

KEEPING PACE WITH THE PROGRESS OF THE WORLD: ARTICLE 9 OF THE JAPANESE CONSTITUTION[†]

I. INTRODUCTION

Article 9 of the Japanese Constitution states:

Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as 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.¹

Japan's previous constitution, the Meiji Constitution,² was revised in 1946 as a term of Japan's surrender to the United States on August 15, 1945.³ The new constitution was designed explicitly to counter the fact that "no modern or current world power was more aggressively militaristic or culturally more adulatory of military virtues" than pre-surrender Japan.⁴ Since 1945, Japan's constitutionally-mandated pacifism has become a

[†] The title comes from Emperor Hirohito's radio broadcast announcement of Japan's surrender, which he concluded by telling his subjects to "[c]ultivate the ways of rectitude; foster nobility of spirit; and work with resolution so as to enhance Japan's glory and keep pace with the progress of the world." Hirohito, Announcement of Japan's Surrender (Aug. 15, 1945), in MARK D. ROEHRS & WILLIAM A. RENZI, *WORLD WAR II IN THE PACIFIC* 252–53 (2004) (emphasis omitted).

1. Nihonkoku Kenpō [Constitution] art. 9 (Japan), reprinted in *English* in THE CONSTITUTION OF JAPAN: ITS FIRST TWENTY YEARS, 1947–67, app. at 303 (Japanese Ministry of Justice trans. 1958, Dan Fenno Henderson ed., 1968) (1947) [hereinafter Article 9].

2. Meiji Kenpō [Meiji Constitution, 1889] (Japan), reprinted in *English* in JAPAN'S CONTESTED CONSTITUTION, at 179–88 (2001) (M. Ito trans. 1889, Glen D. Hook & Gavan McCormack eds., 2001).

3. See Potsdam Declaration, U.S.-P.R.C.-U.K., ¶¶ 10, 12, July 26, 1945, reprinted in THEODORE MCNELLY, *THE ORIGINS OF JAPAN'S DEMOCRATIC CONSTITUTION* app. 1 at 176. The Potsdam Declaration states that the Japanese government must establish a "peacefully inclined and responsible government," and must "remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people." *Id.* The Constitution has not been revised since 1947. R.P. ANAND, *STUDIES IN INTERNATIONAL LAW AND HISTORY: AN ASIAN PERSPECTIVE* 85 (2004).

4. Lawrence W. Beer, *Peace in Theory and Practice Under Article 9 of Japan's Constitution*, 81 MARQ. L. REV. 815, 816 (1998).

powerful influence on every aspect of Japanese society.⁵ This ingrained pacifist sentiment, however, must be reconciled with the creation, and continuously expanded role of Japan's Self-Defense Forces ("SDF"). Sixty years after its defeat in World War II, Japan now has the second largest defense budget in the world⁶ and has deployed the SDF to aid in various international peacekeeping operations and humanitarian missions.⁷

This Note will examine Japan's struggle to "keep pace with the world" while adhering to Article 9 of its constitution. First, this Note will examine Japan's early nationalism and its imperialistic conquests prior to its surrender to the allies in 1945.⁸ From there, the Note turns to the revision of Japan's Constitution and the development of Article 9.⁹ Next, the Note examines some of the factors that have so far proved strong inhibitors of Article 9 amendment: judicial abstention from the constitutionality debate; cultural attachment to pacifism as a reaction to horrors witnessed in war; and regional politics.¹⁰ Although this Note concludes that amendment of Article 9 will be the result of a natural and glacial evolution of values as the current younger generation takes over politics,¹¹ the Note suggests that, in the meantime, Japan will have to prove to the world that its dedication to pacifism is a workable and desirable *modus operandi* in international collective decision-making and that it can be an effective world player while maintaining this ideal. Ultimately, this Note concludes that through Article 9's pacifist principles,¹² Japan has the opportunity to become an

5. *Id.* at 818–19.

6. MICHAEL J. GREEN, JAPAN'S RELUCTANT REALISM 62 (2001).

7. *Id.* at 63. Green notes that the Maritime SDF was sent to the Persian Gulf in 1991 for minesweeping activities; that the Ground SDF was sent to Cambodia in 1992–1993; and that the SDF has participated in peacekeeping operations or humanitarian missions in Mozambique, the Golan Heights, and Honduras. *Id.* Additionally, he notes that the SDF has participated in joint training exercises with the Russian and South Korean navies. *Id.*

8. *See infra* notes 13–62 and accompanying text.

9. *See infra* notes 63–95 and accompanying text.

10. *See infra* notes 96–141 and accompanying text.

11. Alan Dupont similarly believes that change will occur through "an evolutionary process in which Japan seeks a greater voice on issues that are central to its security concerns in Asia or when there are opportunities to dilute the unilateralist tendencies of the US and encourage more collaborative behaviour," but does not attribute this to generational turnover. ALAN DUPONT, LOWY INSTITUTE FOR INTERNATIONAL POLICY, UNSHEATHING THE SAMURAI SWORD: JAPAN'S CHANGING SECURITY POLICY 17, Paper 03 (2004).

12. This is contrary to the position taken by one author that Article 9 is a "self-inflicted mark of Cain" and is an "[e]ntrenching disabilit[y]" which "seems to say to the world: 'There is a bad seed here in this nation, and it is planted from generation to generation.'" George P. Fletcher, *Liberals and Romanticism at War: The Problem of Collective Guilt*, 111 YALE L.J. 1499, 1537 (2002). This Note explicitly rejects this type of pessimism about the implications of Article 9 for future generations.

international leader by increasing its involvement with the United Nations and other international organizations.

II. HISTORY

A. Japan's Imperialist Expansion and World War II Experience

1. *The Rise to Militarism: From the Seventeenth Century to World War II*

Japan's geographical isolation allowed Japanese civilization to develop in relative seclusion, creating a sense of unique Japanese identity.¹³ For nearly three centuries, Japan was ruled by a military dictatorship.¹⁴ Although several European countries had established trading posts in Japan by the seventeenth century,¹⁵ Japan's military dictatorship expelled all but the Dutch, due to increasing suspicions at the number of Japanese converting to Christianity.¹⁶ Thereafter, the dictatorship imposed a policy of national seclusion.¹⁷

Fear of invasion from Russia and encroachment from the Western world strengthened the perception that seclusion was necessary in order to preserve Japan.¹⁸ By 1825, Japan had a policy of driving away foreign vessels and attacking upon sight.¹⁹ For two hundred years—until 1853—

13. ANAND, *supra* note 3, at 29. Japan was, however, influenced by its interactions with China in the development of its culture. *Id.* China influenced Japan's written language, form of government, teaching methods, philosophy, medical care, and religion. *Id.* at 29–30.

14. *Id.* at 30. From 1603 to 1868, the Tokugawa Family, a military dictatorship, ruled Japan after subduing the feudal lords who had previously controlled Japan. *Id.*

15. *Id.* at 30. The Portuguese were the first to reach Japan in 1542, followed soon thereafter by missionaries and traders. *Id.* at 30. By the early 1600s, the Portuguese, Spanish, Dutch, and English had established trading posts in Japan. *Id.* at 31.

16. *Id.* at 31. The Tokugawa did not think the Dutch were Christian because they did not engage in any missionary activity. *Id.* at 31. Because of this, and the Dutch hostility toward the Spanish and Portuguese, the Tokugawa allowed the Dutch to remain in Japan. *Id.* The Dutch, along with the Chinese, with whom Japan also maintained trade relations, proved to be an important source of knowledge for the Japanese during this period of seclusion. See Marius B. Jansen, *Japan in the Early Nineteenth Century*, in *THE CAMBRIDGE HISTORY OF JAPAN VOLUME 5, THE NINETEENTH CENTURY* 50, 87–92, 97–99. (Marius B. Jansen ed., 1989).

17. ANAND, *supra* note 3, at 31. Marius B. Jansen attributes the policy of seclusion to a sense of threat posed by knowledge derived from the outside world. See Jansen, *supra* note 16, at 51. Jansen also points to Russian forays into East Asia as well as news about Napoleon's conquests as increasing Japan's perception that dealing with the West was dangerous. *Id.* at 87, 93–97.

18. Jansen, *supra* note 16, at 100–01.

19. *Id.* at 102.

the seclusion policy frustrated attempts by England, France, Russia, and the United States to trade with Japan.²⁰

The process of re-establishing normal relations began in July 1853 when a squadron of four United States warships appeared in Edo Bay.²¹ On March 31, 1854, Japan and the United States signed the “Treaty of Peace, Amity and Commerce,”²² opening the floodgates for western relationships with Japan.²³ Shortly thereafter, the British,²⁴ Russians,²⁵ and the Dutch all signed similar treaties with Japan.²⁶ In these initial treaties, the Japanese grudgingly granted only such minimum concessions as they believed would placate the foreigners.²⁷ The foreigners, however, were not placated for long: in 1857, Japan and the United States signed a convention that vastly expanded the previous treaty.²⁸ The following year,

20. ANAND, *supra* note 3, at 31. During this time, however, Japan continued to trade with the Dutch and Chinese, who were allowed access to the Nagasaki port. *Id.* The Dutch even maintained a colony on Deshima Island in Nagasaki harbor. *Id.* at 32. Thus, the Japanese were not entirely isolated from the rest of the world. *Id.* at 31–32.

21. *Id.* at 33. Commodore Matthew Perry led the squadron and was accompanied by a letter written from President Millard Fillmore to the Emperor of Japan. *Id.* President Fillmore’s letter stated that “the United States and Japan ‘should live in friendship and have commercial intercourse with each other.’” *Id.* (citing President Fillmore’s Letter, in F.C. JONES, *EXTRATERRITORIALITY IN JAPAN AND THE DIPLOMATIC RELATIONS RESULTING IN ITS ABOLITION 1853–1899*, at 6 (1970)). Specifically, the letter requested “the right to buy coal for steamers on the passage between California and China; proper protection for shipwrecked sailors; and permission for ships to dispose of cargo at one or more Japanese ports of call.” *Id.* at 32–33. Although Perry never threatened the Japanese with the use of force if they did not accede to President Fillmore’s request, his behavior made it clear that the United States intended Japan to open, with or without Japan’s cooperation. See W.G. Beasley, *The Foreign Threat and the Opening of the Ports*, in *THE CAMBRIDGE HISTORY OF JAPAN VOLUME 5: THE NINETEENTH CENTURY 259, 269–70* (Marius B. Jansen ed., 1989). See also ANAND, *supra* note 3, at 33–35.

Several weeks after Perry’s arrival, Russian ships appeared at Nagasaki. See Beasley, *supra*. The Russians had heard about the American plans to send ships to Japan and were determined that Russia should not be excluded from any openings in Japan forged by the Americans. *Id.*

22. ANAND, *supra* note 3, at 34. The treaty opened two ports to American ships, promised refuge for shipwrecked sailors, allowed U.S. merchants purchasing power at the ports, allowed for an American consul in Japan, and contained a most-favored-nation clause promising the United States the same benefits as were given to any other countries in future treaties. *Id.*

23. *Id.* “Although [the treaty] was not in the full sense a commercial treaty, it was the beginning and, as Perry said in his report, Japan was ‘opened to the nations of the west.’” *Id.* (quoting Beasley, *supra* note 21, at 270).

24. *Id.* The British treaty allowed the British to use two Japanese ports for repairs and refilling supplies. *Id.* Unlike the American treaty, the British-Japan treaty did not mention trading. *Id.* However, it did include a similar most-favored-nation clause. *Id.*

25. *Id.* at 35. The Russian treaty allowed use of several ports, gave trading and consul rights, and gave the Russian consul jurisdiction over Russians residing in Japan. *Id.*

26. *Id.*

27. See Beasley, *supra* note 21, at 275–77. For a comprehensive list of the general changes that the Japanese allowed under these agreements, see *id.* at 277.

28. ANAND, *supra* note 3, at 35–36. The convention “opened Nagasaki to the United States, provided for full diplomatic and consular privileges, permanent residence of Americans at Shimoda

the two countries signed the Treaty of Amity and Commerce,²⁹ which included even more privileges for the Americans.³⁰ Once again, other countries followed suit, either by renegotiating existing treaties³¹ or initiating first-time treaties.³²

Anti-foreign sentiment rose in Japan's cities out of a perception that the terms of the treaties were unequal and the fear that Japan would, like China, find itself in a position subordinate to the West.³³ In 1863, the Emperor of Japan ordered the expulsion of all foreigners.³⁴ When the Japanese opened fire on foreign ships in Shimonoseki, the British, Dutch, French, and American response demonstrated their clearly superior military capabilities.³⁵ Expelling the foreigners was no longer an option.³⁶ By 1870, after a short civil war precipitated in part by Japan's inability to protect itself from the Western "barbarians," Japan's military dictatorship fell.³⁷ The new Meiji rulers did not impose an isolationist policy: Japan was now open.³⁸

R.P. Anand describes this time as "a period of utter humiliation for the Japanese. . . . It was argued that only through unification of the country under the leadership of the Emperor could Japan rebuild her strength to repel the Western powers."³⁹ That the Western powers usurped privileges

and Hakodate, permitted the appointment of an American Vice-Consul at Hakodate, private import and export transactions, subject to an agreed tariff, and freedom of religion and extraterritorial jurisdiction." *Id.*

29. For details of the United States' dealings with the Japanese, ultimately leading up to the signing of the Treaty, see Beasley, *supra* note 21, at 277–84.

30. ANAND, *supra* note 3, at 36. These further privileges, among other things, imposed the United States as an intermediary between Japan and Europe in the event of conflict, and gave the U.S. the option to revise the treaty after 1872 and the right to circulate its currency in Japan. *Id.*

31. *Id.* Countries renegotiating existing treaties included France, Russia, Great Britain, and the Netherlands. *Id.*

32. *Id.* Countries initiating treaties with Japan and including provisions similar to the terms in the American treaty include Peru, Spain, Norway, Portugal, Prussia, Sweden, Hawaii, and Austria-Hungary. *Id.*

33. *Id.*

34. *Id.* at 37.

35. *Id.* at 37–38. See also Beasley, *supra* note 21, at 292–97.

36. ANAND, *supra* note 3, at 38.

37. *Id.* Internally, famine weakened the Tokugawa's power during the Tempō period (1830–1844). See Marius B. Jansen, *The Meiji Restoration*, in *THE CAMBRIDGE HISTORY OF JAPAN VOLUME 5: THE NINETEENTH CENTURY* 308, 309 (Marius B. Jansen ed., 1989). Their inability to resist making concessions to the foreigners weakened their power further. ANAND, *supra* note 3, at 38. For a detailed telling of the troubles during this period, see Harold Bolitho, *The Tempō Crisis*, in *THE CAMBRIDGE HISTORY OF JAPAN VOLUME 5: THE NINETEENTH CENTURY* 116, 116–64 (Marius B. Jansen ed., 1989). See also CONRAD TOTMAN, *A HISTORY OF JAPAN 289–92* (2000); Jansen, *The Meiji Restoration*, *supra*, at 357–59.

38. ANAND, *supra* note 3, at 38.

39. *Id.*

not included in their respective treaties added to the sense of humiliation.⁴⁰ Resentment at the unequal treatment in these treaties ran high in Japan, and a deepening sense of racial inferiority only strengthened the sense of injustice.⁴¹ Despite such resentment, the Japanese began assimilating all things Western into their culture, out of the belief that only by being perceived as equals to the Westerners could they be treated as such.⁴² Japan soon began expanding in the same fashion as the Western powers,⁴³ characterizing their own imperialism as the civilizing of barbarians.⁴⁴

More humiliation at the hands of Western powers was not long in coming: When Japan invaded China in 1895, Russia, France, and Germany responded by threatening military intervention if Japan did not return a portion of its conquered territory to the Chinese and slow its expanse.⁴⁵ Angry at such patronizing meddling, the Japanese concluded that, in the end, only force mattered in international relations. Indeed, as one Japanese historian has pointed out, in order to understand the Japanese nationalism in the twentieth century it is important to comprehend the bitterness and sense of humiliation that swept the country in the wake of western intervention.⁴⁶

Despite this setback, Japan was rapidly gaining ground in international stature.⁴⁷ At the conclusion of a 1904 war with Russia, Japan had emerged as the first non-Western great power.⁴⁸

40. *Id.* at 38–39.

41. *Id.* at 39.

42. *Id.* at 40–48. See also Hirakawa Sukehiro, *Japan's Turn to the West* (Bob Tadashi Wakabayashi trans.), in *THE CAMBRIDGE HISTORY OF JAPAN VOLUME 5: THE NINETEENTH CENTURY* 432 (Marius B. Jansen ed., 1989).

43. ANAND, *supra* note 3, at 48–49. Between 1875 and 1891, Japan annexed Kuriles, the Bonin Islands, the Ryukyu Islands, and the Volcano Islands. *Id.* In the 1870s, Japan dealt with Korea much as Commodore Matthew Perry had dealt with Japan twenty years earlier. *Id.* at 49. See also *supra* note 21 and accompanying text. In 1894, Japan declared war on China, and by 1895 had forced China out of Korea and Taiwan, extracted important trading rights from the Chinese, and established itself as a regional superpower. *Id.* at 49–50.

44. *Id.* at 50.

45. *Id.* at 56.

46. *Id.*

47. *Id.* at 58–61. First, Japan helped suppress the Boxer Uprising in an alliance with the Western Powers. *Id.* at 58. As a result, Japan was subsequently invited to a peace conference as a full member and thereafter was one of the “Boxer protocol powers.” *Id.* Japan also became Britain’s principle ally in the region. *Id.*

48. *Id.* at 60. Japan wanted to push Russia out of its growing regional sphere of influence and secure its place as local hegemon. *Id.* at 58–62. The Japanese believed that conflict between Russia and Japan in the Korean peninsula would continue until one of the two retreated. *Id.* at 59 (“[T]he Russo-Japanese war was essentially an imperialistic war, fought between two powers over issues outside their national boundaries, at the expense of Korea and China who had no say in the matter.”).

Japan and Russia signed the Treaty of Portsmouth on September 5, 1905. *Id.* For the stipulations of the treaty, see *id.* at 59–60. For a description of Japan’s expanded sphere of influence, see *id.* at 58–

When armed conflict began in 1914, Japan recognized that by joining the Allies, it could easily and legitimately expand its influence by conquering Germany's nearby Pacific territories.⁴⁹ At a meeting of the League of Nations, Japan announced a "Japanese Monroe Doctrine."⁵⁰ Indeed, Japan began to view East Asia as one unit with a uniquely Japanese identity,⁵¹ envisioning what it called the Greater East Asian Co-Prosperty Sphere.⁵² During this same period, Japan initiated a full-scale war against China, which lasted until 1945.⁵³ On September 27, 1940, Japan signed the Tripartite Alliance with Germany and Italy and became a

62. See also ATLAS OF WORLD HISTORY 243 illus. 2 (Geoffrey Barraclough & Richard Overy eds., Hammond 5th ed. 1999) (1978) (showing Japanese expansion from 1875–1918).

49. ANAND, *supra* note 3, at 64. Japan ousted the Germans from their colony in the Chinese province of Tsingtao as well as from their colonies in Micronesia. *Id.* During World War I, Japan signed a treaty with China that reflected its "Twenty-one Demands" and sent troops to Siberia, which remained in Russia after the other allies left. *Id.* at 65–66. In the interim between its success against Russia in 1905 and the beginning of World War I in 1914, Japan turned its focus to exploiting its Taiwanese and Korean colonies in much the same manner as had the Western powers with their own colonies the previous century. *Id.* at 62–63. For a discussion of why Japan's empire was, despite its patterning on Western practices, quite unique, see Mark R. Peattie, *The Japanese Colonial Empire, 1895–1945*, in THE CAMBRIDGE HISTORY OF JAPAN VOLUME 6: THE TWENTIETH CENTURY 217, 217–23 (Peter Duus ed., 1988). Peattie suggests that the Japanese colonial model was based on two precepts. *Id.* at 238. The first was an emphasis on racial superiority whereby it was "the moral right of 'superior' races to dominate and guide the destinies of 'lesser' people." *Id.* The second precept was one of total assimilation "aimed at eliminating all differences between the colonies and the motherland." *Id.* at 240. Peattie notes that although the assimilation doctrine might not have been tyrannical in theory, it ended up very coercive in nature. *Id.* at 243. For instance, Japan's domination of Korea in particular was so repressive it has been described as "colonial totalitarianism." *Id.* (quoting GREGORY HENDERSON, KOREA: POLITICS OF THE VORTEX 146–56 (1966)). Undertaking a project of "Japanization," the Japanese made a concerted effort to wipe out any sense of Korean identity. ANAND, *supra* note 3, at 63.

50. ANAND, *supra* note 3, at 67–70. The actual Monroe Doctrine enunciated "[t]he principle that the United States will allow no intervention or domination by any non-American nation in the Western Hemisphere." BLACK'S LAW DICTIONARY 1028 (8th ed. 2004). Recognition of a Japanese Monroe Doctrine would have provided international legitimacy to Japanese imperialism: the League of Nations Covenant states, "Nothing in this Covenant shall be deemed to affect the validity of international engagements such as . . . regional understandings like the Monroe doctrine, for securing the maintenance of peace." THE COVENANT OF THE LEAGUE OF NATIONS art. 21, in ALFRED ZIMMERN, THE LEAGUE OF NATIONS AND THE RULE OF LAW 1918–1925, at 508 (1936).

51. Peattie, *supra* note 49, at 243. In fact, "all references to colonies were eliminated in favor of a distinction only between the 'inner territory'—Japan—and the 'outer territories'—the overseas possessions." *Id.*

52. ANAND, *supra* note 3, at 74. Believing in a uniquely Asian identity, which corresponded precisely to a uniquely Japanese identity, Japan set out to liberate the Asian race from Western influences and colonialism. Peattie, *supra* note 49, at 243–44. After a failed assassination attempt in 1928 that might have resulted in Japanese control of Chinese-held Manchuria, Japan launched an overt offensive in Manchuria in September 1931. ANAND, *supra* note 3, at 72–73. By March 1932, Japan completely occupied and controlled Manchuria. *Id.* at 73. By 1935, Japan had invaded not only North China and Inner Mongolia, but mainland China as well. *Id.* at 75. Japan was aiming for total control of China. *Id.*

53. ANAND, *supra* note 3, at 76–80.

member of the Axis Powers.⁵⁴ By the summer of 1941, Japan occupied both northern and southern Indochina.⁵⁵ On December 8, 1941, Japan launched its attack on Pearl Harbor, officially drawing the United States into World War II.⁵⁶

Japan continued its offensive until 1945.⁵⁷ After relentlessly carpet-bombing Japanese cities for five months,⁵⁸ American forces dropped an atomic bomb on Hiroshima on August 6, 1945.⁵⁹ Another atomic attack followed on Nagasaki on August 9.⁶⁰ The Japanese surrendered on August 15, 1945.⁶¹ Allied occupation of Japan began shortly thereafter, under the auspices of the Supreme Commander of the Allied Pacific (“SCAP”), General Douglas MacArthur.⁶²

54. Tripartite Alliance Pact, F.R.G.-Italy-Japan, Sept. 27, 1940, DEPARTMENT OF STATE, PEACE AND WAR: UNITED STATES FOREIGN POLICY 1931–1941, at 573 (1943). Article I of the Tripartite Alliance Pact states that “Japan recognizes and respects the leadership of Germany and Italy in the establishment of a new order in Europe.” *Id.* Article 2 states that “Germany and Italy recognize and respect the leadership of Japan in the establishment of a new order in Greater East Asia.” *Id.* at 574. *See also* ANAND, *supra* note 3, at 77. Japan entered into the Tripartite Alliance Pact because it believed that “Chinese military resistance was kept alive by military and psychological assistance from the United States, Britain, the Soviet Union and France.” *Id.* at 76–77.

55. ANAND, *supra* note 3, at 77. This expansion into Indochina came as the German offensive distracted and weakened the Western powers. *Id.* Alarmed, the United States requested that Japan withdraw completely from China and Indochina in November 1941. *Id.* at 77–78. Japan refused. *Id.* at 78.

56. *Id.* A note on the dates: in Japan, it was December 8; in the United States, it was still December 7. On the same day, Japan issued its Imperial Proclamation of War, in which it declared a “Greater Asian War.” *Id.* at 78–79. *See also* President Franklin D. Roosevelt, Address to Congress (Dec. 8, 1941), in 5 DEP’T ST. BULL., Dec. 8, 1941, at 474, reprinted in DEPARTMENT OF STATE, PEACE AND WAR: UNITED STATES FOREIGN POLICY 1931–1941, at 267 (1943).

57. ANAND, *supra* note 3, at 79–80. For a detailed history of Japan’s march through the Pacific and the Allied response until Japan’s surrender in 1945, see generally DOUGLAS MACARTHUR, REMINISCENCES 77–266 (1964); ROEHRS & RENZI, *supra* note †, at 67–255; Alvin D. Coox, *The Pacific War*, in THE CAMBRIDGE HISTORY OF JAPAN VOLUME 6: THE TWENTIETH CENTURY 51, 345–76 (Peter Duus ed., 1988). *See also* ATLAS OF WORLD HISTORY, *supra* note 48, at 268–69 illus. 2–3 (depicting the Japanese offensive and the Allied response).

58. THOMAS W. ZEILER, UNCONDITIONAL DEFEAT 150–51 (2004).

59. *Id.* at 184–85. The overwhelming devastation wrought by American forces was a response to Japanese fanaticism even in the face of destruction and human loss on a scale previously unimaginable. *Id.* at 2. As Zeiler notes, “If [Japan] would not stop fighting on its own and surrender—the logical, rational choice, owing to the vast disparity in power between the two nations—then the United States would force it to do so. . . .” *Id.* To understand the horrors seen by both sides, see *id.* at 22–23, 48–49, 150–51, 160.

60. *Id.* at 185–86.

61. *Id.* at 189. The terms of surrender and subsequent occupation were dictated by the Potsdam Declaration. ANAND, *supra* note 3, at 80–81. The Potsdam Declaration was signed by the United States, Britain, and China on July 26, 1945. Potsdam Declaration, *supra* note 3, at 175–76.

62. *See generally* MACARTHUR, *supra* note 57, at 269–324 (MacArthur’s story of the occupation of Japan).

2. *The Allied Occupation and Constitutional Revision: Creating a Peace State*

The Potsdam Declaration called for “the eliminat[ion] for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest,”⁶³ the destruction of Japan’s war-making power,⁶⁴ and demanded that the “Japanese government . . . remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people.”⁶⁵ Japan was to be occupied until these objectives were met.⁶⁶ In order to meet these mandates, the Japanese needed a new government with a different constitutional structure.⁶⁷ Japan’s 1947 Constitution was not, in fact, a wholly new constitution, but a revision of the Meiji Constitution of 1889.⁶⁸ General MacArthur suggested the revision in October 1945.⁶⁹ The revised Constitution was to

63. Potsdam Declaration ¶¶ 6–7, *supra* note 3, at 175–76.

64. *Id.* ¶ 7.

65. *Id.* ¶ 10.

66. *Id.* ¶ 12.

67. ANAND, *supra* note 3, at 84.

68. Lawrence W. Beer, *Japan’s Constitutional System and Its Judicial Interpretation*, in LAW AND SOCIETY IN CONTEMPORARY JAPAN: AMERICAN PERSPECTIVES 8 (John O. Haley ed., 1988). Additionally, the 1947 Constitution has never been amended. ANAND, *supra* note 3, at 85. For an analysis of why it was important to “revise” the constitution rather than create a new one, see KOSEKI SHOICHI, *THE BIRTH OF JAPAN’S POSTWAR CONSTITUTION* 92–94 (Ray A. Moore trans., Westview Press 1997) (1989). For a general comparison of the features of the Meiji Constitution with the those of the revised 1947 Constitution, see John M. Maki, *Japanese Constitutional Style*, in THE CONSTITUTION OF JAPAN: ITS FIRST TWENTY YEARS, 1947–1967, at 3–8 (Dan Fenno Henderson ed., 1968).

69. KOSEKI, *supra* note 68, at 7–9. MacArthur told a Japanese minister that “the Japanese Constitution must be revised. It is essential to introduce into government sufficient liberal elements through constitutional revision.” *Id.* at 9 (internal citation omitted). Douglas made the suggestion for revision on October 4, 1945, during a meeting with three-time pre-war prime minister and then-minister Prince Konoe Fumimaro. *Id.* at 8. MacArthur’s statement about the necessity of constitutional revision came as a response to Konoe, after delivering a monologue about the causes of the war, *id.* at 8–9, asking MacArthur “whether [he had] any ideas or suggestions regarding the organization of the Japanese Government and the composition of the Diet.” *Id.* at 9.

Interestingly, whether MacArthur demanded constitutional revision became the source of controversy. *Id.* at 9. George Atcheson, Jr., political advisor to the Supreme Commander and present at the October 4 meeting, *id.* at 8, later wrote to President Truman that a seemingly clear mandate for constitutional reform had actually been the result of a translator’s error. *Id.* at 18–19. Atcheson wrote, “[MacArthur] mentioned that the ‘administrative machinery’ of the Government should be reformed and Konoe’s interpreter . . . could not think of the correct Japanese translation and passed the statement off . . . with the only thing that came to his mind—’the constitution should be revised.’” *Id.* at 19 (quoting Letter from George Atcheson, The Acting Political Advisor in Japan to President Truman (Nov. 5, 1945)). Koseki calls this “a dishonorable and shockingly false charge against the interpreter,” and explains that Atcheson’s story may have been an attempt to correct perceptions that the constitutional reform had not come from within Japan but at the direction of the American occupiers. *Id.* at 19. See also *id.* at 1–19. MacArthur would maintain in his memoirs, however, that

conform to MacArthur's Three Principles: retention of the Emperor as the head of state, renunciation of the right of war, and the abolishment of the feudal system.⁷⁰

Although MacArthur's Three Principles clearly stated that Japan must abolish the right of war, confusion surrounds the exact origins of Article 9.⁷¹ MacArthur testified to the United States Senate in 1951, and later repeated in his autobiography, that Prime Minister Shidehara authored the provision.⁷² Others have described Article 9 as the result of MacArthur's personal edict.⁷³ Whatever its origin, the language of Article 9 was originally placed in the preamble to the Constitution.⁷⁴ The text of the

although he recognized the need for constitutional change, he did not try to impose a constitution on the Japanese, instead stating that "[t]he revision had to be made by the Japanese themselves and it had to be done without coercion." MACARTHUR, *supra* note 57, at 299. MacArthur particularly refuted the idea that Article 9 was foisted upon the Japanese at his insistence, stating that the idea came from Prime Minister Shidehara. *Id.* at 302–03.

70. KOSEKI, *supra* note 68, at 79. As to the second point of the Three Principles, the right to war, MacArthur wrote:

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

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

Id.

71. *Id.* at 82–86.

72. *Id.* at 83. See also MACARTHUR, *supra* note 57, at 303. MacArthur stated that the idea of including the no-war principle came from Shidehara and that Shidehara wanted to prohibit "any military establishment whatsoever" for Japan. *Id.* MacArthur wrote of his reaction:

I had thought that my long years of experience had rendered me practically immune to surprise or unusual excitement, but this took my breath away. I could not have agreed more.

For years I have believed that war should be abolished as an outmoded means of resolving disputes between nations.

Id. He quotes Shidehara as saying, "The world will laugh and mock us as impracticable visionaries, but a hundred years from now we will be called prophets." *Id.* (citation omitted). MacArthur was pleased that this renunciation of war—a requirement of the Potsdam Declaration—"had been accomplished by the Japanese themselves, not by the conquering powers." *Id.* at 304. Koseki concludes, MacArthur's claims to the contrary notwithstanding, that MacArthur himself proposed Article 9. KOSEKI, *supra* note 68, at 85. Koseki seems to adopt the view of Professor Sodei Rinjiro that MacArthur may have been trying to avoid the apparent hypocrisy behind authoring such a provision and shortly thereafter initiating the Korean War. *Id.* at 85–86.

73. MACARTHUR, *supra* note 57, at 302 ("It has frequently been charged, even by those who should be better informed, that the 'no war' clause was forced upon the government by my personal fiat.").

74. KOSEKI, *supra* note 68, at 83. Paragraph 1 of Article 9's language is similar to that of both the 1928 Kellogg-Briand Pact, and Article 2 of the Charter of the United Nations. ANAND, *supra* note 3, at 105–06. Compare Article 9, *supra* note 1, with General Pact for the Renunciation of War, Aug. 27, 1928, in DEP'T OF STATE, THE GENERAL PACT FOR THE RENUNCIATION OF WAR 1–3 (1928) ("The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another"), and U.N. CHARTER art. 2 ("All Members shall

Article was later incorporated into the body of the Constitution at MacArthur's suggestion.⁷⁵

On April 17, 1946 a complete draft of the Constitution was published in colloquial Japanese.⁷⁶ The draft was submitted for consideration by the Japanese Diet's House of Representatives on June 25, 1946 and promulgated on November 3, 1946.⁷⁷ The Constitution officially took effect on May 3, 1947.⁷⁸

3. From "No Self-Defense Allowed" to "Peacekeeping Operations"

Despite struggles later in the century to justify self-defense, it is clear that the original understanding of Article 9 was that it did not allow Japan to defend itself even against an aggressor's attack.⁷⁹ However, with the

refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.”).

Theodore McNelly notes that it is not Paragraph One of Article 9 that makes it unique. MCNELLY, *supra* note 3, at 105–06. After all, several French constitutions renounced war beginning in 1791. *Id.* German, Brazilian and Costa Rican constitutions have also renounced war. *See* Grundgesetz [GG] [Constitution] art. 26 (F.R.G.); Constituição Federal [C.F.] [Federal Constitution] art. 4 (Braz.); Constitución Política [Constitution] art. 12 (Costa Rica). Costa Rica abolished its army, similarly to Japan, but retained a constitutionally sanctioned police force. *Id.* art. 12. MCNELLY, *supra* note 3, at 106.

What makes the Japanese constitution particularly unique is its renunciation of defensive capabilities and prohibition of any military forces in paragraph two of Article 9. *Id.* As Dupont notes,

No other country in the world explicitly renounces war as a sovereign right; or eschews the threat, or use of force, as a means of settling international disputes; or proscribes land, sea and air forces as well as other war potential. This . . . is all the more remarkable when one considers that Japan is not an Asian Costa Rica but the world's second largest economy, a major financial power and a favoured candidate for a permanent seat on an expanded United Nation's Security Council.

DUPONT, *supra* note 11, at xxi (footnote omitted).

75. KOSEKI, *supra* note 68, at 83. When it was first moved, the renunciation of war text was originally placed as Article 1. *Id.* In the final version of the SCAP draft, the renunciation text was placed in a separate chapter, “Chapter Two, Renunciation of War.” *Id.* It was placed after the description of the Emperor's power in deference to the importance of the Emperor to the Japanese people. *Id.* at 84.

76. *Id.* at 133.

77. *Id.* at 169. During this process, the draft constitution underwent examination by the Privy Council, the Special Committee on Revision of the Imperial Constitution, another specially created House of Representatives subcommittee, the House of Peers, and again by the Privy Council. *Id.* at 168–69.

78. *Id.* at 220.

79. *Id.* at 192–93. During a meeting of the House of Representatives, Prime Minister Yoshida stated that “the very recognition [of the right to go to war in self-defense] is harmful.” *Id.* at 193 (citation omitted). Likewise, the Privy Council had prepared a “Collection of Expected Questions and Answers,” in which it stated that Japan could not go to war in self-defense. *Id.* at 192–93. Until 1954, Yoshida's statement was the official interpretation of Article 9 and the official answer to the question of legitimate self-defense. *Id.* at 193.

Later, the primary writer of Article 9 would characterize self-defense as a type of inherent residual

outbreak of the Korean War in 1950,⁸⁰ the United States needed to secure Japan's involvement in the containment of communism and was therefore willing to condone such activity in the shadow of Article 9.⁸¹

In August 1950, SCAP ordered Japan to establish a National Police Reserve.⁸² A year later, Japan and the United States signed a bilateral mutual security treaty.⁸³ The National Police Reserve became the National Safety Forces (NSF), and, in 1952, Japan established the National Safety Agency to manage the Safety Forces.⁸⁴ By 1955, Japan had established ground, maritime, and air Self-Defense Forces.⁸⁵ On January 19, 1960, Japan and the United States signed the Treaty of Mutual Cooperation and Security,⁸⁶ which remains in effect today. Supplementing the Treaty of

right that all nations had, whether or not they availed themselves of it. *Id.* at 194. While Article 9 disavowed aggressive war, it had nothing to say about self-defense. *Id.* The official interpretation taught in Japanese law schools was that "Japan had the right to self-defense under international law, but had waived it under the language of the second paragraph" of Article 9. Robert A. Fisher, Note, *The Erosion of Japanese Pacifism: The Constitutionality of the 1997 U.S.-Japan Defense Guidelines*, 32 CORNELL INT'L L.J. 393, 398 (1999). For the views expressed by Japan's Commission on the Constitution, which met from 1957–1964 to examine the implications of Japan's 1947 Constitution, on whether Article 9 allowed for self-defense, see JAPAN'S COMMISSION ON THE CONSTITUTION: THE FINAL REPORT 260–69 (John M. Maki ed., trans., Univ. of Wash. Press 1980).

It is worth noting that General MacArthur maintained that "Nothing in Article 9 . . . prevents any and all necessary steps for the preservation of the safety of the nation. . . . If attacked, she will defend herself." MACARTHUR, *supra* note 57, at 304.

80. Haruhiro Fukui, *Postwar Politics, 1945–1973*, in THE CAMBRIDGE HISTORY OF JAPAN VOLUME 6: THE TWENTIETH CENTURY 154, 158 (Peter Duus ed., 1988). For a history of the outbreak and course of the Korean War, see JAMES BRADY, THE COLDEST WAR: A MEMOIR OF KOREA (2000); T.R. FEHRENBACH, THIS KIND OF WAR: THE CLASSIC KOREAN WAR HISTORY (1998); CARTER MALKASIAN, THE KOREAN WAR 1950–1953 (2001).

81. Fukui, *supra* note 80, at 158.

82. *Id.* Japan was left virtually undefended because of the transfer of SCAP forces to Korea. 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, 1612–13 (2003). In order to preserve security, MacArthur ordered the creation of the National Police Reserve. *Id.* at 1612.

83. Security Treaty Between the United States of America and Japan, Sept. 8, 1951, U.S.-Japan, 3 U.S.T. 3329; see also GEORGE R. PACKARD III, PROTEST IN TOKYO: THE SECURITY TREATY CRISIS OF 1960, at 355–57 (1966); Fukui, *supra* note 80, at 158. Under the treaty, the United States is obligated to defend Japan in exchange for Japan allowing U.S. bases on its soil. See Sandra Madsen, Note, *The Japanese Constitution and Self-Defense Forces: Prospects for a New Japanese Military Role*, 3 TRANSNAT'L L. & CONTEMP. PROBS. 549, 559 (1993).

84. James E. Auer, *Article Nine: Renunciation of War*, JAPANESE CONSTITUTIONAL LAW 74 (Percy R. Luney, Jr. & Kazuyuki Takahashi eds., 1993). The National Safety Agency became the Defense Agency in 1954. *Id.* at 75.

85. *Id.* at 76.

86. See Treaty of Mutual Cooperation and Security, U.S.–Japan, Jan. 19, 1960, 11 U.S.T. 1632; Agreement Under Article VI of the Treaty of Mutual Cooperation and Security: Facilities and Areas and the Status of United States Armed Forces in Japan, U.S.–Japan, Jan. 19, 1960, 11 U.S.T. 1653. See also UNITED STATES-JAPAN SECURITY TREATY AND RELATED DOCUMENTS 1–5, 13–36 (American Embassy 1968). The treaty increased Japan's advisory control over United States troops stationed on

Mutual Cooperation and Security are the Guidelines for U.S.-Japan Defense Cooperation.⁸⁷

Since signing the Treaty of Mutual Cooperation and Security, Japan has become involved in international peacekeeping operations and humanitarian missions, at first slowly, but more rapidly in the past few years.⁸⁸ From a meager police force evolved a fully functioning de facto modern military.⁸⁹

The first Persian Gulf war focused the world's attention on Japan's participation in international peacekeeping⁹⁰ when it contributed more than \$13 billion to the effort in 1990.⁹¹ Despite having made the third largest financial contribution to the war,⁹² Japan was widely criticized for its refusal to contribute troops and was accused of "checkbook diplomacy."⁹³ In 1990, a United Nations (UN) Peace Cooperation Bill that would have sent SDF forces to the Persian Gulf failed to pass muster in the Diet.⁹⁴ In 1992, however, the Diet passed a different Peace Cooperation Bill allowing SDF participation in UN peacekeeping operations, but prohibiting the SDF from using force.⁹⁵

its soil and requires that Japan support the United States if the U.S. is attacked in Japanese territory. See Madsen, *supra* note 83.

87. Joint Statement on Review of Defense Cooperation Guidelines and Defense Cooperation, U.S.-Japan, Sept. 23, 1997, 36 I.L.M. 1621-38; The U.S.-Japan Joint Declaration on Security, U.S.-Japan, Apr. 17, 1996, 36 I.L.M. 1001-05. See also Matthew J. Gilley, Comment, *Japan's Developing Military Potential Within the Context of Its Constitutional Renunciation of War*, 14 EMORY INT'L L. REV. 1681, 1707-16 (2000).

88. See Ted McKenna, *Post 9-11, Japan Gets More Militant*, 28 J. ELECTRONIC DEFENSE 33 (2005). Cf. JAPAN DEFENSE AGENCY, INTERNATIONAL MILITARY SITUATION DEFENSE 3 (2003), http://www.jda.go.jp/e/index_.htm (last visited Oct. 21, 2005). See also DUPONT, *supra* note 11, at 4 tbl.1.1 (SDF peacekeeping activities 1992-2004). The Self-Defense Forces have been deployed to Cambodia, Mozambique, Rwanda, Syria, East Timor, Afghanistan, and Iraq. *Id.*

89. Cf. JAPAN DEFENSE AGENCY, *supra* note 88, at 11. See also DUPONT, *supra* note 11, at 26 (describing the SDF in its early stage as "lack[ing] operational teeth or a strong public mandate" and documenting changes in the SDF that have made them more capable). See also *id.* at 27 tbl.3.1-3.2 (comparing Japan's air and naval capabilities against other countries' capabilities).

90. See Madsen, *supra* note 83.

91. Auer, *supra* note 84, at 78. This was not the first time the SDF had been deployed outside of Japan: minesweepers were sent to Korea in 1950. *Id.* at 79.

92. *Id.* at 78.

93. See Derek van Hoften, Note, *Declaring War on the Japanese Constitution: Japan's Right to Military Sovereignty and the United States' Right to Military Presence in Japan*, 26 HASTINGS INT'L & COMP. L. REV. 289, 298 (2003).

94. Robert B. Funk, Note, *Japan's Constitution and U.N. Obligations in the Persian Gulf War: A Case for Non-Military Participation in U.N. Enforcement Actions*, 25 CORNELL INT'L L.J. 363, 385-89 (1992).

95. Auer, *supra* note 84, at 79. The law also stipulated that the SDF were not to enter combat zones and could not go to locations where a peace agreement had not yet been reached. *Id.* at 79-80. Another 1992 bill, The International Emergency Rescue Force Law, allowed the SDF to participate in aiding other countries in the event of a natural disaster. *Id.* at 80.

B. Domestic Interpretation of Article 9: The Role of the Japanese Judiciary

Article 81 of the Japanese Constitution provides for Supreme Court review of the “constitutionality of any law, order, regulation or official act.”⁹⁶ Although there have been three major cases interpreting Article 9, the Supreme Court of Japan generally has resorted to an American-like political question doctrine⁹⁷ when dealing with Article 9 adjudication.⁹⁸

First, in the 1959 *Sunakawa* case a group of Japanese radicals broke into an air base used by the United States and subsequently raised the defense that the U.S.-Japan Security Treaty was unconstitutional.⁹⁹ The Supreme Court declined to rule on the constitutionality of war for self-defense or of the SDF.¹⁰⁰ The Court did, however, hold that Japan retained an inherent right to self-defense.¹⁰¹

Second, in the *Naganuma Nike Missile Site Cases*,¹⁰² local residents sued the Ministry of Agriculture, Forestry and Fisheries in 1973 in the

96. NIHONKOKU KEMPŌ art. 81 (Japan), *supra* note 1, at app. at 312. See also Yasuhiro Okudaira, *The Constitution and Its Various Influences*, in JAPANESE CONSTITUTIONAL LAW, *supra* note 84, at 16–17. Under the Meiji Constitution, there was no judicial review of government acts. Kisaburo Yokota, *Political Questions and Judicial Review: A Comparison*, in THE CONSTITUTION OF JAPAN, *supra* note 1, at 141.

97. The American political question doctrine originated in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). The Supreme Court more fully explicated the factors determining what constitutes a political question in *Baker v. Carr*, 369 U.S. 186, 217 (1962).

98. Yakota, *supra* note 96, at 142. See also Christopher A. Ford, *The Indigenization of Constitutionalism in the Japanese Experience*, 28 CASE W. RES. L. REV. 3, 43–45 (1996); David Boling, Note, *Mass Rape, Enforced Prostitution, and the Japanese Imperial Army: Japan Eschews International Legal Responsibility?*, 32 COLUM. J. TRANSNAT'L. L. 533, 553, 577–80 (1995); but see Taisuke Kamata, *Adjudication and the Governing Process*, in JAPANESE CONSTITUTIONAL LAW, *supra* note 84, at 151–57 (noting that lately the Supreme Court has applied the legislative discretion doctrine in lieu of the political question, despite having utilized the political question doctrine in past cases); Funk, *supra* note 94, at 380–83. For an examination of Japan's constitutional borrowing generally, see Yasuo Hasebe, *Constitutional Borrowing and Political Theory*, 1 INT'L J. CONST. L. 224 (2003). Additionally, Matthew J. Gilley examines how contemporary Japanese courts have imported a positivist tradition from the previous constitution and thus have limited their interpretative independence in adjudicating Article 9 disputes. See Matthew J. Gilley, Comment, *Japan's Developing Military Potential Within the Context of Its Constitutional Renunciation of War*, 14 EMORY INT'L L. REV. 1681, 1687–93, 1703, 1716 (2000).

99. *Sakata v. Japan* (The Sunakawa Case), 13 KEISHŪ 3225 (Sup. Ct., Dec. 16, 1959), translated in JOHN M. MAKI, COURT AND CONSTITUTION IN JAPAN 298–365 (J.M. Maki Trans., 1964) [hereinafter MAKI, *Sunakawa*]; Auer, *supra* note 84, at 80.

100. MAKI, *Sunakawa*, *supra* note 99, at 302–08. See also Auer, *supra* note 84, at 80.

101. MAKI, *Sunakawa*, *supra* note 99, at 302–08. See also Auer, *supra* note 84, at 80.

102. See *Uno v. Minister of Agric., Forestry, and Fisheries* (The Naganuma Nike Missile Site Case III), 36 MINSHŪ 9, 1679 (Sup. Ct., Sept. 9, 1982), translated in LAWRENCE W. BEER & HIROSHI ITOH, THE CONSTITUTIONAL CASE LAW OF JAPAN, 1970–1990, at 83–130 (Malcom D.H. Smith & Masako Kamiya trans.) (1996) [hereinafter BEER, *Naganuma III*]; *Minister of Agric., Forestry and Fisheries v. Ito* (The Naganuma Nike Missile Site Case II), 27 GYŌSAI REISHŪ 8, 1175 (Sapporo High

Sapporo District Court to prevent a missile base from being constructed in a forest reserve near Naganuma in Hokkaido.¹⁰³ The residents argued, among other things, that construction of the base would violate Article 9.¹⁰⁴ The District Court, after concluding that the plaintiffs had standing to sue¹⁰⁵ and that the political question doctrine did not apply,¹⁰⁶ held that the SDF was unconstitutional.¹⁰⁷ Three years later, in 1976, the Sapporo High Court reversed and vacated the Sapporo District Court decision on the grounds of non-justiciability because, the High Court said, the appellees had lost their interest in the suit.¹⁰⁸ Despite having disposed of the case with the standing determination, the High Court went on to examine the meaning of Article 9 and the constitutionality of the SDF.¹⁰⁹ The High Court determined that, while Article 9's first paragraph clearly renounced war, the effect of the second paragraph was unclear.¹¹⁰ The Court concluded by stating that the constitutionality of the SDF was ultimately a political judgment not to be determined by courts.¹¹¹ The Supreme Court

Ct., Aug. 5, 1976), translated in LAWRENCE W. BEER & HIROSHI ITOH, THE CONSTITUTIONAL CASE LAW OF JAPAN, 1970–1990, at 83–130 (Malcom D.H. Smith & Masako Kamiya trans.) (1996) [hereinafter BEER, *Naganuma II*]; Ito v. Minister of Agriculture, Forestry and Fisheries (The Naganuma Nike Missile Site Case I), 712 HANREI JIHŌ 24 (Sapporo Dist. Ct., Sept. 7, 1973), translated in LAWRENCE W. BEER & HIROSHI ITOH, THE CONSTITUTIONAL CASE LAW OF JAPAN, 1970–1990, at 83–130 (Malcom D.H. Smith & Masako Kamiya trans.) (1996) (decision of the Sapporo District Court) [hereinafter BEER, *Naganuma I*]. See also Auer, *supra* note 84, at 80–81.

103. See BEER, *Naganuma I*, *supra* note 102, at 83.

104. *Id.*

105. *Id.* at 85–88.

106. See *id.* at 91–94.

107. See *id.* at 111–12. The Sapporo District Court stated:

Viewed in terms of its organization, scale, equipment and capabilities, the SDF is a military force, since it is clearly “an organization of men and material which has as its purpose combat activity involving physical force against a foreign threat.” Accordingly, the Ground, Maritime, and Air SDF correspond to the “war potential” of “land, sea, and air forces,” maintenance of which is forbidden by Article 9

Id. at 111.

108. See BEER, *Naganuma II*, *supra* note 102, at 114. See generally *id.* at 112–22.

109. *Id.* at 114–22. After determining that the “right to live in peace, as stated in the Preamble” to the Constitution did not confer substantive rights but was a statement of an ideal or goal, *id.* at 113–14 (citation omitted), the High Court stated that the establishment of the SDF and the enactment of other laws dealing with the SDF fell under the political question doctrine unless “recognized at first sight as very clearly unconstitutional or illegal.” *Id.* at 118. For the High Court’s discussion of Article 81 and how far judicial review might extend, see *id.* at 115–18.

110. *Id.* at 118–19. The High Court stated that “there [were] positive and negative theories as to whether or not the maintenance of military forces and other war potential for the purpose of self-defense [were] forbidden.” *Id.* at 119. The High Court examined these positive and negative theories, *id.* at 119–21, and then concluded that it could not “say that it [was] necessarily clear on which of these two views our Constitution was based.” *Id.* at 121.

111. *Id.* at 122.

affirmed the High Court's decision, but nowhere mentioned the issue of Article 9 or the constitutionality of the SDF.¹¹²

Third, in the Hyakuri Air Base Case in 1989, a dispute arose over land that the SDF wanted to buy in order to build a military base.¹¹³ The Mito District Court found for the SDF.¹¹⁴ Additionally, the court stated that use of force for self-defense was not unconstitutional under Article 9.¹¹⁵ However, the court declined to reach the constitutionality of the existence of the SDF, describing it as a political question that should be left to the Diet and to the public.¹¹⁶ On appeal, the Tokyo High Court also found for the SDF.¹¹⁷ The Tokyo High Court did not address the constitutionality of self-defense generally, or of the SDF.¹¹⁸ In affirming the Tokyo High Court decision, the Supreme Court also declined to examine the constitutionality of self-defense or the SDF.¹¹⁹

Given its history of either ignoring the constitutional question altogether or declining to rule on it, it is unlikely that the Japanese Supreme Court will influence the course of Article 9 interpretation through a definitive ruling.¹²⁰

112. BEER, *Naganuma III*, *supra* note 102, at 122–30.

113. *Ishizuka v. Japan (The Hyakuri Air Base case)*, 43 Minshū 6, 385 (Sup. Ct., June 20, 1989), translated in LAWRENCE W. BEER & HIROSHI ITOH, *THE CONSTITUTIONAL CASE LAW OF JAPAN, 1970–1990*, at 83–130 (Malcom D.H. Smith & Masako Kamiya trans.) (1996) (Vicki L. Beyer & Hiroshi Itoh trans.) [hereinafter BEER, *Hyakuri*].

114. BEER, *Hyakuri*, *supra* note 113, at 131.

115. *Id.* “[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.” *Id.* (quoting the Mito District Court). For a different translation of this paragraph, see Auer, *supra* note 84, at 81.

116. Auer, *supra* note 84, at 81.

117. BEER & ITOH, *supra* note 102, at 131.

118. *Id.*

119. Auer, *supra* note 84, at 82.

120. See John M. Maki, *The Constitution of Japan Pacifism, Popular Sovereignty, and Fundamental Human Rights*, in *JAPANESE CONSTITUTIONAL LAW*, *supra* note 84, at 41 (“It seems fairly safe to predict that the Supreme Court will not rule on the constitutionality of the SDF until a concrete legal dispute arises out of the question of whether the Government has developed the strength of the SDF to the point where it is clearly unconstitutional.”). See also Sylvia Brown Hamano, *Incomplete Revolutions and Not So Alien Transplants: The Japanese Constitution and Human Rights*, 1 U. PA. J. CONST. L. 415, 443 (1999) (“[T]he Court has adopted a policy of [such] extreme deference to the legislative and executive branches . . . that the Japanese legal system, in effect, has returned to that of the Meiji period where laws dictated the content of the Constitution.”); 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, 767–70 (1993); Robert A. Fisher, Note, *The Erosion of Japanese Pacifism: The Constitutionality of the 1997 U.S.-Japan Defense Guidelines*, 32 CORNELL INT'L L.J. 393, 409 (1999) (concluding that, given the Supreme Court's deference to the legislative and executive branches, the SDF is de facto constitutional). However, several lawsuits are pending with the Osaka, Sapporo, Tokyo, Shizuoka, and Nagoya District Courts

C. The Influence of Culture and Regional Politics on the Interpretation of Article 9

1. Shifting Cultural Attitudes: A Generational Shift and the Emergence of Political Discourse in the Common Experience

Japan's dedication to pacifism is an important component of cultural identity and has been a source of considerable national pride.¹²¹ From an early age, the Japanese are indoctrinated with the importance of the pacifist Constitution.¹²² Japan's ingrained aversion to war is in part a continued reaction to the horrors wrought by World War II and Japan's blind pursuit of the East Asian Co-Prosperty Sphere.¹²³ The destruction and loss of life was of a scale never imagined and the advent of the atomic bomb brought devastation and horror of a magnitude previously unthinkable.¹²⁴ By August 11, when Japan sent word of its acceptance of the terms of surrender to Allied capitals,¹²⁵ nearly three million Japanese military personnel and civilians had perished.¹²⁶ Out of their almost utter annihilation in pursuit of war, the Japanese emerged a people deeply committed to pacifism.¹²⁷

However, a generational shift in attitude seems to be developing in Japan.¹²⁸ While the two previous generations view pacifism as an absolute

challenging the constitutionality of the SDF deployment to Iraq. *Japanese Group Files Suit Against Troops Dispatch to Iraq*, BBC MONITORING INT'L REP., July 28, 2004.

121. Beer, *supra* note 4, at 818–19.

122. See Maki, *supra* note 68, at 26–28. “A study of the content of the Constitution, its general nature, and even specific constitutional issues (notably Article 9) is a core feature of social studies, particularly in middle and higher schools.” *Id.* at 27.

123. Beer, *supra* note 4, at 818–19. See also *supra* notes 50–53 and accompanying text.

124. *Id.* at 185. For instance, a single March 8, 1945, bombing of Tokyo obliterated 16 square miles of the city, destroying 267,000 buildings, killing 83,000 people, injuring 41,000, and leaving more than a million homeless. ZEILER, *supra* note 58, at 157–58. Between March and June of 1945, U.S. bombing destroyed nearly fifty percent of Japan's major cities and left twenty-two million people dead, injured, or homeless. *Id.* at 158. The battle for Okinawa alone cost nearly three thousand lives per day during the eighty-two-day fight. *Id.* at 161. When the United States finally secured Okinawa on June 21, 1945, 110,000 Japanese fighters had been killed along with at least 42,000 native Okinawans. *Id.* at 171–72.

125. ROEHR & RENZI, *supra* note †, at 238.

126. ZEILER, *supra* note 58, at 193. One source places the death toll at nearly five million—one and a half million military dead and three million civilians dead. ROEHR & RENZI, *supra* note †, at 257.

127. This commitment to pacifism has also been described as war guilt. Fletcher, *supra* note 12, at 1537.

128. See WILLIAM E. RAPP, PATHS DIVERGING? THE NEXT DECADE IN THE U.S.-JAPAN SECURITY ALLIANCE 30 (Strategic Studies Institute 2004) (“The ideological split in Japanese politics is now more a factor of generation than of party. In a recent poll, over 90 percent of Diet members under the age of 50 supported revision of the Constitution.”); Denny Roy, *Stirring Samurai, Disapproving*

mandate not to be modified, Japan's younger citizens seem to overwhelmingly favor expansion of the SDF's role as well as the revision of Article 9.¹²⁹ Despite this shift in attitude across age groups, the Japanese as a whole still remain risk-averse when it comes to the potential human costs of war.¹³⁰ Additionally, despite its attitude toward SDF expansion or Article 9 revision, the younger generation in Japan seems not to have a deep sense of attachment or devotion to its country.¹³¹

Also important is the emergence of politics into the domain of the average citizen. For much of the past sixty years, there has been a disconnect between politics and the life of a non-politician.¹³² Yet this is

Dragon: Japan's Growing Security Activity and Sino-Japan Relations, 31 ASIAN AFFAIRS 86 (2004) (“[Y]ounger generations born since the end of World War II are decreasingly sympathetic to attempts to constrain Japan because of the ‘history issue’ . . .”). See also WILLIAM CHAPMAN, *INVENTING JAPAN: THE MAKING OF A POSTWAR CIVILIZATION* 51–55 (1991). Chapman describes the “après-guerre generation” and its presumed break with the previous generation. *Id.* He notes that the après were only “modestly less conservative in social attitudes than [their] elders.” *Id.* at 52.

129. See DUPONT, *supra* note 11, at 22. A 1997 survey of Diet members found that 90% under the age of fifty favored revision compared to 50% of those over 50. GREEN, *supra* note 6, at 47. “Up to 60% of those polled in the 20–30-year-old bracket said that the time was right for the country to change its constitution.” Amit Chanda, *Polls Find Majority of Japanese Favouring Amendment of ‘Peace’ Clause in Constitution*, WORLD MARKETS ANALYSIS, June 22, 2004. “[T]hose in their 20s supported the Iraq mission by 57% to 40%, while the ratios began to reverse themselves among people in their 30s and 40s.” Barbara Demick, *Men in Uniform Impress Japan's New Generation*, L.A. TIMES, Feb. 7, 2004, at A9. Additionally, “polls . . . show that a clear majority of the Japanese people and parliamentarians are in favour of constitutional revision . . . and nearly half (48 per cent) want to abandon the prohibition on collective self defence.” *Id.* A February 2003 poll showed 78% opposition to the war in Iraq. RAPP, *supra* note 128, at 44. Alan Dupont notes, however, that after the SDF deployment to Iraq, public approval of SDF involvement in Iraq rose to 53%. DUPONT, *supra* note 11, at 21; see also Howard W. French, *Japan Faces Burden: Its Own Defense*, N.Y. TIMES, July 22, 2003, at A1 (“For the first time in three generations a shift in public opinion has rendered ordinary the discussion of a more assertive Japan and left defenders of the ‘peace Constitution’ on the defensive.”).

130. *From Pacifism to Populism*, THE ECONOMIST, July 10, 2004, at 20, 22 (“Japan’s overall foreign policy remains, at root, risk-averse.”); see also Evan Thomas & Hideko Takayama, *Japan's Unknown Soldiers*, NEWSWEEK, July 19, 2004, at 34 (“Asked if Japan should withdraw its forces [from Iraq] if a soldier was killed or wounded, 54 percent [of poll respondents] said yes.”). But see DUPONT, *supra* note 11, at 21 (noting that when Japanese nationals were captured in Iraq, 61% of poll respondents approved of the Japanese government’s decision not to negotiate with the captors).

131. CHAPMAN, *supra* note 128, at 252. According to Chapman, in the 1980s,

[o]lder people in a 1988 survey expressed strong feelings of patriotism; but only 20 to 30 percent of men in their twenties acknowledged being patriotic. . . . Compared to their cohorts in other nations, young Japanese adults were conspicuously low in devotion to their nation. A survey of the Management and Coordination Agency in early 1988 measured their devotion to national interests against those of young adults in ten other countries. Only 5.5 percent of the Japanese would sacrifice their personal interests for the sake of society’s interests, a rate far lower than in the other nations. About 40 percent of the young Japanese expressed a willingness to serve their country under some circumstances. The rate was twice as high in the other countries.

Id.

132. *Id.* at 145. Chapman notes:

changing.¹³³ Taboos on certain political discussions have been broken,¹³⁴ and political discourse has become common amongst non-politicians.¹³⁵

D. Regional Constraints: An Uneasy Status Quo and Japan's Image Problem

Japan's immediate regional environment might be described as one of barely maintained stability. Asia's international politics have taken on a "hub-and-spoke structure" since World War II, with the United States as the central hub in a series of bilateral relationships.¹³⁶ There are no strong multilateral institutions (such as NATO) in Asia, and tension and distrust among neighboring countries tends to run quite high.¹³⁷ Decades of brinksmanship have created a sense that a descent into chaos and outright war are only an instant away.¹³⁸ Tension also runs high in Asian international relations. Memories of Japan's brutal colonization of the

[Political scientists] found the Japanese identification with politics extremely weak. "It appears that many Japanese simply do not feel that politics lies within the domain of the average citizen," they wrote. To put it bluntly, the average Japanese sees politics as something so unimportant that it can safely be left to the politicians.

Id. (citation omitted). He further notes that "the interplay of politics and broad national issues was of little consequence." *Id.* at 146. Chapman explains that part of this "popular detachment from politics" can be attributed to negative attitudes toward politicians. *Id.* at 146–49. Additionally, Japanese evaluations of self-efficacy in the political process have been historically low. *Id.* at 148–49. *See also* DUPONT, *supra* note 11, at 3:

[T]he Japanese people were largely disengaged from the elite discourse on national security. . . . But the absence of informed public debate meant that there was little domestic pressure on Japanese politicians and bureaucrats to re-calibrate the country's security settings or rethink the role of the SDF as the contours of the strategic landscape altered. Without a popular constituency for change, and given the political strength of the anti-military Socialist Party, those Japanese politicians prepared to challenge the status quo were either marginalised or forced to proceed with their reform agenda at a glacial pace.

Id.

133. DUPONT, *supra* note 11, at 6–7 ("In an opinion poll conducted in October 2001, 76 per cent of respondents—an extremely high figure by Japanese standards—evinced an interest in defence issues.").

134. "[I]t is clear to [people in Christian cultures and Western European democracies] that peace and freedom should be achieved at any cost, even blood. For the Japanese, the question has been taboo. . . . Now we are asked [that question]. We haven't found an answer." CHAPMAN, *supra* note 128, at 301 (quoting Kiichi Miyazawa).

135. *Id.*

136. Francis Fukuyama, *Re-Envisioning Asia*, FOREIGN AFF., Jan.–Feb. 2005, at 76.

137. *Id.*; RAPP, *supra* note 128, at 2 (describing the uncertainty in the region); *see also* Kunihiko Saito, Essay, *The Security Situation in East Asia and the Pacific and Japan's Role*, 19 FORDHAM INT'L L.J. 1835 (1996).

138. *Cf.* Aaron L. Friedberg, *Ripe for Rivalry: Prospects for Peace in a Multipolar Asia*, in EAST ASIAN SECURITY 5 (Michael K. Brown et al. eds., 1996) ("[I]n the long run it is Asia that seems far more likely to be the cockpit of great power conflict").

region still remain,¹³⁹ and there is a pervasive sense within the region that Japan has not apologized sufficiently for its actions before its 1945 surrender to the allies.¹⁴⁰ Japan's neighbors view amendment of Article 9 with suspicion and alarm, and an amendment could spark a regional arms race as well as push tense international relationships past the breaking point.¹⁴¹

III. ANALYSIS

While Japan has escaped amending Article 9 thus far, its continued efforts to expand SDF operations and responsibilities mean that Japan should come face to face with Article 9 and amend it to explicitly allow for self-defense, participation in peacekeeping operations, and humanitarian missions. Past SDF expansion came in small increments:¹⁴² except for sending a minor minesweeping team to Korea in the 1950s,¹⁴³ Japan did not contribute personnel to aid in conflict resolution again until 1992 when it sent eight ceasefire monitors to Cambodia.¹⁴⁴ Since 1992, Japan has become increasingly involved in international affairs,¹⁴⁵ and a defense ministry panel recently suggested that Japan be given first-strike capabilities.¹⁴⁶ Japan has been pushing for a permanent seat on the United Nations Security Council if permanent seats are added.¹⁴⁷ Prime Minister

139. See generally IRIS CHANG, *THE RAPE OF NANKING: THE FORGOTTEN HOLOCAUST OF WORLD WAR II* (1998); YUKI TANAKA, *HIDDEN HORRORS: JAPANESE WAR CRIMES IN WORLD WAR II* (1998); Richard John Galvin, *The Case for a Japanese Truth Commission Covering World War II Era Japanese War Crimes*, 11 TUL. J. INT'L & COMP. L. 59, 62–70 (2003); J.N. Mak, *The Asia-Pacific Security Order*, in *ASIA-PACIFIC IN THE NEW WORLD ORDER* 89 (Anthony McGrew & Christopher Brook eds., 1998) (“Japan’s assertiveness is worrying to China, South Korea and the South-East Asian countries which have not forgotten Japan’s expansionist policy and militarism of the 1930s and 1940s”); Kyeyoung Park, *The Unspeakable Experiences of Korean Women Under Japanese Rule*, 21 WHITTIER L. REV. 567 (2000); Harry N. Scheiber, *Taking Responsibility: Moral and Historical Perspectives on the Japanese War-Reparations Issues*, 20 BERKELY J. INT’L L. 233 (2002).

140. GREEN, *supra* note 6, at 194–98; Boling, *supra* note 98, at 536–37 (“Yet one need not look far to see why Asian nations continue to harbor ill-will against Japan. There is little evidence of Japanese guilt over the actions of her forces in Asia fifty years ago.”); Galvin, *supra* note 139, at 61, 77–92 (“[L]ingering resentment of Japan’s war crimes still burns in China, much of Asia, and among many war crimes survivors as well.”).

141. Fukuyama, *supra* note 136, at 84. See also *Playing with Fire*, THE ECONOMIST, Jan. 22, 2005, at 39 (noting that a recent Japanese draft law aimed at increasing patriotism in schools “risk[s] antagonising Japan’s neighbours and reopening deep domestic wounds.”).

142. Cf. RAPP, *supra* note 128, at 6 (“Japanese security policy will continue, inexorably, to change in incremental steps in the near future . . .”).

143. Auer, *supra* note 84, at 79.

144. Madsen, *supra* note 83, at 552. See *supra* notes 91–95 and accompanying text.

145. See *supra* note 88 and accompanying text.

146. David Billing, *Japan Call to Reshape Defence Capabilities*, FIN. TIMES, Oct. 5, 2004, at 10.

147. Roy, *supra* note 128. Additionally, Prime Minister Koizumi has used Japan’s 2004

Junichiro Koizumi is well-known for his hawkish stance on what capabilities the SDF should have.¹⁴⁸ Furthermore, the governing Liberal Democratic Party released a draft revision of the constitution in November 2004 that would remove restrictions on the SDF and recognize it as a fully functioning military.¹⁴⁹ However, 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 changes as wholly constitutional under Article 9 threatens to undermine the significance of Article 9.¹⁵⁰

Japan must amend Article 9. The question then becomes one of immediacy. Despite Japan's changing cultural and political landscape, this Note concludes that there are two sources of potential change—one immediate and one glacial—and that consistent with Japan's reactive diplomacy and domestic incrementalism glacial change is the most likely future for Article 9. Thus far, amendment has been constrained by a variety of factors: the Supreme Court's reticence to interfere with legislative determinations of Article 9's meaning;¹⁵¹ the Diet's ability to informally amend Article 9 through its legislative enactments;¹⁵² regional conflicts that have reached an uneasy status quo that might be destabilized should Japan choose to amend Article 9;¹⁵³ and, most importantly, cultural attachment to pacifist sentiments.¹⁵⁴ All of these factors will continue to operate as strong inhibitors of amendment.

The two most likely sources of change are either through a shift in the regional security arrangement or evolving cultural sentiments. Given the Supreme Court's historical deference to legislative determination and its declaration that it will not deem law falling under Article 9's auspices unconstitutional unless it is clearly so on its face, a judicially sponsored

deployment of 550 troops to Iraq to argue for a permanent Security Council seat, Norimitsu Onishi, *Japan's Troops Proceed in Iraq Without Shot Fired*, N.Y. TIMES, Oct. 6, 2004, at A1, while Secretary of State Colin Powell expressed skepticism that Japan could fulfill the role of a permanent member without revising Article Nine. *Id.*

148. Cf. DUPONT, *supra* note 11, at xxii, 11–12.

149. Anthony Faiola, *Japan's Draft Charter Redefines Military*, WASH. POST, Nov. 23, 2005, at A16. The revision faces significant hurdles: First it must be approved by a two-thirds vote in the Diet, and then it must also receive majority approval in a national referendum. *Id.*

150. The implications of such ambivalence on the legitimacy of Japan's constitution are not explored in this Note, but carving out one Article as void of substantive meaning cannot bode well.

151. See *supra* notes 97–120 and accompanying text.

152. See *supra* notes 94–95 and accompanying text.

153. See *supra* notes 136–41 and accompanying text.

154. See *supra* notes 121–35 and accompanying text.

change to Article 9 is extremely unlikely.¹⁵⁵ It is similarly unlikely that the Diet or Executive will reverse policy course, rein themselves in, and decrease the scope or scale of the SDF's activities.¹⁵⁶ All indications point to the SDF's continued healthy existence, as well as an expansion of its responsibilities and duties.¹⁵⁷ Thus, we are left with the regional status quo and cultural attachments.

A "change in the regional security situation" means an outward event—likely a terrorist attack by a terrorist organization or an act of belligerence by one of Japan's neighbors—causing a crisis that will force Japan to immediately confront the restrictions Article 9 places on its ability to defend itself or engage in preemptive strikes. However, neither a terrorist attack nor an act of belligerency by a neighbor is likely to occur.¹⁵⁸ First, because Japan has limited its involvement internationally, it is not likely to be the target of terrorist attack.¹⁵⁹ Second, an act of belligerency by one of Japan's neighbors is similarly unlikely¹⁶⁰ because these countries enjoy an uneasy status quo in spite of a decades-long brinkmanship giving the appearance of instability.¹⁶¹ The most obvious threat source is North Korea, but despite its agitations and occasional provocations aimed at extorting its neighbors, North Korea is unlikely to launch an offensive against Japan or another country in the region in the near future.¹⁶² Furthermore, given its historical refusal to participate in missions that might have a human cost,¹⁶³ it is even possible that Japan

155. See *supra* notes 97–120 and accompanying text.

156. Although polls show shifting attitude among Diet members, there are three caveats. The first is that although a Diet member may answer "Should the Constitution be amended?" positively, he or she might not answer "Should Article 9 be amended?" in the same way. Second, although there is a growing consensus that Article 9 should be amended, members of this consensus are generally from the younger generation. Given the flashpoint nature of Article 9, as well as the difficulty amending the Constitution, it is unlikely that the younger generation could, at this point, amend Article 9 on its own will. Such an amendment would likely require a super-majority, both in the Diet and in the population generally. See *NIHON KOKU KENPŌ* [Constitution], art. 96 (Japan), reprinted in *English in THE CONSTITUTION OF JAPAN; ITS FIRST TWENTY YEARS, 1947–1967*, app. at 314 (Japanese Ministry of Justice trans. 1958, Dan Fenno Henderson ed., 1968) (1947).

157. Cf. *Spend and Defend*, *THE ECONOMIST*, Dec. 4, 2004, at 42–43 (describing the Japanese government's current plans for future SDF spending).

158. DUPONT, *supra* note 11, at 5.

159. Commentators have asserted, however, that if Japan gets drawn further into support of the United States' "War on Terror," its likelihood of being the target of terrorist attacks increases. Additionally, Japan was the victim of a domestic terrorist attack in 1997. Lawrence K. Altman, *Nerve Gas that Felled Subway Riders Said to Be One of Most Lethal Known*, *N.Y. TIMES*, Mar. 21, 1995, at A13.

160. DUPONT, *supra* note 11, at 5.

161. See *supra* notes 136–41 and accompanying text.

162. Cf. *When the Partying Has to Stop*, *THE ECONOMIST*, Feb. 12, 2005, at 40.

163. See *supra* note 93 and accompanying text.

might withdraw inward in the event that an act of belligerency was committed within the region. Thus, the greatest potential for immediate change in Japanese law and policy is a direct attack against Japan by a neighboring power. However, barring a dramatic change to the status quo in the region, this is extremely unlikely.¹⁶⁴

The second source of change is already underway: a generational cycling reflected in shifting cultural attitudes and norms. The younger generation—we might call them the “après les après guerre”¹⁶⁵—in Japan is already manifesting a different and more liberal attitude toward the SDF and Japan’s need to be involved internationally.¹⁶⁶ This generation wants to see Japan have a permanent seat on the United Nations Security Council and realizes that Japan must prove itself worthy of the seat.¹⁶⁷ It also is not scarred by memories of war¹⁶⁸ and has an attitude that might be described as “pragmatic realism.”¹⁶⁹ War guilt as an international or regional currency seems to be running on short reserve with this generation.¹⁷⁰ Once this generation matures and gains control of the Diet, the older generation will be swept out, and an Article 9 amendment will be more likely. Change to Article 9 will come as an incident of this generation’s different values.

IV. PROPOSAL

Currently, there is a mismatch between Article 9 and Japanese governmental actions with regard to the SDF and international involvement. This Note has taken the position that immediate change will only come through a blow to the regional security status quo and further, that such a blow likely would have to be directed against Japan itself. Barring such an immediate change, this Note discounts other possible sources of change and points to a long-term change in attitudes and values incident to a generational shift as the next likely source of Article 9 amendment.¹⁷¹ Because of the difficulties in the amendment process and the emotional nature of the subject, a super-majority both in the Diet and

164. Cf. DUPONT, *supra* note 11, at 14 (Japan is unlikely to increase its defense budget “barring a major shock of unanticipated proportions such as a direct Chinese military threat . . .”).

165. Cf. Chapman, *supra* note 128 and accompanying text.

166. See *supra* notes 128–29 and accompanying text.

167. See *supra* note 128 and accompanying text.

168. RAPP, *supra* note 128, at 30.

169. See generally DUPONT, *supra* note 11, at 2–6.

170. RAPP, *supra* note 128, at 30.

171. William E. Rapp shares the conclusion that “Japan, through incremental steps over a number of years, will significantly transform its security policy . . .” *Id.* at 4.

in the population at large will be needed to amend Article 9. Such a super-majority will be in place only once the older generation declines and is replaced by the younger generation. In other words, Japan must hurry up and wait.

But what to do in the interim? That Japan should amend Article 9 does not mean that it should renounce Article 9 principles altogether. In the interim, Japan should work to ensure that its expansion of the SDF is limited to two areas: national self-defense and furtherance of international peace. Japan is still not fully capable of defending itself against an attack on its territory.¹⁷²

The more important question is how Japan might continue to contribute to the furtherance of international peace. Future participation in peacekeeping operations and humanitarian missions is critical, especially in light of Japan's desire for a permanent seat on the United Nations Security Council. As a nation dedicated to peace, Japan should consider deepening inter-operational ties to the United Nations and enmeshing its decision-making process about international involvement with that of the United Nations. As an international organization with the furtherance of world peace as its *raison d'être*, the United Nations is a legitimate vehicle through which Japan can participate in international peacekeeping. Additionally, Japan has the opportunity to lead by example and demonstrate the value of being truly invested in the international coalition that the United Nations represents. This involves not only the commitment of funds, but the commitment of personnel. While Japan would still have to consider its own interests, serving as a quasi-national adjunct to the United Nations could make it the forerunner in an era where security takes on a predominantly global and collective nature.

This is not to say that Japan should leave behind its national concerns: after all, the politicians who make decisions about international involvement are the same politicians who answer to domestic constituencies. Instead, this proposal envisions that Japan, rather than quietly distancing itself from global concerns and conflicts, should take a leadership role in international relations to demonstrate that a country can be realistically committed to international peace without being confined to the role of perpetually-uninvolved outsider.

172. For a description of weaknesses in Japan's defensive capability, see DUPONT, *supra* note 11, at 28, 31.

V. CONCLUSION

A long-term refusal to amend Article 9 of the Japanese Constitution is an unviable course of action and has negative implications for Japan's constitutional and institutional political legitimacy. Japan's Article 9 must be amended, but this process likely will not take place any time soon, constrained as it is by a host of factors. The sources of change with the greatest potential for causing amendment of Article 9 are either an outright attack on Japan or value-shifting manifested through generational cycling. Despite the perpetual, seemingly precarious state of affairs in Asia, Japan is in no danger of imminent attack and therefore imminent change is unlikely. However, the current younger generation has expressed the opinion that Article 9 needs to be amended, at least so that Japan may constitutionally defend itself.

In the meantime, Japan should continue to dedicate itself to the maintenance of world peace. This most closely aligns its ideals with those of the United Nations. With its financial resources and expressed dedication to peace, Japan has the opportunity to emerge as the next leader of the United Nations by fully committing to the process that the United Nations represents. If Japan truly wants the international respect it craves, manifesting its peaceful ideals through cooperation with and dedication to the United Nations seems an ideal proving ground.

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