

Section 3

Three Principles on Transfer of Defense Equipment and Technology

1

Background

Japan has dealt with arms exports in a careful manner, in accordance with the Three Principles of Arms Exports and their related policy guidelines. On the other hand, in individual cases, such as the joint development of BMD by Japan and the U.S., it has taken separate measures by issuing Chief Cabinet Secretary's statements, where arms exports are dealt with outside the Three Principles.

Amidst this situation, the Statement by the Chief Cabinet Secretary On Guidelines for Overseas Transfer of Defense Equipment, etc. was published in December 27 2011. These Guidelines put in place exemptions from the Three Principles

of Arms Exports based on the premise of strict control, in relation to the overseas transfer of defense equipment associated with cases related to peace contribution and international cooperation; and cases regarding international joint development and production of defense equipment, etc. that contributes to Japan's security. The strict control mentioned here refers to the duty imposed on recipient countries to gain prior consent of Japan with respect to extra-purpose use and third party transfer, within international arrangements concluded between Japan and the Governments of recipient countries.

See Reference 62 (The Three Principles on Arms Export, etc.)

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Purpose of Establishment of the Three Principles on Transfer of Defense Equipment and Technology

Meanwhile, when Japan endeavored to arrange the participation of companies within Japan in the international logistics support systems for the manufacture of the F-35, in December 2013, and when 10 thousand rounds of ammunition owned by GSDF forces engaged in activities as a part of South Sudan PKO (United Nations Mission in the Republic of South Sudan (UNMISS)) were provided to the U.N. based on a request by the U.N. since it was not possible to apply Guidelines for Overseas Transfer of Defense Equipment, etc. for these cases, the measures were taken by issuing Chief Cabinet Secretary's statements not to rely on the Three Principles on Arms Export, etc.

In the "National Security Strategy" set out in December 2013, from the perspective of proactive contribution to peace based on the principle of international cooperation, a more proactive involvement in peace contribution and international cooperation through the use of defense equipment and other means, as well as participation in joint development and production of defense and other equipment is required. Based on this situation, clear principles were decided to be established which are suited to the new security environment in regard to the overseas transfer of defense equipment.

Based on the above, "Three Principles on Transfer of Defense Equipment and Technology"¹ was decided by the Cab-

inet Council, at the same time implementation guidelines for it were adopted by National Security Council. While maintaining its basic philosophy as a peace-loving nation that conforms to the Charter of the United Nations and the course it has taken as a peace-loving nation and giving due consideration to the roles that the existing policy guidelines have played so far, with consideration on the past accumulated exemption measures, new principles and guidelines have consolidated the policy guidelines comprehensively. New principles and guidelines also clarifies the concrete standards, procedures and limitation better than ever and state them clearly with transparency both internally and externally.

Based on the Three Principles on Transfer of Defense Equipment and Technology, the Ministry of Defense and Self-Defense Forces, in addition to contributing even more to peace contribution and international cooperation, will also actively cooperate with Japan's ally the United States and other countries in the area of defense equipment and technologies, and more proactively advance the measures required to maintain regional peace and stability and ensure Japan's defense.

See Reference 63 (Three Principles on Transfer of Defense Equipment and Technology)

¹ The term "defense equipment" is deemed appropriate for the title of "Three Principles for the Transfer of Defense Equipment and Technology", since possible articles of overseas transfers help peace contribution and international cooperation as was seen in the example of the provision of bulldozers and other items belonging to the SDF to disaster-stricken countries. Similarly, due to the fact that there is provision of technology in addition to goods, the term "transfer" was adopted rather than "export."

3 Main Contents of the New Three Principles

1 Clarification of cases where transfers are prohibited (the First Principle)

The cases in which transfer of defense equipment and technology shall be prohibited are clarified as when (1) the transfer violates obligations under treaties and other international agreements that Japan has concluded, (2) the transfer violates obligations under United Nations Security Council resolu-

tions, or (3) the defense equipment and technology is destined for a country party to a conflict (a country against which the United Nations Security Council is taking measures to maintain or restore international peace and security in the event of an armed attack).

See Fig. IV-1-3-1 (Concrete examples of the First Principle “The cases where transfers are prohibited”)

Fig. IV-1-3-1 Concrete examples of the First Principle “The cases where transfers are prohibited”

Situation	Specific examples
(1) Violation of obligations under treaties ratified by Japan and other international arrangements	Stipulated in the Chemical Weapons Convention (CWC), Biological Weapons Convention (BWC), Anti-Personnel Mine Ban Convention, Convention on Cluster Munitions, Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (CCW) Amended Protocol II and Protocol IV are prohibitions on the “transfer” of the weapons targeted by each respective convention according with the provisions of each; violation of these responsibilities.
(2) Violation of obligations under United Nations Security Council Resolutions	At present, the countries where the transfer of weapons, etc., is prohibited based on a U.N. Security Council resolution include North Korea, Iran, Iraq, Somalia, Republic of the Congo, Sudan, Côte d’Ivoire, Lebanon, Eritrea, Libya, and the Central African Republic. <ul style="list-style-type: none"> • In the case of North Korea, Security Council Resolution 1718 (2006) established an embargo on tanks, armored combat vehicles, large-diameter artillery systems, combat aircraft, attack helicopters, military warships, missiles or missile systems, and related supplies such as spare parts for the above. Later, in Security Council Resolution 1874 (2009), the subjects of embargo were expanded to include all weapons, excluding small arms and related supplies. • In the case of Iran, Security Council Resolution 1929 (2010) established an embargo on tanks, armored combat vehicles, large-diameter artillery systems, combat aircraft, attack helicopters, military warships, missiles or missile systems, and related supplies such as spare parts for the above.
(3) Transfer to a nation which is party to a conflict (countries which are the target of measures taken by the United Nations Security Council to maintain or recover international peace and safety after an armed attack occurs)	<ul style="list-style-type: none"> ○ At the present time, there are basically no “countries which are the target of measures taken by the United Nations Security Council to maintain or recover international peace and safety after an armed attack occurs.” (the so-called “U.N. Forces in Korea,” formed based on U.N. Security Council Resolutions 82, 83 and 84, which pertain to the Korean War, are stationed in South Korea, but they exist under the Korean Armistice Agreement.) ○ Examples to date include North Korea in the Korean War (Security Council Resolutions 82 (June 25, 1950), 83 (June 27, 1950), 84 (July 7, 1950) and Iraq in the Gulf War (Security Council Resolutions 660 (August 6, 1990), 661 (August 6, 1990), and 678 (November 29, 1990).

2 Limitation to cases where transfers may be permitted as well as strict examination and information disclosure (the Second Principle)

The cases where transfers may be permitted are limited to such cases as the transfer contributes (1) to active promotion of peace contribution and international cooperation, or (2) to Japan’s security. The Government will conduct strict examination on the appropriateness of the destination and end user, and

the extent the overseas transfer of such equipment and technology will raise concern for Japan’s security. At the same time, standards of examinations and procedures will be clarified and made transparent, strict examinations systems of the Government as a whole including deliberations at the National Security Council are decided to be established.

See Fig. IV-1-3-2 (Concrete examples of the Second Principle “Limitation to cases where transfers may be permitted”)

Fig. IV-1-3-2 Concrete examples of the Second Principle “Limitation to cases where transfers may be permitted”

Situation	Specific examples
(1) Contribution to the proactive advancement of peace contribution and international cooperation	<p>The following are examples of overseas transfer that contributes to the proactive advancement of peace contribution and international cooperation (limited to cases where there is proactive significance from the perspective of peace contribution and international cooperation.)</p> <ul style="list-style-type: none"> ○ The transfer destination is the government of another country ○ The transfer destination is the United Nations, a related organization or an organization acting based on a U.N. resolution
(2) Contribution to the security of Japan	<p>The following are examples of overseas transfer that contributes to the security of Japan (limited to cases where there is proactive significance from the perspective the security of Japan.)</p> <ul style="list-style-type: none"> ○ Overseas transfer relating to international joint development and production with countries involved in a cooperative relationship with Japan in terms of security, exemplified by the United States ○ The following are examples of overseas transfer that contributes to the strengthening of security and defense cooperation with countries involved in a cooperative relationship with Japan in terms of security, exemplified by the United States <ul style="list-style-type: none"> • Overseas transfer of defense equipment, including the provision of articles and services based on the Acquisition and Cross-Servicing Agreement (ACSA) • Provision of weapons technology as a part of mutual technology exchange with the United States • Provision of parts and services associated with licensed products from the United States, and the provision of services such as repairs to U.S. Forces ○ Overseas transfer of defense equipment relating to cooperation in evacuation, transport, warnings, surveillance and minesweeping for countries in a cooperative relationship with Japan in terms of security ○ Overseas transfer required for the activities of Government organizations, including the Self-Defense Forces (hereinafter “SDF, etc.”) (including the activities of the governments of other countries or private-sector organizations associated with the activities of the SDF, etc. The same below.) or the security of Japanese people. Examples include the following. <ul style="list-style-type: none"> • Temporary export of equipment, return of purchased equipment and provision of technological information, associated with the activities of the SDF, etc. (including the exchange of parts requiring repair for better parts.) • Export of equipment for the purpose of escorting or the self-protection of public officials • Export of equipment for the purpose of the self-protection of Japanese people engaged in activities in dangerous regions

3 Ensuring appropriate control regarding extra-purpose use or transfer to third parties (the Third Principle)

Overseas transfer of defense equipment and technology will be permitted only in cases where appropriate control is ensured. More concretely, the Government will in principle oblige the Government of the recipient country to gain its prior consent regarding extra-purpose use and transfer to third parties. However, in cases where it is judged appropriate for the proactive advancement of peace contribution and international cooperation, cases involving participation in the international systems for sharing parts, and cases where parts are delivered to a licensor, appropriate control may be ensured with the confirmation of the control system at the destination.

The Ministry of Defense has already advanced considerably in defense equipment and technology cooperation with other countries. Going forward, it will ensure further transparency under the new principles and increase the predictability of partner countries and defense industry. At the same time, it will control the transfer of defense equipment in a responsible manner in cooperation with the relevant Government agencies, while it will thoroughly secure defense technology that is important to the defense of Japan is protected. Thus, it will contribute even further to peace contribution and international cooperation.