



**HAL**  
open science

# EU-JAPAN COOPERATION IN THE SECURITY FIELD FROM THE PERSPECTIVE OF JAPAN'S LEGAL FRAMEWORK

Fumi Yoshimoto

► **To cite this version:**

Fumi Yoshimoto. EU-JAPAN COOPERATION IN THE SECURITY FIELD FROM THE PERSPECTIVE OF JAPAN'S LEGAL FRAMEWORK. Blogdroiteuropéen, 2020. hal-03468762

**HAL Id: hal-03468762**

**<https://hal.science/hal-03468762>**

Submitted on 7 Dec 2021

**HAL** is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

## EU-JAPAN COOPERATION IN THE SECURITY FIELD FROM THE PERSPECTIVE OF JAPAN'S LEGAL FRAMEWORK



**By Fumi Yoshimoto**

PhD Candidate, Hitotsubashi University, Tokyo, Japan

### I- INTRODUCTION

The aim of this paper is to examine the current state of the EU-Japan security relationship from the perspective of Japan's legal framework. While the typical partner both for the EU and Japan is the US and it can be said that "the prospect of a Japan-EU security alliance may seem about as meaningful as a relationship between a bald and comb",<sup>1</sup> the Japan Self-Defence Forces (JSDF) actually cooperates with the European troops often because operations by both are similar – they are often engaged in lower risk activities as compared to combat operations by the US armies.<sup>2</sup> For instance, in Iraq, the JSDF troops were dispatched to reconstruct Iraq in the area where the UK and the Netherlands were working on maintaining the public order.<sup>3</sup>

Furthermore, EU-Japan Strategic Partnership Agreement prescribes that they cooperate in the security field.<sup>4</sup> However, although it does not include concrete rules, it shows the intention by both parties to cooperate with each other.

In this context, Thierry Tardy mentions two advantages for the EU having partners as part of the Common Security and Defence Policy (CSDP).<sup>5</sup> First, the participants provide the EU with their own assets and

personnel that the EU lacks, thus improving capacity. Second, the EU can impose some conditions for the participation of non-EU countries in CSDP, which gives it a political advantage.

Moreover, cooperation with the EU is advantageous for Japan as well. It contributes to reviewing Japan's out-and-out pro-US security policy and Japan's new foreign policy that takes a panoramic perspective of the world map and proactive contribution to peace – which are policies advocated by Japanese Prime Minister Shinzo Abe<sup>6</sup> – without provoking neighbouring countries.

However, Japan generally takes a cautious stance in terms of sustaining its military strength and consequently, security cooperation with other countries. This attitude goes back to the end of the Second World War, after which Japan restricted exercising military power through security-related acts under Article 9 of the Constitution, which prescribes the renunciation of war. However, the Japanese government has sometimes had to change the interpretation of this article to adapt to the changes in international circumstances. One such recent change is the lift in the ban on exporting of arms in 2014 and the amendment of security-related Acts in 2015, which enabled Japan to cooperate with the EU in the field of security.

### II- POSITIVE SIDE OF COOPERATION WITH THE EU

#### A- AMENDMENT OF THE SECURITY-RELATED ACTS

Before the reforms in the security-related acts, the fundamental legal basis of the deployment of the JSDF overseas was based on the Act on Cooperation with the United Nations Peacekeeping operations and other operations (hereinafter, the Act on Peacekeeping Operations) passed in 1992. However, this act only covers deployments to UN peace keeping operations.<sup>7</sup>

1 Midford P., *By Land and by Sea: The Potential of EU-Japan Security Cooperation*, Japan Forum, 24 (3), (2012) 289.

2 Ibid. 290; Tsuruoka M., 'Japan-EU Security and Defence Cooperation making progress silently' (2015) EU MAG (in Japanese) <<http://eumag.jp/behind/d0715/>> accessed 27 February 2020.

3 Tsuruoka, Ibid.

4 Art 1, 1 (C) prescribes that the parties contribute jointly to international peace and stability; Art 1, 3 prescribes that the parties shall strengthen their partnership through dialogue and cooperation on matters of mutual interest in the areas of foreign and security policies; Art 3 prescribes the promotion of peace and security; Art 4 prescribes crisis management; Art 5 prescribes weapons of mass destruction; Art 6 prescribes conventional arms; Art 9 prescribes chemical, biological, radiological and nuclear risk mitigation.

5 Tardy T., *CSDP: Getting Third States on Board*, European Union Institute for Security Studies Brief Issue, no. 6 (2014) 3-4.

6 Japan Ministry of Foreign Affairs, *Diplomatic Bluebook* (2015) 11-12.

7 Paragraph 1 of Article 2 of the old Act on Cooperation with United

## EU-JAPAN COOPERATION IN THE SECURITY FIELD FROM THE PERSPECTIVE OF JAPAN'S LEGAL FRAMEWORK

Consequently, the Japanese government has had to legislate the acts on an ad hoc basis to deploy the JSDF for non-UN operations.<sup>8</sup>

In 2015, the Japanese Lower House passed two bills in July that were then passed by the Upper House in September. These two bills lifted some restrictions on sending to the JSDF abroad. One is the Bill for the Partial Amendment of the Japan Self Defence Forces Act and Other Matters, to Contribute to Ensuring the Peace and Security of Japan and the International Community.<sup>9</sup> This Act amends the ten existing security-related acts including the Act on Peacekeeping Operations. The new Act on Peacekeeping Operations allows the JSDF to join “internationally cooperative peace security operations,” which includes non-UN led operation and stipulates that they may also join EU-led operations.<sup>10</sup>

The other bill is the Bill on Cooperative Support Activities for Other Countries Conducted by Japan on the Occasion of Joint Activities to Deal with Matters Affecting International Peace and Other Matters,<sup>11</sup> which enables Japan to send the JSDF overseas without new legislation or ad hoc measures to provide logistic support to other countries’ armies in the international dispute. The aforementioned two acts were brought into effect on 29 March 2016. Thus, the reform of the security-related acts allows Japan to send the JSDF to operations led by the EU, including CSDP missions.

In addition to the legal basis to participate in EU missions, the reform of the acts also extended the case in which JSDF members may use weapons. Before the reform of the security-related acts, there were several restrictions on the use of weapons by the JSDF. This is illustrated by the deployment to Iraq in 2003–2009 where JSDF members were protected by Dutch forces.

---

Nations Peacekeeping Operations and Other Operations.

8 For instance, Antiterrorism Special Measures Law enacted in 2001, Act on Special Measures concerning Humanitarian and Reconstruction Assistance in Iraq in 2003, Act on Special Measures concerning Implementation of Replenishment Support Activities towards the Anti-Terrorism Maritime Interdiction Operation enacted in 2008 – all Acts are temporary statutes.

9 Bill for the Partial Amendment of the Japan Self-Defence Forces Act and Other Matters to Contribute to Ensuring the Peace and Security of Japan and the International Community: <<http://www.cas.go.jp/jp/gaiyou/jimu/pdf/anbun-heiwaanzenhouseiseibihou.pdf>> (in Japanese) accessed 27 February 2020.

10 Paragraph 1 of Article 2, Item 2 of Paragraph 1 of Article 3 of new Act and Item 3 of Paragraph 1 of Annex 1 of the new act on Cooperation with the United Nations Peacekeeping Operations and Other Operations.

11 Bill on Cooperative Support Activities for Other Countries Conducted by Japan on the Occasion of Joint Activities to Deal with Matters Affecting International Peace and Other Matters <<http://www.cas.go.jp/jp/gaiyou/jimu/pdf/anbun-kokusaiheiwasienshou.pdf>> (in Japanese) accessed 27 February 2020.

After the withdrawal of the Dutch forces in March 2005, the UK agreed to cooperate in to provide for the safety of the Japanese forces. Consequently, one of the aims of the reform of these acts was to solve the problem of being dependent on other armies for protection.

Furthermore, according to the new Act on Peacekeeping Operations, Japan can now use weapons to rescue people in remote locations<sup>12</sup>. Additionally, JSDF personnel can also use weapons to protect local inhabitants, patrol and conduct traffic inspections<sup>13</sup> and protect military camps even when they are not targeted; before the legal revision, they could only use weapons when they were the targets of attacks.<sup>14</sup>

From these changes in the aforementioned acts and the new Act on Peacekeeping Operations, Japan is now able to participate in EU-led operations. For instance, during the special committee meeting on Japan’s security legislation in the House of Councillors in the 180th Diet on 30 July 2015, Masaaki Taniai, a representative belonging to the Koumei Party, asked the Defence Minister, Gen Nakantani, to clarify what non-UN led operations that the Japanese government may take part in as per the legislative reforms and what these were for. In response, the Defence Minister mentioned the Aceh Monitoring Mission, which was led by the EU, as an example of the type of operation the JSDF could participate in under the new legislation.<sup>15</sup>

Furthermore, according to a Japanese newspaper, Asahi Shimbun, the Japanese Ministry of Foreign Affairs had considered making the JSDF participate in EU-led anti-terrorism operations in Mali and Niger before the legislative reform. However, although the EU expected Japan to send JSDF to cooperate in these countries, the Ministry gave up on the idea because the Act on Peacekeeping Operations did not allow participation in these operations. This became impetus for the Japanese government to revise the security-related

---

12 (w) of Item 5 of para. 1 (5) of Article 3 of the Act on Cooperation with United Nations Peacekeeping Operations and Other Operations; Paragraph 2 of Article 26 of the Act on Cooperation with United Nations Peacekeeping Operations and Other Operations.

13 (g) of Item 5 of para. 1 (5) of Article 3 of the Act on Cooperation with United Nations Peacekeeping Operations and Other Operations; Paragraph 1 of Article 26 of the Act on Cooperation with United Nations Peacekeeping Operations and Other Operations.

14 Japan Ministry of Defence, *Defence of Japan* (2019) 262.

15 Reply from Gen Nakatani, the Japanese Minister of Defence in the special committee on Japan’s security legislation in the House of Councillors in the 180th Diet on 30th July 2015 in the recording in the special committee on Japan’s security legislation in the House of Councillors (30th July 2015), no. 5, in the 189th Diet, 24 (in Japanese) <<http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18907300192005.pdf>> accessed 27 February 2020.

Acts.<sup>16</sup>

To summarise, the new Act on Peacekeeping Operations offers enough legal basis for participation in CSDP missions and gives the JSDF personnel the power to use weapons in related operations.

### B- AMENDMENT OF THE POLICY ON TRANSFER OF DEFENCE EQUIPMENT AND TECHNOLOGY

The Policy on Transfer of Defence Equipment and Technology – which is not prescribed in written law but is based on replies by the Prime Ministers in the Diet since 1967 – in Japan's Constitution led the government to restrict the export of arms after WWII. In this context, Prime Minister Eisaku Sato in 1967 said that Japan must not export arms to communist countries, the countries to which the UN Security Council Resolutions has banned the export of arms and the countries having international conflicts. In 1976, Prime Minister Takeo Miki added that Japan should refrain from exporting arms to the countries other than those mentioned by Prime Minister Sato.<sup>17</sup>

However, today, the Japanese government seems to want to export arms to foreign countries. Even under the Policy on Transfer of Defence Equipment and Technology, the Japanese government has allowed the export of arms in no less than 18 cases, including the transfer of military technology to the US, as exceptions from 1983 to 2010.<sup>18</sup> In 2014, the government moved towards lifting the ban on the export of arms by summarising these exceptions, and the Cabinet approved of the new policies on the transfer of defence equipment and technology that made it clear that Japan can export defence equipment for the sake of international peace and Japan's security. This was a substantial shift from the old policy, which was a complete de facto ban on export, to the new policy, which clarifies in which cases Japan may export.<sup>19</sup>

One of the reasons behind the policy change was the weak infrastructure of domestic military production.

16 Asahi Shimbun Digital, 'Ministry of Foreign Affairs considered JSDF's participating in EU missions in Niger and Mali. Yet it does not meet the Act on Peace Keeping Operation' (3 July 2015) (in Japanese): <<http://www.asahi.com/articles/DA3S11838697.html>> accessed 27 February 2020.

17 Japan Ministry of Foreign Affairs, 'Japan's Policies on the Control of Arms Exports' <<https://www.mofa.go.jp/policy/un/disarmament/policy/index.html>> (accessed on 24 February 2020).

18 For further detail, see Kutsunugi K., Amendment of the Principle of Arms Export Ban and New Principles, *Legislation and Research*, no. 361 (2015) (in Japanese) (沓脱和人「武器輸出三原則等」の見直しと新たな「防衛装備移転三原則」『立法と調査』) 59.

19 There have sometimes been protests due to public opinions.

Moreover, due to recent advances in defence equipment technology, per unit cost and maintenance cost have risen, leading to a decrease in the number units procured. As Japan does not have a state-owned munitions factory, the Ministry of Defence procures defence equipment from private companies both in Japan and other countries. It goes without saying that it is consequently important for Japanese security that Japan retains its domestic defence industry.<sup>20</sup>

However, the fall in procurement has made some companies develop a negative attitude towards accepting orders from the Ministry of Defense and even withdraw from the industry itself,<sup>21</sup> thus weakening the Japanese domestic defence industry. Furthermore, the international trends in international joint developments have also driven the Japanese government to make changes in defence equipment policies.<sup>22</sup>

The old policy on the exporting of military equipment also hampered the supply of equipment to foreign troops conducting operations. For instance, in the UN South Sudan Operation, the JSDF provided ammunition to the South Korean troops as an exception.<sup>23</sup> However, the new policy on this matter enables the JSDF to provide other countries' troops with ammunition. Like this, Japan now can provide some equipment to the other country's troops. Furthermore, Japan also signed the Acquisition and Cross Servicing Agreement (ACSA) with the US, Australia, the UK, France and Canada of which aim is to enable the parties to request equipment and the other to provide them.<sup>24</sup>

Thus, the amendment of the security-related acts and the new policies on the export of military equipment show that Japan is willing to cooperate with foreign countries, including the EU. However, the following

20 The Japanese government explains that retaining the national military industry is significant in getting equipment that are the most suitable for Japan to create deterrents to other countries by showing that Japan has its own military industry, to procure equipment from foreign companies and bolster the domestic economy by spin-off. See, Japan Ministry of Defence, *Defence of Japan* (2014) 320.

21 Japan Ministry of Defence, *Defence of Japan* (2015) 258.

22 Japan Ministry of Defence, 'Strategy on Defence Production and Technological Bases: Toward Strengthening the Bases to Support Defence Forces and 'Proactive Contribution to Peace'' (June 2014), 3-5 <<https://www.mod.go.jp/atla/soubiseisaku/soubiseisakuseisan/2606honbuneigo.pdf>> accessed 27 February 2020.

23 The Japan Times, 'Japan to supply ammo to ROK peacekeepers in South Sudan' (23 December 2013) <<https://www.japantimes.co.jp/news/2013/12/23/national/japan-to-supply-ammo-to-rok-forces/#.Xl4CXaj7TD4>> (accessed on 27 February 2020).

24 The Japanese government is also negotiating to sign an ACSA with India.

## EU-JAPAN COOPERATION IN THE SECURITY FIELD FROM THE PERSPECTIVE OF JAPAN'S LEGAL FRAMEWORK

Fig. III-2-1-1 Current Status of the Unit Price and the Acquisition Quantity of Defense Equipment

### Status of Procurement: Unit Price



Type-74 Tank: Approximately 0.39 billion yen (contracted in FY1989)

↓ (2.5 times increase)

Type-10 Tank: Approximately 1 billion yen (contracted in FY2014)



Harushio type: Approximately 38.6 billion yen (contracted in FY1991)

↓ (1.35 times increase)

Soryu type: Approximately 52.1 billion yen (contracted in FY2014)



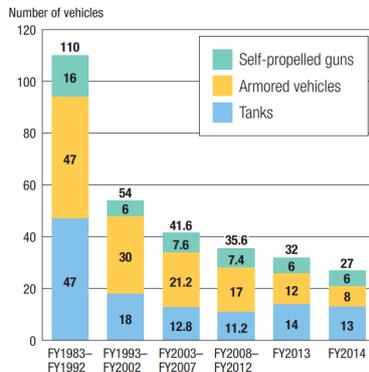
F-4EJ: Approximately 3.8 billion yen (contracted in FY1977)

↓ (4.2 times increase)

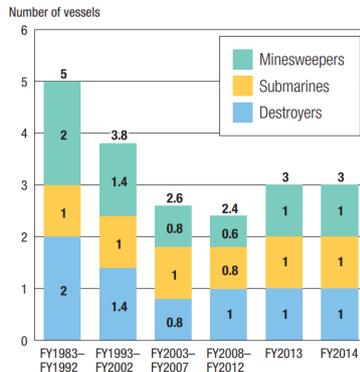
F-35A: Approximately 15.9 billion yen (contracted in FY2014)

### Status of Procurement: Quantity

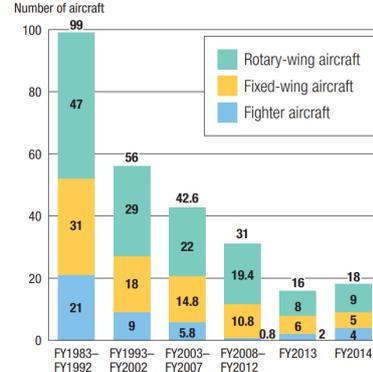
Trend in the annual average procurement quantity of the main vehicles (Data shown for the period prior to FY2012 is the annual average for each period)



Trend in the annual average procurement quantity of the main vessels (Data shown for the period prior to FY2012 is the annual average for each period)



Trend in the annual average procurement quantity of the main aircraft (Data shown for the period prior to FY2012 is the annual average for each period)



(Source of Fig. III-2-1-1: Japan Ministry of Defense, *Defense of Japan* (2015), 258)

section of this paper will show that domestic legislation is not necessarily enough for cooperation with the EU in terms of security.

### III- OBSTACLES TO COOPERATION WITH THE EU

#### A- THE NEW ACT ON PEACEKEEPING OPERATIONS DOES NOT COVER ALL OPERATIONS

It is worth noting that the new Act on Peacekeeping Operations does not cover all operations. For instance, it does not cover anti-piracy operations Japan is a member of Combined Task Forces-151 (hereinafter, CTF-151) (January 2009 – today) by Combined Maritime Forces (CMF) that are multinational forces led by the US to promote maritime security to counter terrorist acts and related illegal activities. Additionally, the EU launched the counter piracy CSDP Operation (EUNAVFOR Atalanta). However, joining CTF-151 does not allow Japan joining the EUNAVFOR Atalanta, which is illustrated by the case of Republic of Korea (ROK) joining both.<sup>25</sup>

<sup>25</sup> This is based on the EU-ROK Framework Participation Agreement. Pierre Minard said, “while South Korea has been diligent on signing the FPA, Japan’s reluctance to do so is the echo of its own internal difficulties related to the constitutional debate.” (Minard P., ‘The EU, Japan and South Korea: Mutual Recognition between Different

Moreover, the EU and Japan have already cooperated with each other to deter and prevent piracy off the coast of Somalia. EUNAVFOR Atalanta, CTF-151 operated by CMF and Ocean Shield operated by NATO have common counter-piracy coordination roles. The EUNAVFOR Atalanta Force Commander, Rear Admiral Alfonso Gómez Fernández de Córdoba, took over the coordination role from the CTF-151 commander, Japanese Rear Admiral Hiroshi Ito, during a meeting at sea on board the Operation Atalanta flagship, ESPS Galicia in July 2015.<sup>26</sup> Giving that Japan already dispatched the JSDF onto the coast of Somalia, and this is the operation in which both are cooperating closely, EUNAVFOR Atalanta is a feasible operation that Japan can and is expected to take part in. Paul Midford also assessed that before Japan takes part in CTF-151, it can join the EUNAVFOR Atalanta.<sup>27</sup>

The Japanese joining CTF-151 has the following history. To respond to the UN resolutions to authorise states

Partners’ (2014) *Group for Research and Information on Peace and Security Analysis Note*, 8 <[http://www.grip.org/sites/grip.org/files/NOTES\\_ANALYSE/2014/NA\\_2014-09-18\\_EN\\_P-MINARD.pdf](http://www.grip.org/sites/grip.org/files/NOTES_ANALYSE/2014/NA_2014-09-18_EN_P-MINARD.pdf)> accessed 27 February 2020.

<sup>26</sup> EUNAVFOR Atalanta, ‘Operation Atalanta Force Headquarters Assumes Counter-Piracy Coordination Role from CTF 151’ (22 July 2015) <<http://eunavfor.eu/operation-atalanta-force-headquarters-assumes-counter-piracy-coordination-role-from-ctf-151>> accessed 27 February 2020.

<sup>27</sup> Supra 1, 301-303.

to take on anti-piracy operations,<sup>28</sup> the Japanese government began an anti-piracy operation off the coast of Somalia.<sup>29</sup> In March 2009, the then Prime Minister Taro Aso recognized the order of maritime patrol activities issued by the Defence Minister based on Art 82 of the Act of Self Defence Forces which prescribes that with recognition by the Prime Minister, the Defence Minister may issue orders that JSDF personnel may take appropriate measures at sea when it is needed to protect life or property or maintain order at sea. Although this article does not refer to anti-piracy operations, the then Prime Minister had no choice but to rely on Art 82 of the old Act of Self Defence Forces because Japan did not have acts or articles to send the JSDF for anti-piracy operations in that time. Thus, two escort vessels left Japan and began maritime escort operations in March 2009.<sup>30</sup> In May 2009, fixed-wing patrol aircrafts (P-3C) were also added to the anti-piracy operation.<sup>31</sup> However, according to Art 82 of the old Act of Self Defence Forces, the JSDF could only protect ships that belonged to the Japanese, were registered in Japan or in which the crew or cargo were Japanese. To protect ships that are not related to Japan, the Act of Punishment and Countermeasures against Piracy (hereinafter, Act of Piracy) was enacted in June 2009, which came into effect in July although “the opposition, and many Japanese people, are wary of taking any steps to water down Japan’s pacifist constitution.”<sup>32</sup>

Then, it can be summarized that the legal basis for Japan to engage in anti-piracy operations was Art 82 of the old Act of Self Defense Forces, and currently, it is the Act of Piracy. Meanwhile, the legal basis for participation in EU-led operations is the new Act on Peacekeeping Operations, Japan may participate in the following operations: first, maintaining neutrality between parties when they agree on a ceasefire and the parties and the state where Japan dispatches

the SDF agree to allow Japan’s participation;<sup>33</sup> second, operations after the parties have ceased activities in the region when the state where Japan dispatches SDF agrees to allow Japan’s participation;<sup>34</sup> third, the operation in which Japan maintains neutrality between parties to prevent armed disputes on occasions when the state where Japan dispatches the SDF agrees to allow Japan’s participation.<sup>35</sup>

The anti-piracy operation does not fall under these three operations in the new Act on Peacekeeping Operations. Thus, to join the EUNAVFOR Atalanta, Japan would need create a new ad hoc act.

### B- THE PROBLEMS WITH USAGE OF WEAPONS

As previously mentioned, the reform of security-related acts enables personnel of the JSDF to use weapons in more situations. However, according to Art 25 of the New Act on Peace Keeping Operations, JSDF personnel are not allowed to injure other people by using these weapons except for self-defence or averting present danger.<sup>36</sup> Instead, they have to use weapons in such a manner so as not to injure people such as, for instance, by firing warning shots.<sup>37</sup> The limited power to use weapons is also a condition with the anti-piracy operations.<sup>38</sup> Namely, the JSDF’s power to use weapons is not full-fledged.

Furthermore, there is a lack of laws regarding cases where JSDF personnel accidentally kill people while on the job. Meanwhile, in Japanese territory, a person who fails to exercise due care required in the pursuit of social activities and thereby causes the death or injury of another shall be punished by imprisonment with or without work for not more than five years or a fine of not more than 1,000,000 yen.<sup>39</sup> However, this article is not applied to crimes committed outside of Japan.<sup>40</sup>

28 UN doc S/RES/1814 (2008), UN doc S/RES/1816 (2008) and UN doc S/RES/1838 (2008).

29 Given that Japan was always against sending personnel abroad, the Japanese response to these resolutions can be assessed as being rarely positive. Additionally, the coast of Somalia is an important zone for Japan, who depends on it for trade by ships. Moreover, the Chinese decision to send ships for anti-piracy operations stimulated the Japanese government to follow suit (see, Heng Y. K., ‘Japan’s Aspiration as a Global Security Actor: The Antipiracy Mission off Somalia and the Dynamics of Great Power Intervention’ in Emma Leonard E., Ramsay G. (eds), *Globalizing Somalia: Multilateral, International and Transnational Repercussions of Conflict* (Bloomsbury Publishing 2013) 189–190).

30 Japan Ministry of Defence, *Defence of Japan* (2009) 127.

31 Ibid.

32 BBC News, ‘Japan’s MPs back anti-piracy bill’ (23 April 2009) <<http://news.bbc.co.uk/2/hi/asia-pacific/8013908.stm>> accessed 27 February 2020.

33 (a) of Item 2 of paragraph 1 of Article 3 of the Act on Cooperation for United Nations Peacekeeping Operations and Other Operations.

34 (b) of Item 2 of paragraph 1 of Article 3 of the Act on Cooperation for United Nations Peacekeeping Operations and Other Operations.

35 (c) of Item 2 of paragraph 1 of Article 3 of the Act on Cooperation for United Nations Peacekeeping Operations and Other Operations  
36 Paragraph 6 of Art 25 of the Act on Cooperation for United Nations Peacekeeping Operations and Other Operations and Art 36 and 27 of Penal Code.

37 Furuya Y., *Annotation of Law concerning the Execution of Duties of Police Officials* (Revised Version, Tachibana Shobo 2007) (in Japanese) (古谷洋一『注釈 警察官職務執行法』(再訂版、2007年)) 364.

38 Art 6 of Act of Piracy; Paragraph 2 of Art 8 of Art 6 of Act of Piracy; Art 7 of the Law concerning the Execution of Duties of Police Officials translated by Ocean Policy Research Foundation.

39 Paragraph 1 of Art 211 of Penal Code.

40 Art 3 of Penal Code.

## EU-JAPAN COOPERATION IN THE SECURITY FIELD FROM THE PERSPECTIVE OF JAPAN'S LEGAL FRAMEWORK

The possibility that JSDF personnel kill people by mistake on the job cannot be ruled out. Therefore, current legislation is not enough to send the JSDF outside of Japan. In this context, it has been reported recently that the Minister of Defense is making efforts to solve the absence of legal basis covering professional negligence resulting in death outside of Japan.<sup>41</sup>

### C- THE PROBLEM OF PROVIDING GOODS

As mentioned above, the Japanese government eased restrictions on the export of arms in 2014. However, this does not mean that Japanese private companies can export such equipment with no restrictions. On the contrary, companies are not allowed to share information on equipment other than information that is already known to public. This condition is an obstacle to creating appeal for their products during business negotiations.<sup>42</sup>

Moreover, Japan's new policies on defence equipment is also not comprehensive as the new Act allows the JSDF to provide ammunition, refuel and conduct maintenance on aircrafts ready for taking off for combat operations while still not providing other equipment.<sup>43</sup> Additionally, it is worth noting that the EU and Japan would need to sign the ACSA to allow for the provision of ammunition.

### IV- CONCLUSION

In conclusion, the second part of this paper showed that obstacles in terms of cooperation with the EU in the security field still remain. However, it is clear, as the first part of this paper showed, that Japan is changing its restrictive security policies and paving the way for cooperation with the EU. It would thus be appropriate to say that Japan is on its way to launch full-scale cooperation with the EU in the field of security.

41 NHK news, 'Minister of Defence, Considering to Solve the Problem on Accidental Homicide by Members of Self-Defence Forces' (in Japanese) (河野防衛相 海外で活動する自衛隊員の過失について対応検討へ)" (21 February 2020) <<https://www3.nhk.or.jp/news/html/20200221/k10012295491000.html>> accessed 27 February 2020.

42 CISTEC Defence Equipment Transfer WG Secretariat, 'Problems on Transfer of Defence Equipment from the Operational Perspective', CISTEC Journal, no. 165 (2016) (in Japanese) (CISTEC 防衛装備移転手続等対応WG事務局「防衛装備の移転に係る制度運用面の問題の所在(整理):安全保障輸出の観点から」『CISTEC Journal』) 101-104.

43 Japanese Ministry of Defence, *Defence of Japan* (2019) 260.