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**JAPAN'S DEFENSIVE CONSTITUTION: NUCLEAR WEAPONS AS A BETTER ALTERNATIVE THAN
EXPANDING COLLECTIVE SELF-DEFENSE FORCES**

Joshua Pickar¹

I. INTRODUCTION

After World War II, the United States effectively rewrote the Japanese Constitution. This Constitution, which is still in effect, includes many provisions similar to those included in the United States Constitution.² However, other articles seek to ensure that Japan would not engage in acts of aggression similar to those it undertook during the course of the war.³ This includes an ultimate prohibition, renouncing Japan's sovereign right as a nation to engage in war.⁴ The Constitution includes explicit references to pacifism in both the preamble and in Article 9. The preamble states, "We, the Japanese people . . . resolved that never again shall we be visited with the horrors of war through the action of the government."⁵ The preamble continues, "We . . . desire peace for all time . . . and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world."⁶ Article 9 of the Japanese Constitution also references Japan's pacifist status: "Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as the sovereign right of the nation and the threat or use of

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² *Compare, e.g.*, U.S. Const. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."); *with* NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 21 (Japan) ("Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.").

³ KENPŌ, *supra* note 2, pmb., art. 9.

⁴ *Id.* art. 9.

⁵ *Id.* pmb.

⁶ *Id.*

force as means of settling international disputes.”⁷ Article 9 continues: “In order to accomplish [this goal] . . . 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.”⁸ This Article has been the center of debate and controversy since its inception, and these debates recently came to a head when Prime Minister Shinzo Abe attempted to unilaterally reinterpret the Article in order to allow the standing military, which until now functioned only domestically, to engage in collective self-defense.⁹

This new interpretation has been the subject of mass demonstrations and public backlash, including one of the few instances of widespread student protests and civil unrest in modern Japanese history.¹⁰ Only 29% of respondents in a public opinion poll supported this change in constitutional interpretation, and 55% expressly opposed the change.¹¹ Professor Matsumoto Masao, who conducted the study, concluded, “Japanese people still feel a strong resistance to approving the roles [*sic*] of the military for peace. In that sense, Japanese opinion about security has not changed significantly [since WWII].”¹² Yet, in surveys where respondents had the option to choose whether Japan should be able to exercise the full right to self-defense, whether it should exercise the right to a limited extent, or whether it should not exercise the right at all, a large proportion opined that Japan should be able to exercise the right to self-defense in a limited capacity.¹³

⁷ *Id.* art. 9.

⁸ *Id.*

⁹ See e.g., Odaka Chiba & Takuro Negishi, *700 sue Japan over security laws, additional suits planned*, THE ASAHI SHIMBUN (Apr. 27, 2016), <https://perma.cc/2LQF-9UX8>.

¹⁰ See e.g., Jiji Kyodo, *SEALDS-led protests return to Diet as security legislation takes effect*, THE JAPAN TIMES (Mar. 29, 2016), <https://perma.cc/Y6CT-S7QG>; *Spotlight: Japan's security laws come into effect as public protests erupt, opposition seeks laws' scrapping*, XINHUA (Mar. 29, 2016), <https://perma.cc/YLE3-R2L2>; Jiji Kyodo, *New opposition party expected to push constitutional change without prioritizing Article 9*, THE JAPAN TIMES (Mar. 9, 2016), <https://perma.cc/YK7G-9UFC>.

¹¹ Kamika Mataka, *Japanese Public Opinions about the Exercise of the Right of Collective Self-Defense*, JAPAN FOREIGN POLICY FORUM (Sept. 25, 2014), <https://perma.cc/8AFA-3ZLK>.

¹² *Id.*

¹³ *Id.*

Japan faces a dilemma: the current administration has legitimate security fears given increasing interactions between Japan and the rest of the world, while civilians, deeply scarred as the only people in history to be attacked by nuclear weapons, want Japan to maintain its pacifist roots. The crux of the citizens' concern is that the government will become too internationally entangled.¹⁴ Therefore, I would argue that, in order to resolve these competing interests, Japan should acquire *defensive* nuclear weapons in order to quell the security concerns of the government while responding to the cries from the citizenry to remain pacifist. While acquisition of nuclear weapons may breach Japan's duties under international law, other countries may acquiesce, particularly the United States, as such proliferation will help to lessen the financial burden on the U.S., who currently provides for Japan's defense. Other similarly situated nations, like the members of the North Atlantic Treaty Organization (NATO), may acquiesce as well given NATO's desire to expand into Asia, which may allow Japan to proceed without repercussions for its violations of international law. The following discusses the history of the Japanese Constitution as well as the role of nuclear weapons in international politics, and argues that defensive nuclear weapons are the most effective way for Japan to obtain its desired result while maintaining a pacifist foreign policy to avoid citizen outrage.

II. HISTORY OF JAPAN'S CONSTITUTION, RENUNCIATION OF WAR, AND THE LOGIC OF NUCLEAR WEAPONS

a. History of the Japanese Constitution and Japan's Renunciation of War

The modern Japanese Constitution came into effect at the end of World War II on May 3, 1947.¹⁵ In 1945, General Douglas MacArthur, while in charge of the provisional government of Japan, began drafting a new Constitution effectuating the demands of the victorious allies.¹⁶ General

¹⁴ See *supra* notes 9–11.

¹⁵ See Sandra Madsen, *The Japanese Constitution and Self-Defense Forces: Prospects for a New Japanese Military Role*, 3 TRANSNAT'L L. & CONTEMP. PROBS. 549, 556 (1993).

¹⁶ *Id.*

MacArthur intended for this to be a peaceful Constitution, replacing the Meiji Constitution.¹⁷ The preamble to the Constitution sets out this goal: “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 a means of settling international disputes.”¹⁸ Other less explicit provisions demonstrate the peaceful goal as well. For example, Article 66 requires that government leaders be civilians,¹⁹ and the Constitution lacks a provision granting citizens the right to bear arms or to form a peacetime militia.²⁰

The goal of creating a peaceful Constitution is not new in world history. Indeed, the constitutions of countries like France, Brazil, and the Philippines renounce aggressive war.²¹ Yet, the complete renunciation of all “war potential” is an outlier in the history of comparative constitutional inquiry, rendering analysis of Article 9 to be a novel endeavor.²²

The story of the Japanese ability to engage in collective self-defense starts with the U.S. signing of the Treaty of Peace with Japan,²³ and the Security Treaty Between the United States of America and Japan.²⁴ According to the Peace Treaty, “Japan as a sovereign nation possesses the inherent right of individual or collective self-defense referred to in Article 51 of the Charter of the United Nations and . . . Japan may voluntarily enter into collective security arrangements.”²⁵ Similarly, in the Security Treaty, the U.S. agreed to maintain armed forces in Japan to deter attacks against Japan “in the expectation . . . that Japan will itself increasingly assume responsibility for its

¹⁷ *Id.* at 553–54.

¹⁸ KENPŌ, *supra* note 2, art. 9.

¹⁹ *Id.* art. 66.

²⁰ See John M. Maki, *The Constitution of Japan: Pacifism, Popular Sovereignty, and Fundamental Human Rights*, 53 LAW & CONTEMP. PROBS. 73, 73–74 (1990).

²¹ See Madsen, *supra* note 15, at 553–54.

²² *Id.*

²³ Japan-U.S., Sept. 8, 1951, 3 U.S.T. 3169 [hereinafter Peace Treaty].

²⁴ Japan-U.S., Sept. 8, 1951, 3 U.S.T. 3329 [hereinafter Security Treaty].

²⁵ Peace Treaty, *supra* note 23, 3 U.S.T. 3169, at art. 5(c).

own defense against direct and indirect aggression.”²⁶ Therefore, at least as far as the international sphere is concerned, Japan could engage in collective self-defense both as understood under the U.N. Charter, and under Japan's various peace and security treaties with other nations.

b. Japanese Court and Political Decisions Regarding Article 9

i. Japanese judicial decisions of Article 9 and the right to self-defense

While Japanese courts have not extensively interpreted Article 9, the few court decisions available illuminate the modern understanding of Japan's renunciation of war and Japan's right to self-defense. A consistent issue related to the reinterpretation of Article 9 is whether the existence of the Japanese Self-Defense Forces (SDF), the unified military forces of Japan, violates Article 9. By way of background, the Korean Conflict began while General MacArthur was drafting the Constitution, and the U.S. moved its troops that were based in Japan into Korea, leaving Japan defenseless.²⁷ MacArthur ordered Japan to create a National Police Reserve (NPR) of 75,000 armed men.²⁸ In 1952, Japan signed its Peace and Defense Treaties with the U.S., recognizing Japan's inherent right to self-defense.²⁹ The NPR included former Imperial Japanese Army soldiers, classified as policemen.³⁰ In 1954, the Japanese Diet, the equivalent of the American congress, passed the Defense Agency Establishment Law, which created the current Self-Defense Forces.³¹ The SDF quickly grew in response to Cold War threats in Asia, amassing air, sea, and land forces of approximately 300,000 personnel and expending \$30 billion in 1990.³² Japan spent the third most on military in Asia, and is the second-largest contributor to the budget of the United Nations.³³

²⁶ Security Treaty, *supra* note 24, 3 U.S.T. 3329, at pmb1., 5th para.

²⁷ See Madsen, *supra* note 15, at 557.

²⁸ *Id.*

²⁹ *Id.*; see *infra* § II(b)(ii).

³⁰ Madsen, *supra* note 15, at 558.

³¹ *Id.* at 558 (*citing* Defense Agency Establishment Law, *reprinted in* HARRISON M. HOLLAND, *MANAGING DEFENSE: JAPAN'S DILEMMA* app. B 71, 73 (1988)).

³² *Id.*

³³ *Id.* at 558–59.

Given that the Japanese Constitution forbids Japan from possessing “war potential,” some scholars and political parties argue that this precludes Japan from possessing forces such as the SDF.³⁴ The government argues that, because Article 9 has no effect on the state’s inherent right of self-defense, the creation of standing forces for that purpose does not constitute “war potential” as prohibited by Article 9. “War potential” would require significantly larger forces than the SDF.³⁵

While the Supreme Court of Japan never conclusively opined on the legality of the SDF, it confronted related questions. In the 1952 case, *Keisatu yobitai iken soshō* (*the Constitutionality of the National Police Reserve*),³⁶ a member of the Diet filed suit alleging that the NPR was unconstitutional. The Supreme Court dismissed the case on a standing challenge,³⁷ arguing that the Court could not determine the constitutionality of a law in such an abstract manner without an actual legal dispute.³⁸ The Court later spoke about the interpretation of Article 9 in several cases, but never considered the constitutionality of the SDF in its judgments.³⁹

³⁴ See e.g., Lawrence W. Beer, *Peace in Theory and Practice under Article 9 of Japan's Constitution*, 81 MARQ. L. REV. 815, 821–22 (1998) (“Until 1994 . . . the Socialist Democratic Party of Japan . . . consistently maintained that the SDF were unconstitutional.”).

³⁵ LAW LIBRARY OF CONGRESS, *Japan: Interpretations of Article 9 of the Constitution* 3 n.19 (Sept. 2015), <https://perma.cc/C8UU-6XWZ> (citing Answer of Ichiro Yoshikuni before the Budget Committee of the House of Councillors, Nov. 13, 1972, SANGIIN YOSAN IIN KAIGIROKU [BUDGET COMMITTEE OF HOUSE OF COUNCILLORS MINUTES], 70th Diet Session, No. 5, at 2 (Nov. 13, 1972)). See *infra* § II(b)(ii) (discussing the government’s position on the scope and effect of Article 9).

³⁶ See D. Bradley Gibbs, *Future Relations Between the United States and Japan: Article 9 and the Remilitarization of Japan*, 33 HOUS. J. INT’L L. 137, 147–48 n.63 (2010) (citing Saikō Saibansho [Sup. Ct.] Oct. 8, 1952, 6 SAIKŪ SAIBANSHO MINJI HANREISHŪ [MINSHŪ] 9 (Japan)).

³⁷ In American law, courts only hear cases when parties have proper “standing” before the court. U.S. Const. art. 3 § 2 cl. 1 (“The Judicial Power shall extend to all Cases . . . [and] Controversies.”). The cases or controversies requirement necessitates that litigants have an actual conflict for the court to resolve—federal courts will not resolve abstract questions of law nor issue advisory opinions. See *Bond v. United States*, 564 U.S. 211, 216–19 (2011) (discussing the standing requirement in American law); see also Martin H. Redish & Sopan Joshi, *Litigating Article III Standing: A Proposed Solution to the Serious (But Unrecognized) Separation of Powers Problem*, 162 U. PA. L. REV. 1373, 1378–84 (2014) (same).

³⁸ Gibbs, *supra* note 36, at 147–48 n.63.

³⁹ See e.g., LAW LIBRARY OF CONGRESS, *supra* note 35, at 18 n.122 (citing Saikō Saibansho [Sup. Ct.] June 20, 1989, 43 SAIKŪ SAIBANSHO MINJI HANREISUHŪ [MINSHŪ] 6 (Japan); and Nūgata Chihō Saibansho [Nūgata Dist. Ct.] Mar. 27, 1981, 13 KEIJI SAIBAN GEPPŌ KONISHI 3, 251 (Japan)). See also

One case from the Sapporo District Court (the trial court) held that the SDF was unconstitutional.⁴⁰ However, the Sapporo High Court (the appellate body) reversed this decision on technical grounds, and the Supreme Court affirmed.⁴¹ The Sapporo High Court stated that the constitutionality of the SDF was a question that would forever evade judicial review, essentially employing the American political question doctrine:⁴² “The choice of means of defense is nothing other than a determination of the most fundamental national policy, requiring both a high level of specialized technical judgment and a high level of political judgment.”⁴³

Perhaps the only case to recognize Japan's inherent right to self-defense was the *Sunakawa* case,⁴⁴ in which the Supreme Court considered the constitutionality of U.S. forces stationed in Japan. The Supreme Court noted that Article 9, “[R]enounces the so-called war and prohibits the maintenance of the so-called war potential, but certainly there is nothing in [Article 9] which would deny the right of self-defense inherent in our nation as a sovereign power. The pacifism advocated in our Constitution was never intended to mean defenselessness or nonresistance.”⁴⁵ Further, the Court recognized that, “Article 9 . . . does not at all prohibit our country from seeking a guarantee

Robert B. Funk, *Japan's Constitution and U.N. Obligations in the Persian Gulf War: A Case for Non-Military Participation in U.N. Enforcement Actions*, 25 CORNELL INT'L L.J. 363, 378–79 (1992) (“Japan's Supreme Court has repeatedly dodged and implicitly rejected challenges that the SDF is unconstitutional.”).

⁴⁰ Sapporo Chihō Saibansho [Sapporo Dist. Ct.] Aug. 7, 1973, 712 HANREI JIHŌ 24 (Japan), *translation available in* THE CONSTITUTIONAL CASE LAW OF JAPAN 83 (Beer & Itoh, eds., 1996); *see* LAW LIBRARY OF CONGRESS, *supra* note 35, at 83.

⁴¹ Sapporo Kōtō Saibansho [Sapporo High Ct.] Aug. 5, 1976, 821 HANREI JIHŌ 21 (Japan), *translation available in* Beer & Itoh, *supra* note 40, at 118.

⁴² The political question doctrine is an abstention principle in American law allowing for courts to forego judgement on cases that are fundamentally political, and not legal, in nature, where such a determination would be better suited for a coordinate branch of government than the judiciary. *See generally* Baker v. Carr, 369 U.S. 186, 217–18 (1962); *see also* Jared P. Cole, *The Political Question Doctrine: Justiciability and the Separation of Powers*, CONGRESSIONAL RESEARCH SERVICE (Dec. 23, 2014), <https://perma.cc/8QY2-UKB9>.

⁴³ *Id.* at 118.

⁴⁴ *See* Saikō Saibansho [Sup. Ct.] Dec. 16, 1959, Showa 34(A) no. 710, 13 SAIKŌ SAIBANSHO HANREISHŪ 3225 (Japan), <https://perma.cc/U397-DKAG>.

⁴⁵ *Id.*

from another country in order to maintain the peace and security of the country.”⁴⁶ Because the U.S. troops were foreign, their presence did not implicate the “war potential” of Japan. Ultimately, judicial decisions considering the scope of Japan’s renunciation of war are not dispositive, as such a determination seems more political than judicial.

ii. Political interpretations of Article 9 and the right to self-defense

While Japanese judicial decisions considering the constitutionality of the SDF and Japan’s renunciation of war are far from conclusive, various political decisions and speeches clearly set out the government’s understanding of Article 9. Generally, scholars and politicians interpret the renunciation of war “as a means for settling international disputes” to prohibit only affirmative invasions of other countries.⁴⁷ Some scholars do argue that this prohibition precludes defensive operations as well,⁴⁸ because 1) all wars, including defensive wars, are a “means of settling international disputes,” and 2) it is difficult to distinguish between defensive and offensive invasions.⁴⁹ However, such a view has never taken hold.⁵⁰ Importantly, unlike Article 9, the preamble to the Constitution has no binding legal effect, despite its clear pacifist message.⁵¹

From early on, Japanese politicians and administrations interpreted Article 9 of the constitution. For example, Kumao Nishimura, the director-general of the Ministry of Foreign

⁴⁶ *Id.*

⁴⁷ See e.g., LAW LIBRARY OF CONGRESS, *supra* note 35, (citing NOBUYOSHI ASHIBE, KENPŌGAKU I [CONSTITUTION STUDY] 257 (1992); and KOKUSAI HŌ [INTERNATIONAL LAW] (Kisaburo Yokota ed., New ed. 1966).

⁴⁸ See e.g., LAW LIBRARY OF CONGRESS, *supra* note 35, at 3 n.5 (listing examples of scholars who believe that Article 9 prohibits defensive engagements) (citing MIYOKO TSUJIMURA, KENPŌ [CONSTITUTION] 108 (2000)).

⁴⁹ See LAW LIBRARY OF CONGRESS, *supra* note 35, at 2.

⁵⁰ *Id.*

⁵¹ Saikō Saibansho [Sup. Ct.] Dec. 16, 1959, Showa 34(A) no. 710, 13 SAIKŌ SAIBANSHO KEIJI HANREISHŪ [KEISHŪ] 3225 (Japan) (“In conjunction with the spirit of international cooperation expressed in the Preamble and paragraph 2, Article 98 of the Constitution, [Article 9] is the embodiment of the concept of pacifism which characterizes the Japanese Constitution.”), <https://perma.cc/Y4VH-EBWQ>.

Affairs' Treaty Bureau in the 1950s, explained that Japan *does* possess a self-defense right but, under Article 9, it waived that right.⁵² Since then, Japan remained consistent in its interpretation of Article 9. The Cabinet Legislation Bureau (CLB) is the “office that created the legal theory underlying the government’s interpretation of the Constitution and has kept that interpretation consistent.”⁵³ As the Law Library of Congress explains, “One of the reasons that the CLB has been able to maintain consistent interpretations of Japan’s laws, despite political pressures, is its stable personnel system.”⁵⁴ Because of the stable personnel system of the CLB, Article 9 has, for the most part, retained the same interpretation until Prime Minister Abe’s recent reinterpretation. In fact, in 1965 the CLB “determined that Article [9] would not prohibit possession of nuclear weapons by Japan, so long as such weapons met the ‘minimum necessary’ requirement.”⁵⁵ Further, Nakasone Yasuhiro, then-director of the Japanese Defense Agency (“JDA”) “opined in a 1970 White Paper that small-yield, tactical, purely defensive nuclear weapons would be permissible under Article [9].”⁵⁶ “Successive administrations have reinforced the CLB interpretation by consistently declaring that Article [9] does not prohibit the possession of nuclear weapons,” acknowledging the distinction between defensive and offensive nuclear weapons as relevant to the analysis of Article 9.⁵⁷

Relatedly, Article 9 of the Constitution prohibits the Japanese government from undertaking a “use of force.”⁵⁸ In 1991, the government explained that a “use of force” is “an act of combat by

⁵² See *id.* at 22 (citing Kumao Nishimura’s answer at House of Councillors, PEACE TREATY AND JAPAN-U.S. SECURITY AGREEMENT SPECIAL COMMITTEE MINUTES, HOUSE OF COUNCILLORS, 12th Diet Session, No. 12, 5 (Nov. 7, 1951)).

⁵³ LAW LIBRARY OF CONGRESS, *supra* note 35, at 16.

⁵⁴ *Id.*

⁵⁵ Robert Johnson, *Japan Closes the Nuclear Umbrella: An Examination of Nonviolent Pacifism and Japan’s Vision for a Nuclear Weapon-Free World*, 13 ASIAN-PAC L. & POL’Y J. 81, 83–84 (2012) (internal citations omitted).

⁵⁶ *Id.* (internal citations omitted).

⁵⁷ *Id.* (internal citations omitted).

⁵⁸ KENPŌ, *supra* note 2, art. 9, para. 1.

an organization consisting of Japanese people carried out with materials provided by Japan and is part of an international armed conflict."⁵⁹ This interpretation is consistent with the CLB's position.

Given that political decisions, as opposed to court rulings, seem to be the relevant currency for changing Article 9, one may wonder whether this is constitutionally problematic, as Article 81 of the Constitution grants the Supreme Court the "power to determine the constitutionality of any law, order, regulation, or official act."⁶⁰ Indeed, this reinterpretation is highly problematic, as it essentially bestows upon the executive branch the power to make law, while Article 41 mandates, "The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State."⁶¹ Ultimately, such a debate is beyond the scope of this article, but it is important to keep this in mind while assessing the appropriateness of Prime Minister Abe's actions.

c. Nuclear Weapons Background and Logic

Nuclear weapons are among those classes of weapons that bring the average citizen great fear. To governments, however, nuclear weapons are a symbol of power; all "great nations" possess them, all permanent members of the United Nations Security Council possess them and, therefore, many states who desire to become a "great nation" would like to acquire nuclear weapons.⁶²

Most importantly for the purposes of this argument, nuclear weapons have a substantial deterrent effect. The idea of deterrence is simple: A state uses the *threat* of force to convince another state *not* to pursue an action it may otherwise consider.⁶³ In order for deterrence to function, the

⁵⁹ LAW LIBRARY OF CONGRESS, *supra* note 35, at 21 (internal citations omitted).

⁶⁰ KENPŌ, *supra* note 2, art. 81.

⁶¹ *Id.* art. 41.

⁶² See e.g., Karsten Frey, *Nuclear Weapons as Symbols: The Role of Norms in Nuclear Policy Making*, IBEI WORKING PAPERS 9 (2006), (arguing that states desire nuclear weapons not only because of their deterrent function, but also because they are symbols of prestige for developed nations), <https://perma.cc/L8PT-75VH>; Maria Rivas, *The Nuclear Weapon as a Symbol*, BRITISH AMERICAN SECURITY INFORMATION COUNCIL (June 24, 2014), <https://perma.cc/3GRV-PAEA>.

⁶³ See SEAN KAY, *GLOBAL SECURITY IN THE TWENTY-FIRST CENTURY* 25 (2d ed. 2012).

threat must be plausible.⁶⁴ Deterrence has been so successful over the past seven decades that people often trivialize its inconspicuous effect. Professors Keir Lieber and Daryl Press explain, “The success of nuclear deterrence may turn out to be its own undoing. [A]fter nearly 65 years without a major war or a nuclear attack, many prominent statesmen, scholars, and analysts have begun to take deterrence for granted.”⁶⁵ The fear of mutually assured destruction allowed for states to carry on, knowing that another state would not take any rash actions, for fear of nuclear retaliation.⁶⁶ However, recent cries for “nuclear zero” may undo the careful balance of power that mutually assured destruction provides.⁶⁷

Before a state can worry about human rights, public goods, or anything for that matter, it must be assured that its regime will survive.⁶⁸ Internally, a state must be able to quell any dissent and, externally, it must be able to maintain its borders.⁶⁹ As Kenneth Waltz explains in his book, *Theory of International Politics*, “A government, ruling by some standard of legitimacy, arrogates to itself the right to use force . . . A national system is not one of self-help. The international system is.”⁷⁰

⁶⁴ *Id.* at 25–26. A relevant example of this regards Japan’s potential threats to China. At the moment, China may not believe a Japanese threat, given that Japan lacks nuclear weapons or its own large military force. However, were Japan to acquire nuclear weapons, their threats would become credible, and they could deter China from attacking. *See e.g., 62% of South Koreans View Japan as Credible Military Threat*, THE AM. INTEREST (Nov. 3, 2013), <https://perma.cc/2Y8M-BVGJ>.

⁶⁵ Keir A. Lieber & Daryl G. Press, *The Nukes We Need, Preserving the American Deterrent*, FOREIGN AFFAIRS (Nov./Dec. 2011), <https://perma.cc/4KVB-HM3A>.

⁶⁶ *Id.*

⁶⁷ Professor Charles Glaser argues: “Because nuclear arsenals could be rebuilt, much of the effort in establishing a disarmament regime would involve designing arrangements to provide states with confidence that they would be secure in the disarmed world. The most obvious requirement is that cheating be effectively monitored. However, effective monitoring would not be sufficient.” Charles L. Glaser, *The Flawed Case for Nuclear Disarmament*, 40 SURVIVAL: GLOBAL POLITICS AND STRATEGY, no. 1, at 114 (1998). Glaser continues, “If one country can rebuild faster than others, then it could have incentives to rebuild, even if monitoring were highly effective. Disarmament would therefore have to be designed to enable states to rearm at essentially equal rates.” *Id. Cf.* Gordon Lubold, *Obama to outline big nuke cuts today*, FOREIGN POLICY (June 19, 2013), <https://perma.cc/P4JB-L3CF>.

⁶⁸ *See* KENNETH WALTZ, *THEORY OF INTERNATIONAL POLITICS*, 103–04 (1979).

⁶⁹ *Id.*

⁷⁰ *Id.*

However, in striving to survive, states often feel insecure when they see another state arming.⁷¹ This “security dilemma” is compounded by the fact that, during a period of armament, one state often fails to understand why another state arms.⁷² The first state may perceive the second state’s arming to be offensive when, in reality, it is a response to the second state’s own security concerns.⁷³ This failure to understand the reasons for which another state arms is called the fundamental attribution error, and it can lead to a sense of insecurity and fear.⁷⁴

Two main schools of international political theory grapple with the security dilemma as the core of international conflicts: defensive realists and offensive realists. The defensive realist assumes all states arm defensively, eliminating the security dilemma.⁷⁵ This framework allows for more predictability, as intentions are undoubtedly understood.⁷⁶ However, for the offensive realist, it is unclear whether states arm offensively or defensively.⁷⁷ Differentiating between these two modalities can be difficult, as a state may only express its true plan when its power peaks.⁷⁸ When a state is uncertain whether it could achieve its desired outcome, it may not express its full intentions.⁷⁹

⁷¹ See John H. Herz, *Idealist Internationalism and the Security Dilemma*, 2 *WORLD POL.* 157, 157 (1950) (“Striving to attain security from attack, [states] are driven to acquire more and more power in order to escape the impact of the power of others. This, in turn, renders the others more insecure and compels them to prepare for the worst.”).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Psychologists Halpern and Voiskounsky explain that the fundamental attribution error tends to exacerbate matters “by lowering the perceptual threshold for attributing hostile intentions to other states.” DIANE HALPBERN & ALEKSANDR VOISKOUNSKY, *STATES OF MIND: AMERICAN AND POST-SOVIET PERSPECTIVES ON CONTEMPORARY ISSUES IN PSYCHOLOGY* 54 (1997). Halpern and Voiskounsky continue, “This tendency—in conjunction with the security dilemma—can lead decision makers to exaggerate the hostile intentions of defensively motivated powers. The security dilemma compels even peaceful states to arm; the fundamental attribution error then leads observers to draw incorrect dispositional inferences.” *Id.*

⁷⁵ See WALTZ, *supra* note 68, at 103–04.

⁷⁶ *Id.*

⁷⁷ See generally JOHN J. MEARSHEIMER, *THE TRAGEDY OF GREAT POWER POLITICS* 17–22 (2d Ed. 2014) (comparing liberalist, offensive realist, and defensive realist theories).

⁷⁸ *Id.*

⁷⁹ *Id.*

Often, it is defensive realists who see nuclear weapons as peace-inducing.⁸⁰ For the defensive realist, nuclear arming is assumed to be defensive and, therefore, the security dilemma vanishes as one's own insecurity does not mount upon seeing another country arm.⁸¹ However, for the offensive realist, the security dilemma intensifies, and it does so especially strongly regarding nuclear weapons.⁸² For the offensive realist, proliferation is dangerous, as it creates insecurity in the international system, and other countries will react to armament in order to provide for their own security.⁸³ The circumstances in Japan are unique as, given that Japan existed without a strong military presence for so long, other states may perceive *any* armament as offensive and expansionist when, in reality, Japan is simply responding to increasing security concerns in Asia.⁸⁴

Unlike conventional forces, nuclear weapons are unique because offensive weapons can be distinguished from defensive weapons.⁸⁵ For instance, a nuclear weapon that has the ability to hit a precise mark is offensive, while an imprecise weapon is defensive.⁸⁶ Precision allows targeting of another country's nuclear stockpile, and by targeting the stockpile, one can destroy the enemy's ability to retaliate, therefore conducting an offensive first-strike.⁸⁷ Defensive weapons are imprecise, counter-value weapons that only have the ability to strike large economic areas, as opposed to nuclear stockpiles.⁸⁸ Ultimately, nuclear technology favors defensive use, as it is difficult to produce

⁸⁰ See Robert Jervis, *Cooperation under the Security Dilemma*, 30 *WORLD POLITICS* 167, 187 (1978).

⁸¹ *Id.*

⁸² MEARSHEIMER, *supra* note 77, at 128–33 (exploring the balance of power when nuclear weapons enter into the equation).

⁸³ *Id.*

⁸⁴ See *infra* § III(c)(i).

⁸⁵ See Jervis, *supra* note 80, at 187–91 (describing the analysis of offense-defense balance and the various implications it can have on the security dilemma).

⁸⁶ See Edward A. Corcoran, *Strategic Nuclear Weapons and Deterrence*, *GLOBAL SECURITY* (Nov. 29, 2005), <https://perma.cc/SYU7-NVVL>.

⁸⁷ *Id.*

⁸⁸ *Id.*

precision weapons.⁸⁹ By acquiring a small number of inaccurate weapons, a state can use strategies of deterrence to soothe its own security concerns, without other countries fearing an offensive strike.⁹⁰

In the case of Japan seeing a rising China, it is rational for Japan to feel insecure. In order to alleviate their insecurity, Japan currently possesses a complete security and extended deterrence agreement with the United States, which provides for Japan's defense in the case of an attack.⁹¹ However, as China's power rises, it is reasonable for Japan to question the sustainability of the security agreement.⁹² For the U.S., it is exceedingly costly to ensure Japan's security in the face of a rising China—the upkeep of military bases in Japan may cost as much at \$5.5 billion per year.⁹³ As China's conventional force size grows, the United States will need to grow their force size to keep

⁸⁹ See Charles L. Glaser & Chaim Kaufmann, *What Is the Offense-Defense Balance and Can We Measure It?*, 22 INTERNATIONAL SECURITY, no. 4 1998, at 5–6 (“[Nuclear technology] so heavily favors defense that when all the major powers have nuclear weapons variation in other factors becomes relatively unimportant.”).

⁹⁰ See CHARLES L. GLASER, ANALYZING NUCLEAR STRATEGY 95 (1990).

⁹¹ See Richard C. Bush, *The U.S. Policy of Extended Deterrence in East Asia: History, Current Views, and Implications* 3–4 (2011), <https://perma.cc/6JUD-GU3E>; Peace Treaty, *supra* note 23, 3 U.S.T. 3169; Security Treaty, *supra* note 24, 3 U.S.T. 3329. See also Van Jackson, *Raindrops Keep Falling on my Nuclear Umbrella*, FOREIGN POLICY (May 18, 2015), <https://perma.cc/Q3TT-BRRP>.

⁹² Richard Bush from Brookings suggests that, “Given the uncertainty about Chinese, North Korean, and U.S. intentions, some American allies proposed the creation of a mechanism . . . where [NATO’s] nuclear and non-nuclear powers discuss how nuclear weapons might be used in a conflict.” Bush, *supra* note 91, at 1. Bush continues that such a meeting “should be part of a larger multilateral effort to reassure China that it is not the subject of containment.” *Id.* See also Charles v. Peña, *War in the South China Sea: Not Worth It*, THE NAT’L INT. (Apr. 21, 2016), <https://perma.cc/8C8W-WCFW>. Cf. *US pushing for military confrontation with China: Analyst*, PRESS TV (Apr. 2, 2016), <https://perma.cc/U7W8-Y2T2>.

⁹³ See Yuko Koshino, *Q&A: How Much Do U.S. Military Bases in Japan and Korea Cost*, WALL ST. J. (Apr. 28, 2016), <https://perma.cc/8S5C-ZAQP>. It is hard to obtain an accurate measure of the cost of a singular nuclear weapon, given that the U.S. is in the process of updating its nuclear triad (meaning the U.S.’s intercontinental ballistic missiles, strategic bombers, and submarine launched ballistic missiles) to the tune of some \$180 billion. See NUCLEAR THREAT INITIATIVE, *U.S. Nuclear Weapons Budget: An Overview* (Sept. 27, 2013), <https://perma.cc/8859-2WMN>. Yet, these updates are not necessary per se to ensure the efficacy of the U.S.’s deterrent capacity. While updates to the triad make the weapons more effective in the abstract, they do not undoubtedly increase the U.S.’s security. See e.g., Dan Sagalyn, *As Pentagon overhauls nuclear triad, critics caution*, PBS (Feb. 24, 2016), <https://perma.cc/J2K6-6FRQ>. We do know, however, that the U.S.’s total military spending is around \$600 billions. See U.S. DEP’T OF DEF., UNITED STATES DEPARTMENT OF DEFENSE FISCAL YEAR 2016 BUDGET REQUEST 1-1 (Feb. 2015), <https://perma.cc/49VD-PQZY>.

up.⁹⁴ Particularly because of various territorial disputes, the United States could be drawn into an armed conflict in East Asia.⁹⁵ The current strategy is too costly, and by allowing proliferation in Japan, the U.S. will not need to increase its force size to mimic China's. If Japan were to acquire its own weapons, it would be able to use deterrence to come to a resolution of disputes itself, and while the United States could provide assistance through diplomacy, it would not be militarily required to defend Japan.

d. The Nuclear Non-Proliferation Treaty

Given the consequences of the Cold War, international law adapted itself to regulate nuclear weapons and nuclear aggression. Even today, questions surrounding the Iranian nuclear program permeate the headlines of various news sources, suggesting the continued relevance and fear of nuclear weapons.⁹⁶ States responded to these fears through the Nuclear Non-Proliferation Treaty of 1968.⁹⁷ The treaty, consisting of 190 parties, relies on three pillars: (1) non-proliferation, (2) disarmament, and (3) the right to peacefully use nuclear technology.⁹⁸ As a signatory and ratifying party,⁹⁹ Japan is obliged not to breach the NPT.¹⁰⁰

The requirement of non-proliferation is only applicable to the five recognized nuclear weapons states (NWS): China, France, the Soviet Union (with obligations inherited by Russia), the

⁹⁴ See e.g., Charles Glaser, *Will China's Rise Lead to War? Why Realism Does Not Mean Pessimism*, FOREIGN AFFAIRS (Mar./Apr. 2011), <https://perma.cc/K5EK-43KG>.

⁹⁵ See *infra* § III(c)(i).

⁹⁶ See Paul K. Kerr, *Iran's Nuclear Program: Tebran's Compliance with International Obligations*, CONG. RESEARCH SERV. (Apr. 7, 2016), <https://perma.cc/NSP8-QLDQ>; *Iran nuclear crisis: Six key points*, BBC (July 14, 2015), <https://perma.cc/QG36-2CYJ>.

⁹⁷ See Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161 [hereinafter NPT].

⁹⁸ *Id.*

⁹⁹ *Id.* at art. 11.

¹⁰⁰ Vienna Convention on the Law of Treaties art. 60, May 23, 1969, 1155 U.N.T.S. 331 (describing the processes and consequences of a breach of a treaty) [hereinafter Vienna Convention].

United Kingdom, and the United States.¹⁰¹ These states are obligated not to “transfer . . . nuclear weapons or other nuclear explosive devices [nor] . . . in any way assist, encourage, or induce” a non-nuclear weapons states (NNWS) to acquire such weapons.¹⁰² Similarly, NNWS “undertake[] not to receive the transfer . . . of nuclear weapons or other nuclear explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons . . . and not to seek or receive any assistance in the manufacture of nuclear weapons.”¹⁰³

The second requirement, disarmament, is perhaps the only binding portion of the treaty.¹⁰⁴ The wording of Article VI is vague, requiring that signatories move in the general direction of disarmament and “nuclear zero”: “Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty of general and complete disarmament under strict and effective international control.”¹⁰⁵ Given that Japan does not currently possess nuclear weapons, it has no duty to disarm. This requirement, however, does place an affirmative duty upon Japan not to obtain nuclear weapons prospectively.¹⁰⁶ While some countries view this language as vague, the International Court of Justice authoritatively determined that, “There exists an obligation [under Article VI] to pursue in good faith and bring to a conclusion negotiations

¹⁰¹ ARMS CONTROL ASSOCIATION, *The Nuclear Nonproliferation Treaty (NPT) at a Glance* (Aug. 2012), <https://perma.cc/V66C-6VKK>.

¹⁰² NPT, *supra* note 97, 21 U.S.T. 483, 729 U.N.T.S. 161, at art. I.

¹⁰³ *Id.* at art. II.

¹⁰⁴ See David A. Koplow, *Parsing Good Faith: Has the United States Violated Article VI of the Nuclear Non-Proliferation Treaty?*, 1993 WIS. L. REV. 301, 338 (“[The NNWS] insisted that the commitment which eventually became article VI must be legally binding, not entirely aspirational [like the other articles].”).

¹⁰⁵ NPT, *supra* note 97, 21 U.S.T. 483, at art. VI.

¹⁰⁶ *Id.* at art. III.

leading to nuclear disarmament in all its aspects under strict and effective international control,” and this requirement applies to both NWS and NNWS.¹⁰⁷

The third pillar is the peaceful use of nuclear energy.¹⁰⁸ Article IV states, “All the Parties to the Treaty . . . have the right to participate in[] the fullest possible exchange of equipment, materials and scientific and technology information for the peaceful uses of nuclear energy.”¹⁰⁹ Despite the disaster in Fukushima, nobody questions whether Japan is within the bounds of Article IV of the NPT.¹¹⁰

One might believe that the NPT would limit Japan's ability to acquire nuclear weapons. The first pillar restricts Japan from receiving nuclear weapons—however, this requirement is likely aspirational and non-binding.¹¹¹ The second pillar requires all member states to negotiate an agreement in good faith.¹¹² But nobody doubts that countries are working toward this goal. Finally, the third permits Japan to use nuclear energy.¹¹³ Even assuming that the prohibition against the transfer of nuclear weapons were binding, the NPT would not pose an issue because, as discussed below, it would be easy for Japan to withdraw from international agreements prohibiting it from obtaining nuclear weapons,¹¹⁴ and other countries likely will accept Japan's retreat, potentially creating new customary international law.¹¹⁵ Yet, it is clear that Japan is obliged under the NPT to

¹⁰⁷ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, § 2(F) (July 8).

¹⁰⁸ NPT, *supra* note 97, 21 U.S.T. 483, at art. V.

¹⁰⁹ *Id.* at art. IV(2).

¹¹⁰ See Yuki Tanaka & Peter J. Kuznick, *Japan, the Atomic Bomb, and the “Peaceful Uses of Nuclear Power*, THE ASIA-PACIFIC JOURNAL (May 22, 2011), <https://perma.cc/EJ37-Q3YY>.

¹¹¹ *Id.* at art. II.

¹¹² *Id.* at art VI.

¹¹³ See WORLD NUCLEAR ASSOCIATION, *Nuclear Power in Japan* (Apr. 2016), <https://perma.cc/3VY3-3TBJ>.

¹¹⁴ See *infra* § III(b).

¹¹⁵ *Id.*

not proliferate—whether Japan will continue to follow international law, or whether it will choose to break international law in the hopes of creating new customary norms is a different question.

III. JAPAN COULD CONSTITUTIONALLY OBTAIN DEFENSIVE NUCLEAR WEAPONS INSTEAD OF ENGAGING IN COLLECTIVE SELF-DEFENSE, AND SHOULD, BECAUSE IT IS MORE IN TUNE WITH ITS CITIZENS' PACIFIST DESIRES AND BECAUSE OTHER COUNTRIES WILL ACQUIESCE

Japan's new interpretation of Article 9 allows the country to obtain defensive nuclear weapons. As compared to maintaining a standing military to engage in collective security, acquisition of defensive nuclear weapons should be normatively preferable to Japan, as they would help in stabilizing the region as well as in calming the concerns of its citizens that, with a standing military, Japan would again become an international aggressor. Nuclear weapons would be a force of good for Japan and greater Asia, and would serve the United States's greater geopolitical interests as well.

a. Japan Could Constitutionally Obtain Defensive Nuclear Weapons

Both under the old interpretation of Article 9 and under Prime Minister Abe's new interpretation, Japan could constitutionally obtain defensive nuclear weapons. Given the large-scale pushback against the new interpretation of Article 9,¹¹⁶ the current government may normatively prefer to acquire such weapons under the standards of the old interpretation. Nonetheless, even under the new interpretation, which allows for collective self-defense, acquisition of defensive nuclear weapons would quell the concerns of the citizens and would be preferable.

Japan's Constitution has no affirmative prohibition against nuclear weapons.¹¹⁷ The portion of the Constitution that could preclude nuclear proliferation is Article 9, the prohibition against "war potential."¹¹⁸ Yet, no Japanese court decision considered the constitutionality of nuclear weapons

¹¹⁶ See *supra*, notes 9–11 (describing lawsuits and student protests regarding the reinterpretation of Article 9).

¹¹⁷ See KENPŌ, *supra* note 2.

¹¹⁸ *Id.* art. IX.

because, like in the United States, Japanese courts only review cases and controversies and, given that Japan never had nuclear weapons, nobody challenged such an acquisition.¹¹⁹

While arguments exist on both sides for whether nuclear proliferation would be constitutional, it is clear that obtaining nuclear weapons would be at least as permissible as expanding ground forces to engage in collective security. Given the nature of cases challenging the SDF,¹²⁰ Prime Minister Abe's plan to expand self-defense forces is likely unconstitutional. But, even if Abe's assertions were indeed unconstitutional, this would not be dispositive of the constitutionality of nuclear weapons. Whereas self-defense forces could be seen as "war potential," defensive nuclear weapons are just the opposite. They are strictly responsive, never meant to provoke, and they would not initiate war, but defend against it. While the Constitution itself may even preclude attacks taken in self-defense,¹²¹ this view has been poorly received and even, under this view, one can reason that defensive nuclear weapons function as defensive insurance against other states' offensive attacks, not as an attack taken out of self-defense.

b. Japan's Acquisition of Nuclear Weapons Would Violate the Nuclear Non-Proliferation Treaty, However, Other Countries Would Likely Acquiesce

Japan's acquisition of nuclear weapons would almost certainly violate its international obligations under the NPT, as Japan is non-nuclear weapons state ratifying party; however, given that the U.S. would save a large amount of money by reducing troops in the region, and NATO member states would welcome an Asian nation gaining membership, they may acquiesce to Japan's nuclear acquisition. First, it is important to recall that, under Japan's treaty obligations, it *is* able to act for the purposes of self-defense, and its decision to limit its "war potential" is a wholly domestic

¹¹⁹ See Shigenori Matsui, *Why Is the Japanese Supreme Court So Conservative*, 88 WASH. U.L. REV. 1375, 1379 (2011) ("This means that there must be a case or controversy that satisfied the requirements for the exercise of judicial power in order for the [Japanese] Supreme Court to exercise the power of judicial review.").

¹²⁰ See *supra* notes 39–44 (listing cases to challenge the constitutionality of the SDF).

¹²¹ See LAW LIBRARY OF CONGRESS, *supra* note 35, at 3.

decision without repercussions for international law.¹²² Therefore, we must consider whether the acquisition of nuclear weapons would violate *international* law—not domestic law.

Not only is Japan an NNWS ratifying party of the NPT, but it is also a signatory of a number of other international commitments in the broader non-proliferation regime, which would preclude it from acquiring nuclear weapons. For example, Japan is a state party to the Additional Protocol of the NPT which, “[S]ignificantly expands [Japan’s] reporting responsibility to the International Atomic Energy Agency (“IAEA”) and enables inspections of declared and suspected undeclared sites at short notice.”¹²³ Additionally, Japan is a state-party to the Comprehensive Test Ban Treaty (“CTBT”).¹²⁴ Although the CTBT has not yet entered into force, it prohibits state parties from “conducting any nuclear test explosions or any other nuclear explosions and establishes a comprehensive worldwide verification regime to monitor compliance.”¹²⁵ Despite the fact that the CTBT has not entered into force, Japan, as a signatory, is bound not to violate the object and purpose of the treaty,¹²⁶ and one could argue that acquisition of nuclear weapons would violate the object and purpose.¹²⁷ Finally, Japan has bilateral nuclear energy agreements with the United States,

¹²² See *supra* § II(b)(ii).

¹²³ Llewlyn Hughes, *Why Japan Will Not Go Nuclear (Yet): International and Domestic Constraints on the Nuclearization of Japan*, 31 INT’L SECURITY, no. 4 2007, at 74.

¹²⁴ See CTBTO PREPARATORY COMMISSION, *Status of Signature and Ratification* (last visited May 9, 2016), <https://perma.cc/V3SR-LVZD>.

¹²⁵ Comprehensive Nuclear Test Ban Treaty, Sept. 24, 1996, S. Treaty Doc. No. 105-28 (1997), 35 I.L.M. 1439 [hereinafter CTBT].

¹²⁶ When a country signs a treaty, but has yet to ratify the treaty, it still is bound not to violate the object and purpose of the treaty under the rules of the Vienna Convention on the Law of Treaties. See Vienna Convention, *supra* note 100, 1155 U.N.T.S. 331, at art. 18. Currently, there are nearly 120 parties to the Vienna Convention, including Japan, yet many scholars have concluded that the Convention represents customary international law, binding even on non-parties. See e.g., Evan Criddle, *The Vienna Convention on the Law of Treaties in U.S. Treaty Interpretation*, 44 VA. J. INT’L L. 431, 434 (2004) (“Although the Senate has yet to ratify the Vienna Convention, courts rely on the Convention as a restatement of customary rules that binds States regardless of whether they are parties.”) (internal quotation marks and citation omitted).

¹²⁷ See David S. Jonas, *Variations on Non-Nuclear: May the “Final Four” Join the Nuclear Nonproliferation Treaty as Non-Nuclear Weapons States while Retaining their Nuclear Weapons?*, 2005 MICH. ST. L. REV. 417, 446–47.

the United Kingdom, France, China and Australia.¹²⁸ In these agreements, the aforementioned countries provide the necessary materials for the nuclear fuel cycle, while Japan agrees to use such equipment only for non-military purposes.¹²⁹ Importantly, “[W]ere Japan to violate any of these agreements, sanctions would be severe and would include immediate return of all materials and equipment to the supplying country. Japan would then be blocked from world supplies of natural and enriched uranium and related equipment.”¹³⁰ This could be devastating for Japan’s economy and, therefore, Japan would need to act thoughtfully and purposefully in determining whether to breach such treaties. Yet, were the countries with which Japan had these bilateral agreements to allow Japan to acquire nuclear weapons, there would be no such devastation.

Recently, scholars have criticized the efficacy of the international nuclear non-proliferation regime, particularly given that India, Pakistan, North Korea, and Israel are not member states of many relevant international agreements.¹³¹ As professor David Jonas argues, the nonproliferation regime will not survive without these countries as members.¹³² Legally, it would not be difficult for Japan to leave the NPT, as it requires only providing three months’ notice and a showing that, “[E]xtraordinary events . . . have jeopardized [Japan’s] supreme interests.”¹³³ The requirements to withdraw from the CTBT are identical, except a state party must provide six months’ notice instead of three.¹³⁴ Therefore, were Japan to desire nuclear weapons, it could easily withdraw from the international agreements that bind it in order to acquire them.

Despite the fact that Japan’s acquisition of defensive nuclear weapons would violate its international treaty obligations (unless it were to withdraw, in which case it may still violate

¹²⁸ See Johnson, *supra* note 55, at 87.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ See Jonas, *supra* note 127, at 418.

¹³² *Id.*

¹³³ NPT, *supra* note 97, 21 U.S.T. 483, at art. 10.

¹³⁴ CTBT, *supra* note 125, S. Treaty Doc. No. 105-28 (1997), 35 I.L.M. 1439, at art. 9.

customary international law), a variety of countries will likely acquiesce to the procurement, potentially forming new, binding customary international law. It is unclear whether the proliferation of defensive nuclear weapons would even violate customary international law; the International Court of Justice has not passed judgment on this question.¹³⁵ In the ICJ case, *Legality of the Threat or Use of Nuclear Weapons*, the Court unanimously held, “A threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable to armed conflict particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons.”¹³⁶ However, by a vote of seven to seven with the President casting his vote for the majority, “It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law.”¹³⁷ The Court continued, “However in the view of the current state of international law . . . the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a State would be at stake.”¹³⁸ The case of Japan could very well be such an “extreme circumstance” where the survival of Japan “would be at stake.” Or, this case may not even

¹³⁵ Compare Jill M. Sheldon, *Nuclear Weapons and the laws of War: Does Customary International Law Prohibit the Use of Nuclear Weapons in All Circumstances?*, 20 *FORDHAM INT'L L.J.* 181, 185 (1996) (“Customary international law, therefore, does not contain a rule forbidding the use of nuclear weapons in all circumstances. This note concludes that prospective measure designed to deter the use and proliferation of nuclear weapons are more effect than a decision determining the legality of nuclear weapons.”); with Rachel A. Weise, *How Nuclear Weapons Change the Doctrine of Self-Defense*, 44 *N.Y.U. J. INT'L L. & POL.* 1331, 1353 (2012) (“Evidence of uniform state practice and opinion juris can be gleaned from a variety of sources, including treaties, diplomatic communiqués, actions of heads of state, U.N. General Assembly resolutions and Security Council resolutions. These sources are evidence that customary international law prohibits nuclear weapons for all states.”).

¹³⁶ *Legality of the Threat or Use of Nuclear Weapons*, *supra* note 107, at § 2(D).

¹³⁷ *Id.* at § 2(E).

¹³⁸ *Id.*

provide guidance, as it does not acknowledge the difference between defensive and offensive weapons, which could affect the relevant provisions of international humanitarian law.

As discussed below, the United States should accept Japanese proliferation, because it will save the U.S. money and allow the U.S. more freedom of maneuver in its Asian foreign policy.¹³⁹ But not only should the U.S. acquiesce so too should other similarly situated members of the Organization for Economic Co-Operation and Development (OECD). NATO has long desired to expand into Asia.¹⁴⁰ Some consider NATO expansion to be a key reason for the Russian intervention in the Ukrainian peninsula of Crimea, as Russia feared a NATO encroachment.¹⁴¹ Currently, Japan, along with Australia, Mongolia, and some other Asian nations are “global partners” of NATO, but not members—no Asian country is a member.¹⁴² By allowing Japan to acquire defensive nuclear weapons and to become a full member of NATO, NATO could begin its goal of Asian expansion to provide global stability, with Japan being the first of such members.

- c. Japan Should Prefer Obtaining Nuclear Weapons to Engaging in Collective Self-Defense, as the Defensive Weapons Will Help to Stabilize the Region and Quell the Fears of Japanese Citizens Who Oppose Military Expansion
 - i. Japan should prefer obtaining nuclear weapons as opposed to expanding its ground forces, as it will help to stabilize the region

Japan faces numerous contemporaneous regional conflicts, and by obtaining nuclear weapons, Japan could broker a peaceful resolution between itself and other Asian states. Currently, there exists a dispute regarding claims to the Senkaku (Japanese name)/Daiyou (Chinese name)

¹³⁹ See *infra* § III(d).

¹⁴⁰ See e.g., Astrid Wendlandt, *Pacifying Russia: International Aid and NATO Expansion*, 22-FALL FLETCHER F. WORLD AFF. 131(1998); Richard D. Anderson, Jr., *On the Wisdom of Enlarging NATO*, 2 UCLA J. INT'L L. & FOREIGN AFF. 1 (1997).

¹⁴¹ See *Putin says annexation of Crimea partly a response to NATO enlargement*, REUTERS (Apr. 17, 2014), <https://perma.cc/G6Y3-3SDR>; Jan Fritsche, *Is NATO expansion to blame for Crimean crisis*, DW (Mar. 29, 2014), <https://perma.cc/ENA8-E7DQ>.

¹⁴² See NATO, *Relations with partners across the globe* (Sept. 7, 2015), <https://perma.cc/LE9H-GQPQ>; NATO, *NATO Member Countries* (Nov. 15, 2015), <https://perma.cc/XG6A-RU9X>.

Islands in the East China Sea.¹⁴³ Without going into all of the intricacies of the law of the sea, the dispute is as follows: both Japan and China make claims to these seven square kilometer islands, as jurisdiction over the islands would allow for extended rights to fishing and natural resources in the Exclusive Economic Zones (EEZ) under the rules of United Nations Convention on the Law of the Sea.¹⁴⁴ Neither country maintains a particularly strong historical claim to the Islands,¹⁴⁵ which makes the determination of who properly retains jurisdiction difficult. Under UNCLOS, a country may only extend its EEZ based on its jurisdiction over islands, not over “rock which cannot sustain human habitation or economic life on their own.”¹⁴⁶ These islands are so small that, according to some experts, they are only rocks, in which case neither Japan nor China could extend its EEZ.¹⁴⁷ President Obama refuses to comment on whether the land masses constitute islands.¹⁴⁸

Presumptively, both Japan and China consider these land masses to be islands, otherwise they would not be in such a heated battle, each assuming that it will be able to extend its EEZ if it gains control. But China refuses to negotiate.¹⁴⁹ China asserts similar claims over island chains in the

¹⁴³ See *How uninhabited island sourced China-Japan Ties*, BBC (Nov. 10, 2014), <https://perma.cc/U33C-W3ZC>.

¹⁴⁴ U.N. Convention on the Law of the Seas arts. 56–57, *opened for signature* Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS] (allowing countries to declare an EEZ of up to 200 nautical miles from its coast, within which it may exercise “sovereign rights for the purpose of exploring and exploiting . . . the natural resources, whether living or non-living, of the . . . seabed and its subsoil.”).

¹⁴⁵ See e.g., Tadashi Ikeda, *Getting Senkaku History Right*, THE DIPLOMAT (Nov. 26, 2013), <https://perma.cc/AJQ2-2CJJ>; D.Z., *Who really owns the Senkaku islands?*, THE ECONOMIST (Dec. 3, 2013), <https://perma.cc/2XJD-DCZJ>.

¹⁴⁶ UNCLOS, *supra* note 144, at art. 121 (“An island is a naturally formed area of land, surrounded by water, which is above water at high tide.”).

¹⁴⁷ See Carlos Ramos-Mrosovsky, *International Law's Unhelpful Role in the Senkaku Islands*, 29 U. PA. J. INT'L L. 903, 908–09 (2008) (outlining the debates under UNCLOS about whether the land masses are islands or rocks).

¹⁴⁸ See Justin McCurry & Tania Branigan, *Obama says US will defend Japan in island dispute with China*, THE GUARDIAN (APRIL 24, 2014) (“[Obama’s] hope is that the Chinese will continue to engage with the US and other countries. We don’t take a position on this piece of land or this piece of rock but we do take a position on the peaceful resolution of these disputes.”), <https://perma.cc/2G8A-7W4U>.

¹⁴⁹ See Jane Perlez, *China and Japan in Sign of a Thaw, Agree to Disagree on a Disputed Island Group*, N.Y. TIMES (Nov. 7, 2014), <https://perma.cc/7G4K-YHXN>; Ikeda, *supra* note 145.

South China Sea without negotiating.¹⁵⁰ China feels no incentive to negotiate, as its power relative to the countries who also assert claims to these island chains (Japan, the Philippines, Vietnam, Indonesia, etc.) is very strong. In fact, China's refusal to arbitrate ownership of the islands is in direct breach of UNCLOS.¹⁵¹ Given China's lack of willingness to comply with international obligations and China's manifestation of power as a means of settling international disputes, Japan's acquisition of nuclear weapons would balance China's power and ensure the continued relevance and implementation of international agreements governing disputes in Asia.

Some may argue that acquisition of defensive nuclear weapons may not actually help Japan feel more secure in its strategic position—defensive nuclear weapons would not allow Japan to exert affirmative force on other countries to act—they would only allow responsive measures should Japan be threatened. However, this argument misses a key element of the solution: acquisition of defensive nuclear weapons could help bring Japan into the fold of NATO to become the first Asian member-state.¹⁵² The acquisition of nuclear weapons, plus the eventual accession into NATO will help Japan become a stabilizing force in the region, during a time when tensions run high as China continues to rise.

- ii. Japan should prefer obtaining nuclear weapons as opposed to expanding its ground forces, as it is more in line with the general pacifist public opinion

Not only would defensive nuclear weapons be normatively preferable to Japan as compared to collective self-defense forces because defensive nuclear weapons will stabilize the region, but they

¹⁵⁰ See Huy Duong, *Negotiating the South China Sea*, THE DIPLOMAT (July 20, 2011), <https://perma.cc/EWR7-CS8T>.

¹⁵¹ As a ratifying party, China is bound under Article 286, which provides that, “[A]ny dispute concerning interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.” UNCLOS, *supra* note 144, at art. 286; see also UNITED NATIONS, *Chronological lists of ratifications of accessions and successions to the Convention [UNCLOS] and the related Agreements as of 02 January 2015* (March 15, 2016), <https://perma.cc/AMC3-J7SS>.

¹⁵² See *infra* § III(b).

are also preferable because they will calm citizens' fears of Japan becoming an international aggressor through an expanded military. As explored above, a large proportion of Japanese citizens believe that Japan should exercise its right to self-defense to a limited extent.¹⁵³ However, the citizenry fears that collective self-defense forces would allow Japan to revert to the international aggressor it was during World War II, as the government could send troops anywhere in the world without public input, straying away from Japan's pacifist disposition.¹⁵⁴ Given the strong public backlash against Prime Minister Abe's unilateral reinterpretation of the Constitution,¹⁵⁵ defensive nuclear proliferation could both provide the collective defense that the Prime Minister desires, while responding to the cries of pacifism from the citizenry. According to CNN, "Opponents of the legislation say seven decades of Japanese postwar pacifism are simply being tossed away without proper public debate or discourse. [They] worry about the consequences of potentially sending troops into battle without actual combat experience."¹⁵⁶ Proliferation solves these dual concerns: (1) abandoning Japan's pacifist foreign policy and (2) a lack of military preparedness. Defensive nuclear weapons present a more pacifist, deterrence-based policy than collective self-defense forces.

Japan certainly retains a right to self-defense.¹⁵⁷ However, Japan's Constitution prohibits the government from maintaining ground forces; in fact, it is unclear whether it would even be constitutional for a citizen's militia to form were an attack to occur.¹⁵⁸ Many scholars argue that the national right of self-defense emanates from Article 51 of the United Nations Charter.¹⁵⁹ As Article

¹⁵³ See *supra* § I.

¹⁵⁴ See *supra* § III.

¹⁵⁵ See *supra* notes (describing protest in response to Prime Minister Abe's actions).

¹⁵⁶ Will Ripley, *Japanese lawmakers OK greater overseas role for military*, CNN (Sept. 18, 2015), <https://perma.cc/BYM2-9YYB>; see also Johnathan Soble, *Japan's Leader Has Little Use for Hiroshima's Lessons of Pacifism*, N.Y. TIMES (May 26, 2016), <https://perma.cc/QRB4-GEHX>.

¹⁵⁷ See *supra* § II(b)(i) (discussing the *Sunakawa* case).

¹⁵⁸ See Maki, *supra* note 21, at 73–74 (describing the lack of a right to form a civilian militia or to bear arms in the Japanese Constitution).

¹⁵⁹ See U.N. Charter art. 51.

51 states, “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs . . . until the Security Council has taken measures necessary to maintain international peace and security.”¹⁶⁰ Japan’s continued self-defense policies are important, but they must take into account the citizens’ clear cries for pacifism.

A major concern for those opposing Japanese proliferation is that proliferation is not pacifist. Yet, “pacifism,” as a concept, exists along a spectrum. Some argue that Japan would never opt to obtain nuclear weapons because of Japanese reticence towards nuclear power after the Fukushima disaster and because the U.S. opposes Japanese acquisition of nuclear weapons.¹⁶¹ And some reiterate that Japan is the only country to experience a nuclear attack, and the fallout of that attack is still ingrained in the minds of its citizens.¹⁶² In any case, the better solution is to view nuclear proliferation as a compromise between the government’s proposal and the citizens’ cries—nuclear proliferation may not be wholly pacifist but, as discussed below, it is more pacifist than collective self-defense forces and, therefore, is an option more true to Japan’s pacifist ethos.

Not unsurprisingly, a large source of the anger toward Prime Minister Abe is from the Japanese citizens of Hiroshima and Nagasaki—the only two cities in the world to have actually felt the power and fallout of a nuclear attack.¹⁶³ Former Prime Minister Tomiichi Murayama stands by the citizens of Hiroshima and Nagasaki in their aversion to nuclear weapons: “Those in Hiroshima

¹⁶⁰ *Id.* See Charles P. Trumbull IV, *The Basis of Unit Self-Defense and Implications for the Use of Force*, 23 DUKE J. COMP & INT’L L. 121, 123–26 (assessing whether self-defense is an inherent right of a sovereign).

¹⁶¹ See e.g., Andrea Berger, *Pacifism bill: Why Japan won’t build a nuclear weapon quickly*, CNN (Sept. 20, 2015), <https://perma.cc/4FLV-TSHV>.

¹⁶² See Jun Hongo, *Survivors of Hiroshima and Nagasaki Bombings Welcome Obama Visit*, WALL ST. J. (May 11, 2016) (recalling the attack on Hiroshima and recounting a survivor stating “I hope Mr. Obama will make his visit an opportunity to pledge that such tragedy will never happen again.”), <https://perma.cc/2Y24-PSCD>

¹⁶³ See e.g., Gabriella Blum, *The Laws of War and the “Lesser Evil”*, 35 YALE J. INT’L L. 1, 24–31 (discussing the history of the bombings in Hiroshima and Nagasaki); Matt Ford, *Japan Curtails its Pacifist Stance*, THE ATLANTIC (Sept. 19, 2015), <https://perma.cc/8TDW-GLTU>.

and Nagasaki suffered the first atomic bombs. People know these things well—that is why we made a vow that we will not repeat the same mistake.”¹⁶⁴ The historical memory of those living where the attacks occurred is a concern in advocating for the acquisition of nuclear weapons. But by acquiring exclusively *defensive* nuclear weapons, Japan will ensure that such an experience never occurs again, instead of leaving itself defenseless, as it currently stands.

While on their face nuclear weapons may not appear pacifist, the acquisition of nuclear weapons can cohere with a pacifist policy. Black's Law Dictionary defines pacifism as “The advocacy of peaceful methods rather than war as a means of solving disputes.”¹⁶⁵ Further, Black's acknowledges that the concept of “armed peace” is possible as “a situation in which two or more countries, while at peace, are actually armed for possible or probable hostilities.”¹⁶⁶ While not pacifist by nature, defensive nuclear weapons are consistent with Japan's pacifistic objectives, where (1) all attempts are made to solve conflicts peaceably first; and (2) weapons are employed only to defend oneself from another state's aggression. Whereas collective self-defense forces retain the ability to travel anywhere in the world and affirmatively launch invasions, defensive nuclear weapons are exclusively responsive, and can only ensure Japan's continue security without the possibility of undertaking an expansionist regime. The keystone of Japan's foreign policy will be deterrence, and history has demonstrated that defensive nuclear weapons further this goal.

Importantly, the idea of acquiring nuclear weapons under the constraints of Article 9 is not novel. As early as 1965, only two decades after the drafting of the Constitution, the CLB determined that the possession of nuclear weapons would not run counter to the prohibition against war potential under Article 9.¹⁶⁷ Further, “Successive administrations have reinforced the CLB

¹⁶⁴ Matthew Carney, *VP Day: Concerns Japan is remilitarising on 70th anniversary of World War II surrender*, ABC (Aug. 16, 2015), <https://perma.cc/P5BF-U5RE>.

¹⁶⁵ *Pacifism*, Black's Law Dictionary (10th ed. 2014).

¹⁶⁶ *Armed Peace*, Black's Law Dictionary (10th ed. 2014).

¹⁶⁷ See *supra* § II(b)(ii).

interpretation by consistently declaring that Article [9] does not prohibit the possession of nuclear weapons,” reminding that the distinction between defensive and offensive nuclear weapons remains relevant to an analysis of the prohibitions under Article 9.¹⁶⁸

A further problem for Japan in creating collective security forces as compared to nuclear weapons is the cost. The price to refurbish an existing nuclear weapon would be approximately \$2 million, while Japan spends upwards of \$4 billion per year on maintenance of U.S. bases and the SDF.¹⁶⁹ This figure would only expand were Japan to engage in collective security. This fiscal concern should lead both the U.S. and Japan to seriously consider proliferation of defensive nuclear weapons as a viable alternative. Therefore, both in terms of finances and popular support, Japan should acquire defensive nuclear weapons as opposed to creating collective self-defense forces.

d. Japanese Acquisition of Defensive Nuclear Weapons Is in the United States's Geopolitical Interest

Given that the U.S. provides for Japan's defense, and this is costly for the U.S., it would be in the U.S.'s international political interest to find a way to disentangle itself from Japan's security so that it can save money while ensuring Japan's continued economic and political success. Recently, Japan sought to cut spending on U.S. military bases in Japan to lower government expenditures.¹⁷⁰ Concurrently, there are strong domestic pressures in the U.S. counseling government to cut defense

¹⁶⁸ Johnson, *supra* note 55, at 83–84. In 2012, the Diet amended its nearly sixty-year-old atomic energy act, which sought to restrict the use of nuclear energy, to include national security as a main goal of the act. See Dan Joyner, *Japan's Nuclear Law and National Security*, ARMS CONTROL LAW (July 24, 2012), <https://perma.cc/88FJ-FG9F>. Some scholars opine that this may indicate a move towards proliferation in Japan. *Id.*

¹⁶⁹ Compare UNION OF CONCERNED SCIENTISTS, *How Much Does it Cost to Create a Singular Nuclear Weapon*, (Nov. 2013), (discussing the costs of a nuclear weapon and estimating it would cost \$2 million to refurbish the submarine-based W76 warheads), <https://perma.cc/N2LL-6UWE>; with Kyle Mizokami, *Japan basing costs, SDF and U.S.*, JAPAN SECURITY WATCH (June 2, 2010), (estimating a cost of \$2 billion to support U.S. forces in Japan, and another \$2 billion to the SDF).

¹⁷⁰ See e.g., Franz-Stefan Grady, *Japan Approves Record Defense Budget*, THE DIPLOMAT (Dec. 28, 2015), <https://perma.cc/U2DR-JFQT>; Christopher Harress, *US-Japan Defense Relations: Tokyo to Cut Spending on American Bases inside Country*, INT'L BUS. TIMES (Oct. 12, 2015), <https://perma.cc/D8DR-2GGY>.

spending.¹⁷¹ While the U.S. does not spend an exorbitant amount of money in absolute terms (some \$526.8 million in 2014) the spending is used in the operation of its bases in Japan, particularly in Okinawa.¹⁷² There is also strong Japanese resistance to the continued maintenance of the U.S. base in Okinawa.¹⁷³

While reduction in spending is certainly a motivating factor for an American acceptance of Japanese proliferation, so too should the U.S. feel comfortable in this decision, because it will help disentangle the U.S. from contentious disputes in Asia. Given that the U.S. provides for Japan's defense, Japan may be constrained in its foreign policy.¹⁷⁴ This means that the U.S. has a strong interest in Japan's geopolitical strategy, but also that the U.S. feels compelled not to allow Japan to act against the U.S.'s interests regarding other nations. For example, while the U.S. currently takes a neutral approach to its interactions with Taiwan,¹⁷⁵ a politically independent Japan with deterrent capabilities could negotiate with China to change the geopolitical arrangements of East Asia. Another situation where the U.S. would benefit from Japanese autonomy would be in the aforementioned disputes over islands in the South and East China Seas.¹⁷⁶ Presumably, the U.S. does not want to become entangled in long-term negotiations regarding the geographic boundaries of Asian nations under UNCLOS in which the U.S. lacks any stake, fearing that the world community

¹⁷¹ See e.g., Bob Bryan, *Donald Trump could cause military spending to skyrocket*, BUS. INSIDER (April 19, 2016), <https://perma.cc/2T46-JRDQ>; Donna Tam, *Presidential election highlight heavy US defense spending*, MARKETPLACE (Apr. 18, 2016), <https://perma.cc/NNC3-R4S5>.

¹⁷² See Lori Robertson, *U.S. Foreign Military Support*, FACT CHECK (Apr. 12, 2016), (“[Q]uantifying the extra cost . . . to keep troops [in Japan] as opposed to on bases in the United States is difficult—not to mention the difficulty in putting a price tag on a benefit” to Japan and the U.S., respectively), <https://perma.cc/P7UT-2SKY>.

¹⁷³ See Minami Funakoshi, *Thousands in Japan rally against U.S. base on Okinawa*, REUTERS (Feb. 21, 2016), <https://perma.cc/VC75-MVRG>. See also *infra* § II(c).

¹⁷⁴ See Yoichiro Sato, *Transitions in Japan's Strategic Landscape*, in JAPAN IN A DYNAMIC ASIA 2 (Yoichiro Sato & Satu Limaye eds., 2006) (describing Japan's freedom of maneuver during various periods in terms of economic and security policy).

¹⁷⁵ See LUNG-CHU CHEN, *THE U.S.-TAIWAN-CHINA RELATIONSHIP IN INTERNATIONAL LAW AND POLICY* 260 (2016) (outlining the incentives of China, the U.S., and Taiwan to avoid armed conflict).

¹⁷⁶ See *supra* § III(c)(i).

would view decisions taken by Japanese leadership as attributable to the United States. Therefore, by allowing Japanese proliferation, the U.S. would empower Japan to engage in negotiations, without the U.S. having to fend off Japan's adversaries. Ultimately, allowing Japanese proliferation is in the best interest of the United States, both permitting a reduction in U.S. military spending, and empowering Japan to make its own foreign policy decisions without deep U.S. entrenchment.

IV. CONCLUSION

Where the Japanese government fears for its safety and the Japanese public clings to its pacifist roots, we see an interesting and pressing dilemma. Proliferation of defensive nuclear weapons will be the most effective means for Japan to quell its fears under the security dilemma, while simultaneously responding to the unease expressed by the Japanese populace of a full military armament, because it will provide security while encouraging pacifism—understanding the aversion to a large standing collective self-defense force, albeit still defensive in orientation. Moreover, the U.S. will see this solution as favorable, as it will allow the U.S. to reduce defense spending in attempts to demonstrate to the international community that the future will entail a less interventionist foreign policy after the disasters in the Middle East of the early twenty-first century. Additionally, nuclear weapons will stabilize East Asia, as Japan will balance China's power in negotiations on hot issues, such as the Senkaku/Daiyou Island dispute in the East China Sea.¹⁷⁷

Even those who find this argument normatively preferable may question the feasibility of such an arrangement, citing the strong international norms against proliferation and many regimes' stated goals of "nuclear zero."¹⁷⁸ While nuclear zero may be an aspirational ideal, it is not in many states' best interest, as governments often take for granted the fact that nuclear weapons have

¹⁷⁷ *Id.*

¹⁷⁸ See e.g., Felicia Schwartz, *John Kerry, in Hiroshima, Reaffirms Need to Curb Nuclear Weapons*, WALL ST. J. (Apr. 11, 2016), <https://perma.cc/C6UP-EDFN>; *389 Members of European Parliament support Global Zero declaration*, BASEL PEACE OFFICE, <https://perma.cc/JD23-YRFW>. Cf. James Jay Carafano, *Nuclear Zero Is Dead*, THE NAT'L INT. (Mar. 9, 2014), <https://perma.cc/EM7M-WWSM>.

provided international stability for decades.¹⁷⁹ Nuclear zero is also unfeasible, because states cannot “un-learn” how to produce nuclear weapons; the best that nuclear zero would do is extend a country’s breakout time before being able to launch an attack.¹⁸⁰ To that end, the whole rationale behind nuclear weapons—providing long-term, deterrent stability because other countries know that you have the capacity to attack—would be undermined in a nuclear zero world.

Consequently, given that nuclear weapons already exist, the best option is to use them for stability, not to ban them with the hopes that everyone will abide by the ban. If the Japanese were to acquire nuclear weapons, it would ease the government’s security dilemma without inciting the massive backlash that expanded collective self-defense forces would provoke. Not only is this a good option for Japan, but it is also in the U.S.’s strategic interest, as it could save large sums of money on defense spending and disentangle the U.S. from contentious disputes in Asia. This proposed solution is feasible, practical, and respects the complicated history and adherence toward pacifism of the Japanese people. Finally, despite the fact that acquisition of defensive nuclear weapons may violate international law, it is in many states’ best interest to allow Japanese proliferation, and these states should quickly acquiesce to a Japanese nuclear acquisition.

¹⁷⁹ See e.g., Lieber & Press, *supra* note 65.

¹⁸⁰ See Glaser, *supra* note 67 (discussing the flaws of “nuclear zero” arguments).