

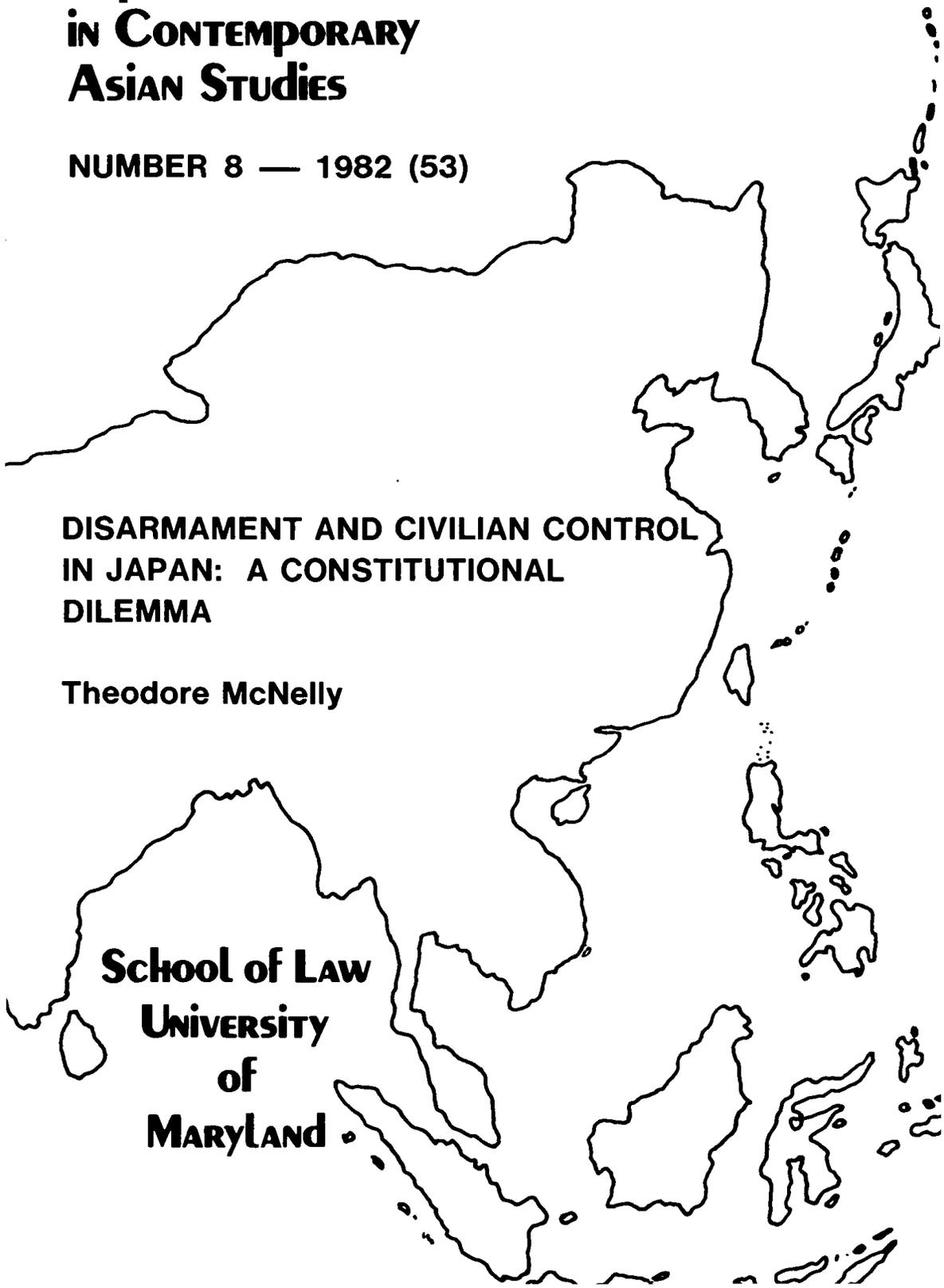
**OCCASIONAL PAPERS/  
REPRINTS SERIES  
IN CONTEMPORARY  
ASIAN STUDIES**

**NUMBER 8 — 1982 (53)**

**DISARMAMENT AND CIVILIAN CONTROL  
IN JAPAN: A CONSTITUTIONAL  
DILEMMA**

**Theodore McNelly**

**School of LAW  
UNIVERSITY  
of  
MARYLAND**



*Occasional Papers/Reprint Series  
in Contemporary Asian Studies*

---

General Editor: Hungdah Chiu

Executive Editor: David Salem

Managing Editor: Shirley Lay

**Editorial Advisory Board**

Professor Robert A. Scalapino, University of California  
at Berkeley

Professor Martin Wilbur, Columbia University

Professor Gaston J. Sigur, George Washington University

Professor Shao-chuan Leng, University of Virginia

Professor Lawrence W. Beer, Lafayette College

Professor James Hsiung, New York University

Dr. Robert Heuser, Max-Planck-Institute for Comparative Public  
Law and International Law at Heidelberg

Dr. Lih-wu Han, Political Science Association of the  
Republic of China

Professor K. P. Misra, Jawaharlal Nehru University, India

Professor J. S. Prybyla, The Pennsylvania State University

Professor Toshio Sawada, Sophia University, Japan

Published with the cooperation of the Maryland International Law Society

All contributions (in English only) and communications should be sent to

Professor Hungdah Chiu, University of Maryland School of Law,

500 West Baltimore Street, Baltimore, Maryland 21201 USA.

All publications in this series reflect only the views of the authors.

While the editor accepts responsibility for the selection of materials to be published,  
the individual author is responsible for statements of facts and expressions of opinion  
contained therein.

Subscription is US \$10.00 for 8 issues (regardless of the price of individual issues) in  
the United States and Canada and \$12.00 for overseas. Check should be addressed to  
OPRSCAS and sent to Professor Hungdah Chiu.

Price for single copy of this issue: US \$2.00

Reprinted with up-to-date information by Occasional Papers/Reprints Series in  
Contemporary Asian Studies, Inc. with the permission of International Peace Research  
Institute, Oslo

ISSN 0730-0107  
ISBN 0-942182-52-9

**DISARMAMENT AND CIVILIAN CONTROL IN JAPAN:  
A CONSTITUTIONAL DILEMMA**

*Theodore McNelly\**

**Table of Contents**

1. Introduction .....	1	[351]
2. The Origin of the Dilemma .....	1	[351]
3. The Ashida Amendments .....	2	[352]
4. Ambiguities in Article 9 .....	3	[353]
5. The Constitutionality of the Self-defense Force.....	4	[354]
6. Justiciability.....	5	[355]
7. The Opposition to Rearmament .....	7	[357]
8. Civilian Control in Japan Today .....	8	[358]
9. The Meaning of Civilian Control.....	10	[360]
10. Recognizing the Reality .....	11	[361]
Notes and References .....	12	[362]
Postscript .....	15	

---

\* Professor of Department of Government and Politics, University of Maryland, College Park, Maryland 20742 U.S.A. This paper was originally published in *Bulletin of Peace Proposals* 4/1982, pp. 351-364 (International Peace Research Institute, Oslo). Reprinted here with up-to-date information by the author and the permission of the publisher. Original page numbers of the paper appear in brackets.



# Disarmament and Civilian Control in Japan: A Constitutional Dilemma\*

Theodore McNelly

Department of Government and Politics, University of Maryland, USA

## 1. Introduction

The only national constitution in the world that renounces *both* war and arms is that of Japan. Article 9 of that country's 1946 basic law provides:

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.

Nevertheless, by 1980, Japan, whose Constitution had once seemed to forbid forever the maintenance of any military forces whatsoever, had the world's ninth most expensive defense establishment.<sup>1</sup> The political opposition in Japan has been very fearful of a revival of militarism in Japan and has sought to block or at least to contain any form of armament. At the same time, the opposition has resisted proposals for establishing organs for civilian control over the military because of the fear

\* I am grateful to the Fulbright Commission and the General Research Board of the University of Maryland for funding that facilitated this research. I am much indebted to Professors Satō Isao and Nishi Osamu for their suggestions. This paper was presented at the Twelfth World Congress of the International Political Science Association, Rio de Janeiro, August 9–14, 1982, in a panel organized by the IPSA Research Committee on Comparative Judicial Studies.

that such organs would legitimize the 'unconstitutional' military forces. The hope of abolishing the Self-Defense Forces by means of legislation and court appeals has thus inhibited the opposition from agreeing to the organization of civilian control agencies. How did this dilemma arise in the first place, and how has the Japanese political system managed to cope with it?

## 2. The origins of the dilemma

At the end of World War II, the two fundamental aims of the Allied Occupation of Japan were to ensure that Japan would never again become a threat to the Allies and that Japan be converted into a democracy.<sup>2</sup> The State-War-Navy Coordinating Committee (SWNCC), an interdepartmental body, formulated the specific United States policies which, with the concurrence of America's Allies, were to be enforced by the Supreme Commander for the Allied Powers (SCAP), Douglas MacArthur. SWNCC-228, 'Reform of the Japanese Governmental System', detailed the evils of dual government in prewar Japan, in which the military branch exercised authority at least equal with, and often superior to, that of the civilian branch. A basic purpose of Japan's constitutional reform, in Washington's view, was to ensure civilian control over the military. To accomplish this, according to SWNCC, there should be a provision in the constitution that all ministers of state be civilians, thus preventing the army and navy from controlling

the ministers of the Army and Navy Departments. Also, the Emperor's prerogative to command the military, which had been used by the military to evade control by the prime minister and cabinet, would have to be abolished.<sup>3</sup> (Articles XI and XII of the Imperial Constitution [1889], the Emperor's military command prerogatives, had been construed to mean that on military matters the Emperor was advised, not by the prime minister, but directly by the high command and the ministers of the army and navy. This system of the 'high command's access to the emperor' [*iaku jōsō*] made it difficult or impossible for the cabinet and the Diet to control the military. The army and navy ministers were required by an imperial ordinance to be high ranking generals or admirals, and when the policies or personnel of a cabinet or even of a proposed cabinet were unsatisfactory to the army or the navy, that branch of the service would not permit one of its officers to be a cabinet minister. The effect of this system sometimes seemed to give the military services the power of life or death over cabinets.)<sup>4</sup>

In February 1946, the reluctance of the Shidehara cabinet to come forward with a clearly democratic draft constitution stimulated MacArthur to direct his Government Section to prepare a model constitution as a basis for Japanese efforts. MacArthur stipulated that, among other things, the constitution should ban war 'even for preserving its own security' and the maintenance of military forces. The American drafters of the constitution, however, regarded the phrase 'even for preserving its own security' as 'unrealistic', and left it out of the constitutional ban on war and arms. Thus, at a very early stage of the formulation of the Japanese Constitution, MacArthur's original pacifistic language was toned down by his own staff.

The no-war, no-arms clause, MacArthur said in 1951, had been suggested to him by Prime Minister Shidehara, but many scholars doubt that Shidehara originally advocated to MacArthur that Japan renounce unilaterally in its constitution the maintenance of armed forces. Irrespective of who originally suggested

Article 9, it seems clear that such a revolutionary provision would never have been adopted without MacArthur's strong insistence.<sup>5</sup>

Following the publication of the SCAP-inspired draft by the Shidehara Cabinet as its own proposal, the Far Eastern Commission (the inter-Allied agency which made policy for the Occupation of Japan) adopted a policy on constitutional reform.<sup>6</sup> Like SWNCC-228, the Allied policy *did not* call for a constitutional ban on war and arms – indeed no mention whatsoever was made of military forces – but rather required that the constitution provide that all cabinet ministers be civilians. MacArthur's staff checked the FEC guidelines against their draft constitution and found that, although the latter did not provide for civilian ministers, such a provision would be unnecessary as Japan, which had been disarmed by the Allies, would have no military forces.<sup>7</sup> On August 19, 1946, MacArthur asked Prime Minister Yoshida to see to three modifications, including a civilian minister's provision, in the draft constitution to make it agree with FEC policy. The Japanese objected to the requirement that ministers be civilians, holding that it was unsuitable because there would be no military in Japan in the future as a result of Article 9. MacArthur agreed not to require the insertion of the civilian-ministers provision.

### 3. *The Ashida amendments*

While the draft constitution was under consideration in the House of Representatives, Ashida Hitoshi, then chairman of the lower house special committee on the constitution, proposed and obtained the adoption of some significant changes in the text of the no-war clause. As a result of the Ashida amendments, it appears to some people that paragraph 1 of Article 9 does not renounce all kinds of war, only war and the threat or use of force *as means of settling international disputes*. Thus war and the threat or use of force as means of self-defense might be permissible. The phrase at the beginning of paragraph 2, 'in order to accomplish the aim of the preceding paragraph', might be interpreted as qualifying the renunciation of land, sea, and air forces. Thus,

although armaments for settling international disputes are banned, armaments for other purposes, such as self-defense, are not renounced. When Ashida brought his amendments to Charles L. Kades, the deputy chief of Government Section, Kades made no objection. Dr. Cyrus Peake, an officer in Government Section, pointed out to General Courtney Whitney, the section's chief, that the Ashida amendment might mean that Japan could maintain defense forces, but Whitney saw nothing wrong in that. The Government Section's concurrence with the Ashida amendments was consistent with its earlier attitude that defense need not be expressly forbidden in the constitution. The amendments to Article 9 were passed by the House of Representatives.

The Chinese delegate to the Far Eastern Commission was outraged by the Ashida amendments. He asserted on September 21 that Article 9 as now altered was a trick by Japanese militarists to deceive the world into thinking that Japan was absolutely renouncing military forces when actually they were planning to rearm the country making use of the loop-hole created by the recent textual changes in the draft constitution.<sup>8</sup> On September 25, the FEC adopted a policy statement reiterating, among other things, its demand that all cabinet ministers be civilians.

By this time, the constitution revision bill was being debated in the House of Peers. In response to the repeated insistence of the Far Eastern Commission, MacArthur's staff persuaded key members of the House of Peers to insert a provision in the proposed constitution providing that all ministers of state be civilians.

The relevant committee members of the House of Peers complied with the SCAP request although they were very confused about its purpose. As there was no single Japanese word corresponding exactly with the English word civilian (meaning no more and no less), the committee, after long discussion, coined a neologism, *bunmin*, by combining the Chinese characters for literature and person.<sup>9</sup> The draft constitution including the amended Article 9 was approved by both houses of the Imperial

Diet and the Privy Council and was promulgated by the Emperor on November 3, 1946.

The provision that cabinet members should be civilian obviously implied the existence in some form or other of non-civilians. Many Diet members and scholars assumed that the purpose of the civilian-ministers clause was to prevent the former officers of Japan's prewar army and navy from becoming cabinet members. The Imperial Army and Navy had been abolished by Allied fiat – Japan was now completely disarmed – and the some 200,000 army and navy officers had been 'purged' (forbidden from holding public office). Presumably the civilian-ministers provision in the constitution would perpetuate the purge of these military people. In light of the constitutional ban on the maintenance of military forces, however, the civilian-ministers clause seemed inappropriate for inclusion in the constitution, a presumably permanent document that would be in effect long after the former imperial army and navy officers were no longer alive. It did, however, occur to a few, not many, of the Japanese and Americans involved in drafting the constitution that the civilian-ministers clause, so insisted upon by the Allied Powers, was deliberately intended to *anticipate the possibility* that Japan in the future would again have a military establishment. (Some observers have therefore concluded that the civilian-ministers clause *recognized the constitutionality of military forces* by providing for civilian control over them. Such indeed has been the view of Professor Ōhira Zengo.)<sup>10</sup>

#### 4. Ambiguities in Article 9

The official Japanese text of Article 9 makes it clear that 'as means of settling international disputes' applies to 'war' as well as to 'the threat or use of force'. I suggest the following translation in lieu of the official English version as a more accurate rendition of paragraph 1 of the Japanese text:

The Japanese people, aspiring sincerely to an international peace based on justice and order, renounce forever, as means of settling international disputes, war as a sovereign right of the nation and the threat or use of force.

Satō Tatsuo states that some Japanese scholars cite the official English translation in support of the view that paragraph 1 of Article 9 bans all wars including defensive wars. This, he says, is a misinterpretation that was not anticipated by those charged with preparing the official English version.<sup>11</sup> Although in the first sentence of paragraph 2, the official English version states 'will never be maintained', the Japanese text seems weaker: '*hoji shinai*' (are not, or will not, be maintained). The expression '*eikyū ni*' (in perpetuity) was removed by the House of Representatives committee apparently to permit Japanese participation in a United Nations force at some future time.<sup>12</sup>

What is the significance of the legislative history for the interpretation of Article 9? It appears that from the beginning to the end of the drafting and passage of the Constitution there was a tendency in public statements of the American and Japanese officials concerned to imply or state outright that the ban on armaments was absolute and that armaments even for defense were banned. At the same time, there existed among the most informed Japanese and Allied officials an awareness that defensive arms might be permissible under Article 9. If SCAP and Japanese Government officials and Diet members had been absolutely determined to eliminate the possibility that arms for defense might be permitted, they could have added the phrase 'even for the purpose of defense', but *they did not. Indeed, they did just the opposite.* The deletion of 'even for preserving its own security' by MacArthur's Headquarters, and the Ashida and civilian-ministers amendments in the Diet, opened the door for defensive armament.

Such ambiguity, as deplorable as it may seem to either the opponents or the advocates of defensive armament, is not at all uncommon in statutes, constitutions, and treaties. The politicians and statesmen who draft these documents are frequently quite aware of such ambiguities and deliberately tolerate or create them for practical purposes.

Some Japanese scholars assert that paragraph 1 bans defensive as well as offensive wars. Some assert that while paragraph 1 does not

explicitly ban defensive war, paragraph 2 bans all armaments, including defensive armament, making it impossible to fight a war of defense.

Some scholars assert that just as paragraph 1 does not forbid defensive war, paragraph 2 does not forbid defensive armament. Other authorities condemn the interpretation that Article 9 permits defensive war and arms because there is no sure way to distinguish between defense and aggression or between defensive and offensive weapons. Since aggression is nearly always justified as defense, they say, the 'hawkish' interpretation of Article 9 in essence deprives this most important provision of Constitution of any real meaning.<sup>13</sup>

The 'right of belligerency' that is renounced is also the subject of debate. Some writers say that this means the right of the state to go to war. Others assert that this refers to the rights that a belligerent enjoys under international law in time of war.<sup>14</sup>

### 5. *The constitutionality of the self-defense forces*

In 1950, following the Chinese Communist victory on the Asian mainland and the outbreak of the Korean war, MacArthur ordered the creation of the National Police Reserve in Japan. Within four years this became the Self-Defense Forces (SDF).

There have been three principal views about the significance of Article 9 for the Self-Defense Forces: (1) Any military forces, whatsoever, including defense forces, are unconstitutional. (2) Forces for exclusively defensive purposes are constitutional. (3) Defensive forces are not unconstitutional, but to clarify their legality (for purposes of improving troop indoctrination and mobilizing public support for defense), the Constitution ought to be amended.<sup>15</sup> The fact that constitutional amendment requires a two-thirds majority in both houses of the Diet and a majority of the vote in a referendum has made it impossible for the governing conservative party to amend the Constitution in the face of public support for Article 9. The government has therefore tended to interpret the Constitution loosely and has largely given up its efforts to amend it.

In the early 1950's the Japanese government took the position that the Constitution did not forbid 'armed forces without war potential'. (War potential meant 'forces which can effectively carry out contemporary warfare'.) When the SDF were established in 1954, the government held that 'such minimum forces as are absolutely necessary for self-defense may be constitutionally maintained'.<sup>16</sup>

Article 81 of the Japanese Constitution confers on the courts the authority to review the constitutionality of legislation. The ambiguities of Article 9 and the bitterness of the ongoing debate over the moral, economic, and strategic desirability of the SDF have resulted in repeated efforts to challenge the constitutionality of the Forces. In 1959, the Tokyo District Court in the Sunakawa case declared unconstitutional the 1951 U.S. - Japan Security Treaty, under which American forces were stationed in Japan. The Supreme Court overruled the lower court on the grounds that the case fell 'outside the right of judicial review by the courts, unless there is clearly obvious unconstitutionality or invalidity'.<sup>17</sup> The Supreme Court further found that the Constitution did not forbid Japan from requesting a guarantee of her security from another country nor did the Constitution forbid the stationing of foreign military forces in Japan. The Court did not pass judgement on the constitutionality of Japan's own SDF.

In the Eniwa case in 1967, the Sapporo District Court avoided having to rule on the constitutionality of the SDF Law by finding the defendants innocent. It was not until 1973, twenty-seven years after the enactment of the new Constitution, that a court ruled directly on the constitutionality of the SDF. In the Naganuma case, the Sapporo District Court explicitly denied the doctrine of the 'political question' cited by the government to avert the review of the constitutionality of the legislation in question. Instead, the court flatly declared unconstitutional the Self-Defense Forces Law and the Defense Agency Establishment Law. In his decision, Judge Fukushima Shigeo found that Article 9 bans all armament, including defensive weapons, and denies even the right

of belligerency. In view of their scale, equipment, and capability, he declared, Ground, Maritime, and Air Self-Defense Forces are land, sea, and air forces as mentioned in Article 9 and are therefore unconstitutional.<sup>18</sup>

The government appealed the case to the Sapporo High Court, which issued its decision nearly three years later, on August 5, 1976. Judge Ogō Yosoji overruled the decision of the District Court because the original plaintiffs in the case had no legal standing to sue. Their complaint had been that the establishment of an Air SDF missile base had deprived them of water supply and flood protection afforded by the forest preserve in which the base was built. However, the High Court found that the construction of suitable dams, etc. assured adequate water supply and flood protection and no one's rights had been harmed. Thus the case was settled without inquiring into the constitutionality of the SDF as the District Court had done.<sup>19</sup> Having overruled the district court decision that the SDF is unconstitutional, the Sapporo High Court has now left us without a legal ruling on the constitutionality of the Defense Forces.

### 6. *Justiciability*

The Sapporo High Court's decision included an obiter dictum that advocated the theory of the 'political question' (which limited the scope of judicial review) and pointed out the existence of opinions supporting as well as opposing the constitutionality of the SDF.

Although the obiter dictum has no legal force, it of course attracted wide attention and gave respectability to the views of the government and conservatives concerning the scope of judicial review and the constitutionality of the SDF. The Ogō opinion could possibly serve at a later date as a basis for decisions made by other courts, including the Supreme Court. The opinion, eloquently stated in Japanese, may be summarized as follows: The Japanese government consists of three branches, executive, legislative, and judicial. The first two branches (political branches) make policy, the judicial branch (courts)

applies laws to cases brought before it and cannot itself initiate policy. How Japan is to be defended is a matter that requires technical acquaintance with diplomacy, strategy, and military technology and involves the political responsibility of the government and of the Diet. Unless the laws creating the SDF and the Defense Agency are obviously at first sight unconstitutional, it is beyond the scope of the authority of the courts to review their constitutionality. There are two principal views concerning the constitutionality of the SDF. One holds that Article 9 does not permit armaments even for self-defense. The other view holds that defensive armaments are not forbidden by Article 9. Since it is not immediately and obviously clear that the SDF are unconstitutional, this is a matter outside the scope of judicial review. It is not the business of the courts to make defense policy but that of the cabinet and the Diet, and ultimately of the sovereign voters, to whom these organs are responsible.

The Ogō opinion reflected strongly the principles enunciated by the Supreme Court in the Tomabechi case (1960) outlining practical limits to the judicial authority, and the Sunakawa case (1959), concerning the doctrine of political questions, especially as regards the interpretation of Article 9. However, Ogō in effect carried the political question doctrine farther than the Supreme Court had done in 1959. In the Sunakawa Case, the Supreme Court had ruled that the U.S.-Japan Pact, a treaty with status in international law, was a political question, whereas Ogō applied the doctrine of the political question to two domestic laws. The Naganuma case concerned the constitutionality of Japan's own forces.

Some opponents of the SDF feared that the Ogō opinion might encourage conservatively inclined courts to go beyond merely refusing to judge the constitutionality of the SDF. The courts might actually adopt the government's argument, already made respectable in the Ogō opinion, that the SDF are constitutional. Thus the political question, used to avoid ruling on the SDF, might be dropped by conservative judges in favor of a positive decision that the

laws creating the SDF and Defense Agency are constitutional.<sup>20</sup>

Indeed, in 1977, the Mito District Court ruled, in connection with the Hyakuri Air Base controversy, that Article 9 did not go so far as to forbid wars of defense and defensive military forces. The court also found that the matter of whether or not the present Self-Defense Forces were offensive forces exceeding the limits required for defense was a political question outside the scope of judicial review.

In 1980, Professor Hashimoto Kiminobu, of Chuo University, published his theory of constitutional change. His idea is that as a result of the policies of the cabinet, the enactment by the Diet of laws creating the Self-Defense Forces and Defense Agency, judicial decisions, and popular perceptions, Article 9 now has a different meaning from what it formerly had. For this reason, the SDF, which Hashimoto had formerly believed were unconstitutional, are now constitutional. Mainstream constitutional law professors in Japan expressed keen concern that Hashimoto's theory would influence young law students and strengthen the already strong possibility that the Supreme Court would ultimately find the SDF constitutional (or at least not unconstitutional).<sup>21</sup>

The Naganuma case was appealed to the Supreme Court, which has not yet made a decision. There is speculation that the Supreme Court is reluctant to act because of the ongoing controversy about urgent American requests that Japan make a greater contribution to the common defense of the Free World.

Many informed observers believe that even in cases not involving Article 9, the Supreme Court for a number of years has deliberately construed its power of judicial review narrowly in order to avoid having to exercise such authority in connection with Article 9.<sup>22</sup> Indeed, the Supreme Court did not declare any statute unconstitutional during the first 26 years of its existence.<sup>23</sup> Beginning in 1973, it has declared several laws unconstitutional. Of course, even if the court did rule on the constitutionality of the SDF, it could cite the Ashida amendment as grounds for declaring that law constitutional.

Many Japanese have been concerned that the existence of the SDF in evident violation of the most notable provision of the Constitution could 'reduce public confidence in and respect for other constitutional provisions and guarantees and hence the constitutional system itself.'<sup>24</sup>

It should be noted that there is a substantial difference between the views of legal experts and of the general public on the constitutionality and desirability of maintaining the SDF. A poll taken in 1981 by the *Asahi Shinbun* (a leading Tokyo newspaper) showed that 61 percent of the public favored preserving the SDF at present levels and 22 percent favored strengthening the SDF. By contrast a poll administered by the *Hōritsu jihō* (a leading law journal) at about the same time showed that 45 percent of legal scholars favored abolishing the SDF and 15 percent favored reducing it. Thus 83 percent of the public favored preserving or increasing the SDF while 60 percent of legal experts favored abolition or reduction of the forces. The two polls also showed that while 17 percent of the public felt that the SDF were unconstitutional, 47 percent felt that they were not unconstitutional. By contrast, 71 percent of the legal experts believed that the forces were unconstitutional and only 27 percent found they were not unconstitutional.<sup>25</sup>

Any realistic political analysis must take into account the facts of public support of the SDF and of its constitutional legitimacy notwithstanding the views of legal specialists.

The scholars' views on the Constitution and defense seem to have changed very little over the past three decades while those of the public have changed very considerably. In face of the growing visibility of the constitution-revision movement headed by conservative former prime minister Kishi Nobusuke, legal scholars, pacifists, and progressives feel a sense of crisis. They wonder how they can 'defend the Peace Constitution' and prevent the revival of militarism and fascism now that public opinion is no longer supportive of their positions. (In Japan, 'defense of the Constitution' is the slogan used by progressives to prevent the amendment of the document. Most legal ex-

perts believe that Article 9, in which Japan *forever* renounces war and arms, may not be legally amended, or at the very least the pacific principle may not legally be expunged.)

Given the relative unpopularity of 'unarmed neutrality' among the Japanese voters today, this issue is not consistently and emphatically supported among any of the political parties except the Japan Socialists, and even they, in an effort to recruit coalition partners, have been softening their traditional stand. If the Supreme Court were to declare unconstitutional the law creating the SDF, it could provoke a confrontation with a government enjoying substantial electoral support. In such a situation, the government might feel obliged to sponsor the amendment of Article 9 in order to legitimize the SDF. Constitutional amendments require a two-thirds vote of all members of each house plus the approval of the majority of the voters in a national referendum. As Article 9 is supported by the overwhelming majority of the people (including many supporters of the SDF), the national debate over the constitutional amendment would be extremely divisive and, according to some observers, would in all likelihood result in resorts to violence. Such practical considerations no doubt have fostered the reluctance of the courts to rule on the constitutionality of the SDF and to take refuge in the doctrine of 'political questions'.

### *7. The opposition to rearmament*

It must be said that Article 9 was from the very beginning the most popular provision in Japan's postwar constitution. During World War II, not only were the Japanese Army and Navy defeated, but the civilian population suffered heavily from massive air attacks on Japanese cities, including the atomic bombing of Hiroshima and Nagasaki. The revival of militarism is widely feared, not only because of the possible involvement of Japan in another war but also because of the possible revival of oppressive, fascist government and distortions in the economy which militarism would cause.

The Japan Socialist Party charges that the SDF, even if vastly strengthened, would be incapable of defending Japan. Japan's cities

cannot be defended from aerial and naval attack, as was shown in World War II. Instead, the opposition believes, the real function of the SDF is to help the U.S. military in the Far East carry out the Pentagon's global strategy for the enhancement of American interests. Japan's rearmament, they charge, is provocative towards Japan's neighbors and carries the strong risk of converting the Japanese archipelago into a battleground for a war between the super-powers – a war in which Japan has no interest. A further danger alleged by the opposition is that the SDF might be mobilized to suppress the Japanese people. If a neutralist government was elected, for example, the SDF might carry out a coup d'état to install a regime friendly to it.

Socialists assert that the SDF and security treaty with the United States exist in violation of the Constitution, which, they say, clearly provides that Japan cannot maintain military forces (including defense forces) and cannot enter into collective defense arrangements with other countries. The only practical and only legal defense policy for Japan, they say, is unarmed neutrality. Japan's security can be ensured by nonmilitary means, including peace diplomacy and economic and cultural cooperation with other countries. It is almost unthinkable to them that, given Japan's peaceful orientation and geographic location, any other country would attack Japan, especially if its independence were guaranteed by a multilateral treaty signed by the United States, the Soviet Union, China, and Japan.<sup>26</sup> (The alleged threat of international communism and the Soviet Union were used by the militarists as pretexts for Japan's invasion of China in the 1930's with disastrous results. The Socialists say that the Japanese people should turn a deaf ear to the anti-Soviet and anti-Communist propaganda emanating from the Pentagon and Japanese reactionaries who apparently want Japan to repeat the disastrous mistakes of the 1930's.) Recently Japanese opponents of rearmament have been citing America's commitment to defend Japan under the U.S.-Japan security treaty as a deterrent to invasion, making unnecessary a Japanese military build-up. It

might, however, be said that the policy of *unarmed* neutrality is pursued by no important country in the world and is difficult for most foreign observers to understand.<sup>27</sup>

In the late 1950's and early 1960's Japan appeared to have a two-party system. The Japan Socialists looked forward to taking over the government in the early or late 1960's, and then they would be able to terminate the security treaty with the United States and abolish the Self-Defense Forces. The policy of the Liberal Democratic Party (LDP) to revise the Constitution to legitimize the Self-Defense Force was unpopular, and the Japan Socialists found this issue more effective than economic or ideological issues to capture votes. Although the Liberal Democrats lost ground in the 1960's in terms of popular votes and Diet seats, the Japan Socialists were unable to benefit from the Liberal Democratic decline partly because of the rise of the third parties: the democratic Socialist, the Komeito, and the Communist. The failure of the Japan Socialists to capture widespread support outside of the Sohyo-affiliated labour unions has resulted in the continuance in power of the conservative, pro-American governments that have progressively increased military spending and supported the alignment with America. While the public has been unenthusiastic about the LDP's security policies, thus far these policies have not been sufficiently unpopular to enable the Japan Socialists to capture a majority in the Diet or to set up a Socialist-led coalition government.

#### 8. *Civilian control in Japan today*

Since World War II, probably the most dramatic demonstration of civilian control for Japanese as well as Americans was the dismissal of General Douglas MacArthur in 1951 as commander of the U.N. forces in Korea, Supreme Commander for the Allied Powers, and Commander in Chief of the Far East Command.<sup>28</sup> MacArthur had been the absolute ruler of Japan for nearly five years and his role in the enactment of Japan's 'Peace Constitution' had been crucial. Some Western commentators hailed the firing of MacArthur as a

fine object lesson for the militaristic Japanese on the meaning of civilian control. Both before and after his dismissal, MacArthur advocated that all nations renounce war and arms in their constitutions as Japan had done.<sup>29</sup> Samuel P. Huntington, a leading authority on civil-military relations, has hailed MacArthur as 'the nation's most eloquent advocate of the abolition of war.'<sup>30</sup> In 1951, however, President Truman and much of the American public seem to have been less impressed with MacArthur's pacifist rhetoric than with his public advocacy of enlarging the Korean war.

The literature on civilian control has proliferated greatly in Japan during the past five years, and articles on the topic have been written by constitutional experts on both sides of the rearmament issue. This literature, almost exclusively in Japanese, is virtually unknown outside of Japan. The Japanese often use the English expression *civilian control* (*shibirian kontorōru*) instead of the Japanese equivalent *bunmin tōsei*, seeming to imply that the subject is one of concern to other democratic countries besides Japan. 'Civil-military relations', a topic favored by American analysts, is of less concern to the Japanese, whose historical experience with militaristic excess has not disposed them to emphasize the rights and authority of the military.

The Constitution stipulates that all ministers of state be civilians, so that both the prime minister, who has supreme command of the SDF, and the minister of state serving as director general of the Defense Agency are both civilians. Officers in the Self-Defense Forces are not considered to be civilians under the government's interpretation of the Constitution. The prime minister of Japan is selected by the two houses of the Japanese Diet. Within the Defense Agency, civilian officials control the SDF. The Diet exercises the power to make laws concerning defense matters, including the appropriation of funds. The Diet passes on treaties.

According to the law establishing the SDF (1954), when the prime minister mobilizes the SDF, the Diet must give its approval either before or after the fact. (The Constitution

makes no provision for the declaration of war.) In matters of defense policy and the mobilization of the SDF, the prime minister is advised by the National Defense Council, which consists of the prime minister (chairman), the deputy prime minister, the director of the Defense Agency, the foreign minister, the finance minister, and the director of the Economic Planning Agency. Assisting the civilian director general of the Defense Agency are a parliamentary vice minister and an administrative vice minister (both civilians) and ten civilian councillors, who fill the posts of director generals of the secretariat and other internal bureaus.<sup>31</sup>

Because the prime minister is a civilian responsible to the Diet, which is elected by the people, the commander of the SDF is ultimately responsible to the people of Japan. Thus, the conservatives claim, civilian control and democratic processes are assured.

The National Defense Council meets so seldom that there are real questions as to its usefulness as an organ of civilian control. It met only fifty times in the twenty-five years from 1946 to 1981 – on the average twice a year. There have been seven years in which it met only once during the year and seven years when it did not meet at all, even when urgent international crises would seem to require meetings. Most of the members seem not greatly interested in strategic questions and largely confine their discussions to the scale of military build-up and the defense budget.<sup>32</sup>

From a pacifist point of view, this system of civilian control in Japan is very unsatisfactory. In addition to legitimizing the SDF, it gives the cabinet control over the armed forces. Since 1948, the cabinet has been consistently conservative and since 1952 it has been favorably disposed to rearmament. The conservatives, many of whom favor the repeal or radical amendment of Article 9, cannot, it is said, be trusted to keep the military in check. Until 1980 there was no standing committee on national defense in either house of the Diet. The Socialists and other opposition parties opposed the creation of such a committee for fear that it would further serve to legitimize the SDF.

The question has arisen about what the SDF should or would do at the moment that it was attacked without forewarning by a foreign military force. Would it have to await the decision of the prime minister before it could fight back in self-defense? In 1978, Kurisu Kiroomi, Chairman of the Joint Staff Council, said that in such a situation, 'It is possible that the frontline commanders would first take supralegal action on their own.'<sup>33</sup> The suggestion of such action, which would at least temporarily release the SDF of governmental control, provoked a fury in the Diet, and Kurisu was forced to resign. In the meantime, the government has been considering 'emergency legislation' that would provide for the contingencies of the sort envisaged by Kurisu. Needless to say, these legislative proposals have been the target of strong criticism by socialists, pacifists, and constitutional lawyers.

### 9. *The meaning of civilian control*

Even though it may be possible to agree on civilian control as a matter of principle, there are bound to be basic differences of view concerning (1) the purposes and definition of civilian control and (2) the forms of civilian control. Everyone of course agrees that civilian control must conform to constitutional requirements. At the same time, it would seem almost inevitable that the opponents of rearmament see civilian control as a means to eliminate or reduce so far as possible the military establishment when appeals to the courts to abolish the SDF have proven successful and are likely to be unsuccessful in the future. Pacifists regard the constitutional abolition of defensive as well as offensive military forces as civilian control *par excellence*. Pacifists would define civilian control to include the democratization of the military to the point that morale and discipline are destroyed and the military rendered useless as a fighting force. The 'human rights' of soldiers to bargain collectively, trial by civilian courts, etc., have been asserted as essential elements of civilian control. Article 76 of the Constitution is said to prohibit court martials. Proposed laws con-

cerning the 'right to know' might deprive the military of the ability to keep secrets and to make or carry out plans. The people's 'right to live in peace', mentioned in the preamble of the Constitution, may be cited in the Diet or the courts to prohibit gunnery practice, the practice of military maneuvers, or the acquisition of land for military purposes. It has been proposed that in an organ of the Diet exercising oversight over the military, the minority parties be given a power of veto, thus enabling the Communists or Socialists to frustrate the will of the majority in defense matters. The forms of civilian control favored by conservatives and the forms favored by progressives and pacifists thus vary considerably. The problem is: 'Which civilians are to do the controlling?'<sup>34</sup> The present structure of the Defense Agency, it is charged, provides for *bureaucratic* control, rather than *civilian* control.<sup>35</sup>

The government interprets the Constitution to mean that the 'war potential' banned by the Constitution does not include the minimum armament necessary for Japan's self-defense. Thus Japan may arm defensively, but minimally. Japan, therefore, may not have offensive weapons and may not dispatch armed personnel to engage in military action abroad. Nuclear weapons *for defense* are not prohibited by Article 9 according to the government. However, the Nuclear Non-Proliferation Treaty, ratified by Japan in 1976, prohibits Japan from possessing nuclear weapons. Japan's policy of the 'three nuclear principles' means that there will be 'no possession, no manufacture, and no introduction of nuclear weapons in Japan'. The U.S.-Japan treaty clearly does not commit Japan to defend America but does commit America to defend Japan. (The view of the government is that the Constitution prohibits Japan from entering into collective defense agreements.)

It is the prevailing view both in and out for the government in Japan that conscription is not permissible under the Constitution, which forbids involuntary servitude, except as punishment of crime (Article 18). Japan's postwar Constitution is very different from West Germany's Basic Law, also written under

Allied tutelage. In West Germany, armament is not constitutionally banned, and conscription has been instituted.

#### 10. *Recognizing the reality*

By 1980, it appeared that, notwithstanding constitutional provisions as interpreted by socialists and the majority of constitutional lawyers, the SDF was here to stay. The SDF, which had been created in 1954, and its predecessors, the National Police Reserve and the Security Forces, had been in existence for nearly thirty years. The courts were not definitively ruling the SDF unconstitutional; the opposition parties were not sufficiently strong or united to throw out the pro-SDF governing party, and public opinion polls showed an increasing public acceptance of the SDF, so that only a small minority of the people advocated their outright abolition. As the possibility of either litigating or legislating the SDF out of existence seemed increasingly remote, it was becoming urgent to establish more effective control over SDF. Although the pacifists and socialists were not ready to give up the struggle to abolish the SDF, they were more open minded than previously to the idea of setting up instrumentalities for civilian control.

In addition to the growing realization that the demise of the SDF was only a remote legal and political possibility, there were other considerations pushing the socialists and pacifists in the direction of civilian control in 1980. These factors were both international and domestic.

Internationally, the credibility of the American defense commitment to Japan was increasingly questioned by the public, as was shown in public opinion polls. The announcement of the Nixon doctrine, the U.S. military withdrawal from South Vietnam in 1973, followed by the collapse of South Vietnam in 1975, suggested that the United States was in the course of pulling out of Asia. This impression was heightened by President's Carter's announced policy of withdrawing American Forces from South Korea. The matter of Japan's defense could no longer be dismissed as a purely American problem. In the late

1970's, the movement led by former Prime Minister Kishi Nobusuke aimed at amending Article 9 to permit rearmament was gaining support.<sup>36</sup>

In 1979, the Soviet Union greatly strengthened its military bases in the northern islands which it had occupied at the end of the war and which Japan claimed as rightfully hers. The arrest and conviction of three SDF officers for passing military secrets to Soviet intelligence in early 1980 enhanced the view that the Soviet Union was no friend of Japan. The Soviet invasion of Afghanistan was a shock to the peace-loving countries of the world, including Japan. Some Japanese, however, were almost as frightened by the American reaction against the Soviet as by the Soviet invasion. They hoped that President Carter would not 'revive the Cold War' in response to the Afghanistan affair. Regardless of whether or not one agreed with the American reaction, including the Olympics boycott, the sense of international crisis, which endangered the peace and security of Japan, was in the air. Books and magazine articles on World War III proliferated, and a debate between Professors Morishima Michio and Seki Yoshihiko on what Japan should do in the event of a Russian invasion raged for several months in journals read by the intellectuals and middle class.<sup>37</sup> Such a debate would have been almost unthinkable in the 1960's and early 1970's, when intellectuals overwhelmingly favored unarmed neutrality as Japan's foreign policy.

The domestic political picture has also tended to favor a resolution of the dilemma concerning constitutional disarmament versus civilian control. The gradual decline of the governing Liberal Democratic Party has meant that it could usually win at best only a paper-thin majority of seats in either house. The strong possibility that the LDP might lose its parliamentary majority encouraged the Japan Socialist Party to make plans for establishing a Socialist-led coalition government. However, in 1980, as the opportunity for forming a left or left-center coalition cabinet became more imminent, the disputes among the opposition parties were not being satisfactorily resolved.

Most notable were the incompatibilities between the Democratic Socialists (DSP) and the Japan Communists (JCP). The DSP doubted whether the JSP was really committed to the democratic system of government and threatened not to participate in any coalition with the JCP. The JCP regarded the DSP as a conservative party that had sold out the interests of the proletariat. Late in 1979 and early 1980, the JSP, DSP, and Komeito (affiliated with the Buddhist Soka Gakkai) made agreements to form a coalition regime that would exclude the Communists. To organize a cooperative campaign in the elections held in the summer of 1980, the three parties making up the potential coalition tried to reconcile their differences on security issues, most importantly the Self-Defense Forces and the security treaty with the United States. This meant that the adamant Socialist opposition to setting up machinery for civilian control softened to accord better with the moderate stands of the Komeito and DSP.

Thus a dramatic break-through occurred in February, 1980. The Japan Socialists agreed to participate in a special committee on national security in the House of Representatives. The new committee began its work almost immediately, providing an official public forum for the discussion of strategic problems.

The landslide victory of the Liberal Democratic Party in the upper and lower house elections held simultaneously in June, 1980, seemed to suggest strongly that the policy of 'unarmed neutrality' advocated by the Socialist Party for thirty years had very little appeal to most Japanese and that the government's policy of cautious rearmament under civilian control enjoyed growing popular support.

The Japanese government asserts that 'the SDF is under strict civilian control as in other democratic nations. This is entirely different from the system under the previous (1889) Japanese Constitution'.<sup>38</sup>

On the other hand, Samuel Huntington, writing in 1964, is pessimistic about establishing civilian control in postwar Japan. He says that, although Japan's contemporary ideology is strongly pacifist, it is, like the prewar belli-

cose nationalism, hostile to military professionalism. The absence of a professional military tradition and the influence of American ideas and practices are likely to complicate further the achievement of objective civilian control. Huntington says that 'the odds would appear to favor the emergence in Japan of a system of civil-military relations differing in appearance but not in essentials from that which prevailed prior to 1945'.<sup>39</sup>

Professor James Buck, commenting on Huntington's projection, writes, 'To date there is no evidence to suggest this state of affairs will come to pass. On the other hand, given Japan's history, it is probably unwise to judge prematurely'.<sup>40</sup>

In the meantime, the Japanese Supreme Court has not yet made its decision on the Naganuma case. Until it does, the constitutionality of the Self-Defense Forces remains in doubt. The thirty-year controversy over the interpretation of constitutional disarmament and civilian control in Japan has become enmeshed with the definition of the scope of judicial review and the nature of 'political questions'.

#### NOTES AND REFERENCES

1. *Asahi Nenkan*, 1981, Supplement, p. 303.
2. 'Basic Initial Post-Surrender Directive to Supreme Commander for the Allied Powers for the Occupation and Control of Japan', transmitted to MacArthur by Joint Chiefs of Staff, November 3, 1945, in Supreme Commander for the Allied Powers, *Political Reorientation of Japan* (Washington, D.C.: U.S. Government Printing Office, n.d.), II, 428-439.
3. Text of SWNCC-228 in Theodore McNelly, ed., *Sources in Modern East Asian History and Politics* (New York: Irvington, 1967), pp. 177-186.
4. Tatsuji Takeuchi, *War and Diplomacy in the Japanese Empire* (Garden City, N.Y.: Doubleday, Doran, 1935), pp. 14-16, 28-30. Also Kenneth Colegrove, 'Militarism in Japan's Foreign Policy', *The Annals of the American Academy of Political and Social Science*, Vol. 215 (May 1941), p. 7-16.
5. For recently discovered evidence on the genesis of the disarmament clause, see Theodore McNelly, 'The Origins of Article 9', *Hōritsu Jihō*, Vol. 51, No. 6 (May, 1979), pp. 256-260, in English, pp. 178-181 in Japanese. Also

- Yomiuri Shinbun*, April 29, 1980, pp. 1, 15, and my 'General MacArthur and the Constitutional Disarmament of Japan', to be published in 1982 in *Transactions of the Asiatic Society of Japan*.
6. In *Political Reorientation*, II, 661.
  7. GHQ, SCAP, Government Section Memorandum for the Record, 10 July 1946, Subject: FEC Basic Principles for the New Japanese Constitution (W-93298). (I am indebted to Dr. Cyrus Peake for supplying me a copy of this document).
  8. Verbatim record of the 27th meeting of the Far Eastern Commission, 21 September 1946, National Archives, Washington, D.C.
  9. Miyazawa Toshiyoshi, *Nihonkoku kenpō* (Tokyo: Nihon Hyōronsha, 1955), supplementary volume, pp. 328-332.
  10. Ōhira Zengo, 'Shibirian kontorōru tokushūgō ni daishite, 'Bōeihō kenkyū', Vol. 3 (May, 1979), pp. 1-2.
  11. Satō Tatsuo, *Nihonkoku kenpō tanjōki* (Tokyo: Ōkurasho Insatsukyoku 1957), pp. 194-201.
  12. Satō, p. 137.
  13. For the contrasting views of Professors Kobayashi and Itō Masami, see Tanaka Hideo, *The Japanese Legal System: Introductory Cases and Materials* (Tokyo: Tokyo University Press, 1976), pp. 698-707.
  14. For a discussion of this point see Satō Seizaburō, 'Meaningless Insistence on the Right of Belligerency', *Japan Echo*, Vol. VIII, No. 2 (Summer 1981), pp. 94-103.
  15. John M. Maki, transl. and ed., *Japan's Commission on the Constitution: The Final Report* (Seattle: University of Washington Press, 1980), pp. 260-272.
  16. Tanaka, p. 702.
  17. John M. Maki, ed., *Court and Constitution in Japan: Selected Supreme Court Decisions, 1948-60* (Seattle: University of Washington Press, 1964), p. 306.
  18. The complete Japanese text of the Naganuma Nike base decision of 1973 is printed in *Jurisuto*, No. 549 (December 1, 1973), pp. 83-151. A very brief summary in English is contained in *Law in Japan: An Annual*, Vol. 6 (1973), pp. 175-176.
  19. The text of the Ogō decision in Japanese is published in *Hanrei jihō*. No. 821 (September 21, 1976), pp. 21-24.
  20. For a review of the issues at stake, see Wada Hideo, 'Naganuma kōsoshin hanketsu o meguru shiten to mondaiten', *Hanrei jihō*, No. 821 (September 21, 1976), pp. 3-8.
  21. Hasegawa Masayasu, 'Dai kyūjū o meguru kanpōgaku no henshen', *Hōgaku seminā*, Vol. 24, No. 8 (August, 1980), pp. 34-39. Hashimoto's theory suggests the 'experiential approach', which has become more or less accepted in American constitutional interpretation. See C. Herman Prichett, *The American Constitution*. Second edition (New York: McGraw-Hill, 1968), pp. 49-50.
  22. Herbert F. Bolz, 'Judicial Review in Japan: The Strategy of Restraint', *Hastings International and Comparative Law Review*, Vol. 4, No. 1 (Fall, 1980), pp. 87-142, esp. pp. 104 and 112.
  23. Concerning political questions in Japan before 1967, see Yokota Kisaburo, 'Political Questions and Judicial Review: A Comparison', Dan Fenno Henderson, ed., *The Constitution of Japan: Its First Twenty Years, 1947-67* (Seattle, Washington: University of Washington Press, 1968), pp. 141-166. On more recent developments, see Tokikuni Yasuo, 'Procedures for Constitutional Litigation and Judgements of Constitutionality', *Law in Japan: An Annual*, Vol. (1980), pp. 1-19.
  24. John M. Maki, 'The Japanese Constitutional Style', in Henderson, op. cit., pp. 3-29.
  25. Hasegawa Masayasu, 'Seron no bunretsu to kenpō no kiki', *Hōgaku seminā*, Vol. 25, No. 8 (August, 1981), pp. 2-6.
  26. A leading advocate of this line of thought, prevailing among Japan's progressive intellectuals, is Kobayashi Naoki. See for example his 'Gendai Nihon bōei no kihon zentei', in *Hōgaku seminā*, Vol. 7 (October, 1978), pp. 16-25.
  27. For example, see Theodore McNelly, "'Peace Constitutions' Can't Bring End to World's Wars', in *Japan Times* (Tokyo), June 8, 1980, p. 12, and the same author's 'Constitutional Disarmament and the Global Abolition of War: The Meaning of the Japanese Experience', in Howard Federspiel, ed., *Southeast Conference Association for Asian Studies Annals*, Vol. III (20th Annual Meeting, January 22-24, 1981, Lexington, Virginia), obtainable from the editor, Ohio State University, Newark, Ohio.
  28. 'I realized with admiration how firmly established was civilian control of the armed forces in the American system of government. I could not help contrasting this with the Japanese government before and during the war'. Takeyama Michio, critic, cited in Asahi Shinbun, *The Pacific Rivals: A Japanese View of Japanese-American Relations* (New York and Tokyo: Weatherhill/Asahi, 1972), p. 202.
  29. After the outbreak of the Korean war, however, MacArthur insisted that the 'abolition of war' could not mean 'the abandonment of all armed forces but it would reduce them to the simpler problems of internal order and international police'. (General MacArthur's addresses on June 11, 1961, at Michigan State University and July 5, 1961 to the Congress of the Philippines, printed in *Representative Speeches of General of the Army Douglas MacArthur* (Washington, D.C.: U.S. Government Printing

- Office, 1964), pp. 90-95, 97-100).
30. Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (New York: Vintage Books, 1964), p. 372.
  31. Bōeicho, ed., *Bōei hakusho* (Tokyo: Ōkurasho Insatsukyoku, August 1980), p. 33.
  32. Nishi Osamu, 'Shibirian kontorōru: Amerika no hikaku o tsūjite', *Hōrei kaisetsu shiryō sōran*, No. 14 pp. 99-115.
  33. *Japan Echo*, Vol. V., No. 4 (Winter 1978), p. 6. The chairman of the Joint Staff Council in Japan corresponds to the chairman of the Joint Chiefs of Staff in the United States.
  34. Huntington, p. 81.
  35. Comments by Ian Gow, speaking at the University of Maryland, April 22, 1982.
  36. On the implications of such an amendment, see Satō Isao, 'Debate on Constitutional Amendment: Origins and Status', *Law in Japan: An Annual*, Vol. 12 (1979), pp. 1-22.
  37. For a bibliography of the Morishima-Seki debate, see *Asahi Nenkan*, 1980, p. 561. An analysis of this debate is carried in *Japan Echo*, Vol. VII, No. 1 (Spring, 1980), pp. 63-68.
  38. *The Defense of Japan, 1980* [The Defense White Paper] (Tokyo: Japan Times, n.d.), p. 87.
  39. Huntington, p. 139.
  40. James H. Buck, 'Civilian Control of the Military in Japan', in Claude E. Welch, Jr. ed., *Civilian Control of the Military: Theory and Cases from Developing Countries* (Albany, N.Y.: State University of New York Press, 1976), pp. 149-185.

### *Postscript*

Since the accompanying article was written, in November, 1982, Mr. Nakasone Yasuhiro became prime minister of Japan and in January 1983 he visited the United States and assured President Reagan that Japan would increase its defense efforts. Mr. Nakasone had been an active member of the Commission on the Constitution created by the Japanese Diet to examine the origins, operation, and possible revision of the postwar Japanese Constitution. The Commission was engaged in its investigation from 1957 until 1964, when it published its comprehensive final report. Nakasone was especially conscious of the origins and interpretations of the Ashida amendment and holds that the Constitution permits Japan "to maintain the minimum necessary defensive power." (See Nakasone's article on Japan's comprehensive security in English translation in *Japan Echo*, Vol. V, No. 4 [Winter 1978], originally appearing in *Seiron*, September, 1978.)

Nakasone, long the leader of a major faction of the Liberal Democratic Party, served as director general of the Defense Agency (i.e., Minister of Defense) in the Sato Cabinet from January 1970 to July 1971. It was in November 1970 that the famous author Mishima Yukio unsuccessfully appealed to members of the Self-Defense forces in Tokyo to carry out a coup d'etat and bring about the repeal of the disarmament clause of the Constitution. Mishima then committed harakiri. Although Mishima was regarded as an eccentric with no substantial political following in Japan, his suicide stimulated a serious discussion of Japan's defense posture.

Nakasone has advocated the amendment of the Constitution to clarify the legality of the SDF and has advocated an increase in defense expenditures. However, it is not expected that he will actively press for constitutional revision or for huge military increases, given the continuing popularity of Article 9 and the government's fiscal problems.

On the origins of Article 9 see my "General Douglas MacArthur and the Constitutional Disarmament of Japan," in the *Transactions of the Asiatic Society of Japan*, Third Series, Vol. XVII, Tokyo, 1982, pp. 1-33. This paper is supplemented in the same issue with an extended commentary by Charles L. Kades, the principal drafter of Article 9 in MacArthur's headquarters.



***Occasional Papers/Reprints Series  
in Contemporary Asian Studies***

500 West Baltimore Street  
Baltimore, MD. 21201  
U.S.A.  
(301) 528-3870

***1977 Series***

- |  |                       |                           |
|--|-----------------------|---------------------------|
| <b>No. 1 - 1977</b>  | <b>ISSN 0730-0107</b> | <b>ISBN 0-942182-00-6</b> |
| Chinese Attitude Toward Continental Shelf and Its Implication on De-<br>limiting Seabed in Southeast Asia (Hungdah Chiu) 32 pp.      |                       | \$1.00                    |
| <b>No. 2 - 1977</b>  | <b>ISSN 0730-0107</b> | <b>ISBN 0-942182-01-4</b> |
| Income Distribution in the Process of Economic Growth of the Republic<br>of China (Yuan-Li Wu) 45 pp.                                |                       | \$1.00                    |
| <b>No. 3 - 1977</b>  | <b>ISSN 0730-0107</b> | <b>ISBN 0-942182-02-2</b> |
| The Indonesian Maoists: Doctrines and Perspectives (Justus M. van der<br>Kroef) 31 pp.   |                       | \$1.00                    |
| <b>No. 4 - 1977</b>  | <b>ISSN 0730-0107</b> | <b>ISBN 0-942182-03-0</b> |
| Taiwan's Foreign Policy in the 1970s: A Case Study Adaptation and<br>Viability (Thomas J. Bellows) 22 pp.                            |                       | \$1.00                    |
| <b>No. 5 - 1977</b>  | <b>ISSN 0730-0107</b> | <b>ISBN 0-942182-04-9</b> |
| Asian Political Scientists in North America: Professional and Ethnic<br>Problems (Edited by Chun-tu Hsueh) 148 pp. Index             |                       | \$3.00                    |
| <b>No. 6 - 1977</b>  | <b>ISSN 0730-0107</b> | <b>ISBN 0-942182-05-7</b> |
| The Sino-Japanese Fisheries Agreement of 1975: A Comparison with<br>Other North Pacific Fisheries Agreements (Song Yook Hong) 80 pp. |                       | \$2.00                    |
| <b>No. 7 - 1977</b>  | <b>ISSN 0730-0107</b> | <b>ISBN 0-942182-06-5</b> |
| Foreign Trade Contracts Between West German Companies and the<br>People's Republic of China: A Case Study (Robert Heuser) 22 pp.     |                       | \$1.00                    |

No. 8 - 1977                      ISSN 0730-0107                      ISBN 0-942182-07-3  
Reflections on Crime and Punishment in China, with Appended Sentencing Documents (Randle Edwards, Translation of Documents by Randle Edwards and Hungdah Chiu) 67 pp.                      \$1.00

No. 9 - 1977                      ISSN 0730-0107                      ISBN 0-942182-08-1  
Chinese Arts and Literature: A Survey of Recent Trends (Edited by Wai-lim Yip) 126 pp.                      \$3.00

No. 10 - 1977                      ISSN 0730-0107                      ISBN 0-942182-09-X  
Legal Aspects of U.S.-Republic of China Trade and Investment — Proceedings of a Regional Conference of the American Society of International Law (Edited by Hungdah Chiu and David Simon) 217 pp. Index                      \$5.00

No. 11 - 1977                      ISSN 0730-0107                      ISBN 0-942182-10-3  
Asian American Assembly Position Paper: I. A Review of U.S. China Relations 62 pp.                      \$1.00

No. 12 - 1977                      ISSN 0730-0107                      ISBN 0-942182-11-1  
Asian American Assembly Position Paper: II. A Review of U.S. Employment Policy 24 pp.                      \$1.00

*1978 Series*

No. 1 - 1978 (13)                      ISSN 0730-0107                      ISBN 0-942182-12-X  
Indian Ocean Politics: An Asian-African Perspective (K.P. Misra) 31 pp.                      \$1.00

No. 2 - 1978 (14)                      ISSN 0730-0107                      ISBN 0-942182-13-8  
Normalizing Relations with the People's Republic of China: Problems, Analysis, and Documents (Edited by Hungdah Chiu, with contribution by G. J. Sigur, Robert A. Scalapino, King C. Chen, Eugene A. Theroux, Michael Y.M. Kau, James C. Hsiung and James W. Morley) 207 pp. Index                      \$3.00

No. 3 - 1978 (15)                      ISSN 0730-0107                      ISBN 0-942182-14-6  
Growth, Distribution, and Social Change: Essays on the Economy of the Republic of China (Edited by Yuan-li Wu and Kung-chia Yeh) 227 pp. Index                      \$3.00

No. 4 - 1978 (16)                      ISSN 0730-0107                      ISBN 0-942182-15-4  
The Societal Objectives of Wealth, Growth, Stability, and Equity in Taiwan (Jan S. Prybyla) 31 pp.                      \$1.00

- No. 5 - 1978 (17)**                      **ISSN 0730-0107**                      **ISBN 0-942182-16-2**  
The Role of Law in the People's Republic of China as Reflecting Mao  
Tse-Tung's Influence (Shao-Chuan Leng) 18 pp.                      \$1.00
- No. 6 - 1978 (18)**                      **ISSN 0730-0107**                      **ISBN 0-942182-17-0**  
Criminal Punishment in Mainland China: A Study of Some Yunnan  
Province Documents (Hungdah Chiu) 35 pp.                      \$1.00
- No. 7 - 1978 (19)**                      **ISSN 0730-0107**                      **ISBN 0-942182-18-9**  
A Guide to the Study of Japanese Law (Lawrence W. Beer and Hidenori  
Tomatsu) 45 pp.                      \$2.00
- No. 8 - 1978 (20)**                      **ISSN 0730-0107**                      **ISBN 0-942182-19-7**  
The Pueblo, EC-121, and Mayaguez Incidents: Some Continuities and  
Changes (Robert Simmons) 40 pp.                      \$2.00
- No. 9 - 1978 (21)**                      **ISSN 0730-0107**                      **ISBN 0-942182-20-0**  
Two Korea's Unification Policy and Strategy (Yong Soon Yim) 82 pp.  
Index                      \$2.00

*1979 Series*

- No. 1 - 1979 (22)**                      **ISSN 0730-0107**                      **ISBN 0-942182-21-9**  
Asian Immigrants and Their Status in the U.S. (Edited by Hungdah  
Chiu) 54 pp.                      \$2.00
- No. 2 - 1979 (23)**                      **ISSN 0730-0107**                      **ISBN 0-942182-22-7**  
Social Disorder in Peking After the 1976 Earthquake Revealed by a Chi-  
nese Legal Documents (Hungdah Chiu) 20 pp.                      \$2.00
- No. 3 - 1979 (24)**                      **ISSN 0730-0107**                      **ISBN 0-942182-23-5**  
The Dragon and the Eagle — A Study of U.S.-People's Republic of  
China Relations in Civil Air Transport (Jack C. Young) 65 pp.                      \$3.00
- No. 4 - 1979 (25)**                      **ISSN 0730-0107**                      **ISBN 0-942182-24-3**  
Chinese Women Writers Today (Edited by Wai-lim Yip and William  
Tay) 108 pp.                      \$3.00
- No. 5 - 1979 (26)**                      **ISSN 0730-0107**                      **ISBN 0-942182-25-1**  
Certain Legal Aspects of Recognizing the People's Republic of China  
(Hungdah Chiu) 49 pp.                      \$2.00
- No. 6 - 1979 (27)**                      **ISSN 0730-0107**                      **ISBN 0-942182-26-X**  
China's Nationalization of Foreign Firms: The Politics of Hostage Capi-  
talism, 1949-1957 (Thomas N. Thompson) 80 pp. Index                      \$3.00

**No. 7 - 1979 (28)**                      **ISSN 0730-0107**                      **ISBN 0-942182-27-8**  
U.S. Status of Force Agreement with Asian Countries: Selected Studies  
(Charles Cochran and Hungdah Chiu) 130 pp. Index                      \$2.50

**No. 8 - 1979 (29)**                      **ISSN 0730-0107**                      **ISBN 0-942182-28-6**  
China's Foreign Aid in 1978 (John F. Copper) 45 pp.                      \$2.00

***1980 Series***

**No. 1 - 1980 (30)**                      **ISSN 0730-0107**                      **ISBN 0-942182-29-4**  
The Chinese Connection and Normalization (Edited by Hungdah Chiu  
and Karen Murphy) 200 pp. Index                      \$5.00

**No. 2 - 1980 (31)**                      **ISSN 0730-0107**                      **ISBN 0-942182-30-8**  
The Conceptual Foundations of U.S. China Policy: A Critical Review  
(James C. Hsiung) 17 pp.                      \$1.00

**No. 3 - 1980 (32)**                      **ISSN 0730-0107**                      **ISBN 0-942182-31-6**  
Policy, Proliferation and the Nuclear Proliferation Treaty: U.S. Strate-  
gies and South Asian Prospects (Joanne Finegan) 61 pp.                      \$2.50

**No. 4 - 1980 (33)**                      **ISSN 0730-0107**                      **ISBN 0-942182-32-4**  
A Comparative Study of Judicial Review Under Nationalist Chinese and  
American Constitutional Law (Jyh-pin Fa) 200 pp. Index                      \$3.50

**No. 5 - 1980 (34)**                      **ISSN 0730-0107**                      **ISBN 0-942182-33-2**  
Certain Problems in Recent Law Reform in the People's Republic of  
China (Hungdah Chiu) 34 pp.                      \$1.50

**No. 6 - 1980 (35)**                      **ISSN 0730-0107**                      **ISBN 0-942182-34-0**  
China's New Criminal & Criminal Procedure Codes (Hungdah Chiu) 16  
pp.                      \$1.00

**No. 7 - 1980 (36)**                      **ISSN 0730-0107**                      **ISBN 0-942182-35-9**  
China's Foreign Relations: Selected Studies (Edited by F. Gilbert Chan  
& Ka-che Yip) 115 pp.                      \$3.00

**No. 8 - 1980 (37)**                      **ISSN 0730-0107**                      **ISBN 0-942182-36-7**  
Annual Review of Selected Books on Contemporary Asian Studies  
(1979-1980) (Edited by John F. Copper) 45 pp.                      \$2.00

### *1981 Series*

- No. 1 - 1981 (38)**                      **ISSN 0730-0107**                      **ISBN 0-942182-37-5**  
Structural Changes in the Organization and Operation of China's Criminal Justice System (Hungdah Chiu) 31 pp.                      \$1.50
- No. 2 - 1981 (39)**                      **ISSN 0730-0107**                      **ISBN 0-942182-38-3**  
Readjustment and Reform in the Chinese Economy (Jan S. Prybyla) 58 pp.                      \$1.00
- No. 3 - 1981 (40)**                      **ISSN 0730-0107**                      **ISBN 0-942182-39-1**  
Symposium on the Trial of Gang of Four and Its Implication in China (Edited by James C. Hsiung) 118 pp.                      \$2.50
- No. 4 - 1981 (41)**                      **ISSN 0730-0107**                      **ISBN 0-942182-40-5**  
China and the Law of the Sea Conference (Hungdah Chiu) 30 pp.                      \$2.00
- No. 5 - 1981 (42)**                      **ISSN 0730-0107**                      **ISBN 0-942182-41-3**  
China's Foreign Aid in 1979-80 (John Franklin Copper) 54 pp.                      \$2.00
- No. 6 - 1981 (43)**                      **ISSN 0730-0107**                      **ISBN 0-942182-42-1**  
Chinese Regionalism: Yesterday and Today (Franz Michael) 35 pp.                      \$2.00
- No. 7 - 1981 (44)**                      **ISSN 0730-0107**                      **ISBN 0-942182-43-X**  
Elite Conflict in the Post-Mao China (Parris H. Chang) 40 pp.                      \$2.00  
(Out of print, please order No. 2 - 1983 (55) for a revised version of this item.)
- No. 8 - 1981 (45)**                      **ISSN 0730-0107**                      **ISBN 0-942182-44-8**  
Proceedings of Conference on Multi-system Nations and International Law: International Status of Germany, Korea, and China (Edited by Hungdah Chiu and Robert Downen) 203 pp. Index                      \$5.00

### *1982 Series*

- No. 1 - 1982 (46)**                      **ISSN 0730-0107**                      **ISBN 0-942182-45-6**  
Socialist Legalism: Reform and Continuity in Post-Mao People's Republic of China (Hungdah Chiu) 35 pp.                      \$2.00
- No. 2 - 1982 (47)**                      **ISSN 0730-0107**                      **ISBN 0-942182-46-4**  
Kampuchea, The Endless Tug of War (Justus M. Van der Kroef) 51 pp.                      \$2.50
- No. 3 - 1982 (48)**                      **ISSN 0730-0107**                      **ISBN 0-942182-47-2**  
Social Change on Mainland China and Taiwan, 1949-1980 (Alan P.L. Liu) 55 pp.                      \$3.00

- No. 4 - 1982 (49)**                      **ISSN 0730-0107**                      **ISBN 0-942182-48-0**  
 Taiwan's Security and United States Policy: Executive and Congressional Strategies in 1978-1979 (Michael S. Frost) 39 pp.                      \$2.50
- No. 5 - 1982 (50)**                      **ISSN 0730-0107**                      **ISBN 0-942182-49-9**  
 Constitutional Revolution in Japanese Law, Society and Politics (Lawrence W. Beer) 35 pp.                      \$2.00
- No. 6 - 1982 (51)**                      **ISSN 0730-0107**                      **ISBN 0-942182-50-2**  
 Review of Selected Books on Contemporary Asian Studies, 1981-1982  
 (Edited by David Salem, Roy Werner and Lyushen Shen) 67 pp.                      \$2.00
- No. 7 - 1982 (52)**                      **ISSN 0730-0107**                      **ISBN 0-942182-51-0**  
 Chinese Law and Justice: Trends Over Three Decades (Hungdah Chiu)  
 39 pp.                      \$2.00
- No. 8 - 1982 (53)**                      **ISSN 0730-0107**                      **ISBN 0-942182-52-9**  
 Disarmament and Civilian Control in Japan: A Constitutional Dilemma  
 (Theodore McNelly) 15 pp.                      \$2.00

***Forthcoming***

- No. 1 - 1983 (54)**                      **ISSN 0730-0107**                      **ISBN 0-942182-53-7**  
 Essays on Sun Yat-sen and the Economic Development of Taiwan (A. James Gregor and Maria Hsia Chang) 54 pp.                      \$3.00
- No. 2 - 1983 (55)**                      **ISSN 0730-0107**                      **ISBN 0-942182-54-5**  
 Elite Conflict in the Post-Mao China (Revised edition) (Paris H. Chang)  
 46 pp.                      \$2.50

-----

**ORDER FORM**

To Occasional Papers/Reprints Series in Contemporary Asian Studies, University of Maryland School of Law, 500 West Baltimore Street, Baltimore, Maryland 21201, U.S.A.

Check One:

Please Send:

<i>No.</i>	<i>Author</i>	<i>Title</i>	<i>Copies</i>
------------	---------------	--------------	---------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Please start my subscription of the OPRSCAS:

Starting issue \_\_\_\_\_

Subscription price is U.S. \$10.00 for 6 issues (regardless of the price of individual issues in the U.S. and Canada and \$12.00 for overseas.)

My check of U.S. \$ \_\_\_\_\_ is enclosed \_\_\_\_\_ copy(s) of invoice/receipt required. (Institution/library may request billing before making payment) (Make check payable to OPRSCAS)

Please send book to:

Name/Corp./Library:

Address: (Please include zip code)

_____
_____
_____

-----

