

No Right to Fight: The Modern Implications of Japan's Pacifist Postwar Constitution. By Zachary D. Kaufman*

I. Introduction

Allowing Japan to rearm “is like giving chocolate liqueur to an alcoholic.” So said former Singaporean Prime Minister Lee Kuan Yew.¹ Japan, a global leader in many fields, has since World War II lagged in at least one: offensive military capabilities. Japan's apparent rearmament, perhaps inevitable, would violate the country's pacifist postwar constitution and prompt concerns among its neighbors and around the globe, especially at a time in which Japan is increasingly nationalistic and revisionist. As it remilitarizes to secure its future, Japan must confront its past. If it does not fully and sincerely address the wartime atrocities it perpetrated, Japan may ultimately find itself facing an increasingly suspicious and hostile environment.

II. Background and Recent Developments

Since World War II, Japan has been constitutionally barred from maintaining an offensive military. U.S. government officials drafted the Japanese Constitution, which came into effect on May 3, 1947.² Article 9, entitled “Renunciation of War,” states in full:

1. Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.
2. In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.³

Since the end of the U.S. occupation, however, Japan has gradually taken steps to strengthen—and flex—its military muscle. In 1990, Japan announced that it would provide a substantial financial package to assist Allied forces in the first Gulf War.⁴ Two years later, Japan passed legislation to permit Japanese soldiers to join U.N. peacekeeping operations. Since September 11, 2001, Japan has enacted various laws to circumvent Article 9 and participate in the U.S.-led wars in Afghanistan and Iraq.⁵

In 2003, Japan launched its first spy satellites and declared that it would install a “purely defensive” U.S.-made missile shield.⁶ Three years later, the

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1. Peter J. Katzenstein & Martin Rouse, *Japan as a Regional Power in Asia*, in *JAPAN AND SOUTH EAST ASIA* 193, 222 (Wolf Mendl ed., 2001).

2. John M. Maki, *The Japanese Constitutional Style*, in *THE CONSTITUTION OF JAPAN: ITS FIRST TWENTY YEARS, 1947-67*, at 3, 8-9 (Dan Fenno Henderson ed., 1968).

3. KENPŌ [Constitution], art. 9 (Japan).

4. HUGO DOBSON, *JAPAN AND UNITED NATIONS PEACEKEEPING* 64 (2003).

5. Norimitsu Onishi, *Premier's Sudden Resignation Leaves Japan in Disarray*, *N.Y. TIMES*, Sept. 13, 2007, at A3.

6. James Brooke, *Japan Launches Spy Satellite Despite North Korean Threats*, *N.Y. TIMES*, Mar. 28, 2003, at A10; *Timeline: Japan*, *BBC NEWS*, Sept. 12, 2007, <http://news.bbc.co.uk/1/hi/world/asia-pacific/1261918.stm>.

Diet, Japan's parliament, approved the creation of the country's first full-fledged defense ministry since World War II.⁷ By 2007, Japan was spending US\$41.75 billion annually on its military, the sixth most of any country in the world.⁸

Beyond merely *extending* its military capabilities, postwar Japan has also been more willing to *use* them. In 1992, in its first foreign deployment of troops since the end of World War II, Japan sent approximately 1,200 non-combat soldiers to Cambodia as part of a U.N. peacekeeping mission. In 2001, for the first time since World War II, Japan sank a foreign vessel when an unidentified and unresponsive North Korean spy ship approached Japan. In another move unprecedented since World War II, Japan deployed forces to a combat zone when it sent "non-combat" soldiers to Iraq in 2004. Additionally, to assist with the U.S.-led war in Afghanistan, from 2001 to 2007, Japan provided fuel to U.S., U.K., and allied ships operating in the Indian Ocean.

Notwithstanding the fact that most opinion polls indicate that Japanese citizens oppose remilitarization,⁹ official Japanese rhetoric has become increasingly militaristic in recent years. Japan's "three non-nuclear principles," outlined in 1967 by Prime Minister Eisaku Sato—and which earned him the Nobel Peace Prize in 1974—prohibit Japan from possessing, developing, or introducing nuclear weapons on its territory.¹⁰ However, several senior Japanese officials, including recent and current prime ministers Shinzo Abe and Yasuo Fukuda, respectively, declared in 2002 that, despite Article 9, Japan could possess nuclear weapons.¹¹ The following year, Japanese Foreign Minister Shigeru Ishiba advocated Japan's right in principle to attack preemptively.¹² Since then, senior Japanese officials have not publicly disavowed these claims.

III. Word Games

In the face of this mounting evidence of its remilitarization, Japan engages in semantic contortions to downplay its military capabilities and activities. Japan calls its military "Self-Defense Forces"¹³ and justifies its growing capabilities as strictly defensive. While it acknowledges that in recent years it has "purchased a great deal of military equipment from the U.S., including more than 200 F-15 fighters, more than 100 P3C Orion patrol planes, 4 AWACS [Airborne Warning and Control System] surveillance

7. *Timeline: Japan*, *supra* note 6.

8. Global Security, World Wide Military Expenditures, <http://www.globalsecurity.org/military/world/spending.htm> (last visited Dec. 11, 2007).

9. Joshua Kurlantzick, *Rising Sun*, NEW REPUBLIC, Oct. 24, 2005, at 12.

10. Eisaku Sato, Prime Minister of Japan, Nobel Lecture: The Pursuit of Peace and Japan in the Nuclear Age (Dec. 11, 1974), *available at* http://nobelprize.org/nobel_prizes/peace/laureates/1974/sato-lecture.html.

11. *Non-Nuclear Principles to Be Reviewed*, CHUGOKU SHIMBUN PEACE NEWS, June 2, 2002, <http://www.chugoku-np.co.jp/abom/02e/An02060202.html>.

12. David McNeill, *Japan Warns That It Will Attack if North Korea Aims Missile*, INDEP. (London), Sept. 15, 2003, at 11.

13. *See generally* THE MODERN JAPANESE MILITARY SYSTEM (James H. Buck ed., 1975) (discussing the history, characteristics, and domestic and foreign relations of the Japanese Self-Defense Forces).

aircraft, and 4 Aegis ships,”¹⁴ at the same time, Japan claims *not* to “possess capabilities for projecting offensive power,” reasoning that it “has no aircraft carriers, no ICBMs [intercontinental ballistic missiles], no long-range bombers, and no marines.”¹⁵ As one commentator observed:

Article 9 has been so diluted by doublespeak as to become virtually meaningless. An early strike against Korea, Ishiba explains, would be “defensive”, not “pre-emptive.” Likewise, in May 2002, Deputy Chief Cabinet Secretary Shinzo Abe declared that Japan could have nuclear weapons so long as they were “small.” In fact, he added, “in legal theory Japan could have intercontinental ballistic missiles and atomic bombs.”¹⁶

However, Japan’s capabilities—and their use—can be viewed differently. Soldiers are not necessarily or always “non-combat”; a missile shield may not be “purely defensive”; and even a small nuclear weapon is still a nuclear weapon. Military troops and technologies often have dual usage as defensive *and* offensive weapons.

Critics further assert that Japan’s recent involvement in the Middle East cannot be characterized as self-defensive or even humanitarian.¹⁷ Even financially supporting or contributing troops to U.N. peacekeeping missions, as Japan did in Cambodia, may be illegal according to Article 9, if such actions are not in Japan’s self-defense. States have claimed significant latitude under the banner of “self-defense.” As critics argued when the United States invaded Iraq in 2003, preemptive self-defense may be nothing more than thinly veiled—and miscalculated—aggression. For example, some argue that, because Japan has limited natural resources, “[t]he protection of Japan’s oil supply could be incorporated easily within the definition of self-defence,”¹⁸ which could justify military action in oil-rich states. Those wary of Japan rearming are especially sensitive to Japan’s understanding and use of the term, as “self-defense” is a justification apologists of Japanese wartime aggression offered—and still do.¹⁹

IV. Rationale

Why the trend towards remilitarization? American pressure offers a partial explanation: by not seeking to enforce the dictates of Japan’s pacifist constitution, the U.S. government has implicitly signaled to Japan that the country can, and perhaps should, rearm. Almost immediately, the United States started to view Japan as critical to defending the United States’s

14. Ryoza Kato, Japanese Ambassador to the U.S., Japan’s Role in a Changing World (June 13, 2006), http://www.us.emb-japan.go.jp/jicc/EJN_vol2_no9.htm.

15. *Id.*

16. Alex Kerr, *A War-Torn Land*, TIME, Feb. 17, 2003, at 22.

17. Norimitsu Onishi, *Premier Ill, Japanese Party Delays Vote on Successor*, N.Y. TIMES, Sept. 14, 2007, at A12.

18. DOBSON, *supra* note 4, at 70.

19. See, e.g., Howard W. French, *Specter of a Rearmed Japan Stirs Its Wartime Generation*, N.Y. TIMES, June 20, 2001, at A1; Shane Green, *Japan’s Lack of Remorse Troubling as It Manoeuvres to Rearm*, SYDNEY MORNING HERALD, June 19, 2003, available at <http://www.smh.com.au/articles/2003/06/18/1055828382201.html>; Paul Wiseman, *Nationalism Gains Strength in Japan*, USA TODAY, July 26, 2007, at 6A.

postwar interests in Asia, and particularly in combating communism.²⁰ As soon as 1947, the United States began encouraging Japan to rearm.²¹ Recently, especially after the 2003 U.S.-led invasion of Iraq, the United States has counted on Japan as one of its few reliable military allies.

U.S. encouragement to rearm occurs at a time when Japan is increasingly concerned about its neighbors and feels it must bolster its military to ensure its security. In 1998, North Korea fired a Taepodong-1 missile over Japan, and has since test-fired seven more long-range missiles. Four years later, North Korea declared that it already possessed and was continuing to develop nuclear weapons, and claimed to have performed its first successful nuclear weapons test in 2006. In 2003, North Korea announced its withdrawal from the Nuclear Nonproliferation Treaty.

China has also appeared threatening to Japan. In recent years, Chinese submarines and aircraft have repeatedly entered Japanese sea and air spaces, and Chinese civilians have staged sometimes violent anti-Japanese protests, perhaps conducted with official Chinese sanction. In response to perceived Chinese and North Korean military buildup and aggression, Japanese nationalism and public support for rearming and revising the constitution to eliminate pacifism have grown,²² as has support for Japanese politicians who advocate these policies.²³

Japan is also concerned with threats emanating from non-state actors. In 1995, Aum Shinrikyo, a religious sect, released sarin—a deadly nerve gas—in Tokyo’s subway, killing twelve people and injuring thousands. The events of September 11, 2001, then prompted Japan to declare its interest in combating global terrorism. In a 2007 policy speech, Fukuda cited “the proliferation of terrorists” as one reason Japan must engage more with the international community.²⁴

While Japan grows increasingly distrustful of the rest of the world, the Japanese have mixed feelings about exclusive strategic reliance on the U.S. security umbrella. In 1995, after American soldiers stationed on Okinawa raped a local schoolgirl, many Japanese demanded the withdrawal of U.S. troops from the island. Then, in 2001, a U.S. submarine collided with a Japanese training vessel, sinking the latter ship and resulting in the loss of nine Japanese, an event that prompted some Japanese to further question their

20. E. Asian Curriculum Project, Columbia Univ., Essay: An Overview of Japan’s Postwar Defense Policy, <http://afe.easia.columbia.edu/japan/japanworkbook/fpdefense/artnine.htm> [hereinafter Japan Essay].

21. Kerr, *supra* note 16. See also Martin E. Weinstein, *The Evolution of the Japan Self-Defense Forces*, in *THE MODERN JAPANESE MILITARY SYSTEM*, *supra* note 13, at 41, 43 (noting that in a 1951 meeting between Japan and the United States, Special Ambassador John Foster Dulles “insisted that a mutual defense agreement would be possible only if Japan rearmed to the level where it could assume primary responsibility for defending itself against a direct Soviet attack and could assist militarily in protecting regional security” and “[h]e urged rapid expansion of the National Policy Reserve into a 350,000-man army”).

22. Wiseman, *supra* note 19.

23. Shane Green, *Call to Rearm Japan Against Korea*, *THE AGE* (Melbourne), Mar. 26, 2003, available at <http://www.theage.com.au/articles/2003/03/25/1048354595324.html>; Kurlantzick, *supra* note 9.

24. Yasuo Fukuda, Prime Minister of Japan, Policy Speech by Prime Minister Yasuo Fukuda to the 168th Session of the Diet (Oct. 1, 2007), available at http://www.kantei.go.jp/foreign/hukudaspeech/2007/10/01syosin_e.html [hereinafter Fukuda Speech].

country's close military ties with the United States. By 2007, many Japanese felt that Japan had become too associated with the U.S. military.²⁵ Upon assuming office, Fukuda acknowledged that "[t]he Japan-U.S. alliance is the cornerstone of Japan's diplomacy," while simultaneously promoting "the principle of self-reliance" for Japan.²⁶

Increased threats from its neighbors and encouragement from the United States to become more independent coincide with Japan's desire for an increased role in international affairs, including security issues. In 2004, Japan began actively campaigning for a permanent seat on the U.N. Security Council,²⁷ an effort continued by Japan's current administration, which has declared that "Japan will realize its responsibilities commensurate with its national strength in the international community, and become a country which is relied upon internationally."²⁸ Some senior U.S. officials, such as former ambassador to Japan Howard Baker, support Japan's ambitions for a permanent, veto-wielding seat on the Security Council.²⁹

V. Evaluation

Views on Japan's rearmament are mixed. Some believe that it is a "healthy development," one pursued "wisely."³⁰ As another commentator has argued, "the U.S. security guarantee prevents Japan from acting like a self-sufficient country. Consequently, U.S. long-term policy should be to withdraw from the role of Japan's protector wherever possible to encourage Japan to act more like a leader internationally."³¹

Others are more critical of Japan's remilitarization. Lee, the former Singaporean leader, for instance, believes that if Japan were permitted to remilitarize, it could not help but be aggressive. Still others are especially concerned about "the advent of a nuclear-armed Japan," which, they argue, "would be potentially catastrophic for both East Asia and the larger global international security environment."³²

A third view holds that, whether for good or ill, Japan's military growth may simply be inevitable, a parallel to Japan's postwar growth in technology and business. A recent *New York Times* editorial observed that "Japan is the world's second-largest economic power, and nobody should expect it to remain aloof to matters involving its own defense."³³ To be sure, Japan faces legitimate threats, especially from North Korea. And even if Japan did not seek to balance against such threats, as some international relations theorists suggest states do,³⁴ the country would likely still seek to balance against the

25. Onishi, *supra* note 5.

26. Fukuda Speech, *supra* note 24.

27. *Timeline: Japan*, *supra* note 6.

28. Fukuda Speech, *supra* note 24.

29. Kurlantzick, *supra* note 9.

30. Editorial, *Japan Discovers Defense*, N.Y. TIMES, Aug. 26, 1999, at A16.

31. Chris Ajemian, Comment, *The 1997 U.S.-Japan Defense Guidelines Under the Japanese Constitution and Their Implications for U.S. Policy*, 7 PAC. RIM L. & POL'Y J. 323, 323 (1998).

32. Kurt M. Campbell & Tsuyoshi Sunohara, *Japan: Thinking the Unthinkable*, in THE NUCLEAR TIPPING POINT: WHY STATES RECONSIDER THEIR NUCLEAR CHOICES 218, 219 (Kurt M. Campbell et al. eds., 2004).

33. *Japan Discovers Defense*, *supra* note 30.

34. See, e.g., STEPHEN M. WALT, THE ORIGINS OF ALLIANCES (1987).

growing power of state and non-state actors, as other international relations theorists contend.³⁵

A final group also accepts Japan's remilitarization, but believes it has already occurred. One commentator argues, "[t]he debate over whether Japan should rearm is moot: Japan has long since rearmed and is capable of striking far beyond its borders. Indeed, Japan has enough plutonium and the technology to produce nuclear weapons in a matter of months."³⁶

VI. Consequences

Japan's full and unambiguous remilitarization would have significant consequences for itself, its neighbors, and its closest military ally, the United States. For Japan, remilitarizing could alienate Japan's former victims or current competitors. As Francis Fukuyama argues, "Japan's unilateral revision of Article 9, viewed against the backdrop of its new nationalism, would isolate Japan from virtually the whole of Asia."³⁷ Such a scenario might prompt an arms race between Japan and China or North Korea.

Nonetheless, some believe that, even with a constitutional revision, Japan would remain peaceful since "no country could fail to learn its lesson after such a horrible war."³⁸ But it is precisely Japan's perceived lack of learning that so concerns domestic and foreign critics of its remilitarization. Nationalist Japanese authorities have revised schoolbooks in order to exonerate Japan for its guilt over aggression and atrocities in World War II.³⁹ Japanese teachers claim to have been punished for discussing taboo topics such as the "comfort women" or for refusing to participate in nationalistic demonstrations, such as saluting the flag or standing for the national anthem.⁴⁰ Several recent official visits to Japanese shrines that glorify the country's war dead have angered China and Korea, which suffered Japanese wartime atrocities.⁴¹ And Japan continues to resist officially acknowledging the atrocities it perpetrated in its horrific past.⁴² As one commentator observed, "because of this omission, Japan lives in dread of its neighbors' disgust and misunderstanding."⁴³

Precisely because the United States, Japan's closest military ally, provides a nuclear umbrella, the United States, more than most countries, could experience both benefits and drawbacks from a rearmed Japan. A Japan more capable of defending itself and projecting its power would reduce or even relieve the U.S. burden to safeguard its ally and would provide the United States with a more able partner in promoting international security.⁴⁴

35. See, e.g., KENNETH N. WALTZ, *THEORY OF INTERNATIONAL POLITICS* (1979).

36. Kerr, *supra* note 16.

37. Francis Fukuyama, *The Trouble with Japanese Nationalism*, PROJECT SYNDICATE, http://www.project-syndicate.org/print_commentary/fukuyama2/English (last visited Dec. 11, 2007).

38. French, *supra* note 19.

39. *Id.*

40. Wiseman, *supra* note 19.

41. French, *supra* note 19. See also Green, *supra* note 19.

42. See, e.g., Editorial, *No Comfort*, N.Y. TIMES, Mar. 6, 2007, at A20; Norimitsu Onishi, *Denial Reopens Wounds of Japan's Ex-Sex Slaves*, N.Y. TIMES, Mar. 8, 2007, at A1.

43. Ajemian, *supra* note 31, at 349.

44. See Japan Essay, *supra* note 20 ("As Japan's economy continues to grow and its manufactured exports compete with and sometimes take markets away from American industries, many

Japan's increased involvement in U.S. military ventures would bolster the credibility of American claims of multilateralism.

On the other hand, a less dependent Japan might mean a less trusted ally. A Japan not shielded under the U.S. nuclear umbrella might become a greater critic of, or even threat to, U.S. strategic interests. At the same time, a United States less reliant on Japan for its loyalty and assistance might be more willing to criticize Japan. After all, Fukuyama suspects that the United States's "gratitude for Japanese support in Iraq" caused the United States to refrain from discussing Japan's nationalistic trend.⁴⁵

Rearmament would also have consequences for U.S. relations with Japan's neighbors, especially if it appears that Japan rearmed with or because of U.S. support. William O. Beeman, a professor of Japanese anthropology, argues that, because of states like Korea, where "memories of Japanese military atrocities in World War II are still alive," the United States, "in encouraging Japan's increased military action, may think it has helped some short-term problems. But it may have bought a great deal of trouble down the line."⁴⁶ And such long-term consequences might include a shifting of regional alliances that would harm U.S. interests. One commentator hypothesizes that the United States "could find itself and Tokyo ostracized by vital allies like Korea and Thailand, moving it even further from China."⁴⁷

VII. Conclusion

Japan now has two main options: It can continue as it has, employing linguistic gymnastics to claim that it technically complies with its pacifist constitution, or it can amend its constitution to reflect what many believe is already a reality—that the previously defanged island country has been rearming for years and will continue to do so. A third option—that Japan reverse its rearming trend and thus comply with Article 9—seems unlikely.

If Japan does continue to rearm, it remains to be seen how far it will go. Japan's remilitarization was "unthinkable" after World War II. Because Japan remains the only country ever to suffer an atomic bombing, its acquisition or development of nuclear weapons is supposedly "unthinkable" still.⁴⁸ But, given that the unthinkable has occurred already, why should it not again?

The fact that Japan has not fully acknowledged its past atrocities creates uncertainty about its true intentions and likely behavior. Whatever route Japan takes to help allay the concerns of its neighbors and the rest of the world that it would behave responsibly if rearmed, Japan should fully account and apologize for the atrocities it committed during World War II, and should cease officially and tacitly authorizing its whitewashing of history. Even then, Japan's sincerity may be perceived as a strategic ploy. Regardless, just as a

Americans have begun to feel that Japan should accept more of the burden of maintaining stability in the world.").

45. Fukuyama, *supra* note 37.

46. William O. Beeman, *Japan's Hidden Agenda in Iraq*, PAC. NEWS SERVICE, July 31, 2003, http://news.pacificnews.org/news/view_article.html?article_id=c8731dc9d548c8bd7f7be2581e4963850.

47. Kurlantzick, *supra* note 9.

48. Brian Bremner, *The U.S. vs. China: What About Japan?*, BUS. WK., Apr. 10, 2001, http://www.businessweek.com/bwdaily/dnflash/apr2001/nf20010410_616.htm.

first step in recovering from alcoholism is admitting the problem, the first step in Japan's remilitarization should be to admit its problematic past.