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Forty Years of the Peace Studies Association of Japan

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Commentary

The current situation of Japan's constitutional pacifism as formulated in Article 9 of the Japanese Constitution

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“Disarmament comes from the common desire of all people to create a safer and more peaceful world, and is inseparable from humanitarianism.”¹

“Since the advent of nuclear weapons, it seems clear that there is no longer any alternative to peace, if there is to be a happy and well world.”² (Dwight D. Eisenhower)

1. Introduction

At the end of April 2012, Shinzo Abe's Liberal Democratic Party (LDP) published a new proposal for amending the constitution which suggested “a number of significant changes” that outdid those of the 2005 proposal and envisaged “a complete overhaul of Article 9.” “These changes,” according to University of Pennsylvania Professor Craig Martin, are “on balance, dangerous.” The amendment proposes to delete paragraph two of article 9 and replace it with new provisions, among which would be one to give the prime

1 Directorate General, Arms Control and Scientific Affairs, Ministry of Foreign Affairs, *Japan's Disarmament Policy*, The Center for the Promotion of Disarmament and Non-Proliferation, Japan Institute of International Affairs, March 2003, Preface.

2 “... there is no longer any alternative to peace” quoted in Quincy Wright, Project for a World Intelligence Center, *Conflict Resolution*, vol. 1, no. 1 (1957), p. 315.

minister supreme command over the proposed “national defense military.”³ One may disagree with Craig Martin's statement that “the denial of rights of belligerency ... makes no sense,” but then one would have to deny and overlook the article's intent and potential as a precedent for facilitating world-wide disarmament and the abolition of war. I agree with Martin though that the changes will, if they come to pass, “utterly undermine the normative power of the third pillar of the Japanese constitutional order—that is, the principle of pacifism and non-use of force.”⁴

On 21 July 2012, Shinzo Abe was elected for the second time as Japan's prime minister. Soon after, in anticipation of the possibility that Japan's foreign policy would become more assertive and aggressive, Abe's second cabinet was severely criticized by some as “a cabinet of radical nationalists.”⁵

As is well known, the revision of the pacifist constitution to allow Japan to participate in war is one of Abe's chief foreign policy objectives. In 2006, when Abe was Chief Cabinet Secretary, just before he became prime minister, he proposed amending the constitution. This, however, he said, would not be achieved “in a year or two.”⁶

3 Craig Martin, LDP's dangerous proposals for amending anti-war article, *The Japan Times*, 6 June 2012. See also Utsumi Aiko, Action for Peace, Peace Studies Bulletin, No. 25 (November 2006), p. 2, pointing out the newly developing nationalism regarding defense and the military: “The draft for a new constitution presented by the Liberal Democratic Party in 2005, which includes a clause establishing a military for self-defense, also includes in the preamble the statement that all people ‘shall jointly have the obligation to support and defend with affection, responsibility, and spirit the nation and society to which they belong.’ Patriotism is thus written into the preamble.”

4 Craig Martin, LDP's dangerous proposals for amending anti-war article, *The Japan Times*, 6 June 2012.

5 Japan's new cabinet: Back to the future, *The Economist*, 5 January 2013. His “appointment of a scarily right-wing cabinet bodes ill for the region.”

6 Abe further stated: “We should be thinking in terms of a span of about five years ... [but] if a public consen-

On 9 October, not long after Abe had become prime minister on 26 September, North Korea exploded a nuclear device while Abe was on his way to a meeting with South Korea's head of state, Roh Moo Hyun. This provided Japan's Prime Minister with a further incentive to become more belligerent. The Japanese Constitution,⁷ with its renunciation of war and its plea for an "international peace based on justice and order" is significant and relevant – and not only for Japan. It aims, like the UN Charter and several national constitutions, for instance, the French, German, Italian and the Danish constitutions, at an effective system of collective security.⁸ What is the current situation affecting the Japanese position with regard to peace and security in the 'Japan Area'?'⁹

... develops ... it's possible to do so earlier. ... The era in which there was the preconception that things decided back then [under the occupation] cannot and shall not be changed is over." Abe eyes new top law in 5 years, *The Daily Yomiuri*, 12 September 2006.

7 On the Japanese constitution, many important books were written by Suzuki Yasuzo. See, for example, *Nihon kempogakushi kenkyu*, Tokyo, Keiso Shobo 1975. Suzuki Yasuzo was a scholar on Ueki Emori and the Freedom and Human Rights Movement, whose draft constitution after the Second World War was translated by the Americans and used extensively for drawing up the post-war Japanese constitution.

8 Some proposals in connection with the discussion to revise or amend the constitution that has been going on for many years, have stressed that "along with positive participation in the various United Nations 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." *SEKAI*, Peace and regional security in the Asia-Pacific, A Japanese proposal (1993-1994), translation in Glenn D. Hook und Gavan McCormack, *Japan's Contested Constitution, documents and analysis*, London and New York, Routledge 2001, p. 96. See also Ozawa Ichirō, A proposal for reforming the Japanese Constitution (1999), translation in *ibid*.

9 See also the recent article by the *Global Article 9 Campaign*, News from Japan - A Backdoor Approach to Changing Article 9: "During his first mandate in 2007, Abe set up the Advisory Panel on Reconstruction of the Legal Basis for Security. In its 2008 report, the Panel had

2. History

A brief excursus into history may be in order.¹⁰ The Hague Peace Conferences in 1899 and 1907 already wanted to abolish the institution of war and replace it with a system of law. The chief aim besides disarmament, i.e. establishing an international court with binding powers, was voted upon twice. The vote having to be unanimous, the proposal for a court was vetoed twice by Germany, followed by Austria-Hungary and Turkey, who later became Germany's allies in the First World War.¹¹ Despite this, a court was created, but without binding powers.

Going back even further, the Constitution of the First French Republic adopted in 1791 contained a stipulation banning aggressive war, which was subsequently emulated, among others, by Brazil in its constitution in 1891 on the occasion of the centenary of the French article.¹²

advocated that Japan's exercise of the right to collective self-defense be allowed in limited cases. But the report was never acted upon as it came out after Abe had resigned as Prime Minister. Revived shortly after Abe took up his second mandate in December 2012, the Panel is expected to release its final report by the end of the year. According to its Chairman Yanai Shunji, the report is likely to recommend this time that Japan embrace the right to engage in collective self-defense in a comprehensive manner." Online at <http://www.article-9.org/en/newsletter/2013/july-sept.html#article1>.

10 Teaching proper history is a task for peace education, as H.G. Wells, the famous author of science fiction, a pacifist and great historian stressed. For some of the background, see Klaus Schlichtmann, H.G. Wells and Peace Education, *Journal of Peace Education*, vol.4, no.2 (September 2007), e.g. p. 193-206

11 Klaus Schlichtmann, Japan, Germany and the Idea of the two Hague Peace Conferences, *Journal of Peace Research*, vol. 40, no. 4 (2003), pp. 377-394, and Japan and the Two Hague Peace Conferences, 1899 and 1907, *Transactions of the International Conference of Eastern Studies*, no. XLI (1996), pp. 142-144.

12 Article 88 of the constitution of 24 February read: "Dans aucun cas, les Etats-Unis du Bresil ne s'engageront dans une guerre de conquete, directement ou indirectement, par eux-memes ou comme allies d'une autre nation." Quoted in B. Mirkine-Guetzévitch, *Revue Helle-*

Eventually, and most significantly, in the interwar period, a resolution was adopted at the twenty-second Conference of the Inter-Parliamentary Union (IPU) in August 1924 in Bern, Switzerland, calling for “proposals [to] be submitted by the National Groups to their respective parliaments for amendments to the Constitution ... to forbid resort to war.”¹³ In Japan, which had been an IPU member since 1910, the then-foreign minister Kijuro Shidehara, is likely to have appreciated and understood the importance and relevance of the IPU Resolution. Shidehara was a pacifist and had been close to the Hague Peace Conferences, but it was highly unlikely that Japanese lawmakers under the Meiji Constitution would have seriously considered or actually discussed implementing the proposal. For various reasons, this would not have been a realistic approach to policy for Japan.

The new “constitutional law of peace” (*Droit constitutionnel de la paix*), which became an integral part of the *ius gentium pacis*, the international law of peace, was promoted and explained by Russian-born jurist Boris Mirkin-Guetzévitch (1882-1955), “the great international teacher of constitutional law,”¹⁴ who taught in New York and Paris between 1936 and 1955.

The idea surfaced once more, when, on 24 January, 1946, Shidehara,¹⁵ on visiting General

Douglas MacArthur, remembered and suggested abolishing war in the new Japanese constitution, which was to feature three key elements which were identified by Professor Tadakazu Fukase, professor emeritus of Hokkaido University, as the “three original pacifist principles,” i.e. “1. The renunciation of all kinds of war...; 2. The necessary disarmament...; [and] 3. The guarantee of the ‘right to live in peace,’”¹⁶ the latter, according to Professor Fukase, being the foremost among human rights: the denial of absolute state sovereignty and the non-recognition of the right of belligerency of the state.¹⁷ The ultimate meaning of Ar-

New York, Toronto, etc., 2 vols., Lexington Books 2009, and Japan, Germany and Shidehara Diplomacy, *The Journal of International Studies*, Institute of International Relations, Tokyo (January 1998), pp. 1-19, and A Statesman for The Twenty-First Century? The Life and Diplomacy of Shidehara Kijûrô (1872-1951), *Transactions of the Asiatic Society of Japan*, fourth series, vol. 10 (1995), pp. 33-67.

16 For recent developments to codify a universal “human right to peace” see, for example, the Luarca Declaration on the Human Right to Peace and the activities of the United Nations Human Rights Council Advisory Committee. See also the Declaration on the Right of Peoples to Peace approved by U.N. General Assembly, ‘Resolution 39/11 of 12 November 1984.

17 Fukase Tadakazu, *Les deux problèmes constitutionnels japonais d’aujourd’hui - La tradition et la paix*, *Revue De La Recherche Juridique*, Droit prospectif (1990-1993), No. XV, 42, p. 497 (482-505) (my translation from the French). See also Klaus Schlichtmann, *The Ethics of Peace: Shidehara Kijûrô and Article 9 of the Constitution*, *Japan Forum*, vol. 7, no. 1 (April/Spring 1995), pp. 55-56 (43-67): “In other words and phrased slightly differently again, the three propositions are: (i) Without the renunciation (or limitation) of national sovereignty, there is no just and orderly pacific settlement of international disputes (i.e. no international peace based on justice and order); 93 (ii) Without arrangements for the just and orderly pacific settlement of international disputes, there is neither demilitarization nor disarmament; and (iii) With absolute national sovereignty not being recognized, there is no (right of) belligerency of the state. On these grounds, we may deduce that Article 9 is indeed a true syllogism, the last sentence containing the conclusion, or ‘matter to be proved’, the first two sentences being the premises by

nique de Droit International, vol. 4 nos. 3-4 (July-December 1951), p. 10.

13 Union Interparlementaire, *Compte rendu de la XXIIe Conférence tenue à Berne et Genève du 22 au 28 Août 1924*, Lausanne, Genève, Librairie Payot 1925, p. 666. See also, for a comprehensive account, Hans Wehberg, *The Outlawry of War*, Washington, Carnegie Endowment 1931. This publication comprised a series of lectures which first appeared in French and were later also published in German.

14 Leon Paliakov, *The History of Anti-semitism: Suicidal Europe, 1870-1933*, University of Pennsylvania Press 2003, p. 392. Paliakov apparently was Boris’ brother-in-law.

15 Klaus Schlichtmann, *Japan in the World. Shidehara Kijûrô, Pacifism and the Abolition of War*, Lanham, Boulder,

Article 9 is not to “regulate military power,”¹⁸ but to abolish it or transform it into police power.

The Japanese government and foreign ministry, backed by the Japanese people, have in essence throughout been “determined” “to make every effort” to contribute to “creat[ing] a just world order; that is, they are engaged in a search for positive peace.” Thus “the pacifism of the Japanese constitution” is not a “pacifism of inaction,” as people have sometimes claimed.¹⁹

In addition, one must not forget that the full text of this constitution was to a large extent based on the draft constitution written by Suzuki Yasuzo for the Research Commission on the Constitution (Kempo Kenkyukai), a draft which GHQ had translated in December 1945 and from which subsequently the Americans copied freely, having but little time at their disposal. It should also be stressed that this Kempo Kenkyukai draft was based on another draft constitution discussed and published by Emori Ueki,²⁰ a leading Jiyu Minken activist-theorist, who was the intellectual brain of the movement.

3. Interpretation/Meaning

Japan in its constitution has commended its national security and existence to a (future) pacifist order of peace.²¹ Article 9 is “one of three ‘pillars’

which we arrive there.”

18 See Akihiko Kimijima, *Global Constitutionalism and Japan’s Constitutional Pacifism*, *Ritsumeikan kokusai-kenkyu*, 23-3 (March 2011), p. 43.

19 Akihiko Kimijima, Article 9, *Oxford Peace Encyclopedia*, Oxford University Press 2010, p. 151.

20 Klaus Schlichtmann, *Japan in the World, Shidehara Kijuro, Pacifism and the Abolition of War*, 2 vols., Lanham, Boulder, New York, Toronto etc., Lexington Books 2009. The doctoral dissertation, of which this title is the translation, was originally published in German in 1997.

21 See, by comparison, the statement at the German constitutional convention in 1948: “We must renounce the most important right of the state, the right of self defense ... [Thus] we acquire the right to an alterna-

at the core of Japan’s constitutional framework [which] has operated to keep Japan out of all armed conflicts of the last 65 years.”²² In today’s situation, where Japan’s sovereignty is threatened, as in the Senkaku/Diaoyu dispute with China or the issue of the Takeshima/Dokto rock islands, it is good to remember that for the peaceful settlement of such and similar disputes, Japan submitted, right after it became a member of the United Nations in 1956, to the compulsory jurisdiction of the International Court of Justice. Unfortunately, neither China nor South Korea accept the compulsory jurisdiction of the ICJ, which means that Japan may have to consider other options for resolving such conflicts, should China, for instance, become even more obtrusive. Japan has engaged in a lot of different approaches, and it has also been one of the chief promoters of the principle of ‘human security’. The Japanese government quickly realized the importance of the connection between “the ‘consolidation of peace’ and ‘human security,’” making it one of the “important pillars of Japan’s foreign policy.”²³ China should reciprocate and submit to the compulsory jurisdiction of the ICJ without delay.

The time-honored principle and hope (against all opposing forces) still is that Japan will, “through its ... constitution,” be recognized as a “vanguard of nations in establishing a new and

tive guarantee of our security, which can only be found in a system of collective security.” Quoted in Klaus Schlichtmann, *Die Abschaffung des Krieges. Artikel IX JV: Ursprung, Auslegung und Kontroverse* (The abolition of war. Article IX: origins, interpretation and controversy), *Sicherheit+Frieden* [Security+Peace], vol. 20, No. 4 (2002), p. 223.

22 Craig Martin, LDP’s dangerous proposals for amending anti-war article, *The Japan Times*, 6 June 2012.

23 Kiyokazu Koshida, Militarization of Japan’s ODA, *Peace Studies Bulletin*, No. 23 (April 2005), p. 7. There is a connection between the concept of ‘Human Security’ and the concept of the ‘Responsibility to Protect’ (R2P). However, the argument favoring humanitarian intervention on the basis of the accepted R2P is flawed as no sovereign or moral authority exists so far to decide ultimately when humanitarian intervention is justified.

more peaceful international order.” China and others should acknowledge that Article 9 was understood and upheld not only by a majority of “the political elite (though there were strong opposing forces among these as well, to be sure), but also by the people of Japan. It was the beginning of a process by which Article 9 ... [became] a powerful constitutive norm, providing the legal foundation for a new national identity centered on pacifist ideals.”²⁴

Japanese like to see their country as “the Switzerland of the Far East—that is, a country whose neutrality and integrity would be guaranteed by the United Nations.”²⁵ As Professor Anthony DiFilippo of Lincoln University in his book *The Challenges of the U.S.-Japan Military Arrangement* pointed out, there is also a connection between Article 9 JC and Article X of the US-Japan Security Treaty, which maintains that the treaty should “expire whenever in the opinions of the[ir] Governments ... there shall have come into force such United Nations arrangements or such alternative individual or collective security dispositions as will satisfactorily provide for the maintenance by the United Nations or otherwise

of international peace and security in the Japan Area.”²⁶ This 1951 stipulation, which was adopted after the failure of the Russian attempt, on the occasion of the Korean crisis, to have the U.N. embark on the transition,²⁷ was to ensure that this future option would remain open and enable the implementation of the provisions in the UN Charter that are vital for the transition to collective security. This option together with Article 9 was clearly “[r]eflecting [not only] the non-belligerent sentiment of the Japanese constitution”²⁸

24 Craig Martin, A Constitutional Case for Amending Article 9, in Bryce Wakefield, ed., *The Constitution of Japan At 65: Time for a Change?* Woodrow Wilson Center for International Scholars, 2012, p. 53. See also Peter J. Katzenstein, *Cultural Norms and National Security: Police and Military in Postwar Japan* (Ithaca: Cornell University Press, 1996), 4-5, 44, 112; and Craig Martin, Binding the Dogs of War: Japan and the Constitutionalizing of *Jus ad Bellum*, *University of Pennsylvania Journal of International Law*, vol. 30 (2008), note 1, pp. 282, 304-305, 355-356.

25 Michael M. Yoshitsu, *Japan and the San Francisco Peace Settlement*, New York, Columbia University Press 1982, p. 49, quoted in Klaus Schlichtmann, Schweizer Neutralität und japanischer Kriegsverzicht [Swiss neutrality and the Japanese renunciation of war], *Zeitschrift für Friedenspolitik - friZ*, 1 / 2007 (Journal for Peace Policy, by the Swiss Peace Council), p. 20. Prime Minister Koizumi is known to have said: “Taking a permanently neutral country such as Switzerland as a role model, many people here think that Japan should be a Switzerland of the East.” (At a meeting with the Swiss foreign minister, Joseph Deiss, in Tokyo in 2002)

26 Article IV of the 1951 treaty. The present Article X of the treaty stresses the UN role, leaves out the “otherwise” provision and just states: “This Treaty shall remain in force until in the opinion of the Governments of Japan and the United States of America there shall have come into force such United Nations arrangements as will satisfactorily provide for the maintenance of international peace and security in the Japan area.” Quoted in Anthony DiFilippo, *The Challenges of the U.S.-Japan Military Arrangement: Competing Security Transitions in a Changing International Environment*, M.E. Sharpe 2002, p. 49. I have heard that Shidehara, Speaker of the House until his death in 1951, had a say in the drafting of this article. See also A. DiFilippo, *op.cit.*, p. 8: “... the United Nations will provide Japan with security. This expectation is the political linchpin that, if ever realized, will become the reason, according to Article X of the U.S.-Japan Security Treaty, for ending the accord. ... *this is the ... (multilateral) security response favored by Russia and China.*” (Emphasis added)

27 In 1950, the Russians refused to sanction the actions of the United Nations in Korea, insisting on an “invocation or implementation” of Article 106. On 11 October 1950, for the last time, they submitted this resolution:

“*The General Assembly, Taking into account the particular importance of concerted action by the five permanent members of the Security Council in defending and strengthening peace and security among nations, Recommends that before armed forces are placed at the disposal of the Security Council under appropriate agreements concluded in accordance with Article 43 of the Charter, the five permanent members of the Security Council ... should take steps to ensure the necessary implementation of Article 106 of the Charter for the purpose of taking such joint action on behalf of the organization as may prove to be necessary for the maintenance of international peace and security.*”

28 A. DiFilippo, *op.cit.*, p. 49.

and the Japanese people, but also the common understanding that to abolish war the international organization must be endowed with the authority to make binding decisions on behalf of the international community.²⁹ The 1957 Basic Policy for National Defense, “which remains fundamentally important to Japan’s defense policy” (A. DiFilippo), and is still relevant today, upheld the vision of an effective United Nations, while temporarily agreeing to face external aggression “on the basis of the Japan-U.S. security arrangements, [but only] pending effective functioning of the United Nations in the future deterring and repelling such aggression.”³⁰

Yet Article 9 is part of only one among several constitutions³¹ aiming at an international peace based on cooperation, justice and order that were introduced after WWII.³² As we have seen, their origins go back to the French Revolution and the

Enlightenment, the Hague Peace Conferences and the interwar period when the League of Nations attempted to outlaw war, and there were many proposals for limiting national sovereignty in constitutions with regard to the right of belligerency.³³ However, being the only provision that has limited state sovereignty with regard to the right to go to or take part in war, Article 9 can be seen as a public law, constitutional motion or precedent that needs to be followed up or seconded in order to become effective. This is confirmed by the provisions in the constitutions of France, Italy, Denmark and several others that agree to such limitations on national sovereignty only on condition of reciprocity. The 1957-1964 Commission for the Investigation of the Constitution (*kempo chosakai*), headed by Kenzo Takayanagi, the “eloquent advocate of the rule of law,”³⁴ was well aware of these constitutional provisions and debated the possible introduction of the condition of reciprocity into Article 9.

It seems that in the order of things Germany is the natural candidate to follow up on and ‘second’ Article 9.³⁵ This tallies with Takayanagi’s state-

29 Thus, “[w]hen Japan became a member of the United Nations in 1956, and for some time thereafter, many Japanese, including policy makers, maintained the expectation that in time this multilateral organization [the U.N.] would provide the country with security; thus, there would be no need for a security alliance with the United States.” *Ibid.*, p. 49.

30 Quoted in A. DiFilippo, *op.cit.*, p. 49. (Emphasis added)

31 Klaus Schlichtmann, A Short History of the “Constitutional Law of Peace” and its possible Application in the Light of Article IX of the Japanese Constitution, *Indian Journal of International Law*, vol. 39, no. 2 (April-June 1999), pp. 291-310

32 Klaus Schlichtmann, *Kenpou daikyuujou ga toikakeru. Kokka shuken no seigen—kakkoku kenpou to hikaku shi nagara* (Investigating Article 9. Limitations of national sovereignty—a comparison with other constitutions), *The SEKAI* (Tokyo, Iwanami), 3 (2006 March, no. 750), pp. 172-83, and *Article Nine in Context – Limitations of National Sovereignty and the Abolition of War in Constitutional Law*, *The Asia-Pacific Journal: Japan Focus*, vol. 23-6-09 (June 8, 2009), online at <http://www.japanfocus.org/-Klaus-Schlichtmann/3168>, and *The Constitutional Abolition of War in Japan. Monument of a Culture of Peace?*, *Internationales Asienforum – International Quarterly for Asian Studies*, vol. 32 (2001), no. 1-2, pp. 123-149.

33 See a list of these provisions online at http://www.unfor.info/liste24list_en.html. But see also, for example, Article 54, para 2 of the Siamese constitution of 10 December 1932, which declared: “Une déclaration de guerre ne peut intervenir que si elle n’est pas contraire aux dispositions du pacte de la Société des Nations.” Citation in Boris Mirkine-Guetzévitch, *Droit Constitutionnel International*, Paris, Librairie du Recueil Sirey 1933, p. 144.

34 John Maki (ed.), *Japan’s Commission on the Constitution. The Final Report*, Seattle and London, University of Washington Press 1980, p. vii.

35 See Klaus Schlichtmann, How to make Article 9 global, *Kyoto Journal* 72 (2009), p. 20, online at <http://www.kyotojournal.org/kjback/72/Making%20A9%20global.pdf>. Apart from my own work comparing the Japanese and German peace constitutions, a little book has recently come out by a German author comparing the two: Markus Gascha, *Der Kriegsverzicht Im Japanischen Verfassungsrecht - Hintergründe und Aktuelle Diskussion Zu Art 9 JV* [The renunciation of war in Japanese constitutional law—backgrounds and recent debate on Article 9], GRIN Verlag, 2011.

ment that “not only the Japanese people, but politicians from all countries must make the greatest efforts toward the realization of this ideal,”³⁶ i.e. to renounce and forego war once and for all. However, the German constitution deliberately did not posit a condition of reciprocity, arguing that after all that Germany had done, the limitation of national sovereignty renouncing war should be unconditional. Article 9 is a precedent, and following up would trigger the process of the transition to collective security³⁷ stipulated in Article 106 of the UN Charter,³⁸ during which the five permanent members would assume their responsibility to assure safe passage, while nations disarm to the minimum level stipulated in Article 26 of the Charter. However, since Germany has not acted on its promise, and is not honoring the relevant provisions of its own peace constitution, which explicitly spells out collective security as one of its main foreign policy aims, this amounts to Germany effectively blocking the development of the United Nations into an effective organization for maintaining international peace and security. This also affects Japan’s position and stand with regard to Article 9.

36 TAKAYANAGI Kenzô, *Kaiken zehi no mondaiten, Jiyû 5*, (1963). According to the commission on the constitution (Kempou chousakai), set up by the government in 1956 under Takayanagi’s chairmanship, there was no direct relationship between the official plans of the American government and the drafting of article 9.

37 See Klaus Schlichtmann, Linking Constitutional Laws of Peace and Collective Security, *Indian Journal of Asian Affairs*, vol. 17, no. 2 (December 2004), pp. 1-22.

38 See Quincy Wright, Political Conditions Of The Period Of Transition, *International Conciliation*, No. 379 (April, 1942), pp. 264-279, for a comprehensive exposition of the concept of the transition, as it was later introduced into the United Nations Charter at San Francisco. Online at http://www.unfor.info/transition_text.pdf See also Klaus Schlichtmann, An Enduring Concept for Security Council Reform, *Beijing Law Review*, vol. 2, no. 2 (June 2011), pp. 97-110, and UN Collective Security and the Transitional Period: A Myth over the Founding and Aims of the United Nations, *Journal of East Asia and International Law*, vol.3, no.1 (Spring 2010), pp. 99-122.

It may largely be due to Germany’s omission after the end of the Cold War that, as Makoto Katsumata and Naomi Kamijo pointed out in the beginning of 2005, the world has

“entered a new era in North-South relations, in which the optimistic scenarios of the early 1990s for a peace dividend seem more unlikely than ever to come about. ... We see increasing globalized socio-economic disparities throughout the world, accompanied by uneven power relations. ... This is particularly true in East Asia, where the legacy of the Cold War persists.”³⁹

Instead of following up on Article 9 to abolish war, Germany set off a new wave of nationalist fervor.

These general omissions are addressed in an article in *Foreign Policy* entitled ‘Avoiding War’, where Doug Bandow argues that when, after the “collapse of the Soviet Union and the end of the Cold War,” the United States, like many other countries, was re-evaluating its security policy, the “most discussed alternative” was collective security, which according to the author had “long been an important aspect of American foreign policy.”⁴⁰ However, nothing came of it, leaving Japan, among others, in the doldrums. Again, on 31 January 1992, at the first-ever summit-level meeting of the Security Council, the fifteen heads of state assembled stressed “the need for the international community to deal effectively” with acts of terrorism and maintain international peace and security, thus confirming their continuing commitment to bring about an effective system of collective security.⁴¹ Again, as no nation ceded

39 Makoto Katsumata and Naomi Kamijo, *Peace Studies Bulletin*, No. 23 (April 2005), pp. 13-14.

40 Doug Bandow, Avoiding War, *Foreign Policy*, no. 89 (Winter 1992/1993), p. 156 (156-174).

41 See Edward C. Luck, Tackling Terrorism, in David M. Malone (ed.), *The UN Security Council. From the Cold War to the 21st Century*, Boulder, CO and London, Lynne Rienner 2004 (A Project of the International

“primary responsibility for the maintenance of international peace and security” to the Security Council, to ensure its “prompt and effective action” (U.N. Charter, Article 24), the matter remained ultimately unresolved.⁴² Similarly perhaps, the problem of unequal representation among the five permanent members also remains unresolved. The solution would be to give a suitable candidate representing the Global South a permanent seat, while reducing the European seats to a single united European representation.⁴³

So, although the SDF were prohibited from participating in PKOs so long as the UN security system was not in force,⁴⁴ the situation changed in

Peace Academy), p. 94.

42 UN Secretary-General Kofi Annan in his 2004 Report of the High-level Panel on Threats, Challenges and Change, *A More Secure World: Our shared responsibility*: “The United Nations was never intended to be a utopian exercise. It was meant to be a collective security system that worked.” (p. 4) Though the Report mentions “collective security” more than a hundred times, it did not address the problem of limiting nation-state sovereignty, although it did point out that “[w]hatever perceptions may have prevailed when the Westphalian system first gave rise to the notion of State sovereignty, today it clearly carries with it the obligation of a State to protect the welfare of its own peoples and meet its obligations to the wider international community.” (p. 17) In view of these facts and perceptions, the continued patience that Japanese policy makers have displayed is astounding.

43 It may be important to maintain the number “5” to ensure optimal operational functionality rooted in the consensus principle during the transition. See also Klaus Schlichtmann, Mahatma Gandhi and the Quest for an Effective United Nations Organization, *The Stakes, 1917-1947, Gandhi Marg*, Vol. 26, No. 1 (April-June 2004), pp. 55-81, and by the same author, *Hitotsu no sekai chitsujo. heiwa kouchiku no tame-ni Nihon to Indo wa tomoni ikaga katsudou ga dekiruka?*, *Gunshuku mondai shiryō*, No. 330 (May 2008), pp. 70-75.

44 Indeed, according to the 2006 “Defense of Japan” Annual White Paper issued by the Ministry of Defense, among the SDF’s primary objectives, apart from granting the natural right of self-defense, were “Disaster Relief and Civil Protection.” Providing assistance in the wake of natural disasters and adopting policing functions in Peace Keeping Operations (PKO) are still perceived by

the 1990s, when it was hoped that the U.N. system would start its operations under the Charter. Had the system become effective, the SDF could have been recognized as what India’s Mohandas K. Gandhi called the *Shanti Sena*, i.e. having the purpose and potential for becoming genuine peace soldiers.⁴⁵ Still today, the most sensible way, to escape the predicament of the present anarchic international system, is to realize the Gandhian concept and establish a universal “*Shanti Sena*” (Soldiers of Peace) or “Peace Corps,”⁴⁶ and have the Self-Defense Force “placed under the UN command and be transformed into a UN police force stationed in Japan,” as renowned Japanese peace researcher Yoshikazu Sakamoto has suggested. The SDF could be a cornerstone and founding member of a multinational police corps, in accord with the purposes and principles of the U.N. Charter.⁴⁷ These ideas “that push the UN to

the public as well to be two of the SDF’s main purposes, but, increasingly, problems of how to counter threats from outside have come to the fore. See Defense of Japan 2006, at http://www.mod.go.jp/e/publ/w_paper/2006.html

45 OZAWA Ichirō, A proposal for reforming the Japanese Constitution (1999), printed in Glenn D. Hook and Gavan McCormack, *Japan’s Contested Constitution, documents and analysis*, London and New York, Routledge 2001, p. 167 (Creating a “UN standing army”): “The only way to maintain order is through the concept of collective security, in other words, policing power on a global scale.”

46 Glenn D. Paige, *Nonkilling Global Political Science*, Honolulu, Center for Global Nonkilling 2009, p. 116. Available online at: <http://nonkilling.org/pdf/nkgps.pdf>; Vinoba Bhave, *Shanti Sena*, Varanasi, Sarva Seva Sangh 1963; Thomas Weber, *Gandhi’s Peace Army: The Shanti Sena and Unarmed Peace-keeping*, Syracuse, Syracuse University Press 1996.

47 Yoshikazu Sakamoto, The Postwar and the Japanese Constitution: Beyond Constitutional Dilemmas, *The Asia-Pacific Journal: Japan Focus*, November 10, 2005, online at <http://www.japanfocus.org/-Yoshikazu-SAKAMOTO/1847>. This I have argued in a recent paper, The Role of UCAV, PGM, Nonlethal Weaponry and Cyber Policing, in Joám Evans Pim (ed.), *Nonkilling Security and the State*, Honolulu and Omaha, Center for Global Nonkilling and Asia World Center 2013, p. 204.

have a mostly civilian rapid deployment force are sensible” and promising.⁴⁸

4. Prospects

It is necessary to revert to the original purposes and principles of the United Nations. In 1946, a U.S. Department of State Report outlined “a transitional period in which the United States would gradually turn over its secrets, atomic weapons, and processing plants to the Atomic Development Authority as the international controls tightened,” with the aim “to protect American security and minimize the danger of the premature release of atomic information”⁴⁹ that would jeopardize international peace and security. Interestingly, in 1990, when there were various official proposals for an effective international order and for strengthening the United Nations, the USA “dug out the ‘transitional’ security arrangement of Article 106 of the UN Charter,” as though expecting someone to initiate the process of empowering the United Nations.⁵⁰

Also, in an undated Memorandum, probably from around 1950, United Nations Secretary General Trygve Lie, noting points for consideration in the development of a 20-year program for achieving peace through the United Nations, pointed out the temporary nature of systems of collective self-defense, stating that “Measures for collective self-defense and regional remedies of other kinds are at best interim measures, and *cannot ... bring any reliable security from the prospect of war*” (Emphasis added).⁵¹ The title of paragraph 10 of the memorandum significantly reads: “Active and systematic use of all the powers of the Charter and all the machinery of the United Nations to speed up the development of international law towards an eventual enforceable world law for a universal world society.”⁵² This is a clear statement on the purposes and principles of the United Nations.

Disarmament is still regarded as utopian, although research has clearly shown its feasibility.⁵³ A lot depends, however, on the U.N. members making good on their promises, including em-

Available online at: <http://nonkilling.org/pdf/nksecurity.pdf>.

48 Akihiko Kimijima, Japan’s Contribution to Global Constitutionalism, *Societies Without Borders*, vol. 4 (Leiden 2009), pp. 112-113. See also the proposal for a “United Nations Emergency Peace Service” by the director of the Joan Kroc Institute at Notre Dame University, Robert C. Johansen (ed.), *A United Nations Emergency Peace Service—to Prevent Genocide and Crimes Against Humanity*, World Federalist Movement - Institute for Global Policy, New York 2006, and the *Draft Statute for the Formation and Operation of the United Nations Emergency Peace Service for the Prevention of Genocide and Crimes against Humanity*, online at http://www.globalactionpw.org/wp/wp-content/uploads/uneps-statute_december-05-2010.pdf.

49 U.S. Department of State, *A Report on the International Control of Atomic Energy* (Washington, D.C., March 16, 1946), pp. 4-61. Reference in Harold Josephson, *James T. Shotwell and the Rise of Internationalism in America*, Fairleigh Dickinson University Press 1974, p. 268.

50 Niels Blokker, *Towards More Effective Supervision of International Organizations: Essays in Honour of Henrys G. Schermers*, Martinus Nijhoff 1994 (International Studies

in Human Rights), p. 56. Professor Niels Blokker teaches public international law at the University of Leiden.

However, the author states that these “transitional security arrangements ... enable[d] the permanent members to act on behalf of the UN outside the context of the Charter if necessary.” This obviously is a misunderstanding, because the transition to collective security could and should never take place ‘outside the Charter.’

51 From the President’s Secretary’s File. Online at http://www.trumanlibrary.org/whistlestop/study_collections/un/large/documents/index.php?documentdate=0000-00-00&documentid=38&studycollectionid=UN&pagenumber=1. (Emphasis added)

52 A. DiFilippo, *The Challenges of the U.S.-Japan Military Arrangement: Competing Security Transitions in a Changing International Environment*, p. 49.

53 On the feasibility of arms conversion, see, for example, Ann Markusen and Joel Yudken, *Dismantling the Cold War Economy*, New York, Basic Books 1992. With regard to chemical weapons, the Organization for the Prohibition of Chemical Weapons (OPCW) has succeeded in reducing chemical stockpiles by 80% over the past 16 years.

powering the United Nations. How far politicians, even in Japan, have strayed from believing in the original purposes and principles of the United Nations, is apparent, for example, in the *Yomiuri Shimbun* when it states that there is “no way in sight to achieve A-bomb survivors’ shared hope—a world without nuclear weapons”⁵⁴—a judgment that reflects the present government’s intention to revise the Constitution. It would not be a surprise to anybody if Japanese politicians and even the public, having faithfully upheld Article 9 for over sixty years, now feel disappointed and may even have given up.

A kind of ambivalence on the part of the victorious powers may be discernible in their dual approach to maintaining peace and security, as in the US, with peace through law, on the one hand, and peace through strength, on the other. However, some countries, like Germany, have no such objectives, their sole political target being political and economic power.⁵⁵ Countries like the USA appear to be willing ultimately to rely on a system of law, if only this could be initiated.

5. Conclusion

In the West, every time the JC’s peace imperative is discussed in Japan, this is taken as a sign that changing the constitution is imminent. Revising Article 9 in favour of allowing Japan to legally participate in collective self-defense would be an-

other serious blow to achieving the UN’s objective to establish a comprehensive system of collective security—the first blow having been the German Constitutional Court’s verdict stating that systems of collective self-defense (like NATO) fulfil the condition for qualifying as a collective security system under the UN Charter. Even if revising the Japanese Constitution’s Article 9 should take another two to three years, an eventual revision would have a domino effect, of which the last domino falling would be the UN.

54 A-bomb memorial held in Hiroshima, *The Japan News* (The *Yomiuri Shimbun*), 7 August 2013. Nevertheless, in February 2010, Parliamentarians for Nuclear Non-proliferation and Disarmament (PNND) member Hideo Hiraoka “and 203 other Japanese legislators sent a letter to US President Obama supporting his stated policy objectives of moving towards a world without nuclear weapons.” Online: <http://gsinstitute.org/blogs/enewsletter-archives/204-japanese-legislators-support-obamas-vision-of-nuclear-disarmament>.

55 Klaus Schlichtmann, *Wartime Atrocities and Responsibilities: The Japanese and the German Case*, *Sophia International Review*, vol. 24 (Tokyo 2002), pp. 61-73.