

On The Pacifism Principle of the Constitution of Japan

Zhiyang Bai*

Renmin University of China Law School, Beijing 100089, China

*baizhiyang322@163.com

Abstract: The Constitution of Japan was enacted on May 3, 1947, as a new constitution for the post-war Japan. It is the fundamental law of Japan. The Constitution has a length of approximately 5000 words and consists of a preamble and 103 articles divided into 11 chapters, including the Emperor, renunciation of war, individual rights, organs of government, amendments and other provisions. This Constitution, also known as the “Post-war Constitution” or the “Peace Constitution”, is best known for its Article 9, which can be regarded as a symbol of the Constitution’s pacifism principle. When it comes to the pacifism principle, it is important to know what exactly the pacifism is and how it is reflected.

Keywords: Pacifism Principle, Constitution, Japan

1. INTRODUCTION

The pacifism principle of the Constitution is mainly reflected by the preamble and the Article 9. The preamble writes “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.” The Article 9 writes “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.”[1] These provisions to some extent ensure post-war Japan’s peace and democracy. However, the pacifism principle has a rich content, including absolutely renunciation of war, international cooperation and asserting liberal doctrine of fundamental human rights, etc.

The preamble and the Article 9 mentioned above is the core of pacifism principle of the Constitution, which means the most important content of the pacifism principle is to renounce war and military forces. Though Japan is not the only country in the world to renounce military method to settle international disputes, but at that time, it was generally believed by the international community that Japan was the only country in the world forever renouncing war as a sovereign right of the nation without maintaining any military forces. But since it was

enacted, this provision has been poorly executed and the intention has been gradually weakened through Japanese government's Constitution interpretation.

2. RENUNCIATION OF WAR

The Article 9 "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." While analyzing this provision, the confusing point is this provisions means renunciation of any war or renunciation of war as means of settling international disputes. In short, there are different ideas about whether it is legal to keep a self-defense forces. Generally speaking, Japanese scholars and government hold two different ideas: one is that the Article 9 means Japan has to renounce any war, including self-defense war, while the other voice is that the Allies tacitly consent to Ashida Hitoshi's revision of of the second clause of Article 9, which means the Allies consent to the possibility that Japan would establish self-defense forces in the future. So the Article 9 only prohibits invasion war rather than defensive war. And the second opinion has already becomes the reality. The drafting of the Constitution was led by General Headquarters (GHQ) and the US government. Douglas MacArthur, the Supreme Commander of the Allied Powers, suggested that neither he nor his superiors in Washington intended to impose a new political system on Japan unilaterally. Instead, they wished to encourage Japan's new leaders to initiate democratic reforms on their own [2]. But by early 1946, MacArthur's staff and Japanese officials were at odds over the most fundamental issue, the writing of a new Constitution. Emperor Hirohito, Prime Minister Kijūrō Shidehara and most of the cabinet members were extremely reluctant to take the drastic step of replacing the 1889 Meiji Constitution with a more liberal document [3]. Both MacArthur and the United States were worried about that Japan will rebuilt their militarism, so to avoid it, they drafted the clauses of pacifism in the Constitution. The article of renunciation of war, stated in MacArthur's three principle as follows: 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 [4]. Kijuro Shidehara, the Prime Minister at that time, who was well-known for his "peace diplomacy", also proposed making the renunciation of war a permanent national policy. According to Shidehara, "I was asked whether the new constitution wasn't imposed on the Japanese against their will by GHQ, but it was certainly not forced on us by anyone." [5] Shidehara "wanted it to prohibit any military establishment for Japan—any military establishment whatsoever." [6] Shidehara's perspective was that retention of arms would be "meaningless" for the Japanese in the post-war era, because any substandard post-war military would no longer gain the respect of the people, and would actually cause people to obsess with the subject of rearming Japan [7]. From what is discussed above, it can be identified that when

the Constitution was drafted, it was intended that all the war should be renounced and the possession of belligerency will not be recognized.

3. PACIFISM PRINCIPLE

Generally speaking, what really raised controversy is Ashida Hitoshi's revision. Ashida worked as the chairman of the Committee on Bill for Revision of the Imperial Constitution, formed on June 28, 1946, in the House of Representatives. Following that, he was the chairman of the Constitution Popularization Society, where he worked to bring the new Constitution to the people of Japan. When Ashida Hitoshi handed over the GHQ's draft to Shugiin, Japanese House of Representatives, he made two key changes. One of them is about the first clause, he revised it into Japan renounce the use of force as means of settling international disputes, which limited the renunciation of forces. According to Ashida's revision, Japan will renounce invasion war but when it comes to defensive circumstance, Japan can use force. The other one is about the second clause, he added "in order to accomplish the aim of the preceding paragraph" at the very beginning of the second clause, in front of "land, sea, and air forces, as well as other war potential, will never be maintained", making the second clause very closely connected with the first clause. The second change added a precondition to that Japan doesn't keep forces, which at first didn't exist at all[8]. Ashida Hitoshi's revision makes it is possible for Japan to develop an army. In the Article 9, the state formally renounces the sovereign right of belligerency and aims at an international peace based on justice and order. However, Japan maintains de facto armed forces, referred to as the Japan Self-Defense Forces.

All in all, the pacifism principle in the Constitution implies that the original intention of Article 9 is that Japan renounces all wars, including the defensive war, at the meantime, doesn't maintain any land, sea, and air forces, as well as other war potential. And the right of belligerency of the state will not be recognized.

4. POSITIVE INTERNATIONAL COOPERATION

The pacifism principle of the Constitution not only mean the renunciation of war, it also means positive international cooperation. The second paragraph of the preamble writes: "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." It implies that the peace for all time are closely connected with the freedom and survival, regarding peace as the precondition of Japanese people's "security and existence". The preamble also writes: "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", from where it can be seen that the peace in the Constitution is not negative, but rather positive. To realize peace, Japan not only depends on other countries creating a peaceful international circumstance negatively, but also searches for international cooperation and

further recognizes “that all people of the world have right to live in peace, free from fear and want.” The third paragraph further emphasizes that “we believe that no nation is responsible to itself alone.” And the preamble ends up with “we, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources.”[9] So the pacifism principle in the Constitution hold positive attitude, searching for cooperation with international community. The pacifism principle not only include “peace”, but also contains searching for international cooperation to reach peace. So much so, besides renunciation of war, pacifism also means positive international cooperation in the Constitution of Japan.

Through the preamble, it is can be found that one of the Constitution’s intention is international cooperation. So the pacifism of the Constitution of Japan means not only Japan’s peace, but also the peace of the whole world. Considering the Article 9: “aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation”, the renunciation of war, not maintaining forces and not recognizing belligerency are a further description of world peace.

5. THE RIGHT TO LIVE IN PEACE

Another significance of the pacifism principle in the Constitution is that it confirms “that all peoples of the world have the right to live in peace, free from fear and want”, which makes peace a human right. And this right is also regarded as a method to achieve peace. Like Urabenori, Japanese scholar said, in the modern world, if human don’t want to be stupid and doomed, they have to think more than “peace as a policy”. They have to chase after peace as a human right, which will be extremely important in the future[10]. This opinion is not raised under the threat of nuclear weapon, for any war will be threat for human beings, which means living under peace itself is a human right. If the right in “all peoples of the world have the right to live in peace” is the human right discussed above, this human right will have more contemporary significance.

However, the whether “the right to live in peace” has a legal nature still need further discussion, which means it is not sure whether people can search for remedy from court when this right is infringed. These problems emerge because the subject and content of the right to live in peace is not clear enough. It is hard to define who enjoys the right and who takes the obligation. So much so, the right to live in peace is regarded as a base of human rights rather than an independent human right. However, this right still worth people’s attention. Japanese scholar Urabenori holds the idea that Article 9 regulates the right to live in peace concretely. For example, maintaining forces is a harm to this right and the people of course can sue to the court and require remedy[11]. This idea is totally different from the one where the military force is regarded as a self-defense method, denying military force to be part of security measures[12].

6. CONCLUSION

The Constitution of Japan is also known as the “Peace Constitution” and this essay discussed about what the pacifism principle of the Constitution means. The pacifism principle is directly reflected in the Article 9, that the state will forever renounce war, any forces will not be maintained and the belligerency will not be recognized. Besides, the constitution, especially the preamble, emphasizes international cooperation. When it comes to peace, Japan will not only lean on other countries negatively, it will chase after peace by searching for cooperation with international community. And Japan will hold world peace as the ideal, not only for Japanese people, but for everyone in the world. The third meaning of the pacifism principle makes peace a human right. The Constitution recognizes all peoples of the world have the right to live in peace. From this sphere, the Article 9 can be seen as a detailed clause, that the renunciation of war and the nonrecognition of belligerency will contribute to the peace world.

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