

## **About the Nationwide Network for Lawsuits on the Unconstitutionality of the New Security Laws**

1. On 1 July 2014, the government of Japan under the administration of Prime Minister Shinzo Abe passed a Cabinet Decision to allow the exercise of the right to collective self-defense. In the early hours of 19 September 2015, the new security laws were railroaded through the Diet in an act of historical violence. Eight years have passed since, in an unprecedented political maneuver, the Cabinet Office revised the “interpretation” of the Constitution, essentially revising Article 9 of the Constitution and opening a path to war. This was done with no formal measures to officially revise the Constitution.

At a Diet session on 22 February 1983, then-Director-General of the Cabinet Legislation Bureau Reijiro Tsunoda stated that “all [of Japan’s] administrations to date have wanted to allow Japan the right to collective self-defense; however, if they wish to make clear that Japan has such right, I believe there is no choice but to revise the Constitution.” With this and other statements, his response suggested that it would be impossible for Japan to exercise the right to collective self-defense without revising Article 9 of the Constitution.

When the Abe administration’s scheme to revise the Constitution materialized through the Cabinet Decision on allowing the right to collective self-defense, we started to seriously consider whether it would be possible to file lawsuits asserting the unconstitutionality of the new security legislation. However, we were faced with the reality that Japan’s legal world was dominated by the view that launching a legal fight on the topic of said unconstitutionality in Japan’s current court system could be dangerous, or that a court ruling in favor of the government, judging the security legislation to be constitutional, would end up serving to further embolden the Abe administration. Indeed, many lawyers harbored these concerns.

Such concerns were largely justified in light of the history of Japan’s postwar judiciary. The Constitution of Japan states that Japan is to have an independent judiciary and that the power of judicial review lies in the judiciary. It gives courts independent of political forces the important role as guardians of the Constitution. Nonetheless, the courts, when faced with a “peace lawsuit” based on Article 9 of the Constitution, have consistently bowed to the political administration of the time, ever since the ruling on the Sunagawa Case in 1959. Their rulings have been made with the aim of not ruffling the feathers of those in political power. This tendency of the judiciary to cater to those in power has been keenly visible since the new security legislation was railroaded through the Diet in 2015. Key examples are the 2016 Supreme Court decision overruling the Tokyo High Court’s ruling partially banning late night

and early morning flights by the Japan Self-Defense Forces (SDF) at Atsugi Air Base, followed by another Supreme Court ruling the same month in favor of the national government in its dispute with the Okinawa Prefectural Government and local residents over the construction of a US military base in Henoko, Okinawa. This precedent caused a majority of experienced lawyers to express doubts over whether a lawsuit on the unconstitutionality of the new security legislation could be successful.

Nonetheless, we believed that for the judiciary, i.e., one of the three branches of government, to let slide the passage of such blatantly unconstitutional legislation would be tantamount to an act of suicide for the three-branched system of government itself. A judiciary that would turn a blind eye to the destruction of the peace constitution is no judiciary of a democratic nation, and would ultimately lose the trust of the people. With this conviction, we, together with other likeminded individuals of strong moral conscience, decided to confront the unconstitutional security legislation head on in a court of law.

Former German president Richard von Weizsäcker stated, “Those who close their eyes to the past will remain blind regarding the future.” We must not allow ourselves to forget the emergence of the Nazi regime that overturned the Weimar Republic and robbed people of their peace and dignity in just three short months, or the reign of terror that lasted for the next twenty years.

2. The lawsuits on the unconstitutionality of the new security legislation started off as a self-funded grassroots effort, and it was a bumpy road. In fact, the series of struggles was far beyond what we could have imagined. The movement started with the fumbling efforts of individuals volunteering to take a stand.

Against this backdrop, the first lawsuit was launched in Tokyo in 2016, followed in quick success with 25 lawsuits filed with 22 district courts including Fukushima, Kochi, Nagasaki, Osaka, Okayama, Saitama, Nagano, Kanagawa, Hiroshima, Fukuoka, Kyoto, Yamaguchi, Oita, Sapporo, Miyazaki, Gunma, Kushiro, Kagoshima, Okinawa, Yamanashi, and Aichi, in that order. The suits were launched by 7,699 plaintiffs represented by 1,685 attorneys.

One of the plaintiffs in the Aichi lawsuit was Nobel Prize-winning physicist Toshihide Maskawa, professor emeritus at Kyoto University. Dr. Maskawa sent the following message to the nation: “Let us protect Article 9 of the Constitution. No matter how small a single voice, when our voices come together they will be loud. If we wait until the country becomes able to wage

war, it will be too late. If we wait until war starts, it will be too late. That is why we must protect Article 9 of the Constitution. I would be most pleased to see Article 9 of the Constitution granted the Nobel Peace Prize.” With renewed conviction, we established the Nationwide Network for Lawsuits on the Unconstitutionality of the New Security Legislation in a bid to draw on the experience of likeminded individuals nationwide, deepen our ties with them, and open up new prospects for victory in our fight.

3. In our view, the deepest significance of the lawsuits on the unconstitutionality of the security legislation lies in affirming in a court of law our unshakeable belief that we must never repeat the dark era of war experienced 81 years ago. Japan entered into World War II and engaged in a war of aggression, robbing more than 20 million people in Asia of their lives. In Japan alone, more than 3.1 million people were killed, with the war culminating in the atomic bombing of Hiroshima and Nagasaki and the bombing of Tokyo. We must engrave in our hearts the cries of anguish of those upon whom this war brought unspeakable tragedy. Throughout Japan are spreading movements of those who refuse to accept the policies pushed forward by the deceitful and irresponsible Abe administration and the Suga and Kishida administrations that followed him. We consider the lawsuits on the unconstitutionality of the security legislation to be a kind of smoke signal with strong ties to these nationwide movements aimed at recovering Japan’s constitutionalism and intelligence. In our view, we bear a historical responsibility to hold this torch high and move forth. The second significance of our lawsuits is their purpose of fundamentally questioning Japan’s judiciary’s tendency to meekly acquiesce to government policy without question, and to wake up individual judges across Japan to their role as those responsible for serving as one of the three independent branches of government. We also considered it necessary to question the negative attitude of some attorneys toward allowing the courts to rule on the security legislation. While we acknowledge some validity to the view that under the current system there is no choice but for the judiciary to attempt to hold on to some semblance of independence while practicing self-restraint in the face of pressure, continued silent acceptance of such reality would ultimately lead to Japan’s three-branched system of government collapsing from its foundations. The lawsuits on the unconstitutionality of the security legislation fundamentally call into question whether the independence of the courts whose job it is to uphold the Constitution, and the three-branched system of government itself, are functioning. Moreover, we held a strong conviction that Japan’s people have the strength to push back against the government’s reckless pursuit of turning Japan into a nation that can wage war, and we felt we had a responsibility to bring cohesion to that strength such that it can be wielded effectively. We believe we must fight to harness deep anxieties about peace as well as anger

about poverty, discrimination, and disparity, bring together many people's hearts as one, and fight against autocratic politics that continues to ignore human dignity and human rights.

4. Lawyers were central to the launch of the lawsuits on the unconstitutionality of the new security legislation. However, the many people who supported the cause and joined us as plaintiffs are being harmed by the security legislation in ways we, the lawyers who started the movement, could not have imagined. Their suffering is witnessed in the testimony they have given in the court proceedings. Some were direct victims of air raids and the atomic bombings during the war; others lost members of their family in the war. They have lived in the postwar era with memories of these tragedies imprinted in their hearts. The threat of being drawn into war again as a result of the new security legislation reignites the fears that still haunt them. It also anguishes them that should Japan go to war once again it would signify a failure on their part to keep the promises they had made to those they lost in the war. These possibilities are agonizing for those who experienced the last war. Through these lawsuits, we also learned of the powerful role Article 9 of the Japanese Constitution has played overseas as a symbol of peace. During the Iran-Iraq war, when every ship was subject to attack, a Japanese ship flying the Japanese national flag made it through the Persian Gulf unscathed. We heard the plaintive appeals of former members of the Japan Self-Defense Forces and their families. We were painfully reminded of the fact that postwar Japan's pacifism existed because of the sacrifice of the people of Okinawa. These experiences made us recognize the magnitude of what we have to lose. We realized that this critical issue of human dignity and peace must not be compartmentalized as the purview of the relatively small group of people involved in the lawsuits. Rather, it must be shared broadly and deeply with everyone in Japan. We must come together to think about what kind of country we want Japan to be going forward.

More than 300 plaintiffs gave statements in the 25 lawsuits nationwide. 150 plaintiffs underwent investigation in court. These included survivors of the atomic bombings and Tokyo air bombings, people living beside military bases, people living with disabilities, nuclear engineers, former Self-Defense Force personnel, aircraft commanders, railway workers, journalists, scholars of constitutional law, and educational scholars. Their raw testimonies spoke keenly of the frightful terror of war and of their fears about the government pushing forward with preparation to institute tragic policies once again. Michiko Muta, a survivor of the atomic bombing of Nagasaki 78 years ago, gave the following testimony at the Tokyo District Court: "We still cannot forget the terror of the atomic bombing of Nagasaki, which left 150,000 people dead or injured in an instant. I want Nagasaki to be the last place ever to be

subjected to the suffering continuously inflicted on us by war and nuclear weapons.”

The original leader of the plaintiffs in the lawsuit lodged at the Nagasaki District Court was Sumiteru Taniguchi, chair of the Nagasaki Council of A-bomb Survivors, who passed away on 30 August 2017. Mr. Taniguchi made the following statement at the Nagasaki Peace Memorial Ceremony on 9 August 2015. A victim of the atomic bombing, Mr. Taniguchi was known as “the boy with the red back” because of a photograph of the extensive injury to his back. His whole body having been exposed to damage from the bomb, Mr. Taniguchi spoke forcefully of the inhumanity of the atomic bomb until the end of his days.

“After the war, Japan’s Constitution was written promising to the world that Japan would never again wage war or carry weapons. However, the government is now pushing acceptance of the right to collective self-defense on us. It is promoting revision of the Constitution and trying to bring us backwards to the era of war. The security legislation being pushed by the government will lead to war. With this legislation the government is attempting to undo all of the work many people have accomplished in our movement opposing war and endeavoring to abolish nuclear weapons founded on our experience of the atomic bomb and our wishes for peace. This cannot be tolerated.”

On his visit to Nagasaki and Hiroshima in 2019, Pope Francis delivered a speech entitled ‘Appeal for Peace’, quoting the following message which Pope John Paul II had given: “War is the work of man. War is the destruction of human life. War is death.” It is absolutely clear that war is the ultimate violation of human rights violation, causing the massacre of millions of people, and inevitably entailing severe violence, discrimination, and suppression of free speech. And we, the Japanese, the people of Japan have managed for more than 70 years since the end of World War II, to prevent another war from breaking out, block off the path to another war for more than 70 years since the end of World War II under Article 9 of the Constitution, we believe. We must not forget these facts. Today, we are continuing our legal battle, asserting the unconstitutionality of the new security-related legislation, with acute awareness of the importance of this mission.