The Right of Belligerency

Article 9, Paragraph 2 of the Constitution prescribes that “the right of belligerency of the state will not be recognized.” However, the “right of belligerency” does not mean the right to engage in battle; rather, it is a general term for various rights that a belligerent nation has under international law, including the authority to inflict casualties and damage upon the enemy’s military force and to occupy enemy territory. On the other hand, Japan may of course use the minimum level of force necessary to defend itself. For example, if Japan inflicts casualties and damage upon the enemy’s military force in exercising its right of self-defense, this is conceptually distinguished from the exercise of the right of belligerency, even though those actions do not appear to be different. Occupation of enemy territory, however, would exceed the minimum necessary level of self-defense and is not permissible.

Advisory Panel on Reconstruction of the Legal Basis for Security

The meeting by the Advisory Panel on Reconstruction of the Legal Basis for Security was held by the first Abe Cabinet in May 2007 to consult on the constitutional ideas related to the four categories of security issues. The panel compiled its recommendations and submitted a report* to then-Prime Minister Fukuda in June 2008.

The Panel was inaugurated again by Prime Minister Abe in February 2013 to study the relationship of the Constitution and security issues, including the right of collective self-defense, based on a problem awareness that reconstructing the legal basis for security was necessary to respond appropriately amid the increasingly severe security environment surrounding Japan. The Panel started to discuss maintaining the peace and security of Japan in light of the changes in the security environment after the issuance of the report. The government will first wait for the conclusion of the Panel.

*Outline of the Report

The Panel examined four cases ((1) defense of U.S. military vessels on the high seas; (2) interception of ballistic missiles that might be aimed at the United States; (3) use of weapons during international peacekeeping operations; and (4) logistics support for other countries participating in the same PKO and other activities) and concluded that the existing interpretation by the government, that Japan only has the right to individual self-defense, was no longer appropriate in light of drastic changes in world affairs and Japan’s position in the international community. Accordingly, the Panel recommended that Article 9 of the Constitution be interpreted to permit Japan’s exercise of not only the right to individual self-defense, but also the right of collective self-defense or participation in collective security on the part of the United Nations.