



The Current Status of Emergency Legislation in Japan and Its Challenges

From Nankai Trough Earthquake
to the Taiwan Contingency

March 2025

The Security Studies Group of the Sasakawa Peace Foundation
Research Group on Emergency Legislation

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This report is the outcome of the “Study on Emergency Response in Japan,” conducted by the Security Studies Group of the Sasakawa Peace Foundation over a two-year period starting in 2023.

In this study, the “Research Group on Emergency Legislation” was established, consisting of six experts, including practitioners with extensive experience in the management of pandemics and other crises, and legal professionals, for in-depth discussions. Amid growing concerns about a possible massive Nankai Trough earthquake and the increasingly severe security environment surrounding Japan, coupled with potential crises in Taiwan and the Korean Peninsula, the research group began discussions with an awareness of the need to reexamine Japan’s emergency legislation and the related mechanisms for responding to such situations. To specifically identify Japan’s challenges, the research group analyzed legal systems for individual events, such as large-scale natural disasters and cyberattacks, while also developing complex scenario models to discuss challenges in emergency response. In addition, through a comparative analysis, the research group explored how major Western countries define emergencies in their legal frameworks, what powers they grant to their governments, and how authorities and roles are divided between the national and local governments in crisis response. Furthermore, the group examined how these countries seek to strike a balance between the implementation of emergency measures, including restrictions on personal rights, and the respect for fundamental human rights.

Through a comparative analysis of legal frameworks in various countries, the group gained valuable insights for achieving a more effective emergency response in Japan. At the same time, it was found that in Japan, there has only been extremely limited discussion on the protection of human rights in time of emergency.

In Japan, discussions surrounding the emergency clause tend to emphasize “concerns about potential abuse of power by the government.” In December 2024, as the study group’s discussions were reaching their final phase, President Yoon Suk Yeol of the Republic of Korea declared martial law. The National Assembly voted to suspend the martial law hours after it was declared, but President Yoon was impeached, and an investigation is underway on charges of treason and other offenses. Regarding this issue again, some expressed concerns that an emergency clause in Japan could lead to the government abusing its power to restrict private rights. Meanwhile, the “Research Group on Emergency Legislation” also held discussions from different perspectives: “Restrictions on the government’s powers, including the parliamentary procedure enabling the suspension of martial law in times of emergencies, along with provisions for human rights protection, made it possible to curb the effect of martial law.” Currently, it appears that Japan is expanding the government’s powers to respond to emergencies while restricting private rights, based on the provision in Article 13 of the Constitution: “to the extent that it does not interfere with the public welfare,” among others. Political parties such as the Liberal Democratic Party and the Japan Innovation Party have published their respective drafts of constitutional amendments, including the introduction of an emergency clause. While these drafts focus on consolidating authority for emergency measures, they cannot be regarded as having been formulated with a strong awareness of human rights protection.

Based on these discussions, the final chapter of the report presents three policy recommendations regarding the

introduction of an emergency clause into the Constitution: the summary of issues related to the introduction of an emergency clause into the Constitution, the enactment of a Basic Emergency Act and the establishment of an Emergency Agency.

Furthermore, as we proceeded with research, we received invaluable cooperation and advice from other research institutions and experts. Such assistance is believed to be based on a shared desire to overcome the challenges of Japan's emergency legislation. We extend our profound appreciation for their contribution and cooperation.

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Note: This report is the outcome of the research conducted as an independent activity by the Security Studies Group of the Sasakawa Peace Foundation, and does not represent the views of the individual experts listed above.

Official names of laws and treaties mentioned in this report

Events	Abbreviations (as used in the text)	Full Name
Matters related to Nankai Trough Earthquake	Tonankai and Nankai Earthquake Disaster Management Act	Act on Special Measures for Promotion of Tonankai and Nankai Earthquake Disaster Management
	Nankai Trough Special Measures Act	Act on Special Measures for Promotion of Nankai Trough Earthquake Disaster Management
Nuclear events	Nuclear Reactor Regulation Act	Act on the Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors
	Nuclear Terrorism Convention	International Convention for the Suppression of Acts of Nuclear Terrorism
	Convention on Nuclear Safety	Convention on Nuclear Safety
	Radiation Emission Punishment Act	Act on Punishment of Conduct Endangering Human Life by Generating Radiation
Pandemics	Infectious Diseases Control Act	Act on the Prevention of Infectious Diseases and Medical Care for Patients with Infectious Diseases
	Immigration Control Act	Immigration Control and Refugee Recognition Act
	Chemical Weapons Convention	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction
	Chemical Weapons Prohibition Act	Act on Prohibition of Chemical Weapons and Control, etc. of Specific Chemicals
	Biological weapons prohibition act	Act on Implementing the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction and the Other Conventions
Events in cyber and new areas	Personal Information Protection Act	Act on the Protection of Personal Information
	Unauthorized Computer Access Prohibition Act	Act on the Prohibition of Unauthorized Computer Access
	Tallinn Manual	Tallinn Manual on the International Law Applicable to Cyber Warfare
Armed attack situation	Armed Attack Situations Response Act	Act on the Peace and Independence of Japan and Maintenance of the Nation and the People's Security in Armed Attack Situations, etc., and a Survival-Threatening Situation
	Civil Protection Act	Act concerning the Measures for Protection of the People in Armed Attack Situations, etc.
	Law Concerning Situations that Will Have an Important Influence	Law Concerning Measures to Ensure the Peace and Security of Japan in Situations that Will Have an Important Influence on Japan's Peace and Security

Structure and Significance of This Report

To address the issues raised in the introduction, this report is structured into four chapters, which will delve into analysis and verification, and propose recommendations for improvement.

Chapter 1 “Emergency Response and Legal Basis - Examination by Event” examines how the current legal systems apply to individual emergency events. We illustrated the laws and mechanisms for addressing each of the three stages—Prevent/Prepare, Detect, and Respond—and identified the challenges. Regarding “Respond,” detailed descriptions were given by classifying them into negligence and intentional actions.

Table 1: Current Status and Challenges of Japan’s Emergency Legislation (Key Points)

	Current Legal Framework	Challenges to address identified from assumed events
Nankai Trough Earthquake	<p>P: Disaster prevention plans are stipulated in the Nankai Trough Special Measures Act, and related damages are covered by relevant legislation</p> <p>D: Surveys along the Nankai Trough started, and the Nankai Trough Earthquake Extra Information was issued</p> <p>R: Nature → Response through the Disaster Countermeasures Basic Act and the Disaster Relief Act</p> <p>NIntentional → The spread of false information and other man-made events are assumed</p>	<p>(1)Effectiveness of advance evacuation</p> <p>(2)Declaration of a state of emergency disaster</p> <p>(3)Re-examination of preparedness for compound disasters</p>
Nuclear accident	<p>P: Safety management standards and international regulations have been established to prevent serious accidents and terrorism.</p> <p>D: Upon detection of an anomaly, the operator shall notify once they determine whether it is accidental or intentional.</p> <p>R: Human Error, etc. → Response through the Act on Special Measures Concerning Nuclear Emergency Preparedness</p> <p>Intentional Attack → Initially covered by the Police, Subsequently by the Self-Defense Forces, Ensuring National Security</p>	<p>(1)Definition of Security Clearance</p> <p>(2)Rapid situation assessment</p> <p>(3)Civil Protection Act and Nuclear Power Plant Operation</p>
Pandemic	<p>P: Classification based on symptoms, vaccinations, etc. Domestic laws and international treaties have been established.</p> <p>D: Infectious Diseases → Medical institutions report to the prefectural governor and the Minister of Health, Labour and Welfare through the public health center.</p> <p>R: Natural → Implementation of Measures to Prevent the Spread of Infection, Insufficient Measures with Binding Power</p> <p>Intentional → Not Assumed by Legislation Applicable legislation differs depending on the perpetrator.</p>	<p>(1)Effectiveness of the Cabinet Agency for Infectious Disease Crisis Management and the Japan Institute for Health Security</p> <p>(2)Effectiveness of revising the International Health Regulations</p> <p>(3)Division of Authorities and Roles between the National and Prefectural Governments</p>

Cyber events	<p>P: Cybersecurity legislation has been developed domestically, but not yet developed internationally.</p> <p>D: Different legislation applies depending on the event. Many different ministries and agencies are involved.</p> <p>R: No severe penalties have been stipulated for attacks on critical infrastructure or security-related attacks.</p>	<p>(1) Establishment of a system to comprehensively strengthen cybersecurity</p> <p>(2) Establishment of international treaties:</p>
Armed attack situation	<p>P: Activities related to deterrence and conflict prevention, implementation of training based on assumed armed attacks, etc.</p> <p>D: The Armed Attack Situations Response Act was enacted to address invasion against our country, etc.</p> <p>R: Japan, Allies, Response to Contingencies in Areas surrounding Japan, Ensuring National Security are Key Issues</p>	<p>(1) Expediting situation assessment</p> <p>(2) Definition of Civil Protection</p> <p>(3) Re-examination of preparedness for compound disasters</p>
Summary Challenges in emergency response	<p>(1) Japan has yet to set a unified definition of “emergency” neither in its Constitution nor basic emergency legislation.</p> <p>(2) Legal systems have been developed in a vertically divided manner, based on events that have occurred or those increasingly likely to occur due to changes in the international situation.</p>	

Chapter 2 identified challenges in Japan’s emergency legislation by assuming cases where multiple events occur in a compound manner under a program dubbed: **“examination of scenarios involving compound events through the method of scenario planning.”**

- **Submarine cable sabotage and biological and chemical terrorism**
- **Cyberattacks against financial institutions and large-scale blackouts: Hidden pitfalls in climate change action and renewable energy**
- **Mt. Fuji eruption and nuclear accident occurring in conjunction with the Nankai Trough earthquake**

Identification of the status of compound events requires certain time. It would be even more so if cyber attacks disrupt communications, making it imperative to bolster readiness for compound disasters to prevent the waste of time in collecting information and searching for applicable laws.

Chapter 3: “Examination of Issues Concerning Emergency Response and the Constitution” sought to identify challenges in Japan’s emergency legislation through comparative analysis with overseas cases. We compared the Japanese system with those of the United States, the United Kingdom, France, and Germany. Each country has developed its own emergency legislation by reflecting its specific national circumstances. The development and revision of these legal frameworks reflect the histories, disasters, and wartime experiences that they have followed respectively and differences can be observed among countries. On the other hand, a shared problem for all countries is how to simultaneously prevent the abuse of authority and improve the effectiveness of emergency response.

The Venice Commission of the Council of Europe has pointed out: “The system in a state of emergency should be stipulated in detail by individual legislation, and if the constitution sets a legal form of organic law, it is desirable to

ensure it by organic law.” Overseas, it is customary to place the basis for switching between peacetime mode and emergency mode in the “constitution,” with details specified by law. The question here is how we view the current situation in Japan without an emergency clause or a Basic Emergency Act. The question here is how should we interpret the current situation where the respect and protection of human rights in emergencies are not sufficiently stipulated or discussed. While differences from overseas do not necessarily represent legal deficiencies, it is necessary to calmly discuss them.

Chapter 4, “Recommendations on Contingency and Emergency Response in Japan,” presents recommendations to the Japanese government from the “Research Group on Emergency Legislation,” based on the previous discussions.

Recommendations for Points of Discussion Regarding an Emergency Clause

“The Diet and the government are urged to define the points of discussion regarding an emergency clause in the Constitution by referring to overseas cases and reexamine them from the perspective of human rights protection. Without defining an emergency, allowing the executive branch to exercise the power to restrict certain human rights in the name of ‘public welfare’ could lead to an abuse of power. Failure to draw a clear line between emergency powers and the emergency clause could lead to confusion in the debate over the emergency clause.”

The enactment of a Basic Emergency Act

“This report proposes the enactment of a Basic Emergency Act, with the goal of overcoming the challenges of Japan’s existing emergency legislation, which has been separately enacted in response to individual events such as disasters, terrorism, and infectious diseases. The proposed act would serve as preparation for situations deemed difficult to handle under current conditions, such as unforeseen events in cyber and new areas where both domestic and international legal systems are not sufficient, as well as those arising from compound disasters. It would also serve as a safeguard if an emergency clause is added to the Constitution. Under the proposed Basic Emergency Act, the government would be granted for a limited period the authority to respond quickly, and a mechanism would be established to ensure that existing legal frameworks are immediately applied once the declared emergency is lifted. This would allow for both the realization of a quick initial response and the prevention of the government’s abuse of power.”

Establishment of an Emergency Agency

In light of the frequency of natural disasters in Japan being among the highest in the world, combined with the risk of cyberattacks and emerging threats, this report calls for the establishment of an

Emergency Agency. Based on an event-driven approach, the agency responsible for emergency response under the Basic Emergency Act is designed to centralize the response authority, currently vertically divided among ministries and agencies, and enhance preparedness for compound disasters.

Accelerating swift emergency response and mitigating damage through such efforts remain constant challenges for Japanese society. We hope that this report will further deepen the discussion on how Japan should respond to emergencies.

In August 2024, an earthquake with a magnitude (M) of 7.1 occurred in the Hyuganada Sea, Miyazaki Prefecture, which is within the assumed source region of the Nankai Trough Earthquake, and the Japan Meteorological Agency issued extra information: “Major Earthquake Alert.” This marked the first announcement of the extra information since the system was introduced in 2019 with the aim of strengthening disaster prevention. In the meantime, the COVID-19, with its initial cases reportedly detected in Wuhan, China, in late 2019, quickly spread worldwide. In 2020, Japan also revised Act on Special Measures against Novel Influenza, etc., and in April, based on the revised act, the government declared a state of emergency and requested entertainment facilities and restaurants to suspend operations or shorten business hours. In 2011, an earthquake and tsunami triggered the Fukushima Daiichi Nuclear Power Plant accident.

Prone to large-scale natural disasters due to its geographical factors, Japan also has seen situations requiring special responses, such as pandemics and nuclear accidents. Furthermore, new crises are anticipated with the advancement of technology, as demonstrated by cyber attacks, making the security environment surrounding Japan increasingly severe and requiring us to also anticipate contingencies including those in Taiwan and the Korean Peninsula, as well as subsequent armed attacks on Japan.

Japan has developed emergency legislation, including those for responding to contingencies, by learning from past events and assuming potential future events even beyond its prior experience. How effective is it? Are there any issues for swift crisis response? The Research Group on Emergency Legislation classified emergencies as follows in order to examine them.

- **Large-scale natural disasters (represented by the Nankai Trough earthquake)**
- **Nuclear accident**
- **Pandemic**
- **Events in cyber and new areas**
- **Armed attack situation**

Specifically, regarding the above five categories, we visualized the relationship between the assumed events and the current legal framework by using a figure and depicted the challenges. Furthermore, we added explanatory notes and presented improvement measures based on the identified issues.

This chapter examines individual current events to identify challenges and recommend actions for improvement.

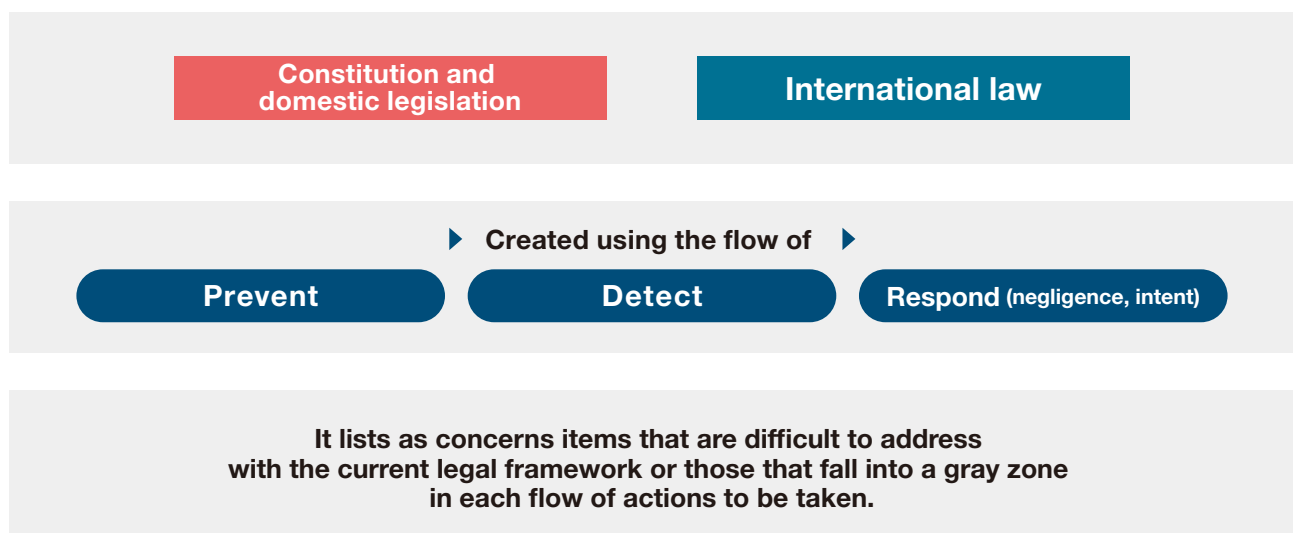
1. Nankai Trough Earthquake

As shown in Figure 1, in visualizing the relationship between the assumed events and the emergency legislation, we examined them using a unified index for the five categories. “Emergency legislation covers a wide range of matters, from disaster prevention and preparedness to responses following the actual occurrence of an event The Research Group on Emergency Legislation conducted the review using a three-stage flow: Prevent (Prepare) → Detect → Respond. At the “Respond” stage, we ensured to conduct detailed examination by classifying events into natural occurrences/negligence and intentional acts (by non-state actors or state actors).

Our first focus for examination is the legislation related to the Nankai Trough earthquake.

Figure 1: Basic Rules for Examining Emergency Legislation framework

How to Read Overview Figures and Tables



(1) Current Legal Framework

Figure 2: Correlation of Assumed Events of a Nankai Trough Earthquake and the Current Legal Framework

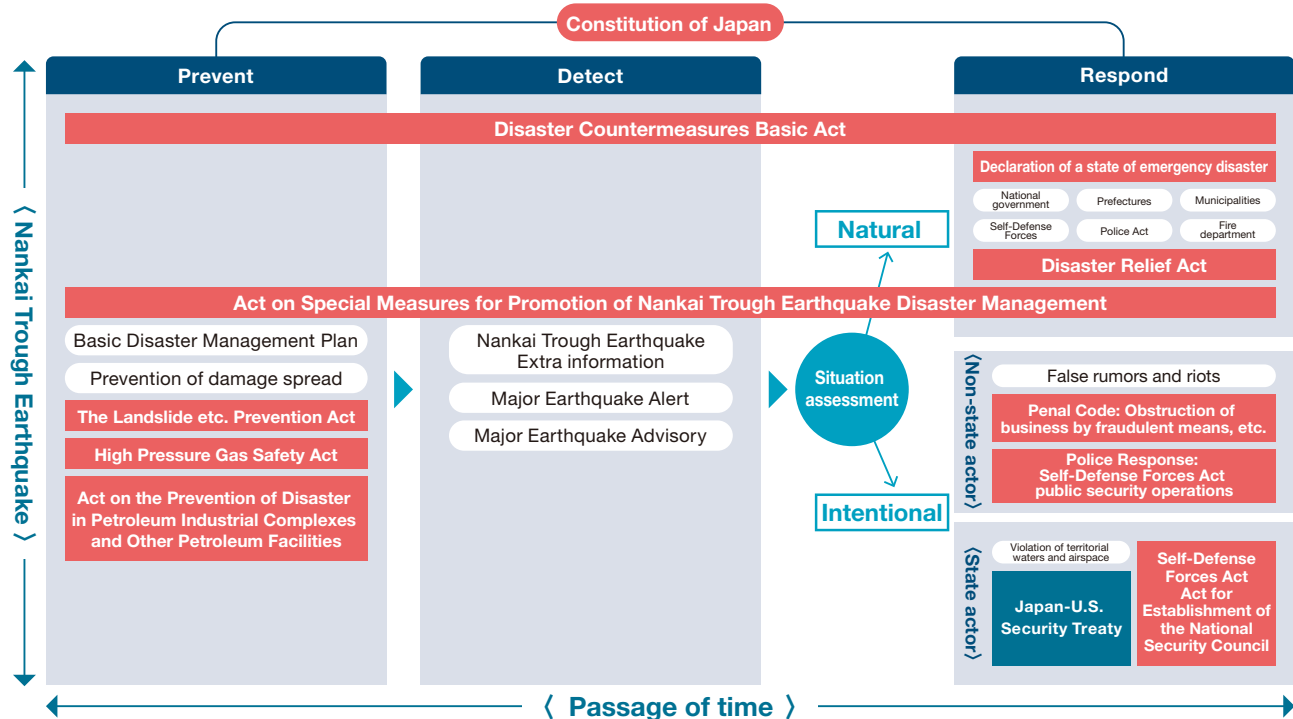


Table 2: Nankai Trough/Correlation

Events Response	Prevent	Detect	Respond (Natural)	Respond (Intentional)	Gray zone
Disaster prevention and preparedness	Disaster legislation centered on the Disaster Countermeasures Basic Act , Disaster Relief Act and Act on Special Measures for Promotion of Nankai Trough Earthquake Disaster Management				Effectiveness of the Self-Defense Forces' preventive deployment and advance evacuation
Disaster response		Disaster legislation centered on the Disaster Countermeasures Basic Act , Disaster Relief Act and Act on Special Measures for Promotion of Nankai Trough Earthquake Disaster Management	Disaster Countermeasures Basic Act (Provision for the declaration of a state of emergency disaster)		How to define the provision for the declaration of a state of emergency disaster in the Constitution
Responding to the spread of false rumors and riots/agitation (Non-state actor)			Penal Code: Obstruction of business by fraudulent means, etc. , Self-Defense Forces Act , Public Security Operations , etc.		Lack of provisions criminalizing the spread of false rumors
Immediate response to the violation of territorial airspace and waters (State actor)				Self-Defense Forces Act for Establishment of the National Security Council , Japan-U.S. Security Treaty	Lack of provisions for the activities of accepted foreign forces

- Prevent (Prepare)

The Act on Special Measures for Promotion of Nankai Trough Earthquake Disaster Management (Article 4) stipulates that the Central Disaster Prevention Council shall formulate a Basic Plan for the Nankai Trough earthquake when an area is designated for the promotion of earthquake disaster prevention measures. Furthermore, as earthquakes are expected to cause secondary disasters, preventive measures are taken under various legislation such as **the Landslide etc. Prevention Act**.

The Disaster Countermeasures Basic Act serves as the basis for disaster response in Japan. Enacted in the wake of the 1959 Typhoon Vera (Isewan Typhoon)¹, the Disaster Countermeasures Basic Act laid the foundation for Japan's emergency legislation, with its articles and frameworks serving as reference when it comes to not just natural disasters, but also nuclear accidents and pandemics. One evidence of this is that the Act on Special Measures Concerning Nuclear Emergency Preparedness is defined as special legislation to the Disaster Countermeasures Basic Act.

The Disaster Countermeasures Basic Act has been revised in response to each large-scale natural disaster, such as the Great East Japan Earthquake that occurred on March 11, 2011. Added provisions include those making it possible to temporarily restrict individual rights, such as enabling the forced removal of abandoned vehicles and prioritizing the passage of emergency vehicles like fire engines and ambulances.

The Disaster Countermeasures Basic Act consists of the following six elements, establishing a comprehensive system for disaster prevention.

- Disaster prevention responsibilities respectively assumed by the state, prefectures, municipalities, public organizations and residents.
- Development and promotion of disaster management organizations
- Planned disaster prevention in government agencies, public institutions and communities
- Roles and Authorities Assumed by Responsible Entities at Each Stage of a Disaster
- Disaster-related fiscal affairs
- Emergency measures in times of disaster

Disaster prevention plans are formulated by the Central Disaster Prevention Council, established under the act. Headed by the Prime Minister, the council has its secretariat within the Cabinet Office. It formulates the Basic Disaster Management Plan, promotes its implementation, and deliberates on important matters related to disaster management in response to inquiries from the Prime Minister and the Minister of State for Disaster Management.

As a first measure against the Nankai Trough earthquake, **the Tonankai and Nankai Earthquake Disaster Management Act** was enacted in July 2002 to protect the lives and property of citizens in the event of a possible

¹ A massive typhoon that landed on the Kii Peninsula on the evening of September 26, 1959. The central pressure was 929.5 hectopascals when it landed, the lowest pressure ever recorded on the Honshu main island. The disaster left 5,098 people dead or missing mainly around the Ise Bay coastline in Aichi and Mie prefectures. It was the largest postwar disaster until the 1995 Great Hanshin-Awaji Earthquake, and led to the enactment of the Disaster Countermeasures Basic Act in 1961.

major earthquake off the Tonankai and Nankai coasts. Following the enactment of **the act**, specific disaster prevention measures were formulated by the above-mentioned Central Disaster Prevention Council, and in March 2004, the Basic Plan for Promotion of Tonankai and Nankai Earthquake Disaster Management was established.

However, based on the lessons learned from the massive damage caused by the Great East Japan Earthquake in March 2011 that exceeded expectations, the Tonankai and Nankai Earthquake Disaster Management Act was revised in November 2013 to **the Nankai Trough Special Measures Act**.² Article 3 (1) of this act stipulates that “The Prime Minister shall designate areas where there is a risk of significant earthquake damage in the event of a Nankai Trough earthquake, and where it is necessary to promote earthquake disaster prevention measures, as areas for the Promotion of Nankai Trough Earthquake Disaster Prevention.” Article 4 further stipulates the role of the Central Disaster Prevention Council under the Disaster Countermeasures Basic Act, stating, “When a Promotion Area is designated pursuant to the provisions of Paragraph of the preceding article, the Central Disaster Prevention Council must formulate and promote the implementation of the Nankai Trough Earthquake Disaster Prevention Promotion Basic Plan (hereinafter referred to as the ‘Basic Plan’).” In March 2014, [a Basic Plan](#) was formulated by the Central Disaster Management Council. Currently, 707 municipalities in 29 prefectures, including those along coastal areas ranging from the Kanto region to the Kyushu region, are designated as areas for the promotion of disaster prevention measures, where efforts are being intensified.

Based on this plan, prefectures and other municipalities also create their own basic plans in accordance with local conditions. These plans are required to ensure effectiveness through constant reviews in response to changes in the social environment and status of facility development, leading to the revision of the Basic Plan for Nankai Trough Earthquake Disaster Management in May 2019².

Upon the occurrence of an earthquake, damage is expected to expand due to secondary events such as landslides. Therefore, legislation such as [the Landslide etc. Prevention Act](#), [the High Pressure Gas Safety Act](#) and [the Act on the Prevention of Disaster in Petroleum Industrial Complexes and Other Petroleum Facilities](#) urges managers of mountain forests and facilities to implement seismic reinforcement and other measures. Furthermore, the Act on Transfer of the Diet and Other Central Government Offices mentions the correction of excessive concentration of capital functions in Tokyo, such as by relocating capital functions, as a countermeasure against a possible earthquake occurring directly beneath the Tokyo Metropolitan Area, but this has not been realized.

² Cabinet Office website, Central Disaster Management Council, “Basic Plan for Nankai Trough Earthquake Disaster Management,” May 2019.
https://www.bousai.go.jp/jishin/nankai/pdf/nankaitrough_keikaku.pdf

- Detect

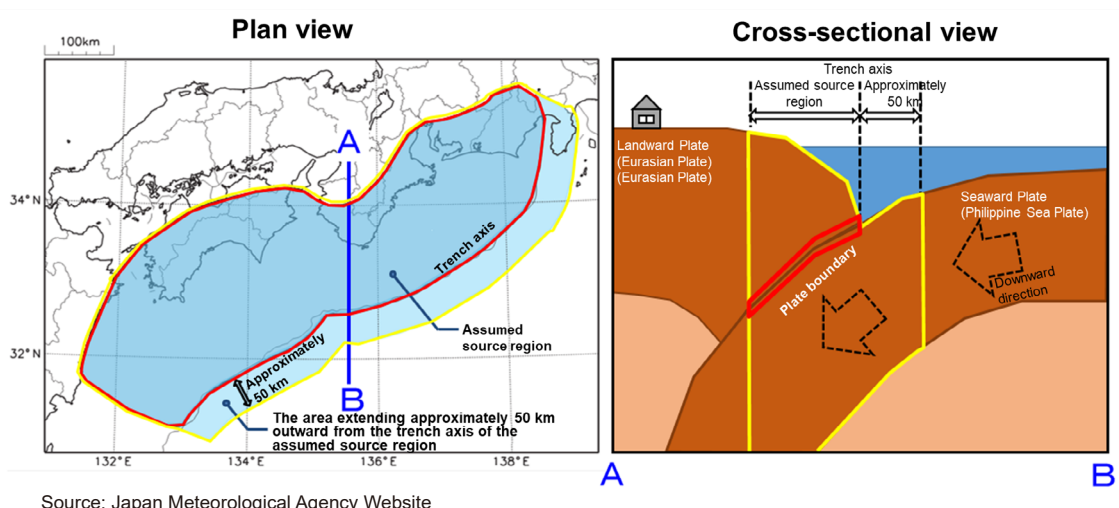
Upon observation of abnormal shaking or fault displacement along the Nankai Trough (the expected source region of the Nankai Trough Earthquake), which has led to the launch of an investigation to determine whether the phenomenon is related to a large-scale earthquake along the Nankai Trough, “[the Nankai Trough Earthquake Extra Information](#)” will be issued.

In the event of an earthquake of magnitude 6.8 or greater occurs in [the expected source region](#) of the Nankai Trough Earthquake (the area monitored by the Japan Meteorological Agency: see Figure 3), and significant changes are observed by one or more strain gauges, combined with changes that are considered to be related to them occurring at multiple other observation points, the Japan Meteorological Agency will convene an Evaluation and Review Committee to investigate whether the earthquake may trigger a massive Nankai Trough Earthquake.

Information issued based on the survey includes the [Major Earthquake Alert](#) and [Major Earthquake Advisory](#). The former is issued when an earthquake of magnitude 8.0 or greater occurs at the plate boundary within the assumed seismic source region, signaling the increased possibility of a Nankai Trough major earthquake compared to normal times. Residents of areas deemed unable to evacuate in time due to tsunami or inundation following an earthquake will be advised to evacuate one week prior. “The latter is issued when an earthquake of magnitude 7.0 or greater has been confirmed to have occurred within the assumed seismic source region.”

Furthermore, in the event of normal disasters, the Japan Meteorological Agency issues forecasts and warnings regarding tsunamis, storm surges, waves and floods, in accordance with Article 13 of the Meteorological Service Act.

Figure 3: Nankai Trough Earthquake Monitoring Area



Depending on how strain accumulates, either of the two patterns occurs: a “full rupture,” where strain shifts all at once across the entire plate boundary, or a “partial rupture,” where it occurs successively on the east and west sides of the boundary (see Table 3).

Table 3: Past 5 Nankai Trough Earthquakes

Date	Name of earthquake	Scale	Note
October 28, 1707	Hoei Earthquake	Full ruptures M8.9	Mount Fuji erupted 49 days later
December 23, 1854	Ansei Tokai Earthquake	Partial ruptures (Kanto to Kinki) M8.6	
December 24, 1854	Ansei Nankai Earthquake	Partial ruptures (Kinki to Kyushu) M8.7	Occurred approximately 32 hours after the Ansei Tokai earthquake.
December 7, 1944	Showa Tonankai Earthquake	Partial ruptures (Tokai region) M8.2	<u>As it was wartime, details of the damage were not disclosed.</u>
December 21, 1946	Showa Nankai Earthquake	Partial ruptures (Kinki to Kyushu) M8.4	Occurred two years after the Showa Tonankai Earthquake

Source: Created by the author based on the Cabinet Office's "Summary of the Study Group on Evaluation Criteria for Abnormal Phenomena along the Nankai Trough for Disaster Prevention Response (Separate Volume of Figures and Tables)," December 25, 2018, and other sources
https://www.bousai.go.jp/jishin/nankai/taio_wg/pdf/h301225bessatsu_02.pdf

Table 3 highlights the challenges associated with advance evacuation during a “Major Earthquake Alert.” If two related earthquakes occur with an interval of a day, like the case involving the Ansei Tokai earthquake and the Ansei Nankai earthquake, advance evacuation can be effective. However, in a case where two related earthquakes happened separately with a time difference of as long as two years, like the one involving the Showa Tonankai Earthquake and the Showa Nankai Earthquake, the credibility of evacuation calls will be undermined if such calls are repeated every time an earthquake that appears to be a precursor occurs. Even with the issuance of the “Major Earthquake Advisory” concerning the Nankai Trough earthquake in August 2024, local governments had the authority to take different responses regarding whether to temporarily close recreational facilities such as beaches. Given that highly accurate predictions are not feasible, the way disaster prevention information is created and offered must be constantly reviewed³.

Furthermore, if volcanic eruptions coincide with that of Mount Fuji or other volcanoes, as was the case during the Hoei earthquake, the damage is expected to be even more devastating, making it more necessary to ensure damage estimations and preparations on the assumption of compound disasters.

³ NHK Close-up Gendai webpage, “Analysis: ‘Major Earthquake Advisory’: extra information, issues and Preparedness” August 26, 2024.
[\[https://www.nhk.or.jp/gendai/articles/4931/\]](https://www.nhk.or.jp/gendai/articles/4931/)

- Respond

Nature: Events followed by earthquakes

In times of actual large-scale earthquakes and other natural disasters, [the Disaster Countermeasures Basic Act, mentioned earlier, along with the Disaster Relief Act](#), serve as the basis for the response.

The Disaster Relief Act was enacted in 1947, ahead of the Disaster Countermeasures Basic Act. It stipulates the provision of emergency temporary housing and daily necessities in times of disasters and other matters concerning the protection of disaster victims. These two acts contain provisions that grant strong command authority to the national and local governments. **The Disaster Relief Act** grants prefectural governors, under the instruction of the Prime Minister, the authority to issue orders to those related to medical care, civil engineering, construction, or transportation to engage in relief operations, and violators are subject to criminal penalties (Article 7; penal provisions are in Article 32).

The Disaster Countermeasures Basic Act has a provision for the **declaration of a state of emergency disaster**.

Article 105 (1): “In cases where an extraordinary disaster has occurred, and the disaster is so abnormal and remarkably severe that it has a serious impact on the State economy and public welfare, when the Prime Minister finds a special necessity to enforce emergency disaster control measures concerning the disaster, preserve the economic order of the State, and address other important issues concerning the disaster, the minister may declare a state of emergency disaster involving the whole or part of the affected area, after deliberation in a cabinet meeting.”

Article 109 (1): In cases where there is an urgent need to preserve the economic order of the State and to ensure the public welfare when confronted with a state of emergency disaster, when the Diet is in adjournment or the House of Representatives is in dissolution, and further, there is no time to determine to convoke an extraordinary session in the Diet or to convoke an emergency session of the House of Councilors for its action, the cabinet may enact Cabinet Order in order to take necessary measures on the matters set forth in each of the following items.

- rationing or restriction or ban on the transfer or delivery of goods of daily necessity in critical shortage
- Determination of the maximum prices for goods necessary for emergency disaster response, disaster recovery, or the stability of the lives of the people.
- Postponement of monetary debt payments and extension of rights preservation periods.

Declaring a state of emergency disaster under the Disaster Countermeasures Basic Act has been pointed out as having issues in relation to the Constitution. The government’s power to enact cabinet orders, which allows for the creation of urgent cabinet orders during disasters, followed by the enactment of subsequent legislation, has been pointed out as not necessarily aligning with the principles of the rule of law. Some argue that placing these provisions in an act subordinate to the Constitution, rather than in the Constitution’s emergency clause, represents a contradiction within the legal system⁴. Partly because of this, no declaration of a state of emergency disaster has been issued, even in disasters considered extremely severe, including the 2011 Great East Japan Earthquake.

⁴ Toshiyuki Munesue, “Disasters and Emergency Powers,” edited by the Institute of Disaster Area Revitalization, Regrowth and Governance, Kwansei Gakuin University, “*Kinkyu jitai joko no naniga mondai ka*” [What is the problem with the emergency clause?] (Iwanami Shoten, 2016), p. 12.

Intentional: Man-made events prompted by earthquakes

Assumed man-made events prompted by large-scale natural disasters, including earthquakes, include the [spread of false information](#).

The first focus is the spread of false rumors and disinformation by non-state actors. False rumors are believed to have prompted the massacre of Koreans following the 1923 Great Kanto Earthquake. Furthermore, during the 2016 Kumamoto earthquake, false information claiming “a lion escaped from a zoo in Kumamoto” was posted on X (formerly Twitter). Regarding the spread of false rumors and disinformation in times of these earthquakes, no existing legislation directly regulates them, and instead, **offenses such as obstruction of business by fraudulent means under the Penal Code** are applied. Regarding the false information in 2016, a person who posted such information was arrested on suspicion of obstruction of business by fraudulent means, for disrupting the operation of a zoo. While the police handle riotous actions triggered by false rumors, if it escalates to a large-scale behavior, a request for public security operations is made to the Self-Defense Forces based on the **Self-Defense Forces Act**.

Assumed state-sponsored man-made events include cases where neighboring countries violate Japan’s territorial airspace or waters and approach or even land on Japan’s territorial remote islands like the Senkaku Islands, apparently in an attempt to test Japan’s external response capabilities while its Self-Defense Forces deploy personnel to disaster relief efforts. Even during the 2011 Great East Japan Earthquake, violations of territorial airspace and waters were on the rise. Based on **the Act for Establishment of the National Security Council**, the Cabinet convenes the National Security Council, keeping a close eye on the movements of neighboring countries, and responds to violations of territorial airspace and waters, based on **the Self-Defense Forces Act** or the Japan Coast Guard Act. In response to intrusions into Japanese territory, including remote islands, measures are taken under the Self-Defense Forces Act and the Armed Attack Situations Response Act, and based on [the Japan-U.S. Security Treaty](#).

(2) Legal Issues to Consider Based on Assumed Events

- Effectiveness of advance evacuation

In a case of the Nankai Trough earthquake occurring in the form of “partial ruptures,” with the two separate tremors taking place with a long time difference on eastern and western sides, the credibility of evacuation calls will be undermined if such calls are repeated every time an earthquake that appears to be a precursor occurs. When the Act on Special Measures Concerning Countermeasures for Large-Scale Earthquakes was enacted in 1978, it was based on prediction. However, it has since become clear that highly accurate prediction is difficult. It is necessary to reexamine how information should be disseminated and how local governments in the affected areas should respond.

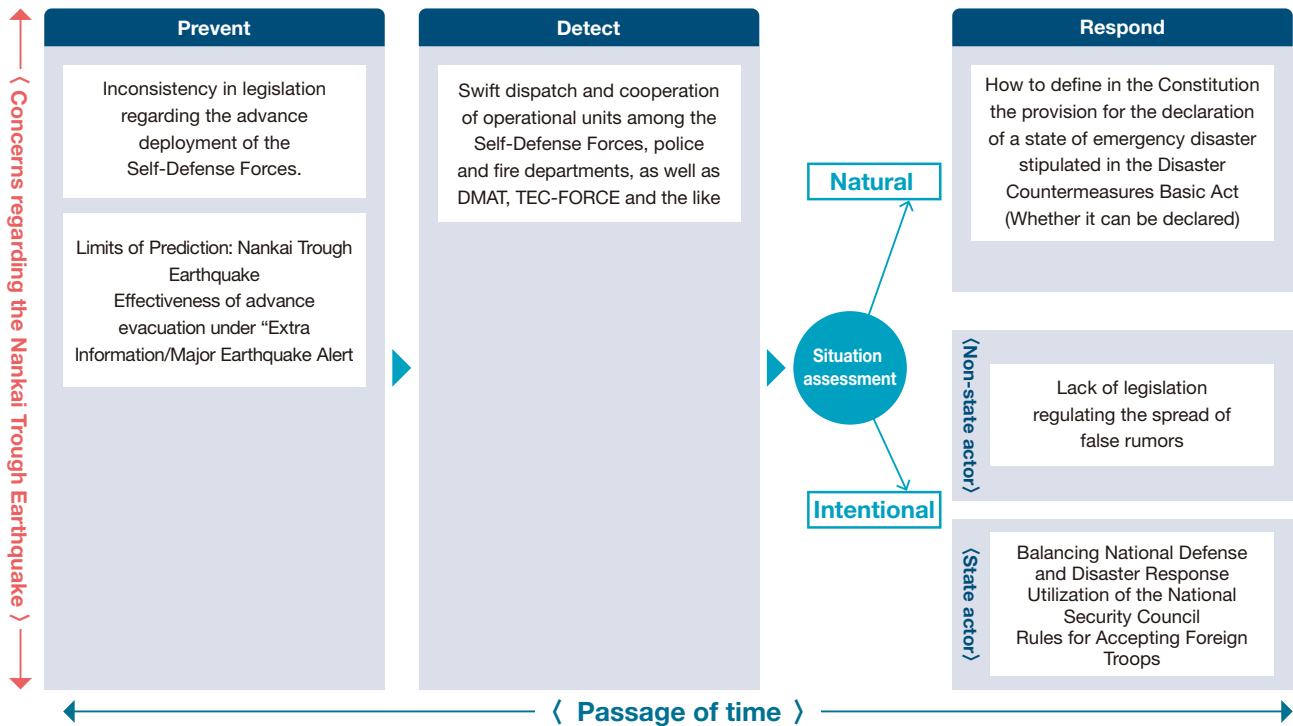
- Provision for the declaration of a state of emergency disaster

The provision in the Disaster Countermeasures Basic Act has constitutional issues and has never been applied. Efforts are needed to quickly clarify its legal issues and improve its effectiveness.

- Re-examination of preparedness for compound disasters

As was the case with the Great East Japan Earthquake that was a compound disaster of a massive earthquake and a subsequent nuclear accident, a massive earthquake can induce other disasters. A Nankai Trough earthquake threatens to trigger volcanic activity at Mount Fuji several months after its occurrence, as was the case with the Hiei earthquake. A near-simultaneous occurrence of a large-scale earthquake and the eruption of Mount Fuji will significantly impact the metropolitan area, which requires measures to prepare for a compound disaster.

Figure 4: Nankai Trough/Concerns



2. Nuclear accident

(1) Current Legal Framework

Figure 5: Correlation of Assumed Events of Nuclear Accidents and the Current Legal Framework

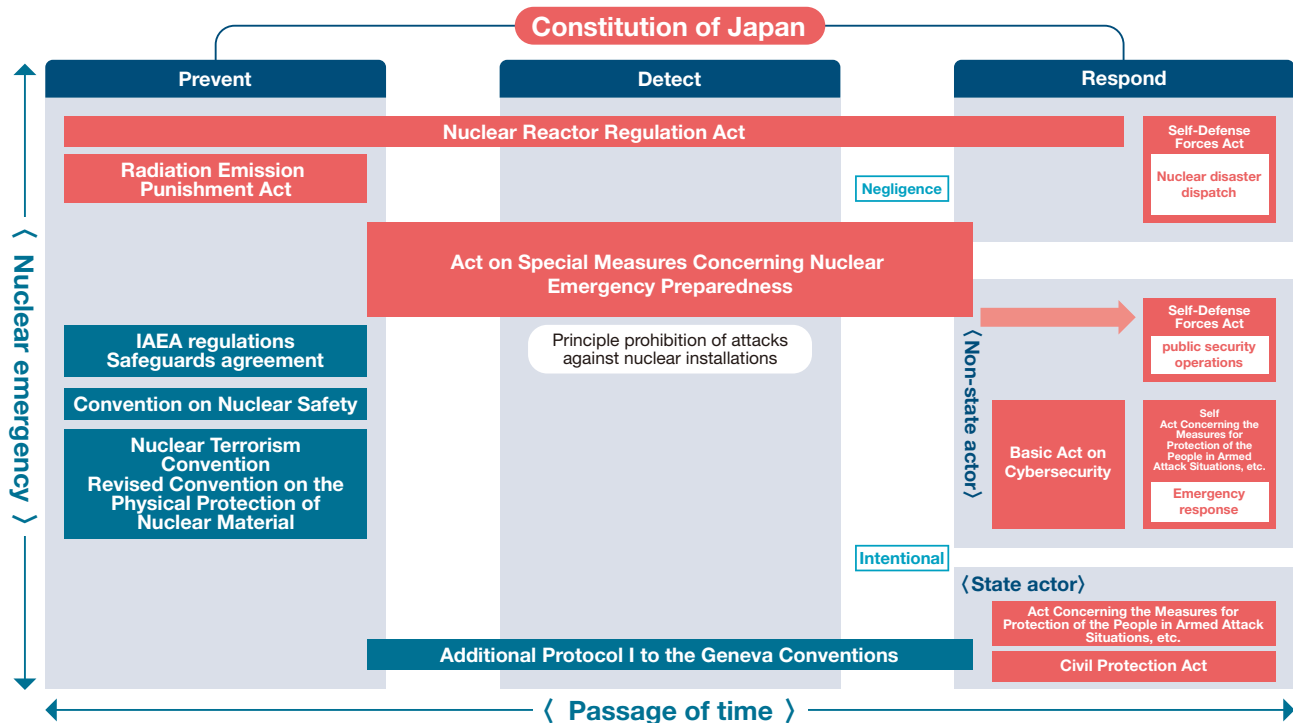


Table 4: Nuclear Accidents/ Correlation

Events Response	Prevention and preparedness	Disasters and accidents	Attacks and Terrorism (including Cyberattacks)	Gray zone	State-sponsored attacks
Compliance	Nuclear Reactor Regulation Act IAEA regulations	Nuclear Reactor Regulation Act Act on Special Measures Concerning Nuclear Emergency Preparedness (Notification)	Nuclear Reactor Regulation Act Important Economic Security Information (Countermeasures against Internal Threats) Act on Special Measures Concerning Nuclear Emergency Preparedness (Notification)		Additional Protocol I to the Geneva Conventions
Initial response		Nuclear Reactor Regulation Act Act on Special Measures Concerning Nuclear Emergency Preparedness	Nuclear Reactor Regulation Act Act on Special Measures Concerning Nuclear Emergency Preparedness (Notification)	Situation assessment (intervening deterioration)	Self-Defense Forces Act Act Concerning the Measures for Protection of the People in Armed Attack Situations, etc.
Preventing the spread of influence (security authorities)		Act on Special Measures Concerning Nuclear Emergency Preparedness	Act on Special Measures Concerning Nuclear Emergency Preparedness	As above	Self-Defense Forces Act Act Concerning the Measures for Protection of the People in Armed Attack Situations, etc.
Prevention of large-scale damage (Self-Defense Forces)		Act on Special Measures Concerning Nuclear Emergency Preparedness Self-Defense Forces Act	Act on Special Measures Concerning Nuclear Emergency Preparedness Self-Defense Forces Act	As above	Self-Defense Forces Act Act Concerning the Measures for Protection of the People in Armed Attack Situations, etc.
Protection of citizens and facilities	Nuclear Terrorism Convention Revised Convention on the Physical Protection of Nuclear Material Radiation Emission Punishment Act	Act on Special Measures Concerning Nuclear Emergency Preparedness	Act on Special Measures Concerning Nuclear Emergency Preparedness Self-Defense Forces Act	As above	Civil Protection Act Additional Protocol I to the Geneva Conventions

- Prevent · Prepare

The use of nuclear energy can have significant impacts on human health and the environment through accidents or intentional attacks. That is why there are safety regulatory standards and international rules to prevent major accidents and terrorism.

As part of efforts to prevent serious accidents, the Nuclear Regulation Authority, established after the Fukushima Daiichi nuclear accident, sets safety regulations (new regulatory standards), based on **the Nuclear Reactor Regulation Act**. Based on these standards, the authority reviews the electric power company's application for reactor operation and decides whether to grant permission.

The authority also has established, under the act, its regulations regarding nuclear security, particularly theft and exploitation of nuclear materials. Regarding security clearances, which are crucial measures against internal threats, differences exist between Japan and other countries that utilize nuclear energy for civilian purposes. In other countries, the government is regarded by law as the entity responsible for conducting reliability investigations on personnel, while in Japan, according to the Reactor Ordinance, the operator is the entity responsible for conducting such investigations. In February 2024, the Bill on the **Protection and Utilization of Important Economic and Security Information** was passed by the House of Representatives, with a wider scope of industries subject to government-led security clearance, including reliability surveys. However, nuclear energy was excluded from the scope of this legislation. Operators continue to conduct reliability surveys, etc., on their own initiative.

Furthermore, **the Nuclear Reactor Regulation Act** stipulates that in the event of theft of nuclear fuel materials, nuclear operators are required to report it to police officers or coast guard officers without delay. The provision is deemed to align with **the International Convention for the Suppression of Acts of Nuclear Terrorism**, an established international law. Regarding the safety management of nuclear facilities and materials, the Convention on Nuclear Safety stipulates prompt notification to other countries in the event of an accident.

Besides the above, **the Act on Special Measures Concerning Nuclear Emergency Preparedness** stipulates measures for the prevention of nuclear accidents. Operators are subject to obligations that are stipulated in light of the unique characteristics of nuclear disasters, such as damage to human health and the environment due to radioactive material leaks.

Operator-conducted security clearance at Japanese nuclear facilities, based on the Ministerial Ordinance for Commercial Nuclear Power Reactors concerning the Installation, Operation, etc. (the Reactor Ordinance), meets the Nuclear Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities (INFCIRC/225). However, this differs from other countries where the government responsibly implements measures based on strict legal systems. The Reactor Ordinance is based on the Nuclear Reactor Regulation Act, and its revision does not require approval from the Diet. Unlike the systems in many other countries where the government leads the operation, this uniquely Japanese approach may cause issues in information sharing with foreign countries regarding terrorism against nuclear facilities.

- Detect

In case of the detection of an anomaly in a nuclear reactor, the operator is required to promptly notify the government upon determining whether it is an accident or an intentional attack.

The Act on Special Measures Concerning Nuclear Emergency Preparedness was enacted in response to the criticality accident⁵ at JCO, a nuclear fuel processing company in Tokai Village, Ibaraki Prefecture, in 1999. At the time of the accident, **the Nuclear Reactor Regulation Act** stipulated that the operator and local governments are responsible for accident response, which caused a delay in situation assessment and notification to the government, resulting in the lack of prompt initial response to prevent the expansion of the accident.

Article 10 of **the Act on Special Measures Concerning Nuclear Emergency Preparedness** requires that the Prime Minister, the Nuclear Regulation Authority, the Competent Prefectural Governor, the Competent Municipal Mayor, etc. shall be notified when a radiation dose above the limit specified by a Cabinet Order has been detected. Furthermore, Article 15 stipulates that in the case of damage to the reactor itself, such as due to a complete loss of power or loss of coolant, or an event where such damage is anticipated, the Prime Minister shall be notified without delay, and the Prime Minister shall immediately issue a “Declaration of a Nuclear Emergency.” Upon the declaration of a state of emergency, the Prime Minister, who assumes the role of Chief of the Nuclear Emergency Response Headquarters, holds the authority to issue direct instructions to local governments, such as prefectures and cities, as well as to nuclear operators (Article 20).

Electric power companies and the government shall work together to swiftly determine whether the situation constitutes what is stipulated in Article 10 or Article 15. In the 2011 Tokyo Electric Power Company (TEPCO) Fukushima Daiichi Nuclear Power Plant accident, the Article 15 notification from TEPCO included ambiguous expressions such as “just in case.” Furthermore, despite the legislation stipulating that the matter should be “immediately promulgated after notification,” the then-Prime Minister insisted on identifying the situation and what he could do under his authority, resulting in a delay of nearly three hours before the state of emergency was declared. This contributed to a delay in the initial response.

⁵ It occurred at JCO, a uranium processing plant in Tokai Village, Ibaraki Prefecture, in September 1999. A chain of nuclear fission reactions, known as “criticality,” occurred during the production of uranium fuel for an experimental fast breeder reactor. Two workers producing the fuel died from acute radiation syndrome. Moreover, 667 nearby residents were exposed to radiation. This was the first criticality accident in Japan.

- Respond

The legislation to apply in responding to accidents due to human error, such as operational mistakes, or those resulting from technical factors, is the Act on Special Measures Concerning Nuclear Emergency Preparedness. If an attack on a nuclear facility is determined to be intentional, the security authorities will respond first in the case of the perpetrator being a non-state actor. If they find it difficult to handle the situation, the deployment of the Self-Defense Forces is requested. The Self-Defense Forces respond to attacks by state actors. In any case, the Civil Protection Act aims to ensure the safety of the people.

Unintentional accident

In the case of an unintentional accident, the Nuclear Emergency Response Headquarters headed by the Prime Minister will be established in accordance with the Act on Special Measures Concerning Nuclear Emergency Preparedness. Under the provision for their dispatch to deal with nuclear disasters, the Self-Defense Forces support accident response. It is stipulated in **Article 83 (3) of the Self-Defense Forces Act** and **Article 20 of the Act on Special Measures Concerning Nuclear Emergency Preparedness** (Authority of the Head of the Nuclear Emergency Response Headquarters). The order is issued by the Minister of Defense at the request of the Chief of the Nuclear Emergency Response Headquarters (Prime Minister).

Non-state actor

Also in responding to security-related events, such as cyberattacks, physical attacks, or occupations against nuclear-related facilities, the primary approach is to apply **the Act on Special Measures Concerning Nuclear Emergency Preparedness**. The key point is that within the scope of the Design Basis Threat (DBT), operators should take the lead in responding to the events in question, with support from security authorities (police, Japan Coast Guard).” In case of the event being determined to have exceeded the DBT, the Self-Defense Forces will be mobilized based on either the public security operations stipulated by the Self-Defense Forces Act (Article 78) or **the Armed Attack Situations Response Act** (Article 22).

State actor

In domestic legislation, **the Civil Protection Act** primarily defines the protection of nuclear facilities in a state of war, or the protection of nearby residents and the general public. In light of the unique nature of nuclear disasters, Article 105 of **the Civil Protection Act** details 15 items regarding measures against armed attacks on nuclear facilities. Furthermore, to prevent massive leaks of radioactive materials, etc., Article 106 grants the Nuclear Regulation Authority the power to order operators of nuclear facilities to stop their operation.

In terms of international law, Article 56 of **the Additional Protocol I to the Geneva Conventions** explicitly states the principle prohibition of armed attacks against nuclear power plants. However, the same article stipulates exceptions that allow for attacks on nuclear facilities that are closely related to military installations, etc., with some countries setting certain reservations to the application of Article 56, such as exempting the self-destruction of facilities to delay enemy

advances. In other words, there is no international consensus on the protection of nuclear facilities during wartime.

Similar to the case of Detect, the speed of situation assessment and the smooth transfer from security authorities to the Self-Defense Forces are the decisive factor for success. Another difficult issue is how to operate nuclear facilities during wartime.

(2) Legal Issues to Consider Based on Assumed Events

- Application of Security Clearance

Security clearance plays a vital role in internal threat protection, a key component of terrorism prevention. When it comes to promoting international cooperation in counterterrorism and information protection, Japan should align with other countries by including nuclear energy as a target of its security system, with the government taking the lead role in the operation. That absolutely requires proper operation. Under the Act on the Protection of Specially Designated Secrets, inappropriate operations were conducted within the Self-Defense Forces, such as personnel without clearance accessing specially designated secrets, leading to a loss of trust both at home and abroad.

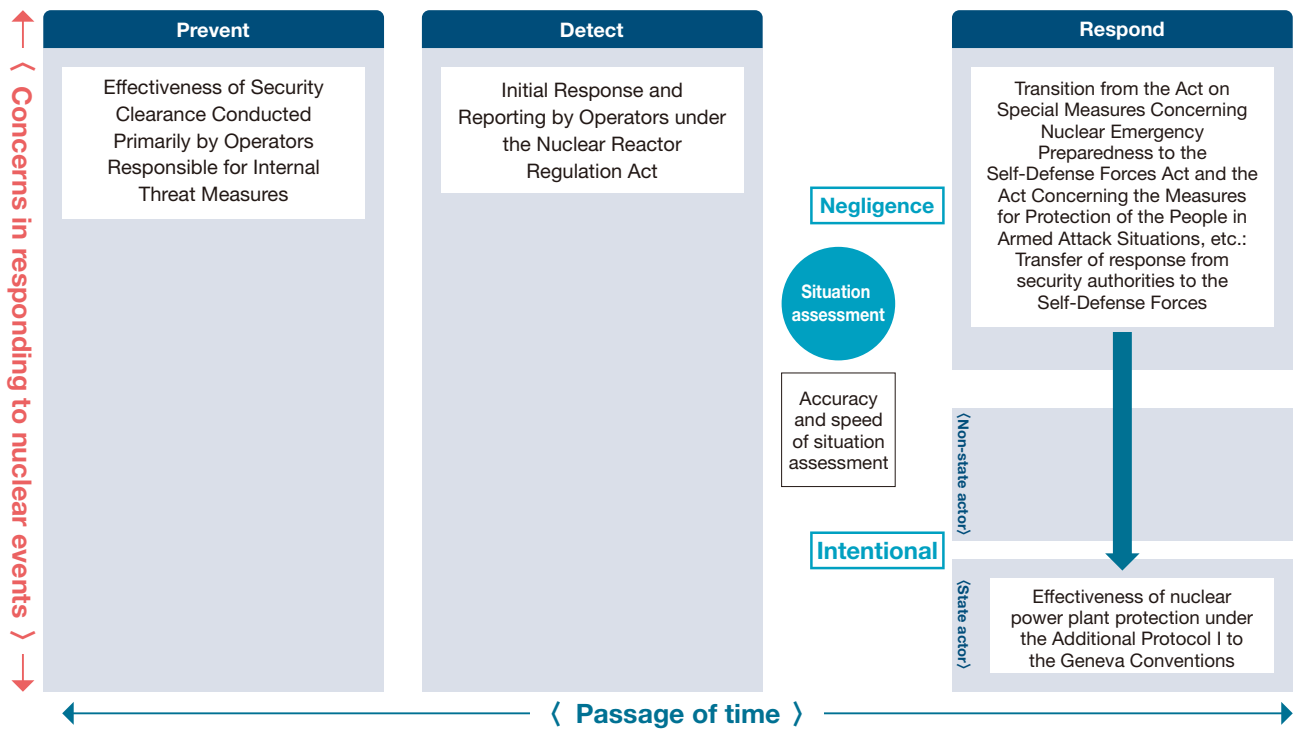
- Expediting situation assessment

During the 2011 Fukushima Daiichi Nuclear Power Plant accident, ambiguous expressions were spotted in the notification under Article 15 of the Act on Special Measures Concerning Nuclear Emergency Preparedness by Tokyo Electric Power Company. Furthermore, the Prime Minister insisted on identifying the situation and what he can do under his authority in the event of a declaration of a state of emergency, resulting in a delay of nearly three hours before the state of emergency was declared. Furthermore, in the event of an intentional attack on a nuclear facility, different legislation will be applied depending on the situation assessment, such as whether it exceeds the Design Basis Threat (DBT), whether it is an attack by a non-state actor, or whether a state actor is involved. Similar to the case of armed attack situations to be discussed later, the government and the Diet should reaffirm the importance of situation assessment while ensuring sufficient training-based knowledge in assessment procedures, with the aim of appropriately responding to nuclear disasters and mitigating damage.

- Civil Protection Act and Nuclear Power Plant Operation

Regarding the protection of nuclear power plants during wartime, related provisions in the Additional Protocol I to the Geneva Conventions lack penalty clauses, leaving open the question as to whether attacking countries will comply. For this reason, the Civil Protection Act includes provisions that allow the government to seek to mitigate damage by ordering the shutdown of nuclear facilities in wartime. However, the criteria for requesting the shutdown of nuclear facilities is very difficult to determine. For example, if there were an armed attack on Okinawa Prefecture, we would ask whether distant nuclear power plants, such as Hokkaido Electric Power's Tomari Nuclear Power Station or Tokyo Electric Power's Kashiwazaki-Kariwa Nuclear Power Station, should be shut down. How to secure alternative power supply in the event of a shutdown is another question. There are many challenges, which require us to conduct repeated simulations and establish the best possible measures.

Figure 6: Nuclear Accidents and Concerns



3. Pandemic

(1) Current Legal Framework

Figure 7: Correlation Assumed Pandemic Events and the Current Legal Framework

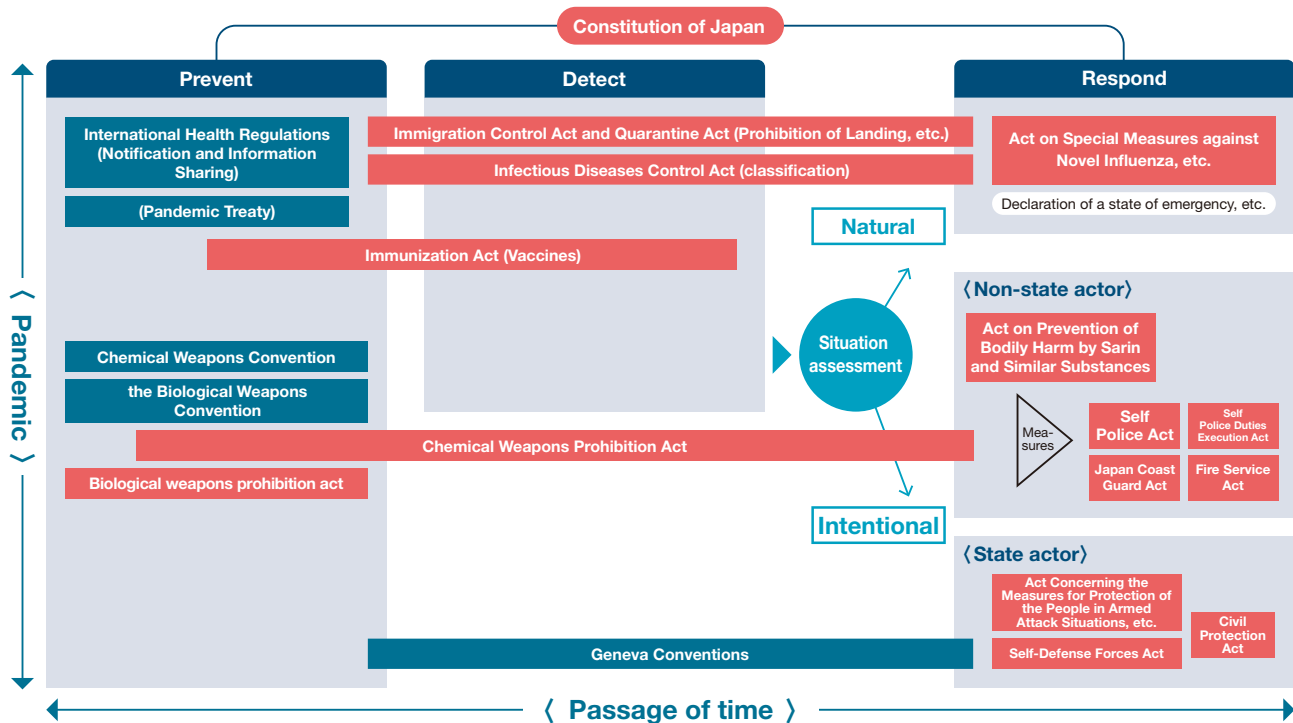


Table 5: Pandemics/Correlation

Response \ Events	Prevent	Detect	Respond (Natural)	Respond (Intentional)	Gray zone
Prior measures (natural)	Infectious Diseases Control Act Quarantine Act International Health Regulations Immunization Act			Additional Protocol I to the Geneva Conventions	
Prior measures (intentional)	Biological Weapons Convention Chemical Weapons Convention Chemical Weapons Prohibition Act Biological weapons prohibition act				
Prevention of spread (natural)		Immigration Control Act Quarantine Act Immunization Act Infectious Diseases Control Act Medical Care Act			Situation assessment (intervening deterioration)
Preventing the spread of influence (intentional)		The Act on Special Measures against Novel Influenza, etc.	Police Act Police Duties Execution Act Japan Coast Guard Act Fire Service Act	Self-Defense Forces Act Act Concerning the Measures for Protection of the People in Armed Attack Situations, etc.	As above
Protection of citizens and facilities				Chemical Weapons Prohibition Act Act on Prevention of Bodily Harm by Sarin and Similar Substances Civil Protection Act Additional Protocol I to the Geneva Conventions	As above

- Prevent (Prepare)

Regarding epidemics caused by viruses and bacteria, **domestic legislation and international treaties stipulate their classifications based on the severity of symptoms and infectiousness, vaccinations and early notification in the event of an outbreak.**

The Infectious Diseases Control Act and **the International Health Regulations** serve as the cornerstones for addressing all pandemic-related events. Taking effect in 1999 to abolish the conventional “Infectious Diseases Prevention Act,” the former was designed to address environmental changes such as the increased possibility of unknown viruses and bacteria entering the country due to the development of transportation and the globalization of the economy. More revisions have been made to the act in response to the occurrence of infectious diseases both at home and abroad. The act was revised again in 2003 in response to SARS (Severe Acute Respiratory Syndrome), which spread to the world, primarily Hong Kong and other countries and regions in East Asia, from November 2002 to early July of the following year, and was eventually integrated with the Tuberculosis Prevention Act in 2007. In 2008, the act was again revised to respond to the potential spread of highly pathogenic avian influenza (H5N1) and to address the risk of a novel influenza pandemic.

The act is designed to provide medical care that corresponds to the risk level of infectious diseases. Specifically, infectious diseases are classified into eight categories: five classes of infectious diseases (Class 1 to Class 5); designated infectious diseases; new infectious diseases; and novel influenza and other infectious diseases, based on the infectivity of the pathogen and the severity of symptoms when developed. Different infectious diseases mean different approaches by medical institutions, making their classification very important. The COVID-19, which spread globally in 2020, was initially classified as a “Infectious diseases such as Novel Influenza” (Class II), and strict isolation was ensured for infected individuals in the early stages of the pandemic.

Table 6: Classification of Infectious Diseases and Possible Restrictive Measures

	Recommendation for hospitalization	Work restrictions	Application to asymptomatic individuals	Request for voluntary restraint from going out
COVID-19 (Before reclassified to Class 5)	○	○	○	○
Class I Infectious Diseases Ebola hemorrhagic fever, plague, etc.	○	○	○	×
Class 2 Infectious Diseases SARS, avian influenza, etc.	○	○	×	×
Class 3 Infectious Diseases Cholera, dysentery, etc.	×	○	×	×
Class 4 Infectious Diseases Rabies, Japanese encephalitis, etc.	×	×	×	×
Class 5 Infectious Diseases Seasonal influenza, etc.	×	×	×	×

Source: Created by the author referencing “Classification of Infectious Diseases” by the Japan Nursing School Benefit Association, etc.

Established under the World Health Organization (WHO) Constitution, **the International Health Regulations** are designed to prevent the global transmission of infectious diseases.” This regulation stipulates the minimum necessary capabilities (core capacities) at the national and regional levels for responding to emergencies such as border health control and the spread of infectious diseases. Given many unsolved issues in responding to infectious diseases in the wake of COVID-19 pandemic, countries from around the world discussed within the WHO between 2020 and 2021, including in the Independent Panel for Pandemic Preparedness and Response (IPPPR), the International Health Regulations Review Committee and the Independent Oversight and Advisory Committee (IOAC), with the strengthening of WHO functions and the rebuilding of global health crisis response capabilities being the main themes, compiling revision recommendations. At the World Health Assembly in June 2024, WHO member states reached a basic agreement on the proposed revision to the International Health Regulations (2005)⁶.

Thus, **the Infectious Diseases Control Act** and **the International Health Regulations** stipulate not just preventive measures, but information sharing in case of recognized signs, and provision of information such as regarding measures to be taken after the occurrence of an event.

Furthermore, vaccination is carried out under **the Immunization Act** regarding known viruses since providing immunity can prevent the spread of infection.

In recent years, more emphasis has been placed on the balance of “infectious disease prevention and consideration for patients’ human rights” in implementing infectious disease control both at home and abroad. In Japan as well, while there was little emphasis on human rights in the Infectious Diseases Prevention Act, **the Infectious Diseases Control Act** explicitly states in its basic principles of Article 2 that all measures should be implemented “while respecting human rights.”

- Detect

When a diagnosis is made by a medical institution regarding an infectious disease listed in Table 1, **the prefectural governor and the Minister of Health, Labour and Welfare** shall be immediately notified **through a public health center**. The upcoming challenge is whether the new ministries and agencies, established in light of the lessons from COVID-19 responses, will function effectively.

Article 12 of **the Infectious Diseases Control Act** mandates that when a medical institution diagnoses a patient with an infectious disease specified in the above-mentioned classification, it must notify the prefectural governor through the public health center within 24 hours for all infectious diseases of Class 1 (Ebola hemorrhagic fever, etc.), Class 2 (tuberculosis, etc.), Class 3 (cholera, etc.) and Class 4 (Japanese encephalitis, etc.), as well as some of Class V (rubella, etc.). For other Class V infectious diseases (known influenza strains other than novel influenza), the notification must be

6

made within 7 days or by the following Monday. Prefectural governors notify the Minister of Health, Labour and Welfare to share information on the occurrence of infectious diseases, thereby urging healthcare professionals to take measures to prevent outbreaks and spread, and also raising public awareness as necessary.

The provision of information on the outbreak of an epidemic caused by viruses or bacteria overseas, which may risk a large-scale outbreak or spread if brought into the country, necessitates entry restrictions based on **the Immigration Control Act and Quarantine Act** for residents of the affected country/region or people with travel history there.

The Act on Special Measures against Novel Influenza, etc., which was revised in 2020 during the early stages of the COVID-19 pandemic, requires in Article 6 that the government formulate a government action plan in preparation for the outbreak of infectious diseases caused by novel viruses, such as novel influenza. Prefectural governors shall establish prefectural action plans based on the government action plan (Article 7). In the event of identifying patients, each of the national and prefectural governments will establish a response headquarters, based on this action plan (Articles 15 and 22). In September 2024, the “**the Cabinet Agency for Infectious Disease Crisis Management**” was established, consolidating departments from various ministries and agencies involved in infectious disease response, including the Ministry of Health, Labour and Welfare, with the aim of improving the crisis response capabilities of the government’s response headquarters. In times of infectious disease crisis, the agency coordinates the responses of each ministry and agency under the government response headquarters. Furthermore, with the aim of strengthening the function of providing scientific advice on infectious disease response, the National Institute of Infectious Diseases and the National Center for Global Health and Medicine will be integrated in 2025 to establish “**the Japan Institute for Health Security**.” Based on the institute’s advice, the government’s comprehensive policy for responding to infectious disease crises will be formulated, and the agency will direct the responses of each ministry and agency.

- Respond

Natural occurrence

In addition to the Infectious Diseases Control Act, measures to prevent the spread of infections, such as by requesting business closures, will be implemented, primarily under **the Act on Special Measures against Novel Influenza, etc.** Unlike other countries that implemented lockdowns during COVID-19, **Japan possessed almost no domestic legislation stipulating measures with binding power.**

It is unpredictable how infectious diseases will enter the country, spread, and increase the risk of causing an epidemic or pandemic.” In the early stage of the COVID-19 pandemic, the cruise ship “Diamond Princess” entered the Port of Yokohama with many people suspected of being infected. Kanagawa Prefecture, in responding to the matter, first implemented a 14-day disembarkation ban for passengers and crew under **the Quarantine Act**, while prioritizing the hospitalization of PCR-positive patients at medical institutions. The increase in the number of positive cases made it difficult for Kanagawa Prefecture to handle the situation alone, necessitating a wider regional response. Sending the Disaster Medical Assistance Team (DMAT) under the jurisdiction of the Ministry of Health, Labour and

Welfare was considered, but at that time, the request for dispatching DMAT was stipulated solely in **the Disaster Countermeasures Basic Act**, meaning the lack of legal basis for requesting its dispatch in medical-related legislation, including the Infectious Diseases Control Act. Therefore, the event on the Diamond Princess was interpreted as a “disaster,” allowing for a request for the dispatch of DMAT and the establishment of a wide-area response system. Based on the lessons learned from this event, **the Infectious Diseases Control Act** and the Medical Care Act were revised, making it possible, from April 2024, to promptly request the dispatch of DMAT during a pandemic as well.

The Act on Special Measures against Novel Influenza, etc., which was revised during the early stages of the COVID-19 pandemic, grants the Prime Minister in Article 32 the authority to declare a state of emergency “when the situation “is deemed to be likely to seriously affect the lives and economy of the public in the event of its rapid spread across the country.” The maximum implementation period is two years.

Article 45 of the same act stipulates specific measures under a state of emergency declaration, such as restrictions on individuals’ outings and requests for stores to close. Paragraph 1 requires the people “not to unnecessarily go out from residence, etc., except when necessary to maintain livelihood,” and paragraphs 2 and 3 designate facilities used by a large number of people, such as entertainment spots, as the target of requests for closure. Although non-compliance can result in a business suspension instruction and the facility’s name being made public, neither the request nor the instruction initially had provisions for criminal penalties, effectively rendering them non-binding. The legislation provides for the use of land in the event of a medical emergency as a binding measure. Article 49 stipulates the use of land and houses for establishing temporary medical facilities, stating they can be expropriated, if the owner refuses.

Thus, a point of discussion regarding **the Act on Special Measures against Novel Influenza, etc.** is that, unlike the legislation of other countries, it has few actions with binding power, such as lockdowns. Even under a state of emergency during the COVID-19 pandemic, a certain number of entertainment facilities and restaurants refused to comply with requests to close. Therefore, the act was revised again in February 2021 to make it possible to impose administrative fines on operators for non-compliance. Furthermore, Article 49 regarding land use does not include administrative authority to directly accommodate or lease hospital beds, failing to serve as a decisive measure for alleviating the shortage of hospital beds at a time when COVID-19 patients were surging. As a result, Article 49 was never applied in the COVID-19 response.

Furthermore, another point of discussion is the division of roles and authorities between the national and prefectural governments deemed not always clear. In areas where a state of emergency has been declared, the prefectural governor holds the authority to issue various requests and instructions (Article 24). On the other hand, Article 20 grants the central government the authority to comprehensively coordinate measures to be implemented. This caused delays in taking measures due to a mismatch in intentions between the national government and the prefectural governors regarding the scope of business categories to be requested to close.

Intentional: Non-state actors or state actors

Neither the Infectious Diseases Control Act nor the Act on Special Measures against Novel Influenza, etc. assume intentional events such as intentionally spreading viruses, bacteria, or harmful chemical substances. Applicable legislation differs depending on whether the perpetrator is a non-state actor or a state actor.

Neither **the Infectious Diseases Control Act** nor **the Act on Special Measures against Novel Influenza, etc.** have provisions against intentional cases of the outbreak of infectious diseases caused by spreading viruses or bacteria, among others. This demonstrates a fundamental difference from **the Act on Special Measures Concerning Nuclear Emergency Preparedness** for nuclear accidents. In case of an event caused by non-state actors, including terrorist groups, security authorities (police and Japan Coast Guard) will respond based on legislation such as **the Penal Code** and **the Chemical Weapons Prohibition Act**. In the event of anticipated large-scale damage exceeding the capacity of law enforcement authorities, the Self-Defense Forces will be dispatched for public security order (Article 78) of **the Self-Defense Forces Act**, or for emergency response situation (Article 22) of **the Armed Attack Situations Response Act**.

Although **the Biological Weapons Convention** prohibits state actors from using weapons containing viruses or bacteria, such weapons have not been completely eradicated from the Earth. Regarding legal legislation to be applied in the event of a state of war, **the Armed Attack Situations Response Act** and **the Civil Protection Act** stipulate how to respond and protect citizens.” In the context of International law, the **Geneva Conventions** stipulate the prevention of damage to civilians. For more details, refer to the section on armed attack situations.

(2) Legal Issues to Consider Based on Assumed Events

- Effectiveness of the Cabinet Agency for Infectious Disease Crisis Management and the Japan Institute for Health Security

Drawing on the lessons learned from the COVID-19 pandemic response and referencing how the U.S. Centers for Disease Control and Prevention (CDC) functions, the Cabinet Agency for Infectious Disease Crisis Management and the Japan Institute for Health Security have been established. However, the question remains whether they can ensure effectiveness. One lesson from the COVID-19 response was the lack of personnel capable of infectious disease crisis management. Whether the two organizations can develop human resources for crisis management is subject to further scrutiny.

- Effectiveness of revising the International Health Regulations

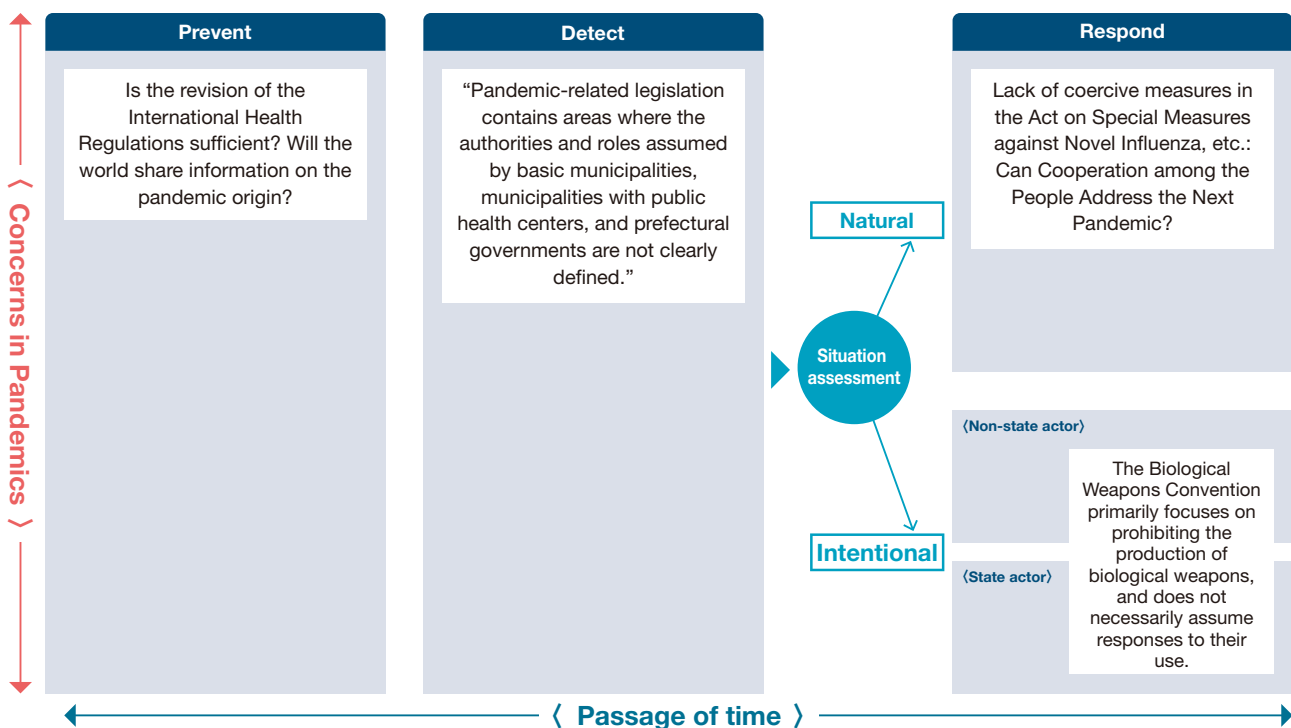
Despite a basic agreement on the revision to the International Health Regulations in May 2024, whether the revision will really be realized remains to be seen, leaving the room for further examination regarding to what extent it would function in preventing international pandemics and responding to crises. The origin of COVID-19 was a contentious issue from the outset, with China, believed to be the origin of the pandemic, failing to provide

sufficient information to the World Health Organization (WHO).

- Balance between measures and respect for human rights

Historically inclined to overemphasize the prevention of an epidemic, infectious disease control measures sometimes failed to fully respect human rights in the past. The Act on Special Measures against Novel Influenza, etc., which has few provisions for coercive measures, includes articles requesting voluntary restraint on outings and business operations. Along with clarifying the division of authorities between the national and prefectural governments, it is necessary to constantly conduct examination to seek the optimal solution regarding the balance between preventing the spread of the virus and respecting human rights.”

Figure 8: Pandemics and Concerns



4. Cyber events

(1) Current Legal Framework

Figure 9: Correlation of Assumed Cyber Events and the Current Legal Framework

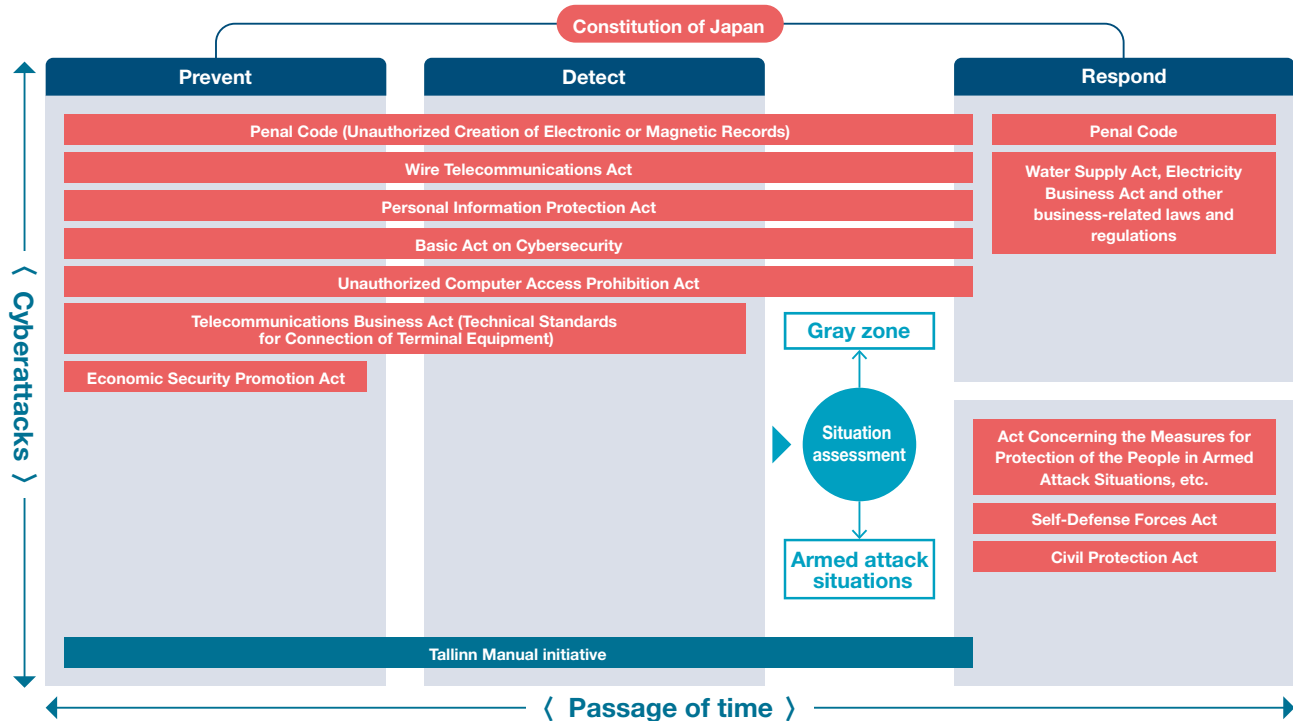


Table 7: Cyber/Correlation

Events Response	Prevent	Detect	Respond (Non-state actor)	Respond (State actor)	Gray zone
Prohibition of unauthorized access Protection of communications facilities	Basic Act on Cybersecurity Unauthorized Computer Access Prohibition Act Wire Telecommunications Act Tallinn Manual	Basic Act on Cybersecurity Unauthorized Computer Access Prohibition Act Wire Telecommunications Act Tallinn Manual			Lack of awareness regarding the protection of communication facilities, particularly submarine cables. Lack of international conventions
Prevention of Unauthorized Creation of Electronic or Magnetic Records	Penal Code Basic Act on Cybersecurity Tallinn Manual	Penal Code Basic Act on Cybersecurity Tallinn Manual			Lack of international conventions
Preventing the spread of influence (non-state actors)			Penal Code Basic Act on Cybersecurity		Rapidity of situation assessment Delay in critical infrastructure protection measures Lack of international conventions
Attack response and civil protection				Self-Defense Forces Act Act Concerning the Measures for Protection of the People in Armed Attack Situations, etc. Tallinn Manual	As above

- Prevent (Prepare)

While the free flow of information has become indispensable to modern society, the threat of cyberattacks is increasing both in Japan and overseas, prompting efforts in Japan to develop relevant laws and regulations to **ensure cybersecurity**.

On the other hand, while existing international laws and principles are **widely believed in the international community to apply to cyber activities**, **how to apply them remains an unresolved issue**.

The Basic Act on Cybersecurity, enacted in 2014, serves as the basis for cybersecurity regulations. As the year of its enactment suggests, cyber-related events are a new challenge to deal with. Article 1 of the act specifies its purpose as clarifying the responsibilities of the national and local governments and setting the basic principles for formulating the Cybersecurity Strategy, thereby comprehensively and effectively promoting measures related to cybersecurity⁷. Furthermore, cybersecurity is defined as “information that is recorded, transmitted, or received by electronic or magnetic means. (Article 2) Furthermore, **the Telecommunications Business Act**, enacted in 1984 prior to the above-mentioned legislation, has been revised in accordance with technological advancements, based on the principle that “the secrecy of communications handled by a telecommunications carrier must not be violated.” (Article 4). In June 2023, telecommunications carriers were redefined and new categories of operators were stipulated to respond to the diversification of services provided on the Internet.

Furthermore, based on Article 7 (1) of the Personal Information Protection Act, the “Basic Policy on the Protection of Personal Information” was revised in April 2022, indicating an awareness that “with the economic growth of emerging countries, the deepening of global value chains and supply chains, and the expansion of security into economic and technological areas, struggles for technological hegemony among nations reflecting geopolitical tensions and moves to strengthen data collection, management and control by nations are visibly intensifying.” It also points out that “therefore, the risk of infringing on the rights and interests of individuals in the cross-border transfer of personal information, etc., due to data localization and unlimited government access, etc., is increasing, also posing a threat to DFFT (Data Free Flow with Trust) and “potential issues” on the economic security front.”⁸

Over 90% of domestic and international digital communications are carried out via submarine cables, highlighting the importance of protecting these physical facilities. Article 13 of **the Wire Telecommunications Act** stipulates the protection of telecommunications facilities and sets penalties for acts of their destruction and such attempts.

Despite the progress made in the enactment and revision of domestic legislation, little progress has been made regarding the establishment of international laws concerning cybersecurity. Cyberspace, while it can be improperly used for warfare

⁷ “Cybersecurity Site for the Public” by Ministry of Internal Affairs and Communications, checked on September 30, 2024.
[https://www.soumu.go.jp/main_sosiki/cybersecurity/kokumin/basic/legal/02/]

⁸ Personal Information Protection Commission website, “Basic Policy on the Protection of Personal Information”
[https://www.ppc.go.jp/personalinfo/legal/fundamental_policy/]

and interference in other countries' elections, serves as an indispensable space for the freedom of global communication. Regarding its protection and regulation, the United Nations General Assembly has confirmed that existing international law, including the UN Charter, applies to cyber activities⁹, but no international consensus has so far been established on how it applies.

In this context, a project of researchers known as the **Tallinn Manual** is drawing attention.

Officially named the “**Tallinn Manual on the International Law Applicable to Cyber Operations**,” it is an initiative to study how existing international law can be applied to cyber operations. Although not legally binding, the manual states that countries that have suffered significant damage from cyberattacks are required to clarify their criteria for determining violations of international law when seeking to establish criminal responsibility of the perpetrator country. Therefore, each country is engaged in analysis and examination of how international law applies to individual instances of cyber activities, referencing **the Tallinn Manual**¹⁰. The NATO Cooperative Cyber Defence Centre of Excellence (CCDCoE), located in Tallinn, capital of Estonia, published the “Tallinn Manual on the International Law Applicable to Cyber Warfare” in 2013, which focused on “contingencies and wartime.” In 2017, it published a revised edition, “Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations,” which expanded the scope to include cyber activities in “peacetime.”

- Detect

Provisions regarding notification upon detecting by certain means a cyberattack, such as a data leakage or system failure, are **inconsistent, with some making it obligatory to notify, depending on the project or the event, and others not requiring it. With a wide range of responsible government agencies involved**, the challenge is how to achieve rapid response to the situation and prevention of damage escalation, among other things.

Individual persons or corporations alone are not able to easily detect information leaks or breaches of confidentiality in communications, often leaving cyberattacks unnoticed for several months after their onset.

Business operators handling personal information have an obligation, as required by laws and regulations for affected parties, to report to the Personal Information Protection Commission under **the Act on the Protection of Personal Information** upon confirmation of personal information leakage, including that caused by cyberattacks. Furthermore, telecommunications carriers that provide telecommunications services are required, under **the Telecommunications Business Act**, to notify the Minister of Internal Affairs and Communications in the event of an event such as the leakage of information to which the secrecy of communications applies or information that can identify users.

For operators of other critical infrastructure, such as railways, electricity and gas, while railway operators and electricity

⁹ Ministry of Foreign Affairs of Japan, “Basic Position of the Government of Japan on International Law Applicable to Cyber Operation,” May 28, 2021.

¹⁰ Keiko Kono, “An Attempt to Explore the Validity of the ‘Tallinn Manual 2’: From the Perspective of Cyberspace Sovereignty,” NIDS Security Studies 21-1_03. [https://www.nids.mod.go.jp/publication/kiyo/pdf/bulletin_j21_1_3.pdf]

providers are obligated by industry legislation or ministerial ordinances to report incidents or failures to the competent minister, the only recommendation given to such operators in general is that they contact the National center of Incident readiness and Strategy for Cybersecurity (NISC) through the relevant government ministry, in the event of system malfunctions such as service disruptions due to security incidents. Thus, there is no sole legislation applicable to operators when detecting cyberattacks, with the responsible government agencies being diverse, including NISC, the Ministry of Defense, the National Police Agency, the Ministry of Internal Affairs and Communications, the Ministry of Economy, Trade and Industry, and the Digital Agency. Cyberattacks are seen as a potential trigger of modern warfare, requiring us to determine how to achieve rapid response after detection.

The Ministry of Defense is enhancing the functions of the Defense Intelligence Headquarters, established within the ministry in 1997, to strengthen its response to “cognitive warfare,” which causes confusion in other countries through the spread of disinformation¹¹. In April 2022, the National Police Agency established the Cyber Police Bureau and revised its cyber strategy and priority measures for cybersecurity (which define measures to be taken based on the strategy), strengthening its countermeasures against large-scale cyberattacks on critical infrastructure and intelligence activities using information and communications technology¹². The challenge is how to integrate these individual organizational efforts to reduce threats in the cyberspace, while ensuring freedom of communication at the national level.

- Respond

While establishing penalties for acts that constitute cyberattacks under relevant laws and regulations, Japan, unlike major Western countries, **has not introduced severer penalties for attacks on critical infrastructure or attacks threatening national security.**

Peacetime and gray zone

In peacetime or in gray zone situations, acts constituting cyberattacks are punishable primarily on grounds of the violation of the Penal Code (provision of electronic or magnetic records that give unauthorized commands, obstruction of business by destroying a computer, etc.) and the Unauthorized Computer Access Prohibition Act. Additionally, sector-specific legislation, such as **the Water Supply Act** and **the Electricity Business Act**, define penalties for obstruction of business. On the other hand, Japan has not set any severer penalties for cyberattacks on critical infrastructure such as energy-related facilities, airports and ports, which threaten national security, as it makes no distinction with attacks targeting other sectors.

The United States has provisions that allow for increased sentencing for acts of destruction, including not just cyberattacks but acts of physical violence, as long as they are against critical infrastructure facilities. In August 2013, the European Union (EU) issued a DIRECTIVE, enabling stricter penalties exceeding conventional sentencing for cyberattacks against operators of critical infrastructure, and encouraging cooperation among member states to facilitate

¹¹ Ministry of Defense Website, “Response to Information Warfare Including the Cognitive Domain”[<https://www.mod.go.jp/j/approach/defense/infowarfare/index.html>]

¹² National Police Agency Website, “Countermeasures Against Cyber Attacks” [<https://www.npa.go.jp/bureau/security/cyber/index.html>]

cross-border investigations. Member states completed the enactment of domestic legislation based on the directive by 2015. In April 2015, the UK stepped up the maximum penalties at the time of prosecution for cybercrimes to life imprisonment or 14 years' imprisonment.

Japan is in urgent need for measures against potential threats to its democratic processes, in addition to its delay in introducing severer penalties for cyberattacks on specific facilities such as critical infrastructure, unlike major Western countries. For example, presidential and parliamentary elections in democracies have reportedly been subject to attacks from foreign countries attempting to interfere with election results through the spread of disinformation, starting with the 2016 U.S. presidential election. Russia and others are pointed out as attempting to interfere in the election results. Furthermore, with the technology for creating videos that impersonate individuals using generative AI rapidly advancing, the EU and 20 U.S. states have set rules requiring the videos to clearly state that they were created using generative AI^{13,14}. In Japan, while the Public Offices Election Act stipulates the crime of publishing false information to influence elections through the dissemination of such information, it does not explicitly prohibit AI-based actions that interfere with election results. Urgent action is needed to address threats to democracy and technological innovation.

Armed attack situation

In the event of an attack on critical infrastructure or similar targets constituting an armed attack, the Self-Defense Forces will take over from the law enforcement agencies the mission to respond, based on **the Armed Attack Situations Response Act and the Self-Defense Forces Act**. For more details, refer to armed attack situations.

(2) Legal Issues to Consider Based on Assumed Events

- Establishment of a system to comprehensively strengthen cybersecurity

New threats to democratic processes are emerging, such as election interference through impersonation and the spread of disinformation using generative AI, as concerns intensify over cyberattacks on critical infrastructure that significantly impact the lives of the people. What is needed is the establishment of a “Cybersecurity Agency” and other systems that can comprehensively address these new issues.

- Establishment of common understanding regarding the application of international law¹⁵

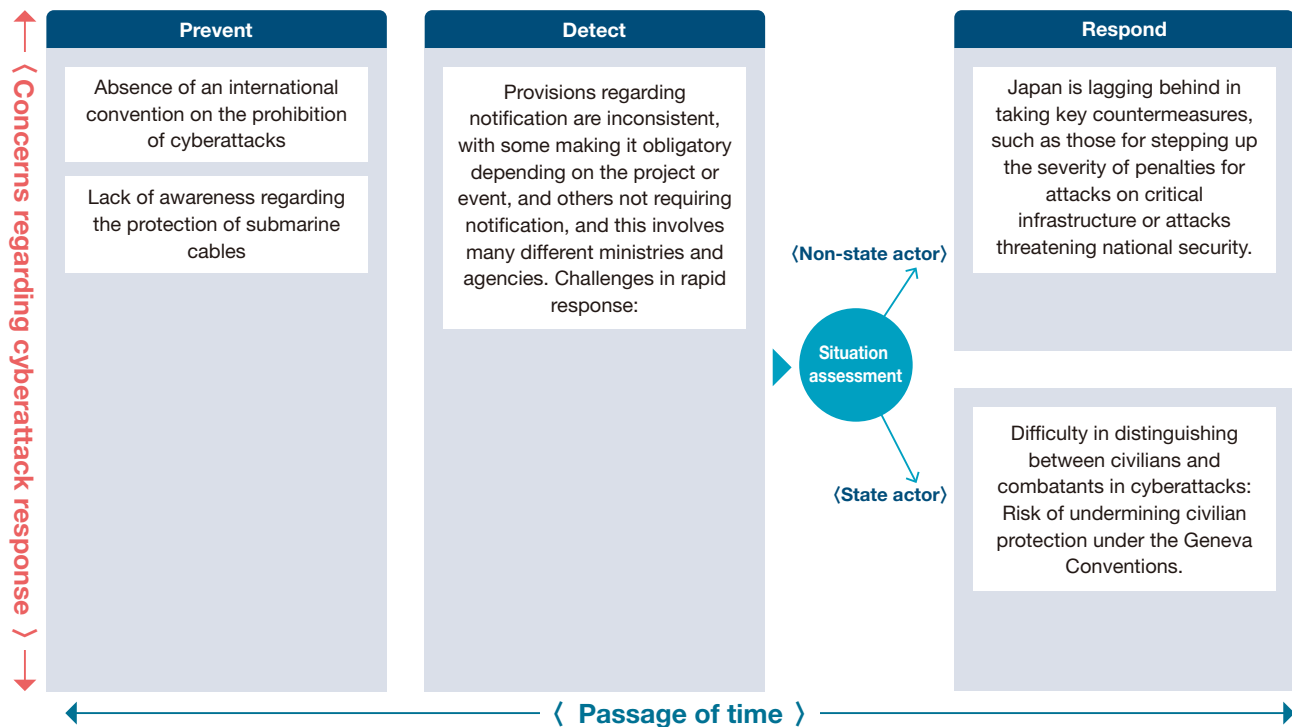
Given the severity of the damage caused by cyberattacks, we expect to see an international agreement reached on what actions in cyberspace constitute violations of international law and what methods affected states can use, based on existing international law. Discussions should be accelerated to establish an international consensus on issues such as regulating cyberattacks in elections and warfare, while also ensuring freedom of communications.

¹³ NHK, “EU AI Act Approved and Enacted by Member States: Regulations Expected to Apply in 2026,” May 21, 2024. [<https://www3.nhk.or.jp/news/html/20240521/k10014456551000.html>]

¹⁴ Yomiuri Shimbun, “AI poses a threat to the US presidential elections: only 20 states (40%) have restrictions on election-related false information ... Yomiuri Shimbun survey,” November 2, 2024. [<https://www.yomiuri.co.jp/world/uspresident/20241101-OYT1T50148/>]

¹⁵ Ministry of Foreign Affairs, refer to the previous note 9

Figure 10: Cyber/Concerns



5. Armed attack situation

(1) Current Legal Framework

Figure 11: Correlation of Armed Attack Situations and the Current Legal Framework

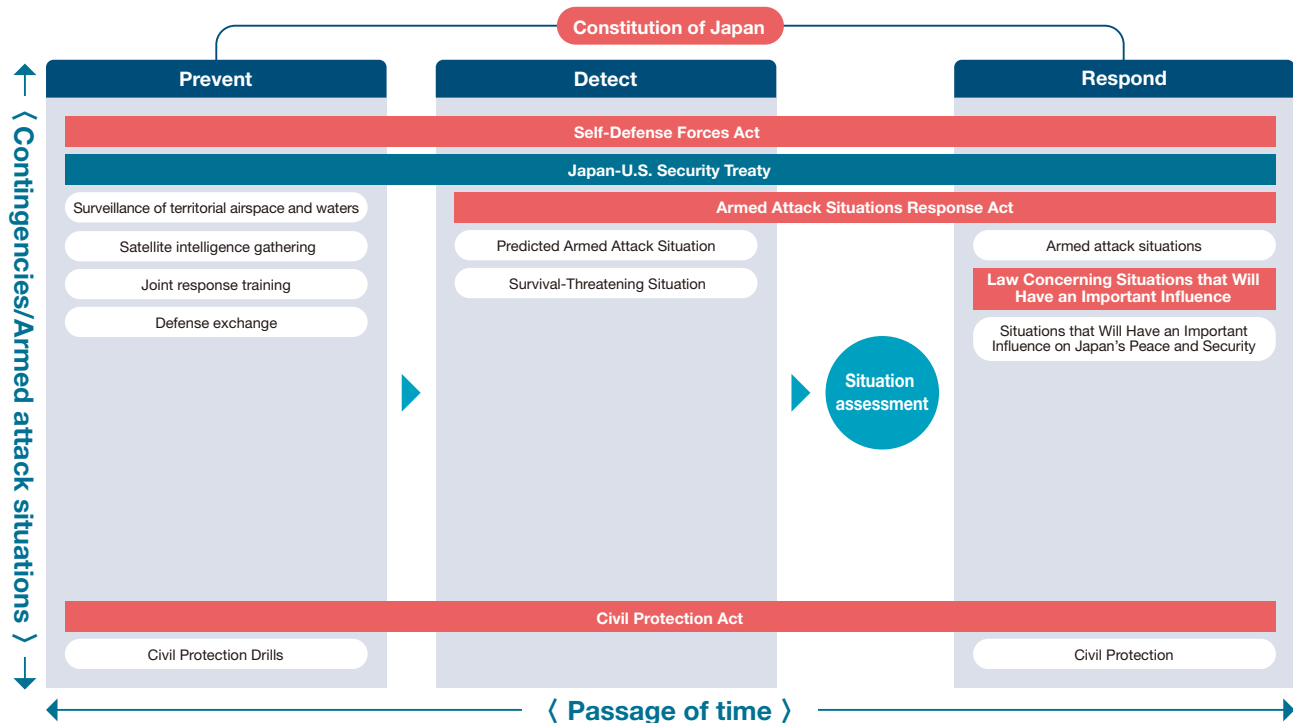


Table 8: Armed Attack Situation/Correlation

Response \ Events	Prevent	Detect	Respond	Gray zone
Deterrence	Self-Defense Forces Act Japan-U.S. Security Treaty	Self-Defense Forces Act Japan-U.S. Security Treaty		Absence of Live Ammunition in Countermeasures against Airspace Violation
Situation assessment		Armed Attack Situations Response Act Act on Measures to Ensure the Peace and Security of Japan in Perilous Situations in Areas Surrounding Japan		Situation assessment and procedural challenges
Response to armed attack			Self-Defense Forces Act Japan-U.S. Security Treaty Armed Attack Situations Response Act	Response to hybrid warfare and effectiveness of counterstrike capabilities
Civil Protection	Civil Protection Act	Civil Protection Act	Civil Protection Act	Lack of a civil defense perspective: Effectiveness of Civil Protection Drills

- Prevent · Prepare

Prevent: activities for deterrence and conflict prevention include **airspace and maritime surveillance, information collection and sharing, and joint Japan-U.S. response training. Civil protection drills** in preparation for armed attacks, as well as **those for large-scale natural** disasters as activities other than national defense, have been put in place.

Along with the activities mentioned above, **the Self-Defense Forces Act** and **the Japan-U.S. Security Treaty** serve as the core legal frameworks for Japan's defense. Enacted upon the establishment of the Defense Agency in 1954, **The Self-Defense Forces Act** has a provision for defense mobilization in Article 76, along with Article 3 (2) that stipulates, as a mission of the Self-Defense Forces within the scope that does not constitute the threat or use of force, "activities contributing to the preservation of Japan's peace and security in response to situations that significantly affect Japan's peace and security." **The Japan-U.S. Security Treaty** was revised in 1960, with added provisions in Article 5 for joint response to threats or uses of armed force against Japan. Furthermore, Article 6 stipulates: "For the purpose of contributing to the security of Japan and the maintenance of international peace and security in the Far East, the United States of America is granted the use by its land, air and naval forces of facilities and areas in Japan." With **the Self-Defense Act** and **the Japan-U.S. Security Treaty**, Japan and the U.S. jointly deter armed attacks on Japan by other countries.

Regarding peacetime drills in preparation for armed attacks, Article 42 of **the Civil Protection Act** stipulates that "heads of designated administrative organs, etc., shall endeavor to conduct drills on measures for the protection of citizens, either individually or in collaboration with other heads of designated administrative organs, etc., in accordance with the provisions of their respective plans for the protection of citizens or operational plans for the protection of citizens." The latter part of the article stipulates: "Consideration shall be given to ensure organic coordination with disaster prevention drills under Article 48, Paragraph 1 of the Disaster Countermeasures Basic Act." On "Tsunami Disaster Prevention Day," November 5th, drills are organized by each prefecture on the assumption of a Nankai Trough Earthquake with the participation of the Self-Defense Forces, for the purpose of enhancing disaster response capabilities and reducing disaster risks.

- Detect

Situations deemed as **an armed attack on Japan** or those clearly deemed as threatening to pose an **imminent armed attack** are defined by **the Armed Attack Situations Response Act**

Regarding an armed attack against Japan or situations where such an attack is imminent, Article 2 of **the Armed Attack Situations Response Act** stipulates as follows:

- **Armed Attack** : An armed attack from outside against Japan
- **Situation of Armed Attack** : A situation in which an armed attack has occurred or a situation in which it is recognized that there is a clear and imminent danger of an armed attack occurring
- **Predicted Armed Attack Situation** : A situation that has not seen an armed attack, but has become tense, and an armed attack is predicted
- **Survival-Threatening Situation** : A situation where an armed attack against a foreign country that is in a close relationship with Japan occurs, which in turn poses a clear risk of threatening Japan's survival and of overturning people's rights to life, liberty and pursuit of happiness fundamentally.

These situations were not specifically defined at the time when the Self-Defense Forces were established. Since the establishment of the Defense Agency and the Self-Defense Forces in 1954, only **the Self-Defense Forces Act** had provisions for responding to armed attacks and similar situations. Article 76 of **the Self-Defense Forces Act** provides for defense mobilization, stating, "The Prime Minister may, with the approval of the Diet, order the mobilization of all or part of the Self-Defense Forces when deemed necessary to defend Japan in the event of an armed attack from outside (including the threat of an armed attack from outside)."

Since 2000, with the primary objective of responding to changes in the security environment surrounding Japan, steps have been taken to respond to armed attacks and specify necessary procedures. Between 2003 and 2004, three contingency-related acts (**the Armed Attack Situations Response Act**, the revised **Self-Defense Forces Act**, and the revised **Act for Establishment of the National Security Council**) and seven situation-response-related acts (**the Civil Protection Act**, **the Act on Measures Conducted by the Government in Line with U.S. Military Actions in Armed Attack Situations, Etc.**, **the Act on the Use of Specific Public Facilities, etc. in Armed Attack Situations, etc.**, **the Act on Penal Sanctions against Grave Breaches of the International Humanitarian Law**, **the Act on the Restriction of Maritime Transportation of Foreign Military Supplies in Armed Attack Situations**, **the Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations**, and the revised **Self-Defense Forces Act**) were enacted. Furthermore, the 2015 Peace and Security Legislation (**the Armed Attack Situations Response Act**, **the Self-Defense Forces Act**, **the Law Concerning Situations that Will Have an Important Influence**, **the Act on Cooperation with United Nations Peacekeeping Operations and Other Operations**, **the Act on Ship Inspection Operations in Situations in Areas Surrounding Japan**, **the Act on Measures Conducted by the Government in Line with U.S. Military Actions in Armed Attack Situations, Etc.**, **the Act on the Use of Specific Public Facilities, etc. in Armed Attack Situations, etc.**, **the Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations**, **the Act for Establishment of the National Security Council**, and **the International Peace Support Act**—all revised) was enacted.

Thus, while the Self-Defense Forces Act was the sole legal framework regarding armed attack situations, there were no detailed provisions on what situations would necessitate an order for defense mobilization in response to a threat of

armed attack. However, since 2003, various situations have been defined in detail through the enactment of the Armed Attack Situations Response Act and revisions to existing legislation. In other words, while the legal concept that was dominant for a long time was that responses to situations of armed attack should be handled solely by the Self-Defense Forces, Japan's system has shifted to one where the entire nation addresses such situations.

- Respond

In responding to attacks against Japan or its allies, or events involving armed attacks occurring in areas surrounding Japan, the most critical challenge for the nation is to ensure the safety of citizens while simultaneously responding the attacks.

In the event of an armed attack situation occurring in Japan, its allies or areas surrounding Japan, the measures to respond and ensure the safety of citizens are stipulated in **the Armed Attack Situations Response Act, the Law Concerning Measures to Ensure the Peace and Security of Japan in Situations that Will Have an Important Influence on Japan's Peace and Security** and **the Civil Protection Act**."

Attacks against Japan and its allies

In the event of a situation described in the Detect section, the government will approve at a Cabinet meeting a draft basic plan for countermeasures based on **the Armed Attack Situations Response Act** and seek approval from the Diet."

Main items in the draft basic policy for countermeasures are as follows:

1. Matters concerning the situations to be addressed
 - Developments of the situation; the fact that the situation is an armed attack situation; determination of the situation as being a predicted armed attack situation or a survival-threatening situation; and the facts that constitute the basis of such determination
 - In the event of determining the situation as being an armed attack situation or a survival-threatening situation, the reasons why there are no other appropriate means to ensure Japan's survival and protect its citizens, and why the use of force is deemed necessary to address the situation
2. The overall policy regarding responses to the relevant armed attack situation, etc., or survival-threatening situation
3. Important matters concerning countermeasures

In principle, prior approval from the Diet is required when ordering the Self-Defense Forces to mobilize for defense. However, in cases of urgent necessity, response measures, including defense mobilization, can be initiated with a decision at a Cabinet meeting on the draft basic policy for countermeasures, allowing for subsequent approval from the Diet.

During the period from the establishment of the basic policy for countermeasures until its abolition, designated

administrative organs and local governments shall implement the following measures based on the provisions of the legislation.

- Measures implemented in response to the progression of an armed attack situation, etc., eventually to terminate it (**Measures to eliminate violation**)
- Measures implemented in response to the progression of an armed attack situation, etc., to protect the lives, bodies, and property of citizens from armed attacks, or to minimize the impact on citizens' lives and the national economy when armed attacks have such an impact (**Civilian protection measures**).
- Measures implemented in response to the progression of a survival-threatening situation, eventually to terminate it (**Measures to eliminate a survival-threatening situation**)

Furthermore, Article 10 stipulates that when the basic response policy is established, the Prime Minister, in order to promote the implementation of response measures, shall convene a Cabinet meeting and establish a temporary response headquarters within the Cabinet.

One problem to be noted here is that **the Civil Protection Act** lacks a framework of evacuation measures for residents. The act, on the premise of voluntary cooperation of citizens, entrusts evacuation to the discretion of residents.

Response to events occurring in areas surrounding Japan

Contingencies in areas surrounding Japan, such as those in Taiwan and the Korean Peninsula, are highly likely to have serious impacts on Japan. The framework for addressing them is established in **the Law Concerning Situations that Will Have an Important Influence**. A situation that will have an important influence on Japan's peace and security is defined as "a situation that, if left unattended, could lead to a direct armed attack against Japan, or a situation that significantly affects Japan's peace and security" (Article 1), with the purpose of the act being "to contribute to the effective operation of the U.S.-Japan Security Treaty by conducting rear support activities for the United States, etc., in the event of a situation that will have an important influence on Japan's peace and security, thereby strengthening cooperation with foreign countries in addressing situations that will have an important influence on Japan's peace and security and contributing to the preservation of Japan's peace and security" (same article).

Military forces and organizations that address situations that will have an important influence on Japan's peace and security are stipulated as the target of support as follows:

- ▼ U.S. forces conducting activities that contribute to the achievement of the objectives of the Japan-U.S. Security Treaty.
- ▼ Foreign military forces conducting activities that contribute to the achievement of the purposes of the Charter of the United Nations.
- ▼ Other similar organizations

Response measures include:

- rear support activities (types of goods and services provided by the Ministry of Defense and the Self-Defense Forces),
- search and rescue operations,
- ship inspection activities (as stipulated in the Act on Ship Inspection Operations in Situations in Areas Surrounding Japan), and
- other necessary measures to respond to situations that will have an important influence on Japan's peace and security.

Specifically, established as a framework for responding to situations that outlines actions that can be taken regardless of how the situation is defined in peacetime, it stipulates as actions that can be taken when a situation arises: (1) public security operations (orders/requests), (2) maritime security operations, (3) destruction measures against ballistic missiles, etc., (4) airspace violation measures, (5) protection measures for overseas Japanese nationals, (6) transportation of overseas Japanese nationals, and (7) removal of sea mines.

In the event of a situation developing into a survival-threatening situation or an armed attack situation, Japan will respond in accordance with **the Armed Attack Situations Response Act**

Thus, since 2003, with the enactment of **the Armed Attack Situations Response Act** and revisions to existing legislation, administrative procedures and procedures for Diet approval regarding responses to situations have become precisely stipulated.

On the other hand, we note excessive administrative measures and Diet procedures related to situation assessment and countermeasures. Upcoming challenges include ensuring prompt situation assessment through training with assumed armed attacks, and establishing a system that allows immediate response. Furthermore, regarding responses to armed attacks that are similar to collective self-defense, there is ongoing debate among some as to whether they are guaranteed by the Constitution. Therefore, in Figure 11, the Constitution of Japan and "Respond" are represented by dotted lines.

(2) Legal Issues to Consider Based on Assumed Events

- Rapidity of situation assessment

The situation can easily be regarded as escalating rapidly in the event of the use of force against Japan or armed attacks in areas surrounding Japan. The question here is how the government can promptly carry out situation assessment, formulate a basic policy for countermeasures, and swiftly gain Diet approval.

- Definition of Civil Protection

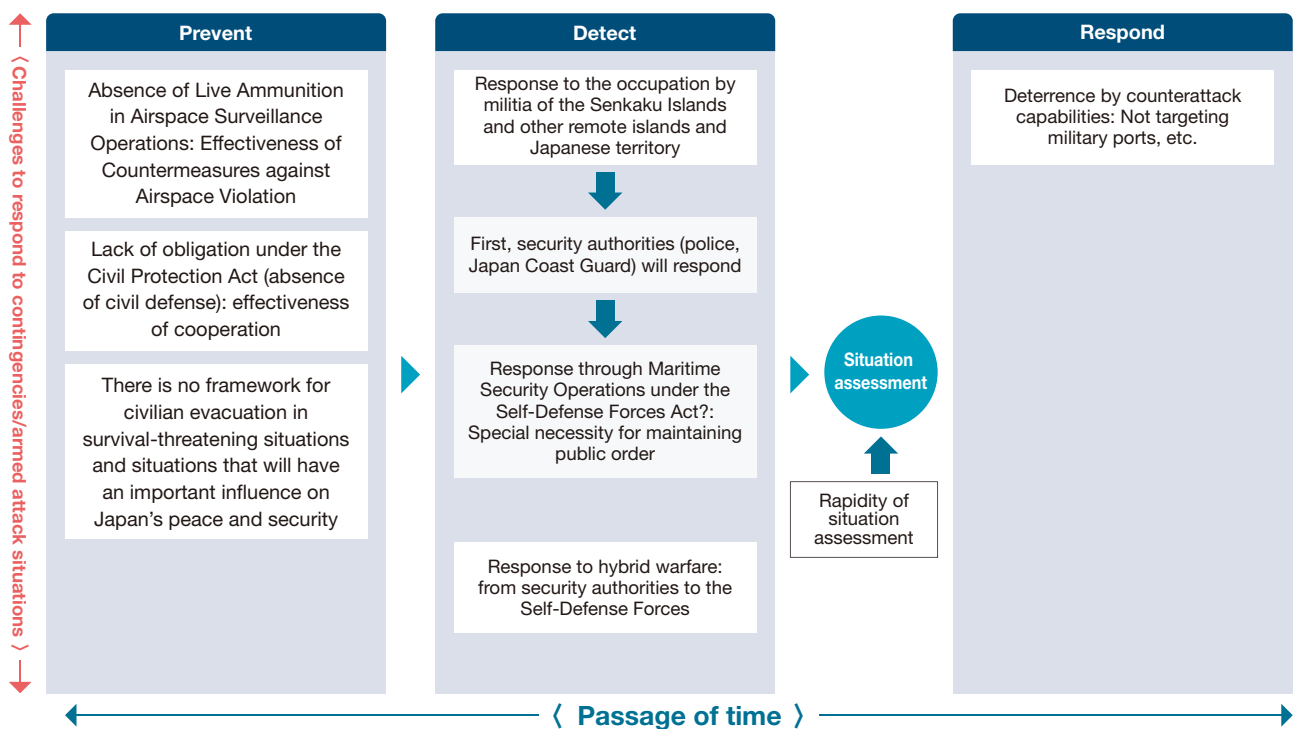
In addition to the issues involving the effectiveness of civilian protection in the event of an armed attack, there is also an issue of the absence of framework for civilian evacuation in situations that will have an important influence

on Japan's peace and security and survival-threatening situations. There are criticisms that leaving civilian evacuation to residents' discretion is irresponsible as a government policy, and urgent consideration is believed to be necessary.

- Re-examination of preparedness for compound disasters

As introduced during the explanation of the Nankai Trough Earthquake, the Showa Tonankai Earthquake occurred during the Pacific War. What would happen if a large-scale natural disaster, such as a massive earthquake, occurred during wartime? Given Japan's circumstances, we must anticipate such scenarios.

Figure 12: Armed Attack Situations/ Items to Consider



6. Summary: Legal Development Based on the Event-Based Approach and its Limitations

Japan's emergency response, including setting situations involving armed attacks, is characterized by

- the absence of a unified national definition of “what constitutes an emergency” in the Constitution or basic emergency legislation, and
- legal frameworks which have been developed based on both past events and events with increased probability due to changes in the international situation.

Consequently, in the event of unforeseen or unanticipated events, discussions must begin by asking what legislation can be applied and what legal revisions are necessary for the application. For example, when COVID-19 entered a phase of global pandemic, Japan spent nearly two months to implement specific measures, starting from the first confirmed domestic case and revising the Act on Special Measures against Novel Influenza, etc. In the five examined events, there are numerous events where confusion and response delays, similar to those experienced during COVID-19, are expected to occur at each stage of Prevent (Prepare), Detect, and Respond.

Furthermore, given the legal framework developed under the event-based approach, different legislation defines different emergency situations, with the criteria for establishing countermeasures headquarters being inconsistent. With multiple events triggering an emergency situation, questions arise as to whether confusion can be avoided regarding initial response, situation assessment and establishment of countermeasures headquarters, as well as application of legislation.

The next chapter will explore challenges of Japan's emergency response in multiple event scenarios through the concept of scenario planning.

The previous chapter delineated the relationship between the current legal framework and events that could occur in five emergency situations, such as armed attacks and pandemics, and identified issues and suggested improvement measures. By incorporating the aforementioned improvement measures into the crisis response protocols implemented so far, an improvement in response capabilities, including those of the initial response, can be expected in the event of a future emergency. However, emergencies never occur in exactly the same way as they did in the past. Furthermore, there is no guarantee that the five types of emergencies that have been examined will occur independently, and there is a risk that two or more events, or completely unknown events, may occur in combination. A prominent example of complex events would be the Great East Japan Earthquake of March 2011, during which an earthquake, tsunami, and nuclear plant meltdown occurred simultaneously. Complex events can have a significant impact on emergency response, such as delays in the dispatch of rescue and relief teams to the disaster area.

With this in mind, the Research Group on Emergency Legislation adopted a method of scenario planning and examined how Japan should respond to complex events.

Scenario planning is an attempt to assess the validity of current measures and policies to create new methods by envisioning a number of possible future scenarios. This approach is considered useful when it is difficult to predict the future based on past events.

This technique is believed to have been developed by Shell, a major oil company. In the early 1970s, the company incorporated in its business strategy a scenario in which the price of crude oil would soar because of turmoil in the Middle East. Consequently, it was widely reported that the company was less affected by the impact of the fourth Middle East War in 1973 and the associated oil shock compared with others.¹⁶

In dealing with complex events, it is difficult to come up with improvement measures for the future merely through discussions based on past disasters and the current legal framework.

For this reason, the research group identified events that would expose Japan's vulnerabilities and the damage that could result from such vulnerabilities. Various scenarios were presented, including those conceived at the spur of the moment. The following three scenarios were created based on the premise that there is a lack of discussion regarding countermeasures and that there is a possibility of enormous damage that could affect the nation's survival.

- **Submarine cable sabotage and biological and chemical terrorism**
- **Cyberattacks against financial institutions and large-scale blackouts: Hidden pitfalls in climate change action and renewable energy**
- **Mt. Fuji eruption and nuclear accident occurring in conjunction with the Nankai Trough earthquake**

The measures that Japan should adopt are outlined for each scenario. These are presented as policy proposals at the end of this report.

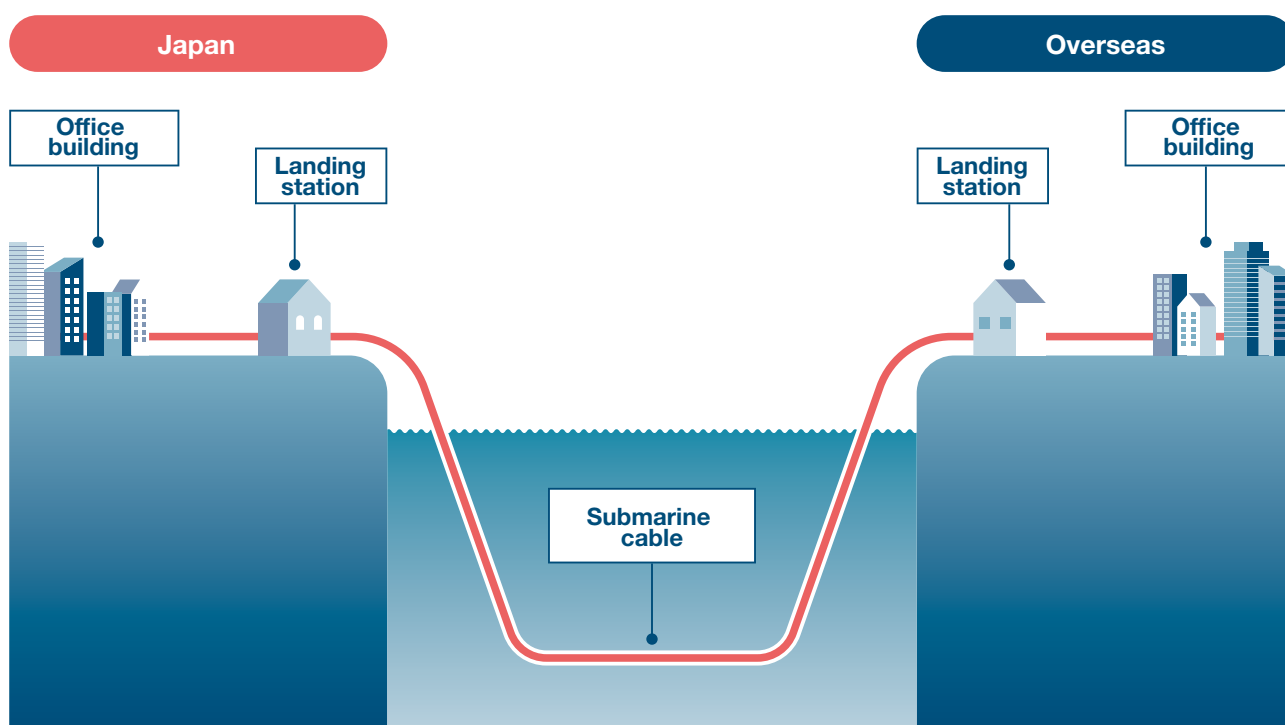
¹⁶ A study group organized by the Middle East Research Center of the Institute of Energy Economics, Japan, and the Sasakawa Peace Foundation, May 22, 2020.

1. Scenario 1: Submarine cable sabotage and biological and chemical terrorism

(1) Submarine cables

In recent years, artificial satellites such as Starlink have been gaining attention as an infrastructure that supports information and communications. However, it is estimated that 99% of international communications are carried out through submarine cables. According to some estimates, the value of financial transactions conducted through these cables reaches \$10 trillion (approximately 1,550 trillion yen) a day. This is because submarine cables are superior to satellites in terms of communication capacity and speed. In Japan, 99% of international communications are transmitted through submarine cables¹⁷ (see Figure 13).

Figure 13: The role of submarine cables



As illustrated, the cable is visible where it emerges from the seabed and rises to the surface around the landing station. What would happen if someone cut the cable and blocked most of the communication between Japan and the rest of the world?

¹⁷ Mitsubishi Research Institute, Inc. “Gaiko anzen hoshō dai jūgo kai yūji o sotei shita kaitei keburu no bōgo kyojinka dokuji no risuku bunseki kara michibiku setsudan no eikyo to mezasu beki taisaku” [Diplomacy and security no. 15: protection and fortification of submarine cables assuming contingencies; the impact of sabotage based on independent risk analysis and the measures to be pursued], May 24, 2024. [<https://www.mri.co.jp/knowledge/column/20240524.html>]

(2) Scenario

It was May 2030, around 8:00 a.m. All of a sudden, the internet stopped working, especially in the Tokyo metropolitan area. Trading on the Tokyo Stock Exchange was suspended, and securities firms were scrambling to respond. Bank payments and ATMs stopped working, and no types of businesses were able to operate because they lost internet access. Public transportation was also completely shut down, leaving many people stranded in rush-hour traffic. Everyone panicked at the unexplained situation.

Before long, many people collapsed and began writhing at Shinjuku Station, which was packed with commuters. Everyone tried to report the incident using their smartphone, but there was no connection. The police officer at the nearby police box noticed the incident and tried to contact the police station by radio. However, he lost consciousness after a while. Police officers, firefighters, and paramedics arrived at the scene, but they also collapsed one after the other. Eventually, a rescue team in protective gear rushed to the scene. By then, people were lying in heaps on the streets around the train station. Half an hour later, people also collapsed around Chiba Station, which is some distance away from Shinjuku.

The police, firefighters, and paramedics in protective gear determined at the scene that it was a terrorist attack involving large-scale use of sarin, and requested that the chemical decontaminant ChemKlenz (manufactured by TIMILON) be brought in. They also requested assistance from the Ground Self-Defense Force Camp Omiya in Saitama City, where the JGSDF Chemical School is located. The situation was reported to the Cabinet Secretariat through the National Police Agency. The government established a task force at the Crisis Management Center in the basement of the Prime Minister's Office, where emergency personnel gathered to assess and analyze the information. The incident was determined to be an unprecedented act of terrorism. However, the cause of the communication failure could not be identified, and the response was poorly coordinated.

At 10:00 a.m., the chief cabinet secretary held a new conference earlier than usual. However, reporters could not attend the conference because of the lack of communication and the chaos in the Tokyo metropolitan area. For this reason, the government could not fully communicate its message to the public. People were urged to take shelter indoors through the disaster prevention radio system operated by municipalities. However, nobody could accurately grasp what was happening. At the same time, the government tried to transmit its initial report on the event to other countries based on the **Chemical Weapons Convention** and alert the world to similar acts of terrorism. However, this was difficult because of the complete loss of communication.

There were no indications that communication had been restored two hours after the incident. This led to the suspicion that the submarine cables had been extensively damaged. In Japan, landing stations that connect submarine cables with land-based networks are concentrated in Kitaibaraki (Ibaraki Prefecture), Minamiboso (Chiba Prefecture), and Shima (Mie Prefecture). The police in each prefecture checked the scene and discovered that all the buildings had been destroyed in an explosion and all the cables had been cut. There was no system in place for constant security at any of the landing stations, with only police officers patrolling the area. Security was not sufficient even though they were an essential part of people's daily lives. Between 2023 and 2024, there was a series of incidents in the Baltic Sea in Northern Europe in which submarine cables were damaged by cargo ships and fishing boats believed to be of Chinese

and Russian registration¹⁸. In response, Japan discussed strengthening the security of submarine cables, but this was never implemented.

After noon, the death toll from the mass-scale attack on the Tokyo metropolitan area exceeded 20,000, and the number of seriously injured people reached 30,000. The attack is believed to have involved the use of VX gas. However, the means of communication with hospitals were extremely limited, and there was an insufficient stockpile of neutralizer. Thus, the number of deaths increased with time.

As evening approached, communication between the government and local governments was restored. This is because they used telecommunications operators' landing stations located outside the three locations mentioned above. However, the media, private-sector enterprises, and ordinary citizens remained cut off from communication access. Thus, the government was unable to keep the public informed on the situation. People's anxiety grew because the facts remained unclear. They did not know whether this was an act of domestic terrorism, terrorism by a non-state actor from abroad, or terrorism by a foreign regular army plotting an invasion. They also worried that, if it was an act of foreign regular army, there might also be a mass-scale attack outside the Tokyo metropolitan area involving the use of chemical weapons.

<Measures Japan should adopt based on the scenario>

- There have been vigorous discussions on measures to fight cyberattacks, but they still predominantly focus on virtual space. The infrastructure that supports communication, especially submarine cables, is clearly vulnerable. However, this issue is rarely discussed. The nation should strengthen its security protocol.
- Countermeasures against chemical terrorism have progressed to a certain extent, drawing on the lessons of the 1995 Sarin gas attack on the Tokyo subway system. However, there are concerns about how information is shared among relevant ministries and agencies, and how quickly the government responds based on that information. Chemical terrorism has common elements with pandemics and biological terrorism. Nevertheless, in organizing ministries and agencies, the government established a new entity that focuses only on pandemics. There is a lack of regulations regarding the provision of medical services during terrorist attacks. Moreover, neutralizers are useful only when a chemical substance is absorbed into the body as a result of accidents or attacks. It is difficult to determine how much neutralizers to stockpile because they must be disposed of once they expire. These problems must be resolved.

¹⁸ Nihon Keizai Shimbun, "*Kaittei keburu mondai no otoshiana* [Pitfalls of the submarine cable problem]," (Members only), January 29, 2025.

2. Cyberattacks against financial institutions and large-scale blackouts: Hidden pitfalls in climate change action and renewable energy

(1) The vulnerabilities of renewable energy

The average temperature in the summer of 2024 (June to August) was 1.76 degrees higher for the entire nation than the average year. It matches the level recorded in 2023 and is the highest since statistics began in 1898¹⁹. Climate change, rather than a future crisis, is becoming a pressing concern in the present. There is a growing call for the promotion of renewable energy, in part because the Japanese government made a global pledge to achieve carbon neutrality by 2050, with virtually zero CO2 emissions.

One of the vulnerabilities of renewable energy is that there are many power generation facilities spread out across disparate locations. Nuclear power generation and natural-gas power generation are facility-intensive. These facilities are thoroughly protected against both physical attacks and cyberattacks. On the other hand, renewable energy is vulnerable to even the most basic form of attack, as demonstrated by the frequent theft of copper cables from solar power generation facilities. Additionally, there are concerns about the vulnerability of the software contained in Chinese-made solar panels and wind turbines. There have been cases in which remote monitoring devices for renewable energy came under cyberattacks. These devices were manipulated from the outside and used to access online banking services and steal money from financial institutions.

Efforts are being made to enhance the security of nuclear power plants in response to frequent concerns about physical attacks and cyberattacks. In contrast, there is very little discussion regarding security in the area of renewable energy. There must be a blind spot there.

(2) Scenario

In 2030, Japan barely achieved its international pledge to reduce CO2 emissions by 46% from the 2013 level. This is because the nation rapidly increased the share of renewable energy to 55%, since it could not restart nuclear power plants quickly enough. The government further raised the share of renewable energy to 65% by 2035. In 2025, Donald Trump was re-elected president of the United States. The nation temporarily withdrew from the Paris Agreement, with the result that CO2 emissions were not significantly reduced on a global scale. However, Japan, along with Germany, was recognized for its leading role in implementing measures to address climate change.

In the summer of 2035, there was a series of reports regarding unusual money transfers involving financial institutions in western Japan. As a result of an emergency investigation by the Financial Services Agency, it was found that more than 10,000 remote monitoring devices for solar power facilities had come under cyberattacks and had been used for

¹⁹ Weathernews Flash Report, “2024 nen wa kako mottomo atsui natsu senotakai kokiatsu ya takai kaimensuion ga eikyo” [2024 was the hottest summer on record, affected by strong anticyclones and high sea surface temperatures] (September 1, 2024) [<https://weathernews.jp/s/topics/202408/310255/#:~:text=%E3%81%93%E3%81%AE%E5%A4%8F%E3%81%AE%E6%B0%97%E6%B8%A9%E3%81%AF,76%E2%84%83%E3%81%A8%E3%81%AA%E3%82%8A%E3%81%BE%E3%81%97%E3%81%9F%E3%80%82>]

unauthorized money transfers. This was carried out in the following fashion. The hackers did not miss the vulnerability in the software. They accessed online bank accounts by installing a “backdoor” program that allowed them to remotely monitor the device and operate it from the outside. If a hacker carried out a cyberattack by using their own devices to access bank accounts, withdraw money, or transfer money, there is a risk that they may be traced by the authorities. For this reason, hackers use other people’s systems as a launching pad for cyberattacks.

Remote monitoring devices for solar power facilities, which are vulnerable to attacks, were an easy target. A similar case of fraudulent money transfer occurred in Japan in May 2024²⁰. The government at the time left the operators to handle the problem on their own so that it could prioritize the expansion of solar power generation and combat climate change. As a consequence, the subsequent cyberattack was more widespread and disruptive than the one that occurred in 2024. After a while, there was an unusual deluge of sell orders on the nation’s stock exchanges. The stock market plunged by more than 30%, marking a record decline that significantly surpassed the previous steepest drop. Brokerage firms were inundated with inquiries from customers regarding unknown transactions carried out in their name. Japan Exchange Group Inc. immediately suspended stock trading in accordance with the Financial Instruments and Exchange Act. However, individuals and small businesses incurred losses because of a sharp decline in their shareholdings. They issued bad checks and disrupted economic activities. Japan’s legal system is not fully equipped to handle financial and economic contingencies because such cases are not always presupposed. The government declared a “state of emergency disaster” under the Basic Act on Disaster Management and considered issuing an ordinance to suspend all financial obligations for six months as an emergency measure. However, opinions were divided over whether stock price manipulation through cyberattacks fell under the category of “disaster.” The Financial Services Agency scrambled to deal with the situation, but no progress was made as time passed. Before long, a large-scale power outage occurred in eastern Japan.

The target of cyberattacks is not limited to remote monitoring devices. Hackers also take over communication control systems, infiltrate power grids, and even destroy power plants. Renewable energy is decentralized. Facilities are located in various places, and they also account for a large share of electricity supply. Therefore, the impact of cyberattacks is significant. It was thought that the power transmission had stopped following an attack on inverters that convert direct current power from solar and wind facilities into alternating current power. When the balance between supply and demand is disrupted, the frequency becomes unstable and causes a large-scale power outage²¹.

In Japan, no efforts had been made to bolster the cybersecurity of power grids under the leadership of the national government, with such initiatives left up to private-sector operators. Chinese-made inverters have a significant market share. It had been pointed out that these products had vulnerable software, but the Japanese government could not completely eliminate them from the market.

Large-scale cyberattacks on renewable energy facilities did not merely result in financial or economic disruption. There had been many cases in which cyberattacks led to military attacks or large-scale terrorist attacks on physical targets. These cases include Russia’s invasion of Ukraine in 2022. The 11th Regional Coast Guard Headquarters, which primarily

²⁰ Nihon Keizai Shimbun, “*Taiyoko hatsuden saiba kogeki no onsho ni IoT keiyu de fusei sokin*” [Solar power generation becomes a hotbed for cyberattacks: Unauthorized money transfers with through IoT], August 17, 2024 (members only).

²¹ Chubu Electric Power Grid, “*Juyou to kyoukyuu no baransu* [Balance of supply and demand],” Chubu Electric Power Grid website, accessed November 1, 2024. [<https://powergrid.chuden.co.jp/denkiyoho/qa/06.html>]

monitors the waters around Okinawa, communicated via radio that a significant number of ships had amassed in the vicinity of the Senkaku Islands. Was it an attempt by a militia posing as fishermen to land on the Senkaku Islands, or by regular troops to occupy them? Japan was forced to respond to the situation without being able to confirm their intention amid a power outage that made communication difficult.

<Measures Japan should adopt based on the scenario>

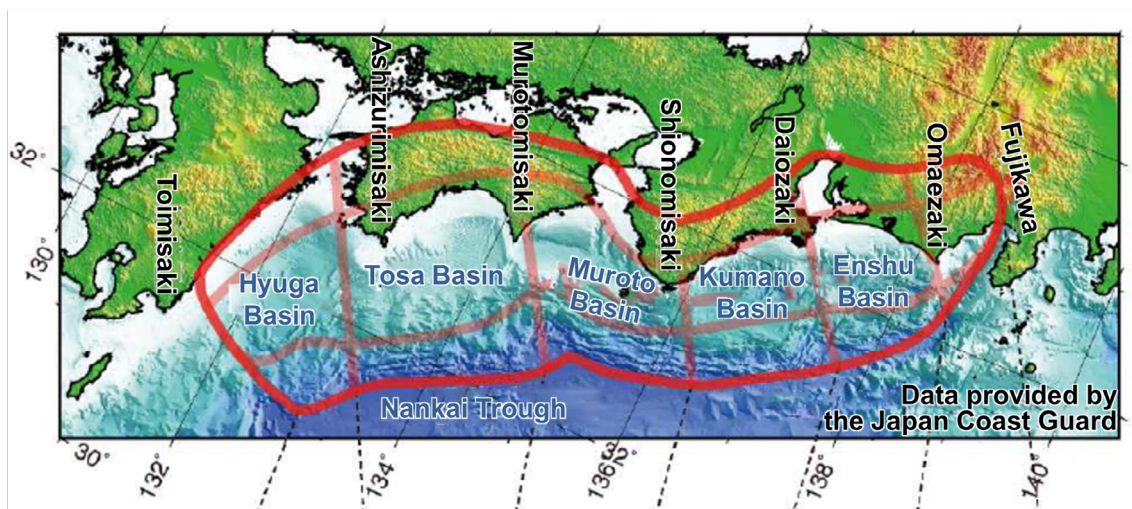
- It is imperative to prevent cyberattacks on critical infrastructure and strengthen security. It is particularly important to strengthen the security of energy-related facilities. Now that there are growing calls for measures to address climate change, it is necessary to eliminate the potential vulnerabilities of renewable energy.
- When a cyberattack occurs, it takes time to grasp the situation and assess the incident. However, it is not advisable to wait passively for the assessment after the incident is detected. “The active cyber defense” legislation has been submitted to the 217th parliamentary session to enable prompt response measures after any abnormalities are detected. In addition, it is necessary to create a Basic Emergency Act in order to deal with unforeseen circumstances and multiple disasters. There must be a system in place to implement such a law until the nation can return to the existing law once the situation is assessed.

3. Mt. Fuji eruption and nuclear accident occurring in conjunction with the Nankai Trough earthquake

(1) Nankai Trough Earthquake

The Nankai Trough is a trench-like boundary where the Eurasian Plate (the land side of the Japanese archipelago) and the Philippine Sea Plate (the ocean side) meet on the seafloor. It extends about 500 kilometers from Suruga Bay in Shizuoka Prefecture to Hyuganada, where an earthquake occurred in August 2024²². It is generally held that the Philippine Sea Plate is sinking a few centimeters each year toward the Eurasian Plate, and that the Eurasian Plate is being pulled down, causing strain to accumulate and triggering a massive earthquake²³. Earthquakes occurred in the projected epicenter surrounded by the red line in Figure 14 at intervals of 100 to 150 years. The last quake occurred in 1946, and the government is on high alert, saying there is a 70% to 80% chance of another tremor occurring within the next 30 years²⁴.

Figure 14: Projected epicenter of the Nankai Trough earthquake



Source: Kako ni hassei shita nankai torafu jishin no shingen iki no jikukan bunpu [Spatio-temporal distribution of the epicenters of the past Nankai Trough earthquakes] released by the Japan Meteorological Agency

There are two types of rupture depending on how the strain accumulates: “total rupture,” in which the strain shifts all at once across the plate boundary, and “partial rupture,” in which a rupture occurs successively on the east and west sides of the boundary. In the event of a “total rupture,” it is said that the plates shift on a large scale, causing tremendous tremors on the ground. This raises a question as to whether other disasters may also occur at the same time.

²² Japan Meteorological Agency, “Nankai torafu jishin towa [What is the Nankai Trough Earthquake?],” [https://www.data.jma.go.jp/eqev/data/nteq/nteq.html]

²³ Ibid.

²⁴ Japan Meteorological Agency, Nankai torafu jishin ni kansuru joho [Information related to the Nankai Trough Earthquake], [https://www.data.jma.go.jp/eqev/data/nteq/index.html]

(2) Scenario

In July 2035, an earthquake with a magnitude of 8.2 occurred off the coast of Suruga Bay. If an earthquake of magnitude 6.8 or greater occurs at a projected epicenter of the Nankai Trough earthquake and significant changes are observed in one or more strain gauges, the Japan Meteorological Agency is required by law to convene an evaluation committee to determine whether this could trigger a massive earthquake. The Japan Meteorological Agency immediately convened such a committee. Two hours later, a warning was issued for a massive earthquake. This warning is issued when there is a higher- than-normal chance of a massive earthquake occurring after an earthquake of magnitude 8.0 or greater occurs at a projected epicenter. Local governments along the coast from the Tokai region to the Shikoku region urged residents to evacuate for one week in advance since they may not be able to evacuate in time because of tsunamis and flooding caused by the earthquake.

The warning was issued just as the summer tourist season was about to begin, causing confusion at seaside tourist destinations. In the past, the Japan Meteorological Agency issued several warnings, including a warning of a massive earthquake in August 2024. However, all these warnings were lifted one week later without any earthquake occurring. However, the agency issued an “alert” (keikai) which is used for a more immediate danger, rather than a “warning” (chui), for the first time. The areas became very quiet and deserted after tourists canceled their trips one after the other. The residents of alert areas evacuated to facilities on higher ground. As a week passed without a major earthquake, the residents began to show signs of fatigue.

Evacuation calls are not compulsory. The Act on Special Measures Concerning Countermeasures for Large-Scale Earthquakes was enforced in 1978. Under the law, based on the premise that earthquakes can be predicted beforehand, the prime minister issues a compulsory alert, stops trains from running, closes shops, and dispatches the Self-Defense Forces, before the earthquake occurs (the Article 9, alert declaration, etc.) However, it was later found that making highly accurate predictions was difficult. For this reason, the focus of the law concerning the Nankai Trough earthquake is the government’s responsibility to provide information. It is up to each local government and individual resident to decide how to respond. The Japan Meteorological Agency allowed residents to return home temporarily, even though it was difficult to reach this decision.

The residents began to suspect that nothing was going to happen this time, either. However, a massive earthquake hit the Japanese archipelago in September 2035. The quake registered a seismic intensity of 7 from the Chubu region to the Kyushu region. Huge tsunamis of over 30 meters hit the Pacific coast, including the areas off Kochi and Wakayama, and destroyed seaside communities. In the Kanto region, too, many houses were destroyed and fires spread, especially in areas with many wooden houses. The situation was beyond the control of the fire department or police. The government immediately assembled an emergency response team at the Crisis Management Center. The prime minister, for the first time in history, declared a “state of emergency disaster” under the Basic Act on Disaster Management for areas other than Hokkaido and Tohoku. As an emergency measure, the government issued an ordinance to place the distribution of essential goods under its control. The government also issued a six-month moratorium on all financial obligations. However, the situation was devastating according to information provided to the emergency response headquarters. It was estimated that at least 250,000 people died in 30 prefectures, more than 2 million buildings were completely

destroyed, and approximately 7.5 million people were forced to evacuate. The total amount of damage was estimated to be 150 trillion yen, exceeding the national budget. Local governments requested the dispatch of not only the Self-Defense Forces but also the Disaster Medical Assistance Team (DMAT) under the jurisdiction of the Ministry of Health, Labour and Welfare, and the Technical Emergency Control Force (TEC-FORCE), which advises on emergency measures for roads and embankments, etc. under the jurisdiction of the Ministry of Land, Infrastructure, Transport and Tourism. The government faced the difficult decision as to which areas to prioritize.

Two weeks later, ominous information was brought to the government's emergency response headquarters from Shizuoka Prefecture. According to the report, there have been a series of earthquakes and tremors in the area around Mt. Fuji. Three days later, in the evening, Mt. Fuji erupted for the first time in about 330 years since the Hoei eruption (1707). Lava fountains were visible even at night (Figure 15).

Figure 15: “Yoruno Keiki [night scene],” an illustration of the Hoei Eruption of Mt. Fuji



Source: Shizuoka Prefecture Rekishi Bunka Joho Center (published with permission)

After 9 p.m., ash was observed even in central Tokyo, where it piled up to 10 centimeters by the following morning. The ash caused power distribution equipment and facilities to short-circuit, leading to widespread power outages in the Kanto region. Trains were also halted because the rails and power lines were unusable. Water pollution spread rapidly, exceeding the capacity of water treatment facilities. Thus, it became impossible to secure water for daily use. The lava crossed over Shizuoka and Yamanashi prefectures and reached Sagami-hara City in Kanagawa Prefecture, blocking the Tomei Expressway. The government lost the capability to regulate the distribution of essential goods now that the

transportation routes connecting the Tokyo metropolitan area and the Kansai region were severed. Furthermore, the shortage of goods worsened in the Kanto region because of hoarding in the Kansai region. In short, the capital lost its administrative functions and the government lost its disaster response capabilities.

In addition to the massive earthquake and tsunami, the eruption of Mt. Fuji also threatened Chubu Electric Power's Hamaoka nuclear power plant. Japan strengthened its nuclear safety standards after the 2011 disaster at the Fukushima Daiichi Nuclear Power Plant. The Hamaoka nuclear power plant continued to operate by meeting the strict new standards. The power plant was fully prepared for earthquakes and tsunamis. However, it was not prepared for a large amount of volcanic ash. The water reservoir, essential for cooling the reactor, was contaminated with a large amount of ash. The pipes would have been damaged and radioactive materials would have leaked if the water had been continuously injected into the reactor. The reactor was kept cool and maintained for a while as the power outage continued. However, the disruption of roads and railroads hindered the procurement of diesel oil, a critical component for the functioning of the emergency power supply system. With only two days' worth of diesel fuel left, a decision had to be made as to whether seawater should be injected even though this meant that the plant would have to be decommissioned later.

The situation at the Hamaoka nuclear power plant was communicated to the public by the government's emergency response headquarters. The damage far exceeded that caused by the Great East Japan Earthquake of March 2011, which was considered the worst disaster in history. There were widespread concerns as to whether Japan would be able to survive. It has been one month since the massive earthquake and 10 days since the eruption of Mt. Fuji. The smoke from the eruption was still clearly visible from the Tokyo metropolitan area.

<Measures Japan should adopt based on the scenario>

- Individual disaster prevention plans for each nuclear power plant, as well as hazard maps for the Nankai Trough earthquake and Mt. Fuji eruptions, have already been created. It is necessary to begin integrating these perspectives to strengthen the nation's preparedness.
- In particular, medical institutions involved in rescue and treatment should strengthen their stockpiles so that they can continue to provide medical care on their own, assuming that they will not receive sufficient support, such as in the form of food, necessary materials, oxygen, and electricity, for a long period of time. They should also improve their response capabilities by assuming complex disasters and repeatedly conducting training.

4. Conclusion

It takes time to understand what is happening in a complex event. This is especially the case in the event of a cyberattack that results in significant communication disruptions. The collection of information and the search for applicable laws can result in delays in the initial response. As discussed in the second and third scenarios, a “state of emergency disaster” under the Basic Act on Disaster Management has never been declared, even though it is stipulated. This is because a question has been raised regarding the applicability of this provision to natural disasters. In addition, some legal scholars question whether the government can issue a compulsory declaration based on a law that is subordinate to the constitution.

To address these issues, it is imperative that the nation engage in a discussion regarding the definition of an “emergency situation.” In the subsequent chapter, the Research Group on Emergency Legislation will discuss how to define emergency situations under the constitution and what new perspectives may exist regarding an emergency clause. The group will also propose a mechanism in which a Basic Emergency Act would be established to allow for a quick response after abnormalities are detected and before the nation returns to the existing legal framework once the incident is assessed. In addition, the group will also make recommendations on how the government ministries and agencies should be organized to enhance the effectiveness of various disaster prevention and response measures.

Japan's emergency legal framework and subsequent response system have been developed individually based on specific incidents and disasters, primarily focusing on natural disasters and large-scale accidents²⁵. The Basic Act on Disaster Management was enacted following the Ise Bay Typhoon²⁶ that hit central Japan in 1959, and the Act on Special Measures for Responding to Nuclear Disasters was established in response to the 1999 criticality accident²⁷ at JCO, a nuclear fuel-processing plant operator, in the village of Tokai, Ibaraki Prefecture. After the spread of the novel strain of influenza in 2009, the Act on Special Measures against Novel Influenza, etc. was enacted. In response to the COVID-19 pandemic from 2020 onward, the law was subsequently amended.

A sectoral approach to lawmaking or amendments based on event-driven principles improves preparedness for disasters similar to past occurrences. However, for unprecedented events or complex disasters, responses often must start with verifying legal grounds, leading to confusion in the initial response phase. In addition, there is a lack of unified standards on the conditions that permit measures involving restrictions on human rights—such as movement limitations during emergencies or cooperation in national protection during crises. This contrasts with many countries worldwide which have constitutional emergency provisions that clearly define state authority and the conditions for restricting human rights during emergencies.

In examining a more effective emergency legal framework and response measures, discussions on emergency provisions cannot be avoided, regardless of whether their introduction is ultimately adopted. In February 2022, Russia launched a military invasion of Ukraine, reminding us once again that emergencies and crises can suddenly become a reality. The following analysis compares and examines discussions on emergency provisions worldwide, including in Japan, and attempts to sort out key issues²⁸.

²⁵ TAKEDA Yasuhiro, “Ronkyu: Nihon no kiki kanri taisei: Kokumin hogo to bosai wo meguru katto” [Examination of Japan’s crisis management system: Conflicts surrounding civil protection and disaster prevention] (Fuyo Shobo Shuppan, 2020), pp. 29-78

²⁶ A massive typhoon that made landfall on the Kii Peninsula on the evening of September 26, 1959. The central pressure at landfall was 929.5 hPa, the lowest level ever recorded on the largest main island of Honshu. The disaster left 5,098 persons dead or missing mainly around the Ise Bay coastline in Aichi and Mie prefectures. It was the largest postwar disaster until the Great Hanshin-Awaji Earthquake of 1995, and led to the enactment of the Basic Act on Disaster Management in 1961.

²⁷ The first criticality accident in Japan, which occurred in September 1999 at the JCO uranium-processing plant in Tokai village, Ibaraki Prefecture. A chain of nuclear fission reactions, known as “criticality,” occurred during the production of uranium fuel for an experimental fast breeder reactor. Two workers involved in fuel production died from acute radiation syndrome. Moreover, 667 nearby residents were exposed to radiation.

²⁸ This chapter is an expanded and reorganized version based on the comparative analysis of national constitutions presented in the April 2022 report by the Sasakawa Peace Foundation, titled “Challenges in Emergency Response in Japan – A Legal Review of COVID-19 Measures.” [<https://www.spf.org/global-data/user26/EmergencyResponse.pdf>]

1. Emergency Legislation in Japan

The history of emergency legislation dates back to the birth of modern democratic states.

Since the 19th century, nations have actively debated the implementation of exceptional measures to restore order when faced with wars, large-scale disasters and other crises threatening national survival. As a result, countries like France and Germany explicitly incorporated emergency provisions into their constitutions, while nations like the United States and the United Kingdom recognized state powers during emergencies as “unwritten principles” without constitutional stipulation, leading to the development of emergency legislation as detailed administrative instructions. In Japan under the Meiji Constitution, which aimed for a constitutional monarchy, the country followed the approach of France and Germany by explicitly stipulating state powers during emergencies in the constitution²⁹.

After the two world wars, changes occurred in the exercise of state powers during emergencies.

If emergencies are strictly defined in the constitution or laws, there is a risk of restricting the state’s response. If emergencies are defined in a broad and abstract manner, on the other hand, there is a risk that the state may frequently declare emergencies and impose restrictions on private rights, thereby undermining constitutionalism and democracy³⁰. Overcoming this issue, known as the “paradox of emergency powers,” is a common challenge for all countries. Each nation continues to experiment and refine the balance between the effectiveness of emergency measures and the protection of human rights.

(1) History of Emergency Legislation in Japan

Japan’s emergency legal framework has undergone dramatic changes in the postwar period. After Japan’s defeat in World War II, the establishment of a new constitution became the most crucial issue in order to break away from totalitarianism and promote democracy. The authority of the state in emergencies was not explicitly stated in the Japanese Constitution as a result of discussions between the Japanese government and the Allied Powers’ General Headquarters (GHQ). Taking these circumstances into account, this study will examine the history of the development of emergency legislation in Japan and its impact.

Provisions on Emergency Situations under Old Constitution

The Constitution of the Empire of Japan was modeled after the German constitution as it was considered the closest to Japan’s national circumstances at the time. It was promulgated in 1889 and explicitly included the following four emergency response powers.

- **Power to issue emergency imperial ordinances (Article 8)**
- **Prerogative to proclaim martial law (Article 14)**
- **Emergency powers (Article 31)**
- **Emergency financial measures (Article 70)**

²⁹ National Diet Library Research and Legislative Reference Bureau, “*Shuyo koku ni okeru kinkyuujitai e no taisho*” [Response to emergencies in major countries] (2003), pp. 9-15

³⁰ SATO Koji, “*Nihon koku kenpo ron*” [Discussion on the Japanese Constitution], Seibundo, 2020, etc.

(For the emergency clauses in the Constitution of the Empire of Japan and in the constitution and laws of each country, please refer to the appendix.)

Table 9: Emergency powers stipulated in Constitution of Empire of Japan

	Issuance of emergency imperial ordinances	Martial law	Emergency powers	Emergency financial measures
Prerequisite conditions	Maintenance of public safety	During wartime or internal unrest	Wartime, national emergency	Maintenance of public safety
Determination	Emperor (supreme governor)	Emperor (supreme governor)	Emperor (supreme military commander)	Cabinet
Measures	Proclamation of Imperial ordinances	Transfer of administrative authority to military & restriction of citizens' rights	Measures necessary for military action	Necessary financial measures by imperial decree
Governance	Parliamentary approval (ex post)	None	Unknown	Parliamentary approval (ex post)
Period	During recess of parliament or when it cannot be convened	Necessary period	Necessary period	During recess of parliament or when it cannot be convened
Examples of implementation	Numerous instances such as immediately after Great Kanto Earthquake in 1923	1905: Hibiya riot ³¹ 1923: Great Kanto Earthquake 1936: February 26 incident	None	Many instances, such as during financial panic after 1923 Great Kanto Earthquake

Source: Prepared by this author, based on Commission on the Constitution, House of Representatives, “*Hijo jitai to kenpo ni kansuru kisoteki shiryō*” [Basic material on emergency situations and the Constitution]

The requirements and examples of implementation for the four emergency response powers mentioned above are summarized in Table 1. Among these, the martial law, which transfers administrative authority to the military, was declared three times from the Meiji to Showa eras (1868-1989). As for emergency powers, the distinction from the authority related to martial law was not clear, and it was never invoked³².

Characteristics of Emergency Legislation under New Constitution

During postwar constitutional amendment discussions, the draft constitution initially submitted by Japan to the GHQ reflected the idea of explicitly including provisions on emergency situations in the constitution, similar to those in the prewar Meiji Constitution. Article 76 of the draft stipulated that “In cases where the House of Representatives is dissolved or for other reasons the National Diet cannot be convened, and there is an urgent necessity to maintain public order/safety, the Cabinet may enact orders in place of laws or budgets on condition that they obtain Diet approval

³¹ On September 5, 1905, the public protesting the failure to obtain reparations from Russia during talks on the Portsmouth Treaty (the peace treaty of the Russo-Japanese War), etc., gathered at a national rally held in Hibiya Park, Tokyo, where they clashed with police. Subsequently, the crowd turned into a mob, setting fire to the Interior Ministers’ official residence, newspaper offices, police stations and streetcars. The riot continued until the next day, leading to the declaration of martial law and the deployment of military forces to suppress the unrest.

³² Commission on the Constitution, House of Representatives, “*Hijo jitai to kenpo ni kansuru kisoteki shiryō*” [Basic material on emergency situations and the Constitution], p. 4

afterward.”³³ This provision allowed for the transfer of legislative and budgetary authority from the National Diet to the executive branch (Cabinet) in times of emergency.

On the other hand, the GHQ urged the Japanese government to handle the state’s emergency response authority in accordance with the principles of Anglo-American law, recognizing it as an unwritten principle. As a result, the inclusion of the above-mentioned Article 76 of the draft in the Japanese Constitution was abandoned³⁴.

However, the Japanese government appealed to the GHQ that, given Japan’s susceptibility to natural disasters, measures for unforeseen calamities were necessary. As a result, the Japanese Constitution included provisions for an emergency session of the House of Councilors (Article 54)³⁵. In the event of a disaster occurring while the House of Representatives is dissolved, the Constitution stipulates that the Cabinet may request an emergency session of the House of Councilors to provisionally approve laws and budgetary measures.

At a House of Representatives Imperial Constitution Amendment Committee session in 1946, Tokujiro Kanamori, then Minister of State in charge of constitutional revision, explained the above process as follows. “Emergency imperial decrees and similar measures may be highly ‘調法’ (sic) = (*chōhō* or useful/convenient) =³⁶ for administrative authorities, but in order to thoroughly implement democratic governance and fully protect the rights of the people, such unilateral actions by the government must be prevented as much as possible. In other words, the discretionary scope of executive powers should be minimized to the greatest extent possible. It is appropriate to have comprehensive provisions in place to ensure that actual specific regulations necessary for responding to exceptional situations are prepared in advance in a manner that prevents misuse³⁷. The Meiji Constitution had such provisions in place, but in practice, those measures were never explicitly utilized. Therefore, in the new Constitution, greater emphasis was placed rather on ensuring the security of freedom guarantees.”³⁸

Article 54 of the Japanese Constitution defines the authority of the Cabinet in emergencies. However, as stated in Minister Kanamori’s response, it is more restricted compared with the state’s authority under the Constitution of the Empire of Japan. Another factor behind this restriction was that, at the time of the new Constitution’s establishment, the military had been disbanded when it would mainly be responsible for the implementation of martial law and public order maintenance. These factors led to a unique development of emergency legislation in postwar Japan.

While Western countries advanced the development of emergency legislation focusing on the protection of citizens from armed attacks by other nations, Japan established a framework for defining emergency situations and government authority by identifying issues arising from actual events, primarily centered around natural disasters.

³³ Commission on the Constitution, House of Representatives, “Key Points of Various Drafts in the Process of Establishing the Constitution of Japan” (March 2000), p. 12.

³⁴ *Ibid.*, p. 6

³⁵ TAKAMI Katsutoshi, “*Seiji no konmei to kenpo* [Political confusion and the Constitution], Iwanami Shoten, 2012, p. 261

³⁶ According to the *Nihon Kokugo Daijiten* (Unabridged Dictionary of the Japanese Language), the term ‘調法’ (*chōhō*) primarily means “to investigate or consider something, to deliberate carefully, or to think thoroughly and handle appropriately;” which does not necessarily align with the context of Minister Kanamori’s statement. “重宝,” another Japanese term also pronounced “*chōhō*,” is more appropriate in this context, and there is a possibility that a typographical error occurred during the transcription of the parliamentary proceedings.

³⁷ “90th Session of the Imperial Diet House of Representatives, *Imperial Constitution Amendment Committee Minutes*” (stenographic record), 3rd Session, July 2, 1946, pp. 34-35.

³⁸ “90th Session of the Imperial Diet House of Representatives, *Imperial Constitution Amendment Committee Minutes*” (stenographic record), 13th Session, July 15, 1946, p. 240

Table 10 summarizes the main laws that define emergency situations.

Except for the 2003 Act on Measures to Address Armed Attack Situations, etc., all other laws have been enacted or amended in response to actual events that occurred.

Table 10: Major Japanese laws defining emergency situations

Law name	FY of legislation	Provisions	Event that triggered legislation of emergency provision
Act on Special Provisions of Article 3 of Public Finance Act	1948	Effect of Public Finance Act's Article 3 (price provision) suspended temporarily in economic emergency	Hyperinflation immediately after war end
Police Act	1954 (fully revised)	Articles 71, 74	Territorial divisions and difficulties in wide-area operations due to establishment of municipal police under GHQ supervision after war end
Basic Act on Disaster Management	1961	Articles 105, 106	Ise Bay Typhoon (1959)
Act on Special Measures for Responding to Nuclear Disasters	1999	Article 15	JCO criticality accident (1999)
Act on Measures for Addressing Armed Attack Situations, etc.	2003	Articles 21~24	
Act on Special Measures against Novel Influenza, etc.	2012 2020, 2021 (revised)	Article 45	H1N1 subtype influenza virus pandemic (2009) Novel corona virus pandemic (2020)

Source: Prepared by this author, based on Commission on the Constitution, House of Representatives, "*Hijo jitai to kenpo ni kansuru kisoteki shiryō*" [Basic material on emergency situations and the Constitution], etc.

Since the Constitution lacks an emergency clause, various interpretations have been proposed regarding the meaning of the emergencies defined by the laws listed in Table 10. One interpretation is that the recognition of emergencies and the authority to take response measures granted by these laws complement state powers in emergencies, which are considered to be granted to the state as unwritten principles, and that, in some cases, it may also allow for the adoption of extraordinary measures that temporarily suspend the constitutional order. This is a perspective that was once adopted in the United States and the United Kingdom. On the other hand, from the standpoint that the current Constitution does not anticipate special powers for the state in emergencies, there are opinions suggesting that the measures outlined in the aforementioned laws merely specify cases in which the activities of the executive branch, police, and Self-Defense Forces can be temporarily concentrated and strengthened⁴¹.

³⁹ A massive typhoon that made landfall on Kii Peninsula on evening of September 26, 1959. The central pressure at landfall was 929.5 hPa, the lowest level ever recorded on the largest main island of Honshu. The disaster left 5,098 persons dead or missing mainly around the Ise Bay coastline in Aichi and Mie prefectures. It was the largest postwar disaster until the Great Hanshin-Awaji Earthquake of 1995, and led to the enactment of the Basic Act on Disaster Management in 1961.

⁴⁰ The first criticality accident in Japan, which occurred in September 1999 at the JCO uranium-processing plant in Tokai village, Ibaraki Prefecture. A chain of nuclear fission reactions, known as "criticality," occurred during the production of uranium fuel for an experimental fast breeder reactor. Two workers involved in fuel production died from acute radiation syndrome. Moreover, 667 nearby residents were exposed to radiation.

⁴¹ Commission on the Constitution, House of Representatives, "*Hijo jitai to kenpo ni kansuru kisoteki shiryō*" [Basic material on emergency situations and the Constitution], p. 7

The official government stance is that although there is no emergency clause in the Constitution of Japan, measures in emergencies that restrict citizens' rights or impose obligations are permissible from the perspective of "public welfare" as defined in Article 13 of the Constitution and elsewhere, and this has been affirmed by the successive directors-general of the Cabinet Legislation Bureau in Diet responses. In 2004, for example, during Diet debate on emergency legislation, then Director-General of the Cabinet Legislation Bureau, Osamu Akiyama, provided the following response. "Even under the current Constitution, it is possible to enact laws that restrict the rights of the people or impose obligations within a reasonable scope from the perspective of public welfare in order to address extraordinary situations such as large-scale disasters or economic turmoil. There are already many cases of legislation in place, such as the Basic Act on Disaster Management and the Act on Emergency Measures for Stabilizing Living Conditions of the Public."⁴²

Emergency Legislation to Address New Threats

Provisions on Japan's emergency response have been evolving since the late 1990s to expand the powers of the state.

When the JCO criticality accident occurred in Tokai village, Ibaraki Prefecture, in 1999, resulting in radiation leakage to the surrounding area, the legal basis for nuclear disaster response was a law on the regulation of nuclear reactors, etc., and measures such as resident evacuation were left to the discretion of local governments. However, reflecting on the inadequacy of response at the local government level, the Act on Special Measures for Responding to Nuclear Disasters was enacted, allowing the national government to centrally determine disaster response measures and issue evacuation orders to multiple local governments. Under this law, if the Prime Minister issues a nuclear emergency declaration based on Article 15, authority is centralized in the Prime Minister, who can guide local governments and nuclear operators in responding to the situation (Article 20). In the 2011 Fukushima Daiichi nuclear disaster following the Great East Japan Earthquake, then Prime Minister Naoto Kan invoked this provision to intervene in the accident response of Tokyo Electric Power Co. (TEPCO), the plant operator.

Under the Act on Special Measures against Novel Influenza, etc., the Prime Minister was granted overarching coordination authority, and there were cases where the national government requested modifications to prefectural implementation plans regarding business closure requests for specific industries. Furthermore, under the Act on Measures for Addressing Armed Attack Situations, etc. and the Civil Protection Act, unlike the Basic Act on Disaster Management, local response measures are classified not as "autonomous administrative tasks" but as "legally delegated duties," meaning that local governments implement them under the guidance of the national government⁴³.

In the response to COVID-19, there were numerous cases where coordination between the national government and local administrations took considerable time, which has fueled discussions on whether the national government should take command in emergencies. In June 2024, the government enacted the revised Local Autonomy Act, introducing a new "directive authority" for the national government. This is a comprehensive directive power that applies regardless of whether the matter is an autonomous administrative task or a legally delegated duty. While directive authority is expected

⁴² House of Representatives, "Special Commission on Response to Armed Attack Situations, etc., Journal Number 5," April 20, 2004, p. 28.

⁴³ TAKEDA Yasuhiro, "Ronkyu: Nihon no kiki kanri taisai: Kokumin hogo to bosai wo meguru katto" [Examination of Japan's crisis management system: Conflicts surrounding civil protection and disaster prevention], p. 45

to enable a swift emergency response, concerns remain that its broad scope could lead to arbitrary use by the central government or a lack of safeguards against abuse. The concerns stem from the emphasis on speed as directive authority does not require prior approval from the National Diet or prior consultation with local governments. Instead, only post-reporting to the Diet is mandated, and consultation with local governments remains merely a best-effort obligation⁴⁴.

The Constitution of Japan has in place a separate chapter on local autonomy and guarantees it as a system. It can be said that Japan emphasizes “decentralization” as a fundamental picture of national governance. Strengthening the national government’s authority in emergencies through case-specific laws and expanding its authority comprehensively under the Local Autonomy Act carry different levels of significance. It is necessary to closely monitor developments following the implementation of the revised Local Autonomy Act.

2. Development & Features of Emergency Legislation in Major Western Countries

Western countries have also reorganized their emergency legislation after World War II, learning from the past abuses of executive powers during wartime and disasters. Examining the history of emergency legislation in various countries is considered to provide important insights into how Japan should approach emergency response. I will provide an overview of the cases of the United States, the United Kingdom, France and Germany.

(1) United States

Two key characteristics can be observed in the U.S. legal system. One is that the United States is a federal state, where the federal government and state governments each have their own distinct powers. Another is that when a situation exceeds the capacity of a state government, the federal government, particularly the President, is granted concentrated authority to respond.

Regarding the latter presidential authority, the “unwritten principle” was replaced by a statutory approach after WWII in order to clarify Congress’s responsibility for preventing the abuse of powers. Since the 21st century, there has been an ongoing movement to revise emergency legislation with a view to addressing new threats such as terrorism, aiming to establish a legal framework that can respond effectively, including the reassessment of the distribution of powers between the federal and state governments.

Changing Perspective on Presidential Emergency Powers

The U.S. Constitution includes provisions stating that the President is the Commander in Chief of the military, that the President can convene both houses of Congress in emergencies (both Article II), and that the President has the authority to protect states from foreign invasion, domestic violence and insurrections (Article IV). However, there is no explicit

⁴⁴ The Asahi Shimbun editorially commented, “Expansion of National Government’s Directive Authority: Detrimental Revision Undermining Principle of Autonomy” (June 19, 2024) <https://www.asahi.com/articles/DA3S15961873.html>

provision in the Constitution that clearly states the President can implement measures different from those in normal times during emergencies.

However, until the end of WWII, there were instances where the President issued orders during emergencies that violated the Constitution. For example, President Franklin Roosevelt executed the forced internment of Japanese Americans living on the West Coast in February 1942, citing threats to national security. Congress ratified this order a month later⁴⁵.

President Roosevelt's emphasis on prioritizing security during wartime was generally supported by the public. After the war, amidst the U.S.-Soviet Cold War, concerns about urban attacks using nuclear weapons further legitimized this perspective.

However, Congress and the judiciary did not unconditionally approve the exercise of presidential authority. Against the backdrop of the Korean War, President Harry Truman ordered federal employees to seize and operate a steel mill in Youngstown, Ohio, to prevent a strike at the facility. However, the U.S. Supreme Court ruled against him by a 6-3 decision, stating that the Constitution does not grant the President such authority. In this case, Justice Robert Jackson categorized presidential powers into the following three types:

- When the President acts pursuant to explicit or implied authorization of the Constitution, his authority is at its maximum. If the President seizes property under a law enacted by Congress, it is presumed to be constitutional to the fullest extent and receives the broadest judicial support.
- When the President acts in a situation where Congress has neither granted nor denied authority, he can rely only on his own independent powers. However, there exists a "zone of twilight" where the President and Congress share concurrent authority, or where the distribution of powers itself is uncertain. The practical test for authority in this zone is determined not by abstract legal theory but by the emergency of the situation and the unforeseen circumstances at hand.
- When the President takes measures contrary to the explicit or implicit will of Congress, his authority is at its weakest.

Based on this framework, Justice Jackson noted that the President had already been granted the authority to halt strikes through legislatively authorized means (the Taft-Hartley Act). He criticized the President's attempt to take measures to prevent the strike under presidential authority despite the fact that the law allowed him to seek a court order to prohibit the strike for 80 days. Namely, he deemed it unconstitutional, categorizing it under the third classification mentioned above⁴⁶.

The perspective on presidential powers during emergencies underwent a transformation in the 1970s. The catalyst was the leak of classified documents from the Department of Defense regarding the Gulf of Tonkin incident, which led to full-scale U.S. involvement in Vietnam (June 1971)⁴⁷.

⁴⁵ ASAKAWA Koki, "*Bei daitoryoshoku to kinkyujitaikengen*" [U.S. Presidency and Emergency Powers], Annual Report, Institute of Political Science & Economics, Musashino University, 2017 (https://www.musashino-u.ac.jp/albums/abm.php?f=abm00004720.pdf&n=02_asakawa.pdf)

⁴⁶ ASAKAWA Koki, "*Bei daitoryoshoku to kinkyujitaikengen*" [U.S. Presidency and Emergency Powers], pp. 28-29 [<https://www.musashino-u.ac.jp/research/pdf/abm00004720.pdf>]

⁴⁷ Commission on the Constitution, House of Representatives, "*Hijo jitai to kenpo ni kansuru kisoteki shiryō*" [Basic material on emergency situations and the Constitution], p. 33

In the Gulf of Tonkin off the coast of North Vietnam in August 1964, North Vietnamese patrol boats fired two torpedoes at a U.S. Navy destroyer, which was viewed as an act of aggression against the American military. President Lyndon Johnson's proposal to attack North Vietnam was overwhelmingly supported by a vote of 88 to 2 in the Senate and 416 to 0 in the House of Representatives. After this, the United States formally entered the Vietnam War. However, the leak of classified documents revealed that the Gulf of Tonkin incident was part of a covert operation orchestrated by the U.S. military to justify the bombing of North Vietnam.

As a result of the loss of trust in the presidency and Congress, the United States moved away from the traditional view of the nation's rights in emergency response being based on "unwritten principles." Instead, it transitioned to a statutory system that clearly delineates the President's authority in emergencies and the oversight role of Congress. It sorted out the presidential orders related to wartime and other emergencies, clarifying the oversight function of Congress, and delineated the powers concerning war from those pertaining to other emergencies.

The National Emergencies Act (1976) and the International Emergency Economic Powers Act (1977) were enacted to address presidential powers in emergencies other than war. The latter grants the President various powers to regulate transactions in response to an "unusual and extraordinary threat" to U.S. national security, foreign policy, or economy, which originates, in whole or in substantial part, from outside the United States, including the authority to freeze foreign-owned property and assets under U.S. jurisdiction. In order to exercise the authority under the said law, the President declares a national emergency concerning the relevant threat. The legal structure is such that the National Emergencies Act provides the provisions for this declaration. The National Emergencies Act stipulates that "when the President declares a national emergency, he or she must specify the statutory authority for the specific measures to be implemented and submit it to Congress" (Section 301). It also provides that "Congress shall review the declaration every six months to determine whether to terminate it and that if Congress agrees to terminate the declaration, the national emergency declaration loses its effect regardless of the President's intent." (Section 202(c))

The President's authority during wartime is in place as one established by the War Powers Resolution of 1973. It imposes restrictions on the President's command authority, providing for efforts to consult Congress in advance, an obligation to report to Congress within 48 hours after taking action, and the necessity of congressional approval within 60 days, among other things.

Reconstructing Emergency Response in 21st Century

Presidential authority in emergencies has shifted toward a statutory framework, but the structure of the U.S. emergency legal system continues to evolve through trial and error. First, there was a shift in the government structural following the terrorist attacks on September 11, 2001.

Until 2001, U.S. counterterrorism efforts were divided into crisis management, which focused on preventive measures, and consequence management, which dealt with post-incident response. The former involved terrorism prevention led by the Federal Bureau of Investigation (FBI) while the latter focused on disaster response managed by the Federal Emergency Management Agency (FEMA). However, during the terrorist attacks, critical information that had been obtained in advance by the FBI and the Central Intelligence Agency (CIA) could not be shared within the government.

Furthermore, reflecting on the inadequate disaster response, President George W. Bush aimed to centralize the departmental structure involved in counterterrorism efforts. In January 2003, the Department of Homeland Security was established as the 15th department of the U.S. administration by integrating 22 government agencies, including the Coast Guard, the Bureau of Citizenship and Immigration Services, and FEMA. This new department became a massive agency with a workforce of 170,000 employees, headed by a Cabinet member.

The most significantly affected agency by the departmental reorganization was FEMA. It could not retain its status as an independent organization, and its personnel and budgetary powers were constrained⁴⁸.

In August 2005, during the natural disaster caused by Hurricane Katrina, which inflicted severe damage on Louisiana and other areas, it was pointed out that FEMA's inadequate response and the miscommunication among local governments, state governments and the federal government led to delays in the deployment of relief supplies and personnel, exacerbating the damage. One contributing factor was the Department of Homeland Security's counterterrorism-focused personnel policies, which resulted in the removal of staff with expertise in natural disaster response from key positions within FEMA. Therefore, in 2006, the Post-Katrina Emergency Management Reform Act was enacted, restoring FEMA's status as an independent organization and granting it centralized authority over preparedness, response, and regional recovery efforts. Additionally, FEMA was granted the authority to coordinate emergency response efforts among the federal government, state governments, local governments and private nonprofit organizations⁴⁹.

Except in times of war, the U.S. approach to emergency response is shifting toward a system where the federal, state and local governments emphasize coordination through FEMA as the central agency. This stands in contrast to Japan, where response authority tends to be centralized within the national government.

As a legal framework, there is a growing trend of statutory provisions granting special powers when the President declares a national emergency, now totaling approximately 120. As of 2024, the United States has more than 40 declared "national emergencies" in place⁵⁰. Furthermore, President Donald Trump, who took office in January 2025, is considering declaring a national emergency under the International Emergency Economic Powers Act as a basis for imposing uniform tariffs on various countries⁵¹. It has been pointed out that the designation of national emergencies risks becoming increasingly arbitrary.

Regarding war powers, President Barack Obama sought congressional authorization for the use of military force in 2013 against the Assad regime in Syria, which was continuing its crackdown on opposition forces during the protracted Syrian civil war. This move triggered renewed debate on how war powers are distributed between the President and Congress under the Constitution and the War Powers Resolution⁵².

⁴⁸ TAKEDA Yasuhiro, "Ronkyu: Nihon no kiki kanri taisei: Kokumin hogo to bosai wo meguru katto"

[Examination of Japan's crisis management system: Conflicts surrounding civil protection and disaster prevention], p. 68

⁴⁹ TAKEDA Yasuhiro, "Ronkyu: Nihon no kiki kanri taisei: Kokumin hogo to bosai wo meguru katto"

[Examination of Japan's crisis management system: Conflicts surrounding civil protection and disaster prevention], p. 71

⁵⁰ BRENNAN CENTER FOR JUSTICE, "Declared National Emergencies Under the National Emergencies Act"

[<https://www.brennancenter.org/our-work/research-reports/declared-national-emergencies-under-national-emergencies-act>]

⁵¹ "Trump mulls economic emergency declaration to back universal tariff plans: U.S. media reports," Japanese edition of Reuters' world news service, January 9, 2025

[<https://jp.reuters.com/business/GK3SN3ETSRITVD77JXFICUDN5M-2025-01-08/>]

⁵² KURITA Masahiro, "U.S. Authority for Military Deployment," Foreign Affairs & National Defense Division, Research and Legislative Reference Bureau, National Diet Library, October 2014 [https://dl.ndl.go.jp/view/download/digidepo_8779804_po_076505.pdf?contentNo=1]

(2) United Kingdom

The United Kingdom, which belongs to the Anglo-American legal system, does not have a written constitution and, like the United States, has recognized the state's authority to address emergencies as an "unwritten principle." Since World War I, the UK has transitioned to a statutory framework to clarify the executive branch of government's authority in emergencies. In the 21st century, the UK reorganized its emergency legal framework to enable rapid crisis response and address emerging threats such as terrorism and infectious diseases, enacting a new law that provides a unified definition of emergencies, including war.

Legislation on National Emergency Response Powers

In the UK, the general law positioned for emergencies is the Emergency Powers Act 1964. The Act is structured to integrate laws enacted since World War I.

In 1914, during World War I, the UK enacted the Defense of the Realm Act, granting the government the authority to issue emergency orders for the purpose of national defense and public safety. On the eve of World War II, the Emergency Powers Act of 1939 was enacted as one-year temporary legislation to declare war against Nazi Germany, referencing the aforementioned law. Subsequently, as the threat of German invasion of the British mainland grew, the Emergency Powers Act 1940 was enacted as temporary legislation, similar to the 1939 Act, and was extended until 1946.

For non-military emergencies, the Emergency Powers Act was enacted in 1920. The Act aimed to address growing social unrest following World War I as strikes, particularly among coal miners, became increasingly frequent. It stipulated that the government could declare a state of emergency in the name of the monarch in response to threats that disrupted the supply of food, water and fuel, obstructed transportation, or deprived society of essential elements of daily life.

The Emergency Powers Act 1964 incorporated parts of the Emergency Powers Act that had expired in 1946 into the Emergency Powers Act 1920. Section 1 stipulates that "the monarch may declare a state of emergency in the event of a collapse in the supply of food, water, fuel or light, or means of locomotion, thereby depriving the community of essentials of life."⁵³ The scope of application was expanded to include natural disasters and nuclear accidents. Section 2 provides for military mobilization, stating that "in case of national emergency, members of the armed forces may be temporarily engaged in agriculture and other essential work."⁵⁴

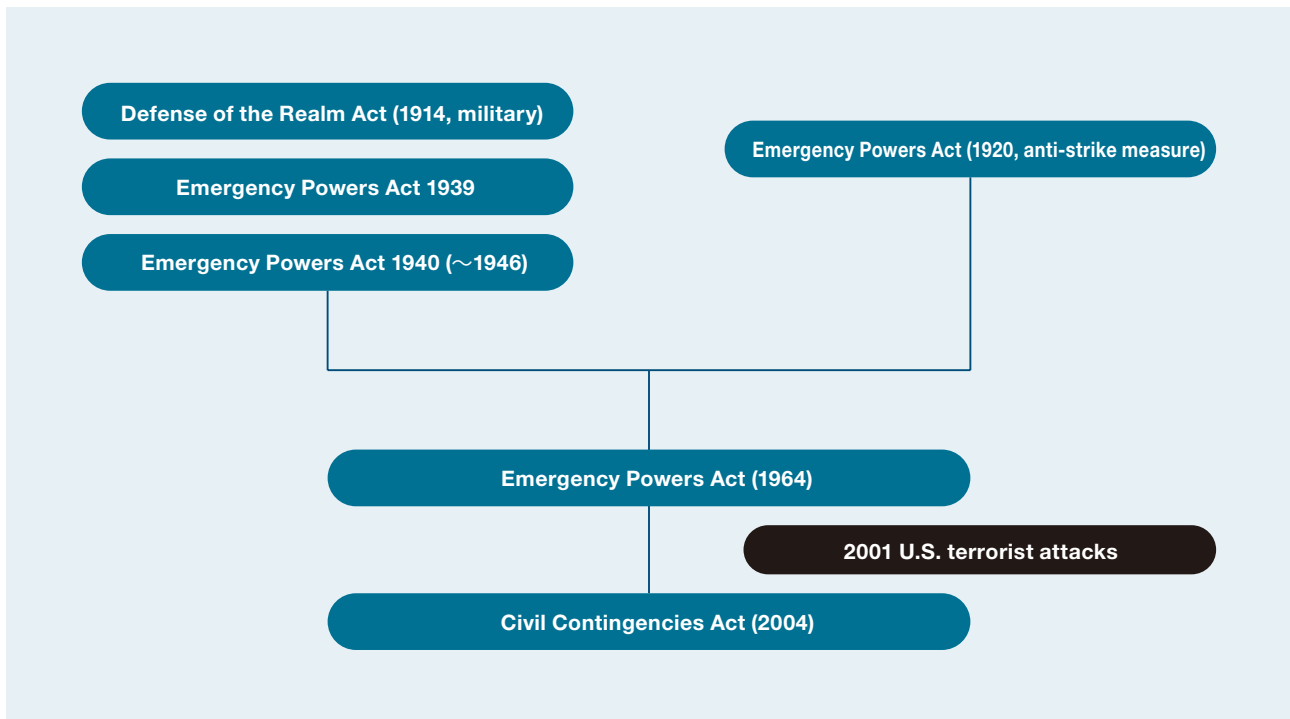
Reconstructing Emergency Response in 21st Century

The United Kingdom established new legislation supplementing the Emergency Powers Act 1964 In response to new threats such as the September 11, 2001, terrorist attacks in the United States. This aimed to clarify the duties and powers of central and local governments and ensure a swift response to all types of crises (see Figure 16).

⁵³ SHIMIZU Takao, "II. Kinkyujitai hōsei I. Igirisu" [II. Emergency legislation 1. United Kingdom], 'Shuyo koku ni okeru kinkyujitai e no taisho' [Response to emergencies in major countries]' (2003, Research and Legislative Reference Bureau, National Diet Library), pp. 40-42

⁵⁴ *Ibid.*, pp. 40-42

Figure 16: Integration & development of UK's emergency legislation



Source) Prepared by this author, based on Commission on the Constitution, House of Representatives, “*Hijo jitai to kenpo ni kansuru kisoteki shiryō*” [Basic material on emergency situations and the Constitution], etc.

In 2004, the Civil Contingencies Act was enacted as a law that defines the powers of the state in emergencies, anticipating a wide range of crises, from war and terrorist attacks to natural disasters and infectious diseases⁵⁵. The Act is composed of three parts: Part 1 sets out “the duty of local-level public bodies (such as local authorities) to ensure civil protection in response to emergencies of all scales”; Part 2 grants the central government “swift and robust regulatory powers in the event of larger-scale emergencies”; and Part 3 outlines “general provisions such as enforcement and scope of application.”⁵⁶

Emergencies are broadly classified into the following three categories (Part 2, Section 19 of the Act)⁵⁷:

- (a) an event or situation which threatens serious damage to human welfare in the United Kingdom or in a part or region,
- (b) an event or situation which threatens serious damage to the environment of the United Kingdom or of a part or region, or
- (c) war, or terrorism, which threatens serious damage to the security of the United Kingdom.

This part is formed in a two-tiered structure. In the event of an emergency, local governments and authorities are primarily responsible for the response. Only when the scale of damage is significant does the central government declare an emergency and respond by enacting emergency regulations⁵⁸.

⁵⁵ OKA Hisayoshi, “*Kinkyujitai ni sonaeta kokka kengen no kyōka eikoku 2004 nen minkan kinkyujitai hō*” [Strengthening national authority for emergencies: UK’s 2004 Civil Contingencies Act], “*Gaikoku no rippo 223*” [Foreign Legislation 223] (February 2005, Overseas Legislative Information Division, National Diet Library), p. 1

⁵⁶ *Ibid.*, p. 1

⁵⁷ *Ibid.*, p. 27

⁵⁸ *Ibid.*, p. 7

Emergency regulations under the Civil Contingencies Act are enacted by an Order in Council issued by the monarch. However, if a delay in the enactment process is anticipated, the regulations can be issued through consultation among senior ministers (the Prime Minister, principal Secretaries of State, and Commissioners of the Treasury), and subsequently submitted for parliamentary approval (Part 2, Section 20 of the Act)⁵⁹. If Parliament is adjourned or in recess, a request can be made to convene Parliament (Part 2, Section 28 of the Act)⁶⁰. Regulations expire within 30 days after parliamentary approval, but the central government has the authority to enact new regulations (Part 2, Section 26 of the Act)⁶¹. Furthermore, for regulations applicable to the devolved regions of Scotland, Northern Ireland and Wales, the central government's senior ministers as above must consult with the relevant local governments in advance. However, in cases of high emergency, prior consultation can be waived (Part 2, Section 29 of the Act)⁶².

On the other hand, the Act also specifies the authority of Parliament to prevent the abuse of executive powers by the government. It is stipulated that if the government submits regulations to Parliament and approval from both Houses (the House of Lords and the House of Commons) is not obtained within seven days, the regulations will lose their validity (Part 2, Section 27 of the Act)⁶³.

In response to the spread of COVID-19, the UK government determined that it did not constitute an emergency as defined by the Civil Contingencies Act and decided not to apply the Act, resulting in the virus spreading nationwide⁶⁴. As a result, it was assessed that the UK's legal framework did not necessarily lead to a swift crisis response, highlighting the challenges of emergency management.

(3) France

France is known as the first country in the world to codify the state's emergency response powers into law⁶⁵. In contrast to the United States and the United Kingdom, moreover, France has traditionally enshrined the state's emergency powers in its Constitution. Since the transition to the Fifth Republic in 1958, which was centered on the introduction of a presidential system, emergency response powers have been concentrated in the president. The French system is characteristic in that it has significantly stronger executive authority than in the United States and the United Kingdom. Such expansion of executive powers has sparked debate over its consistency with the Constitution, which upholds the respect for human rights.

⁵⁹ *Ibid.*, p. 8

⁶⁰ *Ibid.*, p. 32

⁶¹ *Ibid.*, p. 31

⁶² *Ibid.*, p. 32

⁶³ *Ibid.*, p. 31

⁶⁴ TANAKA Ryosuke, “*Eikoku ni okeru kinkyujitai hosei to guntai no kokunai doin, COVID-19 taio to EU ridatsu o jirei toshite*” [Emergency legislation and domestic deployment of the military in the UK: Cases of COVID-19 response and EU withdrawal], NIDS Commentary No. 122 (June 11, 2020, National Institute for Defense Studies), p. 3

⁶⁵ Commission on the Constitution, House of Representatives, “*Hijo jitai to kenpo ni kansuru kisoteki shiryō*” [Basic material on emergency situations and the Constitution] (February 2003), p. 25

Perspective on Changing Governing System/Constitution & Emergency Powers

France's emergency legislation developed dramatically after World War II.

For France's Fourth Republic, which adopted a parliamentary democracy, response to independence movements in former colonies was one of major challenges in the 1950s. In April 1955, the government enacted the "State of Emergency Act," primarily to address the Algerian independence movement, defining the state's powers in emergencies.

The Act classifies emergencies into two types:

- an emergent crisis resulting from a serious violation of public order, and
- situations that, due to their nature and gravity, are considered public disasters.

(Article 1)

The former resembles a state of martial law during wartime, while the latter primarily anticipates large-scale natural disasters. If either of these conditions is met and an emergency declaration is issued by the government, it becomes possible to implement coercive measures, including the restriction of personal rights.

Furthermore, in 1958, General Charles de Gaulle, who had led the resistance against the Nazis during World War II, returned to politics and sought to establish a powerful state led by the president. He secured the approval of a new constitution, which involved a change in the national system, through a referendum.

With the transition to a presidential system, the state's powers in emergencies were explicitly outlined in the Constitution, and the president's emergency powers (Article 16) were newly established. The article states that if the country's independence, territorial integrity, or the fulfillment of international agreements is under serious and imminent threat, and the normal functioning of the Constitution is disrupted, the president may issue a state of emergency declaration and take necessary measures. It is stipulated that the Prime Minister, the heads of both houses of parliament, and the Constitutional Council⁶⁶ may only be consulted by the President, and they do not have the authority to review the validity of a state of emergency declaration. After 30 days from the declaration of a state of emergency, both houses of parliament (the National Assembly⁶⁷ and the Senate⁶⁸) may refer the issue of whether the conditions for declaring a state of emergency are still met to the Constitutional Council. However, parliament itself does not have the authority to decide on the extension of a state of emergency. Thus, the provisions of Article 16 strongly affirm the President's authority to implement measures.

On April 23, 1961, a rebellion broke out in Algeria, and a high-ranking French government official was taken hostage. In response, President de Gaulle declared a state of emergency under Article 16. However, only one high-ranking official of the mainland government was taken hostage by the rebels and state institutions were still functioning normally. Therefore, the declaration of a state of emergency raised questions about Article 16 of the Constitution for future administrations. In 1993, President Francois Mitterrand submitted a constitutional amendment to parliament to abolish Article 16, stating that "no other democratic country in Europe has a provision that allows such a concentration of power

⁶⁶ The body responsible for constitutional review is the Constitutional Council, whose members (nine in total) are appointed, three each by the President, the Speaker of the National Assembly, and the President of the Senate. While many democratic countries grant constitutional review powers to the judiciary and set legal qualifications such as years of judicial experience for judges, France's Constitutional Council has no specific eligibility requirements for its members.

⁶⁷ Equivalent to Japan's House of Representatives, membership is 577. Elected through single-member district system

⁶⁸ Equivalent to Japan's House of Councilors, membership is 348. Elected through an indirect election, where voters are local council members, rather than by direct popular vote.

in contradiction to fundamental principles.” The amendment was not approved, but subsequent administrations have also refrained from invoking Article 16⁶⁹. Even during major crises such as the 2015 Paris terrorist attacks, which claimed over 100 lives, a state of emergency was not declared under Article 16. In the history of the Fifth Republic, President de Gaulle remains the only leader to have declared a state of emergency under Article 16 of the Constitution⁷⁰.

Characteristics of Emergency Response in 21st Century

As countries review the application of constitutional emergency provisions and laws to address new threats such as terrorism in the 21st century, France has sought to strengthen its crisis response by applying the 1955 State of Emergency Act to various situations. The Act can be applied to a wide range of emergencies, from wartime crises to natural disasters. Compared with Article 16 of the Constitution, the declaration of a state of emergency involves not only the President but also the Cabinet and regional governors. Therefore, it offers the advantage of allowing the government to present a united effort in addressing the crisis. The main cases of state of emergency declarations under this law since 2000 are the following two incidents:

In October 2005, following the deaths of two immigrant youths who were electrocuted at a power substation while being chased by police in the suburbs of Paris, riots calling for the elimination of prejudice and discrimination against immigrants spread across various regions. On November 8, President Jacques Chirac declared a state of emergency under the 1955 State of Emergency Act and, by administrative orders from Prime Minister Dominique de Villepin, coercive measures, such as a curfew, were enforced until January 2006.

On November 13, 2015, a series of coordinated terrorist attacks took place in the capital of Paris, where multiple groups, believed to be fighters from the Islamic State (ISIS) extremist group, carried out shootings and bombings at several locations simultaneously, resulting in 130 deaths. President Francois Hollande immediately declared a state of emergency under the 1955 State of Emergency Act. To apprehend surviving perpetrators and prevent further attacks, administrative and police powers were strengthened, including the prohibition of gatherings and warrantless house searches. As a result, the state of emergency remained in effect for an unusually long period, lasting until November 2017. According to the French Ministry of the Interior, house searches were carried out at a total of 4,457 locations under the declaration, and 752 individuals were placed under house arrest. Additionally, 625 weapons were seized, and 19 religious establishments promoting extremist ideologies were shut down⁷¹.

The “Public Health Emergency Act,” enacted in 2020 to address COVID-19, also follows the procedures of the State of Emergency Act for declaring a state of emergency and implementing coercive measures.

However, the repeated application of the State of Emergency Act and the enactment of new laws based on this Act have raised concerns from the perspective of respecting fundamental human rights. To date, the Constitutional Council has not issued any judicial rulings invalidating the effectiveness of state of emergency declarations or coercive measures under the State of Emergency Act, but debate has been continuing concerning the balance with respect for human rights.

⁶⁹ MIZUSHIMA Asaho, “*Sekai no yuji hosei wo miru*” [Examining emergency legislation around the world] (Horitsu Bunka Sha, 2003), pp. 109-110

⁷⁰ *Ibid.*, p. 106

⁷¹ Mainichi Shimbun, “France’s State of Emergency Declaration,” December 31, 2017, ()

(4) Germany

Like France, Germany explicitly stipulates the state's powers in emergencies in its constitution. The emergency provisions in the Basic Law of Germany (equivalent to the constitution) were developed over nearly a decade after Germany's defeat in World War II. After the experience of the abuse of emergency provisions in the Weimar Constitution by the Nazis, the emergency provisions in the Basic Law are characterized by detailed categorization of the definition of an emergency and the roles of the federal and state governments in such situations, aiming to prevent any abuse of power by the state.

Changes in Approach to Emergency Situations

Germany, forced to start anew as a divided nation after its World War II defeat, faced strong resistance from the public to explicitly specify the state's powers in emergencies during the drafting of the Basic Law for the Federal Republic of Germany (former West Germany), despite joining the democratic bloc. This was because the emergency provisions in the Weimar Constitution had led to the destruction of democracy and human rights protections.

Article 48 of the Weimar Constitution stated that “when a serious disturbance or threat to public safety and order occurs, the President may take the necessary measures to restore public safety and order, and if necessary, intervene with the use of force.”⁷² In January 1933, when Adolf Hitler became Chancellor, he requested the President to apply the emergency powers under Article 48 for the “protection of the nation and the state,” and had them invoked. Subsequently, numerous decrees were issued based on the same article, and the majority of parliamentary legislative functions were replaced by government orders. As a result, it led to the collapse of constitutionalism and democracy⁷³.

In 1960, the federal government proposed a constitutional amendment concerning emergency situations. However, the amendment, modeled after Article 48 of the Weimar Constitution, granted the federal government the authority to issue decrees replacing laws and the power to restrict individual rights during emergencies. As a result, it was rejected by parliament⁷⁴.

Subsequently, a new constitutional amendment proposal was introduced after long-time, extensive discussions led by the country's two major parties, the Christian Democratic Union/Christian Social Union (CDU/CSU) and the Social Democratic Party (SPD). In 1968, the amendment incorporating emergency provisions was approved. The emergency provisions have remained in effect even after the reunification of East and West Germany in 1990.

The following two key features of the new emergency provisions, reflecting lessons learned from the Weimar Constitution, can be highlighted.

- **Even in a state of emergency, the federal government is not granted unilateral authority to issue orders in a package. Instead, the division of responsibilities with state governments is clearly**

⁷² Commission on the Constitution, House of Representatives, “*Hijo jitai to kenpo ni kansuru kisoteki shiryō*” [Basic material on emergency situations and the Constitution], p. 20

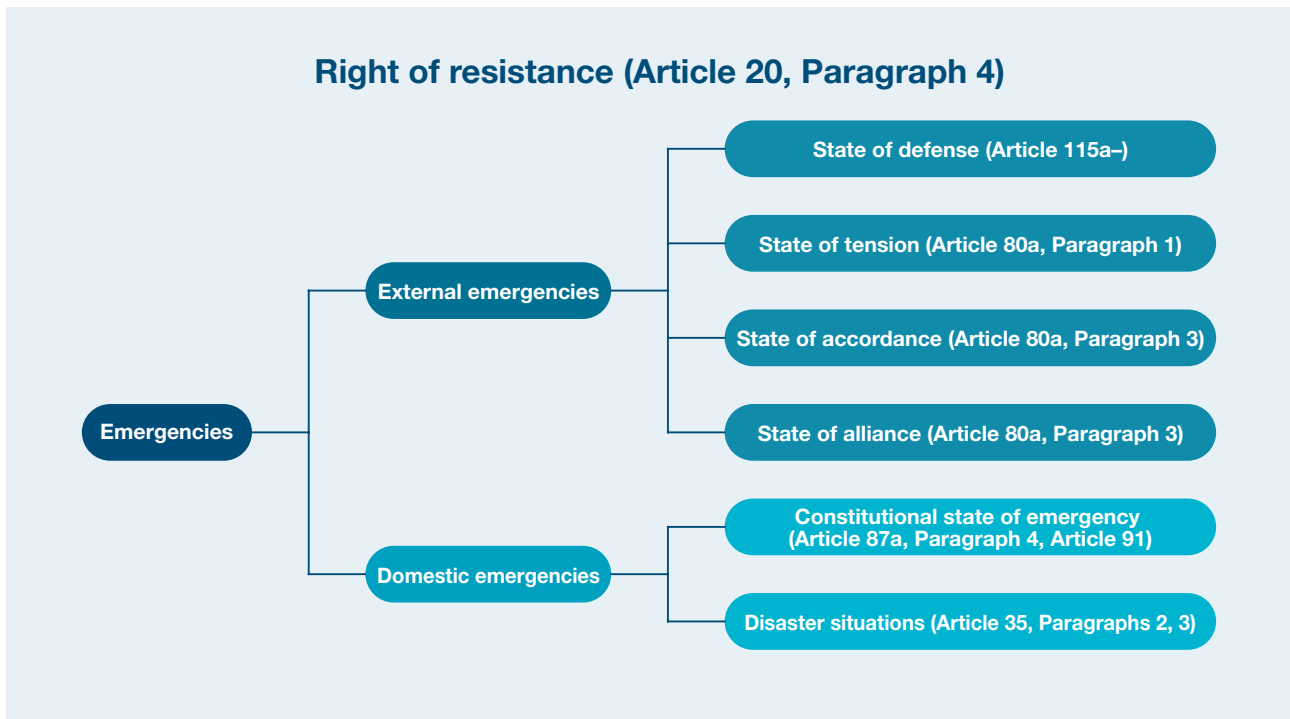
⁷³ YAMAOKA Norio, “*Doitsu renpo kyowakoku kihonho ni okeru kinkyujitai joko*” [Emergency clause in the Basic Law of the Federal Republic of Germany], “Reference,” Vol. 786 (Research and Legislative Reference Bureau, National Diet Library, 2016), p. 60

⁷⁴ MIZUSHIMA Asaho, “*Sekai no yuji hōsei wo miru*” [Examining emergency legislation around the world], p. 89

defined, and the Federal Diet (Bundestag) is given oversight authority over federal government measures.

- Rather than comprehensively defining a state of emergency, it is categorized and defined in detail according to each specific state.

Figure 17: Classification of emergency situations under German Basic Law



Source) Commission on the Constitution, House of Representatives, “*Hijo jitai to kenpo ni kansuru kisoteki shiryō*”
[Basic material on emergency situations and the Constitution]

As shown in Figure 17, emergency situations are broadly classified into “domestic emergencies” arising from internal factors and “external emergencies” caused by foreign factors. In the former case,

- disaster situations (Article 35) and
- emergency endangering the existence of a state (Articles 87 and 91)

are defined. In countries that have introduced emergency provisions in their constitutions, most assume external factors, namely war, as the primary scenario. Germany is said to be the only country that explicitly includes natural disasters as an emergency situation⁷⁵.

Article 35 and Article 91 precisely define the roles of the state and federal governments in internal emergencies. Primary responsibility for responding to emergencies lies with a relevant state government. If a single state is unable to handle the situation, it can request assistance from other states or call for the deployment of the Federal Border Guard (Bundesgrenzschutz) or the military through the federal government. However, the deployment can be halted at the

⁷⁵ Institute of Disaster Area Revitalization, Regrowth and Governance, Kwansei Gakuin University, “*Kinkyū jitai joko no naniga mondai ka*”
[What is the problems with emergency provisions?] (Iwanami Shoten, 2016), p. 26

request of the Federal Council (Bundesrat)⁷⁶.

External emergencies assume attacks from foreign countries and, depending on the level of emergency, are classified⁷⁷ into the following four categories.

- **State of defense** : Defines armed external attacks (Article 115a).
- **State of tension** : Assumes entering a state of preparedness for a state of defense (Paragraph (1), Article 80a).
- **State of approval** : Assumes the possibility of escalating into a Crisis Situation (Paragraph (3), Article 80a).
- **State of alliance** : Assumes the necessity of measures similar to those for a state of tension for fulfilling alliance obligations with other countries (Paragraph (3), Article 80a).

The determination of a state of defense is made by the Bundestag with the consent of the Bundesrat (Paragraph (1), Article 115a). If an emergent situation arises and the Bundestag or the Bundesrat cannot be convened or muster a quorum due to dissolution, etc., the Joint Committee, comprising members from both chambers, is granted this decision-making authority (Paragraph (2), Article 115a).

In this way, Germany's emergency provisions classify situations in more detail compared with those of other countries. Furthermore, the roles of the state and federal governments are precisely defined, and the parliamentary authority of oversight over federal measures is carefully stipulated according to the nature of the situation concerned. Furthermore, all Germans are granted the right to resist those who seek to eliminate the free and democratic order established by the Basic Law if there are no other means available (Article 20). The emergency provisions of Germany's Basic Law, which aim to thoroughly eliminate the possibility of the central government abusing its powers during a state of emergency, have been praised by the global legal community as the "ultimate form of institutionalized emergency powers."⁷⁸

New Threats & Limits to "Ultimate Form of Emergency Powers"

The 2001 terrorist attacks in the United States cast doubt on the definition of emergency situations under the German Basic Law. This is because terrorist attacks carried out by immigrants posing as law-abiding citizens raise uncertainty about whether they fall under the federal military's national defense against external threats or civilian protection by the states in response to internal threats, making it unclear which crisis response framework applies⁷⁹.

In January 2003, furthermore, an incident reminiscent of the 9/11 attacks in the United States occurred in Germany.

A hijacked light aircraft approached a cluster of high-rise buildings in Frankfurt, Germany's economic hub. The perpetrator threatened to crash into the European Central Bank building in the city, forcing many people to evacuate from the skyscrapers. Two Phantom fighter jets of the German Air Force were scrambled to intercept the hijacked aircraft, which landed at Frankfurt Airport two hours later. The culprit was a student with a history of mental illness and was

⁷⁶ The second chamber of the Bundestag, composed of representatives from the state governments. Refer to "[Politics of Germany](#)," Embassy of the Federal Republic of Germany in Japan

⁷⁷ Commission on the Constitution, House of Representatives, "*Hijo jitai to kenpo ni kansuru kisoteki shiryō*" [Basic material on emergency situations and the Constitution], pp. 21-22

⁷⁸ MIZUSHIMA Asaho, "*Sekai no yuji hōsei wo miru*" [Examining emergency legislation around the world], p. 87

⁷⁹ TAKEDA Yasuhiro, "*Ronkyū: Nihon no kiki kanri taisei: Kokumin hōgo to bosai wo meguru katto*" [Examination of Japan's crisis management system: Conflicts surrounding civil protection and disaster prevention], pp. 84-85

immediately arrested⁸⁰.

The point of debate on the incident was the deployment of the fighter jets, which was carried out based on the German Air Force's on-site judgment. According to the Basic Law of Germany, "Apart from defense, the Federal Armed Forces may be employed only to the extent expressly permitted by this Basic Law" (Paragraph (2), Article 87a), thus limiting the military's deployment. On the other hand, Paragraph 2 of Article 35 stipulates mutual assistance in duties, envisaging cooperation between the police and the military in responding to emergencies. The hijacking incident sparked debate over which type of emergency it fell under, as well as controversy over whether the fighter jet deployment violated the Basic Law or was permissible under the provision of mutual assistance in duties⁸¹.

The German government at the time (a left-wing coalition government of the SPD and the Green Party), recognizing that the Basic Law's emergency provisions and the laws based on it were not necessarily sufficient to counter terrorism, decided that a constitutional amendment was not necessary. Instead, they enacted the Aviation Security Act, which permitted the deployment of the Federal Armed Forces for counterterrorism operations. Article 14 of the law explicitly stipulates the deployment of fighter jets against hijacked aircraft, granting the authority to issue warning shots, enforce forced landings, and ultimately neutralize the hijacked aircraft. However, then President Horst Köhler⁸² questioned the constitutionality of the law, which was enacted without amending the Basic Law, and urged the government to seek a ruling from the Constitutional Court. In 2006, the court ruled that the provision in the Aviation Security Act allowing the Federal Armed Forces to use force was unconstitutional, rendering Article 14 invalid⁸³.

Like Japan, Germany shares a history as a defeated nation and has established emergency provisions that are even regarded as the "perfected form of emergency powers." However, the domestic deployment of the military remains a sensitive issue. Discussions continue regarding the state's authority in emergencies to address new threats that have emerged since the 21st century.

⁸⁰ MIZUSHIMA Asaho, "*Sekai no yuji hosei wo miru*" [Examining emergency legislation around the world], p. 55

⁸¹ *Ibid.*

⁸² The German Federal President's powers, defined in the Basic Law as "neutral authority," are limited to ceremonial and formal duties, such as convening the Bundestag and representing Germany as the head of state.

⁸³ TAKEDA Yasuhiro, "*Ronkyu: Nihon no kiki kanri taisei: Kokumin hogo to bosai wo meguru katto*" [Examination of Japan's crisis management system: Conflicts surrounding civil protection and disaster prevention], p. 88

3. Definitions of Terms Related to State of Exigency, State of Emergency & Emergency Provisions

When examining emergency provisions in the constitutions of various countries, terms such as a “state of exigency” and a “state of emergency” frequently appear in both the clauses themselves and the legislative process. There is the issue of translation as well, but how should these terms be defined individually? In this report, the exercise of state authority under exceptional circumstances -- different from national powers in normal times -- is referred to as “state authority in a state of emergency.” However, in Japan, this authority is sometimes referred to as “national emergency powers.”

However, “state authority in a state of emergency” and “national emergency powers” are not identical. In Japanese constitutional studies and discussions, there are often cases where debate intended to address “*kinkyu jitai*” (a state of exigency requiring immediate action or response) actually focuses on “*hijo jitai*” (a state of emergency of critical nature), or where emergency provisions and national emergency powers are confused. The ambiguous use of terminology frequently leads to confusion in discussions.

How should Japan handle emergency provisions? Before discussing whether to introduce emergency provisions, it is crucial to first define the terms clearly to facilitate constructive debate and identify Japan’s specific challenges.

(1) Definition

The definition of national emergency powers by constitutional scholar Nobuyoshi Ashibe is well known and frequently cited. National emergency powers as defined by him refer to:

“(1) In emergency situations such as war, internal conflict, economic crises or large-scale natural disasters, (2) where the governing structure in normal times is insufficient to respond, (3) in order to maintain the existence of the state, (4) allowing state authority to take emergency measures by temporarily suspending the constitutional order (including human rights protections and the separation of powers).”⁸⁴

Analyzing this definition, (1) lists specific examples of “emergency situations” as described in (2). So, how is an “emergency situation” defined? The key lies in the expression “governing structure in normal times.” Even if special laws are created and implemented to deal with a given situation, it follows that the situation is an “emergency” and not a “crisis” if it is carried out under the “governing structure in normal times” and constitutional controls function adequately⁸⁵. It is the position that a “state of exigency,” which “broadly includes circumstances requiring response different from that in the normal legal system/legal operations,” should be distinguished from a “state of emergency,” which refers to “a level of situation that cannot be handled by the governing structure in normal times.” In other words, a state of emergency is severer than a state of exigency and can be understood as a crisis threatening the survival of the nation. According to this usage, the invocation of national emergency powers is limited to a “state of emergency.” Conversely, even if “measures

⁸⁴ ASHIBE Nobuyoshi, “*Kenpogaku I: Kenpo soron*” [Constitutional law I: General theory of the constitution] (Yuhikaku, 1992), p. 65 The numbers (1) - (4) in the definition are inserted by this author. An almost identical definition is given in ASHIBE Nobuyoshi, “*Kenpo*” [Constitution], 8th edition (revised by TAKAHASHI Kazuyuki) (Iwanami Shoten, 2023), p. 402

⁸⁵ AIKYO Koji, “Emergency Clause as Constitutional Amendment Issue,” *Ronkyu Jurist*, No. 15 (2015), pp. 142-143 Also refer to TAKADA Atsushi, “What State of Emergency Is — Perspective from Constitutional Studies,” *Ronkyu Jurist*, No. 21 (2017), pp. 4-5

to be taken differ from the legal system and operations in normal times,” they fall under responses taken in a “state of exigency” as long as they do not reach a level that suspends the constitutional order, and must be distinguished from the issue of national emergency powers. Therefore, the state of exigency declarations and measures implemented by various countries during the spread of COVID-19 are not considered the issue of national emergency powers.

Indeed, in the above-mentioned definition of national emergency powers, point (3) refers to the purpose of exercising such powers, and Ashibe’s definition limits it to ‘the survival of the state. Furthermore, point (4) describes the content or legal effect of national emergency powers, defining it not as a “limitation” of the constitutional order but as a “suspension” of it.

What is essential from a constitutional perspective is that the fundamental issue is not just individual emergency provisions but rather the question of whether the measures to be taken in such situations should be explicitly stipulated in the constitution in advance. National emergency powers can be defined as a response to the existential question of how to address situations where constitutionally designated institutions can no longer function properly⁸⁶.

Clarification of Confusion in Discussions

In this way, preparing constitutional provisions in anticipation of an “emergency” and deciding whether to recognize “national emergency powers” are fundamentally separate issues. In the previous section, we reviewed the history of emergency clauses and emergency legislation in major democratic countries. In these countries, discussions regarding “state of emergency,” “emergency power” and “emergency provisions” (in English), as well as *pouvoirs exceptionnels* (exceptional powers in French), are strictly distinguished from national emergency powers. In Japan, on the other hand, when political parties propose emergency clauses as part of draft constitutional amendments or when discussions on emergency clauses are called for in the National Diet, criticism is often raised that “the introduction of national emergency powers would lead to the abuse of power by the state.”⁸⁷ Conversely, it is also common for individuals or organizations proposing emergency clauses to justify their introduction by asserting that “national emergency powers are inherently recognized as a natural right of the state.” Due to these circumstances, Japanese constitutional scholarship has classified perspectives on response to emergencies into the following three main theories:

- the view that the Japanese Constitution deliberately does not recognize national emergency powers,
- the view that the Constitution does not recognize national emergency powers but considers this a flaw that should be amended, and
- the view that, while the Constitution does not explicitly recognize national emergency powers, they can be justified based on natural law.

However, as seen in the history of various countries, the definitions of emergency provisions and national emergency powers are not identical.

Therefore, a classification has emerged that refers to national emergency powers in their true sense as “genuine national

⁸⁶ OISHI Makoto, “Formation of Constitutional System” (Shinzansha Publisher Co., 2021), pp. 72-73

⁸⁷ For example, the Japan Federation of Bar Associations criticizes the proposed introduction of emergency clauses in its opinion statement, titled “Opposition to the Establishment of Emergency Clauses (National Emergency Powers) in the Japanese Constitution” (February 17, 2017), equating such clauses with national emergency powers as indicated in the title.

emergency powers” while situations that do not reach this level are referred to as “non-genuine national emergency powers.” “Non-genuine national emergency powers” refer to “(1) cases where war, internal conflict, or large-scale natural disasters occur, (2) making it difficult to protect citizens under laws applicable in peacetime, (4) thereby granting state institutions such as the legislature and executive branch exceptional powers different from those in peacetime (3) in order to protect citizens and maintain constitutional order.” If the national emergency powers that have been debated or proposed by legal scholars and certain political parties are understood as this “non-genuine national emergency power,” it may help prevent confusion in discussions by avoiding the mix-up of emergency provisions and national emergency powers⁸⁸.

In this report, the provisions that grant powers different from those in normal times during an emergency are defined as “emergency provisions,” and the situation that meets the requirements for activating these provisions is defined as an “emergency.” Following this definition, the next section will discuss what specifically constitutes an “emergency” and what legal responses are currently anticipated under existing laws, what issues arise from these responses and how they should be addressed, and how the Constitution should be structured in relation to these measures.

(2) Global Perceptions of Emergency Provisions & Debate in Japan

Understanding Current State of Emergency Provisions via Data

The movement to introduce emergency provisions into constitutions or basic laws began with the French Constitution (1795), followed by the Spanish Constitution (1808). Subsequently, it spread to Latin American countries⁸⁹ and then worldwide, being widely incorporated into the constitutions of former colonies that gained independence after 1950, and of the newly independent states that followed the collapse of the Soviet Union in the 1990s. These emergency provisions stipulate in the constitution that under what circumstances an emergency can be declared or approved, who has the authority to do so, and what exceptional powers, not permitted under normal circumstances, are granted to whom. Specifically, these provisions are supposed to address the following six questions.

- What are the conditions necessary for an emergency situation?
- Who has the authority to declare a state of emergency?
- Who has the authority to declare the end of the state of emergency?
- Who has the authority to oversee the legality of measures used during the emergency?
- Who exercises the emergency powers?
- What (additional) powers are given to the emergency government during a state of emergency?⁹⁰

As of 2013, approximately 90% of the world’s constitutions, or those of 171 countries, contain provisions for emergency powers. In the 38 member countries of the Organization for Economic Cooperation and Development (OECD), 30 countries (79%) have emergency provisions while 8 countries (21%) do not⁹¹. This fact suggests that, globally, establishing emergency provisions in constitutions or basic laws is considered “the rule, not the exception.”

⁸⁸ AKASAKA Masahiro, “Current Status of Debate on National Emergency Powers & Challenges,” *Kenpo Mondai* [Constitutional Issues] (2022), p. 16

⁸⁹ Christian Bjørnskov & Stefan Voigt, *The Architecture of Emergency Constitutions*, 16 INT’L J. CONST. L. 101, 104 (2018).

⁹⁰ See footnote 81.

⁹¹ KOSHIDA Takao, “Constitutional Emergency Provisions in Foreign Countries,” Research and Legislative Reference Bureau, National Diet Library, National Diet Library, September 2023 [https://dl.ndl.go.jp/view/download/digidepo_12998127_po_202301a01.pdf?contentNo=1]

Collapse of Nazi Germany

An often cited case that has significantly influenced, and continues to influence, the debate on the introduction of emergency provisions, including in Japan, is the rise of the Nazis in pre-World War II Germany and the emergency powers established by the Weimar Constitution (Article 48) at that time. In January 1933, when Adolf Hitler became Chancellor, he requested the President to apply the emergency powers under Article 48 for the purpose of “protecting the nation and the state,” and had them invoked.

In Nazi Germany, the history of the abuse of state powers during a state of emergency led postwar countries, including Germany and Japan, to engage in extensive discussions and considerations on how to define emergency provisions in their constitutions or basic laws. Between foreign countries, including Europe, and Japan, there are contrasting differences in how the lessons of abuse are taken into account when it comes to emergency provisions.

Europe: How to regulate emergency provisions to prevent the abuse of state power during emergencies.

Japan: Emergency provisions are unnecessary as they could lead to cases like Nazi Germany and contradict constitutionalism.

Current Europe

The basic approach to emergency provisions in Europe is outlined by the European Commission for Democracy through Law (commonly known as the Venice Commission⁹²), an advisory body on constitutional matters within the Council of Europe⁹³ (CoE), which has provided opinions on how emergency provisions should be framed.

The Commission has produced over 1,000 opinions and reports to date and, in its 2016 report titled “The Rule of Law Checklist,” it also examines emergency provisions. This is a detailed list created as a reference to assess whether the “rule of law” is properly established. In the section on “exceptions in emergency situations,” it states the following:⁹⁴

- Are exceptions in emergency situations provided for by law?
- Are there specific national provisions applicable to emergency situations (war or other public emergency threatening the life of the nation)?
- Are derogations to human rights possible in such situations under national law?
- What are the circumstances and criteria required in order to trigger an exception?

⁹² The organization consists of a total of 62 member countries, including 47 European nations and 15 non-European states, with Japan also participating as an observer. The members of the Venice Commission are appointed by the member countries (one commissioner and one deputy commissioner) and consist of university professors of public law and international law, supreme or constitutional court judges, parliamentarians, and public officials from various countries (with a 4-year term), but they act in their personal capacity. YAMADA Kunio, “Constitutional Reform Support Activities of Council of Europe’s Venice Commission: European Standards of Constitutionalism,” *Reference* 57 (Vol. 12) (2007), pp. 45 and onwards; TERATANI Koji, “Europe Beyond Europe: Universal Development of Judicial Dialogue by Venice Commission,” *Horitsu Jiho (Law Journal)* 93 (Vol. 4) (2021), pp. 63 and onwards, etc.

⁹³ An organization established in 1949 after World War II, aimed at promoting the three values of human rights, democracy and the rule of law. It was established after World War II with the aim of rebuilding Europe’s political systems by promoting these three values shared across Europe. It is a separate organization from the European Union (EU) and, currently, 46 countries are members. Japan acquired observer status in 1996 and has been participating in the Council’s activities. Please refer to the website of the Consulate General of Japan in Strasbourg. https://www.strasbourg.fr/emb-japan.go.jp/itpr_ja/ce-top.html#:~:text=%E6%AC%A7%E5%B7%9E%E8%A9%95%E8%AD%B0%E4%BC%9A%EF%BC%88%E4%BB%A5%E4%B8%8BCoE,%E5%BD%93%E5%88%9D%E3%81%AE%E7%9B%AE%E7%9A%84%E3%81%A7%E3%81%97%E3%81%9F%E3%80%82

⁹⁴ Venice Commission, Rule of Law Checklist, DL-AD(2016)007rev <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)007-e)>

- Does national law prohibit derogation from certain rights even in emergency situations?
- Are derogations proportionate? That is, limited to the extent strictly required by the exigencies of the situation, in duration, circumstance and scope?
- Are the possibilities for the executive to derogate from the normal division of powers in emergency circumstances also limited in duration, circumstance and scope?
- What is the procedure for determining an emergency situation? Are there parliamentary control and judicial review of the existence and duration of an emergency situation, and the scope of any derogation thereunder?

This checklist shows that defining exceptions in emergency situations through “law” is regarded as a requirement of the “rule of law” in Europe.

The question arises as to what is meant by “law” as referred to in the checklist. In this regard, a report titled “Emergency Powers”⁹⁵ prepared by the Venice Commission in 1995 provides recommendations, clearly stating: “The emergency situations capable of giving rise to the declaration of states of emergency should clearly be defined and delimited by the constitution.” The Commission has repeatedly made clear that it is desirable for the rules regarding states of emergency to be stipulated in the constitution or in a fundamental law. In an interim report published in 2020, for example, it states: “The declaration of a state of emergency is subject to the rules enshrined in the domestic legal order. “The rules must be clear, accessible and prospective . “The basic provisions on the state of emergency and on emergency powers should ideally be included in the Constitution, including a clear indication of which rights can be suspended and which rights do not permit derogation. “This is necessary because emergency powers usually restrict basic constitutional principles, such as fundamental rights, democracy and the rule of law.”⁹⁶

(3) Design of Emergency Provisions

Anticipated Emergency Situations

According to statistics from the Comparative Constitutions Project (CCP), a U.S.-based nonprofit organization that conducts comparative studies of constitutions around the world, states of emergency anticipated in the constitutions or basic laws of various countries can be broadly classified into six categories: (1) war/invasion, (2) domestic security, (3) large-scale disasters, (4) general danger, (5) economic crisis, and (6) constitutional system/order crisis. In the 1950s, constitutions mentioned only one of the six types of emergencies listed above on the average. However, by 2011, the average number of emergency types specified in constitutions had increased to 1.67. There is a tendency to explicitly specify approximately two types of emergencies in constitutions. As of 2011, the proportion of constitutions specifying each type of emergency was as follows: (1) War/Invasion 48.6%, (2) domestic security 38.8%, (3) natural disasters 26.2%, (4) general danger 25.7%, (5) economic crisis 7.1%, (6) constitutional system/order crisis 2.7%.

The 2020 report by the Venice Commission also identifies natural disasters, civil unrest, epidemics, massive terrorist

⁹⁵ Venice Commission, Emergency Power, CDL-STD(1995)012
[[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD\(1995\)012](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD(1995)012)]

⁹⁶ 18 Venice Commission, Interim Report, On the Measures Taken in the EU Member States as a Result of the Covid-19 Crisis and their Impact on Democracy, the Rule of Law and Fundamental Rights, CDL-AD(2020)18
[[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)018-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)018-e)]

attacks, economic crises, and wars as potential states of emergency. It explains that most past instances of the use of emergency powers have involved armed conflicts, massive terrorist attacks, natural disasters, or epidemics.

Authority determining state of emergency

Who Declares It?

The most common case is the delegation of such authority to the head of state. As of 2011, out of 159 constitutions that include emergency provisions, 129 grant the power to declare a state of emergency to the head of state. Although fewer in number, there are also constitutions that grant this authority to collegial bodies such as the cabinet or the legislature.

Who approves it?

Regarding the approval of a state of emergency declaration, 39% of constitutions designate the legislature (in unicameral systems) or the lower house (in bicameral systems), 19% designate both houses (in bicameral systems), and 14% designate the government or the cabinet. The timing and effect of approval vary. For example, some constitutions, such as the Spanish Constitution (Article 116.3) and the Brazilian Constitution (Article 137), require prior approval by the legislature, while others, including the South Korean Constitution (Article 76.3) and the Polish Constitution (Article 231), require ex post facto approval by the legislature. Russia's Constitution (Article 88) merely requires notification to the legislature.

Duration of emergency

Regarding the duration of a state of emergency, as seen in the emergency provisions of the U.S., the U.K., Germany and France, there are not a few examples where a time limit is set by the constitution or law. The Venice Commission report states that: (1) A state of emergency should be declared for a limited period; (2) any extension of the period should be made with parliamentary approval; (3) such approval may be required to be granted by a qualified (special) majority.

In addition, when declaring a state of emergency, there is a growing trend toward strengthening parliamentary oversight, as seen in the U.S. National Emergencies Act and the War Powers Resolution. This is also related to the duration of a state of emergency and the procedures for its termination. The Constitution of South Africa (Section 37 2. b.) also sets a validity period for a state of emergency declaration and stipulates that the declaration will lose its effect if parliamentary approval is not obtained within a certain period. As of 2009, 35.9% of constitutions included provisions stipulating that a state of emergency declaration would lapse without parliamentary approval.

Distribution of powers during state of emergency

Active Distribution of Powers

It is common to grant the executive branch the authority to issue decrees on matters that, under normal circumstances, can only be established by law. Article 49(1) of the Hungarian Constitution stipulates that various powers are concentrated in the National Defense Council, which consists of the President, the Speaker of the parliament, the leaders of parliamentary groups, the Prime Minister, other ministers, and the Chief of General Staff.

Passive Distribution of Powers

This refers to the establishment of powers that must not be exercised or actions that must not be permitted, even during a state of emergency. The French Constitution (Article 16, Paragraph 4), the Portuguese Constitution (Article 172, Paragraph 1), and the Romanian Constitution (Article 89, Paragraph 3) prohibit the dissolution of parliament during a state of emergency. Moreover, the Romanian Constitution has a provision, Article 152, Paragraph 3, which prohibits constitutional amendments during a state of emergency. The Estonian Constitution (Article 161) and the Brazilian Constitution (Article 60) have similar provisions. The Polish Constitution (Article 228, Paragraph 6) prohibits changes to election laws during a state of emergency.

Judiciary role

Emergency declarations may impose certain restrictions on human rights, and many constitutions emphasize the role of the judiciary. The Hungarian Constitution (Article 54, Paragraph 2) prohibits any restriction of the Constitutional Court's activities during a state of emergency. South Africa's Constitution (Article 37, Paragraph 3) grants courts the authority to judge the validity of the declaration of a state of emergency, its extension, and the measures taken during the emergency. Moreover, there are cases where it is explicitly stated that the court shall conduct a judicial review of the measures taken during a state of emergency. Meanwhile, there are examples of constitutional provisions rejecting the possibility of the so-called "political question doctrine" -- that is, the exclusion of matters of highly political nature from judicial review -- and instead require mandatory judicial review. These include Article 215 of the Colombian Constitution, Article 129 (6) of the Slovak Constitution, Article 149 (8) of the Montenegrin Constitution, and Article 29 of the Mexican Constitution.

Human Rights Protection in State of Emergency

Relativization of Human Rights Protection

Many countries have provisions that allow for the relativization of human rights protection during emergencies, with the number reaching 118 countries as of 2011. The "relativization of human rights protection" includes not only the "suspension" of rights but also the "acceptance" of special restrictions that would normally be considered unconstitutional under normal circumstances. On the other hand, there are also constitutions that include provisions stipulating certain rights for which "derogation" from the normal level of protection is not permitted, even during a state of emergency. In international human rights law, it is common for provisions to allow "derogation" from treaty obligations during a state of emergency, while at the same time specifying "non-derogable rights" that must not be violated under any circumstances. Examples of constitutions that have incorporated this principle include Article 56, Paragraph 3 of the Russian Constitution and Article 233, Paragraph 1 of Poland's Constitution.

(4) Challenges for Japan as Seen from Overseas Examples

During the phase of the COVID-19 outbreak in Japan, there were discussions suggesting that even a city lockdown could be implemented by invoking the "public welfare" perspective, which is a general ground for restricting human rights as stipulated in the Constitution. The Venice Commission's report clearly identifies the following three main approaches for addressing emergencies: "limitation of human rights," "derogation from human rights," and "exclusion from human

rights.” On the other hand, the report says: “The basic provisions on the state of emergency and on emergency powers should ideally be included in the Constitution, including a clear indication of which rights can be suspended and which rights do not permit derogation. “This is necessary because emergency powers usually restrict basic constitutional principles, such as fundamental rights, democracy and the rule of law.” In other words, it emphasizes the need to clearly define the status of human rights during emergencies.

In light of the Venice Commission’s report, provisions called into question in connection with Japan’s current laws appear to be Article 105 (“proclamation of a disaster emergency”) and Article 109 (“emergency measures”) of the Basic Act on Disaster Management.

Article 105: “In the event of a major and severe disaster that has occurred and is likely to have a significant impact on the national economy and public welfare, the Prime Minister may, after Cabinet deliberation, proclaim a disaster emergency for all or part of the affected region if it is deemed necessary to promote emergency measures for disaster management, maintain the order of the national economy, and address other critical issues related to the disaster.”

2. “The proclamation mentioned in the preceding paragraph must clearly specify the affected area, an outline of the situation that necessitates the proclamation, and the date and time when the proclamation will take effect.”

Article 109: “In the event of a disaster emergency and when it is urgently necessary to maintain the national economic order and ensure public welfare, the Cabinet may, in order to take necessary measures on the following matters, promulgate a Cabinet order if the National Diet is in recess or the House of Representatives is dissolved, and it is not possible to wait for the convening of a special Diet session or for an emergency meeting of the House of Councilors.”

- i) “Restriction or prohibition of the distribution, transfer, or delivery of daily necessities whose supply is particularly scarce.”
 - ii) “Determination of the maximum prices of goods or compensation for services and other benefits necessary for emergency disaster response, disaster recovery, or the stabilization of people’s livelihoods.”
 - iii) “Postponement of payments of monetary obligations (excluding payments of monetary obligations based on labor relations such as wages, disaster compensation benefits, and payments from deposits, etc., by banks and other financial institutions for such payments), as well as the extension of the period for preserving rights.”
2. “A Cabinet order enacted pursuant to the provisions of the preceding paragraph may contain provisions to impose penalties on persons who violate such a Cabinet order, including imprisonment with work or imprisonment without work for not more than two years, a fine of not more than 100,000 yen, detention, a petty fine, or confiscation, or a combination thereof. It may also provide that, if the representative of a corporation, or an agent, servant or other worker of a corporation or individual commits a violation of the said Cabinet order in relation to the business of such a corporation or individual, the corporation or individual shall be punished and, in addition, subject to the fines, petty fines or confiscation prescribed in this Article. Furthermore, the Cabinet order may stipulate that, in cases where all or part of the property subject to confiscation cannot be confiscated, the equivalent value may be collected as a surcharge.”

3. “When the necessity for a Cabinet order enacted pursuant to the provisions of Paragraph 1 ceases to exist, the Cabinet shall immediately abolish such a Cabinet order.”
4. “When the Cabinet enacts a Cabinet order pursuant to the provisions of Paragraph 1, it shall immediately decide to convene an extraordinary session of the National Diet or request an emergency session of the House of Councilors, and if the measures taken are to be continued, it shall take steps to enact a law to replace the Cabinet order; otherwise, it shall seek approval regarding the enactment of the Cabinet order.”
5. “Except for those Cabinet orders already repealed or whose effective period has expired, a Cabinet order enacted pursuant to the provisions of Paragraph 1 shall lose its effect upon the enforcement of a law enacted to replace the said Cabinet order at an extraordinary session of the National Diet or an emergency session of the House of Councilors mentioned in the preceding paragraph. If no such law is enacted at any of the said sessions, the Cabinet order shall lose its effect at the time it is determined that no such law will be enacted.”
6. “Except in the case referred to in the preceding paragraph, and excluding those Cabinet orders that have already been repealed or whose effective period has expired, a Cabinet order enacted pursuant to the provisions of Paragraph 1 shall lose its effect at the earlier of either: 20 days after the opening of an extraordinary session of the National Diet provided for in Paragraph 4 or the end of that session; or 10 days after the opening of an emergency session of the House of Councilors provided for in the same paragraph or the end of that session.”
7. “When a Cabinet order loses its effect pursuant to the provisions of the preceding two paragraphs, the Cabinet shall immediately make a public announcement to that effect.”
8. “When a Cabinet order enacted pursuant to the provisions of Paragraph 1 includes penal provisions, the application of such penalties to acts committed while the said order was in effect shall continue to follow the former provisions, even after the order has been abolished, its validity period has expired, or it has lost effect pursuant to the provisions of Paragraph 5 or 6.”

These provisions establish a system in which Cabinet orders are issued first, followed by legislation enacted later. Such a system has been criticized as being close to a forbidden practice contrary to the principle of the rule of law. It is argued that inconsistencies within the legal system would be resolved if the constitution explicitly stipulated the circumstances under which Cabinet orders may be issued in advance, and that provisions such as those in the Basic Act on Disaster Management were elevated to constitutional status⁹⁷.

⁹⁷ MUNESUE Toshiyuki, “Disasters and National Emergency Powers,” edited by the Institute of Disaster Area Revitalization, Regrowth and Governance, Kwansei Gakuin University, “*Kinkyu jitai joko no naniga mondai ka*” [What is the problem with the emergency clause?] (Iwanami Shoten, 2016), p. 12

4. Conclusion

The authority of the state in times of emergency is generally categorized into two legal traditions: the Anglo-American legal system (e.g., the United States and the United Kingdom), which considers such authority to be inherently vested in the state as an “unwritten principle” even without explicit constitutional or legal provisions, and the continental European legal system (e.g., France and Germany), which defines such authority through explicit provisions in the constitution.

Each country has developed its own emergency legislation by reflecting its specific national circumstances. The development and revision of these legal systems reflect the histories, disasters and wartime experiences that they have followed respectively and differences can be observed among countries. On the other hand, a common challenge faced by all countries is the so-called “paradox of emergency powers.”

In Japan, since the Meiji era, the concept of emergency provisions was introduced into the constitution by adopting the continental European legal system under the Constitution of the Empire of Japan, which was modeled after the German constitution. After experiencing a history of militarism, the Constitution of Japan, promulgated in 1946, has been operated without explicitly stipulating the powers of the state in times of emergency.

Both the United States and the United Kingdom, which had traditionally treated emergency powers as unwritten principles, have shifted toward a statutory approach after their wartime experiences. They now regulate the procedures and requirements for emergency declarations by the President or the Monarch through legislation, while also strengthening parliamentary oversight functions.

France has consistently regulated the state’s powers during emergencies through the Constitution or laws since the early modern period. With the transition to the Fifth Republic in 1958, emergency powers were consolidated under the authority of the President. Germany, after experiencing the abuse of emergency powers under the Nazi regime, did not initially include emergency provisions in its Basic Law after WWII. However, in 1968, it introduced emergency provisions that clarified the division of roles between the federal and state governments and incorporated safeguards such as parliamentary oversight to prevent the abuse of authority.

In this way, after WWII, each country has repeatedly revised its emergency legislation in an effort to strike a balance between preventing the abuse of power and enhancing the effectiveness of emergency responses. Since the beginning of the 21st century, countries have continued to debate an appropriate framework for emergency legislation in the face of new threats such as terrorism and complex disasters.

“The system in a state of emergency should be stipulated in detail by individual legislation, and if the constitution sets a legal form of organic law, it is desirable to ensure it by organic law.” As the Venice Commission has pointed out as above, it is customary for many countries overseas to place the basis for switching between peacetime mode and emergency mode in the “constitution,” with details specified by law. In contrast, Japan has neither emergency provisions nor a basic emergency act (see Table 11). Whether this difference amounts to a legal deficiency is open to debate, but it is nonetheless important to discuss it.

Table 11: General laws concerning emergency situations in countries without constitutional emergency provisions

Law name	FY of legislation	Provisions
United States	National Emergencies Act	The President may declare a “state of national emergency” and designate and apply the laws that grant the President special powers during such an emergency.
United Kingdom	Civil Contingencies Act of 2004	In cases of urgent necessity, examples are provided, and the King is granted the power to enact emergency regulations.
Australia	National Emergency Declaration Act 2020	In the event of an emergency, the Governor-General may declare a “national emergency” and implement changes to the relevant agencies or exemptions from the application of laws.
Canada	Emergencies Act	In the case of an urgent and grave situation, the Governor in Council may declare a “public welfare emergency,” a “public order emergency,” etc. Can issue orders to regulate gatherings and movement
New Zealand	Civil Defense Emergency Management Act 2002	If local response capabilities are exceeded, the Minister can declare a “national emergency,” enabling restrictions on movement, confiscation of property, and other measures.
Norway	None	
Belgium	None	
Japan	None	

Source: Created by this author with reference to legal materials from various countries

In Japan, due to the ongoing confusion between emergency provisions and national emergency powers, there are some discussions that assert the introduction of emergency provisions would be against constitutionalism. However, considering the widespread adoption of emergency provisions abroad, this argument cannot be considered a well-founded one. Regarding Japan’s emergency provisions in particular, there is a lack of discussion on “the human rights that the government is prohibited from restricting or limiting even in emergencies.” Currently, there is a risk that human rights restrictions that would not be accepted in countries where emergency provisions have been introduced could be allowed in Japan based on the argument that it would violate the “public welfare” stipulated in Article 13 of the Constitution.

Some events cannot be addressed, or difficult to address, under the existing legal framework (creating a legal gray zone). This becomes clear when the relationship is delineated between the existing legal framework and possible contingencies, from large-scale natural disasters to armed attacks. A comparison between Japan and other countries, particularly those in the West, regarding the development of emergency legislation and the debate over an emergency clause indicates that Japan is unique in that it does not have an emergency clause in its constitution and that the nation does not have a basic law that outlines its approach to emergencies.

The Research Group on Emergency Legislation, established by the Security Studies Group of the Sasakawa Peace Foundation, presents three proposals designed to address the above issues. The goal is to enhance the effectiveness of emergency response while ensuring that human rights are not excessively restricted during emergency situations.

- Organize the issues regarding an emergency clause in the constitution by referring to overseas cases and discuss them anew from the perspective of human rights protection.
- Establish a Basic Emergency Act and provide a standard definition of the term “emergency.” At the same time, tackle the issues of the existing legal framework, which was developed in response to the occurrence of incidents, and establish a system that can respond quickly to all types of crises.
- Establish an Emergency Agency (tentative name) as an organization that will take action based on the Basic Emergency Act, and strengthen preparedness for complex disasters by consolidating the authority of various ministries and agencies currently granted in a vertical manner for each emergency situation.

In the discussion of an emergency clause, this report proposes that the country eliminate the confusion between emergency situations and state emergency powers and clarify which situations should be regarded as emergencies, who should be responsible for declaring emergencies, and how parliament should be involved, based on examples from overseas. The report also discusses government actions that should be prohibited and human rights that should be protected even in an emergency. Discussion on these issues has been noticeably absent in this nation. It would be worthwhile to include guidelines in the constitution, the nation’s highest law, regarding the balance between government measures and the protection of human rights, an issue that was raised in the application of the Act on Special Measures against Novel Influenza, etc.

The Basic Emergency Act would compensate for the shortcomings of Japanese laws, which have been established on an individual basis in response to certain events. The law could also address any unforeseen situation in the cyber world or other new domains, for which neither Japanese laws nor international laws have fully developed. As repeatedly argued with respect to the correlation between the current laws and expected events, it is often difficult to immediately determine which laws should be applied at the beginning of a crisis. This is because it is difficult to identify the type of crisis, find out whether the perpetrator is a non-state actor (terrorism) or a state (war), and assess the scale of the damage. Under the Basic Emergency Act, the government should be given the authority to respond quickly for a limited time until the situation is assessed and the existing laws are applied. This may help overcome delays in the initial response, a recurring

problem after each disaster.

To achieve such a quick response, it is essential to centralize the emergency response authority currently dispersed among various government ministries and agencies, and to train personnel who are well-versed in crisis management. The government should establish an Emergency Agency as an independent organization with personnel and budgetary authority to better prepare for both individual disasters and complex events and train personnel who can respond to emergencies. This is how the nation should improve the effectiveness of its emergency response.

What follows is a closer examination of the three recommendations discussed above.

1. Recommendation for organizing the issues related to an emergency clause

“Parliament and government should organize the issues regarding an emergency clause in the constitution by referring to overseas cases and discuss them anew from the perspective of human rights protection. Allowing the government to exercise authority to restrict some human rights in the name of public welfare without defining the term “emergency” could lead to abuse of power. Confusing state emergency powers with the emergency clause could lead to confusion in the debate over the emergency clause.”

Since the end of World War II, Japan has been creating emergency laws without including an emergency clause in the constitution. How should an “emergency” be defined in the constitution, what powers should be granted to the government, and to what extent should the government be allowed to use measures to restrict human rights? How the government views these issues and what should be included in the constitution will have an impact on the entire emergency legislation. Take, for instance, Japan’s response to COVID-19, which began to spread in 2020. The government rarely implemented any compulsory measures at the time. However, there were views that it would be permissible to implement certain compulsory measures or restrict some private rights from the perspective of public welfare. The Japanese constitution does not always presuppose a situation in which the government temporarily suspends the rights of citizens stipulated in the constitution in times of emergency. To discuss the future of emergency legislation, it is necessary to organize the issues regarding an emergency clause in the constitution.

(1) Avoid confusion between the emergency clause with state emergency powers

A report released by the Commission on the Constitution of the House of Representatives in 2003 is a typical example of discussion about the Japanese constitution in which an emergency clause is often confused with state emergency powers. Given that the current constitution does not include an emergency clause, the report discusses whether Japan has state emergency powers as an “unwritten principle”

and how constitutional scholars have interpreted the lack of state emergency powers in the constitution.

- Affirmation of state emergency powers as an unwritten principle
- Denial of state emergency powers as an unwritten principle

The latter position, which denies state emergency powers as an unwritten principle, can be broadly divided into the following two camps.

- The constitution should state that Japan has state emergency powers. The absence of a clause regarding state emergency powers is a legal deficiency.
- The omission of state emergency powers is the result of a conscious decision based on the lessons of the prewar period. Its inclusion would mean the “suicide of the constitution.”

As seen in the previous section, according to Ashibe’s definition, even if special laws are created and implemented to deal with an emergency, if this is carried out under the governance structure of normal times and constitutional control, then the situation is an “emergency” and not a “crisis.” The situation in which state emergency powers are invoked must be limited to a crisis that cannot be addressed by the governing structure of normal times. Even if the legal system and legal application differ from those in normal times, if the situation is not at a level at which constitutional order is suspended, it should be dealt with as an “emergency.” This is not a matter of state emergency powers.

It is necessary to clearly distinguish between “emergency” and “crisis” and consider how the lack of an emergency clause in the current constitution affects the characteristics of Japan’s emergency laws. Measures that restrict private rights may conflict with the provisions of Japan’s constitution, such as the respect for fundamental human rights (Article 11) and the inviolability of personal property rights (Article 29), which are among the three major principles of the constitution. Thus, even if individual laws subordinate to the constitution include compulsory measures that restrict private rights, such stipulations may be judged unconstitutional by the courts. In fact, the “declaration of a state of emergency disaster” in the Basic Act on Disaster Management has never been issued. It was not issued even at the time of the Great East Japan Earthquake, which caused unprecedented damage. This raises the question as to whether the government can issue ordinances or implement measures that would restrict private rights during an emergency under a law subordinate to the constitution. After all, such measures are not stipulated in the constitution.

(2) The right and wrong of “public welfare”

In the 21st century, Japan faced a number of crises and events that required new response measures. These include the Great East Japan Earthquake (March 2011) and the spread of COVID-19 (2020–2022). As a result, discussion began regarding the addition of an emergency clause to the constitution. The Liberal Democratic Party and the Japan Innovation Party have proposed revisions to the constitution that include an emergency clause. However, parliament’s Commission on the Constitution has yet to create a final draft. Therefore, to deal with unknown situations similar to the one described above, the government has justified the restriction of private rights by citing Article 13 of the constitution, which states that the government is permitted to exercise its power as long as it does not interfere with public welfare. According to this interpretation, the nation can enact laws that restrict the rights of citizens or impose obligations within reasonable

limits from the perspective of public welfare.

On the other hand, as stated in Venice Commission reports, there is a view that it is desirable from the perspective of human rights protection to specify in the constitution to what extent and under what circumstances the government can restrict the rights of citizens. Laws that allow for gradual restrictions on private rights in the name of public welfare, if accepted, could lead to the abuse of power by the government⁹⁸.

These discussions are also taking place overseas. In the United States and France, concerns have been raised regarding the concentration of power in the hands of the president during emergencies. In the United States, the exercise of state powers was not transparent during the Vietnam War. In response, a system was put in place to reduce the concentration of power in the hands of the president during emergencies and increase the involvement of Congress. In France, the president can exercise the emergency powers as stipulated in Article 16 of the constitution without parliamentary approval. There is a debate regarding a revision to this system on the grounds that it goes against democratic principles.

The role of the courts is also emphasized in other countries. Regarding measures implemented during an emergency, citizens are guaranteed the right to appeal any human rights violations. The courts are required to conduct a judicial review of measures taken in an emergency situation, and in some cases, a mandatory review is required.

Is it acceptable to allow the government to implement measures that differ from those taken in normal times in the name of public welfare without clarifying the role of parliament and courts, as well as the specific means of checking whether the measures implemented in emergency situations do not unduly infringe on human rights? It is time to discuss an emergency clause from the perspective of human rights protection, which has been lacking in the discussions in Japan.

2. Establishment of the Basic Emergency Act

“This report proposes the enactment of a Basic Emergency Act, with the goal of overcoming the shortcomings of Japan’s emergency laws, which have been individually established in response to certain events. The law could also address any unforeseen situation in the cyber world or other new domains, as well as complex disasters, for which neither Japanese laws nor international laws have been fully developed. It would also serve as a safeguard in case an emergency clause is added to the constitution. The Basic Emergency Act should grant the government the authority to respond quickly for a limited time. A mechanism should be established in such a way that the nation quickly transitions back to the existing laws after the situation is assessed. This would allow for both the realization of a quick initial response and the prevention of the government’s abuse of power.

The Basic Emergency Act aims to overcome the shortcomings of Japan’s emergency laws, which have been established on an individual basis in response to certain events, articulate the nation’s basic approach regarding emergencies,

⁹⁸ Satoshi Yokodaido, “*Nashikuzushi no jinken seigen kiken*” [Gradual restrictions on human rights are dangerous], October 26, 2021, Kyodo News.

maintain democratic control in emergencies, and prevent the abuse of power and violation of human rights by the government.

One of the drawbacks of creating laws based on the occurrence of incidents is that such a system is unable to respond quickly to unforeseen events. Numerous special measures laws have been created, with the result that their provisions differ from one another. Kurahachi Sato, a member of the Research Group on Emergency Legislation and former JGSDF Command and Staff College instructor, said: “The regulations are not uniform regarding the preventive deployment of the Self-Defense Forces when there is a strong likelihood of a disaster. Some special measures laws have such a provision, but some do not. The Self-Defense Forces Act, which is the basic law for the Self-Defense Forces, does not have a provision for preventive deployment. Therefore, there is a danger that problems may arise over whether to implement preventive deployment.”⁹⁹

To overcome these shortcomings, it is necessary to review individual emergency situations and the individual laws that form the basis for dealing with them. For example, it is necessary to adopt a system in which the government performs security clearance in the event of a nuclear incident, as in the case of other countries, and to reexamine the way in which advance evacuation is carried out in preparation for the Nankai Trough earthquake. In addition, to accelerate the assessment of the situation and implement prompt initial responses, an issue common to each incident, it is important to protect national security and the lives and property of citizens by providing the government and related organizations with the legal authority to implement necessary measures, regardless of the type of emergency.

In Japan, the Basic Emergency Act has not yet been enacted, and the emergency laws have not been consolidated or organized. However, in 2003, the former Democratic Party of Japan released the outline of a similar law, which was discussed between the ruling and opposition parties. It is hoped that parliament and the government will begin discussions with the aim of enacting the Basic Emergency Act by considering the outline of the bill and the background to the debate.

The Democratic Party of Japan drafted the legislation in May 2003 in response to a series of events and disasters both at home and abroad that were difficult to address under existing laws. In 1995, Japan experienced the Great Hanshin-Awaji Earthquake, which caused widespread damage, and a sarin-gas attack on the Tokyo subway system. In 1999, a North Korean ship entered Japanese territorial waters. In 2001, the United States faced terrorist attacks, which led to wars in Afghanistan and Iraq (2003). Since then, Japan has enacted its first-ever emergency legislation to fulfill its role as an ally of the United States. Under these circumstances, the Democratic Party of Japan drafted legislation designed to articulate in law that the government, in responding to an emergency situation, must take prompt action to protect the lives, physical well-being, and property of citizens while ensuring democratic control and fundamental human rights¹⁰⁰.

The bill defines an emergency as a “situation that has a significant impact on the safety of the country and its citizens, such as an armed attack on Japan from outside, a large-scale attack by terrorists, and a large-scale natural disaster.” The main points concerning crisis response are as follows:

- Grant parliament the authority to issue prior approval to the government as it implements emergency response

⁹⁹ Interview with Kurahachi Sato, October 26, 2021

¹⁰⁰ The Democratic Party of Japan email magazine, No.96., May 15, 2003.(http://archive.dpj.or.jp/sub_link/info_mailmag/bk_mailing/vol096.html)

measures

- To facilitate rapid decision-making by the Cabinet, establish a national emergency response council, with the prime minister as the chair and eight other Cabinet members as members, including the chief cabinet secretary, the minister of foreign affairs, the director-general of the Defense Agency (now the Ministry of Defense), and the chair of the National Public Safety Commission. In this way, the Cabinet can make decisions that are different from those made under normal circumstances.
- Establish provisions to respect basic human rights to the greatest extent possible while assuming that some restrictions may be imposed on private rights.

The legislation conveys the party's intent to articulate the nation's basic approach to emergencies. It broadly defines emergency situations, from military affairs to natural disasters, and encompasses emergency-related laws that had been enacted separately up to that point. It also aims to build a rapid response system to protect the safety of citizens. In addition, in light of the historical incident in which democracy was destroyed by the state's emergency response authority, consideration has been given to democratic control of such authority¹⁰¹.

In May 2004, one year after the bill was unveiled, the Liberal Democratic Party, the Democratic Party of Japan, and the New Komeito Party agreed that they would seek to enact the basic emergency law in the ordinary session of parliament in 2005. However, this was not realized because the privatization of Japan Post dominated the parliamentary discussion.

Japan was not the only country that sought to review its response to emergencies, including new threats, following the 2001 terrorist attacks in the United States. The United Kingdom passed the Civil Contingencies Act by partly integrating and reorganizing existing emergency-related laws. Under the law, which spells out the nation's emergency response authority, the legal framework was restructured to enable the nation to respond to all kinds of crises and emergencies that could affect society, including military affairs, natural disasters, nuclear accidents, terrorist attacks, and pandemics.

Japan did not enact the basic emergency legislation, but there is still a need for a legal framework for unforeseen crises. In fact, such a need is growing.

With respect to Japan's Basic Emergency Act, it would be more realistic to first grant the government the authority to respond to emerging events that are difficult to address under existing laws, rather than integrate all existing laws and create a new law as was the case in the United Kingdom. This would accelerate the development of the law, with reference to the discussions that took place between 2003 and 2004. The security environment surrounding Japan is becoming increasingly severe, with the nation expected to experience large-scale natural disasters such as the Nankai Trough earthquake, as well as new emergencies such as cyber terrorism. The expedited establishment of the Basic Emergency Act would help improve Japan's crisis management capabilities.

Tetsuya Nishikawa, who was responsible for crisis response as Assistant Chief Cabinet Secretary during the Great East Japan Earthquake, has proposed the following: "It would be effective to provide a legal basis for the Cabinet Secretariat to take the lead in collecting information and taking emergency measures, using a framework such as the Basic Emergency Act, in the initial stages that require the best decisions even if it is difficult to grasp the full extent of

¹⁰¹ The Democratic Party of Japan email magazine, No.96.

the crisis. Then, when the Cabinet Office implements measures to respond to the crisis, the nation should transition to individual laws.”¹⁰²

Countries that do not have an emergency clause in their constitution state in their basic emergency laws how to define emergencies as a nation and what kind of authority to grant to the government. In Japan, it is desirable that the Basic Emergency Act play such a role for the time being. Parliament, the highest organ of state power and the sole legislative organ of the state, should express its views as soon as possible regarding how emergencies should be handled in the constitution. If an emergency clause is added, the Basic Emergency Act will serve as a safeguard against the abuse of power.

3. Establishment of an Emergency Agency

“The frequency of natural disaster in Japan is among the highest in the world. There is also a risk of cyber-terrorism and other unexpected situations. In light of this situation, this report calls for the establishment of an Emergency Agency (tentative name). The agency will operate in accordance with the Basic Emergency Act. It will strengthen preparedness for complex disasters by consolidating the authority of various ministries and agencies currently granted in a vertical manner for each emergency situation based on the occurrence of certain incidents.”

(1) Importance of consolidating disaster response authority and the importance of coordination

In Japan, there have been calls for the creation of an Emergency Agency that would consolidate the authority to respond to various disasters and emergencies currently dispersed among ministries and agencies. The Great East Japan Earthquake of 2011 was a complex disaster involving both a natural disaster and a nuclear accident. It greatly exceeded the response capabilities of the local government and businesses, requiring the response of various government ministries and agencies. As a result, coordination took time, delaying action. After the earthquake, there were views within parliament that the nation should establish a ministry or agency specializing in disaster response, similar to the U.S. Federal Emergency Management Agency (FEMA)¹⁰³.

However, proposals for the centralization of disaster response are often based on an inaccurate understanding of how Japan’s administrative entities operate compared with those of overseas. For example, it is not accurate to assume that the FEMA oversees all government agencies involved in disaster response. FEMA’s primary responsibility is to coordinate with, and provide advice to, local, state, and federal governments, which have primary response authority.

In Japan, views are often expressed that coordination is functioning well among ministries and agencies and between the

¹⁰² Sasakawa Peace Foundation, *Nihon ni okeru kinkyo jitai taisho no kadai COVID-19 taio no hosei men no kensho* [Issues in responding to emergencies in Japan: Legal review of COVID-19 measures] p. 55.

¹⁰³ Such views are expressed, for example, in the minutes of the 183rd ordinary session of the Diet dated May 10, 2013 [https://www.shugiin.go.jp/internet/itdb_kaigirokua.nsf/html/kaigirokua/002218320130510005.htm]

central government and local governments¹⁰⁴. However, this objection is not very persuasive. It is not the case that, in responding to the COVID-19 pandemic in 2020 and thereafter, that the government, led by the Cabinet Office, overcame the problem of vertically segmented administration and achieved rapid responses through organic communication between the central government and local governments, based on the lessons learned from the Great East Japan Earthquake.

In light of these circumstances, in proposing the establishment of an Emergency Agency, it is essential to ensure the following four points in order to improve the effectiveness of the nation's emergency response.

- (1) Consolidate the response authority currently dispersed among various ministries and agencies into the Emergency Agency as much as possible and clarify the division of responsibilities among these ministries and agencies.
- (2) In the event of an emergency, the director-general of the agency should have the delegated authority to serve as an acting prime minister and focus on collaborating with prefectures and municipalities or providing advice.
- (3) Place the Disaster Medical Assistance Team (DMAT: Ministry of Health, Labour and Welfare), the Technical Emergency Control Force (TEC-FORCE: Ministry of Land, Infrastructure, Transport and Tourism), and other disaster response units under the Emergency Management Agency to establish a system that can quickly dispatch them in any type of disaster in accordance with the Basic Emergency Act.
- (4) Grant the authority to make personnel and budgetary decisions to the agency as an independent organization. Centralize the training of specialist personnel for emergency response, training involving operational units, and support for human resource development for prefectures and municipalities.

Emergency response encompasses a wide range of activities. Thus, it is not practical to centralize all operations in a single organization. In this respect, the current situation in Japan, where the response authority is dispersed among various ministries and agencies centered on the Cabinet Office, is not unique. FEMA has divided the Emergency Support Functions (ESFs) into 15 categories. It defines and clarifies the role of the primary agencies (P), support agencies (S), and coordinator (C) to ensure speedy emergency response, in implementing the ESFs (Table 12).

¹⁰⁴ Examples include the final report on the government's crisis management organization issued by the meeting of vice ministers responsible for the government crisis management organization on March 30, 2015 .

Table 12: Main areas of ESFs and the responsibilities of departments and agencies

	Transportation	Communications	Public works and engineering	Firefighting	Information, planning	Support for disaster victims	Logistics	Hygiene and pharmaceuticals	Search and rescue	Petroleum and toxic substances	Agriculture and nature	Energy	Public safety	Transfer to the NDRF	External affairs
Department of Agriculture	S	S	S			S	S	S	S	S	CP	S			
Forest Service, the Department of Agriculture				CP											
Department of Defense	S	S	S	S		S	S	S	PS	S	S	S	S		
Army Corps of Engineers			CP			S	S								
Department of Energy	S		S				S	S		S	S	CP			
Department of Health and Human Services			S			S	S	CP	S	S	S				
Department of Homeland Security	S	S	S			S		S	S	S	S	S	S		C
Office of Cybersecurity and Communications , the National Protection and Program Directorate, the Department of Homeland Security		CP													
FEMA		P			CP	CP	CP		CP						P
Coast Guard, the Department of Homeland Security				S					P	P					
U.S. Fire Administration, the Federal Emergency Management Agency, the Department of Homeland Security				CS											
Department of the Interior	S	S	S	S		S	S	S	S	S	P	S	S		
National Park Service, the Department of the Interior									P						
Bureau of Alcohol, Tobacco, Firearms and Explosives, the Department of Justice													CP		
Department of Transportation	CP		S			S	S	S	S	S	S	S			
Environmental Protection Agency			S	S				S		CP	S	S			
General Services Administration	S	S	S			S	CP	S		S	S				
American Red Cross						PS	S	S			S				

Source: FEMA “Emergency Support Functions (ESFs),” accessed in January 16, 2025. https://emilms.fema.gov/is_0230e/groups/243.html

Of these 15 core functions, the FEMA focuses on the six, which are particularly important in the initial stages: communications, information and planning, support for disaster victims, logistics, search and rescue, and external affairs. The remaining nine functions are carried out through coordination with the relevant government agencies. For incidents that require specialist knowledge, such as nuclear power and radiation accidents, cyber incidents, terrorism, and pandemics, the department or agency with the relevant expertise takes the initiative. FEMA evacuates residents and handles logistics¹⁰⁵. With respect to the relationship among the federal government, state government, and local government, the head (mayor) of the local government affected by the disaster has primary responsibility for disaster response. For this reason, state government employees and federal government (FEMA) support units come under the command of the mayor. These support units are operational units well versed in the FEMA’s six operations. These units have personnel with the certifications and licenses necessary for communications, construction, civil engineering, and emergency response. The number of full-time employees exceeds 7,500. The number of on-call workers mobilized in a disaster also exceeds 10,000. There is a system in place to immediately dispatch support staff to affected municipalities from 10 regional bases established across the United States. In the U.S., the authority to decide which equipment is necessary and how many personnel to mobilize is delegated to a person in the regional base who has a firm grasp of the local situation. This person can make decisions on the spot without having to obtain permission from the federal government. This helps ensure a quick initial response. These regional bases also work with local companies and nonprofit organizations. They jointly conduct training and sign disaster agreements¹⁰⁶.

The effectiveness of emergency response, particularly the initial response, will improve if the Emergency Agency refers to these cases and the four points listed above, decide on the specialized areas, carries out centralized communication and coordination among ministries and agencies and between the central government and local governments, establish regional basis, and build a system in which operational units can be immediately mobilized.

¹⁰⁵ FEMA website: <http://www.fema.gov/>

¹⁰⁶ Shunsuke Mutai, Sadatoshi Koike, et al., “3.11 igo no nihon no kiki kanri o toi” [Questioning Japan’s crisis management after 3.11], Institute for Legal Studies, Kanagawa University, 2013.

(2) Strengthening human resource development

In Japan, measures have been implemented to improve the effectiveness of crisis management since the Great East Japan Earthquake of 2011. In particular, the Cabinet Office, which is directly under the Cabinet and independent of other ministries or agencies responsible for specific fields or industries, plays an increasingly important role in disaster response. In fact, the Cabinet Office effectively serves as a coordinating agency. However, this does not mean that the Cabinet Office specializes in matters related to the initial response, which is particularly important in disaster response. It does not have any operational unit, either. In Japan, ministries, agencies, and prefectures have their own operational units, which are dispatched in response to instructions or requests from the prime minister, the minister in charge, or the governor. The Ministry of Defense oversees the Self-Defense Forces, while municipalities and prefectures operate fire departments and police. The specialized operational units include TEC-FORCE and DMAT. The latter provides emergency medical care.

To coordinate with the relevant organizations and quickly dispatch an operational unit, it is essential to have personnel who can make quick decisions in an emergency. Japan's ability to deal with disasters is weak compared with other countries. Coordination among ministries and agencies, and between the central government and local governments is a serious concern. However, what is more concerning is that there are almost no employees with expertise in disaster prevention in either the central government or local governments. This is partly due to how employees are hired. In Japan, government workers are hired for general positions. The common practice is to transfer employees to different departments after two or three years so that they can gain a certain level of knowledge by working in a wide range of fields. In the West, workers are hired for specialist positions.

At present, the government's disaster prevention operations are handled by a total of 150 people, including staff assigned to the disaster prevention department of the Cabinet Office and those on loan from local governments. In normal times, they formulate disaster prevention plans, conduct training, and prepare for the delivery of goods and provision of support to evacuation centers. When a disaster of a certain scale occurs, they all work together to create a task force and coordinate response with other ministries and agencies. Normal operations are suspended if a disaster occurs. For example, a review of the basic plan for the Nankai Trough Earthquake, originally scheduled for the first half of 2024, was delayed significantly because of the Noto Peninsula Earthquake, which occurred in January of the same year. As this case illustrates, there are not enough personnel for disaster prevention and disaster response¹⁰⁷.

This is another reason why this report calls for the creation of an Emergency Agency, an independent organization. It is urgently necessary to consolidate personnel from the departments of ministries and agencies that are involved in crisis response, secure personnel and budgetary authority, and train personnel by conducting training jointly with local governments. In Germany, a joint training exercise called LÜKEX (inter-state cross-border crisis management exercise) is held every year by the federal government and the government of each state, with the assumed scenario changing each time¹⁰⁸. Japan should also prepare itself for emergencies as quickly as possible, while developing human resources in accordance with the current situation.

¹⁰⁷ Sankei Shimbun, “*Suihei suichoku bosaisho kakuage mienu jitsuzo hitsuyo na jinnin wa baijō*”

[Horizontal and vertical: Disaster Prevention Agency upgrade; unseen reality; necessary personnel is more than doubled], October 6, 2024.

¹⁰⁸ Yasuhiro Takeda, *Ronkyū nihon no kiki kanri taisei: kokumin hogo to bosai o meguru katto*

[Examination of Japan's crisis management system: conflicts surrounding civil protection and disaster prevention] (Fuyo Shobo Shuppan, 2020), p. 85.

Conclusion Improve the effectiveness of emergency response

This report reexamined Japan's emergency laws and the mechanism for dealing with emergencies based on these laws. In Japan, there is talk of new threats such as the possibility of a massive earthquake in the Nankai Trough and large-scale cyberattacks on critical infrastructure. The security environment is becoming increasingly challenging, necessitating preparations for various emergencies. The report conducted a three-step examination with the aim of enhancing Japan's capability to respond to all types of emergencies. The first step was to delineate the relationship between assumed events and the current legal framework by classifying five emergency situations, including large-scale natural disasters and pandemics, into three categories: Prevent (Prepare), Detect, and Respond. The aim was to pinpoint situations that might be difficult to address within the existing legal framework. The second step was to adopt the concept of scenario planning and identify the issues that would arise if any of the above five situations, or any combination of unknown events, occurred. The final step was to organize the issues regarding an emergency clause in the nation's constitution by comparing and contrasting it with the constitutions or basic laws of other countries.

The three-step examination has revealed that the problems with Japan's emergency laws and the mechanism for dealing with emergencies in accordance with these laws are rooted in the way in which the laws were established, i.e., in response to the occurrence of incidents. It is still common practice to consider and enact legislative changes in response to the occurrence of events. A case in point is the debate that arose over the amendment of Article 84 of the Self-Defense Forces Act following the 2021 incident in Afghanistan involving the rescue of Japanese citizens. This report has made three recommendations for addressing the issues identified in the examination so that the nation will be able to respond quickly to any type of emergency.

Nevertheless, Japan's emergency response is not entirely without merit. Take, for instance, the nation's response to the COVID-19 pandemic. Japan had fewer infected individuals and fatalities than major Western countries that have emergency clauses in their constitutions or basic laws and have implemented compulsory measures involving certain restrictions on human rights. It is important to study the history of how these emergency laws were developed, identify the problems with government agencies' response mechanism cultivated in the process, and make constant efforts to reduce the element of surprise. In Chapter 4, the report provided a new perspective for discussing an emergency clause and called for the enactment of a Basic Emergency Act and the creation of an Emergency Agency. It proposed specific measures designed to improve the effectiveness of emergency response and balance emergency measures with the protection of human rights while grounding such measures in the history of Japan's emergency laws. The government and parliament should seriously consider this matter.

In this examination, emergencies associated with climate change and financial or economic emergencies caused by cyberattacks were only briefly mentioned in the section on complex events. In addition, in the event of a contingency in Taiwan or the Korean Peninsula, there is a possibility that Japan may have a large influx of immigrants, even if the incident does not escalate into an armed attack or a situation that threatens the very existence of the nation. Thus, it is necessary to discuss the potential occurrence of emergencies that Japan has rarely experienced in the past.

A constant challenge for Japanese society is to quickly minimize damage during emergencies. It is hoped that the

examination by the Research Group on Emergency Legislation will further contribute to discussion in Japan on how to address any future emergencies.

Appendix 1: References and resources

Books

Abe, Keishi. *Kansensho no kokka senryaku: Nihon no anzen hoshō to kiki kanri* [National strategy for infectious diseases: Japan's security and crisis management]. Toyo Keizai, 2021.

Kanai, Toshiyuki. *Korona taisaku ka no kuni to jichitai: saigai gyōsei no meisō to heisoku* [The country's and municipalities' response to COVID-19: confusion and stagnation in disaster administration]. Chikuma Shinsho, 2021.

Takeda, Yasuhiro. *Ronkyū nihon no kiki kanri taisei: kokumin hōgo to bosai o meguru katto* [Examination of Japan's crisis management system: conflicts surrounding civil protection and disaster prevention]. Fuyo Shobo Shuppan, 2020.

Iwami, Yutaka. *Eikoku no bunken kaikaku to rijonarizumu* [Decentralization reforms and regionalism in the UK]. Ashi Shobo, 2012.

Sato, Koji. *Nihon koku kenpō ron* [Discussion on the Japanese constitution]. Seibundo, 2011.

Kojima, Kazushi. *Kenpō gaisetsu* [Overview of the constitution]. Ryōsho Fukyū Kai, 1987.

Takami, Katsutoshi. *Seiji no konmei to kenpō* [Political confusion and the constitution]. Iwanami Shoten, 2012.

Mizushima, Asaho. *Sekai no yūji hōsei o miru* [Examining emergency legislation around the world]. Horitsu Bunka Sha, 2003.

Kwansei Gakuin University Institute of Disaster Area Revitalization, Regrowth and Governance, *Kinkyū jitai joko no naniga mondai ka* [What is the problem with the emergency clause?]. Iwanami Shoten, 2016.

Security Strategy Research Institute of Japan, ed. *Yūji kokumin wa hinan dekiru no ka* [In case of emergency, can the citizens evacuate?]. Kokushokankokai, 2022.

Ashibe, Nobuyoshi. *Kenpōgaku kenpō soron* [Constitutional law I: general theory of the constitution]. Yuhikaku, 1992.

Hollnagel, Erik. *Safety-I & Safety-II anzen manejimento no kakoto mirai* [Safety-I and Safety-II: The Past and Future of Safety Management]. Translated by Masaharu Kitamura and Akinori Komatsubara. Kaibundo, 2015.

Isobe, Koichi. *Tomodachi sakusen no saizensen: fukushima genpatsu jiko ni miru nichibei domei renkei no kyōkun* [The front line of Operation Tomodachi: lessons from the Fukushima nuclear accident on Japan-US alliance]. Sairyusha, 2019.

Ito, Tetsuro. *Kokka no kiki kanri: jirei kara manabu rinen to jissen* [National crisis management: principles and practice learned from case studies]. Gyōsei, 2014.

Hashizume, Daizaburo. *Kokka kinkyūken* [State emergency powers]. NHK Publishing, 2014.

Papers

Nakamura, Susumu. “*Nihon no kinkyujitai taisho ni okeru hi kyosei sochi no zehi o kangaeru kohen nihon no hi kyosei sochi no tokucho, rekishi, kadai* [Considering the pros and cons of non-compulsory measures in Japan’s emergency response (part 2): characteristics, history, and issues of Japan’s non-compulsory measures].” International Information Network Analysis. May 25, 2020. Sasakawa Peace Foundation.

Nakamura, Susumu. “*Taiwan kiki to nichibei no taio kohen nihon wa do junbi taio subeki ka* [Taiwan crisis and Japan-US response (part 2) - how should Japan prepare and respond?].” International Information Network Analysis. May 28, 2021. Sasakawa Peace Foundation (https://www.spf.org/iina/articles/nakamura_05.html).

Ito, Tetsuro. “*Shingata infuruenzato taisaku tokubetsu sochiho seiritsu no keii to shingata korona uirusu kansen kakudai ji no doho no unyo ni tsuite* [The enactment process of the Act on Special Measures against Novel Influenza, etc. and the application of the law during the spread of COVID-19].” *Seisan Kenkyu*, vol. 72, no. 4 (2020).

Ashida, Jun. “*Igirisu shingata korona uirusu taisaku no tame no kisoku no seitei to* [Enactment of regulations for measures against COVID-19 in the UK].” *Gaikoku no rippo* No. 283-1 (April 2020). Research and Legislative Reference Bureau, National Diet Library.

Yabe, Akihiro. “*Furansu no kinkyujitai ho* [The state of emergency law in France].” Reference, May 2013 issue. Research and Legislative Reference Bureau, National Diet Library.

Asakawa, Koki. “*Bei daitoryoshoku to kinkyujitai kengen* [The US presidency and emergency powers].” Annual report of the Institute of Political Science & Economics, Musashino University (2017).

Shimizu, Takao. “*Ni kinkyujitai hosei ichi igirisu* [II Emergency legislation 1. United Kingdom].” *Shuyo koku ni okeru kinkyujitai e no taisho* [Response to emergencies in major countries], (2003). Research and Legislative Reference Bureau, National Diet Library.

Okahisa, Kei. “*Kinkyujitai ni sonaeta kokka kengen no kyoka eikoku nisenyo nen minkan kinkyujitai ho* [Strengthening national authority for emergencies: UK’s 2004 Civil Contingencies Act].” *Gaikoku no rippo* 223 (February 2005). Overseas Legislative Information Division, National Diet Library.

Tanaka, Ryosuke. “*Eikoku ni okeru kinkyujitai hosei to guntai no kokunai doin COVID-19 taio to EU ridatsu o jirei toshite* [Emergency legislation and domestic deployment of the military in the UK: cases of COVID-19 response and EU withdrawal].” NIDS Commentary No. 122 (June 11, 2020). National Institute for Defense Studies.

Yamaoka, Norio. “*Doitsu renpo kyowakoku kihonho ni okeru kinkyujitai joko* [Emergency clause in the Basic Law of the Federal Republic of Germany].” Reference, vol. 786. Research and Legislative Reference Bureau, National Diet Library, 2016.

Sashida, Tomohisa, Yuichiro Ikegami, et al. “*Nihonban FEMA kochiku no kanosei to ryuiten seifu to chiho jichitai no saigai taio no arikata no teian* [Possibilities and considerations for building a Japanese version of FEMA: proposals on disaster response by the government and local governments].” (2014).

Investigation committee reports, etc.

Commission on the Constitution of the House of Representatives. *Hijo jitai to kenpo ni kansuru kisoteki shiryō* [Basic material on emergency situations and the constitution]. February 2003.

Asia Pacific Initiative. *Shingata korona taio minkan rinji chosakai chosa kensho hokokusho* [Private-sector temporary investigation committee on COVID-19 response: investigation and verification report]. December 2021.

Research and Legislative Reference Bureau, National Diet Library. *Gaikoku no rippo 251 kikanban tokushu daikibo saigai taisaku hosei* [Legislation of foreign countries no. 251 quarterly edition special issue: large-scale disaster countermeasure legislation]. March 2012.

National Diet Library. *COVID-19 to kinkyujitai sengen kodo kisei sochi* [COVID-19, state of emergency declarations, and behavioral restriction measures]. June 15, 2020.

Research and Legislative Reference Bureau, National Diet Library. *Shuyo koku ni okeru kinkyujitai e no taisho* [Response to emergencies in major countries]. 2003.

Sasakawa Peace Foundation. *Kenkyukai hokokusho Fukushima genpatsu jiko to kiki kanri nichibei domei kyoryoku no shiten kara* [study group report on Fukushima nuclear accident and crisis management: from the perspective of Japan-US alliance]. September 2012.

Appendix 2: Emergency clauses in the constitutions of various countries and legal provisions that define emergency situations

Japan

The Constitution of the Empire of Japan

Article 8

1. The Emperor, in consequence of an urgent necessity to maintain public safety or to avert public calamities, issues, when the Imperial Diet is not sitting, Imperial Ordinances in the place of law.
2. Such Imperial Ordinances are to be laid before the Imperial Diet at its next session, and when the Diet does not approve the said Ordinances, the Government shall declare them to be invalid for the future.

Article 14

1. The Emperor proclaims the law of siege.
2. The conditions and effects of the law of siege shall be determined by law.

Article 31

The provisions contained in the present Chapter shall not affect the exercise of the powers appertaining to the Emperor, in times of war or in cases of a national emergency.

Article 70

1. When the Imperial Diet cannot be convoked, owing to the external or internal condition of the country, in case of urgent need for the maintenance of public safety, the Government may take all necessary financial measures, by means of an Imperial Ordinance.
2. In the case mentioned in the preceding clause, the matter shall be submitted to the Imperial Diet at its next session, and its approbation shall be obtained thereto.

Act Partially Amending the Act on Special Measures against Novel Influenza, etc., and Other Relevant Act

Article 32

When the head of the government task force recognizes that a new influenza, etc. (limited to those that meet the criteria specified by government ordinance as having the potential to cause significant harm to the lives and health of the public, hereinafter the same in this chapter) has occurred domestically, that it has significantly affected or has the potential to significantly affect national life and the national economy due to its nationwide and rapid spread, and that it meets the criteria specified by government ordinance as posing such a threat (hereinafter referred to as a “new influenza, etc. emergency”), the head shall publicly announce the occurrence of the new influenza, etc. emergency and the following

matter (hereinafter referred to as a “declaration of new influenza, etc. emergency” in Paragraph 5 and Article 34, Paragraph 1) and report the occurrence and the matter to the Diet.

Act on Special Measures for Responding to Nuclear Disasters

Article 15

1. If the NRA finds that a nuclear emergency falling under any of the following standards has occurred, the NRA must promptly report the necessary information concerning the situation to the Prime Minister, and submit to the Prime Minister a draft public notice under the provisions of the next paragraph as well as a draft instruction under the provisions of paragraph (3):
 - (i) the radiation dose specified by Cabinet Order as being the condition for an unusual radiation dose is exceeded by the detected radiation dose relating to a notification received by the Prime Minister and the NRA pursuant to the provisions of the first sentence of Article 10, paragraph (1) or by the radiation dose detected at radiation measuring equipment using a measuring method specified by Cabinet Order;
 - (ii) beyond what is listed in the preceding item, an incident specified by Cabinet Order as being an indicator of the occurrence of a nuclear emergency situation.
2. If a report or submission is filed pursuant to the provisions of the preceding paragraph, the Prime Minister is to promptly issue a public notice describing the occurrence of a nuclear emergency and the following matters (referred below to as “declaration of a nuclear emergency”):
 - (i) the area where emergency response measures should be implemented;
 - (ii) an overview of the nuclear emergency;
 - (iii) beyond what is listed in the preceding two items, matters that need to be known by residents, visitors, and other persons as well as public and private organizations (referred below to as “residents and other relevant persons and organizations”) in the area listed in item (i).

The United States of America

Stafford Act

Sec. 102. Definitions (42 U.S.C. 5122)

In this chapter, the meanings of the terms listed in the following items are as prescribed in each of these item

- (1) “Emergency” means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

France

Constitution of the Fifth Republic

Article 16

Where the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments are under serious and immediate threat, and where the proper functioning of the constitutional public authorities is interrupted, the President of the Republic shall take measures required by these circumstances, after formally consulting the Prime Minister, the Presidents of the Houses of Parliament and the Constitutional Council.

He shall address the Nation and inform it of such measures.

The measures shall be designed to provide the constitutional public authorities as swiftly as possible, with the means to carry out their duties. The Constitutional Council shall be consulted with regard to such measures.

Parliament shall sit as of right.

The National Assembly shall not be dissolved during the exercise of such emergency powers.

After thirty days of the exercise of such emergency powers, the matter may be referred to the Constitutional Council by the President of the National Assembly, the President of the Senate, sixty Members of the National Assembly or sixty Senators, so as to decide if the conditions laid down in paragraph one still apply. It shall make its decision by public announcement as soon as possible. It shall, as of right, carry out such an examination and shall make its decision in the same manner after sixty days of the exercise of emergency powers or at any moment thereafter.

State of Emergency Law

Article 1: Conditions for application of the state of emergency and territories

A state of emergency can be declared in the mainland, overseas prefectures, overseas public entities stipulated in Article 74 of the Constitution, and all or part of New Caledonia when there is an imminent danger of causing serious violations of public order or when a situation arises that constitutes a public disaster due to its nature and severity.

The United Kingdom

Civil Contingencies Act

Article 19: Meaning of “emergency”

- (1) In this Part “emergency” means—
 - (a) an event or situation which threatens serious damage to human welfare in the United Kingdom or in a Part or region,
 - (b) an event or situation which threatens serious damage to the environment of the United Kingdom or of a Part or region, or
 - (c) war, or terrorism, which threatens serious damage to the security of the United Kingdom.
- (2) For the purposes of subsection (1)(a) an event or situation threatens damage to human welfare only if it involves, causes or may cause—
 - (a) loss of human life,
 - (b) human illness or injury,
 - (c) homelessness,
 - (d) damage to property,
 - (e) disruption of a supply of money, food, water, energy or fuel,
 - (f) disruption of a system of communication,
 - (g) disruption of facilities for transport, or
 - (h) disruption of services relating to health.
- (3) For the purposes of subsection (1)(b) an event or situation threatens damage to the environment only if it involves, causes or may cause—
 - (a) contamination of land, water or air with biological, chemical or radio-active matter, or
 - (b) disruption or destruction of plant life or animal life.
- (4) The Secretary of State may by order amend subsection (2) so as to provide that in so far as an event or situation involves or causes disruption of a specified supply, system, facility or service—
 - (a) it is to be treated as threatening damage to human welfare, or
 - (b) it is no longer to be treated as threatening damage to human welfare.
- (5) An order under subsection (4)—
 - (a) may make consequential amendment of this Part, and
 - (b) may not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.
- (6) The event or situation mentioned in subsection (1) may occur or be inside or outside the United Kingdom.

Germany

Basic Law for the Federal Republic of Germany

Article 35

- (2) In order to maintain or restore public security or order, a Land in particularly serious cases may call upon personnel and facilities of the Federal Border Police to assist its police when without such assistance the police could not fulfil their responsibilities, or could do so only with great difficulty. In order to respond to a grave accident or a natural disaster, a Land may call for the assistance of police forces of other Länder or of personnel and facilities of other administrative authorities, of the Armed Forces or of the Federal Border Police.
- (3) If the natural disaster or accident endangers the territory of more than one Land, the Federal Government, insofar as is necessary to combat the danger, may instruct the Land governments to place police forces at the disposal of other Länder and may deploy units of the Federal Border Police or the Armed Forces to support the police. Measures taken by the Federal Government pursuant to the first sentence of this paragraph shall be rescinded at any time at the demand of the Bundesrat and in any event as soon as the danger is removed.

State of tension

Article 80a

- (1) If this Basic Law or a federal law regarding defence, including protection of the civilian population, provides that legal provisions may be applied only in accordance with this Article, their application, except when a state of defence has been declared, shall be permissible only after the Bundestag has determined that a state of tension exists or has specifically approved such application. The determination of a state of tension and specific approval in the cases mentioned in the first sentence of paragraph (5) and the second sentence of paragraph (6) of Article 12a shall require a two-thirds majority of the votes cast.
- (2) Any measures taken pursuant to legal provisions by virtue of paragraph (1) of this Article shall be rescinded whenever the Bundestag so demands.
- (3) Notwithstanding paragraph (1) of this Article, the application of such legal provisions shall also be permissible on the basis of and in accordance with a decision made by an international body within the framework of a treaty of alliance with the approval of the Federal Government. Any measures taken pursuant to this paragraph shall be rescinded whenever the Bundestag, by the vote of a majority of its Members, so demands.

Internal emergency

Article 91

- (1) In order to avert an imminent danger to the existence or free democratic basic order of the Federation or of a Land, a Land may call upon police forces of other Länder, or upon personnel and facilities of other administrative authorities and of the Federal Border Police.
- (2) If the Land where such danger is imminent is not itself willing or able to combat the danger, the Federal Government may place the police in that Land and the police forces of other Länder under its own orders and deploy units of the

Federal Border Police. Any such order shall be rescinded once the danger is removed or at any time on the demand of the Bundesrat. If the danger extends beyond the territory of a single Land, the Federal Government, insofar as is necessary to combat such danger, may issue instructions to the Land governments; the first and second sentences of this paragraph shall not be affected by this provision.

Declaration of a state of defence

Article 115a

- (1) Any determination that the federal territory is under attack by armed force or imminently threatened with such an attack (state of defence) shall be made by the Bundestag with the consent of the Bundesrat. Such determination shall be made on application of the Federal Government and shall require a two-thirds majority of the votes cast, which shall include at least a majority of the Members of the Bundestag.
- (2) If the situation imperatively calls for immediate action and if insurmountable obstacles prevent the timely convening of the Bundestag or the Bundestag cannot muster a quorum, the Joint Committee shall make this determination by a two-thirds majority of the votes cast, which shall include at least a majority of its members.
- (3) The determination shall be promulgated by the Federal President in the Federal Law Gazette pursuant to Article 82. If this cannot be done in time, promulgation shall be effected in another manner; the determination shall be printed in the Federal Law Gazette as soon as circumstances permit.
- (4) If the federal territory is under attack by armed force, and if the competent federal authorities are not in a position at once to make the determination provided for in the first sentence of paragraph (1) of this Article, the determination shall be deemed to have been made and promulgated at the time the attack began. The Federal President shall announce that time as soon as circumstances permit.
- (5) If the determination of a state of defence has been promulgated, and if the federal territory is under attack by armed force, the Federal President, with the consent of the Bundestag, may issue declarations under international law regarding the existence of the state of defence. Under the conditions specified in paragraph (2) of this Article, the Joint Committee shall act in place of the Bundestag.

The constitutions and laws of each country, including those used in the main text, were referenced from *Shinkaisetsu sekai kenposhu dai go han* [New commentary on world constitutions 5th edition] by Shiyake Masanori and Miyoko Tsujimura (Sanseido, 2020).

 笹川平和財団

