



**ABE'S LAW:
DOMESTIC DIMENSIONS OF JAPAN'S COLLECTIVE
SELF-DEFENSE DEBATE**

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For decades, the Japanese government has maintained that Japan has the right of collective self-defense under international law, but that the nation's constitution does not allow it to exercise that right. Now, Prime Minister Shinzo Abe wants to expand Japan's defense options and in the process reinterpret the constitution. Many policymakers and analysts in the United States agree with Abe's intended course of action, and have noted that constitutional reinterpretation to permit the right of collective self-defense could allow Japan's Self Defense Forces (SDF) to better integrate into U.S.-Japan alliance activities and to be more active in international peacekeeping efforts. However, less attention is paid to domestic debates. In Japan collective self-defense is still an extremely sensitive issue among the public. It has put strain on the government and may ultimately invite closer judicial review of security related legislation. More circumspection as well as a different approach to constitutional change is in order.

Stacking the Deck

Much of the controversy surrounding reinterpretation stems from Abe's governing style. The prime minister has upset convention within Japan's highly regularized bureaucracy, appointing to committees and offices those who agree with his politics. In terms of constitutional reinterpretation, his most prominent selection is career diplomat Ichiro Komatsu to head the Cabinet Legislation Bureau (CLB), which scrutinizes legislation and government policy to ensure that it is in line with the constitution. The CLB director-general is usually selected from the bureau's own ranks and, until now, never from the Ministry of Foreign Affairs. Komatsu has publically disagreed with the CLB's consistent position that exercising the right of collective self-defense would violate Article 9. Indeed, rather than offering independent advice, Komatsu has explained that as "part of the Cabinet," the CLB must "do what it can to follow the prime minister's policy."¹ His irregular appointment has therefore been criticized in Japan as a "rude technique" to accelerate Abe's reinterpretation agenda.²

This is not, however, the first time Abe has been accused of placing his own supporters in areas where they could shape the debate on reinterpretation. In 2007, when he was briefly prime minister the first time, Abe convened a commission of 13 experts to explore whether the government could reinterpret the constitution to better provide for Japan's security. The commission was criticized heavily in the Japanese media as assembled simply to agree with the prime minister's position. Indeed, it was well known that its members favored reinterpretation, and its composition—the commission included only one expert on the constitution, and an extremely conservative one at that—does suggest its members were selected more for these preferences than for expertise with constitutional issues.³

The commission's findings emphasized the practical benefits of collective self-defense in four hypothetical cases, but were ignored by subsequent governments, for good reason. Their legal argument relied mostly on a formula stating that Japan should be permitted to engage in collective self-defense because it has the right to do so under international law.⁴ The Charter of the United Nations does indeed allow every member nation the rights of individual or collective self-defense against an armed attack by an aggressor. However, the commission's argument was deeply flawed. Nations can always waive their rights, and in the case of

collective self-defense, the language and long-standing interpretations of Article 9 of the constitution compel Japan to do so.

Back in power from 2012, Abe reconvened the commission with essentially the same membership to again deal with the question of reinterpretation. In February 2014, it released its preliminary report to the cabinet just in time for Abe to state that he did not consider amendment of the constitution necessary to allow collective self-defense. Abe wants to introduce the new interpretation before the end of the Diet session in June. Under this timetable, the Diet would have at most about two months to consider the historic change after the commission's final report is delivered in April. However, Abe has noted that he might sidestep Diet debate altogether and simply have the Cabinet declare the reinterpretation as government policy.

Self Defense and the Japanese Constitution—the Current Interpretation

The commission thus has a difficult task—to explain why CLB interpretations almost as old as the constitution itself should now be considered incorrect. In 1954, following some earlier discussion on the matter, the CLB settled on the interpretation that the first paragraph of Article 9, which renounces war “and the threat or use of force as a means of settling international disputes,” did not “deny the right of self-defense [. . .] in the case of an immediate violation of the nation of Japan.”⁵ A clear attack on Japan's undisputed sovereign territory could not be an international dispute from Japan's point of view. Moreover, the language in the second paragraph connected a ban on “air, sea, and land forces and other war potential” to the first. The ban did not therefore cover the acquisition of military-style weapons for uses short of war, such as maintaining public order. Nor did it preclude these arms from being used for defense of the nation against a direct attack.⁶ Individual self-defense was thus permitted under the constitution.

According to the CLB, however, the constitution clearly imposed restrictions on Japan when defending itself.⁷ By the time it had settled on its interpretation allowing individual self-defense, the government had refined those restrictions into three inseparable principles based on the CLB's reading of Article 9.⁸ These principles continue to form the basis of Japan's position regarding the use of force against other nations, appearing as a comprehensive statement in Japan's annual defense white papers. They mandate that the government can use force for self-defense only when:

- there is an imminent and illegitimate act of aggression against Japan;
- there are no other means of stopping that aggression; and
- the use of armed force is confined to the minimum necessary level.⁹

While the principles taken together are sufficient to prohibit collective self-defense, the CLB augmented its earlier testimony in 1955. Article 13 of the constitution states that the right of the Japanese people to life, liberty, and the pursuit of happiness is the government's highest consideration. According to the CLB, this implied an official “obligation to protect public order and freedom,” which would be impaired in a direct attack on Japan. Japan could thus defend itself, but, due to the restrictions in Article 9, only insofar as it would be protecting the Japanese people's rights. Thus, “Article 9 considered in conjunction with Article 13, naturally recognizes [. . .] action necessarily limited to eliminating a direct invasion.”¹⁰ If that was not clear enough, the CLB stated in 1960 that the right to defend a friendly foreign nation under attack “while called the right of collective self-defense [in international law], is not recognized under the constitution.”¹¹

The Supreme Court, which officially holds the power to “determine the constitutionality of any law, order, regulation, or official act” issued a ruling in the 1959 *Sunagawa* case, that, while not concurring outright with the CLB interpretation, did reiterate and reinforce some of its major tenets. The central question in the case was whether U.S. bases and forces on Japanese soil constituted the illegal maintenance by the Japanese government of “war potential.” The court ruled that they did not, because the government did not exercise command over them. Moreover, the court held that the renunciation of war and use of force in paragraph one of Article 9 did not constitute rejection of Japan’s right to self-defense, and so foreign forces could be stationed in Japan according to that right. However, that right was to be exercised by Japan taking only “measures for necessary self-defense in order to fulfill the existence and maintain the peace and safety of its own nation (*jikoku*).”¹² The clear implication of this ruling was “that actions or arrangements that were *not* strictly for the defense of Japan, and military forces or other war potential that *were* under the command of the Japanese government” might violate Article 9.¹³

More notoriously, the court also declared its reluctance to rule on treaties and laws concerning national security, because, unless their content was clearly unconstitutional, they stood as “political questions” best left to the Diet.¹⁴ This was an amazing abdication of the court’s formal powers, but along with the subsequent development of narrow standing rules that made it difficult for anyone to bring a case against the government for violation of Article 9, it had the effect of increasing the importance of CLB interpretations. In the absence of Supreme Court rulings, it was the CLB that would determine how the constitution applied to security—and for that matter, most other—legislation.

Indeed, the CLB confirmed its interpretation on collective self-defense in Diet debates on the issue in 1973. The interpretation also served as the basis for an official 1981 declaration outlining the government’s view that Japan had the right of collective self-defense under international law, but “the exercise of the right of self-defense must stay within the minimum necessary level to defend Japan (*wagakuni*), and collective self-defense exceeds this limit and is therefore impermissible under the constitution.”¹⁵ By the early 1980s the ban on collective self-defense was considered such an essential part of Japan’s constitutional fabric that the CLB director-general and several ministers (including Foreign Minister Shintaro Abe, the current prime minister’s father) unequivocally testified that future governments wanting to reverse the ban “would naturally have to do so by means of constitutional revision.”¹⁶ Successive governments have reiterated this testimony.

Problems with the Commission’s Arguments

Indeed, such testimony corresponds to accepted theory on constitutional change. The major problem with the approach of the commission reconvened by Shinzo Abe is that, like its earlier attempt, it seeks to justify reinterpretation primarily with reference to Japan’s practical needs in its transforming regional security environment.¹⁷ But constitutions by their very nature establish prior commitments to restrict government action even—and arguably especially—when political and practical circumstances change. Certainly, the interpretation of constitutional texts can transform over time, but this process must be incremental and usually emerges as the result of evolving judicial interpretation of constitutional law principles in the context of specific cases. While there is substantial debate about the legitimacy of such a process, no widely accepted constitutional theory contemplates conscious, “ad hoc, [and] radical government reinterpretation of provisions to fit perceived policy needs.”¹⁸

Be that as it may, the commission will likely revert to its previous arguments that Japan needs to be able to engage in collective self-defense in order to meet its treaty commitments to the United States and the United Nations. Indeed, commission members are clear that greater bilateral and international cooperation is the main reason behind their preference for reinterpretation.¹⁹ Yet, obligations under the U.S.-Japan Security Treaty or United Nations Charter also cannot be used as legitimate grounds to change current interpretations of Article 9. Article 98 of the constitution does oblige Japan to observe its treaty obligations, but this does not mean it would place any such obligations above its constitutional provisions. In any case, the security treaty does not purport to impose such obligations, clearly stating that during an attack, each party is obliged only to “act to meet the common danger in accordance with its constitutional provisions and processes.” If a case on the principles of the constitution itself cannot be found for exercising the right of collective self-defense, the treaty does not provide one.

The commission does, however, have another argument that it claims is conceptually derived from constitutional doctrine. This argument turns on the principle that Japan is only permitted the use of force as long as it stays within the minimum necessary level for defense. “Minimum” here has long been understood as a relative term, whose meaning changes according to other nations’ capabilities. In general, Japan refrains from arming itself with such weapons as long-range bombers and intercontinental ballistic missiles, primarily used for attacks far beyond a nation’s borders. Nevertheless, it can adjust the composition and armaments of its forces to meet clearly defined threats to its territory. Commission members have therefore argued that the right of collective self-defense should be included in this minimum necessary level.²⁰ The commission also later revealed that it thought Japan should be able to respond militarily to attacks on friendly countries in “cases which, if neglected, would have a large influence on Japan’s security.”²¹

Though more sophisticated than previous legal arguments for exercising the right of collective self-defense, the commission’s new position is still problematic, both in terms of the objections to reinterpretation raised above, and on its own merits. First, the hypothetical “large influence on Japan’s security” that serves as the condition for military action is too vague and expands Article 9 well beyond its intended scope. Early debates on the constitution show that Japanese lawmakers who reviewed and revised the document before it was promulgated were clear that the article’s inclusion in the main text rather than the preamble meant that it placed real legal restrictions on the government.²² Yet, the commission’s reinterpretation would provide the government with broad and arbitrary powers to declare a particular situation a “large influence on Japanese security,” and thus not an “international dispute.” Restrictions on these powers would be mostly political,²³ and independent of clear-cut criteria, such as the current stipulation that Japan’s sovereign territorial rights be subject to actual or imminent violation for Japan to defend itself. The reinterpretation would therefore strip Article 9 of its legal force. This is perhaps the Abe government’s objective, but it is also clearly unconstitutional.

Second, the logical flaws in the commission’s approach are quite serious. The requirement that the use of force be restricted to the minimum necessary level was but one of three principles derived *together* from a reading of Article 9. To make any sense as an interpretation of the text itself, they are therefore inseparable and include the condition that there must be an “illegitimate and imminent” act of aggression “against Japan.” As well as explicitly ruling out collective self-defense for Japan, the government’s 1981 declaration, derived from those principles, limits the minimum necessary use of force to that needed “to

defend Japan (*wagakuni*).” Because all three principles form a comprehensive interpretation, then, the commission cannot simply isolate the “minimum necessary level” principle from the other two, or indeed from Article 9 itself, and use it as a basis for reinterpretation. To have any credibility at all, it must offer a new explanation for how its interpretation fits with the text of the constitution. It does not seem intent on providing one.

Legal and Political Consequences of Reinterpretation

There are, then, significant unanswered questions about the commission’s findings, and opinion leaders in Japan are now warning the prime minister to respect the rule of law and the integrity of the constitution as he proceeds.²⁴ Moreover, collective self-defense is, along with security and secrecy laws recently railroaded through the Diet, part of a package of unpopular government actions that strike at the heart of Japan’s post-war antimilitarist national identity. Only about a third of Japanese polled think that exercising the right of collective self-defense should be allowed, while over 50 percent, including a majority of the ruling Liberal Democratic Party’s (LDP) supporters, oppose it.²⁵

Abe’s push for reinterpretation may therefore strengthen opposition and impair his ability to achieve his long-term goals, especially around constitutional revision. In addition to a two-thirds majority vote in both houses of the Diet, any revision to the text of the constitution needs the support of a majority of voters in a national referendum. Public support for revision is therefore crucial, and the role of civil society is particularly important here. After Japan’s participation in the Iraq War, thousands of protest groups, coordinated from 2004 by a central “Article 9 Association” acted to reverse trends in public opinion, which until then increasingly favored constitutional revision in general and was even creeping toward an endorsement of changing Article 9. While these groups have since been out of the public eye, opposition to Abe’s approach is likely to reinvigorate them. Moreover, there is significant scope for confluence with protestors of the government’s pro-nuclear policy and its secrecy and security legislation, meaning that public opposition to constitutional revision may have more staying power as the result of a “growing and changing civil society.”²⁶

Reinterpretation may also have important long term consequences in the Diet. Key here is the role of Komeito, the smaller party in the LDP-led coalition government. Komeito, is backed by the Buddhist organization Soka Gakkai, which maintains a strong commitment to the pacifist principles of the constitution.²⁷ Leader Natsuo Yamaguchi has declared that he is “absolutely opposed” to reinterpretation.²⁸ Nevertheless, Komeito has endorsed measures contrary to the pacifist views of its constituents before, such as SDF participation in the Iraq War. It has justified its position in the LDP-led government as providing a check on the excesses of its larger partner, and may agree to reinterpretation with significant conditions. Given that Abe may not want to cut Komeito adrift because of its ability to organize voters for the LDP in districts that it does not contest, the smaller party may well be able to slow down the process of legislating under any reinterpretation, insisting that it scrutinize bills enabling SDF action and that restrictions be applied before they are passed. Indeed, Abe may even postpone his announcement of reinterpretation to satisfy Komeito.

If Komeito cannot cut a deal with the LDP, however, it might leave, or be ejected from, the ruling coalition over the issue of collective self-defense. In this case, in order to ensure its bills pass the upper house, the LDP would need to join forces with either the right-wing Your Party or the Japan Restoration Party (JRP) or, more likely, both. Indeed, Abe has labelled the two “the responsible opposition parties” and JRP officials are speculating over the possibility and shape of a new coalition.²⁹

Such a coalition would complicate both U.S. and Japanese diplomacy in the region. The JRP in particular is a collection of some of Japan's more bombastic nationalist politicians. Abe is already under fire in the overseas media for his recent visit to the controversial Yasukuni shrine, and for the outrageous comments of strident nationalists he hand-picked to serve on the board of the national broadcaster. Regional and international criticism of his well-known views of history will only intensify if the LDP forms a coalition with the JRP over reinterpretation. Such a coalition would serve to reconfirm fears within the minds of Chinese and Korean policymakers that collective self-defense is part of Abe's broader agenda for a forthright and nationalistic Japan. This will frustrate U.S. efforts to convince partners in Seoul to work more closely with Japan, and it will cause problems for relations between Washington and Beijing, given Japan's status as a U.S. ally.

Abe's approach to the constitution also devalues the rhetorical power of his own diplomacy. In criticism of China's vast maritime territorial claims, including over territory Japan sees as its own, Abe has stressed that countries in the region must adhere to the rule of international maritime law. Such a policy should be applauded. However, his attachment to the rule of law overseas notwithstanding, the prime minister has declared during Diet debates on reinterpretation that he views the notion of constitutional restrictions on government action as old-fashioned and that he alone is ultimately responsible for reinterpreting the constitution on behalf of the government. Abe's comments attracted immediate rebuke from lawyers, the media, and opposition parties for being ignorant of the basic tenets of constitutionalism.³⁰ His calls for the rule of law in the international sphere when he seems not to respect it at home will therefore ring hollow.³¹

Indeed, there is also the admittedly slight possibility of legal action complicating Abe's reinterpretation agenda. As in the past, citizens groups will no doubt bring court cases against the government. The courts have ultimately rejected such cases on failure to meet extremely narrow criteria for standing. Nevertheless, cases are often filed as a type of protest activity "to keep the action before the public" and therefore to prolong litigation even when there is no chance of winning.³² In 2008, for example, the Nagoya High Court dismissed, on standing, a case against SDF dispatch in Iraq, but nevertheless noted in its non-binding commentary that Air Self Defense Force missions transporting foreign soldiers and supplies to combat areas "play[ed] a part in the use of force by other countries" and thus were in violation of the constitution.³³ The LDP poured scorn on the ruling, but it was of political benefit to the opposition Democratic Party of Japan, which viewed the dispatch as unconstitutional.³⁴ The rulings of even rejected cases are thus sometimes embarrassing for the government.

What is more serious is that the Supreme Court may choose to examine a case on the constitutionality of collective self-defense. Such a case would have deleterious effects on any concurrent missions involving collective self-defense activities, because the government would have to act cautiously while the legal basis of those activities was under review. The case might also result in a constitutional crisis where the court strikes down important security legislation and the government resists the ruling. More likely, it could further devalue the power of the court as a guardian of the constitution if the court reaffirmed its subordinate status on "political issues," or reviewed the case and rejected it on narrow standing rules. None of this would be a good outcome for Japanese democracy.

The chance that such a case will reach the Supreme Court is slim, but it is not zero. The court has been extremely reluctant to invalidate laws on constitutional grounds. One reason for this,

however, is that government bills are usually carefully scrutinized by several skilled legal experts at the CLB before they reach the Diet, and thus there is “very little chance that any new legislation contravening the Constitution [. . .] would see the light of day.”³⁵ By appointing its own external commission, as well as an outsider as CLB director, to expedite the reinterpretation process, however, the Abe government has upended this careful process of prior review. Unlike the commission, moreover, the court cannot emphasize practical matters in its judgments, and must focus on application of the law. Indeed, Tsuneyuki Yamamoto, the most recent justice appointed to the court has announced publically that collective self-defense would be “extremely difficult” to square with the constitution, and that it could only be realized through revision.³⁶ If Yamamoto’s opinion is shared by other justices, the prime minister cannot completely assume the acquiescence of the court that his predecessors have generally enjoyed.

Making Amends

Is Japan’s ban on collective self-defense outdated? Perhaps. But the correct way to rescind the ban is to build a consensus across parties and the public and to revise the text of the constitution through its own amendment procedures. By stirring up public opinion, placing his coalition partner into a political dilemma while pandering to alternative parties, and inviting contentious legal challenges to his agenda, the prime minister is setting back the cause of constitutional revision. This is unfortunate for Abe. Not only is revision one of the prime minister’s ultimate goals, it is the only avenue of constitutional change whose legitimacy cannot be questioned.

During the Cold War, ideological opposition from left-wing parties in the Diet made constitutional revision all but impossible. Since the late-1990s, however, moderate opposition parties have been more open to revision. The LDP has been in power most of that time, yet it has never initiated serious cross-party dialogue aimed at updating the basic law in ways that were broadly acceptable. Abe, with his commanding majority in the Diet, could magnanimously invite the disorganized opposition to discuss change. Experience in similar political systems shows that consensus will almost certainly be required for serious constitutional revision, and Abe should understand this.³⁷ Instead, his party has intentionally and divisively publicized an ideological draft constitution that would erode many of the current constitution’s popular principles of pacifism, the Japanese people’s rights, and democracy. The LDP’s draft, moreover, is flawed as a constitutional document, because it effectively removes all restrictions on state power vis-à-vis the individual.³⁸

This is no way to go about constitutional revision, and reinterpretation of the type that Abe is proposing is not legitimate. It is now the LDP that is being ideological and irresponsible in its approach to constitutional change. American analysts and policymakers, when they gently push Japan’s leaders to reinterpret the constitution and exercise the right of collective self-defense, almost always state that this must also be the decision of the Japanese people.³⁹ Yet Abe’s vision for reinterpretation would introduce radical change in a way tailored specifically to avoid the messy but legitimate democratic debate needed for revision. Liberal newspaper editorials in Japan, and even leading figures within his own party, are currently urging Abe to slow down the reinterpretation process so that it can receive democratic scrutiny.⁴⁰ The correct approach, however, would be to stop it altogether. Perhaps then, the government could embark on the legitimate process of building consensus for moderate constitutional revision.

POLICY RECOMMENDATIONS:

Reinterpretation of the constitution to allow Japan to exercise the right of collective self-defense is controversial in Japan. Polls show that only a third of the Japanese population supports it, while between 50 and 60 percent oppose it. Opposition is partly due to Abe's approach. A commission of experts he set up to examine the issue has been criticized as specially selected to push for reinterpretation, while his choice for director of the Cabinet Legislation Bureau (CLB) has upset convention.

- Abe's approach may stir up public sentiment and set back his agenda for outright revision of the text of the constitution. It may reinvigorate citizens networks set up to protect Article 9, the "peace" clause of the Japanese constitution.
- Komeito, the smaller party in Abe's coalition government opposes constitutional revision to allow Japan to exercise the right of collective self-defense and will move to complicate any attempt to implement it quickly or without restrictions.
- Abe could rely on nationalist parties instead. This would complicate regional diplomacy, given Korean and Chinese and, increasingly, U.S. views on historical revisionism in Japan.
- Court cases will be used to protest reinterpretation. While unlikely, the Supreme Court may also take up a case on the constitutionality of laws passed under any government reinterpretation. In the past, the court has been reluctant to engage in judicial review of legislation, but that may change with the government upending the CLB's careful process of prior review.
- Revision through the amendment procedures of the constitution is the only legitimate method of constitutional change. Abe should understand that this requires consensus, stop his divisive approach to the constitution, and work towards the goal of moderate revision.

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ENDNOTES

¹ "Kenpō kaishaku henkō ni iyoku: komatsu hōseikyokuchōkan ga fukki," *Asahi Shimbun*, February 25, 2014.

² "Shasetsu: Shūdanteki jieiken nashikuzushi wa ikenai," *Mainichi Shimbun*, August 9, 2013.

³ "Sekkyoku-ha zurari, abe-shushō yori shūdanteki jieiken 'kondankai' menbaa," *Asahi Shimbun*, April 26, 2007. In his recent book, Osamu Nishi, the only member of the commission who focuses almost exclusively on the constitution in his research, claims that the views of more mainstream constitutional scholars who disagree with his position "will destroy Japan" (*nihon o horobosu*). He also subscribes to a theory, common among a narrow

group of revisionist historians in Japan, that the constitution, the first draft of which was written by Japan's U.S. occupiers, was a part of a "War Guilt Information Program" established by the Allied occupation to "brainwash" the Japanese people and instill a "masochistic consciousness" (*kadonā jigiyaku ishiki*) in postwar Japanese society. Osamu Nishi, *Kenpō kaisei no ronten* (Tokyo: Bunshun Shinsho, 2013), 14-26, 80-98.

⁴ Prime Minister's Office, Anzenhoshō no hōteki kiban no saikōchiku ni kansuru kondankai, *Hōkokusho*, 2008, 18, 21. <http://www.kantei.go.jp/jp/singi/anzenhosyou/houkokusho.pdf>

⁵ Kokkai kaigiroku (Diet Records), House of Councilors, Committee on Judicial Affairs, Session 19, No. 35, May 13, 1954, 7-9.

⁶ Diet Records, House of Councilors, Committee on Judicial Affairs, Session 15, No. 8, December 23, 1952, 2-5.

⁷ Ibid.

⁸ Diet Records, House of Representatives, Committee on Foreign Affairs, Session 19, No. 20, March 19, 1954, 6.

⁹ *Defense of Japan*. Tokyo: Ministry of Defense, 2013, 143.

¹⁰ Diet Records, House of Councilors, Cabinet Committee, Session 22, No. 34, July 30, 1955, 21.

¹¹ Diet Records, House of Councilors, Budget Committee, Session 34, No. 23, March 31, 1960, 27.

¹² Saikō Saibansho (Supreme Court), Grand Bench, December 16, 1959, 13 Saikō saibansho keiji hanreishū, 3225.

¹³ Craig Martin, "The Case Against 'Revising Interpretations' of the Japanese Constitution," *The Asia Pacific Journal*, May 29, 2007, accessed February 20, 2014, <http://japanfocus.org/-craig-martin/2434>.

¹⁴ Supreme Court, Grand Bench, December 16, 1959, 13 *Saikō saibansho keiji hanreishū*, 3225. It should be noted that Chief Justice Kotaro Tanaka met secretly with U.S. Ambassador Douglas MacArthur II, "the interested party of a case in his court," and gave the ambassador updates on the case. Given that *Sunagawa* effectively insulated both the U.S. Forces and the SDF from future legal action on constitutional grounds, Tanaka's actions cannot help but raise questions about the independence of the judiciary in the case. "Supreme Court, government must come clean on Sunagawa incident ruling," *Asahi Shimbun*, April 15, 2013.

¹⁵ "Tōben honbun jōhō," House of Representative website, accessed February 1, 2014,

http://www.shugiin.go.jp/itdb_shitsumona.nsf/html/shitsumon/b094032.htm.

¹⁶ Diet Records, House of Representatives, Budget Committee, Session 98, No. 20, February 22, 1983. The words are the CLB director's, and were immediately endorsed first by Shintaro Abe and then other cabinet members.

¹⁷ "Anzen hoshō no hōteki kiban no saikōchiku ni kansuru kondan-kai," Prime Minister's Office website.

Accessed February 24, 2014, http://www.kantei.go.jp/jp/96_abe/actions/201309/17kondankai.html.

¹⁸ Martin, The Case Against "Revising Interpretations." Op. Cit 3. The quote is from Martin's shorter article on the same subject: "The Fatal Flaw in Trying to Impose a Reinterpretation on Article 9," *Japan Times*, October 15, 2008.

¹⁹ "Tasukeaukata ga gunjiryoku yokusei ni: kitaoka shin'ichi anpo hōsei konzachōdairi ni kiku," *Asahi Shimbun*, August 8, 2013.

²⁰ "Shūdantekijieiken: kenpō no hadome ga hazureru," *Kōchi Shimbun*, February 9, 2014.

²¹ "Anpo hōsei-kon kosshi akiraka ni shūdantekijieiken kōshi wa 'missetsuna kuni e no kōgeki' o sōtei," *Sankei Shimbun*, February 21, 2014.

²² Teikokugikai kaigiroku (Imperial Diet Records), Imperial Committee for Constitutional Revision, Session 90, No. 4, July 29, 1946, 4-7.

²³ In response to criticism that the reinterpretation will allow for government action beyond constitutional limitations, Shinichi Kitaoka, who has sometimes acted as head of the commission, has outlined a number of principles that he says the government should adhere to when exercising the right of collective self-defense (See Fumiaki Kubo's contribution in this volume). However, it is unclear, first, how Kitaoka's principles are based on a reading of the constitution and, second, whether the government will respect these principles in future. For example, Kitaoka has said that these principles would restrict Japan from unconditionally responding to requests for armed assistance if, say, China launched an unprovoked attack on the Philippines. However, LDP Secretary General Shigeru Ishiba, who is tipped as a future prime minister, has already expressed his view that enabling the right of collective self-defense should allow Japan and South East Asian nations to create a NATO-like alliance aimed at China, where, presumably, an attack on one member will be considered an attack on all. This directly contradicts Kitaoka's statements. Kitaoka has also said that he cannot think of any case where the interpretation promoted by the commission would see the SDF deployed on the other side of the world. This again was contradicted directly in comments by Nobushige Takamizawa, the senior government official in the Cabinet Secretariat. Shinichi Kitaoka and Kyoji Yanagisawa, "Japan's Right to Collective Self Defense" (debate at the Foreign Correspondents Club of Japan, Tokyo, Japan, November 12, 2013); "Ishiba: Asia needs body like NATO" *Japan Times*, March 6, 2014; "Kenpō kaishaku-hen: 4 katsudō han'i, mienai hadome," *Asahi Shimbun*, 8 March 2014.

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- ²⁴ “Kaishaku kaiken rikken shugi o keishi suru hatsugen,” *Nishi Nihon Shimbun*, February 19, 2014; “Shasetsu: shūdantekijieiken kikinagasenu shushō no tōben,” *Asahi Shimbun*, February 15, 2014.
- ²⁵ “Shasetsu: shūdantekijieiken no kōshi - ima wa fumidasu toki denai,” *Mainichi Shimbun*, February 12, 2014; “Shasetsu: daihyō shitsumon ‘min’i’ o butskete koso,” *Tokyo Shimbun*, January 29, 2014; “59% against moves to allow right to collective self-defense,” *Asahi Shimbun*, August 26, 2013.
- ²⁶ Akihiro Ogawa, “The New Prominence of the Civil Sector in Japan,” in *The Routledge Handbook of Japanese Culture and Society*, ed. Victoria Bestor et al. (London: Routledge, 2011), 196.
- ²⁷ As Komeito’s website states, the relationship between the party and “Soka Gakkai has been the subject of as much serious debate as it has been a tool for political gain wielded by the party’s rivals and critics.” Another reason for Komeito’s caution about reinterpretation might therefore be its attachment to current government interpretations of Article 20 of the constitution. The article guarantees freedom of religion but states that no religious organization can “exercise any political authority.” Current government interpretations backed by CLB testimony which hold that Article 20 “cannot be interpreted as a direct prohibition of political activities.” If the Abe government has the right to reinterpret longstanding interpretations of Article 9, this would, however, concede to future governments the right to change long-standing official interpretations of any part of the constitution, including Article 20. Such a scenario is unlikely, but the integrity of interpretations surrounding religious liberty is still a sensitive issue for Komeito. “On Politics and Religion,” New Komeito, accessed March 12, 2014, <https://www.komei.or.jp/en/about/view.html>.
- ²⁸ “Kōmei daihyō ‘danko hantai’ jimin ga shūdantekijieiken kōshi yōnin nara,” *Nihon Keizai Shimbun*, July 6, 2013.
- ²⁹ “Abe shushō minna sekkin, yoyatō piripiri jimin ‘kiite inai’,” *Asahi Shimbun*, 29 January, 2014.
- ³⁰ “Lawyer group charges Abe with constitutional ignorance,” *Japan Times*, February 14, 2014; “‘Kenpō wakattenai’ shushō kaishaku henkō hatsugen yoyatō yamanu hihan,” *Tokyo Shimbun*, February 15, 2014.
- ³¹ “Shasetsu” *Asahi Shimbun*, February 15, 2014.
- ³² Owen John Haley, *Authority Without Power: Law and the Japanese Paradox* (Oxford: Oxford University Press), 1991, 188.
- ³³ “High Court: ASDF mission to Iraq illegal,” *Japan Times*, April 18, 2008.
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- ³⁶ “Suga kanbōchōkan ‘iwakan aru’ shūdantekijieiken meguru yamamoto zen-hōseikyokuchōkan hatsugen,” *Asahi Shimbun*, August 22, 2013.
- ³⁷ Rosalind Dixon, “Constitutional Amendment Rules: A Comparative Perspective,” in *Comparative Constitutional Law*, ed. Tom Ginsburg and Rosalind Dixon (Cheltenham: Edward Elgar, 2011), 107.
- ³⁸ “Masuzoe tochiji: Jimin kaiken sōan o hihan ‘rikken shugi ni terashi mondai’,” *Mainichi Shimbun*, February 15, 2014; Lawrence Repeta, “Japan’s Democracy at Risk – The LDP’s Ten Most Dangerous Proposals for Constitutional Change,” *The Asia-Pacific Journal* 11 (2013), accessed February 20, 2014, <http://japanfocus.org/-Lawrence-Repeta/3969>.
- ³⁹ Richard L. Armitage, Joseph S. Nye, Tsuyoshi Sunohara, *Nichibei dōmei vs. chūgoku/kitachōsen*, (Tokyo: Bunshun Shinchō, 2011), 270; “Caroline Kennedy: Tokyo, Beijing, Seoul should ‘reach across history’ for reconciliation,” *Asahi Shimbun*, January 23, 2014.
- ⁴⁰ “Shasetsu,” *Mainichi Shimbun*, February 12, 2014; “Justice minister cautions Abe over collective self-defense plan,” *Asahi Shimbun*, March 8, 2014.