

日本自衛隊法律事務組織 與職能之介紹

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摘 要

隨著第二次世界大戰結束，日本戰前軍隊組織及各項軍事法制均相繼廢止，然 1950 年韓戰爆發，東亞安全環境產生變化，也開啟了日本再軍備的重要契機，嗣後於 1954 年 7 月成立自衛隊，擔負日本國土的防衛工作。按自衛隊員係採志願入隊方式，有關隊員之紀律維持係規範於自衛隊法中，但僅限於與隊員職務相關之特定犯罪行為設有處罰規定，其餘均與一般國民相同適用普通刑法，至於違反管理規定或服務紀律時則施以行政懲罰，並無以自衛隊員為特定對象而專門制定之軍事刑法典。復囿於日本憲法規定不得設立特別法院，因此自衛隊並無特設之軍事法院或軍事審判制度，隊員不論涉犯自衛隊法或刑事法律，全數交由普通法院審判。此外，目前防衛省所轄之各機關、部隊與學校，均設有法務官，專責辦理防衛事務之訴訟與賠償事件、法律諮詢及對各級幹部實施法治教育等事務；另自衛隊為維持內部秩序與人員紀律，復設有警務隊，為一執行司法警察職務之組織，依法負有犯罪搜查權限，建構成自衛隊之法律事務體制。

The Introduction of Organization and Functions for Legal Affairs of Japan Self-Defense Forces

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Abstract

In the wake of the end of World War II, Japan repealed military organizations within Japan as well as the military legal system. However with the outbreak of the Korean War many changes were impelled on the security situation in East Asia. It restarted the important opportunity of Japan rearmament. After the Korean War, Japan established the SDF(Self-Defense Forces)in July of 1954 to defend the Japanese homeland. The SDF is an all-volunteer force that relies on the Self-Defense Forces Act, which restricts the duties of SDF members to maintain discipline. The SDF are applicable to ordinary criminal law. It is same with the general national. As for disciplinary actions for violations of regulations, SDF members are imposed administrative penalties that are not specifically formulated by the Military Penal Code. Because of Article 76 of Japanese Constitution saying that no extraordinary tribunal shell be established, nor shall any organ or agency of the Executive be given final judicial power. Members of the SDF are currently tried as civilians by civilian's courts. In addition, the Ministry of Defense assigns legal officers to authorities at all levels. To troops and schools in charge of litigation and compensation events of the SDF, legal advice and implementing of legal education to cadres at all levels. The SDF also set up the Militay Police(Criminal Investigation Command) which is an organization set up to perform military police duties and criminal investigations with authority, in order to maintain internal discipline, personnel discipline and the construction of Legal Affairs of the SDF system.