

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

Section

1

Background to the Development of Legislation for Peace and Security

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 livelihoods 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 May 2014, following a report submitted by the Advisory Panel on the Reconstruction of the Legal Basis for Security¹ In May 2014, following a report submitted by the Advisory Panel on the Reconstruction of the Legal Basis for Security¹ 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.



Reference 14 (Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People)

2 Background and Significance of the Development of Legislature

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 (MOD)/Self-Defense Force (SDF) 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 Security² and the International Peace Support Bill.³ The two bills were then submitted to the 189th ordinary session of the Diet on May 15, 2015.

These two bills enable seamless responses to any

¹ In February 2013, Prime Minister Abe resumed the Advisory Panel on Reconstruction of the Legal Basis for Security, which had been held during the first Abe Cabinet. Following a total of seven meetings, the Advisory Panel submitted its report to Prime Minister Abe in May 2014.

² 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

³ 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-5-1-1 Layout of the Legislation for Peace and Security

Peace and Security Legislation Development Act (Bundling together partial amendments to the existing laws)	
Act for the Development of the Legislation for Peace and Security: Law Concerning Partial Amendments to the Self-Defense Forces Law and Other Existing Laws for Ensuring the Peace and Security of Japan and the International Community	
1. Self-Defense Forces Law	* In addition to those in the left column, the 10 existing laws were revised for technical reasons.
2. International Peace Cooperation Act Act on Cooperation with United Nations Peacekeeping Operations and Other Operations	
3. Law Concerning Measures to Ensure Peace and Security of Japan in Situations in Areas Surrounding Japan → Changed to Law Concerning Measures to Ensure Peace and Security of Japan in Situations that Will Have an Important Influence on Japan's Peace and Security Law Concerning Measures to Ensure Peace and Security of Japan in Situations that Will Have an Important Influence on Japan's Peace and Security	
4. Ship Inspection Operations Act Law Concerning Ship Inspection Operations in Situations that Will Have an Important Influence on Japan's Peace and Security and Other Situations	
5. Legislation for Responses to Armed Attack Situations Law for Ensuring Peace and Independence of Japan and Security of the State and the People in Armed Attack Situations, etc., and Survival-Threatening Situation	
6. U.S. Military Actions Related Measures Act → Changed to the U.S. and Others' Military Actions Related Measures Act Law Concerning the Measures Conducted by the Government in Line with U.S. and Other Countries' Military Actions in Armed Attack Situations, etc., and Survival-Threatening Situation	
7. Act Regarding the Use of Specific Public Facilities Law Concerning the Use of Specific Public Facilities and Others in Situations including Where an Armed Attack against Japan Occurs	
8. Maritime Transportation Restriction Act Law Concerning the Restriction of Maritime Transportation of Foreign Military Supplies and Others in Armed Attack Situations, etc., and Survival-Threatening Situation	
9. Prisoners of War Act Law Concerning the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations, etc., and Survival-Threatening Situation	
10. Act for Establishment of the National Security Council	
New enactment (one)	
International Peace Support Act: Law Concerning Cooperation and Support Activities to Armed Forces of Foreign Countries, etc. in Situations where the International Community is Collectively Addressing for International Peace and Security	

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 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"⁴ are satisfied. They are essential for Japan to secure the lives and peaceful livelihoods of its people.

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 a broad consensus, with approval of not only the Liberal Democratic Party of Japan and Komeito 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 increasingly severe, the enforcement of the Legislation for Peace and Security has a historical significance. The legislation, which enables the SDF to provide protection and logistic support to U.S. naval vessels engaged in ballistic missile defense, helps strengthen the deterrence and response capability of the Japan-U.S. Alliance as a whole, thereby further ensuring the peace and security of Japan through making more proactive contributions to the peace and

⁴ See Chapter 1, Section 2

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.

stability of the region and the international community. The Legislation has been highly appraised around the world.⁵ This fact clearly shows that the Legislation contributes to the peace and stability of the region and the international community.

 See Fig. II-5-1-1 (Structure of the Legislation for Peace and Security)

⁵ The Legislation for Peace and Security has been drawing understanding and support not only from Japan’s ally, the U.S., but also from Australia, countries of the Asia-Pacific region, Europe, the Middle East, Africa, and South America, as well as Association of Southeast Asian Nations (ASEAN), the European Union (EU) and the United Nations (UN).