

# Japan Closes the Nuclear Umbrella: An Examination of Nonviolent Pacifism and Japan’s Vision for a Nuclear Weapon-Free World

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## INTRODUCTION

Japan’s principled stand against acquiring nuclear weapons has been a subject of political and academic security policy discourse for more than half a century. Japan has steadfastly refused to join the so-called “nuclear club” notwithstanding possession of nuclear weapons first by China and subsequently by North Korea, both of which are Japan’s traditional rivals. Faced with regional challenges to its security, Japan has chosen to rely on the nuclear non-proliferation regime and U.S. extended

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deterrence, rather than on a domestic nuclear deterrent, for its security. However, in the face of increasingly provocative acts from North Korea, which include the October 2009 test of its second nuclear device, a rapidly modernizing Chinese military that is becoming more active and more hostile to the U.S.-Japan alliance, and a non-proliferation regime that some believe is on the brink of irrelevance, an analysis of whether and under what circumstances Japan will consider developing nuclear weapons is more timely now than at any previous point in Japan's modern history.

Any ambiguity regarding Japan's nuclear ambitions could have serious implications for the continued viability of the non-proliferation regime, as well as for East Asian regional stability. Japan is both a key proponent of the regime and the only nation to have suffered a nuclear attack. Should Japan abandon the regime and acquire its own nuclear weapons, such action will at best further weaken the regime and, at worst, possibly doom the regime. Further, should Japan acquire nuclear arms, Japan may spark an arms race with China and North Korea, and possibly also with South Korea, as each country harbors historical animosity toward Japan. Thus, a nuclear-armed Japan could undermine already fragile regional stability in East Asia. It is also essential in this regard to preliminarily gauge the effect of the ongoing crisis at the Fukushima Nuclear Power Plant, which followed the March 11, 2011 earthquake and tsunami disasters, on any calculus of the potential willingness of Japanese citizens to permit nuclear weapons onto Japanese territory. The Great East Japan Earthquake, as that disaster is now called, and its effect on the Fukushima plant, have already raised questions about the future of nuclear energy in Japan.

As Japan has thus far been remarkably resilient in its official opposition to acquiring nuclear weapons, it is now necessary to engage a more focused analysis of whether Japan's cultural predisposition with regard to nuclear weapons operates as a normative constraint on Japan's security policy that is durable enough to bind Japan to its anti-nuclear stance without regard to the intensity of Japan's external security threats. This article presents the argument that a phenomenon termed "nonviolent pacifism" operates in Japan as a societal norm that governs the outcomes of Japan's security policy decision-making process in response to threats posed by nuclear weapons. This article further posits that the strength of the nonviolent pacifist phenomenon in Japan has grown and has guided Japan to responsively take increasingly principled stands against nuclear weapons even as nuclear threats to Japan's security have intensified.

As will be demonstrated throughout this article, nonviolent pacifism – which in Japan manifests as an absolute moral objection to the possession of nuclear weapons – has become part of Japan's national identity and operates at a foundational level in Japanese security policy thinking, such that Japan's nonviolent pacifist norm will prevent Japan

from considering nuclear weapons to fit within its national interest in all but the most cataclysmic of international security eventualities.

## I. THE LEGAL FRAMEWORK

### A. *Article Nine*

Article Nine of the Japanese Constitution provides as follows:

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. 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.<sup>1</sup>

While the language of Article Nine appears to prohibit Japan from maintaining any military capability, Article Nine has been interpreted as requiring only that Japan not use its military aggressively.<sup>2</sup> Accordingly, Japan may maintain and utilize an exclusively self-defense oriented military force. Traditionally, Japan's politically prescribed test for the constitutionality of its military force posture rested on a determination of whether its forces possessed the "minimum necessary level" sufficient for self-defense.<sup>3</sup> Under this test, the question of the constitutionality of Japan's ability to possess (*hoyū*, 保有) nuclear weapons has been whether such weapons could ever constitute the "minimum necessary" weapons for self-defense. The Cabinet Legislative Bureau ("CLB"), an executive body charged with opining on the constitutionality of proposed legislation and of the government's policy positions, determined in 1965 that Article Nine would not prohibit possession of nuclear weapons by Japan, so long as such weapons met the "minimum necessary" requirement.<sup>4</sup> Nakasone Yasuhiro,<sup>5</sup> then-director of the former Japanese Defense Agency ("JDA"),<sup>6</sup> opined in a 1970 White Paper that "small-

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<sup>1</sup> NIHONHOKU KENPŌ [CONSTITUTION], art. 9, paras. 1 & 2.

<sup>2</sup> See RICHARD B. FINN, WINNERS IN PEACE: MACARTHUR, YOSHIDA, AND POSTWAR JAPAN 116 (1992) (arguing that Article Nine "spawned a new international concept of a conventional military force that could be used only for defense of the nation's territory.").

<sup>3</sup> See Mike M. Mochizuki, *Japan Tests the Nuclear Taboo*, 14 NONPROLIFERATION REV., no. 2, July 2007 at 303, 305 (2007).

<sup>4</sup> See *id.*

<sup>5</sup> This article will refer to Japanese figures using the family name/given name convention. Thus, although western readers would consider "Nakasone" to be a "last name," it is presented here preceding the given name, "Yasuhiro."

yield, tactical, purely defensive nuclear weapons” would be permissible under Article Nine.<sup>7</sup> Successive administrations have reinforced the CLB interpretation by consistently declaring that Article Nine does not prohibit the possession of nuclear weapons.<sup>8</sup>

In its *National Defense Program Guidelines for FY 2011 and Beyond* (“2010 NDPG”), which are designed to direct Japan’s defense policy for the proceeding decade, Japan officially abandoned the “minimum necessary level” security policy concept, citing “the current security environment surrounding” Japan as a precipitating factor.<sup>9</sup> In its place, Japan will “steadily build an appropriate size defense force.”<sup>10</sup> Thus, with the technical barrier of the “minimum necessary level” restriction removed, Japan could conceivably develop both strategic and tactical nuclear weapons without running afoul of Article Nine, so long as such weapons fit within the meaning of the term “appropriate size,” the parameters of which are practically impossible to pinpoint. Under an “appropriate size” calculation of the force authorized by Article Nine, Japan could constitutionally equate deterrence with defense – given that a policy of deterrence is essentially one designed to protect its proponent from acts of aggression – and develop a full nuclear triad.<sup>11</sup> Article Nine thus neither constrains nor prohibits the possession of nuclear weapons by Japan. The question thus becomes: why has Japan not acquired its own nuclear weapons?

### B. *The Atomic Energy Basic Law*

In December 1955, the National Diet of Japan (“Diet”), Japan’s legislative body, passed the Basic Law on Atomic Energy (“Basic Law”), Article 2 of which states as follows: “The research, development and

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<sup>6</sup> In 2007, the JDA was elevated to a cabinet-level ministry, and is now called the Ministry of Defense (“MOD”).

<sup>7</sup> See Kurt M. Campbell & Tsuyoshi Sunohara, *Japan: Thinking the Unthinkable*, in *THE NUCLEAR TIPPING POINT: WHY STATES RECONSIDER THEIR NUCLEAR OPTIONS* 218, 222 (Kurt M. Campbell, et al., eds., 2004).

<sup>8</sup> See Llewelyn Hughes, *Why Japan Will Not Go Nuclear (Yet): International and Domestic Constraints on the Nuclearization of Japan*, 31 *INT’L SECURITY*, no. 4 2007 at 67, 84. Although the distinction between tactical and strategic nuclear weapons has blurred as nuclear weapons have evolved, Japan’s policy makers have not formally declared them outside the bounds of Article Nine.

<sup>9</sup> See *National Defense Program Guidelines for FY 2011 and Beyond*, MINISTRY OF DEF. 1 (Dec. 17, 2010), [http://www.mod.go.jp/e/d\\_act/d\\_policy/pdf/guidelinesFY2011.pdf](http://www.mod.go.jp/e/d_act/d_policy/pdf/guidelinesFY2011.pdf).

<sup>10</sup> See *id.*

<sup>11</sup> It is historically true that Japan has ruled certain weapons systems unconstitutional only to later determine that those systems meet the requirements of self-defense in light of evolving technologies. See Hughes, *supra* note 8, at 84.

utilization of atomic energy shall be limited to peaceful purposes.”<sup>12</sup> The Basic Law is significantly more restrictive than the Constitution, and plainly proscribes the use of nuclear energy for military purposes. Further, the Basic Law established the Atomic Energy Commission, a nuclear watchdog charged with ensuring that Japan’s use of nuclear energy conforms to the Basic Law’s requirements.<sup>13</sup>

However, as Llewelyn Hughes indicates, “few regulatory tools are available to [Atomic Energy Commission members] to halt any drive to revise the law to allow the diversion of nuclear materials to a nuclear weapons program.”<sup>14</sup> Further, the Basic Law, like any statute, can be abrogated should Japan develop the political will to pursue a nuclear weapons program. Thus, while the Basic Law affirmatively prohibits the diversion of nuclear energy for military purposes, the law provides limited regulatory tools through which Japan’s watchdog agency may monitor compliance, and it is subject to rescission should Japan decide to pursue a nuclear weapons program.

### C. *The Nuclear Nonproliferation Regime*

Japan signed the Treaty on the Non-proliferation of Nuclear Weapons (“NPT”)<sup>15</sup> in 1970. The NPT is both the most successful legal device in the broader nuclear non-proliferation regime and the linchpin of that regime.<sup>16</sup> As Japan is a non-nuclear weapons State (“NNWS”), Article II of the NPT forbids Japan from receiving, manufacturing or otherwise acquiring “nuclear weapons or other nuclear explosive devices,” and does not permit Japan to “seek or receive any assistance in the manufacture of” such weapons or devices.<sup>17</sup> Japan is also a state party to several other treaties that help to strengthen the broader non-proliferation regime. This includes the Additional Protocol to the NPT, which “significantly expands

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<sup>12</sup> Atomic Energy Basic Act, Law No. 186 of 1955, art. 2 (Japan), *translated in Atomic Energy Basic Act, NUCLEAR SAFETY COMM’N OF JAPAN*, <http://www.nsc.go.jp/NSCenglish/documents/laws/1.pdf>.

<sup>13</sup> See Hughes, *supra* note 8, at 88.

<sup>14</sup> *Id.* Llewelyn Hughes is an Assistant Professor of Political Science and International Affairs at George Washington University’s Elliott School of International Affairs.

<sup>15</sup> See Treaty on the Non-Proliferation of Nuclear Weapons [hereinafter NPT], *opened for signature* July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161.

<sup>16</sup> See David S. Jonas, *Variations on Non-Nuclear: May the “Final Four” Join the Nuclear Nonproliferation Treaty as Non-Nuclear Weapons States While Retaining Their Nuclear Weapons?*, 2005 MICH. ST. L. REV. 417, 418 (2005) (noting that the NPT has 189 states parties and is the “most widely subscribed and successful arms control treaty in history”).

<sup>17</sup> NPT, *supra* note 15, 21 U.S.T. at 487, 729 U.N.T.S. at 171.

[Japan's] reporting responsibilities to the International Atomic Energy Agency ("IAEA") and enables inspections of declared and suspected undeclared sites at short notice,"<sup>18</sup> and the Comprehensive Test Ban Treaty ("CTBT"), which, although it has not entered into force, prohibits states parties from "conducting any nuclear test explosions or any other nuclear explosions and establishes a comprehensive worldwide verification regime to monitor compliance."<sup>19</sup> While it is true that the CTBT has not yet entered into force, Japan, having ratified the CTBT,<sup>20</sup> has a customary international law obligation to avoid acts that would violate the object and purpose of the CTBT.<sup>21</sup> Japan's "object and purpose" obligation, at the very least, acts to bar Japan from conducting a nuclear test explosion.<sup>22</sup>

Additionally, Japan has entered bilateral nuclear energy agreements with the United States, the United Kingdom, France, China, Canada, and Australia. Under each of these agreements, the aforementioned nuclear suppliers agree to provide material and equipment necessary for the nuclear fuel cycle (including reactors, nuclear fuel, nuclear technology and related equipment) in exchange for Japan's pledge to use such equipment only for non-military purposes.<sup>23</sup> Were Japan to violate any of these agreements, sanctions would be severe and would include immediate return of all materials and equipment to the supplying country.<sup>24</sup> Japan would then be blocked from world supplies of natural and enriched uranium and related equipment.<sup>25</sup> Violation of one of Japan's nuclear energy agreements could thus devastate Japan's energy industry, which is heavily reliant on nuclear reactors for a large percentage of Japan's energy requirements.

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<sup>18</sup> Hughes, *supra* note 8, at 74.

<sup>19</sup> Comprehensive Nuclear Test Ban Treaty [hereinafter CTBT], Sept. 24, 1996, S. TREATY DOC. NO. 105-28 (1997), 35 I.L.M. 1439, 1456; *see also* draft text as contained in U.N. Doc. A/RES/50/1027 (Aug. 26, 1996), adopted in G.A. Res. 50/245, U.N. Doc. A/RES/50/245 (Sept. 17, 1996); *see also* David S. Jonas, *The Comprehensive Nuclear Test Ban Treaty: Current Legal Status in the United States and the Implications of a Nuclear Test Explosion*, 39 N.Y.U. J. INT'L L. & POL. 1007, 1008 (2007).

<sup>20</sup> *See* Press Release, Comprehensive Test Ban Treaty Organization, CTBTO Preparatory Comm'n, Japan Ratifies the CTBT (July 9, 1997), <http://www.ctbto.org/press-centre/press-releases/1997/japan-ratifies-the-ctbt/>.

<sup>21</sup> For a general analysis of the methods by which the object and purpose of a treaty is determined, *see* David S. Jonas & Thomas N. Saunders, *The Object and Purpose of a Treaty: Three Interpretive Methods*, 43 VAND. J. TRANSNAT'L L. 565 (2010).

<sup>22</sup> *See* Jonas, *supra* note 16, at 1035.

<sup>23</sup> *See* Mochizuki, *supra* note 3, at 309.

<sup>24</sup> *See* EMMA CHANLETT-AVERY & MARY BETH NIKITIN, CONG. RESEARCH SERV., RL 34487, JAPAN'S NUCLEAR FUTURE: POLICY DEBATE, PROSPECTS, AND U.S. INTERESTS 9 (Feb. 19, 2009).

<sup>25</sup> *See id.*

Japan's obligations under the nuclear non-proliferation regime thus ostensibly serve as substantial legal barriers to its acquisition of nuclear weapons. The effectiveness of those barriers, however, depends upon Japan's perception of the strength of the nuclear non-proliferation regime and on Japan's commitment to the same. To be sure, the regime's foundation is under attack. The weaknesses in the NPT's inspection mechanisms were exposed alongside the exposure of Iraq's hidden nuclear program following the 1991 Gulf War.<sup>26</sup> Until the discovery of its clandestine nuclear weapons program, Iraq was believed to have been in compliance with the NPT. Similar weaknesses in the NPT, "in particular the ability of non-nuclear-weapon-states-parties to misuse Article IV to acquire weapons-relevant materials and technology, foil verification attempts, and then withdraw from the treaty," have been exposed with respect to Iran and North Korea.<sup>27</sup>

Moreover, the emergence of India and Pakistan as nuclear powers outside the NPT, coupled with the withdrawal of North Korea from the NPT to become a nuclear power, has diminished the perceived effectiveness of multilateralism at halting the proliferation of nuclear weapons. This is particularly the case on the Asian peninsula a geographic area of obvious primary concern to Japan.<sup>28</sup> The Indian and Pakistani cases particularly troubled Japan, not only because both countries detonated nuclear bombs a mere three years following permanent extension of the NPT, but also because of Japan's perception of the international response. Japan reacted strongly following the India and Pakistan nuclear tests, notably by freezing new aid grants and introducing a resolution to condemn the tests.<sup>29</sup> The permanent Security Council members, however, including the U.S., responded by blocking Japan from a Security Council meeting regarding the tests.<sup>30</sup> Japan's perception that the South Asian nuclear tests were handled by the Security Council in a nonchalant manner shook its faith in the strength of multilateralism. Although India and Pakistan were not signatories to the NPT, Japan believed that the international consensus surrounding the NPT meant that even non-adherents could face severe diplomatic or reputational penalties for acquiring nuclear weapons.<sup>31</sup> Moreover, Japan continues to be troubled

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<sup>26</sup> See Hughes, *supra* note 8, at 77.

<sup>27</sup> Jonas, *supra* note 16, at 425.

<sup>28</sup> See Hughes, *supra* note 8, at 77.

<sup>29</sup> See Mochizuki, *supra* note 3, at 309.

<sup>30</sup> See *id.*

<sup>31</sup> See Campbell & Sunohara, *supra* note 7, at 228 (noting that "[o]ne reason the Japanese had decided to join the NPT in the early 1970s was that they had anticipated severe penalties for those states that defied the international consensus against further nuclear weapons acquisition.").

by North Korea – its most vocal antagonist – given North Korea’s repeated demonstrations of its ability to flout the non-proliferation regime.<sup>32</sup>

India, Pakistan, North Korea and Israel remain confirmed or suspected nuclear powers outside the non-proliferation regime. David Jonas, a professor at Georgetown University Law Center, argues that “the nonproliferation regime will not survive without them.”<sup>33</sup> The handling of Iran’s suspected nuclear weapons program presents another serious challenge for the non-proliferation regime, and a source of worry in Japan for the viability of the same.<sup>34</sup>

Japan certainly appreciates the regime’s existential threats and, in the face of its own security threats, can choose either to abandon the regime or attempt to strengthen it. Though violating its bilateral energy agreements may have a significantly devastating impact on Japan’s energy security,<sup>35</sup> abandoning the NPT would pose little difficulty – in a strictly legal sense – for Japan. Article X of the NPT requires only three-months’ notice and a subjective showing that “extraordinary events...have jeopardized [a signatory’s] supreme interests.”<sup>36</sup> The CTBT requires an identical subjective showing, together with six months’ advance notice.<sup>37</sup> Thus, Japan would face few legal hurdles if it chose to withdraw from the NPT and the CTBT.

## II. THE NONVIOLENT PACIFIST PRINCIPLE

As will be discussed in the next section, Japan has chosen to support and strengthen the non-proliferation regime. Additionally, although Japan could reverse the domestic legal and policy prohibitions on nuclear weapon manufacturing with sufficient political will, it has chosen to retain its internal accountability mechanisms. Many commentators have sought to understand Japan’s motivations for advocating non-proliferation

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<sup>32</sup> *See id.* at 240.

<sup>33</sup> Jonas, *supra* note 16, at 418. Indeed, there are commentators who defend the vitality of the non-proliferation regime. Ultimately, however, it does not matter whether the regime is actually in jeopardy. What matters is Japan’s perception of the regime’s viability. If Japan perceives the regime as failing, it can choose to abandon the regime.

<sup>34</sup> *See* Campbell & Sunohara, *supra* note 7, at 240.

<sup>35</sup> Note, however, that Japan may be able to produce enough nuclear fuel to have an independent fuel supply. Dr. Maria Rost Rublee, a senior lecturer at the University of Auckland in New Zealand and a specialist in issues regarding nuclear non-proliferation and East Asia, notes “Japan could withdraw from the NPT after it establishes its own nuclear fuel supply without worries about energy security.” Maria Rost Rublee, *The Nuclear Threshold States*, 17 *THE NONPROLIFERATION REV.* 49, 60 (2010).

<sup>36</sup> NPT, *supra* note 15, 21 U.S.T. at 493, 729 U.N.T.S. at 175.

<sup>37</sup> *See* CTBT, *supra* note 19, S. TREATY DOC. NO. 105-28 (1997), 35 I.L.M. 1439, 1456.

and have also attempted to determine the scenarios under which Japan will be compelled to develop an indigenous nuclear arsenal. According to current scholarship, Japan has utilized a combination of the U.S. nuclear umbrella and the international non-proliferation regime to ensure its security against nuclear threats.<sup>38</sup> The same view holds that if serious threats to Japan's security develop or continue in tandem with a breakdown of the U.S.-Japan alliance, such a combination of events may force Japan to pursue a nuclear weapons program notwithstanding the reputational and other costs of such an act.<sup>39</sup>

While current scholarship provides a helpful examination of the regimes that constrain Japan's flexibility with regard to the acquisition of nuclear weapons, it does not sufficiently develop non-realist<sup>40</sup> explanations for why Japan chose to subject itself to such regimes or for the security policy choices that Japan may make should such regimes fail to ensure Japan's security from nuclear threats. What is needed is an examination of the underlying societal norms that inform Japan's policy choices, together with an analysis of whether and to what extent those norms can survive challenges to the regimes that Japan relies on for protection against nuclear threats. In the article "Nine Lives?: The Politics of Constitutional Reform in Japan," Richard J. Samuels and J. Patrick Boyd (hereinafter "Boyd/Samuels") discuss two competing forms of pacifism that helped form the foundation for modern Japanese society – the "nonviolent" pacifist principle and the "nonaggressive" pacifist principle.<sup>41</sup>

Under the "nonviolent" pacifist principle, a nation should not wage war for any reason, including self-defense, and should be forbidden from possessing any military armaments because of the absolute prohibition against waging war.<sup>42</sup> Shidehara Kijūrō, a prominent politician and one-time Prime Minister, who would come to be called a "man of peace"<sup>43</sup> and

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<sup>38</sup> See, e.g., Hughes, *supra* note 8.

<sup>39</sup> See, e.g., Campbell & Sunohara, *supra* note 7.

<sup>40</sup> The realist school of international relations theorists generally posit that "international politics is power politics and power is an aggregate totality of various material capabilities inclusive of military and economic power, but irrespective of abstract ideas, such as morality." Key-Young Son, *Constructing Fear: How the Japanese State Mediates Risks from North Korea*, 22 JAPAN F. 169, 191, n.1 (2010) (internal citations omitted).

<sup>41</sup> See J. Patrick Boyd & Richard J. Samuels, *Nine Lives?: The Politics of Constitutional Reform in Japan*, 19 POL'Y STUD. 5-6 (2005). Richard J. Samuels is the Ford International Professor of Political Science at the Massachusetts Institute of Technology ("MIT"). J. Patrick Boyd is a doctoral candidate at MIT.

<sup>42</sup> See *id.* at 6.

<sup>43</sup> *Japan-China: Secessionist Movements*, TIME, Oct. 12, 1931, available at <http://www.time.com/time/magazine/article/0,9171,742386,00.html> (noting that Shidehara was "[f]amed as a man of peace because he forced Japanese ratification...of

the “spiritual father” of Article Nine,<sup>44</sup> held to this view. Shidehara believed that with Article Nine, Japan embarked on a bold experiment as a “peace nation” (*heiwa kokka*, 平和国家) and that other countries would eventually disarm under Article Nine-styled constitutional regimes in a new international system based on collective security under the United Nations.<sup>45</sup> By proposing Article Nine to General Douglas MacArthur, Supreme Commander of Allied Forces in the Pacific and head of the Japanese occupation forces, Shidehara attempted to establish nonviolent pacifism as fundamental law in Japan.<sup>46</sup>

By contrast, the “nonaggressive” pacifist principle, which would eventually become embodied by the text of Article Nine, renounces the use of war and military armaments as tools of aggression.<sup>47</sup> Under this view, military armaments and “war potential” may be preserved, so long as the armaments retained do not exceed what is necessary to preserve the sovereignty of the retaining nation.<sup>48</sup> General MacArthur came to embrace the nonaggressive pacifist ideal for Japan, and the version of Article Nine eventually adopted by Japan’s parliament enshrined the nonaggressive principle in Japan’s constitution.<sup>49</sup>

As a matter of law and practice, Japan has embraced the nonaggressive principle of pacifism for its conventional forces. However, while embracing the limited right to possess nuclear arms as a matter of constitutional law, Japan’s security policy practice demonstrates Japan’s adherence to the nonviolent pacifist principle with regards to nuclear weapons.

Though the philosophical foundations of nonviolent pacifism were laid long before the Second World War, the horrific experience of the war, particularly its conclusion, profoundly magnified the influence of nonviolent pacifism on Japanese society with respect to nuclear weapons.<sup>50</sup> Through the experience of Hiroshima and Nagasaki, Japanese

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the London Naval Treaty despite terrific opposition”).

<sup>44</sup> Patrick Hein, *Realpolitik Versus Principled Politics: Nitobe, Shidehara, Shirasu and the Hollowing out of the Japanese Peace Constitution*, 26 EAST ASIA 285, 287 (2009) (stating that Shidehara was “considered to be the spiritual father of Article 9 of the after war constitution of Japan”).

<sup>45</sup> See *id.* at 289.

<sup>46</sup> See Boyd & Samuels, *supra* note 41, at 6; Hein, *supra* note 44, at 287-88.

<sup>47</sup> See Boyd & Samuels, *supra* note 41, at 6.

<sup>48</sup> See *id.*

<sup>49</sup> See FINN, *supra* note 2, at 116.

<sup>50</sup> For an in-depth historical treatment of Japanese pacifism, see 1 KLAUS SCHLICHTMANN, *JAPAN IN THE WORLD: SHIDEHARA KIJŪRŌ, PACIFISM, AND THE ABOLITION OF WAR 11-67* (2009). To be sure, Japan also possessed what can be considered a deep-seeded militaristic pre-war culture, particularly as shown in the

citizens developed a moral abhorrence for nuclear weapons,<sup>51</sup> together with a corresponding sense of moral imperative to warn the world of the horrors that nuclear weapons can cause.<sup>52</sup> Japan's societal repulsion toward nuclear weapons is so strong that it takes an increasingly principled stand against nuclear weapons in the face of threats from its traditional rivals even as the nonaggressive principle guides it to move toward possessing more of the conventional armaments of a so-called "normal" state – i.e., possessing the offensive, defensive, and military force projection capabilities of traditional great powers.<sup>53</sup>

Perhaps because pacifism in Japan was merely magnified, rather than generated, by the devastation of World War II, it has demonstrated a resilience independent of Japan's connection to World War II. By way of example, in connection with the ongoing debate regarding whether Article

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Bushidō principles of the samurai tradition. The influence of Christian pacifism on the samurai during the Meiji period (*Meiji-jidai*, 明治時代), however, may have caused some samurai to devalue the militaristic aspect of Bushidō. For example, Uchimura Kanzō, a leading intellectual during the Meiji period, was a former samurai who became a prominent Christian proponent of nonviolent pacifism during the Russo-Japanese War. See Doron B. Cohen, *Voices of Dissent: Uchimura Kanzō and Yosano Akiko*, 2 J. INTERDISC. STUDY MONOTHEISTIC RELIGIONS 74 (2006), available at [http://www.cismor.jp/en/publication/jismor/documents/JISMOR2en\\_cohen.pdf](http://www.cismor.jp/en/publication/jismor/documents/JISMOR2en_cohen.pdf). As Uchimura grew in his Christian faith, he came to "emphasize[] the principles of chivalry and honesty in Bushidō, rather than its militaristic aspects." *Id.* at 77. Uchimura came to see no contradiction between Christianity and Bushidō, and, as his passion for nonviolent pacifism grew, Uchimura began to believe that a true adherence to the principles of Christianity and Bushidō would require Japan to "rid itself of its chauvinistic and militaristic tendencies." *Id.* Uchimura had many followers, whom he called the "Mukyōkai" (無協会, "Churchless Christians"). See *id.* at 76-77. It may thus be true that pacifism began to change the views of some of the more militaristic sects of Japanese society in the prewar years. Nevertheless, assuming arguendo that pacifism contended with a much stronger militarist force in prewar Japan, the evidence presented throughout this article demonstrates that militarism with regard to nuclear security policy has a greatly diminished impact on modern Japanese society.

<sup>51</sup> See Maria Rost Rublee, *Taking Stock of the Nuclear Nonproliferation Regime: Using Social Psychology to Understand Regime Effectiveness*, 10 INT'L STUD. REV. 420, 441 (2008) ("a significant segment of the Japanese population, including many politicians and large portions of the [Ministry of Foreign Affairs], have been persuaded specifically that nuclear weapons are morally wrong and thus can never be considered as legitimate political or military tools.").

<sup>52</sup> See Mochizuki, *supra* note 3, at 307.

<sup>53</sup> Mike Mochizuki mentioned a similarly contrasting view of Japanese pacifism in the article "Japan Tests the Nuclear Taboo." Mochizuki termed Japan's pacifism as "pragmatic" because Japan "retained the right to defend itself and maintain minimally necessary self-defense forces for that purpose." Mochizuki went on to note, however, that, "[d]espite this pragmatic pacifism, forgoing nuclear weapons has been central to Japan's identify as a "peace state." *Id.* at 306. Mochizuki also noted "the 'non-nuclear' element of national identity remains a powerful constraint as the country 'normalizes' as a security actor." *Id.* at 307.

Nine should be amended to explicitly recognize the right of collective self-defense, a recent survey found that the older generation in Japan favors revision to a higher degree than does the younger population, who would rather Article Nine be preserved in its current form.<sup>54</sup> As an exhibition of the continuing vitality of nonviolent nuclear pacifism in particular, a poll conducted by the *Yomiuri Shimbun* shortly following North Korea's 2006 nuclear test showed that a resounding eighty percent of respondents favored retention of the "three nonnuclear principles," which cement the stand against possession of nuclear weapons into Japanese policy, compared with only eighteen percent who favored revision of those principles.<sup>55</sup> In fact, "public polling in Japan consistently demonstrates an aversion to nuclearization that has not varied significantly despite the end of the Cold War and the emergence of North Korea as a nuclear weapons state."<sup>56</sup>

While a rejection of the militarism that defined prewar Japanese international policy formed the modern foundation for Japan's nonaggressive stance toward security policy with regard to traditional armaments, a reaction to its unique experience as the only nation ever to suffer a nuclear attack has led Japan to adopt a nonviolent stance with regard to nuclear weapons. That stance prevents Japan from considering the possession of nuclear weapons as part of its national interest in all but the most dire of international security circumstances.

### III. COMPETING VIEWS REGARDING THE SIGNIFICANCE OF PACIFISM

As noted above, not all commentators share the view that pacifism dominates Japan's security policy with regard to nuclear weapons.<sup>57</sup> Many commentators instead improperly assign primacy to realist theories in their analyses of factors contributing to Japan's policy toward nuclear weapons. By way of example, Boyd/Samuels, despite coining the term that forms the basis of Japan's nuclear security posture, assign nonviolent pacifism only marginal significance in Japan's security policy decision-making, choosing instead to assign prominence to quasi-realist considerations.<sup>58</sup>

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<sup>54</sup> See Boyd & Samuels, *supra* note 41, at 14 (noting a 2004 *Asahi Shimbun* poll, "which found that Japanese in their thirties, forties, and fifties, actually opposed revising Article Nine at higher rates than those in their sixties and seventies.").

<sup>55</sup> See Mochizuki, *supra* note 3, at 307.

<sup>56</sup> Hughes, *supra* note 8, at 89.

<sup>57</sup> See, e.g., Campbell & Sunohara, *supra* note 7.

<sup>58</sup> Note that the Boyd/Samuels article does not discuss nuclear weapons and is primarily intended to analyze the Article Nine revision debate. Nevertheless, Boyd/Samuels do provide general analysis with regard to the political ideologies that drive Japan's security policy decision-making. In Boyd/Samuels' calculus, pacifism is one of three competing such ideologies, and its influence on Japanese security policy is of declining significance. See, e.g., Boyd & Samuels, *supra* note 41, at 17-27.

Similarly, recent articles by three prominent Japan scholars provide only summary analyses of Japan's pacifist stand against nuclear weapons and, as a result, reach conclusions that do not fully account for the primacy of pacifism vis-à-vis legal and quasi-realist factors in influencing Japan's Twenty-First Century security policy thinking.

In a piece titled "Japan: Thinking the Unthinkable," Kurt M. Campbell, Assistant Secretary of State for East Asian and Pacific Affairs, together with Tsuyoshi Sunohara, senior writer for the *Nikkei Shimbun*, addresses the primary factors influencing Japan's future nuclear weapons policies.<sup>59</sup> Campbell and Sunohara assert that an eroding security environment and the uncertain future for the nuclear non-proliferation regime and the U.S.-Japan security alliance are external factors that will impact Japan's security against nuclear threats. However, Japan's internal pacifist stand against nuclear weapons occupies comparatively minimal analytical space in Campbell and Sunohara's argument, and though they note the strength of pacifism against nuclearization, Campbell and Sunohara present little analysis as to whether pacifism will continue to possess the ability to constrain Japan's nuclear choices.<sup>60</sup> Instead, for Campbell and Sunohara, the U.S. nuclear umbrella, "and the Japanese-American security alliance in which it is embedded, provides the most important reason why Japan has not sought to develop an independent nuclear weapons capacity."<sup>61</sup> Although Campbell and Sunohara do not explicitly state that a breakdown in the alliance will trigger Japan's development of nuclear weapons, they note that such a collapse is "almost a prerequisite for Japan's pursuing the nuclear option."<sup>62</sup> Tying Japan's stance against nuclear weapons to primarily *realpolitik* considerations of security policy influences undercuts the significance of nonviolent pacifism in Japan's strategic thinking with regard to nuclear weapons.

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<sup>59</sup> See Campbell & Sunohara, *supra* note 7.

<sup>60</sup> See *id.* at 241-43 (noting that "the Japanese public has not lessened its resistance to an independent nuclear capability," but that "[d]omestic factors do exist...that could lead to such a development."). For Campbell and Sunohara, factors suggesting a possible future decline of the impact of antinuclear sentiment include: Japanese opposition to the American military presence on Okinawa, a 2003 survey showing that 37 percent of those polled would favor Japan considering the acquisition of nuclear weapons if North Korea declared that it possessed them, and concerns among the Japanese populace about "international irrelevance." See *id.* The 2003 poll, however, appears to have been an aberration. The Campbell/Sunohara piece was published in 2004. Subsequent polls in 2005 and 2006, after the North Korean nuclear test, showed significantly diminished support – by nearly twenty percent for the 2006 poll, and by over 30 percent for the 2005 poll – for an indigenous nuclear capability. See Mochizuki, *supra* note 3, at 307.

<sup>61</sup> Campbell & Sunohara, *supra* note 7, at 236.

<sup>62</sup> *Id.* at 244.

Similarly, Professors Mike Mochizuki and Llewelyn Hughes, both part of the distinguished community of Japan scholars at George Washington University's Elliott School of International Affairs, provide merely synoptical treatments of Japanese pacifism in their articles discussing Japan's possible future nuclear security policy.<sup>63</sup> Professor Mochizuki lists three foundations of what he terms Japan's "non-nuclear weapons policy":<sup>64</sup> Japan's "national identity" as a "peace state"; Japan's commitment to the non-proliferation regime; and its realist security considerations as foundations for Japan's antinuclear stance.<sup>65</sup> While Professor Mochizuki deems Japan's commitment to the non-proliferation regime as an important consideration in its nonnuclear stance, his listing of that commitment as a separate pillar in the foundation of Japan's nonnuclear policy suggests that that pillar is distinct from, and not influenced by, the pacifism that provides the substance for Japan's "peace state" pillar.

Regarding realist considerations, while this article certainly does not argue that Japan is incapable of applying realist logic in its nuclear security policy decision-making, it also does not support the proposition that realism enjoys the primacy that some scholars attribute to it in Japanese security thinking or the implication that realist considerations are not subject to the influence of a pacifist norm. Because Japan's pacifist stance against nuclear weapons does not appear to be interwoven with other factors that contribute to Japan's current position with regard to nuclear weapons, it lacks sufficient salience as a normative factor that can influence Mochizuki's three potential Japanese policy outcomes in the face of modern threats to Japan's nuclear security.<sup>66</sup>

Professor Hughes provides a similarly excellent treatment of the self-imposed restrictions that constrain Japan's choices with regard to nuclear weapons. However, Prof. Hughes falls short of assigning prominence to Japan's pacifism. For Hughes, Japan's primary constraints are domestic, and include the constitutional and legislative constraints already discussed. Professor Hughes notes that Japan's three nonnuclear

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<sup>63</sup> See Mochizuki, *supra* note 3; Hughes, *supra* note 8. Hughes was a doctoral candidate at MIT at the time he wrote his article.

<sup>64</sup> See Mochizuki, *supra* note 3, at 306.

<sup>65</sup> See *id.* at 308-12.

<sup>66</sup> Mochizuki provides three policy alternatives that Japan might consider in the face of its present security threats: "(1) moving toward a nuclear weapons option, (2) promoting a more robust conventional defense posture and a stronger alliance with the United States, and (3) pursuing a more assertive non-nuclear diplomacy." *Id.* at 313. Hughes similarly concludes his analysis by contending, *inter alia*, that "it is likely to be policies that undermine decisionmakers' confidence in Japan's existing insurance policies to manage nuclear threats that will reignite debate with Japan on whether to rebalance the scales toward nuclear autonomy rather than protection." See Hughes, *supra* note 8, at 96.

principles – commitments by Japan to never manufacture, possess, or import nuclear weapons – also constrain Japan’s options with regard to nuclear weapons, although Hughes questions the commitment of Japan’s leaders to those principles.<sup>67</sup> Finally, Hughes argues that “informal constraints” – namely public opinion – “present a more significant barrier to Japanese nuclearization.”<sup>68</sup>

While the Hughes article, like the Mochizuki article, is notable because it assigns a degree of significance to Japan’s principled stance against nuclear weapons, it also mirrors Professor Mochizuki’s decision to consign principled pacifism to merely one of several separate factors contributing to Japan’s security decision-making. Thus, even though Professors Mochizuki and Hughes ultimately arrive at highly persuasive analyses of Japan’s possible responses to its changing security environment, those analyses fail to reflect the prominence of nonviolent pacifism in Japan’s security decision-making.

This article attempts to give sufficient weight to nonviolent pacifism as a societal norm that influences Japan’s security policy in the context of nuclear weapons. It posits that Japanese pacifism – and nonviolent pacifism in particular with regard to nuclear weapons – represents a core societal principle that forms the basis for Japan’s security philosophy and decision-making. In this regard, it is similar to the concept of democracy in the U.S. Democracy is a core societal value shared among U.S. politicians and the general public. Regardless of the security challenges that the U.S. has faced throughout its history, Americans consistently uphold the principle that the U.S. must not sacrifice democracy as it meets those threats. Japan’s security policy outcomes demonstrate that the same is true for Japan. Regardless of the threats that Japan has faced in the postwar period, its people have never abandoned their principled stand against nuclear weapons. This stand originated under centuries of nonviolent pacifist philosophy and has blossomed in response to the atomic bombings of Hiroshima and Nagasaki. Thus, nonviolent pacifism, rather than being subject to a particular set of security vulnerabilities, serves as a guide that produces consistent macro-level nuclear security policy outcomes without regard to the nuclear threats that Japan faces, or will likely face in the foreseeable future.

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<sup>67</sup> See *id.* at 85-88.

<sup>68</sup> See *id.* at 89-91.

#### IV. TESTING THE NONVIOLENT PACIFIST PRINCIPLE: REGIONAL SECURITY THREATS

##### A. *The Three Nonnuclear Principles*

The nonviolent pacifism that forms the basis of Japan's security policy with regard to nuclear weapons consistently generates policy responses that reaffirm Japan's commitment to its nonnuclear posture in the face of security threats. Japan's first principled stand against nuclear weapons occurred in the wake of China's October 1964 nuclear test.<sup>69</sup> The emergence of China, a traditional Japanese rival that Japan had brutalized in the years leading up to and including World War II, as a nuclear power necessarily shook the foundations of Japan's nonnuclear stance. Nevertheless, then-Prime Minister Sato Eisaku responded by enunciating Japan's "three nonnuclear principles." Three years following the birth of the nonnuclear principles, Japan signed the NPT, cementing its position as a nonnuclear weapons state in the face of a nuclear threat posed by a traditional enemy.

Sato's – and Japan's – commitment to the three nonnuclear principles has been questioned, with good reason. During a meeting with U.S. President Lyndon Johnson immediately following the Chinese test, Sato commented, "if Chicom [Chinese Communists] had nuclear weapons, the Japanese also should have them."<sup>70</sup> According to documents made public during a recent investigation into whether Japan violated the principles by permitting entry of nuclear-armed U.S. naval vessels, Sato reflected that the principles were a "mistake."<sup>71</sup> Additionally, a committee of the Ministry of Foreign Affairs ("MoFA") recently concluded that there was at least an "unspoken agreement" (*mitsuyaku*, 密約) between the U.S. and Japan that permitted the U.S. to introduce nuclear-armed warships and submarines into Japanese waters in the event of "emergencies."<sup>72</sup> The Japanese originally understood the "Three Nos" – a shorthand reference to the three nonnuclear principles – to forbid the U.S. from introducing nuclear weapons even into Japan's territorial waters.<sup>73</sup> MoFA, however, apparently negotiated a diplomatic compromise with the U.S. whereby the U.S. could not introduce nuclear-armed warships and submarines into

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<sup>69</sup> See Campbell & Sunohara, *supra* note 7, at 221-22.

<sup>70</sup> Campbell & Sunohara, *supra* note 7, at 222.

<sup>71</sup> *Memo: Sato Said Ban on Nukes was "Mistake,"* YOMIURI SHIMBUN, Mar. 11, 2010.

<sup>72</sup> See *id.*; see also *Experts: No Secret Nuke Pact*, ASAHI SHIMBUN, Mar. 1, 2010, <http://www.asahi.com/english/TKY201002280265.html>; *Panel Likely to Conclude 2 Japan-U.S. Secret Pacts Existed*, YOMIURI SHIMBUN, Feb. 25, 2010.

<sup>73</sup> See Tsuyoshi Sunohara, *The Anatomy of Japan's Shifting Security Orientation*, 33 WASH. Q., no. 4, Oct. 2010 at 39, 49.

Japanese waters without “prior consultation.”<sup>74</sup> Effectively, the “prior consultation” policy meant that the U.S. could introduce nuclear-armed vessels into Japanese waters without notification and the Japanese, in turn, could assert that no such weapons had been introduced because they had not been notified.<sup>75</sup> Moreover, MoFA may have advocated clandestine importation of tactical nuclear weapons into Japan.<sup>76</sup>

Nevertheless, notwithstanding early evidence of Japan’s unsteady commitment to the principles, it is important to note from a normative pacifist standpoint that those principles were formalized under Sato, even though he was described by some as the most pro-nuclear Prime Minister up to that point in Japanese postwar history.<sup>77</sup> It is also important to note that the post-enunciation policy discussion culminated in Japan’s signing of the NPT, further solidifying the normative effect of nonviolent pacifism on Japan’s nuclear security policy outcomes despite initial wrangling concerning the three nonnuclear principles.

Further, Japan’s commitment to the three nonnuclear principles has grown substantially in recent years. Every successive cabinet following Sato’s has reaffirmed the principles. Further, the 2010 NDPG, designed to govern Japan’s security policy for a decade, memorializes Japan’s vow to “continue to uphold its basic defense policies, such as...maintaining the three non-nuclear principles . . . .”<sup>78</sup> A draft bill prepared in 2004 by the Liberal Democratic Party’s (“LDP”) Constitutional Reform Committee in the midst of the simmering debate regarding the revision of Article Nine to potentially permit Japan to participate in collective self-defense, recommended that the Three Nos be written into the Japanese constitution.<sup>79</sup> Although subsequent drafts omitted such language, the recommendation is significant because the LDP, traditionally Japan’s strongest party,<sup>80</sup> is also the party most in favor of Japan becoming what international observers might interpret as a “normal” state. *Minshuto* (民主と), Japan’s main opposition party (commonly referred to as the Democratic Party of Japan, or “DPJ”), echoed the LDP Committee’s recommendation by also proposing a draft constitutional revision that

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<sup>74</sup> See *id.*

<sup>75</sup> See *id.* at 50.

<sup>76</sup> See Hughes, *supra* note 8, at 86.

<sup>77</sup> See Campbell & Sunohara, *supra* note 7, at 225.

<sup>78</sup> See *National Defense Program Guidelines for FY 2011 and Beyond*, *supra* note 9, at 2.

<sup>79</sup> See, Hughes, *supra* note 8, at 90.

<sup>80</sup> Until 2009, when the Democratic Party of Japan (“DPJ”), the main opposition party, temporarily assumed control of both Houses of the Diet, the Liberal Democratic Party (“LDP”) had enjoyed a nearly uninterrupted reign in Japanese politics for more than half a century.

would enshrine the Three Nos into constitutional law.<sup>81</sup> The inclusion of the Three Nos in the constitutional drafts of Japan's two strongest political parties signals that there was recently a near political consensus to give the Three Nos the status of law. Such actions demonstrate the strength of Japan's commitment to the Three Nos, and of nonviolent pacifism in general.

### B. *Contrary to the Spirit of Humanity*

The consistency of nonviolent pacifism as an unwavering societal norm is also demonstrated by Japan's reactions to North Korea's various provocations. North Korea has warned Japan that it lies "well within striking range of" the North's missiles and that Japan should therefore stay well behaved.<sup>82</sup> The North has also threatened to turn Japan into a "nuclear sea of fire."<sup>83</sup> The North has backed such statements up by launching a series of missiles toward Japan, one of which flew over northern Japan in 1998,<sup>84</sup> and six more that landed in the Sea of Japan in 2006.<sup>85</sup> While Japan responded by notably increasing its rhetoric with regard to the threat posed by North Korea<sup>86</sup> and significantly increasing the defensive capabilities of the Self Defense Forces ("SDF"),<sup>87</sup> its response with regard to nuclear security policy has been to entrench itself more deeply into the nonviolent pacifist stand against nuclear weapons.

To be sure, however, individual politicians have called for Japan to develop its own nuclear weapons as a deterrent against the North. In 2009, for example, prior to the second North Korean Nuclear Test, Nakagawa Shoichi, Japan's former finance minister, suggested that Japan consider

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<sup>81</sup> See Mochizuki, *supra* note 3, at 308 (noting that Hatoyama Yukio, then Secretary General of the DPJ proposed a draft constitution that would expressly recognize collective self-defense, but that would also constitutionalize the three nonnuclear principles).

<sup>82</sup> See Campbell & Sunohara, *supra* note 7, at 231.

<sup>83</sup> See Barbara Demick, *North Korea Warns Japan – Pyongyang Promises a "Nuclear Sea of Fire" if the U.S. Were to Launch an Attack*, THE ORLANDO SENTINEL, Sept. 24, 2004, [http://articles.orlandosentinel.com/2004-09-24/news/0409240072\\_1\\_south-korean-north-korea-japan](http://articles.orlandosentinel.com/2004-09-24/news/0409240072_1_south-korean-north-korea-japan).

<sup>84</sup> See *Japan and North Korea: Bones of Contention*, 100 ASIA REP. 7 (2005) [hereinafter *Bones of Contention*].

<sup>85</sup> See Christopher W. Hughes, "Super-sizing" the DPRK Threat: Japan's Evolving Military Posture and North Korea, 49 ASIAN SURV. 291, 303 (2009).

<sup>86</sup> The 2010 NDPG, for example, refers to North Korea as an "immediate and grave destabilizing factor to regional security." *National Defense Program Guidelines for FY 2011 and Beyond*, *supra* note 9, at 4.

<sup>87</sup> See generally Hughes, *supra* note 85.

obtaining nuclear weapons to counter those of the North.<sup>88</sup> In March of this year, Tokyo's outgoing Governor, Ishihara Shintaro, argued that Japan could send a strong message to the world by developing an indigenous nuclear weapon stockpile.<sup>89</sup> Ishihara's comments were aimed more toward China, which Japan regards as a greater threat,<sup>90</sup> than toward North Korea. To be sure, China has deployed about 130 land-based nuclear-capable ballistic missiles, most of which have the range to reach targets in Asia, including Japan.<sup>91</sup> Further, China is committed to countering the naval strength of the U.S. Pacific Fleet with its evolving "anti-access/area denial" military strategy, which could upset the U.S.-Japan alliance and the balance of power in East Asia.<sup>92</sup> Thus, these statements, to a degree, do reflect political anxiety in the face of threats from North Korea and China.<sup>93</sup>

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<sup>88</sup> See Danielle Demetriou, *Japan "Should Develop Nuclear Weapons" to Counter North Korea Threat*, THE TELEGRAPH, Apr. 20, 2009, <http://www.telegraph.co.uk/news/worldnews/asia/japan/5187269/Japan-should-develop-nuclear-weaponst-to-counter-North-Korea-threat.html>. Demetriou also noted that, two months prior to his comments, Nakagawa resigned "after appearing to be drunk at a Group of Seven press conference in Rome." See *id.*

<sup>89</sup> See David McNeill, *Japan Must Develop Nuclear Weapons, Warns Tokyo Governor*, THE INDEP., Mar. 8, 2011, <http://www.independent.co.uk/news/world/asia/japan-must-develop-nuclear-weapons-warns-tokyo-governor-2235186.html>. The article also referred to Ishihara as a "right-wing" politician and noted that he has previously called homosexuals "abnormal" and post-menopausal women "useless." See *id.* Ishihara made similar comments in 2007 in New York, arguing that, "If the U.S. would not fulfill her responsibility based on [the] U.S.-Japan security treaty in the case of emergency, Japan will make her own efforts to protect herself. This would lead Japan to possess nuclear weapons as the U.S. is concerned." Sunohara, *supra* note 73, at 50.

<sup>90</sup> See generally Hughes, *supra* note 85 at 303-05 (arguing that Japan has used North Korea as a "catch-all proxy threat" to develop security policies that properly respond to the perceived China threat).

<sup>91</sup> See Michael Richardson, Opinion, *Why Worry About China's Nuclear Warheads*, JAPAN TIMES ONLINE, Mar. 4, 2011, <http://search.japantimes.co.jp/cgi-bin/eo20110304mr.html>.

<sup>92</sup> See Michael Richardson, Opinion, *China Targeting U.S. Deterrence*, THE JAPAN TIMES, Jan. 5, 2011, <http://www.japantimes.co.jp/text/eo20110105mr.html>.

<sup>93</sup> More notable Japanese politicians, such as Abe Shinzō and Asō Tarō, both former Prime Ministers, have also made similar comments, although their comments reflected a desire to merely debate the issue, rather than actually acquire nuclear weapons. See, e.g., Elizabeth D. Bakanic, *The End of Japan's Nuclear Taboo*, BULL. ATOMIC SCIENTISTS, June 9, 2008, <http://www.thebulletin.org/print/web-edition/features/the-end-of-japans-nuclear-taboo> ("During his administration, Abe commented that it wouldn't violate Japan's pacifist constitution to acquire nuclear weapons for defensive purposes."); Mochizuki, *supra* note 3, at 303 ("Foreign Minister Asō Tarō echoed this view: 'When neighboring country has come to possess [nuclear weapons], it is important to debate this in various ways as one way of thinking.'").

Notwithstanding comments from individual political figures,<sup>94</sup> Japan's policy outcomes reflect that provocations from North Korea, and even China, have not pushed the broader Japanese population to seriously consider acquiring nuclear weapons. In the aftermath of the North's March 1993 threat to withdraw from the NPT, Japan responded not by declaring an intent to develop its own nuclear arsenal, but rather by officially declaring nuclear weapons "contrary to the spirit of humanity that gives international law its philosophical foundation."<sup>95</sup> Japan reiterated this stance in a June 14, 1995 letter to the International Court of Justice – which sought comments in connection with its consideration of the legality of nuclear weapons under international law – by stating again that nuclear weapons were contrary to the spirit of humanity and by affirming that Japan "will always strive to promote nuclear disarmament and nuclear non-proliferation, with a view to achieving the ultimate elimination of nuclear weapons."<sup>96</sup> Though falling short of declaring nuclear weapons illegal under international law, Japan's official comments signal a commitment to securing their abolition, rather than to acquiring them.

In August 1998, after North Korea launched a Taepodong-1 missile<sup>97</sup> over Japan, Japan responded by threatening to withdraw support for an agreement under the Korean Peninsula Energy Development Organization ("KEDO"), through which Japan committed to provide one billion dollars in aid for two North Korean light-water nuclear reactors.<sup>98</sup> Japan also sent a further signal of its evolution as an active security player when the Marine Self Defense Force ("MSDF") fired warning shots against North Korean *fushinsen* (不審船, "suspicious ships") that were invading Japanese waters – thus engaging in the first military exchange of fire in Japanese waters since World War II.<sup>99</sup> Yet, notwithstanding its

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<sup>94</sup> Indeed, "a limited number of conservative politicians have for decades argued for a vision of Japan with an independent military capability." Hajime Izumi & Katsuhisa Furukawa, *Not Going Nuclear: Japan's Response to North Korea's Nuclear Test*, 37 ARMS CONTROL TODAY, June 2007, available at <http://www.armscontrol.org/print/2375>.

<sup>95</sup> Written Statement of the Government of Japan, Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, 1996 I.C.J. 66 (July 8).

<sup>96</sup> Letter Dated 14 June 1995 from Minister at the Embassy of Japan, together with Written Statement of the Government of Japan, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226 (July 8).

<sup>97</sup> The Taepodong-1 is touted as a long-range missile capable of reaching Hawaii and Alaska. See Son, *supra* note 40, at 192 n.5; *Bones of Contention*, *supra* note 84, at 7. The 1998 missile test was only a partial success, given that the rocket's third stage failed. See *id.*

<sup>98</sup> See John O. Magbadelo, *Japan and the Two Koreas: The Challenges and Prospects of Confidence-building*, 10 WORLD AFF, no. 2, Summer (2006) at 72, 82. Japan subsequently reversed course under pressure from the U.S. and South Korea and agreed to provide the funding. See *id.*

<sup>99</sup> See Hughes, *supra* note 85, at 298. Later, in a 2001 *fushinsen* incident, Japan

active diplomatic and conventional military responses to the North's provocation, Japan again signaled a further retreat from the possibility of developing nuclear weapons by signing the IAEA Additional Protocol a mere three months following the North's Taepodong-1 launch.<sup>100</sup>

Japan's nonviolent pacifist stand against nuclear weapons continued with North Korea's first nuclear test in 2006. Though many Japanese appreciated the significance of the test,<sup>101</sup> the response among the Japanese public was considerably measured. Though Japan views North Korea as a "terrorist state" implacably, and possibly irrationally, bent on the destruction of Japan,<sup>102</sup> the Japanese public did not take any specific psychological safety measures, such as building underground shelters, in response to the possibility of a North Korean nuclear strike.<sup>103</sup> Instead, the public was more concerned about possible radioactive contamination from the nuclear test, and was relieved when such risk proved to be low.<sup>104</sup> Within a month of the North's test, Japanese media, and the Japanese public, returned to coverage of the decades-old issue of North Korea's abduction of Japanese citizens.<sup>105</sup>

The Japanese public showed a similar resolve in the face of the North's firing of a long range Taepodong-2 missile in Japan's direction in April 2009 and its second nuclear test the following month.<sup>106</sup> Though

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took the unprecedented step of chasing the North Korean ship into China's exclusive economic zone and, after an exchange of fire, sinking it, along with its 15-member crew. See Son, *supra* note 40, at 187.

<sup>100</sup> See *Status of Additional Protocols (as of 10 Mar. 2011)*, INTERNATIONAL ATOMIC ENERGY AGENCY [IAEA], [http://www.iaea.org/OurWork/SV/Safeguards/sg\\_protocol.html](http://www.iaea.org/OurWork/SV/Safeguards/sg_protocol.html) (last visited Apr. 15, 2011).

<sup>101</sup> A poll taken by the *Asahi Shimbun* following the test showed that 82 percent of respondents were "concerned," and that among those, 44 percent felt a "strong threat" from North Korea. See Izumi & Furukawa, *supra* note 94.

<sup>102</sup> Hughes, *supra* note 85, at 302.

<sup>103</sup> See Izumi & Furukawa, *supra* note 94.

<sup>104</sup> See *id.*

<sup>105</sup> See *id.*; see also Rublee, *supra* note 51, at 434 (citing a comment by a Japanese nuclear expert that "It surprised me how calm the Japanese public was after the North Korean Test. I heard few people saying Japan should go nuclear. The media were saying, 'Japan should not go nuclear in response.' Even the conservative papers did not argue that Japan should go nuclear.").

<sup>106</sup> See Masako Toki, *The North Korean Nuclear Test: The Japanese Reaction*, BULL. ATOMIC SCIENTISTS, May 27, 2009, available at <http://www.thebulletin.org/web-edition/features/the-north-korean-nuclear-test-the-japanese-reaction>. North Korea implicitly signaled that it would stop firing long-range missiles over Japan when it agreed with the United States on February 29, 2012 to suspend long-range missile launches in exchange for 240,000 tons of U.S. food aid. See William Wan, *N. Korea Agrees to Suspend Uranium Enrichment, Nuclear Tests*, WASH. POST, Feb. 29, 2012,

Japan called for emergency U.N. Security Council sessions and then Prime Minister Asō quickly referred to the North's May 24, 2009 nuclear test as an "intolerable act that poses a significant threat to the national security of Japan," the *hibakusha* (被爆者, Japan's remaining survivors of the Hiroshima and Nagasaki bombings), together with Japan's disarmament-focused NGO's, which represent the majority of public opinion, were more concerned that the arguments of Japan's nuclear hardliners would gain traction.<sup>107</sup>

Notwithstanding the calls from a limited subset of Japan's political figures for Japan to acquire nuclear weapons and the international fascination with the question of whether Japan will undertake such an action, "[m]ost Japanese regard foreign countries' concerns about Japan's nuclear future as exaggerated."<sup>108</sup> In the face of repeated provocations from North Korea, a constant Chinese nuclear presence coupled with its growing military presence which includes a blue water navy that has clashed with Japan's naval forces,<sup>109</sup> and a deteriorating nuclear non-

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[http://www.washingtonpost.com/world/national-security/n-korea-agrees-to-suspend-uranium-enrichment-nuclear-tests/2012/02/29/gIQAsxwAiR\\_story.html](http://www.washingtonpost.com/world/national-security/n-korea-agrees-to-suspend-uranium-enrichment-nuclear-tests/2012/02/29/gIQAsxwAiR_story.html). The North's commitment to that agreement was quickly called into question, however, after the North's announcement, less than one month later, that it would launch a satellite into space "to mark the centenary of the birth of its founder, Kim Il Sung." See *N. Korea Planned Rocket Launch a "Deal-Breaker," Says U.S.*, HONOLULU STAR ADVERTISER, March 16, 2012, [http://www.staradvertiser.com/news/breaking/North\\_Korea\\_says\\_it\\_will\\_launch\\_long-range\\_rocket.html](http://www.staradvertiser.com/news/breaking/North_Korea_says_it_will_launch_long-range_rocket.html). Thus, Japan continues to face the threat of North Korean missile launches.

<sup>107</sup> See *id.*

<sup>108</sup> Izumi & Furukawa, *supra* note 94. Masaru Tamamoto, a senior fellow at the World Policy Institute, calls international fascination with the comments of this subset of Japan's politicians a "deep and dangerous misreading of the political currents in Japan, which mistakes the sentiments of a small cadre of nationalists for that of the broader officialdom." Masaru Tamamoto, *The Emperor's New Clothes: Can Japan Live Without the Bomb?*, 26 WORLD POL'Y J. 63, 68 (2009).

<sup>109</sup> In November 2004, Japan's SDF caught a Chinese submarine attempting to map the ocean floor in Japan's territorial waters, in an apparent attempt to prepare for a sea battle over Taiwan. See Joseph Kahn, *The Two Faces of Rising China*, N.Y. TIMES, Mar. 13, 2005, at sec. 5, <http://query.nytimes.com/gst/fullpage.html?res=9E0DE4D7143CF930A25750C0A9639C8B63&scp=1&sq=chinese%20submarine%20japanese%20territorial%20water&st=cse&pagewanted=2>. The Maritime Self-Defense Force (MSDF) chased the submarine into the East China Sea. See Nicholas Szechenyi, *A Turning Point for Japan's Self-Defense Forces*, 29 WASH. Q., no. 4, Autumn 2006 at 139, 143. Additionally, the MOD has reported that Chinese destroyers were detected in the area near Miyakojima Island and Okinotori-shima Island five times since 2008. See *A Rapid Buildup of Nuclear Weapons by China and its Apparent Determination to Restrict United States' Forces Access to the Western Pacific is Threatening to Transform the Balance of Power in East Asia*, ASAHI SHIMBUN, June 21, 2010 [hereinafter *Rapid Buildup*]. Further, in April 2010, a fleet of ten vessels, including two Kilo-class submarines – Russian-built diesel/electric submarines

proliferation regime, there is still a near-consensus of opposition to Japan acquiring nuclear weapons among Japan's prominent opinion-makers, experts, and scientific and academic communities.<sup>110</sup> The continued and unaffected stand of the Japanese populace against nuclear weapons acquisition is a testament to the normative strength of nonviolent pacifism in Japan's nuclear security thinking.

### C. *Whither the Nuclear Taboo?*

To be sure, North Korea's possession of nuclear weapons has helped remove the so-called "nuclear taboo" – an aversion to public discussion of even the possibility of acquiring nuclear weapons – in Japan. As recently as 1999, Japanese political figures still faced dismissal for publicly commenting on nuclear weapons.<sup>111</sup> More recently, however, high-level politicians, including former Prime Ministers Abe and Fukuda Yasuo have openly discussed the possibility of Japan acquiring nuclear weapons with comparatively little political consequences.<sup>112</sup> Earlier this year, Ishiba Shigeru, a prominent former Defense Minister, conducted an interview with the *Sankei Shimbun* during which he debated the merits and pitfalls of a decision by Japan to develop nuclear weapons.<sup>113</sup> Moreover, public opinion polls have shown an increasing openness among the Japanese population to the discussion of nuclear weapons. A November

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that China acquired between 1995 and 1998 – passed between Okinawa and Miyakojima; a move that, according to a Chinese military source, was intended to “demonstrate to Japan and the United States the improvement in China’s anti-access capabilities in the East China Sea.” *Id.* See *Kilo-Class Submarine – People’s Liberation Army Navy*, GLOBALSECURITY.ORG, <http://www.globalsecurity.org/military/world/china/kilo.htm> (last accessed March 10, 2012) (describing the Kilo-class submarine).

<sup>110</sup> See CHANLETT-AVERY & NIKITIN, *supra* note 24, at 7 (noting also that “the Japanese public remains overwhelmingly opposed to nuclearization, pointing to factors like an educational system that promotes pacifism and the few surviving victims of Hiroshima and Nagasaki who serve as powerful reminders of the bombs’ effects.”); see also Izumi & Furukawa, *supra* note 94.

<sup>111</sup> See Campbell & Sunohara, *supra* note 7, at 229 (noting that a statement by then-Vice Defense Minister Nishimura Shingo in a 1999 magazine interview that the Diet “should consider the fact that Japan may be better off if it armed itself with nuclear weapons,” created a public uproar and resulted in Nishimura’s resignation.).

<sup>112</sup> See Bakanic, *supra* note 93.

<sup>113</sup> See “*Kakunoka Sahanai Yorimashi*” *Ishiba Shigeru Jimintō Seichōkaichō*, SANKEI SHIMBUN, Feb. 19, 2011, <http://sankei.jp.msn.com/politics/news/110219/plc11021912010007-n1.htm> (translation provided by Japanese colleague) (Ishiba noted that the Constitution permits tactical nuclear weapons and that possessing nuclear weapons was advantageous in that it would mean Japan had a domestic deterrent capability, but that the disadvantages included a weakening of the U.S.’s “umbrella” commitment and the devastation the energy industry would face due to sanctions from uranium providers and the U.N.).

2006 *Asahi Shimbun* poll, for example, found that 61 percent of respondents favored debating the nuclear issue.<sup>114</sup> More recently, a *Sankei Shimbun* poll found that the percentage of those favoring discussion of the nuclear issue had risen to 86.7 percent.<sup>115</sup>

The easing of Japan's nuclear taboo has caused some commentators to fear that Japan's younger generation may more readily favor Japan acquiring nuclear weapons. Emma Chanlett-Avery and Mary Beth Nikitin of the Congressional Research Service, for example, note the fear among some observers that Japan's younger population may be becoming more nationalist and may therefore become more supportive of nuclear weapons in the future.<sup>116</sup> For these observers, a willingness to discuss the nuclear issue may be indicative of a trend toward favoring nuclearization. However, given that Japan's opposition to nuclear weapons is so strong that the combined effect of a traditional rival's possession of hundreds of the same and of an avowed enemy's belligerent missile tests can only propel Japan to talk about *talking about* nuclear weapons, any fear that Japan will come to favor nuclear weapons because of an easing of the "nuclear taboo," even if valid, will likely not become a reality for at least several generations.

A willingness to debate the issue, however, is not necessarily symptomatic of an oncoming willingness to develop nuclear weapons. Recall, for example that the younger generation is in some ways more averse to so-called "normalization" than the older generation, as reflected by recent attitudes regarding revising Article Nine.<sup>117</sup> Moreover, as Elizabeth Bakanic notes in the *Bulletin of the Atomic Scientists*, even though the younger generation has only secondary knowledge of the Hiroshima and Nagasaki bombings – knowledge that may account for an increased willingness to discuss nuclear weapons – "the population continues to exhibit strong negative attitudes toward nuclear weapons, and younger generations are still much more adverse to nuclear weapons than populations in most other countries."<sup>118</sup> Moreover, Dr. Maria Rost Rublee, a senior lecturer at the University of Auckland in New Zealand and a specialist in issues regarding nuclear non-proliferation and East Asia,

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<sup>114</sup> See Mochizuki, *supra* note 3, at 319.

<sup>115</sup> See *Kotsukaide Kaku Gironsubeki 86.7%*, SANKEI SHIMBUN, Feb. 14, 2011, <http://sankei.jp.msn.com/politics/news/110214/stt11021422510013-n1.htm> (translation provided by Japanese colleague).

<sup>116</sup> See CHANLETT-AVERY & NIKITIN, *supra* note 24, at 7.

<sup>117</sup> See Boyd & Samuels, *supra* note 41, at 14. Recall also the polls discussed above that show an overwhelming aversion to acquiring nuclear weapons even while at the same time showing a willingness to discuss the issue.

<sup>118</sup> Bakanic, *supra* note 93. Bakanic concludes by stating "by no means is Japan on the road to nuclear weapons development – or even considering it as a serious option." *Id.*

notes that, rather than being in favor of acquiring nuclear weapons, most Diet members and bureaucrats who want to discuss the nuclear option “would like to see [it] discussed so that the Japanese can see why it does not make sense for Japan given their national priorities.”<sup>119</sup> Thus, a relaxing of the nuclear taboo should not be interpreted as a decline in the normative strength of nonviolent pacifism with regard to nuclear weapons in Japan.

#### V. TESTING THE NONVIOLENT PACIFIST PRINCIPLE: THE NON-PROLIFERATION REGIME

Japan may be the linchpin of the non-proliferation regime. As the only country to have ever suffered a nuclear attack, Japan’s advocacy of the regime stems from a national tragedy, and its experience serves as a powerful testament to the importance of the regime’s goal of eliminating nuclear weapons. Dr. Rublee argues that if Japan were “seen as potentially withdrawing from the NPT, many other threshold states may wonder whether the ship is sinking and whether it is time for them to leave as well.”<sup>120</sup> With India, Pakistan, and likely Israel developing nuclear weapons outside the NPT framework, together with North Korea and Iran flouting the NPT to acquire materials for the purpose of diverting them to a nuclear weapons program, the withdrawal of Japan from the NPT could signal the non-proliferation regime’s demise. However, notwithstanding its concerns about the viability of the regime, Japan has responded by increasing its commitment to the regime. Professor Mochizuki notes:

Recent Japanese initiatives in the field include hosting UN conferences on disarmament issues, introducing nuclear disarmament resolutions to the UN General Assembly, training officials from developing countries about arms control and nonproliferation, providing financial and technical aid for the completion of the CTBT, persuading like-minded countries to join the CTBT, supporting a nuclear-weapon-free zone in Central Asia, and assisting denuclearization efforts in the former Soviet Union.<sup>121</sup>

In April 2009, departing from its traditionally modest disarmament proposals, Japan, through then-Foreign Minister Nakasone Hirofumi, announced its “11 Benchmarks for Global Nuclear Disarmament,” through which Japan proposed such bold actions as: (1) calling for China,

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<sup>119</sup> Rublee, *supra* note 51, at 442.

<sup>120</sup> Rublee, *supra* note 35, at 63.

<sup>121</sup> Mochizuki, *supra* note 3, at 308.

specifically, as well as other states, to take concrete steps toward disarmament; (2) imposing global restrictions on ballistic missiles capable of delivering a nuclear warhead; and (3) immediate ratification of the CTBT by the U.S.<sup>122</sup> Sharon Squassoni, Director and Senior Fellow of the Proliferation Prevention Program at the Center for Strategic and International Studies, argued that Japan's Eleven Benchmarks were a "new approach" that "deserve[d] attention."<sup>123</sup>

Further signaling its commitment to strengthening the non-proliferation regime, Japan partnered with Australia in 2008 to form the International Commission on Nuclear Non-proliferation and Disarmament ("Japan-Australia Commission"), which "aims to reinvigorate international efforts on nuclear non-proliferation and disarmament."<sup>124</sup> At the May 2010 NPT Review Conference, the Japan-Australia Commission introduced a "Joint Package of Practical Nuclear Disarmament and Non-Proliferation Measures," which set out concrete steps that the states parties to the NPT could take to achieve universalization of the NPT, as well as the NPT's three "pillars": nuclear disarmament, nuclear non-proliferation, and the peaceful use of nuclear energy.<sup>125</sup>

These recent steps signal that, rather than shrinking away from the non-proliferation regime, Japan is choosing to assume a leadership role in strengthening the regime. Dr. Rublee notes that "[t]he cost – in both financial and human capital – of consistently and enthusiastically calling parties together to wrestle with the complex issues of disarmament is not insignificant and displays a commitment that few other states have been willing to take."<sup>126</sup> Indeed, Japan's commitment to the non-proliferation regime is analogous to the statement made by former U.S. Supreme Court Justice Robert H. Jackson in his concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*:

With all its defects, delays and inconveniences, men have discovered no technique for long preserving free

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<sup>122</sup> See *Statement by Mr. Hirofumi Nakasone, Minister for Foreign Affairs of Japan: Conditions Toward Zero – "11 Benchmarks for Global Nuclear Disarmament"* [hereinafter *Statement by Mr. Hirofumi Nakasone*], MINISTRY OF FOREIGN AFFAIRS OF JAPAN (Apr. 27, 2009), <http://www.mofa.go.jp/policy/un/disarmament/arms/state0904.html>.

<sup>123</sup> See Sharon Squassoni, *Grading Progress on the 13 Steps Toward Nuclear Disarmament*, 45 POL'Y OUTLOOK 7-8 (2009), available at [http://www.carnegieendowment.org/files/13\\_steps.pdf](http://www.carnegieendowment.org/files/13_steps.pdf).

<sup>124</sup> INT'L COMM'N ON NUCLEAR NON-PROLIFERATION AND DISARMAMENT, <http://icnnd.org/Pages/default.aspx> (last visited Apr. 15, 2011).

<sup>125</sup> See Media Release, Australian Minister for Foreign Affairs and Trade, Australia-Japan Joint Package on Nuclear Disarmament (Mar. 24, 2010), available at <http://www.foreignminister.gov.au/releases/2010/fa-s100324.html>.

<sup>126</sup> Rublee, *supra* note 35, at 58.

government except that the Executive be under the law, and that the law be made by parliamentary deliberations. Such institutions may be destined to pass away. But it is the duty of the Court to be the last, not first, to give them up.<sup>127</sup>

While Justice Jackson was referring to the democratic concept of separation of powers under the U.S. Constitution, his statement is equally true with regard to Japan's commitment to the non-proliferation regime. In Japan's view, the non-proliferation regime is the best mechanism for ensuring nuclear disarmament, and even if the regime is failing, Japan is determined to "be the last, not first" to give it up. Japan's commitment to the non-proliferation regime is reflective of its nonviolent pacifist commitment to abolish, rather than acquire, nuclear weapons.

#### VI. THE U.S. "NUCLEAR UMBRELLA" CONUNDRUM

Many commentators see Japan's continuing reliance on extended deterrence by the U.S. (the so-called "nuclear umbrella") as tarnishing its image as a leader in the non-proliferation regime both because other states view Japan's reliance on the umbrella as hypocritical, and because, as noted above, theorists cite an eventual weakening of the umbrella as the primary factor that may drive Japan to develop its own nuclear weapons.<sup>128</sup> As an example of the former, India responded to Japan's sanctions and criticism following India's 1998 nuclear test by accusing

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<sup>127</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 655 (1952).

<sup>128</sup> Indeed, the nuclear umbrella, and not any societal norm, has been noted as a primary factor for Japan's decision to remain nonnuclear in the face of nuclear threats. *See Campbell & Sunohara, supra* note 6, at 206. Japan's civilian nuclear program is also seen as a stumbling block to its non-proliferation efforts. Japan has "one of the most advanced and largest . . . civilian nuclear power programs in the world." *Id.* at 243. At least one of Japan's reprocessing plants, Rokkasho, combines plutonium with uranium to create mixed oxide (MOX) fuel. *See Rublee, supra* note 35, at 59. According to Dr. Rublee, "it is not difficult to separate out plutonium from MOX," and therefore "[i]f Tokyo decided to pursue nuclear weapons, Rokkasho would make it very easy to do so." *Id.* Further, under some estimates, Japan already has enough reactor-grade plutonium to manufacture hundreds of nuclear weapons. *See Campbell & Sunohara, supra* note 7, at 243. Japan could thus conceivably create nuclear weapons in as little as a year and, given the expertise of Japan's nuclear scientists, could also develop reliable nuclear warheads without the need to test them. *See id.* at 243-44. Japan's civilian nuclear program is thus seen by others as an indicator that Japan is hedging its nuclear bets. Professor Hughes notes, however, "the commitment to civilian nuclear energy is not designed to hedge against abandonment by the United States, but rather is embedded in a far broader portfolio of policies designed to decrease perceived risks associated with reliance on external energy supplies." Hughes, *supra* note 8, at 81. Thus, Japan's civilian nuclear program is likely not a proliferation threat. Further, given the ongoing crisis at the Fukushima Plant following the March 2011 earthquake and tsunami disaster, the future of Japan's nuclear industry remains unclear.

Japan of hypocrisy given its reliance on U.S. extended deterrence.<sup>129</sup> More recently, after an accusation by Japan's foreign minister at a recent meeting of the foreign ministers of Japan, China, and Korea in South Korea that "[a]mong the countries that possess nuclear weapons, only China is increasing its nuclear weapons," China's minister responded, "There is nothing to justify being told such a thing by Japan, which is protected by the U.S. nuclear umbrella."<sup>130</sup>

Japan readily admits that it relies on extended deterrence from the U.S. In his "11 Benchmarks" speech, Nakasone noted that "In light of the situation in East Asia ... it goes without saying that the extended deterrent including nuclear deterrence under the Japan-U.S. security arrangements is of critical importance for Japan."<sup>131</sup> Japan has viewed the nuclear umbrella as central to preserving its security during the interim period as the world moves closer to total disarmament.<sup>132</sup> Japan's stance with regard to U.S. extended deterrence demonstrates that it is not incapable of at least quasi-realist security policymaking. However, given Japan's repeated reaffirmations that it is committed to non-proliferation not because of the strength of U.S. extended deterrence, but because nuclear weapons are "contrary to the spirit of humanity,"<sup>133</sup> reliance on U.S. extended deterrence likely represents the extent to which Japan is willing to embrace traditional notions of realism with regard to nuclear security.

Japan's ability to perform realist calculations and its sensitivity to factors affecting the strength of U.S. extended deterrence is further meted out by the fact that it conducted a secret study following the end of the Cold War, with the premise that the demise of the Soviet Union undercut the strategic merit of extended deterrence for the U.S. The study, conducted by the then-JDA<sup>134</sup> in 1995, examined the possibility of Japan acquiring nuclear weapons and outlined several drawbacks to such a policy.<sup>135</sup> The study concluded that, even if the U.S. umbrella weakened and the non-proliferation regime further eroded, acquiring nuclear

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<sup>129</sup> See Rublee, *supra* note 35, at 61.

<sup>130</sup> See *Rapid Buildup*, *supra* note 109.

<sup>131</sup> *Statement by Mr. Hirofumi Nakasone*, *supra* note 122.

<sup>132</sup> See *id.* ("With this viewpoint in mind, I believe that the world has now arrived at a stage where it should consider more specifically a realistic approach to nuclear disarmament whereby international stability will be preserved both in establishing the goal of the world free of nuclear weapons as well as in the process of attaining it while the international regime of nuclear non-proliferation being maintained and even enhanced.").

<sup>133</sup> Written Statement of the Government of Japan, *supra* note 95.

<sup>134</sup> In 2007, the JDA was elevated to cabinet-level ministry and is now called the Ministry of Defense.

<sup>135</sup> See Campbell & Sunohara, *supra* note 7, at 227.

weapons would not be in Japan's national interest because such action would create an environment unfavorable to Japan's continued prosperity as a trading nation.<sup>136</sup> Further, the study noted that "Japan's high population density and small geographic area undercut the logic of mutually assured destruction"<sup>137</sup> and that a Japanese withdrawal from the NPT would "deal a serious blow to the international nuclear nonproliferation regime."<sup>138</sup> Given the study's conclusion that various factors militated against the acquisition of nuclear weapons, it is easy to simply conclude that Japan's reliance on the nuclear umbrella and its support of the non-proliferation regime are for purely pragmatic reasons.

With regard to the non-proliferation regime, however, it is important to note that the 1995 study was conducted well in advance of North Korea's nuclear test. Indeed, the study "asserted that it was highly unlikely that the United States would allow North Korea to develop nuclear weapons."<sup>139</sup> The JDA's assumption, however, proved false. In the years since the 1995 study, North Korea has tested two nuclear devices and launched several missiles in Japan's direction, signaling that Japan's "national interest" calculation could reasonably change. Indeed, Japan's abandonment of the "minimum necessary force" concept indicates that regional instability has caused it to recalculate what weapons capabilities are in its national *security* interest. However, assuming *arguendo* that national interests can change, it is far harder to abandon those interests when they are tied to the normative principles – in this case nonviolent pacifism – that define a population's national existence. That fact explains Japan's increasing commitment to and leadership of the non-proliferation regime in the face of threats that, according to realist calculations, should cause Japan to seek "self-help" in the form of acquiring a domestic nuclear deterrent.<sup>140</sup>

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<sup>136</sup> See Mochizuki, *supra* note 3, at 311.

<sup>137</sup> Hughes, *supra* note 8, at 78.

<sup>138</sup> Rublee, *supra* note 51, at 433 (citing an interview with a senior Japanese nuclear expert). The 1995 JDA study was not the first such study. Between 1968 and 1970, prior to signing the NPT, Japan conducted a similar study and reached a similar conclusion that a domestic nuclear weapons program was not in Japan's national interest. See Hughes, *supra* note 8, at 76. Though an easy inference is that Japan joined the NPT because of the 1968-70 study's conclusion, and not because of any nonviolent pacifist sentiment, such an inference does not account for Japan's prior manifestations of its nonviolent stand against nuclear weapons, which manifestations include Shidehara's nonviolent pacifist inspiration for Article Nine and also include the Basic Law.

<sup>139</sup> Campbell & Sunohara, *supra* note 7, at 228.

<sup>140</sup> It may also help to create a context for the elevation of the JDA to a cabinet-level department in 2007. Professor Hughes notes that, in light of its conclusion that nuclearization is practically untenable, the JDA's promotion will likely militate against future nuclearization. See Hughes, *supra* note 8, at 94. Thus, while the JDA's promotion certainly reflects the increased prominence of an active defense posture in Japan's

Regarding U.S. extended deterrence, though Japan remains dependent on the nuclear umbrella, there is increasing evidence that the nonviolent pacifist principle is moving Japan toward favoring its removal. In August 2009, the DPJ overtook the LDP to assume control of the powerful Lower House of the Diet.<sup>141</sup> As of October 2009, sixty-one percent of Lower House DPJ members surveyed preferred ending Japan's reliance on U.S. extended deterrence.<sup>142</sup> Further, nearly 90 percent of Lower House DPJ members would prefer that the U.S. adopt a no-first-use policy.<sup>143</sup> Although the 2010 U.S. Nuclear Posture Review ("NPR") does not adopt a strict no-first-use policy, and also reaffirms the commitment of the U.S. to extended deterrence, it does provide a limited negative security assurance by declaring that the U.S. "will not use or threaten to use nuclear weapons against non-nuclear weapons states that are party to the Nuclear Nonproliferation Treaty and in compliance with their nuclear nonproliferation obligations."<sup>144</sup> The NPR partially reflects the policy goal of then-Foreign Minister Okada Katsuya, who made clinching a negative security assurance one of the key aspects of his nuclear policy.<sup>145</sup> The trend against the nuclear umbrella extends beyond the views of Japan's current leading political party. Tamamoto notes that a majority of Japanese citizens feel that U.S. extended deterrence is unnecessary.<sup>146</sup> Ralph Cossa, President of the Pacific Forum at the Center for Strategic and International Studies, echoes Tamamoto's evidence. After the NPR reaffirmed the U.S. commitment to extended deterrence in Asia, Cossa noted, "many [in the general public] seem to believe that the nuclear dimension of extended deterrence can and should be eliminated."<sup>147</sup>

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security thinking – as reflected by the 2010 NDPG – it may also reflect a further entrenching of the nonviolent pacifist stand against nuclearization in Japan's political establishment.

<sup>141</sup> See Martin Fackler, *With Bold Stand, Japan Opposition Wins a Landslide*, N.Y. TIMES, Aug. 30, 2009, <http://www.nytimes.com/2009/08/31/world/asia/31japan.html>. The DPJ had previously assumed control of the Upper House, the House of Councilors, in 2007. See *Battle for Power/Coalition Partners Hold Key to DPJ Policies*, YOMIURI SHIMBUN, Aug. 1, 2009. In July, 2010, the DPJ lost control of the Upper House, but it still controls the Lower House. See *Ruling Camp Loses Majority/Opposition LDP Makes Gains; Kan Says He'll Stay On*, YOMIURI SHIMBUN, July 12, 2010.

<sup>142</sup> See Rublee, *supra* note 35, at 62.

<sup>143</sup> See *id.*

<sup>144</sup> See *Foreign Minister Katsuya Okada is Stuck Between a Rock and a hard Place, Defense-Wise*, ASAHI SHIMBUN, Apr. 16, 2010.

<sup>145</sup> See *id.*

<sup>146</sup> See Tamamoto, *supra* note 108, at 65.

<sup>147</sup> Ralph Cossa, *Opinion, Between the Lines of U.S. Nuclear Policy*, JAPAN TIMES, Apr. 20, 2010, <http://www.japantimes.co.jp/text/eo20100420rc.html>.

In August 2010, at a ceremony commemorating the sixty-fifth anniversary of the Hiroshima bombing, then-Hiroshima Mayor Akiba Tadatashi urged Japan to abandon the nuclear umbrella.<sup>148</sup> While we may expect such a statement to emanate from Hiroshima, especially during a commemorative ceremony, the sixty-fifth anniversary event was attended by representatives from the U.S., Britain and France and marked the first instance of a U.S. delegate's attendance.<sup>149</sup> U.N. Secretary General Ban Ki Moon also attended the ceremony, marking the first attendance by a U.N. Secretary General.<sup>150</sup> The attendance at the ceremony of a U.S. Ambassador and the U.N. Secretary General increased the international profile and prominence of the ceremony, as well as Japan's leadership in the non-proliferation regime. Further, the fact that Hiroshima called for an end of the umbrella on a world stage effectively indicated that Japan had taken a bold step toward signaling that it is willing to emerge from the umbrella. On the eve of the ceremony, Ban and then-Foreign Minister Okada announced that Japan and the U.N. would aim for the abolition of nuclear weapons.<sup>151</sup>

As a further sign of Japan's willingness to emerge from the umbrella, in February 2010 Hiraoka Hideo, a Lower House DPJ official, sent to U.S. President Barack Obama a letter bearing the signatures of 204 lawmakers from both the ruling and opposition parties, that called for the U.S. to adopt a "sole purpose" policy for U.S. nuclear weapons.<sup>152</sup> The letter assured President Obama that the signatory lawmakers were "firmly convinced that Japan will not seek the road toward possession of nuclear weapons if the U.S. adopts a 'sole purpose' policy."<sup>153</sup> Hiraoka, also a member of the Parliamentarians for Nuclear Non-proliferation and Disarmament, has been called "a driving force behind efforts to create a nuclear weapons-free zone in Northeast Asia."<sup>154</sup> There is substantial

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<sup>148</sup> See *Hiroshima to Reject Nuclear Umbrella*, ASAHI SHIMBUN, Aug. 3, 2010, <http://www.asahi.com/english/TKY201008020255.html>.

<sup>149</sup> See Masami Ito, *Ban, Okada Confirm Effort to Eradicate Nukes*, JAPAN TIMES, Aug. 4, 2010. The article notes that John Roos, U.S. Ambassador to Japan, attended the event.

<sup>150</sup> See *id.*

<sup>151</sup> See *id.*; see also Yuasa Ichiro, *Strategy for a Northeast Asia Nuclear Weapon-Free Zone as a Step to "Common Security,"* PEOPLE'S SOLIDARITY FOR PARTICIPATORY DEMOCRACY (Nov. 24, 2010, 3:35 PM), available at <http://blog.peoplepower21.org/English/20990>.

<sup>152</sup> "Sole purpose" is synonymous with "no first use" in that both signal a deterrence-only policy for nuclear weapons.

<sup>153</sup> See Masami Ito, *Diet Members Send Obama Nuclear Letter*, JAPAN TIMES, Feb. 20, 2010, <http://www.japantimes.co.jp/text/nn20100220a3.html>.

<sup>154</sup> See Taro Karasaki, *Eyes on Japan to Achieve Breakthrough on Nuclear Issue*, ASAHI SHIMBUN, Aug. 14, 2010, <http://www.asahi.com/english/TKY201008130290.html>.

evidence that, notwithstanding the threats that Japan faces from nuclear-armed hostile neighbors and the erosion of the non-proliferation regime, a large segment of the body politic and an increasingly influential bloc of Japan's political establishment believe that Japan's security requires neither an indigenous nuclear deterrent nor U.S. nuclear extended deterrence. Therefore, removal of the U.S. nuclear umbrella will likely not trigger a nuclear-armed Japan. Rather, in addition to being embraced by influential sectors in Japan, such a move will likely also strengthen Japan's moral authority to be a leader in the non-proliferation regime.

#### VII. JAPAN'S SECURITY COUNCIL BID: A NONNUCLEAR VISION FOR THE WORLD

Shidehara envisioned Japan becoming a beacon of peace in the international community and he saw Article Nine as a model of nonviolent pacifism that would enable all nations to disarm.<sup>155</sup> Japan has embraced Shidehara's vision, particularly with regard to nuclear weapons. Tanaka Kakuei, Japan's Prime Minister from 1972-1974, once remarked that "Japan will stake its fate on world peace."<sup>156</sup> Though the comment appears idealistic and perhaps naïve, the passion from which the comment derived has formed a key pillar of Japan's national identity. For Japan, idealism is absolute truth and, in that regard, is the ultimate realism.<sup>157</sup> Dr. Rublee notes that, in Twenty-First Century Japan, "the great majority of politicians and almost all, if not all, of the public . . . has accepted transformed definitions of security, power and prestige in today's international system.... National interest does not include military might."<sup>158</sup> Seeking to actualize Shidehara's vision, Japan is vigorously campaigning for a permanent seat on the United Nations Security Council. Japan's primary argument supporting its bid for a permanent Security Council seat is that its status as an NNWS places Japan in a unique position to contribute to world peace.<sup>159</sup>

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<sup>155</sup> See Hein, *supra* note 44, at 289 ("Article 9 was, in Shidehara's view, to become a cornerstone of the United Nations system of collective security that would enable all nations to disarm. Article 9 is viewed as a forerunner to modern concepts of human or collective security.").

<sup>156</sup> Kei Wakaizumi, *Japan's Role in a New World Order*, 51 FOREIGN AFF. 310, 316 (1973).

<sup>157</sup> See *id.*

<sup>158</sup> Rublee, *supra* note 51, at 441.

<sup>159</sup> See MINISTRY OF FOREIGN AFFAIRS OF JAPAN, JAPAN'S POSITION ON THE UNITED NATIONS SECURITY COUNCIL FOR THE 21<sup>ST</sup> CENTURY 4 (2011) [hereinafter, MoFA], available at [http://www.mofa.go.jp/policy/un/reform/pdfs/pamph1103\\_english.pdf](http://www.mofa.go.jp/policy/un/reform/pdfs/pamph1103_english.pdf); see also Mochizuki, *supra* note 3, at 307 (echoing Dr. Rublee's argument that "Japanese have 'accepted transformed definitions of security' and stating that '[i]ndicative of this

Faced with a belligerent nuclear-armed state and a deteriorating non-proliferation regime, Japan has chosen to stake its national reputation on its status as an NNWS. Japan has expended a tremendous amount of economic, political and military capital in its quest to realize a higher profile within the U.N. system.

Since 1991, the SDF has participated in [several] U.N. peacekeeping . . . [and] humanitarian relief operations worldwide. It has performed remarkably well in a variety of missions ranging from medical services and school construction to transportation and logistical support. It has displayed great flexibility, serving both under the auspices of the United Nations and in collaboration with select coalition partners, particularly since the September 11, 2001 attacks.<sup>160</sup>

Japan notes that it has contributed to peace-building activities in at least fourteen African nations, as well as in areas ranging from the Golan Heights to Haiti, and that it is the second largest economic contributor, behind the U.S., to the U.N.'s budget.<sup>161</sup> Add to these activities Japan's political and diplomatic efforts noted above – such as partnering with Australia to form the Japan-Australia Commission – and Japan has done more than many other countries to contribute to non-proliferation and international peace. Japan's international reputation and standing are now tied to its status as a “peace state” and as a nation willing to forswear nuclear weapons at all costs.<sup>162</sup>

Japan is of course aware that an about face on its nuclear posture would have devastating reputational effects, and would likely doom its bid for a seat on the Security Council.<sup>163</sup> Japan is also aware that the reform effort required to open up the Security Council to additional permanent members could take a great deal of time to materialize.<sup>164</sup> Additionally,

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collective psyche is the reason that many Japanese citizens give for why their country should become a permanent member of the U.N. Security Council: the participation of a non-nuclear country would contribute to world peace.”).

<sup>160</sup> See Szechenyi, *supra* note 109, at 143.

<sup>161</sup> See MOFA, *supra* note 159, at 4-5.

<sup>162</sup> See Szechenyi, *supra* note 109, at 148 (noting that, as Japan continues to engage in international peacekeeping and peace-building activities “the states and people that benefit from their actions are more likely to associate Japan with compassion, leadership, and peace.”).

<sup>163</sup> See CHANLETT-AVERY & NIKITIN, *supra* note 24, at 9 (stating that “[a]cquiring nuclear weapons could also hurt Japan's long-term goal of permanent membership on the U.N. Security Council.”).

<sup>164</sup> Japan has campaigned for at least four years for a Security Council seat. See Jason T. Shaplen & James Laney, *Washington's Eastern Sunset: The Decline of U.S. Power in Northeast Asia*, 86 FOREIGN AFF., no. 6, Nov./Dec. 2007 at 82, 86. Further,

Japan is aware that other states, particularly the U.S., have expended political capital supporting its bid for a Security Council seat.<sup>165</sup> Thus, Japan has not lightly embarked on its bid to become the Security Council's only NNWS member.<sup>166</sup> Given the time commitment and political capital expended by Japan and its allies, coupled with the reputational costs of an about face, Japan's bid for a Security Council seat demonstrates its indefinite commitment to remaining nonnuclear. Japan's desire to contribute to world peace and to be the only NNWS on the Security Council also demonstrates its determination to rid the world of nuclear weapons. Japan's Security Council bid is thus a further manifestation of the normative strength of nonviolent pacifism.

#### CONCLUSION

The nonviolent pacifist principle – which holds that a state will refrain from using force, and possessing armaments to accomplish the same, even if such restraint threatens the very existence of the state – has become part of Japan's national identity with regard to nuclear weapons. Japan's nonviolent pacifist identity began to form from the ashes of Hiroshima and Nagasaki, where its latent prewar pacifist underpinnings found a tragic cause through which to become increasingly salient in Japanese society and security policy. The resilience of Japan's nonviolent pacifist identity exhibits itself through both Japan's repeated adherence to an anti-nuclear stance in the face of multiple threats both to its security and to the non-proliferation regime and through Japan's long-term commitment to lead global efforts toward total nuclear disarmament. As a sign of the self-perpetuating character of nonviolent pacifism, Japan's younger generation, though lacking a first-hand memory of the Hiroshima and Nagasaki bombings, continues to strongly embrace pacifism and overwhelmingly reject nuclear weapons.

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realizing that the reform process could take many more years, Japan has adopted a strategy of seeking repetitive nonpermanent seat terms “to enhance its presence on the Security Council.” *Japan to Seek Nonpermanent U.N. Security Council Seat for 2012-2013*, KYODO NEWS INT'L, INC., Jan. 5, 2011.

<sup>165</sup> See Hiromu Namiki & Cameron McLauchlan, *U.S. Vows Defense of Japan/Commitment “Unshakable,” Obama Tells Kan in 1-Hour Talks*, DAILY YOMIURI ONLINE, Nov. 14, 2010, <http://www.yomiuri.co.jp/dy/business/T101113003072.htm>, (reporting that President Obama had officially signaled support for Japan's Security Council bid, having remarked that “Japan stands as a model of the kind of country we would want to see as a permanent member of the Security Council, and I look forward to a reformed Security Council that includes Japan as a permanent member.”).

<sup>166</sup> Japan is also proceeding in the face of opposition from strong countries. China has been noted as being “downright hostile” to Japan's bid. See Ted Galen Carpenter, *Long Overdue: Adding Permanent Members to the U.N. Security Council*, NAT'L INT., Nov. 8, 2010, <http://nationalinterest.org/blog/the-skeptics/long-overdue-adding-permanent-members-the-un-security-council-4380>.

In this regard, it is important to briefly note one aspect of the likely psychological reaction of the Japanese populace to the ongoing crisis at the Fukushima Nuclear Power Plant following the March 11, 2011 earthquake and tsunami. Japan has rated the severity of the Fukushima radiation leak at a seven, the highest level on the International Atomic Energy Agency's scale, thus placing the Fukushima disaster apparently at a level of severity equal to that of the Chernobyl disaster.<sup>167</sup> Given Japan's reliance on nuclear materials for a large percentage its energy needs, it seems obvious that the Japanese public is able to separate civilian nuclear energy programs, which they apparently favor or at least tolerate, from military nuclear weapon programs, which they overwhelmingly oppose. Nevertheless, in a society that has demonstrated an historic aversion to even discussing nuclear weapons, it is not unreasonable to anticipate that an unfolding nuclear disaster of this magnitude may both reinforce the public's opposition to nuclear weapons and generate public opposition to civilian nuclear energy, though the occurrence and strength of either public reaction are difficult to gauge at this early juncture. It is probable, however, because the Fukushima crisis is the biggest nuclear crisis in Japan since the atomic bombings of Hiroshima and Nagasaki,<sup>168</sup> and because Japanese citizens have a long memory of the latter disaster, that any psychological reaction the Japanese public may experience as a result of the Fukushima crisis will at least reinforce Japan's nonviolent pacifist stand against nuclear weapons.

Japan's nonviolent pacifist identity has weathered the presence of hundreds of nuclear-capable Chinese ballistic missiles, two nuclear tests by an increasingly belligerent North Korea, and repeated threats to the non-proliferation regime. Moreover, Japan's opposition to nuclear weapons may soon cause it to declare that U.S. extended deterrence is no longer in Japan's security interest. Thus, because Japan has held to its nonviolent principle in the face of the greatest security challenges it has faced since World War II, and has met those challenges by becoming increasingly dedicated to disarmament, this article concludes that nonviolent pacifism will act as an absolute bar to Japanese acquisition of nuclear weapons. Given the steadfastness of Japan's commitment to remaining "nonnuclear," it would require the occurrence of cataclysmic international events such as the breakdown of the U.N. international

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<sup>167</sup> See Kenneth Bradsher, et. al., *Japanese Officials on Defensive as Nuclear Alert Level Rises*, N.Y. TIMES, Apr. 13, 2011, at A5. Japanese officials, attempting to ease fears, however, contend that Fukushima has released only one-tenth as much radioactive material as the Chernobyl plant. *See id.*

<sup>168</sup> See Jonathan Schell, *From Hiroshima to Fukushima*, THE NATION, Mar. 15, 2011, available at <http://www.thenation.com/article/159238/hiroshima-fukushima> (noting that "Japan's prime minister, Naoto Kan, referred to the atomic bombings by implication when he stated that the current crisis was the worst for Japan 'since the Second World War.'").

regime and the removal of the U.S. as an international state actor for Japan to consider nuclear weapons as part of its national interest. Such events exceed the bounds of foreseeability and perhaps also border on the fanciful. Japan's nonviolent pacifist stand against nuclear weapons is part of its national identity, and Japan will therefore likely never acquire nuclear weapons.