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## Taiwan Contingency - Opinion Piece

**Japan: Its situation, recognition, and discussions around the gray-zone issue**

*By Naoki Takiguchi*

### Introduction

An enormous sense of crisis over a possible invasion of Taiwan by China, which is strengthening its hegemony, was shared and manifested first in the Japan-United States 2+2 meeting, the following bilateral summit meeting, the Japan-EU summit meeting, as well as the G7 summit meeting. It was the very first time in 52 years that Taiwan was included in the joint statement by the leaders of Japan and the U.S. In 1969, Japan and the U.S. had diplomatic relations with Taiwan, hence the situation back then was far different from today. The U.S.-Japan Joint Leaders' Statement by Prime Minister Yoshihide Suga and President Joseph Biden stressed the "importance of peace and stability of Taiwan Strait." It is my aim to present Japan's recognition of the situation in the event that China attacks Taiwan. Furthermore, I look at the challenges posed by the gray-zone issue followed by discussions of major political parties around this issue.

### 1. Relationships: China, Taiwan, and Japan

Firstly, I would like to discuss Japan's recognition of China. The relationship between Japan and China heavily soured especially when the then-Democratic Party of Japan lead government purchased the Senkaku islands in 2012. This less-than-friendly relationship continued under the Shinzo Abe government. Nonetheless, it gradually and ironically improved after the inauguration of President Donald Trump. In 2019, then Prime Minister Shinzo Abe stated that the bilateral relations had returned to a completely "normal course". In the spring of 2020, Chinese President Xi Jinping was scheduled to visit Japan as a state guest, however his visit was postponed due to the spread of Covid-19 and there has so far been no indication that it

has been rescheduled yet. In fact, there was strong opposition even within the ruling Liberal Democratic Party (LDP) to President Xi's state guest visit on the grounds of intermittent Chinese authority ships' incursions into Japanese territorial waters around the Senkaku Islands and human rights issues in Xinjiang Uighur Autonomous Region, Tibet, and Hong Kong. In the first half of 2021, voices calling for a tougher approach to China, on human rights issues, were actively raised from both the ruling and opposition parties, and there is now a move to try to enact a Japanese version of the "Magnitsky Act." The majority of the general public also share a harsh view of China in terms of technology, such as 5G, and economic security. Of course, it is a fact that the Japanese people were outraged by the spread of Covid-19 from Wuhan and the failure of the Chinese government to appropriately respond to it.

According to a public poll conducted by the Cabinet Office in October 2020, approx. 80% of respondents did not feel an affinity for China<sup>1</sup>. On the other hand, China, like for other countries, is Japan's largest trading partner and has very strong economic ties. From this viewpoint, it is vital for Japan just like other countries to "get along" with China. However, China's hegemonic and wolf warrior behavior cannot be overlooked, and Japanese politicians share a sense of crisis over the "Taiwan contingency." Such awareness of the issue has led to the "Taiwan Policy," which is explained in a following chapter, and called for further discussions on responses to gray-zone situations within the political parties following the enactment of China's Coast Guard Law. According to a public poll conducted by NHK (Japan's only National Broadcaster) in June 2021, 80% of the Japanese public perceive China as a security threat. As such, it can be stated that President Xi's "lovable China" is hard to find in Japan.

On the other hand, since the establishment of diplomatic relations with mainland China, Japan has maintained a working relationship with Taiwan on a non-governmental level, centering on economy and culture. Taiwan has always had a strong affinity for Japan, and vice versa. According to a 2020 survey by the Taipei Economic and Cultural Representative Office in Japan, 77% of Japanese feel close to Taiwan.

Even though both China and Taiwan claim sovereignty over the Senkaku Islands, Japan maintains particularly friendly relations with Taiwan, and despite the absence of high-level governmental exchanges, many Japanese politicians are sympathetic towards Taiwan.

## 2. Japan's possible response: International and domestic legal frameworks

Japan's possible response would greatly differ depending on the nature of the "Taiwan contingency." In this paper, we would assume that Taiwan's Main Island (Formosa) was attacked by China unless otherwise specified.

Article 5 of the Japan-U.S. Security Treaty stipulates that Japan and the U.S. shall jointly defend Japan against "an armed attack against either party in the territories under the administration of Japan."<sup>2</sup> Therefore, a Taiwan contingency does not fall under the scope of Article 5. Article 6, on the other hand, grants the U.S. to use their bases in Japan for "the security of Japan and the maintenance of international peace and security in the Far East." In this case, however, the U.S. must consult with Japan in advance<sup>3</sup>. Incidentally, while Section 3 (c) of the U.S. Taiwan Relations Act sets forth that the U.S. President and the Congress shall determine "appropriate action" in case a threat is posed to Taiwan and any danger to its interests<sup>4</sup>, there is no such law in Japan.

The Government of Japan (GOJ) has long taken the position of encouraging peaceful solutions to cross-strait issues. This is an issue that should be resolved through negotiations between the parties concerned, and if Taiwan is to be unified with China as a result thereof, GOJ will accept it. This is to say, Japan does not accept the solution of the cross-strait issue by force. There is political significance in the fact that Japan and the U.S. have purposely included the

Taiwan Strait in the joint communique. I would next like to discuss how Japan can respond to a Taiwan contingency from a legal perspective.

1) The first case is that Japan takes no special action in the event of a Taiwan contingency, although it is inconceivable. Unlike the U.S., there is no law of its kind like the Taiwan Relations Act in Japan. Even though some Japanese think that it is appropriate for the Japan Self-Defense Forces (SDF) to not be involved in such conflicts, 45% of the Japanese people still think the SDF needs to work with the U.S. forces in the event of a Taiwan contingency<sup>5</sup>. Therefore, it can be said that there is a certain degree of national understanding on this matter. The following are major situations that can be recognized by the GOJ regarding a Taiwan contingency.

2) The second is the case in which a Taiwan contingency is acknowledged as a "Situation That Will Have an Important Influence on Japan's Peace and Security" (*Juyo-Eikyo-Jitai*). It refers to situations that will have an important influence on Japan's peace and security, including situations that, if left without a response, could lead to a direct armed attack on Japan<sup>6 7</sup>. This will enable the SDF to provide logistic support (supply, transport, repair and maintenance, medical care, communication, etc.) where weapons are excluded, to the U.S. Armed Forces and armed forces of other countries under a certain condition- "Law Concerning Measures to Ensure the Peace and Security of Japan in Situations that Will Have an Important Influence on Japan's Peace and Security". However, activities cannot be conducted in a "scene where combat activities are actually taking place." This is to avoid the "integration in the use of force" (*Buryoku-Koushi-no-Ittaika*) with other countries<sup>8</sup>.

3) The third is the case in which a Taiwan contingency has become a "Survival-Threatening Situation" (*Sonritsu-Kiki-Jitai*). In this case, let us assume (due to the fact in the next paragraph) that the U.S. Armed Forces were attacked by China in addition to Taiwan. A "Survival-Threatening Situation" means a situation where (1) an armed attack against a foreign country that is in a close relationship with Japan occurs, which in turn poses a clear risk of threatening Japan's survival and of overturning people's rights to life, liberty and pursuit of happiness fundamentally. It would meet the "Three New Conditions" for Japan to conduct the use of force, when (2) there is no other appropriate means available to repel the attack and to ensure Japan's survival and protect its people, and when (3) the use of force is limited to the minimum extent necessary, SDF will be able to engage in "Defense Operation" (*Bouei-Shutsudou*) (Articles 76 and 88 of the SDF Law, Article 4 of Armed Attack Situations Response Act). This enables Japan to exercise its right to collective self-defense at the minimum extent.

It is important to mention that GOJ has made it cleared that a "foreign country" mentioned above includes "unrecognized states<sup>9</sup>." It should be noted that GOJ has not specified whether Taiwan falls under this category. Nevertheless, on April 17 this year, Minister of Defense Nobuo Kishi visited Yonaguni Island, which is located at the westernmost point of Japan, approx. 110 km from Taiwan. During his visit to the island, he reaffirmed the closeness of Taiwan and the importance of Japan's defense of the southwest<sup>10</sup>. The April Japan-U.S. summit meeting was later held on the same day. This is an expression of Japan's determination, and is part of its deterrence efforts.

In early July, Deputy Prime Minister Taro Aso hinted at the possibility of the application of the Survival-Threatening Situation to a "major problem" in Taiwan in the context of a military attack from China<sup>11</sup>. His statement was not official but it is still worth taking note of how the Japanese Deputy Prime Minister sees the issue.

4) The fourth is that, in addition to the attacks on Taiwan, there might be cases in which a Taiwan contingency develops into an armed attack against Japan (for example, the Sakishima Islands; Senkaku Islands, Yonaguni Island, Miyako Island, etc.). These constitute an "Armed Attack Situation" (*Buryoku-Kougeki-Jitai*). The SDF would be mobilized for a Defense Operation in such an event. If an armed attack is foreseeable, an "Anticipated Armed Attack Situation" (*Buryoku-Kougeki-Yosoku-Jitai*) can be recognized, and the SDF can be ordered to stand by for

a Defense Operation. Considering the geographical proximity of Japan and Taiwan, these situations are highly possible.

### 3. Maneuvering in the gray-zone

As mentioned above, depending on the gravity of the situation, there are different levels of responses that Japan can take. Yet another concern is its response to gray-zone situations. Examples include violations that do not amount to armed attacks and cases in which armed groups disguised as fishermen land on remote Japanese islands<sup>12</sup>. This is a case in which domestic laws would not recognize as an armed attack. This means Japan cannot exercise its use of force as GOJ has long defined armed attacks as the systematic use of force against the country. In such gray-zone cases, the Japan Coast Guard (JCG,) based on their police authority, will be the first to deal with the situation, and the SDF will only deal with the situation if it evolves beyond the capacity of JCG, and following the approval by the cabinet. With the Cabinet decision in May 2015, GOJ has put in place a system that enables themselves to promptly make a Cabinet decision on "Maritime Security Operation" (*Kaijō-Keibi-Kōdō*) and "Public Security Operation" (*Chian-Shutsudō*) by telephone or other means. With the enforcement of China's new Coast Guard Law<sup>13</sup> and their intermittent incursions to Japan's territorial waters, however, discussions around the gray-zone response are growing again. In early 2021, GOJ made it clear that illegal landing constitutes a serious crime and that foreign vessels will be subject to being fired upon (*Kigai-Shageki*) by JCG and by SDF under the Maritime Security Operation (where SDF will be granted the use of weapons under Article 7 of the Police Duties Execution Act, which was not clarified in the past).

In April, LDP submitted its proposal to GOJ, which pointed out China's problematic behaviors and urged the need for Japan to legally study whether it has fully ensured that all the rights granted to the country under international laws to eliminate infringements on its territory are implemented by its domestic laws<sup>14</sup>. The proposal underscored strengthening of cooperation among JCG, the Police, and SDF, as well as conducting training with other countries. The substantial points of the proposal are that GOJ has been requested to swiftly consider necessary measures to fully respond to infringements that do not result in an Armed Attack Situation, and is aimed at reacting to infringements on its territories, to the extent permitted under international laws, and also to consider developing relevant laws as necessary. In addition, the proposal also calls for GOJ to constantly review their equipment and current legislation to prepare for a Taiwan contingency and ballistic missile launches by North Korea.

In June, LDP compiled its first recommendations by the Taiwan Policy Review Project Team, defining Taiwan as being in a close relationship with Japan in terms of security, and a crisis for Taiwan is that of Japan. It also stressed the importance of strengthening deterrence to discourage China from invading Taiwan. Meanwhile, LDP demanded GOJ that they take all possible measures to sort out the legal status of its response, including simulating the situation with its allies and evacuating Japanese nationals residing in Taiwan in the event of a Taiwan contingency.

The largest opposition party, the Constitutional Democratic Party (CDP,) submitted a bill to the House of Representatives to establish the "Basic Policy on Maritime Security", which is to renew their equipment, capacity, and human resources every five years, and to create a new preparatory operation to strengthen maritime security by the SDF<sup>15</sup>. The Democratic Party for the People (DPFP) and Japan Innovation Party (JIP) also jointly submitted a bill on the same issue as well<sup>16</sup>.

It is desirable for JCG, as a law enforcement body, to deal with the gray-zone situation in the first place. If Japan was to immediately send SDF to the front line, it would give China an excuse for its behaviors. For this reason as well, the positions of both the ruling and opposition parties are presented in a restrained manner. On the other hand, the definition of "Armed Attack," which is a requirement for a Defense Operation, may no longer be functional to respond to the changes in the current international security environment. For future events of hostilities

or other violations that do not amount to a systematic armed attack on the country, effective and preparatory arrangements including formulation of new legislation will be necessary<sup>17</sup>.

#### 4. Conclusions

This paper focused on a Taiwan contingency and discussed Japan's response dependent on the severity of the situations and challenges around the gray-zone issue. China's low key policy of "*Tao Guang Yang Hui*" is no longer relevant. It has become a real threat and is trying to unilaterally change the status quo by force. The annual white paper, Defense of Japan 2021, also clearly states that "stabilizing the situation surrounding Taiwan is important for Japan's security and the stability of the international community. Therefore, it is necessary that we (Japan) pay close attention to the situation with a sense of crisis more than ever before<sup>18</sup>". This is the GOJ's very recognition of the issue. Japan's position is to encourage a peaceful solution to the cross-strait issues, however, Taiwan contingency is, as explained above, in itself a contingency for Japan. It is the responsibility of the politicians and policymakers to prepare for this. Likewise, it is also as important for the nation to be on alert regarding this. To this end, it is essential to strengthen the Japan-U.S. Alliance, develop the Quad (e.g., increasing South Korea and other countries' participation), and engage like-minded partners, including European countries, in the Indo-Pacific region and beyond to discourage China from taking assertive actions by enhancing deterrence<sup>19</sup> (e.g., strengthening the missile defense system, possessing enemy base strike capability, and expanding the defense budget). LDP is reportedly considering to increase its defense spending and purchase defense equipment to deter China in its election pledges for the general election that will take place this fall<sup>20</sup> at the latest.

Japan may be forced to make tough decisions in the future, however, we may not have a long time before then. At the same time, it is important to get the general public to appropriately understand any situation which may arise. It is not my intention to incite a sense of crisis, but rather, to raise the necessity of building an appropriate deterrent. It is always better to be safe than sorry.

This article reflects the sole opinion of the author and does not present an official standpoint of KAS.

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Note: The links are not necessarily available in English.

<sup>1</sup> Cabinet Office, "Poll on Diplomacy" October 2020. <https://survey.gov-online.go.jp/r02/r02-gaiko/zh/z07.html> (last accessed 09.07.2021).

<sup>2</sup> Treaty of Mutual Cooperation and Security Between Japan and The United States of America January 19, 1960.

<sup>3</sup> House of Representatives, Committee on Okinawa and Northern Issues, „GOJ's Unified Understanding" on Sentou-Sakusen-Koudou ( 戦 闘 作 戦 行 動 ), June 7, 1972. [https://www.mofa.go.jp/mofaj/area/usa/hosho/pdfs/jyoyaku\\_k\\_03.pdf](https://www.mofa.go.jp/mofaj/area/usa/hosho/pdfs/jyoyaku_k_03.pdf) (last accessed 09.07.2021).

<sup>4</sup> Data Base The World and Japan. <https://worldjpn.grips.ac.jp/> (last accessed 09.07.2021).

<sup>5</sup> TV Asahi Houdou Station, Poll, April 17 and 18, 2021. <https://www.tv-asahi.co.jp/hst/poll/202104/> (last accessed 09.07.2021). \*According to Nikkei (April 26, 2021,) as many as 74% of the respondents were in favor of "Japan's involvement in the stability of the Taiwan Strait." <https://www.nikkei.com/article/DGKKZO71354350W1A420C2PE8000/>

<sup>6</sup> Law Concerning Measures to Ensure Peace and Security of Japan in Situations that Will Have an Important Influence on Japan's Peace and Security. <https://elaws.e-gov.go.jp/document?lawid=411AC0000000060> (last accessed 09.07.2021).

<sup>7</sup> Japan Ministry of Defense, Defense of Japan 2020: Responses to Situations that Will Have an Important Influence. [https://www.mod.go.jp/en/publ/w\\_paper/wp2020/pdf/R02020501.pdf](https://www.mod.go.jp/en/publ/w_paper/wp2020/pdf/R02020501.pdf) (last accessed 09.07.2021).

<sup>8</sup> \*The GOJ interprets it as "the Constitution does not allow Japan to engage in activities that are integrated with the use of force by other countries, if Japan is not under direct attack."

<sup>9</sup> House of Representatives, Special Committee on Legislation for Peace and Security for Japan and the International Community, Minister for Foreign Affairs Fumio Kishida, June 15, 2015. <https://kokkai.ndl.go.jp/txt/118903929X01020150615/403> (last accessed 09.07.2021).

\*It is GOJ's official position that Japan, under the San Francisco Peace Treaty, renounced all right, title and claim to Formosa and the Pescadores, therefore, it is not in a position to unilaterally recognize the legal status of Taiwan. Minister for Foreign Affairs Fumio Kishida, June 15, 2015. <https://kokkai.ndl.go.jp/txt/118903929X01020150615/405> (last accessed 09.07.2021).

<sup>10</sup> Minister of Defense Nobuo Kishi, Press Conference April 17, 2021. [https://www.mod.go.jp/j/press/kisha/2021/0417a\\_r.html](https://www.mod.go.jp/j/press/kisha/2021/0417a_r.html) (last accessed 09.07.2021).

<sup>11</sup> The Mainichi Newspaper, Deputy PM Aso says Japan would defend Taiwan with US, irking China July 6th 2021. <https://mainichi.jp/english/articles/20210706/p2g/00m/0na/091000c> (last accessed 09.07.2021).

<sup>12</sup> Prime Minister's Office, PM Shinzo Abe's Press Conference May 15, 2014 [https://www.kantei.go.jp/jp/96\\_abe/statement/2014/0515kaiken.html](https://www.kantei.go.jp/jp/96_abe/statement/2014/0515kaiken.html) (last accessed 09.07.2021).

<sup>13</sup> Japan Ministry of Defense, "The Coast Guard Law of PRC" [https://www.mod.go.jp/en/d\\_act/sec\\_env/ch\\_ocn/index.html](https://www.mod.go.jp/en/d_act/sec_env/ch_ocn/index.html) (last accessed 09.07.2021).

<sup>14</sup> Liberal Democratic Party, „An urgent proposal for resolutely defending Japan's territory, territorial waters, and airspace, including the Senkaku Islands" April 6, 2021. <https://www.jimin.jp/news/policy/201441.html> (last accessed 09.07.2021).

<sup>15</sup> Constitutional Democratic Party, „Submitted Bill for Territorial Security and Japan Coast Guard (JCG) Strengthening Act" June 3, 2021. [https://cdp-japan.jp/news/20210603\\_1469](https://cdp-japan.jp/news/20210603_1469) (last accessed 09.07.2021).

<sup>16</sup> Democratic Party for the People, „Submitted Bill to Amend SDF Act and JCG Act“ June 2, 2021. [https://new-kokumin.jp/news/diet/2021\\_0602](https://new-kokumin.jp/news/diet/2021_0602) (last accessed 09.07.2021).

<sup>17</sup> Japan Society of Defense Law, Defense Law Studies Extra edition, “Necessary and Effective Legislation for the so-called Gray-Zone Situation” April 2015. Prof. Kimito Abo of Takushoku University refers to laws of the United States and Sweden.

<sup>18</sup> Japan Ministry of Defense, „Defense of Japan 2021 (Digest)“ July, 2021. [https://www.mod.go.jp/en/publ/w\\_paper/wp2021/DOI2021\\_Digest\\_EN.pdf](https://www.mod.go.jp/en/publ/w_paper/wp2021/DOI2021_Digest_EN.pdf) (last accessed 19.07.2021)

<sup>19</sup> The Sankei News Seiron, Nobukatsu Kanehara, Former Deputy Secretary-General of the National Security Secretariat April 21, 2021.

<sup>20</sup> Nikkei, „Early Revision of Mid-Term Defense Program: LDP to Increase Defense Expenditures to deter China into its election pledge“ June 27, 2021. <https://www.nikkei.com/article/DGKKZO73308770W1A620C2EA3000/>

\*Defense Minister Nobuo Kishi told Nikkei in May that Japan must increase its defense budget and will not consider outlays in relation to GDP. 1% ceiling (roughly 5 trillion JPY) against its GDP. The ceiling was the Cabinet Decision under the Miki Cabinet, was later abandoned though became an actual limit to Japan’s annual defense spending. <https://asia.nikkei.com/Editor-s-Picks/Interview/Japan-to-scrap-1-GDP-cap-on-defense-spending-Minister-Kishi> (last accessed 09.07.2021).

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