

AUGUST 2023



**CONSTITUTIONAL TENSION
AND JAPANESE
REMILITARISATION**

WRITTEN BY: OLIVER LEICESTER



WRITTEN BY

OLIVER LEICESTER

EDITED BY

MICHELE PUGGIA

SUPERVISED BY

CANSU MACIT KARADUMAN

Introduction

Following the end of World War Two, Japan was occupied by the Allied Powers and administrated by U.S. General Douglas MacArthur. While occupying the nation, the US oversaw the drafting of a new constitution that prioritised democracy, individual freedoms and pacifism. Japan's shift towards pacifism is enshrined in Article 9 of its Constitution and formed a central part of its foreign policy for decades. This research paper seeks to understand how Japan has shifted away from Article 9 and began the process of remilitarisation. Despite maintaining a small military capability, the Japan Self-Defence Force, Japan has relied heavily on its alliance with the US to protect its interests internationally. In recent decades, Japan has taken further steps to increase the size and strength of its military for defensive purposes but also to protect its essential interests in the Asia-Pacific region.

The Japanese Constitution

The Foreword of the Japanese Constitution (1947) reads "We the Japanese people desire peace for all time." The role Imperial Japan held in the Second World War, created a strong appetite for Japanese pacifism, both domestically and internationally. Therefore, when the United States occupied Japan (Moses, & Iwami, 2009, p.69) and drafted their Constitution, pacifism was legally enshrined in it. Chapter II, The Renunciation of War, directly follows the constitutional basis of Japan's Emperor (Chapter I) and precedes the rights and duties of the Japanese people (Chapter III). Chapter II, Article 9 highlights the features of Japan's pacifism, which this study will separate into two parts. The first of these is a theoretical pledge, for Japan to forever renounce the "use of war as a sovereign right" and the "threat or use of force as a means of settling disputes." The second of these is a practical measure, to limit Japan's ability to wage war with military equipment, forbidding the maintenance of land, sea and air forces.

Transition to Militarisation

As the Cold War emerged, the US's policy on Japan changed from dismantling Japan's military to building an ally (Easley, 2017, p. 69). In 1950, MacArthur ordered the creation of a National Police Reserve (NPR) of 75,000 (French, 2014, p.147) to defend Japan from internal and external threats to Japan's peace and sovereignty. Some academics argue that this was in response to the US pulling troops out of Japan to fight in the Korean War (Shibayama, 2010, pp. 295, 375). The US troops leaving would've left Japan defenceless to internal and external security threats. The NPR grew to resemble a paramilitary force, wearing semi-military uniforms, and practicing modified US Army drills (French, 2014, p. 97). The NPR was equipped with anti-aircraft half-tracks (French, 2014, p.147) and light weaponry such as rifles and carbines (French, 2014, p.100). Therefore the original structure of the NPR resembles a constabulary rather than a military (French 2014, pp. 192). Preventing external attacks was not the initial purpose of the NPR (McClintock, 1992, p.8), however, there were provisions that allowed the NPR to use heavier military equipment if needed (French 2014, p.100). At this point, it could be argued that the NPR did not exceed the limits of Article 9.

However, as the Korean War continued, in 1951, General McArthur felt that the NPR's purpose and size must expand in order to safeguard Japan from external threats (French, 2014, pp. 231). This included a vast expansion in military equipment from the Department of the Army to the NPR of "399 medium tanks, 2480 machine guns, 155 4.2" mortars, 816 recoilless rifles and 304 howitzers" (French, 2014, p. 231). This expansion caused controversy, specifically in the context of its legitimacy under the Japanese Constitution.

Initial Opposition

Within Japan, there was political and legal opposition to this expansion, specifically in relation to the legality of this expansion in relation to Article 9 of the Constitution. Prime Minister Yoshida proposed the "Initial Steps for Rearmament Program" in February 1951 to the Americans, which sought to preserve the NPR in its smaller form. This proposal was unsuccessful. The US proceeded with expanding the NPR and created the National Safety Force (NSF), an organisation concerned with the external security of Japan. This change was organised privately with the Americans, meaning Yoshida was viewed as responsible for the adoption of the NSF (French, 2014, p. 246). French argued that the appetite for remilitarisation was still very weak in Japan, which led to a political loss for the Prime Minister (French, 2014, p. 246).

Legality of Militarisation

Article 9 of the Constitution was often cited in opposition to the US plans of arming Japan. Yoshida even referred to it as the "perfect excuse" to maintain the NPR in its reduced form (French, 2014, pp. 259). However, in 1956, Japan joined the UN and the laws in the UN Charter required a new interpretation of Article 9. This reinterpretation relates specifically to Article 51 of the UN Charter, which "enshrines a state's right to self-defence." Article 9 of Japan's Constitution renounces the right to war and the use of threat or force as a means of settling disputes. The UN Charter grants Japan the right to defend itself, whereas the Japanese Constitution forbids the use of war to settle disputes. The law of the UN Charter is superior to the law of Japan's Constitution, meaning Article 51 of the Charter grants Japan the right to use force in cases of self-defence. This partly undermines the first premise of Article 9, as the concept of self-defence could be interpreted relatively loosely and applied to a range of threats to Japan's national interests.

The second premise of Article 9 was also impacted when the UN Charter established Japan's right to self-defence. The long-governing Liberal Democratic Party interpreted Article 9 as allowing self-defence, and therefore, Article 9 also allowed the maintenance of a military force for this purpose (Hughes, 2022, p 683). The second part of Article 9 forbids Japan from maintaining "land, sea, and air forces, as well as other war potential". The maintenance of arms is not referenced in the UN Charter, as such, it does not contradict the second part of Article 9. It could be argued that the signing of Article 9 does not necessarily justify the adoption of a military in order to ensure Japan's right to self-defence.

Nevertheless, Japanese politicians decided to establish the Japan Self-Defence Forces (JSDF) at the request and assistance of the US (Hughes, 2022, p. 692). Japanese politicians still maintained significant constraints on the JSDF, meaning they did not operate as many other national militaries did. They avoided entering collective defence commitments (Hughes, 2022, p. 692) and they constrained the military from engaging in the “theatre of war” (Hughes, 2022, p. 694). For this reason, JSDF has not been used for combative purposes when acting out of the country’s borders (Hughes, 2022, p. 692).

Subsequent Reinterpretation of Article 9

In July 2014, the Japanese Cabinet announced a significant reinterpretation of Article 9. A Cabinet statement outlines that Japan will take a proactive stance in protecting Japan’s security and “preventing the emergence of threats” (Cabinet Decision, 2014, preface). The preface also states Japan’s new objectives, working closely with the US and developing their alliance, protecting the security of Japan, and that of the “Asia-Pacific Region” (Cabinet Decision, 2014). This is a significant change in Japan’s foreign policy and a remarkable shift from the commitments of Article 9. This change specifically stands in contrast to forbidding the threat or use of force to settle disputes. The Cabinet statement instead allows the potential use of force if it is justified in defending the security of Japan or the security of the Asia-Pacific Region. Of course, defending the security of Japan and this region could be open to a large degree of interpretation.

The Third paragraph of the statement reveals a new interpretation of the prohibition on the “use of force” from Article 9 of the Constitution. This paragraph states that this prohibition cannot come at the expense of the rights of Japanese people to peace, life, liberty and the pursuit of happiness (Cabinet Statement, 2014, para.3). Furthermore, Japan may rely on “the use of force” not only in order to defend their own country, but also to defend their allies if it is deemed that doing so protects Japan’s safety (Cabinet Statement, 2014, para.3). This is perhaps the most significant reinterpretation of Article 9, allowing Japan to actively engage in international disputes and provide military assistance to their allies. The Abe administration consistently avoided describing the conditions that could form a danger to Japan’s security (Hughes, 2022, p.694). The new threshold to justify engaging in international conflicts, allows Japan to take a central role in the security of the Asia-Pacific region and their allies globally.

Political Implications

Despite legal opposition, there have been multiple political factors within the government and Japanese society that have complicated Japan’s transition away from pacifism. In 2015, Former Prime Minister Abe Shinzo’s government overcame “massive domestic objection” in securing the passage of this legislation through the Diet (Evron, 2019, p.196). There have also been significant political disagreements over proposed increases in defence spending. Before his murder, Abe was consistently pushing for Japan to increase defence spending from 1% to 2% of GDP over a five-year period (Hanssen, 2022, para.1). This proposed increase would make Japan the third largest defence spender in the world (Hanssen, 2022, para.1).

Defence Minister Takeshi argued that it is unnecessary setting spending as a numerical target before deciding how this money will be spent (Hanssen, 2022, para.3). Hanssen argues that doubling the military budget is a more significant step to remilitarisation than reinterpreting Article 9 (2022, para.12). This partly explains why this trend has been so criticised by Japanese politicians (Edward, 2023, para.5).

Reflections on Yoshida

Some academics have come to reinterpret the “Yoshida Doctrine” foreign policy, which has become synonymous with Japan pursuing pacifism in line with Article 9 (Hoshiro 2022, p.105). The Yoshida Doctrine has also been strongly associated with Japan’s reliance on its military partnership with the US to justify its commitment to maintaining minimal military capabilities (Hoshiro, 2022, p.106). It has since been argued, that Yoshida viewed Japan’s commitment to Article 9 as a pragmatic arrangement rather than a permanent one. For example, Hoshiro argues that once Japan had recovered financially, it was viewed as inevitable that Japan would establish its own independent military force (Hoshiro, 2022, p.112 and French 2014, p.26). Yoshida is argued to have believed that military strength was an inevitable characteristic of a sovereign state (Hoshiro, 2022, p.112). Through this lens, Japanese remilitarisation could be understood as an inevitable progression and not simply a political decision to favour allies like the US. With this perspective, it is also inevitable that Article 9 would have been changed by law or reinterpreted, in order to facilitate Japan’s transition to being a “sovereign state”.

Conclusion

The Japanese Constitution, in Article 9, set out a clear prohibition on the international threat and use of force as well as Japan’s ability to maintain a military. However, since its ratification, Article 9 has been subject to multiple reinterpretations and encroachments on its purpose. Since 2014, Article 9 has been subject to its most dramatic reinterpretations which have essentially rendered it obsolete. From a legal and political perspective, this has been extremely controversial. However, from a practical perspective, it has been argued that remilitarisation was inevitable for Japan to become a sovereign state. At present, Japan is legally able to support its allies internationally and protect its interests in the Asia-Pacific region, without regard to Article 9.

References

- Easley, L. E. (2017). How proactive? How pacifist? Charting Japan's evolving defence posture. *Australian Journal of International Affairs*. 71(1), 63–87.
- Edward, D. (17 May 2023). Japanese protests against US military gain new significance amid China tensions. ITVX. Available at: <http://www.itv.com/news/2023-05-17/japan-protests-over-us-military-gain-new-significance-amid-china-tensions>.
- Evron, Y. (2019). The Middle East in China-Japan Relations: Shared Interests, Competition, and Rivalry Spillover. *Asian Journal of Middle Eastern and Islamic Studies*. 13(2), 162–175.
- French, T. (2014). Contested "Rearmament": The National Police Reserve and Japan's Cold War(s). *Japanese Studies*. 34(1), 25–36.
- French, T. (2014). *National Police Reserve: The Origin of Japan's Self Defense Forces*. BRILL.
- Hanssen, U. (15 July 2022). Is Japan's Postwar Pacifism Dead?. *The Diplomat*. Available at: <https://thediplomat.com/2022/07/is-japans-postwar-pacifism-dead/>.
- Hatakeyama, K. (2021). *Japan's evolving security policy: militarisation within a pacifist tradition*. Routledge.
- Hoshiro, H. (2022). Deconstructing the "Yoshida Doctrine.". *Japanese Journal of Political Science*. 23(2), 105–128.
- Hughes, C. W. (2022). *Remilitarization in Japan*. In *The Oxford Handbook of Japanese Politic*. Oxford University Press.
- Kallender, P & Hughes, C. W. (2019). Hiding in Plain Sight? Japan's Militarization of Space and Challenges to the Yoshida Doctrine. *Asian Security*. (15(2), 180–204.
- Katada, S. N. (2020). *Japan's New Regional Reality: Geoeconomic Strategy in the Asia-Pacific*. Columbia University Press.
- Key-young, S & Mason, R. (2013). Building a Maritime "Great Wall" to Contain China? Explaining Japan's Recalibration of Risk with the Militarization of Okinawa. *Asian Perspective*. 37(3), 437–461.
- Kim, J. (2018). The clash of power and nationalism: The Sino-Japan territorial dispute. *Journal of Asian Security and International Affairs*. 5(1), 31-56.
- Lee J. (7 June 2013). Japan's "Pacifist" Militarization. *The Wall Street Journal Asia*. Available at: <https://www.hudson.org/foreign-policy/japan-s-pacifist-militarization>.

McClintock, M. (1992). *Instruments of statecraft: US guerrilla warfare, counterinsurgency, and counter-terrorism*. New York: Pantheon Books.

Moses, J & Iwami, T. (2009). From pacifism to militarisation: liberal-democratic discourse and Japan's global role. *Global Change, Peace & Security*. 21(1), 69–84.

Scott, D. (2019). The Geoeconomics and Geopolitics of Japan's "Indo-Pacific" Strategy. *Journal of Asian Security and International Affairs*. 6(2), 136–161/.

Shibayama, F. (2010). *Nihon Saigunbi e no Michi – 1945–1954 (The Path Toward Japan's Rearmament 1945–1954)*. Minerva Shobō, Tokyo. pp. 375, 295, 297–298.

Tasevski, O. (17 Feb 2022). Okinawa's vocal anti-US military base movement. *The Interpreter*. Available at: <https://www.lowyinstitute.org/the-interpreter/okinawa-s-vocal-anti-us-military-base-movement>.

The Constitution of Japan. (1947). Prime Minister of Japan and His Cabinet. Available at: https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html.

Tsuruoka, M. (2020). Competing Visions of Japan's International Engagement: Japan First vs Global Japan. *The International Spectator*. 55(1), 34-47.

Yamaguchi, M. (18 October 2021). Japan Leader Calls for Greater Military Capability, Spending. *The Diplomat*. Available at: <https://thediplomat.com/2021/10/japan-leader-calls-for-greater-military-capability-spending/>.