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Coping with the North Korean Nuclear Crisis

Toshiya NAKAMURA (The University of Melbourne)

On 24 April 2003, North Korea revealed that it possesses nuclear weapons. It highlights the most serious security concern in Northeast Asia. This admission was preceded by a series of extraordinary events, for example, test-launching the *Taepodong-1* missile over Japan in 1998. This has had profound implications for security and stability throughout the region, especially the direct neighbour, Japan. In coping with these circumstances, Japan has accelerated its transformation process of the security posture that had begun since the end of the Cold War. Accordingly, Tokyo revised the Japan-U.S. Defence Guidelines followed by enactment of the War-Contingency Laws.

This paper examines Japan's security posture in responding to Pyongyang's threats. For this purpose, it firstly looks at North Korea's so-called 'Policy of Brinkmanship' since 1993. Secondly, it investigates Tokyo's countermeasures against them, namely the Japan-U.S. Defence Guidelines as well as the War-Contingency Laws. It also explores the limitations of Tokyo's policy making under the 'Peace Constitution.' Finally, it argues that Tokyo will inevitably address the issue of exercise of the right of collective self-defence that restricts its security policy in the near future.

1. Policy of Brinkmanship

Intention of withdrawal from NPT (12 March 1993)

The Nuclear Crisis emerged through Pyongyang's sudden announcement of its intention to withdraw from NPT (Nuclear Non-Proliferation Treaty) to the UN Security Council on 12 March 1993. Subsequently, North Korea refused inspections of IAEA (International Atomic Energy Agency) at Yongbyon on 16 March 1994, demanding direct talks with the U.S. It was widely believed that North Korea had some kind of a secret nuclear program, although it was not clear to what extent Pyongyang developed it. In reaction to this nuclear crisis, the Clinton administration considered all options including the possibility of use of force to resolve the crisis. Both seemed almost close to war.

This near-war situation was narrowly averted by the visit of the former President Jimmy Carter to Pyongyang to see the then leader of the North, Kim Il Song on 15 June 1994. In the meeting, Kim agreed to freeze the nuclear program and to allow IAEA inspectors to remain, in exchange for direct talks with the U.S, acquisitions of light-water reactors and assurance of the U.S. against any sanctions by the UN.¹ Based on the Carter-Kim agreement, the Agreed Framework was worked out by both governments. Although a catastrophic war on the Korean Peninsula was prevented, some may argue that a poor behaviour was rewarded in favour of North Korea.²

¹ Mazarr, M. J., *North Korea and the Bomb: A Case Study in Nonproliferation*, New York, St. Martin's Press, 1995. pp. 162-165. See also Oberdorfer, D., *The Two Koreas*, Reading, Massachusetts, Addison-Wesley, 1997.

² Carter's visit sparked strong, and contradictory, reactions in the Clinton administration. See Mazarr, 'North Korea and the Bomb', pp.163-164; Quinones, K., *Kitachosen - Beikokumusho Tantokan no Kosho Hiroku (North Korea's Nuclear Threat-'Off the Record' Memories)*, Tokyo, Chuokoron-Shinsha, 2000. pp. 292-294

Launch of Teapodong-1 (31 August 1998)

Understandably, both Japanese government and the public were greatly concerned by the North's launching of a three-stage *Taepodong-1* missile over Japan in August 1998. In this, North Korea demonstrated that major population areas including Tokyo were within 1500km (600 miles) range of their missile.³ It is believed that the state has also been developing *Taepodong-2* that allegedly has a range of between 3500 and 6000km.⁴ In May 1993 a medium-range, ballistic missile *Nodong-1*⁵ was launched into the Sea of Japan in May 1993.

Since February 2003, North Korea again has fired three short-range, land-to-ship missiles. Two missiles fell into the Sea of Japan on 24 February and 10 March, while another landed on 1 April to the Yellow Sea.⁶

Spy ships (December 2001)

Furthermore, the arms-laden vessel that sank in waters off Amami Oshima in December 2001 was identified as a North Korean spy ship after it was salvaged on 11 September 2002.⁷ The 30-meter-long ship was sunk in December 2002 after exchanging fire with the Japan Coast Guard Patrol Vessels. The ship is believed to have engaged in secret missions

³ Boeicho (Japan Defence Agency), *Heisei 14 Nendo Boei Hakusho (Defence of Japan 2002)*, Tokyo, Zaimusho (Ministry of Finance), 2002. pp.53-55.

⁴ Ibid., pp. 54-55.

⁵ In 1990s, Pyongyang has been working on developing missiles. In 1991, development was begun of a missile called *Nodong-1* by western observers after the name of its test facility. The *Nodong-1* is based on the Soviet Scud design. After some failed initial tests, a successful test launch was conducted in May 1993. Ibid., pp.53-54; The National Institute for Defence Studies, *East Asian Strategic Review*, Tokyo, The National Institute for Defence Studies, 2002. pp. 162-163.

⁶ Japan raises alleged spy ship, [The Japan Times](#), 12 September, 2002, ;Struck, D., North Korea Fires Short -Range Missile, [Washington Post](#), 1 April, 2003, A12. Kita, Taikan Misairu Saihassha (North Korea fired land-to-ship missile again), [Sankei Shimbun](#), 11 March, 2003,

⁷ Japan raises alleged spy ship, [The Japan Times](#), 12 September, 2002,

involving drug running or communication with spies that have already infiltrated Japan.

Abductions of Japanese citizens (September 2002)

At the Japan-North Korea Summit Meeting, the leader of North Korea, Kim Jong-il, revealed an astonishing fact: North Korea had abducted 13 Japanese citizens in 1970s and 1980s to train spies.⁸ According to Pyongyang's explanation, only five of the abductees survived, whilst eight were killed. Surprisingly, Pyongyang had refused even an inquiry of this matter and criticized Japan for being a liar.⁹ It is reported that Kim Jong-il verbally apologized for this terror act, however it was not included in the Joint Declaration of the Summit.¹⁰

Although it has never been clear why Kim suddenly confessed to the terror, one of the plausible explanations would be that he miscalculated his

⁸ French, H., Japan and North Korea Reach Agreement on Relations, The New York Times, 17 September, 2002, ;Takahashi, J., Kim admits abductions, The Japan Times, 18 September, 2002,

⁹ The North, for example, strongly criticized the issue of Lee Eun-hye that Japan raised as 'a contemptible accusation' during the third round of the normalization talks of the bilateral relations on 20-22 May 1991 in Beijing. Lee Eun-hye was a Japanese language trainer for an espionage agent, Kim Hyon-hui, who planted a powerful bomb in the Korean Airlines flight 858 on 29 November 1987, killing 115 passengers onboard. The Japanese Police Agency announced on 15 May 1991 that the agency identified Lee Eun-hye as Ms Yaeko Taguchi, who had been abducted from Japan to North Korea. Pyongyang's position was always very hostile on the abduction issue until the North admitted on September 2002. See Suzuki, M. (1994). *Kitachosen no Tainichi Seisaku* (North Korea's Policy toward Japan). Posuto Reisen no Chosen Hanto (Korean Peninsula in the post-Cold War era). M. Okonogi. Tokyo, The Japan Institute of International Affairs (JIIA): pp.50-92;Lee, M. (2002). *Japanese-North Korean Relations. North Korea and Northeast Asia*. Samuel Kim et al. Lanham, Maryland, Rowman & Littlefield Publishers: pp.89-107;Sato, K., *Rachi Kazoku, Kim Jong-il tono Tatakai Zen Kiseki (All the Records on Wars of the Families of the Abductees against Kim Jong-il)*, Tokyo, Shogakukan, 2002.

¹⁰ Aihara, K., Shusho ha Danzai sezu Sengen Shomei (Premier signed Declaration without convicting of terror), Yomiuri Shimbun, 19 September, 2002,

admission would lead to a removal of a decades- old barrier of abduction issues to normalization of bilateral relations. Moreover, he might believe that North Korea would receive the payment of billions of dollars for war reparations, as some experts pointed out.¹¹

This confession caused a hugely negative impact and stirred an atmosphere of anger in Japan. It was not only fury and anger of the Japanese public against Pyongyang's actions, but also anger and distrust of the Japanese government, especially the Ministry of Foreign Affairs (MOFA) for its vacillation.¹² This was reinforced by the fact that MOFA received more than one hundred phone calls in one day after Kim's confession, protesting against its 'incompetent diplomacy,' leaving the abduction issues unresolved for more than twenty years.¹³

In these circumstances, the Japanese government sent a fact-finding mission to Pyongyang from 28 September till 2 October to gather information on the Japanese abducted only to gain unacceptable stories on them.¹⁴ According to the official account, of eight killed abductees, two were killed in traffic accidents in a country with very little traffic, two were poisoned by carbon monoxide, two died of heart attack and heart disease, one died of cirrhosis of the liver and one committed suicide through depression – and almost all of the remains except of one abductee were washed away because of floods.¹⁵ The explanation was perceived to be far from the truth by the Japanese public.¹⁶

¹¹ James Laney et al., 'How to Deal With North Korea.' *Foreign Affairs*, vol.82, no.2, 2003, pp. 16.

¹² McCormack, G., 'North Korea: Coming in from the Cold?' *Japan Policy research Institute (JPRI) Working Paper*, no.91, 2003.

¹³ Gaimusho ni Kougi no Denwa Satto (Protest Calls Rush to MOFA), Asahi Shimbun, 18 September, 2002,

¹⁴ Details about deaths of abductees dubious, The Japan Times, 3 October, 2002,

¹⁵ Pyongyang's account of dead abductees, The Japan Times, 3 October, 2002, ;Details about deaths of abductees dubious, The Japan Times, 3 October, 2002,

¹⁶ Abductees' kin angry at 'lies', The Japan Times, 3 October, 2002,

Furthermore, the ‘remains,’ of which the North had claimed to be Mr. Kaoru Matsuki, one of the abductees, was identified most likely as bones of a woman of over sixties by the scientific DNA analysis conducted by Japan’s National Police Agency (NPA).¹⁷ For many of the Japanese, the dead bodies are considered to be most important to hold a memorial services for the departed and to honour their souls. As such, the particular conduct by Pyongyang in regard to the deceased is perceived as a desecration of the deceased. In this way, North Korea has renewed the Japanese anger.

On 15 October 2002 North Korea allowed the five abductees to return to Japan ‘temporarily’ without taking their families. This was the first time after they were abducted more than 20 years ago.¹⁸ In this situation, the Japanese government demanded on 24 October that Pyongyang allow their children living in the North to join the parents as quickly as possible, indicating that the abductees would stay in Japan permanently.¹⁹ The North rejected either the Japanese proposals to reunite the families, or even phone calls from the abductees to their families in the North.²⁰ In fact, Pyongyang still insisted on returning the abductees to the North, although the leader of the North had apologized for the crime.²¹

¹⁷ Ikotsu Matsuki-san to Betsujin (Remains are not of Mr.Matsuki's), Sankei Shimbun, 12 November, 2002,

¹⁸ Abductees Come Home, The Japan Times, 16 October, 2002,

¹⁹ Government to keep abductees, call for North Korean-born kids to visit, The Japan Times, 25 October, 2002,

²⁰ Pyongyang no Kazoku ni Denwa sasetai ni Kitachosen 'No' (North Korea said 'No' to Calls to Families in Pyongyang), Asahi Shimbun, 31 October, 2002,

²¹ Some experts argued that the Japanese government put pressure on the abductees to stay in Japan against their will. For example, McCormack wrote ‘the Chief Cabinet Secretary, Fukuda Yasuo, announced that, despite the initial agreement with Pyongyang that the former abductees would be returned after two weeks, the hapless five would not be allowed to go back,’ under the subtitle ‘Re-Abduction by Japan?’ See McCormack,

On the abduction issue, U.S. President George Bush expressed his strong support for Tokyo on 23 May 2003. At the joint news conference after the meeting with Japanese Prime Minister Junichiro Koizumi at Bush's ranch in Crawford, Texas, Bush said that 'I assured the Prime Minister that the United States will stand squarely with Japan until all Japanese citizens kidnapped by North Korea are fully accounted for. I strongly condemn the kidnapping of Japanese citizens by the North Koreans.'²²

The Japan-North Korea Summit ended up demonstrating President George Bush's condemnation of Pyongyang as an axis of evils to be true.²³

Admission of Possession of Nuclear Weapons (24 April 2003)

North Korea revealed the possession of nuclear weapons on 24 April 2003 in the trilateral talks with the U.S. and China in Beijing.

In the talks, North Korean negotiators threatened assistant Secretary of State, James A. Kelly and his delegations to export nuclear weapons or conduct a 'physical demonstration,' indicating that they may conduct a test of a nuclear weapon.²⁴ Although it needs to be confirmed independently, the CIA has estimated that the communist state produced one or two nuclear weapons.²⁵

'North Korea: Coming in from the Cold?' However, all the five abductees expressed their will and hope to remain in Japan and wait for their families to join them to the Japanese government by 23 October 2002. See Hasuike, T., *Dakkan - Hikusakareta 24 nen (Retake - The Divided 24 Years)*, Tokyo, Shinchosha, 2003. pp. 44-54. Also, Seifu Happyomae, *Rachihigaisha 5 nin mizukara Eiju Ketsudan (Five Abductees decide Permanent Residency before Government Announcement)*, Yomiuri Shimbun, 1 December, 2002,

²² The Associated Press, The Text of Bush, Koizumi remarks in Texas, The New York Times, 23 May, 2003,

²³ Cortazzi, S. H., *Kitachosen ha yahari 'Aku no Sujiku' da (North Korea is surely an 'axis of evils')*, Sankei Shimbun, 30 September, 2002,

²⁴ Kessler, G., *N. Korea says It Has Nuclear Arms*, Washington Post, 25 April, 2003, A01.

²⁵ Sanger, D., *North Korea Says It Now Possesses Nuclear Arsenal*, The New York Times, 24 April, 2003, The CIA said that Pyongyang probably had enough plutonium 'for at least one, perhaps two nuclear weapons.' It did not venture a judgement on

Prior to the admission, Pyongyang admitted that it had begun building a new, Highly-Enriched-Uranium (HEU) nuclear program in October 2002.²⁶ Then, North Korea subsequently offered to halt the HEU program in exchange for a non-aggression treaty with the United States.²⁷ But Washington refused to open a dialogue unless the North abandoned the HEU Program. The U.S. also criticized Pyongyang, saying that the state had violated the 1994 Agreed Framework as well as NPT and several other nuclear non-proliferation commitments.

While the U.S. toughened its stance against Pyongyang, the Korean Peninsula Energy Development Organization (KEDO), which administered the Agreed Framework, published a statement on 14 November 2002 that the Executive Board, consisting of the U.S, Japan, South Korea and the European Union, agreed to condemn Pyongyang's pursuit of a nuclear weapon, and that heavy fuel oil deliveries would be suspended beginning with the December shipment.²⁸

North Korea responded by announcing plans to reopen its Yongbyon facilities.²⁹ Pyongyang immediately cut most of the seals and impeded the functioning of surveillance equipment including monitoring cameras at the

weaponisation until its assessments in 2001 and 2002, both of which said Pyongyang had one or possibly two nuclear weapons. Huisken, R., 'North Korea's Bluff.' *The Diplomat*, vol.2, no.2, 2003, pp. 14-15.

²⁶ Spokesman of U.S. Department of State (2002). Press Statement - North Korean Nuclear Program. www.state.gov/r/pa/prs/ps/2002/14432pf.htm. Downloaded 17 October.

²⁷ French, H., North Korea Asks South to Help Press U.S. on Nonaggression Pact, The New York Times, 24 November, 2002, ;Kuroda, K., Kita, Bei Kaiju ni Yakki (North Korea try to conciliate U.S.), Sankei Shimbun, 26 October, 2002,

²⁸ The Koreann Peninsula Energy Development Organization (KEDO) (2002). KEDO Executive Board Meeting Concludes - November 14, 2002. www.kedo.org/news_details.asp?newsID=10. Downloaded 17 July.

²⁹ Namura, T., Kitachosen 'Kakukaihatsu wo Saikai (North Korea 'resumes Nuclear Program'), Sankei Shimbun, 13 December, 2002,

frozen nuclear facilities in Yongbyon on 21 December 2002.³⁰ The North subsequently began to remove some 8000 spent irradiated fuel rods out of storage.³¹ Furthermore, the North expelled the IAEA inspectors on 31 December 2002.³² Finally, Pyongyang announced its withdrawal from NPT on 9 January 2003.³³ Pyongyang also restarted the critical reprocessing plant in February 2003, despite repeated warnings by the U.S, Japan, China and IAEA.³⁴ The situation seems to be even worse than the first nuclear crisis in 1993-94.

2. Japan's Security Posture

The Guidelines for Japan – U.S. Defence Cooperation (September 1997)

The North Korean Nuclear Crisis in 1993-94 produced the new version of 'the Guidelines for Japan – U.S. Defence Cooperation' a few years later. The Guidelines were approved by the US-Japan Security Consultative Committee meeting in New York on 23 September 1997.

Subsequently, the Japanese Diet passed three bills on 24 May 1999, under which Japan could carry out the tasks required under the Guidelines; 'the Law Concerning Measures to Ensure Peace and Security of Japan in Situations in Areas Surrounding Japan', the Amendment of 'the Self-Defence Force Law', and the ratification of 'the Revised US-Japan

³⁰ IAEA Press Release, DPRK Interferes with IAEA Safeguards Equipment, 21 December, 2002,

³¹ IAEA Press Release, Further Disruption of IAEA Safeguards Implementation in the DPRK, 22 December, 2002, ;IAEA Press Release, Continued Disruption of IAEA Safeguards Equipment in DPRK, 24 December, 2002,

³² IAEA Press Release, IAEA Inspectors to leave North Korea, 28 December, 2002, ;IAEA Press Release, IAEA Responds to DPRK request to Remove Inspectors, 27 December, 2002,

³³ UN News Centre, Security Council notified of DPR of Korea's withdrawal from nuclear arms accord, 10 January, 2003,

³⁴ Glenn Kessler et al., N. Korea Stymied On Plutonium Work, Washington Post, 20 March, 2003, A24.

Acquisition and Cross-Serving Agreement (ACSA)'.³⁵ Japan also enacted 'the Law Concerning the Conduct of Ship Inspection Operations in Situations in Areas Surrounding Japan' on 6 December 2000.³⁶

'Situations in areas Surrounding Japan'

The New Guidelines paved a way for the Self-Defence Force (SDF) to operate not only in the territory of Japan, but also 'in situations in areas surrounding Japan'.³⁷ According to the document, the concept of 'situations in areas surrounding Japan' is not geographic but situational³⁸. An American defence official involved in a preliminary analysis of the Guidelines stated, for example, that 'the alliance has essentially been transformed from one oriented primarily to Article 5 of the Mutual Security Treaty (MST) -- the narrow self-defence of Japan -- toward one more balanced between Articles 5 and 6 -- regional security.'³⁹

In other words, the New Guidelines expanded the scope of Japan's cooperation with the U.S. Article 5 of the Guidelines, for instance, specifies forty areas where Japan would provide rear-area supports⁴⁰

³⁵ Boeicho (Japan Defence Agency), *Heisei 14 Nendo Boei Hakusho (Defence of Japan 2002)*, Tokyo, Zaimusho (Ministry of Finance), 2002. pp.176-188. Asagumo Shimbunsha, *Boei Hando Bukku Heisei 14 nenban (Handbook for Defence 2002)*, Tokyo, Asagumo Shimbunsha, 2002. pp.376-380.

³⁶ Boeicho, *Heisei 14 Nendo Boei Hakusho*, pp.187-189.

³⁷ The Guidelines for Japan - U.S. Defence Cooperation, 1997. See Article V. 'Cooperation in Situations in Areas Surrounding Japan that will have an important Influence on Japan's Peace and Security' (Situations in Areas Surrounding Japan).

³⁸ It further stipulates, "The two Governments will make every effort, including diplomatic efforts, to prevent such situations from occurring. When the two Governments reach a common assessment of the state of each situation, they will effectively coordinate their activities."

³⁹ Cronin, P., 'The U.S. - Japan Alliance Redefined.' *The Strategic Forum - Institute for National Strategic Studies*, no.75, 1996.

⁴⁰ 40 specific areas include "relief work, dealing with refugees, and search and rescue; evacuation of non-combatants; activities to ensure the implementation of economic sanctions; offering the use of Japanese facilities to the US; logistical support in terms of

including the use of Japanese hospitals, ports, and airfields, and the provisions of fuel and equipment; and the use of Japanese ships to evacuate Japanese citizens from conflict areas.

The New Guidelines, however, contain some controversial problems. First, the definition of 'situations in areas surrounding Japan' avoids a decision as to where and when 'cooperation' will take place, as some experts pointed out.⁴¹ If the decision when and where to cooperate is up to Japan, that creates uncertainty for the U.S. If the decision rests with the U.S, then Japan's autonomy is diminished.

Second, the guidelines stipulate that Japan will provide rear area support to the U.S. Forces, and rear area support will be provided not only in Japanese territory, but also 'on the high seas and international airspace around Japan, which are distinguished from areas where combat operations are being conducted.'⁴² However, this definition of 'rear area' also avoids a decision as to where and when 'rear area' support will take place. Furthermore, it is quite difficult to distinguish clearly such rear areas from areas of combat operations in reality. Some experts correctly criticized the definition of 'rear area' as non-sense.⁴³

'Limitations of the Constitution'

On the other hand, all those operations do not go beyond three major limitations that exist in Japan's security posture: 'exclusively defence-oriented policy'; 'three non-nuclear principles'; restriction of the

supply and transportation; security of US military installations, communications and other areas; surveillance; and minesweeping". See The Guidelines for Japan - U.S. Defence Cooperation, 1997. Annex 'Functions and Field and Examples of Items of Cooperation in Situations in areas Surrounding Japan'.

⁴¹ Stuart Harris et.al. (2000). The U.S. - Japan Alliance. America's Asian Alliances. Robert D. Blackwill et al. ed. Cambridge, Mass., The MIT Press. P.39.

⁴² The Guidelines for Japan - U.S. Defence Cooperation, 1997.

⁴³ See, for example, Sase, M., *Shudanteki Jieiken (Right of Collective Self-Defence)*, Tokyo, The PHP Institute, 2001. pp.242-246.

exercise of right of collective defence. Article 2 of the document states, for example, 'Japan will conduct all its actions within the limitations of the Constitution and in accordance with such basic positions as the maintenance of its exclusively defence-oriented policy and its three non-nuclear principles.'⁴⁴

The Japanese Government considers the exclusively defence-oriented policy as one of the basic policies for national defence. Tokyo stipulates that military force cannot be exercised until armed attack is initiated, and that the scope and level of use of defence forces are kept to the minimum required for the purpose of self-defence, under the policy.⁴⁵ Moreover, the defence capability to be possessed by Japan must be limited to the minimum necessary level. Thus, this policy refers to the posture of a passive defence strategy that is consistent with the spirit of the Constitution.

The Three Non-Nuclear Principles refer to the principles of "not possessing nuclear weapons, not producing them and not permitting their introduction in Japan."⁴⁶ Japan has adhered to the Three Non-Nuclear Principles as the fixed line of national policy. The Atomic Energy Law also prohibits Japan from manufacturing or possessing nuclear weapons. Furthermore, Japan ratified the Nuclear Non-Proliferation Treaty (NPT) in 1976, and placed itself under obligation, as a non-nuclear weapons state, not to produce or acquire nuclear weapons.

Restriction of Exercise of the right of Collective Self-Defence

The Cabinet Legislation Bureau of Japan (CLB), which is responsible for

⁴⁴ The Guidelines for Japan - U.S. Defence Cooperation, 1997.

⁴⁵ Boeicho (Japan Defence Agency), *Heisei 14 Nendo Boei Hakusho (Defence of Japan 2002)*, Tokyo, Zaimusho (Ministry of Finance), 2002. pp.87-88.

⁴⁶ *Ibid.*, p.88.

legal issues relating to the Constitution, claimed that Japan has the inherent right of self-defence including collective self-defence. The Cabinet organ, however, has stressed the Constitution does not allow Japan to exercise its right of collective self-defence, because its exercise of self-defence allowed under Article Nine⁴⁷ should be limited to a minimum in order to defend the country, and its exercise of collective self-defence is beyond the scope of the Article.⁴⁸

The War-Contingency Laws (6 June 2003)

Empowered Government in Military Emergencies

The North Korean Nuclear Crisis and hostile policies including spy ships and abduction issues paved a way for the Japanese government to enact the long-awaited legislations. On 6 June 2003, Japan's Parliament passed three war contingency bills⁴⁹ that gave the government significantly increased powers in military emergencies. 'The Law regarding Responses to Armed Attacks' and two others, in essence, enable a smooth operation of the SDF within the territory of Japan, allowing the SDF to begin certain ground operations before the prime minister issues a mobilization order.⁵⁰ It is

⁴⁷ Article Nine of the Constitution states: 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.

⁴⁸ Boeicho (Japan Defence Agency), *Heisei 14 Nendo Boei Hakusho (Defence of Japan 2002)*, Tokyo, Zaimusho (Ministry of Finance), 2002. p.312.

⁴⁹ The three laws are the Law regarding Response to Armed Attacks, the Law on the Establishment of the Security Council of Japan and the Law to amend the SDF Law. In addition, the ruling parties (LDP, New Conservative Party, New Komeito) agreed with an opposition party, the DPJ, to attach a supplementary resolution calling for the enactment of another set of bills to protect the safety and rights of people in the event of an emergency within one year.

⁵⁰ Buryoku Kogeki Jitai nadoni okeru Wagakunino Heiwa to Dokuritsu narabini Kuni oyobi kokumin no Anzen no Kakuho nikansuru Horitsu (The Law regarding Response to Armed Attacks), 2003.

the very first time for Tokyo after the end of the World War II that such war contingency laws are enacted.

Under the contingency laws, the government will draft a plan of action when there is an attack against Japan or when the government determines that the danger of an attack is imminent. The plan, following the Cabinet approval, must be endorsed by the Diet. In situations deemed particularly urgent, the government is empowered to mobilize the SDF before drawing up a plan but has to halt the deployment of forces if the eventual plan is rejected by the Diet. The law also allows the government to put the SDF on standby when it determines that a military attack is ‘anticipated.’ The amendment to the SDF law enables military personnel to seize land and other property for operations and exempts the SDF from a range of peace time legal procedures, such as those concerning road traffic, medical activities and constructing facilities for their use.

In responding to Tokyo’s move toward enactment of the laws, Pyongyang immediately slammed the passage of the three bills by the Japanese House of Representative as evidence of Japan’s intention to launch overseas aggression. A North Korean Foreign Ministry spokesman said in a statement carried by the official Korean Central News Agency (KCNA), ‘These bills, among other things, justify the Japanese SDF’s participation in a war of overseas aggression in “case of emergency” and stipulate ways of mobilizing civilians for a war.’⁵¹

Bipartisan Consensus on the bills

The war-contingency bills were supported by bipartisan consensus not only

⁵¹ DPRK Foreign Ministry spokesman denounces passage of bills in Japan, The Korean Central News Agency, 17 May, 2003,

of the ruling bloc and but of opposition parties. At least two reasons can be identified.

Pyongyang's Threat made Political Parties United

First, the major opposition party, the Democratic Party of Japan (DPJ) shared a common view with the ruling parties that Tokyo should prepare for the worst, because Pyongyang's threat was such a serious one that Tokyo had never faced after the end of the World War II. It was reinforced by the fact that the DPJ submitted the counter bills to the Diet on 30 April 2003 before it expressed a conditional support for the government-sponsored bills upon amendments. In other words, Pyongyang's threat made political parties united.

In the Cold War era, such a bipartisan consensus was never formed, because the security policy of the then biggest opposition party, the Japan Socialist Party (JSP, renamed as the Social Democratic Party) was far apart from one of the LDP. For example, JSP maintained the policy that Japan should be neutral and unarmed, and the Self-Defence Force was unconstitutional, until 20 July 1994 when JSP Chairman Tomiichi Murayama formed his government with the LDP and the Shinto Sakigake (the Harbinger Party).⁵²

Loss of Confidence to SDP

Second, Pyongyang's sudden admission of abductions of Japanese citizens made left wing Japanese who had close relationships or sympathies with the North, very much embarrassed.

The Social Democratic Party (SDP)⁵³ lost its confidence among the

⁵² Hara, Y., *Sengoshi no nakano Nihonshakaito (The Japan Socialist Party in the post-war history)*, Tokyo, Chuokoron Shinsha, 2000. pp.316-320.

⁵³ Only members of SDP and the Japanese Communist Party (JCP) opposed the

Japanese public after it acted against the abductees, but in favour of North Korea on the abduction issue. The SDP and its predecessor, the Japan Socialist Party, have had a history of friendly relations with the Korean Workers' Party, the governing party of North Korea.

Despite a number of the party delegations visiting the North, it failed to pursue the abduction issue. Moreover, it has maintained a thesis that the kidnapping issue represented a 'fiction devised by the South Korean intelligence', which appeared in its July 1997 party bulletin and remained there even after the North admitted to the kidnappings in September 2002.⁵⁴

An apology was expressed by the SDP leader, Ms Takako Doi only on 7 October 2002 to the families of the kidnapped to North Korea, admitting the party failed to sufficiently pursue the abduction issue.⁵⁵ It was only after a SDP member as well as a member of the House of Councillors, Yoko Tajima, left the party due to discontent with its 'slow reaction' to the abduction issue on the same day.⁵⁶ Doi emphasized the party would review its policy toward North Korea in light of the revelations.

3. Limitations of Japan's Security Policy

The war-contingency laws, as well as the New Guidelines, did avoid confronting three limitations: 'exclusively defence-oriented policy', 'three non-nuclear principles' and restriction of exercise of the right of collective

legislations, arguing it goes beyond the pacifist Constitution. The two parties argued that the legislation could result in Japan becoming embroiled military operations led by the United States, its mainly security ally.

⁵⁴ Shamin HP ni 'Rachi ha Sosaku' (Abduction is a Fiction - SDP Homepage), Sankei Shimbun, 4 October, 2002, ;Editorial, Doi Toshu Shazai Rachi meguru Kako wa Kienai (President Doi apologized, but Past on abductions will never be erased), Yomiuri Shimbun, 11 October, 2002,

⁵⁵ SDP Chief Doi apologizes for abduction inaction, The Japan Times, 8 October, 2002,

⁵⁶ Tajima Giin ga Shaminto wo Rito (MP Tajima left SDP), Sankei Shimbun, 8 October, 2002,

self-defence. However, remarkably at this time, the need for reviewing these policies is now acknowledged even by the oppositions through its debate on the contingency laws. For example, the Lower House opposition politician and the shadow minister of defence, Mr. Seiji Maehara (DPJ) underlined that self-defence should not mean simply sitting back and waiting to be attacked.

“Using offensive weapons for defensive purposes does not pose a threat to the Constitution.”⁵⁷

Right of Collective Self-Defence

Through the debate on the war-contingency laws under the pressure of intensified threats from the North, a broad consensus seems to have been shaped that Japan should make it clear that it can exercise the right to collective self-defence. The open question is only when and how to do it, that is whether by changing the interpretation of the Constitution or by amending the Constitution.

The Research Committee of the Liberal Democratic Party (LDP) on the Constitution, which discusses the amendment of the Constitution, for instance, made a first draft to this effect, which was leaked by Mainichi Shimbun on 3 May 2003. According to Mainichi, the draft says, “Japan can ally with other states for the purpose of national defence,” clarifying that Japan has and can exercise its inherent right of collective self-defence.⁵⁸ The Committee is expected to finalize the report by the end of this year.

⁵⁷ Shimoyachi, N., DPJ politician seeks more effective war contingency plan, The Japan Times, 29 May, 2003,

⁵⁸ Hirata, T., Shusho ni Hijojitai Hatsudoken - Kaiken Soan ga Hanmei (PM to Right of State of Emergency - Draft of Constitution Amendment), Mainichi Shimbun, 3 May, 2003,

However, some maintain that the current Constitution does not impede SDF from engaging in collective defence, implying the interpretation prepared by CLB has been improper. Former Prime Minister Yasuhiro Nakasone and Kiichi Miyazawa, for instance, claimed on 3 May 2003 that Japan is able to engage in collective defence under the current Constitution. Nakasone said in an NHK program marking the 56 anniversary of the implementation of Japan's Constitution that Japan can exercise the right to collective defence even under the current Constitution and that all Prime Minister Junichiro Koizumi needs to do is to say that it can be done. He said it is 'silly' that Japan would be unable to act in the event a problem arises with North Korea, for example, and the U.S. aircraft carrier deployed in the Sea of Japan is attacked."⁵⁹

Similarly, Miyazawa argued that exercising the right to use military force to defend an ally is "natural from anyone's perspective", but noted that it should be limited to areas near Japan. He said participating in collective defence if, for instance, the U.S. military came under attack off California would be beyond the realm of debate on the matter.⁶⁰

On the other hand, oppositions claimed that the right of collective self-defence could only be exercised by amending the Constitution, not by changing its interpretation. DPJ stipulates this argument in the party policy. Mr. Maehara said in an interview with the Japanese monthly journal 'Foresight':

"I personally support the amendment of the Constitution rather than changing the interpretation. The amendment should be to add just one sentence that Japan has the inherent right of self-defence. It is simple and clear. Needless to say, Self-defence includes individual

⁵⁹ Former leaders back collective self-defence, The Japan Times, 4 May, 2003,

⁶⁰ Ibid.,

and collective self-defence.”⁶¹

Furthermore, he agreed with Mr. Fumio Kyuma, former Director-General of Japan Defence Agency and a MP of LDP, on the need to revise the Constitution, saying the current geopolitical situation in Northeast Asia is markedly different from when it was drawn up more than half a century ago. Maehara added:

“It amazes me that the Constitution has been left untouched for such a long time. I think it is the responsibility of politicians to present the need (for revisions to the Constitutions) to the public.”⁶²

Likewise, the public opinion poll suggests the majority of the public are for the amendment of the Constitution. 54% prefer the amendment, while 30% are against it, according the latest poll by one of the biggest Japanese newspapers, Yomiuri Shimbun.⁶³ 52% of the participants who answered for the amendment gave the reason that “the Constitution can not address new problems Japan faces at present.”

Public Opinion Poll on the Amendment of the Constitution (Yomiuri Shimbun)

	1981	1986	1991	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
For	28%	23%	33%	50%	44%	50%	47%	45%	52%	53%	60%	54%	57%	54%
Against	44%	57%	51%	33%	40%	31%	36%	37%	31%	31%	27%	28%	29%	30%
No Answer	28%	21%	16%	17%	16%	19%	17%	18%	17%	16%	13%	18%	14%	16%

⁶¹ Editor of the 'Foresight', 'Naze Yato ga Yujihosei wo Jitsugen Sasetanoka (Why Opposites realized the War Contingency Laws).' *Foresight*, vol.14, no.7, 2003, pp. 8-11. Maehara also said that this policy is a product of a compromise between two groups in the party. One says it is necessary to exercise the right to collective self-defence for Japan's security. The other says they would like to seal the discussion on this matter.

⁶² Shimoyachi, N., DPJ politician seeks more effective war contingency plan, The Japan Times, 29 May, 2003,

⁶³ Kenpo Kaiseiha 6 nen Renzoku de Kahansu (Majority are for Constitution Amendment for 6 consecutive years), Yomiuri Shimbun, 2 April, 2003,

Source: 2 April 2003 Morning edition of Yomiuri Shimbun, Yomiuri Shimbun Yoron Chosabu (Opinion Polls Section of Yomiuri Shimbun), *Nihon no Yoron (Japanese Public Opinion)*, Tokyo, Kobundo, 2002, pp.48-50.

Furthermore, the U.S. is putting the pressure on Japan to make it clear that Tokyo can exercise the right of collective self-defence. A bipartisan study group on the U.S. – Japan partnership published its report titled ‘The United States and Japan: Advancing Toward a Mature Partnership.’⁶⁴ The report clearly demanded Tokyo to lift the prohibition against exercise of the right of collective self-defence by stating ‘Japan’s prohibition against collective self-defence is a constraint on alliance cooperation. Lifting this prohibition would allow for close and more efficient security cooperation.’ The content of this report is widely seen to become the policy of the Bush Administration toward Japan, because some of the 16 prominent experts of the group joined the administration as senior officials, for example, deputy Secretary of State Richard Armitage (then Armitage and Associates), deputy Secretary of Defence Paul Wolfowitz (then Dean and Professor of SAIS of the Johns Hopkins University) and the Director for Japan and Korea of the National Security Council, Michael J. Green (then Senior Fellow of the Council on Foreign Relations).

The pressure from the U.S. might be strengthened, if the North Korean Nuclear Crisis would be intensified. There is a precedent in Europe. At the time of the Gulf War in 1991, the Government of just unified Germany, which is a member of the North Atlantic Treaty Organization (NATO), refused to send the German Force to the Middle East as the U.S. had requested. The Then government led by Chancellor Helmut Kohl explained that the Basic Law (*Grundgesetz*) did not allow operations of

⁶⁴ A Bipartisan Group on the U.S.-Japan Partnership, 'The United States and Japan: Advancing Toward a Mature Partnership.' *INSS special Report*, 2000.

German Force (*Bundeswehr*) beyond the boundaries of the NATO member states except unarmed humanitarian operations. This was why Berlin concentrated on the financial supports to the U.S. and other NATO states. However, this policy provoked strong criticism especially from the U.S. with the notorious name of ‘Cheque-book diplomacy.’

In response to this, Washington soon put huge pressure on the German government. Then U.S. ambassador to Germany, Vernon A. Walters utilized every occasion to ask the same question to German ministers, prominent politicians and senior officials. ‘Which article of the Basic Law prohibits operations of German Forces out of the NATO area?’ he asked them, and added ‘I pointed out that Germany had not been a member of NATO, when the Basic Law had been ratified.’⁶⁵

The German government slowly changed its interpretation of the Basic Law in a kind of ‘salami tactic’ and expanded the functions of the Bundeswehr ‘slice by slice,’ whilst Berlin at first aimed to amend the Basic Law to explicitly allow out-of-area operations.⁶⁶ The government’s position today is that out-of-area operations of the Bundeswehr are not against the Basic Law, after the Federal Constitutional Court clearly confirmed on 12 July 1994 that out-of-area operations are constitutional.⁶⁷

As the case of Germany mentioned earlier, the U.S. is expected to put huge pressure on Japan to allow exercising the right of the collective

⁶⁵ Walters disclosed these episodes in his Memoir published in Germany. Walters, V., *Die Vereinigung war voraussehbar (The Unification was predictable)*, Berlin, Siedler Verlag, 1994. p.134.

⁶⁶ Philippi, N., *Bundeswehr-Auslandseinsätze als aussen- und sicherheitspolitisches Problem des geeinten Deutschland (Bundeswehr Operation Abroad as Foreign and Security Policy of Unified Germany)*, Frankfurt, Peter Lang, 1997. pp.203-205. Philippi, N. (2001). Civilian power and war: the German debate about out-of-area operations 1990-99. Germany as a Civilian Power? Sebastian Harnisch et al. Manchester, Manchester University Press. pp.52-53.

⁶⁷ Bundesverfassungsgericht (The Federal Constitutional Court), Urteil (adjudgement), 2 BvE 3/92, 2 BvE 5/93, 2 BvE 7/93, 2 BvE 8/93., 1994, Leitsätze (Main Clause) pp.1-2.

self-defence, if the Crisis in Korean Peninsula would be intensified.

'Exclusively Defence-Oriented Policy'

Moreover, the issue of 'exclusively defence-oriented policy' is on a political agenda. A bipartisan group of 'young members of Parliaments discussing Japanese security policy for the 21 century' composed by 103 Diet Members led by Mr. Keizo Takemi (LDP) published a statement to call for an urgent review of the 'exclusively defence-oriented policy' on 20 June 2003.⁶⁸

The statement called for the government to change the interpretation of the Constitution so that the SDF could have minimum capability to attack bases of the enemy if attacks against Japan are imminent. It also urges the government to launch a study in which cases exercising the right of the collective self-defence is allowed under the Constitution.

It seems difficult for Tokyo to maintain 'the exclusively defence-oriented policy' that military force cannot be exercised until armed attack is initiated⁶⁹, and at the same time to defend the country against Pyongyang 's threat of the mis siles.

In fact, the Director General of Japan Defence Agency Shigeru Ishiba said in the Budget Committee of the House of Representatives on 24 January 2003 that it would not be unconstitutional to make a pre-emptive attack on the launch site, if North Korea were to about launch a missile at Japan.⁷⁰ He also revealed that Pyongyang's *Nodong* missile could reach Japan in 'from seven or eight minutes to ten and a few minutes after firing,'

⁶⁸ Senshu Boei nado Minaosi Motomeru Kinkyu Seimei (Urgent Statement for Review on Exclusively Defence - Oriented Policy), Asahi Shimbun, 21 June, 2003,

⁶⁹ Boeicho (Japan Defence Agency), *Heisei 14 Nendo Boei Hakusho (Defence of Japan 2002)*, Tokyo, Zaimusho (Ministry of Finance), 2002. pp.87-88.

⁷⁰ Kita Misairu Hasshamae demo Hangeki Kano (Attack possible before Missile Firing of the North), Yomiuri Shimbun, 25 January, 2003,

according to the analysis of JDA.⁷¹

Furthermore, the director general said in a Fuji TV interview on 30 March 2003 show that such pre-emptive strike abilities are entrusted to the U.S. military, however that correctness of the policy should be examined.⁷²

In addition, Deputy Chief Cabinet Secretary Shinzo Abe followed suit by saying that ‘it would be natural for us to debate the scope of defence Japan should have based on our defence-oriented policy, given advancing weapons technology, tactics and strategy’ in the same TV show.⁷³

Prime Minister Koizumi said his government adheres to the exclusively defence-oriented policy and that will have no idea to have capabilities for a pre-emptive strike, although he is aware there is an argument to do so.⁷⁴

However, it is necessary for Tokyo to design a strategy how to defend the country against the North’s threats of missiles within the framework of the exclusively defence-oriented policy, which is apparently an uneasy task.

Three non-Nuclear Principles

The major opposition party DPJ’s shadow minister of defence, Mr. Maehara and his counterpart of LDP, Mr. Kyuma agreed that possession of intercontinental ballistic missiles goes beyond the scope of self-defence, and flatly denied suggestions that Japan would adopt nuclear weapons.⁷⁵ They said Japan would rely on the U.S. for offence capabilities of that type.

⁷¹ Ibid.,

⁷² Strengthening military is worth discussing: Abe, The Japan Times, 31 March, 2003, ;Japan Today (2003). Pre-emptive strike on N Korea not unconstitutional: Ishiba. www.japantoday.com/e/?content=news&id=254791. Downloaded 31 March.

⁷³ Strengthening military is worth discussing: Abe, The Japan Times, 31 March, 2003, ;Tekikichi Kogeki Noryoku Hoyu Giron ha Tozen (Discussion Natural: Pre-Emptive Strike Capabilities), Sankei Shimbun, 31 March, 2003,

⁷⁴ Jietai no Tekikichi Kogeki Noryoku ni Hiteiteki Kenkai (Negative to Capability for Pre-emptive Strike), Asahi Shimbun, 28 March, 2003,

⁷⁵ Shimoyachi, N., DPJ politician seeks more effective war contingency plan, The Japan Times, 29 May, 2003,

‘The three non-Nuclear principles’ are widely seen as the symbols of Tokyo’s pacifism of so called ‘nuclear allergy’ or ‘nuclear taboo’ since the country’s defeat in World War II with the U.S. bombing of Hiroshima and Nagasaki - the only time atomic weapons have been used in a conflict, killing millions of civilians in a few seconds. The principles were first announced by then Prime Minister Eisaku Sato in December 1967 and adopted a resolution pledging to confirm to the principles in a plenary session of the House of the Representatives in November 1971.

Despite the government’s adherence of the principles and the agreement of both politicians, the principles have been challenged in a new circumstance of the post-Cold War era, especially by nuclear threats of North Korea or by rising power of nuclear China.

In fact, Mr. Yasuo Fukuda, the chief cabinet secretary of the Koizumi government, told reporters on 31 May 2002 on an off-the-record basis, ‘the (non-nuclear) principles are just like the Constitution. But in the face of calls to amend the Constitution, amendment of the principles is also likely.’⁷⁶

Amid a wave of criticism, Fukuda later told a Diet panel on 10 June 2003 that the government has no intention of abandoning the three principles of not possessing, manufacturing or allowing nuclear arms on its soil, in order to calm down the uproar.⁷⁷ Prime Minister Koizumi also stressed in the same session that his administration adhere to the decades-old non-nuclear principles.⁷⁸ The Koizumi government was particularly embarrassed by the timing of the controversy, because Mr. Koizumi was in South Korea attending the opening ceremony of the World Cup as a co-host, and the foreign minister was calling upon India and Pakistan to pledge not to use

⁷⁶ Seifu Shuno, Hikaku 3 Gensoku no Minaoshi ni Genkyu (Review on the Non-Nuclear Principles likely - Senior Government Official), Asahi Shimbun, 1 June, 2002,

⁷⁷ Non-nuclear principles ton stay: Fukuda, The Japan Times, 11 June, 2002,

⁷⁸ Ibid.,

nuclear weapons against each other.⁷⁹

Furthermore, an influential opposition leader of the Liberal Party, Mr. Ichiro Ozawa, criticized China's rapid military build-up in his speech on 6 April 2002, and referred to the potentiality of Japan's becoming a nuclear power.⁸⁰ He said 'if China gets too inflated, the Japanese people will become hysterical in response. We have plenty of plutonium in our nuclear power plants, so it is possible for us to produce 3000 to 4000 nuclear warheads.'⁸¹

The remarks were apparently alarmed by the rising power of China and Pyongyang's unpredictable nuclear threats and anxious about the effectiveness of security guarantees from the U.S. However, Tokyo has not successfully shown its own strategy to cope with these problems so far.

4. Conclusion

In response to intensified threats by North Korea, Japan has transformed its security policy in terms of strengthening Japan-U.S. security cooperation in the regional security and smoothing operations of the SDF within the territory of Japan through the empowered government at the time of contingency. Although three limitations of Japanese Security Policy, namely restriction of the exercise of the right of collective self-defence, 'exclusively defence-oriented policy' and 'three non-nuclear policy' have not been reviewed yet, broad discussion on the limitations has been intensified. The majority of policy-makers including the opposition are clearly aware of those issues that need to be addressed in order to implement an effective security policy.

⁷⁹ French, H., Nuclear Arms Taboo is Challenged in Japan, The New York Times, 9 June, 2002,

⁸⁰ Nihon niha Kakubuso no Gijutsuryoku aru to Chugoku Kensei (Japan has Technology to arm Nuclear, alarming China), Asahi Shimbun, 7 April, 2002,

⁸¹ Ibid., ;French, H., Nuclear Arms Taboo is Challenged in Japan, The New York Times, 9 June, 2002,

Amid the nuclear threats by Pyongyang, Japan will at first be confronted with the issue over the exercise of the right of collective self-defence in the near future either by changing the interpretation of the Constitution or by amending the Constitution, so that Tokyo could prepare for the worst scenario in the Korean Peninsula Crisis.

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