

JAPAN'S CONSTITUTIONAL REVISION DEBATE
IN THE LIGHT OF DOMESTIC AND REGIONAL DEVELOPMENTS

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ABSTRACT

Japan's Constitutional Revision Debate in the Light of Domestic and Regional Developments

The biggest factor that makes the Japanese constitution special is its pacifist article which blocks Japanese army to be deployed in overseas. This constitution, which was written during the American invasion, has not been changed for 70 years. Until the end of the Cold War, Japan displayed a passive and quiet stance in the bipolar world. But the internal and external changes that took place after the Cold War led Japan to rearrange its policies. The pragmatists in the Liberal Democratic Party, lost their power and the bipolar world order is long gone. This complexity gave birth to push Japan to adopt a different policy, particularly to revise its constitution. The main aim of this thesis is to examine the reasons behind the constitutional revision and to prove that these reasons are actually intertwined.

ÖZET

Japonya'nın Yerel ve Bölgesel Gelişmeler Işığındaki Anayasa Revizyonu

Japon anayasasını özel kılan en büyük faktör, Japon ordusunun yurtdışında konuşlandırılmasını engelleyen pasifist makalesidir. Amerikan işgali sırasında yazılan bu anayasa, 70 yıl boyunca değişmedi. Soğuk Savaş'ın sonuna kadar, Japonya bipolar dünyada pasif ve sessiz bir duruş sergiledi. Ancak Soğuk Savaş sonrasında yaşanan iç ve dış değişimler Japonya'nın politikalarını yeniden gözden geçirmesine sebep oldu. Liberal Demokratik Parti içindeki pragmatistler partilerindeki nüfuzlarını kaybettiler ve bu arada iki kutuplu dünya düzeni de çöktü. Ortaya çıkan gelişmeler, Japonya'yı özellikle anayasasını değiştirmek için farklı bir politika benimsemeye itti. Bu tezin temel amacı, anayasa revizyonunun arkasındaki nedenleri incelemek ve bu nedenlerin nasıl iç içe geçtiğini kanıtlamaktır.

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CHAPTER 1

INTRODUCTION

The current Japanese Constitution, which was promulgated in 1947, is a pacifist constitution. It renounces war and rejects the act of belligerency. Its principles were dictated in 1946 after the end of the World War 2 by the office of the Supreme Commander of the Allied Powers (SCAP) of the US. A year after the war, Japan was in a devastated state, exhausted by the damages of war. It was occupied by the American army until the San Francisco Treaty of 1952. Regarding the war- torn conditions, Japan had to accept every decision that was dictated by the SCAP. The new constitution was therefore influenced by the circumstances of its period, the post-war era, with its concepts deeply focused on demilitarization and pacifism. The occupation reforms included a wide range of topics such as education, land reforms, basic human rights and treatment of women. With these reforms Japan was reconstructed based on a model of a liberal democratic nation similar to the United States. From its promulgation in 1947 till now, the constitution remains unamended, despite Japan's major political changes of course (see APPENDIX A for the full text of the 1947 Constitution). Since the 1950s, each new National Guidelines or constitutional reinterpretation triggered a debate on the amendment of this constitution concerning regional developments, which is still going on.¹ This thesis analyzes the Japanese discourse that centers around the need for a constitutional change and in particular the revision of Article 9 on pacifism. The initial question

¹ Umeda, "Japan: Interpretations of Article 9 of the Constitution."

that is investigated is whether a constitutional change will be induced by the basic requisites of the Japanese nation or by exterior forces that evolved as an unavoidable response to global changes of the Post-Cold war period.

However such a dualistic either/or analysis is not capable of explaining the reason behind the need for a constitutional revision. These two components are entangled with each other, therefore the case cannot be simplified. The post Cold war period global changes induced deviations in the Japanese local and domestic politics. In order to further elaborate this entanglement, this thesis will examine the historical background and study the domestic debate about the constitutional revision, proceeding with a discussion of the post-Cold War international order. This thesis aims to show the character of this entanglement in the following manner.

The need for reform was put in writing by the LDP, when it released a draft for a revised constitution on May 7th 2012, which contained numerous changes to its current articles (see APPENDIX C for the full text of the Draft Constitution). This draft was the result of 3 years of preparatory work and constitutional debate. Their website announced the Constitutional Draft as a necessary amendment that would “unshackle” Japan from the old, American imposed system and would make it a truly sovereign state.² The revised version does not only make significant changes to the Article 9 but also introduces values regarding family, citizen responsibility and, old national symbols as well as administrative issues such as declaration of a State of Emergency and the Emperor being the head of the state.

² Announcement of 2012 Draft by the LDP in English:

<https://www.jimin.jp/english/news/117099.html>

This thesis will use the 2012 Constitutional Draft that was translated in detail by a non-governmental organization named VOYCE (Voice of Overseas Youth for Civic Engagement; <http://www.voyce-jpn.com/>) The group defines itself in this statement:

VOYCE is a gathering of young people from outside of Japan, gathered under the common intention of actively facing various political and social issues in and outside of Japan as a member of Japanese society. Initially, we started our activities by visualizing the will of foreign students who oppose the security legislation. However, Japan's political and social issues are not limited to the security legislation, and in order to realize a democratic society that guarantees people's freedom, we need to call for continued political participation.

However, their website is currently inaccessible. Their official translation (APPENDIX:C) has been checked by comparing the original text with the ones in the draft, before being used by the present thesis. The VOYCE translation was found out to be correct however the reason for their inactivity and the inaccessibility of their site remains unknown.³ In spite of this, recent studies have already used their English translation.⁴

³ This tumblr post has the names of prominent professors who supported this organization.
<https://voyce-jpn.tumblr.com/post/129001303319/joint-statement-by-overseas-students-on-japans>

⁴ See Okano Yayo's article: Prime Minister Abe's Constitutional Campaign and the Assault on Individual Rights, *The Asia Pacific Journal*, Volume 16, Issue 5, March 1, 2018. Dip note: 19 and Carl F. Goodman's CONTEMPLATED AMENDMENTS TO JAPAN'S 1947 CONSTITUTION: A Return To Iye, Kokutai and the Meiji State, *Washington International Law Association*, Volume 26, Number 1, January 2017. Dip note: 13.

The thesis will respond to the current situation by analyzing 3 key points. The first point investigates the domestic causes of constitutional revision which will be observed in 3 domains; sovereignty, nationalism and political stakeholders. The second point investigates the causal impact of the ambiguous global environment on constitutional revision. The third point will observe the effects of 2012 Constitutional Draft and examine the public reaction to the amendment package.

The present introduction chapter discusses the main issues. The second chapter, gives a brief overview of the values of the Japanese constitution as well as its history and condition from its promulgation to the early 2000s. The third chapter peruses the 2012 LDP Draft and examines its revised articles. The fourth chapter begins to examine the domestic causes of constitutional revision by analyzing the rising nationalism in Japan, its ongoing traditional values and notable political elites. The fifth chapter also looks at the domestic causes of constitutional revision, but by concentrating on the state of the constitution itself. In order to achieve this, observation of past events and the Japanese right-wing as well as the statements of ministers, army officers and civil servants will be scrutinized to reach a fresh interpretation. The sixth chapter focuses on the ambiguous global environment and its relevance to the Japanese constitutional revision by discussing the response of the important international players—such as China, Russia, South Korea and United States—to the amendment of the Article 9. This will be achieved through the observation of Japan's treaties, susceptible topics, foreign policies and national security guidelines. The seventh chapter examines the public reaction to the amendment package by investigating the data from public polls and comparing the poll results. An analysis of the intended changes will also be presented, and the possible consequences will be deduced by focusing on past events, comparing

national agendas and looking at both the supporters and the opposers of the constitutional revision. Lastly, chapter eight will present the concluding remarks.

To summarize the concepts briefly, Article 9 resembles a pillar of pacifism for Japan and is one of the most debated articles of the Japanese Constitution. Its pacifist tone largely comes from this Article that disables the use of military forces for solving disputes and prevents any act of war mongering. Thus, instead of an establishment of a self-sufficient and fully sovereign military system, Japan's security relies partly on the US forces.⁵ Despite a few relaxations, Japan's defense continues to remain on exterior military help. However, with the end of the Cold War, new issues emerged that sparked the debate for a reconsideration of the article and its possible revision.

Article 9 states:

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 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.

During the American occupation, the Allied Staff favored the continuation of basic institutions, such as the office of the emperor, in Japan, in contrast to their demand of total disintegration in Germany. SCAP believed that the belligerency and militarism in Japan was caused by the previous constitution, the Meiji constitution of

⁵ Lind. "Japan's Security Evolution."

1889, which was claimed to have had flaws that needed certain modifications and removals.

The 1947 constitution has 3 pillars: Location of sovereignty, division of powers, and definition of the rights and duties of citizens and state. However, it also generates a fourth issue, the nature of the state, which was, in this situation, antimilitarist.⁶ SCAP determined that the new Japanese constitution had to be based on democratic values. To achieve this, they removed the sovereignty of the Emperor and gave it to the people, which they thought would eliminate the militaristic flaw of the Meiji Constitution. However, the Emperor was the key figure of the Japanese society, the pillar of institutions and the bureaucracy was structured around him. In order to prevent ruptures, instead of a total removal of the Emperor, SCAP revised it by diffusing the sovereignty of the Emperor.

As the Cold War was coming to an end, new problems emerged that brought up the necessity for structural change in Japan's security agenda. The need for revising Article 9 first appeared in the early 1990s with the North Korean nuclear missile tests.⁷ Today, Japan has a defensive military force called the "Special Defence Force," (SDF) which protects the Japanese inland against an invasion. Japan also has a joint defence agreement with America. However, Japan's effectiveness in international affairs was necessarily slowed down by Article 9, which is why the conservatives want to revise it in order to regain total independence and national pride. What the conservatives want to do is to keep Paragraph 1 of

⁶ Hook and McCormack, *Japan's Contested Constitution*, 3.

⁷ Kyodo, "Japanese sharply divided over revising Article 9 amid regional security threats, poll finds."

Article 9, which renounces war, but change Paragraph 2, which recognizes a defensive, non-war potential army. If the constitutionality of the SDF passes, it will be put under the PM and controlled by the Diet (the Japanese Parliament). Japan would then be able to participate in peace keeping missions more regularly. Some of the Keidanren (corporate elite) also agree with the conservatives on changing just Paragraph 1, stating that improving the SDF would not create tensions.

The conservatives criticize the current constitution by pointing out the fact that it was promulgated by the Americans. These revisionists often cry out about the North Korean missile tests as well as China's aggressive expansions.⁸ They demand further powers for the SDF to regain Japan's reputation with an independent army. They claim that even though Article 9 renounces war and disables the maintenance of the land, sea and air forces, the responsibility of these units are only "defensive" and therefore they can be retained.⁹ Among the revisionists, there are also a few other ideas such as strengthening US security alliance and focusing more on international organization activities.

The amendment debate gained momentum with the July 1st 2014 Constitutional Reinterpretation. The new interpretation consists of further increase of Japan's military force capacity, giving additional rights and powers to SDF and the addition of the clause about the protection of Japan's Allies. The July 2015 Cabinet decision lifted Japan's restrictions on the overseas use of force. It now allows the country to provide military help to a foreign country that is in a close relationship with Japan, on the condition that the attack also threatens Japan's security and/or

⁸ Costantini, "Japan's constitutional debate on the use of military power."

⁹ "The Article 9 Debate at a Glance."

survival. In 2016, the Liberal Democratic Party (LDP) had the 2/3 majority on both houses of the Diet because of its successful electoral wins. This encouraged the revisionists inside the LDP to push their agenda for constitutional revision.¹⁰

From its creation until now, Article 9 was subjected to various interpretations and revisions, depending on the meaning of the words and the political conditions. According to some critics, it appears that the words of Article 9 were simply emptied of much of their original meaning. It is generally agreed that there is a gap between the wording of Article 9 and the reality of the current situation in Japan. It is forecasted that Japan will break away from its current situation by further changing the article for the sake of increasing its prestige and independence. Indeed it was always during militarily critical situations that Japan had tried institute constitutional changes.

However, amending Article 9 is not an easy task. A majority of two thirds of the seats of the House of Representatives and the House of Councillors is required. In addition, the amendment bill must be passed through jurisdiction and then taken to the referendum stage. Even though PM Shinzo Abe has the support of the majority of the public, his supporters are divided regarding the revision of Article 9, as only half of them support the full revision.

According to the sources of the House of Representatives Commission on the Constitution in 2007, there are 3 types of views regarding the amendment issue. First group claims that the amendment is unnecessary, but a legislation is needed. Second group claims that both the amendment and its legislation are unnecessary and the

¹⁰ Wakatsuki and Perry, “Japanese election: Shinzo Abe declares victory.”

third group claims that both are necessary. According to the second group, the core principles of the constitution should be preserved by keeping the SDF as small as possible, keeping its roles and duties as it is and keeping away from collective self-defense. As for the first group, they favor a revision of US-Japan Security Treaty and focus more on both collective security and international non-military efforts, as well as creating a legislation for 3 non-nuclear principles.¹¹ Lastly for the third group, they favor the lifting of the above restraints in order to gain total sovereignty.

As for the public support, according to the results of the 2016 *NHK* survey regarding the constitutional amendment, %22 favor the change while %32 think the amendment of the constitution is unnecessary. For the revisionists, Japan should state the capabilities of the SDF while those who favor no change insist that, the pacifist roots should be protected.¹²

Before its defeat in World War 2, Japan's foreign policy was expansionist and imperialistic. Just like its European counterparts, Japan sought a colonial approach and gained significant territory first by invading Manchuria and Korea followed by the occupation of Southeast Asia including Hong Kong, Singapore, the Dutch Indies, French Indochina, Malaysia and the Philippines. After the World War 2, this policy was abandoned with Japan's unconditional surrender and a new foreign strategy was created through the adoption of the 1947 constitution. During the Cold War, Japan maintained a low military profile, refraining from developing strong military forces and deploying them overseas. Its security relations with East Asian countries were not very tense. However, Japan's security policy underwent a significant

¹¹ Umeda, "Japan: Interpretations of Article 9 of the Constitution."

¹² "The Article 9 Debate at a Glance."

transformation after the Cold War. This change was prompted by the weakening of the left in Japanese domestic policies, North Korea's missile and nuclear development programs, and the rise of the power of China.¹³ Due to several island and land disputes, instead of making active efforts at improving its relations with its neighboring states, Japan has taken a realist policy of strengthening its own military capability, enhancing its alliances, and building new security ties with the states that have similar security concerns.

Until the end of the Cold War, Japan maintained its pacifist state and established ties with its foreign neighbors. As the debates on the revision of Article 9 started getting more popular, Japan's relations with its neighbors has gained critical importance.¹⁴ The outcome of a constitutional change would necessarily influence and transform the regional dynamics of East Asia.

Since World War II, Japan's most important ties have been with the United States. The mutual defense treaty between them provides its security. The United States is committed to defend Japan and maintains military bases there partially for that purpose. Despite Japan's defeat and subsequent occupation by the United States, relations between the two states have been friendly and close, except for several periods of trade disagreements that occurred during the 1970s. Japan, with the assistance of United States, became a member of various international organizations, including the United Nations, the Organization for Economic Cooperation and Development (OECD), and the General Agreement on Tariffs and Trade (GATT). Trade between the United States and Japan plays a crucial role for both countries.

¹³ Kaseda, "Japan's Security Policy towards East Asia", 3-26.

¹⁴ Hook and McCormack, *Japan's Contested Constitution*, 5.

The United States is a major market for Japanese exports as well as a primary source of imports.¹⁵ As the United States is deeply concerned with the increase of Chinese influence in Southeast Asia (SEA) region, it demands further help from Japan. A future change of Article 9 could boost Japan's military capabilities thus making Japan more active in the region. In several occasions this will benefit the US interests, therefore the opinion of the US is generally positive regarding this issue.

Japan also developed ties with the Southeast Asian countries such as Philippines, Indonesia (The Dutch East Indies), Thailand and Vietnam(Indochina) after World War II even though it had joined the war partly to gain control of the region's resources. Its occupation of many Southeast Asian countries had created bitterness and left its relations in strained circumstances. So the Japanese government is today making efforts to improve its relationship with those countries in Asia, which make up Japan's 4th largest export market (Japan is at the top 5 trade partner of Viet Nam, Malaysia Thailand and Indonesia), while providing several important resources including food, oil, metal ore, lumber and rubber imports.¹⁶

Despite the traditional share of many cultural aspects- including the Chinese writing system and traditional philosophical influences-Japan's harsh colonization of Korea between 1910-1945 has left constrained relations between the two countries. Nevertheless, both Japan and South Korea are America's allies against the North Korean threat and they are trading several manufactured goods with each other.¹⁷ A future change of Article 9 could strain the relations between the two countries as a

¹⁵ Bergsten, "Japan and the United States in the World Economy."

¹⁶ Data retrieved from: <https://atlas.media.mit.edu/en/profile/country/jpn/>

¹⁷ Smith, "Reinterpreting Japan's Constitution."

new threat would emerge for the South Korean security which would be a fully sovereign Japan.

Japan's long history of close cultural contacts with China has generated a special interest and friendliness toward the Chinese. Starting with the outbreak of the Sino-Japanese War in 1937 During World War II, however, Japan colonized parts of Manchuria and invaded many major cities of China. Under US pressure, Japan did not establish relations with the People's Republic of China until after President Nixon's surprising visit to China in 1972. Then, Japan quickly adapted to the new situation and got involved in assisting the Chinese in their efforts to develop their economy, providing large sums of aid for the development of China. Similar to South Korea, Japan's relations with China would receive a dramatic blow, as an aggressive Japan would be a direct threat to China and its influence.¹⁸

Lastly, Japan's relations with Russia have been strained throughout the post-war period. In the last days of World War II, the Soviets occupied South Sakhalin Islands and the Kurile islands, including a few more islands close to Hokkaidô, which the Japanese claim as part of their native land. The issue of these islands is still under negotiation between the two countries and the two sides have still not signed a Treaty of Peace since World War 2.

This subject is important because a possible change of the Article 9 would surely affect not just the domestic policies of Japan, but also the whole region. In recent years, developments occurred regarding the planned revision. With his overwhelming victory in 2017 general elections, PM Shinzo Abe gained more

¹⁸ Gao, "Are China and Japan Moving Towards a Rapprochement?"

confidence for the revision of the Japanese constitution. The strengthening of the LDP as well as North Korean security threats and changing views of the Americans pressure Japan into an essential revision.¹⁹

¹⁹ Tomohiro, “Abe claims victory as powerful endorsement, may seek re-election next month.”

CHAPTER 2

THE DYNAMICS OF JAPAN'S DOMESTIC AND FOREIGN AFFAIRS FROM 1947 TILL 1989

Before delving into the reasons behind the constitutional revision, a look at Japanese history from the Meiji period of 1868 until the end of World War 2 would facilitate the understanding of the characteristics of Imperial Japan and the reasons behind the changes which were implemented during the American occupation. This chapter covers the period of between the Meiji Restoration and the new millennia to provide a better insight into Japanese politics and the contested constitution.

2.1 Analysis of the Emperor and changes brought by the 1947 Constitution with examination of SCAP and the Article 9

The Meiji Restoration of 1868 had long lasting results. The most important consequence was the abandoning of the feudal samurai regime and the introduction of a political system, that had a parliament but kept the Emperor's right of sovereignty. This was accompanied by gradual changes in the legal system beginning in the year 1872, and the promulgation of the Meiji Constitution of 1889. The new Japanese constitution was the first constitution in Asia that was formulated according to Western values, but it still kept the Emperor at the head of the state, as well as giving him an "inviolable" standing due to his religious place in the Japanese society.²⁰ This combination of constitutionalism coupled with absolute monarchy

²⁰ Matsui, "Characteristics of the Japanese Constitution: An Overview," 189.

was similar to the Prussian-German model of 1850. Unlike the Cabinet, the Emperor had the power to declare war since he was considered to be the supreme commander of all armed forces. Sovereignty (all the governing powers) resided with the Emperor.²¹

The Emperor was supported by a group of elites, who were divided among themselves since they were competing for power and influence. The Japanese power of structure since the beginning of the 20th century had consisted of the Emperor, the military, Zaibatsu (Japanese modern cartels), the bureaucracy and the groups that were close to the Emperor. Japanese Parliament that was named as the Diet, was designed to consist of two houses, the House of Peers and the House of the Representatives. The former comprised the Imperial family, the nobles and those who were nominated by the Emperor. Its duty was to check the House of Representatives. With the consent of the Diet, the Emperor exercised his legislative power. The Prime Minister was appointed by the Emperor. As for the judiciary, the courts of law had the judicial powers. However, these courts didn't have any power over the administrative law cases and they weren't independent. Furthermore, the Emperor's ordinances had the highest degree of legislative and judicial rank. The rights of subjects were protected within the provisions of law. The 1889 Meiji constitution was presented as a gift that was given by the Emperor to his subjects. Several constitutional scholars define it as pseudo-constitutional due to its lack of democratic values.²² It was both nationalist and constitutionalist.

²¹ Ibid.

²² Luney and Takahashi, *Japanese Constitutional Law*, 30.

The Taisho period, from 1912 to 1926, is considered as the liberal period of pre-war Japan. Parliamentary governments continued from 1924 to 1932 and the cabinets were formed in accordance with the majority of the lower House (the House of Representatives). Later on, by the gradual increase of the influence of the army over politics resulted in turning Japan into a militarist state.²³ The civilian control over the politics was almost non-existent due to a lack of democracy. The militaristic period continued until the end of the World War 2 with the unconditional surrender of Japan to the Allies on August 10, 1945.

The Allied occupation of Japan had three primary objectives. To disarm, to demilitarize and to democratize Japan. General Douglas Mac Arthur was appointed by the US President Harry Truman on August 14, 1945 together with the approvals of the victorious states: Britain, Soviet Union and China. Thus, Mac Arthur had absolute authority over Japan, surpassing the level of Emperor or any other Japanese politician. The occupation achieved the demobilization of the Japanese army in the same year under the responsibility of two countries: The British Commonwealth and the United States with the stationing of 354.000 Allied troops.

Political administration was in the hands of two powers: Japan and the US. Until 1948, the occupiers worked with a Japanese contact bureau named The Central Liaison Office, for the execution of the new laws. General Mac Arthur was named as the Supreme Commander of the Allied Forces (SCAP), and was also the agent for advice trafficking between Britain and America. The Far Eastern Commission (FEC), which was established in February 1946, consisted of 11 countries that had

²³ Matsui, "Characteristics of the Japanese Constitution," 190.

mainly fought against Japan. FEC was a supervisory body, which was in charge of preparing policies and reviewing Mac Arthur's directives. United States had a prominent position within it, as well as having benefits, including the right of veto and the postponement of committee actions. The Allied Council of Japan had 4 members: US, USSR, China and UK, but it was not successful due to the Cold War politics and pressure against Japan. Just like the Far Eastern Commission it was supposed to provide the member states with the possibility of stipulating conditions that were to be enacted by Mac Arthur, but due to the limitations dictated by the US, their contributions were less than fruitful. The United States, because of its unique role in ending the war with the Japanese, enjoyed an unilateral control over Japan.²⁴

The amendment of the Meiji Constitution began in September 1945 with MacArthur ordering the Shidehara Kijuro Cabinet (premiership: October 1945- May 1946) to make preparations for the change. At first, this task was left to the Japanese government. Therefore, Shidehara appointed Japanese lawyer, Joji Matsumoto as the head of the Constitution Research Committee. However, almost all articles proposed by Japanese leaders and politicians were rejected because they gave the right to wage war to the emperor. For example, Article 12 of the Matsumoto draft stated: "The emperor declares war and makes peace, with the advice and approval of the Imperial Diet".²⁵

During the writing of the 1947 constitution, and its Article 9, which was created by the Allied occupation, several issues came to the fore. The

²⁴ Meyer, *Japan, a concise history*, 4th edition, 223.

²⁵ Supreme Commander for the Allied Powers, Government Section, Political Reorientation of Japan, 605 cited in Umeda, *supra* note 40.

implementation of the liberal reforms was based on the solid belief of a democratic peace theory. This theory points out the fact that democracies rarely go to war with each other and pose little threat against world peace.²⁶ Firstly democratic nations have institutional constraints known as checks and balances. These structural complexities affect the decisions of elected political leaders, thus making the foreign policy decisions more cautious and less risky.²⁷ Secondly, democratic states are less likely to use force against other democratic states. As non-democratic states oppresses their people and act in an aggressive manner, it is generally easy for a democratic state to rally people against the aggressor by pointing out their flaw. This is known as getting the consent of the citizens. Thirdly, as democratic nations share the same norms and morals, they tend to solve political disputes in a peaceful manner than engaging a full front war.

Western reforms contained universal suffrage, encouraging free economy, liberalizing education, free elections from 1946 and onwards, freedom of press and women's rights. They also included several rules to improve democratic institutions, punish war criminals, ensure the implementation of the allied occupation and lastly to define the terms and conditions for the withdrawal of the American forces (Potsdam Declaration 1945).²⁸

SCAP was formed of many entities that were tasked under various subjects such as Civil Intelligence Section or Economic Section (see Figure 1 for the full structure). With the establishment of the General Headquarters on 2 October 1945,

²⁶ Kant, "Toward Perpetual Peace" in *Practical Philosophy*, ed. Gregor and Wood, 322-338.

²⁷ Russett, *Grasping the Democratic Peace: Principles for a Post-Cold War*, 11-12.

²⁸ Meyer, *Japan, a concise history*, 4th edition, 223-224.

the indirect American rule had begun. On the same day, the Government Section of SCAP was created in order to implement the aforementioned reforms. The staff of this section, led by Brig. General Courtney Whitney, was formed by the left oriented reformers of the New Deal period, who envisioned a Japan stripped away from the values of feudalism and militarism.²⁹ They thought that Japan should be enveloped by the American values and become a likeminded ally for the United States. These reformers had seen themselves as liberators and all the reforms were implemented under this idealistic viewpoint. The Intelligence section, which was led by General Charles Willoughby, also had similar plans for Japan, but in this case, they focused on keeping the stability of Japan so that the reforms could take effect smoothly. The Economy section was concerned with cases related to Zaibatsu and implementation of the Trade Union Law for worker rights.

Washington prepared drafts of the articles that were later to be implemented as reforms and sent them to General MacArthur. These were: Promotion of political parties; extracting of officers accused of war crimes from the workplace; spreading of civil liberties; and disintegration of Zaibatsu. The Japanese could not reject the foreign element in their constitution because of the terms of unconditional surrender that were imposed upon them. On the other hand, American administration cooperated with the Japanese government for the implementation of the reforms, which was a contrast to the rupture strategy used in their occupations of Germany and Italy.³⁰

²⁹ Jansen, *The Making of Modern Japan*, 678.

³⁰ Meyer, *Japan, a concise history*, 4th edition, 222.

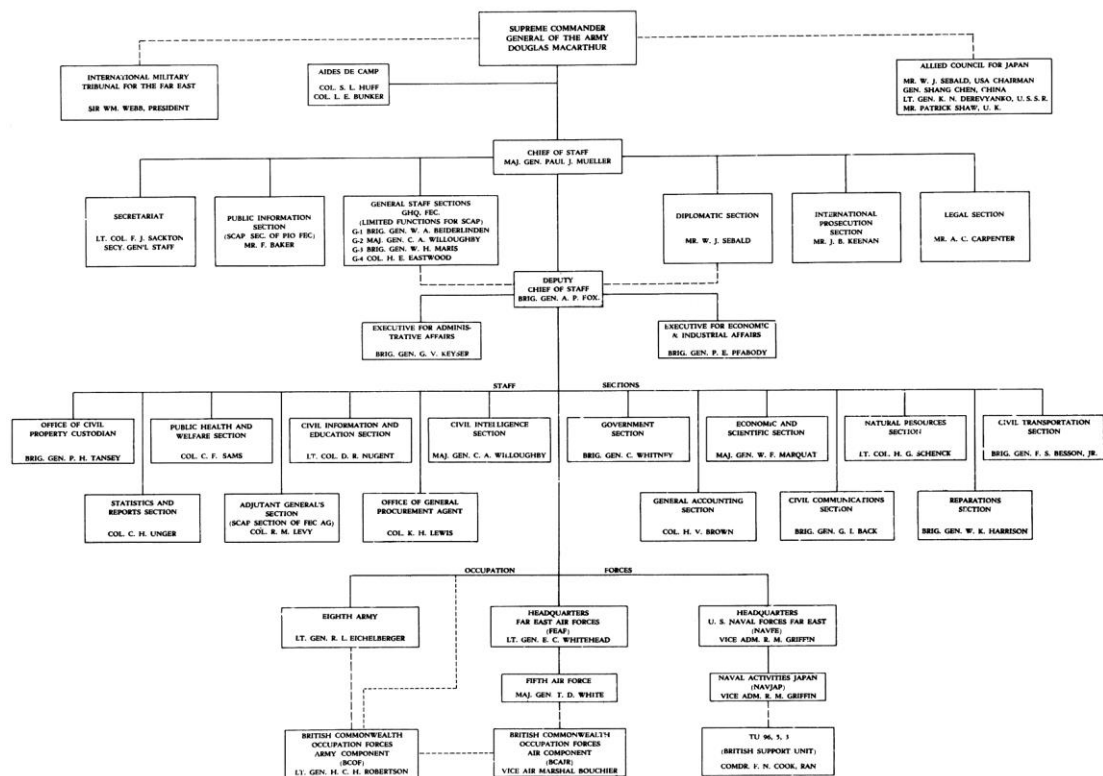


Fig. 1 The command structure of SCAP

Harold K. Johnson, *Reports of General MacArthur*, St. John's Press (December 19, 2016).

Several changes were made to the Mac Arthur draft such as; the unicameral Diet changed to a bicameral, the clause of the right to have private ownerships of property was added to Article 28, with the use of force for self-defense added later. The SCAP rejected only the Japanese points, which marked the importance of the use of the army. Before the 1947 constitution, most of the army had already been disarmed and faced limitations.³¹ The reforms also included the extraction of religious holiness from the Emperor. Instead of a complete removal of imperial rank,

³¹ Department of State, Foreign Relations of the United States, 1950 vol.6, 1293-96 cited in Umeda , "Japan: Interpretations of Article 9 of the Constitution."

the occupying body partly allowed the emperor's powers to facilitate the implementation of the upcoming rigid changes. In conclusion, the American administration made several alterations to the existing system instead of completely removing it. In order to affect a smooth revision, the Emperor was tasked to order the change. Thus his rank and authority were used by the SCAP to prevent a public revolt.³²

The present constitution was first released on November 3, 1946 and took effect 7 months later. It introduced radical changes to the Japanese post-war military structure, political and social policies. The change of an imperial state to a pacifist state was based on the Article 9 of the new constitution. The structural switch to pacifism was designed to make Japan serve and suit American purposes. Pacifism is thus constructed to be one of the basic foundations of Japanese constitutional democracy.

[Original]

Article 9. 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 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.

Article 9, forbids the creation of any military force or any engagement of war and promotes peace. Paragraph 1 of Article 9 clearly renounces the use of war to settle international disputes. On the other hand, it is a known fact that every

³² Trumbull, "A Leader Who Took Japan to War, to Surrender, and Finally to Peace."

sovereign state other than Japan may use war or threats to claim a specific target (mostly land) if it is deemed necessary.

In addition, Paragraph 2 of the article basically forbids military mobilization of the country. It is stated in the Sayuri Umeda's article that this paragraph mentions the banning of air, sea and ground forces of Japan.³³

The idea of outlawing aggressive war was practiced much earlier on several other constitutions from that adopted by the French Republic in 1791 and the Costa Rican Constitution of 1948, as well as international agreements such as the Kellogg-Briand Pact of 1928.³⁴ In Kellogg-Briand Pact it is stated:

The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.³⁵

The Pact was proposed by US Secretary State Frank Kellogg and French Minister of Foreign Affairs Aristide Briand as a way to prevent another war from happening. The signing parties had promised to not use war as means to settle international disputes. 15 states signed it which included Japan, Germany, Italy, United Kingdom and United States.

³³ Umeda, "Japan: Interpretations of Article 9 of the Constitution."

³⁴ Hook and McCormack, *Japan's Contested Constitution*, 8.

³⁵ Kellogg-Briand Pact: http://avalon.law.yale.edu/20th_century/kbpact.asp

What makes the Japanese constitution unique was the outlawing of war itself as well as banning the maintenance of forces, which were stipulated by these two paragraphs. It later became a concern for both the Japanese politicians and the US authorities that using military forces may be needed for defense. In time, this led to some necessary changes and implementations to the mentioned paragraphs.³⁶ Japan had to create some force to defend itself and SDF was born through this rationale. For this reason, the Japanese government interpreted the article differently, which led to the creation of a body of non-aggression forces, that was named as the Self Defense Forces (SDF) in 1954 (Japanese: *Jieitai*). According to this interpretation, paragraph 1 of the constitution does not ban the establishment of an army, as long as it is for defensive purposes only.³⁷

What pushed Japan into taking such a decision and what was the reason? The change of the interpretation of Article 9 first began at the start of the Korean War of 1950-53. The war induced a fear of a domino effect. The Americans thought that if one country had succumbed to communism, the threat would diffuse to other states, thus all of them would fall like domino stones. When North Korea invaded South Korea; General Mac Arthur, who was in charge of the Pacific forces and the UN, needed to move the army stationed in Japan to South Korea, which left Japan defenseless. As confidence and reliability on American help got weaker, the questionability of Paragraph 2 had begun , which outlaws the maintenance of all forces. Later on, Americans demanded several implementations from the Japanese

³⁶ Umeda, “Japan: Interpretations of Article 9 of the Constitution.”

³⁷ Ibid.

administration. For the upcoming negotiations, John F. Dulles was appointed as the Special Representative of the US government.³⁸

Meanwhile America was preparing to pull back its forces from Japan and eventually end the American occupation. During the peace treaty talks between the US and Japan in 1950, the American side put 2 preconditions for the reestablishment of Japan's sovereignty. The first agreement between US and Japan was that Japan should create "some" force to defend itself. The second part of the agreement, pointed out the bilateral treaty made between the US and Japan over the stationing of the US military forces in Japanese soil. What Dulles suggested to the Japanese Prime Minister at the time Yoshida Shigeru (premiership: 1946-54, 5 separate cabinets), was to encourage the creation of a collective security system and to improve Japanese self-sufficiency. On the other hand, according to the Library of Law (2006) article, which points out the Japanese situation at that time, people who were devastated by the atomic bomb did not wish the creation of a strong Japanese army.³⁹ At the same time, the pressure coming out of the Far Eastern Commission, mainly from Soviet Union and China blocked a strong intention to create a defense force anyway. However, Japan, was desperate to remove the occupation, and agreed to the conditions regarding "some" armament which was stipulated.⁴⁰

The creation of coast guards and police force initiated by Mac Arthur and later John F. Dulles, created questions in the Japanese Diet about whether this force

³⁸ Shuichi, Article Nine of the Japanese Constitution and security policy: realism versus idealism in Japan since the Second World War, 408.

³⁹ Umeda, "Japan: Interpretations of Article 9 of the Constitution."

⁴⁰ Shoichi, *The Birth of Japan's Postwar Constitution*, trans Ray A. Moore, 170-171.

is militaristic or not. Prime Minister Yoshida's answer (July 26, 1950) to these questions was mostly about describing the Police Force Reserve (*Keisatsu Yobitai Rei*) as a means for safeguarding the peace. According to this new interpretation, Japan was using minimal force to defend itself from any threats that might have caused war. An ordinary interpretation would be describing defensive forces as civilians with guns or police force. In this case, Japanese SDF was not named as a military force however, they were formed of air, sea, and ground forces. It was underlined that the creation of the SDF came with the idea of a non-aggressive method of using force. It does not have the quality of *Senryoku* (war potential) and cannot cause a threat, so it can be seen to be strictly for self-defense purposes.

Initially the police force was equipped with carbines and machine guns. As the communist threat got stronger, throughout the Cold War the US military had provided new class of weapons (artillery, airplanes) to SDF.⁴¹ The increasing quality of the weapons used by the SDF made most political analyzers question the ability of Japan for war potential and its Self-Defense Force.

Besides the military reforms, which created significant changes, America had several other plans for Japan. The democratization of Japan was one of them. The reform era, leading to this, had 2 distinct phases. The first, which was the primary stage for the implementation of the hardline reforms, lasted from 1945 to 1948. The second was from 1948 to 1952 and can be labeled as the recovery period, which was the time when the US prepared the withdrawal of its armed forces from Japan and later focused on the Korean War.⁴²

⁴¹ Green, "The Forgotten Player," 42.

⁴² Meyer, *Japan, a concise history*, 4th edition, 223.

In the democratization period, one of the top issues was the jurisdiction of the Japanese war criminals. This involved the exclusion of high ranking Japanese officials from the workplace through a tribunal called the International Military Tribunal for the Far East. Seven of 25 officials, who were accused of harsh war crimes were hanged (Class A war criminal General Hideko Tojo among them). Others were punished by imprisonment from 7 years to life sentences. 200.000 bureaucrats and public officials were discharged from the workplace due to their roles before and during the war.⁴³ However, these people were necessary for the reconstruction of the post-war Japan, as will be explained below.

The draft articles provided by the Japanese administration were not satisfactory enough for the SCAP. Through deliberations and discussions they later changed and modified them to be able to pass them through the Diet. The resulting rules gave the Emperor the responsibility of keeping the public unity, stipulating that his position was not a result of religious holiness but given to him by the public. At the *Ningen-sengen* (人間宣言 trans. As “humanity declaration”) speech on 1946 New Year’s Day, Emperor Hirohito made several clarifications regarding his rank. The section where he declares: “The ties between Us and Our people have always stood upon mutual trust and affection and do not depend upon mere legends and myths. They are not predicated on the false conception that the Emperor is divine, and that the Japanese people are superior to other races and fated to rule the world” was given great attention and importance from the occupation. According to the popular view, Hirohito challenged the old myths of his imperial rank and the core

⁴³ Ibid, 224.

perspective which begets Japanese pride.⁴⁴ The royal family was preserved but became a symbol, while the nobility was abolished by the new constitution. On the other hand, imperial household rules continued beyond political scrutiny (see APPENDIX D for the full text of the Imperial Household Law).

The 1947 constitution of Japan is similar to the American constitution in terms of its basic principles. It extended Japanese politics by giving sovereignty and basic human rights to the citizens.⁴⁵ The constitution removed the priorities of the elites that were close to the Emperor before the occupation. Now, the Diet, which became the highest and only organ, continues to pass and create the laws. People of 20 and older can vote, while both houses of the Diet are formed through elections.⁴⁶

The US gave great importance to changes in the judiciary structure. From this point onward the members of the Supreme Court began to be chosen by the people once every 10 years. In the case of judicial review the last resort to determine the constitutionality of any law, regulation or act could be settled through the Supreme Court. Regional autonomy got stronger. During the Meiji constitution the Emperor, who was the central figure, had given orders to the local authorities and municipalities had executed them. Instead, the 1947 constitution gave several executive powers to local governors such as taxation, police force, judicial administration and education. Audit of the police was performed not by the ministry but by administrators of municipalities and provinces. The constitution favored the

⁴⁴ Suzuki, *The Rhetoric of Emperor Hirohito: Continuity and Rupture in Japan's Dramas of Modernity*, 124.

⁴⁵ Meyer, *Japan, a concise history*, 4th edition, 224.

⁴⁶ Ibid.

regional civil servants and governors from then on, and they were chosen by local voters. The increase of responsibilities of local governors later caused fiscal problems as their expenses were unchecked and bureaucrats needed more money for their public expenditures. As a result of the lack of the accountability of the new taxation system, the authority of the central administration was partly re-instigated.

The 1947 reforms underlined the necessity for a liberalized and equal educational system. National propaganda, along with Shinto values and symbols were removed from textbooks, the level of education was upgraded, and opportunities were given to all citizens. Compulsory education was raised to 9 years based on the American system.

One more reform that the Americans had in their plan was the removal of the Zaibatsu system. These were Japanese modern economic cartels consisting of a family-controlled company, connected with dominant industrial subsidiaries and financed by a bank. These vertically formed corporates held substantial amount of influence in Japanese economics and politics due to their enormous profits.⁴⁷ Americans blamed them for financing and having relationships with the former military mechanisms during WW2. The 4 main Zaibatsu were Mitsui, Mitsubishi, Sumitomo and Yasuda. These cartels were founded after the Meiji Restoration (1868) with the intention of stimulating economic growth. After the World War 2, it was believed that these major cartels were the cause of the unbalanced economic distribution and could further disrupt democratic tendencies. Members of the zaibatsu and their families were dismissed, and their company accounts were frozen.

⁴⁷ Beamer and Seybolt, *"Japanese Zaibatsu" in Cultural sociology of the Middle East, Asia, and Africa : an encyclopedia*, 300-301.

Several measures about combatting monopolization were introduced such as passing some laws for the balanced redistribution of goods. After the 1951 Peace Treaty, the former Zaibatsu groups started to form enterprises, with a more loosely formed organizational structure. Later, these groups played a big part on reconstruction of Japanese industries and banking sectors through major investments and backing provided by them. They became known as Keiretsu, meaning subsidiary. Compared to Zaibatsu, Keiretsu has a horizontally formed administrative structure.⁴⁸

In addition, for a while, worker unions were promoted. SCAP hoped that they could push the democratization process. It was also thought that as the zaibatsu further disintegrated, lower middle classes could participate more in politics and through this participation experienced politicians would emerge from among them. As a result, workers gained several rights such as organizational unity and worker strikes. However, this strategy was later abandoned as occupiers realized that giving these powers to the workers could easily trigger a socialist strike. With the pretext of saving money and facilitate economic growth, in 1949 a large number of the employees of the unions, along with their leaders were fired. In addition, a review board from the US had advised SCAP to permit the old Zaibatsu leaders, who were expelled during the reform period, to become functional again.

Lastly, land reforms abolishing the semi-feudal land system were introduced. Instead of full management by the tenants, several property limits were put into practice. The government bought land and later sold it at profit. However,

⁴⁸ Ibid.

agricultural debts couldn't be settled as several purchased estates were used for reasons other than agricultural production.

During the recovery period, both America and Japan were preparing for a peace treaty. Now that the fundamentals had been put forward, America could pull back its forces from Japan and outline the basic requirements of the peace treaty. As Cold War accelerated, America's need for a stable and democratic ally at the Pacific region further intensified. Economic growth continued and pressure was put on the fighting communists and the radical right.

Japan regained its sovereignty in 1952 after signing two important treaties with the occupying US. The first one, the San Francisco Treaty, gave Japan its sovereignty and from then on, Japan could sign free trade agreements with other countries. For the damage it had caused during WW2, Japan agreed to pay compensation money to Indonesia and Philippines. Japan also stated its disclaim of Spratly and Paracel Islands. From this point onwards, Japanese international relations with war torn countries normalized (1952 for India, 1954 for Burma, 1956 and 1958 for Indonesia and Philippines).⁴⁹

With the second treaty, the *US-Japan Security Agreement* of 1952, Japan gave the US the right of keeping its military force on Japanese territory. (see APPENDIX E for the full version of the security treaty). As explained above, before gaining full sovereignty Japan had to sign a treaty with Americans, which was about the continuation of stationing of the American forces. Due to the communist threat, after the Korean War, the American administration recognized that the question of

⁴⁹ Meyer, *Japan, a concise history*, 4th edition , 232.

what would happen if Japan got attacked by an aggressor could not be deflected. The aim of this agreement was to keep peace and stability in the Far East and to protect Japan against an invasion. The US forces that were in Japan were regarded as a military deterrence force. It mentioned a time limit of 10 years. Payments, concessions and jurisdictions were later organized by *the Administrative Agreement* (1952). Way back in 1952, Americans saw the beginning of the change for Japan, and forecasted its military buildup. As stated in the Security Treaty:

The USA should maintain armed forces of its own in and about Japan so as to deter armed attack upon Japan ... in the expectation that Japan will itself increasingly assume responsibility for its own defense against direct and indirect aggression, always avoiding any armament which could be of an offensive nature.⁵⁰

Four articles of the Security Treaty (Ampo) quoted below contain its basic fundamentals:

ARTICLE III

The Parties, individually and in cooperation with each other, by means of continuous and effective self-help and mutual aid will maintain and develop, subject to their constitutional provisions, their capacities to resist armed attack.

This article binds both parties, through mutual aid and cooperation, to maintain and construct their capacity to resist armed attacks, subject to constitutional limitations. In addition to Article III, Article IV also requires the U.S. to consult with Japan whenever a threat to Japan's security or a threat to the international peace and security of the Far East arises.

⁵⁰ Full Text of the Security Treaty can be Found at <https://www.mofa.go.jp/region/n-america/us/q&a/ref/1.html>

ARTICLE V

Each Party recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes. Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations in accordance with the provisions of Article 51 of the Charter. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

This article binds the U.S. to defend Japan against armed attack but does not require Japan to respond in the defense of U.S. forces—even those acting to defend Japan since Japan cannot dispatch its own military force.

ARTICLE VI

For the purpose of contributing to the security of Japan and the maintenance of international peace and security in the Far East, the United States of America is granted the use by its land, air and naval forces of facilities and areas in Japan. The use of these facilities and areas as well as the status of United States armed forces in Japan shall be governed by a separate agreement, replacing the Administrative Agreement under Article III of the Security Treaty between Japan and the United States of America, signed at Tokyo on February 28, 1952, as amended, and by such other arrangements as may be agreed upon.

This article establishes the principle of burden sharing by granting the US the use of facilities and areas in Japan needed for Japan's defense as well as those needed to maintain international peace and security in the Far East.

ARTICLE X

This Treaty shall remain in force until in the opinion of the Governments of Japan and the United States of America there shall have come into force such United Nations arrangements as will satisfactorily provide for the maintenance of international peace and security in the Japan area. However, after the Treaty has been in force for ten years, either Party may give notice to the other Party of its intention to terminate the Treaty, in which case the Treaty shall terminate one year after such notice has been given.

Article X discusses treaty duration and termination procedures.

After the signing of both the US-Japan Treaty and the San Francisco Treaty, the future of Japan's security remained in blur. The American side was pressuring Japan to rearm itself up to the point that it would ease the burden of the maintenance costs of American troops stationed there. As a way to compensate this, Japan had increased its military on a step by step basis. This started with the establishment of Marine Guard (*kaicho keibitai*), Security Agency (*hoancho*) in 1952, and the *Mutual Security Act* of 1954 declared the requirement of Japan to strengthen its defense capabilities thus, National Forces became known as Self- Defense Forces. In 2018, US has 21.000 troops stationed in Japan accompanied with 150 aircraft. In addition, the US 7th fleet consists of 30 vessels weighing 400.000 tons with 50 carrier -based aircraft.⁵¹

⁵¹ Japanese Ministry of Defense, *2018 Defense of Japan*, Major Military Forces in the Asia-Pacific Region (Approximate Strength), 49.

The creation of the Marine Guards, security consolidating agencies and renting of foreign ships for patrolling territorial waters were some of Japan's attempts for increasing their security infrastructure. The *Mutual Defense Assistance Agreement* (MDA) between Japan and the US further increased the bond of military partnership and collective security attempts. With this agreement, Japan gained assistance and resources from the US while creating its own force by issuing a bill during the House of Councilors Meeting on June 2, 1954. During the constitution talks of that year it was admitted that the *Jieitai* force was entrusted with the security of land within Japanese borders. By analyzing the US encouragements, it is safe to say that the US needed a non-communist Asian ally that would create a bulwark against the communist threat.

Article 8 in this agreement states that:

The Government of Japan . . . will make . . . the full contribution permitted by its manpower, resources, facilities and general economic condition to the development and maintenance of its own defensive strength and the defensive strength of the free world, take all reasonable measures which may be needed to develop its defense capacities, and take appropriate steps to ensure the effective utilization of any assistance provided by the Government of the United States of America.⁵²

However, one must consider the ongoing question: Do they have the capability of war potential? Omura Seiichi, the director general of the Japan Defense Agency claimed that for a state to have defense power was more legitimate than the

⁵² Full text of 1954 MDA Agreement can be found here:

<https://www.learner.org/workshops/primarysources/coldwar/docs/usjapan.html>

constitution during the Lower House Budget Committee in 1954.⁵³ The defense of Japan was so prioritized that leaders started to shelve the pacifist values and paraphrase the constitution through different interpretations. This is in fact a realist approach which puts much more concern towards the protection of territories rather than adhering to laws or morality. According to famous political scientist Hans Morgenthau, the struggle for power is the essence that defines the world of international politics. Korean War of 1950 had reminded this approach to Japan again, which pushed Japan to consider a more rational approach to their own security.

As Japan started to establish its own military force another subject of importance rose to the surface which was collective self-defense. The issue of collective self-defense got a place in the United Nations Charter 51, in the same year that Japan gained its independence. In Charter 51 it is written:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”

For the case of Japan, the Yoshida administration simply rejected to utilize this right. In 1954, during Yoshida’s premiership, Japan was deeply wrapped into full

⁵³ “Kenpo kaisei nado o tsuikyū.” Asahi Shimbun evening edition, cited in Shuichi, “Article Nine of the Japanese Constitution and security policy: realism versus idealism in Japan since the Second World War,” 411.

pacifism. Even though the adoption of this law prevented Japan from using the SDF for overseas deployment, through the Article 51 of the UN charter, which mentions the sovereign powers' right of collective self-defense, Japan could deploy the SDF after the end of the Gulf War in April 1991. However, its role was limited to logistical support rather than combat.⁵⁴

Before the formation of the Liberal Democratic Party in 1955, Japanese politics were divided into factions with their unique policies. On one side was the nationalists with their rearmament agenda and anti-US view, and on the other side were the liberals with their pacifist agenda and pro-US view. Yoshida Shigeru from the Liberal Party prioritized the economic development, but as explained above later had to create a defense force due to American pressure. The questioning of Article 9's military ban, first began with Yoshida Shigeru, in the session of the Upper House Budget Committee on 6 March 1952.⁵⁵ He was a staunch defender of the 1947 constitution and he preferred American military assistance rather than constructing Japan's own military forces while he put primary importance on the economic development. According to him, Article 9 was not for only prohibiting the belligerency of the state but also for abolishing any potential of military force either for offensive or defensive purposes. He added that all wars were caused by the self-defense issue.

⁵⁴ Hughes, *Why Japan Could Revise Its Constitution and What It Would Mean for Japanese Security Policy*, 732.

⁵⁵ Sangiin (The House of Councilors) (Proceedings of Committee on Budget, The House of Councilors), the 13th Diet Session , No:17, (March 10, 1952).

The constitution had some flaws. Since it was first written in English, the Japanese government could question its legitimacy (binding) and would want to change it. Additionally, it has been criticized by the Japanese nationalists for not reflecting Japanese values and historic ties. The constitution is also claimed to be imposed by the Americans occupiers. It should also be noted that after the independence of Japan, several right wing/conservative politicians like Hatoyama Ichiro and Nakasone Yasuhiro, who were previously expelled by the US, because of their responsibility and decision making during the wars, returned to their official positions. These people wished to create a constitution that did not have any prescription imposed by outside forces but created by the Japanese themselves.⁵⁶

In 1950s, the nationalists were led by Hatoyama Ichiro, who got expelled from politics in 1946 but later returned to the political stage in 1952. Hatoyama was Kishi Nobusuke's (premiership 1957-60) predecessor and both he and Kishi had similar views regarding the constitution and the American occupation. After the San Francisco Treaty, his views regarding the constitution got sharpened as he believed it was forced upon Japan by the US. In contrast to Yoshida, he emphasized building a greater military structure, since an independent nation needs to possess sufficient defense capabilities. Due to Hatoyama and Yoshida's different views, Hatoyama had to create his own party calling it the Japanese Democratic Party. Lastly, the minority Nishio faction, the hawkish side of the Japan Socialist Party, has maintained a neutral realist style, which placed it neither in LDP nor in JSP's influence.

⁵⁶ Hook and McCormack, *Japan's Contested Constitution*, 15.

As the leader of Democratic Party, Hatoyama's definition of war potential was similar to Yoshida's definition during his 1952 speech. As long as it served defense purposes it was considered constitutional. Yet, Hatoyama proposed the revision of the constitution and favored forging normal relations with USSR. But, due to his health problems this normalization could not be fully achieved.⁵⁷

The above information proves that the constitutional revision debate had already begun in the 1950s, two years prior to Japan's regaining of its sovereignty. Revision was desired by a faction of Liberal Party political elites who were more nationalistic, and right wing than the Yoshida line of pragmatic accommodation to the Occupation reforms, including the 1947 Constitution. However, as the Cold War was rising in tension, the ideological differences were becoming more definite. As a result, political groups merged under the leftist and rightist political camps in order to become more influential and effective in domestic politics.

2.2 The formation of the 1955 institutional system

During the work of the 2005 Research Commission on Constitution it was stated that Japan should revise its constitution. This commission was established in 2000 by the Diet to discuss and research whether a constitutional reform is needed or not. During his short speech Chairman Taro Nakayama made some statements regarding the issue of constitutional revision.

⁵⁷ Shuichi, "Article Nine of the Japanese Constitution and security policy: realism versus idealism in Japan since the Second World War," 411.

In his speech he said:

For we need to resolve the gap between the Constitution and the realities that have come into being during the past 58 years since its enactment, as well as to deal with changes that have taken place.

In other words, many opinions were first expressed that we should continue to maintain the basic three principles of the Constitution as well as the emperor-as-symbol system. Then, as regards the right to self-defense and the Self-Defense Forces, many opinions were expressed admitting that constitutional measures should be taken in one way or another. In areas of people's rights and duties, many opinions were expressed in favor of specifically stipulating environmental rights and several new human rights. Amendment of the Constitution by clearly changing the text was also thought necessary and favored by many for the establishment of a Constitutional Court, support to private educational institutions, strengthened and consolidated local government, and crisis management.⁵⁸

Both houses of the Diet as well as the opposition parties had participated in this commission. However, a commission similar to this had already happened many years ago, in 1957. At that time, the Prime Minister was Kishi Nobusuke and just like the Japanese prime minister of today, he wanted to revise the constitution. However, his plan did not work out well, as it faced strong opposition from the public. After the signing of the Ampo, he was replaced by Ikeda Hayato in 1960 and the revision plan was shelved for some time. This outcome indicated that it was too early to revise the constitution as a consensus between LDP and the opposition seemed impossible. Liberal Democratic Party's diverse internal factions as well as resistance against a major change made several Prime Ministers change their revision agendas. In order to understand this situation, we must analyze the political parties

⁵⁸ Nakayama, "*Short speeches by Mr. Taro NAKAYAMA.* "

and their policies during the pre-LDP period.⁵⁹ Figure 2 below shows the ideological factions of each political factions before the formation of 1955 system.

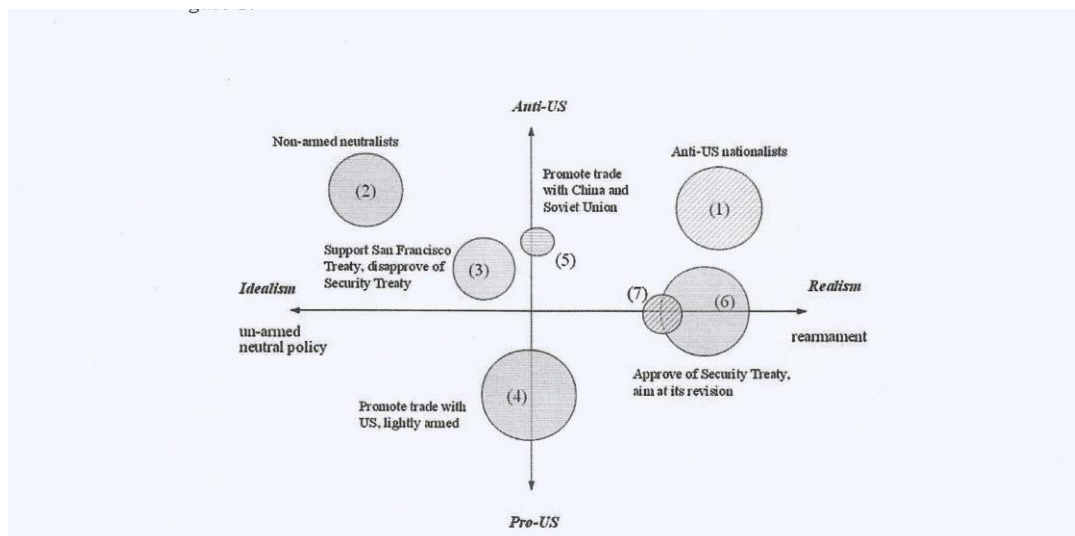


Fig. 2 The seven political factions of Japanese society before the formation of LDP: 1950-1955

Source: Wada Shuichi, Article Nine of the Japanese Constitution and security policy: realism versus idealism in Japan since the Second World War, *The Japan Forum*, 412

The first group was the Anti-US nationalists. They fully supported the constitutional revision until 1955. Hatoyama Ichiro and Kishi Nobusuke were the prime composers. Their party's name was Democratic Party (Nihon Minshuto) which was founded by Hatoyama in 1954.

⁵⁹ Shuichi, "Article Nine of the Japanese Constitution and security policy: realism versus idealism in Japan since the Second World War," 406.

The second group was the Anti-US idealists. These were the left wing of the Japanese Communist Party (Nippon Kyosanto-JCP) who favored an unarmed neutral policy (*hibuso churitsu seisaku*). Left wing JSP, which comprised the majority of the group, was led by Suzuki Mosaburo. They did not support the San Francisco Peace Treaty because of China and USSR'S stance to Japan. In short, Communist China was not represented and USSR wanted the superscription of the Sakhalin and Kuril Islands which it occupied.⁶⁰ These two communist countries accused the US of undermining the stability of the Asia. JCP promotes Japanese relations with Soviet Union and China. They claimed that SDF was unconstitutional and the US Security Treaty must be terminated.

The third group also consists of anti-US idealists. Represented by Kawakami Jotaro they were the right wing of the Japanese Socialist Party (Shakai Minshuto) but unlike the Nishio faction, they did not support the Security Treaty. They also did not support the policy of rearmament, while at the same time they favored the regaining of Japan's sovereignty.⁶¹

The fourth group were pro-US neutrals, who prioritized the economic growth and small armaments. As mentioned above, Yoshida Shigeru belonged to this group.⁶² He led the Liberal Party (Jiyuto) which was founded in 1945 until the merge with Democratic Party in 1955.

The fifth group was anti-US neutrals. The top representative of this faction was Ishibashi Tanzan. He was a liberal anti-militarist and like Yoshida Shigeru he

⁶⁰ Meyer, *Japan, a concise history*, 4th edition, 229.

⁶¹ Shuichi, 414.

⁶² Shigeru, *Sekai to Nihon* (The World and Japan), 198.

believed the economic growth should be the top priority of the post-war Japan. His expansionary fiscal policies included a formation of a trade agreement with China.⁶³ The sixth and seventh groups had very similar agendas. Both supported the rearmament of Japan plus stayed neutral towards US. The only difference was their backgrounds. Both approved the change of the Security Treaty as they claimed it was unfair (due to its unilateral side, giving priorities to US). It included the former Katayama and Ashida groups of the Democratic Party (1947) and the Nishio faction. Politicians like Ashida Hitoshi and Nakasone Yasuhiro came from the Democratic Party roots whereas Nishio faction led by Nishio Suehiro (chief cabinet secretary under the Katayama administration of 1947) once consisted the part of JSP. Due to their right-wing policies and realist view on Japanese security they got disbanded and formed their own party in 1960 named as Minshu Shakai-to (Democratic Socialist Party- DSP). The background of the Ashida- Katayama groups trace way back to wartime organizations (Imperial Rule Assistance Association) whereas Nishio faction was formed by labor movement leaders. This similarity had resulted with the cooperation of two parties on various occasions such as; removing the GNP expenditure limit and enacting legislations for the educational reforms during the Nakasone Cabinet in 1983.⁶⁴ The wide range of opinions of these seven factions merged into two camps after 1955. Figure 3 below shows the political orientation of political factions during the formation of the 1955 system.

⁶³ Masuda, *Ishibashi Tanzan: Riberarisuto no shinzui* (Ishibashi Tanzan: the heart and essence of a liberal), 169-240.

⁶⁴ Shuichi, 427.

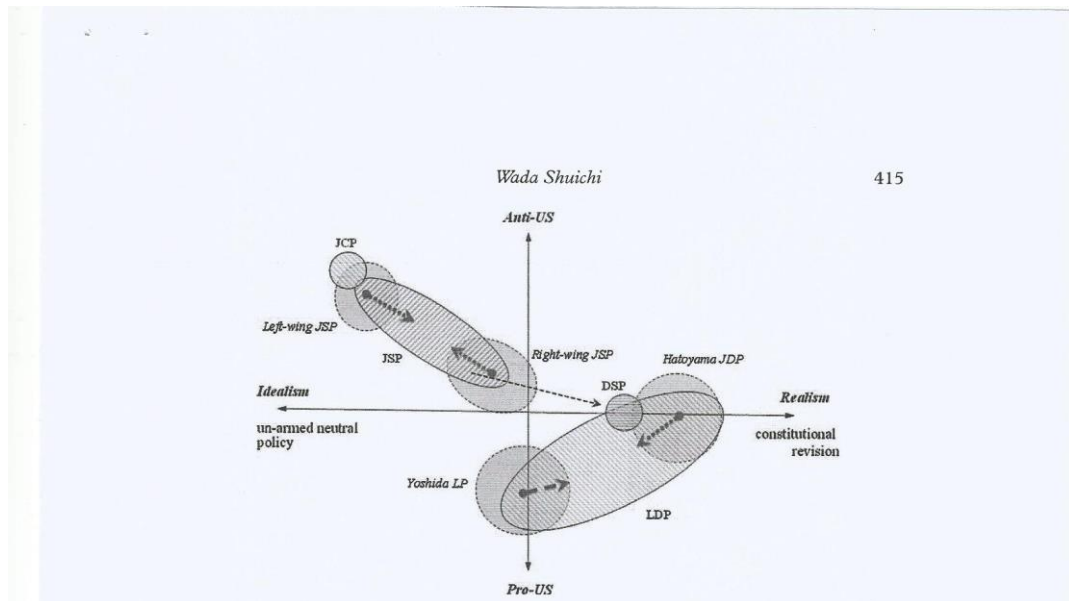


Fig. 3: The merging political parties and their shifting policies after 1955

Wada Shuichi, 415.

What caused these groups to merge and reorganize? There are two important factors. First one was caused by the electoral cooperation and competition between the parties, whether being right-wing or left. In order to win the Lower House elections JSP and JCP came to a consensus to accept the San Francisco Peace Treaty. They promised to continue their unarmed neutralization policies while criticizing all forms of rearmament or revision. Left wing parties favored the signing of a treaty of mutual nonaggression with Japan's communist neighbors (similar to the Locarno Treaties of 1925 which was signed between Germany, France, Belgium, Britain and Italy).⁶⁵ As a response, Liberal Party and Japan Democratic Party merged under LDP (Liberal Democratic Party-Jiyu Minshuto) in October 1955 and started to follow a

⁶⁵ Ibid.

more idealistic approach for their foreign policies. Instead of emphasizing rearmament, they focused on constitutional revision. Furthermore, anti-US politicians such as Hatoyama retired, which stirred the party's view on relations with America. As Cold War politics was getting stronger, Japan turned its attention on fighting with the common enemy, which was communism.⁶⁶ We should also keep in mind that LDP consists of many factions from liberals to those who have a socialist tendency. As a go for all party Japanese administrations in time had conducted welfare policies to increase the standards of the people.

The second important factor is the American perspective towards Japan. As the anti-communism among the US allies grew stronger, sympathetic views towards Soviet Union received harsher responses. As a result of this, American political ranks stopped favoring JSP. Eisenhower administration preferred a pro-US Japanese Prime Minister to tackle the communist threat more efficiently. This led to changes inside the LDP; after the resignation of Hatoyama and Ishibashi in 1957, Kishi Nobusuke changed his anti-US nationalist view to pro-US view to receive American support for his election campaign.⁶⁷ This change of outlook favored him well, as he did receive American support for the change of the Security Treaty as well. Before the revision, US could unilaterally terminate the treaty, declaring a state of domestic unrest which they could suppress without the permission of the Japanese. These unfair clauses were later removed.⁶⁸

⁶⁶ Ibid.

⁶⁷ Shuichi, 416.

⁶⁸ Ibid.

The pacifistic sentiments of the Japanese constitution can be considered as unique. What makes this constitution more special is its adoption of pacifism even though Japan is as a developed power. At the beginning of 1990s the questions above accelerated the shifts of Japan's foreign and domestic policies. Since the articles of the constitution put limitations on SDF, Japan sought new interpretations of the articles that would at least let it pass legislations. The second paragraph of Article 9 could help Japan to adjust its meaning:

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.

During the passing of the constitution in 1946, the red painted words were added by Hitoshi Ashida (Premiership: 10 March to 15 October 1948). Ashida was a former diplomat who had worked in Japanese embassies in 1910s and 1930s (1917 Russia, 1918-20 France, Turkey around 1927). As a realist, he had seen the Western disdain for the invasion of Manchuria by the Japanese army. For this reason, he supported anti-militarism during the writing of the draft constitution and dreamt of an international organization that would maintain the international peace.⁶⁹ This line that he added, opened the way for new interpretations as long as it did not include any means of aggressive war. It gave some space for the SDF to be deployed on overseas based on peacekeeping purposes. However, collective self-defense became an important issue of Japanese administration at the end of Cold war era. The government section that was responsible for creating new interpretations from the articles of the constitution was the Japanese Cabinet Legislation Bureau.

⁶⁹ Yoshida, "The realist behind the idealist Constitution."

Cabinet Legislation Bureau and the Supreme Court cases

The various interpretations of the Article 9 and SDF cases were mostly discussed in the Cabinet Legislation Bureau (CLB). Established under the Yoshida Cabinet in 1952, its mission was to create consistent interpretations for the constitution and to examine the Cabinet drafts and treaties.⁷⁰ It was an independent institution and rather than being planned within a direct career path forged with entrance exams, CLB was organized to comprise 26 elite bureaucrats that had been working at the ministries for over 15-20 years. It continues to provide a hub for consultation for the Cabinet and ministries and is tasked to answer the questions of the Diet members during the Diet meetings. The idea of a legislative bureau had started way back during the Meiji period. The Legislation Bureau of Japan was founded in 1885 and was modeled after the French *Conseil d'Etat*. It was the key advisory hub for the government and was later assigned to the Imperial Institution in 1890.⁷¹ Approval of all regulations and acts by the ministries as well as staffing of the courts and the examination of the Emperor's Privy Council had made the Chief Cabinet Secretary the second top authority before the WW2 period. After the war, CLB had created the new constitution which later got rejected by SCAP Colonel Charles Kades, which led to its abolishment in 1947. The bureau was reestablished by Yoshida Shigeru after the signing of the Peace Treaty of 1952. The new bureau possessed lesser power than its predecessor due to the abolishment of the Emperor's Privy Council.⁷² This

⁷⁰ Naikaku hōseikyoku secchi hō (CLB Establishment Law), Law No. 252 of 1952.

⁷¹ Samuels, "Politics, Security Policy, and Japan's Cabinet Legislation Bureau: Who Elected These Guys, Anyway?"

⁷² Ibid.

supervisory body had served great roles during the debate of the constitutionality of the *Jieitai* in 1954 and the use of the right of collective self-defense deliberations in 1994.

The concept of war potential depends on the level of military, which is above the minimum necessary self-defense requirement.⁷³ If Japan were to have a military force beyond that minimum level then it would become unconstitutional since it could be considered to the amount war potential. However, this requirement level is undefined in security treaties. Questions arose regarding ambiguous state of SDF, whether it could be a war potential force, or contradict the Paragraph 2 of Article 9.

The Supreme Court cases first started with the questioning of *Keisatsu Yobitai Iken Sosho* (Constitutionality of the National Police Reserve Case), which was brought to the court in 1952 by a Socialist Party member in the Diet. The case was dismissed by the Supreme Court as constitutional due to its lacking of any political disputes.⁷⁴ In addition, the Yoshida government denied the claims that the existence of the Police Reserve was a military unit.

Additionally, the *Sunagawa* and *Eniwa* cases are basic examples of collective security and war potential matters.⁷⁵ *Sunagawa* case was concerning the stationing of US forces in Japanese territory. In 1959, a Chief Justice in Tokyo District Court, Date Akio, claimed that US-Japan Security Treaty is unconstitutional. The case began with the arrests of the protesters who were protesting the extension of the US

⁷³ Hideo Sanda, Director General, Cabinet legislation Bureau, Answer before the Budget Committee of the House of Councilors (April 3, 1978).

⁷⁴ Umeda, “Japan: Interpretations of Article 9 of the Constitution.”

⁷⁵ Eniwa Case, Sapporo District Court, 9 Kakeishu 1175.

base in Sunagawa, a suburb located in Tokyo. Under the 1951 Security Treaty US troops were kept in Japan.⁷⁶ Known as the Sunagawa Case, this protest against the US base extension, later went to the Supreme Court, where it was pointed out that military extension didn't contain any clear unconstitutionality or invalidity. The Supreme Court dismissed the case by referring to the right of self-defense. It was stated that Article 9 of the constitution:

...renounces the so-called war and prohibits the maintenance of the so-called war potential, but certainly there is nothing in it which would deny the right of self-defense inherent in our nation as a sovereign power. The pacifism advocated in our Constitution was never intended to mean defenselessness or nonresistance.⁷⁷

The case was claimed as having a highly political nature. It was a doctrine of political questions and was subjected to the legislature. Basically, the constitutionality of the SDF and American bases were considered a political matter, beyond the judiciary. This was a breach of judicial independence, as legislature intervened in a judicial matter.⁷⁸ Yet, challenging the Cold War international order was a hopeless case for the Japanese judiciary. As a way of safeguarding both American and Japanese interests even nuclear bombs were stored and transported throughout Japan.⁷⁹ In most of the constitutionality cases it was claimed that it was not Japan's war potential but the US's. In addition, the Security Treaty (Ampo) had not adopted the device of questioning the type of weapons to be stored in Japan.

⁷⁶ Tokyo District Court 1959, 1 Kakeishu 776.

⁷⁷ Sunagawa case, *supra* note 4, at 3232.

⁷⁸ Matsui, 177.

⁷⁹ Norris, Arkin, and Burr, "How much did Japan know?"

Furthermore, the US did not specify what weapons its destroyers were carrying, which sparked suspicions. In general, all cases were examples that displayed the unfettered use of US authority with regard to the Japanese national politics.

Just like the example above, in the *Eniwa* case, ranchers, who were deeply disturbed by the loud noises coming from the SDF bases, had cut the telephone wires that were connected to the base and were prosecuted due to the breach of an SDF Act. The local Sapporo District Court avoided making decisions due to the issue of the constitutionality of the SDF. Most lawsuits filed at the regional courts got canceled by the higher courts with the technical explanation of the Article 9 and the SDF as ‘political questions’. These two cases have shown us that a fully pacifist approach was considered as being illogical.⁸⁰ For example, during the introduction of the 1954 SDF Establishment Law in the Diet, it was claimed by the CLB that as Japan became a sovereign state it had the right of self-defense just like any other sovereign state. For this reason, Japan could build a defensive structure on its homeland, purely for defensive purposes.⁸¹

The Girard Case

The Girard case of January 30th of 1957, had displayed another US superiority over Japanese judiciary. It had highlighted several concerns regarding the issue of extraterritorial rights. The killing of a Japanese woman by a US soldier, William S.

⁸⁰ Matsui, *The Constitution of Japan: A Contextual Analysis*, 246.

⁸¹ “The Cabinet Legislation Bureau, its image and reality: witness by Takatsuji Masami, former director of cabinet legislation bureau.”

Girard, at Somagahara Firing Range in Gunma Prefecture, triggered the question of where the culprit was to be judged: by the Japanese or the USA courts. The Japanese woman, Naka Sakai, was shot from the back with an empty shell casing fired by William Girard in an attempt to scare the woman. The Japanese side claimed that William Girard was not on duty thus his primary jurisdiction by the Japanese judges would not violate the SOFA agreement. At first, the Joint Committee formed by the US Secretary of the Army and the Japanese government reached an agreement of prosecuting Girard in Japan. However, the US Department of State intervened in order to reverse the decision of the joint committee, since they suspected that the Japanese case could become a precedent and would affect other crimes committed by the US staff stationed in different countries. Later, the diplomatic crisis was solved with the US Supreme Court decision, which accepted that the primary jurisdiction of Girard should be at the Japanese courts. Girard was found guilty of inflicting bodily injuries resulting in death and given a 3- year suspended sentence.⁸² Critics of SOFA (Status of Forces Agreement) usually mention the Girard case as an example of unfair treatment.⁸³ According to this agreement, each act performed by a US soldier inside the base falls into the category of duty activity. Thus, the US side tried to justify Girard's actions by defining the incident as an excessive reaction for protective purposes. Under the Article 17 of the US-Japan Administrative

⁸² Girard Case Summary. Retrieved from

<http://www.anpomovie.com/Girard%20Case%20Summary.pdf>

⁸³ Sebata, "United States Forces in Japan (USFJ) and Extraterritoriality."

Agreement, Girard was interpreted to have been in official duty at the time. The third paragraph of this agreement mentions the privileges of the US armed forces:

- a) Japanese authorities may arrest members of the United States armed forces, the civilian component, or their dependents outside facilities and areas in use by United States armed forces for the commission or attempted commission of an offense, but in the event of such an arrest, the individual or individuals shall be immediately turned over to the United States armed forces. Any person fleeing from the jurisdiction of the United States armed forces and found in any place outside the facilities and areas may on request be arrested by the Japanese authorities and turned over to the United States authorities.
- b) The United States authorities shall have the exclusive right to arrest within facilities and areas in use by United States armed forces. Any person subject to the jurisdiction of Japan and found in any such facility or area will, on request, be turned over to the Japanese authorities.
- c) The United States authorities may, under due process of law, arrest, in the vicinity of such a facility or area, any person in the commission or attempted commission of an offense against the security of that facility or area. Any such person not subject to the jurisdiction of the United States armed forces shall be immediately turned over to Japanese authorities.
- d) Subject to the provisions of paragraph 3 I, the activities outside the facilities and areas of military police of the United States armed forces shall be limited to the extent necessary for maintaining order and discipline of and arresting members of the United States armed forces, the civilian component, and their dependents.
- e) The authorities of the United States and Japan shall cooperate in making available witnesses and evidence for criminal investigations and other criminal proceedings in their respective tribunals and shall assist each other in the making of investigations. In the event of a criminal contempt, perjury, or an obstruction of justice before a tribunal which does not have criminal jurisdiction over the individual committing the offense, he shall be tried by a tribunal which has jurisdiction over him as if he had committed the offense before it.
- f) The United States armed forces shall have the exclusive right of removing from Japan members of the United States armed forces, the civilian component, and their dependents. The United States will give sympathetic consideration to a request by the Government of Japan for the removal of any such person for good cause.
- g) Japanese authorities shall have no right of search or seizure, with respect to any persons or property, within facilities and areas in use by the United States armed forces, or with respect to property of the United States armed forces wherever situated. At the request of the Japanese authorities the United States authorities undertake, within the limits of their authority, to make such search and seizure and inform the Japanese authorities as to the results thereof. In the event of a judgment concerning such property, except property owned or utilized by the United States Government, the United States will turn over such property to the

Japanese authorities for disposition in accordance with the judgment. Japanese authorities shall have no right of search or seizure outside facilities and areas in use by the United States armed forces with respect to the persons or property of members of the United States armed forces, the civilian component, or their dependents, except as to such persons as may be arrested in accordance with paragraph 3 (a) of this Article, and except as to cases where such search is required for the purpose of arresting offenders under the jurisdiction of Japan.

- h) (h) A death sentence shall not be carried out in Japan by the United States armed forces if the legislation of Japan does not provide for such punishment in a similar case.⁸⁴

According to SOFA the person who was to decide whether a serviceman is in official duty or not is the commander of that personnel.

For the Japanese side the real problem is the issue of Japan's disability to exercise sovereignty over US forces. As is stated in Takao Sebata's article, many crimes and accidents are not tried by either a Japanese court or a United States military court in Japan. On the other hand, the Japanese law does not control USFJ (US Forces stationed in Japan). Therefore, it can be interpreted in such a way that the US forces enjoy "extraterritoriality" under SOFA as Japanese judiciary cannot intervene.⁸⁵ As a result, crimes and accidents by US forces keep being repeated. There is a common perception that Japanese victims of crimes committed by U.S. military personnel in Japan could not expect to get justice in a U.S. military court.⁸⁶

⁸⁴ Full Text of Administrative Agreement:

<http://worldjpn.grips.ac.jp/documents/texts/docs/19520228.T1E.html>

⁸⁵ Sebata, United States Forces in Japan (USFJ) and Extraterritoriality, 59.

⁸⁶ Wetherall, "The Girard and Kupski cases: Extraterritoriality and jurisdiction in post-Occupation Japan."

When a member of the American staff is suspected of a crime he/she is put under the custody of the US army and can only be passed to the Japanese authorities after the indictment is filed.

Summary of the 1955 system

These party integrations created the political system known as the 1955 system. The parties had to relinquish their radical values in order to reach a consensus between them. It had the feature of adopting more idealistic policies (by idealism it is meant that their world view is harmonious, they emphasize morality and peace, and do not prefer militarism). This system had not received any changes until the end of the Cold War in 1991. Liberal Democratic Party from 1955 to present has served as a political base for the constitutional revision. It was the ruling party from 1955 to 1993. Apart from the leftist Socialist Party of Japan, LDP gained economic help from the United States through the CIA as a way to counter the communist threat, which started with supplementing Kishi Nobusuke's election campaign in 1958 Lower House elections. Therefore, LDP had enough budget to sustain their election campaign.⁸⁷ An outcome for this partnership is the response of the Japanese government to the war in Vietnam, which was a soft line opposition to the American presence there and it opened its ports for the use of the American navy.⁸⁸

As mentioned above, JSP could not get American support for their campaign. The leftist side of JSP wanted the return of Okinawa island back to the Japanese administration in 1957 as well as the abolishment of the US Security Treaty.

⁸⁷ Schaller, *Altered States: The United States and Japan since the Occupation*, 36.

⁸⁸ Schaller, *ibid*, 195.

However, the Nishio faction inside the JSP claimed that the Security Treaty was necessary. Nishio viewed the Cold War as a battle, which was based not on ideological clashes but was based on the government authority whether it is democratic or totalitarian. In this case the clash was between totalitarian Soviet regime versus democratic Western front. Nishio also claimed that the termination of the security treaty and the reconnection of Okinawa needed more time, like a decade or so. Because of the leftist protests, the Nishio faction left JSP in 1959 and formed Democratic Socialist Party in 1960.⁸⁹ DSP followed realist-oriented security policies and supported the welfare policies in their economic agenda. The left-right rivalry inside the JSP could be seen through the analysis of the trade unions. At the beginning of the 1960s the realist socialists formed their own trade union, *Sodomei* (Japan Federation of Labor Unions). It got changed to *Domei* (Japan Confederation of Labor) in 1964. Labor unions and human right organizations played a crucial role during the Security Treaty and constitutional amendment protests in 1959. From Prime Minister Ikeda Hayato onwards, all PM's were forced to renounce their intentions to revise the Constitution when they were faced with the JSP member questions in the Diet. Each PM had to state this before the questioning, otherwise opposition could reject the deliberations and stall the legislation process.⁹⁰ In order to refrain from provoking JSP, even Nakasone Yasuhiro(1982-1987) avoided to bring out the constitutional revision case in his premiership.

⁸⁹ *Encyclopedia Britannica*, s.v “Democratic Socialist Party,” last accessed July 25, 2018.

<https://www.britannica.com/topic/Democratic-Socialist-Party>

⁹⁰ Shuichi, 418.

2.3 Japan's defense policy during the Cold War period and the issue of Okinawa

For years the approach of the Japanese to national security remained unchanged despite several modifications. No other military roles were assigned by the Japanese Defense Agency, other than initiating the increase of defense expenses. The umbrella of the US already gave enough safety for the Japanese land, as its nuclear defense was forged with the cooperation of US-Japan 1951 Security Treaty. The main duty of the Japanese side towards their ally US was simply ‘burden sharing’. In order to regain its economic strength, Japanese goods were bought by the US. In exchange, Japan tried to reduce the US surplus by buying weapons from them. The increase of buying weapons from the US accelerated during the 1980s. This trade network did not only increase the quality of the weapons that the Japanese inventory had, but also increased the cooperation between the two countries.⁹¹ The US forces were settled on various military bases such as Okinawa. Later, Japan extended its defense line to a 1000-mile sea line perimeter with US permission. As Prime Minister Yasuhiro Nakasone once said, Japan was US's unsinkable aircraft carrier⁹².

In order to show its commitment to non-aggression, Japan adopted several acts for demonstrating its demilitarization. The 1967 Non-nuclear Principles banned the production, possession and introduction of nuclear weapons. In addition, Japan restricted its exports of arms in 1967, and put 1% GNP limit on its defense expenditures in 1976. Figure 4 displays the rising and declining trend of the Japanese defense budget between years 1999 and 2015.

⁹¹ Ibid.

⁹² Stokes, “Dip In Nakasone Backing Tied To Arms Stand.”

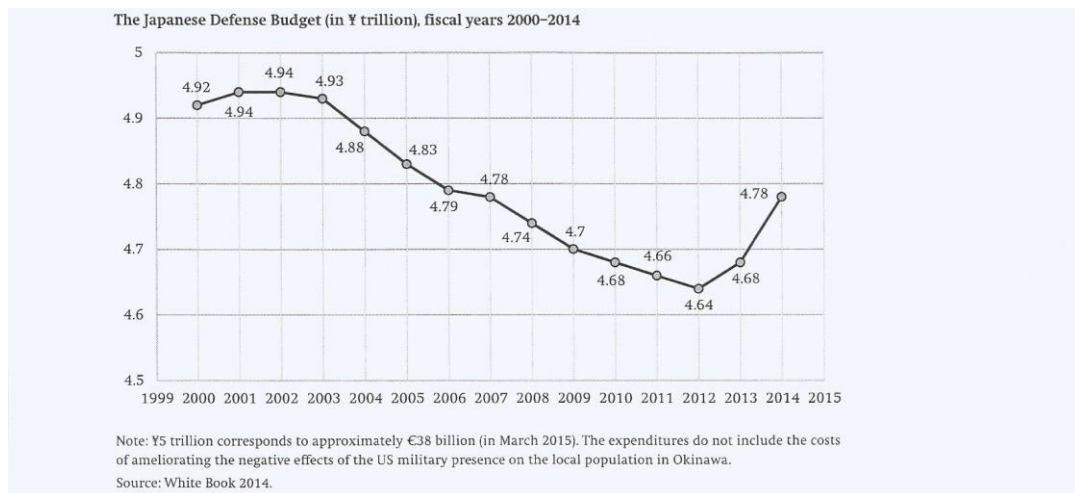


Fig. 4 The Japanese defense budget (in Yen trillion), fiscal years 2000-2014

White Book 2014 cited in Alexandra Sakaki, Japan's Security Policy: A Shift in Direction under Abe?, SWP Research Paper, (March 2015):25

Maintaining positive relations with the US remained as the top priority for the Japanese for more than 60 years. Because of the arms purchases, the quality of the Japanese weapons reached the level of the UK's. Currently Japan only lacks nuclear weapons and aircraft carriers. It has the world's 8th largest defense budget (46 billion US dollars).⁹³ Only US- China and Russia surpasses Japan in defense spending. The arms spending increased from 5.15 billion dollars to 41.44 billion dollars between the years of 1976 to 1993. Although constitutional change lacked public support, armament and recognition of the SDF had no struggle to gain the support of the public. The weapons that were purchased had only the aim of improving the defensive quality. Besides, Article 9 disables the aggressive use of war. Its main

⁹³ Yamaguchi, "Japan Cabinet approves record \$46B defense budget."

purpose was defensive. Pacifism sure has received several modifications, but alongside these changes there were other elements that were essential to be observed.

Under the light of the above information, the lack of a military structure and Cold War politics, pushed Japan into new concerns. Instead of a swift military recovery, Japan focused its efforts on economic development and tried to be a responsible member of the international community. After the World War II what the LDP wanted to do was to regain the political prestige of Imperial Japan with strong wealth and institutions. Instead of a military bureau, the production of most of the new military technology and defensive structures were initiated by MITI (Ministry of International Trade and Industry). However, only focusing on economy was not enough. That's why sending military personnel on legal duties to strengthen the bilateral agreements between the US and Japan (War on Terror), as well as increasing their prestige at international organizations were the two main focuses of the Japanese foreign policy during the past years. The bilateral agreements include humanitarian assistance, counter-terrorism, peacebuilding, and strengthening maritime law enforcement capabilities. In addition, with its American sponsorship, Japan rose to the forth rank among the member states of the *Organization for the Economic Co-operation and Development/Development Assistance Committee* (OECD/DAC).

Issue of Okinawa

Another major issue is the relations between central government and the local authority of Okinawa prefecture. During WW2, Okinawa suffered intense battles between US and Japanese soldiers. 1/3 of its population died (140.000), some of them committed suicide to avoid getting captured by the American soldiers (*shudan*

jiketsu). According to Ota Masahide the Japanese army distributed grenades to Okinawan citizens in order for them to commit suicide.⁹⁴ For this reason, the respect of the Okinawan people for the 1947 Japanese Constitution and their commitment to Article 9 is much stronger than any other prefecture in Japan. After WW2, Okinawa was under direct military administration of the US Army (other parts were indirectly administered by SCAP) till 1972. The island is regarded as the “Keystone for the Pacific” due to the majority of US bases structured there. 75% of the US military bases are concentrated on Okinawa and covers the 1/5 of Okinawan land. Japanese administration pays the 75% cost of maintenance of all these military bases. (allocated during Security Treaty agreement). According to US Forces Japan, the cost of maintenance of US forces stationed in Japan is 5.5 billion dollars in 2017. It is said that Japan pays 192 billion Yen is paid by the Japanese side. However, the correct numbers are in blur as both sides claim different numbers. According to an official from Defense Ministry, U.S. usually does not want to overwhelm the numbers, as doing so would hint at who pays the most among the U.S. allies.⁹⁵

In addition, US authority is always unconstrained in Okinawa. Status of Forces Agreement gave operational freedom and autonomy within the legal framework.⁹⁶ Although the military bases remained after 1972, the vigorous pursuit for a democratic local administration and respect for the Constitution still went on. This led to the “Okinawan problem”. It started in 1996, with the refusal of the

⁹⁴ Masahide, Ealey and Mc Lauchlan, “Descent Into Hell: The Battle of Okinawa 地獄へ落ちる 沖縄戦の記憶.”

⁹⁵ Mie, “How much does Japan pay to host U.S. forces? Depends on who you ask.”

⁹⁶ Johnson, Okinawa Between the United States and Japan.

governor (Ota Masahide) of Okinawa, for the renewal of leases of US bases on behalf of the landowners. Governor gained the support of both the landowners and the local people. The issue got bigger and went to the Supreme Court. Supreme Court deemed the Japan-US Security Treaty as constitutional thus the review of the leasing of private lands for the use of US forces wasn't necessary.⁹⁷ The national government ignored the local opinion, which was against US activity. It continued to cater to the US interests by admitting further constructions in spite of local protests. This might be considered as a blow against the constitutional rights of safety and freedom. Another reason why the local people are tired of the US bases were the occurrence of crimes committed by the US personnel. Since 1972, 5000 crimes were committed by the US staff. The rape of a 12-year-old school girl in 1995 as well as the practice of firing of shells containing toxic materials sparked further protests and debates.⁹⁸ Okinawan people, especially the landowners firmly believe that the lease agreement is a perfect example of the violation, demonstrated against the property rights of citizens.⁹⁹ The 1998 Okinawan land incident proved that the will of the foreign government was more important than the will of the local residents. In order to construct a helicopter base, the national government ignored the property rights of

⁹⁷ Editorial, "Former Okinawa Governor Ota fought to change Tokyo's attitude."

⁹⁸ Tokai Daigaku Heiwa Senryaku Kokusai Kenkyujo (ed.), *Nichibei ampo to Okinawa mondai-bunseki to shiryō*, cited by Hook and McCormack, *Japan's Contested Constitution*, 25.

⁹⁹ Koji, "Okinawa's Choice: Independence or Subordination," in Chalmers Johnson (ed.), *Okinawa - Cold War Island*, 175 cited by Kokusai Kenkyujo (ed.), *Nichibei ampo to Okinawa mondai-bunseki to shiryō*, in Hook and McCormack, *Japan's Contested Constitution*, 25.

the local Okinawan landlords with special legislations passed in 1997 and 1999.¹⁰⁰ Central government authority put pressure on the governor, and as a result the governor had to step down from his refusal against the construction of a US helicopter base. But this meant that the Article 95 of the constitution was neglected. This article was a law applicable to a particular region, and it could only be passed with the consent of a majority of voters of the local public entity concerned. The people of Okinawa strongly desired the peace that Article 9 brought but their local rights were always neglected. The draft constitution also over-rode the land rights of the local people by omitting the property clause from Article 95. The decentralization concept that was provided by the 1947 Constitution thus couldn't make the intended progress due to financial issues. Local communities were still connected to the central government in terms of finances.¹⁰¹

2.4 Emerging new formations, analysis of changes after Cold War

For years Japan tried to adapt to the Cold War International Order. However, the end of the Cold War pushed Japan into a new dimension, which promoted the necessity of composing new approaches for its political structure. Public opinion cherished the retainment of Article 9 as well as accepting the constitutionality of the SDF.¹⁰² Now that the Cold War was over, this pushed the main parties of Japan (SDPJ and LDP) to rearrange their party programs. For SDPJ(Social Democratic Party of Japan) this mentioned change had started way back in 1984, when the party chairman at that

¹⁰⁰ Moriteru, “Kokkai to hondo ni mushi sareta ‘Beigun yochi tokushakuho’ kaitei”, 27-29.

¹⁰¹ Hook, *Japan's Contested Constitution*, 26.

¹⁰² Boyd and Samuels, *Nine Lives?: The Politics of Constitutional Reform in Japan*, 27.

time, Ishibashi Masashi claimed SDF could be seen unconstitutional but legal.¹⁰³

Although the strict interpretation inside SDPJ, which was to totally support unarmed neutralization, continued, several members like Masashi adopted a more compromising approach regarding the constitutionality of SDF and security improvisations. The policy of unarmed neutralization as a measurement against entanglement to US and nuclear bomb threats was collapsed with the end of Cold War. The major cause was the SDF's dispatch to overseas which demonstrated Japan's response to the international call. Therefore, Japan was not neutral anymore.¹⁰⁴ For those who sought concessions, adaptations to the new international order was the most significant factor among several which proved that adaptation and change was necessary.¹⁰⁵

The first need for adaptation arose during the Gulf crisis, which began in 1990. For the first time in 40 years, Japan entered into a conflict, which was not a result of the Cold War. This event also demonstrated the weakness of an overseas dispatch of the SDF, which could be considered as a force, but did not have war potential. Due to American pressure, Japan provided financial support of 13 billion dollars, yet, this contribution could not put Japan out of its "free rider status". In November 1991, during his speech in Tokyo, then US Secretary of State, James Baker made a statement regarding the Japan's "share of burden". He argued that the time for checkbook diplomacy is over and instead of material participation Japan should participate with human contribution. At that time, it was indicated that the

¹⁰³ Shingo, Jieitai "iken goho" ni hashiru Ishibashi shakaito no shingi, 14-18.

¹⁰⁴ Hook and McCormack, *Japan's Contested Constitution*, 31.

¹⁰⁵ Ibid.

deployment of the SDF was still useful, since their human contribution was considered more substantial than economic aid. The argument gained further importance with Dick Cheney's visit at the same year.¹⁰⁶

The second was in 1993, when another method, which was Yamahana Sadoo's creative constitutionalism (soken), was introduced. He was the leader of the SDPJ party during the midst of 1993 and he mentioned the writing of a Security Law, which would make SDF legitimate. The issue of SDF forces remained popular, as its overseas dispatch proved its usefulness during international conflicts. In 1994, the reformists inside SDPJ claimed that they had refrained from any objections against the constitutionality of SDF, national symbols like Hinomaru flag and the US Security Treaty. They tried to adapt the changing circumstances by promoting non-aggressive defense forces and advising adoption of Article 9 to their regional neighbors.¹⁰⁷

The examples above show the effects of the changing world order in the case of SDPJ. It led to a polarity of politics inside the Japanese parties. Numerous questions arose regarding these changes. The US-Japan Security Treaty was based on creating a cooperation structure against communism. With the threat of communism vanished, could Japan be removed from the American entanglement? Now that the USSR had fallen, the threat of a nuclear war was further reduced. But now that the bipolar structure of the international world had disappeared what would happen to

¹⁰⁶ Lancaster, "Japan's Political Profile Should Rise, Cheney Says: Tokyo 'can do more' Around the World."

¹⁰⁷ *Gekkan Shakaito*, June 1993, quoted in Atsushi, 'Kaikenron no doko to jieiken ron no otoshiana,' *Gekkan Foramu*, November 1993, 34-42, 39.

the unarmed neutrality? Gulf War also demonstrated that SDF could be used for keeping international peace. What would be the SDF's limits?

These questions later gave birth to structural changes inside Japanese domestic politics. Through the mid-1990s for a short period of time, the head of Japan New Party, Hosokawa Morihiro (premiership August 1993-April 1994) became the Prime Minister. In 1994-95 SDPJ lowered its voice on opposition against constitutional revision. However, then Prime Minister Tomiichi Murayama said that the existence of the SDF did not violate the Article 9 of the Constitution and stated the end of their objections to the Security Treaty, although the party had been claiming that both the treaty and the SDF was unconstitutional.¹⁰⁸ This was a serious development in the case of leftist socialists. However, it was not welcomed by the public opinion. The intra party clash removed SDPJ as the main opposition party. After 1995, it lost its position as a major player backing the anti-militaristic principles.¹⁰⁹

The Democratic Party of Japan became the main opposition. Founded in 1996, it was formed by groups who had separated from SDPJ and LDP. As a result of its synthesis of both right and left-wing politicians, it claimed a central role in Japanese politics and had a soft side on constitutional revision.

The aura of depolarization was not a SDPJ thing. It happened to the right wing LDP too. From 1960 and onwards the party principles were not only affected by the socialist opposition but also by the in-party conflicts between pragmatists and

¹⁰⁸ Tomiichi Murayama's statement, Shūgiin Kaigiroku [House of Representative Plenary Session Minutes], 130th Diet Session, No. 2, 5 (July 20, 1994).

¹⁰⁹ See 1995 House of Councilors results: http://archive.ipu.org/parline-e/reports/arc/2162_95.htm

revisionists. At the beginning of 2000s hawkish actors like Junichiro Koizumi (premiership: 2001-2006) and Yoshiro Mori (premiership: 5 April 2000-26 April 2001) entered the political scene. Due to various political scandals, the pragmatic factions of Hashimoto Ryutaro and Yohei Kono had gradually lost its influence which gave Mori's revisionist faction greater influence.¹¹⁰ In recent years, revisionist members include those from former revisionist PM Nakasone Yasuhiro's faction like Taro Yamazaki, Shinzo Abe (grandson of Kishi Nobusuke), Taro Aso (grandson of Yoshida Shigeru) Yasuo Fukuda (son of revisionist PM Takeo Fukuda), and Itsunori Onodera are also in this group. This group believes that stretching constitutional interpretations were not enough, since it had already reached its limit. Furthermore, they claim that checkbook diplomacy was not enough and enhancement for the military capabilities are vitally needed. Non-combat support for the UN missions should be full combat operations with the change of the Preamble of the constitution.¹¹¹ Attempting to change the constitution is their main agenda. Shigeru Ishiba (son of Jiro Ishiba- one of the most powerful bureaucrat families), Wataru Takeshita and Yohei Kono are the dovish figures of LDP that criticized Abe's policies and scandals.¹¹²

¹¹⁰ Berkofsky, *A Pacifist Constitution for an Armed Empire: Past and Present of Japanese Security and Defense Policies*, 141.

¹¹¹ Jiyu Minshuto, *Shinkempo Hoan*, 2,4-5 cited in Hughes, *Why Japan Could Revise Its Constitution and What It Would Mean for Japanese Security Policy*, 737.

¹¹² Yuda, "Shigeru Ishiba, the dovish warship aficionado."

With the dawn of a new millennium, Japan tried to adapt to the changing framework by developing new adjustments. The most drastic change that was popular among the debates at that time was the possible revision of the constitution. Each party proposed their own programs and ideas for the revision. Analyzing their party proposals could give us some insight on their approach to the constitution 60 years later.

LDP being the hub of revision for 60 years hasn't changed its agenda so much. It identifies SDF as the national armed force of Japan, which keeps the territorial defense of Japanese land and supports the stability of international security. As suggested by the Americans, LDP aims to replace ad hoc legislations and prepare a definite law called *Basic Law for National Defense*. They believed that temporary laws block the improvement of response mechanisms of SDF during international conflicts. Furthermore, several revisionists inside the party suggest that Japan must increase its military expenditure from 1% of its GDP to excess this level. LDP also promises to lift the ban on collective self-defense. It highlights that stating the duties of citizens for the defense of the country in the draft constitution is crucial. Inside the LDP minor differences regarding the method of revision can be seen between the politicians. Regarding the de facto legislations issue, Taro Aso prefers a direct revision of the constitution while Abe prefers the Cabinet Legislation Bureau interpretation. As for Yamasaki, he prefers a limited form of collective self-defense, which only considers Japan and US. Initial debates contained the "renaming" agenda for renaming several concepts. In the passage of Article 9, renunciation of war is renamed as security, the part "in order to" is removed, SDF is recognized as Self Defense Military (Jieigun) and SDF's mission for international cooperation is recognized. However, collective self-defense is not addressed, as mentioned above,

due to the reason of a lack of consensus between core politicians. A separate law was planned for that issue. And lastly, PM receives a prominent role, through which he can pass bills with a single majority vote.¹¹³ These will be analyzed through 2012 Draft article in the next chapter.

As for the Komeito, which participated in various coalition governments with LDP, it has a slightly different party agenda. They focus on supplementation (*kaken*), meaning that their main aim is to preserve the constitution. However, they would like to add new features to it since it became outdated and needs further modifications. This is called a partial revision (*kakenron*) in contrast to a complete revision (*kaikenron*).¹¹⁴ As a result, Article 9 is retained with recognitions to SDF and its international security role (Komeito doesn't mention the collective self-defense either).

Modifications mentioned above consists of adding laws to the constitution about recently developed concepts such as human rights, the right to access information and lowering the legal age of adulthood from 20 to 18. Other examples include; healthy environment (*kankyoken*), privacy rights (*puraibashii-ken*), intellectual property rights (*chiteki zaisanken*), and changing the meaning of the right to a certain standard of living (*seizonken*). As analyzed before, the issue of decentralization (*chiko bunken*) is the fueling force of constitutional change. It is argued that more authority should be given to local municipalities such as the

¹¹³ Samuels, "Politics, Security Policy, and Japan's Cabinet Legislation Bureau: Who Elected These Guys, Anyway?"

¹¹⁴ Nishikawa, "The Future of the Japanese Constitution: From the "Mac Arthur Constitution" to What?"

management of taxation and budget. Moreover, the borders of prefectures should be broadened (*doshu* system).¹¹⁵

Even though the constitution's basic conditions are thus weakened, its framework is still being used and utilized. The generic idea of pacifism, which was embraced by the Japanese people, served the Americans ends. This idea gives birth to the pursuit of a harmonious world with no mass destruction weapons and hostilities. In 2012, Koichiro Gamba, the former Japanese foreign affairs minister, pointed out Japan's attempts to promote world peace and regional stability, as well as its accomplishments regarding this issue, its humanitarian affairs, its encouragement of the power of welfare, and economy of the nation rather than its military power.¹¹⁶ Although his ideas at first sounded utopic for the nationalists, they were convenient. Having been the only nation who faced the perishing force of the nuclear bomb, the loss of countless lives and the tragedy it brought might have led Japan to become a pivotal leader for the non-nuclear weapons policy. However, for the last 6-7 years Japan has been adjusting its National Security agenda. This agenda consists of a more overconfident and careful security policy to swiftly respond to the rising threats of the Far East. North Korea's possession of the nuclear bomb and China's wish to dominate the region with its investing of large sums in military concerns, has pushed Japan to reconsider its non-armament policy once more.

As for the issue of collective defense, it is one of the top issues that trigger Japan's intention to amend the constitution. With the changing economic tides of the

¹¹⁵ Ibid, 68.

¹¹⁶ Gamba, "Message from the Minister for Foreign Affairs."

post 1980's, China gained economic importance with its cheap labor and easy gathering of resources. This forced the Japanese government to enter the international arena not only with its economy but with its military assistance.

Before this period, the Japanese foreign policy was mostly shaped by Yoshida Shigeru's doctrine, which focused on the technological and economic sectors. What Yoshida and his liberal internationalist supporters wanted to do was to regain the political rank of Imperial Japan by implementing strong wealth and institutions. Instead of a military bureau most military technology and defensive structures were initiated by MITI (Ministry of International Trade and Industry). In 1954 this situation was more beneficial as a defensive industry, and the proposal of a domestic defense weapon system had signaled this change. They thought that this should be done not only for the defense purposes but also for marketing home produced technological military defense equipment, which was hoped to boost the economy.¹¹⁷ That's why MITI always proposed and made recommendations for this issue.

This situation continues even today. Japan wants to contribute and become a strong actor in the international arena. According to revisionists claim, only focusing on the economy is not enough, which is why Japan had two main foreign policy focuses during the past years. One was sending military personnel for legal duties to strengthen the bilateral agreements between the US and Japan (War on Terror); and the second was increasing their prestige in international organizations. The Peace Keeping Operations law that was passed in 1992, gave Japan the possibility of sending its SDF force abroad. This force's mission is to provide basic needs and

¹¹⁷ Takada, Japan's Economic Miracle: Underlying Factors and Strategies for the Growth, 15.

assist countries in conflict. Japan sent SDF forces to countries like Mozambique, Golan Heights and Rwanda. Despite the fact that Japan cannot change the Article 9 and self-defense rights, it can still try to gain advantages and benefits from the SDF such as these.¹¹⁸

One of the reasons to change Article 9 was to gain better deterrence tactics such as more powerful weapons like nuclear missiles stationed for defensive purposes. As a result of this, they could take some precautions in an instance such as the North Korean aggression, which causes irritation for regional peace and leads to more security spending. The fear began in 1993 and still continues to dominate Japanese policy making. After the end of Cold War and the bipolar world structure, Japan needed to revise its defense cooperation with the US. A US-Japan meeting in 1997 confirmed American help against a possible danger for Japan and Japan's promise to keep military bases to aid America maintain stability in the Far East. The Situation of Armed Attack Law of 2004 gave improved reaction capabilities for a potential attack instead of mass reacting afterwards. The law upgraded the preparation methods, which were helpful to use before retaliation. As for the Iraqi War of 2003, Japan sent SDF to provide supplies and basic needs for the Iraqi people. Even though sending soldiers to aid the US seems acceptable, the amount of aid effectiveness given to the US might have been negotiable, since the SDF were used in non-conflict areas and were under the limitation to be able to conduct

¹¹⁸ Fukushima, *Japanese Foreign Policy: The Emerging Logic of Multilateralism*, 73.

defensive action only. That's why Japanese SDF are more like soft UN peacekeeping forces that were stationed for basic aid and casual duty.¹¹⁹

A millennium in a nutshell

As seen from the information above, the Japanese politics had drastically altered twice, once during the American occupation and again after the end of Cold War. Despite all these changes the constitution remained unchanged. Currently, questions regarding Japan's collective self-defense interpretations, its national interest, the future role of the SDF, political elites' revisionist politics, and the rising nationalism among the Japanese public all contribute to the reasons behind the need for a constitutional revision. On the other hand, in recent years, one document has drawn the attention of not just the Japanese public but also of other states. The contents of this document is significant as it covers not just the above concerns of Japan but presents a whole set of values that are quite the opposite to the current ones in the constitution. This document is the Liberal Democratic Party's 2012 Constitutional Draft, the contents of which will be the subject of the next chapter.

¹¹⁹ Christopher Hughes, 731-733.

CHAPTER 3

ANALYSIS OF 2012 CONSTITUTIONAL DRAFT

The 2012 Constitutional Draft is important because of its full coverage and rearrangement of all articles of the current 1947 constitution. Several of these articles were changed with wording replacements and some of them were either removed or rewritten. What makes this draft so ill-reputed and questionable is the layout, which consists of dramatic changes to the existing one, with the reappearance of some of the old values from the Meiji Constitution. Dramatic changes include restriction of human rights, making the Emperor the head of the state, introducing a new section called Declaration of State of Emergency and several structural changes to the Preamble of the constitution as well as withdrawal from pacifism. During LDP's constitutional amendment panels 3 subjects always gain significant importance: the Emperor being the head of state, changing SDF to National Forces and giving official status to Hinomaru flag and Kimigayo anthem as national symbols. All these changes will be analyzed by comparing the 2012 Draft articles with the current 1947 Constitution. The English version will be used in the comparison and the original Japanese texts will be included in the discussion when necessary.

The draft was written by Yosuke Isozaki, deputy head of the LDP's Constitutional Reform Promotion Headquarters, before the LDP's election victory and Abe's premiership (the chairman of the draft program was Gen Nakatani). The text was not critically examined by both Abe and the LDP president at the time,

Sadakazu Tanigaki.¹²⁰ When Shinzo Abe is criticized with respect to the constitutional draft, he simply evades it by pointing out the fact that the draft was written before his presidency, thus claiming that it was not under his scrutiny. The opposition of both Democratic Party of Japan as well as LDP's coalition partner, Komeito pushes Abe to shelve the draft amendment. However, several politicians reject this, especially the people who played the leading role on penning the draft.

This group is led by Isozaki, who had fully supported Abe and his plan for revising the constitution. He had played the leading role both on the writing of the draft article and the preparing of the security legislations as well as their reinterpretations. Isozaki and his group refuse to shelve the 2012 Draft by claiming that the draft text had become a historical document.¹²¹ Thus, the draft cannot be altered until it is negotiated with all other parties. Abe also supports this vision as he neither wants to scrap the draft nor to dismiss the document, since he believes that during a revision process this draft could be used as an example text. As it was criticized too much on its highly conservative characteristic, in 2016, LDP decided to freeze the document, by not submitting it to the constitutional commission. It can be concluded that the party wanted to put the Draft as an official historic document that can be put into deliberations in the future rather than scrapping it.¹²²

¹²⁰ Commentary-Sentaku Magazine, "The LDP's draft constitution."

¹²¹ Ibid.

¹²² Tomohiro, "LDP sets aside 2012 draft constitution ahead of Diet debate on revision."

Make Japan a Normal Country (futsu no kokka) Again

The Preamble

The current version of the Preamble of the 1947 Japanese Constitution, starts with an emphasis on the sovereignty of the Japanese people and their desire for unending peace. The 2012 Draft, however, stresses out the characteristics of the Emperor, in which he is described as the symbol of unity for the Japanese people. Then it praises the Japanese culture and history and states that it endured wars and many natural disasters by rebuilding and recovering itself. The main difference between the two documents is the way they represent World War 2 and its aftermath. According to the 1947 preamble, WW2 and the major devastation of Japan was initiated by its militaristic government of the time with the anti-democratic politicians and warmongers, who inflicted all that suffering on their own people. It continues to explain that after experiencing such horrors, Japan adopted the policy of retaining from aggressive war and promoting a permanent peace. In the draft version, however, the meaning was changed drastically with a *kanji* change. The *kanji* for calamity, *sanka* (惨禍), was replaced with *kohai* (荒廃), meaning decay or ruin. As a result of this replacement, in the draft text, war is represented as an occurrence similar to a natural disaster and no references were given to the military actions and responsibilities of the political elites of the time.¹²³ This is the 1947 version (important words are underlined):

¹²³ Repeta, “Japan’s Democracy at Risk – The LDP’s Ten Most Dangerous Proposals for Constitutional Change.”

(1947)

“We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith. We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want. We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations. We, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources. “

Draft version of Preamble

“Japan is a nation with a long history and unique culture, having the Emperor as the symbol of the unity of the people, governed based on the separation of the legislative, administrative and judicial powers subject to the sovereignty of the people. Our nation has overcome and developed from the ruins of the last war and many great disasters, and now holds an important position in the international society, promoting amicable relations with foreign countries and contributing to the peace and prosperity of the world under a doctrine of peace. We, the Japanese people, defend our country and territorial land with pride and strong spirit, and respecting fundamental human rights, do value harmony and do form a nation where families and the whole society support each other. We hold freedom and discipline in high regard, and while defending this beautiful territory and natural environment, do promote education, science and technology and the growth of the country through vigorous economic activities. We, the Japanese people, in order to pass on our good traditions and our nation to posterity for many years to come, do hereby establish this Constitution.”

As can be seen above, the Draft version does not include the democratic ideals that are presented in the 1947 version. The underlined words which stresses the universality of human rights were deleted. Instead, the Draft version modifies it with a unique system of rights that are based on traditional values of Japan. Below is the Draft Preamble in Japanese.

(前文)日本国は、長い歴史と固有の文化を持ち、国民統合の象徴である天皇を戴いただく国家であって、国民主権の下、立法、行政及び司法の三権分立に基づいて統治される。我が国は、先の大戦による 荒廃 や幾多の大災害を乗り越えて発展し、今や国際社会に

において重要な地位を占めており、平和主義の下、諸外国との友好関係を増進し、世界の平和と繁栄に貢献する。日本国民は、国と郷土を誇りと気概を持って自ら守り、基本的人権を尊重するとともに、和を尊び、家族や社会全体が互いに助け合って国家を形成する。我々は、自由と規律を重んじ、美しい国土と自然環境を守りつつ、教育や科学技術を振興し、活力ある経済活動を通じて国を成長させる日。本国民は、良き伝統と我々の国家を末永く子孫に継承するため、ここに、この憲法を制定する。(red painted kanji: kohai)

Additionally the opening part of the constitution is also altered. Instead of starting with “We, the Japanese people”, the draft places the country first; “Japan is a nation with a long history and unique culture...” and puts the first part much later. With this change, the importance of the country is stressed over the sovereignty of the Japanese people.

The three national symbols

As stated in the previous chapter, old values regarding the valuation of the Emperor had slightly returned to Japan after 1947. As the 1947 constitution remains completely alienated to this issue the draft version covers it with additional modifications. In the first Article of the Draft version, the Emperor is identified as a ruler (*genshu*) and symbol of the Japanese nation. His position is based on the consensus of opinion of the Japanese people. He is given stronger prerogatives in the draft, since the present constitution does not use the word *genshu* (underlined) to describe him the ruler of Japanese nation. 1947 version uses the word *shouchou* which means a symbol.

(1947)

Article 1. The Emperor shall be the symbol of the State and of the unity of the People, deriving his position from the will of the people with whom resides sovereign power.

(Draft)

Article 1. The Emperor is the head of the State and shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power.

[1947]

天皇は、日本国の象徴であり日本国民統合の象徴であつて、この地位は、主権の存する日本国民の総意に基く。

Article 1: 第一章天皇（天皇）第一条天皇は、日本国の元首であり、日本国及び日本国民統合の象徴であつて、その地位は、主権の存する日本国民の総意に基づく。

But the Emperor is not the only symbol that was given significantly more importance. In the Article 3 of the 2012 Draft, the Hinomaru flag and the Kimigayo anthem are declared officially as national symbols to be respected by all Japanese citizens.

[Draft]

Article 3. The national flag is the rising sun flag and the national anthem is Kimigayo. The Japanese people must respect the national flag and the national anthem.

Article 3: (国旗及び国歌) 第三条国旗は日章旗とし、国歌は君が代とする。

First red kanji is the Nissho flag and the second one means Kimigayo.

In August 1999, they had already been recognized and legalized as the official Japanese symbols. However, when the diet had passed a resolution that legalized them, this was met with harsh criticisms and lack of support. LDP found the support it needed from the New Komeito party later on and the resolution was passed, but the 1947 constitution remains blank on this issue.

The return of these 3 symbols, emits a strong sense that those who prepared the draft articles depict the current Japan as the continuation of the old pre-war Meiji era. All of them were the legal foundations of Imperial state during the Meiji era. The introducing of these old values in the draft constitution indicates that the writers might wanted to display the current Japan as the continuation of the pre-war state.¹²⁴

Additional language was used in the Articles 5 and 6 making it clear that the Emperor can attend public events and conduct various other unspecified public duties. The same articles also specify that the Prime Minister can dissolve the House of Representatives any time, which is currently in practice but unstated in the constitution.¹²⁵

As the Draft has a complete new article, this caused a dislocation among other articles.

Primarily, the second paragraph of Article 4 is deleted.

(1947)

Article 4. The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government.

¹²⁴ Ibid.

¹²⁵ Jones, "The LDP constitution, article by article: a preview of things to come?"

(Deleted: The Emperor may delegate the performance of his acts in matters of state as may be provided by law.)

With Article 4 gone, the Emperor can conduct public duties without contradicting the constitution. Article 5 is also deleted. Instead, it is written as a new paragraph that replaces Article 4 with a minor alteration.

(Deleted: Article 5. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.)

(Draft)

(Authority of the Emperor)

Article 5. The Emperor shall perform (Omitted: "only") such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government.

(1947)

Article 6. The Emperor shall appoint the Prime Minister as designated by the Diet. The Emperor shall appoint the Chief Judge of the Supreme Court as designated by the Cabinet.

(Draft)

(Constitutional functions, etc. of the Emperor)

Article 6. The Emperor, on behalf of the people, shall appoint the Prime Minister as designated by the Diet and shall appoint the Chief Judge of the Supreme Court as designated by the Cabinet.

-With changes to Article's 5 and 6, the Emperor is equipped with more duties.

(1947)

Article 7. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people:

Promulgation of amendments of the constitution, laws, cabinet orders and treaties. Convocation of the Diet. Dissolution of the House of Representatives. Proclamation of general election of members of the Diet. Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers. Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights. Awarding of honors. Attestation of instruments of ratification and other diplomatic documents as provided for by law. Receiving foreign ambassadors and ministers. Performance of ceremonial functions.

-In the Draft version, the duties stated in the above article got merged under Article 6 with further changes which are underlined below.

(Draft)

Article 6. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people:

Promulgation of amendments of the Constitution, laws, cabinet orders and treaties. Convocation of the Diet. Dissolution of the House of Representatives. Proclamation of general election of members of the House of Councilors and of regular election of members of the House of Representatives. Attestation of the appointment and dismissal of Ministers of State and other public officials of the as provided for by law. Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights. Awarding of honors. Attestation of full powers and credentials of Ambassadors and Ministers, instruments of ratification

and other diplomatic documents as provided for by law. Receiving foreign ambassadors and ministers. Performance of ceremonial functions. State

The Emperor may delegate the performance of his acts in the preceding two paragraphs as may be provided by law. The suggestions of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor. However, with regard to the dissolution of the House of Representatives, the Prime Minister shall decide the issue. In addition to those listed in the first and second paragraphs, the Emperor shall attend ceremonies held by the State, local governments or other public entities, and shall perform other public activities.

As for Article 5, it is rewritten as Article 7 in the Draft version:

(1947)

Article 5. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

(Draft)

(Regency)

Article 7. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. Article 5 and the provisions in the fourth paragraph of the preceding article shall apply to the Regency.

Article 9 and the SDF

The draft keeps the sentence “forever renounces war” from Article 9, but deletes the part that states that “Japan will never have armed forces”. The draft does not have the kanji 永久 (eikyū: forever). There are also minor wording differences. For example the word “*tai*” (group or unit) is replaced with “*gun*” (forces). Currently, *tai* is used for Self Defense Forces, which are called as *Jieitai*. The draft replaces this with *kokubogun* (National Defense Forces). Although both these words are translated into English as SDF, the difference originates from the suffix *gun*, which has a more military oriented meaning whereas *tai* can be used with non-militaristic connotations such as *shouboutai* (fire brigade). Additionally in the draft, the Prime Minister is stated as the commander-in-chief of the National Forces. Its Article 9 has 2 more paragraphs which state the role of the SDF on international peacekeeping as well as its duty to protect the Japanese territories and all resources therein.¹²⁶

(1947)

Article 9. 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 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.

¹²⁶ Ibid.

-This little article got 2 additional paragraphs in the Draft version. One detailing the National Forces, other claims the territorial resources as a defense target.

(Draft)

(Pacifism)Article 9. Aspiring sincerely to an international peace based on justice and order, the Japanese people [Omitted: “forever”] renounce war as a sovereign right of the nation and will not employ the threat and use of force as a means of settling international disputes.

(Deleted: 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.)

[Added:] The provisions in the preceding paragraph shall not prevent the exercise of the right to self-defense.

[Draft (New)]

(National Defense Military)

Article 9-2. In order to secure peace and independence for our nation as well as the safety of the State and the people, the National Defense Military shall be retained with the Prime Minister as the supreme commander.

The National Defense Military, when carrying out tasks prescribed in the preceding paragraph, shall be subject to Diet approval and other controls, as provided by law.

The National Defense Military, in addition to the activities for performing the duties in the first paragraph, shall conduct international cooperative activities in order to secure the peace and safety of the international society and maintain public

order, or conduct activities in order to defend the lives or freedoms of the people, as provided by law.

Other matters relating to the organization, regulation and security protection of the National Defense Military subject to the preceding two paragraphs shall be determined by law.

In order to conduct trials when crimes associated with official duties or confidential matters of the National Defense Military are committed by National Defense Military personnel or other public officials, a military tribunal shall be established in the National Defense Military, as provided by law. In this case, the defendant's right to appeal to the courts is guaranteed.

[Draft (New)]

(Territorial integrity, etc.)

Article 9-3. The State, in order to defend its sovereignty and independence, in cooperation with the people, shall maintain its territorial land, territorial waters and territorial airspace, and shall secure all resources therein.

[1947]

Article 9. 第九条【戦争放棄、軍備及び交戦権の否認】 1 日本国民は、正義と秩序を基調とする国際平和を誠実に希求し、国権の発動たる戦争と、武力による威嚇又は武力の行使は、国際紛争を解決する手段としては、永久にこれを放棄する。(red painted kanji means permanent, forever)

2 前項の目的を達するため、陸海空軍その他の戦力は、これを保持しない。国の交戦権は、これを認めない。

Article 9 (draft). 第九条日本国民は、正義と秩序を基調とする国際平和を誠実に希求し、国権の発動としての戦争を放棄し、

武力による威嚇及び武力の行使は、国際紛争を解決する手段としては用いない。

2前項の規定は、自衛権の発動を妨げるものではない。

Article 9-2.第二章安全保障（平和主義）第九条日本国民は、正義と秩序を基調とする国際平和を誠実に希求し、国権の発動としての戦争を放棄し、武力による威嚇及び武力の行使は、国際紛争を解決する手段としては用いない。

2 前項の規定は、自衛権の発動を妨げるものではない。

（国防軍） 第九条の二我が国の平和と独立並びに国及び国民の安全を確保するため、内閣総理大臣を最高指揮官とする国防軍を保持する。2 国防軍は、前項の規定による任務を遂行する際は、法律の定めるところにより、国会の承認その他の統制に服する。3 国防軍は、第一項に規定する任務を遂行するための活動のほか、法律の定めるところにより、国際社会の平和と安全を確保す(the red kanji means “gun”)

るために国際的に協調して行われる活動及び公の秩序を維持し、又は国民の生命若しくは自由を守るための活動を行うことができる。4 前二項に定めるもののほか、国防軍の組織、統制及び機密の保持に関する事項は、法律で定める。5 国防軍に属する軍人その他の公務員がその職務の実施に伴う罪又は国防軍の機密に関する罪を犯した場合の裁判を行うため、法律の定めるところにより、国防軍に審判所を置く。こ

の場合においては、被告人が裁判所へ上訴する権利は、保障されなければならない。

Article 9-3. (領土等の保全等) 第九条の三国は、主権と独立を守るため、国民と協力して、領土、領海及び領空を保全し、その資源を確保しなければならない。(This paragraph is about the protection of territorial resources, added as a response for the Senkaku Island crisis's in 2010 and 2012)

The 2012 Constitutional Draft, which was prepared by the LDP, changes the name of SDF to National Army giving SDF new rights and removing its constraints.¹²⁷

These three new sections drafted for the amendment of Article 9 also extend the level of sovereignty. Now, not only could Japan defend its land from potential invaders but also its resources from enemies. These amendments were a direct response to Chinese trade ships, which pass from foreign territorial waters including the Japanese for fish hunting.¹²⁸

Although these modifications can be seen as drastic changes to the current constitution, they are already in practice. With collective security interpretations of 2014 and 2015, Japan introduced several pre-conditions and defined new roles for its self-defense forces as well as bypassing the 1954 self-imposed collective self-

¹²⁷ LDP Draft Bill to Amend the Constitution of Japan, internet site:

<https://www.jimin.jp/english/news/117099.html>

¹²⁸ Motoyama, "The Significance of the Provisions for the Renunciation of War and Abolition of Military Forces in the Japanese Constitution, 295.

defense ban. Furthermore, Japanese ships began patrolling the waters with the pretext of protecting the Senkaku Islands. The interpretational stretching came to a point where the only imperfection comes from the discrepancies in the current constitution.¹²⁹

Secularism and State Shinto

As stated in the second chapter, secularism and freedom of belief were among the core elements that were implemented by the American policymakers inside SCAP during the American occupation. Article 20 of the 1947 constitution guarantees the freedom of belief of its citizens as well as refraining from favorizing any religion. The first and second paragraphs of Article 20 were untouched, but the third paragraph was significantly altered. It asserts that the state and its organs shall not undertake religious activity but, it adds that this regulation does not include activities that are within widely recognized cultural or social norms. This opens the way for politicians to participate in religious events that are designated to be within the cultural norms of Japan. As a result of this paragraph the conservative politicians of LDP would be able to justify their visits to the controversial Yasukuni shrine without any problems. It would also remove both the uncertainty about participation by politicians in religious events within the current constitution and the present inconsistency that is generated by this practice.¹³⁰

¹²⁹ Ibid.

¹³⁰ Repeta, Japan's Democracy at Risk – The LDP's Ten Most Dangerous Proposals for Constitutional Change.

(1947)

Article 20. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.

No person shall be compelled to take part in any religious act, celebration, rite or practice.

The State and its organs shall refrain from religious education or any other religious activity.

(Draft)

(Freedom of religion)

Article 20. Freedom of religion is guaranteed to all. The State shall not grant privileges to any religious organization. (Omitted: “No religious organization shall exercise any political authority.”)

No person shall be compelled to take part in any religious act, celebration, rite or practice.

The State, local governments and other public entities shall refrain from particular religious education and other religious activities. **However, this provision shall not apply to activities that do not exceed the scope of social rituals or customary practices.**

[1947]

Article 20. 第二十条【信教の自由、国の宗教活動の禁止】 1

信教の自由は、何人に対してもこれを保障する。いかなる宗教団体も、国から特権を受け、又は政治上の権力を行使してはならない。 2 何人も、宗教上の行為、祝典、儀式又は行事

に参加することを強制されない。 3 国 及びその機関は、宗教教育その他いかなる宗教的活動もしてはならない。

[Draft]

Article 20. (信教の自由) 第二十条 信教の自由は、保障する。国は、いかなる宗教団体に対しても、特権を与えてはならない。 2 何人も、宗教上の行為、祝典、儀式又は行事に参加することを強制されない。 3 国及び地方自治体その他の公共団体は、特定の宗教のための教育その他の宗教的活動をしてはならない。 **ただし、社会的儀礼又は習俗的行為の範囲を超えないものについては、この限りでない。**

The 1947 version puts limits on the participation of politicians to religious events. The red painted addition is aimed to justify the future visits of LDP politicians to shrines such as the Yasukuni Shrine. If we compare the situation with the past imperial practices, even the Meiji Constitution is more secular than the 2012 Draft. In the Meiji Constitution the only article that mentions religion is the Article 28 which stated that:

Meiji/Article 28. Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief.

The Meiji Constitution did not cover the last part about the participation of politicians to the religious events.

It should be also noted that several organizations such as *Nihon Izokukai* (The Japanese War-Bereaved Families Association) that lobby the LDP have been advocating for a revision to put Yasukuni shrine under the supervision of the state

since 1950s.¹³¹ The proposal in one way could remove the inconsistency that has been going on between the current constitution and the practice. On the other hand, it could deliver a serious blow to secularism as religion would once again be connected to politics.

Diverse changes

Although the constitution defends the rights and the freedom of Japanese citizens, Abe's agenda proves otherwise. 2012 Japanese Constitutional draft version adds a section of defining the duties and obligations of the citizens. Duties of the citizens are detailed (Article 12) and Japanese traditional family values are reinstated (Article 24).¹³²

(1947)

Article 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

(Draft)

(Duties of the people)

Article 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people. The people shall refrain from any abuse of these freedoms and rights, shall be aware of the fact

¹³¹ Seraphim (2006), *War Memory and Social Politics in Japan, 1945–2005*.

¹³² Jones, "The LDP constitution, article by article: a preview of things to come?"

that there are responsibilities and duties that accompany these freedoms and rights, and shall not infringe the public interest and public order.¹³³

Article 12. (国民の責務) 第十二条 この憲法が国民に保障する自由及び権利は、国民の不断の努力により、保持されなければならない。国民は、これを濫用してはならず、自由及び権利には責任及び義務が伴うことを自覚し、常に 公益 及び 公の秩序 に反してはならない。

Painted kanji's: public interest and public order

The draft also covers several changes to minor topics that are correlated to the ones above. In Article 13, the word individuals is changed to persons. Thus, they are considered as human beings.

(1947)

Article 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

(Draft)

(Respect, etc. for people as persons)

Article 13. All of the people shall be respected as persons. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public interest and public order, be the supreme consideration in legislation and in other governmental affairs.

¹³³ Retrieved from: <https://www.voyce-jpn.com/ldp-draft-constitution>

[1947]

Article 13.第十三条　すべて国民は、**個人として**尊重される。生命、自由及び幸福追求に対する国民の権利については、公共の福祉に反しない限り、立法その他の国政の上で、最大の尊重を必要とする。

[Draft]

Article 13.（人としての尊重等）第十三条　全て国民は、**人として**尊重される。生命、自由及び幸福追求に対する国民の権利については、**公益**及び**公の秩序**に反しない限り、立法その他の国政の上で、最大限に尊重されなければならない。

After the word 国民 (*kokumin*), the meaning individuals is changed to persons (the word *kojin* was changed to *hito*). The second paragraph also mentions public interest and public order. Citizens respected as individuals and protection of life, liberty and pursuit of happiness are also stated in the US Declaration of Independence. But why was it changed? The word “individuals” has a particular meaning that the word “persons” does not have. An individual composes one of the cores of Western theory and liberalism. Individual is self-reliant and autonomous. In contrast to general will, individual has its own will which he/she can freely use it as long as it does not infringe the liberties of other individuals. Every individual has rights and liberties that are protected by the laws of state. Individual is aware of the natural rights he/she possesses. The state mainly maintains a defensive posture and ensures the freedom of citizens (*laissez faire*). Surely, there is a huge gap of

difference between individuals and subjects. The word *kojin* has emerged as a word during the Meiji period in 1884 as a translation for the European word individual that was introduced by the Dutch traders (*individueel*).¹³⁴ During the reform period of 1948-52, this term is emphasized greatly by the American reformers in order to counter the fascist sentiments with democratic reforms. It was believed that lack of democracy and individual reforms gave rise to fascist Italy, Germany and Japan.

Family and security of citizens

(1947)

Article 24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.

With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

(Draft)

(Fundamental principles concerning family, marriage, etc.)

Article 24. Family shall be respected as the natural and fundamental unit of society. Family members must support each other.

Marriage shall be based (Deleted: “only”) on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and

¹³⁴ Tsuyoshi, The Emergence of the Modern Sino-Japanese Lexicon: Seven Studies, 10-11.

wife as a basis. With regard to family, maintenance, guardianship, marriage and divorce, property rights, inheritance and other matters pertaining to kinship, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

-Values based on family are strengthened in Article 24. Family is mentioned as the natural and basic unit of society. History, culture and tradition is once again emphasized.

(1947)

Article 25. All people shall have the right to maintain the minimum standards of wholesome and cultured living.

In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

(Draft)

(Right to life, etc.)

Article 25. All people shall have the right to maintain the minimum standards of wholesome and cultured living.

In all spheres of livelihoods of the people, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

[Draft (New)]

(Responsibility of environmental protection)

Article 25-2. **The State, in cooperation with the people, shall use its endeavors to maintain the environment so that the people can enjoy a satisfactory environment.**

[Draft (New)]

(Protection of nationals abroad)

Article 25-3. *The State shall use its endeavors to protect its nationals abroad when an emergency occurs outside its territory.*

[Draft (New)]

(Consideration toward victims of crime, etc.)

Article 25-4. The State shall give consideration to the human rights and treatment of victims of crime and their families.

Article 25 puts three new obligations on the state. The first calls for the state and the people to cooperate in protecting the environment. The second requires the state to protect the Japanese citizens abroad in emergencies. With this addition Japan can intervene in any matter (even militarily) about the safety of its citizens by claiming it as a constitutional duty. As for the third one, it requires the state to protect the rights of crime victims and their families. In Article 25 citizens are obliged to cooperate with the state to protect the environment.

Article 19 introduces a protection of personal information clause that is not mentioned in the current one. It also changes the word violated (*okashite*) to guaranteed (*hosho suru*-underlined)

[1947]

Article 19. 第十九条 思想及び良心の自由は、これを侵してはならない。

Freedom of thought and conscience shall not be violated.

[Draft]

Article 19. (思想及び良心の自由) 第十九条 思想及び良心の自由は、保障する。

Freedom of thought and conscience shall be guaranteed.

Article 21 which is about freedom of assembly is modified with further indications that any collective conduct that destabilizes public order and security is banned.

[1947]

第二十一条 集会、結社及び言論、出版その他一切の表現の自由は、これを保障する。

Article 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

検閲は、これをしてはならない。通信の秘密は、これを侵してはならない。

No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

[Draft]

Article 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

Notwithstanding the provisions of the preceding paragraph, engaging in activities with the purpose of harming the **public interest and public order** and forming associations to attain this objective shall not be recognized.

No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

[Draft (New)]

(Responsibility to provide an account on governmental affairs)

Article 21-2. The State is responsible for giving the people an account of governmental affairs.

Article 21. (表現の自由) 第二十一条集会、結社及び言論、出版その他一切の表現の自由は、保障する。2前項の規定にかかわらず、公益及び公の秩序を害することを目的とした活動を行い、並びにそれを目的として結社をすることは、認められない

Public order and public interest again... Changes to Article 21 indicate that freedom of assembly is banned if it is deemed as a violation of public order.

Article 28 enumerates the complex mechanism of compensation of the workers, as they are prohibited from exercising the right to strike.

(1947)

Article 28. The right of workers to organize and to bargain and act collectively is guaranteed.

(Draft)

(Right of workers to organize, etc.)

Article 28. The right of workers to organize and to bargain and act collectively is guaranteed.

With regard to public officials, in view of the fact that they are servants of the whole community, all or part of their rights in the preceding paragraph may be restricted, as provided by law. In this case, necessary measures shall be taken to improve the working conditions of public officials.

Article 36, which bans torture is weakened as the wording “absolutely”(zettai: 絶対) is removed. In the draft version critical adverbs such as the example above or wordings like “shall not be violated” about the freedom of

thought are smoothened to either removal of the word or changed to phrases like “shall be guaranteed”.

[Current]

Article 36. 第三十六条 公務員による拷問及び残虐な刑罰は、絶対にこれを禁ずる。

Article 36. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

第三十六条 公務員による拷問及び残虐な刑罰は、禁止する。

Additional language is used in Article 47 that makes it clear that the electoral districts should be based primarily on population but may take other factors (municipal boundaries, etc.) into consideration as well due to malapportionment problem of the Diet (a seat that represents fewer votes than the others).

(1947)

Article 47. Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law.

(Draft)

(Matters pertaining to elections)

Article 47. Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law. In this case, each electoral district shall take into comprehensive consideration administrative subdivisions and topography with population as the basis.

In Article 63, it is stated that PM does not have to answer the questions of the Diet if he is too busy.

(1947)

Article 63. The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

(Draft)

(Rights and duties of the Prime Minister, etc. regarding their presence in the House)

Article 63. The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills. (Omitted: “regardless of whether they are members of the House or not.”)

The Prime Minister and other Ministers of State must appear when their presence is required in order to give answers or explanations. However, this requirement shall not apply to the performance of official duties as may be deemed necessary.

The stipulation in Article 66 that states that the Prime Minister and other Ministers of State “must be civilians” is changed to “may not be active military personnel”. Some scholars claim that this statement is superfluous as Japan should not have a standing army in the first place due to Article 9.¹³⁵

(1947)

Article 66. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law.

The Prime Minister and other Ministers of State must be civilians.

¹³⁵ Jones, “The LDP constitution, article by article: a preview of things to come?”

The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

(Draft)

(Organization of the Cabinet and responsibilities to the Diet)

Article 66. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law. The Prime Minister and other Ministers of State must not be military personnel on active duty.

The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

As for Finance, additional language was also used in Article 86 to make it clear that Cabinets can submit supplementary budgets, a practice that already takes place anyway.

(1947)

Article 86. The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year.

(Draft)

(Budget)

Article 86. The Cabinet shall prepare and submit to the Diet for its consideration and decision a draft budget for each fiscal year. The Cabinet may submit a draft budget in order to correct a budget during each fiscal year. When the Cabinet determines that there is no prospect for obtaining the authorization of the first paragraph, it must submit a tentative draft budget prior to the commencement of the relevant fiscal year.

The budget for each fiscal year, as provided for by law, with the passage of a resolution of the Diet, may be expended for the year following each year.

Article 89's ban on the use of public money for religious institutions is evaded by stating that the religious content, especially for the Imperial ceremonies, can be defined as being above the level of custom or social etiquette.¹³⁶ This is a critical blow the state's neutrality toward religion as well as its non-involvement. With this addition, the State can financially support Shinto ceremonies through public funds.¹³⁷

(Current)

Article 89. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.

(Draft)

(Expenditure of public money and restrictions on appropriation)

Article 89. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of religious activities conducted by any institution or association, except for cases set forth in the proviso of the third paragraph of Article 20.

No public money or other property shall be expended or appropriated for any charitable, educational or benevolent enterprises beyond the supervision of the State, local governments or other public entities.

¹³⁶ Ibid.

¹³⁷ Repeta, Japan's Democracy at Risk – The LDP's Ten Most Dangerous Proposals for Constitutional Change.

2012 Draft also has several changes on local self-government. Japan has 47 prefectures, some of them have population below 2 million. A long term goal of revisionists is to change the prefectural system into federal one, just like in Germany and give further autonomy. LDP Draft does not contain this however, additional wording on the related articles proves that several rights and services were given and extended to local residents. The article above is an example of them.¹³⁸

(1947)

Article 94. Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.

(Draft)

(Authority of local governments)

Article 95. Local governments shall have the right to manage their (*Omitted: “property, ”*) affairs (*Omitted: “and administration ”*) and to enact their own regulations within the law.

[Draft (New)]

(Finances of local governments and fiscal measures of the State)

Article 96. Local taxes imposed and other independent sources of revenue, pursuant to regulation, shall serve as a basis for the expenses of the local government. The State shall take necessary fiscal measures when the local government cannot offer its services through the independent sources of revenue mentioned in the preceding paragraph alone, as provided by law.

¹³⁸ Ibid.

The provision of the second paragraph of Article 83 shall apply to local autonomy.

Article 96: Lowering the prerequisites for constitutional amendment

Another article that often has been put onto the debate table is the Article 96. This article allows the change of constitution only if the 2/3 of both of the houses of the Diet pass it and receives confirmation from the electorate. This article is one of the reasons behind the absence of constitutional change as its high prerogatives gives a hard time for such amendment to be enacted. In order to amend the constitution much quicker, LDP made several changes to the method of amending it, which is recorded in their draft version of the constitution.

Shortly after the beginning of his premiership, on December 31, 2012, Shinzo Abe declared his intentions to change the Article 96 of the constitution, which is the article that stipulates the conditions for amending the constitution. As a result of its highly difficult to attain structural procedures, the constitution has remained unchanged until today. The draft simplifies the procedures. The altered version in Article 100 of the Draft reduces the steps and requirements to a simple majority vote. Although this change would increase the speed of passing proposed articles inside the Diet, it would still need to be approved by the Japanese people in a national referendum.¹³⁹

Article 96 as it is in the 1947 Constitution:

Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the

¹³⁹ Ibid.

affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.

Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.

Draft of Amendments (Draft version)

Article 100. Amendments to this Constitution shall be initiated by members of the House of Representatives or the House of Councilors, through a concurring vote of a majority of all the members of each House, and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all valid votes cast thereon, at a referendum as specified by law.

Amendments when so ratified shall immediately be promulgated by the Emperor.

(Omitted: “in the name of the people, as an integral part of this Constitution.”)

Americans wanted it to be difficult to change the constitution to prevent an imperialist, anti-democratic, and militaristic government to rise again. Until 2005 no proposal was made to change the constitution, because of Article 9. From the 1950s to the 1980s the Japanese people were not interested in amending Article 9.¹⁴⁰ As we shall see in the next chapters, even today there is a strong resistance against the amendment of the constitution among the Japanese public.

With Article 100, getting a simple majority (%51 of the Diet) would be enough to change the constitution. This raises the popular question: Is it necessary to have a bicameral legislative? This question was raised after the 2007 Upper House elections. In that case, the lower house had the majority of governing parties while

¹⁴⁰ Wada, “Kenpo kaisei zenin ishiki zodai to watashitachi no kadai [Increase of people’s acceptance of amendment of the constitution and our task].”

the upper house had the majority of the opposition. As a result of this, due to the objections of the Upper House to several bills, the legislation process was stagnated with numerous delays. This is called a distorted Diet (*nejire kokkai*).

In addition to all these changes, the right to declare a state of emergency is introduced. This new concept is stated in Article 98 of the draft, which states the right of the PM to declare *Kinkyujitai* under several conditions: Attack by foreign military forces, natural disaster and domestic unrest. During a state of emergency, special laws can be passed in the Diet and can either be approved before or after they are passed. All citizens are tasked with several obligations to act accordingly and preserve stability. Highlighted kanji means: Chapter 9, Declaration of Emergency Situation.¹⁴¹

[Draft (New)]

(Declaration of a state of emergency)

Article 98. The Prime Minister, in the event of armed attacks on our nation from abroad, disturbances of the social order due to internal strife, etc., large-scale natural disasters due to earthquakes, etc., or other states of emergency as determined by law, may, when deemed particularly necessary, issue a declaration of a state of emergency through a cabinet meeting, as provided by law.

For the declaration of a state of emergency, prior or subsequent approval of the Diet must be obtained, as provided by law. The Prime Minister must cancel the declaration of a state of emergency through a cabinet meeting, as provided by law, when:

¹⁴¹ Ibid.

A resolution of disapproval has been made in cases mentioned in the preceding paragraph. The Diet resolves to cancel the declaration of a state of emergency. No longer deemed necessary to continue the said declaration of a state of emergency due to changes of the situation. Moreover, when intending to continue a declaration of a state of emergency for more than one-hundred (100) days, prior approval of the Diet must be obtained for each one-hundred (100) days.

The provision of the second paragraph of Article 60 shall apply to the Diet approval mentioned in the second paragraph and the latter part of the third paragraph. In this case, “within thirty (30) days” in the said paragraph shall be read as “within fifty (50) days.”

[Draft (New)]

(Effects of the declaration of a state of emergency)

Article 99. When the declaration of a state of emergency has been issued, the Cabinet, as provided by law, may enact cabinet orders having an effect equivalent to that of law, and in addition, the Prime Minister may make necessary expenditures or other dispositions and may issue necessary orders to chief executive officers of local governments.

For the cabinet orders and dispositions mentioned in the preceding paragraph, subsequent approval of the Diet must be obtained, as provided by law. In the case that a declaration of a state of emergency has been issued, every person shall be subject to the orders of the State and other public organs issued to protect the lives, bodies and properties of the people, as provided by law. Even in this case, Article 14, Article 18, Article 19, Article 21 and other provisions relating to fundamental human rights shall be respected to the fullest extent.

In the case that a declaration of a state of emergency has been issued, the House of

Representatives shall not be dissolved, and exceptions for the terms of office and election dates of members of both Houses shall be established, as provided by law.

With these new additions, the PM can declare a State of Emergency. Article 96's threshold is also lowered from 2/3 to majority. The removal of Article 97 means that the fundamental human rights that were gained with the age-old struggles for freedom would not be inviolable anymore. It can be easily seen that human beings do not have basic rights that they inherently possess. It is presented in such a way that these rights are entitled to the state and state is basically the purveyor of people's rights.¹⁴²

[1947]

(Deleted: Article 97. The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate.)

The fruits of age-old struggle to be free is gone, completely.

(1947)

Article 98. This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

The treaties concluded by Japan and established laws of nations shall be faithfully observed.

¹⁴² Rangdrol, *The Enduring Ambiguities of Japan's Postwar Secularism*, 146-147.

(Draft)

(The nature, etc. of the Constitution as the supreme law)

Article 101. This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

The treaties concluded by Japan and established laws of nations shall be faithfully observed.

Respecting and upholding the constitution binds the government and the Diet members, but the additional language in the Article 99 binds the citizens as well.

However, as an ordinary citizen would not know what this duty entails, the government would have to inform them, which shifts a constitutional practice to an anti- constitutional one. On the other hand, the Emperor and the Regent are excused from this duty of upholding the constitution.¹⁴³

(1947)

Article 99. The Emperor or the Regent as well as Ministers of State, members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

(Draft)

(Obligation to respect and uphold the Constitution)

Article 102. All people shall respect this Constitution.

(Omitted: “The Emperor or the Regent”) Members of the Diet, Ministers of State,

¹⁴³ Jones, “The LDP constitution, article by article: a preview of things to come?”

judges, and all other public officials have the obligation to respect and uphold this Constitution.

The changes that the nationalist wing of LDP sought to procure did not only consider an amendment on security but a full revival of some of the values of 1930s ultranationalist Japan. From the removal of liberal values such as individualism to the reintroduction of the State Shinto system, the 2012 Draft Constitution contains a wide range of re-arrangements. But why would LDP lawmakers and revisionists wanted to bring back these old values? What was the backbone of this nationalist adjustments? In order to grasp the situation better, the next chapter will analyze the concepts related to Imperial Japan as well as the current rising trend of nationalism.

CHAPTER 4

COMPREHENSION OF THE JAPANESE CONSTITUTIONAL AMENDMENT THROUGH THE ANALYSIS OF JAPANESE NATIONALISM, SOVEREIGNTY AND DOMESTIC DEBATES

Over the years, Japanese domestic politics experienced changes as a result of the altering world order. From 2010 onwards, nationalism began to rise in Japan as in the European countries. What were the main causes of such increase? What distinguishes this period from others? What are the major characteristics of Japanese nationalism and what values does it propagate from? How can a domestic situation be entangled to an international dispute? This chapter will search for answers to these questions as well as pinpoint the controversial subjects which caused a diplomatic crisis between Japan and war-experienced countries. In addition, it will present a case study for one, the 2012 Senkaku Island crisis between Japan and China. Through the analysis of the major players of the crisis such as the Governor of Tokyo, Japanese and Chinese medias, Japanese interest groups, political stakeholders and public polls, it will shed light on the events of this crisis period and its effects on public sentiment. Before going into the details, we should first look at Japan's two controversial subjects: The Yasukuni Shrine controversy and the comfort women issues with South Korea.

Yasukuni Shrine

When we talk about the obstacles of Japan's foreign relations with its neighbors especially with China, a controversial subject always pops up, which is Yasukuni Shrine. What is the reason behind the shrine that causes so much disdain for the Chinese and South Korean side? Why do the Japan's regional neighbors cause so much protest and hostility towards a PM who visited the shrine for just paying respects to the war dead?

Founded in June 1869 to revere the souls of those soldiers who died for the Meiji restoration in 1868. Their souls become revered spirits who were revered at the shrine. 1000 of the 2.4 million souls who were revered at the shrine consists of war criminals according to the Tokyo International Military Tribunal for the Far East decision in 1948. This is the reason why the shrine is considered as a “degenerate place” for Japan's neighbors, as those who committed outstandingly war-crimes were enshrined and honored in the place. Nine civilians and nineteen military man were accused of various offenses, such as ill-treatment of prisoners, conducting massacre, pillaging and torture. 7 of those prosecuted were sentenced to death. The case received a critical nature in 1978, as a secret ceremony was held in the shrine in which a new section was created in the shrine that regarded those who were judged in the War Tribunals as victims.¹⁴⁴ Case of such moral nature, create frustrations among the Chinese people who were devastated by the Japanese army during the Sino-Japanese War(First in 25 July 1894 – 17 April 1895 second in Jul 7, 1937 – Sep 9, 1945) and the Korean Annexation(1910-1945). This is the reason why the Chinese

¹⁴⁴ Woolf, “Why is the Yasukuni Shrine so controversial?.”

and Korean administrations responded to the Yasukuni shrine visits of Japanese premiers with mass protests and summit cancellations. This anti-Yasukuni sentiment could much way further if the changes for the Article 20 and 89 in the 2012 Draft are made since it could open the way for more Yasukuni Shrine visits.

Comfort Women

Another controversial subject is the issue of comfort women (*ianfu*). These are the women from South Korean, China and Philippines who were coerced into prostitution by the Japanese Imperial Army from 1930s until the end the World War 2. Since 1990s this issue has been raised numerous times by the victims of that mistreatment and became a reason of Abe's resignation in 2007 due to his remarks on comfort women. Although it was told that Abe had resigned due to health problems the real reason was his rejection of documents that contained information on the Korean comfort women. After the incident United States Congress passed a resolution about Japan's past responsibility and requested an acknowledgement, apology and compensation money from the Japanese authorities. It then spread into other countries such as Netherlands and Canada.

Japan made a statement in 1993, in which Yohei Kono (then-chief cabinet secretary) had acknowledged that some Korean women were recruited against their will but denies that they were forcefully taken away. It also stated that this was the act of the military authorities at that time and Japan sincerely apologizes for such conducts. Since 1993, Japan has been using this kind of dialogue and did not take additional steps other than compensation money which was agreed with South Korea in 2015 and repeating Kono's statement.

4.1 Japan's rising nationalism

In recent years, a new trend has been rising in Japan, which is nationalism. This domestic mood is generated by the changing balance of power in the East Asian region as well as bilateral issues between Japan and its neighbors. Starting in 1990s, Japan's relations with North Korea and especially with China have been always fragile and strained. As for the relations between China and Japan, they have a strong economic partnership, yet this partnership is overshadowed by their competition. They each claim that they have 'mutually beneficial relations based on common strategic interests' (economic development) and China is Japan's largest trade partner. However, the competition between them became so vigorous that not even their economic interdependence can soften it. Japan's distrust of China began during the midst of the 1990s. In 1995 China started its nuclear tests and took over the Mischief Reef of the Spratly Islands. Later, in 1996 the island dispute (Senkaku-Diayou) started.¹⁴⁵ In response to the Taiwan Straits crisis, Japan made a joint declaration of security with America. In addition, China's heavy-handed demands from Japan as well as promoting patriotic education, gave birth to the growing of anti-Chinese sentiments inside Japan. At some point in time, this nationalistic mood conjoined with the regional developments, became so intense that it directly influenced the foreign policies of the government. It was the 2012 Senkaku Island crisis which led to the nationalization of the islands.

Nationalism appears to have been a trump card that right wing politicians use in order to get the public attention and votes. It diverts the attention from domestic

¹⁴⁵ Sato, "The Japan-China Summit and Joint Declaration of 1998: A Watershed for Japan China Relations in the 21st Century?," 4-7.

problems such as corruption, environmental degradation, and fiscal breakdown. Just like domestic policies, a foreign policy can be affected by the ideology of nationalism. A nationalistic state is considered to be assertive and has a strong military to back up its assertiveness. Almost all constitutional scholars maintain that nationalism in Japan is rising. According to the Independent report, the rise of hawkish actors is an indicator that Japanese people desire to become a “normal state”.¹⁴⁶ Here a normal state means a state that is more willing to discuss security issues and constitutional amendment. But a desire for such changes was generated by several downturns: declining economy, eroding influence, wounded national pride (Japan wants to take more responsibility and become more influential), decline of the sense of superiority, and the rise of China. Younger generations, who have not witnessed the wartime period are more willing to accept tougher policies.¹⁴⁷ In addition, as China is getting stronger each year, Japan with its small growth looks weaker compared to China, since its economic growth is much bigger. The rivalry between these two strong states and the massive arms race between them further sabotages a possible idealistic approach. Japan claims that China’s military developments are unknown to them, and that Chinese lack of transparency is dangerous. It is in fact the security dilemma among them that pushes Japan to adopt aircraft carriers and stealth fighters. North Korean aggressions are also tied to this reason, as it makes Japan more eager to adopt their own nuclear armament. North Korea just plays with fire with its missile tests and abduction of Japanese citizens. In

¹⁴⁶ Mc Neill, “Japan: The land of the rising nationalism.”

¹⁴⁷ Eugene Matthews, “Japan’s New Nationalism,” 80.

regard to these developments, Japanese people believe that a more confrontational approach is needed to tackle such problems more efficiently.

What catalyzed the emerge of nationalist groups inside Japan? It was Japan's bilateral disputes with its neighbors starting from 1980s till present time , which compelled the conservatives to adopt a more nationalistic tone. These people have a particular interest in political matters and are more concerned about the actual regional issues. A nationalist-oriented state normally has a tendency to construct massive military buildups, but in Japan's case nationalism does not lead to a rapid militarization. As Shiro Sakaiya had already remarked, Japanese public is more interested in economic issues than the political ones. According to Nye however, the public is completely disinterested in bringing back the old militarized values of the 1930s.¹⁴⁸ Support for Article 9 continues as ever along with the nuclear allergy (refrainment). As Japan suffered greatly from nuclear bombs and the destruction during the World War 2, the Japanese people regard the adoption of nuclear bombs with disfavor. Nationalism is considered not in a militaristic sense but in a conservative sense, since it is to regain the deterrence power, prestige and pride of Japan.¹⁴⁹ People firmly follow the belief that protection of the Japanese territory is its number one security issue of. In order to protect its territories Japan must become active in providing its own security. The ability to reject and resist unfair foreign pressure is an indispensable skill as in the case of possible Chinese aggressions.

¹⁴⁸ Nye, "Japan takes a nationalist turn."

¹⁴⁹ Horiuchi, "Public Opinion in Japan and the Nationalization of the Senkaku Islands," 1-10.

The hardline postures of both China and Japan gave birth to anti-Chinese sentiments. Various Chinese demands from Japan caused public resentment. For example, requesting apologies from Japan for its past wartime crimes is being repeated over and over by the Chinese administration. Inside Japan, many believe that Japan had apologized enough. In the 1995 Murayama statement, Japan already mentioned its deep remorse and apologies. On the 50th anniversary of the end of WW2, Murayama said that: “I express once more my heartfelt feelings of deep remorse and state my heartfelt apology”. In 1998, Japanese PM Obuchi Keizo had responded Chinese president Jiang Zemin’s comments regarding the invasion of China, by repeating the statement of Murayama.¹⁵⁰ Many conservative voters claim that China uses past events to restrain Japan. China also blocked the summit with the politicians who visited the Yasukuni shrine. Tension continued with the Japanese chase of a Chinese submarine in 2004, which was a close call for a naval battle between the two sides. China allowed mass protests in its cities, in which damages were inflicted on Japanese properties. On top of that, China did not apologize for this problem. In 2005 the Chinese Vice Premier Wu Yi canceled her meeting with PM Koizumi at the last minute, which created a protocol problem.¹⁵¹ Later, the Chinese side mentioned that the cancellation was a response to Koizumi’s visit to the Yasukuni shrine every year starting from 2001.

In the international arena China tries to block Japanese pursuits for acquiring a permanent seat at the United Nations Security Council. It is stated that Japan is not

¹⁵⁰ Sullivan, “Japan’s War Apology Disappoints Chinese.”

¹⁵¹ Agencies, “Vice Premier cancels meeting with Koizumi.”

ready to take on such responsibility because it has not fully come to terms with its past aggressions against other Asian states. In 2005, a Chinese internet-based petition which opposed Japan's security council bid reached 30 million people.¹⁵² Such types of Chinese activities spark the flames of nationalism among Japanese conservatives. Relations worsened as each side made efforts discredit each other's foreign policies. China responded heavily to Japan's Senkaku island nationalization in 2012 by allowing protests in its 100 cities, dispatching surveillance ships to patrol around Japanese territory and further damaging Japanese properties. Both sides depicted each other in a negative light, a mentality that was brought on by patriotic education.¹⁵³

Thus, the result was a profound change within the Japanese people's perceptions. Warm relations of the past turned into intense rivalry. In a 1980 poll, 79% of the respondents expressed that they had friendly feeling towards China. After the bilateral problems, in 2012, this dropped to a mere 18%. The survey which was prepared by the government displayed that the public resentment towards China grew stronger, as 80.6% of the respondents claim no friendly feelings. Another survey, which was conducted by Kyodo News in 2012, demonstrates that 84% of the respondents held a negative impression of China. The *Yomiuri Shimbun* research indicated the rising distrust in Japan as 84% said that they did not trust China and a future apology was unnecessary. The 2011 Waseda University survey pointed out that

¹⁵² Moore, "History, Nationalism and Face in Sino-Japanese Relations," 283-306.

¹⁵³ Anderlini, "Patriotic education distorts China world view."

the anti-Chinese sentiments grew so strong that China was perceived as a threat much more dangerous than North Korea or a worldwide terrorist organization.¹⁵⁴

These developments affected the Japanese foreign policy but it was mainly the domestic and social groups and political organizations, who were more effective. These groups gave birth to the new policies of the post-election period. Three major actors play the key parts of this system, which are interest groups, mass media organization and general opinions of business groups.¹⁵⁵

Interest groups are the creation of the 1955 system. At that time opposition was weak and, the LDP being the dominant power, they had successfully disseminated their members, who were composed of bureaucrats, politicians and interest groups, into a web like system. Interest groups were so close to the party politicians that they had a prominent role at policymaking and implementation. Bureaucrats were considered as the implementors of these interests and they played an important role in communications, acting as channels binding the interest groups with the politicians. The 1955 system had collapsed in 1993 election loss, but with minor structural changes the bureaucratic system had continued to some degree. According to Toru Ishida, the change happened due to the invention of the Internet, as he claims that the system became more plural and democratic. Through Internet, the public opinion and media gained greater influence over the government, opening the way for further changes. An example to the interest groups would be Japan Federation of Economic Organizations.

¹⁵⁴ Public Opinion survey on diplomacy: the December 2011 Report, Research Institute of Contemporary Japanese Systems cited in Horiuchi, 33.

¹⁵⁵ Horiuchi, "Public Opinion in Japan and the Nationalization of the Senkaku Islands," 33.

As in every state, business groups in Japan can be regarded as a major actor and influencer. The Federation of Economic Organizations is a major contributor to the political parties. This group often expresses their ideas about the situations that they are interested in. They publish recommendations to the policy makers and at several times meet with the Prime Minister as advisors or consultants.¹⁵⁶

Mass media can be described as the major content generator and impression influencer. As it can quickly publish data and channel various information about specific subjects, politicians usually use it as a way to connect with the people. The possibility of electoral punishments or disapprovals make politicians more sensitive and responsive to their voters. Mass media acts as an information hub and a major highlighter of issues. Assuming that every individual uses some kind of media tool at least once, mass media has a very broad reach of influence in terms of access.¹⁵⁷

There are five major newspapers in Japan: *Asahi*, *Yomiuri*, *Nikkei*, *Sankei* and *Mainichi*. As Japan has a high literacy rate and reader base, the combined number of readers of these five newspapers reaches 30 million. In addition, several magazines cover events by mixing them with political coverage. Examples for these political magazines include *Bugeni Shurou* and *SPIO*. These magazines play a strong part on rising anti-Chinese sentiments.¹⁵⁸

Media is also a great method to gain rapid public interest and popularity. Through its channels, Tokyo Governor Ishihara's plan to buy the Senkaku Island in 2012 gained so much attention that his policy was acknowledged by many Japanese

¹⁵⁶ Horiuchi, "Public Opinion in Japan and the Nationalization of the Senkaku Islands," 34.

¹⁵⁷ Horiuchi, "Public Opinion in Japan and the Nationalization of the Senkaku Islands," 35.

¹⁵⁸ Mitsunaga, "Zasshi ga aoru Han Chugoku Mudo," 72-81.

people, who were affected by his tough and trustworthy stance, which they found pretty convincing. In course of time he became the center of attention. Public opinion began to favor the purchasing of the islands, and people believed that it already belonged to their rightful territories.

Another issue that the media had been focusing on was the North Korean abduction of several Japanese people. Starting from 2007, through media coverages with lots of discussions and reports on this matter, conservative politicians included this situation in their core agenda. It became not only a core problem but also a precondition for the relations between North Korea and Japan. Therefore, through media reports, Japanese people became more concerned with Japan's foreign relations.¹⁵⁹

The State Shinto and religious nationalists

Japan's right-wing nationalist groups such as Nippon Kaigi have ideological roots connected to the pre-war State Shinto system. Its leadership consists of many high-up personnel from various shrines and religious associations. Religion plays a prominent role in bringing all these groups together, as they hold a consensus on Japan's special spiritual essence and the Emperor's religious importance. The origin of these united sects comes from the pre-war State Shinto system.

According to this system, the political occupation of the state must be fused with the spiritual utility of the Emperor. The belief that the Emperor is a descendant of the Sun Goddess Amaterasu, is the main fundamental pillar of Japan's *kokutai*

¹⁵⁹ Kyodo, "Public opinion, conservative media alter policy on North Korea."

(national body), which is a feature unique to Japan. As Japan's sovereignty and its existence as a nation comes from this religious belief (*bansei ikkei*), this concept can be characterized as both philosophical and spiritual. Shintoism cannot be put only under the category of religion as it is the core of Japanese nationalism and culture as well as having ties to every section of the state, such as administration and education.¹⁶⁰ Rituals play a big part on this role and is practiced at the main Amaterasu shrine named as *Ise Jingu*. In order to preserve this *kokutai*, Japan makes no compromises to any outside ideology claiming to be superior. Religion is placed at the center of state affairs as the state is involved directly with the administration of the Shinto shrines.¹⁶¹

State Shinto system started at the Meiji era of Japan (1868-1912). The Meiji government revolutionized the Shrine Shinto and placed the Emperor at the center of politics, which affected the religious structure of the system. Their "Great Promulgation Campaign" detached the Shinto Shrine from Buddhist circles and put it under the control of the government.¹⁶² The ideas from the *kokugaku* school of thought together with this nationalist ideology greatly influenced the Shinto priests' teachings and cemented the ground for a nationalistic rhetoric. National consciousness was shaped with the Imperial Rescripts regarding the education system and the army. Loyalty to the Emperor then became the most sacred virtue of the Japanese people. According to Walter Skya, this belief was exploited during the

¹⁶⁰ Weiss, "Towards a Beautiful: Right-Wing Religious Nationalism in Japan's LDP," 4.

¹⁶¹ Susumu, *Kokka Shinto to Nihonjin*, Iwanami Shinsho, cited in Andrew Weiss, "Towards a Beautiful: Right-Wing Religious Nationalism in Japan's LDP."

¹⁶² Hardacre, "*Shinto And the State: 1868-1988*," 59.

militarization period of the 1930s, as it was correlated with Japan's expansionism and ultra-nationalism.¹⁶³ Civilian, elite control of politics was intruded with the introduction of the military dominated state with the assassination of PM Inukai Tsuyoshi in 1932. Later on, political thinkers like Minoda Muneki and Kakehi Katsuhiko inspired this ultranationalist ideology and soon it had effectively influenced and incorporated the Japanese state ideology. Thus, Japan's expansionism and aggression was based on this ideology.¹⁶⁴ However, current Japanese nationalist groups do not support bringing back this *völkish* system of the 1930s. Instead, they wish to return to a pre-war Showa system based on the synchronization of Western style nation building and Japanese style Emperor worship.¹⁶⁵

Nippon Kaigi

Supporters of all kinds of pro-nationalist people came together at the well-known Japanese non-governmental organization called Nippon Kaigi (Japan Conference) whose members appear to have influenced the general attitude of the Draft that acknowledges a new patriotic tone and revival of traditional values with the revision of Article 9. This organization has more than 38.000 members and can be considered as the most potent communication portal between conservative supporters and politicians. It was formed in 1997 with the unification of two organizations: *Nippon wo Mamoru Kai (Society for the Protection of Japan)* and *Nippon wo Mamoru Kokumin Kaigi (National Conference to Protect Japan)*. Before the formation of

¹⁶³ Skya, "Japan's Holy War: The Ideology of radical Shinto Ultranationalism."

¹⁶⁴ Weiss, "Towards a Beautiful: Right-Wing Religious Nationalism in Japan's LDP," 1-34.

¹⁶⁵ Skya, 133.

these organizations, Japanese right-wing political engagement was seen twice in reactionary situations. The first one was propagated by the right-wing student groups to counter the 1960 leftist Ampo protests. The second was an attempt to re-establish the imperial rituals such as the National Foundation Day (*Kigensetsu*). The rising left had a large amount of influence during the 1960s and early 1970s. As these groups had desired the abolition of the Emperor system, right-wing intellectuals formed their own group called as *Seicho-no-Ie*, which was founded by Taniguchi Masaharu.¹⁶⁶ In 1972 he founded the first division of the Nippon Kaigi, Nippon wo Mamoru Kai. They still believe the communists are posing as an imminent threat for Japan.¹⁶⁷ Still to this day, the fundamentalists among his group, *Nisseikyo*, is active and currently positioned around Abe's circle. For example, the former minister, Taro Aso had been the former chairman of Nippon Kaigi.¹⁶⁸

With this old religious state system as the backbone of their ideology, Nippon Kaigi's policies can be characterized as: Reintroducing State Shinto by prioritizing Shinto rituals and establishing a direct control over Yasukuni Shrine, rewrite educational curriculum and remove liberal elements, promote historical revisionism, refrain from dovish foreign policy, and support constitutional revision. These policies fall in line with the Abe Cabinet's policies as it might seem that Nippon Kaigi is deeply influencing the Cabinet decisions.¹⁶⁹ In fact, the draft constitution of 2012 covers most of these issues and the priorities regarding the removal of Western

¹⁶⁶ Weiss, "Towards a Beautiful Japan: Right-Wing Religious Nationalism in Japan's LDP," 4-7.

¹⁶⁷ Sugita and Kawasoe, "Sekai No Shihaiso Wa Mina Comintern?!"

¹⁶⁸ Johnston, "Net boards venue for faceless rightists."

¹⁶⁹ Adelstein and Yamamoto, "The Religious Cult Secretly Running Japan."

imposed values from the current constitution can be seen in this draft. These correlations prove that the writers of the draft might have received ideas from Nippon Kaigi and the *Shinto Seiji Renmei* (Association of Shinto Shrines). Table 1 displays the correlation between Nippon Kaigi and the religious groups as most of the members of the organization are priests from various Shinto shrines.

Table 1. Nippon Kaigi Board Members Associated with Religious Groups-2017
 Andrew Weiss, Towards a Beautiful Japan: Right-Wing Religious Nationalism in Japan's LDP, *Yale University Student Work*, 2018: 31

Nippon Kaigi Board Members Associated with Religious Groups (as of September 2017)

a: Shintō Shrine/Shintō New Religion b: Buddhist c: Other New Religion

Advisors	
Name	Title
Kitashirakawa Michihisa	Association of Shintō Shrines (General Manager) _a
Komatsu Kiyohisa	Ise Shrine Grand Priest _a

Vice Chairman	
Name	Title
Tanaka Tsunekiyo	Association of Shintō Shrines (President) _a

Representative Committee Member	
Name	Title
Akimoto Kyotoku	Shinsei Bukkyodan Supreme Advisor _b
Inayama Reiho	Nenpou Shinkyō Chief Priest _b
Uchida Fumihiko	Shintō Seiji Renmei President _a
Okada Ko'ou	Sukyo Mahikari <i>Oshienushi</i> _c
Okano Seiho	Gedatsu Church President _b
Ogushi Kazuo	Atsuta Shrine Chief Priest _a
Ono Takashi	Tokyo Association of Shintō Shrines Head _a
Ohori Kojitsu	Hieizan Enryakuji Representative Officer _b
Sekiguchi Yoshikazu	Bussho-Gonenkai President _b
Takagi Harunobu	Ise Shrine Assistant Grand Priest _a
Tokugawa Yasuhisa	Yasukuni Shrine Head Priest _a
Nakajima Seitarou	Meiji Shrine Head Priest _a
Nakano Yoshiko	OISCA International (Ananaikyo) President _a
Hiroike Mototaka	Morality Research Institute Board Chairman (Reitaku University) _a
Hozumi Hidetane	Taiwa-Kyodan <i>Kyonushi</i> _a
Maruyama Toshiaki	RINRI Institute of Ethics Chairman [PL Kyodan] _c

Board Chairman	
Name	Title
Amitani Michihiko	Meiji Shrine Worshippers' Association President _a

Source: <http://www.nipponkaigi.org/about/yakuin> (Nippon Kaigi Officer List)

Other Religious Groups Associated with Nippon Kaigi (past officers, etc.)

Reiyukai	Tendai Buddhist	Nichiren Buddhist (Nichirenshu)
Kurozumikyo		

In recent years, as a result of sheer amounts of opposition to the 2012 draft, the constitutional revision agenda was followed mainly for amending the pacifist Article 9, rather than putting national interests before the freedom of citizens. The three important scholars of Nippon Kaigi consist of Nagao Kazuhiro (Chuo University), Akira Momochi (Nippon University) and Nishi Osamu (Komazawa University).¹⁷⁴ They all believe that collective self-defense revision of Japan is necessary and legitimate. They all presented as references by Chief Cabinet Secretary, Yoshihide Suga during the reinterpretation of the collective self-defense ban in 2015.¹⁷⁵

Other nationalist groups are composed of various conservatives, rightist activist groups and business executives. Internet plays a big part as it serves as the general communication method for these people to express their views. It consists of various blogs, videos and site forums. These internet nationalists are called the Internet right wingers (*netto uyaku*). The forum in which these people exchange their views is called *ni-chameru* (the forum of right wingers). The Osaka University report, which was conducted by professor Tsuji Daisuke, reveals the proportion of the *netto uyaku* group among the Japanese internet users. The group claims that the major media companies provide biased information and can't be trusted. The questionnaire displays that among 1000, only 1.3% responded with unfriendly feelings towards China or South Korea. Although nationalist groups such as *netto uyaku* consist of a small part of the population, they are really active in terms of event demonstration. These groups are eager to perform social activities such as

¹⁷⁴ Japanese Scholars Reply to the American Scholars Comfort Women Statement.

¹⁷⁵ Yoshida, "Japan security bills reveal irreconcilable divide between scholars, politicians."

encouraging petitions and donations. Internet provides a network not only for nationalist groups but also for hawkish politicians.¹⁷⁶ A popular example would be Hashimoto Toru, who was the former mayor of Osaka. By using Twitter, he wanted to appeal the internet rightists. He was a supporter for Article 9 revision, but his claim about the necessity of comfort women (Korean women used as pleasure slaves during WW2) resulted with a public backlash and toppled his popularity. Just like Hashimoto, the current Prime Minister Shinzo Abe also uses social media (Facebook) to inform people about his actions and appeal to his supporters. The famous nationalist movie director, Mizushima Satoru uses his own media company (Channel Sakura), in order to reach out to conservative voters.¹⁷⁷

Nadeshiko akushon (Japanese Women for Justice and Peace) is a web-based network interested in spreading an interpretation of history, which is supposed to be the correct one. This group claims that the South Korean comfort women issue is a fabrication. They believe that it is a South Korean propaganda that aims to gain supporters from the US and to defame the Japanese people.¹⁷⁸ Their activities mostly consist of sending e-mails to US media organizations to gain their support for their own propaganda, and against that of South Korean.

Another example to the nationalist network groups is the *Zaitotukai*. It means the “Citizens Group that will not forgive special privileges for Koreans.” It claims to have 14,000 members and consists of people with economic difficulties. They blame

¹⁷⁶ Tsuji, “Intanetto Ni Okeru 'ukeika' Gensho Ni Kansuru Jisshokenkyu.” cited in Horuichi, 28.

¹⁷⁷ McNeill, “Look back in anger.”

¹⁷⁸ Nadeshiko Akushon’s website: <http://nadesiko-action.org/>

the Korean minorities living in Japan for their economic problems. It is considered as an ultra-conservative group with xenophobic sentiments.¹⁷⁹

4.2 Historical revisionism and nationalism

Apart from the Nippon Kaigi, the historical revisionists can also be considered as an influential nationalist group whose ideas were reflected in the Constitutional Draft revisions about Japan's role in the War. In this part characteristics of the this group as well as their agenda will be observed.

In his article, Sven Saaler mentions the importance of history among the mindset of people of all nations. According to Saaler, history poses as a core element in the constructions of nationhood. In order to discover their own essence, people try to find the roots of the nations, which were sprouted way back in antiquity. Based on their findings, they come up with claims of legitimacy and pride. For instance, as in the French case, the Gaulish War and Vercingetorix, creates some sense of ancestral knowledge and grandeur. Every civilization has this essence, which makes it unique through the writings of epics. In Japan, the core of national identity is represented by the continuing Imperial Household, which is based on myths and epics. The national discourse is based on the Emperor, the belief of Japan as the land of the gods (*kami no kuni*) and his being the forerunner of the future as well as the core element of the Shinto religion. Post-WW2 US interference introduced new forms of identity and nationalization, such as statist nationalism, economic nationalism, educational nationalism and cultural nationalism that all emerged with the changing

¹⁷⁹ Fackler, "New dissent in Japan is loudly anti-foreign."

environment.¹⁸⁰ During the implementation of the 1947 constitution, SCAP knew that preserving the imperial system was necessary as it would ensure the smooth functioning of the implementation, which would suit American interests. Thus, the Emperor was without a doubt, the main necessity for preventing dissent by preserving the integrity of the people.¹⁸¹

The Continuation of Old Values

Although the absolute political rank of the Emperor had been stripped by the American occupation as well as the Emperor Hirohito's own statement of himself being an ordinary human, there is a rising trend among the Japanese public for the re-emergence of the institution's mystical features since 1966.

Since 1947 several attempts have been made by the Japanese politicians to bring back the old values based on traditions and modify the current ones. For instance, the symbolic function of the Emperor was later reinforced, his cultural and religious role grew stronger and his influence on social life had been reconsolidated over several years. Several actions of the Japanese government aimed to put the Emperor at the center of politics again. For example, in 1947, the Imperial House Law was passed. This law freed the Emperor from the burden of taxation. It also gave him right to vote and immunity from provisions of civil and criminal law. As stated in the first article of this law, imperial succession was only given to the male

¹⁸⁰ McVeigh, *Nationalisms of Japan*. cited in Saaler, "Nationalism and History in Contemporary Japan."

¹⁸¹ Saaler, "Nationalism and History in Contemporary Japan."

heirs, which was a contrast to the Article 24 of the Japanese Constitution which states the essential equality of the sexes. The Emperor had always been a significant presence in the Japanese society. He was the source of Japanese nationalism and the pillar of Japaneseness. The new constitution was introduced like a gift from the Emperor and bits of imperial absolutism were inherited. Examples include: Reintroducing of *Kigensetsu* in 1966, which is the day of commemorating the founding of Japan by the gods. Another example is the *Gengoho* in 1979. This is a calendar system, in which the years are in accordance with the Emperor's chronology. In 1989, Shinto rituals for the funeral of Emperor Hirohito led to the questions of whether these actions, which were inserted by the government were constitutional. In 2018, Prince Akishino commented that the ritual of Daijosai (religious ritual) should be compensated by the royals fund not public fund (20 million dollars was paid by the government in the 1989 ritual).¹⁸² Nevertheless, critical thinkers may interpret these developments as a breach to Article 20, which states that the Japanese government cannot intervene in religious matters.¹⁸³

In addition to the examples above, several symbols have come into existence again, such as the Kimigayo anthem, the pre-war national anthem since the Meiji period, and the Hinomaru flag. Kimi means the Emperor and the Hinomaru symbol comes from the concept of Japan as the land of the Rising Sun. These symbols had been abolished during the Occupation. Japan's neighbor countries had been seen them as the symbols of the pre-war state, contents subjected to war and imperialism.

¹⁸² Aizawa, "Prince Akishino questions rite funding."

¹⁸³ Higuchi, "*The Constitution and the Emperor System: Is Revisionism Alive?*" in Luney and Takahashi, (eds), op.cit., 57-67 cited in Hook and McCormack, *Japan's Contested Constitution*, 10.

For those countries who suffered during the Japanese Occupation, Kimigayo was like a counterpart of Deutschland Uber Alles and the symbol of the flag was the Japanese version of the swastika.¹⁸⁴ They also had links with the Emperor however they don't completely share a common link. In 1999, the Japanese flag and anthem were finally declared as national. Actually both were used since the Tokyo Olympics of 1964, but the 1999 law made it official by law. This action later sparked a question, about the praise for the Emperor within the national anthem being unconstitutional or not. Hook and McCormack argues that the symbolic Emperor gained so much privileges and respect that he became a *genshu* (sovereign in traditional sense).¹⁸⁵ Hence, the 2012 Draft in this sense reflects what had already become practice over the years.

The post-war educational curriculum was augmented by several additions, the enforcement of which raised further questions about Japan's intentions. In the 1930s, the Japanese education system was filled with symbols for the worship of the Emperor. The Ministry of Education is thought to have reintroduced this national Imperial spirit in 1989 with several directives to the educators. These directives were called as Outline Educational Directives known as '*Gakushu shido yoryo*', which required teachers to participate in high school ceremonies with the anthem. Improvising the national spirit within schoolbooks became an agenda that has been used in recent years. The language that the media uses for the Emperor as well as the utmost respect it displays towards him and his statements demonstrate his extreme

¹⁸⁴ Hook and McCormack, *Japan's Contested Constitution*, 10.

¹⁸⁵ Hook and McCormack, *Japan's Contested Constitution*, 11.

importance for the Japanese society. However, several cases show us that this ‘‘respect’’ could also generate a taboo and public pressure.¹⁸⁶

This is known as ‘‘chrysanthemum taboo’’. It means intimidating those who favor a moral autonomy that is not modified by the Emperor. Basically no one can criticize the Emperor. For instance, if someone points out the fact that the Emperor had war responsibility, it could trigger the outrage of several right-wing groups, which indicates the link between right wing violence and the Emperor. Cases include the silencing of Kitakyushu teachers in 1996 who protested the flag events; shooting of *Asahi Shimbun* reporter in 1987,¹⁸⁷ which provided a hub for thinkers against constitutional revision; death threats to the mayor of Nagasaki for questioning the responsibility of Hirohito during WW2; and threatening The Ferris (Christian university) and Meiji Gakuin University staff who didn’t mourn the death of Emperor Hirohito in 1989.¹⁸⁸

However, in spite of the recent increase of the Emperor’s influence on traditional matters, the idea of making him the head of state lacks public backing. Only far-right voters support this idea of the old monarchy. At the moment, the Emperor is far from the center of politics of Japan, which is a contrast to the pre-war system. Additionally, during the funeral of Hirohito in 1989, there was no noticeable

¹⁸⁶ Hook and McCormack, *Japan’s Contested Constitution*, 12

¹⁸⁷ Kobe, “Asahi Shimbun remembers 29-year-old reporter killed in 1987 ultra-rightist attack.”

¹⁸⁸ Sakamoto (ed), *The Emperor System as a Japan Problem: The Case of Meiji Gakuin University*, cited in Hook and McCormack, *Japan’s Contested Constitution*, 12.

public mourning and Japanese life continued as usual. This proved that it could be very difficult to put the Emperor back in the center of the political structure.¹⁸⁹

One of the significant issues that the American occupiers emphasized was the implementation of human rights. Unlike the American values of freedom and equality, Japanese traditions valued loyalty and basic duties of the citizens. These traditions and norms of the past Meiji Constitution later came to the surface again. In Pre-war Japan, traditions favored imperial rule coupled with a huge bureaucratic force to obey the Emperor's orders. Hook argues that the inheritance of the past values as well as the LDP dominance from 1955 to 1993 gave little space for public union and separation of powers to develop. These values were partially adopted. Glenn D. Hook, argues in his book that the roots of LDP and its bureaucratic structure were ingrained so strongly in the political system that the influence of the public became lesser than that intended by Americans. The ruling elite, consisted of the strongly regulated police force and the bureaucrats. Then came the imperial institutions and the politicians. Big businesses also match the level of the politicians. Public union and opinion is positioned at the end (bureaucrats 37%, politicians 22%, business 15% and, public opinion 7%).¹⁹⁰ In a critical light, Schlesinger adds that, bureaucracy was unchallenged, which led to "inclusive and corrupt bureaucratic structures" that resembled a corporate governance.¹⁹¹

Hook and McCormack also point out discrimination as a major problem. During the preparation of the 1947 draft, the clause of all people (subete no

¹⁸⁹ Hook and McCormack, *Japan's Contested Constitution*, 21.

¹⁹⁰ Nihon Keizai Shimbun, "Nihon Keizai Shimbun Public Survey."

¹⁹¹ Schlesinger, "*Shadow Shoguns: the Rise and Fall of Japan's Postwar Political Machine.*"

kokumin) was changed to ‘all Japanese citizens’. According to Koseki, this rendition led to a weakening of non-discrimination within the social system as non-Japanese citizens were left out of bounds. This affected the Korean residents the most since they had been subjected to discrimination in employment. Foreigners as well as the Ainu people (native people of Saru River in Hokkaido) were discriminated against mostly on land rights.¹⁹² In 1976, Supreme Court found that the electoral system could be regarded as unconstitutional as it discriminates against the urban voters. Hook adds that, illegal Asian workers brought further problems due to their unskilled work and poor community. According to Yoko Sellek, sex trafficking and illegal migration were the major outcomes of this problem.¹⁹³ Freedom of expression was not developed enough. School texts were censored (the famous Ienaga trials is examined on page 113). Due to their possible threat to Occupation the issue of labor rights was abandoned. Article 28, guaranteed workers to organize and bargain. However, due to the socialist threat in 1973 an absolute prohibition of worker strikes was initiated.¹⁹⁴ There is also the question of the treatment of criminals. Article 31 and 38 bans the conviction of criminals based on confessions. However, till 1980, it was done according to confessions. Several judges found harsh detentions reasonable. The problem still continues today with the detention of Nissan

¹⁹² Shoichi, *Shin kempo no tanjo*, edited and translated by Moore as *The Birth of Japan's Postwar Constitution*, 115, 179-80 cited in Hook and McCormack, 18.

¹⁹³ Sellek, *Migrant Labour in Japan*, cited in Hook and McCormack, *Japan's Contested Constitution*, 18.

¹⁹⁴ Beer, 'Freedom of Expression: the Continuing Revolution,' in Luney and Takahashi, *Japanese Constitutional Law*, op. Cit. 221-54 at 243-5.

CEO Carlos Ghosn as Japan's Justice Department takes white-collar crime extremely serious.¹⁹⁵ Although Japan signed the International Covenant on Civil Rights, the implementations and reforms tended to work slowly. Yoshiaki Yoshida argues that the highly conservative structure, which was cemented by the long LDP rule, created difficulties for incoming ratifications and implementations.¹⁹⁶

Despite the structural difficulties, the Japanese public organizations and NGO's as well as the foreign organizations are working and putting as much work as they can to present the problems of the Japanese public to the state. NGO's such as Japan International Volunteers, founded in 1980 tries to enhance the life chances of the citizens. Like most of the human rights groups these organizations aim for the development of Japanese domestic society by putting pressure to the state to sign the international treaties and highlight the issues of human rights in public. Examples include: The Pacific-Asia Resource Center (PARC) which was established in 1973 which published Japan Asia Quarterly Review(AMPO),¹⁹⁷ Japan International Volunteers (JVC) and Overseas Development Assistance Charter.¹⁹⁸

Rise of Historical Revisionism

Commemorations for the first Emperor of Japan, Emperor Jimmu in 11 February 2015 and various visits of the present Emperor Akihito to these events have also

¹⁹⁵ Kiley, "Carlos Ghosn Enters A Japanese Court In Handcuffs. "I Am Innocent."

¹⁹⁶ Yoshida, '*Authority of the National and Local Governments under the Consultation*' in Luney and Takahashi, op.cit. 109-121, at 110-112.

¹⁹⁷ Yoko, "Grassroots Aid in the Work: Beyond PP21 Kanagawa International Symposium," 43-47.

¹⁹⁸ NGO Katsuda Suishin Senta, NGO *Detabukku* ', cited in Hook and McCormack, 22-23.

demonstrated the rising interest of the public for the national symbols of Japan. Nationalism in Japan is growing within the policies of the realist (belligerent) right wing politicians as well as organizations that wish to bring back the values of “the golden period of Japan,” the Meiji period. In the post-Cold War period, the influence of the nationalist group called the “historical revisionists” increased among the Japanese. This group is very critical of the values and interpretations that were implemented during the American occupation. The group members claim that describing WW2 as a war of aggression is false, as those who occupied Japan created such a distorted view in order to discredit Japan.¹⁹⁹ In order to stop this distorted view from being included within school curriculums, in the early 2000s, the historical revisionists wish to level out this interpretation with a Textbook Reform known as “*Atarashii Rekishi Kyokasho Tsukurukai*”, Tsukurukai in short, that is supposed to have the “true” interpretation of the war (see APPENDIX F for further details of the textbook reform). This idea of reform was introduced by a committee which was formed by the members of an LDP committee named History Examination Committee (*rekishii kanto iinkai*) which was founded in 1993. The HEC claimed that during WW2 Japan was not conducting a war of aggression but a war of self-defense. The statement of the HEC which described Japan as the country who has lifted the white dominance over the colored race is:

The Manchurian Incident [1931], the China Incident [1937] and the Greater East Asian War ... were a fight for survival between the colored races and the white race. Since the Russo-Japanese War [1904/05], the colored races had all depended-on Japan to be liberated from colonial rule. Since this would be a terrible blow, the whites united in order to suppress Japan. ... The Greater East Asian War was a glorious international contribution, a sacrifice without

¹⁹⁹ Saaler, “Nationalism and History in Contemporary Japan.”

precedent in the history of mankind. ... The Japanese are a righteous people.²⁰⁰

Shinzo Abe who pursues a neonationalist agenda, has attended the HEC sessions as well as Nippon Kaigi meetings. Besides his participation in the HEC sessions, he also attended the meetings of a group called Diet Member Group to Consider Japan's Future and History Textbooks, as well as the roundtable discussions of the Shinto Association of Spiritual Leadership.²⁰¹

In addition to the issue of the "false interpretation" of Japanese history, historical revisionists also have doubts on the issue of the comfort women. According to the HEC, the case of the Japanese use of Korean women as sexual slaves is a Korean fabrication to discredit Japan and does not have proof. HEC also wishes to change the values of the post-war regime, which were introduced during 1945-1952. Tomomi Inada, who was the former Defense Minister of Japan, criticized the Tokyo War Crimes Trial for being the victors' justice and argued that it must be re-interpreted, which could be considered an attack on the San Francisco Peace Treaty.²⁰²

Notable historical revisionists

Literary actions started with the HEC publications in 1995. One of the notable historical revisionists is Tamogami Toshio, who was the former chief of staff of the

²⁰⁰ RKI (Rekishi Kentō Inkai) (ed.), *Daitōa sensō no sōkatsu*, 62-67.

²⁰¹ Mullins, "Secularization, Deprivatization, and the Reappearance of 'Public Religion' in Japanese Society," 1-22.

²⁰² Inagaki, "Tomomi Inada: Japan's prime minister in waiting."

Japanese Air Self Defense Forces, could be considered as one of the popular historical revisionists. He published ultranationalist books such as Tamogami's *Army of the Land of Gods* in 2010. In his essay, he claimed that Japan had been duped to attack Pearl Harbor. He argued that Japan should arm itself with nuclear weapons, aircraft carriers and long-range bombers. In order to compensate the expenditures of these systems, he suggested cutting child allowances. He also criticized the PM's like Fukuda Takeo and Obuchi Keito for selling out Japan's interests.²⁰³

In his works, he uses 3 key words in order to describe those who favor pacifism and reconciliation with the neighbors of Japan. The destruction of the country (*bokoku*), the selling out of Japan (*baikoku*) and the traitors (*baikokudo*) were attributed to the group of former Japanese PM's, academics, and the crown Prince Naruhito. Similar to Tamogami, Nishio Kanji and Kaji Nobuyuki has also accused Princess Masako as acting too ordinary and disregarding her social rank. They defined her as a strange existence (*fushigi no sonzai*) as they believed that Princess Masako was destroying the imperial lifestyle by acting like a commoner. They suggest that the Prime Minister should interfere in such cases in order to make it socially acceptable for the ultra-nationalists such as themselves.²⁰⁴

Another revisionist writer is Hyakuta Naoki, who is the author of the novel *Eien no Zero* (The Eternal Zero), which has gained extreme popularity during 2013/14. Just like other historical revisionists, he claimed that the Nanjing Massacre

²⁰³ CNN, "Japan fires military chief over WWII denial."

²⁰⁴ Kanji and Kaji, "*Kōtaishi-sama ni kangen mōshiagemasu*", 34-49.

of 1937 was a Chinese fabrication.²⁰⁵ He had close ties with PM Shinzo Abe and he even published a book co-authored by Abe in 2013.²⁰⁶ Its title was *Japan! Be proud of yourself in the 'center of the world'*. The book has nationalistic themes such as seeking the power and prestige of the old days and claiming that Japan should become a top influence in global politics. The book advocates harsh behavior towards the leftists and DPJ. It refers to the leftists as human scum and accuses the DPJ of selling out the country. It claims that the post-War regime and the constitution were dictated to Japan by the US. It also asserted that the LDP election slogan that was used during the 2012 elections, "Taking back Japan" was chosen to indicate that when the LDP would take back the administration from the DPJ cabinet it would bring Japan back to its true origins. During the DPJ Cabinets from 2009 to 2012, politicians from LDP such as Abe, criticized the DPJ harshly with slogans such as government selling out Japan (*baikoku minshuto Seiken*).²⁰⁷

Watanabe Shochi was considered to be a long-term revisionist who had authored 612 books since 1965. According to the journal database, *Zassaku Plus*, he is the author or co-author of more than 690 articles which was published between 1955 to 2014. He made infamous remarks during the debates of Japanese war crimes in 1990s and, claiming that the Nanjing Massacre had never happened, insisted that all Korean heroes were terrorists.²⁰⁸ Just like Naoki, he believed that Japan had a

²⁰⁵ Editorials, "NHK's credibility at stake."

²⁰⁶ Abe and Hyakuta, *Nihon yo, sekai no man-naka de saki-hokore*, cited in Saaler, "Nationalism and History in Contemporary Japan."

²⁰⁷ Abe and Hyakuta, *Nihon yo, sekai no man-naka de saki-hokore*, 111 and 136.

²⁰⁸ Shōichi (2012), "Kankoku no eiyū wa terorisuto bakari," *Rekishi-tsū* 11, 30-37.

significant uniqueness and it should once again become a role model for other countries.²⁰⁹

Besides these people, the same issue was discussed in the religious spheres as well. Okawa Ryuho, who is the founder and leader of a new religion called Kofuku no Kagaku (Science of Happiness) and the Happiness Realization Party in 2009 is also considered to be a revisionist.²¹⁰ Apart from the similar claims of the novelists, his party aimed to double the population of Japan through child friendly policies. Similar to other revisionist claims, he disregards the Nanjing Massacre and Korean comfort women issues and claims them as being historically distorted. He criticized the apologies of the government starting from 1990s. Although his claims can be considered as harsh and explosive, they did not have an influential outcome as his party had only a weak support in the recent elections.²¹¹

Another example for the neonationalist writers is Sakurai Yoshiko, who is a former television announcer. She appears on TV as a commentator on the private channel called Sakura. Like other revisionists, she criticized wartime atrocities attributed to Japan as being false by calling them “Tokyo Trial view of history”.²¹² In Saaler’s article it is stated that she denied the factual basis for the Nanjing massacre and the comfort women.

²⁰⁹ Shōichi and Mutsuo, *Nihon no teki. Gurōbarizumu no shōtai*, cited in Saaler, “Nationalism and History in Contemporary Japan.”

²¹⁰ Astley, “The Transformation of a Recent Japanese New Religion: Ōkawa Ryūhō and Kōfuku no Kagaku,” 343-380.

²¹¹ Party Website: <http://en.hr-party.jp/blog/415.html>

²¹² Hoffman, “Will Japan be a country that welcomes all?”

In addition to the neonationalist revisionists above, there are other popular contributors such as the German literature scholar Nishio Kanji, education scholar Fujioka Nobukatsu, manga writer Kobayashi Yoshinori, business leaders such as Maeno Toru and TV entertainers like Kent Gilbert. Ironically, the historical revisionist group does not have a historian at all. They were even criticized by historians with nationalistic sentiments. For example Hata Ikuhiko has criticized Tamogami's essay by pointing out that it is full of factual mistakes.²¹³

Patriotic education issue

In every country, education plays a major role both in the country's development and the propagation of the values of the society by passing the torch to future generations. In Japan, the School Education Law requires schools to use the school texts that are authorized by the Ministry of Education. Any textbook company should submit their textbook to the Ministry first. The Ministry of Education has a council named as Textbook Authorization and Research Council which checks each draft to make sure it is suitable to the current curriculum guideline of the Ministry. If the draft is deemed consistent with the curriculum then it is moved to the next stage, in which it can be chosen by the local boards of education at each city and prefecture. This authorization is conducted every 4 years.

This system has been criticized due to its censorship. Critical matters such as Nanjing Massacre or any ill portrayal of Imperial Japan is not allowed in school textbooks(for junior school and high school). During the Ienaga trial of 1950s, his

²¹³ Saaler, "Nationalism and History in Contemporary Japan,"

drafts were submitted various times to the Authorization Council. Due to the changing curriculum and high number of corrections, from 1952 to 1957, he had applied 5 times in order to get his textbook to be published. When he took this action to the court, claiming that this was a breach of freedom of speech, it was not considered to be so as it was deemed politically inappropriate.²¹⁴ This trial has shown that if the textbooks were too critical on Imperial Japan and Nanjing massacre or against the political ideology of the government, the freedom of speech granted by Article 21 could be ignored.

There has been numerous attempts in Japan to alter the existing educational system and replace it with patriotism. The situation continued to appear later on in 1980s and even caused a diplomatic crisis. According to the *Asahi Shimbun* report, on June 26, 1982, the Ministry of Education demanded the change of the wording of one of the draft textbooks. Instead of the word invade in the phrase “Japanese army invaded China,” the Ministry wanted the word “advanced” to be used. As a result of huge protests from China and South Korea, a new criterion called as Neighboring Country Clause was implemented, which stated that historical issues such as invasions must be handled with increased cautiousness. But this was not be the only subject of concern that would spark diplomatic tensions.²¹⁵

Until the 1990s, comfort women issue had not been recognized by the Japanese government and conservative politicians. After a deep investigation, they recognized and apologized for the Korean comfort women. This subject had entered the school textbooks in 1995 which was the same year when PM Murayama

²¹⁴ Minamizuka, “The History Textbook Problem in Japan.”

²¹⁵ Minamizuka, “The History Textbook Problem in Japan,” 2-3.

Tomiichi expressed his deep remorse for Japan's colonial rule. Although Murayama statement greatly improved the South Korea-Japan relations it angered the Japanese nationalists, who claimed that the issue is political and should not be forcefully included in school texts.²¹⁶

The nationalists then formed their own groups to collectively criticize the recent textbook issues. In January 1997 a group named Japanese Society for a New History Textbook was formed by conservative scholars who got the support of LDP. They claimed that a revision was needed to the school texts because they contained a highly masochistic view. In 2000 another group emerged known as Japanese Society for a New History Textbook (新しい歴史教科書), which promoted a counter to the masochistic view with the removal of several negative comments about the Japanese Imperial Army and its actions during WW2. Through many alterations the draft submittal of this new group got the approval of the Ministry. In the meantime, Koizumi Cabinet was formed. Despite the approval, the new textbook was adopted in less than 1% of Japanese junior schools.²¹⁷ See Appendix A for the detailed analysis of New History Textbook's contents.

In the early 2000s Tsukurukai attempted such a program, which ended with failure. Due to an extremely low market share (543 copies- 0.039 percent), the group lost its support and split up until Abe's premiership in 2006. After Tsukurukai's failure another organization was created, which was named *Nihon Kyoiku Saisei Kiko* (Foundation to Revive Japanese Education). Formed by Yagi Hidetsugu, it

²¹⁶ Minamizuka, "The History Textbook Problem in Japan," 3.

²¹⁷ Minamizuka, "The History Textbook Problem in Japan," 5.

created another body called *Kyokasho Kaizen no Kai* (KKK). Instead of academic research, it aimed at historical revisionism. Patriotic education was not a new phenomenon and it gained the support of many important actors, such as Shinzo Abe and his grandfather Kishi Nobusuke since 1980s.²¹⁸ Because of copyright infringement and ostensible similarities, Yagi's books were soon eliminated and the market was left to Tsukurukai. But it should also be noted that between the years of 2012 and 2016 Yagi's KKK had increased its share in the textbook market from 3.7% to 6.5%.

One of the main reasons of this increase was the nationalist mayors, who were sympathetic towards the so-called "true" indoctrinations that were written in those books. Popular mayors such as Hashimoto Toru and Nakada Hiroshi (former mayor of Yokohama) were among those who had adopted the KKK texts in their municipalities. In addition, in Summer 2015, a number of cities in Ishikawa Prefecture including the city of Kanazawa were encouraged to use KKK texts.²¹⁹

In 2005, six Nippon Kaigi affiliated Diet members visited England to observe and copy Margaret Thatcher's educational reforms. The group defined the causes of Japan's educational problems as a result from overly individualistic, student centered ideology that made students irresponsible and unsuccessful. It was added that the masochistic view of Japan's past actions must be abolished and the national pride

²¹⁸ Shōji, "*Sengo dōtoku kyōiku wa dono yō ni hen'yō shite kita ka,*" *Kodomo to Kyōkasho Zenkoku Netto 21* (ed.), *Dōtoku no kyōkaka de zugamerareru kodomotachi*, 59.

²¹⁹ Saaler, "Nationalism and History in Contemporary Japan."

must be regained with a new system which embraces patriotism and national pride.²²⁰ Later on, these ideas were connected to historical revisionism, claiming that Japan's past actions were part of a self-defense struggle. Additionally, historical revisionism defines Tokyo War Crime Trials of 1946 as victor's justice and claims that Japanese soldiers behaved honorably.²²¹

In 2006, the Abe administration pushed through the revision of Fundamental Law on Education. The idea to revise this law was advised to Abe by the executive director of the Association to Demand a New Fundamental Law on Education, Takahashi Shiro. The main aim was to implement what they called the "correct" view of history by emphasizing tradition, patriotism and moral education as correct goals of the education system.²²²

Contents of the New History Textbook and KKK texts

The New History Textbook emphasizes several historical features of Japan: Firstly, it is stated that Japan was and is a peaceful nation, who is content with its Emperor. It then follows a chauvinistic nationalism, stating that it was Japan, who resisted the Western expansions since the 16th century. According to the textbook the Emperor was not responsible for the beginning of the War, nor has he had any ties to the

²²⁰ Eikoku Kyoiku Chosadan, and Terumasa Nakanishi. *Thatcher Kaikaku Ni Manabu: Kyoiku Seijoka He No Michi*, 24-27.

²²¹ Selden and Nozaki, "Japanese Textbook Controversies, Nationalism, and Historical Memory: Intra- and Inter-national Conflicts."

²²² McNeill, and Lebowitz, "Hammering down the educational nail: Abe revises the Fundamental Law of Education."

atrocities conducted in it. The New Textbook's historical facts were far from objective interpretations as they were subjective and partial. Its main aim was to remove the negative view of Japan and to promote the Japanese pride.

Just like the New Historical Textbooks, the KKK books contained a large number of topics including Japanese mythology (spirituality of Japan), various pictures of Shinzo Abe, and Japanese achievements. The whole texts were written in a superiority oriented fashion with information given through a sense of belief rather than knowledge that could be observed with critical thinking. Achievements were written to bolster the nationalistic pride among the students. Because the criteria for the examination of the contents of the textbooks were changed, the texts could present Japanese territorial disputes as major concerns of national integrity and interests.²²³ Saaler argues that teaching elementary school children international security topics is no different from brainwashing, as little children cannot grasp highly political matters such as these. He adds that these tactics indicate that Japanese education is moving to the direction that was adopted by China and Korea.²²⁴

In addition to the textual alterations, a change in morals can be seen among several Japanese schools. The moral education called *Dotoku* has been introduced to the Japanese education since Abe's premiership in 2007.²²⁵ Materials such as Notes

²²³ Yoshifumi "The Abe Government and the 2014 Screening of Japanese Junior High School History Textbooks," cited in Saaler, "Nationalism and History in Contemporary Japan."

²²⁴ Saaler, "Nationalism and History in Contemporary Japan."

²²⁵ McNeill and Lebowitz, "Hammering Down the Educational Nail: Abe Revises the Fundamental law of Education."

of Heart, containing manners and traditional values are mixed with a deep love for the nation. Abe's *Dotoku* is similar to the educational conditions of the pre-war Japan. At that time, moral education was named *Shushin*. In Abe's time, matters of implementing the necessary procedures for the patriotic education were first started in 2012 with the appointment of Shimomura Hakubun to the Ministry of Education. Main backers of such constructional changes were the Watanabe Shoichi's group of "Association of Experts for the Promotion of Moral Education" and the KKK group.²²⁶

However, problems started to emerge, as teachers were not trained and instructed to teach such morals, and there was no academic basis for such a system. In addition, major cities had foreign citizens which made the situation much more complicated. A Korean or Filipino child might be subjected to discrimination as the phrase in the *Dotoku* texts, love for the nation does not bind them in the same way as Japanese children.²²⁷ In fact not only the foreign nationals were discriminated against, but also the homosexual people and women.²²⁸ Several comments and statements made by lawmakers have shown the social problems of Japan; which in this case was unequal treatment.²²⁹

²²⁶ Saaler, "Nationalism and History in Contemporary Japan."

²²⁷ In the 1965 version, moral education was emphasized to bolster values such as individualism, peaceful international society, contribution for a democratic nation. See:

http://www.mext.go.jp/b_menu/hakusho/html/hpae196501/hpae196501_2_031.html

²²⁸ Kyodo, "Local assemblyman urged to resign after calling gay people 'abnormal'."

²²⁹ Agence France Presse, "Japanese prime minister apologizes for sexist taunts in Tokyo assembly."

Public scandals also created a negative feeling, which created public doubts on the administration's management of issues such as education. Tomomi Inada had to resign due to her responsibility on concealment of the territorial breach conducted by the SDF forces during a peacemaking mission in South Sudan.²³⁰ Tamogami Toshio was arrested for election riggings whereas Amari Akira the Former Minister of Economics, has been removed from work due to bribery scandal.²³¹ In 2016 the Tokyo Governor Matsuzoe Yoichi was accused of using public funds for private purposes. All of these scandals demonstrated the lack of moral values of the politicians themselves who wished the implementation of a sensitive issue like moral education. In addition, a piece on partisanship found in an 2015 *dotoku* text book issued by the Ministry of Education that was in breach of the national guidelines of education. It indicated that patriotic education was definitely aimed to increase the interests of the LDP. The 2015 textbooks points out the obligations of the children and denies that rights and freedoms stated in the constitution is situational and can be changed. The 2015th version views the civil rights and duties as conditional and based on civic responsibilities instead of treating them as a natural laws or universal rights. The civic responsibilities in one case can be tied to the conscription duty as well. Nevertheless, this was in fact a breach of prohibition of partisanship.

²³⁰ Panda, "Tomomi Inada, Japan's Defense Minister, Resigns Following Weeks of Scandal."

²³¹ Kyodo Staff Report, "Former ASDF chief Tamogami arrested over alleged illegal election staff payments."

4.3 Japan's rising nationalism: Case study of 2012 Senkaku Islands

The case of Senkaku Islands is a perfect example of how effective the public opinion can be on the policies of government. Usually, public opinion does not directly affect a government's decision. Instead it provides itself as a background which indirectly influences the policymakers.²³² The 2012 island crisis was a case of bad timing and misunderstandings. It included a governor who got the support of the public and a Prime Minister who had no choice but to intervene. This case is a perfect example of the power Japanese public opinion. It could also shed light on the influence of nationalism among the Japanese parties and people.

One man's political ambition raised so much popularity that Japanese government at that time, the Noda Cabinet had to take a drastic decision that would shook not just the region but also the world. Tokyo Governor Shintaro Ishihara, is a well-known politician who favors constitutional revision and nuclear rearmament. He won the governor elections in 2003 with a 70% support. In 2005, he visited the Okinotori Islets which were connected to the Senkaku islands. He argued that, unlike the Chinese claim, these islets are not just basically some rocks but small islands that can broaden the exclusive economic zone of Japan. After numerous failed attempts of purchase, finally in 2011, the owner of the islands agreed to sell them to the Tokyo Governor. The Governor's plan then gained a momentum as a donation campaign was established by the Tokyo Metropolitan government. Donations reached 1.47 billion Yen in just four months. As described above, through the activities of nationalist groups and communities (Satoru Mizushima's network

²³² Hook and McCormack, *Japan's International relations: politics, economics and security Third Edition*, cited in Horiuchi, *Public Opinion in Japan and the Nationalization of the Senkaku Islands*, 25.

provided most of it- 1/3 of the 16 million dollars), this significant amount of money had been received in such a short time.²³³ This was the core reason why the government made the decision to nationalize these islands. It also pushed Ishihara more into the zone as he could not back down from this purchase. The fate of the deal was sealed. Yahoo! Japan made a survey in 2012 in which 92% of the participants favored the purchase of the islands.²³⁴ If Ishihara had become successful at his plan, it could have opened the way for China to dramatically criticize the weakness of the Japanese government. As a result, the government had no choice but to intervene.

The issue of the nationalization of the Senkaku Islands had started way back during Koizumi's premiership of 2000. By 2012, Fujimura Osamu, who was the Chief Cabinet Secretary of the Noda Cabinet, told the media that preparations to nationalize the islands started one month after the announcement of Ishihara. According to Fujimura, Ishihara was monitored by the government in order to better observe Ishihara's actions. At one time, Ishihara had participated in a secret meeting with the national government, in which he suggested to PM Noda that he would refrain from buying the islands, if the government built some facilities for monitoring China. However, Noda refused this as it could create an armed conflict. He also voiced his thought about building a facility on one of the islands or at least upgrading the lighthouse located at Uotsurishima (one of the largest islands in the Senkaku Islands group) which was built by the Japanese nationalists in 1978 and nationalized in 2005. The Foreign Minister Gamba convinced Noda to abandon this plan as it

²³³ Hayashi, "Japan's Nationalist Movement Strengthens."

²³⁴ "Tokyo ton o Senkakushoto Kaitori ni Sansei ga 92%."

could lead to Chinese provocations. Based on these circumstances, Noda hastened the plan of nationalization following Ishihara's hard line approach as well as the massive donations from the public. Through the evaluation of costs and benefits, nationalization of the islands could damage the relations with Chinese greatly.

However, if Noda managed to succeed, he could rally support in his favor as well as cover up his plan to increase the consumption tax and prevent the danger of the breakup of the party.

Before the Senkaku Islands crisis Noda had been criticized for having a soft-line resistance over territorial disputes. If he could have managed the nationalization he thought this could wash away these claims. His plan actually did gain the majority support of the public. The Yomiuri Survey displayed that public support for nationalization was at 65%.²³⁵ The Jiji press poll had a similar result with a 73% support.²³⁶

Figure 5 below shows the location of the Senkaku Islands plus the small islets near the Senkaku's. The islands are uninhabited and contain potential oil and gas reserves. Taiwan also have claims on the island.²³⁷

²³⁵ Yomiuri, "Senkakushoto no Kokuyuka ni Sansei 65% (65% supporting the nationalization of the Senkaku Islands)."

²³⁶ Jiji, "Senkakushoto Kokuyuka 7 waricho Sansei (More than 70% supporting the nationalization of the Senkaku Islands)."

²³⁷ BBC, How uninhabited islands soured China-Japan ties.

Map
Senkaku/Diaoyu Islands in regional context

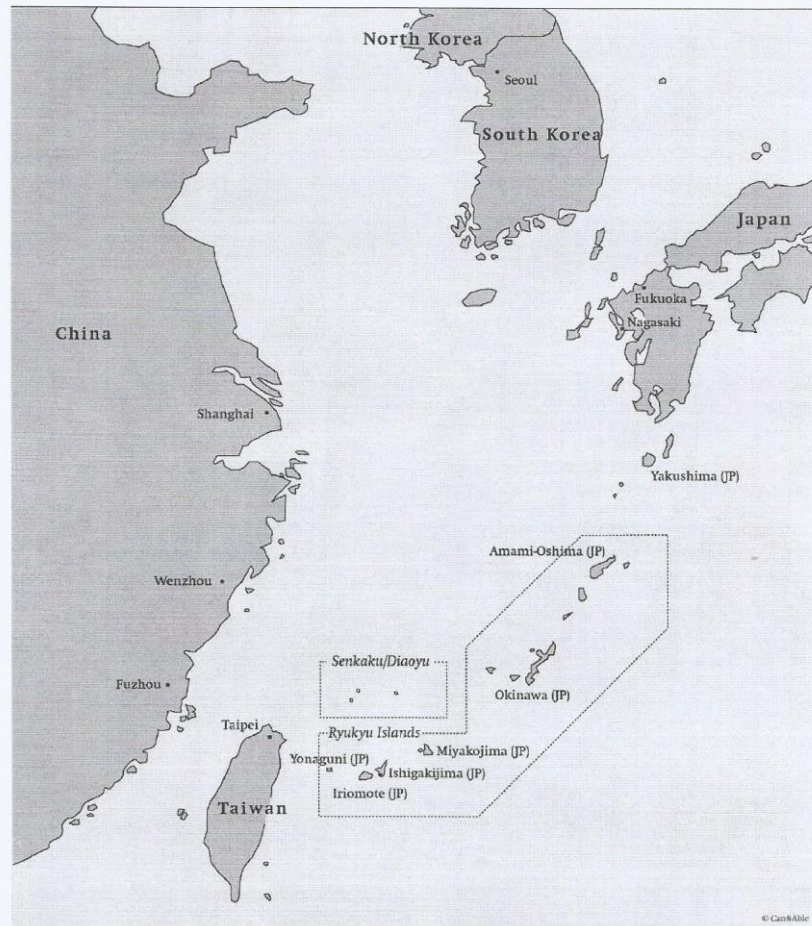


Fig. 5 Map of region surrounding Senkaku Islands

Alexandra Sakaki, A Shift in Direction under Abe? 24.

At that time there was some opposition to the plan of nationalization of the islands in any case, a brief demonstration of which could assist the understanding the costs that Noda's plan would have inflicted on Japan. For example, several business leaders such as Yunekura Hiromusa warned the Noda cabinet that the nationalization of Senkaku Islands could undermine their operations at China and could deteriorate the trade between the two countries. Japanese ambassador to China, Niwa Uichiro, who had close ties with the Chinese through the Itochu Corporation, had also opposed Noda's plan as it could inflict serious damage to bilateral relations from the point of politics. In actual fact, his objections were based on the interests of the Itochu Corporation. He had disagreed with the rising nationalism among the Japanese public, for the same reason as well. His obvious bias towards preserving the company's relations with China rather than Japanese interests. Brought foreign career to an end in December 2012.²³⁸

Another example is Sasae Kenichiro's plan, who was the Administrative Vice Foreign Minister at the same time. He suggested to Noda that he should let Ishihara purchase the islands and leave the responsibility to him. Basically, national government would declare that it had nothing to do with the purchase of the islands. However, Noda rejected it.

Surprisingly, America also opposed the nationalization of the islands. 10 April 2013, US warned the Noda cabinet that committing such an action could result

²³⁸ Sankei, "(Niwa Taishi 9 gatsu Kotai) Ambassador to be replaced in September."

in an unilateral change of the status quo. The US side disagreed with the Japanese one, believing that Japan did not understand the Chinese reasoning.²³⁹

From the beginning till the end of the Senkaku crisis, the public opinion played the primary role. Although Noda managed to gain the public backing, it was already an inextricable case. Nationalization issue had already gained a strong support, so that it could be mobilized with or without Noda. The central government couldn't analyze the situation well. First of all, the major transformation that was promised by the Hashimoto cabinet after their election victory of 2009 was not implemented. In 2010, Hashimoto was replaced by Kan. Unlike the LDP, DPJ was a young party, inexperienced at foreign relations. The party program for the economic improvements could not be performed as DPJ was unable to prevent the tax increases. Furthermore, DPJ's plan to create a community based on only Asian nations would not succeed as the participation of the US was necessary in order to maintain such unity. Its failure on the Futenma incident as well as its reluctance to use coercive measures against the foreign far right activists damaged the party's reputation. Based on the findings of Waseda University survey in 2012 and Yomiuri Shinbun poll in October 2010, during the 2010 crisis, the Kan cabinet should have indicted the far-right activists instead of deporting them from Japan. The decisions of the Kan cabinet were generally disliked by the public, who regarded the cabinet as "weak kneed".²⁴⁰

²³⁹ Tokyo, "Senkaku Kokuyuka Kiki Maneku, Bei Noda Seiken ni Keikoku [The nationalization of the Senkaku Islands to invite a crisis, The US Warned the Noda Cabinet]."

²⁴⁰ Waseda University, "Gaiko Ni Kansuru Yoronchosa nen 9 gatsu Repoto (Public opinion survey on diplomacy: the September 2012 Report)" cited in Horuichi, 42.

While preparing for the nationalization plan, the Noda government tried to establish the diplomatic network with the Chinese side. The Japanese believed that the nationalization of the islands would not damage the relations, as much as their purchasing by the Tokyo governor. In addition, Japan had the perception that China would not react in the same way that it did during the 2010 crisis. Japan tried its best to persuade the Chinese, by pointing out the fact that the nationalization plan is much more stable and would not bring any change to the status quo. However, the case was affected by bad timing, since China was going through a power struggle among its own party leadership. Hu Jintao was harshly criticized by his soft approach towards Japan and it was thought that a more assertive nature was needed to deal with the overstretching of Japan.²⁴¹

The case was badly handled and the results did not impress either of the sides. It implies that nationalist perceptions in Japan are on the rise. It is safe to say that this ideological transformation affects the public opinion and the conservative politicians. However, a more detailed study on the intellectual and constructive segments behind the constitutional revision could provide a better insight on whether nationalism is the basis of the intended change or if it is simply one of the elements of the backbone of revision.

²⁴¹ Toru Horiuchi, 43.

CHAPTER 5

THE INTELLECTUAL AND POLITICAL DEBATE ON THE NECESSITY OF CONSTITUTIONAL REVISION

Although the Japanese constitution was promulgated as long as 71 years ago it has not been amended even once. The previous chapters have discussed the historical framework, analyzed the ideological Japanese concepts and examined the 2012 Draft in order to comprehend the vision that the LDP's political stakeholders have held for the present constitution. Even though the 2012 Draft is an eye-catching example, it left several concepts unreviewed. How should the Upper House members be selected? Is Japan facing a crown prince shortage? This chapter will first examine the characteristics of the present constitution and discuss its vague points using the publications of constitutional scholars. Then it will investigate the problematic domestic issues of Japan and analyze the proposals that the revisionist parties offered in 2012 to resolve them. Lastly, it will give a brief overview of the current parties inside the Diet.

Apart from the historical, social and political examinations, there are analyzers who study the Japanese constitutional amendment through a theoretical approach. In his article, Christian Winkler pointed out that there are several types of revisionists.²⁴² One is the traditional revision, which concerns the ideological provisions based on traditional concepts such as the imperial system. Traditional revision favors the old system of Japan, embracing the past values of the Meiji era.

²⁴² McElwain, and Winkler, "What's Unique about the Japanese Constitution?: A Comparative and Historical Analysis," 250-280.

Winkler argues that the 1947 constitution is uncommonly vague and the political institutions lack specifications thus making them obscure. The articles of the constitution were not strictly defined, and many subjects and problems were left to law. Consequently, Issues of government efficacy are still fixed with a simple parliamentary majority vote in Japan. Several other topics included the electoral system and the range of local governments' authority. McElwain and Winkler pointed out that as a result of this deficiency, various interpretations of various sections of the constitution have been generated, which increased the gap between theory and practice over the past 30 years. Revisionists usually point out this handicap and call for an institutional change. One can also claim that the traditional revisionists' main aim is to alter the US imposed regime.²⁴³

The amendment agenda covers several problems that arose due to the constitution's weak institutionalism. The mentioned changes include the implementations that would improve the swift functioning of the system such as the abolition of the Upper House of the Diet and greater decentralization. However, as Winkler mentioned, these changes might not be effective as intended, due to the vagueness and distinctiveness of the Japanese constitution. Besides, the intended reforms could be utilized without a formal amendment. Although the constitution lacked institutional specifications and clear definitions, it introduced the basic rights and liberties of the citizens and consolidated their protection.²⁴⁴

²⁴³ McElwain and Winkler, "What's Unique about the Japanese Constitution?: A Comparative and Historical Analysis," 252.

²⁴⁴ McElwain and Winkler, "What's Unique about the Japanese Constitution?: A Comparative and Historical Analysis," 252.

Some of the claims of the traditional revisionists blame the US reforms, which for them appear to be incorrect. The post-WW2 reforms are criticized as being US imposed, since little focus was given to the Japanese administration at that time. Because of foreign pressure, SCAP was impatient in creating a new constitution.²⁴⁵ The one that was prepared by Japan did not bring any changes to the existing system. Thus, SCAP had to create the constitution by itself that would suit both the US and its Allies' interests. The SCAP draft underwent numerous changes, some of which were suggested by the Japanese themselves. In spite of all the modifications, the historical revisionists still claim that the 1947 constitution had a Western imperialist tone. For example, bicameralism was imposed upon the Japanese by no other authority than themselves.²⁴⁶

Watanabe Osamu divides the revisionists into two categories. The first one comprises the neoliberals and the second, by the neonationalists. The neoliberal side aimed for smaller government intervention and greater individual responsibility. As for the neonationalists, they aim for the reimplementation of the traditional values.²⁴⁷ Although the scholars claim that the revisional agenda had gained very limited focus of the Japanese policymakers before the end of the Cold War period in 1990, the period of 1953-1964 experienced 11 proposals for the constitutional amendment. However, none of them was published in the following 15 years. As for the applications that had happened after the Cold War period, the time between 1990 and

²⁴⁵ Winkler, *The Quest for Japan's New Constitution: An Analysis of Visions and Constitutional Reform Proposals, 1980-2009*, 6.

²⁴⁶ Hellegers, *We the People: World War 2 and the Origins of the Japanese Constitution*, 615-617.

²⁴⁷ Osamu, *Kenpou "kaisei" no soten: shiryō de yomu kaikenron no rekishi*, 49-50.

2012 had seen 27 proposals. These were mostly composed by the reactionaries that aimed for the revival of the old regime of Japan. Some of these proposals were even specifically against the foundational values of the 1947 Japanese constitution.²⁴⁸

5.1 Intellectual and theoretical dimensions of constitutional revision

In 2007, the Liberal Democratic Party focused on 3 key points at the House of Representatives Commission on the Constitution, regarding the amendment of the Constitution: (1) the need to clarify the constitutionality of the nation's armed forces, (2) the need for explicit affirmation of the right to self-defense, and (3) the need for constitutional provisions concerning military and nonmilitary cooperation by Japan in international security efforts. Right wing LDP, wants to change the constitution based on today's political scene, while left wing parties such as JSP want to protect the pacifist core of the constitution (*gokenron*) and prevent bad revisions (*kaiaku*).²⁴⁹ Those who seek the preservation of the present constitution, are very cautious about those who want to amend the Article 9. As for moderates, they prefer the passing of new laws under the roof of Article 9. And the liberals demand that the rights of the SDF must be clarified and updated for collective security missions rather than structural changes.

Several surveys demonstrated the fact that ideological issues do matter for the Japanese public opinion. The *Yomiuri Shimbun* survey in 2013 has created adequate

²⁴⁸ McElwain and Winkler, "What's Unique about the Japanese Constitution?: A Comparative and Historical Analysis," 250.

²⁴⁹ Nishikawa, "The Future of the Japanese Constitution: From the 'Mac Arthur Constitution' to What?" 66.

results. When asked about the institutional problems of Japan, 47% of the respondents expressed Article 9 as a topic of interest, while 15% of the respondents mentioned the imperial system.²⁵⁰ The desire of the Japanese for a future change of the system has two problems: One is the legislative gridlock of the Diet (*nejire kokkai*) and the other is the interregional socioeconomic inequality. The desired change comes slowly and through interpretations rather than the formal amendment of the constitution. The Cabinet Legislation Bureau, which is the legal counsel of the PM, creates reinterpretations of the constitution, which can be claimed as the easy route.²⁵¹

However, according to the revisionists, there are three other main issues that cannot be fixed with just regular reinterpretations. The first one concerns the Emperor, who is stated as the symbol of state in the constitution. The traditional revisionists want to change this statement to “the head of the state” (the highest formal representative). Currently, the Emperor plays a ceremonial role in Japanese politics. As the de facto head of the state, his political power consists of merely rubberstamping the Diet decisions. There is also the issue of the Imperial Household Law, which puts the continuity of the royal lineage exclusive to the male heirs. For some time, this created some questions regarding the Crown Prince Naruhito, as he does not have a son.²⁵² Currently, there are 4 heirs to the throne: Crown Prince

²⁵⁰ “Kenpou yoron chousa: 96-jo kaisei kappatsu giron nozomu 8-wari.”

²⁵¹ McElwain and Winkler, “What’s Unique about the Japanese Constitution?: A Comparative and Historical Analysis,” 254.

²⁵² McElwain and Winkler, “What’s Unique about the Japanese Constitution?: A Comparative and Historical Analysis,” 256.

Naruhito (58), Prince Akishino (52), Prince Hisahito (Naruhito's nephew-12 years old) and, Prince Hitachi (82).

The second is bicameralism, which has been the general issue of the Japanese politics from the end of WW2 to the present. In order to gain swift legislative mechanisms, most cabinets favored the majority at both Houses of the Diet. If the Upper House rejects a legislative bill passed by the Lower House, the latter can overrule the former by reaching only a 2/3 supermajority. Critics claim that the Upper House came to a point that is far away from its intended purpose. Originally, it was intended as a mechanism that would act as a Chamber of Deliberation, but a legislative gridlock is created when diverse political factions have the majority in the Upper and Lower Houses. During the American occupation, Japanese PM Shidehara Kijuro had suggested the formation of the Upper House by the preselection of its members to temper the partisanship, but the GHQ had rejected this. The absence of preselection has subsequently led to many quarrels of politics among the Houses. The 1994 electoral reform partly addressed this problem, since only the Lower House was formed with mixed member majoritarian system.²⁵³ The Upper House on the other hand, was formed with proportional representation thus it was difficult for parties to gain majority at the Upper House.²⁵⁴

The third issue is the decentralization, which is needed to reduce the economic influence of the central government on the local governments. However, nothing much was done about this issue, in order to refrain from empowering the

²⁵³ Hellegers, *We the People: World War 2 and the Origins of the Japanese Constitution*, 615-616.

²⁵⁴ McElwain and Winkler, "What's Unique about the Japanese Constitution?: A Comparative and Historical Analysis," 257.

leftist local governments. A second reason was the fear of bankruptcies due to high end election promises of the local candidates. Currently, local municipalities can increase the taxes only to a limited amount that is permitted by the Diet. These economic restraints have made the local municipalities dependent on central government's fiscal transactions. According to an article in the Social Science Japan, Japanese local expenses are higher than its OECD equivalents.²⁵⁵ The intended system for the local governments favor either the appointment of the local leaders by the central government or for them to be chosen by local assemblies. According to the former Osaka mayor, Hashimoto Toru, municipalities should be further empowered through increasing their authority on taxation, management of education and business. He favored the composition of a mini state system through the merging of cities with prefectures. Thus in his view, for example the prefecture of Osaka should be a state and its name should be spelled as "Osaka-to," meaning the state of Osaka. Currently the Japanese Diet defines the allocation of the budget of local assemblies with the Local Allocation Tax. In comparison to large cities, poorer rural regions tend to benefit better from this tax system. Although, the system has unfair effects on elections and tax distribution, the "designated cities" system reduces this problem by giving the metropolitan cities some economic authority to further gain money by issuing bonds except taxes.²⁵⁶

The issue of decentralization is, however, different than the others in the sense that a formal amendment is not necessary to modify the system. Currently there are no prohibitions against a possible reform of constitutional decentralization

²⁵⁵ DeWit, and Steinmo, "The Political Economy of Taxes and Redistribution in Japan," 159-78.

²⁵⁶ Bednar, "The Political Science of Federalism," 269-288.

as laws regarding tax allocations can be changed with a Lower House bill. Thus the Local Tax Law is not subjected to constitution and can be changed any time. But, this system benefits the LDP as well, since poorer regions are in desperate need of money, thus they are dependent on the fiscal allocation from the Diet to sustain their welfare policies. Therefore The LDP is content to leave this system as it is.²⁵⁷

Characteristics of the Japanese Constitution

Revisionist politicians claim that a structural reform is needed for the Japanese constitution as they claim the issues above is causing problems and should be fixed. The revisionist professor Tamura Shigenobu mentioned, the gap between theory and practice became so wide that the Japanese constitution has to be amended with new stipulations.²⁵⁸ He pointed out that every constitution needs a certain upgrade in order to maintain a healthy judiciary system. Much has changed in Japan from 1947 to the present. Changes as in the cases of social demographics, balance of power among various sections of the society and the economic priorities lead to compulsory modifications that is essential for the lifespan of a constitution.²⁵⁹ Japanese constitution could therefore be a remedy for the problems that were created by these changes. Winkler and Mc Elwain argued that failure to adopt the necessary measures could lead to the complete replacement of any constitution or it could lead

²⁵⁷ Ibid.

²⁵⁸ Shigenobu, *Shinkenpou wa kou naru*, 104. Translated by McElwain and Winkler in Journal of Japanese Studies.

²⁵⁹ Ibid.

to inefficiency.²⁶⁰ The two most important issues of a constitution, institutional power and civil rights are not treated equally in the Japanese one. Japan has a very progressive constitution for civil rights. Compared to other constitutions at the time of its promulgation, the Japanese one was much advanced on securing the rights and liberties of its citizens. In terms of concepts such as freedom of speech and religious assembly, Japanese constitution has an advanced level. This was achieved due to the US interests to create its own ally at the Pacific region, which totally embraced the Western values, an idea to make Japan a country similar to Switzerland.²⁶¹

The clause of pacifism, the lack of ability to use military force as a legitimate instrument both in domestic and foreign problems blocked the potential of using the army as a political tool as well. Instead of using SDF for suppressing public protests or an opportunity for political influence, it was employed as a disaster relief force (2013 Haiyan typhoon in Philippines).²⁶² Article 66 prevents military officers from becoming members of the Cabinet.

Unlike China or any other country, Japanese armed forces cannot be used against domestic protesters. Likewise, people preferred the US collective security umbrella and unarmed neutrality rather than constructing their own military establishments. For example, the Japanese youth are spared from forced conscription. Likewise, Japan avoided the American entanglement during the Vietnam War with

²⁶⁰ Winkler and Mc Elwain, 262.

²⁶¹ Dower, *Embracing Defeat: Japan in the Wake of World War 2*, cited in Mc Elwain, 254.

²⁶² Miller, "Typhoon Haiyan, Japan and the New Asia."

an indirect support. According to Hook, restraining effects of Article 9, can be regarded as positive since it kept Japan out of trouble for decades.²⁶³

In contrast to its stance on civil rights, the Japanese constitution is indefinite and vague in the case of institutionalism. This was claimed by the CCP data which states that, the institutional specificity of the Japanese constitution is at 39%, which is considered below average.²⁶⁴ The civil rights on the other hand is at the level of 77%, which is considered to be greater than average. According to the law specificity data, which measures the correspondence between two subjects, the treatment of civil rights and institutionalism in the Japanese constitution is mismatched at a level of -0.38. this is a very low level since the lowest possible is -0.5. Interestingly, this vagueness as well as the progressiveness of the constitution led to an increase of its own lifespan. That is the reason why the Japanese constitution survived without any amendments for so long. However, it covers many topics limitedly and it is very short. Its shortness, on the other hand, is both a weakness and reason for its longevity. A lengthy constitution often tends to be rewritten often. An example is the Indian one, which got amended 97 times from 1950 to 2012.²⁶⁵

Additionally, according to Winkler's data, the topics covered by the Japanese constitution have a low frequency mentioning, which leaves gaps in their understanding. These are filled by the Diet and the courts. The 2012 LDP draft does little to change this vagueness. Instead of clarifying these issues within the

²⁶³ Hook and McCormack *Japan's Contested Constitution*, 22.

²⁶⁴ Elkins, Ginsburg, and Melton, *The Comparative Constitutions Project in The Endurance of National Constitutions*.

²⁶⁵ Winkler and McElwain, 263.

constitution, the LDP draft focuses more on ideological issues rather than the structural modifications.²⁶⁶ This was beneficial to the ruling parties, since leaving the system to the Diet gave them the strings of the game. According to Winkler, it only partially diminished the elite-led demands to amend the constitution. Most of the institutional issues were left to statute.

Although a majority on both Houses as well as a majority on the referendum seems difficult for the Japanese case, compared to other constitutional amendment procedures, the Japanese one could be regarded as having an average difficulty. It is similar to the German one, in which the median rate of a constitutional change is rated as once in every 12 years.²⁶⁷

National Security Council: A Display of Japanese Efforts for Revision

Although Japan tries to bring the structural change that is desired by the public, the result is always the same; the old system swallows the newly founded one. This case can be seen inside the Japanese security, administrative and economic sectors. A powerful bureaucratic system overshadows the intended upgrades, thus the intended change is harder to obtain and requires more time. For example, the National Security Council (NSC), which was established in December 2013 to improve the cooperation mechanisms with Japan's allies. It was modeled after the US National Security Council. The main aim of the Japanese council was to shift the political influence and the power of elite bureaucracy to the PM. With this purpose in mind,

²⁶⁶ Martin, "LDP's Dangerous Proposals for Amending Anti-war Article."

²⁶⁷ McElwain and Winkler, "What's Unique about the Japanese Constitution?: A Comparative and Historical Analysis," 263.

the Prime Minister could play a better part at building Japan's foreign policy. However, it lost its stature due to the lack of cooperation between the defense and foreign ministries. NSC's precursor, the Security Council had been established for creating prominent roles for the management of defense plans and crisis responses. It was composed of 9 ministers from various ministries. But it was not efficient enough due to the slow mechanisms of the system. The ministers were summoned much more rarely than was suggested. In order to fix this situation, the amount of the ministers were reduced to 4 for rapid convokes for the NSC. Now the key roles were assigned to the Prime Minister, Chief Cabinet Secretary, Foreign Minister and Defense Minister, with the main body consisting of 60 experts from various ministries. Soon this led to inter ministry rivalries as ministerial bureaucracy started to sprout at these meetings, dominating the structure of the system. The idea of rapid shuffling of the members, did provide room for more diverse opinions, but, it was weakened due to ideological clashes between the new members and the older ones. Despite the deficiencies of the NSC, its foundation provided numerous updates and improvements to the security mechanisms of Japan. NSC Secretariat, provided a center of information exchange to manage the knowledge flow between the Japanese administration and the US advisors. Its Secretary General also had several advantages over the Cabinet members, since he was not obliged to participate at the parliamentary sessions. In terms of flexibility and rank, he had more benefits due to the independency of the NSC and its swift method of communication.²⁶⁸

²⁶⁸ Sakaki, "Japan's Security Policy: A Shift in Direction under Abe?" 12-14.

NSC is also known for constituting an intelligence sharing hub. It intensified the intelligence exchange of Japan with the UK and US. A new law (Secret Information Protection Act) was passed in 2013 regarding the penalty for those who leaked and distributed the state secrets. With the new legislation, the imprisonment of the suspects rose from 1 year to 10 years. This update was a precondition for the delivery of F-35 stealth fighters from the US. Before the legislation, the US was deeply concerned that the technical information of the F-35 stealth jets could be leaked. It demanded harsher punishments and further discouragement from the Japanese administration. Although the legislation further reduced the accountability of the actions performed by the two states, it was a necessary implementation, which could be safer for both states.²⁶⁹ Additionally, the laws, which were stipulated by the NSC, increased the efficiency of the data exchange between the diverse Japanese ministries. Until that time, Japanese administration was reluctant to pass information between themselves. NSC reforms, increased the pace of such communication.²⁷⁰

5.2 Amendment proposals of the revisionist parties from 2012 until present and LDP's intraparty conflict

Coming to the proposals of the parties for the constitution, analyzing the demands of 4 revisionist parties until the 2017 general election could give us some insight on policies that they pursue. These are: LDP, the Sunrise Party, Your Party, and Hashimoto Toru's One Osaka party. In the case of LDP, their reformist tendencies

²⁶⁹ Pollman, "Japan's Controversial State Secrets Law: One Year Later."

²⁷⁰ Sakaki, "Japan's Security Policy: A Shift in Direction under Abe," 14.

got hastened when the pro-revisionist politicians such as Koizumi and Mori rose to the party leadership. As analyzed above, the 2012 LDP draft shows that the party had little interest over structural changes such as bicameralism, direct elections, the election method of the Prime Minister, decentralization, and power of the Upper House. Its intensions were mostly focused on security issues and national values.

The Sunrise party and Your Party were founded by ex-LDP members. Compared to the LDP agenda they can be considered more hawkish, as their agendas have both structural and ideological changes such as stressing the need for patriotic education and structural reforms to the bicameral system of the Diet. The founder and chairman of the Sunrise Party, Hiranuma Takeo was a politician, who emphasized the traditional values of history and patriotism that put him in the revisionist camp.

Your Party's founder Watanabe Yoshimi had similar plans on the subjects that Hiranuma was aiming at, however, Your Party's revisionist plan was largely affected by the neoliberal oriented economic reforms similar to Koizumi's.

As for Hashimoto Toru's regional One Osaka party, which gained a nationwide popularity, it mostly focused on the decentralization reform. Table 2 below is the McElwain and Winkler's graph on the characteristics of the draft programs of all four parties:

Table 2. A Comparison of Constitutional Proposals of the Revisionist Parties

McElwain, Kenneth Mori and Christian G. Winkler, “What’s Unique about the Japanese Constitution?: A Comparative and Historical Analysis,” *The Journal of Japanese Studies*, vol:41, No.2 (2015): 269.

A Comparison of Constitutional Proposals (propositions that change the status quo in <i>italics</i>)				
Proposal	LDP	Sunrise Party	Your Party	One Osaka*
Diet				
Bicameralism	Bicameral	Bicameral	<i>Unicameral</i>	<i>Bicameral now, unicameral later</i>
Lower House –Upper House Relations	2/3 lower house overrides upper house	<i>Upper house can delay but not veto</i>	N/A	<i>Lower house majority overrides upper house</i>
Upper House Election	Direct election	<i>200 seats in regional blocs</i>	N/A	<i>Indirect: local government representatives</i>
Election of Prime Minister	Indirect	Indirect	<i>Direct</i>	<i>Direct</i>
Local Government				
Prefectures or States	Prefectures	Prefectures	<i>States</i>	<i>States</i>
Emperor				
Head of State	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>	No
Exclusively Male	No	<i>Yes</i>	<i>No</i>	No
Ideology				
National Flag and Anthem	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>	No
Article 9 Revision	<i>Yes</i>	<i>Yes</i>	<i>Yes, but by referendum</i>	<i>By referendum</i>

Note: One Osaka has proposed a two-step reform of the upper house.

As it can be seen above, the first 3 parties have a particular focus on the ideological issues. Article 9 is one of the core reasons for the constitutional change. The intended changes would remove the military restraints of the SDF. One Osaka Party on the other hand has little interest on ideological changes, as Hashimoto Toru claimed at one time, constitution is not a book of thought, it should be neutral and equal.

The Sunshine Party had a harsher stance for the imperial monarchy. The party program preferred a male exclusive system for the imperial lineage. It claimed the

protection of the core Japanese traditional and cultural values. For the bicameral system, Hashimoto wanted to abolish bicameralism and form a unicameral Diet, giving more political power to the local authorities (just like the German Bundesrat, Upper House members would be the heads of the local municipalities) and change the local government system to States (doshusei). The LDP's program however, consists of amending Article 95 with additional definitions.

Article 95. Local governments shall have the right to manage their affairs to enact their own regulations within the law.

The Sunrise Party's (SP) intention for the Upper House was just like One Osaka Party's plan, which was to empower the Lower House. However, SP intended to achieve this through removing the veto power of the Upper House. Thus the Upper House simply would become a center of deliberation, performing a role similar to House of Lords of the British parliament (tax consideration and treaty approval). LDP however, leaves all of these institutional issues untouched thus solving only a little piece of the weak institutionalism issue.

After 2012, LDP's stance on the rank of Emperor has changed. During the Koizumi period, a possible revision on the 1947 Imperial Household Law was debated that would allow the ascension of Crown Princesses to Chrysanthemum Throne. This was later shelved as Hisahito was born in 2006. However, the problem of male shortage in the Imperial line still remains. The imperial lineage rests on Hisahito's shoulders, as if he does not have any sons in future, a heir shortage would happen. Currently, LDP follows an Exclusively Male Emperor profile, however the administration is also working on a revision that would allow princesses to stay on

Imperial family line and may be to ascend to the throne.²⁷¹ Table 3 displays the Yomiuri Shimbun’s annual survey the respondents tendency to revise the above-mentioned issues.

Table 3. Percentage of Respondents Selecting Each Issue – McElwain, Kenneth Mori and Christian G. Winkler, “What’s Unique about the Japanese Constitution?: A Comparative and Historical Analysis,” *The Journal of Japanese Studies*, vol:41, No.2 (2015): 278

		“What Issues Do You Want Addressed?” Percentage of Respondents Selecting Each Issue (issues with declining support since 2005 in <i>italics</i>)									
Category	Provision	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Ideological:											
Chapter 1:	<i>Position, role of the emperor</i>	25	24	15	14	13	16	12	23	14	11
Emperor											
Article 9:	<i>Maintain self-defense capacity</i>	29	27	23	27	30	28	29	34	32	27
National Security	<i>Proactive international cooperation</i>	23	22	23	20	23	22	20	23	19	21
Institutional:											
Chapter 5:	Strengthen prime minister's powers in state of emergency	13	12	13	13	11	11	20	22	19	13
Cabinet											
Chapter 4:	Functions of the two houses of the Diet	10	14	12	15	22	17	17	20	18	19
Diet											
Chapter 8:	Functions of central government and municipalities	18	25	22	22	30	30	25	27	27	21
Local Government											
	“Nothing in particular needs to be changed”	19	16	24	24	20	24	21	17	19	23

Source: Data from Yomiuri shinbun’s annual surveys on the constitution.

A perfect example for this intraparty conflict is the failure of the LDP panel for constitutional revision to reach a consensus about revising Article 9 in 2018. Several members such as Shigeru Ishiba, who was the former defense minister of Japan, demanded more consistent revisions. This event revealed that several lawmakers among the LDP, questioned the leadership of the party. Their distrust was created due to the document tampering scandal that involved the Osaka based

²⁷¹ Walsh, “Why has Japan's shrinking Imperial Family lost another princess?”

Moritomo Gakuen school in 2017.²⁷² The school was proclaimed to be teaching the correct history of Japan that praises Japan's traditional norms and national pride.²⁷³ In short, shady deals and donations occurred between the government, the school administration, Shinzo Abe's wife and the landowner who sold a chunk of land to the government in a very discounted price. As a result, lawmakers such as Ishiba was reluctant to leave the revision matter to the current party leadership.²⁷⁴

In the 2018 Panel, LDP leadership prepared 7 draft proposals, each one focusing on different changes. Abe's proposal was the adoption of a *minimum necessary armed organization* that is required for self-defense. It also normalizes the legal status of the SDF forces. Ishiba's draft proposal however, consists of radical changes such as the deletion of the paragraph 2, which mentions the disallowance of maintaining land, sea and air forces. Like Abe's proposal, Ishiba's proposal also demands the full exercise of the right of collective self-defense. Another draft claimed the maintenance of the second paragraph but supplemented it with the right of self-defense. The meaning of self-defense is still not clarified and is subject to diverse interpretations. Furthermore, the collective self-defense issue continues to being neglected, as it allows the provision of forces to a Japanese ally only if Japan's survival is at stake. In contrast to the concept referred to as the Caroline test, which points out the imminence of foreign attack and stresses the anticipatory defense of a

²⁷² Johnston, "Moritomo Gakuen scandal another history Japan's nationalists may wish to rewrite."

²⁷³ The school's principal, Yasunori Kagoike's thoughts on school curriculum and Nanjing Massacre can be found in this video: The return of Japan's imperialists, *France 24 English*, March 1, 2017.

YouTube link: <https://www.youtube.com/watch?v=eSXNv1ksmQQ>

²⁷⁴ Yoshida, LDP panel fails to form consensus over revision of war-renouncing Article 9."

nation; the Japanese concept focuses more on the impact of an attack on the liberty of its people.²⁷⁵ Examples include: A missile attack on Guam by Democratic People's Republic of Korea (DPRK) army, or an attack against a ship which contains the evacuating Japanese citizens at a crisis region. The survival of the people at stake is described as the threat to the people's rights and sovereignty. Besides this argument, there are several other pursuits of increasing Japan's defenses by adopting stealth jets. Although having "strike capability" does not violate Article 9, it is a politically sensitive issue that can cause problems among Japanese neighbors. Draft proposals, such as this, are passed to the Prime Minister Abe within a month to be reviewed at the national defense guidelines during the end of each year.

In 2017, the group consisting of the liberal splinter of DPJ left the party, which led to its disbanding. This liberal wing formed its own party, led by Yukio Edano called The Constitutional Democratic Party of Japan, to become the major opposition party. It gained 58 seats in House of Representatives and 25 in House of Councilors. Despite the CDP's initial achievements, the party is still considered to be a small entity compared to major LDP dominance with a control of a total sum of 400 seats. The recent political scandal of Moritomo Gakuen could not increase CDP's influence either, as Japanese public opinion remains cynical towards all opposition parties. In the latest *Asahi Shimbun* survey, the CDP was supported by only 5 percent of the respondents, down from the party's peak approval rating of 17 percent. The party has local chapters in only 33 of the nation's 47 prefectures. As a result, it tries to gain influence by conducting workshops and events that could gain

²⁷⁵ Webb, 310.

popular favor. Economic issues and local politics play a large role in CDP's agenda. It also follows a more democratic approach by adopting "grassroots diplomacy", which emphasizes dialogue with the voters.²⁷⁶

The Democratic Party For the People is a centrist political party formed by the former DPJ members and the Party of Hope members in May 7, 2018. Its leader is Yuichiro Tamaki, one of the co-leaders of the DPJ. Although the two parties were united, their partnership failed to become the major opposition force.

Nippon Ishin no Kai is a right-wing, neoliberal and nationalist opposition party of Japan. Currently, it is the third largest opposition party in the Japanese Diet. It was formed by politicians who had split from the Japanese Innovation Party in October 2015, such as Hashimoto Toru and Ichiro Matsui. The party has a co-leader system, and is led by Ichiro Matsui and Toranosuke Katayama.

Analysis of Current Composition of the Diet

When a party is in majority it can ensure certain passage of legislation and can approve nominations at 122 seats – LDP currently has the majority in the Upper House with its 125 seats+25 from Komeito (see APPENDIX G for the Diet distribution).

With 162 seats that makes a two-thirds supermajority, it can initiate a referendum to change the constitution. Currently the ruling coalition does not have the supermajority in the Upper House. In one possible scenario; if the nationalist right-wing opposition, Nippon Ishin no Kai had helped the ruling coalition to pass

²⁷⁶ Editorial, "To be a viable force, CDP must show grassroots identity."

the referendum bill with its 15 seats, the referendum might have happened. However, the party currently holds an opposition agenda with its center-right/right-wing oriented political position.

In the House of Representatives, the ruling coalition holds the supermajority with 311 seats. Compared to the Upper House, the Lower House has more powers. It can bypass the Upper House to veto a bill which had been passed by the Lower House. As for bills about the budget and treaties, the Upper House can only delay the legislation. Furthermore, the prime minister has more say in the Lower House since he can dissolve it, while he has no say over the Upper House.

With one third occupation, the opposition can block any changes to the constitution at 81 seats. There are seven anti-revisionist opposition parties: DPFP, CDP, Ishin, JCP, Energize, Okinawa Whirlwind and Independents at 91. Since with 20 seats< parties can initiate budget-related private members' bills (i.e. bills not sponsored by the cabinet), this can be met by the opposition parties DPFP and CDP. Other private members' bills, which are excluding budget-related measures, can also be Initiated by parties with 10 seats. This requirement can be met in the opposition by DP, JCP and Osaka Ishin (DP and JCP also meet the 20-seat threshold in the House of Representatives). The next Upper House election will be held in July 2019.

Although the LDP is the ruling party and has the majority in the Japanese Diet, their agenda for the constitutional amendment could not have been implemented as of today. This is largely due to the reluctance of the public, who remains ambivalent on the issue of constitutional revision since the details of a possible one remains unexplained. However, the external reasons might play a more significant role than the internal ones. The next chapter will give a better view of these external reasons and the transformation of the Japanese foreign politics.

CHAPTER 6

JAPAN'S INTERNATIONAL RELATIONS AND SECURITY POLICIES

In order to understand the impact of constitutional change through the window of international politics, Japan's relations with those countries and the path Japan is taking as a response to their actions must be analyzed. Senkaku Islands crisis' showed us that there is a correlation between domestic mood and international developments. This chapter aims to answer the following question: What happened to the international order that caused the need to revise the 1947 Constitution? The chapter offers a detailed analysis of Japan's security agenda and its future plans including brief examinations of Japan's past security agreements. Here the region is analyzed through the perceptions of the regional contenders such as US, China, South Korea, Australia and North Korea. The chapter will also shed light on the transformation and adaptation of Japanese security composition, from the end of Cold War to the post-Cold War era. One of the aims of the chapter is to understand the effects of new concepts such as multipolar world, rise of China and, War on Terror.

Japan's Foreign Policy is constructed on two main pillars. One is the strategic balance between entanglement and abandonment. As mentioned by Thucydides in Peloponnesian Wars, fear of entanglement is basically the forceful binding of the small ally to the larger ally.²⁷⁷ Any part of hostility by the larger ally also affects the small ally thus the latter is interdependent on the former's decisions. As for the

²⁷⁷ Green, "The Democratic Party of Japan and the Future of the U.S.-Japan Alliance," 100.

abandonment, it is the lack of the guarantee for the alliance between the larger power and the smaller one during a crisis. For instance for the entanglement one can cite the Australian soldiers, who were deployed for the British interests during WW1, while the British neglect of Australia vis-a-vis Japan during WW2 is an example for the abandonment.

Japan-US relations

The second main pillar is the security cooperation with the US. During the post-WW2 period Japanese international politics consists of coactions between Japan's domestic politics and external Cold War politics at the Far East region. The internal politics of Japan was mostly shaped by the 1955 system, in which the conservatives were the ruling party whereas the leftists were the opposition.

From 1952 onwards, US forces served as the safeguard of Japanese territorial defense as well as nuclear deterrence. The security cooperation between them is so strong and necessary that Japan described it as a lynchpin in this 2017 Diplomatic Blue Book which was already stated by US President George W Bush ten years ago.²⁷⁸ In 2017, US has 39.000 troops stationed at Japan, generally employed at Okinawa and Honshu Islands. As of March 2006, the 87 facilities that were exclusively used by the U.S. military covered an area of 312.2 square kilometers.²⁷⁹ Exclusive areas located on the mainland are owned by the Japanese government but provided essentially to the US staff under the agreement of US-Japan Security

²⁷⁸ Bush, "President Bush Attends Veterans of Foreign Wars National Convention, Discusses War on Terror."

²⁷⁹ Yoshida, "Basics of the U.S. military presence."

Treaty. On the other hand, 1/3 of land used by the US forces in Okinawa is privately owned by the US forces which were confiscated from Japan after the War. US poses not only as an advisor but as an diplomatic moderator for the solution of crises through bilateral means. Generally, Japan and the US maintain a mutual relationship with similar agendas on the Far East region. Japan values its relations with US so much that it names it as the Alliance of Hope.²⁸⁰

As mentioned in the reports of Armitage (2000) and Nye (2007) as well as other articles, Japan is an indispensable ally of the US.²⁸¹ Both reports pointed out several ways of strengthening this alliance and the strategy for engaging with the ongoing Chinese aggression.²⁸² In addition, Kenneth Pyle indicated that the historical ties between Japan and US, as well as the reformation of the alliance is vital for Japan in response to the changing international circumstances.²⁸³ The security alliance experienced several crises: the 1960 Ampo protests (about American bases in Japan), Vietnam War protests (Japanese governments little resistance to US will), Nixon shocks(fall of Bretton Woods system and the fixed exchange rates) and the 1995 Okinawan rape incident(rape of 12 year Okinawan schoolgirl by a US soldier).

²⁸⁰ Smith, "Alliance of hope': US and Japan leaders meet for historic Pearl Harbor first."

²⁸¹ Armitage, "The United States and Japan: Advancing toward a Mature Partnership," and Armitage and. Nye, "The U.S-Japan Alliance: Getting Asia Right through 2020," cited in Green, DPJ and the Future of the Japan Alliance, 93.

²⁸² Przystup and Saunder, "Visions of Order: Japan and China in US Strategy", 1-6 cited in Moses and Iwami, 78.

²⁸³ Pyle, Japan Rising: The resurgence of Japanese Power and Purpose (New York: Public Affairs, March 2007) cited in Green, "The Democratic Party of Japan and the Future of the U.S.-Japan Alliance," 94.

Even though these incidents can be expressed as major handicaps, to end the alliance between the two countries seemed impossible. In contrast to ending the ties, it reconsolidated them. Calder pointed out that responding to a crisis can be effectively done by promoting compensations such as initiating policy coordination with the opposition.

There are also the structural factors, which cement the security alliance. Firstly, both countries regard North Korean nuclearization as a danger to their security. Secondly, United States is considered to be the best alliance partner for Japan. Lastly, since Japan is far too dependent on Chinese products and they believe that an alliance with the US could reduce this dependency, providing them with more advantages and economic freedom.²⁸⁴

With the *Treaty of Mutual Cooperation and Security in 1960* Japan gained an equal standing on its relations with the US. As a way of compensation for the return of Okinawa to Japanese administration, Japan agreed to share responsibility for the maintenance of the region by allowing the continuation of the US bases in Okinawa. In order to adjust to the regional dynamics and changing world environment, the Security Treaty was revised several times by the Japanese National Guidelines beginning in 1976.

The 1976 National Defense Program Guidelines(NDPG) mentioned the balance of power between United States and Soviet Union-China communist bloc for the first time, even though it did not mention specific countries. For example, the communist threat created by the Korean tension, which existed then as now, caused

²⁸⁴ Ibid, 94-95.

military buildups in Japan, which is still in effect as a precaution to counter a possible Korean aggression. But, the Guidelines made no straight references to the DPRK (Democratic People's Republic of Korea). 1976 Guidelines also outlined the necessity to build specially required surveillance systems to detect enemy movements more efficiently, mentioned the need for the improvement of Japan's deterrence mechanisms against small-scale aggressions, and noted that the smooth functioning of the system must continue.²⁸⁵

6.1 Analysis of all National Guidelines: The Guidelines For Japan-U.S. Defense Cooperation (November 27, 1978)

A new set of guidelines was introduced in 1978, which touched upon the integration of Japan into the regional and global military strategy of the US. They included the 1976 Guidelines for further clarifying the prominent concepts. This guideline settled the periphery of Japanese sea control at 1000 sea lines. In addition, Japan lifted the self-imposed ban of exporting arms. In order to ease the criticism of its mercantilist trade policies in 1978 as well as aiding the US for necessary materials, Japan agreed to provide "host nation support" that helped pay for the Japanese workers employed at US military bases. Japanese host nation support is composed of two funding sources: Special Measures Agreements (SMAs) and the Facilities Improvement Program (FIP). Each SMA is a bilateral agreement, generally covering a time period of five years, that obligates Japan to pay a certain amount for utility and labor costs of U.S. bases. In addition, the money is used on constructing and transferring the US

²⁸⁵ Kaseda, 28.

bases, in order to keep training exercises away from populated areas.²⁸⁶ At this time, the cost was scheduled to be generally between \$3 – 4 billion per year. It is called in Japanese as “*omoiyari yosan*” (“sympathy budget”). In 1986 its military expenditure limit of 1% was breached.²⁸⁷ As in the period between 2011-2015 the funding of FIP was settled as 200 million dollars. As the rise of China further threatened the stability of the region, Japan needed to enhance its deterrence. However, no changes were made to these guidelines until the end of the Cold War.²⁸⁸

In the 1980s relations between Japan and North Korea got strained, and as North Korean nuclear experiments continued they deteriorated even further. North Korea built its nuclear reactor in 1986 and a fuel-reprocessing facility for its nuclear program in 1988. A move towards normalization between 1989-1991 didn’t achieve any solution and US skepticism over nuclear issues grew during 1992. In the same year, Japan and United States established a summit called US-Japan Global Partnership to discuss the changing environment and the issue of DPRK nuclearization. This summit acknowledged the importance of the alliance between the two countries.²⁸⁹

Further developments took place in the beginning of the 1990s. In 1992 China claimed the Senkaku Islands as Chinese territory with its Enactment of law on Law

²⁸⁶ Japan-U.S. Relations: Issues for Congress, *Congressional Research Service Report*, (2015): 20-21.

²⁸⁷ Hook, “The Erosion of Anti-Militaristic Principles in Contemporary Japan,” 384 cited in Moses and Iwami, *From pacifism to militarization: liberal- democratic discourse and Japan’s global role*, 75.

²⁸⁸ Kaseda, 28-29.

²⁸⁹ Japan Foreign Ministry *Japan Ministry of Foreign Affairs Diplomatic Blue Book*(Relations with Japan), 1992.

of Territorial Waters, naming the islands ‘‘Diayou’’. The island issue remains unresolved till today with both Japan and China claiming them as their own territory. In May 1993 North Korea launched its first medium range ballistic missile called Nodong. It was a huge surprise for Japan as its flight perimeter covered its territories. In October 1994 US and DPRK made a treaty for establishing an Agreed Framework for nuclear disarmament, a meeting of which partly solved the nuclear issue, but it lacked the support of South Korea (ROK).²⁹⁰

Japan’s ‘‘National Defense Program Outline’’ of November 1995

After the end of Cold War, the need for a new security agreement came to light. As a result, the 1995 Guidelines were drafted bringing different policies into the agenda.

In this guideline, Japan emphasized its participation in international missions. It also stated the concern for North Korean ballistic missile tests:

In the surrounding regions of Japan, the end of the Cold War and the collapse of the Soviet Union have brought about a reduction of the military force level and changes in the military posture in Far East Russia. At the same time, there still remain large-scale military capabilities including nuclear arsenals and many countries in the region are expanding or modernizing their military capabilities mainly against the background of their economic development. There remain uncertainty and unpredictability, such as continued tensions on the Korean Peninsula, and a stable security environment has not been fully established. Under these circumstances, the possibility of a situation in this region, which could seriously affect the security of Japan, cannot be excluded. At the same time, various activities are being pursued to deepen cooperative relations among nations and to achieve regional stability, such as promotion of bilateral dialogues and search for a regional security framework.²⁹¹

²⁹⁰ Kaseda, 30.

²⁹¹ National defense Program Outline in and after FY 1996 (NDPO FY 1996) (Official translation presented in Defense of Japan 2000), III: Security of Japan and roles of Defense Capabilities, (3) Contribution to Creation of a More Stable Security Environment

Additional agreements were linked up to the 1995 Guidelines, stressing the need for Japan's contribution to US defense strategies. In 1996, the Acquisition and Cross-Servicing Agreement(ACSA) between Japan and US achieved this, allowing Japan to send military supplies to help US troops.²⁹² In addition, the *Joint Declaration on Security* between the two countries from the same year reaffirmed the importance of alliance between them. Not only did it outline the bilateral agreements between the two countries but it also mentioned Japan's global role: "The Prime Minister and the President agreed that the two governments will strengthen their cooperation in support of the United Nations and other international organizations through activities such as peacekeeping and humanitarian relief operations."

Originally the issue of Japan's commitment to international operations had begun much earlier, during the beginning of the 1990s.²⁹³ The biggest debater of this issue was Ichiro Ozawa, who was the former leader of DPJ (later joined to the Liberal Party). According to Ozawa, SDF could have been deployed overseas during the Gulf War for the protection of collective security without a constitutional revision.²⁹⁴

Since collective security is the exercise of force only if it is sanctioned by the UN for the purpose of collective retaliation against an aggression under the Article

²⁹² Embassy of United States. *Acquisition and Cross Servicing Agreement (ACSA) (English)*. Tokyo: Embassy of United States Tokyo Japan, April 15, 1996. Website: <https://japan2.usembassy.gov/pdfs/wwwf-mdao-acsa1996.pdf>

²⁹³ Lancaster, "Japan's Political Profile Should Rise, Cheney Says: Tokyo "can do more" Around the World."

²⁹⁴ Yoshitaka, *Umi o Wataru Jieitai*, 13-17.

43 of UN Charter, under Ozawa's vision, Japan could participate in any activity, which was sanctioned by UN without violating Article 9. On the other hand, this concept should not be confused with collective self-defense, which is the inherent right of protection under the Article 51 of UN Charter, but was rejected by Yoshida Shigeru's government in 1950.²⁹⁵

SDF's human contribution began with their minesweeping mission in 1991 at the end of the Gulf War. In 1992 International Peace Cooperation Law was passed which enables SDF's dispatch on non-combat areas under the peacekeeping operations. Until the beginning of the 1990s, the 1954 law that established SDF but banned its dispatch to abroad had disabled the sendoff of SDF troops to overseas. The 1954 SDF law was accepted with 59% agreement.²⁹⁶ Although at the early stages of Cold War, Japanese policymakers have thought that collective self-defense could set Japan on an equal footing with the US, they did not promulgate it due to the fear of entanglement in US's overseas military operations.²⁹⁷ With the reforming of the international world order, Japanese administration tried to adapt to the changing circumstances. At first, public opinion was skeptical about such changes but as time passed SDF's new role as peacekeeping forces got accepted. Likewise, in 1993, for the first-time constitutional revision received the majority support of the public

²⁹⁵ Shinoda, "Taigai Seisaku no Akuta Toshite no ozawa Ichiro," in Hashimoto, ed., *Nihon Gaiko Seisaku Kettei Yoin*, 41.

²⁹⁶ House of Councilors, *Jieitai no kaigai shutsudō kinshi ketsugi* (Resolution on Ban of Dispatch of SDF to Abroad) (June 2, 1954).

²⁹⁷ Hughes, *Why Japan Could Revise Its Constitution and What It Would Mean for Japanese Security Policy*, 728.

(50.4%).²⁹⁸ The revision was not necessarily for the Article 9 but for Japan's insufficient international contribution. It is observed from the yearly opinion polls of *Yomiuri Shimbun* which was conducted between the periods of 1990-1993 that, people started to grasp the constitutionality of the SDF. It was found out that the opposition to SDF's dispatch had dropped from 51% to 30%. On the political terms, Japan was seeking new heights inside the global arena and wanted to be respected. In order to do that, Japanese administration believed Japan must fulfill its international obligations by supporting UN peacekeeping operations. Throughout the 1990s international interest in the SDF increased significantly: Cambodia requested Japanese troop support under the United Nations Peace Keeping Operations, while SDF was also used in Mozambique, Rwanda, Honduras and Golan Heights. Logistical support included roles like constructing roads and establishing medical clinics.²⁹⁹

Despite the limitations, SDF's overseas dispatch starting with 1991 minesweeping mission at Persian Gulf, can be considered as a major breakthrough for the Japanese international role and its security. It gave a symbolic meaning to the SDF. However, the inherent right of self-defense was not applied to SDF. It indicated the diplomatic creativity of Japan in which new methods could be adopted for contributing to the international order. It showed Japan's will to participate in multilateral organizations for a worthy cause such as peacekeeping. Once again, the

²⁹⁸ Hokan, 'Kempo to sedai ishiki,' *This is Yomiuri*, 147 cited in Hook and McCormack, *Japan's Contested Constitution*, 32.

²⁹⁹ Hook and McCormack, *Japan's Contested Constitution*, 32.

constitution was subjected to flexible interpretations as a mean for pragmatic adaptations.

Meanwhile, in 1994 Japanese politics was experiencing a different election method with the implementation of a new electoral system. Proportional representation favored LDP the most, increasing its seats from 28 to 239 at the lower house elections. SDP however, suffered a great loss with the increase of its seats from 15 to a very tiny 30 seat. This affected the foreign decisions of Japan, as the Japanese left got drastically weakened, it had triggered the acceleration of military buildups and LDP once again facilitated its main pursuits in its strategy making.³⁰⁰

The Guidelines For Japan-U.S. Defense Cooperation (September 23, 1997)

The 1997 Guidelines were the revised version of the 1978 Guidelines. Surely, much has changed since 1978. Cold War was over and China was bolstering its pressure on Taiwan. In the 1997 version, China was mentioned as a concern after the Taiwan Strait crisis which was associated with China's One China Policy and its claim of Taiwan leads to tension between the two countries. Chinese military practices near the Taiwan Straits caused deterioration of relations between Japan and China, which were strained even further by Japan's refusal to present its written apology to Chinese President Jiang Zemin in 1999, due to past military aggression.³⁰¹ In response to severed relations and Taiwan crisis, Japan initiated the *Law on the Situations in Areas Surrounding Japan* (SIASJ law). Enacted in May 1999, this law revised all previous laws that stated Japan's contribution to US defense operations

³⁰⁰ Kaseda, 32.

³⁰¹ Parry, "China angry at 'apology' from Japan."

such as SDF law, ACSA, and the Ship Inspection Operations Law. Up to that point, the US-Japan cooperation had been mainly assumed for emergency situations and was geographically limited. By revising the SIASJ Law, Japan continued to provide the rear support that US had requested. In addition, Japan emphasized its contribution efforts by clarifying and explaining the range of its non-combat operations. As a response to each regional tension, Japan tried to adapt its agenda by revising and reforming past security treaties as primary countermeasures. Meanwhile, the constitution provided the necessary barrier against a US military entanglement.³⁰²

North Korean threat

The biggest factor that catalyzed Japan's security readjustments is the North Korean threat. In 1990s, the tensions kept rising with the 1998 North Korean missile test (Taepodong-1), which once again threatened the stability of the region. The missile fell into Alaska and demonstrated the range of these rockets. Additionally, there were the MSDF (Maritime Self Defense Forces) reports that mysterious ships were passing through Japanese waters (2017-2018 ghost ships) and reports of abduction of Japanese schoolgirls (Yokota Megumi in 1997) by the North Korean agents.³⁰³ These events pushed Japanese public opinion to sympathize with further SDF armaments. Likewise, the media's anti-Korean campaign accelerated.³⁰⁴

³⁰² Kaseda, 31-33.

³⁰³ "What's behind the N Korean 'ghost ships' washing up in Japan?"

³⁰⁴ Kyodo, "Public opinion, conservative media alter policy on North Korea."

As a response to the North Korean missile threat, various Japanese task members from security institutions suggested several concepts that were highly unspoken until that time. The chief of Japan Defense Agency (JDA), Norota Hosei claimed that Japan should initiate a preemptive attack if the North Korean threat goes out of control.³⁰⁵ It was a surprise that his claim did not create a public uproar. The same cannot be said for Nishimura Shingo. He was the parliamentary vice minister of JDA and he carried this argument further by claiming that Japan should arm itself with nuclear weapons.³⁰⁶ Later he was forced to resign. This event demonstrated that several officials inside JDA did not even consider putting nuclear weapons under the category of war potential.³⁰⁷

The North Korean fear led to the emergence of new security interpretations. As a response to Korean 1998 missile as well as China's high-tech missiles, a joint ballistic missile research project for increasing Japan's defensive capabilities (*senshu boei*) was put into the security agenda. In addition, plans for introducing new satellites for information gathering purposes were added (the 1969 act that banned military use of satellites was ignored).³⁰⁸ Japan tried to be open to any opportunity that benefited further partnerships. This reached to another level, during 2000s, with Japan's bilateral partnerships with India and Australia over security cooperation.

³⁰⁵ Statement by JDA Director General Hosei Norota at Hearing before the National Security Committee in the House of Representatives, 145th Diet (1999), 3 March 1999.

³⁰⁶ The Japan Times, "Nishimura quits over nuclear arms remarks."

³⁰⁷ Hook and McCormack, *Japan's Contested Constitution*, 33.

³⁰⁸ Yoshinori Kaseda, 33.

The relations of the US alliance with North Korea had always ebbed and flowed. During the mid 1980s tensions rose between all the countries as a result of the DPRK nuclear programs, but this had cooled down as a result of the Agreed Framework agreement in 1994. At the end of the 20th century, attempts of normalization returned, this time initiated by South Korea's Kim Dae-Jung administration. His policy, called the Sunshine Policy, eased the nervousness between the countries a bit, and a new summit temporarily improved the relations between Japan and DPRK. The first summit with the North Korean leader Kim Jong Il took place in 2000 during the Koizumi administration of Japan. The period of diplomatic normalization continued until 2002, when it was found out that North Korea had continued its uranium enrichment program, which was a serious blow to the Agreed Framework. Once the framework collapsed in 2002, normalization process also ended.³⁰⁹

DPRK's hard line program in its foreign policies, resulted in the US adopting a similar approach. The reconsolidation of security relations between US and Japan continued at a faster pace. In 2003 the US Proliferation Security Initiative, which was mainly a measure against the trafficking of weapons of mass destruction, was welcomed by Japan with the participation of the Japanese in these meetings. Furthermore, Japan started its construction of a BMD by purchasing SM-3 (surface to air missiles) and PAC-3 (ground to air missiles).³¹⁰ Two more Laws on Measures were passed in 2003 and 2004 against military attacks and for assisting the operations of US forces. But George Bush's hard line approach affected Japan's relations with China

³⁰⁹ Ibid, 32-34.

³¹⁰ Reuters, 'Japan Shoots Down Dummy Ballistic Missile in Test.'

and Russia. Relations with Moscow suffered due to US-Japan joint efforts for constructing a BMD system. As for Beijing they felt threatened due to US-Japan treaties against their foreign programs. Koizumi's yearly visits to Yasukuni shrine (place of commemoration of dead Japanese military personnel and primary war criminals) also sparked the memories of past aggressions, which pushed China to enhance its ties with Russia.³¹¹ China also tried to construct a gas field, which Japan claims, was too close to the exclusive economic zone, spreading into the Japan's section. Meanwhile Chinese submarines passed near Japanese waters without surfacing in 2004, which meant that the MSDF had to stay in an alert mode.³¹²

Although the Cold War was over, new demands kept coming from American administration for the expansions of collective security. As years passed with each new interpretation intended for military buildups, it became much more difficult to adhere to the pacifism and military consolidation of Article 9. As one of the LDP policymakers, Masazumi Gotoda once said, the constitution had been stretched like an elastic band that almost reaching a breaking point.³¹³ Professor Ken Motoyama added that deviating further from an already distorted interpretation would risk a double distortion.³¹⁴ Likewise, several American officials have stated their opinion about Article 9, disfavoring its existence. In 1953, when he was the vice president, Richard

³¹¹ Nakata and Ito, "Defiant Koizumi visits Yasukuni."

³¹² Shimoyachi, "Chinese submarine intrusion considered an act of provocation."

³¹³ *Asahi Shimbun Yukan*, 17 cited in Hughes, *Why Japan Could Revise Its Constitution and What It Would Mean for Japanese Security Policy*, 735.

³¹⁴ Motoyama, "The Significance of the Provisions for the Renunciation of War and Abolition of Military Forces in the Japanese Constitution), 285-298.

Nixon had argued that Article 9 was a mistake (at that time Americans were pressuring Yoshida to create some force against the communist threat). Additionally, the Armitage Report of 2000 which was prepared by Former US Deputy Secretary of State Richard Armitage, regards the collective self-defense prohibition, which was stipulated by Japan as a constraint on cooperation. In the report it is written that:

Japan's prohibition against collective self-defense is a constraint on alliance cooperation. Lifting this prohibition would allow for closer and more efficient security cooperation...

... Full participation in peacekeeping and humanitarian relief missions. Japan would need to remove its 1992 self-imposed restraints on these activities so as not to burden other peacekeeping nations.³¹⁵

It is stated that Japan must be ready and compensate itself in order to be considered an US ally. Japan needed to partially exercise in collective self-defense ability. These dissatisfactions of Japanese elitists and the US politicians and experts were some of the main reasons of constitutional revision. Shafiqul Islam treats this case as ironic by stating that the country-the United States-that helped Japan embrace pacifism after World War 2 is the one that may turn out to be responsible for pushing Japan to break out of it half a century later.³¹⁶

³¹⁵ Armitage, "The United States and Japan: Advancing toward a Mature Partnership," 3-4.

³¹⁶ Islam, Foreign Aid and Burden sharing: Is Japan Free Riding to a Coprosperity Sphere in Pacific Asia?, 330.

War on Terror

Up until 2001, the check book diplomacy and rear supporting activities were the main two channels through which Japan could deploy its forces overseas and the National Guidelines had provided a satisfactory substructure for Japan's Security agenda. However, at this point, a new concept entered the Security list, which was terrorism. Like most states, Japan took necessary measures and precautions to prevent terrorism in its own territory. Additionally, since 9/11 remained a threat to international peace, Japan continued to participate under the UN peacekeeping forces and assisted US forces to combat activities connected with terrorism. But simply participating under peacekeeping operations became insufficient after 9/11 and the right of collective self-defense was no longer sufficient for Japan's protection. To justify a proactive defense policy Japan used the Preamble part of its constitution, which was written as:

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

The Preamble gave the Japanese an obligation to work for the international society and to preserve peace. With this claim, Japan emphasized its duty to maintain international peace while stating that its past missions had consisted more than just giving support to US forces. A precedent for this Preamble method had been used for the Iraqi Reconstruction Law. It legitimized Japan's approach to international missions and a de facto act could then be passed to enable the dispatching of the SDF.

Thus the de facto ‘‘Special Measures Acts’’ were passed, which were often used to submit legislative actions. These acts are temporary legislative laws, or measures that were taken as a response to situational matters. These actions cannot be regarded as bilateral treaties as they are constructed on a case by case basis. First one was passed in 2001 by the Koizumi administration, right after 9/11 named as *Act on Special Measures Against Terrorism* (Anti-terrorism Act) to be able to support the US forces. This act consisted of sending SDF to the Indian Sea for rear support under the unit of multinational forces mainly composed of US units. Prior to regional developments, America demanded the rear support assistance of the Japanese to help improve their logistics.

The 1999 Emergency at Periphery Act had enabled the SDF’s dispatch to Indian Sea and the Middle East as rear support forces, which had until then been considered as outside periphery. Rear support missions were mostly about the protection of army materials and providing a fueling station for US ships. During the Iraq War the 2003 *Iraq Assistance Special Measures Act* enabled the sending of SDF to non-combat areas in Iraq. In return, Japan would get the support of the US as a response to regional contingencies around the Korean peninsula.³¹⁷ There, SDF conducted humanitarian support as well as rear support, medical support, protection of supplies, transportation of soldiers and weapons. Its mission ended in 2008. SDF’s dispatch to Iraq raised questions about the role of the SDF in Iraq. In 2008, the Nagoya Court of Appeal claimed that Article 9 was breached.³¹⁸ However, since it was a special measures act, it did not have much of an impact. This decision is only

³¹⁷ *Yomiuri Shimbun*, evening edition, 1.

³¹⁸ Martin, ‘‘Rule of law comes under fire.’’

binding in Nagoya. In any case, Japan had not engaged in any military conflicts and had conducted its international duty as a global contender.

Armed Situations Act of 2003 opened the way of making preparations against a terrorist attack and a possible aggression of DPRK. This act improved the power of the PM and with the addition of swift response mechanisms, it gave the PM the right to initiate mobilization of forces. This act got an addition in 2004 with *Civil Protection Act*, which stated the conditions of an act of protection of the people during armed attack situations.³¹⁹

In order to improve the legitimization of the SDF, *Special Defense Forces Act* was passed in 2007. This act stated the role of SDF as a contributor of peace and confirmed its peace keeping activities as permanent. This act also reflected the opinion of the people concerning the SDF and the constitution. Unions such as *Article 9 Association* (9 jo nokai) believe that the SDF should only defend the country and it should be sent to overseas if it is for UN peacekeeping operations with disabled weapons.³²⁰ Pacifists' motto is "Never to kill, never to be killed". Thinkers like Jeremy Moses and Tadashi Iwami claim that Article 9 serves as a great mitigator for political and military tensions and that Japan must continue to embrace it.³²¹ On the other hand, revisionists claim that the effectiveness of these non-combat peacekeeping missions were limited. Revisionists stress the points, which were stated

³¹⁹ Motoyama, "The Significance of the Provisions for the Renunciation of War and Abolition of Military Forces in the Japanese Constitution, 293.

³²⁰ Oe, "An Appeal from the Article Nine Association."

³²¹ Moses and Iwami, From pacifism to militarization: liberal- democratic discourse and Japan's global role, 71.

in the Armitage Report. Although the missions were successful and necessary they had constraints around them. They were too dependent on UN legitimizations and the cumbersome operational restrictions that were stipulated for the SDF made it inefficient and hesitant during serious conflicts. The response of the SDF missions to regional contingencies also ended up being insufficient (North Korean incidents). All in all, Japan needed more freedom in their missions in order to be able to counter outside threats more efficiently.

National Defense Program Guidelines (Dec. 10, 2004)

As a response to the rising regional threats and strained relations with China and DPRK, 2004 Guidelines were adopted. It illustrated Japan's upgraded security concerns and defined ways to counter such issues. At the same time the 2004 Guidelines, increased the scope of Japanese defensive systems. These were created because of the decision to introduce Ballistic Missile Defense (BMD) systems into Japanese missile defense inventory. In addition, they finally lifted the ban on exporting several types of arms. As a result, any BMD-related or high-tech weaponry could be exported to the US. The main intention was to provide protection against nuclear weapons by increasing the self-defensive capabilities. North Korea, which rose as a major threat to Japan's security, was highlighted in the Guidelines. This was because of the 2002 North Korean uranium enrichment programs, which had led to the collapse of the Agreed Framework between US and North Korea in 1994. For the second time China was mentioned as a concern in the 2004 Guidelines, due to the issues of the 1995 Taiwan Straits, China's naval expansions and improved missile capabilities. This meant that Japan was regarding China as a regional actor, which endangers the stability of the whole region. For a couple of years, Chinese ships had

been violating the Japanese sea lanes. The 2004 Guidelines, therefore mentioned all the possible threats for Japan, first stating them and then relaying the necessity to adopt every possible precaution against them. The cited acts are; Korean missile tests, invasion of Japan's offshore islands, guerilla forces, interfering ships, and submerged submarines. The 2004 Guidelines once more emphasized the indispensability of the US alliance and described the region as unpredictable.³²²

After the 2004 Guidelines, the North Korean missile tests continued. The Alliance responded with sanctions. In 2006 the name of the Japanese Defense Agency was changed to Defense Ministry.³²³ In 2007, a period of softening ties and denuclearization occurred between the US and DPRK. US and DPRK agreed to soften the sanctions and pause the nuclear programs.³²⁴ However, separate from the US decisions, Japan continued its hardline approach and deployed its PAC-3 missiles (Patriot). Its BMD research actually developed and Japan started to conduct SM-3 missile tests starting from December 2007 till October 2010. The Japanese distrust to DPRK denuclearization continued and the process for adopting a more sophisticated missile system was accelerated. Indeed, DPRK's denuclearization process stopped as it refused further inspections and requests from the US.³²⁵

³²² National Defense Program Guidelines, FY 2005- (NDPG FY2005), "Section III. Basic Principles of Japan's Security Policy, 3. Japan-US Security Arrangements".

³²³ Ministry of Defense. *The Defense Agency's Transition to the Ministry of Defense*. Tokyo: Japanese Ministry of Defense, 2006. Web link: <http://www.mod.go.jp/e/jdf/no04/special.html>

³²⁴ "Foreign Ministry's Spokesman on DPRK's Decision to Suspend Activities to Disable Nuclear Facilities," *KCNA*, 27 August 2008.

³²⁵ Kaseda, 37.

In conclusion, Japan adjusted itself to the regional advancements through the adoptions of national guidelines in which it stated various subjects and political issues. Bit by bit Japan in a way gained its sovereignty in terms of military buildups and attributing the SDF new roles like disaster relief and peacekeeping. It should be noted that Japanese security cannot be considered sufficient only by itself.

In order to discuss recent regional developments, US and Japan established the Security Consultative Committee, for which the foreign ministers of both sides came together in annual meetings. Starting with the February 2005 meeting, the committee served as an opinion sharing hub between the two countries. Through consultation meetings, a consensus was reached by both sides about the regional issues. The Japanese response, whether it would be a hard line approach or a peaceful one, was to be decided in these meetings. In 2007, Australia and India also joined this partnership.³²⁶

At this time, the balance of power inside the Diet was changing, as the Democratic Party of Japan was gaining influence. DPJ won the 2007 upper house elections and unlike LDP, had a different foreign policy agenda. DPJ criticized Japan's support in Iraq War, SDF's activities at Indian Ocean and high US military maintenance costs. It made a coalition with Social Democratic Party (SDP) and People's New Party claiming that it would end the refueling activities of SDF and reduce the US presence in Okinawa. However, the politics of the region proved otherwise and showed that moving away from the US influence was too difficult to achieve. In order to understand this situation better, we must analyze the 2009 DPJ

³²⁶ Kaseda, 39.

cabinet, led by Hatoyama Yukio (grandson of Hatoyama Ichiro, founder of the Democratic Party).

As stated above, some of the elections during the recent years showed us the important fact that some of the Japanese people are sympathetic towards a structural change. One of the examples of such elections is the Hatoyama Yukio's cabinet election victory during 2009 elections. His victory took place at a period when several questions about the US-Japan alliance and its foreign security were on the public agenda. The future of the issue about relocation of *Marine Corps Air Station* (MCAS) Futenma as well as other bases which are situated at Okinawa region raised several concerns about Japan's commitment to US forces.

Although, both sides benefit from this alignment, the issue of Okinawa remains a problem mainly for the residents of Okinawa. The unsolved case of Futenma as well as environmental degradation and noise complaints bolster opposition at the Okinawa prefecture, causing unrest among the Okinawans for the US bases which claim the majority of the land of Okinawa (70%).³²⁷ Futenma case was basically the moving of the MCAS base located at Ginowan, to a densely populated area at Henoko. However, Okinawans rejected such a construction. At one point, Hirokazu Nakaima, who was the elected governor of Okinawa in 2006, stopped resisting to the transportation of the Futenma base. He gave consent to the landfill of an area that was located at the Bay of Henoko. The landfilling gained the support of the central government. At the cost of 2 landing strips, the central government aided funds for the Okinawan executive. Although the anti-American

³²⁷ Base-released Data, Okinawa Prefectural Government, 2016. Retrieved from: <http://dc-office.org/basedata>

Susumu Inamine (mayor) and Takeshi Onaga (who replaced Nakaima) became victorious in November 2014 elections, the same fate befell them in the 2018 elections when the LDP backed Taketoyo Toguchi won the governor elections. Currently, Okinawa is preparing to gather resources and adjusting the situation at the Henoko coastal area. The fate of the relocation of the Futenma base is affiliated to the will of the people. It is one of the few issues that make US-Japan relations imperfect.³²⁸

The US expects Japan to rebuild the mutual confidence between them, as the new cabinet was attempting to move closer to China to avoid US entanglement.³²⁹ This attempt of Japan to reconsolidate its ties with China was not welcomed by the US. In addition, the fiscal situation of Japan at that time pushed the DPJ party to try to solve the economic situation. Japan was in a confused state both at domestic and foreign arenas. This short-term weakening of ties between the US and Japan also occurred during the Trump administration in 2018. Apparently, the Japanese feel that, a US strategic negligence could affect Japanese interests, as Japan would have no choice but to search for alternative partners.³³⁰ Before continuing with the Guidelines, observing the 2009-2010 DPJ Cabinet could give us a better understanding on entanglement vs abandonment dilemma.

³²⁸ Johnston, "Fate of U.S. base remains unresolved after Okinawa assembly elections."

³²⁹ Green, *The Democratic Party of Japan and the Future of the U.S.-Japan Alliance*, 92.

³³⁰ Lundström, "US neglect and Russian respect in Japan."

6.2 The emergence of the Hatoyama administration, Japan seeking autonomy?

At the time, Japanese economy was in a static position, with very small growth. As one of the main reasons of Hatoyama's victory in the 2009 elections, new compensations were declared through which the economic situation was to be solved with reduced spending and an increased consumption tax. Even though economy affected the public opinion towards DPJ there were other reasons for the defeat of the LDP.

The first LDP inaccuracy was the traditional mistake of adhering to the outdated bipolar past structure of the world. Although, much had changed after the Cold War as the economic miracle days had ended, the bipolar world mentality was kept by the LDP. Japan suffered a lot during the 1989 stock market crash and instead of restructuring the old economic system it just adopted Keynesian style supportive additions, which were not enough.³³¹

Secondly, internal corruption became a huge problem for both the Japanese economy and politics as several politicians manipulated the election votes with irregular fundraising tactics. One of them was Tanaka Kakuei, who drew his votes from third party organizations. The 1985 Plaza Accord led to huge cash flows, due to the increasing of the value of the Yen.³³² The deceptions of Tanaka Kakuei led to a public disappointment for the LDP party. Koizumi tried to dismantle the Tanaka faction and fought against the anti-reformers inside the party. He also had the

³³¹ Green, "The Democratic Party of Japan and the Future of the U.S.-Japan Alliance," 97.

³³² Green, "The Democratic Party of Japan and the Future of the U.S.-Japan Alliance," 97.

privatization of postal saving system in his agenda. On the other hand, one of Hatoyama's election promises was to remove the privatization of postal system.³³³

Lastly as mentioned before, public opinion favored a structural change and adapting to new environment (it included both government and work sectors). *Seiken koutai* (power change) was the battle cry of the DPJ party, which was for the change of the old and outdated style of administration. Hatoyama tried to earn votes on the one side by attacking Koizumi's privatization policies and on the other by pledging to decrease unemployment and controlling the problematic bureaucratic structure.³³⁴

Moving towards China?

As mentioned at the beginning of the chapter, finding a balance between entanglement and abandonment is a necessary theme for the Japanese foreign policy. The reason that pushed the Hatoyama cabinet to make the decision of consolidating ties with China was this fear of entanglement which is one of the main components as well as concerns of the Japanese foreign policy.

Since the beginning of 2000s, in order to weigh out the US-Japan alliance, China moved closer to Russia and asserted a more serious foreign policy to secure its interests. In 2005, mass anti-Japan demonstrations occurred in China. In 2006, Japanese Abe administration avoided visiting Yasukuni shrine, because of the close economic interdependence between the two countries, since business ties are deeply affected by the foreign policy of the states. In 2007 January, China launched its ballistic missile on a satellite. As a response, in the same year, Japan stationed 20 F-

³³³ Ibid.

³³⁴ Fackler, "Fresh Off Victory, Japanese Party Flexes Muscle."

15 fighter jets at Okinawa. In 2008, reconciliation occurred regarding the issue of a gas field which was near the demarcation line.³³⁵ In 2010, relations suffered as Chinese fishing vessels passed near Senkaku Islands, which was claimed by both sides. MSA arrested the crew of one ship and a period of de facto sanctioning occurred. Japan, later released the captain of that ship, since it was deeply dependent on those rare materials.³³⁶

It remains uncertain whether the identity of Japan fits better within the Asian or Western world since it shifts back and forth between the two. Hatoyama Ichiro first tried to clarify this issue in 1950s but he couldn't achieve a definite result. There was also the Fukuda doctrine, which aimed to form ties with other Asian countries and to establish an East-Asian community. The idea of constructing an East-Asian community first appeared at 1993 ASEAN+3 summit. Later efforts continued with Koizumi's IDEA (Initiative for Development of East Asia). The plan was to create an ASEAN+3 with inclusions of Australia and New Zealand. DPJ adopted both Fukuda doctrine and IDEA and included them in its party manifesto (2005). The construction of relations with Asian countries could also provide benefits to the Japanese financial sectors as exports are dependent on governmental ties. Up to that point Japan, with the help of US, was number one destination for foreign direct investments.

According to the *Center for Strategic and International Studies* survey of 2009, 80% of the Japanese people support an establishment of East Asian

³³⁵ Fackler, "China and Japan in "Deal Over Contested Gas Fields."

³³⁶ Kaseda, 38.

Community.³³⁷ 51% seems skeptical to China's inclusion as they claim it could be a threat to regional peace while 91% favors the inclusion of the US in this community. Similar results were achieved during the 2009 Lower House election as 71.9% rejected an alliance with China and 76% thought the US-Japan alliance useful.³³⁸

Year by year Japan's security dependence on the US was increasing. According to Patrick Boyd, Hatoyama Yukio was a traditionalist and remained less ambitious than the new revisionists. The clashes of entrapment versus abandonment rose to the surface once again with Hatoyama being the one who favored the neutral side. His main aim was to make US dependent on Japan, in some way. This could be achieved by constructing a more equal alliance between the two countries. At the time of these debates Japan was still performing its duty at the Indian Ocean. MSDF was dispatched there for refueling the coalition ships. Some critics named Japan as US's gas station and demanded that Japan should withdraw from this agreement. There were also several clauses which were about forming a commission to investigate the past secret nuclear agreements by Japan and US. Japan also stated that they would revise SOFA (Status of Forces Agreement) which determined the fate of the US forces stationed in Japan. Lastly the 2005 bilateral base agreement was to be renegotiated. This included the famous Futenma base. US responded to these clauses with their own. They claimed that Pakistan's navy was the one in need of Japanese fuel. US also expressed its displeasure about the reintroduction of the checkbook

³³⁷ Gill, Green, Tsuji, and Watts. *Strategic Views on Asian Regionalism*, cited in Green DPJ and the Future of Japan-U.S. Alliance, 102.

³³⁸ "Kenpo kaisei 'sansei 51.6%, futatabi tasu shimeru. Yomiuri yoron chosa." *Yomiuri Shimbun*. April 3, 2009 cited in Michael Green, DPJ and the Future of Japan-U.S. Alliance, 102.

diplomacy. The investigation of the past secret nuclear deals did not have any important results since the tactical nuclear weapons had already been removed from Japan in 1991. In addition, trying to revise SOFA could have caused serious trouble for both sides. Michael Green describes it as opening Pandora's box as it could have affected all American forces stationed in various countries.³³⁹

Futenma problem

The Futenma Case of 2009 showed us how difficult it was for Japan to abandon its security alliance with the United States. Having been negotiated for 15 years, the 2009 case wasn't successful both due to bad timing and handling of the issue. The case was about the removal the Futenma Air Corps Station from Okinawa to another location called Guam. The prepared plan of the Foreign Minister Okada Katsuya was approved by the governor of Okinawa. However, fear struck Hatoyama as several minority parties in its coalition disapproved the Okinawa Clan, such as the SDP and People's New Party (PNP). The breakup of the coalition could result in a loss of majority at the Upper House. As time passed Hatoyama couldn't find an alternative to the Futenma problem. Instead of offering a better solution, the party simply continued the existing system that it had inherited from the previous cabinets. The Futenma problem had damaged the Hatoyama administration and severed the ties between US and Japan for a small period. If construction had started before the Hatoyama administration, DPJ would not have asked for a revision. Also, if the case was started way later than the DPJ victory (1 more year to accommodate the

³³⁹ Green, "The Democratic Party of Japan and the Future of the U.S.-Japan Alliance," 104.

situation) DPJ could have more time to successfully negotiate it. However, Obama gave so little time to Hatoyama for the adjustments that he hoped to achieve that Futenma problem failed, ending up with no gains for either side. At the same time PNA and North Korean activities continued with increasing tensions. The sinking of the South Korean ship *Cheonan* on March 2010 by a torpedo attack, pushed the neutral administration to give up its independent alliance policy.

Despite the Futenma problem, in the long run the security network between Japan and US continued with increased joint activities and dispatches proceeding without interruptions. This time MSDF was tasked to protect the trade ships from pirates at the East African region. These dispatches included several rules of engagement which were not stated in an agreement before. For the first time the use of force was mentioned against a pirate attack (this was actually the right of collective self-defense).³⁴⁰

As a response to the ongoing missions in the Indian Ocean as well as other counterpiracy issues around the globe, DPJ administration realized that abandoning all of these missions and security rearmaments would not improve the defense capabilities of Japan at all. Withdrawing from the Indian Ocean as well as revising and eluding the defense plans of the Americans would not reach any fruitful outcome. The security policies shifted from the left to the center. In fact, the DPJ security plan was not so different then the LDP's plan at all. As stated by Saro Shigetaka at the Council of Security and Defense Capabilities panel, the continuation of the LDP's defense planning was vital for the Japanese security interests.³⁴¹ It is

³⁴⁰ Dickinson, "Will Japan ditch pacifism to fight pirates?"

³⁴¹ Shigetaka, "Aratana jidai no anzen hoshou to boueiryoku ni kansuru kondankai."

indeed the basic truth of Japanese security as well its foreign policy. US-Japan alliance remained and will always remain as the pillar of Japanese foreign policy.

New trends were sought by the Hatoyama administration. In order to gain the leftist support, the party maintained its nuclear proliferation at the same time expecting better deterrence mechanisms (ballistic missiles). In a desperate situation ideology does not always guarantee an ideal solution. In the past, pacifists had to make vital decisions as well. For instance, in 1995 Murayama Tomiichi had tried to express a symbolic apology for Japan's previous war crimes.³⁴² At the same time, as a response to the Taiwan Straits crisis Murayama approved the preparations of a revision of the Guidelines. This was later pursued by the Hashimoto administration of 1996 as well. The main important outcome of foreign policy decisions is that initiating security practices and consolidating ties with one side tend to deeply affect the coalition politics and can spawn external threats. The policy that was mostly followed by centrist politicians was to consolidate the bases of Japan to reduce the US footprint while at the same time providing an effective defense policy. If the equipment of a base is really strong, the number of personnel of that base becomes less important. For example, a removal of 8000 US marines from Okinawa may be affected because of this fact, since a powerful base could provide the necessary deterrence.³⁴³

³⁴² Tomiichi. "On the occasion of the 50th anniversary of the war's end."

³⁴³ Green, "The Democratic Party of Japan and the Future of the U.S.-Japan Alliance, 109.

National Defense Program Guidelines (Dec. 17, 2010)

The presence of the US forces acts as a deterrent against regional contingencies.

Japan has a dire need of more dynamic and high agility defense forces. In order to achieve this, Japan preserves the current American forces as well as station its SDF on several off-shore islands within its territory. The 2010 Guidelines was a response to all these territorial disputes and balance of power shifts. For the first time, full attention was given to the Chinese threat, as their military stance was a great security concern for Japan. It was pointed out that as a response to possible Chinese missiles, a multi-layered defense posture had to be initiated.³⁴⁴ 2010 Guidelines also stated Japan's cooperation efforts with other countries and its benefits. Indeed, the outdated bilateral approach between the US and Japan needed to be replaced by multilateralism. Under the US alliance there were several other actors such as Australia, India, and South Korea.

In 2013, Japan launched its first National Security Council, which aimed for a more dynamic defense force with extra weaponry and deterrence abilities with missiles. As mentioned above, this policy that the PM Shinzo Abe introduced, promotes collective security possibilities of Japan with the utilization of more useful tactics. For example, at the moment if an American ship gets attacked outside Japanese waters but in the Pacific Ocean, Japan cannot send any military aid. In order to make Japan more able, most US military men like Admiral Keating (2008) believed that Japan should be encouraged and supported in its attempts of discussing

³⁴⁴ "Basic Principles of Japan's Society", National Defense Program Guidelines for FY 2011 and beyond (NDPG FY 2011) Retrieved from: www.mofa.go.jp/policy/security/pdfs/h23_ndpg_en.pdf

the Article 9 once more.³⁴⁵ Just like Admiral Keating, Armitage also suggested that Japan should be encouraged to change its constitution.³⁴⁶ They believed that Japan should become an ally of the US like United Kingdom which would create a sustainable military force but at the same time stay under the umbrella of US alliance.

Military partnerships with other countries

The partnership between Japan and Australia started on 2007 March with the Japan-Australia Joint Declaration on Security Cooperation meeting. Followed by 2 more summits on September 2007 and December 2009, Australia formed an Acquisition and Cross Servicing Agreement with Japan. Japan participated in maritime exercises hosted by Australia, starting from July 2008. It also took part in a defense ministers' meeting at Canberra on May 2009. Due to American encouragements, a trilateral security network between the 3 countries was established, while Security and Defense Cooperation meetings were conducted at directorial level.

Japan also participated in summit meetings with India, starting from 2006, when both sides agreed on forming a global partnership. In 2008, they jointly declared a cooperation on security. In 2009, they prepared an action plan for securing the mentioned cooperation. Multilateral military exercises were conducted, such as the Malabar 07-2 and Malabar 09. 07-2 included Singapore, Japan and Australia, while 09 was between Indian and Japan. These military practices provided the

³⁴⁵ Keating, "A Combatant Commander's Perspective on Security in the Asia-Pacific."

³⁴⁶ Kyodo, "Armitage wants bills on SDF role passed soon, *Japan Times*."

Japanese units with experience and information, which increased the efficacy of the SDF.

The cooperation network between South Korea and Japan is limited because of the historical issues between the two countries (colonization). However, the two sides still did some joint activities such as SAREX (search and rescue exercise). In 2009 both sides dispatched observers to each other's military exercises. Washington served as a mediator and partnerships were initiated through trilateral approaches.³⁴⁷

Proactive Pacifism

Before examining the new collective security interpretations, Proactive Pacifism must be analyzed to better grasp the new security outlook of Japan. The current Prime Minister of Japan, Shinzo Abe is considered to be a hawkish politician who pursued the amendment of the current constitution for years. Now with his overwhelming victory in 2017 general elections, Prime Minister Shinzo Abe gained more confidence for the revision of the Japanese Constitution. With this victory, Abe removed doubts about his leadership and the future of his international agenda with increased support from the lower house. His next goal is to be re-elected as Prime Minister again in 2020 and form a new cabinet.

After the 2017 elections, Abe had 281 seats which means an overwhelming majority backed him. His tactics against North Korean missile development are similar to the hard line pressure-over-dialogue tactics of Donald Trump. As a result of this approach, maintaining a strong communication network with key countries

³⁴⁷ Hajime, "Japan, ROK to Push Defense Cooperation."

around the region is essential for Japanese politics. Therefore, Abe has to discuss regional issues with important leaders, such as Putin, Trump and Xi Jinping. Abe's goal for the constitution is to change it by 2020.³⁴⁸ It is not clear if he will keep this date but the submittal of the draft constitution may occur at the near future. He tries to emphasize and bring up the constitutional change issue as much as possible to raise the public awareness.

Abe's program is called 'proactive pacifism' (*sekkyokuteki heiwashugi*), which is basically for the increase of Japan's influence both in the East-Asian region and the global arena. As a response to the Secretary Armitage's Report about whether Japan would be a tier-1 country or tier-2, Abe's response was to make Japan a tier-1 country with full sovereignty and independence.³⁴⁹ It is the rejection of past idealistic sentiments and counters the Yoshida Doctrine. Its security policy stresses the basic security relations of Japan with the US and other countries. Abe's security strategy of proactive pacifism covers a period of 10 years and emphasizes the basic tenets of democracy. In it Japan is described as a peace-loving nation. Therefore, the policies address the military buildups for peaceful purposes and point out the Three Non-Nuclear principles as a model for that. In short, proactive pacifism promotes Japan to become the vigilant player in the global arena, instead of just reacting to vital occurrences.

Proactive pacifism is a fresh word, that is being mentioned in recent years. While describing the new policies, the Japanese administration refrains from using objectionable words that trigger public skepticism. Therefore the amendment is

³⁴⁸ The Asahi Shimbun, "Abe remains set on 2020 target for amending Constitution."

³⁴⁹ Akira and Nahory, "Japan's Decision on Collective Self-Defense in Context."

presented as an effort to become a “normal” state. According to Kenichi Ito, who was the president of the Forum on International Relations in 2009, the idealistic approach that had been used by the past prime ministers had suppressed the defensive capabilities of Japan.³⁵⁰

One must also consider Japan’s current security challenges. Currently the region is experiencing a wide set of international problems. According to Dr. Sinan Levent, the emergence of international crises and phenomena such as the rise of the nationalist wing with President Donald Trump in the US, the increasing nationalism movement in Europe, the rising Chinese political power, and President Vladimir Putin and the rebirth of Russia, pushes Japan to be prepared in order to respond effectively to such developments. The planned revision of the current constitution in one way, can be considered as one of the preparations that Japan is reconsidering.³⁵¹

If Abe’s program manages to be successful, rewriting Article 9 would lead to the restructuring of Japanese values and norms. Its change would have a profound impact on how the Japanese people perceive themselves both as a nation and as a global player on the international stage.³⁵² According to Toshiyuki Nishikawa, implementation of a Western style constitutionalism to non-Western countries is a difficult case in terms of adapting to the local traditional identities. He argues that Japan poses as an excellent demonstration to study the challenges that are similar to

³⁵⁰ Japan Forum on International Relations, Proactive pacifism and the guiding principles of the Japanese-US alliance], 8.

³⁵¹ Mercan and Durul, “Japonya’da anayasa değişikliği için henüz irade bütünlüğü yok’.”

³⁵² Trapaghan, “Revising the Japanese Constitution.”

this issue. Whether the SDF's role will be a disaster relief force or the right hand of US interests, depends on the opinion of the Japanese people.³⁵³

6.3 2014 White Paper and 2014 collective self-defense reinterpretation

On July 1, 2014 Japan made drastic changes and upgraded its foreign policies. The 2014 White Paper, also named as Defense of Japan, was composed by the Cabinet Legislation Bureau, with the aim of bringing new changes and interpretations to the constitution and introducing a reinterpretation for the collective self-defense issue. It analyzes the method of Japan's use of force according to the legislation named as *'Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People'*. White Paper justifies the use of force in all forms by referring to the Preamble of the constitution, which mentions the right of the people to live in peace. In addition to the Preamble, another article, the Article 13, was handpicked to correlate the use of force with the life and liberty rights of the people. This article mentions the fundamental rights of the Japanese people (life, liberty, pursuit of happiness), which are in crucial need of protection and states that it is SDF's duty to do this. Protection of all these values are correlated with the collective self-defense ability of Japan, which in this case, Japan can enact collective self-defense only if there is a threat directed towards the aforementioned values.³⁵⁴ Furthermore, 2014

³⁵³ Nishikawa, "The Future of the Japanese Constitution: From the "Mac Arthur Constitution" to What?" 76-77.

³⁵⁴ *Kakuni Kettei: Kunino sonritsu wo matto shi, Kokumin wo mamoru tamenno kiremenonai anzenhoshohosei no seibi ni tsuite*, [Decision on Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People], Prime Minister and his Cabinet (July 1, 2014).

White Paper also talks about the justification of an armed attack against a foreign country, because of the changing nature of the power balance. As a result of technological innovations and weapons of massive destruction, Japan articulates that it is necessary to counter any threat efficiently. In its Constitution and Basis of Defense Policy section Japan further clarifies that the use of force is exclusively peace oriented and refrains from any aggressive war potential. It is written as:

Under the Constitution, Japan is permitted to possess the minimum necessary level of self-defense capability. The specific limit is subject to change relative to the prevailing international situation, the level of military technologies, and various other factors, and it is discussed and decided through annual budget deliberations and other factors by the Diet on behalf of the people. Whether such capability constitutes a “war potential” that is prohibited by Article 9, Paragraph 2 of the Constitution must be considered within the context of Japan’s overall military strength. Therefore, whether the SDF should be allowed to possess certain armaments depends on whether such possession would cause its total military strength to exceed the constitutional limit. The possession of armaments deemed to be offensive weapons designed to be used only for the mass destruction of another country, which would, by definition, exceed the minimum necessary level, is not permissible under any circumstances. For example, the SDF is not allowed to possess intercontinental ballistic missiles (ICBM), long-range strategic bombers, or attack aircraft carriers.³⁵⁵

White Paper also adds that the use of force mentioned above, must be carried out in accordance to international law. This is in fact a collective self-defense under the Article 51 of UN Charter.

In short the collective self-defense can be used within 6 preconditions in which 3 of them are conditional and the other 3 are procedural. The conditional ones: a close ally of Japan is under attack; a situation that would represent a grave threat to Japanese security if it was ignored; Japan receives a request from an allied country

³⁵⁵ Japanese Ministry of Defense, “*The Defense of Japan: White Paper 2014* (July 2014) (‘White Paper’),” 119.

that is under attack. The procedural ones include: Japan's PM must decide to use force; this decision must be approved by the Diet; and the Japanese government must attain permission from a third country to pass through their territory.³⁵⁶

Latest Guideline: The Guidelines for Japan-U.S. Defense Cooperation (April 27, 2015)

For 15 years, Japan-US security cooperation was provided under the framework of 1997 Defense Guidelines. The 2004 and 2010 Defense Programs were later promulgated in order to adapt to the changes of that time. In addition to the terrorist attacks and rising China, technology was also changing in a rapid gesture.³⁵⁷ The technology of the 1997 was outdated and similar remark can be concluded on the guidelines. As a result, the Security Consultative Committee's (SCC) approval of the revised Guidelines were a respond to these developments. There are three core reasons for Japan to revise its guidelines.

First one is changing security environment. The guideline defines the environment as "increasingly complex". In recent years countries such as China, North Korea and Russia have increased their assertiveness and their gaze on the Far East Region. The increased military activity coupled with missile tests has created a complicated region where competition has been increasing gradually year by year.³⁵⁸

Secondly, the administration policies of Japan have been changed. Abe's Proactive Pacifism has increased the Japanese efforts on multiple humanitarian

³⁵⁶ Yellen, "Shinzo Abe's Constitutional Ambitions."

³⁵⁷ Sakoda, "The 2015 U.S.-Japan Defense Guidelines: End Of A New Beginning."

³⁵⁸ Ibid.

assistance and anti-piracy operations which improved the cooperation between the US and Japan and increased the experience of the SDF. The first cooperation mechanism called as Bilateral Coordination Mechanism established in the 1997 Guidelines was proved to be inefficient on recent events as it was acknowledged that a more active and flexible mechanism must be installed.

Thirdly, several bans on arms export as well as SDF's collective security was lifted. In addition, cyber warfare and software development have evolved to a different stage. These issues were left short and the outdated characterizations must be revised.³⁵⁹

In the 2015 version, the *Bilateral Coordination Mechanism* was revised with Alliance Coordination Mechanism which was defined as more robust and inclusive that included the whole government planning as well as offering better crisis management mechanisms. The smooth functioning of cooperation between the two countries' forces was emphasized. Contingencies around Japan was described in broader, simplified definitions consisting every type of foreign attack whether it would be biological or nuclear.

Authorization of construction and produce of weapons, particularly the missile systems were specifically defined. Sakoda defines the cooperation an endeavor that both countries could seize meaning that as both countries have sophisticated technology; this puts the cooperation in an equal footing.³⁶⁰

³⁵⁹ Ibid.

³⁶⁰ Ibid.

The level of Japanese military and arms deployments

As defined by the National Security Council and the Cabinet in the National Security Strategy document on December 17, 2013, SDF is the ultimate guarantee of the Japanese national security.³⁶¹ Like China, Japan does not tolerate any changes to the unilateral status quo of East Asian region. In order to react smoothly in a military situation, Japan must be efficiently prepared. In order to bring the deterrence it pursues, Japan must maintain air and maritime superiority. As a result, Japan adopts the necessary measures by adding various kinds of sophisticated weaponry into its military inventory. It includes: diesel-electric propelled Saryu-class submarines (22 units), Izumi-class helicopter destroyers which could transport 14 helicopters, cruise missiles, destroyers equipped with modern SM-3 defense systems for repelling submarine attacks, 42 F-35's, and the amphibious units which have the system used by the US marines named as AAV-7(Assault Amphibious Vehicle 7). In order to increase the reconnaissance activities around the region of Senkaku Islands, Japan has constructed a radar base at Yonaguni in 2016. This assisted the coast guards, who had been patrolling the area to control Chinese interventions. Coming to the cost of the aforementioned units, 17% of the military budget is spent for the purchase and research of new weapons and 44% on working personnel. However, due to its huge debt and weak-yen, the defense spending eats up a lot of money which returns with additional debts.³⁶²

³⁶¹ National Security Strategy, 15.

³⁶² Tachikawa, "Moody's Warns on Japan Rating."

On Feb 10, 2015 Japan established a *Development Cooperation Charter* which replaces the Official Development Assistance Charter of 2002.³⁶³ The 2002 one have relaxed the rules in order to better assist foreign military detachments. This was a contradiction to the 1992 Charter and Japan refrained from delivering aid's for military purposes. However, the 2015 Charter, updated the role of the SDF for assisting as a disaster relief force and soldiers against terrorism and piracy. However, it is a known issue that distinguishing a non-military force from a military one is extremely hard.³⁶⁴

The criticisms to Japan's collective self-defense reinterpretation
In 2014 China's news agency Xinhua responded negatively to collective self-defense reinterpretation, stating that Japan's collective self-defense approach was violating its pacifistic nature. China's Foreign Ministry also responded negatively asserting that Japan is losing its peaceful development with its revisions regarding military issues.³⁶⁵

China used 2 methods of criticism regarding this issue. First Abe government didn't revise the constitution formally, since for its revision, the party needs a majority in the Diet and more than 50% majority from the public. Instead, the revision was done through a cabinet decision with 19 unanimous votes from cabinet members and with the 50% support from both Houses of the parliament. That's why

³⁶³ Japan Ministry of Foreign Affairs, *Cabinet decision on the Development Cooperation Charter*, Retrieved from: <https://www.mofa.go.jp/files/000067701.pdf>

³⁶⁴ Hiroshima, "Panel Calls for ODA to Foreign militaries for Nondefense Use."

³⁶⁵ Fackler and. Sanger, "Japan Announces a Military Shift to Thwart China."

Chinese officials were criticizing the Abe government by pointing out that he neglected the public opinion. “Chinese Foreign Ministry spokesman Hong Lei noted the strong public opposition within Japan to lifting the ban on collective self-defense, while Wang Ping from the Institute of Japanese Studies at the Chinese Academy of Social Sciences argued that Abe was acting in defiance of the long-held norm of ‘pacifism’ in Japan.”³⁶⁶

China had been using this highlighting public opinion approach for 60 years. However, China’s government also has the similar issue of non-representation. That’s why this strategy could not bring China any success and with its expansionist policies around South China Sea, it did not have the consistency and credibility to affect its enemies.³⁶⁷

The second method of criticism that China used was claiming that Japan was removing the pillars of the post-World War 2 international order. After the 1947 constitution, Japan had very limited and pacifistic defense forces, mostly protected by the US. With the recent revisions, Japan was moving away from pacifism and stepping into militarism with its military developments. Therefore, Japan was losing its non-belligerency touch and becoming uncompromising. This was natural since China did not want another state that sought to counter it.³⁶⁸ China claims its economic development is peaceful and it will peacefully coexist with any country by avoiding military conflicts. However, its military spending has been increasing (in year 2005 it was 29 billion dollars) and its claims on several territories such as

³⁶⁶ Anu, “China’s response to Japan’s constitutional reinterpretation.”

³⁶⁷ Ibid.

³⁶⁸ Ibid.

Spratly and Paracell Islands and the Taiwan Straits depict China as a regional aggressor. American decision makers believe that at some point in the future, China will challenge US interests in the Pacific region, which must be protected. This basically means that America is simply perpetuating its own military dominance by declaring China as a threat. On the other hand, the pressure against China and its containment raises China's apprehension. It is then forced to commit to a military buildup as a way to counter its containment. Ironically, due to these self-fulfilling claims America and Japan are also fueling the instability of the region.

Several actions of the Japanese administration generated distrust and discontent in China. These were: Koizumi and Abe's visits to Yasukuni shrine, the issue of textbooks, disagreements about Nanjing Massacre, covering up its military history, refusing to apologize for war crimes, and conducting anti-missile research programs with the US. Furthermore, the proposal of Okada about the possibility of pre-emptive strikes as well as the efforts of the Japanese administration to amend Article 9 further accelerate the Chinese urge to build its defenses. Both the US and Japan claim the Taiwan Straits problem as a common security issue, which triggered Japan to send military personnel to Senkaku Islands instead of reconciling with the Chinese side. At that time there was also a plan which was created by the EU to sedate the Chinese by removing the arms embargo that was imposed against them. But instead of choosing the appeasement strategy Japan fully sped up its deterrence. This was a highly fragile situation, since the historical ties between China and Japan

are so sensitive that despite the huge trade interdependence, the distrust among them is unavoidable.³⁶⁹

Relations with ASEAN countries, Japanese multilateralism

Association of Southeast Asian Nations (ASEAN), which was established against the communist threat in 1967, is one of the diplomatic channels that Japan uses to increase its influence in the South Asia region. Despite Japan's aim of influence gathering, it did not focus on ASEAN for its security policy. Instead, it is tending towards bilateral agreements. Japan's usual policy is to adopt a "value" approach to define its security partners.³⁷⁰ The countries who share the same values that Japan adheres are: South Korea, Australia, India and several ASEAN members. The ASEAN partners include countries who have concerns over the Chinese rise such as; the Philippines, Vietnam, and Indonesia which were marked as the "pivot south". Additionally, Japan has formed trilateral security mechanisms with Australia and South Korea. Japan's main objective for the ASEAN countries is to improve their military capacities to counter the rising Chinese influence. Japan supports these countries for achieving more influence but also to assist those with whom it shares a maritime trade route. Through the mechanism of Capability Building Assistance and Capacity Building Assistance of 2011, Japan is further increasing its own influence by aiding the developing countries (defined as coalition of willing). In order to improve their monitoring over the coastal waters, Japan delivered several patrol

³⁶⁹ Kausikan, "The roots of strategic distrust: the US, China, Japan and Asean in East Asia."

³⁷⁰ Hosoya, "The Rise and Fall of Japan's Grand Strategy: 'The Arc of Freedom and Prosperity' and the Future Asian Order," 13-24.

boats to Manila. Also Abe visited all ASEAN member states in 11 months in 2012.

The “value” approach of Japan directly targeted China to ostracize it from the region, as had indeed been already stated as a concern by China.³⁷¹

Consequences of the constitutional change in regard to regional politics

If Japan changes Article 9, some nations, such as China or Korea, might call this the return of the aggression of Japan. China had already opposed the nuclear defense agreements between Japan and the US in 1994, since it objected to Japan’s empowerment. But, a change in Article 9 would strengthen the relations between Japan and the US and mutually affect them with suitable outcomes. The US tends to balance the regional power, encouraging countries such as South Korea and Japan to invest money in military concerns and withdraw from the foreign dependence policy. The Chinese aggression to Taiwan in 1996 and the 1998 North Korean missile test created a space for Japan to employ tactics such as deploying ballistic missiles and launching satellites.

Both China and Japan took some actions that might cause discontent for each other such as China’s rejection of a Japanese proposal for a UN reform and Japanese PM Koizumi’s visiting the Yasukuni shrine in Japan which complicated the security coordination between South Korea and Japan, both partners of the US.³⁷²

³⁷¹ Sakaki, “Japan’s Security Policy: A Shift in Direction under Abe?” 30.

³⁷² NYT (New York Times) Editorial Board, “Risky Nationalism in Japan.”

In order to reduce the exacerbating tensions of the Far East, states can pursue ways other than arm buildups. Seigel mentions three ways in his article.³⁷³ The first one is, embracing the mentality of “defensive defense”. Compared to an aggressive one, it has limited power projection capabilities and does not rely on self-fulfilling prophecies. Due to its compatibility with Article 9, Japan uses this approach when a conflict occurs close to its territories.

He secondly suggests that sometimes, by coming together with more than just one actor, strength through numbers approach could be a better solution. Through multilateral security a threat is dealt by multiple partnerships, which is desired by many states due to its equal and fair nature. Usually, in bilateral agreements the larger side has more advantages compared to the smaller power. The Security Treaty of 1951 is a perfect example for this bandwagon dilemma. Lastly Japan should try to reduce tensions by advising its neighbors to adopt Article 9. Encouraging such regulations could be effective against a security dilemma.

Seigel also believes that changing Article 9 could make Japan more interdependent with the US rather than independent as is widely believed in Japan. Japan already provides support for the US whenever the demand arises. As a result of the change in Article 9 Japan would be even more deeply embedded within American strategies. This would lead to a possible entrapment of Japan’s foreign policy by the American one, as SDF will be used for US interests. Japan’s wish to be an independent active player in the region is not reasonable since it does not have the

³⁷³ Seigel, “Some Considerations Regarding Article 9 of the Japanese Constitution, Paper based on the discussion at the Joint Australia-Japan Workshop.”

potential to compensate a Chinese aggression, as China has a larger population and a rising economy.³⁷⁴

Year by year the region of Far East Asia gets further involved in a security dilemma. The arms race of the above mentioned countries is fueled by overly cautious perceptions and self-fulfilling claims. Because of this fear, such states are prompted to improve their deterrence. Japanese side doesn't consider this as fear, but the return of Japan's former strength. Abe made significant legislations that demonstrated this purpose. In 2013 the amount of defense budget expenses was increased. In 2014, National Security Council was introduced as a response to the changing circumstances. It aspired to introduce several improvements concerning Japan's cooperation with key countries. In April 2014, Japan updated its arms exports, which rule that Japan can have deals with friendly countries but it will faithfully reject exporting to any sanctioned country. With this legislation, Japan planned to remove all its export bans to bolster the arm companies operating in its territories. In addition, lifting the limits of arm exports was an essential necessity for conducting arms research. Japan claims all these changes as new ways to maneuver.³⁷⁵ All these examples show the Japanese efforts to adapt to the rapidly changing-ambiguous international order.

Understanding the rivalry between China and Japan, Chinese perspective
If we look from the Chinese perspective and briefly inspect what Japan was doing, Japan certainly appears to be an aggressive state. Surely, several statements of the

³⁷⁴ Seigel, "Some Considerations Regarding Article 9 of the Japanese Constitution," 13.

³⁷⁵ Japanese Ministry of Defense, National Defense Program Guidelines for FY 2014 and beyond, 1-8.

Japanese administration as well as the containment policy it indicts upon the Chinese side, are the biggest catalyzers of China's rising fears. Based on such fears, it looks like the current Japanese government simply downplayed Japan's role and responsibility in the first half of the 20th century. If we look from an objective point of view, Japan does not seem to aim to resolve or ease any interstate conflicts. Any low level or medium aggression from China gets a double rate of defensive countermeasures. This pessimistic view is bred by regional power shifts. China surpassed the status of Japan, and became the second largest economy in 2010. Furthermore it keeps growing in terms of military and economic power. Even though Japan has more sophisticated battle systems, the gap of technology between them is narrowing. Rivalry between the two countries usually cools down during interstate discussions to avoid excessive tensions. If a warming of ties occurs between the US and China, this would affect Japanese interests as well since it would encourage Japan to follow the same pattern on its relations with China.³⁷⁶

Several events have showed us the distrust that is between Japan and China. The Senkaku Islands crisis in 2010 and 2012 strained the relations among the two countries. China claimed that it was a Japanese provocation and a violation of China's territorial sovereignty. Both crises had led to rapid naval activity around the Senkaku Islands which was performed by both nations. If we look at the issue from the Japanese side, territorial violations that were committed by China were the real provocation and that the purchase of the Senkaku Islands was a necessary thing, which in actual fact had not violated the unilateral status quo of the region. Japan

³⁷⁶ Sieg, "Japan's Abe pursues China thaw as U.S.-Beijing ties in deep freeze."

claims that China is generating such aggression under a specific step by step policy. It is increasing its influence on the disputed areas (gray zones) by infiltrating and scanning the area with its ships (gray zone conflicts). It also established an Air Defense Identification Zone for the monitoring of the flights that passes through the region. Analysis of the environment of the region can provide us several tips regarding the situation of the crisis.³⁷⁷

Firstly, the above mentioned Senkaku Islands are too small for anti-air system deployments. Japan needs better systems which covers higher range. Secondly, the anti-submarine naval defense systems that were dispatched by China, entrenches the US presence at the West Pacific region.³⁷⁸ In terms of military tensions, the US nuclear shield provides the deterrence that Japan needs for its defense, in case of destructive maneuvers. As a result, tensions are limited to a low level escalation.

According to a report by the South China Morning Post, despite the warming ties between the two countries, the distrust still remains. China keeps a worrying eye over the Article 9 reform. Abe has the 2/3 seats of the Diet (312 of the 465 seats) and has 2 more years of service. China's present concerns can be summarized as the Japanese PM's visits to Yasukuni shrine and Japan's avoidance of any compromises over the disputed Diaoyu Islands. Zhou Yengsheng, a Japanese affairs expert at the China Foreign Affairs University, argues that Abe should refrain from inflaming

³⁷⁷ Green, Hicks, Cooper, Schaus and Douglas, Counter-Coercion Series: East China Sea Air Defense Identification Zone.”

³⁷⁸ Sakaguchi, “Aratana Bōei Senryaku no Sōzō Nansei Chiiki ni okeru Sekkyokuteki Eashii Batoru no shinajii kōka” [Creating a new defense strategy: Synergy effects of active defense and air-sea battle in the Southwest Region],): 3–13 cited in Alexandra Sakaki, 10.

nationalistic sentiments.³⁷⁹ The future status of relations between Japan and China depends on reconciliations and the easement of disputes.

The nuclear problem is sealed in the case of China for now but the region is still far from the stability it requires. This instability also affects Japan's relations with North Korea, which is an unpredictable neighbor as far as Japan is concerned. The cooperation and communication of the two states remain almost nonexistent. Through various methods of sabotages and deceptions, North Korea could blackmail Japan. As a result of this, Japan at one point would need to improve the bilateral relations with China to contain the North Korean threat.

According to Michael T. Seigel in order to pressure North Korea to denuclearize a trilateral approach is needed. Japan, South Korea and North Korea with the mediation of United States should come together and reach a consensus that all countries would accept to refrain from such types of arms. The reason why Japan must be included in this agreement is its high capacity and potential to create nuclear bombs. It has more than enough plutonium and missiles to develop its own nuclear bomb within a short period of time.³⁸⁰ Therefore, Japan should negotiate with the other states and encourage them to do the same.

Article 9 blocks immediate threats from Japan and this outcome gives some breathing room for the neighbors of the Japanese. The change of Article 9 could lead to massive arms buildups. Seigel thinks that there is already a very dynamic arms race going on among Japan, China, South Korea, North Korea and Taiwan. Japan has

³⁷⁹ Huang, "China to keep wary watch on Abe's push to change pacifist constitution."

³⁸⁰ Seigel, *Some Considerations Regarding Article 9 of the Japanese Constitution*, 7.

already created a strong force to defend itself and it doesn't really need any article changes for military upgrades.³⁸¹

If we look at the situation from this point, the self-defense hypothesis of Yoshida Shigeru might be accurate. The improvement of one state's military power might threaten the others even though the purpose was defense only. This theory suits well in the region of the Pacific. The historical conflicts affect the relations of these countries even today. For example, China and Japan's tendency to move towards a more militaristic and realist foreign policies rose the tension between them.

UK Perspective towards Article 9 of Japanese constitution

The perspective of the United Kingdom is similar to the American one. Britain has a similar governing system as Japan as well as being in the same alliance. Therefore, analyzing the British perspective on Article 9 can provide some insights about the reformists at the Japanese cabinet. Since both countries have similar security concerns, such as terrorism, the United Kingdom considers Japan as a likeminded ally.³⁸² It is pleased about Japan's involvement in global affairs and appreciates Japan's efforts of participating in the UN peacekeeping operations as well as financially contributing to the UN budget. Japan is in fact the second largest contributor to the UN budget (10%). UK strongly supports Japan's efforts to become a permanent Security Council member. The broad interpretations of Article 9, to which the Japanese administrations committed, have thrilled the UK administration. These similarities encouraged both sides to form partnerships. In 2012, Prime

³⁸¹ Ibid.

³⁸² Hardy, "Japan and the UK: Ties That Bind?"

Minister Cameron and Japanese PM Toshihiko Noda formed the bilateral strategic dialogue with two agreements. One was the security information sharing agreement for improvised intelligence. The other was about the research and production of new defensive equipment. These agreements got consolidated in 2013 with the Defense Equipment Cooperation Framework and the Information Security Agreement. In 2014 both sides stated their intentions to form an ACSA as well as conducting joint military exercises. The difference between UK and US is the reason of their presence in the Pacific Region. In contrast to the military presence of the US, UK is mostly situated in the region for trading and cooperation.³⁸³

As a country who supports Japan's efforts for maintaining international order and stability, the UK is interested in Article 9. In 2008, the UK Foreign and Commonwealth Office expressed its opinion about the Japanese constitution. They claimed that it would be beneficial for Japan to participate in more peacekeeping missions despite the constitutional constraints.³⁸⁴ UK supports the Japanese contributions and desires Japan to be a proactive contributor of peace. In order to achieve that role, Japan must remove the aforementioned constraints. Therefore, UK supports Japan's Article 9 reform.³⁸⁵

Japan's right of belligerency, its "state of war," is completely tied to its self-defense, which makes its agreement with the US unequal, since Japan could dispatch

³⁸³ Webb, A British Perspective on the War and Military Forces Clause of the Japanese Constitution, 300.

³⁸⁴ UK House of Commons, "Select Committee on Foreign Affairs Tenth Report."

³⁸⁵ UK-Japan Joint Statement. Retrieved from: www.gov.uk/government/news/uk-japan-joint-statement

its forces only against a threat to its own survival (or to fundamental rights of the Japanese people). The UK side has also some peculiarities in case of foreign interventions. In 2013 the British cabinet claimed that Syria had chemical weapons and was using them on its own people. Because of that, a humanitarian intervention was necessary. However, there was a problem regarding the case of humanitarian intervention. According to Philippa Webb humanitarian intervention is not widely accepted as a customary international law. In order to conduct military operations, states either claim a self-defense position or put forward a possible justification for the use of force.³⁸⁶ As a result, during the British parliamentary debate, military deployment was voted and was refused, thus demonstrating that in several cases the parliament could interfere and block the government legislation due to legal difficulties for justifying a military action. At that time Japan was a supporter of intervention, due to the tragic deaths of 2 Japanese nationals who were brutally killed by ISIL terrorists. ISIL claimed that the 2 deaths were tied to Japan's 200-million-dollar aid to countries who were against them. This incident once again sparked the Article 9 debates, with the popular demand of punishing ISIL. Because of UK's failure of sending forces to Syria and the lack of support from US, Japan lowered its voice on army dispatch and focused its attention on dismantling chemical weapons. The Syrian case above is a perfect indicator of the obstacles that block Japan's military dispatches. Japan had also experienced a similar case during the 1999 Kosovo intervention of NATO. Because of the status of 'perceived legal difficulties surrounding the justification of the action under established international law', the

³⁸⁶ Webb, "A British Perspective on the War and Military Forces Clause of the Japanese Constitution," 307.

case was marked with ‘understanding, not settling with outright endorsement or approval’’.³⁸⁷ According to Webb, the US did not demand the support of Japan for the Kosovo case. This indicated another side of the Japanese politics, which depends mostly on American decisions.³⁸⁸

Just like the Japanese Supreme Court, UK also has a High Court for questioning the constitutionality of any law or act. English courts can also decide whether a foreign law can be recognizable or not. However, in several cases, English High Court had marked them as related to a political question and left the matter to another department.³⁸⁹ For example, a Security Committee to judge situations about passing army intel to another foreign country’s military or the use of phosphorus bombs on cities could be more appropriate than the Supreme Court branch. But, in accordance to their efficiency, the UK court has more benefits than its Japanese counterpart. As the UK does not have a written constitution, its legal structure is operated according to the values of the period. Thus it has lesser challenges than the Japanese one as there are no written words to be stretched.³⁹⁰

South Korean Perspective

South Korea’s situation is slightly different from the Japanese one since first of all it has a border with an aggressive state, North Korea. Secondly, its history with Japan

³⁸⁷ Koji, The Debate on Humanitarian Intervention, Humanitarian Intervention: The Evolving Asian Debate,” 14.

³⁸⁸ Webb, 308.

³⁸⁹ Bradley and Ewing, *Constitutional and Administrative Law*, 25 cited in Webb, 304.

³⁹⁰ Ibid.

and past Japanese aggressions until 1945 strain the relations between the two countries. Furthermore, the tensions between the US and China, North Korean missile tests, and Japan's efforts to increase its military stance at the East Asia region are all potential threats to South Korea's security. As a country which is located near China and North Korea, South Korean foreign policies can never be on a bilateral level with the US, similar to the US-Japan agreement. Among the South Korean thinkers, there are currently three popular ideas regarding the revision of Article 9.³⁹¹

The first group focuses on the US-Japan alliance and the gradual shifts of the American policy regarding Japan. It highlights the American focus, which is currently geared towards the Middle East rather than the West Pacific. Under these circumstances it would definitely affect Japan's foreign policy approach, as the US demands further Japanese help to secure the balance of power of the Pacific region. According to Kijeong Nam, in order to do that, Japan must amend Article 9 and aid United States not only in the Pacific but also around the world.³⁹² On the other hand, Hyoktae Kwon, analyzing the relations of the US with South Korea and Japan, discusses that both countries need the American security umbrella against the threats from North Korea and China. Basically, since they had to be entangled with the defense network of the US, without its help, South Korea would definitely be in a dire situation. Even a disintegration among Japan and US could affect the security of South Korea as the balance of power would gradually shift. Kwon argues that as far

³⁹¹ Cho E. J. R and Shin, "South Korean views on Japan's constitutional reform under the Abe government," 257.

³⁹² Kijeong, "The Reality of military base and the evolution of pacifism: Japan's Korean war and peace," 18.

as South Korean security is concerned, historical issues between Japan and South Korea must be dealt with in a separate case as any possible attempt to cooperation would be undermined by the matters of the past.³⁹³

In order to deal with the historical issues, the United States must consider the South Korean interests and concerns. Neglecting them would endanger any stable relationship between Japan and South Korea. So far, if any disagreement or conflict happens between these two states, the US played a mediating role to resolve the historical disputes. Japan's past aggressions have led doubts among the South Korean thinkers and politicians. The fear that the Japanese constitutional reform could lead to a possibility of a Japanese aggression as Japan could send its troops to the Korean peninsula. Kwon argues that this sense of distrust is the reason of past historical issues. In order to tackle them, a two track policy is needed. Any resolution between the two states must be inclusive and genuine. In the cause of maintaining the regional peace and stability, Kwon suggests that an Asian regional security network should be established, which comprises the primary actors of the region: China, South Korea, and Japan. Nam, on the other hand, suggests a more idealistic approach, which is that Japan should promote the regional peace through recommending and emphasizing the peace clauses of Article 9.³⁹⁴

The second group of South Korean intellectuals, focus on the domestic factors which play the main role for the amendment of Article 9. In this analysis, the structural change is facilitated by three domestic factors: the political elites, the

³⁹³ Kwon, "Would it be possible to deal with history and security issues separately? Japan's rightism and Korea-Japan relations," 258.

³⁹⁴ Kijeong, *The birth of a base-state: Japan's Korean War*, 440.

ruling party's politics, and the relation between the state and society. Among the intellectuals of this group, Choul-hee Park, argues that the Liberal Democratic Party has many interests, since the politicians who play the active role for the constitutional amendment is formed by members with a wide range of agendas.³⁹⁵

These interests are reflected on draft articles and then passed on to the national guidelines. Thus, contrary to the expectations of those who fear the Japanese constitutional amendment, he thinks that it would not lead to the rapid militarization of Japan. During the 2012 cabinet, Komeito was the coalition partner of the LDP, and it played a significant role on softening the draft revisions. There are also the pacifist organizations among the Japanese public who are very keen on the conservation of the pacifistic Article 9. Therefore, Japan could not achieve mass increases of militarization in such a short period. Another thinker, Soo-hyeon Kim argues that in recent years LDP officials have refrained from expressing any statements that could lead to public outburst and frenzied negotiations. This approach started after the collapse of the 1955 system. A statement on critical issues by any politician could result in his resignation and thus, they regard the voice of the public more seriously now. Kim argues that temporary political needs based on regional conflicts have exploited the principles of procedural legitimacy for years.

The third group focuses on the balance of power between South Korea and its neighboring countries. This group which was formed of pro realists, argue that Japanese constitutional change might favor South Korea as in the case of the rising Chinese influence. Thinkers like Chang-hee Nam and Sung-ho Sheen point out the

³⁹⁵ Park, Three-layered structure of Japan's conservative political shift," 76.

fact that Japanese constitutional amendment would not cause any threat to the South Korean side. Nam adds that Japanese remilitarization would be beneficial to contain the North Korean threat and Chinese expansion. A trilateral approach could therefore solve the instability of the Far East region.³⁹⁶ Sheen on the other hand, has remarked that Japan has neither the capacity nor the intention of reinstituting the old militaristic political system of the 1930s.³⁹⁷

Scholars among this group agree that due to the political interests and change of balance inside the region, a clash between US and China is inevitable. As a result of this prospect, Japan wants to be the major player who could reverse the declining US influence and become a pivotal actor in the region. However, in contrast to the Japanese case, South Korea has other concerns to consider as it shares a border with North Korea as well as relations with China. This presents a dilemma since a future regional conflict could damage South Korean territories and it would have no choice but to enter it. Therefore, South Korea has to adopt more flexible policies in order to ensure its security. In order to ease the tensions around the region, the countries have no choice but to avoid a possible power struggle at all costs since it would result in instability and uneasiness.

Relations with Russia

Lastly, the relations between Russia and Japan can be seen as eccentric, as the two states do not have a peace agreement between them after the end of WW2. Russia is

³⁹⁶ The Korean Journal of International Studies, “Japan’s interpretation of the Article 9 of the Constitution: Is it another threat or an asset?”, 329.

³⁹⁷ Sheen, “A Korean view: Japan’s constitutional debate revision debate.”

not considered to be a major threat for Japan but its annexation of the Kuril Islands, blocks any improvement of relations between them. A possible agreement could lead to concessions, and therefore Japan avoids such initiatives.³⁹⁸

The Importance of economy

As economy plays a big role on a state's foreign policy, a nation with a high economy is inclined to have a higher participation in the key roles of the global arena. Various Japanese politicians tried to overcome the Japanese economic problems through various strategies. For instance, the economic strategy of PM Hatoyama was mainly based on solving the deflation of the Yen, while increasing the national debt and nonperforming loans. The need of economic recovery first began with Koizumi's (PM in 2000-2006) emphasis on "growth".³⁹⁹ His privatization policies gradually increased the amount of contract workers. Hatoyama (PM in 2009) named his strategy yuai (fraternite) and listed its economic policies. Yuai aimed to increase the disposable income for consumption. Its main agenda was cutting highway taxes and high school fees as well as supporting households. It also aimed to remove the postal privatization of Koizumi as well as part-time contracts.⁴⁰⁰ However, it led to higher deficit rates and the administration couldn't fulfill its promises regarding these populist economic policies. As for Shinzo Abe's economic policies, called as Abenomics, it aimed for economic growth just like Koizumi's

³⁹⁸ Kirby, "Russia and Japan at odds over seven-decade-old Kuril Islands dispute."

³⁹⁹ Green, "The Democratic Party of Japan and the Future of the U.S.-Japan Alliance," 109-110.

⁴⁰⁰ DPJ Financial Crisis Action Plan, "*Economic and Financial Crisis Measures: Opening up a Path Towards the Future by 'Putting People's Lives First.'*"

program. It included economic policies such as fiscal stimulus, monetary easing, and structural reforms. Abenomics is one of the main causes of Abe's election victories at Upper House and national elections.

Non-proliferation policy of Japan

Because of its past experiences, Japan always stood away from deploying nuclear bombs. The examples that demonstrate the Japanese policy of non-nuclear proliferation are: 1955 Atomic Energy Law that gave Japan the use of atomic energy only for electricity consumption purposes; 3 Nuclear Principles signed in 1968 that ban the storing and usage of nuclear weapons of Japan; Japan's becoming the biggest promoter of non-proliferation and peaceful use of atomic energy. Moreover, Japan's joint proposals with Australia for denuclearization gained recognition of many countries. Japan has also posted resolutions at the UN for a mass nuclear disarmament since 1994 (icnnd.org) and encourages all countries to sign the treaty of Comprehensive Nuclear Test Ban Treaty.

According to the nuclear disarmament report (in the nti.org), during the Sato government, Japan tried ways to acquire a nuclear bomb to deter its enemies, but the agreements that it had signed was only valid for the Sato administration and lacked the any long term effects (Katsuya Okada's interview).⁴⁰¹

The question of Japan deploying a defensive nuclear bomb is certainly noteworthy. In recent years there has been the debate of Japan reinterpreting the 3 Non-nuclear principles and discussing a possible nuclear weapon policy to deter

⁴⁰¹ Yoshida, From the Reality of a Nuclear Umbrella to a World without Nuclear Weapons: An Interview with Katsuya Okada, 474-485.

North Korean aggression. Shingo Nishimura a former vice president of defense proposed this but faced such a harsh response that he had to resign. After that Abe and Fukuda both stated that Article 9 didn't prohibit the adoption of small nuclear missiles.⁴⁰² They both also faced harsh responses from the public. Right now, the Kobe Formula, a system that strictly follows the 3 principles, caused several ports to be nuclear free. Whether this is a safe position for Japan to adopt remains to be seen.

Returning to the question of having a nuclear bomb, a possible acquirement may greatly increase the deterrence and defensive abilities of Japan. However, if it happens, the balance of power and regional stability of the Pacific region would be questionable. North Korea, who does have a nuclear bomb, is marked as an evil and unreasonable country which poses a serious threat to regional stability. It is hard to imagine that Japan would do the same in order to increase its safety. China would definitely get irritated by this and would tend to block any Japanese attempt to further improve its armament. This arm race might further continue with a "Big Game" that would possibly create increased tensions and promote a nationalistic aura.⁴⁰³ The fact that Article 9 does not have a non-nuclear agenda and only includes other types of weaponry is considered to be too unrealistic. However, since nuclear weapons show a country's seriousness in the power struggle, economical concerns are not enough for a country's stability; national interests demand that foreign policy should also consider a proper armament. In order to be able to develop a nuclear

⁴⁰² Ryall, "Shinzo Abe's government insists Japanese constitution does not explicitly prohibit nuclear weapons."

⁴⁰³ Wang, "Why the US is no threat to China, but a remilitarized Japan, led by Shinzo Abe, may well be."

policy, Japan first needs to change Article 9. Then it needs to be released from its present nuclear arms restrictions. The three non-nuclear Principles of the PM Sato should be withdrawn, which may be affected without much difficulty since these principles are resolutions, and not laws. However, such a course can only be adopted with US partnership, while the intentions of the US may well be different from Japan's or the Japanese public may strongly oppose it. Still, with a different constitution, the US may have its consolidated ally in the Pacific. Therefore there are many options and many potential deals. As far as Japan is concerned, a big leap towards security might sound reasonable but in the realm of politics sometimes good intentions may create tougher situations.

All these examples show us the evolution of Japan's military power since its independence in 1952. In 60 years, Japan's policies have developed significantly, the current version is a far cry from the 1950's Japan. Surely, the US played a big role on Japan's development both in economic and military fields. As we saw in the early 1990s, in contrary to the Cold War's solid, bilateral world; the post-Cold War era is dynamic and obscure. Currently, the conjuncture of the international world is changing in a rapid movement. As a result Japan needs to adapt to these changes in a more rigorous fashion. Andrew Oros from Washington College defines all these conspicuous developments as Japan's Security Renaissance.⁴⁰⁴ Therefore, it is safe to say that a big difference to the existing system, especially to the Article 9, would be the causation of this changing international order.

⁴⁰⁴ Oros, *Japan's security renaissance, new policies and politics for the twenty-first century*, 1-34.

This chapter proves that a constitutional change would necessarily affect both the domestic and foreign structures of Japan. In today's world a domestic challenge cannot be carried out without referencing the international contexts. In this case, not only will Japan's interior framework would change but also its relations with the neighboring countries. A change in the constitution could integrate Japan more into the US strategy but reduce its relations with its neighbors. It would alter Japan's military outlook, which would augment the present arms race. This would further increase regional tensions, since all the countries are already deeply immersed within a security dilemma.

However, one must consider the public sentiments towards a future constitutional revision. Now that all the fundamentals of the Japanese domestic and foreign have been analyzed the next chapter will analyze the poll results to provide a better insight of the constitutional debate and particularly of Article 9.

CHAPTER 7

POLL RESULTS

Various newspapers and organizations tried to understand the mind-set of the people, from the young generations to elderly. Poll results concerning the constitutional revision constitutes the material for this chapter's analysis on Japanese public opinion. As stated in previous chapters, domestic factors such as the collapse of the 1955 system as well as the outside factors like North Korean missile threats, have catalyzed this change. A brief overview of the present public opinion consists of three major aspects. Firstly, the majority favors some form of constitutional revision. Secondly, only a small minority wants to write the constitution from scratch. Thirdly, those who seek partial revisions, demand clarifications instead of radical structural changes. This chapter will demonstrate these three aspects by providing poll results as examples.

A better understanding of the issues concerning the constitutional change, public opinion during vital events has to be surveyed. From the period of its promulgation till the present-day, in spite of significant events, Article 9 stayed the same. Since the 2012 victory, the revisionist LDP has taken several steps on constitutional reinterpretation and security outlook.

From 1955 to present: The agenda of change

If the past and the present are compared as a start, the following question has to be asked: How was the reaction of Japanese people to the new 1947 constitution at the time of its promulgation? At that period the circumstances of the post-war period were much different than today, and there had been a few polls that tried to answer

this question. According to Shiro Sakaiya who is an associate professor of Political Science in the Tokyo Metropolitan University, the claim that the Japanese people would enthusiastically embracing Article 9, with its agenda of renouncing war, can be questionable.⁴⁰⁵ His studies about researching the past mentality of the people, drew attention from politicians and many organizations. By analyzing the public opinion of the past, Sakaiya noticed that several pieces of information regarding the constitution could have been false. His research could thus lead to the shattering of myths, as he claims that the Article 9 is not a sacred thing. The only data about this article renouncing war can be found in the 1946 survey by the Mainichi Shimbun, which states that 70% of the respondents thought that Article 9 was necessary. However, Sakaiya claims that the sampling method had some flaws, since only 2000 people participated, and the poll was not inclusive enough. In March 1952, another survey done by the Mainichi Shimbun resulted only with 27% support to the question of possessing a national army. However, the problem is that very few people remember the results of 1950 period. Sakaiya adds that, this blurred memory could have been restructured by the liberal intellectuals who protected the constitution from any revision.⁴⁰⁶

Constitutional revision was first discussed during the March-November period of 1952. At that time the US was impelling Japan to rearmament. The idea was that Japan would regain its sovereignty both on paper (San Francisco Peace Treaty) and on administration (construction of army). According to *Yomiuri Shimbun*

⁴⁰⁵ Yoshida, “Scholar plumbs polls to challenge Japanese Constitution ‘myths’.”

⁴⁰⁶ Ibid.

survey in April 1952, 47.5% of the interviewers said that Japan should revise the Constitution to rearm itself, while 39% disagreed.⁴⁰⁷

In the future, if there will be a poll about the constitutional revision, Sakaiya points out that the wording of that poll would affect the results greatly. As the opinion of the people is a very sensitive subject, the wording of the poll must be carefully chosen. Words such as “gun”(forces/units) or change of renunciation of war could dramatically alter the vision of the people. Sakaiya claims that people are not very interested in the nationalistic sentiments. In fact, they care more about jobs and a strong economy. He claims that Abe got the votes through his economic policies called as Abenomics. And lastly, he claims that the role of the opposition party is also significant, and that the stance of the DPJ will affect the poll results greatly.

The preparations for the constitutional amendment agenda had started in the midst of 2000s. After the 2005 Commission regarding the constitutional reform, during the Abe premiership of 2006-2007, the Referendum Law was passed for paving the road for the intended amendment. After a brief pause, which occurred during the DPJ cabinet, the 2012 Lower House election victory followed with the 2013 Upper House election once again gave Abe the premiership, and he brought back the agenda for the constitutional change. Prior to the 2013 victory as well as the 2014 collective self-defense interpretation and Referendum Law revision, 2 surveys were conducted each year to find out the interests of the public regarding the changes. The 2014 version of the Referendum Law gave the voting right to the 18 year old's, and the LDP gained more than 2/3 of the seats at the Lower House. As the

⁴⁰⁷ Yomiuri Shimbun, “Kenpo o dou omou?”

constitutional debate got more heated another survey was conducted in 2015 to analyze the mindset of the people after the 2014 reforms. In the Aramaki Hiroshi and Masaki Miki article, the results of 4 telephone surveys gathered by *NHK*, which were about the personnel sentiments of the people on planned constitutional changes, especially Article 9 and 96 are analyzed. First survey was conducted during 2007 followed by the remaining three in 2013, 2014 and 2015. According to the results, the rate of support for the constitutional reform was high in 2007 but later in 2015, it dropped from 41% to 24%. Similar results were seen on other topics such as Article 9 and Article 96 changes. The analysis paper claims that the drop was caused because the public began to understand the proposed changes better and felt that more caution was needed, since the change seemed too swift.⁴⁰⁸ Through each constitutional interpretation, Japan's role in the global arena was getting larger than ever. The analysis paper displays the results of the 2015 survey for the July 2014 collective self-defense interpretational change. Additionally, it was found out that people regarded the method of the interpretation inappropriate and felt that further information had to be shared with the people.⁴⁰⁹

7.1 Supporters and opposers of the constitutional revision: The NHK polls

All 4 surveys which were conducted in 2007, 2013, 2014 and 2015 had a valid response rate, which was almost equal to 60%. Telephone digits were dialed randomly. Samples were collected from Japanese citizens who were aged 18 and older. In the 2015 survey it was found out that 7 out of 10 people showed interest in

⁴⁰⁸ Aramaki, Masaki, Pros and Cons Evenly Matched on Constitutional Revision, 2.

⁴⁰⁹ Ibid, 2-3.

the constitutional debates. 23% of the remaining 29%, was not very interested, while 6% was not interested at all. As for gender and age allocations, it was found out that men were more interested than women and the interest of older people aged 60 and higher in the constitutional debates was much higher than young adults.⁴¹⁰

According to the survey results, the people were very interested in the revision of the constitution before 2014. In the 2015 survey, those who favor the revision and the ones that oppose reached to identical levels (see Figure 6).

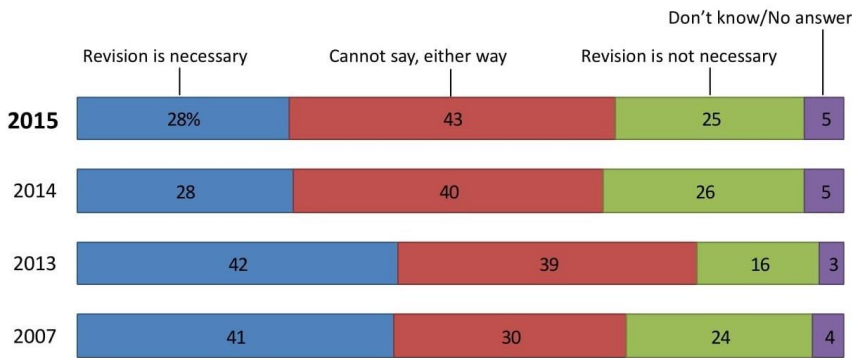


Fig. 6 Pros and cons of Constitutional Revision

Aramaki Hiroshi and Masaki Miki, Pros and Cons Evenly Matched on Constitutional Revision, 5.

Meanwhile, the number of the undecided ones had reached from 30% to 43%, which demonstrated the mindset of the people. Indecision between the current values of pacifism and a popular demand for new implementations was the general cause of this increase. As the gap between the reality and practice got narrower due to the

⁴¹⁰ Ibid, 3.

formation of the Abe cabinet as well as the LDP having majorities in the both of the Houses, people suddenly came to the realization that a sweeping change was coming, which would suddenly alter the structure of the constitution.⁴¹¹

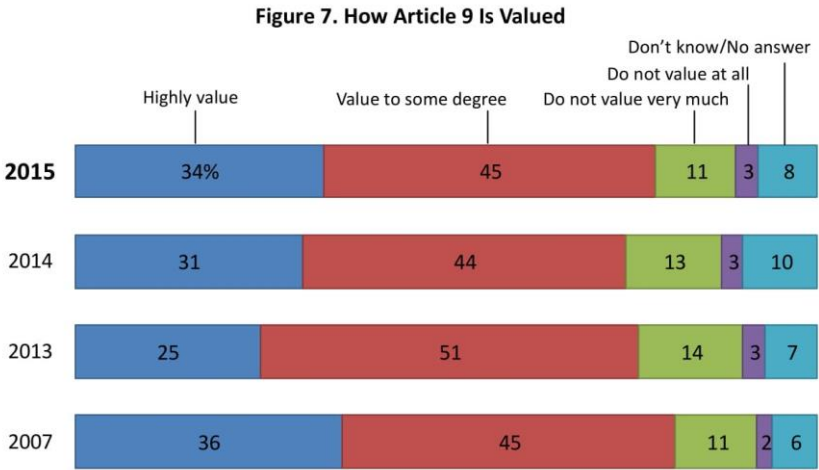


Fig. 7 How Article 9 is valued

Aramaki Hiroshi, Masaki Miki, Pros and Cons Evenly Matched on Constitutional Revision, 7.

As for Article 9, the pacifist article was valued as highly as the 2007 period with 36% highly valued. It poses as one of the main reasons, which sparked the public disinterest towards a constitutional revision. Figure 7 above shows that in the 2015 survey, 45% of the respondents value Article 9 and see it in a positive light. As for the Article 9 revision, 22% supported the revision of Article 9, whereas 38% was against it. Although slight decreases occurred during the 2013-2014 period, opposition to the Article 9 change regained its position in the 2015 one. Also, older

⁴¹¹ Aramaki, Masaki, Pros and Cons Evenly Matched on Constitutional Revision, 5.

people were much more interested in preserving the article whereas women were less interested in changing it compared to men. Figures 7 and 8 are the results for constitutional revision, people's attitude towards Article 9's value and for its revision obtained during the 4 periods.

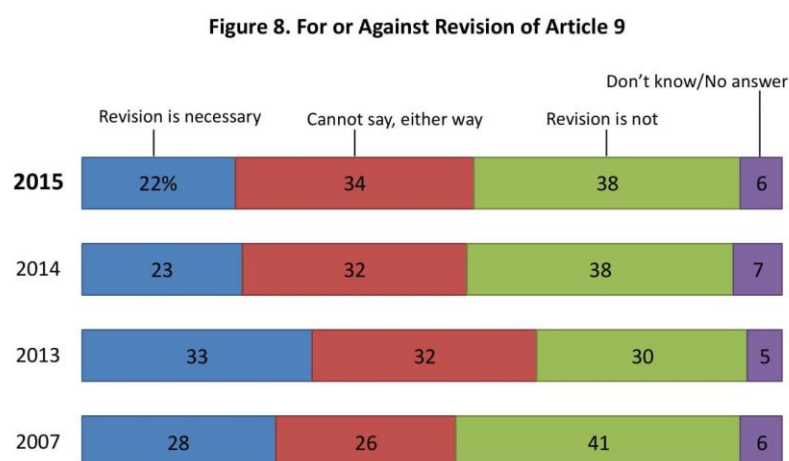


Fig. 8 For or against revision of Article 9

Aramaki Hiroshi, Masaki Miki, Pros and Cons Evenly Matched on Constitutional Revision, 8.

For the method of article change, the respondents wished that the conditions of the SDF should be stipulated to label it as a military force and the limitations of the SDF should be ascertained. In the 2015 survey 44% chose that more clarification should be added to the constitution regarding the SDF forces. 25% asked several other additions such as the participation of the SDF to the United Nations-led military activities. Those who favor total abandonment from any military limitations were 15%, whereas a minority of 8% was sympathetic to total abolishment of pacifism. Those who oppose the Article 9 revision mainly claimed that Article 9 is the most important clause in the pacifist Constitution (65%). 13% believed that SDF

restraints should be preserved. Another 13% supported the opposition due to the belief that the interpretation strategy was necessary enough for tackling future situations.⁴¹²

When the respondents were asked to provide a reason for the revision, they claimed that it was necessary to change the constitution because it was outdated (79%), and a clarification was required for the continuity of the international role performed by the Self Defense Forces (12%). As for the opposition side, 67% disfavored constitutional change for the protection of Article 9 and 20% thought that the constitution did not require serious changes, since it only had minor problems.

Survey results for the collective self-defense issue

As mentioned above, collective self-defense is a country's right given by the UN Charter, which enables a country to send aid including military aid, to protect its ally from a belligerent state. Therefore, an attack against an ally is recognized as an attack to a country itself. In the Japanese case, this is largely limited due to Article 9 and the 1950 collective security ban.

Figure 9 indicates that before the July 1st, 2014, the cabinet approval regarding the right of collective self-defense, the people were in favor of amending the ban.

However, the situation got reversed in 2014, several months before the 2014 interpretation change. In the 2014 version, a rising skepticism regarding the collective self-defense was seen. It was also found out that the people preferred the method of constitutional change much more than just a transitory interpretational

⁴¹² Ibid, 10.

alteration. This dissatisfaction was a response to the 2014 reinterpretation.

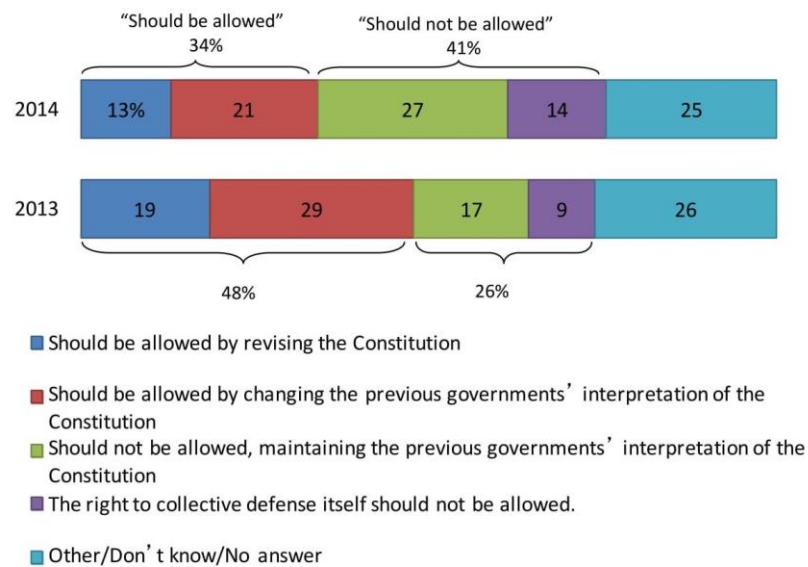


Fig. 9 Should exercise of the right of collective self-defense be allowed? (colors are in order)

Aramaki Hiroshi, Masaki Miki, Pros and Cons Evenly Matched on Constitutional Revision, 11.

The 2015 version has demonstrated that Japanese people are not sure whether changing the right of collective self-defense would be beneficial or not. As can be seen from Figure 10 below, opposition is slightly higher than the support whereas the men tend to support the adoption of the right much more than women. The indecisive group consists mostly of young adults who do not have a clear view on this issue.

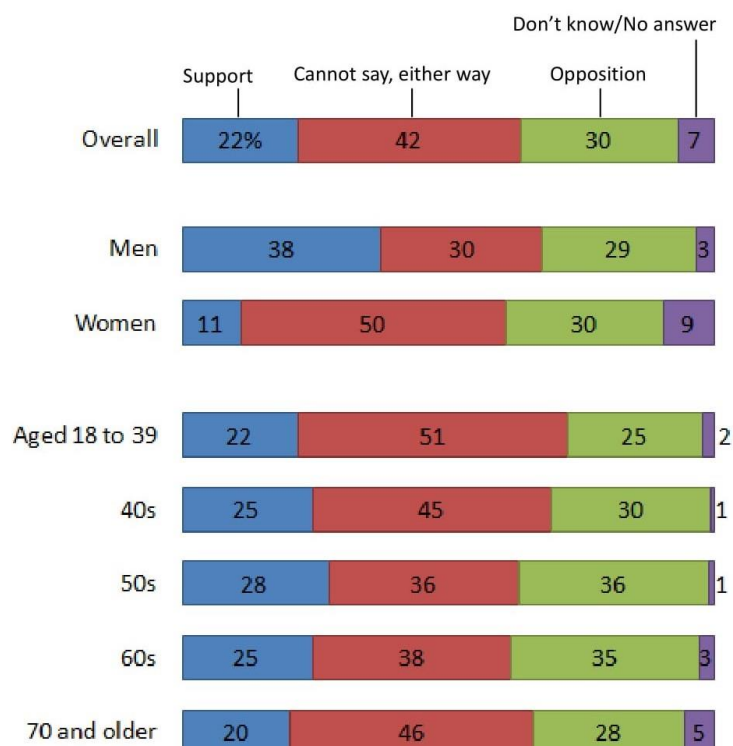


Fig. 10 Support for or Opposition to exercise of the right to collective self-defense (2015; by gender and age group)

Aramaki Hiroshi, Masaki Miki, Pros and Cons Evenly Matched on Constitutional Revision, 12.

However, not all of the public opinion polls show similar results to the ones done by *Asahi Shimbun* or the *NHK* telephone surveys above. There are other opinion polls that were conducted between the May-June period of 2014. For example, the result of a poll jointly conducted by the *Sankei Shimbun* and the Fuji News Network (FNN) on May 17 and 18 gave a completely different conclusion. In this poll, 69.9% of respondents supported Japan's exercise of the right of collective self-defense. Among this 70% group, 10.5% of respondents answered, "The right should be able to be exercised in full scale," and 59.4% answered, "The right should

be able to be exercised to the minimum extent necessary”. The exercise of the right was opposed by 28.1%. Similarly, a poll, which was conducted by the *Yomiuri Shimbun* on May 30 through June 1, has shown similar results. In the Yomiuri poll, exercising the right of collective self-defense was supported by 71% of respondents. Supporters of the collective self-defense adoption were divided between the 11%, who answered as, “The right should be able to be exercised in full scale,” and the remaining 60%, who answered as, “The right should be able to be exercised to the minimum extent necessary”. The opposers of this right reached 24%.⁴¹³

The above examples show that the Japanese public is rather ambiguous about security issues. The resistance against the adoption of more active security policies has proven that there is still a quite a significant amount of people that oppose any military approval or upgrade. There is an uncertainty whether such an adoption would be fruitful for Japan or alter it greatly. People are dissatisfied by the Abe Cabinet’s explanations about the adoption of the right of collective self-defense. On questions such as: How will Japan’s defense posture and external policy change if Japan starts to exercise its right of collective self-defense? What will happen to the current status of Japan?, Abe refrains from giving additional information as it could disrupt its relationship with its coalition partner Komeito.

The wording of the polls is also an important factor. Polls that have only 2 options resulted with more opposition to collective self-defense reform whereas polls which had sub questions resulted with more support.

⁴¹³ Mataka, “Japanese Public Opinions about the Exercise of the Right of Collective Self-Defense.”

Revising Article 96

The change to the Article 96 had attracted much attention, since this change would also involve a necessity for changing the war renouncing Article 9. The revision of this article was one of the primary targets of Shinzo Abe, right after his premiership in 2012. Although, softening the recommendations for constitutional amendment could have removed the Diet barrier, it would not have achieved the swift changes that Abe had stressed for, as the public would only have supported a revision if they were well informed and prepared to embrace it.⁴¹⁴ In addition, several opposition politicians suggested that some of the articles should have had more procedural standards in order to be amended (like the articles concerning the Emperor's authority). As Japan never had a constitutional reform in 70 years, the option of adopting a national governance and direct democracy, whereby the prime minister would be elected by a national vote, resulted with many undecided people about such a rigorous change to the current constitutional structure. This can be easily seen in the 2015 poll that both in 2013 and 2014, there were 40%, who were undecided.⁴¹⁵ Figure 11 below, shows the statistics of years 2013 and 2014. It shows the declining trend of pro revisionists and the rising opposition to the constitutional revision.

⁴¹⁴ Tadashi, "Behind Moves to Revise Article 96."

⁴¹⁵ Aramaki and Masaki, 16.

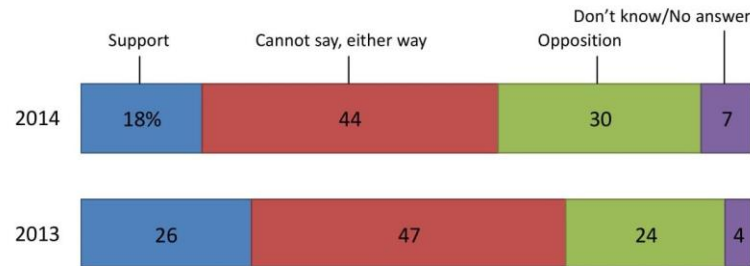


Fig. 11 Do you support or oppose the revision of Article 96?

Aramaki Hiroshi, Masaki Miki, Pros and Cons Evenly Matched on Constitutional Revision,¹⁶

7.2 Kyodo and Jiji news surveys

The debate for the revision of the Japanese Constitution gained momentum prior to North Korean and Chinese military developments. According to Kyodo News mail-in survey that was conducted in 2017, the number of revisionists are slightly more than the pacifists, because of the threat implied by the North Korean missile tests. This survey showed that 49% of the respondents favor a change whereas 47% oppose a structural revision for the constitution. However, the survey also includes that only 45% want the revision under the rule of the Abe government.⁴¹⁶ Majority of the respondents believed that, Article 9 of the constitution, which blocked any Japanese military intervention to foreign countries, prevented Japan from entering into harsh conflicts ever since 1945. The survey included 3000 randomly selected subjects, aged 18 and older who were e-mailed questionnaires. The results were obtained from 2000 respondents.

⁴¹⁶Kyodo, “Japanese sharply divided over revising Article 9 amid regional security threats, poll finds.”

The support for the 2017 Abe administration dropped as another survey performed by Kyodo News demonstrated that the people wanted a constitutional change, not necessarily in 2020 but sometime in the future.⁴¹⁷ The survey randomly picked 3,000 people aged 18 and older nationwide, and questionnaires were sent to them by mail on March 7. A total of 2,040 sent back their answers by April 13, with valid responses collected from 1,922. According to this mail-in survey, 61% disfavored a constitutional change under the Abe administration compared to 38% support for them. 62% preferred to have a constitutional change not in 2020, while the support for Abe dropped to 36%. The survey indicated that people wanted to change the outdated constitution, but not in a hurry, and that they did not trust the Abe administration due to the several political scandals and allegations of cronyism. It also demonstrated that the issue of constitutional change was in a stalemate, as it swayed between two opinions. At one time the public demand for the amendment of the constitution increased because of the growing threats from the outside. At another time, a public scandal that rose among the LDP and its institutions, led to the public disapproval of the ruling party. This happened after the Moritomo Gakuen scandal as opinion polls have indicated that the support for revision had dropped in response to inappropriate incidents.⁴¹⁸

If we compare the results of 2015 and 2017, we observe an increase in the number of revisionists, but the change is slow and regional developments play big parts on the public response. A result from the 2017 Jiji Press poll has shown that

⁴¹⁷ Kyodo News, “Majority of Japanese oppose any constitutional revisions under Abe, but see need for future changes, poll finds.”

⁴¹⁸ Osaki, “Abe attempts to rally from scandal, repeating Article 9 vows at LDP’s annual convention.”

people tend to refrain from any revision in haste and want to be more informed about the details of such changes.⁴¹⁹In the year of 2018, 70% of the 2000 poll subjects opposed any constitutional amendment. It is found out from the poll that 17% did not want any revision at all and only 20% has stated their support for the change. Asked what should be given priority for the amendment, 36% suggested government transparency following with 35.9%, who wished for a free education, and 28% supported the addition of a state of emergency clause.

7.3 Three different newspaper surveys

Figure 12 shows the results of 3 polls conducted by popular newspapers from March and April of 2017: Asahi Shimbun, Yomiuri Shimbun, and *NHK*. The results for each poll 41, 49, and 43% respectively state that revision is necessary. The same polls also show that 50, 49, and 34% respectively view revision as unnecessary.⁴²⁰ Each survey has shown a different set of results. This inconsistency is generated as a result of a lack of common ground between the surveys.

⁴¹⁹ Jiji, “Nearly 70% oppose Diet actions directed at constitutional revision in 2018: survey.”

⁴²⁰ Anderla, “The Uphill Battle for Constitutional Revision in Abe’s Japan.”

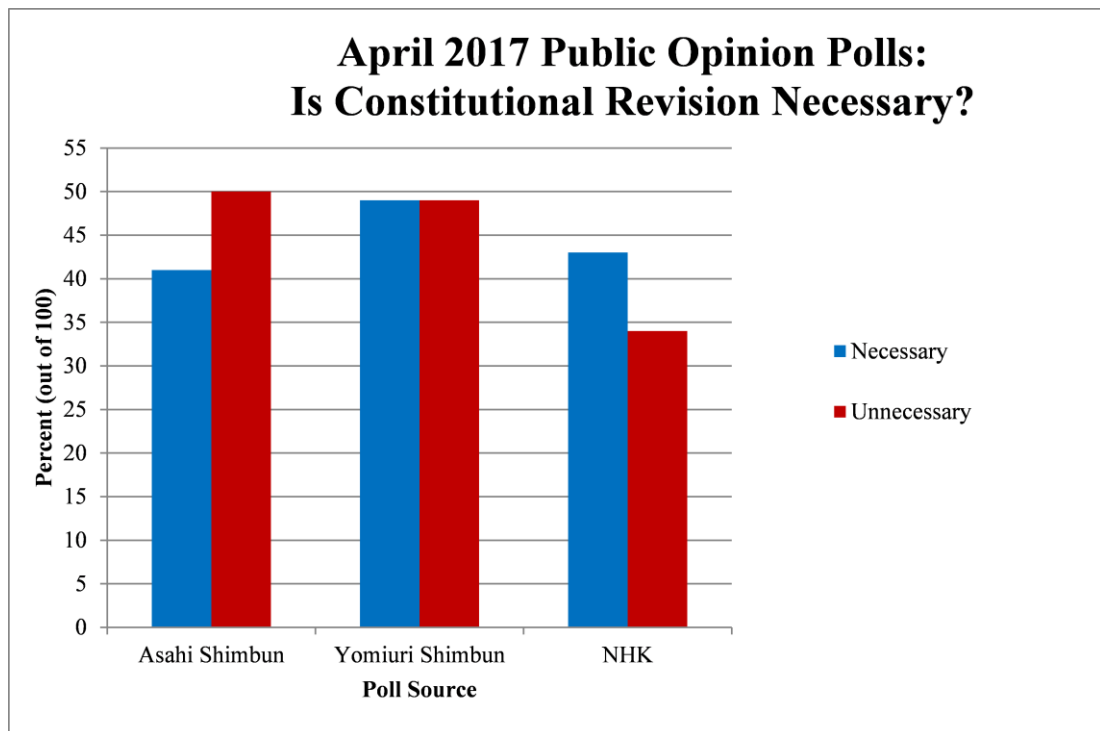


Fig. 12 Is Constitutional Revision Necessary? Data collected from Asahi Shimbun (Question 18), Yomiuri Shimbun (Question 2), and NHK (Chart 1) April 2017 polls prior to the 70th anniversary of the constitution.

Grant Anderla, The Uphill Battle for Constitutional Revision in Abe’s Japan, Stimson Analysis, August 3. <https://www.stimson.org/content/uphill-battle-constitutional-revision-abe%E2%80%99s-japan>

Figure 13 shows how the opinions are divided for the revision of Article 9. The distrust for the US and the North Korean missile tests still trigger an uneasiness for the Japanese voters, as Yomiuri Shimbun survey once again shows high support for revision. The right-wing Yomiuri Shimbun poll shows that even in 2017, the opposition to the revision of Article 9 still remained.

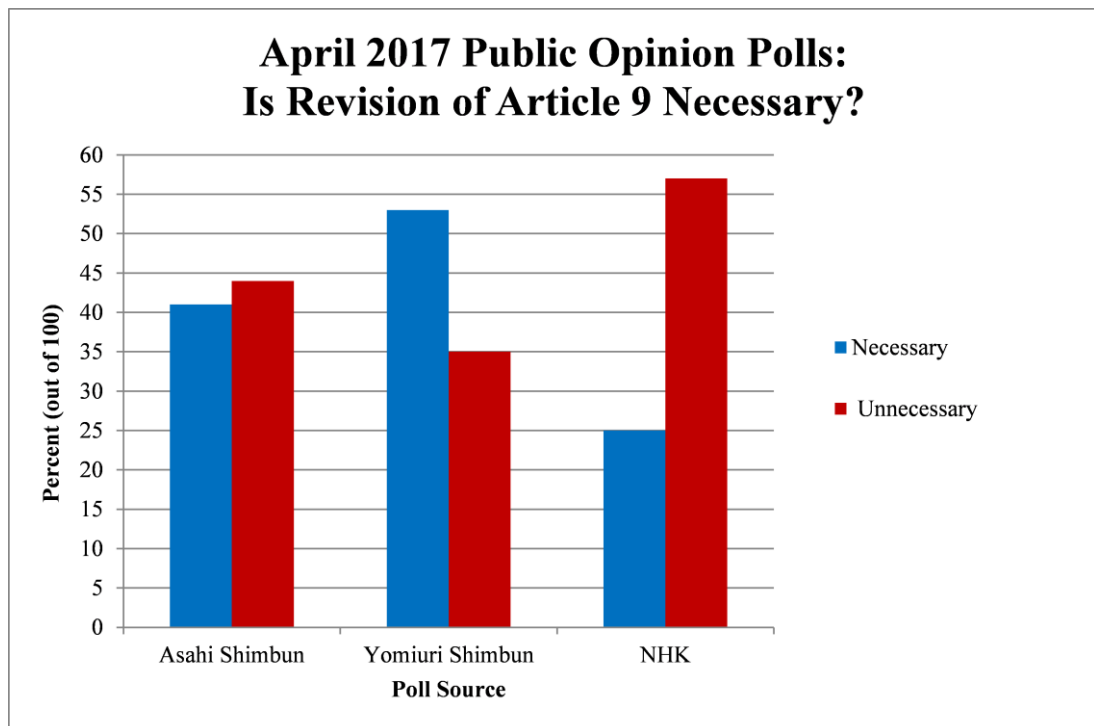


Fig. 13 Is revision of Article 9 Necessary? Data collected from NHK (Chart 7), Yomiuri Shimbun (Question 5), and Asahi Shimbun (Question 6) April 2017 polls regarding Article 9 revision.

Grant Anderla, *The Uphill Battle for Constitutional Revision in Abe's Japan*, Stimson Analysis, August 3. <https://www.stimson.org/content/uphill-battle-constitutional-revision-abe%E2%80%99s-japan>

However, as Figure 14 below shows, that there is a division between those who favor a revision and the others whom prefer to keep going with reinterpretations. Between the years 2015-2016, there was a rising trend to keep Article 9 as it is.

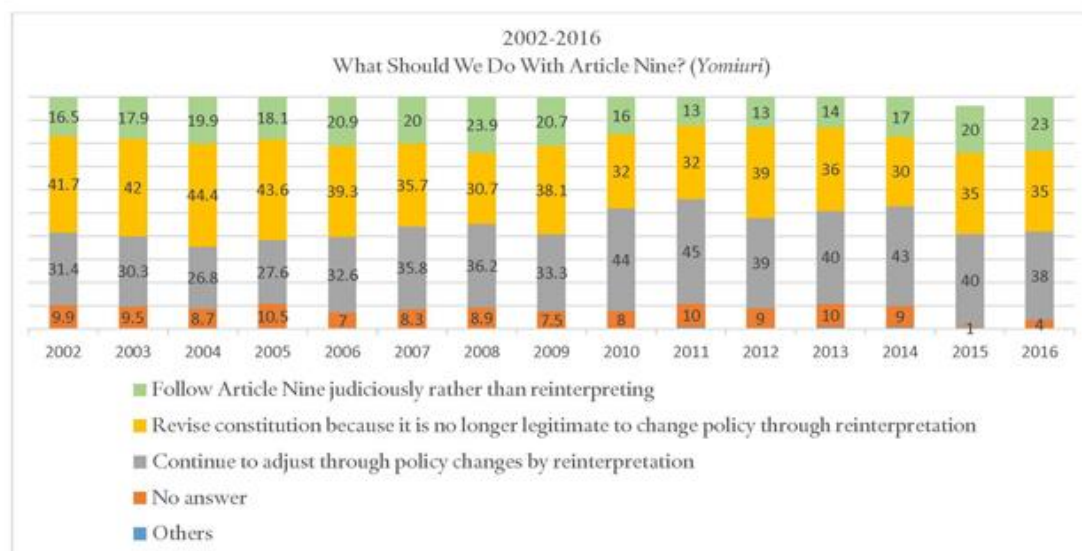


Fig. 14 Yomiuri Polls from 1995 to 2016 Upper House elections

Sheila A. Smith and Ayumi Teraoka, Japanese Public Opinion on Constitutional Revision in 2016, Council of Foreign Relations, August 1, 2016.

As Grant Anderla stated, the chances of success for Abe's revision plans is getting lower, as the public remains skeptical about the dramatic changes. According to Anderla winning the favor of the voters needs 3 criteria. Firstly, continued economic growth through Abenomics, stable foreign relations, and a strategic Cabinet reshuffle may help stabilize Abe's rating. Secondly, increasingly credible threats from a nuclear North Korea and decreasing confidence in the U.S. as an ally may trigger the Japanese people to accept the need for a constitutional SDF. And thirdly, a persuasive explanation of the status and role of a legal SDF may change people's minds.⁴²¹ Throughout the years, the third option – Japan's Proactive

⁴²¹ Ibid.

Contribution to Peace – is generally highlighted in Japan's Blue Books, and a broad constitutional revision is shelved at the moment.

In sum, the Japanese constitutional revision is analyzed through public opinion, domestic circumstances and party politics. Increasing nationalism, strong ruling party and outdated institutionalism are the basic internal reasons of the need for a constitutional revision.

CHAPTER 8

CONCLUSION

This thesis shows that domestic and external developments play big part on constitutional change. They are entangled to each other and both have the same level of influence. The above chapters tried to prove this entanglement by a effect and consequence analysis.

Japan evolved significantly both in terms of its defense policy and its contribution to world peace between the 1952 San Francisco peace treaty and the present. During this time it achieved substantial amount of military force to effectively defend itself against foreign threats through constitutional interpretations. Although interpretations were adequate for responding to the global dynamics, when the ideological gap between the inscribed article 9 of the constitution and the government practice became widened, a need for constitutional amendment had to be considered to supersede this discrepancy. The SDF was the chosen body that was responsible for the solution of this situation, but the limits that were dictated for its actions inevitably raises the question whether Japan has full sovereignty as all other independent states or not.

Originally, the purpose of Article 9 was to create a perfectly demilitarized Japan that would accompany US interests at the Pacific region. Although the initial purpose of the article had deteriorated in the course of the past 70 years, the pacifist nature of the constitution had successfully hindered Japan from adopting expansionist military policies. The need to refrain from any bellicose action had served Japan well during the Cold War years, when Japan was growing in wealth and the US nuclear umbrella was enough for ensuring its defense. But times changed

after the Cold War, as the bipolar world structure was shattered, and Japan had to adjust its policies in order to immerse itself into the New World Order. As a result the debates for the amendment of the constitution rose to the surface again. Japanese internal politics experienced major changes in the 90s as parties reorganized themselves on account of the changing global structure. They had to update their party agendas as well as listen to the public demands in order to gain administrative power.

So far, Japan achieved military improvements through de facto recognitions and managed the international peacekeeping operations by interpreting the Preamble of the constitution. The current status of its amendment seems to be near at hand thanks to the Prime Minister Shinzo Abe's recent election victory in 2017 as well as his ambitious and high-profile Abe Doctrine. This doctrine can be regarded as historic due to its reaction to various contemporary security issues of Japan, especially counter terrorism. This differentiates Abe from other revisionist prime ministers of Japan, because of his prioritizing the implementations against the rising Chinese influence. The highly active nature of Japan's foreign contributions further indicate this fact. In order to embrace this proactive role, Japan will act as the counter measure against a strong China at the Pacific region. This is the main reason why Japan attempts to further increase its cooperation with the US government, labeling it as the Alliance of Hope. As the US security cooperation represents a dynamic pillar of Japanese defense policy, the two countries would eventually bolster their collaboration with further agreements and assistance. Cases like Futenma vacillation as well as the issue of Okinawa have shown us that despite the low term hesitancy of relations between the two countries, their partnership is indispensable. It is

understandable that both regional and global factors played a big role on the creation of the Abe doctrine.

From the 1950s until today the necessity to revise the constitution was always on the agenda. The second chapter elucidating the Japanese political history before the end of the Cold War shows that Japan was planning to revise Article 9 even when it was under the American occupation. After the pragmatist wing came to power the debate was shelved for a time. However, it was put back on the table again due to the above-mentioned reasons.

The amendment issue involves not just a simple matter of changing one article or recognizing the defense forces as a national army. Instead it is a set of interconnected complicated issues, which deeply concerns the future of Japan's democracy, constitutionalism, national sovereignty and independence, relationship with the US, and its contributing role for maintaining regional and global peace, security, and order. It remains to be seen whether the Abe administration will amend the constitution only by the addition of several clarifications to the existing articles or spread the reform into other categories as well, particularly the authority of the Emperor.

The 2012 Draft showed us that Article 9 was not the only issue. The authority of the Emperor is also a sensitive subject that is being supported by the nationalists who want the adoption of the old Meiji style imperial system. In this system, the Emperor was the Head of the State with a Privy Council accompanying him in order to spin the bureaucratic wheel. Japanese people were subjected to values and responsibilities with full obedience to the judgments of the Emperor. Re-construction of this system could endanger the present democratic values of Japan as well as rewrite the distribution of power of the Japanese politics as a whole. As stated above,

this idea gained the support of only the far-right, while politicians like Abe refrained from pushing forward this agenda in order to prevent public backlash. These issues are not the reasons of post-Cold War adaptation. It even contradicts the development of the liberties of Japanese citizens as it delivers a critical blow to democracy and basic rights of citizens. The 2012 Draft, the 1978 Yasukuni Shrine reorganization and the Nippon Kaigi have shown that the ultra-nationalist spirit inside Japan hid in the shadows for a while after WW2, but resurfaced again in several occasions. Just like the amendment debate, they were always there. This is not a new phenomenon.

Any changes to Article 9's constraints on SDF would have significant consequences in the Asia-Pacific region and beyond. The regional power game was a great demonstration of the neorealism ideology. Through the analysis of notable neorealist thinkers such as Kenneth Waltz and Hanz Morgenthau, it can be concluded that the revision of Article 9 can be identified as a neorealist tendency. As states are the most important units of the international system, the decisions of the Japanese state would definitely affect the whole region. Due to the demand of every state to increase its own capabilities further, this would result with a regional security dilemma. China and South Korea will not see the reform as a sign of Japanese concerns about its own future security, but rather as evidence that Abe is taking Japan back to its militaristic origins. For its neighbors, any attempt to violate the regional status quo or the distribution of power by amending Article 9 will be perceived as a negative development. These overly cautious perceptions are the result of Japan's past expansionist actions dating back to the pre-World War 2 period. Constitutional changes will also draw a reaction from Washington. Trump has made a point of telling U.S. allies that they must improve their own defenses, and he may misunderstand the revision as a sign that Japan is willing to remove all

constraints on its military. In the future this may bring difficulties in managing U.S. expectations.

Discussion of Thucydides' entanglement vs abandonment dilemma has displayed the vital characteristic of Japanese Foreign Policy. The fear that the US would abandon Japan during a crisis between Japan and North Korea pushes Japan to be more entangled to the US security strategy. Japan was always on the side of America and consistently provided support to US operations such as the Iraq 2003 operation, logistical support in Indian Ocean and fighting pirates near the coast of Somalia. All these efforts are the signs of Japanese expectations to prevent any US let down in the case of a huge national crisis.

The analysis of the case study of the Senkaku Islands Nationalization in 2012, has shown that nationalism inside Japan gained significant ground thanks to the role of the Internet as a platform of information and communication. The nationalists wish for a more active Japan which holds a prominent role in international politics. Many Japanese people dream of the past days when Japan was rising rapidly with its large economy and great technology. Now that the growth of their economy is checked, many nationalists frustrated about their country's declining achievements and faded national pride. Instead of a complete militarization of the old Meiji days, these people favor a highly active Japan, which is dependent on itself with its full recuperation of its sovereignty.

Despite Abe's landslide victory in 2017, it is unclear whether he will be able to push through the aforementioned reforms. A large majority of legislators in Japan's lower house would like to see the details of such revisions and they do not all share Abe's ideas about which reform should be passed and which should not. In

addition, the approval of a revision in a national referendum might be the hardest part since many people are oppose to such an idea. Taking this issue into account, after the elections Abe stepped back from trying to amend the constitution by 2020, stating that more time is needed in order to ensure that the largest possible number of the Japanese support the revision. The unsteady public opinion affects Abe's plans for revision directly, thus the future still remains in blur.

In addition, one must consider the highly maintenance budget of the SDF. Currently, Japanese society is facing several tough issues which is posed by its shrinking and rapidly aging population, low birthrates and an unprecedented fiscal crunch. As a result of these challenges, one must consider the question of whether Japan could finance its military and equip much sophisticated military systems.

The only thing that does not change is change itself. As a response to the changing regional dynamics, not in the long run but definitely in the near future, Japan would one way or another modify the long disputed Article 9. Currently, the stipulations of this article are already being breached in Japan. Although Japan needs to be able to and does activate sudden SDF dispatches overseas under certain preconditions, Article 9 prohibits this under any conditions. This is but one case that demonstrates the present rift between the written word and active practice. The fate of the constitution depends entirely on people's will and discretion if such an attempt was put on the table by the Japanese Prime Minister.

APPENDIX A

1947 CONSTITUTION OF JAPAN IN JAPANESE AND ENGLISH⁴²²

日本国憲法

The Constitution of Japan

昭和二十一年十一月三日憲法

Constitution November 3, 1946

日本国民は、正当に選挙された国会における代表者を通じて行動し、われらとわれらの子孫のために、諸国民との協和による成果と、わが国全土にわたつて自由のもたらす恵沢を確保し、政府の行為によつて再び戦争の惨禍が起ることのないやうにすることを決意し、ここに主権が国民に存することを宣言し、この憲法を確定する。そもそも国政は、国民の厳粛な信託によるものであつて、その権威は国民に由来し、その権力は国民の代表者がこれを行使し、その福利は国民がこれを享受する。これは人類普遍の原理であり、この憲法は、かかる原理に基くものである。われらは、これに反する一切の憲法、法令及び詔勅を排除する。

⁴²² Retrieved from http://www.japaneselawtranslation.go.jp/law/detail_main?id=174

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith.

日本国民は、恒久の平和を念願し、人間相互の関係を支配する崇高な理想を深く自覚するのであつて、平和を愛する諸国民の公正と信義に信頼して、われらの安全と生存を保持しようと決意した。われらは、平和を維持し、専制と隷従、圧迫と偏狭を地上から永遠に除去しようと努めてゐる国際社会において、名誉ある地位を占めたいと思ふ。われらは、全世界の国民が、ひとしく恐怖と欠乏から免かれ、平和のうちに生存する権利を有することを確認する。

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

われらは、いづれの国家も、自国のことのみに専念して他国を無視してはならないのであつて、政治道徳の法則は、普遍的なものであり、この法則に従ふことは、自国の主権を維持し、他国と対等関係に立たうとする各国の責務であると信ずる。

We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations.

日本国民は、国家の名誉にかけ、全力をあげてこの崇高な理想と目的を達成することを誓ふ。

We, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources.

第百章 天皇

CHAPTER I. THE EMPEROR

第百条 天皇は、日本国の象徴であり日本国民統合の象徴であつて、

この地位は、主権の存する日本国民の総意に基く。

Article 1. The Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power.

第二条 皇位は、世襲のものであつて、国会の議決した皇室典範の定めるところにより、これを継承する。

Article 2. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

第三条 天皇の国事に関するすべての行為には、内閣の助言と承認を必要とし、内閣が、その責任を負ふ。

Article 3. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

第四条 天皇は、この憲法の定める国事に関する行為のみを行ひ、国政に関する権能を有しない。

Article 4. The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government.

天皇は、法律の定めるところにより、その国事に関する行為を委任することができる。

The Emperor may delegate the performance of his acts in matters of state as may be provided by law.

第五条 皇室典範の定めるところにより摂政を置くときは、摂政は、天皇の名でその国事に関する行為を行ふ。この場合には、前条第一項の規定を準用する。

Article 5. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

第六条 天皇は、国会の指名に基いて、内閣総理大臣を任命する。

Article 6. The Emperor shall appoint the Prime Minister as designated by the Diet.

天皇は、内閣の指名に基いて、最高裁判所の長たる裁判官を任命する。

The Emperor shall appoint the Chief Judge of the Supreme Court as designated by the Cabinet.

第七条 天皇は、内閣の助言と承認により、国民のために、左の国事に関する行為を行ふ。

Article 7. The Emperor,
with the advice and approval of the Cabinet, shall perform the following acts in
matters of state on behalf of the people:

- 一 憲法改正、法律、政令及び条約を公布すること。

Promulgation of amendments of the constitution, laws,
cabinet orders and treaties.

- 二 国会を召集すること。

Convocation of the Diet.

- 三 衆議院を解散すること。

Dissolution of the House of Representatives.

- 四 国会議員の総選挙の施行を公示すること。

Proclamation of general election of members of the Diet.

- 五 国務大臣及び法律の定めるその他の官吏の任免並びに全権委任状
及び大使及び公使の信任状を認証すること。

Attestation of the appointment and dismissal of Ministers of
State and other officials as provided for by law, and of full powers and credentials of
Ambassadors and Ministers.

- 六 大赦、特赦、減刑、刑の執行の免除及び復権を認証すること。

Attestation of general and special amnesty, commutation of punishment,
reprieve, and restoration of rights.

- 七 栄典を授与すること。

Awarding of honors.

八 批准書及び法律の定めるその他の外交文書を認証すること。

Attestation of instruments of ratification and other diplomatic documents as provided for by law.

九 外国の大使及び公使を接受すること。

Receiving foreign ambassadors and ministers.

十 儀式を行ふこと。

Performance of ceremonial functions.

第八条 皇室に財産を譲り渡し、又は皇室が、財産を譲り受け、若しくは賜与することは、国会の議決に基かなければならない。

Article 8. No property can be given to, or received by, the Imperial House, nor can any gifts be made therefrom, without the authorization of the Diet.

第二章 戦争の放棄

CHAPTER II. RENUNCIATION OF WAR

第九条 日本国民は、正義と秩序を基調とする国際平和を誠実に希求し、国権の発動たる戦争と、武力による威嚇又は武力の行使は、国際紛争を解決する手段としては、永久にこれを放棄する。

Article 9. 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 means of settling international disputes.

前項の目的を達するため、陸海空軍その他の戦力は、これを保持しない。国の交戦権は、これを認めない。

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.

第三章 国民の権利及び義務

CHAPTER III. RIGHTS AND DUTIES OF THE PEOPLE

第十条 日本国民たる要件は、法律でこれを定める。

Article 10. The conditions necessary for being a Japanese national shall be determined by law.

第十一条 国民は、すべての基本的人権の享有を妨げられない。この憲法が国民に保障する基本的人権は、侵すことのできない永久の権利として、現在及び将来の国民に与へられる。

Article 11. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

第十二条 この憲法が国民に保障する自由及び権利は、国民の不断の努力によつて、これを保持しなければならない。又、国民は、これを濫用してはならないのであつて、常に公共の福祉のためにこれを利用する責任を負ふ。

Article 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

第十三条 すべて国民は、個人として尊重される。生命、自由及び幸福追求に対する国民の権利については、公共の福祉に反しない限り、立法その他の国政の上で、最大の尊重を必要とする。

Article 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

第十四条 すべて国民は、法の下に平等であつて、人種、信条、性別、社会的身分又は門地により、政治的、経済的又は社会的関係において、差別されない。

Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

華族その他の貴族の制度は、これを認めない。

Peers and peerage shall not be recognized.

栄誉、勲章その他の栄典の授与は、いかなる特権も伴はない。栄典の授与は、現にこれを有し、又は将来これを受ける者の一代に限り、その効力を有する。

No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

第十五条 公務員を選定し、及びこれを罷免することは、国民固有の権利である。

Article 15. The people have the inalienable right to choose their public officials and to dismiss them.

すべて公務員は、全体の奉仕者であつて、一部の奉仕者ではない。

All public officials are servants of the whole community and not of any group thereof.

公務員の選挙については、成年者による普通選挙を保障する。

Universal adult suffrage is guaranteed with regard to the election of public officials.

すべて選挙における投票の秘密は、これを侵してはならない。選挙人は、その選択に関し公的にも私的にも責任を問はれない。

In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.

第十六条 何人も、損害の救済、公務員の罷免、法律、命令又は規則の制定、廃止又は改正その他の事項に関し、平穏に請願する権利を有し、何人も、かかる請願をしたためにいかなる差別待遇も受けない。

Article 16. Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.

第十七条 何人も、公務員の不法行為により、損害を受けたときは、法律の定めるところにより、国又は公共団体に、その賠償を求めることができる。

Article 17. Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.

第十八条 何人も、いかなる奴隸的拘束も受けない。又、犯罪に因る処罰の場合を除いては、その意に反する苦役に服させられない。

Article 18. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

第十九条 思想及び良心の自由は、これを侵してはならない。

Article 19. Freedom of thought and conscience shall not be violated.

第二十条 信教の自由は、何人に対してもこれを保障する。いかなる宗教団体も、国から特権を受け、又は政治上の権力を行使してはならない。

Article 20. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.

何人も、宗教上の行為、祝典、儀式又は行事に参加することを強制されない。

No person shall be compelled to take part in any religious act, celebration, rite or practice.

国及びその機関は、宗教教育その他いかなる宗教的活動もしてはならない。

The State and its organs shall refrain from religious education or any other religious activity.

第二十一条 集会、結社及び言論、出版その他一切の表現の自由は、これを保障する。

Article 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

検閲は、これをしてはならない。通信の秘密は、これを侵してはならない。

No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

第二十二條 何人も、公共の福祉に反しない限り、居住、移転及び職業選択の自由を有する。

Article 22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

何人も、外国に移住し、又は国籍を離脱する自由を侵されない。

Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

第二十三條 学問の自由は、これを保障する。

Article 23. Academic freedom is guaranteed.

第二十四條 婚姻は、両性の合意のみに基いて成立し、夫婦が同等の権利を有することを基本として、相互の協力により、維持されなければならない。

Article 24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.

配偶者の選択、財産権、相続、住居の選定、離婚並びに婚姻及び家族に関するその他の事項に関しては、法律は、個人の尊厳と両性の本質的平等に立脚して、制定されなければならない。

With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

第二十五条　すべて国民は、健康で文化的な最低限度の生活を営む権利を有する。

Article 25. All people shall have the right to maintain the minimum standards of wholesome and cultured living.

国は、すべての生活部面について、社会福祉、社会保障及び公衆衛生の向上及び増進に努めなければならない。

In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

第二十六条　すべて国民は、法律の定めるところにより、その能力に応じて、ひとしく教育を受ける権利を有する。

Article 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law.

すべて国民は、法律の定めるところにより、その保護する子女に普通教育を受けさせる義務を負ふ。義務教育は、これを無償とする。

All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.

第二十七条 すべて国民は、勤労の権利を有し、義務を負ふ。

Article 27. All people shall have the right and the obligation to work.

賃金、就業時間、休息その他の勤労条件に関する基準は、法律でこれを定める。

Standards for wages, hours, rest and other working conditions shall be fixed by law.

児童は、これを酷使してはならない。

Children shall not be exploited.

第二十八条 勤労者の団結する権利及び団体交渉その他の団体行動をする権利は、これを保障する。

Article 28. The right of workers to organize and to bargain and act collectively is guaranteed.

第二十九条 財産権は、これを侵してはならない。

Article 29. The right to own or to hold property is inviolable.

財産権の内容は、公共の福祉に適合するやうに、法律でこれを定める。

Property rights shall be defined by law, in conformity with the public welfare.

私有財産は、正当な補償の下に、これを公共のために用ひることができる。

Private property may be taken for public use upon just compensation therefor.

第三十条 国民は、法律の定めるところにより、納税の義務を負ふ。

Article 30. The people shall be liable to taxation as provided by law.

第三十一条 何人も、法律の定める手続によらなければ、その生命若しくは自由を奪はれ、又はその他の刑罰を科せられない。

Article 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

第三十二条 何人も、裁判所において裁判を受ける権利を奪はれない。

Article 32. No person shall be denied the right of access to the courts.

第三十三条 何人も、現行犯として逮捕される場合を除いては、権限を有する司法官憲が発し、且つ理由となつてゐる犯罪を明示する令状によらなければ、逮捕されない。

Article 33. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.

第三十四条 何人も、理由を直ちに告げられ、且つ、直ちに弁護人に依頼する権利を与へられなければ、抑留又は拘禁されない。又、何人も、正

当な理由がなければ、拘禁されず、要求があれば、その理由は、直ちに本人及びその弁護人の出席する公開の法廷で示されなければならない。

Article 34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

第三十五条 何人も、その住居、書類及び所持品について、侵入、搜索及び押収を受けることのない権利は、第三十三条の場合を除いては、正当な理由に基いて発せられ、且つ搜索する場所及び押収する物を明示する令状がなければ、侵されない。

Article 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.

搜索又は押収は、権限を有する司法官憲が発する各別の令状により、これを行ふ。

Each search or seizure shall be made upon separate warrant issued by a competent judicial officer.

第三十六条 公務員による拷問及び残虐な刑罰は、絶対にこれを禁ずる。

Article 36. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

第三十七条 すべて刑事事件においては、被告人は、公平な裁判所の迅速な公開裁判を受ける権利を有する。

Article 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

刑事被告人は、すべての証人に対して審問する機会を充分に与へられ、又、公費で自己のために強制的手続により証人を求める権利を有する。

He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

刑事被告人は、いかなる場合にも、資格を有する弁護人を依頼することができる。被告人が自らこれを依頼することができないときは、国でこれを附する。

At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.

第三十八条 何人も、自己に不利益な供述を強要されない。

Article 38. No person shall be compelled to testify against himself.

強制、拷問若しくは脅迫による自白又は不当に長く抑留若しくは拘禁された後の自白は、これを証拠とすることができない。

Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.

何人も、自己に不利益な唯一の証拠が本人の自白である場合には、有罪とされ、又は刑罰を科せられない。

No person shall be convicted or punished in cases where the only proof against him is his own confession.

第三十九条 何人も、実行の時に適法であつた行為又は既に無罪とされた行為については、刑事上の責任を問はれない。又、同一の犯罪について、重ねて刑事上の責任を問はれない。

Article 39. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.

第四十条 何人も、抑留又は拘禁された後、無罪の裁判を受けたときは、法律の定めるところにより、国にその補償を求めることができる。

Article 40. Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.

第四章 国会

CHAPTER IV. THE DIET

第四十一条 国会は、国権の最高機関であつて、国の唯一の立法機関である。

Article 41. The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.

第四十二条 国会は、衆議院及び参議院の両議院でこれを構成する。

Article 42. The Diet shall consist of two Houses, namely the House of Representatives and the House of Councilors.

第四十三条 両議院は、全国民を代表する選挙された議員でこれを組織する。

Article 43. Both Houses shall consist of elected members, representative of all the people.

両議院の議員の定数は、法律でこれを定める。

The number of the members of each House shall be fixed by law.

第四十四条 両議院の議員及びその選挙人の資格は、法律でこれを定める。但し、人種、信条、性別、社会的身分、門地、教育、財産又は収入によつて差別してはならない。

Article 44. The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall

be no discrimination because of race, creed, sex, social status,
family origin, education, property or income.

第四十五条 衆議院議員の任期は、四年とする。但し、衆議院解散の場合には、その期間満了前に終了する。

Article 45. The term of office of members of the House of Representatives shall be four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved.

第四十六条 参議院議員の任期は、六年とし、三年ごとに議員の半数を改選する。

Article 46. The term of office of members of the House of Councilors shall be six years, and election for half the members shall take place every three years.

第四十七条 選挙区、投票の方法その他両議院の議員の選挙に関する事項は、法律でこれを定める。

Article 47. Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law.

第四十八条 何人も、同時に両議院の議員たることはできない。

Article 48. No person shall be permitted to be a member of both Houses simultaneously.

第四十九条 両議院の議員は、法律の定めるところにより、国庫から相当額の歳費を受ける。

Article 49. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.

第五十条 両議院の議員は、法律の定める場合を除いては、国会の会期中逮捕されず、会期前に逮捕された議員は、その議院の要求があれば、会期中これを釈放しなければならない。

Article 50. Except in cases provided by law, members of both Houses shall be exempt from apprehension while the Diet is in session, and any members apprehended before the opening of the session shall be freed during the term of the session upon demand of the House.

第五十一条 両議院の議員は、議院で行った演説、討論又は表決について、院外で責任を問はれない。

Article 51. Members of both Houses shall not be held liable outside the House for speeches, debates or votes cast inside the House.

第五十二条 国会の常会は、毎年一回これを召集する。

Article 52. An ordinary session of the Diet shall be convoked once per year.

第五十三条 内閣は、国会の臨時会の召集を決定することができる。
いずれかの議院の総議員の四分の一以上の要求があれば、内閣は、その召集を決定しなければならない。

Article 53. The Cabinet may determine to convoke extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Cabinet must determine on such convocation.

第五十四条 衆議院が解散されたときは、解散の日から四十日以内に、衆議院議員の総選挙を行ひ、その選挙の日から三十日以内に、国会を召集しなければならない。

Article 54. When the House of Representatives is dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election.

衆議院が解散されたときは、参議院は、同時に閉会となる。但し、内閣は、国に緊急の必要があるときは、参議院の緊急集会を求めることができる。

When the House of Representatives is dissolved, the House of Councilors is closed at the same time. However, the Cabinet may in time of national emergency convoke the House of Councilors in emergency session.

前項但書の緊急集会において採られた措置は、臨時のものであつて、次の国会開会の後十日以内に、衆議院の同意がない場合には、その効力を失ふ。

Measures taken at such session as mentioned in the proviso of the preceding paragraph shall be provisional and shall become null and void unless agreed to

by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

第五十五条 両議院は、各々その議員の資格に関する争訟を裁判する。但し、議員の議席を失はせるには、出席議員の三分の二以上の多数による議決を必要とする。

Article 55. Each House shall judge disputes related to qualifications of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

第五十六条 両議院は、各々その総議員の三分の一以上の出席がなければ、議事を開き議決することができない。

Article 56. Business cannot be transacted in either House unless one-third or more of total membership is present.

両議院の議事は、この憲法に特別の定のある場合を除いては、出席議員の過半数でこれを決し、可否同数のときは、議長の決するところによる。

All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution, and in case of a tie, the presiding officer shall decide the issue.

第五十七条 両議院の会議は、公開とする。但し、出席議員の三分の二以上の多数で議決したときは、秘密会を開くことができる。

Article 57. Deliberation in each House shall be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor.

両議院は、各々その会議の記録を保存し、秘密会の記録の中で特に秘密を要すると認められるもの以外は、これを公表し、且つ一般に頒布しなければならない。

Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy.

出席議員の五分の一以上の要求があれば、各議員の表決は、これを会議録に記載しなければならない。

Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

第五十八条 両議院は、各々その議長その他の役員を選任する。

Article 58. Each House shall select its own president and other officials.

両議院は、各々その会議その他の手続及び内部の規律に関する規則を定め、又、院内の秩序をみだした議員を懲罰することができる。但し、議員を除名するには、出席議員の三分の二以上の多数による議決を必要とする。

Each House shall establish its rules pertaining to meetings, proceedings and internal discipline, and may punish members

for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

第五十九条 法律案は、この憲法に特別の定のある場合を除いては、両議院で可決したとき法律となる。

Article 59. A bill becomes a law on passage by both Houses, except as otherwise provided by the Constitution.

衆議院で可決し、参議院でこれと異なつた議決をした法律案は、衆議院で出席議員の三分の二以上の多数で再び可決したときは、法律となる。

A bill which is passed by the House of Representatives, and upon which the House of Councilors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present.

前項の規定は、法律の定めるところにより、衆議院が、両議院の協議会を開くことを求めることを妨げない。

The provision of the preceding paragraph does not preclude the House of Representatives from calling for the meeting of a joint committee of both Houses, provided for by law.

参議院が、衆議院の可決した法律案を受け取つた後、国会休会中の期間を除いて六十日以内に、議決しないときは、衆議院は、参議院がその法律案を否決したものとみなすことができる。

Failure by the House of Councilors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection of the said bill by the House of Councilors.

第六十条 予算は、さきに衆議院に提出しなければならない。

Article 60. The budget must first be submitted to the House of Representatives.

予算について、参議院で衆議院と異なつた議決をした場合に、法律の定めるところにより、両議院の協議会を開いても意見が一致しないとき、又は参議院が、衆議院の可決した予算を受け取つた後、国会休会中の期間を除いて三十日以内に、議決しないときは、衆議院の議決を国会の議決とする。

Upon consideration of the budget, when the House of Councilors makes a decision different from that of the House of Representatives, and when no agreement can be reached even through a joint committee of both Houses, provided for by law, or in the case of failure by the House of Councilors to take final action within thirty (30) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives shall be the decision of the Diet.

第六十一条 条約の締結に必要な国会の承認については、前条第二項の規定を準用する。

Article 61. The second paragraph of the preceding article applies also to the Diet approval required for the conclusion of treaties.

第六十二条 両議院は、各々国政に関する調査を行ひ、これに関して、証人の出頭及び証言並びに記録の提出を要求することができる。

Article 62. Each House may conduct investigations in relation to government, and may demand the presence and testimony of witnesses, and the production of records.

第六十三条 内閣総理大臣その他の国务大臣は、両議院の一に議席を有すると有しないとにかかはらず、何時でも議案について発言するため議院に出席することができる。又、答弁又は説明のため出席を求められたときは、出席しなければならない。

Article 63. The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

第六十四条 国会は、罷免の訴追を受けた裁判官を裁判するため、両議院の議員で組織する弾劾裁判所を設ける。

Article 64. The Diet shall set up an impeachment court from among the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

弾劾に関する事項は、法律でこれを定める。

Matters relating to impeachment shall be provided by law.

第五章 内閣

CHAPTER V. THE CABINET

第六十五条 行政権は、内閣に属する。

Article 65. Executive power shall be vested in the Cabinet.

第六十六条 内閣は、法律の定めるところにより、その首長たる内閣総理大臣及びその他の国務大臣でこれを組織する。

Article 66. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law.

内閣総理大臣その他の国務大臣は、文民でなければならない。

The Prime Minister and other Ministers of State must be civilians.

内閣は、行政権の行使について、国会に対し連帯して責任を負ふ。

The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

第六十七条 内閣総理大臣は、国会議員の中から国会の議決で、これを指名する。この指名は、他のすべての案件に先だつて、これを行ふ。

Article 67. The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet.
This designation shall precede all other business.

衆議院と参議院とが異なつた指名の議決をした場合に、法律の定めるところにより、両議院の協議会を開いても意見が一致しないとき、又は衆議

院が指名の議決をした後、国会休会中の期間を除いて十日以内に、参議院が、指名の議決をしないときは、衆議院の議決を国会の議決とする。

If the House of Representatives and the House of Councilors disagree and if no agreement can be reached even through a joint committee of both Houses, provided for by law, or the House of Councilors fails to make designation within ten (10) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.

第六十八条 内閣総理大臣は、国务大臣を任命する。但し、その過半数は、国会議員の中から選ばなければならない。

Article 68. The Prime Minister shall appoint the Ministers of State. However, a majority of their number must be chosen from among the members of the Diet.

内閣総理大臣は、任意に国务大臣を罷免することができる。

The Prime Minister may remove the Ministers of State as he chooses.

第六十九条 内閣は、衆議院で不信任の決議案を可決し、又は信任の決議案を否決したときは、十日以内に衆議院が解散されない限り、総辞職をしなければならない。

Article 69. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days.

第七十条 内閣総理大臣が欠けたとき、又は衆議院議員総選挙の後に初めて国会の召集があつたときは、内閣は、総辞職をしなければならない。

Article 70. When there is a vacancy in the post of Prime Minister, or upon the first convocation of the Diet after a general election of members of the House of Representatives, the Cabinet shall resign en masse.

第七十一条 前二条の場合には、内閣は、あらたに内閣総理大臣が任命されるまで引き続きその職務を行ふ。

Article 71. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

第七十二条 内閣総理大臣は、内閣を代表して議案を国会に提出し、一般国務及び外交関係について国会に報告し、並びに行政各部を指揮監督する。

Article 72. The Prime Minister, representing the Cabinet, submits bills, reports on general national affairs and foreign relations

to the Diet and exercises control and supervision over various administrative branches.

第七十三条 内閣は、他の一般行政事務の外、左の事務を行ふ。

Article 73. The Cabinet, in addition to other general administrative functions, shall perform the following functions:

一 法律を誠実に執行し、国務を総理すること。

Administer the law faithfully; conduct affairs of state.

二 外交関係を処理すること。

Manage foreign affairs.

三 条約を締結すること。但し、事前に、時宜によつては事後に、国会の承認を経ることを必要とする。

Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet.

四 法律の定める基準に従ひ、官吏に関する事務を掌理すること。

Administer the civil service, in accordance with standards established by law.

五 予算を作成して国会に提出すること。

Prepare the budget, and present it to the Diet.

六 この憲法及び法律の規定を実施するために、政令を制定すること。但し、政令には、特にその法律の委任がある場合を除いては、罰則を設けることができない。

Enact cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law.

七 大赦、特赦、減刑、刑の執行の免除及び復権を決定すること。

Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

第七十四条 法律及び政令には、すべて主任の国务大臣が署名し、内閣総理大臣が連署することを必要とする。

Article 74. All laws and cabinet orders shall be signed by the competent Minister of State and countersigned by the Prime Minister.

第七十五条 国务大臣は、その在任中、内閣総理大臣の同意がなければ、訴追されない。但し、これがため、訴追の権利は、害されない。

Article 75. The Ministers of State, during their tenure of office, shall not be subject to legal action without the consent of the Prime Minister. However, the right to take that action is not impaired hereby.

第六章 司法

CHAPTER VI. JUDICIARY

第七十六条 すべて司法権は、最高裁判所及び法律の定めるところにより設置する下級裁判所に属する。

Article 76. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

特別裁判所は、これを設置することができない。行政機関は、終審として裁判を行ふことができない。

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

すべて裁判官は、その良心に従ひ独立してその職権を行ひ、この憲法及び法律にのみ拘束される。

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

第七十七条 最高裁判所は、訴訟に関する手続、弁護士、裁判所の内部規律及び司法事務処理に関する事項について、規則を定める権限を有する。

Article 77. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating

to attorneys, the internal discipline of the courts and the administration of judicial affairs.

検察官は、最高裁判所の定める規則に従はなければならない。

Public procurators shall be subject to the rule-making power of the Supreme Court.

最高裁判所は、下級裁判所に関する規則を定める権限を、下級裁判所に委任することができる。

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

第七十八条 裁判官は、裁判により、心身の故障のために職務を執ることができないと決定された場合を除いては、公の弾劾によらなければ罷免されない。裁判官の懲戒処分は、行政機関がこれを行ふことはできない。

Article 78. Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.

第七十九条 最高裁判所は、その長たる裁判官及び法律の定める員数のその他の裁判官でこれを構成し、その長たる裁判官以外の裁判官は、内閣でこれを任命する。

Article 79. The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet.

最高裁判所の裁判官の任命は、その任命後初めて行はれる衆議院議員総選挙の際国民の審査に付し、その後十年を経過した後初めて行はれる衆議院議員総選挙の際更に審査に付し、その後も同様とする。

The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter.

前項の場合において、投票者の多数が裁判官の罷免を可とするときは、その裁判官は、罷免される。

In cases mentioned in the foregoing paragraph, when the majority of the voters favors the dismissal of a judge, he shall be dismissed.

審査に関する事項は、法律でこれを定める。

Matters pertaining to review shall be prescribed by law.

最高裁判所の裁判官は、法律の定める年齢に達した時に退官する。

The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law.

最高裁判所の裁判官は、すべて定期に相当額の報酬を受ける。この報酬は、在任中、これを減額することができない。

All such judges shall receive, at regular stated intervals,
adequate compensation which shall not be decreased during their terms of office.

第八十条 下級裁判所の裁判官は、最高裁判所の指名した者の名簿によつて、内閣でこれを任命する。その裁判官は、任期を十年とし、再任されることができる。但し、法律の定める年齢に達した時には退官する。

Article 80. The judges of the inferior courts shall be appointed
by the Cabinet from a list of persons nominated by the Supreme Court.
All such judges shall hold office for a term of ten (10) years with privilege
of reappointment, provided that they shall be retired upon the attainment of the age
as fixed by law.

下級裁判所の裁判官は、すべて定期に相当額の報酬を受ける。この報酬は、在任中、これを減額することができない。

The judges of the inferior courts shall receive, at regular stated intervals,
adequate compensation which shall not be decreased during their terms of office.

第八十一条 最高裁判所は、一切の法律、命令、規則又は処分が憲法に適合するかしないかを決定する権限を有する終審裁判所である。

Article 81. The Supreme Court is the court of last resort with power to
determine the constitutionality of any law, order, regulation or official act.

第八十二条 裁判の対審及び判決は、公開法廷でこれを行ふ。

Article 82. Trials shall be conducted and judgment declared publicly.

裁判所が、裁判官の全員一致で、公の秩序又は善良の風俗を害する虞があると決した場合には、対審は、公開しないでこれを行ふことができる。

但し、政治犯罪、出版に関する犯罪又はこの憲法第三章で保障する国民の権利が問題となつてゐる事件の対審は、常にこれを公開しなければならない。

Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly.

第七章 財政

CHAPTER VII. FINANCE

第八十三条 国の財政を処理する権限は、国会の議決に基いて、これを行使しなければならない。

Article 83. The power to administer national finances shall be exercised as the Diet shall determine.

第八十四条 あらたに租税を課し、又は現行の租税を変更するには、法律又は法律の定める条件によることを必要とする。

Article 84. No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

第八十五条 国費を支出し、又は国が債務を負担するには、国会の議決に基くことを必要とする。

Article 85. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

第八十六条 内閣は、毎会計年度の予算を作成し、国会に提出して、その審議を受け議決を経なければならない。

Article 86. The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year.

第八十七条 予見し難い予算の不足に充てるため、国会の議決に基いて予備費を設け、内閣の責任でこれを支出することができる。

Article 87. In order to provide for unforeseen deficiencies in the budget, a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet.

すべて予備費の支出については、内閣は、事後に国会の承諾を得なければならない。

The Cabinet must get subsequent approval of the Diet for all payments from the reserve fund.

第八十八条 すべて皇室財産は、国に属する。すべて皇室の費用は、予算に計上して国会の議決を経なければならない。

Article 88. All property of the Imperial Household shall belong to the State. All expenses of the Imperial Household shall be appropriated by the Diet in the budget.

第八十九条 公金その他の公の財産は、宗教上の組織若しくは団体の使用、便益若しくは維持のため、又は公の支配に属しない慈善、教育若しくは博愛の事業に対し、これを支出し、又はその利用に供してはならない。

Article 89. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.

第九十条 国の収入支出の決算は、すべて毎年会計検査院がこれを検査し、内閣は、次の年度に、その検査報告とともに、これを国会に提出しなければならない。

Article 90. Final accounts of the expenditures and revenues of the State shall be audited annually by a Board of Audit and submitted by the Cabinet to the Diet, together with the statement of audit, during the fiscal year immediately following the period covered.

会計検査院の組織及び権限は、法律でこれを定める。

The organization and competency of the Board of Audit shall be determined by law.

第九十一条 内閣は、国会及び国民に対し、定期に、少くとも毎年一回、国の財政状況について報告しなければならない。

Article 91. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

第八章 地方自治

CHAPTER VIII. LOCAL SELF-GOVERNMENT

第九十二条 地方公共団体の組織及び運営に関する事項は、地方自治の本旨に基いて、法律でこれを定める。

Article 92. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

第九十三条 地方公共団体には、法律の定めるところにより、その議事機関として議会を設置する。

Article 93. The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

地方公共団体の長、その議会の議員及び法律の定めるその他の吏員は、その地方公共団体の住民が、直接これを選挙する。

The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

第九十四条 地方公共団体は、その財産を管理し、事務を処理し、及び行政を執行する権能を有し、法律の範囲内で条例を制定することができる。

Article 94. Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.

第九十五条 一の地方公共団体のみに適用される特別法は、法律の定めるところにより、その地方公共団体の住民の投票においてその過半数の同意を得なければ、国会は、これを制定することができない。

Article 95. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

第九章 改正

CHAPTER IX. AMENDMENTS

第九十六条 この憲法の改正は、各議院の総議員の三分の二以上の賛成で、国会が、これを発議し、国民に提案してその承認を経なければならない。この承認には、特別の国民投票又は国会の定める選挙の際行はれる投票において、その過半数の賛成を必要とする。

Article 96. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.

憲法改正について前項の承認を経たときは、天皇は、国民の名で、この憲法と一体を成すものとして、直ちにこれを公布する。

Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.

第十章 最高法規

CHAPTER X. SUPREME LAW

第九十七条 この憲法が日本国民に保障する基本的人権は、人類の多年にわたる自由獲得の努力の成果であつて、これらの権利は、過去幾多の試練に堪へ、現在及び将来の国民に対し、侵すことのできない永久の権利として信託されたものである。

Article 97. The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate.

第九十八条 この憲法は、国の最高法規であつて、その条規に反する法律、命令、詔勅及び国務に関するその他の行為の全部又は一部は、その効力を有しない。

Article 98. This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

日本国が締結した条約及び確立された国際法規は、これを誠実に遵守することを必要とする。

The treaties concluded by Japan and established laws of nations shall be faithfully observed.

第九十九条 天皇又は摂政及び国務大臣、国会議員、裁判官その他の
公務員は、この憲法を尊重し擁護する義務を負ふ。

Article 99. The Emperor or the Regent as well as Ministers of
State, members of the Diet, judges, and all other public officials
have the obligation to respect and uphold this Constitution.

第十一章 補則

CHAPTER XI. SUPPLEMENTARY PROVISIONS

第百条 この憲法は、公布の日から起算して六箇月を経過した日から、これを施行する。

Article 100. This Constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation.

この憲法を施行するために必要な法律の制定、参議院議員の選挙及び国会召集の手續並びにこの憲法を施行するために必要な準備手續は、前項の期日より前に、これを行ふことができる。

The enactment of laws necessary for the enforcement of this Constitution, the election of members of the House of Councillors and the procedure for the convocation of the Diet and other preparatory procedures necessary for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph.

第百一条 この憲法施行の際、参議院がまだ成立してゐないときは、その成立するまでの間、衆議院は、国会としての権限を行ふ。

Article 101. If the House of Councilors is not constituted before the effective date of this Constitution, the House of Representatives shall function as the Diet until such time as the House of Councilors shall be constituted.

第百二条 この憲法による第一期の参議院議員のうち、その半数の者の任期は、これを三年とする。その議員は、法律の定めるところにより、これを定める。

Article 102. The term of office for half the members of the House of Councilors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law.

第百三条 この憲法施行の際現に在職する国务大臣、衆議院議員及び裁判官並びにその他の公務員で、その地位に相応する地位がこの憲法で認められてゐる者は、法律で特別の定をした場合を除いては、この憲法施行のため、当然にはその地位を失ふことはない。但し、この憲法によつて、後任者が選挙又は任命されたときは、当然その地位を失ふ。

Article 103. The Ministers of State, members of the House of Representatives, and judges in office on the effective date of this Constitution, and all other public officials, who occupy positions corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on account of the enforcement of this Constitution unless otherwise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution they shall forfeit their positions as a matter of course.

APPENDIX B

JAPANESE 2012 CONSTITUTIONAL DRAFT in JAPANESE⁴²³

Upper table has the Draft articles

Lower table has the original articles

⁴²³ Retrieved from LDP website: <http://constitution.jimin.jp/document/draft/>

日本国憲法改正草案

（現行憲法対照）

自由民主党

平成二十四年四月二十七日（決定）

○日本国憲法改正草案対照表

※ 主な（実質的な）修文事項については、ゴシックで表記

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日本国憲法改正草案	現行憲法
<p>目次</p> <p>前文</p> <p>第一章 天皇（第一条―第八条）</p> <p>第二章 安全保障（第九条―第九条の三）</p> <p>第三章 国民の権利及び義務（第十条―第四十条）</p> <p>第四章 国会（第四十一条―第六十四条の二）</p> <p>第五章 内閣（第六十五条―第七十五条）</p> <p>第六章 司法（第七十六条―第八十二条）</p> <p>第七章 財政（第八十三条―第九十一条）</p> <p>第八章 地方自治（第九十二条―第九十七条）</p> <p>第九章 緊急事態（第九十八条・第九十九条）</p> <p>第十章 改正（第百条）</p> <p>第十一章 最高法規（第百一条・第百二条）</p> <p>（前文）</p> <p>日本国は、長い歴史と固有の文化を持ち、国民統合の象徴である天皇を戴く国家であつて、国民主権の下、立法、行政及び司法の三権分立に基づいて統治される。</p> <p>我が国は、先の大戦による荒廃や幾多の大災害を乗り越えて発展し、今や国際社会において重要な地位を占めており、平和主義の下、諸外国との友好関係を増進し、世界の平和と繁栄に貢献する。</p> <p>日本国民は、国と郷土を誇りと気概を持って自ら守り、基本的人権を尊重するとともに、和を尊び、家族や社会全体が互いに助け合つて国家を形成する。</p> <p>我々は、自由と規律を重んじ、美しい国土と自然環境を守りつつ、教育や科学技術を振興し、活力ある経済活動を通じて国を成長させる。</p> <p>日本国民は、良き伝統と我々の国家を末永く子孫に継承するため、ここに、この憲法を制定する。</p>	<p>（前文）</p> <p>日本国民は、正当に選挙された国会における代表者を通じて行動し、われらとわれらの子孫のために、諸国民との協和による成果と、わが国全土にわたつて自由のもたらす恵沢を確保し、政府の行為によつて再び戦争の惨禍が起ることのないやうにすることを決意し、ここに主権が国民に存することを宣言し、この憲法を確定する。そもそも国政は、国民の厳粛な信託によるものであつて、その権威は国民に由来し、その権力は国民の代表者がこれを行使し、その福利は国民がこれを享受する。これは人類普遍の原理であり、この憲法は、かかる原理に基くものである。われらは、これに反する一切の憲法、法令及び詔勅を排除する。</p> <p>日本国民は、恒久の平和を念願し、人間相互の関係を支配する崇高な理想を深く自覚するのであつて、平和を愛する諸国民の公正と信義に信頼して、われらの安全と生存を保持しようと決意した。われらは、平和を維持し、専制と隷従、圧迫と偏狭を地上から永遠に</p>

<p>第一章 天皇</p> <p>(天皇)</p> <p>第一条 天皇は、日本国の元首であり、日本国及び日本国民統合の象徴であつて、その地位は、主権の存する日本国民の総意に基づく。</p> <p>(皇位の継承)</p> <p>第二条 皇位は、世襲のものであつて、国会の議決した皇室典範の定めるところにより、これを継承する。</p> <p>(国旗及び国歌)</p> <p>第三条 国旗は日章旗とし、国歌は君が代とする。</p> <p>2 日本国民は、国旗及び国歌を尊重しなければならない。</p> <p>(元号)</p> <p>第四条 元号は、法律の定めるところにより、皇位の継承があつたときに制定する。</p> <p>(天皇の権能)</p> <p>第五条 天皇は、この憲法に定める国事に関する行為を行い、国政に関する権能を有しない。</p>	<p>除去しようと努めてゐる国際社会において、名誉ある地位を占めたいと思ふ。われらは、全世界の国民が、ひとしく恐怖と欠乏から免かれ、平和のうちに生存する権利を有することを確認する。</p> <p>われらは、いづれの国家も、自国のことのみに専念して他国を無視してはならないのであつて、政治道徳の法則は、普遍的なものであり、この法則に従ふことは、自国の主権を維持し、他国と対等関係に立たうとする各国の責務であると信ずる。</p> <p>日本国民は、国家の名誉にかけ、全力をあげてこの崇高な理想と目的を達成することを誓ふ。</p> <p>第一章 天皇</p> <p>第一条 天皇は、日本国の象徴であり日本国民統合の象徴であつて、この地位は、主権の存する日本国民の総意に基づく。</p> <p>第二条 皇位は、世襲のものであつて、国会の議決した皇室典範の定めるところにより、これを継承する。</p> <p>第三条 天皇の国事に関するすべての行為には、内閣の助言と承認を必要とし、内閣が、その責任を負ふ。</p> <p>(新設)</p> <p>第四条 天皇は、この憲法の定める国事に関する行為のみを行い、国政に関する権能を有しない。</p>
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<p>〔削除〕</p> <p>〔削除〕</p> <p>（天皇の国事行為等）</p> <p>第六条 天皇は、国民のために、国会の指名に基づいて内閣総理大臣を任命し、内閣の指名に基づいて最高裁判所の長である裁判官を任命する。</p>	<p>2 天皇は、国民のために、次に掲げる国事に関する行為を行う。</p> <p>一 憲法改正、法律、政令及び条約を公布すること。</p> <p>二 国会を召集すること。</p> <p>三 衆議院を解散すること。</p> <p>四 衆議院議員の総選挙及び参議院議員の通常選挙の施行を公示すること。</p> <p>五 国務大臣及び法律の定めるその他の国の公務員の任免を認証すること。</p> <p>六 大赦、特赦、減刑、刑の執行の免除及び復権を認証すること。</p> <p>七 栄典を授与すること。</p> <p>八 全権委任状並びに大使及び公使の信任状並びに批准書及び法律の定めるその他の外交文書を認証すること。</p> <p>九 外国の大使及び公使を接受すること。</p> <p>十 儀式を行うこと。</p>
<p>② 天皇は、法律の定めるところにより、その国事に関する行為を委任することができる。</p> <p>第五条 皇室典範の定めるところにより摂政を置くときは、摂政は、天皇の名でその国事に関する行為を行ふ。この場合には、前条第一項の規定を準用する。</p> <p>第六条 天皇は、国会の指名に基づいて、内閣総理大臣を任命する。</p> <p>② 天皇は、内閣の指名に基づいて、最高裁判所の長たる裁判官を任命する。</p> <p>第七条 天皇は、内閣の助言と承認により、国民のために、左の国事に関する行為を行ふ。</p> <p>一 憲法改正、法律、政令及び条約を公布すること。</p> <p>二 国会を召集すること。</p> <p>三 衆議院を解散すること。</p> <p>四 国会議員の総選挙の施行を公示すること。</p> <p>五 国務大臣及び法律の定めるその他の官吏の任免並びに全権委任状及び大使及び公使の信任状を認証すること。</p> <p>六 大赦、特赦、減刑、刑の執行の免除及び復権を認証すること。</p> <p>七 栄典を授与すること。</p> <p>八 批准書及び法律の定めるその他の外交文書を認証すること。</p> <p>九 外国の大使及び公使を接受すること。</p> <p>十 儀式を行うこと。</p>	<p>3 天皇は、法律の定めるところにより、前二項の行為を委任することができる。</p> <p>第四条 （略）</p> <p>② 天皇は、法律の定めるところにより、その国事に関する行為を委任することができる。</p>

<p>4 天皇の国事に関する全ての行為には、内閣の<u>進言</u>を必要とし、内閣がその責任を負う。ただし、衆議院の解散については、内閣総理大臣の進言による。</p> <p>5 第一項及び第二項に掲げるもののほか、天皇は、国又は地方自治体その他の公共団体が主催する式典への出席その他の公的な行為を行う。</p>	<p>第三条 天皇の国事に関するすべての行為には、内閣の助言と承認を必要とし、内閣が、その責任を負ふ。</p> <p>〔新設〕</p>
<p>〔摂政〕</p> <p>第七条 皇室典範の定めるところにより摂政を置くときは、摂政は、天皇の名で、その国事に関する行為を行う。</p> <p>2 第五条及び前条第四項の規定は、摂政について準用する。</p>	<p>第五条 皇室典範の定めるところにより摂政を置くときは、摂政は、天皇の名でその国事に関する行為を行ふ。この場合には、前条第一項の規定を準用する。</p>
<p>〔皇室への財産の譲渡等の制限〕</p> <p>第八条 皇室に財産を譲り渡し、又は皇室が財産を譲り受け、若しくは賜与するには、法律で定める場合を除き、国会の承認を経なければならぬ。</p>	<p>第八条 皇室に財産を譲り渡し、又は皇室が、財産を譲り受け、若しくは賜与することは、国会の議決に基かなければならない。</p>
<p>第二章 安全保障</p> <p>〔平和主義〕</p> <p>第九条 日本国民は、正義と秩序を基調とする国際平和を誠実に希求し、国権の発動としての戦争を放棄し、武力による威嚇及び武力の行使は、国際紛争を解決する手段としては用いない。</p> <p>2 前項の規定は、自衛権の発動を妨げるものではない。</p>	<p>第二章 戦争の放棄</p> <p>第九条 日本国民は、正義と秩序を基調とする国際平和を誠実に希求し、国権の発動たる戦争と、武力による威嚇又は武力の行使は、国際紛争を解決する手段としては、永久にこれを放棄する。</p> <p>② 前項の目的を達するため、陸海空軍その他の戦力は、これを保持しない。国の交戦権は、これを認めない。</p>
<p>〔国防軍〕</p> <p>第九条の二 我が国の平和と独立並びに国及び国民の安全を確保するため、内閣総理大臣を最高指揮官とする国防軍を保持する。</p> <p>2 国防軍は、前項の規定による任務を遂行する際は、法律の定めるところにより、国会の承認その他の統制に服する。</p> <p>3 国防軍は、第一項に規定する任務を遂行するための活動のほか、法律の定めるところにより、国際社会の平和と安全を確保す</p>	<p>〔新設〕</p>

<p>るために国際的に協調して行われる活動及び公の秩序を維持し、又は国民の生命若しくは自由を守るための活動を行うことができる。</p> <p>4 前二項に定めるもののほか、国防軍の組織、統制及び機密の保持に関する事項は、法律で定める。</p> <p>5 国防軍に属する軍人その他の公務員がその職務の実施に伴う罪又は国防軍の機密に関する罪を犯した場合の裁判を行うため、法律の定めるところにより、国防軍に審判所を置く。この場合において、被告人が裁判所へ上訴する権利は、保障されなければならない。</p>	
<p>(領土等の保全等)</p> <p>第九条の三 国は、主権と独立を守るため、国民と協力して、領土、領海及び領空を保全し、その資源を確保しなければならない。</p>	<p>〔新設〕</p>
<p>第三章 国民の権利及び義務</p> <p>第十条 日本国民の要件は、法律で定める。</p>	<p>第三章 国民の権利及び義務</p> <p>第十条 日本国民たる要件は、法律でこれを定める。</p>
<p>(基本的人権の享有)</p> <p>第十一条 国民は、全ての基本的人権を享有する。この憲法が国民に保障する基本的人権は、侵すことのできない永久の権利である。</p>	<p>第十一条 国民は、すべての基本的人権の享有を妨げられない。この憲法が国民に保障する基本的人権は、侵すことのできない永久の権利として、現在及び将来の国民に与へられる。</p>
<p>(国民の責務)</p> <p>第十二条 この憲法が国民に保障する自由及び権利は、国民の不断の努力により、保持されなければならない。国民は、これを濫用してはならず、自由及び権利には責任及び義務が伴うことを自覚し、常に公益及び公の秩序に反してはならない。</p>	<p>第十二条 この憲法が国民に保障する自由及び権利は、国民の不断の努力によつて、これを保持しなければならない。又、国民は、これを濫用してはならないのであつて、常に公共の福祉のためにこれを利用する責任を負ふ。</p>
<p>(人としての尊重等)</p> <p>第十三条 全て国民は、人として尊重される。生命、自由及び幸福</p>	<p>第十三条 すべて国民は、個人として尊重される。生命、自由及び</p>

追求に対する国民の権利については、公益及び公の秩序に反しない限り、立法その他の国政の上で、最大限に尊重されなければならない。

（法の下の平等）

第十四条 全て国民は、法の下に平等であつて、人種、信条、性別、社会的身分又は門地により、政治的、経済的又は社会的関係において、差別されない。

2| 華族その他の貴族の制度は、認めない。

3| 荣誉、勲章その他の栄典の授与は、現にこれを有し、又は将来これを受ける者の一代に限り、その効力を有する。

（公務員の選定及び罷免に関する権利等）

第十五条 公務員を選定し、及び罷免することは、主権の存する国民の権利である。

2| 全て公務員は、全体の奉仕者であつて、一部の奉仕者ではない。

3| 公務員の選定を選挙により行う場合は、日本国籍を有する成年者による普通選挙の方法による。

4| 選挙における投票の秘密は、侵されない。選挙人は、その選択に関し、公的にも私的にも責任を問われない。

（請願をする権利）

第十六条 何人も、損害の救済、公務員の罷免、法律、命令又は規則の制定、廃止又は改正その他の事項に関し、平穩に請願する権利を有する。

2| 請願をした者は、そのためにいかなる差別待遇も受けない。

（国等に対する賠償請求権）

第十七条 何人も、公務員の不法行為により損害を受けたときは、法律の定めるところにより、国又は地方自治体その他の公共団体

幸福追求に対する国民の権利については、公共の福祉に反しない限り、立法その他の国政の上で、最大の尊重を必要とする。

第十四条 すべて国民は、法の下に平等であつて、人種、信条、性別、社会的身分又は門地により、政治的、経済的又は社会的関係において、差別されない。

② 華族その他の貴族の制度は、これを認めない。

③ 荣誉、勲章その他の栄典の授与は、いかなる特権も伴はない。栄典の授与は、現にこれを有し、又は将来これを受ける者の一代に限り、その効力を有する。

第十五条 公務員を選定し、及びこれを罷免することは、国民固有の権利である。

② すべて公務員は、全体の奉仕者であつて、一部の奉仕者ではない。

③ 公務員の選挙については、成年者による普通選挙を保障する。

④ すべて選挙における投票の秘密は、これを侵してはならない。選挙人は、その選択に関し公的にも私的にも責任を問はれない。

第十六条 何人も、損害の救済、公務員の罷免、法律、命令又は規則の制定、廃止又は改正その他の事項に関し、平穩に請願する権利を有し、何人も、かかる請願をしたためにいかなる差別待遇も受けない。

第十七条 何人も、公務員の不法行為により、損害を受けたときは、法律の定めるところにより、国又は公共団体に、その賠償を求め

<p>に、その賠償を求めることができる。</p>	<p>ることができる。</p>
<p>(身体の拘束及び苦役からの自由) 第十八条 何人も、その意に反すると否にかかわらず、社会的又は経済的関係において身体を拘束されない。</p>	<p>第十八条 何人も、いかなる奴隷的拘束も受けない。又、犯罪に因る処罰の場合を除いては、その意に反する苦役に服させられない。</p>
<p>2 何人も、犯罪による処罰の場合を除いては、その意に反する苦役に服させられない。</p>	
<p>(思想及び良心の自由) 第十九条 思想及び良心の自由は、保障する。</p>	<p>第十九条 思想及び良心の自由は、これを侵してはならない。</p>
<p>(個人情報の不当取得の禁止等) 第十九条の二 何人も、個人に関する情報を不当に取得し、保有し、又は利用してはならない。</p>	<p>〔新設〕</p>
<p>(宗教の自由) 第二十条 宗教の自由は、保障する。国は、いかなる宗教団体に対しても、特権を与えてはならない。</p>	<p>第二十条 宗教の自由は、何人に対してもこれを保障する。いかなる宗教団体も、国から特権を受け、又は政治上の権力を行使してはならない。</p>
<p>2 何人も、宗教上の行為、祝典、儀式又は行事に参加することを強制されない。</p>	<p>② 何人も、宗教上の行為、祝典、儀式又は行事に参加することを強制されない。</p>
<p>3 国及び地方自治体その他の公共団体は、特定の宗教のための教育その他の宗教的活動をしてはならない。ただし、社会的儀礼又は習俗的行為の範囲を超えないものについては、この限りでない。</p>	<p>③ 国及びその機関は、宗教教育その他いかなる宗教的活動もしてはならない。</p>
<p>(表現の自由) 第二十一条 集会、結社及び言論、出版その他一切の表現の自由は、保障する。</p>	<p>第二十一条 集会、結社及び言論、出版その他一切の表現の自由は、これを保障する。</p>
<p>2 前項の規定にかかわらず、公益及び公の秩序を害することを目的とした活動を行い、並びにそれを目的として結社をすることは、認められない。</p>	<p>〔新設〕</p>

<p>3 検閲は、してはならない。通信の秘密は、侵してはならない。</p> <p>〔国政上の行為に関する説明の責務〕</p> <p>第二十一条の二 国は、国政上の行為につき国民に説明する責務を負う。</p>	<p>② 検閲は、これをしてはならない。通信の秘密は、これを侵してはならない。</p> <p>〔新設〕</p>
<p>〔居住、移転及び職業選択等の自由等〕</p> <p>第二十二条 何人も、居住、移転及び職業選択の自由を有する。</p> <p>2 全て国民は、外国に移住し、又は国籍を離脱する自由を有する。</p> <p>〔学問の自由〕</p> <p>第二十三条 学問の自由は、保障する。</p>	<p>第二十二条 何人も、公共の福祉に反しない限り、居住、移転及び職業選択の自由を有する。</p> <p>② 何人も、外国に移住し、又は国籍を離脱する自由を侵されない。</p> <p>第二十三条 学問の自由は、これを保障する。</p>
<p>〔家族、婚姻等に関する基本原則〕</p> <p>第二十四条 家族は、社会の自然かつ基礎的な単位として、尊重される。家族は、互いに助け合わなければならない。</p> <p>2 婚姻は、両性の合意に基づいて成立し、夫婦が同等の権利を有することを基本として、相互の協力により、維持されなければならない。</p> <p>3 家族、扶養、後見、婚姻及び離婚、財産権、相続並びに親族に関するその他の事項に関しては、法律は、個人の尊厳と両性の本質的平等に立脚して、制定されなければならない。</p>	<p>〔新設〕</p> <p>第二十四条 婚姻は、両性の合意のみに基いて成立し、夫婦が同等の権利を有することを基本として、相互の協力により、維持されなければならない。</p> <p>② 配偶者の選択、財産権、相続、住居の選定、離婚並びに婚姻及び家族に関するその他の事項に関しては、法律は、個人の尊厳と両性の本質的平等に立脚して、制定されなければならない。</p>
<p>〔生存権等〕</p> <p>第二十五条 全て国民は、健康で文化的な最低限度の生活を営む権利を有する。</p> <p>2 国は、国民生活のあらゆる側面において、社会福祉、社会保障及び公衆衛生の向上及び増進に努めなければならない。</p> <p>〔環境保全の責務〕</p> <p>第二十五条の二 国は、国民と協力して、国民が良好な環境を享受</p>	<p>第二十五条 すべて国民は、健康で文化的な最低限度の生活を営む権利を有する。</p> <p>② 国は、すべての生活部面について、社会福祉、社会保障及び公衆衛生の向上及び増進に努めなければならない。</p> <p>〔新設〕</p>

<p>することができるよう、その保全に努めなければならない。</p>	
<p>〔在外国民の保護〕 第二十五条の三 国は、国外において緊急事態が生じたときは、在外国民の保護に努めなければならない。</p>	<p>〔新設〕</p>
<p>〔犯罪被害者等への配慮〕 第二十五条の四 国は、犯罪被害者及びその家族の人権及び処遇に配慮しなければならない。</p>	<p>〔新設〕</p>
<p>〔教育に関する権利及び義務等〕 第二十六条 全て国民は、法律の定めるところにより、その能力に応じて、等しく教育を受ける権利を有する。 2 全て国民は、法律の定めるところにより、その保護する子に普通教育を受けさせる義務を負う。義務教育は、無償とする。 3 国は、教育が国の未来を切り拓く上で欠くことのできないものであることに鑑み、教育環境の整備に努めなければならない。</p>	<p>第二十六条 すべて国民は、法律の定めるところにより、その能力に応じて、ひとしく教育を受ける権利を有する。 ② すべて国民は、法律の定めるところにより、その保護する子女に普通教育を受けさせる義務を負ふ。義務教育は、これを無償とする。 〔新設〕</p>
<p>〔勤労者の権利及び義務等〕 第二十七条 全て国民は、勤労の権利を有し、義務を負う。 2 賃金、就業時間、休息その他の勤労条件に関する基準は、法律で定める。 3 何人も、児童を酷使してはならない。</p>	<p>第二十七条 すべて国民は、勤労の権利を有し、義務を負ふ。 ② 賃金、就業時間、休息その他の勤労条件に関する基準は、法律でこれを定める。 ③ 児童は、これを酷使してはならない。</p>
<p>〔勤労者の団結権等〕 第二十八条 勤労者の団結する権利及び団体交渉その他の団体行動をする権利は、保障する。 2 公務員については、全体の奉仕者であることに鑑み、法律の定めるところにより、前項に規定する権利の全部又は一部を制限することができる。この場合においては、公務員の勤労条件を改善するため、必要な措置が講じられなければならない。</p>	<p>第二十八条 勤労者の団結する権利及び団体交渉その他の団体行動をする権利は、これを保障する。 〔新設〕</p>

<p>〔財産権〕</p> <p>第二十九条 財産権は、保障する。</p> <p>2 財産権の内容は、公益及び公の秩序に適合するように、法律で定める。この場合において、知的財産権については、国民の知的創造力の向上に資するように配慮しなければならない。</p> <p>3 私有財産は、正当な補償の下に、公共のために用いることができる。</p>	<p>第二十九条 財産権は、これを侵してはならない。</p> <p>② 財産権の内容は、公共の福祉に適合するやうに、法律でこれを定める。</p> <p>③ 私有財産は、正当な補償の下に、これを公共のために用ひることができる。</p>
<p>〔納税の義務〕</p> <p>第三十条 国民は、法律の定めるところにより、納税の義務を負う。</p>	<p>第三十条 国民は、法律の定めるところにより、納税の義務を負ふ。</p>
<p>〔適正手続の保障〕</p> <p>第三十一条 何人も、法律の定める適正な手続によらなければ、その生命若しくは自由を奪われ、又はその他の刑罰を科せられない。</p>	<p>第三十一条 何人も、法律の定める手続によらなければ、その生命若しくは自由を奪はれ、又はその他の刑罰を科せられない。</p>
<p>〔裁判を受ける権利〕</p> <p>第三十二条 何人も、裁判所において裁判を受ける権利を有する。</p>	<p>第三十二条 何人も、裁判所において裁判を受ける権利を奪はれない。</p>
<p>〔逮捕に関する手続の保障〕</p> <p>第三十三条 何人も、現行犯として逮捕される場合を除いては、裁判官が発し、かつ、理由となつてゐる犯罪を明示する令状によらなければ、逮捕されない。</p>	<p>第三十三条 何人も、現行犯として逮捕される場合を除いては、権限を有する司法官憲が発し、且つ理由となつてゐる犯罪を明示する令状によらなければ、逮捕されない。</p>
<p>〔抑留及び拘禁に関する手続の保障〕</p> <p>第三十四条 何人も、正当な理由がなく、若しくは理由を直ちに告げられないことなく、又は直ちに弁護人に依頼する権利を与えられないことなく、抑留され、又は拘禁されない。</p> <p>2 拘禁された者は、拘禁の理由を直ちに本人及びその弁護人の出席する公開の法廷で示すことを求める権利を有する。</p>	<p>第三十四条 何人も、理由を直ちに告げられ、且つ、直ちに弁護人に依頼する権利を与へられなければ、抑留又は拘禁されない。又、何人も、正当な理由がなければ、拘禁されず、要求があれば、その理由は、直ちに本人及びその弁護人の出席する公開の法廷で示されなければならない。</p>

<p>(住居等の不可侵)</p> <p>第三十五条 何人も、正当な理由に基づいて発せられ、かつ、搜索する場所及び押収する物を明示する令状によらなければ、住居その他の場所、書類及び所持品について、侵入、搜索又は押収を受けない。ただし、第三十三条の規定により逮捕される場合は、この限りでない。</p> <p>2 前項本文の規定による搜索又は押収は、裁判官が発する各別の令状によって行う。</p>	<p>第三十五条 何人も、その住居、書類及び所持品について、侵入、搜索及び押収を受けることのない権利は、第三十三条の場合を除いては、正当な理由に基いて発せられ、且つ搜索する場所及び押収する物を明示する令状がなければ、侵されない。</p> <p>② 搜索又は押収は、権限を有する司法官憲が発する各別の令状により、これを行ふ。</p>
<p>(拷問及び残虐な刑罰の禁止)</p> <p>第三十六条 公務員による拷問及び残虐な刑罰は、禁止する。</p>	<p>第三十六条 公務員による拷問及び残虐な刑罰は、絶対にこれを禁ずる。</p>
<p>(刑事被告人の権利)</p> <p>第三十七条 全て刑事事件においては、被告人は、公平な裁判所の迅速な公開裁判を受ける権利を有する。</p> <p>2 被告人は、全ての証人に対して審問する機会を十分に与えられる権利及び公費で自己のために強制的手続により証人を求める権利を有する。</p> <p>3 被告人は、いかなる場合にも、資格を有する弁護人を依頼することができる。被告人が自らこれを依頼することができないときは、国でこれを付する。</p>	<p>第三十七条 すべて刑事事件においては、被告人は、公平な裁判所の迅速な公開裁判を受ける権利を有する。</p> <p>② 刑事被告人は、すべての証人に対して審問する機会を充分に与へられ、又、公費で自己のために強制的手続により証人を求める権利を有する。</p> <p>③ 刑事被告人は、いかなる場合にも、資格を有する弁護人を依頼することができる。被告人が自らこれを依頼することができないときは、国でこれを附する。</p>
<p>(刑事事件における自白等)</p> <p>第三十八条 何人も、自己に不利益な供述を強要されない。</p> <p>2 拷問、脅迫その他の強制による自白又は不当に長く抑留され、若しくは拘禁された後の自白は、証拠とすることができない。</p> <p>3 何人も、自己に不利益な唯一の証拠が本人の自白である場合には、有罪とされない。</p>	<p>第三十八条 何人も、自己に不利益な供述を強要されない。</p> <p>② 強制、拷問若しくは脅迫による自白又は不当に長く抑留若しくは拘禁された後の自白は、これを証拠とすることができない。</p> <p>③ 何人も、自己に不利益な唯一の証拠が本人の自白である場合には、有罪とされ、又は刑罰を科せられない。</p>
<p>(適及処罰等の禁止)</p> <p>第三十九条 何人も、実行の時に違法ではなかつた行為又は既に無</p>	<p>第三十九条 何人も、実行の時に適法であつた行為又は既に無罪と</p>

<p>罪とされた行為については、刑事上の責任を問われない。同一の犯罪については、重ねて刑事上の責任を問われない。</p>	<p>された行為については、刑事上の責任を問はれない。又、同一の犯罪について、重ねて刑事上の責任を問はれない。</p>
<p>(刑事補償を求める権利) 第四十条 何人も、抑留され、又は拘禁された後、裁判の結果無罪となつたときは、法律の定めるところにより、国にその補償を求めることができる。</p>	<p>第四十条 何人も、抑留又は拘禁された後、無罪の裁判を受けたときは、法律の定めるところにより、国にその補償を求めることができる。</p>
<p>第四章 国会</p>	<p>第四章 国会</p>
<p>(国会と立法権) 第四十一条 国会は、国権の最高機関であつて、国の唯一の立法機関である。</p>	<p>第四十一条 国会は、国権の最高機関であつて、国の唯一の立法機関である。</p>
<p>(両議院) 第四十二条 国会は、衆議院及び参議院の両議院で構成する。</p>	<p>第四十二条 国会は、衆議院及び参議院の両議院でこれを構成する。</p>
<p>(両議院の組織) 第四十三条 両議院は、全国民を代表する選挙された議員で組織する。 2 両議院の議員の定数は、法律で定める。</p>	<p>第四十三条 両議院は、全国民を代表する選挙された議員でこれを組織する。 ② 両議院の議員の定数は、法律でこれを定める。</p>
<p>(議員及び選挙人の資格) 第四十四条 両議院の議員及びその選挙人の資格は、法律で定める。この場合においては、人種、信条、性別、障害の有無、社会的身分、門地、教育、財産又は収入によつて差別してはならない。</p>	<p>第四十四条 両議院の議員及びその選挙人の資格は、法律でこれを定める。但し、人種、信条、性別、社会的身分、門地、教育、財産又は収入によつて差別してはならない。</p>
<p>(衆議院議員の任期) 第四十五条 衆議院議員の任期は、四年とする。ただし、衆議院が解散された場合には、その期間満了前に終了する。</p>	<p>第四十五条 衆議院議員の任期は、四年とする。但し、衆議院解散の場合には、その期間満了前に終了する。</p>
<p>(参議院議員の任期) 第四十六条 参議院議員の任期は、六年とし、三年ごとに議員の半</p>	<p>第四十六条 参議院議員の任期は、六年とし、三年ごとに議員の半</p>

<p>数を改選する。</p> <p>〔選挙に関する事項〕</p> <p>第四十七条 選挙区、投票の方法その他両議院の議員の選挙に関する事項は、法律で定める。この場合においては、各選挙区は、人口を基本とし、行政区画、地勢等を総合的に勘案して定めなければならない。</p>	<p>数を改選する。</p> <p>第四十七条 選挙区、投票の方法その他両議院の議員の選挙に関する事項は、法律でこれを定める。</p>
<p>〔両議院議員兼職の禁止〕</p> <p>第四十八条 何人も、同時に両議院の議員となることはできない。</p>	<p>第四十八条 何人も、同時に両議院の議員たることはできない。</p>
<p>〔議員の歳費〕</p> <p>第四十九条 両議院の議員は、法律の定めるところにより、国庫から相当額の歳費を受ける。</p>	<p>第四十九条 両議院の議員は、法律の定めるところにより、国庫から相当額の歳費を受ける。</p>
<p>〔議員の不逮捕特権〕</p> <p>第五十条 両議院の議員は、法律の定める場合を除いては、国会の会期中逮捕されず、会期前に逮捕された議員は、その議院の要求があるときは、会期中釈放しなければならない。</p>	<p>第五十条 両議院の議員は、法律の定める場合を除いては、国会の会期中逮捕されず、会期前に逮捕された議員は、その議院の要求があれば、会期中これを釈放しなければならない。</p>
<p>〔議員の免責特権〕</p> <p>第五十一条 両議院の議員は、議院で行った演説、討論又は表決について、院外で責任を問われない。</p>	<p>第五十一条 両議院の議員は、議院で行った演説、討論又は表決について、院外で責任を問はれない。</p>
<p>〔通常国会〕</p> <p>第五十二条 通常国会は、毎年一回召集される。</p> <p>2 通常国会の会期は、法律で定める。</p>	<p>第五十二条 国会の常会は、毎年一回これを召集する。</p> <p>〔新設〕</p>
<p>〔臨時国会〕</p> <p>第五十三条 内閣は、臨時国会の召集を決定することができる。いづれかの議院の総議員の四分の一以上の要求があつたときは、要求があつた日から二十日以内に臨時国会が召集されなければならない。</p>	<p>第五十三条 内閣は、国会の臨時会の召集を決定することができる。いづれかの議院の総議員の四分の一以上の要求があれば、内閣は、その召集を決定しなければならない。</p>

<p>(衆議院の解散と衆議院議員の総選挙、特別国会及び参議院の緊急集会)</p> <p>第五十四条 衆議院の解散は、内閣総理大臣が決定する。</p> <p>2 衆議院が解散されたときは、解散の日から四十日以内に、衆議院議員の総選挙を行い、その選挙の日から三十日以内に、特別国会が召集されなければならない。</p> <p>3 衆議院が解散されたときは、参議院は、同時に閉会となる。ただし、内閣は、国に緊急の必要があるときは、参議院の緊急集会を求めることができる。</p> <p>4 前項ただし書の緊急集会において採られた措置は、臨時のものであつて、次の国会開会の後十日以内に、衆議院の同意がない場合には、その効力を失う。</p>	<p>〔新設〕</p> <p>第五十四条 衆議院が解散されたときは、解散の日から四十日以内に、衆議院議員の総選挙を行ひ、その選挙の日から三十日以内に、国会を召集しなければならない。</p> <p>② 衆議院が解散されたときは、参議院は、同時に閉会となる。但し、内閣は、国に緊急の必要があるときは、参議院の緊急集会を求めることができる。</p> <p>③ 前項但書の緊急集会において採られた措置は、臨時のものであつて、次の国会開会の後十日以内に、衆議院の同意がない場合には、その効力を失ふ。</p>
<p>(議員の資格審査)</p> <p>第五十五条 両議院は、各々その議員の資格に関し争いがあるときは、これについて審査し、議決する。ただし、議員の議席を失わせるには、出席議員の三分の二以上の多数による議決を必要とする。</p>	<p>第五十五条 両議院は、各々その議員の資格に関する争訟を裁判する。但し、議員の議席を失はせるには、出席議員の三分の二以上の多数による議決を必要とする。</p>
<p>(表決及び定足数)</p> <p>第五十六条 両議院の議事は、この憲法に特別の定めのある場合を除いては、出席議員の過半数で決し、可否同数のときは、議長が決するところによる。</p> <p>2 両議院の議決は、各々その総議員の三分の一以上の出席がなければすることができない。</p>	<p>第五十六条 両議院は、各々その総議員の三分の一以上の出席がなければ、議事を開き議決することができない。</p> <p>② 両議院の議事は、この憲法に特別の定めのある場合を除いては、出席議員の過半数でこれを決し、可否同数のときは、議長の決するところによる。</p>
<p>(会議及び会議録の公開等)</p> <p>第五十七条 両議院の会議は、公開しなければならない。ただし、出席議員の三分の二以上の多数で議決したときは、秘密会を開くことができる。</p> <p>2 両議院は、各々その会議の記録を保存し、秘密会の記録の中で</p>	<p>第五十七条 両議院の会議は、公開とする。但し、出席議員の三分の二以上の多数で議決したときは、秘密会を開くことができる。</p> <p>② 両議院は、各々その会議の記録を保存し、秘密会の記録の中で</p>

<p>特に秘密を要すると認められるものを除き、これを公表し、かつ、一般に頒布しなければならない。</p> <p>3 出席議員の五分の一以上の要求があるときは、各議員の表決を会議録に記載しなければならない。</p>	<p>特に秘密を要すると認められるもの以外は、これを公表し、且つ一般に頒布しなければならない。</p> <p>③ 出席議員の五分の一以上の要求があれば、各議員の表決は、これを会議録に記載しなければならない。</p>
<p>(役員を選任並びに議院規則及び懲罰)</p> <p>第五十八條 両議院は、各々その議長その他の役員を選任する。</p> <p>2 両議院は、各々その会議その他の手続及び内部の規律に関する規則を定め、並びに院内の秩序を乱した議員を懲罰することができる。ただし、議員を除名するには、出席議員の三分の二以上の多数による議決を必要とする。</p>	<p>第五十八條 両議院は、各々その議長その他の役員を選任する。</p> <p>② 両議院は、各々その会議その他の手続及び内部の規律に関する規則を定め、又、院内の秩序をみだした議員を懲罰することができる。但し、議員を除名するには、出席議員の三分の二以上の多数による議決を必要とする。</p>
<p>(法律案の議決及び衆議院の優越)</p> <p>第五十九條 法律案は、この憲法に特別の定めのある場合を除いては、両議院で可決したとき法律となる。</p> <p>2 衆議院で可決し、参議院でこれと異なつた議決をした法律案は、衆議院で出席議員の三分の二以上の多数で再び可決したときは、法律となる。</p>	<p>第五十九條 法律案は、この憲法に特別の定めのある場合を除いては、両議院で可決したとき法律となる。</p> <p>② 衆議院で可決し、参議院でこれと異なつた議決をした法律案は、衆議院で出席議員の三分の二以上の多数で再び可決したときは、法律となる。</p>
<p>3 前項の規定は、法律の定めるところにより、衆議院が両議院の協議会を開くことを求めることを妨げない。</p> <p>4 参議院が、衆議院の可決した法律案を受け取つた後、国会休会中の期間を除いて六十日以内に、議決しないときは、衆議院は、参議院がその法律案を否決したものとみなすことができる。</p>	<p>③ 前項の規定は、法律の定めるところにより、衆議院が、両議院の協議会を開くことを求めることを妨げない。</p> <p>④ 参議院が、衆議院の可決した法律案を受け取つた後、国会休会中の期間を除いて六十日以内に、議決しないときは、衆議院は、参議院がその法律案を否決したものとみなすことができる。</p>
<p>(予算案の議決等に関する衆議院の優越)</p> <p>第六十條 予算案は、先に衆議院に提出しなければならない。</p> <p>2 予算案について、参議院で衆議院と異なつた議決をした場合において、法律の定めるところにより、両議院の協議会を開いても意見が一致しないとき、又は参議院が、衆議院の可決した予算案を受け取つた後、国会休会中の期間を除いて三十日以内に、議決しないときは、衆議院の議決を国会の議決とする。</p>	<p>第六十條 予算は、さきに衆議院に提出しなければならない。</p> <p>② 予算について、参議院で衆議院と異なつた議決をした場合に、法律の定めるところにより、両議院の協議会を開いても意見が一致しないとき、又は参議院が、衆議院の可決した予算を受け取つた後、国会休会中の期間を除いて三十日以内に、議決しないときは、衆議院の議決を国会の議決とする。</p>

(条約の承認に関する衆議院の優越)

<p>第六十一条 条約の締結に必要な国会の承認については、前条第二項の規定を準用する。</p> <p>〔議院の国政調査権〕</p> <p>第六十二条 両議院は、各々国政に関する調査を行い、これに関し、証人の出頭及び証言並びに記録の提出を要求することができる。</p> <p>〔内閣総理大臣等の議院出席の権利及び義務〕</p> <p>第六十三条 内閣総理大臣及びその他の国務大臣は、議案について発言するため両議院に出席することができる。</p> <p>2 内閣総理大臣及びその他の国務大臣は、答弁又は説明のため議院から出席を求められたときは、出席しなければならない。ただし、職務の遂行上特に必要がある場合は、この限りでない。</p> <p>〔弾劾裁判所〕</p> <p>第六十四条 国会は、罷免の訴追を受けた裁判官を裁判するため、両議院の議員で組織する弾劾裁判所を設ける。</p> <p>2 弾劾に関する事項は、法律で定める。</p> <p>〔政党〕</p> <p>第六十四条の二 国は、政党が議会制民主主義に不可欠の存在であることに鑑み、その活動の公正の確保及びその健全な発展に努めなければならない。</p> <p>2 政党の政治活動の自由は、保障する。</p> <p>3 前二項に定めるもののほか、政党に関する事項は、法律で定める。</p> <p>第五章 内閣</p> <p>〔内閣と行政権〕</p>	<p>第六十一条 条約の締結に必要な国会の承認については、前条第二項の規定を準用する。</p> <p>第六十二条 両議院は、各々国政に関する調査を行い、これに関し、証人の出頭及び証言並びに記録の提出を要求することができる。</p> <p>第六十三条 内閣総理大臣その他の国務大臣は、両議院の一に議席を有すると有しないにかかはらず、何時でも議案について発言するため議院に出席することができる。又、答弁又は説明のため出席を求められたときは、出席しなければならない。</p> <p>第六十四条 国会は、罷免の訴追を受けた裁判官を裁判するため、両議院の議員で組織する弾劾裁判所を設ける。</p> <p>② 弾劾に関する事項は、法律でこれを定める。</p> <p>〔新設〕</p> <p>第五章 内閣</p>
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<p>第六十五条 行政権は、この憲法に特別の定めのある場合を除き、内閣に属する。</p>	<p>第六十五条 行政権は、内閣に属する。</p>
<p>〔内閣の構成及び国会に対する責任〕</p>	<p>第六十六条 内閣は、法律の定めるところにより、その首長たる内閣総理大臣及びその他の国務大臣で構成する。</p>
<p>2 内閣総理大臣及び全ての国務大臣は、現役の軍人であつてはならない。</p>	<p>② 内閣総理大臣その他の国務大臣は、文民でなければならない。</p>
<p>3 内閣は、行政権の行使について、国会に対し連帯して責任を負う。</p>	<p>③ 内閣は、行政権の行使について、国会に対し連帯して責任を負ふ。</p>
<p>〔内閣総理大臣の指名及び衆議院の優越〕</p>	<p>第六十七条 内閣総理大臣は、国会議員の中から国会の議決で、これを指名する。この指名は、他のすべての案件に先だつて、これを行ふ。</p>
<p>2 国会は、他の全ての案件に先立つて、内閣総理大臣の指名を行わなければならない。</p>	<p>第六十七条 内閣総理大臣は、国会議員の中から国会の議決で、これを指名する。この指名は、他のすべての案件に先だつて、これを行ふ。</p>
<p>3 衆議院と参議院とが異なつた指名をした場合において、法律の定めるところにより、両議院の協議会を開いても意見が一致しないとき、又は衆議院が指名をした後、国会休会中の期間を除いて十日以内に、参議院が指名をしないときは、衆議院の指名を国会の指名とする。</p>	<p>② 衆議院と参議院とが異なつた指名の議決をした場合に、法律の定めるところにより、両議院の協議会を開いても意見が一致しないとき、又は衆議院が指名の議決をした後、国会休会中の期間を除いて十日以内に、参議院が、指名の議決をしないときは、衆議院の議決を国会の議決とする。</p>
<p>〔国務大臣の任免〕</p>	<p>第六十八条 内閣総理大臣は、国務大臣を任命する。但し、その過半数は、国会議員の中から選ばなければならない。</p>
<p>2 内閣総理大臣は、任意に国務大臣を罷免することができる。</p>	<p>② 内閣総理大臣は、任意に国務大臣を罷免することができる。</p>
<p>〔内閣の不信任と総辞職〕</p> <p>第六十九条 内閣は、衆議院が不信任の決議案を可決し、又は信任の決議案を否決したときは、十日以内に衆議院が解散されない限り、総辞職をしなければならない。</p>	<p>第六十九条 内閣は、衆議院で不信任の決議案を可決し、又は信任の決議案を否決したときは、十日以内に衆議院が解散されない限り、総辞職をしなければならない。</p>

<p>（内閣総理大臣が欠けたとき等の内閣の総辞職等）</p> <p>第七十条 内閣総理大臣が欠けたとき、又は衆議院議員の総選挙の後初めて国会の召集があつたときは、内閣は、総辞職をしななければならない。</p> <p>2 内閣総理大臣が欠けたとき、その他これに準ずる場合として法律で定めるときは、内閣総理大臣があらかじめ指定した国務大臣が、臨時に、その職務を行う。</p> <p>（総辞職後の内閣）</p> <p>第七十一条 前二条の場合には、内閣は、新たに内閣総理大臣が任命されるまでの間は、引き続き、その職務を行う。</p> <p>（内閣総理大臣の職務）</p> <p>第七十二条 内閣総理大臣は、行政各部を指揮監督し、その総合調整を行う。</p> <p>2 内閣総理大臣は、内閣を代表して、議案を国会に提出し、並びに一般国務及び外交関係について国会に報告する。</p> <p>3 内閣総理大臣は、最高指揮官として、国防軍を統括する。</p> <p>（内閣の職務）</p> <p>第七十三条 内閣は、他の一般行政事務のほか、次に掲げる事務を行う。</p> <p>一 法律を誠実に執行し、国務を総理すること。</p> <p>二 外交関係を処理すること。</p> <p>三 条約を締結すること。ただし、事前に、やむを得ない場合は事後に、国会の承認を経ることを必要とする。</p> <p>四 法律の定める基準に従い、国の公務員に関する事務をつかさどること。</p> <p>五 予算案及び法律案を作成して国会に提出すること。</p> <p>六 法律の規定に基づき、政令を制定すること。ただし、政令には、特にその法律の委任がある場合を除いては、義務を課し、</p>	<p>第七十条 内閣総理大臣が欠けたとき、又は衆議院議員総選挙の後初めて国会の召集があつたときは、内閣は、総辞職をしななければならない。</p> <p>〔新設〕</p> <p>第七十一条 前二条の場合には、内閣は、あらたに内閣総理大臣が任命されるまで引き続きその職務を行ふ。</p> <p>第七十二条 内閣総理大臣は、内閣を代表して議案を国会に提出し、一般国務及び外交関係について国会に報告し、並びに行政各部を指揮監督する。</p> <p>〔新設〕</p> <p>〔新設〕</p> <p>第七十三条 内閣は、他の一般行政事務の外、左の事務を行ふ。</p> <p>一 法律を誠実に執行し、国務を総理すること。</p> <p>二 外交関係を処理すること。</p> <p>三 条約を締結すること。但し、事前に、時宜によつては事後に、国会の承認を経ることを必要とする。</p> <p>四 法律の定める基準に従ひ、官吏に関する事務を掌理すること。</p> <p>五 予算を作成して国会に提出すること。</p> <p>六 この憲法及び法律の規定を実施するために、政令を制定すること。但し、政令には、特にその法律の委任がある場合を除いては、</p>
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<p>又は権利を制限する規定を設けることができない。</p> <p>七 大赦、特赦、減刑、刑の執行の免除及び復権を決定すること。</p> <p>(法律及び政令への署名)</p> <p>第七十四条 法律及び政令には、<u>全て</u>主任の国務大臣が署名し、内閣総理大臣が連署することを必要とする。</p> <p>(国務大臣の不訴追特権)</p> <p>第七十五条 国務大臣は、その在任中、内閣総理大臣の同意がなければ、<u>公訴を提起されない</u>。ただし、<u>国務大臣でなくなった後に、公訴を提起することを妨げない</u>。</p>	<p>ては、<u>罰則を設けることができない</u>。</p> <p>七 大赦、特赦、減刑、刑の執行の免除及び復権を決定すること。</p> <p>第七十四条 法律及び政令には、<u>すべて</u>主任の国務大臣が署名し、内閣総理大臣が連署することを必要とする。</p> <p>第七十五条 国務大臣は、その在任中、内閣総理大臣の同意がなければ、<u>訴追されない</u>。但し、<u>これがため、訴追の権利は、害されない</u>。</p>
<p>第六章 司法</p> <p>(裁判所と司法権)</p> <p>第七十六条 <u>全て司法権は、最高裁判所及び法律の定めるところにより設置する下級裁判所に属する</u>。</p> <p>2 特別裁判所は、設置することができない。行政機関は、最終的な上訴審として裁判を行うことができない。</p> <p>3 <u>全て裁判官は、その良心に従い独立してその職権を行い、この憲法及び法律にのみ拘束される</u>。</p>	<p>第六章 司法</p> <p>第七十六条 <u>すべて司法権は、最高裁判所及び法律の定めるところにより設置する下級裁判所に属する</u>。</p> <p>② 特別裁判所は、これを設置することができない。行政機関は、終審として裁判を行ふことができない。</p> <p>③ <u>すべて裁判官は、その良心に従ひ独立してその職権を行い、この憲法及び法律にのみ拘束される</u>。</p>
<p>(最高裁判所の規則制定権)</p> <p>第七十七条 最高裁判所は、裁判に関する手続、弁護士、裁判所の内部規律及び司法事務処理に関する事項について、規則を定める権限を有する。</p> <p>2 検察官、弁護士その他の裁判に関わる者は、最高裁判所の定める規則に従わなければならない。</p> <p>3 最高裁判所は、下級裁判所に関する規則を定める権限を、下級裁判所に委任することができる。</p>	<p>第七十七条 最高裁判所は、<u>訴訟</u>に関する手続、弁護士、裁判所の内部規律及び司法事務処理に関する事項について、規則を定める権限を有する。</p> <p>② 検察官は、最高裁判所の定める規則に従はなければならない。</p> <p>③ 最高裁判所は、下級裁判所に関する規則を定める権限を、下級裁判所に委任することができる。</p>
<p>(裁判官の身分保障)</p> <p>第七十八条 裁判官は、<u>次条第三項に規定する場合及び心身の故障</u></p>	<p>第七十八条 裁判官は、<u>裁判により、心身の故障のために職務を執</u></p>

<p>のために職務を執ることができないと裁判により決定された場合を除いては、第六十四条第一項の規定による裁判によらなければ罷免されない。行政機関は、裁判官の懲戒処分を行うことができない。</p>	<p>ることができないと決定された場合を除いては、公の弾劾によらなければ罷免されない。裁判官の懲戒処分は、行政機関がこれを行ふことはできない。</p>
<p>(最高裁判所の裁判官) 第七十九条 最高裁判所は、その長である裁判官及び法律の定める員数のその他の裁判官で構成し、最高裁判所の長である裁判官以外の裁判官は、内閣が任命する。 2 最高裁判所の裁判官は、その任命後、<u>法律の定めるところにより、国民の審査を受けなければならない。</u></p>	<p>第七十九条 最高裁判所は、その長たる裁判官及び法律の定める員数のその他の裁判官でこれを構成し、その長たる裁判官以外の裁判官は、内閣でこれを任命する。 ② 最高裁判所の裁判官の任命は、その任命後初めて行はれる衆議院議員総選挙の際国民の審査に付し、その後十年を経過した後初めて行はれる衆議院議員総選挙の際更に審査に付し、その後も同様とする。</p>
<p>3 前項の審査において罷免すべきとされた裁判官は、罷免される。 〔削除〕 4 最高裁判所の裁判官は、法律の定める年齢に達した時に退官する。 5 最高裁判所の裁判官は、<u>全て定期に相当額の報酬を受ける。この報酬は、在任中、分限又は懲戒による場合及び一般の公務員の例による場合を除き、減額できない。</u></p>	<p>③ 前項の場合において、投票者の多数が裁判官の罷免を可とするときは、その裁判官は、罷免される。 ④ 審査に関する事項は、法律でこれを定める。 ⑤ 最高裁判所の裁判官は、法律の定める年齢に達した時に退官する。 ⑥ 最高裁判所の裁判官は、<u>すべて定期に相当額の報酬を受ける。この報酬は、在任中、これを減額することができない。</u></p>
<p>(下級裁判所の裁判官) 第八十条 下級裁判所の裁判官は、最高裁判所の指名した者の名簿によつて、内閣が任命する。その裁判官は、<u>法律の定める任期を限って任命され、再任されることができ。ただし、法律の定める年齢に達した時には、退官する。</u> 2 前条第五項の規定は、<u>下級裁判所の裁判官の報酬について準用する。</u></p>	<p>第八十条 下級裁判所の裁判官は、最高裁判所の指名した者の名簿によつて、内閣でこれを任命する。その裁判官は、任期を十年とし、再任されることができ。但し、法律の定める年齢に達した時には退官する。 ② 下級裁判所の裁判官は、<u>すべて定期に相当額の報酬を受ける。この報酬は、在任中、これを減額することができない。</u></p>
<p>(法令審査権と最高裁判所) 第八十一条 最高裁判所は、一切の法律、命令、規則又は処分が憲法に適合するかしないかを決定する権限を有する最終的な上訴</p>	<p>第八十一条 最高裁判所は、一切の法律、命令、規則又は処分が憲法に適合するかしないかを決定する権限を有する終審裁判所で</p>

審裁判所である。	ある。
<p>〔裁判の公開〕</p> <p>第八十二条 裁判の口頭弁論及び公判手続並びに判決は、公開の法廷で行う。</p> <p>2 裁判所が、裁判官の全員一致で、公の秩序又は善良の風俗を害するおそれがあると決した場合には、口頭弁論及び公判手続は、公開しないで行うことができる。ただし、政治犯罪、出版に関する犯罪又は第三章で保障する国民の権利が問題となっている事件の口頭弁論及び公判手続は、常に公開しなければならない。</p>	<p>第八十二条 裁判の対審及び判決は、公開法廷でこれを行ふ。</p> <p>② 裁判所が、裁判官の全員一致で、公の秩序又は善良の風俗を害する虞があると決した場合には、対審は、公開しないでこれを行ふことができる。但し、政治犯罪、出版に関する犯罪又はこの憲法第三章で保障する国民の権利が問題となつてある事件の対審は、常にこれを公開しなければならない。</p>
第七章 財政	第七章 財政
<p>〔財政の基本原則〕</p> <p>第八十三条 国の財政を処理する権限は、国会の議決に基づいて行使しなければならない。</p> <p>2 財政の健全性は、法律の定めるところにより、確保されなければならない。</p>	<p>第八十三条 国の財政を処理する権限は、国会の議決に基づいて、これを行使しなければならない。</p> <p>〔新設〕</p>
<p>〔租税法律主義〕</p> <p>第八十四条 租税を新たに課し、又は変更するには、法律の定めるところによることを必要とする。</p>	<p>第八十四条 あらたに租税を課し、又は現行の租税を変更するには、法律又は法律の定める条件によることを必要とする。</p>
<p>〔国費の支出及び国の債務負担〕</p> <p>第八十五条 国費を支出し、又は国が債務を負担するには、国会の議決に基づくことを必要とする。</p>	<p>第八十五条 国費を支出し、又は国が債務を負担するには、国会の議決に基づくことを必要とする。</p>
<p>〔予算〕</p> <p>第八十六条 内閣は、毎会計年度の予算案を作成し、国会に提出して、その審議を受け、議決を経なければならない。</p> <p>2 内閣は、毎会計年度中において、予算を補正するための予算案を提出することができる。</p> <p>3 内閣は、当該会計年度開始前に第一項の議決を得られる見込み</p>	<p>第八十六条 内閣は、毎会計年度の予算を作成し、国会に提出して、その審議を受け議決を経なければならない。</p> <p>〔新設〕</p> <p>〔新設〕</p>
	〔新設〕

<p>がないと認めるときは、暫定期間に係る予算案を提出しなければならない。</p> <p>4 毎会計年度の予算は、法律の定めるところにより、国会の議決を経て、翌年度以降の年度においても支出することができる。</p>	<p>〔新設〕</p>
<p>（予備費）</p> <p>第八十七条 予見し難い予算の不足に充てるため、国会の議決に基づいて予備費を設け、内閣の責任でこれを支出することができる。</p> <p>2 全て予備費の支出については、内閣は、事後に国会の承諾を得なければならない。</p>	<p>第八十七条 予見し難い予算の不足に充てるため、国会の議決に基づいて予備費を設け、内閣の責任でこれを支出することができる。</p> <p>② すべて予備費の支出については、内閣は、事後に国会の承諾を得なければならない。</p>
<p>（皇室財産及び皇室の費用）</p> <p>第八十八条 全て皇室財産は、国に属する。全て皇室の費用は、予算案に計上して国会の議決を経なければならない。</p>	<p>第八十八条 すべて皇室財産は、国に属する。すべて皇室の費用は、予算に計上して国会の議決を経なければならない。</p>
<p>（公の財産の支出及び利用の制限）</p> <p>第八十九条 公金その他の公の財産は、第二十条第三項ただし書に規定する場合を除き、宗教的活動を行う組織若しくは団体の使用、便益若しくは維持のため支出し、又はその利用に供してはならない。</p> <p>2 公金その他の公の財産は、国若しくは地方自治体その他の公共団体の監督が及ばない慈善、教育若しくは博愛の事業に対して支出し、又はその利用に供してはならない。</p>	<p>第八十九条 公金その他の公の財産は、宗教上の組織若しくは団体の使用、便益若しくは維持のため、又は公の支配に属しない慈善、教育若しくは博愛の事業に対し、これを支出し、又はその利用に供してはならない。</p>
<p>（決算の承認等）</p> <p>第九十条 内閣は、国の収入支出の決算について、全て毎年会計検査院の検査を受け、法律の定めるところにより、次の年度にその検査報告とともに両議院に提出し、その承認を受けなければならない。</p> <p>2 会計検査院の組織及び権限は、法律で定める。</p> <p>3 内閣は、第一項の検査報告の内容を予算案に反映させ、国会に對し、その結果について報告しなければならない。</p>	<p>第九十条 国の収入支出の決算は、すべて毎年会計検査院がこれを検査し、内閣は、次の年度に、その検査報告とともに、これを国会に提出しなければならない。</p> <p>② 会計検査院の組織及び権限は、法律でこれを定める。</p> <p>〔新設〕</p>

<p>(財政状況の報告)</p> <p>第九十一条 内閣は、国会に対し、定期に、少なくとも毎年一回、国の財政状況について報告しなければならない。</p>	<p>第九十一条 内閣は、国会及び国民に対し、定期に、少なくとも毎年一回、国の財政状況について報告しなければならない。</p>
<p>第八章 地方自治</p> <p>(地方自治の本旨)</p> <p>第九十二条 地方自治は、住民の参画を基本とし、住民に身近な行政を自主的、自立的かつ総合的に実施することを旨として行う。</p> <p>2 住民は、その属する地方自治体の役務の提供を等しく受ける権利を有し、その負担を公平に分担する義務を負う。</p>	<p>第八章 地方自治</p> <p>(新設)</p>
<p>(地方自治体の種類、国及び地方自治体の協力等)</p> <p>第九十三条 地方自治体は、基礎地方自治体及びこれを包括する広域地方自治体とすることを基本とし、その種類は、法律で定める。</p> <p>2 地方自治体の組織及び運営に関する基本的事項は、地方自治の本旨に基づいて、法律で定める。</p> <p>3 国及び地方自治体は、法律の定める役割分担を踏まえ、協力しなければならない。地方自治体は、相互に協力しなければならない。</p>	<p>(新設)</p> <p>第九十二条 地方公共団体の組織及び運営に関する事項は、地方自治の本旨に基づいて、法律でこれを定める。</p> <p>(新設)</p>
<p>(地方自治体の議会及び公務員の直接選挙)</p> <p>第九十四条 地方自治体には、法律の定めるところにより、条例その他の重要事項を議決する機関として、議会を設置する。</p> <p>2 地方自治体の長、議会の議員及び法律の定めるその他の公務員は、当該地方自治体の住民であつて日本国籍を有する者が直接選挙する。</p>	<p>第九十三条 地方公共団体には、法律の定めるところにより、その議事機関として議会を設置する。</p> <p>② 地方公共団体の長、その議会の議員及び法律の定めるその他の吏員は、その地方公共団体の住民が、直接これを選挙する。</p>
<p>(地方自治体の権能)</p> <p>第九十五条 地方自治体は、その事務を処理する権能を有し、法律の範囲内で条例を制定することができる。</p>	<p>第九十四条 地方公共団体は、その財産を管理し、事務を処理し、及び行政を執行する権能を有し、法律の範囲内で条例を制定することができる。</p>

<p>(地方自治体の財政及び国の財政措置)</p> <p>第九十六条 地方自治体の経費は、条例の定めるところにより課する地方税その他の自主的な財源をもつて充ててゐることを基本とする。</p> <p>2 国は、地方自治体において、前項の自主的な財源だけでは地方自治体の行うべき役務の提供ができないときは、法律の定めるところにより、必要な財政上の措置を講じなければならない。</p> <p>3 第八十三条第二項の規定は、地方自治について準用する。</p>	<p>〔新設〕</p>
<p>(地方自治特別法)</p> <p>第九十七条 特定の地方自治体の組織、運営若しくは権能について他の地方自治体と異なる定めをし、又は特定の地方自治体の住民にのみ義務を課し、権利を制限する特別法は、法律の定めるところにより、その地方自治体の住民の投票において有効投票の過半数の同意を得なければ、制定することができない。</p>	<p>第九十五条 一の地方公共団体のみに適用される特別法は、法律の定めるところにより、その地方公共団体の住民の投票においてその過半数の同意を得なければ、国会は、これを制定することができない。</p>
<p>第九章 緊急事態</p> <p>(緊急事態の宣言)</p> <p>第九十八条 内閣総理大臣は、我が国に対する外部からの武力攻撃、内乱等による社会秩序の混乱、地震等による大規模な自然災害その他の法律で定める緊急事態において、特に必要があると認めるときは、法律の定めるところにより、閣議にかけて、緊急事態の宣言を発することができる。</p> <p>2 緊急事態の宣言は、法律の定めるところにより、事前又は事後に国会の承認を得なければならない。</p> <p>3 内閣総理大臣は、前項の場合において不承認の議決があつたとき、国会が緊急事態の宣言を解除すべき旨を議決したとき、又は事態の推移により当該宣言を継続する必要がないと認めるときは、法律の定めるところにより、閣議にかけて、当該宣言を速やかに解除しなければならない。また、百日を超えて緊急事態の宣言を継続しようとするときは、百日を超えるごとに、事前に国会</p>	<p>〔新設〕</p>

<p>4 第二項及び前項後段の国会の承認については、第六十条第二項の規定を準用する。この場合において、同項中「三十日以内」とあるのは、「五日以内」と読み替えるものとする。</p> <p>(緊急事態の宣言の効果)</p> <p>第九十九条 緊急事態の宣言が発せられたときは、法律の定めるところにより、内閣は法律と同一の効力を有する政令を制定することができるほか、内閣総理大臣は財政上必要な支出その他の処分を行い、地方自治体の長に対して必要な指示をすることができる。</p> <p>2 前項の政令の制定及び処分については、法律の定めるところにより、事後に国会の承認を得なければならない。</p> <p>3 緊急事態の宣言が発せられた場合には、何人も、法律の定めるところにより、当該宣言に係る事態において国民の生命、身体及び財産を守るために行われる措置に関して発せられる国その他公の機関の指示に従わなければならない。この場合においても、第十四条、第十八条、第十九条、第二十一条その他の基本的人権に関する規定は、最大限に尊重されなければならない。</p> <p>4 緊急事態の宣言が発せられた場合においては、法律の定めるところにより、その宣言が効力を有する期間、衆議院は解散されないものとし、両議院の議員の任期及びその選挙期日の特例を設けることができる。</p> <p>第十章 改正</p> <p>第一百条 この憲法の改正は、衆議院又は参議院の議員の発議により、両議院のそれぞれの総議員の過半数の賛成で国会が議決し、国民に提案してその承認を得なければならない。この承認には、法律の定めるところにより行われる国民の投票において有効投票の過半数の賛成を必要とする。</p> <p>2 憲法改正について前項の承認を経たときは、天皇は、直ちに憲法改正を公布する。</p>	<p>(新設)</p> <p>第九十六条 この憲法の改正は、各議院の総議員の三分の二以上の賛成で、国会が、これを発議し、国民に提案してその承認を経なければならない。この承認には、特別の国民投票又は国会の定める選挙の際行はれる投票において、その過半数の賛成を必要とする。</p> <p>② 憲法改正について前項の承認を経たときは、天皇は、国民の名で、この憲法と一体を成すものとして、直ちにこれを公布する。</p> <p>第九章 改正</p>
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<p>第十一章 最高法規</p> <p>〔削除〕</p>	<p>第十章 最高法規</p> <p>第九十七條 この憲法が日本国民に保障する基本的人権は、人類の多年にわたる自由獲得の努力の成果であつて、これらの権利は、過去幾多の試練に堪へ、現在及び将来の国民に対し、侵すことのできない永久の権利として信託されたものである。</p>
<p>（憲法の最高法規性等）</p> <p>第百一條 この憲法は、国の最高法規であつて、その条規に反する法律、命令、詔勅及び国務に関するその他の行為の全部又は一部は、その効力を有しない。</p> <p>2 日本国が締結した条約及び確立された国際法規は、これを誠実に遵守することを必要とする。</p> <p>（憲法尊重擁護義務）</p> <p>第百二條 全て国民は、この憲法を尊重しねばならない。</p> <p>2 国会議員、国務大臣、裁判官その他の公務員は、この憲法を擁護する義務を負う。</p>	<p>第九十八條 この憲法は、国の最高法規であつて、その条規に反する法律、命令、詔勅及び国務に関するその他の行為の全部又は一部は、その効力を有しない。</p> <p>② 日本国が締結した条約及び確立された国際法規は、これを誠実に遵守することを必要とする。</p> <p>第九十九條 天皇又は摂政及び国務大臣、国会議員、裁判官その他の公務員は、この憲法を尊重し擁護する義務を負ふ。</p>
<p>附 則</p> <p>（施行期日）</p> <p>1 この憲法改正は、平成〇年〇月〇日から施行する。ただし、次の項の規定は、公布の日から施行する。</p> <p>（施行に必要な準備行為）</p> <p>2 この憲法改正を施行するために必要な法律の制定及び改廃その他この憲法改正を施行するために必要な準備行為は、この憲法改正の施行の日よりも前に行うことができる。</p> <p>（適用区分等）</p> <p>3 改正後の日本国憲法第七十九条第五項後段（改正後の第八十条第二項において準用する場合を含む。）の規定は、改正前の日本国憲法の規定により任命された最高裁判所の裁判官及び下級裁判所</p>	<p>第十一章 補 則</p> <p>第百條 この憲法は、公布の日から起算して六箇月を經過した日から、これを施行する。</p> <p>② この憲法を施行するために必要な法律の制定、参議院議員の選挙及び国会召集の手続並びにこの憲法を施行するために必要な準備手続は、前項の期日よりも前に、これを行ふことができる。</p> <p>第百一條 この憲法施行の際、参議院がまだ成立してゐないときは、その成立するまでの間、衆議院は、国会としての権限を行ふ。</p> <p>第百二條 この憲法による第一期の参議院議員のうち、その半数の</p>

<p>の裁判官の報酬についても適用する。</p> <p>4 この憲法改正の施行の際現に在職する下級裁判所の裁判官については、その任期は改正前の日本国憲法第八十条第一項の規定による任期の残任期間とし、改正後の日本国憲法第八十条第一項の規定により再任されることができ。</p> <p>5 改正後の日本国憲法第八十六条第一項、第二項及び第四項の規定はこの憲法改正の施行後に提出される予算案及び予算から、同条第三項の規定はこの憲法改正の施行後に提出される同条第一項の予算案に係る会計年度における暫定期間に係る予算案から、それぞれ適用し、この憲法改正の施行前に提出された予算及び当該予算に係る会計年度における暫定期間に係る予算については、なお従前の例による。</p> <p>6 改正後の日本国憲法第九十条第一項及び第三項の規定は、この憲法改正の施行後に提出される決算から適用し、この憲法改正の施行前に提出された決算については、なお従前の例による。</p>	<p>者の任期は、これを三年とする。その議員は、法律の定めるところにより、これを定める。</p> <p>第百三条 この憲法施行の際現に在職する国務大臣、衆議院議員及び裁判官並びにその他の公務員で、その地位に相応する地位がこの憲法で認められてゐる者は、法律で特別の定をした場合を除いては、この憲法施行のため、当然にはその地位を失ふことはない。但し、この憲法によつて、後任者が選挙又は任命されたときは、当然その地位を失ふ。</p>
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憲法改正推進本部

平成23年12月20日現在
(平成21年12月4日設置)

本部長

保利耕輔

最高顧問

麻生太郎 安倍晋三 福田康夫 森喜朗

顧問

古賀誠 中川秀直 野田毅

谷川秀善 中曽根弘文

関谷勝嗣 中山太郎 船田元 保岡興治

副会長

石破茂 木村太郎 中谷元 平沢勝栄
古屋圭司

小坂憲次 中川雅治 溝手顕正

事務局長

中谷元

事務局次長

井上信治 近藤三津枝
磯崎陽輔 岡田直樹

(役員の並びは、五十音順)

憲法改正推進本部 起草委員会

平成23年12月22日

委員長	中谷元				
顧問	保小	利坂	耕憲	輔次	
幹事	川中西	口川田	順雅昌	子治司	
委員	井石木近柴田棚中野平古	上破村藤山村橋川田沢屋	信太三昌憲泰秀勝圭	治茂郎彦久文直毅栄司	
	有磯衛大佐中藤古丸山若	村崎藤家山藤根川川山谷林	治陽晟敏さつ正弘政俊和え健	子輔一志き久文人治也子太	<兼務>
事務局長	磯崎			陽輔	
事務局次長	近藤			三津枝	

APPENDIX C

LDP CONSTITUTIONAL DRAFT OF 2012

Retrieved from the VOYCE Organization

Preamble

[Current]

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith.

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and

slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations.

We, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources.

[Draft]

Japan is a nation with a long history and unique culture, having the Emperor as the symbol of the unity of the people, governed based on the separation of the legislative, administrative and judicial powers subject to the sovereignty of the people.

Our nation has overcome and developed from the ruins of the last war and many great disasters, and now holds an important position in the international society, promoting amicable relations with foreign countries and contributing to the peace and prosperity of the world under a doctrine of peace.

We, the Japanese people, defend our country and territorial land with pride and strong spirit, and respecting fundamental human rights, do value harmony and do form a nation where families and the whole society support each other.

We hold freedom and discipline in high regard, and while defending this beautiful territory and natural environment, do promote education, science and technology and the growth of the country through vigorous economic activities.

We, the Japanese people, in order to pass on our good traditions and our nation to posterity for many years to come, do hereby establish this Constitution.

Chapter I: The Emperor

[Current]

Article 1. The Emperor shall be the symbol of the State and of the unity of the People, deriving his position from the will of the people with whom resides sovereign power.

[Draft]

(The Emperor)

Article 1. The Emperor is the head of the State and shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power.

[Current]

Article 2. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

[Draft]

(Succession to the Imperial Throne)

Article 2. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

[Current]

(Deleted: Article 3. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.)

[Draft]

(National flag and national anthem)

Article 3. The national flag is the rising sun flag and the national anthem is Kimigayo.

The Japanese people must respect the national flag and the national anthem.

[Draft (New)]

(Era name)

Article 4. The era name as provided by law shall be determined when the Imperial Throne is succeeded to.

[Current]

Article 4. The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government.

(Deleted: The Emperor may delegate the performance of his acts in matters of state as may be provided by law.)

(Deleted: Article 5. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.)

[Draft]

(Authority of the Emperor)

Article 5. The Emperor shall perform (Omitted: "only") such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government.

[Current]

Article 6. The Emperor shall appoint the Prime Minister as designated by the Diet. The Emperor shall appoint the Chief Judge of the Supreme Court as designated by the Cabinet.

Article 7. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people:

Promulgation of amendments of the constitution, laws, cabinet orders and treaties.

Convocation of the Diet.

Dissolution of the House of Representatives.

Proclamation of general election of members of the Diet.

Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers.

Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights.

Awarding of honors.

Attestation of instruments of ratification and other diplomatic documents as provided for by law.

Receiving foreign ambassadors and ministers.

Performance of ceremonial functions.

Article 4. (abbr.) The Emperor may delegate the performance of his acts in matters of state as may be provided by law.

[Draft]

(Constitutional functions, etc. of the Emperor)

Article 6. The Emperor, on behalf of the people, shall appoint the Prime Minister as designated by the Diet and shall appoint the Chief Judge of the Supreme Court as designated by the Cabinet. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people:

Promulgation of amendments of the Constitution, laws, cabinet orders and treaties.

Convocation of the Diet.

Dissolution of the House of Representatives.

Proclamation of general election of members of the House of Councillors and of regular election of members of the House of Representatives.

Attestation of the appointment and dismissal of Ministers of State and other public officials of the State as provided for by law.

Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights.

Awarding of honors.

Attestation of full powers and credentials of Ambassadors and Ministers, instruments of ratification and other diplomatic documents as provided for by law.

Receiving foreign ambassadors and ministers.

Performance of ceremonial functions.

The Emperor may delegate the performance of his acts in the preceding two paragraphs as may be provided by law.

The suggestions of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor. However, with regard to the dissolution of the House of Representatives, the Prime Minister shall decide the issue. In addition to those listed in the first and second paragraphs, the Emperor shall attend ceremonies held by the State, local governments or other public entities, and shall perform other public activities.

[Current]

Article 5. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

[Draft]

(Regency)

Article 7. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. Article 5 and the provisions in the fourth paragraph of the preceding article shall apply to the Regency.

[Current]

Article 8. No property can be given to, or received by, the Imperial House, nor can any gifts be made therefrom, without the authorization of the Diet.

[Draft]

(Restrictions to the Imperial House on the alienation of property, etc.)

Article 8. No property can be given to, or received by, the Imperial House, nor can any gifts be made therefrom, except in cases provided by law, without Diet approval.

Chapter II: National Security

[Current]

Article 9. 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 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.

[Draft]

(Pacifism)

Article 9. Aspiring sincerely to an international peace based on justice and order, the Japanese people (Omitted: “forever”) renounce war as a sovereign right of the nation and will not employ the threat and use of force as a means of settling international disputes.

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

The provisions in the preceding paragraph shall not prevent the exercise of the right to self-defense.

[Draft (New)]

(National Defense Military)

Article 9-2. In order to secure peace and independence for our nation as well as the safety of the State and the people, the National Defense Military shall be retained with the Prime Minister as the supreme commander.

The National Defense Military, when carrying out tasks prescribed in the preceding paragraph, shall be subject to Diet approval and other controls, as provided by law. The National Defense Military, in addition to the activities for performing the duties in the first paragraph, shall conduct international cooperative activities in order to secure the peace and safety of the international society and maintain public order, or conduct activities in order to defend the lives or freedoms of the people, as provided by law.

Other matters relating to the organization, regulation and security protection of the National Defense Military subject to the preceding two paragraphs shall be determined by law.

In order to conduct trials when crimes associated with official duties or confidential matters of the National Defense Military are committed by National Defense Military personnel or other public officials, a military tribunal shall be established in the National Defense Military, as provided by law. In this case, the defendant's right to appeal to the courts is guaranteed.

[Draft (New)]

(Territorial integrity, etc.)

Article 9-3. The State, in order to defend its sovereignty and independence, in cooperation with the people, shall maintain its territorial land, territorial waters and territorial airspace, and shall secure all resources therein.

Chapter III: Rights and Duties of the People

[Current]

Article 10. The conditions necessary for being a Japanese national shall be determined by law.

[Draft]

(Japanese national)

Article 10. The conditions necessary for being a Japanese national shall be determined by law.

[Current]

Article 11. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

[Draft]

(Enjoyment of fundamental human rights)

Article 11. The people are entitled to enjoy all of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution are eternal and inviolate rights.

[Current]

Article 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

[Draft]

(Duties of the people)

Article 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people. The people shall refrain from any abuse of these freedoms and rights, shall be aware of the fact that there are responsibilities and duties that accompany these freedoms and rights, and shall not infringe the public interest and public order.

[Current]

Article 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

[Draft]

(Respect, etc. for people as persons)

Article 13. All of the people shall be respected as persons. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public interest and public order, be the supreme consideration in legislation and in other governmental affairs.

[Current]

Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin. Peers and peerage shall not be recognized. No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

[Draft]

(Equal protection under the law)

Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, disability, social status or family origin. Peers and peerage shall not be recognized. (Omitted: “No privilege shall accompany”) No award of honor, decoration or any distinction shall be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

[Current]

Article 15. The people have the inalienable right to choose their public officials and to dismiss them. All public officials are servants of the whole community and not of any group thereof. Universal adult suffrage is guaranteed with regard to the election of public officials. In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.

[Draft]

(Rights, etc. pertaining to the appointment and dismissal of public officials)

Article 15. The people, with whom sovereign power resides, have the right to choose their public officials and to dismiss them. All public officials are servants of the whole community and not of any group thereof. In the case that public officials are appointed through an election, the popular election shall be carried out by all adult people who possess Japanese nationality. In (Omitted: “all”) elections, secrecy of the ballot shall not be violated. A voter shall not be questioned nor held responsible, publicly or privately, for the choice he has made.

[Current]

Article 16. Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or

amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.

[Draft]

(Right to petition)

Article 16. Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters. No person shall be in any way discriminated against for sponsoring a petition.

[Current]

Article 17. Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.

[Draft]

(Compensation claims against the State, etc.)

Article 17. Every person may sue for redress as provided by law from the State, local governments or other public entities, in case he/she has suffered damage through illegal act of any public official.

[Current]

Article 18. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

[Draft]

(Freedom from bondage and servitude)

Article 18. No person, irrespective of his will, shall be held in bondage in social or economic relations.

Involuntary servitude, except as punishment for crime, is prohibited.

[Current]

Article 19. Freedom of thought and conscience shall not be violated.

[Draft]

(Freedom of thought and conscience)

Article 19. Freedom of thought and conscience is guaranteed.

[Draft (New)]

(Prohibition on the wrongful acquisition of personal information, etc.)

Article 19-2. No person shall wrongfully acquire, possess or utilize any personal information.

[Current]

Article 20. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority. No person shall be compelled to take part in any religious act, celebration, rite or practice. The State and its organs shall refrain from religious education or any other religious activity.

[Draft]

(Freedom of religion)

Article 20. Freedom of religion is guaranteed to all. The State shall not grant privileges to any religious organization. (Omitted: “No religious organization shall exercise any political authority.”) No person shall be compelled to take part in any religious act, celebration, rite or practice. The State, local governments and other public entities shall refrain from particular religious education and other religious activities. However, this provision shall not apply to activities that do not exceed the scope of social rituals or customary practices.

[Current]

Article 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

[Draft]

(Freedom of expression)

Article 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. Notwithstanding the provisions of the preceding paragraph, engaging in activities with the purpose of harming the public interest and public order and forming associations to attain this objective shall not be recognized. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

[Draft (New)]

(Responsibility to provide an account on governmental affairs)

Article 21-2. The State is responsible for giving the people an account of governmental affairs.

[Current]

Article 22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare. Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

[Draft]

(Freedom to choose and change residence and choose occupation, etc.)

Article 22. Every person shall have freedom to choose and change his residence and to choose his occupation. (Deleted: “to the extent that it does not

interfere with the public welfare.”) Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

[Current]

Article 23. Academic freedom is guaranteed.

[Draft]

(Academic freedom)

Article 23. Academic freedom is guaranteed.

[Current]

Article 24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

[Draft]

(Fundamental principles concerning family, marriage, etc.)

Article 24. Family shall be respected as the natural and fundamental unit of society. Family members must support each other. Marriage shall be based (Deleted: “only”) on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. With regard to family, maintenance, guardianship, marriage and divorce, property rights, inheritance and other matters pertaining to kinship, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

[Current]

Article 25. All people shall have the right to maintain the minimum standards of wholesome and cultured living. In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

[Draft]

(Right to life, etc.)

Article 25. All people shall have the right to maintain the minimum standards of wholesome and cultured living. In all spheres of livelihoods of the people, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

[Draft (New)]

(Responsibility of environmental protection)

Article 25-2. The State, in cooperation with the people, shall use its endeavors to maintain the environment so that the people can enjoy a satisfactory environment.

[Draft (New)]

(Protection of nationals abroad)

Article 25-3. The State shall use its endeavors to protect its nationals abroad when an emergency occurs outside its territory.

[Draft (New)]

(Consideration toward victims of crime, etc.)

Article 25-4. The State shall give consideration to the human rights and treatment of victims of crime and their families.

[Current]

Article 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law. All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.

[Draft]

(Rights and duties, etc. concerning education)

Article 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law. All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free. The State, in view of the fact that education is indispensable in pioneering the future of the State, shall use its endeavors for developing an educational environment.

[Current]

Article 27. All people shall have the right and the obligation to work. Standards for wages, hours, rest and other working conditions shall be fixed by law. Children shall not be exploited.

[Draft]

(Rights and duties, etc. concerning labor)

Article 27. All people shall have the right and the obligation to work.
Standards for wages, hours, rest and other working conditions shall be fixed by law.
No person shall exploit children.

[Current]

Article 28. The right of workers to organize and to bargain and act collectively is guaranteed.

[Draft]

(Right of workers to organize, etc.)

Article 28. The right of workers to organize and to bargain and act collectively is guaranteed. With regard to public officials, in view of the fact that they are servants of the whole community, all or part of their rights in the preceding paragraph may be restricted, as provided by law. In this case, necessary measures shall be taken to improve the working conditions of public officials.

[Current]

Article 29. The right to own or to hold property is inviolable. Property rights shall be defined by law, in conformity with the public welfare. Private property may be taken for public use upon just compensation therefor.

[Draft]

(Property rights)

Article 29. The right to own or to hold property is inviolable. Property rights shall be defined by law, in conformity with the public interest and public order. In this case, with regard to intellectual property rights, consideration shall be given for

contributing to the improvement of the intellectual creativity of the people. Private property may be taken for public use upon just compensation therefor.

[Current]

Article 30. The people shall be liable to taxation as provided by law.

[Draft]

(Tax liability)

Article 30. The people shall be liable to taxation as provided by law.

[Current]

Article 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

[Draft]

(Guarantee of due process of law)

Article 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to due process of law.

[Current]

Article 32. No person shall be denied the right of access to the courts.

[Draft]

(Right of access to the courts)

Article 32. No person shall be denied the right of access to the courts.

[Current]

Article 33. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.

[Draft]

(Guarantee of procedures relating to apprehension)

Article 33. No person shall be apprehended except upon warrant issued by a judge which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.

[Current]

Article 34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

[Draft]

(Guarantee of procedures relating to arrest and detainment)

Article 34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause.

The detainee shall have the right to immediately show the cause in open court in his presence and the presence of his counsel.

[Current]

Article 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33. Each search or seizure shall be made upon separate warrant issued by a competent judicial officer.

[Draft]

(Inviolability of residence, etc.)

Article 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33. Each search or seizure under the provisions of the preceding paragraph shall be made upon separate warrant issued by a judge.

[Current]

Article 36. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

[Draft]

(Prohibition on torture and cruel punishments)

Article 36. The infliction of torture by any public officer and cruel punishments are (Omitted: “absolutely”) forbidden.

[Current]

Article 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal. He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense. At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.

[Draft]

(Rights of the accused)

Article 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal. He shall be permitted (Omitted: “full”) opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense. At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.

[Current]

Article 38. No person shall be compelled to testify against himself. Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence. No person shall be convicted or punished in cases where the only proof against him is his own confession.

[Draft]

(Confessions made in criminal cases, etc.)

Article 38. No person shall be compelled to testify against himself. Confession made under torture, compulsion or other threats, or after prolonged arrest

or detention shall not be admitted in evidence. No person shall be convicted (Omitted: “or punished”) in cases where the only proof against him is his own confession.

[Current]

Article 39. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.

[Draft]

(Prohibition on retroactive punishment, etc.)

Article 39. No person shall be held criminally liable for an act which was not unlawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.

[Current]

Article 40. Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.

[Draft]

(Right to seek indemnity)

Article 40. Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.

Chapter IV: The Diet

[Current]

Article 41. The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.

[Draft]

(The Diet and legislative power)

Article 41. The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.

[Current]

Article 42. The Diet shall consist of two Houses, namely the House of Representatives and the House of Councilors.

[Draft]

(Two Houses)

Article 42. The Diet shall consist of two Houses, namely the House of Representatives and the House of Councilors.

[Current]

Article 43. Both Houses shall consist of elected members, representative of all the people. The number of the members of each House shall be fixed by law.

[Draft]

(Organization of both Houses)

Article 43. Both Houses shall consist of elected members, representative of all the people. The number of the members of each House shall be fixed by law.

[Current]

Article 44. The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.

[Draft]

(Qualifications of members of the Diet and voters)

Article 44. The qualifications of members of both Houses and their electors shall be fixed by law. In this case, there shall be no discrimination because of race, creed, sex, disability, social status, family origin, education, property or income.

[Current]

Article 45. The term of office of members of the House of Representatives shall be four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved.

[Draft]

(Term of office of members of the House of Representatives)

Article 45. The term of office of members of the House of Representatives shall be four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved.

[Current]

Article 46. The term of office of members of the House of Councilors shall be six years, and election for half the members shall take place every three years.

[Draft]

(Term of office of members of the House of Councilors)

Article 46. The term of office of members of the House of Councilors shall be six years, and election for half the members shall take place every three years.

[Current]

Article 47. Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law.

[Draft]

(Matters pertaining to elections)

Article 47. Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law. In this case, each electoral district shall take into comprehensive consideration administrative subdivisions and topography with population as the basis.

[Current]

Article 48. No person shall be permitted to be a member of both Houses simultaneously.

[Draft]

(Prohibition on concurrent holding of positions)

Article 48. No person shall be permitted to be a member of both Houses simultaneously.

[Current]

Article 49. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.

[Draft]

(Annual salary of members of the Diet)

Article 49. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.

[Current]

Article 50. Except in cases provided by law, members of both Houses shall be exempt from apprehension while the Diet is in session, and any members apprehended before the opening of the session shall be freed during the term of the session upon demand of the House.

[Draft]

(Immunity of members of the Diet from arrest)

Article 50. Except in cases provided by law, members of both Houses shall be exempt from apprehension while the Diet is in session, and any members apprehended before the opening of the session shall be freed during the term of the session upon demand of the House.

[Current]

Article 51. Members of both Houses shall not be held liable outside the House for speeches, debates or votes cast inside the House.

[Draft]

(Diplomatic immunity of members of the Diet)

Article 51. Members of both Houses shall not be held liable outside the House for speeches, debates or votes cast inside the House.

[Current]

Article 52. An ordinary session of the Diet shall be convoked once per year.

[Draft]

(Ordinary sessions of the Diet)

Article 52. An ordinary session of the Diet shall be convoked once per year.

The term of the ordinary session of the Diet shall be fixed by law.

[Current]

Article 53. The Cabinet may determine to convoke extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Cabinet must determine on such convocation.

[Draft]

(Extraordinary sessions of the Diet)

Article 53. The Cabinet may determine to convoke extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, extraordinary sessions of the Diet must be convoked within twenty-one (21) days from the date of the demand.

[Current]

Article 54. When the House of Representatives is dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election. When the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the Cabinet may in time

of national emergency convoke the House of Councilors in emergency session.

Measures taken at such session as mentioned in the proviso of the preceding paragraph shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

[Draft]

(Dissolution of the House of Representatives, general elections of members of the House of Representatives, special sessions of the Diet and emergency sessions of the House of Councilors)

Article 54. The dissolution of the House of Representatives shall be determined by the cabinet minister. When the House of Representatives is dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and a special session of the Diet must be convoked within thirty (30) days from the date of the election. When the House of Representatives is dissolved, the House of Councilors is closed at the same time. However, the Cabinet may in time of national emergency convoke the House of Councilors in emergency session. Measures taken at such session as mentioned in the proviso of the preceding paragraph shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

[Current]

Article 55. Each House shall judge disputes related to qualifications of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

[Draft]

(Review of the qualifications of members of the Diet)

Article 55. Each House shall review and pass a resolution on disputes related to qualifications of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

[Current]

Article 56. Business cannot be transacted in either House unless one-third or more of total membership is present. All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution, and in case of a tie, the presiding officer shall decide the issue.

[Draft]

(Voting and quorum)

Article 56. All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution, and in case of a tie, the presiding officer shall decide the issue.

A resolution cannot be passed in either House unless one-third or more of total membership is present.

[Current]

Article 57. Deliberation in each House shall be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor. Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy. Upon demand of

one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

[Draft]

(Publicity, etc. of deliberations and record of proceedings)

Article 57. Deliberation in each House must be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor. Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy. Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

[Current]

Article 58. Each House shall select its own president and other officials. Each House shall establish its rules pertaining to meetings, proceedings and internal discipline, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

[Draft]

(Appointment of officials and rules of the House and official reprimand)

Article 58. Each House shall select its own president and other officials. Each House shall establish its rules pertaining to meetings, proceedings and internal discipline, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

[Current]

Article 59. A bill becomes a law on passage by both Houses, except as otherwise provided by the Constitution. A bill which is passed by the House of Representatives, and upon which the House of Councilors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present. The provision of the preceding paragraph does not preclude the House of Representatives from calling for the meeting of a joint committee of both Houses, provided for by law. Failure by the House of Councilors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection of the said bill by the House of Councilors.

[Draft]

(Passage of bills and the authority of the House of Representatives)

Article 59. A bill becomes a law on passage by both Houses, except as otherwise provided by the Constitution. A bill which is passed by the House of Representatives, and upon which the House of Councilors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present. The provision of the preceding paragraph does not preclude the House of Representatives from calling for the meeting of a joint committee of both Houses, provided for by law. Failure by the House of Councilors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in

recess excepted, may be determined by the House of Representatives to constitute a rejection of the said bill by the House of Councilors.

[Current]

Article 60. The budget must first be submitted to the House of Representatives. Upon consideration of the budget, when the House of Councilors makes a decision different from that of the House of Representatives, and when no agreement can be reached even through a joint committee of both Houses, provided for by law, or in the case of failure by the House of Councilors to take final action within thirty (30) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives shall be the decision of the Diet.

[Draft]

(Authority of the House of Representatives relating to the approval, etc. of the draft budget)

Article 60. The draft budget must first be submitted to the House of Representatives. Upon consideration of the budget, when the House of Councilors makes a decision different from that of the House of Representatives, and when no agreement can be reached even through a joint committee of both Houses, provided for by law, or in the case of failure by the House of Councilors to take final action within thirty (30) days, the period of recess excluded, after the receipt of the draft budget passed by the House of Representatives, the decision of the House of Representatives shall be the decision of the Diet.

[Current]

Article 61. The second paragraph of the preceding article applies also to the Diet approval required for the conclusion of treaties.

[Draft]

(Authority of the House of Representatives relating to the conclusion of treaties)

Article 61. The second paragraph of the preceding article applies also to the Diet approval required for the conclusion of treaties.

[Current]

Article 62. Each House may conduct investigations in relation to government, and may demand the presence and testimony of witnesses, and the production of records.

[Draft]

(Investigation rights of the House)

Article 62. Each House may conduct investigations in relation to government, and may demand the presence and testimony of witnesses, and the production of records.

[Current]

Article 63. The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

[Draft]

(Rights and duties of the Prime Minister, etc. regarding their presence in the House)

Article 63. The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills. (Omitted: “regardless of whether they are members of the House or not.”) The Prime Minister and other Ministers of State must appear when their presence is required in order to give answers or explanations. However, this requirement shall not apply to the performance of official duties as may be deemed necessary.

[Current]

Article 64. The Diet shall set up an impeachment court from among the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

Matters relating to impeachment shall be provided by law.

[Draft]

(Impeachment courts)

Article 64. The Diet shall set up an impeachment court from among the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

Matters relating to impeachment shall be provided by law.

[Draft (New)]

(Political parties)

Article 64-2. The State, in view of the essential role of political parties in parliamentary democracy, shall use its endeavors for ensuring the fairness of the

activity and its sound development.

Freedom of political activity is guaranteed.

Other matters relating to political parties subject to the preceding two paragraphs shall be determined by law.

Chapter V: The Cabinet

[Current]

Article 65. Executive power shall be vested in the Cabinet.

[Draft]

(The Cabinet and executive power)

Article 65. Executive power, except as elsewhere provided in the Constitution, shall be vested in the Cabinet.

[Current]

Article 66. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law. The Prime Minister and other Ministers of State must be civilians. The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

[Draft]

(Organization of the Cabinet and responsibilities to the Diet)

Article 66. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law. The Prime Minister and other Ministers of State must not be military personnel on active duty. The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

[Current]

Article 67. The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business. If the House of Representatives and the House of Councilors disagree and if no agreement can be reached even through a joint committee of both Houses, provided for by law, or the House of Councilors fails to make designation within ten

(10) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.

[Draft]

(Designation of the Prime Minister and the authority of the House of Representatives)

Article 67. The Prime Minister shall be designated by the Diet from among the members of the Diet. (Omitted: “by a resolution of the Diet.”) The designation of the Prime Minister by the Diet shall precede all other business. If the House of Representatives and the House of Councilors disagree and if no agreement can be reached even through a joint committee of both Houses, provided for by law, or the House of Councilors fails to make designation within ten (10) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.

[Current]

Article 68. The Prime Minister shall appoint the Ministers of State. However, a majority of their number must be chosen from among the members of the Diet. The Prime Minister may remove the Ministers of State as he chooses.

[Draft]

(Appointment and dismissal of the Ministers of State)

Article 68. The Prime Minister shall appoint the Ministers of State. In this case, a majority of their number must be appointed from among the members of the Diet. The Prime Minister may remove the Ministers of State as he chooses.

[Current]

Article 69. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days.

[Draft]

(Non-confidence resolutions and mass resignation of the Cabinet)

Article 69. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days.

[Current]

Article 70. When there is a vacancy in the post of Prime Minister, or upon the first convocation of the Diet after a general election of members of the House of Representatives, the Cabinet shall resign en masse.

[Draft]

(Mass resignation, etc. of the Cabinet when in the vacancy in the post of Prime Minister, etc.)

Article 70. When there is a vacancy in the post of Prime Minister, or upon the first convocation of the Diet after a general election of members of the House of Representatives, the Cabinet shall resign en masse. When there is a vacancy in the post of Prime Minister, or in cases determined by law as being equivalent thereto, the Minister of State designated by him in advance shall perform temporarily the functions of the Prime Minister.

[Current]

Article 71. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

[Draft]

(The Cabinet following mass resignation)

Article 71. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

[Current]

Article 72. The Prime Minister, representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet and exercises control and supervision over various administrative branches.

[Draft]

(Official duties of the Prime Minister)

Article 72. The Prime Minister exercises control and supervision over various administrative branches, and performs general coordination.

The Prime Minister, representing the Cabinet, submits bills and reports on general national affairs and foreign relations to the Diet.

The Prime Minister, as the supreme commander, oversees the National Defense Military.

[Current]

Article 73. The Cabinet, in addition to other general administrative functions, shall perform the following functions:

Administer the law faithfully; conduct affairs of state.

Manage foreign affairs. Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet. Administer the civil service, in accordance with standards established by law. Prepare the budget, and present it to the Diet. Enact cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such

cabinet orders unless authorized by such law. Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

[Draft]

(Official duties of the Cabinet)

Article 73. The Cabinet, in addition to other general administrative functions, shall perform the following functions:

Administer the law faithfully; conduct affairs of state. Manage foreign affairs. Conclude treaties. However, it shall obtain prior or, in unavoidable circumstances, subsequent approval of the Diet. Administer the civil service, in accordance with standards established by law. Prepare the draft budget and the bills, and present them to the Diet. Enact cabinet orders in accordance with the provisions of the law. (Deleted: “in order to execute the provisions of this Constitution.”)

However, it cannot include provisions in such cabinet orders that impose obligations or restrict rights unless authorized by such law. Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

[Current]

Article 74. All laws and cabinet orders shall be signed by the competent Minister of State and countersigned by the Prime Minister.

[Draft]

(Signatures of laws and cabinet orders)

Article 74. All laws and cabinet orders shall be signed by the competent Minister of State and countersigned by the Prime Minister.

[Current]

Article 75. The Ministers of State, during their tenure of office, shall not be subject to legal action without the consent of the Prime Minister. However, the right to take that action is not impaired hereby.

[Draft]

(Legal immunity of Ministers of State)

Article 75. The Ministers of State, during their tenure of office, shall not be subject to prosecution without the consent of the Prime Minister. However, nothing herein contained shall prevent the prosecution of the Ministers of State following their removal from office.

Chapter VI: Judiciary

[Current]

Article 76. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law. No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power. All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

[Draft]

(Courts and jurisdiction)

Article 76. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law. No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power. All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

[Current]

Article 77. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs. Public procurators shall be subject to the rule-making power of the Supreme Court. The Supreme Court may delegate the power to make rules for inferior courts to such courts.

[Draft]

(Rule-making power of the Supreme Court)

Article 77. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs. Public procurators, attorneys and other individuals involved in the trial shall be subject to the rule-making power of the Supreme Court. The Supreme Court may delegate the power to make rules for inferior courts to such courts.

[Current]

Article 78. Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.

[Draft]

(Guarantee of tenure for judges)

Article 78. Judges shall be removed by trial in accordance with the provision of the first paragraph of Article 64, except in cases prescribed in the third paragraph of the next Article and unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.

[Current]

Article 79. The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet. The appointment of the judges of the

Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter. In cases mentioned in the foregoing paragraph, when the majority of the voters favors the dismissal of a judge, he shall be dismissed. (Deleted: "Matters pertaining to review shall be prescribed by law.") The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law. All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

[Draft]

(Judges of the Supreme Court)

Article 79. The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet. Where prescribed by law, the judges of the Supreme Court, following their appointment, must be reviewed by the people. In the reviews mentioned in the foregoing paragraph, where the dismissal of a judge is warranted, he shall be dismissed. The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law. All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office, except with regard to changes in employment status or official reprimand and in cases of regular public officials.

[Current]

Article 80. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold

office for a term of ten (10) years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law.

The judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

[Draft]

(Judges of inferior courts)

Article 80. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a limited term as fixed by law, with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law.

The fifth paragraph of the preceding article shall apply to the compensation of the judges of the inferior courts.

[Current]

Article 81. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

[Draft]

(Power to determine constitutionality and the Supreme Court)

Article 81. The Supreme Court is the final appellate court with power to determine the constitutionality of any law, order, regulation or official act.

Current]

Article 82. Trials shall be conducted and judgment declared publicly.

Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly.

[Draft]

(Publicity of trials)

Article 82. Oral proceedings and trial procedures shall be conducted and judgment declared publicly. Where a court unanimously determines publicity to be dangerous to public order or morals, oral proceedings and trial procedures may be conducted privately. However, oral proceedings and trial procedures of political offenses, offenses involving the press or cases wherein the rights of people are guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly.

Chapter VII: Finance

[Current]

Article 83. The power to administer national finances shall be exercised as the Diet shall determine.

[Draft]

(Fundamental principles of finance)

Article 83. The power to administer national finances shall be exercised as the Diet shall determine. Fiscal soundness must be consolidated in accordance with law.

[Current]

Article 84. No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

[Draft]

(Principles of taxation law)

Article 84. No new taxes shall be imposed or (Deleted: “existing ones”) modified except (Deleted: “by law or under such conditions”) as prescribed by law.

[Current]

Article 85. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

[Draft]

(Expenditure of the national budget and debt burden of the State)

Article 85. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

[Current]

Article 86. The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year.

[Draft]

(Budget)

Article 86. The Cabinet shall prepare and submit to the Diet for its consideration and decision a draft budget for each fiscal year.

The Cabinet may submit a draft budget in order to correct a budget during each fiscal year. When the Cabinet determines that there is no prospect for obtaining the authorization of the first paragraph, it must submit a tentative draft budget prior to the commencement of the relevant fiscal year. The budget for each fiscal year, as provided for by law, with the passage of a resolution of the Diet, may be expended for the year following each year.

[Current]

Article 87. In order to provide for unforeseen deficiencies in the budget, a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet. The Cabinet must get subsequent approval of the Diet for all payments from the reserve fund.

[Draft]

(Reserve funds)

Article 87. In order to provide for unforeseen deficiencies in the budget, a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet. The Cabinet must get subsequent approval of the Diet for all payments from the reserve fund.

[Current]

Article 88. All property of the Imperial Household shall belong to the State.
All expenses of the Imperial Household shall be appropriated by the Diet in the budget.

[Draft]

(Property and expenses of the Imperial Household)

Article 88. All property of the Imperial Household shall belong to the State.
All expenses of the Imperial Household shall be appropriated by the Diet in the draft budget.

[Current]

Article 89. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.

[Draft]

(Expenditure of public money and restrictions on appropriation)

Article 89. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of religious activities conducted by any institution or association, except for cases set forth in the proviso of the third paragraph of Article 20. No public money or other property shall be expended or appropriated for any charitable, educational or benevolent enterprises beyond the supervision of the State, local governments or other public entities.

[Current]

Article 90. Final accounts of the expenditures and revenues of the State shall be audited annually by a Board of Audit and submitted by the Cabinet to the Diet, together with the statement of audit, during the fiscal year immediately following the period covered.

The organization and competency of the Board of Audit shall be determined by law.

[Draft]

(Approval, etc. of final accounts)

Article 90. Final accounts of the expenditures and revenues of the State shall be audited annually by a Board of Audit and, in accordance with law, submitted by the Cabinet to both Houses for approval, together with the statement of audit, during the fiscal year immediately following the period covered. The organization and competency of the Board of Audit shall be determined by law. The Cabinet shall reflect on the draft budget the contents of the statement of audit mentioned in the first paragraph and must report to the Diet on the results thereof.

[Current]

Article 91. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

[Draft]

(Report on the state of national finances)

Article 91. At regular intervals and at least annually the Cabinet shall report to the Diet (Omitted: “and the people”) on the state of national finances.

Chapter VIII: Local Self-Government

[Draft (New)]

(Principle of local autonomy)

Article 92. Local autonomy, with the participation of residents as a basis, shall make it a principle to autonomously, independently and comprehensively implement an administration in the vicinity of residents. Residents shall have the right to equally receive services offered by the local government to which they belong, and the obligation to fairly share the burden.

[Current]

Article 92. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

[Draft]

(Categories of local governments, cooperation between the State and local governments, etc.)

Article 93. Local governments shall have as the foundation basic local governments, and wide-area local governments that comprise them, categories of which shall be fixed by law. Basic regulations concerning organization and operations of local governments shall be fixed by law in accordance with the principle of local autonomy. The State and the local government shall cooperate based on the appropriate division of roles prescribed by law. Local governments shall mutually cooperate with one another.

[Current]

Article 93. The local public entities shall establish assemblies as their deliberative organs, in accordance with law. The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

[Draft]

(Assemblies of local governments and direct election of public officials)

Article 94. Local governments shall establish assemblies as their deliberating organs for making decisions on regulations and other important matters, in accordance with law. The chief executive officers of all local governments, the members of their assemblies, and such other public officials as may be determined by law shall be directly elected by persons whom reside within the said local governments and possess Japanese nationality.

[Current]

Article 94. Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.

[Draft]

(Authority of local governments)

Article 95. Local governments shall have the right to manage their (Omitted: “property,”) affairs (Omitted: “and administration”) and to enact their own regulations within the law.

[Draft (New)]

(Finances of local governments and fiscal measures of the State)

Article 96. Local taxes imposed and other independent sources of revenue, pursuant to regulation, shall serve as a basis for the expenses of the local government. The State shall take necessary fiscal measures when the local government cannot offer its services through the independent sources of revenue mentioned in the preceding paragraph alone, as provided by law.

The provision of the second paragraph of Article 83 shall apply to local autonomy.

[Current]

Article 95. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

[Draft]

(Special law of local autonomy)

Article 97. A special law, which determines the organization, operations and authority of a particular local government differently from other local governments, or imposes obligations on and restricts the rights of residents within a particular local government, cannot be enacted without the consent of the majority of the qualified voters of the local government concerned, obtained in accordance with law.

Chapter IX: State of Emergency

[Draft (New)]

(Declaration of a state of emergency)

Article 98. The Prime Minister, in the event of armed attacks on our nation from abroad, disturbances of the social order due to internal strife, etc., large-scale natural disasters due to earthquakes, etc., or other states of emergency as determined by law, may, when deemed particularly necessary, issue a declaration of a state of emergency through a cabinet meeting, as provided by law. For the declaration of a state of emergency, prior or subsequent approval of the Diet must be obtained, as provided by law. The Prime Minister must cancel the declaration of a state of emergency through a cabinet meeting, as provided by law, when:

A resolution of disapproval has been made in cases mentioned in the preceding paragraph. The Diet resolves to cancel the declaration of a state of emergency. No longer deemed necessary to continue the said declaration of a state of emergency due to changes of the situation.

Moreover, when intending to continue a declaration of a state of emergency for more than one-hundred (100) days, prior approval of the Diet must be obtained for each one-hundred (100) days. The provision of the second paragraph of Article 60 shall apply to the Diet approval mentioned in the second paragraph and the latter part of the third paragraph. In this case, “within thirty (30) days” in the said paragraph shall be read as “within fifty (50) days.”

[Draft (New)]

(Effects of the declaration of a state of emergency)

Article 99. When the declaration of a state of emergency has been issued, the Cabinet, as provided by law, may enact cabinet orders having an effect equivalent to that of law, and in addition, the Prime Minister may make necessary expenditures or other dispositions and may issue necessary orders to chief executive officers of local governments. For the cabinet orders and dispositions mentioned in the preceding paragraph, subsequent approval of the Diet must be obtained, as provided by law.

In the case that a declaration of a state of emergency has been issued, every person shall be subject to the orders of the State and other public organs issued to protect the lives, bodies and properties of the people, as provided by law. Even in this case, Article 14, Article 18, Article 19, Article 21 and other provisions relating to fundamental human rights shall be respected to the fullest extent.

In the case that a declaration of a state of emergency has been issued, the House of Representatives shall not be dissolved, and exceptions for the terms of office and election dates of members of both Houses shall be established, as provided by law.

Chapter X: Amendments

[Current]

Article 96. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.

Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.

[Draft]

(Amendments)

Article 100. Amendments to this Constitution shall be initiated by members of the House of Representatives or the House of Councilors, through a concurring vote of a majority of all the members of each House, and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all valid votes cast thereon, at a referendum as specified by law.

Amendments when so ratified shall immediately be promulgated by the Emperor.

(Omitted: “in the name of the people, as an integral part of this Constitution.”)

Chapter XI: Supreme Law

[Current]

(Deleted: Article 97. The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate.)

Article 98. This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

The treaties concluded by Japan and established laws of nations shall be faithfully observed.

[Draft]

(The nature, etc. of the Constitution as the supreme law)

Article 101. This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

The treaties concluded by Japan and established laws of nations shall be faithfully observed.

[Current]

Article 99. The Emperor or the Regent as well as Ministers of State, members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

[Draft]

(Obligation to respect and uphold the Constitution)

Article 102. All people shall respect this Constitution.

(Omitted: “The Emperor or the Regent”) Members of the Diet, Ministers of State, judges, and all other public officials have the obligation to respect and uphold this Constitution.

Supplementary Provisions

[Current]

Article 100. This Constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation. The enactment of laws necessary for the enforcement of this Constitution, the election of members of the House of Councilors and the procedure for the convocation of the Diet and other preparatory procedures necessary for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph.

Article 101. If the House of Councilors is not constituted before the effective date of this Constitution, the House of Representatives shall function as the Diet until such time as the House of Councilors shall be constituted.

Article 102. The term of office for half the members of the House of Councilors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law.

Article 103. The Ministers of State, members of the House of Representatives and judges in office on the effective date of this Constitution, and all other public officials who occupy positions corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on account of the enforcement of this Constitution unless otherwise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution, they shall forfeit their positions as a matter of course.

[Draft (New)]

(Effective date)

These constitutional amendments shall become effective on MM/DD/YYYY. However, the following provisions shall become effective on the day of promulgation.

(Preparatory acts necessary for enforcement)

Enactment and reform of law needed to enforce this constitutional amendment, as well as other preparatory actions needed to enforce this constitutional amendment may be conducted prior to the effective date of this constitutional amendment.

(Applicable classes, etc.)

The provision of the latter part of the fifth paragraph of Article 79 of the amended Constitution of Japan (including cases where applied under the second paragraph of Article 80 of the amended Constitution of Japan) shall also apply to the remuneration of the judges of the Supreme Court and the inferior courts appointed under the provisions of the unrevised Constitution of Japan.

1. Judges of the inferior courts in office on the effective date of this constitutional amendment shall hold office for the remaining term, as prescribed by the first paragraph of Article 80 of the unrevised Constitution of Japan, with privilege of reappointment, in accordance with the provision of the first paragraph of Article 80 of the amended Constitution of Japan.

2. The provisions of the first, second and fourth paragraphs of Article 86 of the amended Constitution of Japan shall apply to the draft budget and the allocated budget submitted after the enforcement of this constitutional amendment; the provision of the third paragraph of the same Article shall apply to the tentative draft budget in the fiscal year pertaining to the draft budget of the first paragraph of the same Article submitted after the enforcement of this constitutional amendment; the allocated budget, as well as the tentative budget in the fiscal year pertaining to the relevant budget submitted prior to the enforcement of this constitutional amendment shall be dealt in conformity with the former provisions.

3. The provisions of the first and third paragraphs of Article 90 of the amended Constitution of Japan shall apply to the final accounts submitted after the enforcement of this constitutional amendment. The final accounts submitted prior to the enforcement of this constitutional amendment shall be dealt in conformity with the former provisions.

Headquarters for the Promotion of Constitutional Amendment

As of December 20, 2011

(Established on December 4, 2009)

Director-General Kōsuke Hori

Supreme Advisors Tarō Asō, Shinzō Abe, Yasuo Fukuda, Yoshirō Mori

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Amendment

December 22, 2011

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Secretary-General Yōsuke Isozaki

Deputy Secretary-General Mitsue Kondo

APPENDIX D
THE IMPERIAL HOUSEHOLD LAW ⁴²⁸

Chapter 1. Succession to the Imperial Throne

Article 1

The Imperial Throne shall be succeeded to by a male offspring in the male line belonging to the Imperial Lineage.

Article 2

The Imperial Throne shall be passed to the members of the Imperial Family according to the following order:

The eldest son of the Emperor

The eldest son of the Emperor's eldest son

Other descendants of the eldest son of the Emperor

The second son of the Emperor and his descendants

Other descendants of the Emperor

Brothers of the Emperor and their descendants

Uncles of the Emperor and their descendants

⁴²⁸ Retrieved from Japanese Imperial Household Agency: <http://www.kunaicho.go.jp/e-kunaicho/hourei-01.html>

In case there is no member of the Imperial Family as under the numbers of the preceding paragraph, the Throne shall be passed to the member of the Imperial family next nearest in lineage.

In the cases of the two preceding paragraphs, precedence shall be given to the senior line, and in the same degree, to the senior member.

Article 3

In case the Imperial Heir is affected with an incurable and serious disease, mentally or physically, or there is a serious hindrance, the order of succession may be changed by decision of the Imperial House Council and in accordance with the order stipulated in the preceding article.

Article 4

Upon the demise of the Emperor, the Imperial Heir shall immediately accede to the Throne.

Chapter 2. The Imperial Family

Article 5

The Empress, the Grand Empress Dowager, the Empress Dowager, Shinno, the consorts of Shinno, Naishinno, O, the consorts of O, and Jo-o shall be the members of the Imperial Family.

Article 6

The legitimate children of an Emperor and the legitimate grandchildren of an Emperor in the legitimate male line shall be Shinno in the case of a male, and Naishinno in the case of a female. The legitimate descendants of an Emperor in the

third and later generations in the legitimate male line shall be O in the case of a male and Jo-o in the case of a female.

Article 7

In case an O succeeds to the Throne, his brothers and sisters who are O and Jo-o shall specially become Shinno and Naishinno.

Article 8

The son of the Emperor who is the Imperial Heir is called “Kotaishi” and in case there is no Kotaishi, the grandson of the Emperor, who is the Imperial Heir shall be called “Kotaison”.

Article 9

The Emperor and the members of the Imperial Family may not adopt children.

Article 10

The institution of the Empress and the marriage of any male member of the Imperial Family shall be passed by the Imperial House Council.

Article 11

A Naishinno, O, or Jo-o, of 15 years of age or more, shall leave the status of Imperial Family member according to her or his own desire and by decision of the Imperial House Council.

Beside the case as mentioned in the preceding paragraph, a Shinno (excepting the Kotashi and the Kotaison), Naishinno, O or Jo-o shall, in the case of special and

unavoidable circumstances, leave the status of Imperial Family member by decision of the Imperial House Council.

Article 12

In case a female of the Imperial Family marries a person other than the Emperor or the members of the Imperial Family, she shall lose the status of the Imperial Family member.

Article 13

The consorts of a Shinno or O who leaves the status of the Imperial Family member, and his direct descendants and their consorts, excepting those females who are married to other members of the Imperial Family and their direct descendants, shall lose simultaneously the status of the Imperial Family member. However, as regards his direct descendants and their consorts, it may be so decided by the Imperial House Council that they do not lose the status of the Imperial Family member.

Article 14

A female, not of the Imperial Family, who is married to a Shinno or O, may, upon the loss of her husband, leave the status of the Imperial Family member according to her own desire.

When a female mentioned in the preceding paragraph has lost her husband, she shall, in case of special and unavoidable circumstances beside the case as under the same paragraph, leave the status of the Imperial Family member by decision of the Imperial House Council.

In case a female mentioned in the first paragraph is divorced, she shall lose the status of the Imperial Family.

The provisions of the first paragraph and the preceding paragraph shall apply to the females married to other members of the Imperial Family mentioned in the preceding article.

Article 15

Any person outside the Imperial Family and his or her descendants shall not become a member thereof except in the cases where a female becomes Empress or marries a member of the Imperial Family.

Chapter 3. Regency

Article 16

In case the Emperor has not come of age, a Regency shall be established.

In case the Emperor is affected with a serious disease, mentally or physically, or there is a serious hindrance and is unable to perform his acts in matters of state, a Regency shall be instituted by decision of the Imperial House Council.

Article 17

The Regency shall be assumed by a member of the Imperial Family of age according to the following order:

The Kōtaishi, or Kōtaison

A Shinno and an O

The Empress

The Empress Dowager

The Grand Empress Dowager

A Naishinno and a Jo-o

In the case of No. 2 in the preceding paragraph the order of succession to the Throne shall apply; and in the case of No. 6 in the same paragraph, the order of succession to the Throne shall apply *mutatis mutandis*.

Article 18

In case the Regent, or a person falling in the order of assumption of Regency, is affected with a serious disease, mentally or physically, or there is a serious hindrance, the Imperial House Council may decide to change the Regent or the order of assumption of Regency, according to the order stipulated in the preceding article.

Article 19

When, because of minority of the person falling in the order of assumption of Regency or because of obstacles mentioned in the preceding paragraph, another member of the Imperial Family has become Regent, he shall not yield his post of Regent to the said member of the Imperial Family who has the precedence on the ground of his attainment to majority or the removal of those obstacles, except in the case such person happens to be the Kotaishi or Kotoison.

Article 20

In case the obstacles mentioned in Article 16, paragraph 2 have been removed, the Regency shall be abolished by decision of the Imperial House Council.

Article 21

The Regent, while in office, shall not be subject to legal action. However, the right to take that action is not impaired hereby.

Chapter 4. Majority; Honorific Titles; Ceremony of Accession; Imperial Funeral; Record of Imperial Lineage; and Imperial Mausoleums

Article 22

The majority age for the Emperor, the Kōtōshi and the Kōtōson shall be eighteen.

Article 23

The honorific title for the Emperor, the Empress, the Grand Empress Dowager and the Empress Dowager shall be “Heika”.

The honorific title for the members of the Imperial Family other than those mentioned in the preceding paragraph shall be “Denka”.

Article 24

When the Throne is succeeded to, the ceremony of Accession shall be held.

Article 25

When the Emperor dies, the Rites of Imperial Funeral shall be held.

Article 26

The matters relating to the family status of the Emperor and the members of the Imperial Family shall be registered in the Record of Imperial Lineage.

Article 27

The graves of the Emperor, the Empress, the Grand Empress Dowager and the Empress Dowager, shall be called “Ryo”, and those of all other members of the Imperial Family shall be called “Bo”; the matters relating to Ryo and Bo shall be entered respectively in the Ryo Register and the Bo Register.

Chapter 5. The Imperial House Council

Article 28

The Imperial House Council shall be composed of ten members.

These members shall consist of two Imperial Family members, the Presidents and Vice-Presidents of the House of Representatives and of the House of Councilors, the Prime Minister, the head of the Imperial Household Agency, the Chief Judge and one other judge of the Supreme Court.

The members of the Imperial Family and the judge other than the Chief Judge of the Supreme Court, who are to become members of the Council, shall be chosen by mutual election respectively from among the members of the Imperial Family of age and from among the judges other than the Chief Judge of the Supreme Court.

Article 29

The member of the Imperial House Council, who is the Prime Minister, shall preside over its meeting.

Article 30

There shall be appointed ten reserve members in the Imperial House Council.

As regards the reserve members for the Imperial Family members and the judge of the Supreme Court in the Council, the provision of Article 28, paragraph 3, shall apply *mutatis mutandis*.

The reserve members for the Presidents and the Vice-Presidents of the House Representatives and of the House of Councilors in the Council shall be selected by mutual election from among the members of the House of Representatives and of the House of Councilors.

The numbers of the reserve members mentioned in the two preceding paragraphs shall be the same as the numbers of the members in the Council, and the order of assuming their functions shall be determined at the time of the mutual election.

The reserve member for the Prime Minister in the Council shall be the Minister of State who has been designated as the one to perform temporarily the functions of Prime Minister under the provisions of the Cabinet Law.

The reserve member for the head of the Imperial Household Agency in the Council shall be designated by the Prime Minister from among the officials of the Imperial Household Agency.

In case there is a hindrance with regard to a member of the Council, or he is missing, the reserve member for him shall perform his functions.

Article 31

As regards the President, the Vice-President and members of the House of Representatives mentioned in Article 28 and the preceding paragraph, they shall be, in case the house has been dissolved and pending the selection of the successors,

those persons who were respectively the President, the Vice-President and members of the House at the time of its dissolution.

Article 32

Term of office for the members of the Council, who are members of the Imperial Family and a judge other than the Chief Judge of the Supreme Court and their reserve members shall be four years.

Article 33

The Imperial House Council shall be convened by the president of the Council.

The Imperial House Council must be convoked, if demanded by four members or more, in the cases as under Article 3, Article 16, paragraph 2, Article 18 and Article 20.

Article 34

The Imperial House Council, unless attended by six members or more, may not open deliberations and make decisions.

Article 35

The deliberations of the Imperial House Council shall be decided by a majority vote of two-thirds or more of the members present, in the cases of Article 3, Article 16, paragraph 2, Article 18 and Article 20; and by a majority in all other cases.

In case of a tie in the case of the latter clause of the preceding paragraph, the President shall make the decision.

Article 36

A member may not participate in the deliberation of any matter in which he has a special interest.

Article 37

The Imperial House Council shall exercise only those powers which are provided for by this and other laws.

APPENDIX E

THE SECURITY TREATY OF 1951

[Title] Security Treaty Between Japan and the United States of America

[Place] San Francisco

[Date] September 8, 1951

[Source] Joyakushu, 30-6. Japan's Foreign Relations-Basic Documents

Vol.1,444-448.

Japan has this day signed a Treaty of Peace with the Allied Powers. On the coming into force of that Treaty, Japan will not have the effective means to exercise its inherent right of self-defense because it has been disarmed.

There is danger to Japan in this situation because irresponsible militarism has not yet been driven from the world. Therefore Japan desires a Security Treaty with the United States of America to come into force simultaneously with the Treaty of Peace between Japan and the United States of America.

The Treaty of Peace recognizes that Japan as a sovereign nation has the right to enter into collective security arrangements, and further, the Charter of the United Nations recognizes that all nations possess an inherent right of individual and collective self-defense.

In exercise of these rights, Japan desires, as a provisional arrangement for its defense, that the United States of America should maintain armed forces of its own in and about Japan so as to deter armed attack upon Japan.

The United States of America, in the interest of peace and security, is presently willing to maintain certain of its armed forces in and about Japan, in the expectation, however, that Japan will itself increasingly assume responsibility for its

own defense against direct and indirect aggression, always avoiding any armament which could be an offensive threat or serve other than to promote peace and security in accordance with the purposes and principles of the United Nations Charter.

Accordingly, the two countries have agreed as follows:

ARTICLE I

Japan grants, and the United States of America accepts, the right, upon the coming into force of the Treaty of Peace and of this Treaty, to dispose United States land, air and sea forces in and about Japan. Such forces may be utilized to contribute to the maintenance of international peace and security in the Far East and to the security of Japan against armed attack from without, including assistance given at the express request of the Japanese Government to put down large-scale internal riots and disturbances in Japan, caused through instigation or intervention by an outside power or powers.

ARTICLE II

During the exercise of the right referred to in Article I, Japan will not grant, without the prior consent of the United States of America, any bases or any rights, powers or authority whatsoever, in or relating to bases or the right of garrison or of maneuver, or transit of ground, air or naval forces to any third power.

ARTICLE III

The conditions which shall govern the disposition of armed forces of the United States of America in and about Japan shall be determined by administrative agreements between the two Governments.

ARTICLE IV

This Treaty shall expire whenever in the opinion of the Governments of Japan and the United States of America there shall have come into force such United Nations arrangements or such alternative individual or collective security dispositions as will satisfactorily provide for the maintenance by the United Nations or otherwise of international peace and security in the Japan Area.

ARTICLE V

This Treaty shall be ratified by Japan and the United States of America and will come into force when instruments of ratification thereof have been exchanged by them at Washington.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Treaty.

DONE in duplicate at the city of San Francisco, in the Japanese and English languages, this eighth day of September, 1951.

FOR JAPAN:

Shigeru Yoshida

FOR THE UNITED STATES OF AMERICA;

Dean Acheson

John Foster Dulles

Alexander Wiley

Styles Bridges

APPENDIX F

New Historical Textbook Comparison by Shingo Minamizuka⁴²⁹

《Annexation of Korea》 (A) The Japanese government thought it necessary to annex Korea to prevent the security of Japan and interests in Manchuria. After Russo-Japanese War Japan intensified the rule of Korea by establishing the Korean Governor. In 1910 Japan resolutely carried out the annexation suppressing by force the opposition within Korea. Western acknowledged Japanese annexation of Korea, in exchange for the recognition by Japan of their ruling colonies such as British India, French Indochina, American Philippines and Russian outer Mongolia. Although some were willing to accept the annexation in Korea, there occurred fierce resistance against losing the independence and thence the movement for restoring independence was to last tenaciously.

(B) After Russo-Japanese War(1904-05) Japan intensified the rule of Korea by establishing the Korean Governor. Western powers dare not raise objections to Japan exerting influence upon Korea , in exchange for the recognition by Japan of their ruling colonies and spheres of interest such as British India, American Philippines and Russian outer Mongolia. The Japanese government thought it necessary to annex Korea to prevent the security of Japan and interests in Manchuria. In 1910 Japan resolutely carried out the annexation suppressing by force the opposition within Korea. There occurred in Korea fierce resistance against losing the

⁴²⁹ "The History Textbook Problem in Japan," *Hosei University*, September 3, 2006. Retrieved from: <http://www.npo-if.jp/worldhistory/wp-content/uploads/2015/11/The-History-Textbook-Problem-in-Japan.pdf> (accessed September 10, 2018).

independence and thence the movement for restoring independence was to last tenaciously.

In the first version(A), the annexation of Korea was described as if some Koreans accepted it and the western powers also admitted it. This was changed according to the advice by the Ministry into the version of (B). But still it is openly insisted that Japan annexed Korea for the interest of Japan and Manchuria.

《Chino-Japanese War》 (1) 1937.7.7 : Someone fired against the Japanese army on the Marco Polo Bridge (Rokokyo Bridge) near Peking that was doing field practice. This led to a state of war between the Japanese and Chinese army.

(2) 1937.12 :Nanjing Massacre (南京大虐殺) as “Nanjing Incident “ (南京事件): On this occasion lots of Chinese military and civil people were dead or wounded because of the Japanese military action(Nanjing Incident). Concerning the reality of this incident including the number of the scarified people, there is still discussion going among various opinions, with questions concerning historical materials. These are interesting cases. In the first case(1), it has been almost clear that the Rokokyo incident was a fabrication by the Japanese army, though there is a small room for discussion. But the textbook dare say “someone”. Thus the textbook ignores the result of the historical researches. While in the second case(2), the textbook makes the event ambiguous by pointing to the existence of discussion. This

is the typical method of the textbook. It is said by many Japanese historians, International Military Tribunal for the

Far East and Chinese government that more than 100,000 (up to 400,000) military and civil Chinese (including women) were killed by the Japanese army for six weeks after Nanjing was occupied by the Japanese army on 13 December 1937. But the conservative scholars around the New History Textbook insists that the number is not so great and those who were killed were soldiers, insisting that the Nanjing Massacre is a mere diplomatic propaganda of Chinese government.

《World War II-1》 (B) The initial victory of Japan gave to the people of South East Asia and India dreams and courage for their independence . The unresisted advance of the Japanese army toward South East Asia was possible only with the cooperation of the local inhabitants . /// In order to request the cooperation for the war of the people in these regions and to show the unity of the people there, Japan held the Great Asian Congress in Tokyo in November 1943. In opposition to the Atlantic Charter of the Allied Powers , the Congress issued a Joint Declaration of Great Asia, which declared the independence of the people, economic development through mutual cooperation and abolition of racial discrimination. Since this Congress Japan held up as her war cause the construction of the Greater East Asia Co-Prosperity Sphere that excluded European and American powers.

The textbook wants to insist that the war was welcome by the Asian people like the Russo-Japanese War of 1904-05 because Japan was the liberator of Asian people from the western powers. The textbook also wants to insist that the war was fought against western invasion into Asia.

《World War II-2》 (A) Japan established military administration everywhere she occupied. The local leaders of the movement of independence cooperated the Japanese administration in order to achieve the independence from European and American powers. There were, however, some resistances against Japan . There occurred some anti-Japanese guerillas that were connected with the Allied powers, which were severely suppressed by the Japanese army. Sometimes the thoroughgoing military training of the local population became unpopular . Toward the end of the War, when the war situation became unfavorable for Japan, there were often such cases when people suffered from short of food and local population was forced to work in hard situations. Later, however, in about ten years or so after the evacuation of the Japanese army, these colonial countries achieved independence by themselves one by one. Among the Japanese soldiers were found those who stayed and participated these wars of independence. The advance of Japan into the south had an effect of promoting the process for independence of Asian countries, though it was “ for self existence and self – defense ” .

(B) This war gave great damage and suffering to the people of the Asian regions t h a t b e c a m e battlefields . Especially among Chinese soldiers and common people were many sacrifices who suffered from the invasion of the Japanese army. Japan established military administration everywhere she occupied. The local leaders of the movement of independence cooperated the Japanese administration in order to achieve the independence from European and American powers. There were, however, some resistances against the obligation of education of Japanese language and paying respect to shrines . There occurred some anti-Japanese guerillas that were connected with the Allied powers, which were severely suppressed by the Japanese army, resulting many sacrifices including common citizens . Toward the end of the War, when the war situation became unfavorable for

Japan, there were often such cases when people suffered from short of food and local population was forced to work in hard situations. Later, however, in about ten years or so after the evacuation of the Japanese army, these colonial countries achieved independence by themselves one by one. Among the Japanese soldiers were found those who stayed and participated these wars of independence. The advance of Japan into the south was one of the factors that moved forward the movement for independence that had already begun in Asian countries, though it aimed originally the acquisition of natural sources.

The original version(A) ignores the damages done to the people in Asia but insists that Japan helped the independence of Asian people. Following the direction of the Ministry, the revised version(B) describes the damages and sacrifices. But it does not mention “comfort women” problem (From 2005 almost all the Japanese textbooks ceased to mention “comfort women”).

《Atomic bomb and Siberia》 (A) Actually there were no countries that did not commit murders or cruelty against unarmed people. Japan was not exceptional . Toward the end of the war, the United States dared nonselective bombing against many cities of Japan including Tokyo and attacked Hiroshima and Nagasaki with atomic bombs. Soviet, on the other hand, violated the Japan-Soviet Neutrality Treaty to invade Manchuria, thus reiterating plunder, violence and murder. Then Soviet took about 600,000 Japanese to Siberia to make them work in hard conditions, thus about 10% of them being dead.

(B) Actually there were no countries that did not commit murders or cruelty against unarmed people. The Japanese army also committed unjust murder and

cruelty toward the soldiers and civilians of the hostile countries who were taken prisoner ./// The original version(A) was obscure in the Japanese murder and cruelty. This was revised by the new version(B). Except this there is an interesting point here. As for damage by the atomic bomb, the textbook does not mention the number who died from it, though it is estimated as about 150-200 thousand including both cities, while it mentions the number of those who were taken by the Soviet to Siberia and died there after the War as 60,000. Of course it does not mention the sacrifice of the miserable war on Ryukyu Island that killed more than 190,000 soldiers and population owing to the military policy of the Japanese leadership including Emperor. In this way the textbook describes the historical events vividly when they seem to strengthen its inclination(anti-communist and imperial inclination).

APPENDIX G

DISTRIBUTION OF JAPANESE PARTIES IN THE DIET

Table G1. Strength of the In-House Groups in the House of Representatives
(Shuugin) (as of December 26, 2018)

Liberal Democratic Party	282 (22)
The Constitutional Democratic Party of Japan	58(14)
Democratic Party For the People	37(2)
Komeito	29 (4)
The Group of Independents	13 (1)
Japanese Communist Party	12 (3)
Nippon Ishin (Japan Innovation Party)	11 (1)
Social Democratic Party	2 (0)
The Party of Hope	2 (0)
Future Japan	2 (0)
Liberal Party	2 (0)
Independents	13(0)
INCUMBENTS	463 (47)

Vacancies	2
MEMBERSHIP	465

Note: Figures in parentheses show the number of women members.

In-House Group: A group of House Members who engage in joint activities within the House.

Usually, a political party forms an in-House group inside the House, but occasionally there are cases where a group is formed by (1) House Members who do not belong to a particular political party, (2) a political party and a House Member or Members who do not belong to any political party, or (3) two or more political parties

Table G2. Strength of the Political Groups in the House of Councilors (Sangiin)

(As of December 28,2018)

Political Groups in the House	Number of Members	Abbreviation
Liberal Democratic Party and Voice of The People	125 (19)	LDP・VP
Komeito	25 (5)	KP
The Constitutional Democratic Party of Japan and Minyukai	25 (6)	CDP
Democratic Party For the People and The Shin-Ryokufukai	23 (5)	DPFP-SR
Japanese Communist Party	14 (5)	JCP
Nippon Ishin(Japan Innovation Party)	11 (2)	JIP
Hope Coalition(Kibou)	6 (3)	HC
The Party of Hope	3 (2)	TPH
Independents Club	2 (1)	IC
Okinawa Whirlwind	2 (1)	OW
Independents	5 (1)	None
INCUMBENTS	241 (50)	-
Vacancies	1	-
MEMBERSHIP	242	-

Notes: Figures in parentheses show the number of women members.

Most house members belong to political groups, which are formed according to their political parties. On this Web site, the names of the political groups are abbreviated as listed above because of the layout. These abbreviations are not the official abbreviations for the various political groups.

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