Collective Self-Defense or Collective Security? Japan’s Reinterpretation of Article 9 of the Constitution

Jaemin Lee

The concept of self-defense takes such an important place in the UN Charter and international law. The concept of collective self-defense should also be interpreted and applied within the clear parameters of stated principles of the UN Charter. This is not a concept that can be elastically applied so as to cover a wide range of instances that require military action by like-minded States acting in response to contingent situations. The discussion of collective self-defense within the specific context of Japan at the moment, however, seems to involve issues larger than or beyond the traditional concept of self-defense. Arguably, some aspects of the issues posed seem to fall under the collective security realm which is reserved to the authority of the UN Security Council or which at least requires authorization or delegation from the Security Council. Using the term collective self-defense to address a wide spectrum of military contingencies to be tackled by collective security regime may not square with the provisions of the UN Charter.

Keywords

* Associate Professor of Law at Seoul National University School of Law. LL.B./LL.M./Ph.D. (Seoul Nat’l U.); LL.M. (Georgetown); J.D. (Boston College). ORCID: http://orcid.org/0000-0002-4738-6583. This research was supported by the 2015 Research Fund of the Seoul National University Law Research Institute, with the charitable donation of the Seoul National University Law Foundation. The author may be contacted at: jaemin@smu.ac.kr / Address: Seoul National University School of Law, 1 Gwanak-ro, Gwanak-gu, Seoul 151-742 Korea.
DOI: http://dx.doi.org/10.14330/jeail.2015.8.2.04
I. Introduction

“Collective self-defense” has a long history in the international community. It is not uncommon for a State (A) to invoke collective self-defense to justify their military actions against another State (B) that has invaded yet the third State (C). The recent past has also witnessed references to the concept, on the occasion of the US military action against Taliban in Afghanistan with her allies, and in the multinational forces’ military action against Iraq after the Iraqi invasion of Kuwait. In many instances, the invocation of collective self-defense has been made possible through military alliance treaties concluded between a victim State and a rescuing one. The invocation of the concept, however, does not necessarily require a pre-existing treaty framework.

The concept of collective self-defense is now attracting increased global attention. Arguably, it has become one of the most frequently cited terms in international law since mid-2013 when the discussions over the possibility of Japan’s more