

Japanese Maritime Policy and “Free and Open Indo-Pacific Strategy

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Good afternoon.

My name is Atsuko Kanehara. I am Professor of Public International Law at Sophia University in Tokyo, Japan.

It is really a great honour for me to have this opportunity to talk about Japan’s ocean policy including the Free and Open Indo-Pacific Strategy and exchange views with distinguished participants.

There are many interesting fields in public international law. Among them, one of my fields is the law of the sea. Maritime issues are, for instance, maritime security, piracy, delimitation of maritime spaces, seaborne migrants, rights and obligations of coastal States and States of nationality of vessels (we call them flag States), resource management and conservation, marine environmental protection and so on. These maritime issues have been so important in international law. There are many treaties that deal with these maritime issues. I have researched them for a long time.

Regarding domestic ocean policies of Japan, I have served as Councilor since 2016, a Member of Advisory Council for the National Headquarters of Ocean Policy of Japan. Every two years, ten councilors are appointed by Prime Minister. Later, when I introduce to you the Japanese domestic system to enact and enforce its ocean policies, I will explain the roles of the National Headquarters and the Advisory Council.

Introduction

(1) Gist of This Presentation

Today, I am speaking about the Japan’s ocean policy. I will mainly focus on the wide understanding by Japan of the maritime security. And, in this context, I will introduce the Free and Open Indo-Pacific Strategy that Japan has strongly promoted. For that strategy, it is needless to say that your country is very important to Japan and really a key player.

The structure of my lecture is as follows.

(2) Structure of This Presentation

First, I will explain the recent developments in Japanese system, particularly, administrative institutions to enact and enforce its ocean policies.

Japan adopted the Third Basic Plan on Ocean Policy (the Third Basic Plan) as a cabinet decision on the 15th of May of this year. I think you have the English translation of its gist at your hand. The main pillar of the Third Basic Plan is maritime security. Since Japan enacted the Basic Act on Ocean Policy in 2007, as related legislative measures that Japan has taken, the Basic Plan was adopted in 2008 and it has been reviewed and updated every 5 years. This year, 2018, the Third Basic Plan was adopted in May.

As an institutional development, some explanation will be given on the National Headquarters of Ocean Policy of Japan (the National Headquarter) and its advisory organ, namely, the Advisory Council for the National Headquarters of Ocean Policy (Advisory Council). This institutional development, above all, purports to realize an integrative and comprehensive mechanism of enactment and enforcement of Japan's ocean policies. Its concept is different from that of Japan's traditional system of distribution of authorities among the relevant ministries and agencies.

Second, I will introduce the contents of the Third Basic Plan principally focusing upon maritime security. There will be two categories of the ocean policies in relation to maritime security. I will succinctly explain the concrete contents of the two categories of the ocean policies.

Third, I will further elaborate upon the characteristics of Japan's ocean policies regarding maritime security. Its remarkable point is the wide understanding of maritime security.

The Indo-Pacific Strategy will be realized by ocean policies for its maritime security. The important point is the wide understanding of maritime security by Japan. It includes various ocean policies that are intertwined to each other.

The wide understanding of maritime security closely relates to the Japan's current system of enforcement of ocean policies. As a result of it, various domestic authorities come to get involved in maritime security. Here, pressing agendas are appearing for the Japanese government.

The parallel development of two different systems is critically required for the perfect realization of Japan's ocean policies: one is the integrative system; the other is the system of distribution of authorities to various ministries and agencies.

Fourth, finally, I would like focus upon the Indo-Pacific Strategy based upon the explanation of Japan's ocean policy under the Third Basic Plan. This strategy is also understood in accordance with Japan's wide understanding of its maritime security.

Now, I am moving onto the first point, namely, the development in the Japanese laws and institutions in the field of its ocean policies. The comparison between your country's domestic system and Japan's would be so much interesting and meaningful. If I could hear from you about the characteristics of your country's domestic systems to enact and enforce ocean policies, I would be so much grateful.

1. Japan's Domestic Laws and Institutions in Relation to Its Ocean Policies

(1) Development in Japan's National System for Its Ocean Policy

As you can see in the English version, at page 1, in the upper part, in 2007, Japan enacted the Basic Act on Ocean Policy in order for overall or integrative and planned realization of ocean policies as a maritime nation. In accordance with the object and purpose of the Basic Act, two developments followed.

First, the First Basic Plan on Ocean Policy was adopted in 2008. It concretely provides for various measures to be taken by various ministries and agencies in order to achieve the goal that The Basic Act sets forth. The Basic Plan is to be renewed every 5 years and in 2018, this year, the Third Basic Plan was adopted in May.

Second, regarding the administrative system to enforce both the Basic Act and the Basic Plan, the National Headquarters of Ocean Policy of Japan was established in 2008 with Prime Minister as its chair. Members of the National Headquarters are all the Ministers who are in charge of various maritime issues of Japan. The Council Meeting as an advisory organ for the National Headquarters was also constructed in the same year. As I told you before, I have served as Councilor since 2016.

The National Headquarters fulfill its function with the support by its Secretariat. In addition, the Council Meeting gives advices in a timely manner to the Chair of the National Headquarters, namely, Prime Minister.

In 2017, the Advisory Council Meeting established a Sub-Committee on Maritime Security, and I served as the Chair of the Committee. Based upon the examination by the Sub-Committee, the part on maritime security, which is the main pillar of the Basic Plan, was drafted and enacted.

This is the recent development of Japanese institutions to enact and

enforce its ocean policies. Next, let's look at the contents the Third Basic Plan.

(2) The Third Basic Plan on Ocean Policy

As the contents of the Third Basic Plan, I will introduce the following 7 items. Please look at the English translation at your hand. Maritime security comes first. It is the main pillar of the Third Basic Plan. English translation, at page 1, in the lower part, on the right side, number (4), (a) to (f))

First, comprehensive maritime security;

Second (a), promotion of industrial use of the ocean;

Third (b), maintain and protect the marine environment;

Fourth (c), Improve scientific knowledge;

Fifth (d), promote Arctic policy;

Sixth (e), international collaboration and cooperation;

Seventh (f), develop human resources with knowledge of ocean and to advance 'citizens' understanding

Without doubt, the main pillar of the Third Basic Plan is maritime security. Here, I need to make clear that mainly due to the confidential nature, defense issues, or, roughly speaking the war-related issues are provided for in a limited manner by the Third Basic Plan. Core defense issues are to be dealt with by the designated authorities who are in charge of these issues, in a confidential manner.

Then, I will focus on the wide understanding of maritime security in the Third Basic Plan and introduce the concrete policies to be taken for Japan's maritime security. Many of these policies have close relation to the Free and Open Indo-Pacific Strategy which I will deal with at the end of my lecture.

2. The Wide Understanding of Maritime Security and Policies to Be Taken for Japan's Maritime Security

(1) The Wide Understanding of Maritime Security

The most prominent characteristic of the Third Basic Plan is a wide understanding of maritime security. Later, I will explain the policies to be taken for realizing Japan's maritime security. You will easily find that there are really wide-range and various policies. The remarkably wide range of the policies undoubtedly proves this characteristic of the wide understanding of maritime security.

It is not only a characteristic of the Japanese Third Basic Plan. In scholarly writings in the fields of international law and international politics, there is a firm tendency to grasp maritime security as encompassing various issues. I can introduce to you one typical example of a wide understanding of maritime security. According to it, “maritime security does not confine itself to traditional concept of maritime security in relation to military threats. Maritime security is understood by the measures combatting military threat, terrorism, weapons proliferation, transnational crime, piracy, environmental/ resource destruction, and illegal seaborne migration.”

(Douglas Guilfoyle, “Maritime Law Enforcement Operations and Intelligence in an Age of Maritime Security,” 93 *International Law Studies*, Published by U. S. Naval College, 2017, p. 299.)

Due to this wide understanding of maritime security, as a necessary result, the policies for realizing Japan’s maritime security include tremendously various ones. They range almost comprehensively over all the fields of Japan’s ocean policies. Under the Third Basic Plan, the policies of maritime security of Japan are categorized into two categories of policies.

Next, let’s look at these two categories of policies. You can find these policies in the English translation at page 3, in the upper part, the figure entitled “comprehensive maritime security,”

3. Ocean Policies for Maritime Security: Two Categories

There are two categories of the ocean policies regarding maritime security: first, policies for maritime security, (I will call them) **A category** policies, which appear in the figure as (1) Maritime Security; second, policies forming the foundations for contributing to reinforcement of maritime security, (I will call them) **B category** policies, which appear in the figure as (2) and they are divided into two types, (a) and (b).

(1) A Category Policies

In the **A category** policies there are three main policies: first, the policies for maintaining the peace and order of the oceans by law enforcement; second, the policies for realization of the safety of marine traffic; and third, the policies for coping with ocean oriented natural disasters. Each three policy can be explained in detail by further concrete policies. But, here the introduction of these three policy items is enough for you to grasp the concept of the first category, namely, **A category** policies for Japan’s maritime security.

(2) B Category Policies: Two types

Next, the **B category** policies are further divided into two types: first, ocean policies forming bases of maritime security; and second, ocean policies that support maritime security in a complementary manner.

First, as for the ocean policies forming bases for maritime security, there are five policies.

- ① Establishment of maritime domain awareness (MDA) System
- ② Preservation and management of remote islands that form national borders
- ③ Development of marine scientific research and marine observation
- ④ Enhancement of scientific technology and research development
- ⑤ Development of Rearing human resources and improvement of understanding by nationals of ocean matters

Among them the Japanese government places much weight on the first and second policies: establishment of maritime domain awareness system (MDA); preservation and management of remote islands that form national borders. It is instituting for the first time a system of MDA. MDA will serve not only for military purposes but also for other purposes, such as law enforcement, natural disaster relief, the safety of navigation, metrological forecast, and development of natural resources by providing efficient data. Concerning the preservation and control of remote islands that form national borders, in 2017 the Japanese government enacted the Act on Promotion of Life on Manned Islands that form national borders.

Second, as for the ocean policies supporting maritime security in a complementary manner, there are two policies: one is policy for economic security; and the other is protection and preservation of the marine environment.

Then, what are the results of the wide understanding of maritime security and the overarching inclusion of various policies under the name of the policies for maritime security?

Here, the general agenda is echoed for Japan that it needs to ensure the parallel development of two kinds of institutional devices. One is the integrative and synthetic system for Japan's ocean policy with its head of the National Headquarters. The other is the Japan's traditional institutional system of division of authorities to various ministries and agencies.

Next, I will elaborate upon this point in relation to maritime security of Japan.

(3) The Pressing Agendas for Japan's Domestic System to Enact and

Enforce Its Ocean Policy

①As an obvious result of such a wide understanding of maritime security, vast majority of the ministries and agencies should get involved in the issues of maritime security. The issues to be dealt with are, security, safety of navigation, smuggling, immigration control, seaborne disaster, fishery resources management, maritime environmental protection, and so on. In coping with these issues, all the relevant ministries and agencies need to clearly recognize that their mandate and function are closely related to each other in serving the same purpose of maritime security.

What is the implication of this? In this regard, I would like to introduce Japan's traditional bureaucracy for its realization of ocean policies. It has been highly sector-specific, or heavily stove piped.

② In Japan, the individual ocean issues have been dealt with by each ministry and agency under its authority: for self-defense the ministry of defense, for the safety navigation the ministry of land and territory, for fishery resources management the fishery agency, for marine environmental protection ministry of environment, and etc. This is called a solid sector-specific system for the realization of Japan's ocean policies.

I assume that in many States in the world similar situation is found.

③ In order to achieve the goal of maritime security that relates widely to various ministries and agencies, two pressing agendas have appeared.

First, to enhance the overall and integrative realization of ocean policies regarding maritime security, the National Headquarters are strongly expected to properly function. Second, close coordination and cooperation among the relevant ministries and agencies are indispensably required.

However, they are not easy tasks for Japan. This is due to the efficient sector-specific distribution of powers among the ministries and agencies. Therefore, Japan needs, on the one hand, to firmly proceed to the integrative achievement of its ocean policies regarding maritime security. On the other hand, Japan, has to keep and enhance the efficient sector-specific distribution of powers among the authorities. The both things should make progress in a parallel manner.

With this understanding of the Third Basic Plan and its treatment of maritime security, I would like to move onto the Free and Open Indo-Pacific Strategy. Its promotion is no doubt an indispensable piece of the Third Basic Plan.

4. Free and Open Indo-Pacific Strategy and Maintenance of the Ocean Order

(1) Free and Open Indo-Pacific Strategy

① Let's begin with the contents of the Free and Open Indo-Pacific Strategy (FOIPS).

I can give you an example of remarks by Minister of Foreign Affairs, H. E. Abul Hassan Mahmood Ali, and Minister of Foreign Affairs, H. E. Kono on the occasion of Mr. Kono's official visit to Bangladesh in November of 2017.

When Mr. Kono explained the FOIPS, Mr. Ali demonstrated the agreement of his country to the freedom of navigation and the rule of law in the Indo-Pacific Region, and the intention to align with the concept of IPS.

Then, let's look at FOIPS itself.

② FOIPS has the basic idea as follows.

First, I will read out several sentences, and they will sketch the grand design of FOIPS. And then, I will isolate three main pillars of it for your convenience in order to make FOIPS clearly understandable to you.

The Indo-Pacific region is facing various challenges such as piracy, terrorism, proliferation of Weapons of Mass Destruction, natural disasters and attempts to change the status quo. Under such circumstances, FOIPS aims to promote peace, stability and prosperity across the region to make the Indo-Pacific free and open as "international public goods", though ensuring rule-based international order including the rule of law, freedom of navigation and overflight, peaceful settlement of disputes, and promotion of free trade.

Then, the three main pillars of FOIPS are as follows.

First, promotion and establishment of the rule of law, freedom of navigation, free trade, and etc.

Second, pursuit of economic prosperity by improving connectivity and strengthening economic partnership including Economic Partnership Agreements and/or Free Trade Agreements and investment treaties.

Third, commitment for peace and stability by capacity building on maritime law enforcement, humanitarian assistance and disaster relief cooperation.

I hope that now you have understood the gist of FOIPS. Before Moving onto its analyses, I would like to emphasize two points.

First, FOIPS is based upon the shared common value among the participant States. As Asian countries, we have built and developed liberal democracy as our own. We do not need to speak about its Western origin. Asian countries themselves have born the idea and fostered it for a long time. Any international cooperation could become really meaningful when it is based upon this shared common value, liberal democracy.

Second, FOIPS promotes reciprocal progresses of all the participants in terms of economy, security, maritime safety, maintenance of order, and etc. No one-sided benefit or prosperity of one State is allowed to be aimed at. For instance, when a port facility in one country is developed, it should produce the economic benefit for the local State and the benefit to be obtained of the ocean transshipment by utilizing the sea-lane with the hub port. With ensuring the reciprocal merits of the participating States, the common benefits should be obtained, such as, the benefits by the policy goals of the rule of law, freedom of the sea, economic prosperity, and maritime safety at sea.

As I mentioned before, FOIPS forms indispensable part of the Third Basic Plan. Then let's look at FOIPS under the Third Basic Plan.

Please look at again its English translation.

(2) Free and Open Indo-Pacific Strategy in the Third Basic Plan

① Concerning the remarks on FOIPS under the Third Basic Plan, I would like to introduce to you the following three points.

First, FOIPS is mentioned as one of the principal philosophies to govern the various policies. In the Part One, the Third Basic Plan, in order to enforce the policies under it in an integrative and synthetic manner, the principal philosophies and policy directions are set forth. One principal philosophy relates to FOIPS. It is emphasized that liberty, democracy, protection of human rights and the rule of law form the basis for the peace, security and prosperity of the world. Japan by itself needs to make efforts to achieve these goals. At the same time in accordance with FOIPS, it should ensure its peace, security, and prosperity along with those of other States in the world.

Second, as one of the policy directions it is provided for the open and stable seas in order to protect Japan and its nationals (English translation, at page 1, in the lower part, on the left side (2) Chapter 1 (a)). In this context,

FOIPS is mentioned as a tool to maintain and strengthen the ocean order based upon the rule of law and the principle of the freedom of the sea.

Third, particularly with respect to maritime security, as one of the basic policies for “comprehensive maritime security,” The Third Basic Plan mentions implementation of “Free and Open Indo-Pacific Strategy” in cooperation with foreign countries (English translation, at page 3, in the upper part, on the left side 2-1. reads that for the purpose of maritime security Japan needs to protect its peace and security and at the same time, that it Basic Policy for “comprehensive maritime security”, the third point).

Thus, FOIPS doubtlessly forms one of the parts of the principal philosophies and policy directions, and the basic policies of the comprehensive maritime security. It is deeply rooted in the issue of maritime security of Japan.

Not only that, due to the wide understanding of maritime security, various ocean policies come to have indispensable relation to FOIPS.

② As explained before, in the Third Basic Plan, maritime security is broadly understood. In an overarching manner, the wide understanding gives significance to various policies for the realization of maritime security. Therefore, not only the core defense policies, law enforcement, and policies to combat natural disasters for the maritime safety are the principal policies for maritime security. But also, the policies in relation to the following matters are evaluated as promoting maritime security. They are, establishment of MDA system, preservation of remote islands, development of marine scientific research, enhancement of scientific technology and research development, development of human resources, guarantee of economic security, and marine environmental protection.

With this broad range of ocean policies that contribute to maritime security, it has close relationship to the three main pillars of FOIPS. They are: promotion and establishment of the rule of law, the freedom of the sea; pursuit of economic prosperity; commitment for peace and stability by capacity building on maritime law enforcement, humanitarian assistance and disaster relief cooperation.

Thus, the policies for maritime security of Japan under the Third Basic Plan, on the one hand, and the policies for realization of FOIPS, on the other hand, are inseparably intertwined to each other.

In the end, I can safely say that for Japan to realize the ocean policies under the Third Basic Plan means undeniably to promote FOIPS. For that purpose, Japan has to cope with the pressing agenda to ensure the

parallel developments of the integrative institutional device with the National Headquarters, on the one hand, and the strong distribution of authorities to ministries and agencies, on the other hand. By doing this, Japan can achieve the goal of ensuring maritime security.

In addition, there is a critical piece to be built in Japan's ocean policy. That is FOIPS. And the furtherance of friendly and cooperative relation between your country and Japan definitely forms the firm and solid basis for Japan to enhance its power in accomplishing the object and purpose of Japan's ocean policy. That is maritime security.

This is the end of my lecture.

Thank you for your kind attention.