

History of Legislation on the Transportation and Rescue of Japanese Nationals Overseas*

Masanobu MATSUURA

Abstract

With the recent increase in movement of Japanese citizens overseas, the rescue and transportation of Japanese nationals overseas in the event of an emergency have come to the fore as policy concerns. This study examined the history of legislation on issues relating to the transportation and rescue of Japanese nationals overseas and analyzed whether the current legislative framework would enable the Japanese government to adequately protect the lives and property of Japanese citizens abroad. Since the Cold War, the Japanese government has adapted its policy and established legislation on the transportation and rescue of Japanese nationals overseas in response to changes in the prevailing security landscape, the United States (US)-Japan alliance, and domestic public opinion. This can be seen in developments such as the Treaty of Mutual Cooperation and Security between the US and Japan (US-Japan Security Treaty), the Guidelines for Japan-US Defense Cooperation, the Iran-Iraq War, the North Korean nuclear crisis (1993-1994), and the Japan-US Joint Declaration on Security: Alliance for the 21st Century. In 2015, following the adoption of Japan's Legislation for Peace and Security, Article 84, Section 3 of the Self-Defense Forces Law on the "rescue of Japanese nationals abroad and others," which enables Japanese nationals at risk of life or limb to be guarded or rescued, was newly established in addition to Article 84, Section 4 on the "transportation of Japanese nationals abroad and others." However, since the "three conditions" that must be met if measures to rescue Japanese nationals overseas and others are to be applied are more stringent than those of other countries, responding to real security challenges continues to prove difficult for the Japanese government. Thus, under the current legal system centered on non-combatant evacuation operations by the Japan Self-Defense Forces, it would be difficult to successfully rescue and transport Japanese nationals overseas, not only in cases where the number of individuals affected was relatively low but also in the event of an emergency on the Korean Peninsula or around Taiwan in which more people were involved.

Keywords : transportation, rescue of Japanese nationals, US-Japan alliance, non-combatant evacuation operations (NEO)

1 Introduction

In August 2021, amid the growing unrest in

Afghanistan, the Japanese government dispatched the Self-Defense Forces (SDF) to evacuate civilians from the country. The SDF's mission was to rescue approximately

500 people, including Japanese nationals overseas as well as the Afghan staff of the Japanese embassy and the Afghanistan Office of the Japan International Cooperation Agency (JICA), along with their families. Yet, the government later opted to abandon its effort to rescue Japanese citizens from Afghanistan, citing the worsening situation on ground.

Though the western powers managed, albeit with considerable difficulty, to evacuate their citizens and some Afghans and South Korea successfully lifted out 390 local personnel, Japan failed to rescue its own nationals and others. For Japanese diplomacy, there will be a heavy price to pay for this in humanitarian terms. Beyond Afghanistan, issues around non-combatant evacuation operations (NEOs) to rescue and transport Japanese civilians stationed overseas have become a key policy issue in recent years. Approximately 86,000 Japanese nationals live on the Korean Peninsula, which is of great importance to Japan in geopolitical and geo-economic terms.¹ If an emergency were to occur there, the impact would far exceed that of events in Afghanistan.

With little progress expected in nuclear talks with North Korea, as the risk of such a crisis lingers, would Japan be able to evacuate and rescue Japanese nationals under the current legal system and within the framework of the United States (US)–Japan alliance? Could the Japan Self-Defense Forces (JSDF) exercise its capabilities sufficiently in regard to NEOs and other international humanitarian affairs? If it cannot respond to such challenges, what is the problem, and what course of action should Japan take going forward? This article considers the history of legislation around Japanese NEOs, with an eye on the recently much-discussed issue of a potential crisis on the Korean Peninsula.

2 Emergence and Limitations of Japanese Studies on Potential Emergencies

2.1 Revision of the US–Japan Security Treaty and Secret Study of Potential Emergencies

When the Treaty of Mutual Cooperation and Security between the US and Japan (US–Japan Security Treaty) was signed in 1960, Japan and the US agreed on a system of “prior consultation.” Consequently, the asymmetric dimension of the previous security treaty was reduced, placing Japan and the US on a more equal footing than in the past. This resulted in profound changes not only in Japan’s self-defense but also in the way Japan might respond to a crisis in the region.

Of particular importance was how the US sought prior approval from the Japanese government in cases where its military facilities in Japan were used to deploy troops for combat operations during conflicts in regions that were not directly linked to Japan. Yet, as US forces in Japan upgraded their armaments and facilities, Japan and the US concluded on a secret pact to exempt actions by US forces in Japan from prior consultation,² and the two countries developed an understanding that missions could be carried out in response to situations in the region from US military facilities in Japan. Thus, the system of prior consultation that was intended to give Japan a voice and guarantee an equal partnership did not function adequately. It was clear that for the US, the principal objective of the military bases in Japan when responding to situations in the region was directly linked to the prospect of a crisis in Korea.³ In this relationship with its ally, the SDF came to recognize the need for fuller contingency studies with an eye to a potential crisis on the Korean Peninsula.

In 1963, three years after the US–Japan Security Treaty was revised, the SDF’s Joint Staff Office secretly began a study called the General Defense Operations Study of 1963, otherwise known as the Three Arrows Study (*Mitsuya Kenkyu*).⁴ The Three Arrows Study, which broached the contingency of all-out war on the Korean Peninsula, anticipated tensions escalating from an uprising of South Korean forces. The study

went on to envisage a scenario wherein, as US forces in South Korea worked to suppress the uprising there, a Communist army led by North Korea would cross the Military Demarcation Line and mount an armed invasion of Japan's western region. In fact, just two years before the research began, a military coup led by Park Chung-hee had been carried out in South Korea, and political unrest in the South was a factor leading to the emergence of this Japanese study on the possibility of an emergency in Korea.

2.2 The Three Arrows Study as a Political Weapon

The objective of the Three Arrows Study was to clarify requests made by the US forces in Japan to the JSDF and to develop materials that could be used to advance specific measures necessary for defense.⁵ At the time, diplomatic relations between Japan and South Korea had not yet been normalized, and apart from some journalists, barely any Japanese nationals lived in Korea. Therefore, the Three Arrows Study was a military wargame that did not need to consider the transportation or rescue of Japanese nationals in Korea.

However, in the discourse space of 1960s Japan, where the collective memory of the World War II was still fresh and socialistically minded reformist intellectuals dominated the discussion, the Three Arrows Study failed to win the support of the Japanese public. The study was brought to light in 1965, when part of a top-secret document on the Three Arrows Study was passed to Haruo Okada of the Japan Socialist Party. The existence of the Three Arrows Study was then quickly politicized in the Japanese parliament and became a weapon of choice to attack the first Eisaku Sato cabinet during its early days.

In the Diet, Okada scathingly criticized the JSDF for inappropriately intervening in a political matter that ought to have been decided in cabinet meetings or in the Diet.⁶ Considering the state of Japanese society in the 1960s, the Three Arrows Study was indeed inappropriate in its framing of the crisis and the way

in which its questions were posed. Yet, given that actions by US forces in Japan in response to situations in the region were exempted from prior consultation, as mentioned above, it is also true that the study was urgently needed in military strategic terms, not least in its focus on the overall operation of the SDF in the event of an emergency in Korea.

Nevertheless, shortly after his appointment, Prime Minister Sato raised the issue of the politicized Three Arrows Study and sought to bring closure to the issue through the resignation of Japan Defense Agency Director General Jun'ya Koizumi and the dismissal of 26 agency officials.⁷ Out of all this arose a sense that for the Diet to even discuss a potential emergency in Korea was akin to espousing or glorifying war and that the study of such contingencies within Japan was considered taboo.

3 Changes in the Strategic Environment Around Japan—US Studies on Potential Emergencies

3.1 US Détente and South Korean Concerns

In the late 1960s, when it became apparent that the US was losing its overwhelming economic and military dominance, President Nixon and Secretary of State Kissinger moved to downsize the country's commitments to its allies and improve relations with China and the Soviet Union through a new policy of "détente." The US deemphasized the ideological goals of the Cold War, accepted limits on its own power, and scaled back its strategic goals. While détente saw the US pledge to continue to uphold its commitments to its allies and promise to fulfill its defense obligations in the event that the freedom of an ally was threatened by a nuclear power, where other kinds of attacks were concerned, allies were to have primary responsibility for their own defense.⁸

Although this drive toward détente had already emerged in negotiations over the reversion of Okinawa to Japan, the relaxation of tensions with the major

powers of Russia and China did not necessarily proceed hand-in-hand with the easing of tensions in the East Asia region. In fact, when Japan's policy for Okinawa of "no nukes and parity with mainland Japan" became clear as the talks progressed, South Korea became increasingly concerned that the military bases in Okinawa would no longer function well, leaving South Korea "abandoned." Therefore, Park Chung-hee's government urged both Japan and the US to consider South Korea's predicament. In the light of military provocation by North Korea and isolationist tendencies on the part of the US, South Korea considered that the form of reversion indicated by Japan would pose a major problem for its own security. At that time, Prime Minister Chung Il-kwon, ally and confidant of President Park, declared that if the reversion of Okinawa was unavoidable, South Korea would be ready and willing to provide new bases for the US military.⁹

This led the Japanese and US governments to establish the "Korea Clause," which offered the assurance that "the security of the Republic of Korea is essential to Japan's own security" during a 1969 summit meeting between Nixon and Japanese Prime Minister Sato. Japan and the US thereafter sought to allay South Korean fears by repeatedly reaffirming this clause, as well as a "new Korea Clause" stating that "peace on the Korean Peninsula . . . is necessary for peace and security in East Asia, including in Japan," in joint statements of summit meetings through the Cold War period.¹⁰

3.2 Study of Potential Emergencies Stalls

The increasing pivot away from Asia on the part of the US that continued through the early 1970s, coupled with heightened expectations induced by Japan's economic growth in an expanded role for the JSDF, brought the Japanese government to recognize the need for studies on potential emergencies. In a 1977 cabinet meeting, Prime Minister Takeo Fukuda instructed the Japan Defense Agency and National

Defense Council to begin investigations on (1) studies on legislation for potential emergencies, (2) studies on integrated defense, and (3) the development of a civil defense system. Following this, in August 1977, JDA Director General Asao Mihara directed the study scope to focus only on legislative issues concerning the smooth and effective fulfillment of duties by the JSDF in the event of a situation in which defense forces were ordered to mobilize.¹¹

After the Guidelines for Japan-US Defense Cooperation (the "1978 Guidelines") were approved in 1978, Japan and the US began in earnest to conduct studies on bilateral defense planning and interoperability in preparation for attacks against Japan itself or an external emergency in the region and for the protection of sea lanes of communication (SLOC). However, the sole focus of these changes in the strategic environment around contingency studies in Japan and between Japan and the US was to be ready to prevent an invasion or respond in the event of an armed attack against Japan. In other words, this work was not developed into official studies of contingencies external to Japan or, most crucially, an emergency on the Korean Peninsula.

From a diplomatic perspective, the Japanese government at this time hoped to circumvent pressure from the US to expand the role of the SDF by restricting the focus of discussion to matters concerning the defense of Japan, as stipulated in Article 5 of the security treaty; simply put, the Japanese public was still highly skeptical about the SDF. Ultimately, contingencies in the Far East, external to Japan—Article 6 of the security treaty—remained off the table, and the transportation of Japanese nationals overseas (TJNO) in the event of an emergency was not discussed.¹²

In short, from the postwar years until the 1980s, a discussion was developed on potential emergencies that Japan might face, in conjunction with changes in the way the US-Japan alliance operated; however, there was no official effort to promote studies focusing

on a crisis in Korea, and consequently, no progress in discussions around NEO.

Issues concerning the transportation and rescue of Japanese nationals overseas were not actively discussed by the Japanese Ministry of Foreign Affairs, the department in charge of Rescue of Japanese Nationals overseas (RJNO). According to the former Japanese ambassador to Peru, Morihisa Aoki, who was captured by terrorists during the 1996 Japanese embassy hostage crisis, activities to evacuate and repatriate Japanese nationals overseas were not considered the responsibility of the Ministry of Foreign Affairs until the late 1980s. Indeed, it was not until 1989 that the Division for the Protection of Japanese Nationals Overseas was established in the Consular and Migration Affairs Department of the Ministry of Foreign Affairs.¹³

As seen, discussions on the development of legislation around RJNO issues did not arise from the context of the US–Japan alliance or this body of study on potential emergencies. Moreover, issues concerning RJNO were a very low priority for the Japanese government of the day. Consequently, no progress was made in the development of legislation on TJNO and RJNO.

4 Studies on a Potential Emergency on the Korean Peninsula and Legislation for TJNO

4.1 TJNO and the Iran–Iraq War

When, then, did the Japanese government come to recognize RJNO as a policy issue? It comes as no surprise that the development of legislation for TJNO and RJNO has changed in response to tangible security threats. Within Japan, it was the Iran–Iraq War that compelled a wider recognition of the need to address TJNO issues in anticipation of a potential emergency.

Until then, whenever the need to evacuate Japanese nationals arose, the Japanese government would respond by urging Japanese citizens to evacuate of

their own accord, on scheduled commercial flights, or by chartering civilian aircraft where this was not possible. In other words, the task of rescuing Japanese nationals, which should have been undertaken by the government, was left to the private sector.

During the Iran–Iraq War, however, it proved difficult to coordinate rescue operations with civil aviation. Difficulties reached a climax in 1985, when the Iraqi military designated the whole Iranian airspace as a warzone, at which time the Japanese government approached Japan Airlines to dispatch planes but nevertheless failed to arrange the pullout amid criticism from the labor union over the safety of the crew. Japan did not have a system similar to that of the Civil Reserve Air Fleet in the US that would enable the government to mobilize civilian aircrafts in the event of an emergency, leaving the government with no choice but to request cooperation on a voluntary basis.

Facing this reality, Prime Minister Kaifu Toshiki made arrangements through a decision of the State Aircraft Investigation Committee in 1991 to utilize government aircrafts previously used to transport the prime minister and other dignitaries, where necessary, in transportation missions related to international relief activities, international peacekeeping assignments, and Japanese nationals overseas. In 1992, a bill to revise the Self-Defense Forces Law was submitted to the National Diet. Yet, since the proposed revision was a policy issue that was also connected to the overseas deployment of the SDF, debate continued for longer than expected.¹⁴ For example, Kurihara Kimiko of the Japan Socialist Party urged the government to abandon the bill on the grounds that it was “even more dangerous than the PKO Law.”¹⁵

4.2 Confluence of RJNO Issues and the First North Korean Nuclear Crisis

In the Diet, legislation that would enable the transportation essential to RJNO was in a state of deadlock, and the likelihood that Japanese nationals

overseas could be rescued during an emergency situation was lower still. However, geopolitical risks were increasing in East Asia, and circumstances around RJNO issues began to change with increasing rapidity.

In March 1993, North Korea unilaterally declared its withdrawal from the Nuclear Non-Proliferation Treaty before successfully testing its "Rodong-1" missile in May of that year, creating a new threat not only of nuclear development but of nuclear missiles. Thus came the "first North Korean nuclear crisis," which led to instant tension between North Korea and the US.

Despite this sudden worsening of the situation in the region, the Japanese government was initially slow to apply specific measures. It was around this time that the "1955 System," which had remained in place throughout the postwar era, collapsed, throwing the country's politics into disarray. When a motion of no-confidence against Prime Minister Miyazawa Kiichi's cabinet was approved in June 1993, the House of Representatives was dissolved. In the general election that followed in July, the Liberal Democratic Party (LDP), which had enjoyed one-party rule since 1955, failed to secure a majority, culminating in the formation of the Hosokawa Cabinet, a non-LDP coalition of eight democratic reform parties: the Japan Socialist Party, Japan Renewal Party, Komeito, Japan New Party, Democratic Socialist Party, New Party Sakigake, Socialist Democratic Federation, and the Democratic Reform Party in the House of Councillors.¹⁶ Formed in August 1993, the Hosokawa government initially lacked a sense of crisis over the various problems around assistance for the US and the transportation and rescue of Japanese nationals in Korea and did not even encourage the JSDF to consider plans for responding to a potential emergency.¹⁷

Amid domestic turmoil in Japan, the JSDF began its own efforts through the Joint Staff Office to revise the Joint Defense Plan and address other specific tasks under instructions from the Chief of Staff of the Joint Staff Council (JSC). The aim of these efforts was to

consider what kinds of orders the government could give the SDF in relation to national defense, cooperation with the US, and humanitarian activities and whether those orders would be constitutionally and legally permissible. The investigations focused on information gathering, cautionary surveillance, responding to illegal behavior and the like, dealing with refugees, rescuing Japanese nationals overseas, search and rescue, and minesweeping.¹⁸ This was the first instance in which transportation and rescue activities were linked to a potential crisis on the Korean Peninsula.

Meanwhile, the JSC, having studied the issue of NEOs during a potential emergency in Korea, was aware that the lack of a legal basis was problematic. Chief of Staff of the JSC, Nishimoto Tetsuya, who led the proceedings, recalled that the JSC moved forward with concrete studies into the ports and airports as well as aircrafts and vessels that would be used, after reporting to the administrative vice minister that they would study scenarios in which the SDF was instructed to mobilize even in the absence of a legal basis.¹⁹

As tensions between North Korea and the US approached a climax, the JSC studied eventualities in which the US might request support under Article 6 of the US-Japan Security Treaty. In early February 1994, the two countries conducted a bilateral command post exercise (CPX), where they focused on information gathering, strengthening of the cautionary surveillance system, rear-echelon support for the US forces, counterterrorism, and support in securing US bases in the event of a crisis on the Korean Peninsula. At this point, the level of cooperation remained one in which each country was developing its own operation plans.²⁰

However, after the bilateral CPX, the headquarters of the US Forces in Japan and the JSC began studying specific areas of mutual cooperation. During these discussions, Japanese officials were informed that US forces in South Korea would be chiefly responsible for dealing with the situation on the Korean Peninsula, while US forces in Japan would play a strictly

supportive role centered on rear-echelon support and NEOs.²¹ When carrying out NEOs, it was anticipated that US forces in Japan would use the Yokota Base for military aircrafts and Fukuoka Airport for civil aviation, while the SDF would be required to provide support such as accommodation, food supplies, medical assistance, and transportation. In March 1994, a military seminar was held to discuss the contingency of a conflict on the Korean Peninsula; US officials presented detailed information based on a timeline for the deployment of military forces, including the identification of several tens of thousands of non-combatants and requirements for ground transportation and storage.²²

4.3 William Perry's Visit to Japan and the Coordinated Joint Outline Emergency Plan

Despite granting officials from the International Atomic Energy Agency entry to its nuclear reprocessing facilities in Yongbyon in March 1994, North Korea ultimately restricted the activity of weapons inspectors and refused to allow the sampling that had been agreed upon. North Korea's nuclear provocation intensified when in that same month, North Korean Chief Delegate Park Young-soo threatened to turn Seoul into an "inferno" in response to comments by the South Korean Chief Delegate on the possibility of sanctions over the nuclear inspections; this was followed in May by the removal of spent nuclear fuel rods from the Yongbyon reactor.

Shifting its line, the Clinton government began to consider specific military action as an option to curb North Korea's nuclear development.²³ At that time, Secretary of Defense William J. Perry examined the content of military support plans with top military advisor John Shalikashvili (Chairman of the Joint Chiefs of Staff) and General Gary Luck (Commander of the US Forces in Korea) and established a policy to strengthen forward deployment capabilities in Northeast Asia in readiness for a conflict on the Korean Peninsula. The

plan, which was based on a report compiled by Luck, aimed to boost the number of troops stationed in South Korea by several tens of thousands based on a judgment that the US would need up to 400,000 troops in the event of a "Second Korean War."²⁴

This sudden reinforcement of US troops risked triggering a pre-emptive strike by North Korea. Therefore, the US had to be ready to respond should North Korea launch a rapid invasion of the South. Attention quickly turned to how Japan would respond to this situation as an ally of the US. The gist of the US contingency plan for North Korea was to send a large number of aircrafts, additional forces, and the material needed to sustain the troops to North Korea via Japan in stages, utilizing all US military facilities in Japan from Aomori in the north to Kadena in the south. Although the US military was permitted to use its bases in Japan under Article 6 prior to an armed strike against Japan, it was judged that in an actual emergency, the US would need to explain the situation to the Japanese government and gain its full support. Thus, in April 1994, Secretary Perry made an urgent visit to Japan to obtain Japanese approval on this matter.²⁵ Secretary Perry's move to plan for a contingency on the Korean Peninsula was the juncture at which independent studies on potential emergencies by Japan and the US evolved into a Coordinated Joint Outline Emergency Plan.

The US approached the Japan Defense Agency about the possibility of imposing a sea blockade to block North Korean maritime transport. According to testimony by Japan's Deputy Chief Cabinet Secretary Ishihara Nobuo, it was at this point that the Japanese government first became aware that an approach would need to be developed on Japanese cooperation under the US-Japan Security Treaty to deal with the kind of situation in which a sea blockade might be imposed. Thus, Ishihara instructed officials from the foreign affairs and defense authorities to arrange discussions. For example, would it be a possible interpretation of

the Constitution for Japan to provide supplies to US forces? Moreover, since the use of a sea blockade would create a situation akin to war with North Korea, the question arose of whether active involvement of the SDF in operations might contravene constitutional provisions prohibiting Japan from exercising its right to collective self-defense.²⁶

4.4 Transportation of Japanese Nationals in Korea and Amendment of the Self-Defense Forces Law

To what extent did the discussions between military officials of Japan and the US develop to include concrete discussion of the issue of transportation of Japanese nationals in Korea? In 1994, there were 25,514 American and 16,783 Japanese short-term residents in South Korea.²⁷ Although Deputy Chief Cabinet Secretary Ishihara led an examination of the issue of RJNO for the Japanese government, it was legally impossible to dispatch transport aircrafts of the Air Self-Defense Force (ASDF). Furthermore, since the government lacked the legal basis required to commandeer civil aircrafts, it was forced to request support in the form of NEOs conducted by the US military. In the spring of 1994, the Japanese Embassy in Seoul requested support from US forces in South Korea to evacuate approximately 9,000 Japanese nationals from the country; however, this request was denied.²⁸ In short, NEOs by the US were in principle intended for US nationals only. During the crisis, the US was unmotivated to cooperate regarding the rescue of Japanese nationals in Korea, despite its alliance with Japan.

So what kind of challenges did the first North Korean nuclear crisis pose for the governments of Japan and the US? First, there were lessons to be learned on the need for legislation around the SDF's provision of rear-echelon support, including transportation and replenishment of supplies, which was an essential part of the US military action plan. Second, the Japanese government grew increasingly concerned about having

to entrust the transportation of large numbers of Japanese citizens living in South Korea upon private operators, along with its current incapacity to rescue them.

In relation to studies on a potential emergency in Korea, which had progressed in the absence of a legal basis, Article 100, Section 8 was added to the Self-Defense Forces Law after an amendment bill cleared the National Diet in November 1994. This enabled the SDF to provide transport for Japanese and non-Japanese civilians during a natural disaster, disturbance, or other emergencies abroad, in the event that the Minister of Defense received a request from the Minister of Foreign Affairs for the transportation of Japanese nationals at risk of life or limb. Transportation was permitted only to the extent that it did not hinder the performance of other missions by the SDF and where the safety of the transportation was deemed secure.²⁹

5 Development of Studies on NEOs and a Potential Emergency in Korea

5.1 NEOs and the Japan-US Joint Declaration on Security

In 1996, Prime Minister Hashimoto Ryutaro and President Clinton announced the Japan-US Joint Declaration on Security: Alliance for the 21st Century. The intent of the joint declaration was to respond to the changing nature of the security environment and the US-Japan alliance after the end of the Cold War. The declaration also saw Japan expand the scope of its security framework beyond its relations with the US and the Far East to encompass the wider Asia-Pacific region.

With the Joint Declaration in place, the two governments began revising the "1978 Guidelines,"³⁰ whose primary concern was a Soviet invasion of Japan. This led to joint studies on Japan-US defense cooperation that envisaged conflicts in the Far East, including joint use of SDF bases with US forces. In

Japan, Prime Minister Hashimoto instructed the Ministry of Foreign Affairs, the Defense Agency, and other relevant departments to consider emergency countermeasures, expressing his wish for a “thorough and realistic examination of specific scenarios.”³¹

Then-Chief Cabinet Secretary Seiroku Kajiyama commented on Japan’s response to a potential incident in Korea thus: “We must come up with a series of concrete plans that establish how far we can go.” Further, in a seminar held by the Japan Federation of Employers’ Associations (Nikkeiren), Kajiyama spoke of “false refugees” and discord between North and South Korean resident communities in Japan in relation to a potential crisis in Korea, confirming the government’s efforts to plan for specific contingencies.³² Though Kajiyama’s remarks were considered problematic by opposition parties in the Diet,³³ the issue did not lead to an argument as the Three Arrows Study had in the 1960s. This was related to the fact that awareness of the North Korean threat was stronger among the Japanese public than it had been three decades earlier, due to recurrent military provocation by the North and the prominence of the abduction issue.

Prime Minister Hashimoto, who announced the Japan-US Joint Declaration on Security, set a direction for Japan-US defense cooperation on issues such as RJNO, measures for dealing with refugees, protection of SLOC, and rear-echelon support for US forces during a meeting of LDP officials. Japan and the US held a meeting for foreign affairs and defense officials in Hawaii and stepped up efforts to revise existing guidelines. In the 1997 Guidelines for Japan-US Defense Cooperation (the 1997 Guidelines), the two countries agreed to cooperate on measures for humanitarian relief operations and refugees, use of facilities by US forces, rear area support for US forces, surveillance, minesweeping, and marine traffic coordination/airspace control in “situations in areas surrounding Japan.” Discussions on plans for rescuing Japanese nationals in Korea during an emergency

were also incorporated for the first time, and specific plans were coordinated between Japan and the US for evacuating non-combatants.

5.2 The SDF Takes Part in RIMPAC and the US Proposes a “Secret Agreement”

As this unfolded, Japan’s Maritime Self-Defense Force (MSDF) made the decision to send senior personnel as observers to the 1998 Rim of the Pacific Exercise (RIMPAC 1998) to create its own manual for US military NEO exercises based on the new Japan-US guidelines enacted the previous year. An MSDF official who participated in RIMPAC 98 said, “There were many things we learned for the first time by observing the way the US military operates based on experience; the reality is that if we were suddenly told to rescue Japanese nationals, without any help, we would be almost clueless,” suggesting that the SDF was continuing to fumble with the issue.³⁴

Around this time, the MSDF conducted a large-scale CPX to prepare for “situations in areas surrounding Japan.” The exercise simulated a southward invasion by North Korea, to which the ROK/US Combined Forces would respond and the Japanese National Diet would, upon issuing a declaration of emergency, mobilize the SDF. To evacuate Japanese nationals in Korea, the JS Osumi, a large transportation vessel, would depart for South Korea with escort vessels from Yokosuka and Maizuru Bases and other locations in Japan.³⁵

In 1999, US forces in South Korea conducted an exercise between Osan Air Base in South Korea and Fukuoka Airport in Japan, wherein military transport vessels were used to evacuate US non-combatants living in South Korea to US military bases in Japan. However, at this time, “although there was an offer from the US military to implement the exercises jointly between Japan and the US, as an agreement has not yet been concluded, this failed to materialize.”³⁶

Though the governments of Japan and the US had agreed to conclude on an agreement regarding the

issue of the transportation and rescue of Japanese nationals in Korea, differences in opinion remained regarding the manner in which the agreement should be concluded. The US sought a “secret agreement” to substantiate cooperation on the issue; yet, Japan rejected this idea, bringing negotiations to an abrupt halt.

Being involved in conflicts around the world and having a large number of allies, the US was concerned that concluding a unilateral agreement with Japan and publicizing its existence would encourage other countries to seek similar arrangements.³⁷ There was also some resentment that the lives of young Americans would have to be sacrificed to protect Japanese citizens. Constrained by its Constitution, Japan, on the contrary, continued to press for an open agreement to ensure the requisite approval of the National Diet. This divergence in views between the two parties hampered the progress of negotiations at this point. This resulted in growing concerns that Japan’s efforts to establish a plan of action for rescuing Japanese nationals in Korea, a major pillar of the guidelines, would be further delayed, along with the development of related laws.³⁸

Nevertheless, at the Japan–US “2+2” dialogue held in 2005, the countries continued deliberations through an examination of roles, missions, and capabilities, adding NEOs, for example, to the list of specific areas where cooperation was to be enhanced.³⁹ Cooperation was also expanded in various areas, including a joint civilian transport exercise at Iwakuni Base using Japanese and US transport aircraft and helicopters.

5.3 Establishment of Contingency Legislation and Legislation for Peace and Security

In 2003, Japan approved three laws governing its response to armed attacks, along with the Law Concerning Special Measures on Humanitarian and Reconstruction Assistance in Iraq (Iraq Special Measures Law), enabling the SDF to conduct rear-echelon support operations in non-combat areas.

Then, with the enactment of the Civil Protection Law (one of the seven contingency laws) in 2004—allocating responsibilities to the national government, local authorities, and civilians in the event of an emergency—the development of the legislative framework of readiness for an armed attack against Japan was almost complete.⁴⁰

Contingency legislation was finally completed during the leadership of Prime Minister Junichiro Koizumi (son of Junya Koizumi, who was forced to resign as Director General of the Japan Defense Agency following the disclosure of the Three Arrows Study in the 1960s) and Chief Cabinet Secretary Yasuo Fukuda (son of Prime Minister Takeo Fukuda, who promoted the study of contingencies in the 1970s).

In 2007, TJNO by the SDF was upgraded from a “secondary mission” to a “primary mission.”⁴¹ TJNO was thus positioned as a key operation in ensuring the security of Japanese citizens during potential conflicts overseas with large numbers of Japanese nationals visiting and residing abroad.

Further, in a 2014 Cabinet decision, the Japanese government concluded that the “Rescue of Japanese nationals is permitted under the Constitution as a ‘policing action’ based on the consent of the territorial state, provided the activities are conducted in the area within which the power of the territorial state is maintained.” Prerequisites for the deployment of the SDF were that (1) support activities would not be conducted in places where combat is actually taking place and (2) law and order would be maintained by the police or other authorities of the territorial state. The government was to decide on whether such circumstances would be guaranteed based on deliberations by the National Security Council of Japan, which was established the previous year. The logic here was to uphold the “defense-only” principle of the Japanese Constitution by stipulating the rescue of Japanese nationals as a police-like activity that does not involve “use of force.”⁴²

In 2015, Japan's Legislation for Peace and Security was passed by the Diet. This enabled the initiation of measures concerning the rescue and guarding of overseas Japanese nationals in danger of life or limb, in addition to the "transportation of Japanese nationals abroad and others" provided for in Article 84, Section 4 of the Self-Defense Forces Law. With regard to the "rescue" of Japanese nationals (Article 84, Section 3), the following stringent conditions were to apply based on the content of the Cabinet decision mentioned above:

- (1) Authorities authorized by the territorial state would maintain law and order in the area where the measures were to be carried out, and no combat would take place.
- (2) Consent of the territorial state involved would be obtained.
- (3) Cooperation would be expected between the SDF troops and the authorities of the territorial state to ensure that rescue measures be implemented as seamlessly and safely as possible in response to expected dangers.

In accordance with the passage of the legislation, the SDF enhanced its capabilities through various practice drills, which have been conducted jointly by all arms of the SDF, as close cooperation among the Ground, Maritime, and Air Self-Defense Forces is necessary for measures regarding the transport and rescue of Japanese nationals overseas. In 2017, the SDF conducted a drill in Djibouti to practice rescuing Japanese citizens aimed at enhancing its overseas deployment and operations capabilities and strengthening its cooperation with US forces.⁴³

Furthermore, along with the legislation, the SDF gradually acquired more experience in the area of transportation of overseas Japanese nationals. In 2004, the ASDF dispatched a C-130H transport aircraft to evacuate 10 Japanese citizens during the kidnapping

of Japanese and other foreigners in Iraq. In 2013, a government aircraft was dispatched to bring back seven Japanese nationals and the bodies of nine others following a hostage crisis in Algeria. Following the terrorist attack in Dhaka, Bangladesh, in 2016, the bodies of Japanese victims and their families were transported back to Japan on a government aircraft. During the deteriorating situation in South Sudan that same year, the ASDF transported four embassy staff members on a C-130H transport aircraft.⁴⁴ In the chaos that followed the collapse of the Ghani government in Afghanistan in 2021, the Japanese government transported non-Japanese citizens for the first time under Article 84, Section 4 (TJNO, etc.) of the Self-Defense Forces Law.

6 Conclusion

Is the Japanese legislative system for NEOs described above sufficient to meet the security challenges of today? The answer is "no." A host of legal issues have been exposed in relation to the transport and rescue of Japanese nationals overseas.

Under Article 84, Section 4 of the Self-Defense Forces Law, the SDF is not permitted to operate unless the safety of its transportation is ensured. During the NEOs in Afghanistan in August 2021, the Japanese government dispatched three SDF transport aircrafts to evacuate approximately 500 Afghan employees of the Japanese embassy and JICA, along with employees' families, to locations outside Afghanistan. However, the government then decided that the route to Kabul Airport, where Japanese nationals were gathering, was unsafe. As a result, Japanese nationals and Afghans who had worked with the Japanese government who wished to evacuate the country were forced to make their own way to the airport.

In the end, only one Japanese citizen was lifted out, and all their Afghan colleagues were left behind. Although another 14 Afghans managed to board

an SDF aircraft, these were individuals who were employed by the US; none of the intended targets of the operation managed to reach Kabul Airport. The case of Afghanistan exposes the fact that Japan's current legislative system, which assumes that civilians in regions where public safety deteriorates will evacuate of their own accord, is not suited to cope with the current security environment.

Moreover, these issues are not limited to Article 84, Section 4 of the Self-Defense Forces Law. The issue of "rescuing" Japanese nationals (Article 84, Section 3 of the Self-Defense Law) is even more committed and serious than that of transportation, with little likelihood that these rules could be applied were a crisis to occur. As seen, the three conditions contained in the law set a very high bar by global standards. For example, Japan could apply the law only when conditions were at a level defined as "stable" by the United Kingdom and France. In other words, Japan has no legal basis whatsoever for NEOs in conditions where public safety has deteriorated—the very conditions in which rescue and transportation operations are most needed. Government-led military support is required precisely because civilians overseas are unable to escape by themselves. In fact, the internal legal systems of other major powers are developed and applied to meet these standards.⁴⁵

The same can be said about the interpretation of international law. Among the major powers, the rescue of overseas nationals is placed in the same category as national defense, and the international criticism of efforts to rescue overseas citizens is avoided by clarifying the conditions for carrying out operations. In the long term, Japan must engage in constitutional debate and reinterpret international law with a view to subsume violations against Japanese nationals overseas within the scope of its right to self-defense.

1 South Korean Ministry of Justice (2020). Annual

Statistics on Foreigners Entering and Leaving the Country (in Korean).

- 2 Sakamoto, K. (2000). *Nichibei Domei no Kizuna* [The Bond of the Japan-US Alliance]. Tokyo: Yuhikaku, 139-280.
- 3 "Chosen Yuji no Mitsuyaku-bun Hakken" [Discovery of a Secret Pact on a Potential Emergency on the Korean Peninsula], *Asahi Shimbun*, 4 June 2008.
- 4 The Three Arrows Study took its name from the year in which the study was initiated; 1963, which in the Japanese calendar is the 38th year of the Showa era (the letters three and eight are read similarly to "three arrows"), as well as the idea of unifying the three self-defense forces of land, sea, and air, with reference to Mori Motonari's "lesson of the three arrows."
- 5 Fujiwara, A. (1987). *Nihon no Gunji-shi* [Japanese Military History] (Vol. 2, Postwar). Nippon Hyoronsha, 109-110; Kurokawa, Y. (2003). *Kindai Nihon no Gunji Senryaku Gaishi* [General History of Modern Japanese Military Strategy]. Tokyo: Fuyo Shobo, 257-258.
- 6 House of Representatives Budget Committee, "Proceedings of the 48th Diet Session," No. 17, 2 March 1965.
- 7 Goda, Y. (2002). *Sekai ni Manabe! Nihon no Yuji Hosei* [Learn from the World! Japan's Emergency Legislation]. Tokyo: Fuyodo Shuppan, 91.
- 8 Fukuda, T. (2006). "Nichibei Boei Kyoryoku ni okeru 3-tsu no Tenki" [Three Turning Points in Japan-US Defense], Reference, 146-147.
- 9 Choi, K. (2014). *Reisenki Nikkan Anzen Hosho Kankei no Keisei* [Formation of the Japan-South Korea Security Relationship During the Cold War]. Tokyo: Keio University Press, 76-78.
- 10 For interpretations of the "Korea Clause" and the "new Korea Clause" see Tsuchiyama, J. (2005). "Nichibei Domei to Nikkan Anzen Hosho Kyoryoku" [The Japan-US Alliance and Japan-South Korea Security Cooperation]. In H. Ohata and C. Moon

- (Eds.). *Nikkan Kokusai Seijigaku no Shinchihei* [New Horizons for Japan–ROK International Political Studies]. Tokyo: Keio University Press; Kurata, H.(2005). “Nichibeikan Anpo Teikei no Kigen: “Kankoku Joko” Zenshi no Kaishakuteki Saikento” [Origins of the Japan–US–South Korea Security Partnership: Interpretive Reexamination of the Prehistory to the “Korean Clause”]. In Joint Research Committee on Japanese–Korean History (Ed.). *Nikkan Rekishi Kyodo Kenkui Hokokusho* (Dai-1-ki) [Report on Joint Research on Japanese–Korean History (First Period), 3rd Subcommittee, Vol. 2.
- 11 Japanese Ministry of Defense.(1990). “White Paper on Defense,” 114-115; Goda, Y.(2002). *Sekai ni Manabe! Nihon no Yuji Hosei* [Learn from the World! Japan’s Emergency Legislation]. Tokyo: Fuyodo Shuppan, 100.
- 12 “Chiiki Antei e Sekinin Buntan” [Sharing the Responsibility for Regional Security], *Yomiuri Shimbun*, 14 September 1997.
- 13 Kadota, R.(2015). *Nihon, Haruka-nari* [Japan, Faraway]. Tokyo: PHP Institute, 382–384.
- 14 As explained below, the amendment was eventually added as Article 100, Section 8 of the Self-Defense Forces Law in November 1994.
- 15 “Proceedings of the 131st Diet Session, House of Councilors Cabinet Committee,” No. 5, 8 November 1994.
- 16 “Hi-Jimin Renritsu no Hosokawa Seiken” [The Non-LDP Coalition Hosokawa Cabinet]. *Asahi Shimbun*, 13 April 2011.
- 17 National Institute for Defense Studies (Ed.).(2010). “Nishimoto Tetsuya Oral History <Moto-Togo Bakuryocho>” [Oral History of Nishimoto Tetsuya <Former Chief of Staff, Joint Staff Council>](Vol. 2). 151-152, 157.
- 18 National Institute for Defense Studies (Ed.).(2010). 149-150.
- 19 National Institute for Defense Studies (Ed.).(2010). 151.
- 20 National Institute for Defense Studies (Ed.).(2010). 153.
- 21 National Institute for Defense Studies (Ed.).(2010). 158.
- 22 National Institute for Defense Studies (Ed.).(2010). 159.
- 23 Secretary of Defense Perry instructed General Shalikashvili to draw up a plan for a “surgical attack” on North Korea’s nuclear missile. Perry, W.(2015). *My Journey at the Nuclear Brink*. Redwood City: Stanford University Press, 103-106. Perry also testified that the US had been developing a plan to attack North Korea to the House of Representatives Committee on Foreign Affairs on January 18, 2007. Handa, S.(2014). *Nihon wa Senso o Suru no ka* [Will Japan Go to War?]. Tokyo: Iwanami Shoten, 136.
- 24 Perry, W.(2011). *In Search of A World with No Nuclear War*. Japanese translation by T. Sunohara. Tokyo: Nikkei Publishing Inc., 109.
- 25 Ibid, 110-111.
- 26 Mikuriya, T. & Watanabe, A.(1997). *Shusho Kantei no Ketsudan: Naikaku Kanbo Fukuchokan Ishihara Nobuo no 2600-nichi* [Decisions of the Prime Minister’s Residence: 2,600 Days of Deputy Chief Cabinet Secretary Ishihara Nobuo]. Tokyo: Chuokoron-sha, 141-143.
- 27 South Korean Ministry of Justice.(1994). “Annual Immigration Control Statistics”(FY 1994 edition). 222, 226.
- 28 “Kyokuto Yuji Guideline Minaoshi(5)Hojin Kyushutsu ya Nanmin Taisaku – Aitsugu Nanmon, Tezumari” [Review of Guidelines for a Potential Emergency in the Far East(5): Measures for Rescuing Japanese and Refugees–Ongoing Difficulties and Deadlock]. *Nihon Keizai Shimbun*, 25 February 1997.
- 29 Japan Defense Agency.(2004). “White Paper on Defense”. 419.
- 30 Consensus document between the governments

- of the US and Japan on the operation of the US–Japan Security Treaty concluded at a meeting of the Japan–US Security Consultative Committee, the highest legislative organization (September 23, 1997, New York). The guidelines set out how the two countries were to share military responsibility in responding to “armed attacks against Japan” and “situations in areas surrounding Japan.”
- 31 “Yuji Taio o Honkaku Kento” [Full-fledged Examination of Emergency Response]. *Yomiuri Shimbun*, 14 May 1996.
- 32 Nanasawa, A. (1999). “Guideline-ho Kanren (3)” [Matters Concerning the Guidelines Law, Part 3]. *Toki no Horei*, No. 1602, 34, Garyusha. “Yuji Taiou o Honkaku Kento” [Full-fledged Examination on Emergency Response], *Yomiuri Shimbun*, 14 May 1996.
- 33 “Shusen Kinenbi de Kakuto ga Danwa” [Each Party Talks on the Anniversary of the End of the War], *Yomiuri Shimbun*, 15 August 1996. “Chosen Yuji Hatsugen de Kajiyama Kanbo Chokan ga Chinsha” [Chief Cabinet Secretary Kajiyama Apologizes for Remarks on a Potential Emergency in Korea], *Yomiuri Shimbun*, 21 August 1996.
- 34 RIMPAC 98 Hawaii Kaiiki de Enshu [Exercises in the RIMPAC 98 Hawaiian Area], *Yomiuri Shimbun*, 28 July 1998.
- 35 Handa, S. Op. cit., 158.
- 36 “Fukuoka Kuko de Beigun Kunren Keikaku: Zaikanbeikokujin no Hinan, Chosen Yuji o Sotei” [Plan for a US Military Exercise at Fukuoka Airport: For an Evacuation of US Citizens in South Korea and Emergency in Korea], *Yomiuri Shimbun*, 20 March 1999. “Kaitei 40-nen Anpo no Kaidai (2) Guideline” [Security Challenges 40 Years After Treaty Revision (2) Guidelines], *Yomiuri Shimbun*, 24 May 2000. “Beigun Taihi Kunren Owaru” [US Military Evacuation Drill Finished], *Yomiuri Shimbun* (Western Edition), 29 March 1999.
- 37 “Kankoku Yuji ‘Hojin Taihi’ Beikan to Kyogi” [Deliberations with the US and South Korea on ‘Evacuation of Japanese’ during a Potential Emergency in Korea], *Yomiuri Shimbun*, 22 January 2003.
- 38 “Zaigai Hojin Kyushutsu no Boei Kyoryoku Bei, Himitsu Kyotei o Teian: Nihon wa Kyohi Taisei-zukuri Okure mo” [US Proposes a Secret Agreement for Defense Cooperation on Rescue of Japanese Abroad – Japan Rejects – Delays in Preparation Also Expected], *Yomiuri Shimbun*, 24 April 2000. “Bei Himitsu Kyotei Teian” [US Proposes Secret Agreement], *Yomiuri Shimbun*, 25 April 2000.
- 39 Japanese Ministry of Foreign Affairs. (2005). “US–Japan Alliance: Transformation and Realignment for the Future,” http://www.mofa.go.jp/mofaj/area/usa/hosho/henkaku_saihen.html; “29-nichi Happyo Sareta Zainichi Beigun Saihen Chukan Hokoku no Yoshi” [Japan-US Military Realignment Announced on the 29th, Summary of Interim Report], *Yomiuri Shimbun*, October 30 2005.
- 40 *Yomiuri Shimbun* Political News Department (Ed.). (2015). *Anzen Hosho Kanren-ho* [The Security Laws]. Tokyo: Miyama-sha, 192. Goda, Y. (2002). *Sekai ni Manabe! Nihon no Yuji Hosei* [Learn from the World! Japan’s Emergency Legislation]. Tokyo: Fuyodo Shuppan, 36. “Yuji Hosei ni Hantai Shomei: Zainichi Chosenjin Group” [Petition Against Contingency Legislation: Group of Koreans Residing in Japan]. *Asahi Shimbun*, 14 June 2004.
- 41 “Aratani Honrai Ninmu to Ichizukeru Katsudo” [Operations Positioned Anew as a Primary Mission], “Heisei 18-nenban Nippon no Boei: Boei Hakusho” [Defense of Japan 2006: Defense White Paper], 2006, 116.
- 42 *Yomiuri Shimbun* Political News Department (Ed.). (2015). *Anzen Hosho Kanren-ho* [The Security Laws]. Tokyo: Miyama-sha, 163; Suzuki, K. (2015). *Nihon no Anzen Hosho Nyumon* [The Handbook of

- Japan's Security]. Tokyo: Naigai Publishing, 139.
- 43 Japanese Ministry of Defense, "2018 White Paper on Defense," 339.
- 44 Japanese Ministry of Defense, "2020 White Paper on Defense," 290-291.
- 45 Matsuura, M. (2019). "Policy Research on Japanese Non-combatant Evacuation Operations (NEO) in a Korean Peninsula Crisis," *Journal of International Security*, 47(3), 2019, 92-109.

*This work was supported by JSPS KAKENHI Grant Number 19K13630

日本の在外邦人輸送・保護をめぐる法制度化の歴史

松浦正伸

要旨

近年、多数の邦人が海外に進出する中で、有事の際に、在外国民をいかに保護するのかという問題が政策争点として浮上している。そこで、本研究では、日本の在外邦人輸送・保護問題をめぐる法制度化の歴史を明らかにし、日本政府が、現在の法的枠組みの下で、在外邦人の生命・財産を適切に保護することができるのか分析した。冷戦期以降、日本政府は、日米安保改定、日米防衛協力のための指針、イラン・イラク戦争、第一次朝鮮半島核危機、日米安全保障条約共同宣言等に見られる通り、時々安全保障環境、日米同盟、国内世論の変化に応じて、在外邦人輸送・保護措置に関する政策を調整し法整備を進めてきた。2015年には、平和安保法制が可決したことを受けて、在外邦人等の輸送を可能にする自衛隊法第84条の4「在外邦人等の輸送措置」だけでなく、生命又は身体に危害が加えられるおそれがある在外邦人等について、警護や救出などを可能にする自衛隊法第84条の3「在外邦人等の保護措置」が新設された。だが、「在外邦人等の保護措置」の適用基準である3要件が諸外国と比較して厳格であることから、日本政府が現実の安全保障環境に十分対応することが困難な状況が続いている。以上のことから、自衛隊による非戦闘員退避活動をめぐる現在の法制度では、比較的少数の在外邦人輸送は勿論、朝鮮半島有事や台湾有事といった、より大規模な邦人輸送や保護を実現することは困難である。

キーワード：在外邦人輸送・保護、日米同盟、非戦闘員退避（NEO）

DOI: 10.15096 / UrbanManagement.1411