

Exercising the Right to Collective Self-Defense? An Analysis of “Japan’s Peace and Security Legislation”

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I. INTRODUCTION

Successive Japanese governments consistently explained that Japan has the right of “collective self-defense” but that it cannot be exercised because of Article 9, the so-called “peace clause”, of the Japanese Constitution. Therefore, it was interpreted that only the exercise of the right to “individual self-defense” is permitted under the current Constitution. The Second Abe Cabinet, however, made a decision to “partially” exercise the right of collective self-defense on 1 July 2014.

Based on that cabinet decision, the Third Abe Cabinet made another decision on the Legislation for Peace and Security on 14 May 2015, and the legislation was eventually enacted on 19 September 2015. The Peace and Security Legislation constituted a revision of ten laws, including the Self-Defense Forces (SDF) Law, as well as a new law to dispatch the SDF to rear support activities for the maintenance of international peace and security, such as multi-national forces authorized by the United Nations.

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Table: The Enactment Process of the Peace and Security Legislation¹

Day/Month/Year	Sequence of the Relevant Events
26 Dec 2012	Second Abe Cabinet initiated
15 May 2014	Council on Security Legislation submits a report to PM Abe
20 May 2014	First meeting by the LDP and Kōmeitō on security legislation
1 Jul 2014	Cabinet Decision on the “Three New Conditions for Self Defense”
24 Dec 2014	Third Abe Cabinet initiated
13 Feb 2015	Meeting of the LDP/Kōmeitō resumed
20 Mar 2015	LDP and Kōmeitō agree on basic points of security legislation
27 Apr 2015	New Guidelines for Japan-US Defense Cooperation announced
14 May 2015	LDP/Kōmeitō approve the Peace and Security Legislation
	Abe Cabinet makes a cabinet decision on the legislation
15 May 2015	Peace and Security Legislation submitted to the Diet
22 May 2015	Deliberation on the legislation initiated in the Lower House
16 July 2015	Peace and Security Legislation passed in the Lower House
27 July 2015	Deliberation on the legislation initiated in the Upper House
17 Sep 2015	Peace and Security Legislation passed in the Upper House
19 Sep 2015	Peace and Security Legislation enacted

This paper examines the enactment process of the Peace and Security Legislation deliberated on in the Special Committee on Peace and Security Legislation during the 189th ordinary session of the Japanese National Diet. As an analysis of primary source materials, this paper provides an overview of the Peace and Security Legislation and investigates relevant official documents of the Japanese government as well as proceedings of the National Diet in the Special Committee on Peace and Security Legislation. In particular, special attention will be paid to statements by Diet members regarding the constitutionality of the legislation. The analysis of the Diet’s deliberation proceedings is of significance given that most analysts tend not to utilize the proceedings of the entire committee. This could be because most previous publications were written before or during the Diet deliberations and, hence, did not provide an analysis of the proceedings of the entire committee.²

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- 1 The timeline by Nakauchi, Yokoyama and Kohiyama (2015) modified by the author. Y. NAKAUCHI/A. YOKOYAMA/T. KOHIYAMA, *Heiwa anzen hōsei seibi hōan to kokusai heiwa shien hōan: kokkai ni teishutsu sareta anzen hoshō kanren 2 hōan no gaiyō* [Peace and Security Legislation Development Bill and International Peace Support Bill: The Outline of Two Security-related Bills submitted to the Diet], in: The House of Councillors, *Rippō to Chōsa* [Lawmaking and Research] 366 (July 2015) 7.
 - 2 See, e.g., S. ISHIBA, *Nihonjin no tame no “shūdan-teki jiei-ken” nyūmon* [Introduction to the “Right of Collective Self-Defense” for the Japanese People] (Tōkyō 2014); S. KOBAYASHI, *Hakunetsu kōgi!: shūdan-teki jiei-ken* [Heated Lecture!: The Right of Collective Self-Defense] (Tōkyō 2014); K. OGAWA, *Nihonjin ga shiranai shūdan-teki jiei-ken* [The Right to Collective Self-Defense That the Japanese People Do Not Know] (Tōkyō 2015); Y. HASEBE/A. SUGITA, *Anpo hōsei no nani ga mondai ka* [What’s Wrong with the Security

It took 116 hours in the Lower House and 100 hours in the Upper House for the deliberations on the enactment of the Peace and Security Legislation. The author carefully watched the entire Diet deliberations of 216 hours and read the proceedings in order to extract the relevant statements. As secondary source material, publications on the legislation, such as books, journal articles, newspapers, etc., were utilized to supplement the primary source. In its first part, this paper considers the “pros and cons” of the Peace and Security Legislation in general. Then, the Peace and Security Legislation itself is analyzed. In the third part, proceedings of the Special Committee on Peace and Security Legislation that are relevant to the question of constitutionality will be investigated in detail. Finally, the research assesses the constitutionality of the Peace and Security Legislation.

II. PROS AND CONS OF THE EXERCISE OF JAPAN’S RIGHT TO COLLECTIVE SELF-DEFENSE

As mentioned before, successive Japanese governments consistently explained that although Japan has the right of collective self-defense, it cannot be exercised due to Article 9 of the Japanese Constitution. At a casual observer’s first glance, however, Article 9 would seem to forbid any kind of “use of force”, including “self-defense” as follows:

“Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.”³

Indeed, most traditional Japanese constitutional scholars tend to regard the SDF as “unconstitutional” in terms of Article 9. Nobuyoshi Ashibe, for instance, noted that Article 9 forbids not only aggressive war (acts of aggression), but also defensive war (self-defense).⁴ Ashibe also argued that the SDF could be regarded as “forces” or “war potential” banned in Paragraph 2 of Article 9.⁵ Nevertheless, it is important to consider that whereas the MacArthur Note as a prototype of Article 9 explicitly banned even “defensive war” or “self-defense”,⁶ Article 9 does not explicitly deny Japan’s right of self-

Legislation] (Tōkyō 2015); S. KIMURA, *Shūdan-teki jiei-ken wa naze iken nano ka? [Why is the Right to Collective Self-Defense Unconstitutional?]* (Tōkyō 2015); K. YANAGISAWA, *Bokoku no shūdan-teki jiei-ken [The Right to Collective Self-Defense without a Country]* (Tōkyō 2015).

3 NDL (National Diet Library), The Constitution of Japan, available at <http://www.ndl.go.jp/constitution/e/etc/c01.html>.

4 See, e.g., N. ASHIBE, *Kenpō* [Constitution] (6th ed., Tōkyō 2015) 57–58.

5 *Id.*, 61.

6 The MacArthur Note reads: War as a sovereign right of the nation is abolished. Japan renounces it as an instrumentality for settling its disputes and *even for preserving its own se-*

defense. This is because the sentence in the MacArthur Note pertaining to self-defense was deliberately deleted in the drafting process.⁷

Unlike the interpretation by constitutional scholars, the Japanese government explained that “use of force” in Article 9 means act of aggression but not self-defense. This is how the successive Japanese governments justified the existence of the SDF as well as use of force for self-defense on the basis of Article 88 of the SDF Law.⁸

Moreover, the Japan-US security treaty has been justified on the basis of the so-called “Sunagawa Judgment” by the Supreme Court, which stipulates that “measures for self-defense”, including alliances with other countries, shall be “constitutional” in the light of Article 13 of the Japanese Constitution, guaranteeing Japanese people’s right to “life, liberty, and the pursuit of happiness”.⁹

Likewise, the Japanese government, especially the Cabinet Legislation Bureau (CLB), which is responsible for the government’s official view on legality and constitutionality, explained that Japan can exercise the right of “individual self-defense”, but not the so-called right to “collective self-defense”.¹⁰ In terms of Article 13 of the Japanese Constitution, the Japanese government established the “Three Conditions for Self-Defense”. For instance, on 27 September 1985, the Japanese government stated that, as allowed under Article 9 of the Constitution, the “Three Conditions on Japan’s Self-Defense” (formerly Three Conditions for Self-Defense) are as follows:

- 1) An imminent and illegitimate act of aggression against Japan
- 2) Lack of other appropriate means of eliminating the threat
- 3) Exercise of no more than the minimum amount of force required¹¹

Despite the interpretation by the successive Japanese governments, the Second Abe Cabinet issued a decision, “Development of Seamless Security Legislation to Ensure

curity. See, NDL, Three Basic Points stated by Supreme Commander to be “musts” in constitutional revision (MacArthur Note), February 1946, available at <http://www.ndl.go.jp/constitution/e/shiryo/03/072/072tx.html>, last retrieved on 11 February 2016.

7 See, e.g. D. AKIMOTO, An Analysis of the Japanese Constitutional Revision Debate: From the Eclectic Perspectives of IR Theory, in: ZJapanR/J.Japan.L. 35 (2013) 232.

8 MOD (Ministry of Defense Japan), Defense of Japan: Defense Whitepaper 2015 (Tōkyō 2015) 145.

9 Supreme Court of Japan, “The Sunagawa Judgment”: Judgment upon case of the so-called “SUNAKAWA CASE” [Violation of the Special Criminal Law enacted in consequence of the Administrative Agreement under Article III of the Security Treaty between Japan and the United States of America] (1959), available at http://www.courts.go.jp/app/hanrei_en/detail?id=13, last retrieved on 18 January 2016.

10 CLB (Cabinet Legislation Bureau), *Shūdan-teki jiei-ken to kenpō to no kankei* [The Relationship between Collective Self-Defense and the Constitution] (Tōkyō 1972).

11 LDP (Liberal Democratic Party of Japan), Emphasis on Limited Exercise of the Right of Collective Self-Defense, Party Vice-President Masahiko Komura: “It’s a Misunderstanding to Think That the Right of Collective Self-Defense can be Exercised Solely through a Cabinet Decision”, 14 July 2014, available at <https://www.jimin.jp/english/news/125672.html>, last retrieved on 1 June 2015.

Japan’s Survival and Protect Its People” on 1 July 2014, which approved a “limited” exercise of the right to collective self-defense. In the cabinet decision, the limited exercise of the right to collective self-defense was approved with the following Three New Conditions:

- 1) 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
- 2) When there is no other appropriate means available to repel the attack and ensure Japan’s survival and protect its people
- 3) Use of force to the minimum extent necessary¹²

Obviously, the first point of the cabinet decision approves the partial exercise of collective self-defense. On the basis of the cabinet decision of 1 July 2014, the Third Abe Cabinet made a new decision on the so-called “Peace and Security Legislation” on 14 May 2015.

In response to the Peace and Security Legislation submitted by the LDP-Kōmeitō coalition government, most Japanese constitutional scholars voiced their objections. Indeed, according to a survey by Nippon Hōsō Kyōkai (NHK) or the Japanese Broadcasting Corporation, 377 out of 422 members (89%) of the Japan Public Law Association replied that the Peace and Security Legislation could be unconstitutional, whereas only 28 members (7%) supported the constitutionality of the legislation.¹³

Notably, although there are some books in favor of the Peace and Security Legislation,¹⁴ most books were written in objection to the legislation.¹⁵ For instance, Sota Kimura, Associate Professor in constitutional studies at Tōkyō Metropolitan University, insisted that the exercise of the right of collective self-defense is unconstitutional because there is no explicit legal basis in the Japanese Constitution.¹⁶ Internationally, some experts recognized the significance of the legislation, although they also pointed to problems with the enactment process.¹⁷

- 12 Prime Minister of Japan and His Cabinet (Kantei), Cabinet Decision on Development of Seamless Security Legislation to Ensure Japan’s Survival and Protect Its People, 1 July 2014, available at http://japan.kantei.go.jp/96_abe/decisions/2014/icsFiles/asfieldfile/2014/07/03/anpohosei_eng.pdf, last retrieved on accessed 1 June 2015.
- 13 NHK (Nippon Hōsō Kyōkai), *Kensho anpo hoan: ima nanio toubekika* [Investigation of the Security Bills: What Should be Debated?], 23 July 2015, available at http://www.nhk.or.jp/gendai/kiroku/detail02_3690_all.html, last retrieved on 15 January 2016.
- 14 See, e.g., ISHIBA, *supra* note 2; OGAWA, *supra* note 2; M. NISHIHARA (ed.), *Wakaru heiwa anzen hôsei* [Easy-to-Understand: The Peace and Security Legislation] (Tōkyō 2015).
- 15 See, e.g., KOBAYASHI, *supra* note 2; HASEBE/SUGITA, *supra* note 2; KIMURA, *supra* note 2; YANAGISAWA, *supra* note 2.
- 16 KIMURA, *supra* note 2, 17.

Unsurprisingly, Japanese opposition parties, especially the Democratic Party of Japan (DPJ), the Social Democratic Party (SDP) and the Japan Communist Party (JCP), expressed their opposition to the legislation. JCP leader Kazuo Shii, for example, criticized the Peace and Security Legislation as “deceptive”, and described the name of the bills, which include the term “peace”, as being “extremely inappropriate”. Shii sharply condemned the bills, arguing that “[t]he Abe administration is using the phrase ‘peace and security’, but in reality, this legislation is for ‘war’.”¹⁸ Instead, the JCP calls the Peace and Security Legislation “war legislation” or “war bills” which might allow Japan to engage in possible future wars led by the United States.¹⁹ Thus, the Peace and Security Legislation produced strong opposition not only from the opposition parties but also from most Japanese constitutional scholars.

III. AN OVERVIEW OF “JAPAN’S PEACE AND SECURITY LEGISLATION”

In the press conference after the cabinet decision on 14 May 2015, Prime Minister Shinzō Abe stated that the Peace and Security Legislation is important and necessary in the changing international security environment where Japanese citizens were victimized by terrorists in Algeria, Syria, and Tunisia. In addition, Prime Minister Abe mentioned hundreds of North Korea’s missiles targeting Japan, and he insisted that the right of collective self-defense should be permitted under “very limited circumstances” in order to protect Japan. Moreover, Prime Minister Abe argued that Japan should make more proactive contributions to the maintenance of international peace and security under the banner of “proactive contribution to peace”.²⁰

According to the Japanese government, the Peace and Security Legislation is composed of two parts: peace and security for Japan, and international peace and security. It was explained that the new legislation will enable Japan to take seamless responses and measures against military threats, and to make more proactive contributions to international peace and security. The government also made assurances that Japan’s fundamen-

- 17 See, *et seq.*, R. KERSTEN, Contextualizing Australia-Japan Security Cooperation: The Normative Framing of Japanese Security Policy, in: Australian Journal of International Affairs 70 (1) (2016) 6–23 (published online on 23 November 2015).
- 18 Mainichi Shinbun, Opposition Camp Raps Naming of Security-related Bills As “Peace Legislation”, 27 May 2015, available at <http://mainichi.jp/english/english/newsselect/news/20150527p2a00m0na007000c.html>, last retrieved on 8 June 2015.
- 19 Japan Press Weekly, Shii Upsets PM Abe Asking Questions About Japan’s Use of Collective Self-Defense Right In Possible US Wars Of Aggression, 2 June 2015, available at <http://www.japan-press.co.jp/modules/news/index.php?id=8235>, last retrieved on 8 June 2015.
- 20 Prime Minister of Japan and His Cabinet (Kantei), Press Conference by Prime Minister Shinzo Abe Following the Cabinet Decision on the “Legislation for Peace and Security”, 14 May 2015, available at http://japan.kantei.go.jp/97_abe/statement/201505/0514kaiken.html, last retrieved on 3 June 2015.

tal position as a “peace-loving nation” will not change, and the legislation could enhance the deterrence achieved by the Japan-US alliance in the Asia-Pacific region.²¹

As well as the enactment of a new law (International Peace Support Law), the following 10 security-related laws were revised:

- 1) Self-Defense Forces Law (SDF Law)
- 2) International Peace Cooperation Law or UN Peacekeeping Operations Cooperation Act (PKO Law)
- 3) Law Concerning Measures to Ensure Peace and Security of Japan in Situations in Areas Surrounding Japan
- 4) Ship Inspection Operations Law
- 5) Legislation for Responses to Armed Attack Situations
- 6) Act on Measures Conducted by the Government in Line with U.S. Military Actions in Armed Attack Situations
- 7) Law Concerning the Use of Specific Public Facilities
- 8) Marine Transport Restriction Act
- 9) Prisoner Treatment Act
- 10) National Security Council (NSC) Establishment Act

In general, the Peace and Security Legislation is aimed at enhancing Japan’s defense capability to shift in a seamless manner from peacetime to contingency. In peacetime, the Japanese government is able to “transport” its nationals overseas in case of emergency, but the revised SDF Law (Paragraph 3 of Article 84) enables the government to “rescue” nationals. Moreover, the new SDF Law (Paragraph 2 of Article 95) will enable Japan to protect not only SDF’s weapons but also weapons of the United States and other countries which contribute to the defense of Japan. The revised SDF Law (Paragraph 6 of Article 100) will strengthen the supplies and services to the US Armed Forces in peacetime. Also, Paragraph 2 of Article 122 was revised for the development of provisions for the punishment of those who commit crimes overseas.²²

With regard to Japan’s contribution to international peace and security, the new legislation includes a revision of the PKO Law enacted in 1992 so that Japan can make further contributions not only for the United Nations Peacekeeping Operations (UNPKO) but also for “internationally coordinated peace and security operations” outside the UNPKO framework. The revised PKO Law would enable Japanese peacekeepers to use weapons not only for themselves but also for other civilians under their protection. Moreover, the Japanese peacekeepers would be able to conduct “*kaketsuke keigo*” or “coming to the aid of geographically distant units or personnel under attack” and to use weapons “for the purpose of the execution of missions”. The revised PKO Law adheres

21 MOFA (Ministry of Foreign Affairs, Japan), Japan’s Legislation for Peace and Security: Seamless Responses for Peace and Security of Japan and the International Community, May 2015, available at <http://www.mofa.go.jp/files/000080671.pdf>, 2, last retrieved on 4 June 2015.

22 MOFA, *supra* note 16, 3; MOD, *supra* note 4, 142.

to the so-called “Five Principles” on Japan’s PKO participation: (1) ceasefire, (2) acceptance by conflict parties, (3) neutrality, (4) withdrawal if the three conditions are not satisfied, and (5) minimum necessary use of weapons.²³

Upon the occurrence of a military contingency that would eventually threaten the peace and security of Japan, the Japanese government was supposed to take appropriate measures to prevent it from spreading on the basis of the “Law Concerning Measures to Ensure Peace and Security of Japan in Situations in Areas Surrounding Japan”, enacted in 1999. The new legislation could be applied in the event of situations that would have an “important influence” on Japan’s peace and security, and the law was renamed as the “The Law Concerning Measures to Ensure Peace and Security of Japan in Situations that Will Have an Important Influence on Japan’s Peace and Security”. The new legislation does not have any geographical limitations regarding the SDF’s operation, and it also expands Japan’s support activities not only for the United States but also for countries that contribute to the defense of Japan. Additionally, the “Ship Inspection Operations Law” in the new legislation would enable Japan to conduct “ship inspection operations” based on the “Important Influence Situations Law” as well as the “International Peace Support Law”.²⁴

As mentioned previously, a “survival threatening situation” is a situation “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”. In order to respond to the survival threatening situation, the new legislation enables Japan to exercise the “limited” right of “collective self-defense”. To this end, Article 76 of the SDF Law was revised so that the SDF can deal with the survival threatening situation, during which Japan can exercise the “limited” right to collective self-defense for the “defense of Japan”.²⁵

Similarly, other laws, such as the Act on Measures Conducted by the Government in Line with U.S. Military Actions in Armed Attack Situations, the Use of Specific Public Facilities Act, the Marine Transport Restriction Act, the Prisoner Treatment Act, and the NSC Establishment Act, were partially revised consistent with the cabinet decision of 14 May 2015, especially as to survival threatening situations and important influence situations.

In addition to the revision of the security related laws mentioned above, a new permanent law – the “International Peace Support Law” – would enable Japan to make contributions to the UN-authorized multinational forces by providing “logistic support”. By enacting the permanent law, the Japanese government will be able to dispatch the SDF to international peace operations authorized by the United Nations without enacting “special measures law”.²⁶

23 MOD, *supra* note 4, 140.

24 MOFA, *supra* note 16, 3.

25 *Id.*

In the deliberation process, Kōmeitō, as a pacifist political party, suggested that there should be clear conditions for the overseas dispatch of the SDF based on the new legislation. The conditions proposed by Kōmeitō and accepted by the government are:

- 1) The dispatch is consistent with international law
- 2) Maintaining civilian control and public support
- 3) Implementing necessary measures to ensure the safety of SDF personnel deployed overseas²⁷

The first point means that there should be a legal basis for a SDF dispatch, especially UN resolutions adopted on the basis of the UN Charter as international law. The second point signifies that the Diet should be involved in the decision-making process as a representative of the Japanese public. In the event of a SDF dispatch on the basis of the International Peace Support Law, Kōmeitō successfully persuaded the LDP to include Diet approval prior to the dispatch “without exception”. This is a critical legal constraint to guarantee civilian control over the military. The third point promises that the Japanese government will ensure the safety of SDF personnel. Importantly, the three conditions will be satisfied whenever the Japanese government attempts to dispatch the SDF on the basis of the Peace and Security Legislation.

Thus, the Peace and Security Legislation, comprising a revision of ten laws and the enactment of a new permanent law, is comprehensive and significant for Japan’s security policy. Still, the legislation is too complicated to comprehend; therefore, it is important to examine the Diet debates and the explanations provided by the government in the special committee.

IV. THE ENACTMENT PROCESS OF THE PEACE AND SECURITY LEGISLATION

1. Deliberations in the House of Representatives

The Peace and Security Legislation was submitted to the Diet on 15 May 2015, and deliberations were initiated in the House of Representatives one week later. On 22 May, Yasukazu Hamada of the LDP, Chairman of the committee on the Peace and Security Legislation, delivered an inauguration address in the first committee meeting.²⁸ On 26 May 2015, Defense Minister Gen Nakatani briefly explained the necessity of the Peace and Security Legislation. Nakatani argued that the security environment surround-

26 The Japanese government enacted two special measures to dispatch the SDF to the Indian Ocean and Iraq on the basis of related UN resolutions. See, e.g. D. AKIMOTO, Japan as a “Global Pacifist State”: Its Changing Pacifism and Security Identity (Bern 2013).

27 “Kōmeitō Agrees to Permanent Law on Dispatch of SDF”, Japan Times, 18 March 2015, available at <http://www.japantimes.co.jp/news/2015/03/18/national/politics-diplomacy/komeito-agrees-to-permanent-law-on-dispatch-of-sdf/>.

28 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 22 May 2015, available at <http://kokkai.ndl.go.jp/SENDAKU/syugiin/189/0298/18905220298001a.html>.

ing Japan has changed, and hence it was judged that the right to collective self-defense should be partially exercised in order to protect Japan. In addition, the defense minister contended that Japan should make a proactive contribution to international peace and security in accordance with the purpose of the UN Charter.²⁹

On 27 May, Masataka Komura, Vice President of the LDP, confirmed that the Peace and Security Legislation would enable Japan to exercise the “partial” right of collective self-defense. Komura also confirmed that the SDF could use weapons only for self-defense and emergency evacuation under the legislation. In contrast, Katsuya Okada, as DPJ President, pointed out that whereas the Japan-US alliance enhances deterrence, there is some risk of being involved in wars waged by the United States. Likewise, Hiroshi Ogushi of the DPJ stated that there would be more risks if the SDF members were dispatched on the basis of the Peace and Security Legislation. Moreover, Kazuo Shii, JCP Chairperson of the Executive Committee, expressed his opinion that there could be more psychological burdens on the SDF staff if they are deployed overseas in support of military activities of other countries.³⁰

On 28 May, Kōmeitō Vice-Representative Kazuo Kitagawa supported the Peace and Security Legislation in terms of its “constitutionality, legal system, and policy judgement”. Kitagawa emphasized the point that there should be prior Diet approval, without exception, on SDF dispatch as logistical support for other countries’ forces on the basis of the “International Peace Support Law”. Meanwhile, Kenji Eda and Sakihito Ozawa of the Japan Innovation Party (JIP or Ishin no Tō) expressed their concern that the modification of the “Law Concerning Measures to Ensure Peace and Security of Japan in Situations in Areas Surrounding Japan” could expand the role of the SDF outside the periphery of Japan. JCP Chairperson Shii stated that the Peace and Security Legislation would enable the SDF to join international peacekeeping operations that might entail some risk, such as the International Security Assistance Force in Afghanistan (ISAF).³¹

On 29 May, Akinori Eto of the LDP asked Defense Minister Gen Nakatani how the government plans to minimize the risks related to expanded activities of the SDF. In response, the defense minister explained that the risks could be minimized by the decision on areas where SDF members are deployed and by further training of SDF staff.³²

29 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 26 May 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/syugiin/189/0298/18905260298002a.html>.

30 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 27 May 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/syugiin/189/0298/18905270298003a.html>.

31 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 28 May 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/syugiin/189/0298/18905280298004a.html>.

32 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 29 May 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/syugiin/189/0298/18905290298005a.html>.

On 1 June, Takeshi Iwaya of the LDP and Kiyohiko Toyama of Kōmeitō mentioned the possibility of minimizing the risks in SDF missions under the Peace and Security Legislation. Toyama asked Defense Minister Nakatani to confirm that the “use of weapons” by the SDF would not escalate into the “use of force”, which is unconstitutional under the current Constitution. By contrast, Yūchi Gotō of the DPJ asked Defense Minister Nakatani whether there would not be any risk of SDF staff being involved in combat. Manabu Terada of the DPJ argued that if Japan exercises the right of collective self-defense, it would be beyond Japan’s defense only policy. Hodaka Maruyama of the JIP asked Prime Minister Abe whether the SDF could be dispatched to the Straits of Malacca and Lombok. In response, the prime minister replied that he would not assume cases other than the Straits of Hormuz at that point.³³

On 4 June, the Japanese government invited three legal experts, Professor Yasuo Hasebe, Professor Setsu Kobayashi, and Professor Eiji Sasada, to the Examination Committee on the Constitution in order to ask their opinions regarding the Peace and Security Legislation. Ironically, all of them, including Professor Hasebe, recommended by the LDP, expressed their conviction that the Peace and Security Legislation would violate Article 9 and that it could be unconstitutional.³⁴ On 5 June, Kiyomi Tsujimoto and Hiroshi Ogushi of the DPJ contended that the legislation must be unconstitutional given the remarks by the three constitutional scholars. In response to Tsujimoto’s question, Defense Minister Nakatani explained that the legislation is constitutional because the government considered how to apply the Constitution to the legislation.³⁵

On 10 June, in response to Nakatani’s remark regarding the constitutionality of the legislation, Tsujimoto argued that Nakatani’s remark should be withdrawn. Tsujimoto continued that the legal validity of the legislation should be explained in terms of the 1972 government’s view on the unconstitutionality of exercising the right to collective self-defense. Meanwhile, Masahito Moriyama of the LDP asked CLB Chief Yusuke Yokobatake to explain the constitutionality of the legislation. In response, Yokobatake provided an explanation that the legislation maintains the basic logic of the Constitution, i.e. minimum necessary self-defense, which is consistent with the Sunagawa Judgment, and the 1972 government’s opinion. Meanwhile, Shinichi Isa of Kōmeitō asked CLB

33 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 1 June 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/syugiin/189/0298/18906010298006a.html>.

34 NDL, Proceedings of the Examination Committee on the Constitution in the 189th Diet Session, 4 June 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/syugiin/189/0250/18906040250003a.html>; see also, Mainichi Shinbun, All Experts Called To Diet Say Gov’t Security Bills Unconstitutional, 5 June 2015, available at <http://mainichi.jp/english/english/news/select/news/20150605p2g00m0dm020000c.html>.

35 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 5 June 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/syugiin/189/0298/18906050298007a.html>.

Chief Yokobatake to explain how the SDF would be able to avoid participation in the use of force by other countries during its support activities. Yokobatake replied that the SDF would not be connected with the use of force because the SDF should conduct its support activities in non-combat scenarios.³⁶

On 12 June, Yasushi Adachi of the JIP reported to Defense Minister Nakatani, Foreign Minister Kishida, and CLB Chief Yokobatake about the constitutionality of the legislation in relation to opposition by some 200 constitutional scholars. Importantly, Masami Kawano of the JIP asked Yokobatake how the government would respond if the Supreme Court judges the legislation as unconstitutional. In response, Yokobatake stated that it is unlikely that the Supreme Court would judge the legislation as unconstitutional.³⁷ On 15 June, Akihisa Nagashima and Manabu Terada of the DPJ questioned the constitutionality of the legislation in relation to the Sunagawa Judgment. In response to the questions, CLB Chief Yokobatake explained that the legislation is consistent with the basic logic of the Sunagawa Judgment, i.e. the constitutionality of “measures for self-defense” permitted under Article 9 of the Constitution.³⁸

On 19 June, Kiyomi Tsujimoto and Manabu Terada of the DPJ asked the government to clarify the constitutionality of the legislation, especially the partial exercise of the right to collective self-defense. In response to Tsujimoto, Chief Cabinet Secretary Yoshihide Suga explained that the legislation is within the basic logic of the 1972 government view. Interestingly, Terada likened the partial exercise of the right to collective self-defense to partially rotten miso soup, which is not edible. In response, CLB Chief Yokobatake compared the partial exercise of the right to collective self-defense to partial blowfish (*fugu*), which is edible except for the poisonous organs. Yokobatake implied that just as *fugu* is edible after cooking, the partial exercise of the right to collective self-defense could be constitutional after the enactment of the legislation.³⁹

On 22 June, legal experts and political scientists were invited to the Diet for hearing sessions. In the committee meeting, Setsu Kobayashi, Emeritus Professor of Keiō University, criticized the legislation as “war legislation” and “unconstitutional”. Reiichi Miyazaki, the former Chief of the CLB, also contended that even a limited exercise of the right to collective self-defense in the legislation would be unconstitutional, given the govern-

36 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 10 June 2015, available at <http://kokkai.ndl.go.jp/SENDAKU/syugiin/189/0298/18906100298008a.html>.

37 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 12 June 2015, available at <http://kokkai.ndl.go.jp/SENDAKU/syugiin/189/0298/18906120298009a.html>.

38 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 15 June 2015, available at <http://kokkai.ndl.go.jp/SENDAKU/syugiin/189/0298/18906150298010a.html>.

39 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 19 June 2015, available at <http://kokkai.ndl.go.jp/SENDAKU/syugiin/189/0298/18906190298012a.html>.

ment's official answer to the question by Satoshi Shima, former Diet member, in June 2004. On the other hand, Osamu Nishi, Professor of Komazawa University, and Satoshi Morimoto, the former Defense Minister during the DPJ government, supported the legislation from the legal and political perspectives. In addition, Masahiro Sakata, the former Chief of the CLB, expressed his opinion that the legislation is within the logic of the conventional government's view on self-defense. Yet, Sakata did not agree with the case of SDF dispatch to the Straits of Hormuz in the name of collective self-defense.⁴⁰

On 26 June, Hiroshi Imazu of the LDP asked Prime Minister Abe to confirm the constitutionality of the legislation. In response, the prime minister explained that the legislation is constitutional because it is within the basic logic of the Sunagawa Judgment of the Supreme Court as well as the 1972 government's official view. On the other hand, Hiroshi Ogushi of the DPJ argued that the legislation should be withdrawn given an opinion survey showing that 56% of the responders regarded the legislation as unconstitutional. Moreover, Kazumi Ōta of the JIP pointed out that in an opinion poll conducted by Kyodo News Site on 20 and 21 June, 57% of the responders considered the legislation to be unconstitutional. Ohta also pointed out that the definition of "defense only policy" (*senshu bōei*) in the Japanese version of the Defense Whitepaper is different from the English version.⁴¹

On 29 June 2015, Sakihito Ozawa of the JIP mentioned the opposition to the legislation by the three constitutional scholars invited to the Diet. Sekio Masuta of the JIP argued that about 70% of the responders in an opinion poll did not think that the explanation by the Japanese government was sufficient. In response to Masuta, Chief Cabinet Secretary Yoshihide Suga stated that the government would make further efforts to explain the legislation to the public. As for the opposition by constitutional scholars, Suga noted that about 80% of constitutional scholars were against the proposed legislation during the Diet deliberation of the PKO Bill in the early 1990s, whereas some 90% of Japanese citizens support Japan's contribution to UNPKO nowadays.⁴²

On 1 July, experts on military and security issues were invited to the Diet to express their opinions on the Peace and Security Legislation. Kenji Isezaki, Professor of Tōkyō University of Foreign Studies, pointed out that the nature of UNPKO has changed and it would be difficult for Japanese peacekeepers to withdraw, even after a ceasefire is violated. Isezaki also warned that Japanese peacekeepers might be responsible for murder

40 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 22 June 2015, available at <http://kokkai.ndl.go.jp/SENDAKU/syugiin/189/0298/18906220298013a.html>.

41 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 26 June 2015, available at <http://kokkai.ndl.go.jp/SENDAKU/syugiin/189/0298/18906260298014a.html>.

42 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 29 June 2015, available at <http://kokkai.ndl.go.jp/SENDAKU/syugiin/189/0298/18906290298015a.html>.

in other countries. Likewise, Kyōji Yanagisawa, the former senior official of the Ministry of Defense, warned that the risks in SDF activities based on the legislation will be increased and that SDF staff could be involved in criminal cases in the new activities. On the other hand, Kazuhisa Ogawa, a military analyst, ensured that Japan does not possess any offensive weapons to invade other countries.⁴³

On 3 July, Seiji Kihara of the LDP confirmed that traditional constitutional scholars in Japan have regarded the existence of the SDF as unconstitutional and that it was natural for constitutional scholars to interpret the legislation as unconstitutional. Likewise, Prime Minister Abe pointed out that the most popular civic textbook used in junior high schools in Japan notes that the SDF could be regarded as unconstitutional. Abe, however, argued that the Sunagawa Judgment and the 1972 government's official view generally recognizing Japan's right to self-defense could be legal bases for the Peace and Security Legislation.⁴⁴

On 6 July, a meeting for opinion hearing was held in Okinawa. In the meeting, Susumu Inamine, Mayor of Nago City, opposed the Peace and Security Legislation in terms of Article 9, constitutionalism and the risk it meant for Okinawa. On the other hand, Keishun Koja, the Mayor of Anjo City supported the legislation as long as it was within the current Constitution and as long as the government made efforts to reduce the burden of military bases in Okinawa. Similarly, Yoshitaka Nakayama, Mayor of Ishigaki City, expressed his support for the legislation given the missile threat posed by North Korea as well as the necessity to protect the Senkaku Islands from intrusion into territorial waters.⁴⁵ On the same day, another opinion hearing meeting was held in Saitama Prefecture. In the meeting, Yuichi Hosoya, Professor of Keio University, expressed his support for the legislation in the light of international politics, whereas Yōji Ochiai, Professor of Tokai University, opposed the legislation in relation to the current Constitution.⁴⁶

On 8 July, Kazuo Kitagawa of Kōmeitō confirmed the procedure for exercising the right of collective self-defense based on international law, especially in the light of the 1986 case between Nicaragua and the United States that was judged by the International Court of Justice (ICJ). In the meantime, on that day the JIP submitted its alternative legislation to the Lower House. Kazuhiko Shigetoku of the JIP stressed that the JIP alternative legislation does not allow the government to exercise the right of collective

43 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 1 July 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/syugiin/189/0298/18907010298016a.html>.

44 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 3 July 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/syugiin/189/0298/18907030298017a.html>.

45 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 8 July 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/syugiin/189/0298/18907080298018a.html>.

46 *Id.*

self-defense. Furthermore, Shigetoku contended that the JIP legislation could therefore be constitutional and be supported by constitutional scholars as well as the former Chief of the CLB.⁴⁷

On 10 July, Itsunori Onodera, the former Defense Minister, emphasized the point that not constitutional scholars but Diet members have the responsibility to make a final decision on security policy. Meanwhile, Mito Kakizawa of the JIP argued that the alternative legislation submitted by the JIP enables Japan to protect the United States by exercising the right to individual self-defense rather than collective self-defense on the basis of the 2003 statement by the former Chief of the CLB, Osamu Akiyama. Nonetheless, Takeo Akiba, Director-General of International Legal Affairs Bureau at the Foreign Ministry, contradicted the legitimacy of the JIP legislation in the light of international law. Onodera supported the statement by Director-General Akiba and continued that the JIP legislation could be regarded as a pre-emptive strike, i.e. a violation of international law.⁴⁸

On 13 July, primarily the alternative legislation submitted by the JIP was deliberated. Takeshi Iwaya of the LDP pointed out the fact that Kōmeitō originally supported an alternative similar to that of the JIP but eventually agreed with the Peace and Security Legislation because of its necessity and legitimacy.⁴⁹ On the same day, some legal experts and political scientists were invited to a hearing of the special committee. In the hearing, Kōji Murata, Professor of international politics at Dōshisha University, supported the legislation because of its necessity in the changing international security environment. On the other hand, Sōta Kimura, Associate Professor of constitutional studies at Tōkyō Metropolitan University, noted that the legislation could be unconstitutional because it is beyond the constitutional interpretation.⁵⁰ On 14 July, the DPJ and JCP were absent from the committee meeting in the Diet, and deliberation on the Peace and Security Legislation was thus not deepened. Yet, Yasushi Adachi of the JIP stated that most constitutional scholars and public opinion were unsupportive of the legislation.⁵¹

On 15 July, Kiyohiko Toyama of Kōmeitō argued that the Peace and Security Legislation is consistent with the defense-only policy and within the framework of the current Constitution. Notably, Toyama pointed out that a survival-threatening situation and a

47 *Id.*

48 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 10 July 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/syugiin/189/0298/18907100298019a.html>.

49 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 13 July 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/syugiin/189/0298/18907130298020a.html>.

50 NDL, Proceedings of the Hearing of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 13 July 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/syugiin/189/0303/18907130303001a.html>.

51 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 14 July 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/syugiin/189/0298/18907140298021a.html>.

military attack situation could overlap. On the other hand, the JIP contended that its legislation should be deliberated further and that the other opposition parties only disagreed with the idea of taking a vote on that day.⁵²

Based on the Peace and Security Legislation, Japan will be able to exercise the right to collective self-defense in survival-threatening situations and exercise the right to individual self-defense in military attack situations. However, on the basis of the JIP legislation, if Japan exercised the right to individual self-defense during a situation in which a military attack against Japan did not occur, the use of force would be illegal in terms of international law. Therefore, in terms of international law, the Peace and Security Legislation is legitimate, although it necessitated a change in the interpretation of the Japanese Constitution. Either way, in the plenary session of the Lower House on 16 July the legislation was passed by a majority vote of the LDP, Kōmeitō and the Party for Future Generations after the 116 hour-long deliberations.

2. Deliberations in the House of Councillors

On 27 July, deliberation on the Peace and Security Legislation was initiated in the House of Councillors. On the next day, the deliberation process began with the statement of Masahisa Sato of the LDP. Sato stressed that the Peace and Security Legislation is necessary given the reality of international politics, offering the example of the military takeover of the Crimean Peninsula by Russia. Jirō Aichi of the LDP also expressed his support for the legislation on the basis of his experience as a Parliamentary Vice-Defense Minister. According to Aichi, the number of scramble flights by the SDF occurred 36 times more than 10 years ago. By contrast, Tetsurō Fukuyama of the DPJ pointed out the fact that the notion of limited exercise of the right to collective self-defense had been already discussed and rejected during past Diet deliberations. Nonetheless, CLB Chief Yusuke Yokobatake explained that the Abe Cabinet officially formulated the limited exercise of the right to collective self-defense as well as the “Three New Conditions for Self Defense”.⁵³

On 29 July, Makoto Nishida of Kōmeitō confirmed the threefold constraint regarding the Peace and Security Legislation: (a) constitutional constraint, (b) legislative constraint, and (c) policy constraint. Toranosuke Katayama of the JIP pointed out that the so-called “crossover” between the right of individual self-defense and the right of collective self-defense could be recognized. Katayama furthermore explained that the JIP legislation is constitutional because the legislation only deals with the crossover.⁵⁴

52 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 15 July 2015, available at <http://kokkai.ndl.go.jp/SENTRAKU/syugin/189/0298/18907150298022a.html>.

53 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 28 July 2015, available at <http://kokkai.ndl.go.jp/SENTRAKU/sangiin/189/0192/18907280192003a.html>.

On 30 July, Masako Mori of the LDP asked Prime Minister Abe to confirm that the Peace and Security Legislation does not include a conscription system. In response, the prime minister assured Mori that the legislation has nothing to do with a conscription system, especially given Article 18 of the Japanese Constitution that stipulates: “No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited”. Hajime Hirota of the DPJ insisted that the definition of defense only policy (*senshu bōei*) could be changed by the enactment of the Peace and Security Legislation. Hirota argued that the existing definition of defense only policy is related to the right to individual self-defense but not collective self-defense. In response, Prime Minister Abe, Defense Minister Nakatani, and Foreign Minister Kishida explained that the defensive defense policy of Japan is consistent with the limited exercise of the right to collective self-defense. Kiyonari Maekawa of the DPJ pointed out the fact that 97.6% of constitutional scholars were against the legislation, whereas only 1.6% supported it in an academic journal, *Kenpō Hanrei Hyakusen*.⁵⁵

On 3 August, Yosuke Isozaki, Special Adviser to the Prime Minister (who had mentioned that legal stability was irrelevant to the legislation), was summoned as an unsworn witness before the Diet. Isozaki officially admitted that his remark on legal stability was inappropriate.⁵⁶ On 4 August, Masahisa Satō of the LDP stated that not only opinions of constitutional scholars but also those of political scientists and international law scholars needed to be considered with regard to the legislation. Meanwhile, Katsuo Yakura of Kōmeitō pointed out the possible miniaturization of nuclear warheads by North Korea as a threat to the security of Japan. With reference to that specific threat, Yakura pointed to the significance of a missile defense system as well as the Peace and Security Legislation. By contrast, Mizuho Fukushima of the SDP offered as example 14 cases in which the right to collective self-defense was exercised and argued that those cases, such as the Vietnam War, were illegitimate in terms of international law. In response, Prime Minister Abe explained that Japan would not be able to exercise the right to “full-size” collective self-defense unlike other countries.⁵⁷

On 5 August, in response to a question by Tsuneo Kitamura of the LDP, Foreign Minister Fumio Kishida stated that the United States and Australia as well as countries in

54 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 29 July 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18907290192004a.html>.

55 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 30 July 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18907300192005a.html>.

56 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 3 August 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18908030192006a.html>.

57 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 4 August 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18908040192007a.html>.

Europe, ASEAN, Africa, the Middle East and Latin America had expressed their support for the legislation. According to Foreign Minister Kishida, the prime ministers of Australia and Sri Lanka were explicitly supportive of the legislation. Kenzō Fujisue of the DPJ asked Defense Minister Gen Nakatani whether Japan would be able to transport nuclear weapons as logistical support for the United States. In response, Defense Minister Nakatani explained that it should be impossible for Japan to transport weapons of mass destruction, especially nuclear weapons.⁵⁸

On 11 August, opposition parties criticized that Prime Minister Abe did not refer to the “Three Non-Nuclear Principles” (non-possession, non-production, non-introduction of nuclear weapons) in his speech in Hiroshima. Kōhei Ōtsuka of the DPJ asked Foreign Minister Fumio Kishida and Defense Minister Gen Nakatani if Japan would be able to deliver nuclear weapons based on the Peace and Security Legislation. In response, both Kishida and Nakatani denied the possibility and confirmed that Japan would adhere to the Three Non-Nuclear Principles. Ōtsuka also pointed out differences between the Japanese version of the 2015 Defense Whitepaper and the English version in the definition of the defense only policy (*senshu bōei*). In response, Nakatani explained that although the new Defense Whitepaper approves of the partial exercise of the right to collective self-defense, the nature of “defensive-defense” (*senshu bōei*) would not be altered.⁵⁹

On 19 August, Tarō Yamamoto stated that the Peace and Security Legislation could stem from the third report by Joseph Nye Jr., Harvard Professor, and Richard Armitage, the former Deputy State Secretary, who have a strong political influence on Japan’s security policy. Indeed, the so-called “Third Armitage-Nye Report” implied that Japan should be able to exercise the right to collective self-defense for the sake of the Japan-US alliance, and it proposed that Japan should be able to dispatch the SDF to the Hormuz Straights for minesweeping and to the South China Sea for monitoring activities. In response, Foreign Minister Kishida explained that the Japanese government did not draft the legislation in reference to the Armitage-Nye report. Simultaneously, Defense Minister Nakatani commented that it is true that some parts of the report overlap with the legislation, but the government did not adopt the proposals in the report. Furthermore, Tarō Yamamoto stressed that the Sunagawa Judgment was reached under pressure exerted by the United States. In this way, Yamamoto attempted to refute the authenticity of the Sunagawa Judgment as one of the legal bases for the constitutionality of the Peace and Security Legislation. Foreign Minister Kishida stated that the Japanese government would refrain from making any comments on this matter.⁶⁰

58 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 5 August 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18908050192008a.html>.

59 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 11 August 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18908110192009a.html>.

On 21 August, some female Diet members discussed the Peace and Security Legislation. Kuniko Inoguchi of the LDP, a former Professor in international politics at Sophia University, pointed out that the international tone, especially in the *Wall Street Journal* and the *Financial Times*, was relatively favorable to the legislation. Inoguchi argued that the Japanese government should simultaneously strengthen its peace diplomacy in the field of development assistance, disarmament, disaster relief, and human security. On the other hand, Renhō (Lian Fang) of the DPJ disagreed with the legislation as it would be regarded as unconstitutional. Sayaka Sasaki of Kōmeitō pointed to the change in opinion polls conducted by Fuji News Network (FNN), according to which the number of female supporters of the legislation in August became larger than in the previous month.⁶¹ Likewise, Mizuho Ōnuma of the LDP asked Foreign Minister Kishida how many countries supported the legislation. In response, Kishida replied that the United States, ASEAN member states, and European countries welcomed the legislation, and also that China and Korea did not express any official disagreement. Ōnuma continued that if the legislation is literally war legislation as argued by opposition parties, both China and Korea should have expressed official opposition.⁶²

On 26 August, Katsunori Takahashi of the LDP argued that the Peace and Security Legislation is necessary for the defense of Japan, just as the revision of the Japan-US Security Treaty in 1960 – which split Japan’s public opinion in two and caused a protest demonstration by some 100,000 at the National Diet – was necessary. Kōhei Ōtsuka of the DPJ asked Foreign Minister Kishida whether there is any definition of a limited exercise of the right to collective self-defense in international law. In response, Kishida replied that there is no such definition, but it is a partial exercise of the full-set right to collective self-defense which is defined in international law.⁶³

On 28 August, the legislation submitted by the JIP on 20 August was formally announced in the Upper House.⁶⁴ On 2 September, the commission members deliberated on the JIP legislation. Jirō Ono of the JIP argued that Japan should report the exercise of

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- 60 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 19 August 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18908190192010a.html>.
 - 61 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 21 August 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18908210192011a.html>.
 - 62 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 25 August 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18908250192012a.html>.
 - 63 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 26 August 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18908260192013a.html>.
 - 64 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 28 August 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18908280192014a.html>.

the right to self-defense rather than individual or collective self-defense to the United Nations. Indeed, according to Ono, most UN member states reported exercise of the right to self-defense regardless of whether individual or collective self-defense. However, Kiyohiro Araki of Kōmeitō insisted that exercise of the right to self-defense should be distinguished as between individual self-defense and collective self-defense in terms of international law.⁶⁵ On 4 September, Ryūhei Kawada of the JIP asked if the Japanese government was employing the term “proactive contribution to peace” (*sekkyokuteki heiwa shugi*) so that Japan could use force proactively rather than reactively. In response, Defense Minister Gen Nakatani denied that interpretation. Kawada continued that Johan Galtung, a Norwegian peace scholar, accused the Abe administration of plagiarizing Galtung’s definition of “positive peace” (*sekkyokuteki heiwa*). In response, Foreign Minister Fumio Kishida explained that the Japanese government has made a diplomatic contribution to positive peace especially in terms of “human security”.⁶⁶

On 8 September, Masasuke Ōmori, the former Chief of the CLB, and Makoto Ito, a well-known lawyer, were summoned and provided their opinions regarding the legislation. Both Ōmori and Ito expressed their views that the Peace and Security Legislation could be regarded as unconstitutional and that the Sunagawa Judgment should not be used as a legal basis for the legislation. On the other hand, Katsuo Yakura of Kōmeitō referred to the comment by Setsu Kobayashi, summoned in the Lower House, and commented that the Diet, the Cabinet, and the Supreme Court have the authority to interpret the Constitution. In the law-making process in Japan, the Cabinet makes a final decision in interpreting the constitutionality by referring to the Cabinet Legislation Bureau. Afterwards, the legislation is deliberated on for enactment in the Diet. If legal troubles arise regarding constitutionality, the Supreme Court is supposed to make a final judgment on constitutionality.⁶⁷ Needless to say, the same is true of the legislative process and legal operation in respect of the Peace and Security Legislation.

On 9 September, mainly the revised PKO Bill submitted by the JIP on 8 September was deliberated. In the deliberation process, Kenzō Fujisue pointed out that it would be difficult to dispatch the SDF for post-war humanitarian assistance based on the Peace and Security Legislation even if a situation similar to the 2003 Iraq War happened. In such a case, the Japanese government would need to create special measures legislation, but Defense Minister Nakatani rejected this as a possibility because there was no official

65 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 2 September 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18909020192015a.html>.

66 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 4 September 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18909040192016a.html>.

67 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 8 September 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18909080192017a.html>.

ceasefire in Iraq.⁶⁸ In other words, the Japanese government would strictly adhere to the so-called “Five Principle” on PKO participation, especially the existence of a ceasefire.

On 11 September, Ichita Yamamoto of the LDP referred to research by the National Defense Academy of Japan and emphasized the necessity of the Japan-US alliance. According to the research, the cost of host nation support to maintain the US military forces in Japan is approximately 1.8 trillion yen per year, whereas it would cost about 22 or 23 trillion yen if Japan defended itself without the US military presence. Thus, Yamamoto argued that the partial exercise of the right to collective self-defense is indispensable for the defense of Japan.⁶⁹ On 14 September, Masahisa Satō of the LDP stated that the former representatives of the DPJ, such as Katsuya Okada and Yoshihiko Noda, had previously insisted that a limited exercise of the right to collective self-defense should be justified. Likewise, Foreign Minister Fumio Kishida confirmed that the limited exercise of the right to collective self-defense is still part of the full-set exercise of the right to collective self-defense authorized by the UN Charter.⁷⁰

Significantly, Natsuo Yamaguchi, Chief Representative of Kōmeitō, asked CLB Chief Yusuke Yokobatake whether military attack situations and survival threatening situations could overlap in some cases. In response, Yokobatake replied that they could overlap on the basis of Article 13 of the Japanese Constitution, i.e. the right to life, liberty, and the pursuit of happiness. Yamaguchi also questioned Foreign Minister Fumio Kishida and Prime Minister Shinzō Abe as to whether there is presently a need to dispatch the SDF to the Straits of Hormuz for minesweeping. The foreign minister explained that Japan has never assumed that Iran would spread mines in the Hormuz Straits. The prime minister continued that it would be unrealistic to dispatch the SDF to the Hormuz Straits under the current situation. Meanwhile, Torajirō Katayama of the JIP contended that there would be some cases that individual self-defense and collective self-defense could overlap, and the JIP believed that Japan should deal with the situation by exercising the right to individual self-defense. Still, Prime Minister Abe explained that Japan should exercise the right to collective self-defense in order to abide by international law.⁷¹

On 15 September, Aki Okuda, a graduate student of Meiji Gakuin University and a representative of SEALDs (Students Emergency Action for Liberal Democracy), stated that a large number of university students in Japan are against the Peace and Security

68 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 9 September 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18909090192018a.html>.

69 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 11 September 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18909110192019a.html>.

70 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 14 September 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18909140192020a.html>.

71 *Id.*

Legislation.⁷² It is unusual for a student to be invited to a hearing session of Diet deliberations, but the DPJ invited Okuda because SEALDs had become a politically influential student organization.

On 16 September, a meeting for opinion hearing was held in Yokohama. In the meeting, Seigo Hirowatari, Professor of Senshū University and the former President of the Science Council of Japan, expressed his opposition to the legislation as a representative of academic groups opposed to the legislation at 137 Japanese universities. Professor Hirowatari explicitly criticized the legislation as unconstitutional. Takahisa Mizukami, Assistant Professor of Aoyama Gakuin University, showed his opposition to the legislation and the Abe administration by stating that the legislation is based on majoritarianism but not necessarily on democracy. Meanwhile, Daisaku Hiraki of Kōmeitō stressed that the legislation would not lead to the so-called “security dilemma” between Japan and its neighbor states. Regarding this issue, Tsuneo Watanabe, policy research senior fellow of the Tōkyō Foundation, stated that it is important to conduct proper communication with neighboring countries, especially China and Korea.⁷³

On 17 September, Yoshitada Kōnoike, Chairman of the Commission in the Upper House, changed the room for taking a vote on the legislation without any notification being provided to Diet members from opposition parties so that the opposition parties would not physically block the door to the deliberation room. The opposition parties held a no-confidence vote against Chairman Kōnoike. Although the no-confidence motion was rejected in the Upper House, the opposition parties never relented in their objections to the legislation. For instance, Mizuho Fukushima of the SDP made reference to the House of Peers during the Empire of Japan, which could not prevent the military elites from plunging into the Second World War. Fukushima also referred to the “Enabling Act” under the Weimar Constitution during Nazi Germany, condemning the Peace and Security Legislation as war legislation and implicitly comparing Prime Minister Abe to Adolf Hitler.⁷⁴

In the afternoon of that day, the Peace and Security Legislation supported by the LDP, Kōmeitō, and three opposition parties (the Assembly to Energize Japan, the Party for Future Generations, and New Renaissance Party) passed the Upper House. In the plenary session of the Upper House, members of the opposition parties attempted to block the enactment of the legislation in a physical manner. For example, Tarō Yamamoto conducted “ox-walk tactics” and held a filibuster speech in order to delay the voting. In a

72 NDL, Proceedings of the Hearing of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 15 September 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangin/189/0193/18909150193001a.html>.

73 NDL, Proceedings of the Special Committee on the Peace and Security Legislation in the 189th Diet Session, 17 September 2015, available at <http://kokkai.ndl.go.jp/SENTAKU/sangin/189/0192/18909170192021a.html>.

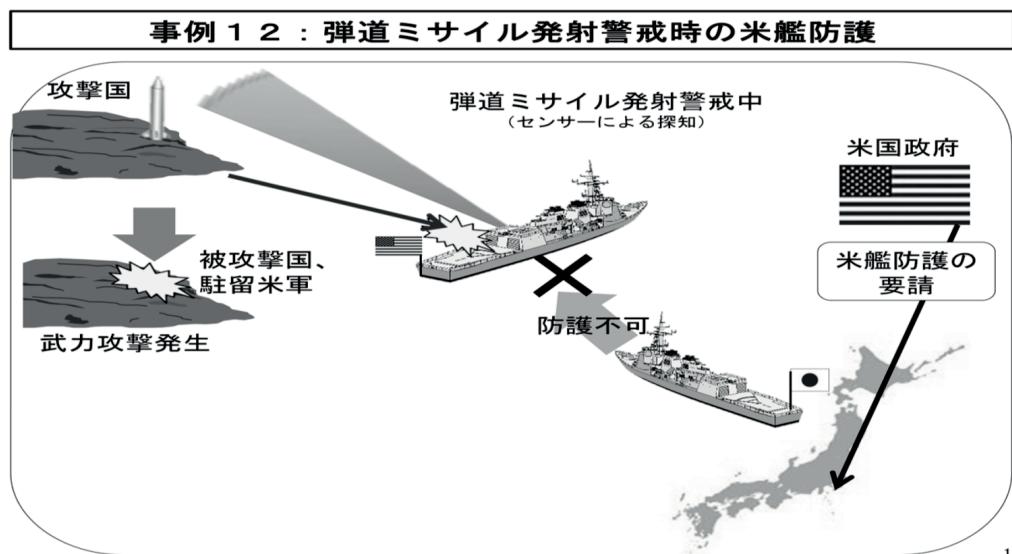
74 *Id.*

storm of shouting and physical contact among the committee members, the Peace and Security Legislation was eventually enacted in the early hours of 19 September 2015.

V. AN ASSESSMENT OF THE CONSTITUTIONALITY OF THE PEACE AND SECURITY LEGISLATION

As reviewed in the previous sections, most constitutional scholars, legal experts, and opposition party Diet members criticized the legislation as unconstitutional. Similar debates, however, have already been conducted in the Diet. Indeed, some politicians pointed out that there could be some cases in which the right to individual self-defense and the right to collective self-defense overlap.⁷⁵ Both are two different legal concepts in terms of international law, and hence it is fair to argue that there could be some cases in which the defense of Japan and the defense of other countries overlap. As shown in the following photo, the Japanese government provided a typical example in which Japan needs to partially exercise the right of collective self-defense.

Photo: Protection of US Aegis Destroyer Operating a Missile Defense System⁷⁶



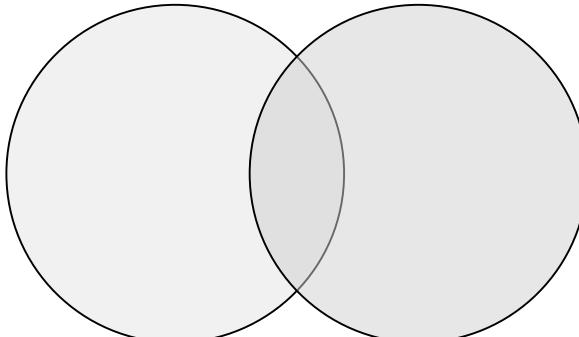
75 See, e.g., House of Representatives, *Naikaku hōsei-kyoku no kengen to jiei-ken ni tsuite no kaishaku ni kansuru shitsumon shūisho* [A Questionnaire regarding the Authority of the Cabinet Legislation Bureau and the Right of Self-Defense], 8 July 2013, available at http://www.shugin.go.jp/internet/itdb_shitsumon.nsf/html/shitsumon/a156119.htm.

76 This case was raised as one of 15 cases related to the Peace and Security Legislation. House of Representatives (Research Bureau), *Heiwa anzen hōsei kanren hōritsu-an ni kansuru shiryō* [Source on the Peace and Security Legislation], May 2015, 204.

In this case, a US Aegis destroyer, operating in accord with the Japan-US Security Treaty, prepares to intercept missiles by an aggressor attempting to attack both the United States and Japan. In this case, the aggressor has already attacked a neighboring state in which US military forces are stationed. It is considered that it would become relatively difficult for an Aegis destroyer to deal with attacks by fighter aircrafts, especially when the destroyer is in preparation of a missile defense operation.⁷⁷

In this situation, if Japan protects the US Aegis destroyer, the action would be regarded as an exercise of the right to collective self-defense, but the purpose itself is the defense of Japan. If Japan does not take any appropriate measures in the situation, it is highly likely that the aggressor would launch another missile against Japan. In this sense, the protection of the US Aegis destroyer can serve the defense of Japan. This is the overlapping part manifesting a survival threatening situation as constitutionalized in the Peace and Security Legislation. In order to comprehend the debate, an image of the constitutionality of the Peace and Security Legislation can be visualized as follows.

Table: An Image of the Constitutionality of Japan's Legislation for Peace and Security⁷⁸

○ Constitutional	× Unconstitutional
a) Purpose: Defense of Japan (Means: Individual Self-defense)	b) Purpose: Defense of Other Countries (Means: Collective Self-defense)
 <ul style="list-style-type: none"> – Generally, exercise of the right to individual self-defense is constitutional, but exercise of the full-set right to collective self-defense is unconstitutional. – Overlapping part = collective self-defense for defense of Japan is constitutional. – Legal bases = Article 13 of the Japanese Constitution + 1959 Sunagawa Judgment – Legal constraints = Article 9 + “Three New Conditions for Self Defense” 	

77 *Id.*

78 The explanation is related to the use of force, excluding peacetime laws such as the revised PKO Law, which are naturally regarded as constitutional. D. AKIMOTO, *Kokumin no seimei, jiyū, kōfuku o mamoru “heiwa anzen hōsei”* [“The Peace and Security Legislation” to Guarantee the Right to Life, Liberty, and the Pursuit of Happiness], in: Kōmei (November 2015), 44.

<p>c) Support Activities for International Peace and Security / Important Influence Situations (in non-combat scenarios)</p> <ul style="list-style-type: none"> - Legal constraint = <i>Three Conditions for SDF Dispatch</i> <ol style="list-style-type: none"> 1) Authorization by international law 2) Civilian control by Diet approval 3) Safety of SDF personnel 	<p>d) Use of Force for International Peace and Security / Participation in the Integral Part of the Use of Force (in combat scenarios)</p> <ul style="list-style-type: none"> - Constitutionally, the SDF is not allowed to use force in military operations even if it is authorized by the United Nations. - Legal constraint = Article 9 of the Japanese Constitution
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First, exercise of the right to individual self-defense has been regarded as constitutional, whereas exercise of the right to collective self-defense was unconstitutional. The Japanese government explained that the defense of Japan (left circle in table) is constitutional, whereas the defense of other countries (right circle in table) is unconstitutional in the light of the 1959 Sunagawa Judgment that ruled on the constitutionality of the existence of the US military forces in Japan as well as measures for self-defense. The Sunagawa Judgment upheld the constitutionality of measures for self-defense based on Article 13 of the Japanese Constitution, which guarantees the Japanese people's right to "life, liberty, and the pursuit of happiness" regardless of whether individual self-defense or collective self-defense was at issue. Still, the successive government's official views, especially the 1972 official view, have stipulated that exercise of the right to so-called collective self-defense is unconstitutional.

Second, the Abe government adopted a new interpretation whereby there exist two types of collective self-defense: 1) collective self-defense purely for the defense of other countries (right part of the right circle in table), and 2) collective self-defense for the defense of Japan (overlapping part of both circles in table). There is no such classification or definition in Article 51 of the United Nations Charter or international law, but the Abe government explained that both are the same right to collective self-defense recognized in the UN Charter. In the Peace and Security Legislation, the former (collective self-defense for other countries) could be regarded as unconstitutional, whereas the latter (collective self-defense for defense of Japan) shall be considered to be constitutional. Thus, exercise of the partial right to collective self-defense for the defense of Japan was "constitutionalized" with the enactment process of the Peace and Security Legislation.

Third, support activities such as logistics or rear support for multinational forces authorized by the United Nations Security Council and other relevant international organizations, such as the General Assembly of the United Nations, are legalized under the new law, "International Peace Support Law". Likewise, support activities for military forces which are in operation for the defense of Japan are legalized under the "Law Concerning Measures to Ensure Peace and Security of Japan in Situations that Will Have an Important Influence on Japan's Peace and Security". Nevertheless, the Japanese governments should adhere to the new conditions for an overseas dispatch of the SDF. Significantly, prior diet approval for dispatch of the SDF on the basis of the "Interna-

tional Peace Support Law” became a must due to the strong request by Kōmeitō as a pacifist political party.

Fourth, Japan cannot, however, use force in military operations even when authorized by the United Nations Security Council. In addition, Japan cannot provide any logistic support for UN-authorized multinational forces in combat scenarios. In other words, if the Japanese government wishes to exercise the right to collective self-defense purely for the defense of other countries and wishes to use force in UN authorized military operations, the government needs to revise the current Constitution, concededly a politically difficult hurdle.

VI. CONCLUSION

This paper has examined the Peace and Security Legislation enacted on 19 September 2015. It has been clarified that although successive Japanese governments did not recognize the constitutionality of exercising the right to collective self-defense under Article 9 of the Constitution, the third Abe Cabinet constitutionalized the exercise of the partial right to collective self-defense with the “Three New Conditions” for self-defense.

The analysis has shown that the Peace and Security Legislation is comprehensive and constitutes the revision of 10 laws as well as one new law. Among the 11 laws in the legislation, the constitutionality of the exercise of the right to collective self-defense became a center of the Diet debates in the Special Committee on the Peace and Security Legislation during the 189th Diet session. It has been clarified that the government employed a new concept (survival threatening situation) in the “Three New Conditions for Self Defense” in order to constitutionalize the limited exercise of the right to collective self-defense. In order to comprehend the constitutionality of the legislation explained by the government, this research has anatomized the proceedings of the Diet debates in the House of Representatives as well as in the House of Councillors.

As a result of the thorough investigation of the proceedings of the committee, it has been revealed that the Abe government classified the right to collective self-defense into two types: 1) collective self-defense for the defense of Japan and 2) collective self-defense purely for the defense of other countries. The Abe government has explained that the former should be regarded as constitutional in the light of the 1959 Sunagawa Judgment by the Supreme Court officially recognizing the constitutionality of measures for self-defense and the existence of the US military bases in Japan. Also, it was explained that the measures for self-defense identified in the Sunagawa Judgment are constitutionally legitimate in terms of Article 13 of the Constitution, which guarantees the right to “life, liberty, and the pursuit of happiness”.

In conclusion, Japan cannot exercise the normal and full-size right to collective self-defense in typical cases, such as the Vietnam War or the 2001 Afghanistan War, even if the United States officially request the dispatch of the SDF. In order to exercise the full-

size right to collective self-defense solely for the defense of other countries, the future Japanese government will need to revise Article 9 of the current Constitution.

SUMMARY

Successive Japanese governments have consistently interpreted that Japan has the right of collective self-defense but that it cannot be exercised because of the so-called “peace clause” contained in Article 9 of the Japanese Constitution. Despite this official interpretation, the Second Abe Cabinet made a decision to partially exercise the right of collective self-defense on 1 July 2014. Based on that cabinet decision, the Third Abe Cabinet reached another decision on legislation for peace and security on 14 May 2015, which was eventually enacted on 19 September 2015. This paper examines the legislative process in connection with the Peace and Security Legislation as deliberated in the Special Committee on the Peace and Security Legislation during the 189th ordinary session in the Japanese National Diet. In order to comprehend the constitutionality of the legislation, this paper thoroughly anatomizes the proceedings of the Committee on the Peace and Security Legislation.

The outcome of the research indicates that although the legislation allows Japan to exercise the right to collective self-defense for the defense of Japan, it does not allow Japan to exercise the full-size right to collective self-defense purely for the defense of other countries. Hence, it should be noted that it is impossible for Japan to exercise the normal right to collective self-defense in a typical case, such as the Vietnam War or the Afghanistan War. This paper clarifies that if the Japanese government wishes to exercise the normal and full-set right to collective self-defense, a revision of Article 9 of the Japanese Constitution becomes necessary.

ZUSAMMENFASSUNG

Verschiedene japanische Regierungen haben die Auffassung vertreten, dass Japan zwar das Recht zur Selbstverteidigung habe, dieses aber wegen der sogenannten „Friedensklause“ des Art. 9 der japanischen Verfassung nicht ausüben könne. Ungeachtet dieser offiziellen Interpretation hat die zweite Regierung unter Ministerpräsident Abe am 1. Juli 2014 die Entscheidung getroffen, das Recht auf Selbstverteidigung künftig auszuüben. Auf Grundlage dieser Entscheidung hat die dritte Regierung Abe am 14. Mai 2015 ein gesetzliches Regime zur Sicherung von Frieden und Sicherheit verabschiedet, dass am 19. September 2015 in Kraft trat. Der Beitrag untersucht das einschlägige Gesetzgebungsverfahren im Sonderausschuss für die Regelung von Frieden und Sicherheit während der 189. Legislaturperiode des japanischen Parlaments. Um die Verfassungsmäßigkeit dieser Gesetzgebung herauszuarbeiten, untersucht der Beitrag den Ablauf der Sitzungen des Sonderausschusses im Detail.

Das Ergebnis dieser Untersuchung zeigt, dass die neue Gesetzgebung Japan erlaubt, Maßnahmen zur Selbstverteidigung des Landes zu ergreifen. Allerdings geht dieses Recht

nicht soweit, dass Japan sein Recht auf Selbstverteidigung zur Verteidigung anderer Staaten ausüben darf. Dies bedeutet, dass es für Japan nicht möglich ist, dieses Recht in Fällen wie den Kriegen in Vietnam oder Afghanistan auszuüben. Der Beitrag stellt klar, dass Japan, um wie andere Staaten seine Interessen in vollem Umfange verteidigen zu können, den Artikel 9 seiner Verfassung ändern muss.

(Die Redaktion)