Ivona LAĐEVAC¹ Ana JOVIĆ-LAZIò

REINTERPRETATION OF JAPAN'S CONSTITUTION*

ABSTRACT

Since its enacting, in 1947, efforts for reinterpreting Japan's pacifist Constitution occasionally were seen. Almost after 70 years, Cabinet of Prime Minister Shinzo Abe realized that intention.

Amending the Article 9 of Japan's Constitution extends the scope of right to self-defense to include the defense of an ally under attack.

Authors will give their opinion on possible implications of this reinterpretation.

Key words: Japan, security policy, Japanese Constitution, Article 9, constitutional changes

Introductory remarks

Before the end of the World War II, according to the Article VII of the Potsdam Declaration³, Japan was called upon to eliminate its "warmaking

¹ Ivona Lađevac, M.Sc., Research Associate, Institute of International Politics and Economics, Belgrade.

² Ana Jović-Lazić, Ph.D., Research Fellow, Institute of International Politics and Economics, Belgrade.

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³ "Truman and the Bomb, a Documentary History, Chapter 7: The Potsdam Declaration, July 26, 1945", Edited by Robert H. Ferrell, Internet, http://www.upa.pdx.edu/IMS/current projects/TAHv3/Content/PDFs/Potsdam Declaration.pdf, 10/12/2014.

powers"⁴, to cut all connections with its colonial history and, at the same time, to remove obstacles for democratization and to ensure protection of the civil rights. Unfortunately, Japanese leaders were not aware that Americans possess nuclear bomb while, from the other side, they were convinced that it is possible to negotiate about terms to surrender. Eventually, following horrifying and tragic events from Hiroshima and Nagasaki led to unconditional surrender of Japan. Immediately, Japanese territory was occupied and put under the control of *de jure* an Allied Powers commission. *De facto*, Japan was under authority of the Supreme Commander for the Allied Powers, General Douglas MacArthur, who took orders directly from Washington.⁵

General MacArthur correctly assumed that "imposing a new order on the island nation would be a difficult task even with Japanese cooperation", so he decided to keep the existing government: the national legislature (Diet), cabinet, bureaucracy and the Emperor. As may be anticipated, it was he who was giving instructions to all of them, so they were governing the country along with Potsdam Declaration. Even the postwar Japanese Constitution was written under the US directions.

New Post-war Constitution

In the beginning of the February 1946, General MacArthur appointed a team to write a model for new constitution. Their main reference was a book on world constitutions, 1939 edition.⁷ Only six days later, team issued a new constitution. Text was presented to members of Japanese government. Their opinions were confronted. Among those who found themselves astonished with completely new provisions, were a lot of them who had a problem "to accept the idea of "rule by the people" which conflicted with the Japanese tradition of absolute obedience to the Emperor." The quarrel between members of government ended the Emperor Hirohito who declared that presented model represents the basis

⁴ Ray A. Moore, Donald L. Robinson, "Partners for Democracy: Crafting the New Japanese State Under MacArthur", Oxford University Press, 2004, p. 54.

⁵ Look in: "Bringing democracy to Japan" in: *Bill of Rights in Action*, Vol. 3:4, Constitutional Right Foundation, Internet, http://www.crf-usa.org/election-central/bringing-democracy-to-japan.html, 10/12/2014.

⁶ Ibidem.

⁷ Ibidem.

⁸ Ibidem.

for the new constitution of Japan. He said that "Upon these principles will truly rest the welfare of our people and the rebuilding of Japan." His words had effect; the new constitution was accepted by the Japanese cabinet on March 6th, 1946. After that, a discussion with Japanese people, which aims was widely promotion of the new constitution, had started. At the same time, went preparations for general elections. After the elections were conducted, Diet was constituted and at its summer meeting accepted the Constitution. Japan's new constitution went into effect on May 3rd, 1947.

In the Preamble of the Constitution it is stated that Japanese people "shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government" (...) and that they "desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world." ¹¹

It seems that pacification of Japan is the most visible in the Chapter II, Article 9 of the Constitution:

"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."¹²

In other words, Japan was allowed only to the bare minimum use of force in order to defend the nation from direct attack. The exercise of collective self-defense or even the use of force to defend an ally that is under attack was not

⁹ Ibidem.

¹⁰ The Constitution of Japan (Promulgated on November 3rd, 1946, came into effect on May 3rd, 1947), Prime Minister of Japan and His Cabinet, Internet, http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html, 10/12/2014.

The Constitution is consisted of the Preamble and XI Chapters titled as follows: The Emperor, Renunciation of War, Rights and Duties of the People, The Diet, The Cabinet, Judiciary, Finance, Local Self-government, Amendments, Supreme Law and Supplementary Provisions.

¹¹ Preamble, The Constitution of Japan, op. cit.

¹² Article 9, Chapter II, *The Constitution of Japan*, op. cit.

permitted. Japan was legally unable to shoot down a missile targeting its ally or come to aid an allied ship that was under attack.

Quest for democratization of the country was fulfilled by Chapter III of the Constitution referring to fundamental human rights and freedoms that are guaranteed to the people without any discrimination.¹³

A future changes of the constitution was covered by the Chapter IX, Article 96, which provided that:

"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."¹⁴

The USA-Japanese Relations after the World War II

Connections between Japan and the USA in the post-World War II period were developed on the basis of the Security Treaty that two countries signed on the September 8th, 1951.¹⁵

This treaty is presented as a logical maneuver of the Japanese government bearing in mind that Japan "not have the effective means to exercise its inherent right of self-defense because it has been disarmed." From the other hand since in the world still are present countries that can endanger pacifist countries, "Japan desires a Security Treaty with the United States of America to come into force simultaneously with the Treaty of Peace between the United States of America and Japan." Since the Treaty of Peace with Allied Powers recognizes Japan as a sovereign country ¹⁸ and that the Charter of the UN clearly states that each

¹³ Articles 10–40, Chapter III, The Constitution of Japan, op. cit.

¹⁴ Article 96, Chapter IX, The Constitution of Japan, op. cit.

¹⁵ Security Treaty Between the United States and Japan; September 8, 1951, American Foreign Policy 1950–1955, Basic Documents Volumes I and II, Department of State Publication 6446, General Foreign Policy Series 117Washington, DC: U.S. Government Printing Office, 1957, Internet, http://avalon.law.yale.edu/20th century/japan001.asp, 10/12/2014.

¹⁶ Security Treaty between the United States and Japan, Preamble, op. cit.

¹⁷ Ibidem.

country "possesses an inherent right of individual and collective self-defense" is to understand Japan's desire "as a provisional arrangement for its defense, that the United States of America should maintain armed forces of its own in and about Japan so as to deter armed attack upon Japan." From its side, the USA "in the interest of peace and security, is presently willing to maintain certain of its armed forces in and about Japan, in the expectation, however, that Japan will itself increasingly assume responsibility for its own defense against direct and indirect aggression, always avoiding any armament which could be an offensive threat or serve other than to promote peace and security in accordance with the purposes and principles of the United Nations Charter."

According to the Security Treaty, Japan decided to dispose its land, air and sea forces in and about Japan to the USA in order to contribute to the international peace, but also to stability in the region of the Far East. But here must be emphasized that these forces also can be used in case of some internal instability in Japan such as uprising and different turmoil.

This type of the US-Japanese arrangement was not widely accepted, although there was significant number of those who defended Constitution as it was. From the other hand there were those who were advocated looser connections with the US and its limited presence. The most illustrative example of disagreement with terms of the Security Treaty was seen in the sixties when the so-called Security Treaty Crisis arose. At that time massive protest arose because Diet passes Security Treaty by clearly disregarding of the consensus. Even more, post war population was openly against Japan's partnership with the USA, who was involved in the Vietnam War.²² Although this movement didn't result in termination of the treaty, certain result was achieved: each party, after the one year's notice, could any time unilaterally abrogate the treaty.²³

¹⁸ Article 1, Chapter 1, *Treaty of Peace with Japan* (with two declarations), signed at San Francisco, on 8 September 1951, UN Treaties, Internet, https://treaties.un.org/doc/Publication/UNTS/Volume%20136/volume-136-I-1832-English.pdf, 10/12/2014.

¹⁹ Article 51, *Charter of the United Nations*, United Nations, Internet, http://www.un.org/en/documents/charter/chapter7.shtml, 10/12/2014.

²⁰ Security Treaty between the United States and Japan, Preamble, op. cit.

²¹ Ibidem.

²² Look in: *The Constitutional Case Law of Japan, Selected Supreme Court Decisions 1961–70*, edited by Hiroshi Itoh and Lawrence Ward Beer, the University Washington Press, 1978, p. 13.

²³ Ibidem.

Ruling Political Parties and Constitutional Revision

In the forthcoming decades political parties' tendencies for constitutional revision were not uncommon. Discussions mainly were led about the famous Article 9 of Constitution which distinct Japan from any other country in the international community. This article turns Japan into unique case, no other country, but Japan is forbidden to maintain arm forces or "not have the right to wage war"²⁴. Thus, it is not difficult to understand that political parties of dominantly conservative orientation concentrated its efforts aiming to reaffirm position of Japan and align it to "normal countries" that is allowed to have its own security policy and to strengthen defense capacities.

Opposite from the Social Democratic Party (SDP) for which "preserving the constitution (*goken*) has been of paramount importance"²⁵, for almost seven past decades loudest voices calling for certain constitutional revision could be heard from the Liberal Democratic Party (LDP). LDP and the groups close to this party were interested in revising the Constitution in whole or, at least, in some parts.²⁶ Its ambition got bigger than ever before during the administration of Junichiro Koizumi, in period of 2001-2006. A year before the end of Koizumi's mandate, in November 2005, LDP issued a draft for new constitution.²⁷

Draft for new constitution was presented after "an internal research committee" presented its findings. This committee was established in 2000 by LDP with a task "to study constitutional revision". In 2004 LDP issued a paper explaining why they consider constitutional as a necessity. Among other arguments, they spoke about worldwide practice of constitutional revision based on changed circumstances of internal political life, but also as an answer to changes on international scene. At the same time, LDP expressed unchanged commitment to universally accepted values. In this paper, later it was overtaken in draft for new constitution, as specified "four main topics for revision:

²⁴ Japan as a "normal Country"?: A Nation in Search of Its Place in the World, eds. Yoshihide Soeya, David A. Welch, Masayuki Tadokoro, University of Toronto Press, 2011, p. 211.

²⁵ "Why Japan Could Revise Its Constitution and What It Would Mean for Japanese Security Policy", Christopher W. Hughes, in: *Orbis*, Volume 50, Autumn 2006, p. 725, Internet, http://core.kmi.open.ac.uk/download/pdf/48468.pdf, 10/12/2014.

²⁶ The Constitutional Case Law of Japan, Selected Supreme Court Decisions 1961-70, op. cit.

²⁷ Look in: *Japanese Politics Today: From Karaoke to Kabuki Democracy*, eds., Takashi Inoguchi, Purnendra Jain, Palgrave Macmillan, 2011, p. 236.

²⁸ Op. cit., p. 202.

²⁹ Ibidem.

- 1. revision of Article 9 and renaming of the Self-Defense Force into Self-Defense Army;
- 2. to include duty of people to protect national security and independence;
- 3. the Emperor to be named as a head of state and
- 4. to include new civil rights such as the freedom of information, right to privacy, environmental rights, rights of victims of crimes and right to protection of defamation or libel."³⁰

Apart from that LDP has an intention to revise existing security arrangement with the US due to emerging security challenges in the region.

Although in Diet there was consensus in favor of revision, in 2005 no revision was conducted because of the lack of the agreement on specific revisions.³¹ Anyway, that didn't mean the end of the further intentions for constitutional revision. Taking into account that in 2006 Shinzo Abe became Prime Minister the expectations that LDP will push for revision were growing. But unexpectedly, Abe's mandate lasted only one year, he resigned in 2007. In the post-war history of Japan, of all parties, LDP led country the most until the 2009 when Prime Minister Taro Aso resigned after the worst electoral defeat. Poor result was consequence of economic situation and problems related to passing the budget.³² Because of the internal political and economic issues, matter of constitution was put a side until Abe's comeback in 2012.

Second Abe's Mandate and Constitutional Revision

In the elections 2012 LDP won majority of seats in Diet, of total 480, LDP won 294 seats.³³ With its longtime partner, New Komeito Party, they had in total 325 seats and two-thirds majority to support coalition government. Prime Minister of new government was Shinzo Abe. Disregarding result, Abe stated:

³⁰ Ibidem.

³¹ "Why Japan Could Revise Its Constitution and What It Would Mean for Japanese Security Policy", Christopher W. Hughes, op. cit., p. 740.

³² Look in: "Nakagawa Shoichi to resign, LDP conservatives in retreat", Tobias Harris, 17 February 2009, East Asia Forum, Economics, Politics and Public Policy in East Asia and the Pacific, Internet, http://www.eastasiaforum.org/2009/02/17/nakagawa-shoichi-to-resign-ldp-conservatives-in-retreat/, 10/12/2014.

³³ Election Resources on the Internet: Parliamentary Elections in Japan – Results Lookup, December 16, 2012 House of Representatives Election Results – Japan Totals, Internet, 10/12/2014.

"We recognize that this was not a restoration of confidence in the Liberal Democratic Party, but a rejection of three years of incompetent rule by the Democratic Party". Being aware of the urgent problems, Abe focused its attention to possibilities of cutting down growing national debt, to cut a trade deficit and to confront with problem of the aging population. Additional problem was energetic situation after the tragic events in Fukushima.

One could assume that question of constitution was put a side, but it was opposite. Regional security environment became more challenging, bilateral relations with China, apart from those of economic origin, were tightened because of claims to disputed islands, Senkaku/Diaou. Even relations with allies became more complex. In such milieu, reasoning that need for revision of constitution still exists simply impose itself. And that need led to the other, to necessity of substantial change in the security policy.

Being aware that for constitution revision he would need strong public support, in his second mandate Prime Minister Abe started to pursue "active pacifism". Subsistent part of active pacifism is reinterpretation of Constitution of Japan in order to allow Japan the right of collective self-defense. Prime Minister Abe and like minded conservatives want Japan to become a "normal" country, to "escape the postwar regime" and to create "beautiful Japan, defended by a strong military and guided by a new sense of national pride". Precondition for that creation was revision of the Article 9. In other words, it looks like that Abe would consider the revision of Article 9 as a fulfilling of a personal mission. But, at the same time, he was aware that there are serious obstacles that preventing him of fulfilling that mission. Strong debates and public opinion polls convince the Prime Minister Abe to take more flexible approach.³⁸

³⁴ "Japan Election Returns Power to Old Guard", The New York Times, December 16th, 2012, Internet, http://www.nytimes.com/2012/12/17/world/asia/conservative-liberal-democratic-party-nearing-a-return-to-power-in-japan.html?pagewanted=all& r=0, 10/12/2014.

³⁵ Japan as a "normal Country"?: A Nation in Search of Its Place in the World, eds. Yoshihide Soeya, David A. Welch, Masayuki Tadokoro, University of Toronto Press, 2011, p. 211, op. cit.

³⁶ "Japanese election victory hands Shinzo Abe a chance for redemption", The Guardian, 16 December 2012, Internet, http://www.theguardian.com/world/2012/dec/16/japanese-election-shinzo-aide-redemption, 10/12/2014.

³⁷ Ibidem.

³⁸ According "the survey by the Asahi newspaper and a University of Tokyo research team showed that 50 percent of voters were in favor of revising the constitution, up from 41 percent in 2009 but far below the 89 percent of members of parliament elected in December's lower house election who want to alter the charter.

For tell the truth, constitutional revision was his first choice. Eventually, when he realized that would be impossible to achieve it, he found an easier way out: instead of revising the constitution, he decided to reinterpret it! At the beginning, he didn't even have support of his coalition partner, New Komeito Party, to realize that idea, but at the end he managed to get their support thanks to his persuasive attitude and diplomatic manners of experienced politician.

On May 15th, 2014 Abe made public his plan to reinterpret Constitution by allowing Japan's Self-Defense Forces to "proactively contribute to the international peace"³⁹. In other words, Abe's cabinet has approved limited reinterpretation of the Constitution which extended the right to self defense to right to defense an ally under attack. Along with new interpretation Japan is enabled to use the Self-Defense Forces if "the country's existence is threatened, and there are clear dangers that the people's right to life, liberty, and the pursuit of happiness would be overturned due to an armed attack on Japan or countries with close ties"⁴⁰.

Implications of the Article 9 reinterpretation

Domestic implications

Decision brought on July 1st, 2014 divided the country. While the constitutional reinterpretation was approving; there was a protest outside Abe's office.⁴¹ According to some media, there were more than 2000 people who deeply disagree with this decision. They were afraid that such decision will affect even the life of future generations which civil rights will be of the limited scale. Maybe

Forty-five percent of voters were in favor of allowing Japan to exercise its right to collective self-defense, or coming to the aid of an ally under attack. That was up from 37 percent in 2009, but well below the 79 percent of MPs who back the change in interpretation of the constitution." Look in: "Japan voters split on revising pacifist constitution: poll", Reuters, http://www.reuters.com/article/2013/01/28/us-japan-politics-constitution-idUSBRE90R01M20130128, 10/12/2014.

³⁹ "Quakes in Japan's pacifism", Aljazeera, 30th May, 2014, Internet, http://www.aljazeera. com/indepth/opinion/2014/05/quakes-japan-pacifism 201453074531999339.html, 10/12/2014.

^{40 &}quot;Japan's New Defense Posture", Lionel Pierre Fatton, July 10th, 2014, *The Diplomat*, Internet, http://thediplomat.com/2014/07/japans-new-defense-posture/, 10/12/2014.

⁴¹ "Japan approves larger military role in major reinterpretation of constitution", Mari Yamaguchi, July 1st, 2014, *The Globe and Mail*, Internet, http://www.theglobeandmail.com/news/world/japan-approves-larger-military-role-in-major-reinterpretation-of-constitution/article19402001/, 10/12/2014.

the best illustration was given day after the reinterpretation, when *Asashi Shimbun* stated that 1st July, 2014, "will remain the darkest day in the history of Japan's constitutionalism."

No one can deny that the implications of reinterpretation could have severe consequences for Abe's government. For instance, after reinterpretation, Kyodo News conducted a poll according to which 54.4% were against it, while 34.6% were for it. Even more, the poll showed that the disapproval rate of the government was 40%. Under such circumstances remains open the question whether Abe will be capable to secure support for necessary set of legislation enabling collective self-defense that should follow the reinterpretation. It is very likely that public will insist on wide consultation.

Complicated internal political situation could force Abe to focus more on realization of "Abenomics⁴⁴", to make realistic his own initiative to boost the economy. It can be assumed that in case of decreasing deflation, giving an impetus to export of Japanese goods, creating promising social policy that will result in positive birth rate, Abe would deserve that people of Japan change its opinion about him and his politics. Contemporary history offers many examples of political support that springs out of stable economy and people's content with their life standard.

Abe could also use regional security dynamics as reasonable grounds in order to assure the entire population that renewing Japan's security policy is not an option, but the compulsion. To tell the truth, no one can deny that China continuously is increasing its activity in the region through presence in the regional waters and airspace. China is investing a lot of money in military industry and increasing budget assigned for country's defense. And above all, the most of Japanese people cannot withstand the impression that China "uses its burgeoning power to engage in coercive behavior and attempts to change the

⁴² "Japan's New Defense Posture", Lionel Pierre Fatton, op., cit.

⁴³ Ibidem.

⁴⁴ For definition of "Abenomics" look in: "Definition of Abenomics", *Financial Times*, Internet, http://lexicon.ft.com/Term?term=abenomics, 10/12/2014.

⁴⁵ According to SIPRI, China's military budget in 2000 was 30 billion dollars while in 2012 it reached 160 billion. Look in: "Territorial disputes in the South China Sea or the USA/China rebalance of power", Ivona Lađevac and Ana Jović-Lazić, in: *Regionalism and Reconciliation*, eds. Duško Dimitrijević, Ana Jović-Lazić and Ivona Lađevac, Global Resource Management, Doshisha University, Japan, Institute of International Politics and Economics, Belgrade, 2014, p. 53.

status quo"46. Establishing of an "East China Sea Air Identification Zone" contributes in fueling their concern.47

It is most likely that the most accurate valuation of domestic implications caused by the constitutional reinterpretation will be given on the next elections.

Foreign implications

As anticipated, reinterpretation of the Japan's Constitution has its echo not just in the region, but further. Likewise in, opinions about Abe's maneuver are divided out of Japan, too.

China is first on the list of those countries that does not support this step. From the Chinese point of view, this act feeds up concern for the regional security and for future "regional security architecture". It is apparent that China is disturbed with a fact that Japan will increase not just its military potential, but its impact in the world's geopolitical order through its existing alliance with the US. To ensure a commitment by Washington to defend Japanese interests in Asia, Tokyo must be willing to share some of the security burden. Having on mind opposite interests of China and the USA in the region and their current relation of rebalancing the power, it is very likely to expect that Japan will support the most of statements and actions taken by the US government.

Same pattern could be seen in the multilateral regional organizations. Countries that perceive China as a threat for regional order will align with Japan knowing that its defense forces now are allowed to react and taking into account ties that Japan has with the USA.

Australia and Great Britain also could have expectations similar to those of the US. Reinterpretation of the Article 9 creates a base for expanding alliance with two countries that consider Japan as reliable partner.

There is no doubt that a right to self-defense is among universal values. The same stands for the right to making alliances in order to preserve peace and

⁴⁶ East Asian Strategic Review, The National Institute for Defense Studies, Japan, The Japan Times, 2014, p. 31.

⁴⁷ Ibidem.

⁴⁸ "Constitutional Re-Interpretation in Japan I: the North Korean Angle", Stephan Haggard, July 11th, 2014, Peterson Institute for International Economics, Internet, http://blogs.piie.com/nk/?p=13302, 10/12/2014.

stability. From that stand, Japan's decision to reinterpret its Constitution, to align with "normal" countries, to make its defense forces internationally operative is not difficult to understand. Same stands for the expanding existing alliances. But, at the same time, one should bear in mind that any type of action eventually causes a reaction. Under current circumstances the highest priority should be given to wise and peaceful politicians who will know how to act in order to decrease existing tensions and antagonisms in the region. In this era of globalization, regional confrontations easily spill over.

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