

# 日本和平憲法之修憲爭議 — 由自衛隊邁向國防軍

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## 摘 要

日本是地小人稠的島國，自然資源缺乏，要發展資本主義經濟，有其先天上的缺陷，原料與市場都須外求，這是它對外侵略的動因。二〇〇五年十一月二十二日自民黨成立五十週年大會時公布「新憲法草案」，其最大特色就是刪除憲法第九條第二項不擁有軍隊之規定。二〇一二年四月二十七日再次公布之自民黨修憲草案，將自衛隊改名為國防軍，並增設第九條之二，主要內容係以內閣總理為國防軍最高指揮官；國防軍執行任務時依法受國會管制；國防軍之組織、管制及保持機密之事項以法律定之；國防軍所屬軍人及公務員執行職務所涉之罪或與國防軍機密有關之犯罪，其審判由依法律設立之軍事法院為之。本文以日本和平憲法緣起為開端，次論日本憲法特質與推動憲修改過程，進而探究自衛權概念，最後就日本自民黨修憲草案關於自衛權之爭點加以分析。

## The Controversy to Reform the Constitution of Japan From Self-Defense Forces to National Defense Forces

Chi Lee

### Abstract

Japan is a small island with dense population and insufficient natural resources so raw materials and markets are demanded from outside. This is its congenital defect so as to develop Capitalist economy and the motivation to invade other countries.

The Liberal Democratic Party (LDP) released a draft proposal to reform the Constitution on its 50th anniversary of General Assembly on November 22, 2005. The most significant change is to remove the war renunciation language of Article 9, section 2 of the constitution to prohibit Japan from possessing any armed forces with war potential.

The LDP released a draft proposal again to upgrade the status of Japan Self-Defense Forces to National Defense Forces and revise the Article 9, section 2 of the constitution as the followings. The Prime Minister is the supreme commander of the National Defense Forces which are controlled by the Congress during the mission. The organization, confidentiality control and maintenance of the National Defense Forces are prescribed by law. The Military courts established by law will be responsible for the crimes committed by soldiers; while civil servants belonged to National Defense Forces during the missions or crimes will also be heard by in relation to National Defense Forces confidentiality.

This study starts with the Constitution of Japan; then, the character of Japanese constitution and the process of constitution revision. Subsequently, the concept of self-defense right will be discussed and the argued points will be analyzed regarding the LDP draft proposal to reform its constitution based on the self-defense right.