Working Paper #22-02

Collective Self-Defense and Japan's Security Policy

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July 2022

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INTRODUCTION

"A friend in need is a friend indeed." This saying pithily describes what Japan's security policy is NOT. Closely associated with the Western world politically and economically and upholding an alliance relationship with the United States since during the Cold War, Japanese leaders nevertheless have maintained that their country could not legally come to the defense of another country when the latter found itself under attack by a third country.

According to official Tokyo, this is because the post-World War II Japanese Constitution prohibits the exercise of the right to collective self-defense as set force in Article 51 of the Charter of the United Nations. The Peace and Security Legislation enacted by the Abe Shinzō government in 2015 has made only a peripheral adjustment in this respect.

That constitutional interpretation, indeed the Constitution itself, is not carved in stone, however. Specific legal constructions arise from specific political environments and their validity changes with shifts in internal and external circumstances. Tokyo's stand on the right of self-defense is no exception.

As a matter of fact, approaches to the question of collective self-defense by Japanese elites have varied appreciably over the decades. This paper will trace this process since the first decade of the Cold War and relate it to changes in the security environment as well as the nation's self-image as an international actor.

We will start with a review of the concept of collective self-defense, followed by an explication of the prevailing interpretation of the Japanese Constitution regarding the right of self-defense. Dividing the postwar years into five periods, we will then recount the evolution of Japanese outlook on collective self-defense, with a special focus on deliberations in the National Diet.

CONCEPT OF COLLECTIVE SELF-DEFENSE

Origins of Collective Self-Defense

Collective self-defense emerged at the San Francisco Conference held to complete the UN Charter in the spring of 1945, even though similar ideas, or "precursors," might already have existed for some time.[1] It was primarily a response to what was called "Latin American crisis," which arose from the perceived impact of the introduction of a veto system in the Security Council on the autonomous functioning of the Inter-American security arrangements. In an effort to mollify the Latin Americans, the United States proposed and obtained consent on what was to become Article 51, which explicitly acknowledged the right of collective as well as individual self-defense.

Article 51 of the UN Charter reads as follows:

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

While stretching the traditional concept of self-defense by expressly authorizing collective self-defense, Article 51 also imposes significant restrictions on the exercise of the right of self-defense. Most important, the right of self-defense may be invoked only when an armed attack takes place. In addition, reporting will be required for self-defense measures, on which a temporal limitation may be imposed. Self-defense being an exception to the prohibition on the use of force under the UN system, its scope has thus been circumscribed.

Theories of Collective Self-Defense

Jurists have long debated about the legal nature of the right of collective self-defense. One view holds that, in resorting to collective self-defense,

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[1] Mori Tadashi, "Shūdanteki jieiken no tanjō: Chitsujo to muchitsujo no aida ni," *Kokusaihō Gaikō Zasshi*, Vol. 102, No. 1 (2003); Mori Tadashi, *Jieiken no Kisō: Kokuren Kenshō ni Itaru Rekishiteki Tenkai* (Tōkyō: Tōkyō Daigaku Shuppankai , 2009), pp. 146-159.

states are jointly exercising their right of individual self-defense.[2] Another view identifies collective self-defense simply as "defense of another state," and not really "self"-defense.[3] In a third view, a country exercises the right of collective self-defense to aid in the defense of another in order to safeguard its own vital interests.[4]

Perspectives on the legal foundation of collective self-defense go a long way to determine what category of states can justify its invocation for the benefit of other states. For a state to exercise the right of collective self-defense, it must itself be an object of aggression in the first view, or it must have vital interests in the security of the beneficiary state in the third, while the second view imposes no such requirements.

Moreover, questions relating to the right of self-defense in general directly affect the specification of the circumstances in which collective self-defense can lawfully be turned to. Of such questions one of the more consequential is whether Article 51 of the UN Charter superseded the right of self-defense under customary international law, either abolishing that right or at least restricting it to instances of armed attack.[5]

The decision of the International Court of Justice on the *Nicaragua Case* in 1986 has had a significant impact on theoretical discourse on the right of

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[2] This view is typified by D.W. Bowett, "Collective Self-Defence under the Charter of the United Nations," in C.H.M. Waldock, ed., *The British Year Book of International Law, 1955-6* (London: Oxford University Press, 1957), pp. 136-137.

[3] The quotations are from Josef L. Kunz, "Individual and Collective Self-Defense in Article 51 of the Charter of the United Nations," *American Journal of International Law*, Vol. 41, No. 4 (1947), p. 875; Hans Kelsen, *The Law of the United Nations: A Critical Analysis of Its Fundamental Problems: With Supplement* (New York: Frederick A. Praeger, 1951), p. 792. They represent early expressions of this view.

[4] H. Lauterpacht, ed., *Disputes, War and Neutrality*, Vol. 2 of *International Law: A Treatise by L. Oppenheim* (7th ed.; London: Longmans, Green, 1952), p. 155 exemplifies this view.

[5] Other important questions include: What conditions must be met for an act of violence to qualify as an armed attack? Could the use of force against merchant ships or private citizens of a state outside its territory constitute an armed attack on that state? Might a cross-border attack perpetrated by organized armed groups trigger the right of self-defense? What about a cyber attack? Would Article 51 allow a state threatened with an armed attack to take military action to forestall it?

collective self-defense. While "customary international law continues to exist alongside treaty law" as regards the right of self-defense, pronounced the judges, states could not exercise the right of collective self-defense against "acts which do not constitute an 'armed attack.'"[6]

Of note, the Court laid down two additional requirements for the exercise of that right. First, the state for whose benefit collective self-defense is invoked ought to have "declared itself to be the victim of an armed attack."[7] Second, there must be "a request by the State which regards itself as the victim of an armed attack."[8] It is generally assumed, moreover, that a state exercising the right of self-defense, whether individual or collective, must also satisfy the conditions of necessity and proportionality.

Finally, experts have differed on the relationship between collective self-defense and the UN system of collective security. More influential is the view that the former complements the latter. The Security Council has more often than not been unable to perform the function of maintaining international peace and security adequately. It is the right of collective self-defense that has made it possible for states to take collective measures to prevent and remove military threats. There are those, however, who believe that the former undermines the latter. By turning to collective self-defense for their security, states have eroded the authority of the United Nations in determining the presence of and measures against armed aggression.

Collective Self-Defense in Practice

While scholars continue to disagree over the merits of the right to collective self-defense, national leaders have found it a highly useful tool for foreign policy, leading to its widespread political legitimacy. In fact, most prominent security arrangements from the early Cold War years to the present, including the North Atlantic Treaty and the former Warsaw Pact, have rested on that right.[9] The Japan-U.S. Mutual Security Treaty (MST)

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[6] International Court of Justice [ICJ], *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, June 27, 1986, para. 176, 211.
[7] ICJ (1986), para. 195.
[8] ICJ (1986), para. 199.
[9] Article 5 of North Atlantic Treaty (1949); Article 4 of Warsaw Pact (1955).

of 1960 acknowledges the right of collective as well as individual self-defense, as did the 1951 Security Treaty that it replaced.[10] Other agreements that have underpinned the "hub and spoke" security structure in the Asia-Pacific region centered on the United States pledge "efforts for collective defense," though without referring to the right of collective self-defense explicitly.[11]

States have reported on their exercise of the right of collective self-defense to the UN Security Council in more than a dozen instances.[12] The Soviet Union invoked collective self-defense to justify its intervention in Hungary (1956), Czechoslovakia (1968), and Afghanistan (1979). So did the United States in asserting the legality of its military involvement in Lebanon (1958) and, more important, use of force for South Vietnam (1965). After the Iraqi invasion of Kuwait in 1990, Washington and London sent troops to the Persian Gulf initially on the basis of their right to collective self-defense. Adducing Article 51 of the UN Charter, several Western states cooperated with U.S. military action in Afghanistan in the wake of the 9/11 terror attacks in 2001. Most recently, Russia notified the Security Council on February 24, 2022 of its exercise of the right to collective self-defense for two breakaway "people's republics" of Ukraine.

Despite the general acceptance of the concept of collective self-defense *per se*, its application by various states has often aroused serious questions.[13] In a number of instances, for example, that include the Soviet interventions mentioned above, the existence or the genuineness of the

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[10] Preamble of those treaties. The 1960 treaty is formally called the Treaty of Mutual Cooperation and Security between Japan and the United States of America.

[11] See the preamble of the treaties that the United States concluded with the Philippines (1951), Australia and New Zealand (1951), South Korea (1953), and the Republic of China (1954).

[12] Shimonaka Natsuko and Hiyama Chifuyu, "Shūdanteki jieiken no enyō jirei," *Refarensu*, Issue 770 (2015); Christine Gray, *International Law and the Use of Force* (4th ed.; Oxford, UK: Oxford University Press, 2018), pp. 176-177.

[13] As Gray (2018), 178-179 summarizes: While the "legality of the third-state use of force" was almost always controversial, disagreements "generally centered on the facts rather than law." That is to say, "the controversy concerned the question whether there had been an armed attack, and also whether there had been a genuine request for help by the victim state."

request from the presumed victim of an armed attack has been called into doubt. In addition to the arguably less than perfect legitimacy of the government of South Vietnam, the Gulf of Tonkin Incident, which Washington used to justify its exercise of the right to collective self-defense, has turned out to have been a fabrication. The attack by Al Qaeda has brought into focus the question of whether and how a violent action of a non-state actor may constitute an armed attack in the meaning of the UN Charter. Finally, few states outside Russia have recognized the "people's republics" created by Russian-backed separatists in Ukraine.

Collective Self-Defense and Japanese Intellectuals

As we saw above, the right of collective self-defense itself has remained essentially uncontroversial internationally and the "undisputed legal existence" of collective defense treaties has been accepted widely.[14]

By contrast, collective self-defense has been a distinctly controversial concept in Japan. Scholars and commentators have long decried the tendency for security arrangements concluded in the name of collective self-defense to assume the character of military alliances.

In the past, negative opinion of collective self-defense was often a direct reflection of antipathy to the Japan-U.S. security tie. For example, in their statement of opposition to the MST in the making, a group of prominent intellectuals contended that collective self-defense was nothing but a "relic of the traditional alliance system" and as such an "impurity" slipped into the Charter of the United Nations.[15] There were those who would even dispute the "legal existence" of the bilateral security arrangements.

Antagonism toward the MST also apparently motivated some to delegitimize Article 51 of the UN Charter by recasting the process in which it

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[14] The quotation is from Kevin C. Kenny, "Self-Defence," in Rüdiger Wolfrum, ed., *United Nations: Law, Policies and Practice,* Vol. 2 (new, revised ed.; Dordrecht, the Netherlands: Martinus Nijhoff, 1995), p. 1168. In fact, the right of collective self-defense may be said to have "attracted relatively little attention until the judgment of the ICJ in the *Nicaragua Case*." Christopher Greenwood, "Self-Defence," in Rüdiger Wolfrum, ed., *The Max Planck Encyclopedia of Public International Law*, Vol. 9 (Oxford, UK: Oxford University Press, 2012), p. 110.

[15] Arase Yutaka et al., "Seifu no Anpo kaitei kōsō o hihansuru," *Sekai*, Issue 166 (October 1959), p. 39.

came about. As international law professor Sogawa Takeo wrote, for instance, the United States could be viewed as having "arrogated to itself whatever justifiability the regionalism of Latin American countries may have had" so as to carry through its anti-Soviet agenda. In this sense, Washington's move was supposedly consistent with the "temporizing" on the second front during World War II as well as the atomic bombing of Japan.[16]

Sogawa left a deep mark on the study of the right of collective self-defense in Japanese academia.[17] Schematizing the three views we saw earlier concerning the legal nature of that right, he found them either devoid of content or unlikely to enhance prospects for international peace and security. If it was conceived as joint exercise of the right to individual self-defense, collective self-defense would be left with little substance proper to itself. If it was understood as defense of just another state, then it would actually mean legalization of "war of intervention," which could easily turn into "war between opposing alliances." If protection of the vital interests of the state assisting in the defense of another was to be regarded as its core, then the concept of collective self-defense would presuppose a "subtle relaxation" of the definition of the former's "legally protected interests" to be secured by self-defense measures.[18]

Opposition to the alliance relationship with the United States steadily decreased beginning in the late 1970s. All the same, the tendency among pundits and publicists to highlight contradiction between collective security under the United Nations and the right of collective self-defense persisted.[19]

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[16] Sogawa Takeo, "Shūdanteki jiei: Iwayuru US Formula no ronriteki kōzō to genjitsuteki kinō," in Sogawa, ed., *Kokusai Seiji Shisō to Taigai Ishiki* (Tōkyō: Sōbunsha, 1977), pp. 440, 476 (n. 57).

[17] Mori Tadashi, "Shūdanteki jieiken no hōteki kōzō: Nikaragua jiken hanketsu no saikentō o chūshin ni," *Kokusaihō Gaikō Zasshi*, Vol. 115, No. 4 (2017), pp. 26-27.

[18] Sogawa Takeo, "Anpo Jōyaku no hōteki kōzō," *Hōritsu Jihō*, Vol. 41, No. 9 (1969), pp. 12-14; Sogawa (1977), 448-458.

[19] For example, a senior staff writer at the influential *Asahi Shimbun* called the right of collective self-defense a "deformed child" born of the U.S.-Soviet confrontation. Chūma Kiyofuku, *Saigunbi no Seijigaku* (Tōkyō: Chishikisha, 1985), p. 126. In the words of a renowned professor in international law, that right "runs counter to the collective security system" of the United Nations. Mogami Toshiki, "Shūdanteki jieiken to ha," *Sekai (Bessatsu)*, Issue 641 (October 1997), p. 59.

Looking upon it as causing "regression to balance-of-power policies"[20] that prevailed before the two world wars, commentators to this day has continued to cast a critical eye on the concept of collective self-defense.[21] While direct influence of intellectuals on government policy-making may be quite limited, their rather dim view of collective self-defense has no doubt been a factor in setting the tone of debate among political elites in Japan.

As a matter of fact, a first-hand account by a journalist suggests that bureaucrats in the Cabinet Legislation Office, who, as we shall see, play the central role in determining the government interpretation of the Constitution, have tended to regard the very concept of collective self-defense as representing "misuse of the concept of self-defense."[22]

JAPANESE CONSTITUTION AND COLLECTIVE SELF-DEFENSE

What has prevented Japan from exercising the right of collective self-defense, even though that right is written into the Charter of the United Nations? The short answer is, of course, the dictates of the "peace" Constitution of 1946. But it was not until 1972 that Tokyo established a blanket prohibition on the use of force for collective self-defense in the form of a Government View. This View is presumed to be a natural extension of the official interpretation of Article 9 of the Constitution that originated in 1954, the year that saw the creation of the Self-Defense Force (SDF). Accordingly, we will review the 1954 interpretation first, and then take a look at the 1972 Government View.

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[20] Yamagata Hideo, "Kokusaihō kara mita shūdanteki jieiken kōshi yōnin no mondaiten," in Watanabe Osamu et al., *Shūdanteki Jieiken Yōnin o Hihansuru* (Tōkyō: Nihon Hyōronsha, 2014), p. 51.

[21] Throughout the postwar decades, however, there have also been academics taking distinctly favorable views of collective self-defense. Among the more recent work by such scholars are Sase Masamori, *Shūdanteki Jieiken: Ronsō no Tame ni* (Tōkyō: PHP Kenkyūjo, 2001) and Shinoda Hideaki, *Shūdanteki Jieiken no Shisōshi: Kenpō 9-jō to Nichibei Anpo* (Tōkyō: Fūkōsha, 2016).

[22] Nakamura Akira, *Sengo Seiji ni Yureta Kenpō Kyūjō: Naikaku Hōseikyoku no Jishin to Tsuyosa* (3rd ed.; Tōkyō: Saikai Shuppan, 2009), p. 218.

A word of caution is in order here. What is meant by "official interpretation" in this paper is interpretation placed by the executive branch of the Japanese government. Although the Supreme Court has the power of judicial review, it usually desists from ruling on cases of highly political nature such as the construction to be put on Article 9. Within the executive branch, the Cabinet Legislation Office has almost undisputed authority over constitutional matters. Its opinion in effect automatically becomes the interpretation binding the whole government.

1954 Interpretation of Article 9

Consisting of two paragraphs, Article 9, or the no-war provision, of the Japanese Constitution stipulates:

> (1) Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.
>
> (2) In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

How to interpret this article has been a subject of spirited debate throughout the post-World War II period. Most scholars specialized in constitutional studies believe that Article 9 permits no armament whatsoever, even as they generally agree that Japan retains the right of self-defense. Some underline that the first paragraph of the article forbids use of force of any kind, including for self-defense. Those who differ on this point still think that the nation cannot have armed forces because of the total ban on "war potential," or *senryoku*, in the second paragraph. If Japan ever finds it necessary to bring its right of self-defense to bear, it must rely solely on nonmilitary means.

A minority of experts subscribe to what is known as the Ashida Amendment theory, laying stress on the opening phrase of the second paragraph, which was inserted by Ashida Hitoshi during deliberations on

the draft Constitution in the Imperial Diet.[23] The first paragraph of Article 9 prohibits only act of force for aggressive purposes and the "aim" mentioned in the second paragraph points to preventing such act only. The "war potential," the possession of which is disallowed, denotes only what serves that "aim." The nation is therefore entitled to have armed forces that may engage in any action other than prosecuting a war of aggression.

Tokyo originally took a stand similar to that favored by the majority of constitutionalists in academia, indicating that the nation had only a "right of self-defense without arms."[24] It then defended the establishment of quasi-military organizations, the Security Force (*Hoantai*) and the Guard Force (*Keibitai*), in 1952 by claiming that they did not constitute *senryoku* in the meaning of the Constitution because of their lack of capacity to fight "modern wars" effectively.[25] When the SDF was founded two years later, political leaders realized the necessity for laying down a firmer legal foundation for the maintenance of armaments, leading to the 1954 interpretation of Article 9.

Official thinking on the right of self-defense, which has evolved since its first expression in 1954,[26] lies halfway between the viewpoint popular among constitutional scholars and that asserted by the Ashida Amendment theorists. On the one hand, Japan may lawfully turn to force for self-defense. Because the Constitution does not deny the nation the right of self-defense, it naturally permits use of force to the "minimum extent necessary for self-defense." The maintenance of armed forces, like the SDF, whose mission is exclusively to defend against an armed attack and whose capability strictly corresponds with that mission should be possible under

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[23] Ashida was then a member of the House of Representatives and chairman of the subcommittee in charge of revision of the Imperial Constitution. He served as prime minister in 1948.

[24] Statement by Yoshida Shigeru (Prime Minister) at House of Representatives [HR] Plenary Session [PS], January 27, 1950. Yoshida used similar language in the Diet several times in that year. In this paper, references to remarks in the national legislature will be selective, not exhaustive.

[25] For the text of this official interpretation, see Tanaka Akihiko, *Anzen Hoshō: Sengo 50-nen no Mosaku* (Tōkyō: Yomiuri Shimbunsha, 1997), pp. 98-99.

[26] The 1954 interpretation was first enunciated in Ōmura Seiichi (Director of Defense Agency), HR Committee on Budget [BC], December 22, 1954.

Article 9. On the other hand, military capability that goes beyond the "minimum extent necessary for self-defense" constitutes "war potential" in the meaning of the Constitution and as such is prohibited. Important corollaries to the 1954 interpretation developed over time, one of which was the general debarment of sending SDF personnel overseas to undertake combat duties.[27]

Summarizing the government position on the use of force were the Three Conditions for the Exercise of the Right of Self-Defense. The right of self-defense may be invoked only when (1) there are "imminent and unjustifiable infringements" against Japan and (2) there are no other appropriate means to deal with such infringements, and, when defensive action is taken, (3) the use of force should be restricted to the "minimum extent necessary" level.[28] As we shall see, a slight modification would be made in the first of the three conditions by the Abe cabinet in 2014.

1972 Government View on Collective Self-Defense

The 1972 Government View, which has afforded leaders in Tokyo a solid basis for addressing questions related to collective self-defense, comprises four lines of argument.[29] First, it defines the right of collective self-defense of a state as the right to thwart by force an armed attack upon a third state that it has a "close relationship" with, even though the state itself has not come under direct attack.

Second, it affirms that Japan as a sovereign state naturally "possesses" such right under international law, citing not only the UN Charter but also

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[27] Ban on the possession of certain "offensive" weapons was another.

[28] The expression "imminent and illegitimate infringements," or *kyūhaku fusei no shingai*, essentially stands for an armed attack. See, for example, Takatsuji Masami (Director General of Cabinet Legislation Office), HR BC, February 5, 1969; and Kudō Atsuo (do.), HR Special Committee on UN Peace Cooperation, October 25, 1990.

[29] For the text of the 1972 Government View, see Asagumo Shimbunsha Shuppan Gyōmubu, ed., *Bōei Handobukku: Heisei 26-nen ban* (Tōkyō: Asagumo Shimbunsha, 2014), pp. 633-634.

the Peace Treaty with Japan of 1951, the MST, and the Joint Declaration between Japan and the Soviet Union in 1956[30].

Third, the 1972 View defends recourse to arms as long as it remains within the "minimum extent necessary for self-defense." It attempts to reinforce the executive interpretation of the no-war clause dating back to 1954 by stating as follows:

> Although the Constitution, in Article 9, renounces war and prohibits the maintenance of war potential, both as referred to in that article, it also recognizes in the Preamble that "all peoples of the world have the right to live in peace" and provides in Article 13 that "[the people's] right to life, liberty, and the pursuit of happiness shall . . . be the supreme consideration . . . in . . . government affairs." In light of this, it is evident that the Constitution does not go so far as to disallow our nation ensuring its survival or the people living in peace and that the Constitution can hardly be interpreted to prohibit our nation from taking measures of self-defense necessary to maintain its peace and security and ensure its survival.

Finally, what is most important for our purposes, it contends that the exercise of the right of collective self-defense falls outside the purview of "minimum extent necessary for self-defense," hence impermissible under the Constitution. The 1946 document, "which makes 'giving precedence to peace' [*heiwa shugi*][31] its fundamental principle," can scarcely be construed as authorizing just any measures that may be taken for self-defense. Act of force would be legal only when they are considered indispensable to "dealing with imminent, unjustifiable situations where the people's right to life, liberty, and the pursuit of happiness is fundamentally overturned owing to an armed attack by a foreign power, thereby safeguarding these rights of the people." Whereas legitimate use of force would thus be limited to cases in which Japan itself faces "imminent, unjustifiable infringements," the right of collective self-defense as defined above would be invoked only in situations where the nation has yet to come under attack. The exercise of that right, the 1972 View concludes, is therefore "not permitted under the Constitution."

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[30] Article 5 (C) of the Peace Treaty with Japan and Paragraph 3 (b) of the Japan-Soviet Declaration as well as the Preamble of the MST refer to the right of collective self-defense.

[31] *Heiwa shugi* is a term that can denote beliefs and attitudes ranging from absolute pacifism to simple preference for peace to active promotion of peace.

COLLECTIVE SELF-DEFENSE IN JAPANESE DIET

Collective self-defense presupposes a friend that a state considers worth defending as well as the legitimacy of military action as an instrument of national policy. The self-image of the state as an international actor, or its security identity, determines the existence of such a friend, while the acceptability of military means is closely related to its perception of threat.

With that in mind, we will now trace the evolution of Japanese thinking on collective self-defense as displayed in debates in the National Diet.[32] We will do so by dividing the post-World War II decades into five periods, each spanning approximately fifteen years. Each period is associated with a distinct security identity and threat perception.

[32] Sakaguchi Kiyoshi, "Shūdanteki jieiken ni kansuru seifu kaishaku no keisei to tenkai: Sanfuranshisuko kōwa kara Wangan Sensō made," *Gaikō Jihō*, Issues 1330 and 1331 (1996) and Suzuki Takahiro, "Kenpō dai-9-jō to shūdanteki jieiken: Kokkai tōben kara shūdanteki jieiken kaishaku no hensen o miru," *Refarensu*, Issue 730 (2011) give an overview of the relevant Diet debates.

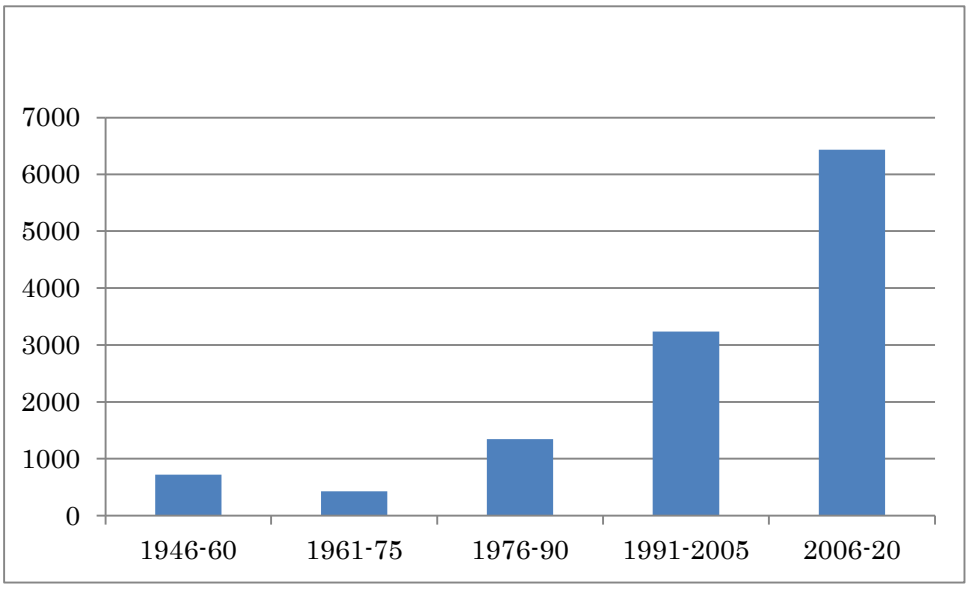

Figure 1

Total Number of Remarks Containing "Right of Collective Self-Defense" by Period[a,b]

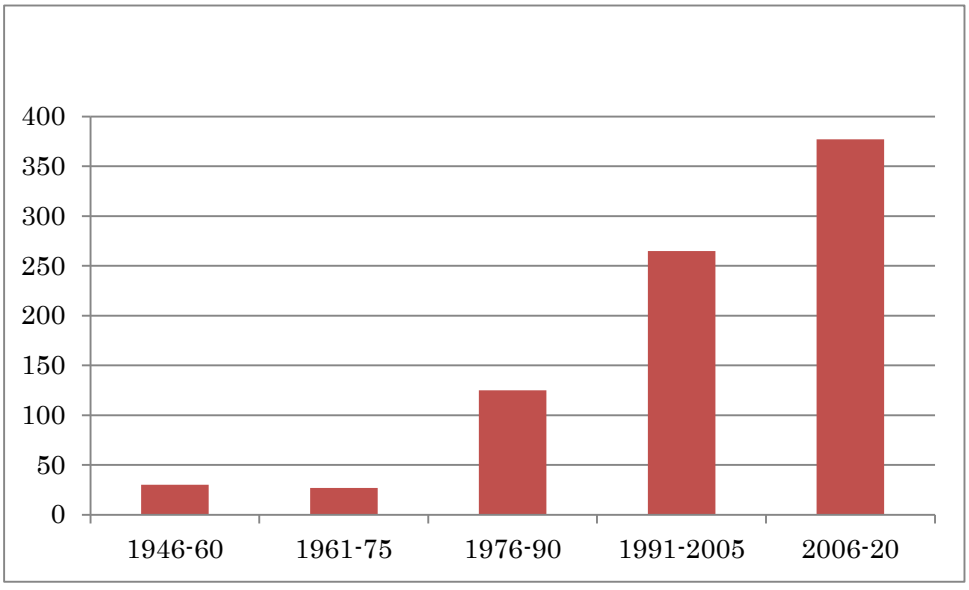

Figure 2

Number of Remarks at Plenary Session Containing
"Right of Collective Self-Defense" by Period[a,b]

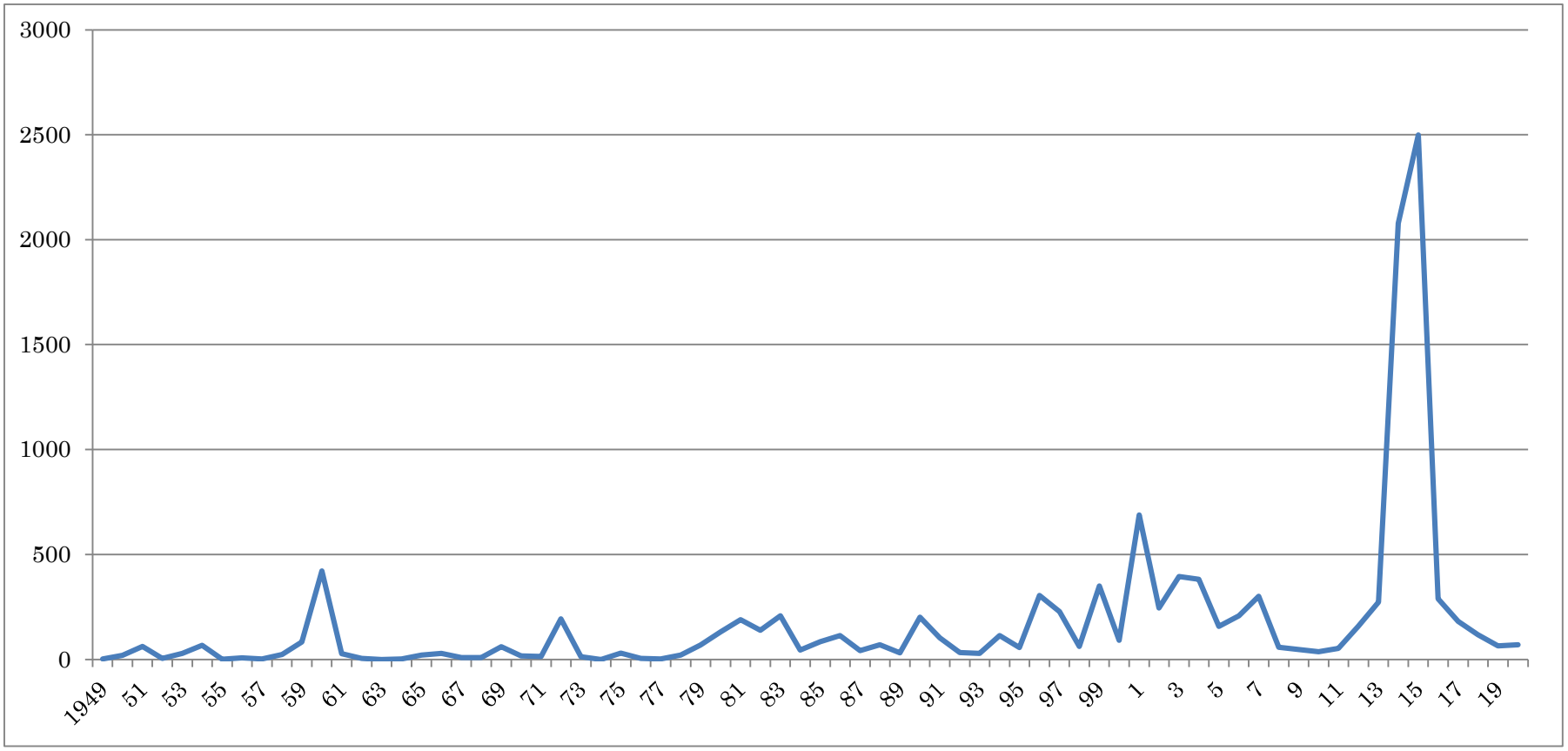

Figure 3

Total Number of Remarks Containing “Right of Collective Self-Defense” by Year[b]

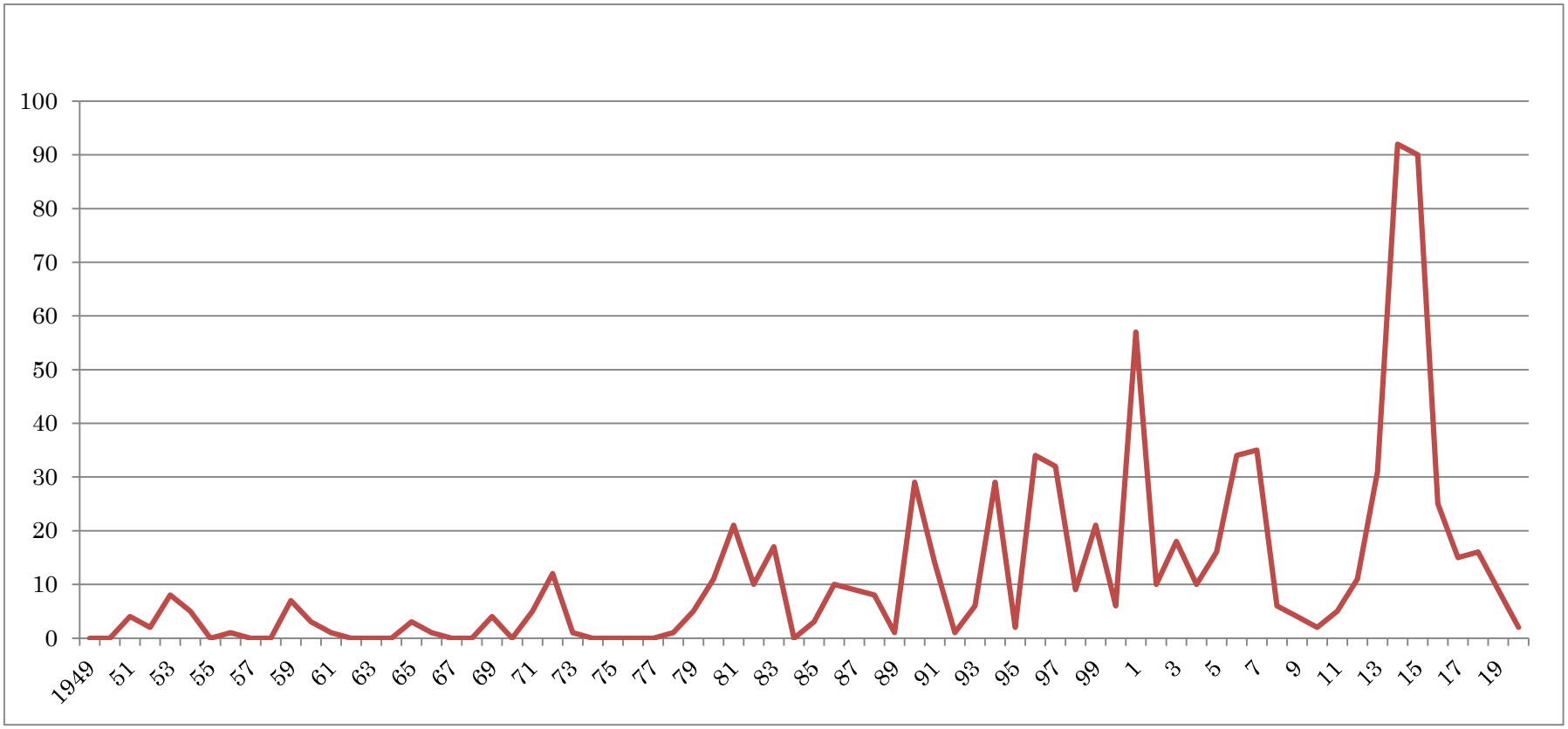

Figure 4

Number of Remarks at Plenary Session Containing "Right of Collective Self-Defense" by Year[b]

[a] Each period consists of exactly 15 years to make comparisons easier.
[b] source: *Record of Diet Proceedings*

Figure 1 depicts the total number of remarks made by legislators in each period that contain the word "the right of collective self-defense" or an expression equivalent to it. The number of such remarks at plenary sessions is recorded in Figure 2. We can infer from these charts that collective self-defense has developed over time from a rather esoteric subject into a topic that politicians readily talk about. This apparent trend generally corresponds to the enlarging scope of SDF activities from Period III onward. As Figures 3 and 4 show, however, the frequency of references fluctuated quite sharply within each period. They topped out in 2014 and 2015, when the Abe government ventured to make a modification in the relevant constitutional interpretation and incorporated it into law.

Period I

Period I extends from the days of the Allied occupation to around 1960, the year the MST was concluded. Conservative politicians, who were in power both before and after the formation of the Liberal Democratic Party (LDP) in 1955, chose to associate with the West as a "member of the Liberal Camp" largely for instrumental reasons.[33] They expected Washington, in particular, to assist in economic recovery and help stem the influence of domestic communism. Although they supported gradual formation of a defense force, their perception of external threat was generally limited. Washington was seen as interested in incorporating Japan in a multilateral security framework in the Asia-Pacific dubbed PATO, NEATO, etc. Keenly aware of the electoral risk of raising the possibility of sending troops abroad, however, political leaders showed relatively little interest in contributing to regional defense.

Meanwhile, those on the political left, spearheaded by the Japan Socialist Party (JSP), strongly resisted to alignment with the West and advocated neutralism. Objection to rearmament was quite vociferous,

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[33] Japanese leaders readily identified the nation as belonging to the "Liberal Camp," or *Jiyūshugi Jin'ei*, in this and the next periods. In the cabinets headed by premiers Hatoyama Ichirō (in office, 1954-56), Kishi Nobusuke (1957-60), Ikeda Hayato (1960-64), Satō Eisaku (1964-72), and Tanaka Kakuei (1972-74), either the prime minister or the foreign minister used this term or one of its equivalents at plenary sessions of the Diet. The "Liberal Camp" here can be equated roughly with the Free World.

precisely because building a defense capability was viewed as part and parcel of that alignment. Pacifism or anti-militarism among Japanese in this period can thus be understood primarily in the context of the desire to abstain from the East-West confrontation. The international orientation of the nation was still assumed to be fluid, and opposition forces were ready to initiate armament once they rose to power and managed to remodel the domestic political structure. According to opinion polls, a majority of Japanese approved going to war to preserve peace or defend the country.[34]

Giving It Two meanings

Japanese leaders faced two types of challenges that affected their approach to the right of collective self-defense. On the one hand, they sought to fasten the security relationship with the United States by giving it a semblance of mutuality. On the other hand, it was essential for them to avoid raising suspicions about sending uniformed personnel overseas.

In dealing with this dual challenge, government officials used the concept of collective self-defense in two different meanings. Resort to force for the defense of another country putatively constituted the narrower definition of the concept. In the broader sense, exercise of the right to collective self-defense would include various actions other than recourse to arms.

During the negotiation for the 1951 Security Treaty, Japanese diplomats insisted that the bilateral relationship should be based on mutual exercise of the right of collective self-defense, on the ground that even a disarmed Japan could contribute to the security of the United States by economic means.[35] Their efforts came to naught, however, because Washington saw Japan incapable of meeting the requirements of "effective self-help and mutual aid" set forth in the Vandenberg Resolution of 1948.

When the ratification of the MST came up in the Diet, Director General Hayashi Shūzō of the Cabinet Legislation Office affirmed that provision of military bases or emergency economic assistance for the United States could

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[34] NHK Hōsō Seron Chōsajo, ed., *Zusetsu Sengo Seron-shi* (Tōkyō: Nippon Hōsō Shuppan Kyōkai, 1975), p. 164.
[35] Sakamoto Kazuya, *Nichibei Dōmei no Kizuna: Anpo Jōyaku to Sōgosei no Mosaku* (enlarged ed.; Tōkyō: Yūhikaku, 2020), p. 54.

be regarded as an exercise of the right of collective self-defense.[36] Prime Minister Kishi Nobusuke endorsed Hayashi's view that such exercise would be permitted under the Constitution.[37]

All this while, Tokyo maintained that Japan could not legally engage in act of collective self-defense in the narrower sense by sending combat forces abroad to aid in the defense of another country. The explanation for this changed over time. At first, Japan under the Constitution had no military forces.[38] Then, it was stressed that the nation was currently not a party to any collective defense arrangement.[39]

Shortly before the SDF was established, a high-ranking Foreign Ministry official cited the nonrecognition of the right of belligerency in arguing that Japan could not enter into an agreement for mutual exercise of the right of collective self-defense.[40] Referring to the dispatch of armed forces to help defend a foreign country as the "core matter," "main body," or "what is most typical" of collective self-defense, Kishi underlined during deliberations on the MST that the Constitution would not allow it.[41]

Negative Image Produced

Lawmakers of opposition parties were at first not particularly negative about collective self-defense, at least in the abstract. As a matter of fact, Asanuma Inejirō, speaking for the JSP in 1951, declared that "it was fortunate" that the Peace Treaty with Japan placed no restrictions on the nation's right to both individual and collective self-defense.[42]

With the conservatives' quest for a tighter Japan-U.S. defense tie well under way, however, left-leaning politicians became more critical of the

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[36] Hayashi Shūzō, House of Councilors [HC] BC, March 31, 1960; Hayashi, HR Special Committee on Japan-U.S. Security Treaty, April 20, 1960.
[37] Kishi Nobusuke, HC BC, March 31, 1960.
[38] Nishimura Kumao (Foreign Ministry official), HC Special Committee on Peace Treaty, November 7, 1951.
[39] Okazaki Katsuo (Minister of Foreign Affairs), HR Joint Committee (Foreign Affairs, Cabinet, Agriculture and Forestry, and International Trade and Industry), March 17, 1954.
[40] Shimoda Takesō, HR Committee on Foreign Affairs [FAC], June 3, 1954. Shimoda cautioned that his remark represented the conclusion of a study within the Foreign Ministry, not the official government position.
[41] Kishi, HC PS, February 10, 1960; Kishi, HC BC, March 31, 1960.
[42] Asanuma Inejirō, HR PS, August 17, 1951.

concept. Collective self-defense, which would effectively legalize "offensive and defensive alliances," had little to do with the "main objective" of the United Nations.[43] Article 51 could accordingly be labeled as an "illegitimate child" or a "changeling" of the UN Charter.[44]

Opposition legislators emphasized that the right of collective self-defense was susceptible to abuse. The United States had in fact misused it in Lebanon and might conceivably do so in areas closer to Japan. According to Socialists, Washington, perhaps with prompting from the South Koreans, South Vietnamese, or Taiwanese, might resort to illegal use of force in the name of collective self-defense.[45] A Diet member of the Japanese Communist Party (JCP) branded Article 51 as a "fig leaf" to cover America's aggressive military action and interference in the internal affairs of other countries.[46]

Antipathy to the alignment with the United States thus alienated the political left from the notion of collective self-defense itself. Socialist Ishibashi Masashi carried it to the extreme. "The very idea of the right to collective self-defense, mutual defense, or mutual assistance," he proclaimed, "is against the Constitution." "Considering an infringement or aggression against another country to be an aggression against Japan" was in and of itself deemed illegitimate.[47]

Defending U.S. Forces in Japan

From the vantage point of leftist critics, it looked as though the LDP government was trying to make collective self-defense more palatable to the electorate by highlighting the broader definition of the concept. Tokyo might be quietly preparing the nation to exercise the right of collective self-defense in the narrower sense, i.e. sending military personnel abroad to

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[43] Ōnishi Masamichi, HR FAC, May 17, 1957.
[44] Hozumi Shichirō, HR Special Committee on Japan-U.S. Security Treaty, May 3, 1960.
[45] Hozumi, HR Special Committee on Japan-U.S. Security Treaty, April 11, 1960; Tokano Satoko, HR Special Committee on Japan-U.S. Security Treaty, April 11, 1960. In the words of Hozumi and Tokano, the unwavering belief in U.S. righteousness on the part of Tokyo was comparable to "holy war thinking" or "fanaticism for Germany" during World War II.
[46] Iwama Masao, HC BC, March 12, 1960.
[47] Ishibashi Masashi, HR Committee on Cabinet [CC], February 10, 1959.

participate in the defense of another country, as well. Use of force to help protect U.S. forces deployed in Japan as provided in Article 5 of the MST could function as "spadework" for it.[48] According to that article, in the event of "an armed attack against either Party in the territories under the administration of Japan," each party would recognize it as "dangerous to its own peace and safety" and "act to meet the common danger."

As a matter of fact, the legal character of the SDF action to defend U.S. bases and other military assets located in Japan was one of the subjects most hotly debated during the deliberations about the bilateral pact. The Kishi government insisted that such action should be explained in terms of individual self-defense, on the ground that no attack on the U.S. military could be executed without trespassing on Japanese territory. Although officials conceded that the nation could in theory be understood as exercising its right of collective self-defense, they steadfastly rejected this interpretation to avoid being "forced to send troops overseas" or "wrongly assumed to be able to do so."[49]

For their part, legislators in the opposition persisted in their argument that the SDF's contribution to the defense of U.S. forces in Japan should be recognized as an exercise of the right of collective self-defense. Unless Japanese action was founded on the right of collective self-defense, the MST would not embody the principle of mutual aid set down in the Vandenberg Resolution and so the United States would not have consented to its conclusion. Depending on its scale and mode, moreover, an assault on U.S. forces stationed in Japan might not constitute an armed attack against Japan itself, in which case the nation could not lawfully turn to individual self-defense. Thus, from the viewpoint of leftist lawmakers, Tokyo was getting ready to authorize act of collective self-defense by military means, albeit only in the event of an attack on Japanese territory, without acknowledging it.

Period II

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[48] Akiyama Chōzō, HC BC, March 31, 1960.

[49] Akagi Munenori (Director General of Defense Agency), HR CC, November 20, 1959. It is of interest what entity was thought to be able to "force" Tokyo to send SDF troops overseas.

Period II represents the years between the early 1960s and the mid-1970s. The security arrangements with the United States and gradual enhancement of defense capability within that framework took increasingly firm root. Political leaders continued to perceive little threat from outside, while their concern with widespread domestic disturbances also subsided. Conservative politicians embraced alignment with the West essentially for instrumental reasons as before, though their focus shifted to the role of the MST in facilitating economic growth by allowing Tokyo to keep spending for the SDF within bounds. Those in leadership positions began to call their nation an "advanced country."[50]

What all this meant for the left in Japan was that the nation's basic stand in the bipolar confrontation in the world was in effect no longer open to change. With neutralism more and more difficult to put into practice, pacifism/anti-militarism that they had been preaching was severed from an actual policy choice. Instead, it came to be cherished as an abstract principle and gained wider public appeal as such. Opposition forces stopped referring to armament in the event of their assuming power and the JSP, the largest of the out-parties throughout this period, held up the banner of "unarmed neutrality." Surveys found the vast majority of people to be against fighting a war for any reason whatsoever.[51]

Mindful of the popular attraction of pacifism/anti-militarism, Tokyo placed various constraints on defense policy to solidify domestic support further for the MST and the SDF. The 1972 Government View laying down prohibition on the exercise of the right to collective self-defense was one of those constraints.[52] It was largely a response to a tarnished image of that right caused by the Vietnam War in combination with a growing concern about the possibility that the nation might be led to exercise it abroad.

Negative Image Compounded

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[50] Satō was the first prime minister that described Japan as an advanced nation without any qualification in his address to the plenary session of the Diet.

[51] NHK Hōsō Seron Chōsajo (1975), 164.

[52] The Three Non-Nuclear Principles (1967), Three Principles on Weapons Exports (1967), ban on military uses of outer space (1969), and one-percent (of gross national product, or GNP) ceiling on annual defense spending (1976) were also constraints institutionalized in this period.

While the government of Prime Minister Satō Eisaku steadfastly supported Washington's intervention policy, the war in Vietnam was deeply unpopular with the Japanese public.[53] Much of the criticism of that war in the Diet focused on the validity of the invocation of the right of collective self-defense by the United States for the South Vietnamese.

For example, leftist lawmakers charged that South Vietnam was not entitled to enter into a collective defense relationship with another state, because it was not a member of the United Nations.[54] Moreover, the Saigon government was nothing more than a "puppet regime"[55] and U.S.-South Vietnam defense arrangements had even less authenticity than "agreements between Japan and the Wang Zhaoming regime" during World War II[56].

Politicians in the opposition also raised doubts as to whether the infiltration from the North amounted to an armed attack. Rather, as a Communist legislator asserted, it was "unmistakably the Americans themselves" who initiated military aggression in Vietnam.[57] Even if the activities of the North Vietnamese constituted an armed attack on the South, the United States failed to establish that its own security was threatened, a condition critics claimed to be necessary for Washington to have recourse to collective self-defense.

From the perspective of left-leaning Diet members, U.S. military action violated the principle of proportionality as well. Accusations were made against the bombings of the North and, in particular, the mining of the port of Haiphong toward the end of the U.S. involvement. For all these and other reasons, opposition politicians generally held the view of the Vietnam War not dissimilar from that of a Socialist, who accused the United States of committing a "shameful act like daytime burglary" that was comparable to Japan's Manchurian and China Incidents.[58] It was noteworthy that such act was begun and being executed in the name of collective self-defense.

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53 NHK Hōsō Seron Chōsajo (1975), 181.
54 Jurists generally agree that the right of self-defense, individual or collective, is "inherent" to all states including those outside the United Nations.
55 Matsumoto Shichirō, HR PS, April 15, 1965.
56 Hozumi, HR FAC, February 18, 1966.
57 Hoshino Tsutomu, HC PS, May 12, 1972.
58 Hozumi, HR FAC, February 18, 1966.

Overseas Deployment Feared

Meanwhile, the war in Vietnam helped to generate concern that the nation might somehow be pushed into sending SDF troops overseas in an exercise of the right of collective self-defense. By the late 1960s, the United States, largely because of frustration in Vietnam, became eager to reduce military presence in the Far East and in fact began a large-scale drawdown of forces deployed in the region. It was widely believed that Washington expected Tokyo to take over some of its responsibilities in collective defense of the Asia-Pacific in return for reversion of the administrative control of Okinawa.

Proposals like the one for creating a multilateral APATO (Asia-Pacific Treaty Organization) caused left-leaning politicians to worry that requests would be made sooner or later for Japan to "assume a military role with regard to collective security in anti-communist Asia" beyond the provision of bases for U.S. forces.[59] Their anxiety found a focal point in the joint statement issued by Prime Minister Satō and President Richard M. Nixon in 1969. As the Japanese premier declared, the security of South Korea was "essential to Japan's own security" and that of Taiwan a "most important factor for the security of Japan."[60]

Tightening the Interpretation

Against this background, the Japanese government started to tighten its interpretation of the Constitution in regard to collective self-defense. Executive officials stopped mentioning the broader definition of the right to collective self-defense and began to speak in more unequivocal terms of prohibition on the use of force in the exercise of that right. Director General Takatsuji Masami of the Cabinet Legislation Office noted that Article 9 could hardly be construed as permitting act of force for the defense of another country "even if that country is supposed to have a solidary relationship with our country."[61] "It might sound selfish," but, while Japan could benefit from

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[59] Tate Kenjirō, HR BC, February 19, 1969.
[60] "Joint Statement of Japanese Prime Minister Eisaku Sato and U.S. President Richard Nixon," November 21, 1969.
[61] Takatsuji Masami, HR BC, February 19, 1969.

collective self-defense invoked by other nations, it could not send troops for their security.[62]

According to Takatsuji, who had also been a central figure in crafting the 1954 interpretation of Article 9, Japan should be allowed to "brush off sparks,"[63] or repel an armed attack perpetrated against it, but the nation could not lawfully use its military capability in any other way. The exercise of the right of collective self-defense, which would mean taking up arms in the absence of an attack on Japan itself, signified use of force as "means of settlement of international disputes," which was explicitly forbidden by the Constitution.[64]

Colloquies with Minakuchi

Although the main elements of the 1972 View on collective self-defense were present in the remarks of Takatsuji, it was only after several lengthy exchanges between Socialist Minakuchi Kōzō and government representatives that Tokyo put forward its formal stand in writing.[65]

In those exchanges, Minakuchi sought the answer to the question whether non-exercise of the right of collective self-defense was mandated by the Constitution or just a statement of government policy. If the Constitution allowed the nation to have recourse to arms (to the minimum extent necessary) for self-defense, as official Tokyo maintained, then it should permit the use of force for collective self-defense, because Article 9 made no distinction between individual and collective self-defense. "Where in the Constitution is it written that the right of collective self-defense cannot be exercised?" he pointedly asked.[66] Tokyo's rejection of military action for collective self-defense could only be understood simply as an expression of current policy and as such was amenable to change with the international and domestic political condition.

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62 Takatsuji, HC BC, March 5, 1969.
63 Takatsuji, HC BC, March 31, 1969.
64 Takatsuji Masami, "Seiji to no fureai," in Naikaku Hōseikyoku Hyakunenshi Henshū Iinkai, ed., *Shōgen Kindai Hōsei no Kiseki: Naikaku Hōseikyoku no Kaisō* (Tōkyō: Gyōsei, 1985), pp. 42-43.
65 The most relevant exchanges took place on May 12, May 18, and September 14, 1972.
66 Minakuchi Kōzō, HC CC, May 12, 1972.

From the perspective of Minakuchi, moreover, Japan did not have to wait for its territory to be invaded to exercise its right of self-defense. There could be situations where an armed attack on another country was tantamount to an armed attack on Japan itself. If, for example, the nation's security were to be seriously threatened by a major assault against South Korea, as was suggested in the 1969 Satō-Nixon statement, Tokyo would be entitled to bring the right of collective self-defense to bear.

Minakuchi being a member of the JSP, his own interpretation of the Constitution was that, if Japan should exercise the right of self-defense, whether individual or collective, it would have to do so exclusively with nonmilitary means. If, on the other hand, recourse to force for self-defense was permitted under Article 9 (as maintained by Tokyo), non-exercise of the right to collective self-defense was simply a government policy (as suspected by Minakuchi), and Japan could invoke that right before it came under attack (as contended by Minakuchi), then it would be impossible to dispel the concern that the SDF might one day be sent to Korea or possibly to Taiwan, or might even "go to the Strait of Malacca to participate in combat operations."[67]

In response to this Socialist challenge, Yoshikuni Ichirō, head of the Cabinet Legislation Office, made clear that non-exercise of the right to collective self-defense was not a mere policy statement but a constitutional requirement. He explained that the Constitution did not demand that the nation should acquiesce in its territory being overrun by a foreign power and the people undergoing intense suffering as a result. Measures of self-defense, the purpose of which would be to "brush off sparks" in the parlance of his predecessor, could not be initiated, however, until at least "immediately before" such eventuality, or when an aggression against Japan was about to take place or have actually begun to take place.[68]

According to Yoshikuni, moreover, armed attack on another country, no matter how close the relationship between Japan and that country might be, would not itself "constitute a situation in which the people of our country are suffering."[69] For this reason, the right of collective self-defense could not be exercised under Article 9 of the Constitution. Minakuchi's request for a

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[67] Minakuchi, HC CC, May 18, 1972.
[68] Yoshikuni Ichirō, HC Committee on Audit [AC], September 14, 1972.
[69] Yoshikuni, HC AC, September 14, 1972.

written statement incorporating such standpoint of Tokyo led to the submission of the 1972 Government View to the Diet.

Period III

Period III corresponds to the last fifteen or so years of the Cold War. The LDP government no longer hesitated to call the bilateral relationship with the United States an "alliance."[70] While they continued to prize the alignment with the West for tangible security and economic benefits, Japanese leaders also began to stress that the nation shared the basic values of freedom and democracy with the Americans and Europeans. As a "member of the West," they argued, Japan should have a hand in upholding the international order being sustained chiefly by the United States.[71] At the same time, the supposed uniqueness, for good or ill, of Japanese political culture attracted attention both inside and outside the country.

Meanwhile, threat situation facing Japan turned for the worse. Soviet military posture in the Far East came to be perceived at least as a "potential threat" to the nation's security.[72] It also presented a serious challenge to the Western international order, especially by constraining the deployment options for U.S. forces in the Pacific. Japan's ability to defend the homeland and sea lanes in the Western Pacific was thus deemed critically important for U.S. global strategy.

Against this background, cooperation between the SDF and the U.S. military gradually took shape. Tokyo and Washington agreed on Guidelines for Japan-U.S. Defense Cooperation focused on a Japan contingency (i.e., a situation in which Japan came under attack) in 1978. Planning for combined operations in such contingency as well as studies on sea lane defense got under way, while the scope of combined training exercises expanded.

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[70] "Joint Communique of Japanese Prime Minister Zenko Suzuki and U.S. President Reagan," May 8, 1981. Previously, high officials in Tokyo had from time to time described the Japan-U.S. relationship in similar ways, but on less noticeable occasions.

[71] The first prime minister that characterized his nation as such in the Diet was Suzuki Zenkō (1980-82), the last Kaifu Toshiki (1989-91).

[72] The annual Defense White Paper, *Nippon no Bōei*, used the expression "potential threat" for ten consecutive years beginning in 1980.

Conscious of the need to answer the U.S. expectation for greater defense burden sharing by Tokyo, Japanese prime ministers on their visit to Washington spoke of the protection of sea lanes out to 1,000 miles,[73] likened Japan to an "unsinkable aircraft carrier" blocking the advance of Soviet bombers into the Pacific,[74] and referred to the aim of "complete and full control of four straits" around the Japanese islands to impede the movements of the Kremlin's navy.[75]

Mounting concern over the Soviet capability and intentions led to a growing support for arms and alliances by the Japanese public. While pacifism/anti-militarism retained substantial, if decreasing, influence, it manifested itself mainly in efforts to preserve the constraints on defense policy institutionalized in the previous period.[76]

Tokyo was thus poised to expand the role of Japan in alliance security, primarily by enhancing the capacity of the SDF to respond to Soviet provocations in areas close to Japan. At the same time, it had to mollify the people who were disturbed by such trend, including those agitated by the rhetoric employed by national leaders as mentioned above. In these circumstances, those representing the government in the Diet doubled down on the constitutional proscription against the exercise of the right to collective self-defense, while quietly pushing the envelope of individual self-defense.

Canonizing Prohibition

Blanket prohibition on the exercise of the right of collective self-defense, established in the 1972 Government View, became something of an unalterable canon in this period. A new executive position on the question was advanced in 1981, but it was essentially an abridged version of the 1972 View.[77] According to Director General Tsunoda Reijirō of the Cabinet Legislation Office, the possibility that Japan could put that right to use was

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[73] *Yomiuri Shimbun*, May 9, 1981 (evening edition).
[74] *Washington Post*, January 19, 1983.
[75] Ibid.
[76] The one-percent ceiling on defense outlays was removed and exceptions were made to the Three Principles on Weapons Exports in this period.
[77] For the text of the 1981 Government View, see Asagumo Shimbunsha Shuppan Gyōmubu (2014), 633.

absolutely "zero."[78] Even when armed aggression against a neighboring country might "decide the fate" of Japan, the nation could not turn to the right of self-defense, unless and until an attack was launched against it.[79] Tsunoda further stated that a revision of the Constitution itself would be a precondition for the exercise of the right to collective self-defense to be contemplated.[80]

Emphasis on the ban on the exercise of the right of collective self-defense, however, afforded opposition lawmakers a clear baseline from which they could accuse the LDP government of deviating. Left-leaning politicians focused their criticism on the nature of sea lane defense that the nation was prepared to take on. They charged that Tokyo had acquiesced in the U.S. demand for it to assume comprehensive responsibility for the defense of certain sea areas (and the airspace above), or engage in *kaiiki buntan*, in the Western Pacific. Such an undertaking would very likely entail protection of foreign ships (and planes) including U.S. aircraft carriers by the SDF even when Japanese territory was not under attack, which of course meant an exercise of the right to collective self-defense.

Members of out-parties also took exception to the SDF's participation in combined training exercises presided over by the United States, most notably the multinational Rim of the Pacific Exercise (RIMPAC). RIMPAC allegedly envisaged Japan along with other partners of the United States playing a part in defending the Pacific against the Soviet navy, in the event the bulk of U.S. maritime forces should be redeployed elsewhere, say, in the Persian Gulf. Thus, according to a Socialist Doi Takako, RIMPAC could only be understood as "premised on the exercise of the right of collective self-defense."[81]

At the same time, opposition politicians frequently relied on the broader conception of collective self-defense, which official Tokyo had discarded by 1972, in challenging the government. From their standpoint, SDF activities in cooperation with the U.S. military, especially those outside Japanese territory, were all suspect. A Communist lawmaker thus asserted that the 1978 Guidelines for bilateral defense cooperation in their entirety "cannot be

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78 Tsunoda Reijirō, HR Committee on Judicial Affairs [JAC], June 3, 1981.
79 Tsunoda, HR JAC, June 3, 1981.
80 Tsunoda, HR BC, February 22, 1983.
81 Doi Takako, HR FAC, December 14, 1979.

rationalized except in the name of collective self-defense."[82] More concrete issues raised by leftist critics included exchange of tactical intelligence with U.S. forces, financial contribution and logistic support for Americans in action outside Japan, and participation in research for Washington's Strategic Defense Initiative (SDI).

Government representatives, for their part, found the 1972 View useful in fending off attacks from the opposition. It enabled them to justify whatever action they were taking or planning to take simply by disclaiming any intention to go against the ban on the right of collective self-defense. What the nation would undertake on sea lane defense was, for example, a functional division of responsibility with the Americans, not a geographical one as suggested by the term *kaiiki buntan*.[83] The purpose of Japanese participation in RIMPAC was strictly to improve combat skills of the SDF and had nothing to do with any scheme for multilateral defense in the Pacific.[84] Sticking to the narrower definition of the right of collective self-defense, Tokyo also readily dismissed criticism from opposition legislators concerning activities other than direct use of force.

Expanding Individual Self-Defense

Meanwhile, the LDP government started to stretch the meaning of individual self-defense with respect to sea lane defense. Rejection of *Kaiiki buntan* was presumed to signify, for example, that, even in a Japan contingency, the nation did not have the "responsibility" or "obligation" to repel an attack on the high seas against U.S. warships participating in the defense of Japan. Government officials had in fact explained in the mid-1970s, "rescue" or "protection" of such U.S. vessels could take place only "as a consequence" of SDF operations to defend Japan itself, if at all.[85]

Within several years, however, Tokyo changed its tune. Making a clear distinction beforehand between the rights to individual and collective self-defense was difficult, it was pointed out, as far as sea lane defense was

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[82] Senaga Kamejirō, HR PS, January 30, 1979.
[83] Shiota Akira (Defense Agency official), HC BC, April 5, 1982.
[84] Sassa Atsuyuki (Defense Agency official), HC AC, November 28, 1979 etc.
[85] Maruyama Kō (Defense Agency official), HR FAC, June 18, 1975;
Miyazawa Kiichi (Minister of Foreign Affairs), HR BC, October 29, 1975.

concerned.[86] Prime Minister Nakasone Yasuhiro in effect declared that, when Japan was under attack, SDF action with the intention of guarding U.S. vessels speeding for Japan to assist in its defense would fall within the purview of individual self-defense.[87] According to a Defense Agency official, escort by Japanese forces for a U.S. carrier battle group "on its way for an attack on the Maritime Territory [of the Soviet Union]" or for a strategic nuclear submarines patrolling in the Western Pacific would be permitted under the Constitution, on condition that it was practiced as part of the endeavor to deal with a Japan contingency.[88]

In a similar vein, it was affirmed in as late as 1982 that an assault on a cargo ship of foreign registry would not authorize Japan to take measures of self-defense.[89] The Japanese government had reached a slightly different conclusion by the following year, however. Protection by the SDF of merchant ships carrying commodities deemed indispensable to "repulsing an armed attack against our nation" or "ensuring the survival of our people" would be a legitimate exercise of the right of individual self-defense.[90]

Finally, some out-party politicians began to fault the official interpretation of Article 9 for being too restrictive on the use of force. Ōuchi Keigo of the centrist Democratic Socialist Party, for example, expressed concern over the fact that Japan could do nothing to defend U.S. forces outside Japanese territory when an attack on Japan was impending but had not materialized, even under the new parameters of individual self-defense set by Nakasone and his aides.[91] Criticism of this nature on Tokyo's security policy was a new phenomenon in the Diet and anticipated what was to come when the Cold War ended.

Period IV

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[86] *Yomiuri Shimbun*, September 4, 1982.
[87] Nakasone Yasuhiro, HR BC, February 4, 1983.
[88] Natsume Haruo (Defense Agency official), HC CC, March 24, 1983; Natsume, HC AC, May 11, 1983.
[89] Kuriyama Takakazu (Foreign Ministry official), HR BC, February 23, 1982.
[90] Tanikawa Kazuo (Director of Defense Agency), HC BC, March 15, 1983.
[91] Ōuchi Keigo, HR BC, February 8, 1983.

Roughly a decade and a half after the end of the Cold War constitutes Period IV. With the demise of the Eastern bloc, Western political and economic ideas appeared to prevail throughout the globe. Japan eagerly embraced that turn of events from the viewpoint of both national interests and democratic values. Interest in the distinctive character of Japanese society and culture substantially decreased both within Japan and internationally. *Kokusai kōken*, or contribution to the emerging international order, became a buzzword in post-Cold War Japan for some time.[92]

When Iraq invaded Kuwait in 1990, the Japanese government tried but failed to send SDF troops to the Persian Gulf region to provide logistic support for the U.S.-led coalition forces. Subsequently, however, it succeeded in creating, and then acting on, a framework for dispatching uniformed personnel for UN peacekeeping operations.

Tokyo and Washington redefined their alliance relationship to suit the new security environment. The emphasis was placed first on meeting the instabilities and uncertainties in the Asia-Pacific and then on addressing global problems such as terrorism and the proliferation of weapons of mass destruction. The Guidelines for Japan-U.S. Defense Cooperation was updated in 1997 to facilitate support for U.S. forces in the event of *shūhen jitai*, or Situations in Areas Surrounding Japan (SIASJ), most notably on the Korean Peninsula.

After 9/11, Japan dispatched SDF vessels to the Indian Ocean to assist in the anti-terror operations that the Americans and others were conducting in Afghanistan and elsewhere. In the wake of the regime change in Baghdad, Japanese units were sent to Iraq for humanitarian reconstruction assistance.

Pacifism/anti-militarism within Japan, which mostly took the form of fighting against the removal of existing constraints on defense policy, died hard. But Tokyo's job of persuading the public into accepting an enlarged scope of SDF activities was made easier by the fact that such activities could be presented as service to the international community as a whole, not to one group of states in a divided world. The JSP, which formed a coalition

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[92] This notion was virtually unknown until the mid-1980s. References to it in the Diet peaked in the early 1990s and then gradually decreased.

government with the LDP for a couple of years, gave a nod to the MST and the SDF, and then disappeared as a major political force.

Under these circumstances, it was considered critically important for Japanese leaders to harmonize the new missions of the SDF with the 1972 Government View on the right of collective self-defense. By doing so, officials in Tokyo hoped to counter the opposition charge that the proscription against the exercise of that right was being brought to naught. At the same time, they were keen to hold back the pressure for a reinterpretation of the Constitution to extend the range of legitimate act of force putatively for the sake of better adapting to the changed international environment.

Inventing "Integration" Argument

Most prominent of official Tokyo's efforts to accommodate the new missions of the SDF to the no-war provision of the Constitution was the virtual invention of the concept of *ittaika*, or "integration," with use of force by another country. Although its origin went back to 1959,[93] the "integration" argument in its current context was first put forward during Diet debates on the nation's response to the Persian Gulf Crisis.

Opposition lawmakers stressed that the coalition forces confronting the Iraqis were organized not by the United Nations but by individual states. Any material support for them by Japanese troops would therefore constitute an exercise of the right of collective self-defense.[94] Even if the SDF personnel stayed away from the presumed battlefield, moreover, they might still find themselves involved in fighting, because "front" and "rear" could not be effectively distinguished in modern warfare.

Representatives of the government countered that the anti-Iraq coalition was acting on behalf of the United Nations. More important, the Constitution would allow SDF troops to be deployed in the Gulf to engage in logistic support as long as their activities were not "integrated" with combat operations of other militaries. Director General Kudō Atsuo of the Cabinet Legislation Office offered four criteria for *ittaika*. They comprised 1) physical distance of the SDF units from the foreign troops to be supported, 2)

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93 Hayashi, HC BC March 19, 1959.

94 Many in the opposition continued to base their argument on the broader conception of collective self-defense.

action of the SDF units in the concrete, 3) closeness of relationship between the SDF units and those among the foreign troops tasked with actual use of force, and 4) current state of operations of the foreign troops.[95]

Although lack of popular support eventually forced the government to give up on sending SDF personnel to the Gulf, the "integration" argument subsequently became a silver bullet for Tokyo in defending its policy of participating in UN peacekeeping operations and providing logistic services for U.S. and other militaries in other contexts.

"Integration" Argument as a Silver Bullet

Leftist politicians were strongly against sending Japanese troops abroad for any purpose, and they put up stiff resistance to SDF participation in UN peacekeeping. Government officials overcame the resistance by arguing that the Five Principles for Participation would effectively preclude *ittaika*,[96] thus making contribution to peacekeeping by Japanese units permissible under the Constitution.

Members of out-parties dismissed the notion of SIASJ as ill-defined and dangerous, doubted the legality of U.S. military action in Afghanistan, and lambasted the Iraq War as totally unjust. In their view, Japanese leaders were all too eager to have a hand in America's war and, since rear support and combat operations were in reality inseparable, the constitutional ban on the exercise of the right of collective self-defense was being rendered meaningless. Repudiating the characterizations of SIASF, Afghanistan, and Iraq by opposition politicians, government representatives reiterated

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[95] Kudō Atsuo, HR Special Committee on UN Peace Cooperation, October 29, 1990. These criteria were restated in Ōmori Masasuke (Director General of Cabinet Legislation Office), HC CC, May 21, 1996.

[96] Kudō, HR Special Committee on International Peace Cooperation, September 25, 1991. According to the Five Principles for Participation incorporated in the International Peace Cooperation Law of 1992, peacekeeping operations by SDF units were premised on ceasefire agreements among the parties to the armed conflict and consent for Japan's participation in peacekeeping. Moreover, the operations must not favor any of the parties to the armed conflict and must be terminated should any of the preceding conditions cease to be met. Finally, use of weapons must be limited to the minimum extent necessary for the protection of the lives of the personnel. The last requirement was somewhat relaxed in subsequent years.

that SDF operations would never get "integrated" with use of force by the United States or any other country.

A couple of words were crafted in an effort to make sure *ittaika* would not take place. The 1997 Guidelines for bilateral defense cooperation and the subsequent legislation incorporating the Guidelines designated what Japanese personnel would perform in SIASJ as "rear area support." The SDF outside Japanese territory would execute its duties only in "rear areas," which meant areas "where combat operations are neither being conducted nor expected to be conducted throughout the period of its operation."[97] Similar geographical restrictions were applied to the anti-terror activities in the Indian Ocean and the humanitarian reconstruction assistance activities in Iraq, although in these cases the areas in which SDF personnel were allowed to carry out their assignments were generally referred to as "noncombat zones."[98] High officials in the LDP government candidly admitted that "rear area" and "noncombat zone" were devised with a view to assuredly avoiding "integration" with use of force by other militaries.[99]

Pressure for Reinterpretation

Even as they deflected largely predictable criticisms from the left, those speaking for the government were obliged to pay attention to calls for a rethinking on the no-war provision in the Constitution. According to the 1954 interpretation of Article 9, only the use of force that came within the category of "minimum extent necessary for self-defense" would be permitted. Whether such a stringent restriction on the use of force would accord with the post-Cold War international environment and Japan's role in it had become the question of major importance.

For example, a study group headed by Ozawa Ichirō, then one of the most powerful figures in the LDP, proposed in 1992 that the Japanese government should alter its interpretation of the no-war clause so that the nation might be able to take part in enforcement actions by the United

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[97] Bōeichō, ed., *Nippon no Bōei: Heisei 11-nen ban* (Tōkyō: Ōkurashō Insatsukyoku, 1999), p. 223.
[98] Bōeichō, ed., *Nippon no Bōei: Heisei 16-nen ban* (Tōkyō: Kokuritsu Insatsukyoku, 2004), p. 196.
[99] Kōmura Masahiko (Minister of Foreign Affairs), HC BC, February 23, 1999; Ishiba Shigeru (Director of Defense Agency), HR PS, June 24, 2003.

Nations.[100] In 2004, nongovernmental experts put together to help Tokyo draw up new national defense program guidelines urged the government to "promote the debate on the exercise of the right of collective self-defense in order to clarify what Japan should and/or can do within the framework of the Constitution, and expeditiously settle this issue."[101]

By the turn of the century, moreover, it appeared as if a revision of the Constitution itself had become a real possibility for the very first time since its promulgation in 1946. Both houses of the National Diet set up a Constitution Research Council to conduct comprehensive studies on the supreme law of the land, and it produced its first and final report in 2005. That year also saw an LDP draft constitution as well as an outline for constitutional revision by the Democratic Party of Japan (DPJ), then the largest party in the opposition.[102]

In this political environment, it was hardly surprising that conservative as well as centrist lawmakers should start pushing official Tokyo to reconsider its interpretation of the Constitution in respect of the right to collective self-defense. As they saw it, security cooperation with the United States considered possible in the existing legal framework would be too narrow in scope for Japan to play an active role in regional security or even to ensure its own security. Moreover, the artificial distinction between "front" and "rear" that the government would make to prevent *ittaika* could cause unnecessary confusion on the ground.

In discussing the implications of a redefined Japan-U.S. alliance in 1996, for example, those speaking for the two largest political parties at the time, the ruling LDP and the opposition New Frontier Party, both urged official

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[100] The outline of the draft report is found in *Asahi Shimbun*, February 21, 1992.

[101] Council on Security and Defense Capabilities, *Japan's Visions for Future Security and Defense Capabilities*, October 2004, p. 33. This is the English version of the group's report.

[102] By removing the second paragraph of Article 9, which prohibits the maintenance of "war potential," the LDP draft would authorize the exercise of the right to collective self-defense. The DPJ proposal was less clear on this point, although the nation's right of self-defense would be written into the new constitution. *Yomiuri Shimbun*, November 1, 2005.

Tokyo to take another look at collective self-defense.[103] The following year, Maehara Seiji, a DPJ security expert, wondered if there could be no exercise of the right to collective self-defense that would fall within the limit of "minimum extent necessary for self-defense."[104] Abe Shinzō of the LDP raised essentially the same question in 2004, on the assumption that "minimum extent necessary" was a concept indicating the quantitative limit of military endeavors.[105] Other conservative politicians, including those outside the LDP, also called for adjustments to the government position embodied in the 1972 View, citing North Korea, weapons proliferation, terrorism, etc.

High officials in the Japanese government occasionally signaled that they might be ready for a new approach to the right of collective self-defense. Two cabinet members of a short-lived non-LDP coalition government reportedly talked of the need for rethinking the proscription against its exercise.[106] Prime Minister Koizumi Jun'ichirō stated several times in the Diet that he was open to "investigating" the question "from various angles."[107]

Withstanding the Pressure

In the end, however, the enthusiasm displayed by some Diet members for a relaxation of legal constraints on the use of force fell short. The *status quo* stoutly defended by officials in the executive branch won out.

Sticking to the 1954 interpretation of Article 9, for example, government representatives turned down participation in enforcement measures authorized by the United Nations. Use of force as part of such measures

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[103] Takebe Tsutomu, HR PS, April 23, 1996; Aichi Kazuo, HR PS, April 23, 1996.
[104] Maehara Seiji, HR PS, December 2, 1997.
[105] Abe Shinzō, HR BC, January 26, 2004.
[106] *Asahi Shimbun*, April 29 and 30, 1994. They both effectively retracted their remarks shortly afterward. Kakizawa Kōji (Minister of Foreign Affairs), HR BC, May 18, 1994; Kanda Atsushi (Director of Defense Agency), HR BC, May 18, 1994.
[107] Koizumi Jun'ichirō, HR PS, May 9, 2001. Koizumi also remarked that he would be "cautious" about changing constitutional interpretations. He kept the combination of his willingness to "investigate" and his "caution" to change for some time.

would be distinct from act of self-defense; therefore, it would contravene the Constitution.[108]

Tokyo would not budge an inch on the right of collective self-defense either. In its endeavor to preserve the 1972 Government View, the Cabinet Legislation Office came to highlight the Three Conditions for the Exercise of the Right of Self-Defense. In reply to Abe's question in 2004, Director General Akiyama Osamu stated that the phrase "minimum extent necessary for self-defense" in the 1972 View did not represent a quantitative concept but referred to a situation in which the first of the Three Conditions, namely the occurrence of "imminent and unjustifiable infringements" against Japan itself, was not fulfilled. Consequently, any exercise of the right to collective self-defense, defined as use of force to defend another country in the absence of direct attack against Japan, would exceed the limit of "minimum extent necessary."[109]

Beneath the reluctance of the Cabinet Legislation Office to reconsider the 1972 View, or for that matter the 1954 interpretation, lurked the belief that its interpretation of the Constitution represented legal logic, not politics. As one of its director generals who served in this period noted, the official construction of the Constitution was a "result of logical pursuit" and as such could not be freely changed by political leaders.[110] Should Tokyo drastically alter its reading of the supreme law for policy purposes, added a second, not only would the "authority of the constitutional interpretation of the government" be lost but the "people's trust in the government itself" might also be severely damaged.[111]

On the other hand, the tendency to expand the right of individual self-defense continued into this period. It was affirmed that an attack on the high seas against a U.S. vessel dispatched to assist in the defense of Japan might in some circumstances be regarded as an armed attack against

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[108] Ōde Takao (Director General of Cabinet Legislation Office), HR BC, June 8, 1994.
[109] Akiyama Osamu (Director General of Cabinet Legislation Office), HR BC, January 26, 2004.
[110] Ōde, HC Special Committee on Religious Corporations, November 27, 1995.
[111] Ōmori, HR BC, February 27, 1996.

Japan.[112] Insofar as the hypothetical situation did not presuppose a Japan contingency (rather, it would create one), [113] this constitutional interpretation broadened the concept of individual self-defense one step further than that under Prime Minister Nakasone, while answering such concern as raised then by Democratic Socialist Ōuchi.

Period V

Period V represents the years since the middle of the 2000s. A U.S.-centered global order envisaged in the early post-Cold War years gradually gave way to a new bipolarity with Washington and Beijing constituting the poles. Before long, democracies everywhere came to face an increasingly stiff challenge from populism within and authoritarianism without.

Japanese leaders became seriously concerned about the growing military might of China as well as its territorial ambitions, even as they saw North Korea as posing the most direct threat for the time being. Their identification with such Western notions as liberty, democracy, and human rights further deepened, with Tokyo beginning to champion them in the international arena in some contexts. With the DPJ in power for over three years in this period, defense cooperation with the United States generally came to encounter much less resistance in the Japanese body politic.[114] Reverberations of pacifism/anti-militarism were still heard, however, as evidenced by an upsurge of popular opposition to the Peace and Security Legislation of 2015.

Advisory Panel Report

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[112] Fukuda Yasuo (Chief Cabinet Secretary), HR Committee on Security Affairs, May 16, 2003.

[113] Fukuda's remark presumably meant that an attack on a U.S. vessel might be recognized as constituting the first salvo against Japan. Sakata Masahiro, ed., *Seifu no Kenpō Kaishaku* (Tōkyō: Yūhikaku, 2013), pp. 36-37.

[114] Of the remaining constraints on defense policy institutionalized in Period II, the Three Principles on Weapons Exports were replaced by the Three Principles on Transfer of Defense Equipment in 2014.

Abe Shinzō served as prime minister in the years 2006-07 and 2012-19 and made an indelible mark on constitutional affairs.[115] As we have seen, Abe had made known his reservation about the existing official interpretation of the 1946 document on the right of collective self-defense before he rose to the highest position in the Japanese government. During his first administration, he organized an Advisory Panel on Reconstruction of the Legal Basis for Security "to examine issues of the Constitution, including those related to the right of collective self-defense."[116] The 13-member panel, chaired by former vice minister of foreign affairs Yanai Shunji, produced its first report in June 2008, by which time the first Abe cabinet was gone for some time. Soon after he climbed back to the premiership, Abe reconvened the panel, adding one member to the original thirteen. The panel completed its task in May 2014, when it submitted its second and final report to Abe.[117]

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[115] Developments in constitutional politics in this period included the following: The Constitutional Research Council, or *Kenpō Chōsakai*, of both houses of the Diet was succeeded by a Constitutional Examination Council, or *Kenpō Shinsakai*, that could decide on amendments to the Constitution for the whole Diet to consider (as a prerequisite to national referendum). [*Kenpō Chōsakai* and *Kenpō Shinsakai*, like many other terms related to Japanese politics, get translated in various ways.] The LDP, while out of power, drew up a new draft constitution in 2012, which, like the 2005 draft, did away with the second paragraph of Article 9. Under Abe, the party in 2018 proposed that a revised constitution should preserve the existing two paragraphs of that article but append a provision explicitly recognizing the SDF.

On various aspects of constitutional issues during and after the Abe administration, see, for instance, Sheila A. Smith, *Japan Rearmed: The Politics of Military Power* (Cambridge, MA: Harvard University Press, 2019), pp. 150-172; Hideshi Tokuchi, "Implications of Revision of Article 9 of the Constitution of Japan on the Defense Policy of Japan," *Columbia Journal of Asian Law*, Vol. 33, No. 1 (2019); and Masahiro Kurosaki, "Legal Framework of Japan's Self-Defense with the United States," in Nobuhisa Ishizuka et al., eds., *Strengthening the U.S.-Japan Alliance: Pathways for Bridging Law and Policy* (Columbia Law School, 2020).

[116] *Report of the Advisory Panel on Reconstruction of the Legal Basis for Security*, June 24, 2008, p. 34. This is the English version of the first report of the panel.

[117] The English version of the second report is *Report of the Advisory Panel on Reconstruction of the Legal Basis for Security*, May 15, 2014.

According to the Advisory Panel, the Ashida Amendment theory was the right approach to the constitutional questions. In a word, Article 9 would allow not only the exercise of the right to collective self-defense and participation in UN collective security operations but also the maintenance of armaments for such purposes.

At the same time, the panel report also presented what might be considered a fallback position. Even if the traditional interpretation centered on the concept of "minimum extent necessary for self-defense" was to be retained, it insisted, resort to arms for collective self-defense should still be permitted in certain circumstances. Such a change in Tokyo's constitutional stand would make it possible, for example, to defend U.S. vessels against an attack in contingencies arising in the vicinity of Japan and to intercept ballistic missiles that might be headed for the United States. Other activities theretofore debarred for constitutional reasons should also be allowed. They included sweeping of mines other than "abandoned mines" in sea areas such as the Persian Gulf and logistic support for foreign militaries when "integration," or *ittaika*, with the latter's use of force was unavoidable.

Parallel with its advocacy of the exercise of the right to collective self-defense, the Advisory Panel cautioned against the expansion of the concept of individual self-defense. Explaining what was understood internationally as an act of collective self-defense in terms of individual self-defense might "constitute a violation of international law." Protection by the SDF of US vessels engaging in joint actions on the high seas when there was no armed attack on Japan itself was adduced as an example.

No sooner had he received the final report of the Advisory Panel than Prime Minister Abe declared that he would not accept the Ashida Amendment theory. It was made clear that the reconsideration of the 1972 Government View was to proceed within the "minimum extent necessary for self-defense" framework. After consulting with members of the ruling coalition of the LDP and the centrist Kōmeitō party, the Abe cabinet took a

decision on "Development of Seamless Security Legislation to Ensure Japan's Survival and Protect Its People" in July 2014.[118]

2014 Cabinet Decision

Citing recent trends in the security environment including 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," the Cabinet Decision pointed out that "[n]o country can secure its own peace only by itself" and that "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." In these circumstances, it was deemed essential to further elevate the effectiveness of the security arrangements with the United States and "develop domestic legislation that enables seamless responses" to various threats on the basis of a strengthened bilateral alliance.

From the vantage point of the Abe government, however, such responses might not be possible "if the constitutional interpretation to date were maintained." At the same time, the "basic logic" of the 1972 Government View "must be maintained" for the sake of "logical consistency and legal stability." The compromise made in the Cabinet Decision between that "logic" and what the current security environment demanded was a minor change on the conditions for legitimate exercise of the right of self-defense under the Constitution. In addition to a situation in which Japan itself came under attack, the nation would now legally have recourse to force "when an armed attack against a foreign county 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 [the] people's right to life, liberty and pursuit of happiness," provided that "there is no other appropriate means available" and that the force used would remain the "minimum extent necessary."[119]

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[118] The quotations of the Cabinet Decision are from *Defense of Japan, 2017*, pp. 460-462. This publication is the officially sanctioned English translation of *Nippon no Bōei* of the same year.

[119] These requirements for use of force were labeled the New Three Conditions for the Exercise of the Right of Self-Defense.

The newly introduced situation that might trigger the right of self-defense by Japan was christened *sonritsu kiki jitai*, or Existential Crisis (Survival Threatening) Situation, when the Peace and Security Legislation was submitted the following year. As the Cabinet Decision explained, the use of force to deal with an Existential Crisis Situation would in certain circumstances rest on the right to collective self-defense under international law, even though it would still be a measure strictly for "ensuring Japan's survival and protecting its people."

According to Abe and his aides, the "basic logic" of the 1972 View was kept intact. Use of force was still legal only when it was indispensable to "dealing with imminent, unjustifiable situations where the people's right to life, liberty, and the pursuit of happiness is fundamentally overturned." Rather, it was the "application," or *atehame*, of the "logic" that was changed a little by the Cabinet Decision.[120] Before then, the "logic" was thought to apply only to armed aggression against Japan itself, the assumption being that military strike on a third state could never "constitute a situation in which the people of our country are suffering," as Director General Yoshikuni of the Cabinet Legislation Office told in 1972.[121] Now Tokyo recognized that an armed attack on a foreign country could in some set of conditions also pose a grave danger to the basic rights of the Japanese people and resolved to prepare for that eventuality.

The Abe cabinet also decided to adhere to the theory of *ittaika.* The government was to stop, however, delineating "rear areas" or "noncombat zones" to prevent SDF activities from "integrating" with other militaries' use of force. Instead, logistic support "conducted at a place which is not 'the scene where combat activities are actually being conducted" by foreign forces would from then on be cleared of suspicion of *ittaika*.

Peace and Security Legislation

In April 2015, Tokyo and Washington agreed on new guidelines for bilateral defense cooperation, which reflected the change in constitutional interpretation by the Cabinet Decision. The SDF and U.S. forces would cooperate in asset protection, search and rescue, minesweeping, escort

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[120] Abe, HR BC, July 14, 2014; Yokobatake Yūsuke (Director General of Cabinet Legislation Office), HR BC, July 15, 2014.
[121] See note 69 above.

operations, interdiction operations, ballistic missile defense, and logistic support in what was to be known as the Existential Crisis Situation.[122] Prime Minister Abe then told the U.S. Congress of his government's efforts to "enhance the legislative foundations" for national security that were "in line with" the defense cooperation guidelines and pledged to achieve the reform "by this coming summer."[123] The Abe government in fact submitted to the Diet a total of eleven security-related bills as one lump package and dubbed them Peace and Security Legislation.

By that time, criticism of the process through which Abe undertook to make a modification in the constitutional interpretation regarding collective self-defense and then incorporate it in new laws had been mounting. Opposition lawmakers attacked the prime minister and the ruling coalition for violating "constitutionalism" by upending the established construction of the Constitution by a single cabinet decision, i.e. without deliberations in the Diet or explanation to the voters. Questions were also raised about the appropriateness of completing the new bilateral defense guidelines before the submission of the security-related bills to, much less their approval by, the Diet as well as Abe's remark in the U.S. Congress referring to the legislative time line.

As for the substance of the Cabinet Decision and the Peace and Security Legislation in relation to the right of collective self-defense, members of the DPJ declared that the 2014 Decision to be "unconstitutional and invalid" on the ground that it evidently contradicted the 1972 Government View.[124] Even if it were not, moreover, the concept of *sonritsu kiki jitai* was extremely vague and the criteria by which to recognize a situation as such was so imprecise that they could hardly check SDF operations overseas. In fact, the Abe government had highlighted the possibility of sending minesweepers to the Strait of Hormuz in case the interruption of petroleum supply caused

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122 "The Guidelines for Japan-U.S. Defense Cooperation," April 27, 2015.
123 "Address by Prime Minister Shinzo Abe to a Joint Meeting of the U.S. Congress: Toward an Alliance of Hope," April 29, 2015.
124 Konishi Hiroyuki, HC Committee on Foreign Affairs and Defense, May 12, 2015.

by an armed conflict in the area had a destructive impact on the people's lives.[125]

From the perspective of the DPJ, Tokyo should focus its attention on security situation closer to home but the new legislative package made little contribution to addressing it. As party president Okada Katsuya stated, "what is needed to safeguard the people's lives and peaceful livelihood is the right of individual self-defense; exercise of the right of collective self-defense as promoted by the Abe government is not necessary."[126]

As Okada's remark implied, however, politicians of out-parties were not entirely dismissive about making greater efforts in the military sphere. What the DPJ was against was precisely the exercise of the right to collective self-defense "as promoted by the Abe government."[127] A member of the DPJ even hinted support for striking down ballistic missiles heading toward another country.[128] The centrist Ishin-no-Tō, or the Japan Innovation Party, would legalize use of force in an "armed attack crisis situation," which would be similar to the Existential Crisis Situation but would not include contingencies like the mining of the Strait of Hormuz, where Japan itself would not be in any danger of armed attack.[129]

Even so, those opposition lawmakers receptive to extending the boundaries of legitimate act of force refused to encase their argument in the framework of collective self-defense. The DPJ legislator cited above wondered if missile defense for the benefit of another country could be explained in terms of "human security" instead of collective self-defense. The Ishin-no-Tō identified the recourse to force in the "armed attack situation" as an exercise of the right of individual self-defense.

By contrast, the Communists were totally unforgiving. In their view, exercise of the right of collective self-defense would make for "a nation that spills the blood of Japanese youth, who kill and get killed for America's war."[130] Tokyo's objective in pushing forward the unconstitutional "war bills"

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[125] Mining of Hormuz was one of the two hypothetical contingencies cited by Abe where the New Three Conditions for the Exercise of the Right of Self-Defense might apply. Abe, HR PS, February 16, 2015.
[126] Okada Katsuya, HR PS, July 16, 2015.
[127] *Asahi Shimbun*, April 29, 2015.
[128] Haku Shinkun, HC PS, June 29, 2015.
[129] *Yomiuri Shimbun*, July 4, 2015; Matsuno Yorihisa, HR PS, July 16, 2015.
[130] Yamashita Yoshiki, HC PS, October 2, 2014.

was precisely to make it possible to fight alongside the Americans in conflicts initiated more often than not illegally by the latter.

Opposition politicians' stand on the Constitution was aided by the constitutional scholars and former heads of the Cabinet Legislation Office who stated their views in Diet panels. Even the professor of constitutional studies that the LDP put up as a witness pronounced the exercise of the right of collective self-defense contemplated in the legislation package to be against the supreme law of the land.[131] The two ex-Director Generals of the Cabinet Legislation Office, Sakata Masahiro and Miyazaki Reiichi, contended that the new official interpretation could not be derived from the 1972 Government View, which they still considered the correct understanding of what the Constitution stipulated.[132]

Miyazaki, in particular, seemed to attest to the tendency we noted earlier for bureaucrats in the Cabinet Legislation Office to regard collective self-defense with suspicion. Identifying the right of collective self-defense as "extraneous to the right of self-defense in the proper sense of the term," he faulted the concept for increasing the danger of "arbitrary and excessive use of force," because it would authorize military intervention by "self-styled allies." Rather surprisingly, the former head of the Cabinet Legislation Office also opined that the use of force by a state when it was not under attack would constitute a "preemptive strike" deemed illegal under international law. In his understanding, then, almost all military action to help defend another country would fall under the rubric of unlawful act of force.[133]

Against the charge of unconstitutionality, representatives of the Abe government stressed that the basic construction of the Constitution was unchanged. Proscription in principle against overseas deployment of the SDF for combat purposes would be preserved, with minesweeping in the

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131 Hasebe Yasuo, HR Constitutional Examination Council, June 4, 2015.

132 Sakata Masahiro, HR Special Committee on Peace and Security Legislation, June 22, 2015; Miyazaki Reiichi, HR Special Committee on Peace and Security Legislation, June 22,. 2015. Sakata detailed his criticism of the Abe cabinet's constitutional interpretation in his *Kenpō 9-jō to Anpo Hōsei: Seifu no Aratana Kenpō Kaishaku no Kenshō* (Tōkyō: Yūhikaku, 2016).

133 Miyazaki, HR Special Committee on Peace and Security Legislation, June 22, 2015.

Strait of Hormuz expected to be a largely theoretical exception. The adjustment in the executive interpretation of Article 9 would not authorize Japan to participate in such military conflict as the Persian Gulf War and the Iraq War. As Abe and his subordinates repeatedly affirmed, the Peace and Security Legislation would sanction only such limited exercise of the right of collective self-defense as absolutely indispensable to national survival, but not comprehensive, or "full spec," exercise of that right, which would "have the defense of another state *per se* as its objective."[134]

Abe's endeavor for a new security posture paid off when the Peace and Security Legislation passed the Diet in September 2015 after extraordinarily heated debates. The legislative package won the support of the LDP, Kōmeitō, and a couple of minor political groups.

With the North Korean missile threat mounting, Tokyo subsequently confirmed that an armed attack on U.S. vessels conducting ballistic missile surveillance on the high seas close to Japan could be recognized as an Existential Crisis Situation.[135] Even a missile strike on the island of Guam, where the U.S. military capability critical for Japan's defense was located, might satisfy the conditions set by the 2014 Cabinet Decision for Japan to have recourse to force.[136] In 2021, Deputy Prime Minister Asō Tarō reportedly stated that a Chinese invasion of Taiwan could lead to *sonritsu kiki jitai*, in which case "Japan and the United States must together defend Taiwan."[137]

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134 Abe, HR PS, May 26, 2015; Yokobatake, HR Special Committee on Peace and Security Legislation, June 10, 2015.
135 Nakatani Gen (Minister of Defense), HC Committee on Foreign Affairs and Defense, March 17, 2016.
136 Onodera Itsunori (Minister of Defense), HR Committee on Security Affairs, August 10, 2017.
137 *Yomiuri Shimbun*, July 6, 2021.

Table I

Evolution of Political Environment and Policy on Collective Self-Defense

	international system	rationale for alignment	threat perception	pacifism/ anti-militarism	policy on collective self-defense [CSD]
Period I	Cold War (bipolar)	instrumental	low	strong	two meanings of CSD use of force (overseas) prohibited other activities permitted
Period II	Cold War (bipolar)	instrumental	lowest	strongest	1972, 1981 Views on CSD use of force prohibited other activities excluded from definition
Period III	Cold War (bipolar)	instrumental + values	medium (USSR)	moderate	exercise of right to CSD prohibited notion of individual self-defense expanded
Period IV	post-Cold War (unipolar)	instrumental + values	medium (NK, China)	weak	exercise of right to CSD prohibited "integration" argument devised
Period V	new Cold War? (bipolar)	instrumental + values	high (China, NK, Russia)	weaker	limited exercise of right of CSD permitted

CONCLUSION

Table I summarizes the external and internal political environment facing the Japanese government as well as its basic policy on the right of collective self-defense in the five periods since the end of World War II. A combination of bipolarity, alignment with the West mainly for instrumental reasons, low threat perception, and strong pacifist/anti-militarist influence corresponded to the total ban on the use of force to assist in the defense of another country. Concern over Soviet threat coupled with greater consciousness of the commonalities of values with the Westerners was linked to the tendency for pushing the envelope of individual self-defense so as to enhance alliance security without touching the prohibition on the right of collective self-defense. The end of bipolarity made it easier to send SDF personnel overseas for noncombat duties and led to the contrivance of the "integration," or *ittaika*, argument, the aim of which was to accommodate the activities of Japanese troops to that prohibition. Finally, renewed bipolarity, worsening threat situation, and by then substantially weakened domestic pacifism/anti-militarism induced Tokyo to sanction limited exercise of the right to collective self-defense.

Lifting the ban on the exercise of the right to collective self-defense by the government of Abe Shinzō may be said to have marked a "groundbreaking shift in Japan's willingness to involve itself in regional security."[138] At the same time, in no small part because it continues to prohibit "full spec" exercise of that right, Japan remains "exceptional" in the U.S. alliance network, "far from 'normal' compared to other middle powers."[139] What then is the prospect of Japan further expanding the range of legitimate use of force for the security of other nations?

At first glance, the long-term trends that we have observed appear to point in that direction. Not only has Japan come to regard the Western states (and some others including Taiwan) as "friends" who share a great deal of strategic and economic interests with it, but it also has begun to act upon the basic values it believes it has in common with those states in a

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[138] Jeffrey W. Hornung, "U.S.-Japan: A Pacific Alliance Transformed," *The Diplomat*, May 4, 2015.

[139] Jeffrey W. Hornung and Mike M. Mochizuki, "Japan: Still an Exceptional U.S. Ally," *Washington Quarterly*, Vol. 30, No. 1 (2016).

world that increasingly pits "democracies" against "autocracies." With the growth of perceived threat from China and North Korea, plus, most recently, Russia, the legitimacy afforded to military means within Japan has never been greater as far as the defense of the nation itself is concerned. When belief in the efficacy of military instruments at its disposal for guarding against the danger it faces together with its "friends" develops, Japan will fully embrace collective self-defense measures.

It must be recognized, however, that certain obstacles to such evolution of Japanese outlook may prove to be quite formidable.

First, the appeal of Article 9 still abides in the Japanese public. Having witnessed the Russian invasion of Ukraine, for instance, nearly two-thirds of the respondents in an *Asahi Shimbun* survey still said "no" to revising the no-war clause of the Constitution, suggesting lingering hesitancy about military undertakings in general.[140]

Second, within the Japanese government, the pretense of "logic" by the Cabinet Legislation Office may not be easy to break. As long as the "basic logic" of the 1972 Government View is retained, however, there will be a severe limit to how far Tokyo can go by altering its "application."

Third, the adjustment made by the Abe cabinet may ironically have made the approach to "full spec" exercise of the right of collective self-defense more difficult. If a blockade of the Strait of Hormuz or an attack on Guam can now trigger act of collective self-defense, what more would Japan need?

Fourth, Japan may be able to fulfill the role expected of it in alliance defense, or more broadly in the defense of "democracies," simply enhancing its capability for individual self-defense. The critical importance of protecting U.S. and SDF bases in Japan in a Taiwan contingency comes to mind.

Still, we probably should not think those obstacles insurmountable. If the past is any indication, public opinion may well shift in the direction of giving Tokyo more latitude on the use of force.[141] It may be assumed that

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[140] *Asahi Shimbun*, May 3, 2022.

[141] The *Asahi Shimbun* poll cited in the text also found a clear majority in favor of limited exercise of the right to collective self-defense. More than half the respondents had said they opposed the Peace and Security Legislation when it passed the Diet. *Asahi Shimbun*, September 21, 2015.

bureaucrats in the Cabinet Legislation Office are in fact aware that political dynamics sometimes trumps their internal logic.[142]

If the third and fourth obstacles are to be overcome, on the other hand, political leaders will have to persuade the nation of the significance of being legally able to do militarily more than what is presumed to be necessary in a likely contingency involving Japan itself. To the degree they succeed in this endeavor, Japan will be able to realize its stated aspiration to "occupy an honored place in an international society striving for the preservation of peace."[143]

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[142] For example, former Director General Takatsuji acknowledged: "It is an undeniable fact that the interpretation of Article 9 of the Constitution has evolved along with developments in politics." Takatsuji (1985), 38.
[143] Preamble of Japanese Constitution.

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