

Maritime Law Enforcement amid Evolving Global Dynamics

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ATSUKO KANEHARA

THE 1ST MARITIME SAFETY AND
SECURITY RESEARCH DIALOGUE

7-8 OCTOBER 2026, IN TOKYO, JAPAN

SESSION 1, “KEY ISSUES AND
PROSPECTS IN INTERNATIONAL LAW
OF THE SEA”

Panelists

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(by the Order of Presentation)

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I. Introduction

1. Object and Purpose of the 1st Maritime Safety and Security Research Dialogue (Tokyo Dialogue)
2. Gist of Session 1
“Key Issues and Prospects in International Law of the Sea”

II. The Three Principles of the Rule of Law at Sea, Presented by then Prime Minister Shinzo Abe

III. Implementation of the Three Principles of the Rule of Law at Sea

IV. Enlarging and Strengthening of the Three Principles

* These slides include excerpts from the Flyer and other documents issued for the Tokyo Dialogue

I. Introduction

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1. Object and Purpose of the 1st Tokyo Dialogue

The Tokyo Dialogue will take as one of its points of departure *the Three Principles of the Rule of Law at Sea, presented by then Prime Minister Shinzo Abe* in his keynote address at the 2014 Shangri-La Dialogue.

From the perspective of maritime law enforcement agencies (the Japan Coast Guard), the Tokyo Dialogue will examine the continuing significance of these principles and explore how they may be understood and implemented amid today's changing international environment.

I. Introduction

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2. Gist of Session 1

“Key Issues and Prospects in International Law of the Sea”

Session 1, which forms the core of the Tokyo Dialogue, will once again share the “Three Principles of the Rule of Law at Sea” and their significance. It will also clarify the specific relationship between maritime law enforcement functions and the Three Principles of the Rule of Law at Sea.

These three principles contain substantial elements of foreign policy, and their relevance to frontline maritime law enforcement functions may be perceived as limited.

This session will therefore focus on the relationship between the two and, in particular, attempt to elaborate and clarify, from the perspective of law enforcement, what functions and roles maritime law enforcement agencies, as organs of a government, are expected to perform when that government seeks to comply with and pursue the Three Principles.

I. Introduction

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2. Gist of Session 1

“Key Issues and Prospects in International Law of the Sea” (continued)

Furthermore, even if the concept of the “Three Principles of the Rule of Law at Sea” under international law can be shared within the international community, it is necessary to note that, where parties do not possess a common “law,” disputes may frequently arise, and the very concept of the rule of law may be threatened.

Among parties that do not possess a common “law,” this session will discuss how differences and conflicts of views concerning “law” itself can be addressed, from such perspectives as the effectiveness of international legal norms, arrangements, and other measures for preventing escalation in frontline maritime areas;

e. g. the character of organizations responsible for maritime law enforcement functions and their cooperative relationships with organizations that have defense missions.

II. The Three Principles of the Rule of Law at Sea, Presented by then Prime Minister Shinzo Abe

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1. The Rule of Law Incorporating into International Law

(1) Domestic Law Origin of “The Rule of Law”

The rule of law developed at the background of domestic societies.

Not necessarily unified contents for “the rule of law,” while principally control and restriction of an exercise of authorities form its substance

(2) The Rule of Law in International Law

Difference between the structure of domestic society and that of international society

The contents, which, even if, are somehow solidified in domestic law, could not be incorporated to international law, as such.

In international law, “the rule of law” has not yet well established **an inherent meaning** beyond what simply designating the situations and acts that are in conformity with international law.

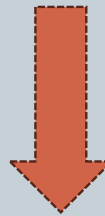
II. The Three Principles of the Rule of Law at Sea, Presented by then Prime Minister Shinzo Abe

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1. The Rule of Law Incorporating into International Law

(3) The Three Principles of the Rule of Law at Sea

PM Shinzo Abe declared the three principles of the rule of law at sea at the 13th Shangri-la Dialogue of 2014



An important step for the rule of law under international law for clarification and substantiation of its inherent meaning beyond what simply designating the situations and acts that are in conformity with international law

II. The Three Principles of the Rule of Law at Sea, Presented by then Prime Minister Shinzo Abe

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2. Three Principles Confirmed

Principle 1: Making and clarifying claims based on international law

For example, enforcement activities conducted against foreign vessels within a state's territorial sea by a maritime law enforcement agency, as an organ of the state, constitute, in a broad sense, a "claim by the state."

Principle 2: Not using force or coercion in trying to drive one's claims

Principle 3: Seeking to settle disputes by peaceful means

II. The Three Principles of the Rule of Law at Sea, Presented by then Prime Minister Shinzo Abe

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3. Three Principles from a Perspective of International Law

(1) Principle 1: Making and clarifying claims based on international law

Creation of International Law

c. f. Domestic Law: Legislative Measures

International Society

= Coexistence of Sovereign States That Are Equal to and Independent from Each Other



Creation and Evolution of International Law by Consents of Sovereign States

International law takes form mainly,

- Treaties

- Customary International Law: Consensual Basis?

II. The Three Principles of the Rule of Law at Sea, Presented by then Prime Minister Shinzo Abe

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3. Three Principles from a Perspective of International Law

(1) Principle 1: Making and clarifying claims based on international law
(continued)

Creation and Evolution of International Law by Consents of Sovereign States

Lacuna takes place in international law far more than in domestic law

Because,

- lack of consents of sovereign States
- the matter concerned is newly emerging one which existing international law does not apply

e. g. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) does not cover combatting measures toward harmful acts against undersea infrastructure with newly developed technology

II. The Three Principles of the Rule of Law at Sea, Presented by then Prime Minister Shinzo Abe

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3. Three Principles from a Perspective of International Law (continued)

(2) Principle 2: Not using force or coercion in trying
to drive one's claims

Assumed Situation by the Principle 2

= Prohibition of unilateral change of *status quo* by
using force or coercion

II. The Three Principles of the Rule of Law at Sea, Presented by then Prime Minister Shinzo Abe

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3. Three Principles from a Perspective of International Law

(2) Principle 2: Not using force or coercion in trying to drive one's claims (continued)

Achievement of international society to prohibit the use of force

【Article 2 (4) of the United Nations Charter (UN Charter)】

“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.”

II. The Three Principles of the Rule of Law at Sea, Presented by then Prime Minister Shinzo Abe

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3. Three Principles from a Perspective of International Law (continued)

(3) Principle 3: Seeking to settle disputes by peaceful means

No compulsory dispute settlement procedure in the international society

c. f. Domestic society that has compulsory judicial procedure to entertain a dispute

Obligation to resolve a dispute by peaceful means.

【Article 2 (3) of the UN Charter】

“All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.”

Article 2 (3) and Article 2 (4) of the UN Charter form a pair of wheels of a car for the international peace and security

They are reflected in the Principle 2 and the Principle 3 of the rule of law at sea.

III. Implementation of the Three Principles of the Rule of Law at Sea

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1. The Three Principles in Context

(1) Incidents to Be Discussed in This Session 1

① Law Enforcement Measures Taken toward Foreign Vessels in Japan's Territorial Sea in the East China Sea

e. g. We may assume the tense situation that Japan has been facing in its territorial sea surrounding the Senkaku Islands. China has claimed territorial sovereignty over the Islands.

The Japan Coast Guard (the JCG) vessels have permanently conducted the territorial sea guarding.

III. Implementation of the Three Principles of the Rule of Law at Sea

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1. The Three Principles in Context

(1) Incidents to Be Touched Upon in This Session 1 (continued)

② Law Enforcement Measures Taken toward Foreign Vessels That Conduct Harmful Acts against Undersea Infrastructure in one State's Jurisdictional Sea Area

* Undersea infrastructure: submarine cables and submarine pipelines

We may assume harmful acts by a vessel flying a flag of State A against undersea infrastructure in exclusive economic zone of State B.

Such an incident is one of the most serious challenges against the current international maritime order

III. Implementation of the Three Principles of the Rule of Law at Sea

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1. The Three Principles in Context (continued)

(2) Zone System under the United Nations Convention of the Law of the Sea (UNCLOS)

① Territorial Sea: 12 Nautical miles from the Coast

Coastal States have *sovereignty* over their territorial seas

② Exclusive Economic Zone (EEZ): 200 nautical miles from the Coast

Coastal States have *sovereign right and jurisdiction* solely on the designated matters by UNCLOS

e. g. Exploitation of natural resources (fishery resource), production of energy, environmental protection, artificial islands

c. f. Matters over which coastal States of EEZ do not have rights, such as navigation, laying submarine cables and submarine pipelines

For these matters, EEZ is treated almost as high seas.

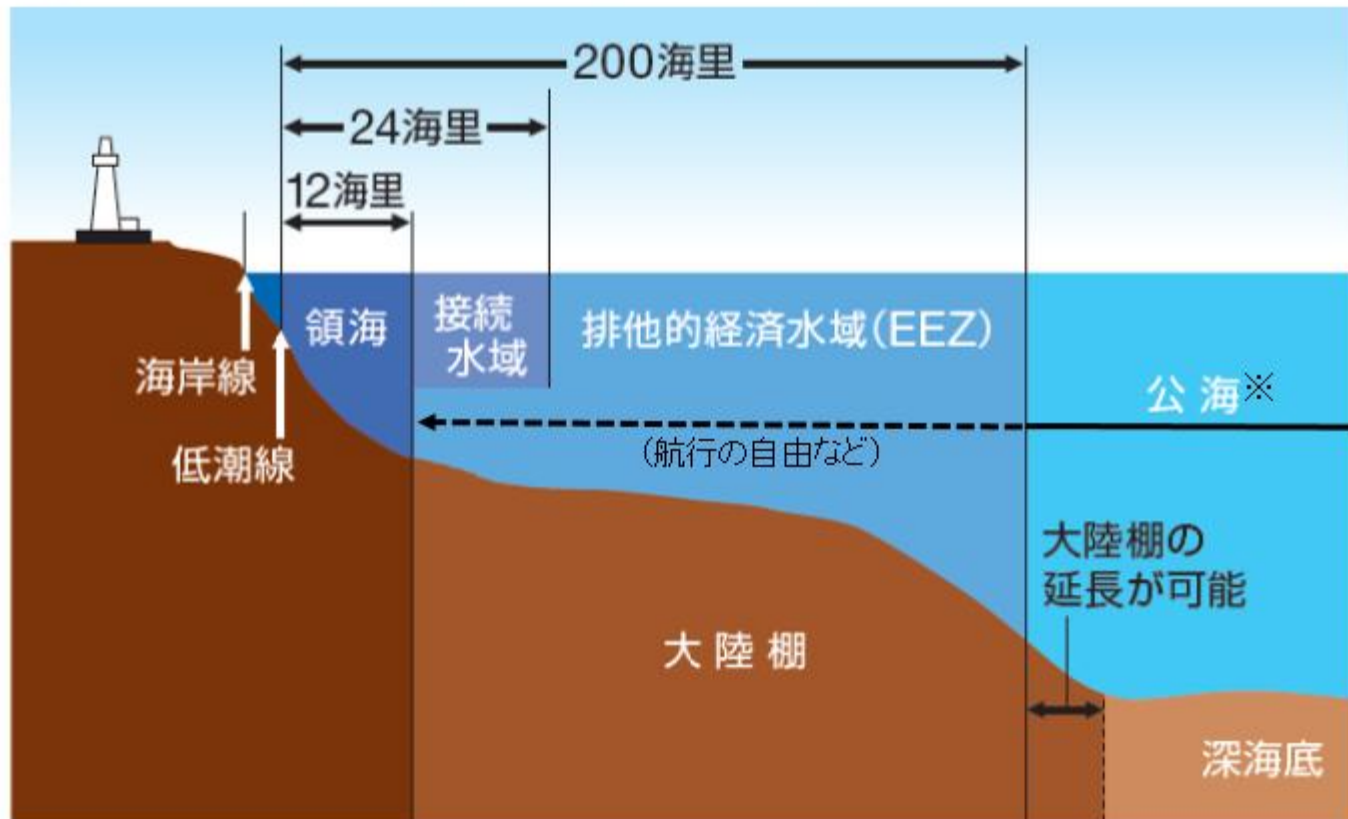
③ High Sea: beyond EEZ

III. Implementation of the Three Principles of the Rule of Law at Sea

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(https://www1.kaiho.mlit.go.jp/JODC/ryokai/zyoho/msk_idx.html)

◆ 領海・排他的經濟水域等模式図



III. Implementation of the Three Principles of the Rule of Law at Sea

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2. Focusing upon the First Principle of the Rule of Law at Sea in Context

Principle 1: Making and clarifying claims based on international law

(1) Legal Basis for Law Enforcement Measures

① Enforcement Jurisdiction against Foreign Vessels

Different from domestic law, international law has not yet developed unified definition of law enforcement.

e. g. measures, such as ordering to stop, chasing, forcing to stop, boarding to inspect

c. f. Prescriptive jurisdiction and judicial jurisdiction

② Legal Basis for Law Enforcement Measures Depending on Sea Zones

a. Territorial Sea: Sovereignty and Relevant Provisions of UNCLOS

b. EEZ: Depending on Matters, Sovereign Right or Jurisdiction

c. High Seas: Flag State jurisdiction * to be discussed in detail below

III. Implementation of the Three Principles of the Rule of Law at Sea

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2. Focusing upon the First Principle of the Rule of Law at Sea in Context (continued)

Principle 1: Making and clarifying claims based on international law

(2) Legal Basis for Weapons Accompanying Law Enforcement Measures

c. f. Prohibition of the Use of Force by International Law

In the course of enforcement measures, the use of weapons, water cannons, or similar means

Distinction between *the use of force* prohibited by international law, and *the use of weapons* accompanying law enforcement measures

(* May be related to **Principle 2:** Not using force or coercion in trying to drive one's claims)

III. Implementation of the Three Principles of the Rule of Law at Sea

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2. Focusing upon the First Principle of the Rule of Law at Sea in Context (continued)

(3) Harmful Acts against Undersea Infrastructure in EEZ and High Seas

Both in EEZ and high seas all States enjoy the freedom of laying undersea infrastructure.

To maintain and restore the international maritime order, the most traditional means is **the flag State principle**.

【UNCLOS Article 94】

“Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.”

III. Implementation of the Three Principles of the Rule of Law at Sea

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2. Focusing upon the First Principle of the Rule of Law at Sea in Context

(3) Harmful Acts against Undersea Infrastructure in EEZ and High Seas (continued)

Expectation on the flag State principle

As far as the principle effectively function, the international maritime order, particularly in the high seas and EEZ depending on matters, could be maintained and restored.

Recent serious challenges that undermine this fundamental expectation
“Shadow fleet,” “flag-of-convenience,” “fraudulent registration/open registration of vessels”



The flag State principle does not provide the legal basis properly for the enforcement jurisdiction on harmful acts against undersea infrastructure in the high seas and EEZ

IV. Enlarging and Strengthening of the Three Principles

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1. Principle 1: Making and clarifying claims based on international law

Creation and evolution of International Law by Consents of Sovereign States

Lacuna takes place in international law far more than in domestic law

Because,

- lack of consents of sovereign States
- the matter concerned is newly emerging one which existing international law does not apply

e. g. The 1982 UNCLOS does not cover enforcement jurisdiction to combat harmful acts against undersea infrastructure with newly developed technology

e. g. UNCLOS is based upon the flag State principle that is *now in doubt*.

What possibilities can we expect to cope with lacuna?

IV. Enlarging and Strengthening of the Three Principles

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1. Principle 1: Making and clarifying claims based on international law (continued)

Concrete procedures, standards, and means according to which law enforcement measures should be taken are desired commonly shared among many States.

IV. Enlarging and Strengthening of the Three Principles

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2. Principle 2: Not using force or coercion in trying to drive one's claims

Practical clarification of the distinction of the use of force prohibited by international law, and the use of weapons accompanying law enforcement measures

(May be related to Principle 1.)

IV. Enlarging and Strengthening of the Three Principles

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3. Principle 3: Seeking to settle disputes by peaceful means

While States have the obligation to resolve a dispute by peaceful means, under international law, no compulsory dispute settlement procedures.

Dispute settlement procedures: negotiation, conciliation, arbitration, judicial procedure

What function does avoidance of escalation discharge, which is a maxim regulating law enforcement in a tense sea areas?

What other possibilities can we expect to enlarge and strengthen the Principle 3?

END

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Thank you for your kind attention !