

Peace Constitutions of Costa Rica and Japan: Similarities and Differences

(Draft)

59th Annual DPI/NGO Conference

United Nations Headquarters

6-8 September, 2006

Roberto Zamora, Student of Law, Costa Rica University¹

Message from Roberto Zamora *My Background*

I had the luck and fortune of being born in a country with no army, where peace was something that anyone could breathe and live. It has become part of the cultural construction of our identity as Costa Ricans. I am from a humble family where the Cantares² motto "*liberty is a house that we're going to build with justice, love, peace and truth*" was part of our daily life. I grew up with the teaching that these four elements are unbeatable, no matter what. If these principles can become our daily life guideline, a better world will be granted for everybody, even though the path is sometimes rough.

I grew up as a human being with freedom. As a cheerful kid, which I still try to keep in me, the death of that kid will mean my own destruction. I have the human right to enjoy freedom and I refuse to lose it.

As I grew up I changed and so did my country, but the principles remained. Fierce capitalism and savage neo-liberalism aimed at my country, as well as many others, and the social struggle became larger and larger as the social gap increased. My duty, as a person who loves his country and its endemic peace, was to be on the side of those who accept losing luxury but refuse to lose their human dignity. I chose to live by the four principles previously described.

The social movement received me with all the love and patience of those whose desire good for all. Through my personal struggles as a social activist, I learned that everyone has their trench and objective, and mine is the law and peace. I was taught through the social movement that truth has to be told as it is. Those who feel bad for receiving the truth as it is are the ones who, in the end, do not wish to see things as they are, but through some sort of glass that will fade the natural strength that lies within the pure truth.

I believe that only by saying things as they are, will the world be able to reach the level of agreement and understanding that will allow governments and peoples to join hearts and efforts in order to achieve the desired "another world," which I believe is not only possible but also on its way.

Under this scenario I present my thoughts and ideas, it has been these principles that gave me the strength and confidence to pursuit peace even by standing alone against my government, in a struggle

¹ Contact: roberto@peaceboat.gr.jp

² Cantares is a Costa Rican folkloric music group, neighbors's of my family.

for peace and against supporting an unjust war. Justice, love, peace and truth prevailed, as it was meant to be, and that is how I have come to this point in my life as a peace activist.

Different origins of the Constitutions

Japanese Article 9:

“Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes”.

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

<i>Issue</i>	<i>Costa Rican Constitution</i>	<i>Japanese Constitution</i>
Respect for international law and order	Article 7: <i>“Public Treaties, International Conventions and Concordats, duly approved by the Legislative Assembly, from the day of its promulgation will have a superior authority than the law”</i> Article 48 (fragment): <i>“Every individual has the right to the... amparo recourse to maintain or reestablish the enjoyment of the rights granted in this constitution as well as those of fundamental character established in international instruments on Human Rights.”</i>	Article 9: <i>“Aspiring sincerely to an international peace based on justice and order...”</i> Article 98: <i>“The treaties conclude by Japan and established laws of nations shall be faithfully observed”.</i> Preamble: <i>“We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and the faith of the peace-loving peoples of the world”</i>
Abolishment of the army	Article 12 (par 1 & 2): <i>“Army, as a Permanent institution is proscribed” For public order vigilance and conservation, necessary police forces will be established.”</i>	Article 9 (fragments): <i>“... the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. In order to accomplish the aim of the preceding paragraph, land sea and air forces, as well as other war potential, will never be maintained.</i>
Neutrality	Neutrality Statement of the Republic of Costa Rica of November 7 th ,1983: <i>The statement declares that Costa Rica will be neutral and its neutrality will be perpetual, ideologically active and non armed.</i>	Article 9: (fragment): <i>“... The right of belligerency of the state will not be recognized”.</i> The renunciation to the state of belligerency is actually a neutrality statement.
Right to Peace	Supreme Court of Justice. Zamora Bolaños and others against The State (Pacheco and Tovar): <i>“VI.- Under this normative framework, there is no dispute nor among the Parties nor within this Constitutionality Control Organ, concerning the existence and the capacity of the concept of peace to raise as an enforceable and valid constitutional parameter able to confront and judge public authorities acts and, in concrete for this case, by the Executive Power”.</i>	Preamble: <i>“We recognize that ll the peoples of the world have the right to live in peace, free from fear an want”</i>

The historical development of these countries cannot be more different. However, constitutionally speaking, these two countries share more peace law clauses than any other pair of countries. They share the abolishment of an army, neutrality, the respect of International Law and the recognition of the Right

to Peace.

The Japanese Constitution's origins go back to the Potsdam Declaration and the process of creating the constitution that began after Japan's surrender to the Allied Powers in August 15th 1945³. Under that order and under those historical circumstances, the Japanese Constitution was created to prevent the Japanese people and Government from suffering again the scourge of war⁴.

The Costa Rican case is very different. In 1948 a Civil Revolution broke out as the result of electoral fraud. The new Constitution was not drafted as a means to prevent war, as the country had not engaged in war since the failed US invasion in 1856, but rather to preserve democracy. The incompatibility existing between democracy and the army was well understood by the leaders of the revolution. It was also well understood that the army, which is the starting point for a world of threat, undermines the social and human development of a country, as funds are wasted on military budget rather than invested in people. As a consequence of this knowledge, while setting the new constitution it was decided that all funds previously destined to the army would be redirected to education and social welfare.

The abolishment of the army is only one of the three minimum principles I consider necessary and basic in order to achieve international peace.

The three minimum requirements to achieve peace. (see chart)

The first is the understanding that countries exist within an International Community, which shall be governed by International Law. The Japanese Constitution set this principle in its preamble, in Article 9 and in Article 98. In the case of Costa Rica, a less clear provision but in fact more respected can be found in Article 7. The rule of law is fundamental in the interaction of people as well as in the interaction of Nations.

After the First World War, the necessity of setting up a supra-national organism whose aims and goals were the maintenance of international peace and order through the rule of law became evident. The League of Nations was created, though for various reasons it resulted in failure. However, after World War II a second and longer lasting attempt was realized, the United Nations.

The constitutive instrument of this organization, the UN Charter, clearly specifies how the rule of international law is significantly responsible for the maintenance of world peace. When the rule of law fails and the UN Charter mandate is defied, war arises. The illegal aggression of the US-UK led coalition in Iraq is the most clear example.

The second minimum requirement to achieve a peaceful international relations system is the abolishment of armed forces. This provision is set in the Japanese Constitution's Article 9 and its Costa Rican homologue in article 12. There is a general error of thinking that armies are needed to secure countries. It has been, in fact, the lack of military that has maintained a secure Costa Rica, and this is a particularly good case study being as the county is located in a highly conflictive region. In the contemporary world, aggressive threats are of the biggest obstacles to secure peace. Armies and weapons are possibly the worst cases and causes of threats of aggression.

Besides this, there is an evident contradiction between trying to promote international peace and justice (objectives that rely in trust and confidence, say *bona fides* and *pacta sunt servanda principles*) while maintaining armies for self-defense. Armed forces are a major obstacle in the process of trust and confidence building. How can we tell our neighbors that we wish to live in peace when we have an

³ It has to be said that World War II officially lasted until the signature of San Francisco Peace Treaties in 1951.

⁴ Important to be said that Japanese Constitution was written when the UN Charter had already been adopted.

arsenal in our front yard? And worst than that, if we are proud of having it and increasing it every year?

The third minimum requirement to achieve peace is neutrality. Neutrality prevents the escalation of conflict, in terms of involved countries, and allows 'neutral' countries to more easily play the role of mediator due to impartiality. Also neutrality avoids the development of military standoffs, such as what the world witnessed during the Cold War world. (It has to be said that while the Cold War remained "cold" between US and the former USSR, it turned into a despicable situation in Central América, South America and Asia.)

Neutrality in the Costa Rican Case is incorporated into Article 7 of the constitution by the formulation of the State's Neutrality Statement, issued in November 1983. In the Japanese case, Article 9 sets the non-recognition of belligerency, in effect a neutrality statement.

Now, having briefly seen these requirements, it is now important to see how effective Japan and Costa Rica have been in meeting them.

Differences in accomplishing the principles

1. Respect for International Law

Concerning the first principle, the respect of International Law, it has to be said that Costa Rica has been an international leader in the promulgation and promotion of International Human Rights instruments, such as the Interamerican Convention of Human Rights (Pact of San José, Costa Rica) and is the seat of the Interamerican Court on Human Rights. It has occupied active and successful roles in the construction of Peace, such as in the Central American Peace Process during the mid 1980s, and one of our best jurists, Elizabeth Odio has occupied chairs in the International Tribunals (International Criminal Tribunal for former Yugoslavia and currently in the International Criminal Court).

In the case of Japan, the provisions have not been respected. Japan has refused to integrate international organs such as the ICC, contradicting the Japanese obligation to pursue international peace and justice. It is important to note the lack of regional Human Rights documents and Tribunals in Asia. Also, although there is no legal obligation towards Japan to do so, there is nothing that impedes Japan from promoting the creation of these instruments and instances. Costa Rica never had the obligation to do so yet did, bringing magnificent social benefits. It is never too late and Japan should start working on the creation of regional Human Rights instruments and Tribunals, in order to contribute to the process of confidence building in the region.

It is important to say that the rule of International Law begins within each country, and inclusion of Peace clauses within the Constitution and an independent Judicial Power willing to uphold the constitutional principles (which Japan does not have) are a necessary starting point.

When the US-UK Coalition of the "willing" decided to divide the world into good and evil, the Costa Rican Government swallowed the lies of the US government and decided to support the coalition. Assuming a historical responsibility to those who forged my country, though still a student, I decided to challenge the government's support in the Supreme Court of Justice on the basis of breaching the Peace clauses within the Costa Rican constitutional system as well as for violating International Law.

The Constitutional Hall of the Supreme Court of Justice unanimously ruled that the government's decision to support the aggression was unconstitutional for being against the International Law of the United Nations as well as the Neutrality Statement of 1983 and for violating the constitutional right to Peace.

In the case of Japan several people tried to challenge their government but a servile Japanese Supreme Court decided to reject the suits under no legal argument.

2. Abolishment of Army

Concerning the second minimum requirement, the prohibition of an army, Costa Rica has followed the constitutional commandment in good faith and indeed we have no armed forces at all.

The country has faced no security or military threats since. We do not worry about any kind of foreign invasion and people do not have to live with the sad scene of seeing military men and women crowding our streets and destroying our forests. This has definitely helped the construction of a peaceful national identity. How can a child grow free of fear and want by seeing soldiers when the only image they can get from a soldier is war, misery and destruction? How can a soldier become a country's proud symbol? Perhaps my cultural limitations do not allow me the capability to understand this concept.

In the case of Japan, after the Peace Agreements that gave full sovereignty back to Japan a deceiving security treaty was concerted with the United States. This “security” treaty has, at least, two undesirable effects. One is the proliferation of US soldiers and armies with its consequent effect of opposing Japanese demilitarization. It has to be said that demilitarization is not only getting rid of national armies, it is getting rid of any armies, including foreign ones.

The second effect is that the Treaty served as a basis to create the unconstitutional self-defense forces, which are in effect a permanent army, clearly banned in the Japanese Constitution. Interestingly, the Japanese Government has recognized that the SDF legality is not clear, but stopped short of stating they were illegal. It is important to note that Japanese Supreme Court has ruled that the “Self-defense” forces are illegal and yet the government clearly has not responded.

Both the Court and the Japanese Government have started absurd discussion on if when Article 9 says that *“land, sea, and air forces, as well as other war potential, will never be maintained”* it includes the Self-Defense Forces. Concerning this desperate effort to find a way to legitimize an army, there are some things that should be mentioned. The first one is that, according to legal terms, where the law does not make a differentiation, people are not allowed to make it. The Japanese constitution does not make any differentiation between self-defense forces and other forces, so under legal principles neither the Government nor the Court can make this distinction.

The second thing to be said is that the creation of the Self-Defense forces violates the legality principle. This basic and fundamental principle of law estates that public organs and officials can only make what the law allows them to make. So, if no legal regulation allows Japan to create and maintain self-defense forces, then having and maintaining them is illegal.

Since the establishment of Costa Rica's new Constitution, the army was effectively abolished and social investment was maximized. Since then social and human development indicators raised and now they still stand alongside those of the so-called “developed” countries. Costa Rica's Human Development Index (HDI) is 0.838, positioning the country number 47th in the world, while Japan is 0.943, ranking 12th. The Costa Rican infant mortality rate is 10.26/1000 births, while Japan's is surprising low at 3.28/1000. The birth rate is 18.6, while Japan's is 9.4; the suicide rate is 43/million, while Japan's is 215/million; the literacy rate is 97% compared to Japan's 99%, the life expectancy is 78 years versus Japan's 82; unemployment is 6.6, Japan 4.5; the crime rate is 12/1000 people and Japan's is 19/1000 people; civil and political liberties 5.5 out of 6, which is the same for Japan.

Balancing the indicators, it can not be said that Japan has a better general living condition than Costa Rica (Costa Rica leads in birth, suicide and crime rates, as well as civil and political liberties). Japan

has a GDP nine times larger than that of Costa Rica and an economy hundreds of times larger. Still, in terms of social aspects, the gap is not so large. We are not here saying that Japan is not doing well, we are just saying that the abolishment of the army as in Costa Rica, followed by a wise investment of resources into human issues, is the best way to grant human development.

The numbers shown demonstrate that the elimination of an army and the redirection of those funds to education and social welfare are a boost for the achievement of millennium development goals. A simple comparison with the rest of Central American countries will be enough. It has to be said that there is no roof concerning human development. Japan essentially wastes roughly \$40 billion US dollars on their military budget per year. One can imagine how much social investment could be made with that amount of money.

3. Neutrality

Finally, concerning the third minimum requirement, in the case of Costa Rica, during the early 80s because of the civil war in Nicaragua, the US government began pushing the Costa Rican government to allow the “Contras” (a guerrilla group trained and supported by the CIA) to set up bases in the northern plains of Costa Rica. This would have summoned Costa Rica into a war as happened with Honduras and El Salvador.

The answer that former president Monge found to escape from the pressure of the US to make Costa Rica become involved in a war was to issue the neutrality statement (at the end, the US was condemned by the ICJ in the case Nicaragua filed against them). This historical example clearly shows that neutrality is actually a very effective defense strategy, which also promotes peace relations and peace keeping.

In the case of Japan, neutrality is an issue that has never been discussed. The clause that sets Japanese neutrality is not as explicit as the Costa Rican proclamation, but nothing impedes the interpretation from being raised. Costa Rica has based its security in neutrality, and the effects can be seen. Japan should shift its policies and take advantage of the constitutional clause that set its neutrality in order to approach to a self-defense strategy that has shown effectiveness and is based on peaceful prevention.

So we see that Costa Rica, without any “security” agreement with the US, without armed forces and by remaining neutral is in effect more secure than Japan. We suffer no threats from surrounding countries and we represent no threat to anyone, whereas Japan suffers the military threat from surrounding countries, and the surrounding countries suffer worrying about a huge Japanese military (self-defense forces).

Call for Action

We live in times when peace is a cornerstone that the world must achieve in order to reach millennium development goals. Basically, without peace the world is condemned to keep suffering misery and the scourge of war. There are factual examples that show us the way to accomplish this and cases in which disobeying the rule of law and basic principles are counterproductive, as well as examples of the success that can be achieved by following basic and simple rules.

We might think that the Japanese constitutional crisis related to Article 9 is a local topic limited to the Japanese people, however this is not true. For peace to be regarded as a global issue, matters occurring in individual countries must be recognized as having an impact worldwide.

I believe in the importance of the work that is being done within Japanese civil society to defend and

make true Article 9. I also wish to emphasize the importance of Japanese civil society's efforts to make it clear that the principles of Article 9, if universalized, are of superb importance towards world peace.

Following this order of ideas, I believe that the Article 9 Global Campaign to Abolish War is a great initiative that should most definitely be supported, promoted and followed by governments and civil society groups and organizations all over the world.