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by Maeda Tetsuo

From virtually the moment the ink dried on Japan's no-war Constitution of 1947, the United States and Japan's ruling party have sought to undermine the principle that the activities of Japan's Self-Defense Forces would be limited strictly to Japan's own defense. Maeda Tetsuo, a specialist on Japanese security, offers a detailed analysis of the threats to the Constitution that have intensified since September 11, 2001 with the intensification of efforts to mobilize the Self-Defense Forces both for regional policing and for direct support of U.S. war aims in the Middle East and Central Asia. The result, he concludes, is a fullscale military alliance with Japan preparing to undertake military actions at the U.S. behest in forthcoming wars. The article also analyzes the behavior of U.S. forces in Japan following 9-11, particularly the loss of Japanese sovereignty in U.S. bases. The article appeared in Gunshuku [Disarmament] 266 (December 2002): 6-11. This is the first of a series of articles on Japanese security and constitutional issues to be made available at Japan Focus.

A Security Relationship Poised for War

The September 11, 2001 attacks on the World Trade Center and the Pentagon put the Japan-U.S. security framework on a virtual wartime footing. Japan's support for U.S. retaliatory attacks on Afghanistan that began the following month offered the Japanese government an opportunity to press forward publicly its new national standard of "participating in foreign wars." Needless to say, we cannot ignore the baleful influence of the new category of "regional policing" (ryï¿½iki keibi) that has become an added factor in the government's ongoing program of constitutional sabotage since the "suspicious boat incident" that occurred on December 22, 2001 in the Southwestern seas off Kyushu, near Amami Oshima, in which Japanese Self-Defense Forces sank a suspected North Korean vessel. Nevertheless, the transition to war readiness has been caused primarily by "America's war." The atmosphere that pervades the Japan-U.S. security system has three main aspects:

1) The high state of combat readiness on U.S. bases in Japan that has put Article Six of the Japan-U.S. Security Treaty and the Japan-U.S. status of forces agreement on a wartime footing as well;

2) mobilization of Japan's Self-Defense Forces and the activities of those forces in support of the U.S. offensive in Afghanistan;

3) legalization of war readiness and the movement toward a national-emergency state that are evident in the Antiterrorism Special Measures Law and the three laws related to emergency procedures.

The transition to a wartime footing that gave rise to these processes is evident in the series of measures collectively referred to as the "redefinition of the security relationship," including the Japan-U.S. Joint Declaration on Security of 1996, agreement on the new Guidelines for Japan-U.S. Defense Cooperation in 1997, and formation of a law governing "situations in areas surrounding Japan" in 1999. In effect, these provide the framework for a security system without borders. In other words, Japan-U.S. security cooperation has escalated from the "era of framework modification" of the late-90s to the "era of implementation," which was launched from the springboard of September 11, 2001. This means that the Japan-U.S. security relationship, whose significance and objectives have always been delimited by its definition as a "Japan-U.S. defense treaty," has now become a military alliance with neither borders nor limitations. There has also been a fundamental change in the responsibilities of the Self-Defense Forces even though, according to the government's interpretation, those responsibilities remain "limited to Japan's own self-defense" and consistent with the principle that "exercising the right of collective self-defense is unconstitutional." As a result of the recent expansion of Japan's perimeters of security concern and the weakening of constitutional limitations, the constraint that has always limited Japan-U.S. security cooperation - that is, the prohibition against direct participation by the Self-Defense Forces in combat - has virtually disappeared.

The transition to a virtual war footing in the Japan-U.S. security relationship has taken place at a time when the Bush administration has renounced the "deterrent strategy," which remained in effect down through the previous administration, and has reverted to a "preemptive strike strategy" (the September 2002 National Security

Strategy, i.e., the "Bush doctrine"). Preparations are underway for the invasion of Iraq, which will be the first application of that strategy. We must assume that the geographical scope and action content of the Japan-U.S. security relationship will be broadened further as a result of intensifying U.S. pressure on Japan. For now, this acceleration will most likely take the form of another extension of the time limit for dispatch of the Self-Defense Forces (previously limited to the period ending on November 19, 2002) and their expansion and refitting so as to be appropriate for use in support of attacks on Iraq. When that happens, the government will activate the new provisions -- added to the Self-Defense Forces law in November 2001 - that relate to supplying guards for American military facilities in Japan, handling defense secrets, and gathering information prior to the mobilization of security forces. There will also be a demand for early passage of bills deferred from the previous Diet session, including those dealing with Japan's response to military attack and other measures related to a state of emergency. [Translator's note: The Antiterrorism Special Measures Law, which went into effect on Nov. 20, 2001, put a six-month limit on SDF support activities, including dispatch of ships to the Indian Ocean. The period was extended for another six months on May 19, 2002, and again on November 19, 2002, as Maeda predicted.]

Thus, the Japan-U.S. security alliance has been reoriented toward imminent war via the effective redefinition of the system accomplished through three processes: the new Guidelines, the catalytic effect of September 11, and Japanese participation in the war on terrorism. The reorientation process culminated in the state of emergency system, which amounts to national mobilization and affects the daily lives of every citizen. Let us look more closely at the current state of the security alliance that has been transformed in the above three dimensions and reinforced by the state of emergency bills.

U.S. Bases in Japan in the Wake of September 11

On September 11, 2001, I happened to be in Okinawa, where I was able to observe the very moment when the American bases, which occupy twenty percent of the main island's land area, were literally transformed into American territory.

Amidst the dark clouds and high winds brought by Typhoon 16, the metaphorical "typhoon" created by the terrorist attacks on U.S. nerve centers caused the American bases in Okinawa to go immediately to the highest state of alert -- "Condition Delta," a level of preparedness never resorted to even during the Gulf War. This meant a virtual state of war. Gates to the bases were all closed, and neither entry by Japanese nor exit by Americans was allowed. When it was essential to open gates briefly, they were heavily guarded in anticipation of terrorist attacks and reinforced with heavy, meter-high barricades designed to prevent vehicles from crashing through. Heavily armed guards scrutinized military ID cards and carefully checked each vehicle, including the trunk, while soldiers armed with rifles and wearing bullet-proof jackets crouched in grassy areas outside. Only military vehicles could be seen leaving.

Japanese base employees had been ordered to remain at home on call, and because American soldiers had been confined to the bases, the central region of Okinawa gave every appearance of being under martial law. Silence descended over even the foreign entertainment section of Koza, which on weekends is usually crowded and noisy. In a broadcast over American forces television aimed at the "quarantined" soldiers and their families, Kadena base commander Brigadier-General Gary North urged that "All personnel of Kadena base should be focused on the war against the terrorists and ready to support the president and America's top leaders." The concern evidenced in such pronouncements was limited only to the safety of American bases and citizens, with no consideration for Okinawans or for the security of Japan. Indeed, in the areas of White Beach and Henoko (the new location for the base facilities now at Futenma), which are adjacent to the Camp Hansen Marine base, Japanese were repeatedly questioned and harassed by American soldiers patrolling outside the bases. The so-called "Anpo [security treaty] hill" overlooking Kadena base was continuously occupied by Japanese police officers from prefectural headquarters.

Thus, until Japanese employees were once again admitted on September 14th, the American bases in Okinawa became American territory in the true sense of the word. This revealed that when the U.S. is "granted the useï¿½of facilities and areas in Japan," as specified in Article Six of the Japan-U.S. Security Treaty, the implication is that in an emergency these bases become extensions of the American homeland. It also exposed the cold fact that when the status of forces agreement states in paragraph three that, "the United States may take whatever measures it deems necessary for arrangement, operation, policing and control of facilities and areas," it really means that inside the bases, residual Japanese sovereignty entails no substantive rights whatsoever. Eventually, Kadena air base became the launch pad for offensive operations against the Taliban and al Qaeda, and Special Forces soldiers left from Torii Station to participate in the drive to eradicate Islamic guerrillas (Balikatan 02-01) in the Philippines.

Analogous processes occurred at American bases on the four main islands of Japan. At the Sagami supply depot, soldiers stacked sandbags around the gate and pointed the machine guns on a stationary armored vehicle toward the neighboring Japanese business district. At Sasebo Naval Base, American forces denied entry, for a time, not only to base employees but to members of the Maritime Self-Defense Forces who share the base facilities; at Yokota Air Base a huge loudspeaker system, tagged the "giant voice," was used to practice broadcasting an air attack warning

(said to be its first use since the Korean War). Although U.S. bases are less concentrated on the main Japanese islands than in Okinawa, even there September 11 and its aftermath - especially the warlike moves in the security system -- have brought home to nearby residents the depth of their connection to the crisis facing the U.S. Moreover, as preparations for war with Iraq proceed it has been confirmed that large volumes of base construction materials and ships are being deployed from the Sagami Supply Depot and Yokohama North Dock. Here, too, we find a new form of security cooperation that is connected directly to the Persian Gulf and reflects the state of war-readiness that prevails on American bases in Japan.

Redefinition of the Security Relationship and Support for the U.S. since the New Guidelines

Since the new Guidelines, changes in the Japanese security structure have become clearer as a result of the antiterrorism legislation, which permits the wartime dispatch of Self-Defense Forces. The state of war that defines SDF activities in support of the U.S. offensive in Afghanistan is one manifestation. The SDF's exercise of "self-defense" is now linked to the U.S.'s own right of self-defense.

Paragraph five of the Japan-U.S. Security Treaty characterizes the goals and scope of joint defensive operations between the SDF and American forces as directed against "an armed attack against either Party in the territories under the administration of Japan." Thus, the original scope of the treaty's application is Japanese territory. Moreover, the third paragraph of the Self-Defense Forces Law says that those forces "defend Japan from direct or indirect attack." In other words, the duties of the SDF are properly limited to homeland defense. Even if we assume for purposes of argument that the security treaty and the SDF are constitutional, this limitation admits of no ambiguity. How is it, then, that Japanese supply ships and escorts can be dispatched to the Indian Ocean in response to a situation that is neither located in territory under Japanese jurisdiction nor consistent with the fundamental role of the SDF?

In order to secure agreement and "guarantee the effectiveness of the new Guidelines," the government adopted the "law concerning situations in areas surrounding Japan," which bestows on the SDF the duty to aid the US and provide rear support even outside Japanese territory as such. However, this constituted a major reinterpretation of the scope of the Japan-US Security Treaty and the duties specified in the SDF law. Strictly speaking, it should be termed a distortion rather than an interpretation. According to a government briefing document, the rationale is as follows:

"[Cooperation with the U.S. in accord with the "surrounding areas law"] is not mandated under the Japan-U.S. Security Treaty. However, as a sovereign state it is natural that, within the constraints of the Constitution, we should make legal provision to establish a framework for necessary security measures. Cooperation with the U.S. under the law to guarantee security in situations occurring in areas surrounding Japan is based on this way of thinking and will be carried out within the objectives and scope of the Japan-U.S. Security Treaty. Therefore, no particular problem is caused by the absence in the treaty itself of any clear provision concerning this kind of cooperation." (Briefing sheet provided to Diet member Shimizu Sumiko and bearing the name of Prime Minister Obuchi Keizï¿½, August 24, 1999).

Thus, while on the one hand they admit that the treaty contains no clear provision for cooperation with the U.S. outside the treaty's regional scope, they nonetheless reach the contrary conclusion that so long as it is "within the scope of the Constitution" and "within the objectives and scope of the Japan-U.S. Security Treaty," this constitutes "no particular problem." To arbitrarily provide for a type of cooperation not specified in the treaty without even initiating any procedures for revision is hardly the kind of behavior one expects from a constitutional state; in fact, the "way to the Indian Ocean" was opened coercively through the antiterrorism legislation that incorporated just such an interpretation.

Soon after September 11, the Koizumi cabinet announced its policy of "autonomously waging the war against terrorism as an issue of Japan's own security, strongly supporting our American ally and cooperating closely with the United States and other countries of the world." In line with this policy, the key phrase that showed up everywhere in the new Guidelines, "cooperation in situations that occur in areas surrounding Japan," has now replaced "security treaty" and "Self-Defense Forces Law" as the operative principle. The seven point plan for supporting the U.S., issued on September 19, announced that "toward the goal of providing medical, transport, and logistical support," the government would "immediately study measures necessary to dispatch the SDF." What emerged from this study were the antiterrorism laws.

According to the basic plan designed to implement the antiterrorism laws, the "area within which logistical support and transport are to be carried out" includes "the Indian Ocean (including the Persian Gulf) and its air space along with the British island Diego Garcia" and extends to "Australian territory." The vicinity of the Persian Gulf is precisely the "war zone" declared by the U.S. government in accord with international law right after retaliatory strikes began. Suspicious vessels in this zone can be boarded and searched. Moreover, the ships dispatched by Japan clearly operate under the command and control of the U.S. Fifth Fleet, which reports to Central Command. In the roughly one year preceding October 2002, about sixteen supply and escort vessels were sent (customarily three to five) and

they supplied over 200,000 kiloliters of fuel to American and British vessels. Japan has also undertaken to provide air transport from Japan to Guam and Diego Garcia.

Although the government has argued tenaciously that the mission of the Japanese ships is refueling and should be clearly distinguished from combat, that argument is specious with respect to the escort vessels. The information gathered by the escorts' radar and sonar has no meaning unless it is processed through the networks of the American and British warships, and doubtless such information is used jointly by the allied nations. Here, it is clear that Japan's exercise of the right of collective self-defense is already an established fact. Perhaps anticipating objections on this point, the basic plan contains the contrived caveat that, "[Rear support activities] are carried out prior to actual hostilities, or in areas where it is not anticipated that hostilities will occur concurrently with those activities." However, to the extent that these activities are carried out in the vicinity of hostilities, under the command of combat forces, and while providing combat intelligence, such a caveat is unpersuasive.

That is how the Self-Defense Forces have become deeply involved in actual war. In the case of the Maritime Self-Defense Force this coincides with the fiftieth anniversary of its founding, and thus carries the additional meaning of wartime dispatch fifty years after the first moves toward rearmament. This is what Japan-U.S. security cooperation has come to under the redefinition of the security relationship and the new Guidelines.

Legal Insurrection from Below

Needless to say, when a movement toward wartime dispatch of military forces that began in the transition from the new Guidelines to the "surrounding areas" law and eventually produced the antiterrorism laws is promoted under a Constitution that "resolve[s] that never again shall we be visited with the horrors of war," a distorted legal structure is one result. One might call this process "legal war-readiness." It is tantamount to an attack on the legal order from below, and can be described as a legislative insurrection, or coup d'ï¿½tat. In much simplified terms, it can be reduced to the following game of escalation that ultimately overturns the system:

ï¿½ American military strategy turns toward "dealing with regional wars," giving rise to the new Guidelinesï¿½
ï¿½ Because the Guidelines, as an agreement between governments, is insufficient to guarantee operability, the "surrounding areas" law is passedï¿½
ï¿½ The "surrounding areas" law does not cover the Middle East and Indian Ocean, necessitating the antiterrorism legislationï¿½
ï¿½ The antiterrorism legislation is limited to the September 11 incident and has an effective period of only two years, so this requires a "law governing situations of armed attack"ï¿½
ï¿½ To make a "law governing situations of armed attack" effective, it is necessary to mobilize private citizens in local areas, giving rise to the "legislative system to protect national livelihood."

Thus, the process reaches a certain "completion" in national mobilization via the "legislative system to protect national livelihood." In sum, without actually touching the Constitution, they have succeeded in eroding it sufficiently from below to render it moot.

These machinations that have sapped the force from constitutional norms can be understood as a strategy of attacking fundamental law by changing the particular laws intended to implement it. But if we trace the revision of the SDF law that has paralleled redefinition of the security system, another process of legal insurrection will come into view. This process proves that manipulation has produced a legal system that sanctions the dispatch of troops overseas.

As we have already seen, the basic mission of the SDF, as specified in the SDF law, is to "defend Japan from direct or indirect attack." In light of Article Nine of the Constitution, it would be clearly inconsistent and unviable to amend this law to read, "direct or indirect attack in areas surrounding Japan" If, nevertheless, it is deemed necessary to pass the "surrounding areas" law and the antiterrorism laws, which extend the geographical purview of Japanese "defense," then at least the related SDF missions have to be provided for somewhere in the SDF law. What have been employed for that purpose are the specific provisions of paragraph 100 of that law. When the SDF was originally launched, paragraph 100 included only a provision regarding responsibility for "engineering projects." Later, responsibilities for "education and training," "cooperation in regard to athletic meets," "cooperation in regard to observation missions to the south pole" were added, but as is obvious from the provision that these are to be undertaken "only to the extent that they do not interfere with accomplishment of the SDF's mission," all these fall in the category of "service activities."

Now, after the end of the Cold War, in line with arguments that the SDF should make an international contribution, and parallel with the redefinition of the security relationship through the new Guidelines, this paragraph has been used to conceal provisions related to dispatch of the SDF overseas. Provisions of paragraph 100 beginning with provision six were added in the 1990s and relate to the SDF's overseas missions. They provide for "international aid activities, etc.," "international peace cooperation and related activities" (PKO), "providing transportation for Japanese nationals and others abroad," "providing goods and services for American forces under the Japan-U.S. acquisition and cross-servicing agreement," and, finally, number ten has to do with "rear-areas support," that is, deployment for purposes related to the "surrounding areas"

law and inspection of shipping. The antiterrorism legislation was only temporary, so its provisions were relegated to the sub-categories of addenda seventeen and eighteen, but its substance was covered in provision eleven of paragraph 100. Should the "law governing a situation of armed attack" be passed, it, too, would most likely be inserted here. In sum, these techniques of sophistry, by which provisions for implementation are, in effect, used to overturn general mission statements, have enabled the government to render the general principle in paragraph three-- that the SDF defends against "direct or indirect attack" -- legally consistent with allowing the Maritime SDF's most up-to-date fleet to participate in America's war.

Defending the Constitution

I seriously doubt that techniques such as those above can be considered consistent with the "rule of law' or "constitutionalism." Even if we were to admit that such circus tricks could somehow qualify as parliamentary tactics, they nevertheless betray an absence of governmental responsibility to respect the rules and laws of democracy and, at a minimum, to address the people face to face. Since redefinition of the security relationship and its wartime mobilization, the SDF has been operating on the basis of precisely such an unwholesome legal foundation. The SDF's dispatch under the Antiterrorism Special Measures Law has been extended again, and if, in this period of time, the U.S. should attack Iraq, the fissure between law and actual circumstances will deepen. If the emergency bill is reintroduced, the daily lives of the citizens will be dominated by a virtual state of war. Under these circumstances, to "protect the Constitution" must imply confronting squarely the paralysis that has befallen the constitutional order and moving decisively to rescue it from that state.

Translation by Vic Koschmann