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A New Security Framework for Northeast Asia

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by Mizushima Asaho

The current debate over Japanese security is examined in light of Japan's constitutional ideals enshrined in the peace provisions of Article 9 and the challenges posed by the Bush administration's preventive attack strategy and the Iraq war. The article takes on particular relevance in the context of the Koizumi administration's offer to send Japanese Self-Defense Forces to Iraq to support the postwar pacification that the U.S. envisages as a project for an international peacekeeping force, and the mounting tensions centered on North Korea. The author is a professor of law at Waseda University. This article appeared in Shukan Kinyobi, May 30, 2003.

The United Nations Charter goes a step further than the Kellogg-Briand "No War Pactï¿½"(Treaty of Paris, 1928) in outlawing war; in principle it forbids the use of force or the threat of force. The only exceptions are military acts of force undertaken by the United Nations or the exercise of the right of self-defense (in limited circumstances). However, the United States carried out naked violence against Iraq without the legitimizing flag of a UN resolution. We must continue to pursue the matter of responsibility for launching this war of invasion. And there is a strong case that international humanitarian law was violated in the course of the invasion by acts including the use of depleted uranium bombs and cluster bombs. We must pursue the responsibility for this as well.

Prosecuting the American Commanding officer

Relatives of those killed in the invasion by American forces, 17 Iraqis and 2 Jordanians on May 14 filed a suit in Belgian court in Brussels against General Franks, the commander of the American forces. Belgian has rigorous laws allowing the pursuit of war crimes that take place beyond its national borders. If a person is indicted, an international subpoena is issued. Representative Ackerman immediately introduced a bill to forbid the American Justice Department from cooperating in any form with Belgian law. This bill requires the president to take all necessary steps to protect any American citizen (that is, General Franks) from being detained by Belgium. It does not rule out use of military force. A German newspaper satirically called this the "law for invading Belgium" for it implies that the U.S. would not even hesitate to bomb the Brussels airport in order to protect General Franks. The United States has unilaterally quit the International Criminal Court. The runaway self-righteousness of the United States knows no limits. The Belgian government, in deference to the United States, decided to forward this matter to the American authorities rather than prosecute the case, in accord with a revision of the law this April.

The American administration is at present controlled by a peculiar group, the so-called "neo-cons". But it would be a mistake to view all of America as an enemy just because the current policies are wrong. In Japanese terms, that would be equivalent to judging all Japanese politicians on the basis of the views of Ishiba Shigeru, Director of the Self-Defense Agency, or Abe Shinzo, the Deputy Secretary General of the Cabinet.]]

On March 20, just as the British and American forces launched their invasion of Iraq, Prime Minister Koizumi immediately announced "I understand and support the American attack." Moreover, he dispatched the naval self-defense force ship, Aegis, to the Arabian Sea. Simply put, he made it crystal clear to the world that the Japanese state had joined the war.

But it would be dangerous to follow the current American regime under the control of the neo-cons. I believe President Bush will not be re-elected. It is also possible that, like president Nixon, Bush will eventually fall, stumbling on domestic problems. Koizumi will then doubtless regret having drawn too near to Bush. It is necessary for Japan to distance itself by one step from Bushï¿½s doctrine of preventive attack. At least there

should be no rush to pass the "emergency laws." It is necessary to deliberate further and carefully verify what sorts of situations would constitute an ï¿½emergencyï¿½ for Japan.

The present "emergency legislation" is a legal measure to enable Japanese cooperation with the United States, which seeks a preemptive strike against a certain country in Asia. The true stance of the Japanese government is something like the following: "If a certain country is attacked, closer to us than Iraq, its reaction will be violent and we too may be drenched in blood from their wounds. Therefore, let us pass a law setting up a 'legal system for protecting the people' so that our citizens will allow us to use their land and provide material support. And we'll have the cooperation of the private sector broadcasters as specially designated public organs. Further, we want Prime Minister Koizumi to be able to bring a nice present when he visits the United States on May 23."

Why does the Democratic Party, the major opposition party, cooperate with such an agenda? The party chief, Kan Naoto, proudly states that by negotiating for revisions in the legislation, guarantees of respect for human rights have been explicitly written into the Law for Cases of Military Attack. But it is excessively optimistic to feel secure just because such phrases are written into the law. Why? Similar wording about respect for fundamental human rights is also written into the Law to Prevent Subversive Activities, the Wiretapping Law, and Japanese misdemeanor law. But for those who would abuse such laws, these phrases lack effective legal force.

In the constitution itself, a guarantee of fundamental human rights is inscribed. It is not merely over-optimistic to think that human rights are protected simply because such phrasing is included in a Law for Cases of Military Attack that is highly unconstitutional; the very idea leads to embellishing violations of human rights. Certainly the three "emergency laws" should be rejected in the House of Councilors.

A Conclusion that the "Butinthe" People Draw

But without such legislation, is it possible to protect our lives in an emergency? Many people would argue that "all countries have it, so we need a system of emergency laws as well." Just by saying "but in the UK it is like this" or "but in the US, it is simply common sense," one gives the impression of making a logical argument. But this is an argument from the land of "Butinthe." By the simple phrase, "but in the...", one loses sight of the particular circumstances which have produced the constitutions and legal systems of these countries.

In *Examining "Emergency Legislation Systemsï¿½ Around the World* (Mizushima Asaho ed.), we compared such legal systems in nine countries, and in most of them there are movements underway to rethink or revise the existing system of emergency legislation. Even in South Korea, because the Emergency Situation Law was abused by the military dictatorship in the past, efforts are underway to partially abolish this law. And in each country there are troubling experiences of abuse of such laws. There are no grounds for concluding that just because others have such laws, Japan needs them as well.

The greatest abuse comes in the area of "Laws for the Protection of the People." Some local government leaders are saying that "it is unacceptable that the law for the protection of the people was deferred." But we should not be deceived by the expression "protection of the people." It would be a great mistake, in fact, to think that the people are being protected.

Indeed, it is in the very use of this term for the people, literally ï¿½the people of the nation (*kokumin*) that one can discern the governmentï¿½s objective. The basic tenet of the local government law is that the head of local government is obligated to protect the security of the residents, so one should call this "resident protection" or "citizen protection." That is, among the residents are foreigners. A "Law for Protection of the People (of the nation)" is the foundation of a legal system to protect only Japanese nationals. Further, the expression "protection of the people" is here a verbal sleight of hand; this is not a law to protect the people, but a law to force the people to cooperate in a situation of military attack. Thus, we need to pay more attention to insuring our "freedom from the state."

Recently laws have been passed to protect people from stalkers or domestic violence, and the concept that people should rely on state power to protect our security has emerged. In particular cases, such protection is necessary. However, article 12 of the Japanese constitution stipulates that "the freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people," and in this sense,

it is a great mistake to think that freedom and rights are given to us by the state.

There is no denying that the danger of terrorism exists in various places and situations. There are ships smuggling narcotics, and states that engage in a diplomacy of intimidation by lobbing missiles in our direction. But the question is whether it is correct to respond to this country militarily or for Japan to take part in an American preemptive attack.

If we enact heavy-handed "emergency legislation" and cooperate with the American neo-conservatives, our channels for cooperation with South Korea and China will be narrowed. Diplomacy consists not in confrontation based on force, but in figuring out how to build relationships that will prevent that country from exploding. That is to say, we need to build a framework for regional collective security in Northeast Asia; this is the best counter to the "emergency legislation system."

The preface to the Japanese constitution states "we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world." The approach to national security envisioned in the constitution, according to Sato Isao, writing in 1976 "is to aim at a conceptualization of a world federation or global state, and insofar as this has not been achieved, to maintain a stance of unarmed neutrality in relation to all states, specifically the American and Soviet camps." Thus, the current systemï¿½ the US-Japan security systemï¿½in which the only way to guarantee Japanese security is to join unequivocally with one side, and defend ourselves from attack by the other "is [again according to Sato] completely different from the security system that the constitution idealized and anticipated." This observation remains appropriate today in the post-cold war era.

As a system of regional collective security, there is the Organization for European Security and Cooperation (OSCE), which includes 55 nations of Europe and North America. In the era of its predecessor, the Conference on European Security and Cooperation (CSCE), it played a very important role in resolving the East-West confrontation in a process that began with the taking down of the Berlin Wall. It has also since played an important role of active intervention in the form of non-military activities (dispatch of observers and various missions) in cases such as the Yugoslav conflict.

How to create a similar regime in Asia? Some people call this an empty dream, but that is not the case. From July 1994 the Asian Regional Forum (ARF) was launched, and North Korea joined from the year 2000. This ARF, comprised of 22 Asian and other nations and the European Union, is an organization working for security and cooperation in the Asia Pacific region, and is indeed the sole inter-governmental site of dialogue in the region. It meets every summer for a succession of cabinet level conferences, and does not maintain a standing secretariat. It stresses the free exchange of opinions, and runs on the principle of consensus decision making. It also gives importance to off-the record discussions. The policy of avoiding public procedures and systematization is a distinguishing feature of the organization.

We can call this a relationship of loose cooperation that also characterizes the Okinawan practice of "reaching accommodation" It can be called a mild form of establishing cooperative relationships. It seeks to initiate processes that will open the way to the building of trust, preventive diplomacy, and conflict resolution. Movement is gradual, but certain progress is being made. What Japan needs to do at present is put more energy into this organization, make greater use of links to China and South Korea, and seek to prevent North Koreaï¿½s reckless actions.

Not Neo-Egocentrism, but . . .

What types of power bring about peace? There are various dangers around us. But through the experience of various wars, humanity has created the wisdom to remove dangers without resort to war or force.

But recently we have been making decisions based on an excessively narrow range of information. For example, simply based on information about the existence of a group of people in Japan who wear white robes, there are opinions that we should ostracize them. But these people have been doing the same thing for about 10 years. One might not sympathize with them, or might even hate them, but it is wrong to use police power to remove a group that has committed no crime.

In similar fashion, when international society begins to think that we can preempt and eliminate dangers by using the power of the American military, some dangerous forces rise up within our midst. This is a "new selfishness" that has moved from thinking "I want to protect my affluence" to "it is enough to protect my affluence only." This is a hybrid of selfishness and self-addiction (extreme nationalism). In Japan, this self-centered nationalism has emerged in hybrid form. Together with politicians who stir up sentiments of "Japan is Number One," when we become a country which uses force, a "new selfishness" emerges in each of us.

A true civil society is one in which people find self-realization while respecting each other, but we are turning rapidly into a society where so long as an individual is all right, it is acceptable for him or her to hurt someone else. One feels this sort of sentiment in the context of all sorts of issues from the North Korea problem to the white-robe group.

This is evident in the opinion that supports the emergency legislation. A society founded on selfishness, the sentiment that "we are a normal country" rooted in such a societyï¿½to put it a bit extremely, this means that we as individuals have become "imperialist citizens" (to borrow the expression of Watanabe Yo, professor emeritus of Tokyo University). We need to become citizens who repudiate the state of "imperial citizenship" and seek to realize ourselves while always co-existing with others.

Translation by Andy Gordon for Japan Focus

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