

# Fundamental Concepts of National Defense

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## THE CONSTITUTION OF JAPAN

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### (THE PREAMBLE)

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances and rescripts in conflict herewith.

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security, and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations.

We, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources.

## CHAPTER II. RENUNCIATION OF WAR

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### **Article 9.**

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.

## 1 Constitution and the Right of Self-Defense

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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

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### 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 (which will be described in the next section) made on July 1st 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, the Government has reached a conclusion 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. 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.

■ Newly determined three conditions for the "use of force" as measures for self-defense permitted under Article 9 of the Constitution

○ When an armed attack against Japan has occurred, or 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.

○ When there is no appropriate means available to repel the attack and ensure Japan's survival and protect its people.

○ Use of force to the minimum extent necessary.

### 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 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.