Abe’s Difficult Road to Constitutional Change in Japan

By J. Berkshire Miller

When Shinzo Abe returned as Japan’s prime minister in 2012, much of the focus was on his economic reforms. But Abe’s longstanding interest in changing Japan’s US-scripted constitution has been a perennial worry for those who fear that such changes could lead the country down a dangerous path. J. Berkshire Miller argues that constitutional reform is fraught with obstacles.

Since Japan’s Prime Minister Shinzo Abe took office in late 2012, there has been much speculation about his desire to revise Japan’s 1946 “Peace Constitution.” If Abe embarked on efforts to amend the constitution, it would be the first time in Japan’s post-war history that a prime minister had made such a concerted push. While previous Japanese leaders have also eyed constitutional reform, none had the political support and space that Abe seemingly enjoys.

The geostrategic context in East Asia has furthered complicated Japan’s evolving security posture, because Tokyo’s detractors — especially China — view Abe’s desire to retrofit Japan’s security posture as revisionist and even re-militarist. Others, however, both in Japan and abroad, insist that such reforms, including Japan’s “Peace and Security Legislation” passed in the fall of 2015, are minimal changes necessary for Tokyo to re-adjust to a more complex and volatile security environment in East Asia.

Japan’s constitution has been a lightning rod for criticism from conservatives and right-wing groups who claim that it does not represent Japan’s cultural and historical tradition and is overly prohibitive, especially with regard to the role of the military. The well-known clause, Article 9, calls for the “renunciation of war” as a means of the state. As a result, since the end of the Second World War, Japan has not maintained a traditional military, but instead fields a Self-Defense Force (SDF) that originally was tasked narrowly with national defense.

Japan’s neighbors are concerned that Abe is determined to revise Article 9. There is no doubt that Abe himself has long coveted constitutional reform, and he has made this clear on numerous occasions over his political career, saying that he believes the charter was forced upon Japan by the post-war occupation government led by US General Douglas MacArthur. This may be true, but many revisionists in Japan — including Abe — overlook the critical role that Japanese politicians and experts took in drafting the 1946 constitution.

But while Abe may have dreams of constitutional revision as his final legacy in office, the realities of governance and the legal barriers to change are significant and multifaceted. Indeed, even many of Abe’s top advisors and key members of his ruling party have dismissed the notion that Article 9 revisions are inevitable. Veteran Liberal Democratic Party (LDP) lawmaker and former foreign minister, Masahiko Komura, noted prior to the Upper House elections this past July that there was “zero possibility of revising Article 9” in the coming months of Abe’s reign. Simply put, the challenges and constraints to constitutional reform in Japan are often poorly understood or downplayed by the mainstream media, both in Japan and abroad. The result is an incomplete and erroneous narrative on the probabilities of such revision and its impact on Japan’s security and defense posture going forward.

Abe’s Political Grip Strengthened

In July, Japan’s ruling LDP — led by Abe — secured a key election victory during the poll for the House of Councilors. The LDP, along with its coalition partner — the Komeito Party — scored 70 of the 121 seats that were contested during the upper house election and now control a combined 146 seats in the chamber out of 242. This victory, coupled with the LDP-Komeito coalition’s significant majority in the lower house of the Japanese Diet gives Abe a “supermajority” of two-thirds in both houses, a seemingly unassailable grip on power, at least until the fall of 2018, when his term as LDP president is set to expire.

There is also some talk that Abe may look to amend the LDP rules to allow him to serve in office until 2020, which would make the Tokyo Olympic Games his capstone legacy and ensure he would become the longest-serving Japanese prime minister in history. Shortly after his victory, Abe made some changes to important positions both within the LDP and his governing cabinet. The most important was the appointment of Toshihiro Nikai as the new Secretary General of the LDP, to replace Sadakazu Tanigaki, who was injured earlier this year and became unable to maintain the party leadership. Tanigaki resisted Abe’s offer to stay on as secretary general and Abe then focused on Nikai, the former chairman of the LDP Executive Council. Nikai’s appointment is seen as strategically beneficial for Abe, who needs strong backing and discipline within the LDP to push forward an ambitious economic agenda and a potential attempt to revise the constitution. Nikai also has previously supported revision of LDP rules that would allow Abe to remain as party president after his second term expires in 2018.

Abe’s power in the Diet has fueled speculation that he will push for constitutional revision, with the main opposition party, the newly fused Democratic Party, effectively neutralized. Indeed, following the landmark win, Abe made reference to the possibility of constitutional change, saying, “The LDP has held the goal of revising the Constitution since its formation and it included that goal in its platform for governing.”

Threshold for Revision Remains a Challenge

It is still an open question whether Abe will devote his political capital to the constitution. As time has passed, successive Japanese gov-
erments — along with support from their US ally — have looked to adapt the role of the SDF to meet new geopolitical realities. The most recent example was the passage of security legislation last year that reinterpreted Tokyo’s right to engage in “collective self-defense.”

The strengthened LDP-Komeito coalition, in concert with other revisionist allies in the Diet, theoretically would allow Abe to pass the legislative hurdles necessary to amend the constitution (a two-thirds vote in both houses is a requirement). This is by no means a sure bet, since there will be robust debate within both chambers of the Diet. Moreover, Abe will have to compromise on any legislation with the Komeito, which has dovish views on the role of the military and has traditionally stood by Japan’s pacifist stance. Any eventual constitutional amendment therefore would undergo rigorous scrutiny if it is to pass.

Second, in order for any constitutional changes to be enacted, Abe would need to secure majority approval in a public referendum. This remains the largest hurdle, because many Japanese citizens are heavily skeptical of the need to amend the constitution. Most polling in Japan continues to show that this will be an enormous challenge, although there have been indications that Japanese people are not opposed to revision writ-large. According to a poll conducted by Japan’s liberal newspaper, the Asahi Shimbun, shortly after the Upper House poll in July, 49 percent of voters supported the notion of constitutional reform. But, while there is tepid support for potential revision, the public remains intensely skeptical of amending Article 9 — viewed by many in Japan and abroad as the “heart of the constitution.” Most polling indicates that Japanese voters are opposed to revisions to Article 9. Moreover, formal political resistance is also stiff. According to a Mainichi Shimbun poll this past June, only 42 percent of candidates on the LDP ticket agreed with revising the article. The numbers are higher for the main opposition party, the DP, with 67 percent opposed to the revision.

Another often-misunderstood element of LDP plans for constitutional reform is the fixation on Article 9. While changes to Article 9 remain at the heart of reform plans — including the LDP’s draft constitutional amendments in 2012 — there is a probability that the ruling party will seek to circumvent intense political and public scrutiny by first focusing on other elements, the “low hanging fruit” outside of Article 9. This might include, for example, a debate about changing the current high threshold for constitutional change.

LIMITED POLITICAL SPACE

In addition to the legal challenges to constitutional change, the Abe government also has limited political space to operate in — despite its overwhelming majorities in the Diet and its high approval ratings. Essentially, the Abe government’s popularity is most directly linked with his economic policy, dubbed “Abenomics.” Indeed, according to an Asahi Shimbun poll this past July, only 14 percent of Japanese voters saw constitutional reform as their most important issue. Most voters remain more concerned about the economy, education, healthcare and social security.

Since Abe was first elected in late 2012, he pledged to develop economic policies that would dig Japan out of deflation and help spur economic growth. Thus far, Abenomics has achieved only mixed success, with Abe unable to come close to reaching his stated target of 2-percent inflation. Likewise, while the Japanese yen weakened considerably after Abe first took office — strengthening the competitiveness of Japan’s major exporters — this trend has been reversed over the past year due to market instability and investors flocking to the Japanese yen as a “safe-haven” currency.

The glaring weakness in Abenomics remains the lack of progress on structural reform of Japan’s economy — headlined by improved regulatory control, sectoral reform, improving the role of women in the workforce and boosting immigration to help mitigate Japan’s rapidly shrinking demographics. In addition to these impediments is the looming question of the Trans-Pacific Partnership (TPP) trade agreement and its future, in light of the upcoming US election. The TPP, of which Japan is a member, is a key element of Abe’s plans to reform and revitalize Japan’s economy through greater market access and preferential trade deals.

The TPP will consume a lot of Abe’s political agenda as the LDP is slated to ratify the trade pact this fall, during a special Diet session. The TPP is highly controversial in Japan, and even though the LDP coalition has the votes to ratify the agreement, Abe will be likely to take a significant political hit during the Diet debates, which will further curtail his time and capital for constitutional revision.

SECURITY AND DEFENSE REFORMS

Many who are concerned about Abe’s constitutional revision goals have centered their criticism on the efforts that his government has taken to reform Japan’s security and defense posture. Some of the key changes over the past three years include: the creation of a centralized National Security Council, the passage of a new secrets bill, a first-ever National Security Strategy (NSS), revised National Defense Program Guidelines, revised bilateral defense guidelines with the United States and a relaxation on arms exports. The NSS stresses the need for a more coherent and retrofitted security posture for Japan as a consequence of geostrategic threats: “Surrounded by an increasingly severe security environment and confronted by complex and grave national security challenges, it
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has become indispensable for Japan to make more proactive efforts in line with the principle of international co-operation. But none of these reforms has been as controversial as Japan’s reinterpretation of Article 9, passed in legislative bills last year that lifted Japan’s self-moratorium on its constitutional right to collective self-defense. Essentially, the new bills address the decades-long gaps in Japan’s ability to shore up its security alliance with Washington. The new legislation allows Japan to assist the US, or other allies, in the event that circumstances threaten Japan’s security. This change is complemented by the newly released US-Japan bilateral defense guidelines, announced in April 2015, which increase the scope of co-operation between Tokyo and Washington on defense.

The revised bilateral defense guidelines have a number of key takeaways that serve to retro-fit the alliance. The defense of Japan remains central to the alliance and this has been reaffirmed with Washington’s reiteration of its backing of Tokyo’s administration of the Senkaku Islands in the East China Sea. During Abe’s visit to Washington in 2015, President Barack Obama reiterated “our [US] treaty commitment to Japan’s security is absolute, and that Article 5 of the US-Japan Security Treaty covers all territories under Japan’s administration, including Senkaku Islands.” Obama’s pledge, which has been repeated publicly on several occasions over the past few years by senior US officials, is meant to both reassure Tokyo that the US is serious about its commitment and also to deter Beijing from upping the stakes in the seas surrounding the islands.

Tokyo and Washington have also enhanced their co-ordination through a new whole-of-government Alliance Co-ordination Mechanism that allows a more seamless approach to assessing threat scenarios, sharing information and developing a joint response. Framing this debate on security reforms and the reinterpretation of Article 9 are important limitations to Japan’s ability to respond to an armed attack against the US or other key partners. Abe was prodded by his partner, the Komeito Party, to place firm restrictions on the ability of the SDF to use force in such situations. The three restrictions are: an armed attack against the US or another partner must threaten Japan’s survival and pose a clear danger to Japan’s citizens; there are no available options other than the use of force; and finally, the use of force is limited to the minimum extent necessary. While there remains some legal ambiguity within these restrictions, they remain fairly significant obstacles to the more expansive role for the SDF that many critics of the Abe administration point to when accusing Tokyo of “militarizing.”

Other key changes are an expanded role and allowance for the use of force by the SDF in UN-mandated peacekeeping operations; the ability to engage in multinational peacekeeping operations outside of the UN framework; support activities to foreign partners on collective security operations; greater ability to inspect ships when international peace is threatened; and the provision of military and logistical support to the US in peacetime. Indeed, Japan’s 2015 security bills represent a significant transition point for the country, but they also have been consistently over-hyped. As Adam Liff has noted, the fixation on Abe’s defense and security reforms is often over-blown and creates “more heat than light.” Liff remarks, “In all this noise, the practical implications of recent developments are often lost. Far from constituting an abrupt transformation of Japan’s defense policy, recent measures adopted during the Abe era to a large extent continue long-term trends initiated by previous governments from both his Liberal Democratic Party (LDP) and the leading opposition Democratic Party of Japan (DPJ).”

The WAY AHEAD IS FAR FROM CERTAIN

Japan’s security reforms, in other words, are not a drastic departure by a revisionist leader hell-bent to alter Japan’s military role. Rather, they should be seen through a clearer lens. The reforms thus far — while notable — are merely part of a long-running process that has been discussed in Japan for decades. Moreover, with regard to efforts to revise the constitution, Abe faces considerable hurdles — both legal and political — and the need to focus on the Japanese economy will continue to constrain his revisionist side, despite his stated desire to debate constitutional issues.

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