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## ANALYSIS OF CURRENT AFFAIRS

### 1. A political crisis?

After rejecting Mr Fukuda's proposal for a coalition, the Minshutō seems to have opted for an approach of constructive opposition. On 21 December, it put its "terrorism elimination bill" to the Upper House, a counter-proposal to the government bill to replace the anti-terrorist law which expired on 1 November. Mr Ozawa reaffirmed, however, that the Minshutō remained just as opposed as it had been to the government's proposal of enabling the Self-Defence Forces (SDF) to continue their refueling activity<sup>1</sup>. Indeed, since the start of the Parliamentary session on 10 September, the Party had been rejecting any idea of collaboration in order to force the government into dissolving the Lower House.

The fact that the opposition holds a (relative) majority of seats in the Upper House, an unprecedented situation, has considerably slowed down the pace of political activity. Only the draft bills agreed to by both sides can be voted on (the law on the financing of parties, for example, has been amended). While the LDP holds a two-thirds majority of seats in the Lower House, enough to allow it to have its bills passed on the second reading, the Prime Minister has not wanted to resort to forcing them through before first trying to win over Minshutō. This is a more popular strategy, and one that is likely to bring about a favourable situation for the remainder of the Parliamentary session. Minshutō's refusal to engage in consultation means that the government is reduced to pushing things through, although doing so systematically is politically difficult. On the other hand, an opposition that is not constructive enough would lose out in the eyes of the public.

Mr Fukuda, like Mr Ozawa for that matter, has underestimated the determination of Minshutō members to play the opposition card. In fact, Minshutō's leader, Ozawa Ichirō, seemed prepared to form a coalition with the LDP when Mr Fukuda put this proposal to him on 2 November. Mr Ozawa replied by saying that he would submit the idea to his party, but the party's backbench felt that this would be a betrayal of the voters' trust. It even regretted the fact that Mr Ozawa had not rejected the proposal out of hand, whereas he had been of the view that a

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1. "Sekiyu shinhō wo haian ni suru kangae ni kawara wa nai, Ozawa daihyō, tōan teishutsu uke kishadan ni", the Party's website, consulted on 21 December 2007.

period in power would be the best way to demonstrate an ability to govern<sup>2</sup>. Furthermore, he pointed out that Mr Fukuda had shown himself ready to make two concessions, if Minshutō were to join the government. The one was to restrict the role of the SDF in international peace-keeping to situations where there is a resolution of the UN's Security Council or General Assembly; the other was to jettison the draft bill intended to replace the 2001 counterterrorism legislation<sup>3</sup>. Mr Fukuda has denied having made such commitments.

The Parliamentary session was extended until 15 December to give the opposition time to debate the proposed new anti-terrorist law, before being further extended until 15 January to allow for a vote during the bill's second reading in the Lower House, on the 12th (the Upper House has up to 60 days in which to reach a decision, starting from the day it receives a bill, in accordance with article 59 of the Constitution).

At the end of March, the government will have to decide on what strategy to adopt for the budget vote. The government could be led to a situation where it forces its draft bill through after a second reading in the Lower House (for finance bills, the deadline is not 60 days but 30, in line with article 60 of the Constitution), a lengthy procedure.

In the eventuality of a bill being forced through, a no-confidence motion could be adopted against the Prime Minister in the Upper House. This would not have any legal force, but may have a political one.

There is nothing that the LDP can look forward to from an early dissolution of the Lower House. If the Minshutō were to gain power, both Houses would have the same majority and for the first time there would be a complete majority shift.

The Minshutō is not regarded as being credible, however. Opinion polls give the Prime Minister a popularity rating above 50%, with the LDP itself at 34%, against around 22 % for Minshutō<sup>4</sup>.

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2. Press conference on 4 November and Mr Ozawa's speech to members of his Party on 7 November 2007.

3. Press conference on 4 November announcing his resignation, "Gōwan Ozawa' shikake tsuzuke", *Asahi shimbun*, 5 November 2007.

4. Poll by *Yomiuri* published on 13 November 2007. In the poll taken the following month (11 December edition), Minshutō had fallen to 17 %.

The more likely outcome is that the LDP would lose its two-thirds majority. A coalition would then be set up – a scenario that makes the Kōmeitō apprehensive about being sidelined (though a Min-Kō coalition would be foreseeable in the event of the LDP suffering a significant reverse of fortune).

Mr Fukuda has indicated that he would not dissolve the Lower Chamber before the vote on the budget<sup>5</sup>. The Kōmeitō is in favour of a later dissolution: on 13 December, the PLD and its ally decided on the month of July, after the G8 Summit (which will be held in Hokkaidō from the 7<sup>th</sup> to the 9<sup>th</sup>). Between now and then, it is probable that the government will have to push its main agenda through.

Sources: Constitution, the Law of the Diet, *Yomiuri*, *Asahi*.

## 2. Passing a bill to replace the 2001 counterterrorism legislation

The 2001 anti-terrorist law could not be renewed before its expiry date, on 1st November, and the maritime Self-Defence Forces which were deployed in the Indian Ocean have now returned home.

The government drafted a new bill, voted on by the Lower Chamber and sent to the Upper Chamber on 13 November, which limits the current contribution to its most basic level, which is the supply of fuel.

The opposition seized on two scandals to hold up the start of debate in the Upper Chamber. The one concerned a case of corruption implicating Moriya Takemasa, a former administrative Head of the Ministry of Defence. This was the fact that the fuel supplied by the the Self-Defence Forces in the Indian Ocean went to ships that were used by the United States in Iraq (an “association with the use of force”, forbidden by article 9 of the Constitution) without the SDF informing their Minister.

The Minshutō indicated in October that it was hoping that the SDF would take part in the International Security Assistance Force (ISAF, mandated by the ONU under NATO supervision) and that they would give food and medical aid, as well bolster administrative and

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5. Press conference by the Prime Minister at his residence on the evening of the 14<sup>th</sup>: “Yosan seiritsu made kaisai sezu”, *Yomiuri shimbun*, 15 December 2007.

police structures<sup>6</sup>. It also proposed sending non-uniformed SDF members, attached to the Ministry of Foreign Affairs, as part of civilian regional action groups, once favourable conditions had been created to enable civilians to be sent<sup>7</sup>. The proposal, made on 21 December, “for the eradication and the prevention of international terrorism and to help in the reconstruction of Afghanistan” (“*kokusaitekina terorizumu no bōshi oyobi konzetsu no tame no afuganisutan fukkōshientō ni kansuru tokubetsusochihōan*”) restricts the deployment of the SDF to those regions where there is a ceasefire in place and to providing humanitarian aid. Supply of oil would be a possibility if based on a United Nations Security Council resolution. The SDF are given the right to use their weapons to remove an obstacle that would otherwise prevent them from accomplishing their mission (something excluded by the law as it stands at present)<sup>8</sup>.

Public opinion, although in favour of the government’s draft bill, does not want it to be rushed through Parliament<sup>9</sup>. It would, however, have understood the need for this if the Minshutō had appeared to be just stonewalling for the sake of it. The Minshutō therefore resolved to put its own proposal to the House, although this is highly unlikely to get through as the Party has only a relative majority of seats (fewer than 121). In any case, the government and some NGOs are already engaged in civilian humanitarian aid work, and ceasefires or UN resolutions seem rather unlikely.<sup>10</sup>

The subject of Japan’s role in the fight against terrorism in the Indian Ocean was raised during Mr Fukuda’s visit to the United States on 16 November, and later during the visit to Tōkyō by the secretary-general of NATO. The

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6. “Minshu, ikenshūyaku nankō mo” [“The difficulties of taking on board all points of view within the Democratic Party”], *Yomiuri shimbun*, 19 October 2007.

7. Meeting between Ishiba Shigeru and Asao Keiichirō at the Press Club on 20 October 2007. “Kokkai ronsen mae ni bōeisōtai-ketsu” [“Confrontation over defence prior to the debate in the National Diet”], *Yomiuri shimbun*, 21 October 2007.

8. “Minshutō, shinterō taisaku hōde, danzoku shingi senjutsu”, *Sankei shimbun*, 21 December 2007.

9. A poll by the *Yomiuri* on 11 December 2007 gave 44% opposed to it being pushed through, with 42.5 % in favour.

10. “Minshutō, Shinterō taisaku hōan, sanin ni teishutsu”, *Mainichi shimbun*, 21 December 2007.

government is not in principle opposed to participating in the ISAF which would enable Japan to put in place the closer cooperation NATO is hoping for. aux États-Unis le 16 novembre, puis lors de la visite du secrétaire général de l'Otan à Tōkyō. Le gouvernement n'est pas opposé au principe d'une participation à l'ISAF qui permettrait au Japon de mettre en œuvre la coopération plus étroite à laquelle il aspire avec l'Otan.

Jaap de Hoop Scheffer was in Tōkyō on 13 December for his second visit after first being there in April 2005. Meanwhile, Abe Shinzō and the Defence Minister, Kyūma Fumio, had gone to Brussels, in January and May respectively. High-level discussions were also held in Tōkyō in March, part of an ongoing series that have taken place on a regular basis since 1990. Japan has observer status for some NATO exercises, and also takes part in some of its seminars (on proliferation, and assistance to Afghanistan, for example). It participates in twelve of the projects carried out by NATO's regional reconstruction teams, and in December sent an officer to liaise with NATO's representative in Kabul.

The Defence Minister, Ishiba Shigeru, estimates that the rate of activity of Pakistani troops has dropped by 40% since Japan withdrew its participation<sup>11</sup>.

Sources: websites of Minshutō, NATO, *Yomiuri*, *Asahi*, *Mainichi*, *Sankei*.

### 3. A shift in Japan's North Korea policy

Mr Fukuda initiated a shift in the Japanese position in terms of finding a resolution to the North Korean crisis. This was in order to avoid Japan being isolated. The government is no longer making the question of the kidnap victims a pre-condition for resolving the crisis, judging that it was compromising the chances of moving forward on the nuclear and ballistic fronts.

The second session of the sixth round of the Six-party talks was held in Beijing from 27 to 30 September. It resulted in the signing, on 3 October, of an agreement on the second stage of action.

No progress was achieved in the bilateral dialogue between Japan and North Korea, held

to discuss the normalisation of diplomatic relations and to clarify the fate of the kidnapped Japanese citizens.

Giving due consideration to the gulf appearing between the resolution of multilateral questions and bilateral ones, Japan has realised that it was running the risk of finding itself marginalised, and so is now adopting a new approach.

After a dialogue phase which began with Pyongyang's declaration on 17 September 2002, during Mr Koizumi's first visit to Korea, Japan gradually opted for a policy of sanctions. As early as February 2004, it adopted legislative amendments allowing it to apply some gentle pressure on North Korea.

The ballistic and nuclear developments in the crisis brought about a hardening of relations. In 2005 and 2006, the United States and Japan were aligned around a common position, as attested by the declarations of the Japanese-American "2 +2" Committee, on 19 February 2005, and by the last Bush-Koizumi Summit, on 29 June 2006. The first stage on the road to finding a way out of the crisis, on 19 September 2005 (at the conclusion of the fourth Six-party talks), had been a disappointment. This common Japanese-American position was again expressed in the way the two crises were managed, first the ballistic crisis of July 2006 and then the nuclear crisis of October 2006.

On 1st November 2006, North Korea announced that it was prepared for a resumption of negotiations, and the action plan of 13 February 2007 was adopted. In the meantime, a split emerged between the American and Japanese positions: the nuclear test, the change of majority in the American Congress and the Iraqi and Iranian situations all led to the United States adopting a more flexible position.

The action plan did not satisfy Japan, which announced that it would not provide energy assistance for its implementation as long as the question of the kidnapped Japanese citizens remained unresolved. Indeed, this issue of the seventeen Japanese who had been kidnapped by North Korea in the 1970s and 1980s had come to be a priority for the Koizumi government, as it subsequently was for the Abe government.

Japan has renewed its sanctions which were taken on the basis of the Security Council

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11. "Shin tero hōan fukamaru giron", *Yomiuri shimbun*, 15 December 2007.

resolutions of July (S/RES/1695(2006)) and October 2006 (S/RES/1718(2006)).

There are signs, however, that the split between Japan and the United States is on the mend. Mr Fukuda has been opting for a less intransigent approach. During his meeting with President Bush on 16 November, he did not insist on linking the US's taking North Korea off the list of terrorist states to the resolution of the question of the kidnap victims<sup>12</sup>. This meant that he understood this was causing Japan to be isolated in its approach to North Korea.

The question has not, however, gone away. Indeed, during Mr Bush's meeting with Mr Fukuda, the American President stressed the importance of having it settled<sup>13</sup>. At the Asean + 3 Summit on 20 November, just prior to the 3<sup>rd</sup> East Asia Summit on 21 November, whilst Fukuda Yasuo recognised the great importance of resolving aspects of the nuclear question, he also explained the importance for Japan of a return of the kidnap victims; Hu Jintao expressed his understanding and empathy, and offered his cooperation<sup>14</sup>. Hu Jintao and Roh Mu-hyun also affirmed the need to pursue the process of a peaceful resolution of the nuclear crisis, at the same time as stating their understanding and their willingness to help where they could<sup>15</sup>.

Lee Myung-bak's election in South Korea leads one to think that there could be a rapprochement between the two countries on the question of North Korea<sup>16</sup>.

Sources: website of the Ministry of Foreign Affairs, *Asahi*, *Yomiuri*.

#### 4. Mr Fukuda's China diplomacy

Fukuda Yasuo was opposed to Mr Koizumi's visits to the Yasukuni shrine and is in favour of the idea of a separate and secular memorial

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12. "Kiban yowai dōshi hairyo", *Asahi shimbun*, 18 November 2007.

13. [http://www.mofa.go.jp/mofaj/kaidan/s\\_fukuda/usa\\_07/gaiyo.html](http://www.mofa.go.jp/mofaj/kaidan/s_fukuda/usa_07/gaiyo.html)

14. At the lunch between the two heads of state, on 20 November:  
[http://www.mofa.go.jp/mofaj/kaidan/s\\_fukuda/eas\\_07/jchn\\_gai.html](http://www.mofa.go.jp/mofaj/kaidan/s_fukuda/eas_07/jchn_gai.html)

15. During the Asean + 3 Summit:  
[http://www.mofa.go.jp/mofaj/area/asean/jck/kaidan/8\\_gai.html](http://www.mofa.go.jp/mofaj/area/asean/jck/kaidan/8_gai.html)

16. "Taikita kakuhaibi wo sai'yūsen", *Yomiuri shimbun*, 20 December 2007.

being set up. It was his father, Tanaka Takeo, who had signed the 1978 Sino-Japanese Peace and Friendship Treaty, by virtue of which the son is held to be a friend of China.

Mr Fukuda is cultivating this positive image and carrying on the work begun by his predecessors in this regard.

The Sino-Japanese dialogue on defence was taken up by Mr Abe. On 30 August, the Japanese Defence Minister in the last Abe government, Kōmura Masahiko, held talks in Tōkyō with his Chinese counterpart, Cao Gangchuan, the first visit by a Chinese Defence Minister to Japan since the one made by Chi Haotian back in 1998. The two Defence Ministries had not had any meeting since September 2003 (the Ishiba-Cao meeting). They decided on setting up a hotline between their two Ministries, as well as on Japan's participation as an observer in Chinese military exercises at September<sup>17</sup>, and on reciprocal visits to be carried out during the year by vessels from the Japanese and Chinese navies<sup>18</sup>. This was put into practice when a Chinese destroyer moored in a Japanese port on 28 November. It had been decided that a Chinese ship would come to Japan already in October 2000, during the visit to Tōkyō by the Chinese Prime Minister Zhu Ronji<sup>19</sup>. The planned visit by an Aegis vessel for late November was cancelled, however, due to reserve expressed by the United States<sup>20</sup>.

During their meeting in the wings of the East Asian Summit on 20 November, Messrs Fukuda, Hu and Roh adopted a timetable for Asean + 3 cooperation, calling for increased exchanges, particularly in the area of security.

Furthermore, the first top level economic dialogue, to which Wen Jiabao and Abe Shinzō

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17. Two Japanese officers were in fact invited to observe Chinese military exercises on 24 and 25 September:

<http://www.mod.go.jp/j/news/2007/09/21.html>

18. "Nicchū bōei kōryū wo saikai", *Yomiuri shimbun*, 31 August 2007.

19. "Chūgoku kantei kikō bōei kōryū no okure kokufuku wo" ["Arrival of a Chinese destroyer: making up for the delay in exchanges in the field of defence"], *Tōkyō shimbun*, 28 November 2007.

20. "Chūgoku kaigun no Aegis kan shisatsu keikaku, beigawa kōgi de chūshi" ["The planned visit of an Aegis ship by the Chinese navy deferred due to American opposition"], *Yomiuri shimbun*, 30 November 2007.

were invited, in Tōkyō in April 2007, was held on the 2 December.

After the visit to China made on 1 December by Mr Kōmura, currently Minister of Foreign Affairs, the government announced that the amount of the loan in yen to be transferred as part of the “economic cooperation programme with China”, set up by Japan in October 2001, would be 46.3 billion yen over the 2007 fiscal year<sup>21</sup>. This is the final payment of this kind<sup>22</sup>. Mr Koizumi had announced in April 2004 that Japan’s official development assistance (ODA) earmarked for China would be discontinued, as China now had its own ODA policy. The Japanese government also considers that the Chinese has failed to appreciate this aid which has amounted to some 3 316 billion yen since its inception in 1979. Lastly, it signals Japan’s disapproval of the increase in the Chinese military budget.

In fact, in spite of this positive climate, the setbacks are not over yet for Japan.

Thus, two sentences in the joint declaration adopted during this first economic dialogue were withdrawn from the on-line version posted by the Chinese government<sup>23</sup>. The text was not deemed by China to be suitable for a declaration. The two sentences in question concerned, on the one hand, the request made by Japan for an appreciation in the exchange rate of the renminbi; and on the other, the importance of China’s participation in the Energy Charter Treaty, which would commit it, in particular, to liberalising investments in this area (China currently has observer status).

The frictions linked to the extraction of natural gas from the eastern part of the East China Sea were not mentioned in the communiqué of 2 December<sup>24</sup>. The rise in military might,

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21. A programme set up on the recommendation, on 18 December 2000, of the Advisory Group on Economic Cooperation with China in the 21st Century (“21 seiki ni muketa taichū keizai kyōryoku no arikata ni kansuru kondankai”) chaired by Miyazaki Isamu, a former director of the Agency for Economic Planning.

22. “Saigo no taichū enshakkan 463 okuen”, *Yomiuri shimbun*, 9 November 2007.

23. “Chūgoku, kyōdō bunsho wo ichibu sakujo”, *Yomiuri shimbun*, 11 December 2007. Cf. (with thanks to Mathieu Duchâtel, Asia Centre, for his assistance):

<http://www.fmprc.gov.cn/chn/wjb/zzjg/yzs/gjlb/1281/1282/t386476.htm>

24. [http://www.mofa.go.jp/mofaj/area/china/jc\\_keizai\\_hi01.html](http://www.mofa.go.jp/mofaj/area/china/jc_keizai_hi01.html)

shrouded in secrecy, is still a source of considerable concern for Japan. Finally, Mr Sarkozy’s visit to China in late November gave new life to the prospect of a lifting of the European embargo on arms’ sales to China, something about which Japan is very apprehensive.

Sino-Japanese relations are, however, on a generally much better footing. Mr. Fukuda paid a visit to China on the 27<sup>th</sup>, where he met Hu Jintao and Wen Jiabao. During the visit he also went to the shrine of Confucius in Qufu where he wrote out four characters meaning: “*Know the past in order to build the future*”. The Chinese government, for its part, refrained from making any statement on the 70<sup>th</sup> anniversary of the rape of Nanjing.

Mr Ozawa, on his side, went to Beijing on the 7<sup>th</sup>. He declared at his meeting with Hu Jintao that if the Minshutō took power, China would become as important a partner of Japan as was the United States. He was accompanied by three members of the Minshutō: Kan Naoto, the Party’s Executive President, Yamaoka Kenji, responsible for relations with the Diet, and, on China’s request, Tanaka Makiko, the former Minister of Foreign Affairs and the daughter of former Prime Minister Tanaka, who, in 1972, was the architect of the normalisation of relations with China.

Sources: websites of the MOFA, the Ministry of Defence, the *Jimintō*, the *Mainichi*, the *Tōkyō shimbun* and the *Yomiuri*.

## PERSPECTIVES ON CURRENT AFFAIRS

**Ozawa Ichirō, “The immediate need for agreement on the principles of international security” [“Ima koso kokusai anzenhoshō no gensoku kakuritsu wo”], *Sekai*, November 2007, pp. 148-153.**

*Below is Mr. Ozawa’s response to Kawabata Kiyotaka’s article in the October issue of Sekai, part of which is to be found in the previous issue of Japan Analysis.*

Many Japanese feel that there is a contradiction between giving primacy to the UN and the US-Japanese alliance. In my view, this tension arises from the behaviour of the government rather than from these two concerns themselves. In fact, there is no contradiction, and Japan’s security relies on both.

The situation in Afghanistan and Iraq shows that the United States is now finding it impossible to be the sole guardians of the international community. The US president began the war in Afghanistan with the declaration that he did not need a UN resolution because it was a legitimate war of self-defence. But in fact they did not act alone and sought the help of the international community. World peace cannot be achieved without the combined forces of all, as laid out in the UN charter.

If Japan is to be a true ally of the US, she must tell the Americans (and it would be the same with any other ally) that they must behave as a leading member of the international community. And to that end, it is absolutely essential that Japan herself should make every effort to share the responsibility for keeping world peace. That has been my position since the Gulf War in 1990, when I was general secretary of the LDP. Japanese people are still not sufficiently aware of this necessity.

To get back to the «problems» in my statement picked up by the article named above, I have never said that Japan should not take part in the fight against terrorism. I just think that the Self Defence Forces must not be deployed overseas unconditionally. In accordance with the terms of article 9 of the Constitution, Japan must not use force to settle an international dispute. According to established interpretations, the deployment of the SDF is only permitted in cases of legitimate self-defence or if there is a fear that Japan might be attacked in connection with a crisis in the surrounding area. But the Japanese Constitution also expresses an aspiration towards peace and a respected place in the international community. That is why we must play an active role in UN operations. The Cabinet Legislation Bureau (CLB) still holds to this day that even actions under UN auspices fall into the category of legitimate collective defence, and that consequently Japanese participation in any operations authorised by article 42, chapter 7 of the UN charter (military or peace-keeping operations) would be unconstitutional. Since all the states taking part in the Afghan operation do so in the name of legitimate collective defence, how could we have taken part? At the time of the first Gulf War, when I believed that, without sending any armed units, we could provide logistics for equipment and medicine, the CLB and the different ministries were opposed to it, on the grounds that even logistical support constituted an «association with armed force» [an exercise enabling the use of force]. So what does the CLB say now about deployment in Afghanistan

or Iraq? The Liberal Democrat government says that it is not a matter of using force or making war<sup>25</sup>. For my part, I believe that Japan must not send troops to fight for the legitimate self-defence of another state, whether that is the United States or any other country. On the other hand I am still convinced that participating in the actions of the UN, even when they involve the use of force, is not contrary to the spirit of the Constitution [...] [Essentially] UN peace-keeping actions take precedence over legitimate self-defence, which is a matter of national sovereignty.

The article goes on to argue that there are no legal provisions governing the interpretation of the right to collective defence or the use of armed force overseas, but since they are covered by accepted international standards there is no particular need for legal quibbles.

It then went on to claim that there was no agreement in the Minshutō on these issues, but this clearly shows that he had not read the policy statement which we published in December 2006<sup>26</sup>.

Moreover, the fight against terrorism is not just a matter of American military operations. This fight mainly calls for a resolute approach, involving a close watch on developing countries and the movement of funds. If we enter into government, we will participate in the International Security Assistance Force (ISAF).

The government claimed that after the September 19th resolution renewing its mandate, the UN praised Japan's contribution to its actions. But the naval units of the Self Defence Force are not working with ISAF but with the American military's self-defence operations. Our position is that they must be part of joint forces like ISAF which participates in UN operations.

As for the argument that any decision to participate in UN actions provided they are authorised by the international community, means that there would be nothing to prevent

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25 . Editor's note: The CLB does not have any politicians among its advisers, who are civil servants, often legal professionals, seconded for five years in order to ensure their independence from the ministry which sent them. The Self Defence Forces are not represented.

26 .<http://www.dpj.or.jp/governance/taikai/magunacarta2006.html#03> : Chapter 3 specifies that Japan must be able to intervene in the context of a UN operation based on article 41 or 42.

sending SDF units to Iraq on the basis of the special law of 2003, since this claims in turn to be based on the UN resolution authorising a multinational army of occupation [*sic*], it is mistaken on two counts. Firstly, resolution 1483, which is the basis for that law, did not authorise the creation of a multinational army but only actions to maintain order through the agency of the United States and the United Kingdom. Secondly, although I do maintain that we must participate in actions based on UN resolutions, that does not mean that we could do absolutely anything on the grounds that it was allowed by the Constitution. Even when a resolution has been passed, the government ought to decide on each occasion whether to participate or not, and in what way and to what extent.

The Iraq war took the form of an attack by American and British troops, in spite of the opposition from France, Russia, and China. The ensuing failure of the occupation has plunged Iraqi society into chaos. The United States, which began the war on its own, has found itself obliged to seek international co-operation. This is the only reason behind the series of resolutions on the rebuilding of Iraq.

Until now, the Constitution has been used as a shield to allow us to keep a low profile in international co-operation. I think that there is no need to change the spirit of the Constitution but to put it more fully into effect. We must take an active part in every aspect of international co-operation.

**Ishiba Shigeru, “Reflecting on the deployment of the Self Defence Forces abroad” [“Jieitai kaigai haken nikansuru ikkōsatsu”], *Sekai*, December 2007, pp. 142-147**

*Ishiba Shigeru responds to Ozawa Ichirō’s article, emphasising his experience in government and his close knowledge of the legal debates and the real issues involved.*

*What is legitimate collective defence?*

If I have understood it rightly, Ozawa Ichirō’s article argues that any resort to legitimate collective defence violates the Constitution, and so does the special law on terrorism (2001). Before going into his reasoning more closely, let me first redefine legitimate collective defence. Under the terms of article 51 of the UN charter, it allows a nation to consider an imminent and unlawful attack on a country with which it has close ties to be an attack against itself, even

when its own territory is not being attacked. In Japan, it seems to me, it is understood as a right (or at least that is how it is presented) to declare war anywhere in the world jointly with the United States.

Let me now turn to the law itself. Firstly, its application is restricted to *non-combat areas*, meaning “*places where it has been established that there is presently no combat and where there will be none for the duration of the mission*”. So how is “combat” defined? It is “*the destruction of goods and the killing of people in the context of an international conflict*”. And what is an international conflict? It is a confrontation between States or organisations under the control of States. The law stipulates that its provisions do not include the use of force or the threat to resort to arms, and that the SDF units can only be deployed in non-combat areas. It does not allow for the suppression of the threat, as legitimate collective defence would. In no way can that be taken to be its basis. When the law was adopted in 1999, the majority intended it to be applied in cases of crisis in the surrounding region. I was vice-director of security matters in the political bureau of the LDP, and I opposed it. The intention was that this law should apply when the nation is under threat, or when a regional crisis breaks out with serious consequences for its peace and security. It was doubtful that the September 11th attacks came under this heading. Secondly, the law passed in 1999 is not based on geographical areas, but the Indian Ocean and Afghanistan can hardly be considered “regional”. Finally, the main point is that the law of 1999 was intended “*to contribute to the effectiveness of the Japanese-American Security Treaty*”, meaning that the United States can be the only beneficiary of the support which it authorises. But there are more beneficiaries of Japanese actions under resolution 1368 than the United States.

What was to be done? My team and I worked for three days and nights on a bill. One thing was certain: we could not call into question the established constitutional interpretation of legitimate collective defence, which would have taken several months. This law is based on the rules for Peace Keeping Operations and the law enacted in 1999, but we wished to help the United States to exercise their right of legitimate self-defence, as well as NATO and the ANZUS pact in their reliance on collective defence. Given that we devised the “combat area” formula and included the rejection of force in the law, I conclude that Mr Ozawa’s observation is completely unfounded.

A State cannot be built on purely military or civilian methods but on the effective combination of both.

*Does the UN take precedence over national sovereignty?*

[...] You cannot claim that intervention should be based equally on both a UN resolution and the political decisions of any government in power at the time. Interventions on the basis of UN resolutions are not the current practice, and would have serious consequences if they were.

[...] There is no getting away from the fact that the UN is a union of nations, an association created by the victors of the Second World War. That is why the clauses referring to the "enemy" are still there. Of course, Japan should contribute as far as her national interest allows, and I am not one of those who reject its existence (*"kokuren hiteironsha"*). But giving a central role to the UN (*"kokuren chūshinshugi"*) should not lead to pro-UN extremism (*"kokuren zettaishugi"*). National interests do not simply disappear when the UN authorises an operation. If national interests had no role in a state's participation in UN actions, that state would not be able to withdraw its troops on its own initiative.

For better or for worse, the Japanese government has been chosen by the people. We would not be a sovereign nation if we obeyed the will of the American or Chinese governments. That would be extremely anti-democratic.

Moreover, a resolution is only passed if it is not vetoed by one of the five permanent members. This means that it is highly unlikely that we would be able to move our forces even when our national interests or our international obligations demanded it.

*The significance of deploying the SDF*

Last January, Mr. Abe gave NATO an undertaking that Japan would participate in the Provisional Reconstruction Teams (PRTs) in Afghanistan. As I understand it, these PRTs combine military and civilian organisations providing assistance to the civilian population. If adequate provisions are made to avoid infringement of article 9, I can see no legal objection.

A similar combined activity is provided by the SDF's humanitarian activities in Samawah, in

Iraq, – in the form of water purification and supply, and rebuilding roads and medical establishments. When this measure was passed, I was Director of the Defence Agency. In accordance with article 9, the Director is responsible for the safety of the troops which he deploys. Such a provision did not exist in the 1999 and 2001 laws, and was unprecedented. Why? Because we knew that the SDF troops were being sent to a dangerous place: so what should be done, and where? And what were the conditions governing the use of arms? What weapons should they carry? Although they would be able to defend themselves, how was security in the surrounding area to be maintained? What should be the relationship with the countries responsible for security in the region (the Netherlands and Britain)? We thought about all these questions and put the SDF land forces through intensive training. The rules of engagement remained unchanged: as long as the adversary does not open fire, neither does the SDF. But that rule can only hold if it is stringently observed.

Finally, the question as to whether to come to the aid of the Dutch, Australian, and British troops has nothing to do with the right of collective defence. A response to terrorist attacks is not an instance of collective defence on the part of States: terrorists are neither States *nor controlled by States*.

Certainly, the situation was dangerous. But if a yakuza mobster opens fire in a theatre, does that make it a combat area? And would it make it an international conflict? The issue of danger is quite different from whether it is an international conflict. If Dutch troops come under terrorist attack, their response is not based on the right of States to self-defence. And if the SDF troops come to their aid, they are not exercising the right of collective self-defence.

Declarations which are not grounded in a concrete grasp of the legal bases, necessities, and accepted practices, are meaningless. You cannot sweep all this aside and vaguely promise help to the ISAF or the PRTs.

*Are we able to take part in ISAF?*

Isn't it ISAF's intention to put an end to an international conflict? How can we be sure that it is in accordance with the provisions of article 9? It has not been made clear what belonging to ISAF would involve, nor what would be expected of Japan. If the Taliban who are gaining territory in several provinces came to

exercise complete control over one of them, and ISAF was obliged to confront them, it is quite possible that would make it a “means of settling an international conflict” [since Taliban control over an area would make them its *de facto* government].

Nevertheless, if among ISAF’s range of activities a non-combat area could be found in which there is neither a State nor an organisation under the control of a State, or if even in the presence of such an organisation it could be shown that the recourse to armed force was limited to normal self-defence or the protection of equipment, and if a mechanism could be set up to permit both the deployment of troops and the cessation of their actions and their withdrawal, it is not out of the question that in the future we may participate in ISAF. But that must not amount to the use of force.

**Sakata Masahiro, “The government’s interpretation and Ozawa’s reasoning” [“Seifu kaishaku to ozawa ronri”], *Sekai*, December 2007, pp. 153-156.**

*The author is a lawyer and Director of the Cabinet Legislation Bureau who also disagrees with Ozawa Ichirō’s article.*

Mr Ozawa is wrong on two counts. Firstly, when he writes that the government believes that “actions within the UN fall under the category of the right to collective defence”: the use of force while implementing a UN resolution to maintain collective security and the right to collective defence are two quite different things, and the government has never confused the two.

He goes on to say that at the time of the 1990 Gulf War “even logistical support constituted an association with armed force” [an exercise enabling the use of force], so that participation would have been an infraction of article 9. The government’s view at the time was that Japan could not provide any aid or co-operation which would constitute “association with armed force” but that, insofar as we refrained from such association, co-operation was permitted (October 24th 1990, special commission of the Chamber of Deputies on peace-keeping co-operation with the UN). In this context, we introduced a bill to allow peace-keeping co-operation with the UN, specifically aimed at providing medical support, transport, and communications. The government was therefore not opposed to all logistical participation on the grounds that it would have constituted an “association with armed force”.

The bill in question was not passed, but the laws on crisis situations in the neighbouring region, on terrorism, and on deployment in Iraq were all written into the legal arguments in support.

Mr. Ozawa then asks why Japan has sided with the United States in Afghanistan when, unlike all the other countries following the same path it does not maintain the right to collective defence.

Article 9 forbids the use of force except in legitimate self-defence defined in the strictest terms. The government considers that even when the SDF does not itself employ force, any action involving association with force employed by other States – like the transport of munitions to the front line – would legally entail an association with force in violation of article 9.

But as long as the SDF’s actions are not themselves contrary to the Constitution, that is, provided that they do not constitute an association with the force employed by other States, they are permitted on the same grounds as the military bases and financial assistance provided by Japan. The support given on the basis of the anti-terrorist law to the warships of various nations in non-combat areas is governed precisely by this principle.

The other countries which, basing themselves on the right to collective defence, collaborate with the United States, are themselves either exercising force or associating themselves with the United States to exercise it. Since the actions of the SDF do not constitute a use of force and are separate from its use by other countries, they have no relevance to the question of the right to collective defence.

Moreover, the right of collective defence is governed by article 51 of the UN charter and requires that the Security Council be directly informed. Japan has not supplied any report of its activities to the Council, nor has it been asked to do so. The activities in question constitute neither the exercise of force nor the right of collective defence.

[...] [Could we participate in UN activities which did involve a use of force?] Mr Ozawa’s arguments aimed at authorising participation in actions supporting a specific resolution, even when they involved the use of force, call for two comments.

It might well be said that, since the actions of the UN are not those of a single State, even if the SDF had recourse to the use of force it

would not be “an affirmation of national sovereign rights”; and that, moreover, such active participation is in accordance with the spirit of the preamble to the Constitution which states that “*We aspire to lasting peace and an honourable place in the international community*”.

However, a resolution which provides the basis for military intervention is not binding, as is the case with economic sanctions, but falls into the category which allows for abstention. The decisions on military deployment and the use of force belong to the sovereign nation State. Provided that it is not covered by treaty obligations, it is no different from any decision over whether to invoke or not, the right of collective defence in favour of a third country.

Therefore one cannot claim, whether in terms of international or national law, that any use of force arising from military deployment sanctioned by the UN constitutes for that reason a purely UN action, without involving the use of force by the country concerned. Military actions carried out by the SDF on the basis of a UN resolution would constitute nothing less, fundamentally, than a use of force forbidden by article 9.

Finally, the kind of force envisaged by article 9 refers to military activities arising from international conflicts. When the enemy is neither a State nor an organisation under the control of a State, and insofar as the actions involved fall within the purview of maintaining internal order, we may consider that there is no constitutional objection to them.

On the second point, it is difficult to agree that the Constitution may have been framed to allow international co-operation involving the use of force. But the current international contribution is fully acceptable, since it involves non-military means. The supply of oil under the special law on terrorism, or the aid for reconstruction under the special law on Iraq, were implemented precisely to conform to this version of international co-operation.

**Tahara Sōichirō, “The Democratic Party cannot take power” [“Minshutō wa seiken wo torenai”], *Voice*, January 2008, pp. 46-55.**

*The author is a media personality well known for his straight talking (TV and Asahi. Here he considers the reasons why Mr Ozawa was tempted to accept Mr Fukuda’s proposal for a coalition.*

Why did Mr Ozawa walk right into the coalition plan?

At the press conference where he announced that he would be remaining in his position, Mr Ozawa stated that two people had given him the idea of a broad coalition, but he did not name them. One of them was Watanabe Tsuneo, chief editor of *Yomiuri*. Doubtless, the former Prime Minister Nakasone preceded him, and the one who did the real work behind the rapprochement was probably another former Prime Minister, Mori Yoshirō. On August 16th 2007, the editorial in *Yomiuri* called for “*a broad coalition to be set up as quickly as possible*”. Political life was bogged down in a situation where the LDP held two thirds of the seats in the Lower Chamber, and the Minshutō had the majority in the Upper Chamber.

Messrs Watanabe and Mori were certainly concerned above all with the need to renew the anti-terrorist law. Another issue was tax reforms including an increase in VAT. One can see why Mr Fukuda may have come to share their opinion. But what interest does the Minshutō have in a coalition?

[...] I can see two explanations for Mr Ozawa’s position. The first is that the Minshutō cannot win the elections, and the second is American influence.

In the 1980s, Japan and the United States were engaged in an economic war. [The American trade deficit led to a demand for deregulation from the United States]. At that time, Mr Ozawa was very responsive to American demands. When I told him that within the administration there were complaints about his weakness, his reply was that “*Without Japan the United States could just carry on, but without the United States Japan could not*”. In other words, Mr Ozawa believed that to a certain extent it was necessary to do what the United States told him to. Nowadays, when Mr Ozawa claims to give precedence to the UN over the alliance with the United States, he is not saying what he thinks.

[...] However, he is not in a position to go on saying no indefinitely. He hopes to take over the government, and has to show that he appreciates his responsibilities. So he has put forward the idea of a permanent law allowing the deployment of the SDF in the place of the anti-terrorist law. He probably thought that he could get the anti-terrorist law amended while nonetheless permitting the SDF to continue their activities in the Indian Ocean.

But the LDP is a party which wears its opponents down by forming coalitions with them. That is how the Socialist Party (*Shakaitō*) and the *Shintō Sakigake* disappeared from the scene. Ozawa himself experienced this under Prime Minister Obuchi, in the coalition between the LDP, the Liberal Party and the Kōmeitō. The Liberal Party led by Ozawa was absorbed; among the defectors were Noda Takeshi, Nikai Toshihiro (leader of an LDP faction), Nakanishi Keisuke (who has left politics altogether), and Ms Koike Yuriko (a former security adviser to Mr Abe).

So the Minshutō was running a risk in accepting a coalition. If Mr Ozawa yielded to temptation nonetheless, that was because he does not like being in opposition. Ozawa is a man of power; he takes it when he can. When he was the leading figure in the main LDP faction, the Keiseikai, he abandoned it and it withered away. By accepting the post of Deputy Prime Minister, he definitely thought that he could bring down Mr Fukuda's government, in a move which would have destroyed the LDP and won him the elections. He is a man capable of making such a calculation, and he has sufficient self-confidence to carry it out.

**Maehara Seiji, "Can the Minshutō survive?" ["Minshutō wa ikinokoreruka?"], *Chūō kōron*, January 2008, pp. 68-75.**

*The vice-Chairman of the Minshutō outlines his ideas in an interview with Hashimoto Gorō, a journalist for Yomiuri.*

At the extraordinary party convention in mid-November, I proposed a large-scale co-ordination exercise, in which the Minshutō would put forward a number of counter-proposals on major topics and suggest some policy improvements. As Ozawa considered that the party was opposed to a grand coalition, he was also opposed to co-ordinating policies. That was his mistake. A coalition, which presupposes an agreement, would have been wrong, but an exchange of views within parliamentary committees is essential. It is also an opportunity. Up till now, the LDP has had a majority in the two Chambers; if it had been given an *a priori* agreement, not a single detail could have been altered later. Even when there was a genuine debate in the Diet, no amendments could be passed. It might well be said that the Diet was not working. But now that the majorities are not lined up (*nejire kokkai*) there is a unique opportunity to get the Diet

working properly [...] I believe that a combined LDP-Minshutō-Kōmeitō committee should be set up to allow this co-ordination to take place. I personally do not completely reject the idea of a coalition, but there are other things to be done first.

The Chamber which gives the most recent expression of the popular will is the Upper Chamber, which has just been elected. If each Chamber passed a motion for or against the government, and if they were not in agreement, the question as to which enjoyed the most recent legitimacy would arise. Nevertheless, the power to dissolve the parliament is in the hands of the Prime Minister<sup>27</sup>. As for myself, I believe that that the refuelling and supply activities in the Indian Ocean are absolutely necessary, and that Mr Fukuda ought to make use of the two-thirds majority.

If in the event the LDP and the Kōmeitō won the election, a grand coalition would come closer. [...] The victory in the latest elections has been above all a defeat for the LDP. In spite of that, however, within the party there has spread an unfounded feeling that we will win the next elections. [Mr Ozawa has affirmed that the party has not yet reached a critical threshold and that it will be difficult to win the next elections<sup>28</sup>]. I understand his anxiety, but he is not fulfilling his responsibilities as party Chairman.

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27. A motion of no-confidence or a refusal of a confidence motion by the Lower Chamber obliges the Prime Minister to dissolve the Chamber or delay the resignation of the government (article 69 of the Constitution).

28. At a press conference on November 4th 2007.