



Maritime Security

Japan Self Defence Force in Somalia Coast

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On 14 March 2009, the Japanese government finally exercised its authority under the 'Maritime Security Operation' to dispatch the Maritime Self-Defence Force (MSDF) to the coast of Somalia and the Gulf of Aden. Compared to other countries, its response came too late. But, as compared to its earlier examples, it went smoothly. There are three remarkable aspects of this decision. First, the Japanese government used the law of 'Maritime Security Operation' which has already existed as an emergency measure. Second, the Rule of Engagement (ROE) was loosened. Third, the new law against acts of piracy is set to become a permanent law.

This detachment could be empowered to expand MSDF activities. Japan is one of the security partners of India, since the 'Indo-Japan Joint Declaration on Security Cooperation' was announced on 22 October 2008. But so far, the restraints of MSDF operation overseas fetter practical cooperation with India, including in anti-piracy activities. The recent Japanese deployment and a new permanent law however, could facilitate security cooperation with India in the future. This paper will provide a detailed analysis of these issues and the process through which the Japanese leadership came to a decision to deploy the MSDF.

I THE JAPANESE SELF DEFENCE FORCE (JSDF) A SHORT HISTORICAL ANALYSIS

Japan has forbidden itself from having an armed force under Article 9 of its constitution, since it was defeated in World War II. By definition, the JSDF is not an 'army', 'navy' or 'air force'; even though it possesses sophisticated armaments and

adequate defense budget (5th highest in the world). Article 9 reads as follows;

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.

When the JSDF was established in 1954, the Japanese Diet had resolved not to dispatch it overseas. It was expected to be used only under an exclusively defensive security system and not to operate outside Japan. In addition, the Japanese civilian control has been a 'negative civilian control', concerned with how not to use the military option.

What has made Japan decide to use the JSDF overseas? The trigger was the Gulf war. Japan did not receive any praise even though it had spent more than thirteen billion US dollars in that war. Japanese policy makers realized that the international society would not recognize its contribution without 'boots on the ground'. This experience led to the PKO law in 1992. In addition, the domestic politics' movement was also important. When the Social Democratic Party of Japan (SDPJ), which had objected to the JSDF for a long time, came into power with the Liberal Democratic Party (LDP) and New Party Sakigake in 1994, the leader of SDPJ, Tomiichi Murayama, reversed its policy and accepted the JSDF. This reverse in the SDPJ policy was an epochal decision,

and extinguished the importance of defense issues in the elections. Since then, the other opposition parties have also changed their attitude toward defense issues, and many defense-related laws have been revised and enacted. However, Article 9 still remains controversial. Even the LDP avoids amending it, except the Abe administration.

Since the law of 1992 was enacted, JSDF has contributed nearly 20 PKO. But the PKO law has five principles: 'the conclusion of a cease-fire agreement between warring parties', 'acceptance of peacekeepers by parties', 'adherence to strict neutrality', 'requirement of JSDF to withdraw if any of three above are not sustained', and 'use arms only for defense purposes'. Thus, when this law is not enough and the Japanese government still requires to dispatch JSDF overseas, policy makers need a special law. Some of these are: the Anti-Terrorism Special Measures Law, the Replenishment Support Special Measures Law and the Iraq Special Measures Law. The process of enactment always causes a long delay.

The MSDF deployment in the Indian Ocean is a good example. The mission of this deployment is refueling and supplying water to support the

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Maritime Interdiction Operation in the war against terrorism. Even when the MSDF only acts as a filling station, it still needed a special law. First of all, this mission had been executed under the Anti-Terrorism Special Measures Law. But it was a temporary law and the Japanese government failed to extend it. The cause for the rejection was a doubt regarding whether the US Navy would use Japanese oil for the Iraq mission. Since this law required a UN resolution, the opposition party

criticized that Operation Iraqi Freedom was not sufficient. Later, the government succeeded to enact the Replenishment Support Special Measures Law instead of the previous one and resumed the MSDF mission.

It is quite risky to deploy without making the JSDF position clear. Basically, the JSDF has been restrained from using weapons except for self-defense and urgent escape. If the JSDF fires a gun, it is possible it will be converted into a warring party. Before it operated in Rwanda in 1994, the Japanese Diet seriously discussed if it needed to bring two machine guns or one, not for one soldier, but one unit. For the more dangerous operations like the one in Iraq, policy makers discussed issues regarding equipment for a long time. In the Iraq mission, the Japanese government is proud that the JSDF has never pulled the trigger except during its routine practice sessions. Second, since it is not treated as an armed force, the JSDF does not have any provision for court-martial. If one of the JSDF's soldiers accidentally killed someone, he or she would be tried in a public court.

With these previous experiences, some politicians and scholars in recent days, have seriously debated whether or not Japan should enact a permanent defense law. While the debate warmed up during the period of the Abe administration, it soon cooled off, particularly after he vacated office. However, the Defense Agency was upgraded to a Ministry in 2007, and an international mission is now treated as a primary and not a collateral task.

II TO SOMALIA COAST

The discussion regarding the dispatch of the MSDF started after the Security Council resolution in October 2008. In November, the Japan Foundation and the Ocean Policy Research Foundation announced its policy paper, urging the need to dispatch MSDF for maintaining maritime security. At the same time, young members of the Diet suprapartisan group started lobbying for it. The LDP, as the ruling party, set up a project team to discuss this issue in December. Meanwhile, Prime Minister Aso ordered the Minister of Defense to operationalize the MSDF's mission. Subsequently, a joint exercise started between the MSDF and the Coast Guard in the middle of

February.

Issues of domestic policy arguments were who would escort the ships, who would be escorted, when should the MSDF use its weapons (the ROE), how would it cooperate with other countries, and how would the Diet be involved. First of all, who will escort the ships? Usually, this is a Coast Guard job. However, since this mission is going to be far away from the Japanese territorial waters, the Japanese government has considered using the MSDF from the beginning. But, some political parties criticized it, arguing - 'Why not the Coast Guard? It can work as a police, but the MSDF can not.' Then the Japanese government used 'Maritime Security Operation' as an emergency measure. This is contained in Article 82 of Japanese Self-Defense Force law, which reads as under:

The Minister of Defense can order to the JSDF to do necessary operations in the special case for the maintenance security and protection of human life and wealth under the approval of Prime Minister.

Though it was supposed to be meant for territorial waters, this law doesn't specify the exact area. The Japanese government used a loophole in the law tentatively to dispatch the MSDF.

On the question of 'who will be escorted?', there are many restraints on the MSDF under the 'Maritime Security Operation'. Under the law, MSDF will be able to protect only Japanese ships, citizens and its wealth. Even if other countries' ships requested for help, the MSDF would be able to do nothing. Such action could be criticized by the international society, which is why the Japanese government has been framing a new law which allows protecting the ships of other countries as well.

The ROE is also one of the big focus issues. As mentioned above, the law places severe restrictions on the JSDF with regard to the use of weapons. While the Minister of Defense had asked to expand the ROE, the cabinet and the New Komeito have been hesitant to do so. Finally, the Japanese government decided to permit the MSDF to use its guns under the police law, which allows for counterattacks when pirates attack. However, the MSDF is expected to avoid shooting pirates ships directly, since the issue remains

controversial.

The fourth issue is how to cooperate with other countries. The JSDF cannot exercise the collective right of self-defense. The government denies that cooperation with other countries such as exchange of information about piracy is the

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collective right of self-defense.

And the fifth issue is how the Diet would be involved in this matter. The criticism levied by the opposition parties was that they would be unable to keep a check on MSDF operations if the ruling parties decided to use the 'Maritime Security Operation'. Therefore, the Ministry of Defense has decided to report to the Diet frequently to obtain its support.

The current Japanese Diet is 'Nejire Kokkai (the tortuous Diet)'. The Democratic Party of Japan (DPJ) is in majority in the House of Councilors, while the coalition of Liberal Democratic Party and New Komeito are in majority in the House of Representatives. Although the House of Councilors does not have stronger powers than the House of Representatives, this situation is still an obstacle to make new laws. The biggest opposition party, the DPJ was divided. While some of the members agreed to dispatch, some of them were concerned about the Social Democratic Party's attitude. The Social Democratic Party which is a partner of the DPJ opposes the use of the MSDF for anti-piracy mission. It has been criticizing the Japanese government for deciding to dispatch the MSDF and not the Coast Guard, and without the approval of the Diet and it is opposed to the government's deviation from the purpose of the 'Maritime Security Operation'. Another opposition party, the Japanese Communist Party has also been critical of this mission. This party had

declared its opposition to the expansion of the JSDF operation even after the 1990s. Those two parties are in a minority, thus, the DPJ's position is decisive in passing the law. On 19 March 2009, the DPJ decided to insist that the Coast Guard should play the main role. Although the DPJ expresses its determination to maintain maritime security, it might want to draw a line between the LDP and New Komeito, since it wants to showcase its leadership to win the election.

The differing attitudes of the political parties reflect the difference in the people's will. Three of Japan's five main newspapers, Sankei, Yomiuri and Nikkei are sympathetic toward the government's action. The rest of them, Asahi and Mainichi are raising questions about the ambiguity of law and expansion of the ROE. But interestingly, they don't oppose the dispatch of the MSDF itself. Public opinion has also been changing. On 21 and 22 February 2009, the Mainichi Shinbun's opinion poll showed 47 per cent people agreed that the MSDF should join the piracy mission while 42 per cent disagreed. Moreover, according to a Yomiuri Shinbun's poll, 59 per cent agreed that there was a need to enact a new law against acts of piracy because the MSDF would not be able to protect other countries' ships under the 'Maritime Security Operation' while only 30 per cent disagreed. On 14 March, the Cabinet Office also released its January poll. It showed that 63 per cent people thought the MSDF should join this mission.

Finally, the Minister of Defense ordered the 'Maritime Security Operation' on 13 March 2009, and the next day, two destroyers, 'Sazanami' and 'Samidare' sailed from Hiroshima with about 400 members of the MSDF and eight members of the Coast Guard. Those destroyers will start escorting Japanese merchant ships in the Gulf of Aden and coast of Somalia soon. The length of the mission has not been decided. The cabinet has already formed a new permanent law against anti-piracy. This law will permit the MSDF to operate its anti-piracy mission when the Coast Guard is not enough. After the Diet approves it, the government will replace the law.

III THE ROAD AHEAD

The JSDF despatch overseas is still a controversial matter in Japan. The opposition makes much of Article 9 of the constitution. They respect the

exclusively defensive security system, and believe that it is illegal to dispatch the JSDF overseas. On the other hand, those in favour, understand that it is difficult to maintain Japan's national security only under the exclusively defensive security system. They think Japan should join international missions like the PKO more for its own benefit. The numbers in favour have been increasing steadily.

Armed forces today are playing a different role than before. Their missions now include peace support operations for the formation and maintenance of international order. It is wrong to compare this with warfare or armed intervention. Of course, it should be careful to ensure that the JSDF's operations do not increase the concerns of neighbouring countries and in turn, lead to a military expansion. However, the MSDF's despatch to join the anti-piracy mission would not be an international threat. The JSDF enjoys a good reputation internationally and this should be made good use of.

Since the 1990s, the JSDF has been expanding its mission and role. It is also significant that the Japanese government signed 'the joint declaration on security cooperation' with Australia (2007) and India (2008). Although it is still difficult to amend the constitution or make a permanent law, this unusual measure which Tokyo has taken at this time could become an example some day. The Japanese government has always been under pressure to dispatch the JSDF since the 1990s. It is possible that JSDF would in future contribute to anti-piracy missions in Southeast Asia or other crucial points of the sea lane, if its present mission is completed successfully.

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