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Japan's Self-Defense Capability: “Minimum Extent Necessary”

On the current revision of three key documents defining the future of Japan's self-defense

By Naoki TAKIGUCHI

I. Introduction

The government and ruling parties proactively worked towards revisions of the three key defense documents, including the National Security Strategy, and these have recently received Cabinet approval. At the time of writing of this paper, Russian aggression against Ukraine, China's military actions, and North Korea's intermittent missile launches have had a major impact on the general public's awareness of national security. Given the current situation, it is reasonable to assume that the security environment around Japan will continue to deteriorate. Japan has long maintained an exclusively defense-oriented policy. Thus, in the event of an armed attack, Japan is constrained to using force to the “minimum extent necessary¹” beyond proportionality.

Note: Quotes in this paper are a provisional translation of the original unless otherwise specified.

II. Policy Recommendations by the Liberal Democratic Party

In April 2022, the Liberal Democratic Party (LDP) submitted its *Recommendations for the Formulation of New National Security Strategy, etc.* (新たな国家安全保障戦略等の策定に向けた提言²) to the government. Prime Minister Fumio Kishida told the party: "the government seriously accepts these proposals and will proceed with discussions." The party recommendations include 1) ensuring the three defense documents are consistent with U.S. strategic documents; 2) replacing the National Defense Program Guidelines with the National Defense Strategy as a "threat-resistant defense strategy;" 3) promoting a Free and Open Indo-Pacific (FOIP) and strengthening cooperation with allies and like-minded nations. In particular, the recommendation paper attracted significant interest both at home and abroad for its suggestion that Japan should develop counterstrike capabilities against armed attacks on home soil, including the increasingly possibility of ballistic missile attacks.

The proposal has one short chapter briefly explaining the "exclusively defense-oriented policy." According to media reports, LDP lawmakers were concerned that such a defense posture would not be sufficient to counter current threats³. The proposal mentions that the specific limitation of defense capability to the "minimum extent necessary" will be determined in conjunction with conditions such as the prevailing situation internationally and scientific developments. This could be interpreted as suggesting that the specific limit of force to the "minimum extent necessary" could be quite variable and elastic depending on the prevailing international situation and current progress of science and technology. Please note that the rather cumbersome expression "minimum extent necessary" is consistent with terminology used in government documents, especially the current one.

III. What does using force to the "minimum extent necessary" actually mean?

In December 1954, the year before the integration of conservative forces (namely the then Liberal Party and Democratic Party) in Japan, the then-government, upon request of the National Diet, issued an official position on the interpretation of Article 9 of the Constitution. This document stated "it is no violation of the Constitution for Japan to have a self-defense body, such as the Self Defense Forces, and to establish a competent force to necessary extent for that purpose." This reinterpretation would cause anything exceeding the "minimum extent necessary" as "war potential⁴".

Yasuaki Chijiwa, Senior Fellow of the National Institute for Defense Studies, explains⁵:

- 1) The predecessors of the Self-Defense Forces (SDF) did not have "modern warfare capabilities," therefore, they did not fall under the "war potential" prohibited by the Constitution and thus were not considered unconstitutional,
- 2) Later on, regardless of whether or not Japan possessed modern warfare capabilities, the Constitution was reinterpreted to accept the organization of forces as constitutional, provided that use is no more than to the "minimum extent necessary."

The latest government position voiced in the National Diet reads as follows: "the specific limit is subject to change according to the prevailing international situation, the level of military technologies, and various other factors, and it is discussed and

decided through annual budget and other deliberations by the Diet on behalf of the people.⁶ Thus, we are unable to make generalisations about the specific limit. However, offensive weapons designed only to cause mass destruction in another country are not permissible under any circumstances as their use would directly exceed the definition of the “minimum extent necessary” for self-defense. For example, the SDF is not allowed to possess intercontinental ballistic missiles (ICBM), long-range strategic bombers, or attack aircraft carriers. The reference to the “prevailing international situation and the level of military technologies” was first made by Masaharu Kondo, Commissioner of the Cabinet Legislation Bureau, at a session of the Committee on Security of the House of Representatives on July 8, 2020. Since 1954, successive governments have frequently used the expression “minimum extent necessary” to respond to questions in the Diet. Prior to July 2020, however, the government position was generally that “the specific limit to the use of force, which is to the “minimum extent necessary”, is in accordance with the scale and manner of the armed attack in question, and it is difficult to state these in general terms.”

IV. Concept Remains Untouched

Meanwhile, Prime Minister Kishida has reiterated⁷ that the government will maintain its exclusively defense-oriented policy. Itsunori Onodera, Chairperson of the LDP Research Commission on Security, who was responsible for formulating the above-mentioned proposal, commented, “if the ‘minimum extent necessary’ is to be changed, the interpretation of the Constitution and all previous government responses in the Diet must also be changed. Time-consuming efforts that could take as long as developing the 2015 Security Legislation or even longer would have to be made. In today’s tough security environment, we tried to do what we could and left the ‘minimum extent necessary’ unchanged⁸.” He made it clear that while the concept had been a subject of debate, the party has chosen to maintain the “minimum extent necessary”. This is a judgement based on maintaining consistency with previous interpretations of the Constitution.

During revision of the three defense documents, the government and ruling parties decided to specifically mention that Japan would possess counterstrike capabilities to the “minimum extent necessary⁹”, and the LDP and Komeito agreed on executing counterstrike capabilities provided this meets the three new requirements for exercising the right to self-defense. Komeito has historically been cautious about allowing Japan to possess counterstrike capabilities, but the party position has shifted towards tolerating its possession. However, the junior coalition partner still believes that the government should refrain from carrying out counterstrikes as a preemptive action. The use of preemptive strikes will remain impermissible. Counterstrikes can also be utilised in the case of an armed attack on a Japanese ally.

In May 2020, at a meeting of the House of Representatives Commission on the Constitution, Yuichiro Tamaki, President of the Democratic Party for the People, asked the LDP for its views on the concept of the “minimum extent necessary”. Yoshitaka Shindo, the ruling party’s Senior Director for the Commission and deputy chief of the LDP Policy Research Council stated¹⁰ that: 1) the concept had previously been classified as a quantitative one. 2) the major premise is that it is subject to change in accordance with relative security and the content of threats to Japan. 3) it would require a quantitative, relative, and comprehensive judgement going forward. Therefore, the party’s current position concept is that the “minimum extent necessary” is not only quantitative, but also relative, and comprehensive.

V. Conclusions

Although the three defense documents are a turning point, security policies remain constrained by the Constitution. Counterstrike capabilities are one of the main focal points. However, the legal foundation for these had already been established as of 1956. This time, the government has made a policy shift to retain capabilities and related assets at hand. This broadens the scope and capacity of Japan's security policy. Meanwhile, Shigenobu Tamura, a former advisor to the LDP Policy Research Council, says even after the revision of the three defense documents, "the foundations (of security policy) will not change¹¹." With this clear relativization, the concept of the "minimum extent necessary" can change depending on the prevailing international situation and scientific and technological advances. In addition, the government can alter the scope of assets possessed by the SDF. These circumstances will have an impact on Japan's entire security policy, including the shape of the U.S.-Japan alliance. I believe that such potential shifts in the direction of national security strategy are in fact more significant than the possession of counterstrike capabilities. The government has been taking every opportunity to reiterate its intention to "fundamentally reinforce Japan's defense capabilities". It has already announced that it will aim to increase the defense budget by at least 2% within five years. As a result, PM Kishida ordered both the Finance and Defense Ministers to implement this increase by FY2027, and the LDP had very active discussions over the issue.

While Japan has made clear progress on the revised defense budget, counterstrike capabilities, and the assets of defense equipment, certain limitations will remain in place. As Akihisa Nagashima, a member of the House of Representatives well versed in defense issues, points out, the elasticity of the concept of the "minimum extent necessary" could undermine constitutional norms and goes against constitutionalism. He calls for constitutional amendments in order to respond to national security realities¹². From the known facts, it can be concluded that in due course there will be productive debates to strengthen constitutionalism and Japan's security policy.

Note: Not all references are available in English.

- ¹ The "minimum extent necessary" 必要最小限度 in this article refer to the use of force and assets of the Self-Defense Forces.
- ² Liberal Democratic Party (April 25, 2022) Recommendations for the Formulation of New National Security Strategy, etc. *新たな国家安全保障戦略等の策定に向けた提言*
<https://www.jimin.jp/news/policy/203401.html>
- ³ Sankei Shimbun (April 12, 2022) Exclusively defense-oriented policy: LDP rethinks corresponding to the change in security environment *専守防衛 自民見直し論 安保環境の変化に対応*
- ⁴ Constitution of Japan (May 3, 1947) Article 9
- ⁵ Yasuaki Chijiwa (May 25, 2022) Chuko-Shinsho Japan's Postwar Security *戦後日本の安全保障*
- ⁶ Ministry of Defense, White Paper 2022 https://www.mod.go.jp/en/publ/w_paper/wp2022/DOJ2022_EN_Full_02.pdf
- ⁷ House of Representatives Plenary (May 25, 2022) Prime Minister Fumio Kishida <https://kokkai.ndl.go.jp/txt/120805254X02920220525/25>

- ⁸ Nikkei Shimbun (June 9, 2022) “Counterstrike Capabilities“ to open the Pandora’s box パンドラの箱開ける「反撃能力」 自衛権の限界論争再び <https://www.nikkei.com/article/DGXZQOCD018QR0R00C22A6000000/>
- ⁹ National Security Strategy (Provisional Translation) December 2022 (December 16, 2022) Cabinet Secretariat <https://www.cas.go.jp/jp/siryou/221216anzenhoshou/nss-e.pdf>
- National Defense Strategy (Provisional Translation) December 2022 (December 16, 2022) Ministry of Defense https://www.mod.go.jp/j/approach/agenda/guideline/strategy/pdf/strategy_en.pdf
- Note: In these document, the “minimum extent necessary” is referred as “minimum necessary.”
- ¹⁰ House of Representatives Commission on the Constitution (May 19, 2022) Member of the House of Representatives Yoshitaka Shindo <https://kokkai.ndl.go.jp/txt/120804183X01320220519/16>
- ¹¹ Shigenobu Tamura Former Advisor to the LDP Policy Research Council, Adjunct Fellow to the Japan Institute of International Affairs (November 22, 2022) Interview at a Tokyo venue
- ¹² Akihisa Nagashima Member of the House of Representatives (May 19, 2022) <https://twitter.com/nagashima21/status/1527127802977611776>

(All the links last accessed December 16, 2022)

(References) Following references are all Japanese publications

- Shigenobu Tamura (October 1, 2018, Naigai Publishing, New Defense Legislation 新・防衛法制)
- Legislative Bureau, Cabinet Office (January 30, 2017) Government’s responses related to the Constitution (Article 9 / Constitutional interpretation) 憲法関係答弁集 (第9条・憲法解釈関係)
- Kazumasa Imai (March 15, 2022) “Weapons the Self-Defense Forces Can Possess: The Limit to the “Minimum Extent Necessary” of Self-Defense Force” 「自衛隊の保有しうる兵器—必要最小限度の自衛力の限界—」 Tokyo Kansho Fukyu Toki no Hourei

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