CHAPTER -5
AMENDING THE PACIFIST CONSTITUTION: DEBATES AND DEVELOPMENTS

Introduction:

In the post Cold war period Japan owing to the US pressure, has started a “stretched interpretation” of Article 9 to meet its security needs overseas. Beginning from the Gulf war until Iraq war, Japan has stretched Article 9 as an “elastic band” to justify its defense policies and deployment of its troops in missions abroad. However, its effort to seek ways to help the US through Collective Self Defense, reinterpreting the constitution yet again, indicates that the “band” has reached to a “breaking point”. The people in the Japanese administration and the government do realize that the mere interpretation will not work. Therefore they are trying to capitalize on the collapse of 1955 system- that is marginalization of anti-revision forces in domestic politics- to achieve their goal of Constitutional revision and have enacted legislation in the Diet for a national referendum, which would decide the fate of constitution by 2010.

The emergence of the opposition DPJ- a political force supportive to the need of Constitutional change indicates that the debate on amending the pacifist Constitution has reached to a decisive phase. Now, all the major parties have set up committees that are debating and drafting proposed revisions and have given their inputs to the Diet constituted Research Commission on Constitution (RCC) which has recommended the change in the Constitution. Moreover, the momentum generated by the media and other groups through their proposals to review the Constitution and public opinion poll is keeping the issue alive.

In this background this chapter examines how the political parties, the judiciary, the Cabinet Legislation Bureau and the Ministry of Defense have approached the issues
related to Constitution and Article 9, and how they have changed their stance on Article 9. The chapter also discusses suggestions given by the Constitutional Research Commission to cope with the constitutional problem in the post-Cold War scenario.

**Amending the Pacifist Constitution: Changing Stances of Political Parties**

The debate regarding pacifist Constitution and constitutionality of SDF has profoundly affected Japanese politics. The opposition mainly the Japanese Socialist Party (JSP) and Japanese Communist Party (JCP) have been poles apart with the government on the issue of defense and Security, though they have gradually diluted some of their stances which reflects that they have accepted the changed realities. In this context, the issue demands a critical evaluation of the stances of different political parties in a historical perspective.

**Liberal Democratic Party (LDP): Spearheading the Constitutional Amendment**

The LDP which has become strong proponent of Constitutional amendment now had been strong supporter to preserve US imposed Constitution during the occupation period as its predecessor Liberal Party defended the Article 9. Kita Reikichi of the Japanese Liberal Party called the renunciation of war “not only a new departure for Japan as a peace(ful) nation, but a strong appeal to all the nations of the world to make pacifism a reality”*(Research Commission on the Constitution, The House of Representatives 2005, p.VIII).

The party continued on its policy of Constitutional protection during Yoshida Shigeru and his successors who defended the pacifist clause of the Constitution. However, there were elements in the party who wanted to amend the constitution anew, but they could not garner support to push for a revision from party platform.

In a significant political development in 1955, conservative parties formed Liberal Democratic Party (LDP) with the merger of all conservative blocs to corner a unified
Socialist Party and included revision of the Constitution as part of its broader agenda. The main points of the newly formed LDP was as follows:

"While holding to the principle of pacifism, democracy, respect for basic human rights, we will study the question of an autonomous revision of the Constitution, re-examine various laws introduced by the Occupation, and mount changes based on what is good for the nation. (Osamu Nishi 1989: 202)

Despite the explicit announcement of re-examination of the Constitution Prime Ministers from LDP have adopted different stances some toed the party line while others defied. The issue has been discussed in the same chapter separately.

The party seemed divided in dovish and hawkish faction as former remained firm in maintaining the pacifist constitution while later batted for revising it anew. When the hawkish wrested power under the leadership of Kishi Nobusuke, efforts were made to amend the Constitution. Kishi established the investigation Committee for Constitution in 1957 hoping to amend Article 9.

But the committee could not come out with a concrete proposal as the party itself was divided into a hawkish and dovish camp, the former advocating for its scrap while the later arguing to retain it intact (McIntosh, 1986: 29). The hawkish faction became dominant again in the 1980s with Nakasone Yasuhiro assuming the power and took bold steps towards militarization of Japan but could not push for the revision of Constitution realizing that the majority of the masses were still in favour of retaining the pacifist clause.

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1 Nakasone, however gives another reason for not pursuing Constitutional amendment. In his book he states that “when I was Prime Minister focus was on privatization and administrative reform...In order to avoid confusion I reassured people that I would not put Constitutional revision on agenda”. Y. Nakasone 2003 p117.
In 1982 the party’s Constitutional Inquiry Committee unveiled an interim report in which it took the position that SDF would be made Constitutional but stated that amending Article 9 is not necessary, indicating that consensus eludes in the party for amending the Article. (Osamu Nishi 1989)

It seems the LDP because of factionalism could not reach to a consensus on whether to revise the Constitution or leave the present provisions intact. Again in 1985, the party at its 30th year of formation made the following pledge as regards to Constitutional revision:

“Our party since its formation has had its platform, the autonomous enactment, that is to say, the autonomous revision of the Constitution. In the future, while maintaining the principles of pacifism, democracy and human rights, we will proceed to examine the question of revising the original Constitution as times change”. (Osamu Nishi 1989)

The explicit reference to upholding the “principle of Pacifism” in the above commitments indicate that within the LDP a number of Dietmen were in favour of maintaining the war renouncing clause of 1947 Constitution.

In the post cold war period and especially after Koizumi assumed power, the Party has taken some initiatives, which is indicative of its move to unshackle Japan with the amendment in the pacifist constitution.

The ruling LDP’ adopted three basic points in its security policy:

1) The SDF is constitutionally legitimate organization,
2) The Japan US treaty is the main pillar of Japan’s foreign policy and
3) The US military presence in the Asia pacific region is playing a key role in maintaining peace and stability in the area.
Continuing on its affirmation, the party in its election manifesto of 2004 general election has set its goal of revising the constitution and resolved to have a Japanese combat troop by the end of 2005.

Following the change in DPJ’s stance on Constitutional amendment, the LDP sought DPJ’s cooperation in achieving changes to the constitution and Prime Minister Junichiro Koizumi said that “many leaders in the LDP and Minshuto (DPJ) have a common idea and the LDP is not going to revise the constitution by itself” (The Asahi Shimbun, January 23, 2004). These efforts later availed fruit when the DPJ lawmaker took an identical position on the issue of an amendment in the Constitution in the Lower House Constitution Research Council.

However, the debate entered the most decisive phase following the LDP’s victory with almost two thirds majority in the September 11, 2005 snap General election. The landslide victory has given it new confidence to embark on its long pending policy to amend the Constitution. During the 50th anniversary of its foundation the Party endorsed a draft of the new Constitution, which has deleted crucial part of the war renouncing Article 9, and has altered the wording of paragraph 2 of the clause spelling out that Japan would create a full fledged military force. The preamble of the draft stated:

“Sincerely wishing for international peace based on justice and order, the Japanese people will cooperate with other nations to realize it. While recognizing the existence of variety of values in international community, the people will make incessant efforts to eliminate oppression and violation of human rights.”

It also stated that “basic principles- the idea of popular sovereignty, democracy, liberalism, respect of basic human rights, pacifism and the idea of seeking international harmony – shall be inherited as inalterable values.”

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2 The DPJ’s stance on the Constitutional amendment has been discussed later in this chapter
Political analysts viewed this preamble as a weak one as in comparison with present Constitution’s preamble which states more emphatically that “never again shall we be visited the horrors of the war through the action of the government”. This was enough to believe that the LDP wanted to push its agenda of changing the pacifist nature of the Constitution.

But what caught the international community’s attention the most was the deletion of crucial part of war renouncing Constitution. LDP’s draft stated that Japan would create a full-fledged military force and that it would take part in “activities jointly carried out internationally to ensure peace and stability in the international community” (The Japan Times, editorial Nov.7 2005).

Commenting on the unveiling of a new draft Constitution the Japan Times in its editorial opined that “it appears questionable whether the LDP government has tried to exhaust every means conducive to the Constitution’s pacifist principles in its past attempts to deal with international problems. The principle should be maintained as a universal ideal toward which the nation must strive. (The Japan Times, editorial Nov.7 2005)

The LDP under the leadership of Koizumi’s successor Shinzo Abe took the pledge for amending the Constitution as one of the main policy objective. The efforts of Party’s pro amendment camp materialized when it was successful in getting majority approval of the referendum bill from both houses of the diet. The LDP under the leadership of Shinzo Abe has gone a step ahead by constituting a committee to seek ways how Japan could engage in Collective self-defense with its allies (The Japan Times June 30,2007), an option presently banned in the present Constitution.

The panel headed by Shunji Yanai completed his findings in 2008 and submitted its report to Abe’s Successor Yasuo Fukuda. The report suggested that the government should allow the use of the collective self-defense right in two cases, namely “protection
of U.S. military vessels in international waters” and “interception of ballistic missiles likely to be heading for the United States.”

The panel also said the SDF’s “emergency dispatch to protect other countries military units, which could be attacked during UN peacekeeping operations” and “logistical support with supplies and transportation for other nations operating on PKO missions” were not acts of collective self-defense. It said the dispatching of the SDF to join peacekeeping missions should be decided politically, bearing in mind the nation’s interests. (The Yomiuri Daily, June 26, 2008)

In his first public statement on Yania panel’s recommendation Yasuo Fukuda treaded carefully and stated that “Sufficient discussions are necessary on what kind of international activities the Self-Defense Forces may exercise the right to collective self-defense in terms of the constitutional interpretation (The Daily Yomiuri, Oct 10, 2007).”

It looks strange that the party which came into existence in 1955 with an agenda of Constitutional amendment is still continuing with the debate and after passage of almost 60 years have not achieved this goal. The LDP, despite various proposals for revision and commitment in almost all election manifestos to go for an independent revision has not acted on the pledge because it knew the public sentiment is not in favour of tampering the pacifist clause. Thus it has taken a pragmatic decision of not putting the amendment on test fearing that if it does so it will lose vote.

Democratic Party of Japan (DPJ): A Hesitant supporter of Constitutional Revision

The main opposition, the Democratic Party of Japan (DPJ) is not against the Constitutional revision per se. But as the party is an amalgamation of SDPJ dissidents and the Liberal Party, internal factionalism continues as they hold their previous stands on Constitutional revision as a result consensus eludes on the issue, within the party. However, the DPJ holds the view that the Constitution should be adjusted with the new realities of the post cold war period.
In its convention held on January 13, 2004, then party president Naoto Kan said that his party will work out its own proposal by 2006, the 60th anniversary of the promulgation of constitution (The Japan Times, Jan 27, 2004). Naoto Kan called for a national debate involving all sectors of the public. Perhaps it was not in the mood to a backdoor arrangement (dango) with the LDP, which also has similar stance on Constitutional amendment and never wanted that LDP should take the credit for a Constitutional revision. To this end he made the announcement in the Diet as follows:

“If the main ruling party and the biggest opposition party starts a discussion first, the people will not be involved in the process (for revision to the Constitution). That amounts to Dango (behind the scene negotiations) by the politicians,” He said, “first of all, the issue of Constitutional revision should be discussed amongst a wider range of people. Then, Japan will be able to become a country in which sovereignty actually rests with the people” (The Asahi Shimbun, Jan 23, 2004).

One of DPJ leaders Hatoyama in its proposal to amend the Constitution suggested to “maintain Land, Sea and air forces, as well as other war potential” Hataoyama opined that Japan’s possession of armed forces would end the long debate on constitutionality of the SDF. However, he urged that Japan should acknowledge unequivocally past acts of aggression to eliminate Asian countries “misgivings about such revisions” (Itoh 2003: 212-215)

Regarding the participation in the UN the draft urges Japan, to “actively participate in activities undertaken by the UN or other established international organs to maintain and create peace.” Elaborating on his suggestion Hatoyama said that “when participating in such international activities Japan must act on UN resolution and the Prime Minister must obtain Diet approval”. (The Japan Times January 3, 2005).

On another occasion in an apparent move to speed up the debate within the party Hatoyama argued that “people should not spent too much of time when we are to shape
the state of this nation...If combined the number of LDP and DPJ (lawmakers) constitutes more than two third of the vote in both the diet Chambers" (The Japan Times, March 12, 2005) that would pave way for Constitutional amendment.

True to its statements the DPJ supported the proposal of Lower House Research Commission on Constitutional review which recommended revision in the Constitution. The DPJ lawmaker Yukio Edano, who was also the deputy Chairman of the Commission while submitting the findings of the Commission to the Lower House said, “the Commission did not aim at setting a certain course from the beginning. It will be appropriate for the commission to be authorized to deliberate on the referendum bill as well as the constitution itself further” (The Japan Times, April 16, 2005).

In 2005 the DPJ agreed in principle to submit a joint bill with the ruling LDP on Constitutional referendum (The Japan Times, December 22, 2005) and deliberated specific procedure for National Referendum on Constitutional revision but the DPJ took a reverse gear when Ozawa Ichiro took the charge of leadership in the Party. Ozawa – once strong proponent of amending US imposed Constitution as is evident from his words that he stated in his book “Blueprint of New Japan: The Rethinking of a nation” (Ozawa 1994: 100-112)\(^3\) - now does not want that the credit to amend the Constitution should go to the LDP and he pushed his party members to vote against the referendum bill- a decision which left the DPJ’s Ryoun Kai faction unconvinced which includes Naoto Kan, Hatoyam, Seiji Maehara. (The Daily Yomiuri, April 15, 2007)

As of now the DPJ stands for revising war renouncing clause of article 9 of the Constitution so that country could exercise right of “restrictive” Self-defence. A proposal drafted by the DPJ called for written restriction on how the nation could exercise its right to self-defense- only in cases of emergency until the United Nations puts its Collective

\[3\] The Constitution was not meant to be left untouched, sacred in its original form through the ages. It sets forth the fundamental rules that enable us to live in happiness and prosperity. The circumstances surrounding Japan change as do our own needs and desires. It is natural and appropriate the Constitution too should change with the times. (Ozawa 1994: 111)
security activities into operation. The DPJ draft also advocated for stipulating the nation could join UN-led collective security activities such as PKO. (The Japan Times, November 1, 2005).

**The New Komeito Party: A Reluctant Supporter of Constitutional Amendment**

The New Komeito Party supported by the lay Buddhist organization *Sokagakkai* had been advocating peace through pacifism, since its formation in 1965. As its objective, it outlined the achievement of total disarmament, total abolition of nuclear weapon, strengthening the UN and peace maintenance by UN Police Force. It explicitly advocated that “the SDF would be subsequently dissolved and made in to a National Service force.” It also advocated omni directional foreign policy and a scaling down of the Japanese –US Security Treaty.

At one occasion the Komeito party argued that “the Constitution articulates the universal human ideals of peace, renunciation of war and democracy, and as long as there are no social or period changes that warrant its amendment we should preserve it” (Osamu Nishi 1989: 205). Thus the party at that time was of the view that until and unless there is no major social change the Constitution could be preserved.

In 1972 election the party pledged to defend the peace constitution and promote the peace and neutralization with neutral diplomacy. It also advocated the removal of US military bases and an early dissolution of the Japan-US Security Treaty structure. A year later in 1973, the party in regard to the Article and the SDF has stated that “there is some doubt as to constitutionality of the SDF”.

But in 1980, its political aspiration to join a coalition government made it to announce that “under a coalition government in which the Komeito participates, the SDF will not be unconstitutional. An analysis of its statements made from its establishment in 1964 to
up till 1980 show that the Komeito has gone for a major policy shift on its stand on Constitution and the SDF.

In its 19th Party Convention held in 1981 the Komeito reversed its security policy and supported the US Japan Security Treaty- for which the party since inception has been demanding gradual dissolution. In the same convention by declaring support for the forces capable of preserving Japan’s territorial integrity it accepted conditional constitutionality of the SDF.

By 1986 the party has substantially changed its position on Constitution and announcing its basic policy of 1986 made following statement in this regard:

"In respect to the capability underlying the right to self-defense mentioned by the Constitution, the Komeito finds it reasonable for the SDF to possess a capability limited to the duties of protecting the integrity of the nation’s sea, air and land. The Komeito would regard an SDF with the Capability to maintain territorial integrity as Constitutional." (Osamu Nishi 1989: 206)

Thus the party which stood for dissolution of the SDF owing to the Constitutional renunciation of war and possession of force, accepted the SDF as Constitutional as it considered it legitimate organization for the protection of national integrity.

The Komeito further diluted its stance once it entered into an alliance with the LDP and formed a coalition government in the mid 1990s. On the issue of overseas dispatch of SDF the Party has hesitantly approved it on the conditioned that the troops should be deployed in non-combat zones only. However in a plan approved by the 2002 convention the party stated that the Article 9 should remain unchanged but the Constitution need to be updated (The Daily Yomiuri, May 12, 2007). But Komeito’s previous decisions indicate that owing to its coalition commitment it has always gone with the LDP’s decision whether relating to dispatching SDF to Iraq, supporting the Research
Commission on the Constitution in the Diet or more recently presenting bill (along with its coalition partner LDP) to hold a referendum on Constitution. However, the Party maintains that "it considers the current Constitution to be preeminent" and is mulling to include additional clause to the Article that would clarify the role of the SDF and its participation in international peacekeeping (The Japan Times, July 12, 2007).

The party recorded its position to the report of the House of Representative’s Research Commission on Constitution through a letter asking the Commission not to "rush to close the gap with reality" regarding Article 9, and warned that if done so "we risk losing sight of our ideals". The party added that "if we focus too much on common sense approach of confirming the existing situation and making explicit provision for it in the text, we may well fall into the trap of letting the realities go unchecked." *(Research Commission on the Constitution, The House of Representatives 2005, p.XVI).

The Party, as of now, is opposed to opting for collective Self defense and makes it clear that some sort of break measures are needed and believes that Japan should refuse a request by the US if they ask it to take part in situations like bombing of Afghanistan or invasion of Iraq (The Daily Yomiuri, May 12, 2007).

**The Socialist Party: From Negation to Acceptance of the SDF and “Back to Squire One”**.

The Socialist party’s stand has not been consistent on the issue of Constitution and Constitutionality of SDF as it has been shifting its position. During the discussions in the Diet during the occupation period it spoke in favour of Article 9, saying that "the renunciation of war is not a clause that was imposed on us, but a great idea that was present as an undercurrent in the hearts of Japanese people" *(Research Commission on the Constitution, The House of Representatives 2005, p.VIII).
Later in its Basic Policy on Peace Treaty adopted in 1950, the party stated that Japan has declared its commitment to disarmament and peace in the constitution, and what this means is that it be neutral in international disputes. In 1951, the party laid down its Four Peace Principles: opposition to rearmament, a complete peace treaty (with the Soviet Union and China), neutrality and opposition to the presence of military bases in Japan.

Since then the Socialists stance on Security was that the country could be best protected by possessing no arms and adopting a neutral position in world affairs. Confrontation between the socialists and the establishment regarding foreign relations and defense led to disputes ranging from parliamentary debate to popular demonstrations.

During 40th anniversary, the JSP outlined a “New Declaration” stating following principles:

1) Anti war, peace and mutual coexistence 
2) Human rights and charity 
3) Freedom backed by individuality, democracy and self government 
4) An affluent and high quality of life 
5) Mutualism in man and nature

The party opined that the Japanese constitution, properly gives concrete expression to these fine principles which should be spread into the international arena. It also expelled out that any party willing for a coalition with JSP should “completely implement the Constitution” (Osamu Nishi 1989: 204)

The socialists could not sustain to continue on their stances for long and in the face of changing international realities, the Socialist Democratic Party of Japan (SDPJ) tried to revise its Security policy. In 1984, for the first time, Ishibashi Masashi, party Chairman, took first step toward approval of the SDF. He argued that the SDF might be

\[4\] Earlier known as Japanese Socialist party (JSP).
unconstitutional but could still be considered legal. He stated that even though the existence of the SDF runs counter to the letter of the constitution, its creation was sanctioned through legal procedure and parliamentary deliberation. It seems the Party realized that despite their continued opposition to the SDF the organization was firmly established and gained legitimacy in the majority of the masses. Despite this revision towards SDF they still advocated for UN centered foreign policy and argued that the UN must be entrusted the security of every country.

The major changes in socialist party’s line were witnessed in 1994, when the socialists for the first time formed a coalition government. Prime Minister Tomichi Murayama lauded the role of the SDF saying, “an organization devoted exclusively to defense and armed to the minimum extent necessary, is in conformity with the constitution”. Murayama also embraced the Japan –US Security Treaty, which the SDPJ had bitterly opposed for decades, saying the treaty “serves the political foundation for broad US Japan cooperation in the international community” (Fukatsu Masumi 1995). He deemed the Treaty as indispensable to the development of peace and prosperity in Asia. In a statement to a meeting of the House of Councillors he explained that he believes it proper to interpret the Article 9 in line with the shift in international and domestic situations Nakasone 2003: 48). His acceptance to US-Japan Security treaty approved the SDF participation in the Rim of the pacific exercises sponsored by the US navy and Japan’s possession of the Airborne Warning and Control System (AWACS).

It must be noted here that the SDPJ’s policy had represented the sentiments of people who feared that the confrontation between the two superpowers would pull their country to another catastrophic war. But the disintegration of Soviet Union and US –Soviet rapprochements allayed this fear and the party probably must be thinking that they could not garner public support if they continue on these policies. Most importantly it could have been very difficult for Murayama to term the SDF an illegal and illegitimate organization to which he was the head as a new Prime Minister and with the passage of time and interaction with the US leaders he may have realized that the Japan-US Security
alliance is a reality. Rather than abandoning the security treaty he preferred to abandon party’s long held stances. But the party continued on opposing the constitutional amendment efforts

The party criticized the Research Commission on Constitution saying that “Article 9 has been targeted for revision”. Takako Doi, in a letter to the Commission stated that “the use of armed force to solve problem has brought death and injury to hundreds of thousands,…that is why we want to hold up the pacifist principle of article 9 of Constitution of Japan” adding that Now as never before Article 9 must be kept alive” *(Research Commission on the Constitution, The House of Representatives 2005, p.XX).*

However, the Party reversing its 12 year stance on the legality of the SDF, termed its existence as unconstitutional in its annual convention on February 11, 2006. The Party President Mizuho Fukushima on this occasion said, “we cannot say that the SDF, which has been dispatched to Iraq to support the U.S. military that exercises force, exists within the framework of the Constitution.”

Regarding the future role of the SDF the declaration of the party said that “we aim to reduce the scale of the (forces), which are apparently unconstitutional, to reassign them to the duties of border security, disaster relief and international cooperation so we can have an unarmed Japan”. *(The Japan Times Weekly, February 18, 2008).* The move was apparently aimed at boosting the SDP's standing as a pacifist party which was once the main opposition party in the Japanese Diet.

Thus the party is back on its long held stance of pacifism and aims to win support of masses that are opposed to amending the pacifist nature of Japan.

**The Japanese Communist Party (JCP): The consistent opponent of amendment**

The Communist Party has been in the fore front in advocating preservation of peace constitution though during the early ears of Occupation the Party had adopted a policy
that Japan should renounce aggressive war not a defensive war. In the Diet JCP member Nozaka Sanzo argued that “to renounce the right of self defense could jeopardize the independence of the Japanese people. I oppose the draft constitution while reserving the right to try to modify it in future.” *(Research Commission on the Constitution, The House of Representatives, p.VIII). Sanzo advocated in the House of Representative for differentiating between denouncing a “war of invasion” and upholding the right of a war for “self-defense.” *(Japan’s Imperial Diet, Official Gazette Extra *(English Edition), Minutes in the proceeding of House of Representative, 90th Session, no.8, June 28, 1946, p15). The party expressed its reservation by voting against the ratification of the US drafted pacifist Constitution in the Lower House. (Richard Sims 2001: 244)

But with the passage of time, the party took U-turn with the mounting Cold War in the region and regarded peace Constitution a way to check US pressure for rearming Japan. In its party mouth organ Akahata the JCP advocated for “eliminating militarism” but did not take the explicit position on “unarmed neutrality”-a position taken by Socialists-instead called for neutralization of Japan with the dissolution of security treaties. Later the party clarified its view in a policy statement and dealt the subject in relation with the Security Treaty, saying:

“Our proposal for abrogation of Security Treaty and dissolution of Self Defense Forces is not because we deny the right of self defense [to Japan] but because American imperialism aims at invading Japan infringing on her sovereignty…the Self Defense Forces are an army that serve the US and oppresses the Japanese people”. (Endicott 1978: 83)

In 1972 the JCP pledged in its policy statement that as the SDF is unconstitutional and subordinate to the US, it would be dissolved and fate of the self-defense would be decided by the collective will of the people. (Endicott 1978: 83). The party has been the flag bearer in mobilizing mass rallies against the revision of Security treaty and still strongly opposes any revision in the pacifist clause of article 9 and has rapped the House Commission on Constitution saying “the report is a summary of issues which anticipates Constitutional revision” adding that “to centre the debate on whether certain explicit
provision – such as provision for the Self Defense Forces, for the exercise of the right of collective Self-defense ......-amounts to summarizing the issues in anticipation of revising the Constitution.” *(Research Commission on the Constitution, The House of Representatives, 2005 p.XVIII).

Japanese Prime Minister's and their approach on Constitutional revision:

The LDP, having its agenda for Constitutional revision, has been at the helm of affairs in Japan. But prime ministers from his party have adopted a different approach on the issue. Here is an effort to analyse how they have handled the Constitutional revision.

Yoshida Shigeru, as has been mentioned in previous chapter, had been the strong defended of pacifist clause of the Constitution and had tried to pacify the demands of amendment terming it as a harmful idea. He used Article 9 as a trump card against entrapment in American Cold war adventures. On one occasion Yoshida told a young Miyazawa Kiichi at the time (who later became PM in early 1990s), “it is indeed our Heaven-bestowed good fortune that the Constitution bans arms. If the Americans complain, the Constitution gives us a perfect justification. The politicians who want to amend the Constitution are fools.” (Pyle 1996:59)

Hatoyama Ichiro, who had been advocating for Constitutional revision as his agenda took up this issue once he assumed Prime Ministership in 1955 and announced that “as a first step in the correction of the policies of the Occupation, Constitutional change particularly that of Article 9 is necessary.” (Osamu Nishi, 1989:196).

Only two months after assuming office, Hatoyama announced election putting the objective of effecting Constitutional revision. But since the reformist managed to gain more than one third of the seat he could not pursue the constitutional reform. However he was successful in creating a Constitutional Inquiry Committee to seek ways how it could be amended.
After Hatoyama, Kishi Nobusuke took keen interest in pursuing the Constitutional reform and pushed the Inquiry Committee to expedite its work. But before the Committee could have reached to its recommendation Kishi has to resign amid the protest against the US-Japan Security treaty revision in 1960.

Kishi’s successor Ikeda Hayato took a cautious stand on Constitutional revision and stated that “We have no intention of amending the present Constitution even if we did temporarily require a two third majority.” (Osamu Nishi, 1989:198) And when the Constitutional Inquiry Committee, constituted during Hatoyama Cabinet, submitted its report during his regime, he state that “I believe that the Government, Diet and the people have to together research and examine the Constitution in an adequate manner.” (Osamu Nishi, 1989:198). His admission was construed as shelving the issue for ever which later came true as none of his successors pursued the issue seriously.

When Naksone Yasuhiro assumed Prime Ministership in 1982 much was expected within the conservative circle that he will push for Constitutional amendment as he has been very much vocal for the cause. In 1956 the young Nakasone had written a Song for Constitutional revision and years before assuming Premiership he had written a book in which he argued for Constitutional revision saying “the present Constitution is something ingeniously and indirectly drafted and forced upon us by MacArthur and I strongly felt that a Constitution created under such circumstances should be revised.” (Osamu Nishi, 1989:198).

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5 The song goes as follows:
Ah, defeated in war and occupied by enemy soldiers,
Coerced by an occupation constitution on the pretext of pacifist democracy,
The plan was to enervate our native land,
The war had been over for half a year.

Ten long years drag by, but now freedom returns.
We must make our constitution to build our country.
The decision will swell our hearts. (Hook and MacCormack 2001; 15)
But after becoming the Prime Minister made a surprise statement saying that “my cabinet has no intention of working towards Constitutional revision”. However, he gave no specific reason for why he is not picking up the agenda he vouched through out his political career. Later in his book... he gave the reason why he kept the issue of Constitutional revisionism aside stating “When I was Prime Minister, focus was on privatization and administrative reform.... In order to avoid confusion, I reassured the people that I would not put Constitutional revision on agenda. (Nakasone 2003: 117)

After a decade Constitutional debate in Japan yet again came to the fore once Japan’s failed to contribute militarily in the Gulf war 1990. But till Koizumi Junichiro no one took bold initiative towards that effect. He vehemently proposed the Constitutional amendment in one of his policy speeches urging:

“In the sixtieth year since the end of the war, debate is continuing within the ruling and opposition parties concerning amendment to the Constitution. I believe that it is now time to actively engage in discussion on the modalities of the Constitution in a new era. (162 session of the Diet, Jan 21 2005, www.kantei.org)”

A year later Koizumi proposed to enact a referendum bill arguing for the Constitutional referendum as follows:

“Now that more than sixty years have passed since the end of the Second World War, debate is continuing within each political party concerning the amendment of the Constitution. I believe that the time is now ripe to actively engage in discussion with the people of Japan on the modalities of the Constitution for the new era. With respect to the drafting of a bill to stipulate the referendum procedure for amending the Constitution, the bill should be drawn up in accordance with the Constitution.” (January 2006, 164th session of the Diet, www.kantei.org)

He vehemently proposed the Constitutional amendment in one of his policy speeches urging that the process should be expedited within “the ruling and opposition parties”. 141
True to his statements, he was successful in pushing the Diet’s Research Commission on Constitution to conclude their findings which identified areas that need a revision.

Koizumi’s successor Shinzo Abe went a step further on his policy for amending Japan’s pacifist Constitution. On May 3, 2007, the 60th anniversary of enactment of 1946 Constitution he made a policy speech unveiling his desire to amend the Constitution:

“... the international framework surrounding Japan has been changing profoundly. Our basic frameworks, starting from the Constitution, down to the administrative system, state-local relationship, and foreign policy and national security, have become incapable of adapting to the great changes taking place, and these frameworks demand review. New challenges such as global environmental issues must be addressed urgently. In addition, I believe it is important for the young people who will shoulder the next generation to carry with them a spirit of public-mindedness and self-discipline, as well as affection and a sense of responsibility for their community and the nation.

However, Abe made assurance to upheld the basic principle and structure of the Constitution will be upheld.

“In this context, while we continue to uphold the fundamental principles of the present Constitution as abiding values, a bold review of the postwar regime all the way back to its origins and an in-depth discussion of the Constitution toward realizing a new Japan will lead to a spirit of laying the path to a new era. A constitution embodies the ideals and vision of a nation. I strongly hope that an even broader national debate on the modality of the Constitution will take place so that we may identify a clear direction for the future. On this milestone of the 60th anniversary of the enactment of the Constitution I have renewed my resolve to make further progress toward realizing a new Japan, a country admired and respected by people in the world, a country our children’s generation can have self-confidence and pride in, with the fundamental principles of the Constitution deeply engraved in my mind.”

(www.kantei.go.jp/foreign/abespeech/2007/05/03)
It is clear from this policy speech that Abe considered Constitutional amendment necessary to adapt foreign policy and national security with “the international framework surrounding Japan” which he said has been changing profoundly. Abe was successful in enacting legislation in the Diet for a referendum on Constitution during his tenure. The bill promises to decide on ways to put the constitution on referendum by 2010.

Yasuo Fukuda though supported debate on Constitutional revision, was not as vocal as his predecessor Koizumi and Abe. In one of the Policy speeches in the Diet- which sets the goal of Prime Ministers vision for the country- he made following remarks:

“Regarding discussions on the Constitution, which lays out the foundation of our nation, the National Referendum Law was enacted during last year’s ordinary session of the Diet, owing to the efforts of all those involved. Naturally, this is a matter that should be decided upon by the Diet, and I strongly hope that sincere discussions will take place with a view towards achieving a broad based arrangement with the participation of all political parties in an appropriate setting within the diet on various issues that were carried over in the deliberation of the National Referendum Law and the content of any possible revision if it is to be revised.” *(www.kantei.go.jp/foreign/hukudaspeech/2008/01/18housein_e.html)*

Fukuda merely made a statement in his speech regarding the ongoing effort to revise the Constitution. However, he did not urge upon the Diet members to expedite the effort as did his predecessors. This meant he was trying to pass the buck on the parliament by observing that “the matter should be decided by the Diet”.

Fukuda’s successor Taro Aso however did not touched upon the issue of Constitutional revision, as he was busy in dealing with economic crisis aftermath of global meltdown and recession. During his policy speech he talked about “Peace of mind” a sustainable environment and maintaining existing alliance with the US saying that “the US-Japan alliance for the security of Japan and its people remains unchanged.” *(http://www.kantei.go.jp/foreign/asospeech/2008/09/29housin_e.html)*
Constitutional Interpretation: Whether Judiciary or Legislature?

The Constitutional problem in Japan has been lingering on also because the judiciary which is authorized constitutionally to determine constitutionality of any law, order, regulation or official act in case the act is in contention, has never taken a decisive step and neither it gave any clear verdict whenever the issue was brought up before it.

The role of judiciary is being performed by the legislative which interprets and reinterprets the Constitution to suit the government's needs. In this context an effort has been made to understand the role of judiciary and legislature with reference to Article 9.

Judiciary and the Issue of Article 9.

Though the present Constitution authorizes the Supreme Court "power to determine the Constitutionality of any law," the Supreme Court has always adopted a practice of judicial passivity on the issue of interpretation of Article 9 and determination of legality of any decision taken by the government. This approach by the Judiciary has provided much confusion as is evident from its verdict on the issue of Sunakawa case which needs elaboration here.

In its verdict on the Sunakawa case, in which seven local villagers were arrested for trespassing on a US installation, the Tachikawa airbase, the Tokyo District Court acquitted the trespassers stating that the seven were "found not to be guilty", since the charge of illegal entry was enacted as part of Security Treaty of 1951, which the court held to be "unconstitutional". According to the Court the treaty contravened the prohibition against land, sea and air forces in article 9. It noted that:

"When we consider the real substance of these matters, we can not help but conclude that to allow the United States Armed Forces to be stationed in our country for purposes of our self-defense against armed attacks from

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6 Article 81 of the Japanese Constitution, 1947: The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act."
without is equal to maintenance of land, sea and air forces and other war potential which is prohibited under the first sentence of paragraph 2 of Article 9 of the Japanese Constitution, regardless of whether or not our country has the right to exercise command over them, and whether or not they have the duty to go into action. We can not refrain from holding that the stationing of United States Armed Forces in our country is not permissible under the Constitution.” (Curtis J Milhaupt and others, 2006: 207-212).

But when the case was taken to the Supreme Court it disagreed stating that the article 9 did not prohibit Japan from gaining security guarantee from another country, which it made clear from the following passage of the verdict:

“....this article renounces what is termed therein war, and prohibits the maintenance of what is termed war potential ; naturally, the above in no way denies the inherent right of self-defense which our country posses as a sovereign nation. The pacifism of our constitution has never provided for either defenselessness or nonresistance.”

It noted further that ... “Article 9 of the Constitution does not at all prohibit our country from seeking a guarantee from another country in order to maintain the peace and security of the country...” The Supreme Court over ruled the District Court judgment saying original decision... went beyond the scope of judicial review and constituted an error” in interpreting the constitutional provisions”. (Curtis J Milhaupt and others, 2006: 213-216).

Following this verdict many argued that by making self-defense an exception to the command and control test, the Court legalized the SDF.

In yet another case in 1969, -commonly known as Naganuma Missile Site I case,- petitioners challenged the government’s decision to construct Nike anti-craft base in a forest reserve near Sapporo saying that it will bring natural hazards to their area. The
District Court of Sapporo determined that the base violate "no war" clause of the Constitution and revoked the Ministry of Agriculture, Forest and Fishery's ordinance granting the land for base. The court then determined the constitutionality of the SDF, which is as follows:

"Viewed in terms of its organization, scale equipment and capabilities, the SDF is a military force since it is clearly "an organization of men and material which as its purpose combat activity involving physical force against a foreign threat". Accordingly the Ground, maritime and Air SDF corresponds to the "war potential" of land, sea and air forces" maintenance of which is forbidden by Article 9, 2 of the Constitution." (Curtis J Milhaupt and others, 2006: 222).

Moreover, the court for the first time pronounced that Self Defense Forces Law and other laws related to the SDF are "violating" constitutional provision and have no validity under Article 98 of the Constitution," (Curtis J Milhaupt and others, 2006:213-216), which stipulates that no law or ordinance ....shall have legal force or validity.

However, this decision was overturned on an appeal to the Sapporo High Court in Naganuma Missile Site II case absolving it self saying that these are the matters beyond the purview of the Courts. The court concluded its verdict as follows ---

"In view of the forgoing, the problem of whether or not the existence .... of the SDF conforms to article 9 of the Constitution is a decision concerning state governance, and as a political act of the Diet and cabinet would ultimately be entrusted to the political judgment of the entire people. It should not be construed as the matter that courts are to be determined." (Curtis J Milhaupt and others, 2006:224)

When the plaintiffs took the issue to the Supreme Court, the apex court termed earlier verdict as "mistaken interpretation of Article 9" and adjudged the case on the basis of whether the construction of base at the site poses any environmental threat to the people in the vicinity. It upheld the High Courts verdict concluding that .... "we must examine
the judgment below in relation to whether the risk of flood was eliminated by the substitute facilities...the Court below (high Court) had reached the correct conclusion that there was no remaining threat". (Curtis J Milhaupt and others, 2006:225).

Thus it is evident since the Sunagawa case that the judiciary has avoided any resolution of Article 9 issue. This approach could be viewed as an attempt by the court to avoid Constitutional issues by focusing more on technical grounds for decision. The practical effect of the policy of avoidance by the Court has given way to Legislature and the Diet to define the defense policy by interpreting the Constitution on its own and the way they deem fit to be interpreted.

More recently, over than 1100 plaintiffs approached Nagoya High Court and challenged the operation of ASDF in Iraq calcimining that the Japanese Defence Force is operating in a combat zone and thus it violates the Constitution. The High Court held that deployment of the SDF to Iraq, and particularly the current operations of the ASDF in transporting supplies and armed coalition forces from Kuwait to such areas in Iraq as Baghdad, constituted the use of force and was thus a violation of paragraph one of Article 9. (The Asahi Shimbun, April 18, 2008)

The Cabinet Legislation Bureau’s interpretation of Article 9:

The war renouncing Article 9 of the Japanese constitution have been in the lime light due to the defense build up activities pursued by the Government of Japan (GoJ). The issues such as-procuring "war potential", use of armed forces, deployment of SDF overseas and interpreting right of collective defense are seen contradicting with the pacifism enshrined in article 9.

The government of Japan has not been consistent on its interpretation and it has been changing the interpretation time to time in favour of its policies. Till the formation of Cabinet Legislation Bureau, statements of Prime Ministers and senior ministers were
considered as the official position of the government. For the first time the government’s point of view was clarified by Prime Minister Yoshida in the Diet when the Constitution was enacted (in 1947) where he said that “even though Article 9 did not the right of self-defense directly, since the second paragraph of article 9 denies the maintenance of all forces and the right of belligerency, the state had abandoned the right in engaging in war for self-protection,...” *(Research Commission of Constitution, House of Councillors 2005:37)

In 1952 which coincided with establishment of National Self Defense Force, in a formal interpretation of article 9, the Cabinet Legislation Bureau (CLB) interpreted that Article 9 did not ban military capabilities falling short of the ability to conduct modern warfare nor the use of such capabilities to repel a direct attack. Yoshida expressed that “the forces prohibited by the Second paragraph of article 9, whether it was for aggression or self dense were meant to be those equipped with weapons that could carry out modern wars”. *

*(Research Commission of Constitution 2005:38) This was a major shift as Japan identified for the first time that it can use force for defensive defense, a right Yoshida has earlier denied.

In 1954 when the SDF was founded in the Hatoyama government, the CLB changed the interpretation of Forces prohibited in Article 9 defining them as “the force that exceeds the minimum necessity for self defense” *( Research Commission of Constitution, House of Councillors 2005:37), which meant the use of force in self defense is limited to the “minimum necessary level”. In 1968 the CLB reaffirmed that the SDF can only act “when there is sudden unprovoked attack on Japan and there are no other means available to protect the lives and safety of the people”. Regarding the collective Self-defense the CLB in 1981 issued a formal interpretation defining that the Japan has the right of collective self defense under international law but it is forbidden to exercise it under Article 97.

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7 CLB’s interpretation of Collective self defense in relation to Article 9: “It is recognized under international Law that a state has the right of collective self defense, which is the right to use actual force to
This is the interpretation which is a hurdle in Japan’s will to contribute its ally militarily and the Abe government has constituted a committee which is looking four ways namely – whether the MSDF are permitted to intercept Ballistic Missiles targeting the US, whether the MSDF warships are permitted to retaliate when a US warship engaged in joint operations including exercises is attacked at sea, whether the MSDF is permitted to use weapons to return fire following attacks on foreign forces during UN peacekeeping operations and whether the SDF can provide back up support such as logistic and transportation of foreign troops. The committee weighing the options one by one has recommended in favour of exercising collective self defense and intercept Ballistic missiles targeted at the US. Moreover, Sunji Yanai Chief of the Committee a new interpretation of government position argued for Collective Self-defense saying that “it is time we should bring an end to the interpretation of the Constitution that does not match the reality” adding further that “the circumstances have changed so should the interpretation of the Constitution” (The Asahi Shimbun, July 12, 2007).

Ministry of Defense: Implementation of Article 9

The government of Japan and more particularly the Ministry of Defense has its own stated interpretation for maintaining right of self defense. The defense white paper 2008 clarifies the government’s position as follows:

“Since the right of self defense is not denied, the government interprets this to mean that the Constitution allows Japan to possess the minimum level of armed strength needed to support the exercise of that right. On the basis of this understanding the government as part its exclusive self-defense oriented basic policy for national defense under the terms of the constitution, maintained the Self Defense Forces as an organization, continued to equip and prepare it for operational use.” *(Defense of Japan 2008: 109)*

stop an armed attack on a foreign country with which it has close relations, even when the state itself is not under direct attack. It is therefore self-evident that since it is a sovereign state, Japan has the right of collective self-defense under international law. The Japanese government nevertheless takes the view that the exercise of the right to self-defense as authorized under Article 9 of the Constitution is confined to the minimum necessary level for the defense of the country. The government believes that the exercise of the right of collective self-defense exceeds that limit and is not therefore possible under the constitution.”
The next issue is Japan’s procurement of “war potential” which once again contravenes paragraph 2 of article 9. Here the Japanese government has different logic for the maintenance of defense capabilities. It interprets that Japan has the right of self-defense it has to maintain defense capabilities up to a specific limit and this limit will depend on various factors such as “prevailing international situation and available military technologies”. Thus the government implicitly interprets that the maintaining certain war potential will be in proportion with the military capabilities of the present world order. However the government honestly admits that procuring WMDs and those characterized, as offensive weapons would exceed the minimum self-defense limit. The defense white paper states- “The SDF therefore is not allowed to posses International Ballistic Missiles (ICBMs), long-range strategic bombers, or attack aircraft carriers.” *(Defense of Japan 2008: 109)

Regarding the exercise of the rights of self-defense, the Government of Japan interprets that this is permissible under the Article 9 only in the following three conditions are met:

(1) When there is an imminent and illegitimate act of aggression against Japan
(2) When there is no appropriate means to deal with the such an acts of aggression other than by resorting to the right of self defense; and
(3) When the use of armed strength is confined to the minimum necessary level. *(Defence of Japan 2008: 109)

In the case of geographical boundary within which the government can exercise the right of self-defense, the defense white paper says that ‘it would vary according to the details of the case’. The government’s stated position however regarding the dispatch of the SDF is that the government cannot send the troops abroad “because such an overseas deployments of troops would generally go beyond the necessary level of self-defense.” *(Defence of Japan 2008: 110)

On the issue of right of Collective self-defense, the government believes that since Japan is a sovereign nation it naturally has the right of collective self-defense. However, so far
maintained that "the exercise of the right of collective self defense exceeds the limit of self defense authorized under Article 9 of the Constitution and it is therefore not permissible under the constitution." *(Defense of Japan 2008: 109)*

The last question is that, if Japan exercises the right of self-defense will it be termed as belligerent action and will it be a violation of the paragraph 2 of the Article 9? The government admits that if Japan inflicts casualties and damage upon an enemy's military force in exercising its right of self defense, it will not constitute right of belligerence, "although there may be seemingly no difference in what was actually done" *(Defense of Japan 2008: 110). It adds further that the occupation of enemy's territory, however, exceeds the limits of the minimum self-defense.

**Recommendations from both the Diets Research Commission on Constitution:**

In April 2005, both the House of the Japanese Diet endorsed separate reports which after five years of deliberations had submitted its findings citing the needs of revising the Constitution but failed to declare a consensus on amending Article 9. The main point of the argument of the members of the Commission consisting of different political parties on amending Pacifist clauses of Constitution are being summarized here.

**Recommendations by the Upper House Commission:**

The Upper House Commission on the Constitution presented a seven hundred page document presenting the views of House members who participated in the debate. However only those issues around which this research revolves has been included here.

**Maintaining the Pacifism:** Regarding the Article 9 the House of Councillors final report notes that "the commission members agreed that we should firmly maintain the significance and ideal of pacifism". It notes further that one of the Commission members stating that "the accomplishments Japan achieved in the Post War world and the trust it
gained from the global community should be thought highly of, and that the nation should continue to actively involved in global activities to world peace, emphasizing its unchanged principles of pacifism”.

The Research Commission however has concealed the name an affiliation of the Commission member and mentions their argument as “one member” and “another member”. Thus it becomes very difficult to comprehend who spoke what and the matter gets more complex since there are certain factions within the LDP also which do not favour amending the pacifist clauses.

Regarding the paragraph I of the Article 9 the report says that “the commission members generally agreed that we should preserve the first paragraph of Article 9, which stipulates the renunciation of war”. One of the members opined that Japan should preserve the first paragraph of Article 9, “because it declares the renunciation of wars of aggression”, a widely accepted idea of in international law in line with the spirit of antiwar pact and the charter of the UN.” *(Research Commission on Constitution, House of Councillors, 2005 :11).

**Preservation of Article 9:**

The report notes that the commission members “generally” agreed to “preserve first paragraph of Article 9, which stipulates the renunciation of war.” However they “agreed that Japan as an independent member is entitled to the right of individual self defense.” *(Research Commission on Constitution, House of Councillors, 2005:.12). The report notes a Commission member arguing that “individual right of self defense is a natural right …which comes before the provisions of the constitution.” The report notes further that “one of the members argued that the constitution absolutely allows Japan to have a right of self-defense for ‘national security’ and to ‘use its forces’ for self-defense.” The report adds that “another member maintained the UN Charter stipulates that international laws permit any sovereign state to have individual and collective right of self defense,
and that Japan is no exception” *(Research Commission on Constitution, House of Councillors, 2005: 13).

Necessity of having a self defense organization:

The report notes that Commission members “generally agreed” on the need for “a minimum self defense organization for self defense” adding that “one of the commission members” argued that an independent state has a right of self defense, and “self defense organization is necessary to protect the lives and properties of the people.” However the report also notes that “a different member” maintained that current Self-defense force is unconstitutional and they go beyond the minimum necessity. *(Research Commission on Constitution, House of Councillors, 2005:14).

As regards to revising the second paragraph of article 9 banning possession of armed forces and war potentials, members in the Commission were divided in favour and against the amendments. The report notes:

“One of the members for the amendment pointed out that there are inconsistencies between the provisions and what really goes in the world, and that we need to amend the article when it is considered more appropriate to go with the reality”.

The report quotes another member who supported the need for amending the second paragraph as arguing for a clear that “stipulation of the capacity to maintain the self defense forces and additional military forces for international cooperation”, in the Constitution. *(Research Commission on Constitution, House of Councillors, 2005:14).

As regards to anti- amendment camps the report notes one member arguing for the preservation of second paragraph article 9 maintaining who argued that “Article 9 has a special significance as a brake that can work against runaway militarism”. However the report also notes a third alternative –“adding a new clause in the article 9”- that was discussed during the debate. The report notes:
"The member claimed that on the premise of preserving first paragraph article 9 which renounces war and the second paragraph that denies the possession of war potentials, we should stipulate the self defense forces status and add a new provision that can provide rationales for Japan’s international contribution" the report added. *(Research Commission on Constitution, House of Councillors, 2005:38).

Regarding the exercise of Collective Self-defense the opinion among the Diet members deliberating Constitutional revision were evenly divided. The report notes that a member favoured exercising right of collective self-defense in case of a “unanimous decision of United Nations” resolution. The Commission members were divided on the issue of adding of a clause stipulating right of Collective self-defense. The report noted that “Some supported the idea of stipulating it in the Constitution. The others claimed that an interpretation of the Constitution would be enough”. The report quotes one member arguing for “complete amendment” to dispel “ambiguities” which “invite varied interpretation”, while another opposing the stipulation raising the “concern that the United States might take advantage of it...because the Japan-US security Treaty does not clearly state what Japan’s role should be in terms of collective self-defense.”

The issue of Self-Defense force has been the matter of debate since its formation in 1954 and remained an issue of debate for Commission members as they failed to iron out their differences on “whether the Self-Defense Forces should be stipulated in the Constitution,” but “generally agreed” the need of a “minimum organization for self-Defense.” The report notes:

“one of the members for the stipulation of the Self-defense Forces said that a sovereign nation is entitled to the right of self-defense and a military force is indispensable to protect life and property of the people... there is a consensus among Japanese people that the self-defense forces is constitutional.” *(Research Commission on Constitution, House of Councillors, 2005:41)
International Contribution and Article 9:

The report notes that commission members were "divided" on the issue of inclusion of separate clause in the Constitution for International Contribution.

It notes further that some members supported the idea of "actively promoting the idea Japan's military participation in PKO or multi-national forces approved by the UN, that involve use of force". Other maintained that Japan should only make international contribution in non-military fields, strongly denying the view that "article 9 stands in the way of Japan making international contribution" *(Research Commission on Constitution, House of Councillors, 2005:42).*

Amending Article 96:

There were suggestions in the proposals by the newspapers and private think tanks to amend article 96 as it serves the bottle neck in amending Japanese constitution. The report however notes that commission members "agreed" maintaining the national referendum system "due to its importance". It quotes one of the members saying "it is reasonable for the people to have the authority to amend the Constitution." *(Research Commission on Constitution, House of Councillors, 2005:30).*

Recommendations from Lower House of the Research Commission on Constitution:

The findings of Research Commission on Constitution of House of Representatives note that many members were in favour of maintaining pacifism –the basic principles of Japanese Constitution. *(Research Commission on Constitution, House of Representatives, 2005: 260).*
Maintaining the Pacifism:

As regards to Article 9 the report notes that there were many comments to the fact that “pacifism should be maintained in the future by firmly upholding at least the principle of renunciation of war in paragraph 1 of article 9.”

On the Need of Self Defense Forces:

On the issue of recognition of the right of self defense the House of Representative was divided whether to recognize this right. The report notes that “some members were opposed to recognition even as an exercise of the right of self-defense” however the report also notes that “many members were in favour of recognizing the minimum necessary use of force as an exercise of the right of self-defense. *(Research Commission on Constitution, House of Representatives, 2005: 264).

The Right of Collective Self Defence:

The opinion in the commission were evenly divided on the issue of recognizing the right of Collective Self defense. The report notes that the opinion on the issue was divided into three opinions: those who favoured recognitions without limits, those who faavoured limited recognition and those opposed recognition.

Those who favoured recognitions without limits cited the reason for recognizing the right of collective defense as “recognition would enable....to build an equal partnership with the United Sates” *(Research Commission on Constitution, House of Representatives, 2005: 265).

About those who wanted this right to recognize with limits argued that the right “should be exercised with restraint” establishing prior limits such as limiting its exercise to joint action with allied nations... or to East Asian region ...or in cases having a serious impact on the vital interest of Japan.
Those who were opposed to recognizing this right were of the view that the right of Collective Self defense in the UN charter is “an exceptional and interim measure”. They also argued that “the recognition would open way to unrestricted participation by the SDF in wars fought by the US” and “would threaten other Asian nation and cause them to distrust Japan” *(Research Commission on Constitution, House of Representatives, 2005: 265).

**International Cooperation and Constitution:**

The report of the House of Representative notes that there was a common understanding that Japan should continue actively carrying out international cooperation in future. But on establishing provision on international cooperation the opinion was again diverse. There were suggestions that “provision should be established as a basis for overseas dispatch of the SDF”. But those who opposed the inclusion of such a provision argued that “there is no need to revise the Constitution because under article 9, Japan should carry out support activities in non-military sectors” *(Research Commission on Constitution, House of Representatives, 2005: 267).

A conclusion can be drawn from the findings in the both Houses of the Commissions that while both the houses agreed for adhering and maintaining pacifism, they differed on amending Article 9. While Upper House panel suggested keeping both the clauses intact, the Lower House panel noted that majority of the members were in favour of maintaining right of Self Defence and need of a Self Defense Force and therefore suggested amending Paragraph 2 of the Article 9. The panel members also differed on the status of Self Defence Forces on whether SDF should be specified as military in the Constitution.

A close examination of the Lower House and Upper House Research Commission on Constitution, recommendation indicate that the panel while deliberation on the issue of Constitutional update has taken media as well as other proposals to amend the constitution into consideration. The recommendation that, the Constitution should be updated to ensure the right of self-defense and maintaining self-defense forces has also been explicitly suggested by the Yomiuri and Ozawa proposals. The Lower House
recommendation has also suggested that the second paragraph of Article 9 should be omitted. To this effect, the Yomiuri proposal had also suggested to scrap Para 2 of Article 9 while the Ozawa proposal has suggested addition of a third paragraph saying that ‘the regulation in paragraph 2 does not prevent the maintenance of military power for the purpose of exercising Japan’s right of self defense against military attack by a third country’. Almost all the proposals have suggested that Japan should play its role in the UN peacekeeping efforts.

The Yomiuri and Ozawa proposals have suggested inclusion of a provision expressing Japan’s participation in the international peace activities. A statement in the Lower House recommendation to this effect that ‘explicit provision should be made in the Constitution regarding Japan’s participation in UN collective security activities’ reflects that their suggestion has been taken into consideration. Now that fate of recommendation will all depend on how seriously all the parties in the diet pursue this issue.

New wave of Pacifist Movement in Japan
As Japanese administration stepped up its effort to amend the Constitution by passing a legislation to go for a referendum on Constitution, the pacifist groups also strengthened its rank and file to check the move. More and more pro-Article 9 groups were established, most notably Article 9 Association, with an aim to establish a network to link the local groups to seek further public support for Article 9. It was able to draw more and more intellectuals including 1994, Nobel prize winner Kenzaburo Oe. (The Japan Times, May 4, 2006)

Upping their ante against constitutional revision, the pacifist groups led by Peace Boat-an umbrella organization spearheading peace movement in Japan- organized a three day international conference in Chiba prefecture in May 2008 in which peace groups from around the world participated and voiced their support to preserve Article 9. Over ten thousand participants in the conference pledged to spread the spirit of Article 9 of the Japanese Constitution to other Asian countries. The conference adopted a declaration
which stated that the Article 9 can work as an international peacemaking mechanism and that other countries can introduce similar ideas into their Constitution. It also called for starting global movement to promote the spirit of Article 9. (The Japan Times May 6, 2008)

The anti-amendment group got a shot in the arm when 1976 Nobel Peace prize winner Mairead Corrigan-Maguire termed the Article 9 “a treasure of all mankind and it must be protected”. She said that altering the war renouncing clause of the Japanese Constitution could threaten the safety of Asian people and trigger a regional arm race and urged that all the peace loving people must unite to oppose moves to abandon Article 9 and Japan’s peace Constitution. (The Japan Times May 04, 2008)

At the level of common people there has been strong opposition in the Japanese society to maintain the ideal of war renouncing Article 9. Each year on May 3- - the day Japanese Constitution was promulgated in 1947-- the Japanese throng on streets with anti war slogans and mass rallies country wide and narrate the outcome of catastrophic war pledging not to make the mistake again. On May 3, 2008 during a public rally against amending Article 9, a retired soldier narrated his experience as follows:

“Whenever I recall the orphans left behind in the charred ruins of Tokyo (after the war), my hearts aches. I was responsible for the children having to face such a hardship, I do not want any children to go through that again”, said Eiji Ishizawa who was in the Imperial Japanese Navy. (The Japan Times, May 05, 2008)

The deep distrust towards the war by the retired naval officer echoes Japanese sentiments towards war and is indicative enough why the Japanese do not want an amendment in war renouncing clause of their Constitution.

Government enthusiasms to revise the Constitution apart, the people in Japan do not give much importance over day to day issues. The opinion survey conducted by the Yomiuri Shimbun to asses public aspiration towards Shinzo Abe administration and what are the
policies they would wish Abe to undertake, Constitutional reform came 13 among the peoples priority list with only 7.2% of the 1741 respondents favoured this issue. (See table 1)

Q From list below, please select all applicable issues you would like the Abe cabinet to prioritize and address.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Percentage (%)</th>
</tr>
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<tbody>
<tr>
<td>Economic conditions/job security</td>
<td>51.7% (51.1)</td>
</tr>
<tr>
<td>Fiscal reconstruction</td>
<td>22.1% (19.2)</td>
</tr>
<tr>
<td>Tax reform and the issue of the consumption tax</td>
<td>33.9% (27.4)</td>
</tr>
<tr>
<td>Social security reform, including pensions and healthcare</td>
<td>65.1% (59.5)</td>
</tr>
<tr>
<td>Support for child care and countermeasures for declining birthrates</td>
<td>24.9% (29.0)</td>
</tr>
<tr>
<td>Education reform</td>
<td>20.9% (24.8)</td>
</tr>
<tr>
<td>Administrative reform, such as cutting back the number of government employees</td>
<td>20.8% (17.6)</td>
</tr>
<tr>
<td>Problems of income disparities</td>
<td>32.7% (27.2)</td>
</tr>
<tr>
<td>Yasukuni Shrine issue</td>
<td>4.3% (8.4)</td>
</tr>
<tr>
<td>Foreign policy toward Asia, including China and South Korea</td>
<td>11.4% (15.0)</td>
</tr>
<tr>
<td>Issues with North Korea</td>
<td>20.6% (29.4)</td>
</tr>
<tr>
<td>National defense and security</td>
<td>9.8% (13.9)</td>
</tr>
<tr>
<td><strong>Constitutional revision</strong></td>
<td><strong>7.4% (11.5)</strong></td>
</tr>
<tr>
<td>Disaster prevention and crisis management</td>
<td>11.2% (11.0)</td>
</tr>
<tr>
<td>Public safety and crime prevention</td>
<td>15.1% (26.6)</td>
</tr>
<tr>
<td>Environmental protection</td>
<td>18.6% (21.9)</td>
</tr>
<tr>
<td>Food safety</td>
<td>23.7% (15.0)</td>
</tr>
<tr>
<td>Other; Nothing special; Do not know; No answer</td>
<td>4.0% (2.8)</td>
</tr>
</tbody>
</table>

Figures in parentheses are results from polls conducted in May 2007 (http://www.mansfieldfdn.org/polls/2007/poll-07-35.htm)

Table 1

A previous survey by the Yomiuri Shimbun indicated that the level of understanding and support among different group of society varied to a large extent. Among the General Public, 44.9% approved the idea of an amendment while 36.8% disapproved it. Among the diet members 60.4% members agreed that amendment is best while 34.8% negated it. (Japan Echo 1997:49) This means by the year 1993 two third majority required for approval of an amendment, was still not to be attained. But 97% of the Diet members
wanted a lively debate on Constitution. Among the informed persons, 57.2% supported the amendment while 41.7% were opposed to this idea. The result was reverse in the group of Constitutional Scholars with 63.8% opposing the idea of amendment while 32.6% supported it (see figure 14).

As many as 48% of the opponents of revision, cited the dangers of Japan’s becoming a military superpower as one reason of their stance. Opinion was split over the right of ‘right to collective self-defense’ and overseas deployment of the SDF. In the same poll, 34% said that the government should not change its interpretation that Japan is constitutionally prohibited from exercising this right; while 22% said a clause clearly prohibiting such right should be inserted in the Constitution. (Japan Echo, vol 24 1997:49)
The government's thrust has been to amend Article 9 so as to give a legal status to its defence force and pave for its participation in international security missions, which is presently banned as per the Constitutional provisions. A February 2007 Yomiuri Shimbun survey indicated that 46.2% of the respondents want an amendment in the Constitution while 39.1% wanted to maintain it as it is. A year later the same survey reported that the support for amending constitution fall to 42.5% while those opposed rose to 43.1%. (International Herald Tribune, April 8, 2008)

A Kyodo new survey released in April 2007 suggest that the support to revise Constitution slipped to 57% from 61% two years ago and those opposed jumped to 34.5% from 29.5%. On Article 9, 44.5% said they believe that there is no need to change it, far exceeding the 26% who believe it needs to be changed. (The Japan Times, April 17, 2007).

However public opinion in favour of amendment touched the lowest ebb in 2008 when respondents opposing the amendment outnumbered those who were in favour of amendment. A March 2008 Yomiuri Shimbun survey indicated that among 1786 respondents 43.1% were opposed to a constitutional revision while those supported were 42.5%, remaining 14.4% were indecisive. (IHT, April 8, 2008) (See Figure 15)

![Figure 15](image)

**Figure 15**
But in 2009 support for amendment yet again rose to 51.6% while those opposed came down to 36.1%. Thus the public sentiment towards the amendment shows some inconsistency and indicates that public perceptions vary according to the internal and external circumstances.

However, the people’s aspiration to amend the Constitution does not match with that of the government. A March 2007, Yomiuri survey indicated that more people (25%) wanted amendment because they wished to see explicit provisions regarding the right to live in a favorable environment and those who wanted revision to give legal status to SDF came second (23%). (See the table 2)

Q In regards to the Japanese Constitution, are there any clauses you think should be revised or added? Please select from the list below all applicable options:

| Status of the emperor and what it should be | 15.0% (24.2) |
| Maintaining of an army for self-defense | 23.2% (27.4) |
| Positive international cooperation | 23.3% (21.9) |
| The right to know information about the administrative body | 17.8% (18.3) |
| Protection of individual privacy | 21.4% (27.6) |
| Respect of family | 13.3% (11.5) |
| The right to live in a favorable environment | 25.3% (27.6) |
| Intensifying the authority of the Prime Minister during a state of emergency | 12.5% (12.4) |
| Roles of the House of Representatives and House of Councilors | 11.8% (13.5) |
| Roles of the state and regions | 21.9% (25.2) |
| Establishment of the Constitutional courts | 4.2% (4.5) |
| Other | 0.1% (0.1) |
| None really | 23.8% (16.4) |
| Does not know; No answer | 4.1% (2.9) |

Figures in parentheses are results from polls conducted in March 2006

Table 2

Another poll conducted by Nikkei Shimbun also validates the fact that more people put emphasis on other issues than that of Article 9 which is prime focus of the government. A Nikkei poll found that among the 865 respondents 29% wished that environmental issue should find special mention in the updated Constitution while 25% thought that the idea
of local autonomy is not fully incorporated, far ahead than those (22%) who thought that Article 9 that contains renunciation of the right of belligerency is unrealistic. (see Table3)

Q. If there are problems in the current constitution, what are those items? Please choose as many as apply from the following five answers. (N=865)

| Article 9 that contains renunciation of the right of belligerency is unrealistic. | 22 |
| There is no article that is responsive for current society such as environmental and privacy rights. | 29 |
| The article on the Diet including the bicameral system composed of the House of Councilors and the House of Representatives is inappropriate. | 21 |
| There is wide latitude for the government's intervention and freedom of economic activities is not clearly delineated. | 17 |
| The idea of local autonomy is not fully incorporated. | 25 |
| Others | 2 |
| There is no problem. | 2 |
| Can't answer/ don't know | 21 |

Table 3

As regards to amendment in Article 9, a 2007 Yomiuri survey indicated that a majority of 80.3% of the respondents wanted to maintain first clause of the war renouncing Constitution, while 54.1% wanted to amend second paragraph of Article 9 to give legal status of its SDF. (See Table 4)

Q. Within Article 9's provisions, there are clauses 1 and 2. For each one, please state whether or not you feel there is a need for revision.
S1. Concerning the first clause, which established the "renouncement of war," do you feel there is a need to revise it?

| Yes | 14.0% |
| No | 80.3% |
| Does not know; No answer | 5.7% |

Table 4-a

S2. Concerning the second clause, which established the "absence of military power," do you feel there is a need to revise it?

| Yes | 38.1% |
| No | 54.1% |
| Does not know; No answer | 7.8% |

Table 4-b
As regards to the method adopted to protect Japan, most of the Japanese think that it is the US-Japan security arrangement that guarantees their security. (See Table 5)

Q What method do you think should be employed in order to protect Japan's safety? Please choose only one from the following?

<table>
<thead>
<tr>
<th>Method</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quit the U.S.-Japan Security Treaty, increase military power, and protect Japan's peace with only Japanese power</td>
<td>8.6%</td>
</tr>
<tr>
<td>Continue with present arrangement of protecting peace with the U.S.-Japan Security Treaty and the Self-Defense Force</td>
<td>76.2%</td>
</tr>
<tr>
<td>Quit the U.S.-Japan Security Treaty, and shrink or abolish the Self-Defense Force</td>
<td>5.6%</td>
</tr>
<tr>
<td>Other</td>
<td>1.3%</td>
</tr>
<tr>
<td>Don't know</td>
<td>8.3%</td>
</tr>
</tbody>
</table>

http://www8.cao.go.jp/survey/h17/index-h17.html

Table 5

But due to government's continuous effort to legitimize existence of a Defense force people's perceptions over the years about their Defense Forces which was unexpectedly low during previous years has improved remarkably and has reached up to 84%, which hints to the fact that people would favour adding a clause in the Constitution for having a full-fledged military. (Defense of Japan 2008: 536)

Impression about the SDF

Figure 16
Conclusion

With the above discussion we can draw conclusion that as a result of consistent pressure from its security allies following the non-participation in Gulf War, Japan has initiated a debate to adjust its Constitution as well as pacifist policies with the changed post Cold war realities. The change in Japanese policy is evident not only in the government policies but also in the stance of the political parties. Barring the Communists and the Socialists all the parties seem agreeing to revise the Constitution so that Japan could contribute to the international security and the UN. But how to strike a balance between pacifist ideal of the Constitution while executing this role is still a problem.

To this end, political parties, media organizations, pressure groups and think tanks have unveiled their own proposals suggesting how to amend the Constitution which indicate that they also understand the need for a revision of the Constitution. The Constitutional Review Councils of both the diet have also suggested revision as well as inclusion of new articles to fill the existing gap between the Constitution and new security scenario.

On the issue of most contentious Article 9, some media groups have argued to maintain idealism of pacifism keeping the article intact however suggested inclusion of some additional articles to cope the problem. But majority of them are in favour of either deletion or complete overhaul of paragraph 2 of Article 9 which prohibits Japan from maintaining military and war potentials.

Some of the Constitutional proposals have gone as far as proposing to go for Collective Self Defense –a provision that Japan still considers is prohibited as per the Article 9. Japanese administration’s decision to upgrade JDA to Ministry of Defense, passing a Bill that would consider ways to conduct referendum on Constitutional revision and Constituting a high level Committee to seek ways how Japan could exercise Collective Self Defense, indicate that it is gearing up to renounce Constitutional pacifism.
The changes in Japan’s pacifist policy and the ongoing process on Constitutional revision as well as defense upgrade have drawn strong criticism and concerns from its neighbours. At the same time Japan and the US are also seeking new allies by forming a quad-lateral security arrangement to maintain their supremacy in the region, which have drawn criticism from China and Russia. In this context, the next chapter discusses the implication of these changes on regional security and analyses how countries in the region are reacting to changes in Japan’s pacifist policy and adopting different measures to maintain a balance of power in the region.