

ARTICLE

Revisiting the Pacifism of the Japanese Constitution

Akihiko KIMIJIMA

Introduction

This paper takes a fresh look at the pacifism of the Japanese constitution. It does not, however, examine in detail the interpretations of the Japanese constitution's pacifism or try to persuade judges presiding over constitutional lawsuits. It is true that the constitution binds judges in court cases under the judicial review system, and that is an important aspect of the constitution. Yet that is not all there is to it because the constitution sets the governing principles of society—local, national, regional, and international, it embodies a theory of justice, and it provides policy guidelines for a political community. This paper focuses on these aspects of Japan's constitution and tries to see its pacifism in a new way. A store of analyses and theories have accumulated on the pacifism of the constitution since its enactment in 1946¹⁾, but now that 60 years have passed I would like to use this paper to throw new light on it.

1. Japan's Constitution as Seen from Peace Studies

It seems that a scientific or academic consideration of peace now calls for building on what peace studies have achieved and attained so far, and this also goes for studying the constitution's pacifism. We cannot ignore the achievements and attainments of peace studies, which has a 50-year history.

To begin with, we can perhaps say the following about the understanding shared in peace studies now.²⁾ While realizing peace consists in overcoming violence, we must overcome two kinds of violence: direct violence such as war, and structural violence. Structural violence includes the unequal power relationships and various differentials built into social structures, with examples being economic exploitation, political repression, various kinds of discrimination, and colonial domination. Further, the absence of direct violence can be termed passive peace, while the absence of structural violence can be called active peace. The peace we aim to achieve is the overcoming of both direct and structural violence, and the realization of both passive and active peace. In addition, overcoming violence includes overcoming violence toward women.

Having confirmed this shared understanding of peace studies, we can turn to taking a

new look at the pacifism of the Japanese constitution, which appears especially in the Preamble's second paragraph and in Article 9. The Preamble's second paragraph³⁾ is understood to mean that we recognize that all peoples of the world have the right to live in peace—this is the basis of everything—and that the constitution asks Japan's citizens and government to take action for creating a just world order that will guarantee this.⁴⁾ A just world order is one in which we have overcome tyranny, slavery, oppression, fear, and want, i.e., structural violence. Article 9⁵⁾ prohibits the threat or use of force, and the maintenance of a military, and it denies the right of belligerency—it attempts to overcome direct violence—and therefore the actions of the Japanese people and government must be nonviolent. As this shows, the pacifism of Japan's constitution attempts to overcome both structural and direct violence, and therefore its soundness is reaffirmed even in the light of the attainments and shared understanding of peace studies. Article 24 is of note with regard to overcoming violence against women. From the process of drafting Article 24 we can see that in substance it rejects male domination in the family sphere. One of the normative demands of Article 24 is overcoming patriarchal violence. If we conceive Articles 9 and 24 as a whole, the Japanese constitution manifests itself as a thoroughly nonviolent legal norm that attempts to overcome the two kinds of violence—state/military violence and patriarchal violence—that “ordinary modern states” allow.

One area of peace studies is security studies, and its understanding is also worthy of our attention. An influential current in peace studies conceives security in this way⁶⁾: Countries of the North monopolize and waste resources without taking limitations of the global environment into account, and they use military force to suppress the uprisings from the South that occur because of the North-South disparity in a bid to protect peace, security, and affluence in the North, but that is impossible. In today's world one cannot obtain lasting peace and security by using force to paper over contradictions. The only way we can obtain security is to squarely face the fundamental cause—the global social structure that breeds violence, terrorism, and the like—and to carry on with persistent efforts to make global society just, which cannot be done with violence. This understanding resonates with the pacifism of the Japanese constitution.

2. Who Creates Peace?

One important feature of the Japanese constitution's pacifism is the understanding of who creates peace. Judging from the expression “We, the Japanese people ... resolved that never again shall we be visited with the horrors of war through the action of government” in the Preamble, and the use of “the Japanese people” as the grammatical subjects in the Preamble and Article 9, the Japanese constitution assumes that peace is brought about by individual citizens and by their aggregate, the people. I think the way this is expressed by constitutional law scholar Tadakazu Fukase sums it up most exactly.

The problems of war and arms, and of peace and disarmament, are no longer problems of the “government's” exclusive right or final say; they are under the direct

and indirect direction and control of the people, who are the sovereigns. Not only in domestic society, but also in international (world) society, the people, as individuals and as voluntary groups (NGOs and other groups which lobby the UN), and by means of their partial and total public opinion, are guaranteed the status and rights to act of their own accord in solving problems relating to war and peace and to arms and disarmament, or to influence or apply pressure regarding them.⁷⁾

3. “Not Doing” Pacifism and “Doing” Pacifism

There are two ways for citizens or the people to realize peace.

One is through parliamentary democracy and the judicial process, whereby the sovereigns control government policy (peace and security policy, and foreign policy), or they call the government to account in court after it has violated the right to live in peace through its policy. Because the Japanese government has in the postwar years consistently expanded and used the Self-Defense Forces (SDF) and cooperated with the US military despite the constitutional principle of pacifism, the citizens/people have sought to prevent the SDF's overseas deployment, and to keep the SDF from taking part in US-led military actions.

The other way is for the citizens/people to conduct activities for peace themselves without government involvement, and this takes the form of various dynamic NGO activities including human rights monitoring, emergency humanitarian aid, medical aid, refugee aid, and nonviolent intervention.

In postwar Japan the former of these two has been stronger. Because the people have tried to prevent overseas SDF deployments and cooperation with the US military, this is “not doing” pacifism. Since Japan has come to the point where the SDF were deployed to Iraq, we must once again affirm the importance of “not doing” pacifism, but that is half of the Japanese constitution's pacifism.

The other half is “doing” pacifism. While the very realization of “not doing” pacifism is certainly not easy, if “not doing” pacifism succeeds, the result will be that Japan will do nothing. It will take no military action. That is very important, but the question is then “What will Japan *do*?” As noted above, the Japanese constitution's pacifism requires Japan's citizens and government to take active nonmilitary action to create a just world order. “Doing” pacifism is essential. And it is none other than the peace activities of NGOs that are the realization of “doing” pacifism that is possible under the Japanese constitution's pacifism.⁸⁾

4. Article 9 as a “Social Contract” and “Treaty”

Because in 1945 the biggest threat to peace in East Asia was Japanese militarism, a major issue in East Asia was what to do about it. Article 9 of the Japanese constitution was the response. In that sense Article 9 is not a provision for Japan's security, but a

provision for the security of East Asian peoples who suffered under Japanese militarism. Revision of the Constitution of the Empire of Japan, i.e., enactment of the postwar constitution, happened under the strong influence of General Douglas MacArthur and GHQ in Japan, but it was the Far Eastern Commission (FEC, in Washington), which represented the Allied nations, that had ultimate authority on the matter of Japan's constitution. FEC members included these Asia-Pacific countries: China, India, the Philippines, Australia, and New Zealand. FEC conducted quite extensive discussions on the issue of Japan's constitution, and in the end approved it. From this it is perhaps safe to say that Japan enacted the postwar constitution with other Asia-Pacific nations. It would seem that the Japanese constitution might be understood as a "social contract" for the postwar continued existence in East Asia of the state of Japan, which destroyed peace in the region.⁹⁾

One hypothesis on the origin of Article 9 is that of Professor Takashi Miwa at Saitama University¹⁰⁾: At the beginning of 1946, the US State Department was preparing a draft four-nation treaty for Japanese disarmament, under which four allied nations (the US, UK, USSR, and China) would monitor Japan's disarmament for 25 years. Miwa speculated that MacArthur, who found out about this draft in January 1946, incorporated its substance into the Japanese constitution while the treaty was still a draft. This is a very bold hypothesis, and has little evidence to support it, but it is attractive, and it would indicate that Article 9 is actually a treaty.

5. Security Policies under the Japanese Constitution

Universal Security

If Article 9 is not a provision for Japan's security, then how is Japan's security conceived by its constitution? The part of the Preamble's second paragraph reading "we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world" tells us. It sets forth the idea that Japan's security is maintained by the framework and institution of universal security, which is a system that limits the rights of individual states in relation to conflict and war, and has the necessary measures taken by organizations as a whole; it is the idea that instead of forming military alliances that assume the existence of enemy states, a comprehensive security framework is established for all the states in a region, and those states' security is maintained within that framework. Just after Japan's constitution was enacted, the idea seems to have been that the United Nations would maintain Japan's security, but that could not be expected owing to the Cold War, and the Japanese government increased its dependence on the US-Japan Security Treaty system. However, the Japanese constitution's intent is not security under military alliances, but seeking security through a universal security framework. Security by the UN even now has yet to be achieved, and I think working toward universal security on a regional scale—East Asia—is a contemporary challenge.¹¹⁾

The “Common House of Northeast Asia” and Overcoming the Past

The Japanese constitution envisions universal security, and our present challenge is trying to attain universal security in East Asia. One excellent example of this is the “common house of Northeast Asian” concept advocated by Haruki Wada¹²⁾ and Kan Sang-jung¹³⁾. As we work toward universal security, or the “common house of Northeast Asia,” one unavoidable problem is that of overcoming the Japanese empire. Our job now is to create a framework for regional security in East Asia and build relationships of trust among our peoples, but in doing so an urgent task is surmounting the detrimental legacy of the Japanese empire, which tried to dominate East Asia militarily and politically. Other East Asians still do not feel that the Japanese government and people have completely overcome the Japanese empire’s colonial domination and war of aggression.

How Universal Security Is Related to Article 9

Under the universal security system, the use of force by individual states is strictly controlled. Using force to settle conflicts is completely forbidden, and using force for self-defense is allowed in only rare exceptions. Using force for self-defense is forbidden in some cases. As a corollary, the entire organization assumes responsibility for peace and security. Individual states are required to disarm, while the organization as a whole maintains and uses military force. Under universal security individual states may not use “private” military force, but it is possible that member states will be asked to participate in the organization’s “public” use of force, i.e., joint military actions. How should we regard this use of force under Article 9?

The ideas of the German international law scholar Hans Wehberg (1885-1962) offer many good suggestions.¹⁴⁾ Wehberg recognized military enforcement measures by the League of Nations as exceptional actions, but contended that states which try to completely disarm are making further steps toward international peace, and that it is not necessary to have a military in order to participate in military enforcement measures by international organizations. The pacifism principle of Japan’s constitution is indeed the exception which Wehberg advocates. Japan’s constitution totally renounces the use of force as an individual state, i.e., it renounces military self-defense, it calls for having no military force through total disarmament, and for not participating in the “public” use of force, i.e., joint military actions. The nature of pacifism in Japan’s constitution can be seen as *rightness*, as universal security is conceived.

Even if we assume the rightness of Article 9, which can be considered a unilateral disarmament initiative, we are still left with the major problem of how to see the maintenance and use of “public” military force by a universal security organization as a whole. Is there a problem with the maintenance and use of “public” military force? From the perspective of working for a world order which overcomes direct violence, the maintenance and use of military force, even if it is “public,” should be scaled down and overcome. It is noteworthy that peace NGOs around the world have made efforts to overcome the UN’s just-war theory—the “public” use of military force in Chapter 7 of the

UN Charter.¹⁵⁾ This may be seen as an effort to bring the UN Charter closer to Japan's constitution.

Nonviolent Defense

Another security policy elicited from the Japanese constitution along with universal security is nonviolent defense. Maintaining one's own security without a military as stipulated by Article 9 means nonviolent defense. There are examples of nonviolent defense in 20th-century Europe, such as Norway under Nazi control and the Soviet invasion of Czechoslovakia in 1968. The Indian struggle for independence led by Mohandas Karamchand Gandhi and the struggle of African-Americans under Martin Luther King, Jr. were also in character close to nonviolent defense. In Japan the anti-base struggle in Okinawa is perhaps an excellent example of nonviolent resistance. I think that under Japan's constitution we are required to formulate policies of nonviolent defense.¹⁶⁾

6. The Cold War and Article 9: "Donut-shaped Substitute Militarism"

After Japan's constitution was promulgated, East Asia experienced the Cold War and hot wars. Like Europe, East Asia was a region with fierce military confrontations. During these years Article 9 remained without amendment despite the remilitarization of Japan under the US-Japan Security Treaty. US forces in Japan, the SDF, and Article 9 have "coexisted" thanks to the Supreme Court's avoidance of the decision on whether the US forces in Japan violate Article 9, thanks to the government's constitutional interpretation that the SDF do not violate Article 9, and thanks to the courts' avoidance of judgments on this point (in the Naganuma Case, the only one in which a court ventured into SDF constitutionality, the Sapporo District Court clearly found that the SDF violate Article 9).

Why did Article 9 remain unchanged during the Cold War years? Certainly, Japan's domestic peace movement and political arrangement supported Article 9, but that is probably just part of it. Our understanding of this period is aided by the "donut-shaped substitute militarism" conception of Yoshikazu Sakamoto.¹⁷⁾ During the Cold War it indeed looked as though the militarization of the Japanese main islands was relatively low. That was because the leading edge of military confrontation was not in the main islands of Japan. That role was played by the US bases in Okinawa, and by the military regimes in the Republic of Korea (ROK), Taiwan, and Southeast Asia, and the Japanese government provided these East Asian military regimes with economic aid. Thus, although Japan's main islands went relatively unmilitarized (the donut center), Japanese economic aid supported military regimes in the region. Sakamoto calls this "donut-shaped substitute militarism." The Korean Japan researcher Kwon Heok-Tae, a professor at SungKongHoe University in Seoul, has a similar view¹⁸⁾: During the Cold War nearby countries supplemented the light armament of Japan's main islands, an ironic situation in which these pro-American, pro-Japanese military dictatorships supported Japan's constitution, but with the democratization of those countries, the military burden has come back to Japan.

While it is too narrow a view to think that it was only Japan's domestic peace movement and political arrangement that supported Article 9, it is also perhaps too narrow to consider that Article 9 was maintained only by the international political arrangement. But I do not think we can afford to overlook Sakamoto's "donut-shaped substitute militarism" and Kwon's view of the situation because they do throw light on one aspect of postwar Japan. US bases in Okinawa, and the military regimes of the ROK, Taiwan, and Southeast Asia should not be seen as irrelevant to the pacifism of Japan's constitution; instead, we need a perspective which regards them as issues related to that pacifism. Solidarity with the anti-base struggle in Okinawa, with the people suffering under military governments in East Asia, and with movements for democracy in those countries are indeed issues related to the pacifism of Japan's constitution.

What we have now is no longer "donut-shaped substitute militarism," for Japan itself is becoming a military power, so what we must do is use Article 9 to develop a vision for demilitarization in East Asia. We need to think of Article 9 as a matter of regional security in East Asia.

7. International Peace Cooperation under the Japanese Constitution

As noted above, the Japanese constitution's Preamble is understood as requiring the Japanese government and people to take action—international peace cooperation—to build a just world order that overcomes structural violence, and actions taken by the Japanese government and people must be nonviolent because Article 9 rejects the threat and use of force, a military, and the right of belligerency, which are direct violence. One could say there are many NGO activities functioning as international peace cooperation which conforms to Article 9, and as the "doing" pacifism envisioned by the constitution.

While NGO activities in areas such as development assistance, environmental conservation, and human rights protection are important, here I will consider NGOs which address problems closer to Article 9, such as armed conflict, humanitarian crises, and large-scale human rights violations.

First, there are monitoring NGOs like Amnesty International and Human Rights Watch that monitor human rights infringements and issue warnings. Then there are NGOs like Doctors Without Borders and Doctors of the World that provide emergency medical aid in conflict areas. There are emergency humanitarian aid NGOs such as the Japan International Volunteer Center and Peace Winds Japan, NGOs that assist refugees, such as the Association for Aid and Relief, Japan, and Peshawar-kai, and many more. A great variety of NGO activities is possible.¹⁹⁾

In this paper I want to go into a bit of detail on NGO activities of the kind called nonviolent intervention, in which unarmed citizens enter conflict areas. Much has been accomplished by one of these NGOs, Peace Brigades International, which was established in 1981. This NGO sends teams comprising trained, unarmed citizens of various nationalities into conflict areas, where they accompany people engaging in nonviolent democratization movements, human rights struggles, and other endeavors in an attempt to

prevent massacres and keep conflicts from turning violent. Having foreigners accompany local activists sends the message that “international society is watching” and thereby deters violence with “the eyes of international society.” Worldwide there are now about 20 such nonviolent intervention NGOs active in countries that include Colombia, Mexico, Guatemala, Nicaragua, the Balkan states, Israel/Palestine, and Sri Lanka, and they have garnered a certain amount of success in deterring violence.²⁰⁾ A new NGO of this type is the Nonviolent Peaceforce, which was founded in 2002. This NGO is also organized in Japan and the ROK, and now has a team active in Sri Lanka. Japanese citizens can contribute to world peace by conducting such NGO activities under Article 9 of their constitution.²¹⁾

8. The Japanese Constitution as a Project to Transcend the “Ordinary Modern State”: An Integrated Understanding of Articles 9 and 24

Article 24²²⁾ of Japan’s constitution is in fact, like Article 9, a provision for nonviolence. Let’s examine what this means.

The modern state is an entity that has a monopoly on the justifiable use of violence within a certain territory. In that Article 9 (2) of the Japanese constitution renounces the maintenance of a military, which is allowed for modern states, it attempts to transcend the modern state, but in that vein we must also focus on Article 24. There are two situations in which violence is justified and permitted in the modern state: One is military violence, and the other is patriarchal violence in the family sphere.²³⁾

Article 24 Rejects Male Domination

Modern states have divided society into two domains: a public domain into which the government intervenes, and a private domain into which it does not, and it has left the latter to domination by a patriarch of the family sphere, i.e., the husband and father. And when a patriarch rules and controls his own domain, the family sphere, ultimately the threat or use of violence is in the background. The Napoleonic Code, established after the French Revolution, strictly prescribed the principle of patriarchal control, or subordination of the wife to her husband, and 19th-century Anglo-American law gave husbands the right to punish their wives, a mandate for violence. The modern West was a male-dominated society, and modern families were patriarchal. At the core of the patriarchal system was violence by husbands.²⁴⁾

It is now well known that Article 24 of Japan’s constitution, which guarantees men and women the same rights in the family sphere, was drafted by Beate Sirota. The intent of this provision is clearly evident in her draft (Article 23 of the so-called MacArthur draft) before it was changed by the Japanese government: “...Marriage shall rest upon the indisputable legal and social equality of both sexes, founded upon mutual consent instead of parental coercion, and maintained through cooperation instead of male domination...” Article 24’s purpose is to reject male domination in the family sphere, and its normative requirement is the prohibition of violence by husbands, i.e., domestic violence. Its

implication is overcoming the “modern family,” and it exhibits a perspective that transcends the modern state.

An Integrated Understanding of Articles 9 and 24

As such, we can see the Japanese constitution, by means of Articles 9 and 24, as something which overcomes the two domains of violence—military violence and patriarchal violence—that have been justified and sanctioned by modern states. The 1993 book *A Plan for Remaking Japan* by Ichiro Ozawa argues that Japan should become “an ordinary state” that uses the SDF, which is a military force. If we follow Ozawa’s language, then Japan’s constitution can be seen as a project that transcends the “ordinary modern state.” If we understand Articles 9 and 24 as an integrated whole, the Japanese constitution comes into view as a comprehensive and thoroughgoing norm for nonviolence which seeks to overcome all violence from the family sphere to international society.²⁵⁾

Meanwhile, feminist peace researchers such as Betty Reardon, Cynthia Enloe, and Kozue Akibayashi have argued that militarism and patriarchy, which are interdependent, are the biggest barrier to achieving peace.²⁶⁾ Militarism here is not just the issue of military forces, but denotes the values and way of thinking that place importance on national defense using the military. The approach of Japan’s constitution, whose Article 9 is aimed at demilitarization and whose Article 24 rejects male domination, resonates with the position of feminist peace researchers. Indeed, their research can also be considered a project which transcends the “ordinary modern state.”

But in international society, where the thinking of the “ordinary modern state” remains firmly entrenched, Japan’s constitution faces major challenges, which are manifested as the contradictions between the constitution’s norms and the US-Japan Security Treaty system. “Okinawan and Korean women raped and killed by US soldiers” is a symbolic expression of the violence in present-day East Asia. Feminist peace researchers too deepened their insights by seeing the problems of those women as their own. When I recall those women who are sacrificed to violence, I think that no matter how hard the path we take, we must not give up on the Japanese constitution, the project that transcends the “ordinary modern state.”

9. From the Modern Sovereign State System to Global Constitutionalism

Article 9, which could be called a unilateral disarmament initiative, and the second paragraph of the Preamble, which sets forth a vision for universal security, should be conceived as a set. Article 9 is a self-restriction on military sovereignty, while the universal and collective security in the Preamble’s second paragraph is an attempt at an international framework consisting in limitations on sovereignty and creating “public” political power at the international level. Along with the UN Charter, these try to overcome the negative aspects of the modern sovereign state system—the state is always primed for the danger and worry of armed attack from other states. Transferring part of

state sovereignty to an international organization is a feature held in common by constitutions enacted after World War II.

Constitutions or constitutionalism are projects that try to control political power, but now when globalization is proceeding rapidly, political power has diffused and transcended state control, and is no longer something that can be completely controlled by national constitutions or national constitutionalism alone. It would seem that the needed response to the global diffusion of political power is the globalization of constitutionalism, i.e., global constitutionalism.

There is currently much discussion about global constitutionalism.²⁷⁾ While diversity of views on global constitutionalism is possible, here I would like to write briefly about the way it is conceived by Richard Falk and others.²⁸⁾ It seems we can understand the global constitutionalism of which they speak to be something like a system of rules and institutions which realize the values of 1) nonviolent peace, 2) human rights, 3) democracy, and 4) environmental conservation throughout all of global society. Presently the world can be seen as a three-layered structure consisting of three systems: 1) the inter-state system (sovereign state system), 2) the United Nations system, and 3) global civil society (NGOs, citizen movements, and social movements), but the rules and institutions of global constitutionalism should run through all three layers. We must work for democratic constitutionalism (domestic democracy and better guarantee of human rights, democratic control of the UN, etc.) in all three of these systems, but at the same time it is also important to pursue initiatives that vertically penetrate the three tiers, such as the democratization of states and the UN by NGOs, or NGOs effecting reform through collaboration with reform forces in their states and the UN.

A characteristic of the global constitutionalism of Falk and others is that it does not adopt a state integration approach like that of the World Federation. Bringing about a world government (calling forth even greater power) in order to overcome the sovereign state system (controlling the power of individual states) is contradictory and paradoxical. I find the idea of Falk and others very interesting because it discerns importance in the active role of global civil society as seen in NGO activities, and conceives global constitutionalism not as something that aims to create a world government, but as a movement and process of democratizing and constitutionalizing global society.

In fact, world politics in the 1990s exhibited two arenas which had initiatives close to the ideas of Falk and others. First is that in the series of world conferences held by the UN on the global problematique, such as the Earth Summit (Rio de Janeiro, 1992), World Conference on Human Rights (Vienna, 1993), World Summit for Social Development (Copenhagen 1995), and the United Nations Fourth World Conference on Women (Beijing, 1995), NGOs tried to actualize values such as democracy and environmental conservation as they collaborated with or worked against governments and the UN.²⁹⁾ In the other arena we saw the effectiveness of the approach in which collaboration and networking by world NGOs formed the basis for beefed-up lobbying of governments and the making of international law on disarmament. Examples of this are the World Court Project (1992-1996), which elicited an advisory opinion on the illegality of using nuclear weapons from the International Court of Justice (ICJ), and the International Campaign to Ban

Landmines (1992-1997), which succeeded in having governments sign the Convention on the Prohibition of Landmines.³⁰⁾ Action in these two arenas represented gains for global constitutionalism.

I think that in a different way global constitutionalism has deepened in recent years. Let me cite three instances.

First is the idea for one of the UN reforms which was an extension of the NGO-government partnership seen in the 1990s. It was the idea for holding a “global civil society forum” for discussions by delegates of NGOs working in various areas and from around the world, held in parallel with the UN General Assembly, a conference of governments. This idea could be considered the budding of bicameral world parliament in which the UN General Assembly, a governments’ conference, is the upper house, and a “global civil society forum” is the lower house.³¹⁾ Falk and others also propose an idea for a “Global Peoples Assembly” as a global civil society conference that would be unrelated to the UN General Assembly.³²⁾

Second is the activities of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, which were established by the UN Security Council, and the International Criminal Court (ICC), which is an extension of those tribunals and is now active. There are also proposals for strengthening the role of the International Court of Justice. Overall, there are efforts to reinforce the rule of law in global society.

Third is people’s international tribunals, which are quite active. When the ICJ and ICC cannot be used due to various restrictions—it is not unusual for permanent Security Council members to evade the control of international law—it is possible for global civil society to set up people’s international tribunals. A recent example is the Women’s International War Crimes Tribunal (2000-2001), which tried the crimes committed in the Asia-Pacific war by the Japanese Army’s sex slavery system, the so-called “comfort women” system, in the light of international law at the time. This was based on collaboration among East Asian women’s NGOs from North and South Korea, China, Taiwan, the Philippines, Indonesia, Japan, and other countries/regions, and was accomplished with the involvement of top experts in international law including Professor Christine Chinkin of the London School of Economics and Political Science. When governments or international organizations do not ensure that international law is carried out, global civil society must intervene to bring about justice.³³⁾

In light of the advances and deepening of global constitutionalism as described above, the practical realism and soundness of the Japanese constitution’s pacifism are substantiated once again.

Conclusion

The Japanese constitution is the supreme law of the state, and basically places limitations on the powers of the Japanese government. While each state has its own constitution, it is usually the case that a people will frame its constitution with reference to

the achievements of other peoples' constitutions, and in that sense each nation's constitution represents constitutional achievements of humankind as of the time it was framed. The same goes for the Japanese constitution's pacifism, which in some ways followed the peace provisions that appeared in constitutions around the world, but it goes a step further. My expression of this facet is the Japanese constitution as a project which transcends the "ordinary modern state."

The pacifism of Japan's constitution, which goes full measure in trying to overcome violence, is attracting interest among the world's peace NGOs in recent years. Conferences of world peace NGOs often refer to Article 9 of Japan's constitution when formulating their basic principles and action agendas. The Hague Appeal for Peace Civil Society Conference, held at The Hague in the Netherlands in May 1999, summed up its discussions in the "Ten Fundamental Principles for a Just World Order," which it released on its final day of May 15. The first principle says, "Every Parliament should adopt a resolution prohibiting its government from going to war, like the Japanese constitution's article number nine."³⁴ Additionally, the Final Report by the "Peace, Security and Disarmament" Thematic Group of the Millennium Forum, an NGO conference held at the UN in New York in May 2000, set forth "a proposal for all countries to adopt in their own constitutions the war-renouncing principles expressed in Article 9 of the Japanese constitution."

Recently the Global Partnership for the Prevention of Armed Conflict (GPPAC) has been in the spotlight as an NGO project for world peace. The GPPAC project traces its beginning back to a report on preventing armed conflict submitted to the UN Security Council by UN Secretary-General Kofi Annan on June 7, 2001.³⁵ In this report Secretary-General Annan wrote, "I urge NGOs with an interest in conflict prevention to organize an international conference of local, national and international NGOs on their role in conflict prevention and future interaction with the United Nations in this field" (Recommendation 27). In response to this recommendation, the European Centre for Conflict Prevention (ECCP), an NGO based in Utrecht, the Netherlands, took the initiative and called on NGOs around the world. This was the start of GPPAC.

In our more violent post-9/11 world, there is disdain for efforts at conflict resolution that does not rely on force, which is the kind developed through peace studies, conflict resolution theory, and NGO activities. GPPAC sends the NGO message that what is important is preventing armed conflict, not "the war on terror." GPPAC is also a project in which NGOs try to gain access to the Security Council. GPPAC tries to make the voice of global civil society heard in the Security Council, which is centered on the government and is further a place dominated by major powers.

The world is divided into 15 regions in which NGOs involved in conflict resolution have gathered for in-depth debate and discussion on the role of NGOs in conflict prevention and the possibilities for partnership with governments and the UN. By March 2005 all 15 regions held regional conferences and developed regional action agendas. NGO people from the Northeast Asia region, which includes Japan, held a Northeast Asia conference and adopted the Northeast Asia Regional Action Agenda (Tokyo Agenda) in February 2005. It was the conference's consensus that upholding Article 9 of Japan's constitution is very important to preventing armed conflict in Northeast Asia, and Article 9

is the keynote of the Tokyo Agenda.

Further, a Global Action Agenda which brings together the action agendas developed by the 15 world regions was formulated in June 2005, and then presented to UN Secretary-General Annan at the GPPAC Global Conference held at the UN in New York from July 19 to 21. The Global Action Agenda, which contains recommendations on policy and action by world NGOs working to prevent armed conflict, refers to the significance of the Japanese constitution's Article 9 in a section called "Demilitarization, disarmament and arms control."³⁶⁾

As this shows, peace NGOs around the world see the pacifism of Japan's constitution as something which resonates with their own activities. Thus the pacifism of Japan's constitution is at the same time the supreme law of one state, and a symbol for the global peace movement. It is not only a challenge for Japan but also a challenge for humanity.

Notes

This paper is based on a paper I presented previously at the Asian Forum for Constitutional Law held on September 22-25, 2005 at the College of Law, Seoul National University. The Forum was entitled "Constitutionalism and Constitutional Adjudication in Asia" and was organized by the College of Law, Seoul National University and the Korea Legislation Research Institute. I thank the organizers of the Forum and the participants who gave me valuable comments on my paper.

- 1) Naoki Kobayashi, *Kenpo dai kyu jo* (Tokyo: Iwanami Shoten, 1982), Tadakazu Fukase, *Senso hoki to heiwateki seizonken* (Tokyo: Iwanami Shoten, 1987), Toshihiro Yamauchi, *Heiwa kenpo no riron* (Tokyo: Nihon Hyoronsha, 1992), Asaho Mizushima, *Buryoku naki heiwa* (Tokyo: Iwanami Shoten, 1997), and Tadakazu Fukase, Yasuo Sugihara, Yo-ichi Higuchi, and Kenji Urata (eds.), *Kokyu sekai heiwa no tameni* (Tokyo: Keiso Shobo, 1998).
- 2) Johan Galtung, "Violence, Peace and Peace Research," *Journal of Peace Research*, no. 3 (1969).
- 3) "We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want."
- 4) Masao Maruyama, "Kenpo dai kyujo o meguru jakkan no kosatsu," in Masao Maruyama, *Koei no ichi kara* (Tokyo: Miraisha, 1982) pp. 21-70.
- 5) "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. 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."
- 6) Paul Rogers, *Losing Control: Global Security in the Twenty-first Century* Second Edition (London: Pluto Press, 2002).

- 7) Tadakazu Fukase, *Senso hoki to heiwateki seizonken* (Tokyo: Iwanami Shoten, 1987) pp. 194-195.
- 8) Akihiko Kimijima, "Heiwa o tsukuru shutai to shiteno NGO," in Ayako Miyoshi, Susumu Wakai, Tomomi Kozaki, and Yoshinori Ikezumi (eds.), *Heiwa, Jinken, NGO* (Tokyo: Shin Hyoron, 2004) pp. 57-87.
- 9) On the drafting process and legislative history of the Japanese Constitution of 1946, see Shoichi Koseki, *The Birth of Japan's Postwar Constitution* (Boulder, Colorado: Westview Press, 1998).
- 10) Takashi Miwa, "Nippon hibuso ka jouyaku koso to MacArthur note dai 2 ko," *Saitama daigaku kiyo kyouiku gakubu (jinbun shakai kagaku hen)*, vol. 47, no. 1 (1998) p. 43.
- 11) As an NGO project seeking universal security, the Global Action to Prevent War is extremely interesting and important. Visit <http://www.globalactionpw.org/>.
- 12) Haruki Wada, *Tohoku Asia kyodo no ie* (Tokyo: Heibonsha, 2003).
- 13) Kang Sang-jung, *Tohoku Asia kyodo no ie o mezashite* (Tokyo: Heibonsha, 2001).
- 14) Masayuki Takeda, "Heiwa kenpo no rekishi teki imi: kokusai soshiki koso shi no shikaku ni yoru ichi shiron," *Rekishigaku kenkyu*, no. 728 (1999) p. 30.
- 15) One excellent example of that effort is a statement to the United Nations Commission on the Status of Women, 48th Session (March 2004) submitted by the Canadian Voice of Women for Peace entitled "Toward Delegitimizing War."
- 16) Toshio Terajima, *Shimin teki fufukuju* (Tokyo: Fukosha, 2004), Peter Ackerman and Jack DuVall, *A Force More Powerful: A Century of Nonviolent Conflict* (New York, New York: St. Martin's Press, 2000).
- 17) Yoshikazu Sakamoto, *Chikyu jidai no kokusai seiji* (Tokyo: Iwanami Shoten, 1990) p. 223.
- 18) Kwon Heok-Tae, "Nikkan kankei to 'rentai' no mondai," *Gendai shiso*, vol. 33, no. 6 (2005) p. 204.
- 19) Akihiko Kimijima, "Heiwa o tsukuru shutai to shiteno NGO," in Ayako Miyoshi, Susumu Wakai, Tomomi Kozaki, and Yoshinori Ikezumi (eds.), *Heiwa, Jinken, NGO* (Tokyo: Shin Hyoron, 2004) pp. 57-87.
- 20) Yeshua Moser-Puangsuwan and Thomas Weber (eds.), *Nonviolent Intervention Across Borders: A Recurrent Vision* (Honolulu, Hawaii: Spark M. Matsunaga Institute for Peace, University of Hawaii, 2000), Liam Mahony and Luis Enrique Eguren, *Unarmed Bodyguards: International Accompaniment for the Protection of Human Rights* (West Hartford, Connecticut: Kumarian Press, 1997), Ed Griffin-Nolan, *Witness for Peace: A Story of Resistance* (Louisville, Kentucky: Westminster/John Knox Press, 1991).
- 21) Akihiko Kimijima, "Jindo teki kainyu to nihonkoku kenpo," *Horitsu jiho zokan kenpo kaisei mondai* (Tokyo: Nihon Hyoronsha, 2005) pp. 145-149, Akihiko Kimijima, "NGO no heiwa kochiku ga kenpo no heiwa shugi o gutaika suru," *Ronza*, December 2004 (Tokyo: Asahi Shimbunsha, 2004) pp. 236-242.
- 22) "Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes."
- 23) Chizuko Ueno, *Feminisim kara mita Hiroshima* (Hiroshima: Kazokusha, 2002).
- 24) Miyoko Tsujimura, "Sei shihai no hou teki kozo to rekishi teki tenkai," *Iwanami koza gendai no hou 11: Gender to hou* (Tokyo: Iwanami Shoten, 1997) pp. 3-36.

- 25) Noriko Wakao, "Heiwa shugi, boryoku, gender," in Masayasu Hasegawa and Toru Niwa (eds.), *Jiyu, byodo, minshushugi to kenpo gaku* (Osaka: Osaka keizai hoka daigaku shuppanbu, 1998) pp. 27-47.
- 26) Betty A. Reardon, *Sexism and the War System* (Syracuse, New York: Syracuse University Press, 1996), Cynthia Enloe (translated by Kozue Akibayashi), *Feminism de saguru gunji ka to kokusai seiji* (Tokyo: Ochanomizu Shobo, 2004).
- 27) Kenji Urata, "Reflections on Global Constitutionalism: In Search for Democracy and Peace," in Joakim Nergelius, Pasquale Policastro, and Kenji Urata (eds.), *Challenges of Multi-Level Constitutionalism* (Krakow, Poland: Polpress Publisher, 2004) pp. 193-232.
- 28) Richard A. Falk, Robert C. Johansen, and Samuel S. Kim (eds.), *The Constitutional Foundations of World Peace* (Albany, New York: State University of New York Press, 1993).
- 29) Michael G. Schechter (ed.), *United Nations-sponsored World Conferences: Focus on Impact and Follow-up* (Tokyo: United Nations University Press, 2001), Michael G. Schechter, *United Nations Global Conferences* (London: Routledge, 2005).
- 30) Akihiko Kimijima, "Kaku gunshuku ni okeru NGO to seifu no renkei," in Koji Aikyo, Asaho Mizushima, and Sadao Morone (eds.), *Gendai rikken shugi no ninshiki to jissen* (Tokyo: Nihon Hyoronsha, 2005) pp. 451-471, Kate Dewes, *The World Court Project: The Evolution and Impact of an Effective Citizens' Movement, A Thesis Submitted for the Degree of Doctor of Philosophy of the University of New England* (Christchurch, Aotearoa/New Zealand: 1998), Maxwell A. Cameron, Robert J. Lawson, and Brian W. Tomlin (eds.), *To Walk Without Fear: The Global Movement to Ban Landmines* (Toronto: Oxford University Press Canada, 1998).
- 31) Akihiko Kimijima, "NGO no minshu teki seito sei," *Kokusai jinken*, no. 16 (Tokyo: Shinzansha, 2005) pp. 50-54.
- 32) Richard Falk and Andrew Strauss, "On the Creation of a Global Peoples Assembly: Legitimacy and the Power of Popular Sovereignty," *Stanford Journal of International Law*, vol. 36 (2000) p. 191.
- 33) Richard Falk, "The Rights of Peoples," in James Crawford (ed.), *The Rights of Peoples* (New York: Oxford University Press, 1988) pp. 17-37, Judgement of The Women's International War Crimes Tribunal For the Trial of Japan's Military Sexual Slavery (The Hague, The Netherlands: December 4, 2001).
- 34) Akihiko Kimijima, "Nihonkoku kenpo dai 9 jo to Hauge heiwa appeal," *Sekai*, no. 694 (Tokyo: Iwanami Shoten, November 2001) pp. 90-95.
- 35) Report of the Secretary-General to the Security Council on Prevention of Armed Conflict, A/55/985-S/2001/574 (June 7, 2001).
- 36) Akihiko Kimijima, "GPPAC Global Action Agenda o yomu," *Hogaku seminar*, no. 612 (Tokyo: Nihon Hyoronsha, December 2005) pp. 78-81.

(KIMIJIMA Akihiko, Professor, College of International Relations, Ritsumeikan University)

日本国憲法の平和主義を捉え直す

本稿は日本国憲法の平和主義を平和学の視点、東アジアの視点、NGOの視点から捉え直す試みである。まず日本国憲法の平和主義は、9条に示されている武力依存の極小化（直接的暴力の克服）のみならず、前文が述べている公正な世界秩序の構築（構造的暴力の克服）をめざす点で、平和学の認識と響きあっている。

次に、日本国憲法9条の東アジア民衆にとっての意義、9条が東アジアにおける苛酷な冷戦と熱戦を生き延びた理由、そしてこれから東アジア不戦共同体をめざす方向性など、日本国憲法の平和主義は東アジアの文脈において考察することが不可欠である。

また、平和主義 暴力の克服 について考えるとき、女性に対する暴力、家父長制的暴力を視野に入れる必要がある。家族圏における男性支配、家父長制的暴力を否定する日本国憲法24条と9条を一体として捉えると、日本国憲法は、近代国家が許容してきた軍隊の暴力と家父長制的暴力の両方を克服しようとする、いわば「普通の近代国家」を超えるプロジェクトとして理解される。

日本国憲法は平和をつくる主体として市民の役割を重視している。市民が武力によらずに平和をつくる活動であるNGO活動は、日本国憲法の平和主義と共鳴する。近年、世界の平和NGOは日本国憲法9条に注目している。日本国憲法の平和主義は、日本の市民の問題であるにとどまらず、人類史的挑戦でもある。

（君島東彦，立命館大学国際関係学部教授）