

On the verge of history? Japan's 2016 election and prospects for Article 9 revision by Adam P. Liff

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The LDP has held the goal of revising the Constitution since its formation and it included that goal in its platform for governing. However, amending the Constitution will mean having a national referendum. As serious discussions are held in the two Constitution commissions and as public understanding deepens, I hope conclusions are reached about what articles to amend.

So spoke a triumphant Japanese Prime Minister Abe Shinzo from Liberal Democratic Party (LDP) headquarters late in the night of July 10. The ruling LDP-Komeito coalition's solid Upper House election victory – each party yielded a net gain of five seats – moves to the front burner the prospect of the first-ever revision of Japan's 1946 "Peace Constitution." With smaller opposition parties open to lending their support, by most counts the pro-revision camp now enjoys a two-thirds majority in the 242-seat Upper House through 2019. Coupled with the ruling coalition's two-thirds majority in the 475-seat Lower House (through 2018), it appears to have the votes necessary to meet the first two of three conditions for Constitutional revision. (The third condition is majority support in a public referendum.)

If Abe formally pursues Constitutional amendment, it should come as no great surprise. The LDP has championed revision of the 70-year-old, (US-drafted) Occupation-era charter since the party was established in 1955. Abe has advocated revision throughout his career, and during the last Diet session, repeatedly expressed his "wish to achieve [revision] while I'm in office." With four election victories under Abe's belt and his term as LDP president ending in September 2018, this new Diet may offer his last, best chance.

In light of new political realities and Japan's recent security legislation, this inevitably raises the question: what might revision mean for the Constitution's famously "pacifist" Article 9?

Over the past 70 years, Article 9 has been effectively "reinterpreted" to allow for, inter alia, the post-Occupation establishment of Japan's Self-Defense Forces (JSDF; est. 1954) and incremental expansion of its capabilities and missions. Yet the persistence of significant restrictions means that formal revision still has potentially immense significance for Japan's foreign policy, JSDF capabilities, and its regional

and global role within and outside its special security relationship with the United States.

As a case in point, despite the Cabinet's July 2014 "reinterpretation" of Article 9 to allow "limited" exercise of the UN-sanctioned right of collective self-defense (CSD), the strict conditions placed on actual "use of force" (*buryoku kōshi*) – coupled with Abe's public recognition that more ambitious policy shifts such as "full" exercise of CSD or participation in UN-sanctioned collective security operations require formal Constitutional revision – reveal the extent to which significant aspects of Japan's security posture remain unchanged without amendment and raise the question of what might change with it.

The LDP's 2012 revision proposal

Over the past decades, various proposals to revise Article 9 have been tabled by individuals, think tanks, and newspapers across the political spectrum. Of greatest salience to the forthcoming debate is the LDP's April 2012 draft Constitution – published online upon the 60th anniversary of the San Francisco Peace Treaty in full-text with point-by-point FAQ and side-by-side comparison to the original charter. As an LDP proposal, this draft is best interpreted as a maximal "upper bound" of what revisions might be possible. Even if Abe's party adopts this ambitious 2012 framework as a starting point, intense negotiations with its junior coalition partner – ostensibly pacific Komeito – and consideration of reactions from the opposition and public are likely to significantly moderate many of its proposals.

What revisions to Article 9 does the 2012 draft contain? Space prevents verbatim analysis of the full-text, which is four-times longer than and entails significant changes and additions to the original, 1946 version. What follows is an abbreviated overview:

- **Heading of Chapter II, entitled "Security" (revised):**
 - The 2012 draft **changes the title of the 1946 Constitution's Chapter II (of which Article 9 is the sole component) from "Renunciation of War" to "Security."** This change highlights a shift from categorical eschewal of military capabilities and avoidance of involvement in military conflict under any circumstances – as Article 9 was originally intended – to legitimize defensive measures judged necessary to ensure Japan's security. It recognizes contemporary realities and tries to create flexibility for further changes in response to the vicissitudes of Japan's security environment.
- **Clause 1, entitled "Pacifism" (revised):**
 - This clause asserts **that the revision maintains Japan's long-held "pacifism" and renounces both war as a**

sovereign right of the nation and the threat and use of force as means of settling international disputes. (An official LDP FAQ states that the implication is that “war” (*sensō*) and “aggressive use of force” (*shinryaku mokuteki ni yoru buryoku kōshi*) will remain prohibited.)

- Significantly, it makes explicit what Cabinet “reinterpretations” of Article 9 have made clear: these core principles do not preclude Japan from exercising the (UN-sanctioned) right of all sovereign nations to “self-defense” (*jieiken*). Presumably, the LDP intends to allow both individual and collective self-defense, meaning that this revision would remove the strict conditions imposed on “limited” exercise of CSD under the July 2014 “reinterpretation” of Article 9, and leave interpretation of what actions constitute “self-defense” to the Diet. (The revised clause’s ambiguity regarding CSD could prove problematic.)

- **Clause 2, entitled “National Defense Force” (new)**

- The 2012 draft deletes the original second clause stipulating that “land, sea and air forces, as well as other war potential, will never be maintained” and that “the right of belligerence of the state will not be recognized”
- In its place, the draft adds a lengthy new five-part clause stipulating that Japan will maintain a “National Defense Force” (*Kokubōgun; NDF*) and tasks the prime minister with commanding it to safeguard peace, independence, and the security of the nation and its people. It delineates additional NDF activities, including international cooperation activities to safeguard the “peace and security of international society,” maintain order, and protect the lives and freedoms of the Japanese people. (An official LDP FAQ states that under this revision “use of force” in collective security operations would be constitutional, but legal only if allowed by Diet legislation.)
- Further asserting the principle of civilian control, this clause stipulates explicitly that the specific manner in which the NDF is employed to achieve these goals, as well as other relevant factors (its organization, control, classified secrets protection, establishment and use of military courts, etc.) will be in accordance with law and subject to approval by the Diet.

- **Clause 3, entitled “Territorial Integrity” (new):**

- The 2012 draft contains a one-sentence final paragraph stipulating that the state, in cooperation with the Japanese people and in order to protect its “independence and sovereignty,” must safeguard its territorial land, waters, and airspace, as well as the resources therein.

The LDP’s proposed changes are striking. Compared to the reality of the JSDF’s actual capabilities, roles, and missions in 2016, however, the disconnect appears much smaller. Still, the proposal raises a number of questions – and

to many critics, concerns – that will become the focus of vigorous debate.

The major objective of the LDP’s proposed revision to Article 9 appears to be a significant reduction of explicit constitutional constraints on JSDF (“NDF”) activities; instead shifting the locus of policy questions about what Japan’s armed forces “can/should” and “can’t/shouldn’t” do to the democratically elected Diet to debate and legislate. To proponents, a goal is to increase the focus of debates on the substance of policies, as opposed to “abstract” debates about “constitutionality” insulated from changes to Japan’s strategic environment over the past 70 years. The effort is consistent with measures adopted in other areas to make Japan – in the words of some leaders, including Abe – a more “normal” major democratic power. Indeed, Japan’s unique principle of “state pacifism” – baked into its Occupation-era Constitution – means that no other major power has dealt with similar questions.

A bumpy and uncertain future

Although the election results mean the political stars may now be aligned, revision of the Constitution – much less Article 9 itself – is hardly a forgone conclusion. Numerous LDP prime ministers (including Abe, multiple times) have abandoned revision efforts in the face of domestic political and normative headwinds. Though opinion survey results are mixed, with some suggesting less public and opposition party resistance today than in the past, there is still little consensus on what to revise, or how to revise it. On the most contentious issues, there isn’t consensus within the LDP itself – on July 5, LDP VP Komura Masahiko said there was “zero possibility” of Article 9 being amended – much less between it and its Komeito junior coalition partner, which does not support Article 9 revision. Meanwhile, a motley assortment of views pervade the opposition parties and the general public.

Also underappreciated outside Japan, domestic debate over Constitutional revision is about much more than Article 9. Given domestic sensitivities, any revision effort is likely to start elsewhere.

Japan’s domestic debate over the highly-sensitive issue of Article 9 revision has long transcended straightforward discussion of national security concerns. Rather, it involves complicated issues concerning Japan’s democracy, constitutionalism, national sovereignty and independence, relationship with Washington, role in contributing to maintaining regional and global peace, security, and order, and – perhaps most fundamentally – national identity. How the ruling coalition proceeds will carry important implications for all of the above. Revision is by no means guaranteed. Yet the 2016 election result is potentially historic. All interested observers should watch this space.

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