

Urgently Advocating a Precise Understanding of the Principle of Proportionality: From the Perspective of the Inherent Situation of the Japan Coast Guard and the Japan Maritime Self-Defence Force

Research Director Atsuko Kanehara

Member of Compass Voice - External Expert Network of the Japan Coast Guard

1. Introduction

(1) Terminology

This paper examines the principle of proportionality (hereinafter referred to as “proportionality” as long as no confusion is expected), which imposes restrictions on the use of force and the use of weapons.

In this paper, the term “the use of force” primarily refers to the use of arms as an exercise of the right to self-defence under international law¹ and the use of arms during armed conflicts. This terminology reflects the use of force under international law and Article 2, Paragraph 4 of the UN Charter.² In domestic law, Article 88 of the Self-Defence Forces Law³ regulates the use of force during defence operations.⁴

*All URLs were last accessed on 27 September 2025.

¹ This paper uses the term “the use of weapons” with “the” attached to “use of weapons” in the context of law enforcement measures. To avoid confusion, the term “use of weapons” (with quotation marks) is employed as a factual and physical term without legal implication.

² 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.

³ Law No. 165 of 1954.

⁴ It reads:

1. The Self-Defence Forces, when ordered to mobilize pursuant to Article 76, Paragraph 1, may exercise necessary force to defend Japan.
2. In the use of force referred to in the preceding paragraph, it shall comply with international law and custom where applicable, and shall not exceed the limits that is set as reasonably necessary in light of the circumstances (translated by the

In contrast, the term “the use of weapons” refers to “use of weapons” by law enforcement agencies during law enforcement actions. The distinction between “the use of force” and “the use of weapons” is critically important in international law for the following reasons. International law, under Article 2, Paragraph 4 of the 1945 UN Charter, prohibits the use of force. However, not all “use of weapons” is prohibited. A primary example is the use of weapons during law enforcement measures. This has been repeatedly confirmed not only in academic writings but also in the State practice of various countries and in international practice, including international court judgments and arbitral awards.⁵

(2) Purpose

The purpose of this paper is to provide essential considerations for the safety of the Japan Coast Guard (JCG), as a law enforcement agency, under the constraints of proportionality under international law, and Article 7 of the Police Duties Execution Act (PDEA)⁶ under domestic law.⁷ Specifically, this paper envisions ensuring the safety of the JCG officers and

author).

Article 76 provides for defence operations.

⁵ This author has examined the practice elsewhere. As to the relevant writings, and State and international practices, 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, No. 2 (2023), pp. 13-48 and footnotes thereto (hereinafter referred to as Kanehara, “Reconsideration”); 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), pp. 1-2, 41-42, 47-48 and footnotes thereto (hereinafter referred to as Kanehara, “The Use of Force.”)

⁶ The Police Duties Execution Act (Act No. 136 of 1948). The text of the provision will be referenced later at an appropriate place.

⁷ Article 20, Paragraph 2 of the Japan Coast Guard Act (Act No. 28 of 1948) permits the use of weapons by the JCG under certain conditions, in addition to the cases covered by Article 7 of the PDEA.

Article 20 reads:

The use of weapons by Coast Guard officers and assistant officers shall be governed *mutatis mutandis* by the provisions of Article 7 of the Police Duties Execution Act (Act No. 136 of 1948).

② In addition to cases where weapons are used pursuant to Article 7 of the Police

vessels (hereinafter referred to simply as “the Japan Coast Guard” or “the JCG” when no distinction is necessary and no confusion arises) when operating in tense maritime areas, including the discharge of the missions designated by the Control Guidelines⁸ based on

Duties Execution Act as applied *mutatis mutandis* in the preceding paragraph, when crew members, etc., fail to comply with repeated orders to halt the vessel's progress in accordance with Article 17, Paragraph 1, and continue to resist the execution of duties by a Coast Guard officer or assistant officer or attempt to flee, and the Commandant of the Japan Coast Guard reasonably determines, based on the vessel's appearance, the manner of navigation, the abnormal behaviour of the crew members, and other surrounding circumstances and the related information, and reasonably determines that the situation meets all of the following items, a Coast Guard officer or assistant officer may use weapons to the extent reasonably necessary for the situation, provided there are reasonable grounds to believe there is no other means to stop the vessel's progress.

- (i) The vessel is reasonably believed to be a foreign vessel (excluding warships and vessels owned or operated by governments for non-commercial purposes only) currently engaged in non-innocent passage under Article 19 of the United Nations Convention on the Law of the Sea within Japan's internal waters or territorial sea (except where there is a legitimate reason for such navigation).
- (ii) It is provable that such passage will be repeated in the future if left unchecked.
- (iii) It is deemed impossible to dispel suspicion that the passage is being conducted for the purpose of preparing to commit a heinous crime within Japan's territory punishable by death, life imprisonment, or imprisonment for three years or more (hereinafter referred to as “serious heinous crime”).
- (iv) It is deemed that the occurrence of serious heinous crimes in the future cannot be prevented unless appropriate measures are taken based on the information that could be obtained by stopping the vessel and conducting a boarding inspection (translated by the author).

Paragraph 2 of Article 20 was added to cope with so-called “unidentified vessels.” Later unidentified vessels were determined to be spy ships from North Korea. As to incidents involving unidentified vessels, see Atsuko Kanehara, “The Incident of an Unidentified Vessel in Japan’s Exclusive Economic Zone,” *The Japanese Annual of International Law*, No. 45 (2002), pp. 116-126.

⁸ On the 28th of April 2023, the Japanese government issued the Control Guidelines stipulating the manner of collaboration between the Japanese Maritime Self-Defence Force

Article 80⁹ of the Self-Defence Forces Law.¹⁰

As the author has previously discussed elsewhere,¹¹ she has harboured strong concerns and doubts regarding the operation of the JCG in the East China Sea under the Control Guidelines during an international armed conflict, such as a Taiwan contingency.¹² These concerns and questions stem from the perspective of ensuring the safety of the JCG. With clear reservation on this point, the following sections will explain how a lack of accurate recognition and adequate understanding of proportionality seriously threatens the safety of the JCG while also considering the execution of the missions of the JCG as stipulated by the Control Guidelines.

Relatedly, they will also briefly touch upon the issue with regard to the Japan Maritime Self-Defence Force (JMSDF). When the JMSDF conducts maritime police operations under

and the JCG in accordance with Article 80 of the Self-Defence Forces Law. For details, see Atsuko Kanehara, “Ensuring the Safety of the Japan Coast Guard during Its Missions under Article 80 of the Self-Defence Forces Law and the Control Guidelines (in Japanese),” *Jurist* (February 2024, No. 1593), reproduced below,

https://cigs.canon/article/20250127_8602.html, (hereinafter referred to as Kanehara “Control Guidelines”).

⁹ Article 80, Paragraph 1 reads:

The Prime Minister may, when an order for deployment of all or part of the Self-Defence Forces has been issued pursuant to Article 76, Paragraph 1 (limited to the portion pertaining to Item 1) or Article 78, Paragraph 1, and when the Prime Minister deems it particularly necessary, place all or part of the Japan Coast Guard under the control of the Minister of Defence (translated by the author).

¹⁰ The collaboration and the functions to be discharged by the JCG under the Control Guidelines will be discussed later as necessary.

¹¹ Kanehara, “Control Guidelines”; Atsuko Kanehara, “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,” *Japan Review*, Vol. 6, No. 2 (2023), pp. 47-79 (hereinafter referred to as Kanehara, “The JCG under the Control Guidelines.”)

¹² For some analysis of the East and South China Seas, see Ronald O’Rourke, “Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress,” CRS Report for Congress, US Library of Congress of Washington D.C. Congressional Research Service, 2012.

<https://apps.dtic.mil/sti/html/tr/ADA584681/index.html>.

Article 82 of the Self-Defence Forces Law,¹³ the same restrictions on its use of weapons apply as for the JCG. The JMSDF is an institution responsible for defence, and the use of force for that purpose is guaranteed by domestic law. However, when engaged in maritime police operations, which it does differently from defence operations, as they are “police” operations, the JMSDF is also only permitted to use weapons subject to the restrictions of Article 7 of the PDEA. Depending on the situation in which the JMSDF is deployed, this could potentially pose a risk to the JMSDF itself. Therefore, for the sake of ensuring the safety of the JMSDF, too, an accurate recognition and understanding of proportionality as a restriction on the use of weapons in connection with law enforcement measures is indispensable.

There are several types of confusion regarding “proportionality.” First, the difference between proportionality under international law and that under domestic law is not recognized. The author has heard and seen a confusion between proportionality under domestic law, namely, Article 7 of the PDEA,¹⁴ on the one hand, and proportionality under international law. One reason may explain such a confusion. While there is the principle of proportionality in international law, the “police proportionality” principle is referenced in relation to Article 7 of the PDEA of domestic law. The use of the identical term “proportionality” in both laws leads to simple misunderstandings.

Second, the confusion between proportionality under international law and that under domestic law becomes even worse and more complicated considering the following point. As will be discussed later, the principle of proportionality, even when limited to its application to the use of weapons and the use of force, functions in three distinct areas of international law. Therefore, when considering the confusion between proportionality under international law and that under domestic law, there could be three possibilities of confusion between each proportionality in these three distinct fields, and proportionality under domestic law.

¹³ It reads:

The Minister of Defence may, when special necessity arises for the protection of human life or property at sea or for the maintenance of public order at sea, order Self-Defence Forces units to take necessary measures at sea, with the approval of the Prime Minister (translated by the author).

¹⁴ As will be explained later, under Article 7 of the PDEA, the restrictions on the use of weapons accompanying law enforcement measures that cause harm are stricter than the police proportionality principle. With this reservation, and provided it does not cause confusion or misunderstanding, the principle under Article 7 of the PDEA is referred to as “the police proportionality principle.”

Third, even when concentrating on proportionality under international law, the distinction is not consistently noted among proportionality in the three distinct fields of international law.

The author has repeatedly encountered such misunderstandings and confusions on many occasions including domestic and international conferences. As an international law scholar, the author wishes to resolve these misunderstandings surrounding proportionality by providing theoretical clarification and the dissemination of knowledge.

However, this is not the sole purpose of this paper. It is a brief paper addressing a more serious and urgent issue. The author's grave concern is that without accurate recognition and understanding of the law—specifically, the principle of proportionality—the safety of the JCG will be significantly threatened. More concretely, it is a profound concern that neglecting proportionality, particularly during operations conducted under the Control Guidelines and in tense maritime areas like the East China Sea, will make it totally impossible to ensure the safety of the JCG.

Simply put, recognition and understanding of proportionality on the one hand, and the assurance of the safety of the JCG, on the other hand, are inseparably intertwined, forming an indivisible unity. Therefore, particularly in the East China Sea during tense situations, including times of armed conflict under international law such as a Taiwan contingency, decisions to avoid risk based solely on facts and experience cannot guarantee the safety of the JCG.

Based on these concerns, providing help in accurately recognizing and understanding proportionality is a critical and urgent task for the author. Addressing this task is the purpose of this paper.

In international law, as likely is the case in other legal fields, the terms “principle,” “rule,” and “standard” are strictly used with distinct meanings. Unless such a distinction is necessary, this paper refers to the “principle” of proportionality. Similarly, concepts closely related to the principle of proportionality, such as reasonableness or necessity, are also referred to as “principles” when contextually appropriate.

(3) The JCG as a Law Enforcement Agency

① The JCG is a law enforcement agency. When operating under the Control Guidelines and under the control of the Minister of Defence, even when acting during a state of armed attack under domestic law (the Self-Defence Forces Law) and during an armed conflict under international law, the JCG remains a law enforcement agency and is not permitted to

perform defence functions.¹⁵ This is due to strict adherence to Article 25 of the Japan Coast Guard Act.¹⁶ Article 25 stipulates: “Nothing in this Act shall be construed to permit the Japan Coast Guard or its officers and employees to be organized for, be trained for, or perform the functions of an armed force (translated by the author).”

This point is particularly noteworthy when considering the extensive State practice of various countries in the international society. The State practice demonstrates a clear tendency that in armed conflicts and in similar situations, for instance, coast guards are incorporated into navies or otherwise jointly perform tasks, often not strictly adhering to the coast guard's status as a “law enforcement agency.”¹⁷ It has also been pointed out that common-law countries have the traditional reluctance to use the armed forces in the enforcement of laws against citizens.¹⁸

¹⁵ 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), p. 47. For an introduction to the US practice, see Rekizo Murakami and Masato Mori, “Enactment of the Japan Coast Guard Law and Reception of Foreign Laws (in Japanese),” in Soji Yamamoto *et al.* eds., *Legal System on Coast Guard – Interplay between the Law of the Sea and Domestic Law*, (Sanseido, 2009), pp. 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/>; Rutherford B. Hayes Presidential Library & Museum, “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/>; Dale Stephen, “Military Involvement in Law Enforcement,” *International Review of the Red Cross*, Vol. 92, No. 878 (2010), p. 455.

¹⁶ As to this issue, see Kanehara, “The JCG under the Control Guidelines,” pp. 52-53; The author's presentation at the 25th Maritime Security Conference in Malaysia, https://cigs.canon/article/20250701_9012.html; Kanehara, “Control Guidelines,” p. 73.

¹⁷ For literature on this issue, including State practice, see Kanehara, “The JCG under the Control Guidelines,” pp. 67-68 and footnotes thereto.

¹⁸ Ivan Shearer, “The Development of International Law with Respect to the Law Enforcement Roles of Navies and Coast Guards in Peacetime,” US Naval War College, *International Law Studies Series*, No. 429 (1998), pp. 448. Regarding the US practice, see also *supra* note 15. A similar opinion is voiced by Fenrick. W. J. Fenrick, “Legal Limits on the Use of Force by Canadian Warships Engaged in Law Enforcement,” *Canadian Yearbook of International Law*, Vol. XVIII (1980), p. 145.

The jurisprudence is fairly understandable in such situations as the relevant State practice in declaring that the distinction has been blurred between military activities and law enforcement.¹⁹ For instance, the Ukraine Naval Vessels Detention Case (Provisional Measures,²⁰ and Preliminary Objections²¹), and the Coastal State Rights Case (Preliminary Objections)²² are examples of such jurisprudence.²³ The JCG is thus quite unusual

¹⁹ For an analysis of such jurisprudence, see Kanehara, “Reconsideration,” pp. 29-34; “The JCG under the Control Guidelines,” pp. 66-67.

²⁰ 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.

²¹ 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.

²² The arbitral tribunal, in another case, too, mentioned a similar thought to that of the International Tribunal for the Law of the Sea (ITLOS) 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.

²³ In these instances, ITLOS and the Arbitral Tribunal considered Article 298, Paragraph 1 (1) (b) of the United Nations Convention on the Law of the Sea (UNCLOS) to determine whether they had jurisdiction to entertain the cases before them. Thus, to evaluate the jurisprudence, such a particular background should be carefully considered. Article 298, Paragraph 1 (1) (b) of UNCLOS 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;

internationally in its insistence on remaining a law enforcement agency.²⁴

Most notably, in China, which is causing tensions in the East China Sea, Article 83 of the 2021 Chinese Coast Guard Law²⁵ allows law enforcement vessels to instantly transform into vessels performing defence functions.²⁶ In other words, the Chinese law enforcement vessels (coast guard ships) that the JCG constantly confronts can, in accordance with China's domestic law,²⁷ instantly transform themselves into vessels performing defence functions.²⁸

② Focusing on proportionality, this is precisely where the reality of the safety of the JCG being threatened becomes starkly apparent. The use of weapons by the JCG, different from under international law,²⁹ is strictly restricted under Japanese domestic law by Article 7 of

²⁴ Atsuko Kanehara, "Proposals for Legal Framework Regarding Territorial Sea Guarding (in Japanese)," *Sophia Law Review*, Vol. 65, No. 4 (2022), pp. 51-53 (hereinafter referred to as Kanehara, "Territorial Sea Guarding"); Kanehara, "Control Guidelines," pp. 76-77; Kanehara, "The JCG under the Control Guidelines," pp. 66-68 and footnotes thereto. For a discussion of the relationship between military agencies and coast guards, and an explanation of the characteristics of the Japan Coast Guard, see Sam Bateman, "Regional Navies and Coastguards: Striking a Balance between 'Lawships' and Warships," in Geoffrey Till & Jane Chan (eds.), *Naval Modernisation in South-East Asia: Nature, Causes and Consequences*, 1st edition (Routledge, 2014), pp. 245-262; Sam Bateman, "Coast Guards: New Forces for Regional Order and Security," *Asia-Pacific Issues, Analysis from the East-West Center*, No. 65 (January, 2003), pp. 1 *et seq.*; Douglas Daniels, "How to Allocate Responsibilities Between the Navy and Coast Guard in Maritime Counterterrorism Operations," *University of Miami Law Review*, Vol. 61 (2007), pp. 467 *et seq.* For a discussion of international law concerning law enforcement by navies and coast guards, see Shearer, *op. cit.*, *supra* n. 18, pp. 429-454.

²⁵ An unofficial English translation: [2021-02-11 China Coast Guard Law FINAL English Changes from draft.pdf](#).

²⁶ Article 83 stipulates: "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."

²⁷ For the use of weapons by the Chinese Coast Guard in maritime law enforcement, see Zhao Weidong, "A Discourse on the Use of Force by China Coast Guard in Maritime Law Enforcement," *China Oceans Law Review*, Vol. 73 (2014), pp. 73-93.

²⁸ Kanehara, "Control Guidelines," p. 75.

²⁹ The international law governing the use of weapons by the JCG is determined by the

the PDEA.³⁰ Violating this provision subjects the JCG officers to punishment under domestic law.³¹

In contrast, use of weapons for defence by Chinese vessels constitutes “the use of force,” as described in the terminology in the Introduction (1). Under international law, and likely under the Chinese domestic law as well, “the use of force” is subject to an entirely different principle of proportionality from that governing the use of weapons in law enforcement measures. As will be explained later, simply put, the principle of proportionality governing the use of force imposes far less stringent restrictions than the principle of proportionality governing the use of weapons. The principle of proportionality permits the use of force on a much larger scale and intensity, including the destruction of opposing vessels. These are two principles of proportionality establishing entirely different types of restrictions.

This very disparity—between the restrictions on the use of weapons by the JCG while operating in the East China Sea during tense situations, including international armed conflicts like a Taiwan contingency, on the one hand, and the restrictions on the use of force by confronting Chinese or foreign vessels, on the other hand—is the very fact that seriously threatens the safety of the JCG. Therefore, the legal understanding of the principle of proportionality is inextricably linked to ensuring the safety of the JCG; the two form an indivisible unity.

③ If the JCG insists on being a “law” enforcement agency, an accurate recognition and understanding of that “law” should be indispensable. Otherwise, even if the JCG emphasizes its role as a law enforcement agency, its significance is considerably diminished. This holds true as a general principle. Moreover, focusing specifically on proportionality—the subject of this paper—makes this point even more pronounced. The safety of the JCG is inextricably

nature of its missions, its status under the law of armed conflict, and whether it qualifies as auxiliary vessels, among other factors.

³⁰ For analysis of Article 7 of the PDEA, see Yoichi Furuya (ed.), *Annotated Police Duties Act* (in Japanese), (Tachibana Shobo, 2021); Masataka Morimoto, “Examination of the Regulations on the Use of Weapons in Police Activities by the Self-Defense Force: Focusing on the Requirements on the Permissible Use of Weapons Causing Harm (in Japanese),” *International Security*, Vol. 42, No. 3 (December 2014), pp. 77-95; Masahiro Tamura, *Explanation of the Authority of Field Police Officers (in Japanese)*, Volume 1 (Tachibana Shobo, 2014).

³¹ Regarding the point that the use of weapons violating Article 7 of the PDEA may constitute a criminal offense under the Penal Code, see Morimoto, *op. cit.*, *supra* n. 30, p. 86.

linked to the accurate recognition and understanding of proportionality as law; the two form an indivisible unity. Therefore, without the accurate recognition and understanding of proportionality, the safety of the JCG cannot be realized.

Motivated by the author's experience of observing confusions and misunderstanding surrounding proportionality, this paper will concisely examine proportionality, limiting its scope to the object and purpose of ensuring the safety of the JCG. Given its significance, the principle of proportionality raises numerous issues and challenges in both international and domestic law, with extensive discussions surrounding them.³² A detailed examination of these debates is beyond this paper's scope. It will proceed with an analysis that is confined to the object and purpose outlined here.

First, to aid accurate recognition of the principle of proportionality, we will confirm a fundamental understanding thereof.

2. The Principle of Proportionality

(1) The Principle of Proportionality in International Law

① For the purposes of this paper, we exclude from consideration those principles of proportionality in international law that do not pertain to the use of weapons or the use of force.³³

³² For works on the principle of proportionality in general, see, for example, Thomas Cottier *et al.*, "The Principle of Proportionality in International Law: Foundations and Variations," *Journal of World Investment & Trade*, Vol. 18(4), (2017) pp. 628-672; Paul Loftus, "The Rise and Rise of Proportionality in Public International Law," *Southern Cross University Law Review*, Vol. 1 (1997), pp. 165-187; William J. Fenrick, "The Rule of Proportionality and Protocol I in Conventional Warfare," *Military Law Review*, Vol. 98, Fall (1982), pp. 91-127; Yoram Dinstein, Chapter 6: Controversial Consequences of the Change in the Legal Status of War, in Yoram Dinstein, *War, Aggression and Self-Defence*, 6th edition (Cambridge University Press, 2017), pp. 173-194; Yoram Dinstein, Chapter 7: The Concept of Self-Defence, in *ibid.*, pp. 197-260; Yoram Dinstein, Chapter 8: The Modalities of Individual Self-Defence, in *ibid.*, pp. 261-300; Geoffrey S. Corn, "Proportionality: Can't Live With It But Can't Live Without It," *International Law Studies*, Vol. 106, <https://digital-commons.usnwc.edu/ils/vol106/iss1/16/>, pp. 515-533. Works on specific points will be referenced at the appropriate places in this paper.

³³ For instance, in the law of the sea, proportionality is a standard to evaluate the provisional delimitation lines to achieve an equitable result. For authorities examining the principle of proportionality across the diverse fields of international law, see, for example, Emily

This section will briefly confirm the three principles of proportionality under international law which are relevant to this paper's analysis: two that regulate the use of force ((1) ②), and one that regulates the use of weapons in law enforcement measures ((1) ④).

② The first principle of proportionality governing the use of force is the principle of proportionality under *jus ad bellum*. *Jus ad bellum* is the law concerning the justification for initiating a war. However, since Article 2, Paragraph 4 of the UN Charter of 1945 prohibits the use of force, and thus international law prohibits war, expressions like "the law of war" or "rules of war" are not to be used.³⁴ Therefore, *jus ad bellum* can be understood as the law concerning the justification of the use of force.

Under the prohibition on the use of force in Article 2, Paragraph 4 of the UN Charter, the use of force permitted by international law is either the exercise of the right of self-defence³⁵ or coercive measures taken by the UN members in accordance with the UN Charter.³⁶ We

Crawford, "Proportionality," *Max Planck Encyclopedia of International Law*, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1459>, article last updated: May 2011; Rüdiger Wolfrum, "Proportionality: Reconsidering the Application of an Established Principle in International Law," *International Law Studies Series*, Vol. 99 (2022), pp. 676-697.

³⁴ Article 2, Paragraph 4 of the UN Charter prohibits the use of force by avoiding the term "war." This term is a traditional one in international law, referring specifically to "war" that follows procedures such as a declaration of war. If the provision prohibits "war," violent acts that are initiated without a declaration of war would not be prohibited by it. To prevent the creation of such loopholes, Article 2, Paragraph 4 more broadly prohibits the use of force by employing the concept of the use of force.

³⁵ Article 51 of the UN Charter stipulates the right of self-defense which reads:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by a Member State in the exercise of this right of self-defense must be reported immediately to the Security Council. Furthermore, such measures shall not affect the authority and responsibility of the Security Council under this Charter to take at any time such action as it deems necessary to maintain or restore international peace and security.

³⁶ Article 41 (non-military measures) and Article 42 (military measures) provide for coercive measures taken by the UN members. The military measures to be taken under Article 42 include the use of force. Article 25 of the UN Charter addresses the binding

will focus on the right of self-defence.

The principle of proportionality in *jus ad bellum* is the principle justifying the use of force as an exercise of the right to self-defence.³⁷ Specifically, this principle of proportionality functions to determine the circumstances permitting the use of force as self-defence, as well as its intensity and scale.³⁸

Furthermore, the following principle of proportionality can be dealt with relating to this proportionality in *jus ad bellum*.³⁹ A State that has become the victim of an internationally unlawful act of violence that does not satisfy the requirements for the exercise of the right to self-defence may take countermeasures,⁴⁰ not exercise the right to self-defence.

Countermeasures may also involve “use of weapons.” However, since the preceding international wrongful acts with violence do not satisfy the requirements for the exercise of the right to self-defence, under the prohibition of Article 2, Paragraph 4 of the UN Charter, countermeasures involving the use of force are not permitted. “Use of weapons” in countermeasures is also governed by the principle of proportionality.⁴¹ We will stop here by

nature of the resolutions adopted by the UN Security Council determining these measures, when the requirement is satisfied.

³⁷ As to necessity in relation to self-defence, see R. Y. Jennings, “The Caroline and McLeod Cases,” *The American Journal of International Law*, Vol. 32, No. 1 (1938), pp. 89–92.

³⁸ Enzo Cannizzaro, “Contextualizing proportionality: jus ad bellum and jus in bello in the Lebanese War,” *International Review of the Red Cross*, Vol. 88, No. 864 (December 2006), https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/irrc_864_cannizzaro.pdf, p. 781.

³⁹ For the regulation of the use of force for self-defence, and countermeasures, see, for instance, Stuart Casey-Maslen, “The Use of Force in Self-Defence and the Taking of Countermeasures in Response to Maritime Hybrid Warfare under International Law,” in Alexander Lott (ed.), *Maritime Security Law in Hybrid Warfare*, Publications on Ocean Development, Vol. 102 (2024), pp. 45-46, 48-52.

⁴⁰ Articles 49-54 of the Articles on Responsibility of States for Internationally Wrongful Acts regulate countermeasures. The Articles were adopted by the International Law Commission of the United Nations and annexed to Resolution 56/83 of December 12, 2001, which was adopted by the UN General Assembly. They are not treaty provisions and are not legally binding. However, the International Court of Justice (ICJ) declared the customary law status of some articles. Here, it is enough to confirm this point.

⁴¹ Regarding the relationship between the degree of the prior wrongful acts and countermeasures, see Enzo Cannizzaro, “The Role of Proportionality in the Law of

noting this point.⁴²

The second principle of proportionality governing the use of force is the principle of proportionality in *jus in bello*.⁴³ *Jus in bello* is the law of hostilities, regulating the means and methods of hostilities.⁴⁴ The fundamental requirement of the principle of proportionality here is the balancing and weighing of military necessity⁴⁵ against humanitarian considerations.⁴⁶ Regulation regarding hostile acts includes the principle of distinction—the principle of targeting military objectives—the duty to take precautionary

International Countermeasures,” *European Journal of International Law* 12, No. 5 (2001), pp. 909-911.

⁴² For the regulation of such “use of weapons” in countermeasures based on the principle of proportionality, see, for example, the following works: Thomas M. Franck, “On Proportionality of Countermeasures in International Law,” *American Journal of International Law*, Vol. 102, No. 4, (2008), pp. 715-767; Cannizzaro, *op. cit.*, *supra* n. 41, pp. 889-916.

⁴³ As to a discussion on the relationship between the principle of proportionality in *jus in bello*, and that in international criminal law, see, for instance, James Kilcup, “Proportionality in Customary International Law: An Argument against Aspirational Laws of War,” *Chicago Journal of International Law*, Vol. 17, No. 1 (2016), pp. 249, and 254 *et seq.*

⁴⁴ When contrasting with “*jus ad bellum*,” the term “*jus in bello*” is used. However, in subsequent analysis, it will be referred to as “the law of armed conflict.” This paper does not specifically address the relationship between (international) humanitarian law and the law of armed conflict, or the issue of terminology. The phrase “the law of armed conflict” does not necessarily exclude the implications of international humanitarian law.

⁴⁵ For an analysis of “imperative military necessity,” see Jeffrey Lovitky, “Article 23(g) Imperative Military Necessity Imposes No Higher Standard than Ordinary Military Necessity,” Lieber Institute for Law and Land Warfare, *ARTICLES OF WAR* (June 29, 2025), <https://lieber.westpoint.edu/article-23g-imperative-military-necessity-imposes-no-higher-standard-ordinary-military-necessity/>.

⁴⁶ For the historical development of the law of armed conflict, see, for example, Christopher Greenwood, “Historical Development and Legal Basis,” in Dieter Fleck *et al.* (eds.), *The Handbook of Humanitarian Law in Armed Conflicts* (Oxford University Press, 1999), pp. 1-38. For the philosophical background of the principle of proportionality, see, for instance, Michael A. Newton, “Reframing the Proportionality Principle,” *Vanderbilt Journal of Transnational Law*, Vol. 51, Issue 3 (2018), pp. 868 *et seq.*

measures,⁴⁷ and the principle of necessity.⁴⁸ Authorities are not necessarily in accord regarding the logical relationships among these principles—for example, whether the proportionality principle or the necessity principle is subsumed within the principle of distinction.⁴⁹ However, for the purposes of this paper, it suffices to confirm that these principles fundamentally aim to balance military necessity with humanitarian considerations, which require the avoidance of harm to civilians and civilian objectives.⁵⁰ Furthermore, the principle of proportionality is also evaluated as being established as customary law as a principle restricting the use of force in *jus in bello*.⁵¹ As a treaty rule

⁴⁷ The duty to take precautionary measures is the obligation to minimize harm to civilians and civilian objects. This is stipulated in Articles 57 and 58 of the 1977 Additional Protocol I to the 1949 Geneva Conventions.

⁴⁸ An authority also cites immediacy. Yoram Dinstein, Chapter 8, Modalities of Individual Self-Defence, in Dinstein, *op. cit.*, *supra* n. 32, paras. 689, 755-757.

⁴⁹ On this point, see, for instance, Michael N. Schmitt, “Fault Lines in the Law of Attack,” in Susan C. Breau & Agnieszka Jachec-Neale (eds.), *Testing the Boundaries of International Humanitarian Law* (2006), p. 301; Kilcup, *op. cit.*, *supra* n. 43, pp. 247-248; Greenwood, *op. cit.*, *supra* n. 46, para. 132; Fenrick, *op. cit.*, *supra* n. 32, pp. 93-94.

⁵⁰ In this regard, for the historical development of fundamental requirements, see, for instance, Fenrick, *op. cit.*, *supra* n. 32, pp. 93-95.

⁵¹ According to the report issued by the Ministry of Foreign Affairs of Japan on the 6th of June, 2024, as of July 2019, 174 countries were parties to the 1977 Additional Protocol I to the 1949 Geneva Conventions, https://www.mofa.go.jp/mofaj/gaiko/k_jindo/ichiran.html. This represents a significant increase in the number of the parties compared to July 1999, when only 138 states were parties. At that time, an authority made the assessment that “it cannot be said that the international community as a whole is a party.” Greenwood, *op. cit.*, *supra* n. 46, para. 127. If the principle of proportionality is established as customary law, non-parties to the 1977 Additional Protocol I to the 1949 Geneva Conventions are also legally bound by it. For a discussion examining whether the principle of proportionality has become customary law, see Kilcup, *op. cit.*, *supra* n. 43, pp. 250-254; International Commission of the Red Cross, *Customary International Humanitarian Law Database, Rule 14: Proportionality in Attack*, <https://ihl-databases.icrc.org/en/customary-ihl/v2/rule14>; Kevin S. Coble, “An Operational Perspective of Military Advantage and Proportionality,” Lieber Institute for Law and Land Warfare, *ARTICLES OF WAR* (July 11, 2025). Furthermore, an authority argues as follows. As far as it has been widely acknowledged as a fundamental requirement to maintain the balance between humanitarian imperatives with military necessity, the issue as to whether proportionality has become customary law

stipulating the principle of proportionality, Article 51, Paragraph 5 (b) of the 1977

Additional Protocol I to the 1949 Geneva Conventions (API)⁵² provides for it.⁵³

While much debate surrounds its core elements—such as “excessive,” “incidental harm,”⁵⁴ and “military advantage”⁵⁵—judgments must ultimately be made on a case-by-case basis.⁵⁶

In addition, several factors, such as level of warfare, type of military operation, centre of gravity, risk, and time, are indicated to evaluate proportionality in individual cases.⁵⁷

③ Under current international law, which prohibits the use of force, State A that uses force

becomes largely meaningless. Fenrick, *op. cit.*, *supra* n. 32, p. 125.

⁵² Article 51, Paragraph 5 reads:

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.

⁵³ As reproduced above (*supra* note 3), the Self-Defence Forces Law of Japan, in its Article 88, Paragraph 2 reads as follows:

2. In the use of force referred to in the preceding paragraph, it shall comply with international law and custom where applicable, and shall not exceed the limits that is set as reasonably necessary in light of the circumstances (translated by the author).

⁵⁴ Aurel Sari, “Indiscriminate Attacks, Proportionality and the Meaning of ‘Incidental’ Civilian Harm,” 11 August 2025, Lieber Institute for Law and Land Warfare, *ARTICLES OF WAR*, <https://lieber.westpoint.edu/indiscriminate-attacks-proportionality-meaning-incidental-civilian-harm/>.

⁵⁵ For these elements, see, for instance, the report of the international conference of experts and practitioners, International Commission of the Red Cross, *The Principle of Proportionality in The Rules Governing the Conduct of Hostilities under International Humanitarian Law* (2016), https://www.icrc.org/sites/default/files/document/file_list/4358_002_expert_meeting_report_web_1_0.pdf; Michael N. Schmitt, *op. cit.*, *supra* n. 49, pp. 293-295.

⁵⁶ *Ibid.*, p. 296.

⁵⁷ Coble, *op. cit.*, *supra* n. 51.

commits an internationally wrongful act. The principle of proportionality in *jus ad bellum* functions to ensure that, as State B is in a superior position vis-à-vis State A, which conducts the internationally wrongful act, the use of force by B is for the purpose of repelling the attack and defending itself. In contrast, the principle of proportionality in *jus in bello* regulates the hostile acts of both parties to an armed conflict, treating them as equals.⁵⁸ It has been noted that the principles of proportionality in *jus ad bellum* and *jus in bello* may overlap, or in other words, that it may be impossible to completely distinguish between them.⁵⁹ Here, we will limit ourselves to acknowledging this point.

④ Another principle of proportionality in international law governs the use of weapons in law enforcement measures.⁶⁰ Unlike domestic law, international law does not have a solidly established definition of “law enforcement.”⁶¹ However, through treaty provisions that

⁵⁸ Cannizzaro, *op. cit.*, *supra* n. 38, p. 785.

⁵⁹ In this regard, with respect to the 2003 Oil Platforms Case (merits) and the 1996 Advisory Opinion on the Legality of Nuclear Weapons, Dinstein points out that the discussions on necessity and proportionality intermingle arguments from *jus in bello* and *jus ad bellum*. Dinstein, *op. cit.*, *supra* n. 32, Chapter 6, Controversial Consequences of the Change in the Legal Status of War, paras. 488-490. Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, *I.C.J. Reports 1996*, p. 226. Oil Platforms (Islamic Republic of Iran v. United States of America), Merits, Judgment, *I.C.J. Reports 2003*, p. 16. For a similar observation regarding the 1986 Nicaragua Case (merits), see Franck, *op. cit.*, *supra* n. 42, p. 721. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. *I.C.J. Reports 1986*, p. 14. Furthermore, it has been pointed out that when civilian harm is considered in the aggregate, the distinction between proportionality under *jus in bello* and proportionality under *jus ad bellum* becomes blurred. Corn, *op. cit.*, *supra* n. 32, p. 525.

⁶⁰ As for this issue, see, for instance, Matteo Tondini, “The Use of Force in the Course of Maritime Law Enforcement Operations,” *Journal on the Use of Force and International Law*, Vol. 4, No. 2 (2017), pp. 253-272; Fenrick, *op. cit.*, *supra* n. 18, pp. 113-145.

⁶¹ Kanehara, “Territorial Sea Guarding,” pp. 25-26; Kanehara, “The Use of Force,” p. 44; Kanehara, “Reconsideration,” p. 27. For the definition of “law enforcement,” see, for instance, Murakami and Mori, *op. cit.*, *supra* n. 15, pp. 30-31; Koichi Morikawa, “The Concept of Use of Force in Maritime Law Enforcement Activities (in Japanese),” in Yuji Iwasawa, Koichi Morikawa, Hajime Mori, and Yumi Nishimura (eds.), *The Dynamism of International Law: A Memorial Volume for Professor Akira Kotera* (in Japanese) (Yuhikaku, 2019), pp. 655-659.

provide guidance on the definition of law enforcement⁶² and international jurisprudence, the category of law enforcement and the use of weapons accompanying law enforcement measures are established to a considerable degree, even if they are not always explicitly referred to as such. In light of the history of the prohibition of war and the use of force under international law, a crucial point is that the use of weapons in connection with law enforcement measures is distinguished from the use of force prohibited by Article 2, Paragraph 4 of the UN Charter, and international law permits the former. This point has been repeatedly confirmed not only by various authorities but also by numerous judicial practices.⁶³ Needless to say, the distinction between the use of force prohibited by international law, on the one hand, and the use of weapons in law enforcement permitted by international law, on the other hand, is critically important for the prohibition of war and the use of force that international law has achieved.⁶⁴ This is because if the use of force, which is prohibited, were to occur under the guise of the use of weapons accompanying law enforcement measures, the historical achievement of international law in prohibiting war and the use of force would be significantly diminished in its significance.⁶⁵ The principles governing the use of weapons in law enforcement measures are unavailability, necessity, and reasonableness. The *M/V Saiga* (No. 2) Case,⁶⁶ the Fishery

⁶² As for some analysis of such treaty provisions including Article 73 of UNCLOS, see Kanehara, "The Use of Force," pp. 44-46.

⁶³ For introductions and analyses of individual cases, see Kanehara, "The Use of Force," pp. 41-42, 46-47 and footnotes thereto; Kanehara, "Reconsideration," pp. 19-20, 28-34 and footnotes thereto.

⁶⁴ Atsuko Kanehara, "Factors Producing 'Grey Zones' in Maritime Security," Reprinted from *International Ocean Information Journal* (published by the Ocean Affairs Council of Taiwan) (July 2025 issue), <https://cigs.canon/uploads/2025/07/2764ae6e22815e8ed32077be1f2994d1aff289e4.pdf>, p. 109.

⁶⁵ Kanehara, "The Use of Force," p. 53; Kanehara, "Reconsideration," pp. 22-23.

⁶⁶ The *M/V Saiga* (No. 2), (Saint Vincent and the Grenadines v. Guinea), the International Tribunal for the Law of the Sea, Judgment (Merits) of 1 July 1999, *International Legal Materials*, 38 (1999), 1323, paras. 155–156, and 159. As UNCLOS does not have provisions (according to the terminology of ITLOS) on the use of force, it declared these principles as general international law. Including this point, as a brief analysis of this case, see Louise Angélique de La Fayette, "Saiga Cases," *Max Planck Encyclopedia of International Law*, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690->

Jurisdiction Case,⁶⁷ and the Guyana and Suriname Arbitration⁶⁸ are examples.⁶⁹ There are other incidents in which the use of weapons raised the issue of its legality, such as the *S. S. I'm Alone* Case and *The Red Crusader* Case.⁷⁰ Even if such judicial and arbitral practices recognize the distinction between the use of force prohibited by international law and the use of weapons in law enforcement measures, they are not necessarily sufficient in terms of clearly defining the latter category or establishing criteria for distinguishing between the use of force and the use of weapons.⁷¹ Despite this reservation, many authorities agree that these principles declared by the judicial and arbitral practices should be understood as principles restricting the use of weapons in law enforcement measures.⁷² In addition to the judicial and arbitral practice, documents such as UN General Assembly resolutions also explicitly state these principles.⁷³

[e203](#), article last updated: April 2009, para. 35.

⁶⁷ The Fisheries Jurisdiction (Spain v. Canada), Judgment (Jurisdiction) of 4 December 1998, *I.C.J. Reports 1998*, paras. 81–84.

⁶⁸ In the Matter of an Arbitration between Guyana and Suriname, in the Award of 17 September 2007, para. 445.

⁶⁹ See *supra* n. 63.

⁷⁰ The *S. S. I'm Alone* Case, *Report of International Arbitral Awards*, 3 (1935), p. 1609. As a detailed analysis of this case, Gerald. G. Fitzmaurice, “The case of the *I'm Alone*,” *British Year Book of International Law*, 17 (1936), pp. 82–111. The Red Crusader Case, *International Law Reports*, 35 (1962), p. 499.

⁷¹ Kanehara, “The Use of Force,” pp. 42, 46–47; Kanehara, “Reconsideration,” pp. 19–20, 33.

⁷² Kanehara, “The Use of Force,” pp. 41, 43–44 and footnotes thereto.

⁷³ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (August 27 to September 7, 1990)

<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement>, Principle 5; The Code of Conduct for Law Enforcement Officials, UN Doc, A/34/169, Article 3.

Furthermore, Article 22, Paragraph 1 (f) of the 1995 UN Fish Stocks Agreement stipulates as follows:

(f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in

Furthermore, subsequent arbitral practice reformulated the principles of “unavoidability, necessity, and reasonableness” as “reasonableness, necessity, and proportionality,” explicitly referencing “proportionality.”⁷⁴ It is not straightforward to rigorously confirm whether necessity, reasonableness, or unavoidability is identical to proportionality. However, in any case, there is no doubt that the essence of proportionality is encompassed within these principles. Therefore, it can be said that the principle of proportionality (also) applies to restrictions on the use of weapons accompanying law enforcement measures.⁷⁵

⑤ As described above, there are three principles of proportionality concerning the use of

the circumstances.

For a discussion including these, see Zou Keyuan, “Maritime Enforcement of United Nations Security Council Resolutions: Use of Force and Coercive Measures,” *International Journal of Marine and Coastal Law*, Vol. 26 (2011), pp. 250-251; Andrew Murdoch & Douglas Guilfoyle, “Capture and Disruption Operations: The Use of Force in Counter-Piracy Off Somalia,” in Douglas Guilfoyle (ed.), *Modern Piracy: Legal Challenges and Responses* (Edward Elgar, 2013), pp. 147-171.

⁷⁴ While the *M/V Saiga* (No. 2) Case referred to inevitability, reasonableness, and necessity, the *Arctic Sunrise* Case (merits) referred to reasonableness, necessity, and proportionality. See Tondini, *op. cit.*, *supra* n. 60, p. 260 and footnote thereto. In the Matter of the Arctic Sunrise Arbitration before an Arbitral Tribunal Constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea between The Kingdom of The Netherlands and The Russian Federation, Award on the Merits,

<https://pcacases.com/web/sendAttach/1438>, para. 333. For a brief analysis on the measures taken by Russia, see Maximilian Stützel and Silja Vöneky, “Arctic Sunrise Cases

(Netherlands v Russia),” *Max Planck Encyclopedia of International Law*,

<https://opil.ouplaw.com/display/10.1093/law-epil/9780199231690/law-9780199231690-e2223>, article last updated: December 2021, paras. 26-32. See also Atsuko Kanehara,

“Jurisdiction of Coastal States of Exclusive Economic Zones - An Analysis of the Arctic Sunrise Case (in Japanese),” *Sophia Law Review*, Vol. 60, No. 3/4 (2017), pp. 223-272.

⁷⁵ In the *M/V Virginia G* Case, ITLOS dealt with proportionality in relation to the coastal Jurisdiction under Article 73 of UNCLOS, which stipulates the enforcement jurisdiction on the conservation and management of living resources. In this regard, see Christos Kypraios, Eirini-Erasmia Fasía, “M/V Virginia G Case (Panama/Guinea-Bissau),” *Max Planck Encyclopedia of International Law*, <https://opil.ouplaw.com/display/10.1093/law-epil/9780199231690/law-9780199231690-e2223>, article last updated: July 2019, paras. 18-21, and 24. *M/V “Virginia G” (Panama/Guinea-Bissau)*, Judgment, *ITLOS Reports 2014*, para. 270.

weapons and the use of force, each possessing its own significance and function.⁷⁶ The confusion between the principle of proportionality in international law and that in domestic law stems from a lack of recognition of the existence of these three (or more) principles of proportionality and from conflating the principle of proportionality under international law and that under domestic law.

If the JCG operates under the Control Guidelines during a state of armed attack under domestic law, and in an armed conflict under international law, an accurate recognition and understanding of the principle of proportionality, particularly in *jus in bello*, is indispensable. Moreover, as will be discussed later, in “naval warfare,”⁷⁷ the content and application of the principle of proportionality differ from those in land warfare.⁷⁸ To ensure the safety of the JCG, it is essential to accurately recognize and understand the applicability of the relevant treaty provisions⁷⁹ and the content of the principle of proportionality, taking these differences into account.

(2) The Principle of Proportionality under Domestic Law

① Article 7 of the PDEA governs the use of weapons in law enforcement measures.⁸⁰ This is considered the principle of police proportionality, but the requirement for the permissible

⁷⁶ Regarding the principle of proportionality in relation to the use of weapons accompanying law enforcement measures, and that in the law of armed conflict, the former is intended to protect the individuals against whom the violence is intentionally directed, while the latter is not. The latter protects civilians and civilian objects. Corn *op. cit.*, *supra* n. 32, p. 516.

⁷⁷ Defining naval warfare is not straightforward. Here, we assume the factual situation of an armed conflict occurring in maritime areas and limit ourselves to pointing out this issue. Kanehara, “Control Guidelines,” p. 76; Kanehara, “The JCG under the Control Guidelines,” pp. 59-61 and footnotes thereto.

⁷⁸ James Kraska, “Distinction, Proportionality, and Precautions in Attacks at Sea in the New Era of the Law of Naval Warfare,” *Chicago Journal of International Law*, Vol. 26, No. 1 (2025), pp. 387-390, 395-395, 405.

⁷⁹ For this issue, see Kanehara, “The JCG under the Control Guidelines,” pp. 59-61.

⁸⁰ Article 20 of the Japan Coast Guard Act provides for the application of Article 7 of the PDEA. It reads:

The use of weapons by Coast Guard officers and Coast Guard assistant officers shall be governed by the provisions of Article 7 of the Police Duties Execution Act (Act No. 136 of 1948) (translated by the author).

use of weapons causing harm⁸¹ is regarded as a stricter limitation than the principle of police proportionality.⁸² Article 7 of the PDEA 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; Provided, however, that the police official must not inflict injury upon any person except in a case falling under Article 36 (Self-Defense) of the Penal Code (Act No. 45, 1907) or Article 37 (Averting present Danger) of the same Act, or a case falling under one of the following items:

(i) in the event that a person who is actually in the act of committing, or is suspected on sufficient grounds of having committed, a violent and dangerous crime which is subject to the death penalty, life imprisonment or life imprisonment without work, or imprisonment or imprisonment without work for a maximum period of not less than three years, resists a police official's performance of duty regarding such person or attempts to escape, or a third party resists the police official in order to allow the subject person to escape; provided there is sufficient probable cause on the part of the police official to believe that there are no other means but to do so either for the prevention of such resistance or escape or for the arrest of such persons.

(ii) in event of arrest of a person under an arrest warrant, or execution of a writ of physical escort or detention warrant, if the subject person resists the police official's performance of duty with respect to such subject person or attempts to escape, or a third person resists the police official in order to allow the subject person to escape; provided there is sufficient probable cause on the part of the police official to believe that there are no other means but to do so either for the prevention of such resistance or escape or for the apprehension of the such persons.⁸³

In situations involving a state of armed attack under domestic law or an armed conflict under international law, the application of the provisions pertaining to cases (i) and (ii) is, for the time being, unlikely. Furthermore, while this article permits the use of weapons for

⁸¹ For works examining Article 7 of the PDEA, see *supra* n. 30 above.

⁸² Morimoto, *op. cit.*, *supra* n. 30, pp. 82 *et seq.*

⁸³ This English translation is provided by *Japanese Law Translation*, operated by the Ministry of Justice of Japan, <https://www.japaneselawtranslation.go.jp/ja/laws/view/4043/tb>.

self-defence or the defence of others, the crucial point is that the use of weapons to inflict harm is limited to cases of self-defence or emergency avoidance.⁸⁴ This constitutes a strict limitation on the use of weapons. Regarding the use of weapons by law enforcement agencies in other countries, the principle governing it is also considered to be the principle of police proportionality.⁸⁵ Below, we focus on self-defence.

② This self-defence under criminal law is referred to in English as “self-defence” or “legitimate defence.” It envisions an individual using weapons to protect themselves or others, and the potential target of harm is also an individual. In other words, it concerns the use of weapons between individuals, and the intensity and scale are generally those reasonably expected within that relationship. In this respect, the use of weapons for self-defence under Article 7 of the PDEA is entirely distinct from the right of self-defence under international law, which pertains to the relationship between States. To ensure this distinction from the right of self-defence between States, the English translation “self-protection” may be appropriate for self-defence or legitimate defence under the Penal Code and the PDEA.⁸⁶

The use of weapons for legitimate defence between individuals and the use of force between States differ qualitatively and are incomparable in scale and intensity. Because the terminology is the same, one must pay close attention to the context to accurately understand which meaning is intended. Article 7 of the PDEA does not contemplate the use of force for self-defence in State-to-State relations. In Japan, such use of force is permitted under domestic law only by the Self-Defence Forces when a defence deployment order is issued.⁸⁷

⁸⁴ On this point, Article 20, Paragraph 2 of the Japan Coast Guard Act eases the requirements. See the text in *supra* n. 7. Morimoto, *op. cit.*, *supra* n. 30, pp. 81-82.

⁸⁵ For example, regarding domestic law governing the use of weapons in Canadian law enforcement, including an introduction to points similar to Article 7 of the PDEA, see Fenrick, *op. cit.*, *supra* n. 18, p. 115 *et seq.*, and 144; Shearer, *op. cit.*, *supra* n. 18, pp. 444 *et seq.*

⁸⁶ As a related discussion, see *op. cit.*, *supra* n. 55, pp. 27-28.

⁸⁷ Article 76 of the Self-Defense Forces Law stipulates defence deployment. It reads:

The Prime Minister may order the deployment of all or part of the Self-Defense Forces when the Prime Minister deems it necessary to defend Japan in the following situations. In such cases, approval of the Diet must be obtained in accordance with the provisions of Article 9 of the Act on the Peace and Independence of Japan and the Security of the State and the People in the Event of

This distinction actually applies when the JCG operates under the Control Guidelines during a state of armed attack under domestic law, and in an armed conflict under international law. In State-to-State relations, for self-defence and as hostile acts under the law of armed conflict, the use of force to annihilate an enemy state is permitted. However, as long as it is subject to the restrictions of Article 7 of the PDEA under domestic law, such use of force is not allowed for the JCG, which is a law enforcement agency. The critical point is that there is a qualitative difference, and a difference in scale and intensity, between the use of force as an act of hostility restricted by the principle of proportionality under the law of armed conflict, on the one hand, and the use of weapons by the JCG restricted by the principle of proportionality under Article 7 of the PDEA, on the other hand.

The former is a principle of international law, while the latter is a principle of Japanese domestic law; in that sense, one might say the two do not logically correspond. However, considering the actual situations the JCG faces, such a description of the situation here is convincing as a matter of reality. The JCG must, under all circumstances, maintain its status as a law enforcement agency, and, thus, cannot be exempted from the restrictions of Article 7 of the PDEA. Consequently, even when confronted with the use of force by a hostile nation, the JCG is solely permitted to use weapons within the constraints of Article 7 of the PDEA.

A vessel of a nation hostile to Japan uses force that is regulated by the principle of proportionality that is, in terms of quality, quantity, and intensity totally incomparable to the principle of proportionality restricting the use of weapons of the JCG. Even in such situations, the JCG is not permitted to use force that would annihilate the hostile nation (vessel).⁸⁸ This is because, even when performing duties under the Control Guidelines in

Armed Attack Situations, etc. and Situations of Crisis of Existence (Act No. 79 of 2003).

(1) A situation where an armed attack from outside Japan has occurred, or a situation where it is recognized that an imminent and clear danger of an armed attack from outside Japan has arisen.

(2) A situation where an armed attack has occurred against another country with which Japan has close relations, and this poses a clear danger of threatening Japan's existence and fundamentally undermining the people's right to life, liberty, and the pursuit of happiness.

2. The Prime Minister must immediately order the withdrawal of the Self-Defense Forces when the necessity for their deployment ceases (translated by the author).

⁸⁸ Kanehara, "The Use of Force," p. 48 and footnote (79).

such situations, Article 25 of the Japan Coast Guard Act mandates that the JCG must maintain its status as a law enforcement agency under any circumstances. This, in turn, is because the JCG is subject to the restriction of Article 7 of the PDEA.

This reality that the JCG faces is fundamentally different from the situation in other countries where coast guards, when operating jointly and cooperatively with navies, could, in some cases, be integrated into the latter and could, in some cases, function similarly to military organs.⁸⁹ Moreover, as mentioned above, regarding Chinese vessels, China's domestic law permits the law enforcement vessels to perform defensive (military) functions, which means the law enforcement vessels change themselves "instantly" into military vessels under the Chinese Coast Guard Law. Under international law, if the requirements are met, such Chinese vessels are permitted to exercise the right to self-defence under international law, or, during an armed conflict, to use force as an act of hostility.

③ Furthermore, regarding the use of firearms by law enforcement agencies, there are numerous precedents entertained by Japanese domestic courts.⁹⁰ This likely reflects the gravity and strictness of these restrictions.⁹¹ Japanese Coast Guard officers must always operate under the constant deterrence that, as a law enforcement agency, the JCG is subject to the restrictions on the use of weapons under Article 7 of the PDEA; violating these restrictions leads to such penalties.⁹²

④ Given the reality of the situation, the author has strong concerns and doubts about the operation of the JCG under the Control Guidelines.⁹³ Therefore, based on this succinct analysis of the principle of proportionality both in international and domestic law, the next section will examine how seriously the safety of the JCG is threatened when it carries out its duties, particularly under the Control Guidelines in tense situations, in light of the principle of proportionality. Concrete explanation will also be provided on how an accurate recognition and understanding of the principle of proportionality is inseparably linked to ensuring the safety of the JCG, with the two forming an indivisible unity.

⁸⁹ For the State practice concerning foreign coast guards, see *supra* n. 77.

⁹⁰ Tamura, *op. cit.*, *supra* n. 30, pp. 442-483.

⁹¹ Regarding the possibility that the use of weapons violating Article 7 of the PDEA may constitute a criminal offense under the Penal Code, see *supra* n. 31.

⁹² As a similar observation, it has been pointed out that under international law, only limited scope is allowed for firing with intent to hit an offending vessel in fisheries law enforcement, unless such firing is required in self-defence. Fenrick, *op. cit.*, *supra* n. 18, p. 133.

⁹³ Kanehara, "The JCG under the Control Guidelines," pp. 78-79; Kanehara, "Control Guidelines," pp. 76-77.

3. The Difficulty of Ensuring the Safety of the JCG in Light of the Principle of Proportionality

(1) The Potential for the JCG to Be Deemed Military Objectives During Its Operations Under the Control Guidelines

① The Control Guidelines stipulate that the JCG shall perform certain duties under the control of the Minister of Defence. To ensure its safety while performing such duties under the Control Guidelines, the JCG has no alternative but to avoid attacks by hostile nations. This is because, as a law enforcement agency subject to the restrictions of Article 7 of the PDEA, the JCG is prohibited from engaging in hostile acts during armed conflicts or from repelling attacks by using weapons to the extent necessary to destroy the hostile nation (vessels).⁹⁴

② The law of armed conflict prescribes for the principle of distinction as a restriction on hostile acts. The possibility of the JCG vessels becoming military objectives has already been discussed elsewhere by this author.⁹⁵ Specifically, regarding whether a JCG vessel qualifies as an auxiliary ship, those arguing that it does not directly participate in hostilities and thus does not constitute military objectives ultimately have no choice but to prove and demonstrate this themselves based on individual, concrete circumstances.⁹⁶

If so, it becomes necessary to explore, on a case-by-case basis, the manner in which the tasks envisioned for the JCG under the Control Guidelines during armed conflicts can be safely carried out.

③ The Control Guidelines define the JCG's missions as "measures for protecting the people and safeguarding human life at sea, etc." Examples of "actions that can be implemented" by both the JMSDF and the JCG include evacuation and rescue of residents; provision of information and evacuation support to vessels; search and rescue operations and saving human lives; countermeasures against terrorist plots targeting port facilities, etc.; and measures to respond to large-scale evacuee flows.

Providing information on enemy vessels to the JMSDF would constitute an act aiding the JMSDF's combat operations. Consequently, such acts of providing information itself could

⁹⁴ Kanehara, "Control Guidelines," p. 73.

⁹⁵ Kanehara, "Control Guidelines," pp. 73-74; Kanehara, "The JCG under the Control Guidelines," pp. 61-77.

⁹⁶ Kanehara, "Control Guidelines," p. 74; Kanehara, "The JCG under the Control Guidelines," pp. 70-77.

be regarded as a combat operation, making the JCG vessels military objectives.⁹⁷

The author has elsewhere⁹⁸ examined the difficulties the JCG faces in ensuring its safety, focusing on its missions such as evacuation of residents, response to mass evacuees, and its routine activity of territorial sea guarding around the Senkaku Islands. The latter also represents a grey zone issue, potentially escalating into armed conflict from the situation prior to the issuance of the control by the Minister of Defence over the JCG under Article 80 of the Self-Defence Forces Law.⁹⁹

As mentioned above, Article 83 of the Chinese Coast Guard Law authorizes law enforcement vessels of the Chinese Coast Guard to conduct defence (military) operations. This means law enforcement vessels can flexibly (instantly) engage in defence operations. They can use weapons for this purpose, and it is presumed the vessels possess the hull structure and equipment necessary for military operations. If the Chinese law enforcement vessels initiate military operations in the waters around the Senkaku Islands and become warships, the tense situation could instantly escalate into armed conflict. Simply put, a scenario where the law enforcement vessels of the JCG confront Chinese vessels that have immediately become warships could occur in an instant. Unless it is proved that the JCG vessels are not recognized as military objectives, and if Chinese warships disregard this as a binding legal rule, the JCG vessels become military objectives and could be attacked without warning. Even if the JCG vessels were to “return fire,” their use of weapons is restricted under Article 7 of the PDEA, which prohibits the annihilation of the adversary. Next, while considering the JCG’s duties under the Control Guidelines and territorial sea guarding, an explanation will again be given on how a lack of recognition and understanding of the principle of proportionality seriously threatens the JCG’s safety.

⁹⁷ Kanehara, “Control Guidelines,” pp. 74–75; Kanehara, “The JCG under the Control Guidelines,” p. 73.

⁹⁸ Kanehara, “Control Guidelines,” pp. 75–76; Kanehara, “The JCG under the Control Guidelines,” p. 70.

⁹⁹ Regarding the meaning and examination of a grey zone in Japan, see Koichi Morikawa, “The Scope and Legal Nature of Gray Zone Incident Response (in Japanese),” *International Affairs*, No. 648 (2016), pp. 29-30. Kanehara, *op. cit.*, *supra* n. 44, pp. 107, 109-111; Kanehara, “The Use of Force,” pp. 51-52 and footnotes thereto. However, as explained above, Chinese law enforcement vessels can “instantly” transform into vessels performing defence (military) functions like those by warships in accordance with Article 83 of the Chinese Coast Guard Law.

(2) The Principle of Proportionality Restricting the Use of Force Against Military Objectives

① The principle of proportionality in the law of armed conflict applies to the use of force against military objectives.¹⁰⁰ The use of force against targets that are not military objectives violates the principle of distinction, rather than the principle of proportionality, such that it constitutes a violation of the law of armed conflict.

As long as the JCG, operating under the Controlling Guidelines, constitutes a military objective, and as clarified above, if Chinese law enforcement vessels operating in the territorial waters around the Senkaku Islands transform into warships performing defence (military) functions,¹⁰¹ and if an armed conflict arises, the JCG vessels could be attacked as military objectives.

② Vessels of parties to an armed conflict are subject to the principle of proportionality under the law of armed conflict. The fundamental point lies, as explained above, in the following.

On the one hand, attacks by hostile nations are constrained by this principle of proportionality. The JCG vessels *themselves* are targets of attack by hostile nations. This is because the principle of proportionality under the law of armed conflict is a principle restricting hostile acts, namely the use of force, in State-to-State relations, and its application to naval warfare is a consequence of this.

On the other hand, when the situation is that under the Control Guidelines, and when the situation escalates from territorial sea guarding around the Senkaku Islands to an armed conflict, the JCG vessels can become military objectives and become targets of State-to-State attacks by an adversary. Even if they are subjected to such State-to-State attacks by an adversary, they are only permitted to use weapons as self-defence in a person-to-person context, subject to the restrictions of Article 7 of the PDEA. They can only use weapons on that limited scale and that limited intensity. This is the very result of Article 25 of the Coast Guard Act, which insists that the JCG remains a law enforcement agency under any circumstances.

¹⁰⁰ See, for example, Geoffrey S. Corn, “The Disproportionate Confusion About Proportionality,” *LAWFARE* (Oct. 26, 2023), <https://sites.duke.edu/lawfire/2023/10/26/geoff-corn-on-the-disproportionate-confusion-about-proportionality/>; Schmitt, *op. cit.*, *supra* n. 49, p. 292; Corn, *op. cit.*, *supra* n. 32, p. 516; Sari, *op. cit.*, *supra* n. 54; Coble, *op. cit.*, *supra* n. 51.

¹⁰¹ Here, we will not delve into the requirements for warships under UNCLOS or the law of armed conflict. It suffices to assume that the Chinese vessels function as warships.

Both the hostile nation and the JCG are subject to the “principle of proportionality,” but as repeatedly emphasized above, the significance of the principle of proportionality is entirely different. There is a qualitative difference between the principle of proportionality under the law of armed conflict, and the principle of proportionality under Article 7 of the PDEA.¹⁰² Moreover, the two are incomparable in terms of intensity and scale. In other words, the risk faced by the JCG is that significant.

③ Particularly in “naval warfare,” i.e., armed conflicts at sea, platforms (such as warships and fighter aircrafts) are the subjects of hostile acts. For example, hostile acts occur ship-to-ship.¹⁰³ When the JCG performs tasks envisioned by the Control Guidelines, such as evacuating residents or handling large-scale evacuee flows—that is, when civilians are aboard the JCG vessels—and when hostilities occur in maritime areas where ship-to-ship combat takes place, even if those aboard a vessel designated as a military objective include civilians, the principle of proportionality does not prohibit attacks on the vessel as a military objective for this reason. Unless the JCG vessel definitively excludes the possibility of being regarded as a military objective, the large number of evacuees aboard the JCG vessel could become targets, as part of the vessel as a whole, of attack by the hostile nation. Because the civilian refugees are aboard a JCG vessel that constitutes a military objective, they are therefore subject to attack by the hostile nation.

In this regard, on the 22nd of June, 2023, after the issuance of the Control Guidelines, the JMSDF and the JCG conducted a joint drill. During this drill, the JCG vessel flew a special emblem flag.¹⁰⁴ This complies with Article 66, Paragraph 4 of the API. However, there is no definitive interpretation as to whether this provision even applies to naval warfare.

Moreover, experts participating in the drill raised doubts about whether the emblem flag is universally recognized as an international signal.¹⁰⁵ The critical point is as follows. Unless

¹⁰² We do not address here the question under international law of whether the JCG vessels can engage in hostile acts, or that they cannot do so if they qualify as auxiliary vessels. Even if the JCG vessels were classified as auxiliary ships and permitted to use force as an exercise of the right to self-defence under international law, questions remain regarding whether they possess the necessary and appropriate equipment for such purposes. Furthermore, the restrictions imposed by Japanese domestic law, namely by Article 7 of the PDEA, would not be lifted.

¹⁰³ Kraska, *op. cit.*, *supra* n. 78, pp. 399, 402.

¹⁰⁴ Kanehara, “Control Guidelines,” p. 75; Kanehara, “The JCG under the Control Guidelines,” pp. 76-77.

¹⁰⁵ Haruko Arimura, “Serving as Minister of Land, Infrastructure, Transport and Tourism:

hostile nations are thoroughly informed and recognize the protection under this emblem flag as a legal obligation, it holds no meaning. Furthermore, attention should be paid to the obligation of parties to an armed conflict: they bear the duty to separate civilians from military targets, such as military installations.¹⁰⁶

After carefully considering all these situations, it is strongly required to sincerely re-examine whether the JCG's actions under the Controlling Guidelines—specifically, evacuating residents and handling large-scale evacuee flows in the circumstances envisioned—can truly be considered rescue operations.

Conclusion

The author has repeatedly heard the misconception that the principle of proportionality means “it is permissible to respond with the same actions as the adversary.” As explained here, this is entirely erroneous. As clarified in this paper, it is an extremely grave and dangerous misunderstanding.

This grave danger does not apply solely to the JCG. When the JMSDF engages in maritime police operations under Article 82 of the Self-Defence Forces Law, it also performs police functions, and its use of weapons, as well as that by the JCG, is restricted by Article 7 of the PDEA.¹⁰⁷ While the nature of the situation requiring the conducting of maritime police operations will vary, seamless responses to grey zone incidents have been repeatedly discussed.¹⁰⁸ In essence, even in situations that potentially escalate into a state of armed

Specific Considerations for Vigilance and Risk Mitigation in a Taiwan Contingency (in Japanese),” *Japan Strategic Studies Forum* (in Japanese), Vol. 98 (October 2023), pp. 36-37; Tomohisa Takei, “Evacuation of Japanese Nationals in Emergencies is Extremely Difficult—Finding Solutions in Utilizing ‘Government Vessels’ (in Japanese),” *Wedge* (in Japanese), 2023, No. 11, p. 72.

¹⁰⁶ While there may be debate over its applicability to naval warfare, see Article 58, particularly (a), of the API.

¹⁰⁷ Considering the arming of military organizations, the view questioning the appropriateness of assigning law enforcement functions to military organizations, given the restrictions on the use of weapons in law enforcement, is expressed by Fenrick, *op. cit.*, *supra* n. 18, p. 145. A similar point is made by Shearer, *op. cit.*, *supra* n. 18, p. 448.

¹⁰⁸ The transition from a law enforcement situation to a defence situation may also occur in the following case. When harmful acts by foreign public vessels or warships within territorial waters constitute an imminent “threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State” (Article 19, Paragraph 2 (a) of

attacks, as long as no defence mobilization order is issued and the JMSDF is engaged in maritime police operations, it is only permitted to use weapons under the restrictions of Article 7 of the PDEA. That this threatens the JMSDF's safety should be self-evident from this paper.

UNCLOS), the coastal State's coercive exclusion measures can be explained by the right of self-defence. Furthermore, regarding marine scientific research, military surveys may constitute acts of preparation for war. The measures taken by the coastal State under its right of protection (Article 25 of UNCLOS) to cope with such acts may be explained under the right of self-defence. Here too, the coastal state's measures transition from law enforcement to self-defence. Naoya Okuwaki, "Enforcement Measures Against Foreign Public Vessels in the Territorial Sea (in Japanese)," *Studies on International Dispute Cases Related to Securing Maritime Rights and Interests in Fiscal Year 2009* (in Japanese) (No. 2), Report of the Committee for Research on Maritime Safety Systems (Maritime Safety Association, 2010), pp. 7, 10. For a similar consideration of Japan's position against Chinese public vessels or warships that are enjoying sovereign immunity in Japanese territorial sea, see Atsuko Kanehara, "Refining Japan's Integrative Position on the Territorial Sovereignty of the Senkaku Islands," *International Law Studies*, Vol. 97 (2021), pp. 1626-1630.