

Revision of Article 9 and its implications by Kazuhiko Togo

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International attention continues to focus on the Abe administration's efforts to change Japan's security policy, in particular the announcement of the revision of the interpretation of the exercise of the right of collective self-defense that took place July 1. It is essential to understand the following four points.

First, we must grasp what Abe and those who support him on this issue want to achieve. Fundamentally, all responsible policy-makers support the cornerstone of Japan's post-war pacifism: a determination that Japan would not become an aggressive military power. But the "excessive pacifism" that Article 9 commanded has long become pain in the minds and hearts of some politicians and government officials, including myself. The idealism of Article 9 could not change the reality of international politics: power-balancing is the key to sustainable peace. Japan's failure to help ensure a balance of power made Japan an ego-centric country that cared only for its own peace. The toll of this "one-country irresponsible pacifism" was sharply felt in the first Persian Gulf War in 1990-91, but the explosion of the Senkaku issue in 2012 and increasingly erratic North Korean behavior under Kim Jong Un made such irresponsible pacifism an unsustainable policy.

In particular, in relations with the US, this selfish ego-centrism was typified by the asymmetry created by Article 5. Under this Article and Article 9 of the Constitution as it has been interpreted, "when Japan is attacked by a third power, the US is obligated to defend Japan, but if the US is attacked, Japan is constitutionally prohibited from defending the US." Article 5 was one of the key articles when the Security Treaty was revised in 1960 and was different from the Security Treaty signed in 1951 together with the San Francisco Peace Treaty, in that it added a US obligation to defend Japan when territories under its administration were attacked. One can applaud the far-sightedness of those who negotiated this provision because the Obama-Abe Communiqué issued April 25, 2014 regarding the Senkakus was precisely based on the concept and the language of Article 5.

The asymmetry caused by this revision created an impossible situation that no US president could defend to the American people. During the Cold War and even two decades after its end, this asymmetry was mostly theoretical, but since 2012 this asymmetry could cause a real problem for Japan and the United States. It is time to address this issue in straightforward manner and redress the asymmetry either by government decision, by law, or by Constitutional amendment, and let Japan become a responsible actor that can

exercise the right of collective self-defense as is usually understood by international law.

Second, what actually took place on July 1? In fact, the power of "one country pacifism" was stronger than anticipated. At the public opinion level, the *Asahi*, *Mainichi*, and *Tokyo Shimbun* all openly attacked the revision of Article 9, at least without full-scale revision of the Constitution. Even *NHK* sometimes gave that impression. At the political level, the Komei Party carried the banner of defending the Constitution. In the bureaucracy, the Cabinet Legislation Office which maintained the rigid interpretation of Article 9 did not want to change that interpretation.

Ultimately, there was a compromise between the old and new interpretations. A new concept of international law combined with an interpretation of the Constitution emerged. It argued, in essence, that for Japan to exert the right of collective self-defense, the threat to an allied power must also create the same degree of threat to Japan itself. A slightly refined legal explanation is: (1) In collective self-defense, there is a "defense of other-country" theory and a "defense of own country" theory; (2) Japan changed its interpretation from the "defense of other country" theory to the "defense of own country" theory; (3) Japan would therefore exert the right of collective self-defense only when the threat caused by an attack to an allied country "threatens Japan's survival and poses a clear danger to fundamentally overthrow people's right to life, liberty and pursuit of happiness"; and so, (4) an "enigmatic" new formula set in that "collective right of self-defense would be exercised within the spectrum of the individual right of self-defense". This notion was formulated as a compromise between the Foreign Ministry's International Law Bureau (the former Treaties Bureau) and the Cabinet Legislation Office, and neither side lost face.

Third, what will happen domestically? Abe made it clear that the Cabinet decision has to be enacted in the form of a series of laws. There seems to be an effort to diffuse the political tension that may increase through parliamentary debate of that legislation. Efforts to enact new laws to "strengthen Japan's regions" at the next parliamentary debate may well be related to these diffusion efforts. But nevertheless, a tough debate on collective right of self-defense seems inevitable. The opposition will try to pin down and legally define all eventualities where this new definition would be applied. If their efforts are successful, the benefits of strategic ambiguity that would result from this new formulation would be stifled and put into a formal framework. It is my hope and expectation that those who will defend the new laws are aware of this danger.

Fourth, most importantly, what is going to happen internationally, in particular in alliance management? In the near future, this decision will help strengthen ties between the

two countries. However restricted within the “individual right of self-defense” the newly acquired “collective right of self-defense” would put Japan closer to US security and defense policy.

It is expected that the planned revision of US-Japan defense guidelines, which will reportedly be finished by the end of the year, will incorporate a greater role for the SDF in defense and logistical cooperation in accordance with the new interpretation. But a critical question arises: will the new interpretation result in a more autonomous Japan or a Japan more closely tied to the strategy of the United States? Kenneth Pyle flagged this concern in June 2014: “What is less clear is the aspect of Abe’s agenda that seeks greater autonomy in its foreign policymaking....Today, that [previous Japanese policy] structure is changing with the rise of an assertive China, the travails of the US-led world order, and the increasing likelihood of a multipolar order in its place. In this context, the long-term goals of Abe remain unclear as he has yet to articulate a vision of what a more independent Japan would seek.”

The very motive for the revision of the interpretation – correcting the current asymmetry – cannot but be understood as an aspiration to put Japan on genuine equal footing with the US. On one hand, this signifies the creation of a stronger, mutually re-enforcing alliance. On the other hand, however, that equality naturally gives Japan a more independent and autonomous position vis-a-vis the United States. Simply put, if Japan believes that a situation affecting US security does not constitute the same danger to its own security, Japan morally and politically, has a much stronger stand to articulate its views under the new interpretation. Or to put this another way, if Japan is in a subordinate position because it is protected by the US, how can it forcefully express dissenting views to the US?

It is not clear what kind of Japan Abe is trying to create in this “autonomous direction.” Pyle is right that Abe is in a position to answer this question. But it is not only Abe and his entourage who need to answer this question. It is the task of all Japanese who think about their future, myself included, to create that vision and to make it a universally acceptable one.

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