

# Gendered Labor Justice and the Law of Peace: Nakajima Michiko and the 15-Woman Lawsuit Opposing Dispatch of Japanese Self-Defense Forces to Iraq

Tomomi Yamaguchi, Norma Field

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### Introduction

In 2004, then Prime Minister Jun'ichiro Koizumi, in response to a request from the United States, sent a contingent of 600 Self-Defense Force troops to Samawa, Iraq, for the purpose of humanitarian relief and reconstruction. Given that Article 9 of the Japanese Constitution eschews the use of military force in the resolution of conflict, this was an enormously controversial step, going further than previous SDF engagements as part of UN peacekeeping operations, which themselves had been criticized by opposition forces as an intensification of the incremental watering-down of the "no-war clause" from as early as the 1950s.

Many citizens, disappointed by the weakness of parliamentary opposition since a partial winner-take-all, first-past-the-post system was introduced in 1994, and frustrated by a perceived lack of independence on the part of the mainstream media, have taken the battle to the courtroom. As with Yasukuni Shrine suits, singly or in groups, with and without lawyers, they have been suing the state for violation of the Constitution in deploying SDF troops to Iraq.



**Nakajima Michiko from the 2002 calendar, *To My Sisters*, a photo of her from her student days at the Japanese Legal Training and Research Institute. A larger view of the same page can be viewed [here](#).**

Nakajima Michiko, a feminist labor lawyer, led one such group of plaintiffs, women ranging in age from 35 to 80. Each of the fifteen had her moment in court, stating her reasons, based on her life experiences, for joining the suit. This gave particular substance to the claim that Article 9 guarantees the "right to live in peace"—the centerpiece of many of these lawsuits, a claim that seems to have been first made when Japan merely contributed 13 billion dollars for the Gulf War effort. What might the "right to live in peace" mean, for individuals and for the collectivity—not just in Japan, but the world? The women's invocation of their histories is key to claiming standing: like the U.S., and unlike many European countries or South Africa, Japan lacks a constitutional court, which means that abstract claims of

constitutional violation cannot trigger judicial review; plaintiffs must show that they have sustained concrete injury to legally protected rights and interests.

Given the almost, though not total, reluctance of Japanese courts to exercise judicial review with respect to prime ministerial visits to Yasukuni Shrine, it is not surprising that judges have been unwilling to acknowledge a claim for a constitutionally guaranteed right to "live in peace." And yet, the elaboration of this right, the right to develop as a human being without "the fear of having to kill or be killed," is surely a logical outcome of Article 9 and the democracy set in motion with the adoption of the postwar Constitution.

trade-off for keeping the emperor, stated in Article 1), much less by the unimaginative arguments about the need to become a "normal," i.e., armed nation. Nakajima's still palpable pleasure in the illustration of tanks and bombers going into a cauldron and trains and fire engines and buildings coming out the bottom in "The Story of Our New Constitution," the supplemental social studies textbook issued by the Ministry of Education in 1947, sixty years after she encountered it in junior high school, is but one indication of the enthusiasm for peace unleashed by war's end and given shape by the Constitution.



### Story of the New Constitution cover

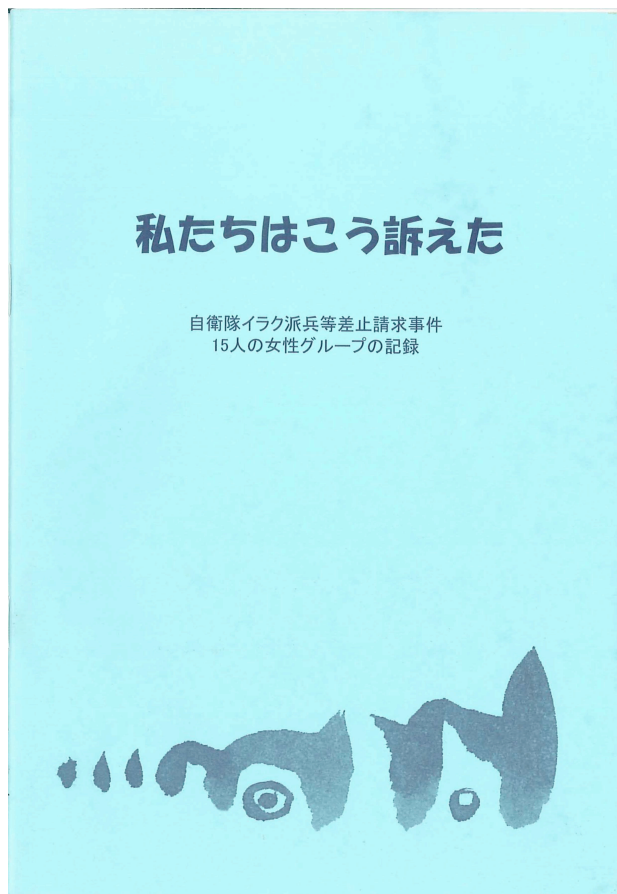
It is an outcome that is not captured by discussion of the origins of the Article (e.g., as



### From tanks and bombs to trains and buildings

"Thus We Appealed: A Record of the Case of the 15-Woman Group Demanding an Injunction Against the Dispatch of Self-Defense Forces to

Iraq" is a text combining the narratives and legal arguments presented by the fifteen women plaintiffs in a lawsuit filed in Tokyo District Court on August 6 (Hiroshima Day), 2004 together with the judgment, delivered in May 2004. The translation of this text, of which a revised version is presented below, was undertaken in preparation for Nakajima Michiko's visit to the University of Chicago in May 2007 as a guest for a course entitled "Postwar Social Movements in Japan" and the parallel lecture series, "Celebrating Protest in Japan." [1] Because of Nakajima's untimely death in a diving accident a scant three months later, Tomomi Yamaguchi and Norma Field, the authors of this introduction and co-organizers of the course and the series, would like to pay tribute to Nakajima by providing a brief sketch of her lifelong activism. It was the historical extent and nature of Nakajima's activities that made her the starting point of their course planning.



## Thus we appealed, cover

Nakajima Michiko was a pioneer who became one of the most renowned feminist attorneys in Japan with a specialization in labor law. She undertook a number of cases involving discrimination against women in employment and won many of them, including the very first supreme court decision in Japan on gender discrimination in employment, which found discrepancy in mandatory retirement age for men and women to be illegal (Nissan Motors Co. Case, 1981). Throughout her career she was active in the Japan Bar Association's committee for equality for the sexes, and as a feminist practitioner, she took on many divorce cases.

Her history as a feminist and peace activist goes back to her high school days. Born in 1935, she experienced the war as a child who suffered from the loneliness of compulsory evacuation, hunger, and the terror of air strikes. Her first involvement in activism was with the Wadatsumi-kai (memorial society for students killed in the war) as a high school student in Toyama Prefecture. She then participated in Ampo (the movement against the US-Japan Security Treaty renewal of 1960), provided legal support for members of the Zenkyoto (All-Campus Joint Struggle Committee) radical student movement of the late 60s, and then became involved in the Women's Liberation Movement in the early 70s. While actively participating in demonstrations and actions, she conducted legal counseling sessions at Lib Shinjuku Center, a communal center formed by young women's liberation activists in Shinjuku, Tokyo.

In 1975 she formed a Tokyo-based feminist group, Kokusai Fujin-nen o Kikkaketoshite Kodo o Okosu Onna-tachi no Kai (International Women's Year Action Group) with other feminists, including Upper House representatives Ichikawa Fusae and Tanaka Sumiko, media critics Yoshitake Teruko, Higuchi Keiko and Tawara Moeko, and many



other women ranging from workers, teachers, housewives, to students. Among many significant achievements of the group, the most notable one was its protest in 1975 of an instant ramen noodle TV commercial designating a female figure as the one who cooks versus a male as one who eats. The commercial ended up being cancelled, and the protest is still remembered as one of the most influential of feminist protests. Nakajima also made her office available for use as a space for various feminist activist groups.

Becoming keenly aware of the need for a Gender Equality Law in employment through her experiences as a feminist lawyer and activist, Nakajima started a new group in 1979, Watashitachi no Koyo Byodoho o Tsukuru Kai (Group to Create Our Own Equal Employment Law), with the Action Group members and others. The group argued that both women and men should work equally, and that both should lead more fully human lives. The movement resulted in the 1985 Equal Employment Opportunity Law, a law that turned out to be a major disappointment for feminists. Nakajima, together with other activists, immediately started a new movement to change the law. Their activism resulted in the revision of the law in 1999 and in 2007. Although the revisions showed significant improvement from the earlier version insofar as employers were held responsible for preventing sexual harassment in the workplace and for prohibiting indirect discrimination, deficiencies remained and new distortions appeared, reflecting Japan's increased adoption of neo-liberal principles. This in turn prompted Nakajima to focus on issues related to part-time and temporary workers. She was dismayed about the labor situation in Japan becoming more unstable and exploitative for both women and men.

Her peace activism paralleled her labor activism. In 1980, with the landslide victory of the Liberal Democratic Party in the general

election and the increased dominance of conservative political forces, Japan seemed to have embarked on an accelerated course to become a "normal" nation capable of participating in war. Given this situation, Nakajima, along with feminist colleagues such as Yoshitake Teruko and Tanaka Sumiko, established a new feminist peace group, Senso e no Michi o Yurusanai Onna-tachi no Kai (Japanese Women's Caucus Against War) in 1980. She was a strong supporter of the efforts leading to the Women's International Tribunal on Japan's Military Sexual Slavery (2000) as well as in establishing the Women's Active Museum in accordance with the will of Matsui Yayori, who spearheaded transnational efforts to hold the Tribunal and bequeathed her estate to such an endeavor before her untimely death in 2002. Nakajima was deeply worried about the fate of Article 9 and active in various efforts to safeguard it. She made sure to cast her absentee ballot for the Upper House elections in advance of her fateful trip to Hawai'i in late July. Let us hope that she heard the news about the stunning defeat dealt Abe and the LDP before her tragic death although of course, she would have been the last person to slacken her efforts after an election.



**Selling copies of the collectively produced book about the Women's Action Group (The Path Opened by Women in Action) with fellow member Kobayashi Michiko. Nakajima**

## center.

Fukushima Mizuho, head of the Japan Social Democratic Party and former member of the Women's Action Group, read a highly emotional and moving eulogy at Nakajima's memorial service, which she later posted on [her blog](#). There, Fukushima declared, "Nakajima Sensei did a wonderful job of teaching generations of women coming after her. Without her, I would not have become a lawyer dedicated to abolishing gender discrimination." It was meeting Nakajima as a college student that attracted Fukushima to the law. Fukushima's invocation of Nakajima's cases involving Nissan Motors, Japan-Soviet Books (Nisso Tosho), Sanyo Realty (Sanyo Bussan), Showa Shell, Japan Iron and Steel Federation (Nihon Tekko Renmei), Imperial Pharmaceuticals (Teikoku Zoki Seiyaku), or Okinawa bus guides from a list "too long to enumerate" reads like the poetry of gender and labor justice, addressing not only pay inequality and retirement discrimination but mandatory transfer policy, which Nakajima would come to see as injurious to men as well.

Like the young women in Fukushima's account, Tomomi Yamaguchi was encouraged and educated as a feminist by Nakajima. She met her while a graduate student doing field research focusing on the Women's Action Group. Listening to her endlessly fascinating stories, she learned a history of activism that she had not previously encountered. Nakajima tirelessly supported and inspired her, encouraging her to pursue her interests in feminism and to become a scholar with a deep commitment to activism. Yamaguchi knows that Nakajima's influence will continue to guide her and others who follow in her footsteps.

Despite her knowledge, experience, and

distinction as a professional and an activist, Nakajima was a strong believer in the ideology of "hiraba," the level field. She was someone who always listened to and talked seriously with people regardless of their age, knowledge, or experience. This was repeatedly demonstrated in the openness and earnestness with which she engaged in discussion with undergraduates at the University of Chicago during her visit in May of 2007. This characteristic carried through to her professional practice, which Field had the opportunity to witness directly. The personal and the political were clearly connected in her mind and her actions. No detail was unworthy of her attention; she seemed to have an intuitive understanding of how shifts in the elements of daily life, both material and psychological, could make existence tolerable or intolerable. Still, devoted as she was to her profession (understanding, for example, the importance of divorce for many women clients), she also wished that she could be freed of the burdens of maintaining a practice so as to more freely devote her expertise and energies to the causes that held her attention. She identified herself as an anarcho-syndicalist: both parts are important, she emphasized to Field two years before her death

Nakajima was well aware of the continuities in her life. When news broke of the three young Japanese taken hostage in Iraq in 2004 and threatened with being burned alive unless the Japanese Government withdrew the Self-Defense Forces from Samawa, she immediately rushed to sit in at the Prime Minister's residence. She told Field that seeing the picture of the youngest, Imai Noriaki (then 18), she had said to herself, "That's me, fifty years ago!" [2]

It is unsurprising, then, that she should have taken steps—with other women—to file a lawsuit demanding an end to the dispatch of

Self-Defense Force troops to Iraq. The suit ended in defeat at the district court level in May of 2006. She was not surprised, though angered by the judges' refusal to show the semblance of engagement. The record produced here bears witness to her continued resolve.

Nakajima's commitment to peace and justice gave coherence to all her activities. Indeed, peace and labor justice were mutually indispensable to her vision of a desirable society. What she sought was not for women to become men and to dedicate themselves, mind, body, and soul to work, but for women and men to have richly human lives—each working fewer hours, thus ensuring work for all and a fulfilling existence for each. What kind of society would it take for labor to be organized in such a way? One thing is certain: it would have to be a society that had renounced war as a source of security, economic growth, and collective identity.

*Tomomi Yamaguchi teaches anthropology and Japan Studies at Montana State University-Bozeman. She is currently working on a book on the Women's Action Group that Nakajima Michiko belonged to and researching the current backlash against feminism in Japan. Norma Field is immersing herself in Japanese proletarian literature, working toward an anthology with Heather Bowen-Struyk from University of Chicago Press and a book on Kobayashi Takiji. Yamaguchi and Field are collaborating with staff and students to produce a website on social movements in Japan, beginning with materials prepared for the course and Celebrating Protest series referred to in the introduction. This introduction was written for Japan Focus and posted on October 20, 2007.*

[1] For a podcast of her public lecture at the University of Chicago on May 4, 2007, with comments by anthropologist John Comaroff, please go to [this website](#). For a transcript of Nakajima's classroom interactions at the University of Chicago, please see [here](#). Nakajima's publications include *Onna ga hataraku koto o mo ichido kangaeru* [Reexamining "women at work"], 1993; *Kodo suru onna ga hiraita michi: Mekishiko kara Nyu Yoku e* [The Path opened up by women in action: From Mexico to New York], jt. Authorship, 1999; and *Onna ga hataraku koto, ikiru koto* [For women to work, for women to live] 2002.

[2] A podcast of Imai's public lecture may be found [here](#).

## **Thus We Appealed: A Record of the 15-Woman Group Demanding an Injunction against the Dispatch of Self-Defense Forces to Iraq**

### **Preface**

Even now, more than three years after the start of the invasion of Iraq, chaos reigns within the country, the number killed and injured continues to rise, and because of the unrest, civilians are forced to live a difficult life. Anguished as we were by America's unjustifiable exercise of force, once the Koizumi cabinet reached the decision to dispatch Self-Defense Force troops to Iraq, we decided to pursue the question of the unconstitutionality of the action in court.

In Tokyo, individual citizens were already filing suits in court, at the rate of one a day, and class action suits were being filed throughout Japan. At a point where, despite our sense of urgency, we could not resolve to act individually, we obtained the cooperation of a lawyer, Nakajima Michiko. As a group of fifteen women, we were able to participate in the lawsuits arguing the "unconstitutionality of the dispatch of troops to Iraq." We filed our suit two years ago on August 6, Hiroshima Day.

Faced with a judiciary that has consistently evaded constitutional findings, we regretfully decided that the only form our suit could take was that of a civil action seeking an injunction against the dispatch of troops and compensation for personal damages. Convinced that the Constitution recognizes citizens' right to live in peace, we each submitted, on two occasions, written statements detailing personal, physical, and mental injuries and demonstrating the importance of peace to our wellbeing. In spite of this, the Court reached its decision without examining the evidence, calling witnesses, or examining the Plaintiffs themselves.

The decision handed down in May of this year [2006] stated that "No statute exists stipulating the right to live in peace, either as a specific right or as a legally protected interest" and rejected our demands and dismissed our case. For more particulars, please refer to "Comments on the Decision" below.

The statements printed in this booklet represent the core of each person's written statement as revised for the concluding hearing in March, in which the Plaintiffs stood up, one after another in relay fashion, and read their pieces over the course of thirty minutes.

We asked the Court for a decision that might advance, by even one step, the cause of securing the right to live in peace, but sadly this was not realized. We feel anew the limits of the Japanese judiciary.

independence from the government. We take pride, however, in having asserted our dissent.

June 2006

## The Docket, Submitted Briefs, and Plaintiffs' Statements

1. October 21, 2004 Petition Statement  
Statements of 3 Plaintiffs

2. December 3, 2004 Preliminary Brief (1)-1 What is occurring in Iraq and what the Self-Defense Forces are doing there: The actual conditions of the Iraq War and its illegality under international law

Preliminary Brief (2) Injuries sustained by Plaintiffs: Right to live in peace and personal rights Statements of 3 Plaintiffs

3. February 18, 2005 Preliminary Brief (1)-2 What is occurring in Iraq, what the Self-Defense Forces are doing there: The actual conditions of the Iraq War and its illegality under international law

Preliminary Brief (3) The unconstitutionality and illegality of the dispatch of the Self-Defense Forces: The recklessness of the cabinet in destroying constitutionalism

Statements of 3 Plaintiffs

4. May 13, 2005 Preliminary Brief (2)-2 Injuries sustained by Plaintiffs  
Preliminary Brief (4) What Japan ought to do for Iraq: What constitutes true



humanitarian aid activities?

nts of 2 Plaintiffs

5. July 14, 2005 Preliminary Brief (5) Seeking Explanation

Submission of Proposed Evidence 1

Statements of 2 Plaintiffs

6. September 8, 2005 Preliminary Brief (6) Statement of 1 Plaintiff

7. November 17, 2005 Submission of Proposed Evidence 2

2006 Court ruling (petition for the examination of witnesses and Plaintiffs dismissed)

8. February 2, 2006 Statement concerning court procedures

9. March 16, 2006 Final Preliminary Brief Statements of 2 attorneys

Statements of 15 Plaintiffs

10. May 11, 2006 The decision

**Heisei 18 (2006) March 16**

**Heisei 16 (2004) Number 16912: Case Demanding an Injunction against the Dispatch of Self-Defense Forces to Iraq**

**Plaintiff: Ishizaki Atsuko and 14 others**

**Defendant: The State** [the government of Japan]

**Tokyo District Court of Law, Civil Affairs Deliberation 15 System B**

***The statement of attorney Nakajima Michiko***

Your Honors, can you not hear them: the voices

of pain and sadness coming from the Iraqi people, and the footsteps of war that are approaching Japan? The plaintiffs and the attorney before you can hear them clearly. We have brought this lawsuit with the urgent desire of stopping this development. It is truly a shame that the court has not admitted the testimony of witnesses and Plaintiffs, but the Plaintiffs have submitted extensive documentary evidence. We ask that the court read all the documentary evidence and take the time to confront, in silence, this photograph of a bloodstained girl. And please do not hand down a decision along the lines of the Kofu District Court decision, as argued by the State. That self-abnegating decision might as well be deemed a suicidal act on the part of the Court.



The cover of *DAYS Japan*, inaugural issue (April 4, 2004).

**Additional note, December 14, 2020:**



At the time we posted this article in 2007, we shared in the enthusiasm felt by those concerned with peace and human rights for *DAYS Japan*, the monthly magazine dedicated to photojournalism. In December 2018, however, the magazine's founder and then-president, Hirokawa Ryuichi, was accused of sexual harassment and violence by seven women. More former workers of *DAYS Japan* and former assistants of Hirokawa came forward and accused Hirokawa of sexual assault, sexual harassment and workplace bullying. It became impossible to ignore the contradiction between the magazine's coverage of human rights issues and Hirokawa's behavior, deeply injurious to the human rights of its workers. *DAYS Japan* published its last issue in March 2019, and dissolved the company. See Tamura Hideharu, "Blowing the whistle on sexual violence by Hirokawa Ryuichi, a prominent Japanese human rights journalist" as well as the report of a third-party investigative committee [in Japanese].

The matters on which we request the Court's decision may be broadly separated into the following two categories:

First, we assert that the deployment of Self-Defense Forces to Iraq is unconstitutional and illegal.

The majority of decisions in peace lawsuits avoid ruling on the constitutionality of the contested issue. We accordingly ask that the Court not casually sidestep the issue of constitutionality. Under the separation of powers, the judiciary is given the authority to review the constitutionality of the actions of the Diet and the government. A representative

democracy is often unable to check laws and government actions that are at odds with the people's will. This is exactly why the judiciary's authority of judicial review is indispensable. In the cases brought against Prime Minister Koizumi's visits to Yasukuni Shrine, constitutional violation has been found numerous times, even though this view appears not in the text of the judgment itself but in the reasoning. [1] Chief Justice Kamekawa, for example, in the Fukuoka District Court case stated, "If the courts continue to avoid ruling on constitutionality, it is highly likely that the actions in question will be repeated. This Court has accordingly decided to take as its responsibility a consideration of the constitutionality of the shrine visits." [2]

This applies precisely to the question of the constitutionality of the deployment of the Self-Defense Forces. Ever since the Supreme Court avoided a constitutional judgment in the Sunagawa Incident on the grounds of sovereign immunity, the Self-Defense Forces have expanded hugely, and now, they have been armed and sent overseas. [3] This is nothing other than the result of the judiciary's avoiding its responsibility. Nevertheless, while relying on the doctrine of sovereign immunity, the Sunagawa decision also stated that if there is "blatant and egregious violation of the Constitution," then the courts needed to pronounce on constitutionality. In the current case, in which heavily armed Self-Defense Forces have been sent to an overseas war zone, there is "blatant and egregious violation of the Constitution." The State calls the deployment humanitarian support for reconstruction, but it is evident that in fact it is support for America's invasion and occupation of Iraq. This is not only a constitutional violation, but it is also an illegal act violating the Self-Defense Forces Law and the Special Measures Law [Regarding Humanitarian Reconstruction Assistance Activities and Activities to Support Ensuring Safety]. Unless the deployment of the Self-Defense Forces is declared unconstitutional

and illegal by a judgment from the judiciary at this time, there will be no brakes on Japan's recklessness.

Fully three years have passed since the invasion of Iraq by the American and British armies. Security in Iraq has only deteriorated, and people's lives are exposed to danger.

This demonstrates that peace cannot be created by force, that violence begets violence, and that the chain of violence only spreads. Therefore, in order to eradicate war, there is nothing to be done but to follow Article 9 of the Constitution of Japan "renouncing all war." [4] Article 9 is truly a treasure in which Japan should take pride. People throughout the world are beginning to accord it respect.

The second judgment we ask the court to make is that the plaintiffs' rights have been violated by the deployment of troops to Iraq, and that they have incurred serious damage.

The State simply denies us standing on the grounds that this is not a legal controversy, but as already mentioned in our preliminary statements, the only stipulation on this issue occurs in Article 3 of the Judiciary Law. [5] To interpret Article 3 narrowly and reject the Plaintiffs' demand would violate the right to access to the courts guaranteed in Article 32 of the Constitution, and would constitute a failure to apply the law. [6]

The Plaintiffs claim that the following interests have been denied: (1) the right to live in peace, (2) personal rights, and (3) legally protected interests.

With respect to the right to live in peace, Professor Yamauchi Toshihiro emphasizes in his written testimony in Statement A-120 that the Preamble to the Constitution provides an explicit basis for such a right. [7] Please note his opinion that given how other countries recognize judicial norms in the preambles to their constitutions, there is no reason for Japan

alone not to do the same. In the case at hand, we assert the right to live in peace based on the Preamble, Article 9, and Article 13. [8] In its response, the State willfully ignores Article 9 and separates the Preamble from Article 13 and denies their purport. This distorts the claims of the Plaintiffs and in no way constitutes a rebuttal.

As to personal rights: for the Plaintiffs, who have lived with the precept of "neither becoming a victim nor a perpetrator of war" as central to their character formation, these are rights that cannot be withdrawn.

In the last matter, that of legally protected interests under the State Redress Law, there are many precedents showing that even those rights not yet explicitly stipulated should be recognized. About the rights that the Plaintiffs charge have been violated, please, your Honors, listen to their voices. A decision to the effect that while the "anxiety" caused by leaflets in private mailboxes constitutes a legally protected interest, the intolerable mental anguish experienced by these Plaintiffs does not constitute the violation of a legally protected interest, would be a biased judgment, one surely to be censured by history. [9]

In conclusion, I would like to express my hope that you will not issue the sort of decision made in the case of the retrial of the Yokohama Incident, a decision that refused to address neither the torture committed by the former Special Police Forces nor the responsibility of the judges issuing the original guilty verdict. [10]

Given that one role of the court is to serve as a staunch guardian of the Constitution, we strongly hope for a judgment that takes even a single step beyond previous judgments in the direction of the Constitution.

***The statement of attorney Owaki Masako***

For twelve years, from Heisei 4 to 16 [1992-2004], I participated as a member of the House of Councilors in discussions of the Commission on the Constitution. I heard from people in various walks of life about their views on the country and the Constitution, and I also participated in work that analyzed each clause. Among the many opinions, the one that struck my heart was that Article 9 of the Constitution of Japan was a beacon of peace in the world, the object of interest and envy among the citizens of different countries, and that when Japanese citizens went abroad on peace missions with non-profit organizations, Article 9 served as the basis of the trust granted them as Japanese by the people of the world. The warm feeling the Plaintiffs hold towards Article 9 is a feeling shared by the people of the world who hope for peace.

Now, I will argue against the claim that the Plaintiffs have no standing as well as the claim that the right to live in peace is not a specific right.

The right to live in peace is a basic human right woven into the Preamble, Article 9, and Article 13 of the Constitution; it is none other than the right that embraces the freedom to pursue peace, to live in peace, and to negate war. It has specificity as the "right to live in a Japan that does not resort to war or force." This is the brilliant theoretical achievement of constitutional jurisprudence in postwar Japan. The right to live in peace is a fundamental right in the twenty-first century.

The Japanese government violated both the Self-Defense Forces Law and the Special Measures Law Regarding Humanitarian Reconstruction Assistance Activities and Activities to Support Ensuring Safety when they sent heavily armed forces into what was clearly a war zone in Iraq, and it is clear that they are supporting the American and British occupation armies' large-scale slaughter of Iraqi citizens.

It is evident that the invasion of Iraq was in violation of international law. Japanese lives are also being lost in Iraq. The fear and torment aroused in the Plaintiffs by the deployment of Self-Defense Forces to Iraq constitutes an infringement of each Plaintiff's right to live in peace. This is nothing other than a direct and indirect violation of both their individual rights and legally protected interests. Our suit has not been filed for the sake of a merely abstract inquiry into the interpretation or value of laws.

Finally, I will say a word about the judiciary's avoidance of pronouncing on discretionary actions by the legislative and administrative branches of government.

Democracy in the Diet is a democracy of majority rule, and there is no guarantee that it will conform to law. If the opinion of the Court is that dispatching the Self-Defense Forces is a political decision to be left to the discretion of the government, then the Court has abrogated its own judicial role as a constitutional court. Please do not try to avoid judicial review.

The judiciary is the institution vested with the sole and therefore highest authority for the interpretation and application of the Constitution. In the case at hand, we hope that the conscience and wisdom of the Court and its awareness of its historic role will lead it to assume the role expected by the law and the people and rule that the right to live in peace has been violated.

## Statements of the Plaintiffs

March 16, 2006

Tokyo District Court of Law, Civil Affairs  
Deliberation 15 System B

*On living in postwar peace*

Nagai Yoshiko (born 1935)

Your Honors! My name is Nagai Yoshiko. We fifteen Plaintiffs have filed this lawsuit from the conviction that the dispatch of Self-Defense Force troops to Iraq is a breach of the Constitution and that the only way to correct this wrongful action on the part of the government is to appeal to the judgment of the judiciary. When the U.S. government ignored international law and resorted to armed strikes despite the lack of both evidence and legitimacy, the Japanese government and the Koizumi administration, ignoring our precious Peace Constitution, decided on full-scale cooperation and sent troops overseas. For this they bear heavy responsibility. We fifteen differ in our life experiences, belong to different generations, and come from different social environments, but we have in common our hope for peace and our wish to act on our responsibility as citizens to preserve the peace and to pass on a peaceful Japan to the next generation. To that end we have made repeated efforts over the years.

Managing to escape the flames of air raids as an elementary school student and dodging machine-gun fire, I have been able to live in the peace of the postwar era. I am proud to have been taught by a national textbook in middle school that the Constitution of Japan has three great pillars, namely pacifism, popular sovereignty, and fundamental human rights. These are the thoughts that I have brought to this suit. I hope with all my heart that your Honors will show yourselves to be rightful guardians of the Constitution by finding the government's action unconstitutional.

The hoped-for examination of each Plaintiff in the suit has been rejected, but on this day, all of the Plaintiffs would like to express their thoughts, in however limited a fashion. Because time is limited, we will speak one after another.

*Memories of the Great Tokyo Air Raids 61 years ago overlap with Iraq*

Ueda Tomoko (born 1925)

My name is Ueda Tomoko. Every time I see images in the news from the war in Iraq, the terror I felt during the Great Tokyo Air Raids of sixty-one years ago is revived. "Molotov Bread Baskets," each one filled with dozens of incendiary bombs, rained down by the hundreds and the thousands. I was running about in confusion, trying to escape the flames, when, at the sound of the explosion of a one-ton bomb, my body froze. I cannot forget my friend who died, suffocated by the smoke.

Now, the same thing is happening in Iraq. Women and children are shot, innocent citizens are burned and robbed of life. The Iraq War is fresh salt rubbed in my old wounds from sixty-one years ago.

I cannot bear the anguish of knowing that Japan, with its Peace Constitution, is involved in this war.

*We have been apologizing to the peoples of Asia*

*and seeking reconciliation and peaceful coexistence*

Shimizu Sumiko (born 1928)

My name is Shimizu Sumiko. The Manchurian Incident, the Sino-Japanese War, and the Second World War filled my first seventeen years. Loyalty to the emperor and the state and militarism were drummed into me. My days were spent participating in lantern parades to celebrate military victories, making care packages for soldiers who were overseas, seeing soldiers off, making thousand-stitch belts, and volunteer labor. The use of the enemy's language, English, was



prohibited. There were daily air raid drills, practice sessions with bamboo spears on scarecrows, helping out with the farm work—even making charcoal—at the homes of soldiers gone to the front, and getting sent off as volunteer corps to work in munitions factories. In school, there were no classes, and not being able to study was the hardest part.

I experienced the 1945 great air raid of Osaka and the air raid of Fukui. People running in confusion, trying to escape the hail of incendiary bombs wrapping the city in fire; American soldiers in low-altitude airplanes firing at them with machine guns; fallen bodies piling up; mothers fleeing with bloody babies on their backs; burnt and festering corpses lying in the streets; and me, also fleeing, covered in water-soaked bedding. Everything about that time overlaps with the experience of the Iraqi people now. Whenever I think of the Iraqi women and children who are exposed to incomparably greater destructive forces, I cannot bear the pain.

I held a seat in the Diet for twelve years. During that time, we sincerely reflected upon and apologized for the infringement of human rights and the virtual enslavement of colonial populations that took place under Japan's colonial rule and war of aggression. We have made efforts toward reconciliation and peaceful coexistence with the peoples of Asia, and we have repeatedly said to them that Article 9 in the Constitution stands as proof of our pledge never to let these things be repeated. We must immediately stop the dispatch of troops to Iraq, which violates the Self-Defense Forces Law and the Constitution.

*The shock of learning that nothing was told to us during the war*

Nozaki Mitsue (born 1932)

My name is Nozaki Mitsue. What scares me

more than anything is the fact that a nation that wages war will come to rule over the hearts and minds of its citizens. I didn't even know that during the war, places around Japan other than Tokyo had been subjected to air raids. No matter how bad the war situation, the news shouted, "Glorious results on the battlefield" with "Our losses are slight" tacked on at the end. Even with the extreme exhaustion caused by the nightly air raids, no one could say, "I can't take any more!" We couldn't challenge the government's assertion that victory was assured because Japan was a country of the gods, ruled by an emperor from an unbroken imperial line. Jeered at as unpatriotic or traitors, monitored by the authorities, the armed forces, society, schools, and neighborhood organizations, we were roped into useless drills with bamboo spears or long-handled swords. Children during wartime knew nothing of the real state of things and were made to believe whole-heartedly that we would win. It was forbidden, like a crime, to have thoughts of one's own.

Now, I feel the mindset of that time is being revived. When the "Law to Protect the People in Conditions of Armed Attack" [passed 2006—Tr.] was being debated, I recalled the mandated destruction of buildings during the war. This was allegedly to make a buffer zone to control the spread of fires. In Hiroshima, under the scorching sun, with no protective gear, middle school students dashing off to perform that task suffered the direct hit of the atomic bomb. They were thirteen years old, the same age as me. I didn't know this until long after the end of the war. When I think about what I was doing at the time, my heart aches. The shock of not having known, the shock of not having been informed—this was the case with Okinawa, the Nanking Massacre, Unit 731, and the comfort women—I learned about these things much, much later. War is also about this kind of restriction on people's psyches and on what they know.

*To realize a democratic society, our unflagging efforts are necessary*

Kase Satsuki (born 1935)

My name is Kase Satsuki. When I was in my first year of middle school, I came across a textbook called *The Story of the New Constitution*. The textbook spoke to us, like this: "Now, the war has finally ended. Don't you agree that you never want to experience such terrible sad feelings again? .... To engage in war is to destroy human beings. It means wrecking the good things in the world." How refreshing it was! The textbook went on to say, "Two decisions were made in our new Constitution to make sure the country of Japan would never wage war again." Even now I can vividly recall what the textbook said about the renunciation of war capabilities and the exercise of military force, and how forcefully it stated, "Japan has done the right thing, ahead of other countries."

In 1952, when I was seventeen, there was a special election for the upper house in Shizuoka Prefecture where I lived, and I became involved in the investigation of systematic election fraud, which I considered the "destruction of the fundamentals of democracy." Thanks to this, I was ostracized. Having gone through that experience, I felt keenly that in order to realize the peaceful and democratic society promoted by the Constitution, we the sovereign people had to make unflagging efforts. Thereafter, having taken part in long campaigns in a variety of postwar citizens' movements and peace movements over the course of half a century, I feel ever more deeply that the principle of the Peace Constitution, which aims for "the realization of peace without depending on military power," is a compass not only for realizing peace in Japan but throughout the world, and that our Constitution is a treasure we should boast of to the world. The past several years, however, with the passage of

three emergency laws, the Special Anti-Terrorism Law and other war-related laws, and the strong-arm tactics used to dispatch troops to Iraq, I cannot help feeling an impending crisis in which the Constitution will be annihilated. Through the practice of such unconstitutional politics, Japan is being distorted into "a country that is able to go to war" once again and this, I believe, must not be permitted.

*Through involvement with the Japanese military "comfort women"*

Ueda Sakiko (born 1939)

My name is Ueda Sakiko. In the Asian Pacific War, Japan not only killed an estimated twenty million innocent people, but it also engaged in outrageous antihuman practices such as forced labor, military sexual slavery in the form of "comfort women," the Nanking Massacre, and medical experimentation on living bodies. In particular, I cannot stop thinking about those women who, at the height of their youth, were forced to become sex slaves as the Japanese military's "comfort women," who were robbed of their lives by that experience. Most of these women were forcibly taken from Japanese colonies or occupied territories, or tricked and taken away, to be trampled upon as the object of soldiers' sexual violence every day. Even after the war ended, there was no restoring anything like a normal human life for these women. Finally, in the 1990s, a group of courageous victims denounced the comfort women system and sued the Japanese government, but all their actions have been dismissed. The United Nations' Commission on Human Rights, Sub-commission on the Prevention of Discrimination against Women, has demanded a fundamental settlement from the Japanese government, but the Japanese government has made no effort even to respond to the victims' demands for justice.

In Iraq there have already been over one hundred thousand deaths in the prevailing

state of war. In addition, the terrible torture in Abu Ghraib Prison and other human rights violations are coming to light together with a rapid increase in sexual violence against women. As a woman, I find these things unbearable. It is out of the question for the Japanese government to be collaborating in consigning women to such a situation. Japan must immediately cooperate in the restitution of the human rights of women.

*In the burdens of my father and my uncle,  
the origins of the movement to advocate human  
rights*

Tsuwa Keiko (born 1945)

My name is Tsuwa Keiko. My father was an officer in the Kwantung Army. He moved from place to place in battles throughout Asia, and even though he returned immediately after the end of the war, a military tribunal found him guilty of POW abuse. The Chinese my father taught me was the words, "*Guniang lai lai*" ("Miss, come here"). The tone in which he said this was unpleasant to my child's ear, but as I grew up and found out about the atrocities of the Japanese military throughout Asia, it became a source of anguish for me. I did not hear anything about that period from my uncle, a military policeman, but in later years, my father sought redemption in religion.

Today, sixty-one years after the end of the war, the Japanese government has forgotten the acts committed by Japan in the past. It is not only legitimizing war and accepting the prime minister's worship at Yasukuni Shrine, but it is going so far as to introduce explicit plans to revise the Constitution in an attempt to make it so that Japan can once again invade other countries. I absolutely cannot forgive this trend toward policies leading to the quagmire of war, abetting America's unjustified attack on Iraq with an army called defense forces. Just

thinking of what the Self-Defense Forces, now turned into an army, will do on the battlefield of Iraq makes my heart ache. Who can state positively that they will not conduct themselves in the same way as the Japanese army of the past? Who can promise that women, the elderly, and children will not become casualties on the battlefield?

*In solidarity with the women who suffer under  
the value system of male dominance*

Kobayashi Michiko (born 1947)

My name is Kobayashi Michiko. I work in a law office. In most cases where women come to consult about divorce, there is a violent husband. A woman from Hokkaido, tossed out of doors in arctic temperatures while pregnant; a person who had been kicked and had her bones broken; women who had been coerced into sexual intercourse: these women are all deeply scarred not only on their bodies, but in their hearts. Violence not only destroys women's self-esteem, but the fear and despair drive the women into self-abnegation and cause them to lose the will to live.

The male chauvinist thinking and values displayed here are similar to what happens in war. Citizens are choked by gag orders, thought-control is put into effect, and violence is glorified: this is the system of war. The images from the reports on the miserable state of affairs in Iraq overlap with the image of women suffering from domestic violence, and this tears at my heart. Scarred by these images, I have begun to suffer from daily nightmares. I am currently on medication. Nothing can cure me other than the smiling faces of the Iraqi people. There is no cure other than images of an Iraq in which life is not threatened, in which everyday life has been restored. Among the American soldiers who participated in the war, I hear that the number of those who suffer from exposure to depleted uranium shells and those

suffering from stress is increasing. It has also been reported that three Self-Defense Force members returned from Iraq have committed suicide, and there are many who are suffering from trauma.

The lives of all people, from every country, are equally precious. Surely, it is the role of the Japanese government to spread the spirit of Article 9 of the Constitution.

*Let's change the way we fight terrorism under the Peace Constitution*

Niwa Masayo (born 1947)

My name is Niwa Masayo. I was born in 1947. I am proud of being the same age as the Constitution and the Fundamental Law of Education. Accordingly, in the days when I was a teacher, I thought about how I wanted to clearly convey this pride to the children. I used to say to them, "Just because we don't have an army doesn't mean that we have to be afraid. Through our decision to renounce war, we have chosen the path of walking together with the peoples of the world."

I am deeply hurt by the fact that the Japanese government is actively involved in the attack on Iraq and in the inhumane occupation of that country.

In particular, after the incident in London last July, I have begun to feel that the fear that I myself, my family, or my friends could also become the object of an armed attack has become more realistic.

I want to change the way we fight terrorism. The Japanese Constitution, which proudly repudiates war, is at once the greatest and most reliable foundation for responding to terrorism. Already, many Iraqis have been victimized, and the number of dead and wounded American soldiers is also

increasing. Japanese have also died. The government must withdraw from the war as soon as possible and move towards the realization of peace.

*The fear of terror from working in a British company*

Yuzuki Yasuko (born 1948)

My name is Yuzuki Yasuko. I don't know war firsthand, but I heard repeatedly about the sufferings caused by war and the preciousness of peace from my grandmother, who experienced the Sino-Japanese War, the Russo-Japanese War, and the Second World War; from my mother, who lost her son and husband in the war; and from my older sister, who experienced compulsory school evacuation and evacuation to live with distant relatives. My mother, who turned 85 this year, often says that when she heard the emperor's surrender broadcast, she thought, "It's good we lost the war. Now we'll have more rations. The military will no longer treat us like worms."

I work for a U.K.-owned company. Ever since the Self-Defense Forces were dispatched to Iraq, the company doors have been kept locked. This is not only because it is a corporation based in Britain, which joined the U.S. war of aggression against Iraq, but because Japan has also become a target for terrorism. In addition, the entire staff was sent e-mails pointing to the "danger of riding the subways," and we were told to be "careful about going home during the commuter rush hour." This is a danger that has arisen since the Self-Defense Forces were dispatched to Iraq. It is also said that after London, Japan is at risk. We will have to live every day in fear until the withdrawal of the Self-Defense Forces.

When I travel in Asia, I meet people concerned with remembering the brutal acts of the Japanese armed forces here and there, but



even given that history, I realize I was accepted because Japan has a Peace Constitution. Over the past few years with Prime Minister Koizumi repeating his visits to Yasukuni Shrine, I have sensed the feeling towards Japanese people becoming worse in China, which I visit every year. I am afraid Japan will choose a path that will cut it off from the rest of Asia.

*As a second-generation atomic bomb victim,  
I think the use of depleted uranium shells is  
unforgivable*

Mishima Hiroko (born 1949)

My name is Mishima Hiroko. I am a second-generation atomic bomb victim. My mother, who at age twenty was enrolled in a Higher Girls' School Specialist Course, was an atomic bomb victim in Nagasaki. Even though she herself was hurt, she went out to help numerous regular-course students who had been bombed in the Mitsubishi Armament works.

When she wanted to go back to rescue more people, she couldn't move, and after several days, she thought, "If I'm going to die anyway, let it be at home," so she went home. For many years, she was tormented by the thought that in leaving Nagasaki, she had not properly mourned the dead or rescued her juniors. When my mother was a teacher, she continued to express these thoughts, and I feel my own life came as an extension of those feelings. Each time I myself gave birth, I thought, "What if the effects of the Flash show up in this baby...." It is precisely for this reason that I want to pass on to my children a peaceful society and to work to prevent the repetition of such tragedies.

Thinking of the effects of residual radioactivity, I believe it is because my mother left Nagasaki that I am here today. That is why I cannot forgive America for using depleted uranium

shells. Since residual radioactivity from the dust caused by depleted uranium shells can reach 1,000 kilometers in every direction, the people of Iraq could be driven to extinction. Due to the same depleted uranium shells of the Gulf War, deaths have also occurred among the American soldiers who participated in the attack, and disabled children have been born as well. The effect on children is serious. If we are going to talk about providing reconstruction aid, we should concentrate our energy on research to remove radiation. That would be humanitarian support.

*I want to stop Japan from turning into a  
garrison state*

Sugita Yoshiko (born 1951)

My name is Sugita Yoshiko. It is clear that the Iraq War is unjustified. The dispatch of Self-Defense Force troops to Iraq is also clearly in violation of the Constitution. The use of napalm bombs, chemical gas, nerve gas, anaesthetic gas, and other poison gases is turning Iraq into a testing ground for illegal weapons. It is said that the internal organs of Iraqis have been extracted and dispatched to America, so the nation acting inhumanely is in fact America itself. Due to an effort to control information, Al-Jazeera, that invaluable resource, has been blocked. If we can only receive one-sided information from the U.S. military, the truth is likely to be concealed.

While the armies of other countries are being withdrawn, Prime Minister Koizumi has decided to extend the deployment of the Self-Defense Forces in Iraq. What a reckless, foolish act. The silent media, a prime minister servile towards the United States, the profit-seeking arms traders, the hypnotized citizens: I want to stop Japan from turning into a garrison state. Learning from the Costa Rican Supreme Court Constitutional Chamber that forced the cancellation of support for the United States,

may this Court deliver a constitutional judgment showing the discernment of the Japanese judiciary.

*The dispatch of troops coincides with the militarization of the schools*

Ishida Kuniko (born 1951)

My name is Ishida Kuniko. I myself have no experience of war, but through living with two children who are seventeen and nineteen, I feel keenly the gravity of a person's life. Therefore, I am intensely angered by the distorted citation of the Preamble to the Constitution that Prime Minister Koizumi presented in justification of sending the Self-Defense Forces to Iraq. Such invocation destroys the spirit of pacifism and of internationalism; it is an insult to the Peace Constitution I take pride in.

From about the time the Japanese government began preparing to dispatch the Self-Defense Forces to Iraq, in classrooms we witnessed a cessation of respect for a diversity of perspectives and saw the dominance of a culture that attempts to control even the hearts of children through enforced salutes to the Rising Sun flag and singing of the *Kimi ga yo* [the national anthem—Tr.]. Sex education, which promoted individual autonomy, the establishment of the human rights of women, and respect for the human rights of others, has been subjected to intense attacks. The state and local governments, by imposing particular values, are turning schools into places that teach obedience and the submersion of individuality.

As a citizen of Japan, which is taking part in a war that tortures the people of Iraq, I am deeply sorry and feel tormented by emotional pain. At the same time, my family and I cannot get over the fear that we ourselves might be subjected to a terrorist attack. As a mother and as a member of the citizenry who have general

responsibility for the education of children, I am deeply troubled by the militarization of the schools.

*Having experienced the terror of 9/11, I plead together with the life granted then*

Nakano Keiko (born 1969)

My name is Nakano Keiko. I was in New York where my husband had been sent on business, and so I experienced the 9/11 terror attacks.

Fortunately, since we were far from our apartment at the time of the attacks, we were not directly affected, but our apartment was close to the World Trade Center. It was two weeks later that we were able to enter our apartment. Even though we had managed to get through the rigorous security check, I did not have any proof of residence on me, so I was accompanied into my apartment by a distraught soldier. Treated like a criminal, I wailed in bitterness and sorrow. Ashes containing asbestos had gathered by the windows.

After 9/11, I think all New Yorkers were in a state of PTSD. A group of 9/11 victims' families (Peaceful Tomorrows) demanded that no war be waged in the victims' names, but Bush kept saying, "We will not give in to terrorists."

The daughter conceived in the place where 2,700 people lost their lives is now three years old. Hers is a life conceived in an apartment permeated with foul odors, where I shut myself in, feeling guilt at being alive as well as gratitude for our good fortune, and struggling to understand how I should go on living. For my daughter's sake, too, I must create a peaceful world where people need not live in fear of war and terrorism. I beg the Court to hand down a courageous decision such that Japan will not be a target of terrorism, that the blood of the citizens of the world need not be spilled.

I cannot appear in court today due to the imminent birth of my second child. But even though I am not in the courtroom, I am giving my full attention to the outcome of this trial. For the sake of my daughter and the child that will soon arrive, as well as for the sake of all the world's children, I place my hopes for peace in your Honors' courage.

*The thoughts of one who has continued in the grassroots peace movement*

Ishizaki Atsuko (born 1924)

My name is Ishizaki Atsuko. My youth was passed in wartime. When I was in grammar school, we prepared care packages for soldiers on the front and took part in lantern parades to celebrate the fall of Nanking. High-spirited with visions of victory, we knew nothing about the Nanking Massacre or the military comfort women. We were ecstatic to hear the results of the attack on Pearl Harbor from Imperial Headquarters. After that, air raids became frequent, daily provisions became scarce, and we had to start mixing our meager rations of rice with wild grass to make porridge to stave off hunger.

I became a teacher at a girls' school where I had been evacuated, but instead of teaching, my role was to accompany students who had been mobilized to help with farm work or to work in factories in Yokosuka. When we were exhausted by air raids day and night and utterly drained of vitality, the atomic bombs were dropped on Hiroshima and Nagasaki, and the war that had claimed over twenty million lives ended. But we had in our grasp the unexpected treasure of the Peace Constitution.

We had thought there would be no more war, but the next thing we knew, there was the U.S.-Japan Security Treaty, the Self-Defense Forces, and then the deployment of troops to Iraq. Since the 1960 struggle over the security treaty

when I felt compelled to take my five-year-old daughter to demonstrate at the Diet, I have continued my anti-war activities. Now I am past the age of eighty, but I intend to continue speaking out against war for the rest of my life.

I have something to say to the prime minister who insists that dispatching forces to Iraq is a service to the world community as called for by the Constitution, and to the young folks watching television who think that war is cool. War is an activity in which people rob each other of life. Not just soldiers sent to battle, but young children and the elderly also get caught up in war, and the chain of violence has no benefit. We who have experienced the horrors of war do not want our children and grandchildren to go through the same thing. We should stop violating our Constitution by being servile to America in its reckless war in Iraq. Instead, we should withdraw immediately and make a contribution to international peace that does not involve dispatching the Self-Defense Forces. This is the judgment I ask your Honors to make.

*I want a society that actualizes Japan's Constitution,*

*gained as a result of war*

Ueda Tomoko (born in 1925)

My name is Ueda Tomoko. I would like to say one final word. I was born in Taisho 14, the year 1925. My adolescence and youth coincided with the war. Can this court imagine what it is like to live with hunger and fear for your life, to feel that a single utterance could put you at risk? Now the politicians and elites of this country who do not know war are lightly discussing matters that will lead to war. A life once lost cannot be regained.

The Japanese people have a duty to all who sacrificed their lives in the war to uphold the

vision and lofty ideals of the Constitution of Japan, which we gained as a result of defeat. In order to pass on to the next generation a society that will actualize this Constitution, I want to bequeath these words to the generations that do not know war. I want them to be aware of the importance of peace and to continue our efforts to preserve it. I want them to know that it will be too late once that peace has been lost. I want to entrust these words to the judiciary, the guardians of the Constitution, as the last testament of Ueda Tomoko.

Final Preliminary Brief

March 16, 2006

# **Tokyo District Court of Law, Civil Affairs Deliberation 15 System B**

*Nakajima Michiko, Attorney et al. (7 other individuals)*

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## Introduction

Your Honors, do you not hear the footsteps of war? To the Plaintiffs, the sound is loud and clear. War is getting ever closer. Any day now, it threatens to take over our everyday lives and wreak its horrors on our youth and unborn children. We sense the approaching danger. Keenly feeling the need to halt this relentless tide, the Plaintiffs have brought this case before the court. Time and again, we have submitted briefs and detailed the charges. But, despite these efforts, the Defendant, the Government of Japan, has not deigned to contest the charges, much less answer them in court. They have only submitted judgments delivered in other cases as exhibits supporting their position and have remained virtually silent in court.

Under these circumstances, the Court rejected the request to examine the Plaintiffs' witnesses and the Plaintiffs themselves. Given that the Plaintiffs have submitted abundant documentary evidence, this is truly deplorable. We sincerely hope that this esteemed Court will carefully examine the evidence and hand down a ruling that will allow it to fulfill the historic role expected of it.

## Section 1 Regarding Defendant Exhibit No. 7 (Kofu District Court Judgment)

### 1. Grounds for citing Kofu District Court Judgment

The Defendant State has submitted Defendant Exhibit No. 1 and Defendant Exhibit No. 7 as pertaining to this case. While these exhibits consist of court rulings or decisions, they differ in many respects from this case in that they are decisions on the Special Measures for Terrorism Law and administrative litigation, and moreover, the reasons for the claims made in many of these cases are different. Of these two exhibits, Defendant Exhibit No. 7

consisting of the Kofu District Court judgment is similar to this particular case, and the Defendant has also requested that the court refer to it in its Explanation of Filed Exhibits (4). As such, the following statements proceed with arguments against the judgment in the Kofu District Court as a way of contesting the Defendant's claims in this case.

### 2. "Findings of fact" for the judgment

The judgment by the Kofu District Court is premised on the following findings of fact (facts evident to the Court): The Self-Defense Forces (SDF) have successively dispatched units to Iraq since December 18, 2003. Troops are authorized to carry out activities that primarily consist of restoring and supplying medical, water, and public facilities and transporting related goods, etc. (humanitarian and reconstruction support) and supporting other nations in their activities to restore security and stability in Iraq.

The Defendant, however, has made no attempt whatsoever to verify whether the SDF is engaged in the above activities. The Plaintiffs, have, on the contrary, established that the SDF is not engaged in these activities. As proof, we have submitted the following exhibits, which establish the fact that the SDF is engaged in neither water supply nor in public facility reconstruction, etc.: Plaintiff Exhibit No. 105 ("Humanitarian Water Support—Japan Gets Lapped," *Tokyo Shimbun* [11]); Plaintiff Exhibit 107 ("Justification for Deployment Getting Fuzzy," *Tokyo Shimbun*); Plaintiff Exhibit No. 108 ("Increased Security for Ground Forces," *Asahi Shimbun*); Plaintiff Exhibit No. 109, 1, 2 (statement of questions by Representative Kazuo Inoue, House of Representatives, and government response); Plaintiff Exhibit No. 110, 1, 2 (statement of questions by Representative Tomoko Abe, House of Representatives, and government response); and Plaintiff Exhibit No. 76 (Watai Takeharu's documentary film *Little Birds* [Ritoru baazu]).

In addition, the Plaintiffs have submitted Plaintiff Exhibit No. 77, 1, 2 (Watai Takeharu's documentary film *Destroyed Friendship* [Hakai shita yuko]; Takato Nahoko's *What's Really Happening in Iraq Now* [Iraku de ima hontoni okotte iru koto]), etc. These exhibits establish that SDF deployment in Iraq has changed Iraqi sentiment toward the Japanese—from amity to enmity—and that it is contributing to a decline in public order and safety.

In making its judgment, the Kofu District Court, without examining the evidence presented, simply asserted that SDF engagement in the activities for which they had been dispatched constituted "facts evident to the Court." The ruling is appalling in its negligence of the most basic rule of fact-finding, that is, examination of evidence.

### 3. Rejection of Right to Live in Peace

(A) The Kofu District Court Judgment rejects the Plaintiffs' right to live in peace, the right to pursue peace, and the right to live in a Japan that does not exercise the use of force or engage in war. The arguments put forth by the Plaintiffs in the Kofu District Court are not necessarily the same as those of the Plaintiffs in this case, but the Defendant State offers similar substantiation for its position in both cases. For this reason, we cite the Kofu District Court's Judgment below as a means of rebutting these points.

The Judgment cites the following in its rejection of the right to live in peace:

(1) The concept of peace is necessarily open to divergent interpretations depending on a person's philosophy, beliefs, worldview, and values. Based on different ways of thinking, the specific means and methods to realize peace also vary.

(2) This is evident from the fact that the Plaintiffs are strongly opposed to the Special Measures Law passed by the Diet, which is

entrusted by the people to act on their behalf. According to this legislation, its aim is "to contribute to the peace and security of international society, including Japan."

(3) The Plaintiffs assert that the Constitution unequivocally employs the term "demilitarized peace" as the means by which to realize peace, but the concept of "demilitarized peace" is also unavoidably open to divergent interpretation.

(4) As a result, when we refer to the present Constitution, whether the Preamble or Article 9, it is not possible to know immediately what concept of peace and what means and methods of attaining peace are legitimate, or which ones superior.

#### (B) Objections to the above reasons

It can only be said that the reasons given above by the Kofu District Court in its ruling are utterly appalling in their disregard for the Constitution. In past so-called "peace lawsuits," some lower courts have rejected the people's right to live in peace, but none have disregarded the Constitution to this extent or treated it with such contempt.

The reason cited in (1) above might be plausible if the Preamble and Article 9 of the Constitution were regarded as nonexistent and the issue were limited to a consideration of individual views, beliefs, etc.; but if we take the current Constitution as our premise, it is not possible to assert that there are diverse means and methods of concretely realizing peace and that various ideas can be put into practice. Regardless of how diverse individual views and beliefs may be, when the Constitution sets forth only one ideal and the means or method by which to achieve it, it is incumbent upon the state (including the judiciary) to abide by it. A ruling that refuses to do so, such as the above-mentioned Judgment, is one that fails to uphold the Constitution.

The reasons cited in (2) are grossly mistaken

and logically flawed. First, it is claimed that the Special Measures Law for Iraq was passed by the Diet, which is entrusted by the people to act on their behalf, with the aim of contributing to the peace and security of the international society, including Japan, but the people of Japan have not entrusted the Diet to pass this special measures legislation for Iraq. In the upcoming elections, the special measures legislation for Iraq has not been put before the people for debate, and public opinion polls invariably show that a majority of the people opposed to the deployment of SDF troops to Iraq (Defendant Exhibit No. 106).

Second, the Plaintiffs are strongly opposed to the Special Measures Law for Iraq because it is a violation of the Constitution, not because of their individual worldviews or values. To reduce the assertion of Constitutional violation to a question of worldview, and to then switch the argument to one about the basis for "diversity" betrays an illogic so disgraceful that one is tempted to avert one's eyes.

The reason cited in (3) above is based on the claim that the notion of "demilitarized peace" is unavoidably open to divergent interpretation, but Article 9, Paragraphs 1 and 2, unequivocally asserts a "demilitarized peace" in stating that "land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized." This law was confirmed and enacted by a constitutional assembly and clearly explained to the people in Plaintiff Exhibit No. 1, *The Story of the New Constitution* [Atarashii kenpo no hanashi] and other materials. Subject to the government's agenda, the interpretation of Article 9 has since changed, but the constitutional provisions themselves have not been revised and do not admit of ambiguous or equivocal interpretations. Thus, although political positions may effect changes in interpretation, it is not to be expected that judges, who are bound by duty to honor the Constitution, simply

follow suit.

#### 4 Rejection of personal rights and personal interests

##### (A) Grounds given in Kofu District Court Judgment

The Kofu District Court judgment rejects the allegation that the plaintiffs' personal rights and personal interests have been violated on the following grounds:

(1) The troop deployment does not directly require Plaintiffs to carry out a duty or achieve a result; nor is there the risk or fear of endangering the Plaintiffs' lives or violating their persons. Even assertions of the rising risk of terrorist attacks based on the diverse motives and causes behind terrorist acts cannot be verified in terms of concrete and realistic risk.

(2) It can be surmised that the Plaintiffs harbor strong aversion to the troop deployment and that this could plausibly be construed as mental anguish. This sentiment, however, should be situated in the realm of emotion—of feelings of righteous indignation, displeasure, irritation, disappointment, etc.—arising from opposition to measures and policies decided and implemented by the state under a system of representative democracy that conflict with individually held beliefs, convictions, and interpretations of the Constitution, etc. This sort of mental anguish is inevitable when decisions are made according to the principle of majority rule, and should either be redressed through activities directed at criticizing state policy and seeking wider acceptance of the legitimacy of one's own understanding of the issue, or endured as a necessary aspect of life under representative democracy. As such, however severe the mental anguish may be in subjective terms, the private emotions of individuals cannot be deemed as meriting protection under the law and cannot be construed as infringing on personal rights or

exceeding the limits of forbearance that are generally expected by society at large.

#### (B) Objections to grounds given above

According to the reason cited in (1) above, the diversity of motives and causes of terrorist attacks makes it impossible to verify with certainty whether the concrete and realistic risk of terrorist attacks has increased. It is difficult to contain one's amazement at such a statement. The Plaintiffs are not asserting that there is a general risk of terrorism, but rather that armed groups have protested the assistance given by Japan's SDF to the U.S. invasion of Iraq and have named Japan as a target for reprisal (Plaintiff Exhibit No. 104), and that in actuality, indiscriminate terrorist attacks have occurred in Spain and Britain, nations that have deployed troops in Iraq. Are the judges who refuse to recognize this danger suggesting that they are in a position to guarantee the safety of Japanese nationals?

This judgment, which denies the rising risk of indiscriminate terrorism, completely rejects the Plaintiffs' claim that the troop deployment to Iraq has generated feelings of anxiety and fear that their lives and personal safety are endangered.

The fear of terrorism is a constant subject of discussion in the United States, and many share feelings of anxiety. In Japan, a nation which is supporting the United States, there is undeniably good reason to fear terrorism and feel anxious

As seen in the reason cited in (2), a significant part of the judgment calls for forbearance regarding all acts of the Diet and the government in the name of representative democracy. It is precisely because we have a representative democracy that the judiciary is given the authority to determine questions of constitutionality, and this point will be addressed below. As stated above, however, the people of Japan have not mandated the Diet to

pass the Special Measures Law for Iraq or to dispatch the SDF to Iraq, and these actions are opposed by a majority of the people. This indicates that representative democracy in Japan is becoming defunct, and judges who nevertheless declare that we should endure decisions of the Diet because they are based on the will of the majority have repudiated the very principles of democracy.

#### *5. Rejection of claims for compensation*

The Kofu District Court Judgment, in rejecting the Plaintiffs' demand for compensation, acknowledges that under the State Redress Law, Article 1, Paragraph 1, illegal acts committed by the state for which compensation may be demanded, consist of violations not only against established rights, but also against those that are not yet clearly established as legally protected rights in cases where their violation may be deemed illegal; and that when the mental anguish of an individual exceeds the limits of endurance that are generally expected by society at large, there are times when personal rights should be legally protected, and that depending on the manner and degree of infringement, there is room for acknowledging that an illegal act has taken place. Nevertheless, it states that because the right to live in peace and pursue peace can be considered neither a concrete right nor interest, it is not possible for these rights to be violated, and for this reason rejects the Plaintiffs' demands.

It is, however, manifestly contradictory to state in the first half of a judgment that even when some rights are not yet established as concrete rights, the mental anguish of an individual may sometimes require legal protection, and then to state in the second half that because the right to live in peace and the right to pursue peace are not concrete rights or interests, the demand for compensation is groundless. The judgment also rejects the demand for compensation because it is impossible to



imagine a situation in which the Plaintiffs' personal rights and personal interests have been infringed by the dispatching of the SDF to Iraq. The judgment makes no mention, however, why it would be not be possible to imagine such a situation. The lapse in reasoning is blatant.

## 6. Significance of the Kofu District Court Judgment

As stated above, the judgment of the Kofu District Court is tantamount to the judges abandoning their responsibility to the law and announcing the suicide of the judiciary. We only hope that such a judgment will not be delivered in this case.

## Section 2 Issue for judgment—the constitutionality and legality of dispatching troops to Iraq

### 1. Significance of judicial review

Under the separation of powers set forth in the Constitution, the judiciary exercises its authority independently of the legislative and administrative branches. Article 76, Paragraph 3 states, "All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws." According to Article 99, judges have the obligation to respect and uphold the Constitution. Furthermore, Article 81 gives the courts the power of judicial review, and under the separation of powers, the judiciary has been established to determine whether laws or dispositions are in conformity with the Constitution. As stated above, in representative democracies, laws and ordinances as well as government actions will often conflict with the will of the people, and for this reason, the judiciary's exercise of judicial review is a necessary and essential practice for ensuring order consistent with the Constitution.

This lawsuit asserts the dispatching of the SDF to Iraq to be a blatant and egregious violation of

the Constitution. Many judgments only involve determining whether the courts have a particular power to judge a particular case, but this case seeks a judgment on whether dispatching troops to Iraq is constitutional. For the courts to evade making a judgment on constitutionality is tantamount to the judiciary's abandoning its role in government.

### 2. Comparison with lawsuits contesting the constitutionality of Yasukuni Shrine visits

Concurrent with this lawsuit regarding the unconstitutionality of SDF deployment to Iraq, there are lawsuits contesting the constitutionality of Prime Minister Koizumi's visits to Yasukuni Shrine. One common aspect of these lawsuits is that the courts have, in both cases, dismissed compensation claims by the plaintiffs, asserting that their legal interests have not been violated and that they are therefore not entitled to damages.

While dismissing compensation claims by the plaintiffs, the court cases regarding the constitutionality of the Yasukuni Shrine visits differ in several notable respects from the current case on the constitutionality of troop deployment to Iraq. As will be discussed below, the judgments by the Sendai High Court, the Fukuoka District Court, and the Osaka High Court state in their reasoning that Yasukuni Shrine visits are either unconstitutional or possibly unconstitutional. Even in those cases in which the courts declined to discuss constitutionality in their reasoning, evidence regarding plaintiffs' damages or the meaning of Prime Minister Koizumi's Yasukuni Shrine visits was examined concretely.

There is criticism in some quarters of the Osaka High Court Judgment (which dismissed Plaintiffs' compensation claims but nonetheless judged the shrine visits to be unconstitutional in its reasoning) on the principle that courts, having dismissed plaintiffs' demands for compensation, should not then engage in needless distraction by pronouncing the visits unconstitutional.

Nevertheless, it stands to reason that courts, when directly confronted with the reality of unconstitutional or illegal situations, should attempt in various ways to exercise the powers vested in them by the people.

In the past, when former Taiwanese soldiers who had been forced to participate in Japan's war of aggression sought to receive compensation on the same terms as provided by law to Japanese soldiers and civilian employees of military, the Tokyo High Court dismissed the case, but at the same time, in pronouncing the judgment, urged the government to "promptly enact legislation." This statement served as an impetus for subsequent legislation, and we should recall that in the end, this resulted in the payment of compensation, however inadequate, to the former Taiwanese soldiers.

According to Okudaira Yasuhiro, Professor Emeritus of the University of Tokyo and an authority on Japanese constitutional law, the essence of judgments on unconstitutionality seems to lie in the reasoning rather than the text of the judgment. He spoke highly of the Osaka High Court's judgment as follows: "The question of whether Yasukuni Shrine visits violate the separation of state and religion under the Constitution is a separate issue from the question of who can contest constitutionality and with what qualifications. It is absurd that no one can contest the illegal actions of the state unless there has been an infringement of legal interest" (*Tokyo Shimbun*, May 10, 2005).

On this point, the Fukuoka District Court's ruling of April 7, 2005 (Kamekawa Kiyonaga, presiding judge), which found the Yasukuni Shrine visits unconstitutional, has this to say: "Despite deeming the visits unconstitutional, the court dismissed compensation claims in the absence of illegal acts. Opinion may differ about the court's pronouncing on the constitutionality of the visits. Nevertheless, under present law,

even if the visits are in violation of Article 20, paragraph 3 of the Constitution [12], there is no provision for bringing a lawsuit seeking judgment just on the constitutionality of the action, or for seeking redress through an administrative suit. Accordingly, suing for compensation for damages was the only means available to the plaintiffs to have the unconstitutionality of the visits acknowledged."

The judgment goes on to observe that "The Yasukuni visit in question was carried out without full debate as to its constitutionality, and the visits have continued since. In view of this situation, if the courts continue to avoid ruling on their constitutionality, it is highly likely that such actions will be repeated. This Court has accordingly decided to take as its responsibility a consideration of the constitutionality of the shrine visits and has decided as indicated above."

"If the courts continue to avoid ruling on their constitutionality, it is highly likely that such actions will be repeated": isn't this precisely what is happening in the controversy surrounding the constitutionality of troop deployment to Iraq?

Why is it, in the case of Self-Defense Force suits, that is to say, Article 9 lawsuits, that the courts not only avoid making constitutional judgment, but also avoid the finding-of-fact stage that should constitute the basis for making a judgment?

The result is the current situation, in which the government's repeated explanation that the principal mission of the SDF is defensive, that it does not recognize the right to exercise collective self-defense, is worth as much as a scrap of paper; in which Prime Minister Koizumi continues his Yasukuni Shrine visits despite court rulings that they are unconstitutional; in which the mandatory observation of the Rising Sun flag and singing of the *Kimigayo*, in violation of the guarantee of freedom of thought and conscience under Article 19 of the

Constitution, have transformed the schools into sites of extraterritoriality where the Constitution does not apply. In view of these circumstances, it is impermissible for the courts to avoid making a judgment.

In the prevailing circumstances, in order to restore the authority of the law and constitutionalism, the courts must have the courage to abide by the letter of Article 76, paragraph 3 of the Constitution, which stipulates that "All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws."

### 3. *Necessity of delivering judgment on the Constitution*

When the Osaka High Court ruled that Prime Minister Koizumi's Yasukuni Shrine visits were unconstitutional and the Tokyo High Court, followed by the Takamatsu High Court, refrained from ruling on the constitutionality of the visits, many Japanese people came to question the fact that different rulings had been delivered on the same case. In the end, these differences can be attributed to differing views about the role of the courts, and the *Asahi Shimbun* carried comments by Professor Kinoshita Satoshi, who backed the ruling of the Osaka High Court, and by Judge Inoue Kaoru, who maintained that a ruling on constitutionality was unnecessary (Defendant Exhibit No. 111). According to Professor Kinoshita, "The Constitution gives the courts the power to determine the constitutionality of any law, order, regulation or official act and this power includes the role of supporting the rights of individuals as well as the regulative role of ensuring that governmental bodies do not engage in acts that are in violation of the Constitution .... In the judgment of the Takamatsu High Court, the stance adopted by the court, which used absence of damages to legally protected interests as justification for avoiding a decision on the official nature and constitutionality of Yasukuni Shrine visits, can

be described as a refusal to see that the suit was seeking "regulation of acts by governmental authority that violate the Constitution." This [Professor Kinoshita's—Tr.] view is consistent with the following passage in the "The Story of the New Constitution" (Plaintiff Exhibit No. 1).

"One extremely unusual aspect of this Constitution is that it empowers courts to examine whether laws created by the Diet are in accord with the Constitution. If a law is found to depart from what has been decided in the Constitution, it is possible not to obey that law. In this sense, the courts have been given a very heavy responsibility.

"We the people think of the Diet as acting on our behalf and place our trust in it. In the same way, we should think of the courts as our allies who protect our rights and freedoms and should give them our respect."

The Plaintiffs ardently wish to respect the courts as their allies who protect their rights and freedoms. This, however, becomes impossible when we read the decision to refrain from judging the constitutionality of the Yasukuni Shrine visits and the decision of the Kofu District Court submitted in Defendant Exhibit No. 7. At the present time, when many Japanese people have lost respect for the courts, we hope that the courts will reconsider their role as a way of recovering the trust of the people.

The article above reported that Judge Inoue Kaoru, who maintained that a court decision on constitutionality was unnecessary, had often been criticized for his decisions, which were too brief and unpersuasive to the parties involved. Facing a problematic reappointment on the tenth year of his term, he himself declined to be reappointed to the bench.

### 4. *Representative democracy and right to determine constitutionality*

The decision by the Kofu District Court cited

earlier states that while it was not difficult to understand the strong sentiments of the Plaintiffs against troop deployment to Iraq, the situation was unavoidable under the system of representative democracy in which decisions are based on the principle of majority rule, and that the only choices were for the Plaintiffs to seek change through criticism of government policies or, failing that, to accept the situation.

Certainly, if parliamentary representatives were elected on the basis of their views on critical issues, if laws were enacted after due deliberation according to constitutional law, and if the government were to implement them legitimately, it would be inappropriate to rashly exercise the power of judicial review.

Unfortunately, however, the system of representative democracy in Japan is in effect moribund. Elections are not the occasion for debate on critical issues. The general election in September 2005 was fundamentally a single-issue election that centered on the privatization of the postal system, and as the victory of the Liberal Democratic headed by Prime Minister Koizumi indicates, the election did not address the dispatch of troops to Iraq, tax hikes, social welfare measures, or other significant government policies. Representatives were elected without a debate on the Special Measures Law for Iraq, which constitutes the basis for dispatching the troops in this case, and this legislation was simply rammed through the Diet by sheer force of numbers. Moreover, the Cabinet has repeatedly violated even this special legislation for Iraq. In such a situation, we can only say that the system of representative democracy is effectively moribund.

This is precisely the reason that the right of the courts to determine the extent to which any law, order, regulation or official act is consistent with the Constitution is necessary.

The separation of powers was originally established so that an independent judiciary

would serve as a check on the actions of the legislature and the administration. There can be no democracy, however, when the people are told that they should forbear and abide by the decisions of the legislative and administrative branches however much they may violate the Constitution.

### 5. *Duty to uphold constitutionalism*

In 1972, when *Mainichi Shimbun* journalist Takichi Nishiyama was convicted of complicity in violating the National Public Service Law by revealing a secret telegram between the U.S. and Japan regarding the reversion of Okinawa, the head of his defense counsel, Date Akio, who, as the presiding judge in the Sunakawa Incident had ruled that U.S. bases were in violation of the Constitution, concluded his defense with the following statement. "A judge can do nothing other than faithfully follow the Constitution and follow the law.

To be sure, it is not the duty solely of the courts to realize constitutionalism and the rule of law, but rather a duty to be shared by all the people. Article 12 of the Constitution states, "The freedoms and rights guaranteed to the people by this Constitution must be maintained by the constant endeavor of the people," and thus assigns to the people the duty to struggle for such rights. The suit brought by the Plaintiffs regarding the dispatch of troops to Iraq is nothing other than the exercise of this "duty to struggle for such rights." We only hope that the court will deliver a judgment that will serve as a step, however small, toward restoring the rule of law and ensuring the sovereignty of the Constitution in Japan.

### 6. *Troop deployment in Iraq—unambiguous constitutional violation*

The Preamble of the Constitution declares, "[R]esolved ... never again ... [to] be visited with the horrors of war through the action of government, [we] do proclaim that sovereign power resides with the people and do



firmly establish this Constitution." It also sets forth that "We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world....We recognize that all peoples of the world have the right to live in peace, free from fear and want."

Furthermore, Article 9, paragraph 1 states, "Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes," and paragraph 2 states, "In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized."

The session of the Diet in which the Constitution was enacted confirmed that war for the purpose of self-defense was also renounced (Plaintiff Exhibit No. 3). Thereafter, with the outbreak of the Korean War, a National Police Reserve was created on the orders of the Supreme Allied Commander Douglas MacArthur, and the Self-Defense Forces (SDF) were inaugurated in 1954. During the interim, the government repeatedly offered shifting explanations and finally tried to put the matter to rest by stipulating in Article 3 of the Self-Defense Forces Law that "The Japanese Self-Defense Forces are charged with the primary duty of defending the nation from direct or indirect threat in order to preserve national security and safeguard the peace and independence of the nation, and when necessary, will undertake the maintenance of public order."

On the occasion of the vote on the Self-Defense Forces Law, a resolution barring the overseas deployment of the SDF was passed in a plenary session of the Diet's upper house on June 2,

1954.

In the Plaintiffs' view, the very existence of the SDF itself is a violation of the Constitution, but even if we were to accept its existence for the purpose of national defense, the dispatching of troops to Iraq is clearly a violation not only of the Constitution, but also of the Self-Defense Forces Law.

Now, a heavily armed Ground Self-Defense Force can be sent overseas to areas of conflict and, under certain circumstances, exercise the use of force. Moreover, the SDF has been dispatched and stationed at the behest of the United States which, in violation of international law (Plaintiff Exhibit No. 89, International Criminal Tribunal for Iraq Judgment) and without justification, continues to engage in armed attack and occupation of Iraq. [13] This is a blatant and egregious violation of the Preamble of the Constitution and Article 9, and the courts cannot possibly deny this. No doubt, a number of judges know in their hearts that this is a violation of the Constitution. This must be the reason that they avoid ruling on the Constitution and dismiss lawsuits brought to court for lack of standing.

As noted above, however, when the courts avoid making decisions on the Constitution, the violations of the Constitution by the Diet and administration are accepted *de facto*, and Japan moves one step closer to war.

The unconstitutionality and illegality of dispatching the SDF are detailed in Preliminary Brief (3).

### *7. Dispatching of SDF to Iraq also violates the Special Measures Law for Iraq*

As detailed in Preliminary Brief (3), not only does the Special Measures Law for Iraq itself violate the Constitution, but the current dispatching of the SDF to Iraq in fact violates the Special Measure Law for Iraq. What is most evident is its violation of Article 2 of said law.

Article 2 of this law stipulates that "[Activities for humanitarian and reconstruction assistance] to be conducted by the SDF shall be implemented in areas where combat is not taking place and is not expected to take place throughout the period during which the activities are to be conducted there." [14]

The city of Samawa, where the SDF is deployed, however, is an area of combat. Dutch troops, having suffered both deaths and injuries, have already withdrawn, and attacks continue against the British troops who have replaced them. On a number of occasions, mortar shells and rockets have targeted the SDF camp, and on June 23, 2005, a shell landed and exploded near a Ground SDF convoy (Plaintiff Exhibit No. 49, 1, 2; Exhibit No. 50, 2). It is a complete fabrication to say that Samawa is not an area of combat. For Prime Minister Koizumi to say that the SDF is not deployed in an area of combat is pure sophistry, but this is the view that has been pushed through the Diet. How can we say that the Japanese nation is founded on constitutional principles?

#### 8. State of affairs in Iraq and SDF activities

The Plaintiffs refer to the state of affairs in Iraq in Preliminary Brief (1)-1, (1)-2 and have submitted abundant documentary evidence. The photographs in Plaintiff Exhibit No. 13 and No. 14 are particularly instructive. Take note, also, of the documentary evidence (Plaintiff Exhibit No. 81 and No. 85) regarding the damage caused by depleted uranium ammunition, used by the U.S. military, with a half-life of 4.5 billion years. Make sure to read all of *Little Birds* (Plaintiff Exhibit No. 76) as well. This will require much time and mental fortitude, but it is indispensable for making a judgment in this case

The SDF is now assisting in an unprecedentedly brutal invasion by the U.S. and British military. Up to now, the Ground SDF has avoided assisting the U.S. and British military in the use of direct force, but at the urgent request of the

U.S. military, it is providing "psychological" support, while carrying out none of the "activities for humanitarian and reconstruction assistance" which constituted its original mission. Regarding water supply, as indicated in Plaintiff Exhibit No. 105, a French NGO (non-governmental organization) was supplying water for 120,000 people as of May 2004. This amount far exceeds the SDF's target of supplying water for 16,000 people, which has made it unnecessary for the SDF to continue its water supply efforts. Even in paving roads or building schools, it is much cheaper and more efficient to use an NGO than the SDF. As the statements of NGO staff indicate, the government only exploits the term "activities for humanitarian and reconstruction assistance" for political purposes.

The Air SDF provides transport for the armed U.S. military and its multilateral forces, a fact that is also acknowledged by the Japanese government. During the one-year period after the Air SDF began providing transport in February 2004, it transported medical equipment only once, on its first transport mission. This is evident from the fact that, upon making a request for disclosure to the Japan Defense Agency, we were told that with the exception of the first transport mission, all subsequent transport missions were confidential and no details could be disclosed. Clearly, at this point in time, no "activities for humanitarian and reconstruction assistance" are being conducted at all. The Maritime SDF has continued to refuel U.S. aircraft carriers, an act which cannot be construed as "activities for humanitarian and reconstruction assistance," but rather, constitutes support for the U.S. exercise of force.

#### 9. Withdrawal of Ground SDF and shift to a new order

As stated above, the activities of the Ground SDF have been phased out, and given that the forces of the Netherlands have withdrawn from

Iraq, soon to be followed by British and Australian troops, the Ground SDF is faced with the concrete reality of its own withdrawal. Under pressure from the United States, however, Japan is unable to express intent to withdraw, and a bill is now being prepared to authorize provisional transfer of the SDF to Kuwait (Plaintiff Exhibit No. 116).

On the other hand, it has become known that upon extending troop deployment in Iraq for one year, the government also revised a major provision of the Special Measures Law, increasing the number of domestic airports in Iraq where the Air Self-Defense Forces could operate from thirteen to twenty-four (Plaintiff Exhibit No. 112).

Furthermore, it has come to light that at the beginning of this year, when the United States formed Provincial Reconstruction Teams (PRT) on the pretext of improving the public security and administrative capabilities of regional governments following the withdrawal of the Ground SDF, it approached the commanders of the Ground SDF about the possibility of having the Ground SDF participate in this effort (Plaintiff Exhibit No. 113, No. 115). It requested that Japan increase the areas where the Air Self-Defense Force can fly C130 transport airplanes to two, which will include the capital of Baghdad (Plaintiff Exhibit No. 115). This indicates that now, in addition to the back-up support of Air SDF, the Ground SDF and U.S. troops have united to directly enforce public security together. Such acts only augment the violation of the Japanese Constitution, which states that "The right of belligerency of the state will not be recognized."

In this way, the support given by the SDF to the Iraq war and the occupation of Iraq has increasingly assumed the nature of military involvement. In such a situation, unless the judiciary delivers a judgment that clearly establishes the unconstitutionality of dispatching troops to Iraq, it will not be possible

to halt these reckless developments and reverse their direction.

## 10. *Iraq and significance of the Japanese Constitution*

While the U.S. military occupation continues, Iraq is said to be trying to establish a new government through elections, but the conflict between the Sunni and Shiite sects has resulted in many deaths, and Iraq now appears to be moving toward civil war (Plaintiff Exhibit Nos. 117-119). Although the U.S. government claims that it is merely observing, the U.S. military that took control over Iraq through force is now seeking a military solution.

Since U.S. President Bush declared victory almost three years ago, public security in Iraq has only deteriorated, and its people live in mortal danger. This is proof that peace is not made by military force, that force only begets more force, extending the chain of violence. This reinforces what is stated in the Japanese Constitution—the only way to eliminate war is to renounce war and never maintain war potential of any sort. In a world ever beset by war, Article 9 of the Japanese Constitution is held in high regard by people everywhere, and has become a precious legacy that Japan can take pride in. Whether this legacy is to be protected is up to the will of the people, but today, as our system of representative democracy becomes increasingly hollow, what we need now are judgments on unconstitutionality by judges who are bound only by their conscience, the Constitution and the law.

## **Section 3 Issue for judgment—sending troops to Iraq is a violation of the Plaintiffs' interests**

### 1. *Standing and right to access to courts and judgment (Article 32, Constitution)*

The Defendant State only asserts that Plaintiffs' demands cannot be recognized because they lack standing. In response, the Plaintiffs have

provided specific counter-arguments that are explained in the Preliminary Brief (5), but the Defendant has made no attempt to reply. For the Court to reject the Plaintiffs' claims without attempting to exercise the right to clarify facts and issues is unjustifiable under Code of Civil Procedure.

As stated below, the Plaintiffs have filed suit claiming infringement of concrete rights, but in the first place, depending on how infringement of concrete rights and standing are defined, the people risk losing the right of access to the courts guaranteed in Article 32 of the Constitution.

As explained in detail in Plaintiffs' Preliminary Brief (2) and (2)-2, there are no stipulations regarding standing in the Constitution, but only in Article 3 of the Law of the Courts, a lower law. Accordingly, the Defendant State argues that in Japan, judicial review takes place as needed in the course of applying laws and statutes to the cases at hand. There is a trend, however, toward merging this form of judicial review with abstract judicial review, since each is a means of safeguarding constitutional order, and jurisprudence increasingly holds that standing should be broadly construed. If it is narrowly construed, as maintained by the Defendant, it will inevitably lead to a violation of Article 32 of the Constitution, as will be shown.

As maintained in Plaintiffs' Preliminary Brief (6), even though it would be an exaggeration to deem Article 3 of the Judiciary Law unconstitutional itself, if it were to be used as the sole justification for a narrow interpretation of standing and therefore as a basis for turning down the Plaintiffs' case, then such application of Article 3 of the Judiciary Law infringes on the right of access to the courts guaranteed in Article 32 of the Constitution and would therefore be a case of unconstitutional application.

We might here refer to the 2004 revision of the Code of Administrative Procedure, whereby

Article 9, paragraph 2 provides that a plaintiff seeking repeal of a disciplinary action need not be the party directly subject to the action. This was a move to guarantee to the people the constitutional "right of access to the courts" as widely as possible. Article 3 of the Judiciary Law should also be interpreted in this spirit.

## 2. *Right to live in peace*

First among the rights violated by the dispatch of the SDF to Iraq that the Plaintiffs wish to assert is the right to live in peace .

In an astounding judgment, the Kofu District Court ruled that this cannot be considered a concrete right because peace as well as the means of maintaining peace are values that differ from individual to individual. The Preamble of the Constitution, however, states that "We recognize that all peoples of the world have the right to live in peace, free from fear and want," and as the means of achieving this, Article 9 clearly stipulates, the "Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized." The means and method here are unequivocal. Regardless of attempts to change this interpretation, whether due to pressure from the United States or the motives of politicians, it is incumbent upon the courts to deliver judgments that are based on the Constitution in all cases.

In a similar suit filed in Shizuoka District Court, constitutional scholar Yamauchi Toshihiro testified regarding the right to live in peace (Plaintiff Exhibit No. 120, 1, 2). Professor Yamauchi based the right to live in peace on the Preamble of the Constitution and put forth a detailed explanation of the judicial norms presented in the Preamble. We would like to call particular attention to the part in which he



shows that given how, in France and Germany, the preambles of the constitutions are recognized as providing judicial norms, the argument denying judicial normativity to the Preamble of the Constitution of Japan is unpersuasive from the perspective of comparative constitutional law. In fact, in Japan, too, there are cases in which lower courts have found a direct basis for their decisions in the Preamble.

Furthermore, it is also noteworthy that the Supreme Court has not yet delivered a decision rejecting the right to live in peace. The Supreme Court decision in the Hyakuri Base Case is understood to have rejected this right, but this ruling pertained to government action in a private capacity and did not involve dismissal of the right to live in peace in the context of the exercise of public authority. [15]

Professor Yamauchi, basing the right to live in peace directly on the Preamble of the Constitution, goes on to testify that the meaning of peace as used here is concretely explained in both the Preamble and Article 9, and the meaning of the right to live in peace is supplemented by each of the provisions pertaining to human rights in Article 13 and subsequent articles. As for the conditions in which the right to live in peace can be found to have occurred, he states that "a situation in which the lives and freedoms of the people are violated due to war, the threat of war, or an act of support for war or when there is the threat of such violation." Furthermore, in "situations where, in the event that the government, in violation of the Constitution, carries out a concrete act of support for war, there is a violation of the right of the people not to become perpetrators of war or becoming party to an act of support for war, or when there is the threat of such violation."

Legal theories that recognize the right to live in peace cite various grounds to justify this right, but insofar as Japan's exceptional refusal to

accord judicial normativity to the Preamble of its Constitution is not recognized from the perspective of comparative law, it would seem correct to base the right to live in peace on the Preamble, which puts forth this right in a clear and unequivocal manner. The various views, however, are not mutually contradictory. Plaintiffs have asserted that the right to live in peace is clearly based on the Preamble of the Constitution, that the concrete meaning of this right is set forth in Article 9, and that it is guaranteed as a concrete right in Article 13 of the Constitution. The Defendant, on the other hand, rejects this claim by separating the Preamble from Article 13 and considering them to be separate rights. The Defendant's claim, which makes no mention of Article 9—the crux of the right to live in peace—does not constitute a counterargument to the Plaintiffs' claims. We request that the Court refrain from taking the part of such slipshod arguments.

### 3. *Personal rights*

Because the Defendant asserts personal rights are not concrete rights, Plaintiffs have provided Preliminary Brief (6) listing cases that have recognized personal rights in the past. The concept of personal rights, in addition to those fundamental to personhood— life, body, and health—refers to the totality of interests associated with reputation, name, image, privacy, freedom, livelihood, etc. Among personal rights, what is at stake in this case is the right of a person never to be placed in the position of having to rob or be robbed of "life," in other words, a guarantee of the right "to be neither a perpetrator nor a victim of war." Because the Plaintiffs have, in the course of their lives, placed "respect for life" at the center of their character formation, they feel strong psychological resistance and emotional shock at finding themselves on the side of those who rob people from other countries of their lives, not to mention being placed at risk of endangering their own lives.

#### 4. Interests to be guaranteed by law

According to the Tokyo District Court judgment in the Minesweeper Case (May 10, 1996), "Illegal acts committed by the state for which compensation can be demanded under the National Compensation Law, Article 1, paragraph1, include not only those that violate established rights, but also those that violate interests not yet clearly established as rights that should be recognized as legally protected rights whose infringement would be illegal. When an individual's mental anguish incurred by injury to feelings exceeds the limits of endurance generally expected by society at large, it may be construed that there exists a personal interest that should be legally protected, and in case of infringement of the same, this infringement can be understood as having constituted an illegal act, depending on the condition of infringement and the degree." Furthermore, "in order to assess whether the mental anguish incurred by injury to the feelings of an individual has exceeded the limits of endurance generally expected by society at large, the individual must have experienced, as the result of being in a certain, particular position, etc., the sort of serious distress, irritation, etc., that could not have been incurred in the ordinary course of daily life in society."

The judgments on peace lawsuits thus far, including the one above, are mistaken with regard to constitutional rights, and we cannot agree with their conclusions. Nevertheless, in this case, while the dispatch of the SDF to Iraq may be construed as a logical step in a series of unconstitutional acts leading to the present, the deployment of armed SDF troops to a combat zone differs in substance in every way from these preceding cases in that the Plaintiffs' right to live in peace is flagrantly violated and their mental anguish ensuing from it has clearly exceeded the limit of endurance expected by society.

Further, recall the case in which a widow sued the Japanese government for the enshrinement of her deceased husband, an SDF officer. Professor Yamauchi argues that the "interest in praying for the spirit of one's deceased husband without being disturbed by others," as articulated by Justice Ito Masami in the Supreme Court decision in that case[16], deserves to be considered a constitutionally guaranteed right. Additionally, the Supreme Court decision in the case of Delayed Certification of Minamata [mercury poisoning] Disease Victims ruled that an "interest to live peacefully without mental anguish" constituted an interest to be protected against infringement under the law against illegal acts. [17] From these cases, we can see that there is a broad concept of legally protected interests.

We ask your Honors to carefully examine the photographs submitted as Plaintiff Exhibit No. 13 and 14. Looking at these photographs, do you not feel mental anguish? And do you not feel distressed to know that the Japanese SDF has been deployed to assist the U.S. in this war?

Today, school children are forced to honor the Rising Sun flag and sing the *Kimigayo* anthem. If children do not perform these acts in the manner deemed appropriate or if teachers do not cooperate, the teachers are disciplined. Those distributing leaflets or writing graffiti saying "anti-war" in public restrooms have been arrested or subject to extended detention and given guilty verdicts. We cannot help thinking that the [prewar] Peace Preservation Law has been revived. The Plaintiffs fear that this sort of situation will lead Japan down the path to war. Such fear must be distinguished from indignation, anger or despair over having one's assertions denied. It is not that our peace of mind has been disturbed. No, our peace of mind has been destroyed, and we are subject to unbearable pain night and day. This pain cannot be compared to the unease of having a flier stuffed in one's mailbox (in the Tachikawa

Tent Village case, the Tokyo High Court, determining that citizens derived to be legally protected against unease, found the flyer distributors guilty). The pain we feel is incomparably more significant and grave. The above-mentioned judgment in the minesweeper case requires that "in order to assess whether the mental anguish incurred by injury to the feelings of an individual has exceeded the limits of forbearance generally expected by society at large, the individual must have experienced, as the result of being in a given, particular position, etc., the sort of serious distress, irritation, etc., that could not have been incurred in the ordinary course of daily life in society."

In the terms of that judgment, the Plaintiffs in the present case, having either experienced war or grown up hearing about the experience of war, who therefore have centered their character formation on the belief that the Japanese Constitution was uniquely precious in never permitting the catastrophe of war to be repeated, who now witness the ravages of the Iraq War, the participation of the Self-Defense Forces in that war, and the concomitant destruction of the Constitution, assert that they are experiencing unbearable pain. These circumstances are such that they could not have been incurred in the ordinary course of daily life in society.

In this case, the Plaintiffs who have experienced war have stated their views. How did they sound to your Honors who do not know war? Might you have heard them as simply referring to the past, having nothing to do with you? But the Plaintiffs know what war is. In the previous war, too, preparations were made in secret, and when it started, it was no longer possible to raise voices in opposition. We hope your Honors who do not know war will learn about how that war started amid the suppression of free speech, and how the Japanese military committed atrocities and killed twenty million Asian people, and how the

war also killed over three million Japanese, and having learned this, we hope you will apply it to your ruling in this case.

#### Section 4. What we seek from the court

##### 1. War responsibility of judges

On February 9, 2006, Presiding Judge Matsuo Shoichi of the Yokohama District Court handed down a judgment that dismissed the petition for retrial of the wartime "Yokohama Incident," in which five people were tortured and died, and many others wrongfully convicted. The decision to dismiss the petition for retrial was based on the fact that the Peace Preservation Law under which the victims were arrested and convicted no longer exists, and amnesty had been granted. This, however, covers up the responsibility of the Special Police officers who conducted the torture to extract so-called confessions, and the judges who followed the Peace Preservation Law and delivered guilty verdicts based on those confessions on September 9, 1945, after Japan had been defeated. According to Kimura Maki, petitioner for retrial, the question was not one of declaring nonguilt or dismissal, but "solely whether the judicial system can fully recognize past crimes and apologize to the victims." Former Supreme Court justice and leading counsel Kan Naotsugu stated, "As a former member of the judiciary and a private individual, I find it unbearable to think that there are still courts delivering such embarrassing rulings" (Plaintiff Exhibit No. 121)

In the postwar period, the Tokyo War Crimes Trial did make an attempt, albeit inadequate, to pursue the question of the war responsibility of the military leaders, and politicians and industrialists were purged from public office. Within the judiciary, however, hardly any judges were purged, even though, through their rulings, they were responsible for acts of suppression in the name of public security. Only 32 public prosecutors who had been

involved in ideological crimes were purged. Moreover, many of the purged were later reinstated, and some, like Imoto Daikichi, even rose to become Public Prosecutor General.

In contrast, in Germany, after leading figures were tried in the Nuremburg War Crimes Trials, continuing trials were opened to prosecute those responsible in twelve different fields such as the judiciary, foreign affairs, economy, medicine, etc. The judiciary, in particular, has continued to reflect on Nazi era law, and the legal academy, which is responsible for the training of lawyers, is said to continue to address the issue of war responsibility on the part of the judiciary. Japan, however, has failed to pursue the war responsibility of the judiciary, and the curriculum of the Legal Training and Research Institute of Japan does not touch upon the wartime judiciary. The consequence is decisions such as Judge Matsuo's ruling in the Yokohama Incident retrial case, and other decisions that remind us of conditions under the Peace Preservation Law.

## 2. The courts as guardians of the law

As for this lawsuit, are your Honors of the opinion that you should reject or dismiss the suit by delivering a ruling in accordance with previous judgments, and which limits itself to a minimal interpretation? We ask you to remember, however, that the courts are the guardians of the law. If constitutional violations are left unaddressed, we can imagine a future in which Japan once again heads down the path to war, and the Japanese people as well as people of all nations (in particular, of Asia) will suffer the ravages of war. The courts can reverse this tide by adhering to the Constitution. The courts can fulfill their role as guardians of the law not only by delivering a ruling that finds a violation of the Constitution, but also by demonstrating an understanding of the distress of the Plaintiffs who feel unbearable pain over the current SDF

deployment in Iraq. The Plaintiffs sincerely hope for a judgment that will reverse the direction of the previous judgments and bring us back even one step closer to the Constitution.

End

Date of Judgment: May 11, 2006

\* Section pertaining to judgment of the court

Judgment of Tokyo District Court

Section 3 Judgment of the Court

### 1. *Regarding the request for injunction*

We consider the assertion by the Plaintiffs that their right to live in peace and personal rights based on the right to live in peace have been violated, and that if this violation is left unaddressed, there is a high risk of irreparable damage, and for this reason, they have the right to seek an injunction to stop the dispatch of the Self-Defense Forces.

(1) The right to live in peace and personal rights based on the right to live in peace

The second paragraph of the Preamble of the Constitution confirms that "all peoples of the world have the right to live in peace." The Preamble, however, is first and foremost a statement of the Constitution's principles, foundation, etc., and even though it indicates the guiding principles and criteria for interpreting the individual articles that make up the body of the Constitution, it is not possible to interpret it as directly giving rise to legal effects or binding power. As such, despite what the second paragraph of the Preamble stipulates, it is not possible to derive from it, as maintained by the Plaintiffs, the right to live in peace or personal rights based on the right to live in peace.

Moreover, even though Article 9 states that the



Japanese people renounce war as a sovereign right of the nation and the threat or use of force, will not maintain war potential, and do not recognize the right of belligerency of the state, it is evident from the wording of that Article that it presents a normative statement about state structure and state actions, and it is not possible to derive from it a right under private law such as the right to live in peace or a legal interest.

Moreover, Article 13 sets forth respect for all people as individuals and the right to the pursuit of happiness, and the provisions under Chapter 3 of the Constitution set forth the rights and duties of the people, and there is no wording referring to the right to live in peace, the right asserted by the Plaintiffs. As such, it is not possible to derive from these articles the right to live in peace as a concrete right such as asserted by the Plaintiffs or as a legal interest.

In addition, no legal ordinances exist regarding the right to live in peace as a concrete right such as asserted by the Plaintiffs or as a legal interest. In view of the above as well as the Constitution and various laws and ordinances, it is not possible to recognize the right to live in peace as a concrete right such as asserted by the Plaintiffs or as a legal interest. Furthermore, based on the Preamble of the Constitution, Article 9 and Article 13, it is not possible to recognize the existence of personal rights such as stated by the Plaintiff.

2) Consequently, it is clear that the right to live in peace as a concrete right such as asserted by the Plaintiffs or as a legal interest is not a concrete right guaranteed by the Constitution or legal interest, and there is generally no basis for a request for injunction, and therefore, it is not necessary to consider the remaining points, and the request for injunction itself is subject to dismissal by the court as illegitimate.

## 2. Regarding compensation for damages

The Plaintiffs assert that that their right to live in peace and their personal rights based on the right to live in peace have been violated.

Nevertheless, as explained above, the right to live in peace as asserted by the Plaintiffs and the personal rights based on the right to live in peace cannot be recognized as a concrete right or legal interest guaranteed by the Constitution.

As such, the Plaintiffs' petition for compensation lacks an interest that has been infringed, and therefore there is no reason to consider the remaining points.

## 3. Conclusion

The court delivers a judgment as follows: In this case brought by the Plaintiffs, the court dismisses the lawsuit seeking an injunction on the grounds of its illegitimacy and rejects the remaining request (request seeking compensation for damages) for lack of reason to merit consideration.

Tokyo District Court 15<sup>th</sup> Civil Division

Presiding Judge Udagawa Motoi,

Judge Nakasato Atsushi

Judge Yasumi Akira

## Regarding the Judgment

Lawsuits contesting the constitutionality of SDF deployment in Iraq have been filed by approximately 5,600 plaintiffs in eleven courts in Japan, making this collectively the largest peace lawsuit in Japan's postwar history. While many of these lawsuits are still continuing, the Japanese government announced on June 20 that it would withdraw the Ground SDF now deployed in Samawa. Our lawsuit has been a part of this series of events. We feel that we have played a certain role in this withdrawal,

not only through our lawsuit, but together with citizens' movements against the deployment of troops in Iraq.

Nevertheless, the government is now considering expanding the Air SDF's airlift operations that transport troops of the multinational forces and supplies to twenty-four airports in Kuwait and Iraq. If this is realized, the Air SDF will be providing direct support for the military operations of the U.S. forces, constituting what will be an even more evident violation of Article 9. We demand the withdrawal of all SDF forces including the Air SDF and will continue to take action in various ways to achieve this.

Many decisions have been handed down in the lawsuits contesting the constitutionality of SDF deployment in Iraq, all deciding against the plaintiff. The fifteen-woman lawsuit opposing the SDF in Iraq was no exception. Based on the series of events up to now, this did not take us by surprise, but we hoped to extend and develop the reasons given in the judgment, thereby pushing legal theory to a deeper level as well as appealing to the conscience and emotions of the judges. But, as we presented argument after argument, the three judges closed their hearts, turned away from our legal assertions and summarily dismissed our lawsuit with reasons amounting to a mere two pages.

We will never forget the names of the three judges who delivered this judgment. We believe that history will one day judge those judges, including the three presiding in our lawsuit, who have dismissed the lawsuits contesting the constitutionality of SDF deployment in Iraq.

Nakajima Michiko

June 23, 2006

*Translated by Kathryn Tanaka, Nick Albertson, and Sarah Allen with permission of Nakajima*

*Michiko. Editorial assistance from Scott Mehl. Kathryn Tanaka and Nick Albertson study Japanese literature, Sarah Allen, Japanese art history, and Scott Allen, comparative literature, all at the University of Chicago. Thanks to the Committee on Japanese Studies at the University of Chicago for support of this project. Posted on Japan Focus, Oct. 20, 2007.*

[1] The "text of the judgment" here refers to "shubun," and the contrasting "reasoning" to "riyu"; these might have been translated as "holding" and "obiter dicta" or "ratio decidendi," but given the amount of discussion, particularly on the latter two terms in the English-language literature, it has seemed wiser not to be overly ambitious in aiming for precision in translating terms of art.

[2] For a Korean report on the 2004 verdict, see [here](#).

For a discussion of the constitutionality of Koizumi's visits, see [here](#).

[3] The Sunagawa Incident refers to large-scale protests in plans to enlarge the U.S. base at Tachikawa, west of Tokyo, in 1957. The Tokyo District Court, as part of its March 1959 decision, declared the presence of U.S. bases in Japan to be in violation of Article 9 (see below [4]), a finding reversed by the Supreme Court in December of that same year.

[4] "1) Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. 2) In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized." [from the official translation; the entire text may be found [here](#).

[5] "Excepting those instances where the Constitution has made specific provision, the courts are vested with the authority to judge all legal disputes and to make determinations with respect to all other laws." [Judiciary Law, Article 3, paragraph 1]

[6] "No person shall be denied the right of access to the courts." [Article 32]

[7] "We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith. We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want. We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their

sovereign relationship with other nations. We, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources." [from the official translation]

[8] "All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs." [Article 13]

[9] On February 27, 2005, Obora Toshiyuki, Onishi Nobuhiro and Takada Sachimi (all men in their late 40s) were taken into police custody for distributing pamphlets in the SDF dormitories, asking SDF members to think more deeply about their involvement and support for an illegal and expensive war. The men were held for seventy-five days before being charged with criminal trespass and released on bail. Prosecutors asked the Hachioji branch of the Tokyo District Court to give the men a six-month prison sentence, but the case was thrown out of court. The prosecutors appealed to the Tokyo High Court, where on 9 December 2005, the three men were convicted of criminal trespass for the danger they posed to the SDF. The men are currently appealing this conviction and the ¥100,000 fine levied against them (although this was reduced from ¥200,000). For further information in English, see [here](#) and [here](#).

[10] The Yokohama Incident is a term used in the postwar period to describe the arrests of more than fifty journalists and lower-ranking government officials, beginning in Yokohama on 14 December 1942 and continuing into 1945. Trumped-up charges implicated the accused of Communist activities. The incident is seen as a prime example of the deployment of the Peace Preservation Law for the wartime suppression of ideas deemed dangerous by the government as well as brutal interrogation techniques that led to the death of four men in

custody and two others shortly after release on bail.

The arrests had especially serious consequences for two of the most influential liberal journals of the prewar era, *Kaizo* and *Chuo Koron*. Senior staff at both magazines were forced to leave after publishing articles the government deemed Communist in 1942, and both magazines ceased publication in 1944 under this pressure. They were restarted in 1946.

The victims of these arrests and their families have engaged in a lengthy court battle with the Japanese state, asking for an apology and restitution of their good name. The Tokyo High Court recently dismissed appeals brought by family members of five of the men (all now deceased) who sought to clear their names. For more information in English, see [here](#) and [here](#).

[11] The article describes how Japan contracted out the water-supplying mission to a French NGO, which then had the actual work done by Iraqi workers. The project as executed by the NGO is said to be far more effective, both in cost and numbers served, than what the SDF itself was targeted (and budgeted) to achieve. According to sources cited in the article, this is true for water purification, the construction and reconstruction of schools and roads as well. Since Japanese taxpayer money would have been far better served supporting NGOs, "humanitarian support activities" in fact obscures the political purpose for SDF presence.

[12] "The State and its organs shall refrain from religious education or any other religious activity." [from the official translation]

[13] Japanese citizens organized an International Criminal Tribunal for Iraq (ICTI; Iraku kokusai minshu hotei) to run in conjunction with the World Tribunal on Iraq (WTI), an international people's tribunal modeled on the Bertrand Russell World Peace

Foundation tribunal of the late 1960s on crimes committed in Vietnam. The Russell Tribunal was also the model for the Women's Tribunal on Japan's Military Sexual Slavery in 2000, and those involved in the latter contributed the lessons learned from that experience to the WTI. The ICTI, like the Women's Tribunal, had an international panel of judges; defendants were George W. Bush, Tony Blair, Koizumi Jun'ichiro, and Gloria Arroyo (President of the Philippines). Information may be found [here](#). The WTI held hearings "on crimes against humanity and against the planet" in twenty sites around the world, beginning in 2003, and delivered its judgment in a final session in Istanbul that was attended by representatives from over 100 countries in 2005. For an observer's report [here](#). Arundhati Roy delivered the opening keynote, "On Behalf of the Jury of Conscience of the World" on 24 June 2005, to be found [here](#). A number of sources refer to a WTI website [here](#) that could not, however, be accessed as of 8 October 2007. The findings of the Jury of Conscience may be read [here](#).

[14] From a provisional translation of the Special Measures Law for Iraq by the Ministry of Foreign Affairs available [here](#). The term "combat" is marked with an asterisk in the original, but there are no footnotes.

[15] The Hyakuri Base suit concerned the efforts of citizens to prevent state purchase of land for the purpose of air base construction. The Supreme Court in its 1989 decision confirmed lower court rulings that the state was acting in a capacity equivalent to that of a private citizen and that the case therefore did not involve the Constitution. For insight into the continued Japanese distinction between "private law" and "public law" as applied to this case, see [here](#); a good brief discussion of the case in Japanese may be found [here](#).

[16] For a contemporary report in English see [here](#); unfortunately, an English translation of the Supreme Court ruling that was available [on](#)



[this website](#) but a few months ago has disappeared. contextualizing the Supreme Court ruling see [here](#).

[17] For an update on Minamata