

Handbook on *the Research Report on the Constitution of Japan*

Research Commission on the Constitution

House of Councillors

JAPAN

2005

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House of Councillors**

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Foreword

The Research Commission on the Constitution of the House of Councillors conducted a broad and comprehensive study on the Constitution of Japan since the Commission's establishment on January 20th, 2000. The Commission compiled five years and three months' worth of research results in the Research Report on the Constitution of Japan and submitted it to the President of the House of Councillors on April 20th, 2005.

This handbook has been made to help you learn the essence of the Report.

**Research Commission on the Constitution
House of Councillors
National Diet of Japan**

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The Constitution of Japan

Acknowledgement

I Regarding the Research Commission on the Constitution (From page 1 to 13 of the Report)

The Research Commission on the Constitution was set up in each House on January 20th, 2000, the opening day of the 147th ordinary Diet session, “in order to conduct broad and comprehensive research on the Constitution of Japan (Article 102- of the Diet Law).” This marks the first time since the enforcement of the current Constitution that a formal research organization on the Constitution has been established in each House.

Historically, the Cabinet had a Research Commission on the Constitution, an official organization of Diet members and experts who conducted research on the Constitution. The Commission submitted a report on its research to the Diet and the Cabinet in 1964. The Commission, however, failed to win all parties’ support due to the objections by some of the political parties that feared that the establishment of an official research organization on the Constitution could automatically lead to constitutional amendments.

The Research Commission on the Constitution we have today has been set up in each House (the Japanese Communist Party and the Social Democratic Party opposed its establishment). Research work started with the participation of all parliamentary parties. After a five-year deliberation, the Commission of the House of Councillors submitted its report to its President.

The Research Commission on the Constitution of the House of Councillors is made up of forty-five members. The Commission has nine directors. The Chairman of the Commission is chosen by its members. The Chairman organizes directors’ meetings to discuss the management of the Commission.

The Rules of the Research Commission of the House of Councillors allow the Commission to be in operation whether or not the Diet is in session. In addition, referral by a member of the House of Councillors is not necessary to sit in on the Commission. These differentiate the Commission from other standing committees.

When the Commission was established, the Board of Directors of the Committee on Rules and Administration agreed on the following three points:

- 1) **The Research Commission on the Constitution shall have no right to submit bills.**
- 2) **The research work shall be completed approximately in five years.**
- 3) **The Chairman shall appoint an acting Chairman from among the directors of the largest parliamentary opposition party.**

The Five Years After the Establishment of the Research Commission on the Constitution (from January 2000 to April 2005)

(From page 15 to 37 of the Report)

During the first year starting in January 2000, the Commission invited a broad range of intellectuals as guest speakers to discuss the grand design of the nation that serves as a foundation for the Constitution. The discussions incorporated the views of those intellectuals on the country's civilization and history. As for the historical process of drafting the current Constitution, we invited former staff members of the General Headquarters of the Supreme Commander for Allied Powers (GHQ), and listened to their experiences and views. (*)

In 2001, we started research on different areas of the Constitution. We set up the four themes of individual research: "General Theory," "Popular Sovereignty and Government," "Fundamental Human Rights," and "Pacifism and Security." These areas of research were completed in and after the fall of 2004, when supplementary research on the Constitution as a whole was conducted. After more opinion exchanges among the Commission members, the completed report was compiled and submitted to the President of the House of Councillors on April 20th, 2005.

Before the submission of the report, several opportunities for broader discussions were provided. The Subcommittee on the Bicameral System and the House of Councillors was set up in February 2004 for these intensive discussions. They compiled the contents of the discussions in a subcommittee report. Open hearings were also held on Popular Sovereignty and Government, Fundamental Human Rights, Pacifism and Security, and Future Japan and its Constitution, in February 2002, May 2002, June 2003, and February 2005, respectively. There are 118 guest speakers who have participated in the discussions of the Commission, including those in the subcommittee. Thirty-one people spoke at open hearings.

Furthermore, delegations of the House of Councillors mainly composed of members of the Commission were sent overseas four times. The mission of the delegations was to do hands-on research on the circumstances surrounding the constitutions of other countries.

The activities of the Research Commission on the Constitution

The Research Commission on the Constitution was established on Jan 20th, 2000.

First Research Year

-January 2000

“Research from the views of intellectuals on the country’s civilization and history”

- Opinion exchanges among the members
- Discussions with guest speakers, including students and former GHQ staffers
- Research by overseas delegation (USA)

Second Research Year

-March 2001

“Research on Popular Sovereignty and Government”

- Opinion exchanges among the members
- Discussions with guest speakers, Open hearing
- Hearing of the views of the Cabinet Legislation Bureau and the Supreme Court
- Research by overseas delegation (Germany, Spain, UK)

Third Research Year

- April 2002

“Research on Fundamental Human Rights”

- Opinion exchanges among the members
- Discussions with guest speakers, Open hearing
- Hearing of the views of “The Japan Federation of Bar Associations” and human rights organizations and others
- Research by overseas delegation (Italy, Belgium, France, EU)

Fourth Research Year

-May 2003

“Research on Pacifism and Security”

- Opinion exchanges among the members
- Discussions with guest speakers, Open hearing
- Research by overseas delegation (Costa Rica, Canada, UN)

Fifth Research Year

-April 2004

“Research on General Theory”

- Discussions with guest speakers
- Opinion exchanges among the members

-October 2004

“Supplementary research on the Constitution as a whole”

- Opinion exchanges among the members
- Discussions with guest speakers
- Reports by each parliamentary group on the current status of their discussions on the issues of the Constitution

-February 2005

“Comprehensive opinion exchanges”

- Open hearing, opinion exchanges among the members
- Report by the Subcommittee on the Bicameral System and the House of Councillors

The Research Report on the Constitution of Japan was compiled and submitted to the President of the House of Councillors on April 20th, 2005

(*) The following is the excerpt of the remarks by former GHQ staff members.

Beate Sirota Gordon,
Former Staff Member,
Government Section, General Headquarters of the Supreme Commander for Allied Powers

"I was among the three people who were in charge of making drafts on human rights. I was 22 years old. I lived in Japan for a decade before the war. I was well aware that Japanese women did not enjoy fundamental human rights as I knew them. We looked at the Constitutions of other civilized countries. We gave a lot of thought to what rights Japanese women really needed. Our supervisors, such as Colonel Charles Kades, did not allow the detailed descriptions of women's welfare in the draft, saying that they should be stipulated in the Civil Code, though they agreed to mention women's fundamental rights themselves in the Constitution. The Japanese Government opposed to the idea of incorporating women's rights in the Constitution. After fierce debates, voices that called for the guarantee of the women's fundamental rights resulted in Article 24."

"I believe the Japanese Constitution is better in its quality than the American counterpart. I don't think it was forced upon Japan. It deserves being protected. When you discuss the future of the Constitution, do not forget to listen to Japanese women."

Richard A. Poole
Former Staff Member,
Government Section, General Headquarters of the Supreme Commander for Allied Powers

"I was 26 years old. I was the head of a committee concerning the Emperor and treaties. We were told to substantially reduce the roles of the Emperor in the draft of the new Constitution. That was to prevent the history from repeating itself that some militarists abused the authority of the Emperor under the Meiji Constitution. The Emperor supported our plan of reducing his roles. It was a huge help for us. We aimed to create a limited monarchy that has the Emperor as a symbol of the unified nation, without sovereignty. The word 'symbol' was difficult to translate into an appropriate

Japanese term, but eventually we were able to find the Japanese counterpart that the Japanese government happily accepted.”

“As for Article 9, I expressed a concern about Japan giving up having military forces forever, but my boss didn’t listen to me at all, saying that it was General MacArthur’s idea, so you couldn’t change it. The current Constitution has many provisions in it that are very vague in their meanings and open for interpretation. This should be corrected. But I don’t support the idea of amending the whole Constitution. You should deal with the issue of the amendments according to individual problems when they arise.”

Milton J. Esman

Former Staff Member,

Government Section, General Headquarters of the Supreme Commander for Allied Powers

“At first, I was opposed to the idea of GHQ making a draft of Japan’s new Constitution. I was against it because I expected that Japanese people would feel they were forced to accept the new Constitution made by a foreign country. I was afraid that it would make our occupation of the country fairly difficult. Luckily, they accepted and cherished the Constitution because it represented what they wanted in politics.”

“It is its basic principle that is the most important in the Constitution. As long as they respect it, future problems related to the Constitution could be resolved by reasonably interpreting appropriate provisions. A formal amendment of the Constitution should be used as the last resort.”

“One more thing I want to mention is that those working in the Government Section at that time hoped that Japan, when it returned to the global community as a productive member, would take a leadership role in international peacekeeping activities under the direction of the United Nations.”

(Mr. Esman was not present for health reasons. His message was read for him.)

Major Issues Discussed in the Research Commission on the Constitution

(From page 39 to 233 of the Report)

This chapter presents the contents of some of the discussions from the Research Commission on the Constitution of the House of Councillors. They are from 'The Part 4, Summary' (From page 223 to 233 of the Report).

The Research Commission on the Constitution of the House of Councillors conducted "broad and comprehensive research on the Constitution of Japan" in accordance with the stipulations of the Diet Law, and discussed a variety of issues about the Constitution. We have reached agreements on some of these issues and have not on others. Among the issues with conflicting views, some views have been approved as "predominant views."

We will present you with some of the major issues and main views of those discussed at the commission.

The Japanese Communist Party and the Social Democratic Party participated in the Commission's discussions on the grounds that they would not allow this Commission to serve as a stepping-stone to the amendment of the Constitution. They opposed the approach of trying to "reach common understandings" on every single major issue to orient the Commission in certain directions. The summary of the Report, however, incorporates the views of both parties.

1. Issues upon Which Common Understandings, Completely or Generally, Have Been Reached

Agreements have been reached on the following issues by all parties: the Liberal Democratic Party, the Democratic Party of Japan, New Komeito, the Japanese Communist Party, and the Social Democratic Party. The word “generally” is added to the issues with some conflicting views within some of the parties and/or within each party.

(1) Three Major Principles (Popular Sovereignty, Respect for Fundamental Human Rights, and Pacifism) (Relating to the Preface, Article 9, 11, and 97)

These three major principles of the Constitution have been a part of life in Japan for about half a century since World War . It is broadly believed that we should maintain these principles. (From page 46 to 47 of the Report)

Popular Sovereignty, Respect for Fundamental Human Rights, and Pacifism are the three major principles of the current Constitution. Pacifism, particularly characteristic of the Constitution, was originally stipulated in antiwar pacts after World War , and later more widely adopted. The United Nations played a significant role in the establishment of the philosophy after World War .

The Commission members highly valued these three principles. One of them pointed out that we should maintain them and make them more sophisticated.

(2) Roles That the Current Constitution Has Played

The Commission members agreed on the excellent quality of the current Constitution and its long-term contribution to the peace, stability, and economic development of the post-war Japan. (From page 48 to 49 of the Report)

The members agreed that the current Constitution made a great contribution to the peace, stability, and economic development of the post-war Japan. Based on that agreement, they discussed possible future shapes of Japan. The topics included how

to establish a state where the Japanese people can find their national identity in its Constitution, how to establish a state where we can work on the establishment of fundamental human rights and take a global leadership role in closing the gaps between advanced and less advanced countries in terms of their protection of human rights, and how to build a state that emphasizes the importance of making international contributions and protecting peace and humanity, rather than pursuing a narrow-minded one-country pacifism.

(3) Firm Maintenance and Further Development of Popular Sovereignty (Relating to the Preface)

The commission members agreed on the importance of maintaining the principle of Popular Sovereignty and of developing it further. (Page 56 of the Report)

Historically, the idea of Popular Sovereignty started to replace Monarch's Sovereignty at the end of the 18th century. It was adopted in the constitutions of many countries as a foundation of democracy and ideal model for nations. Popular Sovereignty is one of the three major principles of the current Constitution along with Respect for Fundamental Human Rights and Pacifism. It serves as a basic principle that supports the country's democracy and governing system.

The Commission members agreed on the continuous maintenance of the principle of Popular Sovereignty and its further development.

(4) Maintenance of the Philosophy That the Emperor Is the Symbol of the State (Relating to Article 1)

For the last 60 years after the end of the war, the philosophy that the Emperor is the symbol of the State has been widely accepted among the Japanese people. The Commission members generally agreed on the policy of retaining the system. (Page 60 of the Report)

Article 1 of the current Constitution stipulates that the Emperor is the symbol of the State and of the unity of the people, and that his position derives from the will of

the people with sovereign power. Also, Article 4 states that the Emperor “shall not have powers related to government.” The characteristic of the position of the Emperor is completely different from that of the Emperors under the Meiji Constitution, who were given all governing powers.

The Commission received various views from the members on the Emperor system. One member mentioned that the Emperor system has a cultural connotation to it in Japan, and that it has been historically very rare for an emperor to gain a direct political power since the system began. Another one said that the Japanese people have given unwavering love and respect to the imperial family, and that the openness of the family to the people is really democratic and we should keep it that way.

(5) Official Duties (Relating to Article 7)

The Commission members generally agreed that the Emperor has some official duties that are not exactly constitutional functions but not purely private acts. (Page 63 of the Report)

Constitutional functions refer to the acts performed by the Emperor based on his constitutional position as the symbol of the State. It is believed that the functions involve a national significance. It is also believed that the Emperor should not be responsible for these functions he performs, in order to protect his neutrality as the symbol with no influence in the nation’s politics.

However, there are some official duties that are not completely private acts by the Emperor. The Emperor’s address at the Opening Ceremony of the Diet serves as an example. The Commission members generally agreed on this point.

The Commission also discussed the validity of the range of the Emperor’s constitutional functions stipulated in the Constitution and the definition of the Emperor’s official duties. Some voiced an opposition to the concept of official duties.

(6) Female Emperor (Relating to Article 2)

The Commission members generally agreed that we should consider having a female Emperor in the future. (Page 65 of the Report)

It is believed that Japan should maintain the imperial succession system in line with the spirit of the philosophy that the emperor is the symbol of the state. The system must win the support of the people and conform to the history and culture of the nation. The Constitution stipulates that imperial succession is hereditary. The Constitution, however, mentions that the Imperial House Law decides how the emperor's position is succeeded. The Law states that a boy on the male side of the imperial family will become an emperor.

At a Commission's discussion, one member raised the figure of a public opinion poll, saying 80 % of the people approve of having a female Emperor and that we should take this fact into consideration. Others said we should not apply pressure on the imperial family to have a boy and that female Emperors did exist in Japan's history after all.

(7) Firm Maintenance of Pacifism (Relating to the Preface and Article 9)

The Commission members agreed that we should firmly maintain the significance and ideal of pacifism. (From page 66 to 67 of the Report)

The principle of pacifism is presented in the Preface and Article 9 of the Constitution. The Japanese people, with their experiences of the horror of the war, feel deeply attached to it. However, some doubt if the principle really fits the status quo of the global community, given that more than half a century has passed since the enforcement of the Constitution. Others, on the other hand, argue that efforts should be made to change the status quo to suit the principle. They emphasize the unchanged validity of the principle stipulated in the Constitution. This, we believe, can be attributed to the fact that opinions vary as to what are the practical means to achieve peace, though people share their hope for peace.

One of the Commission members stated that the accomplishments Japan achieved

in the post-war world and the trust it gained from the global community should be thought highly of, and that the nation should continue to be actively involved in global activities to maintain world peace, emphasizing its unchanged principle of pacifism. Another member mentioned that we should reconfirm the significance of the principle and spirituality of pacifism as the state, and that we should send stronger messages for peace to the global community.

(8) Preservation of the First Paragraph of Article 9 (Relating to the first paragraph of Article 9)

The Commission members generally agreed that we should preserve the first paragraph of Article 9, which stipulates the renunciation of war. (From page 71 to 73 of the Report)

The first paragraph of Article 9 declares the nation's determination to give up wars by stipulating, "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."

The unified view of the Japanese government is that the first paragraph of Article 9 does not deny the right of self-defense, an inherent right for an independent state.

One of the members said at a Commission's discussion that we should preserve the first paragraph of Article 9 because it declares the renunciation of wars of aggression, a widely accepted idea in international laws in line with the spirit of antiwar pacts and the Charter of the United Nations.

(9) Right of Individual Self-Defense (Relating to Article 9)

The Commission members agreed that Japan, as an independent state, is entitled to the right of individual self-defense. (From page 73 to 75 of the Report)

The right of self-defense is usually defined as the right to exercise certain forces for self-defense against imminent or real unlawful armed attack from outside.

It is also said that the individual right of self-defense is a natural right, and that the nation's right of self-defense, as a collection of the individual ones, is also a natural right which comes before the provisions of the Constitution.

The Constitution emphasizes the significance of pacifism, which the Japanese people appreciate. However, people have questioned if pacifism can deny the nation's right of self-defense, and how we should perceive and deal with the presence of the Self-Defense Forces.

When the Self-Defense Forces was founded in 1954, the Hatoyama Cabinet at the time stated that the first paragraph of Article 9 did not deny a right of self-defense inherent in an independent state; therefore, it permitted us to use a minimum military force with which to defend ourselves. The Japanese government has since maintained this view as their basic standpoint.

One of the members argued that the Constitution absolutely allows Japan to have a right of self-defense for the national security and to use its forces for self-defense. Another member maintained the UN Charter stipulates that international laws permit any sovereign state to have individual and collective rights of self-defense, and that Japan is no exception, entitled to the right of self-defense as an independent sovereign state.

(10) Necessity of Having a Minimum Self-Defense Organization (Relating to Article 9)

The Commission members generally agreed that we need a minimum self-defense organization for self-defense. (From page 79 to 81 of the Report)

It was generally agreed at the commission's discussions that a minimum self-defense organization for self-defense is necessary.

When the Self-Defense Forces was founded in 1954, the Hatoyama Cabinet at the time changed the interpretation of 'forces' prohibited in the second paragraph of Article 9. The Cabinet defined them as "the forces that exceed the minimum

necessity for self-defense”(See page 38). They concluded that the Self-Defense Forces is the minimum forces required for the nation’s self-defense, so they are constitutional. The Japanese government has since maintained this view as their basic standpoint.

One of the Commission members argued that an independent state has a right of self-defense, and that a self-defense organization is necessary to protect the lives and properties of the people. A different member maintained that the current Self-Defense Forces is unconstitutional. Another said that they go beyond the minimum necessity.

(11) Civilian Control (Relating to Article 9)

The Commission members generally agreed that maintaining civilian control over the self-defense organization is important. (From page 83 to 85 of the Report)

Democratic control over a military organization is essential in maintaining a democratic state system. The second paragraph of Article 66 of the Constitution stipulates that the Prime Minister and other Ministers of State must be civilians. This is based on the reflection that active military officials became ministers and had huge control over the national politics under the Meiji Constitution. The principle of civilian control places a military organization under the control of civilians.

Recently, some people have argued that the concept of civilian control could go beyond the conventional one. They say that civilian control should also affect other areas such as the declaration of war in the parliament, authority on budgets, the command authority of the leaders of the administrative body, and the authority of the court of justice in case of infringement of the people’s freedom by the military.

One of the members mentioned that we should deal with the concept of civilian control in a broader sense, where the highest military commander-in-chief should be under the control of the parliament of the democratically elected members, not just the narrowly defined view that commander-in-chief must be a civilian. Another member raised concerns, saying that civilian control by the Diet may lose its

substance in the future, given that more and more developed nations are shifting from the parliament/congress-oriented democratic system to a system with more emphasis on administrative body, which has more specialty and mobility.

(12) Emphasis on the United Nations and Necessity of Its Reforms (Relating to the second paragraph of Article 98)

The Commission members generally agreed that Japan's involvement in the activities of the United Nations is important, although the organization needs reforms, such as that of the Security Council. (From page 90 to 92 of the Report)

The global community sought to establish world peace centered on the United Nations, after the horror of the First and Second World Wars. The current Constitution shares in principle the spirit of the Charter of the United Nations that pledges to save the future generations from the disaster of war.

How Japan should be engaged in the peacekeeping activities sponsored by the United Nations is a debatable issue. There are also many different views on the way the United Nations, especially the Security Council, should operate.

At the commission's discussions, a member mentioned the continuous importance of the United Nations in its roles to solve the problems facing the world of the 21st century, including the difficulty in establishing world peace, the correction of the gap between rich and poor, and the destruction of the natural environment. A different member argued that Japan must help the United Nations to strengthen its functions, now that it is easier to do so with some of the conventional obstacles gone, such as the conflict between the East and the West during the Cold War. Another member expected Japan to express itself and conduct itself more in the areas of devising practical global measures centered on the United Nations and strengthening the functions of relevant organizations, including the functions of the International Criminal Court and the establishment of a UN Force or a UN Police Force.

(13) International Contribution (Relating to the Preface)

The Commission members agreed that Japan, as a member of the global community, must be actively involved with international cooperation through its participation in international peacekeeping activities or the utilization of Official Development Assistance. (From page 94 to 95 of the Report)

Japan must bear its responsibility to establish world peace, and not simply pursue one-country pacifism. This is illustrated in the Preface of the Constitution that says, “No nation is responsible to itself alone.”

At the commission’s discussions, the members agreed that Japan, as a member of the global community, must be actively involved with international cooperation through its participation in international peacekeeping activities or the utilization of Official Development Assistance. One of the members argued that each Japanese citizen must understand the importance of international peacekeeping activities and cooperation, so that Japan, as a nation, can take the initiative and actively engage in these activities. Another member proposed that Japan should expand its humanitarian assistance through NGO/NPO, other civilian groups and the Self-Defense Forces, and non-military assistance through ODA, because making an international contribution is a duty for Japan as a member of the global community.

(14) International Cooperation, such as Official Development Assistance (Relating to the Preface)

The Commission members agreed that we cannot achieve the security and peace of the world without solving the North-South problem and the gap between rich and poor, among other chronic economic problems. (From page 97 to 98 of the Report)

The members agreed that we cannot achieve the security and peace of the world without solving the North-South problem and the gap between rich and poor, among other chronic economic problems. Both social and economic assistance are necessary for the troubled nations. Japan shares a part of the responsibility by providing financial and technological resources through the utilization of ODA for the betterment of the economies, societies, and welfare of developing countries.

At the commission's discussions, one of the members insisted that Japan should use ODA more strategically and contribute to the establishment of peace in conflict-stricken areas in cooperation with the global community, and that the contributions should include not only financial ones but also those of personnel and intelligence. A different member argued that Japan's prosperity is based largely on a stable international free trade system, and that Japan has its obligations to share the burden and cooperate with other nations to solve problems that might affect the smooth function of the system. That member added that Japan should not terminate its international cooperation programs or reduce its assistance in a hasty manner, because it would damage Japan's national interest in the long run.

(15) Respect for Fundamental Human Rights (Relating to Articles 11 and 97)

The Commission members agreed on the importance of both the respect for fundamental human rights (one of the three major principles of the Constitution), and their maintenance. (From page 103 to 104 of the Report)

Under the Meiji Constitution legislation did not pay enough respect to fundamental human rights, and had the authority to limit them.

Provisions about human rights in the current Constitution were instituted based on the lessons and reflections from the Meiji Constitution. They were, and still are, considered solid and rich in their content, compared with those of other countries' constitutions.

At the commission's discussions, one of the members mentioned that we should basically keep Articles 10 through 40 that are on fundamental human rights and the rights and duties of the people. A different member said that the respect for fundamental human rights serves as a fundamental core for the Constitution of Japan and should be retained. Another member maintained that the respect for each individual is fundamentals for the Constitution and that it makes the Constitution valuable.

(16) Respect for International Human Rights Laws (Relating to Articles 11, 97 and the second paragraph of Article 98)

The Commission members agreed that we should respect international human rights laws. (From page 104 to 106 of the Report)

After World War , respect for human rights became widespread. Many countries stipulated fundamental human rights in their constitutions and eventually wanted a stipulation of the rights in international laws. These voices resulted in the formulation of the 1948 Universal Declaration of Human Rights. The declaration was made around the same time as Japan's Constitution. They did not have huge differences in their provisions concerning human rights. However, discussions have progressed globally on human rights centered on the United Nations. There have been many human rights-related treaties and pacts signed, such as the International Covenants on Human Rights. It is pointed out that there is a gap arising between these treaties and the Constitution of Japan in terms of the level of the guarantee of human rights.

The Commission members discussed the human rights issue of refugees and asylum seekers in Japan. One of the members said that no discussion is made about the legal effectiveness of human rights-related treaties in Japan's trial cases, and that the rule of law in this country is conducted away from these international laws. As to how Japan should deal with the international guarantee of human rights, one member argued that Japan should play larger and more active roles in the global community, including in the area of correcting a disparity in the level of respect for human rights between developed countries and developing ones. Another member pointed out that, domestically, Japan should establish a system that would respect and practice the policy of the international guarantee of human rights.

(17) Respect for the Human Rights of Women, Children, the Physically Challenged, and Minorities (Relating to Article 14)

The Commission members agreed that we must respect the human rights of women, children, the physically challenged, and minorities. (From page 113 to 114 of the Report)

The Meiji Constitution did not have provisions of the general principle of equality. The current Constitution stipulates the principle in Article 14. This area, among all the rights the Constitution provides, is said to have most developed the concept and application of the guarantee of human rights. Equality under the law, however, has not been completely achieved yet in Japan. In particular, the question of how we can provide equality to minorities and foreigners residing in Japan has garnered attentions.

At the commission's discussions, one of the members talked about the necessity of setting up new laws concerning the reproductive rights and reproductive health for women to make their own decisions about sex and reproduction. Another member argued that we need the legislative stipulation of the rights that recognize children as independent human beings. Another member raised an issue of how to help the physically challenged to participate in society, saying that the legislative body should make laws to make it possible. A different member also proposed making new laws that will guarantee fundamental human rights and achieve comprehensive equality in society, so we can eradicate discriminations against the Buraku people, the Ainu people, the Korean residents of Japan, and foreign workers.

(18) Respect for the Human Rights of Foreigners (Relating to Article 14)

The Commission members generally agreed that we must basically guarantee the human rights of foreigners. (From page 114 to 115 of the Report)

The Constitution is, in its nature, aimed at the people of Japan. It is believed to show the criteria to exercise the power of the state on its people. Therefore, it is a delicate issue if the constitutional rights should be applied to the human rights of foreigners, and if so, how far they should be applied.

At the commission's discussions, the members held the common ground that the current world-wide globalization trends help the human rights issues of foreigners in Japan to garner attention, not to mention the conventional issue of the North and South Korean residents in this country. One of the members urged that we need specific provisions on the guarantee of the human rights of foreigners, and that

these provisions should meet the international standard. Another member said that we need to tackle this issue in order to present our clear vision of creating a constructive network of the Asian civilian societies. A different member argued that with new trade agreements, such as FTA (Free Trade Agreement), making it easier for people to travel among countries, we should set up new laws to deregulate the import of foreign workers and to help them co-exist with the Japanese, and that the Japanese people also have to change their conventional mindset about these foreigners.

(19) Importance of Social Rights (Relating to Articles 25, 26, 27, and 28)

The Commission members agreed that social security, education, and labor are, and will be, important, and that the state must continue to make its utmost effort to guarantee them. (From page 124 to 126 of the Report)

Social rights differ from the classical freedom rights. They are the rights that allow you to pursue individual rights guaranteed by the state aggressively. The social rights the Constitution stipulates are the right to life (Article 25), the right to education (Article 26), the right to work (Article 27), and the basic labor rights (Article 28). It was monumental that the Constitution adopted the provisions about the social rights when it was established. Stipulating the social rights is one thing that makes the current Constitution special.

At the commission's discussions, the members agreed that social security, education, and labor are, and will be, important, and that the state must continue to make its utmost effort to guarantee them. They discussed whether or not these social rights stipulated in the Constitution are applied in the daily lives of the people. More specifically, they focused on the significance and legal characteristics of the provisions of the social rights, the measures to realize them, the relationship between the right to life and social security, the right to work, and the actual working conditions of the people.

(20) Guarantee of New Human Rights (Relating to Articles 13 and 25)

The Commission members agreed that the Constitution should, in principle, guarantee new human rights. (From page 132 to 134 of the Report)

The current Constitution stipulates human rights in detail. These stipulations are the list of the historically important rights and freedoms. However, they do not cover all the human rights that can ever exist.

The world has changed dramatically since the time the current Constitution was enforced. We have to consider new rights that the Constitution has no provisions about, such as the right to know, the privacy rights, and environmental rights. These are called new human rights. They do not have clear standards that distinguish them from other human rights. We have to discuss how we should define them and if we can recognize them as human rights guaranteed by the Constitution.

At the commission's discussions, one of the members proposed incorporating a new human rights catalogue into the provisions of the Constitution to make clear its guarantee of human rights. Another member mentioned that the human rights provisions of the current Constitution, such as Article 13, provide the foundation to protect and guarantee new human rights because they have come about as a result of the people's long-term attempt to promote and realize them.

(21) Separation of Powers (Relating to Articles 41, 65, 66, 69, 76, and 81)

The Commission members agreed that the importance and necessity of the separation of powers will never change. (Page 144 of the Report)

The discussions were carried out on the common understanding that the legislative, administrative, and judicial bodies respectively have to improve their accountability and reciprocal supervision.

At the commission's discussions, one of the members defined the significance of the separation of the three branches as blocking the abuse of power by the checking and balancing of the three branches, to achieve the goals of constitutionalism and the rule of law.

Another member said that the separation of the three branches is essential to run the governing system of Japan smoothly and effectively. A different member argued that we should maintain the separation to protect our freedom. For these reasons, the members agreed that the importance and necessity of the separation of Powers would not change.

**(22) How the Bicameral System and the House of Councillors Should Be
(Relating to Article 42)**

The common understandings were reached on the following points at the commission.

- 1) Maintenance of the bicameral system*
- 2) Necessity of the reform of the House of Councillors and the importance of designing a election system to clearly differentiate it from the House of Representatives*
- 3) Maintenance of the direct election system of the members of the House of Councillors*
- 4) Playing separate and unique roles from the House of Representatives, such as long-term and fundamental commitments to policy issues, the examination of the final account of the state, the strengthening of supervisions of the administration, and the policy evaluation.*
- 5) Legitimacy of the stipulation of the Constitution that places the House of Representatives over the House of Councillors and the necessity to be careful about the relaxation of the requirements for the second vote of the House of Representatives in case of a disagreement between the two Houses.*

The common understandings on the above points, which were first presented in the subcommittee report, were reconfirmed at the commission meetings. (From page 154 to 165 of the Report)

“How the bicameral system and the House of Councillors should be” is an issue that the House of Councillors is responsible for handling. On February 18th, 2004, the Commission set up the “Subcommittee on the Bicameral System and the House of Councillors,” which played a central role in the research. The subcommittee compiled their research work into a report (of which the Japanese Communist Party disapproved) on March 9th, 2005 and submitted it to the Commission.

The Commission confirmed the above-mentioned common understandings in the report and concluded that we should maintain the bicameral system, mainly to reflect various will of the people. The Commission also agreed that we should maintain the direct election system, in which the members of the two Houses are directly chosen by the people as their representatives. It was also confirmed that we should be careful of easing the requirements for conducting the second vote of the House of Representatives when there is a disagreement between the two Houses in their decisions.

The Commission also agreed that the House of Councillors should make the most of its characteristics that the House of Representatives does not share. That is, the House of Councillors, with its longer term for each member and the absence of its dissolution, should design an election system that fits these traits, and make a long-term fundamental commitment to policy issues.

(23) Parliamentary Cabinet System (Relating to Articles 66 and 69)

The Commission members generally agreed that we should maintain our parliamentary cabinet system based on the two Houses. (From page 166 to 167 of the Report)

The basic principle of the parliamentary cabinet system is that a majority party in the Diet forms a Cabinet to be the main body of the administrative authority. Duly elected representatives choose the Prime Minister, who gains the control of the administrative authority with the cabinet ministers under him. This way, there is a bottom-up consistency of democracy in politics. The basic principles of how the nation should be governed are concentrated around the Prime Minister.

The Commission members agreed that we should maintain our parliamentary cabinet system based on the two Houses, and that, more specifically, we should retain the power of appointing the Prime Minister by the House of Councillors and the qualification for the members of the House of Councillors to become Cabinet members. Among the reasons for these arguments was, according to one of the members, that it is important for the two Houses to check and balance each other's functions and collaborate with each other to reflect varied will of the people.

(24) Prohibition of the Establishment of an Extraordinary Tribunal (Relating to the second paragraph of Article 76)

The Commission members generally agreed that we should maintain the policy of prohibiting the establishment of an extraordinary tribunal. (From page 176 to 178 of the Report)

An extraordinary tribunal is a court of justice that can only deal with the cases involving individuals with special status or certain other kinds of cases. More generally speaking, it refers to a court that is not affiliated with the conventional courts.

As for the range of the judicial power, the current Constitution stipulates that it covers all the trial cases including those of administrative suits, and that it belongs to the conventional courts. This basic concept is clear in the second paragraph of Article 76 of the Constitution. It prohibits the establishment of an extraordinary tribunal where the administrative body holds a trial of the last instance. This idea follows the examples of the United States of America and Great Britain.

At a Commission's discussion, a member pointed out that the establishment of an extraordinary tribunal was prohibited because there were human rights infringements in some of the military tribunals.

(25) Facilitation of the Legal Process (Relating to Article 32)

The Commission members agreed that we should facilitate the legal process and enhance trial efficiency. (From page 182 to 183 of the Report)

The justice system reform has been promoted as the last of a series of reforms including those of politics and administration. The reform mainly involves the introduction of the jury system to democratize the legal process with the participation of the general public, and the improvement of the system to nurture the legal profession with the introduction of post-graduate law schools.

The Commission agreed that it is necessary to speed up the legal process and

enhance the efficiency of the trials.

As for the means to achieve these goals, one of the Commission members proposed that program provisions should be set up that emphasize prompt trials and declare that all trials have to proceed swiftly. Another member said that we need to establish a specialty court that handles specialty cases such as those involving the administrative body or intellectual property rights. That member added that the specialty court would not serve as a court of the last incident, and that it should be placed under the Supreme Court and be affiliated with the conventional courts.

**(26) Necessity of Providing Financial Assistance to Private Educational Institutions
(Relating to Article 89)**

The Commission members agreed that it is necessary to maintain the financial assistance to private educational institutions. (From page 192 to 194 of the Report)

The purpose of the provision on public money in the Constitution (Article 89) is to prevent the waste of public money and to secure the independence of private organizations.

Article 89 prohibits spending public money for the educational enterprises that are not under the control of public authority. The constitutionality of this issue has been debated since the enforcement of the current Constitution. In reality, the allocation of the public money to private educational institutions has been considered constitutional, with the help of the enactment of relevant laws. The government standpoint and the judicial precedents support its constitutionality.

The Commission members agreed on the necessity of providing financial assistance to private educational institutions. One of the members said that private educational institutions share the same responsibility for public education as public schools, and that the idea of Article 89 is not to prevent financial assistance to these institutions. That member also pointed out that financial assistance to them is also appropriate from the standpoint of Article 26.

(27) Examination of the Final Account of the State (Relating to Article 90)

The Commission members agreed that one of the main functions of the House of Councillors is to examine the final account of the state. (From page 196 to 197 of the Report)

At the “Subcommittee on the Bicameral System and the House of Councillors,” the members discussed how the examination of the final account of the state by the House of Councillors should proceed and what significance that function should have in the Constitution.

Based on the results of the discussions at the subcommittee, the Commission confirmed that the House of Councillors should emphasize its role to examine the final account of the state. One of the members proposed that the account should be first settled in the House of Councillors and that it should be approved by the Diet, not merely the matter of reporting it to the Diet. That member also said that the Constitution should stipulate that the settlement of the final account has a binding power over the next year’s budget.

(28) Relationship Between the Central Government and the Local Governments (Relating to Articles 92 and 94)

The Commission members generally agreed that amid the ongoing decentralization, the central government and the local governments should build an equal relationship with each other, rather than the conventional relationship of the central one governing the local ones. (From page 201 to 202 of the Report)

It is believed that local autonomy is a basis for democracy, and is a system through which local residents can learn what democracy is all about.

For a long time, the central government controlled and governed local governments. Recently, amid drastic changes in the international and domestic environments, decentralization has been promoted to deal with these changes that the traditional centralized administrative system cannot handle appropriately. With this as a

background, the Commission discussed how local autonomy should operate in the years to come.

At the commission's discussions, the members agreed that the relationship between the central government and local governments should be equal, not a case of the central one controlling and governing the local ones. More specifically, one of the members argued that we might need to amend the Constitution in the future to reflect the way it will be based on the principle of equality between the central government and the local ones. Another member proposed that the Constitution set the standard as to the division of responsibilities between the central government and the local ones, and as to who will coordinate the fiscal disparities between them and how. A different member argued that it is the Local Autonomy Law itself that limits the autonomy and self-responsibility which local governments are supposed to have, because it contains too many detailed regulations.

(29) Local Finance (Relating to Article 94)

The Commission members agreed that the real autonomy of local governments based on the equal relationship with the central one requires them to have sound financial foundations. (From page 202 to 204 of the Report)

The Constitution does not include provisions concerning local finance, while the constitutions of major nations do have detailed stipulations about it, such as how to secure independent revenue resources and how to coordinate finances. The members agreed that healthy financial foundations are essential for the local governments to be fully independent based on the equal relationship with the central government.

Based on this common knowledge, the members discussed tax autonomy, finance autonomy, and the nation's duties to coordinate finance, among other issues. One of the members argued that the Constitution should guarantee tax and finance autonomy for the local governments so that they can procure funds they need based on their own responsibility and judgment. That member also mentioned that the tax autonomy should include the decision-making power for tax items and rates.

(30) Promoting the Autonomy of Local Residents (Relating to Article 93)

The Commission members agreed that local autonomy should be carried out based on the will of the local residents. (From page 205 to 209 of the Report)

The members discussed how to promote the autonomy of citizens as guaranteed by the Constitution. The autonomy of the citizens refers to the principle that local politics and administration should be carried out based on the will of the local residents.

At the commission's discussions, one of the members said that the national politics are based on the representative system, while local politics have participatory democracy as a main pillar that must be guaranteed. For this reason, the Commission concluded that local autonomy should be carried out based on the will of the local residents. Another member proposed that local governments should make their charters, which will stipulate the number of the members of their assemblies, and that they make their own governments through referendums. A different member suggested a "city manager system," in which independent experts will execute administration of a local government. That member proposed that the method to choose the tops of local governments should not be limited to direct elections if we have a do-shu system in the near future. Another member argued that referendums based on local ordinance will be conducted according to relevant laws and that it has a major political implication.

(31) Strengthening the Functions of Lower-Tier Governments (Relating to Articles 92 and 94)

The Commission members agreed that it is important to strengthen the functions of lower-tier governments that will serve as a basis for decentralization. (From page 207 to 208 of the Report)

At a Commission's discussion, one of the members said that it is desirable to make clear the basic idea that the strengthening of the functions of lower-tier governments should come before other issues relating to how local governments

should operate.

Based on this common opinion, a member mentioned that it is necessary to transfer financial resources and authority to neighboring lower-tier governments in order to strengthen the independence and decision-making power of local areas. That member said that it would help local areas regain their individualities.

(32) Decentralization of Power from the Central Government to the Local Governments (Relating to Articles 92 and 94)

The Commission members agreed that decentralization of power should be further promoted. (From page 210 to 211 of the Report)

At a Commission's discussion, one of the members said that from a long-term experience of engaging in the issue of local autonomy the strengthening of the functions of lower-tier governments and the promotion of decentralization of power would no doubt lead to the betterment of the welfare of local residents. The importance of the promotion of decentralization was confirmed by the members.

With this commonly agreed upon, the members discussed how the Constitution should deal with the decentralization of power. One of them argued that the Preface needs a stipulation stating time has come for a change from centralization to decentralization. Another member pointed out that the Constitution needs clear stipulations on the relationships between the central government and the local governments, among the local governments, and among the local administrative chiefs and the local assemblies.

(33) National Referendum System (Relating to Article 96)

The Commission members agreed that they should maintain the national referendum system required to amend the Constitution due to its importance. (From page 216 to 217 of the Report)

Article 96 of the Constitution stipulates that the amendments to the Constitution

require “a concurring vote of two-thirds or more of all the members of each House” and “the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.” Laws are legislated in principle only by the approval of the Diet, while the amendments to the Constitution require a national referendum, a procedure of participatory democracy. This means that the people can make a final decision on the amendments to the Constitution as sovereigns.

At the commission’s discussions, one of the members said that it is reasonable for the people to have the authority to amend the Constitution, and that all amendments to the Constitution have to go through a national referendum. Another member warned that the Constitution is imposed on the State by the people; therefore, amending the amendment process by removing a referendum will cause a legal problem.

2. Predominant Views

The Liberal Democratic Party, the Democratic Party of Japan, and New Komeito generally agreed on the following views.

(1) Stipulation of New Human Rights in the Constitution (Relating to Chapter 3)

Most of the Commission members from the three parties agreed that the Constitution needs new stipulations concerning new human rights. (From page 133 to 134 of the Report)

It was confirmed at the commission's discussions that the Constitution should protect, in principle, new human rights (See page 21). However, there were conflicting views about whether we need new stipulations on new human rights. Some argued that, instead of making new stipulations, the Constitution can deal with the new rights by applying Article 13 ("the right to the pursuit of happiness"), and Article 25 ("the right to maintain the minimum standards of wholesome and cultured living") among other articles.

The Commission saw most of the members support the idea of making new stipulations in the Constitution. As for the reasons, a member maintained that we should meet the changes in the social environment. Another member pointed out that we should clarify the guarantee of human rights. A different member argued that we should consider human rights protections that cover broader ranges, are easy to recognize, and are up to the global standard.

(2) Privacy Rights (Relating to Chapter 3)

Most of the Commission members from the three parties agreed that the Constitution needs new stipulations concerning privacy rights. (From page 136 to 137 of the Report)

Privacy rights derive from the freedom of private life. It is also believed to be the right to control one's own information.

At the commission's discussions, a member said that we should add stipulations concerning the right for the people to protect their private information. Another member urged that the Constitution needs new stipulations that recognize privacy rights as the right to control one's own personal information. It was also pointed out that maintaining privacy is a basis for living a peaceful life and the Constitution needs to stipulate privacy rights as a new human rights provision.

(3) Environmental Rights (Relating to Chapter 3)

Most of the Commission members from the three parties agreed that the Constitution needs new stipulations concerning environmental rights. (From page 137 to 138 of the Report)

Crash industrialization and urbanization have significantly damaged the environment. People suffer from air and water pollution, noise, and unbearable shaking of their houses. This has prompted the idea of environmental rights to preserve the environment and secure the comfortable environment for the people to live in. Nowadays, people are also concerned about the deterioration of the natural environment on the global scale.

The Commission discussed environmental rights and the duties to protect the environment that guarantee a quality environment. This quality environment is considered essential for the people to maintain their healthy, comfortable lives. One of the members said that the Constitution should stipulate environmental rights as the right to enjoy a healthy, quality environment. Another member said that environmental protection is one of the most important areas of international contribution for Japan, and that with a new stipulation, we should make clear that Japan is a nation which values the environment, with its history and tradition of coexisting with the natural environment.

As for the responsibilities of the people and the nation to the future generations and the environment itself, and the aspect of a duty of the people and the nation that they have to protect the environment, one of the members said that the arguments on environmental rights should include the issue of the responsibilities to the future

generations and the environment itself. A different member mentioned the seriousness of the current environmental problems and the negative impacts caused by the actions of private companies and each individual, which have caused more of these problems than the state has. Another member suggested stipulating not only natural rights but also the duties that each individual has to fulfill to prevent the destruction of the environment. Most of the Commission members agreed that the Constitution needs new stipulations concerning environmental rights.

(4) Qualifications to be the Prime Minister and the Ministers of State (Relating to Articles 66, 67, and 68)

Most of the Commission members from the three parties agreed that we should maintain the qualifications to be the Prime Minister and the Ministers of State as they are. (From page 167 to 168 of the Report)

The beginning of the first paragraph of Article 67 stipulates, “The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet.” This means that the Prime Minister must be a Diet member, that is, a member of each House. The first paragraph of Article 68 states, “The Prime Minister shall appoint the Ministers of State. However, a majority of their number must be chosen from among the members of the Diet.” These provisions require a majority of the Ministers of State to be members of the Diet.

Some people argue that the qualifications to be the Prime Minister and the Ministers of State should be limited to the members of the House of Representatives, since a main function of the House of Councillors is monitoring the administration’s activities.

However, most of the Commission members supported the current qualifications. One of the members said that we do not have to narrow the range of the qualifications because there are qualified members in each House. Another member argued that we should keep allowing members of the House of Councillors to be Ministers as long as we maintain the parliamentary cabinet system, which is based on the two Houses.

There were also the members who insisted on amending the current policies. One of them doubted that those who are elected Ministers could execute their duties while fulfilling their responsibilities as members of the House of Councillors, because their functions of monitoring the finance of the state and examining its final account also need to be strengthened. That member mentioned that this characteristic of the House of Councillors has to be considered when we talk about the qualification for the members of the House of Councillors to be the Ministers of State, as well as the power of designating the Prime Minister.

(5) One Year Budget Principle (Relating to Article 86)

Most of the Commission members from the three parties supported the idea of multiple-year budget. (From page 195 to 196 of the Report)

Though some members argued that we should firmly maintain the one-year budget principle, most of the members supported the idea of multiple-year budget. A member against the one-year budget principle said that this principle creates the wrong idea that all the budget money has to be used up by the end of a fiscal year, and that it goes against the direction of achieving the goal of restoring fiscal balance.

A member proposed practical approaches to preparing multiple-year budget. That member said that we do not have to completely abandon the one-year budget principle from the standpoint of financial democracy. That member proposed operating the budget system flexibly, by applying the legally stipulated system for continuing expenditures to the expenses that go over one year.

Another member for the one-year budget principle argued that it can secure a certain level of financial discipline, though that member admitted it has some negative effects.

(6) The Future of the Research Commission on the Constitution

Most of the Commission members from the three parties asked for continuing

discussions of the procedure to amend the Constitution. Japanese Communist Party and Social Democratic Party strongly opposed to this view. (From page 220 to 221 of the Report)

The amendment procedure of the Constitution stipulated in Article 96 only suggests its framework. The actual amendment would require new laws that stipulate the procedure, including how to conduct a national referendum. Any law to that effect has not been established yet.

The discussions at the commission focused on this issue along with the future roles and necessity of the Commission after the submission of the report.

Most of the members supported the idea of maintaining the Commission for further discussions. One of them argued that immediate facilitation would be needed to prepare details on the amendment procedure and a national referendum. That member also said that they need to keep this Commission to discuss these issues or take necessary measures to utilize this Commission or an alternative organization of the House to conduct the research, drafting, deliberations, and decisions on these issues. Another member emphasized that the issue of the possible enactment of a law on the constitutional amendment procedure has to be on the research agendas of the Commission, given its huge significance.

There were also members opposed to the maintenance of this Commission. One of them argued that they will not allow the Commission to be a stepping-stone for the amendment of the Constitution, especially, that of Article 9 and that the Commission should be dissolved once it completed its role of submitting the report to the President of the House of Councillors. Another member said that after its dissolution new venues for discussions should be created for the people to discuss how to realize the principles of the current Constitution. That member also asked for the participation of Diet members in these discussions. Most of the Commission members, however, supported continued discussions at the commission on the procedures of the constitutional amendment.

3. Major Issues with Separate Views

The followings are the issues that even the Liberal Democratic Party, the Democratic Party of Japan and New Komeito did not reach agreements on.

(1) Philosophy and Contents of the Preface (Relating to the Preface)

The Commission members discussed philosophy and contents that need to be added in the Preface. Besides the previously mentioned three principles, the members raised Japan's history, tradition, and culture, among other elements. No agreement was reached on any of them. (From page 50 to 55 of the Report)

Many constitutions of other countries have prefaces as the Japanese Constitution does. Their contents vary. Some stipulate how their constitutions came about. Others state the objectives, goals, principles, or ideals of their constitutions.

The preface of Japan's Constitution declares its basic principles and ideals. It comprises a part of the whole Constitution and has the force of law. These are characteristics of the Constitution.

The members generally agreed on the positive roles that the Preface has played. They said that it explains how Japan should function as a nation and how the nation and its people should be related to each other. They praised that it does so in a clear and simple language to the nation and to the rest of the world.

As for the philosophy and contents that should be included in the Preface, the following were proposed, besides the aforementioned three principles. They proposed "Japan's history, tradition, and culture," "the national identity," "the nation's goals of becoming not only an economy-oriented country but also education and culture-oriented country," "international contribution," "other national goals of realizing world peace and nuclear disarmament and of becoming a nation based on its intelligence and creativity," among other goals. Opinions varied on which of these should be included in the Preface.

(2) Head of State (Relating to Article 1)

The Commission members were divided on whether the Emperor should be interpreted as “Head of State,” and whether a stipulation to that effect should be included in the Constitution. (From page 61 to 62 of the Report)

The Cabinet Legislation Bureau stated an opinion at a Commission meeting on June 6th 2001 as follows. They said that the current Constitution does not have any particular stipulations on “Head of State,” but that the government basically supports the idea of calling the Emperor the Head of State based on a view that anyone at the top of a nation can be called the Head of State, even if he or she does not have authority to rule the nation. One of the members, however, said they feel uncomfortable about calling the Emperor the Head of State, though that member supported respecting him as a symbol of Japan’s culture and tradition. Another member showed a clear opposition to the idea of calling him the Head of State.

(3) Pros and Cons of the Necessity of Amending the Second Paragraph of Article 9 (Relating to the second paragraph of Article 9)

The Commission members were divided on the necessity of amending the second paragraph of Article 9, which denies the maintenance of forces and the right of belligerency. (From page 71 to 73 of the Report)

The second paragraph of Article 9 states, “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.” How to interpret “war potential” and “the right of belligerency” has stirred a lot of controversy.

When the Constitution was enacted, Prime Minister Yoshida mentioned his interpretation at a Diet session. He said that even though Article 9 did not deny the right of self-defense directly, since the second paragraph of Article 9 denied the maintenance of all forces and the right of belligerency, the state had abandoned the right of engaging in war for self-protection, and also the right of belligerency. It was believed that his view had its foundation on the definite abandonment of forces.

However, in 1952, when National Safety Force, the predecessor of Self-Defense Forces, was established, Prime Minister Yoshida changed his view slightly. He expressed that the forces prohibited by the second paragraph of Article 9, whether it was for aggression or self-defense, were meant to be those equipped with weapons that could carry out modern wars.

When the Self-Defense Forces was founded in 1954, the Hatoyama Cabinet at the time stated that the first paragraph of Article 9 did not deny a right of self-defense inherent in an independent state; therefore, it allowed us a minimum capacity of forces with which to defend ourselves. The Cabinet's view changed the meaning of "war potentials" in the second paragraph of Article 9 from those that could carry out modern wars to those beyond the minimum necessity for self-defense. The Japanese government has since maintained this view as their basic standpoint.

At the commission's discussions, the members expressed varied views on the necessity of amending the second paragraph of Article 9. One of the members for the amendment pointed out that there are inconsistencies between the provisions and what really goes on in the world, and that we need to amend the article when it is considered more appropriate to go with the reality. Another member, who also supported the amendment to the second paragraph, argued for the Constitutional stipulation of the capacity to maintain the Self-Defense Forces and additional military forces for international cooperation.

Among those for the preservation of the second paragraph of Article 9, one member said that the Constitution has had its principles deeply rooted in the mindset of the people since its enforcement more than half a century ago, and that Article 9 has a special significance as a brake that can work against runaway militarism.

Another member proposed adding new provisions to the current Constitution when necessary. That member claimed that on the premise of preserving the first paragraph of Article 9, which renounces war, and its second paragraph that denies the possession of war potentials, we should stipulate the Self-Defense Forces' status and add a new provision that can provide rationales for Japan's international contributions.

(4) Pros and Cons of Permitting the Right of Collective Self-Defense (Relating to Article 9)

The Commission members were divided into three groups on this issue, those who fully approve of the right of collective self-defense, those who are against, and those who approve under specified conditions. Even those who fully approve were divided on whether the right should be stipulated in the Constitution or should be guaranteed by the interpretation of the relevant clauses. (From page 76 to 79 of the Report)

According to international law, a state has the right to use force to stop armed attack on a foreign country with which it has close relations, even when the state itself is not under direct attack.

The interpretation by the Japanese government of this right is as follows. It defines that Japan, as a sovereign state, has the right of collective self-defense under existing international law, but that it is unconstitutional to exercise this right, because the exercise of the right of self-defense as permissible under Article 9 is authorized only when the act of self-defense is within the limit of the minimum necessary level for the defense of the nation. The exercise of the right of collective self-defense exceeds that limit and is constitutionally not permissible.

Discussions at the commission focused on whether this government view is valid and whether the right of collective self-defense should be stipulated in the Constitution. The members were divided into three groups, those who fully approve, those who are against, and those who approve under specified conditions.

One of the members in full approved said that the UN Charter stipulates that international law allows any sovereign state to have individual and collective rights of self-defense, and that Japan is no exception, and is entitled to the right.

One of the members who deny the right claimed that what could happen on Japanese territory is covered as the individual right of self-defense. Another member said that it is Japan's true mission to help establish the measures to provide collective security under the framework of the United Nations. That member argued that exercising the right of collective self-defense goes against this mission.

One of the members who approve of the right under specified conditions said that we should exercise the right of collective self-defense if applied to the implementation of a unanimous decision made at the United Nations, though its exercise requires discretion as long as it means engaging in a war along with other nations in foreign countries. That member also said that engaging in a war as part of a UN Force would be extremely unlikely, because there is almost no possibility that such a Force would be formed in the future.

There were also differences in opinion among those in favor of the exercise of the right. Some supported the idea of stipulating it in the Constitution. The others claimed that an interpretation of the Constitution would be enough.

One of the members who wanted a stipulation in the Constitution argued that the government view, which is that we have the right of collective self-defense but its exercise is unconstitutional, can never win international understanding and needs a complete amendment. That member added that it is more necessary to amend the Constitution, whose ambiguities invite varied interpretations.

One of the members who opposed the stipulation said that stipulating Japan's responsibilities for international contribution in the Preface would be enough. That member raised the concern that the United States might take advantage of it if Japan stipulates it because the Japan-US Security Treaty does not clearly state what Japan's role should be in terms of collective self-defense.

(5) Stipulation of the Self-Defense Forces in the Constitution (Relating to Article 9)

The Commission members were divided on whether the Self-Defense Forces should be stipulated in the Constitution, and if so, how. (From page 79 to 82 of the Report)

The Commission members generally agreed that we need a minimum organization for self-defense (See page 13).

The Constitution does not have references to the current Self-Defense Forces and the force necessary for self-defense. Opinions varied as to whether we should stipulate these issues in the Constitution.

One of the members for the stipulation of the Self-Defense Forces said that a sovereign nation is entitled to the right of self-defense, and that a military force is indispensable to protect the lives and properties of its people. That member also argued that there is a national consensus among Japanese people that the Self-Defense Forces is constitutional. Another member said public opinion polls show that those for the amendment to the Constitution want the clarification of the position of the Self-Defense Forces in the Constitution most, among other reasons for the amendment. That member also said that other nations have their military forces for self-defense clearly mentioned in their constitutions, and that we should follow suit.

One of the members against stipulating the Self-Defense Forces said the Force is no doubt identical to the “force” specified in Article 9 and that the Self-Defense Forces should be modified so it does not violate the Constitution, which has a longer history than the Self-Defense Forces. That member proposed discussing how we can make it happen.

As to how the Self-Defense Forces should be stipulated in the Constitution if it is in the future, one of the members maintained that the Constitution needs the stipulation of clear rules that prevent the Self-Defense Forces from turning into a “dangerous weapon.”

(6) Stipulation of International Contributions in the Constitution (Relating to the Preface and Article 9)

The Commission members were divided on whether the Constitution needs stipulations of International Contributions. Some members supported the idea of actively promoting Japan's military participations in peacekeeping operations or multi-national forces approved by the United Nations. Others maintained that Japan should only make international contributions in non-military fields. (From page 94 to 95 of the Report)

The Commission had a consensus that Japan should be actively involved in international cooperation activities such as international peacekeeping activities and ODA, official development assistance (See page 16). The members, however,

expressed separate views on the stipulation of international contributions in the Constitution. One of the members emphasized that each Japanese person needs to understand and appreciate the significance of these contributions so that Japan can make a more voluntary and active commitment to them. That member argued the body of the Constitution needs the stipulation of the principles of international cooperation and Japan's willingness to participate in the activities of international organizations.

There were also separate opinions on whether Japan should make military contributions. Some supported the idea of Japan being actively engaged in military operations, such as peacekeeping operations and also multinational forces approved by the United Nations. Others maintained that Japan's international contributions should be limited to non-military field.

Those for Japan's military contributions asked for a more active involvement by Japan in multinational forces approved by the United Nations and peacekeeping operations that involve the use of force. One of them said that the drastic changes of the world politics in the post-Cold War period have caused a series of conflicts and instabilities, which necessitates these operations. That member argued these are valuable activities and that it is worthwhile for Japan to participate in them actively. That member defined these activities as an example of ideal venues for Japan to make its international contributions.

The others maintained that Japan should make international contributions only in non-military fields. One of those members specified the areas for non-military contributions as nuclear disarmament, the peaceful settlement of the North-South problem, and the prevention of environmental destruction, among other non-military issues. That member stressed the importance of Article 9, saying that it can serve as a basis for Japan to take a unique leadership role in tackling these issues. That member strongly denied a view that Article 9 stands in the way of Japan making international contributions.

(7) Stipulation on Emergency Situations in the Constitution (Relating to Article 9 and Chapter 5)

The Constitution of Japan does not have provisions on how to prepare for and deal

with emergency situations. The Commission members had separate opinions on whether the Constitution should stipulate them. (From page 99 to 100 of the Report)

The current Constitution does not stipulate how to prepare for and handle emergency situations. These include natural disasters and national security emergencies, such as warfare, terrorism, and massive riots.

There is a view that, without the stipulation of how to deal with emergency situations in the constitution of a nation, its spirit might be infringed upon when these situations occur. Germany takes this stance. There is also a view that the current Constitution has a connotation that such provisions are unnecessary. This view has its rationale on the idea that the Constitution was enacted based on the nation's historical soul-searching on the applications of such provisions in the Meiji Constitution.

There is also an opinion that we need a new basic law dealing with emergencies, and we should incorporate provisions similar to those of the legislation to protect civilians in it, without amending the Constitution. This view is based on the concern that the stipulation of how to deal with emergencies in the Constitution may conflict with the spirit of the respect for fundamental human rights, which is already stated in the Constitution.

The members discussed whether the Constitution should stipulate how to deal with emergency situations in the order of constitutionalism. They had separate views.

Those for having such provisions pointed out a shortcoming of the current Constitution. One of those members said that the Constitution in effect allows the nation of Japan to give up its duty to protect the lives and properties of its people, a minimum duty imposed on a modern nation. That member maintained that the Constitution even denies preparing for national emergencies.

The other group of the members took a negative stance toward having such provisions. One of them said the idea highly suggests that the lack of provisions for emergencies is not a defect of the Constitution but something that shows its positive link to the adherence to pacifism.

(8) Relationship Between Human Rights and Public Welfare (Relating to Article 12)

The Commission members were divided as to how we can achieve a good balance between human rights and public welfare, and whether the Constitution needs to stipulate new provisions of the people's duties to guarantee public welfare. (From page 109 to 110 of the Report)

Article 12 and other provisions of the Constitution prohibit the abuse of the freedom and rights guaranteed to the people and stipulate that they should be utilized for the public welfare. The public welfare refers to the public interest that allows all the people to live happily together.

The members had varied opinions as to how we should define the fundamental human rights of a private individual and their relationship with the public interest, and how we should coordinate the two.

One of the members proposed the clarification of the concept of the public welfare, pointing out that the term is too vague and unclear to grasp. A different member said that the limitations of human rights are excessively constrained under the name of protecting the public welfare, and that we should redefine the meaning of the public welfare. Another member argued that mental freedom needs strict standards of restriction on how and when it is allowed, and that economic freedom needs individual standards to apply according to each case. It was also maintained that restraining human rights for military purposes to protect the public welfare basically should not be allowed. Another member opposed the idea of restraining human rights based on easy and unconvincing theories of protecting the public welfare.

They had separate views on how to deal with the issue of the public welfare and how to achieve it.

(9) Rights and Duties (Relating to Chapter 3)

Some members argued that the Constitution needs more stipulations of the people's duties and responsibilities. They supported their argument by saying that a mature

democratic nation imposes responsibilities and duties on its people in exchange for freedom and rights. Others opposed to this view. They said that it is not necessary for the Constitution to reemphasize the people's duties and responsibilities, given the historical background that one of the primary purposes of the Constitution was to limit the national authority for the guarantee of the people's rights. (From page 110 to 112 of the Report)

At the commission's discussions, some members wanted more stipulations of duties and responsibilities in the Constitution than there currently are. One of them said that the Constitution does not have a fair balance of stipulating rights and duties. That member stressed the importance of stipulating new provisions concerning duties.

Another member discussed what obligations we should add in the Constitution. That member raised the obligation to defend the country, the obligation to share the burden of the social costs, such as social security premiums, in addition to tax, the obligation to protect their own families, the obligation to respect the dignity of people's lives, the obligation to respect and defend the Constitution, the obligation to conserve the environment, among others.

Others denied the necessity of new provisions on duties and responsibilities. One of them argued that a primary purpose of the Constitution is to stipulate the duties of the state toward its people, not vice versa. That member opposed the idea of newly stipulating in the Constitution duties and responsibilities, which are the other side of the same coin of rights and freedom.

(10) Foreigners' Right to Vote (Relating to Article 15)

The Commission members were separated as to whether foreigners living in Japan should be given the right to vote in local elections. The issue was discussed in relation to how we should define the significance of popular sovereignty and local autonomy. (From page 115 to 116 of the Report)

The Commission members generally agreed that the fundamental human rights of foreigners should be basically guaranteed (See page 19). They had separate opinions

as to whether foreigners in Japan should be given a voting right in local elections.

Some supported the idea of providing the foreigners in Japan with the right to vote in local elections. One of those members said denying foreigners with permanent residency their right to vote in local elections does not make sense, given duties and responsibilities they fulfill as community members. That member argued that we need to guarantee it as a fundamental right, along with the guarantee of the right to participate in local referendums. Another member maintained that we need to think of new election systems that can reflect the will of foreigners in Japan with permanent residency. A different member complained that it is unreasonable that only foreigners lack the right to vote. Another member supported the idea of giving them the right to vote, pointing out that it is reasonable from the standpoint of providing collective means to respectfully handle their self-determination.

Other members pointed out the difficulties in providing the right to vote in local elections for foreigners in Japan with permanent residency. One of them wanted a stipulation to that effect in the Constitution. That member said that their duty to pay tax does not automatically guarantee their right to vote, explaining that they pay their tax for the social infrastructure on which they carry out their economic lives and activities. Another member raised the difficulty under existing circumstances in making a clear distinction between the right to vote in national elections and in local elections, because some issues relate to both, such as national defense and education.

No one argued for providing these foreigners with the right to vote in national elections.

(11) Freedom of Expression (Relating to Article 21)

The Commission members were divided on how freedom of expression should be regulated in accordance with the development of mass media and information technology. (From page 117 to 119 of the Report)

Freedom of expression refers to the freedom to publicize and communicate thoughts and information. It is an essential right to have the process of democracy function

smoothly.

The development of information technology, such as mass media and the Internet, has created problems that did not exist before, including those of the outflow of personal information and of using the technology for criminal purposes.

The members mainly debated how to protect human rights and privacy under these circumstances, how to control the mass media to protect juveniles from harmful information, and also how to regulate harmful information on the Internet.

Some asked for new regulations on these newly developed media. One of them said that resorting to trial cannot keep up with the fast pace with which new types of human rights violations continue to happen. That member stressed the importance of having some preliminary legal regulation for it.

Another member proposed making a damage payment higher for those who infringe on the human rights of others in these media. That member argued for the measure, saying that the victims would have to face the difficulty of having to pay for judicial costs on their own for a long time, even if judicial help is ultimately important. A different member raised the question of whether the regulation needs the stipulation of protecting juveniles.

The other group of the members insisted that we should be careful with these regulations. One of them argued that freedom of expression should not be basically restricted, and that the free market of ideas should decide which should survive and which should not. That member pointed out the importance of how to protect and regulate freedom of expression in the new media, including the Internet, which has come out of today's advanced information age. That member also mentioned the possibility that the mass media could infringe on the privacy rights of the people.

The Commission members had separate views on how to regulate the mass media and information technology in accordance with their development.

(12) Separation of State and Religion (Relating to Article 20)

The Commission members are divided on how, and how much, the state should be separated from religion, considering Japan's history, tradition, and culture. (From page 120 to 121 of the Report)

To avoid making the same mistakes of the pre-war era, the current Constitution strictly separates state and religion. The latter part of the first paragraph and the third paragraph of Article 20 of the Constitution prohibit any religious organization from receiving privileges from the state, stipulating its neutrality. However, members are divided on how, and how much, the state should be separated from religion, considering Japan's history, tradition, and culture.

One of the Commission members argued that, though basically supporting the principle of the separation of state and religion, the participation of the state and local governments in certain religious activities should be allowed if these activities can be categorized as social rituals, or conventional or cultural activities. Another member argued that the Constitution needs to stipulate right after Article 20 that this article does not deny the tradition, culture, and convention common to the Japanese. They insisted on allowing more participation of the state and local governments in the activities related to Japan's culture and tradition.

Others, however, disagreed with these views. They asked for the strict enforcement of the separation of state and religion. One of them pointed out the importance of Article 20, saying that Article 20 came into being to avoid repeating the mistakes caused by the pre-war regime. That member stressed that the pre-war regime had an extremely close tie with state-sanctioned Shinto and its shrines, and that the tie still exists.

(13) How the Cabinet Should Be, and the Enhancement of Its Functions (Relating to Chapter 5)

Some argued for the enhancement of the functions of the Cabinet, and others for the enhancements of the functions of the Diet. (From page 171 to 172 of the Report)

The principle of the parliamentary cabinet system is that a majority party in the Diet forms a cabinet and functions as the main body to exercise administrative

power. The argument focused on what improvements are necessary under this system. At the commission's discussions, some argued for the enhancement of the functions of the Cabinet, and others for that of the functions of the Diet.

One of the members for enhancing the functions of the Cabinet argued that it is necessary to allow more leadership by the Prime Minister. This is, that member said, needed to eliminate sectionalism, along with the enhancement of the functions of the Cabinet as a whole.

One of the members for enhancing the functions of the Diet emphasized that the more realistic challenge is how to enhance the function of the Diet to oversee the functions of the Cabinet. That member advocated the necessity of revitalizing the lawmaker-initiated legislation system and drastically improving the current political system of consulting advisory bodies.

(14) Direct Election System of the Prime Minister (Relating to Article 67)

The Commission members were divided on the introduction of the direct election system of the Prime Minister. (Page 174 of the Report)

The direct election system of the Prime Minister refers to the system by which the people directly choose the Prime Minister, the head of the administrative body. Article 67 of the Constitution says, "The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet," stipulating it is the Diet members who choose the Prime Minister.

Some people support the idea of the direct election system of the Prime Minister. They argue that the system will produce the Prime Minister in a way that is more likely to reflect the will of the people.

Others, however, oppose to the idea. They express the concern that the Prime Minister chosen by this system may lack a strong power base within the Diet, which may make the functions of the administration body deadlock.

At the commission's discussions, the members were divided on the introduction of

the direct election system of the Prime Minister.

One of the members against the introduction of the system said that you cannot rule out the possibility of populism occurring in Japan's politics. Another member raised other issues, such as how to have the Prime Minister resign and how to deal with the issue of the collective responsibility of the Cabinet. That member also pointed out whether the Diet has the right to submit a non-confidence resolution to the Prime Minister, and what would happen when the Diet is dissolved. A different member maintained that the direct election system of the Prime Minister is not compatible with the characteristics of the parliamentary cabinet system stated in the Constitution.

A member who values the system asked the people to raise their awareness of the parliamentary cabinet system in order to thoroughly discuss the direct election system of the Prime Minister. That member said the Japanese people in general lack the awareness to participate in elections of the House of Representatives to choose the Prime Minister, and that each of us should make the utmost effort to firmly establish a true parliamentary cabinet system in Japan's politics. Another member argued for the shift from the parliamentary cabinet system to the direct election system of the Prime Minister in order to familiarize the people more with the idea of popular sovereignty and to completely break away from bureaucracy-oriented politics.

(15) Establishment of a Constitutional Court (Relating to Chapter 6)

The Commission members were divided on the issue of a constitutional court. (From page 187 to 189 of the Report)

There are generally two kinds of trials on constitutions, one by conventional courts of justice, and the other by constitutional courts. These trials deliberate and decide if a law, order, or regulation will conform with the constitution.

The constitutional trials by conventional courts of justice are conducted through the deliberation of an actual court case. Japan, the United States, and some other nations adopt this system. On the other hand, the constitutional trials by

constitutional courts are conducted by courts specifically organized to deliberate issues concerning constitutions. They function independent of regular courts of justice and administrative litigations. They do not deal with actual trial cases, but with targeted provisions themselves to decide whether they fit the constitution. Germany, among other nations, adopts this system.

Article 81 of the Constitution of Japan stipulates that a conventional court of justice conducts trials on the issue of constitutionality. However, the current system of Japan's constitutionality trials is often criticized for having problems, some of which were raised at the commission's discussions.

Being aware that the current system has problems, the Commission members discussed how the trials on the issues of constitutions should be conducted. The members were divided on the introduction of a constitutional court. Some supported the idea, and others expressed negative views.

One of the members for the idea argued that it is necessary to establish a constitutional court as a court of the first and last instance. That member said that the court would play dual roles as exercising concrete norm control and abstract norm control.

One of the members who had negative views of the introduction of the system raised problems with abstract deliberation conducted by a constitutional court. That member said that the court will have to make political judgments, and that they may put the maintenance of order before the protection of human rights.

That member supported the incidental system to determine constitutionality, saying that this is a great system under which judicial reviews will be conducted on an actual incident with deep discussions, and that the system will complement an abstract aspect of the legislative procedure.

(16) Stipulation of the Financial Assistance to Private Educational Institutions in the Constitution (Relating to Article 89)

The Commission members were divided on whether the current stipulations in the

Constitution regarding financial assistance to private educational institutions should remain as they are. (Page 193 of the Report)

As for the financial assistance to private educational institutions, Article 89 prohibits spending public money on educational enterprises not under the control of public authority. Naturally, since the enforcement of the Constitution, there have been a lot of debates as to the constitutionality of past cases concerning the expenditure of public money to private educational institutions.

At the commission's discussions, the members agreed that it is necessary to provide private educational institutions with financial assistance. They confirmed that there are actually laws that allow financial assistance to reach these institutions, and that the government's interpretation and the related court precedents regard it as constitutional (See Page 25).

The members were divided, however, about whether the Constitution needs amendments regarding this issue.

One of the members for the amendment of provisions of the Constitution said that the literal interpretation of Article 89 would clearly tell you that the financial assistance to private educational institutions is unconstitutional. That member argued for the amendment of related provisions in case they do not reflect the reality, and that the reality seems reasonable.

One of the members against the amendment insisted that the financial assistance to private educational institutions has been interpreted as constitutional since the time of the deliberation of the draft of the current Constitution at the Imperial Diet. That member maintained that Article 26, which stipulates the right to education, also supports the constitutionality of this measure.

(17) Board of Audit (Relating to Article 90)

The Commission members were divided on whether or not the Board of Audit should be attached to the Diet or the House of Councillors. (From page 197 to 198 of the Report)

Board of Audit is an organization stipulated in the Article 90 of the Constitution, which audits the final account of the expenditures and revenues of the State. Article 1 of the Board of Audit Law defines that it “shall have an independent status of the Cabinet.”

The commission’s discussions focused on the positioning and functions of the Board of Audit. It was well considered that the examination of the final accounts of the state is a major function of the House of Councillors.

The Commission members were divided on how the Board of Audit should be positioned in relation to the House of Councillors and what organization it should be attached to, among other issues.

Some members supported the idea of attaching the Board of Audit to the House of Councillors. One of them said that it would make the House of Councillors more responsible for examining the final accounts of the state. That member said it is not the very best measure, but worth implementing.

Others were against the idea of attaching the Board of Audit to the House of Councillors. One of them insisted that the current system should be maintained, saying that its independence should be maintained.

(18) Local Referendum System (Relating to Article 93)

The Commission members were divided on whether a local referendum system should be legislated. (From page 208 to 209 of the Report)

There have been examples of local referendums conducted to reflect the will of the local people concerning important issues such as the construction of a nuclear power plant. The Constitution and the Local Autonomy Law, however, do not particularly have a reference to the implementation of a local referendum about individual issues.

There is a view that, with a system of implementing a local referendum about

individual issues, people will become more aware of their democratic rights. Others, however, point out its potential problems, such as its legal positioning and the danger of its possible abuse.

The Commission members were divided as to the legislation of a local referendum system. Their opinions on the status quo of the local referendum system in Japan varied from positive and negative ones to the cautious ones about the legislation of a local referendum.

Some members expressed negative views of the current local referendum system. One of them pointed out that the Public Office Election Law, which strictly regulates the elections of assembly members, does not apply to corruption or house-to-house canvassing in local referendums. That member said that though people usually value the result of participatory democracy more, it is not necessarily valid.

Others appreciated a local referendum system. One of them said that we will achieve the politics that reflect the will of the people more directly, by further promoting decentralization of authority so that major decisions affecting their daily lives will be made by local governments. That member said that the introduction of a local referendum system is one of the effective ways to do so.

Other members expressed cautious views about the introduction of a local referendum system. One of them maintained that the will of the people can be reflected through the elections of their local administrative chief and assembly members or by the use of developed communications systems. That member raised the concern that the implementation of a local referendum system may deny the significance of the direct election system of local administrative chiefs and assembly members and the modalities for indirect democracy stipulated in the Constitution. That member proposed considering a local referendum system as a complementary method.

(19) Do-Shu System (Relating to Articles 92 and 94)

The Commission members were divided on whether we should introduce a do-shu

system. (From page 211 to 212 of the Report)

The Commission members agreed that decentralization of power should be further promoted (See page 29). They were divided, however, on whether we should promote it under the framework of the current local government system or whether we should establish a new framework that will replace the current one. Easy local amalgamation in an attempt to strengthen the functions of lower-tier governments may cause negative influences on the functions of prefectural governments. There are varied views about this issue, including arguments for establishing regional associations of prefectures, or even implementing a do-shu system of new upper tiers.

The do-shu system refers to a new upper tier system of dividing the nation into new political blocks larger than the conventional prefectural system. This is to achieve possible merits brought by the broader-based local government system.

The introduction of a do-shu system was discussed, including the issue of amending the conventional prefectural system. The members were divided as to its introduction.

One of the members for its introduction argued that the current administrative and political reforms will not be completed without restructuring local government systems. That member proposed to consider the introduction of a do-shu system or a federation system.

Another member pointed out a positive influence by its introduction, on the progress of the administrative reform. That member argued that, with a do-shu system, the current local administrative structures would be vastly simplified, which will streamline the operations of the central government.

The others insisted on being careful about its introduction. One of them argued that the introduction of a do-shu system could make local autonomy virtually non-existent, saying that the system only makes it easier and more convenient for companies to carry out huge business projects.

(20) Requirements for the Amendments to the Constitution (Relating to Article 96)

The Commission members were divided on whether the requirements necessary to amend the Constitution should be changed or not. Some demanded changes, while others took a cautious stance on that issue. (From page 214 to 216 of the Report)

Constitutions can be divided into two categories in terms of the procedure for their amendments. Rigid constitutions require stricter amendment procedures than other laws. Flexible constitutions need the same amendment procedures as other conventional laws.

The Constitution of Japan is a typical example of a rigid constitution. Its amendment procedures require a concurring vote of two-thirds or more of all the members of each House, and the affirmative vote of a majority of all votes cast at a referendum. Some argue that this rule is too strict. At the commission's discussions, the members were divided on whether the requirements necessary to amend the Constitution should be changed or not. Some demanded changes, while others took a cautious stance on that issue.

One of the members asking for changes argued against the requirement of the affirmative vote of two-thirds or more of all members of each House. That member said that this means a vote of a member who wants to keep the status quo carries the significance twice as important as that of a member who wants to change it on an extremely crucial political issue, and that it is unreasonable. That member proposed reducing it to a concurring vote of the half of the members of each House, and that the final judgment should be left on the decisions of the people at a national referendum.

Those taking a cautious stance raised their concern. One of them said that to lower a hurdle for the Constitutional amendments drastically is nothing but to abandon the legal supremacy of the Constitution.

The Commission members agreed on the maintenance of the national referendum system as a part of the amendment procedures of the Constitution(See page 29 and 30).

Appendix

The Constitution of Japan

Promulgated November 3, 1946

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith.

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 faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations.

We, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources.

CHAPTER I. THE EMPEROR

Article 1. The Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power.

Article 2. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

Article 3. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

Article 4. The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government.

The Emperor may delegate the performance of his acts in matters of state as may be provided by law.

Article 5. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

Article 6. The Emperor shall appoint the Prime Minister as designated by the Diet.

The Emperor shall appoint the Chief Judge of the Supreme Court as designated by the Cabinet.

Article 7. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people:

Promulgation of amendments of the constitution, laws,
cabinet orders and treaties.

Convocation of the Diet.

Dissolution of the House of Representatives.

Proclamation of general election of members of the Diet.

Attestation of the appointment and dismissal of Ministers of
State and other officials as provided for by law, and of full
powers and credentials of Ambassadors and Ministers.

Attestation of general and special amnesty, commutation of
punishment, reprieve, and restoration of rights.

Awarding of honors.

Attestation of instruments of ratification and other
diplomatic documents as provided for by law.

Receiving foreign ambassadors and ministers.

Performance of ceremonial functions.

Article 8. No property can be given to, or received by, the Imperial House, nor can any gifts be made therefrom, without the authorization of the Diet.

CHAPTER II. RENUNCIATION OF WAR

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.

CHAPTER III. RIGHTS AND DUTIES OF THE PEOPLE

Article 10. The conditions necessary for being a Japanese national shall be determined by law.

Article 11. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

Article 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

Article 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family

origin.

Peers and peerage shall not be recognized.

No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article 15. The people have the inalienable right to choose their public officials and to dismiss them.

All public officials are servants of the whole community and not of any group thereof.

Universal adult suffrage is guaranteed with regard to the election of public officials.

In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.

Article 16. Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article 17. Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.

Article 18. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

Article 19. Freedom of thought and conscience shall not be violated.

Article 20. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.

No person shall be compelled to take part in any religious act, celebration, rite or practice.

The State and its organs shall refrain from religious education or any other religious activity.

Article 21. 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.

Article 22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article 23. Academic freedom is guaranteed.

Article 24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.

With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

Article 25. All people shall have the right to maintain the minimum standards of wholesome and cultured living.

In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

Article 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law.

All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.

Article 27. All people shall have the right and the obligation to work.

Standards for wages, hours, rest and other working conditions shall be fixed by law.

Children shall not be exploited.

Article 28. The right of workers to organize and to bargain and act collectively is guaranteed.

Article 29. The right to own or to hold property is inviolable.

Property rights shall be defined by law, in conformity with the public welfare.

Private property may be taken for public use upon just compensation therefor.

Article 30. The people shall be liable to taxation as provided by law.

Article 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article 32. No person shall be denied the right of access to the courts.

Article 33. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.

Article 34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.

Each search or seizure shall be made upon separate warrant issued by a competent judicial officer.

Article 36. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.

Article 38. No person shall be compelled to testify against himself.

Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.

No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article 39. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.

Article 40. Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.

CHAPTER IV. THE DIET

Article 41. The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.

Article 42. The Diet shall consist of two Houses, namely the House of Representatives and the House of Councillors.

Article 43. Both Houses shall consist of elected members, representative of all the people.

The number of the members of each House shall be fixed by law.

Article 44. The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.

Article 45. The term of office of members of the House of Representatives shall be four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved.

Article 46. The term of office of members of the House of Councillors shall be six years, and election for half the members shall take place every three years.

Article 47. Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law.

Article 48. No person shall be permitted to be a member of both Houses simultaneously.

Article 49. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.

Article 50. Except in cases provided by law, members of both Houses shall be exempt from apprehension while the Diet is in session, and any members apprehended before the opening of the session shall be freed during the term of the session upon demand of the House.

Article 51. Members of both Houses shall not be held liable outside the House for speeches, debates or votes cast inside the House.

Article 52. An ordinary session of the Diet shall be convoked once per year.

Article 53. The Cabinet may determine to convoke extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Cabinet must determine on such convocation.

Article 54. When the House of Representatives is dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election.

When the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the Cabinet may in time of national emergency convoke the House of Councillors in emergency session.

Measures taken at such session as mentioned in the proviso of the preceding paragraph shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

Article 55. Each House shall judge disputes related to qualifications of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

Article 56. Business cannot be transacted in either House unless one-third or more of total membership is present.

All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution, and in case of a tie, the presiding officer shall decide the

issue.

Article 57. Deliberation in each House shall be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor.

Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy.

Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

Article 58. Each House shall select its own president and other officials.

Each House shall establish its rules pertaining to meetings, proceedings and internal discipline, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

Article 59. A bill becomes a law on passage by both Houses, except as otherwise provided by the Constitution.

A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present.

The provision of the preceding paragraph does not preclude the House of Representatives from calling for the meeting of a joint committee of both Houses, provided for by law.

Failure by the House of Councillors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection of the said bill by the House of Councillors.

Article 60. The budget must first be submitted to the House of Representatives.

Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when no agreement can be reached even through a joint committee of both Houses, provided for by law, or in the case of failure by the House of Councillors to take final action within thirty (30) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the

House of Representatives shall be the decision of the Diet.

Article 61. The second paragraph of the preceding article applies also to the Diet approval required for the conclusion of treaties.

Article 62. Each House may conduct investigations in relation to government, and may demand the presence and testimony of witnesses, and the production of records.

Article 63. The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

Article 64. The Diet shall set up an impeachment court from among the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

Matters relating to impeachment shall be provided by law.

CHAPTER V. THE CABINET

Article 65. Executive power shall be vested in the Cabinet.

Article 66. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law.

The Prime Minister and other Ministers of State must be civilians.

The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

Article 67. The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business.

If the House of Representatives and the House of Councillors disagree and if no agreement can be reached even through a joint committee of both Houses, provided for by law, or the House of Councillors fails to make designation within ten (10) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.

Article 68. The Prime Minister shall appoint the Ministers of State. However, a majority of their number must be chosen from among the members of the Diet.

The Prime Minister may remove the Ministers of State as he chooses.

Article 69. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days.

Article 70. When there is a vacancy in the post of Prime Minister, or upon the first convocation of the Diet after a general election of members of the House of Representatives, the Cabinet shall resign en masse.

Article 71. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

Article 72. The Prime Minister, representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet and exercises control and supervision over various administrative branches.

Article 73. The Cabinet, in addition to other general administrative functions, shall perform the following functions:

Administer the law faithfully; conduct affairs of state.

Manage foreign affairs.

Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet.

Administer the civil service, in accordance with standards established by law.

Prepare the budget, and present it to the Diet.

Enact cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law.

Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

Article 74. All laws and cabinet orders shall be signed by the competent Minister of State and countersigned by the Prime Minister.

Article 75. The Ministers of State, during their tenure of office, shall not be subject to legal action without the consent of the Prime Minister. However, the right to take that action is not impaired hereby.

CHAPTER VI. JUDICIARY

Article 76. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

Article 77. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs.

Public procurators shall be subject to the rule-making power of the Supreme Court.

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article 78. Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.

Article 79. The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet.

The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph, when the majority of the voters favors the dismissal of a judge, he shall be dismissed.

Matters pertaining to review shall be prescribed by law.

The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law.

All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 80. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten (10) years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law.

The judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 81. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

Article 82. Trials shall be conducted and judgment declared publicly. Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly.

CHAPTER VII. FINANCE

Article 83. The power to administer national finances shall be exercised as the Diet shall determine.

Article 84. No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

Article 85. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

Article 86. The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year.

Article 87. In order to provide for unforeseen deficiencies in the budget, a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet.

The Cabinet must get subsequent approval of the Diet for all payments from the reserve fund.

Article 88. All property of the Imperial Household shall belong to the State. All expenses of the Imperial Household shall be appropriated by the Diet in the budget.

Article 89. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.

Article 90. Final accounts of the expenditures and revenues of the State shall be audited annually by a Board of Audit and submitted by the Cabinet to the Diet, together with the statement of audit, during the fiscal year immediately following the period covered.

The organization and competency of the Board of Audit shall be determined by law.

Article 91. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

CHAPTER VIII. LOCAL SELF-GOVERNMENT

Article 92. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

Article 93. The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

Article 94. Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.

Article 95. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

CHAPTER IX. AMENDMENTS

Article 96. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.

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

CHAPTER X. SUPREME LAW

Article 97. The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate.

Article 98. This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

The treaties concluded by Japan and established laws of nations shall be faithfully observed.

Article 99. The Emperor or the Regent as well as Ministers of State, members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

CHAPTER XI. SUPPLEMENTARY PROVISIONS

Article 100. This Constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation.

The enactment of laws necessary for the enforcement of this Constitution, the election of

members of the House of Councillors and the procedure for the convocation of the Diet and other preparatory procedures necessary for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph.

Article 101. If the House of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall function as the Diet until such time as the House of Councillors shall be constituted.

Article 102. The term of office for half the members of the House of Councillors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law.

Article 103. The Ministers of State, members of the House of Representatives and judges in office on the effective date of this Constitution, and all other public officials who occupy positions corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on account of the enforcement of this Constitution unless otherwise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution they shall forfeit their positions as a matter of course.

Acknowledgement

Our Website

Please visit the website of the Research Commission on the Constitution. It offers you a chance to look at the Research Report on the Constitution of Japan and its attached materials, as well as other materials concerning the Constitution.

<http://www.sangiin.go.jp/japanese/kenpou/index.htm>

(Available in Japanese only)

We would appreciate your feedback.

Your feedback on this handbook and the Research Report on the Constitution of Japan would be very much appreciated.

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