

CONSTITUTION OF JAPAN & CONSTITUTIONAL AMENDMENTS

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Major topic

- ◆ Meiji constitution
- ◆ Post-war constitution
- ◆ Constitutional amendments
 - ❖ Proposals by LDP and DPJ
 - ❖ Preamble, Emperor, Article 9

Meiji Constitution

- ◆ The Constitution of the Empire of Japan (大日本帝國憲法) - Imperial Constitution (1889)
- ◆ Fundamental law of the Empire of Japan (1889-1947)
- ◆ Enacted as part of the Meiji Renewal
- ◆ Form of constitutional monarchy based on the Prussian model
- ◆ Emperor of Japan – active ruler with considerable political power, but shared the power with an elected diet.
- ◆ Replaced by the ‘Constitution of Japan’ in the form of Western-style liberal democracy

Comparison

	Meiji Constitution (1889)	Post-war Constitution (1947)
Drafted by	Enacted as part of the Meiji Renewal, abolished after World War II	Allied Occupation at the direction of General Mac-Arthur in 1946, has not been amended since then
Sovereignty	Emperor (claimed to rule by divine right)	People
Emperor	Held supreme power	De facto head of state, ceremonial figurehead
Rights/System	All popular rights were circumscribed and the duty of people to serve and obey Emperor was absolute, imperial system	Parliamentary system of government, guarantee of certain fundamental rights, strict separation of state and religion, liberal democracy
Central policy	Imperial order	Pacifism, no possession of any armed forces, abolishment of feudalism

Constitution of Japan *

Structure

- ◆ I. The Emperor (1-8)
- ◆ II. Renunciation of War (9)
- ◆ III. Rights and Duties of the People (10-40)
- ◆ IV. The Diet (41-64)
- ◆ V. The Cabinet (65-75)
- ◆ VI. Judiciary (76-82)
- ◆ VII. Finance (83-91)
- ◆ VIII. Local Self-Government (92-95)
- ◆ IX. Amendments (96)
- ◆ X. Supreme Law (97-99)
- ◆ XI. Supplementary Provisions (100-103)

Article 9 RENUNCIATION OF WAR

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.

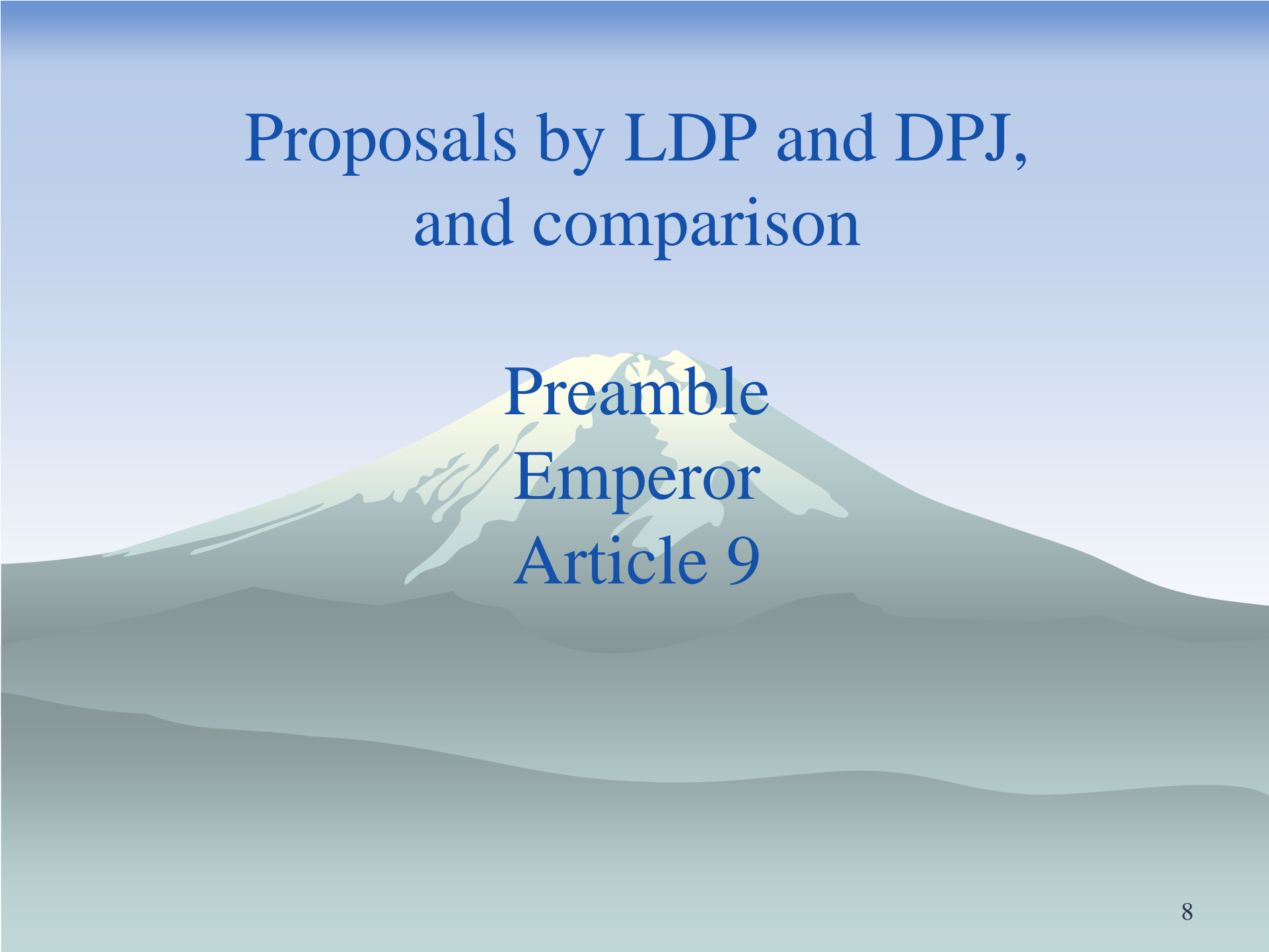
In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

Constitutional Amendments

The revision covers **four major areas**

1. **Guarantee of Fundamental Human Rights**
2. **Fundamental and Organizational Role of Politics**
3. **Japan's Role in International Society**
4. **Local Autonomy.**

Proposals by LDP and DPJ, and comparison



Preamble
Emperor
Article 9

Preamble

Preamble subcommittee of the LDP committee on constitutional revision sets the nation's five core principles

1. Freedom
2. Democracy
3. Human rights
4. Peace
5. International Cooperation

Preamble (Cont')

- ◆ The Preamble emphasizes three elements :
 1. Popular sovereignty
 2. Respect for human rights
 3. Pacifism

It also,

- ◆ notes the principle of “International cooperation” with the aim of showing the world Japan is eager to contribute to the international community
- ◆ calls for Japan to become a nation of education, culture, and an economic power
- ◆ places importance on the development of local government to promote decentralization

The Emperor

The emperor - the symbol of the nation, not the head of state

Government panel on imperial succession supports legal revisions to allow

- ◆ females to ascent the imperial throne to ensure “stable succession.”
 - ◆ female monarchs and their descendants to reign
- * Whether or not to give priority to the emperor’s firstborn, or to give priority to a direct male descendant over any elder sisters is to be included.

Implications of Article 9

- ◆ After adoption of the Constitution of Japan, the US had a desire for Japan to take a more active military role in the struggle against communism.
- ◆ Reinterpreted as 'renouncing the use of force in international affairs, but not renouncing a national right to self-defense
- ◆ Prohibits maintaining a military for warfare, though Japan possesses a self-defense force ⇒ discord between the SDF and Article 9 (must be addressed clearly)
- ◆ Troubling prospect for Asian neighbors wary of a revival of Japanese militarism in the region

Debate on major issues by the ruling and opposition parties

	LDP & Komeito	DPJ
Timeline	Expected to endorse the LDP Constitution panel's draft amendment on 22 November 2005 (party's 50 th anniversary)	Compile a Constitution revision bill in 2006
SDF and International cooperation	<p>Calls for a permanent law for international cooperation, establish the SDF military credential</p> <p>The role of military would be specified to deal with Self defence, international cooperation and contingencies</p>	<p>SDF dispatch to Iraq is problematic.</p> <p>Calls for legal restraints to control the SDF through changes to Article 9.</p> <p>SDF should be reorganized into a reserve force for the UN (Ozawa group)</p>

<p>Self defence, Collective self-defence</p>	<p>Support both self-defence and collective defence</p>	<p>Support both self-defence and collective defence (Maehara)</p> <p>Against the right to collective self-defence because it is banned by Article 9 (former Japan Socialist Members)</p>
<p>Collective security</p>	<p>Support collective security (it is guaranteed under international law (UN Charter 51).</p>	<p>Support collective security (Majority)</p>
<p>Article 9</p>	<p>Retain or reword the war-renouncing Article 9, Clause 1, but to change Clause 2</p> <p>Komeito contends that Article 9, Clause 1 and 2 should be retained</p>	<p>Retain the war-renouncing Article 9, Clause 1, but to scrap Clause 2 to clarify the right of self defence</p>

Charter of the United Nations

Chapter VII

Article 51

- ◆ Nothing in the present Charter shall **impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations**, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Process of amendment

Article 96 defines the process of amendment.

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. Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.

Process of amendment (Cont')

- ◆ Must be supported by a two-thirds majority of both houses
- ◆ Must be supported by a majority of the population in a national referendum



Government has yet to enact legislation outlining procedures for a referendum

i.e. Voters should vote on each amendment proposed
What is the voting age for the referendum
Media reporting

Prospect for amendments

The LDP and DPJ together – 85% HOR, 80% HOC
(Majority of LDP and DPJ Maehara group)

If two parties agree, they could propose amending the
Constitution



The LDP is likely to promote debate on amendments
in coordination with the DPJ, led by pro-amendment
Maehara (head) and Hatoyama (secretary general)

* SDP, JCP and DPJ (former Socialist) are minority

Prospect for amendments (Cont')

Opinion poll (Mainichi newspaper)

- ◆ Agree to constitutional amendment in general: 58%
 - ◆ Disagree to constitutional amendment in general: 34%

 - ◆ Agree to revise Article 9: 30%
 - ◆ Disagree to revise Article 9: 62 %
- * 80% responded that Article 9 contributed to **maintaining Japan's peace** after World War II



END OF LECTURE

(CONSTITUTIONAL AMENDMENTS)