

Peace Constitution behind Poor Crisis Management

Osamu Nishi

During the past 50 days after the gigantic earthquake and tsunami struck eastern Japan on March 11, the cabinet of Prime Minister Naoto Kan has made too poor responses to the disaster, said to be the worst in 1,000 years.

Why not declare an emergency?

First, the prime minister should have convened the Security Council, the cabinet's supreme advisory body to consider "significant matters regarding national defense" and "significant matters regarding responses to a grave emergency." The earthquake-tsunami disaster clearly amounts to "a grave emergency." Government answers at the Diet in the past said the government saw an event like the 1923 Great Kanto Earthquake as equivalent to a "grave emergency." By convening the Security Council, the cabinet could have sent its message recognizing the disaster as emergent and grave and called on the people to share the recognition.

Second, the prime minister should have declared a disaster emergency under Article 105 of the Basic Act on Disaster Control Measures. The article was established in 1962 and provides that the prime minister shall declare a disaster emergency when a disaster is unusual and tremendous enough to exert grave impacts on the national economy and common welfare. The cabinet has claimed that the government should be cautious of invoking the article that could constrain citizens' rights. The claim represents a peacetime sense. The article should have been invoked in response to the unprecedented catastrophe like the latest one. What else would be the case where the government could invoke the article?

In fact, the cabinet instructed prefectural governors and municipal mayors to establish warning zones and impose up to 100,000 yen in fine or a detention on any persons trespassing into such zones. In handling any crisis, the government should declare an emergency first and then take flexible measures according to the situation, instead of taking gradual measures only to stir up discontent or insecurity among residents in the areas affected.

Third, the prime minister, though declaring a state of nuclear emergency under Article 15 of the Nuclear Disaster Special Measures Law, has left relevant government agencies to work out and take specific measures without demonstrating his own leadership.

Japan should enact a basic contingency law

Instead of taking such legal measures that should have been adopted, the prime minister has created many unnecessary panels (the number of such panels has exceeded 20) only to prevent information collection and instruction channels from being unified. Particularly, the creation of a panel to work out a post-disaster restoration plan has run counter to the principle of politicians' leadership as emphasized by the ruling Democratic Party of Japan. Prime Minister Kan has proposed a prime minister-headed task force for implementing the post-disaster restoration plan under the expert panel for the restoration. If the political leadership is given priority, the prime minister should head such panel.

Why has the government remained unable to effectively respond to the crisis? The answer is simple. The reason is that Japan has depended on "peace" and "safety" myths under the Constitution that has fallen short of assuming any emergency. Japan has believed that peace would be maintained as far as the Constitution calls for peace and that it would not have to get prepared to respond to an unexpected emergency.

The best choice for the future is an amendment to the Constitution which, however, will not be easy to be realized. Thus Japan must first take actions to enact a basic contingency law to respond to any emergency at home or abroad. If a "grand coalition" government is created, relevant political parties will have to agree at least to the enactment of such law.

Osamu Nishi is Director, Japan Institute for National Fundamentals, and Professor, Komazawa University