



## **Beyond the Defense Guidelines: Responding to Intruders**

by Ralph A. Cossa

Last weeks' naval incident in the Sea of Japan that resulted in the first shots fired in anger by Japanese ships in over 45 years also served to highlight the importance of the current Diet debate on the Defense Guidelines implementing legislation. It also revealed the shortcomings of the current legislation and of the Guidelines themselves.

The Guidelines for U.S.-Japan Defense Cooperation address defense cooperation under normal circumstances, in case of an armed attack against Japan, and in situations in areas surrounding Japan that will have an important influence on Japan's peace and security. While a great deal of attention has been paid to the latter scenario, the naval incident reminds us that even under normal circumstances, threats to Japan's security exist and must be addressed. And, while Japan's authority to respond in case of armed attack is clear, its ability to defend itself remains limited under normal circumstances.

The two antenna-laden intruding ships (believed to be North Korean intelligence ships on an espionage mission) were first pursued by Maritime Safety Agency (MSA) coast guard ships, which fired the first warning shots. While the MSA has the authority to use weapons if the situation is grave enough, this is reportedly the first time they have done so since challenging a suspected Soviet spy ship off northern Japan in 1953.

As the suspicious ships began fleeing the scene at speeds upwards of 35 knots, it became necessary for the Japanese Maritime Self Defense Forces (JMSDF) to conduct what has now been described as "the first purely military operation ever assigned to the Self Defense Forces." For this to occur required the Prime Minister, in consultation with his Cabinet at a post-midnight emergency meeting, to invoke Article 82 of the Self Defense Force Law, permitting Japanese naval ships to try to stop and inspect intruders. As is the case for MSA coast guard ships, however, unless fired upon first, JMSDF naval ships are only permitted to fire warning shots that "will not cause human injury." As a result, the intruders were able to flee toward the North Korean coast, at which time the Japanese Navy prudently ended the chase.

The passage of the Defense Guidelines implementing legislation, while absolutely essential to permit greater and smoother cooperation between U.S. and Japanese military forces, still falls short of permitting Japanese Self Defense Forces from effectively responding to such situations. The Guidelines do call for closer coordination and information sharing between U.S. and Japanese forces – and U.S. Navy P-3 surveillance aircraft reportedly helped track the fleeing intruders in this instance – but do not address Japan's limited ability in peacetime to conduct what others would consider routine defense operations.

The ongoing Defense Guidelines debate does, however, provide Japanese legislators with a golden opportunity to discuss the larger question of Japan's role not only in assisting the U.S. in maintaining or restoring peace in areas surrounding Japan but also in defending itself under normal circumstances against a variety of potential military threats. For example, while some in Japan speculate about preemptive strikes against overseas missile sites that appear ready to fire upon Japan, I have heard other Japanese defense specialists argue that, technically speaking, a Japanese ship armed with defensive missiles operating outside Japan's territorial waters would not be permitted to fire at incoming missiles until the first missile struck Japan.

The Self Defense Forces' authority to defend itself using all appropriate means against intruding ships, aircraft, or missiles should be clear and unambiguous. Likewise, a debate over whether preemptive strikes are legal or not should not be postponed until hostile missiles are loaded and readied for firing. These are decisions better made in the light of day than at post-midnight emergency meetings.

Meanwhile, Japanese legislators should also move expeditiously to approve the modest steps outlined in the Guidelines to enhance Japan's ability to promote and protect regional stability in cooperation with U.S. forces. Some have complained that providing assistance "in areas surrounding Japan" represents an expansion of Japan's role. This is not true. The 1960 Mutual Defense Treaty references U.S.-Japan cooperation to promote regional stability in the "Far East" and Japan's acceptance of responsibility for sea lane defense up to 1,000 nautical miles from Japan dates back to the 1980s.

All the Defense Guidelines do is clarify the exact nature of Japan's potential military support. The Guidelines spell out what Japan could do and, of equal importance to military planners, what Japan should not be expected to do in case of contingencies. In truth, the caveat "in areas surrounding Japan" serves to limit, not expand, the terms of the Guidelines. At the time of the Guidelines' inception, many of us argued that the third circumstance should read "in situations that will have an important influence on Japan's peace and security." Why should Japanese logistical support to U.S. combat forces be restricted to near-by contingencies? Japan's national security interests are equally threatened by conflicts that threaten the flow of oil and commerce through the Persian Gulf, Indian Ocean, or South China Sea. But, the Guidelines still fail to address what type of support, if any, Japan could be expected to provide in the event of these more remote contingencies that nevertheless "have an important influence on Japan's peace and security."

We can thank the intruding ships for pointing out that passage of the Guidelines' implementing legislation, while an important first step, still falls short of allowing Japan to

perform what most would consider to be normal defensive operations. Hopefully this incident will stimulate further debate on what Japan's future role and responsibilities should be under all types of circumstances.

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