

## THE END OF CONSTITUTIONAL PACIFISM?

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### INTRODUCTION

On September 19, 2015, the National Diet of Japan enacted a series of statutes which enable the government to exercise the right of collective self-defense. One of the statutes also enables the government to dispatch the Self-defense Forces to take charge of logistics for foreign military forces waging wars. This enactment symbolises Japan's turn of course regarding its long-held stance on constitutional pacifism. Pacifism maintained under the Constitution of Japan was not pure pacifism rejecting any use of force. The successive governments held that the right of individual self-defense, in other words, the right to use force in order to repel on-going or imminent, unlawful armed attack against Japan itself, could be exercised under the Constitution. However, past governments maintained that the right of collective self-defense, which is to be invoked when foreign states are under military attack and request support from Japan, is clearly prohibited under Article 9 of the Constitution.

#### I. THE OFFICIAL VIEW AS IN THE PAST

Let me explain the former official view on Article 9 (Section 1), and then the change under the Abe administration and its implications (Section 2). I will then explain why an established authoritative view of the government should not be changed without sufficient reason (Section 3), before proceeding to describe some prospects (Section 4), and giving my conclusion (Section 5).

Whereas Article 9 of the Constitution of Japan stipulates that "land, sea, and air forces, as well as other war potential, will never be maintained," the Self-Defense Forces, which many people regard as nothing but military forces, have been set up and maintained. The official explanation on this point has been that it would be manifestly unreasonable for the Constitution to prohibit the government from maintaining and using minimum forces to protect lives and property of

the people. In other words, the Constitution merely demands that the forces to be maintained and used should be strictly minimal.<sup>1</sup>

The government's statement submitted to the National Diet on October 14, 1972 held that: "the current constitution, which is based on pacifist principles, cannot be understood to tolerate unlimited exercise of the right of self-defense. The constitution recognizes the use of this right only in cases where it is essential to protect the Japanese people's rights to life, liberty, and the pursuit of happiness if these rights are jeopardised by foreign military attack."<sup>2</sup> Since the right of collective self-defense is to be invoked when foreign states are under military attack and request support from Japan, such use of force is beyond the constitutional limit. In concrete terms, the government may use force only when (1) Japan itself is under on-going or imminent, unlawful armed attack emanating from abroad; (2) use of force is necessary to terminate the attack; and (3) the extent of the force used is proportionate to the end to be achieved. These three conditions should be co-existent.<sup>3</sup>

I would like to add that such an expansive interpretation is not without precedent. Consider the Constitution of the United States, which makes it the power of Congress to declare war (Article 1, Section 8, Clause 11), that is, to deploy troops and initiate military actions. However, since the debates of the Constitutional Convention of 1787, it has not been doubted that the executive branch has "the power to repel sudden attacks," that is, to use the right of individual self-defense.<sup>4</sup> The

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<sup>1</sup> See Yasuo Hasebe, *War Powers*, in THE OXFORD HANDBOOK OF COMP. CONST. L. 463, 477–480 (Michael Rosenfeld & András Sajó eds., 2012) (finding that the pure pacifist view embraced by not a few constitutional scholars in Japan is incompatible with modern constitutionalism, which tries to realize the fair co-existence of various, even mutually incommensurable conceptions of the good among the individuals in the society). See also Yasuo Hasebe, *Constitutional Borrowing and Political Theory*, 1 INT'L J. OF CONST. L. 224, 240–243 (2003).

<sup>2</sup> MASAHIRO SAKATA, SEIHU NO KENPO-KAISHAKU [The Government's Interpretations of the Constitution] 55–56 (Yūhikaku, 2013). This is the Tanaka administration's statement. Mr. Kakuei Tanaka was the 6th leader of the LDP and served as the Prime Minister from July 1972 to December 1974.

<sup>3</sup> This interpretation was repeatedly confirmed by successive governments. See SAKATA, *supra* note 2, at 32. The Nakasone administration's statement to the National Diet on September 27, 1985, also states that when the three conditions co-exist, use of force is permitted in foreign territories. *Id.* at 42–43.

<sup>4</sup> Cf. Hasebe, *War Powers*, *supra* note 1, at 477 (claiming that, before the establishment of the Self-Defense Forces, the Japanese government regarded the use of the right of individual self-defense as unconstitutional under Article 9 is simply false. At the same time as the promulgation of the Constitution of Japan in November 1946, the government issued a booklet, entitled SHIN-KENPO NO

War Powers Resolution of 1973, which constrains the president's authority to use military force, still concedes that the president has the "constitutional powers" under Article 2, Section 2, Clause 1, "to introduce United States Armed Forces into hostilities pursuant to a national emergency created attack upon the United States, its territories or possessions, or its armed forces" (Section 2 (c)).

In accordance with this line of reasoning, the Japanese government has stated again and again that among the right of self-defense recognized by Article 51 of the UN charter, the Constitution recognizes only the right of individual self-defense. In other words, the use of the right of collective self-defense is clearly unconstitutional. Various government spokespersons, including successive chiefs of the Cabinet Legislation Bureau who are primarily in charge of providing legal advice to the government,<sup>5</sup> have stated that in order for the government to exercise the right of collective self-defense, amendment of Article 9 is essential.

Mr. Shinzō Abe, who was elected as the 96th Prime Minister in December 2012, has long been critical of this official view. In January 2004, in his question at Parliament to the then Chief of the Cabinet Legislation Bureau, he suggested that there might be some cases where it is acceptable to exercise the right of collective self-defense even under the interpretation indicated in the above-mentioned statement on October 14, 1972.<sup>6</sup>

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KAISETSU [An Introduction to the New Constitution], which was authored by members of the Cabinet Legislation Bureau. According to the booklet, at the 1946 constituent Parliament (that is, the 90th Diet under the Meiji Constitution), many raised the concern that Japan would be unable to repel attacks from abroad under Article 9. The booklet states that there is no reason to worry about this issue because Japan will join the United Nations soon after becoming independent, and the UN Charter recognizes the right of self-defense to its member states. This implies that the government regarded the use of the right of individual self-defense as permissible at the time of the promulgation of the Constitution (although it would be far-fetched to assume that the government would have taken the possibility of using the right of collective self-defense into consideration)).

<sup>5</sup> See Yasuo Hasebe, *The Supreme Court of Japan: Its Adjudication on Electoral Systems and Economic Freedoms*, 5 INT'L J. OF CONST. L. 296, 298–299 (2007) (regarding the organization and functions of the Cabinet Legislation Bureau). The Cabinet Legislation Bureau is "in charge of providing opinions on legal questions to the Cabinet, the Prime Minister, and Cabinet Ministers" according to Article 3 (3) of the Act establishing the Cabinet Legislation Bureau.

<sup>6</sup> The then chief of the bureau, Mr. Osamu Akiyama, denied such possibility. See SAKATA, *supra* note 2, at 57–58.

After taking up the post of Prime Minister in 2012, Abe first asked the advice of the then-chief of the Cabinet Legislation Bureau, Mr. Tsuneyuki Yamamoto, on this issue. Mr. Yamamoto duly repeated the view that the use of the right of collective self-defense is unconstitutional. In August 2013, Yamamoto was asked to retire, and was appointed as an Associate Justice of the Supreme Court.<sup>7</sup> Unprecedentedly, the next chief, Mr. Ichirō Komatsu, was not promoted from within the Bureau, but was recruited from the foreign ministry, which had also been critical of the authoritative interpretation given by the Bureau. Although Mr. Komatsu retired from this post in May 2014 because of serious illness,<sup>8</sup> he made substantial preparation for the change of the interpretation, which had been deemed inalterable by the past governments.

## II. THE CABINET STATEMENT ON JULY 1ST, 2014

On July 1, 2014, the cabinet made the statement that use of the right of collective self-defense is constitutional within some limits.<sup>9</sup> According to the new interpretation, use of force will also be permitted when Japanese people's rights to life, liberty, and pursuit of happiness are jeopardized because of military attacks against foreign countries which are in close relationship with Japan. I will call this condition (1b) in order to distinguish it from the former condition (1)—Japan itself is under on-going or imminent, unlawful armed attack—and rename this former condition (1) as (1a). After July 1, 2014, conditions (2) and (3), mentioned above, remain unchanged. Hereafter, the use of force will be permitted if condition (1a) or (1b) co-exists with conditions (2) and (3).

The new condition (1b) was apparently extracted from the government statement on October 14, 1972, which was meant to explain why the exercise of collective self-defense was not permitted under the current Constitution.<sup>10</sup> Although the new interpretation of the Abe

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<sup>7</sup> The Cabinet has the power to appoint and remove the chief of the Cabinet Legislation Bureau. NAIKAKUHOUSEIKYOKU SECCHI HOU [Act of Establishment of Cabinet Legislation Bureau], art. 2, para. 1 (Japan). The Cabinet appoints Associate Justices of the Supreme Court. NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 79, para. 1 (Japan).

<sup>8</sup> He succumbed to the illness in June 2014.

<sup>9</sup> See KUNINO SONRITSUWO MATTOUSHI, KOKUMINWO MAMORUTAMENO KIREMENONAI ANZENHOUSEI NO SEIBINI TSUITE [Regarding development of the Security Bill for the continuous existence of the nation and for the protection of the public] (July 1, 2014) (<http://www.cas.go.jp/jp/gaiyou/jimu/pdf/anpohosei.pdf>).

<sup>10</sup> See SAKATA, *supra* note 2.

administration refers quite abstractly and ambiguously to changes of international circumstances and military situations by which Japan is now surrounded, the exact grounds of this newly declared interpretation are not clearly articulated. Whereas the tension between China and Japan has recently heightened regarding islets called *Senkaku*, this is a matter of individual self-defense, and does not justify the change in interpretation to allow collective self-defense.

This change of government view has caused a lot of concerns that are shared by wide sections of the society.<sup>11</sup> First, the denial of the right of collective self-defense under the current Constitution was a conclusion perfected through elaborate deliberations over many years by various government departments. It has been steadily confirmed and repeated. If we may here borrow the expression of Sir Edward Coke: “by many succession of ages, it hath been fined and refined by an infinite number of grave and learned men.”<sup>12</sup> If such a product of many minds of requisite art can be changed in accordance with policy preference of a transitory premier who happens to be in charge, the role of the Constitution to limit political power would almost evaporate. Any interpretation of any constitutional clause seems now vulnerable to change.<sup>13</sup>

Second, authority of the Cabinet Legislation Bureau has become seriously undermined in the eyes of many people because of this change

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<sup>11</sup> See, e.g., Yasuo Hasebe, KENSHO: ANPO HOAN [Examining the Security Bills] (Yūhikaku, 2015); Yasuo Hasebe, ANPO HOSEI KARA KANGAERU KENPO TO RIKKENSHUGI, MINSHUSHUG [Reconsidering the Constitution, Constitutionalism, and Democracy in view of the Security Acts] (Yūhikaku, 2016).

<sup>12</sup> EDWARD COKE, INSTITUTES OF THE LAWS OF ENGLAND, 97b, 162 (E. & R. Brooke 1797).

<sup>13</sup> This is not to say that governments' views on the Constitution have never changed. On a couple of occasions, governments actually changed former positions on the Constitution. For example, in August 1985, the government stated that under certain strict conditions, cabinet ministers may *officially* visit the controversial *Yasukuni* shrine in spite of the Constitution's establishment clause (Article 20). Although the families of soldiers killed in action during World War II had demanded that ministers should pay official visits to the shrine, the government had doubts about the constitutionality of such visits. The 1985 statement was intended to clarify the legal situation and provided precise conditions under which ministers could officially visit the shrine. An official visit was conducted only once by Prime Minister Yasuhiro Nakasone in 1985, which provoked strong reactions from neighbouring countries. Since then, ministers have visited as private persons but none have made an official visit. Whether actions clearly held as unconstitutional, such as the use of the right of collective self-defense, could be permitted under limited circumstances would pose a very different question.

of interpretation. Even several former chiefs of the Bureau openly criticised this turnaround.<sup>14</sup> The Bureau has been highly regarded because it has given legal advice to various governments from the standpoint detached from party politics. However, on this issue, the current Bureau chief, Mr. Yūsuke Yokobatake, who succeeded Mr. Komatsu from within the Bureau, is suspected to succumb to Mr. Abe's pressures. If the Bureau has come to say that a government action is constitutional because the prime minister wants it to be, there remains scarce respect for its opinions.

Third, it is difficult to understand the exact meaning of the newly issued conditions for the use of force. On its face, the cabinet statement asserts that use of force is permitted when (1b) Japanese people's rights to life, liberty, and pursuit of happiness are jeopardized because of military attacks against foreign countries.<sup>15</sup> If understood literally, it is quite hard to imagine concrete cases where such a situation is realized. Some politicians, including Shinzō Abe, claim that under the new interpretation, the Self-defense Forces could be dispatched to the Hormuz Strait if it is blockaded. On the other hand, since such a blockade would result in the sharp rise of oil prices and make daily lives of the people difficult,<sup>16</sup> other politicians of the governmental coalition—in particular, those of Komei party—have asserted that it is hardly imaginable that troubles caused by higher oil prices could satisfy condition (1b) above.<sup>17</sup> As to

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<sup>14</sup> See HASEBE, KENSHO: ANPO HOAN, *supra* note 11, at 35–52 (Masasuke Ōmori's remarks). See also *infra* note 26 and the accompanying text.

<sup>15</sup> See *supra* note 9.

<sup>16</sup> See WAGAKUNIOYOBI OYOBI KOKUSAISHAKAI NO HEIWAANZENHOUSEI NI KANSURU TOKUBETSU IINKAI DAI 3 GOU [Special Committee Minutes on the Security Bills of the House of Representative, Volume 3] (May 27, 2015) ([http://www.shugiin.go.jp/internet/itdb\\_kaigiroku.nsf/html/kaigiroku/029818920150527003.htm](http://www.shugiin.go.jp/internet/itdb_kaigiroku.nsf/html/kaigiroku/029818920150527003.htm)).

However, the only case the government suggested necessary use of collective self-defense abroad was the case of sweeping mines at Hormuz Strait. Mr. Shinzō Abe himself confessed during the deliberation at the Special Committee on the Security Bills of the Upper House that he did not think that such a case will actually occur in the near future. See SANGIYIN WAGAKUNI OYOBI KOKUSAISHAKAI NO HEIWAANZENHOUSEI NI KANSURU TOKUBETSU IINKAI KAIGIROKU DAI 20 GOU [Special Committee Minutes on the Security Bills of the Upper House, Volume 20] (Sept. 14, 2015) (<http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18909140192020.pdf>). Moreover, at the Special Committee of the Lower House, Mr. Yokobatake stated that if mines are set against Japanese vessel, the Self-Defense Forces may exercise individual right of self-defense. See WAGAKUNIOYOBI OYOBI KOKUSAISHAKAI NO HEIWAANZENHOUSEI NI KANSURU TOKUBETSU IINKAI DAI 14 GOU [Special Committee Minutes on the Security Bills of the House of Representative, Volume 14] (June 26, 2015) ([http://www.shugiin.go.jp/internet/itdb\\_kaigiroku.nsf/html/kaigiroku/029818920150626014.htm](http://www.shugiin.go.jp/internet/itdb_kaigiroku.nsf/html/kaigiroku/029818920150626014.htm)).

<sup>17</sup> See *Asahi Shimbun Regular Public Opinion Poll*, Maureen and Mike Mansfield, <http://mansfielddn.org/program/research-education-and-communication/asian-opinion-poll-database/a>

the question of whether possible destabilization of the US-Japan alliance caused by foreign military attacks against American forces would satisfy the condition (1b), opinions of Foreign minister, Humio Kishida, and Mr. Yokobatake have patently differed.<sup>18</sup> Therefore, as a result of this change of interpretation, the meaning of Article 9 has become much more blurred, though the normal role of interpretation should have been to provide determinate meaning to an ambiguous text.

Fourth, it is not certain whether such expansion of the possible use of military forces would contribute to peace and security in East Asia.<sup>19</sup> Though the government asserts that this change of interpretation increases the deterrent effect of the US-Japan alliance, it may also bring about military expansion on the part of neighbouring countries, making all parties more prone to miscalculation. The risk that Japan might be implicated in quarrels of other countries would also increase.

### III. AUTHORITATIVE TEXTS AND AUTHORITATIVE INTERPRETATIONS

Those who approve of the Abe administration's change of government view point out that the Cabinet Legislation Bureau's interpretation of Article 9 is just one of many possible interpretations. If the government changes its interpretation, the Constitution itself does not change. Therefore, this reinterpretation is not unconstitutional. Moreover, the text of Article 9 does not allow any room for use of force. Hence, the traditional, authoritative interpretation of the Cabinet Legislation Bureau, that is, the interpretation that Article 9 permitted the use of the right of individual self-defense, was itself unconstitutional. While such an assertion has an air of plausibility, I believe it is incorrect.

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sahi-shimbun-regular-public-opinion-poll-05192015/ Foundation (reporting that Komei party argues that under the new Security Acts, the self-defense forces cannot be dispatched to the Hormuz Strait). Mr. Natsuo Yamaguchi, the leader of Komei Party, argued at the Special Committee on the Security Bills of the Upper House that importation of oil should be secured through diplomacy without having recourse to use of force. See SANGIYIN WAGAKUNI OYOBI KOKUSAISHAKAI NO HEIWAANZENHOUSEI NI KANSURU TOKUBETSU IINKAI KAIGIJIROKU DAI 20 GOU, *supra* note 16.

<sup>18</sup> Compare Mr. Kishida's remarks at the Budget Committee of the Lower House on July 14, 2014 with Mr. Yokobatake's remarks at the Foreign and Defense Committee of the Upper House on October 16, 2014. Their remarks are reported and analyzed by ASAHI SHIMBUN (October 26, 2014).

<sup>19</sup> Mr. Abe's foreign policy is said to be based on "proactive pacifism," an obscure idea that is difficult to understand.

To understand this issue better, one should begin with Joseph Raz's theory of authority.<sup>20</sup> According to Raz's widely accepted Normal Justification Thesis, an authority claims that those whom it addresses should not think or judge what to do by themselves; instead, they should obey orders issued by the authority because, in so doing, they are likely to comply better with reasons that apply to them. Laws often claim that they are authorities: people should not think and judge what to do by themselves; instead, people should duly obey laws, because they are likely to do better what they have reasons to do when they follow the laws. In such cases, people should grasp the semantic, textual meaning of the law. If a legal text requires interpretation to understand its meaning, then people must think and judge what to do by themselves.<sup>21</sup> A typical case of authority is traffic rules. We do not think and judge by ourselves whether or not we should stop at a traffic light, because by following traffic lights loyally we can successfully coordinate our movements on the road. If a law is to function effectively as an authority, its meaning should be clear, stable, consistent, and proactive. A legal text cannot act as an authority unless it follows these requirements.<sup>22</sup>

The question is whether we should regard Article 9 as an authoritative legal text, that is, a positive law whose semantic, textual meaning should be obeyed, which allows us to better do what we have reason to do. I think not, as it is clearly unreasonable to follow the textual meaning of Article 9 and not use any force if Japan were to be attacked from abroad.<sup>23</sup> Therefore, we should regard Article 9 not as an authoritative positive law, but as an object of interpretation. We, the audience of Article 9, must think and judge for ourselves what to do in

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<sup>20</sup> JOSEPH RAZ, *THE MORALITY OF FREEDOM* 38–109 (1986).

<sup>21</sup> Every understanding of a legal text should not be seen as its interpretation because this view leads to an infinite regress, as pointed out by Ludwig Wittgenstein. That is to say, any interpretation produces as its result a new text, which requires another interpretation, which produces another new text, and so on. See LUDWIG WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* 201 (3d ed. 2001). See also ANDREI MARMOR, *INTERPRETATION AND LEGAL THEORY* 9–25 (2d ed. 2005) (asserting that interpretation to understand a text should be an exceptional exercise).

<sup>22</sup> See JOSEPH RAZ, *THE AUTHORITY OF LAW* 210–229 (2d ed. 2009). See also Yasuo Hasebe, *The Rule of Law and its Predicament*, 17 *RATIO JURIS* 489–500 (2004) (describing the concept of the rule of law).

<sup>23</sup> I have argued that this understanding of Article 9 contradicts modern constitutionalism, which is meant to acknowledge the equal coexistence of plural, incommensurable values within a society. See Hasebe, *Constitutional Borrowing and Political Theory*, *supra* note 1, at 240–243.

light of the ideas expressed in Article 9.

However, if different people interpret Article 9 differently, we cannot say that there is a working Constitution limiting political power on this issue. The Cabinet Legislation Bureau has provided authoritative interpretations of Article 9 that successfully coordinated the interactions of various government departments and demarcated clear boundaries for government power. In other words, the Bureau's interpretation functioned as an authority. The functioning Constitution,<sup>24</sup> which effectively restricts government power, is thus formed of authoritative constitutional interpretations as well as authoritative constitutional texts. To sustain constitutionalism, however, an authoritative interpretation should not be changed unless there is sufficient reason to do so, which, in the case of the Bureau's new interpretation of Article 9, the government has failed to demonstrate.<sup>25</sup>

#### IV. SOME PROSPECTS

The government proposed the security bills, intending to enable the government to exercise the right of collective self-defense, to the National Diet on May 15th, 2015. Although it took more than four months to finally enact the statutes, the populace are still not quite persuaded by the government that these statutes are necessary at all. During the Parliamentary deliberation, several former chiefs of the Cabinet Legislation Bureau,<sup>26</sup> one former Justice of the Supreme Court,<sup>27</sup>

<sup>24</sup> Regarding the concept of a functioning constitution or "practice-based" constitution. See JOSEPH RAZ, *BETWEEN AUTHORITY AND INTERPRETATION* 348–350 (2009).

<sup>25</sup> See *supra* note 16.

<sup>26</sup> See WAGAKUNI OYOBI KOKUSAISHAKAI NO HEIWAANZENHOUSEI NI KANSURU TOKUBETSU IINKAI DAI 13 GOU [Special Committee on the Security Bills of the House of Representatives, Volume 13] (June 22, 2016) (<http://kokkai.ndl.go.jp/SENTAKU/syugiin/189/0298/18906220298013.pdf>) (Masahiro Sakata and Rei'ichi Miyazaki's remarks at the Special Committee on the Security Bills of the Lower House). See also SANGIYIN WAGAKUNI OYOBI KOKUSAISHAKAI NO HEIWAANZENHOUSEI NI KANSURU TOKUBETSU IINKAI KAIGIJIROKU DAI 17 GOU [Special Committee on the security Bills of the Upper House, Volume 17] (Sept. 8, 2016) (<http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0192/18909080192017.pdf>) (Masasuke Ōmori making remarks at the Special Committee on the Security Bills of the Upper House).

<sup>27</sup> See SANGIYIN WAGAKUNI OYOBI KOKUSAISHAKAI NO HEIWAANZENHOUSEI NI KANSURU TOKUBETSU IINKAI KAIGIJIROKU DAI 1 GOU [Special Committee Minutes on the Security Bills of the Upper House, Volume 1] (Sept. 15, 2015) (<http://kokkai.ndl.go.jp/SENTAKU/sangiin/189/0193/18909150193001.pdf>) (Kunio Hamada's remarks at the Special Committee on the Security Bills of the Upper House).

and many constitutional law scholars argued that the bills were unconstitutional. On the other hand, several political scientists argued that these bills were necessary for the security of Japan. Perhaps, they tried to say that *necessitas non habet legem*—necessity has no law. However, while the political scientists asserted abstract necessity of the bills, indicating vaguely the change of security conditions surrounding Japan, they did not point out any specific factual circumstances which necessitated the bills.

According to the opinion poll conducted by Asahi Shimbun on the 12th and 13th of September 2015, around 54% responded that they were against the bills and 68% responded that it was unnecessary to enact the bills within the current session of the Diet.<sup>28</sup> Since the end of August, a large number of people opposing the bills have been gathering around the National Diet in order to demonstrate their opinions. And this movement still continues even after the enactment of the bills on September 19th. Opposition parties claim that they will abolish the statutes when they take power at a future national election.

After the upper house election of July 2016, those who favour amendment of the Constitution gained two thirds of both houses, however, these forces differ significantly on what amendments should be implemented on which clauses. In particular, it is unlikely that they will first touch on Article 9, the amendment of which is highly unpopular.

## V. CONCLUSION

If the Constitution of one country grants its government the deployment of troops and the use of force, it is above all to preserve core constitutional values of that country, not to discard them.<sup>29</sup> If a country based on constitutionalism negates its constitutional principles under the pretext of defending itself, the endeavour is clearly self-defeating. In such a case, we cannot say that the state has survived. In Jean-Jacques Rousseau's understanding, "The principle of life of the body politic and,

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<sup>28</sup> According to the opinion poll conducted by Asahi Shimbun on January 16th & 17th 2016, 52% of persons polled said that they were against the security statutes while 31% said that they were for them.

<sup>29</sup> Cf. H. JEFFERSON POWELL, *TARGETING AMERICANS: THE CONSTITUTIONALITY OF THE DRONE WAR* 179 (2016) (advocating the Marshallian, common law constitutional reasoning, based on fundamental principles of the American political community).

so to speak, the heart of the state, is the social pact which, as soon as it is injured, causes the state instantly to die.”<sup>30</sup> To change an established authoritative interpretation of constitutional law without any sufficient reason amounts to a direct attack upon constitutionalism. In my view, the Abe administration’s change of interpretation of Article 9 is exactly such a self-defeating exercise.

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<sup>30</sup> Jean-Jacques Rousseau, *The State of War, in THE SOCIAL CONTRACT AND OTHER LATER POLITICAL WRITINGS* 171 (Victor Gourevitch ed. 1997).

