

Japanese Law Professors Appeal
Against the Aggression by US Forces and Japan's Support

On March 20, 2003 the United States and other "coalition forces" began their armed invasion upon Iraq. The Koizumi Cabinet announced its "understanding" and "support" of this invasion, and is working on a variety of ways to assist it. We the undersigned are law scholars and directors of the Law Section of the Association of Democratic Scientists, and as such, we are involved in legal research and education that contributes to upholding human dignity and peace, and to the advancement of democracy. In this capacity, and from the standpoint of peace and the renunciation of war prescribed by modern international law and the Constitution of Japan, it is our judgment that the attack against Iraq by coalition forces and Japan's support and assistance of that attack are unlawful, illegal, and unconstitutional. Accordingly, we vigorously demand that the attack be halted, and Japan's support withdrawn, for the following reasons.

1. From the Perspective of International Law

(1) The prohibition of the use of force is one of the most important principle of the UN Charter and modern international law. The only exceptions to this prohibition are the right of self-defense in case of an armed attack and UN enforcement measures carried out under Security Council decisions. The attack against Iraq by coalition forces does not fall in either of these exceptions, and it therefore should be characterized as an act of aggression. Coalition members cannot invoke the right of self-defense for their military actions because Iraq has not attempted to attack the US. Although the Bush administration claims that weapons of mass destruction (WMD) developed by Iraq may be handed over to Al Qaeda and be used for a terrorist attack on the US, a link between the government of Saddam Hussein and Al Qaeda has not been proved, and preemptive self-defense, which involves the preventive use of force to a possible armed attack in the future, is not recognized under modern international law.

(2) It is also evident that the coalition attack on Iraq is not based on a Security Council decision. The US cites, as a legal justification for the use of force, Security Council Resolution 1441 of 8 November 2002, and Resolutions 678 and 687 from the time of the Gulf War. Japan's Prime Minister Koizumi likewise depends on these resolutions to justify his support of the US military invasion upon Iraq. But Resolution 678 authorized the use of force only to dislodge Iraq's military from Kuwait. It did not permit the use of force to rid Iraq of WMD, nor to topple the regime of Saddam Hussein. Discard of Iraqi weapons of mass destruction is the obligation imposed by the post-Gulf War Resolution 687, and paragraph 34 of this resolution provided that the Security Council "take such further steps as may be required for the implement the resolution.

Resolution 1441 finally obtained the approval of all Council members by making clearly in paragraph 12 that, even in the event of Iraqi non-cooperation with inspection, it is the Security Council to consider the situation and the need for full compliance with all of the relevant Council resolutions. It does not give automatic authorization of the use of force. Invoking this resolution as the grounds for the arbitrary use of force, is like trying to argue that white is black. In truth, the lack of Security Council approval for the coalition attack on Iraq is also clear from the fact that the joint draft resolution of the US, Britain and Spain to get the authorization for the use of force had to be withdrawn because they saw it had no chance of adoption.

(3) US President Bush asserts that the Security Council did not discharge its responsibility, but in fact this is the opposite of the truth. UN inspections were proceeding steadfastly and getting results. UNMOVIC Executive Chairman Hans Blix and IAEA Director—General Mohammed El Baradei, who were in charge of the

inspections, insisted that the inspections needed several more months. Another claim of President Bush is that the Iraqi government has terrible weapons and is no doubt hiding them, but the inspectors report having found no evidence whatsoever indicating the manufacture or possession of WMD by Iraq. In any event, it is the authority of the Security Council to determine whether its resolutions are being implemented, and what action should be taken to ensure compliance. Unilateral armed attack against Iraq by reason of the Security Council having not discharged its responsibility is equivalent to putting the coalition members beyond law and the United Nations. This is none other than a "rogue" rationale. In his declaration of war, President Bush said the attack was to disarm Iraq and to free its people, but there is no reason in modern international law to expect that the US or other coalition countries have such legal authority.

2. From the Perspective of the Constitution of Japan

(1) The US and other coalition countries have turned their backs on the overwhelming international call against this war, and as observed above, have violated modern international law and the UN Charter by launching a preemptive attack claiming that it is for their own "security." This act is hostile to the spirit of international cooperation set forth in the Preamble of the Constitution of Japan: "We believe that no nation is responsible to itself alone, but that laws of political morality are universal." It is also preposterous to claim that grave sacrifices are being visited upon the Iraqi people in order to liberate them from the shackles of Saddam Hussein's dictatorship, for this obviously violates the right of all peoples of the world to live in peace, which is also found in the Preamble. For Japan's government, of all entities, to "understand" and "support" the actions of the US and other coalition countries that betray the spirit of the Constitution of Japan is a gross violation of the Japanese government's obligation to respect and uphold the Constitution. Prime Minister Koizumi has insisted that with respect to the Iraq issue Japan must "reconcile the Japan-US alliance with international cooperation." The expression of "support" by Japan's government shows it has chosen to follow the US, which in this case has clearly abandoned international cooperation and mocks the spirit of the UN Charter. This means that Japan too has withdrawn from the framework for peace built by modern international law, and has chosen the path of international isolation.

(2) Coalition countries are not under armed attack from Iraq, and there is no imminent threat. To launch a preemptive strike for the future "security" of one's own country under these circumstances is none other than a war of aggression. Hence Japan must provide no assistance whatsoever, including funds, to an aggressor. Prime Minister Koizumi has, while saying that Japan will not participate in combat actions, made statements which suggest that Japan might help with so-called logistic support, but there is no license to assist a war of aggression that is illegal under international law. Lending assistance to the coalition constitutes participation in war, and is none other than "use of force as means of settling international disputes," which is prohibited by Article 9 Paragraph 1 of the Constitution of Japan, and therefore unmistakably violates the Constitution.

(3) Recent public opinion polls indicate that about 80% of the Japanese public opposes the coalition attack on Iraq. But Prime Minister Koizumi has made several statements, such as "Sometimes following public opinion results in mistakes," that ignore the views of the people, with whom sovereign power resides. Further, the prime minister has made statements about his attitude concerning an attack without a UN resolution, such as by saying he makes decisions based on "the mood at that moment," thereby displaying even a lack of proper accountability to the people, who are the holders of sovereign power. In the end, the government arrived at a decision of "support" without any Diet deliberations. This declaration of "support" by Japan's

government is not only unconstitutional in substance, it also lacks respect for the will of the people, and it violated constitutional principles because of procedures that disregarded deliberations in the Diet, the "highest organ of state power."

As the foregoing discussion shows, the invasion upon Iraq by the US and other coalition countries, and Japan's support and intent to assist it, are astonishing violations of international law and the Constitution of Japan that abandon the path to a reasonable resolution under the law, and instead take the path toward domination by undisguised force. This act of violence will take many lives, injure countless victims and cause them suffering because of the aftereffects, create a multitude of refugees, and do terrible damage to assets, Iraq's cultural heritage, and environment. We declare our intense anger at this outrageous act, and vigorously demand that the US and other coalition countries immediately terminate their attack, and that the Japanese government immediately withdraw its declaration of support, take no action to assist the invading countries, and take this occasion to cease efforts to enact the war legislation, so-called "emergency legislation."

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Law Section of the Association of Democratic Scientists
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