

**JAPAN’S PACIFIST CONSTITUTION: IMPOSED ON IT BY
THE UNITED STATES, NOW JAPAN SCRAMBLES TO
ANSWER NORTH KOREA’S THREATS**

Joshua D. Caron, MSgt, USAF, Ret.*

ABSTRACT	184
I. INTRODUCTION.....	184
II. ISSUE: A NUCLEAR CAPABLE NORTH KOREA IS PARTICULARLY ALARMING FOR JAPAN	186
A. <i>North Korea’s Current Military, ICBM, and Nuclear Capability (estimated)</i>	188
III. BACKGROUND: HOW THE UNITED STATES BECAME OBLIGATED TO DEFEND JAPAN	191
A. <i>The U.S. Military Drafted Japan’s Constitution</i>	192
B. <i>The Evolving Interpretation of Japan’s War Renunciation Clause</i>	196
C. <i>The United States Retreats from the War Renunciation Clause It Imposed on Japan</i>	200
D. <i>The Growth of Japan’s Self-Defense Force</i>	201
E. <i>Japan’s Annexation of Korea and Alleged War Crimes</i>	203
F. <i>The Evolution of the Laws Pertaining to Japan’s SDF and the United States</i>	205
1. <i>Treaty of Mutual Cooperation and Security</i>	206
2. <i>Peace Keeping Operations and Other Operations (PKO Law)</i>	207
3. <i>Guidelines for U.S.-Japan Defense Cooperation</i>	207
4. <i>Anti-Terrorism Special Measures Law (Law No. 113 of 2001)</i>	208

* The author is a retired Air Force Master Sergeant with nine years of operational military experience in Far East Asia and a Juris Doctor candidate at Syracuse University College of Law (May 2019). The author would like to express his sincere appreciation to Professor Shannon P. Gardner and Yesim Usluca (L ‘18) for their invaluable assistance and guidance.

5. <i>Law Concerning Ensuring National Independence and Security in a Situation of Armed Attack (Law No. 79 of 2003)</i>	208
6. <i>Iraq Special Measures Law (Law No. 137 of 2003)</i>	209
7. <i>Law Concerning Measures Relating to U.S. Military Actions (Law No. 113 of 2004)</i>	209
IV. ANALYSIS: WHAT SOLUTIONS ARE AVAILABLE TO JAPAN AND WHAT ROLE SHOULD THE UNITED STATES PLAY?.....	210
A. <i>Japan's Pacifist Constitution of 1947 is Illegal Under International Law</i>	210
B. <i>Proposal—The United States Benefits from its Military Bases in Japan and Should Take an Active Role to Protect Japan's Interest</i>	213
V. CONCLUSION	220

ABSTRACT

Though Japan has an inherent right to self-defense, Article 9 of its Constitution expressly renounces war as a means to resolve international disputes. Currently, Japanese nationalists and the United States encourage the government of Japan to reconsider Article 9 and to rebuild its military. With recent threats from North Korea, including a ballistic missile launch over the Japanese island of Hokkaido into the Pacific Ocean, is Japan left to defense tactics only? The Treaty of Mutual Cooperation and Security of 1960 obliges the United States to defend the sovereign territories of Japan, but does the United States have a legal or even moral obligation to defend Japan from *threats*? The current treaties between the United States and Japan lack the necessary specificity to assure Japan's domestic and regional interests. I posit the United States has a moral obligation to defend Japan's interest against not only physical attacks, but also from North Korean threats.

I. INTRODUCTION

North Korea has been developing its Inter-Continental Ballistic Missile ("ICBM") and nuclear capability in earnest since Kim Jung Un succeeded his father in 2011 as the preeminent ruler of the reclusive state. This capability, along with Kim's threatening rhetoric, causes concern in the region and beyond. Indeed, North Korea remains the only state in the

world to have tested nuclear weapons in the twenty-first century, performing tests on at least five separate occasions.¹ The North Korean threat combined with Japan's pacifist Constitution poses a significant security risk for Japan.

Part II frames the issues throughout the note and introduces how the underdeveloped state of North Korea can pose a significant threat to Japan, arguably one of the most advanced nations in the world. Part II also explains the legal limitations within which Japan is forced to operate due to its pacifist Constitution.

Part III provides a history of the development of Japan's current Constitution and the United States' involvement in its drafting process. This section also addresses the evolution in interpreting Article 9 of Japan's Constitution to where it stands today. It further depicts why the United States began to lose favor with Article 9 and how that ultimately led to Japan's adoption of a Self-Defense Force ("SDF"). An overview of the SDF's history follows and includes its capabilities—both legally and operationally. Part III concludes with a historical backdrop of Japan and North Korea, which provides the basis for the current tensions between the two countries. Part III assesses the significant legal treaties and guidelines between Japan and the United States and how they expand the SDF's capacity.

Part IV examines the limitations of Japan's Constitution from a legal perspective and why some may consider it to violate international law. This forms the foundation for why the United States has not only a legal obligation to defend Japan against an attack, but also a moral obligation to defend Japan against threats.

In sum, this note critiques the United States' involvement in drafting Japan's Constitution, and concludes that because of this involvement (along with the strategic benefits the United States enjoys from its large military presence in Japan), the United States is responsible to ensure Japan's wellbeing from threats.

1. Jonathan D. Pollack, *The Threat from North Korea*, BROOKINGS (Apr. 24, 2017) available at <https://www.brookings.edu/blog/unpacked/2017/04/24/the-threat-from-north-korea/> (last visited Oct. 20, 2018).

II. ISSUE: A NUCLEAR CAPABLE NORTH KOREA IS PARTICULARLY ALARMING FOR JAPAN

How can a country with one of the weakest economies in the world (197th in 2013),² one that relies heavily on foreign support,³ be a feasible threat to Japan, a country that enjoys the world's third strongest economy?⁴ North Korea, indeed, remains determined to stay closed off from the Western world to avoid exposure "to the contagion" of foreign influence,⁵ yet it depends on foreign aid to feed its own people. Despite its weak economy, North Korea is home to the fourth largest conventional military the world knows.⁶ But it is not a conventional attack that threatens the region; it is North Korea's nuclear and ICBM capabilities that keeps the world concerned.

In the last two years, North Korea conducted approximately 30 ballistic missile tests.⁷ These tests, coupled with the aggressive rhetoric by

2. Rick Newman, *Here's How Lousy Life Is in North Korea*, U.S. NEWS AND WORLD REP. (Apr. 12, 2013), available at <https://www.usnews.com/news/blogs/rick-newman/2013/04/12/heres-how-lousy-life-is-in-north-korea> (last visited Oct. 20, 2018).

3. As recently as January 2017 (shortly before Donald Trump was sworn in as President), U.S. Secretary of State John Kerry awarded \$1 million to UNICEF for North Korea for humanitarian assistance. Baik Sung-won, *US Humanitarian Aid Goes to North Korea Despite Nuclear Tensions*, VOA NEWS (Jan. 25, 2017), available at <https://www.voanews.com/a/united-states-humanitarian-aid-goes-to-north-korea/3692811.html> (last visited Oct. 20, 2018). The U.K. has provided more than £4 million (\$5.2 million) to North Korea in six years. Jack Maidment, *UK 'Gave Millions in Foreign Aid' to North Korean Regime Now Threatening Nuclear War*, THE TELEGRAPH (Apr. 18, 2017), available at <http://www.telegraph.co.uk/news/2017/04/18/uk-gave-4-million-foreign-aid-north-korea-past-six-years/> (last visited Oct. 20, 2018).

4. *Best Countries—Japan*, U.S. NEWS AND WORLD REP., available at <https://www.usnews.com/news/best-countries/japan> (last visited Oct. 20, 2018).

5. *2017 Index of Economic Freedom, North Korea*, HERITAGE, available at <https://www.heritage.org/index/pdf/2017/countries/northkorea.pdf> (last visited Oct. 20, 2018).

6. Eleanor Albert, *North Korea's Military Capabilities*, COUNCIL ON FOR. REL. (June. 6, 2018), available at <https://www.cfr.org/backgrounder/north-koreas-military-capabilities> (last visited Oct. 20, 2018). Even with a weak GDP, North Korea spends approximately a quarter of its GDP on its military. Between 2004 and 2014, it is estimated that North Korea spent approximately \$3.5 billion annually on its military. *Id.*

7. Rosie Perper, *These Striking Photos Capture the Major Missile Launches North Korea Has Conducted in 2017*, BUS. INSIDER, available at <https://www.businessinsider.com/photos-of-north-koreas-major-missile-and-rocket-launches-to-date-2017-11> (last visited Oct. 20, 2018). For a definition of a "ballistic missile," see *Ballistic Missile*, WIKIPEDIA, available at https://en.wikipedia.org/wiki/Ballistic_missile (last visited Oct. 20, 2018) (stating that:

the North Korean dictator,⁸ cause regional tensions to escalate. Despite international warnings, North Korea launched two ballistic missiles into the Sea of Japan in July 2017 and another ballistic missile *over* Japan into the Pacific Ocean in August 2017, thus increasing the reality of the threats.⁹

North Korea's growing weapons capability, coupled with its aggressive testing, is cause for global concern. As of 2015, South Korea represented the eleventh strongest economy in the world,¹⁰ while Japan's economy ranks third.¹¹ China, also a key player, holds the world's second largest economy.¹² Consequently, a military conflict in the region would result in a disastrous outcome for the global economy.

Geographically, The Republic of Korea (South Korea) and Japan are the most susceptible to an attack from North Korea. Perhaps most vulnerable is Japan. Japan's vulnerability lies not only in its geographic proximity, but also within Article 9 of its Constitution. Specifically, Article 9 renounces war and use of force as a means for resolving disputes:

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.

A ballistic missile is a missile which follows a ballistic trajectory to deliver one or more warheads on a predetermined target. These weapons are only guided during relatively brief periods of flight—most of their trajectory is unpowered, being governed by gravity and air resistance of the atmosphere. Shorter range ballistic missiles stay within the Earth's atmosphere, while longer-ranged intercontinental ballistic missiles (ICBMs), are launched on a sub-orbital flight trajectory and spend most of their flight out of the atmosphere.).

8. For example, "Once an order is issued, you should break the waists of the crazy enemies, totally cut their windpipes and thus clearly show them what a real war is like." Sarah Sicard, *The Most Ridiculous Threats to Come Out of the North Korea in the Last few Years, Ranked*, BUS. INSIDER (Apr. 21, 2017), available at <http://www.businessinsider.com/ridiculous-threats-from-north-korea-ranked-2017-4> (last visited Oct. 20, 2018).

9. Tomoyuki Tachikawa, *U.S.-Japan Ties at "Highest Point" Amid N. Korea Woes: New U.S. Envoy*, KYODO NEWS (Sept. 12, 2017), available at <https://english.kyodonews.net/news/2017/09/df511b512c82-us-japan-ties-at-highest-point-amid-n-korea-woes-new-us-envoy.html> (last visited Oct. 20, 2018).

10. Kim Kyung-rok, *South Korea's Economy 11th Biggest in the World as of 2015*, HANKYOREH (Aug. 17, 2016), available at http://english.hani.co.kr/arti/english_edition/e_business/757139.html (last visited Oct. 20, 2018).

11. Alex Gray, *The World's 10 Biggest Economies in 2017*, WORLD ECON. F. (Mar. 9, 2017), available at <https://www.weforum.org/agenda/2017/03/worlds-biggest-economies-in-2017/> (last visited Oct. 20, 2018).

12. *Id.*

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.¹³

Despite the language of the second paragraph, Japan maintains ground, air, and naval forces.¹⁴ Japan cleverly refers to the military branches as defense forces—the “ground defense force,” the “air defense force,” and the “naval defense force.”¹⁵

Due to its pacifist constitution, Japan lacks the ability to wage war or conduct preemptive military operations, but it does maintain an SDF.¹⁶ The SDF is limited in scope to the defense of Japan and its territories.¹⁷ Thus, short of an overt attack, Japan stands nearly-powerless to respond to North Korean threats. Recent guidelines, however, expand the role of Japan’s SDF. In 2015, Japan and the United States agreed to a new set of defense guidelines, which essentially expanded the capabilities of the SDF.¹⁸ Even with the SDF, since World War II (“WWII”), Japan necessarily relies on the United States for defense.¹⁹ Furthermore, the history involving the region’s major players lies significant to the current situation.

A. North Korea’s Current Military, ICBM, and Nuclear Capability (estimated)

North Korea’s military is not a world power, but it remains a valid threat to regional peace and beyond.²⁰ A ground invasion against Japan

13. NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 9, para. 1-2 (Japan).

14. Brad Lendon, *Resurgent Japan Military ‘Can Stand Toe to Toe with Anybody,’* CNN (Dec. 7, 2016), available at <https://www.cnn.com/2016/12/06/asia/japan-military-pearl-harbor-anniversary/index.html> (last visited Oct 21, 2018).

15. Sayuri Umeda, *Japan: Article 9 of the Constitution* 1, 1, L. LIBR. OF CONG. (2006), available at <https://www.loc.gov/law/help/japan-constitution/japan-constitution-article9.pdf> (last visited Oct. 21, 2018).

16. Kyle Mizokami, *Inside the New U.S.-Japan Defense Guidelines*, USNI NEWS (Apr. 29, 2015), available at <https://news.usni.org/2015/04/29/inside-the-new-u-s-japan-defense-guidelines> (last visited Oct. 21, 2018).

17. *Id.*

18. See generally U.S. DEP’T OF DEF., THE GUIDELINES FOR U.S.-JAPAN DEFENSE COOPERATION (Apr. 27, 2015), available at http://archive.defense.gov/pubs/20150427_GUIDELINES_FOR_US-JAPAN_DEFENSE_COOPERATION.pdf (last visited Oct. 21, 2018) [hereinafter GUIDELINES FOR U.S.-JAPAN DEFENSE COOPERATION].

19. Doug Bandow, *It’s Time to End Japan’s Defense Dependence on the United States*, FORBES (Jan. 28, 2013), available at <https://www.forbes.com/sites/dougbandow/2013/01/28/its-time-to-end-japans-defense-dependence-on-the-united-states/#35551b783185> (last visited Oct. 21, 2018).

20. The North Korean Army is sizable (intelligence sources put it around 1.19 million, making it one of the most powerful in the world). Cristina Silva, *What*

is highly unlikely; however, North Korea's ballistic missile threat to Japan is very real. As tensions between the United States, South Korea, Japan, and North Korea rise, Japan will require more than one arrow in its quiver to respond to North Korea.

North Korea's most operative threat is in the form of a nuclear bomb delivered via ballistic missile. North Korea continues to build its nuclear program, which began in the late 1950s.²¹ Initially only able to construct a nuclear research reactor, North Korea progressed to light-water reactors, and eventually to nuclear bombs.²² The United States estimates that North Korea holds somewhere between 30–60 nuclear bombs.²³ In recent years, North Korea conducted six known tests of its nuclear weapons:

North Korea's Military Looks Like Compared to the U.S., NEWSWEEK (Apr. 25, 2017), available at <http://www.newsweek.com/what-north-koreas-military-looks-compared-us-589688> (last visited Oct. 21, 2018). The North Korean Navy (presumably a delivery vehicle option of ground forces) relies on obsolete equipment—simply transporting ground forces to Japan would prove problematic. Oliver Steward, *How Dangerous Is North Korea's Navy?* UK DEFENCE J. (Sep. 27, 2017), available at <https://ukdefencejournal.org.uk/how-dangerous-is-north-koreas-navy/> (last visited Oct. 21, 2018). Furthermore, North Korea's fleet of more than 1,300 aircraft (traditionally another transport option of ground troops) are outdated, primarily Soviet legacy models, and are generally responsible for defending North Korean Airspace. Simply put, they are not capable attack aircraft or capable troop transport aircraft. North Korea possesses only a handful of modern aircraft—the most capable of which are Pyongyang's fleet of 35 or so Mikoyan MiG-29 Fulcrums fighter aircraft. Other relatively modern planes in Pyongyang's inventory include 56 MiG-23 Floggers and 34 Sukhoi Su-25 Frogfoot close air support aircraft. Avinash Bhunjun, *How Powerful Is the North Korean Air Force?* METRO UK (Sept. 26, 2017), available at <http://metro.co.uk/2017/09/26/how-powerful-is-the-north-korean-air-force-6955891/> (last visited Oct. 21, 2018). Furthermore, Japan hosts the largest concentration of U.S. troops outside of the United States. See Julia Zorthian & Heather Jones, *Boots on the Ground*, TIME (OCT. 16, 2015), available at <http://time.com/4075458/afghanistan-drawdown-obama-troops/> (last visited Oct. 21, 2018). Japan's Air Defense force far exceeds the capabilities of North Korea's. Additionally, there is a sizable presence of U.S. Air Force assets stationed in Japan. Yokota Air Base is located just outside Tokyo and is the Headquarters for U.S. Forces Japan. The base also serves as the logistical hub for the region and hosts a squadron of cargo and troop-carrying aircraft. To the north is Misawa Air Base, which hosts two F16 Fighter Squadrons. To the south in Okinawa, Japan sits Kadena Air Base, which is home to two F15 Fighter Squadrons, an Airborne Warning and Control Systems (AWACS) Squadron, a Tanker Squadron (to provide inflight air refueling) a Rescue Squadron, and an Aeromedical Evacuation Squadron.

21. Albert, *supra* note 6. Initially North Korea had some assistance from the Soviets and later from China and Pakistan, but the growth of its nuclear capability has largely been domestic. *Id.*

22. *Id.*

23. *Id.* Other estimates put the number somewhere closer to fifteen to twenty nuclear bombs. *Id.*

October 2006; May 2009; February 2013; January and September 2016; and September 2017.²⁴

It is not definitively confirmed, but U.S. intelligence analysts believe that North Korea developed the ability to miniaturize its nuclear payload to fit in an ICBM warhead.²⁵ This capability would validate that North Korea is a substantial nuclear threat to the region and the United States. Simultaneously, the North Korean government has been increasing its ICBM capability. What good is a nuclear bomb with no means of delivering it?

Currently, North Korea's arsenal of ballistic missiles range from short-range missiles (with a range of 120–170 km, or 75–105 miles) to the ICBM "Hwasong-14" (with a range of 10,400 km, or 6,400 miles).²⁶ Though California and Japan fall well within the range of North Korea's ballistic missiles, it remains uncertain how powerful of a nuclear weapon North Korea can condense to fit into an ICBM warhead.²⁷ North Korea's guidance systems are also questionable. Some analysts assert that North Korea has been relying on outdated Soviet guidance systems, though others speculate they are now beginning to introduce GPS guidance to their ICBM weapons systems.²⁸

24. Albert, *supra* note 6. Each nuclear test has increased in power. The test in 2017 was seventeen times more powerful than its first in 2006. *Id.*

25. Bonnie Berkowitz, Laris Karklis, & Kevin Schaul, *How Four Launches Signaled New Leaps in North Korea's Missile Capabilities*, WASH. POST (Nov. 18, 2017), available at https://www.washingtonpost.com/graphics/2017/world/north-korea-launch/?utm_term=.85f41c5b8b12 (last visited Oct. 21, 2018). This article puts the September 2017 nuclear test at seven times greater than the first atomic bomb dropped on Hiroshima in 1945. *Id.*

26. *Id.* For reference, North Korea is approximately 2,110 miles from Guam, 4,660 miles from Hawaii, and 5,600 miles from California. Chris Baynes, *North Korea Missiles "Now Capable of Hitting Guam"*, THE INDEP. (Sept. 15, 2017), available at <https://www.independent.co.uk/news/world/asia/north-korea-missiles-guam-japan-us-territory-pacific-ocean-island-pyongyang-military-base-donald-a7947741.html> (last visited Oct. 21, 2018); see also Sebastian Kettley, *Could North Korea Bomb Hawaii? How Far Away Is Hawaii From North Korea?*, EXPRESS (Aug. 12, 2017), available at <https://www.express.co.uk/news/world/840060/North-Korea-news-bomb-Hawaii-missile-range-how-far-attack> (last visited Oct. 21, 2018); Mehreen Kasana, *Can North Korea Missiles Reach California? The West Coast Isn't That Far From Pyongyang*, BUSTLE (Aug. 10, 2017), available at <https://www.bustle.com/p/can-north-korea-missiles-reach-california-the-west-coast-isnt-that-far-from-pyongyang-75885> (last visited Oct. 21, 2018).

27. *How Potent Are North Korea's Threats?*, BBC NEWS (Sept. 15, 2015), available at <http://www.bbc.com/news/world-asia-21710644> (last visited Oct. 22, 2018).

28. Albert, *supra* note 6.

Still, 13 out of the last 18 ICBM tests have been deemed “successful.”²⁹ While some experts debate the accuracy, ability to survive re-entry, and true effective range of the ICBMs,³⁰ no one can argue that despite international condemnation North Korea grew its nuclear and ICBM weapons systems to a point beyond what most expected. What is clear, and perhaps most discomfoting, is that the world remains unable to deter North Korea thus far. If the world failed at slowing North Korea's nuclear and ICBM growth, what is Japan, a nation whose very Constitution forbids it to grow a military, capable of doing?

III. BACKGROUND: HOW THE UNITED STATES BECAME OBLIGATED TO DEFEND JAPAN

Japan's current exposure results from its past imperialistic domination over the region. From its victory in the Sino-Japanese war in 1894–95 until the end of WWII, Japan was determined to imperialize the region.³¹ Because of its domineering history, its regional neighbors view Japan more as a necessary economic trading partner rather than a popular ally.

This Part explains how Japan's current Constitution came to completion and outlines the United States' involvement in the drafting process. A summary follows regarding the expansion of the SDF's capabilities, along with the evolution of Article 9's interpretation. Next, a portrayal of why the United States (despite its initial insistence) now disfavors Article 9's war renunciation clause. The United States actually

29. Berkowitz, Karklis, & Schaul, *supra* note 25.

30. In an effort to avoid striking other countries, North Korea launches its ICBM nearly straight into the air allowing the missiles to fall into the Sea of Japan. For this reason, determining the missiles' exact range on a more traditional, flatter trajectory can be difficult. Experts factor in the curvature of the earth, the earth's rotation, the weight of the warhead, and type of fuel used. Still, it is without question that the latest ICBMs tested include the “Hwasong-14” and are capable of striking the continental United States. The Hwasong-14, for example, flew in a nearly straight-up trajectory for 47 minutes, landing 600 miles from the point of launch and reached an altitude of nearly 2,300 miles above earth. For comparison, the international space station orbits at an altitude of about 250 miles above earth. Most experts believe the “Hwasong-14” could potentially reach New York or Boston on a flatter trajectory. *Id.*

31. Susan Townsend, *Japan's Quest for Empire 1931-1945*, BBC (Mar. 30, 2011), available at http://www.bbc.co.uk/history/worldwars/wwtwo/japan_quest_empire_01.shtml (last visited Oct. 22, 2018). Three years later with its victory in the Russo-Japanese war (which stunned the western world), Japan was able to dominate the Korean peninsula. This new confidence, combined with its increased fundamentalist nationalism and demand for natural resources (especially petroleum), only fueled Japan's desire for expansion. *Id.*

pressured Japan to remilitarize. Part III also outlines the military capabilities of North Korea and Japan and explains why North Korea's most valid threat to Japan remains a missile attack. Finally, Part III concludes with an analysis of significant bilateral treaties and Japanese domestic laws. These treaties and domestic laws define the United States' obligations to Japan in the event of an attack, as well as the SDF's operational capabilities and limitations.

A. *The U.S. Military Drafted Japan's Constitution*

Although Japan currently enjoys "universal adult suffrage,"³² its current Constitution was not adopted through a democratic process; rather, Allied advisers in 1947 "dictated" Japan's Constitution.³³ General Douglas MacArthur, the most celebrated general in the war against Japan, later supervised Japan's surrender on the deck of the USS Missouri in Tokyo Bay on September 2, 1945.³⁴ This resulted in his appointment as the Supreme Commander for Allied Powers ("SCAP") in occupied Japan. As such, the Emperor and government of post-war Japan were subject to his authority.

In September 1945, General MacArthur encouraged the Japanese government to amend its then-current Constitution (Meiji Constitution of 1889).³⁵ A month later, Prime Minister Shidehara established a "Constitutional Research Committee" (Matsumoto Committee).³⁶ The Matsumoto Committee drafted two versions of a new Constitution in closed chambers, with the intention for the process to be secret.³⁷ Intentions

32. *Japan: Government and Society*, ENCYCLOPEDIA BRITANNICA, available at <https://www.britannica.com/place/Japan/Government-and-society> (last visited Oct. 22, 2018).

33. *Occupation and Reconstruction of Japan, 1945-52*, U.S. DEP'T OF ST. OFF. OF THE HISTORIAN, available at <https://history.state.gov/milestones/1945-1952/japan-reconstruction> (last visited Oct. 22, 2018).

34. *Japan Surrenders*, HISTORY, available at <http://www.history.co.uk/this-day-in-history/02-september/japan-surrenders> (last visited Oct. 22, 2018).

35. Umeda, *supra* note 15, at 4. This is also known as the Imperial Constitution. *Id.*

36. *Id.* Dr. JoJi Matsumoto was appointed as chairman of the committee. *Id.*

37. *Birth of the Constitution of Japan, Chronological Table 3, Feb. 1, 1946–Apr. 19, 1946*, NAT'L DIET LIBR., available at <http://www.ndl.go.jp/constitution/e/etc/history03.html> (last visited Oct. 22, 2018) [hereinafter *Chronological Table*]; see also *Outline of the Matsumoto Draft Submitted to SCAP, Gist of the Revision of the Constitution*, NAT'L DIET LIBR., available at http://www.ndl.go.jp/constitution/e/shiryo/03/074a_e/074a_etx.html#t002 (last visited Oct. 22, 2018) [hereinafter *Outline of the Matsumoto Draft Submitted to SCAP*]; *Japan: Interpretations of Article 9 of the Constitution*, LIB. OF CONG., available at <https://www.loc.gov/law/help/japan-constitution/interpretations-article9.php> (last visited Oct. 22, 2018).

aside, in February 1946, a Japanese newspaper gained possession of one of the drafts and made it public.³⁸ Matsumoto's "Revision of the Constitution," submitted to MacArthur on February 8, 1946, notably lacked a war renunciation provision.³⁹ The draft contained limited changes from the original Meiji Constitution and fell short of the standards set out in The Potsdam Declaration (which set the terms for Japan's surrender).⁴⁰

All the while, unbeknownst to the Japanese government, MacArthur (dissatisfied with the leaked Matsumoto draft) ordered his staff to draft the new Japanese Constitution.⁴¹ On February 13, 1946, Brigadier General Courtney Whitney refused the Matsumoto Constitution and personally delivered the draft ordered by MacArthur to the Japanese government.⁴²

The driving force to include Article 9 in Japan's Constitution is unclear. The idea of a war renunciation clause came from either MacArthur or Shidehara—each claim the other introduced it.⁴³ Some facts, however, are not debatable.

For instance, MacArthur was the first to put the idea of a war renunciation clause in writing. In a note from MacArthur to Whitney directing the drafting of the Constitution of Japan, MacArthur outlined the inclusion of three major points, one of which included the renunciation of war.⁴⁴ MacArthur's note regarding war reads:

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

No Japanese army, navy, or air force will ever be authorized and no rights of belligerency will ever be conferred upon any Japanese force.⁴⁵

38. *Chronological Table*, *supra* note 37.

39. *Id.*; see also *Outline of Matsumoto Draft Submitted to SCAP*, *supra* note 37.

40. See *Outline of Matsumoto Draft Submitted to SCAP*, *supra* note 37; see also *Text of the Constitution and Other Important Documents: Potsdam Declaration*, NAT'L DIET LIBR., available at <http://www.ndl.go.jp/constitution/e/etc/c06.html> (last visited Oct. 21, 2018) [hereinafter *Potsdam Declaration*].

41. Umeda, *supra* note 15, at 4-5.

42. *Chronological Table*, *supra* note 37.

43. Umeda, *supra* note 15, at 7. Because both have since died, the debate lingers. *Id.*

44. *Id.* at 6-7. The other two being to end the feudal system and establishing a new Emperor system. *Id.*

45. *Three Basic Points Stated by Supreme Commander to Be "Musts" in Constitutional Revision*, NAT'L DIET LIBR., available at <http://www.ndl.go.jp/constitution/e/shiryo/03/072/072tx.html#t001> (last visited Oct. 21, 2018).

On May 3, 1947, after several drafts, negotiations, and bilingual translations, Japan accepted the new Constitution.⁴⁶ Design of the new Constitution met the objectives set out in The Potsdam Declaration.⁴⁷ One objective required that Japan's new Constitution must remove any "obstacle to democracy and ensure basic freedoms and rights."⁴⁸ The new Constitution contained alterations beyond what would otherwise be deemed as an acceptable amendment under the provisions of the Meiji Constitution of 1889.⁴⁹ Many disfavored MacArthur's version of the Constitution, but his staff rejected any suggested amendments brought by the Japanese committee, forcing Japan to accept the new Constitution without input.⁵⁰ Although unsupported, MacArthur's version of the Constitution became a non-negotiable part of Japan's unconditional surrender.⁵¹ Many speculated that replacement of the SCAP constitution would occur as soon as the occupation of Japan ended, but the constitution remains in place to this day, unchanged.⁵²

Those unfamiliar with Japan's Constitution may assume that it represents little more than a reflection of the United States Constitution at first glance (aside from Article 9's renunciation of war). The preamble of Japan's Constitution resembles the United States Constitution:⁵³

We, the Japanese people, acting through our duly elected representatives . . . do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the

46. *Chronological Table*, *supra* note 37.

47. Lynn Parisi, *Lessons of the Japanese Constitution*, STAN. PROGRAM ON INT'L. AND CROSS-CULTURAL EDUC. (Nov. 2002), available at <https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/const.pdf> (last visited Oct. 21, 2018).

48. *Id.*

49. *Id.*

50. *Id.* Some legal scholars question the legitimacy of the process in the creating of Japan's current constitution. For example, the legislative interference MacArthur's staff imposed on the Japanese government while drafting the constitution violated article 43 of the Laws and Customs of War on Land (Hague IV) and Subitem 12 of the Potsdam Declaration. *Id.*; see also Hague Convention (IV) Respecting the Laws and Customs of War on Land art. 43, Oct. 18, 1907, 36 Stat. 2277; *Potsdam Declaration*, *supra* note 40.

51. Umeda, *supra* note 15, at 6.

52. Parisi, *supra* note 47.

53. "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." U.S. CONST. pmbl.

people . . . the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people.⁵⁴

The Constitution of Japan is, however, a more progressive document as compared to the U.S. Constitution.⁵⁵ By including the specific language “all of the people,” equal rights were immediately afforded to all genders and races.

All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

All people shall have the right to receive an equal education correspondent to their ability, as provided by law.

All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free (emphasis added).⁵⁶

SCAP presented its version of the new *amended* Constitution to Japan with no option but to acquiesce, but MacArthur invited the Japanese government to revise the Constitution between 1948 and 1949.⁵⁷ Japan, however, gave no substantive response.⁵⁸ One may infer Japan declining to revise the constitution to be acceptance of Article 9 and the renunciation of war.

54. NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], pmbl. (Japan). When compared to the U.S. Constitution, the same ideals are reflected in the preamble of the Japanese Constitution.

55. Japan's constitution significantly surpassed the U.S. Constitution in the arena of women's rights and education. Parisi, *supra* note 47. This is attributed to a 22-year old female aid working on MacArthur's staff at the time who was involved in drafting Japan's constitution as a translator—Beate Sirota Gordon. Born in 1923 in Vienna to Russian Jewish immigrants, Gordon lived in Japan from age five to fifteen. Gordon studied at Mills College in California, and in 1945 became an American citizen. As only one of 65 Caucasians in the United States that could speak Japanese, Gordon was a sought-after commodity and ultimately ended up working on MacArthur's staff. Before the SCAP constitution, Japanese women had no rights at all. Cristine Russell, *The American Woman Who Wrote Equal Rights Into Japan's Constitution*, THE ATLANTIC (Jan. 5, 2013), available at <https://www.theatlantic.com/sexes/archive/2013/01/the-american-woman-who-wrote-equal-rights-into-japans-constitution/266856/> (last visited Oct. 22, 2018).

56. NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 14, para. 1 (Japan); NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 26, para. 1-2. In the United States, a free public education is not a constitutional right; see generally U.S. CONST.

57. Parisi, *supra* note 47.

58. *Id.*

***B. The Evolving Interpretation of Japan's War
Renunciation Clause***

Article 9's definition proved to be a moving target in the decades since its inception in 1947, but Japan's Constitution still bars it from any offensive military operations to this day.⁵⁹ The United States was particularly interested in preventing Japan from regaining military power due to its regional dominance and blatant war crimes⁶⁰ in the years leading up to and through World War II. Furthermore, introduction of language similar to Article 9 was far from uncommon for former Axis powers.⁶¹ For instance, the Italian Constitution "rejects war as an instrument of aggression" and German Law prohibits "activities tending and undertaken with the intent to disturb peaceful relations between nations, especially to prepare for aggressive war."⁶² The wording of Article 9, however, goes a step further and presumes to deny the Japanese even the right to utilize a military response as a means of self-defense by eliminating a land, sea, and ground force. It states:

[T]he 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 . . . [L]and, sea, and air forces, as well as other potential, will never be maintained.⁶³

59. Umeda, *supra* note 15.

60. There are many examples, including: The Rape of Nanking (1937), The Bangka Island Massacre (1942), The Bataan Death March (1945), and Conscripting Women into Sexual Slavery (1937-1945). See generally *Nanjing Massacre: Chinese History*, ENCYCLOPEDIA BRITANNICA, available at <https://www.britannica.com/event/Nanjing-Massacre> (last visited Oct. 22, 2018); Libby-Jane Charleston, *The Horror of the Bangka Massacre*, HUFF. POST (Feb. 16, 2017), available at http://www.huffingtonpost.com/au/2017/02/15/the-horror-of-the-bangka-massacre_a_21714994/ (last visited Oct. 22, 2018); Jason Reblando, *Remembering the Bataan Death March 75 Years Later*, L.A. TIMES (May 12, 2017), available at <http://www.latimes.com/visuals/framework/la-me-fw-bataan-death-march-20170422-htmstory.html> (last visited Oct. 22, 2017); Lévy Christine, *The Japanese Imperial Army's "Comfort Women": Political Implications and the Gender of Memory*, SCIENCESPO, MASS VIOLENCE AND RESISTANCE-RES. NETWORK (July 12, 2012), available at <http://www.sciencespo.fr/mass-violence-war-massacre-resistance/en/document/japanese-imperial-armys-comfort-women-political-implications-and-gender-memory> (last visited Oct. 22, 2018).

61. Matt Ford, *Japan Curtails Its Pacifist Stance*, THE ATLANTIC (Sept. 19, 2015), available at <https://www.theatlantic.com/international/archive/2015/09/japan-pacifism-article-nine/406318/> (last visited Oct. 22, 2018).

62. *Id.*

63. NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 9 (Japan).

The failure to define Japan's means for national defense left Article 9 open to much debate within the Japanese government, courts, and public since its inception.

It did not take long for the ambiguity of Article 9 to become a topic for discussion in Japanese society and what it meant to the nation's security. Having already received a devastating defeat and now occupied by the United States, many Japanese citizens saw Article 9 as a new source of national pride: it made Japan the first nation in the world to declare war illegal.⁶⁴ Those in the government, however, saw the need for self-defense as an irrevocable right, and therefore, something that should not be prohibited by Article 9.⁶⁵ Despite thinking of self-defense as an irrevocable right, many in the Japanese Diet⁶⁶ still worried that Article 9 would prevent Japan from contributing to international peacekeeping missions, thus barring them from entering the United Nations ("U.N.").⁶⁷ Yet, Article 9 remains and, much like provisions of the United States Constitution, interpretation varies depending on the contemporary needs of the time.

For example, despite the prohibitive language of Article 9, Japan maintains a SDF. Japan's SDF is divided into three sub-parts: "Air Self-Defense Forces," "Ground Self-Defense Forces," and "Maritime Self-Defense Forces." It also contains amphibious assets⁶⁸ which fall under the Maritime Self-Defense Forces. Since Article 9 forbids a national military, the forces are distinguished as "Self-Defense Forces." Some assert the SDF to indeed embody a military and thus, believe it to violate Japan's Constitution.⁶⁹ Interpretation of Article 9 develops and broadens over time, but the Cabinet Legislation Bureau (the office that created the legal theory of the interpretation of Japan's Constitution) always interprets Article 9 to allow for a SDF.⁷⁰

64. Parisi, *supra* note 47.

65. *Id.*

66. "Diet" is a Prussian term. It functions similarly to the English parliament. Gerald L. Curtis, *The Government of Modern Japan: The Japanese Diet*, COLUM. U.: ASIA FOR EDUCATORS, available at http://afe.easia.columbia.edu/at/jp_diet/govtjd01.html (last visited Oct. 22, 2018).

67. Parisi, *supra* note 47. This would therefore be a self-defeating principle. *Id.*

68. Japan's amphibious assets have a similar mission as the U.S. Marine Corps. See generally John Taishu Pitt, *The Meaning of Japan's New Amphibious Rapid Deployment Brigade Launch*, THE DIPLOMAT (Mar. 29, 2018), available at <https://thediplomat.com/2018/03/the-meaning-of-japans-new-amphibious-rapid-deployment-brigade-launch/> (last visited Oct. 22, 2018).

69. Umeda, *supra* note 15, at 1.

70. *Id.* at 3-4.

In 1950, the SDF began as the National Police Reserve, just a few years after the inception of the SCAP Constitution.⁷¹ By 1954, the National Police Reserve evolved into the SDF.⁷² The United States prompted and encouraged Japan's rearmament (looking for a strategic ally in the region post-occupation) in response to the Korean War and the fear of Communist expansion.⁷³ In the wake of a shattering and demoralizing defeat, the Japanese government initially resisted the unpopular idea of rearmament.⁷⁴ Ultimately, the Japanese government began to rebuild a pseudo military. Ironically, a few years after the United States imposed the renunciation of war provisions on the newly established Japanese government, it reversed course and encouraged Japan to rearm.⁷⁵ Many debated whether any rearmament (including the SDF) would be legally amenable with Japan's new constitution.

The first extensive interpretation that broadened the meaning of Article 9 came in 1954, when the legislature of Japan passed a bill to establish the SDF.⁷⁶ Simultaneously, the legislature passed a resolution to ban the SDF from being deployed abroad.⁷⁷ In December 1954, the Cabinet Legislation Bureau issued an official interpretation of the Constitution and, more specifically, Article 9:

[t]he Constitution did not deny the self-defense right; Japan renounced war, but did not renounce the right to struggle in order to defend itself; [e]stablishment of the SDF is not against the Constitution because its mission is self-defense and its ability is limited to necessary and adequate levels of self-defense.⁷⁸

The Cabinet went on to stipulate three requirements to exercise its right to self-defense: (1) there is a present and wrongful danger of invasion to Japan; (2) no other appropriate measures exist to defend Japan; and (3)

71. *Self-Defense Force: Japanese Armed Force*, ENCYCLOPEDIA BRITANNICA, available at <https://www.britannica.com/topic/Self-Defense-Force> (last visited Oct. 22, 2018).

72. See generally *Japan—Government and Society*, ENCYCLOPEDIA BRITANNICA, available at <https://www.britannica.com/place/Japan/Government-and-society#ref319259> (last visited Oct. 22, 2018).

73. *Id.*; see also Franz-Stefan Gady, *Toothless Tiger: Japan Self-Defence Forces*, BBC NEWS (Oct. 15, 2015), available at <http://www.bbc.com/news/world-asia-34485966> (last visited Oct. 22, 2018).

74. *Article 9 and the U.S.-Japan Security Treaty*, COLUM. U.: ASIA FOR EDUCATORS, available at http://afe.easia.columbia.edu/special/japan_1950_usjapan.htm (last visited Oct. 22, 2018).

75. Of note, MacArthur was initially opposed to Japan's rearmament. See Umeda, *supra* note 15, at 12.

76. *Id.* at 14-15.

77. *Id.*

78. *Id.* at 15.

the use of force to defend Japan is limited to the minimal force necessary.⁷⁹

Though the Supreme Court of Japan never directly ruled on the constitutionality of the SDF, it noted in *dictum* that the SDF did not violate the Constitution.⁸⁰ In 1973, a District Court in Japan held that the SDF was unconstitutional; however, the Court reversed the decision on other grounds.⁸¹ Other courts avoid the constitutionality issue altogether under the “political question” doctrine.⁸²

Beginning in the early 1990s, the Japanese government began a trend of expanding the role of the SDF. In 1992, Japan's legislature passed the U.N. Peacekeeping Operations Cooperation Bill, which allows deployment of the SDF outside the country's boundaries.⁸³ Subsequently, in the same year the SDF deployed outside of Japan for the first time as part of a U.N. mission in Cambodia.⁸⁴ Since the 1992 Bill, SDF troops have provided non-combat support and humanitarian missions to Iraq, Afghanistan, and Indonesia.⁸⁵ In 2001, the Japanese Maritime Force sank a North Korean spy ship in Chinese waters, which marked the first use of military force by Japan since WWII.⁸⁶ In 2015, Japan's legislature passed a controversial bill to advance the interpretational margins of Article 9 even further.⁸⁷

Though limits still exist on Japan's ability to use military force, the SDF can now aid in the defense of the United States and other allies.⁸⁸ Currently, the Cabinet Legislation Bureau yields the sole authority to interpret Article 9.⁸⁹ The Japanese government believes it can expand its

79. *Id.* The cabinet has consistently maintained this interpretation of Article 9 and the three required stipulations to exercise the self-defense right. *Id.*

80. Umeda, *supra* note 15, at 17.

81. *Id.*

82. *Id.* at 18, 28.

83. *Japan's About-Face*, PBS (July 8, 2008), available at <http://www.pbs.org/wnet/wideangle/uncategorized/japans-about-face-timeline-japanese-military-history/1168/> (last visited Oct. 23, 2018).

84. *Id.*

85. *See id.*

86. *Id.*

87. Ford, *supra* note 61. The Bill does not change the language of Article 9, which would require a constitutional amendment, but only re-interprets the Article. Furthermore, the Bill was highly controversial, but ultimately was passed by the leading party after three days of heavy debate, which included a small tussle between opposing party members trying to physically prevent the vote from taking place. *Id.*

88. *Id.* For example, Japan is now permitted to shoot down a North Korean ICBM fired toward the United States. *Id.*

89. Umeda, *supra* note 15, at 32.

defense ability without restriction, so long as its policy remains defense centric.⁹⁰ Japan's Prime Minister would like to amend the Constitution to specifically define the SDF's role within Article 9, but many still oppose that position.⁹¹

C. The United States Retreats from the War Renunciation Clause It Imposed on Japan

Ironically, when the Allied (U.S.) occupation of Japan slowly ended in 1952, the United States began pressing Japan to rearm.⁹² With the spread of communism in China and the Korean War raging just 600 miles away, the United States feared Japan might fall to communism after it just regained sovereignty.⁹³ The United States viewed Japan as an important pro-West ally. With the Cold War in effect, the United States had no intention of completely withdrawing from Japan. The treaties mentioned below (namely the Security Treaty) ensured the U.S. military would remain in Japan for decades.⁹⁴

Although the United States envisioned a "precipitous rearmament" of Japan after it regained sovereignty, Japan's Prime Minister, aware of the general public's aversion to war, resisted the rearmament agenda.⁹⁵ The National Police Reserve and subsequent SDF became a compromise for Japan as a result of its dependence on the United States as an ally. Indeed, many in Japan (mostly socialist and progressive intellectuals) wanted a neutral nation, fully adopting the concepts of Article 9 and relying on the U.N. for protection.⁹⁶ The primary concern with relying on the United States for defense (at the cost of U.S. military bases in Japan) was that Japan would expose itself to attack mostly concerning the use of atomic weapons against Japan in retaliation for U.S. actions in unrelated

90. *Id.*

91. Kyodo, *Opposition to Abe's Amendment Quest Hits 55%; Support for Article 9 Rewrite Falls: Survey*, JAPAN TIMES (Jan. 14, 2018), available at <https://www.japantimes.co.jp/news/2018/01/14/national/politics-diplomacy/opposition-revising-constitution-grows-55-kyodo-survey/#.WnUGfZM-fUI> (last visited Oct. 23, 2018).

92. *Article 9 and the U.S.-Japan Security Treaty*, *supra* note 74. This pressure led to the compromise of Japan's creation of the "National Police Reserve," which ultimately evolved into the SDF. *Id.*

93. *See id.*

94. *See* Treaty of Mutual Cooperation and Security, Japan-U.S., Jan. 19, 1960, 11 U.S.T. 1632.

95. Justin Jesty, *Tokyo 1960: Days of Rage & Grief: Hamaya Hiroshi's Photos of the Anti-Security-Treaty Protests*, 13 ASIA-PAC. J. 1,6 (2015), available at <https://apjjf.org/-Justin-Jesty/4291/article.pdf> (last visited Oct. 23, 2018).

96. *Id.* at 5-6.

conflicts.⁹⁷ These concerns hold merit. It is well known that if the war between North and South Korea⁹⁸ were to regain hostility, the United States would rely on air bases in Japan to assist in an air campaign.⁹⁹ But where does this leave Japan now?

Still, decades later the United States insists that Japan amend Article 9 and rearm. As recent as 2004, Deputy Secretary of State Richard Armitage “told a Japanese lawmaker that the war renouncing Article 9 of Japan’s Constitution is becoming an obstacle to strengthening the Japan-US alliance.”¹⁰⁰ In the same year, Secretary of State Colin Powell stated that if Japan wanted a permanent seat with the U.N. Security Council it “must consider revising its pacifist constitution[.]”¹⁰¹ In order to keep positive relations with the United States, Japan took a series of steps in order to provide for its own defense, which resulted in the current SDF.

D. The Growth of Japan’s Self-Defense Force

Partly due to Japan’s alliance with the United States, Japan’s SDF is one of the most advanced and well-trained “militaries” in Asia.¹⁰² Despite its aging and shrinking population¹⁰³ and lack of natural resources,¹⁰⁴ Japan possesses a well-equipped military. To be certain,

97. *Id.* at 6.

98. Technically, the war between North and South Korea is still “active.” *The Korean War Armistice*, BBC NEWS (Mar. 5, 2015), available at <http://www.bbc.com/news/10165796> (last visited Oct. 23, 2018).

99. Todd South & Jeff Schogol, *War With North Korea: An Inside Look at How U.S. Troops Would Respond Worldwide*, MIL. TIMES (May 21, 2017), available at <https://www.militarytimes.com/news/your-military/2017/05/21/war-with-north-korea-an-inside-look-at-how-us-troops-would-respond-worldwide/> (last visited Oct. 23, 2018).

100. Umeda, *supra* note 15, at 32.

101. *Id.*

102. See Jeremy Bender, *The 11 Most Powerful Militaries in the World*, BUS. INSIDER AUSTRAL. (Nov. 19, 2015), available at <https://www.businessinsider.com.au/11-most-powerful-militaries-in-the-world-2014-4> (last visited Oct. 23, 2018). Japan comes in at number ten overall on the list behind South Korea at nine. Japan’s defense budget ranked sixth in the world and also boasts the fifth largest Air Force in the world. *Id.*

103. Isabel Reynolds, *Japan’s Shrinking Population*, BLOOMBERG (May 16, 2017), available at <https://www.bloomberg.com/quicktake/japan-s-shrinking-population> (last visited Oct. 23, 2018). Over the next fifty years, Japan’s population is estimated to shrink by one-third. This is primarily due to an ageing population (Japanese citizens have one of the longest life expectancies in the world), coupled with decreased birth rates. *Id.*

104. See *Economy and Trade Fact Sheet: Basic Points About Japan’s Economy and Trading Patterns*, COLUM. U.: ASIA FOR EDUCATORS, available at <http://afe.easia.columbia.edu/japan/japanworkbook/economics/factshe.htm> (last

Japan's SDF enjoyed a resurgence in recent years, in part due to territorial disputes with China¹⁰⁵ and the increasing missile capabilities of North Korea.

The Air Defense Force currently consists of approximately 47,000 airmen and 552 combat aircraft.¹⁰⁶ The Ground Defense Force contains approximately 151,000 soldiers,¹⁰⁷ and the Maritime Defense Forces includes approximately 45,500 sailors and 67 vessels.¹⁰⁸ By comparison, in 2015 the United States Air Force had approximately seven times the number of Active Duty Airmen and nine times the number of aircraft.¹⁰⁹ The United States Army in contrast, is roughly three times larger than Japan's Ground Defense Force.¹¹⁰ Notwithstanding a very capable and

visited Oct. 23, 2018). Japan lacks several of the raw materials necessary for industry and energy such as oil, coal, iron ore, copper, aluminum, and timber. *Id.*

105. Beina Xu, *The U.S.-Japan Security Alliance*, COUNCIL ON FOR. REL. (July 1, 2014), available at <https://www.cfr.org/backgrounders/us-japan-security-alliance> (last visited Oct. 23, 2018). Japan has increased defense spending for the first time in eleven years, and for the first time forty years has established a base on its outer islands. The increase in spending has been attributed in part by increasing tensions with China in regard to territorial disputes involving the Senkaku Islands. The territorial dispute involving the Senkaku islands (a small cluster of uninhabited islands in the East China Sea) grew more relevant when a group of Chinese activists landed on the islands in 2012. In response, Japanese government spent ¥2 billion (\$17.8 million) to purchase two of the islands from a private landowner (against warnings from the State Department). China moved further by creating the East China Sea Air Defense Identification Zone (which requires all non-commercial aircraft entering the East China Sea to include the airspace above the Senkaku Islands to submit flight plans before entering). In 2014, President Obama declared that the U.S.-Japan Mutual Defense Treaty applied to "all territories administered by Japan" to include the disputed Senkaku islands. *Id.*

106. Lendon, *supra* note 14. The Air Defense Force's inventory of aircraft is broken down as follows: 201 fighter jets, 66 transport aircraft, and one Airborne Early Warning and Control aircraft. The Ground Defense Force consists of one tank division, three armored infantry divisions, five light infantry divisions, one airborne brigade, one helicopter brigade, three artillery brigades, one special operations unit, and importantly two air defense brigades. The Maritime Defense Force's fleet is broken down as follows: 47 surface ships, 2 helicopter carriers, 18 submarines, and 166 maritime patrol aircraft. *Id.*

107. *Id.*

108. *Id.*

109. *2015 Index of U.S. Military Strength: U.S. Air Force*, HERITAGE FOUND. 1, 255 (2015), available at https://ims-2015.s3.amazonaws.com/2015_Index_of_US_Military_Strength_FINAL.pdf (last visited Oct. 23, 2018). The U.S. Air Force had approximately 329,500 Active Duty Airmen and 5,000 aircraft. *Id.*

110. See *2017 Index of U.S. Military Strength: U.S. Army*, HERITAGE FOUND., available at <http://index.heritage.org/military/2017/assessments/us-military-power/u-s-army/> (last visited Oct. 23, 2018).

equipped SDF, those forces (aside from the two air defense brigades) are essentially powerless against a nuclear, ballistic missile attack.

In response to recent threats from North Korea, Japan and the United States deployed destroyers equipped with the Aegis ballistic missile defense systems to the Sea of Japan.¹¹¹ Despite having this system in place, many analysts question its ability to defend Japan against a North Korean ICBM attack, with some going as far as to conclude that the Aegis system's effectiveness is "limited, if not improbable" of defeating an inbound offensive missile.¹¹² The Aegis system is designed to intercept ICBMs and mid-range ballistic missiles "in the middle stage of their course."¹¹³ As a secondary precaution, United States and Japanese Patriot missiles are in place throughout Japan to intercept offensive missiles "in their final phase."¹¹⁴ Due to the uncertainty of the effectiveness of the two systems, Japan must consider other defense alternatives and rely on allies aside from the United States for support. However, finding a local ally may prove difficult in light of the history between Japan and neighboring nations.

E. Japan's Annexation of Korea and Alleged War Crimes

In the few decades preceding WWII through its ultimate surrender in 1945, Japan imperialized the region in search of natural resources and human labor. In an effort to do so, Japan occupied the Korean peninsula and a majority of Far East Asia.¹¹⁵ In 1907, Japan disbanded the Korean Army.¹¹⁶ Three years later, Japan officially annexed Korea.¹¹⁷ Japan forced Koreans to learn the Japanese language, culture, and religion, and

111. Julian Ryall, *Japan's Missile Defences 'Not Able to Intercept North Korean ICBMs Fired at Guam'*, THE TELEGRAPH (Aug. 11, 2017), available at <http://www.telegraph.co.uk/news/2017/08/11/japans-missile-defences-not-able-to-intercept-north-korean-icbms/> (last visited Oct. 23, 2018). For the sea-based Aegis system to be effective, the ICBM would have to be on a "low trajectory" and "come within 310 miles of the destroyer," thus providing an extremely limited set of circumstances of even a chance of success. As a result, the sea-based Aegis system is deemed as "not capable of reliably interrupting a North Korean ICBM test." *Id.*

112. *Id.*

113. *Id.*

114. *Id.* A missile on a trajectory toward Guam, however, would be outside the current capability of either system.

115. Yoichi Funabashi, *North Korea's Nuclear Weapons, Japan's Bind*, N.Y. TIMES (Sept. 13, 2017), available at <https://www.nytimes.com/2017/09/13/opinion/north-korea-nuclear-weapons-japan.html> (last visited Oct. 15, 2018).

116. Robert S. Boynton, *North Korea's Abduction Project*, NEW YORKER (Dec. 21, 2015), available at <https://www.newyorker.com/news/news-desk/north-koreas-abduction-project> (last visited Oct. 22, 2018).

117. *Id.*

to take on Japanese names.¹¹⁸ During this assimilation period, Japan subjected Korean women to serve Japanese soldiers as “comfort women.”¹¹⁹ Additionally, Japan forced Koreans to serve in the Japanese Imperial Army and Navy.¹²⁰ By the time Japan surrendered to the Allied Forces in 1945, over 700,000 Japanese military and civilian personnel lived in Korea¹²¹ and roughly two million Koreans lived in Japan.¹²² After WWII, the majority of Koreans living in Japan returned to South Korea; however, six hundred thousand remained.¹²³ During Japan’s occupation of Korea until its surrender in WWII, the Korean peninsula remained unified.

After Japan’s surrender culminating in the ultimate conclusion of WWII, Allied forces divided the Korean peninsula. Russia occupied territory north of the 38th parallel and the United States occupied territory south of the 38th parallel.¹²⁴ This separation created not only a physical divide but also an ideological one. In 1948, the Allied Powers formed two distinct countries: The Republic of Korea (South Korea) and the Democratic People’s Republic of Korea (North Korea).¹²⁵ Two years later, the North attempted to unify the peninsula under Communist rule and sent 135,000 soldiers across the 38th parallel into South Korea.¹²⁶

118. *Id.*

119. *Id.* While Korean women were compelled or forced into sex slavery, Korean men were forced to labor in Japanese mines and factories. *See also* Funabashi, *supra* note 115.

120. Boynton, *supra* note 116. Nearly 213,000 Koreans served in the Japanese military.

121. *Id.*

122. Rachel Blomquist & Daniel Wertz, *An Overview of North Korea-Japan Relations*, NAT’L COMM. ON NORTH KOREA (June 2015), available at <https://www.ncnk.org/resources/briefing-papers/all-briefing-papers/overview-north-korea-japan-relations> (last visited Oct. 15, 2018).

123. *Id.*

124. *Korean War Fast Facts*, CNN LIBR. (Apr. 30, 2018), available at <http://www.cnn.com/2013/06/28/world/asia/korean-war-fast-facts/index.html> (last visited Oct. 15, 2018). The U.S. occupation of South Korea continued until 1948. *Id.*

125. Kallie Szczepanski, *Why Is the Peninsula Split Into North Korea and South Korea?*, THOUGHTCO (Mar. 10, 2017), available at <https://www.thoughtco.com/why-north-korea-and-south-korea-195632> (last visited Oct. 15, 2018).

126. *Korean War Fast Facts*, *supra* note 124.

The U.N. and the United States aided the South¹²⁷ while China fought alongside the North.¹²⁸ Ultimately, hostilities ended with an armistice in 1953 and the two nations remain divided today.¹²⁹

F. The Evolution of the Laws Pertaining to Japan's SDF and the United States

There are several bilateral agreements between the United States and Japan outlined in the 2017 State Department's "Treaties in Force,"—the majority of which fall under the subtitle "DEFENSE."¹³⁰ The United States and Japan established formal diplomatic relations in 1858, four years after Commodore Matthew Perry signed the Treaty of Peace and Amity with Japanese Representatives.¹³¹ Ultimately, diplomatic relations suspended from December 1941 (following Japan's attack on Pearl Harbor) until 1952 (when the postwar Allied occupation of Japan ended).¹³²

In addition to the many treaties between Japan and the United States, the countries also agreed to several "guidelines." Guidelines differ from treaties in that they merely provide guidance—and therefore are not binding under international law.¹³³ Also, unlike treaties, guidelines do not

127. Sebastian Kettley, *North Korea and Japan: A History of Relationships Between the Two Nations*, EXPRESS (Apr. 17, 2017), available at <https://www.express.co.uk/news/world/792890/North-Korea-Japan-timeline-history-relationship-Kim-Jong-Un> (last visited Oct. 20, 2018). China fought on the side of North Korea, while Russia provided military equipment and other supplies to the North. Sixteen countries sent troops to assist South Korea (though ninety percent of the foreign troops were from the United States) and forty-one countries sent military equipment or other aid to the South. Of note, this was the first war in which the U.N. was involved. Blomquist & Wertz, *supra* note 122.

128. *Korean War Fast Facts*, *supra* note 124.

129. *Id.* Because neither side surrendered, technically the two countries remain at war. Also of note, although South Korea recognized and adhered to the provisions laid out in the armistice, it refused to sign it.

130. *Treaties in Force*, U.S. DEPT. OF STATE 1, 228-37 (Jan. 1, 2017), available at <https://www.state.gov/documents/organization/273494.pdf> (last visited Oct. 21, 2018).

131. *Japan*, U.S. DEP'T OF STATE: OFF. OF THE HISTORIAN, available at <https://history.state.gov/countries/japan> (last visited Oct. 20, 2018).

132. *Id.*

133. *New Regime for Security Alliance*, JAPAN TIMES (Apr. 28, 2015) available at <https://www.japantimes.co.jp/opinion/2015/04/28/editorials/new-regime-for-security-alliance/#.WqBDshPwbUI> (last visited Oct. 20, 2018). Of significance, "guidelines" differ from treaties and other international agreements in a few respects. Treaties require the consent of two-thirds of the Senators present to concur and therefore more difficult politically to approve. *Treaties*, U.S. SENATE, available at <https://www.senate.gov/artandhistory/history/common/briefing/Treaties.htm> (last visited Oct. 20, 2018). Because this may prove procedurally difficult, Executive Agreements and Congressional-Executive Agreements have gained more

require the approval of the Japanese Diet,¹³⁴ and thus are generally easier to pass. Another regulating force dictating the capabilities and limitations of the SDF includes Japan's legislation.

Since the end of the Allied occupation, the United States and Japan implemented and revised (as the needs of the region evolved) several treaties and guidelines. As such, the laws in Japan governing the SDF and its operational capabilities evolved as well. Some of the more relevant treaties, guidelines, and Japanese laws which shaped the current relationship between Japan and the United States militarily are highlighted below. The Treaty of Mutual Cooperation and Security remains the most significant treaty between the United States and Japan. Over the years, each subsequent guideline, treaty, and Japanese domestic law expanded the role and capability of the SDF.

1. Treaty of Mutual Cooperation and Security

Initially signed in 1951 and revised in 1960, the ten-year renewable treaty is still in effect today.¹³⁵ In short, the treaty allows the United States to maintain a military presence and bases throughout Japan and the Ryukyu Islands (Okinawa) in exchange for the United States' pledge to defend Japan against attack.¹³⁶ Article VI of the Treaty states specifically, "[f]or the purpose of contributing to the security of Japan and the maintenance of international peace and security in the Far East, the United States of America is granted the use by its land, air and naval forces of facilities and areas in Japan."¹³⁷

The treaty allowed the United States to maintain a strategic military presence in the region, proving beneficial to the United States during the Vietnam War, in which the United States launched airstrikes from bases

popularity. *Id.* Executive Agreements are still viewed as binding under international law; however, the subsequent Executive may rescind them with little effort. Defense "guidelines" regarding Japan and the United States are approved by the Security Consultative Committee ("SCC"). Robin "Sak" Sakoda, *The 2015 U.S.-Japan Defense Guidelines: End of a New Beginning*, ASIA MARITIME TRANSPARENCY INITIATIVE (Apr. 30, 2015), available at <https://amti.csis.org/the-2015-u-s-japan-defense-guidelines-end-of-a-new-beginning/> (last visited Oct. 20, 2018). The SCC is comprised of four individuals; the Secretary of State and the Defense Secretary of the United States, and their Japanese counterparts. Emma Chanlett-Avery & Ian E. Rinehart, Cong. Research Serv., RL33740, *The U.S.-Japan Alliance* 13 (2016).

134. Umeda, *supra* note 15, at 21.

135. Treaty of Mutual Cooperation and Security, Japan-U.S., Jan. 19, 1960, 11 U.S.T. 1632.

136. *Id.*

137. *Id.*

within Japan.¹³⁸ In 1967, to dispel concerns that the presence of nuclear weapons on American bases in Japan could expose the country to attacks, then Japanese Prime Minister Eisaku enacted the “Three Non-Nuclear Principles . . . not possessing, not producing, and not permitting the introduction of nuclear weapons . . .”¹³⁹ Furthermore, a second agreement known as the Status of Forces Agreement, or “SOFA,” governs the details of American base operations in Japan. Still, there are several other defense and security agreements that guide the two nations when it comes to defense.

2. *Peace Keeping Operations and Other Operations (PKO Law)*

Under the initial PKO Law (passed in 1992), the SDF could deploy overseas on humanitarian missions only.¹⁴⁰ The U.N. could not command SDF forces and the SDF could only provide non-combatant support, such as medical care and logistical support.¹⁴¹

3. *Guidelines for U.S.-Japan Defense Cooperation*

Originally created in 1979, the “Guidelines for U.S.-Japan Defense Cooperation” were revised in 1997 and, most recently, again in 2015.¹⁴² The Japan-U.S. Security Consultative Committee approves the Guidelines, but submission to the Japanese Diet is not required because it is not a “treaty.”¹⁴³ The 2015 revision outlines how the two nations intend to cooperate after Japan’s latest reinterpretation of Article 9. Now the SDF can not only defend Japan but also defend of its allies to include the United States and its assets based within Japan.¹⁴⁴ For example, this capability would allow Japan to attempt to intercept a North Korean missile

138. *See id.* There are currently an estimated 39,000 U.S. military personnel stationed within Japan. Kim Kyung-Hoon, *U.S. Military Presence in Asia: Troops Stationed in Japan, South Korea and Beyond*, NEWSWEEK (Apr. 26, 2017), available at <http://www.newsweek.com/us-military-japan-north-korea-asia-590278> (last visited Oct. 21, 2018).

139. *Three Non-Nuclear Principles*, MINISTRY OF FOR. AFF. OF JAPAN, available at <http://www.mofa.go.jp/policy/un/disarmament/nnp/> (last visited Oct. 22, 2018).

140. Kokusai Rengo heiwa iji katsudo to ni taisuru kyoryoku ni kansuru horitsu Law No. 79 of 1992, *amended*, available at http://www.pko.go.jp/pko_j/data/law/pdf/law_e.pdf (last visited Oct. 22, 2018) [hereinafter PKO Law].

141. *Id.*

142. Yuki Tatsumi, *4 Takeaways From the US-Japan Defense Guidelines*, THE DIPLOMAT (Apr. 29, 2015), available at <https://thediplomat.com/2015/04/4-takeaways-from-the-new-us-japan-defense-guidelines/> (last visited Oct. 22, 2018).

143. Umeda, *supra* note 15, at 11.

144. GUIDELINES FOR U.S.-JAPAN DEFENSE COOPERATION, *supra* note 18, at 6.

on a trajectory toward Guam. In addition, for the first time the new guidelines set out parameters for bilateral cyberspace cooperation.¹⁴⁵ Lastly, it must be emphasized that these are merely guidelines and therefore are not legally binding on either country.¹⁴⁶

4. *Anti-Terrorism Special Measures Law (Law No. 113 of 2001)*

Enacted as special legislation after the attacks against the United States on September 11, 2001, the Anti-Terrorism Special Measures Law allowed SDF troops to accompany coalition forces in Afghanistan.¹⁴⁷ The Diet passed the law in a short twenty-four days, and it allows SDF troops to assist coalition forces in non-combatative roles while also allowing them not only the right to defend themselves, but also those “who have come under [SFD] control.”¹⁴⁸ Still, Japan needs consent from the government before deploying SDF troops.¹⁴⁹

5. *Law Concerning Ensuring National Independence and Security in a Situation of Armed Attack (Law No. 79 of 2003)*

The Armed Attack Laws obliges the Japanese government to implement an action plan if an actual attack occurs or if danger exists of an imminent attack.¹⁵⁰ The law also allows the government to place SDF troops on “standby” if there is an anticipated attack.¹⁵¹ Prior to this legislation, the SDF could not mobilize against an anticipated attack.¹⁵² The SDF are limited, however, to attack the source of the threat only once the attack has started.¹⁵³ Despite this, it has been determined that in the case of a missile attack, the attack has started once the “missiles are readied into position.”¹⁵⁴

145. *Id.* at 22-23.

146. *New Regime for Security Alliance*, *supra* note 133.

147. The Anti-Terrorism Special Measures Law (Tentative English Summary) (Oct. 2001), available at http://japan.kantei.go.jp/policy/2001/anti-terrorism/1029terohougaiyou_e.html (last visited Oct. 22, 2018).

148. Umeda, *supra* note 15, at 11.

149. *Id.*

150. *Id.* at 13.

151. *Id.* at 24.

152. *Id.*

153. Umeda, *supra* note 15, at 24.

154. *Id.* at 25. This was determined by Masahiko Asada. Mr. Asada is a Professor of International Law at Kyoto University Graduate School of Law. He is also a member of: the International Relations Committee of the Atomic Energy Commission, Cabinet Office; the Subcommittee on Security and Trade Control of the Industrial Structure Advisory Council, Ministry of Economy, Trade and Industry (METI); and the Chemical and Biological Committee of the same Advisory Council. In the Japan Atomic Energy Agency (JAEA), he has led the Committee on Nuclear Non-

6. *Iraq Special Measures Law (Law No. 137 of 2003)*

In 2003, the Special Measures Law Concerning Humanitarian Relief Support Activities and Security Maintenance Support Activities in Iraq (“Iraq Special Measures Law”) expanded SDF capabilities.¹⁵⁵ This law enables SDF troops to deploy to occupied countries where fighting continues, so long as they are dispatched to areas free from “acts of hostility.”¹⁵⁶ The law limits the SDF’s scope to humanitarian and reconstruction assistance.¹⁵⁷ Because the use of weapons was still limited to self-defense purposes, Dutch and Australian groups provided security for SDF missions.¹⁵⁸ Seven more war-contingency laws were subsequently passed in 2004.¹⁵⁹

7. *Law Concerning Measures Relating to U.S. Military Actions (Law No. 113 of 2004)*

Of the seven war-contingency laws passed since 2004, one of the more relevant bills pertaining to the U.S.-Japan relationship is the Law Concerning Measures Relating to U.S. Military Actions, or Law No. 113 of 2004.¹⁶⁰ The law intended to compliment and function in accord with the U.S.-Japan Security Agreement if an attack or imminent attack occurred against Japan.¹⁶¹ Prior to this law, the United States and Japan were limited to providing logistical support to one another only during joint military drills or international relief missions.¹⁶² This bill allows for the two nations to share services and equipment and for U.S. military personnel to utilize privately owned Japanese buildings and land in the event of an attack or anticipated attack (with Prime Minister approval).¹⁶³

proliferation Policy Study as its Chairman since 2005. U.N. AUDIOVISUAL LIB. OF INT’L L., *Mr. Masahiko Asada*, available at http://legal.un.org/avl/pdf/ls/Asada_bio.pdf (last visited Nov. 20, 2018).

155. *Iraku ni okeru jindo fukko shien katsudo oyobi anzan kakuho shien katsudo no jisshi ni kansuru tokubetsu sochi ho* [Special Measures Law Concerning Humanitarian Relief Support Activities and Security Maintenance Support Activities in Iraq], Law No. 137 of 2003.

156. Umeda, *supra* note 15, at 25.

157. Mika Hayashi, *The Japanese Law Concerning the Special Measures on Humanitarian and Reconstruction Assistance in Iraq: Translator’s Introduction*, 13 PAC. RIM L. AND POL’Y J. 579, 587 (2004).

158. Umeda, *supra* note 15, at 26.

159. *Id.*

160. *Buryoku kōgeki jitai tō ni okeru amerika gasshūkoku no guntai no kōdō ni tomonai wagakuni ga jisshi suru sochi ni kansuru hōtitsu* [Law Concerning Measures Relating to US Military Actions], Law No. 113 of 2004.

161. Umeda, *supra* note 15, at 27.

162. *Id.*

163. *Id.* at 27-28.

Japan's SDF capabilities expanded and grew considerably since the early 1950s. Often, the expansion occurred as a reluctant acquiescence to pressure from the United States. Recently, the push stems from a proactive, nationalist government with valid concerns stemming from North Korean threats. The United States consistently encouraged and even pressured Japan to provide for its own self-defense throughout.

IV. ANALYSIS: WHAT SOLUTIONS ARE AVAILABLE TO JAPAN AND WHAT ROLE SHOULD THE UNITED STATES PLAY?

Despite a more liberal interpretation of Article 9 and the SDF's expanded capabilities, Japan still undeniably depends on the United States for its defense. Without a doubt, this is attributed to Japan's pacifist Constitution. Furthermore, the United States forced the current Constitution of Japan upon it with little option.

A. Japan's Pacifist Constitution of 1947 is Illegal Under International Law

Many agree that the process by which Japan's Constitution of 1947 came into existence violates both The Laws and Customs of War and Land (Hague IV) of 1907 and the Potsdam Declaration of 1945 (the proclamation defining the terms of Japan's surrender).¹⁶⁴ Article 43 of Hague IV states that:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.¹⁶⁵

Here, the United States failed to respect the laws in force in the country. Many described the Post WWII Constitution of 1947 as an "amendment" to the Meiji Constitution of 1889. In fact, the Constitution of 1947 became a completely new constitution, altered beyond what is considered a permissible amendment under the Meiji Constitution. The amendment process in which the new constitution came to be is outside the means set forth in the Meiji Constitution (drafted by MacArthur's SCAP committee within a week).¹⁶⁶ Section 12 of the Potsdam Declaration reads:

The occupying forces of the Allies shall be withdrawn from Japan as soon as these objectives have been accomplished and there has been

164. *Id.* at 4.

165. Hague Convention (IV) Respecting the Laws and Customs of War on Land art. 43, Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539.

166. HISTORY OF LAW IN JAPAN SINCE 1868 VOL. 12, 57-58 (Wilhelm Rohl ed., 2004).

established in accordance with the freely expressed will of the Japanese people a peacefully inclined and responsible government.¹⁶⁷

Again, here MacArthur and his staff—not “the freely expressed will of the Japanese people”—designed the government of Japan and its constitution. But, because Japan accepted an unconditional surrender, it was subject to MacArthur's authority. Aside from the procedural issues of birthing Japan's Constitution, substantive issues occurred as well.

Article 98 of Japan's Constitution states that:

This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

The treaties concluded by Japan and established laws of nations shall be faithfully observed.¹⁶⁸

Here, the main legal issue lies within the second provision of this article, which violates international law. Japan is a member of the U.N. (though not a member at the time MacArthur's staff constructed its Constitution),¹⁶⁹ and is therefore obliged by the U.N. Charter and its peacekeeping provisions.¹⁷⁰ Yet, Article 9 limits Japan's involvement to strictly non-combatant, medical, and logistical support roles. Japan is not authorized

167. *Potsdam Declaration*, *supra* note 40.

168. NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 98 (Japan).

169. *Member States*, U.N., available at <http://www.un.org/en/member-states/#gotoJ> (last visited Oct. 19, 2018). Japan became a U.N. member in 1956. *Id.* Japan's membership in the U.N. came just over a decade after its bitter war with the United States was viewed as a benefit to the organization. John J. Metzler, *Japan's Road to United Nations Membership, 1956*, ASIA TIMES (Dec. 24, 2016), available at <http://www.atimes.com/japans-road-united-nations-membership-1956/> (last visited Oct. 19, 2018). This was primarily due to the emerging geopolitical landscape and birthing of the cold war. With a communist China and divided Korean peninsula, the U.N. sought a democratic “pro-West” ally in the region. As of 2016, Japan was the U.N.'s second largest financial contributor. *Id.* Also, of note, Japan has been elected as a non-permanent member of the U.N. Security Council more than any other state (eleven times). *Japan Elected for Record 11th Time to U.N. Security Council Nonpermanent Seat*, JAPAN TIMES (Oct. 16, 2015), available at <https://www.japantimes.co.jp/news/2015/10/16/national/politics-diplomacy/japan-elected-record-11th-time-nonpermanent-unsc-member-ukraine-also-gets-seat/#.WmPS4JM-fUI> (last visited Oct. 19, 2018). There are five non-permanent members elected to the U.N. Security Council that serve two-year terms alongside the five permanent members, which consists of the United States, the UK, China, Russia, and France. *Id.*

170. The U.N. Charter provides that one of its purposes is to “maintain international peace and security.” U.N. Charter art. 1, ¶ 1. U.N. peacekeeping operations are employed by mandates from the U.N. Security Council. *Mandates and the Legal Basis for Peacekeeping*, U.N. PEACEKEEPING, available at <https://peacekeeping.un.org/en/mandates-and-legal-basis-peacekeeping> (last visited Oct. 19, 2018).

to fight alongside other U.N. forces, and if deployed in support of U.N. peacekeeping missions, it must remain under the government of Japan's authority.¹⁷¹ Likewise, the SDF cannot participate in any U.N. missions in which the use of force may be expected.¹⁷² If the U.N. has ever been criticized to be "a toothless tiger,"¹⁷³ Japan's membership and seat at the Security Council table does nothing to demonstrate the opposite.

The language in "The Guidelines for U.S.-Japan Defense Cooperation" ("Guidelines") is quite detailed in addressing any direct attack against Japan, but is ambiguous on how the United States shall address regional threats to peace.¹⁷⁴ Even though the Guidelines call for increased cooperation between the two nations,¹⁷⁵ currently disparity exists between their military capabilities.¹⁷⁶ Even though critics in both Japan and the United States wish to amend Article 9 and rearm Japan, Japan still relies on the United States for security against any type of attack.¹⁷⁷

In 2017, during a visit from Japanese Prime Minister Shinzo Abe, President Trump made a unilateral declaration committing the United States "to the security of Japan and all areas under its administrative control" (referring to the Senkaku Islands).¹⁷⁸ But what has the United States done to ensure regional security regarding the mounting threats from North Korea? Providing defense in response to a conventional attack aside, in the event of a nuclear missile attack, threat deterrence perhaps remains the only effective means of prevention.

For instance, Tokyo (population 13.5 million) has approximately ten minutes to react once North Korea launches a missile.¹⁷⁹ The city of

171. Umeda, *supra* note 15, at 20; *see also* PKO Law, *supra* note 140.

172. PKO Law, *supra* note 140.

173. Which, of course, is a common criticism of the organization—a simple internet search for "is the U.N. a toothless tiger?" produces countless articles devoted to the subject.

174. GUIDELINES FOR U.S.-JAPAN DEFENSE COOPERATION, *supra* note 18, at 1.

175. *Id.*

176. *See* Kyle Mizokami, *Japan and the U.S.: It's Time to Rethink Your Relationship*, THE ATLANTIC (Sept. 27, 2012), available at <https://www.theatlantic.com/international/archive/2012/09/japan-and-the-us-its-time-to-rethink-your-relationship/262916/> (last visited Oct. 21, 2018).

177. *Id.*

178. Steve Holland & Kiyoshi Takenaka, *Trump Says U.S. Committed to Japan Security, in Change From Campaign Rhetoric*, REUTERS (Feb. 10, 2017), available at <https://www.reuters.com/article/us-usa-trump-japan/trump-says-u-s-committed-to-japan-security-in-change-from-campaign-rhetoric-idUSKBN15P17E> (last visited Oct. 21, 2018).

179. David K. Li, *Japan Only Has Minutes to Run for Cover If North Korea Fires Nukes*, N.Y. POST (Apr. 25, 2017), available at

Osaka (population 2.6 million) may have as little as four minutes.¹⁸⁰ Even then, these assumptions are based on the idea that the missile is detected immediately once it is launched, when in fact it may take several minutes to detect.¹⁸¹

In response to North Korea's recent tests, Japan requested fifty-six advanced, medium range, air-to-air missiles from the United States at a cost of about \$113 million.¹⁸² In the meantime, politicians continue to encourage Japan to strengthen its military in order to strike North Korea.¹⁸³ Thus, Japan is looking to acquire the medium-range missiles to be fired from Japanese fighter jets into North Korea "if an attack *appeared* to be imminent."¹⁸⁴ This symbolizes a momentous move from Japan's previous defensive attitude.¹⁸⁵ If this new capability becomes reality, it cannot come soon enough. But is it too little, too late? North Korea's missile capability advanced faster than expected and the previously mentioned land-based Aegis guided missile defense system is not projected to be mission ready until 2023.¹⁸⁶ Will Japan be bringing a knife to a gunfight? Medium range, jet fired missiles pale in comparison to a nuclear capable ICBM. We know the United States is obliged to defend Japan in the event of an attack,¹⁸⁷ but should the United States be doing more to deter the North Korean threat?

A. Proposal—The United States Benefits from its Military Bases in Japan and Should Take an Active Role to Protect Japan's Interest

Without a doubt, the United States benefits greatly from the strategic presence of its military bases in Japan. The proximity of U.S. bases in Japan to North Korea and China allows for accessible intelligence collection. Additionally, as a military ally to South Korea and Taiwan, a large American military presence in Japan promotes regional peace through

<https://nypost.com/2017/04/25/japan-only-has-minutes-to-run-for-cover-if-north-korea-fires-nukes/> (last visited Oct. 16, 2018).

180. *Id.*

181. *Id.*

182. Tom O'Connor, *U.S. Prepares New Missiles for Japan After North Korea Threatens Nuclear War*, NEWSWEEK (Oct. 5, 2017), available at <http://www.newsweek.com/us-military-prepares-war-north-korea-selling-missiles-japan-678830> (last visited Oct. 21, 2018).

183. *Id.*

184. Justin McCurry, *Japan Buys US Missile Defence System to Counter North Korean Threat*, THE GUARDIAN (Dec. 19, 2017), available at <https://www.theguardian.com/world/2017/dec/19/japan-buys-us-missile-defence-system-to-counter-north-korean-threat> (last visited Oct. 21, 2018).

185. *Id.*

186. *Id.*

187. GUIDELINES FOR U.S.-JAPAN DEFENSE COOPERATION, *supra* note 18.

deterrence and allows for a quick military response to any regional hostilities. At approximately 40,000 troops, more American military personnel are in Japan than in any other foreign country.¹⁸⁸ Because the United States benefits from having such a large military presence in Japan, it should reciprocate the relationship in a quid pro quo fashion and defend Japan's interest from threats as well as attack.

Several options remain available to the United States to deter the North Korean nuclear threat. President Trump himself declares that, "all options are on the table."¹⁸⁹ Some of the options available include a preemptive military strike, diplomacy, or regime change. For the reasons set forth below, the most viable option—despite the negative humanitarian affect—is to strictly enforce the sanctions in place and withhold all humanitarian aid from North Korea. In addition, the United States should apply economic sanctions on any country supplying aid to North Korea—most notably China.

Despite decades of sanctions, humanitarian aid still infuses into North Korea much like a lifesaving medical IV. If an effective deterrence plan existed, North Korea would not launch ICBMs over Japan into the Pacific Ocean or test nuclear weapons. As a world leader (and self-imposed protector of Japan), the obligation fails upon the United States to deter regional threats and protect Japan's domestic and regional interest. To deter these threats, in addition to applying sanctions the United States should attempt to restrict all humanitarian aid going to North Korea and place more pressure on China to abide by existing sanctions. Admittedly, at the time of this writing, China began reducing trade with North Korea to induce it into nuclear compliance,¹⁹⁰ and thus North Korea

188. Jeff Desjardins, *Nearly 200,000 US Troops are Currently Deployed Around the World—Here's Where*, BUS. INSIDER (Mar. 20, 2017), available at <https://www.businessinsider.com/us-military-personnel-deployments-by-country-2017-3> (last visited Oct. 26, 2018).

189. Justin McCurry, *Donald Trump on North Korea: 'All Options Are on the Table'*, THE GUARDIAN (Aug. 29, 2017), available at <https://www.theguardian.com/world/2017/aug/29/donald-trump-on-north-korea-all-options-are-on-the-table> (last visited Oct. 26, 2018).

190. Jeremy Page, Andrew Jeong, & Ian Talley, *China, Finally, Clamps Down on North Korea Trade—and the Impact Is Stinging*, WALL ST. J. (Mar. 2, 2018), available at <https://www.wsj.com/articles/north-korea-finally-feels-the-sting-of-international-sanctions-1519923280?emailTo-ken=48b443e47bfe4c63c5fa9d921b9177c6VJaAZCUFFaHjic%2B1UE4IffQaafgYxnx3P6y1bUicjWi4waJ2HK5gN8VVswsnXP5T4A01kHcmuY8%2BGp6W%2BmF2PSoBWh7r%2B%2BBE1Xkj4lmH6bLb2mNN4wevyUzJfvVrTE7e> (last visited Oct. 26, 2018).

acknowledged interest in denuclearization.¹⁹¹ Notwithstanding these encouraging developments, in the last three decades North Korea failed to make any serious attempts to abide by any of its previous agreements.¹⁹²

Previous U.S. administrations, Allies, and the U.N. have all levied varying levels of sanctions against North Korea over the years.¹⁹³ Nevertheless, despite these sanctions North Korea developed an ICBM and nuclear capability few thought it could, and did so faster than imagined. North Korea also stands accused of money laundering, cyberattacks, and human rights violations.¹⁹⁴ As a result, the United States steadily decreased humanitarian aid to North Korea without any change in North Korea's advancement toward gaining nuclear weaponry.¹⁹⁵ For example, from 1995 to 2008 the United States provided \$1.3 billion in humanitarian assistance to North Korea.¹⁹⁶ Since 2009, nearly all U.S. aid has been withheld.¹⁹⁷ In 2012, the United States agreed to resume providing assistance if North Korea agreed to abstain from testing nuclear weapons.¹⁹⁸ The deal lasted three weeks before North Korea broke its end of the agreement.¹⁹⁹ In 2017, one day before President Obama left office, the United States provided \$1,000,000 of relief aid to North Korea.²⁰⁰

So long as China continues to trade with North Korea, any sanctions against the rogue state will fail to effectuate true change. China accounts for ninety percent of North Korea's trade and otherwise serves "as the lead facilitator of black market" trade with North Korea.²⁰¹ Additionally, China will continue to water down any U.N. sanctions placed against

191. Michael R. Gordon, Michael C. Bender, & Jonathan Cheng, *Trump Administration Praises North Korean Overture, but Remains Wary*, WALL ST. J. (Mar. 7, 2018), available at <https://www.wsj.com/articles/north-korea-willing-to-talk-denuclearization-with-u-s-1520336095> (last visited Oct. 26, 2018).

192. See *id.* North Korea has been known to "link . . . denuclearization with unacceptable demands, such as the withdrawal of American troops from the Korean Peninsula." *Id.*

193. Eleanor Albert, *What to Know About the Sanctions on North Korea*, COUNCIL ON FOR. REL. (Jan. 3, 2018), available at <https://www.cfr.org/background/what-know-about-sanctions-north-korea> (last visited Oct. 26, 2018).

194. *Id.*

195. See Baik Sung-won, *supra* note 3.

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. See Baik Sung-won, *supra* note 3.

201. Albert, *supra* note 193.

North Korea.²⁰² What options does this leave the United States and Japan?

Simply accepting North Korea as a nuclear power is unacceptable. This response will only encourage Kim to act more aggressively. To do so would also set a dangerous precedent that the world maintains little option but to submit to future North Korean weapons development. To accept the status quo is not a viable option.

A direct pre-emptive military strike against North Korea by the United States would devastate all sides and the global economy as a whole.²⁰³ A U.S. air strike against North Korea would likely lead to retaliation from North Korea against the South. If North Korea invaded South Korea with ground troops, naturally the United States would come to the defense of South Korea. In doing so, the United States would likely launch air strikes and receive logistical support from its bases in Japan. This, in turn, may invite North Korea to launch ICBMs toward Japan or even the United States. If China were to get involved on any level, even if only to support North Korea logistically, the three largest economies of the world (United States, China, and Japan)²⁰⁴ would be involved in war. The human cost could be unlike anything the world has ever seen.²⁰⁵ The economic impact would be devastating.²⁰⁶ Thus, preemptive military action against North Korea likely becomes the last option.

Perhaps the problem is not that North Korea as a nation maintains a nuclear weapons capability, but the more precise difficulty is the person with his finger on the button. Currently, nine nations possess nuclear

202. *See id.* As a permanent member of the U.N. Security-Council, China maintains power to veto any proposed resolutions. *Id.*

203. Some estimates put the potential death toll at one million. Jonathan Broder, *What Trump's War With North Korea Would Look Like*, NEWSWEEK (Oct. 3, 2017), available at <http://www.newsweek.com/war-trump-north-korea-nuclear-kim-jong-un-china-beijing-pyongyang-japan-south-676372> (last visited Oct. 26, 2018).

204. Gray, *supra* note 11.

205. The Chairman of the Joint Chiefs of Staff, Marine Corps General Joseph Dunford, predicts that a war with North Korea may result in "a loss of life unlike any we have experienced in our lifetimes." John Harwood, *Trump Has Few Options on North Korea as Potential Economic Hazards Come Into Focus*, CNBC (July 31, 2017), available at <https://www.cnbc.com/2017/07/31/potential-economic-hazards-from-north-korea-crisis-come-into-focus.html> (last visited Oct. 26, 2018).

206. *See* Will Martin, *Here's What a War Between North Korea and the US Could Do to the Global Economy*, BUS. INSIDER (Aug. 9, 2017), available at <http://www.businessinsider.com/war-between-north-korea-and-usa-global-economy-impact-2017-8> (last visited Oct. 26, 2018).

weapons²⁰⁷ but only one seems to garner the world's concern and attention. The concern with North Korea is not the nation, but its leader. But in a country like North Korea, the leader defines the nation. The difference between India or Pakistan possessing nuclear weapons compared to North Korea is that Kim Jong Un is not as interested in joining the international community as he is in holding his neighbor nations hostage to his nuclear weapons.²⁰⁸ Is regime change in North Korea possible? Regime change²⁰⁹ may be one of the better alternatives available, yet it was denied as an option by the U.S. Defense Secretary and Secretary of State, who instead promote a diplomatic approach.²¹⁰ With diplomacy and sanctions having a history of failure, and the human and economic cost of a preemptive military strike far too great, what option is the United States left with? When it comes to dealing with Japan's rearmament and constitution, the United States should acknowledge and honor its own historical relevance and continue to support Japan, not just against an imminent attack, but to also deter threats. When it comes to deterring threats from North Korea it comes down to risk evaluation.

207. Skye Gould & Dave Mosher, *14923 Nukes: All the Nations Armed With Nuclear Weapons and How Many They Have*, BUS. INSIDER (Apr. 14, 2017), available at <http://www.businessinsider.com/nuclear-weapons-stockpiles-world-map-2017-4> (last visited Oct. 26, 2018). Currently the United States, the United Kingdom, France, Russia, Israel, Pakistan, India, China, and North Korea all possess nuclear weapons. *Id.*

208. See *North Korea Threatens 'A Sea of Fire' Upon South Korea*, CNN (Nov. 25, 2011), available at <https://www.cnn.com/2011/11/24/world/asia/north-korea-sea-of-fire/index.html> (last visited Oct. 26, 2018). Kim Jong Un has stated "Japan is no longer needed to exist near us" and, referring to islands of the Japanese archipelago, said "[t]he four islands of the archipelago should be sunken into the sea by the nuclear bomb of Juche[.]" Justin McCurry, *We Will Sink Japan and Turn US to 'Ashes and Darkness,' Says North Korea*, THE GUARDIAN (Sep. 14, 2017), available at <https://www.theguardian.com/world/2017/sep/14/north-korea-threat-sink-japan-us-ashes-darkness> (last visited Oct. 26, 2018).

209. Covert regime revolutions are not a new or radical idea. The United States has attempted at least seventy-two regime changes (sixty-six covert and six overt) during the cold war. Notably, most of these efforts failed; however, twenty-six of the sixty-six covert attempts have successfully led to a U.S. backed government being implemented in the target country. Lindsey A. O'Rourke, *The U.S. Tried to Change Other Countries' Governments 72 Times During the Cold War*, WASH. POST (Dec. 23, 2016), available at https://www.washingtonpost.com/news/monkey-cage/wp/2016/12/23/the-cia-says-russia-hacked-the-u-s-election-here-are-6-things-to-learn-from-cold-war-attempts-to-change-regimes/?utm_term=.3ec08025eadf (last visited Oct. 26, 2018).

210. Jim Mattis & Rex Tillerson, *We're Holding Pyongyang to Account*, WALL ST. J. (Aug. 13, 2017), available at <https://www.wsj.com/articles/were-holding-pyongyang-to-account-1502660253> (last visited Oct. 26, 2018).

First, with regards to Japan's rearmament and Article 9, the United States undeniably has a legal obligation—pursuant to bilateral treaties—to defend Japan against an imminent attack.²¹¹ The United States must also acknowledge a moral obligation to defend Japan's regional interest to include threat deterrence. Whether the United States is currently satisfied with Japan's military capability (not only operationally but legally), it must recognize ownership of it. Despite bulldozing a pacifist constitution on Japan, the United States has consistently encouraged Japan to amend Article 9 in favor of rearmament.²¹² The best option for the United States—in regard to Japan's Constitution—is to honor Japan's sovereignty and democratic process. The United States is unquestionably familiar with Japan's Constitution and democratic process; the United States levied it on the defeated nation with little option but to assent.²¹³ If the people of Japan wish to reestablish a traditional military force and amend its constitution, there is an established, democratic process in place to do so (in fact, recent polling reflected 56% favorability for amendment).²¹⁴ The United States should respect the will of the people of Japan and continue to honor its obligation as protector of which it bestowed upon itself. By continuing to ensure Japan's safety, the United States is ensuring a strong global economy, a regional ally, and a strategic military presence.

As to the threat from North Korea, there is no easy solution. Certainly, the North Korean nuclear problem has plagued senior officials in the United States since at least the Clinton era. Of the several possible solutions mentioned above, none stand free from risk for the United States. However, this is not just a U.S. problem, it is a global one. Consequently, there should not be a U.S. solution, but a global solution. Until the nations of the world that provide humanitarian aid to North Korea decide to suspend aid in an effort to pressure Kim into compliance with nuclear terms set out by the U.N., the North Korean nuclear threat will continue.²¹⁵ Conversely, no one wants to see innocent North Korean

211. See GUIDELINES FOR U.S.-JAPAN DEFENSE COOPERATION, *supra* note 18.

212. See Umeda, *supra* note 15, at 23.

213. See *generally id.*

214. Michael MacArthur Bosack, *Japan's Path to Constitutional Amendment*, THE DIPLOMAT (May 26, 2017), available at <https://thediplomat.com/2017/05/japans-path-to-constitutional-amendment/> (last visited Oct. 26, 2018).

215. See Leslie Young, *What Happens to North Korea's Aid Money*, GLOBAL NEWS (Oct. 11, 2017), available at <https://globalnews.ca/news/3797235/north-korea-aid-money/> (last visited Oct. 14, 2018) (noting that Canada provided \$25 million in aid from 2005-2015, and the United States provided \$1.3 billion from 1995-2008); see also Ross Logan, *UN Gives North Korea £4.5M in Aid Despite Slapping Kim With Nuclear Sanctions*, EXPRESS (Aug. 15, 2017), available at

civilians who are separate from the regime suffer. As the new sanctions settle in, truly the ones who suffer are innocent civilians.²¹⁶ However, even while acknowledging the humanitarian concerns, starving North Korea into compliance may be the best option with the least loss of life.

No unassailable scenario exists where everyone wins—either Kim will hold the nations of the region hostage to his growing arsenal, or the innocent people of North Korea will continue to starve under heavy sanctions. Somewhere, a line must be drawn and not everyone can escape this scenario unscathed. Kim, as the leader of North Korea, is responsible for the health and safety of his people. Any effects sanctions have on the innocent civilians of North Korea must lie with Kim alone. The United States and the U.N. must insist on stricter sanctions that include eliminating all humanitarian aid to North Korea. A tough stance on North Korea, however, naturally requires the assistance of China.

With more pressure—especially from China—North Korea can escape decades of isolation and gradually reintegrate into regional affairs. Admittedly, sanctions against North Korea are less effective if North Korea receives assistance from China. The United States must make stronger efforts to encourage China's cooperation in de-nuclearizing North Korea.

In November 2017, the United States designated North Korea as a State Sponsor of Terrorism.²¹⁷ As such, harsher sanctions were imposed on North Korea. This designation “also implicates other sanctions laws that penalize persons and countries engaging in certain trade with state sponsors.”²¹⁸ Sanctions aimed directly at North Korea have a long history of failure; the next approach should be to sanction the nations that continue to aid North Korea.

North Korea's “true lifeline” stems directly from China.²¹⁹ If the United States wants to deter and hopefully eliminate the nuclear threat from North Korea, it must do so with assistance from China. China has

<https://www.express.co.uk/news/world/841630/north-korea-news-drought-united-nations-aid-sanctions-us-weapons> (last visited Oct. 26, 2018) (noting that the U.N. provided \$5.3 million in aid in 2017 alone); Maidment, *supra* note 3 (noting that the UK provided £4 million over the past six years).

216. See Kee B. Park, *Hunger in North Korea Is Devastating and It's Our Fault*, N.Y. TIMES (Dec. 17, 2017), available at <https://www.nytimes.com/2017/12/17/opinion/weapons-north-korea-hunger.html> (last visited Oct. 26, 2018).

217. *State Sponsors of Terrorism*, U.S. DEPT. OF STATE, available at <https://www.state.gov/j/ct/list/c14151.htm> (last visited Oct. 26, 2018).

218. *Id.*

219. See Albert, *supra* note 6.

grown its economy to be the second largest in the world behind only the United States.²²⁰ Unquestionably, China wants to continue its future economic growth. If the United States and its allies can position enough economic pressure against China, perhaps then China will be compelled to rein in Kim. Despite the promise stemming from the U.S.-North Korean summit in Singapore, little ground has been gained since. A recent meeting between the U.S. Secretary of State and North Korean officials was described as going “as badly as it could have gone.”²²¹ In fact, Kim no-showed a scheduled meeting with the Secretary of State.²²² The denuclearization hype from the summit quickly began to lose steam. North Korea accused the United States of making “gangster-like demands,” the United States accused North Korea of “illegally smuggling” refined petroleum products (supplied by China and Russia), and China is already calling for easing sanctions against North Korea.²²³ Thus, without stronger sanctions and the participation of China, the status quo will likely continue. It is time for the United States and its allies to impose unilateral sanctions on China as well.²²⁴

V. CONCLUSION

Japan’s history with the Korean peninsula, coupled with its strong alliance with the United States, makes it a natural target for North Korea. This, along with its pacifist Constitution, readies Japan to be susceptible to attack by North Korea. Because the United States enjoys the strategic benefits of a large military presence in Japan, a moral obligation arises to defend Japan against North Korean threats. Finally, the United States must ultimately recognize its own significance in birthing Japan’s Constitution and acknowledge the procedural difficulty inherent to amend it. To pressure Japan to amend Article 9 constitutes an invasion of Japan’s sovereignty and disrespects the same democratic process we put in place.

220. Gray, *supra* note 11.

221. Zachary Cohen & Elise Labott, *North Korea Puts Off Meeting with US on Returning Soldier Remains*, CNN POL. (July 12, 2018), available at <https://www.cnn.com/2018/07/12/politics/north-korea-us-soldier-remains/index.html> (last visited Oct. 26, 2018).

222. *Id.*

223. Edith M. Lederer, *US Presses China and Russia to Enforce Sanctions on NKorea*, AP NEWS (July 20, 2018), available at <https://www.ap-news.com/a93fd168c6ad45cdb507a6432c6d788b> (last visited Oct. 26, 2018).

224. *Voting System and Records*, U.N. SEC. COUNCIL, available at <http://www.un.org/en/sc/meetings/voting.shtml> (last visited Oct. 26, 2018) (noting that substantial U.N. sanctions against China are an impossibility as China and Russia both have veto power as permanent members of the U.N. Security Council).

The United States must afford the people of Japan the opportunity to govern themselves.

As to North Korea, the United States must insist on a global response that eliminates all aid (including humanitarian aid) to the country. Doing so will naturally require the cooperation of China. Such cooperation will not come voluntarily. Thus, the economic sanctions currently in place against North Korea must be transferred to China. Because an armed response is out of question, an economic solution remains the best option. With China's cooperation, the world could denuclearize North Korea and reintegrate it into regional affairs.