessary not to confuse cultural diversity with cultural multicentricity. Japan, for its part, should play a role in deterring forces to eliminate diversity and create another cultural hierarchy.

UNESCO's World Heritage and Eurocentrism

World Heritage is the most recognized international platform that UNESCO has developed, gaining in global popularity since its inception in 1972. As of 2023, 195 state parties have signed the Convention Concerning the Protection of the World Cultural and Natural Heritage (known as World Heritage Convention). World Heritage is the largest international cultural framework

⁵ Rohan Mukherjee, *Ascending Order: Rising Powers and the Politics of Status in International Institutions* (Cambridge: Cambridge University Press, 2022). Steven Ward, *Status and the Challenge of Rising Powers* (Cambridge: Cambridge University Press, 2017).

⁶ Ryoko Nakano and Yujie Zhu, "Heritage as Soft Power: Japan and China in International Politics," *International Journal of Cultural Policy*, vol. 26, no. 7, 2020, pp. 869–881.

uniting diverse state and non-state entities in the mission to safeguard and preserve natural and cultural heritage worldwide.

European countries dominate the World Heritage List, with one notable exception: China. As of 2023, Italy, China, Germany, France, and Spain were the top five countries with World Heritage properties. Europe and North America account for 47.12% of the total properties, followed by Asia and the Pacific (24.1%), Latin America and the Caribbean (12.43%), Africa (8.59%), and the Arab states (7.76%).⁷

It would be hasty to conclude that African and Arab states lack significant heritage compared to Europe and North America. Whether or not one country has a culturally significant heritage is not solely determined by the number of properties listed on the World Heritage List. African and Arab states have rich and diverse cultural and natural heritage that may not have been extensively recognized or included on the list. The underrepresentation of certain regions could reflect systemic biases in the nomination and evaluation processes rather than the lack of outstanding heritage sites and landscapes.

One perspective for explaining the small number of World Heritage sites in African and Arab states is that the criteria of the Outstanding Universal Value (OUV) to be recognized as World Heritage are biased.⁸ Those who explore heritage as an area of critical inquiry argue that European heritage experts have shaped UNESCO's charters and recommendations.⁹ As a result, Eurocentrism within World Heritage criteria accounts for the overrepresentation of European countries. For instance, if "authenticity" is linked to material and substance based on European heritage examples, such as brick and stone buildings, wooden buildings may not be authentic because their materials are usually replaced with new ones over decades and centuries.

Due to differing perspectives, interests, and priorities among member states regarding World Heritage, the North-South contestation has marked the discussions in the World Heritage Committee, comprising 21 states that make final decisions on World Heritage inscriptions.¹⁰ Developed countries, primarily from the Global North, often have greater financial and technical resources, which enable them to select sites and to submit more nominations for a World Heritage status. With the notion that the preservation of high standards, rigorous evaluation processes, and adherence to technical criteria to maintain the integrity and universal value of the World Heritage List, European states may emphasize the importance of expert evaluations and the need for stringent criteria to protect the credibility and authenticity of the list. However, developing countries, primarily in the Global South, often face challenges due to their limited resources, capacity, and infrastructure. Some developing countries advocate for greater inclusivity, fairness, and recognition of their cultural and natural heritage, calling for reforms in the nomination process, evaluation criteria, and allocation of resources to ensure a more equitable representation of sites from diverse regions and cultures. Nevertheless, non-Western countries, joining the platform relatively later, feel compelled to conform to the norms and practices of Western heritage conservation and management.

Ultimately, the North-South contestation within the World Heritage Committee represents the current changing global power dynamics in the twenty-first century. In some areas, efforts have

⁷ UNESCO, "World Heritage List Statistics," <https://whc.unesco.org/en/list/stat>

⁸ OUV means cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity.

⁹ Laurajane Smith, *Uses of Heritage* (London and New York: Routledge, 2006). Denis Byrne, "Western Hegemony in Archaeological Heritage Management," *History and Anthropology*, vol. 5, no. 2, 1991, pp. 269–276.

¹⁰ Christoph Brumann, "Slag Heaps and Time Lags: Undermining Southern Solidarity in the UNESCO World Heritage Committee," *Ethnos*, vol. 84, no. 4, 2019, pp. 719–738.

been made to bridge this divide through dialogue, capacity-building initiatives, and collaborative projects to address the concerns of developing countries and promote a more balanced and inclusive representation of World Heritage. A noteworthy example of this is the increasing influence of the Global South within UNESCO, prompting UNESCO's secretariat to prioritize the development of a sustainable development framework, given that development is a primary concern of the Global South.¹¹

In this context, the engagement of rising powers in UNESCO has become key. In particular, the emergence of Japan and China as major economic powers has significantly influenced the modifications of UNESCO's heritage concept and institutions. In the following sections, I will examine those two cases as essential steps for diversifying UNESCO's heritage platforms.

Japan and the expanding scope of cultural heritage

Japan joined UNESCO in 1951, before signing the San Francisco Peace Treaty to formally end World War II.¹² At that time, Japan faced limited opportunities for membership in international organizations due to its role as an aggressor during the war. However, UNESCO emerged as the first organization to approach Japan under the US occupation (1945–1952), initiating “re-education activities” aimed at eliminating the causes of war and aggression.¹³ A group of Japanese professors and educators welcomed UNESCO's initiatives and created a mass educational movement to promote the understanding of peace, human rights, and justice, as advocated by UNESCO. Consequently, UNESCO played a pivotal role in Japan's re-entry into the international arena during the postwar era.

As time progressed, Japan actively participated in UNESCO's initiatives, leveraging its expertise, sharing its cultural resources, and contributing to numerous programs and projects led by the organization. As early as 1954, a group of Japanese archeological experts and historians prepared an extensive report on the Silk Roads as part of the contribution to UNESCO's “Major Project for Mutual Appreciation of Cultural Values of East and West.”¹⁴ At the ascendance of Japanese economic power, the Silk Roads captured the Japanese imagination when NHK, a semi-governmental television network, produced and aired a documentary series about the Silk Roads in the 1980s. The program ignited the Japanese people's romantic fascination with ancient regional history.¹⁵ With significant interest by society, the Japanese government decided to participate in UNESCO's ten-year project of the “Integral Study of the Silk Roads: Roads of Dialogue” in 1988. Japan supported the expedition known as “the Maritime Route from Venice to Osaka,” involving Japanese scientists, researchers, and journalists. As a result, Japan has emerged as one of the proactive participants in UNESCO's endeavor to rekindle the Silk Roads memories and heritage during the 1990s.

¹¹ Dobrosława Wiktor-Mach, “Cultural Heritage and Development: UNESCO's New Paradigm in a Changing Geopolitical Context,” *Third World Quarterly*, vol.40, no.9, 2019, pp. 1593–1612.

¹² Takashi Saikawa, “Returning to the International Community: UNESCO and Post-War Japan, 1945–1951,” in Poul Duedahl, ed., *A History of UNESCO: Global Actions and Impacts* (Basingstoke and New York: Palgrave Macmillan, 2016), pp. 116–130.

¹³ Aigul Kulnazarova and Poul Duedahl, “UNESCO's Re-education Activities in Postwar Japan and Germany: Changing Minds and Shifting Attitudes towards Peace and International Understanding,” in Aigul Kulnazarova and Christian Ydesen, eds., *UNESCO without Borders* (London and New York: Routledge, 2016), pp. 52–75.

¹⁴ Japanese National Commission for UNESCO, *Research in Japan in History of Eastern and Western Cultural Contacts: Its Development and Present Situation*, Japanese National Commission for UNESCO, 1957.

¹⁵ Marie Thorsten, “Silk Road Nostalgia and Imagined Global Community,” *Comparative American Studies: An International Journal*, vol. 3, no. 3, 2005, pp. 301–317.

Japan's support for UNESCO's efforts to preserve World Heritage predates its ratification of the World Heritage Convention. In 1989, Japan financed the establishment of UNESCO/Japan's Funds-in-Trust for the Preservation of the World Cultural Heritage. This was consistent with Japan's interest in international cultural cooperation, which came to be a dominant theme for an economically developed Japan.¹⁶ After the ministerial discussion and coordination over the difference between the codes and discourse of the World Heritage Convention and Japanese domestic law on cultural property, Japan finally ratified the World Heritage Convention in 1992.

Since then, as a major financial contributor to UNESCO, Japan has significantly challenged the organization's Eurocentric heritage concepts and norms. As mentioned earlier, World Heritage and its related discourse were predominantly shaped by European scholars and practitioners in heritage conservation and management and European-based organizations in the field. Japan encountered such European-dominated discourse when the Horyuji temple and other Buddhist monuments were assessed for World Heritage inscription in the early 1990s. While the "authenticity" of the wooden temple was questioned due to the view that replaced materials were not original, Japan started exploring the meaning of authenticity.¹⁷ Consequently, Japan supported experts' initiatives for acknowledging non-Western heritage concepts in relation to the OUV criteria. The Nara Document on Authenticity (1994), the outcome document of this meeting, had a major impact on UNESCO's understanding of heritage, as it emphasized cultural contexts in determining authenticity.¹⁸ The document also legitimized the Japanese claim that wooden monuments and buildings whose materials are replaced with new ones also should be considered authentic.

Another milestone for Japan in UNESCO was the election of Koichiro Matsuura, a Japanese diplomat who served earlier as the Chair of the World Heritage Committee, as the Director-General of UNESCO in 1999. By that time, UNESCO had adopted a nonbinding Recommendation on the Safeguarding of Traditional Culture and Folklore (1989), a Living Human Treasures System (1993), and a Proclamation of Masterpieces of the Oral Heritage of Humanity Program (1998). These documents reflect the interest of non-Western countries that have rich non-material cultural assets and resources. However, Matsuura's leadership, backed by Japan's financial and diplomatic support, made it possible to upgrade the Masterpieces program to the Intangible Cultural Heritage (ICH) Convention (2003) and institutionalize a non-Western concept of intangible cultural heritage.¹⁹ Having Natsuko Aikawa from Japan as a developer of the intangible cultural heritage program, Japan further reinforced its commitment to UNESCO by actively shaping and influencing the organization's agenda.²⁰ Given Japan's rich cultural traditions, foods, cultural practices, and handicraft skills, creating a new international heritage platform in UNESCO made sense. The launch of the ICH program was also timely as UNESCO adopted the Universal Declaration on Cultural Diversity in 2002, which defines "culture" broadly and urges all nations and institutions to preserve culture in all forms. Although this achievement was not entirely Japan's success, having involved a bottom-up initiative, Japan's financial and diplomatic

¹⁶ Natsuko Akagawa, *Heritage Conservation and Japan's Cultural Diplomacy: Heritage, National Identity and National Interest* (London: Routledge, 2014).

¹⁷ Aurélie Éliisa Gfeller, "The Authenticity of Heritage: Global Norm-Making at the Crossroads of Cultures," *The American Historical Review*, vol. 122, no. 3, 2017, pp. 758–791.

¹⁸ *Ibid.*

¹⁹ Aurélie Éliisa Gfeller and Jaci Eisenberg, "UNESCO and the Shaping of Global Heritage," in Poul Duedahl, ed., *A History of UNESCO* (London: Palgrave Macmillan, 2016), pp. 279–299.

²⁰ Natsuko Akagawa, "Intangible Heritage and Embodiment: Japan's Influence on Global Heritage Discourse," in William Logan, Máiréad Nic Craith, and Ullrich Kockel, eds., *A Companion to Heritage Studies* (Chichester, United Kingdom: Wiley-Blackwell, 2016), pp. 69–86.

contribution made a significant impact, enhancing greater inclusivity in UNESCO.²¹

These initiatives highlight Japan's proactive approach to reshaping the discourse on heritage and promoting its own cultural perspectives. For non-Western powers engaging with UNESCO, the Eurocentric discourse creates a pressing need to assert their national and regional characteristics in heritage conservation and management. It also presents an opportunity to potentially revise existing platforms to better serve their own interests. Japan has sought to bridge the gap and ensure that its unique heritage perspectives and practices are duly recognized and incorporated into the global heritage discourse. By doing so, it aims to contribute to a more inclusive and balanced approach to heritage conservation that acknowledges the diverse cultural landscapes and traditions of non-Western societies. The scope of UNESCO's cultural heritage has expanded following the new voices of non-Western countries, particularly Asian.

China and the creation of a new cultural platform

China's engagement with UNESCO's heritage regime can be traced back to its ratification of the 1972 World Heritage Convention in 1985. Initially, China concentrated on its domestic agenda, including capacity-building and raising people's awareness of World Heritage. Unlike Japan, which accumulated knowledge and experiences regarding heritage conservation and restoration over decades, China experienced a social and educational disruption during the Cultural Revolution (1966–1976), which destroyed material cultural properties and the persecution of "intellectuals" in various cultural, professional, and educational domains. China therefore pursued expertise in the field of heritage conservation. With the successful outcomes of China's reform and opening-up policies in spurring economic development, the Chinese government also participated in three Advisory Bodies of the World Heritage Committee: International Council on Monuments and Sites in 1993, the International Union for Conservation of Nature in 1996, and the International Centre for the Study of the Preservation and Restoration of Cultural Property in 2000.

China gradually accepted the concept of World Heritage while actively learning the language of the World Heritage nomination.²² This is a top-down process in which government bodies, such as the State Administration for Cultural Heritage, the Ministry of Construction, and the Ministry of Education, have participated. This integration of various government bodies and expertise underscores China's commitment to actively participate in the World Heritage Committee and engage with heritage-related matters on a national and international level. It demonstrates a coordinated effort to combine diplomatic and cultural heritage perspectives within China's delegations, emphasizing the importance the country places on heritage preservation and its recognition by international organizations like UNESCO.

As China's economic ascendance has gained prominence, and tourism became popular activities among Chinese citizens, China's heritage policy entered a new era. Like many other developing countries, the Chinese government was keen to increase the number of World Heritage sites both for inbound and domestic tourists. As has been called "heritage fever," even Chinese local officials made restless efforts to obtain World Heritage recognition in their corresponding sites.²³

After Xi Jinping came in power, China reinvigorated its commitment to UNESCO and the

²¹ J.P. Singh, "Cultural Networks and UNESCO: Fostering Heritage Preservation betwixt Idealism and Participation," *Heritage & Society*, vol. 7, no. 1, 2014, pp. 18–31.

²² Rouran Zhang, "World Heritage Listing and Changes of Political Values: A Case Study in West Lake Cultural Landscape in Hongzhou, China," *International Journal of Heritage Studies*, vol. 23, no. 3, 2017, pp. 215–233.

²³ Celine Lai, "UNESCO and Chinese Heritage: An Ongoing Campaign to Achieve World-Class Standards," in Poul Duedahl, ed., *A History of UNESCO: Global Actions and Impacts* (Basingstoke and New York: Palgrave Macmillan, 2016), pp. 313–324.

preservation of cultural heritage. Xi's profound dedication to UNESCO was evident, with his initial visit to a UN organization being to UNESCO. Embracing the "China Dream" as the cornerstone of his policy, President Xi directed his attention toward the renaissance of Chinese heritage, culture, and civilization. Together with the Belt and Road Initiative, a massive infrastructure development assistance project that Xi launched, China began to express its willingness to promote not only its economic relationship but cultural and social relationships with other countries.

During Xi's period, China transformed itself from a passive observer to an active contributor within UNESCO. China's financial contribution to the UNESCO annual budget overtook the amount of Japan's contribution, making China the biggest contributor to UNESCO after the US withdrawal from the organization in 2019.²⁴ In the World Heritage Committee, China has become one of the most vocal and influential countries in decision-making.²⁵ China has also managed to have placed its own officials in top management positions: Xing Qu as Deputy Director-General and Qian Tang as President of the UNESCO International Bureau of Education.²⁶ Viewed through the lens of shifting power dynamics, these developments signify the culmination of China's willingness to take a lead in UNESCO's programs.

One of the themes over which China actively aligns itself with UNESCO is the linkage between culture and development in the context of the Sustainable Development Goals (SDGs). Building on its previous emphasis on UNESCO's role in development and its own domestic experiences, China backed Director-General Bokova's agenda to enhance UNESCO's involvement in the UN's Post-2015 Development Agenda. This support had already appeared when China hosted the International Congress "Culture: Key to Sustainable Development" convened by UNESCO in Hangzhou in 2013, marking the initiation of the agenda to connect culture with development.²⁷ China's engagement in this agenda serves its domestic interests in development-focused approaches to culture. While some warn that such a policy has destroyed local cultural heritage in Xinjiang, Tibet, and other regions of ethnic communities, this initiative has legitimized the state's utilization of cultural heritage in the name of development. The ultimate outcome of this endeavor was dependent on a broader international network. By connecting the multilateral culture–development agenda and China's own domestic cultural development, China exhibited its central role in promoting the interest of the Global South to the international audience.

Moreover, China's promotion of the Silk Roads heritage in UNESCO has indicated China's desire to champion the field of international cultural cooperation. Notably, China's involvement is comprehensive, with both the central government and regional entities actively participating in the promotion of Silk Roads narratives, resulting in increased recognition and reputation. The Municipality of Xi'an, recognizing its historical role as the "east terminus of the historic Silk Roads," has actively used its historical legacy and aligned its urban development plans accordingly.²⁸ Additionally, Xi'an has hosted several subregional meetings and ceremonial events related to the Silk Roads. At the launch of the collaborative "Silk Roads programme" in UNESCO in 2015, it was not only the Chinese National Commission for UNESCO, but commercial actors,

²⁴ This might change as the US decided to return to UNESCO in 2023.

²⁵ Enrico Bertacchini, Claudia Liuzza, and Lynn Meskell, "Shifting the Balance of Power in the UNESCO World Heritage Committee: An Empirical Assessment," *International Journal of Cultural Policy*, vol. 23, no. 3, 2017, pp. 331–351.

²⁶ Grace Guo, "Should China Now Lead UNESCO?" *The Diplomat*, September 22, 2017. Hwa Young Nam, "The UNESCO Unveiled," *Investigative Journalism Reportika*, 2023. <https://ij-reportika.com/download/9308/?tmstv=1694065301>

²⁷ Wiktoria Mach, 2019, p. 1594.

²⁸ Yang Yang, "Producing Multiple Imaginations of the Silk Road in Xi'an, China's Urban Development," *International Journal of Cultural Policy*, vol. 26, no. 6, 2020, pp. 854–866.

such as the Tang West Market Cultural Industry Investment Group of China, and local agents such as the Provincial Government of Shanxi Province, were also involved.²⁹ China's National Commission for UNESCO has provided support for initiatives such as the Silk Roads Youth Research Grant scheme, while the Beijing International Peace Culture Foundation has funded projects such as the development of an Interactive Atlas of Cultural Interactions along the Silk Roads and the Youth Eyes on the Silk Roads Photo Contest.³⁰

China's wide-ranging activities in the Silk Roads heritage field has broader geopolitical implications. China positions itself as the focal point of civilization, with multifaceted connections to the Middle East, Europe, and Africa, entails China's active involvement in constructing a heritage discourse aligns with its geopolitical and economic agenda.³¹ In contrast to Japan's promotion of the Nara Convention and its initiative for establishing the Intangible Cultural Heritage, China's emphasis on its pivotal role in development and culture, and its promotion of a new Silk Roads heritage platform, is directly related to the discursive construction of the Sinocentric national narrative that China aims to spread across the globe. Fearing such a dominant historical narrative, voices in Southeast Asia are advocating for the acknowledgment and reclamation of their region's historical contributions to the maritime Silk Roads.³² Japan and South Korea also share concerns that their historical ties to the Silk Roads may be overshadowed by Chinese initiatives, leading to potential oblivion.³³

In the aftermath of the zero-COVID policy in 2023, China organized the Alliance for Cultural Heritage in Asia, reviving the ambition to develop "Asian approaches" to conserving and preserving cultural heritage.³⁴ Closely observing China's Silk Roads diplomacy and heritage promotion, Tim Winter, the author of *Geocultural Power* (2019), warned that China's grand initiative for creating a matrix of cultural cooperation, or what Xi Jinping calls a new Global Civilization Initiative, could be a disaster for communities and cultures throughout Asia.³⁵ Mistakes have been made in the past, with the excesses related to the promotion of cultural heritage and development destroying people's livelihoods and natural and cultural environment. For China to be a champion of both development and cultural heritage conservation and preservation in Asia, communities, cultures, and people in the Silk Roads corridors should not be sacrificed for being commodified and commercialized for tourism and state-led infrastructure development projects.

²⁹ UNESCO, "The First Meeting of the International Network for the Silk Road Online Platform: A New Phase in UNESCO's Silk Roads Initiative," <https://en.unesco.org/silkroad/content/first-meeting-international-network-silk-road-online-platform-new-phase-unescos-silk-roads>

³⁰ UNESCO, "Youth Eyes on the Silk Roads: Beijing International Peace Culture Foundation," <https://unescosilkroadphotocontest.org/en/node/41>

³¹ Giulia Sciorati, "'Constructing' heritage diplomacy in Central Asia: China's Sinocentric historicisation of transnational World Heritage Sites," *International Journal of Cultural Policy*, vol. 29, no. 1, 2023, pp. 94–112.

³² Kwa Chong Guan and Han Fook Kwang, "Southeast Asia in the Forgotten History of the Maritime Silk Road?" *RSIS Commentary*, October 13, 2023, https://www.rsis.edu.sg/rsis-publication/rsis/southeast-asia-in-the-forgotten-history-of-the-maritime-silk-road/?doing_wp_cron=1697589997.5977740287780761718750

³³ Ryoko Nakano, "A Geocultural Power Competition in UNESCO's Silk Roads Project: China's Initiatives and the Responses from Japan and South Korea," *Journal of Current Chinese Affairs*, vol. 52, no. 2, 2023, pp. 185–206.

³⁴ Xinhua, "Xi Greets Conference of Alliance for Asian Cultural Heritage," *China Daily*, April 25, 2023, <https://www.chinadailyhk.com/article/327459>

³⁵ Tim Winter, "What's behind China's New Alliance for Cultural Heritage in Asia?" *The Diplomat*, May 4, 2023, <https://thediplomat.com/2023/05/whats-behind-chinas-new-alliance-for-cultural-heritage-in-asia/>

Concluding thoughts

The history of international cultural cooperation in UNESCO reflects the aspirations of countries seeking to bolster their international standing. By actively engaging in UNESCO, these nations aim to contribute to shaping the international cultural landscape, exert influence, and establish narratives of their national history and culture, and contributions within the organization's framework. Through UNESCO, rising powers in particular aim to leverage their cultural heritage and resources to enhance their soft power and assert their presence on the global stage. Japan's aspiration to become a cultured nation is no exception, as it seeks to overcome WWII's negative legacy and move beyond economic power to cultivate its moral standing. Similarly, China launched an endeavor to work within the Western-dominated international order in the 1970s. As its economic power grew, it also aimed to cultivate a new terrain of cultural cooperation and present its national legacy and historical connectivity with the world.

For UNESCO, ensuring a fair and equitable approach to the recognition and preservation of diverse culture and heritage worldwide remains an ongoing challenge. Greater transparency ensures that decisions and actions are accountable and open to scrutiny, reducing the potential for favoritism or biased decision-making. Efforts have been made to address the imbalances in heritage lists/registers and promote a more inclusive representation of heritage from different regions. These measures need to be upgraded to reshape international cultural cooperation to cater not only to the interests of a select few but to many without power.

However, there is a risk that UNESCO will become a platform for specific countries to promote and legitimize their historical narratives and expand their influence beyond the cultural terrain. In particular, China apparently uses UNESCO and its cultural programs to promote its agenda and influence. China combines heritage with development. The inclusion of development attracts developing countries that prioritize economic growth rather than cultural conservation. Under the name of culture and people-to-people connections, China's initiatives can create major social and physical upheavals and destructions, justifying infrastructure projects that may benefit the tourism industry but displace populations.

For those who want to retain their cultural distinctiveness and historical significance, the growing dominance of a Sinocentric historical narrative regarding the Silk Roads is a source of apprehension. Other major powers, including Japan, may be responsible for further enhancing UNESCO's improvement by ensuring transparency, accountability, and multilateral decision-making in the organization. It is also important to support the capacity-building for heritage conservation and protection in other countries, like Japan's recent assistance to the Silk Roads heritage nomination by Central Asian countries.³⁶ By encouraging other UNESCO members to focus on cultural heritage matters, Japan should contribute to creating a more inclusive and democratic environment within the organization, enhancing fairness, inclusivity, and equal representation in UNESCO. By doing so, Japan may serve the original mission of UNESCO and the broader global community.

The recent news of the US rejoining UNESCO is potentially positive.³⁷ Having the US actively participate in UNESCO discussions could help counterbalance China's influence and its pressures on other UNESCO member states. However, the US must assume a constructive role to gain the

³⁶ For example, see UNESCO, "Silk Roads World Heritage Serial and Transnational Nomination in Central Asia: A UNESCO/Japanese Funds-in-Trust Project," <https://whc.unesco.org/en/activities/825/>. UNESCO, "Expert Meeting launches Phase III of the UNESCO/Japan Funds-in-Trust Project: Support Silk Roads World Heritage Nomination(s) process," February 23, 2022, <https://whc.unesco.org/en/news/2416>

³⁷ UNESCO, "The United States' Return to UNESCO Celebrated with a Flag-Raising Ceremony," July 26, 2023, <https://www.unesco.org/en/articles/united-states-return-unesco-celebrated-flag-raising-ceremony>

trust and backing of countries in the Global South. This involves offering timely and proficient assistance to developing nations regarding culture and development and advocating for essential reforms within UNESCO. Without these efforts, the journey toward a more diverse and inclusive global community may result in the establishment of a multipolar hierarchy instead.

Defense Diplomacy as a Foreign Policy Tool: Understanding the Evolving Curve of Japan-India Joint Military Exercises

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Abstract

This paper delves into evaluating defense diplomacy as a foreign policy tool by exclusively discussing the nature and scope of the Japan-India bilateral joint military exercises (JMEs). While defense diplomacy and defense cooperation are concepts rooted in cooperative security, the latter took shape as an overarching concept comprising defense partnerships and collaboration via JMEs. It further highlights how the JMEs collaboration between Japan and India impacts three distinct sub-regions in Asia; namely, South Asia, Southeast Asia, and East Asia; along with the Indian Ocean Region and the Persian Gulf. The paper traces the evolving course and debates on Japan's defense diplomacy and security policy, highlighting Japan's implementation of a new proactive diplomatic policy tool – namely, the official security assistance (OSA) framework to grant financial aid to the militaries of like-minded countries. With the evolution of their respective security policies transiting to a phase wherein centrality of the Indo-Pacific is the focus, the paper provides an in-depth understanding of the Japan-India defense cooperation [JMEs] graph. The paper concludes by arguing that the Japan-India bilateral JMEs graph across Asia has proved instrumental in their expanding acceptance as key regional strategic actors, and how the JMEs constitute as a key confidence-building measure (CBM) to enhance a securitized regional order, which directly reflects upon the Indo-Pacific's balance-of-power politics.

Since the end of the Cold War, the term cooperative security has primarily been used to describe a peaceful approach to security through increased international cooperation. Its vitality got further pronounced, a decade later, following the 9/11 terror attacks on the US in September 2001, which redefined terrorism, along with the need to strengthen international cooperation to combat it in a comprehensive and sustained manner. Largely, cooperative security became a corresponding principle for international security, more so, in terms of being an understanding/commitment among a group of nations with commonality of interests and values to protect the security of individual members within their joint spheres of interest.¹ Resultantly, the role of international defense cooperation in meeting foreign policy goals and supplementing diplomatic initiatives gained critical consequence and momentum. While defense diplomacy and defense cooperation are concepts rooted in cooperative security, the latter took shape as an overarching concept comprising defense partnerships and collaboration via joint military exercises (JMEs), both bilaterally and multilaterally.

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¹ For more details see, Monika Chansoria, "Regional Cooperative Security in the Indo-Pacific: Synergizing Consultative Mechanisms across the Indian Ocean, East China Sea, South China Sea, and the Western Pacific," *Japan Review*, vol. 1, no. 2, Winter 2017.

Military Diplomacy, Defense Cooperation, and JMEs: Offshoots of the Contemporary Cooperative Security Paradigm

The overarching need for cooperative security provided defense cooperation with a new role and broadened scope. Based essentially on the realist understanding of state behavior, and traditionally employed for *realpolitik* purposes by liberal democratic states, defense cooperation is the sum of many defense-related actions, collectively aimed at furthering one's national interests through active cooperation with friendly nations. Defense cooperation and military diplomacy are critical pillars of the cooperative security agenda, which, over time, have emerged as ideal tools to advance vital macro level foreign policy objectives with strategically important countries and regions. The post-9/11 world witnessed the scope of defense cooperation widening more towards a security-motivated-cooperative approach, with JMEs constituting as its most visible and predominant component in peacetime. As bilateral defense cooperation agreements (DCAs) assumed shape of becoming the most common form of institutionalized defense cooperation,² JMEs constituted their core. DCA formation saw states cooperating to obtain joint gains.³ Faced with an increasingly complex security environment, states began to use DCAs⁴ to improve coordinated responses to common security threats, and align themselves with communities of like-minded collaborators. JMEs serve multiple political dimensions, with reassuring allies and partners serving as one of the most crucial political aims.

In the post-9/11 world, confidence-building measures (CBMs), defense cooperation, and military [defense] diplomacy and engagement became not only possible, but highly desirable, given that they reduced transaction costs and made interstate relations more predictable. Participation in international level military exercises, bilaterally and multilaterally, became the highest CBM undertaken by a nation, or a group of nations. Operationally, JMEs enable militaries to understand each other's drills and procedures, and facilitate familiarization with equipment capabilities, and emerging technologies. This is particularly useful in the event of joint operations, whether in war, or, in military operations other than war (MOOTW). The gamut of defense cooperation ranges from JMEs and military-to-military training, strategic dialogues, peacekeeping, deterring war, promoting peace, humanitarian aid and assistance, disaster relief, and anti-piracy.

Above all, the most significant facet of JMEs, perhaps remains "strategic signaling" – be it bilaterally, or multilaterally. Strategic signaling in turn bolsters regional deterrence – in the context of understanding a nation's security policy, and the surrounding power politics in its region. As such, there are revisionist states that attempt to achieve their goals through coercion, which relies on the "threat of future military force to influence an adversary's decision-making."⁵ Coercion, or any stage short of actual war, is, thus, the optimal use of military as an instrument of foreign policy.⁶ Recall what John F. Kennedy stated on defense and diplomacy, "... the two are not substitutes for one another... either alone would fail."

Ranging from signaling military capability and resolve, to reinforcing the credibility of

² Brandon J. Kinne, "Defense Cooperation Agreements and the Emergence of a Global Security Network," *International Organization*, vol. 72, no. 4, Fall 2018, pp. 799–837.

³ For additional reading see, Charles Lipson, "International Cooperation in Economic and Security Affairs," *World Politics*, vol. 37, no. 1, 1984, pp. 1–23.

⁴ Kinne, n. 2.

⁵ Thomas Schelling, *Arms and Influence*, (New Haven, CT: Yale University Press, 1966), p. 3.

⁶ Sushant K. Singh, "Military as an instrument of India's foreign policy: An expanding footprint," in *Handbook of Indian Defence Policy: Themes, structures, and doctrines* (ed.) (London: Routledge, 2016), p. 164.

joint defense commitments, JMEs contribute towards deterrence⁷ driven by factors, such as geographic proximity, and/or a belief that an adversary is violating the “rules of the game” – either of which contribute to the perception of being “under threat.”⁸ Moreover, the geographical location of the JMEs is often read as an indication of engagement and trust within partner nations, especially in reference to the current and underlying territorial and sovereignty issues across Asia. It has been observed that to employ JMEs as a geopolitical messaging tool that signals commitment, and/or deterrence, the visibility of JMEs remains essential.

Being the operation extended arm of defense diplomacy, defense cooperation aims at sharing operational and doctrinal expertise between the armed forces in training and capability enhancement of one’s own military. It also allows for the examination and imbibing of “best practices,” creating ability to operate alongside and enhance maritime domain awareness, through a variety of information sharing mechanisms. Additionally, defense cooperation activities signal political commitment to develop cooperative relations, promote military transparency, reduce misperception, and promote perception of common interests. Consequently, institutionalized defense cooperation becomes instrumental in helping to prevent conflict, and being an ideal tool in advancing vital common foreign policy objectives⁹ with strategically important countries. When governments create DCAs, they reveal information about their trustworthiness and preferred institutional designs,¹⁰ thereby providing transparency to mutual foreign policy initiatives and commonality in approaches.

The Evolving Course in Japan’s Defense Diplomacy and Security Policy

The series of security policy announcements in and around the Indo-Pacific between 2011 and 2014, including the US “rebalance” towards the Asia-Pacific (2011); Japan’s reorientation to the Indo-Pacific (2012); and India’s upgrade of its 1992 “Look East” Policy to the “Act East” Policy (2014) resulted in promotion of bilateral JMEs with regional stakeholders. Moreover, Japan’s announcement of the Free and Open Indo-Pacific (FOIP) strategy found near overlap with the revival of the Quadrilateral Initiative (*Quad*) ahead of the East Asia Summit in 2017. Coining of the term *Indo-Pacific* brought the Indian context to the fore as it links the Indian Ocean with the Western Pacific, across the Malacca Straits, to form a seamless economic and security continuum. The subsequent period witnessed purposeful redefining of the “Asia-Pacific” as the “Indo-Pacific” – succinctly identifying the geographic space and geostrategic significance between the Indian and Pacific Oceans. “Indo-Pacific” gained traction in the political lexicon and strategic thinking not just among the *Quad* members, but also the ASEAN states. Accordingly, the rising scope in Japan-India’s bilateral JMEs discussed in the later sub-section of this paper, indicates strategic realism¹¹ that simultaneously has contributed to their national security interests, as well as broader regional security goals. Beyond its immediate neighborhood, India has adopted a maritime strategy with

⁷ Jordan Bernhardt and Lauren Sukin, “Joint Military Exercises and Crisis Dynamics on the Korean Peninsula,” *Journal of Conflict Resolution*, vol. 20, no. 10, 2020, p. 5.

⁸ Raymond Cohen, “Threat Perception in International Crisis,” *Political Science Quarterly*, vol. 93, no. 1, pp. 93–107.

⁹ Monika Chansoria, “Institutionalizing Defense Cooperation Agreements: A Contextual Study of India & Japan’s First 2+2 Foreign & Defense Ministerial Meet,” *Policy Brief*, Japan Institute of International Affairs, March 30, 2020, available at https://www.jiia-jic.jp/en/policybrief/pdf/PolicyBrief_Chansoria_200330.pdf

¹⁰ *Ibid.*

¹¹ Thomas Schelling’s idea of realism, termed *Strategic Realism* mainly focuses on foreign policy decision-making; Schelling argued that when state leaders face diplomatic and military challenges, they must think strategically in the interest of their state.

an interesting amalgamation of hard and soft power stretching from the Indian Ocean to the South China Sea.¹²

The changing geopolitical situation in an overcrowded Indo-Pacific – the new economic and political center of gravity of the world has paved way for rapid shifts in the regional balance of power.¹³ The world is multipolar economically, broadly unipolar in military terms, and muddled politically – i.e., a world that is in between orders, and adrift.¹⁴ Moreover, China's growing belligerence stemming out of its economic and military rise is challenging the existing rules-based order. Beijing's relentless unilateral actions in the East and South China Seas, and quest for distant Indian Ocean footholds have drawn sharp attention to the region's maritime security.¹⁵ The new *National Security Strategy* document along with two other key defense-related strategic documents announced by Japan in 2022 reflects upon the evolution of Japanese security policy in the past decades. The *National Security Strategy* document identifies that Japan is facing the "most severe and complex security environment" since the end of World War II – labeling China as the unprecedented "greatest strategic challenge" and further predicting that a similar development could occur in the Indo-Pacific or East Asia.

The centrality of the Indo-Pacific in the 21st century augurs a naval century wherein geography illuminates and sets priorities for geostrategic vitality in the Indian Ocean Region (IOR), and the South and East China Seas. Making the Indo-Pacific space a larger regional objective enhances the centrality of the Indian Ocean.¹⁶ In this reference, the *January 2015 Joint Strategic Vision* for the Asia-Pacific and the Indian Ocean identified bridging the Asia-Pacific with the Indian Ocean Region. Of this, Japan, and India, increasingly, are key players and drivers of regional and global growth, from Africa to East Asia, covering the sub-regions, South, Southeast, and Central Asia. Importantly, the *Joint Strategic Vision* clearly suggested a shift in India's strategic thinking towards adopting a more public position against revisionist maritime threats, given its focus to promote partnerships in the region¹⁷ – as does the latter's expanding JME graph in this region suggests.

Countries that recognize the role defense can play in forging international relations actively use their military capabilities to cooperate with other nations to enhance their influence and build a desirable security environment. It was only after the end of the Cold War that Japan began international peace cooperation activities and started defense exchanges with countries other than the United States, but it now regards strengthening security cooperation as a pillar of its basic defense policy.¹⁸ Japanese security scholars have come to define defense diplomacy as "the use of assets of the national defense authorities and armed forces to cooperate with other countries mainly in peacetime to create an environment conducive to the achievement of foreign policy and security objectives." Among the activities that fall into this category include not only "security cooperation," "defense exchange," and "defense cooperation" but also the dispatch of

¹² James R. Holmes, Andrew C. Winner, and Toshi Yoshihara, *Indian Naval Strategy in the Twenty-first Century*, (New York: Routledge, 2009).

¹³ Shivshankar Menon, "India's Foreign Affairs Strategy," *Brookings India Impact Series*, May 2020, p. 10.

¹⁴ *Ibid.*

¹⁵ Arun Prakash, "East meets east," *The Indian Express*, October 27, 2018, available at <https://indianexpress.com/article/opinion/east-meets-east-5420476/>

¹⁶ S. Jaishankar, *The India Way: Strategies for an Uncertain World*, (New Delhi: HarperCollins Publishers, 2020), p. 161.

¹⁷ *US-India Joint Strategic Vision for the Asia-Pacific and Indian Ocean Region*, Office of the Press Secretary, The White House, January 25, 2015.

¹⁸ For more details see, *Strengthening Japan's Defense Diplomacy*, Sasakawa Peace Foundation's *Policy Proposal*, Tokyo, March 2022, p. vi.

troops and personnel for international peacekeeping operations and humanitarian assistance and disaster relief.¹⁹ It has also been suggested to build a framework for cross-decking and officer exchanges during JMEs, which have proliferated in recent years among the major countries.²⁰ To date, Japan's involvement in cross-decking has largely been limited to the landing of shipboard helicopters on the naval vessels of other countries, although the United States, Europe, and Australia regularly dispatch helicopters and related personnel for joint maneuvers to foreign ships for extended periods at a time.²¹ Cross-decking is seen on a larger, more expanded scale, for example, during the Pacific Partnership, a multinational preparedness mission led by the US Indo-Pacific Command.

Unlike conventional diplomacy, defense diplomacy employs hard, military power as a diplomatic tool to communicate and advance its strategic interests. More specifically, defense diplomacy enables cooperation with other countries in crisis management and areas of common interest by fostering friendly relations built on mutual understanding and trust. With countries that share strategic interests, from a Japanese point of view, defense diplomacy can enhance operational capability and deterrence, as coordination is strengthened through military cooperation frameworks and improved interoperability of forces.²² It is further argued from Japan's side that joint military activities in politically disputed regions, such as the South China Sea can be a powerful form of strategic communication, sending a message to China and the littoral countries alike. The armed forces in many emerging and developing countries are often powerful enough to exert an influence on both external relations and domestic politics. Defense diplomacy can thus provide a direct diplomatic channel for military-to-military relations, with capacity building assistance and the transfer of equipment serving as important means of deepening relations.²³

Japan acknowledges that India is increasing its influence with its population (the world's second largest), its high economic growth, and its latent economic power. Located in the center of sea lanes that connect Japan with the Middle East and Africa, India is an extremely important country for Japan,²⁴ that is reflected in Tokyo and New Delhi's cooperation in maritime security and various other areas, while utilizing some frameworks including the "2+2" meeting. In September 2022, the Defense Ministers of the two countries held a meeting to improve interoperability between the two and confirmed that they would continue to work together on defense equipment and technology cooperation. They also participated in the 2nd Japan-India "2+2" in Tokyo, during which it was confirmed that Japan and India would cooperate towards the common goal of realizing FOIP. Furthermore, the importance of cooperation with ASEAN, continued support for ASEAN's unity and centrality, and providing concrete cooperation for FOIP, India's Indo-Pacific Oceans Initiative (IPOI), and the ASEAN Outlook on the Indo-Pacific (AOIP) was underlined.²⁵ In addition, there is shared recognition to realize concrete cooperation in the areas of defense equipment and technology cooperation, coordination to launch the Joint Service Staff Talks to strengthen cooperation between the Japan Joint Staff and the Indian Integrated Defense Staff.

In the field of security affairs, Japan has introduced a new proactive diplomatic policy tool –

¹⁹ Ibid., p. v.

²⁰ For details see, Michito Tsuruoka, "Promptly Build a Framework for Joint Exercises and Collective Action," cited in Sasakawa Peace Foundation's *Policy Proposal*, n. 18, p. 4.

²¹ Ibid.

²² *Strengthening Japan's Defense Diplomacy*, n. 18, p. v.

²³ Ibid., pp. v–vi.

²⁴ *Defense of Japan 2023*, Annual Report, Japan's Ministry of Defense, Tokyo, p. 410.

²⁵ Ibid., p. 411.

namely, implementing its new official security assistance (OSA) framework to grant financial aid to the militaries of like-minded countries. The OSA is aimed at raising the security capabilities of developing countries, and provides assistance in areas such as intelligence, surveillance and reconnaissance activities, counterpiracy operations, and international peacekeeping. Defense and other equipment to be used by militaries, including satellite communication systems and radars, as well as materials necessary to build military infrastructure such as ports, could be offered as well.²⁶ While the OSA's potential strategic benefits for diplomacy include enhanced engagement and deterrence, it is primarily likely to be focused on covering logistics such as infrastructure building, and material support to like-minded countries in the Indo-Pacific region and helping them improve their surveillance capabilities to strengthen deterrence. In fiscal year 2023, feasibility studies are likely to be conducted for plans to provide assistance to the Philippines, Malaysia, Bangladesh and Fiji – four strategically key nations spread across the Indo-Pacific.

The Indo-Pacific in India's Doctrinal Thinking and Statecraft

Post-independence in 1947, India, beginning essentially as a reluctant player, has emerged in being a significant stakeholder in the remodeled multipolar architecture of the 21st century. India's geography is open on three sides, with a history of the Indus and Gangetic valley. According to India's ancient and traditional theory "circle of states" or *rajamandala* theory, adversarial states border the ruler's state by forming a circle around it. As a reactive strategy in response, another set of states surround this set of hostile states to form an outer concentric circle ring. The second circle of states are described as the natural allies of the ruler's state against the hostile states placed between them.²⁷ Flowing from the above construct, India's foreign policy thinking and strategy in the 21st century places critical significance to its geographical spaces, envisaging its neighborhood in the form of three concentric circles. The first encompasses the "immediate neighborhood" in the form of southern Asia; the second circle includes the "extended neighborhood" stretching across Asia and the Indian Ocean Littoral; and, the third and final circle covers the entire global stage – with India being a key player in every successive circle, reflecting the *Arthashastra's* realist vision of geopolitics and statecraft.²⁸

In the intricate and multifaceted interplay between all these three circles, India has sought to balance the influence of other powers and prevent them from undercutting its interests, whilst register its presence as one of the prominent powers and player in regional and international peace and security, in line with its core national security and strategic interests. Since its independence, what remained constant was India's adoption of an independent strategic course while adjusting tactically to the realism of world politics. In managing its relations with major

²⁶ For more details see, Hirohito Ogi, "How Japan can make the most of its latest diplomatic tool," *The Japan Times*, August 27, 2023, available at <https://www.japantimes.co.jp/commentary/2023/08/27/japan/new-security-policy-tool/>

²⁷ The theory of the "circle of states" entails that every ruler within the international system will find a state at the centre of its own circle of states – and this ruler is described as *vijigishu*; For more details on the subject see, Akhilesh Pillalamarri, "Chanakya: India's Truly Radical Machiavelli," *The National Interest*, January 29, 2015; also see, C. Raja Mohan, "India and the Balance of Power," *Foreign Affairs*, vol. 85, no. 4, 2006, p. 18.

²⁸ In the context of historical influences and motivations, the foundational premise and conceptual underpinning of Indian diplomacy can be traced back to the end of fourth century BC. *Arthashastra* delineates theories of statecraft, diplomacy, strategy, and prerequisites of politics and power, and rests on the fundamental notion of pragmatism and utility to justify state actions; for more details and further reading on this see, Monika Chansoria, "From Reluctance to Readiness: India's Foreign Policy and Strategy for the 21st Century," in Jacqueline Braveboy-Wagner, ed., *Diplomatic Strategies of Nations in the Global South: The Search for Leadership* (City University of New York and Palgrave Macmillan, 2016).

and rising powers, India has opted for calibrated balancing behavior over band-wagoning and, also demonstrated a penchant for pragmatic issue-based partnerships on a case-to-case basis.²⁹ Even though India now stands ready to assume a greater international role, it is only beginning to break out of the bounds of a regional power.³⁰

Commensurate with its “Act East” Policy announcement, India’s JMEs framework established and sustained across Southeast and East Asia has aided in improving regional security and capacity-building, and created key linkages at the regional and global levels. Additionally, defense cooperation executed through JMEs has facilitated demonstration of India’s commitment to regional stability, and showcased its defense/defense-industrial capabilities.³¹ While its core interests may be in the Indian Ocean Region, but a presence beyond also ensures a peaceful periphery, and therefore, India’s participation in JMEs with Japan and other Southeast Asian nations contributes to broader stability goals in Asia. Besides, the geopolitical realities in the region called for Japan and India to adjust the thinking and formulation of their respective security strategies in the South China Sea and the East China Sea, especially as territorial and maritime disputes return to center stage.³² Consequently, India began institutionalized mechanisms for bilateral army and naval JMEs with Japan and various other Southeast nations including Myanmar, Thailand, Malaysia, Vietnam, and Indonesia.

The evolutionary enhancement of JMEs conducted by India post 9/11 in its immediate and extended neighborhood manifests a calibrated shift in its foreign policy orientation. The 1991 “Look East” policy which aimed primarily at promoting India’s integration with East and Southeast Asia, was transformed into an “Act East” policy in 2014.³³ Even though it would not ideally want to be drawn into the ongoing power rivalries in the region, given its central location in the Indian Ocean, India can ill-afford to ignore issues in its own strategic backyard. The peninsular shape provides India a coastline of about 7,600 kms, 1200 islands, and an exclusive economic zone (EEZ) of over 2.4 million sq. kms. Further, its island territories in the east are 1,300 kms away from the mainland, with closer physical proximity to Southeast Asia.³⁴ In the said reference, the expanse of India’s JMEs, most significantly, with Japan highlights the relative importance of regional security architectures and dialogues in strengthening defense cooperation across its eastern, far eastern, and south-eastern Asian neighbors.³⁵

In the economic realm, the Indo-Pacific is one of the world’s most dynamic regions accounting for more than 60 percent of the global GDP.³⁶ Further, more than half of India’s GDP depends on its dealings with the rest of the world. This expanded definition of interests perfectly is in sync with Japan’s security and foreign policy agenda evident in its vision of *a Free and Open Indo-*

²⁹ P.R. Chari and Vyjayanti Raghavan, *Sino-Indian and Sino-South Korean Relations: Compulsions, Comparisons and Contrasts*. (New Delhi: Routledge, 2015).

³⁰ Aseema Sinha and Jon P. Dorschner, “India: Rising Power or a Mere Revolution of Rising Expectations?” *Polity*, vol. 42, no. 1, 2010, p. 90.

³¹ For more details and further reading see, Monika Chansoria, “Joint Military Exercises and Confidence-Building: Theoretical and Applied Features,” *CLAWS Journal*, Summer 2015, pp. 59–69; and see, Chansoria, “Institutionalizing Defense Cooperation Agreements...” *Policy Brief*, n. 9.

³² For related details and further reading see, Menon, n. 13, p. 12.

³³ The “Look East” Policy was first formulated under then-PM, P.V. Narasimha Rao in 1991 and sought to strengthen India’s relationships with Southeast Asia specifically, and East Asia more generally.

³⁴ Government of India, MoD, *Annual Report 2002-2003*, New Delhi.

³⁵ Bernhardt et al., n. 7, p. 7.

³⁶ As cited in “The What, How and Why of the Indo-Pacific Economic Framework,” *The Wire*, May 27, 2022, available at <https://thewire.in/economy/the-what-how-and-why-of-the-indo-pacific-economic-framework>

Pacific, based on free sea lanes and navigation, open markets, international law, and common rules. India's maritime trade flowing east through these waters account for 55 percent of India's total trade.³⁷ As far as Japan is concerned, the Indo-Pacific houses three of the world's largest economies, i.e., the US, China, and Japan, with 60 percent of global maritime trade occurring through its waters.

Japan-India Bilateral JMEs³⁸

JMEs aid in safeguarding not just the individual maritime security interests of the nation in question, but also that of its littoral region – thereby enhancing the entire region's net security via enhanced interoperability and confidence building. By managing, conserving, sustaining, and securing the regional maritime domain, JMEs ensure regional security and stability by means of a non-treaty-based, cooperative, and collaborative approach.³⁹ In the contemporary context, India and Japan's bilateral JMEs have become an instrumental tool in shaping a favorable and positive environment for enhancing regional net security and maritime domain awareness across the Indo-Pacific by means of identifying cooperative activities, including, joint patrols, port visits, personnel and information exchanges, staff talks and interactions, exercises with foreign navies, maritime assistance, operational interactions, and high-level maritime strategic interactions.⁴⁰

India and Japan signed a Joint Declaration on Security Cooperation in 2008, and this bilateral relationship has witnessed significant progress in the realm of defense cooperation and security affairs. Apart from operationalization of the Agreement Concerning Reciprocal Provision of Supplies and Services between Japan Self-Defense Forces (JSDF) and the Indian Armed Forces, New Delhi and Tokyo signed up for the inaugural fighter exercise between the Japan Air Self-Defense Force (JASDF) and the Indian Air Force. In the realm of institutionalized bilateral JMEs, the *Dharma Guardian* is an annual bilateral JME conducted between the Indian and Japanese Army since 2018, sharing experiences of counter-terrorism operations. The *Dharma Guardian* 2019 was held at the Counter-Insurgency and Jungle Warfare School situated in Vairengte (north-eastern state of Mizoram, India). *Dharma Guardian* is a platoon-level JME focusing on training for counter-terrorism operations in the jungle and urban scenarios, enhancing interoperability and practicing tactical drills.

Furthermore, bilateral naval cooperation between India and Japan has increased in scope and complexity over the recent years and taken shape in the form of Japan-India Maritime Bilateral Exercise (JIMEX) which commenced in 2012. With a special focus on maritime security cooperation, the fifth edition of JIMEX between the Indian Navy and Japan Maritime Self-Defense Force (JMSDF) was held in the Arabian Sea in 2021. In addition to the indigenously built Guided Missile Stealth Destroyer *Kochi* and Guided Missile Frigate *Teg*, representing the Indian Navy, the Japan Maritime Self-Defense Force was represented by JMSDF ships *Kaga*, an Izumo-Class Helicopter Carrier and *Murasame*, a Guided Missile Destroyer. In addition to these ships, P-8I Long Range Maritime Patrol Aircraft, Dornier Maritime Patrol Aircraft, integral helicopters, and MiG 29K fighter aircraft also participated in this edition of the JIMEX. The primary aim of

³⁷ Ministry of External Affairs (India) (hereafter MEA), Rajya Sabha, Parliamentary Question no. 808, "Trade through South China Sea," February 9, 2017, available at <https://www.mea.gov.in/rajya-sabha.htm?dtl/28041/QUESTION+NO808+TRADE+THROUGH+SOUTH+CHINA+SEA>

³⁸ For details cited in this section, further see, Government of India, MoD, "Defence Cooperation with Foreign Countries," *Annual Reports* 2009-10, 2010-11, 2011-12, 2012-13, 2016-17, 2018-19, 2019-20, 2020-21, New Delhi.

³⁹ Vice Admiral MP Muralidharan, "Significance of Joint Maritime Exercises," *Indian Defence Review*, vol. 37, no. 4, Oct-Dec 2022, available at <https://www.indiandefencereview.com/news/significance-of-joint-maritime-exercises/>

⁴⁰ *Ibid.*

this JME was developing a common understanding of operational procedures and enhancing interoperability through conduct of a multitude of advanced exercises, across the entire spectrum of maritime operations, and tactical exercises involving weapon firings, cross-deck helicopter operations and complex surface, anti-submarine, and air warfare drills.

More recently, in February–March 2023, the Japanese Army (Ground Self-Defense Force) conducted the first bilateral field training exercise *Dharma Guardian* in Japan with the Indian Army to further strengthen cooperation. Earlier, in July 2022, the Chief of Staff (Maritime Self-Defense Force) held a video teleconference with India’s Chief of the Naval Staff to confirm the direction of strengthening future cooperation between the MSDF and Indian Navy. In fact, in 2022, the MSDF conducted a total of four Japan-India bilateral exercises, including JIMEX 2022. In May of the same year, the Chief of Staff (Air Self-Defense Force) held a meeting with India’s Chief of Air Staff during his visit to Japan, in which they agreed to further activate Japan-India defense cooperation and exchanges. The Japan-India bilateral air exercise *Veer Guardian 23* as well as the Japan-India bilateral transport aircraft training *Shinyuu Maitri 23* each was conducted for the first time in Japan, in January, and March 2023 respectively.⁴¹

Further, India and Japan attach growing importance to nations in and around the Persian Gulf, which could directly be attributed to the geostrategic significance and linkage of the Persian Gulf region to maritime security in the western Indian Ocean. Peninsular India is adjacent to one of the most vital sea-lanes stretching from the Suez Canal and the Persian Gulf to the Malacca Straits through which much of the oil from the Gulf region transits. The stability of the international oil market renders the Persian Gulf vital for international security. Moreover, the lack of any regional security architecture, and missing regional balance of power, given deep-rooted frictions among regional states, render the region dependent on external military presence.⁴² In this reference, Japan and India have deployed their naval ships to ensure security of international oil and cargo shipping passing through the Arabian Sea and the Gulf of Oman.

India’s bilateral JMEs graph with Japan has brought out the expanding presence and frequency of New Delhi’s naval engagement with Tokyo, thereby improving capacity-building, and regional security linkages. Together, they augment a much-needed regional balance of power in the Indian Ocean – the pivot of the Indo-Pacific region. While its core interests may be in the Indian Ocean Region, but a presence beyond ensures a peaceful periphery, and therefore, India’s participation in JMEs with Japan and other Southeast Asian nations has contributed to Asia’s broader stability goals.

Conclusion and Implications for the Regional Order

India and Japan’s bilateral JMEs graph across Asia has proved instrumental in their expanding acceptance as key regional strategic actors, be it within South Asia, Southeast Asia, East Asia, and the Indian Ocean Region and the Persian Gulf. Enhanced defense cooperation via the JMEs is provenly a key foundation for strengthening regional diplomacy based on the bilateral JMEs initiatives undertaken. JMEs directly reflect regional balance-of-power politics. In this case, there is a visible coherence in the collective like-minded approach for a Free and Open Indo-Pacific strategy, especially around its maritime rim.

An overcrowded Indo-Pacific has become nerve center of geopolitical, geoeconomic, and geostrategic activity of the world – thereby making way for rapid shifts in the regional balance of

⁴¹ *Defense of Japan 2023*, n. 24, p. 411.

⁴² Md. Muddassir Quamar, “India and the Persian Gulf: Bilateralism, Regional Security and the China Factor,” *Issue Brief*, May 10, 2022, The Institute for Security and Development Policy (Sweden), p. 2.

power.⁴³ Tokyo and New Delhi are indispensable players in the Indo-Pacific at a time when the region is confronting stark shifts in its geopolitical reality. Given such uncertainties, proactive defense diplomacy initiatives and other peacetime efforts including an expanding web of JMEs are essential to ensure a secure strategic future for Japan and India.

As India and Japan work towards striving to secure and consolidate their maritime peripheries, and play a greater proactive role in Asia's regional balancing, the JMEs' formulation and policy implementation is only beginning to be utilized and leveraged as a vital instrument of defense diplomacy, and a promising micro-foundation of securing regional security priorities and order. Tokyo and New Delhi's JMEs have contributed substantially in enhancing the net security of the Indo-Pacific region, by means of leveraging cooperation via cooperative and collaborative bilateral and multilateral JMEs to augment interoperability and confidence-building, which, in turn, has contributed in enhancing the Indo-Pacific's overall regional net security.

⁴³ Menon, n. 13, p. 10; additionally, also see, James D. Fearon, "Rationalist Explanations for War," *International Organization*, vol. 49, no. 3, 1995, pp. 379–414.

Issues of Memory and History: UNESCO and the Politicization of World Heritage Site Nominations

Valérie Niquet

Abstract

Since its adoption in 1972, the Convention concerning the protection of the world cultural and nature heritage has come under increasing pressure. It is no longer enough to choose sites “of outstanding universal values,” but also to respond to increasingly complex objectives such as development, diversity, inclusiveness and the fight against climate change. Choices are also increasingly politicized, and the World Heritage Committee has become the arena for rivalry between the most influent States parties, who see the number of sites nominated as a demonstration of their power and clout. Local economic and development interests are also related to these choices. In this context, the nomination of industrial sites with complex pasts occupies a specific place, raising several questions, including that of the use of history for contemporary geopolitical stakes.

Introduction

The Convention concerning the protection of the world cultural and nature heritage was adopted in 1972 and came into force in 1975. In 2023, 195 State parties are signatories of the Convention and participate to the election of the World Heritage Committee. It reflected at the time of its adoption a preoccupation for the preservation of past heritage, for the education of future generations, that dated back to the League of Nations in 1919.¹ The World Heritage Center, established in 1992 to act as Secretariat, plays the role of coordinator for matter related to the Convention and organizes the annual session of the World Heritage Committee that decides the sites nomination and the reporting on the conditions of the sites.² Its 21 members are elected by the State Parties signatories to the Convention. When the first World Heritage List was drawn up at the first session held from June 27 to July 1st 1977 by the then 15-states committee,³ a number of principles were defined with 10 criteria.⁴ The list was to be exclusive, so that places chosen with “extreme care” would remain remarkable and balanced not only geographically but also between cultural and natural sites.⁵ Concerns have since then been expressed about the impact of Western conceptions, Eurocentric bias and differences in perception between cultures. The global study carried out by ICOMOS (International Council on Monuments and Sites) from 1987 to 1993 revealed that “Europe, historic towns and religious

¹ Jens Boel, “The League of Nations: A Universal Dream that has Stood the Test of Time,” <https://courier.unesco.org/en/articles/league-nations-universal-dream-has-stood-test-time>, 27-01-2020.

² Lynn Meskell, “States of Conservation: Protection, Politics and Pacting Within UNESCO’s World Heritage Committee,” *Current Anthropology*, vol 54, n° 4, 08-2013.

³ Australia, Canada, Ecuador, Egypt, France, West Germany, Ghana, Iran, Iraq, Nigeria, Poland, Senegal, Tunisia, USA, Yugoslavia

⁴ Six for cultural sites and four for natural sites. In 2005, the criteria were merged into one list of ten criteria.

⁵ “Establishment of the World Heritage List,” Decision 1 COM VI. A, whc.unesco.org

monuments, Christianity, historical periods and 'elitist' architecture were all over-represented on the World Heritage List; whereas, all living cultures, and especially 'traditional cultures,' were underrepresented."

However, in 2023, the balance is still not fully respected despite an evolution since the mid-2010s, with Europe representing 47.12% of sites, Asia-Pacific 24.10%, Latin America 12.4%, the Arab world 8.59% and Africa 7.76%. Cultural sites (35%) far outweigh natural sites (1%).⁶ By country, we find heavyweights such as the People's Republic of China (57 sites) and France (52 sites). Japan has 25 registered sites and the Republic of Korea 16.

The initial objective: Strict principles based on widely recognized criteria

The principle of exclusivity in the selection of sites is one of the major points taken into account by the first award committee. The *Operational Guidelines for the Implementation of the World Heritage Convention* (1977) specifies that, to be considered for inclusion in the World Heritage List, proposed sites must have "outstanding universal value."⁷ Cultural or natural sites must be of universal or at least widespread importance, or of exceptional interest to the peoples of the world. The text specifies that "only a select list of the most outstanding from a world view point" will be chosen. The criterion of universality, which refers to an "important or significant" part of humanity, far outweighs national interests or interpretations of what constitutes an "outstanding" site.

As far as cultural sites are concerned, the examples chosen in the Guidelines as representing "masterpieces of human creativity," which have had a lasting influence on art and human development, are particularly representative of a cultural, intellectual, social, artistic but also technological and industrial development, are associated with particularly ancient forms threatened with extinction or are sites of great historical importance in relation to personalities, philosophical schools of thought, events or religions meet this then relatively consensual definition of "world heritage site." Examples given include Borobudur in Indonesia, Angkor Wat in Cambodia, the Valley of the Kings in Egypt, the Pantheon in Rome, the Plaza de Puebla in Mexico, the Château de Vaux le Vicomte in France, the Mayan pyramids, downtown Leningrad, the walled city of Avila in Spain, the longhouses in Indonesia, the Dogon villages in Mali, the Machu Picchu, the Church of the Nativity in Bethlehem, Mecca and the Cape Kennedy site in the USA. The list of indicative examples is intended to be both relatively diversified and geographically balanced, choosing only places recognized as exceptional.⁸

However, the nomination issue has become progressively more complex—and expensive to constitute a dossier with a sufficient degree of expertise—with the inclusion of proposals that are less consensual or raise problems of definition and interpretation. There are six criteria for selection to be included in the World Heritage List but the relative importance of these criteria seems to have evolved in recent years. In particular criterion six led to questions expressed by the World Heritage Committee in its definition: "Criterion VI concerns sites to be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance. (The Committee considers that this criterion should preferably be used in conjunction with other criteria)"⁹

A more complex selection process since the 2000s and the risk of politicization

Progressively, the conditions for nominating UNESCO heritage sites have become more complex

⁶ whc.unesco.org

⁷ <https://whc.unesco.org/archive/1977/cc-77-conf001-8reve.pdf>

⁸ "Establishment of the World Heritage List," Decision 1 COM VI. A, whc.unesco.org

⁹ whc.unesco.org

and less consensual, with an evolution in the concept of “world heritage”: the sites chosen can no longer simply be the expression of “outstanding universal values,” but must also serve a cause.¹⁰ Choices can also serve the more direct economic or political interests of a particular state or interest group. To some experts, it should be noted that every decision taken by the World Heritage Committee is increasingly politicized, and that recommendations made to the Committee by ICOMOS or IUCN (International Union for Conservation of Nature) are not systematically taken into account.¹¹ In 2003 the convergence factor between ICOMOS and IUCN recommendations and decisions by the Committee was 90 %. It fell to 40 % in 2012.¹² Increasingly, members of the World Heritage Committee, composed now of 21 members, are not experts such as archaeologists or naturalists but ambassadors or politicians sent to represent the State parties leading to backstage bargaining to obtain nominations.¹³ An UNESCO audit published in 2011 concludes that the approach is increasingly more “political” rather than “heritage” oriented.¹⁴ Some principles reflect the concerns and urgencies defined by the United Nations at a more global level. This is for example the case for the goal of sustainable development 2030. In 2021, the World Heritage Convention and sustainable development adopted a policy document for the integration of a sustainable development perspective into the process of the World Heritage Convention.¹⁵ Nomination criteria must now also take account natural disasters, contribute to poverty reduction and promote a sustainable way of life for rural communities.

Allocation must also take account social inclusion issues and strengthen the influence of local communities, including young people, women and indigenous peoples. Finally, the nomination of sites must promote peace and security and facilitate cooperation.¹⁶ These are major challenges, which make the nomination of world heritage sites more complex and potentially more controversial, and can also pave the way for a “nomination race” designed to legitimize—or denounce—historical episodes that do not meet with consensus.¹⁷

Some consider that UNESCO has strayed from the objectives of the 1972 World Heritage Convention, which was to protect sites perceived as the common property of mankind, to transform into a political approach to get more sites accepted as a way to bolster prestige and sovereign interests.¹⁸ For instance, the People’s Republic of China (PRC), who ratified the Convention in 1985, proudly proclaims on the website of one of its embassies, that “China ranks second in the world” in the number of sites.¹⁹ China has 57 sites, and Italy, ranking first, 59.

But requests for nominations also have a performative function when sites are chosen for their symbolic value. In Europe, for example, the aim of the European Heritage Label, different from World Heritage but with connections to the UNESCO world heritage sites, launched in 2011,

¹⁰ Simon C. Woodward, Louise Cooke, *World Heritage: Concepts, Management and Conservation*, Routledge, 2023.

¹¹ Idem

¹² Lynn Meskell, op.cit.

¹³ Lynn Meskell, op.cit.

¹⁴ Lynn Meskell, op.cit.

¹⁵ “World Heritage Convention and Sustainable Development,” Decision 44 COM 5 D, whc.unesco.org

¹⁶ Idem

¹⁷ Enrico Bertacchini et al, “The Politicization of UNESCO World Heritage Decision Making,” *Public Choice*, April 2016.

¹⁸ Anna Somers Cocks, “How the War in Ukraine Reveals the Heightened Politics of UNESCO,” *The Art Newspaper*, 09-12-2022.

¹⁹ http://no.china-embassy.gov.cn/eng/zngx_1/whjl/zx/201704/t20170411_3072435.htm

is to “revive European heritage” and thus promote European integration. The label conveys an ideological belief, with emphasis on the values of “peace,” diversity, mobility and inclusion.²⁰

Finally, one of the challenges is the race for numbers, and the fact that commitment to conservation, the original objective of the World Heritage List, has been too often replaced by an acquisitive practice of inscriptions, with pressure exerted on commission members.²¹ China, again, is particularly active in this field, with 13 of its 57 sites nominated since 2014, when the composition of the 21 committee was changed to become more inclusive of the “Global south.”²²

The question of sites associated with memories of recent conflicts and other negative divisive memories.

In 1979, Auschwitz-Birkenau was designated a world heritage site, but the nomination committee stressed the exceptional nature of this type of nomination, recommending an “extremely selective” approach for the future.²³ Auschwitz occupies a symbolic place representing other similar sites. However, from the 1980s onwards, and even more so after the end of the Cold War, we saw the global emergence of a trend in favor of gestures of remembrance, focusing on the duty to remember mass crimes in order to avoid their repetition.²⁴ This “global culture of memory” emphasizes the importance of memorial activities to remember the victims of recent conflicts or other negative and divisive memories. This “duty to remember” is supposed to facilitate reconciliation. However, there are also risks of reviving divisions or exploiting this duty to remember for contemporary political or geopolitical ends.²⁵ Faced with an increasing number of requests for the nomination of controversial sites, in 2018, the World Heritage Center commissioned a report from a group of experts.²⁶ This group of experts defines the term “conflict” very broadly, including wars, battles, but also massacres, genocides, torture or massive violations of human rights. The second point addressed is that of extreme selectivity, so as not to diminish the exemplary value of the sites, and also to take account of the “political difficulties” potentially raised.²⁷ The expert committee points out that certain nominations concerning historical events could be strongly influenced by nationalism, “in contradiction with the objectives of WHC.”²⁸

The creation of “Sites of Conscience” in 1999, for educational purposes, was intended to take into account difficult or divisive places of remembrance, but the list of “Sites of Conscience” does not coincide with the sites designated as World Heritage. Moreover, some of these sites of conscience, such as the “Women’s Active Museum on War and Peace” set up in Tokyo in 2005,

²⁰ Alessandra Quarta, “The European Approach to Culture: the European Heritage Label” in *Forever Young : Celebrating 50 years of the World Heritage Convention*, 2023, <https://cris.unibo.it/handle/11585/923051>.

²¹ Lynn Meskell, Claudia Liuzza, “The World is Not Enough: New Diplomacy and Dilemmas for the World Heritage Convention at 50,” *International Journal of Cultural Property*, vol29 (2022).

²² Tom Seymour, “Worried about Chinese Influence, the US Agrees to rejoin UNESCO,” *The Art Newspaper*, 12-06-2023.

²³ The worry expressed by ICOMOS was that this would lead to a reduction in the value of the sites. whc.unesco.org.

²⁴ Olwen Beazley, Christina Cameron, “Study on Sites Associated with Recent Conflicts and Other Negative and Divisive Memories,” <https://whc.unesco.org/archive/2021/whc21-44com-inf8.2-en.pdf>, 02-05-2020

²⁵ Idem

²⁶ “Expert Meeting on Sites Associated with Recent Conflicts and Other Negative and Divisive Memories Report,” whc.unesco.org.

²⁷ Idem

²⁸ Idem

whose main objective is to make the Japanese government “accountable for sexual slavery during the war,” are open to question.²⁹

Among the 18 World Heritage Sites of negative memories, some are not controversial, such as Gorée Island in Senegal, nominated in 1978, linked to the slave trade, or the other sites related to slavery, or Auschwitz, in 1979. But the nomination of Hiroshima in 1996 was opposed by both the People’s Republic of China (PRC) and the United States, for different reasons. China was concerned that some would try to “whitewash” Japan for its role in the Second World War by emphasizing its victim status. The United States criticized the lack of contextualization of the atomic bombings, and demanded that all war sites be excluded from the scope of the Convention, so as not to see themselves singled out for their actions in Japan, but also in Vietnam or France during the deadly Allied bombings at the end of the Second World War.³⁰ It should be noted that the majority of the sites chosen in that category are related to slavery or the predatory role of the West on non-Western and indigenous populations.³¹

However, sites associated to recent conflicts or difficult memories can reveal or awaken very different historical narratives, so their nomination risks going against UNESCO’s objectives of peace and reconciliation, by themselves being sources of reactivated conflicts.³² In 2014, the United Nations Commission on Human Rights considered that post-conflict societies produce parallel interpretations that limit the possibilities of reconciliation and are detrimental to peaceful international relations.³³ If a State attempts to put a site of this type on the World Heritage List, the risk of tensions may increase. The fear of political recuperation is thus one of the major issue.³⁴

Among the sites listed, some make no mention of human rights abuses that occurred at these sites, such as forced labor, slavery or confinement. For example, when the German Rammelsberg and Goslar mining site was nominated in 1992, it referred only to the exceptional industrial past of this region of Germany, which dates back over a thousand years. However, more recently, work on forced labor in the Rammelsberg mines during the 1939–1945 second world war, and the organization of an exhibition, were carried out, in cooperation with the World Heritage List.³⁵ Also in Germany, although not a world heritage site, celebrations to mark the fiftieth anniversary of the first launch of a missile into space at Peenemünde in 1942, which focused solely on the aspect of technological prowess, had to be cancelled due to international protests.³⁶

In view of all these issues, and the potential tensions involved, the world heritage site committee is not in favor of listing sites linked to a conflict-ridden past or difficult memories.

The case of Japan’s world heritage Sites

Japan’s bid for the Sado mining site, submitted in 2022 and then 2023, which follows the inscription on the World Heritage List of the Meiji era industrial sites in 2015, is one example

²⁹ Olwen Beazley, Christina Cameron, op.cit.

³⁰ Simon C. Woodward, Louise Cooke, op.cit.; “ICOMOS Second Discussion Paper on Sites Associated with Memories of Recent Conflicts and the World Heritage Convention,” whc.unesco.org.

³¹ “Appendix E, World Heritage Sites Associated with Recent Conflicts and Other Negative and Divisive Memories Inscribed under Criteria VI,” whc.unesco.org.

³² Idem

³³ <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session27/regular-session>

³⁴ “Expert meeting on Sites Associated with Recent Conflicts and other Negative and Divisive Memories Report,” op.cit.

³⁵ <https://www.rammelsberg.de/en/exhibition/living-and-working-under-duress-forced-laborers-at-the-rammelsberg-ore-mine-1939-1945>

³⁶ Leilei Li, Dietrich Soyeze, “Transnationalizing Industrial Heritage Valorizations in Germany and China— and Addressing Inherent Dark sides”, *Journal of Heritage Tourism*, 2016.

that lies at the crossroads of these social and geopolitical issues, opening the way to obstruction strategies developed by other countries, but also to a necessary reflection on this type of candidacy and the way it must be dealt with in a mature, model democracy. As at the global level, there has been an evolution in the sites nominated in Japan, from cultural sites that bear witness to a very ancient and culturally rich history (Kyoto 1994, Nara 1998, Nikko 1999), to more recent sites linked in particular to the industrialization and development of the country under Edo and insertion into the world system under Meiji (Iwami Ginzan silver mine 2007, Tomioka Silk mill in 2014, Meiji industrial sites in 2015). There is also a desire to cover the whole geographical scope of Japan, from Hokkaido (Shiretoko 2005) to Okinawa (2000 and 2021) to the archipelago of the Ogasawara Islands (2011).³⁷ The world heritage site of the Hidden Christians in the Nagasaki Region, nominated in 2018, refers to a painful memory, shared with the West, however, there are no sites or references to sites that share that kind of memories with neighbors with whom Japan has more complex relations, such as the People's Republic of China (PRC) and the Republic of Korea.

As early as 2010, Japan included the Sado mining complex on its tentative list of places that could be nominated to the World Heritage List, acting upon a proposal coming from the prefectural level of Niigata dating back to 2006. In its presentation, it is the dimension of industrial history and innovation in the Edo period (1603–1868) of the mines presented as “an outstanding example of Asian mining heritage,” as well as the role of gold extracted from the Sado mines in world trade, that is put forward to justify a possible nomination. The Sado Gold Mine has a long and rich history of gold and silver mining dating back to the 17th century. The site played a crucial role in Japan's economic and cultural development during the Edo period. These sites are also considered to have outstanding cultural value, representing the technological advancements in mining, smelting, and refining during the Edo period. The preservation of traditional mining techniques and infrastructure contributes to the cultural heritage of the region. The Sado Gold Mine also features a distinctive and well-preserved mining landscape, including tunnels, water channels, and processing facilities. The nomination also emphasizes the importance of the Sado Gold Mine in enhancing the global understanding of mining history, technology, and the economic significance of precious metal extraction lending the site its universal value criteria. The nomination also emphasizes the cultural and social significance of the Sado Gold Mine for local communities. And of course, the economic benefits from tourism for the island and the region are also taken into account. The contemporary period is mentioned only in reference to the nationalization of the gold mines under Meiji, then their sale to the Mitsubishi Limited Partnership Company at the beginning of the 20th century.³⁸ The Sado mines site, presented in 2022 for nomination by Japan, with additional documents presented in 2023, focusing on gold mine history under Edo, like the Meiji era industrial sites, nominated in 2015, is thus not related to a conflict or a difficult memory under the criteria defined by the World Heritage Committee.³⁹ However, these sites, and particularly the sites of the gold mines in Sado can also be remembered in relation with the harshness of the working condition, for Japanese as well as foreign contracted laborers. In Ancient times, under the Shogunate, Sado island was also known as a place of relegation. This dimension is also part of the history of Sado island, the main theme of the great movie by Mizoguchi Kenji, *Sansho dayū* (1954). In 2022, in relation with the Sado Gold Mines proposal, the Republic of Korea's Ministry of Foreign Affairs, focusing on the situation of Korean workers in Japan under the colonial rule, protested, demanding that Japan mentions “the full

³⁷ Japan has 25 World heritage sites. whc.unesco.org

³⁸ Idem

³⁹ Importantly, in 2022–2023, Japan will be part of the 21-member World Heritage Committee. In 2014–2015, the Republic of Korea was a member of the committee.

history which contains the painful history of people who were forced to work during wartime.”⁴⁰ Like all industrial sites in Japan until 1945, working conditions in the mines were particularly difficult, both for the Japanese and the Korean people employed there and the issue of “forced labor” versus “contract labor” is controversial.⁴¹ The fate of Korean workers, from a country colonized by the Japanese Empire, can indeed be examined and considered from a historical and scientific point of view.⁴² However, beyond these legitimate historical questions, South Korea’s contestation also—or mostly—answers to domestic Korean political issues and prevents this necessary neutral historical analysis.

For Tokyo, the choice of these sites also corresponds to Japan’s legitimate desire to retake the control of its own History, prior to the Second World War, by highlighting periods, such as the Meiji era, during which Japan opened up to the world and joined the concert of nations by laying the foundations of a liberal international order of which it was an important part. In 2018, in a speech to the Diet, Prime Minister Shinzo Abe declared: “Countless human resources were fostered in the new Meiji era for the modernization of Japan.”⁴³ 2018 marked the 150th anniversary of the founding of the Meiji era, during which, “Japan amazed the world as the first non-western country to ride the wave of an industrial revolution, to transform into a modern state without becoming a colony.”⁴⁴ In that context, world heritage sites are indeed important soft power sources in public diplomacy strategies, provided they do not generate controversy and opposition that can be counterproductive.⁴⁵

However, in 2017, following Japan’s challenge of China’s application for inclusion of so-called “Nanjing Massacre” documents in the international memory of the world register in 2015, UNESCO rejected this inscription and adopted a principle that excludes any recognition or inscription by one country if another country challenges it. This position has been tacitly extended to the nomination of world heritage sites, which is decided by consensus.

This is further proof of the risks involved in politicizing these issues, far removed from the initial principles established in 1972. Another example of the more or less open politicization of these issues is the debate concerning the inclusion of the Loire Valley (France) as a world heritage site in 2000. It was initially rejected and required a secret ballot because of the site proximity to a nuclear power station. In that case, one wonders whether only the landscape issue was at stake, or whether we were faced with a principled opposition to nuclear energy, which France, for its part, firmly defends.⁴⁶

In the case of the Sado Gold Mine, the opposition of the Republic of Korea could also lead to a non-decision.⁴⁷ In Japan, some made it a matter of national honor, with the desire to claim Japan’s

⁴⁰ “National Assembly Adopts Resolution Urging Japan to Withdraw UNESCO Bid for Sado Mine,” *Korea JoongAng Daily*, 28-2-2023.

⁴¹ Nikolai Johnsen, “The Sado Gold Mine and Japan’s ‘History war’ Versus the Memory of Korean Forced Laborers,” *The Asia Pacific Journal*, vol 20, issue 5, N° 1, 04-03-2022.

⁴² “Japan Refiles Request to List Divisive Gold Mine on Unesco,” *The Associated Press*, 21-01-2023.

⁴³ “Policy Speech by Prime Minister Shinzo Abe to the 196th Session of the Diet,” 22-01-2018. See also: Ryoko Nakano, “Mobilizing Meiji Nostalgia and Intentional Forgetting in Japan’s World Heritage Promotion,” *International Journal of Asian Studies*, 2020 1-18, 12_07_2020.

⁴⁴ “Policy Speech by Prime Minister Shinzo Abe to the 196th Session of the Diet,” op.cit.

⁴⁵ “In this respect, Japan could have responded more enthusiastically to the condition placed by Germany, which acted as mediator between Tokyo and Seoul, on the listing of Meiji-era industrial sites in 2015 by explaining the issues related to the conditions of Korean workers from the colonies during the Second World War” in Leilei Li, Dietrich Soyeze, op. cit.

⁴⁶ <https://www.worldheritagesite.org/connection/Controversial+at+inscription>

⁴⁷ Idem

right to its own history, which must not remain forever a hostage to a past instrumentalized by hostile parties. This position is legitimate. Others however, perhaps more aware of the rules of complex international diplomatic game, and the reputational risks attached to the politicization of the World Heritage List nomination process, tend to show greater caution.⁴⁸ This debate reflects the difficulties and the risks of a paralysis or of deviation of its principles the World Heritage Convention is increasingly facing by taking into account more criteria that question the concept of “outstanding universal value” as defined by the initiator of the Convention.

Conclusion

The debates and diplomatic games surrounding the work of the World Heritage Committee and the selection of sites for inscription on the World Heritage List reveal growing difficulties. These difficulties concern the definition of criteria: what does “universal value” mean, for whom, in whose name? In the case of industrial sites that represent an important development in human history, such as the Sado or Rammelsberg mines in Germany, where does industrial history end and social history begin? Should places where work under duress happened for nationals and foreigners alike be only remembered as places of industrial interest, or of a “darker” history? Increasingly, the nomination or inscription of sites on the list of world heritage in danger such as the Old City of Jerusalem and its walls presented by Jordan, becomes hostage to contemporary tensions from which it is difficult to escape.⁴⁹ For some countries, such as the People’s Republic of China (PRC), history is mainly a weapon that can be used to achieve geopolitical gains and Japan has often been the target of political campaigns that tend to deny the legitimacy of a country considered as an adversary, by constantly using the past. In this context, the tentative list of sites proposed for nomination should, as far as possible, avoid the risks of controversies that are difficult to combat. Faced with the majority principle and the diplomatic games played within the World Heritage Committee and the United Nations, it is difficult for States to distance themselves from decisions, however unfair they may be perceived. To do so is to risk even harsher criticism and the ostracism of the responsible nations. In this respect, the Committee’s recommendations on nominations and the list of endangered sites cannot be lightly dismissed, including recommendations concerning the explanations related to sites. And therein lies the difficulty: satisfying vested interests that see in certain nominations the possibility of serving local political, tourist or economic interests, while at the same time meeting the requirements of the World Heritage Committee and its critics. Many States have had to make these choices, which also reflect the difficulties that the World Heritage Convention is increasingly facing in its very principles. Today, geopolitics often prevails over conservation, and number over quality, further undermining the original principles. States are trying to impose their supremacy at all levels of the UN, including within the World Heritage Committee, which cannot escape these power strategies, at the risk of rendering the original objectives unrealistic. And it is the most responsible States parties that have the charge to preserve these original principles as best they can by freeing themselves from harmful power strategies, and focusing on the more elevated original principles of preserving the past for the benefit of the future.

⁴⁸ “Japan Should Proudly Push for Sado Gold Mine’s UNESCO Listing,” Sankei Shimbun, 31-01-2022. According to Sanae Takaichi: “If the recommendation had been differed it would have lent credibility to South Korea unjustified claims.”

⁴⁹ <https://whc.unesco.org/en/decisions/5284/>

How to Ensure the Safety of the Japan Coast Guard While Maintaining Its Nature as a Police Organ When It Conducts Missions in Collaboration with the Japan Maritime Self-Defense Force under the Control Guidelines

Atsuko Kanehara*

Abstract

This article will examine how to ensure the safety of the Japan Coast Guard when it conducts missions designated in the Control Guidelines that Japan adopted on the 28th of April 2023. For that purpose, this contribution will conclude with some proposals.

Under Article 80 of the Self-Defense Forces Law of 1954, the Minister of Defense may place the Japan Coast Guard under its control when there are armed attacks against Japan. The Japan Coast Guard has been ceaselessly conducting monitoring and surveillance of Chinese vessels that have periodically entered Japan's territorial sea surrounding the Senkaku Islands for more than two decades, over which both China and Japan have claimed territorial sovereignty. Due to the provocative conduct of such Chinese vessels, the tension in the sea area has been seriously heightened. Against this background and other factors, the Japanese government adopted three strategic documents on Japan's security on the 16th of December 2022. In line with this, for the implementation of the control of the Minister of Defense over the Japan Coast Guard under Article 80 of the Self-Defense Forces Law, the Japanese government adopted the said Control Guidelines. The said Control Guidelines designate various missions which the Japan Coast Guard will conduct in collaboration with the Japan Maritime Self-Defense Force.

A key characteristic of the Japan Coast Guard is that it must maintain its nature as a police organ or law enforcement organ under Article 25 of the Japan Coast Guard Law. Without specific legal grounds, any "interchangeability or duplication," either between defense missions and police ones, or defense organs and police ones, is strictly prohibited by Japanese law. As a result, the use of weapons by the Japan Coast Guard, as a police organ, is rigidly limited to the extent that is needed for the purpose of accomplishing its police function. The Japan Coast Guard is not allowed to use weapons for defense or military operations. Such situation is very different from the State practice of other countries around the world in terms of the relationship between military organs and coast guards including their missions.

The critical issue is how, when the Japan Coast Guard conducts missions under the Control Guidelines in collaboration with the Japan Maritime Self-Defense Force, it can ensure its safety. When an armed conflict is taking place, can operating in the battlefield or in the sea areas near to it, with significantly limited use of weapons, be safe? If so, how would the safety be ensured?

This paper will consider this confounding issue that is inherent to the Japan Coast Guard from various aspects. It will conclude with this author's proposals to ensure the Japan Coast Guard's safety.

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** All URLs were last accessed on the 12th of January, 2024.

Introduction

The Japanese government finalized the three official documents on Japan's security¹ by a Cabinet decision on the 16th of December 2022. Part of the background to this lies in the serious consideration that the tense situation has been significantly exacerbated in recent years, particularly in relation to China in the East China Sea.² Based upon the same consideration, on the 28th of April 2023, the Japanese government adopted the Control Guidelines for the Japan Coast Guard (Guidelines)³ under Article 80 of the Self-Defense Forces Law.⁴

Article 80 reads:⁵

1. In the event the whole or part of the Self-Defense Forces is ordered into operation under the provisions of Paragraph 1, Article 76 (limited to No. 1), or Paragraph 1, Article 78, the Prime Minister may, if deemed especially necessary, place the whole or part of the Coast Guard under the control of the Minister of Defense (slightly corrected).⁶

2. In the event, the whole or part of the Coast Guard has been placed under control according to the provisions of the preceding paragraph, the Prime Minister shall place it under the command of the Minister of Defense as prescribed by Cabinet Order.

3. When the control under the provisions of Paragraph I has been deemed no longer necessary, the Prime Minister shall immediately remove such control.

After the Self-Defense Forces Law was enacted in 1954, for almost 70 years, concrete ways for how the Japan Coast Guard (JCG) and the Japan Maritime Self-Defense Force (JMSDF) are to take collaborative measures under the control by the Minister of Defense have not been designated. Against the background of the heightened tension in the East China Sea, the implementation of the Guidelines has become reality.

The most important factor to be emphasized is that, under domestic law,⁷ the JCG must maintain its nature as a law enforcement organ or a police organ with strict limitation on its use of weapons to the extent that allows it to accomplish its police function.⁸ The Guidelines will be issued in accordance with a decision under Japan's domestic law that an armed attack against

¹ These are the National Security Strategy of Japan, the National Defense Strategy, and the Defense Buildup Program.

² Atsuko Kanehara, "Refining Japan's Integrative Position on the Territorial Sovereignty of the Senkaku Islands," *International Law Studies*, Vol. 97 (2021), 1597–1600, 1625–1630.

³ https://www.mod.go.jp/j/press/news/2023/04/28b_02.pdf (in Japanese).

⁴ Law No. 165 of 1954.

⁵ An unofficial translation is given in Robert D. Eldridge and Musashi Katsuhiko eds., *The Japan Self-Defense Forces Law: Translation, History, and Analysis*, (Cambridge Scholars Publishing, 2019).

⁶ Article 76 prescribes defense operations and Article 78 does so for public security operations.

⁷ The relevant domestic laws will be introduced later.

⁸ Regarding the difficult distinction between the use of force prohibited by international law, particularly by Article 2, Paragraph 4 of the United Nations Charter, on the one hand, and the use of weapons allowed by international law for the purpose of law enforcement, on the other hand, see Atsuko Kanehara, "Reconsideration of the Distinction between the Use of Arms in Law Enforcement and the Use of Force Prohibited by International Law—With an Analysis of the Inherent Significance of This Issue to Japan—," *Japan Review*, Vol. 5 (2022), 13–48.

Japan is occurring and that it has occurred.⁹ In that case, under international law, an armed conflict is very likely taking place. In facing such a situation, the JCG must be a law enforcement or police organ and is strictly prohibited from using weapons as explained here. It cannot use weapons to respond to an armed attack, namely, to combat enemies.

Then, is it possible for the JCG to protect itself from being attacked? How can the safety of the JCG be ensured when it is discharging the designated missions in collaboration with the JMSDF under the Guidelines ?

This paper will look for possible ways to ensure the safety of the JCG in such a situation and will strongly propose safety as an issue of critical importance. In proceeding with this examination, it is assumed that under domestic law, an armed attack against Japan is defined, and that under international law, there exists an armed conflict to which Japan is a party. In accordance with the Guidelines, in an armed attack against Japan under Japanese domestic law, and with the existence of an armed conflict between China and Japan under international law, the JCG will discharge the duties designated by the Guidelines. In order to conduct a substantial examination of the Guidelines, it is useful to put them into these concrete contexts. This contribution will look for a way to ensure the safety of the JCG when it operates under the Guidelines in accordance with the applicable laws.

This paper, after the Introduction, will proceed as follows. First, it will provide a succinct explanation of the background for the Guidelines. Second, the relevant domestic law rules regarding the nature of the JCG as a law enforcement or a police organ, and its strictly limited use of weapons will be explained. Third, as the basis for finding the most effective way to ensure the safety of the JCG vessels and its personnel, considering the duties that the Guidelines expect the JCG to discharge, this paper will put the Guidelines into two concrete contexts: first, the context of coast guard activities in Japan's territorial sea as a duty of the JCG; second, the context of the duties of protecting nationals and conducting rescue operations for mass evacuations. Fourth, while limited from the perspective of this contribution, it will analyze the applicable laws of international law to the situation that is assumed in this paper. Fifth, a separate section will focus upon the principle of distinction as a fundamental limitation on hostile acts. Some concluding remarks with proposals will follow to emphasize the critical importance of the safety of the JCG which could be achieved by thorough research and prudent consideration of the relevant international law rules.

I. The Background for the Guidelines for the Japan Coast Guard Based on Article 80 of the Self-Defense Forces Law

1. The Tense Situation in the East China Sea in Relation to China

The Japanese government finalized the three official documents on Japan's security on the 16th of December 2022. One of the main background factors to this is the serious consideration that the tense situation has been significantly exacerbated in recent years, particularly in relation to China in the East China Sea. Based upon the same consideration, on the 28th of April 2023, the Japanese

⁹ The precise definition of such a situation is given under Article 76 of the Self-Defense Forces Law. The former part of Paragraph 1 of the provision reads:

When considered necessary from the standpoint of defending the nation against Armed Attack from the outside (including the case where armed attack from the outside is imminent), the Prime Minister may order part or the whole of the Self-Defense Forces into operations (slightly corrected).

Unofficial English translation, *supra* n. 5.

government adopted the Guidelines to reflect Article 80 of the Self-Defense Forces Law.¹⁰

The issue of the Senkaku Islands¹¹ is closely related to this tense situation. Japan's position is: There is no doubt that the Senkaku Islands are clearly an inherent part of the territory of Japan, in light of historical facts and based upon international law. Indeed, the Senkaku Islands are under the valid control of Japan. There exists no issue of territorial sovereignty to be resolved concerning the Senkaku Islands.¹²

Thus, Japan does not admit any existence of a dispute with China on the sovereignty of the Senkaku Islands.¹³ Nonetheless, as a matter of fact, there is a difference of opinions between China and Japan, since China also has claimed its sovereignty over the Senkaku Islands.

Since the beginning of the 21st century, China has dispatched government vessels, warships, and fishing boats to the sea areas surrounding the Senkaku Islands.¹⁴ These sea areas are Japan's territorial sea and contiguous zone. Particularly from 2012, when the Japanese government acquired ownership of the Senkaku Islands, such provocative entries by Chinese vessels into Japanese sea areas has become rampant.¹⁵ In this regard, the JCG has made public, in a periodical manner, information on such activities by Chinese vessels.¹⁶ Far beyond the simple entry of Chinese vessels into Japan's territorial sea, recently, cases have occurred in which Chinese government vessels persistently pursued Japanese fishing boats in the sea areas. On the Chinese side, *in arguendo*, such behavior is justified as the exercising of its law enforcement jurisdiction, because the sea areas concerned, as well as the Senkaku Islands, are under Chinese sovereignty.¹⁷

2. The Chinese Coast Guard Law of 2021

In addition, the event that really exacerbated the tense situation was China's enactment of the Chinese Coast Guard Law (CCGL) in January of 2021¹⁸ and its entry into force on the 1st of February of the same year. The CCGL astounded not only the Japanese authorities but also others across the world. Experts on international law and the law of the sea in particular have

¹⁰ As to the specific provision, see the Introduction.

¹¹ The islands are called "Diaoyu Dao" in Chinese.

¹² Ministry of Foreign Affairs of Japan, About the Senkaku Islands (Apr. 13, 2016), <https://www.mofa.go.jp/region/asia-paci/senkaku/index.html>.

¹³ Here, the concept of a dispute under international law is not discussed. Regarding it and Japan's position, see Kanehara, *op. cit.*, *supra* n. 2, 1591, and footnote 6.

¹⁴ For an overview of the situation, see Ministry of Foreign Affairs of Japan, Status of Activities by Chinese Government Vessels and Chinese Fishing Vessels in Waters Surrounding the Senkaku Islands (Aug. 26, 2016), <https://www.mofa.go.jp/files/000180283.pdf>.

¹⁵ As for the details of such Chinese conduct, see Atsuko Kanehara, "Maritime Security in the East China Sea: Japan's Perspective," *Issues & Insights*, Vol. 21 (2021), <https://pacforum.org/wp-content/uploads/2021/07/Issues-and-Insights-Vol-21-SR2-ver-3.pdf>, 16–17; and Atsuko Kanehara, "International Law as a Tool to Combat China," *Japan Review*, Vol. 4, No. 1 (2020), 18.

¹⁶ <https://www.kaiho.mlit.go.jp/mission/senkaku/senkaku.html>.

¹⁷ Ministry of Foreign Affairs of the People's Republic of China, Foreign Ministry Spokesperson Wang Wenbin's Regular Press Conference on June 4, 2021, https://www.mfa.gov.cn/eng/xwfw_665399/s2510_665401/2511_665403/202106/t20210604_9170759.html; Ministry of Foreign Affairs of the People's Republic of China, Foreign Ministry Spokesperson Zhao Lijian's Regular Press Conference on July 13, 2021, https://www.mfa.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/202107/t20210713_9170784.html.

¹⁸ An unofficial English translation of the Chinese Coast Guard Law is available on the U.S. Air University web site: https://www.airuniversity.af.edu/Portals/10/CASI/documents/Translations/2021-02-11%20China_Coast_Guard_Law_FINAL_English_Changes%20from%20draft.pdf.

repeatedly criticized several points in the CCGL.¹⁹ However, for Japan, which is actually facing the tense situation with China, and from the viewpoint of this paper, the most important provision therein is Article 83.²⁰

Under the CCGL, law enforcement and defense really seem to be “interchangeable.” Article 83 provides that coast guard organizations perform defense operations and other tasks in accordance with the “National Defense Law of the People’s Republic of China,” the “People’s Armed Police Law of the People’s Republic of China” and other relevant laws, military regulations, and orders of the Central Military Commission.²¹

In the sea areas surrounding the Senkaku Islands, periodically and almost permanently, Chinese vessels and JCG vessels are confronting each other.²² The JCG has taken measures against Chinese vessels that are entering Japan’s contiguous zone and territorial sea surrounding the Senkaku Islands in accordance with the United Nations Convention on the Law of the Sea (UNCLOS). The JCG has repeatedly required Chinese government vessels to leave Japan’s territorial sea.²³

In such an actual confrontation between Chinese government vessels and JCG vessels, when Chinese vessels immediately change their mission from law enforcement to defense operation on site in accordance with Article 83 of the CCGL, that would doubtlessly realize the circumstance where JCG vessels come to stand face to face with Chinese “warships.” As the interchangeability given under the CCGL between law enforcement and defense operation enables Chinese government vessels to actually turn into “warships,”²⁴ at least in terms of their function,²⁵ they would confront JCG vessels as warships.

Here is where the issue of rigid non-interchangeability between law enforcement and defense²⁶ for the JCG arises, which will be examined in Section II.

¹⁹ For instance, see Brig Vinod Anand, “Implications of China’s New Coast Guard Law,” *Vivekananda International Foundation* (Feb. 26, 2021), <https://www.vifindia.org/2021/february/26/implications-of-chinas-new-coast-guard-law>; and Tomohisa Takei, “How Japan Should Deal with China’s New Coast Guard Law,” *Asia Pacific Initiative* (Apr. 8, 2021), <https://apinitiative.org/en/2021/04/08/23360/>.

²⁰ As to the impacts of the CCGL on Japan’s coast guard activities, see Atsuko Kanehara, “The Impact on Japan’s Coast Guard and Maritime Security Caused by China’s Coast Guard Law of 2021,” *Japanese Yearbook of International Law*, Vol. 65 (2022), 320–335.

²¹ For an unofficial English translation of the CCGL, see *supra* n. 18.

²² As to the measures that the JCG has taken toward Chinese vessels, see *supra* n. 14 and 15.

²³ As, according to the law of the sea, Chinese government vessels enjoy immunity from the enforcement jurisdiction of foreign countries, the JCG cannot take law enforcement measures against them, and so it repeatedly requests Chinese government vessels to leave Japan’s territorial sea. Regarding such immunity, see Article 32 of UNCLOS. Relating to warships’ refusal to comply with such requests, Article 30 provides for a request to leave by a coastal State of the territorial sea.

²⁴ Under UNCLOS, Article 29 sets a definition of warships. Therefore, Chinese law enforcement vessels that change their function from law enforcement to defense operation under Article 83 of the CCGL need to satisfy the requirements given by the provision of UNCLOS in order to enjoy rights and privileges under international law. Here, it is enough to recognize that, as a matter of fact, Chinese vessels may immediately change their function from law enforcement to defense, such as becoming warships.

²⁵ Regarding warships in armed conflicts, see Wolff Heintschel von Heinegg, “Warships,” *Max Planck Encyclopedias of International Law*, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e443?rskey=Q0ctQU&result=1&prd=MPIL>, article last updated: October 2015.

²⁶ Unless otherwise explained, in this paper, “defense” means that under international law, different from “defense” or self-protection under domestic criminal law.

II. The JCG as a Law Enforcement or a Police Organ under Article 25 of the Japan Coast Guard Law

1. Article 25 of the Japan Coast Guard Law

Even if standing face to face with Chinese warships in Japan's territorial sea around the Senkaku Islands, the JCG is strictly obliged to maintain its nature as a law enforcement organ or a police organ. Article 25 of the Japan Coast Guard Law²⁷ prescribes for that. It reads:

Nothing contained in this Law shall be construed to permit the Japan Coast Guard or its personnel to be trained or organized as a military establishment or to function as such.²⁸

To this rigid non-interchangeability between law enforcement and defense, or military operations, both the background for enacting the law and Japan's inherent history after World War II are closely related.²⁹ This is also the case with Article 9 of the Constitution of Japan,³⁰ in which Japanese people forever renounce war as a sovereign right of the nation.³¹ Here it is enough to point out this fact without going into the details. This background and Japan's history impose so severe a prohibition on such an interchangeability without specific legal grounds between a law enforcement or police organ, on the one hand, and a defense organ, on the other hand.³² This non-interchangeability is not only a matter of organizational demarcation between them, but also a matter of the missions and function that each of them discharges. In any case, the JCG must maintain its being a police organ, and must not take any roles of defense.

2. The Strict Limits Placed on the Use of Weapons by the JCG as a Police Organ

As the JCG is a police organ, its use of weapons is strictly limited to the extent that allows it to accomplish its police function. The former part of Article 7 of the Police Duties Execution Act provides for this. It reads:

In the event that there is probable cause to deem it necessary for the arrest of a criminal or the prevention of a criminal's escape, for self-protection or the protection of others, or for suppression of resistance to the performance of public duty, a police official may use a weapon within the limits judged reasonably necessary in the situation.³³

²⁷ Law No. 28 of 1948.

²⁸ An unofficial English translation of the Japan Coast Guard Law is given at <https://nippon.zaidan.info/seikabutsu/2001/00500/contents/00021.htm>.

²⁹ Rekizo Murakami and Masato Mori, "Kaijohoanchoho no Seiritsu to Gaikoku Hosei no Keiju (Enactment of the Coast Guard Law and Reception of Foreign Laws)," Soji Yamamoto *et al.* eds., *Kaijohoan Hosei—Kaiyoho to Kokunaiho no Kosaku (Legal System on Coast Guard—Interplay between the Law of the Sea and Domestic Law)*, (Sanseido, 2009), 26–33.

³⁰ The Constitution of Japan, November 3, 1946.

³¹ Article 9 reads:

Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

For an unofficial English translation of this provision, see <https://www.japaneselawtranslation.go.jp/ja/laws/view/174>.

³² Hereinafter, this paper will use the term "police organ," which can also mean "law enforcement organ," unless the term "law enforcement organ" is more appropriate depending on the context. JMSDF, which is a defense organ, may discharge police function in accordance with the Self-Defense Force Law. For instance, its Article 82 provides for the maritime police action conducted by JMSDF.

³³ For an unofficial English translation of this provision, see <https://www.japaneselawtranslation.go.jp/ja/laws/view/4043/tb>.

Thus, as a police organ, the JCG and its personnel may only use weapons when it deems this to be necessary for the arrest of a criminal or the prevention of a criminal's escape, for self-protection or for the protection of others. In other words, even when Chinese vessels that come to be warships, at least in terms of their function, in accordance with Article 83 of the CCGL, are conducting armed attacks against the JCG vessels in Japan's territorial sea around the Senkaku Islands, the JCG can only respond to them strictly within the limit placed on its use of weapons by the Japan's Police Duties Execution Act. Even though international law permits the JCG, as a Japanese governmental organ, to respond by exercising the right of self-defense, while issues under *jus in bello* are remaining, this legal fact of Japanese domestic law would never release the JCG from the duty of compliance with the limitation on its use of weapons and the responsibility for a violation thereof under Japan's domestic law. Or, even if there exists an armed conflict under international law, the JCG could never conduct a hostile act with the use of weapons. Broadly speaking, it could not fight an armed conflict.

In addition, the JCG vessels have a lightweight construction such that they can discharge the JCG's principal mission of maritime search and rescue in a speedy manner. They are not durable at all against an armed attack.

Thus, the JCG is, when operating according to the Guidelines under the situation that this paper assumes, a police organ with strict limitation on its use of weapons. Its vessel structure does not fit armed conflicts. Bearing this in mind, next, the duties that the guidelines expect the JCG to discharge will be confirmed. This forms a useful presupposition for finding the most effective way, in concrete contexts, to ensure the safety of the JCG under international law.

III. The Duties That the Guidelines Expect the JCG to Discharge

1. The Contents of the Guidelines

(1) The Guidelines read:

For the JCG to exercise its abilities, its main roles under contingency are taking measures to protect nationals and to protect lives at sea, particularly being able to play to its strength as a police organ. Such a discharge of the JCG's roles of saving lives and evacuating residents at a maximum is useful for the JMSDF as it allows the JMSDF to further concentrate on its frontal strategy.³⁴

As concrete missions that both the JCG and the JMSDF may conduct in collaboration, the Guidelines indicate, for instance, the following: evacuation and rescue of residents, providing information and support for rescue to vessels, search and rescue and saving lives, monitoring and surveillance to protect port facilities from terrorist attacks, and response measures for mass evacuations.

(2) The Guidelines confirm the non-military nature of the JCG. They read:

Under the control of the Minister of Defense, there may be no changes in the duties, functions, competences, and non-military nature of the JCG. Such control over the JCG does not amount to "incorporation of the JCG into the JMSDF" and "para-militarization of the JCG."³⁵

(3) While the Guidelines purport to clarify the meaning of the cooperation and collaboration between the JCG and the JMSDF when the Guidelines are issued under Article 80 of the Self-

³⁴ *Supra* n. 3.

³⁵ *Ibid.*

Defense Forces Law, and while the Guidelines designate the concrete missions with such cooperation and collaboration, still, ambiguity remains to a significant degree. It is ambiguous, for instance, as to where, in what sea areas, the JCG will operate, and as to how the JCG will precisely discharge its function that the Guidelines expect.

This paper is putting the Guidelines into context, for the sake of seeking the most effective way to ensure the safety of the JCG under international law when it is discharging its duties under the Guidelines. By doing so, it may also form a useful basis for the examination of the applicable laws of international law to the situation that this paper assumes.

2. Putting the Guidelines into Concrete Contexts

Two concrete situations as the contexts into which the Guidelines are put may be practically presupposed based upon the actual duties that the JCG is discharging.

In the first context, when the JCG is conducting its guarding of Japan's territorial sea surrounding the Senkaku Islands, an armed conflict takes place between China and Japan.

Such a context is not mentioned in the Guidelines. However, this is the situation that will most likely happen considering Article 83 of the CCGL as explained above. Chinese coast guard vessels entering Japan's territorial sea around the Senkaku Islands may immediately change their missions from law enforcement to defense operation. Chinese coast guard vessels may change themselves into "warships" at least in terms of function.³⁶ To cope with the growing tense situation in the sea area, the JCG has ceaselessly continued its monitoring and surveillance activities. Therefore, realistically, it is most predictable that JCG vessels that are conducting such monitoring and surveillance of Chinese coast guard vessels in the sea area will immediately come to confront the Chinese warships. The safety of the JCG in this situation is doubtlessly the most pressing agenda.

Second, there might be a large number of evacuees coming toward Japan via the sea from neighboring countries, such as Taiwan.³⁷ In fact, the JCG and the JMSDF have conducted a joint drill assuming an issue envisaged by the Guidelines, on the 22nd of June 2023.³⁸ While the details have not been publicly released, according to the media,³⁹ the joint drill supposed that the patrol ships were evacuating Japanese residents. In such an evacuation operation, evacuees from neighboring countries may also be included. Therefore, this second situation is also likely to come true.⁴⁰

Bearing in mind these concrete contexts into which the Guidelines are put, the next section will examine the applicable international laws to the situation that this paper assumes, namely, one when an armed conflict under international law is taking place, and when, under Japanese laws, an armed attack is being conducted against Japan. After giving an overview of some issues

³⁶ This nature as a warship is not necessarily a legal one. Vessels must satisfy the requirements under Article 29 of UNCLOS to legally become warships. See *supra* n. 24.

³⁷ Japan has not given recognition to Taiwan as a sovereign State. Therefore, here, this paper does not intend to define Taiwan as a sovereign State.

³⁸ <https://www.mod.go.jp/j/press/news/2023/06/22a.html>, (in Japanese).

³⁹ Jiji Press News, Japan Holds 1st Drill Based on SDF-JCG Emergency Manual, 2023.06.22 <https://sp.m.jiji.com/english/show/26979>; The Japan Times, MSDF and coast guard hold joint drill under defense minister control scenario, June 23, 2023 <https://www.japantimes.co.jp/news/2023/06/23/national/coast-guard-msdf/>.

⁴⁰ As for a thorough examination of this issue, see, for instance, Raul (Pete) Pedrozo, "Duty to Render Assistance to Mariners in Distress During Armed Conflict at Sea: A U.S. Perspective," *International Law Studies*, Vol. 94 (2018), 102–126; and Natalie Klein, "Assessing Australia's Push Back the Boats Policy under International Law: Legality and Accountability for Maritime Interceptions of Irregular Migrants," *Melbourne Journal of International Law*, Vol. 15, No. 2 (2014), 414–443.

relating to the applicability of “the laws of war” in the next section, the subsequent section will focus mainly upon the principle of distinction.

IV. Applicable Laws to the Situation That This Paper Assumes

1. The Applicability of “the Laws of War” under the Prohibition of the Use or Threats of Force

(1) Regarding the applicable laws to the situation which this paper assumes, there are two critical issues that require examination: the applicability of “the laws of war” under the prohibition of the use or threats of force by Article 2, Paragraph 4 of the United Nations (UN) Charter; and the relationship between the laws of war, if applicable, and the law of the sea.⁴¹ Such a general consideration of the issue of the applicable laws is meaningful before a detailed examination of the principle of distinction in the next section.

(2) To avoid any confusion, some clarification of the terminology is useful. There are “laws of war,” “laws of armed conflicts,” and international humanitarian law. Depending on the period concerned, that is to say before or after the UN Charter came into force, there may or may not exist a distinction between the laws of war and the laws of armed conflicts. By the prohibition of the use of force and the threat of force under Article 2, Paragraph 4 of the UN Charter, “legal” wars ceased to exist. Here, it is not necessary to discuss in detail the requirements for the existence of a war, such as the declaration of a war. Whatever the requirements may be, it is enough to presuppose the existence of war.⁴² When every violent act is falling within the use of force, and when the laws of “war” presuppose the existence of a war, after the UN Charter came into force, there would be no room, at least theoretically, for any application of the laws of “war” that were valid before it. After the UN Charter came into force, in place of the laws of war, the term “armed conflicts,” “the laws of armed conflicts” began to be used to designate the body of laws that regulate violent acts.⁴³

Nonetheless, this distinction between the laws of war and the laws of armed conflicts depending on the time of application is not necessarily so meaningful.⁴⁴ This is because after the

⁴¹ It is necessary to examine the relationship between the laws of armed conflicts, or the laws of war, and the law of the sea. Later, this paper will succinctly outline this issue.

⁴² On this issue, particularly from the perspective of the application of the laws of war as a legal effect of the concept of war, see Christopher Greenwood, “The Concept of War in Modern International Law,” *International and Comparative Law Quarterly*, Vol. 36 (1987), 283–306.

⁴³ While many treaty provisions which this section will introduce provide for “armed conflicts,” there is no established legal definition for the term, and it is an expression that describes a certain factual situation. Article 1, Paragraph 4 of the 1977 Additional Protocol I to the 1949 Geneva Conventions mentions armed conflicts, but it does not give any definition thereof. Hans-Peter Gasser, “Humanitarian Law, International,” *Max Planck Encyclopedias of International Law*, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e488?rskey=Dk4m8X&result=1&prd=MPII>, article last updated: December 2015, para. 5; James Kraska *et al.*, “Newport Manual on the Law of Naval Warfare,” *International Law Studies*, Vol. 101 (2023), 2.1.2.1. Even when there was a distinction between wartime and peacetime, there was not an established concept of war. Greenwood, *op. cit.*, *supra* n. 42, 284–287.

⁴⁴ For an analysis of this issue from the view point of the right of self-defense, see Akira Mayama, “Jieiken Koshi ni Okeru Buryokuhunsoho no Tekiyo—Senjikkokusaiho to Buryoku Hunsoho no Renzokusei · Hirenzokusei (Application of the Laws of Armed Conflicts in Exercise of the Right of Self Defense—Continuity and Discontinuity between the Laws of War and the Laws of Armed Conflicts),” *Kokusai Mondai (International Affairs)*, No. 556 (2006), 33–34, 42–43.

UN Charter came into force, many treaties regulating violent acts by force have been concluded. They are called the laws of armed conflicts. They incorporate the content of the laws of war that were applied before the UN Charter's existence, albeit partially rather than totally, and they do not necessarily abolish such laws of war. In other words, even if the development and changes of the laws of war that were applied before the UN Charter in this course of time are significant, the distinction between the laws of war and the laws of armed conflicts may not be so significant, as the latter has incorporated into it the former with the development and changes.

Bearing this in mind, this paper will hereinafter use the term "the laws of war" and will do so without excluding development and changes thereto, particularly after the UN Charter came into force.

In addition, there is a distinction between "the Hague Law" and "the Geneva Law," and between the laws of war and international humanitarian law. In this regard too, unless confusion would occur, this paper will use the term "the laws of war" and do so without necessarily excluding from it the meaning of international humanitarian law.

(3) Article 2, Paragraph 4 of the UN Charter prohibits the use or threats of force.⁴⁵ The focus is placed on the use of force not the threat of force.⁴⁶ Under this prohibition, therefore, legally, or, if it might be said, theoretically, there must not exist a "war"⁴⁷ if any violent act that amounts to a war is to fall under the use of force. Contrary to such a theoretical conclusion, from a practical standpoint, there have, as a matter of fact, been "wars" or, in other words, instances of the use of force in the world after the UN Charter came into force.

If legally, or theoretically, a war must not exist, there would be no room for "the traditional laws of war," which presuppose the distinction between peacetime and wartime, to apply.⁴⁸ To this, the traditional distinction between *jus ad bellum* and *jus in bello* relates.⁴⁹ As far as the rules in the laws of war regulate the means and method of operations in armed conflicts, they may have applicability to the use of force after the UN Charter came into force. In that case, however, the prohibition of the use of force by the UN Charter, which means prohibition in *jus ad bellum*, should have some impact on *jus in bello*, the laws of war. A complete analysis of this difficult issue

⁴⁵ It reads:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.

⁴⁶ There are opposing views on whether the phrase in Article 2, Paragraph 4 "against the territorial integrity or political independence of any State" sets some limits on the prohibition of the use of force by the provision. The important point here is to confirm that, under the situation that the provision prohibits, regardless of whether "the use of force" is qualified by the phrase or not, a war must not exist.

⁴⁷ *Supra* n. 42, 287–288.

⁴⁸ A.V. Lowe, "The Laws of War at Sea and the 1958 and 1982 Conventions," *Marine Policy*, Vol. 12, Issue 3 (1988), 286. Lowe wisely uses the term "traditional laws of war" to designate the laws that were valid when, before the UN Charter came into force, there was a distinction between wartime and peacetime. This paper, according to the terminology mentioned above, uses the term "the laws of war," which embodies both the traditional laws of war that Lowe refers to, and the modern laws of armed conflicts after the UN Charter came into force, unless any confusion were to occur from such use.

⁴⁹ For a detailed analysis of this issue, see Christopher Greenwood, "The Relationship between *Jus ad Bellum* and *Jus in Bello*," *Review of International Studies*, Vol. 9, No. 4 (1983), 221–234.

is far beyond the examination of this paper.⁵⁰

For the examination in this paper, it is enough to presuppose the applicability of the laws of war after the UN Charter came into force. This is because this paper adopts the term “the laws of war” without making a distinction between the laws of war that applied prior to and after the UN Charter’s existence for the reason explained above. As far as presupposing such applicability, the next issue would be raised, namely the issue of the relationship between the laws of war and the law of the sea. The law of the sea consists of the 1958 Four Geneva Conventions, UNCLOS, and customary law. While it is not only the law of the sea but also other fields of law, such as human rights law, that require a relationship with the laws of war, this paper, from its perspective, will concentrate on the relationship between the laws of war and the law of the sea.⁵¹

2. The Relationship between the Laws of War and the Law of the Sea

Regarding the relationship between the laws of war and the law of the sea,⁵² as a general consideration, for instance, there is an argument that “international law” in the phrase “subject to

⁵⁰ One authority makes a detailed examination of the applicability of the “traditional” (i.e., pre-UN Charter) laws of war following the coming into force of the UN Charter. Lowe, *op. cit.*, *supra* n. 48, 287–288. According to him, there are persuasive arguments for the continued applicability of the traditional laws of war. First, under the prohibition of the use of force by Article 2, Paragraph 4, the use of force is allowed as an exercise of the right of self-defense. The principles of the traditional laws of war, such as the duty to avoid casualties among non-combatants and belligerent rights of visit and search on the high seas, might remain applicable as rules mediating or setting the limits on the proper exercise of the right of self-defense. Second, as Article 2, Paragraph 4 of the UN Charter is interpreted as allowing the use of force such as that in self-defense and that under the authorization by the UN, these types of the use of force may both in fact and in law amount to a war. Thus, the traditional laws of war would apply to these types of the use of force. Considering these arguments and an examination of the Falklands conflict, the authority referred to here came to the conclusion that there remains a role for the traditional laws of war, and he sought to re-establish their role. *Ibid.*, 287–288.

⁵¹ Lowe describes this effort of consideration as looking for “a new law of war.” *Ibid.*, 289.

⁵² There are many works on this issue. Horace B. Robertson, Jr., “The ‘New’ Law of the Sea and The Law of Armed Conflict at Sea,” *The Newport Papers, Third in the Series* (1992); Rüdiger Wolfrum, “Military Activities on the High Seas: What Are the Impacts of the U. N. Convention on the Law of the Sea?,” *International Law Studies*, Vol. 71 (1998), 501–513; A.V. Lowe, “The Commander’s Handbook on the Law of Naval Operations and the Contemporary Law of the Sea,” *International Law Studies*, Vol. 64, Horace B. Robertson, Jr. ed., *The Law of Naval Operations*, Chapter V (Naval War College Press, 1991), 109–147; A.V. Lowe, “Some Legal Problems Arising from the Use of the Seas for Military Purposes,” *Marine Policy*, Vol. 10, Issue 3 (1986), 171–184; Lowe, *op. cit.*, *supra* n. 48; “Straight Baselines in International Law: A Call for Reconsideration,” A Seminar with Its Moderator, W. Michael Reisman, *Proceedings of the Annual Meeting of the American Society of International Law*, Vol. 82 (1988), 260–277; Wolff Heintschel von Heinegg, “Current Legal Issues in Maritime Operations: Maritime Interception Operations in the Global War on Terrorism, Exclusion Zones, Hospital Ships and Maritime Neutrality,” *Israel Yearbook on Human Rights*, Vol. 34 (2004), 151–178; Dale G. Stephens, “The Impact of the 1982 Law of the Sea Convention on the Conduct of Peacetime Naval/Military Operations,” *California Western International Law Journal*, Vol. 29, No. 2 (1999), 283–312; Robin Churchill and Vaughan Lowe, *The Law of the Sea*, Third ed., (Manchester University Press, 1999), 421–432; Tullio Treves, “Military Installations, Structures, and Devices on the Seabed,” *The American Journal of International Law*, Vol. 74, No. 4 (1980), 808–857; D.P. O’Connell, *The International Law of the Sea*, Vol. II (Clarendon Press, 1984), Chapter 29; D.P. O’Connell, “International Law and Contemporary Naval Operations,” *British Year Book of International Law*, Vol. 44 (1970), 19–86. Regarding the relationship between the laws of war, the right of self-defense, and interventions against a foreign vessel on the high seas from the perspective of the law of the sea, see Laurent Lucchini, “Un aspect des mesures de surveillance maritime au cours des opérations d’Algérie,” *Annuaire français de droit international*, Vol. 8 (1962), 920–928.

other rules of international law” of Article 87, Paragraph 1 of UNCLOS refers to the laws of war.⁵³

While not specifically concerning the relationship between the laws of war and the law of the sea, the International Court of Justice (ICJ) declared a “special law” status of the laws of war in relation to human rights law in the particular context of a case before it.⁵⁴

In addition, as a certain general argument on the relationship between the laws of war and the law of the sea, attention has been paid to the significance of the legal zone system, particularly that of exclusive economic zones (EEZs), under UNCLOS due to its inherent meaning to the laws of war.

The coastal States of EEZs have sovereign rights and jurisdiction solely on the matters designated by UNCLOS under its Article 56. In relation to other matters, the freedom of the use of the high seas is applied to EEZs in accordance with Article 58. For the latter matters, the legal status of the sea zones within 200 nautical miles from coasts maybe interpreted as either EEZs or the high seas while Article 58 mentions EEZ.⁵⁵ This may have an inherent significance to the laws of war. When the laws of war apply, the military operations of the naval forces of the parties to armed conflicts are permitted in limited sea areas. In this context, whether the sea areas within 200 nautical miles from coasts are EEZs or the high seas has some importance.⁵⁶

However, these general considerations on the relationship between the laws of war and other fields of international law have not solidified an established understanding. Rather, special issues with respect to the relationship between the laws of war and the law of the sea have developed to a certain degree. In this regard, there are discussions on the issues relating to, for instance, the concept of “peaceful use” of the sea, seabed, structures, installations and other devices, innocent passage of foreign warships, rights of navigation in relation to territorial seas,⁵⁷ internationally used straits, high seas, and military activities in EEZs. In addition, there are issues relating

⁵³ United States Naval War College, International Law Department, Center for Naval Warfare Studies, *Maritime Operational Zones*, Chapter 4, <https://dnnlgwick.blob.core.windows.net/portals/0/NWCDepartments/Stockton%20Center%20International%20Law/2013-Zones-Manual.pdf?sr=b&si=DN NFileManagerPolicy&sig=sWrSUKeqZaEKhaVvWPx0bCSByt6FQnC6k3YHksLx9I%3D>, (2013), 4-16; George K. Walker, “The Tanker War, 1980–88: Law and Policy,” *International Law Studies*, Vol. 74 (2000), 487–489.

⁵⁴ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July, 1996, *ICJ Reports 1996*, para. 25. The same opinion is voiced by James Kraska *et al.*, *op. cit.*, supra n. 43, 1.1.

⁵⁵ This issue occurs also for the matters under Article 59 of UNCLOS, which are not attributed to coastal States or foreign States by UNCLOS. Lowe, *op. cit.*, supra n. 52 “The Commander’s Handbook...,” 113–114.

⁵⁶ W.J. Fenrick, “The Exclusion Zone Device in the Law of Naval Warfare,” *Canadian Yearbook of International Law*, Vol. 24 (1986), 93 and footnote 5; Robertson, Jr., *op. cit.*, supra n. 52, 23–25. See also J. Ashley Roach, “The Law of Naval Warfare at the Turn of Two Centuries,” *The American Journal of International Law*, Vol. 94, No. 1 (2000), 67–68. In the context of naval warfare, one authority deals with all contiguous zones, EEZs, and the high seas under the same category of “international waters”, see United States of America Department of Defense, DEPARTMENT OF DEFENSE LAW OF WAR MANUAL, June 2015 (Updated December 2016), <https://dod.defense.gov/Portals/1/Documents/pubs/DoD%20Law%20of%20War%20Manual%20-%20June%202015%20Updated%20Dec%202016.pdf#page=921,13.2.3>.

⁵⁷ Depending on the legal regimes of sea zones under UNCLOS, States have the rights of navigation or passage.

to maritime zones.⁵⁸ Nonetheless, even for these special issues, too, the arguments have not necessarily reached an accord.

Considering the state of the arguments on the relationship between the laws of war and the law of the sea, it is very difficult to find a definitive answer regarding the question of the relationship. For the analysis in this contribution, it is not necessary to do so. From this contribution's perspective, it is enough to recognize such an issue regarding the relationship. The most important point is to emphasize that it would place a heavy burden on the JCG to have to prove the applicability of the rules of the laws of war and its relationship with the rules of the law of the sea, in terms of needing to convincingly justify its position for ensuring its safety. Thus, it may not be inappropriate for this paper to examine the safety of the JCG under the Guidelines by presupposing the application of some rules of the laws of war without excluding the application of the law of the sea at the same time, as has been argued by a number of authorities.

Based upon this principle of examination, this section and section V below will conduct the following analysis. However, before moving onto section V, it is first necessary to succinctly consider the applicability of the laws of war to naval warfare.⁵⁹ More precisely, the question as to which rules of the laws of war are to apply to naval warfare must be clarified as much as possible.

3. The Applicable Rules of the Laws of War to Naval Warfare

(1) Regarding naval warfare, first, authorities frequently say that there are few treaty rules to

⁵⁸ There are practices of setting maritime zones in armed conflicts, and the names are various, such as exclusion zones and maritime defense zones. The location of these zones is in territorial seas, contiguous zones, EEZs and high seas. Wolff Heintschel von Heinegg, "War Zones," *Max Planck Encyclopedias of International Law*, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e436?rskey=oUiyIT&result=1&prd=MPIL>, article last updated: October 2015; Fenrick, *op. cit.*, *supra* n. 56, 91–126; United States Naval War College, International Law Department, Center for Naval Warfare Studies, *op. cit.*, *supra* n. 53, Chapter 4; R.P. Barston and P.W. Birnie "The Falkland Islands/ Islas Malvinas Conflict: A Question of Zones," *Marine Policy*, Vol. 7, Issue 1 (1983), 14–24. As a similar issue, blockades have also been discussed in the context of the relationship between the law of the sea and the laws of war. Wolff Heintschel von Heinegg, "Blockade," *Max Planck Encyclopedias of International Law*, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e252?rskey=P4e2sC&result=1&prd=MPIL>, article last updated: October 2015; Wolff Heintschel von Heinegg, "Naval Blockade," *International Law Studies*, Vol. 75 (2000), Michael N. Schmitt ed., *International Law Across the Spectrum of Conflict: Essays in Honour of Professor L. C. Green, On the Occasion of His Eightieth Birthday*, Chapter VIII; James Kraska, "Rule Selection in the Case of Israel's Naval Blockade of Gaza: Law of Naval Warfare or Law of the Sea?," *Yearbook of International Humanitarian Law*, Vol. 13 (2010), 367–395. For an analysis of the usage of sea zones from the perspective of combating international terrorism at sea, see Wolff Heintschel von Heinegg, *op. cit.*, *supra* n. 52, 159–162.

⁵⁹ This paper follows the general definition of naval warfare, and it denotes the tactics of military operations conducted on, under, or over the sea. ICRC Databases, Naval warfare, Introductory text, at https://casebook.icrc.org/law/naval-warfare#footnote1_1813h2o, 1, and footnote [1]. Regarding naval roles, see, for instance, Steven Haines, "War at Sea: Nineteenth-Century Laws for Twenty-First Century Wars?," *International Review of the Red Cross*, Vol. 98, No. 2 (2016), 421–426.

apply to naval warfare.⁶⁰ As the other side of the coin, one frequently voiced opinion is that the applicable laws to naval warfare are mainly based upon customary international law.⁶¹

The Second 1949 Geneva Convention (GCII) on naval warfare is certainly applicable to naval warfare. In comparison to this, the First 1949 Geneva Convention (GCI) does not apply to naval warfare. Regarding the Third and Fourth 1949 Geneva Conventions (GCIII and GCIV) and the 1977 Additional Protocol I to the 1949 Geneva Conventions (API),⁶² it is not always an easy task to identify the provisions that are applicable to naval warfare.⁶³ On this, the opinion mentioned above is frequently heard, namely that there are few treaty rules to apply to naval warfare, and that the applicable laws to naval warfare are mainly based upon customary international law.⁶⁴

There is, second, another opinion that the regulation by the laws of naval warfare is decided depending on the place of targets of attacks or objects of protection from attacks, and when they

⁶⁰ W. Michael Reisman and William K. Leitzau, "Moving International Law from Theory to Practice: The Role of Military Manuals in Effectuating the Law of Armed Conflict," *International Law Studies*, Vol. 64, Horace B. Robertson, Jr. ed., *The Law of Naval Operations*, (Naval War College Press, 1991), Chapter I, 8; *San Remo Manual on International Law Applicable to Armed Conflicts at Sea, Prepared by International Lawyers and Naval Experts. Convened by the International Institute of Humanitarian Law. Adopted in June 1994* (hereinafter referred to as "the San Remo Manual"), Introductory Note. For an analysis of the San Remo Manual, see Louise Doswald-Beck, "The San Remo Manual on International Law Applicable to Armed Conflicts at Sea," *The American Journal of International Law*, Vol. 89, No. 1 (1995), 192–208. Yasuyuki Yoshida, "Gendai no Kaijo Sakusen kara Mita Kaisenhoki no Kadai (Agenda of the Laws of Naval Warfare from the Perspective of Modern Naval Operations)," *Kokka Anzenhoshō (National Security)*, Vol. 34, No. 2 (2006), 81; Manabu Oginome, "Kaisen ni Okeru Bunminhogo nado no Koryō (Some Consideration of Civilian Protection and Others in Naval Warfare)," *Kaikankō Senryaku Kenkyū (JMSDF Command and Staff College Strategic Studies)*, Vol. 4, No. 1 (2014), 105–106; *Kaijo Buryoku Hunsoho—Sanremo Manyaru Kaisetsusho (The Law on Naval Warfare—Explanation Book on the San Remo Manual)*, Translated by Masayuki Takemoto, Akira Mayama *et al.*, (Toshindo, 1997), iii.

⁶¹ For such a position and similar ones, see Natalino Ronzitti, "Naval Warfare," *Max Planck Encyclopedias of International Law*, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e342?rskey=uBaeSM&result=1&prd=MPIL>, article last updated: June 2009, para. 2; and W.J. Fenrick, "Legal Aspects of Targeting in the Law of Naval Warfare," *Canadian Yearbook of International Law*, Vol. 29 (1992), 239–241.

⁶² For a detailed analysis of the applicability of API to naval warfare, see *ibid.*, 264–267. It is clear that the provisions under API that reflect GCII, which is Part II, are to apply to naval warfare. However, Article 49, Paragraph 3, which is in Section One of Part IV and not in Part II, confounds the determination of the applicability of Section One of Part IV (from Article 48 to Article 67) of API. The title of Article 49 is "Definition of Attacks and Scope of Application." Paragraph 3 reads:

The provisions of this Section apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all attacks from the sea or from the air against objectives on land *but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air* (Emphasis added).

For one interpretation of Article 49 that Article 52 applies to naval bombardment through Article 49, see Ronzitti, *op. cit.*, *supra* n. 61, para. 21.

⁶³ Considering the assumed situation of this paper, the 1977 Additional Protocol II to the 1949 Geneva Conventions is not within the coverage of this paper's examination.

⁶⁴ There are treaties concluded prior to World War II that apply to naval warfare. This paper will focus mainly upon the 1949 Geneva Conventions (GCI can be omitted) and API.

exist at sea, the laws to regulate them are the laws of naval warfare.⁶⁵ According to this opinion,⁶⁶ it is necessary to decide whether the rules concerned designate the place of the targets of the attacks or the objects of protection from the attacks as the sea, and whether the operation concerned has its targets of attacks at sea and its objects of protection at sea.

Among the authorities mentioned first, one authority clearly writes that naval bombardment is subject to API, since Article 49 renders Article 52 applicable to naval warfare.⁶⁷ Naval bombardment can include bombardment from sea against targets on land. According to the second type of opinion, as long as the target of bombardment exists on land, such bombardment is not subject to the laws of naval warfare. This is because the targets of bombardment do not exist at sea. Therefore, the first and second opinions differ from each other.

(2) However, it is not necessary to fully examine the applicable laws to naval warfare and consider the difference of opinions regarding them. From the perspective of this paper, the most important point is that if the JCG, to ensure its safety, were to rely on some rules of the laws of war and adopt a certain interpretation thereof, the burden placed on it would become very heavy. This is because, as shown by the abovementioned authorities, there remains a certain flexibility as to the applicability of the rules to naval warfare, whether treaty rules or customary rules, and their interpretation needs to be truly well grounded for them to be convincing. Otherwise, the conflicting party to Japan would have enough room to apply different rules from those that the JCG does, and a different interpretation of the same rules as those the JCG presupposes are applicable.

The result is that the JCG would run a serious risk of being in danger, such as being a target of attacks by the conflicting party to the armed conflict, as the latter could choose different applicable rules and a different interpretation as explained here. To firmly ensure its safety, the JCG would need to prepare flawless and perfect arguments on the applicable laws and the interpretation thereof.

Bearing in mind this legal situation of the applicable laws to the situation that this paper assumes, in the next section, an examination of the relevant rules on the principle of distinction will be given. The principle of distinction should be the most important principle in considering the safety of the JCG when it discharges its missions under the Guidelines.

V. The Principle of Distinction⁶⁸

1. Basic Rules for Methods and Means of Warfare

(1) As a basic rule for the methods and means of warfare, Paragraph 1 of Article 35 of API prescribes the principle that the methods or means of warfare are not unlimited. It reads:

In any armed conflict, the right of the Parties to the conflict to choose methods or means of

⁶⁵ Akira Mayama, “Junevu Shojoyaku to Tsuika Giteisho (Geneva Conventions and the Additional Protocols),” in the Japanese Society of International Law ed., *Nihon to Kokusaiho no Hyakunen (100 Years for Japan and International Law)*, (Sanseido, 2001), Vol. 10, 177.

⁶⁶ While there is some ambiguity, in focusing on the place of the targets as being at sea, a similar opinion may be voiced by an authority as saying “(a)s a matter of convenience, if Additional Protocol I is not applicable to attacks directed against objects on, under, or over the seas, Article 48 of that document may be used as a statement of the principle of distinction,” Fenrick, *op. cit.*, *supra* n. 61, 263.

⁶⁷ Ronzitti, *op. cit.*, *supra* n. 61, para. 21 and paras. 7–8.

⁶⁸ This is also called “the principle of identification” and “the principle of discrimination.” Michael N. Schmitt, “The Principle of Discrimination in 21st Century Warfare,” *Yale Human Rights and Development Law Journal*, Vol. 2 (1999), 143–182. This paper will use the term “the principle of distinction.”

warfare is not unlimited.

Article 48 further clarifies such limits in relation to the protection of civilians as follows:

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

This is the principle of distinction. The distinction should be made between civilians and combatants, and also between civilian objects and military objectives. It is required to make the distinction between objects or persons that may be attacked and those that may not be attacked. Paragraph 3, Paragraph 4, and Paragraph 5 of Article 51 provide for the details of the principle of distinction. They read:

Paragraph 3

Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.

Paragraph 4

Indiscriminate attacks are prohibited. Indiscriminate attacks are:

- (a) those which are not directed at a specific military objective;
 - (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or
 - (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;
- and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

Paragraph 5

Among others, the following types of attacks are to be considered as indiscriminate:

- (a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and
- (b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

These provisions belong to Part IV of API. As far as Part II of API reflects GCII and applies to naval warfare, it is not totally clear which provisions from Parts other than Part II of API apply to naval warfare. As a confounding provision, Article 49, in its Part IV, contains the phrase that the provisions of this section apply to all attacks from the sea or from the air against objectives on land *but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air* (Emphasis added).⁶⁹

Nonetheless, as long as the principle of distinction has customary law status in relation to naval warfare,⁷⁰ the applicability of the provisions of API would not require a detailed examination.⁷¹ It remains to identify the detailed contents of the principle and examine their possible status as customary law based upon State practice.

(2) It may be said that the principle of distinction is not only a treaty rule but also a customary

⁶⁹ *Supra* n. 62.

⁷⁰ Yoram Dinstein, "Legitimate Military Objectives under the Current *Jus In Bello*," *Israel Yearbook on Human Rights*, Vol. 31 (2001), 1. Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July, 1996, *op. cit.*, *supra* n. 54, 257.

⁷¹ For a detailed analysis, see Mayama, *op. cit.*, *supra* n. 65, 178–181.

law rule. This is the case with naval warfare.⁷² As relevant State practice,⁷³ the military manuals of States have confirmed the principle.⁷⁴ If the relevant treaty rules that apply to naval warfare are few in number, then customary international law and State practice take on greater significance.⁷⁵ As will be explained later, in terms of the concrete application of the principle, there is some difference of opinion regarding the standard for making the distinction between military objectives and others.⁷⁶ The critical issue is how to define military objectives.

2. The Standard for Determining Military Objectives

(1) Even if the principle of distinction is solidly established, the remaining and daunting issue is how to define military objectives. For the JCG, it is indispensable for its safety to completely prove that its vessels and personnel are not military objectives.⁷⁷

There are two ways of determining military objectives. One is to make a list of military objectives depending on categories of objects. The other is to provide a general definition of military objectives by describing the functions of objects.⁷⁸ In the treaty practice relating to naval warfare, the former way, involving the making of a list, was adopted.⁷⁹

For naval warfare, in the past, the former method was dominant, and, principally, warships, auxiliary vessels and merchant vessels were considered. This history of the development of the standard for identifying military objectives is different from that for land warfare, where the standard for identifying military objectives depending on function was adopted earlier than for naval warfare.⁸⁰

(2) By the State practice in place through two world wars and the present day, the way of identifying military objectives by a list of categories, in relation to naval warfare, has become

⁷² In addition to the authority cited at *supra* n. 70, see Robert W. Tucker, "The Law of War and Neutrality at Sea," *International Law Studies*, Vol. 50 (1955), 365. For a very prudent attitude toward customary rules in this regard, see Lowe, *op. cit.*, *supra* n. 52 "The Commander's Handbook..." 130.

⁷³ On the significance of military manuals as State practice and various types of manual, see, for instance, Earle A. Partington, "Manuals on the Law of Armed Conflict," *Max Planck Encyclopedias of International Law*, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e326?rskey=a8hA9D&result=1&prd=MPIL>, article last updated: August 2016. It has been pointed out that States prefer not to stand alone on the law of armed conflict, para. 25. See also Reisman and Leitzau, *op. cit.*, *supra* n.60.

⁷⁴ For instance, the San Remo Manual, Part III, Section I; United States of America Department of Defense, *op. cit.*, *supra* n. 56, 5.5. and 5.6.; and James Kraska *et al.*, *op. cit.*, *supra* n. 43, 5.4.

⁷⁵ Ronzitti, *op. cit.*, *supra* n. 61, para. 42.

⁷⁶ Mayama, *op. cit.*, *supra* n. 65, 178–181; Akira Mayama, "Kaisenhoki ni Okeru Mokuhyo Kubetsu Gensoku no Shintenkai (New Development of the Principle of Distinction in the Laws of Naval Warfare)," (1), *Kokusaiho Gaiko Zasshi*, (*The Journal of International Law and Diplomacy*), Vol. 95, No. 5 (1996), 539–578, (2) in the same journal, Vol. 96, No. 1 (1997), 25–57, particularly (1) 540–541, 546–552.

⁷⁷ The following part of this paper will give an analysis based upon the Guidelines being put into concrete contexts. Before that, here, the legal arguments on the principle of distinction and related issues will be examined.

⁷⁸ In this regard, including several types of ways to explain military objectives, see Fenrick, *op. cit.*, *supra* n. 61, 242–243.

⁷⁹ For instance, the 1936 London Submarine Protocol indicates that a merchant vessel may not be sunk on sight. Article 4 of the 1907 Hague Convention XI suggests that vessels charged with religious, scientific, or philanthropic missions are exempt from capture. *Ibid.*, 243.

⁸⁰ Mayama, *op. cit.*, *supra* n. 76, (1) 546–552.

useless. In applying the standard for identifying military objectives depending on categories, the most confounding issue has been when merchant vessels, enemy or neutral, become military objectives, while in principle, they are not so.⁸¹ The requirements for merchant vessels to amount to military targets have been discussed for a long time.

This is not the place to examine the development of State practice in detail. Here, it suffices to outline that, irrespective of great efforts to set forth the requirements for merchant vessels to become military objectives, in practice, the distinction between merchant vessels that are immune from attacks and those that may be the targets of attacks has become seriously blurred. The standard for the distinction is not reliable. As far as this is the reality with respect to the most critical matters, namely, the inviolability of merchant vessels, the way of identifying military objectives depending on categories loses its usefulness.⁸²

As recent international rules on this issue, Article 52 of API of 1977 is interpreted as adopting the way of identifying military objectives by providing a general definition, which means a general definition depending on the function of the objectives concerned.⁸³ It describes such function as “their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.” As for the civilian population that Article 51 of API deals with,⁸⁴ in terms of the requirements for civilian populations to become military objectives, an important factor is taking a direct part in hostilities.⁸⁵ It could be said that Article 51, too, defines the civilian population as being immune from attack by its type of function.

Considering the development of State practice in this way, as mentioned here, and as far as Article 51 and Article 52 of API apply to naval warfare as well as land warfare, these provisions, as treaty rules, have brought into the principle of distinction for naval warfare the way of identifying military objectives by a general definition, which means definition depending on the function of the objectives concerned.⁸⁶ If this is the case, the remaining and further difficult question is how to identify military objectives depending on their function, not category. From the perspective of this paper, it is necessary to examine how to prove that JCG vessels and personnel should be immune from attacks.

While for naval warfare, as well as for land warfare, the way of identifying military objectives according to their function is said to be important, still, there may be significance in considering the possibility for JCG vessels to become military objectives in accordance with the way of identifying such objectives depending on their category. Thus, in the following, examinations will be given both from the perspective of the category of JCG vessels and from that of their function.

⁸¹ On this issue, there are many works. Including examination of State practice in the past and the modern time, see, for instance, Fenrick, *op. cit.*, *supra* n. 61, 244 *et seq.*; Mayama, *op. cit.*, *supra* n. 65, 179–181; Mayama, *op. cit.*, *supra* n. 76, (1) 548–578, (2) 25–42; Laurie R. Blank, “Taking Distinction to the Next Level: Accountability for Fighters’ Failure to Distinguish Themselves from Civilians,” *Valparaiso University Law Review*, Vol. 46, No. 3 (2012), 765–777; and Yoram Dinstein, *op. cit.*, *supra* n. 70, 1–26.

⁸² For a detailed analysis, see Mayama, *op. cit.*, *supra* n. 76, (1) 556–571, (2) 26–31.

⁸³ Paragraph 2 of Article 52 reads:

Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

⁸⁴ Article 51 provides for the protection of the civilian population. Paragraph 3 of it reads:

Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.

⁸⁵ This factor will be examined later in this section.

⁸⁶ Mayama, *op. cit.*, *supra* n. 65, 179–181.

In such examinations, a concrete analysis is useful in the context of the duties that the JCG will discharge under the Guidelines, which were confirmed above in Section III of this paper.

3. Categories under Which JCG Vessels May Fall

(1) When considering the categories under which JCG vessels fall, the important element is the “control” by the Minister of Defense over the JCG under the Guidelines. This is in accordance with Article 80 of the Self-Defense Forces Law.⁸⁷ Based upon this provision, the Guidelines⁸⁸ read:

Under an integrative and unitary command that is issued based upon information aggregated in the Ministry of Defense and the JMSDF, the JMSDF and the JCG should cope with the situation concerned by swift and accurate allocation of roles in a more cooperative manner than usual.

As confirmed in Section III, the Guidelines make clear that such control does not mean the incorporation of the JCG into the JMSDF, nor does it make the JCG a paramilitary organ, either.

This position is based upon Japan’s domestic laws and a domestic document, and therefore, they have their validity within Japan. However, it is a totally different issue whether Japan’s position is comprehensible and convincing to international society, particularly to the conflicting party, China. For that to be the case, it is, above all, indispensable for Japan’s position to be in accordance with international law.

(2) According to the way of identifying military objectives by their category, it goes without saying that warships are military objectives. As far as JCG vessels do not satisfy the requirements for warships, such as Article 29 of UNCLOS, Japan might be able to prove that they are not warships. The International Committee of the Red Cross (ICRC) also confirms the definition given by Article 29 of UNCLOS.⁸⁹ In addition, regarding incorporation into armed forces, there is the notification requirement under Article 43, Paragraph 3 of API.⁹⁰

(3) As related consideration, it is significant to recognize the recent tendency to understand “military” with a wider scope. This is of critical importance for the JCG in proving that it does not fall under armed forces. This is because they are State vessels as well as warships and auxiliary vessels in many cases, and their police function can be discharged by warships and auxiliary vessels.

⁸⁷ Introduction.

⁸⁸ *Supra* n. 3.

⁸⁹ International Commission of the Red Cross, Commentary of 2017 to Article 14 of the Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949, <https://ihl-databases.icrc.org/en/ihl-treaties/gcii-1949/article-14/commentary/2017?activeTab=undefined>, para. 1520, [30] reads:

Article 29 of the 1982 UN Convention on the Law of the Sea, which reflects customary international law on this point, defines ‘warship’ as a ‘ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline’.

⁹⁰ Article 43, Paragraph 3 reads:

Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.

In this regard, in relation to a State vessel serving a police function,⁹¹ the distinction between military activities and police operations has been blurred.⁹² Furthermore, the category of vessels, whether military ships or police vessels, does not always reflect the nature of their activities. Military ships may conduct police activities, as police vessels do military operations.⁹³ These discussions demonstrate that, in relation to the standard for the distinction under the principle of distinction, the issue of category of vessels and that of their function may substantially overlap. The same may hold true with the consideration of the factors and function that merchant vessels hold, when they lose their immunity from attacks, which will be later examined.

The ICRC points out the wide scope of the term “military.” In relation to “military hospital ship,” it adopts a wide definition of the term “military.”

Its commentary on Article 22 of GCII reads:

Positively defined, the term ‘military’ means that the hospital ships must be operated by, or under the exclusive control of, the armed forces of a State Party. This requirement is met if they qualify as either ‘warships’ or ‘auxiliary vessels’ as defined in international treaty law and customary law. ‘Military’ is to be understood as ‘relating to ... armed forces’. This term is broad enough to apply equally to ‘warships’ and to ‘auxiliary vessels’, as long as they are in fact operated by, or under the exclusive control of, the armed forces (reference numbers omitted).⁹⁴

In addition, recent jurisprudence has repeatedly recognized that the distinction has been blurred between military activities and law enforcement. The Ukraine Naval Vessels Detention Case, (Provisional Measures,⁹⁵ and Preliminary Objections⁹⁶), the Coastal Rights Case (Preliminary Objections)⁹⁷ are examples of such jurisprudence. In these instances, the International Tribunal for the Law of the Sea (ITLOS) and the Arbitral Tribunal considered Article 298, Paragraph 1 (1)

⁹¹ Regarding a State vessel under UNCLOS, see Gil Carlos Rodríguez Iglesias, “State Ships,” *Max Planck Encyclopedias of International Law*, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1224?rskey=3cfU6A&result=1&prd=MPIL>, article last updated: 1989.

⁹² For a similar position, see A.V. Lowe, “Ships,” in N. Boschiero, T. Scovazzi, C. Pitea and C. Ragni eds., *International Courts and the Development of International Law: Essays in Honour of Tullio Treves*, (T.M.C. Asser Press, 2013), 297. From the perspective of the use of force and the use of arms for law enforcement, this author has dealt with the issue previously. Atsuko Kanehara, *op. cit.*, *supra* n. 8, regarding the relevant jurisprudence, 28–34, and footnotes thereto.

⁹³ This point will be touched upon again later.

⁹⁴ International Commission of the Red Cross, Commentary of 2017 to Article 22 of the Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949, <https://ihl-databases.icrc.org/en/ihl-treaties/gcii-1949/article-22/commentary/2017?activeTab=undefined>, para. 1943.

⁹⁵ Case Concerning the Detention of Three Ukrainian Naval Vessels (Ukraine v. Russian Federation), Request for the Prescription of Provisional Measures, Order of 25 May 2019, https://www.itlos.org/fileadmin/itlos/documents/cases/26/published/C26_Order_20190525.pdf, paras. 64–65.

⁹⁶ In the Matter of an Arbitration before an Arbitral Tribunal Constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea between Ukraine and the Russian Federation, in respect of a Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen, Award on the Preliminary Objections of the Russian Federation, 27 June, 2022, <https://pcacases.com/web/sendAttach/38096>, paras. 107–109

⁹⁷ The arbitral tribunal, in another case, too, mentioned a similar thought to that of the International Tribunal for the Law of the Sea in the Detention Case. In the Matter of an Arbitration before an Arbitral Tribunal Constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea between Ukraine and the Russian Federation, in respect of Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov and Kerch Strait, Award Concerning the Preliminary Objections of the Russian Federation, 21 February 2020, <https://pcacases.com/web/sendAttach/9272>, paras. 333–335.

(b) of UNCLOS⁹⁸ to determine whether they had jurisdiction to entertain the cases before them.⁹⁹

Furthermore, the discussion in the drafting process of Article 43 on “armed forces” under API is also significant. The commentary by the ICRC reads:

During the discussions on Article 43 a proposal was made by a delegation to specify that police forces should be excluded from the armed forces, unless national legislation has otherwise provided and the other Parties to the conflict have been notified accordingly. A long discussion followed, relating on the one hand to the meaning of the term “police force” (which can cover uniformed units as well as plain clothes policemen) and, on the other, to *the incompatibility of any possible duplication of the function of internal lawkeeping and that of combatant*; even the relevance of the proposed notification procedure and whether there should be any provisions on this subject were discussed. Finally the terms “para-military” and “armed law enforcement agency” were substituted for the expression “police forces”, particularly to take into account the differences in internal organization in many States. The problem of any possible duplication of functions referred to above was not explicitly solved, though some may consider that such duplication is impossible (emphasis added, and note number omitted.)¹⁰⁰

While the relationship between military forces and police organs differs depending on the country, as a matter of fact, it is true that there is duplication between the two organs.¹⁰¹ This is the same understanding as the ICJ and the Arbitral Tribunal have indicated, namely that the distinction between military acts and law enforcement and that between the military forces and law enforcement organs has been blurred.¹⁰²

⁹⁸ Article 298, Paragraph 1 (1) (b) reads:

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State may, without prejudice to the obligations arising under section 1, declare in writing that it does not accept any one or more of the procedures provided for in section 2 with respect to one or more of the following categories of disputes:

.....

(b) disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3;

⁹⁹ For a detailed examination of the jurisprudence, see Kanehara, *op. cit.*, *supra* n. 8, 29–34.

¹⁰⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Commentary of 1987, <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-43/commentary/1987?activeTab=undefined>, para. 1682.

¹⁰¹ In this regard, the US experience on *Posse Comitatus* is interesting. It demonstrates a different consideration from that of Japan in making a distinction between military forces and police organs. Captain (N) Laurence M. Hickey, “Enhancing the Naval Mandate for Law Enforcement: Hot Pursuit or Hot Potato?,” *Canadian Military Journal*, Vol. 7, No. 1 (2006), 47. For an introduction to the US practice, see Murakami and Mori, *op. cit.*, *supra* n. 29, 38–40. As to *Posse Comitatus*, see, for instance, Major Craig T. Trebilcock, U.S. Army Reserve, “The Myth of Posse Comitatus,” October 2000, <https://aldeilis.net/english/the-myth-of-posse-comitatus/>; and Rutherford B. Hayes, “The Posse Comitatus Act and Using Military as a Police Force,” <https://www.rbhayes.org/scholarlyworks/the-posse-comitatus-act-and-using-military-as-a-police-force/>.

¹⁰² ITLOS and the Arbitral Tribunal recognized that the question of which organ, a military or a police one, is acting is not decisive in determining the nature of the act concerned, i.e., whether it is a military act or one of law enforcement.

(4) State practice¹⁰³ also endorses the tendency that both the jurisprudence and the ICRC demonstrate.¹⁰⁴ For instance, US Coast Guard Vessels designated as “USCGC” under the command of a commissioned officer are warships.¹⁰⁵ Ships belonging to the French Gendarmerie, the Spanish Guardia Civil, or the Italian Carabinieri are also qualified as warships if under the command of a commissioned officer.¹⁰⁶ When the JCG is to prove its vessels’ non-military nature as police vessels under the control of the Minister of Defense, it should recognize that international society has such a history of having no strict distinction between military forces and police organs. In other words, the burden of proof that is placed on the JCG is very heavy indeed.

(5) It is possible for JCG vessels to fall under the category of auxiliary vessels.¹⁰⁷ Auxiliary vessels are also military objectives.¹⁰⁸ It has been pointed out that there are various definitions of an auxiliary vessel.¹⁰⁹ In the context of the limitation of armament, treaties such as the 1930 Treaty for the Limitation and Reduction of Naval Armament, in a different way, deals with auxiliary vessels.¹¹⁰ The ICRC also gives a definition of an auxiliary vessel with comparison to a merchant

¹⁰³ Regarding State practice with some focus upon Canadian practice, see Hickey, *op. cit., supra* n. 101, 41–47.

¹⁰⁴ From a different perspective, the existence of some relationship between police acts and the exercise of the right of self-defense on the high seas has been discussed. Lucchini, *op. cit. supra* n. 52, 923–926; Vaughan Lowe and Antonios Tzanakopoulos, “Ships, Visit and Search,” *Max Planck Encyclopedias of International Law*, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e406?rskey=IgPTAy&result=1&prd=MPIL>, article last updated: March 2013, para. 20.

¹⁰⁵ There is substantial duplication of function between military forces and police organs in European countries. It is sufficient to note the explanation of one authority that, “Fisheries protection has long been a traditional role for European naval and coast guard forces. Britain’s naval experience in this role dates back to the 16th century. At present, the Royal Navy undertakes quarantine enforcement, fishery protection, contraband operations, drug interdiction, oil and gas field patrols, anti-piracy operations, support for counterinsurgency operations and maritime counter-terrorism. Moreover, the Royal Navy maintains a Fishery Protections Squadron, equipped with six offshore patrol vessels and four mine counter-measures vessels. Looking at other parts of Europe, the French Navy, for example, acquired patrol vessels several years ago for policing duties. Farther north, the Norwegian Coast Guard forms part of the Royal Norwegian Navy, whereas Denmark has no coast guard. However, the Danish Navy exercises police authority for enforcement of sovereignty issues. European navies generally furnish law enforcement services directly to national authorities through MOUs. Usually what these navies provide are naval platforms and facilities. In some cases, such as the Danish model, the navy carries out constabulary and traffic-police duties, whereas the appropriate civil authority conducts the criminal investigations. From a European perspective, naval participation in law enforcement is a significant contribution to good governance at sea.” Hickey, *op. cit., supra* n. 101, 46–47.

¹⁰⁶ Von Heinegg, *op. cit., supra* n. 25, para. 9.

¹⁰⁷ As for the meaning of “an auxiliary vessel” in past State practice in the former part of the 20th century, see “Auxiliary Vessels,” *Digest of International Law*, Vol. 11 (1968), 299–301.

¹⁰⁸ Mayama, *op. cit., supra* n. 76, (1) 548; Ronzitti, *op. cit., supra* n. 61, para. 7.

¹⁰⁹ Mayama, *op. cit., supra* n. 76, (1) footnote 20. Kraska *et al., op. cit., supra* n. 43, 2.1.2.2. and 3.4. Article 236 of UNCLOS is interpreted as adopting the same definition. It reads:

The provisions of this Convention regarding the protection and preservation of the marine environment do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being only on government non-commercial service. However, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Convention.

¹¹⁰ The treaty limited the tonnage of auxiliary ships.

vessel.¹¹¹ It reads:

An ‘auxiliary vessel’ is a ‘vessel, other than a warship [i.e. non-commissioned], that is owned or under the exclusive control of the armed forces of a State and used for the time being on government non-commercial service’ and a ‘merchant vessel’ is a ‘vessel, other than a warship, an auxiliary vessel, or a State vessel such as a customs or police vessel, that is engaged in commercial or private service...’

According to this definition, on the one hand, an auxiliary vessel is owned or under the exclusive control of the armed forces of a State and used for the time being on government non-commercial service. On the other hand, a State vessel such as a customs or police vessel is different from a warship, an auxiliary vessel, and a merchant vessel.¹¹²

As confirmed above, under the Guidelines, JCG vessels are “under an integrative and unitary command” by the Minister of Defense, and therefore, with strong provability, they amount to auxiliary vessels.¹¹³ However, as far as JCG vessels are State police vessels under Japan’s domestic laws, the possibility that they are not regarded as auxiliary vessels cannot be totally denied. However, this should be a very narrow case. In addition, as examined above, the concept of “military” now has a wider scope and the distinction between military vessels and police vessels has been blurred in both the jurisprudence and international practice.¹¹⁴ This should have an impact on the identification of auxiliary vessels.

Furthermore, from a different point of view, several doubts have been raised against the argument that under the Guidelines, JCG vessels are not auxiliary vessels but police vessels.

It is understandable that there is a category of customs or police vessels that function even during an armed conflict, and the ICRC discusses, in its commentary to GCII, such a category of vessels.¹¹⁵ Nonetheless, in considering the situation assumed by this paper, namely, a situation when there is an armed attack against Japan, and when there is an armed conflict between China and Japan, it is difficult to understand and even not convincing that, in an abstract way, State vessels, such as JCG vessels, “under an integrative and unitary command” of the Minister of Defense in accordance with the Guidelines and Article 80 of the Self-Defense Forces Law, should be discharging a customs or police function. It might be said that in the sea areas far enough from those of the theater of the armed conflict, if it is taking place in a limited sea area, JCG vessels might conduct customs or police missions. In such a case, it is not actually useful to regard those JCG vessels, as auxiliary vessels, to be military objectives, since there is rarely necessity and

¹¹¹ *Supra* n. 89.

¹¹² The San Remo Manual also adopts this definition, 13. (g), (h), (i).

¹¹³ As a useful discussion regarding the definition of an auxiliary vessel, one opinion is that in a general or total war, it is very difficult to find “merchant vessels” in a pure sense. This is because, in a general or total war, all merchant vessels are likely to be under the national/military control of their own States, and therefore, they are at least converted to *de facto* auxiliary vessels. William J. Fenrick, “The Merchant Vessel as Legitimate Target in the Law of Naval Warfare,” in Astrid J.M. Delissen and Gerard J. Tanja eds., *Humanitarian Law of Armed Conflict Challenges Ahead*, (Martinus Nijhoff Publishers, 1991), 437–438; Fenrick, *op. cit.*, *supra* n. 56, 106; Fenrick, *op. cit.*, *supra* n. 61, 246, 253–254.

¹¹⁴ Sub-section 3. (4).

¹¹⁵ There are no concrete rules for determining the status of police organs at sea. This is because in many countries, the navy also discharges coast guard activities, and because, as in the case of US Coast Guard Vessels, the designated “USCGC” under the command of a commissioned officer is a warship with a duty to conduct coast guard activities. Thus, there has not been much necessity to discuss the status of police organs at sea during armed conflicts. Akira Mayama, “Kaijo Hoancho to Buryoku Hunsoko (The Japan Coast Guard and the Laws of Armed Conflict),” *Ocean Newsletter*, Vol. 77 (20 October, 2003). As for the State practice of the duplication of duties between military organs and police organs at sea, see *supra* n. 105.

merit in attacking the vessels.¹¹⁶

Rather considering the matter in an abstract way,¹¹⁷ it would be much more meaningful to examine this issue by putting it into a further concrete context, since this paper has already presupposed two concrete situations¹¹⁸ as the contexts for its consideration: first, when the JCG is conducting its coast guard activities on Japan's territorial sea surrounding the Senkaku Islands, an armed conflict takes place between China and Japan; second, there may be a large number of evacuees coming toward Japan via the sea from neighboring countries, such as Taiwan.

(6) Regarding the first situation presupposed, it is not understandable that the JCG should continue its duty of territorial guarding as police function in Japan's territorial sea surrounding the Senkaku Islands. While "territorial guarding" may include various measures, the critical one is surely monitoring and surveillance of the confrontational Chinese vessels entering Japan's territorial sea surrounding the Senkaku Islands in a tense situation that is almost shifting to an armed conflict. When the tense situation really is on the verge of an armed conflict, and when an armed conflict is actually taking place, could the monitoring and surveillance as police function regarding confrontational Chinese vessels be meaningful? No positive answer is difficult to be expected.

As a logical result, it is not meaningful, either, to discuss whether the JCG vessels enacting their territorial guarding duties in the presupposed situation can be regarded as police vessels rather than auxiliary vessels. It necessarily brings the conclusion that when an armed conflict is breaking out, JCG vessels should retreat from the scene. This element will be included in the proposals in the concluding remarks of this paper.

(7) Another proposed situation is that there might be a large number of evacuees coming toward Japan via the sea from neighboring countries, such as Taiwan. The duties that the Guidelines expect the JCG to fulfil in collaboration with the JMSDF are, for instance, the following: evacuation and rescue of residents, providing information and support for rescue to vessels, search and rescue and saving lives, monitoring and surveillance to protect port facilities from terrorist attacks, and response measures for mass evacuations.¹¹⁹ As for the large number of evacuees coming toward Japan via the sea from neighboring countries, the JCG should take response measures for their mass evacuation.

In taking such measures for their mass evacuation, even "under an integrative and unitary command" of the Minister of Defense in accordance with the Guidelines and Article 80 of the Self-Defense Forces Law, it is possible for JCG vessels to be regarded as police vessels providing civilian protection rather than as auxiliary vessels. In that case, JCG vessels would have immunity from attacks.

To examine such a possibility, it is useful to consider the following issues. One is the issue of the requirements for merchant ships to lose their immunity from attacks such that they become military objectives. Another is the issue of when the civilian population constitutes

¹¹⁶ Under Article 80 of the Self-Defense Forces Law, mentioned above in the Introduction, control by the Minister of Defense may cover solely part of the JCG, not its entirety. JCG vessels functioning in remote sea areas far from those of the armed conflict could be out of the scope of said control. This point will be raised again later.

¹¹⁷ It is recognized that even during an international armed conflict, States may conduct maritime law enforcement operations to suppress crime, such as maritime piracy. Kraska *et al.*, *op. cit.*, *supra* n. 43, 2.3. However, this does not give any concrete suggestion as to how a vessel maintains its status as a law enforcement vessel and how it ensures its safety during an international armed conflict.

¹¹⁸ Section III. 1. (3), and III. 2.

¹¹⁹ Section III. 1. (1).

military objectives in accordance with the way of identifying military objectives depending on the function of the object itself. These issues are said to be those of the function of the object itself, irrespective of its category as a merchant vessel and the civilian population. As mentioned above, the issue of the category of objects, namely, a merchant vessel and the civilian population, and that of their function may substantially overlap. In discussing the requirements for these categories to lose their immunity from attacks, focus is placed mainly on their function.

Thus, the sub-section 4 below will consider succinctly the arguments that have been made on these issues, and move onto a consideration of the possibility for JCG vessels taking response measures for a mass evacuation to avoid being regarded as auxiliary vessels, and to be immune from military attacks.

4. Factors and Requirements That Make Merchant Vessels and the Civilian Population Become Military Objectives

(1) Merchant Vessels¹²⁰

Merchant vessels, belligerent or neutral,¹²¹ are not military objectives. When they become military objectives has been discussed over the long history of the laws of naval war.¹²² The immunity of merchant ships from unwarned attack was explained with their inability to attack or endanger a warship.¹²³ In addition, the economic aspect of ocean trade inherently existing in naval warfare, and the nature of a general war or total war particularly in modern wars, have formed an important consideration in discussing the immunity of merchant ships.

This is not the place to comprehensively trace the development of the treatment of merchant vessels in naval warfare.¹²⁴ Here, it is enough to find some suggestions for the JCG to ensure its safety during the discharging of its relevant duties under the Guidelines.

The requirements for merchant vessels, enemy and neutral, to become military objectives are, for instance, as follows:

During an international armed conflict:

1. Any merchant vessel may be attacked:

(a) if it engages in acts of war on behalf of the enemy; (b) if it acts as an auxiliary to the enemy's armed forces (c) if it is incorporated into or assists the enemy's intelligence system;

¹²⁰ As for a definition of a merchant vessel, it is said that a merchant vessel is a cargo-carrying vessel not formally incorporated as an auxiliary vessel into an enemy's naval fleet. Fenrick, *op. cit.*, *supra* n. 113, 425. The San Remo Manual defines a merchant vessel as "a vessel, other than a warship, an auxiliary vessel, or a State vessel such as customs or police vessel, that is engaged in commercial or private service." The San Remo Manual, 13 (i).

¹²¹ Under the prohibition of the use or threat of force by Article 2, Paragraph 4 of the UN Charter, the validity of the terms "belligerency" and "neutral" require serious consideration. Such a consideration is out of the scope of this paper's examination. This paper will use, if necessary, "belligerent" States and "neutral" States to describe respectively those States that are involved in an armed conflict, and those that are not taking part in the armed conflict. Horace B. Robertson, Jr., *op. cit.*, *supra* n. 52, 2–3; Lowe, *op. cit.*, *supra* n. 48, 286–289. For an analysis of the concept of war with a similar viewpoint, see Greenwood, *op. cit.*, *supra* n. 42, 283–284, 303–306.

¹²² Many works have dealt with this issue. Fenrick, *op. cit.*, *supra* n. 61, 243; Dinstein, *op. cit.*, *supra* n. 70, 24–27; Lowe and Tzanakopoulos, *op. cit.*, *supra* n. 104, paras. 10–13; Fenrick, *op. cit.*, *supra* n. 113, 425–443; Ronzitti, *op. cit.*, *supra* n. 61, paras. 8–11. In the context of exclusion zones, see Fenrick, *op. cit.*, *supra* n. 56, 94 *et seq.*

¹²³ For a discussion in the interwar period, see, for instance, Edwin Borchard, "Armed Merchantmen," *The American Journal of International Law*, Vol. 34, No. 1 (1940), 107–112.

¹²⁴ An analysis of the State practice is given by Mayama, *op. cit.*, *supra* n. 76, (1) 556–578, (2) 1–43; Fenrick, *op. cit.*, *supra* n. 61, 244–264.

or (d) if it sails under convoy of enemy warships or military aircraft.

2. Any enemy merchant vessel may be attacked:

(a) if it is armed to an extent that it could inflict significant damage to a warship; or (b) it refuses an order to stop or actively resists visit, search, or capture.

3. A neutral merchant vessel may be attacked if it is believed on reasonable grounds that the vessel is carrying contraband or breaching a blockade and, after prior warning, the vessel intentionally and clearly refuses to stop or resists visit, search, and capture.¹²⁵

The San Remo Manual prescribes the following¹²⁶ regarding enemy merchant vessels in Paragraphs 40, 59 and 60:

40. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

59. Enemy merchant vessels may only be attacked if they meet the definition of a military objective in paragraph 40.

60. The following activities may render enemy merchant vessels military objectives:

(a) engaging in belligerent acts on behalf of the enemy, e.g., laying mines, minesweeping, cutting undersea cables and pipelines, engaging in visit and search of neutral merchant vessels or attacking other merchant vessels;

(b) acting as an auxiliary to an enemy's armed forces, e.g., carrying troops or replenishing warships;

(c) being incorporated into or assisting the enemy's intelligence gathering system, e.g., engaging in reconnaissance, early warning, surveillance, or command, control and communications missions;

(d) sailing under convoy of enemy warships or military aircraft;

(e) refusing an order to stop or actively resisting visit, search or capture;

(f) being armed to an extent that they could inflict damage to a warship; this excludes light individual weapons for the defence of personnel, e.g., against pirates, and purely deflective systems such as chaff; or

(g) otherwise making an effective contribution to military action, e.g., carrying military materials.

As to neutral merchant vessels, paragraphs 67–69 of the San Remo Manual read:

67. Merchant vessels flying the flag of neutral States may not be attacked unless they:

(a) are believed on reasonable grounds to be carrying contraband or breaching a blockade, and after prior warning they intentionally and clearly refuse to stop, or intentionally and clearly resist visit, search or capture;

(b) engage in belligerent acts on behalf of the enemy;

(c) act as auxiliaries to the enemy's armed forces;

(d) are incorporated into or assist the enemy's intelligence system;

(e) sail under convoy of enemy warships or military aircraft; or

(f) otherwise make an effective contribution to the enemy's military action, e.g., by carrying military materials, and it is not feasible for the attacking forces to first place passengers and crew in a place of safety. Unless circumstances do not permit, they are to be given a warning, so that they can re-route, off-load, or take other precautions.

68. Any attack on these vessels is subject to the basic rules in paragraphs 38–46.

69. The mere fact that a neutral merchant vessel is armed provides no grounds for attacking it.

¹²⁵ *Ibid.*, 272.; Fenrick, *op. cit.*, *supra* n. 113, 438.

¹²⁶ *Supra* n. 60.

In these opinions relating to merchant vessels, there are some helpful indications for the JCG to avoid becoming military objectives.¹²⁷

First, the scale of weapons that JCG vessels are equipped with is to be considered when determining whether they become military objectives.¹²⁸ In the former opinion above, any enemy merchant vessel may be attacked, “if armed to an extent that it could inflict significant damage to a warship.” According to the San Remo Manual, enemy merchant vessels can be attacked if they are armed to an extent that they could inflict damage to a warship. In contrast to this, in the case of a neutral merchant vessel, the mere fact that it is armed provides no grounds for attacking it.

Second, sailing under “convoy” of enemy warships or military aircraft is also a factor for merchant vessels to be regarded as military objectives. As long as the JCG vessels are discharging their mission under the Guidelines in the sea area of or near to those where military operations are taking place, they could be sailing under convoy of JMSDF vessels. Therefore, this is a significant factor to be considered for the JCG to ensure its safety through immunity from attacks.

Third, the San Remo Manual includes a similar factor of so-called “direct participation in hostilities,” which will be examined next. Paragraph 40 of the San Remo Manual mentions “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”¹²⁹

Before moving onto an analysis of the concept of “direct participation in hostilities,” some points deserve attention for the JCG in avoiding becoming military objectives. Among the requirements for merchant vessels to lose their immunity from attacks are factors such as being “incorporated into or assisting the enemy’s intelligence gathering system.”¹³⁰ It has been argued that merchant vessels that are incorporated into war efforts are excluded from those merchant vessels with immunity from attacks.¹³¹ Also “incorporation” may include that into the military effort in general and is not confined to the intelligence gathering system.¹³²

One of the missions that the Guidelines expect the JCG to conduct is providing information to vessels.¹³³ If such information-sharing contains information that is advantageous for the JMSDF’s military operation, it will amount to direct participation in hostilities.¹³⁴

Furthermore, the factor of “incorporation into military effort” requires serious attention, when, in terms of their category, JCG vessels deny having the status of auxiliary vessels. It is indispensable for the JCG to prove that the “control” by the Minister of Defense under the Guidelines does not amount to such control as giving JCG vessels the status of auxiliary vessels.¹³⁵

The consideration here concerns merchant vessels when they satisfy the requirements

¹²⁷ As for State practice, in this regard, by military manuals and other means, see Mayama, *op. cit.*, *supra* n.76, (2) 48–49.

¹²⁸ This is an issue that has been discussed for a long time. For instance, a distinction was considered between “offensive” or “defensive” armament. Borchard, *op. cit.*, *supra* n. 123, 107–112.

¹²⁹ See *supra* n. 60.

¹³⁰ According to the opinion of Fenrick introduced above, 1. (c); the San Remo Manual, 60 (c), 67 (d).

¹³¹ As to State practice in this regard, see Fenrick, *op. cit.*, *supra* n. 61, 272. Regarding “war-fighting/war-sustaining effort,” *ibid.*, 274.

¹³² This is dealt with by, for instance, Fenrick, *op. cit.*, *supra* n. 56, 112, 123. With the example of the U.S. Military Manual, see Von Heinegg, *op. cit. supra* n. 58, para. 54.

¹³³ See Section III.

¹³⁴ This is also an issue whereby civilians lose their protection from attacks, which will be examined next.

¹³⁵ This section, sub-section 3. (5).

for losing their immunity from attacks. It is true, at least to a certain degree, that such a consideration may offer some suggestions for the JCG to avoid becoming military objectives. Nonetheless, the JCG should carefully recognize the inherent difference between JCG vessels, namely, police vessels, and merchant vessels. It needs to precisely understand that police vessels may be more likely regarded as being auxiliary vessels or being incorporated into military forces, considering that they are State vessels and the tendency of State practice, as mentioned above, in the world in this regard.¹³⁶ JCG vessels are operating in collaboration with JMSDF vessels under the Guidelines.¹³⁷

(2) Direct Participation in Hostilities

Under Article 51, Paragraph 3 of API,¹³⁸ “direct participation in hostilities”¹³⁹ has been intensely discussed in terms of the requirements for the civilian population¹⁴⁰ to become military

¹³⁶ Regarding the duplication of function between military forces and police organs, see *supra* n. 105.

¹³⁷ This careful reservation is entirely true, as will be shown with the next examination of the concept of “direct participation in hostilities” by civilians. There is also an inherent difference between civilians and JCG vessels, which are police vessels of a State equipped with weapons under national authorization.

¹³⁸ It reads:

Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.

¹³⁹ There is a large volume of works on this issue. Akira Mayama, “Bunminhogo to Buryoku Hunsoho—Sekijūji linkai Kaishaku Shishin no Kento (Protection of Civilian Population and the Laws of Armed Conflicts—Some Analysis on the ICRC Interpretative Guidance on the Concept of Direct Participation in Hostilities),” *Sekaiho Nenpo (Yearbook of World Law)* No. 31 (2012), 138–151; D.A. Jeremy Telman, “The Geneva Conventions in 21st Century Warfare: How the Conventions Should Treat Civilians’ Direct Participation in Hostilities—Introduction: Targeting in an Asymmetrical World,” *Valparaiso University Law Review*, Vol. 46, No. 3 (2012), 697–728; Michael N. Schmitt, “Deconstructing Direct Participation in Hostilities: The Constitutive Elements,” *New York University Journal of International Law and Politics*, Vol. 42, No. 3 (2010), 697–740; Michael N. Schmitt, “Direct Participation in Hostilities’ and 21st Century Armed Conflict,” in Horst Fischer, Ulrike Froissart, Wolff Heintschel von Heinegg, und Christian Raap, Hrsg., *Krisensicherung und Humanitärer Schutz—Crisis Management and Humanitarian Protection—Festschrift für Dieter Fleck*, (BWV · Berliner Wissenschafts-Verlag, 2004), 505–530; Emily Camins, “The Past as Prologue: the Development of the ‘Direct Participation’ Exception to Civilian Immunity,” *International Review of the Red Cross*, Vol. 90, No. 872 (2008), 853–881; Eva Kublbeck, “The Immunity of Civilians—A Moral and Legal Study of Attacks on the Civilian Population,” *International Humanitarian Legal Studies*, Vol. 4, No. 2 (2013), 262–295; W. Hays Parks, “Part IX of the ICRC ‘Direct Participation in Hostilities’ Study: No Mandate, No Expertise, and Legally Incorrect,” *New York University Journal of International Law and Politics*, Vol. 42, No. 3 (2010), 769–830; Kenji Iwata, “Guntai ni Zuihansuru Bunmin no Tekitaikoi ni Tsuite—Dai1 Tsuikagiteisho Dai51jo Dai3ko ni Okeru ‘Tekitaikoi heno Chokusetsu no Sanka’ wo Chushin ni—(Hostilities of Civilians Accompanying Military Forces—With Focus upon ‘Direct Participation in Hostilities’ under Article 51, Paragraph 3 Additional Protocol I),” *Kokka Anzenhosho (National Security)*, Vol. 35, No. 2 (2007), 119–149; Oginome, *op. cit.*, *supra* n. 60, 105–125; Laurie R. Blank, *op. cit.*, *supra* n. 81, 765–802.

¹⁴⁰ “Civilian” has solely a negative definition under the 1949 Geneva Conventions and API. For instance, Article 50, Paragraph 1 of API reads:

A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.

objectives.¹⁴¹ While for naval warfare, vessels as units are focused upon rather than individuals, at least to a certain degree, such arguments may offer suggestions for the JCG to prove that when it is conducting its missions under the Guidelines, it does not directly participate in hostilities.¹⁴² The commentary of the ICRC of 1987 to the provision explains as follows.¹⁴³

Paragraph 1942

Hostile acts should be understood to be acts which by their nature and purpose are intended to cause actual harm to the personnel and equipment of the armed forces.

Paragraph 1944

Thus “direct” participation means acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces.¹⁴⁴

The ICRC commentary points to two factors. First, an act that negatively impacts the enemy’s military effort or in which harm was intended usually qualifies. Second, a relatively direct nexus between that action and the resulting harm should exist. In other words, direct participation must be distinguishable from indirect participation.¹⁴⁵

As to the significance of the arguments on the meaning of “direct participation” for the JCG to prove that its vessels are not taking part in hostilities under the Guidelines, the following may set forth strong reservations to it.

First, regarding “direct participation in hostilities,” the ICRC convened several conferences to build some consensus among States and published the result.¹⁴⁶ However, substantial agreement could not be reached. Several authorities have also voiced severe criticism.¹⁴⁷ Second, the determination of “direct participation in hostilities” should ultimately be done on a case-by-case basis.¹⁴⁸ Before the consideration by the ICRC and the said conferences, the jurisprudence also

¹⁴¹ The ICRC convened international conferences to discuss the issue of “direct participation of civilians in hostilities.” The result is as follows: International Committee of the Red Cross, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law (May 2009)*, <https://www.icrc.org/en/doc/assets/files/other/icrc-002-0990.pdf>. Strong criticism has been voiced on this by, for instance, Schmitt, *op. cit., supra* n. 139 “Deconstructing...”; Parks, *op. cit., supra* n. 139.

¹⁴² One authority points out the following. Unlike the law applicable to land conflicts, the law of naval warfare has a slightly broader interpretation of the principle of distinction. The requirements of “active” and “direct” participation for loss of civilian status in land conflict are broadened, in the naval context, to conduct which more generally relates to the war fighting capacity. United States Naval War College, International Law Department, Center for Naval Warfare Studies, *op. cit., supra* n. 53, 4–23.

¹⁴³ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Commentary of 1987, <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-51/commentary/1987?activeTab=undefined>, paras. 1942 and 1944.

¹⁴⁴ The ICRC distinguishes direct participation in hostilities from participation in the war effort. Its commentary to Article 51, Paragraph 3 of API reads:

There should be a clear distinction between direct participation in hostilities and participation in the war effort. The latter is often required from the population as a whole to various degrees. Without such a distinction the efforts made to reaffirm and develop international humanitarian law could become meaningless. In fact, in modern conflicts, many activities of the nation contribute to the conduct of hostilities, directly or indirectly; even the morale of the population plays a role in this context.

Ibid., para. 1945.

¹⁴⁵ Schmitt, *op. cit., supra* n. 139 “Deconstructing...,” 712.

¹⁴⁶ *Supra* n. 141.

¹⁴⁷ *Supra* n. 141.

¹⁴⁸ Schmitt, *op. cit., supra* n. 139 “Deconstructing...,” 705–710; Schmitt, *op. cit., supra* n. 139 “Direct Participation...,” 508–509.

demonstrated the same understanding.¹⁴⁹

As was explained in Section II and Section III, under the Guidelines and under Article 25 of the Japan Coast Guard Law,¹⁵⁰ the JCG will maintain its nature as a police organ, not a military organ, and thus, it must not take part in hostilities. This is an argument derived from Japan's domestic law. Even if such an argument has a certain convincingness domestically, there is no guarantee that the JCG can persuade foreign States, particularly the conflicting State, China, that it is discharging a police function and not taking part in hostilities. For that purpose, arguments under international law and proof that is firmly based upon State practice are indispensable.

Furthermore, also applicable here is the reservation mentioned above while seeking possible suggestions for the JCG to have immunity from attacks that may be derived from the discussion on the requirements for merchant vessels to lose their immunity from attacks. The JCG should recognize the inherent difference between JCG vessels, namely, police vessels, and civilians and the civilian population.¹⁵¹ It needs to precisely assume that police vessels may be more likely regarded as auxiliary vessels or as being incorporated into military forces, and taking part in hostilities, considering that they are State vessels. They are operating in collaboration with JMSDF vessels under the Guidelines.

In this regard, while it is in the context of non-international armed conflicts, there could be some suggestions for how the JCG could prove its status of being a non-military objective from the fact that some armed groups consider that the police or the civil forces are targetable.¹⁵²

(3) The JCG May Carry an International Distinctive Sign to Indicate Its Civil Defense Missions Under the Guidelines, the JCG will conduct missions for the evacuation and rescue of residents and evacuees from neighboring countries, search and rescue, and saving of lives.¹⁵³

The JCG and the JMSDF held a joint drill on the 22nd of June 2023, under the scenario of control by the Ministry of Defense in accordance with the Guidelines.¹⁵⁴ During the joint drill, the JCG vessel flew special flags that carry the international distinctive sign of an equilateral blue triangle on an orange background. Article 66, Paragraph 4 of API prescribes the distinctive sign. It reads:

¹⁴⁹ Prosecutor v. Dusko Tadić, Case ICTR IT-94-I-T, Opinion and Judgement of 7 May 1997, *International Legal Materials*, Vol. 36, Issue4 (1997), para. 616.

¹⁵⁰ Section II. 1. And Section III. 1. (2).

¹⁵¹ As to the negative definition of civilians, see *supra* n. 140. As to the particular situation of civilians in recent years, see, for instance, Camins, *op. cit.*, *supra* n. 139, 154; Schmitt, *op. cit.*, *supra* n. 139 “Deconstructing...”, 699–700; Schmitt, *op. cit.*, *supra* n. 139 “Direct Participation...”, 512–519. Separate from this, in the case of a vessel, the vessel itself forms a fighting unit. Therefore, hostilities by vessels include not only shooting and launching missiles which cause actual damage, but also the operation of the vessels, such as vessel operations under the captain's order in hostilities, which are reasonably regarded as closely related acts to hostile acts. Iwata, *op. cit.*, *supra* n. 139, 134.

¹⁵² These groups include the National Democratic Front of the Philippines, the Fuerzas Armadas Revolucionarias Colombianas-Ejército Publico (FARC-EP), the Ejército Zapatista de Liberación Nacional of Mexico, which specifically refers to the “policía política que hayan recibido cursos y que hayan sido asesorados, entrenados, o pagados por extranjeros, sea dentro de nuestra nación o fuera de ella, acusados de traición a la Patria” and the Kurdistan Workers Party, which refers to “village guards” and “members of the gendarmerie.” The Kosovo Liberation Army also includes among the forces of the Former Republic of Yugoslavia the “border police,” the “military police” and “local, special, riot and anti-terrorist police.” With further examples, see Camille Marquis Bissonnette, “The Definition of Civilians in Non-International Armed Conflicts,” *Journal of International Humanitarian Legal Studies* Vol. 7, No. 1 (2016) 146–147.

¹⁵³ Section III. 1. and 2.

¹⁵⁴ The media reported on the joint drill. See *supra* n. 39.

The international distinctive sign of civil defence is an equilateral blue triangle on an orange ground when used for the protection of civil defence organizations, their personnel, buildings and matériel and for civilian shelters.

According to the media,¹⁵⁵ the JCG has never previously used the sign in its missions. A coast guard official said, “If a country (attacking Japan) thinks that the coast guard has resorted to armed force, it would give them an excuse to launch a (further) attack,” and “In order to prevent such a situation, we need to clearly show the division of roles with the SDF¹⁵⁶ and send out a message to people in and outside Japan that the coast guard is not a military organization.”

Without adequately demonstrating the said division of roles and the JCG’s non-military duties *toward international society and particularly vis-à-vis a “country attacking Japan,”* such a sign would not have any effect for ensuring the safety of JCG vessels in discharging their roles under the Guidelines.

Actually, the flags that the said JCG vessel flew in the joint drill were in accordance with Article 66, Paragraph 4. It is possible for the JCG, while conducting missions for the evacuation and rescue of residents and evacuees from neighboring countries, search and rescue, and saving of lives, to be regarded as a “civil defence organization” in accordance with Article 61 of API.¹⁵⁷

As explained above in this paper,¹⁵⁸ the applicability of Article 66, Paragraph 4 to naval warfare is not without dispute. This is because of Article 49, Paragraph 3, which contains the confounding phrase “do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air.” How this phrase is interpreted would determine the applicability of Article 66, Paragraph 4, which prescribes the international sign. If the provision does not apply to naval warfare, the possibility for the provision to have a customary rule status might not be denied. Nonetheless, even the Japanese authorities have clearly demonstrated their doubt in respect to the awareness of the sign.¹⁵⁹

The fundamental problem is not the flexibility of the application of Article 66, Paragraph 4, nor the possible customary status of the international sign. The critical point is that the international distinctive sign must be truly internationally distinctive. Without a solid recognition of it in international society, particularly by an attacking country, the sign will never guarantee the safety of the JCG during its missions under the Guidelines. This means that the JCG could run the risk of being militarily attacked, and its personnel could lose their lives.

¹⁵⁵ *Op. cit.*, *supra* n. 39 (Japan Times).

¹⁵⁶ Here, “SDF” means the Japan Self-Defense Force.

¹⁵⁷ It reads:

(a) “civil defence” means the performance of some or all of the undermentioned humanitarian tasks intended to protect the civilian population against the dangers, and to help it to recover from the immediate effects, of hostilities or disasters and also to provide the conditions necessary for its survival. These tasks are:

...

(b) “civil defence organizations” means those establishments and other units which are organized or authorized by the competent authorities of a Party to the conflict to perform any of the tasks mentioned under sub-paragraph (a), and which are assigned and devoted exclusively to such tasks;

¹⁵⁸ Section IV. 3.

¹⁵⁹ Haruko Arimura, a member of the House of Councilors, who, in the said joint drill, took the role of Minister of Land, Infrastructure, Transport and Tourism voiced this point. “Risuku wo Keigen Surutameni Gutaiteki ni Kentou Shitai Koto (Matters that Require Concrete Examination for Reducing Risks),” *Nihon Senryaku Kenkyu Foram (JFSS Quarterly Report)*, Vol. 98, Oct, 2023, 36–37. The JCG is under the Ministry of Land, Infrastructure, Transport and Tourism. Past Chief of Staff, JMSDF, Tomohisa Takei demonstrates the same point. “Yuji ni Okeru Hojin Yuso wa Shinan- ‘Seihu Kosen’ Katsuyo ni Kai wo Miidase (Usage of ‘State Vessels’ as a Possible Resolution for Coping with the Tremendous Difficulty of Transportation of Japanese Nationals),” *Wedge (Wedge)*, 2023, No. 11, 72.

Conclusion

This contribution has examined how to ensure the safety of the JCG during its missions under the Guidelines from various aspects. To achieve this goal, as far as maintaining its non-military nature under Article 25 of the Japan Coast Guard Law, the JCG must prove that it is conducting the missions as a police organ, not as a warship or an auxiliary vessel, and that it is not taking direct participation in hostilities. This is principally for the JCG to avoid becoming military objectives. The JCG should recognize that such a “burden of proof” imposed on it is tremendously heavy. Several points set forth the reasons.¹⁶⁰

First, there still remains flexibility in the applicable laws to the situation that this contribution assumes, namely, an armed attack is taking place against Japan and an armed conflict exists. After the UN Charter came into force, legally, and theoretically, there should not exist the use of force. Under this legal situation, it is necessary to identify with enough justification what part of the laws of war applies to the use of force, in other words, military operations in naval warfare, if such applicability itself is approved.¹⁶¹ Second, there are different views on the determination of the particular applicable rules of the laws of war to naval warfare.¹⁶² Third, even after identifying the applicable rules on the laws of war, what relationship there is between them and the relevant rules of the law of the sea remains unanswered question.¹⁶³

Fourth, whichever argument the JCG may adopt for proving what it needs to do, under the legal situation explained here, support by State practice is indispensable as evidence and justification for what the JCG contends. The importance of State practice is, in general, inherent in the field of the laws of war.¹⁶⁴ In addition, in particular, the following situation in State practice all over the world requires serious consideration. In many States, the “interchangeability or duplication” between military organs and police organs, and between their missions is actually the practice.¹⁶⁵ The JCG presents an entirely different and remarkable example in comparison to such State practice, as it is to keep its non-military nature during its missions under the Guidelines in collaboration with the JMSDF.¹⁶⁶ This will inevitably bring the result that the JCG will face serious difficulty in convincing international society, and particularly the conflicting country, China. International society, considering the State practice confirmed here, likely has the tendency to regard the relationship between coast guards and military organs as having some duplication in missions and in organizational structures. Above all, in China, Article 83 of the CCGL clearly endorses the interchangeability between police operations and defense, or military operations. The JCG needs to convince international society, which bears such a tendency, and China, which has such a domestic law. This will no doubt be a highly daunting task.

Fifth, the most fundamental point is as follows. The purpose of what the JCG needs to prove

¹⁶⁰ Atsuko Kanehara, “Jieitaiho to Tosei Yoryo no Motodeno Kaijohoancho no Ninmusuiko ni Okeru Anzen Kakuho (Securing the Safety of the Japan Coast Guard during Its Missions under Article 80 of the Self-Defense Forces Law and the Control Guidelines),” *Jurisuto (Jurist)*, No. 1593 (2024, February), 72–77.

¹⁶¹ Section IV. 1.

¹⁶² Section IV. 3.

¹⁶³ Section IV. 2.

¹⁶⁴ Section V. 3. (3) and (4). For the significance of military manuals, see, *supra* n. 73.

¹⁶⁵ This fact can be also readily understood if one considers the discussion on the issues of so-called “grey zones” between law enforcement and defense, and the seamless response to the radically changing situation from law enforcement to defense. On this issue, see Koichi Morikawa, “Gurei Zone Jitai Taisho no Shatei to Sono Hoteki Seishitsu (Coping with Grey Zones and Its Legal Implications),” *Kokusai Mondai (International Affairs)*, No. 648 (2016), 29–38; and Atsuko Kanehara, “The Use of Force in Maritime Security and the Use of Arms in Law Enforcement under the Current Wide Understanding of Maritime Security,” *Japan Review*, Vol. 3, No. 2 (2019), 51–52.

¹⁶⁶ Section V. 3. (3), (4), and (5). *Supra* n. 105.

is ensuring its safety, principally by avoiding becoming military objectives. Flawless and perfect arguments are strongly required. Otherwise, the conflicting country, China, could militarily attack the JCG, since China could take a different position from that of the JCG such that it regards the JCG as a military objective.

It is possible for the JCG, relying on its own interpretation of the relevant international law rules, to criticize the illegality of such attacks and claim the State responsibility of China for the illegal attacks. Nevertheless, preliminary measures to prevent such attacks should be sought, separate from “*ex post facto* relief.” This is definitely a maxim, in general, for all the legal rules. Not only that, but there is also a special reason for the JCG to exclusively rely on preliminary measures. This is because “*ex post facto* relief” could never recover the fatal and irreversible damage, including the loss of the lives of JCG personnel, that would be caused by the armed attacks.¹⁶⁷ In the issue that the JCG is facing, there would never be room for “trial and error” given the irreversible damage that would be caused.

As has already been proposed above,¹⁶⁸ JCG vessels should retreat immediately from Japan’s territorial sea surrounding the Senkaku Islands when and even before the control by the Minister of Defense is issued under Article 80 of the Self-Defense Forces Law. Coast guard activities would be fatally meaningless in the situation that this paper assumes.

In place of it, the JCG may take the roles of monitoring and surveillance in the northern sea areas of Japan.¹⁶⁹ When the JMSDF is concentrating on the East China Sea, the northern sea areas should become a gap of warning, thus requiring more monitoring and surveillance than usual. The control by the Minister of Defense over the JCG may only be partial.¹⁷⁰ JCG vessels conducting such monitoring and surveillance can be outside the control by the Minister of Defense such that they are police vessels and are not regarded as warships or auxiliary vessels.

The tremendous difficulty that the JCG is facing for avoiding becoming military objectives demonstrates the reckless risk that the JCG could run during its missions under the Guidelines. Then, what is the justification for such a reckless risk? In this regard, the Guidelines explain the advantage that when the JCG is in charge of missions for the rescue of lives and evacuation of residents at the maximum, the JMSDF can further concentrate on the operational front.¹⁷¹ Even if that is the case, in reality, how and to what extent such an advantage is realized should be fully scrutinized in a concrete manner. That might set forth some justification for the JCG’s missions under the Guidelines.

¹⁶⁷ The critical importance of ensuring compliance with the laws of war on site, on the battlefields, has precisely been pointed out in Masahiro Kurosaki, “Senjo ni Okeru Buryoku Hunsoho no Shihai—Gunjiteki Hitsuyosei to Jindosei no Hikaku Koryo to Guntai Shikikan no Jizenhyoka (The Control by the Laws of Armed Conflicts on the Battlefields—Comparative Consideration between Military Necessity and Humanity, and Prior Assessment by Military Commanders),” *Hogaku Kyoshitsu (Legal Learning)*, No. 509 (2023), 21–22, 24.

¹⁶⁸ Section V. 3. (6).

¹⁶⁹ In the northern sea areas, there are islands over which Russia and Japan have claimed territorial sovereignty and have a dispute. There is also a tense situation in these sea areas.

¹⁷⁰ Article 80 of the Self-Defense Forces Law clearly provides for this; see the Introduction.

¹⁷¹ *Supra* n. 3.

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