

Navigating by Sun and Compass
Brief Two: Assessing the Impact of Abe Era Security Reforms on
Japan-NATO Relations

Mirna Galic

Visiting Research Fellow, Japan Institute of International Affairs
Council on Foreign Relations-Hitachi International Affairs Fellow

Although Japan and the North Atlantic Treaty Organization (NATO) have enjoyed formal relations for nearly thirty years, the relationship has followed an uneven growth trajectory. After establishment in the early 1990s, it plateaued through the early 2000s before ramping up precipitously to direct practical cooperation in 2007. The growth of Japan-NATO relations has accelerated under the tenure of Japan's current Prime Minister, Shinzo Abe, with Japan and NATO conducting their first joint military exercises and signing an Individual Partnership and Cooperation Programme in 2014. These developments, along with security reforms passed in 2015, appear to provide Japan and NATO with the platform necessary to move their relationship to a new phase; whether they will do so remains to be seen. As Japan navigates changing regional and global power dynamics, its growing alignments with non-U.S. partners have taken on increasing significance. Just where NATO fits into this schema is unclear, however. While relations have continued to progress in the late 2010s, with Japan establishing a formal mission to NATO in 2018, policy-makers and scholars have expressed doubts about how much further the relationship can deepen, given priorities, resources, and practical realities on both sides, including Japan's constitutional restrictions on the use of force.

This policy brief is the second in a series of three seeking to explore the future trajectory of Japan-NATO relations. The first brief focused on the history of the Japan-NATO relationship in order to provide context for its current state. The third brief identifies possible models for the future of the relationship. This second brief examines how security reforms promulgated during Abe's tenure create space for greater Japan-NATO operational cooperation in the military sphere. Although Abe's intention to amend Japan's constitution remains unrealized, the 2015 security reforms have liberalized restrictions on Japan's Self-Defense Forces (SDF) significantly. As a result, the SDF now have various authorities that enable them to cooperate militarily with NATO, a development that has yet to be fully explored by either side. The policy brief concludes that the contours for Japan-NATO operational cooperation possible under the legislation are quite broad and constitute new opportunities for deepening the Japan-NATO relationship. Although opportunities for actual cooperation will be narrowed by various considerations, the brief argues that military exercises provide a relevant option, one that warrants serious examination by Japanese and NATO planners, particularly given the findings in the previous brief about the need for Japan and NATO to actively create opportunities for practical and operational cooperation to continue the growth of such cooperation going forward.

Earlier Restrictions and Legislation Impacting the SDF

The authorities granted to the SDF under Prime Minister Abe are easiest to understand in comparison to previous guidelines and legislation, beginning with the constitution. Article 9 of Japan's constitution renounces war and the use or threat of force to settle international disputes; in order to support this decision, it asserts that "land, sea, and air forces, as well as other war potential, will never be maintained."¹ As a result, the 1954 *Self-Defense Forces Law* established the SDF explicitly for the defense of Japanese territory (including waters and airspace) and maintenance of public order.² Under traditional interpretations of Article 9, the SDF are allowed only minimum necessary force to accomplish their duties and are not allowed to participate in activities that directly enable the use of force by other (e.g. U.S.) armed forces.³ The latter restriction, which has included limitations against SDF support activities outside of "non-combat areas," is intended to avoid "ittai-ka" with the use of force" or forming an "integral part" of the use of force (*ittai-ka*).⁴ Other limitations related to how and for whom the SDF may use weapons have also been observed for many years. Additionally, successive Japanese governments have interpreted Article 9 to prohibit Japan from exercising the right of collective self-defense incorporated in the United Nations Charter, meaning that Japan is not allowed to use force to defend another country against attack.⁵ Although the changes made during the Abe era to address these limitations go beyond previous efforts, attempts to loosen restrictions on the use of the SDF are not new to the current administration.

A brief rundown of relevant legislation preceding Abe's 2012 reelection demonstrates a gradual relaxation of SDF strictures. The 1992 *International Peace Cooperation Act* allowed SDF personnel to be deployed outside of Japanese territory to participate in peacekeeping and humanitarian operations under the auspices of the United Nations.⁶ A 2001 amendment authorized deployed SDF to use weapons to protect not just themselves or other present SDF personnel, as provided for in the 1992 law, but also "individuals who have come under their control during the performance of duties," slightly expanding the scope of their activities.⁷ The 1999 *Law Ensuring Peace and Security in Situations in Areas Surrounding Japan* expanded the focus of operational cooperation between the SDF and U.S. forces beyond Japanese territory to include "situations in areas surrounding Japan" that, if left unchecked, could result in an armed attack against Japan.⁸ The law provided the first general authorization for SDF operational cooperation with U.S. forces outside of Japanese territory.⁹ The 2001 *Anti-Terrorism Special Measures Law* and the 2003 *Iraq Special Measures Law* discussed in the first brief followed and are notable for the precedents they set. In the case of the former, this was the first authorization of SDF support activities for foreign forces other than U.S. forces, and through the latter, the first SDF humanitarian/reconstruction assistance in foreign territory under occupational administration by foreign forces.¹⁰ Nonetheless, both of these special measures were short-term initiatives rather than permanent changes to Japanese law, and both limited the presence of the SDF to "non-combat areas."¹¹ The 2009 *Act of Punishment and Countermeasures against Piracy*, also of interest given subsequent operational cooperation

on piracy with NATO, authorized Japanese naval vessels deployed around the Gulf of Aden to protect from pirates not just Japanese ships, but those from any country.¹²

Iterative changes in Japan's National Defense Program Outlines/Guidelines (NDPO/NDPG), which show adjustments made to the scope and posture of the SDF over time, are also instructive. The focus of the 1976 and 1995 NDPOs was on preventing armed invasion and maintaining a basic defense concept, articulated as "possessing the minimum necessary defense capability for an independent nation so that it would not become a source of instability in the surrounding regions by creating a vacuum of power."¹³ The 2004 NDPG, the first after September 11, oriented Japan toward dealing with a new threat environment, calling for "multi-functional, flexible, and effective defense forces that are highly ready, mobile, adaptable and multi-purpose, and are equipped with state-of-the-art technologies and intelligence capabilities..."¹⁴ It also enshrined improving the international security environment as "one of the major pillars of the security policy of Japan," and placed emphasis on developing effective SDF capabilities in this regard.¹⁵ The 2010 NDPG took this development further, noting that "Japan should no longer base its defense on the traditional defense concept... which places priority on ensuring deterrence through the existence of defense forces per se."¹⁶ Instead, it called for Japan to develop "a Dynamic Defense Force that possesses readiness, mobility, flexibility, sustainability, and versatility," reinforced by advanced technology.¹⁷ It also explicitly called for enhanced cooperation with NATO as part of "multilayered security cooperation with the international community."¹⁸ For comparison, the 2013 NDPG, the first under Abe, largely built on the 2010 formulation, calling for a "Dynamic Joint Defense Force," ("joint" referring to integration between the SDF branches).¹⁹

Reforms from the Second Abe Administration

On July 1, 2014, the Abe government unveiled its security policy reforms in a cabinet decision translated as "Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People." The decision, encompassing a number of important initiatives that create greater flexibility for potential SDF deployments and operations, laid out the government's views on defense measures permissible under Article 9 and presaged legislation intended to enable them. First, the government determined that the SDF no longer need to be relegated to "non-combat areas" in order to maintain compliance with the restriction against *ittaika*, so long as their support activities do not take place at "the scene where combat activities are actually being conducted."²⁰ Although this change in formulation may seem slight, the nuance could create much greater scope of deployment in complex modern conflict environments and flexibility for the type of logistic support the SDF can provide. Second, the government clarified permissions for the use of weapons during international peace cooperation activities and other situations short of armed conflict, broadening the latitude for potential SDF weapons use to include the protection of a variety of non-Japanese personnel, civilians, and assets.²¹ Finally, the government decided that the use of force by Japan in response to the armed attack of a country other than itself can qualify as a form of self-defense and therefore be acceptable under Article 9 if such an

attack can be seen to threaten Japan's survival. This determination effectively ended the decades-long trend of interpreting Article 9 to prohibit collective self-defense.

Following the cabinet decision, the government submitted a package of enabling legislation for Diet approval consisting of the *International Peace Support Act* and the *Act for the Development of the Legislation for Peace and Security*. These bills, collectively known as the peace and security legislation, were passed in September 2015 and came into force in March 2016. The *International Peace Support Act* standardizes a new category of SDF operation that had previously required the passage of special legislation (such as the antiterrorism and Iraq special measures laws). It enables the SDF to conduct support activities for foreign forces engaged in actions authorized by the United Nations (inclusive of military operations) to address "situations threatening the international peace and security."²² In addition to standard support activities such as the provision of goods and services (including transportation, repair and maintenance, medical, communications, use of facilities), the law newly authorizes the SDF to provide ammunition and to refuel or provide maintenance for aircraft "ready to take off for combat operations," utilizing the broader scope of logistic support interpreted as consistent with the restriction against *ittaiika*.²³ Such SDF activities are permitted outside of "the scene where combat activities are actually being conducted."²⁴ The SDF are also newly permitted to conduct search and rescue activities for foreign forces.

The *Act for the Development of the Legislation for Peace and Security* comprises amendments to ten existing laws. Perhaps the most significant amendments are those to the 1954 *Self-Defense Forces Law* and the 2003 *Armed Attack Situations Response Act* uncoupling the use of force from territorial self-defense and authorizing Japan's participation in collective self-defense. Under the revisions, the primary mission of the SDF is changed from "defending our country *against direct invasion and indirect aggression* in order to preserve our peace and independence" (emphasis added) to "defending our country in order to preserve our peace and independence," removing the stipulation for territorial defense.²⁵ Moreover, use of force by Japan is authorized under a new type of situation in addition to its existing approved use in response to an armed attack against Japan.²⁶ The new "survival-threatening situation" is defined as "a situation where an armed attack against a foreign country that is in a close relationship with Japan occurs and, as a result, threatens Japan's survival and poses a clear danger to fundamentally overturn people's right to life, liberty and pursuit of happiness."²⁷ Even then, Japan can use force only when there are no other "appropriate means available" and to the "minimum necessary extent."²⁸ Although this provision only endorses the limited use of collective self-defense for the explicit purpose of defending Japan (as opposed to the exclusive defense of another country), the shift is nonetheless groundbreaking.²⁹ Related amendments enable the SDF to conduct support activities for the armed forces of foreign countries responding to armed attack and survival threatening situations.³⁰ In a supplementary resolution to the peace and security legislation, the Upper House of the Diet addressed a scenario not directly covered by the amendments: that of a "survival threatening situation" that does not involve an armed attack.³¹ The supplementary

resolution requires prior Diet approval for military activity in such circumstances, without exception.³²

Amendments to the 1992 *International Peace Cooperation Act* authorize the SDF to participate in “internationally coordinated operations for peace and security” outside of the United Nations framework (e.g., beyond humanitarian and reconstruction assistance operations established by United Nations Security Council resolution or involving United Nations blue-helmeted peacekeepers).³³ This includes operations initiated by “regional organizations,” and “organs established by multilateral treaties,” as well as operations requested by receiving countries.³⁴ Under the amendments, the types of tasks the SDF can undertake while deployed to such operations and to United Nations peacekeeping operations are significantly expanded to include so-called “safety-ensuring” and “*kaketsuke-keigo*” operations.³⁵ Safety-ensuring operations involve “monitoring, stationing, patrol, inspections at checkpoints, and security escort for the protection of safety of specified areas, *including prevention and suppression of injury or harm against lives, bodies and property of local population, afflicted persons and other populations requiring protection,*” (emphasis added), while *kaketsuke-keigo* operations involve “protection of lives and bodies of individuals engaging in international peace cooperation operations or providing support for those operations.”³⁶ Weapons use is authorized during the execution of these tasks, as is weapons use for the protection of foreign personnel jointly stationed at camps with SDF personnel, a significant shift.³⁷ The law brings SDF protection authorities and weapons use regulations into better alignment with the realities of modern peace cooperation operations, removing potential liabilities created by previous proscriptions against the use of force to protect vulnerable populations or other peace operation forces under attack.

Amendments to the 1999 *Law Ensuring Peace and Security in Situations in Areas Surrounding Japan*, renamed the *Law Concerning Measures to Ensure Peace and Security of Japan in Situations that Will Have an Important Influence on Japan’s Peace and Security (Important Influence Situations Law)*, expand the scope of SDF operational cooperation with U.S. armed forces and add cooperation with foreign forces. The revisions authorize the SDF to undertake support activities, search and rescue, and “other measures necessary” for U.S. forces outside of Japanese territory not only in “situations in areas surrounding Japan that will have an important influence on Japan’s peace and security,” as stipulated in the 1999 version, but instead, more expansively, in “situations that will have an important influence on Japan’s peace and security,” including in foreign territories.³⁸ The changes remove any perceived geographic limitations, as well as any remaining reference to the traditional tie between such activities and territorial defense. In addition to support for U.S. forces, the SDF are authorized to undertake support activities, search and rescue, and “other measures necessary,” for other foreign armed forces responding to such situations.³⁹ As in the *International Peace Support Act*, support activities are allowed to include provision of ammunition and fuel/maintenance for combat-ready aircraft. SDF activities are permitted outside of “the scene where combat activities are actually being conducted.”⁴⁰ Related amendments to the 1954 *Self-Defense Forces Law* enable the SDF to

protect the weapons and equipment (assets) of foreign forces engaged with them in activities that contribute to the defense of Japan, including intelligence, surveillance, and reconnaissance (ISR) activities; relevant refueling, supply and other replenishment efforts; and joint exercises.⁴¹ This asset protection, which may include the use of weapons, is meant to cover a range of scenarios short of armed attack against Japan, from peacetime through important influence situations.⁴²

Potential Japan-NATO Military Cooperation per Abe Era Reforms

For the purposes of discussion, the peace and security legislation can be divided into two groups based on its potential impact on Japan-NATO operational cooperation in the military sphere: those elements that enable direct operational cooperation with NATO and those supporting greater indirect cooperation, by opening up additional avenues of operational cooperation with NATO Allies. With their authorization of new types of SDF missions, the amended *International Peace Cooperation Act* and the *International Peace Support Act* anchor the direct operational cooperation group (direct group). For these pieces of legislation and the others in the direct group, the policy brief focuses on what is legally possible, rather than what is politically feasible at any moment in time, to establish the parameters of potential operational cooperation between the SDF and NATO forces. With regard to the legislation in the indirect operational cooperation group (indirect group), although indirect cooperation with NATO through operational cooperation with NATO Allies may not seem like the kind of next-level engagement proponents of the Japan-NATO relationship would get excited about, the militaries of NATO Allies constitute NATO forces, so such cooperation increases interoperability with NATO and can also pave the way for direct Japan-NATO operational cooperation. Moreover, key NATO Allies are the drivers of NATO policy, making them an important element of Japan-NATO relations. Much of the legislation can, in fact, support both direct and indirect operational cooperation, given its generalized wording. In this regard, the brief classifies legislation into the direct group unless it is designed to deal with contingencies closer to Japan that would not be likely to involve the participation of NATO as a whole.

As noted above, the amendments to the *International Peace Cooperation Act* enable Japan's participation in internationally coordinated operations for peace and security initiated by "organs established by multilateral treaties," of which NATO is one. Although this opens the door for Japan's participation in NATO-led peace operations, Japan is permitted to participate in such operations only if "Five Principles for Participation" established in the 1992 version of the act are met. These principles include the existence of a ceasefire agreement, consent for the mission from the parties to the conflict, and impartiality.⁴³ NATO's ability to mount a peace operation that meets these requirements is demonstrated by the 1995 NATO Implementation Force (IFOR) for Bosnia and Herzegovina. IFOR was based on the Dayton Peace Accords, providing the ceasefire, consent from the parties, and basis for impartiality required by the Five Principles for Participation. While endorsed by United Nations Security Council Resolution 1031, IFOR, implemented by NATO forces rather than United Nations blue-helmeted peacekeepers, and

under NATO command, was not a United Nations mission. To this end, IFOR appears to be in line with the basic specifications of the amended *International Peace Cooperation Act*; it is likely that if the current version of the act had been in place in 1995, Japan would have been able to participate in IFOR, and the subsequent NATO Stabilization Force (SFOR), had it so chosen. Although past such NATO missions related to the former Yugoslavia may not have been a geostrategic draw for Japan, recent NATO operations, writ large, encompass areas outside of Europe and are likely to do so, perhaps to an increasing degree, in the future. As such, it is fully conceivable that Japan could participate in a future NATO peace operation on the basis of the amended *International Peace Cooperation Act*.

The amended *International Peace Cooperation Act*'s potential application in a very different scenario was a point of contention during the Diet deliberations on the security reforms in 2015. During the proceedings, an opposition party representative tried to pinpoint Abe's views on whether the amended act could be used to deploy the SDF to a mission like the International Security Assistance Force (ISAF) in Afghanistan.⁴⁴ Abe demurred, noting that ISAF had ended, but never gave a clear no.⁴⁵ Instead, he deemed it difficult to evaluate such a theoretical scenario and noted that the ISAF mission had not met the Five Principles for Participation.⁴⁶ It is through the *International Peace Support Act* and not the amended *International Peace Cooperation Act* that ISAF becomes relevant for Japan, precisely because the Five Principles for Participation are not a requirement of the former.⁴⁷ As noted, the *International Peace Support Act* authorizes SDF support activities for foreign forces in military operations to address threats to international peace and security. The act specifies that a United Nations General Assembly or Security Council resolution directing Member States to respond to a situation threatening the peace and security of the international community is required to legitimize the operations of the foreign forces receiving Japanese support.⁴⁸ United Nations Security Council Resolution 1386 of 2001, establishing ISAF in Afghanistan, appears to meet this requirement. It determines the situation in Afghanistan to constitute a threat to international peace and security, authorizes the establishment of ISAF to help the Afghans maintain security in and around Kabul, and calls on Member States to contribute personnel and resources to ISAF.⁴⁹ As such – had Japan so wanted – the law would likely have permitted Japanese participation in ISAF (through support activities for ISAF forces) had it been in existence in 2001. Once NATO assumed command of ISAF in 2003, this would have constituted Japanese participation in a NATO-led mission.

Japan would likely have been better equipped to provide support to ISAF under the *International Peace Support Act*, within legal constraints, than many realize. The reality of ISAF is that a number of states that were counted as contributors to and received recognition in connection with ISAF had forces performing non-combat duties. These personnel undertook various support activities such as logistics, engineering, medical, and advisory support – activities similar to the ones Japan can perform under the *International Peace Support Act*.⁵⁰ In addition, many states' contributions came with national caveats limiting what their forces could do and where or when they could be deployed. German forces, for example, were restricted from operating outside of the relatively safe Northern

Regional Command of ISAF and were not permitted to use force offensively until 2009.⁵¹ Given such realities, Japan would not have been an outlier had it placed a narrow scope on the use of the SDF within ISAF. With the *International Peace Support Act*'s relaxation of restrictions regarding "non-combat areas," the SDF could theoretically be deployed to a number of areas like the ones in which ISAF operated – particularly in the more stable Capital, Northern and Western Regional Command sectors – as long as their duties excluded "the scene where combat activities are actually being conducted." Similarly, with the act's permissions on support activities, the SDF theoretically could provide supplies, ammunition, transportation, repair, maintenance, medical services, communications, and other support to NATO forces at such locations.⁵² In this regard, Japan may be able to participate in a similar way in a future NATO-led operation under the *International Peace Support Act*, should it so choose.

The collective self-defense permissions legislated under the *Act for the Development of the Legislation for Peace and Security* could also enable direct Japan-NATO operational cooperation, under select circumstances. As noted, the scope for collective self-defense under the legislation is narrow and even concrete examples of its potential use are limited. The primary examples given by Abe refer to an attack on U.S. naval vessels in waters near Japan, and he is clear about the need for a connection between such attacks and a direct danger to Japan.⁵³ The reports of an advisory panel convened to examine the issue provide an additional example, the case of Japan addressing a ballistic missile attack on the United States from a neighboring country (understood to be North Korea), either by intercepting the missile or by joining in a U.S.-led response.⁵⁴ Abe is also explicit about the deterrence benefits of the collective self-defense permissions.⁵⁵ The implication is that collective self-defense would be considered for actual use only in very limited cases. These might include attacks on the United States (or on U.S. forces deployed in Japan's neighborhood) that could be used to facilitate an attack on Japan itself (by, for instance, decreasing U.S. defensive capacity) or attacks on the United States that, if left unaddressed by Japan, would tear the fabric of the Japan-U.S. alliance on which Japan's security depends.⁵⁶ Direct Japan-NATO operational cooperation based on the collective self-defense permissions is thus conceivable where an armed attack on the United States would both be deemed to threaten the survival of Japan and result in a NATO response *in the region* (for example, through the invocation of Article 5). Under such circumstances, the SDF would be able not only to respond with force themselves, but also to conduct support activities for responding NATO forces, effectively participating in a NATO mission. Per NATO regulations, Article 5, technically, could not be invoked for North Korean attacks outside of the U.S. mainland (e.g., the more likely targets of Guam, Hawaii, or U.S. forces in Japan or South Korea), but Article 5 is largely symbolic; NATO can launch missions without it.⁵⁷ Moreover, a number of NATO Allies have theoretical obligations related to the 1953 Korean War armistice.⁵⁸

Although the likelihood of actual cooperation between Japan and NATO under a collective-self-defense scenario based on an attack on the United States appears very low, its potential significance underscores the utility of Japan-NATO military exercises as a means of increasing interoperability for potential operations. As for a "survival threatening situation"

resulting from something other than an armed attack, the Abe government provided the example of mines laid in the Strait of Hormuz.⁵⁹ Because of Japan's dependence on crude oil shipped through the strait, blockage via mines could come to constitute a serious threat, particularly once Japan's domestic petroleum reserve dwindled.⁶⁰ Per the guidance provided in the supplementary resolution to the peace and security legislation, Japan should be able, in theory, with Diet approval, to dispatch minesweepers to the strait.⁶¹ In the case of multilateral minesweeping operations in the Strait of Hormuz, covered in the government's example, the dispatch of SDF minesweepers would require at least careful coordination and information sharing with other participants and could lead to direct operational cooperation with NATO, were a NATO minesweeping group also deployed to the strait (NATO has two standing mine counter-measures maritime groups).⁶² Operationally, such efforts could be akin to the coordinated counter-piracy operations undertaken by the international community in the Gulf of Aden.

The *Important Influence Situations Law* could, technically, enable direct operational cooperation with NATO through its authorization of support activities for foreign forces responding to important influence situations. As in the 1999 version, the law is intended to deal with contingencies short of armed attack against Japan that, if left unaddressed, could develop to threaten Japan's peace and security. Since such important influence situations are not limited in scope geographically, SDF support activities could be conducted, in theory, anywhere around the world. When the law is examined in the context of Japan's broader peace and security legislation and government examples of applicable situations however, it appears most relevant to Japan's broader regional neighborhood, including in and around the South China Sea.⁶³ First, the law is intended to deal specifically with situations that threaten Japan's peace and security as opposed to the broader peace and security of the international community (in which case the *International Peace Support Act* could apply), implying a more local scope. Relatedly, all of the government examples boil down to U.S. and/or foreign forces responding to an attack by one regional country against another, a scenario that might fit a North Korean attack on South Korea or a conflict between China and a U.S. treaty partner in the region.⁶⁴ It is unlikely NATO would respond to either scenario absent a concomitant attack on the United States, while individual Allies like France and the United Kingdom, who deploy naval assets to the region, might be more likely candidates for involvement.⁶⁵ As such, the *Important Influence Situations Law* appears better placed in the indirect than direct group. A similar argument for categorization in the indirect group can be made with the amendments to the 1954 *Self-Defense Forces Law* enabling SDF asset protection for foreign forces concurrently engaged with them in activities supporting Japan's defense. By its nature, such asset protection is likely to take place in Japan's broader regional neighborhood, making it applicable only to NATO Allies with a presence in the region like France, United Kingdom, and Canada, absent joint exercises between Japan and NATO in the region.

Conclusions

The long-held notion that Japan's constitutional constraints inherently limit the development of the military side of Japan-NATO relations, thereby preventing the deepening of the Japan-NATO relationship, is no longer accurate.⁶⁶ As the above discussion illustrates, the peace and security legislation provides a wide scope for potential Japan-NATO operational cooperation in the military sphere, opening up the possibility for an entirely new dimension in Japan-NATO relations that policy makers and military planners in both polities should examine. An important element of this is moving past the perception that constitutional revision is necessary before Japan can be a relevant security partner on the international stage. The constitutional amendment Abe is considering, which would leave the existing text of Article 9 intact but add language explicitly authorizing the SDF, would not affect Japan-NATO operational cooperation with either its presence or absence.⁶⁷ Possible formulations for the new language reportedly include "the Self-Defense Forces will be maintained as an organization with force existing at the minimum necessary level" and "the SDF shall be maintained 'as an armed organization' for Japan to take 'necessary self-defense measures.'"⁶⁸ Although such additions would certainly have symbolic weight and settle any remaining questions about the constitutionality of the SDF, any practical impact on the SDF's operations would be negligible without a revision of the existing Article 9 text, making this a non-issue.

The political feasibility of Japan-NATO military cooperation does remain an issue, however. There are significant sensitivities among Japanese politicians and the public regarding risks to SDF personnel and the deployment of the SDF abroad, as recent scandals surrounding the mission logs of SDF deployed in Iraq and South Sudan highlight.⁶⁹ Given such sensitivities, Abe is likely to be extremely conservative in how he seeks to deploy the SDF under the peace and security legislation for the time being. Indeed, the only utilization of the legislation in a multilateral context, outside of military exercises, has been for duties under the amended *International Peace Cooperation Act* that do not require Diet approval: authority for *kaketsuke-keigo* and joint protection of camps issued to an SDF engineering unit for the United Nations Mission in South Sudan; and the deployment of two SDF officers to the (non-United Nations) Multilateral Force and Observers mission in the Sinai.⁷⁰ The Diet, in which there are strong divisions on security liberalization, would need to approve most deployments, including those related to the *International Peace Support Act*, the *Important Influence Situations Law*, collective self-defense, and safety-ensuring operations. Although Abe's Liberal Democratic Party (LDP) and its longtime coalition partner, Komeito, hold a majority in the upper and lower houses, these are due for elections in 2019 and 2021, respectively, and with the opposition against the legislation and pacifist Komeito wary of the LDP's stance on security, future composition will matter.⁷¹ At the same time, Diet approval may be facilitated by future political imperatives related to the international security environment and Japan-U.S. alliance. This has happened before, most notably with the post-September 11 political and security assessments that led to the passage of the anti-terrorism and Iraq special measures laws, authorizing SDF deployments that would have seemed improbable even a few years earlier.⁷²

Moreover, military exercises are the gaping back door to the constraints of political feasibility. The new authorities in the peace and security legislation create legitimacy for related military exercises to enable training and capacity-building in a wide variety of areas, including those related to the *International Peace Support Act*, the *International Peace Cooperation Act*, and collective self-defense. The SDF have already taken some advantage of relevant training opportunities through multilateral military exercises since the 2016 entry into force of the legislation, undertaking training related to the provision of support activities for foreign forces as part of the Cobra Gold military exercise in 2017 and 2018 and training related to *kaketsuke-keigo* and joint protection of camps during the Khaan Quest exercise in 2018.⁷³ Japan has also taken steps to facilitate military exercises with NATO Allies engaged in the Indo-Pacific region, signing acquisition and cross-servicing agreements (ACSAs) with Canada, France, and the United Kingdom since the legislation came into force.⁷⁴ The ACSAs standardize the reciprocal provision of supplies (including ammunition), services, and other logistical support between the SDF and the forces of these countries during both exercises and operations, providing a framework for the implementation of the support activities authorized under the legislation.⁷⁵ Additionally, Japan has signed information security agreements, necessary to facilitate direct bilateral exercises, with France and the United Kingdom.⁷⁶ The SDF have increased the scope of training exercises with these countries, including through a first-of-its-kind joint exercise in the Pacific in 2017 involving Japan, France, the United Kingdom, and the United States and the inclusion of Canada in the 2018 Japan-U.S. major bilateral exercise Keen Sword.⁷⁷ Notably, Japan and the United Kingdom also conducted the first bilateral air force and army exercises on Japanese soil involving a partner other than the United States in 2016 and 2018, respectively.⁷⁸

Japan and NATO have not yet taken advantage of the opportunity created by the legislation for expanded military exercises, however. In this regard, Japan could participate in NATO military exercises offered under the Allied Command Transformation and Supreme Headquarters Allied Powers Europe on a case by case basis.⁷⁹ The 2018 revision of the Japan-NATO Individual Partnership and Cooperation Programme also states that “NATO may consider contributing assets to Japanese exercises in the Indo-Pacific region...”⁸⁰ Although such opportunities could produce important interoperability gains, pursuing them is not, admittedly, as straight forward as it may sound. NATO exercises are generally held in and around Europe, which is not convenient logistically for Japan, while any deployment of NATO assets to the Indo-Pacific would require the approval of the North Atlantic Council.⁸¹ Further to this end, although military exercises are a practical way around the political constraints that might limit Japan’s actual deployments, they are still subject to capacity constraints; Japan already participates in a large number of bilateral and multilateral exercises outside of the NATO sphere that would compete for resources. As will be discussed in the next policy brief in this series, constraints exist on the NATO side as well. Nonetheless, as concluded in the previous policy brief, Japan and NATO will need to actively create opportunities for practical and operational cooperation if they want to continue the growth of such cooperation going forward, and military exercises are a useful

vehicle in this regard. The peace and security legislation could open up options for Japan-NATO military exercises in a new and meaningful way that should spur relevant Japan-NATO discussions on this issue.

¹ Kantei, "The Constitution of Japan,"

https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html, accessed August 16, 2018.

² Self-Defense Forces Law, Article 3,

http://www.shugiin.go.jp/internet/itdb_housei.nsf/html/houritsu/01919540609165.htm, accessed August 17, 2018.

³ Ministry of Foreign Affairs of Japan, "Cabinet Decision on Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People," July 1, 2014, p. 4, http://www.cas.go.jp/jp/gaiyou/jimu/pdf/anpohosei_eng.pdf.

⁴ "Cabinet Decision on Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People," p. 4.

⁵ Kantei, "Report of the Advisory Panel on Reconstruction of the Legal Basis for Security," May 15, 2014, p. 7, https://www.kantei.go.jp/jp/singi/anzenhosyou2/dai7/houkoku_en.pdf. See also Sasakawa Peace Foundation USA webpage on collective self-defense, <https://spfusa.org/research/collective-self-defense/>, accessed August 17, 2018.

⁶ "Japan: Law Concerning Cooperation for United Nations Peace-Keeping Operations and Other Operations," International Legal Materials, Vol. 32, No. 1 (January 1993), pp. 215-235.

⁷ Secretariat of the International Peace Cooperation Headquarters, "Act on Cooperation for United Nations Peacekeeping Operations and Other Operations," http://www.pko.go.jp/pko_j/data/law/pdf/law_e.pdf, accessed August 30, 2018.

⁸ See Ministry of Defense of Japan, "Guidelines for Japan-U.S. Defense Cooperation," September 23, 1997, pp. 6-8, http://www.mod.go.jp/e/d_act/ampo/pdf/19970923.pdf. See also Ministry of Defense of Japan, "Defense of Japan 2016," p. 215, http://www.mod.go.jp/e/publ/w_paper/2016.html, accessed September 4, 2018.

⁹ Confirmed in author interview with former Ministry of Defense official, February 6, 2019.

¹⁰ *Antiterrorism Special Measures Law* precedent confirmed in author interview with former Ministry of Defense official, February 6, 2019. For *Iraq Special Measures Law* precedent, see "Report of the Advisory Panel on Reconstruction of the Legal Basis for Security," May 15, 2014, p. 33.

¹¹ As specified in Article 3, paragraph 3 of the Anti-Terrorism Special Measures Law and Article 2, paragraph 3 of the Iraq Special Measures Law.

¹² Japan Defense Focus, No. 15, November 2009, p.4, http://www.mod.go.jp/e/jdf/pdf/jdf_no15.pdf; and Cabinet Secretariat of Japan, "Annual Report 2014: 'Japan's Actions against Piracy off the Coast of Somalia and in the Gulf of Aden,'" March 2015, p. 7, <http://www.cas.go.jp/jp/gaiyou/jimu/pdf/siryou2/counter-piracy2014.pdf>.

¹³ Ministry of Foreign Affairs of Japan, "National Defense Program Outline in and after FY1996,"

<https://www.mofa.go.jp/region/n-america/us/q&a/ref/6a.html>, accessed October 18, 2018.

¹⁴ Ministry of Defense of Japan, "National Defense Program Guidelines FY2005 –," p. 5, http://www.mod.go.jp/e/d_act/d_policy/pdf/national_guidelines.pdf, accessed October 18, 2018.

¹⁵ Ministry of Defense of Japan, "Statement by the Chief Cabinet Secretary," December 10, 2004, p. 1, http://www.mod.go.jp/e/d_act/d_policy/pdf/statement.pdf.

¹⁶ Ministry of Defense of Japan, "National Defense Program Guidelines for FY2011 and beyond," p.7, http://www.mod.go.jp/e/d_act/d_policy/pdf/guidelinesFY2011.pdf, accessed October 18, 2018.

¹⁷ "National Defense Program Guidelines for FY2011 and beyond," p.7.

¹⁸ "National Defense Program Guidelines for FY2011 and beyond," p. 9.

¹⁹ Ministry of Defense of Japan, "National Defense Program Guidelines for FY2014 and beyond," p.8, http://www.mod.go.jp/j/approach/agenda/guideline/2014/pdf/20131217_e2.pdf, accessed October 24, 2018.

²⁰ "Cabinet Decision on Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People," p. 4.

²¹ "Cabinet Decision on Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People," pp. 3, 5, 6.

²² "Report of the Advisory Panel on Reconstruction of the Legal Basis for Security," May 15, 2014, pp. 32, 33; and "Defense of Japan 2016," p. 221.

²³ "Defense of Japan 2016," p. 222.

²⁴ "Defense of Japan 2016," p.222.

²⁵ See 1954 Self-Defense Forces Law, Article 3 and Article 3 of the law as revised, accessed through the Japanese legislation search engine, <http://elaws.e-gov.go.jp>, on October 22, 2018.

²⁶ Ministry of Foreign Affairs of Japan, "Japan's Legislation for Peace and Security: Seamless Responses for Peace and Security of Japan and the International Community," March 2016, p. 6, <https://www.mofa.go.jp/files/000143304.pdf>, accessed March 6, 2019.

-
- ²⁷ Ministry of Defense of Japan, “Defense of Japan 2015,” p.145, http://www.mod.go.jp/e/publ/w_paper/2015.html, accessed September 4, 2018. The peculiarity of the language reflects its origins as a compromise between the LDP and its pacifist coalition partner, Komeito. Author interview with former Ministry of Defense official, February 6, 2019.
- ²⁸ “Defense of Japan 2015,” p. 137.
- ²⁹ Komeito webpage on the security bills, May 16, 2015, <https://www.komei.or.jp/en-st/policy/stands/20150516.html>. See also Daisuke Akimoto, *The Abe Doctrine: Japan’s Proactive Pacifism and Security Strategy*, Palgrave Macmillan, 2018, pp. 88, 89.
- ³⁰ The original law provided for support to U.S. forces in armed attack situations. See “Defense of Japan 2016,” pp. 220.
- ³¹ Akimoto, p. 88.
- ³² See “Supplementary Resolution to the Draft Legislation,” accessed November 29, 2018 through the Japanese legislation search engine, <http://elaws.e-gov.go.jp>. Although prior Diet approval is also normally required for SDF operations in a regular “survival threatening situation,” it can, per Article 9, paragraph 4 of the amended *Armed Attack Situations Response Act*, be sought retroactively in cases where time is of the essence.
- ³³ Ministry of Defense of Japan, “Defense of Japan 2017,” p 245, http://www.mod.go.jp/e/publ/w_paper/2017.html, accessed September 4, 2018.
- ³⁴ “Defense of Japan 2017,” p 245.
- ³⁵ “Defense of Japan 2015,” p. 144.
- ³⁶ “Defense of Japan 2017,” pp. 245-247.
- ³⁷ However, using weapons to injure or kill (versus fire warning shots, e.g.,) is allowed only for “legitimate self-defense and aversion of clear and present danger” and weapons use for safety-ensuring and *kaketsuke-keigo* operations is only allowed while acceptance of the host country and parties to the conflict is “consistently maintained.” See “Defense of Japan 2017,” pp. 245, 246, 247.
- ³⁸ When the foreign country concerned consents. See “Defense of Japan 2016,” p. 216.
- ³⁹ “Defense of Japan 2017,” pp. 243, 244.
- ⁴⁰ “Defense of Japan 2017,” p.244.
- ⁴¹ “Defense of Japan 2017,” pp. 259, 260.
- ⁴² “Defense of Japan 2017,” p. 259.
- ⁴³ The other two principles specify that if any of the first three conditions cease to be met, Japan will terminate its cooperation, and that weapons use shall be limited to the minimum necessary. See “Defense of Japan 2017,” p. 245.
- ⁴⁴ National Diet Library, “189th National Assembly Special Committee on Peace and Security Legislation in Japan and the International Community,” May 28, 2015, (author translation), <http://kokkai.ndl.go.jp/SENTAKU/syugiin/189/0298/18905280298004a.html>, accessed November 21, 2018.
- ⁴⁵ “189th National Assembly Special Committee on Peace and Security Legislation in Japan and the International Community.”
- ⁴⁶ “189th National Assembly Special Committee on Peace and Security Legislation in Japan and the International Community.”
- ⁴⁷ The non-application of the Five Principles for Participation to the *International Peace Support Act* has been confirmed to the author by former Japanese officials with detailed knowledge of the security legislation.
- ⁴⁸ Specifically, a resolution deciding, calling on, recommending, or authorizing Member States to respond. See “Defense of Japan 2016,” pp. 221, 222.
- ⁴⁹ United Nations, Security Council Resolution 1386, December 20, 2001, [https://undocs.org/S/RES/1386\(2001\)](https://undocs.org/S/RES/1386(2001)).
- ⁵⁰ Author interview with Pentagon official formerly involved with soliciting country contributions to the ISAF combined joint statement of requirements (CJSOR), November 4, 2018.
- ⁵¹ Stephen M. Saideman and David P. Auerswald, “Comparing Caveats: Understanding the Sources of National Restrictions upon NATO’s Mission in Afghanistan,” *International Studies Quarterly*, Vol. 56, No. 1 (March 2012), pp. 76, 77.
- ⁵² “Defense of Japan 2017,” p. 249.
- ⁵³ See for example Kantei, “Remarks by Prime Minister Shinzo Abe at a Symposium hosted by the Sasakawa Peace Foundation USA,” April 29, 2015, https://japan.kantei.go.jp/97_abe/statement/201504/1210942_9918.html; and Kantei, “Press Conference by Prime Minister Shinzo Abe Following the Cabinet Decision on the ‘Legislation for Peace and Security,’” May 14, 2015, https://japan.kantei.go.jp/97_abe/statement/201505/0514kaiken.html.
- ⁵⁴ “Report of the Advisory Panel on Reconstruction of the Legal Basis for Security,” June 24, 2008, p. 23, <https://www.kantei.go.jp/jp/singi/anzenhoshyou/report.pdf>; and “Report of the Advisory Panel on Reconstruction of the Legal Basis for Security,” May 15, 2014, p. 18. See also Akimoto, pp. 52, 54.
- ⁵⁵ See for example Kantei, “Press Conference by Prime Minister Abe,” July 1, 2014, https://japan.kantei.go.jp/96_abe/statement/201407/0701kaiken.html. This is also asserted in the “Report of the Advisory Panel on Reconstruction of the Legal Basis for Security,” May 15, 2014, pp. 26, 30.

⁵⁶ “Report of the Advisory Panel on Reconstruction of the Legal Basis for Security,” June 24, 2008, pp. 4, 11, 23; and “Report of the Advisory Panel on Reconstruction of the Legal Basis for Security,” May 15, 2014, pp. 18, 30. See also Atsuhiko Fujishige, “New Japan Self-Defense Force Missions under the ‘Proactive Contribution to Peace’ Policy: Significance of the 2015 Legislation for Peace and Security,” Center for Strategic and International Studies, July 21, 2016, p. 5, <https://www.csis.org/analysis/new-japan-self-defense-force-missions-under-%E2%80%9Cproactive-contribution-to-peace%E2%80%9D-policy>.

⁵⁷ Moreover, U.S. officials have stated that the United States could seek an Article 5 declaration over such attacks. See Julian E. Barnes, “If North Korea Attacks Guam, U.S. Holds Open Option for NATO Mutual Defense,” Wall Street Journal, September 22, 2017, <https://www.wsj.com/articles/if-north-korea-attacks-guam-u-s-may-push-for-nato-mutual-defense-1506093433>. (For relevant NATO regulations see Article 6 of the North Atlantic Treaty.)

⁵⁸ See “Joint Policy Declaration Concerning the Korean Armistice,” Gerald R. Ford Presidential Library and Museum, July 27, 1953, <https://www.fordlibrarymuseum.gov/library/document/0337/24468965.pdf>. The signatories include NATO Allies Belgium, Canada, France, Greece, Luxembourg, The Netherlands, Turkey, and the United Kingdom. See also, for example, Louisa Brooke-Holland, “UK defense obligations to South Korea,” House of Commons Library Briefing Paper, October 5, 2017, <http://researchbriefings.files.parliament.uk/documents/CBP-8100/CBP-8100.pdf>.

⁵⁹ Koji Kobayashi, Miyabe Hidemine, and Yukio Kohashima, “Improvement of unbroken system for peace and security of Japan and international society: Deliberation of the Diet on the Law Proposal on Peace and Security Law,” Journal of the Research Bureau of the House of Representatives, No. 12 (December 2015), p. 235, [http://www.shugiin.go.jp/internet/itdb_rchome.nsf/html/rchome/Shiryō/2015ron12.pdf/\\$File/2015ron12.pdf](http://www.shugiin.go.jp/internet/itdb_rchome.nsf/html/rchome/Shiryō/2015ron12.pdf/$File/2015ron12.pdf).

⁶⁰ Cabinet Secretariat of Japan, “Answers to ‘Regarding the development of a seamless security legislation to protect the public,’” questions 24 and 25, <https://www.cas.go.jp/jp/gaiyou/jimu/anzenhoshouhousei.html>, accessed March 4, 2019.

⁶¹ Although the supplementary resolution was passed only in the Upper House of the Diet and does not constitute law, it does create important guidance. The government would risk losing support if it did not incorporate this guidance into its decision-making in such a scenario. Author interview with Daisuke Akimoto, March 4, 2019.

⁶² See Allied Maritime Command webpage on maritime groups, <https://mc.nato.int/missions/maritime-groups.aspx>, accessed December 12, 2018. For Abe government materials, see Akimoto, pp. 55.

⁶³ Contingencies on the Korean peninsula were a focus of the original 1999 law, while contingencies with China were a focus of the amended version. Author interview with former Ministry of Defense official, February 6, 2019.

⁶⁴ Or Taiwan. On the government examples, see “Report of the Advisory Panel on Reconstruction of the Legal Basis for Security,” May 15, 2014, pp. 17, 18; and Akimoto, pp. 51, 52.

⁶⁵ Erik Brattberg, Philippe Le Corre, and Etienne Soula, “Can France and the UK Pivot to the Pacific,” Carnegie Endowment for International Peace, July 5, 2018, <https://carnegieendowment.org/2018/07/05/can-france-and-uk-pivot-to-pacific-pub-76732>; Gavin Williamson, “Raising the Bar for Regional Security Cooperation,” IISS Shangri-La Dialogue, June 3, 2018, <https://www.gov.uk/government/speeches/raising-the-bar-for-regional-security-cooperation>; and Tallulah Lutkin and Togo Shiraishi, “France and Japan to scale up military exercises to deter China,” Nikkei, January 25, 2018, <https://asia.nikkei.com/Politics/International-relations/France-and-Japan-to-scale-up-military-exercises-to-deter-China>.

⁶⁶ See this notion reflected in Japan-NATO scholarship such as Yukio Satoh, “Japan and NATO Agenda for Political Dialogue,” NATO Review, Vol. 40, No. 3, June 1992, <https://www.nato.int/docu/review/1992/9203-4.htm>; and Masashi Nishihara, “Can Japan be a Global Partner for NATO,” Research Institute for Peace and Security, December 2006, http://www.rips.or.jp/Policy_Perspectives/RIPS_Policy_Perspectives_No.2.pdf.

⁶⁷ See Kantei, “Press Conference by the Chief Cabinet Secretary,” May 8, 2017, https://japan.kantei.go.jp/tyoukanpress/201705/8_a.html.

⁶⁸ “LDP constitution panel discusses 7 proposals for revising war-renouncing Article 9,” Mainichi, March 14, 2018, <https://mainichi.jp/english/articles/20180314/p2a/00m/0na/016000c>; and “Key LDP panel agrees to pursue Abe’s proposed amendment of Japan’s pacifist Constitution,” Japan Times, March 22, 2018, <https://www.japantimes.co.jp/news/2018/03/22/national/politics-diplomacy/key-ldp-panel-agrees-pursue-abes-proposed-amendment-japans-pacifist-constitution/>.

⁶⁹ The mission logs, whose existence was initially denied by the government, raised scrutiny of the security conditions under which the peacekeepers were deployed. See, for example, Michael Bosack, “What to Make of the Self Defense Force ‘Log Scandals,’” Tokyo Review, May 30, 2018, <https://www.tokyoreview.net/2018/05/self-defense-force-log-scandals/>. See also The Mainichi, “48% oppose SDF’s new mission under security legislation: Mainichi poll,” September 5, 2016, <https://mainichi.jp/english/articles/20160905/p2a/00m/0na/012000c>.

⁷⁰ The engineering unit deployed to South Sudan left the country in May 2017 without utilizing either authority. Japan Defense Focus, No. 90, July 2017, p. 3, http://www.mod.go.jp/e/jdf/pdf/jdf_no90.pdf; and “Japan approves plan to send SDF officers to Sinai, on first non-U.N. peacekeeping mission,” Japan Times, April 2, 2019, <https://www.japantimes.co.jp/news/2019/04/02/national/japan-approves-plan-send-sdf-officers-sinai-first-non-u-n-peacekeeping-mission/#.XOT4knduK71>.

⁷¹ See, for example, Katsuyuki Yakushiji, “The Komeito’s Curious Journey,” Tokyo Foundation for Research and Policy, April 8, 2014, <http://www.tokyofooundation.org/en/articles/2014/komeito-curious-journey>; and “Critical test for Komeito lies in ability to expand its coalition role,” Asahi Shimbun, October 18, 2018, <http://www.asahi.com/ajw/articles/AJ201810110028.html>.

⁷² See for example, David Arase, “Japan, the Active State? Security Policy after 9/11,” Asian Survey, Vol. XLVII, No. 4, July/August 2007, pp. 570, 571.

⁷³ Japan Defense Focus, No. 98, March 2018, p. 6; Japan Defense Focus, No. 86, March 2017, p. 5; and Ministry of Defense of Japan, “Defense of Japan 2018,” p. 255, https://www.mod.go.jp/e/publ/w_paper/2018.html, accessed March 4, 2019.

⁷⁴ ACSAs for Canada and France are currently before the Diet and the United Kingdom’s has been approved. “Defense of Japan 2018,” pp. 370, 374; and “Japan, France sign agreement to share defense supplies, deepening military ties,” Japan Times, July 14, 2018, <https://www.japantimes.co.jp/news/2018/07/14/national/politics-diplomacy/japan-france-sign-agreement-share-defense-supplies/>.

⁷⁵ See, for example, “Defense of Japan 2017,” pp. 364 and 375-376.

⁷⁶ “Defense of Japan 2018,” p. 495.

⁷⁷ Japan Defense Focus, No. 89, June 2017, p. 5; and Ridzwan Rahmat, “Canada debuts warship at biennial military drills between Japan, US,” Jane’s, October 30, 2018, <https://www.janes.com/article/84172/canada-debuts-warship-at-biennial-military-drills-between-japan-us>. For other exercises with these states, see “Defense of Japan 2018,” pp. 499, 500.

⁷⁸ Japan Defense Focus, No. 82, November 2016, p. 3 and “SDF to conduct first joint military exercises in Japan with British Army,” Japan Times, September 15, 2018, <https://www.japantimes.co.jp/news/2018/09/15/national/sdf-conduct-first-joint-military-exercises-japan-british-army/>.

⁷⁹ Author interview with NATO official, May 17, 2019.

⁸⁰ North Atlantic Treaty Organization, “Individual Partnership and Cooperation Programme between Japan and NATO,” May 31, 2018, https://www.nato.int/nato_static_fl2014/assets/pdf/2018_05_pdf/20180719_180531-ipcp-japan.pdf.

⁸¹ Author interview with NATO official, May 17, 2019.