INTERNATIONAL FELLOWSHIP OF RECONCILIATION (IFOR) and CONSCIENCE AND PEACE TAX INTERNATIONAL (CPTI)

Submission to the 111th Session of the Human Rights Committee

JAPAN

(Military service, conscientious objection and related issues)

Updated : June 2014

JAPAN: Basic information

The greater part of present-day Japan has been an independent unified state since the 7th Century. The modern Japanese state however emerged from the post Second World War American occupation with the Constitution of 1947.

Population (November 2013, estimated\(^1\)) 127,253,000

Military service: Service in the “Self Defence Force” instituted in 1954 has always been voluntary.

Conscientious objection: No provision

Minimum recruitment age\(^2\): 18 (but “Youth Cadets” aged between 15 and 17 are considered to be members of the armed forces)

Males reaching “militarily significant age”\(^3\): 623,635

Armed forces active strength, November 20134: 247,150

as a percentage of the number of men reaching “military age”: 39.6%

Military expenditure (US $ equivalent), 20135

| Per capita | $ 382 |
| As % of GDP | 1.0% |

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\(^1\) Source: The Military Balance 2014 (International Institute of Strategic Studies, London), which bases its estimate on “demographic statistics taken from the US Census Bureau”.

\(^2\) Source: Child Soldiers International (formerly Coalition to Stop the Use of Child Soldiers), Louder than words: an agenda for action to end state use of child soldiers, London, September 2012.

\(^3\) Source: CIA World Factbook. [https://www.cia.gov/library/publications/the-world-factbook/index.html](https://www.cia.gov/library/publications/the-world-factbook/index.html). The CIA defines “militarily significant age” as 16. However its estimates have not been updated since 2010 and therefore relate to the cohort of the male population reaching 20 (a more common recruitment age in most countries) in 2014. This figure is more meaningful than total population in assessing the comparative impact of military recruitment in different countries.

\(^4\) As quoted by the International Institute of Strategic Studies (London) in The Military Balance 2014

Military service and conscientious objection

There is no legislative recognition of conscientious objection to military service in Japan. According to the constitution, the country does not maintain military forces, but the Jietitai or Self-Defence Forces perform that role in all but name. Although no instances have been reported, the possibility cannot be excluded that a serving member of these Forces may develop a conscientious objection. Clarification about the present and future possibility of release in such circumstances would be welcome.

Article 9 of Japan’s 1947 Constitution reads:
“1) Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.
2) In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.”

The interpretation of paragraph 2 of this article has been modified over time. When the Constitution was first introduced, the Prime Minister of the day expressed the view that Japan had thereby abandoned the right of engaging in war for self protection. In 1952, however, under the same Prime Minister (Yoshida), Japan established a “National Safety Force”, maintaining that the “forces” referred to in Article 9.2 were those equipped to carry out modern wars. Two years later, the Self-Defence Forces Act transformed the National Safety Force into the Self-Defence Force (SDF), which have remained in existence until the present; the government now argued that Article 9.2 could not preclude the right of self-defence against attack, and the maintenance of forces with the minimum necessary equipment for this purpose. Over the following decades re-evaluation of the role and functions of the SDF continued, and in 1980 the then Prime Minister (Suzuki) broke the taboo by publicly referring to the SDF as a military force.

A central feature in the re-evaluation has been the question of the deployment of troops outside the borders of Japan, in two distinct contexts: the contribution to international operations under the aegis of the United Nations, and participation in “collective security” arrangements, which stretch the concept of self-defence to include military co-operation with allies.

The first issue was eventually addressed by the UN Peacekeeping Cooperation Law of 1992 “which permitted the SDF to participate in UN medical, refugee aid, transportation, infrastructural repair, election-monitoring, and policing operations under strictly limited conditions.” These conditions notably meant that “Japanese forces could take part in UN operations only if they did not involve the use of force. ‘Peace-keeping operations’ were considered to involve force, so Japan could not constitutionally contribute forces to them.” Thus as recently as 1999 Japan indicated that it was debarred from contributing to the INTERFET peacekeeping operation in East Timor.

A series of legislative acts in 1999 effected the Guidelines for Japan-U.S. Defense Cooperation

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8 http://www.globalsecurity.org/military/world/japan/jda.htm
which loosened the conditions for the SDF’s participation in collective security in the region.\textsuperscript{10} Direct legislative authorisation is however required for participation in operations authorised by the Security Council “which envisage the use of force under national command”.\textsuperscript{11} Two such pieces of legislation have now been passed: the \textit{Anti-Terrorism Special Measures Act} of 2001 authorised a contribution to the military action in Afghanistan by refuelling United States warships in the Indian Ocean, and the \textit{War Contingencies Act} of 2003 authorised the despatch of personnel from the SDF to join the occupying forces in Iraq.

All of these successive moves have been highly controversial in Japan. It is telling that the Research Commission on the Constitution which reported in 2005 could not reach any agreement on whether the Self Defence Force as it existed was consistent with Article 9.2, or as to whether it was desirable to amend that Article in order to reflect or clarify the actual situation. One member of the Commission characterised the current official position as being that “(Japan has) the right of collective self-defense but its exercise is unconstitutional”\textsuperscript{12} There were also divided opinions as to whether Japan’s direct military participation in peacekeeping and other operations approved by the United Nations should be permitted.\textsuperscript{13} Meanwhile in November 2007 the upper house of the Japanese parliament blocked an extension of the mandate under the \textit{Anti-Terrorism Special Measures Act}, and the refuelling operation was only restarted on as the result of an exceptional invocation of the lower house’s constitutional power to overriding a vote of the upper house.\textsuperscript{14}

It remains the policy of the Japanese Government, despite wide popular opposition, to delete or at least redraft Article 9 of the Constitution. In the short term, however, the emphasis has shifted to reinterpreting the article in such a way as to permit the nature and role of the SDF to approach closer to the armed forces of other States. The limitations on weaponry implicit in the words “war potential” in Article 9.2 of the constitution now seem to be interpreted simply as prohibiting the use of nuclear weapons.\textsuperscript{15} Much play was traditionally made of the fact that the SDF was subordinate to a civil service agency, the Japan Defence Agency, thus placing it firmly under civilian control. In January 2007, however, the Japan Defence Agency was replaced by a Ministry of Defence, with a seat in the Cabinet and thus more political leverage.\textsuperscript{16} The 2010 National Defence Programme Guidelines set the goal of creating a “dynamic defence force” that would be more responsive and deployable militarily in contrast to the “static deterrence” of previous years.\textsuperscript{17}

Most recently, on 15\textsuperscript{th} May 2014, a panel established by the Prime Minister produced a report recommending that Article 9 be reinterpreted in order to permit Japanese participation in “collective self defence” activities in support of its allies in the region, notably the USA and Taiwan.\textsuperscript{18}

Since its inception, the Self-Defence Force has relied upon voluntary recruitment. No instances have been recorded of members of the force seeking to be released having developed a conscientious objection. It is however by no means impossible that such instances might arise, either as a result of a general change of belief regarding the bearing of arms, or as a moral / legal objection arising from the continuing reinterpretation of the role of the SDF.

\textsuperscript{10} \url{http://www.globalsecurity.org/military/world/japan/jda.htm}, op. cit.
\textsuperscript{11} House of Lords Select Committee on the Constitution, Appendix IV, op. cit., para 19.
\textsuperscript{13} Ibid. Section III, 3.6
\textsuperscript{14} “Japan resumes refuelling mission”, BBC News, 24\textsuperscript{th} January, 2008 (http://news.bbc.co.uk/2/hi/asia-pacific/7206304.stm)
\textsuperscript{15} See the Japanese Ministry of Defence website at \url{http://www.mod.go.jp/e/d_policy/dp02.html}.
\textsuperscript{16} \url{http://www.globalsecurity.org/military/world/japan/jda.htm}, op. cit., which, as of February 2008, while headlining the new Ministry, still included unamended the text describing the preceding situation.
\textsuperscript{17} The Military Balance 2013, p 306.
\textsuperscript{18} See, “Japan and America: Closer allies”, \textit{The Economist}, 17\textsuperscript{th} May 2014, p.53.
It has usually been assumed\(^{19}\) that the nominally civilian nature of the SDF would mean that there was no obstacle to the immediate resignation of any member who did develop a conscientious objection. To the extent that this is true, it is obviously threatened by the gradual transformation of the SDF into a standard military structure. Clarification would therefore be welcome of the current procedures concerning the release of SDF personnel, of whether any tightening of these procedures is envisaged, and if so of whether this will be accompanied by specific provision for instances of conscientious objection.

**Juvenile recruitment**

On its ratification of the Optional Protocol to the Convention on the Rights of the Child on children in armed conflict, on 2\(^{nd}\) August 2004, Japan made a declaration that it “recruits only those who are at and above the minimum age of 18 as the Japan Self-Defense Forces personnel, with the exception of the cases of the students solely receiving educational training at the schools within the structure of the Japan Self-Defense Forces, (hereinafter referred to as the ‘‘Youth Cadets’’).”\(^{20}\) “Youth Cadets ‘‘do not take a direct part in hostilities’’.\(^{21}\) On completion of their training, Youth Cadets were not obliged to remain within the Self-Defence Forces\(^{22}\). Their status as “special service national public employee” gave them the freedom “at any time during period of service and with the approval of the person with the appointing power, resign without being barred from giving their resignation request.”\(^{23}\)

On 1\(^{st}\) April 2010, Japan deposited a revised declaration, which stated simply, "The Government of Japan, by relevant laws and regulations, recruits only those who are at and above the minimum age of 18 as a member of the Japan Self-Defense Forces." It would not seem that the nature of the Youth Cadet scheme has changed significantly; some aspects of the programme remain questionable, but Japan has probably ceased to classify Youth Cadets as members of the Self-Defence Forces.

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\(^{19}\) eg. by Horeman & Stolwijk, _op cit_.  
\(^{20}\) CRC/C/OPAC/JAP/1, 18\(^{th}\) September 2009, para 5.  
\(^{21}\) Ibid, para 6.  
\(^{22}\) Ibid, para 12.  
\(^{23}\) Ibid, para 17.