

An Urgent Appeal from Japan's Constitutional Scholars

October 9, 2001

Tokyo

With feelings of strong anger, we Japanese constitutional scholars condemn the terrorist assaults of September 11. Our hearts and profound condolences go out to the more than 5,000 victims of those attacks, to their bereaved families, and to all other affected people.

These terrorist attacks, which drew many jet passengers and crew members into the destruction and killed a huge number of citizens, were heinous acts of a kind never before seen, and must be roundly condemned as international crimes against humanity.

However, we also feel a strong sense of crisis over the mobilization of tens of thousands of soldiers for military action led by America's Bush Administration, and the help extended by Japan's Koizumi Cabinet.

Although the US government emphasizes that this action is a response to "a new situation," the use of force cannot avoid victims among the general public no matter how it is restricted to military installations. This use of force is certain to produce several million refugees and starvation victims, which will be added to the more than 5 million already existing refugees. Further, it will not only fail to dismantle the terrorist network that spans the globe, but also presents the danger of provoking more terrorism in response.

1. War in Retaliation Violates International Law

The use of force in Afghanistan is an illegal act with no basis in international law.

1) The United Nations Charter requires that international disputes be resolved by peaceful means. Further, it restricts the right of self-defense to the period of time until the Security Council enacts the necessary measures, and only in situations when having been, or currently being, militarily attacked.

2) Security Council Resolution 1368, adopted on September 12, "Expresses its readiness to take all necessary steps to respond to the terrorist attacks," and stops at confirming the member states' right of self-defense, but does not authorize, request, or approve the use of force against any certain group or state.

3) Furthermore, we should recall that in 1970 the UN General Assembly unanimously adopted Resolution 2625, "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations," which imposed on members the duty to refrain from retaliatory actions involving the use of force.

This use of force makes a mockery of the UN Charter and other achievements of the long years of international effort to bring about peace, and it spreads more apprehension throughout 21st-century international society.

Terrorist Acts Must Be Punished as International Crimes

If this wrongful, illegal use of force is continued by the economically and militarily powerful countries spearheaded by the US, it will only bring about an endless chain of one violent act for another, and an expansion of violence.

To deal with these recent terrorists acts, the use of force should be stopped immediately, the suspects identified on the basis of evidence that they committed international crimes, and taken into custody with the cooperation of international society, then tried rigorously and impartially in international court for crimes against humanity.

2. The Bill to Support US Forces ("Terrorism Control Support Bill") Will Let the Self-Defense Forces Go to War

The bill's intent is to conduct "cooperation and support activities" including supply, repairs, servicing, medical care, and the transport of weapons, ammunition, and personnel, but assuming that the use of force is impossible without such help, this support is an essential part of military action, and is therefore clearly participation in war. This would be the first participation in the use of force by Japan's military apparatus in the postwar years, and would clearly violate Article 9 of Japan's Constitution, which states that "the Japanese people forever renounce... the threat or use of force as a means of settling international disputes." If passed, the bill would surely create a serious impediment to strengthening peaceful relationships of trust between Japan and other East Asian countries.

In addition, there are the following grave constitutional questions about the bill.

1) The bill adds "foreign territory" to the area where the Self-Defense Forces can act, making that area in fact unlimited. SDF activities could be countries and regions near war zones, which means they would be put on the front lines. Even with the limitation that there would be no fighting in places where the SDF go, in fact their activities there would necessarily be integrated into combat actions.

2) The permissible use of weapons would be widened to "defending the lives and physical safety of those under one's charge," and the inclusion of wounded or ill US soldiers would eliminate the distinction of other activities with the use of force.

3) Action would be taken without advance Diet approval, and only a post-action report would be forthcoming. Thus, it is an attempt to create a precedent of sending the SDF to war at the Cabinet's discretion.

Further, the bill to amend the Self-Defense Forces Act, which is not limited-term legislation, presents the following issues.

4) The addition of new provisions for having SDF units guard their own facilities plus those of US forces in Japan, and for information-gathering activities, significantly relaxes the requirements for using the SDF to maintain public order, making it quite possible that the SDF could

unjustly infringe the citizens' basic human rights, including the freedom of expression and assembly.

5) SDF use of weapons inside Japan would be virtually unrestricted because the usage requirements, types of weapons that may be used, and concerned geographical areas for guarding and information gathering are excessively broad and ill-defined.

6) Divulging defense secrets would carry significantly more serious criminal penalties than for divulging other secrets, thereby giving things of military value greater importance than those of civilian value, which runs counter to the Japanese Constitution's basic principles.

We therefore oppose these bills.

3. The Urgent Importance of International Cooperation and Help Based on Unarmed Pacifism

We feel compelled to point out that behind this recent terrorist incident are the poverty and social disparity that are becoming increasingly serious under globalization, and the US-led military oppression against the strife that arises out of this situation. It will be impossible to eradicate the worldwide breeding ground for terrorism without surmounting this inequity and strife.

Japan's Constitution declares that the Japanese people "recognize that all peoples of the world have the right to live in peace, free from fear and want," and "have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world." The Constitution also renounces war and the threat or use of force as a means of settling international disputes, denies the state's right of belligerency, and vows not to maintain war potential. World politics has made it increasingly clear that staking out a position which assures human peace without relying on military force is unquestionably necessary if we are to ultimately eradicate terrorism and achieve the "preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth" (Japanese Constitution) in our globalized world.