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## The Constitution and the Right of Self-Defense

## 1 The Constitution and the Right of Self-Defense

Since the end of World War II, Japan has worked hard to build a peace-loving nation far from the miseries of war. The Japanese people desire lasting peace, and the principle of pacifism is enshrined in the Constitution, of which Article 9 renounces war, the possession of war potential, and the right of belligerency by the state. Nonetheless, since Japan is an independent nation, these provisions do not deny Japan's inherent right of self-defense as a sovereign state. Since the right of self-defense

is not denied, the Government interprets this to mean that the Constitution allows Japan to possess the minimum level of armed force needed to exercise that right. Therefore, the Government, as part of its exclusively national defense-oriented policy under the Constitution, maintains the Self-Defense Forces (SDF) as an armed organization, and continues to keep it equipped and ready for operations.

## 2 The Government's View on Article 9 of the Constitution

## 1 The Permitted Self-Defense Capability

Under the Constitution, Japan is permitted to possess the minimum necessary level of self-defense capability. The specific limit may vary with the prevailing international situation, the technologies available, and various other factors, and it is discussed and decided according to annual budgets and other factors by the Diet on behalf of the people. Whether such capability constitutes a "war potential" that is prohibited by Article 9, Paragraph 2 of the Constitution must be considered within the context of Japan's overall military strength. Therefore, whether the SDF should be allowed to possess certain armaments depends on whether such possession would cause its total military strength to exceed the constitutional limit.

The possession of armaments deemed to be offensive weapons designed to be used only for the mass destruction of another country, which would, by definition, exceed the minimum necessary level, is not permissible under any circumstances. For example, the SDF is not allowed to possess intercontinental ballistic missiles (ICBM), long-range strategic bombers, or attack aircraft carriers.

## 2 Requirements for Exercising the Right of Self-Defense

The Government interprets Article 9 of the Constitution to mean that armed force can be used to exercise the right of self-defense only when the following three conditions are met:

- (1) When there is an imminent and illegitimate act of aggression against Japan;
- (2) When there is no appropriate means to deal with such aggression other than by resorting to the right of self-defense; and
- (3) When the use of armed force is confined to be the minimum necessary level.

## 3 Geographic Boundaries within which the Right of Self-Defense may be Exercised

The use of the minimum necessary force to defend Japan under the right of self-defense is not necessarily confined to the geographic boundaries of Japanese territory, territorial waters and airspace. However, it is difficult to give a general definition of the actual extent to which it may be used, as this would vary with the situation.

Nevertheless, the Government interprets that the Constitution does not permit armed troops to be dispatched to the land, sea, or airspace of other countries with the aim of using force; such overseas deployment of troops would exceed the definition of the minimum necessary level of self-defense.

## 4 The Right of Collective Self-Defense

International law permits a state to have the right of collective self-defense, which is the right to use force to stop an armed attack on a foreign country with which the state has close relations, even if the state itself is not under direct attack. Since Japan is a sovereign state, it naturally has the right of collective self-defense under international law. Nevertheless, the Japanese Government believes that the exercise of the right of collective self-defense exceeds the minimum necessary level of self-defense authorized under Article 9 of the Constitution and is not permissible.

## 5 The Right of Belligerency

Article 9, Paragraph 2 of the Constitution prescribes that “the right of belligerency of the state will not be recognized.” However, the “right of belligerency” does not mean the right to engage in battle; rather, it is a general term for various rights that a belligerent nation has under international law, including the authority to inflict casualties and damage upon the enemy’s military force and to occupy enemy territory. On the other

hand, Japan may of course use the minimum level of force necessary to defend itself. For example, if Japan inflicts casualties and damage upon the enemy’s military force in exercising its right of self-defense, this is conceptually distinguished from the exercise of the right of belligerency, even though those actions do not appear to be different. Occupation of enemy territory, however, would exceed the minimum necessary level of self-defense and is not permissible.

### Commentary

#### Column

### Advisory Panel on Reconstruction of the Legal Basis for Security

The meeting by the Advisory Panel on Reconstruction of the Legal Basis for Security was held by the first Abe Cabinet in May 2007 to consult on the constitutional ideas related to the four categories of security issues. The panel compiled its recommendations and submitted a report\* to then-Prime Minister Fukuda in June 2008.

The Panel was inaugurated again by Prime Minister Abe in February 2013 to study the relationship of the Constitution and security issues, including the right of collective self-defense, based on a problem awareness that reconstructing the legal basis for security was necessary to respond appropriately amid the increasingly severe security environment surrounding Japan. The Panel started to discuss maintaining the peace and security of Japan in light of the changes in the security environment after the issuance of the report. The government will first wait for the conclusion of the Panel.



The first meeting of the Advisory Panel on Reconstruction of the Legal Basis for Security in session (February 2013) [Cabinet Public Relations Office]

#### \*Outline of the Report

The Panel examined four cases ((1) defense of U.S. military vessels on the high seas; (2) interception of ballistic missiles that might be aimed at the United States; (3) use of weapons during international peacekeeping operations; and (4) logistics support for other countries participating in the same PKO and other activities) and concluded that the existing interpretation by the government, that Japan only has the right to individual self-defense, was no longer appropriate in light of drastic changes in world affairs and Japan’s position in the international community. Accordingly, the Panel recommended that Article 9 of the Constitution be interpreted to permit Japan’s exercise of not only the right to individual self-defense, but also the right of collective self-defense or participation in collective security on the part of the United Nations.