

Research on the Current Status of the Revision of Japanese Constitution Article 9

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Abstract: A constitution sets out the most fundamental rules of a country, and the rule of law warrants the country to act in accordance with its constitutional laws. Because of the supreme status of the constitution, complicated procedures are commonly required for constitutional revision. A constitution is rarely revised unless vital; however, persistent appeals for constitutional revision in Japan have arisen since the last century. Debates revolve mainly around Article 9, also known as the "peace clause", of which Japan claims to renounce war and war potentials for international peace. Supporters contend Article 9 allows Japan to concentrate on economic development, and prevents the militarist resurgence that had victimized countless people both inside and outside Japan in World War II. Yet, dissenters tend to deem that Article 9 could hinder Japan's rights to self-defense. Despite decades of efforts made by constitutional revisionists, the Japanese constitution remains unchanged since its promulgation. Therefore, a need arose for this paper to investigate the peace clause to find out why its revision has been tremendously difficult. By reviewing the interpretations and enforcement of Article 9 through secondary sources, this paper also suggests that Article 9 should indeed be revised.

Keywords: Japan, constitution, Article 9, peace clause

1. Introduction

Promulgated in 1946, and came into effect in 1947, the existing Japanese constitution holds its position as the world's oldest intact constitution. Compared to the constitutions of many other countries, the Japanese one has a peculiar feature for its Article 9 which was added in response to Japanese militarism in the Second World War. The most critical roles of the peace clause are to assure that Japan, for the sake of international peace, will not go to war, and to protect victims of Japanese militarism from suffering again from the same dreadful tragedy. Yet, disputes on whether Article 9 needs to be revised have been non-stopped both inside and outside Japan. Since 1955, Japan's largest party, the Liberal Democratic Party (LDP), has been a staunch supporter of amendment. Its former president, deceased Prime Minister Abe had attempted to amend Article 9 multiple times in his tenure. While former Prime Minister Abe had emphasized his desire to implement the revised constitution before the Tokyo Olympic Games, the constitution stayed unmodified by his resignation in 2020. The aims of this paper are thus to explore why the revision of Japanese Article 9 has been immensely difficult, and to argue why Article 9 should be revised. Through the gathering and examination of secondary sources, the paper starts by presenting the impediments faced by the revision of the peace

clause. Then, the necessity of revising the peace clause will be argued, followed by some recommendations on how to promote such a revision successfully in the fourth section. Lastly, the limitations of this paper will be provided in the conclusion.

2. Analysis of the Reasons Why Article 9 Has not yet Been Revised

Although revisionists have been struggling with the amendment of Article 9, they've all failed to make any concrete progress so far, and four reasons are given here as to why Article 9 has yet to be successfully revised.

First, the amendment clause (Article 96) of the Japanese constitution obstructs the revision of Article 9. Article 96 reads: "Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.

Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution" [1]. In simple terms, it means "two-thirds majority of members (not just those present) of each House of the National Diet, followed by a simple majority in a referendum of the people" must be passed for Japanese constitutional revision [2]. The closest the LDP came to successfully revising the constitution was when former Prime Minister Abe secured two-thirds of the seats in both Houses in 2016. Unfortunately, the referendum later did not lend him a hand.

Apart from the hurdle placed by Article 96, Japanese political parties' contested opinions on whether the peace clause should be revised is also a problem. For example, the party named Initiatives from Osaka doesn't voice strong support for the revision of Article 9, while other parties such as the Constitutional Democratic Party of Japan and the Japanese Communist Party firmly defend Article 9. It was indeed such opposed positions over the revision issue made it challenging for former Prime Minister Abe to "rally his party around a legislative effort to revise the document" in 2016 [3].

Third, the revision of Article 9 has been tough because it lacks public support. In fact, public opinion is displaying a growing negative attitude towards the revision of Article 9, as "the polls by Nikkei Shimbun, Japan's business daily, show that its readers have wavered in their support for revision. Although over 60 percent supported revision in 2000, only 41 percent did in 2018" [4]. Such unfavorable public opinion may root partially in war guilt, but more in the culture of anti-militarism, as "the majority of Japanese felt victimized by their own military for having dragged them into a war that rationally could only end in tragedy, and for conducting that war without regard for the suffering that was inflicted on the Japanese people" [5]. Furthermore, many ordinary Japanese defend the peace clause as they contend it creates a secure environment that enables Japan to focus on economic building.

Fourth, the revision of Article 9 of the Japanese constitution faces opposition from the international community. Foreign resistance to the revision primarily comes from Japan's neighboring countries, China and Korea, who are the biggest victims of Japan's militarism in the Second World War. It can be observed that almost every time the Japanese government announced its agenda of constitutional revision, Japan's relations with these two countries would become tense. This is because "average Chinese still have deeply rooted apprehensions about Japan repeating its militarist mistakes, and most Koreans are against Japan's constitutional reform and consider it a sign of Japan's revert back to militarism" [6]. Also, the agenda of amending Article 9 can evoke the memory of the atrocities Japan committed in WWII, and stir up the hatred toward Japan, especially under the current circumstances where many Chinese and Koreans believe Japan hasn't made enough sincere apologies. This frequently manifests itself in protests against the revision of Article 9, as well as campaigns in China and Korea opposing Japanese products, which would ultimately hurt the Japanese economy.

Overall, due to legal, political, public, and foreign obstacles, Article 9 has not been successfully amended.

3. Analysis of the Reasons Why Article 9 Should Be Revised

Though preserving the current Article 9 may be beneficial to international peace and Japan's economic development, there are six reasons suggesting the necessity of amending Article 9.

The very first reason is that Article 9 was not a "Japanese product". Actually, the entire Japanese constitution was written by Americans during the Occupation period. The origin of the peace clause can be traced back to 1946 when "General MacArthur set up a committee composed of occupation officials to draft a new, democratic, constitution for Japan. Most significantly, MacArthur's instructions to the committee charged with drafting a new constitution, was that the right to wage war and to maintain the means of waging it should be abolished. This instruction formed the basis of article 9" [2]. Despite the original wording in the draft of Article 9 had changed slightly under the request of a leading politician, Ashida Hitoshi, Article 9 was not purely "made in Japan", it was imposed on Japan when it was vulnerable. Furthermore, Article 9 was more like "a demarche designed to undercut Soviet interference" at that historical point [2]. Thus, it is more appropriate for Japan to revise Article 9, making it more suitable for the present-day political environment.

Second, the interpretation of Article 9 has been ambiguous and changing. Article 9 reads: "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.

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" [7]. Simply put, the first paragraph says that Japan forever renounces war, and second paragraph forbids maintaining the war potential. On its surface, Article 9 declares absolute pacifism, since "in the original Japanese text, 'as a means of settling international disputes' is clearly connected to not only 'the threat or use of force,' but also to 'war as a sovereign right of the nation'" [8]. However, the problem with Article 9 is that there is no definite interpretation of it. As mentioned earlier, the words "In order to accomplish the aim of the preceding paragraph" were added at the request of Ashida Hitoshi [7]. Indeed, "Ashida's real intention may be paraphrased as follows: 'In order to accomplish the aim of an international peace based on justice and order, Japan may not go to war or develop the means to do so. But for other purposes, for instance defense of home territory, Japan may maintain the means of defending itself and the right to go to war if necessary'" [2]. For this reason, a majority of scholars as well as the Japanese government itself are inclined to opt for the stance that Japan's right to self-defense is still reserved, and a self-defense war is not renounced under Article 9. The ambiguity of Article 9 is also reflected in the inconsistent nature of its interpretation, which varies with the international situation. In 1960, Japan and the U.S. signed the Treaty of Mutual Cooperation and Security between Japan and The United States of America (Japan-U.S. Security Treaty), which is an amended version of the 1951 Security Treaty Between the United States and Japan. The Japan-U.S. Security Treaty represented military cooperation between the two countries, and "it grants the United States the right to establish bases on the archipelago in exchange for a commitment to defend Japan in the event of an attack" [9]. The Japanese government stuck to this agreement till 2015 when the interpretation of the phrase "use of force" in the first paragraph of Article 9 was expanded to allow collective self-defense. Then, "under Prime Minister Shinzo Abe, Japan reinterpreted its constitution in a historic move that allowed its military to defend the allied for the first time, but under limited circumstances. The change helped pave the way for the United States and Japan to revise their defense guidelines once again, expanding the scope of their military cooperation and focusing the alliance on current threats—including from China and North Korea—

and new technologies" [9]. Such ambiguity and inconsistency within the interpretation of Article 9, therefore, encouraging it to be revised to avoid any expanded understanding.

Third, Article 9 should be amended due to the need for explicit affirmation of the right to self-defense. Although Japan was an aggressor in World War II, as a sovereign state, its legal right to self-defense should not be deprived. However, "it is unclear in English translation whether the phrase 'as a means of settling international disputes' is connected to 'war as a sovereign right of the nation'", in the Japanese text of Article 9, strictly speaking, Japan renounces both aggressive and defensive war [8]. Therefore, a more straightforward affirmation of the right to self-defense is needed under either Japanese or English texts.

The fourth reason supporting the revision of Article 9 is that the constitutionality of Japan's armed forces — Self Defense Force (SDF) needs to be clearly justified. The SDF was initially established under the Yoshida government in 1954 as a quasi-military force to "defend Japanese territory, but restricted under the prevailing interpretation of the Peace Clause to activities defined as defensive" [2]. However, since the SDF contradicts the statement of Article 9 that "land, sea, and air forces, as well as other war potential, will never be maintained" [7], the Japanese government then attempted to justify SDF in a way claiming that SDF is not a "war potential" but a "self-defense potential". "The government insists that, because article 9, paragraph 1 does not deny the state's inherent right of self-defense, creating standing forces for the purpose of self-defense does not constitute maintaining the 'war potential' forbidden by article 9, paragraph 2" [8]. In reality, the legitimacy of the SDF remains controversial, for example, the Social Democratic Party and the Japanese Communist Party have refused to admit the constitutionality of the SDF. Hence, it is better to revise Article 9 to articulate the constitutionality of the SDF.

Fifth, Article 9 puts limits on Japan's military and nonmilitary cooperation for international security. The Ministry of Foreign Affairs of Japan stated that "Japan, as a responsible member of the international community, has been strenuously working for the maintenance of peace and security" [10]. Ever since the enactment of the International Peace Cooperation Law in 1992, Japan has participated in ensuring international security, for instance, "Japan has cooperated in 8 peacekeeping operations such as in Angola, Cambodia, Mozambique, El Salvador, the Golan Heights and Timor-Leste; in 5 international humanitarian relief operations such as for Rwandan refugees and Timorese and Iraqi displaced persons" [10]. In Japan, the mission of cooperation in the international arena is assigned to the SDF, the SDF troops were also deployed to Iraq at the request of the U.S. in 2004 besides from ordinary nonmilitary cooperation. Such deployment led to significant controversies among the public. This is because the SDF is barely recognized as a self-defense force under the constitution, whereas assisting the American military in Iraq revealed little obligation of the SDF under the current constitution, implying that the SDF's operations in Iraq may be considered unconstitutional. It also seems that "Article 9 created a bottleneck when it came to Japan's participation in such international peace activities as U.N. peacekeeping operations (UNPKO). The constitutional restraint was cited as the cause when Japan was criticized for offering too little, too late by way of its involvement in the Persian Gulf War" [11]. To cope with the inevitable trend of globalization, the Ministry of Foreign Affairs of Japan emphasized that "participation in UN peacekeeping operations is today placed as one of Japan's important areas of cooperation for international peace and security" [10]. As a result, it is essential for Japan to revise Article 9 to answer the calls for any military and nonmilitary cooperation in international security efforts.

Sixth, compared to Article 11 of the Italian constitution, the Japanese constitution Article 9 should be revised. As with Japan, Italy has long been criticized for its aggressive behavior during WWII. However, unlike the ambiguous and debatable Japanese Article 9, the Italian analogy explicitly permitted the use of force for self-defense and international peacekeeping operations. The Italian Constitution Article 11 reads: "Italy shall repudiate war as an instrument of offense against the liberty

of other peoples and as a means for settling international disputes; it shall agree, on conditions of equality with other states, to such limitations of sovereignty as may be necessary to allow for a legal system that will ensure peace and justice between nations; it shall promote and encourage international organizations having such ends in view" [12]. The Italian Article 11 also disclaims aggressive war yet it is much less controversial as the conditions for using military forces are clearly uttered. Japan may learn from the Italian constitution and revise Article 9 in a similar way.

Given the historical origin of Article 9, its vague and varying interpretation, the hazy affirmation of the right to self-defense, the unconstitutionality of the SDF, the requirement for international nonmilitary and military cooperation, and the contrast with the Italian constitution, Article 9 is better to be revised.

4. Analysis of the Strategy to Achieve Article 9 Being Revised

Recognizing the necessity to amend the current peace clause is not enough; the aforementioned challenges also need to be ameliorated or even eliminated. Here, three recommendations are provided concerning how to promote the revision.

First, the amendment clause of Article 96 may be revised to reduce the complexity of constitutional revision before Article 9 is altered. For example, Article 96 may delete the content of the requirement of a simple majority in the referendum, so that it would be easier to pass a constitutional amendment. However, it must be reminded that this method is relatively tricky and can be seen as undemocratic; therefore, prudent deliberations are required.

Another way is to dispel misgivings of the uncompromising parties, and then mobilize the uncompromising parties to persuade and educate the public. This can be done via debates in the Diet by presenting evidence that suggests the revision of Article 9 is inevitable. Public mobilization is also significant since in most cases the failure of the revision of Article 9 was attributed to inadequate public support. Nevertheless, if the uncompromising parties alter their positions upon constitutional revision, their followers may switch positions as well. Furthermore, it is also possible to execute ideological education at schools, teaching the young generations that the problem of constitutional revision must be addressed, and mobilizing them to vote in a future referendum. However, it is noticeable that this method can be tough to implement since those who are against constitutional revision also have convincing concerns and arguments behind them, which leaves an opportunity for counter-persuasion.

A third strategy deals with international discontent, which is to say, Japan must reassure its neighboring countries that a revision of Article 9 is not a return to militarism but is a clarification of the right to self-defense. Most Chinese and Koreans oppose the revision of Japanese Article 9 mainly through campaigns to boycott Japanese goods which usually cause setbacks to the Japanese economy. Nonetheless, if Japan can establish long-term and friendly international relations with its neighbors, it can be feasible to reverse the disapproving opinions of Chinese and Koreans toward Japan. Certainly, in consideration of the deeply-rooted historical problem, the Japanese government's job of reassurance may take numerous years, but Japan can start by recognizing war atrocities, expressing sincere and consistent apology to its neighbors, and guaranteeing that the renouncement of aggressive wars will still be included in the revised version.

In short, through the amendment of Article 96 of the Japanese constitution, convincing and mobilizing the dissenting political parties to educate citizens, and reassuring the neighboring countries of Japan, it is promising that Japan can make substantial moves toward the revision of Article 9.

5. Conclusion

By examining secondary sources, this paper has demonstrated that the reason why the amendment of the Japanese constitution Article 9 has not been resolved owes to resistance from legal, party, public, and international aspects. This paper also stresses the need of revising Article 9, considering the peace clause's historical background as an imposed clause, its ambiguous and inconsistent interpretation, the need for explicit provisions regarding self-defense, the SDF, and international cooperation, as well as the comparison with the Italian constitution. To promote the successful revision of Article 9, this paper also proposes the advice of revising the amendment clause of the Japanese constitution, dispelling misgivings of the dissented parties and mobilizing them to persuade the public, and giving reassurance to Japan's neighboring countries. Nevertheless, this paper didn't assess the exact feasibility of the above recommendations on promoting the revision of Article 9. In addition, the paper didn't elucidate what the revised Article 9 should look like and failed to evaluate to what extent the revised Article 9 can lead to instability in international security, but all of these limitations point to directions that further research should work on.

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