



THE DOMESTIC AND INTERNATIONAL POLITICS OF CONSTITUTIONAL CHANGE IN JAPAN

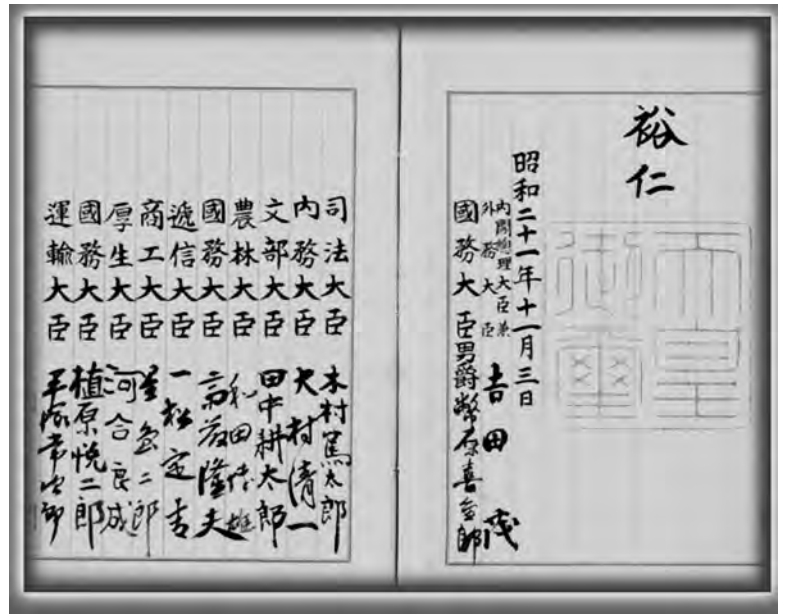
By Andrew L. Oros

Japan's constitution celebrated its sixtieth birthday on May 3, 2007, the national holiday known as "constitution day" (*kempō no hi*). There was much to celebrate. This document is known worldwide for the far-ranging political rights it guarantees 128 million Japanese who enjoy a level of political and economic freedom that is the envy of many in the world. In particular, the Japanese constitution is famous for "Article Nine," which proscribes Japan from maintaining any "war potential" and states that "armed forces will never be maintained."¹ To many Japanese, this document is sacrosanct. It is seen as a critical guarantor of the peace and prosperity that Japan has enjoyed since the Second World War. Others have argued from its inception that the document is an affront to Japanese sovereignty, and that it was forced upon a defeated, occupied nation.

Despite these different views—or perhaps because of them—Japan's constitution has never been formally revised. This is not to say, however, that no change has taken place. Just as the US constitution has been interpreted in dramatically different ways over the years—remember when "all men are created equal" meant, literally, "men"?—important change has taken place in how Japan's constitution has been applied over the past sixty years. In this sense, there have been many instances of constitutional "change" in Japan. In recent years, proposals for formally revising the constitution have risen to the top of the political agenda for a number of different reasons.

Such change has not gone unnoticed by Japan's neighbors, who repeatedly have criticized the multiple constitutional reinterpretations that have allowed Japan to re-create a large military under the appellation of a "Self-Defense Force" (SDF) and, recently, to dispatch these forces to foreign countries. Political leaders and the general publics of Japan's closest neighbors, China, North Korea, and South Korea, in particular, are outspoken in their opposition to formal constitutional revision in Japan, fearing that such revision would lead to even greater Japanese military activities.

Japan, of course, caused great physical and emotional damage to the peoples of China and Korea in the first half of the twentieth century. Today, Japan maintains extensive trade re-



Page from the original Constitution of Japan with the Imperial Signature (upper right) and Seal. Image source: http://en.wikipedia.org/wiki/Japan_constitution.

lations with China and South Korea and is committed publicly and militarily to a policy of peaceful coexistence. Still, these neighbors are wary of how Japan has dealt with the issue of responsibility for the war in general and for wartime atrocities in particular. All three states follow closely the statements of Japan's political leaders, as well as the vibrant debate within Japan's active civil society, regarding Japan's conduct during and leading up to the Second World War. Japanese Prime Minister Tomiichi Murayama issued a comprehensive and heartfelt apology for Japan's wartime actions in 1995, on the fiftieth anniversary of the end of the war, and every successive Prime Minister since that time has reaffirmed it.² Many of Japan's neighbors complain, however, that such an apology is undermined by the actions and statements of other Japanese (including elected officials). In the minds of many—both abroad and inside Japan—constitutional revision of Article Nine would signal a departure from the lessons Japan says it has learned from its Second World War experience.

Concerns over revision of Japan's constitution are not just a matter of the past, however. In the present, Japan possesses (surprisingly given its constitution), one of the most capable military forces on the planet, and has one of the largest military budgets in the world.³ By 2005, Japan's SDF had been dispatched abroad—largely for humanitarian relief or in con-

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junction with United Nations Peacekeeping—to fourteen countries or areas since its first overseas deployment to Cambodia in 1992.⁴ The SDF has also expanded its defense cooperation with the United States military, reflected in new defense “guidelines” issued in 1997 in response to the global war on terrorism. Most strikingly, the SDF has been working closely with the United States-led “coalition of the willing” in anti-terrorist activities around Afghanistan since 2001. “Special measures” legislation authorizing this extraordinary activity expired in November 2007. Previously, a dramatic political showdown regarding this issue occurred between the LDP and DPJ that contributed to the resignation of Prime Minister Abe. Prime Minister Fukuda has pledged to pass new legislation to enable a renewal of Japanese participation



Japan-Afghanistan Summit Meeting, July 5, 2006. Prime Minister Junichiro Koizumi held a meeting with Mr. Hamid Karzai, the President of the Islamic Republic of Afghanistan, at the Prime Minister's Official Residence. Source: The Web site of Prime Minister Junichiro Koizumi at http://www.kantei.go.jp/foreign/koizumiphoto/2006/07/05afghan_e.html.

as soon as possible. Ground forces were dispatched in small numbers to Iraq for three years beginning in 2004 (though solely for humanitarian missions).

Despite the evident growth of Japan's military-related activities over the past sixty years, and despite numerous reinterpretations of the 1947 constitution to allow for such activities, it is not at all clear that Japan seeks a greater military role in the world. Nor is it clear that Japan is acting beyond what it deems necessary for its own self-defense in what it perceives as an increasingly dangerous world. Moreover, despite the growing momentum for formal constitutional revision in Japan in recent years, it is not at all evident that this will actually take place in the coming decade. Events of the past six months certainly have set back plans of those who seek change to Japan's yet-unaltered postwar constitution. Still, further consideration of change within Japan's constitution is both timely and historically relevant.



Captain Alaric Michaelis, 95th Fighter Squadron instructor pilot, stands near a Japanese F-15J aircraft with a Japan Air Self-Defense Force pilot and his crew chief. Two instructor pilots from the 95th FS participated in international training missions in Japan. Photo source: NAVY.mil, the official Web site of the United States Navy at <http://www.tyndall.af.mil/photos/index.asp?page=3>.



THE BIRTH OF LIBERAL JAPAN

The current Japanese constitution—what often is referred to as the “postwar constitution” or, reflecting its origins under occupation, the “MacArthur constitution”—is itself a large constitutional revision. It was an effort to correct what were seen as deficiencies in Japan’s first constitution, a “gift” of the Meiji emperor to his people in 1889. This original document established Japan’s parliament, the Diet, as the first in Asia, as well as a system for competitive elections based on limited manhood suffrage in line with many other “democracies” of the time.⁵ It also bestowed on Japan’s emperor, whom we now refer to as the Meiji Emperor, extensive political powers; essentially, at the beginning at least, Japan’s parliament was an elaborate consultative mechanism for the emperor, who retained final say on important policy questions. In practice, the emperor’s wishes were conveyed by a small political elite of elder statesmen (called *genrō*), who were instrumental in establishing this constitutional system and who elevated the emperor from an essentially cultural role to the supreme political position. Over time, the Imperial Army and Imperial Navy developed their own political power within the prewar constitutional framework. By the time of Japan’s advances deep into China in the 1930s (long after the occupation of Korea), some historians, and much of the Japanese public, believe that the emperor—at that point the Shōwa Emperor, Hirohito—was not the primary decision maker in Japan. After the unconditional surrender of Japan to the Allied Powers, the emperor was absolved of formal responsibility for the war. Nevertheless, he was stripped of all political power and forced to renounce his divine status to the Japanese people. The true role of the emperor in Japan’s descent into what Japanese refer to as the “dark valley” of war was long considered a taboo subject in Japan while the emperor was alive, and has been an area of active scholarship since his death in 1989.⁶

In the twenty-twenty hindsight of 1945, the flaws of Japan’s first constitution were apparent—and dramatically corrected. The new constitution eliminated the political power of the emperor, making him the “symbol” of the state, and established clear, supreme political authority in the Diet. It conferred legal and political rights to individuals (men *and* women, instead of only to male heads of household), guaranteed freedom of religion and expression, and even the right of labor to bargain and act collectively—a right beyond the US constitution. It also eliminated the nobility (or peerage) system, putting all individuals on the same legal footing, and established a new second house of the Diet, the House of Councillors (Upper House), which replaced the prewar House of Peers; a new electoral system for it distinct from the House of Representatives (Lower House) also was developed. Moreover, the new constitution established a Supreme Court which could determine the constitutionality of legislation.⁷

Social and political conservatives chafed at many of these provisions and vowed to fight for change as soon as the American occupiers departed in 1952. Administrative reform took place after the occupation’s end. For example, school admin-



The Shōwa Emperor signs the Constitution of Japan on November 3, 1946.
http://commons.wikimedia.org/wiki/Image:Hirohito_Signing.JPG.

istration and oversight, decentralized under the occupation, was re-centralized under the Ministry of Education—which, years later, would contribute to the textbook controversies evident in the popular press today, and which date back to major political battles in the 1960s.⁸ Constitutionally, conservatives were opposed to women’s suffrage, the diminished status of the emperor, and a host of other provisions. Controversy over Article Nine has proved most resilient, however, and opposition has been voiced consistently for over sixty years. Never before, however, have those seeking change to Article Nine been able to reach the high bar necessary for formal constitutional revision: a two-thirds affirmative vote in both houses of the Diet and a majority affirmative vote in a national referendum. The possibility of achieving the first step, the two-thirds Diet vote, has been so remote that a procedure to conduct the second step was not legislated until last year.

Although constitutional revision has never been introduced into the Diet, this is not because large numbers of Japanese did not advocate it. Extensive public opinion polling in Japan throughout the postwar period conducted by the media and the Cabinet Office shows large numbers of Japanese in favor of revision, generally understood to mean, in particular, revision of Article Nine. Still, support never reached the two-thirds necessary among Diet members, and only in the very early postwar years—and again recently—did it exceed the fifty percent necessary among the public. Instead, conservatives pursued their agenda for change in other ways.

IF NOT REVISION, REINTERPRETATION

Conservatives effectively were stymied in their efforts to change the text of Japan’s constitution during the Cold War due to the high threshold necessary for revision. The spirit and implementation of the constitution did change, however—more than once. During roughly forty years of the Cold War, Japan



IN UNISON: Japan's Maritime Self-Defense Force destroyer JS Yuudachi leads a formation during the five-nation "Malabar" exercise, which started in the Bay of Bengal on September 4, 2007. More than 20,000 personnel from the navies of Australia, India, Japan, Singapore, and the United States took part in the manoeuvres. The image has been provided by the US Navy. Photo source: <http://www.hindu.com/2007/09/07/stories/2007090761721400.htm>

recreated a military force under the name of a Self-Defense Force (SDF) and steadily increased its size, capabilities, and mission over time. This process was facilitated by conservative dominance of the Japanese political system—where the conservative-leaning Liberal Democratic Party (LDP) ruled continuously from 1955 to 1989—and thus their strong influence on the two important institutions that controlled interpretation of the constitution: the Supreme Court and the Cabinet Legislative Bureau (CLB).

The Supreme Court has steadfastly refused to rule on what it deems a political and policy issue. The CLB, by contrast, has used its position as the legal advisor to the Cabinet about legislative proposals and drafts to issue a series of interpretations over time that have justified the existence of the SDF, while setting limits on its mission and capabilities.⁹ For example, under CLB guidance the government issued the following ruling, via a “unified government view” (*seifū tōitsu kenkai*) submitted to the Budget Committee of the House of Representatives in December 1954 that states:

Although Japan has renounced war, it has not renounced the struggle for self-defense. What was abandoned under Article Nine was war and the use of force as means of settling international disputes. The deterring of armed attacks by other countries is in the defense of Japan, and this differs in essence from the settlement of international disputes. Accordingly, use of force for defense of national territory is not contrary to the constitutional provisions.¹⁰

In particular CLB bureaucrats have consistently ruled—reflecting widespread political sentiment—that Japan may maintain only the minimum military force necessary for the defense of Japan, may not possess offensive weaponry, and may not participate in “collective self-defense” activities (i.e., military activities in alliance with other states). These limitations have steadily lessened over time, a trend that arguably has accelerated in the post-Cold War period, and that reflects changing public opinion in Japan about the appropriate level of military capabilities Japan should possess. For example, in 1992, the SDF was dispatched abroad for the first time as part of a United Nations Peacekeeping Operation (UNPKO) in Cambodia. In 2001, it was dispatched abroad for the first time to support an active combat operation in the Indian Ocean, to participate in refueling ships for the US-led war on terror in Afghanistan, and again in 2004 to conduct humanitarian rebuilding activities and to support US forces in Iraq.

Today, two substantial constitutional barriers remain on Japan's SDF—limitations on the offensive capabilities of its forces, and a prohibition on the exercise of “collective self-defense” activities with the militaries of other states. In the view of many—though not all—the only way to enact significant change in these two areas is constitutional revision. This view is a major factor in the recent push for constitutional revision in Japan today. Many Japanese believe that Japan needs to adapt to changed international circumstances.

JAPAN FACING A NEW SECURITY ENVIRONMENT

The end of the Cold War ushered in a new era of security awareness and challenges in Japan. Beginning with widespread criticism of its “checkbook diplomacy” response to the 1990–91 Gulf War (\$13 billion contributed), and exacerbated by instances of domestic and international terrorism in the mid-1990s and increasingly threatening actions of neighbors North Korea and China, many Japanese have come to view Japan's current state of military preparedness as inadequate.¹¹ Politicians have responded to this new thinking by initiating commissions on constitutional revision in both houses of the Diet in January 2000, with the final 700-page report issued in April 2005. Japan's largest-circulation newspaper, the right-of-center *Yomiuri Shimbun*, went so far as to publish a “draft constitution” for national debate on Constitution Day in 1994.¹² It is important to note, however, that in *none* of these proposed drafts is the idea of Article Nine abandoned; rather, it is modified to allow Japan to engage in collective self-defense, either with allies or with the United Nations.

Japan's last Prime Minister, Shinzō Abe, who resigned in September 2007 after a devastating defeat of his party in national elections in July, spoke loudly and often about his view that Japan should change the text of Article Nine to allow Japan to play a greater security role in the world. At the time of his ascension to prime minister, the ruling LDP and its coalition partner, the Kōmeitō (Clean Government Party, or CGP), controlled 327 seats in the 480-seat House of Representatives (just over the two-thirds necessary to initiate constitutional revision) and 134



seats in the 242-seat House of Councillors. With the ruling coalition possessing a comfortable majority in both houses of the Diet, Abe set about almost immediately negotiating with members of his party and coalition on an outline for a revised Article Nine, and on legislation necessary to conduct the national referendum required to enact formal constitutional revision. Abe introduced the national referendum legislation just before Constitution Day in 2007; it passed in the House of Representatives on April 12, and in the House of Councillors on May 14. As a concession to more dovish elements in his coalition, however, the legislation delayed the provisions for the referendum for three years—a delay that meant in practice that both houses of the Diet would hold nationwide elections before constitutional revision could take place.

The first national election in the House of Councillors to take place after the national referendum legislation was held on July 21, 2007. It was a unmitigated disaster for the LDP, with its worst showing ever, resulting for the first time in a party other than the LDP controlling more seats in the House of Councillors, and a twenty-five percent loss of seats overall. Importantly, the ruling coalition lost its absolute majority in this house, creating great uncertainty about the ruling coalition's ability to pass *any* significant legislation in the Diet in the next few years, quite apart from controversial constitutional revision. Exit polling does *not* indicate that voter concerns over possible constitutional revision were a primary factor in their repudiation of the LDP; regardless, the net effect is a significant setback to those who seek constitutional revision in Japan.

PROSPECTS FOR FUTURE CHANGE

Recent political setbacks for those seeking constitutional revision of Article Nine do not change the underlying debates about the issue, nor interest in the issue at home and abroad. Constitutional revision will continue to be actively discussed in Japan's vibrant civil society and within its democratic political institutions in the coming years. As 2010 approaches, the issue is quite likely to resurface to the top of the political agenda as legislation allowing the conduct of Japan's first national referendum comes into effect.

In sum, the push for constitutional change is driven by two separate issues. The first is a desire by some to match the language of Article Nine with the reality of Japan's actual security practices to date, and relatedly, to codify the *existing* interpretations of constitutional limits into a single, clear document. The second is a desire by others to expand the future conduct of Japan's SDF, whether explicitly as a full military force (a clear minority opinion), in conjunction with the United Nations (the previously articulated position of former Democratic Party of Japan leader, Ichiro Ozawa), or within some other framework under the rubric of "collective self-defense." (A smaller group of diverse actors also seeks change to Japan's constitution in other

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areas, such as to make Japan more "environmentally responsible," to guarantee public access to government-held information, or even to directly elect the prime minister.) The difficult issue politically is to compose specific language that will satisfy two-thirds of Diet members and a majority of the voting population. Although, in the past decade, opinion polls regularly show that this bar has been reached on the general question of "do you support revision of the constitution?", so far no political actor has been able to gather such support for a specific revised text.

Critics of Japan argue that Japan is flagrantly violating its own constitution by maintaining armed forces. They worry that constitutional revision of Article Nine will further fuel Japan's "re-militarization." Many in Japan and abroad, however, are comfortable with Japan's current defense activities and seek constitutional revision to bring the text of the constitution more in line with actual defensive activities of Japan. Still others in Japan do in fact seek for Japan to play a greater military role, and see constitutional revision as necessary to achieve this goal. Supporters of constitutional revision do not reside only in Japan. Many in the US defense establishment would like Japan to be able to play a greater role in regional and global security affairs. The authors of an influential report on Asian security issues, chaired by two former Deputy Secretaries of State (one Republican, one Democrat), include in their "recommendations for Japan" the following: "The ongoing debate in Japan on the Constitution is encouraging as it reflects increasing Japanese interest in regional and global security matters. . . . the United States would welcome an alliance partner with greater latitude to engage where our shared security interests may be affected."¹³

Looking to the future, there is both hope and concern. There is *hope* that Japan will build on its positive international contributions of the past sixty years—by playing a greater role in regional and global security. There is *concern* that if Japan revises its constitution, its "self-defense forces" will become a full-fledged military with a full range of offensive capabilities that could threaten Japan's neighbors and lead to global engagements of its military forces. China in particular has expressed concerns about Japan's future military ambitions, eyeing the deepening US-Japan military alliance with suspicion. Yet, China's own growing military spending—which has at least tripled since the end of the Cold War in 1989¹⁴—is a primary driver of Japan's defense policies. Japan's growing concerns about North Korea and global terrorism also are contributing factors to an increasing security awareness among the Japanese public and its policymakers, which undoubtedly is a principal factor in the growing momentum for formal constitutional revision in Japan today.

In this period of great political flux in Japan, it is impossible to imagine how specifically the question of constitutional revision may be brought into future political debate. That it will

be, however, is without question. It is imaginable that nationalist forces in Japan—those who fought successfully for the adoption of the national flag and national anthem in the 1990s, and argue today for “patriotic education”—will coalesce around constitutional revision as a factor in political realignment. It also is imaginable that the debate over Japan’s broader security policies will divide “hawks” and “doves” within both major political parties (the LDP and DPJ), resulting in a political realignment. More likely, however, Japanese domestic politics and parties will continue to focus primarily on domestic issues—issues that drove the LDP from power in the July 2007 House of Councillors election. As a result, Japan will continue to enact future changes in security policy either through the existing constitutional framework or through reinterpreting the constitutional text as it stands. ■

NOTES

1. The complete text of Article Nine reads: “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 a 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.” Reprinted annually in *Defense of Japan*, e.g., 2005, 565.
2. Statement by Prime Minister Tomiichi Murayama, “On the occasion of the fiftieth anniversary of the war’s end,” <http://www.mofa.go.jp/announce/press/pm/murayama/9508.html>, (15 August 1995).
3. In 2006, Japan spent \$43.7 billion on defense, according to the *Stockholm International Peace Research Institute (SIPRI) Yearbook* (2007), ranking it as the fifth largest spender in the world—after, in order, the United States, United Kingdom, France, and China (the first year China surpassed Japan in this yearbook). Jennifer Lind has analyzed the capabilities in these forces, arguing that they are among the most capable in the world. See Jennifer M. Lind, “Pacifism or Passing the Buck? Testing Theories of Japanese Security Policy,” *International Security* 29: 1 (Summer 2004): 92–121.
4. The count of fourteen, as of May 2005, consists of two “special measures deployments” (to the Indian Ocean and to Iraq), eight instances of International Peace Cooperation Activities (Cambodia, Mozambique, Rwanda, Golan Heights, twice to East Timor, Afghanistan, and Iraq), and six instances of International Disaster Relief Activities (Honduras, Turkey, India, Iran, Thailand, and Indonesia). East Timor and Iraq are counted only once each, and the Indian Ocean as a single region, to reach a total of fourteen. The Japan Defense Agency (JDA) itself lists a higher count of SDF deployments due to multiple “missions” within many of the above-mentioned cases. For example, Japan’s Air Self-Defense Force (ASDF) activities based in Kuwait, Ground Self-Defense Force activities based in Samawah, and Maritime Self-Defense Force activities in the Persian Gulf are counted as three instances (and areas) of overseas deployment, despite all being coordinated as assistance to the US-led coalition in Iraq. Further information about these deployments is provided in JDA (2005).
5. Recall that women did not receive the vote in any liberal democracy until 1893 (in New Zealand), and that universal suffrage was first achieved in 1905 (in Finland). It reached the United States in 1920. Universal *manhood* suffrage was achieved in Japan in 1925.
6. See, for example, Herbert Bix’s Pulitzer Prize-winning account in *Hirohito and the Making of Modern Japan* (New York: Harper Collins, 2000).
7. These provisions are meant only as a summary of some of the extensive changes that were introduced. John Dower offers a particularly thorough and readable account of constitutional change in the immediate postwar period in his Pulitzer Prize-winning book, *Embracing Defeat: Japan in the Wake of World War II*.
8. The Japanese historian Ienaga Saburo was a leader in battles with the Ministry of Education to include more passages in school textbooks about Japan’s wartime atrocities, and has published widely in Japanese about his experiences.
9. This institution has been surprisingly under-studied. The definitive work to date in English is J. Patrick Boyd and Richard Samuels, “Nine Lives?: The Politics of Constitutional Reform in Japan,” *Policy Studies* 19 (Washington, DC: East-West Center, 2005).
10. Submitted on December 22, 1954; the English translation is taken from *Asian Security* (1981), 154.
11. According to the cross-national US-Japan SAGE survey, conducted in autumn 2004, over ninety percent of Japanese considered the world a more dangerous place in 2004 compared to twenty-five years ago. Over half feared an attack on Japan from abroad. Nearly eighty percent believed Japan should play a more active role in international affairs, with three-quarters responding that Japan should exert more active international leadership. *An International Study of Attitudes and Global Engagement (SAGE): A Comparative Study of the American and Japanese Citizenry* (Washington State University and International Christian University, 2005), <http://subsite.icu.ac.jp/coe/sage/>.
12. See a summary of their proposal, in English, in Yasuhiro Nakasone, “Yomiuri Shimbun Constitutional Studies Group: A Proposal for a Sweeping Revision of the Constitution,” *Japan Echo* 22 (1995), 1.
13. Richard L. Armitage and Joseph S. Nye, “The US-Japan Alliance: Getting Asia Right through 2020,” *CSIS Report* (Washington, DC: Center for Strategic and International Studies, 2007), 22.
14. China’s official defense spending is about equal to Japan’s at present, though specialists uniformly agree that China under-reports its actual defense spending by as much as a factor of three. *Defense of Japan 2005* (Tokyo: Inter Group Corp, 2005), 55, 487.

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