

Section 3 Basic Policy for the Development of New Security Legislation

1 Report by the “Advisory Panel on Reconstruction of the Legal Basis for Security”

In May 2007, the “Advisory Panel on Reconstruction of the Legal Basis for Security” was held by the first Abe Administration. The Advisory Panel submitted its report, which summarizes the recommendations regarding four patterns proposed by the then Prime Minister Abe¹, to the then Prime Minister Fukuda in June 2008.

Following this, as the security environment around Japan is becoming increasingly severe, Prime Minister Abe resumed the Advisory Panel in February 2013. Considering what must be done, including the most effective operation of the Japan-U.S. Security Arrangements, in order to maintain the peace and security of Japan, he instructed for there to be a re-examination of the legal basis for security, bearing in mind the changes occurred over the past four and half years as well as keeping in mind possible changes in the security environment in the foreseeable future. Following a total of seven meetings, on May 15, 2014, the report was submitted to Prime Minister Abe.

See ▶ Fig. II-1-3-1 (Outline of the report)

2 Basic orientation for further deliberation

On May 15, 2014, following the receipt of the submitted report by the Advisory Panel, at a press conference Prime Minister Abe, presented the basic orientation regarding the ways in which further deliberation would take place as follows.

The government and the ruling parties will be further examining this matter based on specific cases, and will develop national legislation that will allow for seamless responses to secure the lives and livelihood of the Japanese nationals. As legislative measures that are also permissible under the constitution interpretation to date, for example, the following points will be examined:

1. Further strengthening of our responses to an infringement that does not amount to an armed

¹ The Panel examined four cases ((1) the U.S. protection in the high seas; (2) interception of ballistic missiles that may be targeting the U.S.; (3) use of weapons in international peace support operations; and (4) logistic support for the activities by other countries that participate such as in the same PKO), he proposed, for example, the view that the previous official interpretation of the Article 9 of the Constitution was becoming no longer applicable in light of the radically changed international situation and the international status of Japan, and that the Article 9 of the Constitution should rather be interpreted as it would not only prohibit the right of individual self-defense but also the exercise of the right of collective self-defense and participation in the United Nation’s Collective Security.

attack (so-called “grey-zone situations”²), 2. Further contribution to the peace and stability of the international community, including through PKOs and logistics support. In addition to such measures we must be fully ready for situations that could happen in reality. We must hold further reviews to judge whether the legislation could be developed sufficiently to secure the lives and livelihood of its nationals under constitutional interpretation to date.

Among the views expressed in the report, the two below do not make logical consistency with the Government’s constitutional interpretation to date, and thus, the Government cannot adopt them: (1) Regardless of whether it is the right of individual or collective self-defense, the Constitution does not prohibit the use of force for the purpose of self-defense, and (2) The Constitution does not impose any restrictions on activities that are consistent with international law such as participation in collective security measures of the U.N. On the other hand, regarding the view that the exercise of the right of collective self-defense is permissible in such limited situation which has the potential to significantly affect the security of Japan, this view bears in mind the existing basic position of the Government as follows, and the Government will proceed with further examinations of this view: “The Government must give supreme consideration to the people’s right to life, liberty, and the pursuit of happiness. If the purpose of the Preamble and Article 13 of the Constitution is considered, the Constitution does not prohibit the Government from taking measures of self-defense necessary to maintain Japan’s peace and security and to ensure its survival. The constitution permits the use of force to the minimum extent necessary to this end.”

In proceeding with the measures to develop a legal system which enables seamless responses, we will examine review whether it will be possible to develop the necessary domestic legislation under the constitutional interpretation to date or if constitutional interpretation must be changed for the development of certain pieces of domestic legislation, and will consider what constitutional interpretation would be appropriate. The Government will proceed with these reviews while taking into account the opinions of the Cabinet Legislation Bureau and begin consultations among the ruling parties. If based on the result of consultations, we judge that it is necessary to change the constitutional interpretation, then we will make a Cabinet Decision on the basic orientation on the legislative amendments as well as on the matter of constitutional interpretation.

3 Development of Seamless Security Legislation to Ensure Japan’s Survival and Protect its People (Cabinet decision)

² See Part I, Overview, Chapter 1, footnote 1

In accordance with the basic orientation for the ways in which further deliberation will take place as presented by Prime Minister Abe, discussions had been repeatedly held in the ruling parties and examination had also been conducted by the Government. Following this, on July 1st 2014, a cabinet decision was made on “Development of Seamless Security Legislation to Ensure Japan’s Survival and Protect its People”

See ▶ Reference 5 (Development of Seamless Security Legislation to Ensure Japan’s Survival and Protect its People)

This cabinet decision shows the basic policy for the development of new security legislation based on the viewpoint as to what should be done in order to secure the lives and peaceful livelihood of its people at all costs within the current situation where the security environment surrounding Japan has fundamentally transformed and is continuing to evolve. It has a historical significance in further ensuring the peace and security of Japan through enhancing the deterrence and making more proactive contributions to the peace and stability of the region and the international community.

On making this cabinet decision, Prime Minister Abe provided the following instruction: “Without developing relevant legislation, we are unable to conduct any concrete activities, and thus deterrence is not enhanced. In this sense, legislative work to be completed from now on is extremely important. For the development of the security legislation, which will enable seamless responses to any situations, the work must be undertaken immediately.” In addition to launching a legislation drafting team under the National Security Secretariat in the Cabinet Secretariat, the Ministry of Defense and the SDF established “The Study Committee on the Development of Security Legislation” with the Minister of Defense as its Chairman, in order for us to firmly play the role expected by Japanese nationals as well as currently conducting the deliberation towards the development of security legislation based on the following instructions from the Minister of Defense: (1) Prepare legislation which is workable for SDF personnel in the field, and is operationally practical so that it facilitates their decision-making in a clear manner, (2) Develop proper procedures for SDF personnel engaging in a mission, and (3) Work in a timely manner.