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## Japanese Legal Challenges in Rescuing Nationals Abroad

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*Yurika Ishii\**

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## I. INTRODUCTION

On December 15, 2022, the Japanese Cabinet adopted a new National Security Strategy.<sup>1</sup> The instrument stated, “Japan will reinforce arrangements and measures to protect Japanese nationals and others overseas from threats such as conflicts, natural disasters, infectious diseases, and terrorism.”<sup>2</sup> This article questions how the existing law aligns with the requirements outlined in the strategy. It aims to explain the backgrounds and contexts of the relevant laws and to analyze the systemic weaknesses that limit Japanese Self-Defense Force (SDF) responses to potential crises.

Japan, the geopolitical lynchpin in the East Asian region, has developed a unique security policy.<sup>3</sup> The mandates of the SDF are subject to strict limitations under domestic laws. However, the SDF’s roles have gradually expanded over time in response to changes in the region’s geopolitics. The SDF Act of 2015, last amended in 2022, is the current operational provision for rescuing nationals abroad.<sup>4</sup> This article delves into the underlying reasoning and obstacles associated with the law. The scope of analysis encompasses examining Japan’s national security laws, defense policies, and engagement in bilateral and multilateral cooperation, including Japan’s latest agreement with the North Atlantic Treaty Organization (NATO).<sup>5</sup>

A thorough examination of the law, policy, and historical background on the rescue of nationals abroad will be of significance to the reader. In times of crisis within the East Asian region, Japan is the primary responder for rescuing non-combatants. It is essential to keep abreast of the most up-to-date information regarding its laws and policies.

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Note: Individuals’ names are cited according to the customs of their home countries. In the case of Japanese and Koreans, names are cited with the family name preceding the given name.

1. JAPAN MINISTRY OF DEFENSE, NATIONAL SECURITY STRATEGY OF JAPAN (Dec. 2022), [https://www.mod.go.jp/j/approach/agenda/guideline/pdf/security\\_strategy.pdf](https://www.mod.go.jp/j/approach/agenda/guideline/pdf/security_strategy.pdf). A provisional translation is available at [https://www.mod.go.jp/j/approach/agenda/guideline/pdf/security\\_strategy\\_en.pdf](https://www.mod.go.jp/j/approach/agenda/guideline/pdf/security_strategy_en.pdf) (last visited Sept. 28, 2023).

2. *Id.* sec. VI(2)(4)(viii).

3. For an overview of the Japanese national security law and its relations with international law, see YURIKA ISHII, JAPANESE MARITIME SECURITY AND LAW OF THE SEA 14 (2022); James Kraska & Yusuke Saito, *The Law of Military Operations and Self-Defense in the U.S.-Japan Alliance*, 73 NAVAL WAR COLLEGE REVIEW 85 (2020).

4. *See infra* Section II(B).

5. *See infra* Section II(D).

In addition, this article sheds light on an emerging perspective of the doctrine of rescuing nationals abroad. The debates on this doctrine have centered around its compatibility with the *jus ad bellum*. The core subjects of discussions have been whether the peril to citizens abroad may trigger the right of self-defense or whether there is an independent cause for the intervention.<sup>6</sup> These issues often arose in the context of former suzerain powers intervening in the decolonization process from the 1960s to the 1980s.<sup>7</sup> In many cases, States operated not only to protect their citizens but also to take a side with one of the conflicting parties.<sup>8</sup> As a result, a much-debated question was whether the right to self-determination and the doctrine of humanitarian intervention might justify the action.<sup>9</sup>

However, after the Cold War ended, the rescuing State typically obtained the prior consent of the host State to clear the legal issues and secure a safe environment to pursue its mission.<sup>10</sup> States have started formally and informally agreeing to cooperate in evacuating civilians in an emergency. Even when there is a confrontation among domestic groups, rescuing States have pursued their missions without recognizing the new government and without interfering with the domestic politics of the host State.<sup>11</sup>

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6. See Tom Ruys, *The "Protection of Nationals" Doctrine Revisited*, 13 JOURNAL OF CONFLICT & SECURITY LAW 233 (2008); Mathias Forteau, *The Oxford Handbook of the Use of Force in International Law*, in THE OXFORD HANDBOOK OF THE USE OF FORCE IN INTERNATIONAL LAW 949 (Marc Weller ed., 2015); NATALINO RONZITTI, RESCUING NATIONALS ABROAD THROUGH MILITARY COERCION AND INTERVENTION ON GROUNDS OF HUMANITY (1985); Natalino Ronzitti, *Rescuing Nationals Abroad Revisited*, 24 JOURNAL OF CONFLICT & SECURITY LAW 431 (2019). The weight of opinion rejects an independent customary law exception to the prohibition of the use of force to rescue nationals abroad. See, e.g., ROBERT KOLB, INTERNATIONAL LAW ON THE MAINTENANCE OF PEACE: JUS CONTRA BELLUM 318 (2010).

7. See Thomas C. Wingfield & James E. Meyen, *Lillich on the Forcible Protection of Nationals Abroad*, 77 INTERNATIONAL LAW STUDIES 41, 97 (2002).

8. CHRISTINE D. GRAY, INTERNATIONAL LAW AND THE USE OF FORCE 88 (4th ed. 2018).

9. RONZITTI, *supra* note 6, at 1.

10. See also Yasuaki Hashimoto & Hiroshi Hayashi, *Guntai ni yoru zaigai jikkokumin hogotō katsudō to kokusaibō*, 4 BOEI KENKYUSHO KIYO 77 (2002), [http://www.nids.mod.go.jp/publication/kiyo/pdf/bulletin\\_j4-3\\_3.pdf](http://www.nids.mod.go.jp/publication/kiyo/pdf/bulletin_j4-3_3.pdf).

11. For instance, in the case of the evacuation from Afghanistan in August 2021, countries, including the United States, the United Kingdom, and Japan did not recognize the Taliban regime that expelled the democratically elected administration. They nonetheless conducted the operation per Taliban regime acquiescence. For the U.S.'s evacuation process, see U.S. Department of State, *After Action Review on Afghanistan, January 2020–August*

At the operational level, the rescuing State relies on the assistance of the local authority to gather information about evacuation routes and shelters, ensuring a seamless evacuation process for their citizens. The arrangements may include securing the pathways from the operation site to air and maritime ports. The host State also benefits from foreign operations when the situation is in turmoil. There is usually little reason for the host State to prevent other States from evacuating their nationals. When the host State government consents, the operation does not fall under the United Nations Charter Article 2(4) prohibition.<sup>12</sup>

Today, States recommend that their ministries of foreign affairs seek to conclude or modify a memorandum of understanding or status of forces agreement to enable smooth evacuation operations during a crisis. The United States adopted the non-combatant evacuation operation (NEO) doctrine in the late 1980s,<sup>13</sup> a process led by their State Department, mainly in a non-hostile environment. Other countries, such as the United Kingdom,<sup>14</sup>

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2021, at 11–15 (Mar. 2022), <https://www.state.gov/wp-content/uploads/2023/06/State-AAR-AFG.pdf>. For the United States decision not to recognize the Taliban regime, see U.S. Department of State, *U.S. Relations With Afghanistan, Bilateral Relations Fact Sheet* (Aug. 15, 2022), <https://www.state.gov/u-s-relations-with-afghanistan/>.

12. For the significance of the consent in this context, see David Wippman, *Military Intervention, Regional Organizations, and Host-State Consent*, 7 *DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW* 209 (1996); David Wippman, *Pro-Democratic Intervention*, in *THE OXFORD HANDBOOK OF THE USE OF FORCE IN INTERNATIONAL LAW* 797, 811 (Marc Weller ed., 2015). In broader terms, see, e.g., ERIKA DE WET, *MILITARY ASSISTANCE ON REQUEST AND THE USE OF FORCE* 75 (2020).

13. In 1998, U.S. Departments of State and Defense concluded an agreement to cooperate to rescue their nationals abroad. See Memorandum of Agreement Between the Departments of State and Defense on the Protection and Evacuation of U.S. Citizens and Nationals and Designated Other Persons from Threatened Areas Overseas (July 1998), <https://prhome.defense.gov/Portals/52/Documents/PR%20Docs/DOS-DOD%20Memo%20of%20Agreement%20on%20Protection%20and%20Evacuation.pdf>.

14. UNITED KINGDOM MINISTRY OF DEFENCE (UK MOD), *JOINT DOCTRINE PUBLICATION 3-51, NON-COMBATANT EVACUATION OPERATIONS* (July 2023), <https://www.gov.uk/government/publications/jdp-3-51-non-combatant-evacuation-operations> [hereinafter UK MOD].

Canada,<sup>15</sup> Australia,<sup>16</sup> France,<sup>17</sup> and later, the Republic of Korea<sup>18</sup> and Japan,<sup>19</sup> established domestic procedures to enable their militaries to rescue their nationals abroad by cooperating with local embassies.

The host State's consent is not necessarily a requirement in some countries, such as the United States, the United Kingdom, and Australia.<sup>20</sup> These States would pursue the mission in a "hostile" environment, where the host nation's security forces may even obstruct the operation, instead of a "permissive" environment or an "uncertain" environment.<sup>21</sup> Yet, such a situation is an exception, not the norm.

In addition, multiple rescuing States may collaborate through exchanging information, co-planning, and sharing vehicles and assets. Once, it was unnecessary to institutionalize such collaboration because the protection of nationals abroad had an ad hoc and temporal nature. Yet now there are many legal and operational commonalities, and exploring such elements will enable military forces to conduct a safe and efficient operation.

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15. GOVERNMENT OF CANADA, EVALUATION OF THE DEPARTMENT OF NATIONAL DEFENCE (DND) CONTRIBUTIONS TO HUMANITARIAN OPERATIONS (HO), DISASTER RELIEF OPERATIONS (DRO), AND NON-COMBATANT EVACUATION OPERATIONS (NEO) (Oct. 2013), <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/audit-evaluation/evaluation-department-national-defence-contributions-to-humanitarian-operations.html>.

16. AUSTRALIA DEFENCE HEADQUARTERS, CHIEF OF JOINT OPERATIONS, ADDP 3.10, NON-COMBATANT EVACUATION OPERATIONS (2011).

17. MINISTERE DE LA DEFENSE, DIA-3.4.2, LES OPERATIONS D'EVACUATION DE RESORTISSANTS (RESEVAC) (July 2, 2009) (Fr.), <https://www.irsem.fr/data/files/irsem/documents/document/file/94/20090702-NP-CICDE-DIA-3.4.2-RESEVAC-2009.pdf>.

18. DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION], art. 2(2) (S. Kor.). The constitution specifies the State's obligation to rescue its nationals abroad per national law. *See* Act on Immigration and Legal Status of Overseas Koreans, Act No. 6015 (Sept. 2, 1999) (amended by Act No. 6124 (Jan. 12, 2000) and Act No. 6307 (Dec. 29, 2000)) (broadly defining the scope of Korean nationals).

19. *See infra* Part II.

20. *See* Ruys, *supra* note 6, at 265.

21. Permissive environments are characterized by little or no resistance from the host nation or its armed forces. In uncertain environments, the host nation's military forces may be supportive of, neutral, or opposed to the operation. A hostile environment can be characterized by civil unrest or full-scale war.

There are informal cooperative mechanisms such as the NEO Coordination Group<sup>22</sup> and NATO's Allied Joint Doctrine for Non-Combatant Evacuation Operations.<sup>23</sup> The 2011 Libya crisis is an example where countries formed a multilateral coordination cell in Malta and effectively conducted rescue operations.

The collaborative dimension of rescuing nationals abroad has received insufficient attention. When there is no *jus ad bellum* question, there are still issues both on legal and operational levels regarding, for instance, the use of weapons, protection of human rights, and coordination with other States. In addition, a policy question remains regarding whether imposing such a limitation to restrain its military from acting in a hostile environment serves the stakeholders' interests. It is important to evaluate thoroughly such restrictive legislation's potential consequences and implications. This article aims to fill this research gap by conducting a case study on Japan.

The article is divided into two parts to discuss the significance and limits of Japanese law. Part II outlines Japanese laws and policies regarding the SDF's mandate to rescue Japanese nationals abroad. It focuses on details of the current legislation that will be the basis for the operations. It will also track the historical developments regarding this policy in Japan. Finally, it focuses on major key players in the East Asian region in this context—Japan and the United States—to discuss the legal and operational challenges and the way forward to build international cooperation mechanisms.

Part III deals with hypothetical scenarios involving crises in the Korean Peninsula and the Taiwan Strait. In the case of the Korean Peninsula, a significant obstacle arises from the potential disagreement of the Republic of Korea regarding the operations of the SDF within its territory. As a result, the primary focus lies on promoting cooperation among the SDF, the Republic of Korea, and the United States. The subsequent segment examines the challenges associated with a Taiwan Strait crisis, with particular attention given to the legal status of Taiwan under international law. Lastly, Part IV provides the concluding remarks on the implication of the findings.

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22. UK MOD, *supra* note 14, at 38. The NEO Coordination Group, consisting of twenty countries and the EU, met for the first time in 2000 to create a network of international experts in NEO and exchange experiences in planning and executing this type of operation. See Craig Sutherland, *Operation Deference*, 157 ROYAL UNITED SERVICES INSTITUTE JOURNAL 15, 17 (2012).

23. NATO, Allied Joint Publication 3.4.2, Allied Joint Doctrine for Non-Combatant Evacuation Operations (ed. A, ver. 1, May 2013), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/625781/doctrine\\_nato\\_non-combatant\\_evacuation\\_ajp\\_3\\_4\\_2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/625781/doctrine_nato_non-combatant_evacuation_ajp_3_4_2.pdf).

## II. JAPANESE DOMESTIC LAWS AND AUTHORITIES TO RESCUE NATIONALS ABROAD

### A. *The Role and Mandates of the Ministry of Foreign Affairs*

Under Japanese law, the primary duty of safeguarding its citizens abroad falls under the Ministry of Foreign Affairs (MOFA).<sup>24</sup> When a situation arises in a foreign country that necessitates evacuation, the MOFA, through the embassy in charge, confirms the safety of local Japanese; secures the means of evacuation, for example, by charter buses and commercial aircraft; and assists in the evacuation.<sup>25</sup>

Following the end of World War II, the government imposed strict travel restrictions on the Japanese people. However, 1964 saw the liberalization of foreign currency restrictions, which allowed ordinary citizens to travel abroad for tourism. The annual number of Japanese traveling abroad sharply increased from 127,000 in 1964<sup>26</sup> to 20,000,000 in 2019.<sup>27</sup>

The limit of embassies' capability to protect nationals without the presence of military assets became evident.<sup>28</sup> The significant incidents included the Nicaragua turmoil in 1979,<sup>29</sup> the Teheran bombing during the Iran-Iraq

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24. Act on the Establishment of the Ministry of Foreign Affairs, Act No. 94 of 1999, art. 4, [https://elaws.e-gov.go.jp/document?lawid=411AC0000000094\\_20160401\\_427AC0000000066](https://elaws.e-gov.go.jp/document?lawid=411AC0000000094_20160401_427AC0000000066) (provides that the protection of nationals abroad is one of the mandates of the MOFA). MOFA established a division supporting overseas Japanese citizens in 1967.

25. *Id.* The Act on the Establishment of the Ministry of Foreign Affairs also stipulates that “the protection of the lives and bodies of Japanese nationals overseas and other matters relating to their safety” as the affairs under its jurisdiction. Since the establishment of the Consular Section on June 1, 1967, the Ministry of Foreign Affairs of Japan has been engaged in the protection and support of Japanese nationals abroad.

26. Statistics on Immigration, 1964, No. 64-00-02, at 10, <https://www.e-stat.go.jp/stat-search/files?tclass=000001008249&cycle=7&year=19640>. Note that Japanese individuals who traveled to Okinawa were registered as leaving the country, as Okinawa was still under U.S. occupation.

27. Statistics on Immigration, 2019, No. 19-00-01, <https://www.e-stat.go.jp/stat-search/files?tclass=000001008249&cycle=7&year=20190>.

28. *See, e.g.*, Tadashi Itagaki, 131st Diet, Proceedings of HC, Committee of the Cabinet, No. 5, at 3 (Nov. 8, 1994), <https://kokkai.ndl.go.jp/txt/113114889X00519941108/17>.

29. On July 19, 1979, when Managua, Nicaragua fell to the Sandinista National Liberation Front, eighteen Japanese fled by U.S. and Argentina military aircraft. ASAHI SHINBUN, July 20, 1979, at 3.



War in 1985,<sup>30</sup> the coup d'état in Yemen in 1986,<sup>31</sup> the United States operation in Panama in 1989,<sup>32</sup> and the coup d'état in Haiti in 1991.<sup>33</sup>

In many instances, Japanese nationals had to rely on foreign assets to evacuate from perilous situations. For example, in May 1994, during the Yemen Civil War, ninety-six Japanese nationals had to escape Yemen by aircraft provided by Germany, France, Italy, and Jordan.<sup>34</sup> In June 1998, three Japanese individuals escaped from Eritrea during intensified hostilities, which involved airstrikes on major cities as part of an armed conflict over the Ethiopian-Eritrean border. Military aircraft from the United States provided the transportation.<sup>35</sup> In June 2000, during armed clashes in the Solomon Islands prompted by tribal conflicts and the temporary detainment of

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30. On March 17, 1985, during the Iran-Iraq War, Iraqi President Saddam Hussein declared that in forty-eight hours Iraq would begin attacking aircraft flying over Iranian territory. At the time, two hundred sixty out of approximately five hundred Japanese residents in Iran escaped on Turkish Airlines because Japan did not have government aircraft and Japanese commercial airlines refused to fly into Iran. The inability of the Japanese government to rescue Japanese nationals in Iran was later criticized in the Diet. *See, e.g.*, Yanagisawa Renzō, Member, Proceedings of the HC, Cabinet Committee, 107th Diet, No. 5, at 5 (Dec. 9, 1986), <https://kokkai.ndl.go.jp/txt/110714889X00519861209/31>. *See also* ASAHI SHINBUN, Mar. 19, 1985, at 1; ASAHI SHINBUN, Mar. 21, 1985, at 3.

31. On January 13, 1986, an armed conflict occurred in Aden and the government shut the airports. Thirty-eight Japanese escaped on U.S., French, and USSR vessels. ASAHI SHINBUN, Jan. 20, 1986, at 2.

32. On December 20, 1989, the United States conducted a military operation to arrest General Noriega in Panama. According to the Ministry of Foreign Affairs of Japan, none of the 421 Japanese in Panama showed a desire to leave. ASAHI SHINBUN, Dec. 21, 1989, at 1.

33. On September 29, 1991, a coup d'état occurred in Haiti and commercial airline traffic in Haiti stopped. Out of twenty-six Japanese in Haiti, seven left on Mexican military aircraft and the remainder left when commercial airline traffic resumed. ASAHI SHINBUN, Sept. 30, 1991, at 1.

34. ASAHI SHINBUN, May 10, 1994, at 2; ASAHI SHINBUN, May 14, 1994, at 2. *See also* ITO Kosuke, Member, Proceedings of HR, Budget Committee, 129th Diet, No. 14, at 12 (June 1, 1994), <https://kokkai.ndl.go.jp/txt/112905261X01419940601/80>. According to the review by the Agency for Internal Affairs and Communications, the Japanese embassy in Yemen issued an evacuation advisory two days after four Western countries decided to evacuate their citizens from the country during the civil war that broke out. ASAHI SHINBUN, Nov. 14, 1995, at 7.

35. In June 1998, due to a border dispute, Ethiopia and Eritrea attacked each other leading to full-scale conflict between the two States. In response to Italy and other countries' request, Ethiopia agreed to suspend bombing of Asmara Airport in Eritrea for thirteen hours from the night of June 6 to the morning of June 7. In the meantime, approximately fifteen hundred foreigners evacuated by planes from Germany, the United States, and the UK. ASAHI SHINBUN, June 8, 1998, at 1.

the prime minister, twenty-one Japanese nationals were transported from Honiara, the capital of the Solomon Islands, to Australia by an Australian warship, and twenty-seven Japanese citizens were transported to New Zealand by a chartered New Zealand government aircraft.<sup>36</sup> In July 2006, as Israel bombed Beirut International Airport and Hezbollah bases, and Hezbollah in Lebanon continued rocket attacks on cities in northern Israel, thirteen Japanese nationals were transported from Lebanon to Cyprus by a British ship.<sup>37</sup> Finally, due to the worsening situation in Libya in February 2011, twenty-one Japanese nationals were evacuated by U.S. government-chartered vessels and Spanish military aircraft.<sup>38</sup>

The efficiency of rescue operations conducted by the MOFA significantly improved as the Cabinet Office gained increased authority in crisis management. In 1998, the government appointed a Deputy Chief Cabinet Secretary for Crisis Management and established a response framework under the Prime Minister's Office. The Chief Cabinet Secretary oversees crisis management within the Cabinet Secretariat, except for national defense matters under the jurisdiction of the National Security Bureau.

The first action taken after these improvements was the rescue of Japanese nationals in Indonesia. Corruption, food shortages, and mass unemployment triggered riots, resulting in President Suharto's resignation. Nearly five thousand Japanese evacuated Indonesia via commercial airlines. Japan dispatched government aircraft to Singapore, where they were on standby but ultimately not needed for the rescue mission.<sup>39</sup> Similarly, in September 1999, the MOFA supported the evacuation of Japanese nationals from East Timor, where riots erupted. It dispatched the Japan Coast Guard vessel *Mizuhō* to the coast of East Timor, but it was not required for the rescue.<sup>40</sup>

Thereafter, the Cabinet Office took the lead in dealing with Japanese nationals' crises abroad. The organization is pivotal in coordinating and executing strategic measures to address and respond to emergencies overseas. Furthermore, in 2003, the government officially established an organization

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36. See Komeito Gaikō Anzen Hoshō Chōsakai Kenpō Chōsakai Gōdō Kaigi [Gōdō Kaigi], Haifu Siryō, June 19, 2014, at 4, <http://clearinghouse.main.jp/web/cas0016.pdf>.

37. ASAHI SHINBUN, July 18, 2006, at 1. See also Gōdō Kaigi, *supra* note 36, at 4.

38. ASAHI SHINBUN, Feb. 25, 2011, at 8. See also Gōdō Kaigi, *supra* note 36, at 4.

39. ASAHI SHINBUN, May 14, 1998, at 3.

40. ASAHI SHINBUN, Sept. 8, 1999, at 3.

to promote information exchange and cooperation concerning the safety of the nationals between the MOFA and corporations operating abroad.<sup>41</sup>

### B. Present Legal Authorities of the SDF and Their Challenges

#### 1. The Japanese Government's Perspective on the Doctrine of Protection of Nationals Abroad

This section analyzes the present legal authorities of the SDF. It commences with a concise overview of Japanese domestic law to provide context.

Although Article 9 of the Japanese Constitution prohibits the maintenance of “land, sea, and air forces, as well as other war potential” to accomplish “the threat or use of force to settle international disputes,”<sup>42</sup> Japan’s government justified the SDF’s establishment by interpreting Article 9 as the minimum necessary force for Japan to exercise its right of self-defense under international law. However, the Constitution requires the SDF to comply with international law. Specifically, Article 98(2) provides that “[t]he treaties concluded by Japan and established laws of nations shall be faithfully observed.” Additionally, Article 99 states, “public officials have an obligation to respect and uphold this Constitution.”

The SDF Act is the legal basis for all SDF operations.<sup>43</sup> It was first enacted in 1954, with significant amendments in 2015 and other amendments more recently in 2022. Chapter 6 of the Act provides the authorization for each operation, and Chapter 7 provides the rules for execution, including the rules on using weapons.

The threshold of exercising the right of self-defense is high.<sup>44</sup> The government has taken a cautious position to characterize hostilities against nationals abroad as an armed attack against Japan. The rescue of nationals

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41. See *Kaigai Anzen Kanmin Kyoryoku Kaigi*, [https://www.anzen.mofa.go.jp/anzen\\_info/kanminkyo.html](https://www.anzen.mofa.go.jp/anzen_info/kanminkyo.html). The public-private cooperation started in 1992. See *Annual Report of 2012*, at 3, [https://www.anzen.mofa.go.jp/anzen\\_info/pdf/nenji\\_h24.pdf](https://www.anzen.mofa.go.jp/anzen_info/pdf/nenji_h24.pdf).

42. Nihonkoku Kenpō [KENPŌ] [CONSTITUTION], art. 9. While there are multiple interpretations of this clause, this article does not get into the debate. This interpretation is in accordance with the government’s position.

43. Self-Defense Forces Act, Act No. 165 of 1954, <https://elaws.e-gov.go.jp/document?lawid=329AC0000000165> [hereinafter SDF Act].

44. The current position of the government is that the three requirements must be met to use force. First, an armed attack has occurred against Japan, or an armed attack has occurred against another country having a close relationship with Japan, which threatens the

abroad would not satisfy the requirements of the right of self-defense except for an extraordinary circumstance.<sup>45</sup>

In the past, the Japanese government did not rule out the possibility of invoking the right of self-defense under international law to protect a Japanese national's life, body, or property if another country endangered them.<sup>46</sup> However, the Japanese government never enacted a specific statutory rule that authorized the SDF to rescue Japanese nationals under the right of self-defense. The government has explained that the host State's consent is required to dispatch the SDF under international law, even when no explicit provision exists under the SDF Act.<sup>47</sup>

## 2. Protection of Japanese Nationals Abroad

The SDF Act has two grounds for the rescue of nationals abroad.<sup>48</sup> The first is for the protection of Japanese nationals, which entails safeguarding them against security threats. The second is for the transportation of Japanese nationals by providing various assets such as helicopters, aircraft, land vehicles, and ships to facilitate their safe movement. Article 84-3 of the SDF Act grants the mandate for the SDF to protect Japanese nationals abroad, while

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existence of Japan and poses a clear danger that the rights of the people to life, liberty, and the pursuit of happiness will be fundamentally overthrown. Second, there is no other appropriate means to eliminate such an attack to maintain the existence of Japan and to protect the people of Japan. Third, the use of force should be limited to the minimum necessary. Cabinet Decision on Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People, July 1, 2014, Provisional Translation, [https://www.mofa.go.jp/fp/nsp/page23e\\_000273.html](https://www.mofa.go.jp/fp/nsp/page23e_000273.html). For an extensive analysis on the concept of the use of force under the Japanese law, see NAKANO TAKESHI, BOEIHO 113 (2023).

45. SAKATA MASAHIRO, "HO NO BAN'NIN": NAIKAKU HOSEIKYOKUNO KYOJI, 136–37 (2014); NAKANO, *supra* note 44, at 536.

46. Komatsu Ichiro, Dir. Gen., Int'l Law Bureau, Ministry of Foreign Affairs of Japan, Proceedings of the House of Representatives [HR], Special Committee on Security, 120th Diet, No. 5, at 21 (Mar. 13, 1991), <https://kokkai.ndl.go.jp/txt/112003818X00519910313/190>. See Masahiko Asada, *Nihon to Jiei-ken: Kobetsuteki Jiei-ken wo Chushin ni*, in 10 NIHON TO KOKUSAIHO NO 100 NEN, 42–43 (Japanese Society of International Law ed., 2001).

47. General Nakatani, Minister of Defense of Japan, Proceedings of HC, Special Comm. on Peace Legislation for Japan and Int'l Society, No. 10 at 5 (Aug. 19, 2015), <https://kokkai.ndl.go.jp/txt/118913929X01020150819/45>; Masuda Kazuo, Director, Bureau of Defense Policy, MOD, Proceedings of the HR, Committee on Security, 208th Diet, No. 3, at 5 (Mar. 15, 2022), <https://kokkai.ndl.go.jp/txt/120803815X00320220315/36>.

48. For the interpretation of the two provisions, see NAKANO, *supra* note 44, 524–48; Rintaro Yamanaka, *Jietai-bo oyobi Nihonkoku Kenpo jo no Hyoka*, in ZAIGAI HOJIN NO HOGO KYUSHUTSU 21, 36–37 (Yasuhiro Takeda ed., 2021).

Article 84-4 empowers them to transport nationals. These are separate and independent provisions. Current Article 84-3 was introduced during the 2015 amendment. The administration of Prime Minister Shinzo Abe acknowledged the necessity of creating this provision in response to the circumstances described in Section II-C. There has been no case where the government invoked Article 84-3.

Under Article 84-3, the Minister of Defense may, upon the request of the Minister of Foreign Affairs and with the Prime Minister's approval, order SDF units to take measures, including transportation, to protect and rescue Japanese nationals whose lives may be endangered in an emergency in a foreign country. However, the operation is subject to the following requirements.<sup>49</sup>

The first condition is that the competent authorities of the host State are in charge of maintaining public safety and order, and there may be no acts of combat.<sup>50</sup> Combat means acts of killing or wounding people or destroying property committed as part of an international armed conflict.<sup>51</sup>

The second condition is that the host State consents to the approved measures, including using weapons. If an organization administers the host State according to a resolution of the United Nations General Assembly or Security Council, then the SDF must obtain consent from that organization.<sup>52</sup>

According to the government's explanation, measures for protecting Japanese nationals are to "supplement or substitute for the police powers that are part of the governing authority of that host State."<sup>53</sup> Therefore, "the consent of the territory state is an essential prerequisite for implementing such actions."<sup>54</sup> It also added that the requirement derives from the domestic law of Japan. There must be a solid basis under Article 9 of the Constitution for the SDF to operate abroad.<sup>55</sup>

The third condition is that SDF units must obtain the coordination and cooperation of the competent authorities of the host State to implement

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49. SDF Act, *supra* note 43, art. 84-3.

50. *Id.* art. 84-3(1)(i).

51. *Id.*

52. *Id.* art. 84-3(1)(ii).

53. Masuda Kazuo, Director, Bureau of Defense Policy, Japan Ministry of Defense, Proceedings of the HR, Comm. on Security, 208th Diet, No. 3, at 5 (Mar. 15, 2022), <https://kokkai.ndl.go.jp/txt/120803815X00320220315/36>.

54. *Id.*

55. *Id.*

protective measures as smoothly and safely as possible in response to anticipated dangers.<sup>56</sup>

In short, the current legislation does not allow the SDF to operate in an “uncertain” or “hostile” environment. The government has explained that the requirement will be met when the local authority does not have sufficient capacity to protect foreign nationals.<sup>57</sup> Possible scenarios include cases when the SDF is more capable of handling a particular response to situations such as natural disasters.<sup>58</sup> However, the local authority must maintain public safety and order when the SDF’s only transportation route is blocked or when a mob group surrounds the Japanese nationals.<sup>59</sup> On the other hand, when the SDF needs to suppress armed forces to protect Japanese nationals, the first condition is not met.<sup>60</sup>

SDF personnel may use weapons to protect the life or property of Japanese nationals or other persons subject to protection or to protect other persons coming under the control of the SDF while conducting the mission.<sup>61</sup> The government of Japan must find that the first and second requirements under Article 84-3 are met before authorizing the SDF to carry weapons in an operation to rescue Japanese nationals abroad. Specifically, the competent authority of the host nation must consent to the SDF carrying weapons. SDF personnel shall not cause harm to any person except in cases of legitimate defense or necessity as provided under the Japanese Penal Code.<sup>62</sup> This provision on the use of weapons was inserted in the SDF law in 2015 for the first time.

A question arises as to whether SDF personnel can use weapons when armed groups organized in a foreign country interfere with the operation. When the first and second requirements above are still met, the use of weapons will not constitute a use of force against the host State. On the other hand, when conditions change and the requirements above are no longer met, the government of Japan may have to decide on-site whether the local

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56. *Id.* art. 84-3(1)(iii).

57. Ishikawa Hirotaka, Parliamentary Secretary, Proceedings of HC, Special Comm. on Peace Legislation for Japan and Int’l Society, No. 8, at 22 (Aug. 5, 2015), <https://kokkai.ndl.go.jp/txt/118913929X00820150805/251>.

58. *Id.*

59. *Id.*

60. *Id.*

61. SDF Act, *supra* note 43, art. 94-5.

62. *Id.*

authority continues to maintain public safety and order on site, which is, in practice, a difficult determination.<sup>63</sup>

### 3. Transportation of Japanese Nationals Abroad

Under Article 84-4, the SDF may “transport” Japanese nationals abroad and foreigners under certain conditions. Upon a request from the Minister of Foreign Affairs, the Minister of Defense may deploy the SDF to transport Japanese nationals requiring protection in the event of a disaster, disturbance, or another emergency in a foreign country. The Prime Minister’s approval is not a legal requirement. The Minister of Defense is required to consult with the Minister of Foreign Affairs on the risks expected in the transportation of persons and ensure the safe implementation of the plan.<sup>64</sup>

In 1999, when the Diet introduced the SDF Act Article 108-8 on transportation of nationals abroad, the government explained that the host State was to guarantee the safety of transportation.<sup>65</sup> In simpler terms, the role of the SDF units under the prior authorities did not contemplate the SDF acting to ensure the safe transportation of Japanese nationals abroad.<sup>66</sup>

In 2006, the amendment to the SDF Act replaced Article 108-8 with Article 84-3. Then, the revision of 2015 established Article 84-3 for the protection of nationals, as described in the previous section, and Article 84-4 for the transportation of nationals. After the Kabul evacuation, the Diet in 2022 amended the SDF Act so that deployment is now possible when the SDF can take measures to avoid anticipated dangers.<sup>67</sup> The Diet also repealed the requirement to prioritize the use of government aircraft so that the SDF can now use its military aircraft promptly.

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63. Nakano points out that the use of weapons in such a setting, as a whole, may constitute the “use of force” against a foreign State. It is because the “use of weapons” in the absence of the host State’s consent has commonality with the “use of force” in its nature and its purpose. NAKANO, *supra* note 44, at 543.

64. SDF Act, *supra* note 43, art. 84-3.

65. Norota Hosei, Secretary, Defense Agency, Proceedings of the HR, Special Comm. on Japan-U.S. Defense Cooperation Guidelines, 145th Diet, No. 10, at 11 (Apr. 22, 1999), <https://kokkai.ndl.go.jp/txt/114504963X01019990422/86>.

66. *Id.* Norota also explained that engaging in such measures could potentially lead to accidents affecting the Japanese nationals being transported. Should such unfortunate incidents occur, the initial objective of ensuring safety would remain unaccomplished.

67. Act Amending the Act Establishing the Defense Agency, Act No. 26 of 2022, <https://hourei.ndl.go.jp/#/detail?lawId=0000157079>. See *infra*, Section II(C).

Nevertheless, the Japanese government explained that the 2022 amendment did not create any substantive changes in the authorities of the SDF.<sup>68</sup> Revisions in the text of the amendment provided more clarity on the safety requirements of the SDF to carry nationals abroad. The text expressly states that the SDF can take measures to avoid anticipated hazards and emergencies to meet the condition of available safe transportation.<sup>69</sup> More specifically, the government provided examples of scenarios where the SDF can avert the danger to satisfy the safety requirements. They included ensuring the continued functioning of the airfield through security measures implemented by the host nation or a third country, effectively managing the influx of crowds at the airport, and employing secure transportation methods such as chaff, flares, bulletproof plates, and other protective devices.<sup>70</sup> The revised text and the scenarios did not create new authorities but did broaden the conditions for the SDF to provide transportation to rescue nationals abroad.

Conversely, as amended in 2015, the SDF Act did not explicitly authorize the SDF to transport foreign nationals in evacuation operations without Japanese national evacuees. The SDF Act with the 2022 revisions, however, provides that the SDF may now rescue foreign nationals without accompanying Japanese national evacuees who are, *inter alia*, a spouse or a child of a Japanese national, a person employed by the embassy or consul, or a person employed or under contract to work for a Japanese independent administrative agency in a foreign country.<sup>71</sup> Therefore, the 2022 revision of Article 84-4 expanded the eligibility for transportation beyond the previous limitations of only Japanese nationals.

Furthermore, contrary to Article 84-3, the text of Article 84-4 does not require the host State's consent. The Japanese government has taken a position that the protection of nationals abroad, as provided under Article 84-3,

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68. Onodera Itsunori, Minister of Defense of Japan, Proceedings of the HC, Comm. on Diplomacy and Defense, 185th Diet, No. 5, at 12 (Nov. 14, 2013), <https://kokkai.ndl.go.jp/txt/118513950X00520131114/121>; Kuroe Tetsuro, Dir. Bureau of Operational Policy, Ministry of Defense, Proceedings of the HR, Comm. on Security, 183rd Diet, No. 5, at 18 (June 4, 2013), <https://kokkai.ndl.go.jp/txt/118303815X00520130604/163>.

69. *Id.*

70. Kishi Nobuo, Minister of Defense of Japan, Proceedings of the HC, Comm. on Diplomacy and Defense, 208th Diet, No. 8, at 11 (Apr. 12, 2022), <https://kokkai.ndl.go.jp/txt/120813950X00820220412/122>.

71. SDF Act, *supra* note 43, art. 84-4. The government explained that these groups of people could be equated with Japanese nationals. Kishi Nobuo, Minister of Defense of Japan, Proceedings of HC, Comm. of Diplomacy and Defense, No. 8, at 9 (Apr. 12, 2022), <https://kokkai.ndl.go.jp/txt/120813950X00820220412/100>.



is a police measure that does not involve the use of force and it is permissible based on the consent of the host State.<sup>72</sup> Consent is not required under Article 84-4 of the SDF Act because the use of transportation is not to supplement or substitute for the police powers of the host State.<sup>73</sup> Nonetheless, the government of Japan has made clear that host State consent for the use of foreign government transportation is required under international law.<sup>74</sup>

State practice shows that consent can be implicit. On August 23, 2022, Japan dispatched the SDF to Afghanistan under the authority of Article 84-4 without explicitly obtaining the consent of either the Taliban regime or the outgoing administration under President Ashraf Ghani. On the same day, Chief Cabinet Secretary Katsunobu Kato stated at a press conference that “[i]n exceptional circumstances such as the current situation in Afghanistan, the transportation is an emergency measure to evacuate the citizens of the country under circumstances where safety is ensured due to humanitarian needs, and even if there is no clear consent, there is no problem under international law.”<sup>75</sup> Later, Yoshimasa Hayashi, the Minister of Foreign Affairs for Japan, added that “[t]o avoid any problems in terms of operation and international law, we communicated with the parties concerned to obtain their consent, and in the circumstances of the time, no problems under international law arose.”<sup>76</sup> He also stated, “in the exceptional circumstances of the time, this transportation was deemed to have been carried out in a situation where humanitarian needs made it necessary to ensure the safety of the transportation.”<sup>77</sup> In practice, the Taliban regime provided foreign countries with a specific timeframe for the safe evacuation operation, and Japan strictly adhered to this designated duration for its operations.<sup>78</sup>

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72. Masuda Kazuo, Director, Bureau of Defense Policy, Minister of Defense of Japan, Proceedings of the HR, Comm. on Security, 208th Diet, No. 3, at 5 (Mar. 15, 2022), <https://kokkai.ndl.go.jp/txt/120803815X00320220315/36>.

73. *Id.*

74. *Id.* See *supra* Section II(B)(2).

75. Press Conference of Chief Cabinet Secretary, Aug. 23, 2021, [https://www.kantei.go.jp/jp/tyoukanpress/202108/23\\_a.html](https://www.kantei.go.jp/jp/tyoukanpress/202108/23_a.html). See also Kazumasa Imai & Masafumi Okuri, *Zaigai Hojin to no Yuso ni kakawararu Jieitaibo no Ichibu Kaisei*, 447 RIPPON TO CHOSA 59, 68 (2022), [https://www.sangiin.go.jp/japanese/annai/chousa/rippou\\_chousa/backnumber/2022pdf/20220708059.pdf](https://www.sangiin.go.jp/japanese/annai/chousa/rippou_chousa/backnumber/2022pdf/20220708059.pdf).

76. Hayashi Yoshimasa, 208th Diet, Proceedings of HR, Main Conference, No. 9, at 7 (Mar. 8, 2022), <https://kokkai.ndl.go.jp/txt/120805254X00920220308/15>.

77. *Id.*

78. See NAKANO, *supra* note 44, at 525.

SDF personnel engaged in transportation operations may use weapons to protect the life or body of SDF members engaged in the operation, persons subject to transportation, and any other person who has entered under the SDF's control while conducting the operation.<sup>79</sup> Such weapon use must be within the reasonably necessary degree to meet the situation's circumstances.<sup>80</sup> However, the SDF shall not cause harm to any person except in cases of legitimate defense or necessity as provided under the Penal Code.<sup>81</sup>

#### 4. Operations Under "Important Influence" Situations

Another potential legal basis for a rescue operation is Article 84-5 of the SDF Act. This provision is not directly linked with the rescue of nationals abroad and has never been used. It authorizes the SDF to conduct rear-area logistics support if a situation has an "important influence" on Japan. An "important influence situation" is a situation that is likely to impose a grave security threat to Japan, including an armed attack against the country, if left as it is. The procedures for such support were first set out in the Act on the Situation in Areas Surrounding Japan of 1999<sup>82</sup> and later in the Important Influence Situation Act of 2015.<sup>83</sup>

Since its establishment, it has been acknowledged that the SDF may need to take proactive actions to assist their allies, particularly the United States, even if Japan has not directly experienced an attack. It was the 1997 Guideline that triggered the enactment of the Surrounding Situation Act.<sup>84</sup> It stipulated that Japan would support U.S. forces conducting operations to achieve the purposes of the Japan-U.S. Security Treaty.<sup>85</sup> It states that Japan's rear area support can be provided in Japanese territory, on the high

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79. SDF Act, *supra* note 43, art. 94-6. Provisions for using weapons were, for the first time, introduced after the turmoil in Cambodia in 1997 and in the update of the Guidelines for Japan-U.S. Defense Cooperation in 1997. See *infra* Section II(C).

80. SDF Act, *supra* note 43, art. 94-6.

81. *Id.*

82. Act on Measures to Ensure the Peace and Security of Japan in Perilous Situations in Areas Surrounding Japan, Act No. 60 of 1999, [https://elaws.e-gov.go.jp/document?lawid=411AC0000000060\\_20210901\\_503AC0000000036](https://elaws.e-gov.go.jp/document?lawid=411AC0000000060_20210901_503AC0000000036).

83. Amendment of the SDF Act and Others for the Purpose of Contributing to the Maintenance of Peace and Security of Japan and the International Community, Act No. 76 of 2015, [https://www.shugiin.go.jp/internet/itdb\\_housei.nsf/html/housei/18920150930076.htm](https://www.shugiin.go.jp/internet/itdb_housei.nsf/html/housei/18920150930076.htm).

84. U.S.-JAPAN SECURITY CONSULTATIVE COMM., THE GUIDELINES FOR JAPAN-US DEFENSE COOPERATION (Sept. 23, 1997) [hereinafter 1997 GUIDELINES].

85. *Id.* § V:2(2)(b).

seas, and in international airspace, distinguished from areas where combat operations are being conducted. In supporting the foreign force, Japan will appropriately use the authorities and assets of central and local government agencies and private sector assets. To secure compatibility with domestic law, the SDF may conduct such activities as intelligence-gathering and surveillance to protect lives and property and to ensure navigational safety. The government's position is that this assessment of "integration" must be done on a case-by-case basis.<sup>86</sup>

The Japanese government may have the SDF transport overseas Japanese nationals from the country's coast to Japanese territory. However, this provision does not authorize the SDF to enter a foreign territory, including the territorial sea. Therefore, Japan still needs the assistance of a foreign force to transport individuals to the borders of the State in turmoil.

### C. Historical Background and Past Incidents

This section summarizes the historical developments and past major incidents concerning the articles discussed in the preceding section.<sup>87</sup>

The plan to have Japan's governmental assets rescue nationals abroad started in the late 1970s when the Fukuda Yasuo Administration began discussions on purchasing government aircraft.<sup>88</sup> There was the need for emergency response in situations like dispatching special envoys when rescuing Japanese citizens during emergencies. Japan Airlines, a national flag carrier since its establishment in 1951, became privatized in 1987. As a result, in 1987, the Japanese Cabinet introduced two Boeing 747-400 planes as government aircraft with a budget of thirty-six billion yen. In 1992, the aircraft were assigned to the Japan Air Self-Defense Force.<sup>89</sup>

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86. The following elements are relevant in making the assessment: (1) the geographical relationship between the SDF and the place of hostilities; (2) the concrete actions taken; (3) the closeness of the personnel who are in charge of the use of force by the other State; and (4) the actual situation of the State Japan is to aid. Ōmori Masasuke, Secretary, Cabinet of Legislation, 140th Diet, Proceedings of HR Budget Comm., No. 12, at 18 (Feb. 13, 1997), <https://kokkai.ndl.go.jp/txt/114005261X01219970213/110>.

87. For an overview of the development, see Seigo Iwamoto, *Jieitai ni yoru zaigai hojin "yuso" kara zaiga hojin "kyushutsu" e*, 48 SANDAI HOGAKU 826 (2015).

88. *Id.* at 853.

89. Government aircraft are used for transportation in emergency situations, transportation of State guests, international emergency relief activities, and peacekeeping operations. Commercial airlines manage the ground support services for government aircraft, crew

In 1986, the SDF Act introduced Article 100-5 to authorize the SDF to transport foreign guests on diplomatic missions.<sup>90</sup> In 1992, the Japanese Diet amended the SDF Act to provide the authority for the SDF to transport Japanese nationals during an emergency. This new authority entered into force in 1994.<sup>91</sup> However, the mandate of the SDF was considerably limited. In March 1996, when the third Taiwan Strait Crisis intensified, the government and Prime Minister Hashimoto Ryūtarō considered dispatching the SDF to rescue Japanese citizens.<sup>92</sup> In the end, the government concluded that no option was available due to practical and operational difficulties.<sup>93</sup>

Subsequently, the Japanese government took prompt measures to amend the SDF Act to address its limitations. Initially, the SDF Act lacked the legal authority for the SDF to use weapons when conducting transportation operations. The government explained that there was no such need because the operation would only occur when the host State guaranteed safety. In 1997, the Cambodian turmoil occurred.<sup>94</sup> For the first time, in preparation for the transportation of Japanese nationals, the government dispatched three C-130 aircraft to Thailand under Article 100-8 of the SDF Act.<sup>95</sup> The planes waited six days at the U Tapao air base in Thailand. However, the government did not send the aircraft to Phnom Penh. Without any

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training, and maintenance of aircraft. For the history and operation of the government airplanes, see *Seifu sen'yōki ni yoru zaigai hōjin yusō o meguru kadai to taisaku*, Center for Global Security (Yasuhiro Takeda ed., 2018), <http://hdl.handle.net/11605/157>.

90. Act Amending the Act Establishing the Defense Agency and the SDF Act, Act No. 100 of 1986, <https://hourei.ndl.go.jp/#/detail?lawId=0000073542>.

91. Act Amending the SDF Act, Act No. 102 of 1992, <https://hourei.ndl.go.jp/#/detail?lawId=0000080565>.

92. ASAHI SHIMBUN, June 9, 1996, at 1. The story was reported three months after the crisis at a speech by the Prime Minister at the headquarters of the Liberal Democratic Party. In Taiwan at the time there were only two landing sites for government aircraft. There was also a plan to pick up individuals regardless of their nationality. However, the government was concerned that there was no plan for their immigration control, quarantine procedure, and accommodation.

93. *Id.*

94. During the period from July to September 1997, there were clashes between factional forces allied with the National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia and the Cambodian People's Party. The unrest predominantly took place in the city of Phnom Penh.

95. ASAHI SHIMBUN, July 18, 1997, at 3.

government transportation many had to evacuate themselves, and one Japanese national was killed in the crisis.<sup>96</sup> In 1999, the Diet introduced a provision into the SDF Act to authorize personnel to use weapons to protect themselves and the lives of Japanese nationals.<sup>97</sup>

In April 2004, for the first time, the SDF rescued ten Japanese in Iraq with a C-130H.<sup>98</sup> In 2007, the transportation of nationals abroad became one of the primary mandates of the SDF.<sup>99</sup>

In January 2013, under the provision that provided for the transportation of nationals abroad (at the time, SDF Act Article 84-3), government aircraft transported Japanese nationals from Algeria after a terrorist attack in In Amenas. The incident occurred in a remote area and a distance from the coast and the capital, and the SDF lacked the authority to utilize land vehicles to transport Japanese nationals to the airport. Following the incident, and in the same year, the Diet amended the SDF Act to allow the organization to transport affected nationals across land.<sup>100</sup>

As described earlier, in 2015, Articles 84-3 and 84-4 were enacted. In July 2016, government aircraft carried seven Japanese bodies and their families after a terrorist attack in Dhakka, Bangladesh.<sup>101</sup> In the same month, a C-130H evacuated four embassy staff members during the turmoil in Juba, South Sudan.<sup>102</sup>

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96. Ministry of Foreign Affairs of Japan, *Statistics of Protection of Nationals Abroad, 1997*, at 5 (1998), <https://www.e-stat.go.jp/stat-search/files?page=1&toukei=00300300&tstat=000001040380>.

97. Act Amending the SDF Act and Others, Act No. 123 of 1999, <https://hourei.ndl.go.jp/#/detail?lawId=0000085824>. The government explained that it recognized such a need in the wake of the Cambodian clashes. Norota Hosei, Secretary, Defense Agency, 145th Diet, Proceedings of HR Special Comm. on Japan-U.S. Defense Cooperation, No. 5, at 30 (Apr. 1, 1999), [https://kokkai.ndl.go.jp/txt/114504963X005199\\_90401/242](https://kokkai.ndl.go.jp/txt/114504963X005199_90401/242).

98. For the past practice of the transportation of Japanese nationals except for Sudan in 2023, see JAPAN MINISTRY OF DEFENSE, DEFENSE OF JAPAN 2022 at 62 (2022), <https://www.mod.go.jp/j/press/wp/wp2022/pdf/R04shiryō.pdf>.

99. Act Amending the Act Establishing the Defense Agency and the SDF Act, Act No. 80 of 2007, <https://hourei.ndl.go.jp/#/detail?lawId=0000110351>.

100. Act Amending the SDF Act, Act No. 77 of 2013, <https://hourei.ndl.go.jp/#/detail?lawId=0000130723>.

101. See JAPAN MINISTRY OF DEFENSE, *supra* note 98, tbl. 18.

102. *Id.*

The government faced a challenge in August 2021 in Afghanistan. The SDF's C-130H rescued one Japanese and fourteen Afghans during the turmoil in Kabul when the Taliban regime took control over the democratically elected government.<sup>103</sup>

Another difficulty was that the SDF Act limited its scope to Japanese nationals. It did not prevent the SDF from carrying foreigners when there were extra seats. However, it did not authorize the government to dispatch the SDF to rescue only non-Japanese. The Diet amended the Act, expanding its coverage to include specific foreign nationals with a close connection to Japan.<sup>104</sup> In April 2023, an internal conflict took place in Sudan. The SDF carried Japanese citizens from Port Sudan, dispatching the aircraft from its base in Djibouti.<sup>105</sup> Because it was a hostile situation in the capital Khartoum, the Japanese government required the evacuees to travel on their own seven hundred kilometers to the coast.

As briefly described above, every time challenges emerged and the legal limits of the SDF became apparent, the government amended the SDF Act in a relatively prompt manner.

The following table lists Japan's operations to rescue its national abroad.<sup>106</sup>

Case	Overview
Iraq, April 2004	After the Iraq War started in 2003, the SDF provided reconstruction assistance in Samawah under the Special Measures Law for Humanitarian and Reconstruction Assistance in Iraq. Iraqi armed forces kidnapped and held hostage Japanese nationals who ignored the MOFA's advice to avoid traveling to Iraq after the war erupted. They demanded the SDF withdraw. Japan did not follow their request and dispatched the SDF's assets to rescue its nationals. A

103. Press Release, Japan Ministry of Defense (Aug. 31, 2021), <https://www.mod.go.jp/j/press/news/2021/08/31b.pdf>.

104. Act Amending the Act Establishing the Ministry of Defense and Others, Act No. 26 of 2022, <https://hourei.ndl.go.jp/#/detail?lawId=0000157079>.

105. Press Release, Ministry of Foreign Affairs of Japan, Evacuation of Japanese Citizens and Others from the Republic of the Sudan (Apr. 25, 2023), [https://www.mofa.go.jp/press/release/press1e\\_000418.html](https://www.mofa.go.jp/press/release/press1e_000418.html); Press Release, Ministry of Foreign Affairs of Japan, (Apr. 28, 2023), <https://www.mod.go.jp/j/press/news/2023/04/28d.html>.

106. The author created the table, drawing upon the government's press releases and information from news reports.

	C-130 carried ten Japanese journalists from Talil Air Base, Iraq, to Al-Mubarak Air Base, Kuwait.
Algeria, January 2013	On January 16, 2013, in In Amenas, Algeria, terrorists affiliated with Al-Qaeda and a brigade led by Mokhtar Belmokhtar attacked the Tigantourine gas facility. Employees of Nikki Co. Ltd. lost their lives. A Japanese government aircraft B-747 carried seven survivors and nine victims' bodies from Houari Boumediene Airport, Algeria, to Haneda Airport, Japan.
Bangladesh, July 2016	On July 1, 2016, militants attacked a bakery in Dhaka, Bangladesh. As a result, twenty-nine people were killed, both locals and foreigners. The victims included staff of the Japan International Cooperation Agency (JICA). A Japanese government aircraft B-747 carried seven victims' bodies from Hazrat Shahjalal Airport, Bangladesh, to Haneda Airport.
South Sudan, July 2016	In June 2016, clashes broke out in Juba, the capital of South Sudan, between rival armed groups. An SDF C-130 carried four embassy staff from Juba Airport to Djibouti Airport. At the time, JICA staff and the SDF were participating in the UN Mission in South Sudan. JICA staff evacuated via commercial airlines in early July 2016, and the SDF stayed until it withdrew in May 2017.
Afghanistan, August 2021	On August 15, 2021, the Taliban regime regained control of Afghanistan. Following two decades of governance, the United States withdrew its forces from the country. On August 23, the Minister of Defense ordered the SDF to transport Japanese, including the embassy staff, JICA members, and local embassy staff. The initial plan was to transport approximately 500 Japanese. For the first time, the SDF deployed the Japan Ground Self-Defense Force to guide and protect nationals in the field. However, many evacuees could not reach the airport because of the turmoil. In the end, an SDF C-130 carried one Japanese and fourteen Afghanistan nationals from

	Kabul to Islamabad, Pakistan. By February 2022, most of the Japanese could leave the country.
Sudan, April 2023	On April 15, 2023, hostilities erupted between competing factions within the military government of Sudan, giving rise to an armed conflict. Many countries dispatched aircraft to rescue their nationals. An SDF C-2 transport aircraft carried fifty-nine Japanese from Port Sudan to Djibouti.

#### D. International Cooperation

Historically, institutionalized international cooperation regarding rescuing nationals abroad has been limited. However, the landscape has changed in recent times.

Most of the cooperation has taken place at the level of MOFA. For instance, on July 23, 2018, Japan and Cyprus signed a memorandum of cooperation in case Japanese nationals required evacuation from the region. The agreement provided for the reception, provision of assistance, and repatriation of citizens of the two countries.<sup>107</sup>

The SDF has also actively pursued collaboration with foreign governments and militaries besides cooperating with the United States under the treaty alliance. The SDF has participated since 2011 in the annual Cobra Gold military exercise held by the United States and Thailand.<sup>108</sup> In addition, the SDF established its sole overseas base in Djibouti in 2011. It originated primarily in response to the need to address regional acts of piracy. Yet, the SDF's presence in Djibouti allows for potential collaboration on broader security initiatives and regional partnerships beyond suppressing maritime

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107. Memorandum of Cooperation for the Reception, Provision of Assistance and Repatriation of Citizens of the Two Countries, in Case of Evacuation from Areas During a Crisis, Japan-Cyprus, July 23, 2018. *See also* Press Release, Embassy of Japan in Cyprus (July 31, 2018), [https://www.cy.emb-japan.go.jp/itpr\\_el/state\\_minister\\_visit\\_02\\_2018\\_00001.html](https://www.cy.emb-japan.go.jp/itpr_el/state_minister_visit_02_2018_00001.html). The author made a request to the MOFA for the disclosure of the text of the agreement. However, the MOFA declined the request, expressing concerns that the release of such information could potentially compromise the safety and security of the parties involved.

108. For the latest update, *see* Francesca Regalado, *Thailand, U.S. Resume Cobra Gold Military Exercise at Full Scale*, NIKKEI ASIA (Feb. 28, 2023), <https://asia.nikkei.com/Politics/Defense/Thailand-U.S.-resume-Cobra-Gold-military-exercise-at-full-scale>.



crimes.<sup>109</sup> As described in the previous section, the SDF has dispatched aircraft from the Djibouti base to rescue Japanese nationals in South Sudan in 2016 and Sudan in 2023.

In July 2023, NATO and Japan adopted a new cooperation document, the Individually Tailored Partnership Programme.<sup>110</sup> The instrument consists of three strategic goals: strengthen dialogue, enhance interoperability, and bolster resilience. It declared that Japan and NATO cooperate on “emergency management . . . and share experiences and awareness of respective capacities related to environmental, human-made or natural disasters and the support to civil emergency response.”<sup>111</sup> They further agreed to “effectively cooperate and enhance interoperability in the security field.”<sup>112</sup> While the texts of the arrangements on NEO have not been published, each party is expected to assist in transporting and safeguarding the nationals of the other party at the time of crisis.<sup>113</sup>

The Korean Peninsula and Taiwan Strait crises will require Japan to play a more substantial role by temporarily evacuating foreign nationals to Japan. Japan may have to provide temporary shelter and food to the evacuees. Coordination between NATO forces and the SDF escorting evacuation operations will be essential. Furthermore, accomplishing this goal will require Japanese municipalities in the region, particularly in the northern part of Kyushu Island, to conduct extensive preparation and training for the massive influx of evacuees. Concrete plans for such operations are yet to be published.

### III. SITUATIONS AND SCENARIOS

This Part will explore two distinct scenarios: the Korean Peninsula and Taiwan Strait crises. The discussion will focus on the legal challenges that

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109. In 2016, the MOD started a training exercise to evacuate Japanese residents from the country in the event of an emergency, using the SDF's base in Djibouti. ASAHI SHINBUN, Aug. 23, 2016, at 4.

110. Individually Tailored Partnership Programme Between NATO and Japan for 2023–2026, <https://japan.kantei.go.jp/content/000131076.pdf> (last visited Sept. 27, 2023). The instrument consists of three strategic goals to strengthen dialogue, enhance interoperability, and bolster resilience.

111. *Id.* at 1-4, ¶ c.

112. *Id.*

113. *Nichi-NATO, Hojin Taihi de Kyoryoku Taisei Shunō Gōi*, NIHON KEIZAI SHINBUN (July 13, 2023), <https://www.nikkei.com/article/DGKKZO72711060T10C23A7MM800/>.

the SDF may face in carrying out its duties effectively in these situations and offer suggestions on how these challenges could be mitigated or overcome.

*A. Korean Peninsula Crisis*

1. Japan-Republic of Korea Cooperation

The principal obstacle in a Korean Peninsula Crisis is that the Republic of Korea would not consent to the SDF's operation within its territory. In October 2015, at the Korean National Assembly, Councilor Mi Chang-il asked Prime Minister Hwang Kyo-Ahn how he would respond to the thirty-seven thousand Japanese living in the Republic of Korea if their safety was threatened and the Japanese government requested the SDF's entrance. Prime Minister Hwang stated that if it is in the national interest, the Korean government may approve Japan's request for the Self-Defense Forces to enter the Korean Peninsula. The media and public opinion strongly criticized the government. The Prime Minister later explained that the entrance would, in principle, not be allowed.<sup>114</sup>

Without the authorization to enter the Republic of Korea, the SDF cannot protect or transport Japanese nationals based on the SDF Act Articles 84-3 and 84-4.<sup>115</sup> The SDF may undertake operations under the "Important Influence" situation to support the evacuation from the Korean Peninsula of Japanese nationals;<sup>116</sup> however, under such authorities, the SDF are prohibited from entering another State's territory or territorial sea.

In 2017, the Republic of Korea agreed that Japanese residents in South Korea might use evacuation centers established in South Korea, such as subway stations, churches, and commercial facilities. The Japanese government provided information on more than nine hundred facilities to Japanese residents in Korea.<sup>117</sup> It plans to rescue the nationals via commercial and chartered aircraft.<sup>118</sup>

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114. DONGA ILBO (Oct. 15, 2015), <https://www.donga.com/jp/article/all/20151015/429645/1?m=kor>. See also Matsuura Masanobu, *Policy Research on Japanese Non-combatant Evacuation Operations (NEO) in a Korean Peninsula Crisis*, 47 JOURNAL OF INTERNATIONAL SECURITY 92, 96 (2019), <https://cir.nii.ac.jp/crid/1390573242598590976>.

115. See *supra* Section II(B)(2), (3).

116. See *supra* Section II(B)(4).

117. NIHON KEIZAI SHINBUN (Sept. 5, 2017), [https://www.nikkei.com/article/DGXKASFS04H8K\\_U7A900C1PP8000/](https://www.nikkei.com/article/DGXKASFS04H8K_U7A900C1PP8000/).

118. *Id.*

## 2. Trilateral Cooperation Between Japan, the Republic of Korea, and the United States

Japan must collaborate with the United States and the Republic of Korea to pursue the evacuation of Japanese nationals in the event of a Korean Peninsula crisis. The geopolitical setting in this region was formed in the 1950s during the Korean War.<sup>119</sup> In August 1950, the Democratic People's Republic of Korea (DPRK) army pushed the ROK and U.S. forces to Pusan, the southern tip of the peninsula. UN and Republic of Korea forces countered with a breakthrough that occurred through the Incheon amphibious operation in September 1950, where the U.S. forces cut off the supply chain of the North Koreans. The U.S. forces in this operation were based in Yokosuka, Sasebo, and Misawa, Japan. Today, U.S. forces continue to deploy from these bases in Japan, and it is expected that these forces would respond to an armed attack on the Republic of Korea.

The Korean Peninsula Nuclear Crisis in 1994 was the turning point of the geopolitical strategic coordination between the Republic of Korea, the United States, and Japan. DPRK shut down its nuclear reactor at Yongbyon and started to remove spent fuel rods, which contained sufficient amounts of plutonium to produce nuclear bombs. It also withdrew from the Nuclear Proliferation Treaty. The International Atomic Energy Agency failed to access the DPRK's nuclear sites, and the United States decided to strengthen the security in the peninsula. During that period, the U.S. government sought one hundred ninety forms of support from the Japanese government. This assistance encompassed operations for evacuating non-combatants in addition to various categories such as providing fuel, weaponry, ammunition supply, minesweeping activities in the vicinity of the Korean Peninsula, intelligence gathering, safeguarding U.S. vessels, and ship inspections. Japan could not respond effectively because of the lack of domestic legislation.

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119. Murano Masashi, *The Prospects and Challenges for Japan-U.S.-ROK Trilateral Cooperation Under the Legislation for Peace and Security*, 47 JOURNAL OF INTERNATIONAL SECURITY 74, 76 (2019), <https://cir.nii.ac.jp/crid/1520009409394841344>. It is beyond the scope of this article to discuss the US-ROK command structure at the time of war between the ROK and DPRK. For a further discussion, see Kurata Hideya, *Reexamination of the U.S. Forces Realignment and Command Structure in Korea: Dynamics of Strategic Alliance 2015 Revision*, 42 JOURNAL OF INTERNATIONAL SECURITY 31 (2014), <https://cir.nii.ac.jp/crid/1390573242867198080>.

On April 17, 1996, Prime Minister Hashimoto and President Bill Clinton issued the Joint Declaration on Japan-U.S. Security.<sup>120</sup> The instrument expanded the scope of Japan-U.S. security cooperation from the Far East and the 1978 Guidelines, as the Japan-U.S. Security Treaty provided, to the Asia-Pacific region. It also called for the initiation of studies and policy coordination regarding Japan-U.S. joint response to situations that could occur in the region surrounding Japan that would affect Japan's peace and security. The plan included initiating research and policy coordination on joint Japan-U.S. response to possible situations in the region surrounding Japan that would affect Japan's peace and security. The two governments conducted simulation exercises, which have not been publicly available.

Against this background, the two governments updated the Guidelines for Japan-U.S. Defense Cooperation in 1997. In addition, the Japanese government started to enact laws to respond to emergent situations.

The updated Guidelines for Japan-U.S. Defense Cooperation of 2015 cover non-combatant evacuation operations in detail.<sup>121</sup> It is noted that the 2015 Guideline was adopted with the Korean Peninsula crisis in mind. The Republic of Korea has clarified that it would not allow the SDF to conduct an evacuation of Japanese nationals from Korean soil. Therefore, Japan may have to rely on the United States to transport non-combatants from the Korean Peninsula to Japanese territory.

The Guidelines provide that when non-combatants must evacuate from a third country, "each government is responsible for evacuating its nationals and dealing with the authorities of the affected area."<sup>122</sup> It also specifies:

As appropriate, the two governments will coordinate in planning and cooperating in evacuations of Japanese or U.S. non-combatants. In a mutually supplementary manner, these evacuations will be carried out using each country's capabilities, such as transportation and facilities. The two governments may each consider extending evacuation assistance to third-country non-combatants.<sup>123</sup>

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120. Joint Declaration on Security, Japan-U.S., Apr. 17, 1996, MINISTRY OF FOREIGN AFFAIRS OF JAPAN, <https://www.mofa.go.jp/region/n-america/us/security/security.html>.

121. U.S.-JAPAN SECURITY CONSULTATIVE COMM., THE GUIDELINES FOR JAPAN-US DEFENSE COOPERATION (Apr. 27, 2015), <https://www.mofa.go.jp/region/n-america/us/security/guideline2.html>.

122. *Id.* § IV:B(1).

123. *Id.*

In addition, it stipulated that “[t]he two governments will conduct early-stage coordination . . . to carry out cooperation in fields such as the safety of evacuees, transportation means and facilities, customs, immigration and quarantine processing, safe havens, and medical services.”<sup>124</sup> The cooperation between the United States and Japan will include establishing a non-combatant evacuation operation coordination group, tabletop, and live exercises.

Currently, the Republic of Korea and the United States conduct twice-yearly exercises in non-combatant evacuation operations.<sup>125</sup> Through these undertakings, it is essential to establish peacetime cooperation and information-sharing mechanisms among the Republic of Korea, the United States, and Japan.<sup>126</sup> The Camp David meeting between the leaders of these three States in August 2023 affirmed their policies to strengthen trilateral security cooperation. However, the joint statement does not specifically mention the issue of rescuing nationals abroad.<sup>127</sup>

### B. *Taiwan Strait Crisis*

A Taiwan Strait Crisis is a significant threat to Japanese national security. First, there are approximately twenty thousand Japanese nationals in Taiwan.<sup>128</sup> Second, and considerably more complex, is the potential escalation of the crisis to a full-scale war involving China, Taiwan, and the United

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124. *Id.*

125. U.S. Forces Korea, *Noncombatant Evacuation Operations*, Pamphlet 600-300, at 9 (Jan. 30, 2019), <https://www.usfk.mil/Portals/105/Documents/Publications/Pamphlets/USFK-Pam-600-300-Non-Combatant-Emergency-Evacuation-Instructions-20190130.pdf>.

126. Murano points out that Japan might need to offer a base for evacuees, with Yokota Air Base and Kadena Air Base being the primary centers, along with the U.S. Marine Corps base in Okinawa. Yokota only has a single runway and limited operational infrastructure, which could pose challenges in handling civilian aircraft for evacuation from the Seoul metropolitan area. Utilizing Kadena and the Marine bases at Futenma or Henoko in conjunction would provide more comprehensive infrastructure for receiving civilian aircraft and allow for better coordination with the 31st Marine Expeditionary Unit, whose primary mission is NEO. However, if there were a contingency on the Korean Peninsula, the U.S. military base in Okinawa, along with Misawa and other bases, would be considered launching bases for operational aircraft. Therefore, coordination would be necessary to ensure military operations are not impeded. Murano, *supra* note 119, at 79, 81.

127. The Spirit of Camp David: Joint Statement of Japan, the Republic of Korea, and the United States, Aug. 18, 2023, WHITE HOUSE, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/18/the-spirit-of-camp-david-joint-statement-of-japan-the-republic-of-korea-and-the-united-states/>.

128. Taiwan, Ministry of Foreign Affairs of Japan (Apr. 20, 2020), <https://www.mofa.go.jp/mofaj/area/taiwan/data.html>.

States. Such a dangerous scenario may require the evacuation of over 110,000 Japanese in mainland China and approximately 110,000 residents of the Sakishima Islands (1,700 on Yonaguni Island, 53,000 on Ishigaki and Iriomote Islands, and 55,000 on Miyako Island), who will need to evacuate to safer areas north of Okinawa Island in case China extends its attack to Japan. States located in Southeast Asia may use the Sakishima Islands as a hub for transportation because they are the closest to Taiwan. If the United States gets engaged in the Taiwan Strait Crisis, U.S. forces will fly from its bases in Okinawa. The SDF will have to simultaneously perform the tasks of homeland defense, protection and evacuation of its citizens, and logistical support for the United States.

#### 1. Japan-Taiwan Cooperation

The prime challenge is that SDF Act Article 84-3 requires (1) the local authority that effectively controls the territory to maintain public safety and order and (2) the consent of the host State, among others, as analyzed in Section II(B). A question arises whether Taiwan qualifies as a State that is eligible to give consent to a foreign military operation. The Japanese government has not expressed a view on this issue.

When the United States, Japan, and other Western countries resumed their relationship with Beijing in the early 1970s, and mainland China overtook the seat in the United Nations, the recognition of the People's Republic of China made the legal status of Taiwan under international law constructively ambiguous. Beijing has continued to claim that Taiwan is part of China and has demanded that any State that recognizes the Beijing government should not recognize the Taiwanese government.<sup>129</sup> On the other hand, Taiwan has maintained an autonomous and democratically elected government. It has effectively controlled its territory and discharged the usual government functions, including the responsibility of international relations. Its Constitution of 2005 stated that "the rights and obligations between the people of the Chinese mainland area and those of the free area . . . may be specified by law."<sup>130</sup>

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129. China's Anti-Secession Law of 2005 formalized the policy. Anti-Secession Law (promulgated by Presidential Decree No. 34, Mar. 14, 2005), <https://flk.npc.gov.cn/detail.html?MmM5MDlmZGQ2NzhiZjE3OTAxNjc4YmY2MmRkZTAyZmQ%3D>.

130. TAIWAN CONST. art. 11, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0000002>.

Japan has maintained relations with Taiwan through unofficial civilian representative organizations in Taiwan without stating its position on the Taiwanese title. The Japan-China Joint Statement stated that “China reiterates that Taiwan is an inseparable part of China’s territory” and that Japan “fully understands and respects this position of China and adheres to the position based on paragraph 8 of the Potsdam Declaration.”<sup>131</sup> However, the Japanese government has renounced all rights, titles, and claims to Taiwan per Article 2 of the San Francisco Peace Treaty and has avoided assessing the ownership of Taiwan, stating that it is not in a position to make its recognition of the territorial status of Taiwan.<sup>132</sup>

The Taipei government could qualify under SDF Act Article 84-3(1)(i) as the competent authority that may consent to SDF measures required to rescue Japanese nationals in Taiwan.<sup>133</sup> Likewise, with the consent of the competent authority, the deployment of the SDF to Taiwan for a rescue mission would not constitute a use of force. However, on the other hand, it remains uncertain whether Taiwan would meet the criteria of a host State as Article 84-3(1)(ii) requires, and there is still a possibility that such a deployment, in opposition to Beijing’s express objections, could be regarded as a violation of China’s sovereignty. A violation of sovereignty would be considered a violation of international law, which in turn would violate Article 98(2) of the Japanese Constitution. Based on this analysis, safeguarding Japanese citizens in Taiwan may not be presently feasible under SDF Act Article

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131. Joint Communique of the Government of Japan and the Government of the People’s Republic of China (Sept. 29, 1972), MINISTRY OF FOREIGN RELATIONS OF JAPAN, <https://www.mofa.go.jp/region/asia-paci/china/joint72.html>.

132. See Ministry of Foreign Affairs of Japan, *Frequently Asked Questions, East Asia*, <https://www.mofa.go.jp/mofaj/comment/faq/area/asia.html#10> (last visited Sept. 28, 2023). For the *travaux préparatoires* of the Joint Declaration, see Takakazu Kuriyama, *Nichu Kokko Seijoka*, 74 WASEDA LAW REVIEW 39, 44 (1999).

133. With this regard, Nakano argues that a consent of a quasi-State organization suffices as the host State’s consent requirements under the SDF Act Article 84-3. He also states that, as long as there is such a consent, the operation would not constitute the violation of sovereignty. NAKANO, *supra* note 44, at 539. However, this description does not specifically apply to the case of Taiwan. Furthermore, one could argue that Japan is not obligated to uphold the One China Principle if the peaceful order is disrupted, such as during a crisis in the Taiwan Strait. This issue may require a deeper analysis, which this article does not delve into.

84-3, as written, without a more definitive position of the government of Japan.<sup>134</sup>

The Japanese government has occasionally provided humanitarian assistance to Taiwan. For example, when an earthquake struck Taiwan in 1999, an international fire and rescue team, including the National Police Agency and Japan Coast Guard personnel, was dispatched to the area.<sup>135</sup> The governments may have to use similar networks during a Taiwan Strait crisis.

## 2. Japan-U.S. Cooperation

The United States will be a key player in the rescue of the Japanese nationals in Taiwan. The domestic U.S. legal mechanism and non-combatant evacuation operation doctrine allow U.S. forces to conduct evacuation operations in a hostile environment. The United States has a vital interest in the peace and stability of the Taiwan Strait. The Taiwan Relations Act stipulates that “peace and stability in the area are in the political, security, and economic interests of the United States and are matters of international concern.”<sup>136</sup> In 1996, the U.S. government staged the largest display of its naval forces in the region in response to the Taiwan crisis.<sup>137</sup>

The U.S.’s military cooperation with Taiwan has continued despite China’s protests. In particular, since the late 2000s, the United States has deepened cooperation in humanitarian assistance and disaster relief, with the U.S. government training Taiwan’s military and Taiwan’s military participating in exercises with the United States. In 2022, the two signed a memorandum of understanding institutionalizing its partnership in humanitarian assistance cooperation.<sup>138</sup>

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134. When questioned about whether the Japanese government would seek consent from Taiwan or China, Minister of Foreign Affairs Yoshimasa Hayashi evaded providing a definitive response. Yoshimasa Hayashi, 208th Diet, Proceedings of HR, Main Conference, No. 9, at 7 (Mar. 8, 2022), <https://kokkai.ndl.go.jp/txt/120805254X00920220308/15>.

135. Fire and Disaster Management Agency, *Taiwan Jishin Saigai ni okeru Kokusai Shobo Kyujo-tai no Katsudo Hokokoku* [Report of International Fire Rescue Teams in the Taiwan Earthquake Disaster] (1999), [https://www.fdma.go.jp/publication/ugoki/assets/1999\\_11.02.pdf](https://www.fdma.go.jp/publication/ugoki/assets/1999_11.02.pdf).

136. Taiwan Relations Act, 22 U.S.C. §§ 3301–16, PUB. L. 96–8 (1979).

137. For an overview of the Taiwan Crisis, see Douglas Porch, *The Taiwan Strait Crisis of 1996*, 52 NAVAL WAR COLLEGE REVIEW 1, 4 (1999).

138. Press Release, Ministry of Foreign Affairs of Taiwan, Taiwan and US Sign MOU Institutionalizing Global Partnership in Development and Humanitarian Assistance Cooperation (Nov. 7, 2022), [https://en.mofa.gov.tw/News\\_Content.aspx?n=1328&s=98980](https://en.mofa.gov.tw/News_Content.aspx?n=1328&s=98980).



The United States will act with Japan in a Taiwan evacuation operation. The Japan-United States Treaty of Mutual Cooperation and Security of 1960 provides that they “will consult together from time to time regarding the implementation of this Treaty, and, at the request of either Party, whenever the security of Japan or international peace and security in the Far East is threatened.”<sup>139</sup> A Taiwan emergency would clearly fall within this provision. The 1969 Sato-Nixon Joint Statement also confirmed Japan’s view that maintaining peace and security in Taiwan is significant for Japan’s security.<sup>140</sup>

In 1997, the two States updated the Guidelines for Japan-U.S. Defense Cooperation after the Taiwan Strait Crisis in 1996.<sup>141</sup> The updated Guidelines provided a section on the situations surrounding Japan’s areas that will have an important influence on Japan’s peace and security, mainly about the Taiwan Strait Crisis. It stated that “[e]ach Government will conduct relief activities with the consent and cooperation of the authorities in the affected area.”<sup>142</sup> Subsequently, the Surrounding Area Situation Act was enacted in 1999.

The two countries must coordinate closely in co-planning, preparation, exercise, and training for an evacuation to implement these guidelines during a Taiwan Strait Crisis. For instance, it will be necessary that the SDF transport U.S. nationals as a part of its rear-area logistics support. At this stage, however, such coordination has not taken place. The absence of coordination will impede both States from successfully addressing the crisis.

### 3. Cooperation with Other Neighboring States

There have been few cooperative frameworks among regional States in Asia. For example, the annual Cobra Gold exercises include training on noncombatant evacuation operations with over twenty States including Japan, the Philippines, Vietnam, Singapore, Malaysia, Indonesia, the Republic of Korea,

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139. Treaty of Mutual Cooperation and Security Between Japan and the United States of America art. 4, Japan-U.S., Jan. 19, 1960, 11 U.S.T. 1632.

140. Joint Statement Following Discussions Between U.S. President Nixon and Japan Prime Minister Sato (Nov. 21, 1969), THE AMERICAN PRESIDENCY PROJECT, <https://www.presidency.ucsb.edu/documents/joint-statement-following-discussions-with-prime-minister-sato-japan>.

141. 1997 GUIDELINES, *supra* note 84.

142. *Id.* § V:2(1)(a).

Australia, Cambodia, and others led by the United States and Thailand.<sup>143</sup> Other U.S. bilateral exercises with regional participation, such as Balikatan, enhance and strengthen interoperability skills in humanitarian assistance and disaster relief, logistics, airlift, and amphibious landings. Global Cooperation and Training Framework Programs, which the American Institute in Taiwan, the Ministry of Foreign Affairs of Taiwan, and the Japan-Taiwan Exchange Association jointly administer, may be platforms for loose cooperation among government agencies.<sup>144</sup> However, it would not function in a crisis.

One should not exclude a scenario in which China may request Japan, Southeast Asian countries, and the United States to rescue their nationals within a certain period to make the conflict an internal Chinese affair. In such a process, although unrealistic, China may provide some of the assets and capability to carry out an evacuation operation.<sup>145</sup> Since the 2000s, because of rising domestic pressure to protect the growing population of Chinese citizens abroad, Beijing has been developing its diplomatic and military capabilities to manage and mitigate overseas crises.<sup>146</sup> Chinese airlines and maritime transport companies are incorporated into national assets under the National Defense Mobilization Act. They are engaged in training and actual operations, together with the front-line troops, under the command of the People's Liberation Army.<sup>147</sup> In the Libyan conflict that emerged in 2011, China evacuated thirty-five thousand Chinese in twelve days.<sup>148</sup>

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143. It is noted that Operation Cobra Gold includes civilian evacuation and humanitarian aid and disaster relief training to over twenty States including the Philippines and Vietnam. For the latest briefing, see Spencer Garrison et al., *Wide-ranging Cobra Gold 23 Builds Bonds Among Allies and Partners* (Mar. 20, 2023), [https://www.army.mil/article/264983/wide\\_ranging\\_cobra\\_gold\\_23\\_builds\\_bonds\\_among\\_allies\\_and\\_partners](https://www.army.mil/article/264983/wide_ranging_cobra_gold_23_builds_bonds_among_allies_and_partners).

144. Global Cooperation & Training Framework, *Mission Statement*, <https://www.gctf.tw/en/IdeaPurpose.htm> (last visited Sept. 28, 2023).

145. Yamamoto points out that there is a significant commercial transportation infrastructure across the strait. Car ferries (e.g., *COSCO Star*) navigate between the mainland and Keelung and Taichung. Large roll-on-roll-off ships go between major ports, including Shanghai, Tianjin, Dalian, Keelung, Kaohsiung, and Taichung. Yamamoto Katsuya, *Taiwan Strait Crisis and the Protection of Nationals*, INTERNATIONAL INFORMATION NETWORK ANALYSIS (Nov. 5, 2021), [https://www.spf.org/iina/articles/yamamoto\\_09.html](https://www.spf.org/iina/articles/yamamoto_09.html).

146. Shaio H. Zerba, *China's Libya Evacuation Operation: A New Diplomatic Imperative—Overseas Citizen Protection*, 23 JOURNAL OF CONTEMPORARY CHINA 1093 (2014).

147. Conor Kennedy, *Ramping the Strait: Quick and Dirty Solutions to Boost Amphibious Lift*, 21 CHINA BRIEF 14 (2021), <https://jamestown.org/program/ramping-the-strait-quick-and-dirty-solutions-to-boost-amphibious-lift/>.

148. Zerba, *supra* note 146, at 1093.

To ensure the safety of foreign nationals in Taiwan during a critical situation, Japan, the United States, and neighboring countries, including Indonesia, Vietnam, the Philippines, and possibly China, will have to cooperate. Yet, there have been neither institutionalized mechanisms for cooperation nor co-planning. It will require diplomatic efforts for them to start the preparation.

### *C. Summary*

The analysis of these scenarios shows that the lack of cooperative mechanisms among the neighboring States may hinder Japan and other regional States from responding to these crises. It is also noted that it is not clear whether under these scenarios the government of Japan would receive acceptable consent from the host State in accordance with the authorities of Articles 84-3 and 84-4 of the SDF Act that authorize, respectively, the protection and transportation of Japanese nationals abroad. The Japanese Constitution and the present SDF Act present impediments to rescuing Japanese nationals in these scenarios.

## IV. CONCLUDING REMARKS

The study of cases and scenarios concerning Japan's rescuing nationals abroad illustrates the importance of cooperation among the host State, the rescuing States, and the home States.

While certain limitations exist in the SDF Act, they are generally not excessively restrictive. They are in place to balance national security and the principles of Japan's constitution. The government regularly reviews and updates the legislation governing the SDF to ensure its effectiveness and compliance with evolving security challenges. The SDF can still actively pursue and safeguard national interests within the framework of the current legislation. It operates under the legal guidelines set forth by the Japanese government, which define its roles, responsibilities, and operational boundaries. These regulations ensure compliance with constitutional principles and maintain appropriate checks and balances.

The purpose of the SDF Act is to closely restrict the SDF's actions well below the threshold outlined in UN Charter Article 2(4). In theory, there remains a possibility that these actions could be seen as a prohibitive use of force if the operation is done without the territorial State's consent. Even if there is an agreement in effect, the military could exceed the consent of the

host State and resort to using weapons in a given situation. To circumvent potential conflicts, Japan opts to refrain from invoking the option of “protecting” its nationals under Article 84-3. In addition, the SDF has never employed weapons because no situation has arisen that warranted their use.

However, in the cases of a Korean Peninsula Crisis and a Taiwan Strait Crisis, the role of the SDF becomes ironically constrained. The ROK will not allow the SDF to enter their territories for historical and political reasons. The Japanese government has not clarified its policy regarding dispatching the SDF to Taipei at the time of crisis. Therefore, it is necessary that Japan collaborate with those governments as well as the United States and other NATO member countries.

States will continue to rely on various modes for rescuing nationals abroad, adapting their responses to perceived danger. During emergencies, governments and militaries are not the sole stakeholders involved. The safety and well-being of nationals and foreigners at risk, as well as the municipalities that will shelter evacuees, hold significant importance in the operation. By highlighting Japan’s laws and policies, this article underscored the significance of international cooperation, including the extent and limitations of such operations. This perspective offers essential context for comprehending how the rescue of nationals during emergent situations should be effectively addressed and resolved.