

Cabinet Decision
on
Development of Seamless Security Legislation to
Ensure Japan's Survival and Protect its People
July 1, 2014

Since the end of World War II, Japan has consistently followed the path of a peace-loving nation under the Constitution of Japan. While adhering to a basic policy of maintaining an exclusively national defense-oriented policy, not becoming a military power that poses a threat to other countries, and observing the Three Non-Nuclear Principles, Japan has flourished as an economic power through continuous efforts of its people and built a stable and affluent livelihood. Japan, as a peace-loving nation, has also been cooperating with the international community and international organizations including the United Nations (U.N.), and has proactively contributed to their activities, adhering to the Charter of the United Nations. The course that Japan has taken as a peace-loving nation has garnered significant praise and respect from the international community, and Japan must continue these steps to further fortify such a position.

During the 67 years since the Constitution of Japan came into effect, the security environment surrounding Japan has fundamentally transformed and is continuing to evolve, and Japan is confronted by complex and significant national security challenges. There exist no prospects of the realization of the so-called formal "U.N. forces", an ideal proclaimed in the Charter of the United Nations. Moreover, even when considering only the quarter-century since the end of the Cold War, the shift in the global power balance, rapid progress of technological innovation, development and proliferation of weapons of mass destruction and ballistic missiles, and threats such as international terrorism have given rise to issues and tensions in the Asia-Pacific region, and there exists a situation in which any threats, irrespective of where they originate in the world, could have a direct influence on the security of Japan. Furthermore, in recent years, risks that can impede the utilization of and free access to the sea, outer space and cyberspace have been spreading and become more serious. No country can secure its own peace only by itself, and the international community also expects Japan to play a more proactive role for peace and stability in the world, in a way commensurate with its national capability.

Maintaining the peace and security of Japan and ensuring its survival as well as securing its people's lives are the primary responsibility of the Government. In order to adapt

to the changes in the security environment surrounding Japan and to fulfill its responsibility, the Government, first and foremost, has to create a stable and predictable international environment and prevent the emergence of threats by advancing vibrant diplomacy with sufficient institutional capabilities, and has to pursue peaceful settlement of disputes by acting in accordance with international law and giving emphasis to the rule of law.

Moreover, it is important to appropriately develop, maintain and operate Japan's own defense capability, strengthen mutual cooperation with the United States, which is Japan's ally, and deepen trust and cooperative relations with other partners both within and outside the region. In particular, it is essential to avoid armed conflicts before they materialize and prevent threats from reaching Japan by further elevating the effectiveness of the Japan-United States security arrangements and enhancing the deterrence of the Japan-United States Alliance for the security of Japan and peace and stability in the Asia-Pacific region. On that basis, in order to resolutely secure the lives and peaceful livelihood of its people under any situation and contribute even more proactively to the peace and stability of the international community under the policy of "Proactive Contribution to Peace" based on the principle of international cooperation, it is necessary to develop domestic legislation that enables seamless responses.

In accordance with the basic orientation presented by Prime Minister Abe at the May 15 press conference which took place after the report of "the Advisory Panel on Reconstruction of the Legal Basis for Security" was submitted on the same day, discussions have been repeatedly held in the ruling parties and examination has also been conducted by the Government. Based on the result of the discussions of the ruling coalition, the Government will promptly develop domestic legislation necessary for securing the lives and peaceful livelihood of its people, in accordance with the following basic policies:

1. Response to an Infringement that Does Not Amount to an Armed Attack

- (1) Considering the increasingly severe security environment surrounding Japan, situations that are neither pure peacetime nor contingencies are liable to occur, posing risks which could develop into more serious situations. In such situations of infringement that does not amount to an armed attack, it is an even more important task to prepare and ensure seamless and sufficient responses to any unlawful acts through closer cooperation between relevant agencies, including police organizations, and the Self-Defense Forces (SDF), premised on the basic allocation of their roles.

- (2) Specifically, in order to respond to various unlawful acts, under the basic policy that

relevant agencies including the police and Japan Coast Guard are to respond in close cooperation in accordance with their respective duties and authorities, the Government will further strengthen necessary measures in all areas, which include enhancing the respective agency's response capabilities, strengthening collaboration among agencies including information sharing, examining and developing concrete response guidelines, accelerating procedures to issue orders, and improving exercises and training.

- (3) As for accelerating procedures, in cases of responding to a situation where an infringement from the outside that does not amount to an armed attack occurs in areas surrounding remote islands, etc., and police forces are not present nearby or police agencies cannot respond immediately (including situations in which police agencies cannot respond because of the weapons possessed by the armed groups, etc.), the Government will thoroughly examine the application of related provisions to order public security operations or maritime security operations in advance and establish a common understanding among relevant agencies. At the same time, in order to avoid the spread of damages caused by unlawful acts while internal administrative procedures are taken, the Government will also make concrete considerations on measures for issuing orders swiftly and accelerating procedures in light of circumstances.
- (4) Moreover, for ensuring Japan's security, it is important for the SDF and the United States armed forces to respond seamlessly in close cooperation to a situation where an attack occurs against the units of the United States armed forces currently engaged in activities which contribute to the defense of Japan and such situation escalates into an armed attack depending on its circumstances. Assuming a situation where an infringement that does not amount to an armed attack occurs in the course of various peacetime activities carried out in coordination between the SDF and the United States armed forces and referring to the concept of "use of weapons" for the purpose of protecting its own weapons and other equipment under Article 95 of the SDF Law, the Government will develop legislation that enables the SDF to carry out very passive and limited "use of weapons" to the minimum extent necessary to protect weapons and other equipment of the units of the United States armed forces, if they are, in cooperation with the SDF, currently engaged in activities which contribute to the defense of Japan (including joint exercises), in line with the provisions of Article 95 of the SDF Law, premised on request or consent by the United States.

2. Further Contributions to the Peace and Stability of the International Community

- (1) So-called Logistics Support and "Ittaika with the Use of Force"

- A. So-called logistics support is an activity that does not in itself constitute a “use of force”. For instance, when international peace and security are threatened and the international community is united in responding to the situation in accordance with a U.N. Security Council resolution, there exist situations in which it is necessary for Japan to conduct such support activities to armed forces of other countries carrying out legitimate “use of force” based on the resolution. As for Japan’s support activities, however, legal frameworks limiting the area of such activities to “rear area” or so-called “non-combat area”, etc. have been established in past legislations to ensure that the issue of “ittaika with the use of force” (forming an “integral part” of the use of force) does not arise, in relation to Article 9 of the Constitution. This is intended to avoid Japan from being legally evaluated as carrying out by itself the “use of force” which is not permitted under the Constitution because its support activities would form an “integral part” of the use of force (“ittaika with the use of force”) by other countries.
- B. The SDF, even under such legal frameworks, has steadily accumulated its records of various support activities, and the expectations to and trust in Japan have been growing. Amid a major change in the security environment, from the perspective of “Proactive Contribution to Peace” based on the principle of international cooperation, it is necessary to enable the SDF to play sufficient roles in wide-ranging support activities for peace and stability of the international community. It is also vital from the viewpoint of ensuring Japan’s peace and security to enable the carrying out of such activities more than before without hindrance.
- C. The Government, while premising on the theory of so-called “Ittaika with the use of force” itself, based on the accumulation of discussions related to the “ittaika with the use of force” and considering factors such as the SDF’s actual experiences to date and the reality of U.N. collective security measures, no longer takes the current framework uniformly limiting SDF’s activities to such areas as “rear area” or so-called “non-combat area” where the issue of “ittaika with the use of force” does not arise. Instead, the Government takes the recognition that Japan’s support activities such as supply and transportation conducted at a place which is not “the scene where combat activities are actually being conducted” by a foreign country are not regarded as “ittaika with the use of force” by that country. From the viewpoint of the following positions which is based on that recognition, the Government will proceed with developing legislation which enables necessary support activities to armed forces of foreign countries engaging in activities for ensuring Japan’s security or for peace and stability of the international community:

- (a) Do not conduct support activities in “the scene where combat activities are actually being conducted” by armed forces of a foreign country to which Japan provides support.
- (b) Immediately pause or cease support activities if the place where Japan is conducting support activities becomes “the scene where combat operations are actually being conducted” due to changes of the situation.

(2) Use of Weapons Associated with International Peace Cooperation Activities

- A. To date, Japan has developed necessary legislation and has conducted international peace cooperation activities for over 20 years. In conducting such activities, Japan has limited the right of SDF personnel to use weapons when engaging in international peace cooperation activities to so-called self-preservation type and protection of its own weapons and other equipment since use of weapons associated with so-called “kaketsuke-keigo” (coming to the aid of geographically distant unit or personnel under attack) or “use of weapons for the purpose of execution of missions” could constitute the “use of force” prohibited by Article 9 of the Constitution, if such use of weapons are directed against “a state or a quasi-state organization.”
- B. From the perspective of a “Proactive Contribution to Peace” based on the principle of international cooperation, Japan needs to enhance its efforts to promote the peace and stability of the international community. To that end, it is important to be able to participate in international peace cooperation activities including peace keeping operations (PKOs) sufficiently and proactively. Moreover, given that many Japanese nationals are actively working overseas and face risks of being involved in emergency situations such as terrorism, it is necessary to enable the rescuing of Japanese nationals abroad by use of weapons subject to the consent of acceptance from the territorial State which, under international law, has the obligation to extend protection to foreigners who are within its territories.
- C. Based on the above, the Government will proceed with developing legislation based on the following positions in order to enable the SDF’s use of weapons associated with so-called “kaketsuke-keigo” and the “use of weapons for the purpose of execution of missions” in international peace cooperation activities that do not invoke “use of force” including U.N. peacekeeping operations as well as police-like activities that do not invoke “use of force” including the rescuing of Japanese nationals with a consent from the territorial State, through ensuring that “a state or a quasi-state organization” does not

appear as the adversary:

- (a) As for U.N. peacekeeping operations, etc., since “consent by the State to which the areas in which activities are conducted belong” and “consent by the parties to the conflict to activities conducted” are necessary under the framework of the Five Principles for PKOs, “a quasi-state organization” other than parties to the conflict who have given consent of acceptance is, in principle, not expected to appear as the adversary. For more than 20 years, this has been demonstrated by Japan’s experience of U.N. peacekeeping operations, etc. When the use of weapons for the execution of missions is expected to exceed self-preservation and protection of its own weapons and other equipment including when the SDF is tasked with the maintenance of order such as the protection of population, which is deemed as an important mission in recent U.N. peacekeeping operations, it is necessary that consent from the parties to the conflict is stably maintained, especially because of the nature of the activities.
- (b) When the SDF units conduct police-like activities that do not involve “use of force” including the rescuing of Japanese nationals in a foreign country based on the consent of the territorial State’s Government, it is natural that the activities be conducted in the area within which the consent of the territorial State’s Government is valid, i.e. the area within which its authority is maintained. This means that no “quasi-state organization” exists in that area.
- (c) The Cabinet will make a decision on whether the consent of acceptance is stably maintained or the area within which the consent of the territorial State’s Government is valid, etc. based on deliberations etc. at the National Security Council.
- (d) Use of weapons in these activities is subject to the inherent constraint of the strict principle of proportionality which is similar to the principle of police proportionality.

3. Measures for Self-Defense Permitted under Article 9 of the Constitution

- (1) In order to adapt to the changes in the security environment surrounding Japan and secure the lives and peaceful livelihood of its people under any situations, the Government has examined what constitutional interpretation would be appropriate, as sufficient responses would not necessarily be possible if the constitutional interpretation to date were maintained. In this regard, logical consistency and legal stability are required for the Government’s constitutional interpretation. Accordingly, it is necessary to draw a logical conclusion for securing the lives and peaceful livelihood of its people within the limit of

the basic logic of the interpretation of Article 9 of the Constitution as expressed by the Government to date.

- (2) The language of Article 9 of the Constitution appears to prohibit “use of force” in international relations in all forms. However, when considered in light of “the right (of the people) to live in peace” as recognized in the Preamble of the Constitution and the purpose of Article 13 of the Constitution which stipulates, “their (all the people’s) right to life, liberty, and the pursuit of happiness” shall be the supreme consideration in governmental affairs, Article 9 of the Constitution cannot possibly be interpreted to prohibit Japan from taking measures of self-defense necessary to maintain its peace and security and to ensure its survival. Such measures for self-defense are permitted only when they are inevitable for dealing with imminent unlawful situations where the people’s right to life, liberty and the pursuit of happiness is fundamentally overturned due to an armed attack by a foreign country, and for safeguarding these rights of the people. Hence, “use of force” to the minimum extent necessary to that end is permitted. This is the basis, or so-called the basic logic, of the view consistently expressed by the Government to date with regard to “use of force” exceptionally permitted under Article 9 of the Constitution, and clearly shown in the document “Relationship between the Right of Collective Self-Defense and the Constitution” submitted by the Government to the Committee on Audit of the House of Councillors on October 14, 1972.

This basic logic must be maintained under Article 9 of the Constitution.

- (3) To date, the Government has considered that “use of force” under this basic logic is permitted only when an “armed attack” against Japan occurs. However, in light of the situation in which the security environment surrounding Japan has been fundamentally transformed and continuously evolving by shifts in the global power balance, the rapid progress of technological innovation, and threats such as weapons of mass destruction, etc. as mentioned at the outset, in the future, even an armed attack occurring against a foreign country could actually threaten Japan’s survival, depending on its purpose, scale and manner, etc.

Japan, as a matter of course, will make the utmost diplomatic efforts, should a dispute occur, for its peaceful settlement and take all necessary responses in accordance with the existing domestic laws and regulations developed based upon the constitutional interpretation to date. It is still required, however, to make all necessary preparations in order to ensure Japan’s survival and protect its people.

Under such recognition and as a result of careful examination in light of the current security environment, the Government has reached a conclusion that not only when an armed attack against Japan occurs but also when an armed attack against a foreign country

that is in a close relationship with Japan occurs and as a result threatens Japan's survival and poses a clear danger to fundamentally overturn people's right to life, liberty and pursuit of happiness, and when there is no other appropriate means available to repel the attack and ensure Japan's survival and protect its people, use of force to the minimum extent necessary should be interpreted to be permitted under the Constitution as measures for self-defense in accordance with the basic logic of the Government's view to date.

(4) As a matter of course, Japan's "use of force" must be carried out while observing international law. At the same time, a legal basis in international law and constitutional interpretation need to be understood separately. In certain situations, the aforementioned "use of force" permitted under the Constitution is, under international law, based on the right of collective self-defense. Although this "use of force" includes those which are triggered by an armed attack occurring against a foreign country, they are permitted under the Constitution only when they are taken as measures for self-defense which are inevitable for ensuring Japan's survival and protecting its people, in other words for defending Japan.

(5) Moreover, even when "use of force" is permitted under the Constitution, since they are carried out to secure the lives and peaceful livelihood of the people, it is natural to require an assurance of democratic control. The Government will stipulate in the draft legislation that prior approval of the Diet is in principle required upon issuing orders of operations to the SDF for carrying out "use of force" permitted under the Constitution when an armed attack occurs not against Japan but against a foreign country, in the same manner as the procedures related to defense operations stipulated in the current laws and regulations.

4. The Way Forward for Developing Domestic Legislation

When these activities are to be conducted by the SDF, the Cabinet shall make a decision in accordance with deliberations, etc. at the National Security Council. Including such procedures, domestic legislation which serves as the legal basis is necessary in order to enable the SDF to actually conduct such activities. Based on the basic policies described above, the Government will herewith commence the tasks of drafting legislation that enables seamless responses to any situations in order to secure the lives and peaceful livelihood of its people. The Government will give adequate consideration, and as soon as it completes its preparation, it will submit the draft legislation to the Diet for its deliberations.

(End)