

# **JAPAN'S CONSTITUTION: RELEVANCE OF PACIFISM IN THE POST COLD WAR PERIOD**

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**SHAMSHAD AHMAD KHAN**



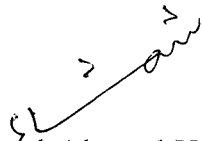
JAPANESE STUDIES DIVISION  
CENTRE FOR EAST ASIAN STUDIES  
SCHOOL OF INTERNATIONAL STUDIES  
JAWAHARLAL NEHRU UNIVERSITY  
NEW DELHI-110067  
INDIA  
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9 June 2005

**CERTIFICATE**

This is to certify that the dissertation entitled "**Japan's Constitution: Relevance of Pacifism in the Post Cold War Period**", submitted by me in partial fulfillment of the requirements for the award of the degree of **Master of Philosophy**, is my own work and has not been previously submitted for any other degree of this or any other university.

  
Shamshad Ahmad Khan

We recommend that this dissertation be placed before the examiners for evaluation.

  
Dr. H.S. Prabhakar

(Chairperson)



Dr. H.S. Prabhakar

(Supervisor)

## DECLARATION

I hereby declare that the dissertation titled, **Japan's Constitution: Relevance of Pacifism in the Post Cold War Period**, being submitted to the Center for East Asian Studies, **Jawaharlal Nehru University**, in partial fulfillment of the requirement for the award of the degree of **Master of Philosophy** has not been previously submitted for any degree of this or any other university. Further, analysis and interpretations of this research are my own and I take responsibility for the same.

09 June 2005

  
**Shamsad Ahmad Khan**

JNU, New Delhi

*Dedicated to*

*My Mother  
Beneath whose feet  
Lies  
My paradise*



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## PREFACE

Japan, was a closed country for over two centuries during Tokugawa (1602-1867) rule. It is with the Meiji Restoration of 1868 political power, was returned to the emperor. To maintain its independence and improve its standings within the comity of nations, Japan adopted the western model of development to advance itself. Such changes were also aimed at meeting the demands of the ongoing “Liberal and Popular Rights Movement” to introduce the Constitution and greater participation of the people in the government. Amid these developments, the Meiji Constitution promulgated in 1890, declared that ‘sovereignty resides in the divine emperor as the head of state’. The Constitution’s recognition of imperial sovereignty gave it a firm foundation in Japanese tradition.

The system of government based on the imperial sovereignty came to an end with Japan’s defeat in the World War II. Under the postwar Constitution imposed by the Supreme Commander of Allied Powers (SCAP), promulgated in 1947, Japan adopted the principles of popular sovereignty, protection of fundamental human rights, judicial independence and pacifism. The replacement was a radical shift from the Meiji Constitution. But inclusion of a war renouncing clause (Article 9) and other pacifist provisions in the constitution was certainly a move to ensure that Japan never again poses a challenge to the Western hegemony.

Nevertheless, with the outbreak of Korean War and escalation of the Cold War, the US realized that a militarized and strong Japan could have been helpful to check the rise of Communism in the region. By suggesting to Japan to create a 75,000 National Police Reserve to meet the challenges emerging from the Cold War, the US tried to rectify its previous political mistakes. This suggestion by US was also aimed at using Japan to pursue its security goal in the future. But the strong opposition supported by the pacifists and war weary masses impeded all attempts of remilitarizing Japan by the hawks in the government. The US imposed war-renouncing Article 9 became the basis for opposition to contain the government’s defense build up policies. The government however

continued with building its military capabilities liberally interpreting this clause, but seemed reluctant to change the Constitution considering the strong opposition.

Japan's willingness to change the text of the Constitution arose following criticism over Japan's non-participation in the Gulf War in 1991. The criticism from its ally and international community that Japan is hiding behind its Constitution and shirking its responsibility in contributing world peace and order, made the Japanese administration realize its failure to contribute militarily to resolve the international conflict. Now Japan started interpreting the Constitution to pave the way to deploy troops overseas and presented legislation to that effect in the Diet in 1990. But due to the differences among the diet members over how to contribute to the UN without conflicting the Article 9, resulted into withdrawal of the legislation without a vote.

However, a great shift in the public opinion, following a heated debate in the media has been witnessed and majority of the people now believe that there should be some kind of amendment to cope with the changing world realities and the way Japan responds. A rise in the public opinion supporting a revision in the Constitution, strengthened government's resolved to form Constitutional Review Council in 2000, consisting of lawmakers of different parties.

In another political development, the LDP's political strength has declined and the opposition, Democratic Party of Japan (DPJ), has increased its parliamentary strength since the recent elections which means that the ruling Party's dependency on opposition has increased to gain two third majority required for an amendment in the Constitution. Though the DPJ is not averse to an amendment in the Constitution, its approach differs from the ruling LDP. The DPJ wants that the impetus to an amendment in the Constitution should come from the people, while the LDP wants that the amendment should be pushed by the parliamentarians. This means that till both the parties narrow down their differences to reach a consensus over an amendment, the government would have to continue on a stretched interpretation to pave way for the deployment of its troops overseas.

In yet another development, after five years of deliberation over the clauses of the Constitution the Lower House Constitution Review Council has submitted its recommendations proposing revision in the Constitution. The recommendation such as inclusion of an explicit provision regarding the role of Japan's Self Defense Force (SDF), omitting the Paragraph 2 of Article 9, defining the defense emergencies in the Constitution, -is likely to stir the Constitutional debate inside Japan as well as in the immediate neighbours.

Over the issue of Constitutional review, the Japanese society is divided between the revisionists and the pacifists. Revisionists believe that the Constitution has lost its brilliance in dealing with the problems and its pacifist provisions serve as a "bottleneck" in Japan's normalization and thus it should be amended so that Japan can play a normal role in the world affairs. While on the other hand, the pacifists and the peace loving Japanese are wary that, with an amendment in article 9, constitutional pacifism will loose its relevance. Also renouncing pacifism is being viewed in the adjoining countries as well as, by the Japanese pacifists, as a beginning towards militarization.

Set against the above background, this research is a modest effort to study the relevance of pacifism on Japan's polity, society, security policy and foreign affairs. As the realities of the post Cold War period has posed new challenges to Japan's Foreign policy and due to the constitutional impediments Japanese governments feels helpless in a 'normal' contribution to the international community, the following research, "**Japan's Constitution: Relevance of Pacifism in the Post Cold war period**" is an attempt at examining various issues involved in Japanese pacifism in the post Cold War period.

## ACKNOWLEDGEMENT

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## GLOSSARY OF JAPANESE WORDS USED IN THE DISSERTATION

*Betanumu ni heiwa* O, Shimin bunka dantani rengo (Beherein.---Committee to peace in Vietnam)

*Dango* (behind the scene negotiations)

*fukuko Kyohei*= a rich country and strong military .

*Genro* -(the House of Peers)

*Gokenron* -constitutional defense party,

*Heiwa* (peace).

Hikaku sangensuku --Three non-nuclear principles

Kashin (Good News)

Koe naki Koe no kai (Voice of the Voiceless)

*Kokusai Kokka Nippon*-Japan an international State

*Kokusai Kyonatai* International Relief Force

Minshuto(DPJ)

*Minzo to Heiwa* (The nation and peace).

National Guard (*Kokudo Keibitai*)

*Nihon Heiwa Kai*” Peace society in Japan,

Nippon Keidanren --Japan Business Federation

The Heiwa Mondai Denwakai (Peace issues discussion Group.)

*the Rikyo Zasshi*--- Tokyo Unitarian Association

Zaibatsu (the big Business enterprises).

Zoku (faction)

## ABBREVIATIONS

ASDF—Air Self Defense Force.

AWACS Airborne Warning and Control System.

DPJ- Democratic Party of Japan.

DSP—Democratic Socialist Party.

FEC—Far Eastern Commission.

GNP--Gross national Product.

JCP - Japanese Communist Party.

JDA—Japan Defense Agency.

JSP—Japan Socialist Party.

LDP—Liberal Democratic Party.

NATO –North Atlantic Treaty Organization.

NDPO- National Defense Program Outline.

OAPEC—Organization of Arab Petroleum Company.

ODA--Official Development Assistance.

ONUC--- United Nations Operation in Congo

SCAP -Supreme Commander of Allied Powers.

SDF- Self Defense Force

SDPJ – Social Democratic Party of Japan.

UNOGIL-United Nations Observation Group in Lebanon

UNPKO-United Nations Peacekeeping Operation.

UNSC-United Nations Security Council.



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# CHAPTER – 1

## INTRODUCTION

### **The Research Theme**

Pacifism- the doctrine of opposition to all wars - has left profound impact on Japan's postwar polity, security, defense and foreign policy. Japan is the only country, which has enshrined pacifism in its Constitution. Article 9 of the Japanese constitution 'renounces war as a sovereign right of the nation' and pledges 'not to maintain armed forces as well as other war potential'. The core principles for Japan's defense policy such as the denial of the collective self-defense, prohibiting deployment of the combat troops overseas, the three non-nuclear principles<sup>1</sup>, denial of the conscription system, 1% ceiling on defense spending and ban on export of weapon related technology stem out of this constitutional pacifism.

Politically, the constitutional pacifism has left deep impact on Japanese politics and most of the debate between the ruling party and opposition has been revolving around the constitutional legality of Self Defense Force (SDF), Security Treaty, and spending on armament. The political parties have been opposing government's defense and Security policies on the premise that these policies are violation of the Article 9, which talks of peace and prohibits maintaining army and possession of war potentials.

Within the Japanese society, the war-renouncing article has given birth to two sections namely, the pacifists - those who advocate retaining this clause and revisionists - those who support a revision. Due to the presence of strong pacifism among the Japanese people the government, despite consistent pressure from its security ally, the US, could not alter most of the pacifists policies during the Cold war period.

However, with the end of Cold war and the demise of Soviet Union, the primary goal of the US-Japan Security Treaty to contain spread of Communism was realized. Varied

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<sup>1</sup> The three non-nuclear principles are –not possessing, not producing and not introducing nuclear weapon into its territory.

opposition, from political parties and masses in Japan, went on to question the continuing need for the Treaty. But the emerging security threat from the North Korean missile test-firings and its nuclear ambitions, compelled Japanese establishment to continue with the Security Treaty. The US administration in the changed circumstances expected a proactive global security role from its ally Japan. The real testing time was the Gulf war 1991, which in fact was the first serious post- Cold War military engagement, and Japan due to its pacifist constitution, could not play its due role despite the willingness of Japanese government. Following Japan's non-participation in the Gulf war, criticism in US about "Japan's free ride" again came to the fore.

The end of Cold war also gave an opportunity to the Japanese administration to wean the political oppositions since their rigid ideological positions got diluted. The opposition mainly the Socialists and Communists during the Cold war period were opposed to US-Japan Security Treaty and had been asking the government to adopt the "unarmed neutrality" as its security policy, to avoid another nuclear catastrophe in the wake of US-Soviet military confrontation. In the post cold war unipolar world, the basic premise of neutrality lost its meaning and the socialists almost dropped the agenda of unarmed neutrality. The favourable situation at the home helped Japanese administration to reflect upon and partially put in place an active international role to meet the US aspirations and demands. Capitalizing over the domestic political situation, Japan has considerably altered its pacifist policies in the post gulf war era. Changes in Japan's pacifist policies are manifested in various legislations aimed to deploy its forces overseas, reviewing Japan-US Defense Guidelines. But Constitutionalist still believed that the Forces have been deployed overseas with stretched interpretation of Article 9. People in the Japanese administration also believe that there exists a "gap" between the Japanese Constitution and the Post Cold war realities. To integrate the Constitution with the post Cold war realities, Japan established Constitutional Research Councils in both the Houses of Diet.

This research is being undertaken at a time when Constitution Research Council has submitted its recommendations proposing revision in the Constitution. The recommendation from the Lower House of the Constitution Research Council, such as

inclusion of an explicit provision regarding the role of SDF, omitting the Paragraph 2 of war renouncing clause of Article 9, defining the defense emergencies in the Constitution, making explicit provision in the Constitution regarding Japan's participation in UN collective security activities<sup>2</sup>, will once again rake up the Constitutional debate inside as well as outside Japan.

With the alterations in article 9, constitutional pacifism will gradually erode. The gradual erosion of pacifism is seen in the adjoining countries as Japan's advancement towards militarization, which reminds them the brutality of Japanese forces during the pacific war, the scars of which they still bear. Their worry is compounded by the fact that in the last few decades, Japan has advanced far ahead from its self-imposed pacifism. The deployment of SDF and finally joining the multinational force in Iraq and now efforts to amend pacifist constitution for overcoming the gap between to the existing realities and the constitution-- is being deemed as Japan is willing to say farewell to its long held pacifism. These incidents mark a major turning point in Japan's policies in the international political affairs.

In this context my research **“Japan's Constitution: Relevance of Pacifism in the Post Cold war period”** aims to examine various issues associated with pacifism in Japan. This is an open-ended research, and is based on the premise that the need for interpretation and amendment of article 9 of the constitutions is necessitated and conditioned by both external and internal factors. It also premises that, though the impetuous to amend the constitution might have arisen out of external pressure (US pressure) the real thrust to the change has been provided by the Japanese polity's unarticulated need to find its own rightful place in the global scenario. The proposed research is an attempt to understand the ever changing international dynamics and its impact on the Japanese security policy and polity. The research aims at critically examining the changes wrought upon the Japanese psyche and the impact both at the level of the community and at the level of the decision-making and its implications on international affairs.

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<sup>2</sup> The Japan Times 16 April 2005.

The research starts with tracing the roots of pacifism in prewar Japan, and then it discusses the background in which pacifism was induced in the constitution, drafted under the occupation in the postwar Japan and the impact it left on internal and external affairs of Japan. Then the research proceeds to examine the external and internal situations that resulted in receding of pacifism with special emphasis on the role played by the media and political parties. As the pacifist constitution has always been seen as an impediment in Japan's military contribution to the UN Peacekeeping activities, the research also looks into the possibility whether Japan, with the proposed amendment in the constitution, be able to play a 'normal' role in the UN and will it ensure entry to UNSC as a permanent member? And fifth and the final Chapter is based on certain findings such as whether the proposed amendment in the Constitution will pave the way for Japan's militarism as expressed by the East Asian countries and will the Constitutional revision serve the aims of hawkish politicians to integrate Japan's security policy with that of the US?

### **Chapter Summary:**

#### *Chapter 2. Militarization vs. Pacifism: Push and Pull factors.*

As the entire Cold war period has witnessed a kind of ideological and practical contest between pacifism and militarization, the First Chapter of my research discusses various pull and push factors involved in pacifism and militarization. The background of the chapter traces the origin of pacifism in Japan, which necessarily took roots during its more than two hundreds years of seclusion. During the entire period the Japanese never witnessed war and the trait of non-participation in the world affairs remained inherent in them in the Meiji era too. In the Meiji era, the pacifism as an ideology came to the notice of the individual, when opposition of war was included in the agenda of ongoing "Liberal and Popular Rights Movement" launched with the demand of establishing Constitution and greater participation of the people in the government. The liberals further provided the basic tenets of pacifism, when they opposed war based on their ideological positions. The two trends in pacifism led by the Christian democrats and social democrats played wider role in

popularizing the concept of pacifism in the masses. The pacifism for Christian Democrats was inspired by their religious conviction and the Biblical command- Thou Shall Not Kill. For the Social democrats; pacifism meant the means to avoidance of social conflict. The ideal of social democrats was an organic harmony of classes rather than classless society. But the pacifists could not survive excessive repression by the government and almost disappeared from the scene till 1945.

Following the World War II, the Occupation authorities took all possible means to demilitarize Japan. To pacify Japan provisions were made in the Japanese constitution drafted under the supervision of Macarthur. To this end provisions to ban forced conscription were spelled out in Article 18. Article 66 spelled out that a person having military background can not be instated on Prime Minister and other Cabinet posts. But most controversial and debated clause was Article 9, which not only banned Japan from possessing army and war potentials but also to use force to settle disputes. The Japanese, who had suffered eight long years of war and the catastrophe they witnessed in the Hiroshima and Nagasaki, had developed strong disgust for military. They accepted the pacifist provisions in their constitution without much resistance and eventually constitutionality of pacifism was established. At the same time there were people (though in minority) who objected this imposed constitution and demanded to scrap the provisions. The chapter thus examines the motive behind the inclusion of these pacifist clauses and summarises the role of different actors in pacifying Japan. It also attempts to map up the reaction of then Dietsmen over the issues.

At the onset of Cold war and Korean War in the region, the US realized its political mistake and pushed Japan for rearmament to counter external threats and a possible internal communist insurgence. Pacifists at this time tried to stall all the efforts through mass rallies and protests for rearmament and demanded to preserve the constitution. Following this, the strong pacifists movement became the part of Japanese society and the movement reached to its peak in 1976 at the time of revision of US-Japan Security Treaty. The Chapter examines that the momentum of pacifist movement has been proportional to the rearmament and defense build up. Had there been no rearmament, pacifism could have not taken shape of a mass movement. With this background the

chapter mentions the role of the Heiwa Mondai Denwakai and other pacifist movement in propagating the pacifist thought in the masses and urged the government to adopt unarmed neutrality as its Security Policy.

In line with the public sentiments the opposition parties have also adopted anti-US Japan stances as their security Policy. Also Within the Liberal Democratic Party (LDP) the dovish faction was against the heavy rearmament of Japan. However, with the beginning of 1980s. the new generation's emerged to the political scene. This generation has not witnessed the devastation of war, so the pacifist ideology did not appeal them. Also Prime Minister Nakasone, in line with his nationalist sentiments advocated greater rearmament to make Japan "an international Japan". The opposition parties revised some of their stances in the 1980s. Except the Communists, opposition parties had shed off their anti militarist policies and adopted more accommodative stance towards defense and security policies pursued by the ruling party. In 1981 Komeito Party at its 19<sup>th</sup> Congress, came out with the support of Japan-US security treaty and by declaring support for forces capable of preserving Japan's territorial integrity, expressed conditional acceptance of the constitutionality of the SDF. In 1983 the Democratic Socialist Party (DSP) called on the public to support greater defense expenditures. Thus at the end of 1980s the nationalism gained an upper hand over pacifism. But major restraints in breaking the pacifism, the Article 9, of the constitution remained intact till the end of 1980s.

### *Chapter 3. The Pacifist Constitution: Need and proposals for amendment.*

The third Chapter begins with analyzing external factors like end of the Cold War and beginning of Gulf war. It is a known fact that it is due to Article 9 of its Constitution that Japan could not commit its troops in the Gulf. Following the non-participation in the Gulf war and continued criticism of its Checkbook diplomacy and getting a free ride on US defense system, Japan was compelled to reexamine its security policies. And when Japan failed in its own effort to participate in United Nations Peacekeeping Operations (UNPKO) with a stretched interpretation of Article 9, people in the administration realized that there exists gap between the words of the constitution and changed realities. Thus they talked of a revision in Article 9. so that Japan could play a new security role in

the international affairs. This resulted in a debate not only in political parties but also in the media as well as diplomatic circles. The chapter in this background discusses views of senior academicians and also presents governments stated interpretation of article 9.

The media groups as well as political and business organizations came with their own proposals to revise the constitution. Among the Proposals, proposal from Asahi Shinbun, Yomiuri Shimbun, Seikai, Keidanren and Ozawa proposal caught attention. The chapter briefly analyses all the proposals. All the proposals reflect their own ideological positions. For example the Sekai and Asahi Proposals try to establish Constitutional pacifism in Japan as they still advocate retaining Article 9, without any change. They strongly believe that the armament during the Cold War period and security arrangements with the US were against the spirit to Constitution and as the Cold war is over now Japan should gradually undo the system. The Yomiuri Proposal, proposal from the Keidanren suggest retaining pacifist clause on the basis that it has helped Japan regain its economic position in the world community. The Yomiuri suggests addition of a clause to establish SDF's constitutional legitimacy in the proposed revision of the constitution. The Ozawa proposal seems most ambitious as it questioned legitimacy of the document as it was imposed in an abnormal condition on Japan. Thus he proposes complete revision of Constitution to reflect the reality of present era. But his repeated argument that the articles and preamble has provision to maintain military and it may dispatch its troops for the 'preservation of peace in international society', suggests that he Initially, he is of the view that revision by interpretation was all that was required for Japan to be able to perform a proper role as responsible member of the world community.

Despite various differences the proposals have some merits and most common feature of these proposals are that they aim to integrate the constitution with the realities of the post cold war period and argue Japan's participation in UN Peacekeeping operation but suggest their own perception. Most if not all these drafts are besieged by the two basic problems. First, is how to overcome the gap between words of the constitution and actual



practice? The second is, how to make the constitution relevant to the circumstances of the 21<sup>st</sup> century.

Following these proposals the chapter examines the recommendations by a lower house Constitutional Study panel, which has recommended to delete 2<sup>nd</sup> paragraph of article 9, which bans Japan from possession of an armed forces, and make a provision to maintain, self defense forces. The panel has recommended to make explicit provision for Japan's participation in UN's collective Security and create a framework for regional security in Asia. Panel members were split three ways over whether to allow Japan right to engage in collective defense. The opinions were to allow, not to allow and to allow with restrictions.

#### *Chapter 4. Japan's expanding global role: obstacles and ambitions*

Japan has stepped up its effort to review its constitution in a hope to get a permanent seat in the upcoming expansion of the UN Security Council (UNSC). The issue of participation in United Nations Peacekeeping Operations (UNPKO) has been a debatable issue from a time when Japan was still to join the UN as a member of General Assembly. As Japanese constitution bans deploying Japanese forces abroad as well as collective defense, the issue whether Japan would be forced to participate in a UNPKO when it joins the UN was raked up by the pacifists in 1950s itself. Japanese administration to allay all these apprehensions had adopted a resolution not to join in UNPKO in the House of Councillors in 1946 and further added a clause in SDF Law not to send the SDF overseas. The chapter discusses that due to these self imposed legal hurdles, Japan could only contribute financially to the UN during the entire Cold War period.

However, the Iraq war and Japan's non participation in UNPKO has generated a renewed debate. Pushed by public support to play a major role in UNPKO Japan has tied the issue of amending article 9 to secure a permanent seat in UN Security Council. In this context the Chapter examines political party's changing stands over Japan's participation in UNPKO. The Political parties are divided over the issue of how to participate in UNPKO. The Komeito its junior coalition partner is of the view that Japan should not send its

troops in a combat zone, while the Japanese Socialist Party (JSP), and Japanese Communist Party (JCP) advocate that Japan's participation should be limited to a non-military contribution to the UNPKO. This chapter also analyzes whether these political differences would let Japan play a normal role in the UN's Security activities. The Chapter weighs Japan's arguments such as its personnel contribution to the UNPKO, Financial contributions to the UN budget, which it has placed to strengthen its bid to the UNSC and also examines all the impediments involved. Before conclusion the Chapter enumerates Japan's diplomatic maneuvering along with 'Group Four' (G – 4) countries to secure its berth in the expanded UNSC.

*Chapter 5: Summary and Conclusion:*

The concluding chapter starts by summarizing the issues involved in the Constitutional debate and contends that despite having the pacifist clause in its Constitution the government due to an external pressure interpreted the Article so as to legitimize inherent right of self-defense. The right of self-defense provided an argument for equipping its SDF through arms procurement and continuing the need for the US-Japan Security Treaty. The chapter analyses the fact that with the end of Cold war US- Japan-Security has gone one sided with the later taking free ride on formers defense system. Japan's non-participation in the Iraq war proved this fact that Japan despite its willingness cannot contribute the US militarily until the Article 9 remains intact.

Following this debate the Chapter discusses that Japan's willingness to amend its Constitution is tied to the two issues *first* paving the way for greater participation in the UN collective defense and *second* seek an interpretation to engage in collective self – defense to come up to its security ally's expectations. Making explicit provision in the Constitution so that it can deploy its troops overseas at least in the UNPKOs, which necessarily will strengthen its bid to secure a permanent berth in the UNSC. But making a provision in the proposed amendment to serve the US demands seems difficult as the Constitutional Review Council could not recommend for a collective self defense due to the differences among the council members. The concluding chapter reaches to the finding that despite the revision in the words of the Article 9, the pacifist clause will still

have some relevance the proposals be it from political parties, the media, business group and the Constitutional Review Council, have recommended to contain the first paragraph of the Article 9 without any change. The possible deletion of second paragraph of the article will end the debate over the Constitutional legitimacy of SDF and arms procurement to strengthen its defense.

## CHAPTER – 2

### The Cold War Period:

#### Militarization vs. Pacifism- Pull and Push factors

##### Introduction

Immediately after World War II, Washington adopted a policy designed to strip Japan off both, militarily and industrially, by- imposing a pacifist constitution in case of the former and by- breaking 'Zaibatsus' (the big Business enterprises) in the case of the latter. The Occupation policies left profound impact on Japan's foreign and domestic policies. The inclusion of Article 9, in new constitution, which renounces war, has severely constrained Japan in case of managing its foreign policy affairs and still remains a controversial issue. The motive behind its inclusion, its perceived and hidden meanings and how it should be interpreted are areas of contestation.

This Chapter attempts to examine the ideological dichotomies that characterise the Militarization versus Pacifism debates in the Japanese polity and accounts for the divergent push and pull factors that led to the preeminence of pacifism as a the dominant ideological trend in the post second war Japan. It starts with tracing the roots of pacifism and then discusses the much-clouded debates as to whether Shidehara or MacArthur was the author of War Renouncing Clause. It then critically evaluates the reaction of the countries of Far Eastern Commission (FEC) and how due to their efforts, another pacifist clause (Article 66), was inducted in the Constitution. Following that the Chapter discusses the question as to why the War renouncing clause, which is considered to be imposed, was accepted by the masses without much resistance?

Then the chapter looks into another move by Occupation- forced militarization which, left major impact on internal and external policies of Japan. The US viewing Japan as an important element of its strategy for containing China and Soviet Union encouraged it to rearm. But again this US move was opposed by the people through vigorous agitation. The Japanese society witnessed a tug of war between the establishment and the pacifists- with the former trying to rearm Japan on the US behest and the later resisting it in the name of neutral and peaceful coexistence. In this context the chapters deals the pacifist

movements and also maps up opinion of the masses with the available surveys conducted during that period. The Chapter concludes on examining the fact that why despite the strong public opposition Japanese government continued on defense build up and how the pacifist tendencies eroded in the 1980s with the advent of Prime Minister Nakasone.

### **Tracing the Roots of Pacifism**

The Meiji Restoration in 1868 was a turning point in the history of Japan as it transformed Japan from a closed country to an open country. With this landmark transformation, Japan after almost over two centuries of seclusion, was preparing itself to face the world with the slogan of “a rich country and strong military (*fukuko Kyohei*)”. It must be noted here that Japan’s desire to make the country strongly armed was initially not to dominate, rather to make it independent. The fact that a section of the oligarchs did not want to dominate is evident from the statement of the oligarchs like Iwakura. In 1871 he declined to opt for a military expedition over Korea and maintained that Japan must concentrate on developing her wealth and strength at home, ‘not harshly opening hostilities against Korea’<sup>1</sup>.

To maintain their independence, the Japanese went for industrialization and militarization. Despite this makeover, attitude of non-participation towards the world affairs, a characteristic of pre Meiji Japan, remained inherent in this era too. Apart from the traditional warrior class- the Samurai, common people wanted that Japan should maintain its peaceful image by not participating in affairs like war. This attitude of non-participation, later provided base to pacifism<sup>2</sup> in Japan.

The emergence of pacifism as an ideology was not a sudden phenomenon rather it came to the individuals through liberalism. The emergence of educated youth with liberal ideas

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<sup>1</sup> McIntosh Malcolm “Japan Re-armed”, (Frances Printer (publishers) London, 1986.)p.7.

<sup>2</sup> Pacifism---- The doctrine of opposition to all wars, including civil wars. Its most obvious feature is personal commitment to non-participation in wars, except possibly in non-combatant role. Pacifists also advocate efforts to maintain peace and support disarmament, through strengthening of international organizations and law. They have long been associated with, Christian sects, but in the 20<sup>th</sup> century they included many who opposed war from secular moral bases. Pacifism is often associated with support for non-violent political action. A more limited form is nuclear pacifism, which is opposed to nuclear but not conventional war. (As defined in New Penguin Encyclopedia 2003 (edit) David Crystal, Penguin Books, London 2003)

gave impetus to the “Liberal and Popular Rights Movement” which was initially launched with the demands to establish constitution, and greater participation of the people in the government. The oligarchs instead heeding to their demands, embarked on the overseas expansions. The liberals viewed this move by oligarchs as a ploy to deflect public attention from the domestic affairs to war efforts. Thus the opposition of war became the part of the ongoing liberal and popular rights movements.

Later Japan’s expansionist policies such as the first Sino-Japanese war of 1894-95 introduced the horrors of modern warfare, and anti-war sentiment flourished in the masses. In the following three decades, pacifism became recognized as an acceptable philosophical position. But the pacifism in the prewar Japan could not take shape of a mass movement rather it was an ideological debate launched by the individuals and opinion leaders and remained limited to their personal commitment towards pacifism. The two ideological groupings, namely, the Christian democrats and Social democrats played vital role in introducing the ideals of pacifism to the people.

To understand the debate and issues involved in the prewar pacifism, it is necessary here to examine, pacifists contribution and their ideological position regarding Pacifism. A close examination of their contribution will also help understand the issues involved in pacifism.

**Kitamura Tokoku** (1868-94) came to advocate pacifism through a search for individualism in his strongly group oriented society. He established the first Peace Society in Japan, “*the Nihon Heiwa Kai*”<sup>3</sup> and served as the chief editor of Society’s journal *Heiwa* (peace). His idea of peace was fundamentally interconnected with his belief in the free individual, unbound by the particulars of race, state or religion. He associated with the organization *Risshisha* which, launched nation wide Popular Rights Movement demanding for the establishment of a popular assembly.

**Kinoshita Naoe** (1869-1937) spent his life ridiculing the follies of war and social inequity. His activism began as a journalist and the major issues he focused on were war

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<sup>3</sup> Nobuya Bamba, “Kitomura Tokoku : His pursuit of Freedom and Peace” in (ed) *Pacifism in Japan: The Christian and Socialist tradition*,( Minerva Press Tokyo, 1978) pp. 35 - 66.

and peace, the state and civil rights, and especially the problem of the emperor system, militarism and Japanese ethics. He expressed strong concern for society amid the growing militarism between the Manchurian incident and at the outset of second Sino-Japanese war. Because of his Christian piety, he considered the nation an instrument to realize the ideals of human kind, and advocated of peace, premised on the mutual love of human beings. He recommended the reduction and abolition of armaments and urged the Japanese to do two things: reject at home the “military government”, which is permeated with “paternalistic despotism” in domestic politics and in external relations seek to realize international peaceful coexistence.<sup>4</sup> This practical manifesto is surprisingly similar to the pacifist principles included in present Japanese constitution.

**Uchimura Kanzo** (1861-1930) initially defended the first Sino Japanese war in 1894 because he felt Japan’s victory would enable it to introduce modern Western life to China. He asserted that Japan can fight a righteous war as Christian nations have fought the war in the past. But he became disillusioned with government’s callous cruelty towards the Chinese and went on to detailed analysis of the technical issues involved in war. The realities of Japanese geopolitics in the first Sino-Japanese war, forced him to rethink his assumption about the righteous war and brought him to absolute pacifism which characterized his thought after the Russo- Japanese war. Deploring the Russo-Japanese war he wrote “I not only oppose war with Russia, I absolutely oppose (*Zettaiteki haishi*) all wars... some people preach the profit of war... the profit of war is the profit of robbery. It is in the long run to the disadvantage of robber and robbed”.<sup>5</sup>

**Kotoko Shusui** (1871-1911) actively encouraged opposition to the Russo-Japanese war. In protest of war, the first Sino Japanese he wrote- “why shouldn’t we pacifists who are opposed to wars talk about the painful predicament of the soldiers?” Kotoko was of the view that military expansion would only do harm when it was not accompanied by democratic development within Japan. Later, he founded the Heimisha, the first

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<sup>4</sup> Nishida T,- “Kinoshita Naoe: Pacifism and religious withdrawal” in Nobuya Bamba and John F. Howes (ed) *Pacifism in Japan: The Christian and Socialist tradition*,( Minerva Press Tokyo, 1978) pp 67-90.

<sup>5</sup> John F Howes “Uchimura Kanzo: The Bible and the War” in Nobuya Bamba and John F. Howes (ed) *Pacifism in Japan: The Christian and Socialist tradition*.( Minerva Press Tokyo, 1978) pp 91-122.

organization to advocate the propagation of peace throughout Japan. In his pacifist manifesto published in 1903 he opined that “In order to favor men with fraternity, we adhere to peace policy and we endeavor to actualize disarmament to stoop bellicose attempts without race distinctions and political divisions. It is our ideal that perfect liberty, equality and fraternity for the greater mass of man should be secured: we shall attempt in realizing this ideal to rouse the public opinion”.<sup>6</sup> Opposing Russo-Japanese war he questioned the whole course of modern Japanese development. He was executed in 1911 for his alleged involvement to conspire for the assassination of Meiji emperor in 1910.

**Abe Isoo.** (1876-1949), is universally acclaimed as the father of Japanese socialism. Through out his life, he never deviated from a rational and consistent opposition to war. He expounded his own socialist pacifism through the journal of the Tokyo Unitarian Association, *the Rikyo Zasshi*, which he edited between 1899 and 1911. Abe’s socialism from the beginning involved opposition to war. The goal of the First Socialist Manifesto of 1901 proclaimed total abolition of armament as a first step toward the establishment of peace among nations and argued that armament creates a financial burden on the common people, which might be used for social welfare. He opined that militarism is evil because it leads to exploitation of weak by strong.<sup>7</sup>

**Yanaihara Tadao** (1893-1961) a disciple of Uchimura, showed a very active concern about war. In the late summer 1932 he made a trip to Manchuria to gather first hand information about Manchurian War. His Manchurian experiences made him firmly oppose the government’s colonial policy<sup>8</sup> and he committed himself to pacifist activities and addressed the question in many books and articles. In one of his articles he commented “ That the Manchurian incident had been trumped up by the Japanese side, as I have suspected from the beginning and since that time I determined to oppose the

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<sup>6</sup> Masamich Asukai , Kotoko Shushi : His Socialism and Pacifism in (ed) *Pacifism in Japan: The Christian and Socialist tradition*,( Minerva Press Tokyo. 1978) pp 123-142.

<sup>7</sup> Cyril H. Powles, “ Abe Isoo: The Utility Man” in (ed) *Pacifism in Japan: The Christian and Socialist tradition*,( Minerva Press Tokyo, 1978)pp 143 –168.

<sup>8</sup> For details see Susan C Townswend. “Yanaihara Tadao and Japan’s Colonial Policy”. (Curzon Press UK 2000)



Manchurian policy of the government". He foretold that if Japan continued its course of military expansion it would eventually be destroyed. In his book *Minzo to Heiwa* (The nation and peace) he criticized various militaristic and chauvinistic opinions expressed within the Ministry of education. When the second Sino-Japanese war broke out in July 1937, Yanaihara criticized the government action. Because of his criticism to war he was made to resign from Tokyo Imperial University. He then propagated his ideas from a monthly called *Kashin* (Good News). Yanaihara until his end of life in 1961 devoted himself to the achievement of peaceful Japan, as he had during the war. In the postwar he is considered among the architects of the postwar education system and a champion on the peace clause in the new constitution.

With the start of Second Sino- Japanese war (1937), grip of military over the administration strengthened further. The nationalists' sentiments began to prevail over the pacifists thought. The war gave new boost to production in industrial units and the military became the most important client of the industry. To this reason people especially in the urban areas supported military expansion and continuation of war. Thus the military and business connection commonly known as *Zaibatsu* also pushed for greater militarization. In this era, the involvement of military in planning the new force of industrial Japan and shaping politics was significant. The military ministers, in charge of the Army and Navy had to come from the armed force rather than being elected by the people. This meant that the military not only had a say in the appointment of two key ministers but also gained two Cabinet seats. The military gave a further blow to the democracy by suppressing the trade unions and constituting the Industrial Association for Service to Country. In yet another blow to the democracy, the army replaced all political parties constituting the Imperial Rule Assistance Army in 1940. The newly formed Imperial Rule Assistance Army paved the way for Tojo Hideki to become Prime minister. The pacifists and liberals also resisted to the efforts of military regime when it embarked on Greater East Asia co-Prosperity sphere. The military regime extensively used provisions of Peace Preservation Law (1925) against the pacifists and liberals. The military regime was so harsh against those who opposed war and military rule that during the period of 1939 to 1943, nearly 3350 people were punished for calling for an end to

the imperial system and private ownership, for espousing liberal idea and for claiming to be pacifists<sup>9</sup>. The state repression towards pacifists continued till the Japan's defeat in 1945. The allied occupation powers, which took control after the war, fostered opposition to war as an important part of their program. An examination of the occupation years and its fallout on the Japanese policymaking is the focus of the next section.

### **Early Years of Occupation:**

The Japanese history took another turn when in the last days of World War II; the spiritually superior Japanese forces had been beaten by the material superiority of the American Forces. The Emperor made the surrender speech on the radio on 20 August 1945, saying that the war had not necessarily gone in Japan's favour. Subsequently Japan came under the American occupation and remained under its tutelage till 1952. From the earlier stages of their planning for postwar administration of Japan, America had two clear goals, namely to establish a peaceful and responsible government and to democratize Japan. The Supreme Commander Allied Power (SCAP), General Mac Arthur took the initiative. However to execute these program was not his own idea. The main basis of SCAP's program was the Potsdam declaration of July 1945, which Japan accepted by its surrender. It demanded that "there must be eliminated for all time the authority and influence of those who have deceived and mislead the people of Japan into embarking on world conquest... Japan will be permitted to maintain such industries as will sustain her economy and permit the exactions of just reparations in kind, but not those, which would enable her to rearm for war."<sup>10</sup> In their first ever task the occupation forces revoked the ban on political parties. The substantial changes in Japan were enormous and involved the release of dissidents from prison including communist sympathizers. Those thought to be right wing; nationalistic or militaristic were removed from senior administrative and business positions. The Education System was thoroughly overhauled, school texts were rewritten and American liberal ethics based on Western

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<sup>9</sup> McIntosh M. "Japan Re-armed", Frances Printer (Publishers), London 1986.p11

<sup>10</sup> Text of the Potsdam Declaration, Political Reorientation of Japan, Government Section, SCAP, 1949, Appendices p 413, as quoted by Douglas H. Mendel Jr. in "The Japanese people and Foreign Policy -- A Study of public opinion in Postwar Treaty Japan. Greenwood Press Publishers, Westport US.

values were propounded. The Zaibatsu (the big business) with the concentration of real power and wealth, which played an important role in establishing an aggressive and expansionist state, were broken up.

These changes introduced during the early years of Occupation rule promoted liberal ideas and gave hope to the liberals that in the changed scenario they will achieve their prewar goals for greater democratization of Japan. Fifteen years of psychological pressure and eight years of wartime conditions had generated strong disgust among the masses for the military and the government. MacArthur drew on this strong disgust and exhorted the Japanese to move from the blind fatalism of war to realism of peace. Granting females the right of franchise and revoking ban on political parties and leaders were MacArthur's calculated moves to capitalize the masses' revulsion in American's favour. These were major steps towards Japan's democratization, for which the Japanese were struggling from the prewar period. With these changes the occupation authorities left the impression to the Japanese masses that the Americans are not an enemy rather they are guides to new and better days.

The Second major step by the Occupation authority was to draft a new constitution for Japanese aimed at establishing a political system according to American values and ensure that Japan never again "revisits" war. To this end, Preamble of the postwar constitution explicitly mentioned that "never again shall we be visited the horrors of war through the nation of government". There are articles in the constitution to check the militarization. The Article 66 has a provision which says that PM and other Ministers of States must be from civilian population. This has been done perhaps taking the fact into consideration that in prewar Japan, the military had two important portfolios and through which they grabbed the Prime Ministerial post. This time occupation ensured to check such happenings in the future. But much more controversial was introduction of Article 9. This pacifist clause not only renounces war but also bans having potential military forces. Another caveat was attached in the form of article 96, which says that a two-thirds majority is needed in the diet and a referendum has to be held in order to change any provision in the constitution. This article proved another hurdle in the way of normalization of Japan.

The Article 9, left profound impact not only Japan's Foreign and Security policies but it also influenced the polity and society as a whole. Most importantly it remained a controversial and much debated issue since the postwar period. Lets examine this article in its background.

### **The Author of War Renouncing Article:**

The authorship of Article 9, is still a controversial issue. There is no unanimity among the Japanologists over the name of the writer. Donald C. Hellman has opined that “the Contrite of utopianism of a senior Japanese statesman (Shidehara Kijuro) led to the insertion of article 9 into the new constitution<sup>11</sup>.” Professor Kenzo Takayanagi, who chaired the Japanese governments Commission on the Constitution, concluded that Prime Minister Shidehara suggested the idea to Mac Arthur and not vice versa.<sup>12</sup> The Japanese Security experts have drew their opinion following Mac Arthur's testimony to the Senate Military and Foreign Relations Committee a month after he was dismissed from his post as Supreme Commander during the Korean War in 1951. During the series of hearings, he testified that it was Shidehara who proposed the no war clause. In his reminiscences also Mac Arthur repeated the same<sup>13</sup>. Kade, one of the Americans who was the part of drafting committee made this issue more complex while stating, “at the time every body was thinking much the same thing about renunciation of war and pacifism. It is difficult to determine whose ideas this was or where it got started.”<sup>14</sup> But Koseiki Shichi has stated that it was not Shidehara but MacArthur himself who introduced the provision of war renouncing clause in the draft constitution. He substantiates his argument based on the fact of “Mac Arthur's Three Principles”.<sup>15</sup> On February 3, 1946, Mac Arthur wrote to General Courtney Whitney a member of Japan's new Constitution Committee that following three principles must be contained in the new constitution.

1. The emperor is the head of state.

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<sup>11</sup> See , Robert, A Scalapino.(edited) “The Foreign Policy of Modern Japan” University of California press Berkley(1997)

<sup>12</sup> “ Some Reminiscences of Japan's Constitution” in Dan Fenno Henderson, ed., *The Constitution of Japan: Its first twenty Years 1947-1967*. (Seattle University of Washington Press, 1968) pp 71-88.

<sup>13</sup> Koseiki Shichi. *The Birth of Japan's Postwar Constitution* West View Press 1997 p.83 as quoted from Mac Arthur, *Macarthur Kaisoki*, 2:164

<sup>14</sup> See Takemae Eiji, *Nihon GHQ no Shogen* (Tokyo Chuo Koronsha, 1988), p.60.

<sup>15</sup> See Koseiki Shichi “ op. cit p.83.

His succession is dynastic.

His duties and powers should be exercised in accordance with the constitution and responsive to the basic will of the people as provided therein.

2. War as a sovereign right to the nation is abolished. Japan renounces it as an instrumentality for settling its dispute and even for preserving its own security. It relies upon the higher ideals, which are now stirring for the world for its defense and its protection.

No Japanese Army, Navy or Air force will ever be authorized and no right of belligerency will ever be conferred upon any Japanese force.

3. The Feudal System of Japan will cease.

No right of Peerage except those of imperial family will extend beyond the lines of those now existent. No patent of nobility will from this time forth embody within itself any national or civic power government.

Pattern budget after British system.

The Security experts believe that Japan is not the first nation where the concept of War renouncing clause first appeared. The War renouncing provision made its appearance in the law through anti war treaties following the World War I. For Example Article 1 of the Kellogg-Briand Pact of 1928 reads: "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." Many also believe that the drafting committee also took the note of the UN Charter article 2,<sup>16</sup> without explicitly mentioning it in the draft proposal.

But ending all the suspense, Kōsēiki Shichi opines that the idea of War renouncing clause to Mac Arthur came from his Philippine's experience. He notes that with the aid of the Philippine's Constitution on Nov.15, 1935, the American Colony took its first step toward complete independence as the Republic of Philippines. Mac Arthur was appointed military advisor to the Philippine national militia a few days before the transition began.

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<sup>16</sup> Article 2 of the UN Charter- "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purpose of United Nations"

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Article 2 of the Philippine’s constitution of 1935 is as follows: “The Philippines renounce war as means of implementing national policy, and adopts the principles of generally established international law as one part of its law.”

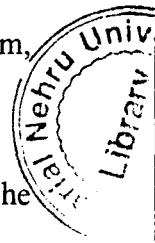
Koseiki Shichi asserts further that it seems highly likely therefore that MacArthur had this in mind when his staff began drafting a constitution for Japan in 1946. He adds that “...we should not forget that relating to the origin of the Philippine Constitution to that of Japan in this way, we might also tend to regard Japan as a colony like the Philippines and article 9 (renouncing the war) as simply a military measures.” We should not forget that Okinawa was under direct US military rule as well we see, MacArthur proceeded to draft the new constitution on the assumption that Okinawa would be made into a fortress and that the Japanese mainland would be demilitarized. Based on the fact that, it was MacArthur who ordered for the war renouncing provision, to be moved from the preamble to the body of the draft constitution, Koseiki Shichi concludes that it was him, who proposed the Article 9, not Shidehara.

This action of MacArthur had raised question, was he a pacifist? If so, then why did he shift the responsibility for introducing war-renouncing article upon Shidehara? Professor Sodei Rinjiro, a student of Mac Arthur analyzed the matter in the following way: “It seems likely that it was painful for MacArthur himself to have to deny, due to the outbreak of the Korean War, the antiwar clause which was born of feelings deep in his heart in a brief moment following the war. It was dishonour for a strategist only five year later to have been so wrong about his prediction of history. Perhaps by shifting to Shidehara the responsibility for proposing the anti war provision, MacArthur was attempting to avoid historical responsibility.”<sup>17</sup>

**Amendment in Article 9:**

The MacArthur draft proposal was put to the diet for discussion and amendment. Of the amendment made to the government bill in the Diet, the one that aroused the greatest concern was the amendment to Article; 9. Majority of the questions asked in relation to

<sup>17</sup> Sodei Rinjiro, MacArthur no nisen nichu (Tokyo: Chuo Koronsa 1964) p.38.as quoted in Koseiki Shichi op. cit p.86.



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the provision regarded the right of self-defense and the problem of security. The government has presented the draft in the Diet, which read as follows:

“War, as a sovereign right of the nation, and the threat or use of force, is forever renounced as a means of settling disputes with other nations.

The maintenance of land, sea and air forces, as well as war potential, will never be authorized. The right of belligerency of the state would never be recognized.”

After the protracted debate on this article Ashida Hitoshi (who later became Prime Minister for a brief period) redrafted the clause<sup>18</sup>, which was agreed by the majority of the diet. The reworded draft read as follows:

*Aspiring sincerely to an international peace based on justice and order,*<sup>19</sup> the Japanese people forever renounce war as a sovereign right of the nation, or the threat or use of force, as a means of settling disputes, with other nations.

*“In order to achieve the purpose of the preceding paragraph,* the land, sea and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state would never be recognized.”

The explanation publicly offered by Ashida at the time was that these additions would indicate in a more emphatic way Japan’s sincere wish for peace by using independent judgment in expression of the provision.<sup>20</sup>

The amendment “In order to achieve the purpose of the preceding paragraph”, provoked greatest concern as it has implicitly paved the way for the having defense force for the name of self-defense. Consequently, the pledge never to maintain war potential is not absolute but it is intended to be limited to aggressive war. Writing, “ the right of belligerency of the state will not be recognized” at the end of article can be interpreted various ways. Firstly, it is not to deny conflict as a means of self-defense. Second and most importantly, it may be interpreted as Japan can militarize itself up to the extent it is not perceived belligerent.

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<sup>18</sup> Williams ,J Sr, “Japan’s Political Revolution under MacArthur: A Participants account” The University of Georgia Press Athens 1979.p.121

<sup>19</sup> The Ashida amendment is italicized, compare article 8 and 9 of Appendix 2 and 3.

<sup>20</sup> James E. Auer , Article Nine: Renunciation of War in Percy R. Luney (ed) Japan’s Constitutional Law-( University of Tokyo Press 1993) pp 72-86.

This amendment by the diet raised eyebrows among the members of the Far East Commission (FEC). which apart from the three allied powers, the US, the UK and the Soviet Union included, China, France, India, the Netherlands, Canada, Australia, New Zealand and the Philippine. The members of FEC suspected Japanese motive behind the amendment with particular reference to Article 9. The Chinese representative was the first to express concern, which was as follows:

“The Chinese delegation notes that the Article has been so revised by the House of Representatives of Japan as to permit an interpretation which might in effect permit the maintenance by Japan of land, sea and Air Forces for the purpose other than those specified in the first paragraph of Article 9 of the draft Constitution.... We know that, of course it is necessary for any government to have a police force. But, generally, speaking, we don't call a police force an armed force. That is to say there is a danger, if Japan will be allowed to maintain armed forces for other purposes than those enumerated there that means there is [a] possibility for Japan to reemploy such armed forces under the certain pretext, such as for instance, self-defense.”<sup>21</sup>

Russia on the other hand had proposed an amendment in article 66, and suggested to add a provision, which could bar the military officials and those, served in military to be appointed as the Prime Minister and in the cabinet. The British representative, George Sansom, argued that because of variety of interpretation is possible and argument abounded, the amendment set the worst possible precedent. He agreed that MacArthur should be asked to clarify about it. The Canadian delegate George Patterson agreed that a query should be sent to MacArthur and strongly supported the argument for civilian provision and the necessity of clarifying the relation between the provision and article 9. The Australian representative Major J. Plimsoll expressed his distrust about Japan, saying that in future Japan might amend article 9, so as to allow maintaining armed forces. He explained that once it occurred it would be consistent with Japanese traditional practice for officers on active duty to be appointed as to the cabinet as ministers in the army and navy. There fore it would be more effective to insert at this juncture a provision

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<sup>21</sup> Transcript of the twenty –seventh meeting of the far eastern Commission, September 21, 1946, microfiche FEC (A)0085, National Diet Library ,pp 18-19 as quoted in Koseiki Shichi “op.cit . p.202.



specifying that all the cabinet members be civilians. Another concern, which was less emphatically presented, was provision of universal suffrage.

All the apprehension observed by the FEC representatives was conveyed to SCAP Commander General Douglas MacArthur. MacArthur quickly accepted some part of the FEC's request and inserted "universal suffrage is hereby guaranteed in Article 15 and in Article 66, "The Prime Minister and other Ministers shall be civilians", was added. However he did not comment regarding the meaning of Article 9. By accepting some of the demands by FEC, the General satisfied the members of FEC and achieved a political victory. The Chinese representative however expressed his concern noting that—

"The second point related to the wording of Article 9, of the draft constitution, which as it stands, contains implications which could not be acceptable to us. Japan in the past repeatedly used her armed forces for aggressions against her neighbours and denied at the same time that she was making war upon them. It should therefore clearly be understood that the commission, letting this article stand, intends in no way to overlook the possible danger of Japan again misusing her armed forces for any warlike or aggressive acts any more than for war itself.... The Chinese representative, however, notes with satisfaction that the message just received from the Supreme Commander for the Allied Powers reports among other things, that a provision has been pledged to be made in the draft Constitution that the Prime Minister and all Ministers for State shall be civilians. This provision, when made will to some extent serve to preclude the objectionable implications to which I have referred."<sup>22</sup>

To sum up, it may be said that the complex process that started with the Ashida amendment to Article 9, concluded with the insertion of the civilian provision (Article 66) in the case of Prime Ministers and all state Ministers. The idea that Ashida amendment could be made a constitutional interpretation for war of self-defense or for procuring war material for self-defense was not even discussed in the Occupation government or in the diet. It was only discussed in the FEC that the amendment might

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<sup>22</sup> Transcript of the twenty-seventh meeting of the far eastern Commission, September 25, 1946 pp.8-9 as quoted in Koseiki Shichi op. cit p.206.

give rise to the self-defense interpretation. In order to close off the possibility, the FEC demanded that Japan insert in the constitution civilian provision as an additional safeguard. The Japanese side believed that the civilian provision is useless as a way of countering the Article 9 and therefore accepted it without any major debate.

The amendment in Article 9 was so skilled with the legal techniques by the bureaucrats of the Legislation Bureau, that even most of the Diet member did not notice it. It was the Chinese representative of FEC who noticed the Japanese motive behind the amendment. It may be mentioned here that the Chinese concerns were based on China's historical experience of suffering from Japanese aggression in the name of self-defense. Apart from China, Canada, Australia and other countries held the view at that time, that by virtue of Article 9, Japan would not become a peaceful country at a single stroke. In their belief that Japan would definitely revise article 9, and eventually possess military forces, they were expressing deep-rooted distrust of Japan. The International Community's concerns appeared true when Japanese due to external strategic changes started rearming itself in the name of self-defense and perceived threat to its security. This apparent paradox is dealt with elsewhere in the chapter.

#### **Pacifists demand for a just Interpretation of Article 9:**

The question naturally arises why the Japanese people accepted the pacifist constitution? The situation that prevailed following the war resulted in a change of mind of the Japanese. The horrible experience of war, the devastation and misery all around them lead to an end of their patriotic fervour. The new realities of war had transformed the once militarist nation into a country of convinced pacifists. There was great rejoicing over the peace that had liberated the nation from the long time oppression under the wartime regime. Now pacifism became the basic tenet of the Japanese society. The situation has matured so that what had once seemed a utopia was institutionalized in the form of the war renunciation clause (Article 9) which gave legal sanctity and symbolic dignity to pacifism in Japan. The pacifists following the legal institutionalization of their ideas propagated their philosophy with much added vigour. Buoyed by the realization of their goal, they further pressurized the government for a just interpretation and amendment in Article 9.

In March 1949, Public Law Forum consisting of pacifists presented proposal for revising the constitution. Regarding Article 9, the Forum proposed to delete “as a means to settling international disputes” and insert a new provision that prohibits individual participation. They proposed to change the words, “ In order to accomplish the aim for the preceding paragraph,” to “For whatever purpose”.

Explaining their reason for revising Article 9, the group opined: “Paragraph one of the Article 9 is a declaration of the renunciation forever of aggressive war and threat or use of force. Paragraph two is a provision, which denies the right to maintain any armament or to wage any kind of war. Despite the fact that the spirit of the original provision was a declaration of complete pacifism renouncing all war, including war in self-defense and war for imposing sanctions, the wording of this article contains various restrictions, which can be misinterpreted and should be completely rewritten.”<sup>23</sup>

It is evident from the wording of their suggestion that the pacifists wanted to give no room of misinterpretation of the article 9. All the exercises of Ashida to get the right of self-defense through interpretation could have been proved futile, if pacifists’ suggestion to add “For whatever purpose” could have been acceded to. It may be noted here that the suggestion for revision came at a time when the SCAP had written to the Japanese government that they may amend the Constitution if the representatives in the Diet deem so. On the other hand another pressure lobby wanted that the government scrap some of the provision of the constitution, which they thought to be “imposed” on Japan. But the then Prime Minister Yoshida Shigeru showed no interest to go for a revision. It seems that he tried to evade from entering into controversies and postponed it for a later period and gave more priority to economics over politics, which was need of the hour.

With the legalization of pacifism, Japanese pacifism entered a new phase, as the pacifists resisted every move to rearm Japan. They showed no sign to budge from their stand even during the Korean and Vietnam War. They not only defended the constitution legally but also came on the street with long rallies and chanted slogan against anti- Vietnam War,

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<sup>23</sup> Koseiki Shichi “ op cit p.249.

anti US-Japan Security treaty, and Return Okinawa. Thus the Pacifism, which was a mere slogan during the prewar period, became a real movement. This resulted into clashes of ideas with the nationalists and changed the course of Japanese history, polity and society as well.

#### **Gradual shift towards militarization:**

Japan could not sustain continuance as an unarmed and neutral country for a long period. The changing security scenario in the region, especially the impending Korean War, led to a change in US policy towards Japan. With the outbreak of Korean War in 1950, the US realized its political mistake of imposing the pacifist clause in Japan's Constitution. For Japanese, it was surprising to know that the MacArthur, who praised the significance of new Constitution in his 1950 New Year's Day message, advised Japan to create 75,000 strong National Police Reserve. Though the avowed objective for such a reversal was to cope with internally fomented Communist insurrection, the real reason for the creation of the National Police Reserve was to allow the United States to move the 75,000 troops to fight in Korea. Most of the National Police Reserve created by Yoshida Cabinet in response to SCAP Commander, was deployed in Hokkaido to fill the void of the US forces hurriedly transferred to Korea. Then US Secretary of State John Foster Dulles suggested Japan to send its force to Korea in the wake of outbreak of Korean War. But Prime Minister Yoshida politely declined the proposal citing the reasons such as the Article 9, which explicitly prohibits rearmament and overseas dispatch to settle international dispute, and the Japanese have psychological aversion to the military due to the tragic pacific war.

But the changing Security scenario and a possible threat from China and Soviet Union and a greater rapprochement between the Soviet Union and China- the two erstwhile enemies of Japan, resulted in change in Yoshida's mind. In the changed circumstances he preferred to align with the US for defense and Security purposes. On September 8, 1951, the same day as the signing of the San Francisco Peace Treaty, a treaty of mutual Security was signed between the US and Japan. According to the provision of this treaty, the Japanese government would continue to guarantee to the US the right to station military force in Japan, even after the end of the Occupation period. The US for its part,

promised to protect Japan militarily from the threat of both foreign attack and domestic insurrection. Moreover, the Japanese government agreed that it will not allow any third country the use of Japanese territory for the deployment of military forces without the US consent. In brief, this treaty was starting point for rearmament in Japan.

Three years later in July 1954, the Japanese government completely reorganized the National Police Reserve turned into National Security Agency and then to National Security Agency and finally to Japanese Self Defense Force, an air-land-sea military with an authorized strength of 146,000 men. The newly formed SDF came under the Japan Defense Agency, the director of which was headed by a civilian and enjoyed status equal to cabinet minister. The joint chiefs and service commander were composed of uniformed personnel and were in charge of tactical planning and operation. In this way the Japanese defense establishment clearly established a military apparatus. With the creation of SDF, it seemed hard to deny that this was in clear contradiction of the renunciation of both war and military capability set forth in the Constitution.

As Japan initiated this process of rearmament and subsequently, in the 1960s launched a program of high-speed economic development, the US pressed Japan to build a military capability appropriate to an ally with whom the US could build a truly mutual security agreement. Accordingly, in January 1960, an entirely new US-Japan Mutual Security agreement was signed. The new agreement replaced the 1951 Security Agreement. The 1960 treaty obliged both Japan and the US to increase their military forces for the purpose of self-defense and mutual assistance. Moreover, Japan and the US were both committed to responding an attack on the other by a third country, if the attack occurred within the Japan's territory. The US was given right to maintain bases on Japanese territory for the purpose of maintaining security in East Asia. Thus, the new treaty had strong overtones of a US-Japan military alliance rather than just a passive defense agreement.

#### **Public Opinion: Pacifism vs Militarization:**

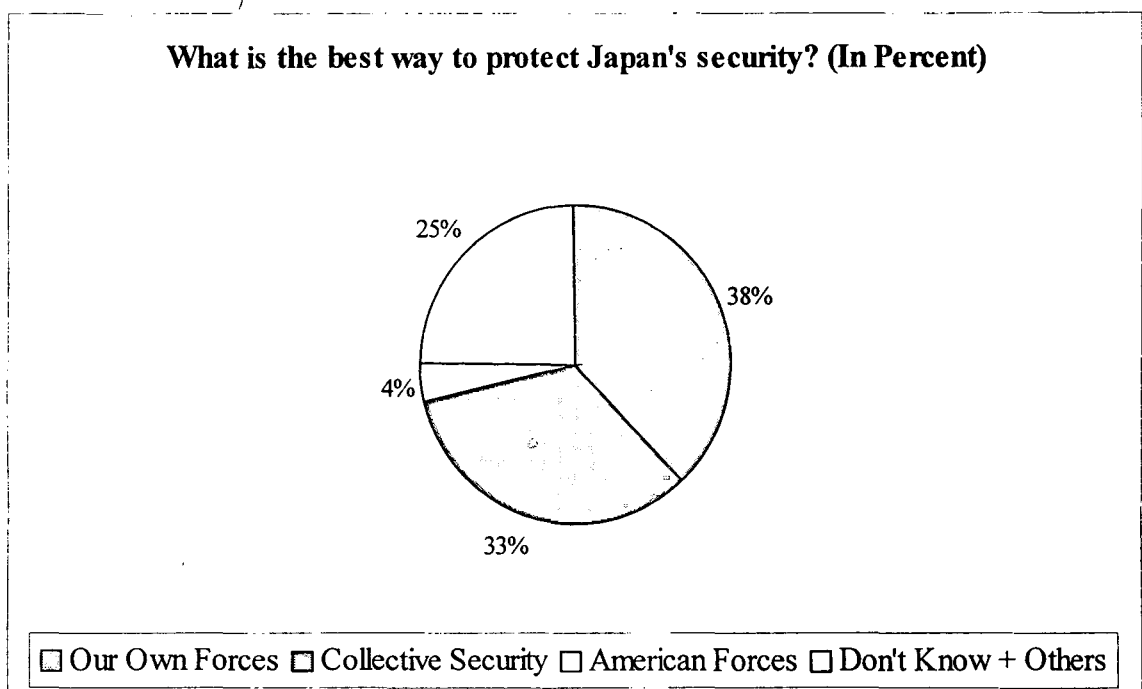
The issue of rearmament and maintaining pacifism had vertically divided the Japanese society. Defense had been the most controversial issue in Japan's postwar politics and it

affected directly or indirectly almost every other domestic and foreign policy issue. In the following section, we make an effort is made to trace the contours of the public perception with respect to Militarization and pacifism.

### What is the best way to secure Japan?

In a survey conducted following Japan's Security Alliance with the US, the respondents were quizzed on the best means of ensuring Japan's security? Out of 16630 respondents, 38% considered their own forces are capable to provide security while 33% thought that it could be done through Collective Security with the American forces<sup>24</sup>. (Figure 1).

Figure 1: National Survey Conducted by the Central Research Services in October 1956  
(Total Number of Respondents 16,630)



Just after the outbreak of Korean War and creation of the paramilitary Police Reserve, Asahi began a series of Surveys asking whether people approved the need for military forces, not just police reserve. 54% respondents answered in 'No' while 28 % answered

<sup>24</sup> National Survey Conducted by the Central Research Services, Japan as cited by Douglass H. Mendel Jr. in "The Japanese People and Foreign Policy A study of Public opinion in Post Treaty Japan Greenwood Press Publishers, Westpool US (1971) p.68,

in 'yes'. (See Figure 2). In 1952 Survey, Asahi found that only one fourth of those favouring rearmament wanted conscription, the rest favoured the existing enlistment system. The group opposing arms was even more hostile to a revival of the prewar conscription. Also one third who supported rearmament in 1952 survey, objected to paying higher taxes for it and a majority opposed any member of their own family entering the service.<sup>25</sup>

Does Japan Need Military Forces (In Percent)

(Total number of respondents 2,641)

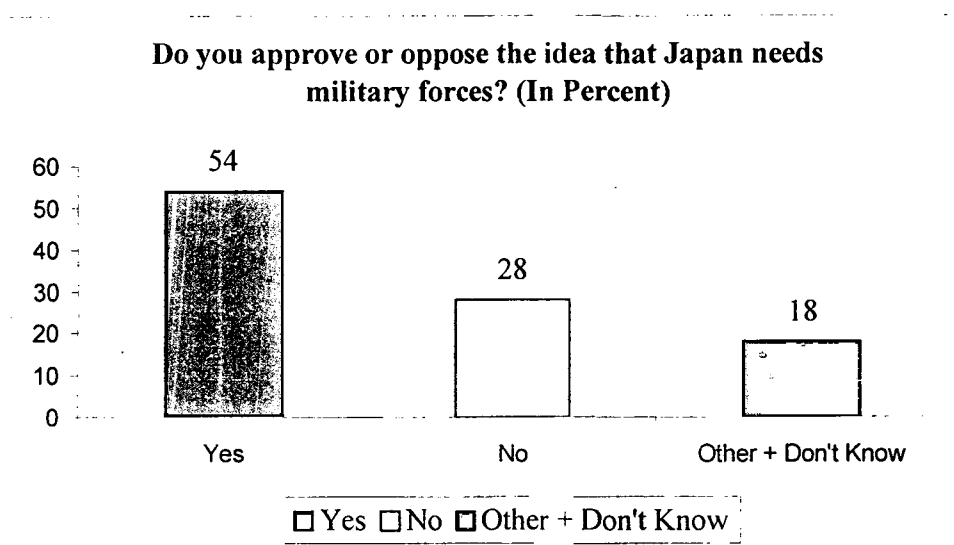


Figure 2:

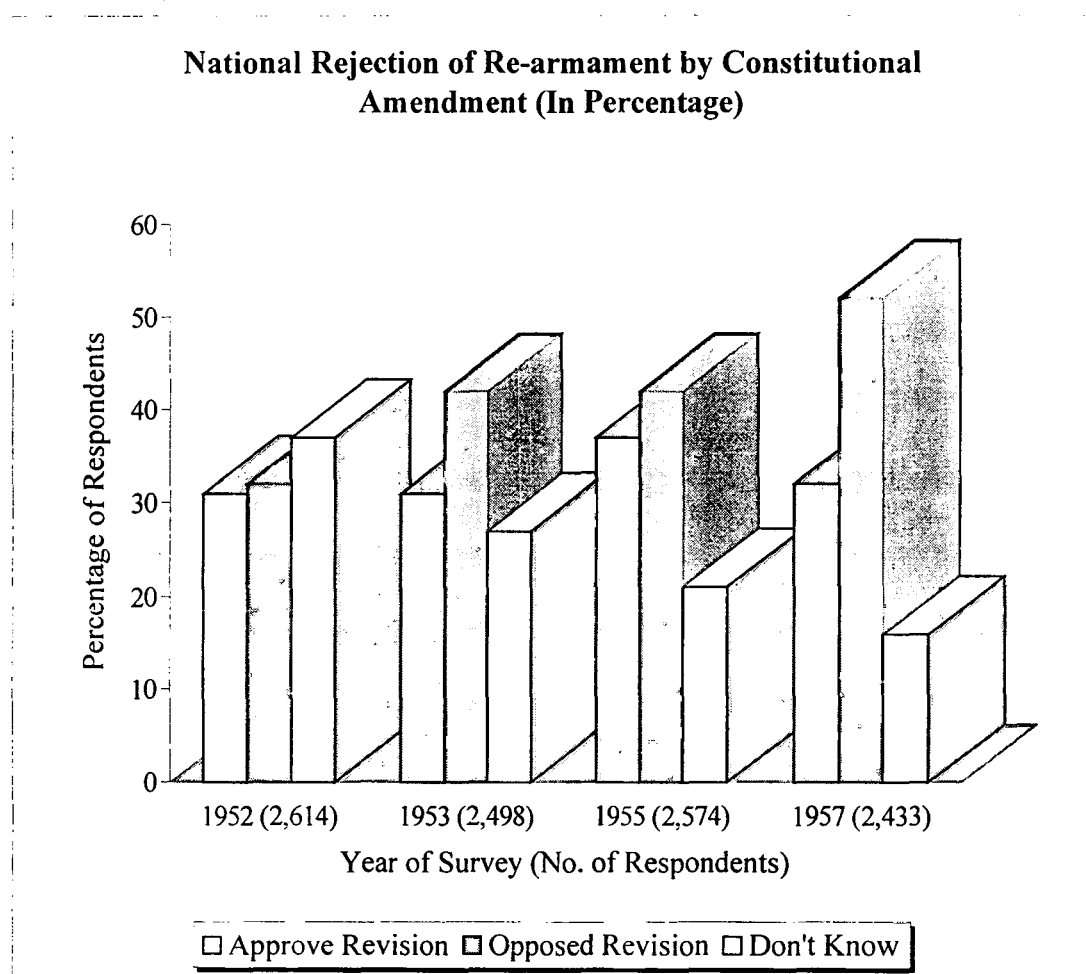
**Should there be a revision in Japanese Constitution for rearmament?**

In its 1952 survey, Asahi asked that whether revision in Article 9 for building military forces was necessary or not? 31% respondents approved the idea while 32% opposed. When the same question was put in 1953 survey 31% replied in affirmation and 42% responded in No. In 1955 and 1957 when this question was presented more lucidly asking, 'Do you approve or oppose revising the Constitution in order for Japan to have a regular military Forces?' In 1955, 37% of respondent supported the revision while 42% opposed it. In 1957, the percentage of respondent who opposed revision was surprisingly

<sup>25</sup> Asahi Survey as quoted by Douglass H. Mendel Jr. op. cit p.69

high and it touched to 52% while the percentage of those supported revision came down to 32%<sup>26</sup>. (See Chart 3).

There are various factors that contributed in the rise of opposing revision in Article 9. Most important was the continued external pressure to expedite Japan's armament. The external pressure for armament resulted into fear of involving Japan in war. The masses thought that Japan's armament would serve purely US purposes.



**Figure 3**

**Whether Japan or the US benefits from US-Japan Security Treaty:**

The surprising degree to which the average Japanese viewed native rearmament as benefiting the US more than Japan was confirmed in an Asahi survey conducted in June

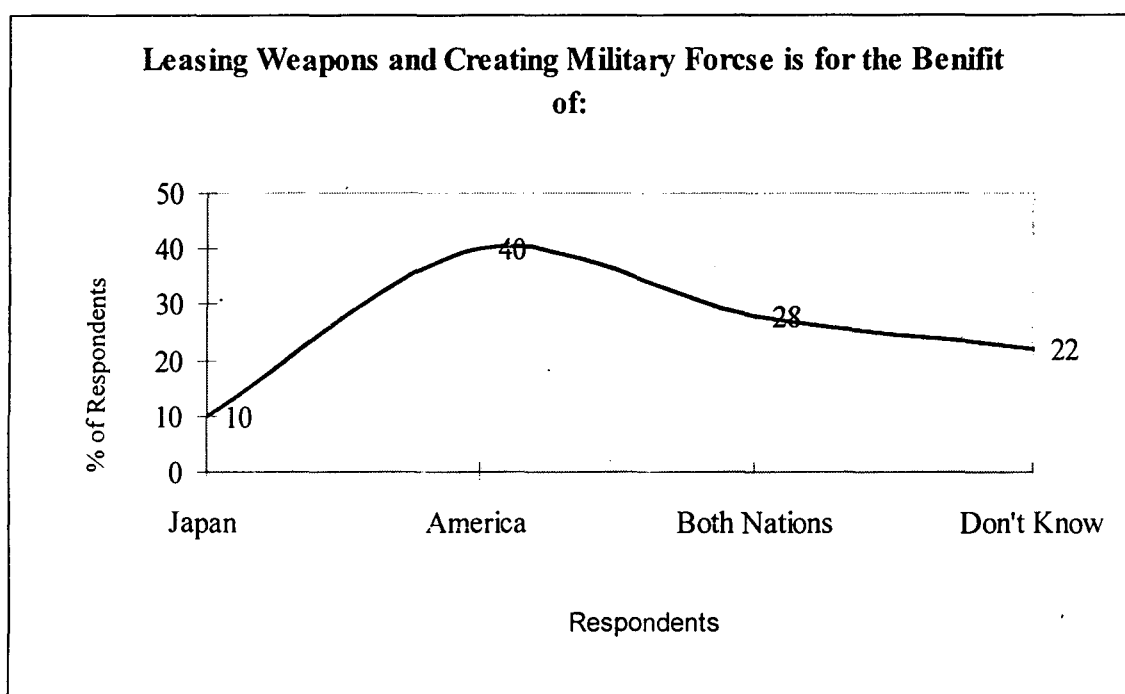
<sup>26</sup> *ibid* p.74



1953. Only 10% of people thought that the rearmament benefits Japan while 40 % replied that it benefits the US. Only 28% thought that it benefits both the US and Japan<sup>27</sup>. (Chart 4).

Another factor that resulted in rising opposition of a revision in Article 9 was campaign from various peace groups like Denwakai, which tried to generate opinion against the rearmament and maintenance of peace among the masses. More and more people accepted their pacifist idea and opposed any effort to revise article 9.

**Figure 4: Re-armament for Japan or America?**  
(Total No. Of Respondents 2,515)



The trend of national opinion on revision of Article 9, indicates that revisionist sentiment remained constant at about 30% throughout the five years in Asahi survey. Opposition however increased from 32 to 57% by 1957.

### **The growth of Military Power under National Defense Buildup Plan:**

<sup>27</sup> Asahi Survey 1952 to 1957 as quoted by Douglas H. Mendel Jr. op. cit p.85.

Since the Establishment of Defense Agency, Japan carried out a series of five year National Defense Buildup Plans, gradually enhanced between 1958 and 1976, it drew up and executed four such plans. The equipping of military forces carried out under the first plan consisted primarily of the supply of US weapons. In the second program however, Japan had equipped itself with the most up to date equipments. It was only with the third plan, however that the most likely actual targets of military response have been specified and appropriate build up objectives and costs were accordingly assigned.

In November 1976, prior to the end of fourth national Defense build up plan, the government elaborated its thinking on national security, presenting in lieu of another concrete build up plan a set of General Principles of defense planning. This document was designed to impose constraints on the further growth of military power. The General Principles also established the principle that military spending should not exceed 1 percent of the GNP.

In November 1978, two years after the adoption of the General Principles process, the US and Japanese governments agreed to a de facto transformation of the mutual security arrangement in the form of a set of Guidelines for US-Japan Defense Cooperation. The Guidelines had three main features:

1. The Guidelines established nuclear deterrence as the foundation of security cooperation. The Japanese government in this document clearly recognized the nuclear deterrent role of the American forces in Japan. The Guidelines pledged “ The American forces will remain a [strategic] nuclear deterrent force and at the same time develop a [tactical] response force in a frontline position,”
2. The Guidelines called for coordinated cooperative action between Japanese and American forces in Japan.
3. The Guidelines called for US –Japanese military cooperation in the event of a situation in East Asia outside of Japan if it bore serious implications for Japan’s own security.

By the terms of these guidelines, the geographical limit of US Japan security cooperation spread far beyond the horizon and beyond all previous Japanese military obligations as well.

### **Pacifist movements against militarization and Security Treaties:**

These military build up and defense treaties roused concern among the pacifists and all those who had aversion towards militarization. They adopted various means to resist it. The Heiwa Mondai Denwakai (Peace issues discussion Group) played the most influential role in propagating peace thought among the masses by issuing statements and publishing thought provoking opinions in its magazine, *Seikai*. The Group's statements regarding the security treaty of 1950 and revision of treaty in 1960 exerted tremendous impact on the debate about peace treaty and influenced the radical political parties, peace movements and labour unions. The group took up the problems of peace and security at the level of thought and values. Most specifically, by examining a number of fundamental questions- what view of reality to adopt in regard to the international situation, what kind of security policy to pursue in the face of the destructive power of atomic weapons? Denwakai emphasized that in order to prevent war, the members of Denwakai should maintain a close and trustful relationship with the people.

One of the Security experts Glenn D. Hook has opined that Danwaki's statements can be viewed as a focal point of postwar peace thought on demilitarization because they were issued in opposition to practical start of militarization at the dictation of the US<sup>28</sup>. The group did not only issued statements but also presented some proposals to maintain peace amid the rising cold war confrontation. One of the Denwakai's leading political thinkers Murayama Masao gave the idea of "peaceful coexistence and "unarmed neutrality". The group proposed that as part of a new Japanese identity, the government play an active role in promoting cooperation and peaceful coexistence between the two worlds.

Following the US Japan Security Treaty and San Francisco peace treaty the Denwakai urged for the conclusion of a peace treaty with all former adversaries, economic and

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<sup>28</sup> Glenn D. Hook Militarization and demilitarization in Contemporary Japan- (Routledge London and New York 1996) p.38

political independence, inviolable neutralism, admission to the UN and opposition to the Japan's provision of providing bases to a third power. To this effect, the group stated "If we are to abide faithfully by the pacifist spirit of our Constitution, we are required to take a positive attitude in attempting to bring about harmony between the two worlds, instead of passively adopting our attitude on the peace settlement problem in line with the vicissitudes of international politics."<sup>29</sup>

The ideas that the Denwakai proposed played a significant role in determining mass approach and promoting mass action on security issues in the cold war era. Though the government did not accept the Denwakai's proposal for unarmed neutrality as its security policy, it became an integral part of security policy proposed by the socialist opposition (the Socialists approach on unarmed neutrality would be discussed in third Chapter) and the peace movements. As a result of Denwakai's endeavours, both parliamentary and extra parliamentary tactics to oppose the militarization got legitimacy in Japan. At the same time due to active propagation of peace at the individual level violent means of opposition in the masses lost popular support.

Amid the agitation against the renewal of US Japan Security Treaty of 1960 Koe naki Koe no kai (Voice of the Voiceless) came into existence. Through its movement the organization tried to focus on the views of ordinary citizens. It was organized by a group of intellectuals like Takabatake Tsurui and Tsurumi. Both the leaders later mooted the idea of constituting an organization *Betanumu ni heiwa O, Shimin bunka dantani rengo (Beherein, in short)*<sup>30</sup>. *Beherein* (Committee to peace in Vietnam) was Contemporary to Denwakai. Unlike the Denwakai it was a citizens movement launched to mobilize anti war sentiment in the masses against the US imperialism in Vietnam. In this movement *Beherein* tried to bring people from all walks of life to its fold to raise their voice for peace. One of the unique features of the movement was that it associated itself with the ongoing anti Vietnam War movement in the US and launched joint agitations against US aggression in Vietnam. A joint conference of the US and Japan's citizens was organized in this regard. The Conference drew up a Japan –US citizen's peace treaty which,

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<sup>29</sup> Ibid page 34.

<sup>30</sup> For details see "Beherein and Anti Vietnam War movement in Japan", in *Japan Quarterly*, vol. III, No. 4, October 1977, pp 6-21.

emphasized the right of the Vietnamese to live as a nation free from foreign intervention. Apart from this the treaty took following resolves.

1. Opposition to cooperation in the use of nuclear and other Scientific weapons,
2. Opposition to publicity activities, which in turn promoted war,
3. Movement directed at the withdrawal of US military bases in Japan, and
4. Movement to end the military alliance between the US and Japan.

In 1969 –72, Beherein widened its area of interest and activity and launched various protest movement to oppose the continuity of US –Japan Security treaty as well as the military bases in Japan. The Behrein on June 1969 organized a rally at Hibiya Park in Tokyo where 70,000 people gathered to protest, demanding to stop Vietnam War, End US Japan Security Treaty and return Okinawa. About a year later it organized a rally to protest the renewal of US- Japan Security treaty in which almost 80,000 people participated.<sup>31</sup>

Both the organizations played a significant role in the promotion of peace thoughts and anti-militarization movement in Japan. While Denwakai influenced people through debate on basic issues related to peace, the Beherein and other smaller groups sensitized the masses through their active participation against militarization, the US imperialism and revision of security treaty. Along side these movements anti nuclear movement was going on in Japan. The anti nuclearization movement took form of the mass movement following the atomic radiation at the Bikni islands nuclear tests conducted by the US.

#### **Anti Nuclear movement in Japan:**

Japan is the only country, which suffered the catastrophe of nuclear weapon. The effect of the nuclear bombing in two cities, Hiroshima and Nagasaki was horrible as it killed 150,000 and injured many more and turned the entire city into rubble. The after effect of the bombing resulted in the origin of nuclear pacifism in Japan. The Atom bomb survivors (Hibakushas) formed anti nuclear movement groups in Japan to oppose nuclearization of Japan as well as the world. They every year commemorate the atomic bombing on Hiroshima and Nagasaki on 6 and 9 August and pledge to save the world form another nuclear catastrophe. The anti nuclear movement became more vibrant

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<sup>31</sup> Nobuya Bamaba and John F. Howes (edits) “ Pacifism in Japan: The Christian and Socialist tradition.” (Minerva Press Tokyo, 1978) pp 270.

following the revelation of nuclear tests of 1954 Bikini incident. Following this incident the Gensuikyo (Japan Council against Atomic and Hydrogen Bombs) came to existence, which holds nation wide rallies including an annual world Conference against all forms of nuclear weapons. Following the Bikini incident opposition of nuclear armament became Japan's official policy as the Japanese administration viewed that if the nuclear tests are conducted in its territory, the people will continuously suffer from nuclear radiation.

Anti nuclear movement in Japan strengthened when the opposition parties joined hands with the ongoing anti- nuclear movement in Japan. The Socialists blamed the ruling LDP for having desire of the Kishi cabinet to arm the SDF with nuclear weapons and presented a resolution in 1959 in the Diet against possible domestic nuclear armament. Socialist's anger increased when Prime Minister Kishi told a Diet Committee that, "small atomic arms for self defense would not violate the Constitution."<sup>32</sup> Prime Minister Kishi's statement stirred anti nuclear debate in Japan. Due to continued pressure from the anti-nuclear lobby Japan in 1967 adopted Three non-nuclear principles (hikaku sangensuku) which spelled out that Japan is not to produce, possess or introduce nuclear weapons. Amid the debate whether Japan should join the NPT or not, the Yomiuri shimbun conducted a nation wise survey and put the question to 3,000 respondents asking, "whether they desire nuclear weapon for Japan"? Only 20% desired the weapon

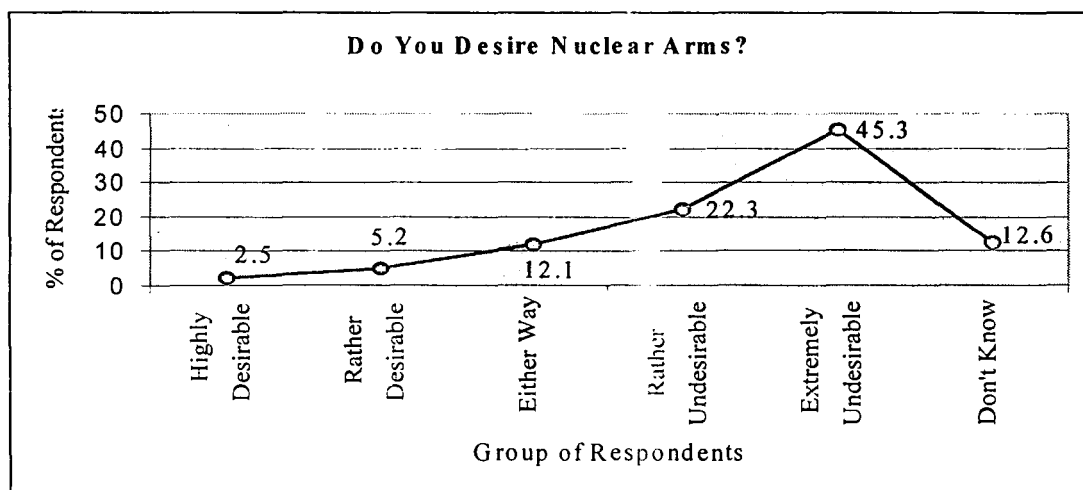


Figure 5

<sup>32</sup> Douglas Mendel H. Jr. op. cit p. 158

with some conditions while a majority of them resoundingly rejected the option.<sup>33</sup> (see Figure 5) The ongoing debate to renounce the option of nuclear weapon achieved substantial breakthrough when Sato government signed NPT in 1976.

The nuclear pacifists lobby in Japan has been so strong that it influenced the government to adopt a policy of suspension of ODA loans if a recipient country conducts nuclear tests and involves in WMDs proliferation. The result of this policy was visible when following the nuclear tests by China in 1995, and India and Pakistan in 1998 ODA loan was suspended. There still exists nuclear pacifism in Japan; however, it is eroding following nuclear ambition of North Korea and its recent announcement that it may produce nuclear weapon. As a result of this Japanese are weighing nuclear option as a deterrent to the North Korean nuclear challenge.

It is fact that the pacifist movements could not continue for so long and could not achieve to alter the course of remilitarization and termination of Security treaty, but the long-term influence of pacifist movements is evident in the preservation of Article 9, maintaining sustained pressure to get back Okinawa from the US occupation, the ban on the dispatch of military forces overseas, the imposition of a 1% ceiling on defense spending and adoption of three non-nuclear principles. There may be various reasons for gradual decay of the pacifist movements. But most obvious reason was emergence of new generation who had not witnessed the devastation of war, thus pacifist ideas did not appeal to them that much.

Another reason for the decay of pacifist movement was the government's relentless pursuit for remilitarization, ignoring the exhortations of the pacifists. The emergence of nationalist leaders like Nakasone who vociferously talked about amendment in imposed Constitution and mutual alliance with the US was yet another blow to the pacifist's ideal to establish a peaceful and unarmed Japan.

### **Militarization During Nakasone Regime**

In 1982, Nakasone Yoshihiro the ardent nationalist and a former JDA Chief was instated as the Prime Minister of Japan. The imprint of his nationalism is visible in the policies he

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<sup>33</sup> The Yomiuri Shimbun, May 31, 1970 as quoted in Endicott, John E. (1972) Japan's Nuclear Option: Political, Technical, and Strategic Factors. Praeger Publisher, New York p.98.

pursued. He sought to take a number of initiatives aimed at breaking out the normative constraints imposed on the military as a legitimate instrument of state policy. The salient feature of militarization during Nakasone administration (1982-87) was to further increase Japan's military might and integration with the US Forces in the region. There was tremendous pressure from the US administration to increase armament to play a vital role in maintaining military balance to fight the challenges of Cold war. Prior to the advent of Nakasone successive Japanese administrations had been able to use domestic political factors, such as popular opposition to increased expenditure and Constitution as a means to resist pressure from the US. Nakasone's political will to create a new national identity and normalization of Japan<sup>34</sup> helped the US to push Nakasone for greater militarization in Japan.

Following his visit to the US and meeting with the US President Ronald Regan, he announced that- "Japan is unsinkable aircraft carrier for the West". In this way, he accepted a greater defense burden as demanded by the US and took endeavor to boost Japan's military might. With the greater defense cooperation Nakasone aimed to achieve his own nationalist goal of making Japan an international State (*Kokusai Kokka Nippon*)<sup>35</sup>. His policy resulted into cooperation in military planning, combined military exercises and technology transfer related to defense industry.

Through these initiatives Japan tried to dispel the "free rider" theory, which always criticized Japan for taking a free ride on US defense system and not spending for its own defense. But increased defense spending resulted in the erosion of 1% GNP barrier for the first time in 1987, (See the Table on page 42) which was imposed during the Miki cabinet in 1976. In yet another step Nakasone partially breached the ban of export on weapon related technology, by signing an Exchange of Technology Agreement between Japan and the US. Another step, which he took, was to visit Yasukuni shrine (symbolic Fountainhead of prewar militarism) in the official capacity of Prime Minister. This stirred the debate in East Asian countries and was seen as the revival of Japanese prewar militarism. Through this visit Nakasone revived the spirit of nationalism in the new

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<sup>34</sup> Glenn D. Hook op.cit p.70.

<sup>35</sup> ibid p.70.



generation and the critical reaction from the neighboring countries further fuelled such nationalistic views especially amidst youth.

To sum up, the resurgence of nationalism and big power consciousness in the name of internationalization clearly demonstrates that apart from external pressure, pressure to strengthen Japan's military came from within the government and governing party, too. In this sense Nakasone skillfully exploited American pressure as a means to legitimize the military build up despite opposition at the popular level.

### **Conclusion:**

It should be clear from the above discussion that during the early years of occupation a host of provisions were made to make Japan a demilitarized and peaceful country. All these measures were to some extent enthusiastically accepted by the majority of masses who had bore the brunt of catastrophic war. But with the bipolarization of the world and the outbreak of Korean War, US stances towards Japan greatly changed. The US, which has imposed pacifism on Japan, pressurized it to play an active role in containing communism in the region. Japan entering into US alliance tried to secure its territory under the US Defense System on one side and utilized opportunity to strengthen its economy under US led Capitalism. With the rapid economic growth in Japan, US further pressurized it to play its role as a security ally commensurate with its economic strength. But the continued pressure from the pacifists against the Japan-US Security System, and their movements against the remilitarization and revision in pacifist clause put a check on such move over the various political will of Japanese leadership. The opposition parties role is also questionable here because during the 1980s except the Communists, opposition parties had shed their anti militarist policies and adopted more accommodative stance towards defense and security policies pursued by the ruling party. In 1980 the Democratic Socialist Party (DSP) demonstrated a change to a pro-military stance in supporting the government's legislation to revise the defense Agency Establishment law, the SDF Law and Defense Agency Employee Salary Law. Like wise, in the Party's action program for 1983 and in the 1983 Outline of Important Policy Points, the DSP called on the public to support greater defense expenditures and accepted a role for Japan in securing the Sea Line of Coordination (SLOCs) as a member of the west. In 1981

Komeito Party at its 19<sup>th</sup> Congress, came out with the support of Japan-US security treaty and by declaring support for forces capable of preserving Japan's territorial integrity, expressed conditional acceptance of the constitutionality of the SDF. It accepted the continued maintenance of Security Treaty with the US terming it unavoidable.

Amid this change in opposition attitude, Nakasone took rein of the political affairs. Nationalism once again saw a sudden rise. Nakasone pursued active rearmament and defense build up policy and skillfully capitalized the change in opposition's mood in realizing his goal of a global Japan. Thus as a result of external pressure and an internal churning the normative principles impeding Japan's Militarization were gradually eroded but Article 9 of the constitution, a major constraint in breaking pacifism, remained intact till the end of 1980s. Yet another external change like the end of Cold war and the Gulf War of Iraq pushed Japan for a greater global role in the field of security. This time Japan was compelled to reexamine its role in world affairs and particularly in the UN Peace keeping mission. For this reason Japan was thinking to amend its pacifist Constitution to integrate its security policies with the changing Security scenario in the post Cold war period. It is these external and internal developments that will be discussed in the next Chapter.

**Table: Trends in Defense Expenditures, 1980-92) Initial Budget (¥ Billion)**

Year	GNP (A)	General Account expenditures (B)	Increase Over Previous Year (C)	Defense Expenditure (D)	Increase Over Previous Year (E)	Defense Spending as % GNP (D/A)	Defense Spending as % of Govt. Spending (D/B)
1980	247,800	42,600	10.3 %	2,200	6.5 %	0.900 %	5.3 %
1981	264,800	46,800	9.9 %	2,400	7.6 %	0.910 %	5.1 %
1982	277,200	49,700	6.2 %	2,600	7.8 %	0.930 %	5.2 %
1983	281,700	50,400	1.4 %	2,800	6.5 %	0.980 %	5.5 %
1984	296,000	50,600	0.5 %	2,900	6.6 %	0.990 %	5.8 %
1985	314,600	52,500	3.7 %	3,100	6.9 %	0.997 %	6.0 %
1986	336,700	54,100	3.0 %	3,300	6.6 %	0.993 %	6.2 %
1987	350,400	54,100	0.0 %	3,500	5.2 %	1.004 %	6.5 %
1988	365,200	56,700	4.8 %	3,700	5.2 %	1.013 %	6.5 %
1989	389,700	60,400	6.6 %	3,900	5.9 %	1.006 %	6.5 %
1990	417,200	66,200	9.6 %	4,200	6.1 %	0.997 %	6.3 %
1991	459,600	70,300	6.2 %	4,400	5.5 %	0.950 %	6.2 %
1992	483,700	72,200	2.7 %	4,600	3.8 %	0.940 %	6.3 %

(Source: 1992 Defense White Paper, 1992, p. 306)

## CHAPTER – 3

### The Pacifist Constitution: Need and proposals for amendment

#### Introduction:

The disintegration of Soviet Union in 1990, led to the end of the cold war. This phenomenon combined with other developments<sup>1</sup> in the world affairs, marked a major turning point in Japan's foreign policy and relations as well. During the Cold War period, as a staunch ally of the US, Japan played a major role in containing the spread of communism as it supported the "balance of power" theory by providing strategic and logistic support to the US. Considering this, Japan was seen among victors, in the war against communism. With the end of Cold War the primary goal of US-Japan Security Treaty was achieved. Varied opposition, from political parties and masses, in Japan came to question the continuing need for the Treaty, while on the other hand, criticism in US about "Japan's free ride" gained momentum. Japan therefore was forced by the US to play an active global and regional role, which compelled Japan to re-examine its security policy.

Thus, there were proposals to redefine fundamentally the nature, form and content of the US-Japan mutual Security Treaty. But in the post cold war period, Japan was reluctant to play its global role as per the US dictates, as reflected in the Japanese non- participation in the Gulf war 1991, which in fact was the first serious post- cold war military engagement. Japan cited its pacifist constitution and especially the war renouncing Article 9<sup>2</sup> for its non-participation and saved the situation by contributing to the war fund by "Check book diplomacy". But criticism and pressure from the US and other allies continued even after the war. The helplessness of Japan arose due to its pacifist constitution and specially the war renouncing Article 9. To meet the US aspirations and demands Japan considerably changed its pacifist policies in the post gulf war era.

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<sup>1</sup> Other development refers to Gulf War 1991 nuclear crisis in the Korean peninsula.

<sup>2</sup> 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.

Changes in Japan's pacifist policies are manifested in various legislations aimed to deploy its forces overseas, reviewing Japan-US Defense Guidelines and constituting "Constitutional Review Council" to review Japan's constitution. This Chapter will discuss all these aspects that resulted in profound changes in Japanese security policy as well as look into the proposals floated by media and political organizations to make the constitution relevant. An attempt has also been made to look into the recommendations by the Constitution Study Councils of both the Houses of the Diet. The objective is to examine the context in which Japan can integrate its pacifist constitution with its Security policies in the post cold war period and how can it make the constitution relevant to the challenges of the 21<sup>st</sup> century.

### **Factors resulting Change in Japan's Foreign Policy:**

The post-cold war period witnessed swift developments in international politics and rapid global changes. This was more challenging for Japan, since global changes in power alignment, compelled Japan to assume a greater global role, inclusive of a military role. Incidents such as, Iraq's invasion on Kuwait in 1990 and nuclear crisis in the Korean peninsula, demonstrated that the end of cold war did not mean the end of security concerns. Instead it may be the beginning to a new security situation calling from Japan to respond. The changing political scenario in the Middle East placed Japan in a vexed situation. The US exhorted Japan to play its role by committing troop's deployment in Iraq. For Japan, on the one hand, committing troops to Iraq could have been violation of the 'Article 9' of its constitution, which renounces war as an instrument of settling disputes, while on the other hand, it could have been, the end of "omni directional foreign policy"<sup>3</sup> towards the Arab world codified during Prime Minister Masayoshi Ohira's regime. Thus, the policy makers in Japan were also worried that its troop deployment overseas might affect its good relations with the Arab world and will also be a disturbing factors to its Asian neighbors. It was in this regard that the ruling Liberal Democratic

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<sup>3</sup> The omni directional foreign policy was adopted following OPEC's denial of its oil resources to Japan, which resulted in oil crisis of 1971 in Japan. Japan succeeded in getting oil resources, when it took pro-Arab stand on Palestine issue.

Party's effort to send Japan's Self Defense Forces (SDF) by enacting UN Peace Cooperation Bill, failed to gain Diet's majority approval.

This generated a renewed debate on Japan's inactivism and its role as a mute spectator at a time when major powers contributed towards maintaining international peace. Further Japan also realized that it cannot play an international role in the changing world politics by its Check book diplomacy alone. Feeling strongly betrayed and let down by these criticisms, Japan went on to examine its own foreign policy mechanism and sought a renewed international role. By interpreting war renouncing Article 9, the Diet adopted an International Peace Cooperation Bill in 1992. This bill paved the way for SDF participation in UN peace keeping operations, for the first time in Cambodia and subsequently, in Golan Height and East Timor.

The US since long has been demanding Japan of a pro-active role and expects that Japan should stand as a true ally and not just as a "free rider". In the post cold war period US-Japan mutual Security alliance has been further strengthened with the two sides signing, the following defense agreements--

- a. Guideline for Japan – US defense cooperation – 1995.
- b. Law situation in Areas surrounding Japan – 1999.

US Japan defense guideline (1995) confirmed that Japan and US will work jointly not only for their own mutual defense but also for the broader international good namely the creation and maintenance of security regime spanning to the entire Asia pacific region. In another development Japan signed the law on situation in areas surrounding Japan. This law defines the range of actions in which SDF can lend support to the US "in situation in areas surrounding Japan that will have an important influence on Japan's peace and security."

#### **East Asian Concern Over Change in Japan's Pacifist Policies:**

These defense build up and Japan's recent initiatives to play a renewed role in international affairs have given rise to a variety of criticism in concerned Asian countries.

Lee Kuan Yew, Singapore's former Prime Minister, criticized the SDF dispatch harshly- "call it a PKO if you like, the overseas dispatch of the self defense forces are like offering whiskey bon-bon to an alcoholic".<sup>4</sup> And when Japan was all prepared to send its SDF troops to Iraq, China voiced its concern saying, "China hopes that Japan will stick to its policy of exclusive self defense". China Youth Daily, the newspaper of the Chinese Communist League, criticized Japan's involvement, saying it could set the country on a new quest for modern military power. "Although we can not yet claim that Japan's troop dispatch to Iraq will inevitably take it back to its previous militaristic path, this large scale military action has fundamentally undermined the Peace Constitution and pushed Japan a large step forward towards becoming a major military power"<sup>5</sup>, it said. North Korea too harshly criticized Japan's moves. The ruling party newspaper Nodong Sinmun said talk in Tokyo of a revamp of Japan's defense posture "reveals the aggressive nature of Japan turning to the right and heading for its militarization. The North Korean state news agency KCNA quoted Nodong Sinmun as saying that plans by Japan to boost participation in UN mission overseas were "nothing but a plan for overseas attack and war"<sup>6</sup>. The US is now escalating its war of aggression worldwide under the pretext of the 'war on terrorism' and urging Japan to render active military support to it. KCNA said. The news agency further added that Japan is taking this situation as a golden opportunity for revising the article in the present constitution, which bans war, and going for overseas aggression without hindrance.

These statements suggest that Asian countries, which still bear the scars of Japanese aggression, view these developments as resurgence of Japan's military adventurism.

### **Changing Stances of Political Parties:**

The debate regarding SDF and constitution has profoundly affected Japanese politics. The record shows that that the opposition mainly the JSP and JCP have been poles apart with the government on the issue of defense and Security, though they have gradually diluted some of their stances in the changed realities. In this context, the issue demands a

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<sup>4</sup> Shindo H. Abe, M. and Kawato, S.(1994) The Government and Politics of Japan University of Tokyo Press.p. 111.

<sup>5</sup> <http://news.bbc.uk/go/pr/fr/-/hi/world/asia-pacific/3413769.stm>

<sup>6</sup> ibid

critical evaluation of the stances of different political parties in a historical perspective. Lets begin with the socialist party. The Socialist party in its Basic Policy on Peace Treaty adopted in 1950 stated Japan has declared its commitment to disarmament and peace in the constitution, and what this means is that it be neutral in international disputes. In 1951, the party laid down its Four Peace Principles: opposition to rearmament, a complete peace treaty (with the Soviet Union and China), neutrality and opposition to the presence of military bases in Japan.

Since then the Socialists stance on Security was that the country could be best protected by possessing no arms and adopting a neutral position in world affairs. Confrontation between the socialists and the establishment regarding foreign relations and defense led to disputes ranging from parliamentary debate to popular demonstrations.

The socialists could not sustain to continue their stances for long and in the face of changing international realities, the Socialist Democratic Party of Japan (SDPJ)<sup>7</sup> tried to revise its Security policy. In 1984, for the first time, Ishibashi Masashi, party Chairman, took first step toward approval of the SDF. He argued that the SDF might unconstitutional but could still be considered legal. He stated that even though the existence of the SDF runs counter to the letter of the constitution, its creation was sanctioned through legal procedure and parliamentary deliberation. They realized that despite their continued opposition to the SDF the organization was firmly established and gained legitimacy in the majority of the masses. Therefore, this changed stance towards SDF was the product of desperate necessity. Despite this revision towards SDF they still advocated for UN centred foreign policy and argued that the UN must be entrusted the security of every country.

The major changes in socialist party's line were witnessed in 1994, when the socialists for the first time formed a coalition government. Prime Minister Tomichi Murayama lauded the role of the SDF saying, "an organization devoted exclusively to defense and armed to the minimum extent necessary, is in conformity with the constitution". Murayama also embraced the Japan –US Security Treaty, which the SDPJ had bitterly

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<sup>7</sup> Earlier known as Japanese Socialist party (JSP).



opposed for decades, saying the treaty “serves the political foundation for broad US Japan cooperation in the international community”<sup>8</sup> and deeming it indispensable to the development of peace and prosperity in Asia. His acceptance to US-Japan Security treaty approved the SDF participation in the Rim of the Pacific exercises sponsored by the US Navy and Japan’s possession of the Airborne Warning and Control System (AWACS).

These changes in fundamental policy, the Socialist Party for a decade had adhered to, came probably to cope with the changing realities. It must be noted here that the SDPJ’s policy had represented the sentiments of people who feared that the confrontation between the two superpowers would pull their country to another catastrophic war. But the disintegration of the Soviet Union and US–Soviet rapprochements allayed this fear and the party probably must be thinking that they could not garner public support if they continue on these policies. There may be more reasons for this policy change such as, SDPJ’s wish to continue in coalition politics for a longer period of time and to narrow down their differences with its then coalition partner the LDP. Most importantly it could have been very difficult for Murayama to term the SDF an illegal and illegitimate organization to which he was the head as a new Prime Minister and with the passage of time and interaction with the US leaders he may have realized that the Japan-US Security alliance is a reality. Rather than abandoning the security treaty he preferred to abandon party’s long held stances.

### **The Japanese Communist Party (JCP):**

Like the Socialist Party, the Communist Party has also revised its position on security and defense policy. During the early years of Occupation the Party adopted a policy that Japan should renounce aggressive war not a defensive war. At the time of renouncement of war, a communist member in the parliament, Nosaka Sanzo argued saying, “We should renounce aggressive war instead of war in general. Isn’t it more accurate to define in this way we wish to renounce.”<sup>9</sup> The party expressed its reservation by voting against the

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<sup>8</sup> Fukatsu Masumi “The SDPJ’s Astronomical Shift in Policy”, *Japan quarterly*, January–March 1995.

<sup>9</sup> Dai 90 kai teikoku gikai shugiin giji shokiroku no.8 (June 29, 1946) as quoted in Koseiki Shichi op.cit p.123.

ratification of the Constitution in the Lower House.<sup>10</sup> But with the passage of time, the party took U-turn on its stance on Defense and Security. In its party mouth organ Akahata the JCP advocated for “eliminating militarism” but did not take the explicit position to unarmed neutrality instead called for neutralization of Japan with the dissolution of security treaties. Later the party clarified its view in a policy statement and dealt the subject in relation with the Security Treaty.

“ Our proposal for abrogation of Security Treaty and dissolution of Self Defense Forces is not because we deny the right of self defense [to Japan] but because American imperialism aims at invading Japan infringing on her sovereignty...the Self Defense Forces are an army that serve the US and oppresses the Japanese people”.<sup>11</sup> In 1972 the JCP pledged in its policy statement that as the SDF is unconstitutional and subordinate to the US, it would be dissolved and fate of the self-defense would be decided by the collective will of the people.<sup>12</sup> The party has been the flag bearer in mobilizing mass rallies against the revision of Security treaty and still strongly opposes any revision in the pacifist clause of article 9 and wants that, it remains intact because once it is revised US will capitalize SDF to meet its aspiration in its missions overseas.

### **The Komeito party:**

The Komeito party since its inception in 1965 had been advocating peace through pacifism. As its objective, it outlined the achievement of total disarmament, total abolition of nuclear weapon, strengthening the UN and peace maintenance by UN Police Force. It also advocated omni directional foreign policy and a scaling down of the Japanese –US Security Treaty. In 1972 election the party pledged to defend the peace constitution and promote the peace and neutralization with neutral diplomacy. It also advocated the removal of US military bases and an early dissolution of the Japan-US Security Treaty structure. But the Komeito also reversed its security policy in the 1980s. The party since inception has been demanding gradual dissolution of US Japan

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<sup>10</sup> Sims, Richard, Japanese Political History since the Meiji Renovation 1868-2000 (Palgrave Macmillan Ltd., New York, 2001) p.244.

<sup>11</sup> John E. Endicott, “Japan’s Nuclear option: Political. Technical and Strategic Factors.” Praeger Publishers. New York 1978. p.83

<sup>12</sup> *ibid* p.83.

Security Treaty, supported the treaty in its 19<sup>th</sup> Party Convention held in 1981. In the same convention by declaring support for the forces capable of preserving Japan's territorial integrity accepted conditional constitutionality. The Komeito further diluted its stance once it entered into an alliance with the LDP and formed a coalition government in the mid 1990s. On the issue of overseas dispatch of SDF the Party has hesitantly approved it on the condition that the troops should be deployed in non-combat zones only. However a plan approved by the 2002 convention the party said that the Article 9 should remain unchanged and the party had decided to reach an agreement on the issue by 2005. In the most recent recommendation by the Lower House Constitution Research Council submitted on May 15 2005, the Komeito along with its coalition partner has supported to amend the Article 9, without changing the first clause that renounces war.

### **The Democratic Socialist Party (DSP)**

The Democratic Socialist Party, Democratic ( DSP), since its formation in 1960, has adopted a different stance which is similar to that of the ruling governments. Regarding the security issue it declared that it would encourage disarmament through the legitimate body that is the UN and called for adjustment of relations with the US to reflect the multi polar world. In 1972 election in its policy statement it pledged as follows-

“We will promote peaceful diplomacy of autonomy and coexistence and contribute to the formatting of a new peaceful order in Asia. Especially we will strive (1) to realize a security treaty without military bases and stationing of forces, by revising the security treaty (2) to oppose the fourth defense plan and form a national consensus on civilian control and defense.”<sup>13</sup>

But in 1980s the DSP also demonstrated a change in its security policy and took a pro military stance identical with the LDP. It supported the government's legislation to revise the Defense Agency Law and the Self Defense Forces Law and Defense Agency Employee Salary Law. Likewise in 1983 the party called on the public to support greater defense expenditure and accepted a role for Japan in securing the Sea Line of Coordination (SLOC.)

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<sup>13</sup> Tokyo Shimbun November 4, 1972 as quoted in John E Endicott, op. cit p. 82.

## Democratic Party of Japan (DPJ)

The newly formed Democratic Party of Japan (DPJ) was opposed to the Iraq legislation (adopted by the parliament in October, 2003), and not to troop dispatch per se. At various occasions, the party maintained that Japan should send its troops only after the UN Security Council passes a resolution at the behest of Iraqi government. The Party also realizes that the Constitution should be adjusted with the new realities of the post cold war period. In its convention held on January 13, 2004, then Party president Naoto Kan said that his party will work out its own proposal by 2006,<sup>14</sup> the 60<sup>th</sup> anniversary of the promulgation of constitution. Naoto Kan called for a national debate involving all sectors of the public. Perhaps it was not in the mood to a back door arrangement with the LDP, which also has similar stance on Constitutional amendment and never want to take LDP the credit for it. To this end he made the announcement in the Diet as follows—“ If the main ruling party and the biggest opposition party starts a discussion first, the people will not be involved in the process (for revision to the Constitution). That amounts to *Dango* (behind the scene negotiations) by the politicians,” He said, “first of all, the issue of Constitutional revision should be discussed amongst a wider range of people. Then, Japan will be able to become a country in which sovereignty actually rests with the people.”<sup>15</sup> Later a senior leader of the party Yuki Hatoyama presented a draft proposal for the amendment in Constitution. Hatoyama proposal suggested retaining war-renouncing provision of article 9 but also acknowledged the SDF as bona fide military. Regarding the participation in the UN the draft says, Japan shall actively participate in activities undertaken by the UN or other established international organs to maintain and create peace.” Hatoyama said, when participating in such international activities Japan must act on UN resolution and the Prime Minister must obtain Diet approval.<sup>16</sup> On another occasion in an apparent move to speed up the debate within the party which is expected to forward proposal for a revision in Constitution in Spring 2006, Hatoyama said that people should not spent too much of time when we are to shape the state of this nation...If combined the number of LDP and DPJ (lawmakers) constitutes more than two

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<sup>14</sup> The Japan Times Jan 27, 2004.

<sup>15</sup> The Asahi Shimbun , January 23, 2004.

<sup>16</sup> The Japan Times, January 3, 2005.

third of the vote in both the diet Chambers.”<sup>17</sup> True to its statements the DPJ supported the proposal of Lower House Research Commission on Constitutional review. The DPJ lawmaker Yukio Edano, who was also the deputy Chairman of the Commission while, submitting the findings of the Commission to the Lower House said, the Commission did not aim at setting a certain course from the beginning. It will be appropriate for the commission to be authorized to deliberate on the referendum bill as well as the constitution itself further”<sup>18</sup>.

### **Liberal Democratic Party (LDP):**

The LDP’s policy on the Security and Constitution has also not been consistent. During the postwar period when it was still under the Occupation, it adopted pacifist stance towards security and advocated for the preservation of Article 9. In 1946 in the plenary Session of the House of Representatives to a suggestion by a Parliament member that “we should renounce aggressive war instead of war in general, Prime Minister Yoshida Shigeru’s reply was as follows—

I think that the very recognition of such a thing (for a state to wage war in legitimate self defense) is harmful.(applause) It is a notable fact that most modern wars have been waged in the name of self defense of states. It seems to me, therefore, that the recognition of the right of the self-defense provides the cause of self-defense.”<sup>19</sup>

Yoshida’s response became known as official interpretation until self-defense force was formed in 1954. In 1957 the Prime Minister Kishi initiated the investigation Committee for constitution hoping to amend Article 9. But the committee could not come out with a concrete proposal as the party itself was divided into a hawkish and dovish camp, the former advocating for its scrap while the later arguing to retain it intact.<sup>20</sup> The hawkish faction became dominant in the 1980s and took bold steps towards militarization of Japan but could not push for the revision realizing that the majority of the masses are still in

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<sup>17</sup> The Japan Times, March 12, 2005

<sup>18</sup> The Japan Times, April 16, 2005.

<sup>19</sup> Quoted in Ronald Dore Japan, Internationalism and the UN. (Routledge London and New York 1997).p.56.

<sup>20</sup> Malcolm McIntosh.op.cit p.29.

favour to retain the pacifist clause. In the post cold war it has taken some initiatives, which is indicative that it is in the move to unshackle Japan with the amendment in the pacifist constitution. In the post cold war period, the ruling LDP's security policy features three basic points, first SDF is constitutionally legitimate organization, second, the Japan US treaty is the main pillar of Japan's foreign policy and the third, the US military presence in the Asia pacific region is playing a key role in maintaining peace and stability in the area. Continuing on its affirmation, the party in its election manifesto of 2004 Election has set its goal of revising the constitution. The LDP has resolved to have a Japanese combat troop by the end of 2005. Following the change in DPJ stance on Constitutional amendment the LDP sought DPJ's cooperation in achieving changes to the constitution and Prime Minister Junichiro Koizumi said that "many leaders in the LDP and Minshuto (DPJ) have a common idea and the LDP is not going to revise the constitution by itself."<sup>21</sup> These efforts later availed fruit when the DPJ lawmaker took an identical position on the issue of an amendment in the Constitution in the Lower House Constitution Research Council.

#### **Academicians and the Constitutional Amendment:**

Like the political parties academicians are also divided on the issue of Constitutional revision. The well-known Japanese academician and senior Professor of Tokyo University Mr. Akio Watanabe in one of his article has suggested that 'constitution must be rewritten' if the Constitution is ambiguous with regard to meet the terms of the international norms. However he is not of the view to discard the pacifism from the constitution. He argues that regardless of whether Japan amends its Constitution, the area in which it can make most meaningful contribution will continue to be support, for the consolidation of peace and for nation building. Therefore he concludes that any amendment of the Constitution needs to preserve the document's peace loving spirit.<sup>22</sup>

Professor Setsu Kobayashi had been an advocate for revising article 9 to make it clear that Japan can defend itself with the SDF. But recent policies of Koizumi government

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<sup>21</sup> The Asahi Shimbun January 23, 2004.

<sup>22</sup> Akio Watanabe, "The UN and Japanese Constitution" Japanese Echo volume 32 Number 1, February 2005 pp52- 54.

and particularly Prime Minister Koizumi's announcement that the SDF deployment to Iraq is to bolster alliance with the US has annoyed him and led to the review his support for the revision in Constitution. Reacting on Koizumi's pro US policy for the War in Iraq, he commented, "I do not want to make Japan as a country that blindly follows the United States like its subordinate state. Article 9 may serve as a brake."<sup>23</sup>

Shinichi Kitaoka a professor of Tokyo University is strong proponent of Constitutional amendment in Article 9. His proposition in an article "*The Constitutional Debate in Japan: Cutting the Gordian knot*" published in Japan Review of International Affairs (fall 1999) has been widely quoted by the Japanologists. Regarding the article 9, Kitaoka says that the article has serious flaws that constrain the development of Japan's security policy. In his opinion the two paragraphs of the Article 9 articulates 'complete different' and 'contradictory' principles. Paragraph 1 stipulates the peaceful settlement of international disputes. However, paragraph 2 is based on a separate principle, which has been termed as "nonmilitarism". He argues that this is a principle that has not been adopted by any other country. He further argues that UN has spelled out in its Charter that 'the countries are not to resolve their differences by force but to leave this to UN forces'. The UN however does not have military forces of its own and Peacekeeping forces are made up of military contingent from member state. Therefore not possessing military force runs counter to the principles of the UN. Based on this argument he suggests either deleting paragraph 2 or amending it <sup>24</sup>

### **The Governments interpretation of Article 9:**

The war renouncing Article 9 of the Japanese constitution have been in the lime light due to the defense build up activities pursued by the Government of Japan (GoJ). The issues such as-procuring "war potential", use of armed forces, deployment of SDF overseas and interpreting right of collective defense are seen contradicting the pacifism enshrined in article 9 and violation of the peace constitution. However the government has its own

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<sup>23</sup> The Japan Times, May 2 2004.

<sup>24</sup> Shinichi Kitaoka "The Constitutional Debate in Japan: Cutting the Gordian knot" Japan Review of International Affairs. Fall 1999, vol. 13 No.3.pp 191- 205.

stated interpretation for maintaining right of self defense, as it is a sovereign state. The defense white paper 2003 clarifies the government's position as follows-

“ Since the right of self defense is not denied, the government interprets this to mean that the Constitution allows Japan to possess the minimum level of armed strength needed to support the exercise of that right. On the basis of this understanding the government as part its exclusive self-defense oriented basic policy for national defense under the terms of the constitution, maintained the Self Defense Forces as an organization, continued to equip and prepare it for operational use.”<sup>25</sup>

The next issue is Japan's procurement of “war potential” which once again contravenes paragraph 2 of article 9 Here the Japanese government has different logic for the maintenance of defense capabilities. It interprets that Japan has the right of self-defense it has to maintain defense capabilities up to a specific limit and this limit will depend on various factors such as “prevailing international situation and available military technologies”. Thus the government implicitly interprets that the maintaining certain war potential will be in proportion with the military capabilities of the present world order. However the government honestly admits that procuring WMDs and those characterized, as offensive weapons would exceed the minimum self-defense limit. The defense white paper states- “ The SDF therefore is not allowed to possess International Ballistic Missiles (ICBMs), long-range strategic bombers, or attack aircraft carriers.”<sup>26</sup>

Regarding the exercise of the rights of self-defense, the GOJ interprets that this is permissible under the Article 9 only in the following three conditions<sup>27</sup> are met ---

- a) There is an imminent and illegitimate act of aggression against Japan:
- b) There is no appropriate means to deal with the such an acts of aggression other than by resorting to the right of self defense; and
- c) The use of armed strength is confined to the minimum necessary level.

In the case of geographical boundary within which the government can exercise the right of self-defense, the defense white paper says that ‘it would vary according to the details

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<sup>25</sup> Defense of Japan, Defense White Paper2003, Japan Defense Agency.p.113

<sup>26</sup> ibid p.113

<sup>27</sup> ibid p.113



of the case'. The government's stated position however regarding the dispatch of the SDF is that the government cannot send the troops abroad "because such an overseas deployments of troops would generally go beyond the necessary level of self-defense."<sup>28</sup>

On the issue of right of Collective self-defense, the government believes that since Japan is a sovereign nation it naturally has the right of collective self-defense. However, so far maintained that "the exercise of the right of collective self defense exceeds the limit of self defense authorized under Article 9 of the Constitution and it is therefore not permissible under the constitution."<sup>29</sup>

The last question is that, if Japan exercises the right of self-defense will it be termed as belligerent action and will it be a violation of the paragraph 2 of the Article 9? The government admits that if Japan inflicts casualties and damage upon an enemy's military force in exercising its right of self defense, it will not constitute right of belligerence, "although there may be seemingly no difference in what was actually done"<sup>30</sup>. It adds further that the occupation of enemy's territory, however, exceeds the limits of the minimum self-defense.

#### **Proposals to amend the Constitution:**

Amid the debate over Japan's non-participation in overseas deployment and to cope with the changing situation, there came various proposals to the fore, suggesting how to overcome the situation. The proposals by leading media organizations like Yomiuri Shimbun, Sekai, and Asahi Shimbun caught attention. Though these proposals cover various issues related to Japanese society, only those suggestions pertaining to this research are being reviewed here.

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<sup>28</sup> ibid p.114

<sup>29</sup> ibid p.114.

<sup>30</sup> ibid p.114.

## **The Sekai Proposal**

The Sekai Journal for long had been one of the leading media organizations of the pacifist movement in Japan. In line with its ideology it enunciated its position in two phases in 1993 and 1994. To resolve the issue of constitutionality of the SDF, the Sekai proposal<sup>31</sup> recommended establishing a Basic Peace Law. The law it proposed will contain the war renouncing provision of preamble of present constitution as well as retain the Article 9 without any amendment. In addition, the Basic Peace Law would contain 'prohibition of military alliances' and 'preservation of three non-nuclear principles'. The proposal termed the Basic Peace Law as a semi constitutional law, which in legal term would be a derivative from Article 9. The Japanese Defense Agency (JDA) and SDF based on the present defense law would be restructured and incorporated under this law. The proposal suggested that from the moment of inception of Basic Law, the SDF, because of unconstitutional element it contains, would be described as 'in an unconstitutional state'. Thus the SDF could be transformed into a transitional National Guard (*Kokudo Keibitai*) and finally would be established as Minimum Self Defense Force (MSDF). Regarding the proposed MSDF the proposal says that its task would be to respect the spirit of the constitution and defend the people from any act in violation of territorial sovereignty and it would come under the supervision and command of the Prime Minister. The MSDF, it proposed, would not be used beyond the boundaries of Japanese sovereignty. It suggested Japan for reconciliation with its own neighbours through apology and compensation for the wounds of the war and thereafter by building networks of peace and cooperation (involving the gradual dissolution of existing military treaties with the US and replacement of all such military treaties by regional collective security agreements). The group hoped that if the UN collective Security System and East Asian Security System encompassing the neighbours of Japan come to existence, the scale of MSDF would also change and if it happens so, a coast guard plus small numbers of ground troops would be enough for the defense of Japanese territory.

The group also urged that Japan should elevate its international diplomatic efforts for peace by the establishment of a Ministry for Peace and Disarmament. To participate in

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<sup>31</sup> See the entire Seikai proposal in Appendix no IV attached at the end of the dissertation.

international peace effort, the group proposed formation of an International Relief Force (*Kokusai Kyonatai*) comprising volunteers, for non-military activities associated with UN PKO and other duties relating to international contribution.

#### **Yomiuri Proposal Nov.3, 1994.**

The Yomiuri constituted Yomiuri Constitution Study Council, in 1992, to prepare a draft proposal for the amendment in Constitution. The Chair of the council submitted its recommendation in 1994, which was later published on Nov.3, 1994 in Yomiuri Shimbun. The Council redrafted almost all the constitution including the preamble and added some of the article as well. The Yomiuri proposal<sup>32</sup> included in the preamble “we the Japanese people, desire peace for all time, respect the spirit of international cooperation and pledge to use our best efforts to ensure the peace, prosperity of the international community.”

Regarding the security it had proposed two Chapters with some addition in the existing clause of Article 9.

#### **Chapter III. National Security.**

##### **Article 10 (Rejection of War and ban on weapons of mass destruction).**

- 1) Aspiring sincerely to an international peace based on justice and order, the Japanese people shall never recognize war as a sovereign right of the nation and threat or use of force as means of settling international disputes.
- 2) Seeking to eliminate from the world inhuman and indiscriminate weapons of mass destruction, Japan shall not manufacture, possess or use such weapons.

##### **Article 11(organization for self defense, civilian control and denial of forced conscription).**

- 1) Japan will form an organization for self-defense to secure its peace and independence and safety.
- 2) The Prime Minister will exercise supreme command authority over the organization for self-defense.
- 3) The people shall not be forced to participate in the organization for self-defense.

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<sup>32</sup> See the entire Yomiuri proposal in Appendix no V attached at the end of the dissertation.

#### Chapter 4. International Cooperation (new Chapter)

##### Article 12. (The Ideal).

Japan shall aspire to eliminate from the earth of human calamities caused by military conflicts, natural disasters, environmental destruction, economic deprivation in particular areas and regional disorder.

##### Article 13. (participation in international activities)

In order to accomplish the aim of preceding article, Japan shall lend active cooperation to the activities of the relevant well established and internationally recognized organizations. In case of need, it may dispatch public officials and provide a part of its self-defense organization for the maintenance and promotion of peace and for humanitarian support activities.

##### Article 14 (observance of international law).

Japan shall faithfully observe those treaties it has concluded and those international laws well established and well recognized by the international community.

It is clear from the proposal that the newspaper proposed to retain pacifism and made the fact clear in its preamble itself. Regarding article 9, it suggested deletion of second paragraph i.e. "Land, sea, and Air Force as well as other war potentials would not be maintained". It means it suggested an unambiguous recognition of the right to possess conventional armed forces. The second paragraph of Article 10 of the Yomiuri proposal justifies Japan's effort on proliferation of WMDs and also suggests giving constitutional legitimacy of three non-nuclear principles accepted during the Sato cabinet. The suggestion to create a self-defense organization, in the next article, is aimed at ending the debate whether SDF is constitution or not. The second paragraph of this article proposes that the Prime Minister supervise the organization. It hints towards Article 66 of the 1947 Constitution where the provision has been made that Prime Minister and other Cabinet Minister should be a civilian not a person from military background. The third paragraph banning the forceful participation in the Self Defense Organization is not new but has been rephrased which is already enshrined in Article 18 of the present constitution, which bans forceful conscription. Amid the debate whether Japan should participate in UN Peace Keeping Operation or not, the newspaper has proposed to include a new chapter on

international cooperation in which it says 'Japan shall lend active cooperation to the activities of the relevant well established and internationally recognized organizations'. It means it has not explicitly mentioned that whether Japan should participate only on UN sponsored missions or any other missions. By suggesting that Japan should lend active suggestion to relevant and well-established organization it has left room for interpretation that Japan may participate in an organization such as NATO in order to accomplish the objectives of international peace.

In June 1995, the Yomiuri Shimbun proceeded to publish further elaboration of its views. The proposal also declared the legitimacy of Japanese participation in collective security arrangements, and urged the extension of the US- Japan Security Treaty into full-fledged bilateral security treaty under which Japanese forces could as much be dispatched to the defense of the United States.

#### **The Asahi Proposal:**

The Asahi Shimbun in its proposal<sup>33</sup> issued on May 3, 1995 endorsed the constitution as it stood. It noted that in cooperating with the rest of the world Japan should adopt an activist attitude and it should make purely non-military contribution to the international community. To this end, the constitution should be supplemented with an International Cooperation Law under which Japan would adopt a particular orientation towards helping the poorest countries and addressing the global problem of militarization, population and environmental deterioration. To execute international cooperation, it proposed to establish the Peace Support Corps, which could respond swiftly with such humanitarian relief and rescue operation in natural disasters. The Peace Support Corps would be a separate entity and would take active part in UN peacekeeping operations in strictly non-combat areas. Quite surprisingly, it suggested that the some members of the corps could carry small arms for their protection. In the proposal it expressed strong opposition to revision of article 9 and opined that the present Constitution has not lost its brilliance and amending it would do much more harm than good. Regarding article 9, it clarified its position publishing the following statement in a box---

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<sup>33</sup> See the entire Asahi proposal in Appendix no. VI attached at the end of the dissertation.

“Article 9 of the constitution, which renounces war and use of force, is an idealistic norm that preemptively undertakes the task facing all mankind. It is now time to consider how should it be put to best use of overhauling the SDF and security arrangements.

Article 9, established the framework for not giving preference to military matters in the postwar society. Now that the Cold war is over, revision of the article to give greater emphasis to military matters run counter to the times and does more harm than good.”

It noted that the present status of SDF oversteps the bounds of a force of self-defense. Therefore, it advanced a program for radical overhaul of the country’s defense and international policies to be carried out by the year 2010. It proposed to revise the Cold war defense alliance relationship and the SDF to be scaled down by 50% in the case of GSDF. It added that the phased reduction in personnel would not put the national security at immediate risk and if such a reduction encourages arms reduction in neighbouring countries, Japan’s own security will be advanced all the more.

The proposal suggested overhaul in US Japan Security arrangements. It argued that the present US Japan Security System was aimed to the goals of Cold War era. Now the Cold war is over there is no need to continue the Security System in the present form. Based on the principles of Organization of Security and Cooperation in Europe, the US and Japan should make a concerted effort to establish an organization that would work for preventive diplomacy and arms control in Asia.

Quite Contrary to Japan’s official claim for entry into UNSC with a veto power, the Asahi proposal asks to phase out veto power from the UNSC members. Regarding its vision to a reform in the UN the group put its proposal in a box saying—

“Broaden powers of General Assembly in the interest of democratizing the United Nations and phasing out the veto power to make the Security Council a fairer body.

Establish a strong socio-economic Security Council to give greatest priority to keeping disputes from growing.

Scrap the passivist perception of the United Nations and take the lead in reforming the world body to achieve a better world. What is important for a non-nuclear Japan that

makes no military contribution is not that it has a permanent seat in the Security Council, but what it does after getting it.”

**Ozawa Proposal:**

Apart from all these proposals from media group a proposal from a senior leader Ichiro Ozawa then associated with the Liberal Party and now Deputy President of Democratic Party of Japan, came to the fore in 1999, which is commonly known as Ozawa proposal<sup>34</sup>. Pointing to the fact that the Japanese Constitution has not been changed since it came into effect, he says that the Constitution should be a document to reflect the realities of each new era. Hence it should be revised to reflect the changing values of new era. He has argued that a constitution, which has been decided under abnormal condition, is invalid under international law. In 1946, Japan was under occupation and it was not an environment where Japanese were able to express freely. Based on this argument he draws the conclusion that constitution adopted under occupation is invalid.

Regarding the most debated article 9, Ozawa has interpreted it plainly as “we will not use force to counterattack unless we do not come under direct attack”. He adds further that a Constitution cannot exist if a state’s legitimate right of defense is not regarded. And to reflect the realities of the changed era he has suggested an addition of third paragraph in the present clause of Article 9, which would be as follows---

1. Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.
2. In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.
3. The regulation in paragraph 2 does not prevent the maintenance of military power for the purpose of exercising Japan’s right of self defense against military attack by a third country.

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<sup>34</sup> See the entire Ozawa proposal in Appendix no. VII attached at the end of the dissertation.

He justifies Japan's participation in UN peacekeeping activities quoting the preamble of the present constitution. It is stated in the preamble that 'we desire to occupy an honourable place in an international society for the preservation of peace'. Thus he sees that Japan could actually support justice and order in international Society through UN, which is a legitimate and only global organization. To this effect he has suggested that 'peaceful cooperation with all nations', as recorded in the preamble of constitution should also be specifically referred to in the body of Constitution and should follow article 9 in Chapter 2. He has suggested the wording of the proposed article as follows:

*(International Peace)*

In order to maintain and restore international peace and safety from threats to, the collapse of, or aggressive actions against peace, the Japanese people shall contribute to world peace through various means including taking the lead in participating international peacekeeping activities and supplying troops. (Ozawa Proposal)

He argues further that by contributing to UN activities based on UN Charter in order to secure the everlasting world peace including through the provision of troops, Japan is ultimately protecting its own security. He also refutes the argument that sending troops overseas for the participation in UN peacekeeping is the violation of Article 9. He notes that active contribution by Japan in order to restore and maintain international peace and security is completely different in character from the war as a sovereign right of the nation mentioned in Article 9 of the constitution.

While concluding the debate, Ozawa comes to Article 96, an article which spells out any amendment can only be done if the diets approves it with a two third majority and its approval through a referendum with majority of all the votes. He considers this as a bottleneck and interprets it, as 'this Constitution can never be revised'. But he suggests that the process of amendment should be reversed. That means, the constitution should be put to referendum generating a national debate first and then to be put to vote in the Diet. The suggestion he has given realizing that the masses are in favour of a revision to the constitution, but fearing a failure in the Diet, the political parties are not taking a step to this direction. He concludes urging that the Constitution is for the people and it no longer suits the time. The will of the people, as a sovereign should be respected first.



### **Proposal from Institute for International Policy Studies:**

Adding to the views in ongoing Constitutional debate, a think tank of Institute for international Policy studies, lead by former Prime Minister Nakasone Yoshiro unveiled its draft in 2005, for revising the Constitution. The draft reflects the sentiments of Nakasone which, he has expressed during the tenure of his Prime Ministership, but could not fulfilled due to opposition from doves faction of his own party and also realizing the pulse of public mood, majority of whom were opposed to any revision. The draft redefines the SDF as Defense Forces, and allows them to use force when carrying out humanitarian aid and other activities to maintain international peace and Security within the framework of the UN or international cooperation<sup>35</sup>. This suggestion is contrary to the government interpretation that says that the Article 9, prohibits Japan from exercising the right of collective self defense. The draft says that the use of force would be subject to either advance or ex post facto approval by the Diet. Like earlier proposal it left Paragraph 1 of the Article 9, which gives constitutionality to the pacifism. In addition to these suggestions the draft proposes to specify political parties a candidate to specify for Prime Minister ahead of a general Election.

### **Proposal from Nippon Keidanren:**

Japan's most powerful business lobby the Nippon Keidanren (Japan Business Federation), released the findings of its Committee on Constitutional Policy that it has formed last year to study on Constitutional amendment. The proposal suggests allowing the right of collective defense and urges to formally recognize the SDF. The draft says that the current ban on exercising the right to collective defense is "acting as a drag" on Japan's efforts to become a trusted nation in the international community<sup>36</sup>. The effort by the business lobby reminds the prewar big business and military connection that resulted in militarization of Japan. But justifying its deliberation on Constitutional amendment the Vice Chairman of the Keidanren and head of the Keidanren Constitutional draft Committee, Shigemitsu Miki said that the "businesses are part of the country's support base and changes in framework will exert a great deal of influence." In the draft proposal

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<sup>35</sup> The Japan Times, January 2005.

<sup>36</sup> Weekly Japan News edited and Published by International Department Kyodo News, January 21, 2005.

Keidanren puts priority to amendment in Paragraph 2 of Article 9 and adds that while Japan should adhere to the war renouncing clause 1 of the Article the second clause should be revised to recognize the SDF and specify the range of their activities, including disaster prevention and maintenance of safety and health, from the view point of contributing to the international community. Though it calls to allow participation in collective defense but to put in restrictions, it has suggested enacting a basic law for national security such as prior approval from the Diet.

All the proposals with respect the review of constitution reflect deep rooted ideological positions. For example the Sekai and Asahi Proposals try to establish Constitutional pacifism in Japan as they still advocate retaining Article 9, without any change. They strongly believe that the armament during the Cold War period and security arrangements with the US were against the spirit to Constitution and as the Cold war is over now Japan should gradually undo the system. The Yomiuri Proposal though is a well-researched proposal and seems a constitution itself; still suggest retaining pacifist clause on the basis that it has helped Japan regain its economic position in the world community. It is the first to accept the constitutionality of SDF and to establish its constitutional legitimacy, suggests addition of a clause in the proposed revision of the constitution. The Ozawa proposal seems most ambitious as it questioned the legitimacy of the constitution document itself, as it was imposed on Japan during abnormal conditions. Thus he proposes complete revision of Constitution to reflect the reality of present era. But his repeated argument that the articles and preamble has provision to maintain military and it may dispatch its troops for the 'preservation of peace in international society', suggests that, he is of the view that revision by interpretation was all that was required for Japan to be able to perform a proper role as responsible member of the world community.

Despite various differences the proposals have some merits and most common feature of these proposals are that they aim to integrate the constitution with the realities of the post cold war period and argue Japan's participation in UN Peacekeeping operation but suggest their own perception. To conclude, all these drafts are concerned with the two basic problems. First, how to overcome the gap between words of the constitution and

actual practice. The second is, how to make the constitution relevant to the circumstances of the 21<sup>st</sup> century.

### **Receding Pacifism:**

The debate about amendment in Constitution has entered into a new phase. This is not the first time that this debate has raked up Japan. The first peak in the constitutional debate came during the administration of Hatoyama Ichiro, following the eruption of Korean War when the Japanese government to meet the cold war challenges wanted to amend the constitution to rearm Japan. Another period of heated debate came in the early 1960s, when a panel was set up to review the constitution. Thereafter until the end of 1980s the issue was put into back burner.

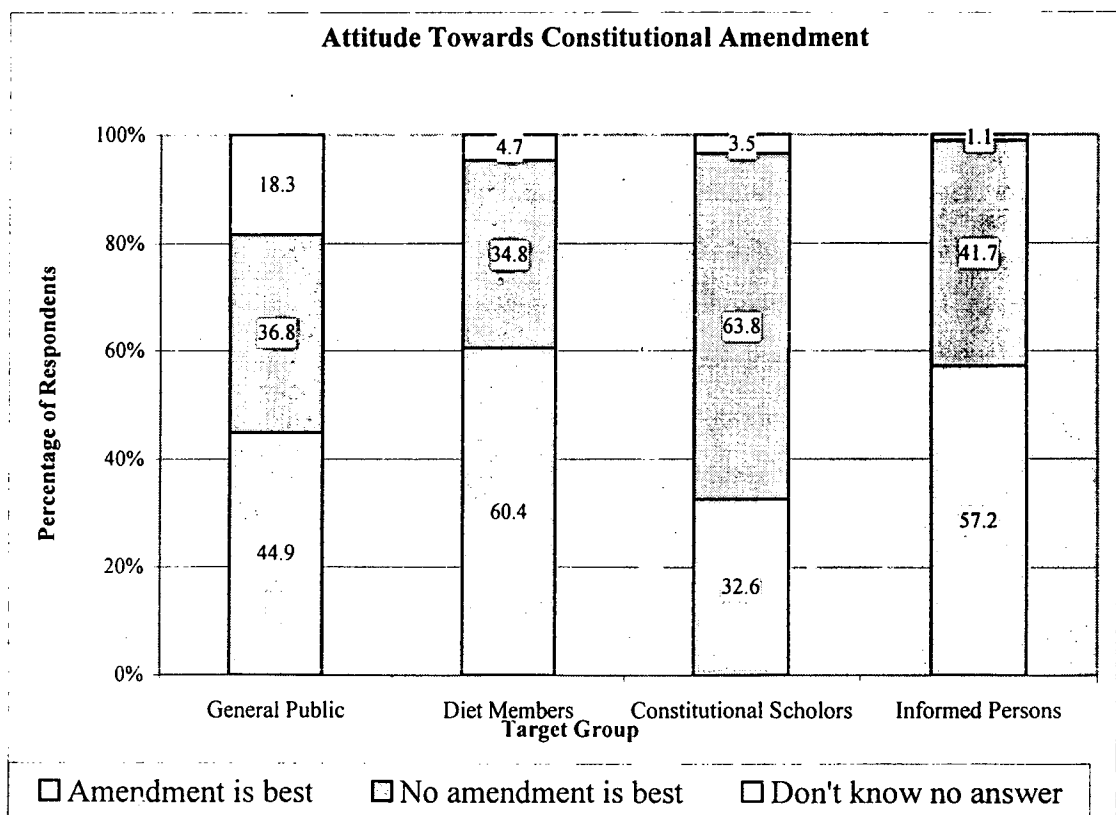
In the early 1990s, Japan's non-participation in the 1991 gulf war generated a renewed debate on Japan's in-activism and its role and contribution towards maintaining international peace. The debate over the bill opening the way for SDF participation in UNPKO triggered a protracted constitutional debate. As compared to earlier debates, this debate was different in the sense that it is continuing since the last 16 years and has resulted into a change of public opinion and also the point of debate.

In a Yomiuri opinion poll of March 1993, more than half of the respondents favoured Constitutional amendment for the first time ever.<sup>37</sup> Point of the debate that was witnessed during the Cold war period that the Constitution should be changed because it was imposed by occupation is fading into the background. Now the point of debate has shifted to the fact that the document could not cope with the new problems that have arisen in areas like international contribution. To this effect 56% of the respondents replied that there exists a gap between the supreme law and the changed realities. 31% of the respondent in pro amendment camp cited that the confusion would ensue if new circumstances are dealt with only by modification in constitutional interpretation and application. While 23% of the respondents still hold on to the point that it should be revised because it was imposed by the US during Occupation.

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<sup>37</sup> As cited in *Japan Echo*, volume 24, no.3, August 1997 p. 47.

In the anti amendment camp 55% respondents argued that this document should not be changed because it has taken firm root among the masses. 35% respondents said that it is the article 9 that gave the document the title “peace constitution” for which Japan could be proud of. The Yomiuri questionnaire targeted four groups of society, the general public, the Diet members, the constitutional scholars and informed persons. Among the General Public, 44.9% approved the idea of an amendment while 36.8% disapproved it. Among the diet members 60.4 % members agreed that amendment is best while 34.8% negated it.<sup>38</sup> This means by 1993 two third majority required for approval of an amendment, was still not to be attained. But 97% of the Diet members wanted a lively debate on Constitution. Among the informed persons, 57.2% supported the amendment while 41.7% were opposed to this idea. The result was reverse in the group of Constitutional Scholars with 63.8% opposing the idea of amendment while 32.6% supported it (see figure 6).

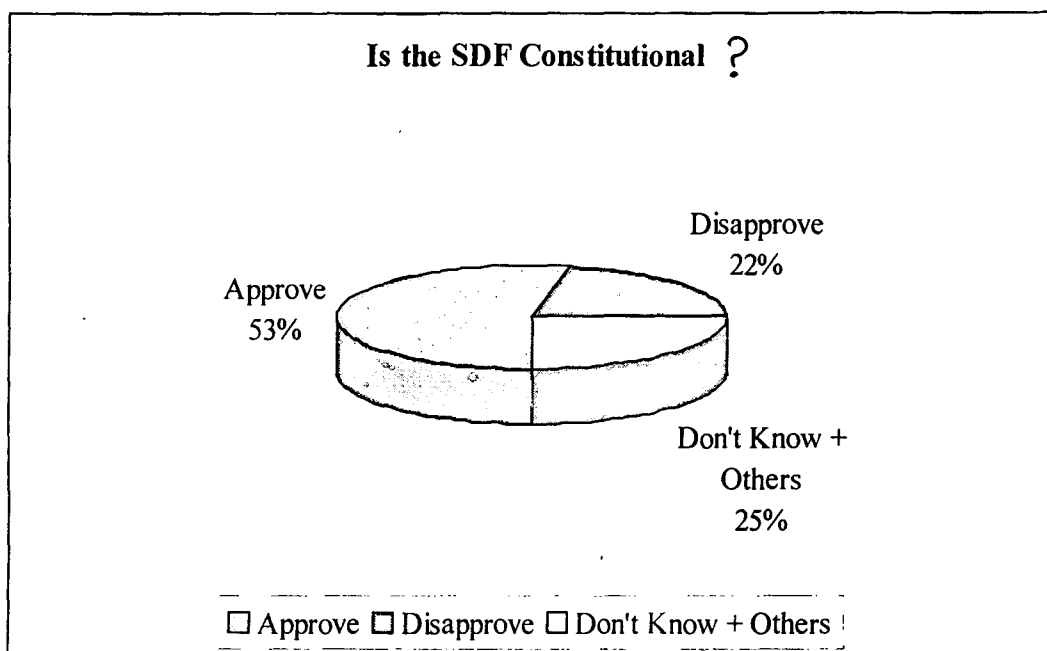


**Figure 6:**

<sup>38</sup> As cited in *Japan Echo*, volume 24, no.3, August 1997 p.49

As many as 48% of the opponents of revision, cited the dangers of Japan's becoming a military superpower as one reason of their stance. Opinion is split over the right of 'right to collective self-defense' and overseas deployment of the SDF. In the same poll, 34% said that the government should not change its interpretation that Japan is constitutionally prohibited from exercising this right; while 22% said a clause clearly prohibiting such right should be inserted in the Constitution.<sup>39</sup>

Regarding the Constitutionality of SDF, the question of its constitutional legitimacy is gaining ground. In Yomiuri survey in 1994, on the legality of SDF 53% of the respondents replied that they are Constitutional while 22% disapproved. (See Figure 7)

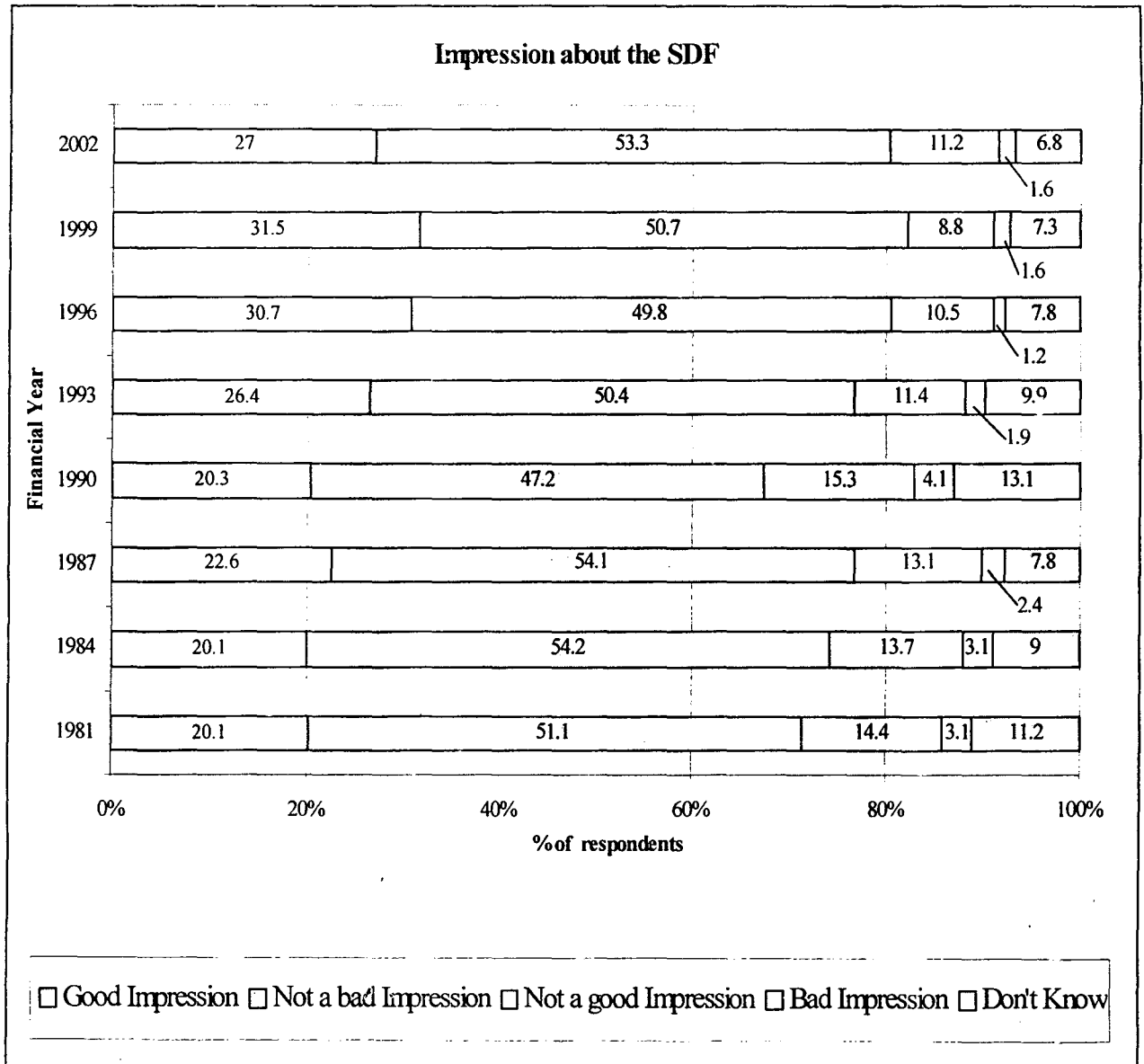


**Figure 7**

Among those who disapproved and approved 74% accepted the fact that SDF make a contribution to the Japanese Security As far as the impression of the SDF is concerned perception of the public seems fragile over the issue. A survey conducted by Prime Minister's office (earlier Cabinet Office) reflects that only 20.1% Japanese had good

<sup>39</sup> *ibid.*p.49.

impression about the SDF and the percentage risen up to 22.6 % in 1987 but again wane down drastically to 20.6% in 1990 amid the impending Gulf war. The SDF's acceptance having good impression again touched to 31.5 % in 1999 survey but it dropped to 27% amid the talk of Japan's participation in the Iraq war in 2002<sup>40</sup>. (See Figure 8))



**Figure 8**

<sup>40</sup> Source: Defense of Japan, Defense white paper (2003) published by the JDA p.494.

With the continued debate the percentage of those who approve Constitutional amendment is raising and has reached up to 79<sup>41</sup>%. This indicates that the majority of Japanese want to see a constitutional update.

There are various factors behind the change in public opinion. The external issues like Iraq wars and criticism of Japan's non-participation gave impetus to need of constitutional amendment. The real thrust to the change has been provided by Japanese political parties like LDP, DPJ and Komeito who want to see Japan's place in the global scenario. The media groups with their debate and opinion polls kept the issue alive and this continued and thought-provoking debate resulted to a change of public attitude.

#### **Lower House Constitutional Review Council Recommendations:**

The change in public mind has given courage to the Japanese statesmen to set up Constitutional Research Council in January 2000, in both the Houses of the Diet to debate over the constitutional issues and give it recommendations. The 50 members lower House Council after five years of discussion has submitted their recommendation to the speaker of the house. The Council in the final report has stressed the need to amend the war-renouncing Article 9. The report says that the majority of the opinion believe that the nation should hold fast to pacifism policy and maintain the war-renouncing clause 1 of Article 9. The 710-page report has the following main highlights<sup>42</sup> as regards to Japan's pacifist constitution-

1. Japan should maintain fundamental principles to respect popular sovereignty, peace and basic human rights.
2. Rewrite the preamble to reflect Japanese history tradition and culture.
3. The current system that recognizes the emperor as the state symbol will continue to exist, while female may assume the Chrysanthemum throne.
4. Constitution should be updated to ensure the right of self-defense and maintaining self-defense forces.

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<sup>41</sup> Editorial, Japan Times. 19 April 2005.

<sup>42</sup> The Japan Times 16 April 2005.

5. Explicit provision should be made in the Constitution regarding Japan's participation in UN collective security activities and the creation of framework for regional security in Asia.
6. Define the defense emergencies in the Constitution.
7. Panel members were split three ways over whether to allow Japan right to engage in collective defense. The opinions were to allow, not to allow and to allow with restrictions.

A close examination of the Lower House recommendation indicates that the panel while deliberation on the issue of Constitutional update has taken media as well as other proposals to amend the constitution into consideration. The recommendation that, the Constitution should be updated to ensure the right of self-defense and maintaining self-defense forces has also been explicitly suggested by the Yomiuri and Ozawa proposals. The Lower House recommendation has also suggested that the second paragraph of Article 9 should be omitted. To this effect, the Yomiuri proposal had also suggested to scrap Para 2 of Article 9 while the Ozawa proposal has suggested a third paragraph saying that 'the regulation in paragraph 2 does not prevent the maintenance of military power for the purpose of exercising Japan's right of self defense against military attack by a third country'. Almost all the proposals have suggested that Japan should play its role in the UN peacekeeping efforts. The Yomiuri and Ozawa proposals have suggested inclusion of a provision expressing Japan's participation in the international peace activities. A statement in the Lower House recommendation to this effect that 'explicit provision should be made in the Constitution regarding Japan's participation in UN collective security activities' reflects that their suggestion has been taken into consideration. The Sekai and Asahi in their proposals have suggested creating a regional Security Frame work comprising the East Asian Countries. A statement in the Lower House recommendation for 'creation of framework for regional security in Asia.' indicates that the panel had not ignored their suggestion in this regard. Now that fate of recommendation will all depend on how seriously all the parties in the diet pursue this issue.



Amid this debate, the Socialists came to the power in Japan for the first time. The political history took another turn when the socialists renounced their long held ideological opposition to the SDF and accepted its legality. They also accepted the US Japan Security framework and Japan's participation in the UNPKO. Following this the new Liberal force the Democratic Party of Japan gained strong hold. The party since its inception talked of a constitutional amendment to reflect the changed realities. Through media the ongoing debate reached to masses, when they came up with their own proposal for constitutional amendment. This time masses very positively reacted to the fact that Japan must play a leading role in UN activities. Capitalizing this situation, the Diet pushed International Peace Cooperation Bill (1992) and the bill pave the way for Japan's limited participation in UN's non-combat missions. The kind of humanitarian role Japan played won acclaim and appreciation form the international community. The Iraq war in 2000 proved another challenges to its international missions when the ruling governments initiative to send its troops in Iraq failed due to forceful protest by the opposition and peace activists. Japan could only sent its non-combat troops to a relatively peaceful area of Samawah following the war got over.

### **Conclusion**

Japan seems gearing itself up for a new proactive role in the international security under the UN. The recommendation has come at a time when Japan has expedited its effort for a permanent seat in the UN Security Council. But its own ally US has suggested that Japan cannot play its role in the UN Security Council until it amends Article 9 of its Constitution. Can Japan ensure its seat in the permanent UN Security Council with the amendment? The issue in its background would be discussed in the next chapter.

## CHAPTER – 4

### Japan's Expanding Global Role: Obstacles and Ambitions

For the last few decades Japan has intensified its efforts to secure a permanent seat in the UNSC and the upcoming UN reforms for an expansion in UNSC has given new hope to its aspirations. As the major Official Development Assistance (ODA) donor to the poor, under developed and developing countries, and being the second largest contributor to the UN budget, it has proved that it has been fulfilling its role as a major contributor in meeting UN objectives. However, Japanese bureaucracy realizes that despite contributing most to the UN financially, their country is not getting its deserved recognition. It is only through direct participation in UN affairs, especially in peacekeeping operations, that Japanese could achieve the standing they desire within the UN system, for which they realize, they need to set up legal frameworks, which are not in conflict with the constitution. Therefore, in the post cold war period Japan prepared itself to participate in UNPKO by deploying its troops abroad. But once again the Japanese establishment faced bitter criticism, at the home front from the opposition, which saw SDF deployment violation of Article 9, and at the international front, the neighboring countries made hue and cry viewing it as resurgence of Japanese militarism. With renewed interpretation, Japanese administration after two years of consistent effort succeeded in adopting International Peace Cooperation bill. Another problem that Japan is facing is now that opinion in the public is still not uniform over the participation in UNPKO and opposition as well as its coalition partners has not agreed to send the troops in a combat zone. These dichotomies that characterise the Japanese foreign policy regime, would be the focus of analysis in this chapter. We would attempt to look into various developments in this regard and also weigh the possibilities of Japan's entry into the UNSC as a permanent member.

#### **Japanese Constitution and the UN:**

The great faith of the Japanese in the UN is evident from the fact that they had renounced war and gave pacifism the constitutional legitimacy with the hope that in case of an

external aggression they would be defended by the UN. With this belief Prime Minister Yoshida in his reference to the relationship between the UN and Japanese constitution has opined that—“What we have in mind is that an international peace body is being established...According to Article 43 of the Charter of the United Nations they would have the obligation to provide the armed forces....when Japan becomes a member of the organization, after it receives its independence , then it will be protected by this Charter.”<sup>1</sup> The pronouncement of Prime Minister Yoshida generated wider debate. The analysts pointed out that according to Article 43, of the UN Charter, Japan would not only be protected but would also be required to contribute troops, which it cannot do since it is constitutionally prevented from maintaining an army. The real impetus to the debate was given by Nambara Shigeru, a Professor, newly appointed to *Genro* (the House of Peers). He questioning the Japan’s role in the UN argued “When Japan in the future should be permitted to join the United Nations, are we proposing to surrender this right or evade this duty? Is there not a danger that Japan will sink in the typical oriental mood of pessimism and resignation, entrusting itself entirely to the good will and trust of other nations? Shall we not thereby loose sight of these great positive ideals? Should we not be ready and willing to sacrifice our blood and our sweat so that together with other nations, we share in the work of protecting freedom and justice and establishing permanent world peace?”<sup>2</sup>

It is clear from the questions that he raised in the Diet that he was suggesting that Japan should be ready to participate in UN missions to establish peace by “sacrificing sweat and blood”. To this end, Prime Minister Yoshida responded that the whole question to Japan’s membership in the UN should be left until Japan gets UN membership. But the Foreign Minister Shidehara Kijiro took the issue more seriously and replied that upon the invitation to join UN “ we have to make very clear the implications of our Constitution, particularly of Article 9, and enter the appropriate reservation to our candidature.”<sup>3</sup>

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<sup>1</sup> Ronald Dore, *Japan Internationalism and UN* (Routledge London and New York 1997) p.56.

<sup>2</sup> *ibid* p.57.

<sup>3</sup> *ibid* p.58.

Till 1954, the question whether Japan will contribute militarily to the UNPKO remained a political issue. In all the debates the government maintained right of individual defense and denied right of collective defense. The debate was put to back burner once the House of Councillors passed a resolution prohibiting any overseas dispatch of the SDF on June 2, 1954.<sup>4</sup> And when the SDF law was enacted, article 3 of the SDF law 'prohibited the dispatch of troops overseas'. With these two measures Japan had already shelved the issue of military contribution in UNPKO.

### **Japan's Entry into the UN:**

Japan entered into the UN as a member of General Assembly in 1956 with high expectations. It is evident from the fact that the government gave priority when it adopted three basic principles of its Foreign Policy. The Policy was as follows.

1. It would be UN centered.
2. It would cooperate with the free world and
3. It would identify closely with the Asian countries.<sup>5</sup>

But Japan could not actually play a UN centered Foreign Policy as its hands were already tied since it has three impediments viz. Article 9, House of Councillors resolution of 1954 and the SDF laws, prohibiting troop's overseas dispatch. To alter the situation a legal framework was needed but the leaders in the opposition as well as within the government were against such frameworks, as they feared militarization. In this situation Japan was left with no choice other than contributing to the UN financially.

In July 1958 when the UN requested Japan to send its personnel in United Nations Observation Group in Lebanon (UNOGIL), the government declined the offer citing hostile domestic climate and lack of legal provisions for the dispatch of personnel on UN peacekeeping. However, Japan has been sending diplomats to fact-finding missions and

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<sup>4</sup> Ogata Sadako –“ The United Nations and Japanese Diplomacy” in, Japanese Review of International Affairs, Tokyo, volume 4, Number 2. Fall/winter 1990. pp. 141-165.

<sup>5</sup> Statement by Foreign Minister Kishi Nobusuke at the 26<sup>th</sup> Session of the Diet as quoted by Ogata Sadako, in her article Changing Role of Japan in the UN in Japan's new World Role edit Johnson D. Katz (Westview Press London(1985).pp28 –43.

has participated in missions wherever it got an option of dispatching civilians, like in the case of Laos where it sent civilians.

The issue of personnel participation once again became the issue of debate during the United Nations Operation in Congo (ONUC), this Time Japan ambassador to the UN Matsudaria Koto pushed the issue of Japan's participation in ONUC, which required policing and maintaining law and order. He stated that it was inconsistent for Japan to adhere to UN principles and not make its troops available for peacekeeping operations. He was forced by the Diet to withdraw his comments and the opposition parties demanded his resignation.<sup>6</sup>

Following this, Ministry of Foreign Affairs (MOFA) outlined a UN Resolutions Cooperation Bill in 1966, which was apparently a bill prepared in reaction of Matsudaria Koto's back down. The Bill stressed Japan's compliance with UN economic sanction and its contribution of SDF personnel as well as the revision in SDF Law, which bans troops deployment overseas. But the LDP government did not take the bill seriously and the issue died down.<sup>7</sup>

These attempts aimed at expanding Japan's role in the UN conflicted with anti militarist norm embedded in Japanese society. The anti militarist norms sought to maintain Japan's low security profile and ensured that Japan's policy towards peacekeeping would be minimal. While in the government circle the desire of leaders not to alienate East Asian neighbours, serving the needs of Japanese economy served to limit the debate on the peacekeeping participation. The other issue, which constrained Japan's participation in UNPKO, was its Security relations with the US. Had Japan agreed to send its forces to the UNPKO it would have to accept US request for greater participation in Vietnam War. By saying no to the UN it has saved the situation.

In the 1980s the situation slightly improved when the Prime Minister Suzuki Zenko while addressing 37<sup>th</sup> General Assembly of the UN suggested establishing a mechanism to monitor global and regional security situations. Later in that year the Japanese delegation

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<sup>6</sup> Hugo Dobson, . "Japan and UN Peacekeeping, New Pressure new responses"( Routledge Curzon London and New York 2003.) p.52.

<sup>7</sup> ibid p.52.

to the UN proposed a resolution to the General Assembly working closely with the nations of the non-aligned movement and established peacekeepers. Japan also suggested creation of small group of experts under UN Secretary General to undertake technical studies regarding the strengthening and expansion of UN peacekeeping function which unfortunately could not materialized. These proposals were made at a time when public opinion was beginning to shift to allow greater participation in the UN. At the same time a private panel report on Japan's participation in PKO which included UN ambassador Saito Sazo and Sadako Ogata, suggested a more active and wider role and advocated a step by step participation in police operation, logistic support and medical activities, supervising election and dispatch of military personnel on patrol and supervision missions. This report has once again stirred the debate with opposition accusing the government to push Japan on the path of militarization. Prime Minister Nakasone quelled the debate terming it as 'merely one view put forward by a private study group'.

Thus it is clear that despite the continued exhortation from the world body and from MOFA to contribute personnel, the Japanese leadership remained reluctant to take major initiative and never seemed to antagonize their masses. Though Prime Minister Suzuki Zenko took some initiative but his initiative in the UN remained limited to achieve the goal of greater disarmament and ensuring containment of regional and global security, which Japan believed, escalates with armaments. Japanese leaders suggestion for monitoring regional security was in lined with the opinion of Japanese public.

To conclude, the Japanese participation to the UN remained limited to the non-combat situations and this trend continued till the end of Cold War period. For the Japanologists, from Japan's previous refusal to participate in PKO to sending first civilians on a monitoring missions and increasing financial commitments has been termed as a major shift in its UN policy. By the end of 1990s and the outbreak of Gulf crisis, the situation in Japanese administration started changing. Japan, which at earlier occasion had been citing Article 9 and SDF laws as an impediment to the personal contribution in the UNPKO, had started interpreting the same clause for participation in the UN. As the issue has stirred another debate, it is needs to be discussed in details.

### **Japan's Response to the Gulf War:**

The Gulf War of February 1991 placed Japan into a difficult situation. At a time when twenty-eight countries of the world were gearing up its efforts under UN authorized Multinational Forces to repel Iraq back from the Kuwaiti territory it has occupied, Japan could only condemn the occupation and supported the UN sanctions on Iraq. Continuing its early practice of non-participation of Japanese self-defense forces personnel, it preferred to share the financial burden and contributed a huge amount of 13 billion US dollars to war fund. Japan thought that with this effort, it had saved the situation of not fighting shoulder to shoulder with its military ally the US. Japan felt betrayed and let down when its "check book diplomacy" drew flak from the world community and this initiative of Japan was seen as equating loss of blood with money. Japan was still to overcome the shock it received following the Gulf War, it received yet another shock. After the liberation from Iraqi occupation, Kuwait gave full-page advertisements in major newspapers of the world mentioning countries of the world but Japan, which had shared major financial burden of the war, was not even mentioned.

### **People and the UNPKO issue:**

Much before the failure to enact legislation in the Diet the government has stepped up its efforts to mobilise the opinion of the masses through appeals in the newspapers. The debate that took place in the diet and in the media also helped Japanese understand about the PKO and Japan's aspiration to gain international community's trust through increased participation in the UN. This resulted in a change of mood as reflected by a comparison between opinion polls conducted during the gulf war and after it. An Asahi survey conducted in August 1990, showed that 67% those polled considered the dispatch of SDF overseas as unconstitutional with only 15% thought that the dispatch of SDF abroad unproblematic.<sup>8</sup> (See figure 9)

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<sup>8</sup> As quoted in Hugo Dobson, op. cit p.68.

Whether the dispatch of SDF abroad constitutional?

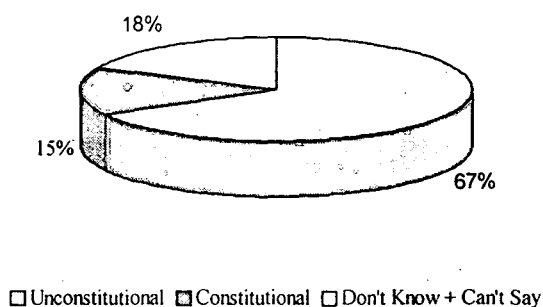


Figure 9

Only 21% of those polled were in support of the legislation to send SDF in UNPKO while 57% were opposed to the proposed bill. (See Figure 10 below) Though a year later the public opinion slightly improved. Domestic poll suggested that the Japanese people would support a limited role in PKOs for the SDF. 54 percent were in favour of some kind of role in disaster relief and 30 percent were against. (See Figure 11) In addition to this, 48 % now supported a non-combat peacekeeping role, with 38% against.<sup>9</sup>

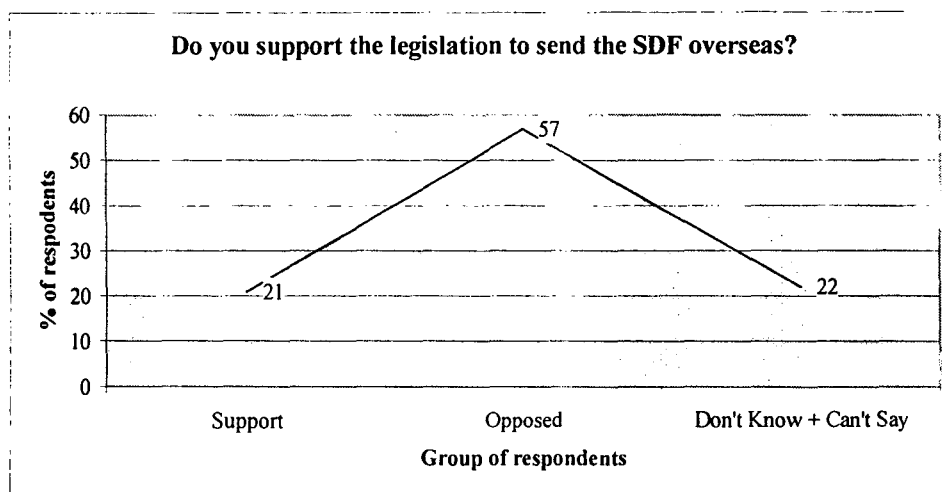
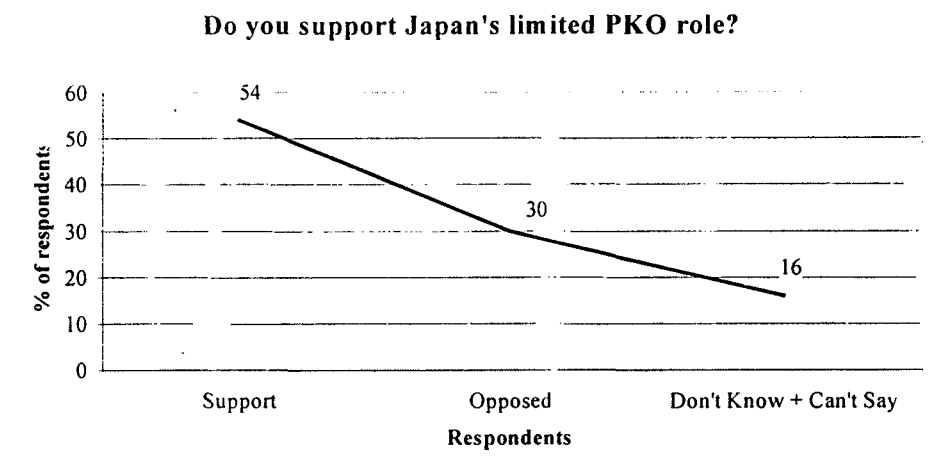


Figure 10.

1992 poll reflected public support for the Peacekeeping role of the SDF. 45.7% of people supported a role encompassing medical, election observation and so on and a further 21% supported an unarmed ceasefire observation role while 10% supported an armed role.

<sup>9</sup> The Japan Times, 10 June 1991





**Figure 11.**

Support for the UN remained high at 88% of people backing the action of the UN.<sup>10</sup> With the mounting support of the public over some kind of participation in UNPKO political parties also softened their stances.

**Political Parties and the UNPKO:**

In 1990, the political parties had severe differences over enactment of UN Peace Cooperation Bill. The Socialists were at the forefront in opposing the Bill. The JSP President expressed opposition to the Bill by linking the dispatch to the symbol of Japan's anti militaristic identity. She stated that " Why must pacifist Japan take the same action as a military big powers, going so far as to oppose the ideal of the Constitution? The UN Peace Cooperation Corps is the overseas dispatch of the military (kaigai hahei), with the SDF dressed in beautiful clothing, which even contradicts the governments own position of regarding this as prohibited by the first clause Article 9."<sup>11</sup> The SDPJ, however, later outlined a report suggesting creation of UN Peace Organization and dispatch of Japanese civilians to assist with a limited role of peacekeeping.

The JCP declared its position on UNPKO in its letter written to the UN Secretary General. In the letter the Party expressed its support for the non-military aspects of the UN's work but stressed the importance of Japanese Constitution which conflicts with

<sup>10</sup> Yomiuri Shimbun, March 3, 1992 as quoted in Hugo Dobson, . op. cit p.74.

<sup>11</sup> Asahi Shimbun (evening edition) 16 October 1990 as quoted in Glenn D. Hook, op. cit. p.87.

Japans possession of an army and bans its overseas dispatch. Regarding the legislation to allow the dispatch of SDF on an overseas mission, it disapproved governments effort however it did talk of international support based on the Constitution and UN Charter, rather than US-led effort.

The centrist DSP had agreed that the government could send personnel to Iraq so long as they were unarmed and do not wear their SDF uniform. Another centrist party, the Komeito Party suggested that the government should send retired SDF personnel and duties of these 'old guards' should be limited to medical, relief and rehabilitation works.

The LDP, on the issue of legislation of UN Peace Cooperation Bill faced divisions within its ranks with each faction taking divergent stands. Miyazawa, Watanabe and Abe faction was against the bill while Komoto and Takeshita faction was in support of the proposed legislation bill. Due to the opposition within the party and the divergent stand of opposition parties, the bill could not reach to a consensus and was eventually withdrawn.

#### **The Three Party Accord:**

The conditional support from the DSP and Komeito party for the overseas dispatch of the SDF hinted the LDP for a *dango* or behind the scene agreement. The LDP, DSP and Komeito Party agreed for a three party accord and the LDP diluted some of its stances to incorporate opposition's points. The differing point between the parties were use of arms by defense force and whether the SDF should participate during or before a ceasefire among the groups in conflict. The three parties Accord reached in September 1991; incorporated following five points of DSP and Komeito Party.

1. A ceasefire accord must be reached.
2. Japan must take consent of parties directly involved in conflict.
3. The UN force must remain neutral.
4. Japanese personnel must be withdrawn, when any of the three conditions ceases to exist.
5. The SDF can only use firearms for their self-defense.

This accord resulted into an amendment of the UNPKO bill and was now entitled as International Peace Cooperation Bill that was approved in 123<sup>rd</sup> session of the Diet in June 1992 with 329 votes in favour, 17 against and 141 abstention.

### **East Asian Concerns:**

Like any other move to alter Japan's security policy, Japan's initial effort to send its troops to Iraq, provoked strong concerns from East Asian countries. In October 1990s Japan was still amid the debate in the domestic front, China was first to voice its annoyance saying –“ the People of China and some other Asian countries can not but be concerned over the Japanese government's plan to dispatch members of its SDF to [the] UN peace cooperation corps abroad as that unfortunate part of the history remains fresh in our minds...It is our hope that the Japanese government will deal with this matter prudently.”<sup>12</sup> The Chinese President Yang Shang Kun, went as far as to say that dispatch that would cause ‘severe and emotional repulsion’ among the Chinese people.<sup>13</sup> The resentment expressed by the East Asian countries hints that they are not worried about Japan's participation in the UN rather they fear that the momentum generated by the developments that started with Japan's participation in UN PKO will continue with the unshackling of measures put in place to prevent it from becoming a military power.

Japanese government positively responded to allay the fears or concerns of East Asian nations. The Japanese ambassadors through out the world were instructed to explain to their host governments that Japanese contribution of personnel would be conducted through the UN. And in this context then Prime minister Kaifu stated that ‘the law should be implemented after getting the consent of all neighbouring countries’.<sup>14</sup> The government sent its envoy to talk the respective governments and ministers to allay their concerns and assure about non-aggressive nature of the legislation. Komeito Party's President Ishida in a one on one meeting with Chinese President Jiang Zemin conveyed that Japan would be participating in a traditional kind of peacekeeping in line with

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<sup>12</sup> The Japan Times, October 1, 1990.

<sup>13</sup> As cited in Hugo Dobson, “Japan and UN Peacekeeping: New Pressures, New Responses.” (Routledge Curzon London and New York 2003.)

<sup>14</sup> The Japan Times, 25 September 1991.

Constitution. The Defense White Paper (2004) of Japan also notes to this effect that, “ the government of Japan has explained Japan’s position to its neighbouring countries on various occasions so as to get their understanding on the International Peace Cooperation Law. Such efforts resulted in many countries coming to understand how Japan is trying to play a role commensurate with its economic power for the promotion of international peace and stability. Government perceives it is necessary for Japan to continue to make efforts to garner further support and understanding from neighbouring countries.”<sup>15</sup>

The government has apparently won understanding of the neighbouring countries, as there were no harsh responses from these countries when government sent SDF for UNPKO in Mozambique in May 1993, Rwanda in September 1994, East Timor in November 1999 and in Afghanistan in 2001. During these operations the Japanese SDF mainly participated in non-combat missions and helped in rehabilitation and reconstruction work. The mission was largely successful in the sense that the Japanese SDF never fired a shot on any one. This kind of peacekeeping won acclaim not only from the international community but also helped allay concern in East Asian countries and at the home to those who earlier held the view that this kind of dispatch will be return of military resurgence in Japan.

#### **Iraq War 2003 and Japan’s Response:**

However, the Iraq war of February 2003 once again stirred the debate of constitutionality of Japan’s overseas troops dispatch. Due to growing criticism of US led war in Iraq, Japanese government despite its willingness to contribute personally to its ally’s efforts, postponed this issue till the General election. Koizumi along with its coalition partner, widely expected to regain majority in the Diet, pushed a basic plan under Iraq Assistance Measures Law adopted in July 2003. The government emphasized that the SDF would be dispatched to non-combat areas where danger was slight.

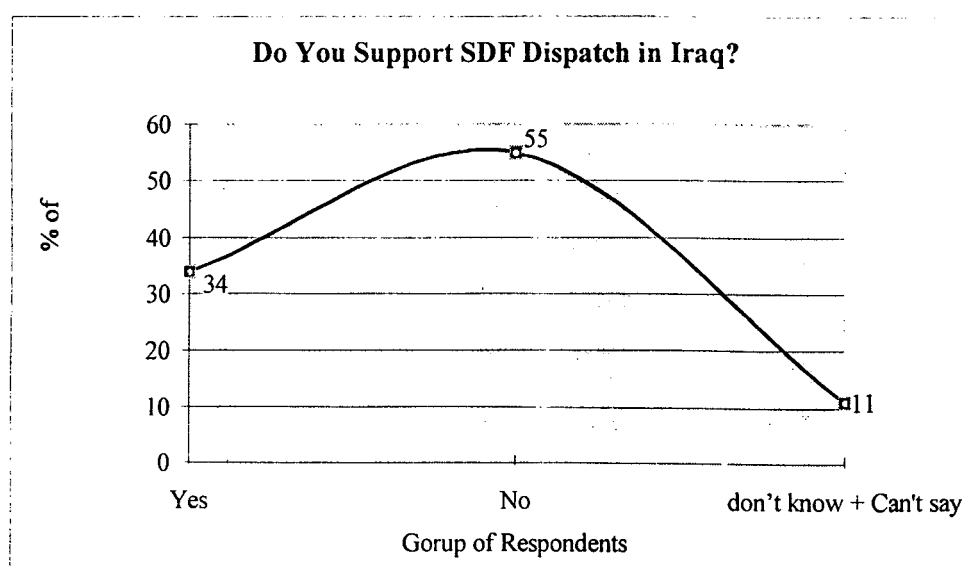
Again the opposition as well as the pacifist groups raised the issue of constitutionality of the dispatch. The opposition-criticized government move saying that the US led coalition forces have been unable to find Weapon of Mass Destruction (WMD), and neither the war nor the dispatch of SDF can be justified. Japanese Communist Party head Tadayoshi

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<sup>15</sup> Defense of Japan, Defense White Paper, Japan Defense Agency, Tokyo, 2004, p.259.

Ichida said, "I still believe that SDF should not go there. SDF activities will fall under the control of the coalition forces, which would violate the war renouncing Constitution."<sup>16</sup> DPJ leader Naoto Kan said that Prime Minister Junichiro Koizumi bears a grave responsibility for making the wrong decision in ordering the dispatch. The decision to deploy the SDF in Iraq also raised the issue of government's non-compliance of International Peace Cooperation Bill 1992. The decision to deploy troops in Iraq was seen as a violation of 1992 bill because Iraq was still a conflict zone and guerilla war was continuing between the Occupation forces and the pro-Saddam resistant groups. Also Japanese government was not asked to send its troops by the Iraqi government or by the UN on the behest of Iraqi government, a condition stipulated under 1992 Bill. The opposition therefore termed the dispatch as government's effort to broaden the scope of the SDF overseas in a view to strengthen the Japan US alliance.

Like the political parties, citizen's opinion is also evenly divided over the SDF deployment. In an opinion poll conducted by the Asahi Shimbun on December 10 and 11, 2003, only 34% of respondents supported the SDF dispatch, while 55% were opposed and remaining 11% were undecided <sup>17</sup> (see figure 12)



**Figure 12.**

<sup>16</sup> The Japan Times, February 4, 2004.

<sup>17</sup> As quoted in "Japan Dispatches the SDF to Iraq," Japan Echo, Vol. 31, No.1 February 2004, pp 6-8.

The outcome of the Mainichi telephonic poll in which 1096 people responded, showed that 54% were opposed to the dispatch of SDF troops to Iraq, while 35% were in favour of the move. When asked why they are opposed to the dispatch, 41% said that Japan should contribute to building Iraq in ways that did not involve use of the military. 22% said that SDF should not go because Iraq was still volatile, while 19% said that they do not support the move because they believe the US led war in Iraq was wrong<sup>18</sup>.

Government on the other hand tried to convince the opposition and the public that the Samawah the area that it has chosen to deploy its SDF is a stable region. Following UNSC resolution 1546 adopted in July 2004, calling the international community to contribute their bit for the rehabilitation and reconstruction for Iraq, Koizumi justified his decision on the basis of this UN resolution<sup>19</sup>. Also as there exists no Iraqi government in the country, Japan should not wait to an Interim Iraqi government to be installed and should expedite its reconstruction for the benefit of the war weary Iraqi masses. But later Japan's decision to join Multinational force was a major development to its earlier traditional norms. To avoid the Constitutional debate that by joining Multinational Forces in Iraq, Japan has violated article 9, which prohibits "right of Collective Self defense", Japan decided to keep its troops under its own command.

In another effort to play its international role it had tried to develop its image by sanctioning \$ 5 billion for reconstruction of Iraq, a commitment that it made during Madrid conference. Yet another move in this regard includes pouring more ODA loans and grants as well as an assurance along with its Paris Club partners, and writing off earlier debts on Iraq<sup>20</sup>.

#### **Response of International Community over SDF deployment in Iraq:**

Response was mixed over Japan's troops deployment in Iraq. The deployment did create some disturbance in the East Asian region again. The mouth organ of Chinese Communist Party, 'Peoples daily' stated that the troop deployment suggested military

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<sup>18</sup> Mainichi Shimbun, Dec.21, 2003.

<sup>19</sup> Suryanarana, P.S. Frontline, 16, January 2004.

<sup>20</sup> Editorial The Japan Times., November 26, 2004.

ambitions<sup>21</sup>. On the other hand Straits Time newspaper of Singapore said it was “churlish and short sighted” to argue that the troop deployment was a sign of rising militarism; rather, Japan could help create a secure and stable Iraq. The daily stated that “for the sake of Iraq, political stability in the middle east, the security of oil supplies and the cut-no-corners war on terror, Japan and other countries must preserve with the hard work of bringing Iraq to normal”<sup>22</sup>. With its visit diplomacy by sending envoys to gulf countries Japan gained support from the gulf countries over its troops deployment The Deputy Prime Minister of UAE, Sheikh Hamdan Bin Zayed Al-Nahyan, appreciated the role played by Japan in assisting within the UN frame work.<sup>23</sup> While visiting Tokyo following the formation of Iraqi governing Council, Chairman of Iraqi governing Council Sayyed Mohammad Baharul Uloom praised Prime Minister Koizumi for his courageous decision to dispatch SDF troops to Iraq. One of the leading Arab nations Egypt also supported Japan’s SDF deployment in Iraq. Egyptian Ambassador to Japan Hisham Badr said, “after Iraq war, people in the Middle East were turned off by hard power. They see Japan not only as the second biggest economy but as a new role model of soft power”<sup>24</sup>

The success of Japan’s mission in Iraq is reflective form the fact that the Iraqi interim government’s Foreign Minister Hoshiyar Zebari requested Japan to extend SDF deployment until late 2005.He made this request during a meeting with his Japanese counterpart Nobutaka Machimura at the sideline of Sharm El Shaikh (Egypt) Summit to resolve the deadlock in Middle East Peace process. Later considering this request Japan extended its mission till Dec.2005.

#### **Japan’s claim for a permanent seat in the UNSC:**

Japan’s effort to deploy SDF overseas is indicative of its willingness to use its hard power in support for its Foreign policy. With the SDF deployment in Iraq, it is clear that Japan, which had been vying to get a permanent seat in UNSC on the basis of its soft power contribution to the international community, is now counting its personnel contribution also to substantiate its claim in the upcoming UNSC expansion. And when

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<sup>21</sup> <http://news.bbc.uk/go/pr/fr/-/hi/world/asia-pacific/3413769.stm>

<sup>22</sup> <http://news.bbc.uk/go/pr/fr/-/hi/world/asia-pacific/3413769.stm>

<sup>23</sup> Sheikh Hamdan Bin Zayed Al-Nahyan, in an Article published in The Japan Times April 21, 2004.

<sup>24</sup> The Japan Times, 25 Dec. 2004.

the issue of UN reform and expansion in the UN Security Council opened up for discussion. Japanese Prime Minister Junichiro Koizumi recounted all its contribution to the world community in his address to 59<sup>th</sup> session (21<sup>st</sup> October 2004) of UN General Assembly. Addressing the session he presented Japan's claim for a permanent seat and argued that – “The realization of peace requires comprehensive efforts ranging from peace building to the nation building. Japan's role has thus become increasingly vital to the maintenance of international peace and security, which is precisely the mandate of the Security Council. We believe that the role that Japan played provides a solid basis for its assumption of permanent membership on the Security Council.”<sup>25</sup>

These statements suggest that obtaining permanent UN Security Council membership is one of Japan's priority foreign policy goals. Prime Minister Koizumi is not first to open the debate for Japan's entry to UNSC. Prime Minister Koizumi was not first to raise the issue of permanent membership in the UN. The issue was raised before also In 1993 Prime Minister Hosokawa Morihiro ambiguously appealed that “Japan is prepared to do all it can do to discharge its responsibilities”<sup>26</sup> in a reformed UN.

Amid the debate for a reform and expansion in the UNSC Japan has stepped up its campaign to secure a seat in the UNSC. Japan has puts following argument to strengthen its bid.

#### **Cooperation in terms of personnel:**

Since the enactment of the international Peace Cooperation Law in 1992, Japan has sent its SDF contingent to UN missions in Cambodia, Mozambique, East Timor, and Golan Heights and recently in Iraq. Following the Tsunami, the UN secretary has made an appeal to the international community to contribute whole-heartedly to the rehabilitation of Tsunami victims. Acting on UN General Secretary's call Japan deployed its SDF for the rehabilitation and relief of the Tsunami victims and tried to come up to the expectation of world community.

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<sup>25</sup> A new United Nations for the new Era Address by PM Junichiro Koizumi to the 59<sup>th</sup> Session of UN General Assembly on 21<sup>st</sup> Sept. 2004, in Japan Times, 22<sup>nd</sup> September 2004.

<sup>26</sup> Hiroshi Fujita, “UN Reform and Japan's Permanent Security Council Seat.” in *Japan Quarterly*, October-December 1995.p. 436-442.



### **Financial Contribution:**

Japan is the second largest financial contributor to the UN, contributing 20.6% of the total budget of the UN; which is slightly lower than the US. Leaving out the US, Japan's financial contributions exceed the combined contribution of the four remaining permanent members of the UNSC. Many Japanese supporting Japan's bid for a permanent Security Council seat have mentioned this high share as the main reason, speaking of 'No taxation without representation'<sup>27</sup> However, Japan's financial contribution to the UN and its policy of pouring ODA loans to the underdeveloped and developing nations are seen as Japan's pursuit to win support from these nations. It led to criticism that Japan is trying to buy a seat through its financial status and not willing to contribute through policies and personnel.

### **Arms Control, Disarmament and Non-proliferation:**

Japan is committed to promoting international disarmament and non-proliferation and had adopted the three non-nuclear principles namely, not possessing, not producing and not permitting the introduction of nuclear weapons into its territory. Japan actively contributed to the success of the 2000 NPT Review Conference and has been taking the initiative in facilitating the entry into force of the Comprehensive Nuclear Test Ban Treaty (CTBT). Moreover, Japan has been playing a leading role in disarmament of conventional weapon, including small arms and landmines. It has provided substantial financial assistance for the purpose and established the Small Arms Reduction Fund within the UN in 2000.

### **Recognition from International Community:**

Japan has served as a non-permanent member of the Security Council for a record nine terms, after its entry into UN in 1956. People in Japanese administration view this achievement as gaining international community's trust which is reflective of their vote

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<sup>27</sup> Statement by Mr. Yoshiro Htano, Permanent Representative of Japan at the fifth meeting of the open-ended working group on question of equitable representation and increase in the membership of the Security Council in: Ministry of Foreign Affairs, UN Policy division, Security Council Reform, Basic Documents, 23 January 1996. as quoted by Reinhard Drifte, in "Looking Forward – Prospects for Multilateralism: Implication for Japan." in Japan and multilateral Diplomacy (edit) Regneir P. and Warner, D. Ashagte (Burlington USA 2003.)

for its record nine term nomination for the Council. They believe that in an expansion of the UNSC international community will repose its faith in the same manner.

They also claim that during its terms as a non-permanent member of the UNSC, it actively contributed to the UN objectives, such as achievement of peace agreement in Cambodia and during 1997-98 term Japan helped shape the debate on various issues and regional situations, such as the sanctions against Iraq and nuclear testing by India and Pakistan.

It is true that Japan has slightly upper edge over other countries vying for a permanent seat in the UNSC. Despite all these claims and contribution, there are major hurdles, which impedes Japan's entry as a permanent member into UNSC. The obstacles include Japan's non-agreement of a peace treaty with Soviet Russia, and poor human rights records as alleged by China and other East Asian Countries. Japan being named as an enemy state in the UN clause, lack of legal framework to deploy troops in a combat zone, non-conformity of ideas among the political parties and public over the issue how to participate in UNPKO.

#### **Enemy Clause of the UN:**

The UN Charter was signed when Japan was still engaged in the war. The allied powers declared Japan as "enemy State". To delete this clause Japan had been manoeuvring diplomatically and in 1995, its effort yielded some results when General Assembly adopted a resolution that recognized enemy state clause as "obsolete". That means the clause is no longer applicable<sup>28</sup>. But without deleting the enemy state clause securing entry would be difficult.

#### **Legal frame work:**

Japan has no proper legal framework to participate in UNPKO and its Constitution bans "overseas deployment" of Japanese troops to "settle international disputes". Though it has participated in UNPKO since 1992 after interim legislations in the Diet. Enacting legislation in the Diet has not been so smooth as it has been met with boycott; opposition

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<sup>28</sup> Yukio Satoshi "Keep pushing for UN reform." In Japan Echo Vol.30 No.6 December 2003 pp.35-39.

and criticism from the parties in opposition. These legislations have allowed Japan's limited participation in the post conflict situation.

Therefore the role of Japan has been limited to peace observation to peacekeeping and it still needs to devise a mechanism, which could allow it, a role of "peace enforcement" in the UN missions. But Japan's constitution especially the war-renouncing clause, deprives it to do so. Various suggestions came to deal with this constitutional problem. Amid the debate over Japan's entry to the UNSC as a permanent member, the US was first to suggest its ally to amend article 9 of its Constitution. In this context, the then US Secretary of State Collin Powell said – "If Japan is going to play a full role on the world stage and become a full active participation of the Security Council, and have the kind of obligations that it would pick up as a member of the Security Council, Article 9, would have to be examined in that light."<sup>29</sup>

But Japan still believes that it can play its role in the UN without reviewing article 9 and termed Powell's remark as 'not official of the US government.'" Chief Cabinet Secretary Horoki Hosoda said, "the United States has supported Japan's quest for permanent membership in the UNSC." He further added, "We have confirmed (the stance) that Constitutional revision is neither a prerequisite nor a restraint."<sup>30</sup>

The Japanese public is also concerned that being a permanent member of the Security Council would require Japan to be militarily involved in addressing global issues and conflicts, therefore the administration is pushing for an amendment in the pacifist constitution. However, Foreign Minister Machimura played down these concerns while addressing a meeting held in Tokyo on the issue of UN reform. To this regard he said- "Japan can fully serve as a permanent member of the UNSC even on the assumption that we maintain the current Constitution."

### **Historical Irritants:**

There are other questions of immediate nature that the UN would have to think about, when considering Japan's bid. Japan has still not formally signed a peace treaty with Russia, which it was obliged to do, under the Potsdam declaration 1945. Other issue is

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<sup>29</sup> Japan Times, August 14, 2004.

<sup>30</sup> The Japan Times. August 25, 2004.

that of Japan's poor record of its past human rights. Changing the historical facts from history textbooks had indicated that rather than seeking sincere atonement over wartime atrocities Japan tried to wipe out its past record. This resulted in strong anti Japanese protest in China and other East Asian Countries. To quell the anti Japanese sentiments, Prime Minister Koizumi apologized for Japan's wartime atrocities during Afro Asian Conference in Bandung.

But rather than acting seriously on the remorse, back in Japan he urged its Asian neighbours not to intervene its internal affairs by denouncing his visit to Yasukuni shrine. Prime Minister Koizumi told the House of Representative budget Committee that—"every country wants to mourn their war dead, and other country should not interfere in the way of mourning".<sup>31</sup> The shadow of Yasukuni issue is still being witnessed on Sino- Japan relations. The issue is so emotional for the Chinese that Chinese Vice Premier Wu Yi on an official visit to Japan flew back home without meeting Prime Minister Koizumi, though she cited "urgent duties" at home as a reason for canceling meeting with Japanese Prime Minister<sup>32</sup>. But the people in the diplomatic circle believe that Beijing may be using the cancellation to pressure Koizumi to stop his visit to the Yasukuni shrine. They also speculate that if Japan not seriously backs its words of apology for Japan's past atrocities, China may use this issue as a bargaining chip and may use veto to block Japan's entry into UNSC.

Other Concerns of the Asian countries is that the Japan's joining the UNSC would not be a representation to the Asian communities rather it would increase US dominance in the UN. Japan as a loyal ally of the US, will serve the US and Asian and other nations would be further marginalized.

#### **Domestic constraints:**

In Japan the ruling government, the opposition as well as the people is enthused over the issue of Japan's bid as a permanent member of the UNSC. They also favour Japan's greater contribution to the UNPKO and other UN activities. But on the issue of how to

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<sup>31</sup> The Japan Times, May 17, 2005.

<sup>32</sup> The Japan Times, May 24, 2005.

contribute to UNPKO there exists non-conformity of the ideas among the political parties and public opinion.

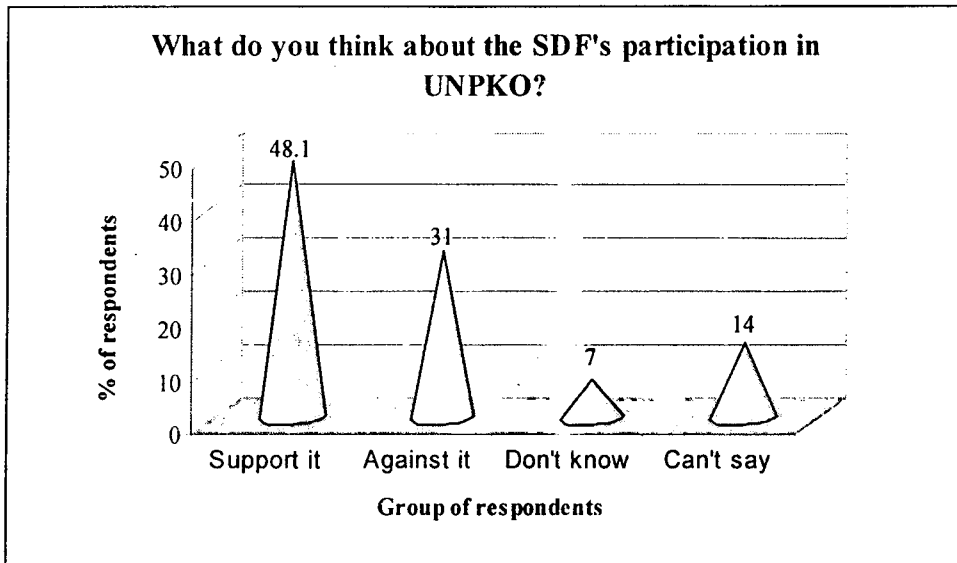
The DPJ including the ruling LDP's coalition partner the New Komeito is opposed to SDF deployment in combat zone. The Komeito was reluctant over the deployment of SDF in Iraq and had hesitantly Okayed SDF dispatch to a relatively stable area of Samawah in Al-Muthanna province. The DPJ still continues on its insistence that SDF should be deployed in overseas missions only if the UN passes a resolution on the behest of the government of the concerned country. The JCP and SDPJ's support to Japan's participation in UNPKO are conditional as they maintain that these contributions should be limited to civilian one and any involvement to SDF's participation would violate the Constitution.

The divide among the political parties is evident from the recent findings of the lower house Constitutional Review Council. On the issue of Collective Security the decision fall far short of gaining two third majority among the Council members. The Council was split three ways, to allow participation, not to allow participation and allow with restriction. This means that there is no conformity among the political parties on the issue of collective security and in case of UNPKO activities; Japan cannot participate in collective security measures adopted by the World body.

The public opinion, however, is rising for greater UNPKO participation as indicated by recent surveys. According to a public opinion poll conducted by Cabinet Office (formerly Prime Ministers Office) in 1993 a year after Japan's first participation in UNPKO, 48% supported while 31% were opposed the move.<sup>33</sup> (See Figure 13A)

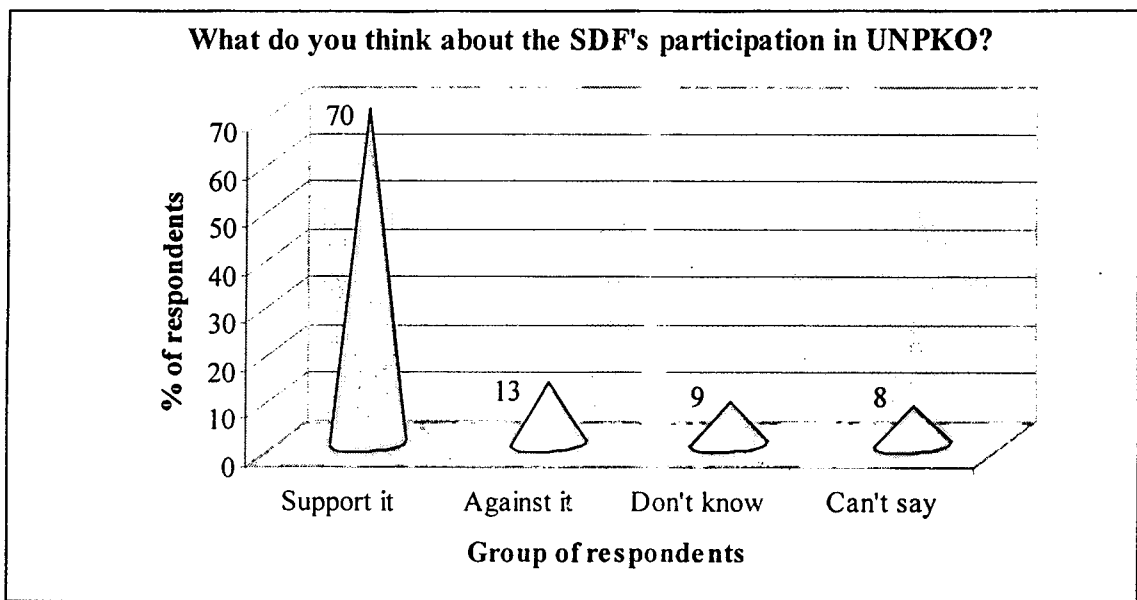
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<sup>33</sup> Source Defense of Japan white paper 2003.p 264.



**Figure 13A**

When the same question was put to a public opinion poll by the Cabinet office in 2002, the ratio of those who supported SDF's participation in UNPKO risen to 70% while those opposed slide down to 13%<sup>34</sup> (See Figure 13B). The opinion poll however does not reflect to the fact that how many people will support Japan's participation in a Peace Enforcement activity of the UN.



**Figure 13B.**

<sup>34</sup> ibid

The changes in people's perceptions towards the SDF partly reflect an increased understanding of Japan's role in international peace cooperation. The changes can also be attributed to the fact the SDF has sincerely executed its job and has not resorted to force during the entire peacekeeping operations. The sincere work by the SDF has allayed the concerns that SDF's overseas deployment will result to resurgence of Japanese militarism, in abroad as well as at home. As a result of this, there is greater acceptance of Japan's UNPKO participation.

**Japan's recent diplomatic maneuvering :**

Following the opening of its bid for the permanent membership of the UNSC, Japan had been pursuing with the US administration in a hope to get strong support from its Security ally. But the US support would not be unconditional, as it is reflected by one of the resolution adopted on 15 July 1994, which demanded that Japan should only be admitted in the UNSC as a permanent member if it is 'capable of discharging the full range of responsibilities of the Security Council'.<sup>35</sup> Beside getting some token support from the low profile officials of the US administration Japan could not get expected support to fulfill its aspiration for the UNSC. Therefore Japan adopted a multi pronged strategy which includes launching of "Group of 4", comprising Japan, Germany, Brazil and India. The group through greater interaction and meetings among the leadership of the countries at the sidelines of major summits has been raising demands of their inclusion with a veto power in the proposed expansion of the UNSC due in September. The group's diplomatic maneuvering includes circulation of a working paper among the members of the United Nations advocating for increasing the current number of permanent members from five to 11. The draft proposal advocates that among the six new members, two countries from Africa should be given representation. It also advocates adding four more non-permanent members, which would be elected every two years. The Group 4 wants the additional permanent members to be granted veto rights, similar to those exercised by the current permanent members.

In yet another development, following the refusal of the US terming the demand of the G-4 for a veto power status as unrealistic, Group 4 agreed to put off discussion of veto

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<sup>35</sup> Reinhard Drifte, "Looking Forward –Prospects of Multilateralism: Implication for Japan" in Japan and multilateral Diplomacy (edit) Regneir P. and Warner,D. Ashagte (Burlington USA 2003.)

right for another 15 years.<sup>36</sup> Meanwhile, the US has hinted that it wants the UNSC expanded by “two or so”<sup>37</sup>. It is clear that the US so far has only revealed Japan’s name. Who would be second is not known. But this US tactics supporting only two may result in a crack in the G-4 alliance.

Again, Japan and other members of the group 4 have been facing strong opposition from the countries of “Uniting for Consensus” a rival faction opposed to the expansion of permanent member, which advocate for a greater democratization of General Assembly rather than dominance and expansion of UNSC over UN affairs. The Uniting for Consensus group, which includes Pakistan, Italy, Canada, Costa Rica, South Korea, Qatar, Spain and Turkey and some other developing countries, has presented a working paper to the UN members, calling for addition of 10 non-permanent members on the Council. Which means total number of non-permanent member of the UNSC would become 20. According to the proposal, six of the 20 seats would go to Africa, five to Asia, four to Latin America and Caribbean, three to Western Europe and two to Eastern Europe. Algeria one of the member of the Uniting for Consensus said-“ What Uniting for Consensus has tried to do...is to offer the General Assembly... an alternative and to demonstrate that it is possible to reach reform of the Security Council by Consensus”<sup>38</sup>

The emergence of a rival group within the UN members has made the task very difficult for a possible UN reform as for any reform to take place the ratification from two third members of the General Assembly. The diplomatic maneuvering by the G-4 countries has resulted in garnering support form 120 countries as claimed by Japanese permanent ambassador to the UN, Kenzo Oshima. This means the group still fall short of gaining support from 128 countries required for approval for UN reform. As any expansion in the UN will need approval from the all P-5 members. And it is evident from the statements by the US, Russia and China that they are opposed to a deadline of September 2005 fixed by UN Secretary General Kofi Annan and are demanding broadest consensus on the reforms. Thus the demand for consensus by the rival groups and the fissures within the

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<sup>36</sup> UN Security Council Reform: Curb your Enthusiasm in *The Economist*, June 11<sup>th</sup> 2005 p.34.

<sup>37</sup> The Hindu, June 18, 2005.

<sup>38</sup> The Japan Times, May 29, 2005.



members of the Security Council, the effort to expand permanent memberships in the UNSC may be stalled for a longer period.

**Conclusion:**

It is clear from above discussion that Japan did not show much interest in playing a wider role in the UN during the cold war period and pacifist clause of the Constitution especially the Article 9 was a greater impediment in this regard. The measures such as adoption of a resolution prohibiting any overseas dispatch of the SDF in the House of Councillors in 1954 and the SDF law enacted in the same year, spelled out prohibition of the dispatch of troops overseas, indicate that Japan was willing to maintain its Constitutional norm when it joins the UN. But these norms were gradually eroded due to continued exhortation by the UN to contribute in UN missions with personnel. Some of the officials in MOFA also gave impetus to the debate that Japan should contribute militarily to the UN missions and stated that it was inconsistent for Japan to adhere to UN principles and not make its troops available for peacekeeping operations. These pressures later resulted into Japan's civilian contribution to the UNPKO and remained limited to the peace observation and election monitoring in various countries.

In the post Cold war period, however, various external and internal phenomena resulted in change of Japanese pacifist policies. The external phenomena like the Iraq wars and 9/11 terrorist attacks have pushed Japan for a new role in multilateral diplomacy. In the home, policy makers in JDA, MOFA, the ruling LDP all have been undergoing generational changes. They do not necessarily stick to the foreign policy stance adopted by their leaders of the previous generation. The strong opposition forces like the Socialists and the Communists have been marginalized politically and a new political force, the DPJ, came to occupy the lacuna left by the marginalization of the opposition. The new opposition-the DPJ's security stance is converging towards that of LDP and public opinion is largely shifting towards the acceptance of SDF's constitutionality, revision in Constitution to align it with the existing reality and a wider participation in UN security frameworks. This phenomenal change has encouraged Japanese establishment to push for a proactive security policy in the world affairs and participation

in the UN through financial as well as personnel Contribution aimed at fulfilling its aspiration to secure a permanent seat in the UNSC.

Now to legitimize its SDF dispatches overseas, Japan has shifted debate from Article 9 to the preamble of the Constitution, which states that 'Japan would work with international society for the preservation of peace'. Japan has used the Preamble to argue that it should support the UN as international society's highest representative. Thus Japan has made remarkable progress from total non-existence of Japan's participation in UNPKO to a limited participation in traditional UN peacekeeping. To play a bigger role however Japanese people would have to find a way to modify their pacifism so that Japan's participation from rear area support to a core of UNPKO becomes possible. This will most likely provide legitimacy to its UNSC bid as a permanent member.

## CHAPTER – 5

### Summary and Conclusion:

Japan's pacifist Constitution, for long, has been acting as a drag in Japan's participation in the world affairs as a normal country. In a major development the Constitutional Review Council has recently recommended the Diet to initiate debate for the revision in Constitution, so that it can be integrated with the challenges of present world order. With this recommendation the constitutional debate and a possibility of amendment has entered into a decisive phase. Though, this is not the first time when the imposed Constitution is in the limelight of debate rather it has been the most debated issue during the entire postwar period. The issue to amend the Constitution was brought into discussion even when Japan was still under occupation. But the Japanese leadership demonstrated its apathy towards the issue. The statesmen reposed their faith in the UN with their firm believe that the world body will provide security in case of an external aggression. Therefore, they did not show interest either in revising the constitution or in maintaining an armed force.

However, the impetus to amend the constitution was provided by the external situation and external pressures, particularly the US pressure. The outbreak of Korean War and inception of Cold War pushed an unarmed Japan into a precarious situation. Thus the need to revise the pacifist clauses of the Constitution and creation of an armed force to meet any possible security threat was felt at the outset of the Cold War. But the US pressure on Japan to remilitarize itself backfired.

When the Korean War broke out, the pacifists in Japan perceiving US gambit to use the nation as a bulwark against communism, stood firm against any possible revision as well as any effort that could have resulted in greater remilitarization of Japan. In response the Japanese administration adopted a strategy to interpret the Constitution especially Article 9, in such a way that it allows having minimum forces for self-defense. Here Ashida Hitoshi's effort to rewrite the war-renouncing clause of the SCAP's draft Constitution helped Japan constitute a force for self-defense. The government argued that Japan's self-defense capability should be developed in proportion with the military

capability of the adjacent countries. This argument gave basis to the US Japan security treaties and the National Defense Program Outlines, which pushed Japan for equipping its self-defense forces with necessary arms. The pacifists did not agree with the argument put forward by the government and continued with their resistance. The pacifists wanted Japan to return to international society as a neutral country belonging to neither camp by signing a treaty that included socialist countries. The Socialist party also adopted somewhat pacifist stances in its security policy and considered China and Russia its ideal as peaceful countries, willing to coexist with international community. However China's recognition to US Japan Security Treaty, Russo-Chinese territorial dispute and Soviet invasion on Afghanistan shattered the myth of socialist countries as champions of peace. The incident severely damaged Socialist Party's pacifist image at home and affected its campaign for a neutral and unarmed Japan.

With the succession of nationalists like Nakasone as Prime Minister, who in an effort to make Japan an international country advocated for a greater alliance with the US in security sphere, pacifists were left with a minimum scope to press the government to pursue a pacifist policy. On the other hand a new generation came to occupy central positions in the government, ministries and bureaucracy, were devoid of pacifist feelings as they did not witness devastation of war and seemed more willing to unshackle Japan from long held pacifism. With this generational change pacifist tendencies in Japanese society were pushed to backburner. However, the significance of the pacifist movement cannot be denied and its impact is reflected from the fact that the government could not alter the words of Constitution and article 9, remained unchanged. During the entire Cold war period, however, the government tried to legitimize its militarization process with stretched interpretation of the Constitution that it provides an inherent right for self-defense.

The demise of Soviet Union and end of the Cold War presented unprecedented problem for Japan. What should be the objective and need of the US- Japan Security system in which the enemy had ceased to exist, was a debatable issue in Japan. The opposition demanded to terminate the US Japan security treaty as the perceived threat from the Soviet had receded. But the development like the missiles test firing by North Korea over

Japanese sea exhibited that the Cold war like situation in North East Asia is not necessarily over. The North Korean situation indicated that a potential security threat still exists which gave the basis for continuation of the US-Japan Security Treaty.

The Post Cold War security situation posed new challenges to Japan, as Japan had no legal framework to respond to the situation taking place beyond its territory and when the Japanese administration under US pressure tried to contribute its bit in the war efforts in the Gulf, the pacifists citing the violation of the war renouncing Article 9, stalled the process. Japan's failure to shoulder military contribution in Iraq led security analysts to interpret Japan as a country, which is taking free ride on the US security system. In fact for Japan the post cold war situation was different from the Cold War period. During the Cold War period Japan had at least ably served the role as a frontline ally state for US in containing the spread of communism, but in the post Cold War period Japan, tied by the US imposed Constitution had no room to contribute to the changed international realities and the demands of its closest ally US.

It is not that the Japanese administration was not willing to contribute to its ally the US. The willingness is reflected from the fact that the Japanese administration did try to send ASDF aircraft to evacuate civilians from the gulf region and contributed 13 billion US dollar to the war fund. But Japan's helplessness in full-fledged military participation in Iraq war arose due to the pacifist Constitution, especially Article 9, which bans Japan's participation in settling international disputes and deployment of its troops overseas. Japan's non-participation in the 1990s gulf war, however, generated a renewed debate on Japan's in-activism and its role and contribution towards maintaining international peace.

Following the Iraq experience, the point of debate in Japan shifted to the fact that the Constitution could not cope with the new problems that have arisen in areas like international contribution. The Japanese administration once again reinterpreted its pacifist Constitution to play a new role towards international contribution. To legitimize its SDF dispatches overseas, this time interpretation moved from Article 9 to the preamble of the Constitution, which states that 'Japan would work with international society for the preservation of peace'. Japan has used the Preamble to argue that Japan

should contribute to the UN through its troops in “preserving the peace” as it is “international society’s” highest representative.

The realization of the majority of the masses that the supreme document has lost its brilliance in the changed security scenario was a major shift in attitude of the traditional pacifist society. With the continued debate the percentage of those who approve Constitutional amendment is rising and has reached up to 79%.<sup>1</sup> This indicates that the majority of Japanese want to see a constitutional update. But the government still was hesitant to push for a review in the Constitution on its own and waited for a further rise in public opinion supporting its security policies. However the media, think tanks as well as business groups gave the greater impetus for the amendment in the Constitution. The Asahi, The Yomiuri, The Sekai, the Keidanren came up with their own suggestions to amend the Constitution to integrate the document with the real problems of the 21<sup>st</sup> Century.

A close examination of these proposals reflects that the proposals from each group represent their own ideological position. For example the Asahi and Sekai proposal are opposed to any amendment in the Article 9, The Yomiuri and the Keidanren proposals as well as proposal from Institute for International Policy Studies suggest deleting second paragraph of the Article 9 and stresses to provide Constitutional legitimacy to the SDF. The Ozawa proposal suggests addition of third paragraph in Article 9 so as to deploy Japanese troops for the participation in international affairs. Nevertheless, there are some common points for Japan’s greater participation in the UN PKO and all these drafts are concerned with the basic problems such as- how to overcome the gap between words of the constitution and actual practice, and what recourses should Japan adopt to make the constitution relevant to the circumstances of the 21<sup>st</sup> century.

The ongoing debate in the media, the people and political parties to amend the Constitution have emboldened the government’s confidence to seriously think for a review in the pacifist provisions. After ten years of its failure in Iraq war, setting up of Constitutional Review Council in both the houses of the Diet was a step towards the

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<sup>1</sup> Editorial, Japan Times, 19 April 2005

amendment in the Constitution. The Constitutional Review Council after five years of thorough debate has submitted its recommendation to the respective Houses in April 2005. The Lower House Council has suggested changes in paragraph 2 of the article 9, provision in the Constitution to provide Constitutional legality to the existing SDF, an explicit provision in the Constitution for Japan's participation in the UN collective security and creating a framework of regional security in Asia. However there was no uniformity among all the 50 panel members over the issue of allowing Japan to engage in collective defense.

Following the recommendation of the Lower House Council, the upper House Council also submitted its findings over Constitutional Review which was more or less similar to the lower house Council recommendation. While there was a consensus among the members of the Upper House Council on retaining the first paragraph of article intact, they differed to review the second paragraph and left the issue to be debated further <sup>2</sup>.

The recommendation by the review Council has been possible with the support of major opposition, the DPJ. This development is yet another breakthrough towards the Constitutional amendment as it indicates that there is growing convergence of perceptions in the major parties, which is a step towards gaining two third majority in the House as stipulated in Article 96 for the amendment in the Constitution. The convergence of ideas over Constitutional amendment among the parties will also help when the proposed amendment is put to vote for a referendum as Japan is largely a cadre based political society. Considering the percentage of votes the LDP, the Komeito, and the DPJ gains, it seems getting a majority approval in the referendum would not be difficult. There may be stiff resistance by the SDPJ and the JCP opposing the review in the Constitution, but if we put party votes supporting the review, the parties opposing the review cannot leave major impact in the House as well as in the referendum.

Though the opinion polls reflect that the support for a revision in the Constitution is rising but Japan is a society where public perceptions are fragile and are open to emotions. During and after the hostage crisis of Japanese civilians in Iraq, opinion polls

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<sup>2</sup> The Japan Times, April 21, 2005.

have reflected waning public support for Japan's effort in Iraq, people demanded withdrawal of Japanese SDF from the country. Therefore Japanese administration would have to push for the Constitutional amendment cautiously. Any statement by a statesman or a decision that is not conforming to the opinion of the masses may foil all the attempts to revise the Constitution.

The talk of a revision in the constitution is expected to cause concern in the administration of the adjoining countries especially those who have been colonies of Japan in the prewar period. Japan would have to take consistent effort to allay their concerns and would have to convince them that it is not returning towards military adventurism and its effort to amend the constitution is aimed at playing its due role in maintaining the international peace under the UN framework. The Japanese administration should draw attention of the neighbouring countries to the fact that it is not deleting the Article 9 altogether and first paragraph that renounces war, as a sovereign right of the nation will remain unchanged. Japan should seriously pursue the matter with neighbouring countries for 'creation of a framework in regional security in Asia' as has been envisioned in the recommendation by the Council. The security framework if comes to creation will help in greater interaction and exchange of security related information among the member countries. Thus security framework will certainly help end hegemony of a member country over other and also ease Japan's burden on the US defense system.

Through the sustained engagement in bilateral meetings with the leaders of the adjoining countries at the sidelines of world summits, Japan has gained substantial success in cooling down their resentment. Prime Minister Koizumi's meeting with Hu Jintao following an open apology among the leaders of world community during Bandung summit of Afro Asian countries may be cited as an example. But the public sentiment in Asian countries is still against Japanese efforts. The recent example of mass protests and burning of Japanese goods reflect that they still harbour resentment against Japan and they are opposed to any effort that could lead to resurgence of militarism in Japan. In the protest they also included agenda of opposition of Japan becoming permanent member of the UNSC.



In the light of these developments Japan should not ignore their concerns and using its diplomatic means Japan can assure them that certainly it is not returning to the prewar militarist path. The fear that Japan will return to a militarist path is just an illusion if seen in the light of the existing realities. The present circumstances are quite different from the prewar Japan. Now it is a responsible country of the world community and is no more a nation with a majority of skilled warrior class-the Samurais. It is not a country which possesses huge military and with the implementation of new Defense Program Outline the number of Japanese SDF will come down to 155,000.<sup>3</sup> The real reason behind the fear is revival of Japanese imperialist ambitions, but there is no current sign of revival of this ambition so long as nationalism is kept in check. Japan has also ratified the NPT and chances of its nuclearization is bleak if seen in the light that the Japanese are “nuclear allergic”. Considering another two factors the low birth rate of 1.29% in Japan and a lack of interest among the youth to join the SDF, it becomes clear that Japan so far does not have a sinister design to militarize.

What Japan aspires with the proposed amendment in the Constitution and how should it reword Article 9 to avoid political confrontation? Certainly the issue, to amend article 9 is tied to secure a permanent seat in UN Security Council. With an amendment in the pacifist article and making an explicit provision for the participation in UN collective security in the Constitution, which seems likely, Japanese government aims to avoid the hassles of presenting an interim legislation each time in the Diet for sending its troops overseas.

Despite the wider public support for Japan’s participation in the UNPKO some section of people also doubt that with the proposed amendment Japan would like to expand SDF’s scope to contribute militarily to the US forces at the global level. The debate in the Japanese administration and the hawkish faction of LDP for provision of a Collective Security in the proposed amendment indicates to that direction. It would not be possible for Japan to include a provision for collective security, as it will not be acceptable to the opposition parties as well as its coalition partner the Komeito. A talk of collective

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<sup>3</sup> The Japan Times, Decemeber, 13 2004.

security just to support its ally's war efforts would hurt the fragile public perception of the masses and pacifists may term it resurgence of Japanese militarism. In the neighbouring countries frequent appearance of people in public to express opinion against Japan has caused diplomatic distress in East Asian countries and either way rendering Japan difficult in responding through policy changes. So it would not be possible for Japanese administration to make an explicit provision in the Constitution regarding the Collective self-defense.

At the same time, one can understand the sentiments of people in the administration that why they advocate for having a right of collective self-defense. In the case of an attack on its security ally, Japan can only watch the US forces sinking in the sea and cannot open fire to repel the aggressor, because it interprets engaging in Collective Self defense as unconstitutional. Therefore the people in the administration and especially those in MOFA, advocate for a provision in the constitution to engage in Collective self-defense. What should be Japan's response in this kind of situations is certainly a serious question? In such cases if an unprovoked attack takes place on its ally the US in Japanese territory and Japan lends active support to deal the situation, it seems logical. If it does not do so it would be blamed as a selfish country taking free ride on the US defense System. But the people in opposition and some in the ruling LDP does not want to make collective self-defense a constitutional provision. They believe that if Japan includes a provision for collective defense without restriction then the US will utilize Japanese troops in each of its missions at the global level. That would give reasons for concern and criticism in the neighbouring countries as well as inside Japan it will amount to renouncing pacifism.

What should be done with the article 9, which is acting as a drag in Japan's normalization? The pacifists advocate that it should not be scrapped. But the revisionist think that leaving it untouched would be of no meaning to initiate an amendment in the Constitution. How to strike a balance between the pacifists and revisionists views regarding constitutional amendment, is the real problem the Japanese government faces now. Noting the fact that all the proposals be it form the media, think tanks business groups, political parties and the Constitutional Review Council suggest to maintain the first paragraph of article 9, which renounces war as a means to settle international

disputes, it seems difficult that the government would ignore their concerns. Suggesting not changing first paragraph of article 9 means that they still see some relevance of pacifism or want to preserve this unique feature of Japanese Constitution. Therefore realizing the wider perception not to drop first paragraph of Article 9, it is likely that Japanese government would preserve it as it stands.

The second paragraph of article 9, which bans Japan of possessing an army contradicts the fact that Japan has an advanced defense system and its ranking varies from 2<sup>nd</sup> to 4<sup>th</sup> among the world's top most military power. Scrapping this paragraph would end the debate regarding the Constitutionality of the SDF. However it would be necessary to define in the Constitution, the role of Japanese troops in the UNPKO and a new clause in the Constitution needs to be added. However even if a new clause is added in the constitution it would not be possible for the Japanese troops to participate in Peace enforcement activities as the words of the article 9 which renounces use of force for settling international disputes would contradict the new provision for the participation in the UN. If it aims to support the UN through participation in core area of peace keeping, it needs to rephrase the Article 9. If it is left as it stands now, the article 9 would continue to serve as a break on Japan's participation in peace enforcements or its participation in core are of peacekeeping.

In sum, what will Japan gain form the proposed amendment? Analyzing the present view of the media, think tanks, the business groups and the recommendation form the Constitutional Review Council, one can asses that the pacifism will still hold its relevance as they are not proposing to scrap the article 9 altogether. But they propose to drop or amend paragraph 2 of the Article 9. Dropping the second part of the article 9 will provide legitimacy to the existing SDF and the debate regarding constitutionality of the SDF will cease to exist. As the second paragraph of the Article 9 also bans possession of "war potential", an amendment or deletion of the paragraph will pave the way for arms procurement for its SDF. A provision regarding SDF's participation in UNPKO will help the government in getting over the hassles to present the bill each time in the Diet before the SDF embarks for an overseas mission. As regards to possibility of allowing the SDF for a Collective Defense with Japan's Security ally the US, the possibility still eludes as

the opinion among the Diet members is divided among not allowing, allowing and allowing with restriction. However if the Dietmen having opinion for allowing and allowing with restriction narrow down their differences, a possibility of allowing the Collective Defense with restriction may emerge.

## APPENDIX – 1

### The Constitution of the Empire of Japan (1889)

#### **Imperial Oath Sworn in the Sanctuary in the Imperial Palace (Tsuge-bumi)**

We, the Successor to the prosperous Throne of Our Predecessors, do humbly and solemnly swear to the Imperial Founder of Our House and to Our other Imperial Ancestors that, in pursuance of a great policy co-extensive with the Heavens and with the Earth, We shall maintain and secure from decline the ancient form of government.

In consideration of the progressive tendency of the course of human affairs and in parallel with the advance of civilization, We deem it expedient, in order to give clearness and distinctness to the instructions bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors, to establish fundamental laws formulated into express provisions of law, so that, on the one hand, Our Imperial posterity may possess an express guide for the course they are to follow, and that, on the other, Our subjects shall thereby be enabled to enjoy a wider range of action in giving Us their support, and that the observance of Our laws shall continue to the remotest ages of time. We will thereby to give greater firmness to the stability of Our country and to promote the welfare of all the people within the boundaries of Our dominions; and We now establish the Imperial House Law and the Constitution. These Laws come to only an exposition of grand precepts for the conduct of the government, bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors. That we have been so fortunate in Our reign, in keeping with the tendency of the times, as to accomplish this work, We owe to the glorious Spirits of the Imperial Founder of Our House and of Our other Imperial Ancestors.

We now reverently make Our prayer to Them and to Our Illustrious Father, and implore the help of Their Sacred Spirits, and make to Them solemn oath never at this time nor in the future to fail to be an example to our subjects in the observance of the Laws hereby established.

May the heavenly Spirits witness this Our solemn Oath.

#### **Imperial Rescript on the Promulgation of the Constitution**

Whereas We make it the joy and glory of Our heart to behold the prosperity of Our country, and the welfare of Our subjects, We do hereby, in virtue of the Supreme power We inherit from Our Imperial Ancestors, promulgate the present immutable fundamental law, for the sake of Our present subjects and their descendants.

The Imperial Founder of Our House and Our other Imperial ancestors, by the help and support of the forefathers of Our subjects, laid the foundation of Our Empire upon a basis, which is to last forever. That this brilliant achievement embellishes the annals of Our country, is due to the glorious virtues of Our Sacred Imperial ancestors, and to the loyalty and bravery of Our subjects, their love of their country and their public spirit. Considering that Our subjects are the descendants of the loyal and good subjects of Our Imperial Ancestors, We doubt not but that Our subjects will be guided by Our views, and

will sympathize with all Our endeavors, and that, harmoniously cooperating together, they will share with Us Our hope of making manifest the glory of Our country, both at home and abroad, and of securing forever the stability of the work bequeathed to Us by Our Imperial Ancestors.

#### **Preamble [or Edict] (Joyu)**

Having, by virtue of the glories of Our Ancestors, ascended the throne of a lineal succession unbroken for ages eternal; desiring to promote the welfare of, and to give development to the moral and intellectual faculties of Our beloved subjects, the very same that have been favored with the benevolent care and affectionate vigilance of Our Ancestors; and hoping to maintain the prosperity of the State, in concert with Our people and with their support, We hereby promulgate, in pursuance of Our Imperial Rescript of the 12th day of the 10th month of the 14th year of Meiji, a fundamental law of the State, to exhibit the principles, by which We are guided in Our conduct, and to point out to what Our descendants and Our subjects and their descendants are forever to conform.

The right of sovereignty of the State, We have inherited from Our Ancestors, and We shall bequeath them to Our descendants. Neither We nor they shall in the future fail to wield them, in accordance with the provisions of the Constitution hereby granted.

We now declare to respect and protect the security of the rights and of the property of Our people, and to secure to them the complete enjoyment of the same, within the extent of the provisions of the present Constitution and of the law.

The Imperial Diet shall first be convoked for the 23rd year of Meiji and the time of its opening shall be the date, when the present Constitution comes into force.

When in the future it may become necessary to amend any of the provisions of the present Constitution, We or Our successors shall assume the initiative right, and submit a project for the same to the Imperial Diet. The Imperial Diet shall pass its vote upon it, according to the conditions imposed by the present Constitution, and in no otherwise shall Our descendants or Our subjects be permitted to attempt any alteration thereof.

Our Ministers of State, on Our behalf, shall be held responsible for the carrying out of the present Constitution, and Our present and future subjects shall forever assume the duty of allegiance to the present Constitution.

#### **CHAPTER I. THE EMPEROR**

Article 1. The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal.

Article 2. The Imperial Throne shall be succeeded to by Imperial male descendants, according to the provisions of the Imperial House Law.

Article 3. The Emperor is sacred and inviolable.

Article 4. The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitution.

Article 5. The Emperor exercises the legislative power with the consent of the Imperial Diet.

Article 6. The Emperor gives sanction to laws, and orders them to be promulgated and executed.

Article 7. The Emperor convokes the Imperial Diet, opens, closes, and prorogues it, and dissolves the House of Representatives.

Article 8. The Emperor, in consequence of an urgent necessity to maintain public safety or to avert public calamities, issues, when the Imperial Diet is not sitting, Imperial ordinances in the place of law.

(2) Such Imperial Ordinances are to be laid before the Imperial Diet at its next session, and when the Diet does not approve the said Ordinances, the Government shall declare them to be invalid for the future.

Article 9. The Emperor issues or causes to be issued, the Ordinances necessary for the carrying out of the laws, or for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects. But no Ordinance shall in any way alter any of the existing laws.

Article 10. The Emperor determines the organization of the different branches of the administration, and salaries of all civil and military officers, and appoints and dismisses the same. Exceptions especially provided for in the present Constitution or in other laws, shall be in accordance with the respective provisions (bearing thereon).

Article 11. The Emperor has the supreme command of the Army and Navy.

Article 12. The Emperor determines the organization and peace standing of the Army and Navy.

Article 13. The Emperor declares war, makes peace, and concludes treaties.

Article 14. The Emperor declares a state of siege.

(2) The conditions and effects of a state of siege shall be determined by law.

Article 15. The Emperor confers titles of nobility, rank, orders and other marks of honor.

Article 16. The Emperor orders amnesty, pardon, commutation of punishments and rehabilitation.

Article 17. A Regency shall be instituted in conformity with the provisions of the Imperial House Law.

(2) The Regent shall exercise the powers appertaining to the Emperor in His name.

## **CHAPTER II. RIGHTS AND DUTIES OF SUBJECTS**

Article 18. The conditions necessary for being a Japanese subject shall be determined by law.

Article 19. Japanese subjects may, according to qualifications determined in laws or ordinances, be appointed to civil or military or any other public offices equally.

Article 20. Japanese subjects are amenable to service in the Army or Navy, according to the provisions of law.

Article 21. Japanese subjects are amenable to the duty of paying taxes, according to the provisions of law.

Article 22. Japanese subjects shall have the liberty of abode and of changing the same within the limits of the law.

Article 23. No Japanese subject shall be arrested, detained, tried or punished, unless according to law.

Article 24. No Japanese subject shall be deprived of his right of being tried by the judges determined by law.

Article 25. Except in the cases provided for in the law, the house of no Japanese subject shall be entered or searched without his consent.

Article 26. Except in the cases mentioned in the law, the secrecy of the letters of every Japanese subject shall remain inviolate.

Article 27. The right of property of every Japanese subject shall remain inviolate.  
(2) Measures necessary to be taken for the public benefit shall be any provided for by law.

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.

Article 29. Japanese subjects shall, within the limits of law, enjoy the liberty of speech, writing, publication, public meetings and associations.

Article 30. Japanese subjects may present petitions, by observing the proper forms of respect, and by complying with the rules specially provided for the same.

Article 31. The provisions contained in the present Chapter shall not affect the exercises of the powers appertaining to the Emperor, in times of war or in cases of a national emergency.

Article 32. Each and every one of the provisions contained in the preceding Articles of the present Chapter, that are not in conflict with the laws or the rules and discipline of the Army and Navy, shall apply to the officers and men of the Army and of the Navy.

### **CHAPTER III. THE IMPERIAL DIET**

Article 33. The Imperial Diet shall consist of two Houses, a House of Peers and a House of Representatives.

Article 34. The House of Peers shall, in accordance with the ordinance concerning the House of Peers, be composed of the members of the Imperial Family, of the orders of nobility, and of those who have been nominated thereto by the Emperor.

Article 35. The House of Representatives shall be composed of members elected by the people, according to the provisions of the law of Election.

Article 36. No one can at one and the same time be a Member of both Houses.

Article 37. Every law requires the consent of the Imperial Diet.

Article 38. Both Houses shall vote upon projects of law submitted to it by the Government, and may respectively initiate projects of law.

Article 39. A Bill, which has been rejected by either the one or the other of the two Houses, shall not be brought in again during the same session.

Article 40. Both Houses can make representations to the Government, as to laws or upon any other subject. When, however, such representations are not accepted, they cannot be made a second time during the same session.

Article 41. The Imperial Diet shall be convoked every year.

Article 42. A session of the Imperial Diet shall last during three months. In case of necessity, the duration of a session may be prolonged by the Imperial Order.

Article 43. When urgent necessity arises, an extraordinary session may be convoked in addition to the ordinary one.

(2) The duration of an extraordinary session shall be determined by Imperial Order.

Article 44. The opening, closing, prolongation of session and prorogation of the Imperial Diet, shall be effected simultaneously for both Houses.



(2) In case the House of Representatives has been ordered to dissolve, the House of Peers shall at the same time be prorogued.

Article 45. When the House of Representatives has been ordered to dissolve, Members shall be caused by Imperial Order to be newly elected, and the new House shall be convoked within five months from the day of dissolution.

Article 46. No debate can be opened and no vote can be taken in either House of the Imperial Diet, unless not less than one-third of the whole number of Members thereof is present.

Article 47. Votes shall be taken in both Houses by absolute majority. In the case of a tie vote, the President shall have the casting vote.

Article 48. The deliberations of both Houses shall be held in public. The deliberations may, however, upon demand of the Government or by resolution of the House, be held in secret sitting.

Article 49. Both Houses of the Imperial Diet may respectively present addresses to the Emperor.

Article 50. Both Houses may receive petitions presented by subjects.

Article 51. Both Houses may enact, besides what is provided for in the present Constitution and in the Law of the Houses, rules necessary for the management of their internal affairs.

Article 52. No Member of either House shall be held responsible outside the respective Houses, for any opinion uttered or for any vote given in the House. When, however, a Member himself has given publicity to his opinions by public speech, by documents in print or in writing, or by any other similar means, he shall, in the matter, be amenable to the general law.

Article 53. The Members of both Houses shall, during the session, be free from arrest, unless with the consent of the House, except in cases of flagrant delicts, or of offenses connected with a state of internal commotion or with a foreign trouble.

Article 54. The Ministers of State and the Delegates of the Government may, at any time, take seats and speak in either House.

#### **CHAPTER IV.**

##### **THE MINISTERS OF STATE AND THE PRIVY COUNCIL**

Article 55. The respective Ministers of State shall give their advice to the Emperor, and be responsible for it.

(2) All Laws, Imperial Ordinances, and Imperial Rescripts of whatever kind, that relate to the affairs of the state, require the countersignature of a Minister of State.

Article 56. The Privy Councillors shall, in accordance with the provisions for the organization of the Privy Council, deliberate upon important matters of State when they have been consulted by the Emperor.

#### **CHAPTER V.**

##### **THE JUDICATURE**

Article 57. The Judicature shall be exercised by the Courts of Law according to law, in the name of the Emperor.

(2) The organization of the Courts of Law shall be determined by law.

Article 58. The judges shall be appointed from among those, who possess proper qualifications according to law.

(2) No judge shall be deprived of his position, unless by way of criminal sentence or disciplinary punishment.

(3) Rules for disciplinary punishment shall be determined by law.

Article 59. Trials and judgments of a Court shall be conducted publicly. When, however, there exists any fear, that such publicity may be prejudicial to peace and order, or to the maintenance of public morality, the public trial may be suspended by provisions of law or by the decision of the Court of Law.

Article 60. All matters that fall within the competency of a special Court, shall be specially provided for by law.

Article 61. No suit at law, which relates to rights alleged to have been infringed by the illegal measures of the administrative authorities, and which shall come within the competency of the Court of Administrative Litigation specially established by law, shall be taken cognizance of by Court of Law.

## **CHAPTER VI. FINANCE**

Article 62. The imposition of a new tax or the modification of the rates (of an existing one) shall be determined by law.

(2) However, all such administrative fees or other revenue having the nature of compensation shall not fall within the category of the above clause.

(3) The raising of national loans and the contracting of other liabilities to the charge of the National Treasury, except those that are provided in the Budget, shall require the consent of the Imperial Diet.

Article 63. The taxes levied at present shall, in so far as they are not remodelled by a new law, be collected according to the old system.

Article 64. The expenditure and revenue of the State require the consent of the Imperial Diet by means of an annual Budget.

(2) Any and all expenditures overpassing the appropriations set forth in the Titles and Paragraphs of the Budget, or that are not provided for in the Budget, shall subsequently require the approbation of the Imperial Diet.

Article 65. The Budget shall be first laid before the House of Representatives.

Article 66. The expenditures of the Imperial House shall be defrayed every year out of the National Treasury, according to the present fixed amount for the same, and shall not require the consent thereto of the Imperial Diet, except in case an increase thereof is found necessary.

Article 67. Those already fixed expenditures based by the Constitution upon the powers appertaining to the Emperor, and such expenditures as may have arisen by the effect of law, or that appertain to the legal obligations of the Government, shall be neither rejected nor reduced by the Imperial Diet, without the concurrence of the Government.

Article 68. In order to meet special requirements, the Government may ask the consent of the Imperial Diet to a certain amount as a Continuing Expenditure Fund, for a previously fixed number of years.

Article 69. In order to supply deficiencies, which are unavoidable, in the Budget, and to meet requirements unprovided for in the same, a Reserve Fund shall be provided in the Budget.

Article 70. When the Imperial Diet cannot be convoked, owing to the external or internal condition of the country, in case of urgent need for the maintenance of public safety, the Government may take all necessary financial measures, by means of an Imperial Ordinance.

(2) In the case mentioned in the preceding clause, the matter shall be submitted to the Imperial Diet at its next session, and its approbation shall be obtained thereto.

Article 71. When the Imperial Diet has not voted on the Budget, or when the Budget has not been brought into actual existence, the Government shall carry out the Budget of the preceding year.

Article 72. The final account of the expenditures and revenues of the State shall be verified and confirmed by the Board of Audit, and it shall be submitted by the Government to the Imperial Diet, together with the report of verification of the said board.

(2) The organization and competency of the Board of Audit shall be determined by law separately.

## **CHAPTER VII. SUPPLEMENTARY RULES**

Article 73. When it has become necessary in future to amend the provisions of the present Constitution, a project to the effect shall be submitted to the Imperial Diet by Imperial Order.

(2) In the above case, neither House can open the debate, unless not less than two-thirds of the whole number of Members are present, and no amendment can be passed, unless a majority of not less than two-thirds of the Members present is obtained.

Article 74. No modification of the Imperial House Law shall be required to be submitted to the deliberation of the Imperial Diet.

(2) No provision of the present Constitution can be modified by the Imperial House Law.

Article 75. No modification can be introduced into the Constitution, or into the Imperial House Law, during the time of a Regency.

Article 76. Existing legal enactments, such as laws, regulations, Ordinances, or by whatever names they may be called, shall, so far as they do not conflict with the present Constitution, continue in force.

(2) All existing contracts or orders, that entail obligations upon the Government, and that are connected with expenditure, shall come within the scope of Article 67.

## APPENDIX -2

### The American Draft of the Constitution.

#### CONSTITUTION OF JAPAN

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 the sovereignty of the people's will and do ordain and establish this Constitution, founded upon the universal principle that government is a sacred trust 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; and we reject and revoke all constitutions, ordinances, laws and precepts in conflict herewith.

Desiring peace for all time and fully conscious of the high ideals controlling human relationship now stirring mankind, we have determined to rely for our security and survival upon the justice and good faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society designed and dedicated to the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance, for all time from the earth. We recognize and acknowledge that all peoples have the right to live in peace, free from fear and want.

We hold that no people is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all peoples who would sustain their own sovereignty and justify their sovereign relationship with other peoples.

To these high principles and purposes we, the Japanese People, pledge our national honor, determined will and full resource.

#### CHAPTER I. The Emperor

Article I. The Emperor shall be the symbol of the State and of the Unity of the People, deriving his position from the sovereign will of the People, and from no other source.

Article II. Succession to the Imperial Throne shall be dynastic and in accordance with such Imperial House Law as the Diet may enact.

Article III. The advice and consent of the Cabinet shall be required for all acts of the Emperor in matters of state, the Cabinet shall be responsible therefore.

The Emperor shall perform only such state functions as are provided for in this Constitution. He shall have no governmental powers, nor shall he assume nor be granted such powers.

The Emperor may delegate his functions in such manner as may be provided by law.

Article IV. When a regency is instituted in conformity with the provisions of such Imperial House Law as the Diet may enact, the duties of the Emperor shall be performed by the Regent in the name of the Emperor, and the limitations on the functions of the Emperor contained herein shall apply with equal force to the Regent.

Article V. The Emperor appoints as Prime Minister the person designated by the Diet.

Article VI. Acting only on the advice and with the consent of the Cabinet, the Emperor, on behalf of the people, shall perform the following state functions:

Affix his official seal to and proclaim all laws enacted by the Diet, all Cabinet orders, all amendments to this Constitution, and all treaties and international conventions;

Convoke sessions of the Diet;

Dissolve the Diet;

Proclaim general elections;

Attest the appointment or commission and resignation or dismissal of Ministers of State, ambassadors and those other state officials whose appointment or commission and resignation or dismissal may by law be attested in this manner;

Attest grants of amnesty, pardons, commutation of punishment, reprieves and rehabilitation;

Award honors;

Receive ambassadors and ministers of foreign States; And

Perform appropriate ceremonial functions.

Article VII. No grants of money or other property shall be made to the Imperial Throne, and no expenditures shall be made by the Imperial Throne, unless authorized by the Diet.

## **CHAPTER II.**

### **Renunciation of War**

Article VIII. War as a sovereign right of the nation is abolished. The threat or use of force is forever renounced as a means for settling disputes with any other nation.

No army, navy, air force, or other war potential will ever be authorized and no rights of belligerency will ever be conferred upon the State.

## **CHAPTER III.**

### **Rights and Duties of the People**

Article IX. The people of Japan are entitled to the enjoyment without interference of all fundamental human rights.

Article X. The fundamental human rights by this Constitution guaranteed to the people of Japan result from the age-old struggle of man to be free. They have survived the exacting test for durability in the crucible of time and experience, and are conferred upon this and future generations in sacred trust, to be held for all time inviolate.

Article XI. The freedoms, rights opportunities enunciated by this Constitution are maintained by the eternal vigilance of the people and involve an obligation on the part of the people to prevent their abuse and to employ them always for the common good.

Article XII. The feudal system of Japan shall cease. All Japanese by virtue of their humanity shall be respected as individuals. Their right to life, liberty and the pursuit of happiness within the limits of the general welfare shall be the supreme consideration of all law and of all governmental action.

Article XIII. All natural persons are equal before the law. No discrimination shall be authorized or tolerated in political, economic or social relations on account of race, creed, sex, social status, caste or national origin.

No patent of nobility shall from this time forth embody within itself any national or civic power of government.

No rights of peerage except those of the Imperial dynasty shall extend beyond the lives of those now in being. No special privilege shall accompany any award of honor, decoration or other distinction; nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article XIV. The people are the ultimate arbiters of their government and of the Imperial Throne. They 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 special groups. In all elections, secrecy of the ballot shall be kept inviolate, nor shall any voter be answerable, publicly or privately, for the choice he has made.

Article XV. Every person has the right of peaceful petition for the redress of grievances for the removal of public officials and for the enactment, repeal or amendment of laws, ordinances or regulations; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article XVI. Aliens shall be entitled to the equal protection of law.

Article XVII. No person shall be held in enslavement, serfdom or bondage of any kind. Involuntary servitude, except as a punishment for crime, is prohibited.

Article XVIII. Freedom of thought and conscience shall be held inviolable.

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

No person shall be compelled to take part in any religious acts, celebrations, rites or practices.

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

Article XX. Freedom of assembly, speech and 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.

Article XXI. Freedom of association, movement and choice of abode are guaranteed to every person to the extent they do not conflict with the general welfare.

All persons shall be free to emigrate and to change their nationality.

Article XXII. Academic freedom and choice of occupation are guaranteed.

Article XXIII. The family is the basis of human society and its traditions for good or evil permeate the nation. Marriage shall rest upon the indisputable legal and social equality of both sexes, founded upon mutual consent instead of parental coercion, and maintained through cooperation instead of male domination. Laws contrary to these principles shall be abolished, and replaced by others viewing choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family from the standpoint of individual dignity and the essential equality of the sexes.

Article XXIV. In all spheres of life, laws shall be designed for the promotion and extension of social welfare, and of freedom, justice and democracy.

Free, universal and compulsory education shall be established.

The exploitation of children shall be prohibited.

The public health shall be promoted.

Social security shall be provided.

Standards for working conditions, wages and hours shall be fixed.

Article XXV. All men have the right to work.

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

Article XXVII. The right to own property is inviolable, but property rights shall be defined by law, in conformity with the public welfare.

Article XXVIII. The ultimate fee to the land and to all natural resources reposes in the State as the collective representative of the people. Land and other natural resources are subject to the right of the State to take them, upon just compensation therefor, for the purpose of securing and promoting the conservation, development, utilization and control thereof.

Article XXIX. Ownership of property imposes obligations. Its use shall be in the public good. Private property may be taken by the State for public use upon just compensation therefor.

Article XXX. No person shall be apprehended except upon warrant issued by a competent officer of a court of law specifying the offense upon which the person is charged, unless he is apprehended while committing a crime.

Article XXXI. No person shall be arrested or detained without being at once informed of the charges against him nor without the immediate privilege of counsel; he shall not be held incommunicado; he shall not 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.

Article XXXII. No person shall be deprived of life or liberty, nor shall any criminal penalty be imposed, except according to procedures established by the Diet, nor shall any person be denied the right of appeal to the courts.

Article XXXIII. The right of the people to be secure in their persons, homes, papers and effects against entries, searches and seizures shall not be impaired except upon judicial warrant issued only for probable cause, and particularly describing the place to be searched and the person or things to be seized.

Each search or seizure shall be made upon separate warrant issued for the purpose by a competent officer of a court of law.

Article XXXIV. The infliction of torture by any public officer is absolutely forbidden.

Article XXXV. Excessive bail shall not be required, nor cruel or unusual punishments inflicted.

Article XXXVI. 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 cross-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 be unable to secure the same by his own efforts, be assigned to his use by the government.

Article XXXVII. No person shall be declared guilty of a crime except by a court of competent jurisdiction.

No person shall be twice placed in jeopardy for the same offense.

Article XXXVIII. No person shall be compelled to testify against himself.

No confession shall be admitted in evidence if made under compulsion, torture or threat, or after prolonged arrest or detention.

No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article XXXIX. No person shall be held criminally liable for an act lawful at the time it was committed.

## CHAPTER IV.

### The Diet

Article XL. The Diet shall be the highest organ of state power and shall be the sole lawmaking authority of the State.

Article XLI. The Diet shall consist of one House of elected representatives with a membership of not less than 300 nor more than 500.

Article XLII. The qualifications of electors and of candidates for election to the Diet shall be determined by law, and in determining such qualifications there shall be no discrimination because of sex, race, creed, color or social status.

Article XLIII. Members of the Diet shall receive adequate compensation from the national treasury as determined by law.

Article XLIV. Members of the Diet shall in all cases, except those specified by law, be free from arrest while attending these sessions of the Diet or while travelling to and from such sessions; and for any speech, debate, or vote in the Diet, they shall not be held legally liable elsewhere.

Article XLV. The term of the members shall be four years, but it may be terminated at an earlier date by dissolution of the Diet as provided herein.

Article XLVI. The method of election, apportionment, and voting shall be determined by law.

Article XLVII. The Diet shall convene at least once in every year.

Article XLVIII. The Cabinet may call special sessions and shall do so on petition of not less than twenty per cent of the members of the Diet.

Article XLIX. The Diet shall be the sole judge of the elections and the qualifications of its members. The denial of a seat to anyone who is certified to have been elected and whose right to the seat has been questioned shall require the vote of a majority of the members present.

Article L. A quorum to transact business shall consist of not less than one-third of all the members. Except as otherwise provided herein all actions of the Diet shall be by majority vote of those present. In case of a tie the presiding officer shall cast the deciding vote.

Article LI. The Diet shall choose its presiding officer and other officials. It may determine the rule of its proceedings, punish members for disorderly behavior and expel them. On a motion for expulsion of a member a vote of not less than two-thirds of the members present shall be required to effect such expulsion.

Article LII. No law shall be passed except by bill.

Article LIII. The deliberations of the Diet shall be public, and no secret sessions shall be held. The Diet shall maintain and publish a record of its proceedings and this record shall be made available to the public. The individual votes of members on any question shall be recorded in the journal upon the demand of twenty percent of those present.



Article LIV. The Diet shall have the power to conduct investigations, to compel the attendance and testimony of witnesses and the production of records, and to punish for refusal to comply.

Article LLV. The Diet by a majority vote of those present shall designate the Prime Minister. The designation of a Prime Minister shall take precedence over all other business of the Diet.

The Diet shall establish the several Ministries of State.

Article LLVI. The Prime Minister and the Ministers of State whether or not they hold seats in the Diet may at any time appear before that body for the purpose of presenting and arguing bills, and shall appear when required to answer interpellations.

Article LVII. Within ten days after the passage of a resolution of non-confidence or the failure to pass a resolution of confidence by a majority of the total membership of the Diet, the Cabinet shall resign or order the Diet to dissolve. When the Diet has been ordered dissolved a special election of a new Diet shall be held not less than thirty days nor more than forty days after the date of dissolution. The newly elected Diet shall be convoked within thirty days after the date of election.

Article LVIII. The Diet shall constitute from among its members a court of impeachment to try members of the judiciary against whom removal proceedings have been instituted.

Article LIX. The Diet shall enact all laws necessary and proper to carry into execution the provisions of this Constitution.

## **CHAPTER V.**

### **The Cabinet**

Article LX. The executive power is vested in a Cabinet.

Article LXI. The Cabinet consists of a Prime Minister, who is its head, and such other Ministers of State as may be authorized by the Diet.

In the exercise of the executive power the Cabinet is collectively responsible to the Diet.

Article LXII. The Prime minister shall with the advice and consent of the Diet appoint Ministers of State.

The Prime Minister may remove individual Ministers at will.

Article LXIII. Whenever a vacancy occurs in the office of Prime Minister or upon the convening of a new Diet, the Cabinet shall collectively resign and a new Prime Minister shall be designated.

Pending such designation the Cabinet shall continue to perform its duties.

Article LXIV. The Prime Minister introduces bills on behalf of the Cabinet, reports to the Diet on general affairs of State and the status of foreign relations, and exercises control and supervision over the several executive departments and agencies.

Article LXV. In addition to other executive responsibilities, the Cabinet shall:

Faithfully execute the laws and administer the affairs of State:

Conduct foreign relations;

Conclude such treaties, international conventions and agreements with the consent of the Diet by prior authorization or subsequent ratification as it deems in the public interest;

Administer the civil service according to standards established by the Diet;

Prepare and submit to the Diet an annual budget;

Issue orders and regulations to carry out the provisions of this constitution and the law, but no such order or regulation shall contain a penal provision; and

Grant amnesty, pardon, commutation of punishment, reprieve and rehabilitation.

Article LXVI. The competent Minister of State shall sign and the Prime Minister shall countersign all acts of the Diet and executive orders.

Article LXVII. Cabinet Ministers shall not be subject to judicial process during their tenure of office without the consent of the Prime Minister, but no right of action shall be impaired by reason hereof.

## CHAPTER VI.

### Judiciary

Article LXVIII. A strong and independent judiciary being the bulwark of the people's rights, the whole judicial power is vested in a Supreme Court and in such inferior courts as the Diet shall from time to time establish.

No extraordinary tribunal shall be establish, 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 enacted pursuant thereto.

Article LXIX. The Supreme Court is vested with the rule-making power under which it determines the rules of practice and of procedure, the admission of attorneys, the internal discipline of the courts, the administration of judicial affairs, and such other matters as may properly affect the free exercise of the judicial power.

Public procurators shall be officers of the court and subject to its rule-making power.

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article LXX. Removals of judges shall be accomplished by public impeachment only and no disciplinary action shall be administered them by any executive organ or agency.

Article LXXI. The Supreme Court shall consist of a chief justice and such number of associate justices as may be determined by the Diet . All such justices shall be appointed by the Cabinet and shall hold office during good behavior but not after the attainment of the age of 70 years, provided however that all such appointments shall be reviewed at the first general election held following the appointment and thereafter at every general election held immediately following the expiration of ten calendar years from the next prior confirmation. Upon a majority vote of the electorate not to retain the incumbent the office shall become vacant.

All such justices shall receive, at regular, stated intervals, adequate compensation which shall not be decrease during their terms of office.

Article LXXII. The judges of the inferior courts shall be appointed by the Cabinet from a list which for each vacancy shall contain the names of at least two persons nominated by the Supreme Court. All such justices shall hold office for a term of ten years with privilege of reappointment and shall receive, at regular, stated intervals, adequate compensation which shall not be decreased during their terms of office. No judge shall hold office after attaining the age of 70 years.

Article LXXIII. The Supreme Court is the court of last resort . Where the determination of the constitutionality of any law, order, regulation or official act is in question, the judgment of the Supreme Court in all cases arising under or involving Chapter III of this Constitution is final; in all other cases where determination of the constitutionality of any

law, ordinance, regulation or official act is in question, the judgment of the Court is subject to review by the Diet.

A judgment of the Supreme Court which is subject to review may be set aside only by the concurring vote of two-thirds of the whole number of representatives of the Diet. The Diet shall establish rules of procedure for reviewing decisions of the Supreme Court .

Article LXXIV. In all cases affecting ambassadors, ministers and consuls of foreign states, the Supreme Court has exclusive original jurisdiction.

Article LXXV. Trials shall be conducted and judgment declared publicly. Where, however, 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 of the press, and cases wherein the rights of citizens as reserved in Chapter III of this Constitution are in question, shall be conducted publicly without exception.

## CHAPTER VII.

### Finance

Article LXXVI. The power to levy taxes, borrow money, appropriate funds, issue and regulate the value of coins and currency shall be exercised through the Diet.

Article LXXVII. No contract shall be entered into in the absence of an appropriation therefor, nor shall the credit of the State be pledged except as authorized by the Diet.

Article LXXIX. The Cabinet shall prepare and submit to the Diet an annual budget setting forth the complete government fiscal program for the next ensuing fiscal year, including all proposed expenditures, anticipated revenues and borrowings.

Article LXXX. The Diet may disapprove, reduce increase or reject any item in the budget or add new items.

The Diet shall appropriate no money for any fiscal year in excess of the anticipated income for that period, including the proceeds of any borrowings.

Article LXXXI. In order to provide for unforeseen deficiencies in the budget a reserve fund may be authorized to be expended under the direct supervision of the Cabinet.

The Cabinet shall be held accountable to the Diet for all payments from the reserve fund.

Article LXXXII. All property of the Imperial Household, other than the hereditary estates, shall belong to the nation. The income from all imperial properties shall be paid into the national treasury, and allowances and expenses of the Imperial Household, as defined by law, shall be appropriated by the Diet in the annual budget.

Article LXXXIII. No public money or property shall be appropriated for the use, benefit or support of any system of religion, or religious institution or association, or for any charitable, educational or benevolent purposes not under the control of the State.

Article LXXXIV. A final audit of all expenditures and revenues of the State shall be made annually by a board of audit and submitted by the Cabinet to the Diet during the fiscal year immediately following the period covered.

The organization and competency of the board of audit shall be determined by the Diet.

Article LXXXV. At regular intervals at least annually the Cabinet shall report to the Diet and the people on the state of public finances.

## **CHAPTER VIII.**

### **Local Government**

Article LXXXVI. The governors of prefectures, the mayors of cities and towns and the chief executive officers of all other subordinate bodies politic and corporate having taxing power, the members of prefectural and local legislative assemblies, and such other prefectural and local officials as the Diet may determine, shall be elected by direct popular vote within their several communities.

Article LXXXVII. The inhabitants of metropolitan areas, cities and towns shall be secure in their right to manage their property, affairs and government and to frame their own charters within such laws as the Diet may enact.

Article LXXXVIII. The Diet shall pass no local or special act applicable to a metropolitan area, city or town where a general act can be made applicable, unless it be made subject to the acceptance of a majority of the electorate of such community.

## **CHAPTER IX.**

### **Amendments**

Article LXXXIX. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds of all its members, 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 such election as the Diet shall specify.

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

## **CHAPTER X.**

### **Supreme Law**

Article XC. This Constitution and the laws and Treaties made in pursuance hereof shall be the supreme law of the nation, and no public law or ordinance and no imperial rescript or other governmental act, or part thereof, contrary to provisions hereof shall have legal force or validity

Article XCI. The Emperor, upon succeeding to the throne, and the Regent, Ministers of the State, Members of the Diet, Members of the Judiciary and all other public officers upon assuming office, shall be bound to uphold and protect this constitution.

All public officials duly holding office when this Constitution takes effect shall likewise be so bound and shall remain in office until their successors are elected or appointed.

## **CHAPTER XI.**

### **Ratification**

Article XCII. This Constitution shall be established when ratified by the Diet by roll-call vote of two-thirds of the members present.

Upon ratification by the Diet, the Emperor shall immediately proclaim, in the name of the People, that this Constitution has been established as the supreme law of the nation.

## APENDIX – 3

### The Constitution of Japan (1947)

*Promulgated on November 3, 1946. Put into effect on May 3, 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.

#### CHAPTER I. THE EMPEROR

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.

Article 2. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House law passed by the Diet.

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.

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

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

Article 6. The Emperor shall appoint the Prime Minister as designated by the Diet.  
(2) 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 makers of state on behalf of the people:

- (i) Promulgation of amendments of the constitution, laws, cabinet orders and treaties;
- (ii) Convocation of the Diet;
- (iii) Dissolution of the House of Representatives;
- (iv) Proclamation of general election of members of the Diet;
- (v) 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;
- (vi) Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights;
- (vii) Awarding of honors;
- (viii) Attestation of instruments of ratification and other diplomatic documents as provided for by law;
- (ix) Receiving foreign ambassadors and ministers;
- (x) Performance of ceremonial functions.

Diet. 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

## **CHAPTER II. RENUNCIATION OF WAR**

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

## **CHAPTER III. RIGHTS AND DUTIES OF THE PEOPLE**

Article 10. The conditions necessary for being a Japanese national shall be determined by law.

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.

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.

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.

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.

(2) Peers and peerage shall not be recognized.

(3) 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.

Article 15. The people have the inalienable right to choose their public officials and to dismiss them.

(2) All public officials are servants of the whole community and not of any group thereof.

(3) Universal adult suffrage is guaranteed with regard to the election of public officials.

(4) 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.

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 law, ordinances or regulations and for other matters, nor shall any person be in any way discriminated against sponsoring such a petition.

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.

Article 18. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited

Article 19. Freedom of thought and conscience shall not be violated.

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

(2) No person shall be compelled to take part in any religious acts, celebration, rite or practice.

(3) The state and its organs shall refrain from religious education or any other religious activity.

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

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

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.

(2) Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article 23. Academic freedom is guaranteed.

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.

(2) 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.

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

(2) 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.

Article 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law.

(2) All people shall be obligated to have all boys and girls under their protection receive ordinary educations as provided for by law. Such compulsory education shall be free.

Article 27. All people shall have the right and the obligation to work.

(2) Standards for wages, hours, rest and other working conditions shall be fixed by law.

(3) Children shall not be exploited.

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

Article 29. The right to own or to hold property is inviolable.

(2) Property rights shall be defined by law, in conformity with the public welfare.

(3) Private property may be taken for public use upon just compensation therefor.

Article 30. The people shall be liable to taxations as provided by law.

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.

Article 32. No person shall be denied the right of access to the courts.

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.

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.

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.

(2) Each search or seizure shall be made upon separate warrant issued by a competent judicial officer.

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

Article 39. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

(2) 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.

(3) 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.

Article 38. No person shall be compelled to testify against himself.

(2) Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.

(3) No person shall be convicted or punished in cases where the only proof against him is his own confession



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.

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**

Article 41. The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.

Article 42. The Diet shall consist of two Houses, namely the House of Representatives and the House of Councillors.

Article 43. Both Houses shall consist of elected members, representative of all the people.  
(2) The number of the members of each House shall be fixed by law.

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.

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.

Article 46. The term of office of members of the House of Councillors shall be six years, and election for half the members shall take place every three years.

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.

Article 48. No person shall be permitted to be a member of both Houses simultaneously.

Article 49. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.

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.

Article 51. Members of both Houses shall not be held liable outside the House for speeches, debates or votes cast inside the House.

Article 52. An ordinary session of the Diet shall be convoked once per year.

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.

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.

(2) 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 Councillors in emergency session.

(3) 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.

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.

Article 56. Business cannot be transacted in either House unless one third or more of total membership is present.

(2) 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.

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.

(2) 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.

(3) Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

Article 58. Each house shall select its own president and other officials.

(2) 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.

Article 59. A bill becomes a law on passage by both Houses, except as otherwise provided by the Constitution.

(2) A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present.

(3) 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.

(4) Failure by the House of Councillors 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 Councillors.

Article 60. The Budget must first be submitted to the House of Representatives.

(2) Upon consideration of the budget, when the House of Councillors 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 Councillors 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.

Article 61. The second paragraph of the preceding article applies also to the Diet approval required for the conclusion of treaties.

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.

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.

Article 64. The Diet shall set up an impeachment court from among the members of both Houses for the purpose of trying judges against whom removal proceedings have been instituted.

(2) Matters relating to impeachment shall be provided by law.

## **CHAPTER V. THE CABINET**

Article 65. Executive power shall be vested in the Cabinet.

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.

(2) The Prime Minister and other Minister of State must be civilians.

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

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.

(2) If the House of Representatives and the House of Councillors disagrees and if no agreement can be reached even through a joint committee of both Houses, provided for by law, or the House of Councillors 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.

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.

(2) The Prime Minister may remove the Ministers of State as he chooses.

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.

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.

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.

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.

Article 73. The Cabinet, in addition to other general administrative functions, shall perform the following functions:

(i) Administer the law faithfully; conduct affairs of state;

(ii) Manage foreign affairs;

(iii) Conclude treaties. However, it shall obtain prior or, depending on circumstances,

subsequent approval of the Diet;

(iv) Administer the civil service, in accordance with standards established by law;

(v) Prepare the budget, and present it to the Diet;

(vi) 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.

(vii) Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

Article 74. All laws and cabinet orders shall be signed by the competent Minister of state and countersigned by the Prime Minister.

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.

## **CHAPTER VI. JUDICIARY**

Article 76. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

(2) No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

(3) All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

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.

(2) Public procurators shall be subject to the rule-making power of the Supreme Court.

(3) The Supreme Court may delegate the power to make rules for inferior courts to such courts.

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.

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.

(2) 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.

(3) In cases mentioned in the foregoing paragraph, when the majority of the voters favors the dismissal of a judge, he shall be dismissed.

(4) Matters pertaining to review shall be prescribed by law.

(5) The judges of the Supreme Court shall of retired upon the attainment of the age as fixed by law.

(6) All such judges shall receive, at regular stated intervals, adequate compensation, which shall not be decreased during their terms of office.

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.

(2) The judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

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.

Article 82. Trials shall be conducted and judgment declared publicly.

(2) 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.

## **CHAPTER VII.**

### **FINANCE**

Article 83. The power to administer national finances shall be exercised as the Diet shall determine.

Article 84. No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

Article 85. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

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

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.

(2) The Cabinet must get subsequent approval of the Diet for all payments from the reserve fund.

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.

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 benevolent enterprises not under the control of public authority.

Article 90. Final accounts of the expenditures and revenues of 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.

(2) The organization and competency of the Board of Audit shall be determined by law.

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.

## **CHAPTER VIII.**

### **LOCAL SELF-GOVERNMENT**

Article 92. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

Article 93. The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

(2) 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

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

Article 95. A special law, applicable 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.

## **CHAPTER IX. AMENDMENTS**

Article 96. Amendment 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 special referendum or at such election as the Diet shall specify.

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

## **CHAPTER X. SUPREME LAW**

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.

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

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.

## **CHAPTER XI. SUPPLEMENTARY PROVISIONS**

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.

(2) 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 for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph.

Article 101. If the House of Councillors 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 Councillors shall be constituted.

Article 102. The term of office for half the members of the House of Councillors 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.

## APPENDIX – 4

### Yomiuri Shimbun, 'A Proposal for the revision of the text of the Constitution of Japan' (1994) Preamble

#### Proposed text

We, the Japanese people, hold sovereign power in Japan and, ultimately, our will shall dictate all state decisions. Government is entrusted to our duly elected representatives, who exercise their power with the trust of the people.

We, the Japanese people, desire peace for all time, respect the spirit of international cooperation and pledge to use our best efforts to ensure the peace, prosperity and security of the international community.

We, the Japanese people, aspire to a free and vigorous society, where basic human rights are duly respected, and simultaneously strive for the advancement of the people's welfare.

We, the Japanese people, acknowledge the inheritance of our long history and tradition and the need to preserve our fair landscape and cultural legacy while promoting culture, arts and sciences.

This constitution is the supreme law of Japan and is to be observed by the Japanese people.

#### Chapter 1 – Sovereign power of the People (Newly Chaptered)

Article 1 (the People's sovereign power)

Sovereign power in Japan resides with the Japanese people.

Article 2 (Exercise of sovereign power)

The people shall exercise their sovereign power through their duly elected representatives in the diet, and at national referenda held to consider amendments to the Constitution.

Article 3 (The conditions for being a Japanese national)

The conditions necessary for being a Japanese national shall be determined by law.

#### Chapter 2- The Emperor (Currently Chapter)

Article 4 (The position of the Emperor)

The Emperor shall be the symbol of the State and of the unity of the people of Japan. The Emperor's position shall be based on the sovereign will of the people.

Article 5 (Succession to the Imperial Throne)

The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

Article 6 (Limits to the Emperor's functions, delegation of his performance of state acts and Regencies.)

1) The Emperor shall perform only such acts in matters of state as are Provided for in this constitution and shall have no powers related to government.



2) The Emperor may delegate the performance of his acts in matters of state as may be provided for by law.

3) 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, and Paragraph 1 of this Article shall apply subject to necessary changes.

Article 7 (Advice and approval of the Cabinet on the Emperor's acts in matters of state)

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.

Article 8 (The Emperor's power to appoint officials)

1) The Emperor shall appoint Prime Minister such person as designated by the House of Representatives.

The Emperor shall appoint Chief Justice of the Constitutional Court such person as designated by the House of Councilors.

Article 9 (The Emperor's acts in matters of state)

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

- 1) As the representative of the State, receiving foreign ambassadors and ministers and attesting commissions of full power, credentials of ambassadors and ministers, instruments of ratification and other diplomatic documents as provided for by law;
- 2) Promulgation of amendment to the Constitution, laws, Cabinet orders and treaties;
- 3) Promulgation of Imperial rescripts for the convocation of the Diet;
- 4) Promulgation of Imperial rescripts for the dissolution of the House of Representatives;
- 5) Proclamation of general elections of members of the House of Representatives and ordinary elections of the House of Councilors;
- 6) Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law;
- 7) Attestation of general and special amnesties, commutations of punishment, reprieves, and restorations of right;
- 8) Attestation of award of honors;
- 9) Performance of ceremonial functions.

### **Chapter 3 –**

#### **National Security**

*(Currently Chapter 2 Renunciation of war)*

Article 10 (Rejection of war and ban on weapons of mass destruction)

1) Aspiring sincerely to an international peace based on justice and order the Japanese people shall never recognize war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

2) Seeking to eliminate from the world inhuman and indiscriminate weapons of mass destruction, Japan shall not manufacture, possess or use such weapons.

Article 11 (Organisation for self-defense, civilian control and denial of forced conscription)

1) Japan shall form an organization for self-defense to secure its peace and independence and to maintain its safety.

- 2) The Prime Minister shall exercise supreme command authority over the organization for self-defense.
- 3) The people shall not be forced to participate in organizations for self-defense.

**Chapter 4 –  
International cooperation  
(New Chapter)**

Article 12 (The ideal)

Japan shall aspire to the elimination from earth of human calamities caused by military conflicts, natural disasters, environmental destruction, economic deprivation in particular areas and regional disorder.

Article 13 (Participation in international activities)

In order to accomplish the aim of the preceding article, Japan shall lend active cooperation to the activities of the relevant well-established and internationally recognized organizations. In case of need, it may dispatch public officials and provide a part of its self-defense organization for the maintenance and promotion of peace and for humanitarian support activities.

Article 14 (Observance of International laws)

Japan shall faithfully observe those treaties it has concluded and those international laws well established and recognized by the international community.

**Chapter 5-  
Rights and Duties of the People  
(Currently Chapter 3)**

Article 15 (Basic declaration)

The people possess all fundamental human rights. The fundamental human rights guaranteed by this constitution are inviolable and eternal rights.

Article 16 (Responsibility for maintenance of freedoms and rights)

The freedoms and rights guaranteed to the people by this constitution shall be maintained by the constant endeavour of the people, who shall always make efforts to harmonize them with the public welfare and who shall refrain from any abuse of them.

Article 17 (Individual dignity)

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.

Article 18 (Equality under the law)

1) 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 and social status of family origin.

2) No peers and peerage shall be recognized.

3) No political or social privilege shall accompany the award of any honor or decoration. However, a reasonable annuity or other economic benefit may be granted when so enacted especially.

4) No such award of honor shall be valid beyond the lifetime of the individual who now holds or hereafter may receive the same.

Article 19 (Right of privacy)

- 1) Every person is guaranteed the right not to have his name, repute, honor, trustworthiness, or other aspects of his character unduly impugned.
- 2) Every person shall have the right to keep his private affairs, family and household safe from unreasonable interference.
- 3) The secrecy of communications shall be inviolable.

Article 20 (Freedom of thought and conscience)

The right to freedom of thought and conscience shall be inviolable.

Article 21 (Freedom of religion and limitation of public expenditure)

- 1) Every person is guaranteed freedom of religion.
- 2) No person shall be compelled to take part in any religious act, celebration, rite or practice.
- 3) The state and its organs shall refrain from religious education or any other religious activity.
- 4) No Religious organization shall receive privileges from the State or exercise political influence.
- 5) No public money or other public property shall be spent or appropriated for the use, benefit or maintenance or any religious organization or body.

Article 22 (Freedom of expression)

- 1) Freedom of speech, press and all other forms of expression are guaranteed.
- 2) No censorship shall be maintained.

Article 23 (Freedom of assembly and association)

Every person is guaranteed freedom of assembly and association.

Article 24 (Freedom to choose and change residence and to shed nationality).

- 1) Every person possesses the freedom to choose and change his residence to the extent that it does not interfere with the public welfare.
- 2) All people are guaranteed freedom to move to a foreign country or divest themselves of their nationality.

Article 25 (Academic freedom)

Academic freedom is guaranteed.

Article 26 (Individual dignity in family life and equality between the sexes)

- 1) Marriage shall be based only on the mutual consent of both sexes and be maintained through mutual cooperation with the equal rights of husband and wife as a basis.
- 2) Legislation paying due regard to the dignity of the individual and the essential equality of the sexes shall be enacted to regulate the choice of spouse, property right, succession, choice of domicile, divorce and other matters pertaining to marriage and the family.

Article 27 (Right of subsistence and the State's social duty)

- 1) All people possess the right to maintain the minimum standards of wholesome and cultural living.
- 2) In all spheres of life, the state shall use its endeavours for the promotion and extension of social welfare and security and of public health.

Article 28 (Rights relating to the Environment)

- 1) Every person possesses the right to enjoy a favorable environment and is obliged to preserve the same.
- 2) The State shall endeavour to maintain the environment in a favorable condition.

Article 29 (Right to receive education)

- 1) All people shall have the right to receive an equal education correspondent to their ability, as provided by law.
- 2) All people shall be obliged to have all children under their protection receive ordinary education as provided for by law. Such compulsory education shall be free of charge.

Article 30 (Right and obligation to work)

- 1) All people shall have the right and the obligation to work.
- 2) Standards for wages, hours, rest and other working conditions shall be fixed by law.
- 3) Children shall not be exploited.

Article 31 (Right of workers to organize)

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

Article 32 (Freedom to choose occupation and conduct business)

Every person possesses the right freely to choose his occupation and to conduct his business to the extent that it does not interfere with the public welfare.

Article 33 (Property rights)

- 1) The right to own or to hold property is inviolable.
- 2) Property rights shall be defined by law, in accordance with the public welfare.
- 3) Private property may be taken for public use upon just compensation being made therefore.

Article 34 (Liability to taxation)

The people shall be liable to taxation as provided by law.

Article 35 (Guarantee of due legal procedure)

No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article 36 (Right of access to the courts)

All persons possess the right of access to the courts.

Article 37 (Conditions for arrest)

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 while committing a crime.

Article 38 (Conditions for arrest or detention and guarantee against unjust arrest or detention)

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. Upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article 39 (Searches and seizures)

- 1) The right of all person to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired without warrant issued for adequate cause or except as provided by Article 37.
- 2) Each search or seizure shall be made upon separate warrant which shall describe the place to be searched or the things to be seized.

Article 40 (Ban on torture and cruel punishments)

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

Article 41 ( Rights of an accused)

- 1) In all criminal cases the accused shall enjoy the right to a speedy trial by an impartial tribunal.
- 2) The accused shall be permitted full opportunity to examine all witnesses, and shall have the right of compulsory process for obtaining witnesses on this behalf at public expense.
- 3) 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.

Article 42 (Invalidity of forced testimony and confession)

- 1) No person shall be compelled to testify against himself.
- 2) Confession made under compulsion, torture or threat, or after unduly prolonged arrest or detention, shall not be admitted in evidence.
- 3) No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article 43 (Prohibition against retroactive punishment and double jeopardy)

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.

Article 44 (Right to receive criminal redress)

Any person, acquitted after arrest or detention, may sue the State for redress as provided by law.

Article 45 (Right to choose and dismiss public officials, characterization of public officials, guarantee of universal suffrage and ballot secrecy)

- 1) The people have the inalienable right to choose and dismiss their diet members, municipal heads and assembly members and other public officials.
- 2) All Public officials are servants of the whole community and not of any group thereof.
- 3) Universal adult suffrage is guaranteed with regard to the election of public officials.
- 4) The secrecy of the ballot shall not be violated in any election. No voter shall be answerable, publicly or privately, for the choice he has made.

Article 46 (Right of petition)

Every person shall have the right of peaceful petition of 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.

Article 47 (Redress for damage from the State or a Public entity)

Every person who has suffered damage through the illegal act of any public official may sue for redress as provided by law from the state or a public entity.

**Chapter 6-**  
**The Diet**  
*(Currently Chapter 4)*

Article 48 (Legislative power of the Diet)

Power to legislate shall pertain exclusively to the Diet.

Article 49 (Bicameral system)

The Diet shall consist of two Houses, namely the House of Representatives and the House of Councillors.

Article 50 (Composition of the Diet)

- 1) Both Houses shall consist of elected members
- 2) The members of the Houses shall represent all the people.
- 3) The number of the members of each House shall be determined by law.

**Article 51 (Qualifications of members of both Houses and their electors)**

The qualifications of members of both Houses and their electors shall be determined by law. However, there shall be no discrimination on grounds of race, creed, sex, social status, family origin, education, property or income.

Article 52 (Term of office of members of the House of Representatives)

The term of office of members of the House of Representatives shall be four years. However, if the House of Representatives is dissolved, the term shall be terminated before the full term has expired.

Article 53 (Term of office of members of the House of Councillors)

The term of office of members of the House of Councillors shall be six years, and elections for half the members shall take place every three years.

Article 54 (Matters pertaining to elections)

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

Article 55 (Ban on being members of both Houses of the Diet)

No person shall be permitted to be a member of both houses simultaneously.

Article 56 (Annual salary for Diet members)

Members of both Houses shall receive appropriate annual payment for the national treasury in accordance with law.

Article 57 (Diet members exemption from apprehension)

Except as 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 a session shall be freed during the term thereof upon demand of the Houses of which he is a member.

Article 58 (Non-liability outside the house of its members for their speeches, debates or votes inside the House)

Members of both Houses shall not be held liable outside the House for speeches, debates or votes made, participated in, or cast inside the House.

Article 59 (Ordinary session of the Diet)

An ordinary session of the Diet shall be convoked once per year.

Article 60 (Extraordinary session of the Diet)

The Cabinet may determine to convoke extraordinary sessions of the Diet, and shall do so when a quarter or more of the total members of either House so demands.

Article 61 (Dissolution and special sessions of the House of Representatives and emergency sessions of the House of Councillors)

1) When the House of Representatives is dissolved, there shall be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet shall be convoked within thirty (30) days from the date of the election.

2) When the House of Representatives is dissolved, the House of Councillors shall simultaneously be closed. However, the Cabinet may in time of national emergency convoke the House of Councillors in emergency session.

3) Measures taken at such session as is mentioned in the proviso to the preceding paragraph shall be provisional and shall lapse 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.

Article 62 (Adjudication of disputes about the qualification of members)

Each house shall judge disputes related to the qualifications of its members. However, in order to deny a seat to any members, it shall be necessary to pass a resolution by a majority of two-thirds or more of the members present.

Article 63 (Quorum and voting)

1) The quorum required for the transaction of any business in either House shall be one-third or more of all current registered members.

2) All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution, and, where there is no clear majority, the presiding officer shall decide the issue.

Article 64 (Deliberations to be public; record of proceedings; record of votes)

1) Deliberations 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.

2) Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of the proceedings of secret session as may be deemed to require secrecy.

3) Upon demand of one-fifth or more of the members present, the votes of the members on any matter shall be recorded in the minutes.

Article 65 ( Selection of officials; rules for the Houses; punishments)

1) Each House shall select its own president and other officials.

2) Each House shall establish the rules pertaining to its 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 to that effect.

Article 66 (Voting on bills, and precedence of the House of Representatives)

1) A bill becomes law when passed by both House except as otherwise provided by the Constitution.

2) A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, shall become law when passed a second time by the house of Representatives by a majority of three -fifths or more of the members present.

3) The provision of the preceding paragraph shall not preclude the House of Representatives from calling for a meeting of a joint committee of both Houses, as provided for by law.

4) Failure by the House of Councillors 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 said bill by the House of Councillors.

Article 67 (Precedence of the House of Representatives in deliberations and decisions on the budget bill)

1) The annual budget bill must first be submitted to the House of Representatives.

2) Upon consideration thereof, when the House of Councillors 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, as provided by law, or in the case of failure by the Houses of Councillors to take final action within thirty (30) Days, periods in recess excluded, after the receipt of the budget bill passed by the House of Representatives, the decision of the House of Representatives shall be the decision excepted, may be determined by the House of Representative to constitute a rejection of the said bill by the House of Councillors.

Article 68 (Precedence of the House of Councillors in treaty approval)

1) Treaties must first be submitted to the House of Councillors.

2) Upon consideration of treaties, when the House of Representatives makes a decision different from that of the House of Councillors, and when no agreement can be reached even through a joint committee of both Houses, as provided by law, or in the case of failure by the House of Representatives to take final action within thirty (30) days, periods in recess excluded, after the receipt of the treaties passed by the House of Councillors, the decision of the House of Councillors shall be the decision of the Diet.

Article 69 (Precedence of the House of Councillors in personnel matters)

1) Appointments to important public posts provided for by law shall require the approval of the Diet.

2) The approval specified in paragraph I hereof shall be subject too the provisions of the preceding article.

Article 70 (The Diet's power to investigate governmental matters)

Each House may conduct its own investigations in relation to government, and may demand the presence and testimony of witnesses, and the production of records.

Article 71 (Minister's right to, and duty of, presence in the Diet)

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. Further, they shall appear when their presence is required in order to give answers or explanations.

Article 72 (Judge impeachment court and judge indictment committee)

1) The House of Councillors shall set up a judge impeachment court from among its members for the purpose of trying those judges against whom removal proceedings have been instituted by the following paragraph.

2) The House of Representatives shall set up a judge indictment committee from among its members for the purpose of indicting those judges described in the preceding paragraph.



3) Matters relating to judge indictment and judge impeachment shall be provided for by law.

**Chapter 7 -  
The Cabinet**  
*(Currently Chapter 5)*

Article 73 (Executive power)

Executive power shall be vested in the cabinet.

Article 74 (composition of the Cabinet and its collective responsibility to the Diet)

1) The Cabinet shall consist of the Prime Minister and other Ministers of State, as Provided for by law.

2) The Prime Minister shall represent the Cabinet and Exercise control and supervision over Ministers of State.

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

4) The Cabinet, in the Exercise of executive power, shall be collectively responsible to the diet.

Article 75 (Designation of the Prime Minister and the House of Representatives Precedence)

The Prime Minister shall be designated from among the members of the House of Representatives by a resolution thereof. This designation shall precede all other business.

Article 76 (Appointment and dismissal of Ministers of State)

1) 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.

2) The Prime Minister shall have sole discretion in the Removal of Ministers of state.

Article 77 (The Cabinet's power to dissolve the House of Representatives and the consequence of a non-confidence decision against the Cabinet)

1) The Cabinet may dissolve the House of Representatives.

2) If the House of Representatives passes a no confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days.

Article 78 (Vacancy in the post of Prime Minister, convocation of a new Diet, and resignation of the Cabinet en masse)

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.

Article 79 (The Cabinet after its resignation en masse)

In the Cases mentioned in the Two preceding articles, the Cabinet shall continue its functions as defined in this constitution until a new Prime Minister shall be appointed, provided always that it shall not exercise its power to dissolve the House of Representatives until such appointment has been made.

Article 80 (The Prime Minister's duties)

The Prime Minister, representing the Cabinet, submits bills, including the annual budget bill, and other measures to the Diet and reports on general national affairs and foreign relations to the Diet.

Article 81 (The Prime Minister's power of command and control)

The Prime Minister shall exercise general control and supervision over the various departments of the executive branch.

Article 82 (The Prime Minister pro-tempore)

1) When the Prime Minister is incapacitated or where there arises a vacancy in his post a minister of State designated as Prime Minister pro tempore shall discharge the Premier's duties.

2) In order to anticipate the contingencies described in the preceding paragraph, the Prime Minister shall designate in advance a minister of state as his pro tempore.

Article 83 (The Cabine's duties)

1) Administer the law faithfully and exercise due control over, and management of, administrative affairs of the state;

2) Manage foreign affairs;

3) Conclude treaties, subject to prior, or, in appropriate circumstances,

4) Administer the civil service, in accordance with the standards established by law;

5) Convoke the Diet;

6) Draft the annual budget bill and present it to the Diet;

7) Enact Cabinet orders in order to implement the provisions of this Constitution and of the law. Such orders may not include penal provisions unless authorized by law;

8) Decide on general and special amnesties, commutations of punishment, reprieves, and restorations of right;

9) Decide on the conferment of honors.

Article 84 (Privileges of the Minister of State)

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 shall remain intact after his dismissal.

## **Chapter 8 -**

### **The Justice**

#### ***(Currently Chapter 6)***

Article 85 (Judicial power, courts and ban on extraordinary tribunals)

1) Judicial power shall be vested exclusively in a Constitutional Court, a Supreme Court and in such inferior courts as are established by law.

2) No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given ultimate judicial power.

Article 86 (Constitutional Court's power to determine the constitutionality of legislation)

The constitutional Court shall be the sole arbiter of the constitutionality of any treaty, law, order, rule or other official act.

Article 87 (Jurisdiction of the Constitutional Court)

The Constitutional Court shall perform the following functions;

Judge the constitutionality or lack thereof under the law of matters related to any treaty, law, order, rule or other official act upon demand by the Cabinet or a one-third or more majority of the members of the House of Representatives or of the House of Councillors;

1) Judge the constitutionality under ht law of matters related to specific trials upon request by the Supreme Court or an inferior court;

2) Determine, as provided for by law, appeals founded on point of constitutional law raised by appellants against Supreme Court decisions in specific trials.

Article 88 (Validity of the judicial decisions by the Constitutional Court)

Where the Constitutional Court Pronounces unconstitutional any treaty, law, order, rule or other official act, such decision, except as provided for by law, shall thenceforth be binding upon all the organs of the State.

Article 89 (Term of office, retirement age and compensation of Constitutional Court Justices)

1) The Constitutional Court shall consist of a Chief Justice and eight other Associate Justices. The Justice excepting the Chief Justice shall be designated by the House of Councillors and appointed by the Cabinet.

2) The term of office of Constitutional Court Justices shall be eight years, with no provision for re-appointment.

3) Constitutional Court Justices shall be retired upon the attainment of the age fixed by law.

4) Constitutional Court Justices shall receive adequate compensation, at regular stated intervals; such compensation shall not be decreased during their terms of office.

Article 90 (The Supreme Court as a Court of last Non-Constitutional resort)

The Supreme Court shall be the court of last resort in matters outwith the jurisdiction of the Constitutional Court.

Article 91 (Term of office, retirement and compensation of Supreme Court Judges)

1) The Supreme Court shall consist of a Chief Judge and such number of Associate Judges as may be determined by law, all such judges excepting the Chief Judge shall be appointed by the Cabinet.

2) The term of office of Supreme Court Judges shall be five (5) years with the Privilege of reappointment.

3) Judges of the Supreme Court shall be retired upon the attainment of the age fixed by law.

4) All such Judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 92 (Term of office, retirement and compensation of inferior court judges)

1) 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 the privilege of reappointment, provided that they shall be retired upon the attainment of the age fixed by law.

2) Judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 93 (The Constitutional Court's and Supreme Court's rule -making power)

1) The constitutional Court and the Supreme Court are empowered to make rules governing practice and procedure, matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs.

2) Public procurators shall be subject to the rule -making power described in the preceding paragraph.

3) The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article 94 (Judges' independence and security of tenure)

- 1) All Justices and judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws of the land.
- 2) No Justices or judges shall be removed except by due impeachment process unless judicially decided mentally and physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.

Article 95 (Open trial)

- 1) Trial shall be conducted, and judgments declared, publicly.
- 2) Where a court unanimously determines publicity to be dangerous to public order, good morals or the interests of the private lives of those persons concerned, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the right of the people as guaranteed in Chapter 5 of this Constitution are in question shall always be conducted publicly.

**Chapter 9 -**

**Finance**

*(Currently Chapter 7)*

Article 96 (Basic principles of financial management)

The power to administer national finances shall be exercised by the Cabinet as the Diet shall determine. The State shall endeavor to maintain and manage its finances in a sound and proper manner.

Article 97 (Taxation)

No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

Article 98 (State expenditure and financial obligations)

No money shall be expended, nor shall the state obligate itself, except as authorized by the Diet.

Article 99 (Budget bills)

- 1) The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget bill for each fiscal year.
- 2) When a continuing expenditure is needed in special circumstances, it shall require the Diet's approval as a continuing expense, but the Period during which it is permitted to continue shall be limited.

Article 100 (Reserve fund)

- 1) 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.
- 2) The Cabinet must get subsequent approval of the Diet for all payments from the reserve fund.

Article 101 (Imperial Household property and expenditures)

All property of the Imperial Household shall belong to the State. All expenses appropriated by the Diet in the Budget.

Article 102 (Final accounts audit and a Board of Audit)

- 1) 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.

2) The organization and competency of the Board of Audit shall be determined by law.

Article 103 (Report of national finances)

At Regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

**Chapter 10 -  
Local Self-government  
(Currently Chapter 8)**

Article 104 (Basic principle of local autonomy)

Regulations concerning organization and operations of local public entities shall be fixed by law paying due regard to the principle of self-government by local residents and local public entities.

Article 105 (Election of Chief executive officers, assemblies, and officials of local public entities through direct popular vote)

1) The local public entities shall establish assemblies in accordance with law.

2) The chief executive officers of all local public entities and the members of their assemblies shall be elected by direct popular vote within their several communities.

Article 106 (Functions and regulation making power of local public entities)

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

Article 107 (Plebiscite on special law)

A special law, applicable only to certain local public entities, cannot be enacted by the Diet without the consent of the majority of the voters of local public entity concerned, obtained in accordance with law.

**Chapter 11 -  
Amendments  
Currently Chapter 9)**

Article 108 (Amendment procedure; promulgation of amendments)

1) Amendments to this Constitution shall require to be approved by the concurrence of the majority of valid votes cast by the members of each House present and voting, and shall be submitted to the people for ratification. Such amendments shall be considered at a meeting of the Diet at which two-thirds or more of all current registered members are in attendance.

2) Notwithstanding the terms of paragraph 1 of this Article, if, at a meeting of the Diet at which two-third of more of all current registered members are in attendance, a majority of two-third or more of the members of each House present and voting vote in favor of the amendment under consideration, such amendment shall be passed.

3) Such ratification as is mentioned in paragraph 1 of this Article shall require a concurring majority of the valid votes cast either at a national referendum held specially for the purpose, or at a special voting held concurrently with such election as the Diet may specify.

4) Amendments to this constitution may be proposed by members either of the Diet or of the Cabinet.

5) An amendment ratified under paragraph 1, or passed under paragraph 2, of this Article shall immediately be promulgated by the Emperor in the name of the people.

We have deleted the current Constitution's Chapter 11 on Supplementary Provisions (Articles 1000-3), since it contained only transitional provisions which were to apply until the current Constitution came into force. Any new supplementary provisions will be similar, if not identical, and purely procedural in phraseology. Hence, we feel no need to duplicate supplementary Provisions in this book.

## APPENDIX – 5

### **Sekai, 'Peace and regional Security in the Asia-Pacific'**

A Japanese Proposal (1993-94)

Koseiki Shoichi, Maeda Tetsuo, Suzuki Yuji, Takahashi Susumu, Takayanagai Sakio, Tsuboi Yoshiharu, Wada Haruki, Yamaguchi Jiro, and Yamaguchi Sadamu.

#### **A proposal for a basic peace law:**

#### **Toward a resolution of the problem Japan's Self-Defense Forces in keeping with the spirit the constitution**

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, Constitution of Japan)

The Cold War era, which for nearly half a century gripped the world within its tensions, has ended. It is also the end of that 'age of world wars', which from the beginning of this century led to great powers to pour out vast sums in military expenditure, and to form alliances opposing one another on a global scale.

The end of the cold War on a global scale demands an end in Japan to the various argument and confrontations which have long continued within its domestic politics. It goes without saying that the biggest argument in the post-war period has been that regarding the issue of Article 9 of the Japanese constitution, the Japanese Self-Defence Forces (SDF), and the US-Japan Security Treaty. Because of Article 9, which, under the flag of 'pacifism,' make clear its stance of 'renunciation of war' and 'non-possession of war potential,' the Japanese Self-Defense Forces lack the dimension of a conventional military force in terms of command, operations, and deployment, and the right to wage war, although they poses huge war-making potential, similarly, the US-Japan Security Treaty has had to function as an irregular system, not in the form of a conventional military alliance.

Herein lies the reason for the continuing dissatisfaction of those, mainly in conservative and government circles, who demand a 'normal state.' While the spirit of the constitution has been distorted by the SDF and the security treaty, so, conversely, the SDF and the security treaty may also be said to have been the conventional modern state). Furthermore, since the security debate died down in the 1970s, this structure was simply set aside without any pretence of a solution, and on the surface appeared to be forgotten. However, the contradictions and the gap between the Constitution, the SDF and the treaty cannot simply be set aside in this way. The problem henceforth is whether to try to correct the distortions while adhering to the spirit of the constitution, or alternatively to correct them by holding fast to the security treaty and the SDF.

The latter position is that of constitutional revision, which is now vociferously advocated. The common strain of thinking in this argument is that which advocates 'normal statehood' with a 'normal army' for Japan along with international 'great power' status in the international community represented by a permanent seat on the UN Security

Council, and to that end international contribution and the overseas dispatch of armed forces.

Basically, we advocate the former position. Apart from the act that the main consensus among the Japanese people is the aspiration for peace and justice, the renunciation of war and the ability to wage war, and respect for international cooperation, all set out in the constitution, we consider it a position that most adequately reflects the spirit of the present age in which wars on a world scale are a thing of the past.

Classical warfare, in the sense of state armies being pitted against each other or wars fought by the forces of several states forming military alliances as was once the case, has become unimaginable, at least among the advanced industrial countries. The best chance for the spirit of the Japanese Constitution to match that of the current age has arrived. It must be stated however, that our position is not that of the established constitutional defense party, *Gokenron* which calls for the immediate abolition of the Self-Defense Forces as unconstitutional. As will be explained further on, we are advocating not complete disarmament, but a new type of Self-Defensive Defense, wielding the minimum necessary defensive force, which, subject to meeting various conditions, could be maintained constitutionally. This position could be described as *Sokenron*, or 'creative constitutionalism.'

While still adhering to the spirit of the constitution, how are we to resolve the contradiction between the Self-Defense forces and the constitution that the divided public opinion for so long, and achieve a national consensus on this matter? We wish to propose the creation of a semi-constitutional law that in legal terms would be derivative from Article 9, and which would adhere to its spirit, which we have named the Basic Peace Law.

This basic Peace Law as we propose it is not merely the exposition of an ideal but a practical foundation to consolidate Article 9 of the constitution, specifying procedures and processes to embody its ideals. Furthermore, it reverses the gradual erosion of the ideals of the constitution consistently practiced by successive post-war conservative governments, and would amount to a vow of non-use of force, 'renunciation of war' and disarmament' to both the Japanese people and the people of the entire world, not particularly the peoples of Asia. The Japan Defense Agency (JDA) and Self-Defense Forces, which, because of unconstitutional elements contained within them, could be described as in an unconstitutional state, would be re-structured into a new organization, provisionally named the National Guard (*Kokudo Keibitai*). This could be regarded as a transitional entity pointing towards the Minimum Defensive Force that would be constitutional and lacking in any attacking capacity. So far as Japan's international contribution of a non-military kind is concerned, that would be entrusted to a separate organization. Furthermore, the Japanese people would be able to launch court actions based on this law, hence shifting the current debate over interpretation from the constitution to this Basic Peace law.

Firstly, we will present the following points which we feel should be incorporated into the Basic Peace Law. It goes without saying that the following is not a formal draft law, and as such it is not presented in strictly legal form. Then secondly, we will explain its background.



## *Outline of a Basic Peace Law (Draft)*

### *A. Objectives*

This law affirms the basic principle and ideals regarding security embodied in the Japanese Constitution, and is here promulgated in order to detail concrete methods and procedures by which to maintain the security of the Japanese people and contribute positively towards world peace, striving for the implementation of the universal ideals embodied in the constitution, in particular the spirit of those sections of the constitution which state that the Japanese people have

resolved that never again shall we be visited with the horrors of war through the action of government. (Preamble)

[that] We, the Japanese people... have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world (Preamble)

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

### THE RIGHT TO LIVE IN PEACE

The Japanese people are guaranteed 'the right to live in peace' under the Constitution of Japan. The government bears the responsibility of security in order to protect the people's lives from various threats.

### THE RIGHT TO SELF-DEFENCE

Although Article 9 of the constitution by paragraph one rejects aggressive war and prohibits the use of force as a means of settling International disputes, the right to individual self-defense is recognized by Article 51 of the United Nations Charter. Sufficient force may be maintained to defend the people's lives from any invasion of sovereignty. However, because paragraph two of Article 9 prohibits all war potential and renounces the right to Defensive Force, the mode of its organization and equipment, and the methods by which it may exert force, must be limited and restricted.

### PROHIBITION OF CONSCRIPTION

Since the Constitution of Japan forever renounces war as a sovereign right of the nation, no emergency power for such purpose may be adopted, the government does not have the right to declare a war or sue for peace, the establishment of courts martial is prohibited, and the duty of state defense shall not be imposed upon the people. Based on the spirit of the constitution, the government shall not impose conscription or any other analogous duties upon the people.

### OBLIGATION OF DISARMAMENT

Since the constitution prohibits our nation from the use of force as a means of settling international disputes, the duty to strive ceaselessly for disarmament, both in Japan and in the world, is imposed on Japan.

### C. Security not reliant on military force

#### RELATIONS WITH NEIGHBORING COUNTRIES

The basis of the security to which the Constitution of Japan aspires is 'trust in the justice and faith of the peace-loving peoples of the world.' Previously, Japan committed the error of employing force to make colonies of its neighboring countries, threatening and invading them with force, and inflicted numerous sufferings and losses upon them. The first thing that Japan must do to regain the trust of these nations and to secure the peace and security of Japan by trusting in the 'justice and faith of the peace-loving people of the world' is to pledge never to repeat those errors, and to apologize and compensate for them. The Japanese people must not be allowed to forget this reality.

#### COMMON SECURITY

**Regional collective security** *The peace and security of the Asia-Pacific region is an indispensable actor in the security of Japan. By avoiding the construction of hypothetical enemies, deepening of mutual economic, political, and cultural exchange, and gradual and continuous effort toward building and encouraging mutual trust in this region, Japan should exert itself to get mutual declarations construct a regional collective security apparatus, as was prescribed in a future-oriented way in the United Nations Charter. Furthermore, every effort shall be made to inform the other people of Asia of the ideals embodied in Article 9 of the constitution, and of the Japanese people's sincere commitment to these ideals.*

Common security based on the United Nations Charter *The United Nations Charter and the Constitution of Japan are both rooted in the common spirit of the same period in terms of their renunciation of the use of force as a means for settling international disputes and their aspiration toward international security based on rejection of war. Furthermore, the peace of Japan cannot be realized without a stable international peace and order. From this perspective, along with positive participation in the various UN activities, every effort shall be made toward what can be termed common security on a global scale in the form of a UN-centered collective security apparatus. Also, every effort shall be made toward the democratic reform of the United Nations, and a position of responsibility should be adopted to pursue such reform.*

However, so far as the 'use of military forces' against threats to peace or against aggressors as prescribed by Article 7 of the UN Charter is concerned, in consideration of the fact that the 'war potential' and war methods employed by United Nations member-states is completely different from that envisaged in the period during which the Charter was established, we make this concrete proposal for cooperation with other states towards the establishment of a 'United Nations Army' suited to the contemporary world.

*Comprehensive Security.* Security means the protection of the lives of the people from all sorts of threat. To accomplish it, we must strive by diplomatic effort, stabilizing and improving domestic politics, stressing the non-military aspects of scientific and technological, economic and industrial progress, to transform the international environment in desirable directions and to promote a security which will ease antagonisms in order to effect favorable change on the international environment.

Furthermore, we recognize that the increasing wealth gap between North and South is the major source of Conflict, and shall make every effort to rectify it.

*Prohibition of military alliances.* In accordance with its Constitution, Japan should not belong to any military alliance. Taking note of the new post-cold war circumstances, we look to the demilitarization of the post –cold war US-Japan Security Treaty and its development and merger into regional collective security system.

*The three non-nuclear principles.* Japan shall never possess, store, or develop either nuclear weapons or the means to transport them. Furthermore, Japan shall not export armaments to any country, or repair or modify the weapons possessed by another country.

#### **D. Minimum defensive force**

##### **TASK**

Its task is to respect the spirit of the constitution and defend the people from any act in violation of territorial sovereignty.

##### **COMMAND**

The Prime Minister shall command and supervise it.

##### **MINISTRY FOR PEACE AND DISARMAMENT**

As for the possession and management of a strictly-controlled minimum defensive force, a provisionally named Ministry of Peace and Disarmament (or alternatively, Ministry of Peace and Security) shall be established. A civilian shall be appointed to head this Ministry (Article 66:2, Constitution of Japan).

##### **BASIC PRINCIPLES**

The Minimum Defensive Force cannot engage in defense activities beyond the boundaries of Japanese sovereign air, sea, or land space. The position of resort to the use of force only after prior use by an opponent shall be maintained.

Furthermore, the decision to deploy the Minimum Defensive Force shall be subject in principle to the prior resolution and approval of the National Diet.

##### **COMPOSITION AND EQUIPMENT**

Levels of personnel, budget, composition and equipment appropriate within the limits appropriate to conducting the tasks outlined by the Basic Peace Law require the decision and approval of the Diet. Furthermore, in regard to scale, every effort shall be made to adhere to the principle of consultation with neighboring countries and mutual approval.

##### **CIVILIAN PRIORITY**

The Ministry for Peace and Disarmament shall be managed according to the principle of civilian priority.

##### **PUBLIC DISCLOSURE OF INFORMATION**

The Minimum Defensive force shall have a duty to publish for the Diet all information pertaining to matters of equipment, operations and information collection.

## RIGHTS OF MEMBERS

The democratic rights (including the right to public association) of personnel who volunteer to participate in the Minimum Defensive Force shall be respected in the same manner as the normal rights of all public servants.

## OBLIGATING OF FULFILLMENT AND PENALTIES

This law imposes upon the government concrete obligations – including in respect of disarmament – of fulfillment, and appropriate penalties for breach. Accordingly, in the event that either the general public or the members of the Minimum Defensive force have reason to believe that these principles have been violated, they may resort to the courts.

### *E. Transitional measures*

Following the establishment of the Basic Peace Law, the current Self-Defense Force shall be reorganized into a National Guard (*Kokudo Keibitai*; a provisional title) with different duties. Furthermore, an International Relief Force (*Kukusai Kyunantai*; a provisional title) shall be hived off as a separate organization, comprising volunteers, for non-military activities associated with UN Peacekeeping Operations and other duties relating to international contribution. Continuing employment will be guaranteed to all personnel.

A disarmament program, designed to bring about the Minimum Defensive Force, shall be spelled out, according to which reductions of equipment and personnel shall be effected in harmony with the disarmament process of neighboring countries. (At the time of establishment of the Basic Peace Law, the Diet shall proclaim the constitutionality of the National Guard.)

### *F. Non-military methods for a positive contribution towards world peace*

The Japanese government and the Japanese people must contribute towards world peace through non-military methods in accordance with the spirit of the constitution. We must deepen mutual understanding and trust through diplomacy, striving for a global nuclear ban and for reductions in conventional armaments and the banning of weapons exports, and also for the implementation of a Official Development Assistance (ODA) policy that will contribute towards the narrowing of the North-south gap in a way without harming the environment or the peoples of any other country, and through the positive advancement and promotion of Non-Government Organizations (NGOs) and the positive promotion of things like textbook exchanges.

## HOW TO INTERPRET THE PRESENT AGE

The end of the Cold War may be considered as the conclusion of an age of worldwide war that spanned the entire twentieth century. Great powers formed global military blocks and confronted each other; regional conflict always threatened to expand into global hostilities between the military blocks, and on two occasions – the First and Second World Wars-did actually evolve into world war. Such an age has now finished.

State socialism, which was born out of the hostilities of the world wars and became one of the major actors of this age, met its end in Russia and Eastern Europe. Furthermore, with the dissolution of the Soviet Empire, the military superpower, the Soviet Union, and the other military superpower, the United States, have also in a sense come to an end. It could be described as the end of the American empire. Upon the end of the Cold war,

former US president Bush spoke of the victory of the United States but this can scarcely be considered to be true.

During the nuclear arms race, the main resources of the former Soviet Union were poured into the production of weapons. At the same time, the economy of the United States also became a grossly weapons-centered system. Now that the two countries have ceased to be enemies, large numbers of overseas-deployed troops, huge nuclear capacity, chemical weapons, the Central Intelligence Agency and KGB and other specialist organs, are all becoming redundant. What is called for now is to move away from a world of military confrontation rooted in hate and fear. The basic orientation of the history that begins now is that of disarmament and demilitarization.

What begins with the passing of the age of world wars is the age of economics, the economic center of this age is Japan, which has built up a highly-efficient, growth economy through non-military development, and Germany, which in the same manner through non-military development became the economic leader of Europe.

Japan suffered defeat in the Second World War, and was democratized under the occupation of the US, its military forces disbanded. With its peace constitution, Japan was promptly able of its own accord to remove itself from the age of world wars. The anti-war and anti-military feelings of beings fed-up with war and sick of armies were sentiments only to be expected from a people that had been the first in history to suffer the horror of nuclear weapons. The Japanese people had sung the praises of its army and supported overseas expansion for half a century after the Sino-Japanese War (1894-5). The transformation into a country without conscription was remarkable.

However, we must also acknowledge that the unprecedented spiritual demilitarization of the Japanese people might actually have been based upon a lack of genuine feeling of responsibility about the war. This can be well understood if Japan and Germany are compared.

At the end of street-fighting in the German capital, the parliament was occupied, and Germany finally surrendered. As a result of the defeat, the country, and even the capital Berlin, was divided. West Germany later revised its new constitution and established a conscription army, but this army was part of the North Atlantic Treaty Organization (NATO) and in the main only operated under NATO command, not sending troops outside of NATO territory. Germany has created relations of such trust with France, a country with which it fought two world wars, as to be able to constitute a joint force with it. This state of affairs however, is linked firmly to the fact that in West Germany the war responsibility of the Hitler regime and Nazism was pursued thoroughly, and denotification limitations was lifted with respect to the pursuit of Nazi war criminals, and compensation to the victims of Nazism undertaken through the responsibility of the German people and industry. The German people punished Nazi Crimes and thereby reflected upon their own responsibility. Furthermore, it may well be that through continuing to question their own responsibility for the war, they have managed to put the responsibility of the military into proportion, without going so far as to negate it outright. In Japan, as part of the Cold War strategy of the US, all responsibility for the war was ascribed to Tojo and the military, and the war responsibility of the Showa Emperor (Hirohito) was not pursued. In addition, because it was easier for most Japanese not to question their own responsibility but to blame the military, the idea of compensating the

victims of Japan's aggressive war never occurred to them. The military was completely negated, but at the same time their own responsibility was forgotten.

Emotionally, the Japanese people turned their backs on wars and armies, even though the age of worldwide conflict continued. The US and the Soviet Union became centers of this age, forming world-wide military blocks and confronting each other with nuclear weapons, Japan was denied the exercise of collective self-defense rights under its constitution, but basically belonged to the US camp, allowed the establishment of US bases within its territory, and in this way chose to entrust its security to a quasi-military alliance with the US. Also, within this security arrangement it constructed on a limited scale a quasi-army known as the Self-Defense Forces. Although such a move was inherently in conflict with the constitution, it explained it to the people in terms of the right to individual self-defense. This was the beginning of constitutional revision by interpretation. In addition, the policy of concentration upon economic growth through non-military development was taken by the Yoshida government.

Later, the Liberal-Democratic party (LDP) called for constitutional revision in order to resolve the contradiction between the constitution and the military, but the people did not give the constitutional reform proposal the necessary two thirds of parliamentary seats. In due course, popular support for article 9 of the constitution became fixed, and support within the LDP for express constitutional revision weakened. Nevertheless, the constitution was systematically belittled by the governing party. Under this weak state in which conscription did not exist, 'companyism' advanced with great strides, and economic high growth was achieved through development of mass production of consumer goods based on non-military, civilian technologies. The fact that the political opposition, and almost a third of the general public, insisted that the existence of the Self-Defense Forces was unconstitutional under Article 9, both made the Yoshida doctrine possible in the first place and sustained it, but also served as a constraint and a brake on its expansion, and served to hold military cooperation with the US to a minimum.

So, what does the end of the age of world conflict portend?

First of all, because the military blocks have been dissolved, or lost their meaning, the concept of collective self-defense by military alliances has also become meaningless. The US-Japan alliance has likewise lost its meaning as something confronting the 'soviet threat.' It is common security' on a global scale that must now be aimed for.<sup>3</sup> It is only natural that the concept of collective security conceived at the formation of the United Nations should now be reconsidered.

The fact that the age of world wars has now passed does not mean that there is no more war but that regional wars are more possible since there is no fear of them escalating into world war. Superpower Soviet-American controls no longer operate, and with the force of ideology diminishing, ethnic emotions and long-held resentments that had been held down by this power explode and regional warfare becomes rampant. The neglected questions of the influence of colonial control, and the scars of aggressive wars, again generate antagonisms. In addition, in the age of the world economy, as the wealth gap between North and South widens it carries the potential for even greater conflicts. Disputes over resources and territory are already occurring.

Even considering such antagonisms and wars, the activities of a UN which stood on the principle of common security become important, without being one-sidedly swayed by the interest of the larger powers, the UN should continue its activities, taking a stance of

fairness and respecting the equal status of all its constituent states. However, the deeply-rooted antagonisms or wars which stem from them will not be resolved by military means. There cannot be true resolution other than by exercising political, economic and cultural effort designed to stir the people of the region concerned to a new awakening and to make their own effort.

Also important are factors which make it impossible for the US and the (former)Soviet Union to push ahead with arms reduction, despite its urgency. The disposal of these (military) white elephants is enormously expensive, and people get laid off as a result, swelling the ranks of the unemployed. The process of transformation of the munitions industry to civilian industry is fraught with difficulties, whether in the former Soviet Union or in the US. Disarmament must proceed slowly but surely, though the deepening of mutual trust between both countries, and it needs to be expanded into a framework of regional cooperation. It is necessary for countries other than the USSR and the US to cooperate positively in the disarmament process.

What does this current situation mean for Japan?

Although the end of the age of world wars means that Japan must endeavor to fulfill its responsibility as a leading power, Japan is not ready for this. It has neither a political position nor a philosophy which is sensitive to this new era and so has issued almost no message to the world. Under these circumstances, it is fatal for there to be no consensus regarding the constitution, and precisely because this is the case we must now tackle the main point of constitutional contention, the problem of the Self-Defense Forces.

The problems of apology, reflection and compensation for war and colonial rule ought to have been settled after the end of the Second World War, but were set aside and left unresolved. Above all else, we must first begin the efforts to establish at a national level an understanding of Japan's colonialism and aggressive war, and show repentance over them. The history of aggression must be taught to the next generation, and compensation made to those who suffered.

The Self-Defense forces and the security treaty are problems left over from the Cold war. They must be resolved in a new spirit appropriate to our third 'postwar' constituted by the end of the age of world wars. We will not be able to enter this new period unless we do this.

#### TOWARD THE IMPLEMENTATION OF ARTICLE

Although the 'left' in post-war Japan adopted the preservation of Article 9 as its *raison d'être*, their explorations of what concretely was meant by preservation of Article 9 did not go very deep.

Domestically, as a result of having renounced armaments and the use of force, little concrete consideration was given to the question of how to advance Japan's security. Unarmed neutrality may have been one of the possibilities considered, but it was assumed to be unrealistic amid the realities of the Cold War, and subsequent opinion surveys and elections show that the majority of the people did not choose this option. The people firmly rejected constitutional revision, but they accepted the contradictory reality involved in recognition of the existence of the SDF.

Internationally, concrete consideration was not given to how Japan might contribute to the resolution of world conflict. Whatever fears there may have been about being embroiled in another war, little practical consideration was given to how to manifest to

the world its peace constitution spirit of aspiring sincerely to an international peace based on justice and order.

For this reason, the world 'constitutional defense' came to be ridiculed as meaning 'one country pacifism.' The main responsibility, however, should attach to governments which, faced with this situation, high-handedly possessed and expanded 'war potential' whose possession was clearly forbidden by the constitution, without amending the constitution, merely saying we can possess it because it is not war potential. Not once was the contradiction between constitution and armed forces made clear to the people, and not once were they given the opportunity to choose to resolve it. The people simply gave up thinking deeply about the issue and lapsed into thinking they might as well just enjoy the 'peace' they had.

Now that the age of world wars is over, what is required of us, both nationally and internationally, in order to preserve the spirit of the constitutions, is the wisdom to implement article 9. We must put an end to the sterile arguments about what is constitutional or non-constitutional, and shift the focus of the debate toward finding a creative constitutionalist path to breathe life into the spirit of the constitution.

As mentioned earlier, the peace constitution was historically prophetic in charter. When considering how to implement it this is a point which should first be recognized. That force is of no use in the settlement of conflict has been demonstrated anew both by the way the Cold War ended and by the course of post-Cold War regional disputes. Unlimited military expansion exhausts economies and comes to threaten security itself. If we look at the examples of the Gulf War and the civil war in Yugoslavia, we should be able to understand that the fundamental causes of conflict cannot be eliminated by force. Although it is still possible to imagine situations where force might be necessary, the spirit of the peace constitution, which rejects force as means of settling disputes, is not only not outdated but is very much in keeping with the times.

Furthermore, another perspective to keep in mind when considering the implementation of the constitution is that the gap between legal norms and reality should not be ignored any longer. *That the court has used the argument of tochi koi to avoid making any judgment on the constitutionality of the Self-Defense Forces means that there are limits to the extent to which any resolution of the problem may be sought through the legal system.* Since the courts defer their judgment to the government, there is no alternative to entrusting the political wisdom of the people to find a solution. The constitution is the basic norm which determines the way politics should be conducted and the condition of the state and as such it must be clear and understandable to the people. What is needed is to strive towards formulation of clear norms, not an explanation of reality by means of interpretations.

Let us here set out the main categories of interpretation of the constitution.

It goes without saying that there are two positions with respect to Article 9, that the SDF is constitutional and that it is unconstitutional, but within both of these there are differences of nuance about interpretations of the right to self defense and of war potential.

The established view of those who affirm the existence of the SDF is that since 'Article 9 paragraph One of the constitution does not go so far as to deny the existence of the right to self-defense, accordingly a minimum necessary force (*hitsuoyo saishogendo no jitsuryoku*) may be maintained based on paragraph Two. This is the constitution



interpretation favoured by the conservative mainstream. And it became the official viewpoint of successive Liberal Democratic Party governments (argument A). although belonging to the same affirmative view, there is another interpretations of this genre which claims that Understating that Article 9 prohibits war of aggression, but not defensive wars, a defensive force may be maintained under paragraph Two. This was the interpretation of Prime Minister Ashida, and until recently was also favored by a majority of scholars. Of late the Ozawa Study Group's understanding of the constitution is of the same type, arguing that Self-Defense Forces may participate in exercising force for security in accord with the decision of the United Nations (argument B). Interpretation B takes the view that, as a normal state, Japan's possession of an army is natural, and restricts the meaning of the constitution to a certain restraint on the exercise of that force. Even among those who believe that the existence of the SDF is unconstitutional, there are differences of interpretation. The conventional understanding interprets article 9 as meaning 'Article 9 paragraph One renounces all forms of war, and the maintenance of war potential of any kind is forbidden under paragraph Two (argument C). A further interpretation (D) claims that 'Article 9 does not deny the right to self-defense, but because the possession of war potential is prohibited in paragraph Two, in effect even defensive war is prohibited. According to D, in the case of aggression, defense would be pursued through non-military police forces and civilian sabotage. This argument was adopted in the first judgment in the Naganuma case.

Our own stance, which rates highly the constitution's pacifism, and tries to pursue its implementation, is this D position, this is because we feel that position C does not permit room for the realization of any other security option than immediate unarmed neutrality, leaving no room for discussion of methods of security to realize the ideal.

Furthermore, the core of implementation of Article 9 is the pursuit of security through methods other than traditional military force. What is necessary towards this end is a transformation in the established ideas of war and army, based on the large historical turning-point of the end of the age of world wars. In this age, even if another country were to be invaded and subdued by force, there is no state able to bear to cost of such war and the costs of controlling the conquered territory. Accordingly at least among advanced countries, classical warfare in which soldiers of rival state armies engage in fighting based on the right of state belligerency, has become inconceivable.

Military blocks have broken down, and the threat to be faced as changed from enemy states or blocks of states seeking conquest to the level of international terrorism and armed refugees. If so, then what this means is that the sort of self-defensive organizations would be much smaller than the required in the traditional scenario of confrontation with another country's regular army, and the scope to construct a new type of defensive organization not prohibited by Article 9 may be discerned.

What was problematic about the interpretation of Article 9 by previous governments was its possession of inherent attack capability a its equipment was steadily upgraded despite the words 'Self-Defense'. In so far as the SDF was for defense against the regular forces of some other country, there was nothing to hold its expansion in check. This aroused suspicion among both the Japanese people and the peoples of neighboring Asia. In keeping with the change in the nature of the threat, the possibility has emerged for construction henceforth a self-defense organization without attacking capability.

We wish to call this new type of defensive organization 'Minimum Defensive Force' (*Saishogen bogyoryoku*). Since much discussion will be needed on the actual scale, equipment, and personnel of such a force, and because there will be changes in accord with international circumstances, we have avoided spelling it out too clearly within the substance of the law. So far as the basic principles are concerned, we have restricted ourselves to what is outlined above. The sort of spider-web defensive organization proposed by Maeda Tetsuo could serve as a draft proposal. It would be a defensive organization without offensive equipment or orientation, but equipped to deal with disasters and conflicts beyond the scope of a conventional police force or fire brigade.

The gap between the present Self-Defense forces and our proposed Minimum Defensive Force is large. The SDF, under pressure from the US, expanded greatly during the Cold War and especially during the 1980s, to the point where they could not possibly be described as 'constitutional.' In order to switch the SDF to a constitutional Minimum Defensive Force, transitional measures, in accordance with a demilitarization program to be debated in the Diet, will be necessary.

What is necessary in sum is to establish a formula for subjecting the new style military to the control of civil society. Most pressing is to put an end to mobilization for keeping the public peace (with certain political movements in mind) as prescribed under Articles 3 and 78 of the Self-Defense Force Law. Furthermore, for civilian control of the military, openness of information is vital. In addition, the enshrinement of the dead at Yasukuni Shrine, which is evocative of the former Imperial Japanese Army, and illegal gathering of intelligence on the civil society should probably also be stopped.

Furthermore, the scale of the Minimum defensive Force will also change depending on the extent to which the UN's collective security system and East Asian regional security systems are provided. If a regional security organization encompassing the US, Russia, china, North and South Korea (or a United Korea) is formed, it could be that a coastguard plus small number of ground troops would be enough for the defense of Japan's territory. The constitution of Japan order the Japanese people to make ceaseless effort toward the accomplishment of security and the resolution of disputes by more peaceful means and by increasing avoidance of force. Continuing discussion on concrete constitutional means will be needed to cope with this permanent movement.

### **Restriction of the Self-Defense Forces**

Until now, the Japanese government has held that it was internationally understood that the SDF were maintained as an inherent right of a sovereign state prescribed under the UN Charter. It has continued to develop its position on the constitutionality of the SDF. However, although this idea of individual self defense has been accepted in Japan as an absolutely self-evident national right, we should realize that there is no clear definition of it, and it is not only vague but potentially dangerous as a basis for legitimacy.

This is because, as pointed out by Prime Minister Yoshida at the constitutional Reform Committee (June 26, 1946) many of the wars of recent years have been waged in the name of self-defense. Furthermore, because the geographical limits of self-defense are not defined, one cannot rule out the possible emergence of irresponsible politicians claiming that Japan's self-defense right extends from 1,000 nautical miles to the Malacca Straits or even the Gulf area.

Certainly, Article 51 of the UN Charter states that '*In the interim before the UN Security Council takes necessary steps for the preservation of peace and security, 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.*' (Even the 1928 Treaty of Non-Aggression includes the qualification that 'Since all sovereign states possess a self-defense right, and since it is assumed in all treaties, therefore all states, regardless of what is stipulated in any treaty, possess the freedom to defend their own territory from attack or aggression.').

However, the reason why we propose a reinterpretation of the notion that the 'self-defense right' is an 'inherent right' of a sovereign state, lies in the collective security system envisaged by the United Nations. In that self-defense is recognized as a temporary measure pending the adoption of measures based upon the collective security system, the judgment of whether or not something is a self-defense right is entrusted to each sovereign state. The problem inherent in this is that of abuse of the self-defense right.

If pacifist Japan can be said to have the right to self-defense, the problem of how to interpret excessive use of this right must be seen as inescapable, and the scale, deployment, and any restrictions on the military force of the proposed Minimum Defensive Force becomes relevant to it.

The use of force and even resort to war in case of conflict between states used to be recognized, but in the course of the present century the view that war is illegal has progressed, and within this trend the United Nations has outlawed both the 'use of force' and the 'threat of force' permitting force only for sanctions or self-defense.

Within the UN collective security system, broad restrictions have been imposed upon the 'use of force,' especially war. The collective sanctions by the UN against illegal 'use of force' or 'the threat of force' have been recognized as legal responses, and the exercise of a self-defense right recognized as a temporary measure pending the coming into operation of such sanctions. However, even if the right to self-defense is exercised as a temporary measure, the possibility remains that the self-defense power may be abused if it is seen as an 'inherent right' of sovereign states.

To construct a system which would prevent such abuse, the 'self-defense right' might be seen as a right stemming from the UN's collective security system rather than as an 'inherent right' of a sovereign state. The possession by a sovereign state of a 'self-defense right' does not vary in accordance with whether the right is inherent or given, but if the self-defense right were to be reconstituted as a right bestowed under the collective security system it should be easier to prevent its abuse.

The 'Basic Peace Law' which we have proposed here can be described as the first step toward a political declaration on the limitation of the self-defense right, and in order to realize it, it might be worth considering the international exchange of documents pertaining to the Basic Peace Law, either through the United Nations or on a regional level.

At the heart of the current UN collective security system is the recognition of the 'use of military force' against breaches of the peace and aggressive acts. However, the essence of an army is 'victory over the enemy,' 'annihilation' and 'destruction.' In principle, what collective security requires should be not the use of the military, but police activity based upon the law to restrain the breaches of the law. There should be no such thing as an 'enemy.'

In addition, in the event of such international (UN) policing activities, it should be possible to establish a new type Japanese unit, not an army and completely separate from the Minimum Defensive Force, which could be inter-nationally, or UN trained and led.

In fact, if Japan is to entrust its security to such an international policing system, one would expect that it would want to participate positively in it. This is because as the international police system grew in strength, the Minimum Defensive Force protecting Japanese territory could gradually be reduced. (So far as any United Nations army is concerned, our position is that great prudence should be exercised regarding any participation by Japan, and that participation in any other multinational force is out of the question).

Of course, we realize that conditions in either the UN or East Asia are not conducive to the immediate formation of a collective security system involving a strengthened police along these lines. However, if we are to be committed to the pacifism demanded by the constitution in this new post-world war age, we must strive to move the reality in the direction of the ideal.

Japan is indeed a 'special state' which has voluntarily relinquished part of its military sovereignty. There are voices, not only from the Liberal-Democratic Party but also from within the political opposition, which would have this 'special state' become a 'normal state'. Even in some circles in Germany the call to become again an 'ordinary state' is gaining strength. But what is wrong with being a 'special state'? Might not the abandonment of part of our sovereignty indicate rather a certain foresight? This is after all the age in which the modern state itself, its borders, its centralized government, its education system and its national economy, are being seriously questioned.

We believe that it is precisely through inheriting and further developing the idea of a 'collective security system' that was born out of the horrors of repeated war, and by exploring both in juridical theory and in practice the idea of UN based collective security and regional security, that our 'special state' may be made into a normal state while retaining its 'specialness.'

What we have developed here is not an argument for the constitutionality of the Self-Defense Forces. Even less is it an argument for leaving things be, by accepting the current situation as it is. It is instead a prescription for putting an end to the Cold War era within our country by our own efforts. For the resolution of conflict, both political wisdom and sincere effort on both sides is necessary. We must attempt to disentangle ourselves from the inertia of the 'Cold War mentality' and 'confrontational thinking' that were nurtured within the Cold War structure.

The political parties that are the political expression of the will of the people, in particular the Social Democratic Party of Japan and the Liberal-Democratic Party, are called upon to exert the utmost efforts towards achieving a mutual understanding and a consensus on this problem.

Furthermore, without the participation and supervision of the people, whatever laws are drawn up will be meaningless. This is so much more the case in dealing with the problem of the military, the most difficult of all problems facing a democracy. A lively debate is called for from the people on this issue.

## APPENDIX – 6

### Asahi Shimbun, 'International Cooperation and the Constitution'(1995)

#### A path Toward a non-military contribution to the world

##### Asahi Shimbun's 6 Proposals

1. Enact an International Cooperation law to Upgrade External assistance.
2. Create a Peace Support Corps for taking part in traditional peacekeeping operations.
3. Idealistic Article 9 of the Constitution does not need to be revised.
4. Scale down the SDF into a force exclusively for defending the country.
5. Overcome security arrangements for the Cold War and give emphasis to peace in Asia as a whole.
6. Take the Initiative for reforming the UN into a healthier world body.

What is Japan to do to save the human race and this planet? In opening a new chapter in the history of Japan fifty years after our defeat in the war, Asahi Shimbun has conducted a company-wide discussion on this question for the past five years. Today, constitution Day, we present an editorial feature package on the theme of 'International cooperation and the constitution' based on the outcome of the discussion. We hope it will serve as a reference for readers to consider the issue.

Our conclusions can be summarized in two points: first, that the present constitution has not lost its brilliance. We are opposed to its revision, because amending it would do much more harm than good. Second, Japan should make purely non-military contributions to the world community. In cooperating with the rest of the world, we should adopt an activist attitude, even more so than other countries.

Such an attitude could also be characterized as a non-military activist state. Though we are aware that a nation differs from an individual, we aspire to be a nation that is, figuratively speaking, a conscientious objector.

Conscientious objection by individuals is already well-established in the United States, Britain, France and many other developed Countries. Germany's Basic Law (in effect its constitution), for example, stipulates that no one shall be forced into military service with weapons against his or her conscience. We suggest that this principle of conscientious objection be applied to our nation.

Those who interpret international cooperation to mean the shedding of one's own blood may criticize our ideas as selfish or cowardly. In fact, conscientious objectors have long been excoriated and persecuted. But to be faithful to a belief, whether for an individual or a nation, under the precept of Thou shalt not kill, that is the only way.

Furthermore, conscientious objection demands considerably strong will and patience. In most countries that accept conscientious objection, conscientious objectors are required to perform alternative service. They are engaged in medical care, or other social welfare services in ways that are sometimes even more demanding than military service. The same would be true for a nation that claims conscientious objection.

We have compiled six proposals as guidelines for a path toward such a non-militarist, activist state- a nation that claims conscientious objection.

In making the accompanying proposals, we have used as a goal for attainment the period around the year 2010. These are certainly turbulent times. Asahi Shimbun intends to

make unceasing effort to reexamine the proposals, chiefly by editorial writers, in response to changes in the world.

Our first proposal charts in specific terms the course Japan should take at the forefront of non-military international cooperation.

Let us imagine the world of 2010. With the living environment being aggravated as a result of the population explosion, antagonism over the issue of poverty and the gap in wealth among people would have escalated in acrimony. If it is left unattended, regional conflicts can proliferate and the number of refugees could increase dramatically.

To prevent this, remedial measures must be applied now. In particular, an International Cooperation Law should be enacted that expresses the resolve of the Japanese people to spread peace and respect for human right more widely in the world.

We also advocate qualitative improvement of our official development assistance – foreign aid-and reinforcement of the role of NGOs in tandem as essential elements of such aid.

Our second proposal is creation of a peace support Corps. Besides taking preventive steps for the future, what else can be done for people who cannot live as humans because of conflict or natural disaster now?

The Peace Support Corps – an entity separate from the SDF- would respond swiftly with such humanitarian relief and rescue operations in natural disasters.

The Peace Support corps would also be an active part of UN peacekeeping operations in strictly non-military areas. Although some members of the corps would carry small arms for their own protection, the corps activities are completely different from those of a regular army because the corps is not a combat force. Nor does it take part in peace enforcement activities or in multilateral forces.

In our third proposal, we express our strong opposition to revision of the present constitution, especially its Article 9, after having clearly stated our position that the constitution does not prohibit possession of self-defense force, based on the right of a nation to defend itself.

Article 9, which renounced war and use of force, is an idealistic norms that embodies that wish of mankind ahead of other nations. The framework that the constitution set up for post-war Japan, especially the ironclad element of not giving precedence to military matters over other matters, is more precious than anything else. That principle must not be sacrificed by revision of the constitution.

What, then, should be the organization for self-defense that is within the scope of the constitution? The criteria and the limits of such an organization are presented in our fourth proposal.

The equipment and organization of such a force are to be strictly limited to defensive defense, and no combat troops would be sent abroad. Because there are strong reservations about the SDF as presently constituted overstepping the bounds of a force for self-defense, a considerable reduction in the SDF should be made, after which its mission, organization and make-up should be completely overhauled.

Given the strategic environment among the countries of the world, the likelihood of Japan being directly invaded is slight at least until early in the next century. Though there is no denying the uncertainties of China and the Korean peninsula, the present SDF, organized in Cold War years and reinforced on the assumption of a Soviet threat, is too large. Phased reduction in personnel by half the present level in the Ground self-Defense Force,

for example, would not put the national security at immediate risk. And if such a reduction encourages arms reduction in neighboring nations, Japan's own security would be enhanced all the more.

Our fifth proposal concerns establishing an organization for peace in Asia and Japan's role in creating it. It is important that Japan and the United States revamp the security arrangements that are oriented towards the Cold War, especially to dismantle or scale back the American military base presence in Japan. The two nations should make a concerted effort to establish an organization that would work for preventive diplomacy and arms control in Asia-similar to the *Organization for Security and Cooperation in Europe* by the end of this century.

Last, we would like to propose that Japan stand at the forefront of specific reform of the UN. We suggest that the veto powers for the permanent members of the Security Council be phased out and that Discussion of the new permanent seats at the Security Council be made not merely for Japan and Germany but also for three other countries each representing Africa, Asia and Latin America.

Our efforts in these proposals are based upon our assumption that the years after two wars – the Cold War and the Persian Gulf War – will bring still more cataclysmic changes in the world.

For a start, the Soviet bloc disintegrated with the end of the Cold War and the tide of market economics has reached the borders of the socialist nations, old and new, and those in what is referred to as the South. While stagnant societies have revived, the shift to market economies has brought with it wide wealth gaps and a surge in refugees and environmental destruction. As exemplified by the relentless fall of the dollar, the importance of the US economy has diminished and Americans are about to lose their status as the nation of the World's key currency.

If the world thus becomes unstable and the cross-border exchanges in money and goods are stalled, it is Japan, which is heavily dependent on overseas countries, that is hit hardest. It will be necessary for Japan to be more heedful of the fact that its efforts for preventing future deterioration in the economies of the developing world and rectifying its own trade imbalance will be beneficial not merely to the cause of peace in the world but also to its own interest.

The Gulf War, on the other hand, narrowed international cooperation to exclusively military contribution, even though temporarily. Only a few years after the war, however, cases of trouble proliferated that are impervious to mainly military approach. It has become clear that there can be no improvement in the situation unless the root causes of trouble are dealt with.

With the lessened danger of another world war, security arrangements have come to cover wider fields other than the military. Measures for preventing or minimizing damage from natural disasters like earthquakes and man-made disasters like explosions have become even more important.

Despite such obvious changes in the world, some in Japan still clamor for revision of the constitution in a way that would increase the dependence upon military might. We think that such an attitude represents a failure to learn from history and an inability to see the future.

If we are genuinely to protect the constitution and want to be part of a nation that practices conscientious objection – which is directly linked to the spirit of the constitution

– the Thou shalt not kill precept must become an article of faith for every one of us. We must be fully prepared for such a task. Without such a will, there is danger that safeguarding the constitution will become a mere slogan.

Because we accepted the constitution that renounced war while leaving the responsibility for the last war ambiguous, is not our awareness about the war still incomplete? Did we not turn a blind eye to harsh realities despite endless conflict in the world and detest being implicated in them?

Or, being intoxicated by postwar prosperity, did not many Japanese fail to pay due attention to the rest of the world and to be considerate to others and extend a helping hand? Were they not too indifferent to the misfortunes of starvation, poverty and violation of human rights that befell others?

We want to call these points into question anew. Fortunately, volunteer activities demonstrated by the young at the time of the Great Hanshin Earthquake give courage to us. When our international cooperation which is freed from condescending attitude of handing out doleouts, our constitution will shine even more brilliantly.

**Proposal 1: Enact a law on international cooperation**

*Enact an International Cooperation Law expressing the people's resolve to propagate peace and respect of human rights. In order to eradicate poverty from the face of the earth and prevent environmental pollution, it is necessary to extend outright grants and badly increase personnel in charge of assistance*

*Arrangements for provision of assistance are to be radically reformed and an International Cooperation Agency directly responsible to the Prime Minister is to be established. Vigorous NGOs and Official Development Assistance should be nurtured as the heart of Japan's external assistance.*

Japan's Official Development Assistance in 1993 increased to US\$ 11.2 billion, three times as much as a decade earlier, to be larger than the contributions of any other nation for three consecutive years. In part, that was due to the yen's strength. But more important was the fact that the government made specific efforts for making quantitative improvement in aid budget appropriate as the centerpiece of Japan's non-military cooperation with the community of nations.

Now that Japan has become a big power in terms of external assistance, does it occupy 'an honored place in an international society' as the preamble to the Constitution says? Have the people of Japan become confident and proud of living in the community of nations?

Unfortunately, the answer to these questions is no.

The problem lies in the quality of Japan's assistance even if it is small, must be one that reaches poor people on the developing world and helps them to stand on their own. Assistance can be put to a good use only if it is backed up by a national effort to send not only money, but people who will roll up their sleeves and test their brains beside those they are helping.

Until now, the question of whether Japan's assistance was really useful to developing nations was a matter of secondary importance to the Japanese government. In the year of rapid economic growth, Japan used its increased aid to other nations as leverage to promote exports and secure resources. After becoming an economic power, Japan was



conscious of its world reputation and pressure from the United States, to which the nation was obligated in security and for which it has felt guilt even if Japan were to succeed in pleasing the governments of developing nations.

In response to criticism here and abroad that Japan's overseas assistance is faceless, Japan belatedly adopted an Outline of Official Development Assistance at a Cabinet meeting in 1992. The outline cites humanitarian considerations for the hungry and impoverished as the basic tenet for aid, and asserts that stability and development of such nations are essential for world peace and prosperity. We are in accord with the notion for it accords with the spirit of the Constitution in striving to propagate peace and respect for human rights in the rest of the world.

But why is such a philosophy contained in the government policy outline, but not in legislation? The government contends that if aid discussion is held at the Diet level, the administration could be put into an embarrassing position in conducting diplomacy. Such secretiveness, in which aid and how to give it are the exclusive domain of the administration, has become the key reason for shady relationships between the governments of recipient nations and Japan's trading companies, and has reduced Japan's aid to arbitrary handouts that elude control over their use.

We would first propose that an International Cooperation Law be enacted, incorporating Japan's philosophy in its international cooperation and organizational makeup for external aid and a Peace Support Corps, and requiring that assistance report be made to the Diet. Such a law would make it clear that the administration is accountable to the Diet for its international cooperation, and such changes will also make it easier for the government to have the understanding and support of the people who pick up the tab.

We also propose that the Upper and Lower Houses of the Diet form permanent International Cooperation Committees and have the government report by region its plans for allocating aid and how it would be used. The International Cooperation Committees of both houses are to hold public hearings from time to time on after-the-fact review of Japan's assistance programs by inviting experts from here and abroad.

Though the Outline of Official Development Assistance stipulates a policy of paying sufficient attention to military spending and recent developments in regard to weapons of mass destruction in the recipient countries, that principle has become devoid of substance in cases of big powers like China because of the government's short-term diplomatic consideration. If the Diet has more to say about foreign aid, Japan's principle in providing aid would be more persuasive to the receiving nations.

We believe that Japan's provision of assistance should be made more consistent and transparent by creating an International Cooperation Agency through overhaul of the present complex government machinery responsible for foreign aid: to prevent layers of diplomacy practiced by the new agency and the Foreign Ministry the agency should be overseen by the Prime minister. Such an agency should be independent of the Foreign Ministry. That is because the government should not handle international cooperation policy but rather deal with it as the question of the highest priority for a country that lives among the community of nations.

The divisions and sections of the Foreign Ministry, the Finance Ministry, the Ministry of International Trade and Industry and the Economic Planning Agency dealing with yen loans and external assistance should be transferred to the new agency. The divisions and

sections of other ministries that deal with gratuitous aid should also be merged into the new agency. Such merger will also help slim the government machinery.

The present approach to assistance and the arrangements for foreign aid should also be radically revised. This is because the present approach to yen loans, appropriate for industrial infrastructure-building, especially in East Asia, and the present understaffed situation cannot properly address the new needs of a post-Cold War world.

Priority projects in East Asian countries that should be built by our aid are those that rectify the widening gap between rich and poor resulting from the headlong rush toward market economics, expansion of the urban slums and pollution, and not construction of an industrial infrastructure.

It is also urgent that the living standard be raised for the 1.3 billion poor in West Asia, Africa and other parts of the world who struggle to even attain subsistence livelihood. There is also an urgent need to deal with population explosion, global warming, acid rain and a surge in refugees.

Poverty and environmental problems can better be addressed by grants and assistance that involve people rather than yen loans, because these are not areas in which investment results in profit.

Grants, which include gratuitous aid, technical assistance and contributions to international organizations, account for only a little over 40 percent of its total Official Development Assistance – the lowest level among donor nations. We urge that a target be established to raise the proportion of grants to 80 percent the average level among donor nations at present – in ten years.

To attain that goal, outright grants must be increased significantly and yen loans gradually reduced. Through such changes West Asian and African nations that now get just a modest part of Japan's foreign aid, would get larger shares. And the proportion allocated for purposes directly related to improving the people's lives such as healthy and hygienic, education, food self-sufficiency and environmental protection would be raised.

In changing our aid policies, it would be more efficient to establish a new enforcement organization responsible to the International Cooperation Agency by integrating the Overseas Economic Cooperation Fund, which handles yen loans, and the Japan International Cooperation Agency, which is responsible for technical cooperation.

By doing so, duplication of work can be avoided for the choice of the projects to be given assistance, dispatch of investigating teams and dealing with the recipient governments in the developing world. It will also become possible to make comprehensive plans for providing assistance.

The precondition for providing meaningful aid to developing nations to enable them to stand on their own is through research into the political, economic and development. We propose establishment of an International Cooperation Research Institute attached to the International Cooperation Agency, with the Institute of Developing Economies forming the core of the new Institute which will be buttressed by absorbing research divisions of the existing aid-providing agencies. It is important that talented people in developing nations should be actively recruited as researchers and their opinions be brought to bear on our aid to such nations.

Such changes in the government machinery should come by the year 2000. In the years before 2000, preparation should be made, and recent accords among the ruling coalition parties regarding integrating the Overseas Economic Cooperation Fund with the Export –

Import Bank of Japan and the Institute of Developing Economies with the Japan External Trade Organization – simply a gimmick for appearance's sake-should be scrapped. We cannot condone the mutual back scratching between politicians and bureaucrats, devoid of any sense of policy.

In comparison with large yen loans projects directed mainly to building dams and roads, assistance for eliminating poverty and environmental pollution consumer far more manpower. Though the amount of money involved is small for each case, the amount of paper work involved does not differ much from that required for much larger projects. Larger staff is also needed to advise recipient nations and guide those who will deal with the programs on the ground.

The number of officials now engaged in external assistance posted at government missions abroad and international assistance organizations is just 1,800. That is far fewer than the number from Western countries and all they can do now is to handle budget allocations. We suggest a bold, ten-year program that would vastly increase the staff to 5,000 to improve the quality of aid, rather than just efficiency. Such an increase in staffing should be achieved by moving people from the government agencies and related public corporations whom would be otherwise made redundant by the streamlining of the government agencies.

The staff of specialists must also be increased, especially for technicians, medical personnel and teachers, and members of the Japan Overseas Cooperation Volunteers. Although more retired people have applied as volunteers to work in developing nations, it is important to include those who are actively employed in the private sector. Companies would be making a great contribution to the aid program if they adopted voluntary leave policies that would encourage their employees to participate in foreign aid projects while being paid by the companies and enable them to return to their jobs after a specific volunteer period.

Help provided by NGOs can sometimes achieve more than the official development assistance because it is more responsive and more detailed. Such resources outside the government realm which are still tenuous, should be nurtured into robust bodies.

Many NGOs can sometimes achieve more than the official development assistance because it is more responsive and more detailed. Such resources outside the government realm which are still tenuous, should be nurtured into robust bodies.

Many NGOs are voluntary organizations without legal protection and financially weak. If they were incorporated, they could more easily solicit contributions and have the benefit of tax breaks. It should be possible for well –organized, even if small, organizations to gain corporate status by relaxing the conditions for *probono* corporate bodies.

We take heart in knowing that a wider range of people in local governments, on business foundations and labor organizations are becoming part of the international aid picture. If international cooperation institutions are properly organized and the government and the people work together for the benefit of the world, Japan will be welcomed into the international community with esteem.

## **Proposal 2: Create a Peace Support Corps**

*A Peace Support Corps is an organ affiliated with the International Cooperation Agency and is to be staffed by About 2,000 members, including part-timers. Its peacekeeping operations are to be confined to conventional ones that abstain from use of force. The corps members are to be sent abroad with the prior approval of the Diet. Its initial work will be limited to transport, logistics, communications and similar duties. The next step is to be taken after ascertaining the success of operations in the initial stage and actual work on peace-keeping operations.*

Although the Cold War has ended, the suffering has not. Helping those who suffer and promoting peace are the most important tasks of the international community. And such efforts are essential components of Japan's international cooperation.

We believe that humanitarian aid to those who are suffering should be accompanied by active participation in UN-led peacekeeping operations.

Troops on peacekeeping missions intervene between parties to a conflict that have agreed to a cease-fire. They patrol and monitor the activities of the warring parties, so that the cease-fire will not be violated until a permanent peace agreement is signed. If there is a cease-fire violation, they investigate it and report their findings to the UN. It is hoped that these activities deter violations and promote negotiated peace.

The UN peacekeeping force was organized to intervene in the 1956 Suez crisis. Dag Hammarskjöld, then UN Secretary-General, established the principle of non-use of force—a principle that bars peacekeepers from using arms except in self-defense.

This has long been observed as a basic rule of peacekeeping, together with the principle of consent—allowing troop dispatches only when the warring parties accept their presence—and the principle of neutrality and impartiality, which prohibits peacekeepers from siding with any of the warring parties.

A spate of domestic conflicts since the end of the Cold War led UN Secretary-General Boutros Boutros-Ghali to abandon these principles and introduce a new kind of peacekeeping operation, one for 'peace enforcement.'

This formula of deploying UN troops who are prepared to use force against uncooperative warring parties failed disastrously in Somalia, forcing Boutros-Ghali to revert to peacekeeping rules.

The 'peace support corps,' which we propose to create, would take part in conventional peacekeeping operations, not those of the 'peace enforcement' type.

Why, many people may wonder, is a new organization needed when units of the SDF have already been sent abroad on peacekeeping missions?

Our answer is that we believe units of the SDF, whose duty is limited to the defense of our own territory under the constitutions, should not be sent abroad.

Considering the fact that Japan colonized Korea, waged aggression against China and sent soldiers in combat boots trampling on countries of Southeast Asia, we believe the SDF should be led with as much restraint as possible.

Certainly, few Asia countries criticized Japan over the dispatch of an SDF contingent to Cambodia, and some Asian leaders say Japan should no longer apologize for its past deeds. But Japan has yet to show remorse and offer a proper apology.

Under these circumstances, we should assume responsibility for history by deeds, not just words, making it clear that no SDF unit shall be sent abroad again.

We believe most people support this view.

Members of the SDF have already been sent abroad several times. But many people, having misgiving about this practice, must nevertheless be resigned to the fact that there is no alternative organization that has the means to send peacekeepers to trouble spots.

The popular sentiment makes politicians hesitant about the dispatch of SDF troops and seeks to impose detailed conditions on troops that are sent.

For example, opposition within the government, for a time, threatened decision to send SDF troops to Mozambique. It took time for the three ruling parties of the coalition administration to resolve their differences and agree to the dispatch of SDF personnel to help Rwandan refugees.

This shows no doubt that the democratic process is at work. But if it is at the expense of speedy decisions for dispatch, it is not what the people want.

The only way around the dilemma is to form a separate organization apart from the SDF to render international cooperation .

Peacekeeping duties are suited for an organization of experts, not a military body like the SDF.

It has been said that since peacekeeping centers on military duties, it is difficult for a Japanese organization outside the SDF. To be sure, such operations, which entail stepping in to separate warring parties in an area where fighting has just come to an end, has military overtones. But the mission is not to fight. When provoked, the peacekeeping team is supposed to calmly talk the adversarial party into ending hostilities.

Peacekeeping troops sent by Finland at the time of the Yom Kippur War, which represented an Egyptian attempt to win back the Sinai Peninsula, were deployed in the suburbs of Suez. When Israeli troops tried to destroy a UN checkpoint, the Finns blocked it by laying down their arms and forming a human wall.

This was an act true to the spirit of peacekeeping operations.

What the Finns did is entirely different from the duty of soldiers, which is to conquer the enemy with force. Exercises for war, like those of the SDF, are not needed to do something like that. Instead, it is important to study the language and customs of regions in conflict, and learn how to carry out checkpoint inspections without being provocative.

Countries send troops for peacekeeping operations in the absence of expert teams. But the fact remains that an organizations of specialists is better suited for the job than troops.

What kind of peace support corps do we have in mind? First of all, let it be clear that the corps would operate on the premise that it would not use force.

The corps would belong to a new International Cooperation Agency, a government agency. It would be in charge of participation in UN peacekeeping operations, humanitarian relief, and disaster relief.

The proposed corps would have a headquarters, under which there would be three units that would be sent abroad –a specialist unit, an administrative unit, and a general unit. A training center would be established in Japan. The total number of people would be about 2,000 including part-time staff.

The specialist unit would contribute to peacekeeping operations with the skills of its members. It would also provide humanitarian assistance and conduct disaster relief activities.

The elements comprising the unit would be the headquarters in the host country, a medical team, a team of staff for prevention of epidemics and water supply, a communications team and a rescue team.

The rescue team of qualified technicians and aides would work to save lives in disasters and support initial recovery efforts.

A small, rapid-deployment team would be ready to respond within twenty-four hours of being summoned, and would be staffed by full-timers. Some members would also serve full-time in obtaining needed equipment and supplies and in liaison and coordination among other members. But volunteers would be recruited for other jobs.

The part-time recruits would be registered with the corps. They would be required to go through training periodically, so that they could be sent abroad when needed.

The administrative units would mainly be in charge of peacekeeping operations. It would be composed of a civilian police team and an autonomy team that would provide guidance on election supervision and the like.

Volunteers would be recruited from among police officers and civil servants in general. As with volunteers for the specialist unit they would be registered with the corps and required to go through training periodically to serve abroad in the future.

The general units would do what peacekeeping operations are supposed to do. It would also handle rescue operations.

Elements of the unit would be the headquarters in the host country, a guard team, a transportation team. A civil engineering team and a UN liaison team.

The members of the general service corps would be full-time staff.

The training center would teach members the principles for them to stand by when they join a peacekeeping operation or provide humanitarian assistance, how to deal with various situations that may arise, and how to protect themselves. It would also instruct them on the state of affairs and customs in the host country and provide linguistic training.

Those engaged in peacekeeping operations are theoretically immune to attack as they take up their duties only after warring parties have agreed to their presence. Actually, however, there is no absolute guarantee that they would not come under attack from a group that is not controlled by parties to the cease fire agreement, or from a group left out of the accord.

Can anyone send unarmed peacekeepers into such a situation?

Assuming that the protection of the specialist unit and the administrative unit would be left to the UN, we would like to allow the general unit to have a guard team for self-defense.

However, in light of the duties of the general unit, the guard team's arms should be of a light defensive nature. Small firearms and non-lethal weapons for peacekeeping should be developed that could temporarily incapacitate assailants.

We believe that a peace support corps with severely restricted equipment, as we have outlined, could participate in the main tasks of peacekeeping falling short of the use of force, such as patrols of the disengagement of forces, and monitoring disarmament.

But peacekeeping operations are still going through a period of trials and errors, which generate distrust and anxiety remaining among the people about participating in them.

The projected peace support corps should start with such tasks as transportation, supplies, communications and road construction.

The performance of the corps should be watched for about five years, during which the reality of peacekeeping operations should be determined. Then a study should be undertaken on what to do next, assuming that a national consensus on such action emerges by that time.

The government would be empowered to send members of the peace support corps on humanitarian aid and disaster relief mission on its own. But in the case of peacekeeping operations, they could be sent only to join conventional operations based on UN resolutions. A decision to send them would require advance approval of the Diet. Depending on developments, the Diet would be able to pass a resolution on their withdrawal halfway and give advice to that effect to the government.

The peace support corps would of course be barred from taking part in a Persian Gulf War –type multinational force.

Member of the corps participating in a peacekeeping operation would be pulled out if any of the attached conditions – the existence of a cease-fire agreement, the consent of warring parties to the presence of peacekeepers from Japan and other countries and the observance of strict neutrality –were not satisfied. The five existing principles that guide peacekeeping operations, including a provision that members should use their arms only to protect their lives, would be strictly applied to the corps.

We have outlined the proposed peace support corps. This is still a bare-bones proposal. A number of details remain to be worked out, such as the status and pay of corps members and compensation for those killed on duty. There may need to be some changes. What we hope to accomplish in presenting this idea is to provoke debate.

### **Proposal 3: Do not revise Article 9**

*Article 9 of the constitution, which renounces war and use of force, is an idealistic norm that preemptively undertakes the task facing all making. It is now time to consider how it should be put to best use in overhauling the SDF and security arrangements.*

*Article 9 established the framework for not giving preference to military matters in the post-war society. Now that the Cold War is over, revision of the article to give greater emphasis to military matters runs counter to the times and does more harm than good.*

Although the Cold War has ended, the suffering has not. Helping those who suffer and promoting peace are the most important tasks of the international community. And such efforts are essential components of Japan's international cooperation.

Japan's constitution, founded on the three principles of absolute pacifism, the sovereignty of the people and respect for basic human rights, has decisively influenced the nation's postwar history. Had there been the slightest tinge of nationalism, Japan would have been utterly different in freedom, affluence and other aspects.

However, the will of the people who had seen enough of the devastation of war and of the militarism that led to war, was reflected in the constitution in its own way in the course of its drafting through Diet discussion. The constitution that resulted was welcomed by the vast majority of the people. Had it not been for the constitution as the overarching guideline for new nation-building, Japan could not have freed itself of a character that marked pre-war Japan.

In particular, Article 9 of the constitution, which renounces war and use of force, is an idealistic provision that embraced the duty of all mankind to seek the path of lasting

peace. In an age characterized by military square off between East and West such a proclamation did not seem very realistic. But it has taken on added significance with the end of the Cold War.

What underpins the ideal of Article 9 is a resolve contained in its Preamble to preserve our security and existence, trusting in the justice and faith the peace loving peoples of the world.

As weapons have come to have horrifyingly destructive power and as cities and civilization have become sophisticated, a modern state can no longer withstand war or use of force. And, partly as a result of democracy taking root in wider parts of the world, worldwide gains of the concept of human rights and ever deeper mutual economic dependence among nations, the world is entering into an age when a hot war among developed countries is hardly likely.

If a long – range look is taken at the world in post-Cold War year and the future of our planet, now is precisely the time for Article 9 to recover its brilliance. While we certainly have far to go, the possibility of translating the constitutions’ ideal into practice is at last upon the horizon.

There have been widely differing interpretations of the overall purpose of article 9 and the wording of individual provisions. And the most divisive issues in post-war politics has revolved around the question of how the SDF should be understood in the context of the article.

Article 9 was understood as calling for being ‘absolutely unarmed’ at the time of the promulgation of the constitution. That was in accord with what was uppermost in the minds of the people and the actual condition of being completely disarmed immediately after our defeat in the war. It was supported by the naïve popular expectations of the peacekeeping function of the UN. In response to questions in the constitutional assembly in June 1946, then prime Minister Yoshida Shigeru said: ‘As a result of any armament and the right of belligerency not being recognized, we renounced war as a means of exercise of the right of self defense.

When the Korean War broke out in 1950, however, the Allied occupation forces compelled the Japanese to organize the Police Reserve Forces, and the US –Japan Security Treaty was signed when the Peace Treaty came into force somewhat later. The government embarked on upgrading defense forces by changing the Police Reserve Forces into the National Security Forces and then into the SDF.

In consequence of the SDF’s subsequent modernization and introduction of heavier artillery and other equipment carried out as proof of Japan’s being a members of the West, the SDF today ranks as one of the most advanced in the world, especially in quality of its equipment. In view of the government interpretation of the constitution and the ideal of begin ‘Absolutely unarmed’ accepted by the people at the time of its promulgation, Article 9 must be said to have gradually been stripped of its spirit against the international background of an aggravating Cold War.

The Japanese, in the meantime, have continued to highly evaluate Article 9 of the constitution. Now that we find ourselves under a completely different situation, what is necessary in ushering in the next century is to reassess Article 9 and give profound thought to applying the provisions of the article to good use in the face of the realities of the ASDF and national security policies.



In the context of Article of the constitution we have serious doubt about the present status of the SDF. How we think of the force for self –defense that is permitted by the constitution will be elaborated in Proposal 4. We do not think that Article 9 rules out the use of force in self-defense. A state is allowed the right of self-defense as a course of last resort in resisting or repelling aggression or use of force by a foreign country. And we do not believe Article 9 went so far as to discard that right.

*Asahi Shimbun has long held such views.*

On December 16, 1953, it said: ‘The majority of the people think at their heart that effective force for self-defense is necessary. We are of the same opinion.

On may 3 1968, it said:

The constitution does not deny the right of self-defense, which is the basic right of a state. It also recognizes the minimum force necessary for self-defense. Though such a force must be used against imminent and unjust aggression by foreign country, such a force should be sued strictly within the frame work of the provision of the constitution.

As long as there are countries that have no qualms in the use of force, force for self-defense cannot, regrettably, be rules out. Unarmed resistance and uprisings alone cannot make people feel secure.

What is important in the interpretation of the constitution is an attitude to flexibly search for its meaning based on the ideals and objectives of its provisions. Too sclerotic as interpretation becomes at times out of step with the times and can undermine the very spirit of the constitution.

The constitution of the United States has a history of more than 200 years and yet it is kept intact save some revision, including the first ten amendments that were added as the Bill of Rights. It should be remembered that flexible interpretation and precedents in response to changes in American society have served as the lifeblood of the American Constitution.

The constitution is a body of supreme legal codes. But as the principles of government, governmental machinery and rights and obligations of the people are contained in concise and abstract provisions, there is often much room for divergent interpretation. Heated controversy thus arises over the constitutionality of certain policies of pieces of legislation, resulting in bitter political conflict. That is why constitutions are said to be ‘political norms’ as well as ‘legal norms.’

That is neither messy nor unhealthy, however. Controversy should be positively appraised for its role as a safety valve to ensure that Japan’s basic policies remain democratic and sound.

In that sense, it would be one-sided to think that Article 9 was ‘hollowed out’, or that it has lost its meaning as a norm by being interpreted differently. We think that, objectively speaking, article 9 has served its role well in guiding the national and its people for half a century.

During that period, Japan neither sent its troops abroad to kill other peoples nor manufactured weapons for export. Though the SDF have been reinforced, the manner of their operations and their behavior have not been unconstrained. That was because they were constantly subjected to scrutiny in the context of Article 9 of the constitution and to discussion among the people.

Much of the framework for Japan’s defense policies – such as the denial of the collective self –defense, prohibitions against sending combat troops abroad, the three non-nuclear

principles, denial of the conscription system, banning weapon exports and restraint on defense spending—are results of Article 9 and debate about it.

More important is that the notion of putting much emphasis on military matters has been rejected. Military matters are liable to take precedence over legislation and government's administration over civilian matter on the ground that military matters are 'the basic tasks of a state'. Under Article 9 of the constitution, however, national defense has been treated on the same footing as the government administration in other field and has not been given preferential treatment.

The fact that the basic framework for not bestowing privileges or giving preferential treatment to military matters has taken root in post-war Japan and that the country does not pose much military threat to neighboring countries clearly owes to the functioning of Article 9.

The SDF are treated as 'military forces' on the international scene. but the SDF units are not ordinary military forces with the same powers and functions as those of other nations.

The SDF is subject to a maze of regulations, such as prior or *ex post facto* approval of the Diet in taking action for defense purposes. According to the government interpretation, exercise of the right of self-defense is contingent upon (1) imminent and unjust aggression against Japan, (2) non-availability of any other means, and (3) use of force to the minimum extent necessary. The SDF can act only on or near Japan's territory, its territorial waters and air space.

Though there is much ambiguity and vagueness in the government's interpretation, the SDF is considerably constrained in its action if those conditions are strictly observed. The SDF can be regarded as not much different from the police and the Maritime Safety Board in that they are subject to many constraints in their action.

Moreover, it is not permitted to limit the rights of the people provided for by the constitution on the pretext of an emergency. And there is neither military tribunal nor legislation authorizing secrecy. It was the pressure of the wide spectrum of the people. Who had great faith in Article 9 of the constitution, that has thwarted many attempts to enact laws for dealing with contingencies.

Political action was repeatedly taken, ranging from the contention, made soon after it was promulgated, that the constitution was 'foisted off upon Japan, to the more recent notion that cast doubt upon it as limiting Japan's ability to make an international contribution now want to revise it purportedly to stop its virtual amendment by farfetched interpretation.

The constitution is not sacrosanct. It is essential that it be examined in the present context. But as far as Article 9 is concerned, what the times require is not that Japan gets free of military constraint but the reverse. Obviously the importance of military power has diminished with the end of the Cold War. The revision of the constitution in such a way as to give greater emphasis to military power clearly runs counter to the trend of the times. We cannot endorse such a move.

It is desirable that defense policy is always open to debate in political processes and a subject to public discussion, as is true in many developed nations. In Japan, Article 9 is the centerpiece of such discussion.

Ultimately, it should be stressed that Article 9 is highly regarded abroad for its ability to check the possibility that Japan could become a county that seeks after its own national

interest by sword-rattling. To Asian neighbors, the article is a symbol of what prevents Japan from becoming a dangerous country.

Revision of Article 9 under the present conditions will surely invite wariness and concern in other countries and could trigger an arms race in East Asia. That would hurt, rather than serve, Japan's security interest.

#### **Proposal 4: Changeover of self –defense forces**

*Use of force for self-defense permitted under Article 9 is limited to being within bounds of genuine self-defense. There are strong doubts that the Self-Defense Forces as presently constituted exceed those bounds in both equipment and scale.*

*Plans should be made annually for scaling them back to an organization for protection of the nation's territory with the years 2010 as a goal. Ground Self –Defense Force strength should be halved and Aegis vessels and P-3C anti-submarine patrol planes should be significantly reduced .*

The public approves both Article 9 of the constitution and the existence of the SDF, as has frequently been shown by opinion polls. Most Japanese accept the SDF's existence, even though they put more hope in their relief role in disasters rather than their primary duty in defense and have always been reluctant to support strengthening them.

However, whether the SDF as presently constituted is in accord with the constitution must be examined separately. In a ruling handed down in 1959 by its full bench on the Sunagawa case, in which the constitutionality of the presence of US forces in Japan was challenged, the Supreme Court found that Article 9 of the constitution does not negate the right of Self-defense, and said that the government 'can take measures necessary for self-defense in order for this country to maintain its peace and security and fully preserve its existence.' The Supreme Court has not, however, ruled on whether the SDF, in its present form, is constitutional.

The government's official view regarding Article 9 in recent years is that it is legal to 'maintain forces for self-defense to the minimum extent necessary' within the rights inherent in a nation. Even with such interpretation of the constitution, a self-defense organization established on the right to self-defense would be unconstitutional if it oversteps the bond of minimum force necessary for self-defense in scale, equipment, duty or basic action doctrines.

Successive past administrations however, have strengthened the SDF's combat capability using rationale that can only be described as subterfuge without thoroughly examining these points. By qualifying 'the minimum with the world 'necessary' they made 'minimum' limit meaningless for practical purposes.

Many wars have been waged in the name of 'protection of interests' or 'self-defense.' If thought is given to that fact, the 'force for self-defense' which will be tolerated under the constitution must be viewed as a limited one which really remains within the bounds of 'self-defense.'

Unlike the government, we think that what is permitted under the Constitution is possession of force that is only sufficient to protect the people and the nation's land from local aggression or use of force that can realistically be assumed.

How much force and what equipment are permitted under the constitution? It is the politicians responsible for civilian control of the SDF, and ultimately the voting public, that set the limits to the force for self-defense. But until now, diet members have tended to be preoccupied with semantic exegesis over whether or not the SDF's very existence is constitutional. Obviously the Diet has neglected constructive discussion on the SDF's management and their limitation after having defined their proper place in the nation's administrative machinery.

What is force for self-defense permitted by Article 9 of the constitution? We see it this way:

1) The right of self-defense is exercised only in a case of armed attack against the people and their territory. The use of force for self-defense is confined within Japan's territory, territorial waters and air space. This is what is termed 'exclusively defensive defense.'

2) The SDF's equipment and organization must remain within the scale and capability that are appropriate to such objectives. For instance, possession of any weapons that could be used to attack other nations is to be restrained to the utmost.

3) No Combat troops will be sent abroad and the right of collective self-defense will not be exercised. Participation in the United Nations peacekeeping operations and any other forms of our international cooperation will be undertaken by a Peace Support Corps, which will be newly created.

4) Great importance will be attached to the SDF's duty of relief activities in natural disasters in order to protect the lives and properties of the people.

Viewed from such perspectives, it is very doubtful that the SDF in its present form is within the boundaries, either in personnel strength or equipment, as set by the constitution.

When Japan's defense spending is the second largest in the world and the country ranks at the second or the third place in the league table of arms import, is Japan's force for self-defense in its present form a minimum force necessary, even though, admittedly, there may be some problems in making simple comparison of defense spending in dollar terms? In particular, the equipment for the Air and Maritime Self-Defense Forces is the most advanced in the world in both quality or quantity.

In no other nations have F-15 fighters and P-3C anti-submarine patrol aircraft been deployed so densely throughout the land. Such a situation conflicts with the message that the pacifist constitution sends to the rest of the world. That is why Japan is being criticized as a 'contradictory country.'

Moreover, there have been some signs of self restraint in acquiring weapons for exclusively defensive purposes being eased still further in recent years. Typical of such changes is the development of the FSX, the next generation of fighter support aircraft. And plans are also afoot to procure refueling aircraft and large transport vessels one after another.

We think that the aggrandized SDF should be reorganized into a smaller force of a National Defense of the Japanese Archipelago by the target year of 2010, fifteen years hence. It is time to re-examine the SDF, in terms of both quality and quantity, and quantity, for reorganizing them into a force dedicated exclusively to the defense of the country.

This is a proposal made not simply from the standpoint of the constitutionality of the SDF.

Some may be worried about possible contingencies. However it has become practically impossible for a hot war to break out between developed countries after the end of the Cold War. Secondly, there is very little likelihood of a regional conflict occurring directly on Japanese soil, even through military build-up in China and uncertainty in the Korean situation are problems besetting the nation. It is precisely the time for Japan to stand at the forefront of a disarmament drive and strive to debunk the perception of armament as something with which to meet threats from others. By doing so, Japan will be inducing neighboring countries to reduce their arms.

The first step toward that end is a large reduction in the Ground self-defense Force. As the likelihood of full scale landings on the Japanese land from the north - which were assumed in the Cold War years - has been dramatically reduced, it is not necessary now to have heavy concentration of Ground Self-Defense Force units in the northern part of the country. It is also possible to have smaller divisions.

As it has become even more unrealistic to assume a decisive battle on Japanese soil, a deep cut can be made in the number of large tanks and artillery. The law should also be revised to strike down the SDF's duty of 'dealing with indirect aggression,' which is, in a way, a vestige of the days when law and order in the country were insecure.

Of the equipment of the Maritime Self-Defense Force and the Air Self-Defense Forces, the numbers of Aegis destroyers, P-3C anti-submarine patrol aircraft and AWACS (Airborne Warning and Control System) planes, which have been consistently upgraded for the purpose of dealing with supposed threat from the Soviet Union, should be largely reduced.

To a Japan dependent on import for most of major natural resources, it is, of course, very important to secure the safety of maritime traffic. But that does not justify expanding the scope of the Maritime Self-Defense Force's action. It will be desirable for Japan to sign agreements on safety on the seas with neighboring countries while cooperating with them in their endeavor for security on the seas.

At the same time it will be necessary to upgrade transport capability for more efficiently operating the reduced Self-Defense Force and improving the quality of equipment used exclusively to defend against an enemy landing on our soil. Small, high-powered vessels and various types of helicopters, for instance, will be in greater need. It is also important to have better equipment for fighting natural and chemical disasters.

Such reorganization needs to be phased in on the basis of yearly plans while paying attention to possible changes that might be made in the Japan-US security arrangements.

*The first stage (until 200)*- The build-up in the defense power, which has been almost consistently carried out since fiscal 1958 on the basis of the Defense power Build-up Programs, is to be put to an end with the termination of the current Midterms Plan which ends in this fiscal years. The government should launch a National Security Council by the end of 1996 to invite its opinion on how the defense power should be at peacetime in post-cold war years, what the relationship between the Japan -US security arrangements and the SDF should be and the prospective military technology and defense industry in the years to come, and draw up a blueprint for the National Defense Force by 1998 in line with Article 9 of the constitution.

Force for self-defense is to be reduced for the time being in the order of freezing, reduction in quantity and slowdown in replacement in quality. In carrying out such reduction, a temporary goal for the scale down should be a return to the level set by the concept of Basic Defense Capability' adopted by the government of Prime Minister Miki Takeo.

The Miki government's plan-which was based on the principles of (1) Japan does not adopt a doctrine of countering external threat with force, (2) the target of improvement in the defense power is force that is necessary in peace time, and (3) the scenario dealing with an invasion should be a limited one-was subsequently turned into meaningless words. But the perception that formed the basis of the plan is still relevant.

The second stage (until 2005) the government should officially pronounce the reorganization of the SDF into a National defense corps, legislate the three non-nuclear principles and the three principles of non-export of weapons and begin consultation on security matters with neighboring countries.

The government is to make yearly plans for scaling back the defense power and changing or abolishing equipment, and further press ahead with reduction in arms described for the first stage. In making such plans, the government should avoid entirely depending on officers in uniform. It should take advantage of a consultative body composed of representatives of political parties and specialists in the private sector.

The third stage (until 2010) this is the period for implementing the reduction in arms planned for the second stage and reviewing the plans itself. The troops in the Ground Self-defense force should be approximately halved.

Such efforts for phased reorganization of the SDF will be more effective if they are made in parallel with diplomatic activities for ensuring relaxation of tensions in the region and multilateral security.

**Proposal 5: Pull away from Cold-War security arrangements**

*Multilateral talks and consultations should be repeatedly held and a target should be set for forming an organization in Asia, similar to the Organization for Security and Cooperation in Europe, for preventive diplomacy and arms control. The emphasis in the new organization is to deal with new threats such as arms buildup and disputes over resources and economic issues.*

One of the most remarkable changes since the end of the Cold War has been the emergence of prospering East Asian nations. A decade ago who could have taken seriously a prediction that the combined economic scale of China plus Hong Kong and Taiwan, South Korea and Southeast Asian nations would approach that of the United States in 2010? What were once theaters of Japan's aggression have become strategic plant sites and markets that drive the global economy.

How are we, living in an insular country on the eastern tip of Asia, to face such changes? First, we should deepen mutual dependence with neighboring countries, and extend a helping hand to their development. Our doing so will contribute to peace in the region by entrenching democracy in those countries and stabilizing their external policies.

It is also important to contribute to creation of a stable security environment. For nothing is more important than peace to economic and social development of these countries.

The days are long gone when the only thing we had to do was to simply scream – along with the United States-about a Soviet threat. How can we establish a lasting peace and prosperity in East Asia in the new age? Japan's diplomatic capability will be put to a more pointed test than ever.

We think that the tasks facing us are threefold as described below.

The first is to put into practice our resolve to never again pose a military threat to other countries- through our own disarmament and participation in peace-keeping operations – and continue to strive to dispel concerns about us on the part of our neighbors. That is the starting point for Japan's taking part in East Asian politics.

The second is to enhance confidence among nations by frequent multilateral talks and consultations for preventing conflict; it is hoped that the results of such talks will lead to formation by the end of this century of a body similar to the Organization for Security and Cooperation in Europe dedicated to maintenance of peace, reduction in armaments and cooperation in security matters.

The third is to press ahead with reexamination of the Japan-US security arrangements at the same time. That means we make efforts for reshuffling the arrangements-made primarily for containing the Soviet Union – into those that will contribute to peace in Asia, while keeping in mind the course that Japan should take as a peace-loving nation.

Hope and anxiety coexist in this region. Though the danger of imminent clashes is reduced, there are still roots of conflicts.

North Korea's isolationist foreign policies and its military oriented economy are causes for serious concern. China's squabbling with the Philippines and other nations over the Spratly Islands is entangled by possible existence of oil resources. Relations between China and Taiwan are also delicate.

Countries in Southeast Asia are very wary of future China. They fear that China, a big power without any doubt, may eventually embark on a strong-arm diplomatic policy on the strength of its military power.

It was for that reason that these countries welcomed the policy of the United States government to maintain its 100,000-strong force in the East Asia and Pacific region for the next ten years.

Not a few are also afraid Japan may become a militarily big power in course to China if China poses a military threat. Against such a background, Southeast Asian countries are hurriedly importing state-of-the-art weapons for modernizing their armaments.

What is most effective in severing the chain reaction that heightens mistrust and tension is for the countries in the region to build up a framework for nipping the causes of disputes in the bud and protecting peace in cooperation with other countries outside the region.

An experiment is already under way for directing the momentum for nascent economic integration toward that direction: the ASEAN Regional Forum. The forum is the first arena for multilateral talks on peace in the region involving nearly all the interested parties.

To resolve the issue of suspected nuclear development by North Korea, the Korean Energy Development Organization was established, and the new Organization has support of China as well. That is another new attempt at regional security. And it is also expected that the Asia-Pacific Economic Cooperation Forum will have increased political weight in coming years.

To take steps toward a security system, talks and consultations have to be conducted on a variety of subjects at many different levels.

For instance, pollution of the air in China and other environmental problems are too be discussed among neighboring countries. If the mobility of labor increases in the region and talks are held on labor markets and working conditions, such talks will also be useful to prevent gaps in the levels of economic development from turning into strains among nations. Cooperation for space development and greater exchanges of students and other people will also contribute to building confidence.

Japan has started talks with China and Russia over security matters, Japan should also try to realize a six-nation consultation by Japan, the United States, China, South Korea, Russia and North Korea on the subject. Such consultations will be meaningful in creating a favorable atmosphere for solution of the territorial dispute between Japan and Russia. Japan can also contribute to mediation in the dispute over the Spratlys and preparing the ground for international cooperation in matters concerned with the safety of maritime traffic and relief in disasters.

Hopefully the series of those efforts will lead to systematization of confidence building measures. Making overtures to these countries for such purposes is an important role for Japan.

There is another unavoidable task; reducing the threat of nuclear weapons. Joining hands with Southeast Asian countries and other non-nuclear powers, Japan should have talks with the United States, China and Russia over non-use of nuclear weapons and regulation of their deployment while giving support to the denuclearization of the Korean peninsula. That will be the first step toward establishment of a nuclear free zone in the future. Most, probably, that is in accord with the wish of the majority of the nations and is also a way for extricating Japan itself from America's nuclear umbrella.

Conventional military alliances do not work against new threats that arise from such issues as natural resources, territories, refugees and environmental destruction. As East Asia is a grouping of diverse countries, the climate was not favorable to creation of arrangements to take the place of military alliances. The major players here are still bilateral alliances led by the United States and organized in Cold War years.

In particular, work is under way in the American administration for 'redefining' the US-Japan Security Treaty-which was, along with the North Atlantic Treaty Organization in Europe, a bastion for the West for nearly half a century – to have the alliance take over the function of maintaining peace in the region.

Japan should ponder, however, whether the security arrangements between Japan and the United States as they are- will contribute to peace in Asia in the long run.

From a historical standpoint, there is no doubt that those arrangements helped stabilize the relations between Japan and the United States and formed a basis for Japan's economic development – which is termed as miraculous –with the United State and formed a basis for Japan's economic development –which is termed as miraculous –with the United States as its trading partner. It is an undeniable fact that some people in Asian countries and the United States think that without the Japan-US security arrangements Japan would not have abided by its pacifist constitution and would have become a military power.

But it should not be overlooked that such arrangements also contain contradictions. It is claimed that Japan did not require more than light weapons precisely because of its



security arrangements with the United States. But did not the American Pressure for Japan's arms build-up aggrandize Japan's Self-Defense Forces and thereby fuel the neighboring countries' sense of being threatened by Japan?

Action taken by American troops in Japan beyond the limit of the Far East, for practical purposes if not in theory, set by the security treaty and ambiguity in the nature of prior consultation (which is to be conducted when the American troops make important changes in their deployment of equipment in Japan and when they are engaged in combat operations from their Japanese bases) have harmed healthy relations between Japan and the United States. Massive amounts spent on supporting the stationing of the American troops in Japan attests to the fact that the security arrangements between the two countries have changed, in practice, into those of mutual obligations and benefits instead of one-sided favor. The security arrangements have also had immeasurable 'negative utility' in giving military consideration out of all proportion to the United States and having thus hindered Japan's own diplomacy in relation to Asian nations.

The security arrangements between Japan and the United States may have been an unavoidable choice for Japan to return to community of nations under the wing of United States and achieve development soon after our defeat in the war. In the light of the ideal of the Constitution, however, Japan's participation in a military alliance, which could implicate Japan into America's wars, was a transitional and exceptional choice.

As long as there are no credible regional security arrangements and many countries in the region pin hope on deployment of American troops as deterrent to conflicts and also on Japan's assistance, however, it is necessary to take an incremental approach to changes in the Japan-US security arrangements. That is because we fear that instability arising as a result of abrupt change can stem the tide of rapprochement.

But some problems demand immediate attention. The first is a reduction or dismantling of the American military bases in Okinawa, which burden inhabitants in the prefecture, and solution of the noise problem around bases elsewhere in Japan. It is necessary to review the Japan-US agreement on the status of the American troops in Japan, which is much more indulgent to the American troops in their manoeuvres and use of facilities than similar arrangements in the countries of the North Atlantic Treaty Organization.

A fresh look should also be taken at the management of the security arrangements between the two countries based on the Cold War assumptions, such as planning joint operations. Those are part of the work for eliminating 'negative utility'.

The second is to discuss the deployment of American forces and their preparedness at the ASEAN Regional Forum and other multilateral meetings. Talks at such conference tables will not only enhance the deterrent effects on conflicts but also prevent American military action from becoming counterproductive.

The only way possible for the regional security arrangements in the years ahead is unceasing efforts to be made by the countries in the region for preventing conflicts and build on such efforts to develop them into a comprehensive collective security system which is capable of taking sanctions and conducting peacekeeping operations, even though such a process may be time-consuming.

Japan's close relations with the United States will continue to be the most important asset to Japan. And the importance to the world community of cooperation between Japan and the United States, two economic powerhouses in the world, for helping the growth of the world economy and providing assistance to developing countries will never diminish.

But there is little doubt that in the next century the world's political and security order centered around the United States will be gradually weakened and its military presence in the region will begin to decline. To try to construct a full-fledged regional security system, carried out with American cooperation, is to prepare for that.

#### **Proposal 6: Leading reform of the United Nations**

*Broaden powers of the General Assembly in the interest of democratizing the United Nations and phasing out the veto power to make the Security Council a fairer body. Establish a strong socio-economic Security Council to give greatest priority to keeping disputes from growing.*

*Scrap the passivist perception of the United Nations and take the lead in reforming the world body to achieve a better world. What is important for a non-nuclear Japan that makes no military contribution is not that it has a permanent seat on the Security Council, but what it does after getting it.*

Japan's postwar diplomatic policies have been based on the two major principles of 'Japan's –US relations as the corner-stone of diplomacy and United Nations-centered diplomacy. If the former was a very realistic policy of establishing the nation security by an alliance with the United States, the latter was an expression of Japan's intention to strive to realize the ideals of the United Nations Charter, which Japan recognized was resonant with the spirit of the constitution, as Japan envisioned an ideal future international community centered on the United –Nations.

The United Nation, which was formed as a result of the soul-searching over two world wars, wanted above all to spare future generations from the scourge of war and obliged all members nations by the Charter to peacefully settle international disputes and refrain from the use or threat of force. The United Nations aspired to be a body for collective security, by which the members nations act together to take sanctions against violators and take coercive measures by force when necessary. But the proper United Nations force for ensuring peace through the world body has not yet come into being.

Responding to such an ideal of the United Nations Charter, Japan's constitution proclaimed renouncing war and the threat or use of force as a means for settling international disputes.

Soon after its founding, however, the United Nations sailed into the rough waters of the Cold War and has not lived up to expectations in the half-century of its existence. Still, liberation of colonies and independence for about eighty nations since then should have been unimaginable without the United Nations. And it was the United Nations that has sought to end racial and sexual discrimination and enhanced the awareness of the states and people about such problems as population explosion and environmental destruction.

Nor should it be forgotten that the United Nations offered a precious arena to medium and small countries for pleading their positions out of a desire to prevent international politics from being driven by the selfish interests of big power.

Fifty years after the end of the last war, however, the world is very different from the time of the foundation of the United Nations, discrepancy between what the world expects of the United Nations and the actual United Nations has become much too great.

The United Nations, which started with fifty-one victors in the Second World War as its charter members, has evolved into a universal international organization with 185

members. As it evolved, however, strains in the composition of the major United Nations organizations such as the Security Council and the economic and social council and imbalance in the powers of those organizations have become so conspicuous that they can no longer be tolerated.

Japan, a 'former enemy' according to the Charter, makes financial contributions to the world body second largest among members nations, Japan is also expected to provide 15.65 percent of all contributions –about equal to the combined contributions of four permanent members of the Security Council excepting the United States –in 1997. The fact that permanent seats for Japan and Germany at the Security Council are talked about in connection with reform of the United Nations is symbolic of the changes that have taken place in the last half century.

The charter of the problems that threaten international peace and security referred to in the Charter has also clearly changed. Regional conflicts and ethnic disputes have proliferated while people are freed from the nightmare of a nuclear show-down between the United States and the Soviet Union.

In place of ideological confrontation, poverty, environmental destruction and various gaps in societies have come to be perceived as major problems confronting the world. Shift of emphasis from military –oriented security to human-centered security for stopping the spread of conflict has been gaining ground.

The 1994 version of the Report on Human Development prepared by the United Nations Development Program notes that one fifth of the population in poor countries suffer from starvation and a quarter do not have basic necessities while large quantities of food are thrown away and needless weapons are produced abundantly in rich countries.

Nor does the problem end there. In a borderless age, national boundaries no longer have the same meaning. Regions are being integrated. Nations are no longer the exclusive players in international politics, and problems facing mankind cannot be addressed properly without joining forces with nongovernmental organizations and regional bodies. It is obvious that the United Nations lags behind such changes in the times. The world body is confronted with an urgent need for radically reexamining its organizational makeup and priorities in its activities.

From such a viewpoint, we propose that Japan stand at the forefront of reform of the United Nations. It is hoped that the proposal will serve as a guideline for Japan, a big power half a century after the end of the war, in adopting future-oriented political and diplomatic policies.

The major targets of the reform are: (1) to strengthen the power of the General Assembly for the sake of democratization of the United Nations, (2) to phase out veto powers to make the Security Council a fairer and more transparent organization, (3) to create an Economic and Social Council to meet the requirements of the times, (4) to clearly define peacekeeping operations in the Charter.

The starting point for the reform of the United Nations is a laboratory for human beings to bring the reality in the world closer to its ideals. What is important is the ability to have visions about the manner of our participation in the world body in light of the world as it should be and the course that Japan should take and to act on such vision.

Some in Japan advocate revising its constitution to make more active 'international contribution under a reinvigorated United Nations. However, we should neither unquestioningly accept the United Nations as it is nor impetuously change its basic

policies. Japan should take the lead in the reform of the United Nations while making serious efforts toward international contribution that is appropriate to Japan.

*Strengthening the power of the General Assembly for democratization of the United Nations* The lifeblood of the United Nations is the member nations confidence in it. It is important that rules and principles are fairly applied regardless of the size and strength of the member nations. That is why democratization comes at the top of our objectives.

The countries in the South are increasingly concerned that the United Nations has tended to be driven by major countries. The power of the General Assembly should be strengthened so that the voices of the developing countries are better reflected in United Nations activities.

The resolutions adopted by the General Assembly are not binding at present. And Article 12 of the Charter stipulates that without the Security Council's explicit request, the General Assembly shall not make any recommendation on matters related to peace and security if the Security Council is performing its duties in such matters.

Because the Security Council is very powerful, it is not healthy that the United Nations lacks in institutional arrangements for examining the relevance of the decisions and other action of the Security Council. The Charter should be revised to enable the General Assembly to always keep track of the Security Council and oversee it. It should also be made possible for the General Assembly to make recommendation on peace and security from perspectives that are different from those of the council.

*Phasing out veto power for a fairer Security Council* The reform of the Security Council the focal point in the overhaul of the United Nations, should be made with the greatest emphasis placed on securing greater transparency in discussion at the council and thereby ensuring fairness.

The veto power should be abolished. In the first phase, which is to be put into effect by the end of this century, change is to be made in the veto power in such a way that it is effective only when two or three permanent council members concur and secondly, it is abolished outright by the target year of 2005.

Japan and Germany are regarded as important candidates for new permanent members of the Security Council. But any reform worth its name would call for inviting three other countries, each representing Africa, Asia and Latin America, as new permanent members. Moreover, nonpermanent members should be increased by about five seats so that smaller countries and those in the South are better represented.

In the second phase of reform the Security Council should be entirely overhauled by around 2010.

The five permanent members of the Security Council are all nuclear powers and major suppliers of weapons. Export of weapons by these countries accounted for 86 percent of the total arms trade in the world in 1993. While the danger of proliferation of nuclear arms and modern weapons to developing countries is more and more serious, the root cause of the danger is traced to the five countries that assume greatest responsibility for maintaining peace and security in the world.

A breakthrough will be found by changing the Security Council so that it can make an honest effort at nuclear disarmament and regulation of transfer of conventional weapons.

Japan, unique in its three non-nuclear principles, refusing to export weapons and not making military contribution to the world community, should stand at the forefront of reform of the United Nations. And if it is so requested, Japan should become a permanent

member of the council. What is important is not that Japan has a permanent seat on the Security Council but what it does after getting it.

*Defining peacekeeping operations in the Charter:* Peacekeeping operations are not formally defined in the charter and the peacekeeping efforts are described as action based on Chapter 6 and half because they are in between Chapter 6, which provides for pacific settlement of disputes and Chapter 7, which stipulates sanctions and use of military power.

The conventional peacekeeping operations were based on principles of (1) consent of the parties to the dispute, (2) nonparticipation by permanent members of the Security Council and parties to the dispute, and (3) not taking military action. Departing from the tradition after the end of the Cold War, however, the United Nations attempted to impose peace through force. But the failure in Somalia put the prestige of the United Nations at risk and Secretary-General Boutros Boutros-Ghali expressed his intention to return to traditional peacekeeping efforts. It is desirable to clearly define peacekeeping in the chapter so that it will not overstep the mark in future.

Japan should actively take part in such operations through its nonmilitary organizations. Chapter 6 of the Charter should more clearly define the course of action for peace, such as a guideline on mediation.

*Creation of an Economic and Social Security Council:* To thwart growth of disputes, emphasis in UN activities should be placed on such problem as poverty, human rights and the environment. But the present Economic and Social Council is not powerful enough for that. Many specialized organizations have branched out of the United Nations in these fields and their functions partly duplicate. But under the present circumstance, the Economic and Social Council cannot properly make comprehensive plans and control or adjust specialized agencies.

An economic and Social Council should be established in these fields with power commensurate with the power of the Security Council in peace and security. Special attention should be paid to joining forces with non-governmental organizations and the role of the non-governmental organizations should be clearly defined in the Charter.

These are only some of the tasks in reforming the United Nations. But every one of them will put Japan to a test in regard to its basic policies and its diplomatic and political capability. It is hoped that Japan, while promoting reform of the United Nations and disarmament in the countries of the world, will be a country that takes steps forward without losing sight of the day when the United Nations will have a credible United Nations police Force.

## APPENDIX – 7

### Ozawa Ichiro, 'A Proposal Reforming the Japanese Constitution'(1999)

**Ozawa Ichiro, President of the Liberal Party of Japan, translation by Julia Parton.**

The Japanese Constitution was adopted by the House of Representatives (Lower House) plenary session on August 24 1946. It was promulgated on November 3, and came into effect on May 3 the following year. It is also widely known that MacArthur, the Supreme Commander of the Allied Forces, proposed the draft of the constitution to the government. Today, over half a century later, it remains without a single amendments.

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.

This is the provision of Article 98 of the Japanese constitution which establishes the constitution as 'the supreme law' amongst all other laws. A constitution represents the rules that a nation decides upon in order to protect the lives, property and rights of the people, enabling them to live in peace. Although it is natural for these rules to change with time our constitution has not been revised for over fifty years. There have been no addition to reflect the changing values of each new era, and we as a nation have become attached to a fossil. Despite this, there are many people who talk about the current constitution as if it were almost perfect.

At the risk of being misunderstood, it seems abnormal to me that a constitution imposed by the occupation authorities continues to function after Japan has become an independent nation. In civil law, it is a self-evident truth that a contract is invalid when imposed while under imprisonment or through coercion. Despite this, when discussion turns to the constitution, the spirit of the law is ignored through arguments which posit that 'although the constitution was introduced during the occupation, it was debated in the Diet and established after following correct procedure.'

In 1946, Japan was under military occupation. It was not an environment where Japanese people were able to express themselves freely. A constitution which is decided under abnormal conditions is invalid under international law.

This is a principle enshrined in the Hague Convention of 1907; and even in the Potsdam Declaration, which Japan accepted after the war, there is a clause which states that the form of Japanese sovereignty 'should follow the freely expressed will' of the Japanese people.

Looking at the constitutions of other countries, it is written in the constitution of the Republic of France, for example, 'No amendment procedure shall be commenced or continued where the integrity of the territory is jeopardized.' It is stated in the constitution (the 'Basic Law') of the Federal Republic of Germany, the former West Germany, that 'this Basic Law, which is valid for the entire German people following the achievement of the unity and freedom of Germany, shall cease to be in force on the day on which a constitution adopted by a free decision of the German people comes into force.

For a long time in Japan, people have hesitated about even discussing revision of the constitution. If politicians like me asserted the need for reform, they were labelled as 'right-wing reactionaries' by those who are grateful for our 'peace constitution.' Of course, I do not believe that all of the constitution is wrong simply because it was

established during the Occupation. On the contrary, I regard it quite highly. When I was at school, I wanted to be a lawyer, and often pored over the constitution. However, what exactly is 'peace'? What exactly is 'the constitution'? Is it not time to reconsider what these words mean?

### **The constitution established under the Occupation is invalid**

To state my conclusion first, Japan should have used the opportunity, presented when it was internationally recognized as an independent country with the conclusion of the San Francisco Peace Treaty in 1951, to announce that the constitution established under the Occupation was invalid, that it was returning to the Imperial Constitution, and that it would then establish a new constitution. Of course, no problem would be posed if the newly established constitution were 'the Japanese Constitution.'

This is not an original idea of my own. In fact the question of whether the constitution was invalid as a document established under the Occupation was a common topic of discussion. This opinion was typical of the Kyoto School, including the scholars Sasaki Soichi and Oishi Yoshio.

A rather unique mentality developed in our country under the so-called '1955 system,' where Japan strove to achieve high-speed economic growth under the background of Soviet-US confrontation. Named 'constitutional protectionism,' it presented itself as a firmly held belief, but rather represents an understanding that the status quo should not be breached. An irresponsible way of thinking permeated deeply throughout Japanese society, where people told themselves that the current system was fine, and there was no need to think about such difficult matters. A particularly Japanese idea dominated that, 'We must defend the constitution, therefore we cannot debate it.' The constitution became immutable, with the ruling Liberal-Democratic Party suspending its call for the establishment of an 'independent constitution' which was included in its party platform at the time, and the main opposition Socialist Party continuing to defend the 'Peace Constitution.' The insights of the scholars of Kyoto University, including Sasaki and Oishi, also came to be forgotten.

As we approach the beginning of the twenty-first century there are few who could deny that Japan is entering into a period of great change. It is impossible for Japan to respond to these domestic and international changes while maintaining the system of Japanese 'collusionism.' Surely there is not a single citizen who wants to go back to the isolation of the Edo period, and therefore then the only path open to us is to change the people's consciousness to bring it in line with the rest of the world. In order to achieve this goal, it is necessary to reconsider whether the imperfections embedded in the constitution, which is at the root of our legal system, can be neglected. Through discussion of constitutional reforms, the potential exists to break through the blockade we are confronting.

I will soon have spent over thirty years as a politician, and have resolved it is time to speak out against Japan's post-war taboos. It was decided recently in the Diet to establish a committee to investigate reform of the constitution. Although this committee is in the ambiguous position of having no right to make any proposals, it can be considered a step forward given the situation up until now. Here I would like to present my own thoughts on constitutional reform as honestly and openly as I can, and encourage people to make a reasoned judgement of my proposals.

Let me start by pointing out that I am not a specialist in law so, from a legal perspective, there are probably many examples of inappropriate wording and unpolished phrasing. It should therefore be understood that these proposals simply represent my opinions with regard to the constitution.

### **Simplifying expression**

The Japanese Constitution, which came into effect in 1947, starts with a preamble of only 600 characters.

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.

Firstly, it should be pointed out that constitutional interpretation cannot use historical context as basis for a decision. In interpreting the law, the motives of its writers should not be included, but it should be interpreted as much as possible according to its provisions. For example, the circumstances at the time the constitution was established meant that the American Occupation forces wanted to prevent Japan from having the ability to fight another war. They thought that the Japanese were a fanatical race who regarded the Americans and the British as barbarians. This policy changed with the consolidation of the Cold War structure between the US and the USSR but one of the fundamental principles of interpreting law is that such historical circumstances should not be included in the interpretation of a constitution.

The basic principles of the Japanese Constitution are written in the preamble: the principles of pacifism; respect for fundamental human rights; sovereignty of the people; and, what I would like to emphasize, the principle of international cooperation. There is no need to change these four principles, in my opinion.

I have used modern, simplified Chinese characters here, but the actual constitution is written using pre-war characters, which makes it difficult to read. I do not, however, intend to touch upon this, or other stylistic problems. Rather, I would prefer to concentrate on the content of the constitution, having said that, it is preferable that the constitution be expressed in the simplest terms possible. Moreover, I am in basic agreement with the argument that the preamble of the constitution should also elaborate the unique characteristics of the Japanese, which stem from our traditions and culture.

Furthermore, abstract principles, which should be recorded in the Preamble, are contained in the various articles, causing confusion in the courts. For example, Article 25, which states that: 'All people shall have the right to maintain the minimum standards of wholesome and cultured living,' should really be in the preamble of the constitution, whereas principles such as international cooperation should be included in the body.

### **The Emperor is the Lead of the Japanese State**

The articles related to the 'Emperor' are recorded in Chapter I (Articles 1-8). The following is the first article of the first chapter of the Japanese Constitution:

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



In other words, those who think that the constitution is simply a 'peace constitution,' as the post-war left wing claim, are mistakenly swept along by the principles recorded in the preamble. The Japanese Constitution is based on the principle of a constitutional monarchy. The fact that the emperor is in the very first provision should make this clear.

The claim of Miyazawa Toshiyoshi, former professor at the University of Tokyo, and others, that 'the Prime Minister is the head of state,' is wrong. Miyazawa's argument regards the Japanese Constitution to be republican in character, in comparison to the Japanese Imperial Constitution. However in Article 6, for example, it is the emperor who appoints the Prime Minister and the Chief Judge of the Supreme Court, in the name of, or as a representative of, the people. Moreover, the emperor acts as head of state in foreign affairs, and is treated as such abroad. These facts should remove any doubt that the emperor is the head of state. Some want it to be clearly stated that the emperor is the head of state, but the emperor is already the head of state according to the current constitution. I often studied Miyazawa's theory while a student, but it appears to me to follow the argument employed by the post-war left wing, and which has continued through post-war society to the present day.

Following the order of the constitution, let us move on to Chapter 2: 'the renunciation of war' (Article 9).

### **Right of self-defense**

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

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

The contents of Article 9 have been the most debated topic in post-war Japan. This is the principle that we should limit the exercising of a sovereign right, that is to say, the right to self-defense, whether it be individual or collective defense. To put it plainly, we will not use force to counter attack unless we come under direct attack. The sub heading for Article 9 should be 'Exercising the right of self-defense,' rather than 'Renouncing war potential,' or 'Denying the right of war.'

Self-defense can be likened to the legitimate right of defense every individual enjoys. This type of right is properly recognized as a 'natural right,' and cannot be denied by any laws, including, of course, the constitution as the supreme law, or international treaties. In countries that have a criminal law system with the power of enforcement, the legitimate right to defense and emergency refuge are recognized. In international society, which does not have a unified legal order with the power of enforcement, it is a natural right of a state as a matter of course. A constitution cannot exist if a state's legitimate right of defense is not recognized. Accordingly, Article 9 should be changed thus:

(Right of self-defense)

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

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

3. The regulation in paragraph 2 does not prevent the maintenance of military power for the purpose of exercising Japan's right of self-defense against military attack by a third country (Ozawa Proposal)

Article 9 starts with the words: 'aspiring sincerely to an international peace based on justice and order.' Moreover, it is stated in the Preamble that '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,' which is an expression of Japan's positive role in the creation of peace. However, how should Japan support justice and order in international society?

I believe that the only way for Japan to participate in peacekeeping activities is through the United Nations, to which the nations of the world belong and which is the only global organization for peace. It is desirable that 'peaceful cooperation with all nations,' as recorded in the Preamble, should also be specifically referred to in the body of the constitution. Thus, following on from Article 9 in Chapter 2, a new article should be created, which would make clear the principle of 'peaceful cooperation with all nations,' for which the constitution aims.

(International Peace)

In order to maintain, and restore, international peace and safety from threats to, the collapse of, or aggressive actions against, peace, the Japanese people shall contribute positively to world peace, through various means including taking the lead in participating in international peacekeeping activities, and supplying troops. (Ozawa Proposal)

The spirit of this article is the same as Chapter 7 of the United Nations' Charter and, moreover, has the same tenor as the statement released when Japan joined the UN.

Having approved the UN Charter upon joining, it is inconsistent to say that 'participation in UN-recognized peacekeeping activities is not allowed according to the domestic constitution.' As I said earlier, the principle of 'peaceful cooperation with all nations' runs right through the Preamble of the constitution. If we explicitly express the notion of pacifism in the new era based on this principle, we can avert the fears and misunderstandings of neighboring countries that Japan is gradually becoming a military power. It is written in the current Preamble to the constitution that 'we desire to occupy an honored place in ... international society.' We must make every effort in order to occupy that honored place. Simply providing money is no longer enough.

### **Creating a 'UN standing army'**

Japan maintains the Self-Defense Forces (SDF) as a minimum military force in order to repel a direct military attack. In addition, as a member of the United Nations and in cooperating with peacekeeping activities as a member of the UN, Japan is able to participate in planning for the creation of a 'UN standing army,' disarmament, and the abolition of nuclear weapons, and can incorporate such aims into law (the Basic Security Law).

In order to maintain peace and survive as we approach the next century, Japan must align itself further with international society. There is no other way to do this than to

participate actively in all activities led by the UN. For this reason, I believe that Japan should take the lead in proposing a plan for a UN standing army. The development of weapons and technology has meant that the traditional theory of the sovereign state no longer holds water. It is no longer possible to defend national peace solely through individual or collective self-defense. The only way to maintain order is through the concept of collective security, in other words, policing power on a global scale. The SDF will end its historical mission, and will be scaled down. Instead, Japan should provide both human assistance and financial power to a UN standing army.

At the time of the Meiji Restoration, the Imperial Court did not possess any military power. It had no police, or authority, so an Imperial Guard was created centred on the Satsuma and Chosha clans. Today's UN is in a similar position to the imperial Court after the Meiji Restoration. Because it does not have its own military strength, when an incident occurs, it calls upon its members to form a multi-lateral force to be used in peacekeeping operations. As a result, there are times when swift action cannot be taken in response to emergencies, due to the concerns or circumstances of individual countries, which often leads to ineffective interventions. I believe, therefore, that we should take a step forward by creating a standing army for the UN rather than continuing in the present vein. Japan could not exist without international cooperation, so it is Japan that should actively call for the establishment of a standing army. While the US may not support this idea, we should work to persuade them of its merits. Japan should also actively advocate the establishment of a standing army to all countries that have the necessary economic and military power, and should be seen taking the lead in realizing this goal.

When discussing collective security centered on the UN, National interest is of course also involved. At the time of the Gulf War, there were those who claimed that America's motive was the protection of a major oil supply. Certainly, there is some truth in saying that America sent troops to protect its own interests. It is pointless, however, to criticize American in such a simplistic way.

It is a problem of globalization. There are some amongst those who rail against this trend who criticize globalization as 'internationalization based on Anglo-Saxon principles.' Such an assessment, however, offers us no solutions, as the world functions according to these rules. Instead, we must respond to and overcome the challenges we are presented with. American would be like Japan going into isolation. If we could assure ourselves that such a course would bring true happiness, then I think that this is one way of living and one philosophy. However, aiming to enjoy increasing material wealth while at the same time complaining about globalization is nothing but Japanese 'self-indulgence.'

In conclusion, active contribution by Japan in order to restore and maintain international peace and security is completely different in character from the 'war as a sovereign right of the nation' mentioned in Article 9 of the constitution.

In other words, by contributing to UN activities based on the UN charter in order to secure everlasting world peace, including through the provision of troops, Japan is ultimately protecting its own peace and security.

Indeed, this is the very starting point of 'cooperation with international society,' which the Japanese Constitution strives to attain.

### **Enlightenment of public welfare**

The 'Rights and duties of the people' are laid out in Articles 10-40 in Chapter 3. Of the current constitution.

I have pointed out that one of the faults with the Japanese Constitution is that its abstract language makes it difficult to understand, and this tendency is clearly visible in Chapter 3. The phrase 'public welfare' is particularly noticeable. It appears in Articles 12 and 23, and is also frequently used in Articles 22 and 29. The word 'public' is over-used to the point of abuse, yet the meaning of the phrase 'public welfare' is not defined anywhere in the constitution. Constitutional debate thus falls into the trap of semantics.

Articles 12 states that

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 right and shall always be responsible for utilizing them for public welfare.

The 'respect ...[of] individuals,' as stated in Article 13, is only 'to the extent that it does not interfere with the public welfare.' The basic principle of Article 1 of the Civil Code is that 'private rights conform to public welfare,' and it is written that one has an obligation to exercise one's rights and perform one's duties sincerely and in good faith. In contrast to this, in the constitution, the rules of 'public welfare' are not explicit and, because they are buried in the text, they are abstract and undefined. My proposal for reform of both of these articles provides that 'public welfare' be stipulated in Article 12, and the importance of endeavor by the people to protect their liberty and rights be recorded in Article 13. Article 12 and 13 therefore, should be revised as follows. As a result, the use of the phrase 'public welfare' will be unnecessary in the other articles. (Public welfare)

The fundamental human right guaranteed to the people by this Constitution shall respect public welfare and public order. Matters, regarding public welfare and order shall be stipulated in law. (Ozawa Proposal)

(The right to pursue happiness)

The right to life, liberty, and the pursuit of happiness guaranteed to the people by this constitution shall be maintained by the constant endeavour of the people. The people shall refrain from any abuse of these freedoms and rights. (Ozawa Proposal)

The concept of public welfare is not understood in Japan making it impossible to enact laws limiting the rights of the individual. In order for the Japanese to become truly independent, it is necessary to make it clear that the freedom of the individual will be limited at times.

The government also holds some responsibility. The Telecommunications Interception Bill (often referred to as the 'wire-tapping law'), for example, is essential for the maintenance of public safety, including national defense. This fact has been kept from the public, and the government has tried to pass the bill through misrepresentation by saying it is important for investigation purposes. Similarly, creating a citizens' register is not only for tax purposes. Surely this issue should be discussed in terms of the importance of a registration system for crisis management in emergencies and security contingencies.

Japanese politics is misinterpreting its mission. Surely we should be gaining the clear understanding of the people regarding the concept of public welfare, and then proposing a concrete system of crisis management. Then it would be possible to enlighten the public of the disadvantage it is in danger of being placed by organized crime. Of course, abuse

of this right by the authorities would also have an adverse effect on the public, also a heavy punishment for such abuses should also be stipulated.

In chapter 3 there are also many articles that can be considered common sense, and so should not be written in the constitution. Leaving in articles which are no longer relevant to the times can be the cause of judicial problems.

There are some instances where the values specified in the constitution are not in accord with the Japanese traditional culture. The Shinto rite of worshipping one's ancestors is very different from the idea of religion in the West. The 'Tamagushiryō Decision' of the Supreme Court against Ehime Prefecture, which declared that making donations to purchase tamagushi was against the Constitution based on the religious freedom of Article 20, would not strike the Japanese (who believe in many gods) as anti-constitutional. Perhaps it would be better to impose restrictions on religious freedom only in order to suppress the development of state-sponsored religious fascism.

Moreover, we should introduce new human rights, such as 'environmental rights,' or 'the right to know.'

### **Upper House elections are unnecessary**

The next chapter is problematic.

Chapter 4, 'The Diet' (Articles 41-64), should be completely revised. It is written in Article 42 that: 'The Diet shall consist of two houses, namely the House of Representatives and the House of Councillors.' In other words, Japan has a bicameral system. It is my feeling, however, that this system is not working. Both the House of Representatives and the House of Councillors have approximately the same amount of power, and both are chosen through elections, meaning that the party structure inevitably extends into the House of Councillors. The division of functions with the House of Representatives, which is the aim of the bicameral system, is breaking down.

Although the House of Representatives is superior to the House of Councillors in the passing of budgets, treaties, and the appointment of the prime minister, if the Upper House votes against any bill, it requires a special vote in the House of Representatives, which must obtain a majority of two-thirds of the members present in order to become law. In all other aspects, the two houses are completely equal, leading to criticism of the Upper House as a carbon copy. The current political situation clearly shows that it is impossible to exercise strong leadership even after securing a majority in the Lower House. Because both houses are effectively equal, the opinion expressed by the people in general elections is also poorly reflected in politics. The selection of representatives by the people in elections should be restricted to the House of Representatives, and the House of Councillors should be given the function of serving as a check on the Lower House.

I envisage the House of Councillors being like the British 'powerless House of Lords.' In the UK, 659 Members of Parliament are chosen by direct election approximately one member for every 100,000 people. In the House of Lords, there are approximately 1,300 members. Real power lies with the House of Commons (Lower House) however, so that in a sense the British system can be understood as a unicameral system.

If Japan were to adopt a system which was in essence unicameral like the British and others, then the 500 members of the House of Representatives would represent approximately one Diet member per 250,000 constituents. In terms of population,

therefore, it would be reasonable for there to be more than double the number of existing Diet members. However given that the Japanese system has two houses which are equivalent in power and play similar roles, people criticize the system as wasteful, and call instead for a reduction in the number of Diet members.

Therefore, my solution would be to change the system so that membership of the House of Councillors becomes an honorary position which is not decided through election, but is bestowed on those who have admirable achievements or distinguished careers, from a broad cross-section of society. To be elected to office means representing the interests of certain groups in one form or another. The advantage to having Upper House members consisting of people with honorary posts is that any personal interests would be eliminated, allowing them to make fair and neutral decisions. If the House of Councillors rejects a bill that has been passed by the House of Representatives, it should be returned to the Lower, where a simple majority would ensure its passage. The real significance of a bicameral system will be realized through an Upper House which is unburdened by vested interests, and functions as a checking mechanism.

When I say the House of Councillors should be like the House of Lords however, I do not mean that it should be a hereditary system. If the honor is limited to one generation, then the abuses of a hereditary system will not materialize. Instead, decorations and titles could be awarded liberally. Article 14 states that while peers and peerage shall not be recognized, honors and awards should. Furthermore, the financial burden on the state would be drastically reduced.

For example, decorations should be awarded to those members of the House of Representatives who have served for twenty-five years, and they should become lifetime members of the House of Councillors. Mrs Thatcher, the former British Prime Minister, became a baroness and moved to the House of Lords. I, for one, would be delighted to move to the House of Councillors. Being awarded such an honor, and not having to fight another election, I suspect that everyone would jump at the chance to move to the Upper House. There would be no need to push for benefits to be provided for the local constituency, and members could give their opinions from a national perspective. For this reason they would do it happily, rather than in order to increase their pensions, and it would also lead to a more youthful House of Representatives.

Revisions to Chapter 4, 'The Diet,' should be as follows.

Firstly, paragraph 1 of Article 43, 'Both Houses shall consist of elected members, representative of all the people,' should be changed to:

Both Houses shall consist of elected members, representative of all the people. The number of the members of each House, and matters concerning elections, shall be fixed by law.

Next, Article 46 would become:

The Emperor shall appoint members of the House of Councillors as designated by the House of Representatives. The term of office shall be for life. (Ozawa Proposal)

(Note: the appointment of members of the House of Councillors will be added to the Emperor's responsibilities in matters of state.)

In addition, paragraph 2 of Article 59 would change as follows:

A bill, which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, shall become law if passed a second time by the House of Representatives

There are other problem areas in Article 4 that should be revised and adjusted after being debated, and it should be adequate to remove passages other than those which have an institutional effect on the Diet or the structure of the cabinet. In the same way that the lack of a written constitution does not cause problems in the UK, a functioning set of laws applied properly should be adequate.

**Do not allow Cabinet measures which are above the law**

**Chapter 5 concerns 'the Cabinet' (Articles 65-75). Since I have made substantial changes to the role of the House of Councillors in Chapter 4, the following paragraph of Article 67 will also need to be changed: 'The Prime minister shall be designated from among the members of the Diet by a resolution of the Diet.'**

The Prime Minister shall be designated from among the members of the House of Representatives by a resolution of the House of Representatives.

Unlike America, which has an independent administration, Japan has a Cabinet system where the Prime Minister is selected from the majority party in the Diet.

As it is stated in Article 66 that, 'The Cabinet shall, in the exercise of executive power, be collectively responsible to the Diet,' the Prime Minister appoints the ministers of state to form a Cabinet, and according to the principle of 'unanimity of the cabinet,' acts as a unified body within the Diet. In other words, in a parliamentary Cabinet system, the Diet and the Cabinet are not positioned in opposition to one another. Rather, it is the ruling party and opposition parties that oppose one another. The majority of the Japanese, however, mistakenly believe that Cabinet is superior, and even the ruling party thinks that the Diet and the Cabinet are in opposition to one another. Also, by separating the government and the ruling party, they are able to further avoid any political responsibility.

The most serious issue concerning the question of the Cabinet is the clear establishment of Cabinet powers during a state of emergency. Not only the LDP, but also other parties and bureaucracies have no understanding of what to do if a state of emergency occurs. Their solution, therefore is to resort to measures that are above the law.

This is of grave concern. It is a denial of democracy, and the argument of dictatorship. Acting above the law is to assert that the ruler is the state. Democracy should mean protecting the promises that were agreed to by all, but this becomes a farce when the solution is to act above the law. Clear rules must be established in preparation for a state of emergency. Democracy must always be carried out according to the due process of law.

This not only applies to wars, but also to natural disasters. If any lesson is to be learned from the Kobe earthquake, it is the importance of crisis management.

Therefore, as one of the powers of the Cabinet, a provision should be created to grant it greater authority during a state of emergency.

(State of emergency)

In the case where a state of emergency has arisen which has the potential to have an important influence on the nation or the lives of the people, the Cabinet shall declare a state of emergency. Matters concerning states of emergency shall be fixed by law.

The issue of reporting to the House of Representatives (the Diet) was discussed during the debate over the 'Guidelines' bills but, because Japan has a parliamentary Cabinet system whereby the party that occupies a majority forms the Cabinet, fundamentally there should be no question of difference in the will of the Cabinet and the Diet. Further, it may perhaps be better for the emperor to make the declaration of a state of emergency as one of his constitutional function.

Finally, concerning the Cabinet system, I would like to point out that arguments for public elections for the Prime minister are mistaken. The public election of the Prime minister would mean the abolition of the emperor system. You cannot build up an argument for public elections, while supporting the emperor system.

One of the emperor's constitutional functions is the attestation of the appointment and dismissal of ministers of state. The speaker of the House of Representatives, however, does not need to be attested by the emperor, nor does the emperor attest Diet members. This is because Diet members are chosen directly by the people, who are the sovereign power. The will of the people as sovereign is final and, at the same time, absolute. That is why there is no need for the attestation of the emperor in the name of the people. The public election of the Prime Minister would mean that the people would be voting directly for the country's highest position of responsibility. The elected Prime Minister would certainly be the head of state, or, in other words, the President, and in these circumstances, it would be impossible to have in place an emperor. Therefore, apart from taking the abolition of the emperor system as a prerequisite, the public election of the Prime Minister is not tenable as a system.

#### **Establishing a Constitutional Court**

In the next three chapters: Chapter 6, the 'Judiciary' (Articles 76-82), Chapter 7, 'Finance' (Articles 83-91) and Chapter 8, 'Local Self-government' (Articles 92-95), I shall limit myself to pointing out the significant problems.

The biggest problem with the judicial system is that the courts progress extremely slowly. Rather than the constitution, the laws governing procedure firstly need to be reformed. The Japanese judicial system may already be fatigued to breaking point. Courts could be sped up through the rationalization of the legal system.

The other thing that I would like to propose is the creation of a constitutional court. I would like to establish a court for dealing only with constitutional lawsuits.

The whole judicial power is vested in a Constitutional Court, a Supreme court, and in such inferior courts as are established by law. (Ozawa Proposal)

As I have already stated, the Japanese Constitution contains many abstract phrases, resulting in the courts having to deal with a large number of ridiculous constitutional lawsuits, some of which may take ten or twenty years for a decision to be reached. Under normal circumstances, the court should dismiss these cases, but they are approaching constitutional issues in a negative way due to the backlog in civil and criminal cases. Even if one accepts that each issue has its own set of circumstances, courts often avoid coming to a clear decision. They should provide a rational decision, whatever their conclusion might be.



Judicial power is the stronghold of the Constitution. We should establish a Constitutional Court, like that of Germany, France and Italy, and entrust it with the role of determining the constitutionality of any law, order, regulation or official act, and amend Article 81. The Constitutional Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act. (Ozawa Proposal)

Constitutional Court judges should not be chosen in the same way as other judges, but should be appointed by the Diet or by the Cabinet from former judges or intellectual circles.

Chapter 7, which concerns finance, is said not to have as many problem areas as other chapter. However, it is often said that the country's finances are on the verge of collapse. Annual budgets (Article 86) and the reporting of the state of national finances (Article 91) are subjects which should become issues for discussion in the future.

Article 89 has become a focus of constitutional debate recently, with 'private school subsidies,' based on the Private Schools Promotion Subsidy Law, at issue.

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.

Reading this article, it is clear that private school subsidies are against the constitution. Given that the first section, which concerns religious institutions and associations, also overlaps with Article 20 about freedom of religion, I think that Article 89 should be revised as soon as possible.

Regarding 'local self-government,' as I wrote in my book, *Blueprint for a New Japan*, a 'law on the Fundamental Principles of Local Government' should be established, and the unipolarization of Tokyo reversed. Many local authorities are suffering from financial collapse in the same way as the state. We should revise Article 94, which deals with the right of local public entities to 'manage their property, affairs and administration and to enact their own regulations within law.'

### **Be resolute, Japanese!**

So far I have discussed my proposal for reform of the constitution, but finally we come to a bottleneck. Chapter 9, 'Amendments,' contains only Article 96. Without revising this, arguments for reform have little power of persuasion. Article 96 might as well say, 'this constitution cannot be revised.'

1. 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.

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

Two-thirds of all the members is an insurmountable barrier. As the term of office of the House of Councillors is six years, even if a party gains an overwhelming majority in the House of Representatives, a two-thirds majority is unattainable. Perhaps it might be possible to revise this in order to allow constitutional amendments through the approval of one-half of members.

According to most recent public opinion polls, the majority of the people of Japan are in favour of reforming the constitution. Even then, two-thirds of the Diet remains an insurmountable barrier to change. The Liberal Party is therefore proposing to establish the legal basis for carrying out referenda in order to revise the constitution. This law provides for the establishment of referendum dates, the provision of information to the electorate, the form of the vote, expenses, penal regulations, and so on. National referendum campaigns are, as a principle, free the aim is to provoke debate. We must not give up, even if we cannot amend the constitution.

For example, can the national referendum not be held before the Diet vote? The constitution is for the people. In order to change a constitution which no longer suits the times, the will of the people as sovereign should be respected first.

We also have the option of returning to the constitutional debate of the Kyoto school. That is to say, to put it to the vote whether to declare the current constitution invalid in the Diet, and to create a new constitution instead.

The Japanese are cautious people, and so find it difficult to make resolute decisions to change the current situation. Despite this there is the fear that, should a 'Taepodong' missile be fired at Japan, for example, the Japanese people would end up acting in an extreme way. Media commentary would heat up, and, without perhaps going as far as calling the Americans and the British barbarians of the pre-war era, headlines such as 'Strike North Korea Immediately!' may spring up. This would be little more than history repeating itself.

Therefore, I ask people to consider calmly what I have said. Each person should come to their own careful considered conclusion, not just follow what Ozawa Ichiro has said.

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