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Japan's Cabinet Seeks Changes to Its Peace Constitution — Issues New “Interpretation” of Article Nine

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Andrew L. Oros, Adjunct Fellow at the East-West Center in Washington, explains that “Nothing has yet been changed in Japanese law, and even if new laws are passed in the fall based on this cabinet statement, the agreement within the ruling coalition places substantial barriers on Japan exercising this right in the years to come.”

Japan's Prime Minister Shinzo Abe addressed his nation at a 6pm press conference on July 1 to announce a much-anticipated Cabinet decision to reinterpret a constitutional prohibition related to Japan's military forces working together with other states, setting the stage for a series of changes to Japanese law when its parliament reconvenes in the fall. Protestors opposing this effective change to Japan's constitution—which has never been formally revised since its implementation in 1947—have gathered in front of the Prime Minister's official residence all week. An estimated 5,000 protestors gathered outside the prime-time press conference where the prime minister argued that the reinterpretation did not represent a fundamental departure in nearly 70 years of Japanese security policy, but rather was a modest update to current policy in response to a changing international security environment.

He repeatedly touted Japan's postwar identity as a “peace state” (*heiwakoku*), arguing that now is the time for Japan to make a greater international contribution to international peace—in line with the national security strategy released by his government in December 2013 that called for Japan to make “proactive contributions to peace” internationally.

The issue of “collective self-defense”—engaging in military action with allied states even if your state itself is not directly threatened—has been a topic of debate in Japan all year. Japanese government policy for over half a century has been that although all states have an inherent right to engage in collective self-defense, as rooted in long-standing practice of international law, Japan would refrain from exercising that right in deference to Article Nine of its postwar constitution, which forbids the use of force to settle international disputes. Prime Minister Abe has long argued that Japan should engage in collective self-defense activities with like-minded states, both together with its alliance partner the United States as well as with other states and through United Nations peacekeeping operations. Abe's coalition partner in government, the New Komei Party, has been opposed, however. As a result, the issue was set aside during the first year of Abe's return to power in December 2012.

Critics of the Abe government argue that this decision is rushed, is taking place without debate in Japan's parliament, and that no elected leader has the right to reinterpret the constitution. There is widespread misunderstanding about the power of this cabinet statement, however: it does not have the force of law. Only legislation passed by Japan's parliament has the force of law—and, indeed, this was one of the subjects of Abe's 10-minute prepared statement to the nation: that his government would be creating a team

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to draft bills to establish the necessary legislation to submit to the Diet for its deliberation. Still, the cabinet statement does reflect unanimity among the cabinet, which includes one member from the New Komei Party. It took months of negotiation and substantial compromises by Abe to achieve this support, leading to a much watered-down mandate to exercise the right of collective self-defense only in highly constrained circumstances and even then only using the minimum necessary force to restore the peace.

The Abe government prepared 15 examples to share with the nation illustrating situations where it saw Japanese security at risk due to Japan’s decision not to exercise its right of collective self-defense, which Abe debuted in an earlier televised prime-time press conference in May. Famously pointing to a sketch of a mother holding a small child while fleeing hostilities, Abe explained cases such as the challenges of evacuating Japanese nationals from a war zone, or Japan’s need to cooperate in de-mining critical sea trade routes in the event an enemy were to lay such mines (as happened in the 1991 Gulf War). In fact, the most likely cases where Japan would exercise collective self-defense are together with its only formal military ally, the United States.

It was announced last October that the two states seek to formally revise their 17-year-old guidelines for defense cooperation by the end of 2014, making a decision on the issue of collective self-defense time sensitive. The two states’ goals of cooperating to combat cyber threats and to improve defenses against ballistic missiles both require a pre-commitment from Japan to work together with the militaries of other states, even in cases where it is not clear that Japan itself is being attacked. In addition, the long-standing fear of a new outbreak of hostilities on the Korean Peninsula would also put great pressure on Japan to offer assistance to US and South Korean military forces—even if Japan itself was not directly attacked, something prohibited under the prior cabinet interpretation of the Japanese constitution.

This new policy on collective self-defense should thus be seen, in part, as a way to show Japan’s commitment to the US-Japan military alliance—and to seek to secure US commitment to the alliance in the wake of growing Japanese concerns about China’s designs on the remote and uninhabited Senkaku Islands that Japan administers but China claims (and which China calls Diaoyu), and that Japan would need the United States military to help protect in the event of hostilities.

The new policy should also be seen as part of a set of initiatives of the Abe government to re-craft Japanese military activities as the sort of conduct any “normal” state engages in without suspicion. In this sense, it is part and parcel of his broader efforts to move beyond the criticism of Japan’s militarist past and to a new status quo where Japan’s “proactive contributions to peace” are welcomed on the contemporary international stage. The policy also should be understood at face value: as a way to address potential security contingencies Japan may face in the future.

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The Abe government is correct about international law: that all states inherently possess the right of collective self-defense. But his public statements belie the substantial change in policy that Japan choosing to exercise this right would represent. Critics over-state the significance of the cabinet statement, however. Nothing has yet been changed in Japanese law, and even if new laws are passed in the fall based on this cabinet statement, the agreement within the ruling coalition places substantial barriers on Japan exercising this right in the years to come. Abe has thus not yet realized his dream of Japan becoming a “normal” state—and based on the scale of criticism both at home and abroad about this policy push, it will take many more years of policy evolution to achieve this goal.

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