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DEBATE ON COLLECTIVE SELF-DEFENCE AND CONSTITUTIONAL REVISION IN JAPAN

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Introduction

In an extremely controversial and massive shift for the country's pacifist stance, Japan's Cabinet took a historic decision on 1 July 2014 "Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People", that will allow the Japanese government to reinterpret the Constitution allowing limited exercise of the right of collective self-defence. The Shinzo Abe government hoped that the new legislation when passed will enable Japan to coordinate with the United States and other members of the international community, thereby contribute to solidifying Japan's peace and security. Abe further hoped that the constitutional reinterpretation would now help Japan to enhance its deterrent power. He expressed his resolve to "consolidate Japan's path as a peace-seeking nation". Abe also pledged to establish "a seamless legal framework on national security to protect the lives and daily livelihood of the people".

It was not easy for the Abe government to reach such a historic decision. His Liberal Democratic Party (LDP) had policy differences with its coalition partner, the New Komeito, which wanted the government to pursue a cautious approach on permitting Japan to exercise the right of collective self-defence. But protracted efforts on Abe's part finally led both the parties to find middle ground and reach an agreement. Under the government's reinterpretation of the Constitution, particularly Article 9, Japan will now be able to use the minimum necessary force when there is an armed attack on a foreign country with which Japan has close relations, and that there is a clear danger that the basic rights of the people of Japan are fundamentally undermined.

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The question that arises is: why did Abe feel the need for such a foreign policy activism at this point of time? Since the end of World War II, Japan backed by its “Peace Constitution”, adhered to a basic policy of maintaining an exclusively national defense-oriented policy, and not become a military power that could pose a threat to other nations. By observing the Three Non-Nuclear Principles, Japan flourished as an economic power and distributed the economic dividends to its people. But since the Constitution of Japan came into operation seven decades ago, the security environment surrounding Japan has dramatically deteriorated, thereby exposing Japan to deal with significant security challenges. China’s brazen expansionist policy and toughening stance on territorial issues, and coupled with threat from North Korea’s nuclear and missile launches are matters of worry. While acknowledging the so-called “UN forces”, an ideal proclaimed in the Charter of the United Nations, with no prospect of realization, the Cabinet decision took cognizance of the shift in the global power balance after the end of the cold war, rapid progress of technological innovation, development and proliferation of weapons of mass destruction and ballistic missiles as well as threats such as international terrorism leading to tensions in the Asia-Pacific region, thereby impacting directly on Japan’s security. Moreover, the threats to maritime security either stemming from maritime terrorism, piracy or unilateral decision by a single country to impose its views and violating the United Nations Laws of Sea such as in the South China Sea makes the security in the region more volatile. The Abe administration felt that such a changed situation warranted an appropriate response.

Implementing the law

March 29, 2017 marked another significant landmark in Japan’s security policy as it marked one year since the Shinzo Abe government enacted the new security-related law that significantly broadened the scope of the country’s Self-Defense Forces’ (SDF) activities, including enabling the limited exercise of the right of collective self-defense. The law also gave the SDF personnel on UN peacekeeping operations greater authority to use their weapons. The law expanded the government’s discretion over overseas operations of the SDFs and allowed the SDF to provide logistical support to the militaries of the US and other nations operating across the world.

Since Abe came to power in December 2012, Japan has been enjoying a rare spell of political stability since Junichiro Koizumi retired from politics, leading to a spell of what came to be known as ‘revolving prime ministers’. This period of political instability came as a serious bottleneck in making legislation on critical issues impinging the country’s security. Abe’s assumption to power changed this situation and the prime minister could afford to devote responding appropriately to the deteriorating security environment in Japan’s neighbourhood.

Post-Trump situation

This situation has somewhat changed after Donald Trump took over the US Presidency. He has demanded greater security burden from the allies – Japan and South Korea – by way of paying more to the cost of US forces stationed in the bases. He made further controversial statement that the allies might even think of acquiring their own nuclear weapons to defend their countries. Such statement was alarming to the people in both Japan and South Korea, though emboldens the hardliners and conservatives to demand for revisiting their nuclear options. The situation however during the pre-Trump era was not dramatically different as the clamour for revising the nuclear policies existed but was dormant. That voice gets more currency now. The media in South Korea has already started articulating on if the time has already arrived for the nation to acquire its own nuclear weapons as a deterrent in the wake

of threat from its neighbour. If opinion builds up to acquire nuclear weapons, the domino effect of such a policy in Japan and Taiwan could be inescapable.

How has Japan been able to use this new law for the country's security during the past one year? And what changes have occurred in the security environment in Japan's neighbourhood? Without doubt, threats from North Korea's nuclear and missile development programs have increased. The firing of a series of missiles by North Korea, including two intercontinental ballistic missiles (ICBMs) on 4 and 28 July that landed in the Japanese waters is a matter of concern for Japan. The SDF has a legitimate right under the new law now to monitor the Sea of Japan. The Maritime SDF of Japan can now engage its Aegis-equipped vessels round the clock to intercept any incoming missiles. If tensions heighten, Aegis destroyers from the US Navy's 7th Fleet will also jointly monitor the situation. Even here, there are various interpretations on the use of force.

Increased heat from North Korean threat

In the latest escalation of tensions on the Korean Peninsula and the extended neighborhood of Northeast Asia, North Korea fired two ICBMs in July 2017 that landed in Japan's exclusive economic zone (EEZ) in the Sea of Japan. This was the sixth such missile fired by North Korea that landed in Japan's EEZ, the earlier being on May 29.

Each time North Korea launches a ballistic missile, it is an indication of having made further advances in its missile capabilities. The one fired on July 4 flew for about 40 minutes and travelled around 930 kilometers. It was the 10th occasion in 2017 that North Korea fired a ballistic missile. The one fired on 28 July had similar range. On 8 June, it fired several surface-to-ship cruise missiles, as well.

Much hope rests on China to exercise its influence on North Korea to change course. But China is either incapable or unwilling to exert any pressure on Pyongyang owing to its own strategic compulsions. US President Trump is unwilling to wait for China to cooperate. Having taken North Korea threat seriously, Trump is reviewing his policies towards the North, including consideration of military options that could include pre-emptive strikes and cyber-attacks. Being geographically close to North Korea, Japan feels the heat and intends to keep in step with the US and ramp up the pressure on North Korea.

Japan still faces limitations

Even though the North Korean ICBM fired two ICBMs in July 2017 in Japanese water exposing Japan's vulnerability, Japan still remains unclear on what sort of response it would adopt if the same kind of missile flew over Japan in the future to target the mainland US. The prospect of an ICBM fired by North Korea in the future flying through the sky over Japan and towards the US became a more realistic possibility after the US confirmed that the missile fired was an ICBM. Though Japan's security-related legislation came into force in March 2016 making legally possible for Japan to intercept such a missile, Japan can only conduct such an operation under strict conditions. High technological barriers also need to be overcome.

The legislation of March 2016 incorporated three new conditions on the use of force set forth by the Cabinet decision of July 2014 to reflect a change in the interpretation of the Constitution. These conditions are (a) an armed attack occurs and threatens Japan's survival; (b) there are no other appropriate means to protect Japan's people; and (c) use of force is restricted to the minimum necessary. Japan shall be able use force and shot down a ballistic missile heading toward the US only if these three conditions are met.

Debate on Revising Article 9 of the Constitution

The above limitation and constraint brings into discussion the issue of constitutional revision, especially Article 9. Ever since Japan's constitution was promulgated 70 years ago, no single change in the document has ever been made. However, Prime Minister Abe wants to change this trend and has resolved to complete the process before the end of his time in office. The document adopted under the US occupation had changed the balance between the state and Japanese society as well as the trajectory of Japan's relations with the world. Abe wants to change this so as to reflect the current world situation and set the date 2020 to coincide with the Tokyo Olympics the same year. His reasoning is like the Tokyo Olympics of 1964, the coming Olympics would be rebirth for Japan and wants to link this prospect of a renaissance for Japan with constitutional revision. In focus is to amend the "no war" clause in Article 9 by adding reference to the constitutionality of the nation's Self Defence Force.¹

Abe's task is not easy. While the opposition decries his focus on the nation's military, there is no consensus even within the ruling LDP. Even before initiating any move to alter Article 9, Article 96 that sets forth the revision process needs to be amended.² The first step in any attempt to revise an Article of the Constitution is that the proposal has to be passed by both the houses of the Diet with a two-thirds majority. If the proposal is passed, the second step will be to put the proposal for a national referendum in which majority of the eligible voters of the country must endorse before the amendment takes effect. Given the reservations among the various political parties, including those by some within the ruling party, on tampering Article 9, and also given the strong anti-militaristic stance of the people, it seems that Abe's objective is destined to be unrealisable. The structural obstacles of Article 96 remains a subject of heavy domestic political contestation and limit Abe's ability to alter Article 9. Despite the LDP has remained the dominant political party for most of Japan's post-War history and having constitutional revision written into its 1955 founding charter, no one LDP prime minister has succeeded. Abe could be no different, though he would leave a legacy for his efforts to bring some change, though unsuccessfully.

Any attempt to revise Article 9 by the Abe administration is likely to be seen critically in China and South Korea in the prism of history's shadow. Even within Japan, there are deep passions in the Japanese people about the constitution's influence on the society and they will be unwilling to see any change. For them, the constitution has served Japan's interest well in the past 70 years and they see no reason to tamper with it. For them, the trust in the security alliance with the US for the nation's security is paramount, no matter threats from North Korea has heightened in recent times.

1 - Article 9 says: (1) 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. (2) 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.

2 - Article 96 says: (1) Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify. (2) Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.

Though the core meaning of the Article 9 and the actual text remains intact, its interpretation has diluted the spirit to some extent, thereby allowing Abe to achieve his objective, partially if not fully. This is because of perceived “external threats, weapon technologies, and shifting domestic political winds”. Even past governments and opposition parties, including the Japan Communist Party, have taken a liberal view on Article 9 and Abe is just building on that platform, albeit more vigorously. He has therefore argued vigorously in defence of 2014 defence resolution as a necessary response to an increasingly dangerous regional security environment. Dismissing Abe as a “nationalistic hawk” would be to undermine the nation’s security needs and exposing it to vulnerability. Abe has to make significant concession to his coalition partner Komeito, which is not on the same page with Abe’s LDP always.

Likely Response from China

China perceives Abe as a nationalist who is determined to dramatically alter Japan’s security posture and revision of Article 9 is the prerequisite. China sees Abe’s slogan during the election campaign to “take back Japan” by interpreting as taken back Japan’s army by the American occupation forces, and therefore alarming as such a policy could challenge the liberal order that the Japanese people have embraced for the past 70 years. China’s fear also stems from the perception that Abe is undermining popular opinion against revision as demonstrated by many opinion polls by the Japanese media. China fears if Japan shall continue to maintain its pacifism or opt for a robust military posture and sees Abe’s policy from such prism.

Likely Response from South Korea

Like China, Japan-South Korea relations suffers from the shadow of history. Most Koreans are against Japan’s constitutional reform and consider it as a sign of Japan’s revert to militarism. The comfort women, a euphemism for sex slaves of Korean women used by Japanese military to work in war front brothels during the World War II, continues to haunt bilateral ties and a constant irritant, fanning anti-Japanese feeling in South Korea. The common threat of North Korea has not helped to improve the Korean perception of Japan.

However, there is also another view in South Korea that tends to take a softer perspective towards Japan. For example, Seong-ho Sheen of Seoul National University is of the opinion that Japan is unlikely to have any desire to return to militarism, as its people feel that they are the greatest victims of such a past. He argues that with a super-aging population and a shrinking economy, Japan is unlikely to have the appetite and capacity to become an expansionist power if it wanted to. Sheen feels that the revision efforts are under the US duress as the US is demanding a more active role by the Japanese military in order to augment the Japan-US alliance. The US demand on Japan is that Japan must adjust to the present unbalanced alliance. However, Sheen’s views belong to the minority opinion among both the educated intellectuals and the commoners in South Korea.

So, given Prime Minister’s determination after 70 years can Japan finally find itself on the cusp of acquiring its own military? That would not be easy. Though strengthening its militaristic posture in the wake of Chinese assertiveness on territorial issues and North Korean threat could seem a valid reason for a reasonable response, the path to assume such a posture is never smooth. Abe has to cross several hurdles, some of which appear insurmountable. To the outside world, Japan’s SDF is just military in all but name and what Abe wants is to give it a legal legitimacy. If China does not halt its aggressive posture and North Korea does not pause its nuclear and missile programs, public opinion inside Japan

might swing swiftly in favour of amending the constitution and referendum then would no longer be a hurdle. In that case, Abe would have left an indelible mark in Japan's history. In the process, the security dynamics in the Northeast Asian region as well as in the larger Asia would have undergone dramatic change with inevitable policy response from China, South Korea and other nations in the region. At the moment, however, it appears to be a mere will-o-the-wisp.