

Chapter 8

Japan's Defense Policy: Terrorist Attacks in the United States and Debate on Defense Policy

The Japanese Diet convened an extraordinary session September 27, following the terrorist attacks in the United States on September 11. This session, from its nature, can be called the antiterrorism Diet session. In this sitting, the Diet enacted the Anti-Terrorism Special Measures Law and the Amendment to the Self-Defense Forces Law. This allowed the government to implement the first, second and sixth of the seven measures cited in Japan's Measures in Response to the Simultaneous Terrorist Attacks in the United States, which the government announced September 19. The three measures are related to the activities of the Self-Defense Forces (SDF). The Amendment to the SDF Law included a provision allowing the SDF to fire at suspicious boats in order to stop them. This was done through an application of the Maritime Safety Agency Law that was simultaneously amended to this effect. The government had considered the provision in a manner to reflect the lessons learned from the suspicious boat incident of March 1999.

Vigorous debate took place in the Diet deliberations on the Anti-Terrorism Special Measures Law, since the legislation envisaged the dispatch of SDF troops overseas to support the military operations of the United States and other countries. Controversial issues in earlier discussions on the dispatch of SDF troops overseas had included the right of collective self-defense, the integration with the use of force and the use of weapons. These issues emerged once again. In the final days of the extraordinary Diet session, amendments to the International Peace Cooperation Law were enacted to allow SDF members to participate in core units of United Nations peace-keeping forces (U.N. PKF). Such participation had been disabled since the enactment of the International Peace Cooperation Law in 1992.

The enactment of the Anti-Terrorism Special Measures Law was significant in the sense that it demonstrated Japan's willingness to voluntarily and proactively take part in international cooperation as a member of the international community. The amendments to the International Peace Cooperation Law will increase opportunities for Japan to make international contributions.

1. The Anti-Terrorism Special Measures Law

(1) Outline of the Law

The Anti-Terrorism Special Measures Law has the following features. First, the law's purposes are limited to Japan's response to the September 11 terrorist attacks. The law will lose effect two years after the effectuation date. If necessary, however, another law may be enacted to extend the Anti-Terrorism Special Measures Law by up to two years.

Second, under the law, there is provision for basic principles for the implementation of specific measures. One principle is that any measures to be taken under the law must not constitute the threat or use of force. This principle is based on the Constitution of Japan. Another principle is that measures under the law may only be implemented in Japan's territory, in the high seas or airspace above where combat is not taking place or not expected to take place while Japan's activities are being implemented, or in the territories of foreign countries (Implementation shall be limited to cases where consent from the territorial countries has been obtained). This aims at preventing Japanese measures from being integrated with the use of force by foreign countries. Therefore, if combat is anticipated in an area where the Japanese SDF is engaged in activities, Japan will have to suspend these activities.

Third, the law requires the government to obtain Diet approval for the implementation of any measures. The government has to request and obtain Diet approval on their implementation within 20 days of their initiation. The Diet approval provision was not in the bill originally proposed, but added as an amendment to the proposal during Diet deliberations on the legislation. The government and the governing parties have failed to reach an agreement with the Democratic Party of Japan (DPJ), the largest opposition group, on whether Diet approval should come before or after the implementation of specific measures, although the DPJ indicated its understanding about the legislation itself. When the Diet approved the dispatch of the SDF after

Table 8-1. Provision of Materials Belonging to the SDF and of SDF Services in Cooperation and Support Activities

Category	Contents
Supplies	Provision of water, fuel, meals and relevant materials and services
Transportation	Transportation of personnel and materials, and provision of transportation equipment and relevant materials and services
Repair & Maintenance	Repair and maintenance, and provision of repair and maintenance equipment, parts, components and relevant materials and services
Medical Services	Provision of medical services, sanitation materials and relevant materials and services to sick or injured people
Communications	Use of communications equipment, and provision of communications devices and relevant materials and services
Airport & Seaport	Assistance for departure and landing of aircraft and for services for departure and arrival of ships, loading and unloading services, and provision of relevant materials and services
Base Support	Collection and disposal of waste, and provision of electricity and relevant materials and services

Source: "The Special Measures Law Concerning Measures Taken by Japan in Support of the Activities of Foreign Countries Aiming to Achieve the Purposes of the Charter of the United Nations in Response to the Terrorist Attacks Which Took Place on September 11, 2001 in the United States of America as well as Concerning Humanitarian Measures Based on Relevant Resolutions of the United Nations."

Notes: The materials to be provided do not include weapons (including ammunitions). The provision of materials and services does not include fuel supply or maintenance for aircraft preparing to take off on military sorties. The transportation of materials does not include the land transportation of weapons (including ammunitions) in foreign territories.

the enactment of the law, however, the DPJ supported the approval, although some of its members did not vote in favor of the motion.

Fourth, the Anti-Terrorism Special Measures Law has a provision limiting the cases where SDF members can use weapons. This provision states that SDF members ordered to implement measures under the law may use weapons when an unavoidable cause exists for the use of such weapons to protect their lives or safety, those of other SDF members who are with them on the scene or those of people on the scene who have come under their control during the course of their duties. How to interpret "those who have come under their control" was a controversial issue. The law allows SDF members to use weapons for the protection of affected people under certain conditions when they are in charge of assisting such people. The provision strictly lim-

Table 8-2. Provision of Materials Belonging to SDF and of SDF Services in Cooperation and Support Activities for Foreign Forces Engaged in Search and Rescue Operations

Category	Contents
Supplies	Provision of water, fuel, meals and relevant materials and services
Transportation	Transportation of personnel and materials, and provision of transportation equipment and relevant materials and services
Repair & Maintenance	Repair and maintenance, and provision of repair and maintenance equipment, parts, components and relevant materials and services
Medical Services	Provision of medical services, sanitation materials and relevant materials and services to sick or injured people
Communications	Use of communications equipment and provision of communications devices and relevant materials and services
Lodging	Use of lodging facilities and provision of bedding, and relevant materials and services
Disinfection	Disinfection and provision of disinfection equipment, and relevant materials and services

Source: "The Special Measures Law Concerning Measures Taken by Japan in Support of the Activities of Foreign Countries Aiming to Achieve the Purposes of the Charter of the United Nations in Response to the Terrorist Attacks Which Took Place on September 11, 2001 in the United States of America as well as Concerning Humanitarian Measures Based on Relevant Resolutions of the United Nations."

Notes: The materials for the provision do not include weapons (including ammunitions). The provision of materials and services does not include fuel supply or maintenance for aircraft preparing to take off on military sorties. The transportation of materials does not include the land transportation of weapons (including ammunitions) in foreign territories.

its SDF members' use of weapons, requiring them not to cause harm to people for purposes other than legitimate self-defense and necessity.

The law calls for Japan to take certain measures with the purpose of contributing proactively and on its own initiative to the endeavors of the international community for the prevention and eradication of international terrorism, thereby ensuring the peace and security of the international community, including Japan. These are: (1) "The measures Japan implements in support of the activities of the armed forces of the United States and other countries that aim to eradicate the threat of the terrorist attacks on September 11, 2001, thereby contributing to the achievement of the purposes of the Charter of the United Nations" and (2) "The measures Japan implements with humanitarian spirit

based on relevant resolutions of the United Nations or requests made by the United Nations, etc.” The first includes cooperation and support activities for U.S. and other forces, such as the provision of materials and services, and convenience (facilitative assistance) (see Table 8-1), and the search and rescue of combatants in distress due to combat. For search and rescue, the cooperation and support activities (see Table 8-2) include the provision of materials and services, and convenience. However, the law prohibits Japan from the supply of weapons and ammunitions, refueling and maintenance services for aircraft in preparation for combat, and ground transportation of weapons and ammunition in foreign territories. The second includes transportation of daily necessities, including food, clothing and medicines, and other humanitarian activities. Basic plans, which are subject to Cabinet decisions, fix the basic policies of these measures, and the categories, specifics and areas of the activities.

(2) Diet Debate: Points of Dispute

The Diet debate on the Anti-Terrorism Special Measures Law focused on the “right of collective self-defense” and the “use of weapons.” The September 11 terrorist attacks forced Japan to take prompt action for the purpose of international cooperation and cooperation with the United States in the fight against international terrorism. In the extraordinary Diet session that began September 27, deliberations on the Anti-Terrorism Special Measures Law for cooperation and support activities of the SDF for U.S. and other foreign forces included a debate over the law’s relation with the right of collective self-defense.

Until the first half of 2001, the right of collective self-defense had been an issue of great controversy in the Diet. The controversy was in connection with the report titled *The United States and Japan: Advancing Toward a Mature Partnership*, published in the United States in October 2000, also known as the *Armitage-Nye Report*, as well as Prime Minister Junichiro Koizumi’s remark on the matter at a news conference in April 2001. This helped activate the debate on the mat-

ter in the extraordinary Diet session. An even greater factor behind the vigorous debate, however, was the fact that, for the first time in its history, the North Atlantic Treaty Organization (NATO) gave a commitment to collective self-defense. It did so in order to support the United States in its exercise of the right of individual self-defense against the terrorist group suspected of masterminding the September 11 attacks and terrorist-supporting countries. However, decisions on specific actions were left up to individual NATO members. Those that actually entered into the commitment to collective self-defense and offered military support to the United States were limited to a small number of NATO members. These included Britain, Italy, Germany and Turkey. In Japan, however, NATO's symbolic commitment to collective self-defense was overemphasized as a contrast to Japan's limited cooperation and support activities.

The right of collective self-defense first emerged as a concept in international law in Article 51 of the Charter of the United Nations. The article says, "Nothing in the present charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security." Collective self-defense is thus one of the inherent self-defense rights that any country can exercise in response to an armed attack. Each U.S. ally has had an inherent right to enter into the commitment to collective self-defense, as endorsed by the U.N. Charter, in response to the United States' exercise of the right of individual self-defense against the terrorist attacks. NATO allies have turned to the U.N. Charter to justify their military support for the United States as endorsed by the international community. In the international community as it stands at the present time, the charter has in principle prohibited the use of force. Having said that, it endorses the use of force by the United Nations and by its members to exercise their inherent right of individual or collective self-defense. In Japan, however, throughout the 50 years of Diet debate since World War II, the

government has consistently interpreted the Constitution of Japan as denying the exercise of the nation's right of collective self-defense. The government interpretation is as follows:

“It is recognized under international law that a state has the right of collective self-defense, which is the right to use actual force to stop an armed attack on a foreign country with which it has close relations, even when the state itself is not under direct attack. It is therefore self-evident that since it is a sovereign state, Japan has the right of collective self-defense under international law. The Japanese government nevertheless takes the view that the exercise of the right of the self-defense as authorized under Article 9 of the Constitution is confined to the minimum necessary level for the defense of the country. The government believes that the exercise of the right of collective self-defense exceeds that limit and is not, therefore, permissible under the Constitution.”

The interpretation means that Japan has the right of individual self-defense and the right of collective self-defense as the inherent rights of sovereign states under international law, but can only exercise the right of individual self-defense under constitutional restraint. This is the present interpretation and stance of the Japanese government. Therefore, the current position of the government is that Japan cannot exercise the right of collective self-defense even in terms of its support for the current U.S. campaign. As a U.S. ally and a member of the international community, Japan's cooperation with the United States in military operations is thus under a constraint that prevents it from exercising the right of collective self-defense or resorting to the use of force.

Furthermore, another constraint on the policy of the Japanese government is a requirement for Japan to refrain from becoming an integral part of the use of force. The concept of integration with the use of

force emerged in the course of Diet deliberations on the International Peace Cooperation Bill for Japan's logistic support for the coalition forces during the Gulf War of 1990. Under this concept, supply and transportation of weapons and ammunitions to combat zones, and medical services integrated with medical units in such zones are interpreted as being an integral part of the use of force. But transportation of food and medicines in areas separated from combat zones is permitted under the concept.

Since such interpretation was given, Japanese lawmakers have questioned if specific actions stipulated in the International Peace Cooperation Bill and the Bill Concerning Measures to Ensure the Peace and Security of Japan in Situations in Areas Surrounding Japan would be allowed under the concept. As a result, the Basic Guidelines for Japan's Participation in Peacekeeping Forces have been incorporated into the International Peace Cooperation Law. This was to prevent Japanese operations becoming an integral part of the use of force. The guidelines, called the "Five Principles," include restrictions on the use of weapons by SDF members and their withdrawal upon the collapse of a cease-fire agreement. The Law Concerning Measures to Ensure the Peace and Security of Japan in Situations in Areas Surrounding

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Five Principles for Participation in PKO

- 1 Agreement on a cease-fire shall have been reached among the parties in conflict.
- 2 Parties under conflict, including its territorial state(s), shall have given their consent to the deployment of the peacekeeping force and Japan's participation in that force.
- 3 The peacekeeping force shall maintain strict impartiality, without favoring any of the parties in conflict.
- 4 Should any of the above requirements cease to be satisfied, Japan's unit must be able to withdraw from the operation.
- 5 Use of weapons shall be limited to the minimum necessary to protect personnel's lives.

Japan has limited logistic support operations to those conducted in rear areas separated from combat zones in this respect. This is to avoid the integration of such operations with the use of force.

Cooperation and support activities, and search and rescue activities under the Anti-Terrorism Special Measures Law have followed provisions on rear-area support and rear-area search and rescue activities in the Law Concerning Measures to Ensure the Peace and Security of Japan in Situations in Areas Surrounding Japan. The problem of the integration with the use of force had once been settled through deliberations on this law. In the course of deliberations on the antiterrorism bill, however, some lawmakers argued that transportation of weapons and ammunitions could become an integral part of the use of force. The transportation of weapons and ammunitions was eventually included in the cooperation and support activities as originally proposed. This was because the government adopted the view that the transportation of weapons and ammunitions to areas separated from combat zones did not constitute an integral part of the use of force. Through further deliberations, however, the land transportation of weapons and ammunitions in foreign territories was excluded. In Diet debate over the overseas dispatch of Aegis-equipped destroyers, some lawmakers presented a radical opinion that the provision of information to U.S. forces could be taken as an integral part of the U.S. use of force. In line with discussions on the concept of the integration with the use of force in respect to SDF activities, actual activities of the SDF under the Law Concerning Measures to Ensure the Peace and Security of Japan in Situations in Areas Surrounding Japan and in U.N. peace-keeping operations (PKO) have in a sense been left flexible to a degree.

Another controversial issue at the Diet was the use of weapons. SDF members dispatched overseas for U.N. PKO had been allowed to use weapons only for minimum self-defense purposes. This was due to the issues of the use of force and of the integration with the use of force. The Anti-Terrorism Special Measures Law provides that SDF

members ordered to implement activities under the law may proportionately use weapons when an unavoidable and reasonable cause exists for the use of weapons to protect their lives and safety, those of other SDF members who are with them on the scene or those of people on the scene who have come under their control during the course of their duties. The provision has allowed SDF members to use weapons to protect affected and other people in certain situations. Some lawmakers argued that the antiterrorism bill that included the provision was expanding the scope for the use of weapons as provided in the International Peace Cooperation Law (officially named the Law Concerning Cooperation for United Nations Peacekeeping Operations and Other Operations). However, the use of weapons under the antiterrorism bill was not as controversial as the use of weapons and the use of force regarding the International Peace Cooperation Bill. Other lawmakers argued that the concept of the inherent right of self-defense was difficult to flexibly interpret. They claimed that, from the humanitarian viewpoint, it should be reconsidered with a view to the protection of refugees and others. The use of weapons should be considered more flexibly to allow SDF members to achieve their purposes and to smoothly and safely conduct their duties.

(3) Expected Activation of Defense Policy Debate

Those for and against Japan's commitment to collective self-defense failed to narrow the gap between them through the Diet debate on the Anti-Terrorism Special Measures Law. Agreement has not yet been fully reached even on the concept of the right of collective self-defense. As frequently pointed out by Prime Minister Koizumi in the Diet, we will have to "consider the issue from various angles." In early November, lawmakers launched a cross-party study group on a basic security law regarding the exercise of the right of collective self-defense. On November 3, experts inaugurated a forum on "Japan and its Constitution in the 21st Century." These movements are expected to contribute to an activation of the debate about the right of collective

self-defense. It seems important to base future debate on the issue on the following viewpoints, as stated by Prime Minister Koizumi at a news conference April 27, 2001:

“What is most important to Japan’s national interest at present? Let’s consider how to maintain Japan-U.S. friendship and manage the Japan-U.S. Security Treaty efficiently and functionally. Of course, Japan’s use of force is not permissible in foreign territories, foreign territorial waters or foreign airspace. If U.S. forces came under attack during their joint exercises or operations with the Japanese SDF in waters close to Japan, however, the scene would not be foreign territories, foreign air space or foreign territorial waters. Would Japan be allowed to refrain from doing something even if U.S. forces came under attack in that case? I respect the government’s present interpretation of the Constitution, although I think that we must try to consider every possible case. I do not call for changing the interpretation of the Constitution immediately. But I believe we have room to study the issue. What I am saying is that we have room to prudently consider the issue.”

As proved by the enactment of the Anti-Terrorism Special Measures Law, Diet debate on defense issues has at last begun to shift from the theological to the realistic. Japan should continue to encourage the debate on defense policy.

2. The Basic Plan and Activities of the Self-Defense Forces

(1) Outline of Basic Plan

As soon as the Anti-Terrorism Special Measures Law was enacted October 29, the government began to draw up the Basic Plan for measures under the law. On November 1, Japan and the United States held a councilor-level meeting of the Security Subcommittee for Japan-

U.S. Consultations on Security in Tokyo to work on coordination for Japan's support measures. On November 16, the Cabinet decided on the Basic Plan required under the Anti-Terrorism Special Measures Law. The Basic Plan states that "It's important for Japan to extend as much support as possible within the scope of the Constitution, based upon the standpoint that Japan should contribute to the efforts actively and on its own initiative." Under this basic policy, the plan spelled out cooperation, support and other activities to support U.S. and other foreign antiterrorism efforts.

The Basic Plan provided for categories and contents of cooperation, and support activities and the scope of areas for these activities, as well as the size, composition, equipment and duration for SDF units conducting these activities in foreign territories. The specifics are as follows:

(1) Categories and contents for cooperation and support activities include supply and transportation of fuel for ships by ships, transportation of personnel and goods by aircraft, repair and maintenance, medical services and seaport services.

(2) The activities are conducted in the following areas:

The supply and transportation by ships will be conducted within Japanese territory, the Indian Ocean, Diego Garcia Island of the United Kingdom, Australia, the territories of countries located on the coast of the Indian Ocean, as well as the territories of countries along the routes from Japanese territory to the above-mentioned areas that contain points of passage or points for loading and unloading of fuel and others, and waters through which Japanese ships pass when navigating between two points belonging to the above-mentioned areas. Transportation by aircraft will be conducted in Japanese territory, Guam Island, Diego Garcia Island and the Indian Ocean coast, as well as the territories of countries along the air routes from Japanese territory to the above-mentioned areas that contain points of passage or points of loading and unloading of personnel or goods, and air

space through which the aircraft pass between two points belonging to the above-mentioned areas.

(3) SDF units for these activities are a Maritime Self-Defense Force (MSDF) unit (up to 1,200 people) consisting of up to two supply ships and up to three escort ships, and an Air Self-Defense Force (ASDF) unit (up to 180 people) consisting of up to six transport aircraft and up to two multipurpose support aircraft.

(4) The duration of the dispatched SDF units' activities is six months, from November 20, 2001, to May 19, 2002.

On search and rescue activities, the plan says that if SDF units conducting cooperation and support activities or assistance to affected people find combatants in distress or receive requests from the United States or other countries to carry out the search and rescue of such persons in distress, they will conduct search and rescue activities in the Indian Ocean area for support and cooperation activities, and assistance to affected people.

As for assistance to affected people, the Basic Plan provides for the categories and contents of the activities, and areas for implementation of the activities, as well as the size, composition, equipment and dispatch duration for SDF units conducting these activities in foreign territories. The specifics are as follows:

(1) The categories and contents of the assistance include the supply of daily necessities to the United Nations High Commissioner for Refugees (UNHCR) based on the request by the UNHCR.

(2) Assistance to affected people will be conducted in the following areas:

Japanese territory, the territory of Pakistan and the Indian Ocean coast, as well as the territories of countries along the routes from Japanese territory to the Indian Ocean coast that contain points of passage. Waters through which ships will pass when navigating between two points belonging to the above-mentioned areas.

(3) The SDF units conducting the assistance to affected people are

MSDF units (up to 120 people) consisting of one minesweeper tender and one escort ship (used for cooperation and support activities).

(4) The duration of the dispatch is about one month and a half (from November 20, 2001, to December 31, 2001).

The plan states that, as far as possible, Japan will conduct medical services in Pakistan, after consultation and coordination with the Pakistani government and the United Nations. It also says Japan will consider assistance to affected people in neighboring countries of Afghanistan other than Pakistan while watching future developments.

In response to the Cabinet decision on the Basic Plan, the Minister of State for Defense Gen Nakatani drew up the guidelines for the implementation of these activities. As Prime Minister Koizumi approved the guidelines November 20, Minister Nakatani ordered the SDF to implement the cooperation and support activities. On November 22, the Cabinet decided on and submitted a resolution to the Diet for approval of the cooperation and support activities under the Anti-Terrorism Special Measures Law. The Diet started deliberations on the resolution November 26 and passed the first resolution to approve the SDF activities November 30. The governing parties and the opposition DPJ voted in favor of the resolution.

(2) Activities of the Self-Defense Forces

The SDF implemented some activities based on laws other than the Anti-Terrorism Special Measures Law. For example, six ASDF C-130 transport aircraft carried relief materials to Pakistan from October 6 to 12 at the request of the UNHCR. Japan dispatched MSDF ships for information collection as part of the seven immediate measures announced September 19 in response to the terrorist attacks. Based on Article 5-18 of the Defense Agency Establishment Law, the MSDF dispatched two escort ships and one supply ship to the Indian Ocean on November 9. In order to implement activities under the Anti-Terrorism Special Measures Law, the government sent a fleet comprising one escort ship, one supply ship and one minesweeper tender to the

Indian Ocean November 25. The minesweeper tender transported relief materials to the port of Karachi in Pakistan as part of the assistance to affected people.

The minesweeper tender *Uraga* leaves for the Indian Ocean (November 25, 2001, Yokosuka)

Actual SDF involvement included cooperation and support activities consisting of transportation by the ASDF and supply by the MSDF, and the MSDF's transportation of relief materials for assistance to affected people. On November 29, an ASDF C-130 transport aircraft conducted an airlift of supplies between U.S. bases in Japan. Also, on December 3 and 4, C-130 aircraft were involved in the transport of materials. On December 3, an MSDF supply ship provided fuel to a U.S. supply ship in the Northern Indian Ocean. The minesweeper tender left Japan to provide assistance to affected people November 25 and arrived and unloaded relief materials at the port of Karachi in Pakistan on December 12. All these activities were based on the Basic Plan and Japan's coordination with U.S. forces and others.

3. Review of International Peace Cooperation Law

(1) Expansion of Japan's Contributions and Its Limits

Since the Law Concerning Cooperation for United Nations Peace-keeping Operations and Other Operations was enacted in June 1992, the SDF have dispatched units for U.N. PKO to Cambodia, Mozambique and the Golan Heights. Upon the enactment of the International Peace Cooperation Law, Japan established two basic positions in contributing to these operations, based on various arguments.

One was that Japan's participation in U.N. PKO would have to be

based on the Basic Guidelines for Japan's Participation in Peacekeeping Forces (the Five Principles). The reason for the establishment of the Five Principles was the necessity for Japan to prevent the participation of the SDF in U.N. Peacekeeping Forces (PKF) from leading to the use of force as prohibited by Article 9 of the Constitution or the deployment of armed forces for the use of force in foreign countries. The Five Principles include restriction on the use of weapons and the requirement for the prior implementation of a cease-fire agreement before the dispatch of SDF units. It is to prevent the SDF from using force or being integrated with the use of force by a peacekeeping force including foreign forces.

The other was that SDF units participating in U.N. PKO should refrain from taking part in core units of U.N. PKF before a separate law is enacted in that respect. This was made subject to review three years after the effectuation of the International Peace Cooperation Law. Due to this stance, the duties of the SDF were limited to medical services, transportation, communications, construction and other logistic ones. Japan thus froze the SDF's participation in core units of the U.N. PKF in consideration of domestic and foreign concerns about the first overseas deployment of SDF units. These stances greatly limited the scope of the SDF's participation in U.N. PKO, despite Japan's willingness to make positive international contributions.

(2) Trends and Problems

The International Peace Cooperation Law was reviewed in 1998 with an amendment made to the provision that had left individual SDF members to decide whether to use weapons. While maintaining one of the Five Principles that restricts the use of weapons by SDF members to the minimum necessary for their self-defense, this amendment allowed SDF members to use weapons only under orders of senior officers at the scene, except in cases where imminent threats to lives make it unfeasible to await such orders. Upon the inauguration in October 1999 of a coalition government consisting of the Liberal

Democratic Party (LDP), the Liberal Party and the New Komeito party, the three parties had a policy agreement to lift the freeze on the SDF's participation in core units of U.N. PKF. Diet debate took place but no remarkable progress was made on the matter. In a Diet debate in early 2001, a government leader confined himself to stating that the government viewed Japan's contributions to international security as important and would address the matter based on discussions at the Diet. After the Koizumi administration was inaugurated in late April 2001, however, rapid progress began in lifting the freeze.

On a visit to the United States on May 31, 2001, LDP Secretary-General Taku Yamasaki told reporters that he was willing to have legislation enacted during an autumn extraordinary Diet session to lift the freeze on the SDF's participation in core units of U.N. PKF. On the same day, when Yamasaki and his counterparts in the other two governing parties met with Torkel L. Patterson, special assistant to the president and senior director for Asian affairs at the National Security Council, Yamasaki voiced his hope to lift the freeze as early as possible. On a visit to the United States on June 22, Minister of State for Defense Gen Nakatani told reporters that he had expressed Japan's positive stance on U.N. PKO at talks with U.N. Deputy Secretary-General Louise Frechette and Undersecretary-General for the PKO Jean Marie Guehenno on June 21. Nakatani also quoted these senior

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Assignments for Core Units of Peacekeeping Forces

- 1 Monitoring the observance of cessation of armed conflict and relocation, withdrawal or demobilization of armed forces
- 2 Stationing in and patrol of buffer zones
- 3 Inspection or identification of the import and export of weapons
- 4 Collection, storage or disposal of abandoned weapons
- 5 Assistance for the designation of cease-fire lines and other boundaries carried out by parties in conflict
- 6 Assistance for exchange of prisoners of war between the parties in conflict

U.N. officials as saying that Japan participated only in a limited part of U.N. PKO and should increase the part it played in relevant activities.

Amid these moves, reports emerged that the New Komeito, which maintained the most cautious attitude on the matter among the three governing parties, had begun to consider reviewing some of the Five Principles. These reports said that the New Komeito was considering reviewing the principle that sets the condition that consent is obtained from the parties in conflict, including countries where the peacekeeping force is to be deployed, in order for Japan to participate in the relevant U.N. PKF. The party remained cautious of expanding the scope for SDF members' use of weapons. While the autumn extraordinary Diet session focused on antiterrorism legislation in response to the terrorist attacks in the United States, moves were under way in the LDP and the other two governing parties to review the International Peace Cooperation Law while giving due consideration to Japan's participation in U.N. PKO in East Timor. On November 12, the three governing parties (the LDP, the New Komeito and the New Conservative Party) agreed at a meeting of their secretaries-general and policy chiefs to amend the International Peace Cooperation Law during the extraordinary Diet session. The agreement includes lifting the freeze on the SDF's participation in core units of U.N. PKF and easing the restrictions on the use of weapons under the Five Principles. At a Cabinet meeting November 20, the government decided on a bill to amend the International Peace Cooperation Law and submitted it to the Diet. Deliberations on the bill started November 22. The bill was passed in the Diet on December 7, with the three governing parties and the DPJ all voting in its favor.

The bill made three amendments to the International Peace Cooperation Law. The first eliminated a special provision on the SDF's international peace cooperation activities, thus lifting the freeze on the SDF's participation in core units of U.N. PKF. The second expanded the scope of those that could be protected by the use of weap-

ons by SDF members. In the expansion, “other SDF members who are with them on the scene or those who are with them on the scene and have come under their control while conducting their duties” was added to the original subjects of protection, “themselves.” The third lifted a ban on the application of Article 95 of the SDF Law to SDF members taking part in U.N. PKO, allowing these SDF members engaged in international peace cooperation activities in foreign countries to use weapons for their protection. These amendments are significant in enabling Japan to contribute more appropriately and effectively to U.N. and other international peace efforts. The lifting of the freeze on the SDF's participation in core units of U.N. PKF will increase the opportunities for Japan to make international contributions.

In Diet deliberations on the amendments to the International Peace Cooperation Law, the relaxation of restrictions on the use of weapons by members of the SDF was an issue of some controversy. On October 22, during his visit to Japan, U.N. Undersecretary-General for the PKO Guehenno offered the views that strong forces for PKO can have a deterrent effect and that PKO units must support each other. Although strict provisions are necessary on the use of weapons, these views will be useful for future debates on the use of weapons by SDF members taking part in U.N. PKO.

Supplement: Emergency Legislation

In 2001, Japan began to consider the enactment of emergency legislation in a full-fledged manner. Studies have been conducted on the operations of the Self-Defense Forces (SDF) in respect to emergency legislation since 1977, but such legislation has yet to be enacted. The September 11 terrorist attacks in the United States have prompted Japan not only to take measures for international cooperation but to pay attention to the need to have arrangements in place for domestic crisis management. Emergency legislation is expected to become a focus of discussions at the Diet in and after 2002. In the current peacetime, Japan should encourage national debate on and promptly enact emergency legislation that is in alignment with the Constitution and respects the rights and freedom of the people.

1. Previous Studies on Emergency Legislation

The legislation necessary in the case of an armed attack on Japan is considered to contain the following three legislative aspects: (1) laws concerning SDF activities, (2) laws concerning the activities of U.S. forces and (3) laws not directly related to the activities of the SDF or U.S. forces but necessary for the protection of people's lives and property. This section will outline the history of emergency legislation studies in Japan.

In 1997, Japan commenced studies on the laws concerning SDF activities as part of emergency legislation. This was done on the approval of the prime minister and under the instructions by the minister of state for defense in 1977. At a Diet session in October 1978, then Prime Minister Takeo Fukuda offered his views on the need for review of emergency legislation, stating that: "The SDF exists to cope with an emergency. Structures should be in place to allow the SDF to fulfill their duties in an emergency. The government, the Defense

Agency and the SDF are responsible for considering and required to consider how the structures should be created. This time, studies will be conducted under my approval and the instructions by the minister of state for defense. The studies should be based on the framework of the Constitution and the basic principle of civilian control.”

Some prerequisites were established for the studies. These were specified in a statement issued by the Defense Agency in September 1978: (1) Subject to the studies are SDF activities during defense alerts; (2) The studies are designed to consider whether any defects exist regarding the legal system and what those defects are; however, the studies are not preparation for bills to be submitted to the Diet in the near future; (3) The studies will be conducted within the framework of the present Constitution and should not cover martial law and conscription systems, nor any curbs on the freedom of speech under the defunct Imperial Constitution; (4) The studies will cover many matters under the jurisdiction of the Defense Agency and other government agencies, and will require long-term consideration of a wide range of issues; and (5) Achievements will be published in a timely and appropriate manner on an interim basis, in order to form a national consensus.

Laws and ordinances potentially subject to the studies were classified into three categories: laws and ordinances under the jurisdiction of the Defense Agency (Category 1); laws and ordinances under the jurisdiction of government agencies other than the Defense Agency (Category 2); and laws and ordinances not falling clearly under the jurisdiction of any particular government agency (Category 3). The Defense Agency published an outline of problems regarding Category 1 in April 1981 and one for Category 2 in October 1984. The Category 1 outline pointed to the time ambiguity in terms of the application of the existing laws, as well as the absence or inadequacy of laws or ordinances based on the existing laws, including the absence of ordinances relating to Article 103 of the SDF Law for the use of land for defense alerts. The Category 2 outline called for special measures

on movement and transportation of SDF units, the use of land, the construction of structures and the treatment of explosives. As for Category 3, the agency said it should consider emergency measures, including those for the proper protection, evacuation and guidance of the population, for the safe traffic of civilian ships and aircraft, and for the effective use of the airwaves. It also stated that Category 3 measures would include those that do not fall clearly under the jurisdiction of any particular government agencies and thus should be considered from a broader perspective.

More than 20 years have passed since studies were first launched in 1977, but Japan has yet to enact emergency legislation. This may be because one of the prerequisites for the studies noted that they were not preparations for bills to be submitted to the Diet in the near future. Another potential factor is that Diet arguments on the matter had been very negative, as is seen from the remark that emergency legislation might be conceived as bills for preparation for war.

2. Moving from Debate to Enactment

In March 1999, some 22 years after the government commenced studies on emergency legislation, then Prime Minister Keizo Obuchi made a Diet statement indicating moves toward subjecting the legislation to Diet deliberations. He said: "Our stance had been that we view studies on the emergency legislation issue as positive and refrain from subjecting such legislation to Diet deliberations for an eventual enactment. But various new situations have emerged." This remark was taken as being a departure from the traditional stance and a step toward enactment. The "various new situations" apparently referred to the launch by North Korea of a ballistic missile based on the *Taepo Dong-1* in the summer of 1998, and the Noto Peninsula suspicious boats incident in the spring of 1999. In particular, maritime security operations were ordered for the Noto Peninsula incident. This was the first order of its kind since the establishment of the SDF, and was a

««COLUMN»»

Suspicious Boat Incident in December 2001

In late December 2001, an incident took place that was reminiscent of the Noto Peninsula suspicious boats incident of March 1999. On December 21, a Maritime Self-Defense Force P-3C patrol aircraft on a routine patrol and surveillance mission found what seemed to be a foreign fishing boat in waters southwest of the island of Kyushu.

Suspicious boat incident in waters southwest of Kyushu (December 22, 2001)

After extensive analysis, the Defense Agency concluded in the small hours of December 22 that the boat could be similar in characteristics to the suspicious boats seen in waters off the Noto Peninsula in 1999. The agency notified the Japan Coast Guard of this conclusion and coast guard aircraft and patrol vessels chased the suspicious boat. They gave an order for the boat to stop, but this order was defied. The patrol vessels then fired warning shots, including those directed at the boat. When the boat later stopped, the coast guard vessels approached it and were met with attacks by rifles and rocket launchers. The patrol boats fired shots for the purpose of self-defense, which led to the sinking of the suspicious boat. The crew of the boat, around 15 in total, were not discovered. On December 23, two of them were recovered dead. The country of origin of the boat has remained unidentified, although allegations were made that it was similar in characteristics to the two suspicious boats in the Noto Peninsula incident. However, one of the recovered bodies wore life jackets with Hangul-letter tags and had other articles such as confectionary and tobacco that may have been made in North Korea. The Japanese government has conducted further analysis of the possible intentions of this boat, and has been considering further measures to clarify the incident.

Articles from the recovered body
(Photographs from Japan Coast Guard)

major turning point in respect to the emergency legislation issue.

When the incident occurred, Diet deliberations were reaching their peak on bills regarding the Japan-U.S. defense cooperation guidelines that were revised in 1997. Since these bills passed the Diet in May 1999, progress was made in moving toward emergency legislation. In October 1999, the then governing parties – the Liberal Democratic Party, the Liberal Party, and the New Komeito – agreed to pursue the enactment of Category 1 and 2 measures that can be quickly agreed upon, based on the government's emergency legislation studies. In March 2000, the three parties' project team on security reached agreement to request the government to remove the ban on actions to enact bills based on the emergency legislation studies and to launch consideration of such enactment.

Based on these developments, then Prime Minister Yoshiro Mori demonstrated a positive stance on the enactment of emergency legislation in his answer to a parliamentary question on his keynote policy address delivered at the 147th session of the Diet in April 2000. He stated: "Former Prime Minister Obuchi expressed his awareness that emergency legislation is necessary for the SDF under civilian control to respond appropriately and to protect the lives and property of the people in the event of an armed attack on our country, and should be enacted in peacetime. I myself view the emergency legislation as really necessary. Based on this view, I have become the first prime minister to refer to emergency legislation in a keynote policy address. While fully recognizing the view recently expressed by the governing parties that called upon the government to initiate consideration aimed at enacting the relevant legislation, I intend to consider how the government should address this matter."

In a policy speech in January 2001, he went on to state that, "Emergency legislation is necessary for the SDF under civilian control to ensure the security of the state and people. Fully bearing in mind the views expressed by the governing parties last year, I will initiate consideration in this regard." Prime Minister Mori thus took a step fur-

ther from his spring 2000 address toward the consideration of enacting emergency legislation. In response, centering around the Cabinet Secretariat and the Defense Agency, the government initiated full considerations in this regard. Preparations for the enactment of emergency legislation accelerated upon the inauguration of the Koizumi administration in late April of 2001. In his policy speech before the Diet in May, Prime Minister Junichiro Koizumi said: "I believe that it is the duty of the political leadership to consider what kind of management structure can be created in the event that the state or the people are exposed to crises and I intend to move forward with consideration on the emergency legislation, fully bearing in mind the views expressed by the governing parties last year." The prime minister then instructed the Minister of State for Defense Nakatani to undertake such considerations. During his visit to the United States in June, Nakatani discussed the Japanese government's thinking on emergency legislation at talks with Secretary of Defense Donald Rumsfeld.

A possible target year for the enactment of emergency legislation was still uncertain at that point. But the September 11 terrorist attacks brought the Japanese government to an awareness that it should swiftly develop emergency legislation from the viewpoint of crisis management. It has come to light that the three governing parties reached agreement to consider such legislation September 13. This was in a bid to have it enacted at an ordinary session of the Diet in 2002. At the same time, the Democratic Party of Japan, the largest opposition group, expressed its understanding with regards to the necessity of such legislation. The Liberal Party, a minor opposition group, took the same position. More than 20 years after the Japanese government launched studies on emergency legislation, movements toward its enactment are finally beginning to materialize.

In his policy speech at the outset of the extraordinary Diet session in September, Prime Minister Koizumi expressed his plan to move forward with considerations on emergency legislation, declaring, "Providing is Preventing." A Diet debate then followed. In response to a

request at a plenary meeting of the House of Councilors on October 3 to specify his government's view on the possible enactment of emergency legislation during the ordinary session of the Diet in 2002, Koizumi said that, "I will appropriately decide when to submit the legislation while watching future developments." At a meeting of a special committee of the House of Representatives on October 11, the prime minister stated: "The terrorist attacks in the United States have indicated that it is important for us in peacetime to consider how to cope with emergencies. The government will have to step up considerations on the legislation and submit relevant bills to the Diet in the future."

It was reported in December that LDP Secretary-General Taku Yamasaki had asked Minister of State for Defense Nakatani to launch preparations for the enactment of the legislation in the 2002 ordinary Diet session. On December 6, Chief Cabinet Secretary Yasuo Fukuda said at a news conference, "The legislation should be considered at the Diet as early as possible."

Japan has thus been making rapid progress toward the enactment of emergency legislation. The legislation is, therefore, expected to become a focus in future Diet discussions. On the other hand, there are also concerns that such legislation could curtail the rights of the people while consideration of the legislation is being carried out within the framework of the Constitution. All democratic countries are fundamentally required to establish emergency rules to respect the rights and freedom of the people in times of emergency, as long as they do not hinder public welfare. In the move toward the enactment of emergency legislation, attention must be paid not only to SDF operations but also to the operations of U.S. forces cooperating with the SDF in coping with emergencies and the protection of the people's lives and property.

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