

ARTICLES

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

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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

Self-Defense, Collective Self-Defense, Collective Security, UN Security Council, Chapter VII Enforcement Action

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I. Introduction

“Collective self-defense” has a long history in the international community.¹ 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 Afghanistan² with her allies, and in the multinational forces’ military action against Iraq after the Iraqi invasion of Kuwait.³ 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.⁴ The invocation of the concept, however, does not necessarily require a pre-existing treaty framework.⁵

The concept of collective self-defense is now attracting increased global attention.⁶ 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

¹ G. Walker, *Anticipatory Collective Self-Defense in the Charter Era: What the Treaties Have Said*, 31 CORNELL INT’L L. J. 324 (1998); Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 27, ¶ 34 (June 27). Traditionally, this concept has also received wide support from States. As the delegate from Colombia observed after the Conference, states unanimously approved the insertion of collective self-defense into the Dumbarton Oaks Proposals:

The origin of the term “collective self-defense” is identified with the necessity of preserving regional systems like the Inter-American one. The Charter ... legitimizes the right of collective self-defense to be carried out in accord with regional pacts so long as they are not opposed to the purposes and principles... expressed in the Charter... The approval of this article implies that the Act of Chapultepec is not in contravention of the Charter.

See T. RUYTS, ‘ARMED ATTACK’ AND ARTICLE 51 OF THE UN CHARTER 62, n. 33 (2010).

² M. O’Connell, *Lawful Self-Defense to Terrorism*, 63 U. PITT. L. REV. 889 (2002). See also J. CRAWFORD, BROWNLIE’S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 749 (8th ed. 2012).

³ G. Walker, *The Crisis over Kuwait, August 1990 - February 1991*, 25 DUKE J. COMP & INT’L L. 32 (1991). It can be said that the use of force before the actions on the basis of Resolution 678 are taken on the basis of collective self-defense and the use of force after the effective date of Resolution 678 are taken on the basis of collective security.

⁴ Indeed, a number of treaty arrangements have been concluded on the basis of a right of collective self-defense, establishing a presumption that ‘an attack against any one party is an attack against the other party or parties to the treaty.’ See e.g., M. McDougall & F. Feliciano, *Legal Regulation of Resort to International Coercion: Aggression and Self-defense in Policy Perspective*, 68 YALE L. J. 1155 (1959); D. BOWETT, SELF-DEFENSE IN INTERNATIONAL LAW 234-6 (1958); North Atlantic Treaty art. 5, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243.

⁵ S. ALEXANDROV, SELF-DEFENSE AGAINST THE USE OF FORCE IN INTERNATIONAL LAW 101-2 (1996). See also W. Kohn, *Collective Self-Defense under a Revised UN Charter*, 22 SOC. RES. 232-3 (1955); C. GRAY, INTERNATIONAL LAW AND THE USE OF FORCE 167-73 (3d ed. 2008).

⁶ See, e.g., L. Repeta, *Japan’s Proposed National Security Legislation, Destruction of the Rule of Law?*, GLOBAL RES. (June 23, 2015), available at <http://www.globalresearch.ca/japans-proposed-national-security-legislation-destruction-of-the-rule-of-law/5457528> (last visited on Nov. 4, 2015); Kamiya Mataka, *Japan-U.S. Defense Guidelines Revised*, 27 JAPAN FOREIGN POL’Y F. (June 12, 2015), available at <http://www.japanpolicyforum.jp/archives/diplomacy/pt20150612210052.html> (last visited on Nov. 4, 2015).

active military engagements in regional and global affairs were suddenly initiated under the pretext of collective self-defense. It is somewhat odd, however, to observe the discussions over this crucial legal concept mainly evolving around the aspect of practical needs and military necessities. In other words, references to the jurisprudence and principles of international law applicable to collective self-defense *per se* have been relatively rare. Given the gravity of the concept of self-defense in international law and the importance of the role it plays in the present UN Charter regime, an argument can be made that any discussion of the issue of collective self-defense should be based on a thorough examination of the applicable jurisprudence and principles of international law. It is irrespective of the emerging consensus on the military necessity and practical appropriateness of Japan's, or any other country's for that matter, wider participation in global and regional security activities.

An over-fixation on enhanced military cooperation and strengthened military alliance, for better or for worse, tend to equate collective security and collective self-defense. As a matter of fact, both concepts would carry strong similarities in terms of outer appearance. However, a closer look at the basic construction of the UN Charter and established jurisprudence offers evidence that these two are in fact distinct concepts meant to be employed to address two different circumstances of the international community. Granted, practically speaking, they sometimes overlap⁷ and a cumulative effect does exist between the two concepts to the extent that both aim to restore and maintain international peace and security.⁸ But, in legal principle, they are two distinct concepts that are not amenable to cross-utilization. Apparently, recent discussions on this issue concerning Japan's declaration of collective self-defense conflate the two notions.

The primary purpose of this research is to analyze the Japanese position on security in light of contemporary discussions in Japan on self-defense as a principle.

⁷ ICJ, *supra* note 1, at 71, ¶ 127. The ICJ opined the existence of other motives does not necessarily negate the right to exercise collective self-defense:

In the Court's view, however, if Nicaragua has been giving support to the armed opposition in El Salvador, and if this constitutes an armed attack on El Salvador and the other appropriate conditions are met, collective self-defense could be legally invoked by the United States, even though there may be the possibility of an additional motive, one perhaps even more decisive for the United States, drawn from the political orientation of the present Nicaraguan Government. The existence of an additional motive, other than that officially proclaimed by the United States, could not deprive the latter of its right to resort to collective self-defense.

⁸ Some scholars noted that the term "collective self-defense" itself raises ambiguity by displaying an inherent 'contradiction.' See D. Bowett, *Collective Self-defense under the Charter of the United Nations*, 32 BRIT. Y.B. INT'L L. 131 (1956); Gray, *supra* note 5; T. Reinold, *State Weakness, Irregular Warfare, and the Right to Self-Defense Post-9/11*, 105 AM. J. INT'L L. 244-86 (2011).

This paper is composed of four parts, including a short Introduction and Conclusion. Part two will examine the distinction between collective self-defense and collective security, and the danger stemming from mixing them up. Part three will look into recent discussions of collective self-defense in Japan to grasp the background of such discussions.

II. Collective Self-Defense and Collective Security: Two Different Concepts and the Danger of Mixing them Up

There are various forms of military threats or contingencies that do not rise to satisfy the threshold level for triggering collective self-defense. What then should be the appropriate or permissible response to these threats or contingencies? One might argue that collective self-defense can (or should) rather be freely utilized so as to cover even these instances as it can help preserve international peace and security after all. However, such an argument is not deemed compatible with the UN Charter.⁹ Under the current scheme of the UN Charter, the Security Council, the primary organ for maintaining international peace and security, is authorized to address this issue on behalf of the international community in accordance with Chapter VII of the Charter.¹⁰ It is true that the Security Council sometimes fails to discharge its duty to maintain international peace and security.¹¹ However such a failure does not necessarily mean that the role can be delegated to or assumed by a group of willing States operating outside the UN regime in the name of collective self-defense.

A. Collective Self-Defense in Article 51 of the UN Charter

As with any other legal concept, a discussion of collective self-defense requires examination and elucidation of applicable jurisprudence. Collective self-defense is not a concept that permits military action to meet the demands of the international

⁹ Some scholars say that a state can lawfully exercise collective self-defense based on “general interest in preserving international peace and security” as long as there is consent even if a formal treaty is absent. *See Walker, supra* note 1, at 353.

¹⁰ U.N. Charter ch. VII, Oct. 24, 1945, 1 U.N.T.S. XVI.

¹¹ *See, e.g., R. Delahunty, Paper Charter: Self-Defense and the Failure of the United Nations Collective Security System*, 56 CATH. U. L. REV. 940 (2007).

community; rather it is one that requires the satisfaction of clear preconditions for proper invocation. As stipulated in Article 51 of the UN Charter, all States possess an “inherent right of self-defense,” either individually or collectively.¹² Collective self-defense has a long history even before the UN Charter.¹³ As one of the two types of self-defense, collective self-defense is also subject to the outer parameters of the concept of self-defense. *E.g.*, all conditions stipulated in Article 51 (such as Security Council notification requirement and limited duration of exercise) should be observed if collective self-defense of whichever form is exercised based on the UN Charter.¹⁴ Furthermore, the requirements of ‘necessity’ and ‘proportionality’ should be satisfied in the context of collective self-defense pursuant to either the UN Charter or customary international law.¹⁵ In other words, all requirements and conditions for self-defense should be satisfied for the legitimate exercise of collective self-defense.

In addition, there are conditions specifically applicable to collective self-defense. There should be an affirmative request by a victim State directed to a State exercising its right of collective self-defense.¹⁶ Likewise, the scope of collective self-defense is confined to the same scope of the individual self-defense on the part of the ‘requesting’ State.¹⁷ It is the victim State that has the authority to determine if an armed attack has indeed occurred. The rescuing State is prohibited from coming to the assistance based on its own assessment of the circumstances whether the assessment is correct or not.¹⁸

¹² Article 51 reads: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security...”

¹³ Walker, *supra* note 1, at 325-47.

¹⁴ U.N. Charter art. 51. It further stipulates: “Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council...”

¹⁵ R. Jennings, *The Caroline and McLeod Cases*, 32 AM J. INT’L L. 89 (1938). See also *Oil Platforms (Iran v. U.S.)*, 1993 I.C.J. 4, ¶ 4.18 (June 8) (Memorial submitted by Iran). (“This condition of lawful self-defense was reflected in the statement of U.S. Secretary of State Webster, in the celebrated *Caroline* case, regarded as the *locus classicus* of the customary right of self-defense.”)

¹⁶ ICJ, *supra* note 1, at 105, ¶ 199. The ICJ further stated in *Nicaragua* case:

At all events, the Court finds that in customary international law, whether of a general kind or that particular to the inter-American legal system, there is no rule permitting the exercise of collective self-defense in the absence of a request by the State which regards itself as the victim of an armed attack. The Court concludes that the requirement of a request by the State which is the victim of the alleged attack is additional to the requirement that such a State should have declared itself to have been attacked.

¹⁷ A. Sofaer, *International Law and the Use of Force*, 82 AM. SOC’Y INT’L L. PROC. 422 (1988). [Emphasis added].

¹⁸ ICJ, *supra* note 1, ¶ 195. The Court opined:

There is no rule in customary international law permitting another State to exercise the right of collective self-defense on the basis of its own assessment of the situation. Where collective self-defense is invoked, it is to be expected that the

Equally noteworthy in this discussion is the nature of Article 51 as an ‘exception’ to the general prohibition of use of force codified in Article 2, paragraph 4 of the UN Charter, perhaps the single most important provision in the current UN regime.¹⁹ As with any other exception to a rule, one may argue that this exception of Article 51 should be interpreted and applied narrowly, if at all possible, so as not to be abused.²⁰ In fact, the basic architecture of the Charter reflects the idea of applying this exception with special circumspection; the exercise of self-defense, individual or collective,²¹ is supposed to be subject to tight control and supervision by the Security Council.²² If the right is to be exercised under Article 51, all stipulated procedural requirements would have to be adhered to. It has been generally understood that Article 51 was drafted so as to “leav[e] unimpaired the right of self-defense as it existed prior to the Charter.”²³ Indeed, exercising self-defense within the context of customary international law does not necessarily require satisfaction of the procedural requirements that appear in Article 51. But even then, satisfaction of the requirements would still play an important role in evaluating the legitimacy of the self-defense being exercised even under customary international law.²⁴ Even if one State’s invocation of collective self-defense is somehow justified under customary international law, it could still be found to be in violation of Article 51 to the extent

State for whose benefit this right is used will have declared itself to be the victim of an armed attack.

¹⁹ Bowett, *supra* note 8, at 130. See also J. Kunz, *Individual and Collective Self-defense in Article 51 of the Charter of the United Nations*, 41 AM J. INT’L L. 873-4 (1947).

²⁰ Bowett, *supra* note 8, at 139. See also Gray, *supra* note 5, at 118, 150, & 168. *E.g.*, a debate continues on whether anticipatory self-defense is permitted in international law, and a lot of commentators have submitted their opinions on this. See Walker, *supra* note 1, at 322-3. Also, regarding the different views on collective self-defense, see O. Schachter, *The Right of States to Use Armed Force*, 82 MICH. L. REV. 1638-9 (1984).

²¹ It should be noted that despite the wordings in Article 51 of the UN Charter some point out the fundamental difference between individual self-defense and collective one. See H. Kelsen, *Collective Security Under International Law* 61 (1956). (“In conformity with the terminology of the Charter of the United Nations, a distinction must be made between individual and collective self-defense. Individual self-defense is the action exercised by a state which is the immediate victim of an armed attack. Collective self-defense is the action by other members of the security organization which, without being attacked themselves, come to the assistance of the victim. Hence, collective self-defense is not ‘self-defense’ but the defense of another, and if it consists of the use of armed force, it is defense and not aggression only from a legal point of view and not from a military-technical standpoint.”).

²² U.N. Charter art. 51. (“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense...until the Security Council has taken measures necessary to maintain international peace and security...”) [Emphasis added]. See Kunz, *supra* note 19, at 879; H. Kelsen, *Collective Security and Collective Self-Defense under the Charter of the United Nations*, 42 AM. J. INT’L L. 795 (1948); Y. DINSTEIN, *WAR, AGGRESSION AND SELF-DEFENSE* 211-5 (4th ed. 2005); Gray, *supra* note 5, at 117-9; A. ABASS, *REGIONAL ORGANIZATIONS AND THE DEVELOPMENT OF COLLECTIVE SECURITY: BEYOND CHAPTER VIII OF THE UN CHARTER* 115-6 (2004).

²³ Schachter, *supra* note 20, at 1634. See also J. Meyer, *Collective Self-Defense and Regional Security: Necessary Exceptions to a Globalist Doctrine*, 11 B. U. INT’L L. J. 394-7 (1993).

²⁴ Reynold, *supra* note 8, at 245-6.

that the procedural requirements have not been met.

The rather confined scope of the concept of self-defense is also reflected in the International Court of Justice (“ICJ”) Advisory Opinion. In the *Palestinian Wall* case, the ICJ stated that the concept of self-defense is not to be invoked to address all sorts of military threats that one State faces.²⁵ Instead, the Court confirmed that only those that satisfy specific requirements may trigger the exercising of self-defense.²⁶ All these restrictive understanding of self-defense should equally apply to the discussions of collective self-defense. An examination of collective self-defense should also be conducted with this narrowness in mind.²⁷ Viewed from this perspective, arguably collective self-defense is not a concept that somehow enables *all* types of joint military activities [Emphasis added]. Nor does it cover *all* situations in which one State desires to come to the assistance of another. As such, all the conditions required of self-defense, either under Article 51 or customary international law as the case may be, should be met in the first place. *E.g.*, there must be an armed attack by a State against another State as an initial matter.²⁸

Against this backdrop, it is questionable whether this clearly defined concept covers an instance where one State ‘recruits’ or ‘solicits’ another State in order to achieve a policy objective such as to share military or logistical burdens, or where one State ‘entrusts’ or ‘delegates’ her power to another State to implement certain military planning. As noted above, the “come to the rescue” aspect is the core element of collective self-defense. This is arguably narrower in scope than

²⁵ See Legal Consequences of the Construction of a wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 194, ¶ 139 (July 9). The ICJ stated:

Article 51 of the Charter thus recognizes the existence of an inherent right of self-defense in the case of armed attack by one State against another. However, Israel does not claim that the attacks against it are imputable to a foreign State. ... The Court also notes that ... *the threat* which it [Israel] regards as justifying the construction of the wall *originates within, and not outside, that territory*. ... [T]herefore Israel could not in any event invoke those resolutions in support of its claim to be exercising a right of self-defense.

This statement of the Court is arguably premised upon the recognition that only *certain* types of military threat leads to the legitimate exercise of self-defense.

²⁶ *Id.*

²⁷ Kunz, *supra* note 19, at 877-8. See also W. Mallison, *Limited Naval Blockade or Quarantine Interdiction: National and Collective Defense Claims Valid under International Law*, 31 GEO. WASH. L. REV. 361-2 (1962).

²⁸ ICJ, *supra* note 1, at 110, ¶ 211. The ICJ stated:

In the view of the Court, under international law in force today - whether customary international law or that of the United Nations system - States do not have a right of “collective” armed response to acts which do not constitute an “armed attack.” The term “armed attack” requires the act in question to meet a certain level - threshold - of violation of substantive rights of another state in order to satisfy “*casus foederis*,” justifying the countering measures.

See *id.* at 103-4, ¶¶ 194-5. On the degree of consequentiality of the ‘values,’ in claiming the use of force as lawful, see McDougal & Feliciano, *supra* note 4, at 1140. See also Gray, *supra* note 5, at 147-9; T. Franck, *Some Observations on the ICJ’s Procedural and Substantive Innovations*, 81 AM. J. INT’L L. 120 (1987).

entrustment or delegation. Even if such entrustment or delegation is legitimate and necessary, it needs another source of legal basis if the “come to the rescue” element is missing and instead the “share the burden” element takes its place.

B. Collective Security under the UN Charter

Understanding how the system of collective security operates under the UN system is important for understanding how collective self-defense works within the system as well. As such, Article 51 of the Charter must be analyzed in a way that maintains the equally important structure of the collective security mechanism. The collective security scheme of the UN has two important segments that need to be taken into account in this respect. The one is to determine a situation as to the existence of or a threat to the international peace and security that requires a collective security response, and the other is to authorize necessary measures, including the use of force, to restore international peace and security.²⁹ Articles 39 to 43 of the UN Charter clarifies that the determinations in the first segment and authorization in the second segment fall under the exclusive jurisdiction of the Security Council. Thus, nowhere in the UN Charter could one find a textual basis indicating that an individual State(s) has the authority or mandate to determine the existence of or a threat to international peace and security or take necessary measures in response. An individual State’s own determination of an emergency situation and adoption of necessary measures is only permitted in the clearly defined parameter of self-defense under Article 51. Stated differently, Chapter VII of the UN Charter keeps collective security and collective self-defense in two different boxes. Overlapping of the two concepts and their cross-utilization are not reflected in the text of the Charter. Neither can be applied to the situation to be covered by each other.

C. Distinguishing Collective Self-Defense from Collective Security

The expansion of collective self-defense to cover situations of collective security activities without authorization from the Security Council may not square with the term ‘self-defense’ itself. The term, self-defense means defense of the State by itself; thus it means unilateral action defending itself against foreign aggression. In this sense, the collective self-defense is not *self-defense* but *another-defense*.³⁰ This

²⁹ U.N. Charter art. 39. Pursuant to Article 39 of the UN Charter, the Security Council must determine the existence of any threat to the peace, breach of the peace or acts of aggression.

³⁰ T. FRANCK, RECOURSE TO FORCE: STATE ACTION AGAINST THREATS AND ARMED ATTACKS 48-51 (2002). See also I. Rinchart, *Collective Self-Defense and US-Japan Security Cooperation* 16 (East-West Center Working Papers No. 24, 2013),

understanding of the term also lends support to the premise that mobilizing the concept of self-defense expansively so as to even cover the function reserved for the Security Council would not square with the current Charter regime.³¹

Sometimes, there may be a close nexus between a victim State and an exercising State in many respects. *E.g.*, a close connection can be found with regard to the geographical proximity or robust trans-border exchanges whereby an armed attack against a victim State amounts to the posing of a direct military threat to the exercising third State, as well.³² This situation alone, however, would not satisfy the threshold level for justifying collective self-defense. Instead, dealing with general military threat in abstract forms would fall under the scope of the collective security mechanism set forth in Chapter VII of the UN Charter. We can understand that collective self-defense requires a close nexus between the two States,³³ which can be defined in terms of geographical proximity or something else.³⁴ Whatever the nexus is, it should be more than just a friendly desire to help another country struggling in a military conflict or the efforts of a Good Samaritan country to want to take up the role of a global justice enforcer.³⁵

Thus, in addressing the issue of military alliance and joint military actions by willing States, it is important to be apprised of the fundamental difference between collective self-defense and collective security, as two distinct and separate concepts.³⁶

available at <http://www.eastwestcenter.org/publications/collective-self-defense-and-us-japan-security-cooperation> (last visited on Nov. 5, 2015); *supra* note 11, at 880. [Emphasis added]

- ³¹ It may be the case that a joint military action, not satisfying the conditions governing the exercise of the right of self-defense, can still be claimed as justifiable for the purpose of 'maintaining peace and security' within a particular region. In this case, however, such action should be either authorized by the Security Council acting under Chapter VII or taken by a regional organization pursuant to the authorization by the Security Council. *See* H. Kelsen, *Is the North Atlantic Treaty a Regional Arrangement?* 45 AM. J. INT'L L. 164 (1951); M. Akehurst, *Enforcement Action by Regional Agencies*, 42 BRIT. Y.B. INT'L L. 184 (1967); Bowett, *supra* note 4, at 239-40. M. DIXON, *TEXTBOOK ON INTERNATIONAL LAW* 341-7 (2013).
- ³² *See, e.g.*, Bowett, *supra* note 4, at 235. Bowett suggests that a mutual defense treaty to exercise collective self-defense be concluded between states possessing some geographical proximity. The protection of nationals abroad is also discussed as another rationale to enable the exercise of collective self-defense. *See id.* at 87. Bowett also suggests that the theoretical ground of collective self-defense should be drawn from the analogy with the private law in which a third-party attempts to legitimize its intervention by underscoring the existence of a 'proximate relationship.' *See* Bowett, *supra* note 8, at 132-4.
- ³³ However, this 'close connection' does not mean that it should depend on "the degree of organization or of treaty relationship" of States, even though an assisting State must have substantial rights or interest affected by an attacking State's action. *See* Walker, *supra* note 1, at 353; Schachter, *supra* note 20, at 1639.
- ³⁴ Bowett, *supra* note 8, at 151-2.
- ³⁵ Walker, *supra* note 1, at 352-3.
- ³⁶ Kunz, *supra* note 19, at 875. "The collective security established by the Charter is quite different from the so-called collective self-defense under Article 51. The measures of collective security taken under Chapter VII of the Charter are centralized actions of the Organization, whereas the process of collective self-defense is a completely decentralized

The basic difference is that, while collective self-defense may take place without the authorization of the Security Council, collective security must secure the authorization of the Security Council. As such, mixing the two would render the basic architecture of UN Charter futile and possibly lead to international conflicts.³⁷ Another important point is the nature of self-defense. Self-defense is a temporary measure that is taken by a defending State until the Security Council takes up the matter and decides on specific measures that need to be taken to restore international peace and security. Once the Security Council seizes of the matter and decides on the measures necessary to maintain international peace and security, States are no longer entitled to take actions on the basis of individual or collective self-defense.³⁸ Self-defense is based on decentralized decision-making system regarding the existence of aggression, while collective security measure is assessed by a centralized one - the Security Council - on the existence of aggression.³⁹ There are some commonalities shared between collective self-defense and collective security to the extent that they are all invoked to address military aggression by one State against another. But they are not identical because the conditions to be satisfied, the identities of the decision-makers, and the procedures to be followed are all different.⁴⁰

D. Confusion Stemming from Mixing up the Two Concepts

Nobody would question the right of a State to defend itself from an armed attack under international law. This self-defense can take the form of either an individual or collective one. As such, the recent issue of collective self-defense in the context of Japan, is not centered on the existence of such a right with Japan; it is undisputable that Japan, as a sovereign State, preserves the inherent right to self-defense including the right to collective self-defense. Rather, the critical point at issue is whether the concept of collective self-defense is the right one to ensure the stated objective of Japan and the US for that matter.

As a matter of fact, a majority of situations envisioned in the revised Defense Guidelines are arguably more amenable to the concept of collective security. Only

reaction against armed attack." See Kelsen, *supra* note 22, at 794.

³⁷ During the Gulf conflict in 1990-1, where both the collective self-defense and the collective security measures were taken, there were some debates among States whether it is possible to take both measures simultaneously. See Schachter, *supra* note 20, at 457-60; B. Weston, *Agora: The Gulf Crisis, Continued*, 85 AM. J. INT'L L. 510-4 (1991).

³⁸ U.N. Charter art. 51.

³⁹ Kelsen, *supra* note 22, at 794.

⁴⁰ T. Gill, *The Second Gulf Crisis and the Relation Between Collective Security and Collective Self-Defense*, 10 GROTIANA (New Series) 72 (1989).

direct armed attack against US military facilities by another country, say North Korea, coupled with a specific request from the US would permit Japan to resort to collective self-defense based on the US-Japan mutual defense treaty. This is just one peculiar situation regarding the application of the new scheme of the Guidelines. It is the wide umbrella of the general scheme that deserves careful attention rather than a specific set of instances with peculiar characteristics. These specific sets and types of instances operate under a different set of rules – jurisprudence of collective self-defense, while the majority of instances in many different places on the globe envisaged by the Guidelines evolve under separate rules. The discussion has so far failed to take note these structural differences between the two. This has treated both of them similarly, as if all instances are to be covered by the Guidelines in particular with the US-Japan military alliance, using the common term of ‘collective self-defense.’ Some instances are covered by collective self-defense jurisprudence, while others are far removed from the concept and would be amenable only to collective security, if anything. Subsequently, there is a mismatch between the objectives pursued and the legal theories presented.

No one could deny that Japan under the new Defense Guidelines expects to participate in a variety of military activities with the US in various parts of the world, including a certain vicinity of the Korean peninsula.⁴¹ The actions Japan expects relate to both categories of collective security and collective self-defense; some of them may fall under the former while others the latter. As discussed above, the two concepts are distinct from each other.⁴² Nonetheless, the examples provided in the Report of the Advisory Panel on Reconstruction of the Legal Basis for Security, a study prepared by Japan in anticipation of the revision of the Defense Guidelines, apparently do not distinguish between the two concepts and the different circumstances surrounding them.⁴³ Some of the acts mentioned in the report can be undertaken within the auspices of the UN and with the authorization of the Security Council. As such, for these acts, it is questionable whether the concept of collective self-defense is appropriate to be invoked.

Bearing in mind the fundamental difference between collective self-defense and collective security, a main problem regarding collective self-defense seems to

⁴¹ S. Tiezzi, *A Closer Look at the New US-Japan Defense Guidelines*, DIPLOMAT, May 1, 2015, available at <http://thediplomat.com/2015/05/a-closer-look-at-the-new-us-japan-defense-guidelines> (last visited on Nov. 5, 2015).

⁴² Under the Charter's rules, “the exercise of collective defense... under Art[icle] 51 [is] merely a right and not a legal duty.” See Kunz, *supra* note 19.

⁴³ The Advisory Panel on Reconstruction of the Legal Basis for Security, Report of the Advisory Panel on Reconstruction of the Legal Basis for Security [「安全保障の法的基盤の再構築に関する懇談会」報告書] (May 15, 2014), available at http://www.kantei.go.jp/jp/singi/anzenhosyou2/dai7/houkoku_en.pdf (last visited on Nov. 5, 2015).

lie in the apparent confusion stemming from mixing up the two distinct concepts. While collective self-defense is a peculiar legal concept with clear legal parameters, references to this concept are now being made in the context of contemplating plans to respond to the future military contingencies in particular regions. This issue falls under the authority and obligation of the Security Council for international peace and security.⁴⁴

Obviously, willing States are free to discuss how to resort to the enforcement scheme of Chapter VII in advance and take preparatory measures between themselves. They are also free to enter into agreements to codify these issues in anticipation of future instances that may trigger the referral to or mobilization of the Chapter VII mechanism to the extent compatible with the UN Charter. Given the inherent limitation of the Security Council to discharge its obligation in a timely manner, an arrangement between States in a particular region may sometimes be necessary, as envisioned under Article 53 of the Charter.⁴⁵ States are also able to spell out terms and conditions for the exercise of collective self-defense. They are, however, not able to agree in advance on how to take action because it essentially falls under the jurisdiction of the Security Council. Doing so would in itself constitute a violation of the UN Charter.⁴⁶ One example would be to agree upon specific terms and conditions “to maintain peace and security” in a particular region.⁴⁷ Perhaps, such an agreement can be made possible with the delegation and authorization from the Security Council. It is doubtful, however, whether it can be justified by mobilizing the concept of collective self-defense. Discussions and arrangements of wider military activities for various military contingencies would arguably overstep the clear boundaries of collective self-defense. Also exercising collective self-defense beyond Article 51 of the UN Charter would lead to a violation of the cardinal rule of the Charter enshrined in Article 2(4).⁴⁸

⁴⁴ U.N. Charter chs. V & VII.

⁴⁵ *Id.* art. 53. See also Dinstein, *supra* note 22, at 310-5. (“assuming the Security Council’s authorization to regional agencies should be understood as ‘sub-contracting’ the use of force to them”).

⁴⁶ U.N. Charter art. 2, ¶ 3.

⁴⁷ Bowett, *supra* note 4, at 239-48. Treaties promising joint military action may overstep the bounds of the strict concept of the collective self-defense, and the contracting parties in some instances may describe their action as necessary to “maintain international peace and security,” which, however, falls under the authority of the Security Council because of Article 24 of the Charter.

⁴⁸ Mallison, *supra* note 27, at 363-4. See also O. Schachter, *United Nations Law in the Gulf Conflict*, 85 AM. J. INT’L L. 471 (1991).

III. Focus on 'Collective Security' in the Discussions in Japan

A. Background: The New Defense Guidelines of 2015

The examination of collective self-defense in the specific context of Japan needs to be examined from two angles. The one is the enhanced US-Japan military alliance based on the mutual defense treaty⁴⁹ and the new Defense Guidelines. The other is the reinterpretation (or attempted re-interpretation by the Japanese judiciary) of the Constitution of Japan. The two angles are closely intertwined as the reinterpretation of the Constitution is a condition precedent to give full effect to the US-Japan military alliance as envisaged in the revised Defense Guidelines.

In April 2015, the US and Japan released the new Defense Guidelines for their military alliance, the second revision of the document since the first revision nearly 20 years ago.⁵⁰ The Joint Statement by the Security Consultative Committee of the US and Japan provides:

The new Guidelines enable the Alliance to make *greater contributions to international security initiatives wherever appropriate* in a way consistent with Japanese laws and regulations, such as peacekeeping operations, maritime security, and logistic support.⁵¹

Similarly, in response to the impact of the new Guidelines, the Japanese Defense Minister Gen Nakatani said:

The defense guidelines provide a foundation for U.S.-Japan cooperation. The new changes will now allow Japanese Self-Defense Forces to coordinate with American forces worldwide, and they will also allow the two countries to cooperate in two new domains - space and cyber. The guidelines also call for an alliance coordination mechanism that will improve planning and coordination between U.S. and Japanese

⁴⁹ The alliance treaty at issue is the 1960 US-Japan Security Treaty. So, the discussion of collective self-defense within the context of the bilateral treaty should be determined by specific terms and conditions contained in the treaty. *E.g.*, Article 5 of the treaty imposes a specific territorial limitation by confining the application of the treaty to a situation of an armed attack occurring "in the territories under the administration of Japan."

⁵⁰ *Supra* note 41.

⁵¹ F. Kishida, G. Nakatani, J. Kerry & A. Carter, Joint Statement of the Security Consultative Committee, *A Stronger Alliance for a Dynamic Security Environment: The New Guidelines for Japan-U.S. Defense Cooperation* (Apr. 27, 2015), available at <http://www.mofa.go.jp/files/000078186.pdf> (last visited on Nov. 5, 2015). [Emphasis added]

forces.⁵²

The Ministry of Foreign Affairs of Japan also expressed its position on the revised Guidelines as follows:

The main achievement of issuing the new guidelines is to intensify or reinforce deterrence and responsiveness to the complex new security environment in East Asia and other areas. That was the main achievement and it was recognized by the two leaders. [US president Barack Obama and Shinzo Abe]⁵³

The above statement arguably indicates that one of the major objectives of the attempted reinterpretation of Article 9 (renunciation of war) of the Japanese Constitution is to enable Japan to implement her commitments under the US-Japan military alliance as strengthened through the revised Guidelines. Japan expects to provide “greater contributions to international security initiatives wherever appropriate.”⁵⁴ This expansion of military roles is also related to the global counter-terrorism effort mobilized after the September 11 attack in 2001.⁵⁵ The enhanced role of Japan’s Self-Defense Forces (“SDF”) is expected to participate in the US-led military operations in various corners of the world either through UN peacekeeping operations, or independent American military initiatives. It may include possible support of US armed forces in Sino-US military confrontation or North Korean provocation.

Collective self-defense in the specific context of Japan needs to take into account this declared intention of the two countries expressed in the said Guidelines. It would not be useful to simply repeat that every sovereign State has the right to self-defense, whether individually or collectively. What is critical at this juncture is to put this issue into perspective and analyze it from the specific context of the circumstances in which it is being raised - the underlying purpose and stated intention of the bilateral military alliance between Washington and Tokyo. The main purpose of reinvigorating the US-Japan military alliance is to bring Japan to a wide

⁵² J. Garamone, *Revised Strategic Guidelines Key to Stability, Japan’s Defense Minister Says*, DoD NEWS, Apr. 27, 2015, available at <http://www.defense.gov/news/newsarticle.aspx?id=128677> (last visited on Nov. 5, 2015).

⁵³ *Supra* note 41.

⁵⁴ Yuichi Hosoya, *Right to Collective Self-Defense and the U.S.-Japan Alliance – How Will the Alliance Be Strengthened?*, 8 US-JAPAN RES. INST VOICE, 1 (July 7, 2015), available at <http://www.us-jpri.org/en/voice/voice8.pdf> (last visited on Nov. 5, 2015) (“If Japan does not possess the right to collective self-defense, the U.S.-Japan alliance would no longer function.”).

⁵⁵ B. Gill, *September 11 and Northeast Asia: Change and Uncertainty in Regional Security*, available at http://csis.org/files/media/isis/press/02summergill_br.pdf (last visited on Nov. 5, 2015).

range of military activities and cooperation in the global community. Collective self-defense merely explains one specific segment of the enhanced alliance. Furthermore, the possible invocation of the concept in case of contingencies in the Korean peninsula is just one specific example of the grand architecture of the alliance. This particular term has not been referred to in a vacuum so far; rather it has been raised as one of the justifying bases for the strengthened military alliance.

Such being the case, asking whether Japan could exercise collective self-defense when North Korea initiates military hostilities against US armed forces in Korea or in Japan would not reveal that much. As long as there is request from the US and other conditions for the invocation of self-defense under Article 51 are satisfied including the consent of Korea, there is no reason for Japan not to exercise her right to collective self-defense toward the Korean territory. Despite the concerns over an enhanced role for Japan can be raised from the political, diplomatic or military perspective,⁵⁶ no legal obstacles are ascertained. The more meaningful and relevant question would be to ask what the overall scheme of the bilateral alliance is - a scheme in which the term self-defense is used. So, any analysis of the issue of collective self-defense within the context of the recent US-Japan bilateral military alliance should not lose sight of this overall scheme.

B. Use of Force under the Japanese Constitution

Unlike other countries, collective self-defense with regard to Japan cannot be separated from her Constitution. Notably, the Japanese Constitution adopted in 1946 contains a unique provision that forbids Japan from resorting to war as means of setting international disputes.⁵⁷ Article 9 of the Constitution stipulates that:

⁵⁶ PRC Ministry of Foreign Affairs, Foreign Ministry Spokesperson Hua Chunying's Remarks on Japan's House of Representatives Approving New Security Bills (July 16, 2015), *available at* http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2535_665405/t1281847.shtml; Foreign Ministry Spokesperson Hong Lei's Regular Press Conference (Apr. 29, 2015), *available at* http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/t1259519.shtml. The Spokesman specifically said that:

The US-Japan alliance is a bilateral arrangement forged during the Cold War era. It is our strong belief that the US and Japan shoulder the responsibility of ensuring that a third party's interests will not be damaged and peace and stability of the Asia-Pacific not be undermined by their alliance. We will keep an eye on the future security cooperation between America and Japan.

See also ROK Ministry of Foreign Affairs, MOFA Spokesperson's Statement on the "Defense of Japan 2015," *available at* http://www.mofa.go.kr/ENG/press/pressreleases/index.jsp?menu=m_10_20&sp=/webmodule/htsboard/template/read/engreadboard.jsp%3Fboardid=302%26typeID=12%26tableName=TYPE_ENGLISH%26seqno=315500 (all last visited on Nov. 5, 2015).

⁵⁷ *See 1947 New Japanese constitution goes into effect*, THIS DAY IN HISTORY, May 3, 2015, *available at* <http://www.history.com/this-day-in-history/new-japanese-constitution-goes-into-effect> (last visited on Nov. 5, 2015).

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.⁵⁸

This provision is meant to advocate a pacifist Japan and imposes a clear limitation on the use of force by Japan.⁵⁹ As Article 9 is understood to impose explicit limitation on mobilizing its SDF, Japan has been unable to take on the roles required in the global community as well as in northeast Asia as it otherwise would have wished.⁶⁰ Only individual self-defense has been understood to be permitted under the provision.⁶¹ Collective self-defense has been unavailable to Japan.

The Japanese Supreme Court has maintained this interpretation of Article 9 for a long time. In the 1959 *Sunagawa* case, an issue was raised whether the presence of US armed forces in Japan could be justified despite the war renouncing provision of Article 9.⁶² In that case, the Supreme Court held that: “US forces stationed in Japan do not constitute war potential as prohibited by [Article 9] because they are not under the Japanese government’s control.”⁶³ It implies that only the troops under Japan’s control were subject to the limitations of the provision. So, as a corollary, the decision effectively acknowledged the limitations imposed on Japan’s SDF, as it is under the direct control of Japan. So, SDF cannot be used as war potential but mobilized only for self-defense in the case of outside invasion.

The Supreme Court decision and the text of Article 9 do not merely confine collective self-defense, but limit “use of force” by Japan in general using armed forces “under Japan’s control.” Despite the explicit renunciation of war, Article 9 has not been understood to prohibit *all* types of military activities. Individual self-defense may be permitted under the provision.⁶⁴

⁵⁸ The Japanese Constitution [日本国憲法] of May 3, 1947, available at http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html (last visited on Nov. 5, 2015).

⁵⁹ *Supra* note 54.

⁶⁰ *Id.*

⁶¹ J. Auer, *Article Nine of Japan's Constitution: From Renunciation of Armed Force "Forever" to the Third Largest Defense Budget in the World*, 1 LAW & CONTEMP. PROBS. (1990), available at <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4046&context=lcp> (last visited on Nov. 5, 2015).

⁶² See *Chance for court to right a wrong*, JAPAN TIMES, June 23, 2014, available at <http://www.japantimes.co.jp/opinion/2014/06/23/editorials/chance-court-right-wrong/#.Va9qxaRVikp>; Judgment upon case of the so-called ‘Sunakawa Case’ [Violation of the Special Criminal Law enacted in consequence of the Administrative Agreement under Article III of the Security Treaty between Japan and the United States of America], 1959 (A) 710 (1959. 12. 16.), available at http://www.courts.go.jp/app/hanrei_en/detail?id=13 (all last visited on Nov. 9, 2015).

⁶³ *Id.*

⁶⁴ Satoshi Morimoto, *The Constitution and the Right of Self-Defense*, in DEFENSE OF JAPAN 2012, at 109, available at http://www.mod.go.jp/e/publ/w_paper/pdf/2012/18_Part2_Chapter1_Sec2.pdf (last visited on Nov. 5, 2015). [Emphasis added]

The Abe administration of Japan has been seeking to change the conventional interpretation of the provision.⁶⁵ A constitutional amendment would be risky; controversies will follow in Japan. An alternative was thus to reinterpret Article 9 rather than to amend, because the former would be easier to achieve under domestic opposition. It was July 2014 that the Abe Administration officially made the reinterpretation plan.⁶⁶ Such reinterpretation paved the way for enhanced military participation of Japan in the global community as well as the invocation of collective self-defense in certain contingency situations. It requires several legislative changes;⁶⁷ the Lower House of the Japanese Diet finally passed 12 security bills on July 16, 2015,⁶⁸ which was given the consent by the Upper House on September 18, 2015.⁶⁹ Japan's domestic controversy over the constitutionality of the purported reinterpretation continues.⁷⁰

In short, comprehensive legislative changes were made to various domestic laws in Japan practically effecting to constitutional reinterpretation.⁷¹ These domestic legislations were believed to enable Japanese SDF to engage in military activities outside Japan including collective self-defense.⁷² As was shown in the 'package' passing of the dozen bills in the Japanese Diet, these changes are confined not merely to a specific setting of collective self-defense under international law, but extended

⁶⁵ *Supra* note 43. *See also supra* note 54, at 2. ("In 1972, the Cabinet Legislation Bureau expressed a government view that clearly explains for the first time that exercising the right to collective self-defense is not permitted in the Constitution.").

⁶⁶ J. Pollack, *Japan's Defense Policy Revision – Where is Japan Headed?*, BROOKINGS, Aug. 17, 2014, available at <http://www.brookings.edu/research/opinions/2014/08/17-japan-defense-policy-revision-pollack> (last visited on Nov. 5, 2015).

⁶⁷ Wire Services, *Japan passes bills allowing greater military role overseas*, ALJAZEERA AMERICA, Sept. 18, 2015, available at <http://america.aljazeera.com/articles/2015/9/18/japan-passes-controversial-security-bills-into-law.html> (last visited on Nov. 5, 2015).

⁶⁸ *See Japan's lower house approves change to self-defense law*, BBC NEWS ASIA, July 16, 2015, available at <http://www.bbc.com/news/world-asia-33546465> (last visited on Nov. 5, 2015).

⁶⁹ *See China warns Japan over expanding military role abroad*, BBC NEWS ASIA, Sept. 19, 2015, available at <http://www.bbc.com/news/world-asia-34301456> (last visited on Nov. 5, 2015).

⁷⁰ Repeta, *supra* note 6. *See also* Y. Tatsumi, *Japan's New Security Legislation: A Missed Opportunity*, DIPLOMAT, July 16, 2015, available at <http://thediplomat.com/2015/07/japans-new-security-legislation-a-missed-opportunity> (last visited on Nov. 5, 2015).

⁷¹ Sei-young Cho, *The Right of Collective Self-Defense and Development in Japan's Legislation for Peace and Security*, KOREA INST. NAT'L UNIFICATION ONLINE SERIES (June 11, 2015), available at <http://www.kinu.or.kr/servlet/Download?num=1103&fno=1654&bid=DATA01&callback=http://www.kinu.or.kr/issue/index.jsp&ses=> (last visited on Nov. 5, 2015). "The security legislation consists of an overall amendment composed of the ten existing legislations such as the Japan Self-Defense Force Law, Law Concerning Situations in Areas Surrounding Japan, Law Concerning Cooperation for UN PKO and Other Operations, and one new bill (International Peace Support Law)."

⁷² M. Penn, *Japan: Taking to the streets to combat militarism*, ALJAZEERA, Aug. 31, 2015, available at <http://www.aljazeera.com/indepth/features/2015/08/japan-streets-combat-militarism-150830122020141.html> (last visited on Nov. 5, 2015).

to a wide range of military activities, somewhat flexible and amorphous in nature.⁷³

C. Japan's Reinterpretation of Article 9 and Broader Military Roles

The recent debate over the issue of collective self-defense in the Japanese context was intensified after a cabinet decision was passed that purported to reinterpret Article 9.⁷⁴ In fact, the Abe administration tried to reinterpret Article 9 because the current interpretation has severely restricted Japan's SDF only to the defense of Japan within its own territory; it has excluded the Forces from collective self-defense.⁷⁵ Now that the new interpretation would expand the scope of the SDF's military engagement, the Forces could take on broader military activities under the US-Japan military alliance including the exercise of collective self-defense.⁷⁶ Nowhere in the statements, has the Japanese government pronounced that they were intended only for collective self-defense. We may not assume that these changes are all about collective self-defense.

Keeping the new interpretation of Article 9 in mind, the Japanese officials have indicated global military activities of the SDF, in cooperation with the US.⁷⁷ If anything, collective self-defense is just one particular snapshot of the new environment envisaged by the reinterpretation. Again, the statements, comments and references made in the course of Japanese domestic debates arguably underscore that the objective of the recent changes lies in the overall expansion of military activities. So, it is not entirely accurate to describe a reinterpretation of Article 9 as an issue of collective self-defense in the case of a North Korean attack against US forces in and around the Korean peninsula. Nor is it reasonable to refer to collective self-defense so as to justify enhanced military roles globally or *vice versa*.

Observations have been made regarding the significance and implication of the proposed changes of the role of Japan's SDF in the overall security environment of

⁷³ P. Kallender-Umezu *Japanese, Bills Expand Self Defense Parameters*, DEFENSE NEWS, July 16, 2015, available at <http://www.defensenews.com/story/defense/policy-budget/warfare/2015/07/16/japanese-bills-expand-self-defense-parameters/30260333>. See also S. Mazumdar, *What Japan's defense policy revision means*, DW-ASIA, July 16, 2015, available at <http://www.dw.com/en/what-japans-defense-policy-revision-means/a-18589489> (all last visited on Nov. 5, 2015).

⁷⁴ Kawasaki Akira & C. Nahory, *Japan's Decision on Collective Self-defense in Context*, DIPLOMAT, Oct. 3, 2014, available at <http://thediplomat.com/2014/10/japans-decision-on-collective-self-defense-in-context/> (last visited on Nov. 5, 2015).

⁷⁵ *Supra* note 54, at 2.

⁷⁶ *Id.* at 4.

⁷⁷ *Supra* note 74.

the global community in general and the northeast Asia in particular.⁷⁸ Indeed, it is argued that the long-term effect of the reinterpretation is not merely confined to the specific parameter of collective self-defense, but would set the stage for enhanced military capabilities of Japan, which would stoke tension in this region.⁷⁹ The accuracy of this practical assessment to the issue is under doubt. From a legal aspect, the term self-defense is not precisely used in describing the underlying purpose of reinterpreting Article 9 and broader military roles behind the scheme.

IV. Conclusion: Putting Self-Defense Debates in Their Proper Context

The concept of self-defense takes such an important place in the UN Charter and customary international law. As much as the prohibition of aggressive war constitutes the fundamental foundation of the postwar global regime, self-defense, a crucial exception to this canon, is equally important. The concept of collective self-defense should also be scrutinized from this angle. Self-defense should also be interpreted and applied within the clear parameters of stated principles of the UN Charter and prevailing jurisprudence of international law. Conditions to be fulfilled and situations to be covered are strictly spelled out by this concept. This 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 beyond the traditional concept. Arguably, some aspects of the issues would rise under the collective security realm which is reserved to the authority of the UN 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. One example that may satisfy the requirements for the proper exercise of collective self-defense is a direct attack by North Korea against the US.

States may consider various objectives in devising a collective self-defense

⁷⁸ Magosaki Ukeru & J. Junkerman, *Japan's "Collective Self-Defense" and American Strategic Policy – Everything Starts from the US-Japan Alliance*, GLOBAL RES. (July 15, 2014), available at <http://www.globalresearch.ca/japans-collective-self-defense-and-american-strategic-policy-everything-starts-from-the-us-japan-alliance/5391277> (last visited on Nov. 5, 2015).

⁷⁹ Yongtao Gui, *Abe's Push toward Collective Self-Defense is Alarming*, 8 GLOBAL ASIA 51-2 (2013), available at <http://www.globalasia.org/wp-content/uploads/2013/12/532.pdf> (last visited on Nov. 5, 2015).

scheme. Nonetheless, the underlying purpose of the military action for aiding third State should “come to the rescue” of the victim State at the request within the specific confinement of Article 51 or under customary international law. In toto, the concept of collective self-defense is far from addressing that one State can support her allies through all sorts of military activities or armed conflicts. As the individual, isolated right to self-defense is not able to justify all sorts of military activities of a State, it is important to understand that collective self-defense is not a justification for every joint military undertaking, either.

A proper question to be asked at this juncture is not whether a State, say Japan, can exercise collective self-defense. The answer to this very question should always be in the affirmative. Rather, our concern is, under what circumstances can Japan exercise her right to collective self-defense.