ARTICLES

# Who Is "Human"? : Pursuing the "Civilizing" Mission in Contemporary Japan※

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## 1 The Death Penalty and the Civilized

On December 18, 2007, the UN General Assembly adopted an epoch-making resolution calling for a moratorium on the death penalty with a view to abolishing all executions. 105 member states voted in favor while 54 opposed and 29 abstained[1].

Japan's position toward the death penalty is unequivocal. Justice Minister Kunio Hatoyama, reading a script drafted by the strong elite bureaucrat, stated immediately after the adoption of the resolution that it was inappropriate for Japan to suspend the death penalty; "It is inappropriate because a majority of the public says capital punishment is unavoidable for certain grave crimes"[2]. Indeed, in alliance with the US, Iran and China among others, Japan vehemently opposed the resolution when it was submitted to the General Assembly.

Given that 13 convicts were executed during the one-year period

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(1) UN Doc. A/62/PV.76.

(2) "U.N. calls for death penalty moratorium", *Japan Times*, December 20, 2007.

between the Christmas Day in 2006 and the end of 2007, Japan's rejection of the UN recommendation seems all the more clear. Surprisingly enough, among those executed during the said period were a 75 year-old man as well as a physically disabled man who was even unable to go up to the gallows without the help of prison officials. Looking at the judicial statistics, one notes that, in the year of 2007, 46 defendants were sentenced to death, the largest figure ever since 1980 when the government started collecting the judicial data on death penalty. More than 100 convicts are now in death row in Japan waiting for the morning to come to be brought to the gallows[3].

The world movement toward the abolition of death penalty is led by the European Union and the European Council, two of the influential regional organizations representing European values. A number of resolutions have been adopted within the organizations to confirm their unfailing pledge to human dignity. Curiously, they locate the legitimacy of their world-wide action against death penalty in civilization. "The death penalty has no legitimate place in the penal systems of modern civilized societies"[4]. In an attempt to "civilize" the barbaric sphere in the world, they passionately propound a proposal for total ban on capital punishment. Apparently, attainment of civilization is measured by joining the rank of abolitionist countries.

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(3) "46 condemned to death; the largest figure ever in the annual statistics (in Japanese)", *Tokyo Shimbun*, January 14, 2008.

(4) Roger Hood, *Capital Punishment: The USA in World Perspective*, Center for Human Rights and Global Justice Working Paper Extrajudicial Executions Series Number 3, 2005, p.8.

## 2 Unequal Treaties Then and Now

The word "civilization" captures my mind. For one thing, as an international lawyer, I am particularly sensitive to the mission of international law which never changes throughout the history of this legal system/discipline[5]. It is called the "civilizing mission". Though wrapped in different clothes in response to changing political landscapes in the international society, the essence of the mission is always to "civilize the natives". The history of international law has never been detached from its "humanitarian" agenda of "civilizing".

Another of my concern to the word "civilization" stems from the history of my country, Japan. Indeed, civilization/modernization is the source of aspiration for the ruling elite at the time Japan opened its doors to Western countries toward the end of the 19th Century. The driving force of civilization was a series of unequal treaties concluded with Western powers. Those treaties were all the same in essence: opening of specified seaports to foreign trade: introduction of consular jurisdiction in which nationals of Western powers were exempted from local jurisdiction: imposition of fixed import duties: extension of most-favored nation clauses. Surely behind these treaties were commercial advantages for Western powers[6]. Equally important, however, is the tutelage of backward Japan into enlightened Western law and government. Thus, emulating Western model of governance, our

(5) See *generally*, Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (2004).

(6) Matthew Craven, "What Happened to Unequal Treaties?: The Continuities of Informal Empire", *Nordic Journal of International Law*, Vol.74 (2005), p.343.

ancestors eagerly pursued legal, administrative and cultural reform to be admitted into the family of nations, which they achieved at a relatively fast pace.

Into the 21st Century, the civilizing mission, far from passing away, is even accelerated throughout the world in the name of democratization or globalization. It is not necessarily the WTO, an institutional product of the neo-liberal scheme aimed at trade liberalization, but a web of bilateral/multilateral trade and investment agreements that is heavily propelling the political and economic agenda of globalization these days[7]. There is no wonder that Japan, as a country now positioned in the core of the civilized world (at least in economic terms), is among its influential promoters.

The proposed Japan- Philippines Economic Partnership Agreement may be a case in point. While Japan already ratified this agreement, the ratification process has been stalled in the Philippines. After all, the Philippines is required totally to open its domestic market to Japan except for rice and salt. There is a firm objection in locality against this comprehensive agreement, which would likely induce legal, administrative and cultural reforms in the Philippines in order to be admitted into the modern family of nations. Betraying its title of economic "partnership" agreement, this is an agreement which may be properly categorized as a modern form of unequal treaty, a treaty which serves the economic and political benefits for the "civilized"

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(7) Muthucumaraswamy Sornarajah, "Economic Neo-Liberalism and the International Law on Foreign Investment", *in The Third World and International Order: Law, Politics and Globalization* (Antony Anghie, Bhupindr Chimni, Karin Mickelson and Obiora Okafor eds., 2003), pp.173-90.

(8) For a succinct inquiry into the politics of the Agreement, FUJIMOTO Nobuki, "Why Are Social Movements in the Philippines Against the 'Japan-

power[8]. The natives are to be civilized through economic tutelage into the globalized world.

## 3 Value-Oriented Diplomacy and the Making of Human

For the government of Japan, the conclusion of modern forms of unequal treaties is not a source of ethical concern. In fact, it is part of official diplomatic policies demonstratively pursued by the government. Taro Aso made it clear in November 2006 as then Foreign Minister that Japanese diplomatic policy would revolve upon a new pillar called "value-oriented diplomacy". According to Aso, the value-oriented diplomacy "involves placing emphasis on the universal value such as democracy, freedom, human rights, the rule of law, and the market economy". Furthermore he added that "Japan wants to design an arc of freedom and prosperity" in the outer rim of the Eurasian continent. Thus, the gist of the value-oriented diplomacy is an export of democracy, human rights and market economy as the "universal value" to the peripheries of democracies[9]. Aso's statement was an expression of the Japanese government's determination to be in the forefront of the "civilizing" mission to accelerate the transformation of the natives into human. The conclusion of unequal treaties is considered part of this "humanitarian" endeavor.

In the era of globalization, human rights and gender are

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Philippines Economic Partnership Agreement' (in Japanese)", Kokusai Jinken Hiroba (*International Human Rights Plaza*), No.76 (November, 2007), pp.12-13.

(9) "Act of Freedom and Prosperity: Japan's Expanding Diplomatic Horizons", Speech by Mr. Taro Aso, Minister for Foreign Affairs on the Occasion of the Japan Institute of International Affairs Seminar, November 30, 2006, at *www.mofa.go.jp/announce/fm/aso/speech0611.html* (last accessed January 23, 2008).

"mainstreamed". They are mainstreamed because they represent the truth procured by the dominant power. Alternative political moralities that shape the ways people in other (non-Western) societies make moral judgments about their lives are disregarded as non-universal. The natives are to be saved and civilized into human. From the critical perspective, the mainstreaming of human rights and gender appears to be directed towards condemning certain uncivilized practices in developing countries. It is a narrative that "gives new credence to the native victim subject in need of rescue and rehabilitation, and re-privileges the figure, and the culture, of the West as normative"[10].

The civilizing mission is pursued in international environmental law where the gender perspective is mainstreamed as well. The mission of this widely celebrated field of law includes the making of the "good" woman who is empowered in the sense of aligning with the dominant expectation of the market economy. The tacitly constructed image of good woman in environmental agreements is one who is economically productive and participates equally in the free market economy, thus contributing to the reduction of poverty[11]. The making of "human" in the civilizing mission is thus legitimated through international human rights and environmental law.

Furthermore, the threat of terrorism conflated with the barbaric natives endangers the very fulcrum of international law against the use of force[12]. The parameter of the right of self-defense, the only legal

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(10) Dianne Otto, "Discovering 'Masculinities': Reinventing the Gendered Subject(s) of International Human Rights Law" *in International Law: Modern Feminist Approaches* (Doris Buss and Ambreena Manji eds., 2005), p.122.

(11) Annie Rochette, "Transcending the Conquest of Nature and Women: A Feminist Perspective on International Environmental Law", in id. pp. 230-33.

(12) Anghie, I*mperialism, Sovereignty and the Making of International Law*

ground to justify the use of force by a sovereign state on its own right, is being blurred and the insistence is gaining momentum that the trans-border deployment of military forces against terrorism is an issue of law enforcement, unregulated by the traditional rules on the use of force. Thus, some influential international lawyers in Japan argue that the invasion of the US forces into Afghanistan and Iraq, which to me is a clear violation of international law, could be categorized as a case of law enforcement rather than a case of the use of force[13]. The law to be enforced is not international law but the law of the Super Power, the US. It is as if the US is outside the ambit of international law which in turn applies only to the barbaric, non-democratic peripheries. Barely exposed is the politics of international law to civilize the non-Western natives. The untrammeled use of force (or activities of law enforcement for that matter) is tolerated to transplant democracy, human rights and market economy onto them, the native other, and transform them into us, "human".

It is within this context that Japan has sent its self-defense forces to assist the US Operation Enduring Freedom in Afghanistan and to be engaged in the battlefields in Iraq. It is ironic that this military civilizing mission against terrorism has caused an enormous scale of violations of human rights guaranteed by international documents as has been repeatedly reported by many sources including the Human Rights Watch and Amnesty International[14]. The appalling incidents in

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(*supra* note 5), pp.273-309.

(13) *E.g.*, FURUYA Syuichi, "Self-Defence and Extra-Territorial Law Enforcement Measures"(in Japanese), in *The Right of Self-Defence in the Contemporary Context* (MURASE Shin'ya ed., 2007), pp.165-200.

(14) *E.g.*, Human Rights Watch, *Enduring Freedom: Abuses by U.S. Forces in Afghanistan*, March 2004 Vol.16, No.3(C).

a prison in Iraq and the Guantanamo Bay signifies the extent to which the natives are not treated as human but as sub/non-human to be eliminated or to be saved into human[15].

It should be recalled that the Torture Convention provides that no one shall be subjected to torture even in exceptional circumstances simply because torture destroys human-ness of human beings. If there are people openly and systematically (not sporadically) subjected to torture, the logical consequence is that they are not regarded by the civilized perpetrators as human. In 2002, the progressive Canadian Federal Supreme Court even accepted that in exceptional circumstances the infliction of torture may be permitted to protect the Canadian security, thus giving a green light to the immigration measure to deport terrorist suspects to Sri Lanka and Algeria[16]. The Torture Convention is considered something to be observed in relation to (white) Canadians but is not applied to the natives who bring to the Canadian soils terrorist threats. Here again, the application of international law is bifurcated between the civilized and the natives. Human rights documents are applied only to human, non-humans being outside its protection.

There is a strong call from the ruling Liberal Democratic Party (LDP) and the opposition Democratic Party of Japan (DPJ) to revise

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(15) See *particularly, The Long Term View* (Massachusetts School of Law at Andover), Vol.6, No.4(2006) featuring a number of academic articles criticizing the US practices of torture under the common theme of "Are Our Highest Official Guilty of Torture?".

(16) *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1; *Ahani v. Canada (Minister of Citizenship and Immigration)*, 2002 1 SCR 72. For an incised analysis, Audrey Macklin, "Mr. Suresh and the Evil Twins", *Refuge* (York University Center for Refugee Studies),Vol.20 (2002), pp.15-22.

the Constitution of Japan. The target of the revision is unequivocal: Article 9 on the renunciation of war and military forces. The absolute pacifism implicated in Article 9 has never been put into practice except at a moment immediately after its enactment. The establishment of the Self-Defense Forces was no doubt in contravention of the Constitution. Even today, a majority of Constitutional lawyers in Japan assert that there is no legal space in the Constitution for such military forces as the SDF. In fact, the political reality, effectively assisted by the judicial inaction, has dominated the Constitutional landscape and the otherwise unconstitutional SDF is paradoxically considered legal, and is incessantly strengthened as the military institution.

Until the 1990's, however, it was beyond the imagination of the ordinary Japanese to dispatch the military forces abroad. After all, Japan's military forces are named the "Self-Defense" Forces to be engaged in defensive activities, not offensive ones abroad. The *fait accomplit* in the 1990's, however, serves as a favorable wind for the revision of Article 9. On an increasing number of occasions, the SDF are sent abroad, mostly under the umbrella of the United Nations, though. The US pressure to push the revision is getting heavier and now Washington is calling for Japan to exercise the right of collective self-defense, a right never envisioned to be exercised under the Pacifist Constitution. While the term "international cooperation" dances happily in the draft Constitutions proposed by the LDP and the DPJ, their essential motive is clearly to have Japan join the rank of the civilized and perform the civilizing mission in the 21st Century; the mission of making human through the implant of democracy, human rights and the market economy into the periphery.

## 4 Archaeology of Silence

The civilizing mission is pursued within the national border as well. The municipal judiciary provides a symbolic setting for the mission to be fulfilled. What I have in mind is a sequence of litigations in which plaintiffs demand post-war reparations for the injustices done to them during the period of the Second World War. The most dramatic moment was when a former Korean "comfort" women or more properly called military sex slave appeared before the public in the summer of 1991 and confessed the unspeakable hardships inflicted upon her while she was subjected to military abuses. A barrage of litigations demanding apology and compensation followed[17].

A number of lawyers and academics provided their practical and intellectual support to help vindicate the survivors' claims. Into the end of the 1990's, legal barriers constructed by the conservative government were gradually shaken, if not broken. Legal barriers envisaged to block the claims include the doctrine of sovereign immunity and the statute of limitation. In cases where claims were made based on international law, the government invoked a traditional view that international law is a law regulating the relations among nations, thus individuals are not capable of enjoying international rights in their own names. Simply put, it was argued that an individual lacks standing before the court because she is not a subject of international law.

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(17) See SHIN Hae Bong, "Compensation for Victims of Wartime Atrocities: Recent Developments in Japan's Case Law", *Journal of International Criminal Justice*, Vol.3 (2005), pp.187-206.

Intensely challenged by plaintiffs, however, these barriers were increasingly found to be groundless by lower courts. Alerted, the government resorted to the last ditch argument to bury all the post-war reparation claims. Submitted to the court was the argument that the individual's right to claim was renounced once and for all by the post-war treaties. Among them are the 1951 San Francisco Peace Treaty, the 1965 Japan-South Korea Claims Agreement and the Sino-Japan Peace documents in the 1970s.

The government had argued beforehand that renounced by these treaties was the government's right to claim and not individuals'. Indeed that is why more than 80 post-war reparation litigations were duly filed and decisions were rendered by domestic courts regardless of whether they were for or against plaintiffs. The government council now argues that by virtue of a series of the post-war treaties the legal obligation of the Japanese government to satisfy the individuals' claims has extinguished. Individuals may make a claim but the Japanese government is not under the obligation to respond to it. The Supreme Court, the most conservative bastion of the state institutions, rendered its decisions in April 2007 wherein it upheld the newly propounded argument to extinguish the government's obligation to satisfy the individuals' claims[18]. The Supreme Court's decision may have a devastating effect upon all the other litigations addressing past war-time injustices.

The position taken by the Japanese government and the Supreme Court is definitively modernist in orientation in its steadfast focus upon

(18) Supreme Court(Second Petty Bench), Judgment, April 27, 2007

the present and future at the expense of the past. It is optimistic in the sense that the present and the future register human progress. It is the act of selecting which pasts merit forgetting as something that should not be fundamental to the construction and maintenance of our collective memory[19].

To be more specific, the position manifests the modernist impulse to repudiate Japan's "burden of the past". As suggested by one critical commentator, its repudiation requires a conception of justice as an instrument that calibrates present reality not to past wrongs but to future aspiration; "This conception's success depends on a leap of faith- that illuminating [justice] with the light of the future will alleviate the weight of history. The danger, of course, is that this leap of faith will prove to be misguided- that the burden of [Japan's] past will become heavier as it becomes cloaked in darkness, as the history of countless places and objects which themselves have no power of memory is never heard, never described or passed along. It is the danger that [Japanese] will not know who they are"[20].

Litigants from Korea never fail to refer to Japan's colonial past which led to the annexation of the Korean Peninsula and the mobilization of an enormous scale of Koreans for forced labor and military sexual slavery. The argument to extinguish the individuals' right to claim represents resistance to engage the past and the judicial vindication of this argument promotes a distinctively modernist Japanese identity, "one that looks to the future to avoid relieving the wreckages of the

(19) Patrick Macklem, "Rybna 9, Praha 1: Restitution and Memory in International Human Rights Law", *European Journal of International Law*, Vol.16, No.1(2005), P.13

(20) *Id.*, pp.20-21.

past"[21]. This inhuman act is indispensable to the pursuit of the civilizing mission which, at the expense of the past, promises the progressive present and future through democracy, freedom, human rights and the market economy.

## *5 Whiteness of the Japanese*[22]

Japanese colonial past is beyond the context of post-war reparation litigations. Indeed, the northernmost Hokkaido and the southernmost Okinawa are two of the territories forcefully occupied by Japan. There should be no wonder that there are ethnic minorities and indigenous peoples among Japanese. Yet, the myth that Japan is a mono-racial country is so strong that different ethnicities and indigenousness are easily erased and subsumed into the concept of Japanese. The central government of Japan is yet to recognize *Ainu* officially as indigenous people, which further strengthens the whiteness of the majority of Japanese who should be named as *Yamato,* a nomenclature given by the indigenous *Ainu.* The municipal law effectively cloaks and legitimizes the racialized nature of the whole panoply of political, economic and cultural system, thus accelerating the forgetting of colonial past.

Whiteness of Japanese finds clear expression in the immigration fields. The Japanese immigration system is notorious for its excessive emphasis on control. Still today, the right to return is not guaranteed to

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(21) *Id.*, p.21

(22) See *generally,* Mark Revine, "Critical Race Theories and Japanese Law: On Racial Privileges of *Wajin* (in Japanese)" *Horitsu Jiho (Japan Law Journal)* , Vol. 80, No.2(2008), pp.80-91.

permanent foreign residents. Thus, Koreans, having special permanent resident status, who were born and brought up in Japan and have no other countries to return to, need special permit to return to Japan when they go abroad. Japanese do not need such permit because they have a constitutional right to return.

In regard to refugees, citizens are now aware that Japan should open its doors to those who are in need of protection. The refugee determination procedure was set in motion in 1982 and theoretically the country has been open to asylum-seekers. In the last 25 years, however, Japan has accepted only a minimum fraction of the refugee population. The difference is stark if you compare Japan's shameful record with that of the other advanced nations, if not with Iran or Pakistan, two of the countries most generous to refugees[23].

Curiously, in November 2007 an announcement was made by the Justice Minister after a discussion with the UN High Commissioner for Refugees that Japan was considering accepting refugees from abroad. This type of refugee acceptance is categorized as the third country resettlement. Unlike Australia, Japan accepts refugees only if they reach Japanese territory and successfully apply for asylum. The Justice Minister's statement is an indication of a change in refugee acceptance policies. Given that doors are likely open to refugees, this policy change appears welcoming. My concern, however, is that it may accelerate the political selection of world refugees in the humanitarian dress.

In 2004, Japan revised its Immigration Control and Refugee Recognition Act in an attempt to improve the refugee recognition

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(23) ABE Kohki, "Are You a Good Refugee or a Bad Refugee?: Security Concerns and Dehumanization of Immigration Policies in Japan", *Asiarights Report* 2007, pp.54-84.

procedure. The system of refugee adjudication councilors was introduced in the appeals stage and the asylum-seekers are to be legally protected against deportation while their applications are pending. Welcoming as it may be, the revision has a discriminatory effect upon refugees. The message of the revision is that Japan welcomes refugees as a civilized nation but refugees should come through a process inscribed in the law. The revised law sets forth that asylum-seekers are received well if they come directly from persecuting territories and apply for asylum within 6 months of landing. Those who do not meet these conditions are not welcome. The implication is that Japan does not extend a warm hand to the irregular movement of refugees, who nevertheless are most likely to move irregularly. Be that as it may, there are now two categories of refugees in Japan: good refugees and bad refugees. Be a good refugee and you may be accepted in Japan.

In relation to the issue of third country resettlement, clearly in the mind of the government is the containment of the irregular movement of refugees and the selection of good refugees to be brought to the soil of Japan in a humanitarian gesture. Receiving native victims from the barbaric peripheries as refugees in terms of international law is a civilized mission. It is civilized because it is humanitarian, progressive and future-oriented. Forgotten is the past, and the whiteness of the receiving end, Japan.

## *6 Re/Construction of the Japanese*

In the last decade, an innumerable number of statutes were enacted in Japan, which directly address fundamental social issues: gender-

equality, normalization of the disabled, protection of the trafficked, the establishment of multi-cultural society, etc. Judicial reform is under progress following political, administrative and economic reforms. There is an abundance of reform-oriented projects going on in Japan. Treatment of foreigners is no exception with a proposal to abolish the current alien registration system.

Living in Japan, one wonders where Japan is heading for. Apparently, an argument sounds appealing that Japan is finally engaged in international issues by even changing its Constitution. Moreover, inside the country, the whole system is being reformed with global standards in mind. Clearly, what transpires now is something never imagined a decade ago, policies toward gender-equality and a proposal to receive refugees from abroad being two of the examples.

For me, I feel a sense of *déjà vue*. Is this the repetition of what happened a century ago when Japan was struggling with the modernization project?: sending military forces abroad as a strong power and transforming the inside structure. Is this exactly what we experienced a century ago? Surely there are not a few differences between then and now, but in commonality is the strong attachment to civilization. It seems to me that the ongoing process is toward constructing new Japanese to serve the civilization and the civilizing mission. It is the process of re/making the Japanese.

When the structure is being reformed either foreign or domestic, it is inevitable that the sense of uneasiness spreads throughout the country. There is no indication that the figure of suicide decline. In fact, in the last decade, more than 300,000 Japanese citizens committed suicides. It

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(24) See Eric Prideaux, "World's suicide capital: tough image to shake", *Japan Times*, November 2, 2007.

comes as no surprise if one characterizes the current situation as a case of massive violation of the right to life. Each year, lives of more than 30,000 men and women, mostly men, are deprived of by themselves[24]. While the number of poor people is clearly on the increase, the term "absolute poverty" is no more theoretical but is being translated into everyday life in Japan.

In response to social uneasiness, criminal measures are reinforced. One such example is the arrest and the conviction of Japanese citizens who opposed the dispatch of the SDF to Iraq. They were charged with trespassing the housing properties when distributing leaflets against Japan's involvement in the Iraq mission. Reasonable lawyers would consider this incident to be a case of violation of freedom of expression protected in the Constitution and the International Covenant on Civil and Political Rights. Few, if any, expected that the arrest would lead to the indictment and even the conviction.

## *7 Where Is Space for Resistance in Japan?*

At the outset of my paper, reference is made of Japan's objection to the UN Resolution against the death penalty. The abolitionist movement is promoted by the European governments who perceive the abolition as a yardstick against which to measure the civilization. As long as retaining the death penalty, Japan may not be categorized as a full-fledged member of the civilized family of nations, as is the case with the US. Surely, its abolition serves the enhancement of protection of human dignity as provided for in international human rights documents. Yet, it seems to me that the current movement has a connotation of a modernist project of forgetting. It should be recalled

that a significant number of European countries who are propelling the abolitionist movement in fact colluded with the US in conducting the notorious rendition policies which paved the way for torturing native terrorist suspects[25]. How is a call for the abolition of death penalty compatible with another call for the infliction of torture?

One Japanese feminist critical thinker, OHGOSHI Aiko brings our attention to the politics of forgetting[26]. In her recent publication, she analyzes the mechanism of amplifying 9/11 while erasing the memory of the Durban World Conference against Racism. The incident of 9/11 happened in the same year as the Durban Conference which squarely addressed the colonial responsibility of the advanced North. It was directed to the remembering and not forgetting the past. The fundamental message of the Conference was that international law "is not solely modernist project that operates to organize the present in ways that conform to future aspiration. It also suggests that the justice of the present is a function of the justice of the past"[27]. It was unfortunate that 9/11 which happened only a few days after the Conference ignited a strong mechanism for forgetting, and deflected our attention from the burden of the past.

Dominance inevitably induces resistance, however. In Japan as in many parts of the world, a wide network to mobilize resistance is being

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(25) See *Alleged Secret Detentions and Unlawful Inter-State Transfers of Detainees involving Council of Europe Member States,* Report of the Committee on Legal Affairs and Human Rights, Rapporteur: Mr. Dick Marty, Parliamentary Assembly Doc. 10957, 12 June 2006.

(26) OHGOSHI Aiko, "Feminism as a 'Philosophy to Criticize Violence'(in Japanese)"', in *The Matrix to Break off Violence* (OHGOSHI Aiko and ITAKE Midori eds., 2007), pp.22-27.

(27) Macklem, *supra* note 19, p.19.

formed. Article 9 of the Constitution provides the focal point in Japan. Despite the media's forming unholy alliance with the ruling elites and their massive campaigns to persuade people into believing that there is no alternative but to revise the Constitution, citizens' movements to protect the non-violent fundamentals of the Constitution stretch throughout the country. The year 2008 will see a large international gathering of citizens aimed at upholding Article 9. It is not Article 9 *per* se but the citizens' commitment and mobilization that counts. As an international lawyer based in Japan, resisting the invitation to participate in the project of saving the natives[28], I should be more sensitive to accommodating this aspect of dynamic social activities into international legal arena. After all, history never ends, and this is a critical moment in history when a committed intervention and engagement makes a difference for our future. It is not the job of only conscientious citizens, but I believe it should also be none other than ours, socially responsible academics'.

(28) Anne Orford, "Feminism, Imperialism and the Mission of International Law", *Nordic Journal of International Law*, Vol.71 (2002), p.276.