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**Constitutional Revision in Japan:
The Future of Article 9**

Roundtable Luncheon with

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I've been asked to discuss Article Nine with you this afternoon, and am happy to oblige. The place to start is the text itself.

Let me confess that, like many others, I have long found it very difficult to sort out how I feel about Article Nine for a number of reasons. I ask myself several questions:

First, do I think it has been, on balance, a positive thing for postwar Japan? Absolutely, I do. Article Nine is the backbone for an attractive Japanese national identity that stands foursquare for peace and non-proliferation-- two highly admirable values. It is, moreover, a potential "soft power" resource-- even if it has never been wielded to great effect. Its alteration would be a reason for some to doubt Japan's intentions-- and an excuse for others to make mischief.

But, do I think that Japan ought to change Article Nine? Of course, this is a matter for the Japanese. That said, I do believe that if I were Japanese I would support change.

So, why? There are many reasons why proponents of constitutional revision seek to change Article Nine. For some, it is an impediment to the realization of national autonomy. (Don't forget that the adjective often applied to Article Nine is "US-imposed.") For others, it is an impediment to national muscularity.

But I would favor change because Article Nine has been an impediment to national honesty. Not to sound hopelessly idealistic, the fact is that Japan has been living a lie. Japanese citizens-- and the rest of us-- have been treated to something closer to a grand kabuki than a sustainable national security strategy. Japan has been dishonest with itself and with its neighbors for too long, and I think Japan would help itself, its allies, and its potential adversaries by undertaking the long overdue, thorough, honest, democratic examination of its national identity.

To be sure, these are judgmental words which beg for elaboration. I will try to unwind this all with you here this afternoon. Let me start with the policy issues and then turn to domestic political dynamics, where there is considerable change afoot. I'll end with a few comments on the international implications of changing Article Nine.

I. Interpreting Article Nine

We have to start by trying to understand the near theological difficulties associated with interpretations of Article NINE. This requires we step back and understand its origins and the institutional context within which Article Nine has been contested.

For most of the postwar period, Japanese politicians have found it useful to leave interpretation of Article Nine to an extraordinary group of bureaucrats-- the legal scholars in the Cabinet Legislation Bureau (CLB).

(Speaking of the CLB, let me pause to note that my remarks today are derived from two papers I published earlier this year-- one on the CLB for the Japan Policy Research Institute and the other, co-authored with my graduate student, Pat Boyd, in *Ronza*.)

The baseline for the continuously parsed interpretations was the CLB's 1952 interpretation of "war potential" in Article Nine and its 1954 determination that the Self-Defense Forces were constitutionally permitted. It was particularly difficult in 1954 for the CLB to lay out systematically the constitutional justification for a Japanese military because, until the Korean War, Prime Minister Yoshida had insisted that Japan did not even have the right of self-defense under the Constitution. (Even afterwards, Yoshida's government denied that the 75,000 man National Police Reserves (NPR) was a military force.)

The CLB had gone along with Yoshida by insisting that the NPR, equipped with tanks and heavy artillery and led by officers of the former Imperial army, lacked "the scale of equipment and preparation that could participate in a modern war." Such is the stuff of which baselines are made.

But as the Cold War progressed and U.S. demands on its Japanese partner intensified, Yoshida realized that Japan would need more than the NPR. It was becoming impossible to continue denying the obvious: Japan would reestablish a military. The challenge for the political leadership and the CLB was to justify this policy change, given what seemed the unambiguous renunciation of the use of force in Article Nine and given prior denials at the highest level that a military could legally exist in postwar Japan. The politicians and the bureaucrats were more than up to the task.

By 1954, when the Self Defense Forces Establishment Law was introduced in the Diet, Yoshida and the CLB had developed a new line, one that has formed the baseline for each subsequent security policy debate to the present day: Japan is a sovereign nation, and all sovereign nations have the right to self-defense. It is legal, moreover, for sovereign nations to provide an infrastructure for homeland security. Since the purpose of a Japanese Self-Defense Force is homeland security, it could not contradict the "war potential" explicitly banned by Paragraph Two of Article NINE. This interpretation also specified the conditions under which Japan could exercise self-defense: Japan could respond with "minimum necessary force" (*jiei no tame no hitsuyô no jitsuryoku*) when invaded. But it could not send forces abroad (*kaigai hahei*), nor could Japan participate in any collective defense arrangements (*shudanteki bôei*).

The CLB's interpretation—drafted at Yoshida's request and under his careful supervision—enabled the creation of the SDF without having to amend the Constitution. Now the use of force banned in Paragraph Two of Article NINE was related only to the purposes of Paragraph One, which did not proscribe self-defense. In its first formal interpretation of Article NINE, the government declared that

“[War potential (*senryoku*)] refers to a force with the equipment and organization capable of conducting modern warfare . . . Determining what constitutes war potential requires a concrete judgment taking into account the temporal and spatial environment of the country in question . . . It is neither unconstitutional to maintain capabilities that fall short of war potential nor to utilize these capabilities to defend the nation from direct invasion.”

Justice Minister Kimura, exasperated with persistent questioning by the opposition about what constitutes “war potential,” finally admitted that there were “no clear quantitative measures” and appealed to “the people’s common sense.” War potential, he and the CLB maintained, was definable only in relation to other states’ capabilities and international conditions. It was, in effect, measurable only on a sliding scale. One man’s sliding scale is another man’s slippery slope.

This enabled the formation of the SDF but created new problems. This new interpretation imposed two major constraints on subsequent Japanese security policy-- or seemed to: First, it limited force levels to those sufficient to provide self defense narrowly defined, and second, it limited the use of force to self defense. The proscription of aggressive war meant that Japan could not maintain the capability to conduct “modern warfare.” Nor could it assist allied nations under attack.

As many of you are aware, there have been a great many other twists and turns, but there is a bottom line here: The battle for control over the definition of what constitutes “minimum necessary force” persists to this day. Political disputes over “necessary limits” (*hitsuyô na gendo*) gave way to arguments over the “necessary proper sphere” (*hitsuyô sôtô na hani*) and then “necessary minimum limit” (*hitsuyô saisho gendo*). And what is “minimum” or “necessary” in a combat situation? Hairs have been split over whether “armed force” (*buryoku*) is different from “war potential” (*senryoku*), which is clearly banned by Article NINE. Each term carries with it the weight of endlessly parsed legal interpretations.

The “hair splitting” continues and makes for contested politics and messy policy. Until very recently, the extant interpretation allowed an SDF officer to take action he deems necessary to protect Japanese lives and property, but it also requires him to have the approval of the Prime Minister. And, of course, actions of the Japanese Prime Minister require approval by the Cabinet. And, because the Cabinet operates on a consensus basis, all ministers must agree. Since the Cabinet meets only twice a week, it is hard to imagine a timely authorization for a Japanese soldier who finds himself under fire.

Former Prime Minister Nakasone is only one of many prominent politicians who have criticized the impracticality of all this, and in the 2001 Anti-Terrorism Law, some restrictions were lifted. Now, a Japanese soldier under fire has to first shout a warning. Then he has to fire in the air. Then he must fire in the ground. Then he is permitted to fire at a non-vital body part. This is progress-- after a fashion.

But perhaps the toughest nut has been the 1954 proscription on collective defense. This has driven conservative politicians mad, and has animated the current drive for constitutional revision. In 1951, the Vice Minister of Foreign Affairs had told SCAP that Japan could support U.S. troops if they were attacked on Okinawa, which was then not even Japanese territory. After the 1954 interpretation and until the 1980s, however, the CLB interpreted the ban so narrowly that the SDF would not have been allowed to assist a U.S. warship that came under attack while defending Japan. You can only imagine how this would have “played in Peoria.”

This formally changed in May 1981, when the CLB issued its famously tortured interpretation of collective defense, giving Japan a right that it is illegal for it to exercise. You really have to read this to get the full flavor:

“It is recognized under international law that a state has the right of collective self-defense, which is the right to use actual force to stop an armed attack on a foreign country with which it has close relations, even when the state itself is not under direct attack. It is therefore self-evident that since it is a sovereign state, Japan has the right of collective self-defense under international law. The Japanese government nevertheless takes the view that the exercise of the right of self-defense as authorized under Article NINE of the Constitution is confined to the minimum necessary level for the defense of the country. The government believes that the exercise of the right of collective self-defense exceeds that limit and is not, therefore, permissible under the Constitution.”

So, when SDF troops were dispatched to Iraq in early 2004, Prime Minister Koizumi and JDA Director General Ishiba took pains to inform other members of America’s “coalition of the willing” that Japanese troops would not come to their defense if they were attacked. One can only imagine the damage that would be done to the alliance if they are in a situation where they can, but do nothing. No doubt some of you may have heard about the Dutch forces griping about having to defend their Japanese neighbors in Samawah. Well, the Dutch forces have been ordered home now, and the Japanese are on their own...

II. Political Dynamics

So why is it that Article Nine has never been changed? The simple answer is not wrong: The bar (2/3 vote in each house and a majority in a national referendum) is set too high. But the more complicated answer is more interesting. What is it about the dynamics of Japanese politics that, despite more than half a century of talk about revision, the renunciation of force to settle international disputes remains unchanged at the center of Japanese security policy?

Is this because the Japanese have become recalcitrant pacifists, intimidated by the ghosts of militarists past? Is it because the left has constrained the choice of the right? Is it because the Japanese national identity was transformed from “Big Japanism” to “Small Japanism” and from imperial and aggressive to mercantile and passive? These labels are all, of course, components of the conventional wisdom-- and, while each gets at part of the story, there remains much to unbundle.

Prior to the current effort-- which began after the 1991 Gulf War-- there was one sustained constitutional revision movements--in the 1950s. It was led by anti-mainstream conservatives-- literally the parents and grandparents of the current ruling group. They failed not because a politically constrained right was forced to acquiesce to demands from the pacifist left, but because conservatives within the LDP were divided on the issue.

So, explaining how Article Nine has persisted despite broad-based pressures for change requires understanding the motivations and strategies of three political groups that battled over the constitution since the 1950s.

The first group was a collection of conservative politicians led in the immediate postwar years by Hatoyama Ichirō and, later, by Kishi Nobusuke and his supporters. These revisionist politicians adhered to conventional *realpolitik* beliefs about national security, favoring a combination of rearmament and conventional alliances. To achieve these ends they called for revision of Article Nine, argued to rebuild Japan's military capabilities, and sought a reciprocal security commitment with the United States.

The second group comprised pragmatic conservative politicians led in the immediate postwar years by Yoshida Shigeru, and later by his disciples such as Ikeda Hayato, Sato Eisaku, and Miyazawa Kiichi.

The two groups of conservatives diverged in two important respects: First, they disagreed about the causes national wealth and power. And second, they disagreed about whether Japan should be “big” or “small.”

Specifically, the Yoshida School believed that economic success and technological autonomy are the foundations of national security. They correctly read that the United States was eager to use Japan as an “unsinkable aircraft carrier,” and judged that they could hedge the risks of a US alliance with a focus on commercial economic development. Once the country had been returned to prosperity, they argued, further investment in military preparedness could be considered.

Yoshida and his supporters pursued an unequal alliance by which Japan's security was guaranteed by the United States without Japanese reciprocation. The unequal nature of the alliance ran counter to the *realpolitik* beliefs of the revisionists, but guaranteed the twin goals of prosperity and security without entangling Japan in American wars. These pragmatists (sometimes called “mainstream conservatives”) dominated cabinets under which all three pillars of Japan's postwar security apparatus: Article Nine, the Self-Defense Forces, and the US-Japan Security Treaty-- as well as such timely codicils as the “Non-nuclear principles” and the “arms export ban”-- were established and successfully defended from change by the revisionists.

The third group comprised intellectuals, labor activists, and leftist politicians who viewed Japan as a “peace nation” (*heiwa kokka*) and categorically opposed the use of organized violence. Strong supporters of Article Nine and strong opponents of rearmament and the US-Japan Security Treaty, they called for a security doctrine of “unarmed neutrality.” These folks did not trust Japan with a full military capability, preferring instead to rely on international public opinion, diplomacy, and passive resistance to counter security threats. They expanded their grassroots networks during the 1950s and became a notable political and social force by the end of the decade.

Shifts in the domestic balance of power among these three groups is at the heart of Japan's continually renegotiated compromise on Article Nine and national security policy. Until recent years, each of these groups represented a significant percentage of both the political elite and the electorate. For this reason, any security policy issue required support from at least two to remain politically viable.

In the case of Article Nine, a winning coalition was formed in the 1950s between the pragmatists and the pacifists. Although this was an uneasy alliance across party lines, their coalition proved stable and was marked by a surprising level of cooperation. It effectively protected Article Nine from numerous challenges-- even into the 1990s.

III. The Current Challenge

But the situation has changed. These forces assumed their customary roles in the first major security crisis of the period, the 1991 Gulf War. Revisionists, led by Ozawa Ichirō, sought to leverage American pressure for SDF participation in Bush 41's grand coalition to push Saddam out of Kuwait into a reinterpretation of Article Nine. Predictably, pacifists among the Socialists and *Kōmeitō* joined forces with LDP pragmatists, such as Gotōda Masaharu and Miyazawa Kiichi, to kill the plan. Ozawa and his supporters were forced to settle for a large monetary contribution and, once hostilities ceased, the deployment of minesweepers to the Gulf.

Soon thereafter, however, signs of change quickly appeared. Stung by international criticism of Japan's failure to provide troops, the Japanese public shifted to support the minesweeper deployment. Picking up on popular sentiment, revisionists began to paint Article Nine as an obstacle to "international cooperation" and the cause of a significant national embarrassment. Wielding the humiliation of "checkbook diplomacy," the revisionists attacked the pragmatists and the pacifists simultaneously-- not to mention their declared war on the CLB. And they began winning...

They secured legislation allowing SDF participation in UN peacekeeping operations (1992), expanded SDF cooperation with US forces during regional crises (1999), and established constitutional review committees in both houses of the Diet (2000). Revisionists were also joined by influential new allies in the media and academia. By the early years of the new millennium, revisionist accomplishments had begun to pile up.

Indeed, after their initial Gulf War victory, pacifists and pragmatists limped through the 1990s. Pacifists were particularly hard hit. Leftist parties were unable to redefine themselves in the post-Cold War era, and have been decimated. The ground also shifted beneath the pragmatists' feet. Their leadership fell into eclipse beginning in the mid-1990s. Considering these developments, one must wonder how Article Nine even survived the 1990s.

The answer again lies in the shifting institutional bases of the revisionists, pragmatists, and pacifists-- with some of the latter finding a new institutional base in the DPJ-- at least in part of the DPJ-- and with others in the Komeito, without which the LDP cannot govern. Thus, the numerical decline among pacifists has been somewhat compensated for by the requirements of coalition politics.

This explains how Article Nine was used to keep Japan from contributing combat forces to the Gulf War, the Afghanistan conflict, and even hypothetical contingencies in surrounding areas that might impact Japan's own security. Indeed, Article Nine has even been used by revisionist leaders who, faced with an uncertain economy and a militarily assertive alliance partner in the

spring of 2003, invoked it to reduce Japan's exposure to the US-led Iraq war. (Note Director-General Ohno's recent musings about withdrawal of forces in the event of violence in Samawah.) Never underestimate the value of Article Nine as a hedging instrument.

Despite continuing to play the Article Nine card, however, revisionists remain publicly committed to realizing formal change in the future and have developed strategies to avoid bureaucratic and political resistance to informal change as well.

To repeat-- times are changing. The balance of power within the conservative majority is shifting at last. Like the pacifists, the pragmatists in the LDP have also become weaker in recent years. The LDP is now headed by revisionist leaders who openly champion a stronger posture for Japan in international affairs, and the party is becoming more unified on key issues in the constitutional debate, including revising Article Nine. Five decades of tripartite political dynamics among pacifists, revisionists, and pragmatists may finally be changing in ways that alter the dynamics of constitutional politics that protected Article Nine so well.

So, the key question is: Where is the tipping point? Repeated polls of Diet members over the last decade have shown growing support for constitutional revision in general and for amending Article Nine in particular. In 2002, the *Yomiuri Shimbun* found 71% of Diet members favored revising the constitution, an increase of 11 points from its 1997 poll. NHK found that 58% of the general public favored revision in 2002, up 23 points from its 1992 poll.

With regard to Article Nine, the same *Yomiuri* poll noted 55% of Diet members favored revision, up 14 points from the previous survey. On the central question of whether Japan should be allowed to exercise the right to collective self-defense, 54% agreed while 40% opposed.

Two recent changes within the LDP are particularly relevant to the future of Article Nine. First, party reforms have strengthened LDP leadership--especially the power of the party president--at the expense of factional leaders. And second, the current party leadership, led by Prime Minister Koizumi, is the most popular group of revisionists ever to have held power. There have been revisionist cabinets in the past, of course, but neither Kishi, Nakasone, nor any other revisionist had ever enjoyed Koizumi's degree of centralized power or popular support. And Koizumi has directed his strongly revisionist leadership on a course that has forced Article Nine onto the political front-burner for the first time in forty years.

As many of you know, last month the LDP released a draft outline of how it would amend the Constitution. Basically, this is an honest rendering of the status quo. The LDP insists on language establishing "armed forces for national self-defense" and proposes that Japan explicitly provide itself the right of collective self-defense as well as the use of armed force when engaging in UN peacekeeping. The LDP proposes to delete Paragraph Two and replace it with a renunciation of war and a declaration of the so-called "three non-nuclear principles" (no production, possession, or introduction of nuclear weapons). So, on the whole, by retaining the renunciation of war, referring to a new pacifism as a basic concept, and by stating its respect for human rights, the LDP draft does respect the original intent of Article Nine. As my colleague at Berkeley, Steve Vogel has recently pointed out: "If the revision proponents are radical

nationalists bent on rebuilding the Japanese military, they are sure doing a good job of masking their true intentions.”

But, remember, PM Koizumi has not been waiting for constitutional change to change government policy on Article Nine. He seized the opportunity provided by the Nine/11 terrorist attacks to win Diet approval for the first dispatch of Japanese warships out of the "areas surrounding Japan" since 1945. With Japanese naval tankers and destroyers in the Indian Ocean, he successfully steered Emergency Powers Legislation-- legislation that had been stalled since the government of his mentor Fukuda Takeo (Kishi's heir) -- through the Diet, authorizing military mobilization in the event of an attack on Japan. His most consequential reform so far may be the July 2003 passage of the Iraq Reconstruction Bill approving deployment of Japanese soldiers to Iraq and the Cabinet order authorizing their dispatch one year ago. (Note that last week the government extended this dispatch for another year-- over strong public opposition.)

Two trends are apparent as this wedding of revisionist ambition with stronger leadership affects the constitutional debate. I have already noted how support for constitutional revision within the LDP has increased dramatically under Koizumi's leadership.

But, second, over the last three years, Koizumi has systematically punished pragmatists and rewarded revisionists within the party. Pragmatists have fared particularly poorly. Katō Kōichi, for example, was forced to resign his Diet seat. A year later, Koizumi forced the retirement of Miyazawa Kiichi, and prior to the 2003 election Nonaka Hiromu announced his retirement from the Diet after expressing frustration at the increasing power of the revisionist party leadership. Although Katō has since been reelected, he and other prominent pragmatists, such as Kōno Yōhei and Koga Makoto, are weaker than ever in party councils. The consolidation of party power behind revisionist leadership has thus worked to marginalize pragmatists and unify the LDP around revisionist goals to heretofore unprecedented degree.

V. Conclusion: Whither Article Nine?

So, can Article Nine survive in this new environment? On the one hand, as I have outlined, revisionists are in firm control of the LDP and of the Cabinet Legislation Bureau which long had hewed to the pragmatists' line; majorities in the Diet favor revising Article Nine; and at least one supra-partisan study group comprising young parliamentarians from both the ruling coalition and the opposition DPJ is agitating for collective self-defense. In addition, the DPJ is expected to match the LDP and issue its own manifesto for constitutional change in the near future. Once the Diet constitutional review committees wrap up their work in May, it is expected that the issue will finally move to the standing Diet committees for debate and, ultimately, for a vote.

Still, there remain significant obstacles making it hard to confidently predict change. First, public opinion is more enthusiastic about constitutional revision in general than it is about changing Article Nine specifically. Second, although revisionists lead the current ruling coalition, they remain dependent on *Kōmeitō* to control the upper house. As I have suggested, *Kōmeitō* has moderated the coalition's revisionist ambitions. It seems quite clear that had the LDP not been dependent upon Komeito support, its draft constitution would have gone much

further. It would not likely have reaffirmed the original intent of Article Nine to quite the extent that it has done.

And there are other hurdles: Revisionists in the LDP will have to reach out to like-minded members of the DPJ in order to achieve the necessary two-thirds majority-- something PM Koizumi has already publicly appealed for. The DPJ cannot be expected to hand over a victory to the LDP on an issue as prominent as constitutional revision without major concessions. The fact that the DPJ opposed the Iraq deployment on constitutional grounds suggests two possibilities-- either the Democrats will continue to exploit this issue as the events of the deployment unfold-- a strategy that would further complicate cooperation with the LDP on Article Nine revision-- or it will split. Indeed, we should not be surprised if either the DPJ or the LDP splinters over this issue. Perhaps both will.

Second, the world is not standing still. If the SDF suffers casualties in Iraq, both sides will likely use them to support their positions on Article Nine. How the public would respond is hard to predict.

We have here an encouraging irony for democracy in Japan. In the past, the key obstacles to revising Article Nine were pragmatists in the LDP, pacifists in the opposition, and a divided public. If pragmatism and pacifism continue to decline in the Diet, the role of the public will become greater than ever. After all, constitutional revision requires not only a two-thirds majority in the Diet, but also a majority in a public referendum. Polls suggest that a minority continues to support pacifist positions, but a clear majority opposes major change to Article Nine. If these positions hold, the public may remain an important force in the constitutional debate. So, while the final outcome remains uncertain, two aspects of the process are very certain indeed. And both are as they should be: First, Article Nine's future will be as contested as its past. And, second, the constitutional debate will be a major test for Japanese democracy. And that, as I said at the outset, is why I favor the process.

Let me end with some rather shallow speculation about the international implications of a change in Article Nine. First, there is the United States, which long ago abandoned its "dual containment" ("cork in the bottle") approach to its alliance with Japan. Recall that Deputy Secretary Armitage reportedly suggested last summer that Article Nine was an obstacle to Japanese membership on the UN Security Council. Some say that we should be careful what we wish for, but like Secretary Armitage, I think we ought to trust Japanese democracy-- and that the Japanese ought to do likewise. A balanced, reciprocal alliance based on popular consent in Japan cannot be a bad thing for US interests.

The Koreans are none too happy with the proposed change, but-- sandwiched as they are between China and the US/Japan alliance-- are likely to resign themselves to it. Still, media commentary on the LDP draft last month was been provocative:

Yonhap Television News said that if the Japanese Constitution is revised, "Japan will be armed with military power and begin marching toward becoming a great military power." The Munhwa Ilbo called the LDP draft "shocking" and worried that by revising the Constitution, Japan would join the ranks of great military powers such as the United States, China and Russia.

And one commentator from the moderate *Chungang Ilbo* was even more blunt: “For the past 60 years, Japan wasn't really its true self. It was constrained by the bridle of defeat under the peace constitution. However, we will see the real Japan soon ...” Japan clearly has some public diplomacy ahead of it.

China’s reaction certainly was predictable. Many in Beijing will find this change very provocative-- and not for no reason. Xinhua News Agency declared that the LDP draft

“ ... is a signal that warrants the vigilance of the world, especially various Asian countries that were invaded by Japan in the past ... Japan is daydreaming to materialize its wild ambitions of becoming a political and military power. Japan will then definitely pose a serious threat to peace in Asia and the world. In the future, it is absolutely possible for a country that has been unable and unwilling to admit its past history of invading other countries to repeat its historic mistakes. Once Japan has broken through the restrictions stipulated in the peaceful Constitution, Japan's "self-defense military force" will freely go to various places around the world and wantonly launch "preemptive" strikes on its so-called "enemies." Such a scenario can only make the peoples of various Asian countries that previously suffered cruel oppressions of Japanese militarists maintain their heightened vigilance.”

The questions are how (and how long) Beijing-- now Japan’s largest trading partner-- will use Japanese constitutional change and at what cost? Surely it will be a tool for anti-Japanese public diplomacy. Likewise, it is a good bet that Beijing will continue to use it to denounce Tokyo to help consolidate power at home. But when does this become counter-productive? And, so long as it is hugging the US close, why should Japan care?

As you can see, on these matters I have many more questions than answers, and thus am happy to end here and hear from you all.