



Pacifism in the Constitution of Japan and **Strategies of National Security**

ENGLISH VERSION

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PACIFISM IN THE CONSTITUTION OF JAPAN AND STRATEGIES OF NATIONAL SECURITY
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Pacifism in the Constitution of Japan

and

Strategies of National Security

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Clause 2, Article 9 of the Constitution is a *Programmvorschrift* (program rule) enacted under the condition that the collective security is fully effective according to its legislative intent. We find such interpretation in the formation process of GHQ draft based on MacArthur's intent, replies of Prime Minister Yoshida and the process of the Ashida Amendment in the Diet. Unfortunately the condition disappeared definitely and the legislative intent was concealed with the intensification of the Cold War. Toshiyoshi Miyazawa proposed the legal principle suitable to the legislative intent for the first time and suppressed it later on against his will.

Controversy concerning Article 9 and disarmament was confrontation between the solutions of rational choice based on the different expectations about the response of Soviet. It was not the opposition whether Article 9 should be esteemed as an absolute norm or not. So there was a consensus that Article 9 can be interpreted newly and revised according to the change of situations. But after the Cold War opinions supporting Article 9 became dogmatic and inflexible. We should regard the establishment of collective security to which preamble of the Constitution refers as an ultimate goal and treat article 9 flexibly.)

Keywords: Douglas MacArthur, *Programmvorschrift*, Shigeru Yoshida, Toshiyoshi Miyazawa, Game Theory

Introduction

The basic ideas about pacifism in Japan's constitution are clearly indicated in the preamble, and Article 9 is conditioned on these ideas. Paragraph 2 of the preamble, which is quoted below, is indispensable for understanding the legislative intent of Article 9.

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

Let's assume that being able to "trust in the justice and faith of the peace-loving peoples of the world" is condition one. There is also the premise that international society is "striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth," which is condition two. Conditions one and two concern the proper functioning of collective security mechanisms, such as the United Nations Security Council.

"Chapter II Renunciation of War" is based on the above and consists only of Article 9, which is quoted below. Parts that were revisions proposed by the House of Representatives Subcommittee of the Committee on Bill for Revision of the Imperial Constitution are underlined. Everything in the Japanese version of this article including the layout is the same as the original.¹

Article 9. Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.
In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

If both conditions one and two are met, there is no need for the Self-Defense Forces and the U.S.-Japan Security Treaty, and there is absolutely no problem with interpreting Article 9 literally. Clause 1 of Article 9 is based on Clause 3 and Clause 4 of Article 2 of the United Nations Charter and can be considered to have basically the same meaning. Clause 2, however, is premised on the two conditions in the preamble being met (in technical terms, they are legal prerequisites), and it can be interpreted as saying that if the two conditions are not met, Japan can maintain war potential and wage war. Immediately after studying about U.N. collective security in a class on international law taught by Wakamizu Tsutsui during the 1979 academic year, I developed this interpretation after rereading the preamble of the constitution as I thought it was closely related to what I had learned. Therefore, let's call it the preamble-as-condition theory.

The two conditions in the preamble are necessary conditions to guarantee "the right to live in peace" for all peoples of the world, which comes immediately after the conditions. This type of guarantee of the right to life and social rights is not an obligation in the sense of positive law even if the government has adopted it as a policy goal; in this case, the program rule theory (*Programmvorschrift* in the original German), in which the government is not in violation of the constitution even if it has not achieved the policy goal, is cogent. The current leading theory of the right to life and social rights on the national level is the abstract right theory, but in situations when collective security mechanisms have not evolved to the extent that the rights can actually be guaranteed, the program rule theory is appropriate, and Clause 2 of Article 9 must be viewed as a program rule

¹ http://www.digital.archives.go.jp/DAS/meta/DGDetail_000000006 (accessed August 29, 2014).

based on the preamble. I clearly show this in chapter 1 of the paper, and in chapter 2, I consider demilitarization policies under various game theory situations.

1. Legislative Intent of Article 9 and Efforts to Hide that Intent

(1) MacArthur's true intentions

The common theory that Article 9 was established to ensure the security of the various Allied countries of World War II, particularly the Asian countries invaded by Japan, in order to convince these countries to maintain Japan's emperor system, is mistaken. After completing a stint as the U.S. Ambassador to the Soviet Union, William A. Harriman visited Japan and held discussions with General Douglas MacArthur, on February 1, 1946, during which he expressed his concerns that the Soviet Union, which wanted to dispatch an occupying force to Japan, would become more involved in occupation policies and was aiming to expand into East Asia.² Harriman also let it slip that U.S. Secretary of State James Francis Byrnes was secretly promoting the idea of concluding a twenty-five-year demilitarization treaty between Japan and the four victors of the war—that is, U.S., Soviet Union, China, and England. It appears that because of this information, MacArthur decided to draft a constitution that included a demilitarization clause.³ Harriman knew well that the cold war between the East and West in Europe was escalating, which was general knowledge on account of Winston Churchill's "Iron Curtain" speech, and was irritated with the U.S. government's inability to see the Soviet Union's ambitions in East Asia and expressed his concerns to MacArthur when he visited Japan, and it appears that this led General Headquarters (GHQ) to play a leading role in drafting the constitution. Therefore, the major reason that MacArthur was opposed to Byrnes' diplomatic efforts related to the Soviet Union and decided to draft a constitution that included the demilitarization clause, which would undermine the idea of a demilitarization treaty before the Far Eastern Commission, which included the Soviet Union, started to operate was to guarantee Japan's security against the Soviet Union and communism,⁴ and his intention from the beginning was probably to make it possible for Japan to rearm in the case that the U.N. security guarantees were unreliable for any of various reasons, such as the Soviet Union exercising its veto power.

At a meeting with MacArthur on May 6, 1947, three days after the constitution was enacted, Emperor Showa (Hirohito) expressed his concerns about entrusting Japan's security to the U.N. and wanted the U.S. to take the initiative (in ensuring Japan's security). Foreseeing the Korean War, MacArthur strongly reassured Hirohito that although the Soviet Union and China could invade Korea, which is contiguous to both countries, it could not invade Japan on account of the U.S.'s sea and air power at that time.⁵ In this way, MacArthur and Hirohito, both of whom had resolutely decided to revise the Meiji Constitution, probably gave the greatest importance to guaranteeing Japan's security against the Soviet Union and communism

The drafting of Japan's constitution began with MacArthur's three principles that he indicated to the CHQ Government Section on February 3, 1946. The second principle, which is the foundation of Article 9, is

² William A. Harriman & Elie Abel (1975). *Special Envoy to Churchill and Stalin 1941–1946*. Random House, pp. 537, 542.

³ Takashi Miwa (1998). "Nihon Hibusoka Joyaku Koso To Makkasa Noto DainiKo" *Saitama Daigaku Kiyo Kyoikugakugu (Jinbu/shakaikagaku-hen)* 47 (1), p. 55, Miwa (2007). "1945-46nen No Kenpo Kaikaku Katei Ni Okeru Hibuso-joko Donyu No Haikai" *Sogukenkyukiko Research Project Research Report*, 5. http://sucra.saitama-u.ac.jp/modules/xoonips/download.php/KP18A06-474.pdf?file_id=1652 (accessed November 3 2014).

⁴ On January 25, 1946, MacArthur reported to the U.S. Joint Chiefs of Staff that there was no evidence that the emperor had committed any war crimes and warned that the situation in Japan would be thrown into confusion and communism could surface if the emperor were prosecuted, and said that the emperor system was necessary to protect Japan from the Soviet Union (<http://www.ndl.go.jp/constitution/shiryu/03/064shoshi.html> (accessed December 22, 2014). Miwa (1998) stresses the point that MacArthur was planning to run for the U.S. presidency in 1948 and rushed to amend the constitution as evidence of what the occupation accomplished in order to appeal to voters, but his dissatisfaction and distrust of the U.S. government's policies against the Soviet Union created and justified a sense of mission that he must become president. Of course, however, he expected that if he were to comply with the desire of the U.S. government and permit the Soviet Union to take part in the occupation, similar to what occurred in Berlin, part of Tokyo would become an isolated communist area, and Hokkaido would come under the jurisdiction of the Soviet Union. Because this would not only undermine what had already been achieved by the occupation, but he would also be responsible for permitting the Soviet Union to invade East Asia, which he was concerned would be decisive disadvantage in the presidential election, MacArthur's desire to become president and his wariness of the Soviet Union probably become interrelated.

⁵ Narahiko Toyoshita (2008). *Showa Tenno Makasa Kaiken*. Iwatani Gendai Bunka Bunko, pp. 97-101.

quoted below.⁶

War as a sovereign right of the nation is abolished. *Japan* renounces it as an instrumentality for settling *its* disputes and even for preserving *its* own security. *It* relies upon the higher ideals which are now stirring the world for *its* defense and *its* protection.

No *Japanese* Army, Navy, or Air Force will ever be authorized and no rights of belligerency will ever be conferred upon any *Japanese* force.

If sentence 1 above were rewritten in the active voice, it is clear that “Japan” would not be the subject because sentence 2 spells out what occurs when war is renounced, and the words “Japan,” “Japanese,” and their pronouns (italicized words) are used numerous times in the various parts of the principle, except for sentence 1. “The nation” appearing in sentence 1 is a generic singular noun; it does not refer to Japan. Therefore, sentence 1 expresses a fundamental premise that the stipulated abolishment of war between member nations of a universal organization comprised of all or a vast majority of nations has actually been achieved, and sentence 2 and afterwards stipulate Japan’s responsibilities when that condition is met. This is the second of MacArthur’s three principles. In addition, paragraph 2 spells out what the international organization imposes on Japan in response to Japan’s positive actions given in sentences 2 and 3 of Paragraph 1. Sentence 2 of Paragraph 1 and after indicate the norms that Japan should first comply with, and it probably can be argued that other countries, including the U.S. itself, are expected to follow these norms.

There remain several drafts based on MacArthur’s three basic principles that were used until the GHQ Original Draft was completed. In an early draft (figure 1), paragraph 1, which follows the hand written “Article I” includes Clause 1 and Clause 2 of Article 8 of the GHQ Draft without a line break, paragraph 2 includes sentences related to the conditions in the preamble discussed in the introduction, and there are hand-written arrows indicating that paragraphs 2 and 3 should be moved to the preamble. Paragraph 3 corresponds to paragraph 4, the last paragraph, of the preamble in the current constitution. Deputy Chief of GHQ’s Government Section Charles Louis Kades considered deleting sentence 3 of the second of MacArthur’s three basic principles and including the spirit of the sentence in the preamble and wrote paragraph 2 in figure 1.⁷

⁶ http://www.ndl.go.jp/constitution/shiryō/03/072/072_0021.html (accessed September 10, 2014). Italics added by Hirayama.

⁷ Akinori Suzuki (1995). *Nihon Kenpo O Unda Misshitsu No Kokonoka-kan*. Sogensha, p. 278.

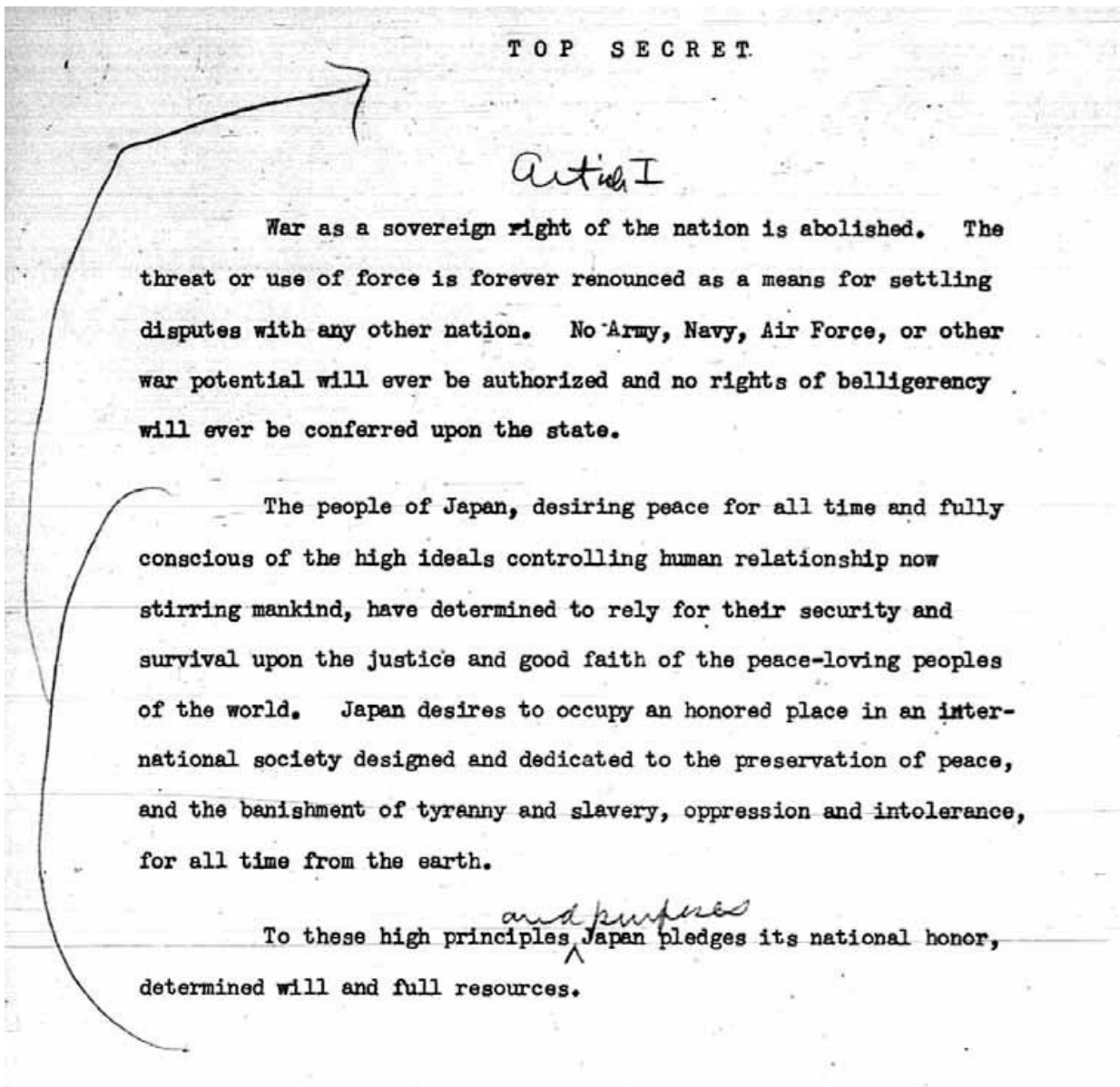


Figure 1. Article 1 of the GHQ Draft

Sauce : *Alfred Hussey Papers*, "24-A Draft of the 'Preamble' to the Revised Constitution" ~ "24-I Drafts of Chapter Ten, 'Supreme Law', of the Revised Constitution" <YE-5, Roll No. 5>.

http://www.ndl.go.jp/constitution/shiryo/03/002_47/002_47_0031.html (accessed September 1, 2014).

Even in later drafts,⁸ there is still no reference to a right to live in peace, and Article 8 of the GHQ Draft remained as Article 1. Therefore, the two conditions appearing in the preamble are the same as those in Article 1 of the original draft but were subsequently moved to the preamble. The right to live in peace was included later without creating a new paragraph and Article 1 through Article 7 were added, making the previous Article 1 the new Article 8 and separating it from the two conditions that were moved to the preamble. It can be surmised that setting aside Clause 1, which conforms to the United Nations Charter, if Article 8 is based on the two conditions in the preamble and the right to life, GHQ created the draft of Article 8,⁹ as given below, assuming that the unprecedented Clause 2 could be interpreted as a program rule that lacks the nature of a positive law.

Article VIII. War as a sovereign right of the nation is abolished. The threat or use of force is forever renounced as a means for settling disputes with any other nation. (第八条 国民ノ一主権トシテノ戦争ハ之ヲ廃止ス他ノ国民トノ紛争解決ノ手段トシテノ武力ノ威嚇又ハ使用ハ永久ニ之ヲ廃棄ス)

No army, navy, air force, or other war potential will ever be authorized and no rights of belligerency will ever be conferred upon the State. (陸軍、海軍、空軍又ハ其ノ他ノ戦力ハ決して許諾セラルルコト無カルヘク又交戦状態ノ権利ハ決して国家ニ授与セラルルコト無カルヘシ)

Unlike sentence 2 and after of the second of MacArthur's three principles, the GHQ draft of Article 8, except for sentence 1, was written in the passive voice and did not use the words "Japan" or "Japanese," starting with the original draft when it was Article 1; therefore, when rewritten in the active voice, the subject is either "all peoples" [any people because grammatically it is singular], like that of the right to live in peace, or "international organization" that should guarantee the right to life. "No army..." of Clause 2, which means "not any army...", refers to all nations and "the State" at the end of the sentence is a generic singular, making the draft of Article 8 (Article 1 of the original draft) a universal law not limited to Japan. The "... laws of political morality are universal...." of paragraph 3 of the preamble of the GHQ Draft refers to this. These laws include renunciation of war, non-maintenance of war potential, and non-recognition of the state's right to belligerence, and the current preamble also has to be interpreted as the universal "[we believe that] obedience to such laws is incumbent upon all nations" of Chapter 2 and paragraph 2 of the preamble. In other words, it does not say that only Japan has to adhere to Clause 2 of Article 9, while other countries do not, and if an ideal collective security mechanism is not completed by the end of the occupation, the constitution does not prohibit Japan from possessing war potential just like other countries or forming military alliances. It should be noted that the Ministry of Foreign Affairs (MOFA) uses the active voice for Clause 1, simply translating "the nation" as 国民 (the people) but employs the passive voice for Clause 2, which has an important meaning.

On February 13, 1946, Courtney Whitney, chief of the GHQ Government Section at the time, said that if Japan did not accept the GHQ Draft submitted to the Japanese government, the conservative elite could not survive and it would be impossible to guarantee the safety of Hirohito,¹⁰ the meaning of which was that only a constitution based on the GHQ Draft could prevent interference by the Soviet Union and the spread of communism.

On February 22, Minister of State Joji Matsumoto consulted with Whitney, and in response to Matsumoto's proposal to place the war renunciation section in the preamble, Whitney said, "The Renunciation

⁸ Alfred Hussey Papers, Constitution File No. 1, Doc. No. 8, http://www.ndl.go.jp/constitution/shiryō/03/147/147_0021.html (accessed September 1, 2014).

⁹ http://www.ndl.go.jp/constitution/shiryō/03/076a_e/076a_e0071.html, http://www.ndl.go.jp/constitution/shiryō/03/076/076_0071.html (Ministry of Foreign Affairs translation) (accessed September 13, 2014).

¹⁰ Record of Events on 13 February 1946 when Proposed New Constitution for Japan was Submitted to the Prime Minister, Mr. Yoshida, in Behalf of the Supreme Commander. *Alfred Hussey Papers*, Constitution File No. 1, Doc. No., 14, p. 3; "Nigatsu Jusan-nichi Kaiken Kiryoku" University of Tokyo, Faculty of Law, [Legal System Historical Materials Office](http://www.ndl.go.jp/constitution/shiryō/03/077shoshi.html), Matsumoto Documents, pp. 1-2. Both, <http://www.ndl.go.jp/constitution/shiryō/03/077shoshi.html> (accessed December 3, 2014).

of War was placed deliberately in a separate chapter in order to give all the emphasis possible to this important Article.” and “this Article [Article 8 of the GHQ Draft, which would become Article 9 of the current constitution] ¹¹ affords Japan the opportunity to assume the moral leadership of the world in the movement towards lasting peace.” When Lieutenant Hussey asked if the reason Matsumoto wanted to place it in the preamble was because he wanted it merely as a principle (without the force of law), Matsumoto said that was right. Hussey responded, “While we appreciate that position, we feel that the renunciation should be incorporated in the basic law itself, that this would give it real force.” Whitney stated, “The enunciation of this principle should be unusual and dramatic.”¹² Hussey appreciated Matsumoto’s proposal to move Article 8 of the draft to the preamble, and Whitney probably admitted it was a general principle because in the draft shown in figure 1, Article 1 is bundled with the two conditions of the preamble with the words “these high principles and purposes” (“and purposes” was added by hand). Whitney admitted that the war renunciation clause originally had been a basic principle included in the preamble. It should be noted that it appears Whitney indicated that this should not be made public but treated as secret knowledge for the time being because it would undermine the persuasiveness for the U.S. government and other allied powers if it were generally known.

At the first meeting of the Allied Council for Japan held on April 5, 1946, MacArthur outlined a theory that the preamble stipulated preconditions for Article 9 by calling for all peoples to create a world order that Japan could entrust its security to, and stated, “The United Nations Organization, admirable as is its purpose, great and noble as are its aims, can only survive to achieve that purpose and those aims if it accomplishes as to all nations just what Japan proposes unilaterally to accomplish through this constitution—abolish war as a sovereign right. Such a renunciation [“Chapter 2 Renunciation of War” in the GHQ Draft and after] must be simultaneous and universal. It must be all or none.”¹³ MacArthur was saying that the legislative intent for “Chapter 2 Renunciation of War” was to propose universal international law in Japan’s constitution, not to stipulate the renunciation of war as positive law that only Japan has to adhere to. It is possible to confirm that the legislative intent for Article 9 was to transform pacifism into an international norm.¹⁴ MacArthur considered it an all-or-none proposition and that it would be impossible for Japan to do so unilaterally. This is the person who originally proposed Article 9 himself clearly indicating the fundamental facts behind the legislation,¹⁵ and as will be discussed below, amendments by the Privy Council, responses by Prime Minister Shigeru Yoshida, and amendments by Hitoshi Ashida (House of Representatives’ committee chairman) all aimed to create a law that faithfully adhered to these facts. It is clear that the facts behind Article 9 were not that Japan had disarmed at the time the constitution was created because even without a Japanese Army, the occupying armies of western countries, led by the U.S. Army, was ensuring Japan’s security from a direct or indirect invasion by the Soviet Union.

The passive form of the war renunciation clause was not used in Japan’s draft for some time starting with the model draft prepared by Matsumoto, but it was restored in Clause 2 of Article 9 of the colloquially written first draft dated April 5, 1945, when the objects were crossed out and the verb changed to the passive voice (*Riku-kai-ku-gun sono hoka no senryoku no hoji ha ~~kore wo~~ yurusa(re)nai. Kuni no kosenken ha ~~kore wo~~ mitome(rare)nai*). Looking at the English translation reveals that Article 9 was still written in the passive voice even in the Constitution Draft Proposal Summary dated March 6,¹⁶ and the current English translation of

¹¹ Portions included in square brackets were added by Hirayama.

¹² Kenzo Takayanagi, Ichiro Otomo, Hideo Tanaka, auth. and ed. (1972). *Nihonkokukempo Seitei No katei—Rengokoku Soshireibu-gawa No Kiroku Ni Yoru I Genbun To Honyaku (The Making of the Constitution of Japan Vol. I Documents)*. Yuhikaku Publishing, pp. 392-4.

¹³ http://www.ndl.go.jp/constitution/shiryo/03/102/102_0111.html (accessed September 13, 2014). The above gist is understood because of the front page of the Asahi Shinbun on the following day, but it was mistakenly translated in various ways as “It was proposed that the Japan unilaterally renounce war, the greatest right, by way of the constitution” on page one of Mainichi Shinbun the following day.

¹⁴ Sumio Hatano (2014). “Kokutai Goji To Hachigatsu Kakumei—Sengo Nihon No Heiwashugi No Seisei” *Kokusai Nihon Kenkyu* 6, p. 15.

¹⁵ Takami Katsutoshi (2004). *Ashibe Kenpogaku Wo Yomu—Tochikiko-ron*. Yuhikaku Publishing, pp. 392-4 defines it as constitutional facts (憲法事実).

¹⁶ http://www.ndl.go.jp/constitution/shiryo/03/101/101_0061.html (crossed out portion deleted), portions in parenthesis added,

Clause 2 still uses the passive voice.¹⁷ Furthermore, Director-General of the Legislation Bureau Toshio Irie and Deputy Director-General of the Legislation Bureau Tatsuo Sato started to work with Kades on April 2 to adjust the proposed wording, but they did not discuss the use of the passive voice in Clause 2 of Article 9.¹⁸ Therefore, the Japanese probably decided on their own to switch to the passive voice, and because the translation of the GHQ Draft prepared by MOFA used the active voice without a subject for Clause 1 and the passive voice for Clause 2, the switch was probably made at the request of MOFA, which attached importance to this translation. In the Legislation Bureau's third Proposed Responses to Questions Regarding Revisions to the Constitution (April 1946), prepared mainly by Irie and Sato, the response to the question "why is Clause 2 of Article 9 in the government's original draft written in the passive form?" is "it means that having ascertained the aim of the international organization, we have adopted a stance to actively move forward in line with that aim."¹⁹ If the passive voice were changed to the active voice, "international organization" would be the subject. Members of MOFA responsible for the translation interpreted the passive voice in the GHQ Original Draft in this way and convinced the Legislation Bureau to use the passive as they were sure that their interpretation was correct on account of MacArthur's April 5 speech, and it was that explanation that became the response to envisioned questions.

However, at the fourth meeting of the Privy Council Committee held on May 6, 1946, the use of the passive voice was criticized because it meant that the clauses had been forced on Japan by foreign powers, and Kichisaburo Nomura pointed out, "if we rely on the righteousness of foreign countries, there will be concerns when the occupying forces withdraw." In response to a statement touching on the above speech that "even MacArthur, himself, has said that it is impossible to achieve the aim of war renunciation unless it is universal," Irie argued, "That is true. I cannot definitely say that I am truly at ease with the passive voice," and Nomura stated, "Because it is created by the freewill of the people, it must be made clear that people are concerned about it. In particular, the issue must be debated in the Diet so that it can be widely understood. If in any way, the people feel they must rely on foreign countries but say nothing about it, it will be a sign of the ruin of the country."²⁰ This resulted in the Privy Council's revisions removing the passive voice. Although MOFA's explanation of the passive voice probably had the same gist as MacArthur's speech that Nomura referred to, the Legislation Bureau softened the prepared response to the envisioned question because it had to be made vague so that the meaning of the passive would not conflict with their interpretation of Article 9. This probably made it impossible for Irie to defend the use of the passive in line with the prepared responses.

(2) Shigeru Yoshida's distorted response

On February 13 and 22, Shigeru Yoshida, who was serving as the Minister of Foreign Affairs at that time, took part in discussions with Courtney Whitney and others. Because Yoshida's English listening skills were probably quite good since he came from a pro-U.S. and England diplomatic faction and had also served as an ambassador to England, his interpretation of Article 9 when he was prime minister and responsible for revising the constitution must be interpreted in terms of these discussions, which relied on subtle nuances of English; MacArthur's April 5 speech; which Yoshida probably knew of (either the original text or the Asahi Shinbun article that was faithful to the original text); and MOFA's interpretation (Yoshida had served in MOFA before becoming a politician), which hinted at the prepared response regarding the use of the passive voice. First, let's examine the response Yoshida gave at the full plenary session of the Diet on June 28, 1946.²¹

The purpose of the proposed renunciation of war clause is to establish an international peace

(accessed September 10, 2014).

¹⁷ http://www.ndl.go.jp/constitution/shiryo/03/093a_e/093a_e0051.html (accessed September 17, 2014).

¹⁸ <http://www.ndl.go.jp/constitution/shiryo/03/100shoshi.html> (accessed September 9, 2014).

¹⁹ http://www.ndl.go.jp/constitution/shiryo/04/118/118_030l.html , 30-31/235 (accessed September 7, 2014)

²⁰ Toshio Irie. *Sumitsuin Inkai Riroku*. fourth meeting, May 6, 1946, http://www.ndl.go.jp/constitution/shiryo/04/111_1/111_1_040l.html (accessed September 4, 2014).

²¹ Official Gazette Extra, June 29, 1946, *90th Imperial Diet House of Representatives Proceedings Record (stenographic notes)* 8, pp. 124-5. Stenographic record of Imperial Diet proceedings can be viewed on the Teikoku Gikai Kaigiroku Search System (<http://teikokugikai-i.ndl.go.jp>).

organization. Establishing an international peace organization is an attempt to prevent all wars of aggression. If one assumes, however, that there are wars in self-defense, there has to be a country that wages a war of aggression. Therefore, not only is permitting wars based on self-defense, a nation's right to self-defense, a dangerous idea that leads to unintended wars, but also if a peace organization or international organization were established, the recognition of a right to self-defense itself would be dangerous.

The underlined part indicates that Yoshida thought that Clause 2 of Article 9 included the expectation that an international peace organization would be created and was conditioned on its creation. In addition, the sections with a wavy underline shows that the international peace organization that Yoshida is discussing is an ideal collective security mechanism that would make not only the exercise of the right to self-defense, which Article 51 of the United Nations Charter permitted as a provisional measure, but also the right itself unnecessary. In response to a question at a meeting of the House of Representatives Committee on Bill for Revision of the Imperial Constitution held on July 4, Yoshida stated, "It is our expectation that because an international peace organization will be created, the natural right to wage war should naturally disappear once that organization is created,"²² once again stressing that the creation of an international peace organization is a precondition for making the right of belligerence in self-defense unnecessary. This is the same spirit as that of the second of MacArthur's three basic principles that Japan even renounce war as a method of self-defense and not possess war potential conditioned on the universal renunciation of war. Most people, including Minister of State Kanamori, ignored Yoshida's reference to the international peace organization, only referred to "recognizing the right to self-defense itself would be dangerous," and interpreted the statement as Yoshida unconditionally renouncing not only war in self-defense but also the right to self-defense.²³ Footnote 33 provides a possible motivation for Kanamori intentionally, not mistakenly, twisting Prime Minister Yoshida's response.

Immediately after giving the response quoted above on July 4, Yoshida stated, "If one only discusses ideals, it may stop at ideals or become empty words.... At any rate, the UNO (United Nations) was founded to maintain international peace, and according to its charter or if Japan joined as an independent nation, it is my interpretation that we would be protected under the charter..."²⁴ Even in regard to concerns about illegal non-military economic threats, Yoshida stated in his July 15 response, "If one considers the existence of an organization of peace-loving countries (U.N.) or the objective of creating a [stronger international peace organization], it is my abstract opinion that such concerns are idle fears though not quite satisfactorily,"²⁵ and in this way, he was saying that the U.N. could not definitely be relied on, and achieving the ideal of establishing an international peace organization was the goal of Article 9 and a precondition for Clause 2 (not maintaining war potential and renouncing the right to belligerence). Because the U.N.'s greatest weakness in regard to Japan's security was the Soviet Union's veto, the international peace organization that Yoshida talked of was an organization that could overcome that and contain the expansion of the communist countries.

As one can see in section (3), in the *Prepared Responses to Envisioned Questions*, Clause 2 of Article 9 is considered to be unrelated to collective security. Although Yoshida repeatedly denied this, Kanamori and the

²² 90th Imperial Diet House of Representatives Committee on Bill for Revision of the Imperial Constitution Proceedings Record (stenographic) 5, pp. 60.

²³ Chubu Nihon Shinbun sha, ed. *Nihonkenpo No Bunseki—Kaisei Ka Yogo Ka*. Reimeishobo, 1954, pp. 84-5, Osamu Nishi. *Nihonkokukempo Seiritsu Katei No Kenkyu* (Seibundoh, 2004), pp. 277-8, Kunio Yamada. *Jieiken No Ronten (Shiruzu Kenpo No Ronten (12))*, National Diet Library, Research and Legislative Reference Bureau, <http://www.ndl.go.jp/jp/diet/publication/document/2006/200605.pdf> (accessed July 10, 2014), note 16, p. 13). Statements with the same gist can be found in the June 26 response (June 27, 1946, Official Gazette Extra, 90th Imperial Diet House of Representatives Proceedings Stenographic Record, 6, pp. 81-2), but Yoshida's referent to the international peace organization in the sentence following "Because Clause 2 of Article 9 permits no arms nor right of belligerency of the state, wars of self-defense and right of belligerency were renounced," is ignored, and it was assumed not only arms for self-defense and wars but also wars in self-defense were not allowed (Yamada (2006), pp. 12-3).

²⁴ 90th Imperial Diet House of Representatives' Committee on Bill for Revision of the Imperial Constitution Proceedings Record (stenographic) 5, p.60.

²⁵ 90th Imperial Diet House of Representatives' Committee on Bill for Revision of the Imperial Constitution Proceedings Record (stenographic) 13, p.227.

Legislation Bureau stuck to the prepared responses and continued to twist Yoshida's response. However, Yoshida did nothing to correct the twisted interpretation because if he openly did so, the secret would come out. In addition, because Yoshida planned to focus all of Japan's energy on reconstruction by free-riding on security as much as possible, Yoshida went as far as to base statements on the twisted interpretation, and as time passed, that interpretation became Yoshida's true feeling.

Even so, in Yoshida's response given on September 5, 1946, at the House of Peers' Special Committee on Revision of the Imperial Constitution, he stated, "Taking pride in promoting and contributing to peace by voluntarily and completely eliminating weapons and then playing a leading role in an organization for peace, we included the war renunciation clause in the constitution,"²⁶ and conditioned Clause 2 of Article 9 on the existence or creation of a peace organization, confirming that revisions by the House of Representatives did not change Yoshida's interpretation of Article 9. What was the significance of the revisions by the House of Representatives?

(3) The truth of the Ashida Amendment

The interpretation that maintaining war potential is constitutional focuses on the "in order to accomplish the aim of the preceding paragraph" phrase, which was added to Clause 2 by the House of Representatives Subcommittee of the Committee on Bill for Revision of the Imperial Constitution, chaired by Hitoshi Ashida. The interpretation is that Japan shall not possess war potential for the purpose of a war of aggression, which is prohibited by the portion following the introductory clause, but Japan can possess war potential for other purposes, such as self-defense. This interpretation is referred to as the Tan theory because Dr. S. H. Tan of China is thought to have been the first person to propose it. Except for the added portions, the initial proposed amendment submitted by Ashida²⁷ switches Clause 1 and Clause 2 of the government's original draft and the current wording.

- Article 9 Aspiring sincerely to an international peace based on justice and order, the Japanese people shall not maintain land, sea, and air forces, as well as other war potential and renounce the right of belligerency of the state.
- (2) For the above purpose, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as a means of settling international disputes.

The aim of not maintaining war potential is "aspiring sincerely to an international peace based on justice and order," which is the same as the first part of Clause 1 of the current constitution. Therefore, Ashida submitted the proposed revision for a completely different purpose than that espoused by The Tan theory.

Yoshida's response at a plenary session of the House of Representatives on June 26, 1946, was "Japan will take the lead itself in renouncing the right to belligerence under any pretense. We will create a foundation for world peace by renouncing (that right). Standing at the forefront of the peace-loving countries throughout the world, we want to express our resolve to contribute to the creation of world peace through this constitution (applause),"²⁸ which is clearly the basis for Ashida's proposed amendment switching Clause 1 and Clause 2 and concluding Clause 1 with the "(the Japanese people) renounce the right of belligerency of the state."

Before submitting the proposed amendment, Ashida showed it to Kades, who interpreted it as permitting self-defense capabilities and participation in U.N. military operations and gave his approval.²⁹ In order to

²⁶ 90th Imperial Diet House of Peers' Committee on Bill for Revision of the Imperial Constitution Proceedings Record (stenographic) 5, p.2.

²⁷ Secretariat of the House of Representatives, ed. (1995). 90th Imperial Diet House of Representatives Subcommittee of the Committee on Bill for Revision of the Constitution Proceedings Record (stenographic), p. 85.

²⁸ Official Gazette Extra June 27, 1946, 90th Imperial Diet House of Representatives Subcommittee of the Committee on Bill for Revision of the Constitution (stenographic notes) 6, p. 82.

²⁹ Charles L. Kades (1989). "The American Role in Revising Japan's Imperial Constitution." *Political Science Quarterly*, 104 (2), pp.236-7. According to Suzuki (1995), the talks between the two took place "around the end of July" (p. 326). Ashida proposed his amended at the subcommittee on July 29, and on that day, Ashida stated that he should talk with GHQ before submitting the proposed amendment to the committee (Secretariat of the House of Representatives, ed. (1995), p 89), and it appears that the

willing permit the possibility of Japan arming to defend itself and other purposes, Kades removed the wording “renounces [war] even for preserving its own security,” which was included in the second of MacArthur’s three basic principles, compiled the GHQ Draft proposal, and permitted Japan to maintain war potential for self-defense [Nishi (2004), pp. 248]. Kades understood that Ashida’s proposed amendment was an active attempt by Japan to make it possible to maintain war potential and supported the attempt. Furthermore, the proposed amendment that Ashida presented to Kades had Clause 1 and Clause 2 in the reverse order of that in the original draft; therefore, Kades interpreted Ashida’s proposed amendment as an attempt to justify maintaining war potential for self-defense and participation in U.N. military operations, unlike The Tan theory.

Kades commented, “At the Privy Council, Minister of State Kanamori said that Japan is permitted to possess arms in order to maintain world peace.” [Nishi (2005) pp. 250]. I thought that Kades may have mistakenly remembered this because I could not find a statement to that effect in the material that would have recorded the proceeding around this time,³⁰ but when I examined the material further, I found that according to a Japanese summary of the Privy Council Review Committee for October 21, 1946, passed on to GHQ, Kanamori assumed that Japan could not use force to suppress domestic rebellions or defend itself because the country could not maintain war potential, and explained, “the ‘in order to accomplish the aim of the preceding paragraph’ in Clause 2 refers to the main aim of ‘aspiring sincerely to an international peace’ in Clause 1, and ‘war potential’ refers to items mainly used for war; therefore, Japan is permitted to possess arms to maintain domestic peace (国内治安維持).”³¹ 国内治安維持 was translated as “maintenance of international peace” in the English translation of the proceedings summary.³² The meaning of the Japanese version of the proceedings summary is unclear because of internal inconsistencies, but it was likely that the English translator resolved the inconsistencies by assuming 内 in 国内 (domestic) was a mistake for 際 in 国際 (international). In any case, even if Minister of State Kanamori actually made that statement at the Privy Council, it was GHQ’s position that it was not a problem.

However, it is clear that to the extent that GHQ did not raise any objections, all committee members wanted to make the provision regarding not maintaining war potential as little like a prohibition in a positive law sense as possible, which is clearly evident by several facts, including the following. Clause 1 of the government’s original draft includes the wording “permanently renounce this” but Clause 2 does not include the word “permanently”, and Minister of State Kanamori said, “When it comes to issues such as maintaining war potential covered in Clause 2, there are probably still many points regarding the relationship with the United Nations that should be considered. One is the idea that the part possessing an extremely clear sense of being forever became a part of Clause 1.” [Secretariat of the House of Representatives (1995), pp 141–2³³] The

talk had already occurred or occurred immediately by the end of July. An interview carried in the May 31, 1976, Asahi Shinbun, stated the talks were in August, but Kades confused it with a talk with Sato on September 27, and there are no records of a meeting with Ashida after August 1, when the proposed amended was decided upon by the committee [Takao Sasaki (1997). *Senso Hoki Joko Seiritsu No Keii*. Seibundoh, pp. 358-70]. Because when amendments to Article 9 were compiled by the subcommittee, “it is said that when Tatsuo Sato whispered to Ashida, ‘if it takes this form, GHQ will probably complain because it will be obvious that we can maintain land, sea, and air forces, as well as other war potential for self-defense,’ Ashida said something like “it is O.K.” [Sato (1999), pp. 137-8], Ashida had probably obtain Kades’s approval before the amendment was adopted. According to an interview with Suzuki, Hussey and Peake heard about the talk between Ashida and Kades and checked it with Whitney [Suzuki (1995) pp.326-7]. It is also assumed that knowing about the Ashida Amendment, Peake may have also independently noticed the Tan theory [Kenzo Takayanagi (1963). *Tenno/Kenpo Daikyujō*. Yukishobo, pp. 78], but that is not so, Hussey and Peake felt that the amendment would make it possible of maintain war potential for purposes such as self-defense because of exchanges between the two based on the proposed amendment that switched the two clauses and checked that it was alright for Kades to made the decision himself.

³⁰ Tatsuo Sato, Isao Sato, rev. (1994). *Nihonkoku Kenpo Seiritsu-shi Vo. 4*. Yuhikaku Publishing, pp. 997–9.

³¹ Ichiro Murakawa, ed. (1981). *Teikoku-kenpo Kaiseian Gijiroku—Sumitsuin Teikoku Kaiseian Shinsa Iinkai Gijiroku*. Kokushokankokai, p. 211.

³² Constitution Hearings: Privy Council Committee Sessions (English). GHQ/SCAP Records, Box no. 2085 Folder title/number: (13), National Diet Library request number: GS (B)00602.

³³ Looking at the GHQ Draft of Article 8 quoted in Section (1), “forever” (*eikyu ni*) is used in Clause 1, and although in the English version “ever,” which basically has the same meaning as “forever,” is used for war potential and right of belligerence, in the Ministry of Foreign Affairs’ translation, Clause 2 uses *keshite...nakarubeku (beshi)*, which has the meaning of never, a stronger negative than not, and the sense of ever, *eikyu ni*, has been eliminated. In addition, in the March 6 Constitution Amendment Draft Summary, while the Japanese simply uses the negative in “*rikukaikugun sono hoka no senryoku no hoji ha sore wo kore wo yurusazu kuni no kosenken ha sore wo mitomezaru koto*”, the English translation is “The maintenance of land,

original draft with the permanent rule in Clause 1 makes it more possible for Japan to fulfill various obligations such as United Nations member countries supplying troops (Article 43 of the U.N. charters) by Clause 2, and the English translation of the Privy Council proceedings summary discussed above indicates the same conclusion.³⁴ It is clear that this statement by Kanamori had a major impact, and the majority opinion became that Clause 1 and Clause 2 should be returned to their position in the original draft [Secretariat of the House of Representatives (1995), pp 190–1]

However, the portion that could be read as Kanamori's interpretation that Clause 2 is not a permanent rule was completely eliminated from the English translation³⁵ submitted to GHQ. Japanese were convinced that they were unable to not only make revisions that would clearly indicate Japan could rearm but also even show GHQ the minutes of secret meetings in which the possibility of such an interpretation had been discussed. It is clear that the Japanese were overly sensitive because the conclusion in the deleted portion is the same as that in GHQ's English translation of Kanamori's comments to the Privy Council Review Committee (which was also a secret meeting). The idea that war potential for participating in the U.N. Army cannot be used for self-defense is unreasonable and not permitted both in terms of the spirit of the U.N. charter and in practice.

As shown by Ashida's statement³⁶ quoted below, Ashida's own interpretation of his proposed amendment is that Clause 1 (Clause 2 of the current Constitution), is premised on the two conditions in the preamble—that is, a collective security.

Well, let me give you another reason that was not explained. If [not maintaining war potential and renouncing the right to belligerence] are left in Clause 2 as in the original and then the wording is changed, this could lead to misunderstanding among related parties. As long as they are independent clauses, unless we make it like something like “do not maintain it” or “that it is not permitted,” making revisions could just cause unnecessary problems [by GHQ rejecting proposed amendments to attach conditions to the not maintaining war potential and renouncing right to belligerence]. Japan truly desires international peace. Therefore, Japan will not maintain an army or navy, and the right of belligerence of the State shall not be recognized. Using “without possessing war potential” by attaching this type of description [revising the “shall not possess war potential” prohibition in the original draft submitted by the government] such as that describe above, will probably make it easier to explain during negotiations with GHQ. Because it would probably be very difficult to rewrite the English version of Clause 2 while leaving it as it [not moving to Clause 1 but keeping Clause 2 not move], I think that it will be better to resolve the matter [not maintaining war potential and

sea, and air forces, as well as other war potential, will never be authorized. The right of belligerency of the state will not be recognized,” and “never” refers nothing but to maintaining war potential (<http://www.ndl.go.jp/constitution/shiryo/03/093shoshi.html> (accessed December 15, 2014)). In the Japanese, “keshite” (never) is missing, and in the English translation, the “never” refers to only not maintaining war potential,” which is maintained in the current version of the Paragraph 2 of Article 9 and its English translation, “The maintenance of land, sea, and air forces, as well as other war potential, will never be authorized. The right of belligerency of the state will not be recognized,” uses never only for the maintenance of war potential (<http://www.ndl.go.jp/constitution/shiryo/03/093shoshi.html> , accessed December 16, 2014). In this way, an expression equivalent to “ever,” which appears twice in Clause 2 in the GHQ Draft and has almost the same meaning as “forever” in Clause 1 was completely eliminated from the Japanese version. This statement by Kanamori hints at the extraordinary creativity and efforts behind it, and because the interpretation of the Article 9 as conditioned on the preamble embodied in the MacArthur's April 5 speech and Yoshida's response would lead to his lifetime work coming to nothing, so it was unwelcome to him, Kanamori probably promulgated the interpretation of Article 9 as an independent article with a positive law nature using the weak points of the GHQ and Yoshida's secret knowledge that could not deny Kanamori's interpretation in public.

³⁴ Tatsuo Sato took Kanamori's statement, “amendments and other options are possible” [Tatsuo Sato (1999). *Nihonkokukenu Tanjoki*. Chuobunko. p. 137.] as hinting at room to maneuver on account of the flexible interpretation that did not go as far as an amendment. The government's future official interpretation that using a flexible interpretation of war potential in Clause 2 would make the maintenance of war potential for self-defense constitutional was built on the framework established by Kanamori [Takayanagi (1963), pp. 83-4] and had its beginnings in Kanamori's statement.

³⁵ Constitution Hearings: House of Representatives/ The 90th Session of the Imperial Diet/ Minutes of Sub-Committee (English). GHQ/SCAP Records, Box no. 2088 Folder title/number: (2), National Diet Library Modern Japanese Political History Materials Room request number: GS(B)635, Kiyoshi Mori, sup. trans. (translated back into Japanese from the English), Ichiro Murakawa, Osamu Nishi, trans. (1983). *Kenpo Kaisei Shoiinkai Himitsu Gijiroku—Beikoku Kobunsho Kokai Shiryo*. Daichihoki.

³⁶ Secretariat of the House of Representatives, ed. (1995), p. 191. Underline and wavy underline added by Hirayama.

renunciation of right of belligerency] within the organization for peace that we aspire to.

The true significance of Ashida's proposed amendment is that not maintaining war potential and renouncing war are conditioned on the existence of a peace organization. As for the statement by Ashida, the underlined portion was completely left out of the English translation submitted to GHQ, and the wavy underlined portion became "[for] this reason, I think that it will be better to resolve the matter into the framework designed to demonstrate our great enthusiasm for peace." Although 平和機構(organization for peace) is translated simply as "peace," and 機構(organization) as "framework," what Ashida is speaking of is an international organization for peace like the U.N. Security Council, which is clear from the seven other examples of the use of that word appearing in the Database System for the Minutes of the Imperial Diet (Teikoku Gikai Kaigiroku Search System).³⁷ It is clear that Ashida's "to resolve the matter within the organization for peace that we aspire to." are restatements of "the purpose is to establish an international peace organization" and "establishing an organization for international peace organization is an attempt to prevent all wars of aggression" in Yoshida's response provided at the House of Representatives on June 28.

According to *Prepared Responses to Envisioned Questions*, Clause 1 permits the right to self-defense, but Clause 2 makes wars in self-defense impossible because there is no war potential. Therefore, although there is the statement "if the United Nations is established and its armed forces increase in strength, countries can in fact rely on the United Nation's armed forces to fight wars of self-defense." Even if that is not true, Clause 2 does not prohibit guerilla wars using available arms that do not involve the war potential of or battles by the nation, and in the *Prepared Responses to Envisioned Questions*, it is noted that Japan should adhere to Clause 2 unconditionally regardless of collective security.³⁸ At the subcommittee, however, Kanamori and Ashida presented an interpretation of Article 9 that deviated from the prepared responses, but it was either left out of the translation or intentionally mistranslated by the Japanese out of concern that GHQ would not approve of it. In the original of the Secretariat of the House of Representatives (1955), forty-one parts were marked with red lines so that they would not be translated.³⁹ In terms of Chapter 2, particularly Clause 2, GHQ's intention of proposing international law and the intent of Ashida Amendments were the same; therefore, there should have been no problem with correctly translating it.

When proposed amendments that were the same as the current wording took shape at the seventh subcommittee meeting held on August 1, 1946, Ashida said, "As for the phrase 'preceding paragraph,' I wanted, in fact, to include the desire for world peace in both of them, but because I did not want to repeat things, I wrote 'in order to accomplish the aim of the preceding paragraph,'" and An Yoshida responded, "[The aim of the preceding paragraph] is aspiring for international peace based on justice and order, and even after revising the prohibition, 'shall not maintain land, sea, and air forces, as well as other war potential to achieve that desire' by replacing 'shall not maintain' with 'do not maintain', the aim is still clearly stated and the committee chair's efforts were not a waste." Hiroshi Hatsukade added to An Yoshida's statement, saying "the preamble ending with 'pledge' is a declaration" and "I do not think that there is any problem with Article 9 coming immediately after that statement..." [Secretariat of the House of Representatives (1955), pp. 194], which set the current wording. Therefore, when Clause 1 and Clause 2 were returned to their original order and the current language settled, no one envisioned The Tan theory, and everyone stressed that not maintaining war potential was a method to achieve international peace given in the preamble, not a prohibition on possessing the potential. The appropriateness of measures is evaluated according to their relationship with the purpose. If ideal collective security has been achieved, not maintaining war potential would be extremely useful for peace as a form of global disarmament, but to the extent that ideal collective security has not been achieved, maintaining war potential is not necessary unconstitutional, and Japan should maintain war potential if doing so makes a greater contribution to establishing international peace based on righteousness and order than not doing so.

³⁷ <http://teikokugikai-i.ndl.go.jp> (accessed July 1, 2014)

³⁸ http://www.ndl.go.jp/constitution/shiryo/04/118/118_0281.html, 28-30/285 (accessed September 7, 2014).

³⁹ *Sankei Shinbun*, September 30, 1995, Tokyo morning edition, pp. 1, 4.

(4) Suspicion that Ashida stole the Tan theory

The first time Ashida set forth The Tan theory was in the January 14, 1951, edition of the *Mainichi Shinbun* (Nishi (2004), pp. 294 (note 102)), and he asserted in the piece that he had publicized the theory since the drafting of the constitution. As evidence, he quoted a line from his book *Shin-kenpo No Kaishaku* (Interpretation of the New Constitution),⁴⁰ which was published on the day the constitution was promulgated, that Article 9 is not a renunciation of wars in self-defense, but that was a restatement of the government's official interpretation (Kanamori's interpretation), and Ashida is clearly being dishonest because in the immediately preceding paragraph, he states that "the aim of the preceding paragraph" is "aspiring sincerely to an international peace based on justice and order."

At the Cabinet's Commission on the Constitution held on December 5, 1957, Ashida asserted The Tan theory and testified that "by inserting the phrase 'in order to accomplish the aim of the preceding paragraph,' the unconditional not maintaining war potential in the original draft was transformed to not maintaining war potential under certain conditions."⁴¹ However, The Tan theory permits the unconditional maintaining of war potential but limits its use to purposes other than aggression; it does not put conditions on not maintaining of war potential. Applying the same explanation he used for amendments that added the condition of the existence of an organization for peace to The Tan theory, Ashida exposes that The Tan theory is not his own idea but something he parroted.

One can discern The Tan theory in the comments that Dr. Tan of China made at the twenty-seventh meeting of the Far Eastern Commission on September 21 regarding the grounds for China's resolution approved by Committee No. 3 of the Far Eastern Commission that met on September 19, 1946.⁴² Going through GHQ, the commission demanded that Japan add a provision requiring that the prime minister and other ministers be civilians (the so-called civilian clause) in case Japan were to rearm on account of a revised Article 9. Therefore, on September 27, Kades told Tatsuo Sato of the Legislation Bureau, "Clause 1 (in fact, Clause 2) of the article includes 'for the above purpose,' and this could create misunderstanding that Japan could rearm for purposes other than that given above"⁴³ and that it would be better to change "for the above purpose" to "in order to accomplish the aim of the preceding paragraph" ('above' is the English translation of 前掲 used in the original proposition of Ashida Amendment) to avoid that misunderstanding.⁴⁴ The former wording could be interpreted to include the preamble, but the later would limit the scope to Clause 1 of Article 9, eliminating the possibility of misunderstanding. Kades concerns are based on the preamble-as-condition theory, not The Tan theory, and he mistakenly thought this was also The Tan theory.

When the wording for Article 9 was set at the committee, Sato thought that a war in self-defense would probably be permitted and was concerned that GHQ might object. However, he had no idea it would become the foundation of The Tan theory.⁴⁵ At that time, just like Kades, he had in mind an interpretation other than The Tan theory that would permit war in self-defense. Ashida somehow heard about The Tan theory, which Sato had picked up from Kades almost two months after Ashida Amendment, and started to claim in January 1951 that the House of Representative subcommittee's revision was based on his own idea that made it possible to rearm. After the stenographic record of the subcommittee were classified in May 1956, the Commission on the Constitution Chair Kenzo Takayanagi, Kanamori, and Sato requested that President of the House of Councillors release those records in order to find out the truth about the Ashida Amendment,⁴⁶ but their request was

⁴⁰ Hitoshi Ashida (1946). *Shin-kenpo No Kaishaku*. Diamond Inc., <http://kindai.ndl.go.jp/info:ndljp/pid/1045378>, accessed November 29, p.36.

⁴¹ Commission on the Constitution, ed. (1957). *Commission on the Constitution General Meeting Proceedings Record*, pp. 7, 91.

⁴² Nishi (2004), pp. 167-8, Transcript of Twenty-Seventh Meeting of the Far Eastern Commission, Held in Main Conference Room, 2516 Massachusetts Avenue, N.W., Saturday, September 21, 1946. Records of the Far Eastern Commission, 1945-1952, Box No. 7 "FEC Verbatim Transcript of Meetings 26-33 (1946.9.19-1946.11.1)" <Sheet No. FEC(A)0085>, pp. 18-19. <http://www.ndl.go.jp/constitution/shiryo/04/126shoshi.html> (accessed September 21, 2014).

⁴³ Tatsuo Sato. "Kenpo Kaiseian Dai-jugokai-jo Oyobi Dai-rokujuroku-jo No Shusei Ni Kanshi Ke-disu Taisa To Kaidan No Ken September 27, 1946 Type-carbon-pen Hito Tsuzuri" National Diet Library (Record of documents related to Tatsuo Sato, A111-58, 201)

⁴⁴ Sato (1999), p. 141

⁴⁵ Sato (1999), pp. 137-9.

⁴⁶ Because Takayanagi consistently misunderstood Ashida's interpretation of Article 9 following the Ashida Amendment

denied.⁴⁷ This suggests that Ashida was also the mastermind who got the records classified.

It is clear that Dr. Tan did not base his interpretation on the English translation of 前項の目的 as “above purpose” because of the “...for purposes other than those specified in the first paragraph of Article IX...” in the above statement. He probably saw 前項 in the original Japanese or the subsequent Chinese translation. Sentences in Chinese classics do not have punctuation and line breaks; these are provided in the explanation of the original text, and they are not necessarily correct. Therefore, people familiar with Chinese classics should be able to envision where punctuation and line breaks appear without even thinking. As shown in the introduction of this paper, the Japanese constitution does not have any numbers that clearly indicate the beginning of Clause 2; for the Chinese translation, therefore, if one removes the punctuation and line breaks, the composition of clauses in each article depends on the reader. What comes after “aspiring sincerely to an international peace based on justice and order,” the introductory clause, can be interpreted as the previous paragraph. First of all, The Tan theory probably could only have been thought up by a person well versed in Chinese classics who applied this knowledge to the Japanese explanation. With the phrase “preceding paragraph,” Japanese reading the Japanese version would read the introductory clause, which represents the aim, and initially stop there. Because the second half of the sentence is the method to achieve the aim (first part of the sentence), even if they assumed that the “the aim of the preceding paragraph” is directly related to the second half of the sentence, the first half of the sentence, the main aim, would be interpreted as prescribing Paragraph 2 because the first part of the sentence is the main aim. This is the same for the English translation after the revision proposed by Kades.⁴⁸

Employing the expressions that I have used, one could summarize Toshiyoshi Miyazawa’s theory of the “aim of the preceding paragraph”⁴⁹ in the following way. Even if “the aim of the preceding paragraph” refers to “not waging wars of aggression” in line with The Tan theory, it is impossible to ignore the “aspiring sincerely to an international peace based on justice and order,” the main aim, and because countries that had renounced wars of aggression through renunciation of war treaties fought World War II in the name of self-defense, it is necessary not to maintain war potential, including that for self-defense, in order to actually achieve the purpose of not waging wars of aggression. In this way, the interpretation that unlike The Tan theory, the Ashida Amendment leads to more forceful demands not to maintain war potential for self-defense is more reasonable. It is probably clear that The Tan theory is a fallacious argument if one adheres to Japanese grammar and semantics and does not inappropriately apply how Chinese classics are read. It should be noted that Miyazawa is not advocating the government’s theory or the dominant theory that the “aim of the preceding paragraph” is referring to the introductory clause of Clause 1. Miyazawa ignores these theories and criticizes the internal structure of The Tan theory; thus this is his own theory distinct from the other three theories.

People working in the Legislation Bureau tried to undermine Ashida’s interpretation of The Tan theory. Using only the part of Ashida’s statement given in section (3) referring to the peace organization up to “probably make it easier to explain during negotiations with GHQ” Toshio Irie, who was responsible for drafting the constitution as the Legislation Bureau Director, commented, “In my opinion, Mr. Ashida was simply setting forth what was considered correct at that time and made the claim to clarify the public stance that

[Takayanagi (1963). pp. 78], it appears that Kanamori and Sato strive to determine the truth by setting Takayanagi up.

⁴⁷ Shoichi Koseki (2009). *Nihonkokukenpo No Tanjo*. Iwanami Gendai Bunko, pp. 298–9.

⁴⁸ On September 13, 1946, about one week before The Tan theory was proposed at the Far Eastern Commission, Kijuro Shidehara gave “maintaining domestic order” as an aim other than the ones in the preceding paragraph while considering “the aim of the preceding paragraph” “aspiring sincerely to an international peace based on justice and order” and police power not war potential in line with the government’s interpretation, and responded, “there is no problem with expanding police power” according to the Ashida Amendment [90th Imperial Diet House of Peers Special Subcommittee of the Committee on Bill for Revision of the Constitution Proceedings Stenographic Record, 12, p. 27]. At the Privy Council’s Committee, Genroku Endo pressed the issue and has interpretation was “it was possible to have a military to certain degree for domestic order as a result of the Ashida Amendment [Tatsuo Sato, Isao Sato, ed. (1994) pp. 998]. On May 6, Endo asserted, “Police only are insufficient for domestic issues. A certain amount of war potential is also necessary. Therefore, I would prefer not to have such constraints if possible. For example, I would like to include a stipulation such as “more than required to maintain domestic order,” [http://www.ndl.go.jp/constitution/shiryo/04/111_1/111_1_0411.html (accessed September 9, 2104), and found such meaning in the Ashida Amendment. If anyone in different positions tries to derive from the Ashida Amendment what he/she desired, he/she can find an interpretation what he/she wants. Among those, the interpretation that war potential could be maintained to ensure world peace in the English translation of the summary of Kanamori’s statements to the Privy Council is the most natural and rational, and one could say that it is the program rule theory.

⁴⁹ Toshiyoshi Miyazawa (1955). *Nihonkoku Kenpo*. Nippon Hyoron Sha, chapter 2, [11].

Japan would not wage any wars—not only wars of aggression, but also ones in self-defense.⁵⁰ Published in July 1960 by the Commission on the Constitution, Irie (1960) supplements oral statements made in June and July 1954 at the University of Tokyo Occupation System Research Conference [Irie (1976) pp. 953].

Shortly before Ashida referred to the organization for peace at the subcommittee, Yoshio Suzuki had the following to say regarding Ashida's opinion that non-recognition of the right of belligerency should come before the renunciation of war, "An international law scholar, too, explained that it is better to first bring up the right to belligerency because then the right to self-defense will not be renounced." [Secretariat of the House of Representatives (1995), pp 190]. Suzuki understood that the proposed Ashida Amendment was a scheme to avoid renouncing not only the right to self-defense but also war potential for the purpose of self-defense and introduced the view of an international law scholar who supported this. However, Irie only stated, "Yoshio Suzuki agreed with that (Ashida's statement)" [Irie (1976), pp. 386] and ignored the view of the international law scholar Suzuki brought up as grounds for his agreement.

Irie referred to his own hand-written notes⁵¹ when making statements, and in these notes he correctly transcribed, including line breaks, not only Suzuki's explanation related to the international law scholar's opinion regarding self-defense but also Ashida's statement regarding a solution to the issues of not maintaining war potential and renouncing the right of belligerency within an organization for peace. Therefore, he must have been strongly impressed by these statements. Omitting these statements from his testimony was clearly an intentional act as it is unthinkable that he would carelessly omit them. At the end of his hand-written notes, he wrote "completed April 30, 1950." Because conditions in East Asia had grown tense on account of the January 1950 statement by U.S. Secretary of State George Acheson and the establishment of an alliance between China and the Soviet Union in February, Irie read through the stenographic record and took notes in preparation for the debate regarding rearmament in the Constitution. When he found Ashida's statement on the organization for peace, he probably thought "this is it." After reading it, Irie may have finally understood the original meaning of the prepared response regarding the passive voice and the April 5, 1946, speech by MacArthur. He then possibly considered making Ashida's statement public and sought Ashida's approval. At that time, he may have also touched on The Tan theory for contrast. In any case, in January 1951, Ashida made public The Tan theory that he had learned through parties related to the Legislation Bureau, such as Irie, and acted as if it was an interpretation that he had thought up from the time of the amendment. Kanamori, Irie, and Sato all countered this assertion. Although it would be a stretch to say that the Ashida amendment, which was no more than a faithfully reflection of MacArthur's and Yoshida's interpretation, was his original contribution, The Tan theory is a unique one that no American or Japanese had thought of.⁵² It was probably clear to people working in the Legislation Bureau that Ashida had stolen that theory and lied out of a twisted intention to take sole credit for making maintaining war potential constitutional.

It was not until May 10, 1956, that the stenographic records were classified, and various aspects make sense if one hypothesizes that Irie made his statements expecting that Miyazawa and others, who were interested in his statements opposing Ashida's interpretation of The Tan theory, would check the stenographic records and discover Ashida's statement regarding the organization of peace that Irie had intentionally abridged. As discussed previously, members of the Legislation Bureau tried to use the stenographic records to prove that Ashida had lied, and shortly after the records were classified, both Kanamori and Sato, supported by the chair of the Commission on the Constitution, Takayanagi, requested the records be made public. As will be discussed below, Takayanagi announced a theory with the same gist as Ashida's statement regarding an organization of

⁵⁰ Toshio Irie (1960). *Nihonkokukempo Seiritsu No Keii*. Commission on the Constitution [Toshio Irie (1976) *Kenposeiritsu No Keii To Kenpo-jo No Shomondai— Toshio Irie Ronshu*. Daiichi Hoki, previously published], pp. 386, 387.

⁵¹ Toshio Irie "Transcription of the 90th Imperial Diet House of Representatives Subcommittee of the Committee on Bill for Revision of the Constitution Proceedings Stenographic Record, etc., pen 3 books" National Diet Library (Modern Political History Material Catalog 2 Toshio Irie Related Documents Catalog 39)

⁵² Soichi Sasaki first advocated The Tan theory in the January 21, 1951, *Asahi Shinbun* [Fumihiko Isaki (2005), "Sengo Ni Okeru Sasaki Sochi No Heiwa-ron—'Jiei-senso/Jiei-senryoku Goken Ronsha No Heiwashugi'" *Shidai Nihonshi*, 9, pp. 108–9], but although it is possible to submit articles and make revisions right before publication with newspapers, he ignored Ashida's editorial in the *Mainichi Shinbun* one week earlier. It is difficult to imagine that Sasaki published his editorial without knowing Ashida's piece beforehand. The chain of plagiarism probably went Tan→Ashida→Sasaki.

peace in 1953, but Miyazawa announced the theory in the spring of 1946, around the time of the GHQ Draft proposal, and, except for GHQ related parties such as MacArthur, had the right to it as its first proponent. The Legislation Bureau created a list composed of Takayanagi and Miyazawa, both of whom had announced a theory that it felt should become the government's new interpretation. Initially, the bureau tried to get Miyazawa, the leading Japanese constitutional scholar who also had first claim to the theory, to take the lead, but he declined. Therefore, the bureau probably worked with Takayanagi, and Ashida responded by "burying" the stenographic records. This hypothesis could be proven if there were a reason for Miyazawa refusing the Legislation Bureau's offer.

(5) Miyazawa's proposal of the program rule theory and suspicion of Takayanagi's plagiarism

In the paper titled "*Kenpo Kaisei Ni Tsuite*" (Regarding Constitutional Revision) published in March 1946, Miyazawa starts off by stating, "The Japanese army has been disbanded. I think that it is important that this not be merely a temporary measure, and Japan be prepared to set a major policy of creating a nation that will never again possess arms—only such a country is truly a peaceful nation" and then commenting "hopes are not necessarily always realized immediately. This is a tricky issue when revising the constitution." He goes on to write, "most professionals in the field of law are adherents to legal positivism and have a tendency to think that stipulating moral standards and overriding political principles in law is meaningless," and then concludes by supporting the idea of dealing with pacifism through revisions to the constitution as he writes, "It is in no way inappropriate to lay down political principles in the constitution. In particular, at a time like now when major reforms are being implemented, it is best if main principles based on high ideals are adopted as a program," and "One can suppose that Japanese want constitutional amendments to set program rules."⁵³ It is clear that this is the application of program rule theory in which provisions concerning the right to life and social rights in the constitution are goals to strive for and policy guidelines, not rules of law. At the sixth meeting of the Constitutional Problems Investigation Committee (Matsumoto Committee) held on November 24, 1945, Miyazawa asserted basically this same ideal during debate regarding removing the military provisions in the Meiji constitution [Takami (2004) pp. 474]. Using this ideal as foundation, he goes on to argue that demilitarized pacifism should be clearly indicated as program rule in *Kenpo Kaisei Ni Tsuite*.

Around the latter part of February, right before Miyazawa wrote *Kenpo Kaisei Ni Tsuite*, a member of the Cabinet permitted him access to the GHQ Draft, but he did not have enough time to carefully read it since he saw the English version (?) for only a couple of minutes, but he notes, "I also heard about Article 9 (Article 8 in the GHQ Draft) and perhaps it stuck in my mind" and "I also feel like one would have to judge that I had knowledge of MacArthur's draft (GHQ Draft) when I wrote *Kenpo Kaisei Ni Tsuite*." Because at the Constitutional Problems Investigation Committee, he said, "it is not the idea of completely disarming but just not placing military provisions in the constitution," the ideas in *Kenpo Kaisei Ni Tsuite* "should probably be viewed as coming from MacArthur's draft."⁵⁴

In *Kenpo Kaisei Ni Tsuite*, Miyazawa develops a program rule theory by comparing the difficulty of establishing a pacifist nation to that of eliminating unemployment even if it is stipulated that all Japanese have the right to work (page 26). Although based on the idea that both can be taken as rights like the right to life and social rights, it requires a major leap from the argument of eliminating the military provisions, and he should have clearly remember it if it were his own idea. If demilitarization were clearly stipulated, it would be impossible to guarantee that the constitution could be quickly revised in the case it became necessary to rearm in the future; therefore, Miyazawa probably hit a wall at the beginning but found the answer in the GHQ Draft. Because the right to live in peace appears in Paragraph 2 of the preamble, Miyazawa was probably able to gain a whole new perspective even in the short time he had with the draft. The phrase "stipulating moral standards and overriding political principles in law" (page 28) likely has its origins in "laws of political morality are universal," which appears in Paragraph 3 of the preamble in the GHQ Draft. Miyazawa probably did not see Chapter II, Article 8, of the GHQ Draft, but Paragraph 2 and 3 of the preamble appear to form the basis of

⁵³ Toshiyoshi Miyazawa (1946). "Kenpo Kaisei Ni Tsuite" *Kaizo*. March, pp. 25, 28, 29.

⁵⁴ Mainichi Shinbun, ed. (1968). *Showa Shisho Shi E No Shogen*. Mainichi Shinbun Sha, p. 169.

Kenpo Kaisei Ni Tsuite. Miyazawa criticizes the dominant theory and the government's interpretation that Clause 1 of Article 9 does not stipulate the renunciation of war in self-defense and thinks that the constitution should be interpreted to mean that all wars should be renounced in light of the absolute pacifism of the preamble [Miyazawa (1955) chapter 2 [8] (b = □)]. The interpretation that the whole of Article 9 is premised on the preamble is a distinctive interpretation of Miyazawa, which suggests how he came into contact with the GHQ Draft and can be seen in the June 26 and 28, 1946, Yoshida response and the second of MacArthur's three general principles that advocates ideals, such as the unnecessary of the right to self-defense. According to Miyazawa, Article 9 is no more than a method to achieve the aims given in the preamble, and whether policies stipulated by Article 9 are appropriate or not is a technical question regarding peace and should be evaluated taking into consideration that the preamble is the aim.⁵⁵ Miyazawa commented, "I tried to explain that Japan cannot have an army, but in fact, Japan does have an army, and to that extent, it violates Article 9. After fully admitting that, we should probably think about what should be done," [Mainichi Shinbun Sha ed. (1968) pp. 173] It is clear from this opinion that after Miyazawa (1946), he consistently considered demilitarization prescribed in Clause 2 of Article 9 as a program rule, not a positive law, similar to eliminating unemployment.

The program rule theory developed in Miyazawa (1946) probably had a major impact on the debate within the House of Representative subcommittee. Takeru Inukai of the Japan Progressive Party said "Chapter 2 is extremely good legal text, and a masterpiece within the constitution, but there is a part that is regrettable and should be changed. I think that it would be better if wording such as 'war is prohibited' were added" [Secretariat of the House of Representatives (1995) p. 79] which is very similar to Miyazawa's comment that "if we are to make certain revisions to the constitution in order to implement the Potsdam Declaration, we must not abandon the high ideal of truly creating a pacifist nation and make only superficial revisions," and it was Inukai's statement that led to the proposed Ashida Amendment. In addition, the Social Party of Japan's opinion regarding the revision was that "there should be an article before Article 9 to the effect that "Japan is a peace loving country, and its national policy is to respect international good faith," [Secretariat of the House of Representatives (1995) p. 79], and Yoshio Suzuki referring to this as a "declaration" [Secretariat of the House of Representatives (1995) p. 78] is similar to Miyazawa using the declaration of rights and declaration of duties in the French Constitution of 1795 as examples and arguing, "If ones looks at it from a positive law perspective, it does not matter if the provision is there or not...however, it does have some advantages. It is in no way meaningless to clearly declare the government's main ideals to the world and to establish what the government is obligated to implement," and "as for the provisions such as national policy shall be based on pacifism'.... At the time of the French Revolution, the French probably wanted to include such provisions...under certain conditions, they may have waged war under these provisions." [Miyazawa (1945) pp. 28, 29, underlines added by Hirayama] Inukai's statement and the Socialist Party's proposed revision were probably influenced by Miyazawa (1946). At the House of Representative subcommittee, there was an amendment to add the aim and ideal of each clause of Article 9 to the beginning of the clause, which quite clearly shows that Clause 2 is a program rule whose aim is the ideals of the preamble.

In response to the amended Article 9 decided by the House of Representative subcommittee, the Far Eastern Commission requested via GHQ that a civilian clause be added in case Japan were able to rearm. At that time, the House of Peers subcommittee, which debated the issue, revised the wording of the preamble related to condition 1, which had been simply "entrust our security and existence to the justice and faith of the peace-loving peoples of the world," to "preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world." Kades understood that the revision, which removed the unconditional "entrust" and added the conditional "trusting," transformed it from being completely dependent on parties outside Japan to being autonomous and would become one of the grounds for maintaining war potential for self-defense [Nishi (2004), p.309-10]. Because of this, too, it is clear that Kades' interpretation was that Article 9 is conditioned on the preamble.

The amendment adding "trusting," is based on paragraph three of *Kaisei Kenpo Maegaki No Shian*⁵⁶

⁵⁵ Toshiyoshi Miyazawa (1969). *Kenpo Kowa*. Iwanami Shoten, pp. 201-2.

⁵⁶ National Diet Library (Modern Political History Material Catalog 2 Toshio Irie Related Documents Catalog 47-35).

(Proposal for the Preamble of the Amended Constitution) written by Yuzu Yamamoto (勇造, pen name 有三 which has the same pronunciation), “We Japanese abhor war and disavow it. Therefore, we declare that we will move forward on our own to cast away our arms and refrain from the use of force to resolve international disputes. In addition to being happy and proud of this, we will trust in the justice and faith of peace-loving countries throughout the world for our security and existence,” and Yamamoto appreciated that the subcommittee used “trusting” in its amendment.⁵⁷ His proposal of incorporating the content of Article 9 into the preamble was not unique as many Japanese after Matsumoto proposed the same, but it appears that Kades’ understanding of the amendment to the preamble was based on the “will move forward on our own to cast away our arms” appearing in Yamamoto’s proposal. The proposal to include “trusting” as it appears in the current constitution came from Kenzo Takayanagi’s “Proposal of Revisions to Wording of the Preamble of Japan’s Constitution.”⁵⁸ Because at the Second House of Peers Subcommittee, Takayanagi stated, “GHQ did not want changes made to the English version of the preamble, but there was no problem with revising the Japanese version in order to make the meaning of the English version clearer,”⁵⁹ Takayanagi negotiated with GHQ regarding the handling of Yamamoto’s proposal, and the phrase “trusting” was inserted in its current form after approval that it would clarify the meaning of the English version was received.⁶⁰

According to Toshiyoshi Miyazawa’s *Bunmin-tanjo No Yurai* (History of the Birth of *Bunmin*) [Miyazawa (1955), attachment, collection], when the 文民 (civilian) clause was added at the request of the Far Eastern Commission, the government assumed “civilian” referred to a person who had not served as a military officer, but the House of Peers subcommittee, which Miyazawa was also a member of, considered stripping the eligibility to become a minister of state from such a broad range of people unreasonable. Because “civilian” refers to people who are not current military officers, 文民 was translated as “civilian.” However, the dominant theory after the new constitution was passed was that 文民 refers to “a person who has not served as a military officer,” even the government loosened its interpretation slightly, and both groups colluded to ignore the legislative intent of the subcommittee. The Far Eastern Committee requested the civilian clause on account of its interpretation that Japan could rearm by revising Article 9, and the committee created the clause premised on this. Miyazawa probably wanted to say that the government interpretation and the dominant theory based on the interpretation that Japan cannot possess war potential could not accept such a legislative intent.

In the GHQ Draft, it was assumed the renunciation of war of Chapter 2 is an international law program rule related to the right to live in peace, and Yoshida’s response and the Ashida Amendment were based on this, but Kanamori squashed the legislative intent of the program rule theory that viewed the preamble as conditions, and the fact that the dominant theory is in line with the government’s interpretation, except for the definition of war potential, is similar to how the civilian clause developed.

At the second subcommittee meeting held on September 30, Eiichi Makino stated, “According to Takayanagi’s opinion, ‘non-civilian’ refers ‘military personnel’ and the Far Eastern Committee’s request means that even if there is a military in the future, ministers of state should be civilians.” Miyazawa responded, “If that is true, it would be find to just say ‘military men cannot become ministers,’ and it is probably important to check if that is truly OK.” In response, it was decided that the subcommittee chair would confirm that and other points with Minister Kanamori in the afternoon, and that afternoon, when Takayanagi asked Kanamori “Why not define ‘civilian’ negatively as ‘the person who is not military personnel?’” and it appears that Kanamori avoided giving an immediately response [Secretariat of the House of Councillors (1996) pp. 6, 10].

⁵⁷ 90th Imperial Diet House of Peers Special Subcommittee of the Committee on Bill for Revision of the Constitution Proceedings Stenographic Record 24, pp. 3.

⁵⁸ National Diet Library (Modern Political History Material Catalog 2 Toshio Irie Related Documents Catalog 47-36).

⁵⁹ Secretariat of the House of Councillors, ed. (1996). *90th Imperial Diet House of Peers Special Subcommittee of the Committee on Bill for Revision of the Constitution Proceedings Hand-written Summary*. Secretariat of the House of Councillors, p. 11.

⁶⁰ According to the Secretariat of the House of Councillors (1996) No. 1, in regard to the demand for a civilian clause, Yasaka Takagi commented, “How about the House of Peers holding talks with GHQ based on the government’s understanding to eliminate misunderstandings?,” and in response, Kanamori said, “It would probably be fine to go through Central Liaison Office (CLO) if done privately, not as the committee.,” [p. 3], and because Eiichi Makino asked, “Are we prohibited from including social and cultural items to the preamble?,” [p. 4], Takayanagi held private talks with GHQ regarding the demand for a civilian clause and amending the preamble the following day, September 29. After that, a proposed revision to the wording of the preamble was created based on this, and the revision was submitted to the Second Subcommittee on September 30.

During the afternoon session of the third subcommittee meeting on the following day, Kanamori responded, “They mean that in the past ‘civilian’ was used, and ‘civilian’ must be used this time, too,” but Yasaka Takagi pressed the issue, asking “Doesn’t this mean that their intention is that even if there is a military in the future, the responsible minister will be a civilian?” [Secretariat of the House of Councillors (1996) p. 23, 10]. During the morning session, in responses to Takagi’s question, “wouldn’t it be OK for the House of Peers to refuse the request to insert an unnecessary provision,” because there were no current military officers as Japan did not have an army, Nabutsune Oda said, “wouldn’t it be better to accept it than refuse and cause major damage to the state.” Takagi countered, “That should not cause such a major international problem. In addition, I do not think that refusing will cause major damage to the nation.” [Secretariat of the House of Councillors (1996) pp. 16-7] In the afternoon, however, Takagi changed his opinion and said the Far Eastern Commission probably considers the civilian clause important because Japan may be able to rearm.

In response to the give and take between Takagi and Oda during the morning, Miyazawa said, “Takagi’s opinion is roughly persuasive, but everyone probably will know in due time that we did not draft the overall constitution independently but were ordered to. If we struggle on to refuse the civilian clause after the loss of greater things, it would be nothing more than self-deception, and we would win nothing from it. Therefore, I agree with Oda.” [Secretariat of the House of Councillors (1996) p. 17] During the lunch break, Miyazawa probably told Takagi that Article 9 does not prohibit rearmament in a positive law fashion because it is a program rule based on the right to live in peace in the preamble, and the Far Eastern Commission had probably seen through to the program rule because it clearly indicated the aim for each clause in the revised Article 9.

At any rate, in the afternoon, Takagi abandoned his morning opinion and adopted the view that the Far Eastern Commission had probably proposed the civilian clause in order to respond to the possibility that Japan could rearm by revising Article 9, which is clearly seen in the subcommittee. As suspicions grew that the government was concealing from the subcommittee top-secret information that both the Far Eastern Commission and the GHQ’s interpretation was that Japan could possess an army by revising Article 9, Oda, Shimojo, and Matsumoto pressed the issue saying, “Couldn’t GHQ be informed that the House of Peers’ intensions are perilous, and they should withdraw the request of civilian clause? Or [if it is impossible to withdraw it, because the Far Eastern Commission has adopted the interpretation that rearmament is possible,] we would like the use of 民人 [probably a mistake for 文民 (civilian)] to be negotiated.” Therefore, Kanamori also agreed to negotiate the use of “civilian” [Secretariat of the House of Councillors (1996) p. 23]. At the first subcommittee meeting, when grouping individual House of Representatives amendments as ones independently proposed or ones requested by GHQ, Kanamori responded, “Article 9 is voluntary. As for ‘the aim of the preceding paragraph’ in Clause 2, there are questions whether it is referring to ‘aspiring sincerely to ...based on justice and order’ or ‘the Japanese people forever renounce war...,’ but I have always thought that it is the former.” [Secretariat of the House of Councillors (1996) p. 2]. In this way, Kanamori seriously considered Tatsuo Sato’s report on Kades’s statement that it appears that the Far Eastern Commission demanded the civilian clause on account of The Tan theory but only introduced superficially to the subcommittee. At the third submitted meeting, Shigeru Yoshida also said that the Far Eastern Commission’s demand for a civilian clause was related to Article 9 amendment, but “They could not answer when I asked the question how it is related to Article 9 ” [Secretariat of the House of Councillors (1996) pp. 22]. However, if because of Article 9 revisions, the Far Eastern Commission requested that civilian, which means not a current military officer, be a condition for a minister of state, it is possible to deductively reason that their interpretation must have been that revisions could lead to current military officers, and people who were aware of the possibility of that interpretation would probably immediately understand that. Having learned of program rule interpretation from Miyazawa, Takagi probably asked those tough questions.

After the third subcommittee meeting, Takayanagi, Takagi, and others had an informal talk with Kades and other members of GHQ, and as soon as Takayanagi completed his report after the fourth meeting of the subcommittee the following morning, Miyazawa asked about Kades’ response to Takagi’s statements during the morning session of the third meeting [Secretariat of the House of Councillors (1996) p. 25]. It appears that the discussion was set up so that Kades would have to directly deal with Takagi’s assertion, and Miyazawa impatiently waited for the results of the meeting. Miyazawa probably saw this as confirmation that GHQ and

the Far Eastern Commission's interpretation was that rearmament was possible under a revised Article 9.

According to Igarashi's notes that record Miyazawa's lectures in 1946, Miyazawa considered the Ashida Amendment of Clause 2 of Article 9 "not very significant, in my opinion [this probably means that the program rule theory that the preamble stipulates conditions would stand with or without the Ashida Amendment], and it appears that he expected that Japan could join the United Nations as an unarmed nation and that Japan's safety would be ensured by the United Nation.⁶¹ However, Ashibe's notes for the same year state, "after mentioning Russel's words, he wrote, 'they are high ideas, but I am concerned that they may be empty words when it comes to putting them into practice'" (Takami (2000), p. 192).⁶² It appears that Miyazawa was aware of Yoshida's July 4 response that the tentative interpretation was that the United Nations would protect Japan though they may simply be ideals and empty words. Immediately after the constitution was passed, Miyazawa interpreted Article 9 using the program rule theory with the preamble as conditions just like Yoshida's response.

Even after that, it is clear that Miyazawa interprets Article 9 as a program rule in *Kenpo-taii*⁶³ (Outline of the Constitution), published in 1949, because he places section "53 Pacifist Nation" after "52 Social Nation," in which he discusses the right to life and social rights, rights interpreted as program rules, in part 5 "Basic Principles of Japan's Constitution" of the introduction to chapter 1. Articles 25–27 of the constitution, which involve the right to life and social rights, are discussed right before Article 9 and are also discussed in chapter 4 "Declaration of Rights," but Article 9 is not discussed in chapter 2 or after. In addition, condition 1 in the preamble is given as a condition for Article 9 in section 53. Based on the above, it is clear that in the introduction to *Kenpo-taii*, Chapter 2, Article 9, is treated as a program rule actually subsumed in the preamble, not an article that should be covered in a chapter of *Kenpo-taii*.

When the Korean War broke out, Miyazawa became a realist and abandoned the extreme high ideals of *Which Way to Peace?*, writing "if it was an issue just for me, I would follow my highest (?) ideals and even die for them no matter how impossible those ideals were. However, for practical political issues, one has to strive more to live with indignity than die uselessly with honor. As long as it is possible, one has to aim for even a slightly less evil or a slightly better good." He also supported Chief Justice of Japan Kotaro Tanaka's interpretation that Japanese serving as volunteer in the U.N. forces was constitutional and considered the National Police Reserve constitutional but worried of a revival of militarism.⁶⁴ The change in Miyazawa is clear if one compares Miyazawa (1949) and Miyazawa (1955). In the former, in response to the question "if other countries continue to maintain arms while only Japan eliminates them, how exactly will Japan survive as a nation," Miyazawa wrote, "how is it possible to survive as a nation in this world without trusting in the 'justice and faith' of the peoples of the world." [53]. On the other hand, in the latter, no one is able to correctly judge if the arms that all countries [including Japan] possess to some extent serve as a deterrent⁶⁵ that prevents wars or contributes to the outbreak of wars, and trusting in the justice and faith of the peoples of the world is embodied in the San Francisco Treaty as the promise that the United Nations will guarantee security, and he argues, "the ultimate ideal is Japan eliminating its arms itself and countries throughout the world following that example" (chapter 2, 四 (4 of Chinese Character)). Japan's arms, which may serve as a deterrent and contribute to peace, are not in violation of the constitution, which should be immediately remedied, and their complete elimination is a universal ultimate ideal that is not limited to Japan, which appears to be an implicit expression of the program rule theory. In Chapter 2, 四, he writes, "the current reality is that all countries, except for Japan, possess arms." Although this contradicts Miyazawa's view that the National Safety Forces and Self-Defense forces are military and war potential, it is in line with the government's interpretation that they are not war potential. Because similar statements can be found in other locations, it cannot be considered a careless mistake. There are inconsistencies between the definitions of war potential, and expounding both the government's

⁶¹ Katsutoshi Takami (2000). *Miyazawa Toshiyoshi No Kenpo Gakushi-teki Kenkyu*. Yuhikaku Publishing. Pp. 191-2.

⁶² Russel's words means Burtrand Russel (1936). *Which Way to Peace?* M. Joseph. Miyazawa reviewed it again immediately after the war and it became a foundation for his opinion concerning peace (Takami (2000) pp.184-5).

⁶³ Toshiyoshi Miyazawa (1949). *Kenpo Taii*. Yuhikakuzensho (for the second and later printings, *Kenpo*)

⁶⁴ Toshiyoshi Miyazawa (1950). "Sensohoki, Giyuhei, Keisatsuyobitai" *Kaizo*, October, pp. 27, 28–30.

⁶⁵ In Miyazawa (1950), the word "deterrence" is not used; "as so-called deterrence" is inserted in Toshiyoshi Miyazawa, Ashibe Nobuyoshi rev. (1979) *Zentei Nihonkokukenpo*, Nippon Hyoron Sha.

interpretation and the theory that the self-defense forces are unconstitutional—two inconsistent theories—means for Miyazawa to undermine both theories intentionally. As shown in section (4) his neglect of both the dominant theory (Self-Defense Forces are unconstitutional) and the government’s interpretation (Self-Defense Forces are constitutional), both of which think that “the aim of the preceding paragraph” is “aspiring sincerely to an international peace based on justice and order”, supports this.

In chapter 2 [16] (c=ハ), of Miyazawa (1955), Miyazawa writes, “The article does not resort to ensuring world peace through arms; its goal is to achieve the ideal that the complete elimination of arms is the foundation of world peace,” and argues that the Japan-U.S. Security Treaty is not necessarily unconstitutional as it is a transitional measure until a collective security arrangement can be completed. He faithfully carries on here the idea embodied in Yoshida’s response and the Ashida Amendment that Clause 2 of Article 9 is a program rule whose ideal is the formation of an international peace organization or peace organization, and one can see the interpretation that with this ideal, arms can be fully eliminated because the coercive force to maintain world peace comes from international police power more than military power. It appears that Miyazawa wants to say that a clear conclusion is that the Self-Defense Forces, a temporary measure, are not necessarily unconstitutional for exactly the same reason the Japan-US Security Treaty is not. The Japan-US Security Treaty can also be justified using various other theories such as treaty- precedence theory (Miyazawa (1955), Article 98 .13), which Miyazawa agreed with, but he was not considering these. Miyazawa wanted to say that Clause 2 Article 9 is a program rule.

Why didn’t Miyazawa directly argue the program rule theory in Miyazawa (1955)? He was opposed to the establishment of the National Safety Forces in 1952.⁶⁶ On the other hand, around six months later, Kenzo Takayanagi developed a “political manifesto” theory that defined Article 9 in almost the same terms as a program rule and proposed a theory that maintaining war potential was constitutional.⁶⁷ Takayanagi, a U.S. and British legal scholar, proposed this concept of a political manifesto acting as though he did not know of the German legal concept of a “program rule,” but Miyazawa probably through that Takayanagi was trying to hide his plagiarism. Miyazawa and Sakae Wagatsuma,⁶⁸ who argued that the right to life and social rights are program rules, were editors of *Jurisuto* at that time, and if Miyazawa were to touch on the fact that the “political manifesto” theory is similar to the program rule theory in Miyazawa (1946), Takayanagi would probably have happily said it was a chance agreement, and both could be viewed as supporters of his theory. Takayanagi may have selected *Jurisuto* to carry his paper expecting this.

In Miyazawa (1952), Miyazawa not only assumes that if the National Safety Forces, which were more powerful than the National Police Reserve, are considered war potential, “probably everyone would agree that creating such a force would be unconstitutional” without revising the constitution but also states his opposition to maintaining the National Safety Forces that are considered war potential by revising the constitution (page 35). The dominant theory and the government’s interpretation hid GHQ and Yoshida’s secret knowledge based on the program rule theory, and Ashida crossed over to The Tan theory, “[except for an extremely few number of people, including Miyazawa] everyone would agree” that Clause 2 of Article 9 is a rule of a positive law nature. If Miyazawa were to criticize this idea and argue that the National Safety Forces were not necessarily unconstitutional under the program rule theory, it would be used by those who supported establishing the National Safety Forces; therefore, because Miyazawa was opposed to establishing the National Safety Forces, bringing the program rule theory to light would not be a good move, and he probably developed an argument based on the idea that “everyone would agree” at that time. Therefore, Miyazawa could probably not side with Takayanagi, who may have been trying to provide approval for the National Safety Forces, which Miyazawa was clearly opposed to, by plagiarizing Miyazawa’s program rule theory.

In chapter 2 [16] (e=ホ) of Miyazawa (1955), Miyazawa writes, “there would need to be extensive evidence to assume that constitutional provisions do not hold special legal meaning, and it is extremely difficult to find much evidence for that regarding the article [Article 9].” Program rules do have legal meaning, and there

⁶⁶ Toshiyoshi Miyazawa (1952). “Kenpo Kaisei To Saigunbi” *Sekai*, May, pp. 34-6.

⁶⁷ Kenzo Takayanagi (1953). “Heiwa, Kyujo, Saigunbi” *Jurisuto*, 25.

⁶⁸ Sakae Wagatsuma (1948) “Shinkenpo To Kihonteki Jinken” *Kokuritsushoin*, pp. 132-8, 212-6.

is the suspicion that Takayanagi used the phrase “political manifesto” since he would have to admit to improper research if he had used the legal term, namely, program rules.

It was just around the time when Irie gave his testimony that Miyazawa stated at the Liberal Party’s Constitution Research Committee that he had been thought that even if it were unconstitutional, it would be better not to amend the constitution because doing so would lead to a revival of nationalism.⁶⁹ In Miyazawa (1952), Miyazawa argues that the unconstitutional National Safety Forces cannot be permitted, and while on its surface, the argument has a positive law tone, it is, in fact, tacitly based on program rule theory. In Miyazawa (1954) he goes on to argue that because there are international obligations accompanying the US and Japan Mutual Defense Assistance Agreement (MDA Agreement), constitutional amendments would have to progress carefully. In chapter 2 [12] (e=ホ) of Miyazawa (1955), Miyazawa used the fact that Article 8 of the MDA Agreement requires Japan to implement various measures, such as strengthening its defense capabilities as evidence that the Self-Defense Forces, which were established shortly after the agreement was concluded, are war potential. It would be possible to argue that even if the Self-defense Forces, which are based on a treaty, violate Clause 2 of Article 9, they could not be called unconstitutional according to various arguments including the treaty precedence theory. In chapter 2, 四 Miyazawa uses the constitution to argue that Japan cannot fulfill its obligation to provide troops under Article 43 of the U.N. charter, but this is a mistake because it is inconsistent with various theories, including the treaty precedence theory. Why did Miyazawa consider amending the constitution even though he could have countered the theory that the Self-Defense Forces are unconstitutional in two ways (excluding the Tan theory, which Miyazawa did not recognize)—the program rule theory or treaty requirements?

In *Zenteihan Hashigaki* (Forward to the Fully Revised Edition) of Miyazawa, Ashibe rev. (1978) (Miyazawa, unknown date), Miyazawa writes, “if there are aspects of the constitution that need to be amended, it is better to call for those amendments straight on than surreptitiously get around the constitution.” It was probably considered important to make Article 8 of the GHQ Draft look like an unconditional positive law norm by breaking up the demilitarization clause between the preamble and Article 8 so that the Soviet Union could not increase its influence through the Far Eastern Commission and a demilitarization pact, so GHQ Draft is the first attempt to get around Article 9 (Article 8 of the draft). Miyazawa had probably begun to consider that it was important to make revisions to transform the secret of the program rule, which most people failed to notice at the time, to open knowledge that everyone could understand. That goal should probably be given the highest priority because the important clauses of a constitution, which form the foundation of democracy, must use simple expressions that everyone can understand without elaborate interpretations.

However, through his political manifesto theory, Takayanagi proposed an end run to make the National Safety Forces and Self-Defense Forces constitutional without revising the constitution. The program rule theory, hijacked by the Commission on Constitution chair Takayanagi and renamed to the political manifesto theory, was also used as an end run, making the constitutional revisions Miyazawa desired impossible as long as Takayanagi was alive. The government’s interpretation that played with the definition of “war potential”; the Tan theory, the least convincing of the various conclusions reached from the same interpretation; the evasive treaty-precedence theory; and others are all end-runs (around Article 9), and when all these are eliminated, the only remaining interpretation is the plain, clear demilitarization theory that the Self-defense Forces are unconstitutional. Therefore, Miyazawa may have concluded that supporting that theory for the time being was the right way to protect democracy and decided to wait for a better opportunity to make the non-militaristic, democratic amendment to the constitution until the demilitarization theory reaches the dead end because of its lack of realism. It is impossible to understand why Miyazawa and Wagatsuma, co-editors of *Jurisuto*, refused to participate in the Commission on Constitution, which chairman Takayanagi presided over, and became companions of the Kenpo Mondai Kenkyu Kai (Constitution Problem Study Group), which opposed the Commission on Constitution, (Takami (2000), pp. 404, 400) if one ignores the discord between the two and Takayanagi. There is a tendency to mistakenly consider Miyazawa, who participated in the Kenpo Mondai Kenkyu Kai, as a proponent of maintaining the non-militaristic constitution, but he consistently asserted a

⁶⁹ Toshiyoshi Miyazawa (1954) “Kenpo Kaitei No Zehi” *Saiken*, August and September combined edition, p. 49.

program rule theory for Article 9 and approved of the Self-Defense Forces and the U.S.-Japan Security Treaty. He was a proponent of constitutional amendments as is evident by his comment, “there are points that probably should be amended. However, I cannot approve of the direction of the constitutional amendments now strongly being called for” [Miyazawa (1968), p. 174].

At the First Kyoto Conference of Scientists, Miyazawa said that the traditional arguments in support of Article 9 were insufficient to counter arguments for rearming in response to the escalating Cold War, and quoting from the “Russell-Einstein Manifesto”, he said that Article 9 should serve as universal morals for humanity during the nuclear age.⁷⁰ Immediately after that, Shin-ichiro Tomonaga asked Miyazawa about Takayanagi’s political manifesto theory probably because the assertions in both were similar. While Tomonaga may have wanted Takayanagi to participate in the Kyoto Conference of Scientists, Takayanagi was probably not interested in participating in a conference Miyazawa and Wagatsuma were at.

(6) Takayanagi’s death and Miyazawa’s relaunch of advocacy

Takayanagi died in 1967 at the age of 80. Without having to worry about Takayanagi, Miyazawa was able to develop his own program rule theory of Article 9. On March 25, 1969, Miyazawa published a three volume collection of essays and papers subtitled *Kenpo Nijunen* (Twenty Years of the Constitution), and the first piece in volume one,⁷¹ Miyazawa (1969a), is *Kenpo Kaisei Ni Tsuite*, which shows that he valued this paper as the origin of his post-war thought. He boldly chose to place it as the first piece even though the content of the paper was appropriate for second volume.⁷²

There must have also been a reason that he chose to use twenty years in the title even though it was the twenty-third year since the constitution had been enacted. It may have been as if an important senior acquaintance had forcefully adopted his child, changed her name, and then raised her as his own, and after that adoptive father died, the child, who had already become an adult (twenty years old in Japan) returned home. This book was published in March, the same month the paper was published in. Therefore, he may be celebrating the child’s birthday along with her coming of age, although slightly late, restoring her name, and introducing her to the world. Miyazawa celebrated his own seventieth birthday on March 26 of that year, surpassing the average life span of 69.84 years for Japanese men in 1970, and he probably found joy in having outlived the long-lived Takayanagi and getting his child back and felt hope for the child’s future.

In the following year, Bertrand Russell, the author of *Which Way to Peace?*, one of the sources of Miyazawa’s post-war pacifism, died. In a memorial address, Miyazawa criticized fears that Russell’s stance in *Which Way to Peace?*, which fascinated Miyazawa immediately after the war, would invite a dictator as defeatism, but praised the fact that following the outbreak of World War II, Russell had reversed course and strongly called for a resolute fight against Hitler, calling it a “militant democracy,” similar to post-war West Germany, where radical political parties on both the left and right, such as the Communists, were banned.⁷³ Miyazawa supported the role of U.N. troops in the Korean War and thought that the participation of Japanese as volunteers was constitutional; was critical of both parties who passionately and dogmatically supported or opposed rearmament as being fascists [Miyazawa (1952), pp. 12]; and criticized Marx as being dogmatic and faith based [Mainichi Shinbun ed. (1968), pp. 174]. In this way, Miyazawa was able to maintain his position as a proponent of a militant democracy opposed to totalitarianism from both the right and left and did not accept the idea of a demilitarized neutral post-war Japan that had a strong Marxist streak.

In Mainichi Shinbun Sha ed. (1968), Miyazawa does not reject the theory that *Kenpo Kaisei Ni Tsuite* was based on the GHQ Draft, but he does do so on page three of the forward to Miyazawa (1969a), which includes *Kenpo Kaisei Ni Tsuite*. Many proponents of revising the constitution view the fact that the constitution

⁷⁰ Toshiyoshi Miyazawa (1962). “Nihonkenpo To Sekai Heiwa” *Sekai*, August, pp. 200-1.

⁷¹ Toshiyoshi Miyazawa (1969a). *Kenpo To Tenno—Kenpo Nijunen Jo*. University of Tokyo Press.

⁷² Toshiyoshi Miyazawa (1969b). *Heiwa To Jinken—Kenpo Nijunen Chu*. University of Tokyo Press.

⁷³ Toshiyoshi Miyazawa (1970a). “Tatakau Minshushugisha (B. Russel) Ra Kyo Tsuito Koen” *Rasseru Kyokai Kaiho*. 16, <http://russell-j.com/MIYA-T01.HTM> (accessed November 29, 2014). Toshiyoshi Miyazawa (1970b). “Tatakau Minshushugisha” Shio, August. [Miyazawa (1978). *Kenpo Ronshu*. Yuhikaku Publishing, stored] probably is the authors own compilation of the speech.

was forced on Japan by GHQ as a problem, and Miyazawa probably indicated that his view was independent of the intentions of GHQ in order to win the support of these people for proposed revisions to the constitution that would clearly indicate Article 9 as a program rule premised on the provisions of the preamble. However, as shown in sections (1) and (2) of this paper, MacArthur and Hirohito agreed that the legislative intent of Article 9 is to ensure Japan's security from the Soviet Union and communism; therefore one probably cannot criticize the constitution as being forced on Japan.

Miyazawa notes that in the House of Peers, Saburo Yamada and others planned amendments that would slightly increase the functions of the emperor, and Takayanagi negotiated with GHQ and obtained their approval, but the efforts stalled on account of opposition from Kanamori [Mainichi Shinbun Sha, ed. (1968), p. 171]. Yamada asserted at various venues including the plenary session of the House of Peers held on June 22, 1946, that the emperor should be the head of state in interactions with foreign countries, and Yamada and Takayanagi jointly proposed amendments to several items, including items 8 and 9 of Article 7 (diplomacy related aspects of the emperor's constitutional activities in matters of state) at the afternoon session of the fourth House of Peers subcommittee meeting. During discussions, Yamada stated, "Having spent a month gaining the understanding of the U.S., Soviet Union, England, and China, it was decided that the amendments were fine," and, in regards to negotiations with the government, "Although the prime minister agrees, he will not publicly express his support. Minister of State Kanamori is generally opposed to amending the draft." [Secretariat of the House of Councillors (1996) p. 30]. No one discussed the issue later on, and after the decision that it was not voted on, Yamada officially introduced a proposed amendment [Secretariat of the House of Councillors (1996) p. 32]. As the government had just been forced to include the 文民 civilian clause, it was expected that Kanamori would fully oppose amendments to Article 7, which is probably why the proposed amendments to Article 7 disappeared. It was under these conditions that Miyazawa commented, "I supported Kanamori's stance," [Mainichi Shinbun Sha, ed. (1968) p. 171], but did not express his intention to oppose amendments to Article 7 at the afternoon session of the fourth House of Peers subcommittee meeting. In this way, Kanamori prevented amendments regarding the emperor as the symbol of the state that had been tentatively approved by not only GHQ and Prime Minister Yoshida but also the Soviet Union and China.

Although Miyazawa had asserted that the new constitution had been forced on Japan by GHQ and called it the MacArthur Constitution [Miyazawa (1952) p.28], the emperor-as-symbol-of-state system was forced on Japan by Kanamori. The reason Miyazawa probably pointed this out was because he thought that in order to move forward with amendments to the new constitution that were in line with the program rule theory he espoused in *Kenpo Kaisei Ni Tsuite*, in which the impact of the GHQ Draft is discussed, it was important to note that GHQ's demands related to provisions on demilitarization and the emperor were mild, and that Kanamori had made even greater demands. However, because there was almost no blowback from Miyazawa's point that Kanamori had forced on Japan the system of the emperor as the symbol of the state, he probably changed course regarding denying the impact of the GHQ Draft on *Kenpo Kaisei Ni Tsuite* in Miyazawa (1969a). At any rate, by including *Kenpo Kaisei Ni Tsuite* which originally dealt with the revision of the Constitution of the Empire of Japan (Meiji Constitution) in Miyazawa (1969a), it has also taken on the meaning of revisions of the Constitution of Japan (Postwar Constitution). Today, when there is the possibility of constitutional revision, it is probably time to finally show the true value of Miyazawa's program rule theory concerning pacifism of Post-war Japan.

2. Game Theory Analysis of a Demilitarization Strategy in Post-war Japan

(1) Impact of collective security

In chapter 2, using game theory based on various situation, I examine whether possessing a military or not is desirable as a method to achieve world peace for a Japan that adheres to Clause 1 of Article 1, which stipulates the renunciation of wars of aggression.

Case 1 is when collective security is not properly functioning. What would happen if a foreign country (F) were hostile toward Japan (J), such as threatening Japan with military force or actually attacking Japan (case 1)? Let's assume that if the foreign country is friendly toward Japan, it is more advantageous for Japan to not possess a military (J: 2)—here and below, figures in parenthesis are the game theory payoff—than to possess one (J: 1) because of the costs of maintaining a military. Let's also assume that whether Japan possesses a military or not, it does not impact the foreign country (F: 1). Now consider the case that the foreign country is hostile toward Japan. Even if Japan possesses a military, it is in a less advantageous position (J: -1) than either situation when the foreign country is friendly, but Japan is in an even more disadvantageous position (J: -2) if it does not possess a military because it is in a weaker negotiating position and it can be unilaterally attacked. If Japan possesses a military, the foreign country is in a more disadvantageous position (F: -1) than when it is friendly toward Japan (F: 1); if Japan does not possess a military, however, the foreign country is in a more advantageous position (F: 2)

Japan's choice to possess or not possess a military will take time to implement. On the other hand, the foreign country can decide to be friendly or hostile almost instantaneously to match changes in Japan's policy. Therefore, this can probably be considered a game in which Japan has the first move, and the foreign country has the second. In this case, it is more advantageous for Japan if it chooses to possess a military and the foreign country decides to be friendly (J: 1) than if Japan elects not to possess a military and the foreign country chooses to be hostile (J: -2). Therefore, Japan chooses to possess a military.

In case 2, let's consider the ideal situation of effective collective security. Even if Japan does not possess a military, collective security entails some sort of burden, but assuming it is less expensive than possessing its own military, it is only slightly more advantageous (+1) for Japan to not possess a military than to possess one. Let's assume that if the foreign country is friendly, the payoff for each country is the same as that for case 1. If the foreign country is hostile, it will face sanctions (F: -2) through the collective security arrangement whether Japan has a military or not. In addition, it is more advantageous for Japan to not possess a military (J: 1) than to possess one (J: 0).

If Japan possess a military, the foreign country will choose to be friendly because it is more advantageous for the foreign country to be friendly (F: 1) than hostile (F: -2). Because this is the same as when Japan does not possess a military, the foreign country will choose to be friendly regardless of Japan's choice. If the foreign country chooses to be friendly, Japan will decide to not possess a military because it is to Japan's advantage not to possess a military (J: 2) than to possess one (J:1).

(2) Cold War (1): Japan's power vacuum theory by Hitoshi Yamakawa

As the Cold War grew more serious, if everyone thought that the situation had changed from that of case 2 to that of case 1, the view that the Self-Defense Forces and the U.S.-Japan Security Treaty are unconstitutional and that Japan should adopt a policy of demilitarization would probably have not become the leading opinion. In other words, many of the people who supported demilitarization were likely supposing that conditions during the Cold War were not those of case 1.

Having experienced how the Communist International interfered in the revolutionary movement in Japan, Hitoshi Yamakawa, who led the left wing of the Social Democratic Party of Japan (SDPJ) after the war as the top theorist of the worker-farmer school of Marxism, recognized that the Soviet Union was a totalitarian state, not a democracy, and that a revolution led by the Soviet Union would be an act of aggression. He was the

first Marxist in the world to call for demilitarized neutrality. In the section of *Heiwa Kenpo No Yogo*⁷⁴ (Defending the Peace Constitution) dated March 2, 1951, in the midst of the Korean War, he admitted that there was the possibility that the Soviet Union and Communist China, communist countries, would invade Japan but argued that demilitarization could be maintained through security guarantees from the U.N.⁷⁵ and was opposed to rearming in order to protect democracy forecasting that rearming comes down to the revival of militarism. He asserted that if Japan's democracy were guaranteed, he was not unconditionally opposed to rearmament because even though the U.N. could be relied on for security, there were requirements such as fulfilling military obligations related to U.N. activities. Because he advocated opposition to rearmament out of hope for security guarantees from the U.N. and worries about losing democracy through remilitarization, Yamakawa did not argue for absolute adherence to Article 9 and thought Japan should rearm if there were no such hope or worries.

In the mid-1950s, Yamakawa clearly stated that the demilitarized neutrality he called for at that time was not absolute and that he could switch from anti-U.S.—pro-Soviet Union to anti-Soviet Union—pro-U.S if conditions changed.⁷⁶ To rely on the U.S.'s nuclear deterrent, however, the Soviet Union would have to believe that if it launched a nuclear attack against Japan, the U.S. would retaliate with its own nuclear capabilities against the Soviet Union or its allies. Therefore, the relationship between Japan and the U.S. would have to be strong and stable, and the same would be true if the U.S.'s and the Soviet Union's positions were switched. In regions confronted with the power struggle between the U.S. and Soviet Union, such as Europe and East Asia, there were countries that were unsure of which of the two super powers to side with, and in these countries there was a tendency for domestic groups to split between pro-U.S. ones and pro-Soviet Union ones and for those groups to fight among each other. The U.S. and Soviet Union either directly or indirectly got involved in various civil wars, such as the ones in Vietnam, Korea, and China (until the Nationalists fled to Taiwan), which easily degenerated into tragedies. In all these countries, a power vacuum had developed after Japan lost the war, and the domestic forces that fought each other to fill that vacuum aligned with either the U.S. or the Soviet Union, which pushed the countries into civil war. In Europe, both the U.S. and Soviet Union attacked and divided up the Axis countries toward the end of World War II and the Cold War broke out as the Iron Curtain was erected, which is fundamentally different than what occurred in Asia.⁷⁷ Japan surrendered right before the Soviet Union attacked mainland Japan, the U.S. Army occupied the whole mainland, and Japan abandoned its possessions other than the mainland, which made it possible for Japan to live in peace.⁷⁸ However, this resulted in a power vacuum in Asia that sparked civil wars. The Cold War was merely a perspective of regions such as Europe and Japan, which were not plagued by destructive civil wars, and there was the risk that any of Yamakawa's proposed policies would cause a power vacuum to develop in Japan, a civil war to breakout like in Korean and

⁷⁴ Takahata Mitchitoshi, ed. (1976) *Kindai Nihon Shiso Taike 19 Yamakawa Hitoshi*. Chikumashobo. previously published.

⁷⁵ At the time of the Korean War, the resolution to support the Korea was adopted by the Security Council as the Soviet Union was absent, and China, which had an understanding with the Soviet Union, dispatched a volunteer army and fought the UN troops. Even though in this way, war broke out between members of the Security Council and collective security mechanism failed to work properly, Yamakawa expected the Security Council to function again. When he wrote the piece, the UN was in a superior position and recaptured Seoul on March 14; therefore there was less of an imminent threat from the communist countries. Even so, Yamakawa's demilitarization theory should be rated empty theory that forgot the unreasonableness of the frequent changes in strategic choice regarding whether to possess a military or not depending on changes in the situation and whether predictions were correct or not. Last minute measures are no good against an armed opponent, and one may be killed if one demonstrates defiance while making preparations.

⁷⁶ Ken Yonehara (2003). *Nihon-gata Shakaiminshushugi No Shiso—Saha Riron No Keisei To Tenkai*, Jiro Yamaguchi, Masumi Ishikawa, ed. *Nihon Shakaito—Sengo Kakushin No Shiso To Kodo*. Nihon Keizai Hyoronsha. p. 13.

⁷⁷ The U.S. tried to separate Communist China from the Soviet Union through Zhou Enlai and convince Communist China to partner with the U.S. by mediating unification between Kuomintang and the Chinese Communist Party, and the Soviet Union also approached the Kuomintang, but when Communist China allied with the Soviet Union in February 1950, the power balance on the Korean Peninsula collapsed and the Korean War broke out. In Vietnam, there was continual outright war or flare ups from 1946 until the U.S. withdrew, and the rapprochement of the U.S. and China in 1971 loosened the bipolar structure of U.S. and Soviet relations.

⁷⁸ Yukio Ito's analysis, which is based on *Showa Tenno Jitsuroku* (released September 9, 2014), is that the direct reason for the accepting the Potsdam Declaration was the Soviet Union joining the war. (<http://sankei.jp.msn.com/life/news/140909/imp14090905100002-n2.htm> (accessed September 15, 2014). MacArthur's kind treatment of Hirohito was probably because of the spirit of chivalry based on the fact that was intuitive felt Hirohito was entrusting Japan to him. This relationship between Hirohito and MacArthur generally set post-war U.S.-Japan relation, which is clearly seen in the meeting between the two held on May 6, 1947, discussed in chapter 1, section (1).

Vietnam, and the United States and Soviet Union to intervene.

(3) Cold War (2): Divided country theory

For people who believed that the communist countries were more democratic and peaceful than America and did not have worries about the Soviet Union, the situation Japan was in during the Cold War can probably be represented by the following game. For case 3, J represents Japan and C, the Soviet Union, Japan's opponent in the game. If the Soviet Union is friendly toward Japan, it is probably unnecessary to differentiate the situation from the ordinary situation of case 1. However, in addition to the experience of Japanese interned in Siberia after the war, there was a shared awareness among Japanese, including those who were pro-Soviet Union, that the Soviet Union was cruel to enemy countries. Therefore, there was the perception that if the Soviet Union were hostile toward Japan, Japan would sustain major damage (J: -3)

If Japan does not possess a military, it is more advantageous for the Soviet Union to be friendly (C: 1) than hostile (C: 0). In other words, it is expected that if Japan decides not to possess a military in order to show that it was not allied with the U.S. to oppose the Soviet Union, a grateful Soviet Union would not become hostile toward and oppress Japan. But this is probably similar to the idea that socialism equals pacifism, an expectation simple based simply on the idea that the U.S. is an imperialistic power. However, just as Yamakawa recognized, the communist countries after the Russian Revolution were totalitarian like Nazism, and genocide on an unprecedented scale and with unprecedented cruelty occurred on the other side of the Iron Curtain.⁷⁹

After Yamakawa's death in 1958, the left wing of the SDJP gradually came to rigidly insist on demilitarization and opposition to the U.S.-Japan Security Treaty because the party mistakenly perceived that the situation was like that in case 3. Itsuro Sakisaka, who succeed Yamakawa and led the left wing of the SDJP, turned pro-Soviet Union in the latter half of the 1960s, supported the Soviet Union's invasion of Czechoslovakia and the Afghanistan,⁸⁰ admitted the possibility of rearmament under a dictatorship of the proletariat,⁸¹ noting that "Japan should remain demilitarized under the current system—that is, while a socialist government is not in place,"⁸² and opposed freedom of expression and speech. Sakisaka adopted an argument that took it as an axiom that the Soviet Union was good, and even if the Soviet Union were to invade Japan, he probably would not have viewed it as an unjust invasion but welcomed the Soviet Union as a friendly liberating army. The Soviet Union provided the left wing of the SDJP with funds, instigated and supported activities in support of the constitution and peace.⁸³ Because the legislative intent of Article 9 is to guarantee Japan's security against the Soviet Union and communisms, this left-wing movement to protect the constitution entailed an extreme revision of the constitution through interpretation as it transformed Article 9 into its complete opposite.

If the Soviet Union were hostile when Japan was demilitarized, Japanese who were not pro-Soviet Union probably expected that the Soviet Union must take advantage of the absence of a military and place Japan under its control. Because controlling adversaries that do not put up resistance with weapons is easy, being hostile toward a demilitarized Japan is extremely advantageous for the Soviet Union (C: 3). The only difference between the situations of case 4 and case 3 is the Soviet Union's payout when Japan does not possess a military and the Soviet Union is hostile. If Japan does not possess a military, the Soviet Union will choose to be hostile, but if Japan possesses a military, the Soviet Union will choose to be friendly. Therefore, anti-Soviet Union Japanese probably considered it good for Japan to possess a military.

⁷⁹ Stéphane Courtois et al. (1997). *Le Livre Noir du Communisme: Crimes, Terreur et Répression*. Robert Laffont, Togawa Tsugio trans. (2001). *Kyosanshugi Kokusho: Hanzai, Teroru, Yokuatsu, Soren Hen*, Keigado Publishing, Taketomo Takahashi trans (2006), *Kyosanshugi Kokusho: Hanzai, Teroru, Yokuatsu, Kominterun Ajia Hen*. Keigado Publishing, Asaji Hirayama (2009). "Shakaishugi No Chimeiteki Na Gobyu To Ha Nanika?—Hijindosei No Shinjitsu To Rironteki Kigen" *Hirayama Asaji Chosakushu Dai-ni-kan, Zoho, Homo Ekonokisu No Kaitai*. Chuokaizai-sha.

⁸⁰ <http://ja.wikipedia.org/wiki/向坂逸郎> (accessed May 22, 2014), Waki Makoto (1985) "Puroretaria Kokusaishugi" *Sakisaka Itsuro To Heiwa Undo*. Jugatsusha. written and edited by Ken Tsukamoto.

⁸¹ Kazuo Nomiyama (1985). "Senso To Heiwa No Mondai" written and edited by Tsukamoto, p. 33.

⁸² *Shokun!*, July 1977, pp. 28.

⁸³ Mitsuhiro Uezumi (1993a). "Nihon-Shakaito Saha Ha Soren Kyosanto No Demise Datta No Ka" *Chuokoron*, August, Mitsuhiro Uezumi (1993b). "Shakai-to Shinsoha Ha Ima Doko Ni Iru" *Chuokoron*, October (explanation of these by the author can be found at http://space.geocities.jp/mitu_fugen/chuko.html (accessed January 29, 2015).

(4) Cold War (3): Free riding on security by arguing collective security is unconstitutional

The response provided by Prime Minister Nobusuke Kishi on March 31, 1960, was that certain aspects of the right to collective self-defense could be constitutional, but the first cabinet of Prime Minister Kakuei Tanaka rejected that interpretation in material submitted to the House of Councillors' Budget Committee on October 14, 1972, and decided that collective self-defense was unconstitutional without exception.⁸⁴ Changing the government's interpretation to that collective self-defense is unconstitutional was probably done in preparation for the increase in U.S. demanding Japan's cooperation with security in East Asia after Okinawa reverted to Japan in May 1972 as the U.S.'s economic power weakened further, symbolized by the dollar shock of August 1971, and in order to continue to free ride on security as long as possible using the constitution as an excuse, etc. The U.S.-Japan relationship was loosening, as evident by various developments including Japan growing distrustful of the U.S. as the U.S. worked toward rapprochement with China without informing Japan. In addition, the U.S. established détente with both China and the Soviet Union when U.S. President Nixon visited China in February 1972 and the U.S. and Soviet Union concluded the U.S.-Soviet Union Strategic Arms Limitation Talks 1 and Anti-Ballistic Missile Treaty in May of the same year, reducing concerns of an imminent security crisis. This made it possible for the Japanese government to safely adopt the argument that collective self-defense violated the constitution. For the same reason, on October 6, 1972, Prime Minister Tanaka issued orders to clarify the limits of defense capabilities during times of peace, and on February 1 of the following year, he announced the Defense Capabilities During Time of Peace,⁸⁵ which included the idea that defense spending would not exceed 1% of GNP.

The written response of May 19, 1981, clearly defined the right to collective security and confirmed the government's interpretation of October 1972 [Suzuki (2011), p. 40]. The definition of the right to collective security adopted at that time used the defense of one's own country (a rational expansion of the right to individual self-defense), not the general support theory (other country defense theory).⁸⁶ However, there was a contradiction because the Japanese government considered the various activities of the U.S., including the U.S.-Japan Security Treaty, legitimate, according to the support theory, and was entirely supportive in many situations.

That month, Japanese Prime Minister Zenko Suzuki stated that the U.S.-Japan relationship was not a military alliance at a press conference after meeting with U.S. President Ronald Regan on the seventh and eighth, which Japanese Chief Cabinet Secretary Kiichi Miyazawa agreed with, but Japanese Minister of Foreign Affairs Masayoshi Ito disagreed and resigned. On the eighteenth, former U.S. Ambassador to Japan Edwin O. Reischauer admitted that the U.S. Army had brought in nuclear weapons to Japan in violation of the three non-nuclear principles. Although starting in 1978, Japan increased the share of U.S. military base expenses it covered, the U.S. wanted Japan to increase its defense spending and increased its criticism of Japan's freeriding after the Soviet Union invaded Afghanistan in 1979, but since the Soviet Union was focused on Afghanistan and caught in a quagmire, for Japan, the Soviet Union's threat had dramatically decreased. Furthermore, the security environment had dramatically improved for Japan in the short term, and Japan was hesitant to increase its defense spending as China, which was aiming to introduce a market economy through a reform and an open-door (改革开放) policy, wanted good relations with Japan. From today's perspective, both Prime Minister Tanaka's and Prime Minister Suzuki's security ideas were short-sighted and Japan-centered.⁸⁷

⁸⁴ Takahiro Suzuki (2011). "Kenpo Daikyujō To Shudanteki-jieiken: Kokkai-toben Kara Shudanteki-jieiken Kaishaku No Hensen Wo Miru" *Refarensu*, November. <http://www.ndl.go.jp/jp/diet/publication/refer/pdf/073002.pdf> (accessed July 9, 2014), pp. 38-9.

⁸⁵ Naotaka Sanada (2010). "Sengo-boei-seisaku To Boeishi" *Nijūichi-seki Dezain Kenkyū* 9, http://www.rikkyo.ne.jp/web/z3000268/journalsd/no9/pdf/no9_thesis03.pdf (accessed September 22, 2014), p. 35.

⁸⁶ Suzuki (2011), pp. 34, Akira Kotera et. al. ed (2011), *Kōgi Kokusaiho Dainihan*. Yuhikaku, p. 497. There is the view that the recent debate about collective security is also based on a different definition than the global norm and is solely for domestic consumption. Japan Innovation Party's former Co-leader Kenji Eda has pointed out and criticized this point. Kenji Eda "Shiruzu 'Shudanteki Jieiken' Wo Kangaeru—(11) Abe Shusho To Seifu No Kenkai Ha Sekai No Itan (Yui-no-to Kenkai Ga Tsusetu)" <http://www.eda-k.net/column/week/2014/07/20140714a.html> (accessed October 9, 2014).

⁸⁷ Prime Minister Tanaka reached agreed with Chinese Prime Minister Zhou Enlai that the territorial dispute regarding the Senkaku islands be shelved, and in recent years, it has become clear that Prime Minister Suzuki informed English Prime

With the goal of driving the Soviet Union, whose strength was waning, into financial ruin and undermine its system, the U.S. increased its spending on various projects including the Star Wars program in 1983, and Japan lent the U.S. money at high interest rates by purchasing U.S. bonds as its desire to freeride grew. The U.S., which had crushed the Soviet Union with money borrowed from Japan and other countries, was also struggling under a current account and government budget deficit. One could argue that by 1985 the economic positions of the U.S and Japan had reversed, Japan bashing and U.S.-Japan trade friction intensified, and there were demands for Japan to no longer freeride and to bear an appropriate share of the cost for putting an end to the cold war. The rule of restraining defense spending to no more than 1% of GNP, which had been proposed in 1973 and applied since 1976, was retracted in December 1986 in response to demands from the U.S., and for three years starting in 1987, Japan's defense spending surpassed 1% although only slightly (1.004%, 1.013%, and 1.006%) [Sanada (2010), p. 33 graph 1 and pp. 39–40], clearly revealing Japan's reluctance to pay the cost of terminating the cold war. The twisted interpretation of the constitution, which Japan used to freeride on security, has its origin in a statement made by Yoshida hijacking Kanamori's public knowledge as if he had forgotten the program rule theory with the preamble as condition,⁸⁸ his true intention, and contributed to the strengthening of Japan's economy over many years. However, when Japan's economic prosperity peaked around 1985, the free-riding strategy came at a high price.

(5) Post–Cold War:

transformation of demilitarized pacifism into a communist policy and its decline

When the SDJP joined the 1993 coalition government headed by Prime Minister Morihiro Hosokawa, it meant that the party had come to accept the U.S.-Japan Security Treaty as it had shelved its policy of demilitarized neutrality, and in July 1994, Prime Minister Tomiichi Murayama of the SDJP clearly stated his acceptance of the Self-Defense Forces and support for the U.S.-Japan Security Treaty in his general-policy speech delivered at the opening of the Diet session. The reason the SDJP gave for the shift in policy was the end of the Cold War. Japan should possess a military, and the U.S.-Japan Security Treaty became a necessity to protect Japan from Russia's nuclear weapons because while the Soviet Union during the Cold War was an opponent in a game represented by case 3, the post-collapse Russia was an opponent in a game represented by case 1. Therefore, if one assumes these perceptions of the situation, the change in policy was a completely rational one, and it is probably inappropriate to criticize it as a betrayal to win the prime ministership.

Believers of uncompromising demilitarization who could not accept the change in the SDPJ's policy fled to the Japanese Communist Party (JCP). The JCP, for whom self-defense neutrality had been a traditional basic policy, switched suddenly to demilitarized neutrality and started to extoll strict adherence to Article 9 at the twentieth party conference held in 1994 without providing a reason.⁸⁹ Having lost the prospect of a violent revolution, the JCP probably worked to attract people who could not stay with the SDPJ by adopting a policy of uncompromising demilitarization and tried to hide the inhuman violence of communism and avoid responsibility for it.

After the Cold War, there were greater calls for recognizing the need to break free from the unilateral reliance on the U.S. for security as China transformed into an economic and military power. At a May 15, 2014,

Minister Margaret Thatcher that he had reached an agreement with Deng Xiaoping to shelve the territorial dispute regarding the Senkaku Islands. It is my opinion that the actual details of the agreement to shelve the problem does not contradict the Japanese government's traditional stance that there is no territorial dispute regarding the islands, but from a modern perspective, it is difficult to refute the claim that prime ministers Tanaka and Suzuki were overly optimistic about the China's future and carelessly allowed China side a chance to take advantage.

⁸⁸ In response to Kanamori divulging the secret knowledge including the provision of troops to the U.N. at the House of Representatives subcommittee, Yoshida stated at the House of Peers subcommittee, "If war is renounced, troops cannot be lent (to the U.N. forces) [Secretariat of the House of Councillors, ed. (1996), pp. 22], revealing that Yoshida had stronger desire to freeride using the constitution as an excuse than Kanamori. Unlike Yoshida, Miyazawa assumed that Japanese volunteers taking part in the Korean War was constitutional, and thought that Japan should actively cooperate the U.S. for world peace and without freeriding as he advocated constitutional amendments to comply with the MSA.

⁸⁹ Sazanamitsushin ed. (2001). "Dai-nijuni Kai To Taiki Ketsugi To Ueda Ronbun" *Sazanamitsushin* 19, "1. Shakaito No 'Hibuso-churitsu'-ron Ni Taisuru Mushi" http://www.geocities.jp/sazanami_tsushin/sazanami/019/02.htm, author unknown (publication date unknown), "Miyamoto—Fuwa Kei To Chuo No Boeiron No Hensen Ni Tsuite" http://www.marino.ne.jp/~rendaico/miyamotoron/miyamotoron_hosoku35.htm (both accessed 22 May, 2014).

press conference, Prime Minister Shinzo Abe proposed changing the interpretation of the constitution to make collective self-defense constitutional as a natural extension of individual self-defense. Using the fact that under the current interpretation, during a crisis on the Korean Peninsula, the Self-Defense Forces could not protect U.S. ships transporting Japanese evacuees that come under attack as an example that could easily win the understanding of the Japanese, Abe called for a change to such situations. On the front page of its June 16, 2014, morning edition, the Asahi Shinbun criticized this statement that the U.S. military had ultimately refused to transport Japanese evacuees and so on. However, the Ministry of Defense refuted this report at a press conference the following day, and the Watchdog for Accuracy in News-reporting's GoHoo website criticized the report on June 24, noting "there are concerns that the paper's reporting could give the mistaken impression that there has been absolutely no progress in the Japan-U.S. agreement over the past couple of years."⁹⁰ Furthermore, on page five of the July 14 edition of the Sankei Shinbun, the paper criticized the Asahi Shinbun's subsequent correction as a manipulative shift of arguments. At just around that time, Iwatami Shoten published a new book with the subtitle "Prime Minister Abe talks of 'imaginary scenarios'" in its Iwanami Shinsho series, and in the book, the author makes assertions with the same gist as that of the June 16 Asahi Shinbun at the beginning of the introduction.⁹¹ There were no apologies for these mistaken reports, which appeared to be collusion between Asahi and Iwanami, but as if to sacrifice for this, the Asahi Shinbun admitted mistaken reporting on "comfort women" in August. Both of these incidences dramatically undermined trust in post-Cold War left-wing pacifism.

⁹⁰ "Hojin Kyushutsu, Beikoku Kobamu' ? 11 Nen, Nichibei Kyoryoku Kasoku De Goi" <http://archive.gohoo.org/alerts/140624/> (accessed December 8, 2014).

⁹¹ Narahiko Toyoshita, Shoichi Koseki (2014). *Shudanteki Jieiken To Anzenhosho*. Iwanamishoten, went on sale July 18. Forward written by Toyoshita.

3. Conclusion

There is also an interpretation of Article 9 based on the social defense theory (citizen defense theory)—that is, non-violent but thorough non-cooperation with occupation policies—and in terms of game theory, this is probably an effort to deter hostility by another country and draw out friendliness as represented in case 5.

If Japan possesses a military, the foreign country chooses to be friend because it is more advantageous for it to be friendly (F: 1) than hostile (F: -1). Therefore Japan's military serves as a deterrent. If Japan does not possess a military and the foreign country is hostile, Japan sustains major damage (J: -4), but the foreign country benefits little (F: 0) on account of the thorough non-cooperation by Japan. It will be more advantageous for the foreign country if it chooses to be friendly (F: 1) to a demilitarized Japan than to be hostile. Therefore, Japan not possessing a military can act as a deterrent and cause the foreign country to be friendly, not hostile, if the foreign country believes that Japan is ready to make major sacrifices and be thoroughly uncooperative. If Japan can be sure to draw out the friendship of the foreign country whether Japan has a military or not, it is better for Japan to not possess a military, which is cheaper.

The argument cannot be applied to certain situations, such as border disputes if there are concerns that the other party in the conflict will occupy uninhabited islands. In addition, in order for noncooperation to serve as a deterrent against a large-scale invasion, the foreign country must not resort to inhumane occupation policies, and social defense theory has been criticized because if a country is controlled by a humane opponent, social defense would probably not be supported because it is more beneficial for the citizens of the occupied county to be cooperative than uncooperative.⁹²

If Japan does not possess a military and the foreign country is hostile, the benefits when Japanese are not cooperative and the foreign country is hostile are the same as those of case 5 (J: -4; F: 0)—that is, Japan does not possess a military and the foreign country is hostile; however, if Japanese are cooperative and the foreign country is hostile, the benefits are (J: 0; F: 2). If one assumes that when the foreign country is friendly, and Japan does not possess a military, Japan and the foreign country get the same benefits (J: 2; F: 1) whether Japan cooperates or not, Japan will choose to cooperate when it unconditionally does not possess a military and is occupied. If the foreign country chooses to be hostile toward Japan, it will control a demilitarized Japan with a soft touch. When Japan does not possess a military and the foreign country is hostile, it is more advantageous for both Japan and the foreign country if Japan switches from being non-cooperative (J: -4; F: 0) to cooperative (J: 0; F: 2). In addition, even compared to when Japan possesses a military and the foreign country is hostile, both countries experience an improvement in welfare if demilitarized Japan is cooperative and the foreign country is hostile. It can be argued that the payoff is similar to that when a peripheral country that is being attacked or threatened by a core country voluntarily disarms and submits to the larger country. This is probably close to the situation for Panama in 1989 when the majority of Panamanians wanted to disarm and follow the U.S. more than maintain arms under the dictatorship of Manuel Noriega. If one reads “not possessing a military” as “not possessing nuclear weapons,” it can be interpreted as a non-nuclear power coming under the nuclear umbrella of a nuclear power. Because the Soviet Union declared war immediately after the U.S. dropped the atomic bombs on Japan, Japan quickly ended the war, accepted the U.S. army, and disarmed in order to protect the main land from the Soviet Union. Japan's choice to come under the U.S.'s nuclear umbrella can also generally be interpreted this way. In this case, not possessing a military and not cooperating would be similar to the call for all Japanese to fight to the death to counter the invasion of mainland Japan toward the end of the World War II (*ichioku-gyokusai*)

In addition, even if as depicted in case 5, the foreign country is hostile toward a demilitarized Japan, it is more advantageous for Japan to possess a military than not to. Therefore, Japan will regret not having seen through the false claims that demilitarization is a deterrent and wish they possessed a military, and the political forces that spearheaded the social defense movement will lose the support of the people, making it possible for

⁹² Yasuo Hasebe (2004). *Kenpo To Heiwa Wo Toinaosu*. Chikumashoten, pp. 165-66.

a government that will promote efforts to build a cooperative relationship with the foreign country to come to power. Even in terms of economics, noncooperation with the foreign country will break down, and secret deals will be made, creating a payoff such as (J; -2, F: 2). If that is expected to be the case, demilitarization does not serve as a deterrent, and the political forces that spearheaded the social defense movement will further lose the trust of the people. Is it consistent to maintain a liberal and democratic system of Japanese political economy on the one hand and to create a robust social defense system which will not waver if foreign country threatens or attacks and in which the majority of Japanese will continue to refuse to participate in the free economic transactions desired by the people of foreign country even if Japan is occupied by them on the other hand?

One way of making demilitarization a viable option is to become dependent on a major power and obtain its protection. One could argue that examples of this include Japanese during the occupation welcoming the obvious interpretation of Article 9, and pro-Soviet Union factions calling for demilitarized neutrality. However, it is feasible as long as freeriding is possible to the extent major power permit it, but there is the risk of becoming enslaved to the major power. Therefore, the only way to get closer to the ideal of demilitarization without becoming enslaved to is for one's own country and countries that one's country has strained relationships with to promote arms reduction while strengthening the UN's collective security and striving to establish a full international peace organization. Article 9 should be interpreted as a declaration that Japan will actively fulfill its role.⁹³

⁹³ The Tokyo Foundation's Security Research Project (project leaders: Shinichi Kitaoka, Akihiko Tanaka) (2008). "Atarashii Nihon No Anzenhosho Senryaku—Taso-kyocho-teki Anzenhosho Senryaku." Policy Research Department, Tokyo Foundation (<http://www.tkfd.or.jp/files/doc/081008.pdf> (accessed July 4, 2014) can be given as a reference policy proposal for this interpretation.

Postscript

According to Zenkichi Mitsuishi, Tsukuba University Professor Emeritus and former dean of Tsukuba Graduate School, “Dr. Tan (譚紹華), who advocated the Tan theory, is a Chinese bureaucrat born in Taishan, Guangdong Province, in 1897. After graduating from Shanghai University, he went to the U.S. and obtained a doctorate in philosophy at the University of Chicago Graduate School. He worked as professor of politics at Shanghai University. He served as an expert committee member for the Ministry of Foreign Affairs on the treaty committee. He was appointed senior secretary for the Ministry of Foreign Affairs in June 1934 and still holds the post. His current address is the Ministry of Foreign Affairs in Nanking.” [Who’s Who in China Volume 4], Ryukeishosha 1973 Reprinted Edition [original is Shanghai, 5th edition and its supplement published by the China Weekly Review, translated into Japanese by Mitsuishi, p. 295] According to a former student of Mitsuishi who lives in Taiwan, he fled to Taiwan with Chiang Kai-shek after the war, served as a minister plenipotentiary to Mexico and Brazil. It is unknown when he died.

On September 28, 2014, and January 25, 2015, I gave presentations based on the draft of this paper at a conference sponsored by the Rekishi Bunka Kenkyukai held at the Uchihara Chuo Kominkan in Mito-shi and received valuable advice from fellow academics including Mitsuishi. I would like to express my appreciation for the advice.

Appendix

Matrix of Case 1: When collective security is not properly functioning

J\F	friendly	hostile
possess a military	1, 1	-1, -1
not possess a military	2, 1	-2, 2

Matrix of Case 2: The ideal situation of effective collective security

J\F	friendly	hostile
possess a military	1, 1	0, -2
not possess a military	2, 1	1, -2

Matrix of Case 3: Cold War for pro-Soviet Union Japanese

J\C	friendly	hostile
possess a military	1, 1	-3, -1
not possess a military	2, 1	-3, 0

Matrix of Case 4: Cold War for anti-Soviet Union Japanese

J\C	friendly	hostile
possess a military	1, 1	-3, -1
not possess a military	2, 1	-3, 3

Matrix of Case 5: When social defense is effective

J\F	friendly	hostile
possess a military	1, 1	-1, -1
not possess a military	2, 1	-4, 0

Matrix of Case 6: When social defense is ineffective

J\F	friendly	hostile
possess a military	1, 1	-1, -1
not possess a military and non-cooperative	2, 1	-4, 0
not possess a military and cooperative	2, 1	0, 2