

Development of Legislation for Peace and Security and the SDF Activities Since Legislation's Enforcement

Section 1

Circumstances of the Development of Legislation

1 Background to the Development of Legislation

The security environment surrounding Japan is increasingly severe, and we are now in an era where threats could easily spread beyond national borders, and no country can maintain its own security only by itself any longer.

Against this background, it is first and foremost important to advance vibrant diplomacy in order to maintain peace and security of Japan, and ensure its survival, as well as to secure its people's lives. However, at the same time, it is also necessary to prepare for the worst-case scenario.

Specifically, it is essential to avoid armed conflicts beforehand and prevent threats from reaching Japan by appropriately developing, maintaining and operating Japan's own defense capability, strengthening mutual cooperation with the United States which is Japan's ally, and other partner countries, and in particular, further elevating the effectiveness of the Japan-U.S. Security Arrangements and enhancing the deterrence of the Japan-U.S. Alliance for the peace and stability of Japan and 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 February 2013, Prime Minister Abe resumed the Advisory Panel on Reconstruction of the Legal Basis for Security. Following a total of seven meetings, the Advisory Panel submitted its report to Prime Minister Abe in May 2014.

Following the Advisory Panel's report and in accordance with the basic orientation for the way that further deliberations would take place as presented by Prime Minister Abe, discussions were held in the ruling parties and studies were also conducted by the Government. Following this, in July 2014, a cabinet decision was made on "Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People," which set forth the basic policy for the development of legislation that enables seamless responses to any situations.

 **See** Fig. II-3-1-1 (Outline of the Cabinet Decision and the Development of Legislation)
Reference 16 (Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People)

2 Background and Significance of the Development of Legislation

Following the aforementioned Cabinet Decision, a legislation drafting team was launched under the National Security Secretariat in the Cabinet Secretariat. In addition, the Ministry of Defense established "The Study Committee on the Development of Security Legislation" with the Minister of Defense as its Chairman, and conducted the deliberations towards the development of

security legislation.

The deliberations in the Government were conducted based on the discussions at a total of 25 meetings in the ruling parties, and, on May 14, 2015, the Government made Cabinet Decisions on two bills, the Bill for the Development of Legislation for Peace and Security¹ and the International Peace Support Bill.² The two bills were

¹ Bill for Partial Amendments to the Self-Defense Forces Law and Other Existing Laws for Ensuring Peace and Security of Japan and the International Community

² Bill Concerning Cooperation and Support Activities to Armed Forces of Foreign Countries, etc. in Situations where the International Community is Collectively Addressing for Peace and Security

Fig. II-3-1-1

Outline of the Cabinet Decision and the Development of Legislation

Items of the Cabinet Decision	Outline	Legislation Development
1. Response to an Infringement that Does Not Amount to an Armed Attack	<ul style="list-style-type: none"> ● 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, including enhancing the respective agency's response capabilities and strengthening collaboration among agencies. In cases of responding to a situation where police forces are not present nearby or police agencies cannot respond immediately, the Government will <u>consider measures for issuing orders swiftly and accelerating procedures for public security operations or maritime security operations.</u> ● The Government will develop legislation that enables the SDF to carry out very passive and limited <u>"use of weapons"</u> to the minimum extent necessary to protect weapons and other equipment of the units of the U.S. and other countries' Armed Forces that are, in cooperation with the SDF, currently engaged in activities that contribute to the defense of Japan (including joint exercises), in line with the provisions of Article 95 of the SDF Law. 	<p>⇒ Acceleration of procedures to issue orders for public security operations/maritime security operations</p> <p>⇒ Revision of the SDF Law (Protection of weapons, etc. of the units of the U.S. Forces and Armed Forces of other countries)</p>
2. Further Contributions to the Peace and Stability of the International Community	<ul style="list-style-type: none"> ● So-called logistics support and "integration with the use of force" (*1) <ul style="list-style-type: none"> ➢ 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 "Integration with the use of force" of that country. Based on that recognition, the Government will proceed with <u>developing legislation which enables necessary support activities for the armed forces of foreign countries engaging in activities for ensuring Japan's security or for the peace and stability of the international community.</u> ➢ Japan does 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. ➢ Japan will 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. ● Use of weapons associated with international peace cooperation activities <p>Based on the following positions, the Government will <u>proceed with developing legislation in order to enable the SDF's use of weapons associated with so-called "kaketsuke-keigo" (coming to the protection of individuals related to operations in response to urgent request) and the "use of weapons for the purpose of execution of missions" in international peace cooperation activities that do not involve the "use of force," including UN peacekeeping operations, as well as police-like activities that do not involve the "use of force," including the rescuing of Japanese nationals with the consent from the territorial State.</u></p> <ul style="list-style-type: none"> ➢ As for UN peacekeeping operations, etc., under the framework of the Five Principles for PKOs, "a quasi-state organization" (*2) other than parties to the conflict who have given consent of acceptance is, in principle, not expected to appear as an adversary. ➢ 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. ➢ The Cabinet will make a decision on whether the consent of acceptance is stably maintained and whether the area within which the consent of the territorial State's Government is valid, etc., based on deliberations, etc., at the National Security Council. 	<p>⇒ Law Concerning Measures to Ensure Peace and Security of Japan in Situations that Will Have an Important Influence on Japan's Peace and Security (Revision of the Law Concerning Measures to Ensure Peace and Security of Japan in Situations in Areas Surrounding Japan), revision of the Ship Inspection Operations Act, enactment of the International Peace Support Act</p> <p>⇒ Revision of the International Peace Cooperation Act, revision of the SDF Law (Rescue measures for Japanese nationals overseas)</p>
3. Measures for Self-Defense Permitted under Article 9 of the Constitution	<ul style="list-style-type: none"> ● The Government believes 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. ● The aforementioned "use of force" permitted under the Constitution could have, under international law, a basis 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. ● The Government will stipulate in the draft legislation that the prior approval of the Diet is in principle required upon issuing orders for operations to the SDF for carrying out <u>"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.</u> 	<p>⇒ Revision of Legislation for Responses to Armed Attack Situations, revision of the SDF Law (The provisions concerning defense operations)</p>

Notes: 1. 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 "integration 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 ("integration with the use of force") by other countries.
2. Use of weapons associated with so-called "kaketsuke-keigo" (coming to the aid of geographically distant units or personnel under attack) or "use of weapons for the purpose of the execution of missions" could constitute the "use of force" prohibited by Article 9 of the Constitution, if such use of weapons is directed against "a state or a quasi-state organization."

then submitted to the 189th ordinary session of the Diet on May 15, 2015.

These two bills enable seamless responses to any situations, from the protection of assets including weapons of units of the U.S. Forces and armed forces

of foreign countries during peacetime, support activities to armed forces of foreign countries, etc., in situations that have an important influence on Japan's peace and security and situations that the international community is collectively addressing for peace and security (to

be discussed later), to the limited use of the right of collective self-defense as a measure for self-defense to the minimum extent necessary to defend Japan when the “Three New Conditions”³ are satisfied.

Following the longest extension of a Diet session in the postwar, the longest Diet debate of security-related bills in the postwar period was conducted, constituting about 116 hours of debate in the House of Representatives and about 100 hours of debate in the House of Councillors, totaling about 216 hours. As a result, the two bills were passed at a plenary session of the House of Councillors and enacted on September 19, 2015, upon formation of broad consensus, with approval of not only the ruling parties but also the three opposition parties of the then Assembly to Energize Japan, the then Party for Future Generations and the then New Renaissance Party (altogether five parties out of the ten political parties).

Just before the passage, these five parties reached the “Agreement Concerning the Legislation for Peace and Security” (the “Five-Party Agreement”), which include matters that should be taken into consideration in judging

the applicability of the Three New Conditions related to the recognition of a “survival-threatening situation,” and committed them to obtaining a conclusion on the shape of a Diet organization for the constant surveillance and post-verification of SDF activities based on the Legislation for Peace and Security, and the strengthening of the Diet’s involvement. The Government also made a cabinet decision to the effect that the Government will respect the Five-Party Agreement and handle these matters appropriately. The Legislation for Peace and Security was put into force on March 29, 2016.

With the security environment surrounding Japan becoming increasing severe, the enforcement of the Legislation for Peace and Security has a historical significance as further ensuring peace and security of Japan through enhancing deterrence and making more proactive contributions to the peace and stability of the region and the international community.

The Legislation for Peace and Security has been highly appraised around the world, drawing strong support from the United States, which is Japan’s ally, Australia,



Foreign Countries' Understanding of the Legislation for Peace and Security

The Legislation for Peace and Security has been strongly supported and highly valued by the United States, which is Japan’s ally, Australia, India and the countries of Southeast Asia and Europe, as well as the Association of Southeast Asian Nations (ASEAN) and the European Union (EU), etc. (See the body text.)

At the Japan-U.S. Summit Meeting in November 2015, for example, then U.S. President Obama expressed his congratulations on the enactment of the Legislation for Peace and Security, and said the legislation enhances Japan’s defense functions and enables Japan and the United States to further broaden their cooperation in the region and the world. The U.S. Senate Foreign Relations Committee and Armed Services Committee also welcomed the enactment of the Legislation for Peace and Security in a joint statement in September 2015, saying that it “will strengthen the vital alliance between our two countries.” Furthermore, in February 2016, Commander Harris of the U.S. Pacific Command, stated regarding responses to ballistic missile launches by North Korea, that the Legislation for Peace and Security and the new Guidelines for Japan-U.S. Defense Cooperation enhanced the capabilities of both Japan and the United States and also improved cooperation between Japan and the United States.

In the Japan-Australia Joint Statement of December 2015, Australia welcomed and supported Japan’s passage of the Legislation for Peace and Security, which enables Japan to contribute even more actively in securing the peace, stability and prosperity of the region and the world in line with its policy of “Proactive Contribution to Peace.”

In November 2015, regarding the Japanese Government’s decision to give the SDF the new duty of the so-called “kaketsukeigo,” the deputy spokesman for the UN Secretary-General stated that “the United Nations appreciates the discussions Japan held on this matter. We welcome any measure of a UN member state that helps enhance the abilities of PKO personnel to protect civilians and UN staff.”

As described above, the strong support for the Legislation for Peace and Security clearly shows that this legislation will help deter war and contribute to the peace and security of the world.

³ The “three new conditions” are as follows: “(1) When an armed attack against Japan has occurred, or 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; (2) When there is no appropriate means available to repel the attack and ensure Japan’s survival and protect its people; (3) Use of force to the minimum extent necessary.”

India and countries of Southeast Asia and Europe as well as the Association of Southeast Asian Nations (ASEAN) and the European Union (EU). This fact clearly shows that the Legislation for Peace and Security strengthens

the Japan-U.S. Alliance and enhances deterrence, and also contributes to the peace and stability of the region and the international community.



The Relationship between the Legislation for Peace and Security and the Constitution

The “use of force” is permitted under the Constitution

- When an armed attack against Japan occurs or 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;
- When there is no other appropriate means available to repel the attack and ensure Japan’s survival and protect its people; and
- Use of force is limited to the minimum extent necessary,

only when the Three New Conditions above are satisfied. Even for the “use of force” permitted under the Three New Conditions, the basic logic of the constitutional interpretation presented in the Governmental view of 1972 (below) has not changed:

- The language of Article 9 of the Constitution appears to prohibit the “use of force” in international relations in all forms. However, when considered in light of “the right (of all peoples of the world) 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 of 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, the “use of force” to the minimum extent necessary to that end is permitted.

Furthermore, the “use of force” permitted under the Three New Conditions remains within the scope of the Supreme Court decision on the Sunagawa Case. The Supreme Court decision states that

- “it must be pointed out that it is natural for Japan, in the exercise of powers inherent in a state, to take measures for self-defense that may be necessary to maintain its peace and security, and to ensure its survival.”

In other words, the decision can be interpreted as recognizing that Japan should be able to take “measures for self-defense” to maintain its peace and security and ensure its survival after stating that Japan has the right to self-defense, without making a distinction between the right to individual self-defense and the right to collective self-defense.

As the Legislation for Peace and Security, which reflects the Three New Conditions described above in just proportion, maintains the basic logic of the constitutional interpretation hitherto presented by the Government and remains within the scope of the Sunagawa Case decision by the Supreme Court, the only institution endowed with the power to finally determine the constitutional interpretation, it is consistent with the Constitution.