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Russia's Invasion of Ukraine Obliges Revision of the Japanese Constitution

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Russia's invasion of Ukraine launched on February 24, 2022 was a reckless act that destroyed the post-war international order. That world order had been underpinned by a system of international cooperation led by the United Nations (UN) comprising the Second World War's victors, combined with a nuclear non-proliferation regime created by the five permanent member nations of the UN Security Council (the permanent five, or P5). The nuclear non-proliferation regime is an international arrangement that entrusts the "adult supervision" of nuclear arms to five nations with nuclear capability (the US, Russia, the UK, France, and China), and does not allow any other nations to possess nuclear arms. However, Russia, which was supposed to be one of the "adults" to strictly supervise the use of nuclear arms, has not only failed to supervise, but has actually engaged in nuclear intimidation against Ukraine, a nation without nuclear capability. This is very different from North Korea, one of the poorest countries in the world, showing off its nuclear weapons; what President Putin has done is to invade another country, trample on the UN Charter, and use nuclear intimidation to fundamentally undermine the nuclear non-proliferation regime.

Turning to post-war Japan, our country espoused the principles of pacifism and international cooperation enshrined in its Constitution, resuming its place within the international community in 1952. The principle of pacifism was stipulated

in both the preamble and Article 9 of the Constitution, and provided the basis for post-war Japan's self-restraining security strategy, including our exclusively defense-oriented policy and the Three Non-Nuclear Principles. Meanwhile, the principle of international cooperation was reflected in the diplomatic stance fully supporting the UN-led international order, primarily from an economic perspective. I refer to this combination of approaches as our "post-war diplomatic and security regime." However, the foundations upon which Japan built its post-war regime has collapsed due to Russia's recent atrocities. That is to say, the dramatic developments marking this new era of war in Ukraine have produced a situation in which the very *raison d'être* of the Japanese Constitution is being called into question.

It is well known that the Japanese Constitution's pacifism shares common origins with the ideals expressed in the UN Charter. The first paragraph of the Constitution's Article 9 includes the statement "...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." These words are virtually identical in meaning to the UN Charter's Article 2 Item 3, "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered" and Article 2 item 4, "All Members shall refrain in their international relations from the

threat or use of force....” However, the second paragraph of the Constitution’s Article 9, including the statement “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” is a provision unique to the Japanese Constitution. This was what provided the basis for post-war Japan’s unusual security strategy. In particular, Japan’s exclusively defense-oriented policy, which is the fundamental principle guiding its approach to defense, is explicitly described in the *Defense of Japan* (Annual White Paper) as meaning that “defensive force is used only in the event of an attack, that the extent of the use of defensive force is kept to the minimum necessary for self-defense, and that the defense capabilities to be possessed and maintained by Japan are limited to the minimum necessary for self-defense. The policy including these matters refers to the posture of a passive defense strategy in accordance with the spirit of the Constitution.” There is nothing surprising about the first part of this description—a posture of passive defense, whereby “defensive force is used only in the event of an attack”—given that it corresponds to international law, which clearly prohibits preemptive attacks. However, the second part, stating that both “the use of defensive force and the defense capabilities to be possessed and maintained” must be kept to “the minimum necessary” represents a surprisingly reluctant attitude toward defense. The reason I say this is that other countries defend peace and the

lives of their citizens by maintaining considerable defense capabilities and using them to the full. In contrast, such an excessively self-restrained policy on the part of Japan very much reflects the post-war global context and anti-war sentiment among the Japanese people that gave rise to the pacifism enshrined in Japan’s Constitution.

Japan’s Constitution was influenced particularly by the three basic points relating to its revision (known as the MacArthur Notes) proposed to the Japanese on February 3, 1946 by US Army General Douglas MacArthur who was the Supreme Commander for the Allied Powers that occupied Japan for seven and a half years. MacArthur’s second basic point, presented below, was incorporated fully into the Constitution’s preamble (“...we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. ...”), as well as Article 9:

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.

However, post-war Japan's security policy, based on the pacifism of a Constitution drafted under such circumstances, must now confront today's tense international situation while still containing three arguably critical anomalies. They are: (1) the Constitution's key precept is now mere formality, (2) Japan has intensified its sense of dependence on US, and (3) the burden on the Japanese people has grown. I explain these three issues in order below.

The first anomaly is the irreconcilable gap between the Constitution's stipulation that "land, sea, and air forces, as well as other war potential, will never be maintained" and the existence of Japan's ground, maritime, and air Self-Defense Forces (SDF), which are among the largest and most powerful armed forces in the world. In the early years of the Constitution, the SDF (including its precursor) was indeed small in scale, lending some plausibility to responses the government often gave to questions in the National Diet, such as the explanation that Japan's self-defense capability did not amount to war potential (of the type prohibited in the Constitution). However, Japan is now the world's fifth-largest military power in terms of the size of its budget. Asserting that self-defense forces on this scale do not correspond to war potential is simply disingenuous. In short, the continuous growth of Japan's defense capabilities as the surrounding security situation intensified means that the Constitutional precept prohibiting

maintenance of war potential has now been reduced to merely an empty shell.

The second anomaly relates to the government's adherence to an exclusively defense-oriented strategy in order to comply with the Constitution, which has had the effect of constraining Japan's defense capability to the minimum necessary for self-defense. As a result, until recently, Japan was prohibited from exercising the right to collective self-defense to contribute to the mutual defense of its allies, and even the SDF's participation in UN peace-keeping operations outside Japan faced major constraints. In addition, strict curbs have been placed on Japanese action to prevent the maintenance of offensive weapons and uphold the Three Non-Nuclear Principles, as well as on our security-related initiatives in the aerospace sector. In trying to make up for this inability to adequately help itself, Japan has become utterly over-reliant on the US and its other allies regarding all aspects of national security. A prime example of this over-reliance occurs every time the US president changes, when the Japanese government adopts a subservient stance by reconfirming that the US will fulfill its obligation to defend Japan under Article 5 of the Japan-US Security Treaty with regard to the Japanese territory of the Senkaku Islands.

The third anomaly could be described as the flip-side of the second, namely, the inequality and unfairness intrinsic to the

Japan-US Security Treaty. Article 5 of the treaty states only that the US would act jointly with Japan to counter any armed attack in the territories under the administration of Japan, and mentions nothing about any obligation Japan might have to defend US territories. From the US perspective, this provision is clearly unfair. On the other hand, Article 6 attempts to make up for Article 5, so to speak, by specifying Japan's obligation to grant the US military use of bases and facilities in Japan in order to maintain peace and security in the Far East. From the Japanese perspective, this provision represents inequality. In other words, the Japan-US alliance—unlike other US treaties of alliance—is not a mutual defense treaty. That is why the Japanese people are forced to put up with all the accidents, other incidents, noise pollution, and environmental damages caused by US military bases that resemble vestiges of the occupation era. The structural instability in the Japan-US alliance caused by this anomaly has always been its Achilles' heel, casting a dark shadow wherever alliance-based cooperation takes place.

For reasons including the resolution of these anomalies, Article 9 of the Japanese Constitution should be revised. The revision I propose is a straightforward one, as follows: simply delete Article 9's second paragraph, retaining its first paragraph. As I pointed out earlier, the first paragraph of Article 9 corresponds to the UN Charter's ideals; if interpreted in conjunction with the principle of international cooperation expressed in the Constitution's preamble, this paragraph does not excessively restrict Japan's security strategy. The problem lies in the provisions of Article 9's second paragraph, which are now divorced from reality. Removal of these provisions will allow for a significantly more proactive diplomatic and security strategy, while retention of Article 9's first paragraph will serve to reaffirm this country's declaration to all parties inside and outside Japan that we will never again be an aggressor nation. Only by doing so will Japan be able to break free of its post-war diplomatic and security regime and more actively fulfill its obligation to maintain and develop the international order as a typical sovereign state and an equal ally to the US.

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