Politics, Practice and Pacifism:
Revising Article 9 of the Japanese Constitution

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I. INTRODUCTION

Japan is undergoing a wave of reforms that are rarely seen in a leading industrialized nation. The reforms, which have been driven by international events, have dramatically impacted the re-evaluation of issues ranging from international trade to corporate governance. The financial crisis of 2007-2009, for example, has provided fertile ground for continued general reforms and for a focus on establishing more extensive regulatory and oversight protocols in the financial arena.

Domestically however, many of the reforms – primarily initiated during former Prime Minister Koizumi’s three terms – touch upon fundamental aspects of Japanese culture. Reform is changing many of the most basic aspects of daily life in Japan from banking and insurance to more complex issues such as the justice system, political party reform, and the restructuring of the Japanese legal educational system. According to Oda, a Japanese law consultant at the UK based international law firm of Herbert Smith, and professor of Japanese law at the University of London (UCL), not since the Meiji Restoration Period (1868-1910) has there been an era with such dramatic and fundamental changes in Japanese society. The political landscape continues to change. On August 30, 2009, the Liberal Democratic Party (LDP), suffered only its second electoral defeat in its history. The Democratic Party of Japan (DPJ), under current Prime Minister Yukio Hatoyama, took control of the Diet campaigning under a platform of reform by introducing an intended focus on accountability and transparency.

No current reform, however, is as fiercely debated as that of constitutional revision. Various factors discussed in this paper highlight that the Japanese Constitution is both controversial and contested. This paper will show that among Japan’s Asian neighbors, Article 9 is admired as a model for peace and as a foundation for non-military based state development. It is also despised by nationalistic Japanese policy makers who see it as an alien instrument that does not adhere to the ‘Japanese’ sense of morality and tradition. Many have stated that the present constitution overemphasizes the rights of individuals, while neglecting their duties towards the nation. The Japanese Constitution of 1947 is

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unique as a governing instrument and primary source of law. While it reiterates the rights and responsibilities of both the citizens and the state, it is unique in its renunciation of war and its aspirational language embracing peace. In terms of Japanese scholarship concerning constitutional reform, since 1947, Article 9 stands alone in regards to the sheer quantity of scholarly focus.\(^5\)

Part I examines the historical origins of this unique document, how it was formed and why. It considers how the effects of war impacted the Japanese and culminated in the embracing of pacifism. At the conclusion of World War II, the United States found the existing Meiji Constitution irreconcilable with the objectives of reforming Japan – not only militarily, but socially and economically as well. The new postwar Constitution set out to destroy Japan’s war-making potential and transform Japan into a democratic state.

Part I also considers U.S. foreign policy in the wake of World War II with emphasis on Article 9 in light of the Korean War, which threatened to change the balance of power in the East Asian region. Scholars Glenn Hook and Gaven McComack have stated that the content of the new constitution was almost immediately regretted by both Japanese nationalists (who saw it as an instrument which compromised their sovereignty) and the United States (who saw it as a restricting factor in having Japan take a more active international role during the Cold War era).\(^6\)

Further, Part I introduces the varying viewpoints that surround possible revision and the paradox of Article 9. This may be seen from two perspectives. The first pertains to the fact that the Japanese Constitution itself was drafted in English by the U.S. in a matter of days then dictated to an extremely reluctant conservative Japanese government. The results since have been a “Japonizing” of the Constitution by rendering interpretations that better suit Japanese society. This particular perspective fuels nationalistic sentiment that suggests Japan must disregard the current constitution and rewrite it stressing what they call ‘Japanese values.’

Second, the legitimacy of the Japanese Constitution may also be considered from the activities of the Self-Defense Force (SDF), which was, in essence, created by the United States in response to regional threats. When North Korea invaded the South in 1950, it caused the creation of the National Police Reserve. Their primary responsibilities were to secure the country from any possible invasion by sea. The NPR was later renamed the Self Defense Force and was essentially created in response to the US


\(^6\) Glenn D. Hook & Gaven McComack, Japan’s Contested Constitution, Documents and Analysis 13 (2001).
policy of containing the communist threat in Asia; a threat advanced by both North Korea and the then Soviet Union.

With Article 9 stating that Japan renounces war making capability and limits the use of arms to a defensive posture only, the legitimacy question directly pertains to the dramatically increased role that the SDF plays, in addition to its well funded capabilities which some argue go far beyond merely defensive capacity. Further, expanded peacekeeping and humanitarian missions have repeatedly called into question the validity of Article 9. The increased activities of the SDF and the level of sophistication of those activities raise more questions than answers. What are the actual functions and limits to SDF activities, and do they have forward projecting “war potential”? 7 In November 1965, Prime Minister Sato commented on the constitutional limits of the SDF: “The defense power is needed for self-defense of course. We would have equipment appropriate to our national power and circumstances. Thus, new conditions will always be added. Therefore it would be difficult to show where the limit is in concrete terms.” Sato’s words ultimately paralleled what author James Auer called “a period of flexible interpretation.” 8

Part II looks at the process of reform and considers first the structure of the Japanese government and the importance of various organs. Because a revision of the Japanese Constitution is unprecedented, this section focuses on how the actual reform would take place. Recently introduced legislation has moved the issue from theoretical debates to establishing the actual procedures for revision. With a 2007 bill being passed by the Japanese Parliament, there is a possibility that 2010 may be the year for a national referendum in deciding the fate of Japan’s pacifist Constitution.

Part II also considers the political consequences of constitutional reform. It looks at past Prime Ministers who challenged the near sanctity of Article 9 and how they fared politically. Revision of the Japanese Constitution could very well result in Japan’s military taking a more active role in world affairs. The subsequent result may see Japan’s military engaged in conflicts that support U.S., NATO, or United Nations objectives. Here, we weigh the potential political consequences of involving Japanese forces in ongoing conflicts that may not be entirely their own. For example, the United States’ open-ended engagements resulted in plummeting approval ratings for President Bush. This is especially so in light of the decision to send an additional 21,500 troops to Iraq in 2007. 9 When Prime Minister Koizumi sent SDF troops in support

7 Maki, supra note 4, at 101.


9 Tens of Thousands Demand U.S. Get Out of Iraq, REUTERS, Jan. 28, 2007,
of various UN peacekeeping missions, there was divided support even though the roles of the SDF were limited to primarily logistic support and, for the most part, they were out of harm’s way. The Obama Administration however, in confronting multiple global fronts, such as nuclear proliferation, Afghanistan, and maintaining a balance in the Asia Pacific region for example, is likely to continue calling for a more involved Japan. Rear positions of relative safety however, are an increasingly difficult objective to secure – A reality that confronts Tokyo as it weighs answering America’s calls while seeking to move to a more visible international level.

In this section, the factors that both drive and hinder reform are also considered. Issues such as ultra-nationalism, Japan’s security alliance with the United States coupled with a fear of U.S. disengagement in the region; provocations by China and North Korea, are examples of factors that encourage revision. This section also considers factors that hinder reforms. The reaction of Japan’s neighbors and a reliance on informal approaches to concrete legal issues (which tend to negate the need for revision) are a few of the most prominent factors. The lack of judicial leadership is also a significant factor hindering reform. Further, this section will demonstrate that in several key cases Japanese courts have shed no light on the question of the constitutionality of Article 9. Though certainly empowered to do so, the courts have refused to rule, instead upholding the obscurity that surrounds the validity of the SDF. This policy of avoiding a ruling on the constitutional legitimacy of the SDF has perpetuated the common practice of manipulating Article 9 to meet the ‘objectives of the day,’ hindering constitutional reform.

The current socio-economic climate may also hinder Article 9 reform. The current financial crisis acts as an inhibitor in that it focuses political resources on resuscitating an economy that, even prior to the crisis, had been experiencing a decade long recession. Debates concerning economic recovery take precedence over constitutional reform, a fact not lost on politicians.

The paper will conclude by suggesting the probable outcome of this debate from a political perspective. What will the Japanese government likely do, and why? The conclusion of this article will discuss the impacts that revisions will have, both internationally, and just as relevant, domestically. The revision of Article 9 need not be met with fear and distrust by Japan’s neighbors, as it is likely that Japan will establish itself as a leading proponent for peace.

Part I

II. THE HISTORICAL ORIGINS OF ARTICLE 9

Article 9. (1) Aspiring sincerely to an international peace
based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as a means of settling international disputes.

(2) In order to accomplish the aim of the preceding paragraph, land, sea, and air forces as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

The origin of Japan’s modern constitution and Article 9 may be traced to the social and political overtones brought about during Japan’s Meiji Restoration (1868-1910), which followed the fall of the Tokugawa regime. Additionally, the embracing of the pacifist wording surrounding Article 9 may also be traced to the psychological impact of a failed quest for territory and resources during Japan’s Pacific Campaign.

It was during the Restoration that Japan began its aggressive and quick modernization and westernization under the slogan “Enrich the country and strengthen the army.”\(^{10}\) The Meiji period, with its new constitution, created a monarchy recognizing the Emperor as a deity, reflecting the influence of the *Nihon Shoki* and the idea of divine creation and rule.\(^{11}\) An argument may be made that instilling within the population the idea of such divine origins manifested itself by giving way to the ultranationalistic attitudes so commonly attributed to Japan during that era.

Aizawa Yasushi (1783-1863), a popular nationalistic writer during that period stated: “Japan is by its very nature the chief country of the earth, providing law and order for all lands…. Japan is the source from which the sun rises…the acceding of the heavenly Sun Succession to its Throne generation after generation being changeless throughout eternity…” These thoughts were interwoven into every aspect of Japan’s objective of modernizing its industry and society using Western models.

The objectives of the Meiji Restoration were not to Westernize simply because the oligarchies had deemed in any significant way that the West was normatively correct. Rather, the Meiji Restoration, its constitution and the subsequent modernization of Japan via western laws, culture, and ideologies, was intended not to incorporate the West, as is popularly believed, but to overcome it. It was the lingering fear of becoming consumed and colonized by the West that motivated Japan to modernize, not recognition that Western society was superior. Many commentators cite this period of unprecedented industrial growth as setting the nationalistic seeds that would ultimately lead to the War in the Pacific. In this sense, the Meiji Restoration was the actual first step

\(^{10}\) ODA, *supra* note 3, at 31.

\(^{11}\) The *Nihon Shoki*, (Chronicles of Japan) pertains to the mystical origins of the islands by the brother and sister deities Izanagi and Izanami.
towards the Pacific War. Further, when the Meiji leaders created their constitution it was primarily to win Western recognition of Japan as a modern state, worthy of their respect, and thereby to gain a revision of the unequal treaties that Western nations had forced on the previous Tokugawa government. “The unequal treaties of the nineteenth century became a primary motivating force for the Japanese government to modernize in order to re-establish the sovereignty it had enjoyed for more than 2,000 years.” The Japanese correctly realized that Japan had to adopt a constitution to persuade the western powers to regard Japan as an equal.

The aggressive industrialization during the Restoration manifested itself outwardly as Japan embarked on a campaign for resources. When the United States responded with a policy of containment, it only increased Japan’s commitment to taking critical resources like oil and metals from its Pacific neighbors. The first step however, was to neutralize American forces in the Pacific – beginning with the attack on Pearl Harbor.

A. The Realities of War

The devastation wrought upon America at Pearl Harbor and the sweeping, virtually unchecked victories across the Pacific initially cost Japan little in terms of lives lost. At Pearl Harbor, the Japanese sank or destroyed 18 ships, 161 planes and took the lives of 2,400 U.S. Americans. Japan had lost only 29 planes over Oahu and had lost under 100 soldiers. Immediately following the attack on Pearl Harbor and the crippling of the U.S. Pacific fleet, Japanese Imperial Forces swept through Asia. By 1942 Japan extended its holdings with occupations of Manila, British North Borneo, Java and Burma. The victories reinforced the idea that Japan’s destiny was to dominate Asia and fueled dreams of extending that domination by neutralizing the U.S., whom they were certain would capitulate under Japan’s military might.

The realities of war fully unfolded upon the Japanese when America turned its attention to the Pacific after securing Europe. As America focused more on the Pacific theater, the tide turned against Japan. As their losses mounted, the Japanese idea of continued imperialism started to slip away. The realities of war culminated on August 6, 1945,
when the atomic bomb was dropped on Hiroshima. 66,000 people were immediately killed. 39,000 people were killed three days later when a second bomb was dropped on Nagasaki. The devastation was enormous and beyond anything that the Japanese could have ever imagined.

The atomic explosion almost completely destroyed Hiroshima's identity as a city. Over a fourth of the population was killed in one stroke and an additional fourth seriously injured, so that even if there had been no damage to structures and installations the normal city life would still have been completely shattered. Nearly everything was heavily damaged up to a radius of three miles from the blast.

Nagasaki was a smaller city yet the actual damage was more extensive than Hiroshima. “Total destruction spread over an area of about three square miles. Over a third of the 50,000 buildings in the target area of Nagasaki were destroyed or seriously damaged. The complete destruction of the huge steel works and the torpedo plant was especially impressive… the badly burned area extended for three miles in length.” On August 14, 1945, the Japanese surrendered. The state-sponsored nationalism, which had fueled militarism and the early dreams of America suing for peace, were left onboard the USS Missouri when on September 2, 1945, Japan signed the formal Instrument of Surrender.

The experience of a war brought to the shores of Japan left nothing to the imagination. The numbers alone were staggering. “Between 1937 and the end of the war, approximately 2.3 million Japanese died, and over 4.5 million were wounded in battle. Ninety cities were bombed, 20 of which were more than half destroyed. Over 800,000 non-combatants were killed or wounded. Two-and-a-half million houses were totally or partially destroyed, leaving millions of people homeless and without any possessions.”

The emotional impact of war, however, was the most far-reaching factor. After their surrender a large portion of the population was starving; supplies were scarce, and basic human needs went largely unmet.

During the war years, first the best rice and then almost all rice was shipped overseas to the soldiers, leaving many civilians foraging for food. Some ate rats, grass soup and

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18 Id.
19 Id.
insects. Of all scarcities during the period immediately following defeat, food was the most desperate.... Hunger was one of the commonest (and longest remembered) experiences of the Japanese people during the war years and in the period immediately following. Hunger transformed the Japanese into a “nation of barterers and grovelers.” The elemental task of finding food and shelter--was what mattered. The winter of 1945 and 1946 was an excruciating, soul-searing experience, and even today Japanese who remember accompany their accounts of it with shudders and grimaces of remembered pain.21

The aftermath of the war left the Japanese destroyed and demoralized. Deceived by their government and brought headlong into a war that simply could not have been won, all that remained in the aftermath of imperialism were ashes and ruins. The deprivation that followed their surrender made security the most valued ideal. From that need for security there formed four ‘never again resolves’:

To never again resort to military means to accomplish goals
To never again have their homeland experience bombings
To never again allow military leaders to veto public policy
To never again underestimate the importance of superior technology 22

During The Occupation the U.S. policy objectives were to transform Japan into a democratic state while destroying its ability to wage war. MacArthur, addressing members of the Allied Council for Japan, April 3, 1946:

Dispositions have been taken to eliminate for all time the authority and influence of those who misled the people of Japan into embarking on world conquest, and to establish in Japan a new order of peace, security, and justice; to secure for the Japanese people freedom of speech, religion and thought, and respect for the fundamental human rights; to remove all obstacles to the strengthening of democratic tendencies among the Japanese people; and readjust the Japanese industrial economy to produce for the Japanese

21 Id.

people after reparations an equitable standard of life.  

Pursuant to those ideals the existing Meiji Constitution fell under scrutiny and was found irreconcilable with the political realities of postwar Japan. Factors considered were:

1. The change of the Emperor's position under the impact of the Occupation;
2. The postulate of a truly representative government; and
3. The emphasis of the Potsdam Declaration upon fundamental human rights, which under the old Constitution were granted to the people only within the limits of law.

These factors, among others, had significant impacts on the incorporation of Article 9's language. Perhaps the strongest influence was the American desire to create within Japan a legal structure supporting pacifism while eliminating ultra-nationalistic sentiments. An additional factor grew from the frustration of the U.S. Allied Command over Japan's inability to produce a constitution which reflected America's post-war Japanese policy.

The 1947 Japanese Constitution is based on three primary principles as prescribed by MacArthur in the Potsdam Declaration (1945): Popular sovereignty, pacifism, and human rights. No other provision however, has received more attention than Article 9. Ongoing debates concerning the constitutional limits of self-defense power and the preservation of pacifist wording continue. That pacifism however, was not a naturally occurring phenomenon.

Japanese pacifism, as embodied in Article 9, was the product of negotiations between the U.S. occupation forces and the Japanese government. MacArthur...had two goals for Japan before the occupation would end. First, he wanted to eliminate any chance of future Japanese militarism through disarmament and demilitarization. Second, he wanted to establish a democratic system of government to extinguish the feudalistic aspects of Japanese society that the United States perceived as being responsible for...

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26 HIROYOKI HATA & GO NAKAGAWA, CONSTITUTIONAL LAW OF JAPAN 18-21 (1997).
Japanese militarism.\footnote{27}

In conclusion, the origin and purpose of Article 9 may be traced to the Meiji Restoration period (which established the foundation of a mindset bent on imperialistic expansion). Utter defeat ended such imperialistic ideals, and the devastation of war, both on a physical level but more importantly, from a psychological perspective, resulted in the collective emotions embracing pacifism. Belligerency and a sense of ‘manifest destiny’ gave way to a commitment by the Japanese people to preserving peace and remaining out of harms’ way. In many ways, Japan became once again closed as the collective consciousness reflected on the turmoil of the preceding years, in a sense disengaging itself from international political issues. However, Japan became more open as ‘conquest’ was sought in other arenas such as manufacturing and trade.

A portion of the population and particularly policy makers have, in the past, frequently used the mantra of “pacifism” as a political tool and as a shield to prevent Japan from shouldering its share of its global responsibility. There are, however, vast numbers of the general population and policy makers who have genuinely internalized the ideals of Article 9 and take great pride in what it stands for. Many people cite it as the single most determining factor that has kept Japan peaceful.\footnote{28} According to Yohei Kono, former speaker of the House of Representatives under the LDP: "Under the constitution, troops from our country have never stolen the life of a single person in any other country. This path of peace is an achievement we can be proud of."\footnote{29}

III. U.S. FOREIGN POLICY IN ASIA AFTER WWII

A. The Soviet Union, China, and the Cold War

Much of America’s postwar foreign policy concerning Japan arose from conflict with the Soviet Union both during and immediately after WWII. In spite of a US $11 billion dollar lend-lease equipment arrangement, Russian suspicions grew over America’s reluctance to open a new front in Western Europe. Aggravating this were disagreements over the postwar division of Eastern Europe. The end of the war and the devastation they had endured shaped Soviet foreign policy. Goals of reparations and Germany’s disarming were especially driven by the need


for Russian security and Stalin’s drive for personal power and control. The Potsdam Conference in 1945 epitomized the developing polarization between the US and the Soviets by dividing Germany along political and economic lines.

America, fearful of a communist advancement, created capitalistic international institutions heavily influenced or controlled by the United States. Bretton Woods represented the establishment of institutional structures (the IMF and World Bank), to ensure global stability under an American doctrine promoting economic trade and control. By 1947 the Truman Doctrine was firmly entrenched in American policy towards Russia, supporting a halt to communist expansion in Europe and elsewhere.

Churchill’s ‘Iron Curtain’ speech a year earlier in Fulton, Missouri instigated a psychology of fear which permeated every facet of America’s dealings with the Soviet Union. ‘Containment’ became a driving force in Washington, dividing the world into two spheres. The formation of NATO itself and its grandiose scheme of promoting peace and tranquility was, in actuality, yet another tool of containment encouraging Europe to not only depend on America for its protection, but to adopt its democratic visions. The exclusion of the Soviets from the Marshall Plan exaggerated Moscow’s feeling of isolation and being essentially surrounded by the ‘evils’ of capitalism. It was clear however, that the economic gains of the Marshall Plan could not compromise Soviet ideologies “…the USSR would regard the plan as an attempt to lure Soviet satellites into the Western camp, and consequently, find unacceptable its conditions and its inherent potential to spread capitalist contagion to command economies.” The 1950 National Security Council Policy Paper Number 68 (NSC-68) solidified, and in a sense institutionalized, the polarization and containment of the Soviet Union.

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34 James A. Nathan & Oliver, United States Foreign Policy and World Order 78 (1989); see also Declassified document: http://www.trumanlibrary.org/whistlestop/study_collections/korea/large/week2/nsc68_10.htm (last visited Nov. 18, 2009).
American foreign policy in Asia continued to be determined by confrontation with the Soviet Union which manifested itself on a number of levels. In China it was seen through conflict between communist Mao Ze-dong and the Nationalist Chinese regime of Chiang Kai-shek, and the ensuing US attempt to preventing a communist China sympathetic to Soviet ideologies and influence. In the Middle East it was seen in Iran for oil; Turkey, for the control of Dardanelles Straits; Greece, through civil war.  

During this period of increasingly complex state relations, America’s lack of diplomatic expertise disallowed successful negotiations with the Soviets on virtually any topic. Utilizing a strategy of selective engagement, the U.S. became consumed with the Soviet “challenge” which supposedly weighed on the very essence of American freedom and liberties. Thus, American policy was one driven by crisis management rather than by negotiations.

America’s relationship with Soviet Russia after 1945 certainly reflected this situation…policymakers became increasingly preoccupied with specific issues as they arose in a determined effort to win (or at least to avoid losing) each and every confrontation with Moscow. The result was an obscuring of long-range planning by the country as successive administrations got bogged down in successive overlays of response to the exigencies of incessant crisis.

Japan’s strategic importance was noticed more as each international event unfolded. A 1947 report by the US Joint Chiefs of Staff ranked Japan as 13th in regards to its strategic significance. Events in Asia substantially altered Japan’s importance. The fall of Chiang Kai-shek to Mao Tse-tung in China represented a geopolitical shift that dramatically impacted the balance of power in the region. Communism had won in China, bolstering the Soviets’ position. The signing of an agreement between Stalin and Mao solidified America’s worst communist fears. The polarization was further aggravated when Eisenhower signed the Taiwan Straits Resolution, which clearly signaled to China the seriousness of the U.S. to use military force to support Chiang who had fled to Taiwan.

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38 DOBSON & MARSH, supra note 33.

39 For details concerning the Taiwan crisis, http://www.coldwar.org/articles/50s/taiwan_crisis.asp (last visited Apr. 11, 2010).
As the Soviet Union dominated in Eastern Europe and communism became firmly entrenched in China, the role of Japan took on changing dynamics. Its strategic importance continued to rise as America intensified its communist containment strategies. Japan ultimately became America’s most valuable asset; with Washington being concerned that slow post-war recovery in Japan would cause the Japanese to turn to the Soviets in search of markets and thus becoming ensnared within the communist ideology.  

During the later part of the Occupation there was a decisive shift in U.S. policy that intended to utilize Japan as a defense against a communist expansion. Washington’s initial push for reforms in Japan via a new constitution and new government structures gave way to economic development in the face of a competing ideology. Washington’s revised policies recognized that only by economically reviving Japan’s industry and properly integrating them into the world economy could Japan be developed into a firm anti-communist ally. As U.S. economic funding poured into Japan, there was the additional question of Japan’s rearmament. Yoshida Shigeru (Prime Minister, 1946-1954) argued against rearming and subtly directed Washington’s attention toward the benefits of an economically viable Japan.

As Cold War boundaries were drawn, the United States pressed Japan to rearm. In what is widely considered Yoshida’s most determined move, he resisted this pressure from Washington. If Japan didn’t dedicate itself to economic revitalization, he explained, then the growing Communist movement would feed on popular frustration with the slow recovery and could threaten reforms. Gradually, the United States came to believe that a prosperous, unarmed Japan was in American national interest.

Yoshida’s interest was focused on Japan’s economic recovery and securing American guarantees of security. The latter culminated in a series of treaties and agreements extending America’s security umbrella and established Japan’s military dependency upon the United States. Though Japan had by now proven its strategic value, the U.S., in pursuit of containment via the Truman Doctrine, initiated bilateral agreements with several other countries including the Philippines, South Korea, Thailand, South Vietnam, and Taiwan.

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41 Paul Bailey, Post-War Japan 1945 to the Present 52-64 (1996).

42 Hougen, supra note 20.

43 Leffler, supra note 40, at 115-116.

44 Takashi Inoguchi, Japan’s Foreign Policy in an Era of Global Chance
In spite of Yoshida’s focus on economic development, the shift toward rearmament was inevitable in light of America's insecurity and increasing tension with the Soviet Union. The changing political and military environment in Asia called upon Japan to assume a role which conflicted with its newly instituted constitution. Ideological confrontation between the super powers continued to be played out throughout the world. When North Korea invaded South Korea, America considered it an act of war that threatened its interest in Asia.

B. Korea: Ideological showdown at the Thirty-eighth Parallel

In spite of its ideological division and prior to the North crossing the Thirty-eighth Parallel, the U.S. was somewhat ambivalent regarding the strategic value of Korea. Certainly in regards to U.S. interest, Washington considered Korea to be an unwise investment compared to Taiwan. However, North Korea’s aggression added yet another dimension to U.S. foreign policy – the Truman Doctrine was extended to include South Korea.

Quite paradoxically, the impetus of the Article 9 debate has its origins in the Korean War, which changed the balance of power in the region. Scholars Percy Luney, Jr. and Kazuyuki Takahashi stated, “It was war that fathered constitutional pacifism in Japan, and it was war that began its erosion.” When North Korea invaded South Korea in 1950, it was clear that the South could survive the communist onslaught only with significant U.S. military aid. The Occupational force in Japan was deployed, though they were ill equipped in terms of numbers and equipment to conduct such an operation. As a light infantry force, they sustained heavy casualties in Korea. To fill the void left behind in Japan, MacArthur ordered the Japanese to create the 75,000 National Police Reserve, which grew almost immediately. The NPR was meant to enforce the new Japanese laws and secure the country from possible invasion by sea. Outfitted with advanced U.S. military hardware and subsequently renamed the Self-Defense Force – this defense division was in actuality created as part of the larger U.S policy confronting the perceived communist threat presented by the then Soviet Union and North Korea.

In conclusion, while the original U.S. initiative was focused on the disarmament of Japan, the policy shifted to an ever-increasing buildup of Japan’s military capabilities. The buildup was justified by the rhetoric that a stronger Japan would be less prone to sway towards communist


Because of its geographically vulnerable location, the shift in policy called on the U.S. to supply Japan with significant financial, technological, and military assistance. The policy would further shift in the future to reflect a more pragmatic issue – economics. Simply stated, the buildup of the SDF would come to later reduce U.S. involvement in Japan’s security and, consequently, reduce the drain on the U.S. military and economic resources.\footnote{Id. at 43.}

IV. THE PARADOX OF ARTICLE 9

The paradox of Article 9 is evident when comparing the aspirational language and the reality of Japan’s military forces. The divergence originated at the onset of the Korean War, and grew dramatically during the Cold War as the SDF continued to evolve in terms of capabilities and numbers. The rapid growth soon made plain that Article 9 is irreconcilable in its present form with the realities of today.

Article 9 (2) states in part “...land, sea, and air forces as well as other war potential, will never be maintained.” Japan currently maintains land forces that number approximately 160,000 troops.\footnote{Japan Ground Self Defense Force, http://www.globalsecurity.org/military/world/japan/jgsdf.htm (last visited Apr. 10, 2010).} This force utilizes a large number of technically superior tanks, personnel carriers, mechanized artillery hardware, missiles, and avionics, most which were supplied by the United States.\footnote{Japan Ground Forces, http://www.globalsecurity.org/military/world/japan/ground.htm (last visited Apr. 10, 2010).} The Japan Maritime Self-Defense Force, (JMSDF) number some 42,600 members and control advanced submarines, warships, combat aircrafts and armed helicopters, and a variety of smaller combat or support vessels.\footnote{Japan, Center for Defense Information, http://www.cdi.org/issues/Asia/japanmil.html (last visited Apr. 9, 2010).} The Air Self-Defense Force (ASDF) features a force of some 45,000 personnel. They control approximately 12 fighter squadrons and utilize about 400 combat aircraft in addition to roughly 300 interceptors.\footnote{Japan Air Self Defense Force, http://www.globalsecurity.org/military/world/japan/jasdf.htm (last visited Apr. 9, 2010).}

A sophisticated fiscal program supports Japan’s military forces. It has allowed for the procurement and development of highly advanced equipment, second only to the United States in terms of its sophistication and sheer destructive capability. The Japanese Cabinet has generally approved yearly budgets slightly more than U.S. 40B.\footnote{Defense Budget, http://www.globalsecurity.org/military/world/japan/budget.htm (last visited Apr. 26, 2010).}
International Peace Research Institute (SIPRI), in noting Japan’s 2008 expenditures as U.S. 42,751B (4,785B Yen), found that no appreciable difference existed in the total amount of money spent by other leading industrialized countries such as Russia, France, the UK and Germany, none of which have Article 9 type clauses. The manufacturing capabilities for military hardware also runs counter to the spirit of Article 9, with many of the top 100 arms-producing companies in the world being Japanese companies. Within Japan itself there are several companies that have taken the lead in military production. For example, Mitsubishi Heavy Industries typically derives a significant part of its sales through its military shipbuilding and oceanic development divisions. In regard to market share, Mitsubishi Heavy Industries controls approximately 22 percent of Japan’s weapon business; Kawasaki Heavy industries 12 percent; and Mitsubishi Electric, roughly 7 percent.

The Paradox of Article 9 and the ambiguity of the clause itself results in a lack of clearly defined key terms which therefore permit continued reinterpretation, especially when judicial direction is lacking. The incongruity of the disconnect focuses on the activities of the SDF as Japan seeks to become a more visible entity on the world stage. As Tokyo continues to seek greater international exposure, it has created a schism which has stretched the credibility of the constitution and has become problematic domestically and internationally.

The deterioration of the ideological meanings of Article 9 was precipitated by events such as the Korean War and the U.S. initiating various security agreements, starting with the Treaty of Mutual Cooperation in 1960. Deterioration progressed with the 1997 revision of

57 Auer, supra note 8.
Guidelines for Japan-U.S. Defense Cooperation, which further opened the door to Japanese rearmament as it gives Japan “primary responsibility” in key areas. The Guidelines were sufficiently ambiguous, which again further encouraged continuing constitutional reinterpretations. 60

Throughout the decades following World War II, Japan continued to expand the SDF and increased its international involvement through participation in peacekeeping missions. Such activities were made possible by the enactment of the PKO Law, which was passed after Japan was criticized for failing to participate adequately in the Gulf War. 61 The UN Peace Keeping Operation Cooperation Law (PKO Law), was an important development in that it allowed Japan to dispatch SDF personnel abroad to participate in UN-directed peacekeeping activities as long as five criteria were satisfied:

1. A cease-fire must be in effect;
2. The parties in conflict must approve Japan’s peacekeeping mission;
3. The peacekeeping operation must be neutral;
4. Japan’s units will withdraw if any of the above conditions are not met; and
5. Japanese use of weapons must be limited to the minimum necessary to prevent injury or death (An amendment after 9/11 allowed the SDF to use arms to not only protect themselves, but to also protect those under “their care” such as asylum seekers, refugees or wounded). 62

Japan has been active in a number of UN-led operations since the PKO Law was enacted. Cambodia, Zaire, (the Congo), Mozambique, Golan Heights, and Afghanistan, with the Deployment to Iraq being particularly significant in that it marked the first time since World War II

U.S.T. 1632. The treaty is a “one way obligation” in that it calls upon the United States to defend Japan, but Japan has no obligation to assist the U.S. in an attack.


61 Following the first Persian Gulf War, Japan was heavily criticized for its non-participation and accused of practicing ‘checkbook diplomacy’ due to its large financial contribution, but lack of contributing actual manpower, particularly in light of their dependency on oil from the region. But see Robert Funk, Japan’s Constitution and U.N. Obligations in the Persian Gulf War: A Case for Non-Military Participation in U.N. Enforcement Actions, 25 CORNELL INT’L L.J. 363 (1992) (asserting that Japan properly fulfilled its UN obligations within the framework of its constitution).

that Japanese troops entered a combat zone. SDF airlift operations in Iraq were extended.\footnote{Id.; Hisane Masaki, ‘Abe trumpets Iraq support ahead of US visit, ASIA TIMES, Apr. 12, 2007, http://www.atimes.com/atimes/Japan/ID12Dh01.html (last visited Nov. 18, 2009).} In 2002, the SDF was sent to Timor-Leste (formally East Timor) and helped to monitor the election process in 2007. Most recently, the DPJ cabinet approved a plan in early February 2010 to send approximately 160 SDF troops to Haiti in response to the devastating January 12, 2010 earthquake. The government approved an increase to approximately 350 SDF troops, comprised mostly of engineers and logistic support personnel. While Prime Minister Hatoyama lauded the SDFs mission in Haiti, stating, “The quake victims are waiting for your arrival…I want you to demonstrate that Japan is a country committed to saving lives.”\footnote{160 SDF troops leave for quake-hit Haiti on U.N. mission, JAPAN TODAY, Feb. 7, 2010, http://www.japantoday.com/category/national/view/160-self-defense-force-troops-leave-for-quake-hit-haiti-on-un-mission (last visited Apr. 9, 2010).} It can be argued that the aid was too insignificant to make a meaningful impact and was too far after the fact – in essence, it was a token act to validate the ‘participation’ claim when weighed against the contributions of other leading industrialized nations.

With each new peacekeeping mission Japan accepts, the constitutional question of the existence of the SDF reignites debates. While the PKO laws seemed to have temporarily dealt with that issue, arguments that many peacekeeping missions go against the black letter meaning of Article 9 are advanced. However, the actual constitutionality of the SDF may be supported if one considers doctrines under the strict adherence to international law, which, for example, state that a nation has the sovereign right of self and collective defense.\footnote{U.N. CHARTER art. 51. \footnote{KENPO [Constitution] art. 98 (Japan).} Adherence to this may be viewed through Japan’s Supremacy Clause (a clause that subjects the Japanese constitution to its international obligations which would then control).\footnote{Port, supra note 13.} As a U.N. member, a likely successful argument would assert that regardless of the limitations imposed on the SDF by Article 9, both Article 43 and 51 of the U.N circumvent it. Thus, international law becomes an influential factor that has the ability to shape domestic policy even without the ability to be coercive. It has been argued that Japan has traditionally looked abroad for tools for social change, and that it has consistently adopted and internalized international norms in shaping and growing the foundation of its domestic laws. Therefore, it is not altogether surprising that Japan has relied heavily on its U.N. obligations to justify (in part), its SDF activities and subsequent need for constitutional revision to remove SDF limitations.

Since the inception of its modern constitution, the Japanese government has undermined Article 9 by “creative interpretation.” The government justifies the SDF’s actions under a number of doctrines, reinterpreting any activity, regardless of how extensive that activity is, as being purely “defensive measures.” Takehiko Yamamoto, of Waseda University has stated; “...it seems the Japanese government believes it need only reinterpret, not change, the Constitution to justify its policy shifts.”

Hajime Funada, LDP member and director of a lower house special committee at the 2007 Yomiuri International Forum stated: “Numerous interpretations have, in effect, acted as revisions. If this goes on, I’m afraid the stability and credibility of the Constitution could be undermined.”

In conclusion, Article 9’s paradox is apparent through the actions of the SDF, which run contrary to the original black letter intent of the constitution. Regardless of the constitutional wording pertaining to defensive measures, however, the SDF has grown not only in numbers but also in terms of its capability and sophistication. Joint operations, security agreements with the U.S., and expanded peacekeeping operations have undermined the credibility of Article 9. Piotrowski, an associate with the law firm of Gardere, has argued that Article 9 ought to be amended to explicitly allow for the realities of the activities that the SDF already actively participates in. The objective, according to Piotrowski, is to bring the constitution in line with that reality; “For Japan to further increase its involvement in peacekeeping operations and humanitarian missions, to gain a permanent seat on the United Nations Security Council, and to gain first-strike capabilities, all the while either refusing to amend Article 9 or attempting to justify such changes as wholly constitutional under Article 9 threatens to undermine the significance of Article 9.”

Part II

V. ATTEMPTS AT CONSTITUTION REFORM AND THE POLITICAL FALLOUT

At the close of World War II, the U.S. dictated a constitution that recognized new individual rights, demystified the emperor, and restructured the government. It divided power into three categories: legislative, executive, and judicial power. Each power is vested in separate organs – the Diet, the Cabinet, and the Supreme Court. Article 41 provides that the Diet shall be the exclusive law-making body while Article 65 states that executive power is vested in the Cabinet, which is presided over

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68 THE JAPAN TIMES, May 7, 2005, at 3.
by a prime minister who is elected from the Diet. Article 76 states that complete judicial power reposes in the Supreme Court and in inferior courts established by law. 71

The entity most responsible for enacting changes to the Constitution, therefore, is the Diet, the legislative lawmaking organ. The Diet is comprised of an Upper and a more powerful Lower House. 72 Article 96 of the Japanese Constitution dictates that any revision requires approval by a two-thirds vote in the Diet. 73 If a vote passes that hurdle, it is then followed by a majority popular vote by the Japanese people in a referendum. The first step in the revision process is recently enacted legislation guidelines, which describe actions required to conduct the referendum. 74 In terms of Article 9 revision, the referendum put into place a three-year “consultation period,” which expires in 2010.

While constitutional amendments in Japan appear to be straightforward, past attempts to attain the necessary votes collapsed against strong Article 9 support. Attempts to oppose the pacifist ideals have had dramatic impacts on the leadership in Japan. In the wake of The Korean War and the signing of the Mutual Defense Assistance Agreement, Prime Minster Ichiro Hatoyama became the first reform casualty. During that period, Japan was faced with re-armament/Article 9 inconsistencies that challenged the newfound pacifism of the Japanese people. 75 Ichiro Hatoyama attempted to push through the LDP party’s agenda of constitutional revision, (one of the fundamental pillars of the party). 76 Opposition blocked the attempt and the pacifist wording of Article 9 stood. The political damage started a downward spiral, of which Hatoyama and his cabinet never recovered. 77

The signing of the 1960 Mutual Defense Assistance Agreement Revision precipitated the political downfall of Prime Minister Kishi. The signing resulted in widespread demonstrations and rioting over the idea

72 PORT & MCAINN, supra note 12, at 34.
73 Kenpō, art. 96.
76 Isao Sato, Revisionism During the Forty Years of the Constitution of Japan, 53 LAW & CONTEMP. PROBS. 97, 98 (1990).
that Japan would be committed to assisting the United States in any conflict with a communist power.\textsuperscript{78} The devastating loss of popular support followed by political isolation made Kishi another casualty of Article 9 when he was forced to resign that same year.\textsuperscript{79} Prime Minister Ikeda, who followed Kishi into office, reflected on the political realities of confronting the Article 9 question; “We do not push the constitutional revision, even if we can obtain the two-thirds majority in both Houses.”\textsuperscript{80}

The political ramifications of challenging Article 9 were also evident during the Gulf War. After the Iraqi invasion of Kuwait, Prime Minister Kaifu sought to reinterpret Article 9 to allow the SDF to take part in sanctions enforcement against Iraq. Public opposition was intense and Kaifu’s political support evaporated under the threat that the proposal could possibly draw Japan into a hostile environment for an extended period of time.\textsuperscript{81} Thus, Japan largely sat on the sidelines during times of international conflict. Japan was harshly criticized in the international community for its “checkbook diplomacy” when it offered financial assistance instead of committing troops. Tokyo was criticized for its willingness to donate large amounts of money rather than tangible support on the ground, despite the fact that Japan’s interests were also being protected by the U.S. led effort. While the indignation brought great shame upon Japan, it was not enough to initiate an immediate change in political direction. In what appeared to be a reluctant response, Japan ultimately enacted the PKO law in 1992, which allowed for U.N. participation on a periphery non-engagement level. While SDF forces would be relegated to relatively safe positions, the enactment of the PKO law was bitterly debated within the Diet.\textsuperscript{82} When Kaifu was rendered as no longer being politically viable, his successor, Kiichi Miyazawa fared no better. As Miyazawa attempted to push reform packages through, (which also touched on Article 9 revision), he was forced to step down as prime minister under a no confidence vote after his reform proposals led, in part, to the LDP losing its first elections since its inception in 1955.\textsuperscript{83

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\textsuperscript{78} \textit{Bonus to be Wisely Spent}, TIME Jan. 25, 1960, http://www.time.com/time/magazine/article/0,9171,939094-1,00.html (last visited Nov. 18, 2009).
\textsuperscript{79} Sato, supra note 76, at 99.
\textsuperscript{80} Id.
\textsuperscript{83} GARY D. ALLISON, JAPAN’S POSTWAR HISTORY 183-187 (2004).
\end{flushright}
Attempts at reform and subsequent political fallout may additionally be seen in the Koizumi administration, the last legitimate long term administration. Koizumi came to office amidst one of its most serious recessions since World War II. His focus on speaking openly about painful reforms that were needed gained him significant popular support. He aggressively pushed through the 2001 Anti-Terrorism Special Law and the 2003 Law concerning the Special Measures on Humanitarian and Reconstruction Assistance in Iraq, in spite of the political risk. In deployment of the SDF, “many Japanese considered [it] to be against the spirit, if not the letter, of the country’s pacifist Constitution.” While Koizumi held the popular support of the people in backing the U.S.-led campaign in Afghanistan, the Democratic Party opposition heavily opposed it. Critics opposed to Koizumi’s policies voiced concerns that SDF activities were a direct violation of Japan’s Constitution. Koizumi continued to support U.S. initiatives in spite of the impact such actions had on his approval ratings.


Abe, Koizumi’s successor, came to office with a clear focus and commitment to increasing the SDF’s international presence, thus making constitutional reform a top political priority.\(^{92}\) Abe’s election platform presented a hard line toward China and North Korea, which bolstered national pride and won him the popular vote.\(^{93}\) Abe’s political demise however, was due primarily to virtually unending domestic gaffes either by himself or his cabinet members.\(^{94}\) His high profile meetings with Wen Jiabao and President Bush only temporarily alleviated the downward spiral.\(^{95}\) SDF activities in Afghanistan and the attempt to stretch the constitution resulted in Abe becoming politically irrelevant in Japan’s revolving door of leadership. He was forced to resign under the guise of ‘health reasons.’ Yasuo Fukuda and Taro Aso, as Prime Ministers of Japan, may be viewed as non-reformists in their short tenures. Neither of them were willing (or politically able), to consider pushing constitutional reform issues.

The question is what is the political effect on the Prime Minister who ushers in the era of a more visible SDF, an SDF that may suffer casualties during an international deployment? While impossible to accurately gauge, the experiences of President Bush may serve as something of a model. We can examine how he fared in the American public’s eye after continued military actions pursuing ideals that have been bitterly contested in both the private and public sector.

Bush’s approval ratings fluctuated between the 50-60 percent ranges during the months following his election. Immediately after September 11, 2001, it soared to over 90 percent generated by a unified America in response to the terrorist attacks.\(^{96}\) While domestic issues remained relevant in the political arena, it has been America’s foreign policies, as seen from the U.S.’s military engagements, which have had the


most impact on his standings. The post-9/11 era saw the U.S. military engaged throughout the world in support of Bush’s “War on Terror.” Though initially supported by the American people and the global community, support eroded in the face of an open-ended military policy. Bush’s ratings declined in the aftermath of 9/11, peaked briefly during the initial Iraqi invasion, and again steadily declined, briefly peaking with the capture of Saddam Hussein. The accompanying graph shows the results of continued military engagements and the continued cost in American lives. While the U.S. is accustomed to exercising military options to defend ideals, the American public has become increasingly sensitive and unwilling to support open-ended policies which expose troops or civilians to ongoing potential dangers.

In Japan, Koizumi entered office with an approval rating above 80 percent on promises of reform, reform that he found difficult to initiate.


once in office, his efforts tempered by opposition on virtually every issue. When he sent troops to Iraq, it was only after a bitter political battle and going against critics who cited that the move violated Japan’s pacifist constitution. The extension of Iraqi troop deployment generated further debates accompanied by escalating public disapproval. Even the mere action of SDF troops training for the Iraqi deployment in Yamanashi Prefecture brought fierce opposition by locals who feared terrorists would target that area. Although the stagnation of many of his attempted domestic reform measures certainly impacted his tenure negatively, broadened SDF activities however, also exacerbated Koizumi’s declining ratings. As there has been limited Japanese exposure to new international crises, no current model exists to analyze. We can only examine resistance to revision itself and the general concerns by Japanese people over how the SDF should be engaged. The current DPJ may at some point in time advance military initiatives whereby the political tone may be weighed, but based on their current platform (which is non-specific in nature), it is unlikely that Yukio Hatoyama’s DPJ will offer any short term insight.

In conclusion, a strong argument may be made that regardless of the state of the constitution, the role of the SDF will continue to grow. The history of flexible interpretation that Japan employs enables justification of any past or future SDF activity. Even with constitutional revision however, it is likely that there will be continued resistance to SDF deployments for three main reasons. First, fear of being drawn into conflicts which the Japanese feel may not be their own but predominantly an American agenda; second, fear of undue influence by the U.S.; and third, fears that Japan may become targets of radical extremists. Political backlash will likely plummet the approval rating of the presiding prime minister, resulting in a precarious position that could shorten his or her tenure. While it may be true that the prime minister who authors the new constitution may be heralded as returning Japan to a ‘normal’ power, that elation will likely be short lived and will probably stand opposite the realities of supporting various military actions. It can be expected that regardless of the wording of a new constitution, the Japanese, who have internalized the pacifist ideal, will have little tolerance for the realities of modern engagement and the loss of life that accompanies it. Thus,

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political opponents will move quickly to voice disapproval of the prime minister responsible for placing Japan ‘at risk.’

VI. OF POLITICS, PRACTICE, AND PACIFISM: THE PUBLIC DEBATE

Yōichi Masuzoe, a Japanese politician and a former Minister of Health, Labor and Welfare from 2007 to 2009, expressed the essence of Japan’s constitutional dilemma:

…it seems clear that Japan cannot make a sufficient contribution in the international arena unless it can exercise the right to collective self-defense. But as the government adheres to the bizarre constitutional interpretation that although Japan possesses this right, it cannot exercise it, we are left with this strange situation in which we leave the task of maintaining order to other countries while limiting ourselves to building roads and the like…\(^{102}\)

In reconciling the point that Mazuzoe raises above, a revisionist “movement” started as early as the end of Occupation and became an integral part of the LDP early political objectives.\(^{103}\) The Ichiro Hatoyama administration, thus far, has taken the revision debate the farthest when the question was put to the Diet but failed to win the necessary two-thirds votes needed for constitutional amendment.\(^{104}\) While the issue of constitutional reform was thereafter always present, it temporarily took a back seat to such issues as economic development and trade. In 2000 the Diet did, however, create a constitutional research commission to examine the possibility of amendments, and, in 2005, the LDP revealed a draft revision of the Constitution.\(^{105}\) Thus, constitutional revision, and particularly the Article 9 debate, was a vital part of the LDP platform.\(^{106}\)

Military expenditures help fuel the public debate over the revision question. Going back to 1998 for example, Japan had the third largest military expenditure in raw dollars behind the United States and Russia. In


\(^{104}\) Sato, supra note 76.


per capita spending, Japan ranked fifth.\textsuperscript{107} Japan also ranked second in military spending per square mile, behind the United Kingdom.\textsuperscript{108} In terms of expenditure per soldier during the same time-frame, Japan ranked third following the United States and the UK.\textsuperscript{109} The same 1998 figures for expenditure as a percentage of GNP are also revealing. Japan was spending about 1\% of its GNP, the least of the leading countries.\textsuperscript{110} The United States was spending approximately 3\%, while Japan’s most significant threat, North Korea, was spending an incredible 26\% of its GNP on military expenditures.\textsuperscript{111} In 2003-2004, The U.S. State Department ranked Japan third in military expenditures with 1 percent of GDP, while in 2008, Japan’s expenditure reduced from 1 to 0.9 percent of GDP.\textsuperscript{112} Professor Kenneth L. Port, referring to Japan’s military expenditures and possession of technically advanced weapon systems, remarked, “…how could anyone ever come to believe that Japan is a pacifist state or that the Japanese Constitution mandates this? This might be one of the strangest geo-political disconnects in the modern era.”\textsuperscript{113} Setsu Kobayashi, a constitutional law professor at Tokyo’s Keio University, asserted that constitution revision not only should address Port’s geo-political disconnect, but should be modernized to reflect a changing socio-political climate, “the constitution should now make protecting the environment and people’s privacy mandatory, and guarantee public access to government information.”\textsuperscript{114} While sentiment for revision runs high at times, Tetsuya Takahashi of the University of Tokyo cautions that the recent political attempts at constitutional reform puts Japan at risk of returning to an ultra-nationalistic mindset.\textsuperscript{115}

Constitutional reform, while being ever-present to one degree or another as a political rallying point, has only recently re-emerged and

\textsuperscript{107} PORT & MCALINN, supra note 12, at 210-211.
\textsuperscript{108} Id. at 211.
\textsuperscript{109} Id. at 212.
\textsuperscript{110} Id.
\textsuperscript{111} Id. at 212.
regained strong momentum during the Koizumi Cabinet. Prior to Koizumi, (and it may be said after, as well), a revolving door of leadership existed within the Japanese government. The results were puppet-like prime ministers who not only relegated Japan to the periphery of the international stage, but also manifested weakness in the ability to actually form and push an agenda involving reforms. Mounting an effective attempt to revise the constitution was foreclosed because prime ministers lacked the longevity, ability, and competence to initiate ‘real’ changes.

Under Koizumi a series of reforms were initiated that were previously unheard of in Japanese leadership. Instituting domestic policies involving market-driven reforms in the banking, postal and legal systems have indeed helped to accelerate economic recovery. The IMF for example, has stated that the continued reforms of financial institutions are necessary and must be fully implemented for Japan to have positive fiscal sustainability. It is Japan’s military policies however, that have garnished the most international attention. Koizumi’s actions, without reconciling the Article 9 debate, stretched constitutional credibility. The continued question is thus: Why not change the constitution to be more in line with SDF activities? Numerous factors both support and restrain reform.

A. In Support of Reform

1. The Limits of American Resources and the Question of Commitment to Japan and the Region

“How long can the world’s biggest borrower remain the world’s biggest power?”

Lawrence H. Summers
Chief Economic Advisor; the Obama Administration

As early 2010 saw the completion of U.S. President Obama’s first year in office, the impact of the financial crisis was clearly evident on both the international and domestic U.S. government levels – trillions spent globally in bailouts and stimulus programs, a $1.565bn deficit for 2010 in the United States (which represents America’s highest debt to GDP ratio since world War II), and budget debates in the American congress featuring unprecedented, stratospherically high numbers. The budget deficit numbers themselves call into question the political will needed to make the necessary economic and policy changes to reign in a crisis which, at times, speaks to issues such as sovereign risk and the possibility of


decreased credit ratings.\textsuperscript{118} It is those unprecedented financials that make plain the questions of the potential limits of American resources and its ability to maintain its global influence.\textsuperscript{119} Thus, the threat of America’s inability to maintain hegemonic balance in Asia due to economic restraint is a factor that encourages constitutional reform debates in Tokyo. The recurring question within the Japanese Diet concerns America’s ability to sustain its commitments to Japan and the East Asian region. The potential limits of American resources may be seen in the unparalleled deficits that will greatly impact U.S. options both domestically and internationally. The economic limitations are manifested, for example, in military restraints in even the most pressing initiatives such as Afghanistan, where in spite of the recent increased troop buildup, President Obama has made it clear that the commitment is short term in nature, preferring instead to allocate resources domestically. In spite of the large troop increase in the first quarter of 2010, he has nonetheless stated; “That’s why our troop commitment in Afghanistan cannot be open-ended because the nation that I’m most interested in building is our own.”\textsuperscript{120}

Roberts and Kynaston, in their study of the early years of the Bank of England as it moved towards establishing itself as a central bank, succinctly characterized the Banks activities; “…for most of the first 120 years of the Bank’s existence the nation was either preparing for war, waging war, or seeking retrenchment after war.”\textsuperscript{121} The modern history of the United States parallels much of the same in regards to military activities. The United States is in a perpetual state of war with the distinctions being only to what degree of engagement is taken in any specific region. In the larger perspective, with military installations spread throughout the world, and ongoing engagements on a seemingly unending basis, the cost of maintaining overt hegemonic influence has become an economic burden which cannot be sustained. The increasing inability of the United States to self-fund both domestic and international initiatives support calls within Japan for constitutional revision. Many reform advocates state the need for Japan to be able to defend itself independently in light of uncertainty over America’s economic and political will to guarantee Japan’s protection.


\textsuperscript{120} \textit{Id.}

In the postwar era, the United States initiated one-sided agreements that gave the U.S. full responsibility for protecting Japan while not requiring Japan to assist the U.S. in return.\textsuperscript{122} The end of the Cold War resulted in a reduction in U.S. troops that caused insecurities in Japan as both North Korea and China increased their military capabilities during the same period. While the U.S. has sought to reassure both Japan and the larger region of America’s commitment,\textsuperscript{123} many within the Japanese political elite have openly speculated that Japan’s sovereignty is at risk by relying on a state that may not have the means to respond to an unforeseen military threat. Further, Washington’s push for Japan to shoulder its share of military responsibilities is additional evidence of a weakened U.S. economy and budget deficits causing reductions in military spending are resulting in a gradual U.S. pullout in the region. Moreover, President Obama’s focus on nuclear non-proliferation and disarmament initiatives suggests to Tokyo a lack of U.S. political will. Observers in Japan contend that Obama’s efforts to arrest nuclear use, in theory, calls into question the protection offered by the U.S. nuclear umbrella.\textsuperscript{124} In contrast to this position, however, the importance that the U.S. still places in Asia may be seen when in February 2009 Hillary Clinton, made Asia her first trip as Secretary of State in the Obama administration – a stop meant to specifically underscore the importance of U.S.-Japanese relations.\textsuperscript{125} President Obama himself, in a speech at Suntory Hall in Tokyo in November of 2009, made it explicitly clear that he supported a tighter Asian economic sphere while pledging that the U.S. will stay involved in the region.\textsuperscript{126}

\textsuperscript{122} In 1981 when Prime Minister Zenko used the term “alliance,” it fanned fear in Japan as the term appeared to suggest a degree of risk sharing that the Japanese were unwilling to shoulder. See JAPAN: A NEW KIND OF SUPERPOWER? 55-58 (CRAIG GARBY & MARY BROWN BULLOCK eds., 1979).


\textsuperscript{126} Helene Cooper & Martin Fackler, President, in Japan, Vows More Involvement in Asia, THE INT’L HERALD TRIB., Nov. 16, 2009.
In conclusion, in response to its own perceived vulnerability to regional hostilities and questions as to America’s commitment and alleged declining economic prowess, Japan has steadily undertaken expansion of its military through the elimination of Article 9 restrictions. Tokyo’s interpretation of America’s wavering economic and political posture acts as a strong factor that supports constitutional reform.

2. Security Alliances and the ongoing Reinterpretation of Article 9

Pressure from the United States for Japan to take a more active part in regional security not only touches upon direct questions of economic and political restraint, but also speaks to the reliance transformation underscored by the numerous security alliances currently in effect – alliances which, in part, often seek to dramatically increase Japan’s security contributions while maintaining America’s protective guarantee. Japan, in seeking to meet those security obligations, has routinely reinterpreted Article 9 to a degree that defies constitutional reason. This, in itself, fuels Article 9 revision to recognize the reality of Japan’s current political and military climate. The U.S. has repeatedly pointed to the need for Japan to remove constitutional restrictions which hinder Tokyo from participating in collective security arrangements.

The U.S. sees the lack of revision as a stumbling block for more meaningful and complex joint operations. “In general, Japan’s U.S.-drafted constitution remains a major obstacle to closer U.S.-Japan defense cooperation because of a prevailing constitutional interpretation of Article 9 that forbids engaging in ‘collective self-defense; that is, combat cooperation with the United States against a third country.’” The question remains however, that in the absence of a constitutional reform issue, would Japan have the socio-political will to engage in front line operations (with the associated causalities) as opposed to its customary position of rear logistical support?

The positive economic impacts that Japan experienced from both the Korean and Vietnam wars coupled with escalating U.S. military costs prompted the development of the Nixon Doctrine, which indirectly put pressure on reforms as it increasingly required Japan to contribute more to its own defense. In addition to indirect pressure to confront the constitutional reform issue, the U.S. has also repeatedly called on Japan to

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129 *Id.*

130 The Nixon Doctrine called for increased direct disengagement from Asian wars while also calling on Japan (and others) to assume more financial responsibility for their defense.
increase its spending to 3 percent of GNP as opposed to the roughly 1 percent Tokyo traditionally limits itself to.\textsuperscript{131} Auer has argued however, that a 3 percent spending level for the second largest economy in the world would be difficult to reconcile while adhering to a pacifist mantra. Auer notes that no amount of political ‘spin’ or enhanced level of flexible interpretation of the constitution could justify the maintenance of such a force.\textsuperscript{132}

U.S.-Japan relations remain the foundation of Japan’s foreign policy initiatives as it virtually guarantees Japan’s prosperity.\textsuperscript{133} Hatoyama of the DPJ, speaking to Parliament at the onset of his tenure, reiterated past Japanese prime ministers by stating that the preservation of U.S.-Japanese alliances were a critical priority and the “cornerstone” of Japanese diplomacy.\textsuperscript{134} This is, in part, reflected in the number of security alliances that are in effect, which in itself puts continued pressure on reforms as both Japan and the U.S. seek deepened military cooperation. The 1997 Guidelines for U.S.-Japan Defense Cooperation, for example, sought to redefine the security relationship by outlining responsibilities of both countries.\textsuperscript{135} Fisher has argued that the Guidelines were too open-ended, with vague wording, which in turn encouraged interpretation to meet the political needs at the time. Fisher further posited that the vagueness of the Guidelines opened the door for the SDF to participate in cooperative operations. Therefore, the Guidelines themselves are unconstitutional when weighed against the original intent and black letter wording of Article 9. He therefore concludes that the only real solution is revision. “At the very least…this amendment would explicitly legalize the existence of the SDF…the language would create the legal space for the Guidelines to be constitutional…”\textsuperscript{136} While conceding that Article 9 amendments “signal the death of pacifism,” any other alternative however, would “serve to undermine the balance achieved by the Guidelines and damage the U.S.-Japan security relationship.”\textsuperscript{137} The U.S. Japan security alliances are not only vital for Japanese prosperity, but are also seen by neighboring countries as a stabilizing factor. Tsai Lng-wen, leader of Taiwan’s opposition Democratic Progressive Party, commented on the

\begin{footnotesize}
\begin{enumerate}
\item Auer, supra note 8.
\item Onishi, supra note 92.
\item Fisher supra note 27, at 426.
\item Id.
\end{enumerate}
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divisive issues of American military bases in Okinawa in a recent visit to Tokyo stating that the U.S.-Japanese alliances were critical to regional security; “I hope the issue of marine base-wherever it is-will not adversely affect the security arrangements.” Thus, it may be argued that maintaining security alliances with the United States exerts political pressure which is a strong factor supporting constitutional reform in Japan.

3. Ultra-Nationalism

Ultra-nationalism in Japan is a strong factor that supports constitutional reform. It in itself is not, however, a modern day phenomenon, but one that has played an important part throughout history and has greatly impacted the political thought of both Japan’s elite and policy makers who shape, mold, and influence Japanese society.

Japan’s expansionist policies and search for resources immediately prior to World War II came at the heels of an aggressive period of modernization, which fueled a ultra-nationalistic mindset. The Meiji Restoration (1868-1910) saw the elevation of the emperor to that of a divine deity, the development of legal thought to counter the unequal treaties which were forced upon them by the United States, and a growth period representing the development of ultra-nationalism which had adopted an imperialistic posture. The point was driven further home to the Japanese people as they witnessed victory in war over China in 1895 to take possession of Taiwan, and in 1905 as Japan exerted itself to take Korea and Manchuria from the Russians in the Russo-Japanese War. The divine right of conquest as Japan’s manifest destiny was advanced by Japanese leaders and centered the state and the emperor as the supreme entities while demanding absolute unwavering devotion; an idea which the citizenry passionately embraced and internalized.

Viewing itself as the last bastion against American influence and alleged domination, the Japanese leadership instilled the idea in the citizenry that they were, in fact, the saviors of Asia. With that established mindset, the settlement of several million Japanese civilian colonists in China was justified, taking control of most of northeast China including Beijing, Tianjin, Shanghai, and Nanjing. In response to the subjugation of the Chinese people and the belligerence toward Japan’s neighbors, the United States cut off sales of scrap metal to Japan in an effort to force an end to the hostilities. The U.S. also later encouraged the Allied Forces to cease crude oil sales to Japan. Tokyo’s response, military in nature, temporarily neutralized the U.S. Pacific Fleet with a devastating attack on

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Pearl Harbor, which allowed Japan to take Burma, Singapore, Thailand, Guam, Malaya and Indonesia. National pride swelled under government propaganda promoting militarism and spoke to Japan’s destiny to command and lead the world. An entire nation was consumed by government initiatives supporting ultra-nationalism and military imperialism.

Japan’s ultimate defeat was swift and uncompromising. It was a defeat so complete that it temporarily shattered the ultra-nationalist mindset as the Japanese people confronted enormous devastation and loss of life. Leaving the theaters of war under the Yoshida Doctrine, Japan focused almost exclusively on rebuilding their economy and re-establishing trade with the view of first establishing basic economic stability, and ultimately economic domination and prosperity. “With defeat and occupation by Allied forces, Japan experienced a profound and dizzyingly rapid social, political, and economic decompression. The force of this decompression was channeled into economic reconstruction and found expression as a renewed hunger for prosperity and economic security.” In essence, Japan became the first true merchant state. Christian Hougen characterizes Japan’s rise as a merchant state as thus: “More than any other factor, it is Japan's choice of economics and economic measures to define not only Japanese foreign relations, but also Japan's national identity and, to a surprising degree, the identity of the Japanese people themselves.” The importance of economics and trade for the Japanese became an issue that surpassed even those of political principles. Ideological differences with trading partners had little to no bearing in regards to pursuit of mutual economic gain.

During this economic growth period, imported technology coupled with management innovations, such as those introduced by American statistician Edwards Deming, literally transformed Japan. Shifts to high-productivity manufacturing industries such as automotive and computer parts became the overriding focus. With virtually every available resource being funneled into economic growth, the numbers spoke for themselves. By the 1970’s, Japan had established itself as a legitimate economic power. While the 2009 figures are skewed due to the global

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141 The Yoshida Doctrine emphasized dependence on the U.S., while channeling every available resource into economic growth.


143 Hougen, supra note 20.


financial crisis, the strength of Japan’s economy may be seen when considering that in 2008, Japan had a GDP of 4.9 trillion US$.

Even with a -0.7 percent growth rate, Japan is still solidly the second largest market economy in the world. While that is a distinction that is in jeopardy and will soon fall as China finally closes the GDP gap, the Japanese nonetheless saw themselves “...both as leaders in the cause of peace and disarmament, and as mentors of Asia's economic development.”

Ultra-nationalism may be said to be evident by the strong coupling of the national identity and economic prowess. The reawakening of nationalism is seen in the socio-political fabric of Japan. For example, visits to the Yasukuni Shrine, which glorifies Japan’s militant past, is seen as nationalistic as it gives homage to Japanese war ‘heroes,’ some of whom are internationally viewed as some of the most violent of war criminals, committing atrocities which are among the most egregious in history. A history made more painful in that Japan’s neighbors frequently assert that Tokyo seeks to distance itself from World War II guilt rather than take responsibility for its actions. While the Aso Administration did not routinely make Yasukuni visits and the current Hatoyama administration is going so far as to re-design the shrine to remove the more contentious displays, past prime ministers such as Koizumi and Abe’s frequent visits promoted wartime nationalism under the guise of patriotism. Patriotism supported by legislation further encourages nationalism in the vulnerable youth population.

The argument is frequently asserted that the size and sophistication of the SDF is a military manifestation of the return of ultra-nationalism in Japan. “Japan's growing nationalism derives from its desire to develop a more independent foreign policy and to increase its military power; much

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147 Japan’s Economy, http://www.asianinfo.org/asianinfo/japan/economy.htm#POSTWAR%20JAPAN (last visited Apr. 9, 2010).


of the country's political elite want to see a return of a powerful Japan. Formenting nationalism among the Japanese population is a necessary development to increase support for a stronger military.” The development of a more independent foreign policy is seen by Hatoyama as taking the position that he intend to re-value security agreements for a closer, more equal arrangement, which allow for more Japanese autonomy.

A return to ultra-nationalism may also be seen through the activities of many of Japan’s political elite such as Shintaro Ishihara, coauthor of the book The Japan That Can Say No. As a widely read political figure, Ishihara has vehemently denied Japanese war atrocities and consistently reframes Japan as the “liberators” of Asia. He has gone as far as saying that the Nanjing Massacre was “…a story made up in China. It has tarnished the image of Japan, but it is a lie.” His known animosity toward foreigners, particularly Chinese and Koreans, has fueled diplomatic tensions on numerous occasions. His 2001 statement of “the Chinese live like animals” exacerbated already tense relations between the two countries. In spite of his well-known racist and discriminating rhetoric, the most alarming fact is that since 1999, with the support of the people, he has been the Governor of Tokyo.

Shintaro’s collaborator on the controversial book The Japan That Can Say No was Watanabe Soichi, a professor at Sophia University. Francis Fukuyama, a professor at Johns Hopkins University commented on Watanabe’s rhetoric; “In the course of a couple of encounters, I heard him explain in front of large public audiences how the people of Manchurua had tears in their eyes when the occupying Kwantung Army left China, so grateful were they to Japan.” Fukuyama has further stated that Watanabe, in grossly distorting history to his university students, “is the equivalent of a holocaust denier, but unlike his German counterpart, he easily draws large and sympathetic audiences. I am regularly sent books by Japanese writers that ‘explain’ how the Nanjing massacre was a big fraud.”

Blatant denials or the simple gross misrepresentation of history continue to spark allegations of Japan’s increasing ultra-nationalism. Shintaro and Watanabe have not been the only high profile figures who


153 Miller, supra note 149.


156 Id.
have denied historical acts. Former Prime Minister Abe, for example, vehemently denied the sexual imprisonment of Koreans and other Asians by the Japanese military. It was only in the face of overwhelmingly irrefutable evidence that he reluctantly admitted that the acts had occurred.\textsuperscript{157} The ultra-nationalism mindset is clearly evident in Japanese academia, which continues to be tightly controlled by the government. Serving as an additional example, Nobukatsu Fujioka, who authors textbooks that have been approved by the Japanese government has stated, "Prostitution in itself is a tragedy, but there is no evidence to indicate that the women were forced into it by the Japanese military."\textsuperscript{158} Nobukatsu’s views, which focus on elevating Japan to being beyond reproach, is particularly problematic, as he and others within Japan’s academia, are literally rewriting history.

In conclusion, the ultra-nationalism that has reawakened in Japan drives constitutional reform. From the fall of Japan during World War II, to the economic success of the second most powerful economy in the world, comes a desire to remove the constraints of Article 9. As sections of the political elite distance themselves from the activities of the past, there are calls for Japan to become a “normal state” due to its economic success.

4. Regional Fears

\textit{The Cold War Hasn’t Ended in North Asia}

David Asher, Woodrow Wilson International Center for Scholars and former Asian advisor to the State Department

Asher’s words speak to the ongoing geo-political tensions and the potential threats which Japan may visualize. This supports constitutional reform in that Article 9 may be viewed as an instrument which does not allow for adequate armament in what is perceived as a potentially hostile environment.

While arms races and isolation strategies are not as prolific today as during the original Cold War, there are specific activities that encourage calls for constitutional reform. China’s dramatic military modernization, for example, coupled with repeated hard-line statements expressing a willingness to use force to settle disputes, has threatened regional stability.\textsuperscript{159} Japan’s military development, directly or indirectly, is derived


\textsuperscript{158} Fackler, \textit{supra} note 134.

almost exclusively from its precarious relationships with its neighbors. The *Japanese National Defense Program Guideline for FY 2005 and After* highlights Tokyo’s perceived vulnerabilities when it specifically named both China and Korea as destabilizing threats to Japan and the region. The U.S., in its continuing effort to encourage Article 9 reform, cites uneasy relations between Japan and countries mentioned above as specifically necessitating ongoing joint military cooperation between Japan and the United States.

a. North Korea

Large-scale military buildups, occasional naval skirmishes with South Korea in disputed waters, and increasingly unpredictable and aggressive actions by Pyongyang strongly support calls for constitutional reform in Japan. In the above context, Article 9 is said to be a clear restraining factor inhibiting Japan’s ability to adequately respond to what it perceives as an ongoing credible North Korean threat.

The calls for lifting the restraints of Article 9 result from the continuous military buildup of North Korea. In 2004, for example, the U.S. State Department reported that approximately 25 percent of North Korea’s GDP went towards military expenditures. The result of such expenditures is a standing armed force of approximately 1.2 million, (with a 1.47 million reserve component), which would give North Korea one of the largest populations under arms. How Pyongyang has used those arms however, is a point of contention which has created regional instability. On April 6, 1996, for example, North Korea entered the Demilitarized Zone for the second time in as many days, ignoring the 1953 armistice which brought about the end of the Korean War. The push into the DMZ was a great concern to the international community for its blatant disregard for international law.

Ongoing missile testing by Pyongyang has strongly encouraged Tokyo to debate Article 9 revision. North Korean provocation is ongoing and typically well-timed with specific strategic messages. For example, on April 5, 2009, as President Obama laid out a stirring vision for the global reduction of nuclear weapons, Pyongyang later that day unsuccessfully

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161 *Comparisons of U.S. and Foreign Spending: Date from Selected Public Sources*, CRS REPORT FOR CONGRESS (RL32209), Jan. 28, 2004, at 5.


launched a three-staged Taepondong-2 missile with the objective of proving North Korea’s capability to engage in space warfare.\textsuperscript{164} North Korean test firings have become issues closely analyzed by both Japan and the United States. The 1998 North Korean claim of having launched a Taepodong-1 missile, for example, had far reaching ramifications. While questionable in terms of validity, it was nonetheless North Korea’s first legitimate attempt to test such a system, and demonstrated its intent on developing the weaponry needed to reach Japan.\textsuperscript{165} The action was particularly unsettling when in the aftermath of the test, rhetoric was given stating that Korea was acting within its sovereign rights to test its missiles and that Japan must “pay” for forty years of aggression towards Korea.\textsuperscript{166} Long-range ballistic tests in July 2006 by South Korea brought additional concerns regarding Japan’s perceived vulnerability and continued to advance the idea that Article 9 needed to be revised to allow Japan to have forward pre-emptive strike capabilities.\textsuperscript{167}

North Korea’s nuclear tests, conducted in October 2006, aggravated and heightened tensions both regionally and globally. Washington stated that North Korea is one of the world’s leading proliferators of weapons technology and called the test destabilizing to international peace and security.\textsuperscript{168} North Korea, posturing itself as a reluctant victim of a hostile geo-political environment, continues to justify its nuclear efforts. North Korean news agency K.C.N.A. recently stated, “we have no option but to strengthen our self-defense nuclear deterrent in the face of increasing nuclear threats and military provocations from hostile forces.”\textsuperscript{169} These actions, coupled with continued aggressive

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rhetoric from Pyongyang, prompted Japan to build upon its continuing joint research with the United States to develop a viable missile defense system. Missle and nuclear testing by North Korea is specifically cited as being a motivating force behind Japan’s desire to rewrite its constitution. Additional underground nuclear tests, KN-01 short range missile firings, and Rodong firings from May to July 2009 have caused Japan considerable concern. Further, in November 2009, official North Korean news agency K.C.N.A., announced that North Korea had completed processing of 8,000 fuel rods from its nuclear reactor in Yongbyon (north of Pyongyang) in its attempt to produce usable plutonium for “weaponizing.” Washington speculates that it is possible Pyongyang may be close to developing a working nuclear warhead which, when utilizing by a Taepondong 2 rocket, could theoretically be used to strike North America.

The legitimacy of a North Korean threat is subject to debate, however, with Pyongyang’s actions orientated towards forcing bilateral talks with the United States in seeking aid in return for ending its nuclear weapons programs. The U.S. in turn is willing to conduct such talks, but only as a prelude to six-party negotiations (which include China, Japan, Russia, and South Korea). There are some commentators who see Pyongyang’s actions more as strategic motions than legitimate threats. Chon Hyun-joon of the Korean Institute for National Unification stated, “it’s a typical North Korean tactic to use both dialogue and pressure, sometimes simultaneously, sometimes consecutively, to achieve its goal…Kim Jong-il’s problem is that South Korea and the United States have gotten used to the game he plays.” Tokyo, however, views North Korean actions as decidedly more than the strategic moves which Chon Hyun-joon and Washington suggest. Japan, instead interprets any Korean action as a provocative measure which threatens Japan’s very existence. While an argument may be made that the North Korean interpretations are highly political at times (akin to U.S. politicians using the much


exaggerated ‘China threat’ mantra to achieve specific political objectives), there is no question that there is genuine concern within the Japanese parliament over North Korea’s actions.

Most commentators see Pyongyang’s actions as a call for increased financial assistance – in essence, payment for a political ideology that has proven itself to be non-functional, resulting in widespread poverty, hunger, and social deprivation. The virtual sequestering of an entire nation has resulted in a population that has literally been cut off from the outside world. While North Korean leader Kim Jong-il is unpredictable, it is highly unlikely that North Korea would militarily attack Japan as the ramifications would be far reaching. Political rhetoric aside, it is essentially a battle that simply cannot be won due to the bi-lateral agreements that exist between Japan and the United States. One may suggest however, that ‘winning’ a military confrontation with America and her allies may not be the actual objective which, in itself, complicates any game theories which one may apply. If Kim Jong-il chooses to ultimately rely on the backing of Beijing, the question of unqualified Chinese support is weakened in light of China’s criticisms of Pyongyang’s nuclear ambitions because North Korean military actions are in conflict with China’s objectives and weakens Beijing’s case to become a more viable economic entity.\(^\text{175}\)

In conclusion, notwithstanding the political grandstanding within the political elite in Tokyo concerning the ‘North Korean threat,’ there are nonetheless legitimate concerns over Pyongyang’s regular testing of forward projecting weaponry. While Tokyo has joined with the United States and others in firmly endorsing increased sanctions against North Korea, the argument consistently returns to Japan being able to defend itself (which includes preemptive strike capability) and the fact that Article 9 is a restraining factor hindering the right of self defense. North Korea’s actions, therefore, act as a strong factor, which encourages constitutional reform.

b. China

Japan’s diplomatic relations with North Korea is largely defined by insecurities regarding Pyongyang’s outwardly aggressive military actions exacerbated by its recent nuclear developments. Japan’s relations with China however, while currently improving based on economic realities, deteriorated in the past based on specific bi-lateral disputes, many of which have strong historical ties. While it is likely that there will be a distinct positive change in Sino-Japanese relations, at this juncture

however, Japan’s perception of China’s military posture is a strong factor encouraging constitutional reform.

The most overt example in this case supporting constitutional revision is China’s massive military buildup and modernization along with its hard-line stand against Taiwan. Of particular concern is Beijing’s expressed willingness to use force to neutralize any bid for Taiwanese independence. Although Taiwan and China were separated during the 1949 civil war, Beijing still regards Taiwan as its own and considers any direct contact with Taipei as interference with domestic affairs. Beijing holds Japan and others as being instrumental in causing the division between Taiwan and China. 176 While Taiwan’s continuing bid for independence has weakened considerably since 2008, it still is preparing itself militarily for what Taipei sees as a possible, although not inevitable, confrontation with China. The Pentagon, however, in a recent analysis of Taiwan’s defense capabilities, found that the indigenously designed fighters were lacking in capabilities, and of the nearly 400 additional combat aircraft Taiwan possessed, “far fewer of these were operationally capable.” 177 While the U.S. does not officially support Taiwanese independence, it also does not support China’s potential use of force to compel Taiwan’s compliance. 178 Additionally, Washington (via the Taiwan Relations Act) is committed to assisting Taiwan in being able to defend itself, 179 explaining the January 29, 2010 decision by the Obama administration to sell Patriot interceptors, Harpoon missiles, and other arms in a weapons package worth more than $6bn to Taipei. 180 A sale

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which, of course, angered Beijing because it sees any arms sales to Taiwan as encouraging de jure Taiwanese independence or separatist activities.\textsuperscript{181} When confronted with the possibility of an independent Taiwan, Beijing has traditionally responded with a show of military activity. After the above Taiwanese arms sales were initially announced, China tested its first land-based missile defense system in what was meant as a signal to both Taipei and Washington.\textsuperscript{182} The trend is predictable. In 1996, for example, China launched a test-missile near Taiwan that was intended as a form of intimidation during Taiwan’s first democratic presidential elections (where much of the debate centered on Taiwanese independence).\textsuperscript{183} In response, the U.S. sent two aircraft carriers to check any potential Chinese interference.\textsuperscript{184} A 1999 U.S. arms sale to Taiwan worth $550m elicited a similar response, whereby China test-fired a Dong Feng-31 missile.\textsuperscript{185} Escalating its challenge to space, Beijing launched a test missile, which destroyed a low-orbiting satellite in 2007.\textsuperscript{186} Both the U.S. and Japan considered China’s actions a threat to the “peaceful use of outer space.” China has repeatedly expressed a willingness to use force against not only Taiwan, but any other party that intervenes in what China considers domestic issues. This is worrisome to both the U.S. and Japan.\textsuperscript{188} With regards to Taiwan, Beijing has recently stated that there are now more than


1,000 missiles aimed at Taiwan.\textsuperscript{189} Tensions regarding Taipei’s possible bid for independence have caused each country to focus on potential strike capabilities as opposed to a more defensive posture.\textsuperscript{190} China’s outwardly aggressive posture is backed by a 2007 defense increase of 17.8 percent (approximately $45 billion).\textsuperscript{191} That expansive budgetary expenditure supports one of the largest standing armed forces in the world.\textsuperscript{192} China’s large military buildup and modernization of its armed forces remains a point of concern for Japan.\textsuperscript{193} Taiwan also perceives China’s actions as equally threatening and routinely conducts war games simulating an attack by Mainland China.\textsuperscript{194} In the event of open hostilities between China and Taiwan, advocates of constitutional revision cite the ability to respond militarily in ways that Article 9 currently prohibits.

While Beijing’s increased military capability coupled with tenuous relations with a U.S.-backed Taiwan encourages Article 9 debate in Tokyo, there has also been rising anti-Japanese sentiment in China based on specific issues which Beijing cites as causing regional instability.\textsuperscript{195} The question of historical accuracy regarding sexual enslavement, for example, has strained relations.\textsuperscript{196} Beijing also takes exception to Japanese denial or downplaying of its wartime atrocities.\textsuperscript{197} Commentators have suggested

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\item People’s Liberation Army-Ground Forces/PLA Army, http://globalsecurity.org/military/world/china/pla-ground-intro.htm (last visited Oct. 9, 2009).
\item Hoadley & Ruland, supra note 123, at 98.
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that Japan had committed atrocities against the Chinese that far surpassed what the Nazis did in Germany.\footnote{PORT & MCAFARLIN, supra note 12, at 214.} Even an apology for Japanese wartime aggression by then-Prime Minister Tomiichi Murayama in 1995 did not sufficiently address the myriad issues of contention.\footnote{Prime Minister Tomiichi Murayama, On the Occasion of the 50th Anniversary of the War’s End, YOMIURI SHINBUN, Aug. 15, 1995.} China pointed to the lack of a formal written apology by the Japanese government and a mitigation of additional acts as evidence of Japan’s continued insincerity.\footnote{Abe Endorses Murayama’s War Apology, CHINA DAILY, Oct. 07, 2006, http://www.chinadaily.com.cn/china/2006-10/07/content_702556.htm (last visited Apr. 9, 2010).} The Yasukuni Shrine visits by numerous members of parliament additionally spoke to the question of sincerity while negating any possible currency that a Japanese ‘apology’ may have held.\footnote{See generally Richard Bilder, The Role of Apology in International Law and Diplomacy, 46 Va. J. Int’l L. 433 (2006); Bill Emmott, The Ambiguity of Yasukuni, THE ECONOMIST, Oct. 2005, at 15; Mari Yamaguchi, Japan Party Won’t Stop War Shrine Visits, WASH. POST, Jan. 17, 2007, http://www.washingtonpost.com/wp-dyn/content/article/2007/01/17/AR2007011700427.html (last visited Apr. 10, 2010).} Hatoyama and the DPJ, however, are attempting to reverse the impacts of former shrine visits, a move which Beijing applauds, as China has repeatedly affirmed the importance of that one issue when it plainly stated that the visits are “a major sticking point in the current difficulties facing China-Japan relations.”\footnote{Foreign Ministry Spokesman Qin Gang, Remarks after the September 2005 ruling in Koizumi’s Yasukuni Shrine visits (2005), available at http://www.fmprc.gov.cn/eng/xwfw/s2510/t214751.htm.}

Military buildups and the ongoing Taiwan question, coupled with denials of history and Japanese domestic policies, have badly deteriorated Japan-China relations. However, Japan, as the foremost example of a merchant state, and China, as an export leader, have put aside ideological differences in regard to trade and the pursuit of economic gain.\footnote{China Tops Japan Trading Partner for 2 Years, CHINA DAILY, Jan. 26, 2006, http://www.chinadaily.com.cn/english/doc/2006-01/26/content_515824.htm (last visited Nov. 22, 2009).} Nonetheless, constitutional revisionists cite to China’s increasing military capability as well as the mindset to utilize such capabilities that at least for now, acts as a factor which encourages Article 9 reform.

5. The Defense Industry

Both the international and domestic defense industries support constitutional reform and actively lobby for the revision of Article 9, which is seen as a limiting provision that makes procurement of advanced weapons systems significantly more difficult for Japan.
For the global defense industry, war – or the prospect of war – is big business. The threat of war, as asserted by defense officials, requires ever-increasingly sophisticated systems (accompanied of course, by their stratospheric price tags). In February 2010, the United States test-fired the Airborne laser Test-bed, which with its directed energy cannon mounted aboard a modified Boeing 747, successfully destroyed a boosting ballistic missile. The system, in essence a laser system akin to what one would see in a science fiction film, is still under development but has cost approximately $5 billion to bring the system to the testing stages. There are already repeated calls to fully develop the system for domestic defense and for distribution to U.S. allies.  

There is little doubt that this technology would greatly augment an already highly sophisticated U.S. arsenal. There is also little doubt that U.S. allies would scramble to purchase the technology. The laser system combines technologies from some of the most prominent manufacturers in the industry. Boeing is the prime contractor and system integrator, Northrop Grumman designed and built the highly technical laser, and Lockheed Martin manufactured the tracking and fire control systems.

The prospect of having the most advanced technology is not lost on prospective countries, particularly when the mantra of the ‘escalating threat’ is used as a sales point. In Japan, this has translated into any provocation by China or North Korea, as reason enough for the acquisition of the most sophisticated hardware regardless of the price, which is seen as a secondary consideration following any such perceived threat. Kurt Strauss, a Raytheon mission capabilities strategist, for example called North Korea’s testing of Taepodong missiles “…a real wake-up call for Japan.”  

A point pushed extensively by the defense industry who welcomes Article 9 revision which would then allow Tokyo to circumvent the inevitable constitutional debates and the traditional foot-dragging that the Japanese Diet is known for.

The potential payoff for the defense industry is nothing less than staggering. Every provocation contributed to Japan accelerating the building of its defense shield (which features the Patriot PAC-3 launchers, made by Lockheed Martin). At more than U.S. $2 million each, Japan plans on maintaining about 30 PAC-3 launchers throughout the country. With the intention of equipping the SDF with the most advanced hardware,

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205 Weinberg & Minami, supra note 56.

206 See generally Mure Dickie, Japan’s Leaders Show Tendency to Dither Over Big Decisions, THE FIN. TIMES, Nov. 23, 2009 (providing an example of Parliamentary indecisions regarding pressing military dilemmas).

207 Yamaguchi, supra note 170.
Japan has also shown a desire to acquire Lockheed Martin’s next-generation F-35 aircraft as its mainstay fighter jet.208

In addition to Lockheed Martin, Raytheon is also a clear winner benefiting from escalating Japanese insecurities. Raytheon supplies Japan with the highly advanced SM-3 missile and ground-based radar systems worth approximately US $1.6 billion.209 In its effort to not solely rely on imported U.S. technology, bilateral agreements featuring domestic conglomerates such as Mitsubishi Heavy Industries are but two firms profiting from the alleged potential threats by North Korea and China. Mitsubishi Heavy Industries is the maker of Japan’s Aegis-class destroyer, and is currently Japan’s largest weapons producer.210

In conclusion, the defense industry in both the United States and Japan support Article 9 revision in that it will legally establish the SDF as a military force and thus allow Tokyo the ability to acquire the most advanced hardware that is available without the constitutional debates to determine whether it violates Article 9. Thus, the encouragement from military contractors both domestically and internationally calls for Japan to increase its military posture and continues to put indirect pressure to amend the constitution and have the restraints of Article 9 lifted.

B. What Hinders Reform

1. Current Economic Realities

The fall of Japan Airlines has served as yet another reminder that during the current financial crisis inefficiently run corporations are extremely vulnerable to failure, as Delta Airlines and General Motors had previously shown.211 The impact of the current financial crises and the realities of Japan’s economy are factors which act as a strong inhibitor for constitutional reform, although the crises themselves have also acted as a strong driver of wider continuing economic and governance oversight reforms. The current economic situation is a factor inhibiting reform in that economic survival has taken precedent over virtually every other issue save an overt military threat or natural disaster. The idea to debate Article 9 is not seen as a particularly pressing issue, as demonstrated by the domestic priorities set by the Hatoyama administration.212


209 Weinberg & Minami, supra note 56.

210 Id.


212 Hatoyama Tells Parliament His Priorities, THE INT’L HERALD TRIB., Oct. 27,
Japan, as the first true merchant state, still strongly identifies with economic prowess – an economic prowess that has eroded over the last decade and been replaced by a state saddled with inordinate debt that strangles its global standing and influence.\(^{213}\) As mentioned previously, the Diet is slow to respond to not only military dilemmas, but also to institute economic or fiscal policy changes.\(^{214}\) The situation is further exacerbated by the looming specter of China and the reality that Beijing is finally overtaking Japan in terms of GDP.\(^{215}\) A focus away from the controversial topic of Article 9 reform and towards that of economic viability is necessitated by the changing parameters of economic power in Asia. In closing, the current financial crises and general economic climate within Japan acts as a strong inhibitor of Article 9 reform in that it has largely directed attention and political resources towards issues of economic survival.

2. Fear of a Re-armed Japan

Many neighboring states see Japan’s efforts to revise Article 9 as being threatening and destabilizing to regional security – the likely results being an Asian arms race with several countries vying to establish regional hegemonic position. The fear of a re-armed Japan is a factor that currently inhibits constitutional reform.

Japan’s neighboring states, particularly those who have suffered under past Japanese aggression, are especially sensitive to any changes that speak to the constitution’s revision. Many feel the Japanese Constitution has been the foundation of Japanese pacifism and cooperative action; in essence, a document that has ‘kept the peace’ in the region. Changes even to name, or to structures within the Japanese military community, have come under strict scrutiny.\(^{216}\) Even among Tokyo’s Asian allies there is concern over a re-armed Japan. Commentators in South Korea, for example, have voiced the view that the rising nationalist movement within the political elite can easily control the Diet, dictating a revisionist agenda.\(^{217}\)


\(^{217}\) Jan-geum Choi, *Search for Identity in Japan’s Politics: Development of*
Japan faces the dilemma of establishing itself as a “normal state” yet is faced with suspicions by its Asian neighbors who are sensitive to the impact that a re-armed Japan may pose to the regional balance of power. While the relative transparency of the revision process may alleviate regional fears, to some degree, Article 9 revision may nonetheless be interpreted as a rebirth of the ultra-nationalist mindset which dominated Tokyo during World War II. With regional neighbors continuing to voice concern over a rearmed Japan, a politically slow moving Tokyo, reluctant to attract criticism in this area, will embrace a cautious attitude, which will act as something of an inhibitor of Article 9 revision.

3. Judicial Indecision

Judicial paralysis and a lack of genuine leadership from the bench have become significant factors contributing to the lack of constitutional reform in Japan. As the Japanese courts continue to sidestep the most relevant legal questions, maintenance of the status quo will continue to directly encourage the flexible interpretation that has historically plagued revisionist agendas. The maintenance of the status quo is seen when the court specifically reverts to a ‘political question’ posture, while carefully applying the use of judicial review. This is evidenced by the holding in the Sunakawa case where the court declined to rule on the legitimacy of the SDF, but at the same time acknowledged the right to self defense. The Sunakawa Case set the precedent for refusing to rule and introduced the process of perpetuating the legal obscurity that surrounds the validity of the SDF and Article 9.

The “doctrine of avoidance” that the Sunakawa Case established was later seen in the Eniwa Case. The facts of the case are thus: Two dairy farmers in Hokkaido argued that nearby SDF training area produced noise which reduced their cows milk production and that the SDF itself was unconstitutional. The farmers, in defending their livelihood, cut telephone wires in the SDF area. The brothers were acquitted of charges that their actions constituted destruction of “defense facilities and equipment” in violation of SDF law. The Court held that the brothers were not guilty under SDF law itself and therefore the court sidestepped the more relevant

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218 Herbert F. Bolz, Judicial Review in Japan: The Strategy of Restraint, HASTINGS INT’L & COMP. L. REV. 87 (1980); Marbury v. Madison, 5 U.S. 137 (1803) was a landmark case that established the doctrine of judicial review in American jurisprudence giving the courts the ability to invalidate decisions based on its interpretation of the Constitution. Since Marbury, U.S. courts engage in active or restrained review. Brown (Brown v Board of Education of Topeka, Kansas, 347 U.S. 483 (1954)), and Baker (Baker v. Carr, 369 U.S. 186 (1962)), are examples of review based on different standards.

219 Japan v. Sakata et al. (1959), 13 Keishu 13, 3225 (Japan, Sup. Ct.).
question by not being called upon to make a decision as to the constitutionality of the SDF’s existence. 220

Perhaps the most high-profile Article 9 cases which gave the opportunity for judicial clarification were the Naganuma series of cases. The first Naganuma case had the aura of a final definitive judicial decision. The facts of the case concerned the transfer of forest reserve land, again in Hokkaido, to the Defense Agency for the Naganuma Missile base that was to be built. Farmers in Naganuma, Hokkaido, challenged a government decision to build the site, claiming the base interfered with their water supply and flood control. They also challenged the constitutionality of the SDF. 221 The court held that the SDF was, in fact, an “armed force,” contradicting the wording of Article 9. The court went on to say that the SDF was therefore unconstitutional because the transfer of land was unable to meet the requirement of public interest. 222 In this case the illegality of the SDF was stated. That in itself would have forced constitutional reform, but the opportunity was lost on appeal when the Sapporo High Court reversed the decision by falling back on the political question doctrine, stating that it was a matter for the Diet and the associated political organs to determine. 223 The Sapporo High Court invalidated the finding that the SDF was unconstitutional, and in Naganuma III, the Supreme Court affirmed the Sapporo High Court’s opinion. 224 The maintenance of the status quo was endorsed at the highest legal level.

Cases such as the 1989 Hyakuri Air Base case, (Ishizuka et al v. Japan et al) offered an opportunity for judicial clarification but the doctrine of avoidance, by then, had permeated throughout virtually every aspect of the judiciary. The Hyakuri court merely reiterated the black letter wording of Article 9 while not legitimately arguing the merits of the case. 225 For all practical purposes, the Hyakuri case was an ineffective use of judicial resources. The trend of ineffective legal direction continued in 2008 and 2009 when there were additional cases which could have acted as excellent test cases, but failed to navigate the legal channels and were not heard. Based on the historical analysis however, an effective argument


221 BEER & MAKI, supra note 5, at 115.

222 Ito v. Minister of Agriculture and Forestry (“Naganuma I”) (1973), 712 Hanrei Jiho 24 (Japan, Sapporo Dist. Ct.).

223 Minister of Agriculture, Forestry and Fisheries v. Itoh (“Naganuma II”) (1976), 27 Gyosai Reishu 1175 (Japan, Sapporo High Ct.).

224 Uno et al v. Minister of Agriculture and Forestry, (“Naganuma III”) (1982), 36 Minshu 1679 (Japan, Sup. Ct.).

may have concluded that those cases would likely have had little to no impact on legally clarifying SDF or Article 9 issues.

Each of the above cases has hindered constitutional reform because of a lack of judicial leadership. The courts have repeatedly refused to clarify the legal standing of the SDF, preferring instead to allow the status quo of flexible interpretation to continue. Thus, the judiciary has in essence denied itself the opportunity to compel revision of the constitution to align it with the realities of SDF activities.

4. Political Expediency

The above section highlighted what can be said to be judicial motion to maintain a façade of legal adherence to black letter law and the judicial process. Much the same may be said of the political process with regards to constitutional reform, which ultimately results in forces that perpetuate the status quo. There are few tangible results, for no other reason than the fact that tangible results are not needed or required. Continual re-interpretation of the constitution alleviates any need to revise it. This is a strong factor that hinders Article 9 reform.

Japan’s informality is highly flexible and is subject to the prevailing political winds of the day to manipulate constitutional meaning to fit a changing environment and to match the circumstances as needed. Informality is seen when there is a practiced lack of an adherence to a rule of law, which forms the basis of predictability in business and society. Here, in this case, the only valid question is whether any specific issue justifies the use of political currency or resources to re-interpret Article 9. The informality of today’s political process is not at all a new phenomenon, but one which is prevalent throughout Japan’s history as evidenced by family-run organizations called zaibatsu which controlled much of the economy during the Tokugawa and Meiji periods. The unpredictability of business and legal transactions in this environment fostered the dissolving of the zaibatsus. Although banned during the Occupation, they later reformed as the keiretsu, utilizing the same hierarchical structures. Those informalities persist to this day and repeatedly give rise to interpreting the Constitution in accordance to the desired outcome, obliterating the need to formally amend the law. As long as legal direction is lacking, the Japanese bureaucracy will simply continue to unofficially manipulate Article 9, reasoning that to do so is far easier than the risk of the necessary political battles needed to amend it. Thus, maintaining the

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227 Michael Panton, Corporate Governance and the Evolving Impact of the Keiretsu in Post War Japan, 1 YONSEI INT’L STUD Issue 1, 80-101 (2009).
political status quo will continue to act as a considerable hindrance to constitutional reform.

VII. CONCLUSION

There can be little doubt that Japan’s constitution will be revised. The only relevant issue is when. The introduction of the referendum law saw the question moving from theoretical discussions to the mechanics of reform. The enactment of the referendum law additionally called for reviewing proposed amendments and also addressed the proposal of lowering the voting age from 20 to 18 years. Additionally, 2010 is the first possible public test of reform. While these factors appear to strongly suggest that momentum is building and that Article 9 reform is imminent, this author suggests that in the short to intermediate term, there will be much talk but little progress. Based on an increasing nationalistic mindset and an overriding desire by Tokyo to have Japan take a more prominent international role, Article 9 reforms will happen in the next 5-7 years at the earliest. The socio-political and economic climate, at present, is simply not ripe to support a revision of Article 9. Additionally, Japan is able to achieve the majority of its goals by constant reinterpretation of the constitution, thus alleviating a sense of urgency for Article 9 revision.

The inevitability of reforms in the long term is without question. Reform is inevitable in that it is driven by nationalism and Japan’s desire to take a more prominent role in global affairs, which necessitate Article 9’s revision. Flexible interpretation of Article 9 has stretched the SDF’s activities beyond any semblance of the original meaning, and as it now stands, the SDF’s activities undermine the legitimacy of Japan’s constitution and undermine the establishment of a credible adherence to a rule of law. However, in spite of the constant reinterpretation of Article 9, it has acted as a restraining force for the SDF. Kenneth Port counters that point by stating that there is little legal benefit to such manipulation, which in fact serves to minimize the importance of adherence to law in Japan. He states; “given the juxtaposition of Article 9 jurisprudence and the reality of the military situation in Japan, it might appear that the Japanese do not recognize or follow the rule of law.”


Within the political elite of Japan, an opinion exists that the constitution must be amended for Japan to take a permanent seat at the U.N. Security Council, Tokyo’s long time political goal. The restrictions of Article 9, in theory, prevent the use of force to settle disputes, which U.N. members may be called upon to do. The U.N. Security Council issue is one area which Tokyo feels must be met for it to take a more prominent role on the world stage. It is of particular importance in that U.N. mandates align with Japan’s pacifist self-identity as a nation that upholds international peace.

As Japan slowly moves closer to revising its constitution, it must balance its desire to be a “normal” state while at the same time reassuring its closest neighbors that it is not shedding its pacifist ideals. Any discussion involving the possible revision of Article 9 is met with concern from China and North Korea, with each country considering Article 9 to be an impressive document which has prevented a return to militarism. While there is sound evidence that supports their claim, both countries fail to acknowledge that their provocation has encouraged Japan’s accelerated military buildup and has encouraged deeper security alliances with the United States. Japan – having clearly felt the destructive misery of war – has no desire to engage in combat, preferring to wage its wars in the global marketplace. Japan acts in response to China, which is consistently outspoken in its readiness to use force to settle international disputes. With Beijing engaged in territorial disputes with a number of nations, occupied with suppressing bids for independence in others, and controlling and shaping the flow of information to its people, China’s actions greatly contrast the peaceful rise mantra so often heard in the tightly controlled Chinese media. There can be little doubt that China’s activities are done in light of considering themselves, at minimum, the regional hegemon and Japan as a rival which is about to be overtaken. There can be no surprise that Japan has steadily increased its military capabilities. North Korea offers a somewhat more “intimate” geo-political scenario in that a focused strike could devastate Tokyo within moments. Unlikely, but it is difficult to not understand Japan’s concern and its subsequent military buildup and alliances with the United States. While this argument justifying a military buildup may be sustained based on the above examples, the possibility of initiating Article 9 revisions, when there are abundant issues of contention between Japan and its Asian neighbors that need to be addressed, adds considerably to the rise of regional tensions.

Insecurities by Japan’s neighbors regarding Tokyo’s military capabilities, however, are largely unwarranted. Japan poses very little military threat on a functional level. While it is true that Japan utilizes some of the most technically advanced weapon systems in the world due

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232 U.N. CHARTER, art 43.

to their alliance with the United States, it lacks capabilities for a sustained forward assault. A large percentage of American hardware used by Japan are scaled-down versions which lack many of the most advanced proprietary technical features. In some ways, Japan’s capabilities somewhat parallel China’s forces, in that when one looks beyond the propaganda of the state news agencies, Chinese forces are better equipped for domestic control and suppression rather than being able to sustain forward capability against a technically advanced adversary. This, however, is a quickly changing situation as Beijing continues to modernize its military forces. Further, Japan’s forces are substantially less that of some of its closest neighbors and its military protocols are almost entirely based on deterrence. In all practicality, Japan’s capabilities are almost purely defensive in nature and its forces are not seen as being vastly superior to its neighbors.\footnote{Wilborn, \textit{supra} note 230, at 27-29.}

Going beyond armed troops or strike capability is the fact that Japan simply does not have the mindset to seek military remedies. A ‘total war’ is something that Japan will avoid at all cost. Japan, a fraction of the size of China, has risen to the second most important economy in the world, a distinction which they have carried in spite of a decade long recession. While China will soon surpass Japan in terms of GDP, there are other key indicators that will continue to favor Japan for the foreseeable future. To wage war will risk destroying everything Japan has built since World War II. Japan’s focus will remain the international marketplace. Japan has risen to become the preeminent merchant state, not by the strength of its arms, but by its near-exclusive focus and allotment of resources to building a powerful economic base for itself and its population. While the failed rationale of many of Japan’s economic or fiscal policies have sustained a decade long recession, the fact remains that the overwhelming majority of Japanese are comfortable when weighed against international standards. Rather than waging war, Japan utilizes international regimes to accomplish its objectives. Military aggression renders no benefit and accomplishes nothing that cannot be obtained through recognized international institutions.

When Article 9 revision ultimately happens, it will have an impact on a variety of levels. The SDF and its activities is one level, although the changes may not be as great as many of Japan’s neighbors speculate. It is highly likely that the removal of constitutional restraints will not result in a reckless show of military strength by Japan. There is every indication that the internalization of pacifist ideals will continue to have a significant impact on policy formation. An equally important determining factor is America’s continued engagement in the region. As long as the United States plays an active role as a stabilizing force within Asia, SDF forces will not be called upon to expand or change the focus of their activities. It
can be expected however, that the SDF will have an increased involvement in U.N.-sanctioned peacekeeping missions, which parallel Japan’s pacifist ideals, but it can also be expected that Japan will continue with its focus on primarily rear logistic support roles, albeit on an expanded basis.

Revision will also impact on the level of increased global influence. Not in regard to the exercise of its military capabilities, but more so in that there will be greater admiration for a “normal” state which restrains its military activities. By having the capability to exercise military might to determine outcomes yet specifically utilizing international organizations to settle its debates, Japan should garner much respect in the international community. Increased global influence will additionally result from the likely large increase in SDF-U.N. humanitarian efforts, which will come to ultimately define Japan in the international community.

While the activities of the SDF and the increased diplomatic currency are two important levels that will be impacted by Article 9 revision, perhaps the most relevant and far-reaching level is the social importance attached to Article 9 revision. The modern Japanese Constitution was a contested document from its very inception. It was heavily debated by both its American authors and by a reluctant and conservative Diet in postwar Tokyo. Although the pacifist wording has been internalized for the most part, the document is one that is nonetheless regarded as foreign in origin. The social importance attached to a revised constitution, authored by Japan, will be seen by the sense of justified national pride for the penning of a document which citizens can legitimately call their own. It would not be an overstatement to say that a Japanese revision would help cut the final holds of Occupation and signal a new beginning for Japan.

When Japan does ultimately revise its constitution, there is little doubt that it will continue to move cautiously regarding the deployment of the SDF. The restraints and the debates have previously focused on the legal limits of the SDF, or how a specific activity can be reconciled to fit within Article 9’s varied interpretations. After revision however, Japan’s pacifist roots, providing that stability continues in the Asian region, will largely influence SDF activities. There is every reason to believe that Japan will remain aware of the global sensitivities regarding a revised Article 9. Tokyo will continue to focus on primarily humanitarian efforts and will continue to act in logistical support roles for U.S. or Allied initiatives. It can be envisioned however, that the SDF will likely be the most visible in international aid relief efforts – efforts that will continue to build good will in the international community and center Japan as a country committed to peace.