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# INDIANA LAW JOURNAL

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## THE NO-WAR CLAUSE IN THE JAPANESE CONSTITUTION

P. ALLAN DIONISOPOULOS†

### I.

The principle of self-defense was a precept of the *ius naturale* and *ius gentium*, and is universally recognized as an inherent right<sup>1</sup> in international law. Yet in the Twentieth Century this right has been modified<sup>2</sup> as the result of a new concept of war; a concept which placed war in roughly two categories referred to by the Church Fathers<sup>3</sup> as "just" and "unjust." This idea is reflected in such wartime phrases as, "God is on our side." The effective alliance with the Supreme Being gives a moral basis to the nation which has already accepted alliance with the pseudo-deity, Mars. Prevailing in righteous struggle (two world wars) the victors believed that they had received the right to impose limitations on sovereignty.

The precedent of restricting sovereignty, established in 1919,<sup>4</sup> was even further elaborated at the conclusion of World War II. The Potsdam Proclamation demanded much more than mere restrictions on armaments and troops; it was a plan to destroy completely and for all time the mili-

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† Department of Government, Indiana University. The writer wishes to express his indebtedness to Professor Edward Beuhrig of the Department of Government, Indiana University, for reading the manuscript and making valuable suggestions. The writer accepts sole responsibility for the facts and points of view contained in this paper.

1. This principle is recognized in the Charter of the United Nations. Article 51 states, "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense. . . ."

2. There is an analogy in that an individual can also lose his "inalienable rights," through "due process of law." However, the procedural aspects at the international level differ considerably from those of municipal law.

3. This concept was resuscitated from the earlier Roman doctrine and embellished with Christian teachings by St. Augustine and Archbishop Isidore. In the Middle Ages other Church Fathers, St. Thomas Aquinas, Francisco Vitoria, and Francisco Suarez, elaborated upon the doctrine of a just war. See NUSSBAUM, A CONCISE HISTORY OF THE LAW OF NATIONS (1950) *passim*.

4. This is not to deny that the exchange of real estate and payment of tribute were not restrictions on sovereignty. However, the pattern of imposing restrictions upon the number of men under arms and the type of weapons and implements of war, as found in the Treaties of Versailles, St. Germain, Neuilly and Trianon, was a new concept.

tary capacity of Japan.<sup>5</sup> It was one thing to impose limitations on a nation's military potential, but quite another thing to carry the program through to its completion, and, as was the case for the treaties concluded after the earlier war, the success of a program of this nature depended on many factors. If the objectives of the Potsdam Declaration were to be achieved, the victorious powers had to be willing to police the defeated nation; the policing function, in turn, depended on domestic politics and international relations.<sup>6</sup> Between September 1945 (Japanese Surrender) and September 1951 (Japanese Peace Treaty) the relations between the non-Communist and Communist nations deteriorated. The "cold war" had changed the international situation so that former enemies (Germany, Japan, and Italy) were now friends and a former ally (Union of Soviet Socialist Republics) became an enemy.

Although the Peace Treaty did not place any restrictions on Japan's military capacity, Article 9 of the American-sponsored Showa Constitution (1947) did.<sup>7</sup> The new Constitution was drafted in SCAP's<sup>8</sup> Government Section, under the direction of Major General Courtney Whitney, and presented to the Japanese Diet as a Government-supported draft. It is not difficult to understand the confusion which reigned in official circles, especially since the Japanese had created a committee to revise the Meiji Constitution in accordance with the stipulations of the Potsdam Proclamation. Although the responsibility for pushing the draft through the Diet fell upon the Prime Minister, Shigeru Yoshida, and his Cabinet members, and thus gave the document the character of a Government product, the "source" of the Constitution was unquestionable.<sup>9</sup> It had

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5. See points 6, 7, and 9 in the Potsdam Proclamation; 13 DEP'T STATE BULL. 423 (1945). A durable program was envisaged in the Byrnes-suggested Four Power Pact. It was proposed that the Big Four (United States, United Kingdom, U.S.S.R., and China) conclude a twenty-five year mutual assistance program to implement the disarmament provision in the Proclamation. 14 *id.* at 1113-14 (1946); and see *Nippon Times*, May 1, 1946.

6. What better example is there than that of the *Petite Entente* (Yugoslavia, Czechoslovakia, and Rumania). Observance of the provisions restricting sovereignty were enforced upon Hungary and Bulgaria until the rise of Nazi Germany changed the picture in Central Europe and made further policing impossible. The domestic scene had also changed with the advent of fascistic parties in Bucharest and Belgrade.

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

"In order to accomplish the aim of the preceding paragraph, land, sea, and air forces as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized." JAPAN CONST., ch. II, art. 9.

8. Supreme Command (also Commander) for the Allied Powers.

9. At the Senate (MacArthur) Hearings in 1951, the deposed General stated that the clause was included at the suggestion of Baron Shidehara, who died a short time before the hearing. However, former Prime Minister Hitoshi Ashida (who had been chairman of the Constitutional Committee in the House of Representatives when the document was taken under consideration) announced in 1953 that the Allies wanted to

a distinctly Anglo-American flavor, convincing many that it had been drafted in the English language and then translated into Japanese. But Article 9 was not a reflection of Western political thought or practice.<sup>10</sup> In it SCAP had erected a safeguard that promised permanence—a permanence that was not available in treaties.

No provision of the Constitution received more consideration than this clause which renounced war as a sovereign right. In the five months in which the two chambers<sup>11</sup> discussed the draft, Prime Minister Yoshida was confronted with the perpetual question, "Who will protect us when the occupation forces are withdrawn?"<sup>12</sup> On these occasions the Prime Minister emphasized the importance of Article 9 "as a great feature of the document." If he was as apprehensive as his fellow legislators, he did not reveal it in the question hours. Shigeru Yoshida resorted to high-sounding phrases in entrusting his nation's security to the "fair play and good faith of the world," while Japan moved in the "vanguard of peace-loving nations on the highroad to justice."<sup>13</sup>

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make sure that Japan would never "come back as a military power" and that the wish of the victorious nations was expressed in Article 9. See *Nippon Times*, March 1, 1953. Ashida may have had knowledge on this subject which is not presently available to interested students of Japanese politics.

And former Prime Minister Yoshida stated, "I myself think it . . . came from General MacArthur's point of view. . . ." Yoshida's *Memoirs*, Part IV, *Asahi Shimbun*, July 29, 1955.

There are a number of excellent studies covering this period. These include: BALL, *JAPAN, ENEMY OF ALLY?* (1949); BLAKESLEE, *THE FAR EASTERN COMMISSION, 1945-1952* (1953); QUIGLEY AND TURNER, *THE NEW JAPAN* (1956); SCAP (Government Section), *POLITICAL REORIENTATION OF JAPAN, SEPTEMBER 1945 TO SEPTEMBER 1948* (1949); and WILDE, *TYPHOON IN TOKYO* (1954). Each of these writers had a first hand knowledge of the events surrounding the drafting and adoption of the Showa Constitution. Blakeslee and Wilde, recognized American scholars on the Far East, were members of the Far Eastern Commission and SCAP's Government Section respectively, and Ball was the Commonwealth representative on the Allied Council.

10. Ashida did note that on two previous occasions other nations had incorporated clauses renouncing aggressive war, the French Constitution of 1791, and Brazil's Constitution of 1891. But no nation had "ever stipulated total abolition of armament and total repudiation of war. In this sense it is unique in the history of the world." See *Nippon Times*, Aug. 18, 1946. It should be recalled that France did engage in a very bitter "defensive" war at that time.

11. The pre-war legislative arrangement prevailed until the new Constitution was in force in May 1947. Thus the older House of Peers (much like the House of Lords, but without the traditions and limitations that have made the latter a functioning body in a democracy), by agreeing to the change in institutions, voted itself out of existence. It was replaced by a new upper chamber called the House of Councillors. Since Japan is a unitary state, the new upper chamber is more like the Italian than the American Senate. Approximately one-half of its membership is elected at large. The remainder are elected in individual districts. It has powers comparable to those of the Italian upper chamber, but cannot cause the defeat of the Government.

12. For accounts of various "question hours," see the *Nippon Times*, June 20, 21, 26, 28, and July 5, 1946; the *OFFICIAL GAZETTE*, Extra, June 27, 28, 29, and Aug. 26, 1946. The *Official Gazette* is the account of proceedings in the House of Representatives and the House of Peers. The journal was published in English during occupation years.

13. *Nippon Times*, June 26, 1946.

The security-minded legislators wanted something more than mere words, and they began looking about for an adequate safeguard. On several occasions interpellators raised the question of finding security within the framework of the United Nations. Questions in this vein indicated either an ignorance of the Charter provisions, or an erroneous inference. Obviously the Government could not give a definite answer to these suggestions, but Government spokesmen found it convenient to dangle before the Diet the hope of the United Nations. Yoshida told the legislators his Government was reassured by the principle upon which the international organization was built, that is, its basic function, the maintenance of international peace and security. Such reasoning by any and all Japanese was fallacious, since the fulfillment of the goals envisioned in the San Francisco Conference in 1945, depended upon much more than mere moral support.<sup>14</sup>

In spite of the many questions raised on the important problem of self defense,<sup>15</sup> the Constitution was adopted by overwhelming majorities in each chamber.<sup>16</sup> The promulgation of the new Constitution was accompanied by an Imperial exhortation to the people to live up to the

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14. In the meetings of the Constitution Committee of the lower chamber, Chairman Hitoshi Ashida had suggested that the renunciation of war was a necessary first step to membership in the United Nations. Other legislators believed that Japan would not be admitted to membership because she could *not* fulfill the obligations of membership. One of the strangest arguments advanced at that time was that the nation would find security within the United Nations with the Security Council taking over Japan's defense and perhaps permitting Japan appropriate measures of self defense. A strange argument indeed—look to an external force for permission to do that which is within the power of a sovereign nation!

15. The Cooperative Democrats openly reflected the insecurity of their compatriots by suggesting an amendment to the draft which would include a statement on the right to self defense. The Party spokesman, Heima Haryashi, noted that "judgment day" was coming, the day when Japan would be independent; but could an independent Japan survive if, in the renunciation of war, she also renounced the right of self defense. Later the Cooperative Democratic Party recommended that the principle of renunciation be incorporated into the Preamble, and exclude it from the operative part of the text. *Nippon Times*, July 12, 1946. If this suggestion had been adopted, it would have saved the Japanese Government many painful moments in later years when it was necessary to "interpret" the constitutional prohibition to create a self defense force. After all, the Preamble of any constitution is an appropriate catch-all, housing those goals which cannot be achieved immediately.

A strong opponent in the House of Peers, Dr. Sasaki, told the Government that if Japan believed that war was immoral, "she could do well to refrain from waging one, without going to the length of making a declaration to that effect." For the account of his statements to the House of Councillors see the *Nippon Times*, Aug. 30, 1946.

16. Only eight Representatives voted against adoption of the Constitution in the lower chamber. One of these, an Independent, voted against adoption because he believed that the Constitution was not "sufficiently pacifistic." He wanted "concrete guarantees against all wars." The lower chamber adopted the draft on August 26, 1946. See *Nippon Times*, Aug. 27, 1946.

The House of Peers adopted the draft on October 7, 1946, and amendments which it proposed were adopted by the House of Representatives without debate.

obligation which they had accepted in renouncing war. On the same occasion Prime Minister Yoshida noted the pride of his fellow countrymen in taking the lead. And a few months later, the Supreme Commander, General MacArthur, reported:

The renunciation of war is a unique feature of the new Constitution. Born out of the bitter experience of war and defeat, this provision bears the impress of the modern conception that mankind constitutes a unity. It renounces the right of belligerency and forbids development of the means to wage war as the only effective curb on war. Here, for the first time in history, a national state thus offers specific and absolute guarantees of peaceful intention, not only to its own people, but to the world at large. The moral significance of this renunciation is self-evident.

The permanent total abolition of armed forces is a logical result of the renunciation of war. This, too, is an innovation in the history of constitutions.<sup>17</sup>

The clause renouncing war, indeed the whole constitution, is enshrouded in contradictions. The victorious powers wanted to mold Japan into a democracy by imposing Western democratic institutions on the Japanese and to create a "peace loving" nation by destroying all vestiges of the war machine. External supervision (the Occupation Forces) was necessary to guarantee acceptance of these two ideals. Yet in each instance it was essential to maintain the myth that the Constitution was "established in accordance with the freely expressed will of the Japanese people. . . ."<sup>18</sup>

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17. SCAP, TWO YEARS OF OCCUPATION, Part 2 (Political), Appendix I, p. 28 (1947). In a report to Congress in 1947, General MacArthur stated that the Japanese renounced all rights to belligerency and "placed their full reliance for future protection on the good faith and justice of mankind." There is not the slightest hint of a measure of self defense in this message. It was obvious that the implementation of the clause depended on foreign powers, not Japan. See General Douglas MacArthur's Message to the U.S. Congress, 16 CONTEMPORARY JAPAN 107 (1947).

18. Potsdam Declaration (12). The principles which were to guide Japanese political development were provided in the Potsdam Proclamation; the United States, along with the other member nations of the Far Eastern Commission, were committed to the creation of a democratic Japan. It would seem that the engrafting of alien institutions on an unfamiliar culture would not be a wise first step toward the development of a democratic nation; institutions are not a guarantee of such development. It is still doubtful whether some individuals in high official capacities realize that a democracy can only exist where there are "democrats;" the cultural and psychological factors being as important as, or perhaps more important than, the democratic institutions.

## II.

Article 9 was a milestone on the highway of idealism. The wisdom of the clause was not challenged immediately after its adoption. On the third anniversary of the Japanese surrender, General MacArthur could still say that the practical weapons which were needed to check the totalitarian advance—liberty, dignity, and opportunity—rested safely “in every Japanese hand, and the nation has thereby become an asset upon which the free world may confidently count.”<sup>19</sup> But questions came forward with increasing rapidity as the “cold war” emerged on the international scene; liberty, dignity, and opportunity are fine weapons, but, unfortunately, the world was not ready to substitute these for another triad—the army, navy, and air force. The Japanese were in a quandry; they recognized the change which had taken place as a result of the cold war. The change threatened to engulf Japan, and some Japanese believed that the nation should prepare an adequate defense; others were opposed to any form of rearmament.<sup>20</sup>

The first step toward self defense was the creation in 1950 of a military police force, the National Police Reserve.<sup>21</sup> The force, comprising 75,000 men, was organized to preserve order and peace and supplement the powers of the rural and municipal civil police forces. This was but the first of a host of plans and programs which could be considered a violation of the Constitution in view of the terms of Article 9. The clause was a contradiction of prevailing world practice, and the Government’s slow but steady progress toward a rebuilt military force was a contradiction of Article 9. The Government, while rearming the nation, denied that it was rearming. The question of constitutionality was raised frequently, but on each occasion Yoshida responded that the Constitution prohibited the use of arms to settle an international dispute, whereas all efforts by the Government were aimed only at increasing the nation’s security.

The Showa Constitution provided for judicial review (one of its many eclectic features).<sup>22</sup> But Japanese jurisprudence was more com-

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19. See General Douglas MacArthur’s Statement Issued on the Third Anniversary of V-J Day, September 2, 1948, 17 *CONTEMPORARY JAPAN* 415 (1948).

20. At the 1953 Conference of the Institute of Pacific Relations in Honolulu, Dr. Shiroshi Nasu, Chairman of the Japanese Delegation, reported that there was a genuinely pacifistic neutrality in Japan. See his statement in *REISCHAUER, JAPAN AND AMERICA TODAY* (1953).

21. At the 1951 Hearings General MacArthur informed the Senators that the National Police Reserve was regarded, at its inception, as a defense force which could be readily converted into something more substantial. See *New York Times*, May 28, 1951.

22. The power of judicial review is an explicit power, not an implied one. *JAPAN CONST.*, ch. 6, art. 81. For a discussion of the Japanese courts see Tanaka, *Democratization*

patible with German positivism than Anglo-American assumptions about law; Japan lacked an essential to the full implementation of the provision for judicial review, *i.e.*, the "higher law" background of the English-speaking world. However, at least one political force availed itself of this constitutional provision in an attempt to prevent the rebirth of militarism in Japan. The Socialists decided to push the issue to its climax, and on March 15, 1952, the Party leadership brought a test case to the Supreme Court. They contended that the National Police Reserve Act was invalid. At the first hearings the Socialists charged that the organization was unconstitutional because the National Police Reserve (1) was purely military, (2) possessed equipment which was "war potential"<sup>23</sup> material, and (3) was scheduled to be converted into a "defense force."<sup>24</sup>

The Supreme Court did not give its decision until October 1952. In the meantime, two important events had taken place: In April 1952 the United States Senate gave its consent to ratification of the Japanese Peace Treaty, and Japan was restored as a free and independent nation on April 28; national elections were held and the Yoshida Liberals won a resounding victory.<sup>25</sup> The Court rejected the Socialists' suit with a declaration by Chief Justice Tanaka that the suit was "abstract" and the Court was not competent to give a decision on the purely theoretical issue of whether the National Police Reserve was "an army" or "military potential." The Court thus limited its power to determine the validity of laws.

The left-wing Socialist, Inomato, Chairman of the Party's Laws and Regulations Committee, charged that the Government had applied pressure on the Court.<sup>26</sup> If the Socialist's charge was true, then the Japanese judiciary missed an opportunity to assert its independence.<sup>27</sup> On the other hand, the Japanese judiciary may have discovered more quickly than its American counterpart, that the ballot, an important expression

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*of Japanese Administration of Justice*, in JAPAN'S PROBLEMS (Ministry of Foreign Affairs (Tokyo), Public Information and Cultural Affairs Bureau, 1954).

23. This is a nebulous and non-descript phrase found in Article 9. It was used frequently in debates, but rarely defined. On one occasion when the Attorney-General, Kimura, was answering questions along this line in the upper chamber, a Socialist, Kanae Hatano, suggested that Japan could "possess military [power] provided it is short of power to wage a modern and aggressive war such as the Pacific War." Kimura answered, "Yes, from a legal standpoint."

24. Nippon Times, May 15, June 12, 1952.

25. Yoshida's victory was especially noteworthy in that Japan has a multi-party system, and in this election, the depurged Ichiro Hatoyama wooed some of the Liberals away from the Prime Minister. Hatoyama had been the head of the Liberal Party until purged by SCAP in 1946, and Yoshida refused to resign when the former was depurged.

26. Nippon Times, Oct. 9, 1952.

27. Article 76 of the Constitution provides for judicial independence, a distinct departure from earlier Japanese practice.



of popular will, perhaps should bind the judiciary as well as the other two branches of government.

Yoshida seemed insecure and uncertain on the constitutional question and made costly "slips of the tongue," which his political opponents were quick to exploit for political gain. Even the principle of self defense, a recognized inherent right of every sovereign nation, did not give the Prime Minister any great solace. On one occasion Yoshida told the Budget Committee of the House of Councillors that the possession of a "war potential" did not constitute a violation of the clause renouncing war.<sup>28</sup> As a result of this statement, the issue of constitutional revision became a question of major political importance, and some parties, such as the Hatoyama faction of the Liberal Party and groups within the Right-Socialist and Progressive Parties,<sup>29</sup> pressed for an immediate revision.<sup>30</sup> The heated debate forced Yoshida to retract his unfortunate statement. At the same time he admitted that rearming, even for self defense, was rearming nevertheless, and therefore called for an amended constitution.<sup>31</sup> But in doing so, Yoshida emphasized two points: (1) that the economic situation prohibited immediate rearmament, and (2) that the Constitution should be changed only when the Japanese people showed their desire for a rearmament program.<sup>32</sup>

Throughout this period Yoshida verbally supported Article 9 and even warned the nation against hasty revision of the Constitution "because it was adopted with such firm determination." It would be a great error, however, to think that Yoshida was disposed to pay as much attention to constitutional considerations as do the heads of governments in the Western world. The Japanese had little understanding of the Western concept of constitutionalism. Japan's first constitution, the Meiji Constitution, was clearly not a constitution in the true sense of that term. It was a "gift" to a subject people from an unfettered sovereign, rather than a document which was imposed on the government by a sovereign people. The Meiji Constitution was an organic act but not

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28. *Nippon Times*, March 8, 1952.

29. Hitoshi Ashida, political advisor to the Progressive Party, concurred with the Government's policy and stated he did not see any need for revision. Ashida had been the leader of the Democratic Party, forerunner of the Progressives, and Prime Minister, but his Party had been involved in scandal and corruption, thereby forcing him out of active politics. He was subsequently cleared by the courts.

30. The Left-Socialist, Labor-Farmer, and Communist Parties opposed revision and rearmament in any form. *Nippon Times*, March 10, 1952.

31. This was interesting in light of later governmental policies which, without constitutional revision, brought into being an armed force. At this time, however, Yoshida said, "To have a 'war potential' even for self-defense, means rearmament and requires revision of the Constitution. I wish to reiterate my earlier statements that this country will not rearm."

32. *Nippon Times*, March 10, 1952.

a fundamental law, and pre-war Japanese Governments did not have to observe restrictions of a constitutional nature. Yoshida's support for the constitution was primarily geared to Japan's economic situation; her economy could not sustain huge military outlays. In fact, the Prime Minister referred so often to the latter factor that it seemed to be far more important than the constitutional provision. When the Prime Minister combined the constitutional and economic factors, he found formidable allies.

American interest in these developments cannot be underestimated. As was manifested in the Peace Treaty and in discussions which preceded the restoration of sovereignty, Washington no longer thought in terms of a helpless Japan.<sup>33</sup> The United States' changed attitude was evident in the material support which was offered to Japan. The economic factor had been so frequently stressed by Prime Minister Yoshida that, if Japan's military force was to be strengthened, material aid was an absolute necessity. This material support provided Yoshida with a very cogent reason to push the defense program, and certainly it removed one of the blocks which he had erected. The constitutional prohibition remained, and it was Yoshida's responsibility to reconcile the defense machinery with Article 9.

Yoshida made an elaborate study of the nation's security needs and then in January 1952 introduced a bill to increase by 35,000 the manpower of the National Police Reserve. The bill brought forth the usual questions on constitutionality; the most appropriate defense the Government could find was to describe the defense corps' mission as exclusively internal.<sup>34</sup> The government's victory on this bill stimulated new defense measures which could be passed within the barrier of Article 9. On August 1, 1952, the National Safety Force, a unified security force, which included the National Police Reserve, was formed. To emphasize the civilian control feature, the National Safety Force was headed by a

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33. For example, in late 1953, Vice President Nixon, on a Far Eastern tour, told the America-Japan Society that the United States was ready to admit that it had made a mistake in advising "Japan to forego the maintenance of a military force." He was not the first to do so. Americans began to bring pressures on the Japanese to rearm shortly after the outbreak of the Korean War. See Nixon, *To the Japanese People*, 22 CONTEMPORARY JAPAN 371 (1953). Others, *e.g.*, Dulles, Admiral Carney, and General Eichelberger, followed suit. See their statements in *Nippon Times*, Nov. 20, 21, and 26, 1953.

34. Takeo Ohashi used this as a means to calm the fears of the legalistic-minded on the left. He had been the Attorney-General but relinquished that portfolio and assumed the responsibility for developing the Japanese defense forces. He once told the Diet that the NPR was much like a regular army, except that the former would not serve overseas, but other than that the police reserve was "better trained than the defunct Japanese army" and was "virtually the same as a military organization." *Nippon Times*, Jan. 10, 1952.

civilian, and the land and sea units were led by civilian inspector-generals who supervised the chiefs of staff.<sup>35</sup> Prime Minister Shigeru Yoshida became the first chairman of the National Safety Board. The occasion was marked by appropriate ceremonies and comments by the new chairman. As usual Yoshida's comments were fuel for the political fires. He called the National Police Reserve the "cornerstone of a new Japanese army," and he instructed the officers to make it the foundation of a new "democratic army."<sup>36</sup>

Although for different reasons, parties from extreme left to conservative right criticized the Prime Minister's statements. The Left-Socialist Party opposed anything that smacked of a rebirth of militarism, while on the conservative side of the Diet, Progressive Party leader Shigemitsu claimed that the speech was tantamount to an admission that the Prime Minister wanted to rearm the nation without revising the Constitution.<sup>37</sup> In building up the defense machinery Prime Minister Yoshida needed the support of the other two conservative parties, but the Government proposals seldom went as far as the Hatoyama and Shigemitsu factions were willing to go.<sup>38</sup> Whenever the Government submitted a new defense measure, the other two parties voted for it; but the personality struggle continued, and there was no strong unifying force that could hold the three parties together for any great length of time. The Hatoyama Liberals and the Shigemitsu Progressives were ready to attack the Government Party at any given moment. These two leaders were in favor of a rearmed Japan, and they believed that the best way to achieve this was by a frontal assault on the constitutional prohibitions. Since they could not persuade the Prime Minister to join them in any effort to revise the Constitution they were ready to join with political brethren of the extreme left to destroy Yoshida.<sup>39</sup>

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35. The civilian control feature was agreed upon by the Cabinet and stressed in presenting the proposal to the Diet. See *Nippon Times*, April 5, 1952.

36. *Nippon Times*, Aug. 5, 1952. Yoshida put his "trademark" on the speech, *i.e.*, immediately after making these comments, he warned that the economy would not permit rearming, and revision of the Constitution would have to precede rearming. The opposition overlooked this portion of his speech.

37. *Nippon Times*, Aug. 9, 1952.

38. Both men had been purged by the occupation authorities. Shigemitsu had been convicted as a war criminal, but was depurged in 1951, and moved back into political circles by creating the Progressive Party out of the scandal-ridden Democratic Party. Ichiro Hatoyama had been the leader of the Liberal Party, but in May 1946, when he was about to take office as Prime Minister, Hatoyama was placed on the purge list, and, according to his later statements, had entrusted the party to Yoshida. When depurged, he discovered that Yoshida was more than a "caretaker"; the Party was his.

39. An example of this alignment occurred after Tokutaro Kimura, the Director-General of the Safety Board, made an address in July 1953 in which he spoke of a "five year defense program." Since this was the first public announcement of the program, the opposition parties, acting in concert, demanded an opportunity to look over

There was another significant development at this time: Former military officers began to take an active role in planning for Japan's defense needs, especially for the development of an air security force. The former officers wanted to schedule two three year plans; the goal of the first three year plan would be a force of 800 planes, and the second three year program would end with a fleet of 3000 planes. The National Safety Board rejected this plan as premature. The Board was content with a fleet of light planes which had been leased from the United States, although it did expect to increase the force to 120 planes by June 1953. The Board believed that the Government should not begin any program to expand the air facility because of the limited economic capacity of the nation.<sup>40</sup> In fact, when the budget was submitted in January 1953, the amount suggested for defense was 20% less than that of 1952.

These various activities undertaken by the Japanese in 1952 indicated that the nation was well on its way to rearming.<sup>41</sup> But by comparing Japan's annual appropriation for national defense with that of the United States, Italy, and the United Kingdom, the Prime Minister found a way to deny that he was rearming the nation. He concluded that it was laughable for his political opponents to accuse him of rearming; two hundred billion yen did not, in his estimation, constitute a rearmament budget.<sup>42</sup>

In June 1953 the U.S. Congress enacted the Mutual Security Act which allowed for Japanese participation. This was to be of great significance to the Japanese in their defense build up. The Japanese Government had hinted that it would be willing to enter into negotiations with the United States and that it would prepare a new defense plan, if

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the provisions of the reported plan. Just a few days after the speech was made, the Budget Committee of the lower house approved a resolution requesting that the plans be laid before it. The Diet demands were met with contradictory statements by the Government; Kimura finally admitted that the plan was still in the study stage, and that the Safety Board had not formally submitted it to the Government for its consideration. Thereafter the Government refused each demand on the ground that the "disputed program" was "merely a 'tentative plan.'" *Nippon Times*, July 5, 1953. Yoshida did tell the Budget Committee that his Cabinet was studying a plan "to gradually increase the strength of the National Safety Force," but the time had "not yet ripened" to reveal it. *Nippon Times*, July 1, 1953.

40. The officer's plan would have called for an annual outlay of 200 billion yen. See *Nippon Times*, Dec. 31, 1952.

41. This changing situation was illustrated by three articles which appeared in the August 14, 1952 issue of the *Nippon Times*. These reported that Japanese shipyards were building small warships for foreign nations, that Japanese industrialists had established a new arms plant, and an association of arms producers had been set up.

42. *Nippon Times*, Sept. 2, 1952. Yoshida cited Italy specifically, since the Italian Government was also a defeated power, but was now trying to rebuild its national armed forces by spending four times as much of its national income for defense as did the Japanese Government. The 1952-1953 budget had earmarked only 3.4% of the national income on defense.

necessary, in order to receive American aid.<sup>43</sup> When this information was given to the Diet by Kimura, it touched off a new debate. On this occasion a Progressive, Hideji Kawasaki, laid two defense plans before his fellow legislators and claimed that one of these was Kimura's "five year plan" and the other, which Kawasaki labelled Plan "A,"<sup>44</sup> was reportedly prepared by Japanese ex-officers, "or by American authorities." The plans were significant not only for the proposed military expansion, but also because of the allegation that Americans had helped in their drafting. The plans raised the usual Article 9 questions, and the anti-Americanism of the leftist factions was visible in the debates. The Foreign Minister, Katsuo Okazaki, admitted that a study was in progress to determine the effect which United States' aid would have on the renunciation of war clause<sup>45</sup> but none of the Government spokesmen was willing to acknowledge that a constitutional revision might be necessary under the provisions of the assistance program.

It was rather apparent that acceptance of aid would mean radical changes in the Safety Force. According to some Japanese officials its name, character, status, and purpose would be revised.<sup>46</sup> The Prime Minister quickly denied that there would be a change in military defense policy.<sup>47</sup> However, in trying to resolve policy statements, Yoshida wrapped himself in policy reversal. Even though he had earlier stated that the function of the Safety Force was to quiet *internal* disturbances, he now told the Diet that it was only natural, in the event of an *external* attack, that the security forces take action. Within a month there was more evidence to indicate a trend of giving the National Safety Force the added duty of external defense; Ogata made public plans which called for an increase in the number of men and which showed that the Government was cognizant of the need to change the character of the forces. There was a general belief in Japan that these plans were the

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43. Nippon Times, July 1, 1953.

44. Plan "A" called for a navy of light carriers, cruisers, destroyers, submarines, and air groups trained in fleet air operations. The "five year plan" was similar, although it favored fewer ships and did not include any recommendations for a carrier program nor a naval air arm.

If the first was an American plan, it was a significant departure from previous policy. Up to this time the only ships which the United States had leased to Japan had been smaller vessels ranging up to destroyers.

45. None of the Government spokesmen were willing to admit that the plans were considered, or authorized by the Government, nor would it admit to Japanese or American authorship.

46. Nippon Times, July 19, 1953. This could have meant that the defense forces would be responsible for more than "internal" defense of the nation. Also see Nippon Times, July 31, 1953.

47. Yoshida also expressed an opinion that the obligation, which Japan would assume under the Mutual Security program, would not lead to any change in the *status quo*, and therefore his Government did not contemplate any change in policy.

direct result of American pressures. Indeed a conference between Secretary of State John Foster Dulles and Prime Minister Yoshida had taken place just previous to this announcement.

The constitutional problem constantly loomed before the Japanese. Up to this time the Government had filled the ranks with volunteers, but a now-contemplated force of over 150,000 men might require a conscription program and this would not be a simple matter without revision of the Constitution. The Government was in a dilemma; it was necessary for domestic political reasons<sup>48</sup> to maintain the fiction of Article 9; at the same time, the Yoshida Government had to provide an increase in military manpower to offset the progressive withdrawal of American security troops. Washington had announced that all American troops would be withdrawn within five years, and the announcement was backed by determination. Yoshida realized that this was an invitation to get the Japanese defensive program in high gear. The Americans could never suggest, however, what was to be done with the constitutional prohibition.<sup>49</sup> Faced with this situation, the Government had to call upon an international law precept, the right of a sovereign nation to defend itself, to justify the course of action it had decided to pursue. The Prime Minister had announced in the past that provisions for self defense would have to be preceded by constitutional revision; suddenly Yoshida discovered that the words and phrases in Article 9 did *not* preclude self defense.<sup>50</sup>

In late 1953 the conservative parties acted in concert to change the name, character, and functions of the National Safety Force. The three conservative parties made plans for a long-range defense program to bring about an increase in Japanese troops in proportion to the decrease in American forces.<sup>51</sup> In October 1953, on the first anniversary of the National Safety Force, Yoshida told the Japanese people that the nation would have to rearm "in the future" to safeguard its sovereign independence, but, because of economic factors, the Japanese would have to be satisfied with the National Safety Force.

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48. The Socialist opposition to rearming was as strong as the two conservative parties' demands for rearming and revision. Yoshida tried to walk the middle plank between these two.

49. Senator Knowland told the Japanese that a Constitution could not "prevent a nation from being dragged behind the Iron Curtain." See his comments in *Nippon Times*, Aug. 29, 1953.

50. *Nippon Times*, Aug. 30, 1953. The size of the National Safety Force was finally set at 130,000. Presumably this number could be filled by voluntary enlistments, and no revision was necessary.

51. *Nippon Times*, Sept. 28, 1953.

The "future" was not too long in coming. Negotiations for American assistance culminated in economic aid pacts with the United States, although, because of disagreement over the size of the projected force, several months of discussion were necessary to arrange mutual defense assistance. While the two governments agreed that an increased number of military personnel was necessary, the Japanese wanted the limits determined by Tokyo rather than by Washington. Although dependent on military aid from the United States, the Yoshida Government was prepared to drive a hard bargain.<sup>52</sup>

In March 1954, the Government submitted two defensive measures (the Defense Board Establishment Bill and the Self-Defense Force Bill) and the Mutual Defense Assistance Agreement to the Diet.<sup>53</sup> Favorable action by the two chambers<sup>54</sup> brought Japan a step closer to the realization of an armed force capable of defending the nation. It was an embryonic army and possessed a military character which could not be de-

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52. As a possible concession to the United States, in view of the higher figures set at Washington, the Japanese Government made public a new five year defense program which would have increased the total forces to 270,000 men.

53. There was confusion surrounding the two proposals because of conflicting statements by members of the Cabinet. The confusion in the Diet was apparent; but the three conservative parties, who held the balance of power in the two houses, were willing to accept any myth or fiction which would help them in creating something stronger than the National Safety Force. If they had any question about a conflict between the constitutional prohibition and the existence of self defense forces, they must have resolved it by deciding that the troops would not be used abroad. Later, however, it was decided that bombing enemy bases from which an aggressive action had been launched against Japan, would be a defensive measure, and not in violation of Article 9. See *Nippon Times*, March 17, 1954. The House of Councillors, while adopting the measures, also resolved that the forces should not be used overseas "in light of the provisions of the Constitution presently in force and the fervent peace-loving spirit of our people." There was widespread apprehension that there would be external use of the forces if the anti-Communist Bloc decided to take action during the battle of Dien Bien Phu.

54. The combined strength of the conservative parties was more than the Socialists and other leftist parties could face, and the defense measures and mutual assistance pacts were pushed through to adoption. Not all Japanese Socialists fit the same pattern. They had split into two groups, the Right and Left Socialists, at the time of the San Francisco Peace Conference in 1951. The Right Socialists often talked as did Yoshida, *i.e.*, they too believed that economic stability was an important first factor, and any program to rearm the nation had to stem from economic recovery. The Socialists of the Right began to move closer to their Left brethren in 1953. They were willing to accept a more heavily armed police force, but claimed that there was "an internationally recognized limit to the equipment of a police organization." In view of the unique character of Article 9, it is difficult to consider a situation comparable in history, and certainly Grotius, Vattel, Pufendorff, and Bynkershoek could not anticipate and treat of such a problem.

There was one Communist representative at the time. In August 1948, the Party published a nine-point peace treaty program which included one recognizing "Japan's right of self-defense and its right to remain free of any commitments that might involve it in international disputes." The Communists had consistently opposed the renunciation of war clause on the grounds that it was hypocritical, since the retention of the Tenno system made Article 9 meaningless.

nied. Instead of a National Police Force charged with internal security, the renamed Self-Defense Force provided a safeguard against external aggression. Another distinguishing feature was that all qualified Japanese, regardless of participation in World War II, could occupy its posts, civil or military.<sup>55</sup>

During enactment of these defense measures, it appeared, for a time, that Yoshida was going to change his policy against revision in order to hold the support of the other conservative factions. His partisan, Eisaku Sato, reported plans to set up a committee within the Liberal Party to study proposals for revising the Constitution.<sup>56</sup> In the following week, Hatoyama offered to return to the fold if the Prime Minister would publicly promise to establish a constitutional revision research committee.<sup>57</sup> If the Prime Minister had carried through with the proposal for revision, there would have been a clear change from the past. But Yoshida had not changed; setting up a committee to study revision was a timely concession that did not bear fruit for his conservative supporters. But for all intents and purposes Hatoyama and the splinter-Liberals had returned to the fold.<sup>58</sup> At this time Vice President Nixon arrived in Tokyo. His presence was interpreted as a means by which the United States would try to influence the Japanese to revise their Constitution and create a larger military establishment.<sup>59</sup> As a result of domestic politics and the attitude of the United States it was reasonable to assume that a major policy change would be made soon.

Hatoyama told a press conference that Yoshida had directed the Legislative Bureau to study the various proposed amendments,<sup>60</sup> and the Prime Minister had given at least implied approval to several such undertakings. Studies were being made by governmental agencies and by committees within the conservative groups but Yoshida treated each of these as all previous measures had been treated—they never reached the floor

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55. The Potsdam Proclamation had called for the permanent removal of those who had been responsible for Japan's aggressive policies in the '30's and '40's. Up to this time the Japanese had followed this stipulation closely; posts in the police force were restricted to ex-officers of junior grades, and only civilians were placed in directorships. *Nippon Times*, May 7, 1954.

56. *Nippon Times*, Oct. 8, 1953. The Constitution provides for popular referendum on constitutional amendments, but the Diet still has not implemented this with legislation.

57. *Nippon Times*, Oct. 16, 1953.

58. Some of the men who had followed Hatoyama out of the Party maintained their identity as "Japan-Liberals."

59. *Nippon Times*, Dec. 2, 1953.

60. Hatoyama may have believed that Yoshida had every intention of recommending legislation which would implement the referendum provision, but more likely he was trying to force the Prime Minister's hand. Hatoyama should have realized that Yoshida did not want to accept responsibility for revision until there was popular support for such an endeavor. For Hatoyama's statements see the *Nippon Times*, Dec. 8, 1953.



of the House of Representatives.

According to the Prime Minister the proposed changes in the defense establishment did not call for revision of the Constitution. Yoshida told the Diet that he would honor the Showa Constitution. In response to a Progressive suggestion that a new one be drafted, one that conformed to reality and was written from a "free standpoint," Yoshida answered that it was "right and natural for us to abide by the Constitution we have whether it is a 'MacArthur Constitution' or not."<sup>61</sup> Three days later Yoshida returned to the Diet with the first critical opinion, that he had ever expressed in public, of the Constitution. Yoshida announced that the document contained some points "unsuitable to Japan's actual situation" and contrary to "the people's sentiments."<sup>62</sup> He admitted that "mistakes" had been made at the time the Constitution was adopted, mistakes which were aggravated by the change in the international scene. This critical opinion was nothing more than what Nixon had expressed two months previous.

Yoshida no longer believed that Article 9 stood in the way of the nation's right to a "peace-preserving force."<sup>63</sup> There was no longer any doubt in the minds of the members of the three conservative parties; the provisions in Article 9 did not preclude rearming for self defense. Under this interpretation of the Constitution, the Prime Minister did not have to render further lip-service to Article 9, nor did he have to seek a definition for that vague phrase "war potential," a phrase which previously had been erected as a bar to rearming.

By the adoption of these defense measures, on July 1, 1954, the Japanese had completed the transition from complete demilitarization and demobilization to the creation of a three-pronged self defense force. There was admittedly a defense army that was to be expanded within a five-year period to 200,000 men; there was a navy which now possessed cruisers and destroyers in contrast to the much smaller vessels formerly operated by the Coastal Safety Force. And for the first time since the end of the Pacific War, Japan had a "self-defense" Air Force complete with modern jet planes.<sup>64</sup> Former officers were now enrolled in the

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61. *Nippon Times*, Jan. 30, 1953. Two weeks later the Liberal Party's Constitutional Research Committee began its study. Yoshida maintained that the study was made to determine "only whether the Constitution is proper to meet the new situation at home." The Socialists claimed that revision was inevitable as the committee was "packed" with pro-rearmament members. Their fears were groundless for no proposal was submitted by the Government to revise the Constitution. Yoshida had conceded enough to gain conservative support, but without giving the left-wing parties an opportunity to capitalize.

62. *Nippon Times*, Feb. 2, 1954.

63. *Nippon Times*, May 7, 1954.

64. *Nippon Times*, July 2, 1954.

ranks of the new forces; the Deputy Chief of the Japanese Self-Defense Air Force, Major General Tsuyoshi Sanagi, had been one of the planners of the sneak attack on Pearl Harbor. The revamped and better equipped forces were primarily the result of Mutual Security.

Yoshida had to draw heavily upon the American arsenal to build even these somewhat limited forces. Training in the use of the new weapons of war was given at American installations. Some Japanese were brought to the United States for schooling and then returned to Japan to train others. Some crews came to the United States to learn shiphandling and returned to Japan aboard ships which had been "demothballed." Japan's transition was thus fostered and brought to completion by the initiator; the "demilitarizer" became the "militarizer."

### III.

Perhaps there is an element of idealism and futility in demilitarization programs. After 1950 some Americans in high places assumed the role of religious flagellantes and scourged themselves before the world for the sin committed in 1945. There were denials that the job which was done was a necessary one, and even great men began to rewrite history to bring their own roles into more favorable light in view of the post-war events. In spite of the failure to correctly evaluate our Red allies and to predict the course of the future, the scourge is not necessary. Hindsight has the advantage over foresight. With our knowledge of post-war events, and especially the deterioration of relations between East and West, we can say we made a mistake in 1945 and 1946 in the occupation policies which we framed for Germany and Japan. But at the same time it must be recognized that the judgments made in the immediate post-war period were based on the knowledge then in our possession.

The United States had definite goals in mind. It is easy now to characterize the goals as idealistic and utopian, but they had meaning then, and still retain some significance. The pattern was set in the 1941 Atlantic meeting aboard the USS *Augusta*, with the famed four freedoms, and reached its maximum development at Potsdam. The Allies had their eyes wide open when they decided to demilitarize and disarm Japan and Germany.

The heinous crime of Nazism and Japanese militarism called for punishment. The tremendous sacrifices in manpower and material were not made so that the newly-created United Nations could officiate as godparents for the offspring of Fascism and militarism. It is inconceivable that anything less than complete destruction of the military potential of both nations would have satisfied the neighbors of Germany and

Japan. The French thought of the three German invasions in seventy years; Belgian soil and neutrality had been violated twice within three decades and the Dutch, Norwegians, Bohemians, Yugoslavs, and Greeks had known the effectiveness of Blitzkrieg and the viciousness of racism. The Japanese had their victims as well. The Chinese, Filipinos, and other Asians who had been subjected to Japanese aggression were no more inclined toward magnanimity than their European counterparts.

The Allies' task was clear. Punishment had to be meted out to those who had instigated the crimes against humanity, and the Allies had to prevent a renaissance of that extremist nationalism which had provided the medium for militarism in Japan and Germany.

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