

Section 3. Framework for Responses to Armed Attack Situation and Other Situations

It is of utmost importance for the national Government to establish a basic system to deal with the most serious situation for the peace and security of the country and its people, such as Armed Attacks against Japan. In particular, it is naturally essential to establish the legislation to facilitate the operations of the SDF and U.S. forces to terminate Armed Attack Situation²⁶ etc. as well as the legislation to protect the lives and properties of the people, which constitute a base of existence of the nation. The national Government has long sought after the establishment of these legislations.

These laws contribute to deterring Armed Attacks against Japan and ensuring civilian control during Armed Attack Situation and other situations.

In 1954, the Defense Agency Establishment Law and the Self-Defense Forces Law were enacted in order to establish the Defense Agency/SDF as organizations to defend the peace and independence of Japan, based on which the framework of the legal structure was developed. Yet, with these legislations the development was insufficient, and the matters that require further development remained.

In 1977, at the Defense Agency, too, then Director-General Mihara, received the approval of Prime Minister Fukuda, and directed the commencement of the study of a so-called "emergency legislation", with a purpose of identification of the issues associated with remaining inadequacy of the legal structure. Then, for almost quarter-century, the study continued.

In February 2002, Prime Minister Koizumi clearly mentioned in the administrative policy speech at the 154th ordinary session of the Diet that the government will seek the concrete development of legal systems, "so as to advance building of a nation that is strong in emergencies". In light of this, as the legislation needed for responding to Armed Attacks on Japan and other situations (legislation for responses to situations, or so-called emergency legislation), the three laws related to responses to Armed Attack Situation, including the Armed Attack Situation Response Law²⁷, were enacted in 2003. Furthermore, the seven laws including the Law Concerning the Measures for Protection of the Civilian Population in Armed Attack Situations (Civil Protection Law) as the legislation for responses to situations were enacted in 2004. Related three treaties were also ratified in 2004.

In Japan, with respect to the legislations that stipulate the systems to respond to Armed Attack Situation against Japan and other situations, the wording of "emergency legislation (Yuji-Hosei)"²⁸ has been used in general, as a generic term for the entire legal structure. This section explains the outline of the framework of responses to Armed Attack Situation and other situations based on above-mentioned emergency legislations.

1. Basic Framework for Responses to Armed Attack Situation and Other Situations

(1) Responses to Armed Attack Situation etc.

The Law to Respond to Armed Attack Situation serves as the basic law for responses to Armed Attack Situation etc. and provides for the fundamental principles regarding responses to Armed Attack Situation etc. (Armed Attack Situation and situation where an armed attack is anticipated²⁹) and responsibilities and roles to be shared by the national and local governments, as well as a basic plan regarding responses to Armed Attack Situation etc. (Basic Response Plan). The Law has established a framework under which related organizations (the designated government institutions, local governments and the designated public institutions³⁰) may take their response measures in cooperation with each other based on individual emergency legislations for responses to situations, including the Civil Protection Law and the nation as a whole may take all possible measures to respond to Armed Attack Situation and etc.

1) Fundamental Principles of Responses to Armed Attack Situation etc.

- a. In responding to Armed Attack Situation etc., the national Government, local governments and the designated public institutions must take all possible measures in mutual collaboration while obtaining cooperation from the people.
- b. In situations where an Armed Attack is anticipated, any and all measures must be taken so as to avoid the occurrence of such attack.
- c. Under Armed Attack Situation, preparations must be made against an Armed Attack. In the event that an Armed Attack actually breaks out, such an attack must be repelled and an attempt for prompt termination of the situation must be implemented. However, the use of forces in eliminating an attack must be limited to the extent determined as reasonably necessary under the situation, if an Armed Attack actually breaks out.
- d. In responding to Armed Attack Situation etc., people's freedom and rights guaranteed by the Constitution must be respected, and restrictions on them, if any, must be the minimum necessary for responding to the situation, and such restrictions must be according to fair and appropriate procedures.
- e. Under Armed Attack Situation etc., the situation and responses to it must be notified to the people in a timely and appropriate manner.
- f. In responding to Armed Attack Situation etc., efforts must be made to secure the understanding and cooperation from the international community such as the United Nations (UN), while cooperating closely with the United States in accordance with the Japan-U.S. Security Treaty.

2) Procedure for Responding to Armed Attack Situation etc.

If Armed Attack Situation etc. breaks out, the Government must follow the following procedure for responding to the situation in normal case.

- i) A proposed Basic Response Plan is prepared.
- ii) The proposed Basic Response Plan is submitted to the Security Council.

The Security Council deliberates the proposed Basic Response Plan. To enable rapid and appropriate deliberation by the Security Council, the Special Advisory Committee for Contingency Planning is established as special advisory organ that conducts researches and analyses for matters concerned and produce recommendations to the Security Council based on the results of such researches and analyses.

- iii) The Security Council submits a draft of the Basic Response Plan to the Prime Minister.
- iv) The Basic Response Plan is submitted to the Cabinet council and the Diet for approval.

(In case of defense operations where there is no enough time for submitting the Basic Response Plan in advance, the Plan must be approved by the Diet after the Prime Minister has given a defense operations order (ex post fact approval).)

- v) The Diet approves the Basic Response Plan.
- vi) Defense operations order etc. that are approved by the Diet

The Prime Minister gives the SDF a defense operations order and takes response measures in accordance with the Basic Response Plan.

If the Basic Response Plan has been disapproved by the Diet, the response measures already taken under the Basic Response Plan must be immediately terminated. The Prime Minister must promptly order the SDF

to terminate the defense operations. (See Fig. 2-3-1)

Mechanism within the Government to Respond to Armed Attack Situations, Etc.

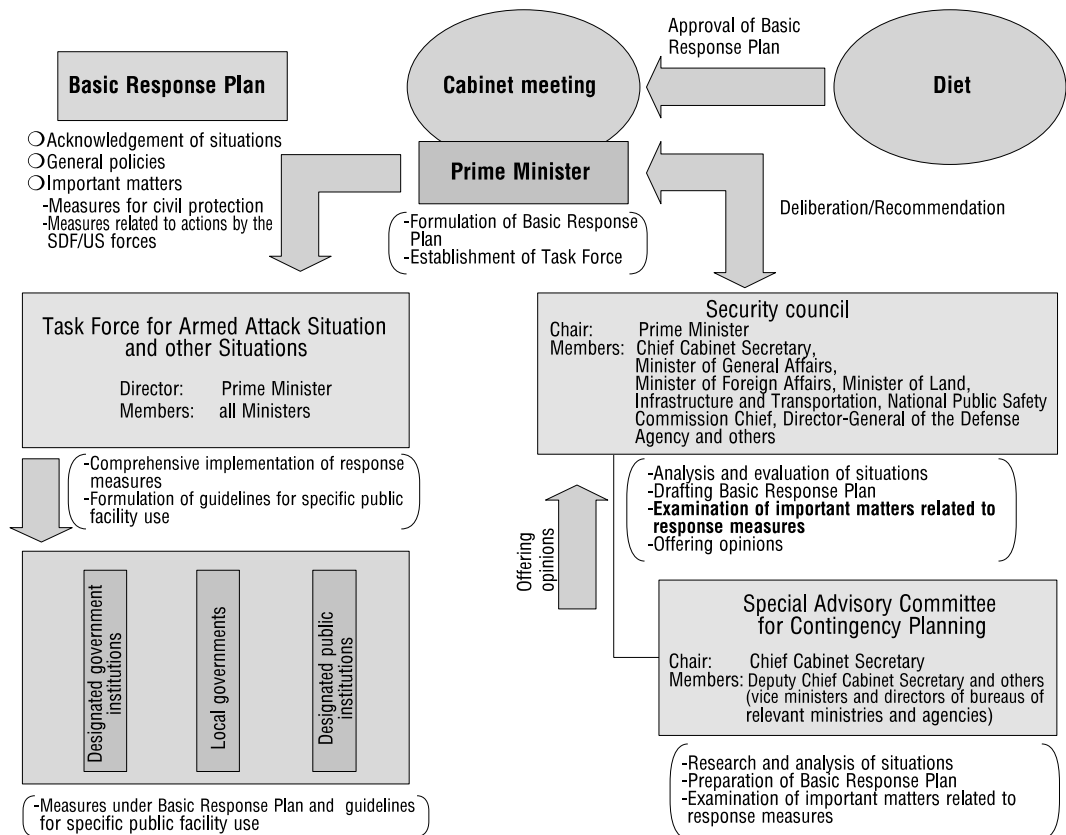


Fig. 2-3-1

3) Basic Response Plan and Response Measures

a. Basic Response Plan

If Armed Attack Situation etc. breaks out, the national Government must approve, at a Cabinet meeting, a Basic Response Plan stipulating the following matters:

- Acknowledgement of an Armed Attack Situation or a situation where an Armed Attack is anticipated, and the facts supporting such acknowledgement;
- General policies regarding the responses to the Armed Attack Situation etc.
- Important matters regarding the response measures.

If the following measures are taken by Prime Minister, these must be referred to as important matters in the Basic Response Plan.

(a) Under a situation where an Armed Attack is anticipated:

- To authorize the Minister of State for Defense to call up the SDF Reserve Personnel and the SDF Ready Reserve Personnel;
- To authorize the Minister of State for Defense to give a defense operation alert order;

- iii) To authorize the Minister of State for Defense to give a defense facility construction order; and
- iv) To authorize the Minister of State for Defense to order the provision of the service as measures related to actions provided for by the U.S. Military Actions Related Measures Law.

(b) In case of an Armed Attack Situation:

In addition to 1) through 4) of above (a), the following matters must be referred to as important matters in the Basic Response Plan.

- i) To authorize the Minister of State for Defense to order visit & search and diversion provided for by the Maritime Transportation Restriction Law;
- ii) To request the Diet to approve a Defense Operations Order; and
- iii) To give a Defense Operations Order (if there is no enough time for requesting the Diet's approval in advance due to an extreme emergency.)

b. Response Measures

In responding to Armed Attack Situation etc., the designated government institutions, local governments or the designated public institutions must take the following measures as response measures in accordance with the provisions of laws during a period between the formation and termination of a Basic Response Plan.

(a) Measures to Terminate Armed Attack Situation etc. to be Implemented Depending on the Progress of the Situation:

- i) Use of force, deployment of units etc., and other activities to be conducted by the SDF;
- ii) Provision of materials, facilities and services, and other measures that make operations of the SDF and U.S. forces efficient and effective; and
- iii) Diplomatic and other measures, other than those mentioned in 1) and 2).

(b) Measures to Protect Lives, Bodies and Properties of the People, and to Minimize Effects on People's Livelihoods and the Economy:

- i) Warnings, evacuation instructions, rescue of victims, emergency restoration of facilities and installations, and other measures; and
- ii) Price stabilization and distribution of goods required for people's daily life, and other measures.

The Prime Minister, when response measures are no longer needed or when the Diet determines the termination of such measure, must request the Cabinet to make a decision on the repeal of the Basic Response Plan.

4) Responsibilities of the National and Local Governments

a. Responsibilities of the National Government

In responding to Armed Attack Situation etc., the national Government as a whole must take any and all prudent measures, including the response measures, by mobilizing all of its organizations and functions in line with fundamental principles.

b. Responsibilities of Local Governments

Local governments, which are obligated to protect the lives, bodies and properties of their residents, must take all necessary measures in close cooperation with the national Government, other local governments, and other institutions.

c. Responsibilities of Designated Public Institutions

The designated public institutions must take all necessary measures in their respective services in close cooperation with the national Government, local governments and other institutions.

d. Cooperation of People

The people, taking into account the importance of maintaining the security of the nation and its people, are expected to extend all necessary cooperation when the response measures are taken.

5) Task Force

When responding to Armed Attack Situation etc., it is essential for the national Government, local governments, the designated public institutions, etc. to take the response measures in coordination and cooperation with each other. When a Basic Response Plan is established to implement the response measures in a comprehensive manner, a Task Force for Armed Attack Situation and other Situations. (the "Task Force") must be established within the Cabinet with the Prime Minister being the Task Force Chief. The Deputy Chief and other posts of the Task Force must be filled by other Ministers of State.

The Prime Minister may instruct heads of local governments, etc. concerned to implement the necessary measures, if coordinated measures have not been implemented, the protection of people's lives, bodies or properties, or the repelling of an Armed Attack, is being hindered by such inaction, and such response measures are particularly required.

The Prime Minister may implement by himself the response measures that should be implemented by local governments or the designated public institutions, or order relevant Ministers of State to implement such response measures, after notifying heads of local governments, etc., if necessary response measures have not been implemented as instructed, or if the protection of people's lives, bodies or properties, or the repelling of an Armed Attack, is being hindered by such inaction, and such response measures should be implemented urgently.

6) Report to the U.N. Security Council

The national Government must immediately report the measures it has taken to repel an Armed Attack to the U.N. Security Council in accordance with the relevant provisions, including Article 51 of the U.N. Charter.

(2) Response to Emergency Response Situation etc.³¹

The Armed Attack Situation Response Law provides that the national Government must respond rapidly and appropriately to Emergency Response Situation³² etc. other than Armed Attack Situation etc., in order to ensure the peace and independence of the nation and to maintain the security of the nation and its people.

In addition, based on changes in various situations surrounding Japan including incidence of armed suspicious boats and occurrences of mass terrorism, measures shall be promptly taken including the following: i) development of the systems for assembly of information, and analysis and evaluation of situations; ii) preparation for formulating response measures in accordance with various situations; iii) enhancement of the coordination of the SDF with the Police force and the Japan Coast Guard³³.

a. Emergency Response Situation Response Plan, etc.

If an Emergency Response Situation has broken out, the Cabinet shall decide on an Emergency Response Situation Basic Response Plan providing the following matters, and submit the Plan to the Diet for approval. When the Emergency Response Situation Basic Response Plan has been finalized, the headquarters for Emergency Response Situation shall be established within the Cabinet.

i) Acknowledgement of an Emergency Response Situation and the facts supporting the acknowledgment;

- ii) General plan for responses;
- iii) Important matters regarding emergency response measures.

b. Emergency Response Measures

The designated government institutions, local governments or the designated public institutions must conduct the following measures as emergency response measures in accordance with the provisions of laws during a period between the formation and termination of an Emergency Response Situation Response Plan.

- i) Measures to prevent or suppress attacks, or other measure, that are implemented to terminate the Emergency Response Situation depending on the progress of the Situation
- ii) Warnings, evacuation instructions, rescue of victims, emergency restoration of facilities and installations, and other measures that are implemented to protect lives, bodies and properties of the people from attacks under the Emergency Response Situation, or to minimize the effects on people's livelihoods and the economy that are caused by attacks under the Emergency Response Situation, depending on the progress of the Situation

2. Measures to Be Taken under Emergency Legislation for Responses to Situations

Based on the framework presented in the legal structure, the Armed Attack Situation Response Law enacted in June 2003 provides that individual emergency legislations for responses to situations should be established in the future so that measures to protect lives of the people and so on, measures to minimize effects caused by an Armed Attack on daily lives of the people, and measures to facilitate effective operations of the SDF and the U.S. forces that are needed to repel Armed Attacks must be taken. The Law further provides that these individual emergency legislations for responses to situations should guarantee the appropriate implementation of the International Humanitarian Law.

In March 2004, the national Government submitted seven bills concerning emergencies and three treaties related to responses to situations to the Diet for approval. In June 2004, the seven bills and ratification of the three treaties were approved by the Diet. As a result, a framework of measures to be taken under Armed Attack Situation or other measures has been established. The outline of the framework is as follows. (See Figs. 2-3-2 and 2-3-3)

1) Measures to Protect the Lives of, and to Minimize the Effects on the Daily Lives, of the People

The Civil Protection Law³⁴ was enacted. The Law provides for the responsibilities of the national and local governments, the cooperation of the people, measures to evacuate residents, measures to support displaced residents, measures to respond to disasters caused by Armed Attacks and other measures that should be performed or implemented to protect the lives of, and to minimize the effects on the daily lives, of the people. The Civil Protection Law provides that similar measures may be taken under Emergency Response Situation.

2) Measures to Terminate Armed Attack Situation etc.

a. Facilitation of Operations of the SDF

The Maritime Transportation Restriction Law³⁵ was enacted. The Law provides that the measures to restrict maritime transportation of foreign military supplies (including weapons) in the territorial waters of Japan and high seas surrounding the territorial waters of Japan may be taken if an Armed Attack Situation breaks out.

b. Facilitation of Operations of U.S. Forces

- (a) The U.S. Military Actions Related Measures Law³⁶ was enacted. The Law provides that measures to fa-

Overview of Legislation for Responses to Armed Attack Situations and Other Situations

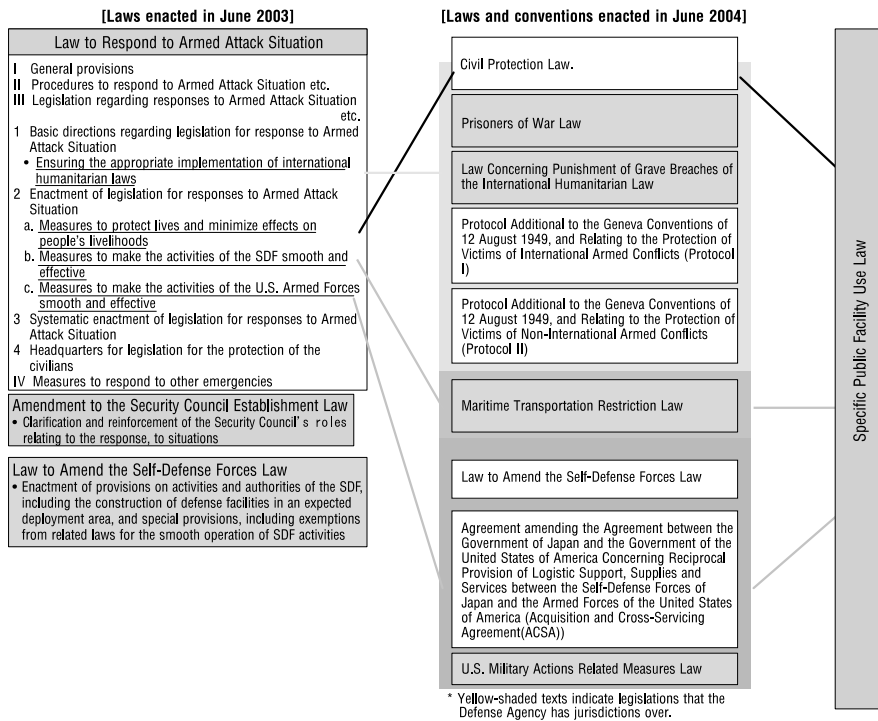


Fig. 2-3-2

The Outline of Emergency Legislations for Responses to Situations

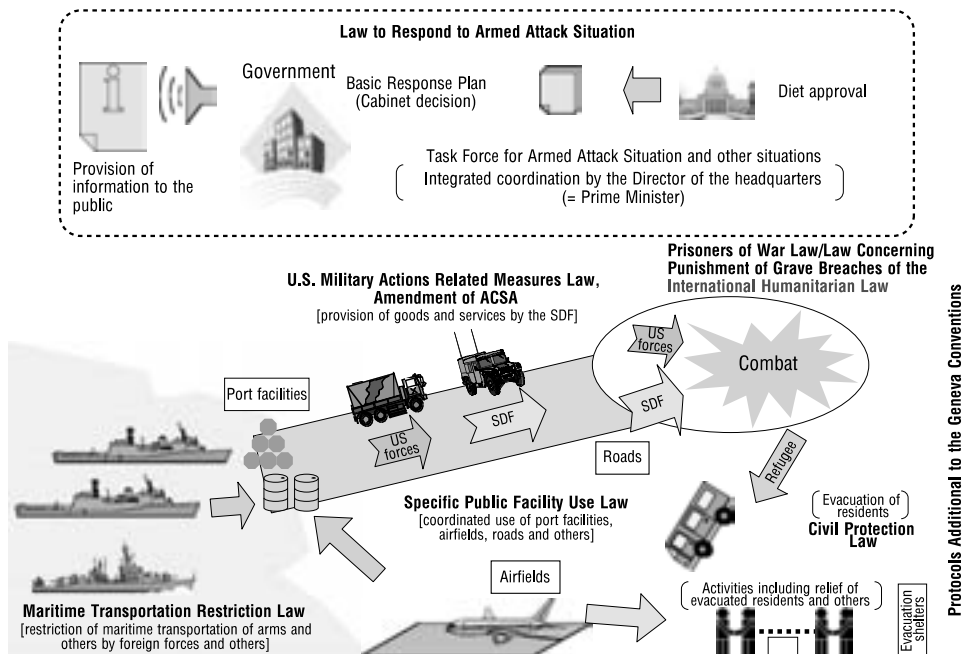


Fig. 2-3-3

cilitate effective operations of U.S. forces necessary to repel an Armed Attack pursuant to the Japan-U.S. Security Treaty may be taken in Armed Attack Situation etc.

- (b) The Acquisition and Cross-Servicing Agreement between Japan and the United States (ACSA)³⁷ was partially amended. The amended ACSA provides that the scope of its application is enlarged to include responses to Armed Attack Situation etc., efforts of international community to contribute to international peace and security, and activities to respond to disasters. The Self-Defense Forces Law was partially amended so that the SDF may provide the U.S. forces implementing aforesaid operations with supplies and services.

c. Others (Coordination of Use of Facilities of Ports and Airfields, Roads and Others.)

The Specific Public Facility Use Law³⁸ was enacted. The Law provides that the use of specific public facilities (facilities of ports and airfields, roads, waters, airspace and radio frequencies) shall be coordinated in a comprehensive manner under Armed Attack Situation etc. for the purpose of proper and rapid implementation of measures such as operations of the SDF and U.S. forces and measures to protect the people

3) Guarantee of Appropriate Implementation of the International Humanitarian Laws

- a. The Prisoners of War Law³⁹ was enacted, and the system was established to ensure that prisoners are always treated humanely under an Armed Attack Situation, the life, body, health and honor of prisoners shall be respected, and always protected from any violations of, or threats to, their rights.
- b. The Law Concerning Punishment of Grave Breaches of the International Humanitarian Laws⁴⁰ was enacted. The Law provides that "grave breaches" of the International Humanitarian Laws, which are applied for international armed conflicts, must be properly penalized.
- c. In addition, the Protocol Additional to the Geneva Conventions of 12 August 1949⁴¹ and relating to the Protection of Victims of International Armed Conflicts (Protocol I⁴²) and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II⁴³), which are the main International Humanitarian Laws, were ratified. The domestic implementation of these of Protocols was thus guaranteed by the enactment of individual laws for responses to situations as mentioned above.

3. High Readiness for Armed Attack Situation and Other Situations.

The enactment of the emergency legislation established the legal ground to deal with the most serious situation for peace and security of the country and its people such as Armed Attacks against Japan, in order to implement civil protection measures, measures for restricting marine transportation, measures regarding the treatment of war prisoners, and measures necessary for securing the smooth and effective use of facilities of ports and airfields.

From now on, it will be important to secure the effectiveness of these legislations and to establish or improve the operational posture. At the same time, in order to follow ever-changing security environment, consistent efforts are required.

The establishment or improvement of the operational posture will require concerted efforts by the national and local governments and relevant institutions, and the understanding of the people.

Therefore, the Special Advisory Committee for Contingency Planning established under the Security Council is currently conducting studies responses to Armed Attack Situation or emergency situations, includ-

ing terror attacks or the emergence of suspicious boats, and other matters.

The designated government institutions, local governments and the designated public institutions that are expected to implement response measures under Armed Attack Situation etc. have begun to establish plans to suit their roles and reflect their roles in actual policies or services.

Even under normal situations, the national Government needs to make an effort to enlighten the people at large, through various opportunities, about the importance of various measures to be taken for the protection of the lives, bodies and properties of the people from Armed Attacks against Japan in accordance with the emergency legislation for responses to situations, and improve the measures while verifying the effectiveness of the operational posture via exercises. (See Fig. 2-3-4)

Studies in the Government under Normal Circumstances to Be Prepared for Armed Attack Situations and Other Situations

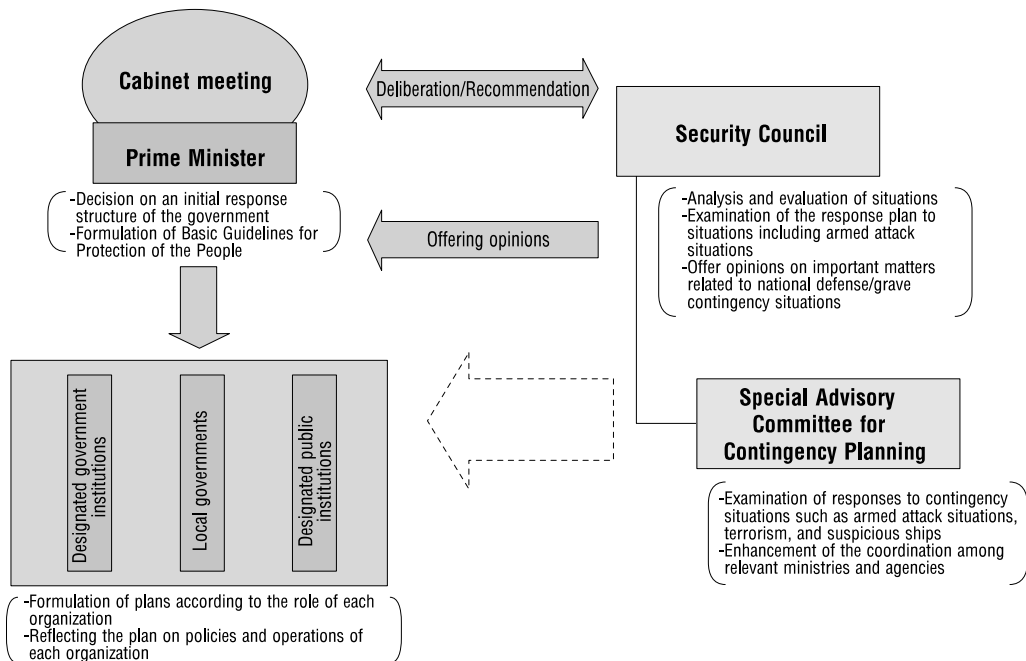


Fig. 2-3-4