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Master's Degree Programme
in Languages, Economics and
Institutions of Asia and North Africa
"D.M. 270/2004"

Final Thesis

Article 9 and UN
Aiming to a system of collective
security in the 21st century

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Academic Year

2017 / 2018

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ABSTRACT

The purpose of this thesis is to contextualize and explain the relation that exists between Article 9 and the United Nations and to find the main similarities between them.

In order to do so, I provide an overview of the main historical events that brought to the writing of the Constitution of Japan and inspired the pacifist article. While doing so, I also stress out the main points in common between Article 9 of the Constitution and the United Nations Charter. I then discuss the main opinions on the emergence and on the source of the pacifist clause that can be divided into two main theses, one that sees Article 9 as imposed on Japan and the other that claims it as indigenous. For a better understanding of this part, I also present two figures that had an important part in the drafting of the new Constitution, Japan's Prime Minister at the time Shidehara Kijurō and the head of the forces of occupation General MacArthur. I also discuss the role America had in the drafting of Article 9 as well as in some related events and in the institution of the Japanese Self-Defence Forces. In this context, I also deal with how the birth of these forces and their changes in intervention policy have affected Japan's relations with the UN, especially in relation to their participation in Peacekeeping Operations. The whole discourse will provide the basis for discussing the modern relation between Article 9 of the Constitution of Japan and the United Nations.

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LIST OF ABBREVIATIONS

DPJ	Democratic Party of Japan
JSDF	Japanese Self-Defense Forces
LDP	Liberal Democratic Party
MOD	Ministry Of Defense
MOFA	Ministry Of Foreign Affairs
NPR	National Police Reserve
NSF	National Safety Forces
PKO	Peace-keeping Operations
SCAP	Supreme Commander of Allied Powers
SDF	Self-Defense Forces
UN	United Nations

要旨

20世紀末以降、日本国憲法改正の中でも第9条の改正がかなり議論されるテーマになっている。この条文を巡る論争は、自民党が2005年9月の衆議院議員総選挙を勝った時から、さらに議論を呼んで来た。2012年に安倍晋三首相の自民党の新たな改正草案で、自衛隊の法律的な役割と基本的な目的と機能を明記して、戦力の保持を禁止する第9条の二番目の段落を消した。もしこの改正草案が可決すれば、憲法の「戦力の不保持」と「交戦権の否認」の中心点の一つが消える。

第9条に、

- (1) 日本国民は、正義と秩序を基調とする国際平和を誠実に希求し、国権の発動たる戦争と、武力による威嚇又は武力の行使は、国際紛争を解決する手段としては、永久にこれを放棄する。
- (2) 前項の目的を達するため、陸海空軍その他の戦力は、これを保持しない。国の交戦権は、これを認めない。

と書いてある。

この条文にある戦争の放棄と「正義と秩序を基調とする国際平和」の希望は日本憲法の二つ大事な中心点である。その上、9条のおかげで日本国憲法は国際情勢で無類ものである。なぜなら、他に存在する「戦争に反対」と書かれた憲法では戦力の保持を禁止していないからである。

しかし、この戦力不保持が日本国憲法に入ったのは、不思議なことではなかった。というのは、1791年の一番目のフランス共和国の憲法や、1889年と1907年の万国平和会議や、1924年の列国議会同盟の22番目の会議での交戦権の否認を全員のメンバーの憲法に入れる要求などが第9条の精神の前例であると言えるからである。

第二次世界大戦後、連合軍による日本占領時代に、米国の主要な目的は二つであった。一つ目は日本が再び世界平和を脅かすようになるのをぼうしすることで、二つ目は米国民主義を基にして政治を作ることであった。日本国憲法はこの時代に書かれ、1947年5月3日に公布した。この憲法は基本的人権を保証し、議会制度を前提し、9条のおかげで平和憲法という名で知られている。この最後の点に関して、幣原首相とマッカーサーの1946年1月24日の出会いが重要な役割を果たした。その時、幣原首相が戦争をなくすことを憲法に入れるのを提案したという。けれども、9条の由来がはっきりせず、マッカーサーの計画だったと考える人もいる。

平和憲法にもかかわらず1954年に日本の自衛隊（SDF）を設置した。その上、日本は1956年に国連加盟国になり、1992年に自衛隊が平和維持活動に参加することを許可す

るために『国際平和協力法』に署名した。これが批判をあびたにもかかわらず、今日まで自衛隊は13回の国際連合平和維持活動に参加した。

もし第9条が改正とすれば、日本の集団的自衛権に法的参加を認める結果になり、国連の集団安全保障体制を確立する目的に悪影響を及ぼし、Schlichtmann教授の「ドミノ効果」と呼ばれることになるのではないだろうか。

第9条と国連の関係は何であるか？ 第9条の由来についてどんな意見があるか？ またはどの意見がもっともらしいのか？ この事におけるアメリカの役割は何であるか？ 自衛隊の組織は国連との関係をどのように変えたか。最後に、ドミノ効果の概念は合理的であるか？

次の章で、この疑問について論じる。

この論文は5つの主要部分に分けられ、主題に関する様々な記事から生じる5つの主要な質問に対応している。

まず、第9条と国連の歴史的背景を紹介し、第二次世界大戦後の時期についても書く。それに、国連と9条の短い紹介をする。

次に、第9条の由来についての論争と意見を示し、もっともらしい意見はいろいろな記事を使って探す。

第三章に、日本国憲法の作り過程の米国の影響についてである。米国と国連の由来を示した後で、日本と第9条の米国との関係について書く。

次の章では日本と国連の自衛隊の平和維持活動の参加の後の関係について論じる。自衛隊を紹介した後、日本の平和維持活動への参加について論じる。

最後の章ではドミノ効果を扱っている。まず、それについてSchlichtmann教授の説明と9条の改正も書き、ドミノ効果の概念は合理的であるかという疑問について論じる。

Introduction

Since the end of the 20th century the revision of the Constitution of Japan, and notably of Article 9, has become quite a discussed subject, especially after September 2005, when LDP (Liberal Democratic Party) won the general elections of the representatives.

In 2012 a new amendment proposal from Prime Minister Shinzo Abe's LDP envisaged deep changes of Article 9. The proposal consisted in deleting the second paragraph of the article, replacing it with new provisions, that would have subverted one of the pillars of the Japanese constitution, namely the principle of pacifism and non-use of force¹.

Article 9 of the Constitution of Japan declares:

“(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.”

The renunciation of war and the hope for an “international peace based on justice and order” contained in Article 9 are two important aspects that characterize the aim for a system of collective security embedded in the Japanese constitution². Moreover, this article makes Japan's Constitution unique in the international scene, since, even though there are other countries that base their institutions on a pacifist constitution, none of them, other than Japan, forbids by constitution to have a regular army.

We must bear in mind, however, that the choice of including a war renunciation resolution in the new constitution didn't come completely unforeseen. In fact, there are some historical facts that can be considered as precedents. In 1791, for example, aggressive war was forbidden for the first time in the Constitution of the First French Republic. Years later,

¹ SCHLICHTMANN Klaus, *The current situation of Japan's constitutional pacifism as formulated in Article 9 of the Japanese Constitution*, “Special Issue: Forty Years of the Peace Studies Association of Japan”, «Peace Studies Bulletin», No.32 (November 2013), pp.19-28: 19.

² Ibid., 20

after the end of *sakoku*³, in the middle of the XIX century, the international system was changing from European-centered to more globally oriented. This was the atmosphere in which, in 1899, the first of the two Hague Peace Conferences took place. Both these conferences aimed at the abolition of the institution of war, and the first one can be seen as a sort of prequel of the modern International Court of Justice and of UN itself. Japan participated as well to the conferences, along with other non-european countries, such as US, China, Persia, Siam and Turkey, and, even though the involvement of Japan in these conferences was not given much attention, the japanese foreign minister was interested in fully participating to them.⁴

In addition to this, after World War I, in 1924, the Twenty Second Conference of the IPU (Inter-Parliamentary Union) called for amendments to the Constitution of each member to ban the resort to war. Japan was member of the Union since 1910 and it seems reasonable to assume that Kijuro Shidehara, then foreign minister, even then understood the importance of this resolution.⁵ Moreover, it was still during the first postwar period that the constitutional law of peace became a fundamental part of the international law of peace and the League of Nations unsuccessfully tried to outlaw war.

After World War II, during the occupation period of Japan (1945-1952), America had two main objectives: prevent Japan from becoming once more a threat to global security, and build a government on the model of American democracy. The Constitution of Japan was written during this period and promulgated on May 3, 1947. It guarantees some fundamental rights, presupposes a parliamentary system of government and is also known as the “Peace Constitution” (平和憲法 *heiwa kenpō*) due to its Article 9, which contains the war renunciation proviso and states the aim at an international peace.

In this regard, an important role was played by the encounter between Prime Minister Shidehara and General Douglas MacArthur, on the 24th of January 1946, during which it has been suggested that the japanese politician put forward the proposal of abolishing war in the new Japanese constitution.⁶ Nonetheless, the origin of Article 9 is not clear, in fact, while

³ *Sakoku*(鎖国), literally "closed country", was the isolationist foreign policy, enacted from 1633 until 1853 during the Tokugawa period, under which trade and relations with other countries were severely restricted, most foreigners were banned from entering Japan and Japanese couldn't leave the country.

⁴ SCHLICHTMANN Klaus, *Japan, Germany and the Idea of the Hague Peace Conferences*, «Journal of Peace Research», vol. 40, no. 4, 2003, pp. 377–394.

⁵ SCHLICHTMANN, *The current situation* cit., 21.

⁶ *Ibid.*, 21

according to MacArthur *mémoire* and *Odaira Memo*, the ‘no war’ clause was suggested by Prime Minister Shidehara others state that it was his idea.⁷ Indeed, the first thesis seems to be corroborated even by admission of Shidehara himself in his memoirs *Gaikō Gojū Nen* (1951), however, there are other interpretations, as the one put forward by Miyazawa Toshiyoshi who sustain that the idea for Article 9 came originally from MacArthur himself and Japan’s Prime Minister was only a puppet in his hands⁸.

During the American occupation, more precisely in 1951, was also signed for the first time the *Treaty of Mutual Cooperation and Security between the United States and Japan*. Revised in 1960 in order to alleviate the inequalities suggested in the previous version, and notwithstanding its character as a collective defense treaty, it assesses that the duty of collective self-defense is to be followed when an armed attack occurs against one of the two countries only within Japan’s territories. Moreover, it stipulates that the United States are granted the right to have military bases on Japanese soil⁹. This treaty and the encouragement of the US, influenced Japan’s decision to establish, in 1954, the Japan Self-Defense Forces (JSDF) and to put them under the control of the Ministry of Defence even though with very limited power of action due to Article 9 provisos.

When Japan became a member of the United Nations in 1956 there was high expectation that it would have provided the country with security and there would have been no more need for a security alliance with the United States.¹⁰

Furthermore, in order to participate more closely to the UN’s operations, in June 1992 Japan signed the *International Peace Cooperation Act*, and in the same year the JSDF participated in their first Peacekeeping Operation (PKO), in Cambodia. To this date, the JSDF has taken part to thirteen more UN operations¹¹ and from July 2014 they’re also allowed to intervene in defence of their allies if war is declared upon them.

⁷ SCHLICHTMANN Klaus, *Article Nine in Context - Limitations of National Sovereignty and the Abolition of War in Constitutional Law*, «The Asia-Pacific Journal», vol. 7, issue 23, no.6, June 6, 2009. 4-6

⁸ 宮沢俊義・芦部信喜補訂『コンメンタール全訂日本国憲法』日本評論社、1978年、167頁

⁹ NASU Hitoshi, *Article 9 of the Japanese Constitution: Revisited in the Light of International Law*, «Journal of Japanese Law», Vol. 9, No. 18, 2004, pp. 50-66: 55-56

¹⁰ DIFILIPPO Anthony, *The Challenges of the U.S.-Japan Military Arrangement: Competing Security Transitions in a Changing International Environment*, M.E. Sharpe 2002, p.49; quoted in SCHLICHTMANN, *The current situation*, cit., footnote 29, p.24

¹¹ Found on the on the website of the Public Relation Office of the Japanese Government: <https://www.gov-online.go.jp/eng/publicity/book/hlj/html/201612/201612_05_en.html>

Despite having drawn several criticisms from the very institution of the SDF to the introduction of laws permitting their deployment in UNPKO, these Japanese contingents, when used in UN operations, are “*ipso jure* not qualified to exercise the sovereign right of Japan”, therefore not making it possible to use Article 9 in order to limit Japan’s participation in operations under the command of the United Nations. In fact, being under the UN command, the SDF contingents are following the Security Council and the UN Charter’s resolutions and their deployment isn’t to be considered as the use of armed force by the Japanese Government.¹²

The fact that Japan has been obliged due to Article 9 to limit its corps only to defensive forces seems to imply that this article restricts the extent of the right of self-defence. However, even though the SDF have still restricted opportunities to use their weapons, it may be contended that a more active involvement of these corps in military activities would eventually decrease the significance of Article 9.¹³

In this regard, it is important to take into account that if other countries were to follow this precedent that is Article 9, a process of transition towards collective security as stipulated in Article 106 of the UN Charter would be brought into effect. As a consequence, the five permanent members would have the responsibility of assuring safety while the partial disarmament, as noted in Article 26 of the Charter, would take place.¹⁴ Anyways, disarmament is still seen as utopian and a hypothetical change of the actual state of things depends on United Nations’ members. Besides, an eventual revision of Article 9 that would result in permitting Japan’s legal participation in collective self-defense, would have negative effects on UN’s objective of establishing a collective security system, and would result in what professor Schlichtmann calls “domino effect, of which the last domino falling would be the UN”.¹⁵

What is the relation between Article 9 and the United Nations? What are the opinions on the emergence of Article 9 and which one is the more plausible? What is the American role in this whole matter? How did the institution of the SDF change the relation with UN? Finally, is the idea of the domino effect reasonable?

These are the research questions to whom the following chapters attempt to answer.

¹² NASU, *Article 9 of the Japanese Constitution*, op.cit., 59-60.

¹³ *Ibid.*, 63-64

¹⁴ SCHLICHTMANN, *The current situation*, op. cit., 25

¹⁵ *Ibid.*, 28

The thesis is thus divided into five main parts, corresponding to five main questions arisen from various articles on the subject.

In the first part Article 9 will be first generally introduced along with its two provisos, in order to explain the various implications of this article of the Constitution. The chapter will open on a brief overview on the historical context common to both the birth of the Japanese Constitution and the founding of the UN, namely the period going approximately from the two Hague peace conferences (1899 and 1907) until the promulgation of the Constitution of Japan (1946).

We will then move on to discuss the organizations, facts, documents and ideas that have potentially led to the birth of the UN as we know it today, as well as to the choice of including Article 9 to the Constitution, especially while dealing with the common themes of peace, disarmament and collective security.

After this introductory part, a closer look will be given into each of the two processes regarding UN and Article 9 and I will focus in detail on the points in common between these two processes, for instance, the influence that the Hague Peace Conferences, the Briand-Kellogg pact or the “droit constitutionnel de la paix” had on both of them.

At the end of this section, the main similarities and differences between the two will be pointed out and while referring to all the information gathered in this first part, the relation between Article 9 and the founding of UN will be highlighted and clarified.

In the second part of my dissertation, we will discuss in more detail the various opinions on the origin of Article 9, as well as on the choice of inserting it into the Constitution of Japan. In doing so, the theories that point at this Article as written by the Americans or by the Japanese will be discussed, underlining the various and differing opinions on this matter.

Two of the main personalities of the period of the American occupation and two of the main actors in the creation of the Japanese Constitution will then be introduced in more detail: General Douglas MacArthur and Prime Minister Shidehara Kijurō will then be introduced in more detail, along with their relationship and diplomatic exchanges that led to the drafting of Article 9. In order to give a broader view on this subject matter, the memorials written by

these two important figures and other leading personalities will as well be introduced. By doing so, it will be possible to achieve a more accurate view on the whole situation behind the writing of the Constitution.

Given the fact that the American role appears important in relation to the whole subject matter treated in this thesis, the third section studies the American role with regards both to the Japanese Constitution and the founding of the UN. This part will be introduced by an explanation of what and how important was the role of the US in the formation and work of the League of Nations, along with discussing how this led to the birth of the United Nations and what are the main differences between these two institutions.

Furthermore, the role the United States played in the creation and organization of the UN will be stressed in order to find some elements that will make easier to understand the interrelation between the American actions and both the United Nations and Japanese international policy. Using these elements, I will move the focus towards the American Occupation period in Japan, the contribution of Americans, especially MacArthur, concerning the writing of the new Constitution of Japan, and I will introduce Japan-US Security Treaty, in order to give a broader insight on the American role in Japan in that period.

In the fourth part of the elaborate will be explained the changes in Japan-UN relationship after the institution of the Self-Defence Forces and their participation in UN Peacekeeping Operations. In order to do so, I will first deal more closely with the Japanese Self-Defence Forces (JSDF) and their work, as well as with various Nations' or scholars' opinions about this "defence army" and its constitutionality. A brief overlook will also be given on the institution of the SDF and on the changes in the interpretation of Article 9 that first permitted this important decision and then changed it and affected its actions and work. I will then move to illustrate the changes in Japanese international politics and in policies regarding Self-Defence Forces, that brought Japan to being able to participate in the Peacekeeping Operations led by United Nations.

In order to give a broader idea on how the relations between Japan and UN changed, I will also briefly talk about some cases where, like in Iraq, the SDF participated in actions out

of the UN jurisdiction, as a mean to help US forces, and finally focus on the problems to which these acts led to, both with other Nations and with UN itself.

After this more explanatory part, I will speak about how the relationship between Japan and UN changed in time, with regards to the institution, and after with the changed role, of the Self-Defence Forces.

In the last part of this paper, will be introduced and discussed professor Schlichtmann's of the "Domino Effect". In the attempt to give as well an informed opinion regarding Schlichtmann's "Domino Effect" hypothesis, this fifth chapter will start contextualizing this effect and it will then be underlined how both UN and Article 9 are the only two institutions deliberately wishing for peace and disarmament.

At this point, the actual "crisis" of both the Article and the UN itself, triggered by the changes in the modern way of thinking of people, Nations and international actors, as well as by the contemporary regional and international framework, will be discussed. I will finally compare Schlichtmann's position about the whole subject matter with the positions and opinions of other scholars, agreeing or disagreeing with him, in order to obtain a more clear idea on the eventuality of a future "domino effect" and to understand if there truly is an interconnection between Article 9 and United Nations.

1. Article 9 and United Nations

“Disarmament comes from the common desire of all people to create a safer and more peaceful world, and is inseparable from humanitarianism.”¹⁶

1.1. Historical context:

The Constitution of Japan has one main point in common with the UN Charter and some other national constitutions, namely the French, the German, the Danish and the Italian ones: they all aim at a system of collective security and at disarmament.¹⁷ However, there are some precedents of this common wish of disarmament and refusal of aggressive war that date more back in time.

The First French Republic Constitution (1791) :

As a matter of fact, the 1791 Constitution of the First French Republic, already had a provision that forbade aggressive war.¹⁸

In the French revolutionary charters of the last decade of the XVIII century, the legislative body was requested to participate in treaty-making and war-making processes, and France renounced aggressive war and would not attack the liberty of any people. These charters are considered important in the field of international law also because they gave prominence to the principles of universalism of international law and of unity of public law. Furthermore, some projects submitted to legislative bodies by Robespierre and other personalities of the period also contained some important points regarding the international

¹⁶ Directorate General, Arms Control and Scientific Affair, *Japan's Disarmament Policy*, The Center for the Promotion of Disarmament and Non-Proliferation, Japan Institute of International Affairs, March 2003, Preface.

¹⁷ SCHLICHTMANN Klaus, *The current situation of Japan's constitutional pacifism as formulated in Article 9 of the Japanese Constitution*, “Special Issue: Forty Years of the Peace Studies Association of Japan”, «Peace Studies Bulletin», No.32 (November 2013), pp.19-28: 20.

¹⁸ This provision inspired other Nations, for example Brazil that inserted the same prohibition in its constitution in 1891. (From SCHLICHTMANN Klaus, *The current situation*, op. cit.)

order, and stating that war was acceptable only if engaged for “defence of a just right” and that “alliances for the purpose of offensive war are attacks on the human family”.

The legislative participation in war and treaties matters and the prohibition of aggressive war were included as well in the French Constitution of 1848.¹⁹

The two Hague Peace Conferences (1899 - 1907)

Approximately one hundred years later, in 1899, the first of the two Hague Peace Conferences took place. These two conferences aimed at the abolition of the institution of war and at the creation of a system of law. Besides disarmament, in these conferences importance was given to the establishment of an international court with binding powers.²⁰

While an agreement was reached on matters connected with peaceful settlement of disputes, the same can not be said for the proposal of limiting or reducing armaments and military budgets.²¹

Right after the end of *sakoku* (1853), the international scene changed from European-centered and became more globally oriented. It was in this new atmosphere that the Russian Tsar Nicholas II decided to call, in 1899, the first of the Hague Peace Conferences, which can be seen as a predecessor of the International Court of Justice and United Nations. During these conferences, the participating nations considered substituting war with legal processes for resolving their disputes, mainly as a consequence of the awareness of the economic, social and political costs of war, as well as the development in those years of a large and powerful peace movement.

Even though the revision of the unequal treaties was seen as a priority, Japan participated along with other non-European countries in the conferences, and was keen to advocate for disarmament as well as for the other main subjects of the conferences. However, it requested unanimity among the participants regarding the armaments’ reduction and the binding powers of the court, as a condition of his support of these main issues.²²

¹⁹ DEENER David R., *Internationalism, Party Politics, and the New French Constitution*, «The Journal of Politics», Vol. 15, No. 3 (Aug., 1953), pp. 399-423: 400-403.

²⁰ SCHLICHTMANN Klaus, *The current situation*, op. cit., 20

²¹ HAYASHI Nobuo, *The Role and Importance of the Hague Conferences: A Historical Perspective*, UNIDIR Resources, 2017, p.1

²²SCHLICHTMANN Klaus, *Japan, Germany and the Idea of the Hague Peace Conferences*, «Journal of Peace Research», vol. 40, no. 4, 2003,pp. 377-394: 377-378

The Japanese position at the Hague can be better understood by considering some cultural and historical facts. First of all, we shall remember that during *sakoku* Japan was not completely isolated as some would say. During the Edo Period, in fact, the country was still politically and economically active in the East Asian scene, and the commercial and diplomatic relations with Korea were still regarded as important, even though strictly regulated by the government,²³ and there was also Okinawa, controlled by Satsuma, that maintained contacts with the outside. By the end of *sakoku*, the Japanese already studied public international law (*bankoku kōhō*) and in March 1868 officially announced that they would conduct their foreign affairs in accordance to it. On top of that, in this period, the government sent many missions to various capitals in Europe and America, most of them having the main purpose of advocating for a revision of the unequal treaties, as the Iwakura Mission, whose failure resulted in the Japanese loss of faith in the principles of international law.

This change of thought can be noticed in the works of Fukuzawa Yukichi, who underlined the importance for Japan to be strong in order to defend its interests from the Western powers. On top of that, another thing to bear in mind is that the idea of condemning aggressive war was present from a long time in Asia, in the teachings of philosophers and intellectuals as Mozi, whose ideas were studied in Japan as well.

In 1899 Japan, along with China, Persia, Siam, Turkey, US and numerous European countries, took part in the First Hague Peace Conference, namely the first assembly of this genre and a real novelty at the time. The conference was held from the 18th of May until the 29th of July and, as already mentioned, the major project brought up at the conference, other than disarmament, was the creation of a Permanent Court of Arbitration, an institution similar to the modern International Court of Justice.²⁴ However, this project could not be fully realized because the vetoes of Germany, Austria-Hungary and Turkey, did not allow the court to have binding powers.²⁵ Although a ‘Convention for the pacific settlement of international disputes’ was instituted and other instruments were adopted, the question of disarmament remained unresolved²⁶ and the overall result disappointed the members of the international peace movement, but there were high hopes on a new international structure of relations

²³ Ibid., 378

²⁴ Ibid., 378-384

²⁵ SCHLICHTMANN Klaus, *The current situation*, op. cit., 20

²⁶ HAYASHI Nobuo, *The Role and Importance of the Hague Conferences*, cit., p.2

between nations and the participants to the conference convened on resolving the remaining problems in a second meeting.²⁷

In the same year, several peace movement had already their own congresses and intellectuals held a negative view of war, and their activism and works increased the public interest towards the hope for peace and for the reduction of armaments promoted by the conference, instilling in peace activists and press members the desire to documentate and influence the deliberations.²⁸

Few years later, at the end of September 1904, the United States President Theodore Roosevelt declared his intention of summoning a second conference, and in the next month he sent a formal invitation to the other nations. The Japanese affirmative answer arrived in early December, even though the country was still in the middle of the Russo-Japanese War, which had started on February of the same year. Unfortunately, Russia refused the proposed armistice and was blamed by the US for causing a delay of the start of the Second Conference. Finally defeated in the battle of Tsushima in 1905, the Russians accepted the invitation to the conference, and advanced some proposals on questions to be discussed on that occasion, including the issue of the International Arbitration Court.²⁹ On their part, the US and the British governments proposed again the question of disarmament, but the attempts of including disarmament in the Second Conference program failed due to the opposition of Germany.³⁰

The Second Hague Peace Conference started on 15 June 1907 and continued until 18 October of the same year. It saw more nations participating. The improvement of the conventions and the renewal of the declarations of the previous one, along with a new convention on maritime warfare, where to be discussed, and the obligatory arbitration was once again on the agenda.³¹ This last principle obtained favourable votes from the great majority of the participants, but it was dismissed by the negative votes of Germany, Austria-Hungary and a few other countries, even though it was unanimously recognized as a guiding principle.

²⁷ SCHLICHTMANN, *Japan, Germany and the Idea of the Hague Peace Conferences*, op. cit., p. 385

²⁸ HAYASHI Nobuo, *The Role and Importance of the Hague Conferences*, cit., p.7

²⁹ SCHLICHTMANN, *Japan, Germany and the Idea of the Hague Peace Conferences*, op. cit., p.385-386

³⁰ *Ibid.*, 386-387

³¹ *Ibid.*, 388

In the end, the 1907 final act only corroborated the same resolutions of 1899 and a hypothesis of a third meeting to be held in 1915 was advanced. Nonetheless, these conferences turned out to be quite important with regard to the institutionalization of the peaceful settlement of international disputes and on a first codification of the rules of war in the new international panorama.³²

During both Peace Conferences the main connection with Japan was Shidehara Kijūrō, then working in the Foreign Ministry. From 1918 until 1924, Shidehara was also appointed as one of the judges of the Permanent Court of Arbitration, although he is especially remembered today for having been Japan's Prime Minister during the American occupation period and one of the persons closely linked to the drafting of Article 9 of the Japanese Constitution.

Finally, it can be said that even without reaching success in all the proposed matters, the two Hague conferences succeeded in developing a successful range of techniques and institutions for the peaceful settlement of international disputes.³³ They had an important role in diplomatic history and made an important step towards a new way of dealing with international disputes without recurring to war. Even the Japanese government, as it has already been mentioned, gave its general support to all the proposals and ideas of the conferences, including on peace and disarmament, even though this was based on the initial assumption that all the main powers would do the same, and that the success of such proposals would be a realistic outcome.³⁴

The way of functioning of the Hague Conferences, even in dealing with situations in which an agreement between delegations could not be reached, can be viewed as a precursor of nowadays conferences and negotiations *modus operandi*,³⁵ and its themes of arbitration and disarmament are still valid, as the experience of the League of Nations and UN show.³⁶

³² HAYASHI Nobuo, *The Role and Importance of the Hague Conferences*, op. cit., p.3-4

³³ *Ibid.*, p.16-17

³⁴ VAN DEN DUNGEN Peter, WITTNER Lawrence S., *Peace History: An Introduction*, «Journal of Peace Research», vol. 40, no. 4, Special Issue on Peace History (Jul. 2003), pp.363-375: 368-369

³⁵ BAKER Betsy, “*Hague Peace Conferences (1899 and 1907)*”, in «Max Planck Encyclopedia of Public International Law», 2009, as found in

<http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e305>, p.1

For more insight on the Hague Peace Conferences see also: SCOTT JB (ed.), *The Hague Conventions and Declarations of 1899 and 1907*, OUP New York, 1915; and SCOTT JB (ed.), *The Proceedings of the Hague Peace Conferences*, vol. 1-5, OUP New York, 1920-21.

³⁶ SCHLICHTMANN, *Japan, Germany and the Idea of the Hague Peace Conferences*, op. cit., p.391.

The 22nd Conference of the Inter-Parliamentary Union (1924)

Initially an organization for parliamentarians, today the IPU is a worldwide association of parliaments, whose mission is to ‘protect and build global democracy through political dialogue and concrete action’.³⁷ It collaborates with the United Nations and other organizations who share the same goals. It was founded in 1899, by the French Frédéric Passy and the English William R. Cremer, with the objective of resolving international disputes through pacific methods. This organization was key in the formation of the previously mentioned Permanent Court of Arbitration and led the way to the creation of both the League of Nations in 1919 and the United Nations Organization in 1945. Japan became a fully fledged IPU member in 1910, after having been an active participant for some time.³⁸

During the first postwar period, the Inter-Parliamentary Union (IPU) convened in its 22nd Conference in August 1924 in Bern, Switzerland, asking for proposals from member-nations of constitutional amendments to interdict the resort to war. This IPU Resolution, according to Schlichtmann, had probably been admired by Foreign Minister Shidehara, who, as already mentioned, had played some role in the Hague Conferences, but could do nothing regarding the IPU proposal with the Meiji government.³⁹

The League of Nations (1920-1946)

On the last year of World War I, when the American forces were about to intervene on January 1918, President Woodrow Wilson, in one of his Fourteen Points⁴⁰, proposed the creation of an association of nations which would have had the responsibility to guarantee political and territorial independence to all nations. Few months later, the victorious nations inserted the principle of collective security in the Covenant of the League of Nations.⁴¹ This Pact, after being included in the Peace Treaties of 1919, came into force on 10 January 1920, giving birth to the League of Nations, whose main objectives were to promote international cooperation between nations, disarmament, and to reach international peace and security. Common interests and regulations to be followed by each member where decided: it was the

³⁷ From the IPU website: <https://www.ipu.org/about-us>

³⁸ From the IPU website: <https://www.ipu.org/history>

³⁹ SCHLICHTMANN, *The current situation*, op. cit., 21

⁴⁰ Wilson’s Fourteen Points were listed by the American President during a speech on war and peace terms on the 8 January 1918. The Fourteen Points were 14 principles to be used for peace negotiations after World War I.

⁴¹ SCHLICHTMANN Klaus, *Article Nine in Context - Limitations of National Sovereignty and the Abolition of War in Constitutional Law*, «The Asia-Pacific Journal», vol.7, issue 23, no.6, 06 Jun 2009, p.13.

beginning of international law as we know it today. The main norms were: the reduction of armaments, the obligation of submit controversies at the origin of international disputes to the Council and wait until three months before deciding whether or not resorting to war, and the commitment to respect other members and follow the decisions of the Council in case of disputes or aggressions. Some institutions were created as well, like the Assembly, which represented all the member states on equal basis, and served for decisions on all the matters regarding the League of Nations. Then there was the already mentioned Congress, with the main responsibility of maintaining peace. It was composed by five permanent members, including Japan and other powers⁴², and five elected. One of the five permanent members was US, but it never actively participated and was substituted first by Germany in 1926, and then by the URSS in 1935. A Permanent Court of International Justice separated from the League was also created, but the American absence and the lack of diplomatic support, along with other limitations embedded in the League, conditioned negatively its history. However, for its first ten years of existence, the League of Nations was able to resolve some political issues between small european powers as well as territorial disputes.

The weaknesses of this international organization came to light in the 1930s, when political crisis and conflicts between Great Powers⁴³ emerged and some of the them left. In 1933, it was the turn of Japan to leave the League as a consequence of the Assembly's condemnation of the Japanese invasion of Manchuria. This saw Japan getting isolated from the international community, but retreat from the League was depicted as a positive decision by the Japanese government.⁴⁴

Gradually, the League of Nations became merely a spectator of the international issues that led to World War II, and it became substantially inactive from 1939, before being formally abolished in 1946.⁴⁵ When the League of Nations was close to its end, a debate started on the future international scene and on the features of the future United Nations Organization, that shared some of the features of its predecessor, as we will see below.

⁴² Namely United States, United Kingdom, France and Italy

⁴³ Namely US, URSS, China, United Kingdom, France

⁴⁴ YASUI Hiroshi, *UN Centrism in Japan. Understanding the Background of the Political and Social Movements Supporting the United Nations*, University of Birmingham, Department of Political Sciences and International Studies, July 2010, p.194-195.

⁴⁵ DE GUTTRY Andrea, PAGANI Fabrizio, *Le Nazioni Unite. Sviluppo e riforma del sistema di sicurezza collettiva*, Bologna, Il Mulino, 2010, (prima ed. 2005), pp.19-24.

The Kellogg-Briand Pact (1928)

The Kellogg-Briand was a pact that tried to outlaw war for solving international disputes. The first article of this pact is reflected in Article 9 of the 1947 Constitution of Japan and states:

The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.⁴⁶

It was signed by sixty-three states including all the great powers on 27 August 1928. However, the fact of being no more than an international pact implied that every state committed to the auto-limitation of the use of force as a means of settling international disputes, but there was no concrete authority capable of imposing and controlling its observance, nor there were there any sanctions for transgressions. This became clear with the advent of World War II.⁴⁷

Nevertheless, it's important to bear in mind that, regardless of its limits, the Pact was an international treaty subscribed by a conspicuous number of nations that, in conditions of hypothetical equality, committed themselves to peacefully solve their controversies. In addition, this Pact created the concept of "crimes against peace", for this reason it was used as a juridic base to prosecute the main exponents of the Nazi regime and of Japan, and some of the statements contained in the Kellogg-Briand Pact were included in the United Nations Charter.⁴⁸

⁴⁶ Article One of the Kellogg-Briand Pact as cited in WADA Shuichi, *Article Nine of the Japanese Constitution and security policy: realism versus idealism in Japan since the Second World War*, «Japan Forum», 2010, 22:3-4, pp.405-431:p.426.

⁴⁷ RAMAIOLI Federico Lorenzo, *Disarmo e Riarmo nella Costituzione Giapponese*, in BORRIELLO Giovanni (a cura di), «Orientalia Parthenopea XVI», Orientalia Parthenopea Edizioni, 2016, pp.101-133: 115-116.

⁴⁸ CARACCILO Lucio, ROCCUCCI Adriano, *Storia contemporanea. Dal mondo europeo al mondo senza centro*, Mondadori Education, 2017, extract found online at http://www.mondadorieducation.it/media/contenuti/universita/roccucci_storia_contemporanea/assets/documents/cap_15_1.pdf

1.2. The post-war period: United Nations and Article 9 of the Japanese Constitution

During World War II, the League of Nations, as we already mentioned, was essentially inactive, thus making the post-war debates focus on new, more effective ways of international collaboration. The first step in that direction was the Atlantic Charter, drafted by US President Franklin D. Roosevelt and British Prime Minister Winston Churchill on 14 August 1941, where they agreed on pursuing the fight against nazism, and stated the intention of developing an international collaboration with a view to promote social and economic development of all nations and to reach international peace and security. In order to do this, they declared that all nations should, for moral and pragmatic reasons, renounce to war and agree to common disarmament, in order to create a collective security system. This declaration had the same themes on which the UN Organization would be based, namely, collective security, disarmament policy, the renunciation of armed forces for settling international disputes, the principle of self-determination of peoples, and public interest promoted through economic and commercial cooperation. Moreover, this Charter did not mention the League of Nations, although sharing the same principles.

The declaration was signed by over twenty states of the Anti-Hitler Coalition, including URSS and China, the same states that signed, on 1st January 1942, the “Declaration by the United Nations” in Washington, which represented a new step towards the creation of United Nations.

Furthermore, on October of the next year, on the occasion of the Third Moscow Conference, USA, Britain, URSS and China expressed their intention of creating an international organization for the peaceful cooperation between nations.⁴⁹ This proposal was then further discussed at the Dumbarton Oaks Conference, in 1944, where the four leaders of the Allied Powers formulated and negotiated the creation of the international organization that would have gone under the name of United Nations from the following year.

The idea of international peaceful cooperation was also closely linked to the new *droit constitutionnel de la paix*, which became an integral part of the international law of peace in those years and was taught in New York and in Paris by the jurist Boris Mirkin-Guetzévitch

⁴⁹ DE GUTTRY, PAGANI, *Le Nazioni Unite*, op.cit., pp.28-30.

from 1936 until 1955.⁵⁰ In the following years, the concepts of war abolition, and peace and disarmament, were further enhanced, first with the foundation of the United Nations Organization in 1945 following the San Francisco Conference, and then with the drafting and adoption of Japan's Postwar Constitution in 1947.

The United Nations Organization

On the last year of World War II, between 25 April and 26 June 1945, the delegates of 50 Allied nations came together in the San Francisco Conference, where the Dumbarton Oaks agreements were reviewed. Actually, little was changed from the original draft and the meeting resulted in the creation of the United Nations, which resulted to have as well a clear influence of the previously mentioned Atlantic Charter.

As a matter of fact, the majority of agreements dealing with the structure and the basic principles of UN, were already reached between Great Powers in Dumbarton Oaks the previous year. In this regard, it was in 1944 that the admission of France in the Security Council as one of the permanent members⁵¹ was decided, along with the creation of an Economic and Social Council (ECOSOC) and a Trusteeship Council, in addition to the more traditional bodies inherited for most part from the League of Nations.

Altogether, the main organs of the United Nations instituted in 1945 are six: the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the UN Secretariat.

The General Assembly is the only UN body with universal participation⁵², and the main deliberative, representative and policymaking organ, even though with limited powers. All the 193 Member States are represented in it and have the right to one vote. Only for major issues, such as the maintenance of international peace and security or the election of the non-permanent members of the Council, a two-thirds majority is required, otherwise the simple majority is enough.⁵³

The Security Council, as briefly mentioned before, has five permanent members and ten elected every two years from the General Assembly. Additionally, when invited by the

⁵⁰ SCHLICHTMANN, *The current situation*, op.cit., p.21.

⁵¹ The other permanent members are United States, Russia, China and United Kingdom.

⁵² From the United Nations website: <http://www.un.org/en/sections/about-un/main-organs/index.html>

⁵³ CAPECCHI Gabriele, PARISI Nicoletta, SANTINI Andrea, *L'Organizzazione delle Nazioni Unite*, «Liuc Papers», n. 102, "Serie Impresa e Istituzioni", 18, suppl. a marzo 2002. pp.9-11

Council, even States that are not part of the 15 members can attend but without the right to vote.⁵⁴ The Council has the responsibility of maintaining international peace and security, and its decision-making process demands, for the approval of deliberations, at least nine votes in favour, provided that one of the permanent members do not resort to its right of veto.⁵⁵

The Economic and Social Council is composed by 54 members of the UN elected as well by the General Assembly, and has the role of assisting the Assembly in the organization of international social and economic cooperation. Whereas, the Trusteeship Council was originally established in 1945 with the role of supervising over eleven Trust Territories that were put under the administration of seven Member States and ensure that they were gradually prepared for self-government and independence. After 1994 all these territories were independents, and now this Council meets only when required by situations.

The International Court of Justice is the main judicial organ of the UN and its main occupation is solving the controversies between nations; and the Secretariat is the permanent administrative apparatus of the organization and it is led by the Secretary-General.⁵⁶

During the San Francisco Conference, the rather flexible attitude of most nations attending the meeting was mainly to be attributed to the desire of restoring order and peace. On the other hand, at the same time the discontent and the competition that soon would have led to the outbreak of Cold War.⁵⁷

The United Nations Charter came into force on the 24 October 1945, day in which the UN came officially to life. This time, although having once more a crucial role in its making, as it had for the League of Nations, the US included itself as one of the permanent members of the Council and was an active participant from the very beginning.

The San Francisco project aimed not only to the institution of the United Nations Organization, but also to decide a code of conduct to be followed in international relationships. In this regard, some of the main principles of this organization include the respect of human rights and equality; the prohibition of resorting to war in international relationships in any way inconsistent with the purposes of UN; the right to self-determination of peoples; the prohibition to intervene in other nations' internal affairs; and to guarantee assistance to the UN. Moreover, the second principle written above, namely the prohibition of

⁵⁴ *Ibid.*, p.11

⁵⁵ *Ibid.*, p. 45

⁵⁶ *Ibid.*, p.12-15.

⁵⁷ DE GUTTRY, PAGANI, *Le Nazioni Unite*, op. cit., pp.31-32

the use of force, codified in Article 2(4) of the Charter, is also the cornerstone of the entire United Nations, and of all international relationships after the war, in that it refers to all kinds of use of aggressive war in international relationships. This fundamental principle was created in order to maintain peace, and its only exception is to be found in Article 51 of the Charter, namely the one defending the inherent-right of collective or individual self-defense. Decisions on the use of force in any case other than self-defense are responsibility of the Security Council.⁵⁸

All the principles and purposes of the organization are written into some of the nineteen chapters of the Charter and divided depending on their subject. More precisely, in Chapter I we find the general purposes and principles of the UN; in Chapters II to V and XIV to XIX are presented all the norms regarding its structure; and finally there are three parts regarding the performance of duties for the maintenance of peace (Chapters from VI to VIII), of economic and social cooperation (IX and X), and of trusteeship (from XI to XIII).⁵⁹

Under certain conditions, potentially every nation could become a member of the UN, and nowadays almost all States are part of this organization. According to Art.3 of the Charter, only the nations that participated in the San Francisco Conference are to be considered the original members, and the new ones have to meet specific requirements in order to be eligibles. In fact, as written in Article 4 of the Charter, they need to be recognizable as States, and for this purpose they need to have an independent and effective governance over a regional community. For this reason, other international actors that do not meet this requirement can not have access to the UN, even though, in practice, to some of them has already been recognized the *status* of Permanent Observer, as it is the case for the Holy See or for some international organizations as the European Union. Furthermore, the Nations members of the UN need to be peace-loving, and to accept all the duties included in the Charter as well as be able to fulfil them. Indeed, these requirements are not objectively verifiable, and they can be valued at the discretion of the organization.

With regard to this members' commitment to the duties of the Charter, there is some confusion on what should be done in the case of neutralized or disarmed States, given the fact that in the Charter is also contained the obligation of helping UN in military operations. As a matter of fact, even a neutralized or disarmed nation admitted to the UN should give military

⁵⁸ *Ibid.*, pp.35-37

⁵⁹ CAPECCHI, PARISI, SANTINI, *L'Organizzazione delle Nazioni Unite*, op.cit., p.3

support if required, in order not to violate the requirements of the Charter.⁶⁰ This, as we will see, is closely related also to Japan, who became member of the United Nations in 1956.

The Constitution of Japan and Article 9

On August the 14th 1945, Japan accepted the request of unconditional surrender from the Allied powers, mainly due to Emperor Hirohito, whose intervention determined the acceptance by the Imperial Cabinet of the Allied request. The Potsdam Declaration, thus, marked the end of World War II, and established the demilitarization and democratization of Japan, as well as the beginning of the American Occupation of Japan. On the 30 August of the same year, the American troops arrived on the archipelago headed by General MacArthur, appointed Supreme Commander of the Allied Powers (SCAP) by the US Government.⁶¹ The disarmament of Japan was quickly completed and the process towards the achievement of one of the most important tasks of the SCAP, namely the drafting and adoption of a new Constitution started.

The occupying powers had a dual aim. On the one hand, they wanted to create a democratic and pluralist government, whereas on the other to prevent the return to the ideologies of authoritarianism and militarism that had characterized the previous government. The achievement of this last purpose was largely helped by the inclusion of Article 9 into the Constitution.⁶² After several draft proposals and the debated decision of inserting the so-called “Peace Article” in the Constitution, a matter discussed in detail in Chapter 2, the Constitution of Japan came finally into force on March the 3rd, 1947, after being promulgated on November the 3rd, 1946.⁶³ The Constitution was for the most part written by the commission created by General MacArthur, even though several drafting proposals were written by the Japanese commission. During the constitutional drafting process, the SCAP tried to guarantee a certain degree of continuity between the previous legal system and the new one, by means such as the preservation of the Emperor’s figure, even though reviewing

⁶⁰ *Ibid.*, pp.7-8

⁶¹ Per un quadro storico più completo si veda il sito ufficiale della Dieta:

<http://www.ndl.go.jp/constitution/ronten/02ronten.html>

⁶² RAMAIOLI Federico Lorenzo, *Addio alle armi: l'articolo 9 della Costituzione giapponese*, in “Academia”, https://www.academia.edu/30543398/Addio_alle_armi_Larticolo_9_della_Costituzione_giapponese, 5-12-2018, pp.4-5.

⁶³ The whole text of the Constitution can be found on the official site of the Kantei:

https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html

his actual powers.⁶⁴ However, even though the overall of the constitutional document was well balanced, the same cannot be said of Article 9, that seemed to be more in line with the contemporary situation rather than with the long term.⁶⁵

The pacific clause of the Constitution is somewhat introduced by the second paragraph of the preamble, where it is written:

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 recognize that all peoples of the world have the right to live in peace, free from fear and want.⁶⁶

As we can see, this paragraph requires both citizens and the government to target their actions for guaranteeing peace and a just world order without structural violence.

Moreover, this decision of starting three out of four paragraphs of the preamble with the phrase “We, the Japanese people”⁶⁷ is meant to underline the constitutional principle of popular sovereignty,⁶⁸ that along with the guarantee of fundamental human rights stresses out the democratic nature of the new constitution. This concept of popular sovereignty was new for the Japanese, for whom until then the sovereignty had been solely a prerogative of the Emperor. Furthermore, it is exactly in Article I last five words (see note 46) that these two constitutional provision are joined together, that put the bases to all the constitutional provisos that characterize a democratic government.⁶⁹

Nevertheless, the most well known and most specific fundamental principle of the Japanese Constitution is pacifism, expressed in the “renunciation of war” chapter, namely the second one, which consists of Article 9. This article, already cited in the Introduction of this thesis, provides an enunciation of Japanese pacifism fundamental points, and is supported by

⁶⁴ Article I of the Constitution says: “The Emperor shall be the symbol of the State and of the unity of the People, deriving his position from the will of the people with whom resides sovereign power.”

⁶⁵ RAMAIOLI, *Disarmo e riarmo nella Costituzione giapponese*, op.cit., pp.101-102.

⁶⁶ Preamble to the Constitution of Japan, second paragraph.

⁶⁷ 「日本国民は」

⁶⁸ Expressed also more directly in the first paragraph of the preamble, and as a subordinate clause in Article I.

⁶⁹ MAKI John M., *The Constitution of Japan: Pacifism, Popular Sovereignty, and Fundamental Human Rights*, «Law and Contemporary Problems», vol. 53, no. 1, 1990, pp.73-87:78.

Article 66 on one hand, and by the absence of regulations on the responsibility of citizens either to defend the nation or to join a “peacetime militia” on the other.⁷⁰

This Article’s two main points are disarmament and the renunciation of war as a sovereign right of the nation, making the Japanese Constitution stand out among all the post-war Constitutions, as other Nations included the aim for international peace, and an effective system of collective security in their constitutions, but Article 9 is the only case of limitation of the state sovereign right to go to or even take part in war. The war renunciation clause also determined some confusion over self-defense legitimacy, as well as a problem regarding Japan’s membership in the United Nations and the legitimacy of its eventual participation in the collective security system of the organization. In addition, even the San Francisco Treaty of the 8 September 1951, chose to keep a certain ambiguity about the possibility or not for the new member to assist the UN in its collective defense actions.⁷¹

Japan’s Article 9 and UN: how much they have in common?

While thinking about the United Nations Charter and Article 9 of the Japanese Constitution, probably the first thing that comes to mind is that both of them envisage an “international peace based on justice and order” and an effective system of collective security. On top of that, when comparing the two, we could point out that Article 9 can be seen as the first step toward the process that would lead to collective security, as envisaged in Article 106 of the UN Charter.⁷² In this article is in fact described how the permanent members would have the responsibility of assuring security to the other nations, should the international disarmament to a minimum level, as stipulated in Article 26, take place.⁷³

The main difference between them lies in the diversity in the way the “sovereign right of war” is treated: while in the Charter this right is only limited to sole self-defense, individual or collective; in Article 9 (2) that same right is denied.

⁷⁰ *Ibid.*, pp.73-74

⁷¹ Chapter III, Article 5 of the San Francisco Peace Treaty reads: “Japan accepts the obligations set forth in Article 2 of the Charter of the United Nations, and in particular the obligations [...] to give the United Nations every assistance in any action it takes in accordance with the Charter and to refrain from giving assistance to any State against which the United Nations may take preventive or enforcement action.” Document to be found on the official site of UN:

<https://treaties.un.org/doc/Publication/UNTS/Volume%20136/volume-136-I-1832-English.pdf>

⁷² The Charter is available on the official site of UN: <http://www.un.org/en/sections/un-charter/un-charter-full-text/>

⁷³ SCHLICHTMANN, *The current situation*, op.cit., pp.24-25

In any case, the Japanese peace article works in line with the United Nations' project and adds something to its ambition to achieve international peace and disarmament, even though its essentially pacific nature has been limiting Japan in its contribution into the UN Peacekeeping Operations, even after the institution of the Japanese Self-Defense Forces.⁷⁴

⁷⁴ These Forces were instituted, as we will see in Chapter 4, in 1954, two years prior Japan's entrance in the UN(1956)

2. What are the origins of Article 9?

“[...] the soldier above all other people prays for peace, for he must suffer and bear the deepest wounds and scars of war.”⁷⁵

We already mentioned that Article 9, unlike the rest of the Constitution’s provisos, seemed to be rather disadvantageous for a sovereign nation like Japan. After all, it was on the sovereign right of the Nation to proclaim peace or war that the defendants based their defence during the Tokyo Trial,⁷⁶ and it was thanks to its army that Japan became one of the main international actors. Certainly, in the postwar period, the disarmament established by Article 9 could seem as the right solution to the Allied Powers, and to the Japanese themselves, but with the sudden change of the international situation Article 9 soon became the object of intense debate, that continues even today, especially in Japan.

When speaking of Article 9, however, one of the most discussed topics regards its origin. There are many opinions on this, some claiming it came directly from the SCAP, others asserting that it originated from the Japanese Government.

There were three main committees for the drafting of the Constitution in 1947. Firstly, there was Matsumoto Jōji’s committee, created from the Japanese government for the constitutional revision; then there was the project of Prince Konoe Fumimaro, to whom was assigned the same task by the Emperor; lastly, there was the committee composed of the occupation forces and headed by General MacArthur, which had the main role in the writing of the final draft of the Constitution. However, it is generally believed that the no-war provision came from an idea of Shidehara Kijūrō, for some, or of Douglas MacArthur, for others.

In light of this, Chapter 2 deals with the origins of Article 9, aiming to give an insight into the reasons and process that led to the decision of including its two provisos into the Japanese Constitution.

⁷⁵ General MacArthur’s Thayer Award Speech, *Duty, Honour, Country*, 1962, from Air University Site, <http://www.au.af.mil/au/awc/awcgate/au-24/au24-352mac.htm>

⁷⁶ The International Military Tribunal for the Far East (IMTFE) was a military trial that, from the 29 April 1946 until the 12 November 1948, prosecuted the leaders of the Empire of Japan for joint conspiracy to start and wage war, conventional war crimes and crimes against humanity. cf. Timothy P. MAGA, *Judgement at Tokyo: The Japanese War Crimes Trials*, University Press of Kentucky, 2001; Richard H. MINEAR, *Victor’s Justice: The Tokyo War Crimes Trial*, Princeton, NJ, Princeton University Press, 1971; Arnold C. BRACKMAN, *The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trial*, New York, William Morrow and Company, 1987

2.1 Prime Minister Shidehara, General MacArthur and their encounter

Shidehara Kijūrō (1872-1952)

As we already mentioned in chapter one, before becoming Prime Minister, Shidehara started his career in the Ministry of Foreign Affairs in 1896, obtained various positions abroad as a diplomat and had been close to the Hague Peace Conferences. On 1921-1922 he represented his country during the Washington Conference, and then became Foreign Minister from 1924 until 1927, adopting a liberal and pacifist policy. During that period he promoted diplomatic relationships with England and the US, and the non-intervention policy in China. He became Prime Minister on October 1945 during the American occupation period and negotiated with the General Headquarter (GHQ) during the constitutional drafting process. Frequently the peaceful Japanese policy of the 1920s is defined as “Shidehara diplomacy” as he has been closely identified with it.⁷⁷

General Douglas MacArthur (1880-1964)

MacArthur was a US general, active in the Southwest Pacific area during World War II. He was appointed Supreme Commander of the Allied Forces (SCAP) during the American occupation of Japan (1945-1952), and was as well the head of the UN forces at the beginning of the Korean War. He supervised the Japanese surrender ceremony on the battleship Missouri on 2 September 1945 and was in charge of the demilitarization process, the economic restoration and of the various reforms that took place in Japan during that period, especially of the constitutional drafting process.

Shidehara and MacArthur encounter of 24 January 1946

On 24 January 1946, Prime Minister Shidehara Kijūrō visited General Douglas MacArthur with the purpose of thanking him for the penicillin he provided to Shidehara.⁷⁸ It seems that this was the occasion in which the idea behind Article 9 was originated. The meeting between the two lasted almost three hours, during which it appears that the Prime Minister talked about his idea of abolishing the sovereign right of war in Japan as a step towards world peace.⁷⁹ Even though no third party attended and the informations we have about their conversation come from the memoir of the General or from records of other people that spoke with them later, there are sufficient sources for believing in the reality of the encounter. There are also sources are from both the Japanese and the American part

⁷⁷ Shidehara Kijūrō. *Prime Minister of Japan*, “Encyclopaedia Britannica”, 1998 (updated on 09 set. 2018), <https://www.britannica.com/biography/Shidehara-Kijuro>, 20 october 2018.

⁷⁸ General Douglas MACARTHUR, *Reminiscences*, Bluejacket Books, Naval Institute Press, Annapolis, Maryland, 1964 (1 ed. McGraw-Hill, New York, 1964), pp. 346-347

⁷⁹ According to the *Ōdaira memo* as written in TANAKA Hideo, *Kempō seitei katei oboegaki (Memorandum on the process of creation of the Constitution)*, Tōkyō, Yūhikaku, 1979. p.94. 田中英夫、『憲法制定過程覚え書』、東京、有斐閣、1979.

asserting that it was Shidehara who mentioned the idea of war renunciation. Right after the meeting, MacArthur told General Courtney Whitney, head of the political section of his headquarters, about the encounter and, according to Whitney, said that Shidehara proposed to insert in the new constitution “an article renouncing war and the maintenance of a military establishment once and for all.”⁸⁰

This war abolition proposal was composed of three main points, which Professor Tadakazu Fukase calls the “three original pacifist principles”, that are “1. The renunciation of all kinds of war...; 2. The necessary disarmament...; [and] 3. The guarantee of the ‘right to live in peace’”.⁸¹

Few days after the encounter, on the 29 January, five Cabinet meetings were called to discuss over the Matsumoto committee proposals. During these sessions, Shidehara never mentioned to the other Cabinet members the dialogue with MacArthur nor did he brought the attention over the idea of the abolition of war to be put into the Constitution. In fact, he just proposed the removal of all military provisions in order to facilitate the negotiations with the SCAP. If at that time the Prime Minister strongly believed in constitutional disarmament, he did not mention it on that occasion.

On 8 February, the Cabinet constitutional proposal contained a point that was the exact opposite of what Shidehara seemed to have discussed with MacArthur, and the draft was judged by the latter as too conservative. A new draft, this time from the American committee, was produced and presented to the Japanese Cabinet, whose members, including Shidehara, were left surprised by the whole document, especially with regards to the no-war clause.⁸²

2.2 Shedding light on the origins of the Article

The main thesis on the origins of Article 9 are six, according to Nishi Osamu. The first one follows the testimony of MacArthur in attributing the idea to Shidehara; the second gives credits to MacArthur; then there is another theory, based especially on a record by the Secretary of the Prime Minister, according to which both MacArthur and Shidehara wanted to abolish war and the ideas and actions of the two simply combined together and gave birth to the Article. Yet another theory presented by professor Theodore McNelly claims that the no-war proviso was originally proposed by Colonel Whitney, the General Director of Civil Affairs, and by Colonel Charles Caddis, the deputy chief of Civil Affairs, to Prime Minister Shidehara, who then proposed it to MacArthur. The first three theories are usually been given more attention than this one, which seems to lack sufficient proof.

⁸⁰ WHITNEY Courtney, *MacArthur: His Rendezvous with History*, New York, Alfred E. Knopf, 1956, p.257.

⁸¹ cit. in SCHLICHTMANN Klaus, *The current situation*, op. cit., p.21.

⁸² McNELLY Theodore, *The Renunciation of War in the Japanese Constitution*, «Political Science Quarterly», vol.77, no.3, The Academy of Political Science, Sep. 1962, pp.350-378: 63-66

Lastly, some scholars also believe that Article 9 came from the Emperor, but this theory is not usually taken into account.⁸³

Here, the focus will be on the theories built around the persons of Shidehara and MacArthur. It appears thus appropriate to discuss the origins of Article 9 by considering the memoirs of Prime Minister Shidehara and General MacArthur themselves.

Shidehara in his *Gaikō gojūnen* (Fifty Years of Diplomacy) recalls having thought of a proviso legally prohibiting war during a train ride to Tokyo.

I decided to thoroughly change the ways of politics so that war would be made impossible for all time, and to write this into the constitution. In other words, to renounce war, and to completely abolish armaments. These goals must be brought about under conditions of democracy. For me this is an absolute conviction which I have spoken of [many times] before. This thought was dominant in my head like a spell... Today Americans often come to Japan and ask if the new Constitution is of Japanese origin, or if the Japanese had been forced to write it by the Americans; but I must say that for me this is irrelevant, since I was under compulsion from nobody.⁸⁴

This version, linking the origin of the no-war provisos to Shidehara, seems to be corroborated by the memoirs of MacArthur, who in his *Reminiscences* recalls how during their private meeting on the 24 January 1946 Prime Minister Shidehara had spoken to him about his idea that Japan should renounce to war.

Long before work was completed on the new Japanese constitution I had an appointment with the prime minister, Baron Kijuro Shidehara, [...]. He arrived at my office at noon on Jan. 24, 1946. [...] He proposed that when the new constitution became final it should include the so-called “no war” clause. I could not have agreed more. [...] As he left the office his face was convulsed with tears and he turned to me and said, “The world will laugh and mock us as impractical visionaries, but 100 years from now we will be called prophets”.⁸⁵

Even though these two reports seem to shed light on the role that the two had in this matter, there is nonetheless confusion about the whole drafting process of Article 9, given that both the

⁸³ NISHI Osamu, *Kenpō 9jō no seiritsu ikisatsu* (The Enactment Process of Article 9), “Komazawadaigaku hōgakubu seiji-gaku ronshū” (Political Science Review of the Komazawa University Faculty of Law), n.30 vol.3(1),2004. pp.168[1]-57[112]: 4-11, available at:

<http://repo.komazawa-u.ac.jp/opac/repository/all/17315/jfku062-02.pdf>

⁸⁴ cit. in Klaus Schlichtmann, *Japan in the World: Shidehara Kijuro, Pacifism, and the Abolition of War*, vol. II, Lexington Books, 2009, p.185

⁸⁵ MACARTHUR, *Reminiscences*, op.cit., pp. 346-347. In his work he also writes: “It has frequently been charged, even by those who should be better informed, that the ‘no war’ clause was forced upon the government by my personal fiat. This is not true” p.302.

General and the Prime Minister were likely to have proposed the Peace Article in the first place. After all, MacArthur had already spoken many times of the possibility of abolishing war as a means to resolve international disputes, and Shidehara himself was considered by many a man with pacifist views. Even as a Foreign Minister,⁸⁶ in fact, he was criticized by some, due to his policy, which was seen as too accommodating. In this sense, the will to abolish war and to preserve peace might have been present in Shidehara's mind since his career as a diplomatic in Washington, but to say it was solely his idea to include the "Peace Article"⁸⁷ in the Constitution seems far-fetched.⁸⁸

On the other hand, on August 1945, President Truman had already mentioned to the SCAP that he had to "insure that Japan will not again become a menace to the United States or the peace and security of the world", and in order to realize this objective Japan had to be demilitarized,⁸⁹ but it is also true that the American State Department did not wish for Japan to be disarmed forever and envisaged the possibility of a future rearmament.⁹⁰

On February of the next year, MacArthur himself had included the war renunciation in the instructions for the occupying forces' constitutional draft,⁹¹ for which he had the responsibility, making thus possible that he himself had pushed for the introduction of Article 9 in the Constitution. This is also corroborated by the fact that the first version of the article was to be found only in the SCAP's draft. It was originally placed in the preamble of the text and was then changed into Article 1 from Mac Arthur, hence making clear how important was for him. Afterwards, it was considered more appropriate to put before everything else the part dedicated to the Emperor, reason why the "Peace Article" was moved right after the provisions on the *tennō*.⁹²

A few years later, when the Korean War started, the General declared that the idea behind Article 9 was originally conceived by the Japanese Prime Minister and denied having proposed the abolition of the sovereign right of war to the SCAP commission for the constitutional draft; whereas according to Yoshida Shigeru, at that time Shidehara's Foreign Minister, it seemed more likely that the idea for the pacifist provisos was first proposed by MacArthur and than approved by the Prime

⁸⁶ Shidehara Kijūrō had been Foreign minister from 1924 to 1927, and from 1929 to 1931.

⁸⁷ This is another name for Article 9 of the Constitution.

⁸⁸ RAMAIOLI, *Addio alle armi*, op.cit., p.6

⁸⁹"United States Initial Post-Surrender Policy for Japan," in SCAP, Government Section, *Political Reorientation of Japan* (2 vols., Washington, Government Printing Office, no date [1949?]), Vol. II, pp. 423-426. As cited in McNELLY Theodore, *The Renunciation of War in the Japanese Constitution*, «Political Science Quarterly», vol.77, no.3, The Academy of Political Science, Sep. 1962, pp.350-378:353.

⁹⁰ McNELLY, *The Renunciation of War*, op. cit., p. 355

⁹¹ One of the three points that MacArthur instructions to General Whitney for the constitutional draft read "War as a sovereign right of the nation is abolished. Japan renounces it as an instrument for settling its disputes and even for preserving its own security. [...] No Japanese army, navy, or air force will ever be authorized and no rights of belligerency will ever be conferred upon any Japanese force", as cited in HERZOG Peter J., *Japan's Pseudo-Democracy*, Routledge, 2013, New York (I ed. 1993 RoutledgeCurzon), p.219; cf. MACARTHUR, *Reminiscences*, op.cit.

⁹² WILLIAMSON Piers R., *Risk and Securitization in Japan: 1945-60*, Abingdon, 2014, Routledge, pp.52-53. *Tennō*: literally "heavenly sovereign" Japanese term referring to the Japanese Emperor.

Minister.⁹³ This thesis is in part consistent with the standard interpretation that Article 9 was imposed by the occupying powers, who then carefully made it appear to be a Japanese initiative by making, for example, Shidehara himself write it in his memoir.

During his work as chairman of the Commission on the Constitution (1957-1964), an organization that conducts research on the Japanese Constitution and on its making, professor Takayanagi Kenzō came to the conclusion that, during the meeting of the 24 January 1946, “The idea was first suggested by Prime Minister Shidehara, not by General MacArthur” and that at the end they both “agreed to insert such a clause in the new Constitution”.⁹⁴ In his *Reminiscences* he also states that “... Shidehara told a number of his close friends that ‘Article 9 did not come from abroad’ and that it was his own proposal”.⁹⁵

The new charter seemed too revolutionary to many exponents of the Japanese Government, especially with regards to Article 9, and while some proposed to reject it, others, like Yoshida Shigeru and Shidehara himself, tried to delay its adoption.⁹⁶ This can make us reconsider once more who was the main author of the no-war clause, since there would have been no reasons for the Prime Minister to hesitate on approving a provision that he himself had decided to include. From this perspective can seem more likely that even though the idea may have originated from Shidehara, but finally was MacArthur who decided to insert it in the new Constitution.⁹⁷

Another element, that seems to provide evidence against the version of events contained in the memoirs of Shidehara and MacArthur, consists in the interview between them on the 21 February 1949, regarding the new constitutional draft and the concerns of the Government about it being too confining. When Shidehara expressed his apprehension, the General stated that Japan should provide proof of its willingness to overcome his militaristic past, and should regard with more attention the repercussions abroad. According to MacArthur in fact, the position of the Emperor as a symbol and the renunciation to war principles would have prevented Nations like URSS to take more drastic resolutions towards the defeated country; and would have also assured a certain *status quo*.⁹⁸ The American General believed that the acceptance of the Matsumoto draft, or the omission of the disarmament provision, would have risen in other Nations doubts on an eventual rearmament of Japan, and would have undermined the security of the Nation.

⁹³ cf. YOSHIDA Shigeru, *Kaisō jūnen (Recollections on ten years)*, Tōkyō, Shinchōsha, 1957, vol. I and vol. II. 吉田茂、『回想十年』、東京、新潮社、1957、第一巻と第二巻。

⁹⁴ TAKAYANAGI Kenzō, *Some Reminiscences of Japan's Commission on the Constitution*, in Dan F. HENDERSON (ed.), “The Constitution of Japan: Its First Twenty Years, 1947-1967”, University of Washington Press, Seattle, 1969, pp.71-88; 79, 86.

⁹⁵ TAKAYANAGI, *Some Reminiscences*, op. cit., p.87

⁹⁶ MacArthur's proposal was modified first by his staff and then by the Japanese Government when the draft was transmitted.

⁹⁷ HERZOG, *Japan's Pseudo-Democracy*, op. cit., pp.218-219.

⁹⁸ FINN R.B., *Winners in Peace: MacArthur, Yoshida and Postwar Japan*, Berkeley, University of California Press, 1992, pp.98-99.

Given the above, it seems plausible to assume that the willingness to put the war renunciation clause into the Constitution came from the Occupation Forces and from MacArthur, even though this does not deny that the idea of a future renunciation to war could have originally come from Shidehara.

3. The American role in the writing of the Constitution of Japan and the birth of UN

“ It is not often that a man can make opportunities for himself. But he can put himself in such shape that when or if the opportunities come he is ready to take advantage of them.”⁹⁹

“[...] modern civilization has become so complex and the lives of civilized men so interwoven with the lives of other men in other countries as to make it impossible to be in this world and not of it.”¹⁰⁰

During the XX century, the United States was one of the major international powers. As we have already seen in the previous chapters, the US had an important but slightly different role in the history of both the League of Nations and the United Nations. It also had a crucial part in the situation of Japan right after World War II, as well as on its economic development and on the drafting of the new Japanese Constitution.

3.1. The United Nations and the US

The history of the United Nations Organization has been closely linked to the United States even before its establishment. The Fourteen Points of the American President Woodrow Wilson, in fact, provided the basis for the League of Nations, the less successful predecessor of the UN.

The role of the United States in the League of Nations

On January 1918, President Woodrow Wilson, in a joint session of the United States Congress, spoke about the American intervention in World War I and the moral reasons of the war. His speech became famous especially for the “Fourteen Points”, that enumerated the basic principles that in Wilson’s opinion were to be followed by the international community in order to create a long term peace after

⁹⁹ ROOSEVELT Theodore, *Theodore Roosevelt: An Autobiography*, Chapter III: “Practical Politics”, New York, Bartleby.com, 1999, <https://www.bartleby.com/55/3.html>, 15 Jan. 2019.

¹⁰⁰ ROOSEVELT Franklin D., *Acceptance Speech for Vice-Presidential Nomination*, Hyde Park, August 9, 1920; in GRAFTON John (ed. by), “Great Speeches - Franklin Delano Roosevelt”, Mineola, Dover Publications, 1999, pp.1-5: 2

the war.¹⁰¹ The speech also foresaw the creation of the League of Nations to control and promote international exchanges, keep a worldwide peace and avoid another war. One of the points in Wilson's speech was about collective defence, a concept that would have been important for the future United Nations as well.

However, while Wilson's idea was well received in Europe by the public, the same could not be said for the leaders of the Allied Powers, who were more interested in guaranteeing safety for their own Nation after the war, rather than collaborating with other states for peace and security. Nevertheless, the Peace Treaty of Versailles (1919) contained the stipulation of some provisions regarding the League of Nations. When he returned to the US, however, President Wilson had to face strong opposition to the League, especially from the Republican Party in the Senate that blocked the ratification on the Treaty twice. One of the main opponents was the Senator Henry Cabot Lodge, also Leader of the Republican Party, who claimed that the treaty would have potentially deprived the US of its sovereignty, and with his powerful influence succeeded in preventing America from entering the League of Nations. The absence of one of the major international Powers ultimately determined, as we already mentioned in Chapter one, the failure of the League of Nations.¹⁰²

Even though by then almost inactive, this international association formally existed until 1946, when Allied Powers were already planning the establishment of a new organization, partly sharing some characteristics and principles with its predecessor.

The United States and the birth of UN

The United States had a central role in the process that led to, and in the building of, the United Nations. The US was making efforts for the constitution of an international order based on collective security already when, in 1928, the French Foreign Minister, Aristide Briand, proposed the formulation of an agreement forbidding war to the US Secretary of State, Frank Kellogg, who accepted and called an international conference during which the Briand-Kellogg Pact was signed by 60 Nations.¹⁰³

Afterwards, during World War II, arose the willingness to create more effective and powerful means of international collaboration, and, on the 14 August 1941, with the Atlantic Charter, US President Franklin D. Roosevelt agreed with British Prime Minister Winston Churchill on the commitment to the fight against Nazism and on the ambition of developing a peaceful international cooperation between Nations. The Atlantic Charter contained the themes and principles on which the

¹⁰¹ For the text of the Fourteen Points see *Fourteen Points. United States Declaration*, "Encyclopaedia Britannica", updated on Jan. 2019, <https://www.britannica.com/event/Fourteen-Points>, 20/01/2019.

¹⁰² cf. FOLEY H., WILSON W., *Woodrow Wilson's Case for the League of Nations*, Princeton, Princeton University Press, 1923.

¹⁰³ DE GUTTRY, PAGANI, *Le Nazioni Unite*, op. cit., p.27

United Nations Organization would be built a few years later. These same principles were endorsed by more than 20 Nations in 1942 with the “Declaration by the United Nations”. The same purpose of creating an international organization based on an equality among Member States was as well the subject of the Third Moscow Conference, that gathered the four major Allied Powers: China, Great Britain, URSS and US. These four Great Powers convened again in Dumbarton Oaks in 1944, in a Conference that resulted in the adoption of a proposal for the creation of the future United Nations Organization, and with the delineation of its structure and functions.

Finally, on the 25 April 1945, the United States invited 50 Nations to participate in the San Francisco Conference, an event that marked the birth of the United Nations. In the end, the content of the final text basically confirmed the proposals of the Four Powers in Dumbarton Oaks.¹⁰⁴

Always present in every step towards the constitution of the UN, the United States proved to be crucial in the success of this process. The Allied Power was also the only nation where the new international system became a topic of domestic debate, to which also public opinion participated. Even though the US had a leadership role in the making of the United Nations, Washington gave as well importance to consult and include the other major Allied Powers.¹⁰⁵ This American diplomatic choice, along with the common enemy, surely had a decisive role in the success of the UN project.¹⁰⁶

3.2. The American occupation of Japan (1945-1952)

At the end of World War II, Allied Powers wanted to neutralize Japan in order to prevent a future return on the battlefield. Therefore, with the Potsdam Declaration of the 26 July 1945, the terms for the Japanese unconditional surrender were established and the occupation of Japan began on the 28 August of the same year.

During the military occupation of the country, one of the priorities of the occupation forces was the demilitarization and disarmament of the country, along with the suppression of patriotism from schools and public life. Political prisoners were released, and many Japanese military and political leaders were prosecuted for war crimes.

Even though officially an occupation by the Allied Forces as a whole, it was practically conducted almost entirely by American forces led by General MacArthur, who was also entrusted with the democratization of the occupied country.

It was the first and only time Japan found itself occupied by a foreign nation.

¹⁰⁴ DE GUTTRY, PAGANI, *Le Nazioni Unite*, op.cit., pp.31-32

¹⁰⁵ Besides US, the major Allied Powers were China, URSS, Britain and France.

¹⁰⁶ *Ibid.*, p.33

The work of the SCAP

During the occupation, Japan underwent enormous changes in a wide range of fields from 1945 until 1952, when the San Francisco Peace Treaty came into effect and the occupation period ended. Even though the measures taken by the Tokyo War Crimes Tribunal¹⁰⁷ were important, what had the most relevance during this period were the various reforms carried out by the SCAP. The United States chose to help Japanese Government to rebuild its Country, rather than punish it for its actions during the war, and this seems to have had some positive effects on Japan and on the international situation as well.¹⁰⁸

First of all, the occupation forces started a demilitarization process in order to make Japan harmless to the international community, and progressively eliminated all military tendencies present in the Nation. Many people were either prosecuted by the Tokyo Tribunal or dismissed from the public offices, in order to remove the conservatives from the government.

Since the Meiji Constitution was not democratic and was now seen as the main cause of the military control over the Cabinet,¹⁰⁹ a new Constitution was promulgated in 1947, and the imperial government was replaced by a democratic one, with civilians leaders. One of the main goals of the SCAP was indeed to democratize Japan and to broaden the popular participation in politics. The constitutional reform determined changes in the institutions and values, clearly inspired by Western democracies, and this influenced Japanese politics from then on.¹¹⁰ In the reformed document, Japan renounced to its sovereign right to war, the Emperor became a mere symbol of the nation and women obtained the right to vote with the establishment of the universal suffrage. Other changes included the land reform, the reformation of the education system, the introduction of fundamental human rights, and a economic reform that aimed at the abolition of the *zaibatsu*¹¹¹ at wealth distribution.

The American occupation profoundly affected Japan, in the social, political and economic fields. For example, the position of women in Japanese society improved and thanks to the educational reform more people had access to higher education. Similarly, many reforms introduced by the SCAP fostered economic growth, in part also because of the lack of military expenses due to disarmament and to the provisions of Article 9.

¹⁰⁷ Also known as the International Military Tribunal for the Far East, the trial gathered on the 29 April 1946 and prosecuted war criminals.

¹⁰⁸ KOCH Kris, *The US Occupation of Japan (In what way did it influence Japan?)*, Lehigh University, 1999, p.15

¹⁰⁹ AUER James E., *Article Nine of Japan's Constitution: From Renunciation of Armed Force 'Forever' to the Third Largest Defense Budget in the World*, «Law and Contemporary Problem», vol.53, no.2, 1990, pp.171-187: p.173.

¹¹⁰ SCALAPINO Robert A., *The American Occupation of Japan-Perspectives after Three Decades*, "The Annals of the American Revolution Abroad", Sage Publications, Nov. 1976, pp.104-113, p.108.

¹¹¹ *Zaibatsu*: large financial, commercial and industrial groups of enterprises (comparable to cartels or trusts) . Originally every *zaibatsu* was controlled by a single powerful family.

By the beginning of the 1950s, the American attention shifted to the militarist communist states as a consequence of the outbreak of the Cold War. The attack on South Korea from the North in 1950, along with the Chinese Revolution of 1949, had a great impact on the relations of the US with Japan. The new international situation convinced the United States to ask for the support of the Japanese conservative party against communism and to move from supporting pacifism to pushing for Japanese rearmament. The next year, the SCAP asked the Japanese government to establish a National Police Reserve of 75,000 men. The United States felt the need to create a mutual security agreement with Japan in order to have an allied in the strategic place that was the Far East. Thus, in 1951, along with the San Francisco Peace Treaty, a Mutual Security Treaty between the United States and Japan was signed. They both came into effect at the end of April the following year.

With the San Francisco Peace Treaty, the American occupation officially ended, and Japan regained its sovereignty over its territories, with the exception of Okinawa, that was returned to Japan from the US only in 1972.

The US-Japan Security Treaty (1951; 1960)

The *Treaty of Mutual Cooperation and Security Between Japan and the United States of America*, also known as US-Japan Security Treaty¹¹², signed for the first time in 1951 and revised in 1960¹¹³, states the right for the United States to have military bases on Japanese territory and ensure American protection to Japan in case of armed attack. Under its terms, in fact, while American forces were expected to deal with external attacks against Japan, to the country was assigned the responsibility of dealing with internal threats and natural disasters.

The first version of the Treaty was as well linked with the “Yoshida Doctrine”. This is the name given to the strategy adopted by the Prime Minister Yoshida Shigeru, who believed it was necessary for Japan to rely on US forces for security problems, in order to be able to focus on the economic reconstruction.

In the 1950s, the United States was willing to keep part of its forces in Japan, as a strategic place during the Cold War, and had already pressured the Japanese Government to institute a National Police Reserve in 1950. After the signing of the Security Treaty, the police forces were expanded, despite the opposition of Prime Minister Yoshida, and in 1954 the Yoshida Government instituted the Japanese Self-Defence Forces.

The bilateral agreement had positive effects on both sides. While Japan had the chance of recovering from the occupation without worrying about its security and did not have to invest money

¹¹² In Japanese 『日本国とアメリカ合衆国との間の相互協力及び安全保障条約』 (*Nihonkoku to Amerikagasshūkoku to no Aida no Sōgo Kyōryoku oyobi Anzen Hoshō Jōyaku*), or 『安保条約』 (*Anpo jōyaku*)

¹¹³ The revised Treaty can be found both in the Japanese and English version on the official site of the MOFA at <https://www.mofa.go.jp/mofaj/area/usa/hosho/jyoyaku.html>

in remilitarization all the while gaining access to the American market, the US obtained a strategic position in the Western Pacific from which it could exercise and provide support to its troops during Cold War.

However, even though the Treaty today remains still valid, it should also be considered that both sides have their own problems related to this document. To start with, the first version of the Treaty was stipulated between a superpower and a defeated Nation that needed to recover from the war, and even though then it was a positive choice to keep American troops on Japanese soil, such a large presence of foreign contingents bring to Japan problems including crimes and large expenses. Moreover, considering that the new international panorama has changed, it is not surprising that many Japanese are not happy with having such an amount of American troops in their Country. Another point of discontent, this time on the American side, is the non-reciprocal character of the Treaty, Japan in fact, due to its Constitutional pacifism, is not obliged to intervene on behalf of the United States, and while having the right of self-defence, Article IX does not allow Japan to exercise it.¹¹⁴

In 1957, three years before the revision of the bilateral treaty, Japanese students started pointing out all of these inequalities enclosed in the Treaty. The discontent towards the agreement grew even stronger as a consequence of various crimes and accidents caused by US troops stationed in Japan. When the 1960 revision of the Treaty was about to be approved, many Japanese gathered in violent street demonstrations.

After the defeat in World War II and the consequent American occupation, Japan's foreign policy and international influence are rather limited, also because of the constitutional renunciation to war and the Security Treaty with the US. The latter, in fact, has had a great influence on Japanese foreign policy, fostering it or not depending on the situation. This reliance of Japan on American defence is also counterproductive for the archipelago's willingness to obtain more independence in foreign policy matters.¹¹⁵

¹¹⁴ PACKARD, George R., *Some Thoughts on the 50th Anniversary of The US-Japan Security Treaty*, "Asia Pacific Review", vol.17, no.2, 2010, pp.1-9: 2-3.

¹¹⁵ BOWEN Roger, *Japan's Foreign Policy*, "Political Science and Politics", vol.25, no.1, American Political Science Association, March 1992, pp.57-73: 57-58.

4. Japan-UN relationships after the institution of the SDF and their participation in PKOs

In 1947, the Constitution of Japan came into effect and the Government diffused an official interpretation according to which, in accordance with Article 9, any armed force was banned, even for self-defence purposes. Notwithstanding this, after the outbreak of the Korean War, on the 8 July 1950, the international tensions rose and General MacArthur sent a letter asking Prime Minister Yoshida to form a National Police Reserve (NPR)¹¹⁶, with the purpose of maintaining Japan's security after the American forces moved to Korea. The task of organising the police corps was assigned to the American Colonel Frank Kowalski, who later in his memoirs referred to them as "a mere disguise for the organization of a new Japanese army".¹¹⁷

Today Japan's military budget is one of the largest in the world and Tōkyō is the second-largest financial contributor to UN Peacekeeping after the United States.¹¹⁸ This chapter gives an overview of the Japanese Self-Defense Forces and their actions, as well as present the opinions on their constitutionality and their role in the United Nations Organization.

4.1. Japan Self-Defense Forces

In 1950, Prime Minister Yoshida Shigeru, known for his anti-militarist views, was not willing to fulfil the American request, knowing that any kind of rearmament would not be well received from the Japanese population and from the other Asian countries. Moreover, he strongly believed that Japan should rely completely on US military aid and preferred to concentrate on a policy of commercial exchanges with other countries, especially because rearmament would have meant a slowdown of the economic recovery. However, on the 10 August of the same year, the Japanese Government followed the American order and promulgated the *Police Reserve Act*, that enable Japan to assemble a National Police Reserve (*Keisatsu yobitai*)¹¹⁹ of 75.000 men, whose main tasks were to maintain domestic security and to defend the American bases on Japanese territory.¹²⁰ The new police corps were

¹¹⁶ A copy of the letter can be found on the Japanese National Diet Library at: http://www.ndl.go.jp/modern/e/img_r/M010/M010-001r.html

¹¹⁷ AUER, *Article Nine of Japan's Constitution*, op. cit., p.177.

¹¹⁸ According to the Japanese Secretariat of the International Peace Cooperation, in 2007 Japan's contribution reached 1,16 billion dollars. http://www.pko.go.jp/pko_e/cooperation/cooperation.html

¹¹⁹ In kanji: 警察予備隊

¹²⁰ A particularity of these Forces was that, in order to avoiding any term that could have been connected to real military forces, it was decided to create a new vocabulary to refer to both people and vehicles.

officially responsible for matters of internal security and took orders from the Cabinet of the Prime Minister.

After the institution of the police forces, Yoshida became gradually keener on finding a compromise between his pacifist ideals, Article 9 and the rearmament asked from the Americans. In October 1951, the Liberal Party, of which Yoshida himself was a member, expressed his official opinion on the matter, sustaining the need for an augmentation of the police forces. In October 1952, the NPR were reorganised into the National Safety Forces (NSF, *Hoan-tai*¹²¹), that also comprehended a minesweeping unit and were now composed by 180.000 men, and a National Safety Agency (*Hoan-chō*¹²²) was instituted to control the Forces. With the institution of the police forces, the military servicemen that had been part of the Imperial Japanese Army during the war were called to work as reserve policemen and the Director General Kimura became Safety Minister.

The NSF were not yet authorized to defend Japan against an external threat and this could have negative effects in the security relations with the US. This fact persuaded Prime Minister Yoshida to stipulate, on the 27 September 1953, an agreement with the president of the Progressive Party where it was stated that Yoshida and the Progressive Party would have defined more clearly their self-defence policy, and that they would extend it in order to compensate for the reduction of US militaries caused by the Korean War. Furthermore, they decided to enable the Forces to the defence of the country against external threats.¹²³

The institution of the Japanese Self-Defense Forces (JSDF)

In July 1954, with the *Self-Defense Forces Law*¹²⁴, the NSF became the Self-Defense Forces (SDF)¹²⁵ and came to be controlled by the Japanese Defense Agency (JDA). With their institution, Japan became able to rely on far more American support for the implementation of the Forces, which were now composed by a Ground, a Maritime and an Air Force. The absence of any intention for offensive measures and the prohibition of sending forces abroad were stressed right from the beginning, mainly in response to the strong protests that their institution had caused.¹²⁶

Even though the Japanese Constitution does not prohibit nuclear weapons, after the Hiroshima and Nagasaki disasters Japan expressed the decision to never own them. In 1955, this was

¹²¹ In kanji: 「保安隊」

¹²² In kanji: 「保安庁」

¹²³ AUER, *Article Nine of Japan's Constitution*, op. cit., p.178.

¹²⁴ In Japanese 「自衛隊法」, *Jieitaihō* (Self-Defense Forces Law), Law No. 165 of 1954. The integral version of the law can be found on the “e-Gov” site at http://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?lawId=329AC0000000165_20180413_430AC0000000013

¹²⁵ In Japanese 「自衛隊」, *Jieitai*. The English version is frequently shortened by using the acronyms “JSDF” or “SDF”.

¹²⁶ DOBSON Hugo James, *Japan and United Nations Peacekeeping: Foreign Policy Formulation in the Post-Cold War World*, Faculty of Social Sciences, School of East Asian Studies, 1998, pp.96,105

made official by the *Atomic Energy Basic Law* that states that research, development and use of atomic energy were to be limited to peaceful uses.¹²⁷ This policy towards nuclear weapons was confirmed in 1967, when Prime Minister Eisaku Satō stated that his policy followed the Three Non-Nuclear Principles of “not possessing, not producing and not permitting the introduction of nuclear weapons”,¹²⁸ and in 1976 the *Treaty on the Non-Proliferation of Nuclear Weapons*, adopted by the Security Council of the United Nations in 1968, was ratified also by Japan.

In 1960, with the revision of the US-Japan Security Treaty, the rights of the United States to use the American bases in Japan were restricted compared to that of the previous document. The revised document qualified the American rights to use the bases for the defence of Japan and for the maintenance of the peace and security in the Far East. It also established that, in case of an attack or of a relocation of American troops in or out of Japan, every decision was to be taken after a previous consultation between the two countries, thus making the Treaty more equal for both nations.

During the 1960s and the 1970s, the belief that the Self-Defense Forces would have never really worked without a change of Article 9 spread among Japanese intellectuals and politicians, who also proposed the inclusion in the US-Japan Security Treaty of a proviso requiring consultation between the parties in case of an attack to the US. The request was not met and the expectations were to be ultimately disappointed when in 1989, without any change of Article 9, the Japanese military budget came to be the third largest military budget in the world.¹²⁹

While from 1954 to 1976 the SDF corps were expanded, the National Defense Program Outline was introduced in 1976. It defined Japan’s missions under the Security Treaty and required the Forces to achieve certain standards to cooperate with the US in case of attack. In 1981 the Japanese Prime Minister Suzuki Zenkō agreed with President Reagan on dividing defence responsibilities in the Far East area and, in 1983, Prime Minister Nakasone approved a five-year defence plan that ultimately made the SDF reach all the standards required from this policy. Standards that became modifiable depending on the international situation after the approval of the 1986 Japanese Defense Agency White Paper.

The reinterpretation of Article 9

Since its inclusion in the Constitution in 1947, Article 9 has left some room for interpretation of the limits it sets with regards to military forces. Since the beginning of the 1950s, the Government of Japan (GOJ) has had a rather flexible approach to the “Peace Article” and started to move towards a

¹²⁷ *National regulations in Japan*, “Jaea”,

<https://c-navi.jaea.go.jp/en/background/international-guidance-legislation-and-regulations/national-regulations-in-japan.html>

¹²⁸ *Statement by Prime Minister Eisaku Sato at the Budget Committee in the House of Representative (December 11th, 1967)*, official site of MOFA, 2014, <https://www.mofa.go.jp/policy/un/disarmament/nnp/index.html>.

¹²⁹ AUER, *Article Nine of Japan’s Constitution*, op. cit., p. 179.

new interpretation of Article 9 according to which it accepted the recourse to self-defence as an exception to the constitutional war renunciation.

In the early 1950s, Prime Minister Yoshida, as already mentioned above, argued that the institution of any kind of armed forces would have meant rearmament and the recognition of the right of self-defence could dangerously become an excuse for the outbreak of another war. This statement was in line with the “Yoshida Doctrine” of non-rearmament and maintenance of a rather passive foreign policy in order to facilitate economic growth.¹³⁰ Yet, shortly afterwards, the Prime Minister started progressively to change his views over national defence matters.

After the institution in 1952 of the NSF, Yoshida was attacked by the opposition. The criticism was based on a statement of the Prime Minister in which, while talking about the constitutionality of the police forces, he referred to them as “war potential for defence purposes”. Yoshida afterwards claimed that a defence potential was different from the war potential mentioned in Article 9, and the institution of forces responsible for self-defence did not mean rearmament. The Government of Japan’s official interpretation was then revised in order to cope with accusations of unconstitutionality of the newly established forces, stating that the “war potential” mentioned in Article 9 of the Constitution meant “a force with the equipment and strength capable of conducting modern warfare”. Therefore, lacking these capabilities, the Safety Forces could not be said to be unconstitutional.¹³¹ In 1953, the Prime Minister added that Article 9 did not forbid self-defence forces, but only the use of force for settling international disputes, thus adding more reasons to support the legitimacy of the police forces.

With the institution of the Self-Defense Forces in 1954, the Cabinet decided to revise again its policy toward the Peace Article and, in 1955, a new statement was released. The Government declared that any use of military power for the purpose of self-defence was not forbidden by constitution. At the same occasion, Ōmura Seiichi, director general of the JDA during the Hatoyama¹³² cabinet, said that it would have been advisable to revise Article 9. The revision was proposed by the Prime Minister, who could not carry out his proposal as a consequence of his short mandate.

Additionally, in 1959, Prime Minister Kishi declared that Japan would not maintain any nuclear weapon, but that in the Constitution there were no stipulations banning a minimum amount of nuclear weapons to be kept for defence purposes. The nuclear question was taken again into account in 1967, when the famous Cabinet policy statement on the three non-nuclear principles was released, stating that nuclear weapons were not allowed on Japanese territory.¹³³

¹³⁰ RAMAIOLI, *Addio alle armi*, op. cit., pp.20-22.

¹³¹ AUER, *Article Nine of Japan’s Constitution*, op. cit., p.177-178.

¹³² Hatoyama Ichirō, prime minister from December 1944 until December 1956.

¹³³ AUER, *Article Nine of Japan’s Constitution*, op. cit., p.179

This official position of the Government, according to which the Pacifist Constitution does not deny the intrinsic right of self-defence of the Nation, seems to be in line with Article 9 (1) of the Constitution. Their relationship is similar to the one we find in the UN Charter between Articles 2 (4) and 51, in which, while Article 2 (4) forbids the use of force, Article 51 acknowledges the exception of the right of collective self-defence.¹³⁴

On the other hand, the second proviso of Article 9 seems to oppose to such an interpretation. However, according to professor Nasu, if the Japanese were to be allowed to use only police forces in order to defend themselves from an attack, this would signify the defeat of Japan, as this type of defence would not be adequate to withstand an armed attack conducted with modern technologies. This would signify going against both Article 9 and the Preamble of the Constitution, since without a certain level of military strength for defence purposes Japan would not be able to defend its “right to live in peace”. Therefore, following the principle of effective interpretation, it seems necessary for Japan to possess a certain amount of defence forces and the problem would rather be that of determining the necessary extent of such a military capability.¹³⁵

During the years, the Liberal Democratic Party (*Jiyū-Minshutō*¹³⁶) has been very active in the rearmament-war renunciation debate. It has tried several times to amend Article 9, but the public opinion and the opposition parties have always blocked these attempts. On the 6 October 1972, the Basic Draft of the Committee on the Constitution of the LDP stated that, until the creation of a system of collective security as mentioned in the United Nations Charter, Japan shall rely on a self-defence potential for its security.¹³⁷

On December 1980, the Japanese government stated once again that the self-defence power is not prohibited by constitution and that the government is allowed to have the minimum necessary means to defend the nation. In the following year it was added that the exercise of collective self-defence was denied by virtue of Article 9 and that collective self-defence was defined as the ability of preventing an attack moved towards an ally of Japan in case that Japan itself was not attacked.

¹³⁴ The first part of Article 51 of the UN Charter: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.[...]”

¹³⁵ NASU Hitoshi, *Article 9 of the Japanese Constitution*, op. cit., 53-54.

¹³⁶ 「自由民主党」、frequently abbreviated in *Jimintō* 「自民党」, or LDP in English. The Japanese party was formed in 1955 from the merger of two Parties: the Liberal Party (*Jiyūtō*, 自由党) of Yoshida Shigeru and the *Japan Democratic Party* (*Minshutō*, 民主党) of Hatoyama Ichirō.

¹³⁷ SCHLICHTMANN Klaus, *The Constitutional Abolition of War in Japan. Monument of a Culture of Peace?*, «Internationales Asienforum», vol. 32, no. 1-2, 2001, pp. 123-149: 129-130.

Opinions on the Self-Defence Forces and their constitutionality

The contrast between the renunciation of war as expressed in Article 9 and the growing presence of military forces in Japan has caused many interpretations of the article to be made and these in turn have given rise to a number of controversies. The Japanese Supreme Court has not ruled yet over the legitimacy of the SDF, neither has it proclaimed their unconstitutionality. However, this has never dissuaded opponents to resort to the Court for denouncing the Self-Defense Forces as unconstitutional.

The constitutionality of the Forces has been questioned mainly on the basis of three important court cases.

The Sunagawa case. Even though this case was not about the SDF, it has been used afterwards to question their constitutionality. In 1955, the residents of Sunagawa started protesting against the expansion of the nearby Tachikawa Air Base, at the time a US military base, and on July 1957 some of the protestors, from a radical group, infiltrated the base destroying the fences. When the case went to the Supreme Court in 1959, the defendants justified the trespassing by claiming the Security Treaty between Japan and the United States was unconstitutional. The Court, while supporting the constitutionality of the right of self-defence, did not comment to the legality of the Self-Defense Forces.¹³⁸

The Nagayama case. Between the end of the 1960s and the beginning of the 1970s, the Japanese Defense Agency decided to build a missile base in Hokkaidō, residents complained and in 1973 the Sapporo District Court stated that the SDF as military units were unconstitutional, preventing the JDA from building the base in the territory. However, in 1976, the Sapporo High Court held that the base construction had no aggressive purposes, thus the case was not related to the constitutionality of the SDF. The same line of thought was followed by the Supreme Court, that decided that the protestors did not have any right to move legal action against the construction of the military base.¹³⁹

The Hyakuri base case. The third case was about the sale of a property to be used by the Government as an air base for the Self-Defense Forces. After opposing the construction by selling his property to a private buyer, the owner changed his mind and made a contract with the Government. On the other hand, the buyer claimed that the contract was not valid since the existence of the SDF was against Article 9. In 1989, the Supreme Court concluded that the Constitution, being a public law, does not forbid any government action when the action in question falls under private law.¹⁴⁰

¹³⁸ On the Supreme Court official website is possible to read the English translation of the document regarding the judgement over this case at: http://www.courts.go.jp/app/hanrei_en/detail?id=13

¹³⁹ AUER, *Article Nine of Japan's Constitution*, op. cit., 181-182

¹⁴⁰ DEAN Meryll, *Japanese Legal System. Second edition*, Cavendish Publishing, London, 2002 (first ed. 1997), p.517. For a more comprehensive understanding of the case see also the case as reported on the site of the Supreme Court of Japan: http://www.courts.go.jp/app/hanrei_en/detail?id=94

The constitutionality of the forces was also criticized by Japan Socialist Party, that had criticized them since the institution of the NPR. It changed its official view only in 1994 when the then leader of the Party FIRST NAME Murayama became Prime Minister with a coalition government. More recently, during a press conference on the 30 June 2004, Mitsuo Fukushima, leader of the Japanese Social Democratic Party (SDP) from 2003 to 2013, confirmed the return of the Party to the former position which claims an unconstitutionality of the SDF and of the US-Japan Security Treaty.

On the other hand, the Democratic Socialist and Clean Government¹⁴¹ does not deny the Nation's right to keep an armed force for self-defence purposes, and the Japan Communist Party (JCP) ridicules unarmed neutrality, even though it does not positively see the SDF and hopes for their future dissolution. The JCP also admits that "It will be natural for us to make use of the existing SDF, if the situation demands it, to assure the people's safety."¹⁴²

As it can be seen from what has been pointed out so far, there are mainly two different lines of thought with regards to the interpretation of the prohibition of war potential contained in Article 9. In fact, while some support the idea that the Article forbids all maintenance or use of armed forces, even for defensive purposes, others argue that the right of self-defence is recognised by the Article and military forces can be used for self-defence if required by the situation.

4.2. Japan and its participation in UN Peacekeeping Operations

When Japan became a member of the UN in 1956, the Foreign Ministry tried from the beginning to gain an active role in the Organization, but when in 1958 and 1960 it asked Japan to send the SDF to assist in the UN operations in Lebanon and Congo, Japan refused, citing both legal and security issues. However, by the end of the 1970s Japan was gradually getting more interested in peacekeeping operations and before long became one of the biggest financial contributors to the UN. By the end of the 1980s Japan had already started participating in elections monitoring operations sending government personnel to Namibia and Nicaragua.

After the end of the Cold War, while Japan was still searching for his place in the international order, the Gulf War broke out. During this conflict, Japan was criticized by the

¹⁴¹ *Kōmeitō*, 公明党

¹⁴² *JCP's view on relationship between Constitution's Article 9 and the Self-Defense Forces*, JCP website, 2000, https://www.jcp.or.jp/english/jps_weekly/e000930_03.html

international community mainly because its assistance to the UN forces was limited to financial contributions due to the limitations imposed by Article 9. On the 29 August 1990, Japan announced that it would have provided vehicles, equipment, medical services and financial aid, and the next day contributed by providing one billion dollars. The rest of the international community was actively participating in the UN operations and the Japanese move was seen negatively. When Tōkyō decided to contribute to the coalition fund with other three billion dollars, the US Treasury Secretary severely criticized the Japanese decision stating that Japan was not committing enough and that it had to actively participate in the operations.¹⁴³

On September of the same year, the Kaifu government asked to the Diet to approve the *Un Peace Cooperation Bill*, whose purpose was to enable the intervention of the SDF, but the bill did not pass. Moreover, while the Government was trying its best to find an interpretation of the Peace Article that would allow the dispatch of the forces, all the while the majority of the public opinion was against it.

On January 1991, Japan made another financial contribution of 9 billion dollars, thus financially contributing a total of 13 billion, more than any other nation, but the act was once more not received favourably by the international community that accused Japan of “checkbook diplomacy”¹⁴⁴. In addition, when the war ended Japan was not even mentioned in the list of countries Kuwait thanked for help. This was a difficult experience for the Japanese population, that started considering the possibility of a SDF dispatch in future UN Peacekeeping Operations. In 1991, four Japanese minesweepers were dispatched in the Persian Gulf for cleanup operations. It was the first time for Japan to deploy the Maritime SDF abroad, and the Japanese Government began to work on an act that would allow defence forces to be deployed in the peacekeeping operations under UN.

The International Peace Cooperation Act (1992)

After facing strong protests aroused by the Gulf War and after receiving pressures from abroad regarding the dispatch of SDF in the United Nations Peacekeeping Operations (UN PKO), on the 19 of June 1992 the Japanese Diet approved the *Act on Cooperation for United Nations Peacekeeping Operations and Other Operations*¹⁴⁵, also known as PKO Law. It allowed Japan to gain a more active role in the peacekeeping operations, as stated in Article 1 of the document, and to provide a legal

¹⁴³ WADA, *Article Nine of the Japanese Constitution*, op. cit., p.419-420.

¹⁴⁴ Ibid. p.421 Japan was accused of paying money in order to avoid sending the Self-Defense Forces.

¹⁴⁵ Act no.79, in Japanese 『国際連合平和維持活動等に対する協力に関する法律』 (*Kokusairengō heiwajikatsudō nado nitasuru kyōryoku nikansuru hōritsu*). Available in Japanese on the MOFA site at: <https://www.mofa.go.jp/mofaj/gaiko/pko/horitu.html>; also in the English translation at: http://www.pko.go.jp/pko_j/data/law/pdf/law_e.pdf. Cf. 『国際平和協力法について』 (*Kokusaiheiwakyōryokuhō - On the Peace Cooperation Law*) on the Ministry of Defense official website at http://www.mod.go.jp/j/approach/kokusai_heiwa/pdf/law_pko.pdf

framework in response to the criticisms raised after its financial involvement during the Gulf War in 1991.

The PKO Law states that Japan will participate in UN operations of peacekeeping and contribute to the international election observation operations and humanitarian relief operations. It enumerates five principles to be followed by Japan in carrying out peacekeeping operations. These principles limit the intervention of the SDF by imposing five conditions: (1) there must be the conclusion of a cease-fire agreement among the parties participating in the armed conflict; (2) the host countries and the parties participating in the conflict must have agreed to both the undertaking of the UN operations and Japan's participation in them; (3) the operations have to maintain impartiality towards the parties; (4) Japan can decide the withdrawal of its personnel if the previous requirements are not satisfied; (5) the limitation of the use of weapons to the minimum necessary for personnel's lives protection. Moreover, the law provided a list of 17 "International Peace Cooperation Assignments", in order to precise the activities that could be carried out by the Japanese forces, thus further limiting the range of action of the SDF. In 1998 the law was reviewed in order to allow more flexibility for SDF intervent.¹⁴⁶

Japan and the UN Peacekeeping Operations in Cambodia

In 1992, Japanese Ground Self-Defense Forces (GSDF) were dispatched to intervene in the UN operations of peacekeeping in Cambodia¹⁴⁷. This first large deployment of military personnel caused people to protest against the Government decision, arguing that the SDF participation to the UN mission was unconstitutional, even though in Cambodia the defence forces actions were limited to operations such as cease-fire observation, elections monitoring, local police training, reconstruction of road and bridges and other duties, that is to say, all were in areas far detached from the armed conflict.

¹⁴⁸ Despite precautions, Japan experienced two casualties and this caused the Japanese public opinion to ask the return of the forces in Japan.¹⁴⁹

This first SDF experience in Peacekeeping Operations showed how one of the main weakness of the Japanese forces was the fact that in order to perform duties that were not included in the Implementation Plan¹⁵⁰, they needed to seek for the approval of the Government. After Cambodia,

¹⁴⁶ *Outline of Japan's International Peace Cooperation*, Ministry of Foreign Affairs of Japan, 14 May 2015, https://www.mofa.go.jp/fp/ipc/page22e_000683.html 30/09/2018

¹⁴⁷ The name of the UN mission was UNTAC (UN Transitional Authority in Cambodia)

¹⁴⁸ *Japanese Participation in UN Peacekeeping. CAMBODIA*, official site of MOFA, 2014, https://www.mofa.go.jp/policy/un/pko/pamph96/02_2.html, 15/08/2018.

¹⁴⁹ HOOK Glenn D., GILSON Julie, HUGHES Christopher W., DOBSON H., *Japan's International Relations: Politics, Economics and Security*, Routledge, Abingdon, 2005 (first. ed. Routledge 2001), pp.383-384

¹⁵⁰ After the adoption of the Peace Cooperation Law, an Implementation Plan was developed in order to define more in detail things such as what duties the SDF would have performed or what weapons they could carry.

Japan has participated in other 12 United Nations Peacekeeping Operations in: Mozambique, Golan Heights, East Timor, Sudan, Haiti and in the ongoing operation in the Republic of South Sudan.¹⁵¹

Changes in JSDF policies

In 1992, the *International Disaster Relief Law* had been amended in order to permit to the Self-Defense Forces to participate in international disaster relief operations. Five years later, in 1997, the Cabinet Legislation Bureau chose to distinguish between defensive combat against an attack and logistic support, thus authorizing the SDF to provide logistical support in US operations even when not linked to combat activities. In 1999, the *Act on Measures to Ensure the Peace and Security of Japan in Periculuous Situations in Areas Surrounding Japan* was approved by the Diet. It allowed the SDF to intervene in US actions out of the UN jurisdiction.

Along with the Gulf War, there have been other two main events that have deeply influenced the Japanese international policy: the North Korean nuclear development and the terrorist acts of 11 September 2001. International tensions rose when North Korea began nuclear tests with missiles launches in 1994 and 1998. When the second Korean rocket flew over Japanese territory, the Japan Defense Agency, that had already started thinking of eventual countermeasures in 1993, decided to take new measures, and the public opinion started supporting an eventual reaction against the Korean Government. After the announcement of Pyongyang over the reactivation of the nuclear program in 2002, the process towards the adoption of the *War Contingencies Laws* (2003-2004) accelerated. These laws, along with the *National Defense Program Guidelines* of 2005, had the objective of attributing to the SDF various duties, such as the participation in defence, disaster relief and collective security missions. The Guidelines thus sought the development of mechanisms that would enable Japan to participate in activities in cooperation with other nations to improve the international security environment.¹⁵²

On the other hand, in response to the terrorist attacks in the United States, the *Anti-Terrorism Special Measures Law* was passed in 2001, succeeded by the *Replenishment Support Special Measures Law* in 2008. Japan, as stated in the *Defense White Paper* of 2010, declares to see terrorism as a global threat and to consider important the international cooperation for its the eradication.¹⁵³ This

¹⁵¹ *Japan contribution to UN Peacekeeping Operations*, official site of MOFA, 2015, https://www.mofa.go.jp/fp/ipc/page22e_000684.html, 15/08/2018. For a map summarizing the Japanese International Peacekeeping situation see http://www.mod.go.jp/j/approach/kokusai_heiwa/pdf/unpko01.pdf. See also *Current Issues Surrounding UN Peace-keeping Operations and Japanese Perspective*”, Ministry of Foreign Affairs of Japan, 1997, <https://www.mofa.go.jp/policy/un/pko/issues.html>

¹⁵² Cf., *Japan's Efforts on Peacebuilding. Towards Consolidation of Peace and Nation-Building*, MOFA, 2007, available at <https://www.mofa.go.jp/policy/un/pko/effort0704.pdf>

¹⁵³ Ministry of Defense of Japan, *Defense of Japan 2010*, Tokyo, 2010, p.344. Can be found on the MOD official website at: http://www.mod.go.jp/e/publ/w_paper/2010.html

law allowed the GSDF to intervene, for example, in Iraq in order to provide medical care, recovery and improvement of public infrastructures and water supply.

In 2007, international operations came to be listed among the primary tasks of the SDF and a Ministry of Defense was established.

4.3. SDF participation in actions out of UN jurisdiction

Even though most of the times Japan has operated in actions of peacekeeping under authorization of the UN, there are some cases in which Japan has acted without a direct UN mandate to do so. It can be noticed, however, how these actions were essentially related to anti-terrorism or to the fight against piracy.

The right of collective self-defence

The right of collective self-defence is expressed in Article 51 of the United Nations Charter and it indicates the right of all members of the UN to use armed force to defend other UN countries if an attack is moved against them.

In 1952 was instituted the Cabinet Legislation Bureau (CLB), that has had an important role in the constitutional interpretation debate. According to the CLB official position, self-defence is divided into individual and collective defence and, under Article 9, Japan is allowed only to exercise the individual defence. It also stated that the resort to individual self-defence was legitimate only under three conditions: the presence of an imminent and close threat, the absence of alternative solutions, and a minimum self-defence ability.¹⁵⁴

When the U.S.-Japan Security Treaty was signed in 1960, the Japanese Government adopted the official view according to which the right of collective self-defence could not be exercised by Japan in accordance with Article 9 of the Constitution. The agreement limited the obligation of collective self-defence only to the cases in which an armed attack against one of the two parties occurred within Japanese territories (Art. 5). However, in 1997, the *Review of Defence Cooperation Guidelines* established that all actions that concerned the Japan-US relation were to be limited only to events happening around Japan, but the area “around Japan” was said to be including also the other areas of the Far East¹⁵⁵. The Government declared that the assistance to US forces conducting operations connected to the Security Treaty outside Japan were to be carried out away from the

¹⁵⁴ TSUJI Yuichiro, *Amendment of the Japanese Constitution. A Comparative Law Approach*, «Nanzan Review of American Studies», vol.37, 2015, pp.51-70: 54-55

¹⁵⁵ The *Guidelines* aim to provide some instructions for the military cooperation between the US and Japan. Originally established in 1978, the Guidelines were implemented by another legislation in 1999. Recently, they have been revised in 2015 by Abe.

battlefield and for this reason this stood not in opposition to Article 9. This view is contested by some people, saying that in modern warfare there is no distinction between battlefield operations and rear areas support and that every Japanese involvement in counter-attack situations, where an armed attack is moved against Japan or one of his allies, is to be regarded as collective self-defence.¹⁵⁶

An example of Japanese exercise of collective self-defence is the intervention in 2001 of three SDF warships in support of the American operations in Afghanistan. The US-led operation was officially based only on self-defence and Prime Minister Koizumi announced Japan's support to the US intervention as a sign of collaboration in the fight against terrorism. On the 29 October 2001 the Diet approved the *Anti-Terrorism Special Measures Law* in order to legitimize the SDF dispatch. It was the first time for Japan to deploy armed forces in war zones and there was no authorisation by the Security Council thus making the decision only triggered by collective security.

The Case of Iraq

Right after the start of the Iraq War in 2003, the Japanese Government confirmed its support for the US actions and Prime Minister Koizumi approved the *Iraq Humanitarian and Reconstruction Assistance Law* that enabled Ground Self-Defense Forces to intervene in non-combat zones in Iraq from 2004 until 2006, even though their dispatch was not in accordance with the PKO Law, since no ceasefire agreement had been reached. In the occasion of the decision of SDF dispatchment in Iraq, during a press conference, Prime Minister Koizumi stated,

I believe that, as a responsible member of the international community, Japan must also fulfill its responsibility in the creation of an environment that will allow the people of Iraq work to rebuild their own country with optimism. For that purpose, I have decided that there is a need for Japan to provide not only financial assistance, but also material assistance and personnel assistance, including the dispatch of SDF.¹⁵⁷

In January 2004, 600 Ground SDF were sent to Iraq to undertake humanitarian and reconstruction assistance in Samawah. The Air and Maritime SDF transported GSDF members and supplies. However, the Japanese intervention had not been asked by the host country nor by the UN and this marked the first time for SDF to be dispatched to a war zone.¹⁵⁸ This received criticism both from within Japan and from the international public opinion. In Japan, even though the domestic

¹⁵⁶ NASU, *Article 9 of the Japanese Constitution Revisited*, op. cit., p.55-58

¹⁵⁷ KOIZUMI Jun'ichirō, *The Basic Plan regarding the measures based on the Law Concerning the Special Measures on Humanitarian and Reconstruction Assistance in Iraq*, 3 Dec. 2003, Japan Kantei website, https://japan.kantei.go.jp/koizumispeech/2003/12/09press_e.html

¹⁵⁸ FOUSE David, *Japan's Dispatch of the Ground Self-Defense Forces to Iraq: Lesson Learned*, Asia Pacific Center for Security Studies, 2007, https://apcss.org/wp-content/uploads/2011/03/Japans-Dispatch-of-the-GSDF-to-Iraq.Fouse_.doc.pdf

opposition towards the deployment of the forces in Iraq was strong before the departure of the troops, soon after their deployment the consensus of the popular opinion seemed to gradually increase. The decision had a positive effect on the country's relations with US, and President Bush remarked the good relationship between the two countries in a press conference in Kyōto in 2005.

Japan's anti-piracy operations

From the first UN Security Council anti-piracy resolution of the 2 June 2008, each member state has been urged to take actions against the acts of piracy in Somalia and in the Gulf of Aden.¹⁵⁹ In January of the next year, Japan announced the dispatch of Maritime SDF to Somalia. The action caused some legal debates over the way eventual pirates attack should be handled by Japanese personnel, until it was decided to allow taking actions when necessary in order to protect Japanese ships from acts of piracy. Since then, the Japanese forces have protected many ships and shared all the informations in their possession with forces of other countries in case of detection of suspicious ships.¹⁶⁰

The Self-Defense Forces and the collective self-defence

With the advent of Abe Shizō second term of office of Prime Minister, the governmental policy towards collective self-defence changed again. In 2014 the Abe administration released three new conditions for the legitimacy of self-defence. While keeping the second and third conditions in line with the ones announced by the CLB years before, it was decided to broaden the first one stating that an attack either against Japan or against one of his close allies would put the existence of the nation in danger and threaten the life, freedom and happiness of the people, thus admitting a counteraction to both types of attack.

In 2015, the 1997 Guidelines have been revised and the new document affirms that the security cooperation aims “to ensure Japan's peace and security under any circumstances, from peacetime to contingencies, and to promote a stable, peaceful, and prosperous Asia-Pacific region and beyond”¹⁶¹. The “and beyond” statement the 2015 Guidelines removed the spacial limitations of the cooperation, while giving importance to the “global nature of the Japan-US Alliance”.

Furthermore, in Article 4 of the text is stated that

Persistent and emerging threats can have a serious and immediate impact on Japan's peace and security. In this increasingly complex security environment, the two

¹⁵⁹ *Resolution 1816 (2008)*, Security Council Report , 2 June 2008, available at <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S%20RES%201816.pdf>

¹⁶⁰ *Anti-piracy operations*, JMSDF, <http://www.mod.go.jp/msdf/formal/english/operation/pirates.html>

¹⁶¹ *The Guidelines for Japan-U.S. Defense Cooperation*, Ministry of Defense, 27 April 2015, http://www.mod.go.jp/e/d_act/ampo/shishin_20150427e.html, 30/09/2018.

governments will take measures to ensure Japan's peace and security in all phases, seamlessly, from peacetime to contingencies, including situations when an armed attack against Japan is not involved.¹⁶²

Thus, it admits the intervention of Japan even if “an armed attack against Japan is not involved”, thus following the same path of Abe’s three conditions for the legitimacy of self-defence.

4.4. The relation between Japan and the United Nations with regards with JSDF

It is a fact that national defence is connected to domestic security as much as to the international dimension. Moreover, in Article 98 (2) of the Constitution of Japan is stated that “The treaties concluded by Japan and established laws of nations shall be faithfully observed”¹⁶³, and there are international treaties and laws also regulating military actions undertaken for self-defence, as for example the United Nations Charter.

In this regard, we shall consider Article 2 of the Charter in relation to Article 9 and self-defence. First of all, Article 2 (4)¹⁶⁴ of the Charter is consistent with the “Peace Article” in that both are against the use of force in international relations; but that same article in its following proviso states that the members of the UN are expected to give their assistance in any action of the Organization and this is not completely in line with Article 9 (2) of the Japanese Constitution.¹⁶⁵

During the XXI century, a decrease of the interest toward the participation in UN peacekeeping operations can be noticed between 2004 and 2010. After the terroristic attacks of the 11 September 2001, Japan’s attention shifted from peacekeeping to anti-terrorism operations, as is evident already by the adoption of the Anti-terrorism Law, which caused the immediate dispatch of the Maritime SDF to support the US intervention in Afghanistan, and in Iraq few years later. Between 2001 and 2010 most of the personnel deployment were part of Non-UN operations and the interest towards the collaboration with the United Nations was regained only after the anti-terrorism actions ended.

¹⁶² *Ibid.*

¹⁶³ Article 98 (2) of the Japanese Constitution, as found on the official site of Kantei:

https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html

¹⁶⁴ The Article reads: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”. Text taken from the UN official website

<http://www.un.org/en/sections/un-charter/un-charter-full-text/>

¹⁶⁵ Article 2 (5): “All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, [...]”

However, since its entrance in the United Nations, Japan has seen its cooperation with the Organization and its participation in the UN Peacekeeping Operations as a mean to obtain international recognition. Japan's SDF thus are a way to develop the nation's diplomatic activities, to promote international peace and security and to get more recognition from the other members of the UN.

The international organization has also been important for Japan's foreign policy, because of the compatibility between Article 9 and the spirit of the UN Charter of resort to peaceful means in order to set international disputes. Furthermore, seeing in UN a symbol of United States power, Japan has adopted a UN-centered view for dealing with international policy, especially during the post-war period. Moreover, Japan is seeking to obtain a permanent seat in the Security Council and this has positively influenced its willingness to collaborate with the Organization.¹⁶⁶ Another reason for its activeness in peacekeeping operations is to be found in the need to maintain the "good international citizen" reputation, also derived from its pacifist constitution.¹⁶⁷

The Japanese Constitution still limits the attempts of the government to find a resolution to broaden the scope of collective defence and for now the SDF continues to not be able to participate in combat operations and, as a consequence, they cannot take part to some UN operations.

Article 9 and Japan's participation in UN Peacekeeping operations.

At the occasion of the institution of the SDF, Japan assumed as its official position that it would have never dispatched the SDF abroad, even if in accordance with the United Nations, as it would be seen as use of force and would therefore violate Article 9. When Japanese SDF participate in UN operations, however, "it is *ipso facto* Japanese contingents [...], but they are *ipso iure* not qualified to exercise the sovereign right of Japan."¹⁶⁸ In this sense, Article 9 cannot forbid Japan to send its SDF to serve in forces under the command of the UN, because in that situations they are considered not Japan's but UN's forces. As a matter of fact, when Japanese armed forces are placed under the command of the UN for the purpose of preserving international peace and security and not as war potential, legally the situation does not fall within the scope of Article 9 as long as they act under the UN command and pursuant to the UN Charter.

Many doubts have been expressed as to whether Japan as a member of the United Nations is required to send the Self-Defense Forces to serve as UN forces in peacekeeping operations. By virtue

¹⁶⁶ DOBSON, *Japan and the United Nations Peacekeeping*, op. cit., 137-140

¹⁶⁷ ISHIZUKA Katsumi, *Peacekeeping Contributor Profile: Japan*, Providing for Peacekeeping, January 2013, <http://www.providingforpeacekeeping.org/2014/04/03/contributor-profile-japan/>, 15/10/2018

¹⁶⁸ NASU, *Article 9 of the Constitution Revisited*, op. cit., p.59

of Article 98 (2) of the Japanese Constitution and of Article 25 of the UN Charter¹⁶⁹, Japan has to carry out all the decisions of the Security Council, but, in the case of military operations, it is not legally obliged to send his troops, unless otherwise stated in a special agreement.¹⁷⁰

Since its “checkbook diplomacy” days, Japan’s participation in peacekeeping operations has increased, even though, in relation with its financial support, its personnel contribution to the UN has been relatively low. Even today, debates over Japan’s peacekeeping policy tend to focus on the constitutionality of the SDF and of their deployment in UN operations. The constitutional restriction seems also to be one of the main motives for the low participation in peacekeeping, even if the majority of the public opinion, while being against a revision of the Constitution, supports Japan’s participation in Peacekeeping.

¹⁶⁹ Art.25 of the Charter calls the state members of UN to follow all decisions of the Security Council.

¹⁷⁰ In accordance with Article 43 of the Charter.

5. The Domino Effect

Since it has been promulgated, Article 9 of the Constitution of Japan has experienced various changes in its interpretation during the years. It is internationally known as the “peace clause” which, together with the preamble, makes the Japanese Constitution peace-oriented.¹⁷¹

On the 3 May 2017¹⁷², Prime Minister Abe Shinzō affirmed that he wanted the revision of the Constitution to be realized by 2020, and more recently, in an NHK television program, the Prime Minister has confirmed his intentions of amending the Constitution have not changed, though this time without setting a time limitation. The current LDP constitutional revision proposal provides also for a codification of the role and status of the SDF to be added to Article 9. The LDP has also criticized opposition party members for not having participated in the Diet debate on the amendment of the Constitution. This lack of participation, according to the Asahi Shinbun, is also connected to the lack of public support for Abe’s constitutional revision campaign, as shown by the results of the Asahi Shinbun survey in occasion of last year’s Constitution Day, where the 53 percent of the respondents was against the LDP amendment proposal.¹⁷³

If the majority of the public opinion was to become favourable to a constitutional revision and the LDP proposal should pass, this would have also a resonance on the international scene. On this regard, an interesting point of view is given by professor Schlichtmann, who claims that “an eventual revision [of Constitution’s Article 9] would have a *domino effect*, of which the last domino falling would be the UN”.¹⁷⁴ According to Schlichtmann in fact, if Japan was to acquire the right to collective self-defence through a revision of the Constitution, this would go against UN aim to create a system of collective security and instead of drawing closer to United Nations’ final purpose, the international system would get even farther away from it.¹⁷⁵ Article 9 has, according to the German scholar, the purpose and the potential to facilitate world-wide disarmament and pacifism, in

¹⁷¹ KATO Norihiro, *Japan’s Break with Peace*, The New York Times, 16 July 2014, https://www.nytimes.com/2014/07/17/opinion/norihiro-kato-japans-break-with-peace.html?_r=0, 25/10/2018

¹⁷² The 3 of May in Japan is the Constitution Memorial Day

¹⁷³ EDITORIAL: *Push to revise Constitution led by top leaders is unacceptable*, The Asahi Shinbun, 10 January 2019, <http://www.asahi.com/ajw/articles/AJ201901100039.html>, 13/01/2019

¹⁷⁴ SCHLICHTMANN, *The current situation*, op.cit., p.28, emphasis added.

¹⁷⁵ *Ibid.*, Schlichtmann points out how, before Article 9, the German Constitutional Court’s verdict, that identifies the collective self-defence as a collective security system in accordance with the UN Charter, had already a negative effect on the achievement of the UN’s objective.

that it can be seen as proof of their feasibility. However, even though there are other nations' constitutions that aim at international peace¹⁷⁶, the Japanese Constitution is the only one that contains the renunciation to war as a sovereign right of the nation. Therefore, "in order to become effective", it needs other nations to start following the same path as Article 9. The peace article thus functions as a precedent, "and following up would trigger the process of the transition to collective security stipulated in Article 106 of the UN Charter."¹⁷⁷

5.1. The importance of Article 9

The Article 9 of the Japanese Constitution, with its war renunciation provisos and its aim to international peace, has international relevance since it shares the aims of the UN Charter and of the constitutions of other countries to a system of collective security. Moreover, because of its constitutional demilitarization and war renunciation, it can also serve as a model for other UN member nations in their path toward the accomplishment of that system.¹⁷⁸ The fact that it is an article of the Constitution is important, because this makes it a legally binding constitutional provision rather than a statement of intent, as it would be if it was written in the preamble. This qualifies it as a unique constitutional case in that it requires war renunciation and disarmament and is a compulsory norm.

The scope of the right of self-defence in international law tends to be broadened by nations, as for example happened when Israel attacked a nuclear reactor in Iraq, justifying the action as preventing a future Iraq's possession of nuclear weapons. Another example is to be found in the US notion of "pre-emptive self-defence". Basically, this right has undergone many interpretations and has been used even to justify some nation's acts, thus if widened too much it could jeopardize the international balances by becoming the motivation for aggressive war. However, Article 9 interpretation plays an important role in limiting the use of

¹⁷⁶ For example, the constitutions of Denmark, France and Italy, that aim to international peace, even though while agreeing also to the limitation of sovereignty, they put this limitation under condition of reciprocity.

¹⁷⁷ SCHLICHTMANN, *The current situation*, op.cit., p.25. In Article 106 is stipulated that the process of transition would need the permanent members to be in charge of security while other nations disarm to the minimum level.

¹⁷⁸ SCHLICHTMANN, *The current situation*, op.cit., p.22

self-defence and this has prevented other countries from fearing a “revival of militaristic control” of Japan.¹⁷⁹

At the beginning of May 2008 took place the Global Article 9 Conference to Abolish War, an international conference where the principles of the article were discussed in the light of their international importance. The article provides, in fact, some basis for a peaceful approach to international relations, in that it could help Japan, that has historically had a traumatic experience with nuclear weapons, to gain a prominent role in nuclear non-proliferation, that is becoming a more and more urgent matter in the international situation. On top of that, Article 9 has also helped Japan to have an important role in Human Security through the respect of human rights and security based on non-violent methods. At the Global Conference, Article 9 has been referred to as an important model for reaching global peace and stability. It has been added that this article could help to reach the abolition of war and to promote peace as a human right. “Japan should abandon the path of militarization [...] to create a peaceful, just and sustainable world.”¹⁸⁰

The relevance of this article has also gained it a nomination to the Nobel Peace Prize in 2014. The Committee’s acceptance of Article 9’s nomination was already a victory for who still believes in the peace article and tries to protect it from an amendment. The people who nominated it to the Nobel Prize were both Japanese and international figures who still believe in the Article validity.¹⁸¹

¹⁷⁹ NASU, *Article 9 of the Japanese Constitution*, op.cit., p.55.

¹⁸⁰ NAHORY Céline, *Japan’s International Contributions: Article 9 as an alternative to the militarization of international responses*, PRIME Journal, no.28, 2008, International Peace Research Institute, Meijigakuin University, Tōkyō, pp.27-30: 29-30

¹⁸¹ DUDDEN Alexis, *The Nomination of Article 9 of Japan’s Constitution for a Nobel Peace Prize - 『日本国憲法第9条ノノーベル平和章候補に』*, *Nihonkoku kenpō daikujō nōberu heiwashō kōho ni*, «The Asian Pacific Journal - Japan Focus», <https://apjif.org/-Alexis-Dudden/4792/article.html>

5.2. The interconnections between Article 9 and the UN

The question of the revision of Article 9

The ongoing debate over the amendment of the Constitution of Japan started during the 1950s with the institution of the defence forces, is focused on Article 9's war renunciation. This article, with its war renunciation and its rejection of armaments, is the principal element that gained the Peace Constitution its nickname. The Government of Japan (GOJ) has adopted as official position that, since the constitutional renunciation to war concerns military aggression, Japan's intrinsic right of self-defence is not denied. On this basis, the GOJ has also declared that the SDF are constitutional because they are the minimum essential capability for self-defence.¹⁸²

There are four main reasons given by those who support the constitutional revision: that the charter has been imposed by the United States, that a military force is needed for the defence of Japan, that Article 9 needs to be changed in order to strengthen the alliance with the United States, and lastly that the Constitution needs to be changed in order to contribute to international peacekeeping operations under the UN.¹⁸³

In 1994, the *Yomiuri Shinbun* was advancing a proposal of amendment of the Constitution where it suggested to replace the second proviso of Article 9 with one allowing armed forces but prohibiting aggressive war. Other proposals came also by politicians such as Nakasone Yasuhiro¹⁸⁴ and Hatoyama Yukio.¹⁸⁵

The constitutional revision, namely the amendment or abrogation of Article 9, has been supported by the *Nippon Kaigi*, a right-wing unincorporated political organization that since its foundation in 1997 aims to the restoration of the traditional imperialistic Japan and to reaffirm the right of the nation to have an army with the same characteristics as the ones of the other nations. Prominent members of the organization include the majority of the ministers of the present government, Prime Minister Abe himself, and Koizumi Jun'ichirō.¹⁸⁶

¹⁸² 『憲法改正 : 9条をめぐる論点』 (*Kenpō kaisei: 9jō o meguru ronten - Constitutional reform: the discussion over Article 9*), Nippon.com, 10/8/2016, <https://www.nippon.com/ja/features/h00146/>, 30/09/2018

¹⁸³ KAWASAKI, *Article 9's Global Impact*, op.cit.

¹⁸⁴ Nakasone has been Prime Minister from 1982 until 1987

¹⁸⁵ Prime Minister from 2009 to 2010

¹⁸⁶ RAMAIOLI, *Addio alle armi*, op.cit., p.28

In 2005, under Koizumi government, was presented the first more structured reform plan, that envisaged the amendment of a certain number of legislations related to the article, and to insert in it a specific reference to Japan's right to self-defence and to SDF, changing also their name in "Self-Defense Army". However, the draft did not mention changes of the war renunciation proviso, because the purpose of the document was to keep the peace image embedded in the Constitution and to give more freedom to the SDF.¹⁸⁷ This project did not have success also because of the popular pacifism and the requirement of a popular referendum for the constitutional revision.¹⁸⁸ Also, for the constitutional revision, the LDP needed the approval of the majority of the two-thirds of both Chambers, but the DPJ¹⁸⁹ was not in complete agreement with the draft since it preferred the role of the SDF to be strictly limited to self-defence.¹⁹⁰

The amendment of the Japanese Constitution is also one of the main points of Abe's government program and it was already proposed by him when he was Chief Cabinet Secretary in 2006. Moreover, shortly after his appointment as Prime Minister that same year, North Korea during some nuclear tests exploded a rocket while the Prime Minister was going to South Korea to meet the head of the state. This fact was seen by Abe as another motivation for the amendment. In 2007 has been instituted the House of Representatives Commission on the Constitution, where the discussions over Article 9 and its eventual amendment concern mainly the constitutionality of the defence forces, the right of self-defence and the Japanese cooperation in international security operations.

Prime Minister Abe Shinzō and his LDP have been calling for an amendment of the Constitution for a while now, mainly arguing that Article 9 is no more up to date with the international situation. On the contrary, the Left argues that the country security policy should be in line with the Constitution. There are also moderates that advocate the approval of new laws alongside the maintenance of Article 9 as it is, whereas some liberals hope for a definition of the duties and scope of the SDF to be added in the Constitution.¹⁹¹

¹⁸⁷ KAWASAKI, *Article 9's Global Impact*, op.cit.

¹⁸⁸ RAMAIOLI, *Disarmo e riarmo nella Costituzione giapponese*, op.cit., p.128.

¹⁸⁹ The Democratic Party of Japan

¹⁹⁰ CRUCIANI, Ludovico Pollastro, *Articolo 9 della Costituzione giapponese: Revisione costituzionale e il problema della sicurezza nazionale attraverso il cambiamento sistemico*, LUISS, Dipartimento di Scienze Politiche, 2016, p.42

¹⁹¹ *Kenpō kaisei*, nippon.com, op.cit.

In 2012 the LDP has released a draft for the constitutional amendment, where the SDF were renamed “National Defense Force” and their legitimate role, along with Japan’s right of self-defence, was inserted. In this draft, only the first proviso was maintained and the second one was substituted with one on the purposes and functions of the “NDF”.

On the other hand, the Kōmeitō, while officially open to the amendment, has not supported any attempt of Article 9 revision yet. On the 21 July 2016, in a press conference the Party representative Yamaguchi Natsuo stated “After having pointed out the current interpretation of Article 9, we have created the security legislation (brought into force in March 2016¹⁹²). We do not intend to contradict our own position.”¹⁹³ In fact, while the Nippon Kaigi is supporting the LDP in its constitutional amendment process, the Kōmeitō party sustains that the principles of eternal pacifism, fundamental rights and people’s sovereignty should be maintained in the Constitution.¹⁹⁴

According to the “Opinion poll on the Constitution” conducted by the NHK in April 2016, the majority of the surveyed didn’t support a revision of Article 9. According to the survey, among the supporters of the amendment, the majority thought that “the ability to possess self-defence force has” to be stated clearly in the Constitution”; whereas the majority of the surveyed that were against it gave as a reason that “It is the most important article of the pacifist Constitution”.¹⁹⁵

In 2017 Abe proposed another revision of Article 9 with the aim to add to the Constitution a clear mention of the SDF, but this time keeping both it already existing provisos. This proposal was then compared by the LDP’ Headquarters for the Promotion of Revision to the Constitution with the other proposal of deleting the second proviso and identifying the Self-Defence Forces as war potential. However, to amend the Constitution adding the mention to the SDF and leaving the second paragraph of the peace article intact would be quite difficult. As the Mainichi editorial of March 2018 points out in fact, the solution would be to add also a new clause allowing the “maintenance of ‘an organization with force existing at the minimum necessary level for self-defence’”. But then there would

¹⁹² He is talking about the security legislation written by the Abe cabinet with the support of the Komeito in 2015, based on the new interpretation of Article 9 permitting collective self-defence

¹⁹³ *Kenpō kaisei*, nippon.com, op.cit.

¹⁹⁴ TSUJI Yuichirō, *Reflection of Public Interest in the Japanese Constitution: Constitutional Amendment*, «Denver Journal of International Law & Policy», vol. 46, no.2, 2018, pp.159-190: 165-168

¹⁹⁵ *Kenpō kaisei*, nippon.com, op.cit., 22,1% pro-amendment and 39,2% opposed.

be the problem of defining the scope of this “minimum necessary level” in order to comprehend if it also would comprise collective self-defence.¹⁹⁶

Nonetheless, there are also some opinions opposing the party’s amendment proposal within the party. In fact, as reported by The Mainichi, last year Yamamoto Kōzō, an LDP member close to the Prime Minister, wrote with regards to the revision of Article 9 that “Discussions on how to avoid war should be prioritized over revising Article 9”¹⁹⁷, thus declaring his opinion that a revision of the article is unnecessary. He also expressed his opposition towards the inclusion in the article of a proviso mentioning the SDF while keeping the war renunciation and disarmament clauses, and towards the replacement of the second paragraph of the article with one on the SDF. Yamamoto also stated that an eventual revision would open discussions on the limits of the forces’ field of action and would lead to a decrease of the public support they have gained during the years.¹⁹⁸

On the 14 February of this year, the LDP has distributed to party-affiliated parliamentarians a document entitled “Request for the Cooperation of the Local Public Bodies with regards to Self-Defense Forces Recruitment”¹⁹⁹, which explains that the Defense Ministry and the SDF are requesting the municipalities to submit information about the local potential recruitment candidates. This document aims to verify Abe’s thesis that more than 60 percent of the prefectures do not want to cooperate in the recruitment. Nevertheless, approximately 53 percent of the municipalities are actually allowing transcription and browsing of the basic resident register for SDF recruiting. If combined with the percentage of municipalities that submit lists of names through paper or electronic documents, nearly 90 percent of municipalities is cooperating in recruitment operations.²⁰⁰

¹⁹⁶ Editorial: LDP’s proposed revision to Article 9 fraught with problems, Mainichi, 1 March 2018, <https://mainichi.jp/english/articles/20180301/p2a/00m/0na/019000c>, 10/08/2018

¹⁹⁷ 「9条改正の前に戦争回避の議論が先決」, “*Kyujō kaisei no mae ni sensō kaihi no giron ga senketsu*”

¹⁹⁸ 『山本元地方創生相「9条改正前に戦争回避の議論が先決」』, Yamamoto moto chihō sōseisō “*kujō kaisei maeni sensō kaihi no giron ga senketsu*”, The Mainichi, 2/11/2018, <https://mainichi.jp/articles/20181103/k00/00m/010/029000c>

¹⁹⁹ 「自衛官募集に対する地方公共団体の協力に関するお願い」, *Jieikan boshū ni taisuru chihōkōkyōdantai no kyōryoku ni kansuru onegai*.

²⁰⁰ 『自民党、自衛官募集協力の要請文書配布 首相を後押しか』, *Jimintō, jieikan boshū kyōryoku no yōsei bunsho haifu shushō o atooshi ka* (LDP, distribution of the document requesting the (continued) cooperation for SDF recruiting. Prime Minister backing?), Asahi Shinbun, 14/02/2019, <https://www.asahi.com/articles/ASM2G6RXRM2GUTFK01P.html>

Possible consequences of an eventual Article 9 revision on UN

Abe and the LDP aim to revise Article 9 and to change or eliminate its second paragraph in order to enable Japan to exercise the right of collective self-defence in accordance with Article 51 of the UN Charter. According to them, the first paragraph does not forbid Japan to exercise his right of self-defence, including the collective one. In their view, the only thing that strictly limits the Japanese use of force is the second paragraph of the Article. However, due to public opposition towards the revision that parallels the approval towards the current status of the SDF, Abe has decided for the time being to limit his proposal to the sole inclusion to the Peace Constitution of a paragraph concerning the SDF.²⁰¹

Moreover, Japan willingness to obtain permanent membership has led it to wish for the achievement of a more active role within the organization, even though, as some have argued, since the Peacekeeping Operations have extended their range to comprehend even missions that in certain cases authorize the use of force for civilian protection, it can be questioned whether the participation of the SDF is in accordance with Article 9 or not. If so, and if a more active approach would be really advisable, maybe an amendment of the article would be advisable, even though some academics and politicians also sustain that Article 9 as it is should be seen as a mean to promote world peace and to lead the way for other UN members to reach nuclear, if not total, disarmament.²⁰²

According to the New York Times, on the contrary, Japan has to change Article 9(2) in order to be more active in its participation in UN operations and with regards to the US-Japan security relations. The proviso should be changed in order to recognize to Japan both individual and collective self-defence and to officially make the SDF the Japanese military defence force for contribution in international operations lead by UN.²⁰³

²⁰¹ YOSHIDA Reiji, *Abe's route to revising Article 9 crosses minefield with legalese*, The Japan Times, 12 March 2018, <https://www.japantimes.co.jp/news/2018/03/12/reference/abes-route-revising-article-9-crosses-minefield-legales/#.XGrC6qJKjIV>, 16/10/2018

²⁰² NAHORY, *Japan's International Contributions*, op.cit., pp.28-29

²⁰³ KITAOKA Shinichi, *A New Role for Japan's Military*, «The New York Times», 4 June 2015, <https://www.nytimes.com/2015/06/05/opinion/shinichi-kitaoka-a-new-role-for-japans-military.html>

Conclusions

Article 9 is important for both the principles it promotes and for its historical role. This article, in fact, was born during a difficult period for Japan and for the world, where people and politicians wished more than ever for peace to be durable. Moreover, in the previous decades, many important historical facts attested that international exchanges were changing and becoming more globally oriented. Precedents as the Hague Peace Conferences, the League of Nations and the Kellogg-Briand Pact attested how Nations were starting to give more importance to international cooperation, often promoting peace and non-use of force in international relations, even though until the Second World War all the attempts to reach an international peace did not prove successful.

With the end of the Second World War approaching, the Allied Powers decided to create an organization for the promotion of international exchanges, that would advocate for the peaceful resolution of international disputes, in order to prevent another war like the one just ended to happen.

On the last year of the war, the delegates of 50 Allied nations came together in the Conference of San Francisco, where the United Nations were finally created.

After two years the Constitution of Japan came into force, and its famous Article 9 contained the same principles promoted by the UN and introduced all the conferences and documents of the previous decades. The Japanese constitutional renunciation to war and to the use of force was welcomed positively by the Japanese people, after the disasters of Hiroshima and Nagasaki and the defeat.

Even though the origins of the peace article are still subject of discussion, recently scholars seem to agree over the fact that while the principles of war renunciation and non-use of force were firstly introduced by Prime Minister Shidehara, the decision of inserting them in the Constitution finally came from General MacArthur.

An important role in both the birth of the UN and the writing of the Constitution was played by the United States, who also had given birth to the League of Nations. And the United States again were the ones that made Japan form its police forces in 1950, that would have soon become the SDF.

These forces were at first opposed by the public opinion and by the international scene that saw them as a signal of Japan's rearmament.

In order to institute the forces and to use them for helping the United States and the UN in their international operations, the Government of Japan started changing the interpretation of Article 9. Another reason for the government to change the interpretation of the article was to affirm Japan's right to self-defence.

Some years later, the Government become also interested in amending Article 9 in order to broaden the scope of the SDF, but this has not been well seen from the population and until today any changes or amendment of the Constitution have been made.

Even today, many people are questioning the constitutionality of the Self-Defence Forces, and their participation in the UN Peacekeeping operations, even though they have now gained large favour from the Japanese public opinion.

Until today, Japan has participated in thirteen peacekeeping operations and while some are sustaining that in order to be more active in the UN operations Article 9 needs to be amended so that the SDF will gain more freedom of action; others sustain that being the article's principles closely connected with the ultimate goal of the United Nations, a system of collective security, a revision of this article would be a serious blow to the UN as well.

As Schlichtmann states, an eventual revision could cause what he calls the *domino effect*, thus ultimately making the UN system fall down.

A change in Article 9 would probably mean an improvement in the scope of the SDF and will as well open them new opportunities of participation in the international scene. However, the peace article is by many seen as the example that a system of collective security based on peace and disarmament to a minimum level could be possible and if it remains as it is it could possibly lead other countries to the path towards the fulfilment of the UN final objective and to international peace.

To conclude, even though an amendment of the Constitution could have positive results in the Japanese international participation, if an amendment to such an article would pass, the constitutional change will not only affect the Self-Defense Forces and Japan, but also threaten the delicate balance of East Asian states' relations and it would signify the fall of "one of the most important models of a demilitarized state that the world has ever seen."²⁰⁴

²⁰⁴ KAWASAKI Akira, *Article 9's Global Impact*, Foreign Policy In Focus, 26 July 2007, https://fpif.org/article_9s_global_impact/, 15/10/2018

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