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Detlef Kantowsky und Alois Graf von Waldburg-Zeil

Wissenschaftlicher Beirat:

Heinz Bechert, Dieter Conrad, Hans-Dieter Evers,  
Michael von Hauff, Hermann Kulke, Gudula Linck

Schriftleitung: Clemens Jürgenmeyer

Windausstrasse 16, 79110 Freiburg  
Phone: +49 (0)761/85091 Fax: +49 (0)761/892967  
E-mail: [abifr@uni-freiburg.de](mailto:abifr@uni-freiburg.de) Homepage: [www.uni-freiburg.de/abifr](http://www.uni-freiburg.de/abifr)

**ABI** ARNOLD  
BERGSTRAESSER  
INSTITUT

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## The Constitutional Abolition of War in Japan Monument of a Culture of Peace?<sup>?</sup>

KLAUS SCHLICHTMANN

“The new world must be built by resolute men who, when hope is dead will hope by faith.”  
(Reinhold Niebuhr)

“... and in the end they might not be able to hold the line.”<sup>1</sup>

### Introduction

National constitutions may have an important role to play in boosting international security and bringing the world under the rule of law. Right after the Second World War the new constitutions of both Germany and Japan contained no provisions regulating military and defense matters; instead they provided for strengthening international organization and cooperation. Rearmament in the mid-1950s in both countries provoked massive popular protests and extensive legal disputes over constitutional issues. In Japan, until today, the existence of the SDF (Self-Defense Forces) is considered by what is probably the majority of legal experts as strictly speaking, unconstitutional.

In contrast to Germany which has changed its Constitution twice, in 1956 and 1968<sup>2</sup>, to create a proper defense establishment and powerful ministry, it seems Japan and even the Japanese Government is conscientiously and meticulously adhering to what it believes to be the essence of Article IX, i.e. a strict adherence to the principle of the non-use of force, [p. 124] except in self-defense – until the UN system of security may one day

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<sup>?</sup> The original draft paper of this article was presented at the *International Congress of Historical Sciences*, ‘Orienting the Twenty-First Century toward Peace’, Oslo, in the *Peace History Commission*, on 12 August, 2000 in the Nobel Institute.

<sup>1</sup> MacArthur about Article IX, in: Government of the United States (ed.), *Military Situation in the Far East*, (Hearings before the Committee on Armed Services and the Committee on Foreign Relations, United States Senate), Washington, D.C., Government Printing Office 1951, p. 223.

<sup>2</sup> It has to be admitted, though, that unlike Germany Japan was never much in danger of becoming the major theater of a third world war.

be in force. Nevertheless, a general erosion of the original purpose of Article IX has been observed, though the residual core remains intact: the denouncement of the ‘institution of war’, pointing to the possibility of some other, non-military arrangements, to establish “an international order based on peace and justice” (Article IX).

### Article IX

Article IX of the Japanese Constitution (JC) presumably originated with Shidehara Kijūrō, when he was Prime Minister from October 1945 to May 1946, as I have shown elsewhere.<sup>3</sup> Yet, in a wider context it has to be seen as the outcome of a universal movement that began with the article forbidding aggressive war in the Constitution of the First Republic of France.<sup>4</sup> Though apparently only the Brazilian Constitution in 1891 took up the wording from the French Constitution, the idea gained momentum with the First World War, when the constitutional prohibition came to be considered as one possibility for averting future war. Several constitutions also adopted articles accepting international jurisdiction, as a means to avoid war.

Mention should be made of the Conference of the Inter-Parliamentary Union in 1924 and the International Peace Conference of 1931, which called for amending national constitutions for the purpose of banishing war, strengthening international law and contributing to the emerging international legal order. The German Walther Schücking, a parliamentarian of the Weimar Republic, professor of international law and Neo-Kantian of the Marburg school of thought, was intimately involved in the drawing up of some of the legal documents related to limitations of national sovereignty and international organization.<sup>5</sup> With the Kellogg-Briand Pact, after 1929, the trend received a new impetus. For example, Article 6 of the Spanish Constitution of 1931 stipulated: “Spain renounces war as an instrument of national policy.”

After the end of the Second World War the idea experienced a boom. In Germany, for example, Article 24 of the Constitution of 1949 provides for [p. 125] delegating sovereign powers to an international organization – for Pro-

fessor Carlo Schmid, the article’s chief drafter, this was the UN – and becoming part of a system of collective security, by agreeing to the necessary limitations of national sovereignty.<sup>6</sup> After the war, in 1946, 1947, 1948, and 1949 respectively, France, Japan, Italy, and Germany were the first countries to provide for limitations of national sovereignty for the purpose of international peace and its lawful organization.<sup>7</sup> The first draft of Article IX in the famous ‘MacArthur Notes’ of end-January 1945 read:

“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 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.”<sup>8</sup>

### The Japanese Constitutional Amendment

The Japanese post-war Constitution was written by Americans and officially adopted as an amendment to the 1889 Meiji Constitution on 24 August 1946. Amongst the Japanese people, “almost everyone ... approved of Article 9”; with the end of the war “pacifist feeling was sincere and almost universal, even among many old-fashioned nationalists.” Also: “The disarmament clause gave Japan a unique status among the important nations of the world.”<sup>9</sup> No doubt, Article IX was one expression of what Professor Wilhelm Grewe described as a new epoch in the history of international law [p. 126] that began in 1945.<sup>10</sup> Polls like that by the daily *Mainichi Shimbun*

<sup>6</sup> For a discussion of the constitutional issues see Daniel-Erasmus Khan and Markus Zöckler, ‘Germans to the Front? or Le malade imaginaire’, *European Journal of International Law* (EJIL), Vol.3, No.1 (1992), pp. 163-77.

<sup>7</sup> See Klaus Schlichtmann, ‘Artikel 9 im Normenkontext der Staatsverfassungen - Souveränitätsbeschränkung und Kriegsverhütung im 20. Jahrhundert’ (Article 9 in context - limitations of national sovereignty and the prevention of war in twentieth century constitutional law), *Gewollt oder geworden*, ed. Werner Schaumann, Munich: iudicium, 1996, pp. 129-50, for a history of the enactment of those constitutional provisions; see also, by the same author, ‘A Short History of the “Constitutional Law of Peace” and its Possible Application, in the Light of Article IX JC’, *Indian Journal of International Law*, Vol.39, No.2 (April-June), 1999, pp. 291-310.

<sup>8</sup> See Charles L. Kades, ‘Discussion of Professor Theodore McNelly’s Paper, „General Douglas MacArthur and the Constitutional Disarmament of Japan“’, *Transactions of the Asiatic Society of Japan*, Vol.vii, No.1 (1982), p. 51. The final article was adopted with a few, not substantial changes.

<sup>9</sup> Richard Storry, *A History of Modern Japan*, Penguin 1960, p. 244.

<sup>10</sup> S. Wilhelm Grewe, *Epochen der Völkerrechtsgeschichte* [Historical epochs of international law], Baden-Baden: Nomos, 1984, pp. 749 ff.

<sup>3</sup> Klaus Schlichtmann, *Shidehara Kijuro: Staatsmann und Pazifist – eine politische Biographie*, Hamburg: Veröffentlichung der Deutsch-Japanischen Juristenvereinigung, 1998.

<sup>4</sup> Constitution of the First Republic (1791): “La nation française renonce à entreprendre aucune guerre dans vue de faire des conquêtes et n’emploiera jamais ses forces contre la liberté d’aucun peuple.”

<sup>5</sup> See Frank Bodendiek, *Walther Schücking*, diss. Kiel University 1999 (in print), and my own forthcoming article on Walther Schücking.

in May 1946 showed the new Constitution was welcomed by 85% and the pacifism of Article IX by almost 70% of the population.<sup>11</sup> The London *Economist* wrote on 9 November 1946 in appreciation:

“The new Constitution is, on paper at least, quite admirably democratic and corrects the notably undemocratic features of its predecessor. But this merely brings Japan tardily into line with the parliamentary-democratic states of the world, and gives it no occasion for moral superiority over other nations. It is otherwise with the clauses by which Japan renounces to wage war even in self-defence. *No nation has ever before thus adopted complete non-violence as part of its political structure; not even Mr. Gandhi's India is proposing to do so.* The Japanese Prime Minister has spoken of the example Japan is setting to the world, and the Japanese are apparently almost as pleased with themselves as if they had won the war... Japan has moved to a higher moral plane ... The cynic may say that, as Japan has been disarmed anyway by the Allies and is to be kept disarmed, this spectacular renunciation of war is only making a virtue of necessity. But, after all, *there is a skill in making a virtue of necessity; it is judo, the 'soft art', in which the wrestler throws his opponent by yielding quickly in the direction of pressure.*”<sup>12</sup>

At the meeting of the War Investigation Commission, which the Japanese government had instituted on 24 November 1945, its Chairman, Prime Minister Shidehara said on 27 March 1946, right after the publication of the draft Constitution, about Article IX:

“No precedent for this kind of constitutional stipulation can be found in the constitution of any other country. Furthermore, at a time when research on atomic bombs and other powerful weapons is continuing unabated, there may be people who think that the renunciation of war is utopian nonsense. *However, no one can guarantee that, with subsequent technological advance and development, new destructive military weapons tens or even hundreds of times more powerful than the atomic bomb won't be discovered. If such weapons are discovered, the possession of millions of soldiers and thousands of warships and airplanes will still not ensure national security.* When war starts the cities of the fighting countries will be totally reduced to ashes and their residents will be annihilated in a few hours.”<sup>13</sup>

[p. 127] The whole Constitution also contains a lot of Japanese progressive thought. It has been shown that Japanese liberal ideas found their way

<sup>11</sup> Tsuneoka Setsuko (Norimoto), ‘Pacifism and some Misconceptions about the Japanese Constitution’, in: *The Constitution of Japan*, Tôkyô: Kashiwashobô, 1993, p. 126.

<sup>12</sup> Emphasis added.

<sup>13</sup> Quoted in Maruyama Masao, ‘Some Reflections on Article IX of the Constitution’, in: Maruyama Masao, *Thought and Behaviour in Modern Japanese Politics*, expanded edition, London: Oxford University Press, 1969, p. 308 (emphasis added). This was originally published in *Sekai*, 235 (1965), and reprinted as: ‘Kempô daikyûjô wo meguru jakkan no kôsetsu’, in Fukase Tadakazu (ed.), *Sensô no hôki* (The renunciation of war), Tôkyô: Sanseido, 1980<sup>2</sup> (1977), pp. 155-73.

into the American draft, through the SCAP<sup>14</sup> GHQ's Milo E. Rowell. Rowell was in charge of receiving the Japanese proposals for the new Constitution, to be made use of by GHQ. Apparently, from among the several drafts by Japanese non-governmental groups, the Americans “consulted only the *kempô kenkyû kai*'s draft.”<sup>15</sup> It is not surprising therefore, that the American draft shows many features of the draft presented by the *kempô kenkyû kai an* (The Draft of Constitutional Research Association), which was translated immediately into English by GHQ.<sup>16</sup> No doubt, similarly, Article IX is a manifestation of earlier Japanese pacifism, which was strong at the turn of the century and in the 1920s. Furthermore, even if in most cases one can “state clearly that this can be traced to foreign influences, and that is indigenuous, in an investigation of the present time one must add that sometimes foreign influences, and what one might call the ‘spirit of the time’ (‘Zeitgeist’), cannot be clearly distinguished.”<sup>17</sup> With regard to Article IX this is also an important clue.

Maruyama Masao (1914-96), “probably the most eminent and well-known Japanese political scientist and social philosopher”<sup>18</sup> stressed that “the people have the final right to decide whether a policy decision is correct or not.” This was “the basis for democracy.” Maruyama acknowledged “Shidehara's statement *foresaw* the new meaning of Article IX in a thermonuclear age and he curiously assigned Japan the mission of being a vanguard in international society.”<sup>19</sup>

[p. 128] General MacArthur (1880-1964) was also favorable of Shidehara's suggestion to abolish war in the Japanese Constitution. In his address to the Allied Council of Japan on 5 April 1946 he emphasized, with regards to Article IX:

<sup>14</sup> Superior Commander of the Allied Powers.

<sup>15</sup> *Kempô Chôsakai, Kempô Seitei no Keika ni Kansuru Shôinukai*, 47, Gijiroku (Report of the 47th Subcommittee on the Making of the Constitution of Japan, Tokyo 1961, p. 303, quoted in HORI Makiyo, ‘The Constitution of Japan: A Logical Extension of the Ueki Draft Constitution (1881) and the American Constitution's Bill of Rights’, in: Barton Starr, *The United States Constitution. Its Birth, Growth and Influence in Asia*, Hong Kong: Hong Kong University Press, 1988, p. 234. I thank Kazuyo Yamane for having brought this article to my attention.

<sup>16</sup> Hori Makiyo, *op.cit.*, p. 232.

<sup>17</sup> Wilhelm Röhl, *Fremde Einflüsse im modernen japanischen Recht*, Frankfurt, M. and Berlin: Alfred Metzner, 1959, p. 1. All translations from the German in this article are by K.S.

<sup>18</sup> Rudolf Wolfgang Müller, ‘Einführung in das Denken Maruyamas’, *Leviathan*, Vol.17, No.2 (1989), p. 166.

<sup>19</sup> Maruyama Masao, ‘Some Reflections on Article IX of the Constitution’, pp. 294 and 300.

„While all provisions of this proposed new constitution are of importance, and lead individually and collectively to the desired end as expressed at Potsdam, I desire especially to mention that provision dealing with the renunciation of war. Such renunciation, while in some respects a logical sequence to the destruction of Japan's war-making potential, goes yet further in its *surrender of the sovereign right of resort to arms in the international sphere*. ... The cynic may view such action as demonstrating but a childlike faith in a visionary ideal, but the realist will see in it far deeper significance. He will understand that in the evolution of society it became necessary for man to surrender certain rights theretofore inherent in himself in order that states might be created vested with sovereign power over the individuals who collectively formed them, that foremost of these inherent rights thus surrendered to the body politic was man's right to resort to force in the settlement of disputes with his neighbor. With the advance of society, groups or states federated together through the identical process of surrendering inherent rights and submitting to a sovereign representing the collective will...

There can be no doubt that both the progress and survival of civilization is dependent upon the timely recognition of the imperative need for some such forward step – is dependent upon the realization by all nations of the utter futility of force as an arbiter of international issues – ... and ... upon the development of a world order which will permit a nation such as Japan safely to entrust its national integrity to just such a higher law to which all people on earth shall have rendered themselves subservient. Therein lies the road to lasting peace.

I therefore commend Japan's proposal for the renunciation of war to the thoughtful consideration of all peoples of the world. *It points the way - the only way.*<sup>20</sup>

Those who were aware of the significance of Article IX, like the renowned international law professor Takayanagi Kenzô, in 1946 member of the Upper House, who in 1957-64 chaired the Japanese Government's Commission on the Constitution (*kempô mondai chôsakai*), considered Article IX to be a necessary first step toward world federation (*sekai rempô*). Legitimately Article IX may be linked to the majority judgment of the Tokyo War Crimes [p. 129] Trial. The International Military Tribunal, referring to the Kellogg-Briand Pact ruled in November 1948 *inter alia* “the right of self-defence does not confer upon the State resorting to war the authority to make a final deter-

mination upon the justification for its action.”<sup>21</sup> It points evidently to a higher authority, yet to be established.

## Post-war Developments

In both Germany and Japan the Korean War created a push toward remilitarization.<sup>22</sup> The Korean War made it necessary to replace the American troops drawn from Japan to engage in action in Korea, with a Japanese national police force (*keisatsu yobitai*), from which the so-called Self-Defense Forces (SDF, j. *jieitai*) evolved in 1954.<sup>23</sup> After massive public demonstrations against the SDF and the US-Japan Security Treaty in the fifties, sixties and seventies, today the *jieitai* are widely accepted. The basis for this acceptance is a wide interpretation of Article IX vis-à-vis a narrow interpretation of Article 51 of the UN Charter.<sup>24</sup> It is hoped that in some future the aims of the Constitution would be fulfilled, and an international order of peace established.

In fact, pressure for revising the Constitution came mostly from outside, especially from the United States. Official Japanese policy, however, remained strict, and in 1975 Prime Minister Miki stated: “Eventually the world has to accept that Japan was not willing to make a positive military contribution.”<sup>25</sup> The Basic Draft of the Committee on the Constitution of the Liberal Democratic Party (LDP) on 6 October 1972 proclaimed: “The guarantee for Japan's security is ideally to be entrusted to a system of collective [p. 130] security of the United Nations. Until its creation, however, it must be recognized that Japan must depend for its security on the maintenance of a

<sup>21</sup> B.V.A. Röling and C.F. Rüter (eds.), *The Tokyo Judgment. The International Military Tribunal for the Far East (I.M.T.F.E.)*, 29 April 1946 - 12 November 1948, Part I: The Majority Judgment. Amsterdam: Amsterdam University Press, 1972, p. 47.

<sup>22</sup> See Hans Buchheim, ‘Adenauers Sicherheitspolitik 1950-1951’, in: *Aspekte der deutschen Wiederbewaffnung bis 1955*, ed. Militärischen Forschungsamt, Boppard am Rhein: Boldt, 1975, p. 134. In many other respects in Germany the development took quite a different turn, however; on the role of public opinion see Hans-Adolf Jacobsen, ‘Zur Rolle der öffentlichen Meinung bei der Debatte um die Wiederbewaffnung 1950-1955’, in: *Aspekte der deutschen Wiederbewaffnung bis 1955*. Strange enough, this author gives ‘growing prosperity’ as a reason for the German peoples’ acceptance of rearmament, p. 67.

<sup>23</sup> Reinhard NEUMANN, *Änderung und Wandlung der Japanischen Verfassung*, Cologne, Berlin, Bonn and Munich 1982, gives valuable details, as does Wilhelm RÖHL.

<sup>24</sup> Granting the right of individual and collective self-defense.

<sup>25</sup> *Mainichi Daily News* v. 9. September 1975, quoted in Neumann, *op.cit.*, p. 88.

<sup>20</sup> General Douglas MacArthur on 5 April 1946. MacArthur Archives, Norfolk, Virginia. I thank Mr. Martin Knottenbelt for this reference. MacArthur on several occasions confirmed Shidehara's authorship of Article IX; also, Shidehara himself admitted to it in his memoirs, *Gaikô Gojûnen* (Fifty Years Diplomacy), Tokyo: Nihontoshosenta, 1998 (orig. 1951)

self-defense potential...”<sup>26</sup> Similarly, the national defense guidelines and political principles stipulate that Japan supports the activities of the United Nations. Should the UN be able one day to “deter or suppress [aggressions] ... effectively ... then three of the five big parties plan to forego the Japanese-American Security Treaty and even step by step dismantle the Self-Defense Forces.”<sup>27</sup> The present US-Japan Security Treaty itself, in an article (Art. X), which probably originated with Shidehara, stipulates that the treaty will become obsolete when the United Nations system will eventually be in place to “provide for the maintenance of international peace and security” for Japan and its neighbors.

Shidehara, however, rejected any kind of rearmament. “Japan has no fighting force and when participation in the United Nations Organization comes up as a practical question she must make a reservation, considering her new Constitution, particularly Article 9. If participation with a reservation is acceptable to UNO circles, we can join the organization ... But so long as there remains Article 9, we must make a reservation with regard to its application. ... We will follow this policy and the public opinion of the world will support us. ... You cannot possess any force capable of fighting a foreign country. ... Japan cannot possess any war potential.”<sup>28</sup> Until now, there is no draft and the Self-Defense Forces are strictly defensive, incorporating the principle and concept of ‘non-offensive defense’, only quite recently studied as an alternative security concept in the West. At the same time the SDF’s tasks also cover the civil sector, e.g. public emergencies and catastrophes.<sup>29</sup> Salaries for those employed in the immediate and wider military task fields constituted about 50% of the defense budget. In addition, a great part of the budget is used for public buildings and construction.<sup>30</sup> In spite of having one of the most well equipped military forces in the world, defense spending does not surpass the stipulated margin of 1% of the GNP, and there is no arms industry geared to exports. The school text[p. 131] books treat the subject of the Constitution extensively. “Study of the Constitution is not limited to the upper level of the educational system ... even spe-

cific constitutional issues (notably Article 9) (are) a core feature of social studies, particularly in the middle and higher schools.”<sup>31</sup>

The above-quoted Maruyama Masao saw Article IX as a „direction indicator“, a „dynamic force, not just a static outer limit“, <sup>32</sup> aiming at the abolition of war and institutions necessary for a global security community. Article IX was a meaningful, logical and stringent proposition to counter the two forms of modern warfare, “supernational and subnational”, which had evolved and were “both combining to shatter the traditional form of warfare – war fought by military units, acting as the formal mechanism of the state, under the complete control of the sovereign authority in which, *in principle*, there is a distinction between combatants and non-combatants. This collapse of the traditional form of warfare makes imperative a re-examination of the conceptual framework of the old international law, which was built around a system of sovereign states and served as the impersonal agent which regulated their mutual relationships.”<sup>33</sup>

## The Way toward Constitutional Revision & Participation in PKOs

“The culture of peace is based on the principles established in the Charter of the United Nations and on respect for human rights, democracy and tolerance, the promotion of development, education for peace, the free flow of information and the wider participation of women as an integral approach to preventing violence and conflicts, and efforts aimed at the creation of conditions for peace and its consolidation.” (A/Res/52/13, 15 January 1998, para. 2)

The *Yomiuri Shimbun* is the largest newspaper in Japan, with a circulation of about ten million.<sup>34</sup> For our purpose it is perhaps the most interesting source, because it is the paper’s declared editorial policy to advocate constitutional revision. Under successive administrations, in order to strengthen opposition [p. 132] to the government’s alleged inactivity with regard to constitutional

<sup>26</sup> Quoted in Arikura Ryōkichi und Hasegawa Masayasu, *Bunken senshū: Nihon koku kempō* (The Japanese Constitution), Tōkyō: Sanseidō, 1977, Vol.13, p. 257 f., in Neumann, *op.cit.*, p. 207.

<sup>27</sup> H.J. Krug, ‘Friedenspolitik’, in: Horst Hammitzsch (ed.), *Japan Handbuch*, Wiesbaden: Franz Steiner, 1981, p. 2018.

<sup>28</sup> Minutes of the session of the Special Committee of the House of Peers on 14 September 1946, Nr.12. quoted in Kades, ‘Discussion of Professor Theodore McNelly’s Paper’, pp. 41-2 .

<sup>29</sup> See Nakamura Ken’ichi, ‘Militarization of Postwar Japan’, *Bulletin of Peace Proposals*, Vol.13, No.1 (1982), p. 37.

<sup>30</sup> Nakamura, *op.cit.*, p. 35.

<sup>31</sup> John M. Maki, ‘The Japanese Constitutional Style’, in: Dan Fenno HENDERSON (ed.), *The Constitution of Japan - Its First Twenty Years, 1947-67*, Seattle und London: University of Washington Press, 1968, p. 27.

<sup>32</sup> Maruyama Masao, *op.cit.*, p. 299.

<sup>33</sup> Maruyama Masao, *op.cit.*, p. 314.

<sup>34</sup> The English language edition I draw on, *The Daily Yomiuri*, has a circulation of about 52 thousand. Though it differs in its contents from the Japanese language edition to a considerable extent, this is not so, of course, with respect to the constitutional issues relevant to this investigation.

revision, the paper has stirred up public sentiment,<sup>35</sup> to find the two-thirds majority necessary for amending the Constitution in a public referendum. Over the years the *Yomiuri* has been proclaiming over and again the ‘need’ to change Japan’s Constitution, especially Article IX:

‘The United Nations is becoming more and more important as an organization enforcing collective security, and, therefore, it is necessary to make the Japanese Constitution compatible with the U.N. Charter. The *Yomiuri Shimbun* established a Research Council on the constitution believing the time had come to consider the constitution from a new perspective. ... All constitutions reflect the international domestic political circumstances when they were drafted ... the *Yomiuri* Research Council proposed enactment of a basic security law, while recommending that the second paragraph of Article 9 of the Constitution be revised. ... Japan’s contributions as a ‘pacifist’ nation are not laudable internationally. It is this point which needs attention from now on.’<sup>36</sup>

The same edition contained a summary of the *Yomiuri* research panel’s report, which clarified the issue: “The proposed national security law would provide that as a sovereign nation, Japan has the right to maintain individual self-defense and collective self-defense. ... [Also:] It would provide that Japan should actively participate in peacekeeping activities of the United Nations.” The Council envisioned widely held discussions “by 1996, the 50th anniversary of the enactment of the Constitution.”<sup>37</sup>

While the NATO Council of Ministers in 1992 for the first time considered the possibility of deploying military personnel under a CSCE or UN mandate,<sup>38</sup> this was also the year, in which for the first time in post-war history, Japan sent Self-Defense Forces personnel on a UN peacekeeping mission abroad. The Peacekeeping Cooperation Law, which had been adopted for the purpose, however, did not allow “participation in primary peacekeeping activities, such as monitoring ceasefires and disarmament, inspections concerning the loading and unloading of arms, and the stationing of personnel in and patrolling out of buffer zones.”<sup>39</sup> In protest, nevertheless, a “civil group filed a lawsuit at the Osaka District Court ... demanding a ban on the dispatch of Self-Defense Forces personnel to Cambodia. The group, 215 citizens living in the Kansai [Osaka] area, also demanded 10,000 Yen per [p.

133] plaintiff in compensation.”<sup>40</sup> They maintained SDF participation was unconstitutional, and they had a right to “halt ... unconstitutional expenditures.”<sup>41</sup> Complaints that the SDF were unconstitutional have been filed before.

In December 1992, the ‘Security Issue Round-Table Conference’, an advisory body to the Liberal Democratic Party (LDP) Policy Research Council chairman, compiled a “seven-chapter proposal, which advocated drastic changes in the country’s security and defense policies.” However, the proposal was pessimistic anything positive in this direction would (*verbatim*) “happen in the very near future”, i.e. “that a U.N. force is established as stipulated in the U.N. Charter so that collective security can be realized by the United Nations.”<sup>42</sup> Indeed, while the ‘peace dividend’ was discussed, following the end of the Cold War, no action was taken in Europe. Apparently it had not been properly understood that European integration requires at the same time the strengthening international organization. Under these circumstances there was not much the Japanese – not the Americans for that matter<sup>43</sup> – could do.

#### a) The end of the Cold War and Security in East Asia

There was a heightened awareness that the end of the Cold War was destabilizing Asian security, as a headline of the *Mainichi Daily News* proclaimed and therefore increased efforts were made to make the Japanese Constitution ‘compatible’ with the new post-Cold War reality. The *Mainichi* article stressed the “uncertainty throughout the Far East over what the ‘new world order’ will bring. The end of global confrontation between the United States and Soviet Union has opened a Pandora’s box of potential security threats in East Asia...”<sup>44</sup> “We are concerned that a heightened arms race will lead [p. 134] to military and political instability in Asia,” wrote the *Asahi Shim-*

<sup>40</sup> *Asahi Evening News*, 19.09.92.

<sup>41</sup> *Asahi Evening News*, 19.09.92.

<sup>42</sup> *The Daily Yomiuri*, 24.12.92.

<sup>43</sup> One is reminded of US President George Bush’s repeated call for a world under the ‘rule of law’ in 1991 and French President Mitterand’s initiatives in 1992, both of which failed to produce a favorable response, and no action by the European governments was forthcoming, such as establishing a “system for the regulation of armaments” under Article 26 or entering into negotiations under Article 43 of the UN Charter, to “contribute to the maintenance of international peace and security” by concluding an “agreement or agreements” with the UN Security Council, and “make available to the Security Council ... armed forces, assistance” etc., for which there exists an obligation, especially for the countries of Europe, where two major wars started in the twentieth century. See Jochen A. Frowein, ‘Commentary on Art. 43’, in B. Simma (ed.), *The Charter of the United Nations: a commentary*, edited by Bruno Simma; in collaboration with Hermann Mosler et al., Oxford and Tokyo: Oxford University Press, 1994.

<sup>44</sup> “End of Cold War destabilizes Asian security”, *Mainichi Daily News*, 22.12.92.

<sup>35</sup> ‘Public favors constitutional change’, *The Daily Yomiuri*, 09.04.98, Editorial.

<sup>36</sup> ‘Need to Revise Japan’s Constitution’, *The Daily Yomiuri*, 10.12.92, Editorial.

<sup>37</sup> *The Daily Yomiuri*, 10.12.92.

<sup>38</sup> See for some of the history: Constitutional Court, Decision, I. 5. a), in: EuGRZ (Europäische Grundrechte Zeitschrift), Vol.21, Nos.11-12, Karlsruhe, 25 July 1994, p. 286.

<sup>39</sup> *The Daily Yomiuri*, 03.09.99.

*bun* on 26 October in an editorial. However, Prime Minister Miyazawa Kiichi declared his opposition to revising Article IX, and saw no need for it.<sup>45</sup> While apparently ‘pressure built up’ and the discussion to revise the Constitution ‘heated up’ – so the *Yomiuri* on 14th and 15th January respectively – Prime Minister Miyazawa reconfirmed his stance. During the opening debate in the Lower House plenary session he cut short all speculations, in order to restrain constitutional debate.<sup>46</sup>

The issue was then discussed in light of the upcoming visit of UN Secretary General Boutros Boutros-Ghali to Japan in mid-February 1993. Although the Japanese government was not adverse to the Secretary General’s plans for “reinforcement of U.N. peacekeeping operations”, Foreign Minister Watanabe Michio, who had previously expressed his ‘personal opinion’, i.e. “that Japan needs more long-range transport aircraft and ships ... to expand its peacekeeping role,”<sup>47</sup> stated that “ideally speaking the formation of what could be called an international police force is in line with the spirit of Japan’s Constitution.”<sup>48</sup>

Just prior to his visit to Japan Boutros Boutros-Ghali was reported to have said in an interview: “My hope is that the government of Japan will be able to change the Constitution to allow Japanese forces to participate in operations of peace enforcement.”<sup>49</sup> The next day Prime Minister Miyazawa countered: “Boutros Boutros-Ghali’s proposal needs to be fully discussed in the United Nations before he requests Japan’s participation in the units,” and offered to “fully explain Japan’s Constitution and its policy, when Boutros-Ghali formally proposes the constitutional changes” on his visit.<sup>50</sup> It seems relevant at this point to quote Article X of the US-Japan Security Treaty, referred to earlier: “This Treaty shall remain in force until in the opinion of the government of Japan and the United States of America there shall come into force such United Nations arrangement as will satisfactorily provide for the maintenance of international peace and security in the Japan area.” The *Yomiuri* mused: ‘Will Japan, freed from Cold War fetters, search for a new alternative for its national security?’<sup>51</sup> [p. 135]

For perhaps the first time the *Yomiuri* linked constitutional revision and Japan’s wish to obtain a permanent seat in the UN Security Council in its

<sup>45</sup> *The Daily Yomiuri*, 13.01.93.

<sup>46</sup> ‘Miyazawa’s Remark Aimed at Limiting Constitutional Debate’, *The Daily Yomiuri*, 26.01.93.

<sup>47</sup> *The Japan Times*, 14.01.93, reprint from *Bangkok Post*, 06.01.93, Editorial.

<sup>48</sup> *The Daily Yomiuri*, 27.01.93.

<sup>49</sup> *The Daily Yomiuri*, 05.02.93.

<sup>50</sup> *The Daily Yomiuri*, 06.02.93.

<sup>51</sup> Hirano Minoru, ‘A Question of Security’, *The Daily Yomiuri*, 05.02.93.

editorial on 7 February.<sup>52</sup> The article strongly objected to Japan’s “philosophy of so-called one-country pacifism – that Japan may isolate itself from the international community, as long as it remains peaceful,” a policy that had provoked international criticism. It was ‘time for a change’.<sup>53</sup> In a second interview, apparently, the UN Secretary General “denied asking for a constitutional change”.<sup>54</sup> As Boutros-Ghali initially seemed to be unable to secure Japan’s participation in the peacekeeping mission for Mozambique, on 28 February the *Daily Yomiuri* editorial summed up: “Japan is now participating only in the peacekeeping operations in Cambodia. ... The United Nations sounded out Japan on the possibility of SDF participation in the logistical task of coordinating and arranging transportation of personnel and supplies. In addition the United Nations was asking for only 45 to 60 SDF members. It was only natural for working-level officials at the Foreign Ministry to take a positive approach toward participation.”<sup>55</sup> Eventually, SDF staff was sent to Mozambique. The Bush administration had all along pressurized Japan to amend its Constitution and ‘build up its military capability’ – a stance criticized by former US-President Jimmy Carter.<sup>56</sup>

## b) Japanese-German parallels?

In August 1993 Hosokawa Morohiro became Prime Minister and by the end of February 1994 he seemed ready to take steps to abandon the 1976 National Defense Program Outline and hold “the first meeting of a private advisory body on defense issues ... to discuss how to implement the [new] plan as well as Japan’s role in U.N. peacekeeping missions.”<sup>57</sup> While deliberations by the German constitutional court in Karlsruhe concerning the highly controversial issue of German military participation outside NATO in peacekeeping missions were reaching their final stage, international concerns of a general nature surfaced. A Leeds University disarmament group, [p. 136] complaining in a widely publicized study that the ‘West fail[ed] to realize’ the “peace dividend,” made the headlines in the beginning of April.<sup>58</sup> Even-

<sup>52</sup> On Security Council reform and Japan’s possible role see Klaus Schlichtmann, ‘A Draft on Security Council Reform’, *Peace and Change*, Vol.24, No.4 (October 1999), pp. 505-35; see also Reinhard Drifte, *Japans Quest For A Permanent Security Council Seat: A Matter Of Pride Or Justice?*, New York : St. Martin’s Press in association with St. Antony’s College, Oxford, 2000.

<sup>53</sup> *The Daily Yomiuri*, 07.02.93.

<sup>54</sup> Both reports in *The Daily Yomiuri*, 13.02.93.

<sup>55</sup> *The Daily Yomiuri*, 28.02.93.

<sup>56</sup> *The Daily Yomiuri*, 12.09.93.

<sup>57</sup> *The Daily Yomiuri*, 28.02.94.

<sup>58</sup> *The Daily Yomiuri*, 01.04.94.

tually, the Defense Outline was not revised, and there followed the short-lived administration of Prime Minister Hata Tsutomu for two months from April to June the same year, who seemed to support “debate on revising the Constitution to allow enforcement of the right of collective security”<sup>59</sup> as well as a permanent UNSC seat for Japan. One article reports: “Hata confirmed that Japan and Germany will make concerted bids for permanent membership. Bonn has already declared that Germany will fulfill all international responsibilities required of a permanent member of the council. In contrast, ‘Japan has not clarified its stance’, a senior Foreign Ministry official said.”<sup>60</sup>

An article in the German weekly newspaper *Die Zeit* phrased the basic question the German Constitutional Court had to face: “Does the Constitution allow the deployment of German troops ‘out of area’, that is outside NATO territory, in fact not only in blue-helmet UN peace-keeping operations but also in combat missions?”<sup>61</sup>

On 4 May 1994, gaining steam, the *Yomiuri* in an editorial called for ‘cool-headed’ discussions on the Constitution: “In the past, arguments in favor of reviewing the Constitution were prone to focus exclusively on the constitutional status of the Self-Defense Forces and related security issues with regard to Article 9 of the Constitution. But the current debate is not limited to the status of Article 9.” This tactic of declaring a new comprehensive approach has been pursued ever since. Another editorial on 22 May dealing with collective defense quoted Foreign Minister Kakizawa Koji as saying. “It is understood that Japan is permitted the right of self-defense but is not allowed the right of collective defense. Can this be left intact? I hope there will be national debate on the matter without preconceptions.”<sup>62</sup> Because it violated the spirit of Article IX, however, he had to retract his statement.

Discussion on Japan’s claim to a permanent seat in the Security Council surfaced again at the end of May, and a survey by the *Yomiuri* had 53% in favor of Japan’s permanent membership in the UNSC.<sup>63</sup> The same issue of the paper reported on the “first defense meeting in Bonn” between Germany and Japan. At the end of June 1994, for the first time breaking the decades-[p. 137] long dominance of the LDP, the Socialists came to power, establishing a coalition with five other parties. On taking office, the new socialist

Prime Minister Murayama Tomiichi, shocked his fellow party members by stating that the Self-Defense Forces did “not violate the nation’s war-renouncing Constitution,”<sup>64</sup> a view contrary to what socialists, intellectuals and others, had so far believed. While the foreign ministry announced its intention of pressing for disarmament and strengthening the United Nations at the Group of Seven industrialized countries meeting in July, Prime Minister Murayama confirmed his policy of not allowing SDF to take part in peacekeeping entailing the use of arms, as this would violate the Constitution. Though he was not particularly interested in seeking a permanent seat in the UNSC, he seemed open to discuss the issue of compensation for comfort women.

In the beginning of July the German Constitutional Court ruled in favor of German troops being “sent abroad on UN missions, reversing a postwar policy adopted to keep the country from ever becoming a military threat.”<sup>65</sup> Japanese reactions to the ruling were ‘mixed’. Prime Minister Murayama maintained that it had no impact on Japan’s defense policy, as obviously the “state of affairs differs from country to country.” The Foreign Ministry upheld its stance that Japan should only make non-military contributions.<sup>66</sup> The German Constitutional Court’s ruling, among other things, seemed to reflect the (widely held but wrong) opinion that a System of Collective Security ‘may be’ a military alliance such as NATO, and could be employed to fight external aggression. What had been one of the great realizations of the nineteenth and twentieth centuries, i.e. that war should be abolished, and the ‘institution of war’ replaced by a system of common security, with an international court, was no longer an aim. While in fact there existed no system of collective security, the Constitutional Court’s ruling made it look like collective self-defense<sup>67</sup> and the System envisaged by the UN Charter<sup>68</sup> were two sides of the same coin.<sup>69</sup> [p. 138]

<sup>64</sup> *The Daily Yomiuri*, 22.06.94.

<sup>65</sup> *The Daily Yomiuri*, 13.07.94.

<sup>66</sup> *The Daily Yomiuri*, 15.07.94.

<sup>67</sup> The *UN Charter* in Article 51 grants the “right of individual and collective self-defense if an armed attack occurs...”

<sup>68</sup> In the Preamble, and Articles 1, 2, and Chapters VI and VII. However, while in Japan it was clear that a system of collective security had to be universal, in Germany, in the European context, contrary to what was anticipated in the German Constitution originally, collective defense – NATO – became the surrogate for collective security.

<sup>69</sup> But because for the Europeans to keep peace among them, a strictly European system would not hold, the “Euro-Atlantic solidarity” remains indispensable. The dilemma lies in that the Europeans think they have learnt the lessons of history, and that, rather than accept a universal system that could guarantee peace and security in Europe, they should impose peace on the rest of the world. So, the absurd situation arose in Germany that, as NATO (the surrogate) had come to be

<sup>59</sup> *The Daily Yomiuri*, 24.04.94. The author of course means collective self-defense.

<sup>60</sup> *The Daily Yomiuri*, 15.04.94.

<sup>61</sup> Constanze Stelzenmüller, ‘Vor dem Abgrund der Geschichte’, *Die Zeit*, 22.04.94. The pretext of course is false, because there is no universal system of system of security in place.

<sup>62</sup> *The Daily Yomiuri*, 22.05.94.

<sup>63</sup> *The Daily Yomiuri*, 05.06.94.

While Japan's joining such a system was discussed, changes to the 1976 National Defense Outline were again urged, and in the White Paper approved by the Cabinet it was accepted that there were "no constitutional problems" concerning the existence of the SDF.<sup>70</sup> On July 21, Murayama officially declared the new policy in the Diet, and renounced the old 'ideology' that Japan remain an 'unarmed neutral'.

In hopeful anticipation, the *Yomiuri* in an editorial in August 18 hailed the end of confrontation between LDP-SDPJ concerning the SDF, which was "certain to bring a major change in dealing with possible revision of the Constitution." An article by a German correspondent in the *Yomiuri*, reflecting the German constitutional court's ruling, gives perhaps the general view outside Japan with regards to Japan's resolute upholding of its constitutional abolition of war. "The long and tiring process of building trust in its region, which Japan could afford to neglect for so long [!], clearly cannot be ... completed in a few months. A very cautious revision of Article 9 of the Japanese Constitution may eventually be unavoidable."<sup>71</sup> With Prime Minister Murayama finally agreeing to a permanent seat in the UNSC, if Japan's non-military contribution be accepted, UN Secretary General Boutros-Ghali on his third visit in September that year, confirmed that "becoming a permanent member of the U.N. Security Council would not entail military responsibilities for maintaining peace in the world's trouble zones" for Japan.<sup>72</sup> "The United Nations needs Japan, I hope Japan needs the United Nations," Boutros-Ghali said, "If Japan becomes a permanent member of the Security Council, there is no obligation to participate in any peacekeeping operations."<sup>73</sup> Similarly, in an interview former Prime Minister Kiichi Miyazawa stated: "[Japan] doesn't have any inclination to become a military power or to change the Constitution. Therefore, the framework for Japan's security [p. 139] into the 21st century is the US-Japan Security Treaty structure as a stabilizer for all of Asia."<sup>74</sup>

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regarded as the system of collective security, the stipulation in the German Constitution's Article 24, providing explicitly for limitations of national sovereignty to access the universal system of collective security, actually became an obstacle, and on this false premise the Constitutional Court had to decide whether the participation of German troops in UN peacekeeping operations was constitutional, which was absurd of course. However good the intentions of those involved, this is a potential source of conflict.

<sup>70</sup> *The Daily Yomiuri*, 17.07.94, Editorial.

<sup>71</sup> *The Daily Yomiuri*, 07.09.94.

<sup>72</sup> *The Daily Yomiuri*, 10.09.94.

<sup>73</sup> *The Daily Yomiuri*, 14.09.94.

<sup>74</sup> Quoted in Sam Jameson, *Los Angeles Times* WORLD REPORT, reprinted in: *The Daily Yomiuri*, 21.09.94, p. 11.

The following day it was reported: "No decision has been reached about what the Constitution allows regarding United Nations Forces. Murayama's government is likely to be asked at home and abroad to clarify Japan's reasons for refraining from military action. Doubts have been expressed in some quarters among Group of Seven industrialized nations on whether Japan should be allowed to claim special privileges."<sup>75</sup> But Foreign Minister Kono Yohei said in a well-received speech at the UN General Assembly in New York: "In keeping with Japan's basic philosophy [of the non-use of force] regarding international contributions ... I wish to state that Japan is prepared, with the endorsement of many countries, to discharge its responsibilities as a permanent member of the Security Council."<sup>76</sup> "We would like to assume a more responsible role for world peace and stability," Prime Minister Murayama said in the House of Representatives, where he was criticized by former Prime Minister Tsutomu Hata for "not committing Japan to use arms on U.N. peacekeeping mission."<sup>77</sup>

### c) The *Yomiuri* Pushes Ahead

In its November 3 issue, *The Daily Yomiuri* put forward its proposals for constitutional revision, the outcome of its "two-year study ... To maintain the spirit of pacifism, the draft imposes a ban on conscription ... It also bans the manufacture, possession or use of weapons of mass destruction... Furthermore, the draft recommends instituting constitutional guarantees of Japanese contributions to the international community beyond the framework of 'one-nation pacifism'."<sup>78</sup> The several-full page proposal also envisaged the establishment of a Constitutional Court. "With the SDPJ having completely changed its position, it can be said that the framework of the long confrontation in Japanese politics that revolved around interpretation of Article 9 has now crumbled." Unfortunately, while "Germany forges ahead ... we cannot help but feel that Japan has been out of step."<sup>79</sup> Although [p. 140] none of this projected into actual policies the *Yomiuri* promised it would "continue its study of the Constitution in an effort to accelerate debate on it in preparation for the 21st century."<sup>80</sup> Previously, in November 1994, Chancellor Kohl in his address following his reelection to parliament stressed that Germany would

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<sup>75</sup> *The Daily Yomiuri*, 15.09.94.

<sup>76</sup> *The Daily Yomiuri*, 29.09.94, front-page.

<sup>77</sup> *The Daily Yomiuri*, 06.10.94, front-page.

<sup>78</sup> Inuma Takemoto (Director of the Yomiuri Research Institute), 'Time to end constitutional chaos', *The Daily Yomiuri*, 04.11.94, Editorial.

<sup>79</sup> *The Daily Yomiuri*, 04.11.94, Editorial.

<sup>80</sup> *The Daily Yomiuri*, 04.12.94, Editorial.

play a greater part in UN peacekeeping missions, in accordance with its international obligations. The German *White Paper 1994* asserted that in the new international environment Germany “must assume new international responsibility,” stating the Federal Government was “prepared” to meet its commitment.

One of the prominent proponents of constitutional revision is former Prime Minister Nakasone Yasuhiro, who continues to exert influence and calls for establishing a “constitutional problems study council in the Cabinet to conduct discussions on the Constitution.”<sup>81</sup> Surprisingly, with the SDPJ having taken a more pragmatic view of the issue, it was now the LDP which changed course. The Liberal Democratic Party’s alleged long-time objective to ‘revise the current Constitution’ had been “expunged from party documents.” “I wonder if it is a good idea to take a major step toward constitutional revision now,” a member of the drafting committee said.<sup>82</sup>

While Japanese peacekeepers sent to Mozambique returned to Japan in January 1995, and the Golan Heights was discussed as the next area of Japanese peacekeeping engagement, discussion on the Constitution intensified. On Constitution day (May 3) the *Yomiuri* presented its two-page ‘Outline of a Comprehensive Security Policy’, detailing further its proposals for ‘normalization’. At a symposium on the Constitution an illustrious panel called for constitutional revision.<sup>83</sup> Repeated calls for participation of SDF in peacekeeping operations of the United Nations also made the headlines.<sup>84</sup> At the end of August the SDPJ ‘dropped’ its opposition and agreed to dispatch Japanese personnel to the Israeli-occupied highlands in southwestern Syria.<sup>85</sup> An international symposium at the end of September again dealt with the ‘constitutional challenges’, mainly focusing on the ‘*Yomiuri* Pro- [p. 141] posals for the Revision of the Constitution of Japan’.<sup>86</sup> And finally, on 28 November the Security Council of Japan and the Cabinet adopted a new National Defense Program Outline. However, a statement by the Chief Cabinet Secretary made it clear that there is “no change in the Government’s stance in the matters regarded as

not permissible under Japan’s Constitution, such as the exercise of the right of collective self-defense.”

In February, a Japanese delegation to Washington was challenged and asked why Japan insisted that “under the present no-war Constitution, [it] cannot exercise the right to collective self-defense,” and consequently “would do nothing for the United States in the event of a crisis on the Korean Peninsula or between China and Taiwan.” After the return of the delegation, there was some discussion about Japan getting out from under the nuclear umbrella of the United States, the argument being that the ideology of nuclear deterrence was ‘outdated’.<sup>87</sup>

As the fiftieth anniversary of the enactment of the JC neared, the *Yomiuri*’s campaign for constitutional revision once more intensified.<sup>88</sup> Another poll found that ‘Support for amending Constitution remains high’.<sup>89</sup> The headline of the editorial on 6 April stated categorically: ‘Constitution due for a change’. Concerning the issue of the US-Japan Security Treaty concern was voiced: ‘Former Ambassador Mansfield: Keep security treaty intact’ (interview, *The Daily Yomiuri*, 08.04.96), ‘Bilateral security treaty crucial’, (interview with James Auer, director of the Center for US-Japan Studies and Cooperation at Vanderbilt University, *The Daily Yomiuri*, 10.04.96), and ‘Ishikawa: Japan must have firm security policy’ (Interview with Ishikawa Tadao, former chancellor of Keio University, on the role of the Japan-US security treaty, *The Daily Yomiuri*, 14.04.96).

Following the demise of the SDPJ coalition government, a new coalition government with LDP’s Hashimoto Ryūtarō as Prime Minister was sworn in on 15 January 1996. Prime Minister Hashimoto continued the policies of previous governments with respect to constitutional revision. “Some people in Shinshinto (New Frontier Party) are talking about drafting a law that would enable Japan to respond to emergencies in the Far East. But it is necessary to study what we can do within the current constitutional framework. I’m not thinking about starting a constitutional argument. There is no need for one.”<sup>90</sup> The *Yomiuri* criticized the government: “[T]he nation has the [p. 142] right under international law to join other nations in collective defense actions but is not allowed to exercise it because of the restrictions set by the

<sup>81</sup> Nakasone Yasuhiro, ‘Constitution must match the times’, *The Daily Yomiuri*, 09.12.94.

<sup>82</sup> Muto Kabun, LDP Research Commission on Fundamental Policies, subcommittee chairman, quoted in: *The Daily Yomiuri*, 19.12.94.

<sup>83</sup> ‘Ideology has no place in national debate’, *The Daily Yomiuri*, 05.05.95, full page Special.

<sup>84</sup> E.g. ‘Defense Agency urges U.N. role’, *The Daily Yomiuri*, 08.06.95, and ‘Let SDF join peacekeeping forces’, *The Daily Yomiuri*, 27.08.95, Editorial.

<sup>85</sup> ‘SDF to join U.N. peace operation in Golan Heights’, *The Daily Yomiuri*, 26.08.95, Editorial.

<sup>86</sup> ‘Japan’s constitutional challenges’, *The Daily Yomiuri*, 15.10.95, full page.

<sup>87</sup> Kito Makato, ‘Second thoughts on security’, *The Daily Yomiuri*, 28.02.96.

<sup>88</sup> ‘No time like now for Diet to face security realities’, *The Daily Yomiuri*, 03.04.96.

<sup>89</sup> *The Daily Yomiuri*, 05.04.96.

<sup>90</sup> ‘Parties must discuss collective defense’, *The Daily Yomiuri*, 24.04.96, Editorial.

Constitution. We think the government's assertion is greatly flawed in terms of logic and the reality of international relations."

In May the Osaka District Court dismissed the charge filed in 1992 on the constitutionality of SDF participation in Cambodia, although it "did not rule whether or not SDF participation in U.N. peacekeeping operations was constitutional." While this may seem contradictory it confirms previous judgments by Japanese courts maintaining that this was a political, and not a legal, issue and that it could therefore not be decided by the national court. Similar suits had also been filed in Tokyo, Nagoya and Hiroshima.<sup>91</sup>

Discussions on constitutional revision went on throughout the summer. A comment in connection with the G-7 nations summit in Lyon end of June reads: "Though the end of the Cold War is years past, there is still no global system to guarantee international order and cooperation. ... The need for a worldwide security network is clear. ... The summit can be a useful forum for creating such a system."<sup>92</sup> Japan has repeatedly made similar requests at G-7 meetings, which have received little or no publicity abroad.

Here are some editorials of the second half of 1996: "Peacekeeping law review vital" (*The Daily Yomiuri*, 30.07.96); "For a truly Japanese Constitution" (*The Daily Yomiuri*, 16.08.96); "Collective self-defense equals survival" (*The Daily Yomiuri*, 19.08.96, Editorial/Opinion); "Improve, protect Constitution" (*The Daily Yomiuri*, 19.08.96, Editorial); "Close the gap between law, reality" (*The Daily Yomiuri*, 03.09.96, Editorial/Opinion); "Help peacekeeping missions more" (*The Daily Yomiuri*, 07.09.96, Editorial/Opinion); "Enact constitutional referendum law" (*The Daily Yomiuri*, 05.11.96, Editorial/Opinion). It goes on in the same tenor. In March 1997 the LDP Research Commission was "revived after 4 years of remaining dormant", in order to "resume debate on constitutional reform for the first time".<sup>93</sup> "Various breeds of Constitution defenders" are exposed, as are the "Constitutional contradictions" with their "[g]laring inconsistencies [that] violate international common sense."<sup>94</sup> [p. 143]

#### d) External threats to national security

<sup>91</sup> 'Lawsuit over SDF peacekeeping dismissed', *The Daily Yomiuri*, 21.05.96, Editorial.

<sup>92</sup> Kama Takehiko, 'Security should be high on the agenda', *The Daily Yomiuri*, 25.06.96.

<sup>93</sup> *The Daily Yomiuri*, 13.03.97.

<sup>94</sup> Both article in *The Daily Yomiuri*, 23.04.97.

On 3 May, the fiftieth anniversary of the entering into force of the JC, the *Yomiuri* offered "A New Conception of Government for the 21st Century," proclaiming that "Now is the time for an overall review of the Constitution". The *Diplomatic Bluebook* for 1997, subtitled 'Japan's Diplomacy in a World of Deeper Interdependence' stated that Japan would have to give proper consideration to safeguarding stability, peace and prosperity in other parts of the world.<sup>95</sup>

In September 'new Guidelines for Japan-US Defense Cooperation' were adopted that were "an epochal step toward redefining Japan-US defense cooperation in the post-Cold War era."<sup>96</sup> The two-page special report gave a detailed table of "Military forces deployed in areas surrounding Japan in 1992-97" and elaborated on the hypothetical scenario of an attack. The text of the Guidelines, published on 25 September, did not include plans for military action.

While the new defense guidelines to replace the 1978 US-Japan instrument had been discussed, there was talk about raising the Defense Agency to the status of a ministry. The Administrative Reform Council, under the chairmanship of Prime Minister Hashimoto Ryûtarô had "submitted proposals to combine and abolish ministries and agencies."<sup>97</sup> So far, the JC contains none of the usual provisions for dealing with emergencies such as an armed attack.<sup>98</sup>

At the end of October, however, the LDP "yielded to its two non-Cabinet allies, agreeing to abandon the idea of upgrading the Defense Agency to a ministry."<sup>99</sup> Also in October, Hashimoto confirmed his view, when questioned during the budget debate, that the SDF should not be allowed to take part in UN peacekeeping and -restoring activities, if it meant using military force.<sup>100</sup> Rather pushy, the headline of an editorial in the *Yomiuri* on November 3rd read, "Don't block Constitution debate". [p. 144]

<sup>95</sup> *The Daily Yomiuri*, 10.05.97.

<sup>96</sup> Shibasaki Kiyotaka, 'Guideline redefines Japan's security role', *The Daily Yomiuri*, 23.09.97, special.

<sup>97</sup> *The Daily Yomiuri*, 20.08.97.

<sup>98</sup> The German Constitution, too, initially did not have any provisions instituting defense, and determining a state of defense, but was amended to allow for the creation of a military establishment in 1956 and 1968 respectively, after much initial resistance by the Social Democratic Party (SPD) and the peace movement.

<sup>99</sup> *The Daily Yomiuri*, 29.10.97.

<sup>100</sup> *The Daily Yomiuri*, 14.10.97.

A joint *Yomiuri Shimbun*/Gallup opinion survey in November had the following question: "If a conflict should break out in an area neighboring Japan, Japanese military cooperation with the United States would be limited because of Japan's constitutional restrictions. To deal with this, which of the following actions do you agree with most?" 1. "Japan's Constitution should be revised to permit greater military cooperation with the U.S." Japan: 26.1% (US: 30.7%); 2. "The Japanese government should change its interpretation of its Constitution to permit greater military cooperation." Japan: 13.9% (US: 22.4%); 3. "Japan's military cooperation should be limited in accordance with the current interpretation of the Constitution." Japan: 41.5% (US: 14.8%); 4. "Japan's military should not cooperate with the United States." Japan: 10.8% (US: 3.9%); 5. "Don't know/no answer." Japan: 7.7% (US: 28.2%).<sup>101</sup>

In 1997 lawmakers from the government and opposition parties formed the Kempō Giren, to "lobby for the establishment of standing Diet committees on constitutional amendments."<sup>102</sup> The North-Korean missile threat made headlines in April 1998, when speculations abounded on a possible attack on Japan, with the country's 'Rodong I' medium-range ballistic missile.<sup>103</sup> On 30 July a new cabinet was installed under the leadership of Prime Minister Obuchi Keizō. The first test came when a month later a North Korean rocket accidentally flew over Japanese territory. It caused major anticipation. One of a series of articles on the country's security dealt with Japan's supposed "defenselessness against nuclear terrorism."<sup>104</sup>

Since the above-mentioned surprise launch of a new type of ballistic missile on 31 August, which North Korea claimed was a space rocket, was not detected, discussions arose on the need for reconnaissance satellites to avert possible danger in the future. An editorial in September ended with the following sentence: "Japan can no longer wallow in the complacency that peace is intrinsically warranted for the country."<sup>105</sup> In January 1999 pressure on Prime Minister Obuchi mounted. *The Economist* wrote:

"Indeed, amending the 52-year old constitution is fast becoming more than a vague dream for many of Japan's conservative politicians. Chief among those seeking to

rewrite the war-renouncing Article 9 is an inter-party group [p. 145] headed by Taro Nakayama, a veteran LDP politician and former foreign minister. Mr. Nakayama aims to establish a standing Diet committee that would stage-manage a review of the constitution. Once it had concluded that a revision was necessary, the group would press for an amendment procedure to get under way at once. To do so would require a two-thirds majority in both chambers of the Diet and approval in a public referendum. It is though, doubtful whether the right-wingers could muster that kind of support even for a minor constitutional change."<sup>106</sup>

Also in January, talks between the LDP and the Jiyutō (Liberal Party) to form a new coalition government centered on the "role the Self-Defense Forces should play in U.N. operations that involve the use of force. Negotiators from the two parties agreed ... Japan could participate in U.N. peace-keeping operations provided the actions were not directly related to the use of force by military units of other nations." Under these regulations two kinds of actions would explicitly be prohibited, "combat actions" and "supply and transportation of supplies to combat zones".<sup>107</sup> The setting up of "standing parliamentary committees to discuss the Constitution and submit related bills to the Diet for early February" stalled when opposition parties insisted that only research committees be formed.<sup>108</sup> On February 6, apparently a "suprapartisan group of lawmakers ... decided ... to seek the establishment ... of constitutional research commissions that would not have the authority to submit bills..."<sup>109</sup>

When two unidentified ships, possibly North-Korean spy ships, entered Japanese waters in March 1999, it was speculated in some quarters, "the government had the ships chased to create a favorable climate for the passage of bills to implement the new Japan-US defense cooperation guidelines ... being debated at the Diet."<sup>110</sup> Obviously, the sense of national insecurity was intensified. It seemed, however, that no real debate was forthcoming, and no actual changes were anticipated.

The *Yomiuri*'s 'Constitution day' 3-page proposals on maritime safety pushed its point further, suggesting that Japanese defense officials had to learn their lesson the hard way, referring to the recent incidents.<sup>111</sup> On 24

<sup>101</sup> 'Japanese, Americans at odds over defense', *The Daily Yomiuri*, 30.11.97.

<sup>102</sup> *The Daily Yomiuri*, 09.04.98, Editorial.

<sup>103</sup> 'Missiles are biggest N. Korean threat', *The Daily Yomiuri*, 11.04.98.

<sup>104</sup> *The Daily Yomiuri*, 16.04.98.

<sup>105</sup> 'Reconnaissance satellites needed for defense', *The Daily Yomiuri*, 16.09.98. This has led the Japanese to consider participation in the American project to develop a Theater Missile Defense (TMD) system. See Akinori Uchida, 'Government launches debates on TMD', *The Daily Yomiuri*, 28.10.98.

<sup>106</sup> *The Economist*, reprinted in *The Bangkok Post*, 10.01.99.

<sup>107</sup> Nagahara Shin, 'Security focus of coalition agreement', *The Daily Yomiuri*, 15.01.99.

<sup>108</sup> *The Daily Yomiuri*, 21.01.99.

<sup>109</sup> *The Daily Yomiuri*, 06.02.99.

<sup>110</sup> Inoue Yasumasa, 'Of life, liberty and the pursuit of suspicious-looking ships', and, in the same issue: Hironaka Yoshimichi, 'National insecurity showing', *The Daily Yomiuri*, 31.03.99.

<sup>111</sup> *The Daily Yomiuri*, 03.05.99.

May the new guidelines for cooperation with the US during emergencies [p. 146] around Japan were put into effect. However, they still did not address the issue of firing warning shots.<sup>112</sup> A sense of insecurity was reflected in the poll in August, when the *Yomiuri* found 70% interested in defense issues, i.e. 26.4% greatly and 45.1% somewhat.<sup>113</sup>

### e) Instituting Commissions on the Constitution

In June, Just before the LDP, the Jiyutô (Liberal Party), the Minshutô (Democratic Party) and the alliance of New Komeitô and Kaikaku (Reform) Club had agreed on “a bill to create a House of Representatives panel on the Constitution ... expected to begin discussions during ... session next year,” with the aim of “conducting wide-ranging and comprehensive research on the Constitution.”<sup>114</sup> Concern over peacekeeping activities continued, with the *Yomiuri* demanding in September that the 1992 Peacekeeping Cooperation Law, which had put a freeze on certain activities, be lifted as the coalition government had indicated in January.<sup>115</sup> Foreign minister Komura Masahiko also expressed the opinion that “time is ripe” to lift the freeze on peacekeeping participation, but at the same time confirmed that he would not divert from the five principles that allow, among others, participation only after a ceasefire. Also, Japan must remain neutral and the foreign country in question must agree to Japanese participation.<sup>116</sup>

When in October the cabinet was reshuffled, there was hope again of change.<sup>117</sup> Foreign minister Kono Yohei, however, indicated that he was against changing the five principles,<sup>118</sup> and on 25 October in Seoul, while expressing remorse over the “tremendous damage and suffering” caused by Japanese “colonial rule and aggression”, he said: “We ... cannot discharge these [five] principles and participate in multinational forces.” He also stressed: “I do believe that the fundamental principles of the current Constitution, that is, commitment to peace, democracy and respect for fundamental human rights, should not be altered.” Instead of any military contribution Japan was intent on “economic assistance to improve the standard of [p.

147] living [and] ... develop ... democracy.”<sup>119</sup> Nevertheless, the *Yomiuri* was content that the situation had changed somewhat. Before 1994, “the prevailing sentiment in the nation’s political world and society was that if a cabinet member merely mentioned ‘constitutional revision’, he deserved to be sacked.”<sup>120</sup> In an editorial on 7 November the *Yomiuri* wrote: “The current U.N. Peacekeeping Cooperation Law, as well as the five principles, contain ideas that remind us of the Cold War era.”<sup>121</sup> Even so, the ruling parties in the government eventually postponed dealing with the question of lifting the self-imposed freeze on participation in UN peacekeeping operations, as originally envisaged.<sup>122</sup>

In the beginning of December, US defense minister William Perry on a visit to Japan said: “Several countries in the region are producing midrange ballistic missiles, and some could pose a threat to Japan.”<sup>123</sup> In a ‘21st Century Special’ edition in a discussion by three politicians participating former Prime Minister and revisionist Nakasone Yasuhiro: “Article 9 of the Constitution is ambiguous and subject to changes in its interpretation with Japan’s changing situation. It is an extremely dangerous situation.”<sup>124</sup> The presumed ambiguity of the article has often been referred to. However, comments also included the following: “We would like the commissions also to have the perspective of considering what is necessary not only to revise the Constitution to meet the demands of reality but also to change reality to bring it into line with the basic principles of the Constitution.”<sup>125</sup> Finally, also to the *Yomiuri*’s satisfaction, in January 2000, Research Commissions on the Constitution were established in each of the two houses of the Diet. The commissions consist of 50 members in the lower house and 45 members in the upper house. It is expected that it will take five years for the research panels to come up with results. The Komeitô considers ten years to be necessary for the national debate. Since the first meeting was held in mid-February,<sup>126</sup> many reports and expert opinions have been heard on the issue. [p. 147]

<sup>119</sup> *The Daily Yomiuri*, 26.10.99. The utter hypocrisy of those countries that permit massive export of arms to Africa and other parts of the world, and then presume to send peace-keeping missions to those troubled areas defies all reason.

<sup>120</sup> ‘Constitution reform taboo cast aside’, *The Daily Yomiuri*, 04.11.99, Editorial.

<sup>121</sup> ‘End freeze on PKF participation’, *The Daily Yomiuri*, 07.11.99.

<sup>122</sup> *The Daily Yomiuri*, 21.11.99.

<sup>123</sup> *The Daily Yomiuri*, 06.12.99.

<sup>124</sup> ‘Seeking true independence’, *The Daily Yomiuri*, 07.01.00.

<sup>125</sup> *Tokyo Shimbun*, 21.01.00.

<sup>126</sup> Jim Mann, Charting Its Own Course. Japan Begins to Move Away From Half a Century of Official Pacifism’, *Los Angeles Times* WORLD REPORT, reprinted in: *The Daily Yomiuri*, 06.03.00.

<sup>112</sup> *The Daily Yomiuri*, 27.05.99.

<sup>113</sup> *The Daily Yomiuri*, 05.08.99.

<sup>114</sup> *The Daily Yomiuri*, 26.06.99.

<sup>115</sup> *The Daily Yomiuri*, 03.09.99.

<sup>116</sup> *The Japan Times*, 24.09.99.

<sup>117</sup> *The Daily Yomiuri*, 07.10.99.

<sup>118</sup> *The Daily Yomiuri*, 14.10.99.

With the establishment of the Research Commission on the Constitution (kempô chôsakai), some critics observe, Japan is due for a change. The general feeling, however, is that changes will only be incremental.<sup>127</sup> The reports, expert opinions and deliberations of the two commissions are being published in several volumes.

## Conclusion

In the second half of the twentieth century no breakthrough has been achieved in the field of disarmament and creating effective institutions to safeguard a permanent peace. Since the United Nations was founded, not a single country has adopted as its philosophy a policy which aims at laying the foundation for a supranational sovereign authority.<sup>128</sup>

Most critics have disregarded that Article IX aims at a universal order of peace, in which all countries assent to limitations of their national sovereignty as has Japan, in favor of a unified and global political institution. Scholars of international law, political scientists, educationists and historians have not been able to give an in-depth, unbiased account of the origins and purpose of the article. So far only some 'alternative' pacifist authors have appreciated the issue.<sup>129</sup> Article IX is, for the Japanese, undoubtedly closely linked to the nuclear predicament, the tragedy of Hiroshima and Nagasaki. Obviously, the beginning of a global armed confrontation or deterioration of international relations would speed up the constitutional revision process. Like a barometer, discussions on Article IX seem to reflect the international security environment. On the other hand, Article IX can show a way out for the countries of the world, a door through which, if they choose, a passage toward non-military 'human' security<sup>130</sup> may be found. Upholding the non-violent principle, meticulously avoiding overstepping the dangerous divide between the use of force and the peaceful [p. 149] settlement of dis-

putes,<sup>131</sup> is evidence of a Culture of Peace. The fact that the Japanese Constitution's peace provision has survived the Cold War, and is still being upheld today as part of the country's "political philosophy", may be a source of hope. Article IX is a powerful weapon, capable of effectively undermining the doctrine of military deterrence and its proliferation, which, as Jonathan Schell in a recent issue of *Foreign Affairs* has warned, must be abolished, if humanity is to survive.<sup>132</sup>

<sup>127</sup> See Michael J. Green, 'State of the Field Report: Research on Japanese Security Policy', *NBR Publications: Assess Asia Review*, Vol.2, No.1 (1998), also at [www.nbr.org/publications/review/vol2no1/essay.html](http://www.nbr.org/publications/review/vol2no1/essay.html)

<sup>128</sup> Otfried Höffe, *Demokratie im Zeitalter der Globalisierung* (Democracy in the age of globalization), Munich: Beck, 1999 is the best book for a long time on this subject.

<sup>129</sup> Charles Overby, *A Call for Peace. The Implications of Japan's War-Renouncing Constitution*, Tokyo: Kodansha International, 1997; Setsuko Norimoto Tsuneoka, Charles Douglas Lummis and Shunsuke Tsurumi, *The Constitution of Japan*, Tokyo: Kashiwashobo, 1993.

<sup>130</sup> See the Unesco web forum on Human Security at [www.unesco.org/securipax/index.htm](http://www.unesco.org/securipax/index.htm)

<sup>131</sup> See A/Res/53/243, 6 October 1999, A. Declaration on a Culture of Peace, Article 1.a) and d); Article 3.a); B. Programme of Action on a Culture of Peace, B., Article 9.g) at [www.unesco.org/cpp/uk/projects/eun-cofp.pdf](http://www.unesco.org/cpp/uk/projects/eun-cofp.pdf)

<sup>132</sup> Jonathan Schell, 'The Folly of Arms Control', *Foreign Affairs*, Vol.79, No.5 (September/October 2000), pp. 22-46.

