

East Asia in the 21st Century and the Constitution of Japan

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Issues over the Constitution's Article 9 and the aim of my thesis

Concerning the Constitution of Japan established in 1946, especially the provisions of a right to live in peace written in its preamble and Article 9 stipulating renunciation of all kinds of war, fierce conflicts have been carried out for 60 years in Japan. But recently it seems that the conflicts will soon come to an end, because the ruling Liberal Democratic Party advocating revision of Article 9 has taken concrete steps toward the revision with the intention of announcing its own revision draft in November.

Japanese persons of law strongly expect a lot of the legal profession and peoples in the rest of the world to raise a voice against the attempts to revise our basic law. The revision is intended to have Japan, the world's second-biggest economic power with the third-greatest defense budget, geared to being a war-fighting country in cooperation with the United States. The constitution's existing peace provisions, as clearly evidenced in the process of its enactment and the descriptions, are characterized by its pledge of peace for the people of the world, above all Asia, on the basis of Japan's remorse over wars of aggression and colonial rule during World War II. For this reason, people of the world have a right to raise a voice against the constitutional amendment --- breach of pledge.

Talking of an adverse revision of the war-renouncing Article 9, the issue is not restricted to being Japan's domestic problem. It is a grave issue in international politics,

therefore our association calls for a international joint struggle in defense of Article 9.

In East Asia (including Southeast Asia, hereinafter referred to as such) at the beginning of the 21st century, fierce conflicts and antagonism continue over various issues between the U.S., Japan, China and Russia. It goes without saying that East Asia is the stage of struggle to hegemony between these countries. I think it desirable that each country, free of such struggle to become superpowers, should adopt a peace constitution including a war-renouncing article and a right to live in peace, or establish a joint community of peace through embodying the principles of Article 9 and a right to live in peace in an international treaty. My thesis, from this standpoint, is aimed at making clear historical processes about North Korea's nuclear developments and human rights issues, Taiwanese issues, and the latest anti-Japanese movements in South Korea and China, and providing the world's law profession and people with materials concerning East Asia's peace and Article 9.

North Korea's nuclear development and human rights issues

North Korea's nuclear development issues were triggered by the discovery of a reprocessing plant under construction for used nuclear fuels in a rural area by a U.S. intelligence satellite in June 1988. The former U.S. President Bush in September 1991 declared that the U.S. would, based on its "modest commitment policy," unilaterally remove all tactical nuclear weapons from its military bases around the world. North Korea in January 1992 signed an agreement to inspections by the International Atomic Energy Agency (IAEA), but in March 1993 it suddenly expressed its secession from the Treaty on Non-Proliferation of Nuclear Weapons (NPT). In March 1994, the country, through its brinkmanship diplomacy, even stated "Seoul will suffer deluge of fire once war breaks out," and the Korean Peninsular became a touchy situation. The tension was eased by the

former President Jimmy Carter's visit to Pyongyang. In October 1994 the "Agreed Framework" was concluded. The agreement says that North Korea should remain in the NPT setup, accept normal inspections by IAEA, and freeze the existing nuclear reactor and reprocessing plant, while the U.S., in return for North Korea's measures, should establish an international setup for North Korea's construction of a light-water reactor and provide 500 thousand-ton's of heavy oil to the country every year until the reactor's completion.

As regards the Agreed Framework, U.S. hardliners bitterly criticized it, and in September 1999 the former Defense Secretary William Perry submitted a report on it. With the cooperation of the former South Korean President Kim Dae-jung, the agreement made some progress, leading to the former President Clinton's abortive visit to North Korea. But with the advent of President George W. Bush, things greatly changed as seen from the fact that he branded the country as one of the "axis of evils" in his January 2002 State of the Union Message. In September 2002, Japan's Prime Minister Koizumi Jun'ichiro visited North Korea, and issued the Pyongyang Declaration. Shigemura Tshimitsu, a Japanese analyst on North Korean issues, explained that the country agreed to the declaration on the basis of its "pendulum diplomacy" intended to thwart U.S. attempts to attack and gain economic cooperation (in his work "Latest North Korea Data Book" in 2002). In October 2002, North Korea first acknowledged its plan to develop its nuclear program when the former Deputy Secretary of State Kerry visited it. In response, the Bush Administration took tough measures against it, and North Korea in January 2003 announced its secession from NPT again. Amid such a vicious circle, the U.S. began to make a more diplomatic approach stressing multinational relations, and to rely on China acting as an intermediary. During April 23 – 25 in 2003, the U.S., China and North

Korea held talks in Beijing. The U.S. insisted on having Japan and South Korea join the talks, while North Korea insisted on having Russia join in, thus leading to holding six-way talks between these countries.

The six-way talks over North Korea's nuclear development issues were held three times in Beijing: The first on August 27 – 29 in 2003, the second on February 25 – 28 in 2004, and the third on June 23 – 26 in 2004. Immediately after the end of the first talks, the North Korean delegation said, "It's no longer necessary to hold such talks," which threatened to end them. But the situation improved to the point where Kerry commented after the end of the third talks, "We have experienced brisk discussions between the six countries. The latest meetings have focused on North Korea's nuclear development issues, but in the future our meetings will possibly deal with other broader issues." As regards the contents of the talks, each country reached the agreement on the freezing of nuclear development, including inspections and the necessity of compensation for that measure. The fourth round of talks was due to be held by the end of September in 2004, but it was shelved because new suspicions about South Korea's nuclear development emerged, and North Korea awaited consequences of the U.S. presidential election. Moreover, North Korea on February 10, 2005 announced a suspension of six-way consultations and manufacturing of nuclear arms. The situation has become tense again with the rumor that North Korea will make a nuclear test explosion.

When I look at the six-way talks, I keenly feel the existence of political speculation, calculation and struggle for initiatives each country has behind their rhetorical expressions. Needless to say, the latest tense situation is first attributable to the U.S. long-standing nuclear-threat policy, but the U.S. is steadfastly trying to safeguard its

position as a great power without any reflection about that. North Korea has been employing a brinkmanship policy, trying to prolong its dictatorship. China aims at taking advantage of the talks to increase its influence in Asia. Japan is anxious to secure its position ruling Asia with the U.S. in rivalry with China. South Korea seems to be indecisive, and Russia appears to attract the attention of other countries with its unique statements. A danger has now become clear people's destiny is being left up to governments and diplomatic leaders. Under such circumstances, now is the time for ordinary people to take the helm, isn't it? Peace groups of six nations should get together, discuss and compile their demands, turn them in to the heads of the six governments, and make common efforts to get these demands realized. I think this age needs such a new peace movement.

I would like to refer to human rights issues in North Korea. Under Kim Jong Il's dictatorship, the people are afflicted with the suppression of freedom and human rights violations, symbols of which are Korea's concentration camps and the abduction of Japanese nationals. About five to six of those camps in its mountainous areas are said to imprison 150 to 200 thousand people. With regards to the abduction issues, Kim on September 17 in 2002 admitted to its facts and apologized to the Japanese government. But he has not yet clarified the whole truth, and the return of many of the abducted to Japan remains unsettled. A survey of a civil association of abduction investigation says that the number of those abducted by North Korean agents is at least 100, possibly 430 (Access the website : <http://www.chosa-kai.jp/>). Savage acts of kidnapping are not limited to Japanese nationals. The South Korean government once announced that 486 of its people were abducted between 1953 and 2000, and abductions took place even in Europe.

As regards this issue, a racial exclusionism campaign against North Korea has extensively been carried out in Japan, and Japanese victims' families, in connection with conservative statesmen, have gained the support of a wide-range of people for their assertion to impose economic sanctions against North Korea. Moreover, Japanese lawyers and peace activists have different views, which makes it difficult to find a consensus on the issue. However, despite the pretence of these complex situations, we cannot evade this issue. Our association would like to make efforts to solve it.

Taiwanese issues

With the news reporting China's enactment of the anti-secessionist law during the end of last year and the beginning of this year, the possibility of China's use of force against Taiwan became a topic of the day. Taiwanese issues suddenly emerged. First, let's look at the outline of Taiwanese history.

It was not until the 16th century that Taiwan emerged in world history. Since then, Taiwan has been at the mercy of outside forces. Between 1624 and 1661, Holland ruled the area, and the Cheng administration which followed the Dutch rule was destroyed by the Ching Dynasty that seized power in China in 1683. Later, Taiwan came under the administrative rule of Fujian Shen, but it was virtually a Chinese colony due to its laissez-faire policy. In the middle of the 19th century, European and American powerful countries tried to rule it, and eventually in 1895, Japan, which won the Japanese-Sino War, succeeded in gaining the area as its colony. Its colonial rule continued 50 years until 1945. Japan's rule at first faced fierce Chinese resistance. The Japanese government tried to force colonial modernization, including improving infrastructure and popularization of primary education, which helped the Taiwanese develop their identity. But the number of Taiwanese soldiers who were drafted into the last war was about 80,000, and that of

paramilitary personnel was about 127,000, some 30,000 of whom died of disease or were killed in the war.

Following Japan's defeat in World War II (the Asia and Pacific War), the Chiang Kai-shek administration condemned Taiwan. The Kuomintang government started its rule over it, but inflation and corruption of public office caused people's complaints and indignation, and at last their fury broke out in the 2.28 incident of 1947. In response, the Kuomintang regime dispatched its army from mainland China to Taiwan and randomly killed many Taiwanese. "It was reported that about 28,000 Taiwanese were killed and their bodies dyed the river red. Besides, the regime arrested many dissidents that it feared to be rebellious, and secretly executed them." (Refer to the book "Introduction to Taiwan" by Sakai Toru). The civil war between the Chinese Communist Party and the Kuomintang regime on mainland China ended up in the former's victory and led to the founding of the People's Republic of China in 1949. The defeated Republic of China government and the Kuomintang fled to Taiwan. With the eruption of the Korean War in 1950, the U.S. started patrols of its 7th Fleet in the Taiwan Strait and resumed its aid to the Chiang Kai-shek administration. "Confrontation between the People's Republic of China and 'Republic of China' bordering the Taiwan Strait was set up." (Refer to the book "Taiwan --- Changing and Hesitating Identity" by Wakabayashi Masatake).

The Republic of China advocated "Liberate Taiwan!," while Chiang Kai-shek advocated "Fight back the mainland!" Two crises bordering the strait took place, but were avoided. During the 1950s and 1960s the Kuomintang enforced a dark rule within Taiwan, but achieved a high-rate economic growth, which was termed the "Miracle of Taiwan" in later years. In the middle of the 1960s, Taiwan changed from an agricultural society into an

industrial society.

In 1971 the Kuomintang regime had the 'right to represent China' in the United Nations revoked by the People's Republic of China government, and seceded from the U.N. Around that time, the regime was not only isolated from international society but weakened its power domestically. Chiang Kai-shek died in 1975, and Chiang Ching-kuo ruled the area. He took the helm toward "perpetuating Taiwan," but under his rule, the Formosa Incident seeking people's freedom and democracy broke out in 1979, and in 1986 the Democratic Progressive Party (DPP) was formed. Corazon Aquino's "People's Power" revolution in the Philippines exerted a great influence on these developments. In July 1987, the martial law which had been in force for 39 years was revoked. In January 1988, Chiang Ching-kuo died, and Lee Teng-hui, then vice-president, became the president. During his 1988 – 2000 rule, he greatly democratized Taiwan with his own efforts and the cooperation of his supportive forces. Domestically, in May 1991 he abolished the emergency system called the "period for mobilizing people to quell rebellions." Consequently, he began to officially use the name "the People's Republic of China," which he formerly had called "communist barbarians." In May 1992, Article 100 of the Criminal Code which had repressed speech against the regime was revised. There is not a single political prisoner now. In 1991, the Legislative Yuan (body) members, elected initially in mainland China in 1948 and called "eternal members" serving many years, retired, and in December 1992, the election of the whole Legislative Yuan members took place. The DPP won the election. In February 1995, Lee made an unofficial visit to the U.S. In March 1996, a direct presidential election, the first ever in Taiwan's history, took place, and he was elected winning 54 percent of the votes cast. The writer Wakabayashi surmised that the "second 'republic' of the Republic of China" was formed with this direct election (Refer to

his book mentioned above). In March 1996, the People's Republic of China carried out missile exercises, and the U.S. confronted it dispatching nuclear-powered aircraft carriers. The Chinese measure had an adverse effect on the Taiwanese. Lee, in July 1999, in an interview with a German radio channel, said "China-Taiwan relations are 'special relations of two countries (through its democratization)', and are not 'one China' consisting of a legitimate government and a renegade province, or a central government and provincial one". His statement triggered China's bitter reaction, but most people in Taiwan supported his statement.

In the March 2000 presidential election, Cheng Sui-bian of the DPP was elected gaining 39.30 % of the votes cast, leading Soong James C.Y. of the People First Party (PFP) 37.47%, and Lien Chan of Kuomintang (KMT) 23.10%. However, his was a weak minority government. In the March 2004 presidential election, Lien and Soong formed a coalition. They were superior to Cheng and Lu Hsiu-lien (DPP) in terms of the number of their supporters. But Cheng and Lu came from behind to win a narrow victory in the election by staging the 2.28 demonstration of forming a 2-million-humanbeing chain linking from Taiwan's northernmost tip to its southernmost. (A sniper incident took place the day before voting day). Chen won the election gaining 50.114%, while Lien polled 49.886% of the votes cast. The difference in the share of the votes cast was only 0.229 % with a difference of 29,518 votes. In the December 2004 Legislative Yuan election, the ruling coalition government gained only 101 seats (89 for DPP and 12 for United Formosans for Independence---UFI), while the opposition parties won 114 seats. President Chen resigned taking responsibility for the 'poor results' of the election. On February 24 in 2005, Chen and Soong had talks, announced a 10-item agreement, and Ng Chiang-tong and Ching Mei-ling of the UFI resigned as presidential advisors. On March 14 in 2005, the

National People's Congress of China enacted its anti-secessionist law. In April and May, Lien and Soong visited Beijing and reconfirmed the principle of "One China" in their talks with President Hu Jintao.

Japanese peace movements have not dealt with Taiwan issues since Chiang Kai-shek ruled Taiwan for many years. Despite changing situations in China since the middle of the 1990s, they have hardly discussed the issues. In recent years, they have begun to talk about them again.

The focal point of discussion is the independence of Taiwan. My view is that peace movements, at home and abroad, should support it if Taiwanese choose a way toward their independence. It is quite natural in view of the principle of "residents' self-determination." It is also supported by Article 1 of the U.N. Charter and Article 1 of the International Covenant on Economic, Social and Cultural Rights. Because the People's Republic of China has never controlled Taiwan, its assertion is unreasonable. The "One China" policy is not realistic today, long after the era of the Taiwan-Communist civil war and of the 1960s.

It has come to light again that China has a policy of "liberating" Taiwan by force in certain circumstances, due to the enactment of the anti-secession law. In fact, 500 missiles have been installed on the coast facing Taiwan. China also is making preparations for blocking U.S. atomic-powered aircraft carriers in times of emergency in Taiwan. The incident when a Chinese atomic-powered submarine violated Japanese territorial waters last November is regarded as part of their strategy. In opposition to such moves, on February 19, 2005, Japan and the U.S. reconfirmed Taiwan Strait issues as a common strategic goal, which has created a strained atmosphere. I am opposed to China's

hegemony, and to the idea of replacing 'support for Taiwan's independence' with 'military support toward Taiwan.' Taiwan issues must be resolved peacefully, and the Japanese government should strive for a peaceful solution on neutral ground.

Anti-Japan movements in Korea and China

In March and April 2005, massive anti-Japan demonstrations were staged in Korea and China. These had been expected since this year marks the 60th anniversary of the end of World War II. But the demonstrations were much bigger than we imagined they would be. China's anti-Japanese protests now seem to have ended, but their causes have not been resolved.

The dispute over the islands in the Sea of Japan called Takeshima Island (called Tok-do by South Korea) abruptly came to the surface again when the prefectural assembly of Shimane (Southwestern Japan) approved the designation of "Takeshima Day" in its meeting. South Korean President Roh Moo Hyun on March 1 said in his speech at the ceremony marking 3.1 of 1919 uprising for independence, "Japan should express sincere remorse and heartfelt apology to Koreans for its wartime atrocities. It should also compensate us and be reconciled with us over the matter, if necessary. This is a universal process to atone for an unfortunate history, done by every country." His statement no doubt gave momentum to Korea's claim of sovereignty over Tok-do and to anti-Japanese demonstrations in connection with the issues of distorted descriptions in Japan's rightist history textbooks and claims for compensation for its wartime damages. The Korean government on March 17 announced a "new doctrine for Japan" describing "demands to have Japan establish its policy based on universal values and common sense." Roh Moo Hyun on March 23 published his informal talk, saying that "We can no longer overlook

Japan's intention to glorify its history of aggression and rule over our country, and to seek hegemony again. Whatever the difficulties, we will surely settle these matters without backing down or leaving them undecided." The Japanese education ministry on April 5 disclosed the results of the authorization of history textbooks to be used for junior high schools next year, adding fuel to Koreans' rage. Roh on April 27 said in the 2,500th issue of "Mindan News" ('Mindan' means 'Korean Residents Union in Japan'), "Korea and Japan should share the common destiny of opening up a path toward the future for East Asia." This remark has spread a rumor that the president changed his mind. Prime Minister Koizumi is scheduled to visit Korea in June.

China's protest was initially triggered by the signature movement on the Internet website against Japan's attempt to become a permanent member of the Security Council of the U.N. around the middle of March. The number of the signatures is said to have topped 10 million by the end of March. Talking about the demonstrations, they started in Chen Dou with a few thousand citizens on April 2, followed by Beijing with 10,000 on 9th, and Su Zhou with several thousands, Guang Zhou with 20,000, Hai Kou with 10,000 on 10th. Then, on 16th-17th, they spread to another 17 provincial cities: Shen Yang 1,000, Tian Jin 2,000, Shang Hai several 10 thousands, Ning Bo 1,000, Guan Zhou 10,000, Shen Zhen several 10 thousands, Chang Sha 2,000, Hong Kong 12,000, Nan Jing scores of citizens, and so forth. Demonstrators even raided Japanese firms, especially on 16th in Shanghai, Japanese restaurants and the Japanese consulate general being assaulted. The Chinese government took a consistent attitude of taking no responsibility for demonstrators' vandalism and violence. At the 17th Japan-China Foreign Ministerial talks, a Chinese director of the foreign ministry said, "The latest situations are caused by the Japanese government which has hurt Chinese people's sentiment over issues such as Taiwan, history and international

human rights.” Prime Minister Koizumi on April 22 expressed “serious remorse and heartfelt apology” for its past colonial rule and acts of war at the Asia and Africa Summit in Indonesia. He also had talks with President Hu Jintao in Jakarta on April 23. Though some contents of the talks were unknown, Koizumi didn’t refer to apology and compensation concerning the violence of the anti-Japanese demonstrations, while Hu made a five-item proposal. The talks seem to have been held at Hu’s pace. The Chinese government is trying to restrict the protest campaign by closing the anti-Japanese website and detention of the protest leaders, and these measures seem to be now working.

How should we appreciate anti-Japanese protests in China and Korea?

As regards anti-Japanese campaigns, the Japanese focus on why Roh changed his mind, as seen in 3.1 speech, although he had promised not to refer to historical issues during his tenure of office. For sure, he seems to have made use of people’s sentiment in order to gain more popularity. But it is not appropriate for us to only focus on his policy change, ignoring the issues Korean people have raised toward Japan. The schemes for distorting problems Japanese conservative statesmen or the mass media employ are the same as those used in China. Japanese conservatives or the mass media bluff people, saying that the Chinese government tried to increase its influence by taking advantage of demonstrations and by Japan-bashing, or it staged a joint government-people demonstration with a view to diverting people’s general dissatisfaction to outside issues. In 2003 in China, I actually saw anti-Iraq war demonstrations being banned and suppressed by the Chinese government. From my experience, I don’t believe the Chinese government assertion that the latest ‘anti-Japanese campaigns were people’s voluntary actions.’ But that’s not enough. Those movements, in China and Korea, basically erupted from people’s dissatisfaction against Japan.

The latest anti-Japanese issues in China and Korea remain unresolved. It is natural that the Japanese government demand apology and compensation from the Chinese counterpart for the damages caused by the acts of violence. But if it only does that, the issues will fester, and anti-Japanese sentiment will rekindle. Right-leaning statesmen's campaign "Boycott the Beijing Olympiad!" is out of the question. The Japanese government and the people alike should answer the questions raised by Korean and Chinese peoples. In this connection, I consider that civic-level interchanges between Japan-Korea and Japan-China are very important, and a basic solution of the issues is impossible without that. In regard to the issues of historical awareness, it is essential that the Japanese should learn actual history directly from the Chinese people. Freedom of expression and of overseas travel in China must be guaranteed in order for the civic-level interchanges between two countries to succeed. The Chinese generally cannot go abroad, and if they do, their remarks are subject to checking by the government. If their remarks on the website remain to be censored by the authorities, such civic-level interchanges will be far from successful. (Refer to the book "Controlling the Media in China" by Qinglian-he).

Aiming at forming a peaceful international community

The problems concerning peace in East Asia cannot be dealt with between the two countries each time they arise. Peace problems mentioned above are all serious in nature, and multi-national cooperation and fundamental solutions are needed to resolve these problems. Therefore, as I have mentioned in the early part of this thesis, I'd like to propose an idea of a peaceful international community on the basis of a right to live in peace and a provision like Article9.

What I'd like to note here is that my proposed community is not one where diplomatic experts or nations merely live in a friendly manner but one which is based on civic-level interchanges and solidarity (Refer to the book "Toward Globalization of Peace" by Irie Akira). I think that peace is merely not a situation free of any war but one with people's symbiosis and their solidarity. Civic-level interchanges and solidarity are indispensable to realization of a peaceful community.

Civic-level interchanges and solidarity are not a new thesis. But they have appeared before our eyes with new contents. At present, peoples in the world are divided and confront each other over their nationalism and exclusionism. With the progress of globalization, government leaders, on the basis of populism, stir and take advantage of this nationalism and exclusionism. Looking at the current situation in Japan, I would never have imagined that the Japanese could show this much attitude of contempt, insult, hatred and terror toward other nations.

I think that lawyers and peace activists need to intentionally pursue more civic-level interchanges. But Chinese lawyers and people are not yet members of the movement of world's lawyers and peace activists. This is amazing. Lack of discussion over this problem is more surprising.

Various efforts to strengthen civic-level interchanges and solidarity have just begun, one of which is the plan to hold the 4th Conference of Lawyers in Asia and Pacific (COLAP4) in Seoul this September. The theme of the conference is "Peace, Human Rights, and Coexistence in the Pacific Region----Aiming at Overcoming Division and Confrontation."

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