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COLLECTIVE SELF-DEFENSE: KEY TO A LARGER SECURITY ROLE FOR JAPAN

Masashi Nishihara

The Long Overdue Constitutional Revision

For sixty years since the Japanese constitution was enacted in 1947, successive governments have taken the stand that Japan can exercise the right of individual self-defense but not collective self-defense. This interpretation of Article 9 of the constitution has unfortunately restricted Japan's role in its alliance with the United States and in UN-sanctioned international peace support operations. Either a reinterpretation or amendment of the constitution is long overdue.

The views expressed in this piece are the author's own and should not be attributed to The Association of Japanese Institutes of Strategic Studies.

Under the current interpretation of Article 9, if North Korea were to fire a missile against Japan, the United States would help intercept it. However, Japan is not obligated to aid in the interception of missiles aimed at Hawaii or other American targets except for American military bases in Japan. In the case of an armed conflict on the Korean peninsula or in the Strait of Taiwan, the United States will be directly engaged, while the Japanese Self-Defense Forces (SDF) may provide logistical support in “non-combat areas.” If combat were to erupt in non-combat areas, then the SDF will by law have to withdraw. Is this Japan capable of maintaining the alliance with the U.S. during wartime?

Prime Minister Shinzo Abe has stated that revising the constitution is one of his top political priorities. Yet he has so far been cautious about moving to amend Article 9. Instead, he has mentioned that a study should be conducted to investigate possible cases of collective self-defense that the government has hitherto interpreted to be banned by the constitution and yet that may be permissible in the light of “minimum, necessary national defense.”

Article 9 reads: “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. ... The right of belligerency of the state will not be recognized.” Literally, this may suggest that Japan should possess no arms. However, the government interpretation is, although Japan cannot have armaments “as means of settling international disputes,” it may have “a minimum level of armaments necessary for national defense,” because national defense is an inherent right of the state. In addition, “a minimum level of armaments necessary for national defense” is interpreted to allow Japan to exercise only the right of individual self-defense but not the right of collective self-defense.

However, Article 51 of the United Nations Charter recognizes collective self-defense as an inherent right of the state. The right of collective self-defense is also mentioned in the preamble of the Security Treaty between Japan and the United States, a key document of the bilateral alliance. Still, the Japanese

government has taken the position that by international law Japan has an inherent right of collective self-defense but that Japan shall not exercise that right under the current constitution.

Denial of Collective Self-Defense Narrows Japan's Options

With this strange interpretation, the Japanese government has been lost in a maze. The Japan-U.S. alliance should mean mutual assistance for national defense, an arrangement for collective self-defense. However, the government position is that to help defend the United States is Japan's exercise of the right of collective self-defense and that Japan should not use force beyond "minimum, necessary national defense."

Restrictions imposed on Japanese naval supply ships operating today in the Arabian Sea and the Indian Ocean are telling. The Japanese Maritime Self-Defense Force has been there since December 2001, following the September 11 attacks. Japanese ships may defend friendly nations' naval ships if they come under attack while being fueled. Foreign ships physically connected to Japanese ships are considered to be "under Japanese control" and, therefore, may be defended by Japan under its right of individual self-defense. However, Japanese ships cannot help defend those friendly ships waiting nearby for Japanese supply. This is because they are not under Japanese control, and defending them is considered to be an exercise of the right of collective self-defense, which is banned.

Similarly, Japanese ground troops engaged in humanitarian assistance missions in southern Iraq until July last year expected to be protected by neighboring forces, first British and Dutch, then British and Australian. However, Japanese troops were not permitted to protect these neighboring forces. Japanese troops could help protect friendly foreign troops only when they were under Japanese control.

Successive Japanese governments, mostly of conservative orientation, have developed such "theological" interpretations of the constitution through their combative debates with opposition parties, often of pacifist orientation.

Consequently, Japan's policy options in the American alliance and UN-sanctioned peace support operations have been narrowed by the handicapped use of force.

For the last few years, Japan has campaigned for a permanent seat in a reformed United Nations Security Council. Efforts to gain a seat should be paralleled by efforts to make possible the exercise of the right of collective self-defense, for a permanent member bears heavy responsibility for international peace and security.

Abe's Welcome Moves


Recognizing the shortfalls of the constraints on Japan's use of force, Prime Minister Abe is trying to identify cases where the right of collective self-defense may be permissible under the constitution. In fact, the government has just announced that it plans to organize a conference of intellectuals on this subject before the end of the month. This is the first step toward a greater security role for Japan. Only by becoming a normal democratic country can Japan fulfill its international responsibility.

Japan should eventually amend the constitution. Amendment requires a two-thirds majority vote in both the lower and upper houses of the Diet, and subsequently a majority vote in a national referendum. The coalition government today – of the Liberal-Democratic and Komeito parties – has more than two-thirds control in the lower house but not in the upper house. The forthcoming upper house election in July may not award the coalition government the needed number of seats. Even so, though unlikely, enough opposition party members may join the government parties in amending the constitution.

The process of constitutional revision requires a national referendum law, which Japan does not yet have. The government has just introduced such a bill and plans to make it into law before the July upper house elections.

In the meantime, as an interim political solution, Abe should venture to do two things. First, he should modify the interpretation of Article 9 so that Japan can exercise both rights of individual and collective self-defense. Second, he should

change the interpretation that Japanese troops engaged in international peace support operations can only protect themselves as a matter of individual self-defense. Protective action by troops working under a United Nations Security Council resolution is not about national defense. It is about eradicating obstructionist activities against UN-sanctioned international peace support operations. With these two modifications of the interpretation of the right of self-defense, Japan can expand its security role in a more meaningful way.

Last January Prime Minister Abe visited Brussels, speaking before NATO's North Atlantic Council in favor of closer cooperation between Japan and NATO. Until Japan recognizes its right of collective self-defense, it cannot act as a trusted partner of NATO, which is organized on the principle of collective self-defense, as stipulated in Article 5 of the Washington Treaty. Also, in March, Japan and Australia signed a joint declaration on security. Here again, the right of collective self-defense will pave the way for substantial bilateral security cooperation. The times have changed. As Japan's economic and defense capabilities have grown, it should modify the outlook of its role in the alliance with the United States and UN-sanctioned peace support operations. 

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