

# EAST ASIA INSIGHTS

## TOWARD COMMUNITY BUILDING

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## Japan's Debate on Constitutional Reinterpretation: Paving the Way for Collective Self-Defense

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RECENT DEVELOPMENTS IN Japan's national security policy under the Shinzo Abe government—including the November 2013 establishment of a National Security Council based on the US model, the announcement of the first National Security Strategy a month later, and ongoing moves to change the interpretation of the constitution to allow for the exercise of the right to collective self-defense—have gained attention around the world.

Given the potential ramifications, these changes to Japan's security posture need to be debated extensively in Japan and placed within the historical context. It is important that the Japanese government clearly explains to both its citizens at home and allies and partners abroad why these changes are necessary and how they are part of a natural historical progression. Given Japan's history in Asia, it is natural that its neighbors would be skeptical of any changes in Japan's security policy, and many people in the region are concerned that any talk of collective self-defense is a signal of a rightward hawkish tilt. However, experts across the political spectrum in Japan recognize that moderate changes to the interpretation of the constitution can contribute to long-term stability and peace in the region.

### **Evolution of Postwar Japanese Security Policy**

To understand how moderate changes are part of a natural policy progression it is useful to review the evolution of Japan's postwar national security policy. This can be divided into the following three main phases.

#### *Occupation and Rearmament (1945–1960s)*

The postwar constitution includes the now famous Article 9 peace clause, which renounces war as a sovereign right of the state and commits Japan to refraining from threatening or using force as a means of settling international disputes. As the Cold War intensified, Mao Zedong and the Communist Party took control of China and war broke out on the Korean Peninsula. It became increasingly evident that the assumptions of a peaceful postwar world, in which international security issues were managed within UN frameworks such as the Security Council, would not come to bear. Facing up to this challenging security environment, the United States dedicated itself to fostering the reconstruction of Japan and embracing it as a US ally under the auspices of the US-Japan Security Treaty. The Japanese Prime Minister of the day, Shigeru

Yoshida, set forth the so-called Yoshida Doctrine, which emphasized the mobilization of resources for economic reconstruction, “light rearmament,” and reliance on the US military for Japan’s defense. This strategy proved to be a great success, and within the space of 23 years Japan rebuilt itself to become the second-largest economy in the world.

### *Credibility of the US-Japan Security Treaty (1970s–1980s)*

During the second phase of Japan’s postwar history, the security debate focused on the credibility of the US-Japan alliance. In the United States, Japan was perceived by many, especially in Congress, as free riding on the alliance and not taking on enough of the burden for its own defense responsibilities. In Japan, the concern was that it was being used as part of the US global security strategy, and doubts lingered as to whether the United States would actually fulfill its security treaty commitments to defend Japan if it came under attack.

With the threat of the USSR ever looming, however, Japan needed to maintain the US security guarantee, including the nuclear umbrella, and moves that would harm alliance relations were carefully avoided. The thrust of Japanese debates during this period focused on how best to manage the abandonment-entrapment dilemma. In order to avoid abandonment by an ally increasingly concerned about burden sharing, Japan increased its defense spending, shouldering the costs associated with stationing US military troops in Japan. At the same time, however, the Liberal Democratic Party government set forth a number of measures to avoid becoming entangled in a US-led war by clearly limiting Japanese security policy to an exclusively defense-oriented framework. Central to these measures was an interpretation of the Japanese constitution’s Article 9 peace clause as renouncing the exercise of the right to collective self-defense. Other important measures included the three non-nuclear principles of not possessing, producing, or permitting the entry into Japan of any nuclear weapons, as well as the three principles on arms exports, which restrict the provision of weapons to Communist Bloc

countries, countries under arms embargoes pursuant to UN Security Council resolutions, and countries that are either involved in or likely to become involved in international conflict.

### *Post–Cold War Reorientation (1990–present)*

After the collapse of the Soviet Union, the Japanese national security debate shifted to the question of how to reorient the US-Japan alliance to focus on post–Cold War challenges, including the legal framework governing operations of the Self-Defense Forces (SDF).

There were high hopes in this new unipolar world that the paralysis that had previously characterized the UN Security Council would finally come to an end. At last a world with a collective security system centered in the UN, as envisioned when Article 9 was written at the end of World War II, appeared to be within reach. The system seemed to be working when UN member states, led by the United States, successfully passed UN Security Council Resolution 678 authorizing the use of force against Iraq to repel its invasion of Kuwait. This brought up a major concern for Japan about what role it could take on to contribute to this task. The United States requested that Japan make both financial and physical contributions, going in with “boots on the ground.” However, given the constitutional restrictions on the SDF, Japan ultimately decided that it could only make a financial contribution. It raised new taxes and provided US\$13 billion to the war effort, the largest financial donation to come from outside of the Gulf region. However, this enormous contribution gained Japan little praise and was instead criticized as another example of its reliance on checkbook diplomacy.

Smarting from this experience, Japan passed the 1992 Peacekeeping Operation (PKO) Law to establish a legal framework for SDF participation in UN-led PKOs. The first SDF dispatch based on this law was under the auspices of the UN Transitional Authority in Cambodia. However, the conditions imposed on the SDF personnel by the PKO Law were highly restrictive and severely limited the use of weapons, making it difficult for Japan to contribute substantially.

The legal framework governing the SDF was again brought into the spotlight by the 1993–1994 North Korean nuclear crisis. As the Japanese government considered its policy options, it became evident that it was woefully underprepared to deal with any escalation of the conflict on the Korean Peninsula or with other conflicts in its immediate surroundings. To address these shortcomings, a joint US-Japan security declaration was announced in 1996 by then Japanese Prime Minister Ryutaro Hashimoto and US President Bill Clinton. Building on this declaration, the US-Japan Defense Cooperation Guidelines were revised in 1997, establishing a framework for Japanese SDF dispatches for noncombatant evacuation operations, SDF support for the US military, and inspections of ships in international waters in accordance with UN Security Council resolutions. The Japanese Diet also subsequently passed the “Law Concerning Measures to Ensure the Peace and Security of Japan in Situations in Areas Surrounding Japan” (SIASJ Law) in 1999 to ensure the revised guidelines could be implemented effectively.

The most difficult aspect of this process was that changes were made with the clear assumption that Japan’s role would be kept within constitutional boundaries and that Article 9 would continue to be interpreted so as not to allow the right to collective self-defense. As a result, the concept of rear-area support was established based on the argument that supporting the US military in non-combat zones would not constitute collective self-defense and is therefore permitted by the constitution.

The new changes were put into action most prominently with the passage of two temporary special measures laws based in the SIASJ Law. The first was the “Anti-Terrorism Special Measures Law,” which was passed by the Japanese Diet in the wake of the September 11 terrorist attacks on Washington and New York in 2001 to allow for the dispatch of the Marine SDF to the Indian Ocean to help refuel US ships en route to Afghanistan. The second was the “Law Concerning Special Measures on Humanitarian and Reconstruction Assistance in Iraq,” enacted in 2003.

## **Facing Up to Current Security Challenges**

The idea that laws governing the SDF and its operations must be consistent with the constitution remains a central tenet of Japan’s postwar alliance policy thinking. At the same time, it is widely understood that Japan’s defense capabilities must also adapt to the ever-changing regional security environment. But the current interpretation of the constitution, stipulating that the exercise of the right to collective self-defense is not permitted, was established during the Cold War and fails to respond to the demands of the current security environment. It is against that backdrop that many experts agree that a moderate reinterpretation is needed.

For instance, in the hypothetical case of an emergency situation on the Korean Peninsula, if Japan were to help the United States track a North Korean fighter jet and the US military subsequently shot the jet down, this would be considered an integration with US military forces and an unconstitutional exercise of collective self-defense under the current interpretation. But if Japan cannot help the United States under such circumstances, the alliance will undoubtedly be undermined.

Before Japan makes a hasty change in the way it interprets the constitution, two points of contention need to be carefully considered. First, how would a change of interpretation fit into a comprehensive US-Japan alliance strategy aimed at enriching the regional security environment? If alliance policy is debated only from a military viewpoint, it risks giving the wrong impression to regional neighbors and exacerbating the security dilemma. In other words, security policy changes not coupled with diplomacy may trigger countermeasures by neighbors, worsening the overall regional security environment. Thus changes to the SDF force structure to boost Japan’s capabilities to defend outlying territories should be done in a calm and transparent manner. At the same time, the United States and Japan should promote a comprehensive approach to alliance strategy that puts diplomacy at the center of all policymaking and brings China into the fold as a responsible regional stakeholder by focusing on confidence-building measures, cooperation on trade and investment, rule

building, and joint energy cooperation. Given the shifting balance of regional power, such a comprehensive approach to alliance strategy is even more important now than it has ever been.

Second, given the unified position of the Japanese government—that the exercise of the right to collective self-defense is not allowed by the constitution—a clear and rational explanation must be given before the interpretation is changed in order to maintain national integrity. This must take into account the sequence of events that led Japan to this point as well as the changing nature of the regional security environment, as described above. Failure to rationally explain changes in their proper context will arouse the suspicion of neighboring countries and worsen the regional security environment.

### **A Rational Exercise of Collective Self-Defense**

Considering the complex context discussed above, any reinterpretation of the constitution should be limited to the following two aspects to maintain consistency with past national security policy but also respond to the challenges of the current international security environment.

First, collective self-defense missions authorized by the international community through the UN Security Council, which includes China and Russia, should be recognized by all parties as permissible exceptions to the restriction on collective self-defense. The conduct of SDF personnel in UN-led PKOs must be held to the highest international standards, but imposing conditions on SDF troops beyond those of other UN PKO soldiers is unnecessary and complicates the already difficult task of restoring peace in volatile situations.

Second, restrictions on the exercise of collective self-defense should be lifted for scenarios that directly

affect Japanese national security. Given that Japan has already established the SIASJ Law, and that the United States is obligated to defend Japan against attacks as per Article 5 of the US-Japan Security Treaty, it is natural that Japan and the United States should cooperate on planning and implementation of defensive operations in such scenarios.

It is, however, unnecessary to change the interpretation so radically that all aspects of the exercise of collective self-defense are permitted by the constitution or that the SDF would be able to participate in US operations anywhere around the globe. Reinterpretation outside the scope of the two above-mentioned aspects would break with the exclusively defense-oriented nature of postwar Japanese security policy and would risk arousing distrust of Japan's intentions.



Maintaining an exclusively defense-oriented security policy framework while also adequately facing up to the security challenges facing Japan and the rest of the region requires a careful balancing act. This is the crux of the security dilemma. Reinterpreting Japan's constitution to recognize the exercise of the right to collective self-defense in strictly limited circumstances—namely unfettered Japan SDF participation in UN-led PKOs under the direction of the UN Security Council and defensive operations to protect Japanese territory and the lives of Japanese citizens—is a rational progression that builds upon Japan's past national security policy while maintaining a liberal internationalist strategic outlook.

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