Japan’s Anti-Conspiracy Law:
Relinquishing Japan’s Civil Liberties in the Name of
Global Counterterrorism Efforts

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V. OKINAWA PEACE ACTIVISTS’ PROTEST OF U.S. MILITARY BASES:

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I. INTRODUCTION

Okinawa has a long history as a poster child of Japanese government suppression of civil liberties, including citizens’ constitutionally protected rights to freedom of speech and peaceful assembly.\(^1\) The lingering presence of U.S. military bases in Okinawa Prefecture sparked opposition by local citizens, United Nations human rights advocates, and even previous Governors of Okinawa who refused to sign leases to maintain the bases.\(^2\)

Base opponents call for their removal as a source of insecurity for its

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\(^1\) Nihonkoku Kenpō [Kenpō] [Constitution], art. 21 (Japan); see Motoko Rich, Conspiracy Bill Advances in Japan Despite Surveillance Fears, N.Y. Times (May 23, 2017), https://www.nytimes.com/2017/05/23/world/asia/japan-anti-terror-conspiracy-abe.html?mcubz=3 (reporting “[the anti-conspiracy legislation] was not the first time Abe pushed for legislation over public opposition… [Abe] defied mass public protests and passed a package of security-related bills authorizing limited overseas combat missions for the country’s military for the first time since World War II. The Japanese anti-conspiracy bill also comes as the Chinese government is considering an intelligence law that would allow its authorities to monitor both foreign and domestic suspects”).

\(^2\) Former Okinawa Prefecture Governor Masahide Ota refused to sign leases on behalf of landowners, under Japan’s Land Acquisition Law, who were unwilling to renew leases for exclusive use by U.S. military bases. The Japanese central government attempted to intimidate Governor Ota into signing the leases. The Prime Minister of Japan sued Ota under the Local Autonomy Law seeking “a court order for the governor to execute the duties delegated to him [to sign the leases].” The Fukuoka High Court, Naha Branch ruled in favor of the Prime Minister. Ota appealed to the Supreme Court of Japan and lost in a verdict announced on August 28, 1996. See Masahide Ota, Governor Ota at the Supreme Court of Japan, in Okinawa: Cold War Island 205 (Chalmers Johnson, ed., 1999); see generally Gavan McCormack & Satoko Oka Norimitsu, Resistant Islands: Okinawa Confronts Japan and the U.S., 3 (2012); Chalmers Johnson, The Okinawan Rape Incident and the End of the Cold War in East Asia, 27 Cal. W. Int’l L.J. 389, 396 (1997) (noting that approximately 3,000 Okinawan landlords are refusing to renew their leases voluntarily, saying that they now want their land back); Sheila A. Smith, The Constancy of Contest with Okinawa, Forbes Asia (Jan. 24, 2014), https://www.forbes.com/sites/sheilaasmith/2014/01/27/the-constancy-of-contest-with-okinawa/.
negative impacts on the environment, rapes of local Okinawan women by U.S. military personnel and civilian workers, and continued economic reliance on the bases as a major provider of employment. Despite this opposition, Japanese and American governments rely upon the continued U.S. military base presence in Okinawa Prefecture to realize the Status of Forces Agreement (“SOFA”) goal to provide a security umbrella throughout the Asia-Pacific region.

The U.S. and Japanese national governments continue to be at odds with human rights advocates and local citizens protesting the bases, who allege measures to preserve the bilateral security alliance infringe upon protesters’ rights to freedom of speech and peaceful assembly. The Okinawan citizens’ anti-base sentiment was symbolically represented by Shōichi Chibana, an anti-base protestors who burned the hinomaru (Japanese national flag) at the National Athletic Meet of 1987 as an act of defiance against continued oppression at the hands of the Japanese national governments.

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4 See generally CHALMERS JOHNSON, OKINAWA: COLD WAR ISLAND (1999).


Chibana was arrested and sentenced to one year in prison from an unsympathetic court system that did not recognize his freedom of speech rights in carrying out his protest. Right-wing political groups intimidated Chibana by sending death threats and burning down his supermarket in Yomitan village. Okinawan police did not protect Chibana, nor his customers who received death threats for shopping at his markets. The latest collision between a local human rights advocate and the Japanese and U.S. central governments occurred over protests of the U.S. and Japan’s decision to construct a new military facility in northern Okinawa. Japanese law enforcement arrested Hiroji Yamashiro, a 64-year-old peace

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8 See Norma Field, In the Realm of a Dying Emperor Japan at Century’s End, 40-56 (First Vintage Books Ed. 1993) (recollecting the burning of the Japanese flag during the National Athletic Meet of 1987 by Shōichi Chibana in protest of the continued U.S. military presence post-World War II. Chibana is regarded as one of the major leaders of the anti-base protestors calling for peace and equality for Okinawa Prefecture by removing the U.S. bases and troops); David Suzuki & Keibo Oiwa, The Other Japan Voices Beyond the Mainstream 15-27 (1999) (elaborating that Chibana burned the hinomaru as a symbolic protest against national organizations imposing upon Okinawa Prefecture, in honor of the Okinawan citizens who perished during the Battle of Okinawa); Koji Taira, Okinawa’s Choice: Independence or Subordination, Okinawa: Cold War Island 171-188 (1999).

9 See Flag-burning Okinawan Activist Fights to Give U.S. Bases the Boot, Japan Times (May 17, 2012), https://www.japantimes.co.jp/news/2012/05/17/national/flag-burning-okinawan-activist-fights-to-give-u-s-bases-the-boot/ (last visited Dec. 26, 2017) ("[Chibana] was found guilty of unlawful entry into the venue of the athletic meet, destruction of the Hinomaru flag and obstruction of the opening ceremony, and was sentenced to a suspended one-year prison term.").

10 See Norma Field, In the Realm of a Dying Emperor Japan at Century’s End, 40-56 (First Vintage Books Ed. 1993) (noting that Okinawa’s Naha District Court did not have a court stenographer at Chibana’s trial, and thus, no verbatim transcript was available to the defendant and his counsel. Okinawa was the only jurisdiction in Japan that did not have a court stenographer available at its local trials, calling into question the transparency and legitimacy of its courts); see also David Suzuki & Keibo Oiwa, The Other Japan Voices Beyond the Mainstream 15-27 (1999).


12 Cf. Norma Field, In the Realm of a Dying Emperor Japan at Century’s End, 46 (First Vintage Books Ed. 1993) (noting that some perpetrators involved with burning Chibana’s supermarket were sentenced to one- and two-year prison terms).

activist and life-long resident of Okinawa Prefecture, for “anti-state activities” because of his involvement in the citizens’ protest against U.S. and Japan’s decision to relocate a heavily contested military base to a rural area of northern Okinawa. Yamashiro remained in police custody beyond the 23 day limit in solitary confinement for five months without bail before finally being released in March 2017, raising allegations that the Japanese government was willing to infringe upon citizens’ civil liberties in the name of global counterterrorism and national security. Thirty years after Chibana’s hinomaru incident, Yamashiro experienced similar intimidation by the Japanese government for protesting the continued U.S. military base presence as he awaits the final verdict for his trial.

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Human rights advocates\textsuperscript{17} and legal experts\textsuperscript{18} speculated that Abe’s administration re-introduced a controversial anti-conspiracy bill following Yamashiro’s arrest to criminalize anti-base protests under new conspiracy crimes.\textsuperscript{19} Abe’s administration pushed forward a third iteration\textsuperscript{20} of the anti-conspiracy bill despite heavy criticism from the legislators from opposing political parties.\textsuperscript{21} Abe testified in support of the anti-conspiracy bill on the Diet floor,\textsuperscript{22} claiming he needed the anti-conspiracy bill as a necessary


\textsuperscript{20} See Divisive Conspiracy Bill to Get Another Try, JAPAN TIMES, http://www.japantimes.co.jp/news/2013/12/11/national/crime-legal/divisive-conspiracy-bill-to-get-another-try/ (last visited Nov. 5, 2017) (citing strong opposition to the anti-conspiracy bill’s prior iterations during Japanese government’s several attempts to revised the organized crime punishment law following the signing of the UNCTOC treaty in December 2000); see also Daisuke Kikuchi, Controversial Conspiracy Bill Approved by Abe Cabinet, JAPAN TIMES (Mar. 21, 2017), http://www.japantimes.co.jp/news/2017/03/21/national/crime-legal/controversial-conspiracy-bill-approved-by-abe-cabinet/ (recounting the Japanese government previously included 676 crimes in its original draft, but narrowed the final number down to 277 in the revised bill).


\textsuperscript{22} See Upper House Begins Deliberations on ‘Conspiracy Bill’, JAPAN TIMES, (May 29, 2017), https://www.japantimes.co.jp/news/2017/05/29/national/politics-diplomacy/upper-house-begins-deliberations-conspiracy-bill/ (quoting Abe’s speech at the plenary session justifying the necessity of the anti-conspiracy legislation, “[i]t is the responsibility of the host country of the (2020) Tokyo Olympics to take all possible measures to counter terrorism”) [hereinafter Japan Upper House Deliberations].
means to fulfill Japan’s diplomatic obligations as a signatory to a U.N. Convention against Transnational Organized Crime (“UNCTOC”) and the Protocols to support the United Nation’s efforts “to prevent terrorism before it happens.”

Abe pitched the bill as part of a necessary legal framework to enable Japan to embrace economic recovery through increased foreign tourism and to prepare for the 2020 Olympic and Paralympic Games in Tōkyō. The National Diet of Japan enacted the anti-conspiracy bill on June 15, 2017 as the “Act on Punishment of the Preparation of Acts of Terrorism and Other Organized Crimes,” establishing 277 criminal acts for which Japanese law enforcement is authorized to arrest suspects to deter crime syndicates from planning terrorist attacks.

Japan’s anti-conspiracy laws foreshadow a new era of the Japanese central government’s human rights violations of Okinawan anti-base activists. Human rights advocates raised specific concerns “on the potential restrictions on non-governmental organizations (“NGOs”), especially on those working in areas of national security.”

This article uncovers the potential for the Japanese government to use the anti-conspiracy law to justify government surveillance and suppression, thus leading to an erosion of citizens’ civil liberties without sufficient procedural protections to protect freedom of speech and peaceful assembly rights. Section II establishes the political context for Abe’s rushed enactment of the anti-

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26 See Tero tou Jyunbi-zai Shobatsu Hou テロ等準備罪について [Act on Punishment of the Preparation of Acts of Terrorism and Other Organized Crimes], Law No. 136 Heisei 11 (Japan), http://elaws.egov.go.jp/search/elawsSearch/elaws_search/lsg0200/select#A.

27 See New Reality, supra note 19 (explaining [the new anti-conspiracy law] will potentially be a separate offense for two or more people to plan (i.e., discuss) the commission of dozens of crimes already on the books”); KATHLEEN CARROLL, CPJ urges Japanese PM Shinzo Abe to implement Special Rapporteur's recommendations, COMMITTEE TO PROTECT JOURNALISTS (June 9, 2017), https://cpj.org/2017/06/cpj-asks-japanese-pm-shinzo-abe-to-implement-speci.php (expressing concerns shared by the U.N. Special Rapporteur, journalists and media experts toward Abe, describing “a tense relationship with the government, pressure on media companies, and an uncertain legal environment that contributes to a deep unease”).
conspiracy bill. Section III discusses alleged political wrongdoing in enacting the anti-conspiracy bill through political maneuvering in the Diet despite widespread opposition by Japanese legal experts and U.N. human rights advocates. Section IV provides an overview of problems associated with suspects’ rights and Japan’s criminal justice system, then considers the potential for criminal liability to incur even without conducting activities with parties with terrorist organization affiliation. Section V revisits Hiroji Yamashiro’s arrest and detainment as a potential source of conflict between local citizens and the government, which could give rise to activities covered under the new anti-conspiracy law without any affiliations to terrorist organizations. This article focuses on Hiroji Yamashiro’s five-month detention serves as a case study of Japanese lawmakers’ use of the legal process to suppress critics of Japanese government actions influencing the U.S.-Japan security alliance, thus violating human rights to further its national security agenda. Section VI posits the argument that Japan cannot be a true democracy so long as it violates suspects’ freedom of speech and peaceful assembly rights through politically motivated arrests and detention under the new anti-conspiracy law. This article will conclude by addressing future implications Yamashiro’s recent arrest and detainment could have on the legal status of Okinawa peace activists following the Abe administration’s implementation of anti-conspiracy laws creating new group criminal liability in Japan.

II. PRIME MINISTER SHINZO ABE’S VOW TO PROTECT JAPAN FROM TERRORISM

This section explores potential motivations for the Abe administration’s passage of the anti-conspiracy bill enacting the “Law on Punishment of Organized Crimes and Control of Crime Proceeds.” Abe personally advocated in favor of the anti-conspiracy bill to guarantee the safety of foreign visitors at the 2020 Tōkyō Olympic and Paralympic Games against threats of international terrorism and honor Japan’s obligation as a UNCTOC signatory to adopt domestic laws enacting punishment to acts in furtherance of terrorist activities. This section offers several alternative explanations for the passage of the anti-conspiracy legislation not publicly discussed, including the Abe administration’s attempt to “tame foreigners” through the broad scope of anti-conspiracy laws, in conjunction with Japan’s efforts to attract more foreign tourists to boost the local economy.

28 See Abe’s Press Release, supra note 25.


30 See Number of Foreign Visitors, supra note 24.
A. Promise to Guarantee Safety for the 2020 Tōkyō Olympic and Paralympic Games

Abe focused on counterterrorism efforts over the past four years he served in office, although “terrorism” was not mentioned a single time in Prime Minister Shinzo Abe’s opening statement at the G-20 Summit following the International Olympic Committee’s announcement of the City of Tōkyō’s successful bid to host the 2020 Olympic Games. At a press conference following the anti-conspiracy bill’s enactment by the National Diet of Japan, Abe’s administration provided two reasons the anti-conspiracy law was necessary to Japan’s fight against terrorist attacks. He explained, “[t]he 2020 Tokyo Olympic and Paralympic Games will be held in three years. We aim to become a State Party to the United Nations Convention against Transnational Organized Crime (UNCTOC) at the earliest possible timing and work closely with the international community to prevent terrorism. A law for this purpose was passed.”

Abe’s commitment to counterterrorism is rooted in preserving Japan’s reputation as the “safest country in the world.” Tōkyō has not experienced domestic threats of terrorism in nearly two decades since the

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31 See Abe’s Press Release, supra note 25.


33 See Abe’s Press Release, supra note 25.

34 See generally YUJI IWASAWA, INTERNATIONAL LAW, HUMAN RIGHTS, AND JAPANESE LAW: THE IMPACT OF INTERNATIONAL LAW ON JAPANESE LAW, (1998);

35 See Abe’s Press Release, supra note 25.


infamous “Subway Sarin Incident” (地下鉄サリン事件 “Chikatetsu Sarin Jiken”). On March 20, 1995, the religious cult Aum Shinrikyo released sarin gas into the Tōkyō subway in trains passing Kasumigaseki and Nagatachō, two of the busiest stations frequented by commuters working in government buildings above. The attack resulted in 12 deaths, 50 serious injuries and 5,000 others requiring medical attention. Japan continues to appeal to foreign visitors as a safe destination among urban metropolitan cities, in contrast to other popular cities, such as London and Paris, where major terrorist attacks took place.


38 See DAVID T. JOHNSON, CRIME AND PUNISHMENT IN CONTEMPORARY JAPAN, 36 Crime & Just. 371 (2007); Thomas Leo Madden, Translation: The Dissolution of Aum Shinri Kyo as a Religious Corporation, 6 PAC. RIM L. & POL’Y J. 327 (1997).


40 Id.


Haruna Yukawa and declared war on Japan for aiding Western allies fighting against IS. Furthermore, growing tensions with North Korea’s recent declaration to halt bilateral talks with Japan to investigate the abduction of Japanese citizens caused further concern toward foreign terrorism. While these acts of terrorism did not take place on Japanese soil, the Japanese government is attempting to prevent domestic acts of terrorism in light of IS and North Korea’s threats against Japanese citizens overseas.

Japan’s efforts to boost international tourism, coupled with the upcoming 2020 Olympics in Tōkyō, could increase the risk of terrorist attacks committed by foreigners. Notwithstanding the Abe administration’s earlier expressed fear of foreigner-committed terrorist attacks, the Abe’s administration made concerted efforts to attract foreign visitors to improve the Japanese economy and reported a 47 percent increase in tourist numbers.

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45 See *The War Against Islamic State*, JAPAN TIMES (Mar. 28, 2016), http://www.japantimes.co.jp/opinion/2016/03/28/editorials/war-islamic-state/.


47 See Sang-Hun, *supra* note 42.

48 See Hernon, *supra* note 42 (quoting concerns toward terrorism with an increased number of foreign visitors, particularly with the 2020 Olympics on the horizon. One legal expert explained, “[b]eing such a high-profile event, there will be organizations interested in causing havoc and they’ll have plenty of time to plan things. It’s a question of whether the counterintelligence and investigative techniques used by the government are good enough to discover a dangerous situation in advance or not.”).

in foreign visitors in 2015.\(^{50}\) Tourism to Japan is at an all-time high, with a record 24.03 million visitors in 2016, and these numbers are expected to grow.\(^{51}\) Further influx of foreign visitors is expected with international sporting events, including the 2019 Rugby World Cup in Tōkyō.\(^{52}\) Abe was concerned about the potential threat of terrorism to Japan’s ability to guarantee safety for foreign visitors to the 2020 Tōkyō Olympic and Paralympic Games.\(^{53}\) According to Abe, the anti-conspiracy law was necessary to deter terrorist attacks as Tōkyō prepares to host the 2020 Olympics and Paralympics.\(^{54}\)

Abe advocated for the anti-conspiracy bill citing its underlying intent to support counterterrorism efforts to ensure national security for Japanese citizens and international visitors.\(^{55}\) Abe impressed upon Diet upper house legislators, “It is the responsibility of the host country of the (2020) Tokyo Olympics to take all possible measures to counter terrorism.”\(^{56}\) Cabinet members supported the Abe Administration’s push of the anti-conspiracy bill amidst widespread opposition by the legislators, legal experts, human rights advocates, and the public. One cabinet member\(^ {57}\) explained the government "aims to introduce the necessary legislation to prevent organized crimes that threaten the lives of people at home and abroad."\(^ {58}\)

B. Promise to Fulfill U.N. Convention Against Transnational Organized Crime Signatory State Obligations

Japan developed a positive reputation as a “peace enabler” among U.N. member countries and recently reaffirmed its commitment to

\(^{50}\) See Number of Foreign Visitors, supra note 24.

\(^{51}\) See id.


\(^{53}\) See Abe’s Press Release, supra note 25.


\(^{55}\) Freedom of Expression, supra note 7 (citing Abe’s address to the Diet); see also Rich, supra note 2.

\(^{56}\) Japan Upper House Deliberations, supra note 22.

\(^{57}\) Justice Minister Katsutoshi Kaneda is Prime Minister Shinzo Abe’s designee, who is in charge of parliamentary deliberations on the bill.

\(^{58}\) Japan Upper House Deliberations, supra note 22.
upholding the highest standards of international peacekeeping efforts through its domestic and foreign policy agendas.\textsuperscript{59} Enacting anti-conspiracy laws was Japan’s final step to ratifying a multilateral treaty aimed at fighting global terrorism.\textsuperscript{60} Nearly two decades has passed since Japan signed the 2000 U.N. Convention against Transnational Organized Crime (“UNCTOC”).\textsuperscript{61} None of the seven Japanese Prime Ministers preceding Abe were successful in passing domestic laws to establish a basic legal framework for Japanese law enforcement to punish and deter terrorism.\textsuperscript{62} The National Diet of Japan adopted UNCTOC in 2013\textsuperscript{63} but was unable to ratify the treaty without enacting an anti-conspiracy law.\textsuperscript{64} Accordingly, Abe prioritized the passage of the anti-conspiracy bill to fulfill Japan’s obligations to the U.N. as a signatory state to a multilateral treaty aimed at fighting global terrorism.\textsuperscript{65}

The UNCTOC’s text defines the anti-conspiracy laws signatory states are required to enact:

States that ratify this instrument commit themselves to taking a series of measures against transnational organized crime, including the creation of domestic criminal offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice); the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation;


\textsuperscript{63}See Daisuke Kikuchi, \textit{Controversial Conspiracy Bill Approved by Abe Cabinet}, JAPAN TIMES (Mar. 21, 2017), http://www.japantimes.co.jp/news/2017/03/21/national/crime-legal/controversial-conspiracy-bill-approved-by-abe-cabinet/ (“Japan’s Diet approved the treaty in 2013, but was unable to ratify it without a law covering criminal conspiracy.”); see also UNCTOC, supra note 28.

\textsuperscript{64}See Daisuke, supra note 62.

\textsuperscript{65}See \textit{id.} (“Japan’s Diet . . . was unable to ratify [UNCTOC] without a law covering criminal conspiracy.”).
and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities.\textsuperscript{66}

Japan’s passage of the anti-conspiracy law was timely and necessary because Japan did not have a criminal conspiracy law, nor was participation in an organized criminal group considered a crime in Japan prior to enacting the anti-conspiracy legislation in 2017.\textsuperscript{67} Despite strong opposition from politicians from other political parties and widespread public protests,\textsuperscript{68} Abe championed the anti-conspiracy bill in the Diet, even testifying in support of the anti-conspiracy bill on the Diet floor.\textsuperscript{69} Abe advocated for the merits of the anti-conspiracy bill, reminding the Upper House legislators that the initial push for the new laws came from a coordinated effort to combat terrorism through the UNCTOC.\textsuperscript{70} Once the bill passed through a majority vote in the Diet, Abe reiterated Japan’s commitment to international peacekeeping efforts through the enactment of new anti-conspiracy laws essential “to ratify the 2000 U.N. Convention against Transnational Organized Crime (“UNCTOC”)”\textsuperscript{71} to honor signatory states’ commitment to criminalize money laundering, to criminalize corruption, and to allow seizure of criminal assets.\textsuperscript{72}

III. ABE’S POLITICAL MANEUVERING IN THE ANTI-CONSPIRACY LEGISLATION’S PASSAGE RAISES CONCERNS AMONG LEGAL EXPERTS AND HUMAN RIGHTS ADVOCATES

This section examines legal experts’ allegations of Prime Minister Abe’s hidden agenda in passing the anti-conspiracy bill to justify government surveillance and suppression of potential opponents. This section explores suspicions arising from Abe’s political maneuvering to pass the anti-conspiracy law, despite strong opposition in the Diet, by bypassing dissenting views held by Judicial Affairs Committee members. This tactic was particularly egregious considering Abe’s administration circumvented ordinary legislative procedures for enacting legislation for a controversial bill that previously failed three times and was widely opposed by legislators, legal experts, and human rights advocates.

\textsuperscript{66} See \textit{UNCTOC}, supra note 29 (emphasis added).

\textsuperscript{67} See Coulson, supra note 62, at 863.

\textsuperscript{68} See \textit{Protests in Japan}, supra note 21.

\textsuperscript{69} See Rich, supra note 1.

\textsuperscript{70} See \textit{Japan Upper House Deliberations}, supra note 22.

\textsuperscript{71} Abe’s \textit{Press Release}, supra note 25.

\textsuperscript{72} See Coulson, supra note 62 (quoting UNCTOC articles specifying three legal requirements signatory states must adopt).
A. Rare Legislative Bypass Tactic Used to Enact Anti-Conspiracy Legislation

Under ordinary legislative procedures, a bill becomes law after passage by both Houses in the National Diet (国会 Kokkai) – the House of Representatives (“lower house”) and the House of Councillors (“upper house”). Abe allegedly used a rare tactic of bypassing committee level approval to avoid opposition by the Judicial Affairs committee members, who were anticipated to strike down the bill before the floor vote. Abe and his supporters in the Diet’s Upper House, who belong to the Liberal Democratic Party, “resorted to an ‘interim report’ that skipped approval by the House of Councillors’ committee.” When used by majority party members, this legislative bypass tactic almost guarantees the measure proceeds directly to a full floor vote. Japanese legislators implicitly understand that the committee bypass option should not be used where its user belongs to the same political party because it eliminates the opportunity for substantive discussion of the bill’s merits during a committee hearing. According to Diet records, “[t]he committee bypass tactic has been used four times in the lower house and 18 times in the upper house. [Abe used the tactic during his first term in office] to revise the law on public servants

73 The Japanese constitution provides the following procedure for passing a bill into law:

A bill becomes a law on passage by both Houses, except as otherwise provided by the Constitution. A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present.

nihonkoku kenpō [kenpō] [constitution], art. 59 (Japan).

74 See Zentaro Kitagawa, doing business in japan § 1.03 (2017).


77 See Yomiuri, Abe Cabinet’s Approval Rating Dips Below 50%, the Honolulu Star Advertiser (June 22, 2017), http://www.staradvertiser.com/2017/06/22/news/abecabinetsapprovalratingdipsbelow50/ [hereinafter Approval rating dips].

78 Diet tactic, supra note 54.
to combat the entrenched practice of bureaucrats landing post-retirement jobs in sectors they used to oversee.”  

Ultimately, a revised draft of the Organized Crime Punishment Act passed in a Diet plenary session by legislators from the same political party as the Prime Minister, the Liberal Democratic Party of Japan (“LDP”). Records indicate the anti-conspiracy bill was “deliberated in the Upper House for less [sic] than 20 hours and is being discussed in a committee chaired by a Komeito lawmaker. The Lower House passed the bill after 30 hours of deliberation.” Legal experts caution Japanese politicians from invoking the committee bypass tactic to avoid opposition. Opponents of the bill referred to this tactic as “an unorthodox step[,] effectively allowing the coalition to avoid having to extend the current Diet session,” which would have allowed for substantive discussion where opposing views could potentially change, delay, or outright reject the passage of the proposed law. The anti-conspiracy bill passed within days of the 2017 Diet Session ending with the necessary support from LDP legislators to provide the majority votes for the bill. Legislators from four other major political parties were dismayed by the insufficient opportunity to discuss the bill’s merits to address citizens’ concerns prior to the bill coming to the Diet floor for a full vote.

79 The Japanese political practice of providing post-retirement jobs to retired government bureaucrats is referred to as “amakudari.” See Colin P.A. Jones, Amakudari and Japanese Law, 22 Mich. St. J. Int’l L. 879 at 879 (defining amakudari as “a Japanese term used to refer to the practice of government officials retiring into industries and institutions, often those that they have formerly been involved in regulating.” Amakudari literally translates to “descent from heaven”); Diet tactic, supra note 54.


81 Conspiracy Law Ramrodded, supra note 76.

82 See Rich, supra note 1 (quoting criticism from the U.N. Special Rapporteur on the Right to Privacy, stating “[t]his is the time for the government of Japan to sit back for a minute, reflect, realize that it can do things in a better way and then proceed to behave like a world-class democracy by taking the time necessary to modify the bill”).

83 Diet tactic, supra note 54.


B. Local opposition of the anti-conspiracy law

Japanese citizens voiced concerns regarding the scope of the anti-conspiracy law and the its potential infringement upon constitutionally protected freedom of speech and peaceful assembly rights. 86 Tens of thousands of protesters gathered in Tōkyō chanting “no pasaran”87 in an outcry over the Abe administration’s decision to push forward the anti-conspiracy bill despite continued opposition toward the bill rooted in prior attempts to pass this legislation. 88 The protestors opposed the legislation’s overly broad definition of an “organized criminal group,” which legitimizes punishment of ordinary and non-terroristic activities conducted by everyday citizens. 89 One protester in Tōkyō pointed out, “[t]his legislation is the perfect example of how the government is using counterterrorism as an excuse for mass-surveillance of ordinary citizens and activists, trying to remilitarize the country and crackdown on dissidents.” 90 Widespread opposition toward the anti-conspiracy bill throughout Japan was documented in a survey conducted by Asahi Shimbun, which revealed that majority of respondents felt the Diet should not have enacted the bill during the 2017 Diet Session. 91 Japanese citizens expressed concerns that “they didn’t know the content of the legislation . . . [and] that the government’s

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86 See Protests in Japan, supra note 21.

87 Translates to “they shall not pass.” This phrase is chanted by human rights advocates in determination to take a stand in defense against an opponent’s position.

88 See Coulson, supra note 62, at 868-75 (documenting three prior attempts to enact anti-conspiracy legislation to criminalize conspiracy in Japan. The earliest attempt was introduced in 2003 in Japan’s 156th diet session, three years following Japan signing the UNCTOC); see also Divisive Conspiracy Bill to Get Another Try (Dec. 11, 2013), JAPAN TIMES, http://www.japantimes.co.jp/news/2013/12/11/national/crime-legal/divisive-conspiracy-bill-to-get-another-try/ (citing strong opposition to the anti-conspiracy bill’s prior iterations by The Japan Federation of Bar Associations and lawmakers from opposition parties because of potential impacts on activists and labor unions); see also Japanese Lawyers Criticize Proposed Conspiracy Bill, JAPAN TIMES (Sep. 1, 2016), https://www.japantimes.co.jp/news/2016/09/01/national/crime-legal/japanese-lawyers-criticize-proposed-conspiracy-bill/.

89 See Protests in Japan, supra note 21.

90 See id.

91 Anti-Conspiracy Bill a Travesty of Justice in Light of Public Opinion, ASAHI SHIMBUN (May 20, 2017), http://www.asahi.com/ajw/articles/AJ201705200026.html [hereinafter Bill a Travesty of Justice] (citing poll results revealing “the lack of broad public support for the anti-conspiracy legislation that is being considered by the Diet. In the survey, 63 percent of respondents said they didn’t know the content of the legislation, while 64 percent answered ‘no’ to the question whether it should be enacted during the current Diet session. Moreover, 78 percent replied that the government’s explanation about the legislation was insufficient.”).
explanation about the legislation was insufficient.” Abe’s new anti-conspiracy law drew heavy criticism from the Japan Bar Association and legal experts for sweeping characterization of anti-state activities to include even small gestures of protest, and the Japanese government’s potential use of the law as a tool to quell criticism, particularly in Okinawa.

Lawmakers opposing the anti-conspiracy bill believed that Abe used global counterterrorism efforts as a façade to rush the anti-conspiracy bill’s passage to create a loophole for Japanese law enforcement to suppress activists and labor unions under the guise of monitoring suspected terrorists. Critics feared the law enacted through the Abe administration’s political maneuvering could infringe upon citizens’ constitutionally protected freedom of speech and peaceful assembly rights.

The “committee bypass tactic” employed by Abe drew accusations of tyrannical abuse of power and even speculation of a vote of no confidence in the Diet. Some critics pointed out that, “[a]lthough not illegal, the tactics adopted by the [Liberal Democratic Party] are out of keeping with standard Diet protocol.” Legal experts harshly criticized Abe for circumventing the democratic process to avoid any risk of the bill not passing committee approval. The use of the legislative tactic was back dropped by Abe’s corruption accusations, calling into question the Prime

92 Id.


94 See Bar Associations Across Japan Call for Revocation of Anti-Conspiracy Laws, supra note 18; Japan Federation of Bar Association Holds Study Meeting to Abolish ‘Anti-Conspiracy’ Law, supra note 18.

95 NIHONKOKU KENPO [KENPO] [CONSTITUTION], art. 21 (Japan).

96 Japan Enacts Broad Anti-Conspiracy Law (June 15, 2017), NIKKEI ASIAN REVIEW, https://asia.nikkei.com/Politics-Economy/Policy-Politics/Japan-enacts-broad-anti-conspiracy-law (last visited Oct. 8, 2017) (reporting that opposing political parties initiated a motion of no confidence against Abe’s cabinet in attempt to stop the conspiracy bill from advancing from the lower house to upper house).

97 Conspiracy Law Ramrodded, supra note 76.

98 Abe’s administration shows a pattern of moving forward contentious legislation despite public protests and opposition by the Democratic Party of Japan and other major political parties. Most notably, Abe’s administration was criticized for moving forward defense legislation to revise Article 9 of the Constitution of Japan, which would legitimize Japan’s Self Defense Forces to fight overseas, which could be potentially viewed as reinvigorating Japan’s imperialist past. See Bill Powell, How Shinzo Abe Became Postwar Japan’s Most Consequential Leader, NEWSWEEK (Sep. 25, 2015), http://www.newsweek.com/2015/10/09/shinzo-abe-critics-fear-militaristic-japan-future-377715.html (portraying Abe as “a neo-nationalist at minimum and a full-throated militarist at worst . . . moving Japan closer to the vision that animated his grandfather: that
Minister’s actions and drawing criticism for the LDP’s mishandling of political affairs in the Diet.

Political commentators explained, “[i]n passing the legislation, Abe’s ruling Liberal Democratic Party and its junior coalition partner, Komeito, resorted to the highly unusual tactic of skipping a vote in the Upper House Committee on Judicial Affairs that was originally planned for Thursday [within 48 hours of the Diet Session ending], instead sending it straight to the chamber’s plenary session for passage.” The anti-conspiracy bill would normally go through the Chair Kozo Akino’s Committee on Judicial Affairs but was instead passed directly for a floor vote among legislators from Abe’s political party.

Abe’s decision to bypass the Judicial Affairs committee approval may go beyond a simple justification of procedural efficiency by avoiding an unnecessary extension of the Diet Session. Some of the deep-seeded resentment toward the Abe administration’s decision to rush through the anti-conspiracy bill is rooted in a history of strong opposition to the measure in fear of government overreach. Three earlier versions of the bill

of a country with a once-again powerful military, able and willing to project force on its own—and no longer Washington’s security lapdog”;

99 Anna Fifield, Japanese Prime Minister’s Poll Numbers Are so Low They Make Trump’s Look Good, THE WASH. POST (July 27, 2017), https://www.washingtonpost.com/world/asia_pacific/japanese-prime-ministers-poll-numbers-are-so-low-they-make-trumps-look-good/2017/07/27/481356e8-728c-11e7-803f-a6c989696a7_story.html (documenting corruption allegations following Abe’s wife’s role in securing a “sweetheart land deal” for an educational company running a right-wing kindergarten in Osaka that had been sending out notes about “wicked” Koreans and Chinese, followed by Abe’s alleged role in “helping to win approval for a close friend to open a veterinary school in a designated national strategic special zone.”).  


101 Conspiracy Law Ramrodded, supra note 76.


104 First introduced as the Act on Punishment of Organized Crimes and Control of Crime Proceeds (組織的な犯罪の処罰及び犯罪収益の規制等に関する法律, 出所: データベース上の文書)
failed to resolve legal differences in the Diet legislative process over concerns of intrusive state surveillance and the granting of arbitrary powers to investigators. In the face of strong opposition of the current and previous iterations of the anti-conspiracy bill, opponents argued “[s]uch a break with well-established practice is typically reserved for when the ruling party wants to pass an important bill that has allowed for adequate discussion at the committee level,[sic] but still faces stonewalling in a committee chaired by an opposition lawmaker who wants to delay the vote.”

C. Criticism from Legal Experts and U.N. Human Rights Special Rapporteur

Widespread protests and allegations of the Abe administration’s corruption caught the attention of the United Nations, prompting a site visit by a special rapporteur for human rights upon suspicion of Japan’s alleged violation of human rights. The rapporteur’s report cited government overreach in the three-month detention of Okinawan peace activist Hiroji Yamashiro and the Abe administration’s handling of the anti-conspiracy bill. Abe drew worldwide criticism in response to the U.N. rapporteur’s report citing Abe’s mishandling of Yamashiro’s arrest and the anti-conspiracy law’s passage, and became a debacle in international news.


106 Id.


108 See discussion supra note 98.

109 Okinawan peace activist Hiroji Yamashiro was arrested for a minor crime and detained for over three months in total. Human rights advocates believe Yamashiro’s extended detention was disproportional to the crimes he was held for.


111 See Rich, supra note 1 (quoting criticism from the U.N. Special Rapporteur on the Right to Privacy, suggesting “the [Japanese] government take more time to discuss and amend the bill to include more safeguards for privacy and freedom of speech”); Cf. Daisuke Kikuchi, Controversial Conspiracy Bill Approved by Abe Cabinet, JAPAN TIMES (Mar. 21, 2017), http://www.japantimes.co.jp/news/2017/03/21/nat/crime-legal/controversial-conspiracy-bill-approved-by-abe-cabinet/ (“Tokyo Bar Association denounced the revisions, which they say would still allow the possibility of government overreach and retaliation against civic groups”); see also Diet Tactic, supra note 54; Conspiracy Law
These highly publicized events leading up to and following the U.N. rapporteur’s visit overshadowed Abe’s efforts to honor Japan’s decades-long commitment as a UNCTOC signatory state.

Abe’s biggest embarrassment came from the U.N.’s allegations of potential human rights violations in enacting the anti-conspiracy law, given Abe’s advocacy for the bill as a necessity to fulfill Japan’s obligations as a UNCTOC signatory state. In an open letter, the U.N. Special Rapporteur on the Right to Privacy, Joseph Cannataci, raised concerns that "[the] planned legislation could lead to unjust restriction of privacy and freedom of expression . . . [and] are lacking balance in the extreme and are inappropriate as [they were] issued unilaterally” without proper support within the legislative branch. Cannataci’s visit to Japan following his letter to Abe did not placate his concerns. U.N. envoy expressed further misgivings over the totalitarian manner in which the Prime Minister’s cabinet pushed forward the bill, despite concerns pertaining to the potential infringement of human rights, including the right to privacy, freedom of expression, and peaceful assembly. Abe dismissed the Rapporteur’s claims as unfounded “without hearing the opinion of the Japanese government.” Japan’s contentious relations with the U.N. continued as the Abe administration unsuccessfully attempted to contain its squabbles with human rights advocates and present a polished public image as the perfect host for the upcoming Olympics.

IV. STATUS OF JAPAN’S CRIMINAL PROCEDURE AFTER THE ANTI-CONSPIRACY LAW WAS ENACTED

This section explores legal experts’ and human rights advocates’ concerns that anticipated benefits of the anti-conspiracy law’s contributions to counterterrorism efforts will be overshadowed by potential for government surveillance and arbitrary arrests. A brief overview of the

Ramrodded, supra note 76.

112 UNCTOC, supra note 29.

113 Japan Upper House Deliberations, supra note 22.

114 Id.

115 Id.


117 Fifield, supra note 99 (comparing Abe’s approval rating as lower than American President Donald Trump admits an embattled administration, with Abe’s “regularly recording support levels in the 20 percent range.”).

118 Japan Upper House Deliberations, supra note 22.
Japan’s Code of Criminal Procedure (刑事訴訟法 “keijisoshōhō”)\(^\text{119}\) pertaining to arrest, detention, prosecution, and sentencing provides the legal framework the Japanese government and law enforcement will follow to arrest, prosecute, and sentence suspects under the new anti-conspiracy law. Examples of the 277 “serious crimes,” contained in the anti-conspiracy law, are discussed within the broader context of the anti-conspiracy legislation’s intent to prevent acts in furtherance of a terrorist attack or crime by a criminal syndicate. Rather than discuss the anti-conspiracy law in a vacuum, these new crimes will be considered within the broader context of the implications criminalizing ordinary activities will have on civil liberties of innocent citizens, civic groups, and labor unions not associated with terrorist organizations.

A. Japan’s Code of Criminal Procedure and Concerns over Civil Liberties

Japanese police practices and criminal procedure are fundamental concerns among critics, who fear that, under the anti-conspiracy law, insufficient procedural protections for suspects will result in abuse of the system to arrest government critics and political activists.\(^\text{120}\) Japan’s Code of Criminal Procedure (刑事訴訟法 “keijisoshōhō”) gives law enforcement broad discretion to arrest and detain suspects in ways that would be considered unconstitutional in the United States.\(^\text{121}\) Opponents of the anti-conspiracy law fear government surveillance and suppression under the broad-range new crimes established by the anti-conspiracy law.\(^\text{122}\)

The Japanese Federation of Bar Associations publicly exposed\(^\text{123}\) loopholes in Japan’s criminal justice system\(^\text{124}\) that legitimizes the arrest

\(^{119}\) See Nihonkoku Kenpō [Kenpō] [Constitution], art. 34-39 (Japan).

\(^{120}\) Coulson, supra note 62, at 885-86.


\(^{122}\) New Reality, supra note 19.


\(^{124}\) See Hanna Kozlowska, Japan’s Notoriously Ruthless Criminal Justice System Is Getting a Face Lift, QUARTZ (May 26, 2016) (“Confessions have long been perceived as the best form of evidence in Japan, and are often coerced by psychological intimidation, shaming, and methods as ruthless as sleep deprivation. Until now, Japan has not had the same tools used in other countries such as wiretapping and plea bargaining—in their absence, Japanese law enforcement has had to rely on confessions.”).
and extended detention of criminal suspects, even in the absence of a formal charge. The anti-conspiracy law provides more possibilities for suspects to be arbitrarily arrested for “enzai” (冤罪), a term used to describe “a crime that one did not commit” or “being framed for a crime.” Japanese law enforcement can detain suspects with limited access to counsel for a maximum of 23 days during which a suspect can be subjected to all-day and all-evening questioning without counsel present. Confessions extracted through these methods are admissible at the accused’s trial. Japan’s unusually high conviction rate of over 99%, coupled with rare dismissals for pretextual arrests, further qualifies concerns over the broadening of punishable crimes to include “acts in furtherance of” encompassing ordinary daily activities.

The Japanese government drew recent criticism from human rights advocates for the extended detention of political activists through criminal procedures, which provide several methods for Japanese law enforcement to renew or extend someone’s detention in jail. During the initial arrest, the suspect will face interrogation and often intimidation with limited access.


126 See Gavan McCormack, There Will Be No Stopping the Okinawan Resistance, an Interview with Yamashiro Hiroji, 15 ASIA-PAC. J. (2017) (“In most developed democratic countries, a suspect may be held in police custody for up to four days before she or he is either indicted or released, but in Japan the limit is 23 days, and in Yamashiro’s case it was arbitrarily extended by serial arrests on unrelated charges.”); see also IWASAWA, supra note 34, at 261 (stating that Japanese law enforcement may arrest citizens as criminal suspects for an initial ten-day period and request an additional ten-day extension).

127 IWASAWA, supra note 34, at 261.


129 See Mariko Oi, Japan Crime: Why Do Innocent People Confess?, BBC NEWS (Jan. 2, 2013), http://www.bbc.com/news/magazine-20810572 (noting that despite the Constitution of Japan’s prohibition on arrests except for crimes in progress or pursuant to an arrest warrant, Japan has an over 99% conviction rate); Cf. David T. Johnson, Wrongful Convictions and the Culture of Denial in Japanese Criminal Justice, 13 Asia-Pacific J. (2017) (arguing that under the Japanese kessai prosecutorial system, “Japanese prosecutors tend to be cautious about charging cases. In fact, a conservative charging policy-to avoid taking defendants to trial who could be acquitted-may be the main reason for Japan's famously high conviction rate.”).

130 See New Reality, supra note 19.

131 See generally Neumann, supra note 125.
to a lawyer.\textsuperscript{132} Japanese criminal procedure law does not provide arraignment proceedings to provide the arrested suspect with an initial hearing to learn about the charges.\textsuperscript{133} Instead, law enforcement can detain suspects for extended periods by arresting the suspect multiple times on the original charge, thereby restarting the detention time limit upon each arrest, and without the suspect learning the reason for being detained.\textsuperscript{134} International human rights groups criticize Japan’s arrest and detention of suspects as violating human rights standards,\textsuperscript{135} but Japanese courts uphold the existing laws, and the lawmakers have not successfully enacted new laws.\textsuperscript{136}

International human rights organizations characterize Japan as a potential human rights oppressor, which is a reputation contrary to that of most close allies of Western democratic countries.\textsuperscript{137} Human Rights Watch identified Japan’s criminal procedure law as a potential source of oppression of citizens’ due process rights, mentioning that “Japanese criminal procedure law allows suspects to be detained for up to 23 days prior to prosecution without the possibility of release on bail. It also prohibits lawyers from being present during interrogations, increasing the prospect of coercive means being used to extract confessions.”\textsuperscript{138}

Legal experts considered Abe’s anti-conspiracy legislation a fundamental shift in the Japanese civil code for creating a new category of crimes punishable under the law.\textsuperscript{139} Some argued that the anti-conspiracy law gives too much power to Japanese enforcement and prosecutors under a revised Japanese penal code, “which previously applied penalties only after crimes had actually been committed.”\textsuperscript{140} The new law targets

\textsuperscript{132} New Reality, \textit{supra} note 19.

\textsuperscript{133} \textit{Id.}

\textsuperscript{134} \textit{Id.}


\textsuperscript{136} The Japanese criminal justice system continues to be considered a major societal problem that has not undergone significant reform by the Diet and is generally upheld by the Japanese courts; Iwasa\textsuperscript{\textsuperscript{a}}, \textit{supra} note 34; \textit{see also} Johnson, \textit{supra} note 129; Cf. Kozlowska, \textit{supra} note 124 (reporting that Japan’s criminal justice system was reformed in response to a scandal involving prosecutors tampering with evidence in a fraud case, imposing new requirements on a narrow category of crimes involving videotape requirements during interrogations).


\textsuperscript{138} \textit{Id.}

\textsuperscript{139} New Reality, \textit{supra} note 19.

\textsuperscript{140} Diet tactic, \textit{supra} note 54.
organized crime by requiring that “individuals must have been involved not only in conspiring to commit a crime but also in preparatory acts such as fundraising before facing a charge.”\(^{141}\)

Proponents of the anti-conspiracy bill argued that the 277 criminal acts covered in the anti-conspiracy law are not arbitrary, as legal experts\(^ {142}\) and other critics\(^ {143}\) suggested; rather, the new law creates an entirely new category of criminal offenses for “planning the execution of a serious crime for a terrorist or other organized crime group”\(^ {144}\) through 277 enumerated acts. Proponents believed that Abe specifically aligned newly enacted types of crimes to UNCTOC requirements, including “human trafficking, narcotics trading and money laundering.”\(^ {145}\) According to the UNCTOC, “[s]tates that ratify this instrument commit themselves to . . . the creation of domestic criminal offences (i.e., participation in an organized criminal group, money laundering, corruption and obstruction of justice).”\(^ {146}\) Critics believed, however, the anti-conspiracy legislation included ordinary acts that could lead to punishing innocent citizens and erode civil liberties.\(^ {147}\) Political commentators pointed out quirky acts that could potentially expose citizens to group criminal liability under the new anti-conspiracy law, such as unauthorized picking of mushrooms with the intent to sell and use proceeds to fund acts in furtherance of a crime.\(^ {148}\)

\(^{141}\) *Japanese Lawyers Criticize Proposed Conspiracy Bill*, supra note 88.

\(^{142}\) Japanese attorneys in the Japanese Bar Association issued an official statement that the anti-conspiracy law would highly likely infringe civil liberties. This concern was echoed by UN’s Special Rapporteur to the Right to Privacy, Joseph Cannataci, who cited concerns about “risks of arbitrary application of [the anti-conspiracy] legislation given the definition of what would constitute ‘planning’ … and given the inclusion of overbroad range of crimes… which are apparently unrelated to terrorism and organized crime. See Bar Associations Across Japan Call for Revocation of Anti-Conspiracy Laws, supra note 18; Japan Federation of Bar Association Holds Study Meeting to Abolish ‘Anti-Conspiracy’ Law, supra note 18; see also Japan Accused of Stifling Freedom with New Terror Law, supra note 18.

\(^{143}\) See *Bill a Travesty of Justice*, supra note 91 (reporting “lingering concerns that the authorities may arbitrarily enforce the law or take excessive measures to monitor targets and gather information about possible offenses to detect acts of planning and preparing for crimes”); Rich, supra note 1 (predicting there will be “more self-censorship in a country where there is already not a very vibrant civil society”).

\(^{144}\) *New Reality*, supra note 19.

\(^{145}\) *Id.*

\(^{146}\) *UNCTOC*, supra note 29.


\(^{148}\) *Id.*
B. Expanding the Japanese Code of Criminal Procedure with Group Criminal Liability

The anti-conspiracy law introduced group crime of conspiracy to the Japanese criminal code, including money laundering, witness tampering, and asset forfeiture provisions. Japan adopted the criminality requirement of the U.N. Convention Against Transnational Organized Crime, which requires signatory states to criminalize money laundering and corruption, and to allow seizure of criminal assets. The anti-conspiracy legislation created two criminal offenses for intentional acts involving the attempt or completion of offenses:

(i) agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in the furtherance of the agreement or involving an organized criminal group; and, (ii) conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in: (a) criminal activities of the organized criminal group; (b) other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim.

The anti-conspiracy law’s scope limits group criminal liability by narrow definitions of “organized criminal group” and “structured group.”

149 Article 6-2: The Group Crime of Conspiracy states “whomever conspires to accomplish an act which is a crime under the following section, as part of a group, be punished as indicated.” Hanzai no kokusaika oyobi soshikika ni taisho suru tame no keihou nado no ichibu wo kaisei suru horitsuan [Bill to Revise Part of the Criminal Law to Deal with Internationalization and Increased Group Criminal Activity], Diet Sess. 156, B. No. 85 of 2003 (Japan).

150 See Coulson, supra note 62 (citing Article 6-2, The Group Crime of Conspiracy); see also Matsumiya Takaaki, Kyobozai no shinsetsu to keiho no kino [Functions of the Criminal Law and the Introduction of Conspiracy], Horitsu Jihô, Sept. 2006, 44 at n.1 (Japan).

151 See Coulson, supra note 62 (citing UNCTOC conspiracy provision requiring signatory states to enact laws adopting specific crimes and definitions into their local legal frameworks).

152 See Coulson, supra note 62, at 865-66 (citing UNCTOC provisions defining group criminality requirement).

153 “A structured group of three or more persons existing for a long period of time and acting in concert with the aim of committing one or more serious crimes or offenses . . . in order to obtain . . . material benefit.” In CATOC art. 2(a).
group”\(^{154}\) to prevent random groups of innocent citizens from incurring criminal liability.\(^{155}\) Criminal liability is further limited by a knowledge requirement\(^{156}\) to avoid conviction for unintentionally committing an act covered under group criminal activity.\(^{157}\)

The Japanese government attempted to assuage concerns\(^{158}\) that the anti-conspiracy law was overly broad by portraying the anti-conspiracy law as too specific to criminalize ordinary citizens’ daily activities.\(^{159}\) The Ministry of Justice offered three reasons why these laws will never be used against the average citizen or group: “First, the conspiracy offenses will only apply when committed by organized crime groups. Second, the types of crimes that are covered are clearly listed. Third, for a conspiracy to be punishable, not only must there be planning, but action in furtherance of it.”\(^{160}\) Justice Minister Katsutoshi Kaneda argued that the “interim draft” passed in the Diet dispelled concerns raised over three previous versions of the bill, arguing that this draft “is expressly limited to organized criminal groups.”\(^{161}\) From a procedural standpoint, Kaneda stated the anti-conspiracy law was not overly broad because “the applicable crimes are

\(^{154}\) A group “that is not randomly formed for the immediate commission of an offense and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.” In CATOC art. 5(2)(c).

\(^{155}\) Coulson, supra note 62, at 866-67.

\(^{156}\) The target offense must be committed “with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crime in question.” UNCTOC, art.5(1)(a)(ii).

\(^{157}\) Coulson, supra note 62, at 866-67.

\(^{158}\) See Bill a Travesty of Justice, supra note 91 (reporting “lingering concerns that the authorities may arbitrarily enforce the law or take excessive measures to monitor targets and gather information about possible offenses to detect acts of planning and preparing for crimes”); Rich, supra note 1 (predicting there will be “more self-censorship in a country where there is already not a very vibrant civil society”).

\(^{159}\) See Anna Fifield, In Japan, Prime Minister Pushes Ahead with Controversial ‘Anti-Conspiracy’ Bill, THE WASH. POST (May 22, 2017), https://www.washingtonpost.com/world/asia_pacific/in-japan-prime-minister-pushes-ahead-with-controversial-anti-conspiracy-bill/2017/05/22/a50bf7b4-3ed0-11e7-9851-b95c40075207_story.html?utm_term=.c37ef4f60b87 (highlighting a few obscure offenses covered under the 277 new anti-conspiracy crimes, including “catching endangered animals, running an unlicensed motorboat race and stealing plants from a forest reserve.” The justice minister informed legislators during a public hearing that picking mushrooms could be considered funding terrorism).

\(^{160}\) New Reality, supra note 19.

\(^{161}\) Diet tactic, supra note 54.
listed and clearly defined and it applies only once actual preparatory actions have taken place.”

The LDP, the major political party responsible for passing the anti-conspiracy bill, produced a series of public service announcement YouTube videos, “Teach Me, Sensei,” to educate the public about the new conspiracy law and respond to widespread public concerns regarding the potential for the new law to punish ordinary citizens for criticizing government action. In one video, legal experts explained, “[under the new law,] you can say things opposing the government while chatting with friends at a local bar without being considered a criminal syndicate punishable under the new law.” Therefore, ordinary people are not subject to arrest for voicing opinions critical of Japanese government officials. A Ministry of Justice representative simplified the anti-conspiracy law to lead one to believe ordinary citizens will not be prosecuted for mundane acts, even those that are enumerated in the new law.

Japanese citizens protesting the anti-conspiracy bill believed the true danger of the anti-conspiracy law does not lie in the text itself, but in the manner in which the laws could be prosecuted. Thus, the broad definitions of ordinary acts that can be construed as criminal acts under the anti-conspiracy law create a risk of arrest of ordinary citizens being falsely accused of an act in furtherance of a crime for conducting their day-to-day business. The anti-conspiracy bill’s text allows for the characterization of “anti-state activities” to include everything from cutting a wire fence on a construction site to laying concrete blocks on the road near a U.S. air station. The inclusion of these acts as potential crimes allows the Japanese government to arrest and detain citizens for an extended period for exercising their constitutionally guaranteed rights to freedom of speech and peaceful assembly to criticize the government.

162 Id.
163 LDP YouTube video, supra note 52.
164 Id.
165 Id.
166 Id.
167 Protests in Japan, supra note 21.
168 See Japan Accused of Stifling Freedom with New Terror Law, supra note 18.
C. Conflicts Between Group Criminal Liability and Constitutionally Protected Rights

Legal experts and human rights advocates expressed concerns that the new law would infringe upon ordinary citizens’ civil liberties, echoing concerns over prior attempts to pass similar anti-conspiracy bills. One of the biggest fears among civil society groups is that the law appears to provide the Japanese government an avenue to arrest and detain human rights advocates for criticizing the government. The Constitution of Japan’s Article 21 provides a guarantee to the “freedom of assembly and association as well as speech, press and all other forms of expression,” stating, “[n]o censorship shall be maintained, nor shall the secrecy of any means of communication be violated.” Human rights advocates opposing the bill cautioned the Abe administration that the anti-conspiracy law “could pave the way to suppression of free speech, invasive state surveillance and arbitrary punishment of civic groups and labor unions.”

Legal experts argued that the scope of the new law was overly broad and did not include sufficient procedural protections to prevent the Japanese government from punishing an act of conspiracy in the absence of a crime committed. The Japan Federation of Bar Associations strongly opposed the new law, pointing out in an official statement, “acts that pose no security risk, such as deposit withdrawal from an automated teller machine, could be punishable as preparatory acts under the bill.” Opponents feared the inclusion of any act in furtherance of committing a crime could lead to the

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170 See Bill a Travesty of Justice, supra note 91 (reporting “lingering concerns that the authorities may arbitrarily enforce the law or take excessive measures to monitor targets and gather information about possible offenses to detect acts of planning and preparing for crimes”); Rich, supra note 1 (predicting Japanese citizens “might be worried about the government trawling emails, text messages and social media posts for evidence of criminal conspiracy, anyone who protests government policies might be reluctant to speak out”).


173 NIHONKOKU KENPO [KENPO] [CONSTITUTION], art. 21 (Japan).

174 Diet Tactic, supra note 54.

175 See Bar Associations Across Japan Call for Revocation of Anti-Conspiracy Laws, supra note 18; Japan Federation of Bar Association Holds Study Meeting to Abolish ‘Anti-Conspiracy’ Law, supra note 18.

176 See Diet tactic, supra note 54.
new law’s scope being expanded almost without limit. One critic noted, “[d]espite consistent concerns from the opposition and civil society . . . the Abe administration stubbornly [pushed] the adoption of the so-called ‘anti-conspiracy’ bill . . . widely criticized for its broad scope, [raising concerns] for arbitrary use of the legislation against ordinary people.”

Japanese law professor Colin P. A. Jones points out, “the real issue is not any individual offense, but how they are prosecuted.” The problem with the law is that mundane acts, such as driving a taxi cab without a proper license, can be considered “an act in furtherance of” terrorism, thereby enabling prosecution of an innocent person. With a conviction rate of nearly 100%, one must wonder whether there are any daily activities that cannot be construed as a potential “act in furtherance of” that could ultimately result in arrest under the broad scope of the new anti-conspiracy law.

Human rights advocates voiced concerns over the anti-conspiracy bill’s potential use by Japanese central government to suppress civil rights actors and organizations critical of the government. U.N. human rights advocate Taisuke Komatsu explained, “[t]he draft bill could jeopardize the work of many human rights and environmental NGOs if the authorities use it against NGOs critical of the government in order to surveil, or worse, criminalize their work.” The United Nations Special Rapporteur on the right to privacy, Joseph Cannataci, later raised concerns “[t]he planned legislation could lead to unjust restriction of privacy and freedom of expression . . . [and] are lacking balance in the extreme and are inappropriate as [they were] issued unilaterally [without proper support within the legislative branch].” Cannataci’s misgivings toward the law reinforced criticism from human rights groups regarding the potential infringement of human rights in Japan, particularly the right to privacy, freedom of expression, and peaceful assembly guaranteed in the

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177 Id.
178 Freedom of Expression, supra note 7.
179 Professor at the Doshisha University School of Law.
180 New Reality, supra note 19.
181 Id.
182 See Oi, supra note 29 (noting that despite the Constitution of Japan’s prohibition on arrests except for crimes in progress or pursuant to an arrest warrant, Japan has an over 99% conviction rate).
183 Diet tactic, supra note 54.
184 Rapporteur’s Report, supra note 110.
185 See discussion supra section III.C.
Constitution of Japan. Cannataci’s primary concern pertained to the planned legislation’s overly broad definition of an “organized criminal group,” which legitimizes punishment of ordinary and non-terroristic activities conducted by Okinawa civil rights organizations. Human rights advocates and legal experts raised concerns “on the potential restrictions on non-governmental organizations (NGOs), in particular, on those working in areas of national security.”

Public concern regarding the manner in which Prime Minister Abe passed the anti-conspiracy bill echoed those of lawmakers from opposing political parties and legal experts. Tens of thousands of protesters gathered in Tōkyō to protest the legislation’s overly broad definition of an “organized criminal group.” A survey conducted by The Manichi revealed “50 percent of respondents were in favor of [the anti-conspiracy law], compared to 37 percent opposed. Eighty percent did not think the government and ruling parties sufficiently explained the measure to the public.”

Okinawa’s anti-base protesters were particularly concerned about the scope of the anti-conspiracy law and the potential loss of constitutionally protected rights to freedom of speech and peaceful assembly. Human rights advocates, news commentators, and U.N. officials expressed their concern for the potential for the Japanese government to make arrests under the 277 acts enumerated in the anti-conspiracy law in an attempt to disband Okinawa civil rights organizations, especially on those working in areas of national security. Human rights advocates voiced concerns about the anti-conspiracy bill’s potential use by Japanese central government to suppress civil society actors and organizations critical of the government. U.N. human rights advocate Taisuke Komatsu explained, “[t]he draft bill could jeopardize the work of many human rights and environmental NGOs if the authorities use it against NGOs critical of the government in order to surveil, or worse, criminalize their work.”

V. OKINAWA PEACE ACTIVISTS’ PROTEST OF U.S. MILITARY BASES: FREEDOMS OF SPEECH AND PEACEFUL ASSEMBLY, AND GROUP CRIMINAL LIABILITY

This section examines the “Okinawa Problem” as a potential source of conflict between local citizens and the government, which could give rise

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186 Rapporteur’s Report, supra note 110.
187 Id.
188 Id.
189 Approval rating dips, supra note 77.
190 Protests in Japan, supra note 21.
191 Freedom of Expression, supra note 7.
192 Id.
to activities covered under the new anti-conspiracy law. This section illustrates the Japanese government’s suppression of citizen’s freedom of speech and peaceful assembly rights through Yamashiro’s arrest and detention for voicing opposition to Japan’s national security agenda.

A. The “Okinawa Problem” Exemplifies Conflicting Priorities of Protecting Japan’s National Policies and Preserving Freedom of Speech and Assembly Rights

U.S. and Japanese policymakers collectively refer to the long-standing tensions between local Okinawans and national governments as “the Okinawa problem” (沖縄の問題 “Okinawa no mondai”), “a catch-all label for the host of unresolved issues between the prefecture and the Japanese and U.S. governments.” 193 Okinawa’s history as a once independent sovereign nation194 and former Japanese colony195 sets the prefecture apart from the rest of mainland Japan, and has given rise to a solidarity movement calling for a future without the U.S. military occupation and interference by the Japanese central government. Okinawan citizens’ legitimacy as an indigenous people was recognized by the United Nations,196 further coloring the resentment toward the central Tōkyō
government for oppressive government policies that benefit mainland Japan at Okinawa’s expense.\textsuperscript{197}

One of the primary sources of tensions between Okinawa Prefecture and mainland Japan is the continued presence of U.S. military bases more than half a century after the end of World War II.\textsuperscript{198} In particular, the “Okinawa problem” (沖縄の問題 “Okinawa no mondai”) has become synonymous with the Okinawa citizens’ protest against “the relocation of the U.S. Marine Corps Air Station (“MCAS”) Futenma from Ginowan City, Okinawa to Henoko village located in Nago City, Okinawa.”\textsuperscript{199} The Futenma Relocation Facility (“FRF”) debate lasted for nearly twenty years, largely because citizen protests and local politics derailed base transfer efforts.\textsuperscript{200} The deep-seated resentment and opposition to MCAS Futenma arose amidst public outrage following the 1995 rape of a twelve-year old Okinawan school girl by four servicemen.\textsuperscript{201} Following this tragedy,

\textsuperscript{197} A U.N. rapporteur reported xenophobia and discrimination against Okinawan people by Japanese mainlanders, suggesting that further investigations into fundamental human rights violations were necessary. A two-pronged approach involving political and legal strategies, as well as cultural and ethical approaches were suggested. At the time of the report, Okinawans were not recognized in Japan as an indigenous people, although Japan implemented national policies on other national minorities (Burakumin and Ainu). \textsuperscript{\textsuperscript{\textsuperscript{199}}} See Tanaka Hiroshi, Oda Makoto, et al., The Diene Report on Discrimination and Racism in Japan, 4 Asia-Pacific J. (2006), http://apjjf.org/-Honda-Katsuichi--William-Wetherall--Pak-Kyongnam--Oda-Makoto--Tanaka-Hiroshi/1882/article.pdf; Doudou Diène, Report: The Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (Jan. 18, 2006), (Meghna Abraham, ed.), https://www.humanrights.ch/upload/pdf/070320_ishr_zusammenfassung.pdf; see also Gavan McCormack & Satoko Oka Norimitsu, Resistant Islands: Okinawa Confronts Japan and the U.S. 3 (2012); Okinawa: Cold War Island (Chalmers Johnson, ed.), 171-188, (1999).


\textsuperscript{199} See Marine Corps Air Station Futenma, United States Marine Corps, http://www.mcasfutenma.marines.mil/.


Okinawans demanded the complete elimination of the MCAS Futenma. Tōkyō and Washington, however, stipulated that the air base could only be relocated, not eliminated. Local Okinawan citizens reluctantly accepted a “compromise,” which was a tentative plan to relocate MCAS Futenma from a densely populated residential area to Camp Schwab in Henoko village in a rural, forestry region as the target relocation area.

The Japanese government heavily relies on U.S. military bases to provide a security umbrella because Article 9 does not allow Japan to develop its own military capabilities. Majority of the U.S. military bases and troops stationed in Japan are located in Okinawa Prefecture, most notably at Kadena Air Base, Camp Schwab, and MCAS Futenma. Both the U.S. and Japanese governments protect the bilateral national security alliance by Japan fulfilling its duty as a compliant host of the military bases, even going as far as the Japanese national government intimidating previous Governors of Okinawa to sign land leases to the U.S. military. Despite the fact that Okinawa is one of the smallest prefectures, it hosts a majority

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203 See MCCORMACK supra note 202.

204 Id.


206 Former Okinawa Prefecture Governor Masahide Ota refused to sign leases on behalf of landowners, under Japan’s Land Acquisition Law, who were unwilling to renew leases for exclusive use by U.S. military bases. The Japanese central government attempted to intimidate Governor Ota into signing the leases. The Prime Minister of Japan sued Ota under the Local Autonomy Law seeking “a court order for the governor to execute the duties delegated to him [to sign the leases].” The Fukuoka High Court, Naha Branch ruled in favor of the Prime Minister. Ota appealed to the Supreme Court of Japan and lost in a verdict announced on August 28, 1996. See Masahide Ota, Governor Ota at the Supreme Court of Japan, in OKINAWA: COLD WAR ISLAND 205 (Chalmers Johnson, ed., 1999).

207 Okinawa Prefecture is an archipelago consisting of sixty inhabited islands stretching for 1,100 kilometers (683 miles). Okinawa Island is the largest island consisting of approximately one-seventh the area of the State of Hawaii. See GAVAN MCCORMACK & SATOKO OKA NORIMATSU, RESISTANT ISLANDS: OKINAWA CONFRONTS JAPAN AND THE U.S. 1 (2012).
of the U.S. military bases in Japan as a lingering arrangement of America’s post-World War II occupation of Japan following its defeat. The local citizens view the presence of the bases as a reminder of the Battle of Okinawa, during which nearly one-third of Okinawa’s civilian population were killed during the ground battle waged between the U.S. and Japanese imperial armies.

Japanese lawmakers and U.S. diplomats claim the continuing local protests of the U.S. military bases in Okinawa Prefecture cause costly delays in construction of new U.S. military bases, particularly in the northern area currently under construction for the new helipad site at Henoko. Sheila A. Smith, an Asia regional security expert with the Council on Foreign Relations, described the impacts to national policy and domestic politics arising from local anti-base protests in Okinawa Prefecture. Smith pointed out, “[t]he complexion of protest in Okinawa has changed considerably over the past decade and a half. Today it is municipal mayors and assembly members that lead the effort to oppose the terms of base relocation in Okinawa.”

Several U.N. human rights advocates alleged that Japanese government’s handling of the “Okinawa problem,” particularly with the MCAS Futenma relocation, amounted to fundamental human rights violations. Several international non-governmental organizations in special consultative status listed the construction of the new military base in Henoko, against the wishes of the indigenous Okinawan “Ryukuan”

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208 Okinawa Prefecture one of the smallest prefectures in Japan, comprising only 0.6 percent of the nation’s land area. Approximately 75% of the U.S. military facilities in Japan remain in Okinawa Prefecture, including Kadena Air Base, Camp Schwab, and Marine Corps Air Station Futenma. See id.; OKINAWA: COLD WAR ISLAND, supra note 202.

209 Dower, supra note 3, at 485 (citing the Battle of Okinawa, as the largest amphibious landing in the Pacific theater of World War II resulting in the largest casualties of World War II, exceeding 100,000 Japanese and 50,000 Allies casualties).


211 Id.

212 Id.

people,"214 as a “human rights situation that requires the Human Rights Council’s attention.”215 A written statement on “Human Rights Violations in Okinawa, Japan” presented to the Human Rights Council opened with “[t]he biggest problem in Ryukyu/Okinawa right now is the construction of a new military base in Henoko, Nago City. Internationally recognized as an indigenous people, the Ryukyuan/Okinawan people, democratically expressed their strong opposition by electing politicians in the local, prefectural, and national governments who are against the new base construction, as well as conducting sit-in protests in Henoko.”216

Despite representing a small population located on the most remote and smallest prefecture in Japan, Okinawa’s local politicians’ lobbying efforts are influencing senior Diet officials.217 One of the lobbying feats achieved by Okinawan politicians included forty-one elected mayors from Okinawa traveling to Tokyo and protesting MCAS Futenma’s relocation within Okinawa prefecture in January 2016.218 The Okinawan mayors rallied around four thousand supporters in Tokyo’s Hibiya Park and called

See GREGORY SMITS, VISIONS OF RYUKYU: IDENTITY AND IDEOLOGY IN EARLY-MODERN THOUGHT AND POLITICS (1999); see also Andrew Daisuke Stewart, Kayano v. Hokkaido Expropriation Committee Revisited: Recognition of Ryukyuans as a Cultural Minority Under the International Covenant on Civil and Political Rights, an Alternative Paradigm for Okinawan Demilitarization, 4 ASIAN-PACIFIC L. & POL’Y J. 307, 321 (defining Ryukyuans as a cultural minority based on a distinct ethnicity, religion, and language apart from mainland Japan, despite efforts by the Japanese central government to assimilate present-day Okinawa Prefecture into the rest of Japan); see generally MAMORU AKAMINE, THE RYUKYU KINGDOM: CORNERSTONE OF EAST ASIA, (Robert Huey ed., Lina Terell trans. 2016).

See SMITS, supra note 214.

SHIMIN GAIKOU CENTRE (CITIZENS’ DIPLOMATIC CENTRE FOR THE RIGHTS OF INDIGENOUS PEOPLES), HUMAN RIGHTS VIOLATIONS IN OKINAWA, JAPAN, The International Movement Against All Forms of Discrimination and Racism (IMADR) Presented at the 30th session of the Human Rights Council Agenda item 4 (September 7, 2015); see generally Andrew Daisuke Stewart, Kayano v. Hokkaido Expropriation Committee Revisited: Recognition of Ryukyuans as a Cultural Minority Under the International Covenant on Civil and Political Rights, an Alternative Paradigm for Okinawan Demilitarization, 4 ASIAN-PACIFIC L. & POL’Y J. 307, 321(2003) (defining Ryukyuans as a cultural minority based on a distinct ethnicity, religion, and language apart from mainland Japan, despite efforts by the Japanese central government to assimilate present-day Okinawa Prefecture into the rest of Japan); SMITS, supra note 214; AKAMINE, supra note 214.

See Four Thousand People at Rally, supra note 217.
upon all Japanese to reject the compulsory hosting of U.S. forces in Japan.\footnote{See id.} The Japanese central government was unable to control the local protests over the construction of the Henoko facility and faced immutable pressure from hundreds of thousands of anti-base protesters led by key community figures, including Okinawa Mayor Takeshi Onaga.\footnote{See supra note 217.}

The Okinawan people’s resentment toward complacent “mainlanders” residing on Japan’s main island (Honshu) only strengthens the resolve of anti-base activists and local government leaders.\footnote{See generally GAVAN MCCORMACK \\ & SATOKO OKA NORIMATSU, RESISTANT ISLANDS: OKINAWA CONFRONTS JAPAN AND THE U.S. 3 (2012); see also Norma Field, IN THE REALM OF A DYING EMPEROR: JAPAN AT CENTURY’S END, at 33-106 (First Vintage Books Edition, February 1993) (recounting the infamous burning of the Hinomaru flag by Okinawan activist Chibana Shoichi in protest of a local village “besiegement” by right-wing national groups).} Mayor Onaga attributed the Okinawan people’s rage to the U.S. and Japanese governments’ ignoring of the local opposition to the deployment of the Osprey helicopters (“Osprey”),\footnote{See Bell Boeing V-22 Osprey, BOEING, http://www.boeing.com/defense/v-22-osprey/ (last visited Aug. 11, 2017) (explaining the Bell Boeing V-22 Osprey is an American multi-mission, tiltrotor military aircraft with both vertical takeoff and landing (VTOL), and short takeoff and landing (STOL) capabilities); Ayako Mie, Nonfatal Osprey Crash in Okinawa Brings Safety Fears to Fore, JAPAN TIMES (Jan. 9, 2017), http://www.japantimes.co.jp/news/2017/01/09/reference/nonfatal-osprey-crash-okinawa-brings-safety-fears-fore/ (noting local concerns toward Osprey crashes, noise pollution and environmental pollution).} who are notorious for high crash rates in populated areas.\footnote{See Four Thousand People at Rally, supra note 217.} Mayor Onaga put an incendiary spin on “Restore Japan,” the catchphrase used by Abe in the previous Lower House election, to make his point known about Okinawan people’s resentment toward bearing the burden of the U.S. military bases.\footnote{Contest with Okinawa, supra note 210.} During a rally in Tokyo, Onaga quipped, “[y]ou cannot restore Japan by continuing to place the burden of Japanese security only on Okinawa. All the people in the main islands of Japan need to take part in discussion on Japan-U.S. security agreements.”\footnote{Id.}

B. Hiroji Yamashiro’s Arrest and Detention

The Japanese government’s recent arrest and detention of Hiroji Yamashiro, the leader of the anti-base movement outside Camp Schwab,\footnote{See Gavan McCormack, “There Will Be No Stopping the Okinawan Resistance,” an Interview with Yamashiro Hiroji, 15 ASIA-PAC. J. (2017).}
reveals the potential for Japanese law enforcement to abuse its discretion to arrest suspects and extend their detainment period for minor crimes under the anti-conspiracy law. Human rights advocates allege that Yamashiro’s role as chairman of the Okinawa Peace Action Center (沖縄平和運動センター “Okinawa heiwa undo senta”) made him a target of politically motivated arrests by the Japanese central government. Yamashiro’s arrest and five-month detainment occurred when the Japanese central government faced strong opposition to MCAS Futenma by the Okinawa Peace Action Center and Okinawan politicians, resulting in costly delays in construction of the new facility. Human rights advocates allege that the prosecution of anti-base protesters affiliated with the Okinawa Peace Action Center infringed upon constitutionally protected freedom of speech and peaceful assembly rights.

Japanese law enforcement exercised a raw display of its powers by arresting and extending Yamashiro’s imprisonment past the 23-day limit for a total of 152 days. Yamashiro’s five-month imprisonment started with an initial arrest for suspicion of cutting a wire fence around the Marine Corps helipad construction site resulting in a standard detention of 23 days. Yamashiro’s detention was subsequently extended with two arrests for unrelated charges. Yamashiro’s detention was an extraordinary attempt to

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229 See Fifield, supra note 227.

230 See discussion supra Part V.A.

231 See Fifield, supra note 227.

232 Freedom of Expression, supra note 7.

233 See McCormack, supra note 226.

234 After Yamashiro’s detainment was extended after the initial arrest when Naha prosecutors arrested him for a second time. Naha prosecutors alleged Yamashiro interfered with public officers’ duties and caused bodily injury by grabbing a civil servant employed at the Okinawa Defense Bureau, shaking him, bruising his arm, and hurting his neck. Yamashiro was arrested for this incident along with another protester while he was scheduled for release from his first arrest. Another extension of his detention occurred
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suppress the citizens’ protest movement outside of Camp Schwab and prevent further costly and lengthy delays in construction of the new facility in Henoko.

Yamashiro endured inhumane treatment while imprisoned and was held in solitary confinement by Naha police under accusations of conspiring against the government. As a 64-year-old who underwent treatment for cancer the year before his first arrest and imprisonment, Yamashiro suffered inhumane physical conditions and was denied access to see a doctor. Naha law enforcement provided Yamashiro with limited access to his attorney Shunji Miyake, who was his only permitted visitor while in prison. He was not permitted any visits from family members. In an interview, Yamashiro recalled the conditions he suffered while in police custody:

For five months (exactly 152 days) Yamashiro was held in solitary confinement and denied any human contact including that of his family, in semi-darkness and without sense of time (deprived of any timepiece), often cold, ill (he had been hospitalized in 2016 for malignant lymphoma), subjected twice daily to a humiliating “body search,” and interrogated under immense pressure designed to extract a “confession.” The state, with all its resources, was intent on compelling submission of this citizen. Systematic intense pressure was combined with random brutality. For much of

because of a third incident taking place on January 28, 2016, by Camp Schwab. Yamashiro’s third arrest was for obstruction for allegedly putting concrete blocks on the road in front of the new Marine Corps air station construction site. See McCormack, supra note 226; Burke and Kusumoto, supra note 16 (“After his initial arrest for cutting a strand of barbed wire on a perimeter fence at Okinawa’s Northern Training Area while protesting the construction of U.S. military helicopter landing pads, prosecutors added other charges – some stemming from months earlier – such as obstructing officers and causing injury after a scuffle between police and protesters and the forcible obstruction of business after Yamashiro was accused of blocking a Camp Schwab construction gate with more than 1,000 concrete blocks”).

See Burke and Kusumoto, supra note 16 (“During his incarceration, Yamashiro was kept in solitary confinement with no natural light after guards covered up his windows, he told Stars and Stripes last summer. He also said he was denied access to his doctor, denied treatment for a cavity and that guards kept the lights on in his cell at all times and removed towels and items he placed over his face to help himself sleep.”).

Burke & Kusumoto, supra note 16.

Undue Oppression, supra note 14.

See Amnesty Int’l, supra note 135 (stating Yamashiro was held in detention for five months under restrictive conditions and without access to his family. The first and only time he was able to see his wife was on 13 March 2017 for 20 minutes, less than one week before his release).
that time, as we wrote in January, though suffering from the cold, he was forbidden even to accept the gift of a pair of socks.\textsuperscript{239}

Naha District Court imposed strict restrictions on Yamashiro after his release, forbidding him from contacting members of the Okinawa Peace Action Center and imposing a high bail for the crimes committed at seven million yen (roughly $65,000).\textsuperscript{240} Previously, Yamashiro was denied bail throughout his arrest and detention,\textsuperscript{241} and was expected to have little chance of acquittal and release.\textsuperscript{242}

Yamashiro was deemed a “prisoner of consciousness”\textsuperscript{243} by local and foreign media as international human rights advocates spread the news of his extended detainment.\textsuperscript{244} Yamashiro’s lengthy detention ended with growing pressure from international human rights organizations who petitioned for his release.\textsuperscript{245}

\textsuperscript{239} See McCormack, supra note 226.

\textsuperscript{240} See id.

\textsuperscript{241} Amnesty Int’l, supra note 135.

\textsuperscript{242} Japanese courts do not provide an arraignment trial and suspects are given limited access to a lawyer even during the interrogation process. See DANDO, supra note 121; see also discussion supra Part IV.A.

\textsuperscript{243} A “prisoner of consciousness” is a person who has been imprisoned for holding political or religious views that are not tolerated by their own government. See Jon Mitchell, Okinawa ‘Prisoner of Conscience’ to Address U.N. About Perceived Abuses, JAPAN TIMES (June 10, 2017), http://www.japantimes.co.jp/news/2017/06/10/world/crime-legal-world/okinawa-prisoner-conscience-address-u-n-perceived-abuses/.


U.N. human rights advocates called attention to the Abe administration’s questionable methods of addressing dissenting opinions by arresting and detaining Yamashiro and passing the anti-conspiracy law through legislative maneuvering rather than the ordinary political process. Taisuke Komatsu, a U.N. human rights advocate from Japan, explained, “[t]he retroactive arrests and prolonged detention were condemned by civil society as arbitrary measures to spread a chilling effect and discourage the protest movement.” Komatsu and other human rights advocates alleged Yamashiro’s detention exemplifies the unconstitutional nature of Prime Minister Abe’s anti-conspiracy bill.

National protests of Yamashiro’s detention and the anti-conspiracy law grew amid Abe’s corruption charges and media coverage speculating government surveillance and suppression would arise from Abe’s enactment of the anti-conspiracy law. Yamashiro’s arrest and detention revealed the potential for government overreach that could result from Japan’s criminal procedure and the expanded coverage of crimes under the new category of crimes covered in the anti-conspiracy law. Yamashiro’s extended detainment illustrates the loopholes in the criminal justice system Japanese law

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246 See discussion supra Part A.

247 Taisuke Komatsu is a human rights advocate from Japan currently working as the UN Advocacy Coordinator of the International Movement Against All Forms of Discrimination and Racism (“IMADR”). See generally The International Movement Against All Forms of Discrimination and Racism, http://imadr.org/; Freedom of Expression, supra note 7.

248 Freedom of Expression, supra note 7.


250 Fifield, supra note 99 (documenting corruption allegations following Abe’s wife’s role in securing a “sweetheart land deal” for an educational company running a right-wing kindergarten in Osaka that had been sending out notes about “wicked” Koreans and Chinese, followed by Abe’s alleged role in “helping to win approval for a close friend to open a veterinary school in a designated national strategic special zone”).


252 See discussion supra Part IV.A.
enforcement is able to use to arrest and detain suspects.\textsuperscript{253} Yamashiro’s detention reinforced Okinawa’s reputation as a poster-child for government suppression of freedom of speech, and peaceful assembly rights were infringed upon in the name of preserving the MCAS Futenma relocation plan at any cost.

VI. GLOBAL COUNTERTERRORISM AT THE EXPENSE OF CIVIL LIBERTIES

With Abe’s national security agenda and global counterterrorism efforts coming at the expense of civil liberties, Japan’s credibility within the U.N. is at stake. Abe’s willingness to continue hosting U.S. military bases in Okinawa Prefecture is essential to providing a security umbrella against regional threats from North Korea and China. Nevertheless, the history of the anti-conspiracy bill and recent arrest and detainment of Hiroji Yamashiro suggest that Abe went too far in protecting Japan’s national security interests and fulfilling its obligations to the United Nations. Yamashiro’s lengthy detention serves as a reminder that Japan should embrace the potential to foster meaningful dialogue with civil society groups and individuals who oppose the U.S. military bases in Okinawa Prefecture. The widespread protests to Yamashiro’s arrest and detention reinforce the position that Japan’s new anti-conspiracy laws should not be used as a basis for prosecuting naysayers of Japan’s government policies.

The current situation in Okinawa undermines the Japanese and U.S. central governments’ national security efforts through the U.S. military bases in Okinawa Prefecture. The bilateral security alliance is largely dependent upon the continued presence of U.S. military bases in Okinawa Prefecture, and, in particular, the successful relocation of MCAS Futenma to Henoko. Although there are no recorded foreign terrorist attacks taking place on Japanese soil, the growing tensions on the Korean Peninsula following North Korea’s two missile tests\textsuperscript{254} create an imminent threat that reinforce the need for the U.S. military bases in Okinawa and other parts of Japan. The symbolic nature the U.S. military pose as a sign of continued oppression at the hands of the Japanese government will continue to fuel local citizens’ protests and opposition by civil society groups. Japan can continue to protect its borders by hosting the U.S. military bases without risking accusations of unconstitutional arrest and detention of anti-base activists by exercising sound judgment in applying its new anti-conspiracy laws.

\textsuperscript{253} See discussion supra Part IV.A.

Abe’s reasons for passing the anti-conspiracy legislation include the intention to guarantee safety and protection from global terrorist networks, thereby supporting Japan’s ambitious plan to open its borders to foreign tourists to reverse economic decline. Abe’s ambitions to attract foreign visitors to Japan and to serve as host of the 2020 Olympic and Paralympic Games come with the expectation that Japan will be able to deliver on its reputation as the world’s safest country. Japanese citizens’ fears of terrorism continue to grow following IS terrorist attacks in densely populated urban cities such as London and Paris,255 rising regional tensions with Russia and China, and abductions by North Korea.256 Abe believed these fears legitimized the need to create a legal framework with teeth to punish terrorist acts, even at great cost to Japan’s democratic process of enacting laws.

Abe should carefully consider how quickly its reputation as a key ally to Western democracies will tarnish with the recent concerns raised by the U.N. rapporteur and U.N. human rights advocates regarding the anti-conspiracy legislation. A country with a reputation of surveilling and suppressing its citizens’ freedom of speech and peaceful assembly rights is unlikely to attract foreign visitors. Moreover, Japan’s current ambition to be the perfect host for the 2020 Olympic and Paralympic Games, as well as the 2019 World Rugby Cup, will require further legislation to implement procedural protections for innocent citizens who could be arrested under the broad scope of the new anti-conspiracy law. The Abe administration must reassure Japanese citizens that the anti-conspiracy law supports Japan’s national security efforts by guaranteeing protection from foreign terrorists, even for anti-base protestors such as Hiroji Yamashiro.


The possibility of arresting and detaining suspects for an extended period of time under the new anti-conspiracy law will provide the Japanese government with potentially limitless power to target civil society groups and individual citizens. Japanese law enforcement will be empowered by the anti-conspiracy law’s broadened criminal liability to arrest anti-base protestors who delay and prevent construction from taking place for the MCAS Futenma relocation project to Henoko. Abe’s expansion of the Japanese civil code, to include punishing individuals acting in furtherance of terrorist attacks, comes at the risk of infringing upon the civil liberties of the innocent who wish to exercise their constitutionally guaranteed rights to freedom of speech and peaceful assembly. Without appropriate procedural protections, Japanese law enforcement will have even broader authority to arrest and prosecute anti-military base protestors under the anti-conspiracy law, regardless whether the individuals’ actual ties to terrorist organizations.

There will be no true democracy in Japan until the appropriate procedural protections are added to the anti-conspiracy law to allow Japanese courts to enforce freedom of speech rights to protect anti-base activists and other citizens from exercising their constitutionally protected right to peacefully express dissent toward government’s actions. Japan’s recently passed anti-conspiracy laws and the illegal detention of anti-base activists in Okinawa Prefecture are incompatible with international human rights norms and democracy. Japan must redeem itself in the eyes of U.N. human rights advocates as a true defender of civil liberties in order to truly fulfill its obligations as a UNCTOC signatory state.

VII. CONCLUSION: SECURITY AT WHAT COST? JAPAN’S TRUE DEMOCRACY IS CONTINGENT UPON PRESERVING FREEDOM OF SPEECH AND PEACEFUL ASSEMBLY RIGHTS

Japan’s Act on Punishment of the Preparation of Acts of Terrorism and Other Organized Crimes [Tero tou Jyunbi-zai Shobatsu Hou テロ等準備罪について] is an unprecedented law that expands the Japanese Penal Code with a new category of crime that enables the punishment of conspiracy activities. In enacting the anti-conspiracy legislation, Prime Minister Shinzo Abe paid the ultimate price to join the United Nation’s global counterterrorism efforts. The anti-conspiracy law broadly expanded criminal liability under the Japanese Penal Code, which could potentially allow Japanese law enforcement to infringe upon constitutionally protected freedom of speech and peaceful assembly rights.

This paper uncovered the potential for the Japanese government to use the anti-conspiracy law to justify government surveillance and suppression, in the absence of sufficient procedural protections. Abe’s anti-conspiracy law was enacted to fulfill Japan’s obligations as a signatory state to the 2000 U.N. Convention against Transnational Organized Crime (“UNCTOC”), as Japan opens its borders to attract foreign tourists and prepares to host the 2020 Olympics. However, the recent arrest and
detention of Hiroji Yamashiro, an Okinawan citizen leading the anti-base protest movement at Camp Schwab in Okinawa Prefecture, exemplifies the potential for the anti-conspiracy law to extend criminal liability to civil society groups with no ties to terrorist organizations. Japan’s reputation as long-standing democratic ally of the U.S. is at risk among the U.N. and other international human rights organizations, who believe Japan’s anti-conspiracy laws are in violation of fundamental human rights.

Japan’s anti-conspiracy law sets a dangerous precedent for other Asia Pacific nations to enact similar laws that could lead to an erosion of civil liberties throughout the region, thus leading to suppression of important voices from human rights advocates that counterbalance government overreach into citizen rights.