

JAPAN'S ARTICLE 9: RULE OF LAW V. FLEXIBLE INTERPRETATION¹

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TABLE OF CONTENTS

I. INTRODUCTION	130
II. A POLITICAL SHIFT WITH THE RISE OF THE LIBERAL DEMOCRATIC PARTY	133
III. THE RULE OF LAW V. FLEXIBLE INTERPRETATION	138
IV. WHAT DRIVES AND INHIBITS REFORM	144
A. What Drives Reform	145
1. Nationalism	145
2. U.S. Pressure and Security Alliances	149
3. Regional Fears	150
a. North Korea	151
b. China	153
4. Uncertainty of America's Commitment to Japan and the Region	156
5. The Defense Industry	158
B. What Inhibits Reform	160
1. The DPJ and Sino-Japanese Relations	160
2. The Current Economic and Socio-Political Climate	161
3. The New Political Retreat from Reforms	162
4. A Lack of Judicial Leadership	163
5. International Fear of a Re-armed Japan	165
6. Political Expediency	167
V. CONCLUSION	167

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1. A term used by James Auer to describe Japan's continuous reinterpretation of Article 9 based on the prevailing political objectives at the time. See James E. Auer, *Article Nine of Japan's Constitution: From Renunciation of Armed Force "Forever" to the Third Largest Defense Budget in the World*, 53 No. 2 LAW & CONTEMP. PROBS 171, 176 (Spring 1990).

I. INTRODUCTION

- Article 9.** (1) *Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as a means of settling international disputes.*
- (2) *In order to accomplish the aim of the preceding paragraph, land, sea, and air forces as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.*

It is doubtful that there is a document in Japan that is more contentious and divisive than the Japanese Constitution of 1947, and particularly Article 9. The modern Japanese Constitution is unique as a governing instrument and primary source of law. As with all constitutions, it states the rights and responsibilities of both the citizens and the government. It is exceptional, however, in its renunciation of war and its aspirational language embracing peace. Since 1947, more has been written in Japanese scholarship about Article 9 than about any other constitutional provision.²

During post-war occupation of Japan, the United States sought to transform Japan into a democratic state which would support various U.S. initiatives such as Washington's Truman Doctrine regarding Soviet containment, while additionally destroying Tokyo's ability to wage war. Pursuant to those ideals, the 1947 Constitution was drafted in English by the United States in a matter of days.³ It was then dictated to an extremely reluctant conservative Japanese government after the existing Meiji Constitution was found to be insufficient and irreconcilable with the political realities of Post War Japan.⁴ The modern Japanese Constitution is based on three principles as prescribed by General MacArthur in the Potsdam Declaration (1945): popular sovereignty, pacifism, and human rights.⁵ Most scholastic attention has focused on the pacifist wording contained in Article 9, and the constitutional limits on the expansion and deployment of Japan's Self Defense Force (SDF).

Domestically, Article 9 was highly contested. The experience of war left the Japanese people destroyed and demoralized. The severe deprivation which followed the fall of imperialist hyper-national aggression made security the single most-valued ideal. From that need for security there formed four "never again" resolves:

- To never again resort to military means to accomplish goals*
To never again have their homeland experience bombings
To never again allow military leaders to veto public policy
*To never again underestimate the importance of superior technology*⁶

2. LAWRENCE W. BEER & JOHN M. MAKI, FROM IMPERIAL MYTH TO DEMOCRACY: JAPAN'S TWO CONSTITUTIONS 116 (1889-2002).

3. See CONSTITUTIONAL LAW OF JAPAN 4-7 (Hiroyuki Hata & Go Nakagawa eds. 1997).

4. *Id.*

5. See *id.* at 9-22.

6. David B. Bobrow, *Pursuing Military Security: Lessons from Japan*, in THE RIDGEWAY

The adoption and evolution of a pacifist mindset has become entwined in the culture of modern day Japan. While a portion of the population, particularly policy-makers, have used the mantra of “pacifism” as a shield to prevent Japan from shouldering its share of its global responsibility, there are vast numbers of citizens who have genuinely internalized the ideals of Article 9 and take great pride in that for which it stands. Many people cite it as the single most determining factor which has kept Japan peaceful.⁷ Yohei Kono, Speaker of the House of Representatives until the fall of the LDP in 2009 has stated, “Under the constitution, troops from our country have never stolen the life of a single person in any other country. This path of peace is an achievement we can be proud of.”⁸

On the other hand, there are Japanese people who view Article 9 as a limitation that prevents Japan from becoming a “normal state.” From this perspective, it is a source of humiliation that Japan’s military efforts, from humanitarian aid to the War on Terror, are relegated to positions of “rear logistical support” because of constitutional limitations. Thus, the constitutional limits of Article 9 are an impediment to Japan attaining great power status. Dr. Malcolm Cook and Andrew Shearer of the Lowey Institute for International Policy have emphasized that Japan cannot legitimately be considered a great power because of constitutional and political constraints which are at the source of that global lack of influence.⁹ Japan, despite having the world’s second largest economy, does not have “enough military, economic and political influence to shape its international environment through its own efforts.”¹⁰

Internationally, Article 9 is equally contested. While the United States has been an ardent supporter of an Article 9 revision which would allow Japan to participate more in its own defense and in U.S.-led initiatives around the world,¹¹ some members of the international community are reluctant to embrace a re-armed Japan. Many states find the prospect problematic citing concern over Tokyo’s possible return to the hyper-nationalism which manifested itself in Japan’s Pacific Campaign decades earlier.¹² Other states see re-armament as a threat to the balance

PAPERS IN INTERNATIONAL SECURITY STUDIES, No. 91-1, 7 (1990) (emphasis in original).

7. *8% Say Article 9 Has Helped Keep Japan Peace*, CHINA DAILY, May 4, 2007, available at 2007 WLNR 8408898.

8. Hiroshi Hiyama, *Japan Looks To Future On 60th Anniversary of Constitution*, AGENCE FRANCE PRESSE ENGLISH WIRE, May 2, 2007.

9. Malcolm Cook & Andrew Shearer, *Going Global: A New Australia-Japan Agenda for Multilateral Cooperation*, THE LOWEY INSTITUTE FOR INT’L POL’Y: PERSPECTIVES 3, (Apr. 2009), available at <http://www.lowyinstitute.org/Publication.asp?pid=1022>.

10. *Id.*

11. *U.S Congressional Research Service: Japan-U.S. Relations: Issues for Congress* (RL33436;), by Emma Chanlett-Avery et al., 12-17, <http://www.fas.org/sgp/crs/row/RL33436.pdf> (last visited Nov. 25, 2009) [hereinafter “Japan-U.S. Relations”]; RICHARD L. ARMITAGE, JOSEPH S. NYE, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES, THE U.S.-JAPAN ALLIANCE: GETTING ASIA RIGHT THROUGH 2020 17-22 (2007).

12. KENNETH PORT, GERALD MCALINN, COMPARATIVE LAW: LAW AND THE LEGAL PROCESS IN JAPAN 31 (Carolina Academic Press 2003); *Sun Dongmin, Japan Wants Rearmament*, PEOPLE DAILY (CHINA), December 6, 2002,

of power in the Asian region, likely forcing further military buildups in both China and North Korea.¹³

Despite the internalization of pacifist ideals and the potential negative international reaction to a re-armed Japan, there continues to be a revisionist movement which began during the end of the post-World War II occupation. While constitutional amendments in Japan appear to be straightforward, the Japanese Constitution has never been amended, causing great uncertainty about the process. The entity most responsible for enacting changes to the Constitution is the Diet, the legislative lawmaking organ divided into the Upper and Lower Houses.¹⁴ In accordance with Article 96, any revision requires approval by a two-thirds vote in the Diet.¹⁵ This is followed by a majority popular vote by the Japanese people in a referendum.¹⁶ In 2007, the Diet approved a bill, articulating the steps required to conduct the referendum.¹⁷ It is a referendum itself, which called for a three year public consultation period, which expires in 2010. Theoretically, this is the earliest date in which the constitutional revision question could be answered.

This article explores the current socio-political climate for constitutional revision. The political landscape in Tokyo has dramatically shifted to a center-left position with the rise of the Democratic Party of Japan (DPJ), which has the potential to dramatically change the rules of the game. This shift in political ideology will likely halt the Liberal Democratic Party's (LDP) previous efforts at constitutional reform. Further, the new administration has clearly voiced a desire for closer ties with both China and South Korea, which in itself will dampen revisionist efforts. While 2010 is heralded by some to be a historical year for constitutional change in Japan, it will more likely result in maintenance of the status quo and a continued non-adherence to the predictability and consistency of a rule of law.

Part II traces the political shift which manifested itself in the coming to power of Hatoyama and the DPJ in August of 2009. The DPJ is faced with mounting domestic dissatisfaction over a declining economy and a citizenry that is not averse to continuing the revolving door of Japanese leadership if an economic turnaround

http://english.peopledaily.com.cn/200212/06/eng20021206_108053.shtml.

13. *U.S. Congressional Research Service: Japan's Nuclear Future: Policy Debate, Prospects, and U.S. Interest* (RL34487; Feb. 19, 2009), by Emma Chanlett-Avery et al., 11, <http://www.fas.org/sgp/crs/nuke/RL34487.pdf> (last visited Apr. 17, 2010); Andrew Forrest, *Future Patterns in China-Japan Power Relations: A Problematic and Puzzling Reality*, J. OF PEACE, CONFLICT AND DEVELOPMENT, Issue 14, July 2009, available at <http://www.peacestudiesjournal.org.uk/dl/Issue%2014%20Article%2013%20Final%20Draft%201.pdf>.

14. KENNETH L. PORT & GERALD P. MCALINN, *COMPARATIVE LAW: LAW AND THE LEGAL PROCESS IN JAPAN* 34 (Carolina Academic Press 2003).

15. KENPŌ [CONSTITUTION], art. 96, para. 1 (Japan).

16. *Id.*

17. Chisaki Watanabe, *Japan Looks to Amend Constitution*, AP ONLINE REGIONAL- ASIA, <http://www.thefreelibrary.com/Japan+looks+to+amend+constitution-a01611304624> (last visited Apr. 17, 2010)..

is not apparent. The DPJ may represent the most dramatic change in policy direction that Japan has seen in generations. Whether this will impact constitutional reform is yet to be seen. This part of the article examines the efforts of past Prime Ministers (PM) who attempted to change Japan's constitution and frames the priority which the DPJ places on Article 9 reform, giving some insight into what political currency will be spent in attempting to push through a constitutional amendment.

Part III addresses the Japanese Diet's willingness to bend the Constitution. By doing so, the Japanese Diet decides the way by which Article 9 is to be enforced to serve the prevailing political agenda. While politically convenient, the rule of law requires consistent practice and reliable application of known principles, rather than discretionary or arbitrary agendas. The on-going, flexible interpretation that is routinely used in determining how the SDF is deployed has adversely impacted Japan's international credibility and has frequently raised questions of reliability from its allies.

Part IV considers the factors that both drive and delay reform. Nationalism, Japan's security alliance with the United States, provocations by China and North Korea, and a fear of U.S. disengagement in the region are examples of forces that drive revision. Alternately, reform may be inhibited by any of the following: the rising relevance of Sino-Japanese relations, the possible reaction of neighboring states to a re-armed Japan, the current financial crisis, a contracting Japanese economy, the lack of judicial leadership, an inability to adhere to a consistent rule of law, and the current political climate.

The current political climate and the ongoing financial crisis are the most noteworthy inhibitions to reform. Hatoyama's new DPJ administration has been vague and contradictory regarding issues which impact Japan's military projection, obligations, and policies, choosing instead to focus on domestic issues like government spending, medical care, and employment. The current financial crisis has necessitated a focus on reviving an economy that even prior to the crisis was experiencing contractions, low productivity and ballooning government debt. Economic recovery may take precedent over constitutional reform, a fact not lost on politicians.

The article concludes by suggesting the probable outcome of the debate regarding Article 9, describing what the Japanese government is likely to do, and why. It will examine, from a legal and public policy perspective, how Japan will reconcile the realities of its activities with its own black letter law. The conclusion of this article projects what the impact of revision will be on Japan's relations with other countries, on the role of the military, and on the balance of power in the region.

II. A POLITICAL SHIFT WITH THE RISE OF THE LIBERAL DEMOCRATIC PARTY

It is no exaggeration to state that the Japanese political landscape is changing. On August 30, 2009, the LDP suffered only the second electoral defeat in its

history.¹⁸ Under Yukio Hatoyama, the DPJ took control of the Diet after campaigning on a platform of accountability and transparency.¹⁹ This shift to the center-left, as dramatic as it may outwardly appear, is more an indicator of Japanese dissatisfaction with the LDP's long-term inability to change Japan's direction, more than it is a vote of confidence in the largely untested DPJ.

The political shift is demonstrated by the Hatoyama Administration's early rhetoric concerning the recall of the SDF to supporting U.S. military refueling functions near Afghanistan. Hatoyama has been adamant in stating that Japan will not renew the anti-terrorism refueling law which expires in 2010.²⁰ Issues concerning Okinawa bases are becoming more contentious, and the United States is faced with the possibility of an attempt to drastically re-define the U.S.-Japanese alliance.²¹ Many of the early remarks from the Hatoyama Administration have been contradictory and reflect confusion and uncertainty within Tokyo as to what positions the state will actually take. Perhaps the most relevant post election message occurred when Hatoyama, reiterating past prime ministers, stated that the U.S.-Japanese alliance remains the basis of Japan's foreign policy.²² He also stated that he is seemingly "caught" between the United States and China²³, however, Tetsuro Fukuyama, a DPJ lawmaker, pragmatically addressed Hatoyama's apparent dilemma when he stated: "It's complete nonsense that a non-Liberal Democratic government will hurt U.S.-Japan[ese] relations."²⁴

How Prime Minister Yukio Hatoyama's Administration (hereinafter "Hatoyama Administration") handles the revision of Article 9 remains to be seen, but it will undoubtedly depart from the LDP's previous initiatives. While the LDP has selectively pushed for revisions throughout its history, past attempts to attain the necessary votes failed against strong Article 9 support. Attempts to oppose the pacifist ideals have had dramatic impacts and consequences for the leadership in Japan. One of the first political victims of the reform battle was Prime Minister Ichiro Hatoyama.²⁵ In the wake of The Korean War and the signing of the Mutual Defense Assistance Agreement,²⁶ Japan was faced with a re-armament/Article 9

18. Martin Fackler, *With Bold Stand, Japan Opposition Wins a Landslide*, N.Y. TIMES, Aug. 31, 2009, at A1 [hereinafter Fackler, *Japan Opposition*].

19. *Id.*

20. Martin Fackler, *Japan: Navy Ends Mission in Support of Afghan War*, N.Y. TIMES, Jan. 16, 2010, at A6.

21. Mure Dickie, *Japan-US differences burst into open*, FIN. TIMES, Dec. 16, 2009; Martin Fackler, *Japan Offers New Plan in Okinawa Dispute*, INT'L. HERALD TRIB., Mar. 5, 2010, at P3; Mure Dickie *Pressure grows on DPJ over Okinawa base plans*, FIN. TIMES, Mar. 25, 2010, at P6.

22. Martin Fackler, *Japan's New Leader Seeks to Reassure U.S. on Alliance*, N.Y. TIMES, Sept. 4, 2009, at A8, available at 2009 WLNR 17348952 [hereinafter Fackler, *New Leader*].

23. *Id.*

24. Fackler, *Japan Opposition*, *supra* note 18.

25. It is important to distinguish Prime Minister Ichiro Hatoyama who served from 1954-1955 from the current Prime Minister Yukio Hatoyama, who was appointed in 2009.

26. The Korean War began on June 25, 1950 and the Mutual Defense Assistance Agreement Act, U.S.-Japan, Mar. 8, 1954, 5 U.S.T. 661, was entered into force May 1, 1954. The Mutual Defense Assistance Agreement Act allowed for the presence of U.S. armed forces in Japan to promote peace and security, while encouraging Japan to take on more responsibility for

contradiction which challenged the new found pacifism of the Japanese people.²⁷ Hatoyama then attempted to push through the LDP party's agenda of constitutional revision.²⁸ Opposition blocked the attempt so that the pacifist wording of Article 9 could be preserved, and it proved to be a major political setback for Hatoyama and his Cabinet.²⁹

Constitutional limits were indirectly implicated in Prime Minister Kishi's signing of the 1960 Mutual Defense Assistance Agreement Revision,³⁰ which resulted in wide spread demonstrations and rioting.³¹ The issue of contention was the possibility of Japan being drawn into a conflict between the United States and a communist power as a supporting "ally" of the United States.³² With escalating protest and public dissatisfaction over the treaty and its implications, Kishi became another casualty of Article 9 when, in 1960, he was forced to resign.³³ Both Hatoyama and Kishi serve as early examples of the consequences of political battles lost when dealing with the ideals of Article 9.³⁴ Prime Minister Ikeda, who replaced Kishi in 1960, when describing how revision was allocated to the periphery, stated, "[w]e do not push the constitutional revision, even if we can obtain the two-thirds majority in both Houses."³⁵

The Gulf War presented a challenge to the sustainability of the executive office as Prime Minister Kaifu attempted to reinterpret Article 9. After the Iraqi invasion of Kuwait, Kaifu sought to extend the meaning of Article 9 and have it circumvented by a cabinet ruling to allow SDF participation to enforce sanctions against Iraq. Kaifu's attempt failed to gain legislative support amidst public pressure over the impact the proposed action would have on Article 9.³⁶

When combat ensued in the Gulf War, it brought international criticism for Japan's "checkbook diplomacy."³⁷ The negative international attention was not

its own defense by rearming for defensive, rather than offensive, purposes.

27. Kendrick F. Royer, *The Demise of the World's First Pacifist Constitution: Japanese Constitutional Interpretation and the Growth of Executive Power to Make War*, 26 VAND. J. TRANSNAT'L L. 749,782 (1993); see also Edward J.L. Southgate, *From Japan to Afghanistan: The U.S.-Japan Joint Security Relationship, The War on Terror, and the Ignominious End of the Pacifist State?*, 151 U. PA. L. REV. 1599, 1607 (Apr. 2003).

28. Isao Sato, *Comment: Revisionism During the Forty Years of the Constitution of Japan*, 53 LAW & CONTEMP. PROBS. 97, 98 (Winter 1990).

29. Royer, *supra* note 27, at 780-82.

30. Treaty of Mutual Cooperation and Security, Jan. 19, 1960, U.S.-Japan, 11 U.S.T. 1632.

31. *JAPAN: Bonus to be Wisely Spent*, TIME, Jan. 25, 1960, available at <http://www.time.com/time/magazine/article/0,9171,939094-1,00.html>.

32. *Id.*

33. Royer, *supra* note 27, at 784.

34. Sato, *supra* note 28, at 99.

35. *Id.*

36. Edward Neilan, *Japanese Plan to Deploy Troops in Gulf Stirs Instant Discontent*, WASH. TIMES, Sept. 28, 1990, at A9.

37. *Id.* Checkbook diplomacy involves the contribution of money to a war effort but not the contribution of troops; see Bablina Hwang, *Japan's Troop Dispatch to Iraq: The End of Checkbook Diplomacy*, THE HERITAGE FOUNDATION, Feb. 9, 2004,

enough to immediately and automatically force a change in policy. Though Japan enacted its Peacekeeping Operations Law (PKO) in 1992, which allowed for U.N. participation, it was only after months of bitter debate within the Diet.³⁸ Although the PKO relegated the SDF to relatively safe positions far from combat, it still generated tremendous domestic opposition. Prime Minister Kaifu's successor, Kiichi Miyazawa, attempted to enact reforms, which included constitutional revision.³⁹ He was forced to resign after a no confidence vote because his reform proposals led, in part, to the LDP losing its first elections since its inception in 1955.⁴⁰ While it is difficult to gauge the impact that revision issues had on Kaifu and Miyazawa, due to the numerous scandals that surrounded the LDP at the time, there is no question that such political fallout could impact the executive office.⁴¹

Thus far the waves of concrete reform in Japan has been economic in nature. In 2001 Prime Minister Koizumi came to office under a platform of economic change, campaigning that painful reforms were needed to set Japan on the road to recovery.⁴² At the start of his first term, Japan was experiencing one of its most serious recessions since World War II.⁴³ While his focus on trimming public works spending and the privatization of the postal service bolstered his public persona,⁴⁴ he risked his political standing when he enacted the 2001 Anti-Terrorism Special Law⁴⁵ and the 2003 law concerning the Special Measures on Humanitarian and Reconstruction Assistance in Iraq.⁴⁶ In deployment of the SDF, "many Japanese considered [it] to be against the spirit, if not the letter, of the country's pacifist Constitution."⁴⁷ Koizumi's support in backing the U.S.-led campaign in Afghanistan was heavily contested by the Democratic Party opposition, but it

<http://www.heritage.org/Research/Reports/2004/02/Japans-Troop-Dispatch-to-Iraq-The-End-of-Checkbook-Diplomacy> .

38. Hisane Masaki, JAPAN TIMES Online, *Foreign Ministry vs. Defense Agency: Japan Divided over Call to Contribute more to U.N. Peacekeeping* (Dec. 17, 2000), JAPAN TIMES ONLINE, <http://search.japantimes.co.jp/cgi-bin/nn20001217a9.html> (last visited Feb. 10, 2010).

39. GARY D. ALLINSON, JAPAN'S POSTWAR HISTORY 183-87 (2004).

40. *Id.*

41. *Id.*

42. *Koizumi Popularity Soars, as Skeptics Remain*, Apr. 28, 2001, CNN WORLD <http://edition.cnn.com/2001/WORLD/asiapcf/east/04/28/japan.politics/> (last visited Feb. 10, 2010).

43. Alex Frew McMillan, *Koizumi Trimming Japan's Public Works*, CNN ASIA, July 23, 2002, <http://edition.cnn.com/2002/BUSINESS/asia/07/18/japan.works/index.html> (last visited Feb. 10, 2010).

44. Alex Frew McMillan, *Koizumi Turns Disapproval Rating Around*, CNN ASIA, July 23, 2002, <http://edition.cnn.com/2002/BUSINESS/asia/07/23/japan.popularity/index.html> (last visited Mar. 24, 2010).

45. Anti-Terrorism Special Measures Law, Law No. 113 of 2001 (summary in English available at http://www.kantei.go.jp/foreign/policy/2001/anti-terrorism/1029terohougaiyou_e.html (last visited Mar. 15, 2010)).

46. Act on Special Measures concerning Humanitarian Relief and Reconstruction Work and Security Assistance in Iraq, Law No. 137 of 2003.

47. Norimitsu Onishi, *Departing Japanese Leader Shook Up Politics as Usual*, N.Y. TIMES, Sept. 19, 2006, at A10.

gained popular support.⁴⁸ His support for the war in Iraq proved far more problematic.⁴⁹ It was largely criticized for being an unjust action, with some critics voicing concerns that the SDF might be engaged in combat that was a direct violation of Japan's Constitution.⁵⁰ Koizumi gambled by supporting the United States instead of addressing his declining approval ratings.⁵¹

Prime Minister Abe, Koizumi's successor, came to office committed to continuing the economic reforms of his predecessor, while focusing even more on increasing the SDF's international presence. He had put constitutional reform at the top of his political agenda, going so far as to state his desire to draft a new constitution with his own hands.⁵² Abe rode the tide of nationalism to take the position of prime minister, bolstered by Korean provocation and militaristic rhetoric from China, while his tough-talking nationalistic positions on education won him votes.⁵³ The rise and fall of Abe's relative political popularity was mostly shaped by domestic incidents. A series of bungling remarks by members of his Cabinet, including the Hakuo Yanagisawa statement labeling women as "child-bearing machines," contributed to Abe's falling numbers.⁵⁴ His early wide-spread public support, spurred mostly by his high-profile meetings with Wen Jiabao and President George W. Bush, was short lived.⁵⁵ Faced with an increasingly hostile political audience, resulting from his attempt to further strain the credibility of the Constitution in regards to Japan's Afghanistan participation, he was ultimately forced to resign under the guise of "health reasons."⁵⁶ The revolving door of

48. *Japan Split over Anti-terror Bill*, CNN WORLD, Oct. 16, 2001, <http://edition.cnn.com/2001/WORLD/asiapcf/east/10/15/ret.japan.antiterrorbill/index.html> (last visited Feb. 10, 2010).

49. Axel Berkofsky, *Koizumi: U.S. Ties Beat out Public Opinion*, ASIA TIMES ONLINE, Mar. 20, 2003, <http://www.atimes.com/atimes/Japan/EC20Dh01.html> (last visited Feb. 10, 2010).

50. *Japan to Send Troops to Iraq*, CNN WORLD, Dec. 9, 2003, <http://www.cnn.com/2003/WORLD/asiapcf/east/12/09/japan.troops/index.html?iref=allsearch> (last visited Mar. 15, 2010).

51. Berkofsky, *supra* note 49.

52. Norimitsu Onishi, *Japan's Likely Next Premier in Hawkish Stand*, N.Y. TIMES, Sept. 2, 2006, at A6, available at <http://www.nytimes.com/2006/09/02/world/asia/02japan.html?n=Top%2fNews%2fWorld%2fCountries%20and%20Territories%2fJapan>.

53. Anthony Failoa, *Japan Passes Landmark Patriotism Laws*, WASH. POST, Dec. 15, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/15/AR2006121501109.html> (last visited Feb. 10, 2010).

54. Keizo Nabeshima, *Gaffes Dog Abe's Leadership*, JAPAN TIMES ONLINE, Feb. 5, 2007, <http://search.japantimes.co.jp/cgi-bin/eo20070205kn.html> (last visited Mar. 15, 2010) (Health, Labor and Welfare Minister Hakuo Yanagisawa made this statement after he was placed in charge of a national policy to reverse Japan's falling birthrate and just before Abe announced the creation of a government council to enact a plan to raise the national birthrate).

55. Mariko Sanchanta & David Pilling, *Abe Sees First Rise in Public Support*, THE FINANCIAL TIMES, May 1, 2007, available at <http://www.ft.com/cms/s/4e3a8b00-f780-11db-86b0-000b5df10621.html>.

56. Hiroko Nakata, *Abe Announces He Will Resign*, JAPAN TIMES, Sept. 13, 2007, available at <http://search.japantimes.co.jp/cgi-bin/nn20070913a1.html>.

Japanese leadership continued, producing Yasuo Fukuda and Taro Aso as Prime Ministers of Japan, both of whom were unable to push a revisionist agenda.⁵⁷

Past prime ministers of the LDP have had difficulties forming consistent foreign policy initiatives and have also been challenged in addressing the question of constitutional reform. These facts are particularly ironic given that the revision movement was a formidable voice during the formation of the LDP in 1955, and has remained a vital part of their platform.⁵⁸ After making decisions seeking to change Japan's Constitution, Prime Ministers have historically experienced political fallout. While Hatoyama and the DPJ have yet to articulate a foreign policy or set an agenda concerning its security policies, they have long advocated a desire to be more independent of the Washington, instead having a relationship based on an "equal" partnership.⁵⁹ Issues concerning both foreign policy and constitutional reform do not appear to be areas of focus for the current Hatoyama Administration. By way of example, in the thirty-one pages of the August 18, 2009 DPJ manifesto, which details policies of the Party's platform for governance, only three pages were allocated to foreign policy.⁶⁰ Only a single paragraph on the last page discussed constitutional reform.⁶¹ Thus, prospects for significant constitutional change are doubtful.

III. THE RULE OF LAW V. FLEXIBLE INTERPRETATION

"Numerous interpretations have, in effect, acted as revisions. If this goes on, I'm afraid the stability and credibility of the Constitution could be undermined."

—Hajime Funada⁶²

"Supremacy of laws," or "rule of law," is an abstract and often vaguely defined legal maxim. Scholars such as Joseph Raz and Judith Shklar have attempted to create useful frameworks.⁶³ Collective efforts by the international legal community have also attempted to crystallize a working definition for "rule

57. Norimitsu Onishi, *Japan Gets New Prime Minister, Veteran of the Governing Party*, N.Y. TIMES, Sept. 24, 2008, available at <http://www.nytimes.com/2008/09/25/world/asia/25japan.html>.

58. For a review of LDP history and the establishment of what was termed "The 1955 System," see MASUMI JUNNOSUKE, *CONTEMPORARY POLITICS IN JAPAN* (Lonny E. Carlile trans.) 1-12 (1995); see also *The Liberal Democratic Party of Japan*, <http://www.jimin.jp/jimin/english/index.html> (last visited Apr. 17, 2010).

59. Fackler, *New Leader*, *supra* note 22.

60. THE DEMOCRATIC PARTY OF JAPAN, *THE DEMOCRATIC PARTY OF JAPAN'S PLATFORM FOR GOVERNMENT: PUTTING PEOPLE'S LIVES FIRST* (2009), available at <http://www.dpj.or.jp/english/manifesto/manifesto2009.pdf> [hereinafter DEMOCRATIC PARTY OF JAPAN].

61. *Id.*

62. Kiyomi Arai, *Yomiuri International Forum: Experts say time for Top Law Revision*, THE DAILY YOMIURI, at 3, Apr. 29, 2007, available at Westlaw News Service 2007 WLNR 8064068.

63. See JOSEPH RAZ, *The Rule of Law and its Virtue*, in *THE AUTHORITY OF LAW: ESSAYS ON LAW AND MORTALITY* 210, 212-13 (1979); Judith Shklar, *Political Theory and the Rule of Law*, in *THE RULE OF LAW: IDEAL OR IDEOLOGY* 1, 1 (1987).

of law.” The 1955 Act of Athens and the 1959 Declaration of Delhi brought together jurists from several jurisdictions in an effort to create a detailed universal understanding of what rule of law means.⁶⁴ The diverse number of interpretations is a reflection of the various levels of legal and political theoretical debates which routinely center rule of law issues. Black’s Law Dictionary defines rule of law, in part, as “the supremacy of regular as opposed to arbitrary power.”⁶⁵ The United Nations has further stated:

[T]he rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.⁶⁶

Thus, the central idea of a rule of law is one of consistency of practice, irrespective of subjective external influence. Domestically, it is seen as a legal structure backed by the state, with recourse available for the most egregious breaches. That predictability of practice extends to the international arena and enables nation states to evaluate and form policy. The consistency accompanying the rule of law creates credibility and one state should only need to refer to the ruling legal doctrine of another state to determine the outcome of a particular situation.

As such, the lack of predictability in the application of Article 9 is seen in the disparity between the aspirational language and the reality of Japan’s military forces. The divergence between language and reality originated at the onset of the Korean War, and further grew during the Cold War, as the SDF continued to evolve. As it grew in both numbers and scope, it became clear that Article 9, in its present form, is irreconcilable with reality.

Article 9 states, in pertinent part, “land, sea, and air forces as well as other war potential, will never be maintained.”⁶⁷ Japan currently *maintains* land forces known as the Ground Self-Defense Force made up of approximately 160,000 troops.⁶⁸ It utilizes a large number of technically advanced tanks, personnel carriers, mechanized artillery hardware, missiles, and avionics.⁶⁹ The Japan

64. RAZ, *supra* note 63, at 212-13.

65. BLACK’S LAW DICTIONARY 1448 (9th ed. 2009).

66. The Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 6, delivered to the U.N. Security Council, U.N. Docs. S/2004/616 (Aug. 24, 2004), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement>.

67. KENPŌ, art. 9, para. 2.

68. GlobalSecurity.org, Japanese Ground Self Defen[s]e Force, <http://www.globalsecurity.org/military/world/japan/jgsdf.htm> (last visited Feb. 10, 2010).

69. GlobalSecurity.org, Ground Self Defense Forces Equipment,

Maritime Self-Defense Force has approximately 42,600 members and controls advanced submarines, warships, combat aircrafts and armed helicopters.⁷⁰ The Air Self-Defense Force has approximately 45,000 personnel in twelve fighter squadrons, utilizing approximately 400 combat aircraft in addition to roughly 300 interceptors.⁷¹ In seeking to establish a stronger war potential, Japan has lobbied the United States to bolster Tokyo's F-X fighter program by the inclusion of the F-35, the next generation of U.S. fighters, as its mainstay fighter jet.⁷²

In support of Japan's forces is a sophisticated fiscal program that allows for the procurement and development of advanced equipment that is arguably second only to the United States in terms of its sophistication and destructive capability. Most recently in December 2006, the Japanese Cabinet approved \$41.75 billion dollar military spending package for FY 2007.⁷³ The Stockholm International Peace Research Institute (SIPRI), lists Japan's 2008 expenditures at \$42.751 billion dollars (4,785B yen), with no appreciable difference in the total amount of money spent by other leading countries such as Russia, France, the United Kingdom and Germany, all countries without "no war" clauses in their laws and constitutions.⁷⁴ Professor Kenneth L. Port, referring to Japan's military expenditures and possession of technically advanced weapon systems, stated, "how could anyone ever come to believe that Japan is a pacifist state or that the Japanese Constitution mandates this? This might be one of the strangest geo-political disconnects in the modern era."⁷⁵ In terms of manufacturing capabilities, Japan has quietly become a relevant force. In 2001, the top hundred arms-producing companies in the world were Japanese companies.⁷⁶ Within Japan, there are several companies that have taken the lead in military production. In 2006, Mitsubishi Heavy Industries derived roughly twenty-three percent of its sales through its military shipbuilding and oceanic development divisions.⁷⁷ In regards to market share, Mitsubishi Heavy Industries controls twenty-two percent of Japan's market

<http://www.globalsecurity.org/military/world/japan/ground.htm> (last visited Feb. 10, 2010).

70. GlobalSecurity.org, Japanese Maritime Self Defense Force, <http://www.globalsecurity.org/military/world/japan/jmsdf.htm> (last visited Feb. 10, 2010).

71. GlobalSecurity.org, Japanese Air Self Defense Force, <http://www.globalsecurity.org/military/world/japan/jasdf.htm> (last visited Feb. 13, 2010).

72. Kyodo News, *Japan Gearing up to Acquire F-35 Fighters*, JAPAN TIMES, Nov. 23, 2009, available at <http://search.japantimes.co.jp/mail/nn20091123a1.html> (last visited Mar. 24, 2010).

73. GlobalSecurity.org, Defense Budget, <http://www.globalsecurity.org/military/world/japan/budget.htm> (last visited Feb. 13, 2010).

74. Stockholm International Peace Research Institute, The SIPRI Military Expenditure Database, <http://milexdata.sipri.org/result.php4> (last visited Feb. 13, 2009) (use the drop-down menu to select the appropriate nation); PORT & MCALINN, *supra* note 14, at 209.

75. Kenneth L. Port, *Article 9 of the Japanese Constitution and the Rule of Law*, 13 CARDOZO J. INT'L & COMP. L. 127, 130 (2005).

76. STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE, SIPRI YEARBOOK 2001: ARMAMENTS, DISARMAMENT AND INTERNATIONAL SECURITY 309 (2001).

77. Mitsubishi Heavy Industries Ltd., Annual Report 2006, http://www.mhi.co.jp/2n/finance/library/contents/pdf/annual_2006.pdf (last visited Mar. 24, 2010).

share for weapon business, Kawasaki Heavy industries controls twelve percent, and Mitsubishi Electric, seven percent.⁷⁸

The lack of clearly defined key terms results in the paradox of Article 9 and the ambiguity which permits continued reinterpretation.⁷⁹ The irony focuses on the activities of the SDF as Japan seeks to become more involved in global affairs.⁸⁰ During the LDP's reign Tokyo continued to formulate increasingly sophisticated policies regarding its military structure and the role of the SDF, creating a schism which has become a problem both domestically and internationally.

The destruction of the ideological motivations of Article 9 was precipitated (in addition to specific events such as the Korean War) by the United States extending its protective shield over Japan and the initiation of various security agreements, starting with the Treaty of Mutual Cooperation in 1960.⁸¹ The erosion of Article 9 was continued by the 1997 revision of the Guidelines for Japan-U.S. Defense Cooperation (hereinafter "Guidelines for Cooperation"), which further opened the door to Japanese rearmament because it gave Japan "primary responsibility" in key areas.⁸² Ambiguity within the Guidelines is evident as they state that Japan must operate within its constitutional limits, while failing to define those limits. Use of vaguely defined terms such as "areas surrounding Japan" also allows for creative interpretation.⁸³ The meaning of Article 9 became further mired as the gradual buildup of the SDF was encouraged by the United States, which made frequent calls for Japan to increase its military spending to three percent of GNP as opposed to the roughly one percent that Japan traditionally spends.⁸⁴

Throughout the decades following World War II, the buildup quietly coincided with Japan's quest for increased international involvement through participation in peacekeeping missions via the enactment of the U.N. Peace Keeping Operation Cooperation Law (PKO Law).⁸⁵ The Gulf War and its negative

78. Neil Weinberg, & Kiyoe Minami, *The Front Line*, FORBES, Sept. 19, 2005, at 154, available at <http://www.forbes.com/forbes/2005/0919/154.html>.

79. See Auer, *supra* note 1, at 176-81 (discussing the flexible interpretation of Article 9).

80. *Abe Vows to Boost NATO Ties, Give SDF Global Role for Peace*, JAPAN TIMES, Jan. 13, 2007, available at <http://search.japantimes.co.jp/cgi-bin/nn20070113b1.html>; *Mr. Abe's Bold Security Agenda*, JAPAN TIMES, Jan. 16, 2007, available at <http://search.japantimes.co.jp/cgi-bin/ed20070116a1.html>.

81. Treaty of Mutual Cooperation and Security, U.S.-Japan, Jan. 19, 1960, 11 U.S.T. 1632. The treaty is a one way obligation in that it calls upon the United States to defend Japan, but Japan has no obligation to assist the United States in an attack.

82. The Guidelines for Japan-U.S. Defense Cooperation, <http://japan.usembassy.gov/pdfs/wwwf-mdao-new-def-guides1997.pdf> (last visited Feb. 13, 2010).

83. *Id.*

84. PORT & MCALINN, *supra* note 14, at 212.

85. Following the first Persian Gulf War, Japan was heavily criticized for its non-participation and accused of practicing "checkbook diplomacy" due to its large financial contribution but failure to contribute actual manpower, particularly in light of their dependency on oil from the region. However, some support the view that Japan properly fulfilled its U.N. obligations. See Robert B. Funk, Note, *Japan's Constitution and U.N. Obligations in the Persian*

reflection upon Japan caused the Diet to pass the PKO Law which allowed Japan to dispatch SDF personnel abroad to participate in U.N. peacekeeping activities as long as the activities met five criteria:

1. A cease fire must be in effect.
2. The parties in Conflict must approve Japan's peace-keeping mission.
3. The peace keeping operation must be neutral.
4. Japan's units will withdraw if any of the above conditions are not met.
5. Japanese use of weapons must be limited to the minimum necessary to prevent injury or death. (An amendment after 9/11 allowed the SDF to use arms to not only protect themselves, but to also protect those under "their care" such as asylum seekers, refugees or wounded.)⁸⁶

Since the enactment of the PKO Law, Japan has been active in a number of U.N. operations in a variety of countries, including Cambodia, Zaire (the Congo), Mozambique, Golan Heights, Afghanistan, and Iraq.⁸⁷ The Iraq deployment was particularly significant as it was the first time Japanese troops had been in a combat zone since World War II. In Japan's continued support of U.S. policy in Iraq, Tokyo also extended the SDF's airlift deployment assistance.⁸⁸ Further, in support of Japan's desire to take more of a role in international humanitarian efforts, the SDF was sent to Timor-Leste (formally East Timor) in 2002.⁸⁹ The SDF continued to be active in Timor-Leste, where in 2007 it participated in a cooperative assignment for election monitoring. In August 2009 two SDF officers were dispatched to Mali as instructors for training programs of peacekeeping officers.⁹⁰

Each peacekeeping mission increases the debate adds to the controversy regarding whether the SDF is constitutional. The argument is that the deployment of Japanese forces, even for peacekeeping missions, is contrary to the meaning of Article 9. Although the PKO Law may have dealt with that issue, the constitutionality of the PKO Law itself has not been submitted to judicial scrutiny. The actual constitutionality of the SDF may be supported, however, under strict adherence to international law, which states that a nation has the sovereign right of

Gulf War: A Case for Non-Military Participation in U.N. Enforcement Actions, 25 CORNELL INT'L L.J. 363 (1992).

86. Secretariat of the International Peace Cooperation Headquarters, Cabinet Office, Overview, http://www.pko.go.jp/PKO_E/cooperation/cooperation.html (last visited Mar. 24, 2010) [hereinafter, "Overview"]; Kokusai Heiwa Kyoryoku Ho [International Peace Cooperation Law], Law No. 79 of June 19, 1992, art. 1, art. 2, para. 1, art. 6, *translated at* http://www.pko.go.jp/PKO_J/data/law/pdf/law_e.pdf.

87. See Overview, *supra* note 86.

88. Hisane Masaki, *Abe Trumpets Iraq Support Ahead of U.S. Visit*, ASIA TIMES, Apr. 12, 2007, *available at* <http://www.atimes.com/atimes/Japan/ID12Dh01.html>.

89. Secretariat of the International Peace Cooperation Headquarters, Cabinet Office, International Peace Cooperation Assignment in East Timor, http://www.pko.go.jp/PKO_E/result/e_timor/e_timor07.html (last visited Mar. 24, 2010).

90. Ministry of Foreign Affairs of Japan, Dispatch of Self-Defense Force Instructors to the Ecole de Maintien de la Paix in the Republic of Mali, Aug. 4, 2009, http://www.mofa.go.jp/announce/announce/2009/8/1194508_1140.html.

self and collective defense.⁹¹ Adherence to this may be required under Japan's Supremacy Clause, which subjects the Japanese Constitution to Japan's international obligations.⁹²

Since Japan is a member of the United Nations, an argument can be made that the limitations imposed on the SDF by Article 9 are circumvented by Articles 43 and 51 of the U.N. Charter. In analyzing the impact of international law, Kenneth Port, uses Japan as an example of how international law can influence domestic policy even without the ability to be coercive. He has argued that Japan has traditionally looked abroad for tools for social change and consistently adopted and internalized international law norms.⁹³ Applying Port's reasoning, it is not surprising that Japan has relied heavily on its U.N. obligations to justify its SDF activities and subsequent need for constitutional revision.

The flexible interpretation which assaults the rule of law is evinced through the wording of Article 9 and the overt actions of the SDF, contrary to the original intent of the constitution. Takehiko Yamamoto of Waseda University elaborated, "it seems the Japanese government believes it need only reinterpret - not change - the Constitution to justify its policy shifts."⁹⁴ The government justifies the SDF's actions under a number of doctrines, all of which conveniently position nearly every SDF action, short of actual engagement, as falling under "defensive measures."⁹⁵ Through these allegedly defensive measures, the SDF has grown not only in size but also in capability and sophistication. Joint operations, collective security agreements with the United States, expanded peacekeeping operations, and taking a supporting role in the War on Terror have stretched the credibility of Article 9. Piotrowski, in arguing that SDF activity has recently increased at a rapid rate, stated that Article 9 ought to be amended to explicitly allow for the activities that Japan already participates in:

For Japan to further increase its involvement in peacekeeping operations and humanitarian missions, to gain a permanent seat on the United Nations Security Council, and to gain first-strike capabilities, all the while either refusing to amend Article 9 or attempting to justify such

91. U.N. Charter art. 51.

92. KENPO, art. 98.

93. Kenneth L. Port, *The Japanese International Law "Revolution": International Human Rights Law and its Impact in Japan*, 28 STAN. J. INT'L L. 139, 140 (1991) (using Japan as an example to "argue[] international law can profoundly influence the development of the domestic laws of nations regardless of the lack of coercive enforcement powers.").

94. Associated Press, *Japan Becomes a More Powerful U.S. Military Ally*, USA TODAY, May 3, 2005, available at http://www.usatoday.com/news/world/2005-05-03-japan-us_x.htm.

95. See Edward J.L. Southgate, Comment, *From Japan to Afghanistan: The U.S.-Japan Joint Security Relationship, the War on Terror, and the Ignominious End of the Pacifist State?*, 151 U. PA. L. REV. 1599, 1601-02 (2003) ("[R]evisionist legislators . . . have used an inherent ambiguity in Article 9 to justify the creation of the SDF. The justification advanced by these legislators for the creation and maintenance of the SDF depends upon a flexible interpretation of "war" as an aggressive act. By establishing a military on the basis of a right to "self-defense," the Japanese Diet has sidestepped the constitution . . .") (internal footnotes omitted).

changes as wholly constitutional under Article 9 threatens to undermine the significance of Article 9.⁹⁶

Japan's reliance on the flexibility of Article 9 underscores the contention that change is not on the horizon.

IV. WHAT DRIVES AND INHIBITS REFORM

In April 2007, lawmakers, academics, and constitutional experts gathered at the Yomiuri International Forum in Tokyo to discuss Japan and its place in world politics. This forum was planned to coincide with the 60th anniversary of the Constitution, the overwhelming opinion being that the Japanese Constitution needed to be revised.⁹⁷ Since its inception, the U.S.-dictated constitution was contested, and the increasing scope and depth of the SDF's activities have created a chasm that can no longer be rationalized by the Japanese government, the Japanese people, or the international community. This part of the article examines what drives and inhibits the use of flexible interpretation to circumvent the rule of law.

Setsu Kobayashi, a constitutional law professor at Tokyo's Keio University supports the peace and democracy that the constitution has advanced. He emphasizes that the revision should reflect the SDF as a viable military entity, and "the constitution should now make protecting the environment and people's privacy mandatory, and guarantee public access to government information."⁹⁸ While sentiment for the revision runs high, Tetsuya Takahashi of the University of Tokyo asserts that the current constitution embodies freedoms of expression and religion and revisions ought to be approached with extreme caution⁹⁹; Abe's earlier educational revisions, like those meant to instill patriotism, when combined with Article 9 revisions, are an attempt to return Japan to ultra-nationalism.¹⁰⁰

Under Koizumi a series of reforms were initiated that was previously unheard of in Japanese leadership.¹⁰¹ These reforms instituted domestic policies involving market driven reforms in the banking, postal, and legal system and became the primary means through which to revive the economy. It is Japan's military policies which, without reconciling the Article 9 debate, stretched constitutional credibility. The question of why the Constitution is not changed to be more in line with SDF activities remains unanswered.

96. Karen Piotrowski, *Keeping Pace with the Progress of the World: Article 9 of the Japanese Constitution*, 83 WASH. U.L.Q. 1653, 1673 (2005).

97. Arai, *supra* note 62.

98. Setsuko Kamiya, *Beware Loss of Peace Clause: Philosopher—Politicians Seen Sowing Seeds of Militarism under Naïve Public's Nose*, JAPAN TIMES, May 5, 2007, available at <http://search.japantimes.co.jp/mail/nn20070505f1.html>.

99. *Id.*

100. *Id.*

101. Malcolm Cook, *Koizumi's Legacy: Japan's New Politics*, Lowry Institute for International Policy, Analysis, (Aug. 22, 2006), available at <http://www.lowryinstitute.org/Publication.asp?pid=441> (click on "download link," then enter the current year); Onishi, *supra* note 47.

A. *What Drives Reform*

1. Nationalism

Nationalism is seen throughout contemporary Japan and is especially prominent in elite political circles. It is embraced by those in policy-making positions who shape and define future generations and is implicated as these policy makers set agendas which influence and mold Japanese society. Nationalism in Japan is not a modern phenomenon, however, and has played an important role throughout its history.

The Meiji Restoration (1868-1910) saw the aggressive modernization of Japan based on western ideals. The Meiji rulers focused on instilling society with an unwavering devotion to the emperor and state, developing Japanese law to address the inequalities of treaties with the United States, and on rapidly growing the military,¹⁰² which demonstrates the development of ultra-nationalism and the adoption of an imperialistic posture. This was manifested in 1895 through war and victory over China and the taking of Taiwan, and again, in 1905, when Japan took Korea and Manchuria from the Russians in the Russo-Japanese War. These wars required focused, patriotic commitment and demonstrated that the Japanese people had internalized many of the government's ideas pertaining to the elevation of Japan's supremacy and centrality on the global stage.

Japan's expansionist policies and search for resources led to the establishment of strongholds throughout China and other parts of Asia. These efforts were supported not only by the idea of Japan's divine right of conquest, but also centering Japan as the benevolent "savior" of Asia, protecting colonized countries from western influence and domination. Prior to World War II, Japan settled several million Japanese civilian colonists in China and subjugated the Chinese people, taking control of most of northeast including Beijing, Tianjin, Shanghai, and Nanjing. In response, the United States cut off sales of scrap metal to Japan to force an end to the hostilities.¹⁰³ The United States later ensured that the Allied Forces ceased crude oil sales to Japan.¹⁰⁴ Tokyo looked South East Asia for its raw materials and managed to temporarily neutralize the U.S. Pacific Fleet at Pearl Harbor, providing the open door to expansion. In the wake of the sneak attack at Pearl Harbor, Japan had taken Burma, Singapore, Thailand, Guam, Malaya and the Dutch East Indies (Indonesia). In one sweeping move, the greatness and superiority of Japan appeared to have been confirmed. National pride swelled due to government propaganda promoting militarism and Japan's destiny to command and lead the world. An entire nation was consumed by government initiatives supporting ultra-nationalism and military imperialism.

102. See generally WILLIAM G. BEASLEY, *THE RISE OF MODERN JAPAN: POLITICAL, ECONOMIC, AND SOCIAL CHANGE SINCE 1850* (St. Martin's Press, 2d ed., 1995) (1990).

103. GARY CLYDE HUFBAUER & JEFFREY J. SCHOTT, *ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND CURRENT POLICY* 166 (1985).

104. BEASLEY, *supra* note 102, at 202.

Despite its temporary success, Japan was defeated in World War II, temporarily ending that ultra-nationalist mindset as the Japanese people were forced to consider whether the widespread devastation that had been brought to their country was worth the sacrifice of human life. “After World War II, Japan, under U.S. protection and yet contrary to American designs that Japan re-arm to stand against Communist expansion in Asia, renounced the traditional offensive and power-projection elements of national defense.”¹⁰⁵ Instead, Japan focused on internal growth and restoring stability. Under the Yoshida Doctrine, Japan focused almost exclusively on rebuilding their economy and re-establishing trade.¹⁰⁶ A devastating wartime defeat transformed a nation’s passion and commitment from building a territorial empire, to that of establishing economic superiority. “With defeat and occupation by Allied forces, Japan experienced a profound and dizzyingly rapid social, political, and economic decompression. The force of this decompression was channeled into economic reconstruction and found expression as a renewed hunger for prosperity and economic security.”¹⁰⁷

Japan emerged as the first true merchant state. “More than any other factor, [Japan was characterized as a merchant state based on its] choice of economics and economic measures to define not only Japanese foreign relations, but also Japan’s national identity and, to a surprising degree, the identity of the Japanese people themselves.”¹⁰⁸ The importance of economics and trade surpasses even those of political principles, as demonstrated by Japan’s willingness to set aside ideological differences with others in pursuit of mutual economic gain.¹⁰⁹

Accelerated productivity policies attributed to economies of scale, imported technology, and shifts to high productivity industries became the focus of Japanese economic policy.¹¹⁰ These factors led to a sustained period of impressive growth led primarily by export orientated manufacturers. “The primary characteristic of Japan’s postwar economy is the 15 year period of high growth, beginning in the mid-1950s, which enabled it to catch up with the developed economies of Europe and the United States.”¹¹¹ By the 1970s, Japan had become a legitimate economic power, continuing to grow and expand through the ensuing decades.¹¹² Even with a

105. Christian Hougen, *The Problems and Promises of Japan’s Economic-Growth-Led Foreign Policy in Perspective*, 21 FALL FLETCHER F. WORLD AFF. 133 (1997).

106. The Yoshida Doctrine emphasized dependence on the United States., while channeling every available resource into economic growth.

107. Shintaro Ishihara, *Nation Without Morality*, in THE SILENT POWER: JAPAN’S IDENTITY AND WORLD ROLE 79 (1976).

108. Hougen, *supra* note 105, at 134.

109. See Hidetaka Yoshimatsu, *Social Demand, State Capability and Globalization: Japan-China Trade Friction over Safeguards*, 15 PAC. REV. 381 (2002).

110. RICHARD KATZ, JAPAN: THE SYSTEM THAT SOURED—THE RISE AND FALL OF THE JAPANESE ECONOMIC MIRACLE 134-64 (1998).

111. AsianInfo.org, Japan’s Economy, <http://www.asianinfo.org/asianinfo/japan/economy.htm> (last visited Feb. 13, 2010).

112. In 2008, Japan had a GDP of U.S. \$4.9 trillion. The World Bank Group, Japan, http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?&CF=&REPORT_ID=9147&REQUEST_TYPE=VIEWADVANCED (last visited Apr. 17, 2010) (use drop-down menu to select Japan).

current -0.7 percent growth rate, Japan is still solidly the second largest market economy in the world, behind the United States.¹¹³ As stated by John Miller, “[The Japanese] consequently began to see themselves both as leaders in the cause of peace and disarmament, and as mentors of Asia’s economic development.”¹¹⁴

The reawakening of nationalism has not been limited to policy-making. Visits to the Yasukuni Shrine by party officials, which glorifies Japan’s militant past, are seen as nationalistic and taken as evidence by other Asian countries that Japan has not atoned for its wartime atrocities. Those sentiments by neighboring countries increased when former Prime Minister Abe sought to distance modern Japan from World War II guilt.¹¹⁵ The Yasukuni Shrine itself has “played a role in promoting wartime nationalism, with Japanese soldiers commonly pledging to fight to the death with the promise to “meet at Yasukuni”¹¹⁶ Additionally, Japan enacted legislation encouraging patriotism in the classroom, which critics argue is planting the seeds of misguided nationalism in Japan’s youth.¹¹⁷ The growing size and sophistication of the SDF is routinely cited by Japan’s neighbors as a manifestation of a return of ultra-nationalism in Japan.¹¹⁸

Within Japan’s political elite there exists a right-wing nationalist presence that has garnered considerable attention. Shintaro Ishihara, co-author of *The Japan That Can Say No*,¹¹⁹ is an example of an extreme nationalist whose continued radical comments have gathered support and attention. As Ishihara exalts Japan’s military past, he vehemently denies Japanese war atrocities and cites to Japan’s liberation of Asia from the West as the benevolent motive behind imperialism.¹²⁰ His known animosity towards foreigners, particularly Chinese and Koreans, has

113. AsianInfo.org, *supra* note 111.

114. John Miller, *Will the Real Japan Please Stand up*, WORLD POL’Y J., 36, 37 (Winter 2005/06), available at <http://www.worldpolicy.org/journal/articles/wpj06-1/Miller.pdf>.

115. Mari Yamaguchi, *Japan Party Won’t Stop War Shrine Visits*, WASH. POST, Jan. 17, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/17/AR2007011700427.html>.

116. *Id.*

117. See Anthony Faiola, *Japan Passes Landmark Patriotism Laws*, WASH. POST, Dec. 15, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/15/AR2006121501109.html>.

118. Erich Marquardt, *The Price of Japanese Nationalism*, ASIA TIMES, Apr. 14, 2005, available at <http://www.atimes.com/atimes/Japan/GD14Dh05.html>. Japan’s growing nationalism derives from its desire to develop a more independent foreign policy and to increase its military power; much of the country’s political elite want to see a return of a powerful Japan. Fomenting nationalism among the Japanese population is a necessary development to increase support for a stronger military. *Id.*

119. SHINTARO ISHIARA, *THE JAPAN THAT CAN SAY NO: WHY JAPAN WILL BE FIRST AMONG EQUALS* (Frank Baldwin trans., Simon & Schuster 1991) (1991).

120. Miller, *supra* note 114, at 40; see, e.g., MICHAEL SHERMER AND ALEX GROBMAN, *DENYING HISTORY: WHO SAYS THE HOLOCAUST NEVER HAPPENED AND WHY DO THEY SAY IT?* 233 (Univ. of California Press 2000) (discussing Ishihara Shintaro’s denial of wartime atrocities as compared to Holocaust denial.).

fueled tensions; in spite of his well known racist and discriminating rhetoric the most alarming fact is that the people of Tokyo elected Ishihara as governor.¹²¹

Francis Fukuyama, a professor at Johns Hopkins University asserts that Sophia University Professor Watanabe Soichi, Shintaro's collaborator on *The Japan That Can Say No*.¹²² is grossly distorting history. "[I]n the course of a couple of encounters, I heard him explain in front of large public audiences how the people of Manchuria had tears in their eyes when the occupying Kwantung Army left China, so grateful were they to Japan."¹²³ Watanabe's account is "the equivalent of a holocaust denier, but unlike his German counterpart, he easily draws large and sympathetic audiences. I am regularly sent books by Japanese writers that 'explain' how the Nanjing massacre was a big fraud."¹²⁴

Blatant denials of history continue to spark allegations of Japan's increasing ultra-nationalism. Prime Minister Abe vehemently denied Japanese responsibility for the sexual enslavement of thousands of Korean and other Asian women by the Japanese military during World War II.¹²⁵ Ultimately, Abe reluctantly admitted to such atrocities, but only in the face of overwhelming evidence.¹²⁶ Nobukatsu Fujioka who authors textbooks that have been approved by the Japanese government¹²⁷ has stated, "[p]rostitution in itself is a tragedy, but there is no evidence to indicate that the women were forced into it by the Japanese military."¹²⁸ The views of Nobukatsu and others in Japanese academia are particularly problematic, because they are literally rewriting history.¹²⁹ The ultra-nationalism that has reawakened in Japan drives constitutional reform. The resurgence of nationalism is a result of economic success, a desire to remove the constraints of Article 9 and expand the military while simultaneously attempting to distance itself from the activities of World War II.

121. See Tokyo Metropolitan Government: Profile of the Governor, <http://www.metro.tokyo.jp/ENGLISH/GOVERNOR/PROFILE/index.htm> (last visited Feb. 11, 2010).

122. ISHIARA, *supra* note 119.

123. Francis Fukuyama, *Tokyo Nationalism Puts U.S. in Bind*, THE AUSTRALIAN, Apr. 2, 2007, available at <http://www.theaustralian.news.com.au/story/0,20867,21485907-2703,00.html>.

124. *Id.*

125. Stuart Biggs, *Abe Apologizes for Japan's Sex Slavery During Wartime (Update 1)*, BLOOMBERG NEWS, Mar. 27, 2007, <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aGC9QzF.W9kw>.

126. *Id.* ("A two-year study in 1993 concluded [that] Japan's military was directly and indirectly involved" in the enslavement of "as many as 200,000 women").

127. Kathleen Woods Masalski, *Examining the Japanese History Textbook Controversies*, JAPAN DIGEST: NATIONAL CLEARINGHOUSE FOR UNITED STATES-JAPAN STUDIES, Nov. 1, 2001, available at <http://www.colorado.edu/AmStudies/lewis/west/japanlies.pdf>.

128. Erich Marquardt, *The Price of Japanese Nationalism*, ASIA TIMES ONLINE, Apr. 14, 2005, <http://www.atimes.com/atimes/Japan/GD14Dh05.html> (last visited Apr. 17, 2010).

129. *See id.*

2. U.S. Pressure and Security Alliances

Pressure from the United States for Japan to take a more active part in regional security further drives constitutional reform. The “alliance transformation”¹³⁰ currently underway seeks to dramatically increase Japan’s security contributions while maintaining America’s protective guarantee.¹³¹ Seeking to meet those security obligations, Japan has reinterpreted Article 9 to the extent that it defies constitutional reason, fueling revision to recognize the reality of today’s political and military climate.¹³² The United States’ official position is that supports reforms which remove restrictions to participating in collective security arrangements¹³³; “[i]n general, Japan’s U.S.-drafted constitution remains a major obstacle to closer U.S.-Japan defense cooperation because of a prevailing constitutional interpretation of Article 9 that forbids engaging in “collective self-defense”; that is, combat cooperation with the United States against a third country.”¹³⁴

Both the Korean and Vietnam Wars had very positive economic impacts on Japan, which continued to flourish, under the protection of both Article 9 and the United States. The Nixon Doctrine called for Japan to contribute more to its own defense as its economic situation improved, indirectly creating another reason for reform.¹³⁵ Japan’s military spending has been a constant point of contention for the United States. The United States has repeatedly called on Japan to increase its spending to three percent of the Gross National Product, as opposed to the one percent to which Tokyo traditionally limits itself.¹³⁶ However, Auer has argued that because of the size of the Japanese economy, increasing military spending up to three percent would have resulted in a military force financed far beyond what the Japanese people or Japan’s neighbors find acceptable. No amount of political “spin” or flexible interpretation of the Constitution could justify the maintenance of such a force.¹³⁷

The strengthening of U.S.-Japanese relations in the postwar era was Japan’s primary priority virtually guaranties Japan’s prosperity. In his quest to bolster U.S.-Japanese relations and to secure assurances of U.S. protection, Koizumi extended Japan’s participation in U.S. defense plans while enacting laws which

130. James Schoff, *Transformation of the U.S.-Japan Alliance*, 31 FLETCHER F. WORLD AFF. 85 (2007).

131. *Id.*

132. *See id.*

133. Japan-U.S. Relations, *supra* note 11, at 2.

134. *Id.* at 10.

135. Robert A. Fisher, *The Erosion of Japanese Pacifism: the Constitutionality of the U.S.-Japan Defense Guidelines*, 32 CORNELL INT’L L.J. 393, 416 (Discussing Nixon’s agreement to continue military operations with Japan.).

136. DUNCAN MCCARGO, CONTEMPORARY STATES AND SOCIETIES: CONTEMPORARY JAPAN 184 (2004).

137. Auer, *supra* note 1, at 186.

permit the deployment of the SDF to Iraq and Afghanistan.¹³⁸ Such security alliances put continued pressure on reforms as both Japan and the United States seek deepened military cooperation. The 1997 Guidelines for Cooperation¹³⁹ continued to redefine the security relationship as the Guidelines outline the responsibilities of both countries. Major areas of the Guidelines are sufficiently vague, such as wording which states that Japan will provide “rear area support” to the United States. This vagueness paves the way for SDF assistance in U.S. war zones far removed from Japanese shores, violating Article 9.¹⁴⁰ It has been argued that the Guidelines opened the door for the SDF to participate in global conflicts, such that Japan’s participation in the Guidelines is unconstitutional when weighed against the original intent of Article 9. The only solution might be revision.¹⁴¹ “At the very least . . . this amendment would explicitly legalize the existence of the SDF . . . the language would create the legal space for the Guidelines [for Cooperation] to be constitutional . . .”¹⁴² Further, while amendments “might signal the death of Japanese pacifism,” any other alternative would serve “to undermine the balance achieved by the Guidelines [for Cooperation] and damage the U.S.-Japanese security relationship.”¹⁴³

3. Regional Fears

Against a backdrop of a changing geo-political climate in Asia, and the increase in potential threats faced by Japan, Professor Hiroshi Nakanishi of Kyoto University recently observed that “the Constitution suited the international situation until the late 20th century, but after the end of the Cold War, things changed.”¹⁴⁴ While arms races and isolation strategies are not as prolific today as during the original Cold War, China’s dramatic military modernization, and repeated statements expressing a willingness to use force to settle disputes, have threatened regional stability and created new tension in the region.¹⁴⁵ David Asher, of the Woodrow Wilson International Center for Scholars and former advisor to

138. *Japan Troops Begin Iraq Mission*, CNN, Jan. 30, 2004, <http://www.cnn.com/2004/WORLD/asiapcf/01/30/japan.iraq.parliament.ap/index.html>; (last visited Apr. 17, 2010); Axel Berkofsky, *Koizumi: U.S. Ties Beat Out Public Opinion*, ASIA TIMES ONLINE, Mar. 20, 2003, <http://www.atimes.com/atimes/Japan/EC20Dh01.html> (last visited Apr. 17, 2010).

139. Ministry of Foreign Affairs of Japan, *The Guidelines for Japan-U.S. Defense Cooperation*, Sept. 23, 1997, available at <http://www.mofa.go.jp/region/n-america/us/security/guideline2.html>.

140. *Id.*

141. Fisher, *supra* note 135, at 396.

142. *Id.* at 426 (“At the very least . . . this amendment would explicitly legalize the existence of the SDF.” Further, “the language would create the legal space for the Guidelines to be constitutional[.]”).

143. *Id.* at 427, 429.

144. Arai, *supra* note 62.

145. Bates Gill, *Chinese Military Modernization and Arms Proliferation in the Asia-Pacific*, IN CHINA’S SHADOW: REGIONAL PERSPECTIVES ON CHINESE FOREIGN POLICY AND MILITARY DEVELOPMENT 10 (Jonathan D. Pollack & Richard H. Yang eds., 1998), available at http://rand.org/pubs/conf_proceedings/2007/CF137.pdf.

the State Department of East Asian and Pacific Affairs, called for more Japanese regional involvement, expanded on regional tension by recently stating that “[t]he Cold War hasn’t ended in North Asia.”¹⁴⁶ A critical portion of Japan’s military development, which drives constitutional reform, rests on its relationship with its neighbors. In 2004, the Japanese government deemed both China and North Korea as destabilizing threats to Japan and the region.¹⁴⁷ The United States cites to uneasy relations between Japan and the two countries as necessitating the ongoing military cooperation with Japan and the continued extension of the United States’ nuclear umbrella.¹⁴⁸

a. North Korea

Military buildups and increasingly unpredictable and aggressive actions by Pyongyang, along with historical mistrust between North Korea and Japan are strong drivers for constitutional reform. In 2004, the U.S. State Department reported that approximately twenty-five percent of North Korea’s Gross Domestic Product (GDP) went towards military expenditures.¹⁴⁹ Behind the United States, China, and India, North Korea may have the largest population under arms.¹⁵⁰ While the sheer volume of North Korea’s military force has unnerved Japan, Pyongyang’s aggressive and unpredictable behavior is the primary cause of regional instability. In 1996, North Korea entered the Demilitarized Zone, ignoring the 1953 armistice which brought about the end of the Korean War.¹⁵¹ The North Korean invasion sent shock waves through the region and the world for its blatant disregard for international law.

In 1998, North Korea tested its Taepodong-1 missile.¹⁵² Although the test was largely unsuccessful, it demonstrated North Korea’s ability to wage a missile attack on Japan.¹⁵³ The action was particularly unsettling when, in the aftermath of the test, a spokesman for the Korean-Pacific Peace Committee stated that North Korea was acting within its sovereign rights to test its missiles and that Japan must “pay” for forty years of aggression towards North Korea.¹⁵⁴ A long range ballistic

146. Weinberg & Minami, *supra* note 78.

147. JAPANESE MINISTRY OF DEFENSE, NATIONAL DEFENSE PROGRAM GUIDELINES, FY 2005- (2004), available at http://www.mod.go.jp/e/d_policy/pdf/national_guideline.pdf.

148. Japan-U.S. Relations, *supra* note 11, at 2.

149. Jeffrey Chamberlain, Cong. Research Serv., *CRS Rep. for Cong.: Comparisons of U.S. and Foreign Military Spending: Data from Selected Public Sources* 5 (2004), available at <http://www.fas.org/man/crs/RL32209.pdf>.

150. LIBRARY OF CONG. – FED. RESEARCH DIV., *COUNTRY PROFILE: N. KOREA 18* (2007), available at http://lcweb2.loc.gov/frd/cs/profiles/North_Korea.pdf.

151. *North Korea Stages Second Incursion into DMZ*, CNN, Apr. 6, 1996, <http://www.cnn.com/WORLD/9604/06/korea>.

152. Jamie McIntyre, *U.S. 'Skeptical' of N. Korea's Satellite Launch Claim*, CNN, Sept. 4, 1998, <http://edition.cnn.com/WORLD/asiapcf/9809/04/nkorea.satellite> (last visited Apr. 14, 2010).

153. *Id.*

154. *North Korea's Missile Test Over Japan: A 'Provocative' Shot Across the Bow*, U.S.

missile test in July 2006 further increased Japan's perceived vulnerability. Tero Aso, Japan's Minister of Foreign Affairs at the time, called the action, "deeply deplorable" and "directly related" to Japan's security.¹⁵⁵ Former Defense Agency Chief Fukushima Nukaga urged that Japan should have forward pre-emptive strike capabilities to reach North Korean missile sites.¹⁵⁶

The nuclear tests in October of 2006 brought heightened tensions both regionally and globally. President Bush, stating that North Korea is one of the world's leading proliferators of weapons technology, called the test "destabilizing to international peace and security."¹⁵⁷ Japan continued sanctions, responding not only to North Korea's aggressive weapon testing, but also to dissatisfaction over North Korea's handling of issues concerning the abduction of Japanese citizens.¹⁵⁸ These actions, coupled with continued aggressive rhetoric from Pyongyang, prompted Japan to begin joint research with the United States to develop a missile defense system.¹⁵⁹

These recent North Korean activities have strengthened the U.S.-Japanese alliance and are partially responsible for Japan's growing activism.¹⁶⁰ U.S. military experts specifically cite to the North Korean missile and nuclear testing as the greatest motivating factor for Japan to re-write its constitution.¹⁶¹ This was further reinforced on April 5th, 2009, when President Obama laid out a stirring vision for the global reduction of nuclear weapons.¹⁶² Earlier that day, North Korea unsuccessfully launched a three-staged Taepodong-2, with the objective of proving Pyongyang's capability to engage in space warfare.¹⁶³ North Korea has conducted

INFO. AGENCY: FOREIGN MEDIA REACTION: DAILY DIGEST, Sept. 3, 1998, *available at* <http://www.fas.org/news/dprk/1998/www8903.html>.

155. Statement by Mr. Taro Aso, Minister for Foreign Affairs, on the Adoption of the United Nations Security Council Resolution 1695 on the Launch of Missiles by North Korea (July 16, 2006), *available at* <http://www.mofa.go.jp/announce/announce/2006/7/0716.html>.

156. Hisane Masaki, *Japan Pushes the Boundaries of Self-Defense*, ASIA TIMES ONLINE, Sept. 12, 2006, <http://www.atimes.com/atimes/Japan/HI12Dh01.html> (last visited Apr. 17, 2010).

157. President Bush's Statement on North Korea Nuclear Test (Oct. 9, 2006), *available at* <http://georgewbush-whitehouse.archives.gov/news/releases/2006/10/20061009.html>.

158. *Sanction on N. Korea Extended Six Months*, JAPAN TIMES, Apr. 11, 2007, *available at* <http://search.japantimes.co.jp/cgi-bin/nn20070411a2.html>; *Abductees Kin Want N. Korea Named as Sponsor of Terrorism*, JAPAN TIMES, Mar. 12, 2007, *available at* <http://search.japantimes.co.jp/cgi-bin/nn20070312a3.html>.

159. Mari Yamaguchi, *Japan Deploys New Missile Defense System*, THE WASHINGTON POST, Mar. 30, 2007, *available at* http://www.mre.gov.br/portugues/noticiario/internacional/selecao_detalhe3.asp?ID_RESENHA=324869.

160. See Richard Cronin, *The North Korean Nuclear Threat and the U.S.-Japan Security Alliance: Perceived Interest, Approaches, and Prospects*, 29 FLETCHER F. WORLD AFF. 51 (2005).

161. Kang Hyun-kyun, *Seoul Hits Japan's Reversion to Militarism*, KOREA TIMES, May 15, 2007, *available at* http://www.koreatimes.co.kr/www/news/nation/2008/10/116_2933.html.

162. *Obama Condemns North Korea Rocket Launch*, CNN.COM, Apr. 5, 2009, <http://edition.cnn.com/2009/WORLD/asiapcf/04/05/us.nkorea.reaction/index.html> (last visited Apr. 17, 2010).

163. *Id.*

additional underground nuclear tests and short-range missile firings conducted from May to July 2009, further unsettling Japan.¹⁶⁴

The legitimacy of a North Korean threat is, however, subject to debate. An argument may be made that Pyongyang's actions are actually a call for increased financial assistance to support a non-functional political ideology that has resulted in widespread poverty, hunger, and social deprivation. Though unpredictable, it is highly unlikely that North Korea would attack Japan, knowing the enormous ramifications that would result from the bi-lateral agreements that exist between Japan and the United States. China's unqualified support for North Korea is weakened in light of China's criticisms of Pyongyang nuclear aspirations.¹⁶⁵ Unprovoked military actions against Japan by North Korea will not necessarily garner support from Beijing, and would likely be met with strong Chinese consternation.¹⁶⁶ According to Robert Einhorn of the Center for Strategic and International Studies, North Korea's military activities "ha[ve] made China discontent because the vulnerable security environment in Northeast Asia is working against the rise of China as an economic power."¹⁶⁷ Tokyo, however, has interpreted any North Korean action as provocation, which threatens Japan's very existence. While Japan routinely re-cast any Pyongyang action to politically support the underlying goal of constitutional revision, Japan has started to carefully measure its words in response to North Korean actions. When North Korea test-fired short-range missiles on May 25, 2007, then Prime Minister Abe reacted with surprising reserve by stating that he did not consider the routine missile test a security threat to Japan.¹⁶⁸ In spite of the reserve displayed at that time, after the most recent DPRK's testing in 2009, Tokyo has firmly endorsed increased sanctions against North Korea. While the Japanese Government will continue to utilize North Korean actions as a political tool to justify Article 9 revision, the missile testing in 2009 can understandably be viewed as a genuine North Korean threat.

b. China

Unlike Japan's relationship with North Korea, which is largely defined by insecurities regarding North Korea's outwardly aggressive military actions, Japan's relationship with China has steadily deteriorated based on specific bi-

164. *N. Korea Conducts Powerful Nuclear Test, Reportedly Fires Short-Range Missiles*, FOXNEWS.COM, May 25, 2009, <http://www.foxnews.com/story/0,2933,521617,00.html> (last visited Apr. 17, 2010).

165. See Hyun-kyun, *supra* note 162; Colum Lynch & Maureen Fan, *China Says It Will Back Sanctions on N. Korea: Beijing Stresses Limits on U.N. Action Against Ally*, WASH. POST, Oct. 11, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/10/AR2006101000490.html?nav=emailpage>.

166. *Id.*

167. *Id.*

168. *North Korea Test-Fires Missiles*, CNN.COM, June 8, 2007, <http://www.cnn.com/2007/WORLD/asiapcf/06/07/nkorea.missile/index.html> (last visited Apr. 17, 2010).

lateral disputes, many of which have strong historical ties. Throughout the recent decades there has been rising anti-Japanese sentiment in China fueled by Beijing's use of specific incidents to justify claims that Japan's actions are causing regional instability.¹⁶⁹ The whitewashing of history regarding sexual enslavement and Japan's downplaying of its wartime atrocities¹⁷⁰ are two examples of what strained relations.¹⁷¹ Kenneth Port and Gerald McAlinn have suggested that the Japanese had committed atrocities against the Chinese which far surpassed those of the Nazi's in Germany.¹⁷²

In 1995, Prime Minister Tomiichi Murayama offered an apology for Japanese wartime aggression.¹⁷³ Nonetheless, China cited the Yasukuni Shrine visits by top Japanese political figures as evidence of Japan's insincerity.¹⁷⁴ The Yasukuni visits alone have negated any credibility that the Japanese "apology" held.¹⁷⁵ This is particularly poignant when the LDP, the ruling party at the time, continued to endorse its politicians visiting the shrine.¹⁷⁶ A thawing of the Yasukuni Shrine issue may be possible with the new DPJ administration.¹⁷⁷ Hatoyama has explicitly pledged not to visit the contentious shrine in an effort to bolster ties with Beijing.¹⁷⁸ This in itself could have considerable traction in stabilizing Sino-Japanese diplomatic relations, as China has affirmed the importance of the issue as "a major sticking point in the current difficulties facing China-Japan relations."¹⁷⁹

169. Edward Cody, *New Anti-Japanese Protest Erupt in China: Thousands Descend on Consulate in Shanghai; Beijing Remains Calm*, WASH. POST, Apr. 16, 2005, available at <http://www.washingtonpost.com/wp-dyn/articles/A58567-2005Apr16.html>.

170. STEPHEN HOADLEY & JURGEN RULAND, ASIAN SECURITY REASSESSED 98 (2006).

171. Kristl K. Ishikane, Comment, *Korean Sex Slaves' Unfinished Journey for Justice: Reparations from the Japanese Government for the Institutionalized Enslavement and Mass Military Rapes of Korean Women During World War II*, 29 U. HAW. L. REV. 123 (2006); 'Comfort women' Recall War Crimes, CHINA DAILY, Aug. 12, 2005, available at http://www.chinadaily.com.cn/english/doc/2005-08/12/content_468291.htm.

172. PORT & MCALINN, *supra* note 14, at 214.

173. Statement by Prime Minister Tomiichi Murayama, On the Occasion of the 50th Anniversary of the War's End (Aug. 15, 1995), available at <http://www.mofa.go.jp/announce/press/pm/murayama/9508.html> (last visited Mar. 27, 2010).

174. Mari Yamaguchi, *Japan Party Won't Stop War Shrine Visits*, WASH. POST, Jan. 17, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/17/AR2007011700427.html> (last visited Mar. 25, 2010); see generally Bill Emmott, *The Ambiguity of Yasukuni*, ECONOMIST, Oct. 8, 2005, at 15.

175. See generally Richard B. Bilder, *The Role of Apology in International Law and Diplomacy*, 46 VA. J. INT'L L. 433, 470 (2006) ("[A]n insincere, incomplete, or highly conditional apology or 'quasi-apology' may not only be ineffective but may sometimes make matters worse."); *supra* text accompanying notes 116-18.

176. Yamaguchi, *supra* note 174.

177. Daisuke Wakabayashi, *Hatoyama Pledges Not to Visit Yasukuni Shrine*, WALL ST. J., Aug. 12, 2009, available at http://online.wsj.com/article/SB125001588907223315.html?mod=sphere_ts&mod=sphere_wd.

178. *Id.*

179. Foreign Ministry Spokesman Qin Gang's Press Conference on 29 September 2005, (Sept. 30, 2005), <http://www.fmprc.gov.cn/eng/xwfw/s2510/t214751.htm> (last visited Mar. 25, 2010).

Textbook revisions, shrine visits, blatant denials of history, and to territorial and resource disputes in the East China Sea, have incensed China and have badly deteriorated Sino-Japanese relations. However, while they are extremely relevant issues, they have not significantly supported Japan's constitutional revision movement. In fact, these issues have had little impact on the economic and trade interdependency of each nation.¹⁸⁰ Both countries continue to reassure each other that in spite of ideological differences, they will continue to form closer economic and trade relations.¹⁸¹

Taiwan's continuing bid for independence (albeit considerably weakened since 2008/2009), is highly contested by mainland China who has expressed firm opposition towards any actions or words which suggests *de jure* Taiwanese independence or separatist activities.¹⁸² China's treatment of the Taiwan issue and the massive Chinese military modernization most directly gives rise to the Article 9 revision movement. China holds Japan partially responsible for the division between itself and Taiwan and tensions run high over any Japanese actions that support Taiwanese sovereignty.¹⁸³ In 1996, China test launched a missile near Taiwan that was specifically meant as a form of intimidation during Taiwan's first democratic presidential elections.¹⁸⁴ In response, the United States sent two aircraft carriers to check any potential Chinese aggression.¹⁸⁵ In 1999 China test fired a Dong Feng-31 missile while simultaneously denouncing a U.S. arms sale to Taiwan worth five hundred and fifty million dollars.¹⁸⁶ Escalating its challenge to space, on January 11, 2007 Beijing launched a test missile which destroyed a low orbiting satellite.¹⁸⁷ Both the United States and Japan consider China's actions a threat to the "peaceful use of outer space."¹⁸⁸ While the U.S. does not officially

180. *See China Tops Japan Trading Partner for 2 Years*, CHINA DAILY, Jan. 26, 2006, available at http://www.chinadaily.com.cn/english/doc/2006-01/26/content_515824.htm (reporting that China was Japan's largest bilateral trade partner in 2004 and 2005) (last visited Mar. 25, 2010).

181. *Japan, China Agree to Avoid Trade Friction*, JAPAN ECON. REV., May 15, 2002.

184. Jiang Zemin, *Continue to Promote the Reunification of the Motherland*, Nov. 15, 2000, <http://www.fmprc.gov.cn/eng/ljzg/3568/t17784.htm>; Wen Jiabao, Premier, State Council of the P.R.C., Speech at the Japanese Diet (Apr. 12, 2007), <http://www.fmprc.gov.cn/eng/zxxx/t311107.htm> (last visited Mar. 25, 2010).

183. China additionally blames the United States for initiating the China/Taiwan division and the ongoing 'Taiwan question' due to U.S. involvement during the Chinese civil war and the protection given to then Formosa. *See* Ministry of Foreign Aff. of the People's Republic of China, *What is the Reason for Saying that the U.S. Government is Responsible for the Taiwan Question?*, Nov. 15, 2000, <http://www.fmprc.gov.cn/eng/ljzg/3568/t17800.htm> (last visited Apr. 17, 2010).

184. *Nations condemn Chinese missile test*, CNN, Mar. 8, 1996, http://edition.cnn.com/WORLD/9603/china_taiwan/08/index.html (last visited Apr. 17, 2010).

185. Jeanne Meserve, *U.S. sends warning to China with warships*, CNN, Mar. 10, 1996, http://edition.cnn.com/WORLD/9603/china_taiwan/10/ (last visited Apr. 17, 2010).

186. *World: Asia-Pacific China steps up military pressure*, BBC NEWS, Aug. 2, 1999, <http://news.bbc.co.uk/2/hi/asia-pacific/409782.stm> (last visited Apr. 17, 2010).

187. *China Confirms Anti-Satellite Missile Test*, GUARDIAN, Jan. 23, 2007, available at <http://www.guardian.co.uk/science/2007/jan/23/spaceexploration.china>.

188. *Japan sees security threat*, JAPAN TIMES, Jan. 20, 2007, available at

support Taiwan's independence, it also does not support China's potential use of force to compel compliance by Taiwan.¹⁸⁹ Additionally, the U.S. government, via the Taiwan Relations Act, is committed to helping Taiwan defend itself.¹⁹⁰ China's willingness to use force against Taiwan or any other parties that intervene in what China considers internal affairs is worrisome to both the United States and Japan who seek to ease China's aggressiveness.¹⁹¹

Tensions between China and Taiwan continue to rise as each country increasingly focuses on potential strike capabilities as opposed to a more defensive posture.¹⁹² Beijing has recently stated that there are now more than one thousand missiles aimed at Taiwan.¹⁹³ The outward aggression towards Taipei was backed by a 2007 defense increase of 17.8 percent, (approximately forty-five billion dollars).¹⁹⁴ That expansive budgetary expenditure supports the largest standing armed forces in the world.¹⁹⁵ China's large military buildup and the modernization of its armed forces remains a point of concern.¹⁹⁶ The late Shoichi Nakagawa, former policy chief for the LDP, called China's ever increasing military spending a "direct military threat [to Japan]."¹⁹⁷ Taiwan also perceives China's actions as equally threatening and responded by conducting war games to simulate an attack by mainland China.¹⁹⁸ In the event of open hostilities between China and Taiwan, constitutional revisionists seek the ability to respond militarily in ways which Article 9 currently prohibits.

4. Uncertainty of America's Commitment to Japan and the Region

The need for Japan to independently be able to defend itself in light of uncertainty over the United States' guarantee of protection is a major tenant supporting the call for constitutional revision. According to former Defense

<http://search.japantimes.co.jp/cqi-bin/nn20070120a4.html>.

189. Bureau of E. Asian and Pac. Aff., *Taiwan*, Oct., 2009, <http://www.state.gov/r/pa/ei/bgn/35855.htm#foreign> (last visited Mar. 25, 2010).

190. *Id.*

191. 22 U.S.C. §§ 3301-3316 (1979); see Joseph Kahn, *Chinese General Threatens Use of A-Bombs if U.S. Intrudes*, N.Y. TIMES, July 15, 2005, at A8.

192. Wu Zhong, *Satellite Killer Really Aimed at Taiwan*, ASIA TIMES, Jan. 23, 2007, available at <http://www.atimes.com/atimes/china/ia23ad01.html>.

193. *Jump in Chinese Defence Spending*, BBC NEWS, Mar. 4, 2007, at <http://news.bbc.co.uk/2/hi/asia-pacific/6416633.stm> (last visited Apr. 17, 2010).

194. Jim Yardley and David Lague, *Beijing Accelerates Its Military Spending*, N.Y. TIMES, Mar. 5, 2007, at A8.

195. GlobalSecurity.org, *People's Liberation Army-Ground Forces*, <http://globalsecurity.org/military/world/china/pla-ground-intro.htm> (last visited Apr. 17, 2010).

196. See *Japan alarmed by Chinese "Threat,"* BBC NEWS, Dec. 22, 2005, <http://news.bbc.co.uk/2/hi/asia-pacific/4551642.stm> (last visited Apr. 17, 2010).

197. Keiichi Yamamura, *Nakagawa Says China Military Spending Threatens Japan*, BLOOMBERG NEWS, Mar. 7, 2007, available at <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aOZEMjCOPX0Y>.

198. Peter Enav, *Taiwan Simulates Attack from Rival China*, WASH. POST, May 15, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/15/AR2007051500065.html>.

Minister Yoshinori Ohno, “[t]he U.S. nuclear umbrella alone is no longer enough to assure our security. . . . Japan can’t just provide the American military with bases. We must cooperate in our own defense.”¹⁹⁹

In the postwar era, the United States initiated “alliances” taking full responsibility for protecting Japan while not requiring Japan to assist the United States in return.²⁰⁰ As the Cold War ended, the resulting shift in U.S. troop strength gradually caused insecurities in Japan as both North Korea and China increased their military capabilities. The United States has sought to reassure Japan by emphasizing ongoing cooperative initiatives. In a 2005 government defense document, the United States affirmed it is committed to protecting Japan and ensuring regional stability.²⁰¹ Most states in the region consider, and desire, the United States to be the stabilizing force within the area.²⁰² Reinforcing that position, then Secretary of State Condoleezza Rice stated in the aftermath of a North Korean missile test that the United States was prepared to use the full capacity of its military strength to protect Japan.²⁰³ In February 2009, Rice’s successor, Hillary Clinton, made Asia her first trip as Secretary of State to specifically underscore the importance the U.S.-Japanese relations.²⁰⁴ The importance of the U.S.-Japanese relations was further demonstrated at the highest level by a visit of President Obama. This visit was specifically meant to begin the process of reestablishing ties with Japan and reassert America’s leadership in Asia.²⁰⁵

Through increased military cooperative action and extensive trade and economic relations, the United States has sought to maintain regional stability and quell Japanese fears of U.S. disengagement. Many Japanese people, however, view Washington’s push for Japan to shoulder its share of military responsibilities as evidence of a gradual U.S. pullout in the region. Advocates of this position

199. Weinberg & Minami, *supra* note 78.

200. See Peter J. Katzensteing and Nobuo Okawara, *Japanese Security Issues, in JAPAN: A NEW KIND OF SUPERPOWER?* 55, 58 (Craig Garby & Mary Brown Bullock eds., Woodrow Wilson Center Press 1994) (1979) (stating that, in 1981, when the Prime Minister used the term ‘alliance’ it fanned fear in Japan as the term appeared to suggest a degree of risk sharing that the Japanese were unwilling to shoulder).

201. Condoleezza Rice et al., Security Consultative Committee Document U.S.-Japanese Alliance: Transformation and Realignment for the Future, Oct. 29, 2005, <http://www.mofa.go.jp/region/n-america/us/security/scc/doc0510.html> (last visited Mar 26, 2010).

202. HOADLEY & RULAND, *supra* note 170, at 120.

203. Bruce Wallace, *U.S. is Japan’s Nuclear Shield, Rice Says*, L.A. TIMES, Oct. 19, 2006, available at <http://articles.latimes.com/2006/oct/19/world/fg-norkor19>.

204. See Glenn Kessler, *Clinton, in Tokyo, Warns N. Korea on Missile Launch*, WASH. POST, Feb. 17, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/16/AR2009021600829.html?sid=ST2009021600888>.

205. See Peter Nicholas, *Obama arrives in Tokyo on first leg of Asia trip*, L.A. TIMES, Nov. 12, 2009, available at http://mobile.latimes.com/inf/infomo?view=webarticle&feed:a=latimes_1min&feed:c=worldnews&feed:i=50469951.

point to a weakened U.S. economy, stating that large U.S. trade and budget deficits have caused reductions in military spending.²⁰⁶ The argument follows that this has thus resulted in a decline in U.S. influence in the region.²⁰⁷ Further destabilizing Japanese confidence is President Obama's focus on nuclear non-proliferation and disarmament initiatives, brought to the forefront during his September 24, 2009 chairing at the United Nations Security Council.²⁰⁸ Obama's efforts to arrest nuclear use, in theory, puts into question the protection offered by the U.S. nuclear umbrella.²⁰⁹ In response to its own perceived vulnerability to regional hostilities and questions as to America's commitment and alleged declining interest, Japan has steadily undertaken expansion of its military through the elimination of Article 9 restrictions.

5. The Defense Industry

In the most basic analysis, national defense and the threat of war is big business. From a historical perspective, Japan's big industries showed strong interest in re-armament because of the U.S. business generated during the Korean and Vietnam wars.²¹⁰ "Japan's big business therefore supported revision of the constitution."²¹¹ As the SDF continues to evolve, it increasingly acquires more sophisticated hardware accompanied by ever increasing stratospheric price tags. The cost, however, becomes a secondary consideration following any provocative actions by either Korea or China. Missile launches over Japan and ballistic and nuclear tests have opened up economic opportunities for the military communities in both the United States and Japan.

Each provocation contributed to Japan accelerating the building of its defense shield, which features the Patriot PAC-3 launchers²¹² made by Lockheed Martin.²¹³ At more than two million dollars each, Japan plans on maintaining about 30 PAC-3 launchers throughout the country.²¹⁴ Lockheed also manufactured, with the Boeing Company, the F-22, the most advanced fighter jet in the world.²¹⁵ Initially the U.S.

206. HOADLEY & RULAND, *supra* note 170, at 120.

207. *Id.*

208. See Press Release, United Nations, Press Conference by Security Council President on September Work Programme (Sept. 2, 2009), available at http://www.un.org/News/briefings/docs/2009/090902_Rice.doc.htm.

209. See generally Todd Crowell, *Of Japanese Umbrellas and Mushroom Clouds*, ASIA SENTINEL, Aug. 11, 2009, http://www.asiasentinel.com/index.php?option=com_content&task=view&id=1999&Itemid=176 (last visited Feb. 13, 2010).

210. Royer, *supra* note 27, at 781.

211. *Id.*

212. For a discussion of Patriot Pac-3, see *Patriot Advanced Capability-3 (PAC-3)*, <http://www.globalsecurity.org/space/systems/patriot-ac-3.htm> (last visited Mar. 27, 2010).

213. Mari Yamaguchi, *Japan Deploys New Missile Defense System*, ASSOCIATED PRESS ONLINE, Mar. 30, 2007. <http://www.cnsnews.com/news/print/45716> (last visited Mar. 27, 2010).

214. *Japan Deploys its First Missile Defense System*, TAIPEI TIMES, Mar. 31, 2007 available at <http://www.taipeitimes.com/News/front/archives/2007/03/31/2003354624>.

215. See Factsheet: F-22 Raptor, <http://www.af.mil/information/factsheets/factsheet.asp?id=199> (last visited Feb. 13, 2010).

government had announced that it would allow a scaled down version to be sold to Japan but ultimately the U.S. prohibited the sale of the F-22 and recently announced it will be halting production of the stealth fighter.²¹⁶ Japan has however, shown a desire to acquire the F-35, the next generation of U.S. fighters, as its mainstay fighter jet.²¹⁷

Lockheed Martin is not the only defense contractor profiting from the escalation of tensions in Asia. Raytheon is also a clear winner in that it supplies Japan with the advanced SM-3 missile and ground based radar systems worth between US \$1 to 1.6 billion.²¹⁸ Domestically, there were concerns that Japan should not rely solely on purchasing advanced technology from abroad.²¹⁹ From bilateral agreements however, domestic conglomerates like Mitsubishi Heavy Industries and Kawasaki are but two firms profiting from the alleged potential threats by North Korea and China.²²⁰ Mitsubishi Heavy Industries is the maker of Japan's Aegis-class destroyer, and is currently Japan's largest weapons producer.²²¹

The "escalating threat" is often used as a sales point and is surrounded by rhetoric stating the necessity of Japan to purchase advanced hardware is a matter "of national survival, not just national pride."²²² Kurt Strauss, a Raytheon mission capabilities strategist stated that "[i]t was a real wake-up call for Japan when the North Koreans flew their *taepodong* . . . Since Japan's an island nation, putting SM-3s on ships halfway in between the countries, or even further forward, is an obvious way to solve the problem."²²³

Military contractors in both the United States and Japan support Article 9 revision because it will legally establish the SDF as a military force and thus will allow Tokyo the ability to acquire the most advanced (and expensive) hardware that is available without the inevitable Diet battles as to whether or not it violates Article 9.²²⁴ The current claims of the Japanese administration that the acquisition of these technologies are defensive in nature is questionable at best as it is difficult to reconcile even a bare boned F-22 or F-35 as a "defensive measure."²²⁵ Thus, the encouragement from military contractors for Japan to increase its military posture

216. See *Japan gearing up to acquire F-35 fighters*, JAPAN TIMES, Nov. 23, 2009, <http://search.japantimes.co.jp/mail/nn20091123a1.html> (last visited Feb. 13, 2010).

217. *Id.*

218. Weinberg & Minami, *supra* note 78.

219. *See id.*

220. *See id.*

221. *Id.*

222. David A. Fulghum & Douglas Barrie, *F-22 Tops Japan's Military Wish List*, AVIATION WEEK, Apr. 22, 2007, http://www.aviationweek.com/aw/generic/story_channel.jsp?channel=defense&id=news/aw042307p2.xml (last visited Feb. 13, 2010).

223. Weinberg & Minami, *supra* note 78.

224. *See id.*

225. *See id.*

continues to put indirect pressure to amend the constitution and have the restraints of Article 9 lifted.²²⁶

B. What Inhibits Reform

1. The DPJ and Sino-Japanese Relations

In the current geo-political climate, the most significant inhibitor to Article 9 reform is the rising importance the DPJ attaches to Sino-Japanese relations. As discussed above, China's increasing military budget and the potential belligerence of Beijing serve as justifications for Japanese politicians to call for amending Article 9. This article asserts, however, that the diplomatic relations between China and Japan, when taken as an individual unit of analysis, may be seen as a force which greatly hinders reform.

Theorists such as Hans Morgenthau and John Mearsheimer have advanced a balance of power framework from a neo-realist perspective, which seeks to explain international relations in terms of acquiring power to maintain the status quo or overthrow competing states.²²⁷ This balance of power framework, however, can be challenged on several grounds: lack of certainty, an unrealistic approach and inadequacy in terms of its predictive power. As an alternative analytical tool, Stephen Walt employs instead a balance of threat paradigm which considers geographic proximity of the proposed threat, the offensive capability, and the perceived intentions.²²⁸ Walt also speculates that a state's options will be dependent on its relative position of power, with a weaker state more likely to bandwagon rather than try to balance against a rising power.²²⁹

Japan sees itself ultimately surpassed by China, both economically and militarily. Rather than attempt to balance, it may be more advantageous for Japan to bandwagon with China to negate a possible threat from a potential adversary which is in a close geographical proximity. Using Walt's framework it is not altogether surprising that the Hatoyama administration, while wary of endangering its U.S. relations, has been particularly vocal regarding a closer alliance with China.²³⁰ The DPJ has expressed a willingness to begin reconciling Japan's war past which has been an extremely polarizing issue. It is an issue that Hatoyama is starting to address through recent announcements concerning a desire to push for further modification of exhibits at the Yasukuni Shrine to better reflect a more accurate historical rendition.

226. *See id.*

227. *See generally*, HANS MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE 209-12 (7th ed. 2006) (1948); JOHN MEARSHEIMER, THE TRAGEDY OF GREAT POWER POLITICS 29-54 (2001).

228. *See generally* STEPHEN M. WALT, THE ORIGINS OF ALLIANCES 154-61 (CORNELL UNIVERSITY PRESS 1987).

229. *Id.* at 173.

230. *See* Associated Press, *Hatoyama expects better-than-ever relations with China, S. Korea*, <http://www.japantoday.com/category/politics/view/hatoyama-expects-better-than-ever-relations-with-china-s-korea> (last visited Apr. 17, 2010).

Furthermore, Hatoyama is promoting a more Asian-centric environment that relies less on the United States and promotes Asian economic and political integration. He specifically has called for the development of a common regional currency and economic bloc similar to the European Union.²³¹ These acts by Japan advance Chinese interest and garnishes Beijing's support, as China continues to push for a realignment of the current global structure.²³² With increasingly closer ties with China, Japan will be reluctant to disrupt diplomatic progress by pushing for an amendment of Article 9, which will be viewed by Beijing as a threat and destabilizing to the region. It can be concluded that as China continues to emerge Japan will seek a closer alliance which by necessity will forestall Article 9 revision.

2. The Current Economic and Socio-Political Climate

The current financial crisis acts as a strong inhibitor for constitutional reform, although the crisis has simultaneously acted as a strong driver of widening continuing economic reforms. The current economic situation took precedent over virtually all other issues, save an overt military, health, or natural disaster threat. Japan, as the first true merchant state, strongly identifies with economic prowess.²³³ While it is still the second most powerful economy in the world,²³⁴ the recent financial contractions in the Japanese markets combined with an economy that has been battered for nearly two decades, threaten that distinction. In reality, it is not a question of whether Japan can maintain its economic position, but rather for how long until it is overtaken by China.²³⁵ The impact of a contracting economy is exacerbated by the current financial crisis. Subsequently, the debates are not focused on Article 9, but rather on domestic economic resuscitation. As the DPJ swept into power in August of 2009, it specifically put forth an action plan with its "Five Pledges" along with additional polices, which exclusively focus on domestic quality of life issues such as childrearing, education, and pension and medical care, and specifically on increasing family income.²³⁶ The current

231. See Yukio Hatoyama, Op-Ed., *A New Path for Japan*, N.Y. TIMES, Aug. 26, 2009, available at <http://www.nytimes.com/2009/08/27/opinion/27iht-edhatoyama.html?pagewanted=all>.

232. Sheo Nandan Pandey, *China and the Diplomatic Power Play at G-20 London Summit*, Paper no. 3153, Apr. 19, 2009, available at <http://www.southasiaanalysis.org/papers32/paper3153.html>; *China's plan to end the dollar era*, FIN. TIMES, Mar. 25, 2009, at 8, available at <http://www.ft.com/cms/s/0/26884e1e-18ab011de0bec8-0000779fd2ac.html>.

233. See CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK JAPAN (2009), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ja.html>.

234. U.S. DEP'T OF STATE, BACKGROUND NOTE: JAPAN, Sept. 9, 2009, available at <http://www.state.gov/r/pa/ei/bgn/4142.htm>.

235. Hiroko Tabuchi, *Economic Juggernaut is Gaining on Japan*, NY TIMES, Oct. 1, 2009, available at <http://www.nytimes.com/2009/10/02/business/economy/02yen.html>.

236. See DEMOCRATIC PARTY OF JAPAN, *supra* note 60.

financial crisis acts as inhibits constitutional reform in that it has largely directed attention and political resources towards economic survival.

Closely aligned with the impact of the economic crisis are the questions of timeliness and the overall socio-political climate, which strongly inhibit constitutional reform. While an argument may be made that a reform “mindset” exists within some factions of government, it does not necessarily speak to whether now is the appropriate time for Japan to increase its military exposure by revising Article 9. Proponents may dictate a revisionist landscape, but, in actuality, the citizenry is widely divided. In a May 2009 poll, sixty-five percent opposed revising Article 9.²³⁷ Politicians in Japan are sensitive to the prevailing winds of social opinion, and it is likely that they will act accordingly and in line with their constituency base. As long as there are highly divisive public opinions, it is unlikely that any given prime minister, basing his or her actions on historical reflections, will risk pushing a revisionist agenda. Many Japanese feel that the status quo is an acceptable position. They are able to secure a high standard of living without undue loss of life pursuing idealistic military operations around the world, with Japan being required to provide only “logistical” rear support. For many Japanese, the proverbial question is simply “why change?” The test will be if the referendum runs in 2010, but all current indicators make it is unlikely that there will be enough preliminary support to justify a referendum.

3. The New Political Retreat from Reforms

Before the fall of the LDP in 2009, a successful argument would have asserted that the sweeping wave of general reforms Japan was already experiencing was one of the most compelling factors encouraging constitutional revision. In recent history, Koizumi, was the PM who took the most steps in confronting domestic problems by initiating policy changes that have often been opposed by his own party.²³⁸ He privatized the country’s enormous postal system, which handles not only postal deliveries, but also insurance and savings for most of the population.²³⁹ Koizumi sought to further deregulate various industries, restructure the banking industry, and reduce the government’s size.²⁴⁰ He also made changes ranging from corporate law to restructuring the law school educational system had also been initiated.²⁴¹ While many of the strictly economic initiatives did not materialize, the efforts did establish a mindset orientated towards

237. 65% Oppose Revising Article 9, THE ASAHI SHIMBUN, May 4, 2009, available at <http://www.asahi.com/english/Herald-asahi/TKY200905040044.html>.

238. Justin McCurry, *Koizumi Sends Out Political Assassins*, GUARDIAN, Sept. 7, 2005, available at <http://www.guardian.co.uk/japan/story/0,7639,1564005,00.html>.

239. See Tomoyuki Tachikawa & Atsuko Fukase, *Japan Unveils Postal Reform Plan*, Mar. 24, 2010, <http://online.wsj.com/article/SB10001424052748704896104575140493357907122.html> (last visited Apr. 17, 2010).

240. Onishi, *supra* note 47.

241. See Susan Carpenter, *Koizumi’s Reform of Special Corporations*, 3 J. INT’L BUS. & L. 67 (2004); George Schuhmann, *Beyond Litigation: Legal Education Reform in Japan and what Japan’s New Lawyers will do*, 13 U. MIAMI INT’L & COMP L. REV. 475 (2006).

reform.²⁴² The effect on the Japanese citizenry has been the acceptance of a need to change and evolve through reform.

In the Hatoyama administration, reform is not a politically viable ideology and that ideology alone can support constitutional revision. As the opposition party, the DPJ ran a campaign which was particularly critical of Koizumi's reforms.²⁴³ It was a platform that blamed those reforms for Japan's current economic hardships, building popular support in a citizenry worn from decades of a stagnant economy and widening income disparities.²⁴⁴ Thus, the idea of reform has been repackaged into a persona which is to blame for Japan's economic woes. Richard Jerram, Chief Economist for Japan at Macquarie Securities explained, "[r]eform has become a bad word [in Japanese politics]. . . Japan is now more reluctant than ever to use market forces to raise productivity."²⁴⁵ Distancing himself from the idea of further reforms, Stanford University-educated Hatoyama has asserted a vague mantra called "yuai," which attacks and rejects U.S.-style market-led reforms, citing them as being void of morals or moderation.²⁴⁶

In spite of Hatoyama's understanding of Tokyo's current socio-economic and political climate, Japan clearly needs a more focused and aggressive reform agenda.²⁴⁷ However, the political reality, with the opposition moving to center left, will be a temporary dampening of general reforms, which further inhibit Article 9 reform efforts. It is simply not tenable in the current socio-political climate to push any agenda which will be deemed as radical or controversial.

4. A Lack of Judicial Leadership

The lack of judicial leadership has acted as a significant inhibitor to constitutional reform, because, without concrete judicial direction, there will be a continuation of flexible interpretation, diminishing the need to revise the Constitution. The judiciary has shed little light on the question of the constitutionality of Article 9, although it is empowered under Article 81 of the Constitution to "determine the constitutionality of any law, order, regulation, or

242. Jim Frederick, *After Koizumi*, TIME ASIA, June 26, 2006, available at <http://www.time.com/time/asia/covers/501060703/story.html>.

243. See *supra* Part II.

244. See *id.*

245. Hiroko Tabuchi, *Japan's Victors Set to Abandon Market Reform*, N.Y. TIMES, Aug. 31, 2009, available at <http://www.nytimes.com/2009/09/01/world/asia/01japan.html>.

246. Kent E. Calder, *Letter From Tokyo: New Regime, New Relationship?*, FOREIGN AFF., Sept. 18, 2009, available at <http://www.foreignaffairs.com/features/letters-from/letter-from-tokyo-new-regime-new-relationship>.

247. *Analyst: Japan may need more deregulation*, UPI, Aug. 31, 2009, available at http://www.upi.com/Business_News/2009/08/31/Analyst-Japan-may-need-more-deregulation/UPI-32231251776670/; see also The IMF's assessment of Japan's need of continued wide-spread reforms, THE INTERNATIONAL MONETARY FUND (IMF). COUNTRY AND REGIONAL PERSPECTIVES, 56-63 (2008), available at <http://www.imf.org/external/puns/ft/weo/2008/02/pdf/c2.pdf>.

official act.”²⁴⁸ The courts have had numerous opportunities to clarify and set precedent but have refused to rule, perpetuating the obscurity that surrounds the validity of the SDF, encouraging the circumventing of the Constitution and forestalling revision.²⁴⁹

The Japanese Supreme Court has stalled reform through cautious use of judicial review, notably by sidestepping the issue of the constitutionality of the SDF.²⁵⁰ The resulting “doctrine” has been one of avoidance. In the Sunakawa Case, the Court stated Japan had a right to self defense, but did not rule on the legitimacy of the SDF.²⁵¹ Utilizing “judicial review” language, the Japanese courts have fallen to relying on the “political question” reminiscent of the judicial struggle in the United States as seen through precedent setting cases such as *Marbury v. Madison*.²⁵²

In the Eniwa case, the court again sidestepped a more critical question. The Eniwa case involved two dairy farmers in Hokkaido who cut telephone lines in an area used for SDF training and were acquitted of charges that their actions constituted destruction of “defense facilities and equipment” in violation of SDF law.²⁵³ The farmers argued that the military noise reduced their cows’ milk production and they were defending their livelihood, and further, that the SDF itself was unconstitutional.²⁵⁴ The Court ruled that the brothers were not guilty under SDF law itself and therefore did not reach the question as to the constitutionality of the SDF’s existence.²⁵⁵

The 1970s and early 1980s brought other opportunities for judicial clarification by way of the high profile Naganuma series of cases. The cases concerned the constitutionality of the SDF and of the transfer of forest reserve land to the Defense Agency for the Naganuma Missile base that was to be built.²⁵⁶ In *Naganuma I*, farmers in Naganuma, Hokkaido challenged a government decision to build the site, claiming the base interfered with their water supply and flood control.²⁵⁷ The court held:

248. KENPŌ, art. 81.

249. Herbert F. Bolz, *Judicial Review in Japan: The Strategy of Restraint*, 4 HASTINGS INT'L & COMP. L. REV. 88, 89 (1980).

250. *Id.*

251. *Japan v. Sakata et al.*, 13 KEISHŪ 13, 3225 (Sup. Ct. Grand Bench, Dec. 16, 1959) (The Sunakawa Case).

252. 5 U.S. 137 (1803). This case established judicial review in American jurisprudence and gave the courts the ability to invalidate decisions based on its interpretation of the Constitution. Since *Marbury*, U.S. courts engage in active or restrained review. *Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483 (1954), and *Baker v. Carr*, 369 U.S. 186 (1962), are examples of review based on different standards.

253. Lawrence W. Beer, “*Pacifism*” and *Mass Media Freedom*, in *LAW IN JAPAN A TURNING POINT* 257, 271 n.23 (Daniel Foote ed., 2007).

254. *Id.*

255. *Id.*

256. Beer & Maki, *supra* note 2, at 115.

257. *Id.*

It was clear that the SDF is an organization of men and materials with the purpose of carrying out battle with force against a foreign enemy. It therefore, falls within the meaning of the term of “armed forces” . . . whose maintenance is prohibited by Article 9 . . . Since the Self-Defense Forces are unconstitutional in themselves the reason given for the cancellation of the forest reserve designation in question cannot satisfy the requirement of “public interest”. . . .²⁵⁸

What emerged from this case was what many considered a definitive position by the judiciary. The Sapporo District Court stated that the SDF was not a viable entity under the current writings of the Constitution, and thus was illegal in nature. This could have forced constitutional revision, but the opportunity was lost on appeal when the Sapporo High Court reversed the decision, stating it was a political matter; issues “concerning state governance, and as a political act of the Diet and Cabinet are ultimately entrusted to the political judgment of the entire people. It should not be construed to be a matter that courts are to determine.”²⁵⁹ The court invalidated the findings that the SDF was unconstitutional and, in *Naganuma III*, the Supreme Court affirmed the Sapporo High Courts opinion.²⁶⁰

In 1989, in a case about the Hyakuri Air Base, the Supreme Court again had the opportunity to clarify, but merely reiterated that Article 9 does not prohibit a right of self-defense.²⁶¹ “[I]n the event of a foreign military attack upon Japan, the resort to the right of self-defense to impede and repel invasion, as well as the prior organization and preparation of effective and appropriate self-defense measures, does not violate the Preamble or Article 9 of the Constitution.”²⁶² Acknowledging the least problematic aspect of Article 9, the court once again avoided reaching the merits of the issue. Each of the cases above allowed the opportunity to clarify the Constitution and compel revision to align it with the realities of SDF activities. In each of these cases the court refused to take a decisive leadership role, preferring instead to allow the status quo of flexible interpretation to continue.

5. International Fear of a Re-armed Japan

Many see Article 9 revision as being threatening to regional security by way of a re-armed Japan. The revisionary talk by then Prime Minister Abe created tensions with Japan's neighbors. “Constitutional revision under the leadership of Mr. Abe, if realized, would lead to discarding of the pillar of postwar Japan—self-restraint on military activities—that has helped the nation gain trust and a

258. *Ito et al. v. Minister of Agriculture, Forestry and Fisheries*, 712 HANREI JIHŌ 24 (Sapporo Dist. Ct., Sept. 7, 1973) (“Naganuma I”).

259. *Minister of Agriculture, Forestry and Fisheries v. Ito et al.*, 27 GYŌSAI REISHŪ 1175 (Sapporo High Ct., Aug. 5, 1976) (“Naganuma II”).

260. *Uno et al v. Minister of Agriculture, Forestry, and Fisheries*, 36 MINSHŪ 1679 (Supreme Ct., Sept. 9, 1982) (“Naganuma III”).

261. *Ishizuka et al. v. Japan et al.*, 43 MINSHŪ 6, 385 (Supreme Ct., June 20, 1989).

262. LAWRENCE BEER & HIROSHI ITOH, *THE CONSTITUTIONAL CASE LAW OF JAPAN: 1970-1990* 131 (1996).

respected position in the international community.”²⁶³ The suspicion and mistrust created by Abe’s hard line revisionist and ultra-nationalist rhetoric raised the potential to isolate Japan politically and illicit negative responses from its neighbors.

Neighboring states point to recent developments which put into motion key elements signaling the continued dismantling of Article 9. Japan’s Defense Agency was recently upgraded to the Ministry of Defense, a first step in creating a more formal military infrastructure.²⁶⁴ Taiwan’s Pyongyang responded by stating that the move signals Japan’s “militarist ambition for overseas expansion.”²⁶⁵ Beijing voiced its concern as well: “[t]he purpose is to get rid of the constraints set after it failed in the wartime invasion, shake off the restrictions on the SDF, and clear the way for justifiably interfering in regional and world affairs.”²⁶⁶

Countries who have suffered under Japanese aggression during the war are not enthusiastic about any move by Tokyo which signals a departure from the pacifist meaning of Article 9. Even amongst Japan’s “quasi-allies,” those other countries under U.S. strategic protection, there is concern. Jang-geun Choi, a noted South Korean scholar, suggested that ultra-nationalists can easily control the often politically paralyzed Diet and dictate a manipulation of public opinion supporting constitutional revision.²⁶⁷ Beijing continues to be wary. Yao Laiyan, in expressing concerns that many Chinese feel, has likened the language used to support Article 9 reform as being very similar to the language which was used to justify Japan’s actions in Manchuria.²⁶⁸ Robert Dujarrie of the National Institute for Public Policy urges, however, that “[t]his [change to ministry status] is just one more piece of dirt for burying Article 9, though in reality it was buried years ago.”²⁶⁹

Fear of a re-armed Japan is an ever-present aspect of the geo-political environment in Asia. Japan runs a fine line in its attempt to establish itself as a true world power. On one hand, it may be viewed as a nation asserting itself, while on the other, each assertion can be interpreted as a return to ultra-nationalism, thus Japan has moved slowly in the revision of its constitution. As regional neighbors continue to voice concern over a rearmed Japan it will act as something of an inhibitor for Article 9 revision.

263. Hisane Masaki, *Mr. Abe’s Worrisome Plan for Japan*, JAPAN TIMES, Sept. 21, 2006, available at <http://search.japantimes.co.jp/cgi-bin/ed20060921a1.html>.

264. Anthony Faiola, *Japan Upgrades its Defense Agency*, WASH. POST, Dec. 16, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/15/AR2006121501707.html>.

265. David Pilling, *Japan Gives Defence Agency Ministry Status*, FINANCIAL TIMES, Jan. 9, 2007, available at <http://www.ft.com/cms/s/0/581431a0-9f86-11db-9e2e-0000779e2340.html>.

266. Zhuang Pinghui, *Abe Hails Defence Upgrade As First Big Step*, SOUTH CHINA MORNING POST, Jan. 10, 2007.

267. Jan-geum Choi, *Search for Identity in Japan’s Politics: Development of Japan’s Nationalism*, J. JAP. STUD. 54 (2003).

268. Yao Laiyan, *Discussion of Article Nine of Japan’s Constitution*, L. J. OF SHANGHAI ADMIN. CADRE INST. OF POL. AND L. 87-91 (Jan. 2005).

269. Pilling, *supra* note 265.

6. Political Expediency

In many ways political convenience inhibited reform. Japan utilizes a “transformation theory” which perpetuates informal flexible interpretation that is subject to the prevailing political winds of the day.²⁷⁰ It purports to maintain a façade of compliance while allowing the manipulation of a document to fit a changing environment. There is no overt need to change the constitution since it can be reinterpreted to match the circumstances. The question then becomes whether any specific issue at hand justifies a reinterpretation of Article 9.

Informality in business and legal matters have always been prevalent throughout Japan's history, especially so during the Tokugawa and Meiji periods when informal family organizations called zaibatsus were prominent.²⁷¹ One of the aims of the U.S.-imposed constitution was the establishment of predictable consistency in legal and business transactions, which necessitated the dissolving of the zaibatsus.²⁷² Though banned during the Occupation they reformed as keiretsu, utilizing the same informalities.²⁷³ Those informalities have perpetuated the practice of interpreting the Constitution in accordance to the desired outcome, obliterating the need to formally amend the law. Without legal direction the Japanese bureaucracy will continue to unofficially manipulate Article 9 because it is simply easier than amending it. Thus the status quo of relying on informality acts as an inhibitor to reform.

V. CONCLUSION

The current socio-political climate dictates that in the near future there will be little concrete progress in terms of Article 9 reform. Revision, if it occurs, will likely not take place for at least five years. With Japan being able to achieve the majority of its goals by constant reinterpretation of the Constitution, there is no sense of urgency for Article 9 revision. Further, the shifting global order within Asia, and the new weight Japan attaches to Sino-Japanese relations, will significantly shape Tokyo's political agendas which will also dampen reform efforts.

The new DPJ administration, as the governing party, has considerable influence on how, and if, the revision debate will advance. To date, they have offered no clear direction on most issues and have not given revision any serious consideration. With a manifesto which has been built on addressing domestic economic issues, it is unlikely that there will be concerted debates on Article 9. In spite of the DPJ's domestic focus, it is in this author's opinion that the DPJ's rule

270. See *supra* Part IV.B.4.

271. PETER DUUS, *THE RISE OF MODERN JAPAN 176–77* (Houghton Mifflin 1976).

272. For a discussion concerning the zaibatsu and the Edwards Report's recommendation for their dissolution, see Harry Frist, *Antitrust in Japan: The Original Intent*, 9 PAC. RIM L. & POL'Y J. 1 (2000); Michael Panton, *Corporate Governance and the Evolving Impact of the Keiretsu in Post War Japan*, YONSEI J. OF INT'L STUD. 80 (2009).

273. DUUS, *supra* note 271, at 259.

will, in itself, be short lived, as the domestic economic downturn will continue for some time.

Based on the polarized factions and the competing political coalitions within the more powerful Lower House, it is unlikely that the inexperienced DPJ will be able to formulate concrete answers to address Japan's most pressing economic issues. The continued downturn is based on an over-dependence on the export-driven manufacturing sector coupled with a mismanaged domestic sector inherited from the previous government. This is manifested by low productivity, bureaucratic red tape that supports inefficient companies, and political hostility towards domestic business entities who strive to bring to Japan more efficient streamlined processes.²⁷⁴ The DPJ does not appear to recognize the depth of the current economic issues and the urgency of attention which they require. Hideo Sawada, CEO of Skymark commented from an entrepreneurial, business perspective: "For Japan to grow, and for it to stay competitive, it needs to get serious about opening up what are frankly backward sectors. I don't get a sense the Democrats see that as a priority."²⁷⁵

Further, while the DPJ is currently in power, it is not the party with which most people identify with. In a November 2009 Asahi Shimbun survey, forty-one percent of respondents supported the LDP in the long run, with only twenty-five percent for the DPJ.²⁷⁶ The same survey found that seventy-one percent of respondents believed that the LDP had the ability to successfully run the government, as opposed to sixty-two percent for the DPJ.²⁷⁷ In spite of a landslide victory and a majority within the powerful Lower House, the DPJ has a precarious hold on its leadership. If less contradictory domestic and foreign policy positions are not soon articulated, Hatoyama may very well find himself addressing votes of confidence questions amid plummeting ratings. He has already been repeatedly criticized for mismanaging his image, projecting the wrong messages to the international community, and having a questionable lack of "diplomatic sense."²⁷⁸ While not suggesting that the Hatoyama Administration is already in crisis—although the current political funds scandal is an increasing distraction²⁷⁹—it can be envisioned that the revolving door of Japanese leadership will continue if a clear and concise policy direction is not presented.

This article has argued that flexible interpretation of Article 9 has stretched the SDF's activities beyond any semblance to the original meaning, and as it now stands the SDF's activities undermines the legitimacy of Japan's constitution and

274. Tabuchi, *supra* note 235.

275. *Id.*

276. *Survey: Two-thirds of Voters Want Power Changes in Politics*, THE ASAHI SHIMBUN, Nov. 4, 2009, available at <http://www.asahi.com/english/Herald-asahi/TKY200911040115.html>.

277. *Id.*

278. Martin Fackler, *Japan's New Leader Reassures U.S. on Alliance*, N.Y. TIMES, Sept. 4, 2009, available at <http://www.nytimes.com/2009/09/04/world/asia/04japan.html?scp=1&sq=Martin%20Fackler,%20Hatoyama,%20september%20,%202009&st=cse>.

279. *Hatoyama's Mom Gave Sons Billions?*, JAPAN TIMES, Dec. 3, 2009, available at <http://search.japantimes.co.jp/mail/nn20091203a1.html>.

additionally challenges Japan's commitment to the rule of law. Professor Thomas Wilborn, an Asian specialist with the Strategic Studies Institute at the U.S. Army War College, has correctly posited that in spite of the manipulation of the rule of law for the sake of political expediency, Article 9 has, in fact, restricted the SDF's activities in ways that do not apply to other states, thus helping to maintain regional stability.²⁸⁰ Kenneth Port points out the impact of that manipulation when he stated that "given the juxtaposition of Article 9 jurisprudence and the reality of the military situation in Japan, it might appear that the Japanese do not recognize or follow the rule of law."²⁸¹ Given the activities and sophistication of Japan's military, he asks how the rule of law can have any real significance in Japan.²⁸²

The normalization of Japan as a state is considered imperative in meeting its objective of playing a more important role on the world stage. Some Japanese people feel that formally lifting the restrictions of Article 9 is necessary to obtain a permanent seat on the U.N. Security Council since permanent members may be required to use force in the settlement of disputes.²⁸³ As Japan takes a more prominent international role, it tries it has tried to identify its pacifist background with core objectives of the Security Council. Koizumi, when addressing the United Nations, Kozumi declared that, "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 has played is the basis for the assumption of a permanent membership of the Security Council."²⁸⁴

While within the political elite there is a clear recognition of the need to reconcile the differences between the written constitution and the actions of the SDF, there is no sense of urgency in enacting such change. The "glacial evolution" cited by Piotrowski is seen by the gradual changes initiated as the younger generation take the reins of government and are in a position to set policy.²⁸⁵ Indeed, many of the current generation question why Japan cannot be a "normal" state and desires to see the SDF take on broader international responsibilities

If Japan ultimately moves towards constitutional revision, it will be required to walk a fine line to assert itself and reassure its neighbors that it is not shedding its pacifist ideals. Japan's neighbors are acutely sensitive to any actions done by Japan that could suggest a return to ultra-nationalism. The potential revision of

280. Thomas L. Wilborn, *Japan's Self-Defense Forces: What Dangers to Northeast Asia*, May 1, 1994, available at <http://www.strategicstudiesinstitute.army.mil/pdf/files/pub102.pdf>.

281. Port, *supra* note 75, at 146-47.

282. *Id.*

283. Koizumi: *No Shift in Article 9*, THE ASAHI SHIMBUN, Aug. 25, 2004, available at <http://www.globalpolicy.org/component/content/article/200-reform/41183.html>.

284. Jamie Miyazaki, *Japan's Holy Grail: a UN Security Council Seat*, ASIA TIMES ONLINE, Sept. 21, 2004, <http://www.atimes.com/atimes/Japan/FI21Dh03.html> (last visited Apr. 17, 2010).

285. Piotrowski, *supra* note 96, at 1654.

Article 9 itself has caused North Korea and China great concern, as each country has considered Article 9 as the only restraining factor in preventing Japan's return to militarism. Both countries fail to acknowledge that their actions have been a significant factor in Japan's accelerated military buildup. China has been aggressive in stating its intention to use force if necessary in settling international disputes.²⁸⁶ It has forced Japan "to [hedge] against a breakdown in international or regional order to balance China through its alliance with the United States,"²⁸⁷ an alliance that has called upon Japan to steadily increase its military capabilities. Any revisions initiated while there are still outstanding issues between Japan and its Asian neighbors increase tension in the region. Unrealistic representations of history, the lack of an adequate apology, and tensions over the Yasukuni Shrine will only open the door for Article 9 revision to be interpreted as releasing the unapologetic genie.

The insecurities of Japan's Asian neighbors are largely unwarranted. On a practical level Japan poses little military threat. While there is no question that, due to their alliance with the United States, Japan utilizes some of the most technically advanced weapons systems in the world, it simply lacks the forward capabilities for a sustained assault. While there are various figures representing the amount of funds that Japan spends on its military, Japan spends a smaller percentage of its GNP on its military than most countries. Further, Japan's military force is a fraction of the size of some of its Asian neighbors and its infrastructure has been set up based on deterrent measures. Additionally, aside from joint exercises with the U.S. military, Japan's current military command holds little more than a theoretical knowledge of actual engagement. In spite of the perception of a deadly military, capable of unleashing indiscriminate destruction upon its regional neighbors, the SDF is more suited for extremely limited peripheral missions as "the SDF are small, understaffed, and underequipped for more extensive military operations."²⁸⁸ While Japan's Navy has received very high marks for its capabilities, their ground forces are not superior to its neighbors.²⁸⁹

More important than military capability, Japan does not have the mindset to seek remedies through use of arms. Japan has become the preeminent merchant state, the most significant example of such a state yet in history.²⁹⁰ Japan is adept at utilizing international regimes to accomplish its objectives, which are primarily focused on trade. Military aggression by Japan would serve no benefit and accomplish no end that cannot be obtained through recognized international institutions. In fact, it is Japan's unwavering support of these international

286. See James Schoff, *Transformation of the U.S.-Japan Alliance*, 31 FLETCHER F. WORLD AFF. 85 (2007).

287. *Id.* at 98.

288. GlobalSecurity.org, *Military: Japan Introduction*, <http://www.globalsecurity.org/military/world/japan/intro.htm> (last visited Mar. 27, 2010).

289. Wilborn, *supra* note 281.

290. See CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK JAPAN (2009), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ja.html>.

organizations which defines and controls their behavior as it seeks to function within the various international regime guidelines.

When revision ultimately occurs it will impact on three primary levels: the social significance of the revision, the actual activities of the SDF, and on the diplomatic level. The social significance will be seen by the sense of national pride in creating a Japanese Constitution that may be legitimately called their own. The justified pride of authorship and the feeling that Japan entering a new era would be a momentous occasion. It would represent that Japan is releasing itself from the final hold of the occupation of more than a generation ago.

When the Constitution is ultimately revised the impact on the SDF may not be as great as some anticipate. Japan's military actions will continue to be largely determined by U.S. initiatives. One school of thought asserts that regional instability will immediately ensue after the removal of Article 9's restrictions. This is doubtful, and will largely be determined by the commitment the United States has to the region. If the United States continues to stay politically active in the region, Japan's increased SDF capability should not be a regional destabilizing factor. While there may be an increased participation in U.N. peacekeeping missions, Article 9's revision will not alleviate Japan's avoidance to being on the front line. The cornerstone of Japan's defense is its alliance with the United States. The various agreements reached cite to Japan's increased involvement, but increased *rear* support involvement. Revision will not substantially alter Japan's primary objectives which is not necessarily to be engaged in front line combat, but more so simply increasing the scope and depth of its supportive role.

The diplomatic currency of a revised constitution may indirectly increase Japan's influence and ability to determine outcomes. That is probably the most important underlying factor encouraging revision. A stable nation that consistently does not aggressively exercise its military options has the capability to gather significant support and respect in the international community.²⁹¹ If Japan revises its constitution, it must continue to move cautiously and with reserve in the deployment of the SDF to keep from appearing overly threatening. Japan, if it revises Article 9, will increase its diplomatic influence by being considered a world power that is operating primarily under U.N. mandates. Japan then will have accomplished its goal of achieving global respect while championing pacifism. If the revision happens, it will then mark Japan as a new type of global leader.

291. For a general discussion on the use of alternative methods of exercising power, see generally JOSEPH S. NYE JR., *SOFT POWER: THE MEANS TO SUCCESS IN WORLD POLITICS* (2005).