

Debate on Collective Self-Defence and Constitutional Revision in Japan

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Abstract *The security environment in Japan's neighbourhood has dramatically deteriorated in recent times. China's assertiveness in regional territorial issues and demonstration of muscular power to assert its claims, North Korea's nuclear and missile launches, and US President Donald Trump's pressure on Japan to shoulder greater security burden are the three compelling factors that are propelling the Abe administration to address appropriately how to respond to the new challenge confronting Japan. In order to do that, the country's 'peace constitution', particularly Article 9, is constraining Abe in his objective to enact laws that could address to the new challenge. Given the strong anti-military and anti-nuclear sentiment in the country and given the difficult procedure to amend the Constitution, the best the Abe government is able to do is to reinterpret the peace clause to achieve his objective without actually enacting any amendment in the document. Even this measure to collective self-defence is thorny. There is no consensus among political parties too.*

This article addresses to this critical issue of domestic debate on collective self-defence and attempt to revise the Constitution as the new situation demands, as well as the responses from neighbouring countries such as China and South Korea to such possible changes when they take place. Both China and South Korea continue to suffer from the shadow of history and strongly react at the slightest sign of Japan increasing its military capability as per the country's need. Even the country's defence forces are not called 'military' but Self-Defence Forces with three separate wings for Army, Navy and Air Force. The political stability of the Abe government has emboldened Prime Minister to pursue a pro-active domestic policy. Though this raises the fear of Japan returning to pre-War militaristic policy, in the current narrative of global policy such fears are clearly misplaced. As a matured democratic nation that has played decisive economic policy contributing to its own and to the region's economic prosperity, Japan in partnership with other friendly countries can play a decisive and responsible role for peace and stability in the region. The analysis in the present paper is relevant in this context and the challenges that Abe faces coping with this are critically examined.

Key Words: Constitution, Militarism, Collective Self-defence, North Korea's missile launches and nuclear tests, Article 9, Article 96, LDP, New Komeito, Constitution, THAAD, SDFs, military.

Introduction

In an extremely controversial and massive shift for the country's pacifist stance, Japan's Cabinet took a historic decision on 1 July 2014 "Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People", that will allow the Japanese government to reinterpret the Constitution allowing limited exercise of the right of collective self-defence. The Shinzo Abe government hoped that the new legislation when passed will enable Japan to coordinate with the United States and other members of the international community, thereby contribute to solidifying Japan's peace and security. Abe further hoped that the constitutional reinterpretation would now help Japan to enhance its deterrent power. He expressed his resolve to "consolidate Japan's path as a peace-seeking nation". Abe also pledged to establish "a seamless legal framework on national security to protect the lives and daily livelihood of the people".

It was not easy for the Abe government to reach such a historic decision. His Liberal Democratic Party (LDP) had policy differences with its coalition partner, the New Komeito, which wanted the government to pursue a cautious approach on permitting Japan to exercise the right of collective self-defence. But protracted efforts on Abe's part finally led both the parties to find middle ground and reach an agreement. Under the government's reinterpretation of the Constitution, particularly Article 9, Japan will now be able to use the minimum necessary force when there is an armed attack on a foreign country with which Japan has close relations, and that there is a clear danger that the basic rights of the people of Japan are fundamentally undermined.

The question that arises is: why did Abe feel the need for such a foreign policy activism at this point of time? Since the end of World War II, Japan backed by its "Peace Constitution", adhered to a basic policy of maintaining an exclusively national defense-oriented policy, and not become a military power that could pose a threat to other nations. By observing the Three Non-Nuclear Principles,¹ Japan flourished as an economic power and distributed the economic dividends to its

1 "Three Non-nuclear Principles", <http://www.mofa.go.jp/policy/un/disarmament/nnp/>. For a detailed discussion on this issue, see Rajaram Panda, "Japan moves a step closer to become a 'normal' state-Analysis", 25 April 2014, <http://www.eurasiareview.com/25042014-japan-moves-step-closer-become-normal-state-analysis/>

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people. But since the Constitution of Japan came into operation seven decades ago, the security environment surrounding Japan has dramatically deteriorated, thereby exposing Japan to deal with significant security challenges. China's brazen expansionist policy and toughening stance on territorial issues, and coupled with threat from North Korea's nuclear and missile launches are matters of worry. While acknowledging the so-called "UN forces", an ideal proclaimed in the Charter of the United Nations, with no prospect of realization, the Cabinet decision took cognizance of the shift in the global power balance after the end of the cold war, rapid progress of technological innovation, development and proliferation of weapons of mass destruction and ballistic missiles as well as threats such as international terrorism leading to tensions in the Asia-Pacific region, thereby impacting directly on Japan's security. Moreover, the threats to maritime security either stemming from maritime terrorism, piracy or unilateral decision by a single country to impose its views and violating the United Nations Laws of Sea such as in the South China Sea makes the security in the region more volatile. The Abe administration felt that such a changed situation warranted an appropriate response.

Implementing the law

March 29, 2017 marked another significant landmark in Japan's security policy as it marked one year since the Shinzo Abe government enacted the new security-related law that significantly broadened the scope of the country's Self-Defense Forces' (SDF) activities, including enabling the limited exercise of the right of collective self-defense. The law also gave the SDF personnel on UN peacekeeping operations greater authority to use their weapons. The law expanded the government's discretion over overseas operations of the SDFs and allowed the SDF to provide logistical support to the militaries of the US and other nations operating across the world.²

Since Abe came to power in December 2012, Japan has been enjoying a rare spell of political stability since Junichiro Koizumi retired from politics, leading to a spell of what came to be known as 'revolving prime ministers'. This period of political instability came as a serious bottleneck in making legislation on critical issues impinging the country's security. Abe's assumption to power changed this situation and the prime minister could afford to devote responding appropriately to the deteriorating security environment in Japan's neighbourhood.

² Rajaram Panda, "Concern over new security law in Japan", *The Pioneer Sunday Edition*, 9 April 2017, <http://www.dailypioneer.com/sunday-edition/agenda/backbone/concern-over-new-security-law-in-japan.html>

The issue of the new security legislation remained controversial domestically since the time the idea was mooted. Though Japan's national security remains vulnerable to perceived threats from North Korea's missile launches and China's belligerence on regional issues, the Japanese peoples are unprepared to accept their country to take the burden to defend the country by themselves. They prefer to rely on the US security umbrella so long as the Security Treaty remains in force.

In the meantime, Japanese media is divided on Japan's new security laws. While the *Yomiuri Shimbun* seemed to endorse Abe's pro-active move, *Asahi Shimbun* is sceptical of Japan's new laws, seen as a departure from the nation's pacifist stance. Even some political parties are opposed to the new security law. Many lawsuits have been filed across the nation to have the court declare the legislative package to be "unconstitutional". With strong public disapproval, the legislation's future looks uncertain.

Post-Trump situation

This situation has somewhat changed after Donald Trump took over the US Presidency. He has demanded greater security burden from the allies – Japan and South Korea – by way of paying more to the cost of US forces stationed in the bases. He made further controversial statement that the allies might even think of acquiring their own nuclear weapons to defend their countries. Such statement was alarming to the people in both Japan and South Korea, though emboldens the hardliners and conservatives to demand for revisiting their nuclear options. The situation however during the pre-Trump era was not dramatically different as the clamour for revising the nuclear policies existed but was dormant. That voice gets more currency now.

How has Japan been able to use this new law for the country's security during the past one year? And what changes have occurred in the security environment in Japan's neighbourhood? Without doubt, threats from North Korea's nuclear and missile development programs have increased. The firing of a series of missiles by North Korea, latest being in August and again in November 2017, many of which landed in the Japanese waters is a matter of concern for Japan. The SDF has a legitimate right under the new law now to monitor the Sea of Japan. The Maritime SDF of Japan can now engage its Aegis-equipped vessels round the clock to intercept any incoming missiles. If tensions heighten, Aegis destroyers from the US Navy's 7th Fleet will also jointly monitor the situation. Even here, there are various interpretations on the use of force.

Before the new security law came into force, if a US ship involved in surveillance or

patrols for the defence of Japan was attacked, Japan was unable to defend that ship unless Japan itself came under armed attack. The new law now enables the MSDF to protect US vessels even in peacetime. The scope was expanded, according to which MSDF can counterattack to protect weapons and other equipment of other nations from being destroyed while in missions to defend Japan.

The urgency to operationalize the new security law with vigour was felt following the missile launch by North Korea on 6 March, three of which landed inside Japan's exclusive economic zone. The information obtained from Aegis ships and radars across Japan were displayed on a larger screen in the underground centre at the Air Self-Defense Force's Air Defense Command headquarters inside the base. The alarm was felt across the region when Pyongyang announced that the missiles were an exercise by a unit tasked with launching an attack on US forces based in Japan, thereby posing a threat both to Japan and the US.

Japan is seized of the reality that North Korea is capable of hitting Japan within 10 minutes of firing a missile. This led to seamless coordination between Japan and the US to share information in peacetime to joint operations in potential emergencies. Therefore an Alliance Coordination Mechanism mandated to closely coordinate between the SDF and the US military was put in place. It remains unconfirmed that Pyongyang has succeeded in miniaturizing a nuclear warhead capable of fitting it onto a ballistic missile but the pace in which it is making advances on the weapon system, the days are not far off when that becomes a reality. Japan, the US and South Korea shall then face the real nightmare. North Korea's advance in nuclear program can no longer be seen as a far-fetched dream.

Increased heat from North Korean threat

In the latest escalation of tensions on the Korean Peninsula and the extended neighborhood of Northeast Asia, North Korea fired another ballistic missile on July 4 that landed in Japan's exclusive economic zone (EEZ) in the Sea of Japan. This was the fifth such missile fired by North Korea that landed in Japan's EEZ, the last one being on May 29.

Each time North Korea launches a ballistic missile, it is an indication of having made further advances in its missile capabilities. The one fired on July 4 July flew for about 40 minutes and travelled around 930 kilometers. It was the 10th occasion in 2017 that North Korea fired a ballistic missile. On 8 June, it fired several surface-to-ship cruise missiles, as well.

Following this most recent missile launch, North Korean state television claimed it

successfully tested its first intercontinental ballistic missile (ICBM) and that it could hit targets anywhere in the world. North Korea said the Hwasong-14 missile, whose launch was overseen by Kim Jong-un, reached an altitude of 2,802 km and flew 933 km for 39 minutes before hitting a target in the sea. North Korea further boasted it was now “a full-fledged nuclear power that has been possessed of the most powerful intercontinental ballistic rocket capable of hitting any part of the world.” North Korea believes that this capability will enable the country to “put an end to the US nuclear war threat and blackmail” and defend the Korean Peninsula. Subsequently, North Korea conducted the sixth nuclear test and launched two ballistic missiles in August 2017 that flew over Japan’s northern island of Hokkaido. Each of these missiles had greater potency than missiles fired before.

Varying Opinions

Pyongyang’s claims are suspect. Though the country has made considerable advances in its nuclear and missile capabilities, some experts believe it does not have the capability to accurately hit a target with an ICBM, or miniaturize a nuclear warhead that can fit onto such a missile. Russia too cast doubt on North Korea’s assessment and said the missile reached an altitude of 535 km and flew about 510 km. While the US military’s Pacific Command claimed it was an ICBM, military experts in South Korea believe Pyongyang fired a new type of medium-to-long-range missile called a Hwasong-12, which was also launched on May 14. The South Korean military believes that if the missile was fired on a normal trajectory, it could travel as far as 4,500 to 5,000 km. US Secretary of State Rex Tillerson also confirmed the missile launched was an ICBM and that it represents a new escalation of the threat to the US, its allies and partners, and the world.

North Korea claims it has developed an ICBM that can carry a large nuclear warhead. This triggered demands for global action that would hold it accountable for pursuing nuclear weapons. Kim Jong-un’s claim that the test completed his country’s strategic weapons capability – which includes atomic and hydrogen bombs and ICBMs – has the potential to alter permanently the balance of power in East Asia. Given the pace with which North Korea is making advances in missile and nuclear technology, it is difficult to doubt that Pyongyang has made a quantum leap in its military reach. On a flatter trajectory, the missile could threaten all of Alaska. The test successfully verified the technical requirements of an ICBM in stage separation, the atmospheric re-entry of the warhead and the late-stage control of the warhead.³

³ Rajaram Panda, “The Challenge of Stopping North Korea’s Saber-rattling”, *Global Asia Forum* (Seoul), 13 July 2017, https://www.globalasia.org/bbs/board.php?bo_table=forum&sca=Global + Asia + Forum

The North Korean threat poses a huge challenge to Trump and his Asian allies. Even while Kim Jong-un remains undeterred and continues to defy the international community through such provocative acts, Trump too has taken a bellicose position, having run out of patience with Beijing, announcing that all options, including a military strike, are on the table, if North Korea does not change its behavior. At the same time, he has said that military action would be a last resort and that sanctions and diplomatic pressure were the preferred course. Though Pyongyang's acts have unnerved Japan, Prime Minister Abe held a meeting of his National Security Council to assess the security threat and deferred a decision to activate the J-Alert emergency warning system after it was concluded that there was no possibility of the missile reaching Japanese land or waters. Japan's SDF also did not take any specific measure to intercept the missile.

Much hope rests on China to exercise its influence on North Korea to change course. But China is either incapable or unwilling to exert any pressure on Pyongyang owing to its own strategic compulsions. US President Trump is unwilling to wait for China to cooperate. Having taken North Korea threat seriously, Trump is reviewing his policies towards the North, including consideration of military options that could include pre-emptive strikes and cyber-attacks. Being geographically close to North Korea, Japan feels the heat and intends to keep in step with the US and ramp up the pressure on North Korea.

With no sign of cooperation from Beijing, Trump has declared that if needed, the US will act unilaterally to deal with the threat of a nuclear North Korea. When Chinese President Xi Jinping visited the US for a summit meeting with Trump on 6 April, Trump urged Xi to put pressure on North Korea to give up its nuclear and missile programs. Undeterred, Pyongyang fired an intercontinental ballistic missile on 4 July capable of hitting the US mainland. It remains unclear, however, what possible actions Trump has in mind to deal with North Korea if China is unwilling to help.

China is North Korea's only international ally. But China fears a possible unified Korea would bring US troops close to its border, besides millions of refugees from North Korea crossing into Chinese territory. Though China joined other nations in imposing sanctions and banned coal imports from North Korea till the end of 2017, these are cosmetic responses to please the outside world. Further details on this are beyond the scope of this paper. That said, the North Korean issue remains alive for Japan and other stakeholders to grapple with.

Japan still faces limitations

Even though the North Korean ICBM fired on 4 July in Japanese water exposing

Japan's vulnerability, Japan still remains unclear on what sort of response it would adopt if the same kind of missile flew over Japan in the future to target the mainland US. The prospect of an ICBM fired by North Korea in the future flying through the sky over Japan and towards the US became a more realistic possibility after the US confirmed that the missile fired was an ICBM. The missile firing of August 2017 proved that. Though Japan's security-related legislation came into force in March 2016 making legally possible for Japan to intercept such a missile, Japan can only conduct such an operation under strict conditions. High technological barriers also need to be overcome.

The legislation of March 2016 incorporated three new conditions on the use of force set forth by the Cabinet decision of July 2014 to reflect a change in the interpretation of the Constitution. These conditions are (a) an armed attack occurs and threatens Japan's survival; (b) there are no other appropriate means to protect Japan's people; and (c) use of force is restricted to the minimum necessary. Japan shall be able use force and shot down a ballistic missile heading toward the US only if these three conditions are met.

In a hypothetical situation that also looks realistic in the background of missile launch of 4 July, if North Korea fires another ICBM targeting Hawaii, home of the headquarters of the US Pacific Command, which the US would use as a base for launching operations to respond to a contingency on the Korean Peninsula, it would fly over Japan. Even with the new security legislation in force, the government of Japan is unsure if it could legally intercept such a missile in such a scenario. However, if war broke out between the North Korea one side and South Korea and the US on the other, and the government in Japan deemed that the country's survival was in danger under the three conditions, it would be within its legal rights to intercept such a missile as a self-defensive measure. By contrast, Japan could be legally prevented to shoot down a North Korean ICBM suddenly launched towards the US in peacetime.⁴

Japan has also to overcome technological and capability problems. While the US has deployed the Terminal High Altitude Area Defense (THAAD) battery system in South Korea amidst a lot of controversy, the same is not the case with Japan. Japan's current missile defence system centres around Aegis destroyers equipped with SM-3 interceptor missiles that can shoot down a target outside the atmosphere up to a maximum altitude of about 500 km. The ability of SM-3s to shoot down a ballistic missile is limited to the point as it begins to fall from its highest point after it

4 "Japan's odd of intercepting N. Korean ICBM unfavourable", *Yomiuri Shimbun*, 6 July 2017, <http://the-japan-news.com/news/article/0003803746>

flies through the air in a parabolic trajectory. But if North Korea fires an ICBM aimed at the US it would have an increasing altitude at a high speed when it passes through the sky over the Aegis vessels stationed in the Sea of Japan. So, the capacity of the SM-3 interceptor missiles to neutralise an ICBM remains limited. “The possibility of shooting down an ICBM likely would be increased if Aegis vessels were stationed in the Pacific Ocean and equipped with the SM-3 Block IIA interceptor missiles being developed by Japan and the United States. These missiles will be able to shoot down a target at an altitude of more than 1,000 kilometers”.⁵

Debate on Revising Article 9 of the Constitution

The above limitation and constraint brings into discussion the issue of constitutional revision, especially Article 9. Ever since Japan’s constitution was promulgated 70 years ago, no single change in the document has ever been made. However, Prime Minister Abe wants to change this trend and has resolved to complete the process before the end of his time in office. The document adopted under the US occupation had changed the balance between the state and Japanese society as well as the trajectory of Japan’s relations with the world. Abe wants to change this so as to reflect the current world situation and set the date 2020 to coincide with the Tokyo Olympics the same year. His reasoning is like the Tokyo Olympics of 1964, the coming Olympics would be rebirth for Japan and wants to link this prospect of a renaissance for Japan with constitutional revision. In focus is to amend the “no war” clause in Article 9 by adding reference to the constitutionality of the nation’s Self Defence Force.⁶

Abe’s task is not easy. While the opposition decries his focus on the nation’s military, there is no consensus even within the ruling LDP. Even before initiating any move to alter Article 9, Article 96 that sets forth the revision process needs to be amended.⁷ The first step in any attempt to revise an Article of the Constitution is

⁵ *Ibid.*

⁶ Sheila A. Smith, “Japan’s Constitutional Debate Accelerates”, 5 May 2017, https://www.cfr.org/blog-post/japans-constitutional-debate-accelerates?_cid=nlc-japan-spotlight_on_japan-summer_2017-link11-20170711&sp_mid=54462117&sp_rid=cmFqYXJhbV9wYW5kYUB5YWh. Article 9 says: (1) 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. (2) 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.

⁷ Article 96 says: (1) Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify. (2) Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.

that the proposal has to be passed by both the houses of the Diet with a two-thirds majority. If the proposal is passed, the second step will be to put the proposal for a national referendum in which majority of the eligible voters of the country must endorse before the amendment takes effect. Given the reservations among the various political parties, including those by some within the ruling party, on tampering Article 9, and also given the strong anti-militaristic stance of the people, it seems that Abe's objective is destined to be unrealisable. The structural obstacles of Article 96 remains a subject of heavy domestic political contestation and limit Abe's ability to alter Article 9. Despite the LDP has remained the dominant political party for most of Japan's post-War history and having constitutional revision written into its 1955 founding charter, no one LDP prime minister has succeeded. Abe could be no different, though he would leave a legacy for his efforts to bring some change, though unsuccessfully.

Any attempt to revise Article 9 by the Abe administration is likely to be seen critically in China and South Korea in the prism of history's shadow. Even within Japan, there are deep passions in the Japanese people about the constitution's influence on the society and they will be unwilling to see any change. For them, the constitution has served Japan's interest well in the past 70 years and they see no reason to tamper with it. For them, the trust in the security alliance with the US for the nation's security is paramount, no matter threats from North Korea has heightened in recent times.

With Abe being serious in his attempt to achieve his objective, the coming three years are going to witness intense debate and political discussions among all spectrums in the Japanese society on their future positions. Besides political parties, even religious groups in Japan are reorganising around the prospect of revising the constitution. Amidst modernity, religious movements have remained a part of the Japanese society since the Meiji Restoration, though their influence might have waned. But their power to influence even a small segment of population cannot be ignored.⁸

Other scholars also tend to compare the way Japan has approached revision with other constitutional democracies. For example, David Law of Washington University examined three popular misperceptions about the Japanese constitution.⁹ Law argues that it has been the desire of the conservatives to amend

⁸ Helen Hardacre, "Political Realignment Among Japan's Religions", 15 May 2017, https://www.cfr.org/blog-post/helen-hardacre-political-realignment-among-japans-religions?cid=nlc-japan-spotlight_on_japan-summer_2017-link12-20170711&sp_mid=54462117&sp_rid=cmFqYXJh

⁹ David Law, "Three Popular Misperceptions About the Japanese Constitution", 9 May 2017, https://www.cfr.org/blog-post/david-law-three-popular-misconceptions-about-japanese-constitution?cid=nlc-japan-spotlight_on_japan-summer_2017-link16-20170711&sp_mid=54462117&sp_rid=c

the post-war constitution, especially the strict commitment to pacifism enshrined in Article 9, since the day it came into force. The three misperceptions that Law mentions are (a) that the constitution is too difficult to amend, (b) that it is obsolete and therefore in need of amendment, and (c) that it was imposed by the US Occupation forces and therefore illegitimate. All three points have arguments in their favour or against and both have merits.

The first misperception, according to Law, is that though no other constitution in the world has lasted longest without amendment than the Japanese constitution of 1947, in a democratic set up it is up to the people if they want amendment to the document. In Japan's case, the peoples have found good reason not to tamper with a document that laid the foundation for decades of peace and prosperity. But in view of the needs of the changing time, the LDP-led Abe government wants to push through amending Article 9 but is unable to secure that. The truism is opinion polls reveal that Japanese people consistently have shown little appetite for the kinds of changes long sought by the LDP. So long as Article 96 that requires popular ratification of constitutional amendments remains in force, all efforts by the LDP would remain stymied. If any move by any political party to amend any article does not have endorsement of the majority of people, it would be inadvisable for the government to push through unpopular changes. In a democracy, the will of the people is always supreme.

The second misperception, argues Law, is though Japan's constitution has lasted a long time without any amendment, the argument to see it obsolete is invalid. According to him, the document was far ahead of the time when drafted as it conforms to the global norms of embracing human rights and non-violent settlement of international disputes and therefore epitomises the deep commitment to international norms and international law. Therefore, the argument that the constitution has become obsolete is incorrect.

The third misperception, says Law, is the belief that the constitution was "imposed" on the Japanese people. True, the document was initially drafted by a small group of Americans working in total secrecy under the command of General Douglas MacArthur, and the Japanese government was not given the liberty to reject the basic principles of the document, such as demilitarisation, popular sovereignty rather than imperial rule, and respect for human rights. But the fact that the Japanese people at that time wanted the kind of a draft constitution that was on offer and therefore to say that it was "imposed" is subject to interpretation in the current political discourse. In fact, when the cabinet's own draft of the constitution, known as the Matsumoto draft¹⁰, was leaked, it met with overwhelming negative reaction from the Japanese public. The Japanese people wanted a new document

that was fundamentally different that would not allow a repeat of the war policy and therefore the American draft was found appropriate. The leaked Matsumoto draft was no more different than the old Meiji Constitution, barring cosmetic changes. This was unacceptable to the general public.

It seems that the draft produced by Japan's Shidehara cabinet was unacceptable by the people and it was only then Gen MacArthur intervened to produce a document that the people could embrace.¹¹ Law observes that polls conducted before and after the constitution was adopted showed that the Japanese people wanted a constitution that would reduce the role of the emperor to a purely symbolic role, expansion of the powers of the Diet, abolition or reform of the House of Peers, greater responsiveness to the will of the people, and greater protection for individual rights and freedoms.¹² While the Matsumoto draft lacked all of these, the American draft included all these expectations of the people. MacArthur's approach demonstrated utmost respect for the wishes of the Japanese people. When the issue of referendum on the constitution was raised, Prime Minister Shigeru Yoshida lacked argument against it as he conceded that the Japanese public opinion was opposed to any revision of the new constitution. Under the circumstance, MacArthur's insistence upon a popular ratification requirement for constitutional amendments empowered the Japanese people to prevent their political leaders to usurp power ever in the future. That makes Article 96 extremely significant and a check on the leaders on tampering with the constitution.

Professor Adam Liff of Indiana University argues how Abe's reinterpretation of the Article 9 to allow for collective self-defence has affected the operations of Japan's military. Though attempts have been made in the past to "shift the goal posts", Abe's attempt is the first that makes it significant during the past 70 years.¹³ Yet, the effective interpretation of Article 9 is "subject to significant constraints". However, Abe has succeeded in making incremental changes in advancing Japan's defence posture overseas in response to the changing security environment in Japan's neighbourhood. Abe allowed first the massive helicopter carrier Izumo to escort a US Navy supply ship in May 2017¹⁴ and then sent the same carrier to take part in the Japan-US-India trilateral naval military drills in the Bay of Bengal in the first week of July 2017, thereby expressing its willingness and ability to project

¹⁰ For the draft prepared by Joji Matsumoto and other proposals by constitutional experts, see <http://www.ndl.go.jp/constitution/e/shiryo/03/074shoshi.html>

¹¹ For the background on the debate on various drafts on the constitution during the cabinet of Kijuro Shidehara leading to its birth, see, <http://www.ndl.go.jp/constitution/e/etc/glossary.html>

¹² For an exhaustive discussion on this issue, see John M. Maki, *Japan's Commission on the Constitution: The Final Report* (2017), University of Washington Press, 423 pp.

¹³ Adam Liff, "Seventy Years of Shifting Goal Posts", 10 May 2017, https://www.cfr.org/blog-post/adam-liff-seventy-years-shifting-goal-posts?cid=nlc-japan-spotlight_on_japan-summer_2017-link19-20170711&sp_mid=54462117&sp_rid=cmFqYXJhbV9wYW5kYUB5Y

power.¹⁵ Such a move was defined in the 2015 US-Japan Guidelines for Defence Cooperation as “mutual protection of each other’s assets … if engaged in activities that contribute to the defence of Japan”.¹⁶ This also could be read as “an armed attack” is not a precondition.

That Japan’s security policy has been undergoing evolutionary and incremental reforms in response to changing external threat perceptions and shifting domestic political winds is not surprising. So, to attribute all such trends to Abe as the initiator could mean overlooking Japan’s security needs. What all Abe has attempted is within the ambit of constitutional provisions, which is why there is public acceptance of his policies. The peoples have reposed their faith in Abe’s leadership and voted him five times to the helm. Lately however, Abe’s grip in domestic politics seems to be loosening, as his party’s defeat in the Tokyo Mayor’s election in June 2017 demonstrated. It seemed to be a temporary aberration and Abe was expected to correct them soon and he did when he dissolved the Lower House, sought fresh mandate on 22 October and returned with overwhelming majority, giving himself with enough time to accomplish his agenda in the nation’s interest.

Though the core meaning of the Article 9 and the actual text remains intact, its interpretation has diluted the spirit to some extent, thereby allowing Abe to achieve his objective, partially if not fully. This is because of perceived “external threats, weapon technologies, and shifting domestic political winds”. Even past governments and opposition parties, including the Japan Communist Party, have taken a liberal view on Article 9 and Abe is just building on that platform, albeit more vigorously. He has therefore argued vigorously in defence of 2014 defence resolution as a necessary response to an increasingly dangerous regional security environment. Dismissing Abe as a “nationalistic hawk” would be to undermine the nation’s security needs and exposing it to vulnerability. Abe has to make significant concession to his coalition partner Komeito, which is not on the same page with Abe always.

14 Ankit Panda, “Japan’s *Izumo* Helicopter Carrier to Escort US Navy Supply Ship”, *The Diplomat*, 1 May 2017, <http://thediplomat.com/2017/05/japans-izumo-helicopter-carrier-to-escort-us-navy-supply-ship/>

15 Rajaram Panda, “Relevance of Malabar 2017 Naval Exercise – Analysis”, 12 July 2017, <http://www.eurasiareview.com/12072017-relevance-of-malabar-2017-naval-exercise-analysis/>. Also see, Harsh V. Pant, “Get Australia into Malabar Exercises”, *Deccan Herald*, 17 July 2017, <http://www.deccanherald.com/content/623077/get-australia-malabar-exercises.html>

16 See, “The Guidelines for Japan-U. S. Defense Cooperation April 27, 2015”, <http://www.mofa.go.jp/files/000078188.pdf>

Likely Response from China

China perceives Abe as a nationalist who is determined to dramatically alter Japan's security posture and revision of Article 9 is the prerequisite. China sees Abe's slogan during the election campaign to "take back Japan" by interpreting as taken back Japan's army by the American occupation forces, and therefore alarming as such a policy could challenge the liberal order that the Japanese people have embraced for the past 70 years. China's fear also stems from the perception that Abe is undermining popular opinion against revision as demonstrated by many opinion polls by the Japanese media. China fears if Japan shall continue to maintain its pacifism or opt for a robust military posture and sees Abe's policy from such prism.

The future of Japan's peace constitution can have significant implications for the China-Japan relationship.¹⁷ The average Chinese still have deeply rooted apprehensions about Japan's repeating its militarist mistakes. Given the already troubled relationship over territorial issues, bilateral ties could get further complicated if Abe's objectives are closer to realisation. China fears mistrust shall deepen creating new obstacles to regional cooperation.

Likely Response from South Korea

Like China, Japan-South Korea relations suffers from the shadow of history. Most Koreans are against Japan's constitutional reform and consider it as a sign of Japan's revert to militarism. The comfort women, a euphemism for sex slaves of Korean women used by Japanese military to work in war front brothels during the World War II, continues to haunt bilateral ties and a constant irritant, fanning anti-Japanese feeling in South Korea. The common threat of North Korea has not helped to improve the Korean perception of Japan.

However, there is also another view in South Korea that tends to take a softer perspective towards Japan. For example, Seong-ho Sheen of Seoul National University is of the opinion that Japan is unlikely to have any desire to return to militarism, as its people feel that they are the greatest victims of such a past. He argues that with a super-aging population and a shrinking economy, Japan is unlikely to have the appetite and capacity to become an expansionist power if it wanted to. Sheen feels that the revision efforts are under the US duress as the US is demanding a more active role by the Japanese military in order to augment the

¹⁷ Gui Yongtao, "The risk of Changing Japan's Peace Constitution", 11 May 2017, https://www.cfr.org/blog-post/chinese-view-risks-changing-japans-peace-constitution?_cid=nlc-japan-spotlight_on_japan-summer_2017-link22-20170711&sp_mid=54462117&sp_rid=cmFqYXJhbV9wY

Japan-US alliance. The US demand on Japan is that Japan must adjust to the present unbalanced alliance. However, Sheen's views belong to the minority opinion among both the educated intellectuals and the commoners in South Korea.¹⁸

Assessment

However, if Japan succeeds in revising the Constitution, it is likely to result in angry protests on the streets of both Seoul and Beijing. In such a situation, Japan would clarify the circumstance under which such revisions were undertaken but given the historical interpretations and territorial issues, it would only aggravate mutual suspicions and distrust, leading to deterioration of Japan's ties with China and South Korea. As both South Korea and China would view constitutional revision in Japan as a sign of return to the militarist past, it could also provoke a new round of arms race in the region. Japan needs to make responsible choice in order to avoid such a situation developing. A large percentage of South Korean people still hold a negative image of Japan. Japan cannot afford to aggravate this further.

While a complete overhaul of the Article 9 is unlikely, the Abe administration is interpreting Article 9 Paragraph 2 which states "land, sea, and air forces, as well as other war potential, will never be maintained" arguing that the SDF maintains self-defense capability rather than war potential, and that it is an organisation using force rather than a military.¹⁹ This clarification is because the relation between the Constitution and the SDF has been a confusing issue and therefore needs clarity. An explicit description of the SDF in the Constitution would carry significant meaning.

There are several ways Article 9 has been interpreted. The current Article 9 contains limitations when interpreted to mean that armed forces can only be used for self-defense, and that logistical support for the US military and others is only possible when not integrated with the use of armed force. This argument is often made in which consensus seems to be eluding. The use of force is a contentious issue and the conditions in which it can be used needs clarification. The Cabinet decision of July 2014 specified three conditions on the use of force. These are: (a) an armed attack against Japan or a foreign country that is in a close relationship with Japan occurs and threatens Japan's survival while also posing a clear danger to fundamentally overturning people's rights to life, liberty and the pursuit of

¹⁸ Seong-ho Shen, "Japan's Constitutional Debate", 12 May 2017, https://www.cfr.org/blog-post/korean-view-japans-constitutional-revision-debate?_cid=nlc-japan-spotlight_on_japan-summer_2017-link25-20170711&sp_mid=54462117&sp_rid=cmFqYXJhbV9wYW5k

¹⁹ Kakuchi Funatsuki, "Behind the Scene/Adding wording key for Article 9 revision", *The Yomiuri Shimbun*, 4 July 2017, <http://the-japan-news.com/news/article/0003784434>

happiness; (b) there are no other appropriate means to ensure Japan's survival and protect its people; and (c) use of force is restricted to a necessary minimum.

Future Prognosis

It transpires that Prime Minister Abe is still struggling to figure out specific ways to revise the Constitution, a deeply held desire ever since he assumed the premiership for the first time in 2006, even though the pro-constitutional amendment forces currently occupy two-thirds majorities in both houses of the Diet, enough to initiate referendum. His trial and error tactics on constitutional amendment reflect his long-held desire. Abe has not been able to bring on board the largest opposition Democratic Party, and the Communist Party, both of which are against constitutional revision.

When his second Cabinet commenced in December 2012, Abe raised the issue of revising Article 96, which stipulates that two-thirds majority votes in both houses of the Diet are necessary to initiate a referendum to specify a simple majority. When this evoked serious backlash not only from the opposition and constitutional scholars but also his coalition partner Komeito, Abe stopped raising this issue. Further, he refrained from promoting constitutional amendment during the campaign for the 2016 House of Councillors election, where the focus was to secure two-thirds majority as the first step. Now Abe is playing his cards carefully and has plans to include constitutional amendment into his political agenda. What the parties want is clarity. For example, Komeito leader Natsuo Yamaguchi observed on 2 May 2017 while addressing an audience: "We don't mean to reject constitutional amendment if changes would make the Constitution better". At the same time, he said, "there's no consensus over what to change. It's important to hold in-depth discussions on how the country should be and ideology on that subject". This shows the ruling party and its junior partner are not at the same wavelength. Moreover, the "two-thirds majority card" will be lost if the LDP loses seats in the next lower house election, scheduled to be held sometime before December 2018. Yet, Prime Minister Abe has put the target 2020 to see the revision takes effect when Japan shall be "born anew". He can serve as LDP president until September 2021 if he wins a third consecutive term as party leader in the next leadership vote in the fall of 2018.

Developments after October 2017

When in a surprise move Abe dissolved the Lower House in September and called for snap polls on 22 October, eyebrows were raised amongst the opposition about Abe's hidden agenda. What transpired was that Abe scored a resounding victory

securing a two-thirds supermajority in both houses of the Diet, emboldening him to pursue his agenda. In his first policy speech after the landslide victory in the parliament, Abe pledged to bolster Japan's defence power, including missile capabilities in order to protect the people's lives and peace and amend the country's pacifist constitution. For nationalist Abe, the constitution is a humiliating relic imposed by the US occupiers after Japan's defeat in World War II and therefore wants to change the wording of the document so that Japan can have a full-fledged military. What Abe wants is to push ahead with changing the pacifist constitution but keep the clause that prevents Japan from waging an offensive war. Abe sees the North Korean threats as a national crisis. It is a different matter that his tentative move towards revamping the pacifist constitution could trigger alarm bells in China and the Koreas given Japan's history of military aggression in the region.²⁰

Japan's defence profile has seen an incremental rise since Abe took office in 2012 with military spending increasing steadily. During his visit to Tokyo in November 2017, Trump urged Abe to buy many more US arms. The US ambassador to Japan William Haggerty too remarked that the US is trying to make more advanced weapons technology available to Japan more efficiently and to increase Japan's capability and interoperability and make the US military more effective in the region.

Following Abe's policy speech, political parties voiced their stances. Emphasising his confrontational attitude, the leader of Constitutional Democratic Party of Japan Yukio Edano insisted the security-related laws, which allows Japan a limited exercise of the right of collective self-defence as "unconstitutional". On the other hand, Yuichiro Tamaki, head of Kibo no To (Party of Hope) opposed a conciliatory approach towards North Korea and displayed readiness to accept discussing a broad range of constitutional issues, including the right to know and the local autonomy. However, he was uncomfortable about the haste in which Abe is pushing his agenda. He wanted more discussion on the issue.²¹

It is not going to be smooth for Abe, however. Public opinion is against, if not hostile, to Abe's agenda. Tens of thousands of people staged a rally in central Tokyo in early November outside the Diet to mark the 71st anniversary of the promulgation of the Constitution to protest Abe's push to amend the Constitution. Akira Kawasaki, a

²⁰ "Abe vows to boost military as Japan's military sheds pacifist stance", 17 November 2017, https://www.globalsecurity.org/wmd/library/news/japan/2017/japan-171117-presstv01.htm?_m=3n%2e002a%2e2159%2eon0ao069c5%2e1zki

²¹ "Kibo's stance on debating issues on Constitution deserves attention", *The Yomiuri Shimbum*, 21 November 2017, <http://the-japan-news.com/news/article/0004081030>

member of the international steering group of the International Campaign to Abolish Nuclear Weapons, winner of 2017 Nobel Peace Prize observed: “The Japanese government is on the path of opposing a ban on nuclear weapons and destroying Article 9 of the Constitution”. Referring to the war-renouncing Constitution, Kawasaki remarked “The right path to take is to campaign to protect and use Article 9 and eliminate nuclear weapons globally”.²² Former Supreme Court justice Kunio Hamada also expressed opposition to Abe’s proposal for amending Article 9 to legitimize the SDFs by observing the proposal “will undermine the trust and standards built over the 70 years since the end of World War II”. What emboldens Abe is that the ruling bloc currently holds a two-thirds majority in both chambers of the Diet, the level required to put constitutional revisions to a national referendum.

Conclusion

As an impetuous Trump and unpredictable Kim Jong-un trading escalatory words threatening to annihilate each other, Japan finds itself in a vulnerable situation as it could be caught in the vortex of a regional conflict, which if not checked, could also assume global dimensions. China’s role to use its leverage to address the North Korean crisis remains questionable. This leaves Abe with no choice than to prepare his nation to defend itself if a situation arises. This lies at the core of Abe’s agenda.

Notwithstanding Trump’s outreach to China after a brief threat of economic reprisal with a view to address the trade imbalance, the observations of Peter Navarro in his book *Crouching Tiger: What China’s Militarism Means for the World* indicating strong suspicion on China’s intentions cannot be overlooked. As China’s surge in military capability and plans to build a 5,000-km “underground great wall to store ballistic nuclear missiles continues, the US and Russia continue to reduce their nuclear warheads significantly. Does this mean that the US and China are heading towards a collision course with perilous consequences for the region and the world? Can Japan afford to sit idle and watch this disturbing development in its neighbourhood?

Abe seems convinced that the element of distrust between Japan and China is not going to go away anytime soon. China’s dream of becoming a strong military power and building a new international order based on Chinese values unnerves not only Japan but many other Asian countries. Moreover, the future of US-China and US-Russia relations are difficult to predict. The choice left before Japan seems to be

²² “Tens of thousands rally in Tokyo against Abe’s push to rewrite Article 9”, 3 November 2017, <https://www.japantimes.co.jp/news/2017/11/03/national/tens-thousands-rally-tokyo-abes-push-rewrite-article-9/#.Wf8ONGiCxPY>

two-fold: strengthen the existing alliance relationship with the US and strengthen its own preparedness to cope with the evolving grave situation in its neighbourhood. Unilateral dependence on the US does not look to be the sole option as there are elements of uncertainties. Removing the legal constitutional hurdles seems to be the prerequisite for Abe to prepare Japan to cope up with the challenge confronting the nation.

So, given Prime Minister's determination after 70 years can Japan finally find itself on the cusp of acquiring its own military? That would not be easy. Though strengthening its militaristic posture in the wake of Chinese assertiveness on territorial issues and North Korean threat could seem a valid reason for a reasonable response, the path to assume such a posture is never smooth. Abe has to cross several hurdles, some of which appear insurmountable. To the outside world, Japan's SDF is just military in all but name and what Abe wants is to give it a legal legitimacy. If China does not halt its aggressive posture and North Korea does not pause its nuclear and missile programs, public opinion inside Japan might swing swiftly in favour of amending the constitution and referendum then would no longer be a hurdle. In that case, Abe would have left an indelible mark in Japan's history. In the process, the security dynamics in the Northeast Asian region as well as in the larger Asia would have undergone dramatic change with inevitable policy response from China, South Korea and other nations in the region. At the moment it appears to be a mere will-o-the-wisp.

