沖縄関係 沖縄返還交渉Ⅱ-1（対内）

各経栄的ペーパー

四四・七・二二

下田大使試案について

二十日下田大使の電報越された試案は、岸・アイゼンハワー共同声明の引用によつて米国内部への影響力をねらう等きわめて示唆に富む構想であるが、他方、表現等細部の問題は別として、同案についてはとりあえず次のような問題点があると考えられる。

(1) 事前協議における事前の同意の表明と国会との関係

下田試案は、日本側書簡において、二つの事態（第2、3項）における事前協議に際しての日本側の回答が「同意」である旨の「方針」をあらかじめ米側に対し表明することとし、かつ、これが国会承認の対象とする要なしとの考えに基づいているところ、

果してかかる「方針」の表明が現行安保条約及び関連取極を改訂せずして行政府限りでなしうると解すべきか多大の疑問があり、この点につき法制局の要請に基づき同局との調整を経た疑問擬答（六月十日付）は否定的に解している。

(ロ) 戦闘作戦行動に関する事前協議制度の趣旨

下田試案は、事前協議制度の趣旨は、「日本が武力紛争等重大な国際紛争に不知の間に巻き込まれるがごときことなからしめるため」のものとし、この趣旨に立つて立案されている（外務大臣書簡案第2項）ところ、本制度設立の際の関係者の意図は別とすれば、政府の国会等に対する説明としては、日本がその意に反して戦争に巻き込まれる可能性を排除するためのものであり、した

がつて、事前協議の際の日本側のとるべき態度は当該事態の日本の安全との関係を尺度として決定されるものとされており（「日本の安全と直接密接な関係ある場合以外はノーという。」「日本の国益、すなわち日本の安全を確保する見地から自主的に判断する」等）、紛争の知、不知を尺度としていない点が問題となる。

(ハ) 米軍の行動と国連憲章との関係

外務大臣書簡案第3項は、ヴィエトナム及び韓国に対する関係での事前協議における日本の同意を米国の行動の国連憲章上の合法性をもつて正当化する考え方に基づいているものと考えられるところ、条約及び交換公文は、日本を基地とする極東及び周辺における米軍の行動が国連憲章に則したものであることを当然の前

提とした上で、なおかつ、かかる行動が事前協議の対象となることを定めたものと解され、憲章上の合法、非合法を日本側態度決定の尺度とする理由付けになりえないと考えられる。（この考え方は、国会答弁においても現われているはずであるが、これを端的に表明したものとして、「極東」の範囲に関する統一見解は、「しかしながら米国の行動には、基本的な制約がある。すなわち米国の行動は常に国連憲章の認める個別的又は集団的自衛権の行使として、侵略に抵抗するためにのみ執られることとなつている からである。また、かかる米国の行動が戦闘作戦行動を伴なうときは、そのための日本の施設の使用には、当然に日本政府との事前協議が必要となつている」と述べている。右は、自衛権行使の

場合のみを掲げているが、朝鮮における国連の行動として米軍が行動する場合にも当然同様と解すべきであり、このことは岸・ハーター交換公文第3項に明瞭である。）

下田試案第3項は「国連憲章に則応してとられた集団的安全保障措置の一環として軍事行動がとられ」とされており、「集団的安全保障措置」の意味（意図）が奈辺にありやは即断しえないが、もし憲章五十一条の自衛権を考えておられるとすれば、ヴィエトナムも含みうるが、前記のとおりの問題があり、他方もし憲章第七章の措置を考えておられるとすれば、ヴィエトナムは含みえず、さらに、朝鮮についても岸・ハーター交換公文第5項との関係及び前記(4)の問題が生ずる。

(二)　なお、政策的な事項に属するが、下田試案が事前協議との関係で直接取り上げているのは、在沖縄基地なるところ、いわゆる「本土との差別論」の関係を覚悟し置く必要があろうと思われる。

SECRET

Elaboration on para. II. of the Japanese paper

1. In the course of the recent discussion, a question was raised by the U.S. side as to whether the following type of action would be subject to prior consultation under the terms of the Exchange of Notes concerning the implementation of Article VI of the Japan-U.S. Security Treaty:

> the use of bases in Japan by U.S. forces for necessary action to protect U.S. military aircraft (or vessels) under attack over (or on) the high seas near the territory of Japan.

It is our view that the question should be considered from two aspects: legal and practical.

Legal aspect

2. If the question is posed strictly as a matter of legal interpretation of the Exchange of Notes, the answer will be rather a simple one: the type of action in question is subject to prior consultation so long as such action falls within the category of "military combat operations" as distinct from "search and rescue operations," which may be freely undertaken from Japan.[1/] The Exchange of Notes does not distinguish

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1/ Although such action will, in most cases, be considered a "military combat operation," it is at least theoretically conceivable that such non-combat operation as demonstration can achieve the same purpose under certain circumstances.

one type of military combat operations from another if the operations are not those conducted under Article V of the Security Treaty. Consequently, the proximity to Japan of the attack or the nature of the attack (whether it is of an incidental nature or it should be regarded as an "armed attack" against the U.S.) is totally irrelevant in this regard.

3. This, however, in no way means that an attack against U.S. forces outside Japan, regardless of its proximity or nature, is of little concern to the Japanese Government. The reason why military combat operations undertaken from Japan in response to an attack against U.S. military aircraft or vessels over or on the high seas are subject to prior consultation is because, as far as the use of bases in Japan by U.S. forces is concerned, the Japan-U.S. Security Treaty is based on the following twofold concept:

(a) Action required in the case of an armed attack against either Party in the territories under the administration of Japan; and

(b) Other types of action for the purpose of contributing to the security of Japan and the maintainance of international peace and security in the Far East. As to such action, distinction is made between military combat operations and non-combat operations.

That is to say, Articles V and VI of the Security Treaty are based on a concept different from that on which Article VI of the North Atlantic Treaty and the corresponding provisions of several other collective defense treaties are written. As a result, unlike the North Atlantic Treaty and others, the Japan-U.S. Security Treaty draws a line between an armed attack "against either Party in the territories under the administration of Japan" and an armed attack against either Party outside such territories, the latter being excluded from the scope of Article V, under which each Party "would act to meet the common danger ....."[2/]

4. As regards action falling under category (b) in the preceding paragraph, all military combat operations are made subject to prior consultation, whether or not such operations are to be undertaken in response to an attack against U.S. aircraft or vessels over or on the high seas. In this connection, no distinction is made whether or not these operations are in conformity with the U.N. Charter. This legal structure of the Treaty should have been clearly understood by the U.S. Government at the time of its

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2/ The difference between the Japan-U.S. Security Treaty and other collective defense treaties is due to the constitutional limitations under which Japan cannot exercise the right of collective self-defense outside her own territories, e.g., to use the Self Defense Forces to assist U.S. forces under attack outside Japan.

conclusion.[3/] It may be added as a clarification, however, that the prior consultation system does not cover situations in which U.S. military aircraft or vessels, while engaging in non-combat operations (patrol, reconnaissance, etc.) undertaken from Japan, are compelled to protect themselves by the use of force against unexpected attack outside Japan.

Practical aspect

5. It may be argued with good reason that unless the kind of action in question is undertaken immediately, it cannot achieve its purpose, i.e., to protect U.S. aircraft or vessels under attack. Should then a special arrangement be made to exempt such action from the prior consultation system or should, as a more practical alternative, a mechanism be found to conduct prior consultation in the most expeditious manner? In the view of the Japanese Government, our common preference should clearly be the latter since the former would be to open a Pandora's box, upsetting the entire structure of the Security Treaty, which has effectively served its purpose for the past ten years.

3/ In the official definition of the term "Far East," referred to in para. VII of the Japanese paper, it is stated that "if such U.S. action (in exercise of the right of individual or collective self-defense authorized by the U.N. Charter) involves military combat operations, the use of facilities in Japan for the operations will naturally require prior consultation with the Government of Japan."

6. True, we must be prepared to meet any contingency. As a matter of fact, however, the need for speedy action is not anything new arising suddenly in connection with the reversion of Okinawa. And yet, the prior consultation system was agreed upon between the two countries in 1960. It could be said that the extension of the prior consultation system to post-reversion Okinawa would fundamentally alter the basis on which the existing arrangements were made, but this is not very much convincing in view of the fact that, under the present circumstances, a situation requiring urgent action is more likely to emerge near mainland Japan than near Okinawa.

7. Moreover, a special arrangement to exempt a certain type or types of military combat operations from the prior consultation system is fraught with practical difficulties. Not only such an arrangement should go to the Diet for approval, but it would be extremely difficult to be worked out in satisfactory terms. How should the lines be drawn on the map to define the areas in which military combat operations would not be subject to prior consultation (what would be the criteria for drawing such lines)? What types of military combat operations should be exempt from prior consultation? In what way the situation requiring free operations could be defined? Should it be limited to an "armed attack against

the U.S." and, if so, why? Thus, there would be an endless list of questions which must be dealt with before agreement could be reached on a specific arrangement to be made.

8. Even if we could overcome all the difficulties described in the preceding paragraph, such an approach could only undermine mutual confidence essential to our partnership. On the one hand, it would breed suspicion on the U.S. side that Japan would not really care for anything but her own security. On the other hand, the Japanese side would come to feel as if the U.S. regard Japan not as a partner but as a piece of land which could be used freely as a military base. No treaty can last without losing its effectiveness on the basis of such mutual distrust. It seems, therefore, to be rather a futile exercise to attempt to find a useful and practical solution from an isolated hypothetical case of an extreme nature which is least likely to occur. Both sides should be imaginative enough to be able to accommodate their respective interests without resorting to this kind of exercise, which could be costly to our broad common interest.

極秘

七月二十日大臣ブリーフ用に作成（大臣、北米、条約局長）

事前協議における諾否の予約と主権の問題

沖縄返還交渉において、わが方が、事前協議の諾否を、場合のいかんにかかわらず、米国との間にあらかじめ約束することはできないということは、次のとおり、法律上の問題とその後にある政策上の問題という二つの側面がある。

1 法律的側面

現行安保条約の体制を維持する限り条約第六条の実施に関する交換公文のたてまえ上、国会の承認を要する特別の取極なくしては、事前協議の諾否に関する予約を行ないえない（七月十六日付けペーパー一の(2)）。

2 政策的側面

(イ) そもそも、駐留外国軍隊の行動に一定の制約を課するか否かは、当事

国間の合意により決定しうる問題であり、駐留軍隊が被駐留国から戦闘作戦行動を行なうことを認めるや否やも同じく主権国間の合意によるところで、条約上の合意の内容としては、あらかじめこれを許容するような内容の合意を行なうことはできる（たとえば旧安保条約）。

(ロ) 他方、事前協議制が設けられたゆえんをみれば、わが国が重大な関心を有する類の米軍の行動（たとえば戦闘作戦行動）は、わが国が関知せざる間に行なわれるのではなく、わが国の同意をまつてとられるということにした方が、対等な主権国家間の協力関係を律する安保条約としてよりふさわしく、かつ、米国としても、日本の意思を一定の範囲で尊重する義務を負う結果生じる米軍の行動上の制約を受け入れることが日米関係上望ましいと考えたことによるものであろう。このような見地から

すれば、本件は、まさしく、両国の基本的な政策の問題であり、沖縄についてもこの政策を変更する理由はないと考えられる。