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The problem of establishing a perfect civil Constitution depends on the problem of law-governed external relations among nations and cannot be solved unless the latter is

Immanuel Kant
The Current Situation of Japan’s Constitutional Pacifism

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"Since the advent of nuclear weapons, it seems clear that there is no longer any alternative to peace, if there is to be a happy and well world". (Dwight D. Eisenhower)

1. Introduction
In April 2012, Shinzo Abe’s Liberal Democratic Party (LDP) published a new proposal for amending Article 9 of the constitution among which would be one to give the prime minister supreme command over the proposed "national defense military". One may disagree with a statement of Craig Martin, a University of Pennsylvania Professor, in The Japan Times in June 2012 that "the denial of rights of belligerency ... makes no sense", but then one would have to deny and overlook the article’s intent and potential as a precedent for facilitating world-wide disarmament and the abolition of war. I agree with Martin though that the changes will, if they come to pass, "utterly undermine the normative power of the third pillar of the Japanese constitutional order — that is, the principle of pacifism and non-use of force".

On 21 July 2012, Shinzo Abe was re-elected as Japan’s prime minister. Soon after, in anticipation of the possibility that Japan’s foreign policy would become more assertive and aggressive, Abe’s second cabinet was severely criticized in The Economist in January 2013 as "a cabinet of radical nationalists". As is well known, the revision of the pacifist constitution to allow Japan to participate in war is one of Abe’s chief foreign policy objectives. In 2006, when Abe was Chief Cabinet Secretary, just before he became prime minister, he proposed amending the constitution. This, however, he said, would not be achieved “in a year or two”. On 9 October, not long after Abe had become prime minister (on 26 September), North Korea exploded a nuclear device while Abe was on his way to a meeting with South Korea’s head of state, Roh Moo Hyun. This provided Japan’s Prime Minister with a further incentive to become more belligerent. The Japanese Constitution, with its renunciation of war and its plea for an “international peace based on justice and order” is significant and relevant — and not only for Japan. It aims, like the UN Charter and several national constitutions, for instance, the French, German, Italian and Danish constitutions, at an effective system of collective security. What is the current situation affecting the Japanese position with regard to peace and security in the Japan Area? One of the most vocal defenders of the Japanese Constitution’s peace provisions is the Global Article 9 Campaign.

2. History
A brief excursus into history may be appropriate. The Hague Peace Conferences 1899 and 1907 already wanted to abolish the institution of war and replace it with a system of law. The chief aim besides disarmament, i.e. establishing an international court with binding powers, was voted upon twice, the vote having to be unanimous. The proposal for a court was vetoed twice by Germany, followed by Austria-Hungary and Turkey, who later became Germany’s allies in the First World War. Despite this, a court was created, but without binding
powers. Going back even further, the Constitution of the First French Republic adopted in 1791 contained a stipulation banning aggressive war, which was subsequently emulated, among others, by Brazil in its constitution in 1891 on the occasion of the centenary of the French article. Eventually, and most significantly, in the interwar period, a resolution was adopted at the twenty-second Conference of the Inter-Parliamentary Union (IPU) in August 1924 in Bern, Switzerland, calling for “proposals [to] be submitted by the National Groups to their respective parliaments for amendments to the Constitution ... to forbid resort to war”. In Japan, which had been an IPU member since 1910, the then-foreign minister Kijuro Shidehara, was likely to have appreciated and understood the importance and relevance of the IPU Resolution. Shidehara was a pacifist and had been close to the Hague Peace Conferences, but it was highly unlikely that Japanese lawmakers under the Meiji Constitution would have seriously considered or actually discussed implementing the proposal.

The new “constitutional law of peace”, which became an integral part of the international law of peace, was promoted and explained by Russian-born jurist Boris Mirkine-Guetzévitch (1882-1955), “the great international teacher of constitutional law”, who taught in New York and Paris between 1936 and 1955. The idea surfaced once more when, on 24 January, 1946, Shidehara, on visiting General Douglas MacArthur, remembered and suggested abolishing war in the new Japanese constitution, which was to feature three key elements which were identified by Tadakazu Fukase, professor of Hokkaido University, as the “three original pacifist principles” – i.e. “1. The renunciation of all kinds of war...; 2. The necessary disarmament...; 3. The guarantee of the ‘right to live in peace’”, the latter being the foremost among human rights: the denial of absolute state sovereignty and the non-recognition of the right of belligerency of the state. The ultimate meaning of Article 9 is not to “regulate military power” (Akihiko Kimijima), but to transform it into police power and to contribute to “creating a just world order, based on positive peace”.

3. Interpretation/meaning
Article 9 is “one of three ‘pillars’ at the core of Japan’s constitutional framework [which] has operated to keep Japan out of all armed conflicts of the last 65 years”. In today’s situation, where Japan’s sovereignty is threatened, as in the Senkaku/Diaoyu dispute with China or the issue of the Takeshima/Dokto rock islands, it is good to remember that for the peaceful settlement of such and similar disputes, Japan submitted itself, right after it became a member of the United Nations in 1956, to the compulsory jurisdiction of the International Court of Justice. Unfortunately, neither China nor South Korea accept the compulsory jurisdiction of the ICJ, which means that Japan may have to consider other options for resolving such conflicts. Japan has engaged in many different approaches. The Japanese government quickly realized the importance of the connection between “the ‘consolidation of peace’ and ‘human security’”, making it an “important pillar of Japan’s foreign policy”. There is a connection between the concept of ‘Human Security’ and the concept of the ‘Responsibility to Protect’ (R2P). However, the argument favoring humanitarian intervention on the basis of the R2P is flawed as no sovereign or moral authority exists so far to decide ultimately when humanitarian intervention is justified.

Japanese like to see their country as “the Switzerland of the Far East – that is, a country whose neutrality and integrity would be guaranteed by the United Nations”. As Professor Anthony DiFilippo of Lincoln University in his book The Challenges of the U.S.-Japan Military Arrangement pointed out, there is
also a connection between Article 9 JC and Article X of the U.S.-Japan Security Treaty, which maintains that the treaty should “expire whenever in the opinions of the [Ir] Governments...there have come into force such United Nations arrangements or such alternative individual or collective security dispositions as will satisfactorily provide for the maintenance by the United Nations or otherwise of international peace and security in the Japan Area”. This 1951 stipulation, which was adopted after the failure of the Russian attempt, on the occasion of the Korean crisis, to have the U.N. embark on the transition, was to ensure that this future option would remain open and enable the implementation of the provisions in the UN Charter that are vital for the transition to collective security. This option together with Article 9 was clearly “[Ir]eflecting [not only] the non-belligerent sentiment of the Japanese constitution” and the Japanese people, but also the common understanding that to abolish war the international organization must be endowed with the authority to make binding decisions on behalf of the international community. The 1957 Basic Policy for National Defense, “which remains fundamentally important to Japan’s defense policy” (A. DiFilippo), and is still relevant today, upheld the vision of an effective United Nations, while temporarily agreeing to face the external aggression “on the basis of the Japan-U.S. security arrangements, [but only] pending effective functioning of the United Nations in the future deterring and repelling such aggression.”

Yet Article 9 is part of only one among several constitutions aiming at an international peace based on cooperation, justice and order that were introduced after WWII. As we have seen, their origins go back to the French Revolution and the Enlightenment, the Hague Peace Conferences and the interwar period when the League of Nations attempted to outlaw war, and there were many proposals for limiting national sovereignty in constitutions with regard to the right of belligerency. However, being the only provision that has limited state sovereignty with regard to the right to go to or take part in war, Article 9 can be seen as a public law, constitutional motion or precedent that needs to be followed up or seconded in order to become effective. This is confirmed by the provisions in the constitutions of France, Italy, Denmark and several others that agree to such limitations on national sovereignty only on condition of reciprocity. The 1957-1964 Commission for the Investigation of the Constitution (kempo chosakai), headed by Kenzo Takayanagi, the “eloquent advocate of the rule of law”, was well aware of these constitutional provisions and debated the possible introduction of the condition of reciprocity into Article 9.

It seems that in the order of things Germany is the natural candidate to follow up on and ‘second’ Article 9. This tallies with Takayanagi’s 1963 statement that “not only the Japanese people, but politicians from all countries must make the greatest efforts toward the realization of this ideal”, i.e. to renounce and forego war once and for all. However, the German constitution deliberately did not posit a condition of reciprocity, arguing that after all that Germany had done, the limitation of national sovereignty renouncing war should be unconditional. Article 9 is a precedent, and following up would trigger the process of the transition to collective security stipulated in Article 106 of the UN Charter, during which the five permanent members would assume their responsibility to assure safe passage, while nations disarm to the minimum level stipulated in Article 26 of the Charter. However, since Germany has not acted on its promise, and is not honoring the relevant provisions of its own peace constitution, which explicitly spells out collective security as one of its main foreign policy aims, this amounts to Germany effectively blocking the development of the United Nations into an effective organization.
for maintaining international peace and security. This also affects Japan’s position and stand with regard to Article 9.

It may largely be due to Germany’s omission after the end of the Cold War, as Makoto Katsumata and Naomi Kamijo pointed out in the beginning of 2005, that the world has “entered a new era in North-South relations, in which the optimistic scenarios of the early 1990s for a peace dividend seem more unlikely than ever to come about... We see increasing globalized socio-economic disparities throughout the world, accompanied by uneven power relations... This is particularly true in East Asia, where the legacy of the Cold War persists”. Instead of following up on Article 9 to abolish war, Germany set off a new wave of nationalist fervor. On 31 January 1992, at the first-ever summit-level meeting of the Security Council, the fifteen heads of state assembled stressed “the need for the international community to deal effectively” with acts of terrorism and maintain international peace and security, thus confirming their continuing commitment to bring about an effective system of collective security. Again, as no nation ceded “primary responsibility for the maintenance of international peace and security” to the Security Council, to ensure its “prompt and effective action” (U.N. Charter, Article 24), the matter remained ultimately unresolved.

Today, the most sensible way, to escape the predicament of the present anarchic international system, is to realize the Gandhian concept and establish a universal “Shanti Sena” (Soldiers of Peace) or “Peace Corps”, and have the Self-Defense Force (SDF) “placed under the UN command and be transformed into a UN police force stationed in Japan”, as renowned Japanese peace researcher Yoshikazu Sakamoto has suggested, making the SDF a cornerstone and founding member of a multinational police corps, which is essentially in accord with the purposes and principles of the U.N. Charter. These ideas “that push the U.N. to have a mostly civilian rapid deployment force are sensible” and promising. (Akihiko Kimijima)

4. Prospects
It is necessary to revert to the original purposes and principles of the United Nations. Thus, in 1946, a U.S. Department of State Report outlined “a transitional period in which the United States would gradually turn over its secrets, atomic weapons, and processing plants to the Atomic Development Authority as the international controls tightened”, with the aim “to protect American security and minimize the danger of the premature release of atomic information” that would jeopardize international peace and security. Also, in an undated Memorandum, probably from around 1950, United Nations Secretary General Trygve Lie, noting points for consideration in the development of a 20-year program for achieving peace through the United Nations, pointed out the temporary nature of systems of collective self-defense, stating that “Measures for collective self-defense and regional remedies of other kinds are at best interim measures, and cannot... bring any reliable security from the prospect of war”. The title of paragraph 10 of the memorandum significantly reads: “Active and systematic use of all the powers of the Charter and all the machinery of the United Nations to speed up the development of international law towards an eventual enforceable world law for a universal world society”. This is a clear statement on the purposes and principles of the United Nations that must have been well received in Japan at the time.

Disarmament is still regarded as utopian, although research has clearly shown its feasibility. A lot depends, however, on the U.N. members making good on their promises, including empowering the United Nations. How far politicians, even in Japan, have strayed from believing in the original purposes and principles of the United Nations, is apparent,
for example, in the Yomiuri Shimbun when in August 2013 it states that there is “no way in sight to achieve A-bomb survivors’ shared hope – a world without nuclear weapons” – a judgment that reflects the present government’s intention to revise the Constitution. It would not be a surprise to anybody if Japanese politicians and even the public, having faithfully upheld Article 9 for over sixty years, now feel disappointed and may even have given up. A kind of ambivalence on the part of the victorious powers may be discernible in their dual approach to maintaining peace and security, as in the U.S., with peace through law, on the one hand, and peace through strength, on the other. However, some countries, like Germany, have no such objectives, their sole political target being political and economic power. Countries like the U.S. appear to be willing ultimately to rely on a system of law, if only this could be initiated.

5. Conclusion
In the West, every time the JC’s peace imperative is discussed in Japan, this is taken as a sign that changing the constitution is imminent. Revising Article 9 in favour of allowing Japan to legally participate in collective self-defense would be another serious blow to achieving the UN’s objective to establish a comprehensive system of collective security – the first blow having been the German Constitutional Court’s verdict stating that systems of collective self-defense (like NATO) fulfil the condition for qualifying as a collective security system under the UN Charter. Even if revising the Japanese Constitution’s Article 9 should take another two to three years, an eventual revision would have a domino effect, of which the last domino falling would be the UN.

1 In 1950, the Russians refused to sanction the actions of the United Nations in Korea, insisting on an “invocation or implementation” of Article 106 of the U.N. Charter. On 11 October 1950, for the last time, they submitted this resolution: “The General Assembly, Taking into account the particular importance of concerted action by the five permanent members of the Security Council in defending and strengthening peace and security among nations, Recommends that before armed forces are placed at the disposal of the Security Council under appropriate agreements concluded in accordance with Article 43 of the Charter, the five permanent members of the Security Council should take steps to ensure the necessary implementation of Article 106 of the Charter for the purpose of taking such joint action on behalf of the organization as may prove to be necessary for the maintenance of international peace and security”
3 Ibidem
4 Makoto Katsurata and Naomi Kamio, Peace Studies Bulletin, No. 23, April 2005
5 Anthony Di Filippo, Ibidem
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