

Japanese Legal Discourse on Article 9: An Analysis of Japan Self Defense Force and Politics of Nuclear Umbrella

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Abstract

Article 9 of the Japanese Constitution has long been a subject of extensive legal discourse, both domestically and internationally. This article, famously known as the "peace clause," renounces the use of war as a means of settling international disputes and prohibits Japan from maintaining military forces. However, it allows for the existence of a "self-defense force" necessary for the country's defense. The interpretations and implications of Article 9 have evolved over the years and have profound consequences for Japan's foreign policy, defense posture, and its relationship with the United States, particularly in the context of the "nuclear umbrella." This article has explored the Japanese legal discourse surrounding Article 9, analyzed its historical evolution, and examined its implications on the politics of the nuclear umbrella. In this intricate tapestry of legal discourse, we find a nation navigating the delicate balance between its historical commitment to pacifism and the pressing demands of its security in an increasingly uncertain world. Japanese legal discourse on Article 9 stands as a testament to the enduring complexities of a nation's identity and its quest for a peaceful and secure future. The research is deductive in nature and uses qualitative case study design to implicate the subject matter and to reach objective understanding of the Japanese legal discourse on article 9 of its constitution.

Key Words: Japan, Post War Constitution, Article 9, Self Defense Force, Nuclear Umbrella, United States.

1. Introduction:

The Japanese Constitution, often referred to as the "post-war constitution," has been a cornerstone of Japan's transformation in the aftermath of World War II.¹ Central to this constitution is Article 9, a clause that renounces the use of war and prohibits Japan from maintaining military forces. This article reflects the nation's commitment to pacifism and demilitarization, aimed at preventing a recurrence of the militarism that led to its aggressive expansion in the first half of the 20th century.²

However, the interpretation and implications of Article 9 have evolved significantly over the decades. This legal discourse has sparked profound debates within Japan and reverberated across the international stage, as Japan grapples with a complex and ever-changing security landscape in East Asia. In this comprehensive exploration, we delve into the intricate layers of Japanese legal discourse surrounding Article 9, examining its historical context, early interpretations, the emergence of the Self-Defense Forces, expanding roles of the SDF, and the ongoing debate over strict versus permissive interpretations.

We also scrutinize the pivotal role of Japanese courts in shaping this discourse, the endeavors to amend the constitution, the complex dynamics of the Japan-U.S. Security Alliance, the concept of Japanese nuclear ambiguity, and the challenges posed by the evolving security environment. Furthermore, we scrutinize the legacy of former Prime Minister Shinzo Abe's constitutional reforms, the prospects for future constitutional amendments, and the overarching impact of this discourse on Japan's national identity, regional relations, and global positioning.

¹ Axel Berkofsky, "Japan's US-Imposed Post War Constitution: How, Why and What for?." In *Italy and Japan: How Similar Are They? A Comparative Analysis of Politics, Economics, and International Relations*, pp. 67-92. Milano: Springer Milan, 2014.

² Benedict SB Chan, "Utilitarian Contingent Pacifism and Article 9 of the Japanese Constitution." *Philosophia* 51, no. 2 (2023): 635-657.

In this intricate tapestry of legal discourse, we find a nation navigating the delicate balance between its historical commitment to pacifism and the pressing demands of its security in an increasingly uncertain world. Japanese legal discourse on Article 9 stands as a testament to the enduring complexities of a nation's identity and its quest for a peaceful and secure future.

2. Historical Context and Evolution of Article 9

The Japanese Constitution, commonly known as the "post-war constitution," was promulgated in 1947 under the auspices of the Allied Occupation. Article 9 was a fundamental component of this constitution and reflected the overarching goal of demilitarization in post-war Japan. This provision was intended to prevent Japan from rekindling militarism, which had led to its aggressive expansion in the first half of the 20th century.³ The drafting of the Japanese Constitution in 1947 was a pivotal moment in Japan's history, and it occurred in the aftermath of World War II. This constitution is often referred to as the "post-war constitution" because it was established following Japan's defeat in World War II and during the period of Allied Occupation. Some of the important aspects vested around Japanese constitution are deliberated as under:

1. The Allied Occupation: After Japan's surrender in 1945, the country came under the control of the Allied Powers, primarily led by the United States. This period, known as the Allied Occupation, aimed to dismantle the Japanese wartime government, disarm its military, and

³ Ayako Kusunoki, "US Policy for the Occupation of Japan and Changes to It." In *Modern Japan's Place in World History: From Meiji to Reiwa*, pp. 111-121. Singapore: Springer Nature Singapore, 2023.

initiate political and societal reforms to prevent Japan from becoming a military threat again.⁴

2. The Goal of Demilitarization: One of the central objectives of the Allied Occupation was to ensure that Japan would never again engage in the aggressive military expansionism that had characterized its actions in the first half of the 20th century. Japan's militarism during this period had led to its involvement in numerous conflicts, including World War II.⁵
3. Article 9's Role in Demilitarization: Article 9 was included as a fundamental component of the new Japanese Constitution to serve as a powerful symbol of Japan's commitment to demilitarization. It was crafted with the explicit purpose of preventing Japan from maintaining a standing military force and from using war as a means to settle international disputes.⁶
4. Preventing a Return to Militarism: The authors of the constitution wanted to ensure that Japan would not revert to its pre-war militaristic tendencies. They believed that by renouncing war and prohibiting the maintenance of military forces for aggressive purposes, they could instill a lasting commitment to peace in Japanese society.

In essence, Article 9 was a response to the historical context of Japan's militarism and its involvement in World War II. It was seen as a way to break with the past and chart a new course for Japan as a peaceful, non-militaristic nation. The inclusion of Article 9 in the constitution was not only a legal provision but also a profound statement of Japan's commitment to pacifism and a

⁴ David M. Crowe, "From war to peace: The Allied occupation of Germany and Japan." In *Transnational Encounters between Germany and East Asia since 1900*, pp. 193-215. Routledge, 2018.

⁵ Birgit Schneider, "From Demilitarization to Democratization. Demobilized Soldiers Between the American Occupation and the German and Japanese States, 1945–1955." *Militär-geschichtliche Zeitschrift* 70, no. 2 (2011): 329-362.

⁶ Jeffrey P. Richter, "Japan's Reinterpretation of Article 9: A Pyrrhic Victory for American Foreign Policy." *Iowa L. Rev.* 101 (2015): 1223.

deliberate step towards preventing future militarism and aggression. This commitment to peace continues to shape Japan's foreign policy and its approach to defense and security matters to this day.

3. Early Interpretations of Article 9

In the early years following its promulgation, Article 9 was interpreted in a strict and pacifist manner. Japan disbanded its military and refrained from any military action beyond self-defense. This approach often referred to as the "no-war interpretation," garnered significant domestic and international support. It cemented Japan's image as a pacifist nation.⁷ Some of the significant early interpretations of Article 9 of the Japanese Constitution are deliberated below:

- i. Disbandment of the Military: In the immediate aftermath of World War II and the promulgation of the Japanese Constitution in 1947, Japan took a very strict and pacifist approach to Article 9. The government adhered to a literal interpretation of the article, which meant that Japan disbanded its military forces, including the Imperial Japanese Army and Navy. This was a radical departure from Japan's historical militarism.⁸
- ii. Emphasis on Self-Defense: Article 9 allowed for the existence of a "self-defense force" necessary for the country's defense. However, this force was conceived in a manner consistent with the strict interpretation of the article. It was envisioned solely as a defensive force and was not meant to have the capacity for offensive military operations.⁹

⁷ Dahlia Patricia Sterling, "Governing Japan: The Perception, Influence and Theoretical Interpretation of Article 9 of the Japanese Constitution and What It Means for Its Security Policy in the 21st Century, If Revised," *Open Journal of Social Sciences* 8, no. 11 (2020): 263.

⁸ Edward J. Drea, *Japan's Imperial Army: Its Rise and Fall, 1853–1945*. University Press of Kansas, 2016.

⁹ Yee-Kuang Heng, "Smart power and Japan's self-defense forces." *Journal of Strategic Studies* 38, no. 3 (2015): 282-308.

- iii. No-War Interpretation: This early interpretation of Article 9 is often referred to as the "no-war interpretation." Under this interpretation, Japan committed itself to an absolute renunciation of war as a means of resolving international disputes. Japan pledged that it would never again engage in acts of aggression or militarism, as it had done in the lead-up to and during World War II.¹⁰
- iv. Domestic and International Support: The no-war interpretation of Article 9 received significant domestic and international support. Domestically, it resonated with a war-weary Japanese population that had endured the devastating consequences of militarism. Internationally, it aligned with the post-war goals of the Allied Powers, particularly the United States, which aimed to ensure that Japan would not pose a military threat in the future.
- v. Pacifist Image: This strict interpretation of Article 9 and Japan's adherence to it helped to shape the country's image as a pacifist nation. Japan was seen as a country committed to peace and renouncing any ambitions of military aggression. This image was reinforced by Japan's commitment to not maintain offensive military capabilities and to use its armed forces exclusively for self-defense.¹¹

The early interpretations of Article 9 were marked by a strong commitment to pacifism and non-aggression. Japan's actions in the years following the constitution's promulgation, including the disbandment of its military and the development of a purely defensive self-defense force, reflected this commitment. These interpretations not only had domestic implications but also contributed to

¹⁰ Toshiya Takahashi, "Security and the meaning of Japan's constitution." In *East Asia Forum Quarterly*, vol. 8, no. 3, pp. 25-27. 2016.

¹¹ Karl Gustafsson, Linus Hagström, and Ulv Hanssen, "Long live pacifism! Narrative power and Japan's pacifist model." *Cambridge Review of International Affairs* 32, no. 4 (2019): 502-520.

Japan's reputation as a nation firmly dedicated to the principles of peace and non-militarism in the international arena.

4. Emergence of the Self-Defense Forces (SDF)

Despite the no-war interpretation, Japan recognized the need to defend itself in the face of potential threats. This led to the establishment of the Japan Self-Defense Forces (SDF) in 1954. The SDF was framed as a purely defensive force, consistent with the spirit of Article 9. However, the SDF's existence raised legal and constitutional questions, as it seemingly contradicted the absolute prohibition on maintaining military forces. Some of the significant aspects of the emergence of the Japan Self-Defense Forces (SDF) and the legal and constitutional questions it raised in light of Article 9 are deliberated below:

- i. Recognizing the Need for Defense: In the early years following World War II and the promulgation of the Japanese Constitution with Article 9, Japan found itself in a precarious security environment. The Cold War was intensifying, and the Korean War (1950-1953) highlighted the vulnerability of Japan to regional conflicts. In this context, Japan recognized the need to defend itself from potential threats, even if it remained committed to the principles of non-aggression and pacifism.
- ii. Establishment of the SDF: To address these security concerns while adhering to the principles of Article 9, Japan established the Japan Self-Defense Forces (SDF) in 1954. The SDF was conceived as a purely defensive force, explicitly designed to protect Japan's

territorial integrity and respond to external threats. It consisted of the Ground Self-Defense Force, Maritime Self-Defense Force, and Air Self-Defense Force.¹²

- iii. Consistency with Article 9: The establishment of the SDF was framed as consistent with the spirit of Article 9. Japan argued that the SDF was not a conventional military force for offensive operations, but rather a defensive force necessary for the country's self-defense. It operated under the strict interpretation of Article 9, emphasizing the prohibition on engaging in acts of aggression or using military force to settle international disputes.
- iv. Legal and Constitutional Questions: However, the emergence of the SDF raised significant legal and constitutional questions. Critics argued that the existence of the SDF appeared to contradict the clear prohibition in Article 9 against maintaining military forces. They contended that even a purely defensive force could be seen as a military establishment in violation of the constitution.¹³
- v. Sunagawa and Hanada Incidents: These legal and constitutional questions came to the forefront in two notable incidents. The Sunagawa Incident in 1959 and the Hanada Incident in 2008 involved legal challenges to the constitutionality of the SDF. In both cases, Japan's courts ruled in favor of the government's interpretation, affirming the constitutionality of the SDF as a defensive force.¹⁴

The emergence of the Japan Self-Defense Forces (SDF) was a response to Japan's security needs while attempting to maintain compliance with the principles of Article 9, particularly the commitment to pacifism. While the SDF was explicitly framed as a defensive force, its establishment raised complex legal and constitutional questions, which were ultimately addressed

¹² James H. Buck, "The Japanese self-defense forces," *Asian Survey* (1967): 597-613.

¹³ Yasuo Hasebe, "The End of Constitutional Pacifism," *Washington. Int'l Law Journal* 26 (2017): 125.

¹⁴ William D. Hoover, *Historical dictionary of postwar Japan*. Rowman & Littlefield, 2018.

through legal rulings that upheld its constitutionality. This allowed Japan to navigate the delicate balance between ensuring its own defense and adhering to the principles of the post-war constitution.

5. Expanding Roles of the SDF

Over time, the roles and capabilities of the SDF expanded. While they remained a defensive force, they began participating in international peacekeeping operations, disaster relief efforts, and maritime security patrols. These expanded roles tested the boundaries of Article 9 and prompted debates about its interpretation. Some of the significant aspects concerning the expanding roles of the Japan Self-Defense Forces (SDF) are deliberated below:

- i. **Origins as a Defensive Force:** When the SDF was established in 1954, it was explicitly designed as a purely defensive force, in line with the principles of Article 9 of the Japanese Constitution. Its primary mission was to safeguard Japan's territorial integrity and respond to external threats.
- ii. **Participation in International Peacekeeping Operations:** In the decades following its establishment, the SDF's roles and capabilities gradually expanded. One significant shift was the SDF's involvement in international peacekeeping operations. Japan began contributing personnel and resources to United Nations peacekeeping missions in conflict zones around the world. These missions aimed to promote global peace and security, and Japan's participation was framed as a way to fulfill its international responsibilities.¹⁵
- iii. **Disaster Relief and Humanitarian Assistance:** The SDF's expanded roles also encompassed disaster relief efforts and humanitarian assistance. Japan is prone to natural

¹⁵ Katsumi Ishizuka, "Japan's policy towards UN peacekeeping operations." *International Peacekeeping* 12, no. 1 (2005): 67-86.

disasters such as earthquakes, tsunamis, and typhoons. The SDF played a crucial role in responding to these emergencies by providing search and rescue operations, medical assistance, and logistical support. This expanded role demonstrated the versatility and utility of the SDF beyond its traditional defense mission.¹⁶

- iv. **Maritime Security Patrols:** Japan's location in East Asia, surrounded by the sea, also led to an expansion of the SDF's roles in maritime security. The SDF conducted patrols and surveillance in Japanese waters to safeguard against potential threats, including illegal fishing, smuggling, and unauthorized maritime activities. This was seen as essential for protecting Japan's maritime interests and security.¹⁷
- v. **Debates on Article 9 Interpretation:** The SDF's evolving roles and its participation in activities beyond strict self-defense raised debates about the interpretation of Article 9. Critics argued that these expanded roles stretched the boundaries of the constitution, as they involved activities that went beyond the traditional understanding of self-defense. The question arose whether Japan's involvement in international peacekeeping, disaster relief, and maritime security was consistent with the constitution's pacifist principles.
- vi. **Balancing Act:** These debates highlighted the delicate balancing act that Japan faced. On one hand, the country sought to contribute to international peace, regional stability, and its own security. On the other hand, it needed to maintain compliance with the principles of Article 9 and avoid perceptions of remilitarization or aggression.¹⁸

¹⁶ Katsumi Ishizuka, "The Crisis Management Capability of Japan's Self Defense Forces for UN Peacekeeping, Counter-Terrorism, and Disaster Relief." *Japanese Journal of Political Science* 14, no. 2 (2013): 201-222.

¹⁷ John F. Bradford, "Japanese naval activities in Southeast Asian waters: building on 50 years of maritime security capacity building." *Asian Security* 17, no. 1 (2021): 79-104.

¹⁸ Tsuneo Akaha, "Japan's soft power—hard power balancing act." In *The US-Japan Alliance*, pp. 58-79. Routledge, 2013.

The expanding roles of the Japan Self-Defense Forces (SDF) over time reflected Japan's evolving security needs and its desire to contribute positively to international peace and security. However, these expanded roles also led to debates about the interpretation of Article 9 and the extent to which the SDF's activities remained consistent with the constitution's commitment to pacifism and self-defense. Japan's efforts to strike a balance between these objectives have continued to shape its defense policies and its role in the international community.

6. Legal Discourse on Article 9

The legal discourse surrounding Article 9 has revolved around two main interpretations: the strict interpretation, which insists on a no-war policy and minimal military capabilities, and the permissive interpretation, which allows for a broader range of self-defense activities, including collective self-defense. Scholars, politicians, and the judiciary have debated the merits of each interpretation.¹⁹ Significant aspects on these two interpretative discourses are deliberated in subsequent paragraphs.

6.1. Strict Interpretation²⁰:

- a) No-War Policy: The strict interpretation of Article 9 emphasizes an absolute commitment to a no-war policy. It argues that Japan should not engage in any form of military aggression, including the use of force in self-defense, unless Japan itself is under direct attack.
- b) Minimal Military Capabilities: Under the strict interpretation, Japan should maintain minimal military capabilities solely for self-defense. This would entail

¹⁹ Adam P. Liff, "Policy by other means: Collective self-defense and the politics of Japan's postwar constitutional reinterpretations," *Asia Policy* 24 (2017): 139-172.

²⁰ Craig Martin, "The legitimacy of informal constitutional amendment and the reinterpretation of Japan's war powers," *Fordham Int'l LJ* 40 (2016): 427.

having a small and defensive-oriented military force that does not possess the capability to engage in offensive operations or collective self-defense.

- c) Historical Roots: The strict interpretation is rooted in the immediate post-war period when Japan was formulating its new constitution. It reflects a commitment to the principles of pacifism and non-aggression as a direct response to Japan's militaristic past and its involvement in World War II.
- d) Advocates: Advocates of the strict interpretation argue that it is in line with the original intent of Article 9, which was to prevent Japan from ever becoming a military aggressor again. They contend that any departure from this interpretation risks undermining the principles of the constitution.

6.2. Permissive Interpretation²¹:

- a) Broader Self-Defense Activities: The permissive interpretation of Article 9 allows for a broader range of self-defense activities. It asserts that Japan can engage in collective self-defense, participate in international peacekeeping missions, and take proactive measures to protect its security interests even if not directly under attack.
- b) Evolving Security Environment: Proponents of the permissive interpretation argue that Japan's security environment has evolved since the immediate post-war period. They contend that Japan should have the flexibility to respond to modern security challenges, which may necessitate a more active role in regional and international security affairs.

²¹ Adam P. Liff, "Japan's defense policy: Abe the evolutionary." *The Washington Quarterly* 38, no. 2 (2015): 79-99.

- c) Collective Self-Defense: One of the most significant aspects of the permissive interpretation is the allowance for collective self-defense. This means that Japan can come to the aid of its allies, such as the United States, if they are under attack, even if Japan itself is not directly threatened.
- d) Advocates: Supporters of the permissive interpretation assert that it allows Japan to be a more responsible global actor, contribute to international peace and security, and enhance its own security by strengthening alliances and partnerships.

The legal discourse on Article 9's interpretation has been at the heart of Japan's defense and foreign policy debates for decades. Scholars, politicians, and the judiciary have engaged in extensive discussions on which interpretation is more in line with the constitution's intent and the country's contemporary security needs. Japan's courts have played a pivotal role in determining the constitutionality of policies and legislation related to Article 9's interpretation. Landmark cases, such as the Sunagawa Incident and the Hanada Incident, have provided legal precedents that have influenced the direction of Japan's security policies. Furthermore, the debate over Article 9 has also been a driving force behind attempts to amend the Japanese Constitution. Proposed amendments have aimed to clarify the legal status of the Self-Defense Forces and provide a clearer framework for their roles in Japan's defense and international security. In summary, the strict vs. permissive interpretations of Article 9 represent two contrasting approaches to Japan's defense and security policies. The debate between these interpretations continues to shape Japan's role in regional and global security affairs and has profound implications for its alliance with the United States and its commitment to pacifism.

7. Judicial Role

Japanese courts have played a significant role in shaping the interpretation of Article 9. Landmark cases, such as the Sunagawa Incident in 1959 and the Hanada Incident in 2008, have influenced the legal discourse by providing clarity on the constitutionality of SDF activities. The judiciary's approach to balancing security needs with constitutional constraints has evolved over time. The role of Japanese courts in shaping the interpretation of Article 9 and the significance of landmark cases like the Sunagawa Incident and the Hanada Incident are deliberated below for better understanding of the judicial activism of Japan.²²

7.1.1. Judicial Role in Interpreting Article 9:

- a) Constitutional Oversight: In Japan, the judiciary has a crucial role in interpreting the constitution and ensuring that government actions and policies are in compliance with its provisions, including Article 9. The courts are responsible for determining the constitutionality of laws and government actions.
- b) Clarity and Consistency: One of the primary functions of the judiciary is to provide clarity and consistency in interpreting Article 9, given its historical significance and the evolving security landscape. Courts must strike a balance between upholding the constitution's principles and acknowledging the changing security needs of Japan.²³

7.1.2. Landmark Cases - Sunagawa Incident (1959):

²² William Andrews, *Dissenting Japan: A History of Japanese Radicalism and Counterculture from 1945 to Fukushima*. Oxford University Press, 2016.

²³ Yuichiro Tsuji, "Article 9 and the History of Japan's Judiciary: Examining Its Likeness to American and German Courts." (2016).

- a) Background: The Sunagawa Incident, which occurred in 1959, was a pivotal moment in the legal discourse on Article 9. It involved a legal challenge to the government's interpretation of the constitution regarding the existence and legality of the Self-Defense Forces (SDF).
- b) Outcome: The Supreme Court of Japan ruled in favor of the government's interpretation, stating that the SDF was constitutional because it served the purpose of self-defense, as allowed under Article 9. This ruling provided legal clarity on the constitutionality of the SDF's existence and activities.
- c) Impact: The Sunagawa ruling set a significant precedent, establishing that the SDF could operate within the bounds of Article 9 as long as its primary mission remained self-defense. This decision had a lasting impact on Japan's security policies and contributed to the institutionalization of the SDF as a legitimate and constitutional entity.²⁴

7.1.3. Landmark Cases - Hanada Incident (2008):

- a) Background: The Hanada Incident, which occurred in 2008, involved a legal challenge to Japan's participation in refueling operations in the Indian Ocean in support of the United States-led war on terror. The question at the heart of this case was whether such activities, which were far from Japan's territorial waters, violated Article 9.
- b) Outcome: The Supreme Court's ruling in the Hanada Incident marked a shift in the judiciary's approach. While upholding the constitutionality of Japan's

²⁴ Po Liang Chen and Jordan T. Wada, "Can the Japanese Supreme Court Overcome the Political Question Hurdle?," *Washington Int. Law Journal*, 26 (2017):349

participation in the refueling operations, the ruling also acknowledged that such activities were a form of collective self-defense.

- c) Impact: The Hanada ruling broadened the interpretation of Article 9 by implicitly recognizing Japan's capacity for collective self-defense, albeit in a limited context. This decision sparked debates about the evolving role of Japan's military in international security affairs.²⁵

The judicial approach to Article 9 has evolved over time. While the Sunagawa ruling initially emphasized strict adherence to the constitution's principles, the Hanada ruling introduced a more permissive interpretation. This evolution reflects the judiciary's acknowledgment of Japan's changing security environment and the need to adapt to new challenges. The role of Japanese courts in interpreting Article 9 is pivotal in shaping the country's security policies and its approach to defense. Landmark cases like the Sunagawa Incident and the Hanada Incident have not only provided legal clarity but have also influenced the broader legal discourse and public debate on Japan's defense posture and the balance between security needs and constitutional constraints.

8. Constitutional Amendments

The Japanese government has made efforts to reinterpret Article 9 through constitutional amendments. However, these attempts have faced resistance from both pacifist and conservative elements of Japanese society. The process of amending the constitution requires a two-thirds majority in both houses of the National Diet and approval in a national referendum, making it a challenging endeavor. Some significant insights into the process of constitutional amendments in Japan and the challenges associated with amending Article 9 are deliberated below:

²⁵ Yasuhiro Izumikawa, "Explaining Japanese antimilitarism: normative and realist constraints on Japan's security policy." *International Security* 35, no. 2 (2010): 123-160.

- a) Complex Process: Amending the Japanese Constitution is a complex and challenging process deliberately designed to ensure broad consensus and prevent hasty changes to the fundamental law. It is outlined in Chapter IX of the constitution.
- b) Requirement for Approval: For a constitutional amendment to pass, it requires a two-thirds majority in both houses of the National Diet, Japan's parliament, which is equivalent to a supermajority. Additionally, it must be approved in a national referendum. This high threshold is intended to ensure that proposed amendments have substantial public and political support.²⁶

8.1.Efforts to Amend Article 9:²⁷

- a) Reinterpretation vs. Amendment: Over the years, there have been efforts by various Japanese governments to amend Article 9, particularly to clarify the legal status of the Self-Defense Forces (SDF) and potentially expand their roles. However, the process of amending the constitution has proven challenging. Instead, some governments have opted for reinterpretations of Article 9, which do not require formal constitutional changes but can alter the practical application of the article.
- b) Resistance from Pacifist Elements: One significant obstacle to amending Article 9 has been opposition from pacifist elements within Japanese society. Japan has a strong tradition of pacifism, and many citizens and advocacy groups

²⁶ Linus Hagström, "The Democratic Party of Japan's security policy and Japanese politics of constitutional revision: a cloud over Article 9?," *Australian Journal of International Affairs* 64, no. 5 (2010): 510-525.

²⁷ Craig Martin, "Change It to Save It: Why and How to Amend Article 9." (2016).

are deeply committed to the principles of the no-war clause. They argue that amending Article 9 would undermine Japan's commitment to peace and could lead to a resurgence of militarism.

- c) Concerns of Neighboring Countries: Amending Article 9 also raises concerns among Japan's neighboring countries, particularly those who have historical memories of Japanese militarism. Any move to strengthen Japan's military capabilities, even for defensive purposes, can be viewed with suspicion and anxiety by neighboring nations.
- d) Political Challenges: Japan's political landscape is characterized by a diverse array of political parties and coalitions. Achieving the two-thirds majority required for a constitutional amendment can be politically challenging, as it often necessitates cooperation and compromise among various political factions.

8.2. Constitutional Reforms Under Prime Minister Shinzo Abe:

- a) **Notable Efforts:** Prime Minister Shinzo Abe, during his tenure, made notable efforts to reinterpret and potentially amend Article 9. His administration sought to clarify the legal status of the SDF and open the door to collective self-defense. These efforts sparked significant domestic and international debates.²⁸
- b) **Mixed Success:** While Abe's efforts led to a reinterpretation of Article 9 in 2014, they did not result in formal constitutional amendments. The resistance

²⁸ Rosalind Dixon and Guy Baldwin, "Globalizing constitutional moments? A reflection on the Japanese article 9 debate." *The American Journal of Comparative Law* 67, no. 1 (2019): 145-176.

from both pacifist and conservative elements of Japanese society, coupled with political challenges, made it difficult to secure the necessary support for full constitutional changes.

Former Prime Minister Shinzo Abe made significant efforts to amend the Japanese Constitution to clarify the legal status of the SDF and expand its roles, including collective self-defense. Although these reforms faced strong opposition, they raised important questions about Japan's security policies.

Shinzo Abe, who served as Japan's prime minister in two non-consecutive terms (2006-2007 and 2012-2020), was a strong advocate for constitutional reforms, particularly related to Article 9 of the Japanese Constitution. One of Abe's key objectives was to clarify the legal status of the Japan Self-Defense Forces (SDF) in the constitution. He sought to amend Article 9 to explicitly acknowledge the existence and legitimacy of the SDF. Additionally, he aimed to expand the SDF's roles, including allowing for collective self-defense, which would enable Japan to come to the aid of its allies under attack.²⁹

Abe's proposed constitutional reforms faced strong opposition from both pacifist elements within Japanese society and conservative factions who supported a more assertive role for Japan in regional security. Pacifist groups and citizens who were committed to Japan's post-war pacifism opposed any changes to Article 9, viewing them as a potential erosion of Japan's commitment to non-aggression. Japan's neighbors, particularly China and South Korea, expressed concerns about any moves to expand Japan's military capabilities and revise its constitution, citing historical grievances and regional stability. Moreover, amending the Japanese Constitution is a complex

²⁹ Michael I. Magcamit, "The fault in Japan's stars: Shinzo Abe, North Korea, and the quest for a new Japanese constitution." *International Politics* 57, no. 4 (2020): 606-633.

process, requiring a two-thirds majority in both houses of the National Diet and approval in a national referendum. The legal and political challenges of achieving such reforms were substantial. One of the most significant impacts of Abe's proposed reforms was the debate on Japan's role in collective self-defense. The proposal to allow Japan to come to the aid of its allies under attack raised important questions about the country's commitment to regional security and its alliance with the United States. While the proposed amendments aimed to provide constitutional clarity regarding the SDF, they also sparked discussions about Japan's security needs and the balance between its commitment to pacifism and its obligations within the Japan-U.S. Security Alliance. Although Abe's constitutional reforms did not lead to formal amendments, they left a lasting legacy in Japan's security policies and the ongoing discussions about Article 9. The reforms contributed to an evolving understanding of Japan's role in regional and global security.

In continuity, the issues raised by Abe's proposed constitutional reforms remain relevant in Japan's security and defense discourse. They continue to shape the country's approach to regional security, its alliance with the United States, and the broader legal and constitutional debates related to Article 9 and the role of the Japan Self-Defense Forces. Shinzo Abe's constitutional reforms, particularly regarding Article 9 and the Japan Self-Defense Forces, sparked significant debates and opposition within Japan and among neighboring nations. While these reforms did not result in formal constitutional changes, they had a profound impact on the discussions about Japan's security policies, its commitment to pacifism, and its role in regional and global security affairs.

Amending Article 9 of the Japanese Constitution is a formidable undertaking due to the constitutional requirements and the deeply ingrained commitment to pacifism in Japanese society. The high threshold for constitutional changes reflects the importance of ensuring broad consensus on matters related to Japan's security and defense policies. While there have been attempts to

reinterpret the article and clarify its application, formal amendments have remained a challenging endeavor, with complex political and societal dynamics at play.

9. Implications on the Politics of Nuclear Umbrella

The United States has maintained a security alliance with Japan since the end of World War II. Central to this alliance is the concept of the "nuclear umbrella," where the U.S. extends its nuclear deterrent to protect Japan from nuclear threats.³⁰ The interpretation of Article 9 directly affects the dynamics of this alliance. A deeper insight into the Japan-U.S. Security Alliance and how the interpretation of Article 9 of the Japanese Constitution directly affects this alliance, especially in the context of the "nuclear umbrella" is deliberated below.

9.1. Japan-U.S. Security Alliance:

- a) Historical Background: The Japan-U.S. Security Alliance was established in the aftermath of World War II, specifically through the U.S.-Japan Security Treaty signed in 1951 and its subsequent revisions. The alliance aimed to ensure Japan's security and promote regional stability in East Asia, particularly in the context of the Cold War.
- b) U.S. Security Commitment: Central to this alliance is the U.S. commitment to provide Japan with security support, including the use of its military forces, in the event of aggression or threats to Japan's sovereignty. This commitment has been reaffirmed through various agreements and diplomatic assurances.

³⁰ Terence Roehrig, *Japan, South Korea, and the United States nuclear umbrella: deterrence after the cold war*. Columbia University Press, 2017.

- c) The "Nuclear Umbrella": The "nuclear umbrella" is a critical aspect of the Japan-U.S. Security Alliance. It entails the United States extending its nuclear deterrence capabilities to protect Japan from nuclear threats. In essence, Japan relies on the U.S. nuclear arsenal as a deterrent against potential nuclear adversaries.³¹

9.2.Impact of Article 9 on the Alliance:³²

- a) Legal Constraints: Article 9 of the Japanese Constitution, which renounces the use of war and prohibits Japan from maintaining military forces, presents certain legal and constitutional constraints. Specifically, it limits Japan's ability to possess and potentially use nuclear weapons, even for defensive purposes.
- b) Assurance of Non-Nuclear Policy: Japan's adherence to a policy of not developing, possessing, or allowing the introduction of nuclear weapons on its territory is in line with the principles of Article 9. This assurance is crucial for maintaining the alliance with the United States.
- c) Debate on Collective Self-Defense: The interpretation of Article 9, particularly regarding collective self-defense, has been a point of discussion within the alliance. Collective self-defense allows Japan to come to the aid of its allies, including the United States, if they are under attack. While this could enhance the alliance's effectiveness, it has also generated debates about whether such actions would violate Article 9.

³¹ Robert Johnson, "Japan Closes the Nuclear Umbrella: An Examination of Nonviolent Pacifism and Japan's Vision for a Nuclear Weapon-Free World." APLPJ 13 (2011): 81.

³² Daisuke Akimoto. "Japan as a 'Nuclear Umbrella State': Embedded in the US Nuclear Strategy." Japan's Nuclear Identity and Its Implications for Nuclear Abolition (2020): 93-119.

- d) Concerns from Neighboring Nations: Japan's security policies, including its reliance on the U.S. nuclear umbrella, can raise concerns among neighboring countries, particularly China and North Korea. These nations may view Japan's security posture as a potential threat and may seek to counterbalance it through their own military developments.

The security environment in East Asia has evolved significantly since the establishment of the Japan-U.S. Security Alliance. North Korea's nuclear ambitions, China's rise as a regional power, and regional territorial disputes have all contributed to shifts in security dynamics. Efforts to reinterpret Article 9, as seen in Prime Minister Shinzo Abe's initiatives, have aimed to clarify Japan's role in the alliance and expand its capabilities, including in the context of collective self-defense. These efforts have had implications for the alliance's structure and Japan's role within it. Japan's interpretation of Article 9 and its security policies must strike a delicate balance between maintaining a commitment to pacifism and ensuring its own defense.

This balancing act has a direct impact on the dynamics of the Japan-U.S. Security Alliance, as the United States relies on Japan as a key regional partner in maintaining stability in the Asia-Pacific region. In summary, the Japan-U.S. Security Alliance is a cornerstone of Japan's security and defense posture. The interpretation of Article 9 plays a vital role in shaping the alliance's dynamics, as it defines Japan's security policies and capabilities, including its reliance on the U.S. nuclear umbrella. Balancing Japan's constitutional constraints with its security needs is an ongoing challenge that has profound implications for regional stability and international security in East Asia.

10. Japanese Nuclear Ambiguity

Japan has adhered to a policy of "nuclear ambiguity," neither confirming nor denying the possession of nuclear weapons. This policy is rooted in Article 9's commitment to pacifism. However, as security challenges in the region have evolved, there have been debates about whether Japan should reconsider its stance on nuclear weapons and develop an independent nuclear deterrent. In other words, Japanese nuclear ambiguity is the hallmark of the Japanese nuclear ambiguity that refers to Japan's policy of neither confirming nor denying the possession of nuclear weapons. It is a deliberate stance taken by the Japanese government regarding its nuclear capabilities or intentions. The policy of nuclear ambiguity is closely tied to the principles of Article 9 of the Japanese Constitution. Article 9 renounces the use of war and prohibits Japan from maintaining military forces. As a result, Japan has maintained a strict no-nuclear-weapons policy as part of its commitment to pacifism.³³

After World War II, Japan was devastated by the atomic bombings of Hiroshima and Nagasaki that had a profound impact on the Japanese psyche and contributed to a strong anti-nuclear sentiment in the country. In the early years of the Japan-U.S. Security Alliance, Japan relied on the United States for nuclear deterrence. The United States extended its nuclear umbrella to Japan, assuring the country that it would provide nuclear protection in the event of a nuclear threat. Contrary to its security alliance with the United States, Japan is also part of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and has consistently advocated for nuclear disarmament. It has also declared itself a nuclear weapon-free zone, further emphasizing its commitment to a non-nuclear stance.³⁴

³³ Koichi Nakano, "The politics of unconstitutional constitutional amendments in Japan: The case of the pacifist Article 9." In *The Law and Politics of Unconstitutional Constitutional Amendments in Asia*, pp. 23-45. Routledge, 2021.

³⁴ Yukinori Komine, "Virtual Nukes: The Formulation of Japan's Non-nuclear Weapons Security Policy." *The International History Review* (2023): 1-23.

The security environment in East Asia has evolved significantly since the end of World War II. North Korea's nuclear program, China's military modernization, and territorial disputes in the region have all raised concerns about Japan's security. As regional security challenges have intensified, there have been debates within Japan about whether the country should reconsider its strict anti-nuclear stance. Some argue that Japan should develop an independent nuclear deterrent to enhance its security in the face of potential threats.³⁵

These debates raise both domestic and international concerns. Domestically, there are pacifist elements in Japanese society that oppose any move towards nuclear weapons. Internationally, Japan's neighbors, particularly South Korea and China, have expressed concerns about any change in Japan's nuclear policy, citing historical grievances and regional stability.

As deliberated in the aforementioned sections that Japan's adherence to Article 9 and its pacifist principles represent a significant constitutional constraint on any change in its nuclear policy. Any shift towards nuclear weapons development would require significant legal and constitutional changes, which is why Japan's alliance with the United States plays a role in its nuclear policy. Japan relies on the U.S. nuclear umbrella for its security, and any move towards an independent nuclear deterrent could have implications for the alliance. Therefore, the debate on Japanese nuclear ambiguity and the country's nuclear policy remains an ongoing and contentious issue. It reflects Japan's enduring commitment to pacifism and its need to adapt to evolving security challenges while navigating complex domestic and international considerations.

Japanese nuclear ambiguity is a policy rooted in Japan's commitment to pacifism and the principles of Article 9 of its constitution. However, as regional security challenges have evolved, there have

³⁵ Min-hyung Kim, "Why Nuclear? Explaining North Korea's Strategic Choice of Going Nuclear and Its Implications for East Asian Security." *Journal of Asian and African Studies* 56, no. 7 (2021): 1488-1502.

been debates about whether Japan should reconsider its stance on nuclear weapons. Balancing these debates with constitutional constraints and the dynamics of the Japan-U.S. Security Alliance is a complex and ongoing process with profound implications for Japan's security posture and regional stability.

10.1. Role of the SDF in Nuclear Defense:

The SDF's role in nuclear defense remains a contentious issue. While the strict interpretation of Article 9 would preclude any involvement in nuclear deterrence, the permissive interpretation could potentially allow for participation in defensive measures related to the nuclear umbrella.

Under the strict interpretation of Article 9, Japan is committed to renouncing the use of war and maintaining a strictly defensive military posture. This interpretation prohibits Japan from possessing, developing, or using nuclear weapons. In accordance with the strict interpretation of Article 9, Japan's SDF is precluded from any involvement in nuclear deterrence. This means that the SDF cannot participate in activities related to the use, deployment, or management of nuclear weapons, as these actions would be considered inconsistent with the constitutional commitment to pacifism.³⁶

Under the permissive interpretation of Article 9, which allows for a broader range of self-defense activities, there is a potential opening for Japan's SDF to participate in defensive measures related to the nuclear umbrella. This could include actions such as missile defense or providing support to U.S. forces engaged in nuclear deterrence.³⁷

³⁶ Sheila Smith and Charles T. McClean, "The US and Japan Build Multilateral Momentum," *Comparative Connections: A Triannual E-Journal on East Asian Bilateral Relations* 25, no. 1 (2023).

³⁷ Charlotte Ning Seah, "Comparing Japan's and the Republic of Korea's missile defense strategies using neoclassical realism." (2023).

The SDF's involvement in nuclear defense remains a contentious issue due to the constitutional constraints imposed by Article 9. Critics argue that even defensive measures related to the nuclear umbrella could be seen as a breach of Japan's commitment to pacifism. Any perceived shift in Japan's stance on nuclear defense or the role of the SDF in such operations can raise concerns among neighboring countries, particularly those with historical grievances related to Japan's past militarism. Defining the SDF's role in nuclear defense requires navigating complex legal and political challenges. Any change in policy or interpretation would likely require legal amendments and could face political resistance both domestically and internationally.

One aspect of Japan's involvement in nuclear defense has been its development and deployment of missile defense systems, such as the Aegis Ashore and Patriot missile systems. These systems are designed to intercept and destroy incoming ballistic missiles, including those with potential nuclear warheads. Japan also engages in intelligence sharing with the United States and other allies related to nuclear threats. This includes sharing information about missile launches and other security threats. Balancing the role of the SDF in nuclear defense with the constitutional constraints of Article 9 is a complex and sensitive issue. It requires Japan to carefully consider its security needs, its commitments to pacifism, and its obligations within the Japan-U.S. Security Alliance. The SDF's role in nuclear defense is a complex and contentious issue influenced by the interpretation of Article 9, the evolving security environment, and the need to navigate legal and political challenges. Japan faces a delicate balancing act as it seeks to enhance its security while adhering to the principles of its constitution and maintaining regional stability.

11. Conclusion

The security environment in East Asia has become increasingly complex, with North Korea's nuclear ambitions, territorial disputes, and the rise of China as a regional power. These

developments have placed pressure on Japan to reassess its security posture and interpretation of Article 9.

North Korea's pursuit of nuclear weapons and long-range missile capabilities has significantly altered the security dynamics in East Asia. The regime's nuclear tests and missile launches have raised concerns about the potential for regional instability and the direct threat to Japan. North Korea's ability to launch missiles capable of reaching Japan has increased the urgency for Japan to bolster its missile defense capabilities and enhance its overall security preparedness.

Territorial disputes in the South China Sea involving China, Japan, and other regional actors have added complexity to the security environment. These disputes have the potential to escalate into regional conflicts, prompting Japan to consider its role in maintaining regional stability. Japan's dispute with China over the sovereignty of the Senkaku/Diaoyu Islands in the East China Sea has strained relations and heightened tensions in the region. This territorial dispute has implications for Japan's defense posture and its interpretation of Article 9 regarding self-defense capabilities.³⁸ Furthermore, China's rapid military modernization and assertiveness in the region have raised concerns among its neighbors, including Japan. The expansion of the Chinese military's capabilities and activities in the East and South China Seas have led Japan to reassess its own security needs. Japan's response to China's rise as a regional power has included efforts to strengthen its defense capabilities, enhance its maritime security, and deepen defense partnerships with regional allies and partners.³⁹

The evolving security environment in East Asia has placed pressure on Japan to enhance its security preparedness. This has included investments in missile defense systems, increased defense

³⁸ Dalei Jie, "From 'shelving sovereignty' to 'regularized patrol': prospect theory and Sino-Japanese islands dispute (2012-14)." *International Relations of the Asia-Pacific* 23, no. 2 (2023): 197-228.

³⁹ Takuya Matsuda, "Japan's Emerging Security Strategy." *The Washington Quarterly* 46, no. 1 (2023): 85-102.

budgets, and efforts to improve the readiness of the Japan Self-Defense Forces (SDF). The changing security environment has also prompted debates within Japan about the interpretation of Article 9. Some argue that the evolving threats in the region necessitate a more proactive role for the SDF, potentially including participation in collective self-defense and other security activities.⁴⁰

Japan faces a delicate balancing act between maintaining its commitment to the pacifist principles of Article 9 and ensuring its own security in a rapidly changing and uncertain regional environment. This balancing act is reflected in discussions about constitutional amendments, reinterpretations of Article 9, and defense policy reforms. In summary, the changing security environment in East Asia, marked by North Korea's nuclear ambitions, territorial disputes, and China's regional rise, has forced Japan to reassess its security posture and the interpretation of Article 9. Japan must navigate a complex landscape that requires it to adapt to new security challenges while upholding its constitutional commitment to pacifism and regional stability.

The future of Article 9 and the broader Japanese legal discourse on defense and security issues remain uncertain. The outcome will depend on the interplay of domestic politics, regional security dynamics, and public opinion. Some of the significant prospects for constitutional amendments in Japan, particularly in relation to Article 9, and the various factors that contribute to the uncertainty surrounding these prospects are deliberated below.

11.1. Domestic Politics:

- a) Political Landscape: The likelihood of constitutional amendments depends on the political landscape in Japan. It requires a two-thirds majority in both houses

⁴⁰ Nadia Shaheen and Ren Mu, "Elevated strategic partnership between India and Japan in the context of the rising power of China." *India Review* 22, no. 4 (2023): 433-462.

of the National Diet to initiate amendments. Political parties and coalitions play a pivotal role in determining whether such a majority can be achieved.

- b) Changes in Leadership: The stance of Japan's leadership, particularly the Prime Minister and the ruling party, significantly influences the prospects for constitutional amendments. Changes in leadership can lead to shifts in the prioritization of constitutional reforms.
- c) Public Support: Public opinion in Japan regarding constitutional amendments, especially related to Article 9, is a critical factor. Public sentiment can influence the decisions of lawmakers and political leaders. Any proposed amendments must ultimately be approved in a national referendum, necessitating public support.
- d) Pacifist Sentiment: Japan has a strong tradition of pacifism, and many citizens are deeply committed to the principles of Article 9. Proposals that are perceived as undermining Japan's pacifist stance may face strong opposition.

11.2. Regional Security Dynamics:

- a) Changing Threats: The evolving security environment in East Asia, including North Korea's nuclear ambitions and China's assertive posture, may exert pressure on Japan to reconsider its security policies and the role of its Self-Defense Forces.
- b) Neighboring Nations: Japan's security policies and constitutional amendments can have diplomatic implications with neighboring nations. It is crucial to consider how Japan's actions may affect regional stability and relationships.

11.3. Complex Legal-cum-Political Processes:

- a) Constitutional Requirements: The process of amending the Japanese Constitution is complex and requires multiple steps. Achieving the necessary two-thirds majority in both houses of the National Diet and securing public approval in a national referendum is a formidable challenge.
- b) Legal Interpretations: Ongoing debates and legal interpretations regarding Article 9 will continue to shape the discourse on constitutional amendments. These debates involve scholars, legal experts, politicians, and the judiciary.
- c) Policy Reforms: Even without formal constitutional amendments, Japan may enact policy reforms and reinterpretations to adapt to evolving security challenges while adhering to the principles of Article 9.
- d) Economic and Social Priorities: Japan faces various domestic challenges, including demographic shifts, economic concerns, and social issues. These priorities can compete with constitutional reforms for political attention and resources.
- e) Role of U.S.-Japan Alliance: The Japan-U.S. Security Alliance plays a significant role in Japan's security posture. The alignment of Japan's constitutional reforms with the interests and expectations of the United States can influence the direction of Japanese security policies.

The future of Article 9 and the broader Japanese legal discourse on defense and security issues remains uncertain due to the interplay of these factors. The outcome will depend on how these dynamics evolve and intersect over time. Any constitutional changes will likely be the result of a careful balancing act between Japan's security needs and its historical commitment to pacifism. Japanese legal discourse on Article 9 of its Constitution is a complex and ongoing debate that

touches on fundamental questions of national identity, security, and international relations. The evolving interpretations of Article 9 have significant implications for Japan's role in the world, its relationship with the United States, and the politics of the nuclear umbrella in East Asia. As Japan navigates an increasingly uncertain security landscape, the debate over Article 9 will continue to shape the country's policies and its place in the global order.

The Japanese legal discourse surrounding Article 9 of its Constitution reflects a multifaceted and ongoing dialogue that transcends mere legal interpretation. It delves deep into the essence of Japan's national identity, its security imperatives, and its intricate web of international relations. These evolving interpretations of Article 9 ripple out to affect Japan's position on the global stage, its alliance with the United States, and the dynamics of the nuclear umbrella in East Asia.

In a world marked by shifting security landscapes and geopolitical uncertainties, the Article 9 debate stands as a pivotal juncture. Japan, with its enduring commitment to pacifism and constitutional constraints, grapples with the necessity of adapting to emerging threats and the demands of its evolving security environment. The outcome of this debate will continue to exert a profound influence on Japan's domestic policies, its place in the international order, and the intricacies of regional diplomacy in East Asia.

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