

April 28, 2015

The Democratic Party of Japan

**Views Concerning Security Legislation by
The Democratic Party of Japan**

1. Basic Stance

Upholding the concept of pacifism, one of the basic principles of the Constitution of Japan

Based on the concepts of pacifism and international cooperation, which are among the basic principles of the Constitution of Japan, in order to ensure greater stability in the security environment of the Asia-Pacific region and improve the global security environment, Japan will cooperate with allied nations, friendly nations and other nations concerned, as well as with the United Nations (UN) and other related international organizations.

In today's world, the mission and responsibility with which we are charged is to look back directly on past history and seek to use the lessons and remorse for the past to build peace. In particular, active efforts are required for the sake of peace, security and coexistence in the East Asian region surrounding Japan, including the strategic deployment of diplomatic efforts aimed at building trust. The purpose of defense is to ensure the independence of Japan, maintain peace and security, and protect the lives and property of the people of Japan, their basic human rights, and the sovereign territories and waters of Japan from unlawful infringements by other countries. In order to achieve such a purpose the DPJ is committed to an exclusively defense-oriented security policy.

Deepening the Japan-U.S. alliance while making autonomous judgments as a sovereign nation

At the same time, however, there remains in the region surrounding Japan a large-scale concentration of military force, including nuclear capability, with many countries modernizing their military capabilities and increasing their military activities. Furthermore, various opaque and uncertain elements, including territorial and maritime issues, make the security environment surrounding Japan one that is diverse and complex. Given this situation, in order to maintain the peace and security of Japan, the Japan-U.S. alliance should be deepened in a manner that will enable an effective response to the new security environment, while allowing Japan to make autonomous judgments as a sovereign nation.

Engaging actively in international peace cooperation activities

Japan should also take an active role in activities in which the international community

cooperates to improve the international security environment, including UN peacekeeping operations (PKO), humanitarian assistance and disaster relief efforts, and a response to non-traditional security issues such as anti-piracy operations. This assistance that is provided through such international peace cooperation activities including capacity building based on Japan's knowledge and experience, should be implemented strategically and be accompanied by measures to ensure the safety of the personnel who are involved in such activities.

Determining whether or not to provide assistance to foreign militaries needs to be examined on a case-by-case basis

With the exception of cases in which a response is required as a situation that would have a grave impact on the peace and security of Japan, the reasons for providing assistance to foreign militaries engaged in activities for the peace and security of the international community as well as what type of assistance are desired of Japan vary greatly depending on each particular situation. This is something that can be seen in the significant differences in the reasons for assistance set forth in the Anti-Terrorism Special Measures Act and the Act on Special Measures concerning Humanitarian Relief and Reconstruction Work and Security Assistance in Iraq. These abovementioned special measures acts represent the only two cases of foreign military assistance provided by Japan. It should therefore be duly noted that in comparison to PKO, Japan lacks decisive experience and knowledge of providing such assistance, therefore careful examination will be necessary when determining whether or not to provide assistance to foreign militaries and how to do so.

Abe administration aiming for “unrestricted” expansion in the guise of a “seamless” response

In contrast to the above, there are concerns that when looked at as a whole, the security legislation currently being advanced by the government could lead to the “unrestricted” expansion of the overseas activities of the Self-Defense Forces (SDF) in the guise of a “seamless” response. The Abe administration is seeking to transform the pacifist principle of not using force overseas—a principle that is enshrined in the Constitution and one that Japan has followed throughout the postwar period—to something different under “Proactive Contribution to Peace.” In fact what the government is attempting is a huge reversal in security policy 70 years after the end of the war and the fact that it is pushing ahead with reckless disregard for the lack of sufficient understanding or consensus among the public on this issue is a cause for grave concern.

This attempt to pass bills that relate to the basis for the nation's security in a single session of the Diet shows a blatant disregard for the public and the Diet, and is outrageous.

Founded on our basic stance outlined above, the DPJ sets out here our current views concerning security legislation. It goes without saying that it will be necessary to further deepen discussion after having carefully examined the content of both the revised Guidelines for Japan-U.S. Defense Cooperation and the bills on security legislation that are scheduled to be submitted by the government next month.

2. Right of Self-Defense

Seeking a realistic and responsible security policy that is committed to being exclusively defense-oriented

- As demonstrated in the Platform of the Democratic Party of Japan and in the National Defense Program Guidelines during the DPJ administration, the DPJ readily recognizes the threats that actually exist. In order to deal with such threats, based on the Dynamic Defense Force concept, the DPJ will steadily develop a strong defensive force, improve deterrence under the Japan-U.S. alliance, and resolutely protect the lives and property of the people of Japan and the nation's sovereign territories and waters.
- The DPJ believes that in view of the changes in the various situations surrounding Japan the necessary measures should be taken, including the deepening of cooperation under the Japan-U.S. alliance in the event of emergency situations in the vicinity of Japan. To this end, the DPJ will examine the necessary measures, including ways to determine if an armed attack has occurred in light of the exercise of the right of individual self-defense, and also giving consideration to the possibility of revising such legislation as the Act on Measures to Ensure the Peace and Security of Japan in Perilous Situations in Areas Surrounding Japan and the Act on the Restriction of Maritime Transportation of Foreign Military Supplies, etc. in Armed Attack Situations. Furthermore, the DPJ will constantly reevaluate such matters as missile defense and the necessity of dealing with cyber threats, responding in a realistic and responsible way to matters relating to the peace and security of Japan.
- In so doing, the DPJ commits itself to an exclusively defense-oriented policy, based on the current Constitution, which means that "Defensive force is used only in the event of an attack, that the extent of use of defensive force is kept to the minimum necessary for self-defense, and that the defense capabilities to be possessed and maintained by Japan are limited to the minimum necessary for self-defense. The policy including these matters refers to the posture of a passive defense strategy in accordance with the spirit of the Constitution."
- Although the Abe administration states that it will continue to uphold an exclusively defense-oriented policy, it must be said that it is deliberately changing its nature, through

such means as permitting the exercise of the right of collective self-defense.

Government's three new conditions permitting the exercise of the right of self-defense are unrestricted

- The criteria for the exercise and response of the government's "three new conditions" permitting the use of force are vague, making it possible that they could be applied under false pretenses at the whim of the government of the day. Given that these criteria could result in the arbitrary expansion, contraction or change to the parameters under which the use of force by Japan is permitted, they are essentially unrestricted.

The government's three new conditions are opportunistic and deliberate, and change constitutional interpretations in a way that runs counter to constitutionalism

- In its "Position regarding changes in interpretation of the Constitution pertaining to the right of collective self-defense," which was compiled by the General Research Committee on Security and the General Committee on Constitution and was approved in the "DPJ's Next Cabinet" document on March 4, 2014, the DPJ states that, "We do not deny that, considering the basic principles of legal interpretation, there is scope for the Cabinet to change the interpretation of the Constitution when giving careful consideration to changes in various circumstances and the new demands arising from them. However, whatever the events and the subsequent demands arising from them, the scope for such interpretations is limited to one which can be logically derived and which maintains consistency with existing interpretations. Changes made opportunistically and deliberately by the Cabinet run counter to constitutionalism and the rule of law and are unacceptable." It is also stated that, "Should the Abe Cabinet engage in moves which could be construed as changing the interpretation of the Constitution, we will rigorously scrutinize these from the perspective of constitutionalism and the rule of law, and confirm whether their interpretation is logical and consistent with the existing interpretation."
- In this context, the government's view on the right of collective self-defense in 1972 concluded that the use of measures for self-defense should be permitted only when they are inevitable for dealing with imminent and unlawful infringements and the use of the right of collective self-defense is unconstitutional. Despite this, the Abe Cabinet's change to the constitutional interpretation under the three new conditions has been drawn from "fundamental logic" by extracting only a part of the government's existing view. Therefore, we must conclude that such a reinterpretation is unacceptably opportunistic and deliberate.
- The interpretation being presented by the Abe Cabinet clearly deviates from the basis for an exclusively defense-oriented policy, whereby defensive force is used only in the event

of an attack, which Japan has upheld since the end of WWII.

Examples presented by the government are not legislative facts that would support the right of collective self-defense

- In Diet deliberations the government has repeatedly used the scenarios of protection of U.S. military transport vessels carrying Japanese nationals and minesweeping operations in the Strait of Hormuz as cases in which the right of collective self-defense must be exercised to deal with situations. However, in Diet questions and hearings with the DPJ to date the government has failed to provide any kind of convincing explanations that would back these examples.
- The scenario concerning the protection of U.S. military transport vessels carrying Japanese nationals does not present a clear argument as to why this could lead to the use of the right of collective self-defense, notwithstanding the fact that neither is it clear why only U.S. military transport vessels would be applicable under this scenario and not privately registered vessels or those of other militaries. Furthermore, it is inconceivable that the closure of the Strait of Hormuz would constitute a threat to the survival of Japan that would require resolution through the use of force.
- The probability of such scenarios arising and their urgency are doubtful in the extreme and such scenarios alone cannot therefore be accepted as legislative facts that would necessitate the use of the right of collective self-defense.
- Based on the above, and from the perspective of our commitment to an exclusively defense-oriented policy, the DPJ does not accept the use of the right of collective self-defense as being pushed forward by the Abe administration.

3. Grey Zone Situations

Formulation of a Territorial Security Act, rather than seeking operational improvements

- With regard to so-called “grey zone situations” the DPJ will formulate a Territorial Security Act, which stipulates that a primary response is to be made by the Japan Coast Guard (JCG), while also making provisions for strengthening cooperation among the JCG, police authorities and the SDF, and expediting public security operations to maintain public peace and engage in maritime security activities.
- Operational improvements alone, as espoused by the government, are an insufficient means of responding to grey zone situations and the formulation of legislation will enable a swift and seamless response in accordance with the expectations of the people of Japan. In addition, by ensuring that such responses are visible to the public, the DPJ will aim to improve democratic controls over SDF actions.

4. Act on Measures to Ensure the Peace and Security of Japan in Perilous Situations in Areas Surrounding Japan

Upholding the concept of “areas surrounding Japan”

- The DPJ is concerned that the Abe administration is seeking to engage in the “unrestricted” expansion of SDF overseas activities in the guise of “seamless” security legislation, which among other things eliminates the concept of “areas surrounding Japan” stipulated in the Act on Measures to Ensure the Peace and Security of Japan in Perilous Situations in Areas Surrounding Japan. In response, the DPJ will uphold the concept of “areas surrounding Japan” and observe the conventional government interpretation of “areas surrounding Japan.”*
- Under the current act, rear area support, rear area search-and-rescue operations, and ship inspection operations implemented by the SDF require the prior approval of the Diet. Based on the DPJ’s draft amendment at the time of the formulation of the legislation, the DPJ will ensure that with regard to such operations: 1) the basic plan in its entirety requires the prior approval of the Diet, and 2) that the continuation of response measures requires the prior approval of the Diet at regular intervals.
- With regard to rear area support and matters relating to the recipients, the location, and the modalities for support (e.g. including refueling and maintenance of aircraft being prepared for take-off, and measures necessitated by new technological innovations), the DPJ will engage in thorough examination and consideration about: 1) whether needs exist, 2) in what cases such support is possible, and 3) the relationship with “ittaika with the use of force,” (forming an “integral part” of the use of force), and will devise the necessary measures.

*(Note) “There are naturally limitations to what can be considered the regions where ‘situations in areas surrounding Japan’ occur. For example, in practical terms situations that occur in the Middle East and the Indian Ocean would not be considered.” (Response by Prime Minister Keizo Obuchi in the plenary session of the House of Councillors. April 28, 1999.)

5. Peacekeeping Operations (PKO)

Responding to new needs in UN PKO

- With the change in focus of the duties of UN PKO from traditional ceasefire monitoring to long-term peacebuilding activities, needs are arising that surpass the scope of duties that were envisaged at the time of the formulation of the Act on Cooperation with United Nations Peacekeeping Operations and Other Operations (PKO Act). Based on the changing situation, of the items that were considered during the DPJ Administration

(Interim Report of the Study Group on Japan's Engagement in UN Peacekeeping Operations, Cabinet Office. July 4, 2011; A More Effective Response to PKO, Report by the Research Committee on Foreign Affairs and Security, DPJ. August 25, 2011), the DPJ will aim to implement a swift draft amendment for those items that it is considered possible to implement within the scope of the existing constitutional interpretation and those that require a particularly expedited solution. These are: 1) addition of duties regarding peacebuilding, activities including disarmament, demobilization and reintegration (DDR) and security sector reform (SSR), 2) joint protection of camps, and 3) establishing a legal basis in the PKO Act for the provision of supplies and services by SDF personnel engaged in PKO activities to signatory nations to the Acquisition and Cross-servicing Agreement (ACSA), such as the military forces of the United States and Australia, only in cases in which disaster response operations are to be implemented.

- With regard to “measures for the protection of civilians, etc.” and “use of weapons for the purpose of execution of missions,” these would not be permitted unless conditions such as the following were satisfied: 1) they accord with the current Five Principles for PKOs, 2) it is continuously confirmed that no state or quasi-state organization exists in the area in question, 3) the need is urgent and there is no alternative means available, measures will be limited to the minimum necessary and once the state of urgency is over the measures will not continue to be implemented, 4) neutrality will be maintained, and 5) the Diet will be fully involved.
- The DPJ will not permit the addition of maintenance of order duties (patrols, checkpoints, suppression and prevention of destructive activities by mobs, detainment, etc.) as a type of international peace cooperation operations based on the PKO Act.
- When dispatching personnel on PKO missions, in addition to taking measures to ensure neutrality, the principles of impartiality of the UN will also be duly respected in the actual execution of activities.

6. Assistance to Foreign Militaries Engaged in Activities for the Peace and Stability of the International Community

Consider legislating a special foreign military assistance bill for each individual case, instead of legislating a permanent bill on universal foreign military assistance

- The question of whether or not to provide assistance to foreign militaries engaged in activities for the peace and stability of the international community and the ideal method for the provision of such assistance will vary depending on each particular situation and therefore it is necessary to examine carefully each case, looking into such matters as legitimacy, the reasons for assistance, national consensus and ensuring safety of SDF

personnel.

- Accordingly, the DPJ believes that a response to such situations should be made not by formulating so-called permanent legislation, which would make no provision for considering individual circumstances as the basis for dispatch and presumes such deployment will occur, and instead considers that special legislation should be formulated as and when necessary.
- When formulating special legislation, consideration should be given based on the following such principles: 1) a UN resolution has been adopted, 2) the assistance would contribute to ensuring the peace and security of the international community, including Japan, 3) the assistance would not constitute the use or the threat of force, 4) mechanisms are in place to ensure there is no “ittaika with the use of force” by other militaries, 5) the safety of SDF personnel and others is ensured, and 6) the Diet grants prior approval.
- In order to ensure stronger democratic controls, supervision by and involvement of the Diet should be secured, and other measures, including the formulation of a new legislative framework, should also be considered.

The concept of “a place which is not the scene where combat activities are actually being conducted” is unacceptable

- The existing concept of “non-combat areas” was established with the purpose of limiting the areas in which Japan implements support activities. This is to ensure that measures, such as cooperation and support activities, which are implemented by Japan, are not evaluated as constituting the use of force by means of “ittaika with the use of force” of foreign militaries.
- In comparison to “non-combat areas,” if the concept is defined as “a place which is not the scene where combat activities are actually being conducted,” there is a possibility that the areas where activities can be implemented will expand significantly from their current scope. At the current point, not only are the criteria that define the specific scope of “a place which is not the scene” unclear, there are also issues from the perspective of avoiding so-called “ittaika with the use of force” in the implementation of assistance in such “places.” These issues include closer involvement in the use of force executed by foreign militaries, leading to closer geographic proximity, and also the question of whether in reality it would be truly possible to temporarily suspend or completely halt support activities at any given time.
- Furthermore, although the government states that measures will be based on the experiences of missions dispatched to date, there are still many outstanding issues, including the lack of a clear rationale for identifying what kinds of impairments were encountered in previous missions and what would need to be changed, and the fact that

the new legislation would also significantly elevate concerns about the safety of SDF personnel. The units to be dispatched from Japan would lack any comprehensive framework for the implementation of required assistance in the necessary timeframe and it cannot be said that the government has acquitted its legislative responsibilities for the dispatch of such missions.

- Accordingly, the DPJ does not accept the adoption of the concept of “a place which is not the scene where combat activities are actually being conducted.”