Section 2 Constitution and the Basis of Defense Policy

1. Constitution and the Right of Self-Defense

Since the end of World War II, Japan made a decision not to repeat the ravages of war and has worked hard, aiming to build a peace-loving nation. The Japanese people desire lasting peace, and the principle of pacifism is enshrined in the Constitution, of which Article 9 prescribes the renunciation of war, the possession of war potential, and the right of belligerency by the state. Of course, 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 Japanese Government interprets this to mean that the Constitution allows Japan to possess the minimum level of armed force needed to exercise that right. Therefore, Japan, under the Constitution, maintains the Self-Defense Forces (SDF) as an armed organization, holding its exclusively national defense-oriented policy as its basic strategy of defense, and continues to keep it equipped and ready for operations.

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

1 Permitted Self-Defense Capability

Under the Constitution, Japan is permitted to possess the minimum necessary level of self-defense capability. The specific limit is subject to change relative to the prevailing international situation, the level of military technologies, and various other factors, and it is discussed and decided through annual budget deliberations 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 Measures for Self-Defense Permitted under Article 9 of the Constitution

In the cabinet decision (described in the next section) made on July 1 2014, measures for self-defense permitted under Article 9 of the Constitution were defined as follows;

The language of Article 9 of the Constitution appears to prohibit "use of force" in international relations in all forms. However, when considered in light of "the right (of the people) to live in peace"

as recognized in the Preamble of the Constitution and the purpose of Article 13 of the Constitution which stipulates, "their (all the people's) right to life, liberty, and the pursuit of happiness" shall be the supreme consideration in governmental affairs, Article 9 of the Constitution cannot possibly be interpreted to prohibit Japan from taking measures of self-defense necessary to maintain its peace and security and to ensure its survival. Such measures for self-defense are permitted only when they are inevitable for dealing with imminent unlawful situations where the people's right to life, liberty, and the pursuit of happiness is fundamentally overturned due to an armed attack by a foreign country, and for safeguarding these rights of the people. Hence, "use of force" to the minimum extent necessary to that end is permitted. This is the basis, or so-called the basic logic, of the view consistently expressed by the Government to date with regard to "use of force" exceptionally permitted under Article 9 of the Constitution, and clearly shown in the document "Relationship between the Right of Collective Self-Defense and the Constitution" submitted by the Government to the Committee on Audit of the House of Councillors on October 14, 1972.

This basic logic must be maintained under Article 9 of the Constitution.

To date, the Government has considered that "use of force" under this basic logic is permitted only when an "armed attack" against Japan occurs. However, in light of the situation in which the security environment surrounding Japan has been fundamentally transformed and continuously evolving by shifts in the global power balance, the rapid progress of technological innovation, and threats such as weapons of mass destruction, etc., in the future, even an armed attack occurring against a foreign country could actually threaten Japan's survival, depending on its purpose, scale and manner, etc.

Japan, as a matter of course, will make the utmost diplomatic efforts, should a dispute occur, for its peaceful settlement and take all necessary responses in accordance with the existing domestic laws and regulations developed based upon the constitutional interpretation to date. It is still required, however, to make all necessary preparations in order to ensure Japan's survival and protect its people.

Under such recognition and as a result of careful examination in light of the current security environment, it has been concluded that not only when an armed attack against Japan occurs but also when an armed attack against a foreign country that is in a close relationship with Japan occurs and as a result threatens Japan's survival and poses a clear danger to fundamentally overturn people's right to life, liberty and pursuit of happiness, and when there is no other appropriate means available to repel the attack and ensure Japan's survival and protect its people, use of force to the minimum extent necessary should be interpreted to be permitted under the Constitution as measures for self-defense in accordance with the basic logic of the Government's view to date.

As a matter of course, Japan's "use of force" must be carried out while observing international law. At the same time, a legal basis in international law and constitutional interpretation need to be understood separately. In certain situations, the aforementioned "use of force" permitted under the Constitution is, under international law, based on the right of collective self-defense. The Government has reached a conclusion that although this "use of force" includes those which are triggered by an armed attack occurring against a foreign country, they are permitted under the Constitution only when they are taken as measures for self-defense which are inevitable for ensuring Japan's survival and protecting its people, in other words, for defending Japan.

See ▶ Fig. II-1-2-1 (Newly determined three conditions for the "use of force" as measures for self-defense permitted under Article 9 of the Constitution)

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, as a general rule, 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 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.

3. Basic policy

Under the Constitution, Japan will efficiently build a highly effective and joint defense force in line with the basic principles of maintaining an exclusively defense-oriented policy and not becoming a military power that poses a threat to other countries, while firmly maintaining the Japan-U.S. Security Arrangements and adhering to the principle of civilian control of the military, observing the Three

Non-Nuclear Principles.

1 Exclusively Defense-Oriented Policy

The exclusively defense-oriented policy means that defensive force is used only in the event of an attack, that the extent of the 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.

2 Not Becoming a Military Power

There is no established definition for the concept of a military power. For Japan, however, not becoming a military power that could threaten other countries means that Japan will not possess and maintain a military capability strong enough to pose a threat to other countries, beyond the minimum necessary for self-defense.

3 Three Non-Nuclear Principles

The Three Non-Nuclear Principles refers to those of not possessing nuclear weapons, not producing them, and not allowing them to be brought into Japan. Japan adheres to the Three Non-Nuclear Principles as a fixed line of national policy.

Japan is also prohibited from manufacturing and possessing nuclear weapons under the Atomic Energy Basic Law[1]. In addition, Japan ratified the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), and as a non-nuclear weapons state, has an obligation not to manufacture and acquire nuclear weapons[2].

4 Securing Civilian Control

Civilian control refers to the priority of politics to the military or democratic political control of military strength in a democratic state. Japan has, by giving serious reflection to the regrettable state of affairs that happened until the end of World War II, adopted the following strict civilian control system that is entirely different from the one under the former Constitution[3]. Civilian control aims to ensure that the SDF is maintained and operated in accordance with the will of the people.

The Diet, which represents Japanese nationals, makes legislative and budgetary decisions on such matters as the allotted number of the SDF personnel and main organizations of the MOD and the SDF. It also issues approval for defense operations of the SDF. The function of national defense, as a general

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1 Article 2 of the Atomic Energy Basic Law states that "The research, development and utilization of atomic energy shall be limited to peaceful purposes, aimed at ensuring safety and performed independently under democratic management."

2 Article 2 of the NPT states that "Each non-nuclear weapon State Party to the Treaty undertakes....not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices..."

3 The Cabinet's control over military matters was limited.

administrative function, entirely falls under the executive power of the Cabinet. The Constitution requires that the Prime Minister and other Ministers of State who constitute the Cabinet be civilians. The Prime Minister, on behalf of the whole Cabinet, holds the authority of supreme command and supervision of the SDF. The Minister of Defense, who is exclusively in charge of national defense, exercises general control and supervision over the SDF duties. In addition, the National Security Council of Japan under the Cabinet deliberates important matters on national security.

At the Ministry of Defense, the Minister of Defense is responsible for issues concerning national defense, and as the head of the Ministry of Defense also controls and manages the SDF. The Minister of Defense is assisted in policy planning and political affairs by the State Minister of Defense, Parliamentary Vice-Ministers (two) and the Senior Adviser to the Minister of Defense[4].

In addition, Special Advisers to the Minister of Defense provide the Minister of Defense with advice on important issues under the jurisdiction of the Ministry of Defense based on their expertise and experience. The Defense Council consisting of political appointees, civilian officials and uniformed SDF personnel of the Ministry of Defense deliberates on basic principles concerning administrative affairs under the Ministry's jurisdiction. Through these ways, the Ministry of Defense aims to further enhance the operation of the civilian control system.

As mentioned above, the civilian control system is well established. However, it is necessary to continue making operational efforts in both political and administrative aspects, along with a deep interest in defense taken by the people, to ensure the system achieves good results.

[4] As a part of the Reform of National Public Officers' Systems, the position of Senior Adviser was newly established in each ministry, for which one official may be assigned, when particularly necessary. Simultaneously, the existing position of Senior Adviser to the Minister of Defense is renamed as Special Adviser to the Minister of Defense.