

## **Briefing Memo**

### **Establishment of the Basic Space Law – Japan’s Space Security Policy**

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On May 21, 2008, the Basic Space Law (Basic Law) was enacted when it was passed by the Lower House of the Diet following its earlier ratification by the Upper House. This law is Japan’s first basic law relating to space activities since 1970 when Japan initiated its space development with the launch of Ohsumi, a satellite for testing technology. This briefing memo looks at the past, present, and future of Japan’s policy on the use of space, particularly the use of space for security purposes.

#### **Diet Resolution – the “Peace Equals Non-military” Principle**

Japan’s basic policy on space activities, particularly its policy concerning security, was established in 1969. In this year, the Law Concerning the National Space Development Agency of Japan (NASDA Law), which established NASDA as the organization responsible for the development of space, was framed and ratified. At the same time, a supplementary resolution was adopted that had an impact on Japan’s space policy in relation to security for several decades.

This resolution defined what constituted “peace purposes” in light of Article 1 of the NASDA Law, which stated that Japan’s space program would be limited to promotion of the development and use of space exclusively for peace purposes. It was at this time that the Diet adopted the interpretation of peace purposes to mean “non-military” purposes. This was in fact one of the dominant interpretations in international society at the time. However, while the interpretation limiting space activities to non-military purposes was widely adopted by countries not engaged in space activities, almost all of the countries engaged in space activities adopted the interpretation of peace purposes to mean “non-aggressive” purposes. Japan, on the other hand, from the outset, voluntarily limited its use of space to peaceful purposes. Since then, this interpretation of equivocating peaceful purposes with non-military purposes remained in effect as the principle underpinning Japan’s space activities for more than 35 years.

This interpretation was confirmed over and over again on various occasions during question-and-answer time in the Diet. This “peaceful purposes” interpretation also continued to be upheld in the government’s broad outline for space development, which was on a number of occasions revised by the Space Activities Commission. Furthermore, in the government’s actual

framework for space development, more emphasis was placed on academic pursuits and R&D in science and technology rather than on security or the promotion of space as an industry. At the core of Japan's space development were NASDA and the Institute of Space and Aeronautical Science (later the Institute of Space and Astronautical Science). NASDA was an institute which belonged to the then Science and Technology Agency, while the Institute of Space and Astronautical Science was initially a research organization of Tokyo University and later came under the jurisdiction of the then Ministry of Education. NASDA and the Institute of Space and Astronautical Science were later consolidated into the National Aerospace Laboratory, which became the present Japan Aerospace Exploration Agency (JAXA). JAXA is an independent administrative institution under the jurisdiction of the Ministry of Internal Affairs and Communications.

### **Broadening of the Peace Principle**

However, interpretation of the use of space for peaceful purposes did not in any way exclude the use of space for security purposes. While the government later maintained the principle of the use of space for non-military purposes and not for activities involving destruction or bloodshed, it approved the use of space by the Self-Defense Forces for general space activities. Telecommunications satellites used by the Self-Defense Forces and information-gathering satellites launched to obtain images required for Japan's security, for example, came under use of space for general purposes. On the basis that there was no other option, the government even came to the conclusion that the use of space for missile defense did not contradict the use of space for peace purposes. Therefore, even in Japan where the development and use of space was based on the view that peaceful purposes were equivocal with non-military purposes, as the above examples attest, the use of space had expanded to some extent within the scope of general use to include security purposes, albeit with restrictions on activities involving destruction and bloodshed.

### **Establishment of the Basic Space Law**

The recently established Basic Law, which reviewed the policy on space development including restrictions in areas of security, was submitted to the Diet in June 2007 after winning the support of the Komeito, one of the ruling coalition parties, as lawmaker-initiated legislation advocated by the Liberal Democratic Party (LDP) for making Japan's policy on space development more efficient. Following consultation with the Komeito, the words "in conformation with the principles of Japan's peace constitution," which had not been in the previous LDP bill, were inserted as a lexical token. These words were most likely added because of the Komeito's view that the LDP draft, as it stood, did not sufficiently restrict the use of space for security purposes. In the following year, 2008, a basic agreement was also reached with the Democratic Party, the largest opposition party, on the same draft after ongoing deliberations. Previously withdrawn as an LDP-Komeito bill, it was again submitted as a three-party bill by the LDP, Komeito, and the Democratic Party, and following

deliberation in both the Lower and Upper Houses was ratified as the Basic Law on May 21, 2008. Officially announced as a law on May 28, it went into force three months later.

### **Outline of the Basic Space Law**

The Basic Law consists of the main body comprised of a total of 35 articles and four supplementary provisions. The fundamental principles of the legislation are detailed below.

The objectives of the law are to improve the lives of the people, develop the economy and society, and contribute to world peace and human welfare by establishing the basis of Japan's space development and use of space as well as its responsibility in these areas and by formulating a basic plan (Article 1). To promote the objectives of the law, Japan will proceed with the development of space in accordance with the principles of Japan's constitution and international law including space agreements and other relevant agreements (Article 2). Furthermore, Japan will engage in space activities that will contribute to the formation of a safe and secure society in Japan, the peace and security of international society, and the security of Japan (Article 3). The provisions continue by enumerating the various uses of space that Japan should pursue such as the promotion of the country's space-related industries (Article 4), contribution to science and technology as well as knowledge for the sake of Japan's entire society (Article 5), the promotion of international cooperation (Article 6), appropriate care of the environment (Article 7), and the obligations of the national and municipal governments to engage in activities based on these basic principles (Articles 8 and 9). It also provides for the government to adopt basic measures required for promoting the objectives of the law (Articles 13 to 23).

A basic space plan is to be drawn up to fulfill these various principles (Article 24). The law also provides for the establishment of a Strategic Space Development Headquarters in the Cabinet Secretariat to draw up the basic plan and facilitate all space-related activities (Article 25) for the organization of the Headquarters, calling for all Cabinet members to be members and for space development to proceed within that framework as a concerted national effort. The Prime Minister is the Director General of Headquarters (Article 28), and the Deputy Director Generals are the Chief Cabinet Secretary and a competent minister who is to be appointed (Article 29). Accordingly, Cabinet Minister Fumio Iwata was recently appointed as Minister for Outer Space Development. To get the Strategic Space Development Headquarters up and running, a number of space-related officers have been seconded to the Cabinet Secretariat from relevant government agencies (Ministry of Economy, Trade and Industry, and Ministry of Education, Culture, Sports, Science and Technology, Ministry of Defense, etc. ).

In addition, in accordance with the supplementary provisions of the Basic Law, a decision was made

to establish within about a year a Space Secretariat within the Cabinet Office as an administrative body for facilitating Japan's overall space development as a nation and to undertake a review of the independent administrative institution, JAXA, which has been responsible for Japan's space development until now.

### **Impact on Security**

From a security point of view, the Basic Space Law is important as legislation because it clearly provides a legal framework for Japan to engage in space development for the sake of national security while conforming to international law. This is a clear departure from the interpretation that had been accepted as Japan's basic policy of space development for over 35 years. In other words, it means that the equivocation of peaceful use with non-military use has been replaced with the interpretation of peaceful use to mean non-aggressive use, which is the international standard. This law also provides for Japan to contribute to international peace and safety. There is also a possibility that this includes contributing to international activities, such as the United Nations' peacekeeping activities, through space activities and cooperation in space activities with the United States from the vantage point of Japan-US security relations.

It is also possible that the use of reconnaissance satellites, radio wave information-gathering satellites, early warning satellites, communications satellites, data relay satellites, and quasi-zenith satellites will be considered in space activities contributing to Japan's own security. (It may have been with this objective in mind that the Space and Maritime Security Policy Office was established as an internal subdivision of the Ministry of Defense on July 1, 2008.) Such satellites can be used for various purposes such as checking on indications of the launch of strategic missiles which neighboring countries possess through image and tracking information (reconnaissance and radio wave information-gathering satellites), detecting projectiles (early warning satellites), and securing adequate communications lines in emergency situations and communicating with troops engaged in overseas peacekeeping activities (communications and data relay satellites). It can also be assumed that such satellites may also be considered for monitoring Self-Defense Forces engaged in overseas peacekeeping activities (reconnaissance satellites), for example, or for improving the accuracy of geodetic surveys in Japan and surrounding areas (quasi-zenith satellites).

However, what is possible that the law and the form of development Japan will actually initiate for the realization of space development, including the systems it should possess and operate, are different issues for discussion altogether. Development of space requires a significant level of funding. Comparisons of technological potential and efficiency with similar existing terrestrial systems are also necessary. Although space systems have the advantage of being able to travel above any country, they are generally extremely costly. They also have a number of disadvantages. For

example, it takes a certain number of days for a satellite to pass over the same geographical point and, because satellites orbit at a considerable distance above the earth (from a low earth orbit of several hundred kilometers above the earth to quasi-zenith orbits of 36,000 kilometers above the earth), it is virtually impossible to repair them if they break down for some reason. In the future, Japan will consider the advantages and disadvantages of various security systems that make use of space, systems whose consideration and comparison were previously prohibited.

As outlined above, this new legislation, which is the first basic law providing for Japan's space activities, can be expected to function as a fundamental law for drafting space activity plans appropriate for the interests of Japan as a whole, that is, in terms of the economy, science, technology, the environment, and security. Since the launching of the Ohsumi satellite in 1970, Japan's constant status as one of the world's most powerful countries in advanced space activities remains uncontested. However, its space activities, which focused on development in academic areas of science and technology rather than being underpinned by a comprehensive national space strategy, differed significantly in nature from the activities of other major countries. The space activities of many countries such as the United States, Russia (the former Soviet Union) and China, which have been undertaken within the context of their countries' strategies and aimed at securing maximum results at the national level, differ markedly from Japan's space activities. In view of the new Basic Space Law, it is likely that Japan will carefully consider results achieved to date and determine the appropriate use of space for the nation through broad discussions within and outside the Diet, and, on that basis, will decide on areas of priority in space development and will reallocate resources and personnel accordingly. During this process, the Ministry of Defense and the Self-Defense Forces, the main agencies in charge of Japan's security, will undoubtedly engage in in-depth discussions on the ways in which Japan should make use of space.

The purpose of this column is to respond to readers' interests in security issues and at the same time to promote a greater understanding of NIDS. A "briefing" provides, among other things, background information. We hope these columns will help everyone to better understand the complex issues involved in security affairs. Please note that the views in this column do not represent the official opinion of NIDS.

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