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Chapter 6

Constitutional Reinterpretation under Prime Minister Abe: Incremental Change or Radical Shift?

Lindsay Black

This chapter sets out how Japan's anti-militarist constitution was formulated and how legal interpretations of the constitution evolved over the course of the 20th century. It details how Japan's constitution was traditionally interpreted to only allow for individual and not collective self-defense. The chapter examines the Abe administration's reinterpretation of the constitution to allow for collective self-defense. Some scholars perceive this reinterpretation as an incremental change that builds on a decades-long transformation of Japan's security policy. The chapter concludes by considering the concerns of other scholars who argue that Abe's reinterpretation constitutes a radical shift.

Introduction

This chapter sets out how Japan's anti-militarist constitution was formulated and how legal interpretations of the constitution evolved over the course of the 20th century. Though the literal meaning of Article 9 of the constitution was not followed, allowing for the establishment of Japan's SDF and the US-Japan Security Treaty, the legal consensus in Japan was that the constitution only permitted individual and not collective self-defense. This meant that Japan's security strategy was "resistant" in that the SDF could only defend Japanese territory and not come to the aid of allies, primarily the US because of the Security Treaty, and could not participate in foreign conflicts. With the end of the Cold War, Japanese governments came under increased pressure to contribute to international security affairs. Reluctantly, successive Japanese governments relaxed the restrictions on the SDF. In the wake of the terrorist attacks on New York and Washington on 11 September 2001, under Prime Minister Koizumi Jun'ichirō, Japan's security policy shifted to a more "active" phase with the SDF performing support roles, albeit limited ones, in the "war on terror." More recently, the second Abe administration (2012–2020) set about reinterpreting the constitution to permit collective self-defense, in an act that divided scholars into the "incremental" and "radical

shift” camps. The chapter concludes by emphasizing the concerns raised by the “radical shift” camp and assessing the prospects of constitutional revision.

Japan’s anti-militarist constitution and “resistant” security strategy

Since the end of World War II, Japan’s foreign policy has been shaped by its anti-militarist or Peace Constitution (*Heiwa Kenpō*). The constitution was formulated under the direction of the Allied Occupation bureaucracy led by Gen. Douglas MacArthur, the Supreme Commander for the Allied Powers (SCAP), and denied Japan the right to possess military forces or engage in conflicts. The Preamble and Article 9 of the constitution clearly set out Japan’s anti-militarist stance. The Preamble reads:

*We, the Japanese people... resolved that never again shall we be visited with the horrors of war through the action of government... desire peace for all time... We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth.*¹

Article 9 of the constitution, or the war renunciation clause, defines Japan’s anti-militarist stance as follows:

1. 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.
2. 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.²

The phrasing at the beginning of each of these paragraphs was added by Ashida Hitoshi, a member of the Japanese Diet, in what became known as the Ashida amendment to Article 9. Though it is unclear what Ashida intended by including the lines “[a]spiring sincerely to an international peace based on justice and order” and “[i]n order to accomplish the aim of the preceding paragraph,” the Ashida amendment nonetheless opened the door to Japan’s remilitarization.³ The logic was that though Japan could not possess “war potential,” armed forces would be needed to establish “international peace based on justice and order.” Similarly, the phrase in the preamble, “we desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance,” has served to justify the expansion of what would become Japan’s SDF.

The aim of the Allied Occupation (1945–1952) in penning Article 9 was to prevent a resurgent Japan from ever again threatening international aggression. MacArthur blamed the Japanese military, the *zaibatsu* conglomerates (powerful industrial and business monopolies), and right-wing extremist groups for Japanese aggression during the 1930s and throughout World War II. He, therefore, determined to transform Japanese society through three processes: demilitarization, democratization and decentralization. Accordingly, Japan’s empire was dismantled, over 200,000 Japanese were purged from public life because of their part in the war and war trials were held to prosecute those Japanese responsible for war

crimes and starting the Asia-Pacific War (1931–1945). Under the constitution, Japan became a liberal parliamentary democracy and the occupation authorities decentralized the power and wealth of elites and dismantled the systems through which these elites maintained their status. SCAP disassembled the *zaibatsu* conglomerates, which ran an estimated three quarters of Japan's industrial and commercial activities, and purged their executives. The growth of labor unions was fostered to promote better working rights and pay for the Japanese workforce. A dramatic and thorough land reform program was carried out, which redistributed rural farming land from landowners to peasants, thereby raising the standard of living of some 50 percent of the Japanese population. The occupation authorities overhauled Japan's education system in order to weed out the ultranationalist teachings in Japanese schools and revised the civil code to stipulate equality between the sexes. The constitution also set a high bar for any formal amendment. According to Article 96, formally amending the constitution would require two thirds of both Houses of the Diet to pass the amendment, followed by a majority of the Japanese population agreeing to the amendment in a referendum.

With the onset of the Cold War from 1949, it became clear to the Allied Occupation that a militarily weak Japan could be threatened by communist expansionism. The Berlin Blockade in Europe and Chinese Communist victory in 1949, together with the outbreak of the Korean War (1950–1953), convinced the US government that it was imperative that Japan prosper and be rearmed. This policy shift, known as the “reverse course,” covered the reconstruction of the economy, restraining the activities of labor unions, allowing individuals who had been purged to be reintegrated back into society, reestablishing Japan's military forces and aligning Japan firmly within the anti-Soviet camp. The Korean War, in particular, served to jump-start the Japanese economy, as Japanese companies won huge bids to service the US-led mission in Korea.

The Korean War also dictated a change in Japan's security policy. This derived primarily from the need to replace US servicemen, who left the Japanese archipelago for the Korean Peninsula, with an alternative security force. In the summer of 1950, the Japanese government, under the orders of General MacArthur, created the National Police Reserve (*keisatsu yobitai*), which comprised some 75,000 men, armed with machine guns, mortars, rifles, flamethrowers, artillery and tanks. On 1 August 1952, a National Safety Agency (NSA) was established to oversee the National Police Reserve. By 1954, the NSA and National Police Reserve were respectively renamed the Japan Defence Agency (JDA) (*Bōeishō*) and Japan Self-Defence Forces (JSDF) (*jieitai*). Japan's remilitarization was solidified by the signing of the US-Japan Security Treaty on 8 September 1951, which followed the endorsement of the Treaty of San Francisco earlier that same day. Notably, the San Francisco peace treaty allowed for Japan to exercise both individual and collective self-defense in accordance with Article 51 of the UN Charter and permitted Japan to enter into security pacts with other states.⁴

Whereas the peace treaty was regarded on the whole as a generous agreement that granted Japan's independence as a sovereign state by ending the Occupation, the US-Japan Security Treaty, was seen by many Japanese people as undermining that independence. Under the Security Treaty, US troops would be stationed in Japan indefinitely, to provide for the security of the region and could even be deployed to suppress demonstrations in Japan. Particularly galling for many Japanese people was the clause enabling the dispatch of US troops stationed in Japan on military missions without requiring any consultation with the Japanese government. Japanese citizens, who had so recently experienced the horror and deprivation of war, were anxious that in the Cold War environment, and with the Korean War at its

height, the dispatch of US troops from Japan would embroil the Japanese population in war again. This concern became known as enmeshment.

The constitutionality of the US-Japan Security Treaty, the JDA, and JSDF were all questioned from the outset, leading to significant public protests through the 1950s. The Japanese government asserted the constitutionality of the JDA and JSDF by claiming that as both only existed to exercise an exclusively defense-orientated policy (*senshu bōei*), so neither would engage in war and Japan would only possess the minimum necessary defense capabilities. This meant that according to the constitution, Japanese forces could not engage in collective self-defense by coming to the aid of an ally.⁵ This interpretation of Japan's constitution was shaped by the Cabinet Legislation Bureau (CLB), which exercised oversight over government policy, acting as a check to ensure that government policy was in line with the constitution and providing advice to the government on legal matters since its formation in 1885.⁶ Comprised of twenty-six legal experts representing each of Japan's ministries, the CLB's primary role has been to ensure consistency in the government's interpretation of legal documents across time.⁷ The CLB's advice guided the government's interpretation in 1954 that restricted the use of armed force to the self-defense of Japan. This interpretation was confirmed by the Supreme Court in the Sunagawa case of 1959, in which Japan's Supreme Court overturned the Tokyo District Court's ruling that the US-Japan Security Treaty was unconstitutional⁸ and that US forces did not constitute "war potential," as they were not under the control of the Japanese government.⁹ The Supreme Court determined not to rule on the legality of Article 9 of the constitution and the question of whether Japan could possess military forces, deeming these issues to be better addressed politically.¹⁰ Constitutional scholar Yamamoto Hajime,¹¹ a law professor at Keio University, maintains that this process of reinterpreting Article 9 rather than formally amending the constitution to enable Japan to acquire military forces makes it "a very unique country in the world."¹²

Popular resistance to Japan playing a greater security role could be seen in the 1959–1960 *Anpo* struggle (*anpo tōsō*). The *Anpo* struggle revolved around the efforts of then Prime Minister Kishi Nobusuke to revise the 1951 Security Treaty (*Anzen Hoshō Jōyaku*, from which the shortened "*Anpo*" term derives) with the US. Kishi was a key conservative politician in Japan's ruling Liberal Democratic Party (LDP) who had been imprisoned by the SCAP as a class A war criminal, only then to be released as part of the US "reverse course" policy. He was among a number of LDP politicians who advocated for a Japanese constitution that revered the emperor, allowed for full-scale rearmament, empowered the state and limited the civil liberties of the Japanese people.¹³ Kishi's aim in revising the 1951 *Anpo* Treaty was to secure for Japan a more equal deal with the US. When the revised *Anpo* Treaty was finally signed in Washington on 19 January 1960 by President Eisenhower and Prime Minister Kishi, it arguably achieved this aim by requiring consultation between the US and Japanese governments, a US commitment to the defense of Japan and denying the use of US forces to put down domestic protests.

Despite this, many Japanese people, notably on the left-wing of the political spectrum, opposed the *Anpo* treaty entirely, desiring that Japan steer a more neutral course during the Cold War. In the Japanese Diet, the Japan Socialist Party (JSP) sought to delay Japan's ratification of the revised *Anpo* treaty, prompting Kishi to order Japan's police force to forcibly remove JSP members from the Diet on 19 May 1960 and allow the LDP to ratify the treaty in their absence. Kishi's unprecedented illiberal move further fueled a growing popular protest movement against the *Anpo* treaty. The protest movement culminated in hundreds of

thousands of Japanese citizens surrounding Japan's Diet in June 1960 and forced Kishi to resign. Kishi's successors swiftly sidelined his ambition to revise the Japanese constitution and cemented in place the primary elements of Japan's anti-militarist international policy. In 1969, the Sato Eisaku administration promulgated three restrictions on the use of self-defense under the constitution. First, an attack would have to be imminent. Second, there would be no means to respond to this attack other than through military force. Third, the extent to which Japan could respond militarily would be confined to an absolute minimum required to repel the attack.¹⁴

In addition to the constitutional limitations on Japan's use of force were a series of anti-militarist norms that pervaded Japanese society. These norms included the three non-nuclear principles (not to possess, produce or house nuclear weapons) which were enunciated by Prime Minister Satō Eisaku in 1967 and adopted by the Japanese Diet in 1971; an arms export ban; and a one percent of GDP limit on defense expenditure, both introduced by Prime Minister Miki Takeo in 1976. These were not merely declarations that could be set aside, but norms that constrained Japan's security policy. When these norms were broken, such as in 1986 when Japan's defense expenditure crept over the one percent of GDP limit, public opinion in Japan, as well as international criticism, particularly from Japan's neighbors, ensured that defense expenditure was brought back in line with the one percent limit. Successive Japanese governments did allow US forces to transit nuclear weapons through Japanese territory thereby breaking one of the three non-nuclear principles from the outset. So as not to enrage public sentiment, Japanese governments kept this practice secret and did not admit to allowing US nuclear-armed vessels into Japan until March 2010.¹⁵ Japan's anti-militarist education system was also critical of Japan's military leadership during the Asia-Pacific War, implanting these norms, as well as the sanctity of Article 9 of Japan's constitution, among Japan's population. Japan's left-wing parties, not least the JSP and the Japanese Communist Party (JCP), together with a majority of the Japanese population perceived Japan's anti-militarist constitution as sacrosanct and the development of Japan's security forces and alliance with the US as running counter to the constitution's core ideals and articles.¹⁶

Because of the emphasis on an exclusively defense-oriented policy, Japan's foreign policy was guided by the Yoshida Doctrine. Named after Prime Minister Yoshida Shigeru (1946–1947, 1948–1954), the Yoshida Doctrine focused on economic growth and left Japan's security largely in the hands of the US. According to the Yoshida Doctrine, Japan would become bilaterally tied and largely subservient to the US for its security, while relying on the US as the key market for Japanese products. Though contested by leading politicians on both the left, who emphasized anti-militarism, multilateralism and Asian-centrism, and the right, who stressed an independent foreign policy and strong military, the Yoshida Doctrine remained in place throughout the Cold War.¹⁷ According to David Arase,¹⁸ Japan's security policy during the Cold War can thereby be understood as “resistant,” namely that Japan's ruling Liberal Democratic Party (LDP), faced with a predominantly anti-militarist popular opinion, was resistant to revising or reinterpreting Japan's constitution to develop an independent and offensive military capability. That said, during the 1980s, under the Nakasone Yasuhiro administration, the Japanese government relaxed Japan's non-nuclear principles and one percent ceiling on defense expenditure, expanded the geographical scope that the SDF would defend from territorial waters to sea lines of communication (SLOCs) up to 1,000 miles distant from Japan, and cooperated more actively in joint operations with the US

military.¹⁹ As the Cold War drew to a close, Japan was increasingly recognized as a military power in the Asia-Pacific region.

From a “reluctant” to an “active” security strategy in the post-Cold War era

With the fall of the Berlin Wall in 1989 and the disintegration of the Soviet Union in 1991, the Japanese government faced new international security challenges and expectations. Perceived as a rising challenger to US hegemony, Japan was the target of sustained criticism over its mercantilist economic policy and free-riding on international security. When Saddam Hussein’s military invaded Kuwait in 1990, the US led an international coalition to push the Iraqi forces out. The Kaifu Toshiki administration belatedly dispatched a mine sweeper to the region and Japan’s financial contribution to the campaign, though substantial, was disparaged as “checkbook diplomacy.” The fallout from Japan’s failure to put boots on the ground in the 1990–1991 Gulf War caused the Japanese government to reassess its international security policy. In June 1992, the Miyazawa Kiichi administration passed the UN Peacekeeping Cooperation Law, enabling the dispatch of SDF troops on UN Peacekeeping Operations (PKOs), albeit with significant restrictions on the use of weapons and engagement with hostile forces.²⁰ In subsequent UNPKOs, Japanese soldiers assisted with reconstruction and support for other military forces that were more directly in the firing line. In 1994, as part of a deal with the LDP to share power in a coalition government, the JSP accepted the legality of the SDF under the constitution, thereby weakening political resistance to the SDF.²¹ To justify these modifications to Japan’s security posture, leading politicians adopted the phrasing from the Preamble of the constitution, arguing that Japan must “occupy an honored place in an international society striving for the preservation of peace.”²²

Arase has termed the period 1989–2001 in the evolution of Japan’s international security policy as “reluctant,” as the Japanese government slowly came to accept the need for Japan to make a more active international contribution (*kokusai kōken*) to security.²³ Nonetheless, there were competing visions as to how Japan would contribute to international security affairs. Leading conservative politician, Ozawa Ichirō’s book *Blueprint for a New Japan* proposed that Japan should become a “normal” nation with an unrestricted military. At the other end of the spectrum, Funabashi Yoichi argued that Japan should act as a civilian power, exercising restraint in the use of military force in line with Japan’s constitution, providing humanitarian and developmental aid, and working multilaterally through international institutions. By January 2000, Japan’s Diet was actively considering constitutional reform through the establishment of Constitutional Research Councils, whose focus lay primarily on how to revise Article 9, but also considered articles relating to human rights and the status of Japan’s emperor.²⁴ In addition, throughout the 1990s, leading newspapers, such as the *Yomiuri* and *Asahi*, were promulgating their own revised constitutional texts.²⁵ While the right-wing *Yomiuri* newspaper emphasized amending Article 9 to normalize the SDF as a military and allow for collective self-defense, the *Asahi* newspaper endorsed a literal interpretation of Article 9, prohibiting Japan from having armed forces. In addition, the *Asahi* campaigned for an “International Cooperation Law” that committed Japan to aiding the world’s poor and address pressing global problems through non-military means.²⁶ In the post-Cold War era, Japanese elites in political, intellectual and media circles actively

debated how their constitution would continue to shape Japan's contribution to and place in the world in the face of changing international circumstances.

Coupled with these debates about how Japan should contribute to international security affairs were concerns about how Japan's security alliance with the US would develop in the post-Cold War world. These concerns were encapsulated in the entrapment/abandonment dilemma. On the one hand, US-led interventions such as in the 1990–1991 Gulf War could drag Japan into a conflict, entrapping Japan against the wishes of an anti-militarist public. On the other hand, a failure to support the US and contribute actively to international security affairs could lead to the US abandoning Japan to take care of its own security.²⁷ In light of mounting regional security threats, most notably China's rise and the Taiwan Straits crisis of 1995–1996, and North Korea's nuclear and missile programs, Japanese governments in the post-Cold War period could ill afford the possibility of the US military abandoning Japan. With this in mind, the Japanese government passed the Guidelines and Law Concerning Situations in Areas Surrounding Japan in 1997, enabling the SDF to provide US forces with rear area support in the event of a crisis in Japan's "vicinity."²⁸ The precise geographical definition of Japan's "vicinity" was left purposefully vague to allow the SDF to support the US military in a variety of contingencies, meaning that it was never clear whether this law covered a security crisis involving Taiwan, for example.

It would take the events of 11 September 2001 at the World Trade Center in New York, and the Pentagon in Washington, to generate pressure for further changes to Japan's security policy. Proclaiming a "war on terror," US President George W. Bush laid out a stark choice for US allies that encapsulated the entrapment and abandonment dilemma; either they were with the US or against it. From 2001 on, Japan would enter an "active" phase in the evolution of its security policy,²⁹ in which key aspects of Japan's anti-militarist security policy were scaled back. In October 2001, the Koizumi Jun'ichirō administration passed the Anti-Terrorism Special Measures Law that permitted the SDF to provide logistical support to the US and British militaries in the "war on terror," including supplying fuel to allied forces in the Indian Ocean. The Special Measures Act expired on 1 November 2007 and was replaced by a New Special Measures Act, extending the Indian Ocean refueling mission for two additional years until the DPJ government ended the mission in early 2010.³⁰ Further security legislation in the form of the Iraq Special Measures Act was passed in 2003 and remained in force until the end of July 2009, enabling the Japanese government to respond more proactively to a security crisis and dispatch troops to participate in the war in Iraq.³¹ This dispatch was made legally permissible due to the CLB and Japanese government creating a contrived distinction between "combat" and "non-combat" areas, with the SDF only being allowed to operate in the latter by providing humanitarian assistance.³² To rationalize this move, Prime Minister Koizumi referred to Japan's "desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth," as stated in the Preamble of Japan's constitution.³³ Koizumi was able to guide Japan towards a more "active" international security role due in no small part to the strengthening of the Prime Minister's Office or *Kantei*. Whereas previous prime ministers had been constrained by bureaucratic in-fighting between Japan's Ministries, by increasing the number and expertise of staff within the *Kantei* and centralizing the decision-making process under the prime minister, Koizumi was able to push through significant security changes.³⁴ Nonetheless, the security legislation passed by the Koizumi administration maintained civilian control over Japan's armed forces.

Notably, Japan's Armed Attack Response Law, passed in 2003, required the Japanese prime minister to secure the approval of both his Cabinet and the Diet in enacting special measures in response to an attack on Japan.³⁵

In addition to the security legislation passed during the Koizumi administration, Japan's defense spending began to creep over the one percent of GDP mark and arms export restrictions were relaxed to allow coast guard patrol boats to be gifted as Official Development Assistance (ODA) to Southeast Asian states.³⁶ In addition, the JDA was relabeled the Ministry of Defense in 2007 giving it equal status to other Japanese ministries, and *Hyūga*-class helicopter destroyers that could be refitted as aircraft carriers were added to the SDF's arsenal.³⁷ This last development raised concerns both domestically and internationally that the Japanese government was looking to acquire offensive military capabilities.

During the first Abe Shinzō administration (2006–2007), constitutional revision was brought firmly into the government's agenda, as Abe sought to transform Japan into a "normal state." Abe shared the revisionist ambitions of his grandfather, former Prime Minister Kishi, perceiving the post-World War II settlement as a stain on Japan's honor.³⁸ Abe convened an Advisory Panel on the Reconstruction for the Legal Basis of Security, comprised of academics and government officials who were sympathetic to his agenda, to set out the parameters of constitutional revision. In addition to normalizing the SDF as Japan's military and allowing the SDF to engage in collective self-defense, the Abe administration sought to dilute Article 96, to expedite the process of constitutional revision, as well as weaken constraints pertaining to the relationship between religion and the state.³⁹ Though Abe's efforts to revise the constitution during his first administration came to nothing, subsequent administrations continued to develop Japan's security policy and capabilities. In 2009, for example, the Asō Tarō administration enacted the Act to Punish and Prevent Piracy to allow the SDF to be dispatched to the Gulf of Aden to protect shipping from Somali pirates, even permitting the SDF to fire on suspected pirate ships under certain circumstances.⁴⁰ As Matsui notes, this Act further stretched the notion of an exclusively defense-oriented policy.⁴¹

Even the Democratic Party of Japan (DPJ) administrations (2009–2012) backed down from their initial stance to create a more equal US-Japan security relationship. Subsequently, the DPJ strengthened the US-Japan alliance through Operation Tomodachi in the wake of the 11 March 2011 Great East Japan Earthquake (*Higashi Nihon daishinsai*), also known as the 3/11 disaster, that hit the Tōhoku region. The DPJ also developed a series of bilateral security agreements with Southeast Asian and Australasian states.⁴² These efforts were actively encouraged by the US government. The three bipartisan Armitage-Nye Reports of 2000, 2007, and 2012, pressured the Japanese government to play a greater international security role and contribute more actively to the maintenance of the international order.⁴³ Still, Japan's Ministry of Foreign Affairs (MOFA) registered some reluctance towards Japan's support for the US-led "war on terror," bemoaning how Japan's foreign policy options had been constrained and that the US was circumventing international institutions that the Japanese government would prefer to work through.⁴⁴ Though Japan's approach to international security had become more active, remnants of Japan's reluctant approach simmered on.

Constitutional reinterpretation: Towards a “transformative” security strategy?

Abe's second tenure as Japan's prime minister (2012–2020) raised the question of whether Japan had now entered a fourth “transformative” phase in the evolution of its security policy. He reconvened the Advisory Panel he had established during his first term as prime minister, which promoted the notion that Japan had to participate in collective self-defense.⁴⁵ The Advisory Panel went further than earlier efforts to revise the constitution by seeking to elevate the status of the emperor, limit human rights by defining them in terms of Japanese culture and tradition, as well as curb workers' rights.⁴⁶ Abe's efforts in revising Japan's security policy began in 2013, when he established Japan's National Security Council (NSC), enunciated Japan's National Security Strategy (NSS), reviewed Japan's National Defense Program Guidelines (NDPG) in light of what his Cabinet perceived to be a steadily deteriorating regional security situation, and passed a State Secrecy Law covering matters related to Japan's national security.⁴⁷ The Abe administration argued that the State Secrecy Law was necessary to enhance military cooperation with the US, but numerous scholars raised concerns about the law. Notably, the State Secrecy Law granted the Japanese government arbitrary power to decide what constitutes a state secret, for how long, and with what punishments should an individual reveal those secrets, as well as undermining freedom of speech and investigative journalism.⁴⁸

On 19 September 2015, the Abe administration passed a number of security bills that reinterpreted Japan's constitution to allow the SDF to participate in collective self-defense. This reinterpretation meant that should a state allied to Japan be attacked, Japan's SDF could be dispatched in defense of that state. Further changes relaxed constraints on the use of force in UN peacekeeping operations, promoted the sale of Japanese military equipment and technology abroad, bolstered Japan's force projection capabilities, and began to consider pre-emptive strikes against states posing an imminent threat to Japan. Previous laws limiting the role of the SDF to Japan's vicinity were discarded, allowing no geographical impediments to the dispatch of the SDF.⁴⁹ According to Gustafsson, Hagström, and Hanssen these new laws meant that there was little that could distinguish Japan from “normal” countries that were unrestrained by an anti-militarist constitution.⁵⁰

To justify constitutional reinterpretation, Abe stressed Japan's increasingly tense regional security environment, emphasizing both China's assertiveness in the South and East China Seas and North Korea's nuclear and missile programs. In light of these challenges, the Abe administration maintained that Japan needed to commit to militarily uphold the international order under the banner of “proactive pacifism” (*sekkyokuteki heiwashugi*).⁵¹ Kitaoka Shinichi, the Deputy Chairman of the Advisory Panel on Reconstruction of the Legal Basis for Security that counselled Abe on reinterpreting Japan's constitution, differentiated “proactive pacifism” from “passive pacifism.” The latter, Kitaoka noted,⁵² indicated a commitment to disarmament that was unrealistic in light of the global security environment and maintained that collective self-defense was necessary as the nature of contemporary warfare meant that no state could defend themselves without allies. On 13 January 2013 in Jakarta, Indonesia, Prime Minister Abe set out the core tenets of what would become known as the Abe Doctrine in a speech entitled “The Bounty of the Open Seas: Five New Principles for Japanese Diplomacy.”⁵³ The speech juxtaposed Japan's “proactive” contribution to peace through the

promotion of “universal values,” including freedom of expression, human rights and rule of law, against the threat to the international order and the globalized economy posed by China’s rise and assertiveness in the South and East China Seas. Abe’s ambition to revise the Japanese constitution indicated a commitment to replace the Yoshida Doctrine with an Abe Doctrine that would grant Japan formal military status, overturn Japan’s postwar settlement and elevate Japan to great power status.⁵⁴

For some commentators,⁵⁵ Abe’s efforts were merely incremental, following the same path as his predecessors who had chipped away at Japan’s anti-militarist norms and policies that inhibited the full use of Japan’s SDF. Those in the incrementalist camp acknowledged the significance of Abe’s policy moves, but maintained that the Japanese government still had a long way to go before the US government would accept it as an ally that actively fights alongside the US military and provides a credible international deterrent to states seeking to revise the current international order.⁵⁶ Members of Abe’s Advisory Panel, such as Hosoya Yūichi and Kitaoka Shinichi, maintained that the changes to Japan’s security posture were not as far-reaching as they could have been, nor as controversial as opponents made out. Hosoya noted that both Komeito, the ruling LDP’s coalition partner, and Yokobatake Yusuke, the Director-General of the CLB, watered down the content of Advisory Panel’s report on constitutional revision.⁵⁷ Kitaoka argued that the legislation could not be considered as divisive, as Japan’s major political parties all concurred with Abe’s efforts in light of regional security tensions.⁵⁸ For constructivist thinkers, such as Oros,⁵⁹ Japan’s antimilitarist security identity remained resilient. While the Abe administration had taken significant steps to change Japan’s security policy, the SDF remained committed to the self-defense of Japan and lacked the capabilities commensurate with Japan’s material power.⁶⁰ A key aspect of the incrementalist argument was that significant brakes (*hadome*) still existed to constrain how the Japanese government could exercise its security policy. Reflecting on Japan’s security legislation passed in 2015, Hornung and Mochizuki noted that for a Japanese prime minister to invoke collective self-defense, an attack on a Japanese ally had to threaten Japan’s survival, and could not be countered by other means, while minimum force must be used.⁶¹ In addition, Diet approval for a military response involving collective self-defense was required, though this approval could be sought retroactively.⁶²

For others, Abe’s reinterpretation of Japan’s constitution indicated a transformation of Japan’s security identity from an “abnormal” pacifist state to a “normal” remilitarized state,⁶³ and constituted a radical shift in Japan’s security policy.⁶⁴ Those scholars who perceived Abe’s reinterpretation of Japan’s constitution as a “radical break” from Japan’s existing security policy were unconvinced by the restrictions that Hornung and Mochizuki highlighted.⁶⁵ This is because these restrictions were ambiguously framed, leaving it to a prime minister’s inner circle to subjectively determine what constitutes an existential threat to Japan when invoking collective self-defense and only needing Diet approval after the fact.⁶⁶ For Hughes, these restrictions do not constitute viable brakes on the exercise of collective self-defense.⁶⁷ He noted that in a crisis situation, the Japanese government would be unlikely to decline a request from the US to enact collective self-defense, thereby undermining Japan’s strategic autonomy.⁶⁸ Similarly, Wakefield and Martin highlight that the reinterpretation of Japan’s constitution to allow for the exercise of collective self-defense is transformative.⁶⁹ Whereas the incremental changes to Japan’s SDF have always fallen within constitutional boundaries, collective self-defense means that Japan’s military forces would be deployed for purposes other than the defense of Japan as articulated in Article 9.⁷⁰

A number of Japanese constitutional scholars have also raised concerns about the Abe administration's reinterpretation of the constitution. Professor Hasebe Yasuo of Waseda University argued that though Japan's constitution has not been interpreted literally to deny Japan the right to individual self-defense, over the course of several decades the interpretations put forward by constitutional scholars and the CLB have cemented an interpretation to allow *only* the right of individual self-defense.⁷¹ For example, North Korea's threat to withdraw from the Nuclear Non-Proliferation Treaty (NPT), which sparked the nuclear crisis of 1993–1994, demonstrated how ill-prepared the Japanese military was to support the US military as the crisis deepened, putting pressure on the Japanese government to reinterpret the constitution.⁷² Throughout the crisis, the Clinton administration pushed the Japanese government to commit to a joint response under the banner of the US-Japan alliance. Despite this US pressure, when the Japanese government attempted to pressure the CLB in 1994 to review its interpretation of the constitution to allow for collective self-defense, the CLB concluded that this would only be possible following the formal amendment of the constitution as outlined in Article 96,⁷³ a position that the majority of Japanese constitutional scholars agree with.⁷⁴ Hasebe maintains that a transitory government should not be permitted to simply cast aside the accepted interpretation of the constitution to suit its needs.⁷⁵ This position echoes the statement of former CLB Director Yoshikuni Ichirō, who informed the Diet in 1975 that Japan's laws must be interpreted objectively and consistently and not overturned on the whim of the executive.⁷⁶ Rather than bring clarity to the constitution, Abe's reinterpretation has made it more ambiguous, arguably raising security tensions in the region.⁷⁷ In addition to fellow constitutional scholars, former heads of the CLB and Yamaguchi Shigeru, a former justice of the Supreme Court, agreed that Abe's reinterpretation was unconstitutional and did not have the support of the majority of the Japanese population.⁷⁸ Yamaguchi notably voiced his concern that by undermining Japan's constitution the Abe government's reinterpretation would “make it impossible to control the use of power or protect citizens from arbitrary politics.”⁷⁹

Furthermore, the Abe administration avoided the formal process of amending the constitution and sidestepped debates in the Diet and a national referendum.⁸⁰ Abe had attempted to relax Article 96 of the constitution to enable simple majorities in both Houses of the Diet to pass an amendment to the constitution, but was opposed by both the opposition parties and the public.⁸¹ Realizing the difficulty of formally amending the constitution, Abe determined to reinterpret it.⁸² The Abe government's reinterpretation of Japan's constitution also effectively sidelined the CLB and significantly weakened it as a constraint on government decisions.⁸³ Abe was able to achieve this by circumventing the accepted procedure for replacing the chief of the CLB with his deputy. Instead, Abe appointed Komatsu Ichirō, a career diplomat, who supported and laid the groundwork for Abe's reinterpretation of the constitution within the CLB,⁸⁴ undermining the established personnel rotation system that had ensured the consistent interpretation of Japan's constitution.⁸⁵ Abe's efforts, Wakefield and Martin argued, “weakened constitutionalism, the rule of law, and fundamental principles of democracy in Japan.”⁸⁶

The arguably illiberal moves of the Abe administration in reinterpreting the constitution and passing the security legislation in 2015 were openly opposed by a significant segment of the Japanese population who took to the streets in protest. Japanese students mobilized around the Students Emergency Action for Liberal Democracy (SEALDs), established on 3 May 2015, which organized demonstrations against the security legislation throughout Japan.

On 30 August 2015, a SEALDs demonstration numbering as many as 120,000 Japanese citizens surrounded the Japanese Diet, conjuring memories of the *Anpo* struggle of 1959–1960. Though many among this number were open to the idea of constitutional revision, they deplored the authoritarian manner in which the Abe administration was avoiding democratic debate by ramming the security legislation through the Diet.⁸⁷ In December 2015, a coalition under the banner of the Civil Alliance for Peace and Constitutionalism (*Shimin Rengō*) was founded to continue to realize the anti-militarist goals and respect for Japan's constitution that SEALDs had pushed for.⁸⁸ It was not only Japan's youth attending these protests, but also large numbers of Japan's elderly population, indicating that the demographic Abe's ruling LDP most relied upon at the ballot box was not in favor of reinterpreting the constitution to enable Japan to play a greater international security role.⁸⁹ As Funabashi highlights, Japan's aging population is the central crisis for Japan.⁹⁰ It will impact Japan's debt over the long-term and capacity to act in international affairs, including in terms of impairing the SDF's ability to recruit as well as its budget.⁹¹ Rather than proactively addressing this core concern through government policies that support young Japanese people looking to start a family, or actively encouraging foreigners to immigrate to Japan, the Abe administration expended both time and political capital on reinterpreting Japan's constitution. Considering Japan's security over the longer term it remains to be seen whether constitutional reinterpretation was worth the effort, if Japan's SDF lacks the manpower and materiel to secure Japan.

Conclusion

Japan's postwar constitution established the anti-militarist tenets upon which Japanese security policies have rested. Though most Japanese people accept that the constitution allows Japan to possess forces for its own defense, many would argue that it allows for no more than this. Over decades, the legal position that Japan's constitution only permitted individual and not collective self-defense became entrenched. The end of the Cold War generated new pressures on the Japanese government to contribute more actively to international security affairs. Gradually and somewhat reluctantly, successive Japanese governments relaxed the constraints on the use of the SDF. This process sped up under Prime Minister Koizumi, in light of the "war on terror" and Iraq war. For some scholars, the actions of Prime Minister Abe in reinterpreting the constitution to allow for collective self-defense in 2015 were in line with a long-standing incrementalist approach to changing Japan's security posture that responds to increasing regional security tensions and global challenges. Others assert that the ambiguity of Abe's reinterpretation, coupled with the lack of constraints on the prime minister's determination of when collective self-defense could be implemented, demonstrates that Japan is entering a new "transformative" era in its security policy. The illiberal manner in which Abe chose to reinterpret rather than amend Japan's constitution raises further concerns that the Japanese prime minister now commands too much power over Japan's security policy. It is not sufficient to exercise civilian control over the military, if the ruling party does not follow democratic process and curtails the legal authority of the CLB. Rather than the 2015 reinterpretation bringing security to Japan through collective self-defense, "security" could take on a different meaning, namely that the weakening of the constitution binds the Japanese people to the whims of their leaders rather than to the rule of law.

Constitutional revision remains a part of both the LDP's and Kishida's agenda. On 21 June 2022, Motegi Toshimitsu, the LDP's secretary general, proclaimed that his party intended to initiate the process of constitutional revision following the House of Councillors election on 10 July. The LDP won the House of Councillors election by a landslide, securing the necessary two-thirds majority in both houses to pass the first hurdle of constitutional revision. As Japan's right-wing, led by Abe until his assassination on 8 July 2022, continues to stress the perilous security environment in which Japan supposedly finds itself, so the question surfaces as to whether opposition to constitutional revision among Japan's population will crack. Subjects that had previously been seen as taboo, such as Japan's role in the defense of Taiwan and Japan hosting nuclear weapons, have entered the mainstream political discourse, chipping away at anti-militarist sentiment, while arguably ratcheting up security tensions in the region. That said, it remains to be seen whether the LDP's efforts to revise the constitution would be rewarded by the public in a subsequent national referendum. Numerous issues arguably demand the government's more immediate attention, including economic recovery in the wake of both the COVID-19 pandemic and Russian invasion of Ukraine, societal inequalities, energy security, and Japan's aging society and debt. As one looks back at the Abe administration's efforts to revise Japan's constitution, one cannot but be struck by the political capital expended at a time when solutions to Japan's soaring debt and aging society were needed. Regardless of the status of Japan's constitution, both financial issues and a lack of recruits will hinder the evolution of Japan's military in the coming decades.

Notes

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