

# **Final Report**

**Research Commission on the Constitution  
The House of Representatives**

**April 2005**

April 15, 2005

The Honorable KONO Yohei  
Speaker of the House of Representatives

Dear Mr. Speaker:

I hereby submit the Final Report of the Research Commission on the Constitution of the House of Representatives prepared in accordance with the provisions of Article 2, paragraph 1 of the Regulations of the Research Commission on the Constitution of the House of Representatives.

Respectfully,

A handwritten signature in black ink, reading "T. Nakayama" in a cursive style. The signature is written on a light-colored rectangular background.

NAKAYAMA Taro  
Chairman  
Research Commission on the Constitution  
House of Representatives

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## **Foreword**

### **Introduction**

The House of Representatives Research Commission on the Constitution was established in the Lower House on January 20, 2000 (the day the Diet convened for its 147th session) to conduct “broad and comprehensive research on the Constitution of Japan.” It was the first time that a body of this kind had been created in the Diet, which under the Constitution of Japan has the right to initiate constitutional amendments.

The Commission applied itself energetically to its task, spending a total of over 450 hours in session between its inaugural meeting on January 20, 2000 and February 24, 2005, including plenary and subcommittee meetings and open hearings in Tokyo and regional centers. During those five years, the House was dissolved twice, followed by general elections. Since a research period of about five years was mutually agreed by the directors’ meeting of the Committee on Rules and Administration, we have now compiled the Commission’s report, which is to be submitted to the Speaker.

### **The Structure of This Report**

Since its creation, to fulfill its task the Commission has conducted research on the Constitution of Japan from the perspectives of the past, present, and future. We began by investigating the process by which the Constitution of Japan was formulated (its past), then examined major postwar decisions of unconstitutionality (an aspect of the past extending into the present), and looked at an ideal vision for Japan in the 21st century (the future). We then formed four subcommittees to carry out specialized and effective research (focused on the present) dealing with the Preamble and the 103 articles which make up the Constitution, after dividing them into topics, each comprised of a small number of articles. Finally, to conclude our investigations we looked at an overview of the Constitution as a whole.

This report presents the entire five years of research activities in a condensed and organized form; it could be described as a digest of the work of the Commission. We feel confident that we have made a thorough and accessible study which will stand the test of public scrutiny, now and in the years to come; for the final verdict on this, however, we must look to history.

Like the Interim Report issued on November 1, 2002, this report consists of four parts, as follows:

Part 1 summarizes the background to the establishment of the Commission, and Part 2 outlines the purpose, organization, and operation of the Commission. These sections describe how the Commission served as a medium of constitutional debate and how its work was conducted. Taking Part 2, Chapter 3, “Basic Matters Administrative Matters,” as an example, I feel sure that, if one reads between the lines, it will be evident that we consulted together with open minds in directors’

meetings and other forums, engaging in earnest and constructive discussions which rose above partisanship, in order to determine how this newly formed House investigative body should be run.

Next, Part 3 summarizes the progress and contents of the research conducted by the Research Commission on the Constitution. Its first two chapters, “Progress of Research” and “Overview of Research,” follow a chronological approach, organizing and summarizing the research under the following headings: the plenary Commission, the subcommittees, the open hearings, and the overseas study missions. Chapter 3 presents wide-ranging comments made over the course of five years by the Commission’s members, informants, and other speakers, organized under headings which basically follow the chapters and articles of the Constitution, with subdivisions according to specific issues. While providing an impartial summary without bias toward any position, the report also indicates which opinions were expressed by a large number of members. This does not mean that these opinions constituted a majority view, which would imply that the Commission was a decision-making body; it is intended solely as a broad indication of how opinion was distributed on a particular topic. I believe that this treatment is entirely proper and necessary if we are to fulfill our responsibility to explain clearly and accurately to the public what took place during the five years of debate in the House of Representatives Research Commission on the Constitution.

At all events, Part 3, Chapter 3 is naturally the heart of this report. For the reader’s convenience, an outline of about 20 pages is provided at the beginning of the chapter. This could be called a “digest of the digest,” and it contains the essence of the report.

Lastly, reference materials pertaining to the Commission’s research activities are compiled in Part 4. The purpose of this section is to make available all the relevant information, including documents prepared by the Commission, not only to the public but to all those, including scholars, who may be interested both now and in the future, and to furnish answers to any criticisms they may have.

### **Looking Back on Five Years’ Work: The Steadfast Conviction that the Constitution Belongs to the People**

Leaving the outline of the Commission’s organization and activities to the relevant sections of the report, I would like to note here that, during my five years as chairman, I was always mindful that the Constitution belongs to the people; in other words, I was resolved that in discussing the Constitution, rather than arguing from partisan positions, we should always adopt the perspective of the people.

In the following pages, I would like to set down a few thoughts on the work of these past five years, and to elaborate a little on this point.

### **Consensus-Building through Meetings of Directors and “NAKAYAMA’s Three Principles”**

In practice, my basic attitude that the Constitution belongs to the people expressed itself, firstly, in the fact that, at every stage of the Commission's work, matters ranging from its management to the choice of research topics were always submitted to the meeting of directors, which included the deputy chairman, the directors, and observers, for mutual consultation; this ensured that the Commission's business was conducted fairly and amicably through sincere and constructive discussions. In my belief, it was the special status of this body as a "research commission on the Constitution" that made this possible.

Thus, in managing the Commission's business, while taking each faction's position into account to the greatest extent possible, I endeavored to foster an understanding which could form common ground for debate. I expressed this stance in my remarks on assuming the chairmanship and when I took part in overseas study missions. My message, which came to be called "NAKAYAMA's Three Principles," was that I intended to explore a new vision for the nation of Japan from the viewpoint of the Japanese people while holding firm to the following three principles: respect for human rights, the sovereignty of the people, and the commitment never again to become an aggressor nation. I emphasized these points in order to correct the mistaken idea, both at home and abroad, that the people seeking a constitutional debate were aiming to do something alarming, and also to make it clear that by discussing the Constitution, with no topic considered taboo, we are actually aiming for the people to exercise their own sovereignty.

### **Establishing Broad and Timely Topics**

My basic attitude that the Constitution belongs to the people has its second practical application in my resolve not to limit the debate to constitutional scholars. Perhaps this is influenced by the fact that I myself am a physician, not a legal expert. In our investigations, we eschewed the idea that the Constitution can be discussed adequately in terms of constitutional law and political science alone, believing instead that a discussion of the nation's basic law should, as far as possible, touch upon virtually everything under the sun; thus, we invited experts from a wide range of fields whose relevance to the Constitution is not immediately obvious. Examples include population theory, which we drew on in order to analyze and understand the structure of an aged society with a low birthrate and the problems of social security costs and benefits which must be studied on the basis of such an analysis; a discussion of genomics, in order to pursue the implications of the dignity of the individual, for which the Constitution provides, in the field of bio-ethics; and various questions raised by the advent of a "ubiquitous society," which requires fundamental changes in our traditional concepts of protecting personal information and the right of information access.

One topic that I particularly wanted to focus on was "scientific and technological progress in relation to the Constitution." This subject was taken up several times, and I think the debates made it clear that the striking postwar advances in science and technology could have serious repercussions for the nation's legal system. For instance, there is the possibility of as-yet-unforeseen ethical and environmental impacts from the misuse of cloning or gene recombination technology, with

potentially grave consequences for the dignity of the individual, which is the highest value proclaimed in the Constitution of Japan; and there is the immeasurable social and legal impact of advances in information and communications technology, such as the introduction of “electronic government” and the creation of private-sector databases of personal information, which have made the protection of personal privacy increasingly urgent and led to debate over the public’s right of information access.

My conviction that the Constitution belongs to the people was also reflected in the effort to choose timely topics with a high level of public interest. I felt that if the Commission were to bind itself to a fixed research program over the medium term it itself set, leaving it unable to address current issues for which there was a real public demand, its work would not truly answer the people’s mandate but would be mere “research for research’s sake.”

For example, during the 156th session of the Diet, on January 30, 2003, the Commission held a free discussion on “The Current International Situation and International Cooperation,” followed on March 20, at a time of great tension over the situation in Iraq, by a second free discussion on the topic “The Constitution and Treaties.” So tense was the international situation, in fact, that even as we were meeting we received news that the United States had launched its military attack on Iraq. As one of those entrusted with protecting the lives, limbs, and property of the people, I believe that this was a moment of truth for Diet debate (and Diet members), as the people’s representatives revealed their true quality and the true value of their political stance by what they said or did not say in discussing the Constitution while such a momentous event was taking place.

### **Broad Research through Open Hearings and Overseas Study Missions**

Further concrete examples of the breadth of our research activities both at home and abroad, based on the principle that the Constitution belongs to the people, are the local open hearings held at nine centers around the country, the open hearings held in Tokyo that occupied a total of five days, and the substantive overseas study missions.

In particular, at the nine local open hearings, we endeavored to listen to the voices of the person in the street, on the spot and in as “live” a format as possible, not only by calling for members of the public to present their views, but also by admitting large numbers of the general public as spectators. Regrettably, at times the proceedings were brought to a temporary halt by heckling and other breaches of order, and at some venues there were persons who were asked to leave, but although only a small section of the public were involved, I saw all these happenings as part of the public’s expression of views on the Constitution, and I think I can say I made every effort to conduct the proceedings with restraint.

The most moving of the local sessions was the one held at the Bankoku Shinryokan Hall in Nago City, Okinawa Prefecture. At a press conference after it was decided to hold an open hearing in Okinawa, I commented on the significance of the event as follows:

“In the Lower House general election of April 10, 1946 (which elected the assembly that would discuss the draft Constitution), the people of Okinawa had their voting rights suspended; thus, they could not send representatives to the constitutional assembly. Moreover, until the San Francisco Peace Treaty came into effect on April 28, 1952, the Constitution of Japan did not apply to Okinawa, which had been placed under a direct military administration separate from the Japanese government by the Memorandum for Governmental and Administrative Separation (January 29, 1946). Even when the San Francisco Peace Treaty came into effect, although Japan’s “residual sovereignty” was recognized, Okinawa was placed under American trusteeship (administrative authority) by Article 3, which effectively meant that the Constitution of Japan did not apply, and Okinawa was ruled indirectly by the “Government of the Ryukyu Islands” created under the United States Civil Administration for the Ryukyus (USCAR); thus, instead of the laws of Japan, legislation passed by the Ryukyu Legislature was applied. Consequently, we had to wait for the reversion of Okinawa on May 15, 1972 before the Constitution of Japan effectively applied there.

“It should also be noted that the Cabinet Commission on the Constitution which was created in 1957 held local open hearings in 46 prefectures, but not in pre-reversion Okinawa.”

The breadth of the Commission’s research was also seen in the five overseas study missions we conducted to examine the constitutional situation in a total of 28 nations and international bodies. A particular highlight was the second of these annual missions, in 2001. Prime Minister KOIZUMI, whose administration was formed in April of that year, had been calling for a system of popular election of the prime minister—a favorite subject of his when he was a Commission member—and the media and public opinion seemed largely favorable to the idea. Alarmed by the prospect of such a fundamental change in the nation’s system of governance being put forward amid a burst of popular enthusiasm, without deep insight or investigation, I chose Israel, which was then the only country to have tried (and abandoned) a system of popular election of its prime minister, as a destination for that year’s overseas study mission. The visit took place just days before the September 11 terrorist attacks in the United States. While the airports and other public places were under tight security following a series of suicide bombings, we met with Israeli officials in a very peaceful and cordial atmosphere and held lengthy, substantial and rewarding discussions. Detailed records of these talks and the materials we gathered were included in the Report of the Overseas Mission and made available to the Commission as a basis for calm debate. The result was that, in the words of the present report, “many members were opposed to introducing a system of direct popular election of the prime minister.”

Another very meaningful overseas mission was the fifth, in 2004, which examined the “Treaty Establishing a Constitution for Europe,” now in the midst of ratification procedures in the member nations. The sovereign state is the basic framework of modern constitutionalism, and the European Union’s great experiment of limiting its member nations’ sovereignty while involving their parliaments, governments, and peoples is a dramatic venture that could well be called “an adventure in constitutionalism.” On learning, however, that the philosophy behind the EU Constitution is the



simple desire to create a constitution that the average citizen can easily read, understand, and relate to, I was encouraged to realize that this basic philosophy is the same the world over.

### **Concern that the Constitution's Distance from Reality Is Undermining Its Normative Nature**

A problem highlighted by the investigations is the gap that exists between constitutional norms and reality. Certain articles had previously been discussed in those terms, such as Article 9 (the non-maintenance of war potential and the problem of the Self-Defense Forces and related issues) and Article 89 (subsidies for private schools and the prohibition on expenditure of public money for educational and other enterprises not under the control of public authority). Another typical case would be the reduction of judges' pay in relation to the ban in Articles 79 and 80 on any decrease in judges' compensation, and one could also cite many instances of the Constitution's provisions not being put adequately into practice. In these situations, it is difficult for the people, with whom sovereignty lies, to comprehend constitutional interpretations that deny the existence of a problem. I think the Supreme Court's passivity on constitutionality questions and the resulting failure of public authority to issue appropriate decisions on such matters is also a factor that allows the law to be interpreted and applied in ways that are difficult for the public to understand.

These unclear interpretations and applications are problematic not only because Japan is a constitutional state ruled by law. They could also cause the people to lose faith in the Constitution, and given that the Constitution belongs to the people, I see this as the most serious problem of all.

### **Changes in the Climate of Constitutional Debate**

In the preceding pages, I have tried to describe the main features of the Commission's operation and its research over the last five years, together with a few concrete impressions of my own as its chairman. More than anything, however, I was struck by how the climate of constitutional debate has changed over these five years.

When the Commission was inaugurated, who would ever have thought that such a lively and yet measured debate could take place on the question of a female Emperor? Who could have foreseen the active debate on security, including the right of collective self-defense, or on the proper form of international cooperation, or the legal provisions for emergency situations, or the creation of a constitutional court? I must confess that even I, who did my small part toward establishing this Commission as chairman of the Group for the Establishment of a Research Committee on the Constitution, never dreamed that the constitutional debate would become so lively.

Certainly, both the international and the domestic situations have changed with dizzying speed in the last five years. To take the area of security alone, internationally we have seen drastic changes including the September 11 terrorist attacks and the wars in Afghanistan and Iraq, together with the

enactment of a series of special measures laws to deal with these events; North Korea's launching of a Teponon missile without notice or warning; the deployment of nuclear missiles by nations in the vicinity of Japan; and the need to develop missile defenses and reconnaissance satellites to protect the people from unforeseen situations. Although these issues are on a continuum with the question of "Article 9 and international cooperation," which began to be discussed in depth during the Gulf crisis of 1990-91, at the same time it must be realized that they have transformed the very concept of security, from "national security" to "regional security" and "human security." Wherever one stands on these issues, they have certainly altered the climate of the current constitutional debate.

### **The Need for a Permanent Forum for Constitutional Debate**

These factors were behind the lively constitutional debate that we see today, but they were not solely responsible. For I believe that the gradual establishment of the debate among Diet members and the public, through the media, can be credited to the steady but tireless research of this Commission (and of its counterpart in the House of Councillors). Indeed, like all the members who have worked together over this period, I pride myself that this is so.

As we reach the end of five years' work, I feel strongly that it is very meaningful, at a time of such dramatic change at home and abroad, to have a place in the House of Representatives where we can calmly discuss a vision for the nation with a broad perspective and relate it to the nation's basic law, without being swept along by the emotions of the moment and while taking a step back from specific legislative policies, where urgency is required.

At the sessions held on February 17 and 24, directors from the Liberal Democratic Party, the Democratic Party of Japan and Club of Independents, and the New Komeito all made comments to the effect that the Constitution lays down rules for the exercise of public authority, that the rules must be made with a broad consensus, and that, starting with debate on a draft national referendum law for amendments to the Constitution of Japan, or what one might call the rules for revising the Constitution, these matters should be discussed, openly and in the broadest possible partisan framework, in a body created to carry on from the present Commission. These comments agreed very closely with my own sentiments as set forth above

### **Conclusion**

Fifty-eight years have passed since the Constitution of Japan came into effect, and when one compares conditions then and now, it seems a very different world.

Having entered World War II in December 1941, Japan surrendered unconditionally to the Allies by accepting the Potsdam Declaration in August 1945. This meant acceptance of indirect rule by the Allied GHQ, which effectively had supreme authority in Occupied Japan. Under this indirect rule, in March 1946 a draft outline of a revised constitution, based on a GHQ draft, was published as the

government's proposal. The House of Representatives had been dissolved the previous December, and a general election for the House was held in April 1946, following a purge of public officials that extended to incumbent Diet members. At the 90th session of the Imperial Diet, convened after the election, a proposal for revising the Constitution of the Empire of Japan was presented, consisting of the draft outline's provisions set out in the form of articles, and intense deliberations ensued in both the House of Representatives and the House of Peers.

For example, in the House of Representatives, NOSAKA Sanzo of the Japanese Communist Party opposed the draft in the following terms: "While I concede that it is more progressive than the existing Constitution, by recognizing a dynastic Imperial system it performs a bait and switch with popular sovereignty; the House of Councillors is also an impediment to democratization. Further, to renounce the right of self-defense could jeopardize the independence of the Japanese people. I oppose the draft Constitution while reserving the right to try to modify it in future." KITA Reikichi of the Japan Liberal Party spoke in its favor, calling Chapter II's renunciation of war "not only a new departure for Japan as a peace nation, but a strong appeal to all the nations of the world to make pacifism a reality." INUKAI Takeru of the Japan Progressive Party was also in favor, arguing as follows: "The area to which we devoted the greatest effort was the status of the Emperor. The Emperor is included among the sovereign people, and the people are not in opposition to the Emperor; he derives his position as symbol of the Japanese nation from their will. I am also filled with deep emotion by the provision that requires the prime minister to be chosen from members of the Diet, and I would like us to join in reporting this to the spirits of our many predecessors who, since the Diet was founded, have given their utmost for the sake of constitutional government." KATAYAMA Tetsu of the Japan Socialist Party also spoke in favor, saying "It is possible to achieve democratization even under an Emperor system, and it is our duty, in putting the Constitution into practice, to do so. Further, the renunciation of war is not a clause that was imposed on us, but a great idea that was present as an undercurrent in the hearts of the Japanese people."

After deliberation in the House of Peers, the Constitution of Japan was promulgated on November 3, 1946, and came into force on May 3, 1947.

Today, half a century later, a national debate on the Constitution is under way. In the interim, Japan's population has grown by some 50 million, from 78 million to 128 million (although a downturn is anticipated); the average life expectancy has also increased by about 30 years, from 50 for men and 54 for women to 78 for men and 85 for women. In the future, as Japan becomes an aging, low-birthrate society in an unprecedentedly rapid shift, certain problems are likely to become acute, such as the question of the associated social security costs and benefits, and the need to guarantee the human rights of foreign nationals due to the influx of foreign workers who will be required to secure a population of working age. Also, as mentioned above, a great many new problems that were unimaginable when the Constitution was enacted will no doubt continue to emerge one after another, including environmental problems on a global scale; problems brought by the advent of the "ubiquitous society"; problems accompanying the finance, information, communications, and distribution revolutions which are occurring worldwide, across national

borders, as FTAs and similar measures bring ever greater globalization; Japan's declining rank in international surveys of academic standards, and the alarming situation of young people, including bullying, absenteeism and violence among school pupils, and the increasing number of serious crimes committed by juveniles; drastic changes in the international situation, the emergence of new threats, and the associated problem of the changing concept of security.

Having been given the people's mandate and empowered to initiate constitutional amendments, we members of the Diet have a duty to carry on a solid constitutional debate that is even broader and more comprehensive in scope, addressing new problems like these and presenting to the people a vision for the nation that can accommodate their solutions.

We are resolved to continue to fulfill this noble duty.

In closing, I would like to express my sincere gratitude for their guidance and cooperation to former Deputy Chairmen KANO Michihiko, NAKANO Kansei, and SENGOKU Yoshito, and current Deputy Chairman EDANO Yukio; to the directors and observers from each party; and to all the past and present members who have participated in the Commission's discussions. I would also like to express my appreciation to all those who attended meetings as informants and speakers and expressed their opinions; and to the Office and all others concerned for their unstinting efforts in the management of the Commission's business.

**NAKAYAMA Taro**

**Chairman**

**House of Representatives Research Commission on the Constitution**

**April 15, 2005**



## **On the Adoption of the Report of the House of Representatives Research Commission on the Constitution**

**FUNADA Hajime (Liberal Democratic Party)**

**Senior director**

**April 15, 2005**

Thomas Jefferson, the third President of the United States and the man who drafted the Declaration of Independence, wrote these words: “No work of man is perfect. It is inevitable that, in the course of time, the imperfections of a written Constitution will become apparent.” Japan’s own Constitution is, of course, no exception.

The international scene has changed dramatically with the end of the Cold War, while domestically Japan has seen the rapid advance of globalization and the advent of an information society, together with a deterioration of the social environment. Against this background, an obvious gap has emerged between the existing Constitution and reality, and it was this situation that led to the creation of the Research Commission on the Constitution to conduct broad research on the Constitution of Japan from the viewpoint of the Diet as the people’s representatives. At the same time, as a result of the creation of the Commission in the Diet, the public’s resistance to discussing the Constitution has diminished.

The Commission, which was launched in January 2000, has deliberated for the appointed period of about five years, and the time has come for it to present its Final Report to the Speaker of the House. It gives me great pleasure to mark this occasion, eight years after the establishment of the cross-party Group for the Establishment of a Research Committee on the Constitution. I would like to express my respect and gratitude to the chairman, Mr. NAKAYAMA, who has worked tirelessly and unceasingly to make the Commission a democratic forum conducive to discussion. I would also like to thank all of the speakers and informants who gave their valuable time and opinions, and to express my appreciation for the work of the successive directors and members of the Commission, who engaged in thoughtful discussion, as well as the Office staff.

This report provides a detailed record of the debates in the Commission over the past five years. Under each topic, it also indicates, according to a fixed criterion, which views were expressed by a large number of members. It thus offers a broad overview of members’ opinions concerning the Constitution and will serve as a resource in the nation’s future constitutional debate. I believe that these are valuable contributions.

Looking at the contents in detail, one finds many positive comments on the fact that, although the Occupation GHQ was involved in the process that led to the enactment of the present Constitution, it has taken root among the people over the years since the war; this is a perception widely shared by the postwar generation, and I think it is an appropriate result. There were many comments in favor of maintaining the Emperor-as-symbol system, the rights that constitute the fundamental human rights, and the bicameral and parliamentary Cabinet systems of the Diet; this, too, reflects the fact that, on the whole, the basic principles of the present Constitution have taken root, and it seems to me a solid

conclusion.

At the same time, the report presents a wide range of views calling for the creation of new provisions or revision of existing ones; this, too, is a valuable feature. The succession to the throne should be determined by the Imperial Household Law, but I am proud to say that this Commission took the lead in mapping out a course toward recognizing female succession. On Article 9, which became the focus of debate, the members reached a more or less common understanding that the renunciation of war in Paragraph 1 should be firmly maintained. I personally would like to see a clearer statement regarding the exercise of the right of self-defense and the existence of the Self-Defense Forces, but it is very significant that most of the political parties agreed on the wording “There were many comments which did not exclude the possibility of constitutional measures of some kind.” I believe that the support shown by a majority of members for an active role in the UN’s collective security measures marks the beginning of a new era, together with the fact that, although opinion was divided on whether to set limits on the exercise of the right of collective self-defense, we were able to hold a realistic debate on this question.

Further, to a nation which finds itself uncertain of the way ahead, the report offers an appropriate prescription for the future. For example, there were many comments in favor of adding environmental rights, the public’s right to know, and the right to privacy in the area of “new rights”; maintaining the bicameral system while making the most of its merits by dividing the roles of the two Houses and giving them different election systems; strengthening the leadership of the prime minister while avoiding a system of popular election to the office; creating a constitutional court and strengthening the system of judicial review; and clarifying “the principle of local autonomy” and introducing a *do-shu* system.

The Final Report also clearly indicates the direction of future constitutional debate. For instance, it records the support of many members for enacting a national referendum law, which is a key element of the constitutional amendment procedure, and for the creation of a permanent body to handle constitutional questions in the Diet. The report thus provides guidelines for the work of reviewing the Constitution which should be undertaken in the future by the Diet, the highest organ of state power.

While we should keep in mind the need for a forum for future review of the Constitution, as a first step, I would certainly like to see the framework of the existing Commission retained, with the successor body being empowered to carry on further constitutional research and to draft and deliberate on a national referendum law. I believe that we must continue to rise above partisan divisions and pursue serious and realistic debate on the Constitution for the sake of the people, now and in the future.

**EDANO Yukio**

**Democratic Party of Japan and Club of Independents**

Over the past five years, this Commission has taken up and intensively studied a wide range of constitutional issues, while also listening to the opinions of experts and members of the public who responded to our invitation to present their views.

In particular, I regard the fact that we have looked beyond the provisions of the existing Constitution to conduct extensive debate on a vision for Japan in the 21st century as a groundbreaking achievement without precedent, not only in the area of constitutional issues, but in the nation's parliamentary history. In the Diet as a whole, there is a regrettable lack of adequate opportunities to freely discuss an all-encompassing vision for the nation's future, without focusing on concrete bills and budget proposals or dividing into committees dealing with specific fields. Simply by engaging in such a free-ranging and open-minded debate, this Commission can be said to have fulfilled an important role.

Moreover, the Commission's debates generally took the form of free discussions. Forums where members can express their views freely, speaking on their own responsibility as elected representatives, are limited in the Diet today. Outside the Commission, there are very few places where members can fire questions at one another, rebut one another's arguments and respond in turn to a rebuttal. The Commission served as a stage where the Diet displayed to the full its constitutionally important role as a bastion of free speech.

I would like to pay sincere tribute to the Commission's chairman, Mr. NAKAYAMA Taro, for his neutral, fair, and judicious conduct of the proceedings, and to all the parties and members for their cooperation, without which such substantive research would not have been possible. I would also like to take this opportunity to thank many others for their cooperation: the Speaker and the various House committees, especially the Committee on Rules and Administration, who made every effort to ensure the Commission's smooth operation; all those who presented their views as informants and speakers; and the Office staff who supported the Commission's work behind the scenes.

This report is an objective presentation of the research results. It was never intended that the Commission would draw its findings together in any definitive way; thus, no specific conclusions have been reached, either in the debates or in this report. Although the report indicates what might be called "majority views," this merely means that, where a large number of members happened to speak on a certain issue, a majority of them happened to take a certain position.

It might be objected that, having conducted a debate, we should draw its conclusions together in some way. But the discussions adhered faithfully to the Commission's appointed role of research, the report is an objective presentation of the results, and its organization is a natural consequence of that fact. It should also be remembered that this was a debate about the Constitution, which has the important role of the basic law governing the exercise of state power; that the issues involved were



many and varied; and that the discussions took place amid a great diversity of views. Taking these factors into account, and considering the situation five years ago when the Commission started its work, I think that the very fact that a report of this nature has been compiled is a major achievement and marks a step forward. The report is important not as an end point in itself, but as a starting point. What matters is how we make use of the research conducted so far.

Throughout these five years, the Commission has endeavored to stimulate public opinion on constitutional matters, primarily by making the debate completely open to the public, in whom the power to enact a Constitution is vested, and by seeking their views. These efforts seem to be bearing fruit to some extent, but one still cannot say that public interest in the Constitution is running high. The members of the Diet are empowered by the people to enact legislation, but when it comes to the Constitution, they can only initiate proposals; it is the people who decide. Thus, the public at large needs to learn about the debate that has taken place in the Commission through this report, and, from now on, to pursue the debate in greater depth as direct participants.

If the debate is to be pursued in depth through dialogue with the public while drawing on the research conducted so far, the Commission's role will need to continue in the future. It is also important to prepare legislation on the constitutional amendment procedure, which remains to be enacted, and thus to increase the public's awareness of their own direct involvement. In-depth debate on the Constitution itself and legislation providing for the constitutional amendment procedure are two sides of the same coin in terms of raising the public's interest in the Constitution and awareness of their involvement, and it is appropriate that this Commission should play the role of pursuing these two goals in an integrated way.

It is my hope that, with this report as a starting point, the Research Commission will proceed to the next step, undertaking both to pursue the constitutional debate in greater depth and to prepare legislation on the amendment procedure, and I look forward to the further development of a substantive debate.

**AKAMATSU Masao**  
**New Komeito**

The role that the existing Constitution has played in the lives of the Japanese for six decades, from its promulgation in 1946 until the present day, cannot be overstated. With the transfer of *sovereignty* from the Emperor to the people, more *fundamental human rights* came to be guaranteed. And the centrality that the Constitution gave to *permanent pacifism* by renouncing war and declaring that Japan will not maintain war potential has been largely responsible—though other factors were involved—for enabling the Japanese to enjoy an era of peace such as the world has rarely seen. Preserving these ideals, which have come to be known as the “three basic constitutional principles,” has remained a basic stance of the New Komeito since its foundation.

Five years of debate in the House of Representatives Research Commission on the Constitution have come to an end. I am truly delighted that the Commission has fulfilled its aim of conducting broad and comprehensive research on the existing Constitution, as readers will see on looking through the Final Report, and I would like to commend the dedicated and energetic participation of members from all parties, especially the chairman, Mr. NAKAYAMA. I think I can say that a great deal has been achieved in terms of examining the existing Constitution from all angles, including that of the annual overseas study missions. The important thing now is to make the most of these results as common assets in the future constitutional debate in Japan.

The Commission’s research was not undertaken with the aim of changing the Constitution; its purpose was strictly to inspect how the Constitution has been implemented. As many readers will know, however, in the actual debates it was frequently suggested that the text should be revised or that items not provided for should be added. The report reflects these comments according to a fixed criterion, by noting that “many members” expressed a particular view when there was at least a twofold difference in the relevant numbers.

On this point, there was some difference of opinion within the New Komeito. Some members were concerned that, as the Commission was not formed with a view to revising the Constitution, giving the report a particular direction by using a numerical criterion would depart somewhat from its aims. In my view, however, a mere compendium of the many opinions expressed would not deserve to be called a final report. It is unavoidable, and on the whole appropriate, that the comments be organized according to a fixed criterion.

On closely examining the arguments as they developed over five years, including the statements in the present report, one notes that the items for which textual revision is considered essential are reduced to a considerable extent, and that in fact there are not a great many. Regardless of the numbers of opinions, when constitutional questions are debated exhaustively, quite often it emerges that the cause of the problem at issue is an inadequate political response.

It seems somewhat precipitate to suppose that problems can be handled by revising the text while

putting off the question of political response indefinitely. Thus, the New Komeito believes that we need to sift through the issues thoroughly in order to determine what parts of the text, if any, should really be changed, what additions, if any, should be made, and what can be dealt with by means of legislation or a new administrative approach rather than by changing the Constitution.

If I may make one comment to sum up the controversy over Article 9, in particular: in rushing to close the gap with reality, we risk losing sight of our ideals. If we focus too much on the common-sense approach of confirming the existing situation and making explicit provision for it in the text, we may well fall into the trap of letting the realities go unchecked. In deciding what measures we will or will not add, we need to return to first principles—the principles we embraced when we became standard-bearers of permanent peace.

With regard to the future of the Commission, what should be the next phase of the constitutional debate, based on this Final Report? We believe that, regardless of its name, a forum with the same framework will continue to be necessary in order to move beyond the broad and comprehensive research conducted up to this point, and to continue, as I have said, to discuss what should be changed and how, or whether no change is needed. It may be necessary to empower the successor body specifically to decide on a national referendum procedure law for constitutional amendments. Although we may not yet have arrived at concrete revisions, putting such a procedure in place is a basic preparation anticipated by the Constitution itself.

In any case, what is needed at this time is calm discussion, not restless comparisons with other countries or claims that it is time to act as the Constitution has now been in effect for 60 years. The New Komeito intends to engage steadily in constitutional debate, mindful of the contents of the Commission's report on its five years' work, but also open to new ideas. We are about to embark upon a critical stage of the constitutional

## **The Five Years of the House of Representatives Research Commission on the Constitution**

**YAMAGUCHI Tomio**  
**Japanese Communist Party**

The Research Commission on the Constitution was launched in January 2000 as a purely investigative body whose stated purpose was to “conduct broad and comprehensive research on the Constitution of Japan.”

In approaching this task, the Japanese Communist Party has maintained that, in keeping with the Commission’s purpose and nature, it should conduct research to ascertain the historical and contemporary significance of the Constitution of Japan and examine the actual state of government in light of its principles. Due to the continual intrusion of efforts to revise the Constitution, however, the Commission’s work over the past five years has not been consistent with its intended purpose or nature.

### **The Vitality of Article 9**

In relation to Article 9, which became the focus of debate, there were various calls for changes to the Constitution, including explicit recognition of the exercise of the right of collective self-defense, and rewriting the Preamble. These arguments were less than persuasive, however, if one takes a broad view of peace in the world and Japan in the 21st century. Of more pressing concern in relation to world peace was the war which the United States has pursued in Iraq according to a policy of unilateralism and a strategy of preemptive strikes, and the stance of the Japanese government, which has declared its support.

The United States’ actions and the war in Iraq drew worldwide criticism as a violation of the UN Charter and international law. The Japanese government has done deep harm to the constitutional principle of pacifism by its uncritical support for the American war in Iraq and its dispatch of the Self-Defense Forces, for the first time in the postwar era, to an overseas territory where a war was currently in progress.

These actions led to an unprecedented growth of public opposition and protest movements against the Iraq war and the dispatch of troops, a fact which is of the greatest importance in thinking about constitutional questions.

Many people who spoke before the Commission, including informants and speakers, severely criticized the unlawful actions of the United States and the Japanese response. Article 9, which aims to realize rules for peace under the UN Charter and to achieve a world without war, was shown to

have a vitality that is essential to the peace of the world.

In the area of fundamental human rights, “new human rights” were taken up. These are rights that have been established by civic movements based on, for example, the right to the pursuit of happiness set forth in Article 13, or the right to certain minimum standards of living stated in Article 25. The real problem is that it will take work to give these practical effect. Indeed, many informants, speakers and others expressed the view that the real challenge is to change the political realities which run counter to achieving these rights, especially in the area of the environment.

In addressing constitutional questions today, what is needed is not to change the Constitution but to deeply reaffirm its principles and their contemporary significance and to apply them to the full, upholding the Constitution and putting it into practice in every sector of politics and society, including the legislative, executive, and judicial branches.

#### A “Summary of the Issues” Which Anticipates Revision

The present report does not reflect the research process that I have described, nor its results. On the contrary, the “report” is a summary of the issues which anticipates constitutional revision, and it therefore departs from the Commission’s own regulations.

Firstly, the report consists of discussions of what should or should not be stated explicitly in each article of the Constitution, especially Article 9. To center the debate on whether certain explicit provisions should be made—such as provision for the Self-Defense Forces, for the exercise of the right of collective self-defense, for new duties to be imposed on the people, or for the obligation to respect and uphold the Constitution to be extended to the people—amounts to summarizing the issues in anticipation of revising the Constitution. This is not in keeping with the nature of the Commission, which is limited to research and is not empowered to issue any specific conclusions.

Secondly, the method of “counting the number of members who spoke on each point, rather than the number of comments,” and “indicating the relative proportions where the difference is approximately twofold or more” exaggerates the support for revision because of the numerical distribution of members in the Diet. Further, by “grouping members’ comments into categories under each topic,” the organization of the report effectively reflects the arguments of the ruling parties and other advocates of revision; for example, among the points listed as issues are “whether explicit provision should be made in the Preamble for the history, traditions, and culture unique to Japan,” and “whether items relating to the family and the home should be stipulated in the Constitution.”

The result is a summary of the issues which anticipates revision; this does not constitute a “report” of this Commission.

In addition, under the heading “The Future of the Constitutional Debate,” the report takes up the creation of “a permanent body to handle constitutional questions in the Diet,” discusses the preparation of a “constitutional amendment procedure law,” and lays out a course that would

empower the Commission to draft and deliberate on such a law. These are moves to pave the way for revision of Article 9, and as such we cannot accept them.

Having completed its task, which was stated to require “about five years,” the Research Commission on the Constitution should quietly bring its work to a close after presenting its report to the Speaker of the House of Representatives.

### The Constitution of Japan in the 21st Century

The Constitution of Japan has ample substance as a set of guidelines for solving the many problems facing Japan and the world today, in areas including peace, the national life, human rights, and democracy.

The Constitution has been a presence in the lives of many Japanese, and they will resist the forces seeking to revise Article 9 and will move forward toward the vision it embodies, a vision of Japan as a nation of peace, human rights, and democracy. That course promises to usher in a new stage of peace and friendship in Asia and the world.

## **Comments on the Final Report of the Research Commission on the Constitution**

**DOI Takako**

**Social Democratic Party**

**April 15, 2005**

The Constitution of Japan arose from critical reflection on the prewar years, when Japan allowed its military to run out of control with disastrous consequences. It is founded on the principle of constitutionalism, which imposes strict controls and limits on state power and guarantees the rights of the sovereign people. The commitment to pacifism which it embodies is truly the consensus and the aspiration of the Japanese people.

Because of the limits imposed on successive governments by Article 9, Japan did not take part in either the Korean War or the Vietnam War, and it has been recognized by the nations of the world as a state with a peace constitution.

During the last five years, the world has seen many wars and armed conflicts, but the use of armed force to solve problems has brought nothing but death and injury to hundreds of thousands, if not millions, while bringing grief and suffering to the survivors and devastation to their livelihoods and the natural environment. That is why we want to hold up the pacifist principles of Article 9 of the Constitution of Japan, with confidence, pride, and courage, to all the peoples of the world who oppose war and are committed to the return of peace. Now, as never before, Article 9 must be kept alive.

And yet, 58 years after it came into force, the Constitution of Japan is facing the greatest crisis in its history. The majority of the Japanese people want peace; they want human rights and freedoms to be guaranteed and fully realized; and they want government that puts the Constitution into practice. Instead of faithfully carrying out its principles, however, a majority of Diet members, who are supposedly obligated to respect and uphold the Constitution, advocate the rejection and abandonment of those principles and are openly pursuing efforts to revise the Constitution. The Research Commission, too, has followed this misguided course in its process and discussions over the past five years. In particular, Article 9 has been targeted for revision.

The Commission was established for the stated purpose of “broad and comprehensive research on the Constitution of Japan.” Its main task was to examine, objectively and in good faith, whether the ideals of the Constitution are being put into practice, and, if its findings were negative, to determine the reasons and responsibility therefor and identify measures to realize constitutional ideals. That research, if carried out, would have shown whether there is any truth in the claims of “a gap between the Constitution and reality.” But because of the numbers of Commission members from parties that favor revision, criticism of the present Constitution and discussion of which articles should be changed and in what way became the dominant theme, generating a momentum toward revision. A case in point is the arguments of members who, having enacted laws which violate Article 9, wish to change the Constitution to bring it into line with the unconstitutional realities. Furthermore, although

the Constitution guarantees fundamental human rights “to be held for all time inviolate,” the Commission had other priorities, preferring to spend time on “adding to the duties of the people,” for example, rather than the redress and realization of human rights. Thus, the Commission cannot be said to have achieved its original purpose.

There were also many inappropriate points in the conduct of the Commission’s business. At the August 5, 2004 session, “summaries of the issues” and proposals anticipating revision were presented by the Liberal Democratic Party, the Democratic Party of Japan and Club of Independents, and the New Komeito, followed by discussion. This was clearly contrary to the stated purpose of the Commission and also lacked fairness, as only three parties were given the opportunity to present their views.

Regrettably, considering that it was a forum for discussion of the supreme law of the land, the Commission frequently failed to reach a quorum, and its members cannot escape the charge of irresponsibility toward the future of democratic and constitutional government. Also, a session of the full Commission to discuss and decide the editorial policy and contents of the Final Report was quite properly requested but did not eventuate.

Many of the informants and the speakers at central and local open hearings stressed the importance not of changing the Constitution but of putting it into practice. Yet the opinions expressed at the local open hearings, in particular, have been condensed into a mere two to five lines, which cannot accurately convey the breadth and diversity of the views expressed.

The Final Report does not fully represent the diversity of opinion in all its varied perspectives and nuances. Organizing comments into arbitrary categories to create the appearance of a majority opinion, it sets a course toward constitutional revision.

There is also very little space devoted to research or comments from the standpoint of putting the Constitution into practice. Japan is prohibited by the Constitution from exercising the right of collective self-defense, but the Final Report barely mentions the international and domestic significance of this fact, nor its historical importance.

Further, under the heading “The Future of the Constitutional Debate and Related Matters,” the Final Report goes so far as to include comments on “a permanent body to handle constitutional questions in the Diet” and a “constitutional amendment procedure law.” These topics clearly deviated from the Commission’s purpose and were never anything more than an extra item on the agenda; there is no justification for including them in the Final Report.

We wish to register our opposition to the manner in which the Commission’s business and its Final Report were handled, and to their contents, as discussed above, and to protest this deplorable situation in the strongest terms.

We aspire to a 21st century in which conflicts are settled through dialogue, renouncing war. I appeal to one and all to be deeply concerned about the present constitutional crisis and work together to protect the Constitution of Japan and make its ideals a reality.





## Notes

1. The official names of the political parties referred to by abbreviation in this report are as follows:

LDP: Liberal Democratic Party

DPJ: Democratic Party of Japan and Club of Independents  
(Official name through the 147th Session: Democratic Party of Japan)

NK-RN: New Komeito and Reformers' Network

NK: New Komeito

LP: Liberal Party

JCP: Japanese Communist Party

SDP: Social Democratic Party

NCP: New Conservative Party

Club 21: 21st Century Club

2. The official names of the subcommittees referred to by abbreviation in this report are as follows:

Human Rights Subcommittee:

Subcommittee on Guarantee of Fundamental Human Rights

Politics Subcommittee:

Subcommittee on Fundamental and Organizational Role of Politics

International Society Subcommittee:

Subcommittee on Japan's Role in International Society

Local Autonomy Subcommittee:

Subcommittee on Local Autonomy

Supreme Law Subcommittee:

Subcommittee on Ideal Constitution as Supreme Law

International Cooperation Subcommittee:

Subcommittee on Security and International Cooperation

Government Subcommittee:

Subcommittee on Ideal Government and Organizations

3. Regarding use of this report, please note the following.

(1) The translation has been made as accurate as possible, but there may be cases where the names of systems in other countries and the organizations visited and titles of persons concerned differ from the English normally used.

(2) Explanatory notes are included in parentheses where they are considered necessary.



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**Appendix The Constitution of Japan**





## **Part 1**

### **Background to the Establishment of the Commission**

## **Part 1 Background to the Establishment of the Commission**

On the occasion of the fiftieth anniversary of the enforcement of the Constitution of Japan, a cross-party parliamentary Group for the Establishment of a Research Committee on the Constitution was formed, and the movement to create in the Diet a forum for discussions on the Constitution gained momentum.

Originally, the Group aimed to make the Research Committee a standing committee, but there was strong opposition to this as some feared that it would result directly in constitutional revision. In February 1999, the Liberal Democratic Party, the Democratic Party of Japan, the New Komeito, the Liberal Party, and the Reformers' Club agreed that (1) the Research Commission on the Constitution would not have the authority to submit bills, and (2) the matter would be discussed at the Committee on Rules and Administration and the Council on the Parliamentary System. Based on this agreement, the secretaries general of the LDP, DPJ, NK-RC (New Komeito and Reformers' Club), and LP submitted a proposal to the Chairman of the Rules and Administration Committee of the House of Representatives.

In response, discussions were initiated in March 1999 at the Council on the Parliamentary System, a private advisory body to the Speaker of the House of Representatives. Based on a report submitted by the Council on its discussions, the Subcommittee on Amendment to the Diet Law within the Rules and Administration Committee of the House of Representatives began discussions in June of that year.

As a result of those discussions, on July 6, 1999, it was decided that the draft bill to amend the Diet Law to establish the Research Commission in the House of Representatives as well as the draft Regulations of the Research Commission on the Constitution of the House of Representatives would be used as the subcommittee's drafts. That same day, the Rules and Administration Committee of the House of Representatives decided that the two draft documents would be submitted by the Committee to the House. The two documents were passed at the House of Representatives plenary session that same day, and the bill to amend the Diet Law was sent to the House of Councillors that same day as well.

The House of Representatives documents were referred to the Rules and Administration Committee of the House of Councillors on July 13. After a question-and-answer session on July 26 with the Chairman of the Rules and Administration Committee of the House of Representatives, who had introduced the bill, the bill was amended by the House of Councillors to establish a similar commission in that House as well. The amended bill was passed at the House of Councillors plenary session and sent to the House of Representatives that same day.

The amended bill was passed and enacted at the House of Representatives plenary session on July 29. The Law to Amend the Diet Law came into force on the day of convocation of the 147th session of the National Diet (January 20, 2000), and the Research Commission on the Constitution was established that same day.

The directors' meeting of the Rules and Administration Committee of the House of Representatives agreed that (1) the Commission would not have the authority to submit bills; (2) the Commission would conduct research for about five years; and (3) the Commission chairman would appoint a deputy chairman from among the directors of the largest opposition party. The same agreement was also made at the directors' meeting of the Rules and Administration Committee of the House of Councillors.

## **Part 2**

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## **Part 2 Purpose, Organization, and Operation of the Commission**

### **Chapter 1 Purpose**

The Research Commission on the Constitution (hereinafter “Commission”) was established in both Houses of the National Diet (Article 102, Paragraph 6 of the Diet Law) to conduct broad and comprehensive research on the Constitution of Japan (Article 1, Regulations of the Research Commission on the Constitution of the House of Representatives [hereinafter “Commission Regulations”]).

Upon completion of its research, the Commission shall prepare a written report on its research process and findings, and the Chairman of the Commission shall submit the report to the Speaker of the House (Article 2, Paragraph 1 of the Commission Regulations).



## Chapter 2 Organization

### Section 1 Members

The Commission is composed of fifty members (Article 3 of the Commission Regulations). Membership is allocated to political parties and groups in the House in proportion to their numerical strength, and members are appointed by the Speaker of the House at the beginning of a session. If, after members have been appointed, there arises a need for redistribution of the membership so allocated by reason of a change in the numerical strength of the political parties and groups, the Speaker may alter the membership with the consent of the Rules and Administration Committee (Article 4 of the Commission Regulations).

#### 1) Allocation of Membership

a. 147th Diet Session, January 20, 2000 (At the time of the inauguration of the Commission)

LDP	DPJ	NK-RN	LP	JCP	SDP
27	9	5	4	3	2

b. 147th Diet Session, April 5, 2000 (Change of allocation due to the establishment of the New Conservative Party)

LDP	DPJ	NK-RN	JCP	NCP	LP	SDP
27	9	5	3	2	2	2

c. 148th Diet Session, July 5, 2000 (New composition following the 42nd general election of the House of Representatives)

LDP	DPJ	NK	LP	JCP	SDP	Club 21	NCP
24	14	3	3	2	2	1	1

d. 150th Diet Session, November 8, 2000 (Change of allocation due to the change of political parties and groups to which some Diet members belonged)

LDP	DPJ	NK	LP	JCP	SDP	Club 21	NCP
25	14	3	2	2	2	1	1

e. 153rd Diet Session, December 5, 2001 (Change of allocation due to the dissolution of the 21st Century Club)

LDP	DPJ	NK-RN	LP	JCP	SDP	NCP
26	14	3	2	2	2	1

f. 154th Diet Session, January 24, 2002 (Change of allocation due to the death of a Diet member)

LDP	DPJ	NK-RN	LP	JCP	SDP	NCP
25	14	4	2	2	2	1

- g. 155th Diet Session, January 8, 2003 (Change of allocation due to the establishment of the New Conservative Party and other factors)

LDP	DPJ	NK-RN	LP	JCP	SDP	NCP
26	14	3	2	2	2	1

- h. 156th Diet Session, March 11, 2003 (Change of allocation due to the change of political parties and groups to which some Diet members belonged)

LDP	DPJ	NK-RN	LP	JCP	SDP	NCP
25	14	4	2	2	2	1

- i. 156th Diet Session, March 27, 2003 (Change of allocation due to the retirement of a Diet member)

LDP	DPJ	NK-RN	LP	JCP	SDP	NCP
26	13	4	2	2	2	1

- j. 156th Diet Session, September, 25 2003 (Change of allocation due to the merger of the DPJ and the LP)

LDP	DPJ	NK-RN	JCP	SDP	NCP
26	15	4	2	2	1

- k. 158th Diet Session, November 20, 2003 (New composition following the 43rd general election of the House of Representatives)

LDP	DPJ	NK-RN	JCP	SDP
25	19	4	1	1

- l. 161st Diet Session, January 11, 2005 (Change of allocation due to the retirement of a Diet member)

LDP	DPJ	NK-RN	JCP	SDP
26	18	4	1	1

## 2) Members and Major Changes in Commission Members and Directors (excluding temporary changes)

### (1) Members from the Time of the Inauguration of the Commission (January 20, 2000) until the Dissolution of the House of Representatives (June 2, 2000)

Chairman	NAKAYAMA Taro	LDP			
Director	AICHI Kazuo	LDP	Director	SUGIURA Seiken	LDP
Director	NAKAGAWA Shoichi	LDP	Director	HANASHI Nobuyuki	LDP
Director	YASUOKA Okiharu	LDP	Director	KANO Michihiko	DPJ
Director	SENGOKU Yoshito	DPJ	Director	HIRATA Yoneo	NK-RN
Director	NODA Takeshi	LP			
	ISHIKAWA Yozo	LDP		ISHIBA Shigeru	LDP
	ETO Seiichi	LDP		OKUDA Mikio	LDP

OKUNO Seisuke	LDP	KYUMA Fumio	LDP
KOIZUMI Junichiro	LDP	SATO Megumu	LDP
SHIRAKAWA Katsuhiko	LDP	TANAKA Makiko	LDP
NAKAGAWA Hidenao	LDP	NAKASONE Yasuhiro	LDP
HIRANUMA Takeo	LDP	FUNADA Hajime	LDP
HOZUMI Yoshiyuki	LDP	MITSUZUKA Hiroshi	LDP
MURAOKA Kanezo	LDP	MORIYAMA Mayumi	LDP
YANAGISAWA Hakuo	LDP	YAMASAKI Taku	LDP
YOKOUCHI Shomei	LDP	ISHIGE Eiko	DPJ
EDANO Yukio	DPJ	NAKANO Kansei	DPJ
HATA Eijiro	DPJ	FUKUOKA Soya	DPJ
FUJIMURA Osamu	DPJ	YOKOMICHI Takahiro	DPJ
ISHIDA Katsuyuki	NK-RN	OTA Akihiro	NK-RN
KURATA Eiki	NK-RN	FUKUSHIMA Yutaka	NK-RN
ABE Motoo	LP	NAKAMURA Eiichi	LP
FUTAMI Nobuaki	LP	SASAKI Rikukai	JCP
SHII Kazuo	JCP	HIGASHINAKA Mitsuo	JCP
ITO Shigeru	SDP	FUKADA Hajime	SDP

#### Changes in Commission Members

147th Session	Members who resigned		New members who replaced them	
Apr. 5, 2000	NODA Takeshi	NCP	TASSO Takuya	LP
Apr. 7, 2000	NAKAGAWA Hidenao	LDP	TAKAICHI Sanae	LDP
Apr. 11, 2000	FUKUOKA Soya	DPJ	SHIMA Satoshi	DPJ

#### Change in Commission Director

147th Session	New director		
Apr. 20, 2000	SASAKI Rikukai	JCP	Appointed with the change in allocation of directorships to the political parties and groups

#### (2) Commission Members Following the 42nd General Election of the House of Representatives (148th Diet Session, July 5, 2000) until the Dissolution of the House of Representatives (October 10, 2003)

Chairman	NAKAYAMA Taro	LDP			
Director	ISHIKAWA Yozo	LDP	Director	TAKAICHI Sanae	LDP
Director	NAKAGAWA Shoichi	LDP	Director	HANASHI Nobuyuki	LDP
Director	EDANO Yukio	DPJ	Director	KANO Michihiko	DPJ
Director	SENGOKU Yoshito	DPJ	Director	AKAMATSU Masao	NK
Director	SHIOTA Susumu	LP			
	OTA Seiichi	LDP		OKUNO Seisuke	LDP
	KYUMA Fumio	LDP		SHINDO Yoshitaka	LDP

SUGIURA Seiken	LDP	TANAKA Makiko	LDP
NAKASONE Yasuhiro	LDP	NAKAYAMA Masaaki	LDP
NUKAGA Fukushima	LDP	NEMOTO Takumi	LDP
HATOYAMA Kunio	LDP	HIRASAWA Katsuei	LDP
HORI Kosuke	LDP	MITSUZUKA Hiroshi	LDP
MIZUNO Kenichi	LDP	MIYASHITA Sohei	LDP
MURAKAMI Seiichiro	LDP	YANAGISAWA Hakuo	LDP
YAMASAKI Taku	LDP	ISHIGE Eiko	DPJ
SHIMA Satoshi	DPJ	NAKANO Kansei	DPJ
NAGATSUMA Akira	DPJ	FUJIMURA Osamu	DPJ
YAMAUCHI Osamu	DPJ	YAMADA Toshimasa	DPJ
YAMATANI Eriko	DPJ	YAMAHANA Ikuo	DPJ
YAMAMURA Takeshi	DPJ	YOKOMICHI Takahiro	DPJ
OTA Akihiro	NK	SAITO Tetsuo	NK
TAKEYAMA Yuriko	LP	FUJISHIMA Masayuki	LP
HARUNA Naoaki	JCP	YAMAGUCHI Tomio	JCP
TSUJIMOTO Kiyomi	SDP	DOI Takako	SDP
KONDO Motohiko	Club 21	NODA Takeshi	NCP

#### Changes in Commission Members

<b>148th Session</b>	<b>Members who resigned</b>		<b>New members who replaced them</b>	
July 6, 2000	MURAKAMI Seiichiro	LDP	MORIYAMA Mayumi	LDP
July 26, 2000	NAGATSUMA Akira	DPJ	OIDE Akira	DPJ
	YAMAUCHI Osamu	DPJ	HOSONO Goshi	DPJ
	YAMADA Toshimasa	DPJ	MAKINO Seishu	DPJ
	YAMATANI Eriko	DPJ	MAEHARA Seiji	DPJ
	YAMAMURA Takeshi	DPJ	IGARASHI Fumihiko	DPJ
<b>150th Session</b>	<b>Members who resigned</b>		<b>New members who replaced them</b>	
Nov. 8, 2000	FUJISHIMA Masayuki	LP	MURAI Jin	LDP
Dec. 5, 2000	NUKAGA Fukushima	LDP	MOTEGI Toshimitsu	LDP
	YANAGISAWA Hakuo	LDP	OSHIMA Tadamori	LDP
Dec. 6, 2000	MURAI Jin	LDP	SATA Genichiro	LDP
<b>151st Session</b>	<b>Members who resigned</b>		<b>New members who replaced them</b>	
Jan. 31, 2001	OSHIMA Tadamori	LDP	KANEKO Kazuyoshi	LDP
	OTA Seiichi	LDP	FUTADA Koji	LDP
	KYUMA Fumio	LDP	NISHIDA Mamoru	LDP
	SATA Genichiro	LDP	ITO Tatsuya	LDP
	SUGIURA Seiken	LDP	SUGA Yoshihide	LDP
	TAKAICHI Sanae	LDP	NAKATANI Gen	LDP

	NEMOTO Takumi	LDP	MORIOKA Masahiro	LDP
	HIRASAWA Katsuei	LDP	YASUOKA Okiharu	LDP
	HORI Kosuke	LDP	TSUSHIMA Yuji	LDP
	MIZUNO Kenichi	LDP	SHIMOMURA Hakubun	LDP
	MIYASHITA Sohei	LDP	ITO Kosuke	LDP
	MOTEGI Toshimitsu	LDP	WATANABE Hiromichi	LDP
	IGARASHI Fumihiko	DPJ	UBUKATA Yukio	DPJ
	ISHIGE Eiko	DPJ	OISHI Hisako	DPJ
	NAKANO Kansei	DPJ	KOBAYASHI Mamoru	DPJ
	FUJIMURA Osamu	DPJ	TSUTSUI Nobutaka	DPJ
	MAKINO Seishu	DPJ	NAKAGAWA Masaharu	DPJ
	YAMAHANA Ikuo	DPJ	NAKADA Hiroshi	DPJ
	YOKOMICHI Takahiro	DPJ	MATSUZAWA Shigefumi	DPJ
	AKAMATSU Masao	NK	UEDA Isamu	NK
	TAKEYAMA Yuriko	LP	FUJISHIMA Masayuki	LP
	TSUJIMOTO Kiyomi	SDP	KANEKO Tetsuo	SDP
Apr. 12, 2001	NODA Takeshi	NCP	KOIKE Yuriko	NCP
Apr. 16, 2001	KOIKE Yuriko	NCP	NODA Takeshi	NCP
Apr. 26, 2001	TANAKA Makiko	LDP	OKONOGI Hachiro	LDP
	NAKATANI Gen	LDP	MURATA Yoshitaka	LDP
	MORIYAMA Mayumi	LDP	SHICHIJO Akira	LDP
	NAKADA Hiroshi	DPJ	KUWABARA Yutaka	DPJ
May 1, 2001	MURATA Yoshitaka	LDP	YAMAMOTO Koichi	LDP
May 7, 2001	OKONOGI Hachiro	LDP	MATSUMOTO Kazuna	LDP
	SHICHIJO Akira	LDP	KOMURA Masahiko	LDP
	SHINDO Yoshitaka	LDP	IMAMURA Masahiro	LDP
	WATANABE Hiromichi	LDP	SATA Genichiro	LDP
May 31, 2001	NODA Takeshi	NCP	KOIKE Yuriko	NCP
June 5, 2001	KOIKE Yuriko	NCP	NODA Takeshi	NCP

<b>152nd Session</b>	<b>Member who resigned</b>		<b>New member who replaced him</b>	
Sept. 26, 2001	SHIOTA Susumu	LP	TSUZUKI Yuzuru	LP

<b>153rd Session</b>	<b>Members who resigned</b>		<b>New members who replaced them</b>	
Sept. 27, 2001	UBUKATA Yukio	DPJ	HOSOKAWA Ritsuo	DPJ
	EDANO Yukio	DPJ	OZAWA Sakihito	DPJ
	OISHI Hisako	DPJ	OKADA Katsuya	DPJ
	KUWABARA Yutaka	DPJ	KOBAYASHI Kenji	DPJ
	KOBAYASHI Mamoru	DPJ	KONNO Azuma	DPJ
	SHIMA Satoshi	DPJ	SUTO Nobuhiko	DPJ
	HOSONO Goshi	DPJ	NAKANO Kansei	DJP
	MAEHARA Seiji	DPJ	NAKAMURA Tetsuji	DPJ
	MATSUZAWA Shigefumi	DPJ	YAMADA Toshimasa	DPJ

Nov. 8, 2001	OZAWA Sakihito	DPJ	SHIMA Satoshi	DPJ
Nov. 21, 2001	KONDO Motohiko	Club21	UDAGAWA Yoshio	Club21
Nov. 29, 2001	UDAGAWA Yoshio	Club21	KONDO Motohiko	Club21
Jan. 8, 2002	IMAMURA Masahiro	LDP	OSHIMA Tadamori	LDP
	SATA Genichiro	LDP	KOSAKA Kenji	LDP
	SHIMOMURA Hakubun	LDP	TORASHIMA Kazuo	LDP
	SUGA Yoshihide	LDP	KITAMURA Naoto	LDP
Jan. 18, 2002	ITO Kosuke	LDP	TAKAICHI Sanae	LDP
	OSHIMA Tadamori	LDP	WATANABE Hiromichi	LDP
	KITAMURA Naoto	LDP	HIRAI Takuya	LDP
	KOSAKA Kenji	LDP	NUKAGA Fukushima	LDP
	TSUSHIMA Yuji	LDP	OKI Hiroshi	LDP
	TORASHIMA Kazuo	LDP	NAGASE Jinen	LDP
	FUTADA Koji	LDP	IWANAGA Mineichi	LDP
	MATSUMOTO Kazuna	LDP	NAKAYAMA Nariaki	LDP
	MITSUZUKA Hiroshi	LDP	MATSUSHIMA Midori	LDP
	YAMAMOTO Koichi	LDP	TANIGAKI Sadakazu	LDP
	OKADA Katsuya	DPJ	MATSUZAWA Shigefumi	DPJ
	HOSOKAWA Ritsuo	DPJ	NAGAI Eiji	DPJ
	UEDA Isamu	NK	AKAMATSU Masao	NK
	TSUZUKI Yuzuru	LP	TAKEYAMA Yuriko	LP

<b>154th Session</b>	<b>Members who resigned</b>		<b>New members who replaced them</b>	
Jan. 22, 2002	NODA Takeshi	NCP	INOUE Kiichi	NCP
Jan. 24, 2002	IWANAGA Mineichi	LDP	EDA Yasuyuki	NK
Feb. 4, 2002	HATAYAMA Kunio	LDP	TSUCHIYA Shinako	LDP
Feb. 5, 2002	OKI Hiroshi	LDP	MOTEGI Toshimitsu	LDP
Feb. 7, 2002	KANO Michihiko	DPJ	BANNO Yutaka	DPJ
Feb. 21, 2002	MATSUSHIMA Midori	LDP	ITO Kosuke	LDP
Mar. 11, 2002	MOTEGI Toshimitsu	LDP	ISHIBA Shigeru	LDP
Apr. 16, 2002	KONDO Motohiko	LDP	KYUMA Fumio	LDP
Apr. 26, 2002	KYUMA Fumio	LDP	KONDO Motohiko	LDP
July 5, 2002	NAKAYAMA Nariaki	LDP	TANIKAWA Kazuo	LDP
Sept. 30, 2002	ISHIBA Shigeru	LDP	SHINDO Yoshitaka	LDP
	TANIGAKI Sadakazu	LDP	SATO Tsutomu	LDP
Oct. 2, 2002	ITO Tatsuya	LDP	KOSAKA Kenji	LDP
	TAKAICHI Sanae	LDP	HASE Hiroshi	LDP
Oct. 4, 2002	SHINDO Yoshitaka	LDP	SATA Genichiro	LDP
	TSUCHIYA Shinako	LDP	KAWASAKI Jiro	LDP
Oct. 17, 2002	KANEKO Kazuyoshi	LDP	FUKUI Teru	LDP
	KOSAKA Kenji	LDP	KURATA Masatoshi	LDP
	KOMURA Masahiko	LDP	SUNADA Keisuke	LDP
	SATA Genichiro	LDP	SHIMOJI Mikio	LDP

HASE Hiroshi	LDP	SUGIURA Seiken	LDP
YAMASAKI Taku	LDP	NAKAYAMA Nariaki	LDP
WATANABE Hiromichi	LDP	YAMAGUCHI Taimei	LDP
SHIMA Satoshi	DPJ	EDANO Yukio	DPJ

<b>155th Session</b>	<b>Members who resigned</b>	<b>New members who replaced them</b>
Oct. 21, 2002	SUNADA Keisuke LDP	NODA Seiko LDP
Oct. 25, 2002	NAKAYAMA Nariaki LDP	TANIMOTO Tatsuya LDP
Jan. 8, 2003	EDA Yasuyuki NK	NODA Takeshi LDP
Jan. 17, 2003	EDANO Yukio DPJ	FURUKAWA Motohisa DPJ
	TSUTSUI Nobutaka DPJ	OHATA Akihiro DPJ
	NAKAMURA Tetsuji DPJ	KUWABARA Yutaka DPJ
	NAGAI Eiji DPJ	SHIMA Satoshi DPJ
	MATSUZAWA Shigefumi DPJ	SUEMATSU Yoshinori DPJ
	YAMADA Toshimasa DPJ	MIZUSHIMA Hiroko DPJ

<b>156th Session</b>	<b>Members who resigned</b>	<b>New members who replaced them</b>
Jan. 20, 2003	DOI Takako SDP	KITAGAWA Renko SDP
Jan. 21, 2003	NISHIDA Mamoru LDP	HIRABAYASHI Kozo LDP
Mar. 11, 2003	KAWASAKI Jiro LDP	ENDO Kazuyoshi NK
Mar. 27, 2003	NAKAGAWA Masaharu DPJ	KAWASAKI Jiro LDP
May. 8, 2003	FUJISHIMA Masayuki LP	ICHIKAWA Yasuo LP
May. 13, 2003	ICHIKAWA Yasuo LP	FUJISHIMA Masayuki LP
May. 29, 2003	BANNO Yutaka DPJ	NAKAGAWA Masaharu DPJ
June 5, 2003	INOUE Kiichi NCP	YAMATANI Eriko NCP
June 10, 2003	YAMATANI Eriko NCP	INOUE Kiichi NCP
June 11, 2003	ISHIKAWA Yozo LDP	KONO Taro LDP
Sept. 22, 2003	NAKAGAWA Shoichi LDP	MIZUNO Kenichi LDP
	INOUE Kiichi NCP	YAMATANI Eriko NCP
Sept. 25, 2003	YAMATANI Eriko NCP	NISHIKAWA Taichiro NCP

#### **Changes in Commission Directors**

<b>150th Session</b>	<b>New director</b>	<b>Director who resigned</b>
Sept. 28, 2000	SHIMA Satoshi DPJ	EDANO Yukio

<b>151st Session</b>	<b>New directors</b>	<b>Directors who resigned, etc.</b>
Feb. 8, 2001	SHINDO Yoshitaka LDP	Appointed with the change in allocation of directorships to the political parties and groups
	YASUOKA Okiharu LDP	TAKAICHI Sanae

	NAKAGAWA Masaharu	DPJ	SHIMA Satoshi
	SAITO Tetsuo	NK	AKAMATSU Masao
May 17, 2001	TSUSHIMA Yuji	LDP	SHINDO Yoshitaka

<b>153rd Session</b>	<b>New director</b>		<b>Director who resigned</b>
Oct. 11, 2001	HOSOKAWA Ritsuo	DPJ	SENGOKU Yoshito

<b>154th Session</b>	<b>New directors</b>		<b>Directors who resigned</b>
Feb. 7, 2002	TAKAICHI Sanae	LDP	ISHIKAWA Yozo
	MOTEGI Toshimitsu	LDP	TSUSHIMA Yuji
	SHIMA Satoshi	DPJ	HOSOKAWA Ritsuo
	NAKANO Kansei	DPJ	KANO Michihiko
	AKAMATSU Masao	NK	SAITO Tetsuo
Mar. 19, 2002	NUKAGA Fukushima	LDP	MOTEGI Toshimitsu

<b>155th Session</b>	<b>New directors</b>		<b>Directors who resigned</b>
Oct. 24, 2002	SUGIURA Seiken	LDP	TAKAICHI Sanae
	NISHIDA Mamoru	LDP	NUKAGA Fukushima
	OIDE Akira	DPJ	SHIMA Satoshi
	SENGOKU Yoshito	DPJ	NAKANO Kansei

<b>156th Session</b>	<b>New directors</b>		<b>Directors who resigned</b>
Jan. 30, 2003	HIRABAYASHI Kozo	LDP	NISHIDA Mamoru
	FURUKAWA Motohisa	DPJ	NAKAGAWA Masaharu

<b>157th Session</b>	<b>New director</b>		<b>Director who resigned</b>
Oct. 2, 2003	NAKAYAMA Masaaki	LDP	NAKAGAWA Shoichi

**(3) Commission Members Following the 43rd General Election of the House of Representatives (158th Diet Session, November 20, 2003) until the Compilation of This Report**

Chairman	NAKAYAMA Taro	LDP			
Director	ONO Shinya	LDP	Director	KONDO Motohiko	LDP
Director	FUNADA Hajime	LDP	Director	FURUYA Keiji	LDP
Director	YASUOKA Okiharu	LDP	Director	OIDE Akira	DPJ
Director	SENGOKU Yoshito	DPJ	Director	FURUKAWA Motohisa	DPJ
Director	AKAMATSU Masao	NK			
	ITO Kosuke	LDP		IWANAGA Mineichi	LDP



ETO Seishiro	LDP	OMURA Hideaki	LDP
KURATA Masatoshi	LDP	KONO Taro	LDP
SHIMOMURA Hakubun	LDP	SUGIURA Seiken	LDP
TANAHASHI Yasufumi	LDP	TOKAI Kisaburo	LDP
NAKATANI Gen	LDP	NAGAOKA Yoji	LDP
HIRAI Takuya	LDP	HIRANUMA Takeo	LDP
FUTADA Koji	LDP	MATSUNO Hirokazu	LDP
MORIOKA Masahiro	LDP	MORIYAMA Mayumi	LDP
WATANUKI Tamisuke	LDP	ICHIMURA Koiichiro	DPJ
OHATA Akihiro	DPJ	KOBAYASHI Kenji	DPJ
KONNO Azuma	DPJ	SHIMA Satoshi	DPJ
SUTO Nobuhiko	DPJ	SUEMATSU Yoshinori	DPJ
TAKEYAMA Yuriko	DPJ	TARUTOKO Shinji	DPJ
NAKAGAWA Masaharu	DPJ	NAKANE Yasuhiro	DPJ
NAKANO Jo	DPJ	NAKANO Hiroko	DPJ
NAGASHIMA Akihisa	DPJ	MABUCHI Sumio	DPJ
MIZUSHIMA Hiroko	DPJ	ISHIDA Noritoshi	NK
OTA Akihiro	NK	SAITO Tetsuo	NK
YAMAGUCHI Tomio	JCP	DOI Takako	SDP

### Changes in Commission Members

<b>158th Session</b>	<b>Members who resigned</b>		<b>New members who replaced them</b>	
Jan. 16, 2004	ICHIMURA Koiichiro	DPJ	KINOSHITA Atsushi	DPJ
	OHATA Akihiro	DPJ	YAMAHANA Ikuo	DPJ
	KONNO Azuma	DPJ	ITO Chuji	DPJ
	SHIMA Satoshi	DPJ	KANO Michihiko	DPJ
	SUTO Nobuhiko	DPJ	KUSUDA Daizo	DPJ
	SUEMATSU Yoshinori	DPJ	GEMBA Koichiro	DPJ
	TAKEYAMA Yuriko	DPJ	SUZUKI Katsumasa	DPJ
	TARUTOKO Shinji	DPJ	SONODA Yasuhiro	DPJ
	NAKAGAWA Masaharu	DPJ	TAKEMASA Koichi	DPJ
	NAKANE Yasuhiro	DPJ	TANAKA Makiko	DPJ
	NAKANO Jo	DPJ	TSUJI Megumu	DPJ
	NAKANO Hiroko	DPJ	HAKARIYA Keiko	DPJ
	NAGASHIMA Akihisa	DPJ	MASUKO Teruhiko	DPJ
	MABUCHI Sumio	DPJ	MURAKOSHI Hirotami	DPJ
	MIZUSHIMA Hiroko	DPJ	RYU Hirofumi	DPJ
	ISHIDA Noritoshi	NK	FUKUSHIMA Yutaka	NK
<b>159th Session</b>	<b>Members who resigned</b>		<b>New members who replaced them</b>	
Apr. 9, 2004	KINOSHITA Atsushi	DPJ	MABUCHI Sumio	DPJ
May 7, 2004	SUGIURA Seiken	LDP	NODA Takeshi	LDP

May 20, 2004	ONO Shinya	LDP	KAWASAKI Jiro	LDP
May 24, 2004	SENGOKU Yoshito	DPJ	EDANO Yukio	DPJ
May 28, 2004	KAWASAKI Jiro	LDP	FUKUDA Yasuo	LDP
June 3, 2004	ETO Seishiro	LDP	SHIBAYAMA Masahiko	LDP

<b>160th Session</b>	<b>Members who resigned</b>		<b>New members who replaced them</b>	
Sept. 27, 2004	TANAHASHI Yasufumi	LDP	WATANABE Hiromichi	LDP
Sept. 29, 2004	IWANAGA Mineichi	LDP	SATO Akira	LDP
Sept. 30, 2004	KURATA Masatoshi	LDP	TAKESHITA Wataru	LDP
	SHIMOMURA Hakubun	LDP	SAKAMOTO Goji	LDP
Oct. 8, 2004	MORIOKA Masahiro	LDP	KOSAKA Kenji	LDP
	KOSAKA Kenji	LDP	SATA Genichiro	LDP
	SATO Akira	LDP	HANASHI Yasuhiro	LDP
	TAKESHITA Wataru	LDP	MIHARA Asahiko	LDP
	WATANUKI Tamisuke	LDP	HAGINO Koki	LDP
	ITO Chuji	DPJ	NAKAGAWA Masaharu	DPJ
	KUSUDA Daizo	DPJ	AOKI Ai	DPJ
	GEMBA Koichiro	DPJ	INAMI Tetsuo	DPJ
	KOBAYASHI Kenji	DPJ	NAKANE Yasuhiro	DPJ
	TAKEMASA Koichi	DPJ	NAGASHIMA Akihisa	DPJ
	MASUKO Teruhiko	DPJ	WADA Takashi	DPJ
	MURAKOSHI Hirotami	DPJ	WATANABE Kozo	DPJ
	SAITO Tetsuo	NK	SATO Shigeki	NK

<b>161st Session</b>	<b>Members who resigned</b>		<b>New members who replaced them</b>	
Oct. 12, 2004	HAGINO Koki	LDP	KATO Katsunobu	LDP
Oct. 28, 2004	SATA Genichiro	LDP	MATSUMIYA Isao	LDP
Jan. 11, 2005	NAGASHIMA Akihisa	DPJ	SATO Akira	LDP
Jan. 18, 2005	SATO Shigeki	NK	TAKAGI Yosuke	NK

<b>162nd Session</b>	<b>Member who resigned</b>		<b>New member who replaced him</b>	
Jan. 28, 2005	SATO Akira	LDP	HAYAKAWA Chuko	LDP

#### **Changes in Commission Directors**

<b>159th Session</b>	<b>New directors</b>		<b>Directors who resigned</b>	
Jan. 22, 2004	KINOSHITA Atsushi	DPJ	FURUKAWA Motohisa	
	YAMAHANA Ikuo	DPJ	OIDE Akira	
Mar. 23, 2004	SUZUKI Katsumasa	DPJ	KINOSHITA Atsushi	
June 3, 2004	FUKUDA Yasuo	LDP	ONO Shinya	
	EDANO Yukio	DPJ	SENGOKU Yoshito	

**161st Session**  
Oct. 14, 2004

**New director**  
NAKAGAWA Masaharu DPJ

**Director who resigned**  
SUZUKI Katsumasa

## Section 2 Chairman and Deputy Chairman

### 1) Chairman

The Chairman of the Research Commission on the Constitution is elected by its members from among themselves (Article 5 of the Commission Regulations). The chairman arranges the business of the Commission, maintains order in it, and represents it (Article 6 of the Commission Regulations).

The following chairman has been elected.

<b>Date of Appointment</b>	<b>Chairman</b>
147th Diet Session, January 20, 2000	NAKAYAMA Taro (LDP)
148th Diet Session, July 5, 2000	NAKAYAMA Taro (LDP)
158th Diet Session, November 20, 2003	NAKAYAMA Taro (LDP)

### 2) Deputy Chairman

The Diet Law and the Regulations of the Research Commission on the Constitution of the House of Representatives contain no provisions governing the deputy chairman. At the directors' meeting of the Rules and Administration Committee of the House of Representatives held on July 6, 1999 during the 145th Session of the Diet, it was agreed that the chairman would appoint a deputy chairman from among the directors of the largest opposition party.

The following deputy chairmen have been appointed.

<b>Date of Appointment</b>	<b>Deputy Chairman</b>
147th Diet Session, January 20, 2000	KANO Michihiko (DPJ)
148th Diet Session, July 5, 2000	KANO Michihiko (DPJ)
154th Diet Session, February 7, 2002	NAKANO Kansei (DPJ)
155th Diet Session, October 24, 2002	SENGOKU Yoshito (DPJ)
158th Diet Session, November 20, 2003	SENGOKU Yoshito (DPJ)
159th Diet Session, June 3, 2004	EDANO Yukio (DPJ)

### **Section 3 Directors and Meetings of Directors**

The Research Commission on the Constitution has one or more directors who are elected by its members from among themselves (Article 7, Paragraph 1 of the Commission Regulations). The chairman may hold a meeting of directors to consult on the management of the Commission (Article 7, Paragraph 2 of the Commission Regulations). In the event that the chairman is indisposed, one of the directors discharges the functions of the chairman (Article 7, Paragraph 3 of the Commission Regulations).

At the Rules and Administration Committee of the House of Representatives held on January 20, 2000, during the 147th Diet Session, the number of directors of the Commission was set at nine, and it was decided that membership would be allocated among the political parties and groups as follows: LDP: 5; DPJ: 2; NK-RC: 1; and LP: 1. The JCP and the SDP were not allocated director positions because they were small parties. However, the two parties submitted a request that they be granted observer status, and such status was approved for both of these parties at the first meeting of directors to ensure the fair operation of the Research Commission through the participation of as many political parties and groups as possible. Observer status at the meeting of directors will be approved upon request for all new political parties and groups that are formed.

OSHIMA Tadamori, Chairman of the Rules and Administration Committee of the House of Representatives, made a verbal request to Commission Chairman NAKAYAMA Taro on February 10, 2000, that the observer members from the JCP and the SDP—the two parties which were not allocated director positions—be treated the same as directors at the Research Commission based on the details of the discussions at the directors' meeting of the Rules and Administration Committee on the allocation of director positions among the political parties and groups.

Based on the results of the 43rd General Election of the House of Representatives (November 20, 2003), the JCP and SDP submitted a request that they be granted observer status at the meeting of directors, but only the JCP was granted observer status.

For the allocation of membership and changes therein, refer to 2. Allocation of Commission Directorships to Each Political Party and Changes in Directors in Part 4.

### **Section 4 Subcommittees**

The Commission may set up subcommittees (Article 8 of the Commission Regulations).

To promote specialized and effective research on the individual points at issue regarding the Constitution of Japan, the Research Commission set up various subcommittees. This decision was made in light of the three basic principles of the Constitution of Japan, the discussions at the Research Commission, and the concern of the Japanese people.

The Research Commission decided that the chairmen and members of each subcommittee would be appointed by the Commission chairman. It was also decided that the chairman and the deputy chairman would have permanent seats on the subcommittees.

**1) Subcommittee Names, Research Issues, Allocation of Membership, and Chairpersons**

**(1) Subcommittees Established at the 154th Diet Session (February 7, 2002) and 155th Diet Session (November 7, 2002)**

Subcommittee name	Subcommittee on guarantee of fundamental human rights	Subcommittee on fundamental and organizational role of politics	Subcommittee on Japan's role in international society	Subcommittee on local autonomy
Research topic	To research the guarantee of fundamental human rights	To research the fundamental and organizational role of politics	To research Japan's role in international society	To research local autonomy
Allocation of subcommittee membership	16 (LDP: 7, DPJ: 4, NK: 1, LP: 1, JCP: 1, SDP: 1, NCP:1)			
154th Session Chairperson	SHIMA Satoshi (DPJ)	TAKAICHI Sanae (LDP)	NAKAGAWA Shoichi (LDP)	YASUOKA Okiharu (LDP)
155th Session Chairperson	OIDE Akira (DPJ)	YASUOKA Okiharu (LDP)		NISHIDA Mamoru (LDP)

**(2) Subcommittees Established at the 156th Diet Session (January 30, 2003), the 157th Diet Session (October 2, 2003), and the 159th Diet Session (January 22, 2004)**

Subcommittee name	Subcommittee on ideal Constitution as supreme law	Subcommittee on security and international cooperation	Subcommittee on guarantee of fundamental human rights	Subcommittee on ideal government and organizations
Research topic	To research the ideal Constitution as supreme law	To research security and international cooperation	To research the guarantee of fundamental human rights	To research the ideal government and organizations
Allocation of subcommittee membership	156th Session 16 (LDP: 7, DPJ: 4, NK: 1, LP: 1, JCP: 1, SDP: 1, NCP:1)			
	157th Session 16 (LDP: 7, DPJ: 5, NK: 1, JCP: 1, SDP: 1, NCP:1)			
	159th Session 16 (LDP: 7, DPJ: 5, NK: 1, JCP: 1, SDP: 1)			
156th Session Chairperson	YASUOKA Okiharu (LDP)	NAKAGAWA Shoichi (LDP)	OIDE Akira (DPJ)	SUGIURA Seiken (LDP)
157th Session Chairperson		NAKAYAMA Masaaki (LDP)		
159th Session Chairperson		KONDO Motohiko (LDP)	YAMAHANA Ikuo (DPJ)	KINOSHITA Atsushi (DPJ) From March 23, 2004: SUZUKI Katsumasa (DPJ)

## 2) Subcommittee Membership and Major Changes in Subcommittee Chairpersons and Members (excluding temporary changes)

### (1) Subcommittees Established at the 154th Diet Session (February 7, 2002)

#### A. Subcommittee on Guarantee of Fundamental Human Rights

Chairperson	SHIMA Satoshi	DPJ		
	KANEKO Kazuyoshi	LDP	KONDO Motohiko	LDP
	NAKAYAMA Nariaki	LDP	NAKAYAMA Masaaki	LDP
	NAGASE Jinen	LDP	HANASHI Nobuyuki	LDP
	MOTEGI Toshimitsu	LDP	OIDE Akira	DPJ
	KOBAYASHI Kenji	DPJ	KONNO Azuma	DPJ
	OTA Akihiro	NK	TAKEYAMA Yuriko	LP
	HARUNA Naoaki	JCP	KANEKO Tetsuo	SDP
	INOUE Kiichi	NCP		

#### Changes in Subcommittee Members

	New subcommittee members		Subcommittee members who resigned	
Feb. 8, 2002	MATSUSHIMA Midori	LDP	NAKAYAMA Masaaki	
Feb. 25, 2002	TSUCHIYA Shinako	LDP	MATSUSHIMA Midori	
Mar. 14, 2002	ISHIBA Shigeru	LDP	MOTEGI Toshimitsu	
July 11, 2002	TANIKAWA Kazuo	LDP	NAKAYAMA Nariaki	

#### B. Subcommittee on Fundamental and Organizational Role of Politics

Chairperson	TAKAICHI Sanae	LDP		
	ITO Tatsuya	LDP	OKUNO Seisuke	LDP
	TANIGAKI Sadakazu	LDP	NAKASONE Yasuhiro	LDP
	NUKAGA Fukushima	LDP	MATSUSHIMA Midori	LDP
	SHIMA Satoshi	DPJ	SENGOKU Yoshito	DPJ
	BANNO Yutaka	DPJ	MATSUZAWA Shigefumi	DPJ
	SAITO Tetsuo	NK	FUJISHIMA Masayuki	LP
	YAMAGUCHI Tomio	JCP	DOI Takako	SDP
	INOUE Kiichi	NCP		

#### Change in Subcommittee Member

	New subcommittee member		Subcommittee member who resigned	
Feb. 8, 2002	NAKAYAMA Masaaki	LDP	MATSUSHIMA Midori	

### C. Subcommittee on Japan's Role in International Society

Chairperson	NAKAGAWA Shoichi	LDP		
	ISHIKAWA Yozo	LDP	KOMURA Masahiko	LDP
	KONDO Motohiko	LDP	TSUCHIYA Shinako	LDP
	HANASHI Nobuyuki	LDP	HIRAI Takuya	LDP
	SUTO Nobuhiko	DPJ	NAKAGAWA Masaharu	DPJ
	NAKAMURA Tetsuji	DPJ	YAMADA Toshimasa	DPJ
	AKAMATSU Masao	NK	FUJISHIMA Masayuki	LP
	YAMAGUCHI Tomio	JCP	KANEKO Tetsuo	SDP
	INOUE Kiichi	NCP		

### D. Subcommittee on Local Autonomy

Chairperson	YASUOKA Okiharu	LDP		
	TSUCHIYA Shinako	LDP	NISHIDA Mamoru	LDP
	HANASHI Nobuyuki	LDP	HIRAI Takuya	LDP
	MORIOKA Masahiro	LDP	WATANABE Hiromichi	LDP
	TSUTSUI Nobutaka	DPJ	NAKAGAWA Masaharu	DPJ
	NAKAMURA Tetsuji	DPJ	NAGAI Eiji	DPJ
	EDA Yasuyuki	NK	TAKEYAMA Yuriko	LP
	HARUNA Naoaki	JCP	DOI Takako	SDP
	INOUE Kiichi	NCP		

### Change in Subcommittee Member

	New subcommittee member		Subcommittee member who resigned
Feb. 25, 2002	ITO Kosuke	LDP	TSUCHIYA Shinako

## (2) Subcommittees Established at the 155th Diet Session (November 7, 2002)

### A. Subcommittee on Guarantee of Fundamental Human Rights

Chairperson	OIDE Akira	DPJ		
	KURATA Masatoshi	LDP	KONDO Motohiko	LDP
	TANIKAWA Kazuo	LDP	TANIMOTO Tatsuya	LDP
	NAGASE Jinen	LDP	NODA Seiko	LDP
	HANASHI Nobuyuki	LDP	EDANO Yukio	DPJ
	KOBAYASHI Kenji	DPJ	KONNO Azuma	DPJ
	OTA Akihiro	NK	TAKEYAMA Yuriko	LP
	YAMAGUCHI Tomio	JCP	KANEKO Tetsuo	SDP
	INOUE Kiichi	NCP		



## **B. Subcommittee on Fundamental and Organizational Role of Politics**

Chairperson	YASUOKA Okiharu	LDP		
	OKUNO Seisuke	LDP	TANIMOTO Tatsuya	LDP
	NAKASONE Yasuhiro	LDP	NAKAYAMA Masaaki	LDP
	NUKAGA Fukushima	LDP	FUKUI Teru	LDP
	EDANO Yukio	DPJ	NAKANO Kansei	DPJ
	BANNO Yutaka	DPJ	MATSUZAWA Shigefumi	DPJ
	SAITO Tetsuo	NK	FUJISHIMA Masayuki	LP
	HARUNA Naoaki	JCP	DOI Takako	SDP
	INOUE Kiichi	NCP		

## **C. Subcommittee on Japan's Role in International Society**

Chairperson	NAKAGAWA Shoichi	LDP		
	ISHIKAWA Yozo	LDP	KONDO Motohiko	LDP
	SHIMOJI Mikio	LDP	HANASHI Nobuyuki	LDP
	HIRAI Takuya	LDP	YAMAGUCHI Taimei	LDP
	SUTO Nobuhiko	DPJ	NAKAGAWA Masaharu	DPJ
	NAKAMURA Tetsuji	DPJ	YAMADA Toshimasa	DPJ
	AKAMATSU Masao	NK	FUJISHIMA Masayuki	LP
	YAMAGUCHI Tomio	JCP	KANEKO Tetsuo	SDP
	INOUE Kiichi	NCP		

## **D. Subcommittee on Local Autonomy**

Chairperson	NISHIDA Mamoru	LDP		
	ITO Kosuke	LDP	SATO Tsutomu	LDP
	SUGIURA Seiken	LDP	HANASHI Nobuyuki	LDP
	HIRAI Takuya	LDP	MORIOKA Masahiro	LDP
	TSUTSUI Nobutaka	DPJ	NAKAGAWA Masaharu	DPJ
	NAKAMURA Tetsuji	DPJ	NAGAI Eiji	DPJ
	EDA Yasuyuki	NK	TAKEYAMA Yuriko	LP
	HARUNA Naoaki	JCP	DOI Takako	SDP
	INOUE Kiichi	NCP		

## **(3) Subcommittees Established at the 156th Diet Session (January 30, 2003)**

### **A. Subcommittee on Ideal Constitution as Supreme Law**

Chairperson	YASUOKA Okiharu	LDP		
	OKUNO Seisuke	LDP	KONDO Motohiko	LDP
	NAKASONE Yasuhiro	LDP	HANASHI Nobuyuki	LDP
	HIRAI Takuya	LDP	MORIOKA Masahiro	LDP
	OHATA Akihiro	DPJ	SHIMA Satoshi	DPJ

NAKANO Kansei	DPJ	BANNO Yutaka	DPJ
AKAMATSU Masao	NK	FUJISHIMA Masayuki	LP
YAMAGUCHI Tomio	JCP	KITAGAWA Renko	SDP
INOUE Kiichi	NCP		

### Changes in Subcommittee Members

	New subcommittee members		Subcommittee members who resigned	
Mar. 13, 2003	ENDO Kazuyoshi	NK	AKAMATSU Masao	
May 29, 2003	NAKAGAWA Masaharu	DPJ	BANNO Yutaka	

### B. Subcommittee on Security and International Cooperation

Chairperson	NAKAGAWA Shoichi	LDP		
	ISHIKAWA Yozo	LDP	KONDO Motohiko	LDP
	SHIMOJI Mikio	LDP	TANIMOTO Tatsuya	LDP
	NAKAYAMA Masaaki	LDP	YAMAGUCHI Taimei	LDP
	KUWABARA Yutaka	DPJ	KONNO Azuma	DPJ
	SUTO Nobuhiko	DPJ	NAKANO Kansei	DPJ
	AKAMATSU Masao	NK	FUJISHIMA Masayuki	LP
	HARUNA Naoaki	JCP	KANEKO Tetsuo	SDP
	INOUE Kiichi	NCP		

### Change in Subcommittee Member

	New subcommittee member		Subcommittee member who resigned	
June 12, 2003	KONO Taro	LDP	ISHIKAWA Yozo	

### C. Subcommittee on Guarantee of Fundamental Human Rights

Chairperson	OIDE Akira	DPJ		
	KURATA Masatoshi	LDP	TANIMOTO Tatsuya	LDP
	NAGASE Jinen	LDP	NODA Seiko	LDP
	NODA Takeshi	LDP	HANASHI Nobuyuki	LDP
	HIRABAYASHI Kozo	LDP	KOBAYASHI Kenji	DPJ
	KONNO Azuma	DPJ	MIZUSHIMA Hiroko	DPJ
	OTA Akihiro	NK	TAKEYAMA Yuriko	LP
	HARUNA Naoaki	JCP	KITAGAWA Renko	SDP
	INOUE Kiichi	NCP		

## Changes in Subcommittee Members

	New subcommittee members		Subcommittee members who resigned	
June 5, 2003	YAMATANI Eriko	NCP	INOUE Kiichi	
July 10, 2003	INOUE Kiichi	NCP	YAMATANI Eriko	

### D. Subcommittee on ideal government and organizations

Chairperson	SUGIURA Seiken	LDP		
	ITO Kosuke	LDP	KAWASAKI Jiro	LDP
	SATO Tsutomu	LDP	TANIKAWA Kazuo	LDP
	NUKAGA Fukushima	LDP	FUKUI Teru	LDP
	SHIMA Satoshi	DPJ	SUEMATSU Yoshinori	DPJ
	NAKAGAWA Masaharu	DPJ	FURUKAWA Motohisa	DPJ
	SAITO Tetsuo	NK	TAKEYAMA Yuriko	LP
	YAMAGUCHI Tomio	JCP	KANEKO Tetsuo	SDP
	INOUE Kiichi	NCP		

## Changes in Subcommittee Members

	New subcommittee members		Subcommittee members who resigned	
Mar. 13, 2003	HANASHI Nobuyuki	LDP	KAWASAKI Jiro	
Mar. 27, 2003	BANNO Yutaka	DPJ	NAKAGAWA Masaharu	
May 29, 2003	NAKAGAWA Masaharu	DPJ	BANNO Yutaka	

## (4) Subcommittees Established at the 157th Diet Session (October 2, 2003)

### A. Subcommittee on Ideal Constitution as Supreme law

Chairperson	YASUOKA Okiharu	LDP		
	OKUNO Seisuke	LDP	KONDO Motohiko	LDP
	NAKASONE Yasuhiro	LDP	HANASHI Nobuyuki	LDP
	HIRAI Takuya	LDP	MORIOKA Masahiro	LDP
	OHATA Akihiro	DPJ	SHIMA Satoshi	DPJ
	NAKAGAWA Masaharu	DPJ	NAKANO Kansei	DPJ
	FUJISHIMA Masayuki	DPJ	ENDO Kazuyoshi	NK
	YAMAGUCHI Tomio	JCP	KITAGAWA Renko	SDP
	NISHIKAWA Taichiro	NCP		

### B. Subcommittee on Security and International Cooperation

Chairperson	NAKAYAMA Masaaki	LDP		
	KONO Taro	LDP	KONDO Motohiko	LDP
	SHIMOJI Mikio	LDP	TANIMOTO Tatsuya	LDP

MIZUNO Kenichi	LDP	YAMAGUCHI Taimei	LDP
KUWABARA Yutaka	DPJ	KONNO Azuma	DPJ
SUTO Nobuhiko	DPJ	NAKANO Kansei	DPJ
FUJISHIMA Masayuki	DPJ	AKAMATSU Masao	NK
HARUNA Naoaki	JCP	KANEKO Tetsuo	SDP
NISHIKAWA Taichiro	NCP		

### C. Subcommittee on Guarantee of Fundamental Human Rights

Chairperson	OIDE Akira	DPJ		
	KURATA Masatoshi	LDP	TANIMOTO Tatsuya	LDP
	NAGASE Jinen	LDP	NODA Seiko	LDP
	NODA Takeshi	LDP	HANASHI Nobuyuki	LDP
	HIRABAYASHI Kozo	LDP	KOBAYASHI Kenji	DPJ
	KONNO Azuma	DPJ	TAKEYAMA Yuriko	DPJ
	MIZUSHIMA Hiroko	DPJ	OTA Akihiro	NK
	HARUNA Naoaki	JCP	KITAGAWA Renko	SDP
	NISHIKAWA Taichiro	NCP		

### D. Subcommittee on Ideal Government and Organizations

Chairperson	SUGIURA Seiken	LDP		
	ITO Kosuke	LDP	SATO Tsutomu	LDP
	TANIKAWA Kazuo	LDP	NUKAGA Fukushima	LDP
	HANASHI Nobuyuki	LDP	FUKUI Teru	LDP
	SHIMA Satoshi	DPJ	SUEMATSU Yoshinori	DPJ
	TAKEYAMA Yuriko	DPJ	NAKAGAWA Masaharu	DPJ
	FURUKAWA Motohisa	DPJ	SAITO Tetsuo	NK
	YAMAGUCHI Tomio	JCP	KANEKO Tetsuo	SDP
	NISHIKAWA Taichiro	NCP		

## (5) Subcommittees Established at the 159th Diet Session (January 22, 2004)

### A. Subcommittee on Ideal Constitution as Supreme Law

Chairperson	YASUOKA Okiharu	LDP		
	ONO Shinya	LDP	SHIMOMURA Hakubun	LDP
	HIRANUMA Takeo	LDP	FUNADA Hajime	LDP
	MORIOKA Masahiro	LDP	WATANUKI Tamisuke	LDP
	OIDE Akira	DPJ	KOBAYASHI Kenji	DPJ
	HAKARIYA Keiko	DPJ	FURUKAWA Motohisa	DPJ
	MASUKO Teruhiko	DPJ	AKAMATSU Masao	NK
	YAMAGUCHI Tomio	JCP	DOI Takako	SDP

### Change in Subcommittee Member

	New subcommittee member		Subcommittee member who resigned
June 1, 2004	FUKUDA Yasuo	LDP	ONO Shinya

### B. Subcommittee on Security and International Cooperation

Chairperson	KONDO Motohiko	LDP		
	ITO Kosuke	LDP	OMURA Hideaki	LDP
	KONO Taro	LDP	TOKAI Kisaburo	LDP
	NAKATANI Gen	LDP	HIRAI Takuya	LDP
	ITO Chuji	DPJ	OIDE Akira	DPJ
	KUSUDA Daizo	DPJ	TANAKA Makiko	DPJ
	TAKEMASA Koichi	DPJ	FUKUSHIMA Yutaka	NK
	YAMAGUCHI Tomio	JCP	DOI Takako	SDP

### C. Subcommittee on Guarantee of Fundamental Human Rights

Chairperson	YAMAHANA Ikuo	DPJ		
	ONO Shinya	LDP	KURATA Masatoshi	LDP
	TANAHASHI Yasufumi	LDP	HIRAI Takuya	LDP
	FUNADA Hajime	LDP	FURUYA Keiji	LDP
	MATSUNO Hirokazu	LDP	SONODA Yasuhiro	DPJ
	TSUJI Megumu	DPJ	MURAKOSHI Hirotami	DPJ
	RYU Hirofumi	DPJ	OTA Akihiro	NK
	YAMAGUCHI Tomio	JCP	DOI Takako	SDP

### Changes in Subcommittee Members

	New subcommittee members		Subcommittee members who resigned
May 27, 2004	KONDO Motohiko	LDP	ONO Shinya
June 1, 2004	FUKUDA Yasuo	LDP	KONDO Motohiko

### D. Subcommittee on Ideal Government and Organizations

Chairperson	KINOSHITA Atsushi	DPJ		
	IWANAGA Mineichi	LDP	ETO Seishiro	LDP
	SUGIURA Seiken	LDP	NAGAOKA Yoji	LDP
	FUTADA Koji	LDP	FURUYA Keiji	LDP
	MORIYAMA Mayumi	LDP	KANO Michihiko	DPJ
	GEMBA Koichiro	DPJ	SUZUKI Katsumasa	DPJ
	TSUJI Megumu	DPJ	SAITO Tetsuo	NK
	YAMAGUCHI Tomio	JCP	DOI Takako	SDP

### **Change in Subcommittee Chairperson**

	<b>New subcommittee chairperson</b>		<b>Subcommittee chairperson who resigned</b>
Mar. 23, 2004	SUZUKI Katsumasa	DPJ	KINOSHITA Atsushi

### **Changes in Subcommittee Members**

	<b>New subcommittee members</b>		<b>Subcommittee members who resigned</b>
Apr. 12, 2004	MABUCHI Sumio	DPJ	KINOSHITA Atsushi
May 10, 2004	NODA Takeshi	LDP	SUGIURA Seiken
June 3, 2004	SHIBAYAMA Masahiko	LDP	ETO Seishiro

## **Section 5 Office**

The Commission Regulations stipulate that an Office shall be created in the Research Commission on the Constitution to handle the Commission's business. The Office is staffed by a Director General and other necessary personnel. The Director General of the Office administers the business of the Office under the direction of the Chairman of the Commission. (Article 24 of the Commission Regulations)

## **Chapter 3 Basic Administrative Matters**

### **1) Basic Matters concerning Administration of the Research Commission**

The directors' meeting of the Rules and Administration Committee of the House of Representatives held on July 6, 1999 during the 145th Session of the Diet reached an agreement to establish the Research Commission and confirmed that (1) the Commission would not have the authority to submit bills; (2) the Commission would conduct research for about five years; and (3) the chairman would appoint a deputy chairman from among the directors of the largest opposition party.

The first meeting of directors was held on February 10, 2000 during the 147th Session of the Diet. In addition to confirming the content of the above agreement, the meeting discussed various administrative matters related to the operation of the Commission, including the regular day for meeting. In addition to the decision to permit the JCP and the SDP to participate as observers in the meeting of directors as mentioned earlier, the directors discussed and decided the following administrative matters related to the operation of the Commission:

- a. Following the procedure for directors' meetings of Diet committees, meetings of directors of the Research Commission shall be closed to the public.
- b. The regular day for meeting of the Research Commission shall be Thursday, and meetings shall be held about twice a month.
- c. Government representatives will, in principle, not be permitted to attend Research Commission meetings or meetings of directors. When deemed necessary, however, participation shall be permitted. Only personnel from the Secretariat of the House of Representatives shall be permitted a permanent seat.
- d. Following the procedure for Diet committees, visitors wishing to attend a meeting of the Research Commission are required to have an introduction from a Diet member. This procedure will stay in place for the time being.

The Commission Regulations clearly state that the meetings of the Research Commission are to be open to the public in principle (Article 22), unlike Diet committee meetings which are closed in principle to the public. Some called for the relaxation of procedures for admitting visitors and the creation of procedures that did not require introduction by a Diet member; however, it was decided that introduction by a Diet member should be required due to such issues as the number of visitors' seats in the meeting room.

At the meeting of directors held on July 5, 2000 during the 148th Diet Session after the 42nd general election held following the dissolution of the House of Representatives in June 2000 and at the meeting of directors held on November 20, 2003 during the 158th Diet Session after the 43rd general election held following the dissolution of the House of Representatives in October 2003, it was confirmed that the same policy regarding these various administrative matters would continue to be used for the Research Commission.

## **2) Basic Matters concerning Administration of the Subcommittees**

The Research Commission established the following four subcommittees at its meeting held on February 7, 2002 during the 154th Session: Subcommittee on guarantee of fundamental human rights; subcommittee on fundamental and organizational role of politics; subcommittee on Japan's role in international society; and subcommittee on local autonomy. At that time, the following basic matters were also discussed and decided regarding administration of the subcommittees.

- a. The appointment of subcommittee members and chairpersons as well as resignations and replacements shall be left to the discretion of the Research Commission Chairman.
- b. The Research Commission Chairman and the deputy chairman shall have permanent seats on each subcommittee.

Moreover, the meeting of directors of the Research Commission held the same day confirmed that the meeting of directors would discuss and decide matters related to the administration of the subcommittees in order to coordinate the pace of research by each subcommittee, including research topics, methods, and the selection of informants.

At the time of the establishment of new subcommittees since then, it was confirmed that the same policy regarding these basic matters concerning administration of subcommittees would continue to be used.

## **3) Basic Matters concerning Administration of the Open Hearings**

To conduct research on the Constitution of Japan, open hearings were held according to the following guidelines in order to hear the opinions of various segments of Japanese society regarding the Constitution.

### **(1) Speakers**

At the First and Second Open Hearings held during the 159th Diet Session, a total of nine speakers spoke, of which six were recommended by the meeting of directors and three were selected based on applications received from the public. Speakers recommended by the meeting of directors were selected using the following process: persons recommended by a political party or group were selected by the meeting of directors after discussion. Speakers selected based on applications received from the public were selected using the following process: The details of open hearings were announced via government gazettes, press releases, and the House of Representatives Website. Applicants were required to submit an essay of 800 Japanese characters in length outlining the views the applicant planned to express at the open hearing. The essays submitted were screened, and speakers selected at the meeting of directors based on the essay as well as the applicant's age, gender, occupation, and other matters.



At the First, Second, and Third Open Hearings held during the 161st Diet Session, a total of 18 speakers spoke, of which 12 were recommended by the meeting of directors and six were selected based on applications received from the public. The processes used to select the speakers were the same as those used for the open hearings held during the 159th Diet Session.

## **(2) Proceedings**

Each open hearing was composed of: a morning session and an afternoon session (the Second Open Hearing held during the 159th Diet Session consisted of a morning session only), with three speakers speaking at each session. The views of each of the three speakers were heard in order. After all three speakers had expressed their views, there was time for questions to the speakers. Each speaker was given 20 minutes to state their views (at the afternoon session of the First Open Hearing held during the 161st Diet Session, each speaker was given 15 minutes only). The question time was allocated as follows: LDP: 45 minutes; DPJ: 30 minutes; NK-RN: 15 minutes; JCP: 15 minutes; and SDP: 15 minutes (at the afternoon session of the First Open Hearing held during the 161st Diet Session, each political party or group was given 15 minutes only).

For data concerning the open hearings, refer to “5. Open Hearings Data” in Part 4.

## **4) Basic Matters concerning Administration of the Local Open Hearings**

In order to hear the opinions of various segments of Japanese society regarding the Constitution of Japan and reflect these opinions in the research of the Research Commission on the Constitution, Commission members were dispatched and local open hearings were held according to the following guidelines.

### **(1) Venues**

Venues for the local open hearings were discussed and decided at the meeting of directors on a case-by-case basis taking various circumstances into consideration.

### **(2) Speakers**

For the First and Second Local Open Hearings, the number of speakers was set at ten. Each of the eight political parties and groups allotted a member at the Research Commission recommended one speaker. Applications were received from the public for the remaining two positions, and the speakers were selected at the meeting of directors based on the applications. At the First Local Open Hearing, applications from the public were received for three of the positions because the New Conservative Party (NCP) gave up its right to recommend a speaker in favor of having a speaker selected from the public. As a result, seven speakers were recommended by political parties and groups while the remaining three speakers were selected based on applications from the public.

The speaker selection process was as follows: Persons recommended by a political party or group were named as speakers by the meeting of directors with no further procedures needed. Regarding speakers selected based on applications received from the public, the process was as follows: The details of the local open hearings were announced via government gazettes, press releases, and the House of Representatives Website. Applicants were required to submit an essay of 800 Japanese characters in length outlining the views the applicant planned to express at the local open hearing. The essays submitted were screened, and speakers selected at the meeting of directors based on the essay as well as the applicant's age, gender, occupation, and other matters.

From the Third Local Open Hearing, the number of speakers was reduced to six to increase the amount of time for each speaker's statement. The recommendation of speakers by the political parties and groups was eliminated, and all six speakers were selected based on applications received from the public. The final selection of speakers was made at the meeting of directors. The speaker selection process was the same as that for the First and Second Local Open Hearings.

### **(3) Dispatching of Member Delegation**

Dispatched to the First Local Open Hearing was a delegation of Commission members led by Chairman NAKAYAMA Taro and composed of the deputy chairman as well as one member from each political party and group. Dispatched for the other local open hearings was a delegation led by Chairman NAKAYAMA Taro and composed of the deputy chairman, two LDP members as well as one member from each political party and group.

### **(4) Proceedings**

Each local open hearing was structured as follows: Chairman NAKAYAMA Taro, who served as chairman of the local open hearing, gave the opening greeting and explained the purpose of the local open hearing. Following this, the views of each speaker were heard. After all speakers had expressed their views, the participating Commission members had an opportunity to ask questions. The amount of time allotted for each speaker to state his or her views and for each delegation member to ask questions to the speakers was ten minutes for the First and Second Local Open Hearings and fifteen minutes for the remaining local open hearings.

After the Commission members had finished asking questions, the views of visitors were solicited, as time permitted. At each local open hearing, a few visitors had the opportunity to comment on the day's proceedings and on the Constitution.

### **(5) Admission of Visitors**

Admission of Diet members and their secretaries, members of the press, as well as the general public to the local open hearings required the permission of the Commission delegation leader. A total of from 200 to 300 seats, depending on the size of the venue, were reserved for the general public.

Some of these seats were apportioned for visitors who were selected by the political parties and groups while the remaining seats were for visitors from the general public who applied to the visitors' lottery. Regarding the visitors' lottery, the details of the local open hearings were announced via government gazettes, press releases, and the House of Representatives Website, and applications from the general public were solicited. In the event that there were too many applicants, visitors were selected by lottery.

For data concerning the local open hearings, refer to "6. Local Open Hearings: Data and Reports by Members Participating" in Part 4.

## **Part 3**

### **Progress and Contents of Research Conducted by the Research Commission on the Constitution**

#### **Chapter 1**

##### **Progress of Research**

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## **Part 3 Progress and Contents of Research Conducted by the Research Commission on the Constitution**

### **Chapter 1 Progress of Research**

From its establishment on January 20, 2000 to December 2001, the Research Commission on the Constitution conducted broad and comprehensive research on the Constitution of Japan based on the themes of “details of how the Constitution was formulated,” “major postwar judgments of unconstitutionality,” and “a vision for Japan in the 21st century.” In 2002, subcommittees were set up under the Research Commission on the Constitution to conduct specialized research on the four themes of “guarantee of fundamental human rights,” “fundamental and organizational role of politics,” “Japan’s role in international society,” and “local autonomy.” These four subcommittees studied the Constitution of Japan from their respective viewpoints. From 2003 to June 2004, subcommittees were set up under the Research Commission on the Constitution to conduct specialized research on the four themes of “ideal Constitution as supreme law,” “security and international cooperation,” “guarantee of fundamental human rights,” and “ideal government and organizations.” The four subcommittees conducted exhaustive research on the Preamble and all 103 articles of the Constitution. From August 2004, no subcommittees were established, and the Research Commission on the Constitution conducted research focused on discussions among the members.

During the course of this research, in order to hear the opinions of people from various segments of Japanese society, local open hearings were held in (1) Sendai in Miyagi Prefecture, Kobe in Hyogo Prefecture, and Nagoya in Aichi Prefecture in 2001; (2) in Nago in Okinawa Prefecture, Sapporo in Hokkaido, and Fukuoka in Fukuoka Prefecture in 2002; (3) in Kanazawa in Ishikawa Prefecture and Takamatsu in Kagawa Prefecture in 2003; and (4) in Hiroshima in Hiroshima Prefecture in 2004. Moreover, open hearings were held at the House of Representatives in May and November 2004.

In addition, House delegations composed mainly of members of the Research Commission on the Constitution were dispatched overseas five times. These delegations conducted studies on the situation of the constitutions in (1) Germany, Switzerland, Italy, France, and Finland in 2000; (2) Russia, Hungary and other Eastern European nations, and five nations, including the Netherlands and Spain, with monarchical systems, and Israel in 2001; (3) the U.K., five Southeast Asian nations (including Thailand and Singapore), the People’s Republic of China, and the Republic of Korea in 2002; (4) the United States, Canada, and Mexico in 2003; and (5) the European Union, Sweden, and Finland in 2004.

## Section 1 Research by the Research Commission on the Constitution and its Subcommittees

### 1) 147th Diet Session

At the meetings held during the 147th Diet session convened on January 20, 2000, the following agenda were covered: (1) internal election of the chairman and directors; (2) statement of political party and group members' opinions; (3) research on the details of how the Constitution was formulated; (4) brainstorming discussions related to Constitution Day; and (5) research on major postwar judgments of unconstitutionality.

The progress of research conducted during the 147th Diet session was as follows.

Date	Meeting	Meeting Agenda	Proceedings
Thurs., Jan. 20, 2000	First Meeting	Internal election of the chairman and directors	
Thurs., Feb. 17, 2000	Second Meeting	Matters relating to the Constitution of Japan	Opinions from members HANASHI Nobuyuki, KANO Michihiko, HIRATA Yoneo, NODA Takeshi, SASAKI Rikukai, and ITO Shigeru were heard.
		Matters relating to the Constitution of Japan (Details of how the Constitution was formulated)	A decision was reached, after discussion, concerning requests for attendance of informants.
Thurs., Feb. 24, 2000	Third Meeting	Matters relating to the Constitution of Japan (Details of how the Constitution was formulated)	After statements were heard from informants, questions were put to them. Informants: NISHI Osamu, Ph.D. Professor of Constitutional Law, Faculty of Law, Komazawa University; Dean, Division of Law, Graduate School, Komazawa University AOYAMA Takenori, Professor, College of Law, Nihon University
Thurs., Mar. 9, 2000	Fourth Meeting	Matters relating to the Constitution of Japan (Details of how the Constitution was formulated)	After statements were heard from informants, questions were put to them. Informants: KOSEKI Shoichi, Professor, Faculty of Law, Dokkyo University MURATA Koji, Assistant Professor, Faculty of Integrated Arts and Sciences, Hiroshima University
Thurs., Mar. 23, 2000	Fifth Meeting	Matters relating to the Constitution of Japan (Details of how the Constitution was formulated)	After statements were heard from informants, questions were put to them. Informants: HASEGAWA Masayasu, Emeritus Professor, Nagoya University TAKAHASHI Masatoshi, Professor, Faculty of Law, Kagawa University
Thurs., Apr. 6, 2000	Sixth Meeting	Matters relating to the Constitution of Japan (Details of how the Constitution was formulated)	After statements were heard from informants, questions were put to them. Informants: KITAOKA Shinichi, Professor, Faculty of Law, The University of Tokyo SHINDO Eiichi, Professor, College of Social Sciences, University of Tsukuba



Date	Meeting	Meeting Agenda	Proceedings
Thurs., Apr. 20, 2000	Seventh Meeting	Matters relating to the Constitution of Japan (Details of how the Constitution was formulated)	After statements were heard from informants, questions were put to them. Informants: IOKIBE Makoto, Professor of Political Science (political history/political process in Japan), Graduate School of Law, Kobe University AMAKAWA Akira, Professor of Political Science (postwar history in Japan), International Graduate School of Social Sciences, Yokohama National University
Thurs., Apr. 27, 2000	Eighth Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held.
Thurs., May 11, 2000	Ninth Meeting	Matters relating to the Constitution of Japan (Details of how the Constitution was formulated)	A brainstorming discussion was held.
Thurs., May 25, 2000	Tenth Meeting	Matters relating to the Constitution of Japan (Major postwar judgments of unconstitutionality)	After an explanation was heard from an official of the Supreme Court, questions were put to him. Informant: CHIBA Katsumi, official, Supreme Court

## 2) 148th Diet Session

Following the 42nd House of Representatives election, the internal election of the chairman and directors was held during the 148th Diet session convened on July 4, 2000.

The research conducted during the 148th Diet session was as follows.

Date	Meeting	Meeting Agenda	Proceedings
Wed., July 5, 2000	First Meeting	Internal election of chairman and directors	

## 3) 149th Diet Session

During the 149th Diet session convened on July 28, 2000, a brainstorming discussion was held on the future proceedings of the Research Commission on the Constitution.

The research conducted during the 149th Diet session was as follows.

Date	Meeting	Meeting Agenda	Proceedings
Thurs., Aug. 3, 2000	First Meeting	Matters relating to the Constitution of Japan (Future proceedings of the Research Commission on the Constitution)	A brainstorming discussion was held.

## 4) 150th Diet Session

At the meetings held during the 150th Diet session convened on September 21, 2000, (1) research was conducted on the theme of “a vision for Japan in the 21st century” and (2) a report was heard on the findings of the House delegation dispatched to survey the constitutions of European nations.

The progress of research conducted during the 150th Diet session was as follows.

Date	Meeting	Meeting Agenda	Proceedings
Thurs., Sept. 28, 2000	First Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	After statements were heard from informants, questions were put to them. Informants: TANAKA Akihiko, Professor, Graduate School of Interdisciplinary Information Studies, The University of Tokyo ODA Makoto, author
		Matters relating to the Constitution of Japan	A decision was reached, after discussion, concerning requests for attendance of informants. Chairman NAKAYAMA Taro presented a brief report on the findings of the House delegation dispatched to survey the constitutions of European nations.
Thurs., Oct. 12, 2000	Second Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	After statements were heard from informants, questions were put to them. Informants: SONO Ayako, writer; Chairperson, The Nippon Foundation KONDO Motohiro, Professor, Graduate School of Social and Cultural Studies, Nihon University
Thurs., Oct. 26, 2000	Third Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	After a statement was heard from an informant, questions were put to him. Informant: ICHIMURA Shinichi, Director, The International Centre for the Study of East Asian Development (ICSEAD)
Thurs., Nov. 9, 2000	Fourth Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	After statements were heard from informants, questions were put to them. Informants: SASAKI Takeshi, Professor, The University of Tokyo KOBAYASHI Takeshi, LL.D., Professor, Nanzan University
Thurs., Nov. 30, 2000	Fifth Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	After statements were heard from informants, questions were put to them. Informants: ISHIHARA Shintaro, Governor of Tokyo SAKURAI Yoshiko, journalist
Thurs., Dec. 7, 2000 (Diet not in session)	Sixth Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	After statements were heard from informants, questions were put to them. Informants: MATSUMOTO Kenichi, Professor, Reitaku University; commentator WATANABE Shoichi, Professor, Sophia University
Thurs., Dec. 21, 2000 (Diet not in session)	Seventh Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	After a statement was heard from an informant, questions were put to him. Informant: MURAKAMI Yoichiro, Professor, College of Liberal Arts, International Christian University

Note: The October 12, 2000 meeting of the Research Commission on the Constitution was held without the attendance of members belonging to the DPJ, LP, JCP, and SDP. This was due to the state of disorder that the National Diet was in, caused by the conflict over the bill to amend the Public Offices Election Law that had been submitted in order to introduce the open-list system to the House of Councillors' proportional representation.

## 5) 151st Diet Session

During the 151st Diet session convened on January 31, 2001, research was conducted on the theme "a vision for Japan in the 21st century" and local open hearings were held in Sendai and Kobe.

The progress of research conducted during the 151st Diet session was as follows.

Date	Meeting	Meeting Agenda	Proceedings
Thurs., Feb. 8, 2001	First Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	After statements were heard from informants, questions were put to them. Informants: NISHIZAWA Junichi, President, Iwate Prefectural University TAKAHASHI Susumu, Professor, The University of Tokyo A decision was reached, after discussion, concerning requests for attendance of informants.
Thurs., Feb. 22, 2001	Second Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	After statements were heard from informants, questions were put to them. Informants: HAYASHIZAKI Yoshihide, Project Director, Genome Exploration Research Group, Genomic Sciences Center, Institute of Physical and Chemical Research (RIKEN) OGAWA Naohiro, Professor, College of Economics, Nihon University; Deputy Director, Nihon University Population Research Institute (NUPRI) A decision was reached, after discussion, on a motion for approval of dispatch of members.
Thurs., Mar. 8, 2001	Third Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	After a statement was heard from an informant, questions were put to him. Informant: SON Masayoshi, President and Chief Executive Officer, Softbank Corporation
Thurs., Mar. 22, 2001	Fourth Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	After statements were heard from informants, questions were put to them. Informants: SAKAMOTO Takao, Professor, Faculty of Law, Gakushuin University KANG Sanjung, Professor, Institute of Socio-Information and Communication Studies, The University of Tokyo
Mon., Apr. 16, 2001		Constitution of Japan	First local open hearing was held in Sendai City, Miyagi Prefecture.
Thurs., Apr. 26, 2001	Fifth Meeting	Matters relating to the Constitution of Japan	Report was heard on the investigations concerning the Constitution of Japan from the dispatched members. A decision was reached, after discussion, on a motion for approval of dispatch of members.
Thurs., May 17, 2001	Sixth Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	After statements were heard from informants, questions were put to them. Informants: KIMURA Yoko, member, Local Finance Council OHKUMA Yoshikazu, Professor, Graduate School of Law, Kyushu University
Mon., June 4, 2001		The Constitution of Japan (A vision for Japan in the 21st century)	Second local open hearing was held in Kobe City, Hyogo Prefecture.
Thurs., June 14, 2001	Seventh Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held. A report on the investigations concerning the Constitution of Japan was heard from the dispatched members.

## 6) 152nd Diet Session

During the 152nd Diet session convened on August 7, 2001, the Research Commission on the Constitution did not meet.

## 7) 153rd Diet Session

During the 153rd Diet session convened on September 27, 2001, the following agenda were covered: (1) a report, followed by a brainstorming discussion, on the findings of the House delegation dispatched to survey the constitutions of Russia, several other European nations, and Israel; (2) regarding “a vision of Japan in the 21st century,” research on matters relating to the United Nations and national security, the system of government in Japan, and guarantee of human rights; and (3) holding of a local open hearing in Nagoya.

The progress of research conducted during the 153rd Diet session was as follows.

Date	Meeting	Meeting Agenda	Proceedings
Thurs., Oct. 11, 2001	First Meeting	Matters relating to the Constitution of Japan	Chairman NAKAYAMA Taro presented a brief report on the findings of the House delegation dispatched to survey the constitutions of Russia, several other European nations, and Israel; the report was followed by discussion.
		Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	A decision was reached, after discussion, concerning requests for attendance of informants.
Thurs., Oct. 25, 2001	Second Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century—The United Nations and national security)	After statements were heard from informants, questions were put to them. Informants: ONUMA Yasuaki, Professor, The University of Tokyo MORIMOTO Satoshi, Professor, Faculty of International Development, Takushoku University
			A decision was reached, after discussion, on a motion for approval of dispatch of members.
Thurs., Nov. 8, 2001	Third Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century—Matters relating to ideal government and organizations)	After statements were heard from informants, questions were put to them. Informants: HASEBE Yasuo, Professor, Faculty of Law, The University of Tokyo MORITA Akira, Professor, Graduate School of Law and Politics, The University of Tokyo
Mon., Nov. 26, 2001		Japan’s role in the international community	Third local open hearing was held in Nagoya City, Aichi Prefecture.
Thurs., Nov. 29, 2001	Fourth Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century—Matters relating to the guarantee of human rights)	After statements were heard from informants, questions were put to them. Informants: MUSHAKOJI Kinhide, Director, Chubu Institute for Advanced Studies, Chubu University HATAJIRI Tsuyoshi, Professor, Department of Economics, Josai University
		Matters relating to the Constitution of Japan	Report was heard on the investigations concerning the Constitution of Japan from the dispatched members.
Thurs., Dec. 6, 2001	Fifth Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	A brainstorming discussion was held.

## 8) 154th Diet Session

During the 154th Diet session convened on January 21, 2002, subcommittees of the Research Commission on the Constitution were set up in order to conduct specialized and effective research

from each viewpoint of the Constitution of Japan. It was decided that the research method used by these subcommittees would be essentially the same as that used up to now, namely hearing statements from informants and then asking them questions, but that in this case the brainstorming discussions would be conducted only among members after the informants had left.

During this Diet session, the subcommittees conducted research on (1) guarantee of fundamental human rights; (2) the fundamental and organizational role of politics; (3) Japan's role in international society; and (4) local autonomy. The Research Commission on the Constitution (1) conducted brainstorming discussions on Japan's national security; (2) heard reports from the chairpersons of each subcommittee, followed by brainstorming discussions; and (3) held local open hearings in Okinawa and Sapporo.

The progress of research conducted during the 154th Diet session was as follows

Date	Meeting	Meeting Agenda	Proceedings
Thurs., Feb. 7, 2002	First Meeting	Matters relating to the Constitution of Japan	It was decided, after discussion, to establish the Subcommittee on Guarantee of Fundamental Human Rights, the Subcommittee on Fundamental and Organizational Role of Politics, the Subcommittee on Japan's Role in International Society, and the Subcommittee on Local Autonomy. A decision was reached, after discussion, concerning requests for attendance of informants at subcommittee meetings.
Thurs., Feb. 14, 2002	Human Rights Subcommittee First Meeting	Matters concerning the guarantee of fundamental human rights	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: MUNESUE Toshiyuki, Professor, Faculty of Law, Seijo University
	Politics Subcommittee First Meeting	Matters concerning the fundamental and organizational role of politics	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: TAKAHASHI Kazuyuki, Professor, Faculty of Law, The University of Tokyo
Thurs., Feb. 28, 2002	International Society Subcommittee First Meeting	Matters concerning Japan's role in international society	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: MATSUI Yoshiro, Professor, Graduate School of Law, Nagoya University
	Local Autonomy Subcommittee First Meeting	Matters concerning local autonomy	After a statement was heard from an informant, questions were put to her; this was followed by discussion among the members. Informant: IWASAKI Mikiko, Professor, University of Tsukuba
Thurs., Mar. 14, 2002	Politics Subcommittee Second Meeting	Matters concerning the fundamental and organizational role of politics	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: YAMAGUCHI Jiro, Professor, Graduate School of Law, Hokkaido University
	Human Rights Subcommittee Second Meeting	Matters concerning the guarantee of fundamental human rights	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: ANNEN Junji, Professor, Seikei University

Date	Meeting	Meeting Agenda	Proceedings
Tues., Mar. 19, 2002	Second Meeting		A decision was reached, after discussion, on a motion for approval of dispatch of members.
Thurs., Mar. 28, 2002	Local Autonomy Subcommittee Second Meeting	Matters concerning local autonomy	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: MORITA Akira, Professor, Graduate School of Law and Politics, The University of Tokyo
	International Society Subcommittee Second Meeting	Matters concerning Japan's role in international society	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: HATAKEYAMA Noboru, Chairman, Japan External Trade Organization (JETRO)
Thurs., Apr. 11, 2002	Human Rights Subcommittee Third Meeting	Matters concerning the guarantee of fundamental human rights	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: SAKAMOTO Masanari, Dean, Faculty of Law, Hiroshima University
	Politics Subcommittee Third Meeting	Matters concerning the fundamental and organizational role of politics	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: OISHI Makoto, Professor, Kyoto University
Mon., Apr. 22, 2002		The Constitution of Japan (Japan and its constitution in the 21st century)	Fourth local open hearing was held in Nago City, Okinawa Prefecture.
Thurs., Apr. 25, 2002	Third Meeting	Matters relating to the Constitution of Japan	Report was heard on the investigations concerning the Constitution of Japan from dispatched members; this was followed by discussion among members.
Thurs., May 9, 2002	International Society Subcommittee Third Meeting	Matters concerning Japan's role in international society	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: TERASHIMA Jitsuro, President, Mitsui Global Strategic Studies Institute
	Local Autonomy Subcommittee Third Meeting	Matters concerning local autonomy	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: JINNO Naohiko, Professor, The University of Tokyo
Thurs., May 16, 2002	Fourth Meeting		A decision was reached, after discussion, on a motion for approval of dispatch of members.
Thurs., May 23, 2002	Politics Subcommittee Fourth Meeting	Matters concerning the fundamental and organizational role of politics	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: MATSUI Shigenori, Professor, Graduate School of Law, Osaka University
	Human Rights Subcommittee Fourth Meeting	Matters concerning the guarantee of fundamental human rights	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: ITO Tetsuo, Director, Japan Policy Institute
Thurs., June 6, 2002	Local Autonomy Subcommittee Fourth Meeting	Matters concerning local autonomy	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: KATAYAMA Yoshihiro, Governor of Tottori Prefecture

Date	Meeting	Meeting Agenda	Proceedings
	International Society Subcommittee Fourth Meeting	Matters concerning Japan's role in international society	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: TAKUBO Tadae, Professor, Faculty of General Policy Studies, Kyorin University
Mon., June 24, 2002		The Constitution of Japan (Japan and its constitution in the 21st century)	Fifth local open hearing was held in Sapporo City, Hokkaido.
Thurs., July 4, 2002	Human Rights Subcommittee Fifth Meeting	Matters concerning the guarantee of fundamental human rights	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: KUSANO Tadayoshi, General Secretary, Japanese Trade Union Confederation (RENGO)
	Politics Subcommittee Fifth Meeting	Matters concerning the fundamental and organizational role of politics	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: YAGI Hidetsugu, Associate Professor, Takasaki City University of Economics
Thurs., July 11, 2002	International Society Subcommittee Fifth Meeting	Matters concerning Japan's role in international society	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: NAKAMURA Tamio, Associate Professor, Institute of Social Science, The University of Tokyo
	Local Autonomy Subcommittee Fifth Meeting	Matters concerning local autonomy	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: KITAGAWA Masayasu, Governor of Mie Prefecture
Thurs., July 25, 2002	Fifth Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held. Reports were heard from the chairpersons of the Subcommittee on Guarantee of Fundamental Human Rights, the Subcommittee on Fundamental and Organizational Role of Politics, the Subcommittee on Japan's Role in International Society, and the Subcommittee on Local Autonomy. Report was heard on the investigations concerning the Constitution of Japan from the dispatched members.

## 9) 155th Diet Session

During the 155th Diet session convened on October 18, 2002, a decision was reached, after discussion, on the Interim Report on November 1, and Chairman NAKAYAMA Taro submitted the Report to Speaker WATANUKI Tamisuke that same day. Also, the same subcommittees of the Research Commission on the Constitution that had been set up at the 154th Diet session were established to continue conducting specialized and effective research on the Constitution from their different viewpoints.

During this Diet session, the subcommittees conducted research on (1) guarantee of fundamental human rights; (2) the fundamental and organizational role of politics; (3) Japan's role in international society; and (4) local autonomy. The Research Commission on the Constitution (1) heard a report, followed by brainstorming discussions, on the findings of the House delegation dispatched to survey the constitutions of the United Kingdom and several Asian nations; (2) heard reports from the

chairpersons of each subcommittee, followed by brainstorming discussions; and (3) held a local open hearing in Fukuoka.

The research conducted during the 155th Diet session was as follows.

Date	Meeting	Meeting Agenda	Proceedings
Thurs., Oct. 24, 2002	First Meeting	Resignation of directors and appointment of substitute directors	
Fri., Nov. 1, 2002	Second Meeting	Matters relating to the Interim Report	A decision was reached, after discussion, on the Interim Report
Thurs., Nov. 7, 2002	Third Meeting	Matters relating to the Constitution of Japan	Chairman NAKAYAMA Taro presented a brief report on the findings of the House delegation dispatched to survey the constitutions of the United Kingdom and several Asian nations; the report was followed by discussion. It was decided, after discussion, to establish the Subcommittee on Guarantee of Fundamental Human Rights, the Subcommittee on Fundamental and Organizational Role of Politics, the Subcommittee on Japan's Role in International Society, and the Subcommittee on Local Autonomy. A decision was reached, after discussion, concerning requests for attendance of informants at subcommittee meetings.
			A decision was reached, after discussion, on a motion for approval of dispatch of members.
Thurs., Nov. 14, 2002	International Society Subcommittee First Meeting	Matters concerning Japan's role in international society	After a statement was heard from an informant, questions were put to her; this was followed by discussion among the members. Informant: IWAMA Yoko, Associate Professor, National Graduate Institute for Policy Studies
	Politics Subcommittee First Meeting	Matters concerning the fundamental and organizational role of politics	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: TAKADA Atsushi, Associate Professor, Faculty of Integrated Human Studies, Kyoto University
Thurs., Nov. 28, 2002	Human Rights Subcommittee First Meeting	Matters concerning the guarantee of fundamental human rights	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: KARIYA Takehiko, Professor, Graduate School of Education, The University of Tokyo
	Local Autonomy Subcommittee First Meeting	Matters concerning local autonomy	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: HOSAKA Kunio, Mayor of Shiki City, Saitama Prefecture
Mon., Dec. 9, 2002		The Constitution of Japan (Japan and its constitution in the 21st century)	Sixth local open hearing was held in Fukuoka City, Fukuoka Prefecture.
Thurs., Dec. 12, 2002	Fourth Meeting	Matters relating to the Constitution of Japan	Brainstorming discussions were held. Reports were heard from the chairpersons of the Subcommittee on Guarantee of Fundamental Human Rights, the Subcommittee on Fundamental and Organizational Role of Politics, the Subcommittee on Japan's Role in International Society, and the Subcommittee on Local Autonomy. Report was heard from the dispatched members on the investigations concerning the Constitution of Japan.



## 10) 156th Diet Session

During the 156th Diet session convened on January 20, 2003, four subcommittees of the Research Commission on the Constitution were set up in order to comprehensively conduct specialized and effective research regarding the Preamble and the 103 articles of the Constitution of Japan. It was decided that these subcommittees would conduct specialized research on the following four themes, which differ from those researched by the subcommittees established in the 154th and 155th Diet sessions: “ideal Constitution as supreme law,” “security and international cooperation,” “guarantee of fundamental human rights,” and “ideal government and organizations.” With regard to the research formats used by these subcommittees, in addition to that used to date, namely, posing questions to informants, followed by brainstorming discussions, a new format was introduced, in which no informants were invited, statements were heard from subcommittee members, questions were then put to them, together with comments, and this was followed by discussions among the members. During the 154th and 155th Diet sessions, reports from subcommittee chairpersons and brainstorming discussions were conducted at the end of the Diet session; it was decided that in the 156th session, however, that they would be conducted every time all four subcommittees had been held.

During this Diet session, the subcommittees conducted research on the themes described above. The Research Commission on the Constitution (1) held brainstorming discussions on the current international situation and international cooperation and treaties and the Constitution, focusing on constitutional matters related to the issues of Iraq and North Korea; (2) heard reports from the chairpersons of each subcommittee, followed by brainstorming discussions; (3) held brainstorming discussions related to Constitution Day; and (4) held local open hearings in Kanazawa and Takamatsu.

The progress of research conducted during the 156th Diet session was as follows.

Date	Meeting	Meeting Agenda	Proceedings
Thurs., Jan. 30, 2003	First Meeting	Matters relating to the Constitution of Japan (Current international situation and international cooperation)	A brainstorming discussion was held.
		Matters relating to the Constitution of Japan	It was decided, after discussion, to establish the Subcommittee on Ideal Constitution as Supreme Law, the Subcommittee on Security and International Cooperation, the Subcommittee on Guarantee of Fundamental Human Rights, and the Subcommittee on Ideal Government and Organizations. A decision was reached, after discussion, concerning requests for attendance of informants at subcommittee meetings.
Thurs., Feb. 6, 2003	Supreme Law Subcommittee First Meeting	Matters concerning the ideal Constitution as the supreme law (Emperor-as-symbol system)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: TAKAHASHI Hiroshi, Lecturer, Kokugakuin University; Lecturer, Tokyo Keizai University; former staff writer of Kyodo News

Date	Meeting	Meeting Agenda	Proceedings
	International Cooperation Subcommittee First Meeting	Matters concerning security and international cooperation (States of emergency and the Constitution)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: MORIMOTO Satoshi, Professor, Faculty of International Development, Takushoku University IGARASHI Takayoshi, Professor, Faculty of Law, Hosei University
Thurs., Feb. 13, 2003	Government Subcommittee First Meeting	Matters concerning ideal government and organizations (Local autonomy)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: MASUDA Hiroya, Governor of Iwate Prefecture
	Human Rights Subcommittee First Meeting	Matters concerning the guarantee of fundamental human rights (The right to receive an education)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: TORII Yasuhiko, Executive Advisor for Academic Affairs, Keio University; President, The Promotion and Mutual Aid Corporation for Private Schools of Japan OKAMURA Ryoji, Professor, Waseda University
Thurs., Feb. 27, 2003	Second Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held. Reports were heard from the chairpersons of the Subcommittee on Ideal Constitution as Supreme Law, the Subcommittee on Security and International Cooperation, the Subcommittee on Ideal Government and Organizations, and the Subcommittee on Guarantee of Fundamental Human Rights.
Thurs., Mar. 6, 2003	International Cooperation Subcommittee Second Meeting	Matters concerning security and international cooperation (States of emergency and the Constitution)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: OGAWA Kazuhisa, international politics and military analyst
	Supreme Law Subcommittee Second Meeting	Matters concerning the ideal Constitution as the supreme law (Emperor-as-symbol system)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: SONOBE Itsuo, former Justice, Supreme Court
Thurs., Mar. 13, 2003	Government Subcommittee Second Meeting	Matters concerning ideal government and organizations (Local autonomy)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: ABE Manao, Mayor of Kameda Town, Niigata Prefecture
	Human Rights Subcommittee Second Meeting	Matters concerning the guarantee of fundamental human rights (Fundamental labor rights)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: SUGENO Kazuo, Professor, The University of Tokyo FUJII Ryuko, member, Cabinet Office Information Disclosure Review Board; former Director-General, Women's Bureau, Ministry of Labour
Tues., Mar. 18, 2003	Third Meeting		A decision was reached, after discussion, on a motion for approval of dispatch of members.
Thurs., Mar. 20, 2003	Fourth Meeting	Matters relating to the Constitution of Japan (Treaties and the Constitution)	A brainstorming discussion was held.
Thurs., Mar. 27, 2003	Fifth Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held. Reports were heard from the chairpersons of the Subcommittee on Ideal Constitution as Supreme Law, the Subcommittee on Ideal Government and Organizations, the Subcommittee on Guarantee of Fundamental Human Rights and the Subcommittee on Security and International Cooperation.

Date	Meeting	Meeting Agenda	Proceedings
Thurs., Apr. 3, 2003	Supreme Law Subcommittee Third Meeting	Matters concerning the ideal Constitution as the supreme law (Procedures for revision of rigid constitutions)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: TAKAMI Katsutoshi, Senior Specialist, Politics and Parliamentary Affairs Research Service, Research and Legislative Reference Bureau, National Diet Library; Professor Emeritus, School of Law, Hokkaido University NAGAO Ryuichi, Professor, College of Law, Nihon University
	International Cooperation Subcommittee Third Meeting	Matters concerning security and international cooperation (International cooperation)	After statements were heard from subcommittee members, questions were put to them, together with comments; this was followed by discussion among the members.
Thurs., Apr. 17, 2003	Sixth Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held. Reports were heard from the chairpersons of the Subcommittee on Ideal Constitution as Supreme Law and the Subcommittee on Security and International Cooperation.
			A decision was reached, after discussion, on a motion for approval of dispatch of members.
Thurs., May 8, 2003	International Cooperation Subcommittee Fourth Meeting	Matters concerning security and international cooperation (International organizations and the Constitution)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: SUGANAMI Shigeru, President, AMDA International (Association of Medical Doctors of Asia) SATO Yukio, President, The Japan Institute of International Affairs
	Supreme Law Subcommittee Fourth Meeting	Matters concerning the ideal Constitution as the supreme law (Meiji Constitution and the Constitution of Japan)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: BANNO Junji, Professor Emeritus, The University of Tokyo
Mon., May 12, 2003		The Constitution of Japan (States of emergency [including security] and the Constitution, the ideal government and organizations [including local autonomy], and the guarantee of fundamental human rights)	Seventh local open hearing was held in Kanazawa City, Ishikawa Prefecture.
Thurs., May 15, 2003	Human Rights Subcommittee Third Meeting	Matters concerning the guarantee of fundamental human rights (Right to know, right of access, right to privacy)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: HORIBE Masao, Professor, Faculty of Law, Chuo University
	Government Subcommittee Third Meeting	Matters concerning ideal government and organizations (The judicial system and a constitutional court)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: TSUNO Osamu, attorney at law; former Director-General, Cabinet Legislation Bureau YAMAGUCHI Shigeru, former Chief Justice, Supreme Court

Date	Meeting	Meeting Agenda	Proceedings
Thurs., May 29, 2003	Seventh Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held. Reports were heard from the chairpersons of the Subcommittee on Security and International Cooperation, the Subcommittee on Ideal Constitution as Supreme Law, the Subcommittee on Guarantee of Fundamental Human Rights and the Subcommittee on Ideal Government and Organizations. A report was heard from the dispatched members on the investigations concerning the Constitution of Japan.
Thurs., June 5, 2003	Government Subcommittee Fourth Meeting	Matters concerning ideal government and organizations (Public finances)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: KUBOTA Yoshio, Associate Professor, Department of Law, Faculty of Law, Kobe Gakuin University SAKURAUCHI Fumiki, Associate Professor, Niigata University
	Human Rights Subcommittee Fourth Meeting	Matters concerning the guarantee of fundamental human rights (Fundamental human rights and the public welfare)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: KOBAYASHI Masaya, Associate Professor, Faculty of Law and Economics, Chiba University
Mon., June 9, 2003		The Constitution of Japan (States of emergency [including security] and the Constitution, the ideal government and organizations [including local autonomy], and the guarantee of fundamental human rights)	Eighth local open hearing was held in Takamatsu City, Kagawa Prefecture.
Thurs., June 12, 2003	Eighth Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held. Reports were heard from the chairpersons of the Subcommittee on Ideal Government and Organizations and the Subcommittee on Guarantee of Fundamental Human Rights. A report was heard from the dispatched members on the investigations concerning the Constitution of Japan.
Thurs., July 3, 2003	Supreme Law Subcommittee Fifth Meeting	Matters concerning the ideal Constitution as the supreme law (The Preamble)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: HANABUSA Masamichi, Advisor to the Chairman, Kajima Corporation
	International Cooperation Subcommittee Fifth Meeting	Matters concerning security and international cooperation (Article 9 of the Constitution)	After statements were heard from subcommittee members, questions were put to them, together with comments; this was followed by discussion among the members. Keynote speakers: KONDO Motohiko (LDP) FUJII Hirohisa (LP)
Thurs., July 10, 2003	Human Rights Subcommittee Fifth Meeting	Matters concerning the guarantee of fundamental human rights (Social security and the Constitution)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: NAKAMURA Mutsuo, President, Hokkaido University OSHIO Takashi, Associate Professor, Faculty of Education, Tokyo Gakugei University

Date	Meeting	Meeting Agenda	Proceedings
	Government Subcommittee Fifth Meeting	Matters concerning ideal government and organizations (Relationship between the Diet and the Cabinet)	An explanation was heard from an officer of the National Diet Library. Officer of the National Diet Library:TAKAMI Katsutoshi, Senior Specialist, Politics and Parliamentary Affairs Research Service, Research and Legislative Reference Bureau, National Diet Library After statements were heard from subcommittee members, questions were put to them, together with comments; this was followed by discussion among the members. Keynote speakers: FURUKAWA Motohisa (DPJ) INOUE Kiichi (NCP)
Thurs., July 24, 2003	Ninth Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held. Reports were heard from the chairpersons of the Subcommittee on Ideal Constitution as Supreme Law, the Subcommittee on Security and International Cooperation, Subcommittee on Guarantee of Fundamental Human Rights and the Subcommittee on Ideal Government and Organizations.

### 11) 157th Diet Session

During the 157th Diet session convened on September 26, 2003, (1) a report was heard on the findings of the House delegation dispatched to survey the constitutions of the United States, Canada, and Mexico; and (2) a brainstorming discussion was held.

Although subcommittees of the Research Commission on the Constitution, which were the same as those established in the 156th Diet session, were set up, they did not meet since the House of Representatives was dissolved soon afterward.

The progress of research conducted during the 157th Diet session was as follows.

Date	Meeting	Meeting Agenda	Proceedings
Thurs., Oct. 2, 2003	First Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held. Chairman NAKAYAMA Taro presented a brief report on the findings of the House delegation dispatched to survey the constitutions of the United States, Canada, and Mexico. It was decided, after discussion, to establish the Subcommittee on Ideal Constitution as Supreme Law, the Subcommittee on Security and International Cooperation, the Subcommittee on Guarantee of Fundamental Human Rights, and the Subcommittee on Ideal Government and Organizations. A decision was reached, after discussion, concerning requests for attendance of informants at subcommittee meetings.

### 12) 158th Diet Session

Following the 43rd general election of the House of Representatives, the internal election of the chairman and directors of the Research Commission on the Constitution was held during the 158th Diet session convened on November 19, 2003.

The progress of research conducted during the 158th Diet session was as follows.

Date	Meeting	Meeting Agenda	Proceedings
Thurs., Nov. 20, 2003	First Meeting	Internal election of the chairman and directors	

### 13) 159th Diet Session

During the 159th Diet session convened on January 19, 2004, subcommittees of the Research Commission on the Constitution, which were the same as those established in the 156th and 157th Diet sessions, were set up in order to continue to comprehensively conduct specialized and effective research on the Preamble and the 103 articles of the Constitution of Japan. It was decided that the research method used by the Research Commission on the Constitution and the subcommittees would be the same as that used in the 156th Diet session.

During this Diet session, the subcommittees conducted research on (1) ideal Constitution as supreme law; (2) security and international cooperation; (3) guarantee of fundamental human rights, and (4) ideal government and organizations. The Research Commission on the Constitution (1) held brainstorming discussions; (2) heard reports from the chairpersons of each subcommittee, followed by brainstorming discussions; (3) conducted research on the progress of science and technology and the Constitution; (4) held open hearings; and (5) held a local open hearing in Hiroshima.

The progress of research conducted during the 159th Diet session was as follows.

Date	Meeting	Meeting Agenda	Proceedings
Thurs., Jan. 22, 2004	First Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held. It was decided, after discussion, to establish the Subcommittee on Ideal Constitution as Supreme Law, the Subcommittee on Security and International Cooperation, the Subcommittee on Guarantee of Fundamental Human Rights, and the Subcommittee on Ideal Government and Organizations. A decision was reached, after discussion, concerning requests for attendance of informants at subcommittee meetings.
			A decision was reached, after discussion, on a motion for approval of dispatch of members.
Thurs., Feb. 5, 2004	Supreme Law Subcommittee First Meeting	Matters concerning the ideal Constitution as the supreme law (Emperor system)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: YOKOTA Kouichi, Professor, Faculty of Law, Ryutsu Keizai University; Professor Emeritus, Kyushu University
	International Cooperation Subcommittee First Meeting	Matters concerning security and international cooperation (Article 9 of the Constitution)	After statements were heard from subcommittee members, questions were put to them, together with comments; this was followed by discussion among the members. Keynote speakers: NAKATANI Gen (LDP) MATSUMOTO Takeaki (DPJ)

Date	Meeting	Meeting Agenda	Proceedings
Thurs., Feb. 19, 2004	Human Rights Subcommittee First Meeting	Matters concerning the guarantee of fundamental human rights (Equality under the law)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: UCHINO Masayuki, Professor, Office for the Establishment of Chuo Law School, Chuo University
	Government Subcommittee First Meeting	Matters concerning ideal government and organizations (Judicial system)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: ICHIKAWA Masato, Professor, College of Law, Ritsumeikan University
Thurs., Feb. 26, 2004	Second Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held. Reports were heard from the chairpersons of the Subcommittee on Ideal Constitution as Supreme Law, the Subcommittee on Security and International Cooperation, the Subcommittee on Guarantee of Fundamental Human Rights, and the Subcommittee on Ideal Government and Organizations.
Thurs., Mar. 4, 2004	International Cooperation Subcommittee Second Meeting	Matters concerning security and international cooperation (Integration of nation-states, accession to international organizations, and the accompanying transfer of sovereign power)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: Bernhard ZEPTER, Ambassador and Head of Delegation, European Commission in Japan
	Supreme Law Subcommittee Second Meeting	Matters concerning the ideal Constitution as the supreme law (Systems of direct democracy)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: IGUCHI Shusaku, Associate Professor, Faculty of Human Environment, Osaka Sangyo University
Thurs., Mar. 11, 2004	Government Subcommittee Second Meeting	Matters concerning ideal government and organizations (Human rights commissions and other quasi-judicial bodies; the ombudsman system)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: UTSUNOMIYA Fukashi, Professor, School of Political Science and Economics, Tokai University
	Human Rights Subcommittee Second Meeting	Matters concerning the guarantee of fundamental human rights (Civil and political liberties)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: NOSAKA Yasuji, Dean, Department of Law, Gakushuin University
Mon., Mar. 15, 2004		The Constitution of Japan (States of emergency [including security] and the Constitution, the ideal government and organizations [including local autonomy], and the guarantee of fundamental human rights)	Ninth local open hearing was held in Hiroshima City, Hiroshima Prefecture.
Thurs., Mar. 18, 2004	Third Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held. Reports were heard from the chairpersons of the Subcommittee on Security and International Cooperation, the Subcommittee on Ideal Constitution as Supreme Law, the Subcommittee on Ideal Government and Organizations, and the Subcommittee on Guarantee of Fundamental Human Rights. A report was heard on the investigations concerning the Constitution of Japan from the dispatched members.
Tues., Mar. 23, 2004	Fourth Meeting		A decision was reached, after discussion, on a motion for approval of holding open hearings.

Date	Meeting	Meeting Agenda	Proceedings
Thurs., Mar. 25, 2004	Supreme Law Subcommittee Third Meeting	Matters concerning the ideal Constitution as the supreme law (Constitutional guarantees)	After explanations were heard from a representative of the Supreme Court and a statement was heard from another informant, questions were put to them; this was followed by discussion among the members. Informants: TAKESAKI Hironobu, Secretary General, Supreme Court SASADA Eiji, Professor, Graduate School of Law, Hokkaido University
	International Cooperation Subcommittee Third Meeting	Matters concerning security and international cooperation (States of emergency and the Constitution)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: KOBARI Tsukasa, Professor, Faculty of Policy Studies, Iwate Prefectural University MATSUURA Kazuo, Associate Professor, National Defense Academy
Thurs., Apr. 1, 2004	Human Rights Subcommittee Third Meeting	Matters concerning the guarantee of fundamental human rights (Public welfare)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: MATSUMOTO Kazuhiko, Professor, Graduate School of Law, Osaka University
	Government Subcommittee Third Meeting	Matters concerning ideal government and organizations (Public finances)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: USUI Mitsuaki, Professor, Graduate School of Law and Politics, The University of Tokyo HIROI Yoshinori, Professor, Faculty of Law and Economics, Chiba University
Thurs., Apr. 8, 2004	Fifth Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held. Reports were heard from the chairpersons of the Subcommittee on Ideal Constitution as Supreme Law, the Subcommittee on Security and International Cooperation, the Subcommittee on Guarantee of Fundamental Human Rights, and the Subcommittee on Ideal Government and Organizations.
		Matters relating to the Constitution of Japan (The progress of science and technology and the Constitution)	It was decided, after discussion, to hear the statements of informants.
Thurs., Apr. 15, 2004	Sixth Meeting	Matters relating to the Constitution of Japan (The progress of science and technology and the Constitution)	After a statement was heard from an informant, questions were put to him. Informant: KIMURA Rihito, former Professor, Waseda University; former Director, Waseda University International Institute of Bioethics and Bio-Law
Thurs., Apr. 22, 2004	International Cooperation Subcommittee Fourth Meeting	Matters concerning security and international cooperation (Regional security)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: KIKUCHI Tsutomu, Professor, School of International Politics, Economics and Business, Aoyama Gakuin University
	Supreme Law Subcommittee Fourth Meeting	Matters concerning the ideal Constitution as the supreme law (The Constitution and international law)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: SAITO Masaaki, Associate Professor, School of Economics, Hokusei Gakuen University
Wed., May 12, 2004	First Open Hearing	Matters relating to the Constitution of Japan	After statements were heard from speakers, questions were put to them.



Date	Meeting	Meeting Agenda	Proceedings
Thurs., May 13, 2004	Second Open Hearing	Matters relating to the Constitution of Japan	After statements were heard from speakers, questions were put to them.
Thurs., May 20, 2004	Government Subcommittee Fourth Meeting	Matters concerning ideal government and organizations (The ideal division of powers between the central and local governments)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: TSUJIYAMA Takanobu, Senior Research Fellow, Japan Research Institute for Local Government
	Human Rights Subcommittee Fourth Meeting	Matters concerning the guarantee of fundamental human rights (Economic, social and cultural freedoms)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: NORO Mitsuru, Professor, School of Law, Kansai University
Thurs., May 27, 2004	Human Rights Subcommittee Fifth Meeting	Matters concerning the guarantee of fundamental human rights (Rights during criminal proceedings and the human rights of crime victims)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: TAGUCHI Morikazu, Professor, School of Law, Waseda University; Professor, Waseda Law School
	Government Subcommittee Fifth Meeting	Matters concerning ideal government and organizations (Bicameralism and the audit system)	After explanations were heard from an official of the Board of Audit and a statement was heard from another informant, questions were put to them; this was followed by discussion among the members. Informants: MORISHITA Nobuaki, President, Board of Audit TADANO Masahito, Associate Professor, Graduate School of Law, Hitotsubashi University
Thurs., June 3, 2004	Seventh Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held. Reports were heard from the chairpersons of the Subcommittee on Security and International Cooperation, the Subcommittee on Ideal Constitution as Supreme Law, the Subcommittee on Guarantee of Fundamental Human Rights, and the Subcommittee on Ideal Government and Organizations.
Thurs., June 10, 2004	Eighth Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held.

#### 14) 160th Diet Session

During the 160th Diet session convened on July 30, 2004, after comments were heard from the Liberal Democratic Party, Democratic Party of Japan, and New Komeito on summaries of the issues, proposals, etc. that they had released around the term end of the 159th Diet session, namely, the summary of the issues by the LDP's project team for constitutional amendment, the DPJ's Interim Report on its constitutional proposal titled "Toward Creation of the Constitution," and the summary of the issues by NK's research committee on the Constitution, statements were heard from representatives of each political party and group.

The progress of research conducted during the 160th Diet session was as follows.

Date	Meeting	Meeting Agenda	Proceedings
Thurs., Aug. 5, 2004	First Meeting	Matters relating to the Constitution of Japan	Opinions from members YASUOKA Okiharu, EDANO Yukio, OTA Akihiro, KONDO Motohiko, YAMAHANA Ikuo, AKAMATSU Masao, YAMAGUCHI Tomio, and DOI Takako were heard.

## 15) 161st Diet Session

During the 161st Diet session convened on October 12, 2004, it was decided that the Research Commission on the Constitution would conduct research centered on discussions among the members without setting up subcommittees.

During this Diet session, (1) a report was heard, followed by a brainstorming discussion, on the findings of the House delegation dispatched to survey the constitutions of the European Union, Sweden, and Finland; (2) a brainstorming discussion on parliamentary ombudsmen and other checks on the administration was conducted; (3) a brainstorming discussion on international organizations and the Constitution was held; (4) a brainstorming discussion on a national referendum system was held; (5) a brainstorming discussion on the Diet and the Cabinet was conducted; and (6) open hearings were held.

The progress of research conducted during the 161st Diet session was as follows.

Date	Meeting	Meeting Agenda	Proceedings
Thurs., Oct. 14, 2004	First Meeting	Matters relating to the Constitution of Japan	Chairman NAKAYAMA Taro presented a brief report on the findings of the House delegation dispatched to survey the constitutions of the European Union, Sweden, and Finland; the report was followed by discussion among the members. A decision was reached, after discussion, on a motion for approval of holding open hearings.
Thurs., Oct. 21, 2004	Second Meeting	Matters relating to the Constitution of Japan (Parliamentary ombudsmen and other checks on the administration) (International organizations and the Constitution)	A brainstorming discussion was held.
Thurs., Oct. 28, 2004	Third Meeting	Matters relating to the Constitution of Japan (National referendum system)	A brainstorming discussion was held.
Thurs., Nov. 11, 2004	First Open Hearing	Matters relating to the Constitution of Japan	After statements were heard from speakers, questions were put to them.
Thurs., Nov. 18, 2004	Second Open Hearing	Matters relating to the Constitution of Japan	After statements were heard from speakers, questions were put to them.
Thurs., Nov. 25, 2004	Third Open Hearing	Matters relating to the Constitution of Japan	After statements were heard from speakers, questions were put to them.
Thurs., Dec. 2, 2004	Fourth Meeting	Matters relating to the Constitution of Japan (The Diet and the Cabinet)	A brainstorming discussion was held.

## 16) 162nd Diet Session

During the 162nd Diet session convened on January 21, 2005, just as during the 161st Diet session, it was decided that the Research Commission on the Constitution would conduct research centered on discussions among the members without setting up subcommittees.

During this Diet session, brainstorming discussions were held on (1) the Emperor; (2) security, international cooperation, and states of emergency; (3) the rights and duties of the people; (4) the Diet, the Cabinet, and related matters; (5) public finances and local autonomy; (6) the judiciary, amendments, supreme law, and related matters; (7) the Preamble and other matters; and (8) the conclusion of the Commission's research on the Constitution.

The progress of research conducted during the 162nd Diet session was as follows.

Date	Meeting	Meeting Agenda	Proceedings
Thurs., Feb. 3, 2005	First Meeting	Matters relating to the Constitution of Japan (The Emperor) (Security, international cooperation, and states of emergency)	A brainstorming discussion was held.
Thurs., Feb. 10, 2005	Second Meeting	Matters relating to the Constitution of Japan (Rights and duties of the people) (The Diet, the Cabinet, and related matters)	A brainstorming discussion was held.
Thurs., Feb. 17, 2005	Third Meeting	Matters relating to the Constitution of Japan (Public finances and local autonomy) (The judiciary, amendments, supreme law, and related matters)	A brainstorming discussion was held.
Thurs., Feb. 24, 2005	Fourth Meeting	Matters relating to the Constitution of Japan (The Preamble and other matters) (The conclusion of the Commission's research on the Constitution)	A brainstorming discussion was held.
Fri., Apr. 15, 2005	Fifth Meeting	Matters relating to the Final Report	

## Section 2 Open Hearings

To conduct research on the Constitution of Japan, open hearings were held on May 12 and 13, 2004 and November 11, 18 and 25, 2004 in order to hear the opinions of various segments of Japanese society regarding the Constitution.

The participating speakers at these open hearings were as follows.

### 1) 159th Diet Session, First Open Hearing (May 12, 2004)

Speakers	INOUCHI Kuniko, Professor, Faculty of Law, Sophia University KAWAMOTO Yuko, Professor, Graduate School, Waseda University INOKAWA Kinzo, former Secretary General, Gunma Forestry Improvement and Extension Association OGUMA Eiji, Assistant Professor, Faculty of Policy Management, Keio University FUNABIKI Takeo, Professor, Graduate School, The University of Tokyo; cultural anthropologist YAMAZAKI Masakazu, President, Toa University
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### 2) 159th Diet Session, Second Open Hearing (May 13, 2004)

Speakers	YOSHIDA Kenichi, lawyer ANBO Katsuya, lecturer, Japan Electronics College HIDAKA Sayaka, former graduate student, Shikoku Gakuin University Graduate School
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### 3) 161st Diet Session, First Open Hearing (November 11, 2004)

Speakers	ASAOKA Mie, President, Kiko Network; lawyer UEMATSU Haruo, President, Japan Medical Association TERUOKA Itsuko, Professor Emeritus, Saitama University NAKASONE Yasuhiro, former Prime Minister MIYAZAWA Kiichi, former Prime Minister TAKEMURA Masayoshi, former Governor of Shiga Prefecture; former Minister of Finance
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### 4) 161st Diet Session, Second Open Hearing (November 18, 2004)

Speakers	TAKATAKE Kazuaki, Executive Director (2004) and President (2005), Junior Chamber International (JCI) Japan TERANAKA Makoto, Secretary General, Amnesty International Japan HINOHARA Shigeaki, Chairman of the Board and Honorary President, St. Luke's International Hospital EBASHI Takashi, Professor, Faculty of Law, Hosei University PEMA Gyalpo, Professor, Faculty of Law, Toin University of Yokohama; Professor Emeritus, Gifu Women's University; Head Officer, Tibet Culture Centre International MURATA Hisanori, Professor, Kansai University School of Law
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**5) 161st Diet Session, Third Open Hearing (November 25, 2004)**

Speakers	SHIRAISHI Masateru, member, Adachi Ward Assembly (Tokyo) SHINOHARA Hiroaki, company employee HIRATSUKA Akifumi, personnel director of an electrical equipment manufacturer YAMADA Junpei, association staff member SEIRYU Miwako, university student MORI Nobuyuki, retired
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### Section 3 Local Open Hearings

In order to hear the opinions of various levels of Japanese society and reflect these opinions in the research of the Research Commission on the Constitution, open hearings were held in Sendai in Miyagi Prefecture, Kobe in Hyogo Prefecture, Nagoya in Aichi Prefecture, Nago in Okinawa Prefecture, Sapporo in Hokkaido, Fukuoka in Fukuoka Prefecture, Kanazawa in Ishikawa Prefecture, Takamatsu in Kagawa Prefecture and Hiroshima in Hiroshima Prefecture.

The participating members and speakers at these open hearings were as follows.

#### 1) Sendai Open Hearing (151st Diet Session, April 16, 2001)

Participating Members	NAKAYAMA Taro (LDP) KANO Michihiko (DPJ) SAITO Tetsuo (NK) HARUNA Naoaki (JCP) KOIKE Yuriko (NCP)	HANASHI Nobuyuki (LDP) SENGOKU Yoshito (DPJ) FUJISHIMA Masayuki (LP) KANEKO Tetsuo (SDP) KONDO Motohiko (Club 21)
Speakers	TEJIMA Norio, Chairman, Sendai Association of Corporate Executives KANO Fuminaga, Mayor of Kashimadai Town, Miyagi Prefecture SHIMURA Kensuke, Professor Emeritus, Tohoku University TANAKA Hidemichi, Professor, Faculty of Arts and Letters, Tohoku University ODANAKA Toshiki, Professor, School of Law, Senshu University; Professor Emeritus, Tohoku University KUBOTA Manae, Representative, Women's Net to Support 1946 Constitution YONETANI Mitsumasa, Associate Professor, Tohoku Fukushi University HAMADA Takehito, instructor, Hirosaki Gakuin Seiai High School ENDO Masanori, instructor, Senshu University Kitakami Senior High School; Representative, Shimin Study Association SAITO Takako, Chairwoman, Peace Activity Committee, Miyagi Consumers' Co-operative Society	

#### 2) Kobe Open Hearing (151st Diet Session, June 4, 2001)

Participating Members	NAKAGAWA Shoichi (LDP) HANASHI Nobuyuki (LDP) NAKAGAWA Masaharu (DPJ) SHIOTA Susumu (LP) KANEKO Tetsuo (SDP) KONDO Motohiko (Club 21)	NAKAYAMA Taro (LDP) KANO Michihiko (DPJ) SAITO Tetsuo (NK) HARUNA Naoaki (JCP) KOIKE Yuriko (NCP)
Speakers	KAIHARA Toshitami, Governor of Hyogo Prefecture SHIBAO Susumu, Mayor of Kawanishi City, Hyogo Prefecture SASAYAMA Kazutoshi, Mayor of Kobe City, Hyogo Prefecture OHMAE Shigeo, Chairman of the Board of Trustees, Ohmae Gakuin URABE Noriho, Vice President, Kobe University; Professor, Graduate School of Law, Kobe University NAKAKITA Ryutarō, lawyer HASHIMOTO Akio, Chairman, Hyogo Prefecture Medical Association KOKUBO Masao, Mayor of Hokudan Town, Hyogo Prefecture TSUKAMOTO Hideki, corporate executive NAKATA Narishige, Associate Professor, Osaka Institute of Technology	

### 3) Nagoya Open Hearing (153rd Diet Session, November 26, 2001)

Participating Members	NAKAYAMA Taro (LDP) HATOYAMA Kunio (LDP) SHIMA Satoshi (DPJ) TSUZUKI Yuzuru (LP) KANEKO Tetsuo (SDP)	HANASHI Nobuyuki (LDP) KANO Michihiko (DPJ) SAITO Tetsuo (NK) HARUNA Naoaki (JCP) UDAGAWA Yoshio (Club 21)
Speakers	TAGUCHI Fukuji, Professor Emeritus, Nagoya University NISHI Hideko, housewife NOHARA Kiyoshi, teacher, Gifu Prefectural High School KAWABATA Hiroaki, doctoral student, Graduate School of Law, Nagoya University KOIDO Yasuo, lawyer KATO Masanori, university student	

### 4) Okinawa Open Hearing (154th Diet Session, April 22, 2002)

Participating Members	KYUMA Fumio (LDP) HANASHI Nobuyuki (LDP) NAKANO Kansei (DPJ) FUJISHIMA Masayuki (LP) KANEKO Tetsuo (SDP)	NAKAYAMA Taro (LDP) SHIMA Satoshi (DPJ) AKAMATSU Masao (NK) HARUNA Naoaki (JCP) INOUE Kiichi (NCP)
Speakers	YAMAUCHI Tokushin, President, Research Institute on Japan's Peace Constitution and Local Autonomy ARAKAKI Tsutomu, lawyer MEGUMI Ryunosuke, business school president KAKINOHANA Hojun, Professor, College of Law, Okinawa International University INAFUKU Erika, university student ASHITOMI Osamu, member, Okinawa Prefectural Assembly	

### 5) Sapporo Open Hearing (154th Diet Session, June 24, 2002)

Participating Members	NAKAGAWA Shoichi (LDP) HANASHI Nobuyuki (LDP) NAKANO Kansei (DPJ) TAKEYAMA Yuriko (LP) KANEKO Tetsuo (SDP)	NAKAYAMA Taro (LDP) NAKAGAWA Masaharu (DPJ) AKAMATSU Masao (NK) HARUNA Naoaki (JCP) INOUE Kiichi (NCP)
Speakers	INATSU Sadatoshi, Managing Director, Daitoa Shoji Co., Ltd. ISHIZUKA Osamu, farmer TANAKA Hiroshi, Chairman, Hokkaido Federation of Bar Associations SATO Satomi, university student YUKI Yoichiro, Professor, Otaru University of Commerce MASUGI Eiichi, lawyer	

**6) Fukuoka Open Hearing (155th Diet Session, December 9, 2002)**

Participating Members	NAKAYAMA Taro (LDP) YASUOKA Okiharu (LDP) SENGOKU Yoshito (DPJ) TAKEYAMA Yuriko (LP) KANEKO Tetsuo (SDP)	HANASHI Nobuyuki (LDP) OIDE Akira (DPJ) EDA Yasuyuki (NK) HARUNA Naoaki (JCP)
Speakers	KUSAKABE Yasuhisa, local government employee GOTO Yorinari, lawyer NISHIZA Seiki, company employee HAYASHI Chikara, former Professor, Kyushu Sangyo University MIYAZAKI Yuko, housewife ISHIMURA Zenji, Professor Emeritus, Fukuoka University; former President, Nagasaki Prefectural University	

**7) Kanazawa Open Hearing (156th Diet Session, May 12, 2003)**

Participating Members	NAKAGAWA Shoichi (LDP) HANASHI Nobuyuki (LDP) SENGOKU Yoshito (DPJ) ICHIKAWA Yasuo (LP) KANEKO Tetsuo (SDP)	NAKAYAMA Taro (LDP) KUWABARA Yutaka (DPJ) ENDO Kazuyoshi (NK) HARUNA Naoaki (JCP)
Speakers	YAMAMOTO Toshio, retired SHIMADA Yoichi, Professor, Fukui Prefectural University IWABUCHI Masaaki, lawyer MATSUDA Tomomi, lawyer KAMONO Yukio, university professor	

Note: Mrs. HASUIKE Hatsui, who was scheduled to speak, was unable to attend for personal reasons; the written opinion she submitted during the selection of speakers was summarized and read aloud by an Office staff member.

**8) Takamatsu Open Hearing (156th Diet Session, June 9, 2003)**

Participating Members	NAKAYAMA Taro (LDP) HIRAI Takuya (LDP) FURUKAWA Motohisa (DPJ) TAKEYAMA Yuriko (LP) KANEKO Tetsuo (SDP)	HANASHI Nobuyuki (LDP) SENGOKU Yoshito (DPJ) ENDO Kazuyoshi (NK) HARUNA Naoaki (JCP) YAMATANI Eriko (NCP)
Speakers	KUSANAGI Junichi, lawyer NEMOTO Hirotohi, Professor, Shikoku Gakuin University TAKAGI Kenichi, student NISHIHARA Kazuie, former junior high school social studies teacher SAKAGAMI Hatsuko, housewife KAGOSHIMA Hitoshi, Associate Professor, Faculty of Law, Kagawa University	



### 9) Hiroshima Open Hearing (159th Diet Session, March 15, 2004)

Participating Members	TOKAI Kisaburo (LDP) FUNADA Hajime (LDP) YAMAHANA Ikuo (DPJ) YAMAGUCHI Tomio (JCP)	NAKAYAMA Taro (LDP) SENGOKU Yoshito (DPJ) SAITO Tetsuo (NK) DOI Takako (SDP)
Speakers	SATO Shuichi, civil servant HIDE Michihiro, former Director, Hiroshima Peace Memorial Museum HIRATA Kanako, NGO employee OKADA Takahiro, President, Midori no Machi social welfare corporation ODA Haruto, member, Okayama Prefectural Assembly	

## **Section 4 Interim Report**

### **1) Submission of the Interim Report**

In accordance with an agreement reached at the directors' meeting of the Rules and Administration Committee of the House of Representatives, the research period of the Research Commission on the Constitution was "regarded as approximately five years as a time framework" The midpoint of this period, two and a half years, fell during the 154th Session of the Diet.

In accordance with the provisions of Article 2, paragraph 2 of the Regulations of the Research Commission on the Constitution of the House of Representatives, the Research Commission prepared an Interim Report on its research progress and contents to date and submitted it to the Speaker of the House of Representatives on November 1, 2002.

At the plenary gathering of the House of Representatives held on November 29, 2002, NAKAYAMA Taro, Chairman of the Research Commission, gave a report on the background to the submission of the Interim Report and an outline of the report.

### **2) Structure of the Interim Report**

The Interim Report is a compilation of the progress and contents of the research conducted by the Research Commission from the time of its establishment on January 20, 2000, the day of the convening of the 147th Session of the Diet, until October 24, 2002, which was during the 155th Session of the Diet. The structure of the report is as follows:

Part 1: Background to the Establishment of the Commission

Part 2: Purpose, Organization, and Operation of the Commission

Part 3: Progress and Contents of the Research Conducted by the Research Commission on the Constitution

Chapter 1: Progress of Research

Chapter 2: Overview of Research

Chapter 3: Summary of Comments by Members, Informants, and Others at the Research Commission on the Constitution

Part 4: Reference Material

### **3) Distribution of the Interim Report**

The Interim Report was distributed to political parties, government ministries and agencies, prefectural assembly libraries, ordinance-designated city assembly libraries, prefectures, cities, foreign embassies in Japan, the mass media, major organizations, university law departments, etc.

The report was also posted and disclosed on the Japanese-language Research Commission Website set up on the House of Representatives Website (<http://www.shugiin.go.jp>).

An English translation of the Interim Report was prepared and disclosed on the English Website of the House of Representatives ([http://www.shugiin.go.jp/index.nsf/html/index\\_e.htm](http://www.shugiin.go.jp/index.nsf/html/index_e.htm)).

## Section 5 International Affairs: Overseas Survey Missions and Reception of Parliamentary Missions

### 1. Overseas Survey Missions

#### 1) Survey Mission by the House Delegation on the Constitutions of European Nations (September 10 to 19, 2000)

The House of Representatives sent out a nine-member survey mission led by Chairman NAKAYAMA Taro to Europe to conduct a survey of constitutional matters of the Federal Republic of Germany, the Swiss Confederation, the Republic of Italy, the French Republic, and the Republic of Finland. The members were: Chairman NAKAYAMA Taro (Leader; LDP), Deputy Chairman KANO Michihiko (Deputy Leader; DPJ), ISHIKAWA Yozo (LDP), NAKAGAWA Shoichi (LDP), HANASHI Nobuyuki (LDP), SENGOKU Yoshito (DPJ), AKAMATSU Masao (NK), HARUNA Naoaki (JCP), and TSUJIMOTO Kiyomi (SDP).

The delegation visited the following:

Date	Country Visited	Meeting Held at	Met with
Sept. 11, 2000	Germany	Federal Constitutional Court	Jutta Limbach, President Udo Steiner, Justice
		Albrecht Tuckermann Wohnanlage	Conscientious objectors
Sept. 12, 2000		Japanese Ambassador's Residence	Suzuki Toru, First Secretary, Embassy of Japan in Finland
		Bundestag	Alfred Hartenbach, Member, (Chairman of the Legal Affairs Department, SPD)
Sept. 13, 2000	Switzerland	Federal Assembly (National Council)	Remo Gysin, Member (Member of the Foreign Affairs Committee and Former Member of the Constitutional Reform Committee, SDP) Ulrich Fischer, Member (Member of the Foreign Affairs Committee, FDP) Remo Galli, Member (Member of the Foreign Affairs Committee, PDC) John Clerc, Deputy Secretary General of the Federal Assembly Alessandro Delprete, Head of Communications, Présence Suisse PRS
			(Federal Department of Justice and Police) Luzius Mader, Vice Director, Federal Office of Justice Dieter Biedermann, Senior Advisor, (Former Deputy Leader of the Constitutional Reform Team) Rhida Frauoa, Chief of Division of Federal Office of Justice
Sept. 14, 2000	Italy	Japanese Ambassador's Residence	Shiono Nanami, author
Sept. 15, 2000		Constitutional Court	Cesare Mirabelli, President Fernando Santosuoss, Judge Riccardo Chieppa, Judge Franco Bile, Judge Giovanni Maria Flick, Judge Maurizio Nevola, Protocol
		1st Commission of Chamber of Deputies	Rosa Russo Jervolino, Member, PPI (President) Giacomo Garra, Member, FI

Date	Country Visited	Meeting Held at	Met with
Sept. 18, 2000	France	National Assembly	Christine Lazerges, Vice President, PS Etienne Pinte, Member, UMP ( Vice President of France-Japan Parliamentary Friendship Group of the National Assembly and Mayor of Versailles)
		Constitutional Council	Yves Guena, President Simone Veil, Member Jean-Claude Colliard, Member

## 2) Survey Mission by the House Delegation on the Constitutions of Russia, Several Other European Nations, and Israel (August 28 to September 7, 2001)

The House of Representatives sent out a nine-member survey mission led by Chairman NAKAYAMA Taro to five East European nations, including the Russian Federation and the Republic of Hungary, five monarchies including the Kingdom of the Netherlands and Spain, as well as the State of Israel to conduct a survey of constitutional matters of those nations. The members were: Chairman NAKAYAMA Taro (Leader; LDP), Deputy Chairman KANO Michihiko (Deputy Leader; DPJ), HANASHI Nobuyuki (LDP), YASUOKA Okiharu (LDP), SENGOKU Yoshito (DPJ), SAITO Tetsuo (NK), YAMAGUCHI Tomio (JCP), KANEKO Tetsuo (SDP), and KONDO Motohiko (Club 21).

The delegation visited the following:

Date	Country Visited	Meeting Held at	Met with	
Aug. 29, 2001	Russia	State Duma	Mikhail Mikhaylovich Zadornov, Member Aleksandor Dmitrievich Zhukov, Member Ivan Andreyevich Zhakaev, Member Margarita Valeryevna Barzhanova, Member Vladimir Petrovich Lukin, Deputy Chairman Anatoly Ivanovich Lukyanov, Chairman, State Structure Committee	
			Ministry of Justice	Vyacheslav Borisovich Evdokimov, First Deputy Vladimir Petrovich Zimin, First Deputy Chief, International Relations Department Andrey Vladimirovich Fedorov, Deputy Chief, Russian Federation Subjects Legislation and Federal Register Directorate Anatoly Vasilyevich Panchenko, Head, Legislation Department Andrey Yuryevich Shirpitsin, Deputy Head, Legislation Department Nataliya Vyacheslavovna Borodina, Director in Charge of Legislation Governing National and Local Agencies Igor Germanovich Gordyushkin, Senior Researcher, International Relations Department
				Scientific-Analytical Center of Constitutional Justice
Aug. 30, 2001	Hungary	Japanese Ambassador's Residence	Yasuda Kunihiko, First Secretary, Embassy of Japan in Hungary Osugi Emi, First Secretary, Embassy of Japan in Poland Sato Teru, First Secretary, Embassy of Japan in the Czech Republic Yoshi Masanobu, First Secretary, Embassy of Japan in Romania	
Aug. 31, 2001	Netherlands	First Chamber	F. Korthals Altes, Chairman	
		Cabinet of the Queen	Felix Edurd Robert Rhodius, Director	

Date	Country Visited	Meeting Held at	Met with
		Ministry of the Interior and Kingdom Relations	Jit A.Peters, Director, Constitutional Affairs and Legislation Department G.R.J. van Wesel, Legal Adviser
		Embassy of Japan	Kajimoto Hiroyuki, First Secretary, Embassy of Japan in Sweden Fujita Junzo, Councilor, Embassy of Japan in Denmark Otsuki Daisuke, First Secretary, Embassy of Japan in Belgium
Sept. 2, 2001	Israel	Conference Room: Hotel	Joshua Schoffman, Deputy Attorney General, Ministry of Justice
		Ministry of Justice	Meir Sheetrit, Minister of Justice
		Conference Room: Hotel	Shlomo Shoham, Legal Advisor, Knesset Ophir Pines, Chairman, Constitution Law and Justice Committee, Knesset
Sept. 3, 2001	Israel	Ministry of Foreign Affairs	Shimon Peres, Deputy Prime Minister and Minister of Foreign Affairs
		Conference Room: Hotel	Arye Z. Carmon, President, The Israel Democracy Institute Zeev Segal, Professor, Tel Aviv University Moshe Arens, Member of Knesset, Chairman, Israel-Japan Parliamentary Friendship League
Sept. 5, 2001	Spain	Council of State	Iñigo Cavero Lataillade, President Landelino Lavilla Alsina, Permanent Councillor Miguel Rodriguez-Piñero, Permanent Councillor Miguel Herrero, Councillor
		Congress of Deputies	Margarita Mariscal de Gante, President of Constitutional Commission Gabriel Cisneros, Deputy Juan Carlos Vera Pro, Deputy Jordi Jane I Guasch, Deputy Jose Antonio Bermudez de Castro, Deputy Diego Garrido, Deputy Alberto Dorrego de Carlos, Secretariat

### 3) Survey Mission by the House Delegation on the Constitutions of the United Kingdom and Several Asian Nations (September 23 to October 5, 2002)

The House of Representatives sent out a four-member survey mission led by Chairman NAKAYAMA Taro to the United Kingdom, five Southeast Asian nations, including the Kingdom of Thailand and the Republic of Singapore, as well as the People's Republic of China and the Republic of Korea to conduct a survey of constitutional matters of those nations. The members were: Chairman NAKAYAMA Taro (Leader; LDP), HANASHI Nobuyuki (LDP), NAKAGAWA Masaharu (DPJ), and HARUNA Naoaki (JCP).

The delegation visited the following:

Date	Country Visited	Meeting Held at	Met with
Sept. 24, 2002	United Kingdom	Parliament	Paul Evans, MP, Commons Committee Clerk, Joint Committee on Human Rights
		Office of the Deputy Prime Minister	Nick Raynsford, MP, Minister of State, Local Government and Regions Ian Scotter, Head, Regional Assembly Division
		University College London	Robert Hazell, Director, the Constitution Unit, UCL Department of Political Science
Sept. 25, 2002		Embassy of Japan	David Beamish, Clerk of Committees, Joint Committee on House of Lords Reform

Date	Country Visited	Meeting Held at	Met with
			(House of Lords Reform Team, Lord Chancellor's Department) Judith Simpson Lola Beaumont Stephen Betty Anthony Zacharzewsky
			Charles Cochrane, Secretary, Council of Civil Service Union
Sept. 27, 2002	Thailand	Constitutional Court	Suchit Bunbongkarn, Judge
		King Prajadhipok's Institute	Borwprnsak Uwanno, Secretary General
		In Bangkok	Marut Bunnag, former Speaker of the House of Representatives
Sept. 28, 2002	Singapore	Japanese Ambassador's Residence	Yoshida Masaharu, Minister, Embassy of Japan in the Philippines Ushio Shigeru, First Secretary, Embassy of Japan in Malaysia Wada Mitsuhiko, Councilor, Embassy of Japan in Indonesia Tani Masanori, First Secretary, Embassy of Japan in Indonesia
			Attorney-General's Chambers
Sept. 30, 2002		Ministry of Foreign Affairs	S Jayakumar, Minister for Law and Minister for Foreign Affairs
		Embassy of Japan	Thio Li-ann, Associate Professor, National University of Singapore
		Japanese Ambassador's Residence	Chin Tet Yung, MP R. Ravindran, MP Charles Chong, MP
Oct. 2, 2002		China	Renmin University of China
	Conference Room: Hotel		Liu Junjie, Professor, Social Development Institute, Central Party School Liu Zhigang, Researcher, Central Party School Press
Oct. 3, 2002	National People's Congress		Zhang Chunsheng, Deputy Director, Commission of Legislative Affairs of the Standing Committee of the National People's Congress
Oct. 4, 2002	Korea	National Assembly	Park Kwan-yong, Speaker
			Kim Chong-tu, Director General, Legislative Counseling Office
		Constitutional Court of the Republic of Korea	Park Yong-sang, Secretary General
		National Human Rights Commission of Korea	Kim Chang-kuk, President

#### **4) Survey Mission by the House Delegation on the Constitutions of the United States, Canada and Mexico (August 31 to September 13, 2003)**

The House of Representatives sent out a four-member survey mission led by Chairman NAKAYAMA Taro to the United States, Canada and Mexico to conduct a survey of constitutional matters of those nations. The members were: Chairman NAKAYAMA Taro (Leader; LDP), Deputy Chairman SENGOKU Yoshito (Deputy Leader, DPJ), NAKAGAWA Shoichi (LDP), and YAMAGUCHI Tomio (JCP).

The delegation visited the following:

Date	Country Visited	Meeting Held at	Met with
Sept. 1, 2003	United States	In Sacramento	Barry Keene, former member of the California State Senate Scott Keene, political consultant to the Consulate General of Japan in San Francisco
Sept. 2, 2003		University of California at Berkeley	Chairman NAKAYAMA's lecture "Activities of the Research Commission on the Constitution of the House of Representatives and the Japanese Constitution in the 21st Century" T. J. Pempel, Professor, Department of Political Science Steven Vogel, Associate Professor, Department of Political Science Michael Zielenziger, Visiting Scholar, Institute of East Asian Studies Kato Junko, Visiting Lecturer Jesse Choper, Professor, School of Law Stephen Barnett, Professor, School of Law Steven Vogel, Associate Professor, Department of Political Science Gordon Silverstein, Associate Professor, Department of Political Science
Sept. 4, 2003	Mexico	Universidad Nacional Autonoma de Mexico (UNAM)	Fernando Serrano, Dean, Faculty of Law
		In Mexico City	Ignacio Burgoa, Emeritus Professor, Faculty of Law, Universidad Nacional Autonoma de Mexico (UNAM)
		Supreme Court of the United Mexican States	Genaro Góngora, Justice
		In Mexico City	Fernando Solana, former Foreign Minister
Sept. 8, 2003	United States	General Accounting Office (GAO)	David Walker, Comptroller General
		Congressional Budget Office (CBO)	Douglas Holtz-Eakin, Director
Sept. 9, 2003	United States	U.S. House of Representatives	Thomas Reynolds, Member, chairman of the National Republican Congressional Committee Steve Chabot, Member, Chairman of the House Subcommittee on the Constitution, Committee on the Judiciary Robert Ney, Member, chairman of the Committee of House Administration
		U.S. Department of State	Richard Armitage, Deputy Secretary
		United States Supreme Court	Antonin Scalia, Associate Judge
		Supreme Court of Canada	Beverley McLachlin, Chief Justice Michel Bastarache, Justice
Sept. 11, 2003	Canada	Department of National Defence	Drew Robertson, Director, Director General, International Security Policy Department Carolyn Keeler, member, Peace Keeping Policy Division, International Security Policy Department
		Canadian House of Commons	Don Boudria, Minister of State and Leader of the Government in the House of Commons
		Privy Council Office	Keith Christie, Deputy Secretary

#### **5) Survey Mission by the House Delegation on the Constitutions of the European Union, Sweden and Finland (September 5 to 17, 2004)**

The House of Representatives sent out a seven-member survey mission led by Chairman NAKAYAMA Taro to the European Union, Sweden and Finland to conduct a survey of



constitutional matters of those nations. The members were: Chairman NAKAYAMA Taro (Leader; LDP), FUNADA Hajime (LDP), SENGOKU Yoshito (DPJ), EDANO Yukio (DPJ), YASUOKA Okiharu (LDP), NAKATANI Gen (LDP) and KONDO Motohiko (LDP).

The delegation visited the following:

Date	Country Visited	Meeting Held at	Met with
Sept. 6, 2004	Sweden	Stockholm International Peace Research Institute (SIPRI)	Alison J.K. Bailes, Director
		Parliament	Tommy Waidelich, Chairman of the Parliament's Advisory Committee on EU Affairs
			Per Westerberg, First Deputy Speaker
			Jan Pennlöv, former parliamentary Ombudsman, Deputy Parliamentary Ombudsman
Sept. 7, 2004		Bo Könberg, Member, former Minister of Health and Social Affairs	Göte Wahlström, Member
		Ministry of Justice	Thomas Bodström, Minister
Sept. 8, 2004		Parliament	(Administration Committee) Matti Väistö, Chairperson Veijo Puhjo, Vice Chairperson Lasse Hautala, Member
Sept. 9, 2004	Finland	In Helsinki	(Employment and Equality Committee) Jukka Gustafsson, Chairperson Anne Holmlund, Vice Chairperson Markus Mustajärvi, Member Kimmo Tiilikainen, Member
		Parliament	(Constitutional Law Committee) Arto Satonen, Member Simo Rundgren, Member Markus Mustajärvi, Member
			Kimmo Kiljunen, Member of Parliament and national parliamentary delegate to the European Constitutional Convention
Sept. 10, 2004	Belgium	Council of the European Union	Jean-Claude Piris, Legal Adviser
		European Parliament	Jean-Luc Dehaene, Vice President, Constitutional Convention
		European Commission	Fernando Valenzuela, Deputy Director-General, External Relations
Sept. 13, 2004			Pieter van Nuffel, Head of the Task Force on the Future of the Union
Sept. 14, 2004		European Court of Human Rights	Luzius Wildhaber, President
		European Parliament	António Vitorino, European Commissioner for Justice and Home Affairs
P.Nikiforos Diamandouros, European Ombudsman			
Georg Jarzembowski, Vice Chairman of Delegation for Relations with Japan			
Íñigo Méndez de Vigo, President, European Parliamentary delegation to the Convention			
Klaus Hänsch, Vice President, European Parliamentary delegation to the Convention			
Jo Leinen, Chairperson of the Committee on Constitutional Affairs			
Sept. 15, 2004	France		Andrew Nicholas Duff, Vice President, European Parliamentary delegation to the Convention
			Sept. 16, 2004

## **2. Reception of Parliamentary Missions**

The Research Commission received courtesy calls of the following four foreign parliamentary delegations and exchanged views on constitutional matters.

### **1) Republic of Indonesia: People's Consultative Assembly (MPR)**

Fifteen members of the MPR's Working Committee on constitutional amendments led by Chairman Rambe, paid a courtesy call on the Commission on April 17, 2000. Chairman NAKAYAMA Taro (LDP), Deputy Chairman KANO Michihiko (DPJ), NAKAGAWA Shoichi (LDP), HANASHI Nobuyuki (LDP), and ITO Shigeru (SDP) met with the delegation.

### **2) Kingdom of Denmark: Parliament (Folketing)**

A six-member Folketing delegation led by Deputy Speaker Simonsen paid a courtesy call on the Commission on March 7, 2001. Chairman NAKAYAMA Taro (LDP), Deputy Chairman KANO Michihiko (DPJ), HANASHI Nobuyuki (LDP), NAKAGAWA Masaharu (DPJ), SAITO Tetsuo (NK), FUJISHIMA Masayuki (LP), HARUNA Naoaki (JCP), KANEKO Tetsuo (SDP), and KONDO Motohiko (Club 21) met with the delegation.

### **3) Federal Republic of Germany: Bundestag**

An eight-member Bundestag delegation led by Chairman Scholz (Committee on Legal Affairs) paid a courtesy call on the Commission on April 5, 2002. Chairman NAKAYAMA Taro (LDP), Deputy Chairman NAKANO Kansei (DPJ), NAKAGAWA Shoichi (LDP), HANASHI Nobuyuki (LDP), YASUOKA Okiharu (LDP), AKAMATSU Masao (NK), FUJISHIMA Masayuki (LP), HARUNA Naoaki (JCP), KANEKO Tetsuo (SDP), and INOUE Kiichi (NCP) met with the delegation.

### **4) Democratic Socialist Republic of Sri Lanka: Parliament**

A two-member Parliament delegation led by Deputy Chairman Andra Hennadi of the Standing Committee paid a courtesy call on the Commission on July 18, 2002. Chairman NAKAYAMA Taro (LDP), Deputy Chairman NAKANO Kansei (DPJ), and HANASHI Nobuyuki (LDP) met with the delegation.

## **Section 6 Other Activities**

### **1) Commission's Public Forum**

On February 25, 2000, the Research Commission on the Constitution set up the Commission's Public Forum as a channel through which members of the public can express their opinions about the Constitution. Opinions were received by post, fax, and e-mail. These opinions were collected and organized by the Office of the Research Commission on the Constitution, regularly reported to the chairman, directors and observers, and provided as reference materials for the discussions of the Research Commission. As of March 31, 2005, a total of 2,541 opinions had been submitted. (For the contents of these opinions, refer to "9. Opinions Received in the Commission's Public Forum" in Part 4.)

### **2) Call for Essays**

In 2000, as part of the PR activities for the first Constitution Day following the establishment of the Research Commission on the Constitution, members of the general public were invited to submit essays on "What I Expect of the Research Commission on the Constitution." A total of 214 essays were submitted. With the cooperation of the meeting of directors, 19 essays of particular interest were selected from these and were included for reference in the minutes of the Research Commission on May 11, 2000.

### **3) Production and Distribution of Posters**

In 2000, together with the above-mentioned call for essays, a poster was produced with the message: "To care about the Constitution is to consider your country and think about your life - May 3 is Constitution Day" in order to stimulate public interest in the work of the Research Commission on the Constitution. The poster was distributed to members of the House of Representatives, political parties, government ministries and agencies, prefectures, cities, major organizations, university law departments, etc. In March 2003, another poster was produced and distributed to relevant parties.

### **4) News of the House of Representatives' Research Commission on the Constitution**

From the 150th Session of the Diet, *News of the House of Representatives' Research Commission on the Constitution* outlining the discussions of the Commission was issued after each meeting as part of public relations activities aimed at all levels of Japanese society and in pursuit of the open disclosure of information. It was sent to interested parties by fax or e-mail and distributed to those attending the meetings as observers.

## **5) Website of the House of Representatives' Research Commission on the Constitution**

Viewing the Internet as an important means of linking citizens with the Research Commission on the Constitution, a Japanese-language Research Commission Website was set up on the House of Representatives Website (<http://www.shugiin.go.jp>) on January 20, 2000, at the time of the establishment of the Research Commission. The Website was later expanded to provide such information as outlines of the discussions at each meeting of the Research Commission, materials distributed, and the schedule for future meetings.

In July 2000, an English version of the Website was established on the English Website of the House of Representatives ([http://www.shugiin.go.jp/index.nsf/html/index\\_e.htm](http://www.shugiin.go.jp/index.nsf/html/index_e.htm)).

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## Chapter 2 Overview of Research

As stated in the preceding chapter, the Research Commission on the Constitution conducted broad and comprehensive research on the Constitution of Japan. In addition, House delegations composed mainly of members of the Research Commission on the Constitution were dispatched overseas five times to conduct studies on the situation of the visited nations' constitutions.

The four sections below contain summaries of discussions and other matters forming part of these research activities, under the headings "Research by the Research Commission on the Constitution," "Research by Subcommittees," "Open Hearings," "Local Open Hearings," and "Overseas Study Missions."

### Section 1 Research by the Research Commission on the Constitution

147th Diet Session, First Meeting, January 20, 2000  
(First meeting since start of Commission)

- Internal election of chairman and directors.

147th Diet Session, Second Meeting, February 17, 2000  
(Second meeting since start of Commission)

- On "Matters relating to the Constitution of Japan (Details of how the Constitution was formulated)," a decision was made, after discussion, on a proposal to request the attendance of informants.
- On "Matters relating to the Constitution of Japan," opinions were stated by the representatives of each political party and group upon the start of the research of the Research Commission on the Constitution.

Amid the expression of opinions by the representatives of the political parties and groups with respect to the way in which the Commission should conduct its research, comments were made as to the necessity to discuss, from various viewpoints and angles, the role the Commission should assume and the Constitution as the basis of the configuration of the country; the necessity to conduct an historical investigation into the circumstances in which the Constitution came into being; the significance of the three key principles of the Constitution; the necessity to discuss the Constitution with the people; the necessity to conduct international comparative research on the Constitution; whether it is necessary to revise the Constitution; the necessity to clarify the pioneering content of the Constitution; the necessity to study the gap between the Constitution and reality; etc.



147th Diet Session, Third Meeting, February 24, 2000

(Third meeting since start of Commission)

- On “Matters relating to the Constitution of Japan (Details of how the Constitution was formulated),” the opinions of the following informants were heard, and then the informants were questioned.

**NISHI Osamu, Informant (Ph.D. Professor of Constitutional Law, Faculty of Law, Komazawa University; Dean, Division of Law, Graduate School, Komazawa University)**

Professor NISHI stated the view that in light of documents such as the report of the Commission on the Constitution that was set up within the Cabinet and the House of Peers minutes, it could be said that the process through which the Constitution came into being was “imposed.” He pointed out that through censorship, the General Headquarters (GHQ) of the Occupation sought to conceal the fact that it was imposed, and that in some respects there were questions as to why foreigners created the Japanese constitution.

With respect to the process of formulating Article 9, he pointed out that the MacArthur Note even included the renunciation of war in self-defense, but as that was not realistic it was deleted from the GHQ draft. Also that, with respect to the Ashida amendment, Ashida’s intention is unclear, but the Far Eastern Commission sensed the possibility of maintaining armed forces for the purpose of self-defense by means of a revision, and demanded that the provision for civilian control be included. He then stated his opinion that, given this evolution, it is natural to interpret the Constitution as permitting the maintenance of war potential for self-defense.

He was then questioned on matters such as whether the Constitution was influenced by occupation policy, the reason the Constitution was accepted by the people, the differences between Germany and Japan in the process of formulating constitutions, the reason why the Constitution has not been revised hitherto, the appropriateness of revising the Constitution for the reason that it was “imposed.”

**AOYAMA Takenori, Informant (Professor, College of Law, Nihon University)**

Professor AOYAMA pointed out that although the Socialist Party of Japan and the Japanese Communist Party are mainstays of support for the Constitution, at the time it was formulated they opposed and took a critical stance towards the draft. He stated his view that at the time of its formulation, restrictions on expression by such means as GHQ censorship meant that the draft was tamely accepted by the people, and although the Potsdam Declaration required in essence that there be constitutional revision, it did not demand the complete revision of the Constitution of the Empire of Japan (Meiji Constitution), and therefore it was only natural that the Matsumoto committee planned to make constitutional revisions within the framework of that constitution.

In addition, he voiced his opinion that the Far Eastern Commission and GHQ acted contrary to the Hague Convention clauses on the laws and customs of war on land and the Potsdam Declaration, and since even the formulation of a constitution by means of revising the Meiji Constitution exceeded the limits of revision, the act of formulating the Constitution included acts that were illegal.

He was then questioned on matters such as the effectiveness of the present constitution, the meaning of “imposed,” the relationship between the acceptance of the Potsdam Declaration and the necessity of constitutional revision, and the support of the people for the “renunciation of war” at the time the constitution was formulated.

147th Diet Session, Fourth Meeting, March 9, 2000  
(Fourth meeting since start of Commission)

- On “Matters relating to the Constitution of Japan (Details of how the Constitution was formulated),” the opinions of the following informants were heard, and then the informants were questioned.

**KOSEKI Shoichi, Informant (Professor, Faculty of Law, Dokkyo University)**

Professor KOSEKI pointed out that since the signing of the peace treaty and the Japan-U.S. Security Treaty, and subsequently the Mutual Security Agreement, the relationship between the Self-Defense Forces and Article 9 of the Constitution has become problematic, and that the origin of the “imposed constitution” argument are to be found in the testimony of Matsumoto Joji at the time the Liberal Party and Progressive Party were aiming to revise the Constitution. He also stated his opinion that although Matsumoto testified that the person of the Emperor could not be guaranteed unless the GHQ draft was accepted, insofar as the Constitution is something formed through the national will, discussion today should not be conducted in the context of what happened at the time it was formulated, and in an emotional way.

Among the other matters he pointed out were that GHQ wanted the Constitution to be drawn up before the Far Eastern Commission was established, that MacArthur strove to maintain the Emperor system, that many revisions were made on the GHQ draft by the Imperial Diet, and that in a Diet reply, Prime Minister Yoshida declared that he had no intention of revising the Constitution. In the informant’s view, although it could not be said that under the Occupation Japan was on an equal footing with the United States, it should be taken into consideration that when the Constitution was formulated, Japan followed the proper procedure for determining the national will.

He was then questioned on matters such as the appropriateness of the present Constitution as the constitution of an independent nation, the extent to which GHQ understood Japanese public opinion, the significance of the present Constitution’s having become so firmly established in Japan, and the

relationship between the debate on constitutional revision and the peace treaty and the Mutual Security Agreement.

**MURATA Koji, Informant (Assistant Professor, Faculty of Integrated Arts and Sciences, Hiroshima University)**

Professor MURATA stated his view that since individual laws take precedence over general laws, the enactment of the Japanese Constitution as the performance of the requirements of the Potsdam Declaration was not contrary to the Hague Convention clauses on the laws and customs of war on land, a general law, and that the assertion that the Constitution is invalid is not constructive and would lead to the denial of Japan's postwar democracy.

He then pointed out that MacArthur's intentions in also wanting Japan to renounce wars of self-defense were (1) to ensure thorough adherence to pacifism, with the swift ending of the Occupation and the maintenance of the Emperor system, and (2) the protection of Japan by U.S. nuclear weapons. He also pointed out that the Far Eastern Commission inferred from the Ashida amendment that there was a possibility of rearmament by Japan, and although it did not oppose the amendment itself, it requested the insertion of the provision for civilian control.

In addition, he stated his view that (1) Japan should acknowledge that the Asia-Pacific War was aggressive in character, and that after setting out clearly the definition of "war of aggression," the distinction between war prohibited by Article 9 and permitted war should be clarified, and (2) that the international perception reflected in the wording in the Preamble that "we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world" is mistaken, and must be revised.

He was then questioned on matters such as the "imposed" constitution argument, Ashida's actual intention with the Ashida amendment, the people's perception at that time with respect to the maintenance of the Emperor system, the kind of view of the nation to be adopted when debating the Constitution, and the connection between the moves to revise Article 9 and the Asia strategy of the United States.

147th Diet Session, Fifth Meeting, March 23, 2000 (Fifth meeting since start of Commission)

- On "Matters relating to the Constitution of Japan (Details of how the Constitution was formulated)," the opinions of the following informants were heard, and then the informants were questioned.

**HASEGAWA Masayasu, Informant (Emeritus Professor, Nagoya University)**

Professor HASEGAWA pointed out that the following three criteria are important for examining constitutions: (1) national sovereignty, (2) principles for controlling state power (separation of powers, parliamentarianism), and (3) the guarantee of freedom and rights of the individual, and that

in light of this one could identify that a problem in prewar Japan was the existence of a dual system: the system of laws based on the Meiji Constitution and the system based on the Imperial Household Law, including the prerogative of supreme command. He also pointed out that in modern Japan there is also a dual system--the system of laws based on the Constitution and the system based on the Japan-U.S. Security Treaty, with which it is inconsistent, and this resembles the dual system in existence during the Occupation, when the Constitution coexisted with the Potsdam imperial rescript and government ordinances.

He then gave his opinion to the effect that (1) in researching the Constitution it is important to examine whether its provisions have been observed and realized, and based on that one should consider whether to revise the reality or the text, (2) just as Japan's sovereignty is restricted, in reality, under the Japan-U.S. Security Arrangements, given the present situation in Japan in which the provisions of the Constitution are not being observed, for example the violation of human rights in large corporations, it is strange to be discussing revising the Constitution.

He was then questioned on matters such as the effectiveness of a constitution enacted under an occupation, the relationship between the Japan-U.S. Security Treaty and national sovereignty, the advisability of establishing an institution with the functions of a constitutional court, the current situation in Okinawa from the standpoint of the Constitution, and the current status with respect to the protection of fundamental human rights.

**TAKAHASHI Masatoshi, Informant (Professor, Faculty of Law, Kagawa University)**

Professor TAKAHASHI started by explaining that the Potsdam Declaration was a conditional agreement for the suspension of hostilities, but during its implementation phase it was enforced as an unconditional surrender, with the result that a program to remodel the country was initiated by the Allies, and the Imperial Constitution was revised.

He then stated his opinion that with respect to the formulation of the Constitution of Japan, the following should be considered from the viewpoint of jurisprudence. (1) During the Occupation the Imperial Constitution and the Constitution of Japan were administrative ordinances within the system of laws from the time of the Potsdam Declaration to the GHQ administrative ordinances. Although the Constitution of Japan following the conclusion of the peace treaty was in legal terms not a continuation of the same constitution during the Occupation, and after the conclusion of the peace treaty Japan entered a period in which it should have decided how to deal with the Constitution as an administrative law, no particular action was taken. (2) In the event of the discontinuation of a law in this manner, its legal validity should be understood as not springing from the attributes stemming from the procedures for enacting the law or its contents, but from its environment--the will and various forces--supporting it. As the present Constitution was formulated during a period when it served as an administrative ordinance, there is little reason to argue that it was "imposed," etc., and the "will and various forces" to support the present Constitution clearly existed among the people after the end of Occupation.

He was then questioned on matters such as the necessity for revising the provisions of the Constitution that deviate from actual circumstances, the meaning of the assertion that Japan “did not have a constitution,” since the Constitution of the Empire of Japan was effectively incorporated into GHQ’s administrative ordinances, and the requirement for constitutional revision in the Potsdam Declaration.

147th Diet Session, Sixth Meeting, April 6, 2000 (Sixth meeting since start of Commission)

- On “Matters relating to the Constitution of Japan (Details of how the Constitution was formulated),” the opinions of the following informants were heard, and then the informants were questioned.

**KITAOKA Shinichi, Informant (Professor, Faculty of Law, The University of Tokyo)**

Professor KITAOKA first stated his view that the Constitution should not be revised solely because it was an “imposed” constitution. He then stated the following opinions. (1) MacArthur intended to have the Constitution formulated before the Far Eastern Commission assumed power over Occupation policy, but out of fear of contravening the Hague Convention clauses on the laws and customs of war on land and the Potsdam Declaration, he disguised this as if it was the spontaneous intent of the Japanese government. (2) It is fallacy to claim that Prime Minister Shidehara was the originator of the provision to renounce the maintenance of war potential. (3) The process of formulating the Constitution was conditional insofar as the acceptance of the Constitution was in exchange for the maintenance of the Emperor system and the supply of economic assistance. (4) As regards the Ashida amendment it is unclear what Ashida’s true intention was, but a series of actions have been interpreted as being artificial, and Colonel Kades tacitly approved it on the grounds that it was obvious that a country should have the right of self-defense, though other allied countries considered this dangerous, and demanded that the civilian-control provision be incorporated. He also took the view that a prerequisite for considering the Constitution is to understand relationships such as that between the Constitution and treaties and laws, and the relationship of the Kellogg-Briand Pact and the UN Charter with Article 9.

He was then questioned on matters such as the reason why the Constitution approved by the Far Eastern Commission and GHQ was not reexamined, the relationship between Article 9 and the right of collective self-defense, and the change in the policy of the U.S. government between the time of the enactment of the Constitution and the time of the establishment of the Self-Defense Forces.

**SHINDO Eiichi, Informant (Professor, College of Social Sciences, University of Tsukuba)**

Professor SHINDO pointed out with respect to the Constitution’s international significance it is essential to examine the “3 Ds”: Democratization, Demilitarization, and Decolonization, and that in

the process of formulating the present Constitution, GHQ translated these into reality in such ways as inserting the civilian-control provision and promoting the decentralization of power. He went on to state the following views. (1) Although it is asserted that the process of formulating the present Constitution was “imposed,” only foreigners were in a position to change fundamentally the country’s systems, and therefore the creation of a constitution by foreigners was not anomalous, but rather a customary practice in constitution formulation. (2) In the discussion about the process of formulating the Constitution it is essential to understand the universality of the ideals of the Constitution, setting aside all ideas of time and place. In doing that it is essential to examine two external factors: “Localization” (How did it take root among the people?) and “Internationalization” (What were the influences from outside the country?).

He also stated the view that (1) we must recapture the foresight and international vision shown by the Japanese people during the formulation process, and implement a “second postwar reform,” and (2) as regards the rights and wrongs of revising the Constitution, although a revision may not be totally wrong, merely to tamper with systems is meaningless; it is important to implement policies aimed at realizing the ideals of the Constitution.

He was then questioned on matters such as the intention of the Ashida amendment and whether Article 9 should be revised, whether the Japanese side and GHQ had a common view during the process of formulating the Constitution, and the relationship between the Japan-U.S. Security Arrangements and the Constitution.

147th Diet Session, Seventh Meeting, April 20, 2000 (Seventh meeting since start of Commission)
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- Appointment of substitute directors.
- On “Matters relating to the Constitution of Japan (Details of how the Constitution was formulated),” the opinions of the following informants were heard, and then the informants were questioned.

**IOKIBE Makoto, Informant (Professor of Political Science (political history/political process in Japan), Graduate School of Law, Kobe University)**

Professor IOKIBE pointed out that MacArthur initially ruled out even wars of self-defense, but Colonel Kades agreed that the Ashida amendment would clarify the maintenance of the right of self-defense and would make it easier for Japan to participate in international security. He stated his view that MacArthur and Yoshida distinguished between their overt and covert positions, the overt stance being the expression of absolute pacifism, and the covert one being the ability to maintain the right of self-defense.

Also, in Professor IOKIBE’s opinion, the Shidehara Cabinet had no choice but to accept the GHQ draft in order to ensure the continuation of the state, and as they decided to bring a valid constitution into being, the argument that the Constitution is invalid for the reasons that it was

“imposed” is inappropriate. The present Constitution received strong public support when it was announced, and it became well established as a constitution that underpinned Japanese society in the postwar period.

In addition, he referred to the fact that the Gulf War sparked growth in public opinion in favor of permitting Article 9 to be revised to enable Japan to make a contribution to the international community. He stated his view that with respect to security, Japan should develop a self-defense capability at its own expense, and as a non-nuclear industrialized nation should seek the creation of an international system in which nuclear weapons are unnecessary. In his view, the argument for the revision of the Constitution should not be the “heretical” one based on the reason that it was “imposed,” but an “orthodox” argument that advocates its conversion into the type of constitution necessary for the people’s security and prosperity, while retaining the fundamental spirit of its predecessor.

He was then questioned on matters such as the importance of the “imposed” viewpoint, the importance of freeing ourselves from ideology-dominated arguments in constitutional discussions, and whether there was a difference of understanding between MacArthur and Shidehara concerning the war-renunciation clause.

**AMAKAWA Akira, Informant (Professor of Political Science, International Graduate School of Social Sciences, Yokohama National University)**

Professor AMAKAWA was of the view that it was of great significance that the chapter on local self-government was included in the Constitution.

He made the following points. (1) The direct origin of the inclusion of the local self-government provisions in the Constitution was that GHQ attached importance to decentralization as a means of fostering the democratization of Japan. To that end, among other things it provided for a system of election by direct popular vote of the heads of local governments, the [citizens’] right of autonomy [to set down charters], and local referendums on special acts with limited applicability to the specified region. (2) During the discussions on amendments with GHQ, the Japanese government raised no particularly strong objections regarding local self-government. (3) In the aftermath of the wartime defeat there were increasingly vigorous moves in Japan in favor of demilitarization and democratization, and when differences between these forces and the thinking of GHQ became clear, the necessity for Japan to initiate reforms on its own was recognized. (4) The outline of the draft revised Constitution contained provisions such as the direct popular election of governors and mayors of municipalities, which had a major impact on Japan’s system of local government.

Professor AMAKAWA also stated his opinion that although it is important to adopt a macro approach of making a general interpretation of the process of formulating the Constitution, it is also important to have a micro approach, in which the formulation process of individual articles is examined.

He was then questioned on matters such as the relationship between a federation of devolved states with an administrative system based on larger administrative regions and the election of the governors by direct popular vote, the meaning of the “honshi (essence) of local autonomy,” the discussion about the prohibition of the repeated reelection of the same heads of local governments, and the role played in demilitarization and democratization by the local-government provisions in the Constitution.

147th Diet Session, Eighth Meeting, April 27, 2000  
(Eighth meeting since start of Commission)

- There was a free discussion among Commission members on “Matters relating to the Constitution of Japan.”

In the free discussion among Commission members, the following were among the matters raised: with respect to the guarantee of fundamental human rights, the relationship between rights and public welfare; in respect of the basic political structure, issues such as the ideal bicameral system and the introduction of a system of direct election of the prime minister; in respect of security and international cooperation, whether the right of self-defense should be stated explicitly, and the relationship between Article 9 and participation in UN security operations; other assessments of the process through which the Constitution was formulated; matters that the Commission should discuss; the relationship between popular sovereignty and the “Emperor as symbol” system; and the pioneering character of the Constitution.

147th Diet Session, Ninth Meeting, May 11, 2000 (Ninth meeting since start of Commission)

- On “Matters relating to the Constitution of Japan (Details of how the Constitution was formulated),” a free discussion was held to conclude the Commission’s consideration of the details of the formulation and enactment of the Constitution of Japan.

In the free discussion among Commission members, the following were among the matters raised: whether GHQ did “impose” the Constitution during the course of its formulation; an assessment of the “imposed Constitution” argument; the validity of the Constitution; the intention of the Ashida amendment and issues such as its relationship with the constitutionality of the Self-Defense Forces; ways in which research should be conducted and points that should be researched; an assessment of the present Constitution; the reason why the Constitution was not revised; the merits and demerits of revising the Constitution; the form that national security should take; the form the governmental system should take; and the desirable form of local self-government.



147th Diet Session, 10th Meeting, May 25, 2000 (10th meeting since start of Commission)

- On “Matters relating to the Constitution of Japan (Major postwar judgments of unconstitutionality),” the opinions of the Director of the Administrative Affairs Bureau of the General Secretariat of the Supreme Court were heard, and he was then questioned.

**CHIBA Katsumi, Director of the Administrative Affairs Bureau of the General Secretariat of the Supreme Court**

The Director of the Administrative Affairs Bureau of the General Secretariat of the Supreme Court gave the following explanation.

- (1) The judgment in the National Police Reserve constitutionality case (1952) indicated that the power of judicial review in Japan is incidental in nature.
- (2) From the mid-1940s to the mid-1970s, partly because the interpretation of the new Constitution and the new Code of Criminal Procedure was not yet established, there were a relatively large number of judgments of unconstitutionality in criminal cases, such as the finding that the determination of guilt by using only the record of a confession as evidence was unconstitutional (1950).
- (3) Thereafter, as the new Constitution permeated national life, there were very many constitutional challenges relating to the principle of equality and human rights provisions, such as the judgment of the unconstitutionality of Article 200 of the Penal Code providing for punishment for killing a linear ascendant (1973), of the regulations that limited the number of pharmacies in a given area (1975), and of the restrictions on the partition of forests (1987).
- (4) Further, during more or less the same period, not only were suits brought by individuals whose rights had been infringed, but constitutional questions affecting public institutions also began to be widely raised, such as the judgment of the unconstitutionality of the apportionment of Diet seats (1976), and of a prefecture’s disbursement from public funds to religious corporations which held ritual ceremonies (1997).

He was then questioned on matters such as the judicial precedents for the court’s not reaching decisions on constitutionality because of the “act of state” doctrine; the cause of the long duration of trials in Japan and the measures to improve the situation; the judicial review systems in other countries such as the United States and Germany, and how they actually operate; and the advisability of introducing a system of abstract judicial review.

148th Diet Session, First Meeting, July 5, 2000 (11th meeting since start of Commission)

- Internal election of chairman and directors.
- Matters relating to requests for attendance by informants and matters relating to the dispatch of members when the Diet is not in session were decided upon after discussion.

149th Diet Session, First Meeting, August 3, 2000 (12th meeting since start of Commission)

- Matters relating to requests for attendance by informants when the Diet is not in session were decided upon after discussion.
- There was a free discussion among Commission members on “Matters relating to the Constitution of Japan (Future proceedings of the Research Commission on the Constitution).”

In the free discussion among Commission members, the following were among the matters raised: the necessity of look ahead to the 21st century; the importance of basing discussion on the three key principles prescribed by the Constitution; points that should be discussed; ways of improving the way the Commission operates; the need to research the discrepancy between the Constitution’s provisions and reality; the necessity of hearing the views of the people by such means as holding local open hearings in various regions of Japan; and other points regarding whether the Constitution requires revision.

150th Diet Session, First Meeting, September 28, 2000  
(13th meeting since start of Commission)

- Approval of the resignation of directors and the appointment of substitute directors.
- On “Matters relating to the Constitution of Japan (A vision for Japan in the 21st century), matters relating to requests for attendance by informants were decided upon after discussion.
- Brief explanation by Commission Chairman NAKAYAMA Taro on the findings of the House delegation dispatched to survey the constitutions of European nations.
- On “Matters relating to the Constitution of Japan (A vision for Japan in the 21st century),” the opinions of the following informants were heard, and then the informants were questioned.

**TANAKA Akihiko, Informant (Professor, Graduate School of Interdisciplinary Information Studies, The University of Tokyo)**

Professor TANAKA pointed out that in the 21st century world (1) as a result of the end of the Cold War, the prioritization of the resolution of global issues has become more vague, (2) the advance of globalization has accelerated the spread of global influences, (3) liberal democracy has been spreading, and (4) as the entities playing leading roles in the world have become more diverse, three kinds of area have been emerging: those with stable peace, those in the process of modernization, and those suffering from civil war and famine.

He stated his opinion that the role of the state is to ensure and maintain the security and interests of the people, and that for a major state like Japan to maintain its present prosperity, it is important (1) to welcome talented people from foreign nations and build a new nation-state (a state composed of citizens with a shared sense of identity), and (2) contribute to the world in diverse fields.

He was then questioned on matters such as whether under the present Constitution it is possible for Japan to contribute personnel to international operations, whether the Constitution should include explicit stipulation of national goals, and the role that Japan should play in the world.

**ODA Makoto, Informant (author)**

Mr. ODA stated the view that Japan should be a “conscientious objector state,” putting into practice the pacifism of the Constitution through the renunciation of war and armaments, and addressing the resolution of problems and disputes by non-military means and methods.

Pointing to the German system of conscientious objection to military service, which has been accepted by society because objectors perform welfare and other civic services, he stated the opinion that Japan should not simply proclaim unarmed neutrality, but should contribute to the world by vigorously putting into practice “civic service activities” as a nation, including refugee relief, debt forgiveness for developing countries, nuclear disarmament, and dispute intermediation.

Mr. ODA was then questioned on matters such as the status of U.S. forces in Japan, the role of the Self-Defense Forces, and the method of realizing pacifism.

150th Diet Session, Second Meeting, October 12, 2000 (14th meeting since start of Commission)
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- On “Matters relating to the Constitution of Japan (A vision for Japan in the 21st century),” the opinions of the following informants were heard, and the informants were then questioned.

**SONO Ayako, Informant (writer; Chairperson, The Nippon Foundation)**

Ms. SONO stated the view that for the sake of the wellbeing of Japanese society in the 21st century, it is essential to establish self-reliance as a state by facing up to realities such as the world’s power-based relationships and the problem of poverty. In addition, she stated the opinion that it is important for Japanese people to arm themselves with the power of “virtue,” and to think deeply about the universal values of “love” (spiritual love) and “courage” (the motive force of “love”).

Ms. SONO was questioned on matters such as the significance of self-reliance in international economic relationships, the desirable form of human education, and the direction of education reform.

**KONDO Motohiro, Informant (Professor, Graduate School of Social and Cultural Studies, Nihon University)**

Professor KONDO stated his opinion that in response to the vicissitudes of Japanese society that followed wartime defeat--the period of reconstruction, the period of rapid economic growth, the

period of stagnation, the period of the bubble economy, and the period after the bubble--Japanese people's assessment of themselves fluctuated between positive and negative, but this has been a search for a culture and identity of their own, and the manifestation of a desire for a spiritual foundation.

For Japan in the 21st century he also recommended that the Commission should look repeatedly to the past to draw lessons from it, and that both the tenor of public opinion and ideas have aspects that are immutable and those that are merely ephemeral, fashions, and we should look not only at the ephemeral, but also at those immutable elements. In addition, he stated his opinion that it would be desirable for Japan's constitution to be something that would regulate the system of the state in a concise manner.

He was then questioned on matters such as the reason why numerous theories attempting to explain the nature of Japan and the Japanese been put forward in the postwar era, the impact they have had on Japan, and also the relationship between the tenor of these and the state of the Japanese economy at the times they have appeared.

150th Diet Session, Third Meeting, October 26, 2000  
(15th meeting since start of Commission)

- On "Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)," the opinions of the following informant were heard, and the informant was then questioned.

**ICHIMURA Shinichi, Informant (Director, The International Centre for the Study of East Asian Development [ICSEAD])**

Dr. ICHIMURA stated his opinion that the following policies should be implemented in the 21st century.

(1) Since the world is moving towards the formation of a tripolar structure with North America, Western Europe, and East Asia as the poles, Japan's geopolitical choice should be to maintain its alliance with the United States, and while holding its own on friendly terms with Russia and China, to bring the nations of East Asia together to create an East Asian economic bloc. (2) Japan's birthrate is declining, and in tandem with that the morality of the people is deteriorating. To arrest the birthrate decline, the family and the community should be rehabilitated, and educational reform implemented in order to raise moral standards. (3) To enable Japan to deal with unforeseen situations such as the outbreak of conflicts, Japan's political, economic, and social institutions need to be enhanced, and to that end the Constitution should be revised to become a clear statement of the fundamental structure of the state suited to Japan's history and traditions.

He was then questioned on matters such as the status of values such as the "family" in the Constitution, and the role in postwar reconstruction that was played by the Constitution, with its espousal of pacifism.

150th Diet Session, Fourth Meeting, November 9, 2000  
(16th meeting since start of Commission)

- On “Matters relating to the Constitution of Japan (A vision for Japan in the 21st century),” the opinions of the following informants were heard, and the informants were then questioned.

**SASAKI Takeshi, Informant (Professor, The University of Tokyo)**

It was the position of Professor SASAKI that the system of bureaucratic control is the root of the structural problems afflicting Japan, and that to resolve them it is necessary to do away with the compartmentalization of the bureaucracy, enhance the strategic orientation of government, and reform bureaucratic control into political leadership. Based upon this fundamental perception, he stated the following opinions.

- (1) Under the existing stringent conditions for proposing amendments to the Constitution there is no political risk involved in the constitutional debate, which lowers our ability to solve problems through politics. Therefore, it is worth considering easing the conditions for proposing amendments.
- (2) The status of political parties should be defined in the Constitution.
- (3) It is essential to review the principle of discontinuous Diet sessions, and to reconsider the provisions relating to the Diet, including the arrangement of the roles of the upper and lower houses.
- (4) It is necessary to correct the mutually dependent relationship between the center and the regions.
- (5) Before abandoning the parliamentary system and considering arguments for the direct election of the prime minister by popular vote and a system of national referendums, we should first try to rehabilitate the system.

He was then questioned on matters such as the difficulty of a change from bureaucratic control to political leadership and the specific methods of achieving it, and the advantages and disadvantages of a system of direct election of the prime minister by popular vote.

**KOBAYASHI Takeshi, Informant (LL.D., Professor, Nanzan University)**

Professor KOBAYASHI stated his opinion that postwar politics has diverged from the Constitution, the reasons for which are that postwar governments and ruling parties have had a consistently unfavorable attitude towards the Constitution, and the Supreme Court has shown excessive leniency toward the political sector.

He also expressed the view that 21st century Japan should put faithfully into practice the norms of the Peace Constitution, lobby for nuclear disarmament and arms reduction, and endeavor to bring about the resolution of poverty and structural violence, thereby fulfilling Japan’s role in the building of world peace.

Questions were then posed to him on matters such as what the exercise of the right of self-defense without arms would entail, and what the reasons were for the high regard with which Article 9 is held around the world.

150th Diet Session, Fifth Meeting, November 30, 2000  
(17th meeting since start of Commission)

- On “Matters relating to the Constitution of Japan (A vision for Japan in the 21st century),” the opinions of the following informants were heard, and the informants were then questioned.

**ISHIHARA Shintaro, Informant (Governor of Tokyo)**

Governor ISHIHARA stated his opinion that to express opinions concerning the Constitution unreservedly and to revise the Constitution are essential for the nation’s prosperity. Among the points he made were that (1) since the present Constitution has come to be known as the “Peace Constitution,” many people have fallen under the illusion that the ideal of peace is a reality, (2) we should look back at the process through which the Constitution was formulated, and have an accurate understanding of who played the central role in making the Constitution, (3) a nation that does not have the power of self-determination based on its own individual character cannot be called a nation, and (4) the United States made the present Constitution in order to restrain Japan’s strength; it contains almost no reflection of the will and the autonomy of the Japanese people.

He also stated the view that the National Diet, as the body that represents the people, should pass a resolution to “negate” the Constitution on the grounds that it lacks historical legitimacy, and on that basis it should commence the work of making a new constitution.

Questions were then posed to Governor ISHIHARA on matters such as his own view of what the Constitution should be, the desirable form of Japan’s security policy, and the form that decentralization should take.

**SAKURAI Yoshiko, Informant (journalist)**

Ms. SAKURAI expressed the view that from the Manchurian Incident to the HIV-contaminated blood products scandal, the lack or distortion of information has caused Japan to make mistakes, and therefore a thorough commitment to the public disclosure of information should be written explicitly into the Constitution. She also stated her opinion that the present Constitution was formulated amid a climate in which a strict censorship system prevented the public from being provided with adequate information, with the result that they could not debate it. She desires that in future information of all kinds is shared with the people, and that discussion on the Constitution, including security issues, be conducted through a transparent, clear, and fair process.

She was also of the opinion that in the international community in the 21st century, Japan should display leadership by taking the initiative in seeking the resolution of environmental problems.

She was then questioned on matters such as the problems affecting the right of collective self-defense, Japan’s foreign policy stance, and the issue of extending local voting rights to foreigners who are permanent residents.

150th Diet Session, Sixth Meeting, December 7, 2000  
(18th meeting since start of Commission)

- On “Matters relating to the Constitution of Japan (A vision for Japan in the 21st century),” the opinions of the following informants were heard, and the informants were then questioned.

**MATSUMOTO Ken'ichi, Informant (Professor, Reitaku University; commentator)**

Professor MATSUMOTO expressed the opinions below premised upon the following understanding: that Japan experienced a “first opening” in the late Edo and early Meiji periods (i.e., the mid-19th century) and a “second opening” after World War II, and these are now being followed by a “third opening” in the wake of the Cold War; and that amid the progressive global fusion of cultures, if Japan does not rebuild and protect its own cultural identity, it will descend into oblivion in world history.

(1) In order to rebuild a cultural identity and to achieve the “third opening,” with the aid of the people we should enact a “People’s Constitution” designed to protect the people. (2) The “People’s Constitution” should make explicit provision for the maintenance of an army of self-defense, and should introduce systems for national referendums and direct popular election of the prime minister. (3) Some people argue that if the Emperor is regarded as the head of state, a system of popular election of the prime minister would be contrary to the Emperor system, but since historically the Emperor has functioned as a protector of culture separated from power, the introduction of a system of popular election of the prime minister would not be inconsistent with the Emperor system.

He was then questioned on matters such as the advantages and disadvantages of a system of popular election of the prime minister, the relationship between a system of popular election of the prime minister and the Emperor system, and the reaction among other Asian countries if the Constitution were to make express provision for possessing an army of self-defense.

**WATANABE Shoichi, Informant (Professor, Sophia University)**

Professor WATANABE expressed the opinion that (1) Democratization was making progress in prewar Japan, but democracy stagnated under the weight of policies that were national socialist in character and attached little importance to a system of private property, and this led to war. (2) Postwar Japan achieved miraculous reconstruction and became a major economic power, but because the bureaucracy has placed little importance on private ownership, and socialistic policies have created a climate of financial rigidity, the Japanese economy has broken down amid the rapid change that has occurred since the collapse of the Cold War structure.

He also stated the view that to ensure a bright future, Japan must break free of the mind control exercised by “Marxist” ideas, give importance to private ownership, and reform its tax system, in which it is essential to totally abolish inheritance tax, and also to make a provision in the Constitution that sets a ceiling of 10% on income tax.

He was then questioned on matters such as the balance between regulation and protection on the one hand, and free competition on the other, the defects of the Meiji Constitution in that it was unable to halt the slide into militarism, and the relationship between the tax system and the Constitution.

150th Diet Session, Seventh Meeting, December 21, 2000  
(19th meeting since start of Commission)

- On “Matters relating to the Constitution of Japan (A vision for Japan in the 21st century),” the opinions of the following informant were heard, and the informant was then questioned.

**MURAKAMI Yoichiro, Informant (Professor, College of Liberal Arts, International Christian University)**

Professor MURAKAMI stated his opinion that in contradistinction to science in its original form as the true home of intellectual curiosity on the part of researchers, the postwar period has seen the emergence of a new type of science whose purpose is to accomplish missions set for it by the nation and society.

In his opinion, in Japan in the 21st century, (1) in education the division between the humanities and the sciences should be removed, (2) a genuine information society should be created, (3) the inviolability of human dignity should be a national ideal, and (4) scientific research for the pleasure of seeking knowledge should be respected.

He was then questioned on matters such as the negative aspects of scientific and technological progress and his thoughts on how to address them, and how to promote comprehensive education that transcends the humanities/sciences framework.

151st Diet Session, First Meeting, February 8, 2001  
(20th meeting since start of Commission)

- Approval of the resignation of directors and the appointment of substitute directors.
- On “Matters relating to the Constitution of Japan (A vision for Japan in the 21st century),” matters relating to requests for attendance by informants were decided upon after discussion.
- On “Matters relating to the Constitution of Japan (A vision for Japan in the 21st century),” the opinions of the following informants were heard, and the informants were then questioned.

**NISHIZAWA Junichi, Informant (President, Iwate Prefectural University)**

Dr. NISHIZAWA set out the view that in order to eliminate the proliferation of egoism, which is concerned only with self-interest, the Preamble to the Constitution should state clearly that each of the people has the responsibility to work for the betterment of society in order to improve his or her



own lot, and also for the betterment not only of Japan but also of other nations. In his opinion, by such means as the reform of the education system and use of the capabilities of elderly people, Japan should aim to improve the qualities of the people and become a nation that earns the respect of other countries.

He also expressed the following opinions. (1) In the 21st century the decisive contests between nations will be wars in the realm of science and technology, and thus there is a need for a compassionate approach to research and development that unites science and humanism. (2) In order to ensure the discovery of important research of a kind that does not attract much notice, such as the research of Nobel Prizewinner Dr. SHIRAKAWA Hideki, it will be important to establish a retrospective system of evaluation, and through that to discover astute judges with the ability to properly discern the value of research in advance.

He was then questioned on matters such as current problems in the education system, and methods of promoting the development of science and technology.

#### **TAKAHASHI Susumu, Informant (Professor, The University of Tokyo)**

With respect to the impact on the nation-state of globalization, Professor TAKAHASHI expressed the following opinions, using certain Western European countries as examples.

(1) The role of the nation-state will be transformed, becoming coordinative and procedural in nature. (2) As globalization advances, there are moves to achieve regional integration based on the strengthening of economic and other relationships, in order to bring about the formation of regions, and this requires “multilevel governance”—governance by a diversity of entities. (3) It is essential to deal with globalization by monitoring closely the direction in which the nation-state moves.

He was then questioned on matters such as the formation of regions in East Asia and the possibility of multilevel governance, the desirable way of addressing globalization, and future trends in the European Union and East Asia.

151st Diet Session, Second Meeting, February 22, 2001 (21st meeting since start of Commission)
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- Matters relating to a motion for approval of the dispatch of members to attend a regional hearing were discussed, and a decision taken.
- On “Matters relating to the Constitution of Japan (A vision for Japan in the 21st century),” the opinions of the following informants were heard, and the informants were then questioned.

**HAYASHIZAKI Yoshihide, Informant (Project Director, Genome Exploration Research Group, Genomic Sciences Center, Institute of Physical and Chemical Research [RIKEN])**

Dr. HAYASHIZAKI explained that the life sciences are currently entering a new era in which the advance of life sciences is bringing about substantial change, both in the realm of scholarship and the industrial realm, and from the perspective of a researcher in the genomic sciences expressed the following opinions. (1) Investment in the life sciences is the right choice for the nation, as the elucidation of the gene network will undoubtedly enhance the welfare of the Japanese people. (2) At the same time, however, from the standpoint of bioethics we must pay close attention and thought to the manner in which the results are utilized. (3) In addition, the time has come to examine closely the nature of the science that will be needed after the explanation of the genome has been completed, and the nature of the administration and industries that will be needed to put that science into effect.

He was then questioned on matters such as the conflict between pursuing research on the human genome and human dignity, the desirable form that the structure of genomic research should take in the future, and the public disclosure of the results of genomic research.

**OGAWA Naohiro, Informant (Professor, College of Economics, Nihon University; Deputy Director, Nihon University Population Research Institute [NUPRI])**

Professor OGAWA stated the opinion that one of the reasons for the current decline in the birthrate is the economic insecurity caused by the bursting of the economic bubble and subsequent restructuring. Therefore, within the next five-year period—when the number of women of childbearing age will reach its peak—policies should be formulated to stabilize the economy and create an environment that facilitates childbearing.

He also expressed the view that since the aging of society and population decline in Japan is proceeding at a pace unprecedented worldwide, it is incumbent upon politicians to show leadership in taking measures to counter the decline in the birthrate and the aging of society, given the variety of problems that give cause for anxiety, such as the deterioration of government finances and the shortage of manpower to provide nursing care.

He was then questioned on matters such as the causes of the decline in the birthrate and effective countermeasures, the need to study the acceptance of foreign workers, and the growth in the world's population and the impact that will have.

151st Diet Session, Third Meeting, March 8, 2001 (22nd meeting since start of Commission)

- On “Matters relating to the Constitution of Japan (A vision for Japan in the 21st century),” the opinions of the following informant were heard, and the informant was then questioned.

**SON Masayoshi, Informant (President and Chief Executive Officer, Softbank Corporation)**

Mr. SON expressed the view that in the 21st century Japan should formulate a constitution predicated on the IT revolution and on globalization, and that in doing so the following points should be taken into consideration.

(1) The Constitution should provide expressly for the right of Internet access and the protection of privacy, and should establish Internet security. (2) An electronic voting system should be introduced, and a system for the direct popular election of national leaders created. (3) Voting should effectively be made compulsory, and voting rights should be granted to all citizens aged 18 years and over. (4) With an exception in the case of self-defense, the settlement of disputes should be entrusted to collective security in such forms as participation in United Nations forces in which other countries also take part. (5) Japan should contribute to the international community. (6) Education should be reformed to meet the demands of the age of the Internet. (7) To secure human resources, Japan should accept immigrants. (8) The Constitution should make express provision for the prohibition of monopolistic corporate practices.

Mr. SON was then questioned on matters such as the role of the government and private sector in furthering the IT revolution, what kind of welfare policies are appropriate for an IT society, and methods to ensure that the IT revolution leads to the creation of employment.

151st Diet Session, Fourth Meeting, March 22, 2001 (23rd meeting since start of Commission)
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- On “Matters relating to the Constitution of Japan (A vision for Japan in the 21st century),” the opinions of the following informants were heard, and the informants were then questioned.

**SAKAMOTO Takao, Informant (Professor, Faculty of Law, Gakushuin University)**

Professor SAKAMOTO expressed the following opinions from the standpoint of the question “What is a state?” (1) In a world undergoing globalization, a state remains important as an entity to protect people, who are unable to move freely in the same way as goods and money. (2) The individual possesses a number of identities that correspond with the multiple layers of society, such as the family, the local community, and the state, and is only a “citizen” to the extent that that identity relates to the state. (3) It is important to recognize that a real state is composed of people who are the bearers of a culture nurtured in the geographical and historical environment of a specific region (i.e., an ethnic group).

Based on these points, Professor SAKAMOTO recommended that in order to address issues facing it in the 21st century, such as the threats from China and North Korea and the acceptance of immigrants, Japan must form a “state” in the sense that the term is used in external relations.

He was then questioned on matters such as the necessity of discussing the “state” in an era of globalization, the problem of the diminishing national awareness of Japanese people, and the necessity of having a common understanding of history with other peoples of Asia.

**KANG Sanjung, Informant (Professor, Institute of Socio-Information and Communication Studies, The University of Tokyo)**

Professor KANG stated his opinion that with the progress of trends such as globalization and decentralization, the centralized power of the state is diminishing, and as we enter an era in which there is a shift from politics that shares the available “pluses” among the Japanese people to a politics that imposes “minuses” on them, there is a need to clarify a vision for Japan in the 21st century. From this understanding he expressed the following views.

Japan should (1) establish a partnership (a Northeast Asian “common house”) with neighboring countries such as South and North Korea, while maintaining its relationship with the United States as pivotal, (2) take decisive action to implement structural reform aimed at internationalizing the yen and transforming itself into a major importing country, and (3) create an integrated multiethnic, multicultural society.

He was then questioned on matters such as the possibility of realizing the creation of a “common house” in Northeast Asia, the propriety of granting permanent foreign residents the right to vote in local elections, and the necessity for education that will deepen mutual understanding of perceptions of history in Japan and other Asian countries.

**151st Diet Session, Fifth Meeting, April 26, 2001 (24th meeting since start of Commission)**

- A report on the local open hearing in Sendai was delivered.
- Matters relating to a motion for approval of the dispatch of members to attend the next local open hearing were discussed, and a decision taken.

**151st Diet Session, Sixth Meeting, May 17, 2001 (25th meeting since start of Commission)**

- Appointment of substitute directors.
- On “Matters relating to the Constitution of Japan (A vision for Japan in the 21st century),” the opinions of the following informants were heard, and the informants were then questioned.

**KIMURA Yoko, Informant (member, Local Finance Council)**

Professor KIMURA expressed the opinion that in a “super-aged society” the labor of elderly persons with the will to work should be utilized by abolishing age restrictions on job applicants.

She went on to state the following views premised on the advent of a “super-aged society.” (1) With respect to the question of the extent to which the state should become involved in the lives of

individuals, it is essential to discuss whether the guarantee of a national minimum (a system of providing minimum benefits to individuals, irrespective of why the individual requires benefits) and universal medical insurance should be maintained. (2) Japan should revise schemes that undermine the will to work, including the system of preferential tax treatment for full-time housewives and the pension scheme for employed elderly people.

She also expressed the opinion that it is necessary to study such matters as policies to deal with the diversification of care-providing organizations, and how to shape local governments in a way suitable for the provision of services for home nursing care.

Professor KIMURA was then questioned on matters such as policies for preventing the “hollowing-out” of the pension system, determining the optimum scale of local governments, the meaning of “guarantee of a national minimum,” the relationship between the idea of self-responsibility in social security and the idea of livelihood rights referred to in Article 25 of the Constitution.

**OHKUMA Yoshikazu, Informant (Professor, Graduate School of Law, Kyushu University)**

Professor OHKUMA put forward the following opinions based on the premise that “local” citizens in the 21st century will play a central role in politics as the driving force of democracy. (1) Local autonomy constitutes an inalienable right of local governments and a fundamental institution that supports the foundations of democracy, and therefore no constitutional amendment can deny its existence. (2) Local autonomy must be strengthened and our understanding of the principle of popular sovereignty must be revised to incorporate the meaning of direct democracy, and in addition we should positively reevaluate citizen participation, particularly in the form of general referendums. (3) The people responsible for operating the political process are expected by citizens at both the national and local level to have the ability to judge accurately what should be protected for the sake of national and local citizens—that is, great discernment and high ethical standards and integrity.

He was then questioned on matters such as the form that local referendums should take as part of local autonomy, the elucidation of “the principle of local autonomy, and the question of granting permanent foreign residents the right to vote in local elections.

151st Diet Session, Seventh Meeting, June 14, 2001 (26th meeting since start of Commission)
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- A report on the local open hearing in Kobe was delivered.
- There was a free discussion among Commission members on “Matters relating to the Constitution of Japan.”

In the free discussion among Commission members, the following were among the points made: with respect to the guarantee of fundamental human rights, the question of whether new human rights should be put in statutory form, and the establishment of institutions to provide assistance in the sphere of human rights; with respect to the desirable basic form of the country's political structure, the review of the bicameral system, the introduction of direct popular election of the prime minister, and the establishment of a constitutional court; with respect to security and international cooperation, the constitutional status of the Self-Defense Forces, the propriety of exercising the right of collective self-defense, and participation in UN peacekeeping operations; with respect to local autonomy, the promotion of decentralization; and other matters that included the evaluation of the process through which the Constitution was formulated; the necessity for public participation in the constitutional debate; the need to protect Japan's positive traditions; and the desirable form that the Preamble should take.

153rd Diet Session, First Meeting, October 11, 2001  
(27th meeting since start of Commission)

- Approval of the resignation of directors and the appointment of substitute directors.
- Matters relating to requests for attendance by informants were decided upon after discussion.
- Chairman NAKAYAMA Taro presented a report outlining the findings of the House delegation dispatched to survey the constitutions of Russia, several other European nations, and Israel; the report was followed by a free discussion among delegation and Commission members.

In the free discussion, the following were among the points about which comment was made: institutional guarantees (constitutional courts, etc.) of human rights; the ceding of national sovereignty to international institutions; the advance of decentralization; policies for the sciences, arts, and culture; the frequency of constitutional amendments and procedures for making them; the pioneering nature of the Constitution of Japan; the need to understand the culture and history that lies behind a country's constitution; and the necessity for adopting a global view when considering a constitution.

153rd Diet Session, Second Meeting, October 25, 2001  
(28th meeting since start of Commission)

- Matters relating to a motion for approval of the dispatch of members to attend a local open hearing were discussed, and a decision taken.
- On "Matters relating to the Constitution of Japan (A vision for Japan in the 21st century—The United Nations and national security)," the opinions of the following informants were heard, and the informants were then questioned.

**ONUMA Yasuaki, Informant (Professor, The University of Tokyo)**

Professor ONUMA stated the view that a constitution is the expression of the basic ideals of a state, and should thus be determined by each generation. Describing developments in the international community and Japan since World War II until the present day, with respect to the desirable form of Japan's constitution he set out "the case for constitutional revision from a protectionist standpoint." The following is a summary of this standpoint: the Constitution played a very substantial role for Japan in the postwar period, but problems have now arisen, in particular (1) the fact that reality has diverged from the norms espoused in Article 9, with the result that the people are becoming increasingly cynical towards the Constitution, and (2) partiality by Japanese people towards their own country, manifested in one-nation pacifism; therefore, although the role the Constitution has played is highly laudable, it should be revised. He also stated the view that Article 9 has a dual significance, for Japan's self-defense and for the security of the international community, a demarcation should be explicitly recognized; from the standpoint of the latter, Japan should participate actively in collective security led by the United Nations.

He was then questioned on matters such as the relationship between the terrorist incidents in the United States and UN-centered collective security, and the attitude that Japan should adopt towards UN-centered collective security.

**MORIMOTO Satoshi, Informant (Professor, Faculty of International Development, Takushoku University)**

Professor MORIMOTO explained his view that since the Cold War the international community has endeavored to reconcile a unipolar structure centered on the United States, and multilateralism, and that it has been compelled to face the negative factors in globalization, such as regional conflicts, terrorism, and the proliferation of weapons of mass destruction. Premised on this perception, he expressed his opinion that (1) the success or failure of U.S. military strategy for dealing with the terrorist attacks in the United States will determine the future direction of international order, (2) whatever the outcome, this will lead to the formation of a new international order in which the demarcation line is determined by whether or not nations share the same values as the United States, and (3) the outlook for the United Nations does not warrant optimism. In addition, with respect to Japan's security he voiced the opinion that (1) we should clarify the national interest and devise a clear national strategy, and then discuss the legal framework and other factors for realizing it, and (2) the Japan-U.S. alliance should be redefined and revised from the standpoint of strengthening it, after assessing threats and ascertaining changes in the international situation.

He was then questioned on matters such as the qualitative changes in the concept of security in recent years, the desirable form of Japan's international contributions, and the strengthening of the functions of the United Nations.

153rd Diet Session, Third Meeting, November 8, 2001  
(29th meeting since start of Commission)

- On “Matters relating to the Constitution of Japan (A vision for Japan in the 21st century—Matters relating to ideal government and organizations),” the opinions of the following informants were heard, and the informants were then questioned.

**HASEBE Yasuo, Informant (Professor, Faculty of Law, The University of Tokyo)**

Prefacing his remarks with the statement that he held a negative view of the introduction of a system of popular election of the prime minister, which would cause the loss of some of the functions of political parties, Professor HASEBE expressed the opinion that various astute measures need to be employed in order to take best advantage of the virtues of a bicameral system.

He voiced the criticism that parliamentary democracy has changed from its classical image, in which the public good is realized through open deliberation in a parliament on the diverse opinions that exist in a society, as the rise of organized mass parties has reduced deliberations to a mere shell. In his view this has led to the emergence of advocates of “deliberative democracy,” which makes it possible to realize the public good objectively through democratic debate and the taking of majority decisions.

He was then questioned on matters such as the problem of the combination of a system of popular election of the prime minister and the Emperor system, and methods to eliminate the closed nature of politics and the reform of the House of Councillors, both of which lie behind the argument in favor of a system of popular election of the prime minister.

**MORITA Akira, Informant (Professor, Graduate School of Law and Politics, The University of Tokyo)**

Professor MORITA explained that the Diet and the Cabinet, whose basis lies in elections, should be understood as forming a unified whole, the “political sector,” and it is important for this to seek a balanced relationship with the “executive sector,” which in the narrow sense comprises the professional administrators of the executive branch of government. Based on this understanding, he set out the following views on points at issue regarding the cabinet system. (1) The political sector should, as a unified whole, direct and oversee the executive sector. (2) Since only the prime minister is appointed by the Diet, the prime minister’s leadership should be accorded strong recognition, and study should be given to the relationships within the Cabinet between the prime minister and other ministers, and to the appropriateness of Article 6 of the Cabinet Law, which stipulates that the prime minister shall exercise control and supervision over Cabinet ministers in accordance with policies decided upon by the Cabinet. (3) Cabinet ministers have a dual character of being “ministers of state” as members of the political sector, and at the same time “ministers in charge” in charge of matters allocated to their jurisdiction; the former of these should be given emphasis, so as to enhance the Cabinet’s functioning as a unified body. Professor MORITA also



expressed the view that in order to bring about the creation of a system of government administration under political leadership formed by the unity of the Diet and the Cabinet, it would be undesirable to have a system of popular election of the prime minister, since that would place the basis of the prime minister's legitimacy outside the Diet.

He was then questioned on matters such as his assessment of the recent reform of the central ministries and agencies, the suitability of Article 6 of the Cabinet Law in relation to the prime minister's right of control and supervision, and problems relating to a system of popular election of the prime minister.

153rd Diet Session, Fourth Meeting, November 29, 2001  
(30th meeting since start of Commission)

- A report on the local open hearing in Nagoya was delivered.
- On "Matters relating to the Constitution of Japan (A vision for Japan in the 21st century—Matters relating to the guarantee of human rights)," the opinions of the following informants were heard, and the informants were then questioned.

**MUSHAKOJI Kinhide, Informant (Director, Chubu Institute for Advanced Studies, Chubu University)**

Professor MUSHAKOJI made the points that the framework of the guarantee of human rights in Japan encompasses only the average Japanese person, and the United Nations had expressed concern that it pays scant regard to resident foreigners in Japan, ethnic minorities, and others. Further, as a result of the need to coalesce the Japanese people in order to resist external pressures, since the Meiji period Japan has pursued a self-centered policy in which "respect for harmony" has applied only among Japanese people themselves. With the advance of globalization today, however, it is essential also to think of that "harmony" with the numerous non-Japanese people living in Japan. Therefore, Japan should breathe life into the right of peaceful existence espoused in the Preamble to the Constitution, which recognizes that "all peoples of the world have the right to live in peace, free from fear and want," by establishing common "human security" that also pays due regard to the safety of minorities.

He was then questioned on matters such as the relationship between "human security" and "national security," traditional discrimination against ethnic minorities in Japan, and the necessity for separate legislation to eradicate each type of discrimination.

**HATAJIRI Tsuyoshi, Informant (Professor, Department of Economics, Josai University)**

Professor HATAJIRI first explained that in view of the perception that the Supreme Court's exercise of the right of judiciary review is in a state of "blockage," (1) some are of the opinion that

to eliminate this situation and facilitate rapid and appropriate judgments on constitutional matters, a constitutional court system must be introduced, while (2) others take a contrary view prompted by a number of concerns, for example that swift judgments affirming constitutionality may strengthen the function of the courts in upholding the status quo.

He said he believed it to be necessary to design a system which most closely conforms to arguments of both sides. He then expressed the opinion that to that end, through legislative rather than constitutional amendment a “Constitutional Department” of the Supreme Court should be established to deal exclusively with constitutional matters, its members being constitutional judges appointed through a neutral and transparent process; this should be coupled with the establishment of a system for the conduct of deliberations on the constitutionality of laws through procedures based on specific standards and control procedures.

Professor HATAJIRI was then questioned on matters such as the pros and cons of the introduction of the system he advocated, and the procedure of the appointment of judges if the “Constitutional Department of the Supreme Court” were established.

153rd Diet Session, Fifth Meeting, December 6, 2001  
(31st meeting since start of Commission)

- There was a free discussion among Commission members on “Matters relating to the Constitution of Japan (A vision for Japan in the 21st century).”

In the free discussion among Commission members, the following were among the points made: with respect to the guarantee of fundamental human rights, the relationship between progress in the life sciences and academic freedom, the desirable form of Japan’s guarantees of human rights by comparison with global standards, the pros and cons of making express mention in the Constitution of new rights such as environmental rights, the scope of human rights for foreigners, and the need for provisions relating to the family; with respect to the desirable structure of politics, the introduction of a system of popular election of the prime minister; with respect to security and international cooperation, the way of interpreting Article 9 in relation to the right of self-defense, the necessity for the resolution of international disputes through non-military contributions, and the desirable form of international cooperation from the standpoint of human security; with respect to local autonomy, the need for ongoing decentralization for the sake of furthering democracy; and other matters that included the method of appointing judges, the necessity for constitutional revision to keep in step with changes in the times, and the way in which the Commission’s discussions should proceed.

154th Diet Session, First Meeting, February 7, 2002  
(32nd meeting since start of Commission)

- Approval of the resignation of directors and the appointment of substitute directors.

- It was decided, after discussion, to establish the Subcommittee on Guarantee of Fundamental Human Rights, the Subcommittee on Fundamental and Organizational Role of Politics, the Subcommittee on Japan's Role in International Society, and the Subcommittee on Local Autonomy.
- Matters relating to requests for attendance by informants at subcommittee meetings were decided upon after discussion.

154th Diet Session, Second Meeting, March 19, 2002  
(33rd meeting since start of Commission)

- Appointment of substitute directors.
- Matters relating to a motion for approval of the dispatch of members to attend the next local open hearing were discussed, and a decision taken.

154th Diet Session, Third Meeting, April 25, 2002 (34th meeting since start of Commission)

- A report on the local open hearing in Okinawa was delivered, and there was a free discussion among the Commission members.

In the free discussion among Commission members, the following were among the points made: the desirable way of establishing security; an evaluation of pacifism and way it has been put into practice; policies for giving concrete form to the spirit of the Peace Constitution; the furtherance of active international cooperation; the inclusion of express provision for the Self-Defense Forces, the right of belligerency, and responses to emergencies; the rights and wrongs of the exercise of the right of collective self-defense; the contradictions between the Constitution and agreements such as the Japan-U.S. Security Treaty; and an assessment of the three emergency response bills; and other points included the advisability of making the Commission a permanent body, and the making of express provision for the right of diplomatic protection.

154th Diet Session, Fourth Meeting, May 16, 2002 (35th meeting since start of Commission)

- Matters relating to a motion for approval of the dispatch of members to attend the next local open hearing were discussed, and a decision taken.

154th Diet Session, Fifth Meeting, July 25, 2002 (36th meeting since start of Commission)

- A report on the local open hearing in Sapporo was delivered.
- The chairpersons of subcommittees reported on the progress and summarized the findings of their subcommittees.
- There was a free discussion among Commission members on "Matters relating to the Constitution of Japan."

In the free discussion among Commission members, the following were among the points made: with respect to the guarantee of fundamental human rights, the question of whether the duty to protect the nation and new human rights should be put in statutory form, the desirable form of refugee policy, education problems, and the relationship between progress in science and technology and academic freedom; with respect to the desirable basic form of the country's political structure, the political system needed to ensure the leadership of the prime minister, and the desirable forms of the bicameral system and election system; with respect to security and international cooperation, the desirable form of international cooperation, the relationship between international cooperation and the Constitution, the relationship between the emergency response bills and Article 9, and the necessity for putting the ideals of Article 9 into practice; with respect to local autonomy, matters requiring consideration when promoting decentralization, and the significance of the provisions of Chapter 8; and other points that included the desirable manner of conducting the constitutional debate, respect for the opinions of speakers at local open hearings, the way of proceeding with the work of the Commission, and the easing of the strict conditions placed on the amendment process.

155th Diet Session, First Meeting, October 24, 2002  
(37th meeting since start of Commission)

- Approval of the resignation of directors and the appointment of substitute directors.

155th Diet Session, Second Meeting, November 1, 2002  
(38th meeting since start of Commission)

- Chairman NAKAYAMA explained the substance of the draft Interim Report and comments were made by the representatives of each party. The Interim Report was then adopted.

155th Diet Session, Third Meeting, November 7, 2002  
(39th meeting since start of Commission)

- Matters relating to a motion for the approval of the dispatch of members to attend the next local open hearing were discussed, and a decision taken.
- A decision was taken to establish the Subcommittee on Guarantee of Fundamental Human Rights, the Subcommittee on Fundamental and Organizational Role of Politics, the Subcommittee on Japan's Role in International Society, and the Subcommittee on Local Autonomy.
- Matters relating to requesting the attendance of informants of the subcommittees were discussed, and a decision taken.
- Chairman NAKAYAMA outlined the findings of the House delegation dispatched to survey the constitutions of the United Kingdom and several countries in Asia, and a discussion was held.

In the free discussion among dispatched members and other members of the Commission, the following were among the matters raised: the necessity of giving the highest priority to Japan's security and interests when considering international relations; the necessity of discussion of the Constitution based on mutual trust among Japanese citizens; the importance of considering discussion of the Constitution in relation to national politics and citizens' lives; the importance of the role played by Constitutional Courts in foreign nations; and evaluations of Article 9 in countries such as China and Korea.

155th Diet Session, Fourth Meeting, December 12, 2002  
(40th meeting since start of Commission)

- A report on the local open hearing in Fukuoka was delivered.
- The chairpersons of the subcommittees reported on the progress and summarized the findings of their subcommittees.
- There was a free discussion among Commission members on "Matters relating to the Constitution of Japan."

In the free discussion among Commission members, the following were among the matters raised: regarding decentralization, the necessity of examining the introduction of the *do-shu* system from the viewpoints of national land policy and promoting decentralization and the stipulation in the Constitution, etc. of the right of local governments to levy independent taxes and the necessity of determining the specific meaning of the "principle of local autonomy"; regarding security, the form emergency response legislation should take, the guarantee of fundamental human rights at times of emergency, the status of the Self-Defense Forces in the Constitution, and the desirable form of Japan's national security; regarding educational issues, the relationship between educational problems such as the decline in academic performance and truancy and the Fundamental Law of Education and the relationship between the actual situation in schools and fundamental human rights; and the attitude of the representatives of each party to discussion of the Constitution.

156th Diet Session, First Meeting, January 30, 2003  
(41st meeting since start of Commission)

- Approval of the resignation of directors and the appointment of substitute directors.
- A decision was taken to establish the Subcommittee on Ideal Constitution as Supreme Law, the Subcommittee on Security and International Cooperation, the Subcommittee on Guarantee of Fundamental Human Rights, and the Subcommittee on
- Ideal Government and Organizations.
- Matters relating to requesting the attendance of informants of the subcommittees were discussed, and a decision taken.
- There was a free discussion among Commission members on "Matters relating to the Constitution of Japan (The current international situation and international cooperation)."

In the free discussion among Commission members, the following were among the matters raised: (1) Regarding the Iraq question, the necessity to distinguish between legal issues and issues of diplomatic strategy, the pros and cons of a preemptive attack by the U.S. against Iraq, the need for a new United Nations resolution approving the use of force, and the necessity of a peaceful resolution through the continuation of inspections, etc.; (2) Regarding the North Korean question, how to approach the abduction problem, the necessity of legal amendments in order to respond to North Korea's illegal conduct, etc., and how to respond to the nuclear problem (withdrawal from the Nuclear Non-Proliferation Treaty, etc.), and the need to reconsider the conditions for deployment of the Self-Defense Forces; (3) Japan's international contribution, the need to consider the question of the exercise of the right of collective self-defense, the pros and cons of participating in multinational forces or United Nations peacekeeping operations, and the role the Constitution and the Japan-U.S. Security Treaty have played in Japan's maintenance of peace.

156th Diet Session, Second Meeting, February 27, 2003  
(42nd meeting since start of Commission)

- The chairpersons of the subcommittees reported on the progress and summarized the findings of their subcommittees and the Commission members held a free discussion.

In the free discussion among Commission members, the following were among the matters raised: (1) Regarding "the 'Emperor as symbol' system," the pros and cons of stipulating that the Emperor is the head of state, and the pros and cons of female succession to the Imperial throne and related issues; (2) Regarding "the Constitution and states of emergency," what measures should be taken against terrorism, the pros and cons of setting forth provisions concerning states of emergency in the Constitution, Japan's national security policy, and the necessity of contingency legislation; (3) Regarding "local autonomy," the three-tiered system of government, prefectures and municipalities, the powers of local governments, and municipal mergers; (4) Regarding the "right to receive an education," the pros and cons of amending the Fundamental Law of Education, ways of debating the Fundamental Law of Education, and educational reform.

156th Diet Session, Third Meeting, March 18, 2003  
(43rd meeting since start of Commission)

- Matters relating to a motion for the approval of the dispatch of members to attend the next local open hearing were discussed, and a decision taken.

156th Diet Session, Fourth Meeting, March 20, 2003  
(44th meeting since start of Commission)

- There was a free discussion among Commission members on "Matters relating to the Constitution of Japan (Treaties and the Constitution)."

In the free discussion among Commission members, the following were among the matters raised: (1) Regarding the Iraq question, whether it should be resolved by the use of force by the U.S., etc. or whether a peaceful resolution should be sought through UN inspections, the legitimacy of the right of self-defense and UN Security Council resolutions 678, 687 and 1441 as grounds for attacking Iraq under international law, and the pros and cons of Japan's support for a resolution by force by the U.S. and others; (2) Regarding the North Korean question, Japan's response to the North Korean situation; (3) The need to review Japan's attitude to "exclusive defense" and exercise of the right of collective self-defense, the relationship between Japan's security and the United Nations, and the necessity of stipulating Japan's response to emergencies in the Constitution.

156th Diet Session, Fifth Meeting, March 27, 2003 (45th meeting since start of Commission)

- The chairpersons of the subcommittees reported on the progress and summarized the findings of their subcommittees and the Commission members held a free discussion.

In the free discussion among Commission members, the following were among the matters raised: (1) Regarding the "Emperor-as-symbol system," the argument concerning the Emperor's acts in matters of state, the classification of the Emperor's acts, and the pros and cons of stipulating in the Constitution that the Emperor is head of state; (2) Regarding "local autonomy," the pros and cons of municipal mergers and the introduction of the *do-shu* system; (3) Regarding "fundamental labor rights," public workers' labor-management relations and Articles 28, 41 and 83 and measures for the realization of gender equality in the workplace; (4) Regarding "the Constitution and states of emergency," the establishment of emergency situation legislation, the problems of Iraq and North Korea, etc.

156th Diet Session, Sixth Meeting, April 17, 2003 (46th meeting since start of Commission)

- Matters relating to a motion for the approval of the dispatch of members to attend the next local open hearing were discussed, and a decision taken.
- The chairpersons of the Subcommittee on Ideal Constitution as Supreme Law and the Subcommittee on Security and International Cooperation reported on the progress and summarized the findings of their subcommittees and the Commission members held a free discussion.
- There was a free discussion among Commission members in relation to the upcoming Constitution Day on May 3.

In the free discussion among Commission members following the reports by the subcommittee chairpersons, the following were among the matters raised: (1) Regarding the "procedures to revise the Constitution of Japan as a rigid constitution," whether a National Referendum Law for constitutional revision should be quickly enacted and whether the fact that such a law has not been enacted represents the Diet's "legislative nonfeasance"; (2) Regarding "matters concerning international cooperation," the necessity of ODA from the viewpoints of sustainable development

and human security, the necessity of efforts to gain the understanding and cooperation of citizens regarding the actual situation of ODA, and the necessity of stipulating provisions on international cooperation in the Constitution.

In the free discussion among Commission members in relation to the upcoming Constitution Day on May 3, the following were among the matters raised: (1) Regarding the Constitution as the supreme law, the necessity of stipulating in the Constitution that the Emperor is the head of state and procedures for revision of the Constitution; (2) Regarding national security and international cooperation, the illegitimacy of the attack on Iraq and the form the United Nations should take; (3) Regarding the guarantee of fundamental human rights, the pros and cons of revising the Fundamental Law of Education and the meaning of the public welfare; (4) Regarding governing organs, the need for the decentralization of power and the introduction of the *do-shu* system; (5) Future conduct of the Commission, pros and cons of establishing a permanent organization to research and examine Constitution problems, and the necessity of revising the Constitution.

156th Diet Session, Seventh Meeting, May 29, 2003  
(47th meeting since start of Commission)

- A report on the local open hearing in Kanazawa was delivered.
- The chairpersons of the subcommittees reported on the progress and summarized the findings of their subcommittees and the Commission members held a free discussion.

In the free discussion among Commission members, the following were among the matters raised: (1) Regarding “international organizations and the Constitution,” the form of involvement of Japan in the United Nations based on the situation of the UN Security Council, etc., support for postwar reconstruction of Iraq, and the necessity of diplomacy founded on close cooperation between the government and NGOs; (2) Regarding “the Meiji Constitution and the Constitution of Japan,” what should be learned from the process of formulating the Meiji Constitution, the ideals of the present Constitution that should be handed down in the 21st century, reevaluation of private drafts of the constitution written before the adoption of the Meiji Constitution, and the problems relating to the fact that the Meiji Constitution was not formulated by a constitutional assembly; (3) Regarding the “right to know, right of access, and right to privacy,” the pros and cons on stipulating “new rights” in the Constitution, evaluation of the Law Concerning Protection of Personal Information, and how to deal with the invasion of privacy by the mass media; (4) Regarding the “judicial system and constitutional court,” the necessity of constitutional revision, the pros and cons of establishing a constitutional court, and changes in interpretation of the Constitution concerning the exercise of the right of collective self-defense.

156th Diet Session, Eighth Meeting, June 12, 2003  
(48th meeting since start of Commission)

- A report on the local open hearing in Takamatsu was delivered.



- The chairpersons of the Subcommittee on Ideal Government and Organizations and the Subcommittee on Guarantee of Fundamental Human Rights reported on the progress and summarized the findings of their subcommittees and the Commission members held a free discussion.
- Reflecting on the debates held in the 156th Diet Session, the Commission members held a free discussion, focusing on the theme of “security and the Constitution.”

In the free discussion among Commission members following the reports by the subcommittee chairpersons, the following were among the matters raised: (1) Regarding “public finances,” the necessity of reflecting the results of policy evaluations in the budget, etc. and the reorganization of the Board of Audit as a subordinate organization of the Diet; (2) Regarding “fundamental human rights and public welfare,” the necessity of viewing the Constitution from the standpoint of communitarianism.

In the free discussion among Commission members reflecting on the debates held in the 156th Diet, focusing on the theme of “national security and the Constitution,” the following were among the matters raised: the necessity of revising Article 9, the dispatch of the Self-Defense Forces to Iraq, and the illegality of the U.S. attack on Iraq.

156th Diet Session, Ninth Meeting, July 24, 2003 (49th meeting since start of Commission)
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- The chairpersons of the subcommittees reported on the progress and summarized the findings of their subcommittees.
- There was a free discussion among Commission members on “Matters relating to the Constitution of Japan.”

In the free discussion among Commission members, the following were among the matters raised: (1) Regarding the ideal Constitution as the supreme law, the pros and cons of stipulating that the Emperor is the head of state and procedures for revision of the Constitution; (2) Regarding national security and international cooperation, the pros and cons of revising Article 9 and support for the reconstruction of Iraq; (3) Regarding the guarantee of fundamental human rights, the stipulation of new human rights in the Constitution and the pros and cons of stipulating in the Constitution the important of the family and the home; (4) Regarding ideal government and organizations, the clear indication of the roles of the House of Representatives and the House of Councillors, the integration of the Cabinet and the ruling parties, and local autonomy.

157th Diet Session, First Meeting, October 2, 2003 (50th meeting since start of Commission)
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- Approval of the resignation of a director and the appointment of a substitute director.

- A decision was taken to establish the Subcommittee on Ideal Constitution as Supreme Law, the Subcommittee on Security and International Cooperation, the Subcommittee on Guarantee of Fundamental Human Rights, and the Subcommittee on Ideal Government and Organizations.
- Matters relating to requesting the attendance of informants of the subcommittees were discussed, and a decision taken.
- Chairman NAKAYAMA outlined the findings of the House delegation dispatched to survey the constitutions of the United States, Canada, and Mexico, and a discussion was held.
- There was a free discussion among Commission members on “Matters relating to the Constitution of Japan.”

In the free discussion among Commission members, the following were among the matters raised: (1) Regarding national security and international cooperation, the pros and cons of making revisions to Article 9 such as the stipulation of the right of collective self-defense, how Article 9 should be interpreted, the necessity of verifying the legal basis of the Iraq war, and support for the reconstruction of Iraq; (2) Regarding ideal government and organizations, the parliamentary cabinet system, the integration of the Cabinet and ruling parties, and the necessity of examining the introduction of the *do-shu* system; (3) The necessity of studying cases where the Constitution is not applied and the necessity of enacting a National Referendum Law for constitutional revision.

<p>158th Diet Session, First Meeting, November 20, 2003 (51st meeting since start of Commission)</p>
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- Internal election of chairman and directors.

<p>159th Diet Session, First Meeting, January 22, 2004 (52nd meeting since start of Commission)</p>
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- Approval of the resignation of directors and the appointment of substitute directors.
- A decision was taken to establish the Subcommittee on Ideal Constitution as Supreme Law, the Subcommittee on Security and International Cooperation, the Subcommittee on Guarantee of Fundamental Human Rights, and the Subcommittee on Ideal Government and Organizations.
- Matters relating to requesting the attendance of informants of the subcommittees were discussed, and a decision taken.
- Matters relating to a motion for the approval of the dispatch of members to attend the next local open hearing were discussed, and a decision taken.
- There was a free discussion among Commission members on “Matters relating to the Constitution of Japan.”

In the free discussion among Commission members, the following were among the matters raised: the pros and cons of revising Article 9; the dispatch of the Self-Defense Forces to Iraq and relationship between international law and the Constitution; support for the reconstruction of Iraq; the necessity of promoting decentralization through introduction of the *do-shu* system; the social

security burden on taxpayers in the pension system reform and the relationship between the pension system and public finances; the improvement of the social security system and the provisions of Article 25; the form judicial review should take; and the provisions on constitutional amendment procedures and the necessity of formulating a National Referendum Law.

159th Diet Session, Second Meeting, February 26, 2004  
(53rd meeting since start of Commission)

- The chairpersons of the subcommittees reported on the progress and summarized the findings of their subcommittees and the Commission members held a free discussion.

In the free discussion among Commission members, the following were among the matters raised: (1) Regarding the “Emperor system,” recognition of female succession to the Imperial throne and classification of the Emperor’s acts; (2) Regarding “revision of Article 9,” the relationship between the principle of international cooperation and the Japan-U.S. alliance, collective security led by the United Nations, and the pros and cons of recognizing the right of collective self-defense; (3) Regarding “equality under the law,” the necessity of rectifying the discrepancy in the weight of a single vote, the concept of equality, and the necessity of expanding the fundamental human rights guaranteed by the Constitution; (4) Regarding the “judicial system,” public participation in the administration of justice, review of the administrative litigation system, and vitalization of the constitutional review system.

159th Diet Session, Third Meeting, March 18, 2004  
(54th meeting since start of Commission)

- A report on the local open hearing in Hiroshima was delivered.
- The chairpersons of the subcommittees reported on the progress and summarized the findings of their subcommittees and the Commission members held a free discussion.

In the free discussion among Commission members, the following were among the matters raised: (1) Regarding “integration of nation-states, accession to international organizations, and the accompanying transfer of sovereign powers,” the necessity of a regional security system in Asia and the relationship between the establishment of a regional security system and collective security and the right of collective self-defense; (2) Regarding “systems of direct democracy,” the relationship between systems of representational democracy and direct democracy, the pros and cons of setting forth provisions concerning direct democracy in the Constitution, and the necessity of legislation for national referendums; (3) Regarding “human rights protection commissions and other quasi-judicial bodies; the ombudsman system,” the necessity of using the Diet’s administrative oversight committees; provision for the ombudsman system in the Constitution, and the relationship between the ombudsman system and the system of administrative counselors; (4) Regarding “civil and political liberties,” the relationship between the Constitution and visits of the prime minister and other public officials to Yasukuni Shrine, the meaning of the constitutional

stipulation of the principle of separation of religion and state, and the necessity, from the standpoint of the guarantee of human rights, of a system whereby citizens can bring lawsuits against officials at the national level, a system of objective litigation, or the introduction of a constitutional court.

159th Diet Session, Fourth Meeting, March 23, 2004

(55th meeting since start of Commission)

- Approval of the resignation of a director and the appointment of a substitute director.
- Matters relating to a motion for the approval of the dispatch of members to attend the next local open hearing were discussed, and a decision taken.

159th Diet Session, Fifth Meeting, April 8, 2004 (56th meeting since start of Commission)

- It was decided, after discussion, to hear the views of informants on “Matters relating to the Constitution of Japan (the Constitution and the progress of science and technology).”
- The chairpersons of the subcommittees reported on the progress and summarized the findings of their subcommittees and the Commission members held a free discussion.

In the free discussion among Commission members, the following were among the matters raised: (1) Regarding “constitutional guarantees,” problems with the existing system of constitutional review and measures to improve it, the pros and cons of establishing a constitutional court and evaluation of the judgment of Fukuoka District Court in a lawsuit seeking damages in relation to the prime minister’s visits to Yasukuni Shrine; (2) Regarding “states of emergency and the Constitution,” the pros and cons of setting forth provisions in the Constitution concerning emergency situations, assessment of the legislation to protect the people of Japan submitted to the Diet; and the foundations of restricting human rights in emergency situations; (3) Regarding “the public welfare,” the relationship between human rights and the public welfare, the relationship between the question of visits to Yasukuni Shrine by the prime minister, etc. and the principle of separation between religion and state, the relationship between the freedom of thought and conscience and the freedom of religion, and the pros and cons of stipulating in the Constitution new human rights such as environmental rights and the right to privacy; (4) Regarding “public finance,” the necessity of additional constitutional provisions for fiscal democracy, the pros and cons of deleting Article 89, and the necessity of examining the pension system from the viewpoint of the right to social security and the government’s obligation as stipulated in Article 25.

159th Diet Session, Sixth Meeting, April 15, 2004 (57th meeting since start of Commission)

- On “Matters relating to the Constitution of Japan (the Constitution and the progress of science and technology,” the opinions of the following informant were heard, and the informant was then questioned.

**KIMURA Rihito, Informant (former Professor, Waseda University; former Director, Waseda University International Institute of Bioethics and Bio-Law)**

The informant explained how he had attempted to create a bioethics that reframes issues of life within a “super-interdisciplinary” field that transcends the boundaries of discrete research areas. He said that his interest in this question began when he learned the facts about the use of defoliants in the Vietnam War while he was teaching at a Vietnamese University in 1970.

After that, at a conference entitled “Genetics and Quality of Life” held in Zurich in 1973, he learned the importance of formulating domestic and international public policy related to life sciences in open forums through the cooperation of experts in various fields and the involvement of ordinary citizens. The approach pioneered by this conference was adopted in fields of advanced biosciences and biotechnology, leading to major changes in the system for creating guidelines, which had been headed by academic experts and medical or public health administrators until the 1960s.

The informant pointed out that while the law usually follows the lead of society in Japan, in the United States they envision the law influencing society and causing it to change. For example, in an advanced seminar on the Constitution at Harvard Law School they adopt a time frame for research and discussion that goes back 500 years and extends 500 years into the future. He also pointed out that it was once the norm in Japan and around the world not to release medical records to patients, whereas today we live in an age when “informed consent” is required. This means that patients receive information on diagnosis and treatment from doctors and, based on this, make the final value judgments concerning the choices and risks regarding their own lives.

The informant concluded that we must not only think about the Japan of today, but must envision Japan one hundred or two hundred years from now and think about the future course of human rights, peace, and human dignity.

He was then questioned on matters such as the background to the different approaches to regulating advanced bioscience and biotechnology in Japan, Europe and the United States, the borderlines for disclosing medical records to patients, bioethics from the perspective of religion, the social responsibilities of scientists as scientists and as human beings, whether Japan should enact a framework similar to the “declaration of rights of the human body” in France’s Bioethics Law.

159th Diet Session, Seventh Meeting, June 3, 2004 (58th meeting since start of Commission)
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- Approval of the resignation of directors and the appointment of substitute directors.
- The chairpersons of the subcommittees reported on the progress and summarized the findings of their subcommittees and the Commission members held a free discussion.

In the free discussion among Commission members, the following were among the matters raised:  
(1) Regarding “regional security,” the pros and cons of the exercise of the right of collective

self-defense, the form regional security should take, and Japan's contribution in the Asia-Pacific region; (2) Regarding "the Constitution and international law," the necessity of the positive domestic application of international human rights treaties, the necessity of clarifying the relationship between the Constitution and human rights treaties, and the necessity of procedures for authorizing treaties under the leadership of the Diet; (3) Regarding "economic, social and cultural freedoms," the concept of public welfare in the restriction of property rights and the ideal form of city planning and the protection of good scenery, including the necessity of residents' participation from the planning stage; (4) Regarding "rights during criminal proceedings and the human rights of crime victims," the necessity of the transformation from the ex-officio system to an adversarial system in the application of criminal proceedings, the necessity of creating an environment in which the lay judge system can function, and the necessity of tackling the issue of violation of human rights between private persons; (5) Regarding "the ideal division of powers between the central and local governments," the necessity of giving local bodies more discretion in deciding how to organize themselves, the necessity of enabling local governments to secure the necessary revenue sources, and the problems of ways in which decentralization and municipal mergers are being promoted; (6) Regarding "bicameralism and the audit system," the significance of maintaining the bicameral system, the necessity of reviewing the electoral systems and functions of both Houses, and the necessity of examining the adoption of a unicameral system.

159th Diet Session, Eighth Meeting, June 10, 2004  
(59th meeting since start of Commission)

- There was a free discussion among Commission members on "Matters relating to the Constitution of Japan."

In the free discussion among Commission members, the following were among the matters raised: the necessity of putting in place a law on the procedure for constitutional amendments; the necessity of introducing more widely to the Japanese public Japan's efforts towards international disarmament; the necessity of determining whether issues should be resolved by amending the Constitution or by amending the law when making proposals for reform; the necessity of a future-oriented constitutional debate; the necessity of putting into practice the principles of the Constitution; expression of doubt concerning meetings that did not have a quorum; the need for a new Constitution based on Japan's traditions and culture; the necessity of eliminating through revision problems arising from the disparity between the Constitution and reality; the necessity of pursuing a national debate on constitutional issues without undue haste; doubt concerning the imposition of new duties on citizens through revision of the Constitution; the necessity of reviewing procedures for treaty approval by the Diet; measures to ensure the sound functioning of parliamentary democracy; the furthering of decentralization; the importance of religious education; the necessity of clearly stipulating the right of self-defense and Japan's international contribution by revising Article 9; the pros and cons of recognizing female succession to the Imperial throne; the pros and cons of relaxing the requirements of procedures for constitutional amendment; views

concerning public welfare; the form national security should take; the significance of conducting research on the process by which the Constitution was enacted; the necessity of establishing a standing committee with the power to propose constitutional amendments; and the necessity of firmly upholding Article 9.

160th Diet Session, First Meeting, August 5, 2004 (60th meeting since start of Commission)

- Comments were heard from political parties which had presented summaries of the issues, proposals, etc.
- Comments were heard from representatives of each political party or group.

In the comments from political parties which had presented summaries of the issues, proposals, etc., the following were among the matters raised: basic approach to enacting a new Constitution, each party's internal consensus regarding the present Constitution, and the direction of constitutional discussions in the parties.

In the comments from representatives of each political party or group, the following were among the matters raised: the necessity of stating explicitly in the Constitution that Japan possesses the right of self-defense and to clarify the status of the Self-Defense Forces; the necessity of establishing a basic law whose structure does not permit arbitrary interpretation by state power; the current status of debate within the party regarding revision of Article 9; the criticism that making proposals by political parties subjects for research is outside the authority of the Research Commission on the Constitution; and the lack of fairness and impartiality in the method of allowing only certain parties to make presentations.

161st Diet Session, First Meeting, October 14, 2004  
(61st meeting since start of Commission)

- Approval of the resignation of a director and the appointment of a substitute director.
- Matters relating to a motion for approval of holding open hearings were discussed, and a decision taken.
- Chairman NAKAYAMA outlined the findings of the House delegation dispatched to survey the constitutions of the EU, Sweden, and Finland, and a discussion was held.

In the free discussion among Commission members, the following were among the matters raised: assessment of the Constitutional Treaty for Europe; expansion of the EU, ratification of the Constitutional Treaty for Europe and national referendums; response to international terrorism; the ombudsman system and the establishment of the rule of law; the ideal form of Japan's national security policy; creation of peace stipulated in the UN Charter and the significance of Article 9 in the 21st century; the pros and cons of establishing a permanent Committee on the Constitution to handle constitutional problems; and the form overseas surveys should take.

161st Diet Session, Second Meeting, October 21, 2004  
(62nd meeting since start of Commission)

- Free discussions among Commission members were held on “parliamentary ombudsmen and other checks on the administration” and “international organizations and the Constitution.”

In the free discussion among Commission members on “parliamentary ombudsmen and other checks on the administration,” the following were among the matters raised: whether it is necessary to introduce the ombudsman system in Japan; the position of the ombudsman system in the Constitution; the relationship between the current complaint processing system, etc. and the ombudsman system; the importance of strengthening the checking mechanism regarding administration of the Diet; the significance of the right to petition and the right to investigate state affairs; and the significance of administrative litigation in control over the executive branch.

In the free discussion among Commission members on “international organizations and the Constitution,” the following were among the matters raised: the relationship between participation in collective security under the United Nations and the Constitution; the form Japan’s international contributions should take and the pros and cons of clearly specifying the ground rules for international contributions in the Constitution; the ideal form of international contributions consistent with Article 9; the relationship between Japan’s becoming a permanent member of the Security Council and the Constitution; and the pros and cons of establishing a permanent Committee on the Constitution.

161st Diet Session, Third Meeting, October 28, 2004  
(63rd meeting since start of Commission)

- There was a free discussion among Commission members on “a national referendum system.”

In the free discussion among Commission members, the following were among the matters raised: the significance of the national referendum system provided for in the Constitution; the pros and cons of introducing a national referendum system regarding important policy issues; the significance, current status and possibilities of residents’ referendums; points to be noted when implementing national referendums; the pros and cons of enacting a National Referendum Law in order to revise the Constitution; and the pros and cons of relaxing the requirements relating to the procedure for constitutional amendments.

161st Diet Session, Fourth Meeting, December 2, 2004  
(64th meeting since start of Commission)

- Free discussions among Commission members were held on “The Diet and the Cabinet” and to conclude the Commission’s research for the year.

In the free discussion among Commission members on “the Diet and the Cabinet,” the following were among the matters raised: the pros and cons of the bicameral system; the division of roles



between the two chambers and the election system; review of the powers of the House of Councillors; status of the *do-shu* system and the House of Councillors; pros and cons of the imbalance in the weight of a single vote in different electorates; stipulation regarding political parties in the Constitution and its contents; and the relationship between political parties and the freedom of association.

In the free discussion among Commission members to conclude the Commission's research for the year, the following were among the matters raised: various issues related to the Constitution; the role played by the Commission; the necessity of promoting citizens' understanding of the Constitution; whether it is necessary to establish an organization to succeed the Commission with the right to introduce bills; and whether it is necessary to enact a National Referendum Law for constitutional revision.

162nd Diet Session, First Meeting, February 3, 2005  
(65th meeting since start of Commission)

- Free discussions among Commission members were held on “the Emperor” and “Security, international cooperation, and emergency situations.”

In the free discussion among Commission members on “The Emperor,” the following were among the matters raised: the pros and cons of stipulating in the Constitution that the Emperor is the head of state; the necessity of recognizing female succession to the Imperial throne by revising the Imperial Household Law and the problems arising from this; and whether it is necessary to revise the provisions in the Constitution concerning the Emperor's “acts in matters of state.”

In the free discussion among Commission members on “security, international cooperation, and emergency situations,” the following were among the matters raised: evaluation of Article 9, pros and cons of giving clear constitutional status to the Self-Defense Forces, the right of individual self-defense and right of collective self-defense; relationship between the Constitution and participation in collective security under the United Nations; and the pros and cons of stipulating Japan's response to emergency situations and basis for it in the Constitution.

162nd Diet Session, Second Meeting, February 10, 2005  
(66th meeting since start of Commission)

- Free discussions among Commission members were held on “the rights and duties of the people” and “the Diet, the Cabinet, and related matters.”

In the free discussion among Commission members on “the rights and duties of the people,” the following were among the matters raised: the modern constitutionalist doctrine and understanding of the normative nature of the Constitution; the ideal way of coordinating and limiting human rights; the pros and cons of including a provision concerning duties; and whether it is necessary to

make express provisions concerning the dignity of life, human dignity, the environment, the right of access to information; and rights relating to protection of the family and community.

In the free discussion among Commission members on “the Diet, the Cabinet, and related matters,” the following were among the matters raised: the issue of the bicameral or unicameral system; the division of roles of the two chambers and the election system; whether it is necessary to include a stipulation concerning political parties in the Constitution; the legislative function of the Diet and measures to strengthen its function of overseeing the administration; the ideal form of policy decision making by the ruling party and the Cabinet; and the strengthening of the Prime Minister’s leadership.

162nd Diet Session, Third Meeting, February 17, 2005  
(67th meeting since start of Commission)

- Free discussions among Commission members were held on “finance and local self-government” and “the judiciary, amendments, supreme law, and related matters.”

In the free discussion among Commission members on “finance and local self-government,” the following were among the matters raised: the ideal form of fiscal democracy; the pros and cons of introducing multi-year budgets; whether it is necessary to stipulate provisions concerning the principle of a balanced budget; handling of private school subsidies and Article 89; the necessity of strengthening the functions of the Board of Audit; the significance of the “principle of local autonomy” and the ideal way to provide for it; the power of local governments to levy independent taxes and stipulation of the principle of complementarity; the pros and cons of introducing the *do-shu* system; the ideal form of fiscal adjustment system; the pros and cons of a residents’ referendum system; and the constitutional status of the community.

In the free discussion among Commission members on “the judiciary, amendments, supreme law, and related matters,” the following were among the matters raised: the necessity of more vigorous reviewing of constitutionality; the pros and cons of establishing a constitutional court; the appointment of Supreme Court justices; and the pros and cons of a system of popular review; where the power to interpret the Constitution should lie; whether it is necessary to establish a law on the procedure for constitutional amendments; the pros and cons of relaxing the requirements for constitutional amendment; and the scope of the entities obligated to respect and uphold the Constitution.

162nd Diet Session, Fourth Meeting, February 24, 2005  
(68th meeting since start of Commission)

- Free discussions among Commission members were held on “the Preamble and other matters” and to conclude the Commission’s research on the Constitution as a whole.

In the free discussion among Commission members on “the Preamble and other matters,” the following were among the matters raised: the significance of the Preamble; the pros and cons of making a clear statement in the Preamble of history, tradition, culture and other values peculiar to Japan; evaluation of the wording of the Preamble; and evaluation of the pacifism extolled in the Preamble.

In the free discussion among Commission members to conclude the Commission’s research on the Constitution as a whole, the following were among the matters raised: whether it is necessary to revise the Constitution; how to conduct discussions on establishing a National Referendum Law for constitutional revision; the role the Commission has played; the need for all members of the Commission to discuss the editorial policy of the Final Report and the best way to prepare the Final Report; and the ideal form of an organization to serve as a forum for future constitutional debate.

162nd Diet Session, Fifth Meeting, April 15, 2005 (69th meeting since start of Commission)
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- Matters related to the Final Report

## Section 2 Research by Subcommittees

### 1) 154th and 155th Diet Session

#### (1) Subcommittee on Guarantee of Fundamental Human Rights

154th Diet Session, First Meeting, February 14, 2002

- On “Matters concerning the guarantee of fundamental human rights,” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

#### **MUNESUE Toshiyuki, Informant (Professor, Faculty of Law, Seijo University)**

With respect to the characteristics and limits of the present Constitution, Professor MUNESUE expressed the following opinions. (1) The Constitution combines the ideals of classical Western liberalism with provisions on social rights characteristic of the 20th century, but does not succeed in integrating the two systematically. (2) With regard to economic freedoms, judicial precedent and scholarly opinions have tolerated active government regulation, with the result that the original ideal of liberalism has not been realized. (3) Spiritual freedom has not been regarded as a civil right, and the correlation with democracy has been weak. (4) The guarantee of human rights is an introverted one between state and people only, lacking an international dimension. (5) The guarantee of human rights in relationships between private persons is inadequate.

As issues to address in respect of the present Constitution, in his view these include the necessity for “freedoms provided by the state,” or “positive freedoms” in which the state actively guarantees freedoms; the necessity for a compound human-rights ideal that transcends the conventional categories of human rights; the necessity for linkage between international and domestic guarantees of human rights; and the necessity for the Constitution to guarantee the three-sided relationship between the state, civil society, and the individual.

He was then questioned on matters such as the relationship between the freedom of the press and privacy, the reasons why the ideals of the Constitution have not been widely accepted, and the relationship between the International Covenants on Human Rights and the Constitution.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the ideal form of the family and the individual, the rights and wrongs of making explicit provision in the Constitution for the guarantee of new human rights and the human rights of foreigners, and the necessity for making express provision for environmental rights.

154th Diet Session, Second Meeting, March 14, 2002

- On “Matters concerning the guarantee of fundamental human rights,” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

#### **ANNEN Junji, Informant (Professor, Seikei University)**

Professor ANNEN stated the opinion that both judicial precedent and scholarly opinion held that “foreign nationals enjoy rights under the Constitution, but they are granted only within the scope of

the system for the sojourn of foreign nationals,” however, because foreign nationals do not have the right to enter the country or to stay, it is logical to conclude that they do not possess rights under the Constitution. He was further of the opinion that (1) it is possible to treat foreign nationals equally with Japanese citizens under the law, and (2) since nationality is determined according to the law, even the status of Japanese people is vague in the Constitution, so for this reason foreign nationals should be recognized as having the same rights as Japanese people to the greatest extent possible.

He also stated the view that even if the Constitution were amended to make express provision for the status of foreign nationals, any such provision would inevitably be abstract, and its substance would be determined by a judge. However, if the status were determined by legislation, that determination would be made by the Diet. Therefore, he stated his opposition to a constitutional amendment to provide for the status of foreign nationals on the grounds that it would be preferable to entrust such a determination to the elected representatives in the Diet, rather than to judges who have qualified for the bench by passing examinations.

He was then questioned on matters such as the desirable way of guaranteeing the rights of foreign nationals, the rights and wrongs of extending the franchise to foreign permanent residents, the form of the system for accepting refugees, and the criteria for determining nationality.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the correction of the government’s exclusionist stance towards North and South Koreans and others residing in Japan, the necessity for studying the question of the inadequacy of postwar reparations, and the recognition of dual citizenship.

154th Diet Session, Third Meeting, April 11, 2002
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- On “Matters concerning the guarantee of fundamental human rights,” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**SAKAMOTO Masanari, Informant (Dean, Faculty of Law, Hiroshima University)**

Professor SAKAMOTO first explained that (1) modern constitutionalism retains the sharp distinction between public law, which governs the public sphere, and private law, which governs the private sphere, and therefore the resolution of issues in the private sphere should be dealt with by private law, and (2) civil liberties in the public sphere, meaning the right to complain of governmental nonfeasance or to claim relief against nuisance from the state, should be regarded as forming the nucleus of human rights. Premised on this perception, he expressed the view that the benefit and protection of the law in such forms as the right to privacy and the right of self-determination, which are known generally as “new human rights,” can be protected by dealing with them legally based on private rights or private law, and therefore there is little need to claim that they are “fundamental human rights.”

He indicated points to be borne in mind if “new human rights” are codified in a constitution, including the following. (1) If the state intervenes and seeks constitutional solutions for issues that could be left to private autonomy, that may give rise to ills such as “human rights inflation,” excessive government, and the statalization of society. (2) For that reason, the benefit and

protection of the law should be sought by means of private rights or the workings of private law, and if there are cases in which that kind of legal handling is not possible, the first priority should be to resolve them by enacting laws. (3) For a “new human right” to be recognized as a constitutional right, a number of conditions must be satisfied, including that the right has a high degree of precedence, its denotation and connotations are clear, and it does not improperly restrict the constitutional freedoms of other parties.

He was then questioned on matters such as the intrinsic nature of rights, what he considered to be the nature of “new human rights,” the rights and wrongs of prescribing new duties in the Constitution, and the necessity for making specific legal provision for environmental rights.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the question of having a system allowing married couples to use separate surnames, and the need to perfect “new human rights” through interpretation rather than through express mention in the Constitution.

154th Diet Session, Fourth Meeting, May 23, 2002
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- On “Matters concerning the guarantee of fundamental human rights,” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

#### **ITO Tetsuo, Informant (Director, Japan Policy Institute)**

Mr. ITO criticized the generally held view that fundamental human rights are rights that all individuals are born with as a matter of course, constituting natural rights that precede the state, and that the Constitution of Japan is also premised on this. He stated the view that “rights” should be understood as being generated gradually in the context of a community’s history, culture, and traditions, in the background to which there exists that community’s own unique “spirit of the law,” and in view of this we must move away from the “natural rights” argument. In his opinion, rights can only be guaranteed if a peaceful and orderly state exists, and therefore in interpreting “public welfare” it is essential that well-defined status is given to state and public benefit, and morality.

He also expressed his opinion that a fundamental principle of democracy is that the people protect their own country themselves, and therefore the Constitution should include express provision for the “duty to defend the country,” while for the protection of the family there should also be express provision concerning “respect for the family.”

He was then questioned on matters such as the state of abuse of human rights, the essence of the culture that provides a backdrop for the Japanese community, the importance of the duty to defend the nation, the meaning of constitutional government, and the necessity for stipulating obligations in the Constitution.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the necessity for the inclusion of obligations concerning environmental preservation, concern that anonymous protest activity will harm freedom of expression, the need for measures to eradicate discrimination against minorities, and questions about the constitutionality of the Bill to Respond to Armed Attacks.

154th Diet Session, Fifth Meeting, July 4, 2002

- On “Matters concerning the guarantee of fundamental human rights,” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**KUSANO Tadayoshi, Informant (General Secretary, Japanese Trade Union Confederation [RENGO])**

Mr. KUSANO expressed the view that it is problematic that although Article 28 of the Constitution guarantees the right to organize, to bargain collectively, and to strike, public employees are legally prohibited from striking, and the government’s stance of not addressing this is drawing international criticism.

He further stated the view that Article 27, Paragraph 1, of the Constitution can be interpreted as obligating the government to (1) create a structure that enables the people to have full employment, (2) provide job opportunities for the unemployed, and (3) pay a living allowance to the unemployed, and therefore the government should implement employment measures accordingly.

He stated opinions as to the necessity for legislation to prevent abuses such as gender inequality, *karoshi* (sudden death from overwork), sexual harassment, and other workplace issues. He stated his belief as to the necessity to study such matters as new forms of the right to work, such as gender equality and the development of professional skills, and called upon the Commission to give full consideration to the right to work and social rights.

He was then questioned on matters such as the rights and wrongs of giving public employees the right to strike, the desirable way of reforming the public-servant system, the method of introducing work sharing, and the necessity for new legislation for the protection of workers.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the necessity for realizing the Constitution’s guarantee of the right to work and fundamental labor rights, the necessity for studying desirable ways of guaranteeing the human rights of resident foreign nationals, and the rights and wrongs of amending the Constitution.

155th Diet Session, First Meeting, November 28, 2002

- On “Matters concerning the guarantee of fundamental human rights,” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**KARIYA Takehiko, Informant (Professor, Graduate School of Education, The University of Tokyo)**

Professor KARIYA first stated that when examining the meaning of guaranteeing citizens “the right to receive an equal education correspondent to their ability” provided for in the Constitution and in the Fundamental Law of Education, we need to define not only “what types of abilities” students may have, but also “when” they have these abilities, and then conduct discussions taking into account the actual state of school education.

The 1992 revision to the education ministry curriculum guidelines emphasized “flexible and lenient education.” This had two results, according to Professor KARIYA: (1) the basic academic abilities of the weakest students went into decline in spite of the extreme importance that the basic academic abilities gained in primary and secondary school have on later academic and living abilities; and (2) there has been a greater “class stratification” in education whereby the children of parents with high educational levels also achieve high educational levels. Ultimately, policies for “flexible and lenient education” were implemented without the backing of statistical data, neglected to ensure that all students acquire basic academic abilities and actually expanded the ability gaps among children.

“Equality of results” should properly mean endeavoring, to the extent possible, not to expand ability gaps so as to enable citizens to take advantage of “equal opportunities.” He stated that children should, to the extent possible, be guaranteed equal abilities to compete fairly at the time that they complete their compulsory education.

He was then questioned on matters such as the meaning of equality in education, declining academic abilities, the collapse of order in classrooms and its relation to “flexible and lenient education,” issues related to amendments to the Fundamental Law of Education, and the pros and cons of the current curriculum guidelines.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the importance of evaluating children on other aspects in addition to academic abilities, the need to monitor what is actually happening in educational environments and issues in public welfare.

## **(2) Subcommittee on Fundamental and Organizational Role of Politics**

154th Diet Session, First Meeting, February 14, 2002
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- On “Matters concerning the fundamental and organizational role of politics,” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

### **TAKAHASHI Kazuyuki, Informant (Professor, Faculty of Law, The University of Tokyo)**

Professor TAKAHASHI stated the following opinion. In the making and conduct of policy in an “active state” like present-day Japan, political leadership is required within a schema in which the Cabinet governs, and that process is controlled by the Diet. To carry that out, it would be valuable to introduce a “national cabinet system” (a form of operation of the parliamentary cabinet system by direct democracy) that would effectively be chosen directly by the people through elections, and would comprise the policy program and the prime minister, who is the main agent of implementing the program as a unified package.

He pointed out that in introducing this system it would be necessary to study (1) the desirable form of an election system that would make clear the will of the majority, (2) the role of political parties



in devising policy programs that receive majority support, and (3) the mental attitude of the people who would be required to express their will clearly through elections and other means with the intention of forming a majority.

He also expressed the view that a constitutional amendment would not be necessary for introducing a national cabinet system, though “constitutional conventions,” for example requiring the House of Councillors to practice self-restraint in the exercise of its powers, should be established.

He was then questioned on matters such as the compatibility of the changes in the role of the Diet and ruling party upon the introduction of a national cabinet system on the one hand, and the separation of powers on the other, and the points of difference with the popular election of the prime minister.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the importance of considering the ideal form of a mechanism of government that can reflect the will of the people, and points to be borne in mind when proceeding with the discussion of the Constitution.

154th Diet Session, Second Meeting, March 14, 2002
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- On “Matters concerning the fundamental and organizational role of politics,” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**YAMAGUCHI Jiro, Informant (Professor, Graduate School of Law, Hokkaido University)**

Professor YAMAGUCHI pointed out some of the problems inherent in the operation of Japan’s parliamentary cabinet system, namely (1) the unrestrained dominance of the governing parties and the frequent changes of leader, (2) the weakening of the Cabinet accompanying the excessively large growth of the bureaucracy, and (3) the lack of transparency in the relationship between the Cabinet and the ruling parties. In his view Japan should try to emulate the parliamentary cabinet system in Britain by (1) integrating the Cabinet and the ruling party or parties, (2) realizing policy through participation in the administration by the ruling party, and (3) establishing a relationship in which politicians direct the bureaucracy. In doing so it would be essential to create new “constitutional conventions,” etc., and to consider the desirable form of government administration from the viewpoint of popular sovereignty.

He put forward the following proposals for reform with respect to institutions, and then practices. Institutions: (1) supersede the principle of allocating charge of administrative affairs to ministers of state in the Cabinet, (2) integrate the policy-making process, and (3) strengthen the Diet’s function as a check on the executive branch. Practices: (1) have elections in which a political party, leader, and policies can be chosen as a single package, (2) conjoin the ruling parties’ decision-making bodies with the Cabinet, (3) operate the ruling parties in such a way that Diet members who belong to those parties shape policy through membership of the Cabinet, and (4) make the ruling parties’ selection of their leaders transparent and open.

He was then questioned on matters such as the desirable form of the relationship between politicians and the bureaucracy under political leadership, and the role of the Diet in a British-style parliamentary cabinet system.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the desirable form of the mechanism of government, and the desirable form that a prime minister's leadership should take.

154th Diet Session, Third Meeting, April 11, 2002

- On "Matters concerning the fundamental and organizational role of politics," the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**OISHI Makoto, Informant (Professor, Kyoto University)**

Professor OISHI stated his belief that the bicameral system should be maintained, since it is doubtful that the will of a diverse electorate can coalesce under a unicameral system. Based on this understanding, he stated the view that to ensure that each House performs independent functions, thereby making the bicameral system meaningful, the method of organization (election of members) of the two Houses should be organized on principles that differ as much as possible, giving consideration to ensuring that the interests and opinions of the people are reflected fairly and effectively in the administration.

He further expressed the view that (1) it is important to ensure that the role expected of the House of Councillors, namely acting as a moderating influence on the dynamism of the House of Representatives, be reflected in the election system, and (2) the present powers of the House of Councillors should be revised, the repassage of bills by the lower house by a majority should be recognized, and only the lower house should have the right to designate the prime minister.

He was then questioned on matters such as the form of the electoral system he envisaged, the significance of the bicameral system, and the desirable form of party politics.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the necessity for considering the method of organization of the two Houses from the standpoint of reflecting the popular will, and the relationship between the significance of the bicameral system and the electoral system.

154th Diet Session, Fourth Meeting, May 23, 2002

- On "Matters concerning the fundamental and organizational role of politics," the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**MATSUI Shigenori, Informant (Professor, Graduate School of Law, Osaka University)**

Professor MATSUI stated his understanding that the provisions of Article 81 of the Constitution confirm the power of "judicial review" exercised in conjunction with the exercise of judicial powers based on a "legal dispute or suit," but that since at present there are very few rulings of

unconstitutionality, and it is difficult for the public to petition for judicial review, the power of judicial review is not being exercised properly.

Based on this understanding he set out a “process-based theory of judicial review.” This theory holds that the courts have the responsibility to preserve and protect, through rigorous review, the rights that are indispensable to the democratic process, and with respect to rights other than these, laws duly enacted by the Diet, which is composed of the representatives of the entire people, should be respected. If it happens that these harm the interests of the people, this should be corrected through elections. He contended that in order to prompt the courts to take an active stance in exercising their judicial powers in line with the responsibilities referred to above, it is essential to undertake a reform of the system, coupled with “consciousness raising.” This would include rectifying the rigidity of the personnel system at the Supreme Court, and by flexible interpretation of matters deemed to be a “legal dispute or suit,” making it easier to file suits for the confirmation of the unconstitutionality of laws and for their suspension.

He was then questioned on matters such as the grounds on which the judicial branch bases its validity, the pros and cons of establishing a constitutional court, and his assessment of the “act of state” doctrine.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the connection between the rigorousness of the procedures for revising the Constitution and judicial passivity, and the pros and cons of establishing a constitutional court.

154th Diet Session, Fifth Meeting, July 4, 2002
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- On “Matters concerning the fundamental and organizational role of politics,” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**YAGI Hidetsugu, Informant (Associate Professor, Takasaki City University of Economics)**

Professor YAGI began by stating his view that the constitutional debate must first be a discussion about the “constitution” (with the same meaning as that word in English, meaning “the character of the nation”), and that we should learn a lesson from the importance that was placed on discussing “the character of the nation” during the process of formulating and enacting the Meiji Constitution.

He expressed the following opinions with respect to the system established by the Meiji Constitution. (1) With regard to the relationship between the Cabinet and the Emperor there was a lack of clarity in interpretation and application regarding the central position of politics. (2) In the actual practice of government administration the prime minister was central, but he could exercise only weak control. (3) The Emperor’s advisory bodies had separate spheres of influence, and as the elder statesmen responsible for coordinating them died off, a void developed at the center of government. (4) The Emperor was the nominal chief executive, and therefore the system of government was that of a constitutional monarchy.

In his view, the “Emperor-as-symbol” system in the Constitution of Japan does not simply mean that the British-style concept of the ruler as the “visible symbol of unity” was adopted, but that it was a continuation of the system of constitutional monarchy under the Meiji Constitution.

He was then questioned on matters such as the defects inherent in the Meiji Constitution, the necessity for education in “the character of the nation” in history and tradition, and his assessment of the “Emperor-as-symbol” system.

In the course of the free discussion based on the interpellation of the informant, the points made included a comment concerning universal principles, inspired by Japan’s ancient wisdom and thought and including the principle of building peace, that should be incorporated when formulating a new constitution.

155th Diet Session, First Meeting, November 14, 2002
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- On “Matters concerning the fundamental and organizational role of politics,” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**TAKADA Atsushi, Informant (Associate Professor, Faculty of Integrated Human Studies, Kyoto University)**

Professor TAKADA commented that political parties are generally viewed in a positive manner as being based on the principle of diversity and an indispensable presence that brings rationality to the democratic system. The democratic process has multiple stages consisting of the identification of points of dispute, tentative decision making and acceptance of these decisions. Political parties play an important role in each of these stages. They also play a decisive role in achieving essential prerequisites to democracy, for example, the recruiting and fostering of political leadership and the drafting of political policies.

When society and “individuals” become more complex and “fragmented” as they are today, the influence of political parties wanes. Even in Japan, it is increasingly difficult for the political parties to reflect the political opinions of the citizens and indeed, a “pathology” is spreading in which political parties tend to cater to particular interests. Combating this requires that political parties and the party system themselves have sufficient complexity and “fragmentation.”

The areas that can be addressed by law include (1) removing the barriers that political parties face in fulfilling their roles, and (2) providing the essential preconditions to that process, namely, (a) removing the barriers faced in discovering and fostering the growth of human resources, and (b) ensuring political party openness and transparency. He urged that the question of explicit constitutional provisions regarding political parties be approached with caution because of the high potential for negative effects in light of the judicial control required to prevent the abuse of political party legislation on the part of legislators.

He was then questioned on matters such as the ideal system of political party legislation and elections, the relationship between binding party principles and legislators’ freedom of political activity, the pros and cons of contributions to political parties by corporations and organizations, and the relationship between politics and the mass media.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the need for binding party principles, the need to reform legislation related to political parties, for example, the Political Party Subsidization Law, and the need to study modalities for parliamentary cabinet systems.

### **(3) Subcommittee on Japan's Role in International Society**

154th Diet Session, First Meeting, February 28, 2002

- On "Matters concerning Japan's role in international society," the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

#### **MATSUI Yoshiro, Informant (Professor, Graduate School of Law, Nagoya University)**

Professor MATSUI's initial comments included observations that peacekeeping operations since the end of the Cold War have changed from the Cold War period with respect to factors such as type of activity and role, and that problems have arisen owing to vacillations in the principles for the operations (noncoerciveness principle, in particular the consent principle; neutrality principle; and internationality principle), together with proposals as to how to resolve those problems. Based on these he expressed the following opinions concerning Japan's efforts in the sphere of international cooperation.

(1) Japan should act with initiative in international cooperation in a broad range of fields on the basis of the principles enshrined in the Constitution, such as pacifism, acting in concert with the international community, and sovereign equality. (2) Spheres in which Japan's active cooperation is both possible and necessary are the implementation of measures to prevent the outbreak of conflicts, peaceful resolution of conflicts, and support for post-conflict social and economic development. (3) With respect to peacekeeping operations, Japan should call on the United Nations to observe the peacekeeping principles, and encourage active utilization of civilian personnel in these operations.

He was then questioned on matters such as the desirable form of Japan's international cooperation, constitutional problems relating to Japan's engaging in international cooperation such as peacekeeping operations, and the actual state of peacekeeping operations.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: whether it is necessary to revise the Constitution to enable international cooperation to be undertaken, the constitutional status of the Self-Defense Forces, and problems relating to Japan's becoming a permanent members of the Security Council.

154th Diet Session, Second Meeting, March 28, 2002

- On "Matters concerning Japan's role in international society," the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**HATAKEYAMA Noboru, Informant (Chairman, Japan External Trade Organization [JETRO])**

Mr. HATAKEYAMA explained that amid the recent global proliferation of free-trade agreements, Japan has lost out by taking the position that free trade should be promoted under the WTO system. This has led to Japan's international isolation, delay in domestic structural reforms, missed opportunities to experiment in new fields such as those involving competition and trade, and actual losses of trade and investment.

Based on this perception he stated the view that Japan must shift to a multilayered structure in which free-trade agreements complement the WTO. When doing so, in the agricultural sector certain products will require protection for reasons of food security, but it will be important to liberalize the other products, while implementing transitional measures to soften the impact of sudden changes. In addition, he expressed the hope that Japan will change its passive approach to the negotiation of free-trade agreements, which have been based on proposals made by other countries, and that by taking the initiative in negotiating free-trade agreements under the leadership of politicians, Japan will assume international leadership.

He was then questioned on matters such as the difficulty for Japan in participating in the process of economic integration in Asia, given the diversity of the countries of the region; and problems for national sovereignty when free-trade agreements develop into regional integration outside the economic sphere, and the relationship of this with the Constitution.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the desirable ways of addressing economic problems; and the necessity, when promoting free-trade agreements, to give consideration to the fact that agriculture is intimately connected with the people's wellbeing and with Japan's traditions and culture.

154th Diet Session, Third Meeting, May 9, 2002

- On "Matters concerning Japan's role in international society," the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**TERASHIMA Jitsuro, Informant (President, Mitsui Global Strategic Studies Institute)**

Mr. TERASHIMA first summed up Japan's international relations during the 20th century in the statement that "the perception is that Japan achieved success through alliances with Britain and the United States." He expressed the view that three points should be kept in mind when considering the Japan-U.S. alliance in the 21st century. (1) The relationship with China should be taken into consideration. (2) Japan should redesign the alliance, taking into account two points that are the accepted thinking internationally, namely that it is not normal for a foreign military force to be stationed for a long time in an independent country, and the United States will protect Japan only within the framework of its own strategy and domestic public opinion. (3) Japan must approach the United States and the international community with its own autonomous identity.

With respect to the desirable form of Japan's security policy in the future, he stated his opinion that Japan (1) should place a review of the Japan-U.S. Security Treaty on the agenda for discussion with the United States, (2) should redefine its Asia strategy, while maintaining an exclusively defensive capacity, and (3) should seek to create a multilateral forum, based on the principle of preventive diplomacy, in the East Asian region.

He was then questioned on matters such as the desirable forms of the Japan-U.S. relationship and the multilateral forum, the merits and demerits of revising Article 9 and other aspects of the Constitution, and problems in relation to the three emergency-response bills.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the rights and wrongs of the exercise of the right of collective self-defense, the desirable form of Japan's security, and direction in which to put the Peace Constitution into practice.

154th Diet Session, Fourth Meeting, June 6, 2002
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- On "Matters concerning Japan's role in international society," the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**TAKUBO Tadae, Informant (Professor, Faculty of General Policy Studies, Kyorin University)**

Professor TAKUBO set out his perception of the international situation as follows. With the advent of a unipolar era of U.S. predominance the United States is pursuing a diplomatic stance backed by power, and with this an element of cooperation has entered U.S.-Russia relations, while duality has begun to characterize U.S.-China relations, the United States attaching importance to China as a market, but in the security sphere reclassifying it from being a "strategic partner" to being a "strategic competitor." Amid these international conditions the United States has expressed the expectation that Japan play a larger role in the security sphere, but Japan has reconciled itself to the status of a "handicapped nation," given that it is unable to engage in military cooperation under the Constitution, and there are limits to the extent to which it can go in establishing emergency-response laws and engaging in counter-terrorism measures solely on the basis of interpretations of the Constitution.

In light of the above, he expressed the opinion that (1) Japan should follow the example of Germany in the way it has responded to changes in the international environment, and should outgrow its former self and become a normal democratic nation, and (2) should gradually shift Japan-U.S. security relations from being one-sided towards being truly bilateral in character.

He was then questioned on matters such as the rights and wrongs of revising the Constitution with respect to the right of collective self-defense, future Sino-Japanese relations and Sino-U.S. relations, and his perception of the three non-nuclear principles.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the significance of the three non-nuclear principles, and the form that Japan's response to emergency situations should take.

154th Diet Session, Fifth Meeting, July 11, 2002

- On “Matters concerning Japan’s role in international society,” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**NAKAMURA Tamio, Informant (Associate Professor, Institute of Social Science, The University of Tokyo)**

Professor NAKAMURA stated his view that the European Union, formed from the three pillars of the European Community, common foreign and security policies, and cooperative police and criminal justice system, (1) has a unique system of government based upon mutually complementary relationships with member states, and (2) is a “grand experiment” still in progress, and is feeling its way towards an ideal form by such means as debating the formulation of a constitution. With respect to the transformation of individual countries’ constitutions through EU integration, in the case of Britain the principle of “parliamentary sovereignty,” which gives parliament unlimited legislative powers, has been transformed as a result of the direct effect and supremacy of EC law.

On the basis of the experience of the European Union in the course of its integration, he also proposed two factors that may have implications for Japan. (1) Given that today cooperation across national borders has become essential, Japan should study EU mechanisms. (2) The process of formation of the European Union, in which a public order is developed by repeated consultation between the member states, is instructive for Japan for shaping the principles of its international cooperation.

He was then questioned on matters such as the action taken by individual member countries during the course of EU integration, future trends in the European Union, and the possibility of the establishment of communities in the Asian region.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the implementation of an active foreign policy; and the necessity for constitutional discussions based on the existence of regional communities, and the desirable form that politics should take.

155th Diet Session, First Meeting, November 14, 2002

- On “Matters concerning Japan’s role in international society,” the opinions of the following informant were heard, she was then questioned, and a free discussion followed.

**IWAMA Yoko, Informant (Associate Professor, National Graduate Institute for Policy Studies)**

Professor IWAMA explained: (1) West Germany was disarmed after its defeat in World War II, but its rearmament was considered in the context of European unification following the outbreak of the Korean War. In 1954, the coalition government revised the Basic Law to give the legislature (the Bundestag lower house and the Bundesrat upper house) the right to prepare military forces. Then when it joined NATO and other organizations in 1955, West Germany created Federal Armed Forces, and in 1956 amended the Basic Law through legislative cooperation between the ruling and



opposition parties to permit the Federation to formally reestablish armed forces. (2) Legislation to address states of emergency was an issue of major concern for the restoration of West Germany's sovereignty, and in 1968 under the broad coalition government the Basic Law was fundamentally amended to cover virtually all conceivable internal emergencies. (3) During the Cold War, the West German Federal Armed Forces were integrated with NATO, and their mobility and chain of command were subject to stipulations that presumed activities would be limited to NATO territory. (4) After the end of the Cold War, dispatch of Federal Armed Forces personnel outside the NATO territory became necessary for Germany to participate in the solution of international conflicts under United Nations and NATO command but this was also problematic in terms of the Basic Law. In 1994, the Constitutional Court ruled that it was constitutional for Federal Armed Forces to participate in these actions with the approval of the legislature, paving the way for broader overseas activities by the German military. (5) In response to the changes taking place in the post-Cold War security environment, German armed forces are rearranging their mission towards new duties of crisis management and conflict prevention outside NATO territory.

She was then questioned on matters such as comparisons of German and Japanese state of emergency legislation, the need for political efforts transcending party lines to pass emergency laws, the modalities for postwar reparations in Japan and Germany, and the pros and cons of amending Article 9.

In the course of the free discussions based on the interpellation of the informant, the following were among the points about which comment was made: response to states of emergency, the debate on passing emergency laws, and matters to be considered for Northeast Asian security.

#### **(4) Subcommittee on Local Autonomy**

154th Diet Session, First Meeting, February 28, 2002

- On "Matters concerning local autonomy," the opinions of the following informant were heard, she was then questioned, and a free discussion followed.

#### **IWASAKI Mikiko, Informant (Professor, University of Tsukuba)**

Professor IWASAKI indicated that following the recent decentralization reforms, among whose cornerstones was the abolition of the delegation of tasks by the government to agencies, issues to be addressed include (1) the transfer of powers in the tax and fiscal spheres, (2) the broadening of the geographical scope of local governments, and (3) the participation of civil society in local government. She expressed the view that after classifying and examining the configurations of the basic units of local government in certain foreign countries, Japan should aim for the type of system in northern Europe, the scale of which had been expanded after the reorganization of basic units of local government bodies to give them the capability of providing social services.

After mentioning issues arising in the event of the adoption of the *do-shu* system (a system which integrates the prefectures into a small number of states or prefectures) or a federal system, she stated her opinion that Japan could, without introducing a federal system, which would necessitate

the revision of the Constitution, achieve decentralization by (1) recognizing the discretion of local governments in policy execution, and (2) establishing a system under which local governments could influence central decisions.

She was then questioned on matters such as the rights and wrongs of top-down central government measures to promote municipal mergers, the desirable form of the financial resources of local governments, and the appropriate scale of local governments.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the need to study prohibiting the repeated reelection of the heads of local governments, the pros and cons of introducing a system for holding local referendums, and the question of granting permanent foreign residents the right to participate in local government.

154th Diet Session, Second Meeting, March 28, 2002
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- On “Matters concerning local autonomy,” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**MORITA Akira, Informant (Professor, Graduate School of Law and Politics, The University of Tokyo)**

Professor MORITA expressed the opinion that (1) reforms by the Committee for the Promotion of Decentralization had achieved results to a certain extent pursuant to the Comprehensive Decentralization Law, for example the abolition of the delegation of tasks by the government to agencies, but (2) in part because of inadequate fiscal reform, local finances are on the brink of a crisis, and therefore steps such as the transfer of taxes and revenue sources to local governments need to be taken.

He also stated the view that it is essential to promote municipal mergers for reasons that include the need to maintain the current level of administrative services, changes in the extent of the geographical areas in which residents conduct their daily lives, population decline, and the aging of society, but that in carrying these out the government should avoid such stances as promoting uniform mergers and attaching too much significance to numerical goals such as a required number of municipalities; an approach finely tuned to the circumstances of each local government is needed.

He pointed out that criticisms include those (1) that promotion of mergers by the central government runs counter to the principle of local autonomy, and (2) that such mergers destroy local communities. His counterarguments were that the ongoing promotion of mergers must be undertaken not solely from the perspective of the individual municipalities, but also from the perspective of the region and country as a whole, and therefore it will be necessary for the central and prefectural governments to coordinate mergers, always respecting the principle of local autonomy. He was also of the opinion that it will be essential to give very careful study to the desirable forms of municipality and prefecture that will eventually emerge from the merger process.

He was then questioned on matters such as the transfer of taxes and revenue sources to local governments, the ways in which to undertake municipal mergers, and the significance of the provisions on local autonomy in the Constitution.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the implementation of a *do-shu* system, the transfer of sources of tax revenue to local governments, and the necessity for joint activity by volunteers and nonprofit organizations and local governments.

154th Diet Session, Third Meeting, May 9, 2002

- On “Matters concerning local autonomy,” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**JINNO Naohiko, Informant (Professor, The University of Tokyo)**

Professor JINNO expressed the opinion that in order to promote decentralization it is essential to (1) transfer taxes and revenue sources to local governments, and (2) to create a system to correct the disparities in fiscal strength between local governments. This is in light of lessons from the past (the Taisho Democracy movement and the Shoup Report), and the advance of globalization and the parallel advance of localization in recent years in certain other countries (enactment of the European Charter of Local Self-Government, etc.).

He offered the following opinions with respect to issues that Japan must address in the future. The recent abolition of the delegation of tasks by the government to agencies under recent decentralization reforms has transferred numerous administrative responsibilities and decision-making powers to the local level, but adequate tax-raising powers have not yet been transferred. To overcome this it will be important to transfer the taxation of personal income and the consumption tax to local governments, thereby shifting from the present “centralized dispersion system,” in which local authorities have no right to levy taxes or decision-making powers, to a “decentralized dispersion system,” in which local authorities do have those powers.

He was then questioned on matters such as the desirable way in which to allocate taxation and financial resources between central and local governments, and the desirable form of financial adjustment between local governments.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the suitability of the central government promoting mergers of municipalities, and concern that the emergency response laws may harm local autonomy.

154th Diet Session, Fourth Meeting, June 6, 2002

- On “Matters concerning local autonomy,” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

### **KATAYAMA Yoshihiro, Informant (Governor of Tottori Prefecture)**

Governor KATAYAMA stated that, based upon his experience as a governor, he considered the following to be among the principal issues to address in order to achieve decentralization. (1) The provisions of the Local Autonomy Law requiring uniformity should be revised in order to ensure, among other things, that the organization of local governments has diversity and localized character. (2) Independent administrative commissions are not functioning adequately because they lack expertise and the relevant capabilities. Therefore, in order to introduce democratic principles, consideration should be given to measures such as the popular election of commission members. (3) The form of local government assemblies should make way for more diversity and independence, and changes should be made to allow for businessmen and others with close contact with ordinary life to serve as members of assemblies while retaining their own jobs. (4) Local finances should be neutral towards the policy choices of local governments, for example as to whether they place emphasis on policy for developing infrastructure through public works, or give more importance to policy in intangible dimensions, such as human resource development. (5) Prefectural government tax revenues should be stabilized by such means as incorporating tax assessments based on business size into corporate enterprise taxation, or allocating corporate enterprise taxation to the national government, and transferring personal income taxation to local governments.

Governor KATAYAMA was then questioned on matters such as his assessment of the government's measures to promote mergers of municipalities, the desirable way in which to allocate taxation and financial resources between central and local governments, decentralization in the field of education, an evaluation of the measures for housing reconstruction support following the earthquake in the western part of Tottori Prefecture, and the role of local governments in international interchange.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the necessity for the transfer of powers to local governments, the necessity for housing reconstruction support and other assistance for disaster victims, and the concern that the emergency response laws may harm local autonomy.

154th Diet Session, Fifth Meeting, July 11, 2002
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- On "Matters concerning local autonomy," the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

### **KITAGAWA Masayasu, Informant (Governor of Mie Prefecture)**

Governor KITAGAWA premised his remarks with the perception that in future it will be important for government administration to adopt the viewpoint of the people who pay taxes, considering their satisfaction as having first priority. From his own experience he gave examples of how this was being put into practice in Mie Prefecture. (1) Information on the outcome of decision-making is not made public only on request; the prefecture provides information actively of its own accord, including information on the process through which policy is shaped. (2) The prefecture has introduced "New Public Management (NPM)," incorporating private-sector corporate management

methods, and conducts administration that is based on performance evaluation, switching from a budget-oriented approach to a balance sheet-oriented approach.

He also expressed the view that Japan should change from a reliance on centralized powers and bureaucratic rule toward decentralization and local autonomy, with the aim of creating a “mosaic nation” that takes best advantage of the distinctive features of each region, and pursuing the development of those regions.

Governor KITAGAWA was then questioned on matters such as measures to transfer taxes and revenue sources to local governments, an assessment of NPM, difficulties encountered in reforming attitudes within the prefectural government, and the form that prefectures should take as they view the prospect of the *do-shu* system.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the assignment of public servants in central government ministries to local governments, the necessity for the Diet to improve its deliberations on financial accounts, and the pros and cons of the introduction of the *do-shu* system.

155th Diet Session, First Meeting, November 28, 2002
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- On “Matters concerning local autonomy,” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**HOSAKA Kunio, Informant (Mayor of Shiki City, Saitama Prefecture)**

Mayor HOSAKA spoke from his experiences in local government regarding Chapter 8 of the Constitution, expressing his opinion that: (1) the division of roles between the central government and local government should be clarified and local autonomy should be better recognized; and (2) the administrative authority of local governments is circumscribed by the Local Autonomy Law and other regulations, but local government should be given more administrative latitude based on clear articulation of their powers.

He then said that decentralization should begin with a clear division of roles between the central and local governments, and taxes and financial resources should be distributed to local governments in an automatic, mechanical fashion according to their work volume, with simplicity and transparency of the utmost importance in this process.

He further underscored: (1) that the important missions of basic units of local governments include fostering a sense of community through promoting personal contacts among their residents, and preserving local culture and the natural environment; (2) that local governments should seek diverse administrative styles based on the principle of self responsibility; and (3) that municipal mergers should be based on citizen participation and determined by the will of the citizenry.

Shiki City’s “Regional Independence Plan” is based on these principles and seeks collaboration between the city government and the citizenry in the administration of city affairs. The city is working to develop a new, 21st century-style form of local government.

Mayor HOSAKA was then questioned on matters such as how financial resources should be distributed to local governments, the content of the “Regional Independence Plan” and its evaluation, and Shiki City’s approach to municipal merger.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the need for legislation to be based on “the principle of local economy,” the importance of allowing inequalities among local governments, and the irrationality of reducing the authority of smaller local government serving populations of 10,000 people or less.

## **2) 156th and 159th Diet Session**

### **(1) Subcommittee on Ideal Constitution as Supreme Law**

156th Diet Session, First Meeting, February 6, 2003
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- On “Matters concerning the ideal Constitution as the supreme law (system of symbolic Emperor),” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

#### **TAKAHASHI Hiroshi, Informant (Lecturer, Kokugakuin University; Lecturer, Tokyo Keizai University; former staff writer of Kyodo News)**

Mr. TAKAHASHI explained: (1) Provisions concerning succession in the current Constitution and in the Imperial Household Law only allow succession by male descendents in the male line and if these provisions are left in their current state there will eventually be no one to succeed to the throne. Therefore, the Imperial Household Law should be amended to allow female succession. This would involve a change from the male to the female line of descent but the tradition whereby the status of the Imperial throne is hereditary would remain unchanged. When female members of the Imperial Household marry, they leave the Imperial Family, but they should be allowed to inaugurate new Imperial Families and gain a prince consort while at the same time paying due consideration to the need to limit the growth in the number of Imperial Household members. Priority in the succession should be by primogeniture regardless of gender. (2) Regarding the symbolic role of the Emperor, the Imperial throne has always been symbolic in nature and there are only a very few examples in history of “emperors in military uniform” like the Meiji Emperor. The current Emperor has been seeking the ideal approach to the “Emperor-as-symbol” concept from his days as Crown Prince and in that sense has created the “form” of the traditional throne. In this sense, the present Emperor is the “first symbolic Emperor” to accede to the throne under the Japanese Constitution.

As political recommendations, he stated: (1) the need to eliminate the political hues to what is viewed as “Imperial diplomacy” when the Emperor and other members of the Imperial Household travel overseas; (2) the need for a rigorous debate in the Diet on the essential nature of the “symbolic Emperor;” (3) the need to amend the Imperial Household Law so as to provide for stable

succession.

Mr. TAKAHASHI was then questioned on matters such as the nature of the Emperor as “head of state,” the issues involved with allowing female succession to the throne, and the Emperor’s acts in matters of state.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: regarding the future orientation of the “Emperor-as-symbol” system and the pros and cons of female succession.

156th Diet Session, Second Meeting, March 6, 2003
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- On “Matters concerning the ideal Constitution as the supreme law (Emperor-as-symbol system),” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**SONOBE Itsuo, Informant (former Justice, Supreme Court)**

Mr. SONOBE expressed the opinion that the Emperor-as-symbol system is in accordance with the principles of the current Constitution, but is also a unique system that reflects history and tradition. Under the Emperor-as-symbol system, the Emperor’s role as the foundation for the organs of government and the conferring of legitimacy to power, which is one aspect of the functions the Emperor has historically fulfilled, is entrusted to the Emperor by the people.. He then spoke on the functions and acts of the Emperor, emphasizing (1) they should be examined, in light of the actual conditions, from the “positive symbol” perspective which states that certain situations are required for the Emperor to function as a symbol of the state; and (2) that, regarding the categorization of the acts of the Emperor, he advocates the five-category theory based on, among others, an analysis of the value of the actual act derived from the symbolic nature of the Emperor

While it is important for the Emperor to perform his role as symbol of state through acts in matters of state and public acts, it is necessary to define the status of public acts as befits their meaning with due caution.

Mr. SONOBE was then questioned on matters such as the significance of the five-category theory, the position of the Emperor under the current Constitution, and the locus of responsibility for public acts.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the relationship between Article 20 and Imperial Household ritual and the need to reopen the debate on the rationale for the act of dissolution of the House of Representatives.

156th Diet Session, Third Meeting, April 3, 2003
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- On “Matters concerning the role of the Constitution as the supreme law (procedures for

revisions of rigid constitutions),” the opinions of the following informants were heard, they were then questioned, and a free discussion followed.

**TAKAMI Katsutoshi, Informant (Senior Specialist, Politics and Parliamentary Affairs Research Service, Research and Legislative Reference Bureau, National Diet Library; Professor Emeritus, School of Law, Hokkaido University)**

**NAGAO Ryuichi, Informant (Professor, College of Law, Nihon University)**

Professor TAKAMI expressed the opinion that procedures for revising constitutions in various nations are normally based on frameworks that satisfy the imperatives of maintaining “constitutional stability” and “the principle of popular sovereignty.” He then discussed four categories of amendment procedures based on the actors making decisions on and approving revisions: (1) parliaments, (2) referendums, (3) special constitutional assemblies, and (4) the governing units that comprise federal states. Following this he explained: (1) the process by which Article 96 was formulated, including the requirement in the initial draft of the Constitution produced by the GHQ that there be a review of the Constitution every 10 years to reflect “theory of generational sovereignty,” and (2) the original intent of Article 96 was to provide a conceptual distinction between the right to establish the Constitution (and approve amendments) which was held by the people and the right to enact legislation (and propose amendments) which was held by the Diet. In closing, he said that the hurdles for amending the constitution imposed by Article 96 are high, but they are by no means the highest from a worldwide perspective and that in foreign countries the actual frequency of constitutional revisions cannot be directly derived from the level of the formal hurdles to constitutional revisions.

Professor NAGAO spoke from the perspective of legal philosophy, noting that the requirement for a special majority for constitutional revisions is just the egotism of the legislators, and that many of the reasons cited for the superiority of the Constitution to ordinary laws often lack validity. Moreover, the significance of the Constitution being rigid is that it provides for the “protection of minorities” from two perspectives: (1) the principle of “natural rights” that says there are some things that cannot be changed even by majority opinion, and (2) the ideal of the “self-critical society” that always respects minority opinions. Additionally, he expressed the following opinions: that, according to the thought of John Locke, constitutions are ultimately derived from the philosophy of the Enlightenment and that history has been a conflict between Enlightenment and tradition, but the 21st century will need to seek a harmony between them.

Professor TAKAMI and Professor NAGAO were then questioned on matters such as the formulation of a national referendum law for constitutional amendment, the limits to amendments of the Constitution of Japan, and the pros and cons of initiatives for constitutional amendments by the people.

In the course of the free discussion based on the interpellation of the informants, the following were among the points about which comment was made: the pros and cons of formulating a national referendum law for the purpose of constitutional amendment at this time and the need to debate the



Constitution from the perspective of the future vision for the nation.

156th Diet Session, Fourth Meeting, May 8, 2003

- On “Matters concerning the role of the Constitution as the supreme law (Meiji Constitution and the Constitution of Japan),” the opinions of the following informants were heard, they were then questioned, and a free discussion followed.

**BANNO Junji, Informant (Professor Emeritus, The University of Tokyo)**

Professor BANNO highlighted two problems with the conventional history to date of the development and enactment of the Meiji Constitution: (1) sufficient thought has not been given to the relationship between the democratic rights side and the pro-establishment side in constitutional history; and (2) sufficient thought has not been given to the relationship between the formulation process of the Meiji Constitution and the actual problems that arose in its application. He then explained that based on such materials as ITO Hirobumi’s *Commentaries on the Constitution of the Empire of Japan* and MINOBE Tatsukichi’s *Kenpo Kowa* (Lectures on the Constitution) there were varied interpretations of the Meiji Constitution. This reflects the Meiji Constitution’s foundations in IWAKURA Tomomi’s “Fundamentals of the Constitution” (actually written by INOUE Kowashi), which was a conservative rewrite of the liberal ideas contained in “Personal Proposals for a Constitution” written by members of Kojunsha. The Liberal Party of ITAGAKI Taisuke had a majority of the legislature but did not subscribe to the notion that the majority party should be the ruling party, so even though the original draft of the Meiji Constitution was already prepared in 1881, as described above, 33 years had to pass before discussions of a parliamentary cabinet system were restarted in earnest. He expressed the opinion that this is why the liberal forces were left without sufficient time to revise the constitutional interpretations of the “independence of the supreme command” which was considered an exceptional provision of the Meiji Constitution, and to restrain the military, which thereafter went out of control.

Professor BANNO was then questioned on such matters as the intentions of the drafters of the Meiji Constitution, whether the problems in the Meiji Constitution were problems with the document itself or with its administration, and the rationale in the Meiji Constitution to justify political power.

156th Diet Session, Fifth Meeting, July 3, 2003

- On “Matters concerning the ideal form of the Constitution as the supreme law (the Preamble),” the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**HANABUSA Masamichi, Informant (Advisor to the Chairman, Kajima Corporation)**

Mr. HANABUSA said that the Preamble of the existing Constitution has served well by firmly establishing the concept of popular sovereignty and creating various democratic institutions in

postwar Japan, but because it is a stateless document that resembles political distilled water it is now believed to be giving rise to an identity crisis, and therefore incorporating Japanese values and new ideals into the Preamble would be highly significant. The people of Japan should have the experience of amending the Constitution themselves in order to give the Constitution legitimacy, and it would be most appropriate in doing so to begin the debate with the Preamble, which can be easily discussed by anyone. Any amendment of the Preamble should provide for the maximum participation of the people in the drafting process. He explained that there are five roles that a new Preamble should fulfill: (1) setting forth a vision for the nation based on Japanese tradition and culture; (2) charting Japan's future course; (3) energizing the nation to break out of the present impasse; (4) clearly showing the coordinate axes of Japan's position in the world; (5) declaring Japan's all-embracing and universal ideals. He then introduced a draft Preamble incorporating these ideas.

Professor HANABUSA was then questioned on matters such as the inseparable nature of the Preamble and the articles, the significance of having a Preamble, the evaluation of the informant's proposed Preamble, and the ideals to be included in a Preamble.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: inseparability of the Preamble and the articles, the pioneering ideals and principles contained in the Preamble, and the ongoing issue of the need to harmonize the Constitution's universality and what is uniquely Japanese.

159th Diet Session, First Meeting, February 5, 2004
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- On "Matters concerning the ideal Constitution as the supreme law (the Emperor system)," the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**YOKOTA Kouichi, Informant (Professor, Faculty of Law, Ryutsu Keizai University; Professor Emeritus, Kyushu University)**

Professor YOKOTA explained that the Emperor system must also be understood along the lines laid down by the norms of the Constitution and that any tradition that goes against the provisions of the Constitution must be rejected. Arguing from the position that a strict distinction should be made between the Emperor's public and private acts, he discussed: (1) the relationship between the basic principles of the Constitution and the "Emperor-as-symbol" system; (2) the status, powers and rationale of the Emperor in view of constitutional norms; and (3) the major points in normative interpretations to date regarding whether the Emperor is "head of state," whether Japan is a "monarchy," whether "public acts" of the Emperor exist and the confusion between public and private acts.

He then expressed two opinions: (1) The present Emperor does not have sovereignty or powers related to government, but has played a political role of a high order. The trends in recent years

toward treating the Emperor and the Imperial Family as celebrities and the steps taken to change or abolish traditions, thereby diminishing the basis of the Emperor's authority, are leading to a weakening of the Emperor's ability to unify the people. (2) A female Emperor would be permissible if the Imperial Household Law, which is subordinate to the Constitution, were amended in line with the Constitution. However, in view of the continuing existence of sexism, recognizing female succession might lead to a further weakening of the capacity to unify the people that is vested in the throne.

Professor YOKOTA was then questioned on matters such as the issues involved in recognizing female succession, harmonization of Japanese history and traditions with modern constitutionalism, and the implications of constitutional norms for the Emperor system.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: issues involved in recognizing female succession, the significance of public acts of the Emperor, and the significance of respecting Japanese history and traditions.

159th Diet Session, Second Meeting, March 4, 2004
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- On "Matters concerning the ideal Constitution as the supreme law (systems of direct democracy)," the opinions of the following informant were heard, he was then questioned, and a free discussion followed.

**IGUCHI Shusaku, Informant (Associate Professor, Faculty of Human Environment, Osaka Sangyo University)**

Professor IGUCHI outlined three underlying points: (1) the concept of direct democracy includes both a pure type of direct democracy and "semi-direct" democracy, the latter of which tends to be the more problematic; (2) referendums have lately enjoyed an international popularity that is sometimes described as a boom, but there is regional bias to this and the increase should be viewed in relative terms; (3) the increase is taking place in countries that have institutionalized "bottom-up referendums" held by popular demand. He then explained the various types of national referendums. Following this he discussed the introduction of direct democracy to Japan, noting that there is no room for it under the existing Constitution, which by its nature eliminates direct democracy. While many of the obstacles to direct democracy have been overcome, the introduction of direct democracy would: (1) in relation to constitutionalism, risk undermining minority protections because the system of judicial review does not sufficiently function at this point in time; (2) in relation to political parties, risk that holding referendums might, depending on outcomes, make it less meaningful to choose a government based on the parties' policy manifestoes; and conversely, (3) in relation to deliberative democracy, encourage public debate through the vehicle of national referendums.

Under the existing Constitution it would conceivably be possible to: (1) make better use of local

referendums, (2) introduce advisory national referendums and (3) give the public the right to introduce bills under certain conditions. Direct democracy is a means of concretely realizing popular sovereignty and strengthening democracy but it is only one means of doing this, albeit an important one. There is no reason to avoid discussing the introduction of direct democracy, but it should not be counted on to solve all problems. It is necessary to create a judiciary, a legislature, and political parties that are equal to the demands of direct democracy, and doing so will mean achieving the ideals of the Constitution of Japan.

Professor IGUCHI was then questioned on matters such as potential problems in the introduction of direct democracy, the significance of introducing direct democracy and necessity of achieving the ideals of the Constitution of Japan.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the necessity of introducing direct democracy, and the need for passing a national referendums law for amendments to the Constitution.

159th Diet Session, Third Meeting, March 25, 2004
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- After explanations were heard from a representative of the Supreme Court and the opinions of the following informant on “Matters concerning the ideal Constitution as the supreme law (constitutional guarantees),” questions were put to them, and a free discussion followed.

**TAKESAKI Hironobu, Representative of the Supreme Court (Secretary General, Supreme Court)**

**SASADA Eiji, Informant (Professor, Graduate School of Law, Hokkaido University)**

Secretary General TAKESAKI, representing the Supreme Court, explained the Court’s system for hearing cases. Justices are undeniably busy, with each involved in an average of 2,000 cases annually, but the 1998 amendments to the Code of Civil Procedure rearranging the appeal system contributed to the reduction of the load on Supreme Court justices. With regards to constitutional questions, he said that, in light of the serious nature of the cases, there was no reason why justices should not be able to provide the required opinions just because they are busy. He then explained the process for appointing Supreme Court justices, the personnel and physical resources of the courts, and the guarantee of the independence of judges. He followed this with two opinions: (1) Comparing the Japanese judicial system with those of other countries in terms of budgets is not necessarily effective because of the significant differences in the systems. Rather, it is essential to analyze whether the functions of the judicial system sufficiently meet the individual “requirements of the law.” (2) The “20 percent judiciary” debate is lacking in empirical evidence and the term may not necessarily be appropriate, but steps should be taken to enhance and strengthen the judicial system so that the people find it easier to use and more reliable. This is the main principle underlying the present judicial system reforms, and from this perspective, it is necessary that Japan achieve reforms that are truly in the interests of its people.

Professor SASADA said that the present state of the Supreme Court can be characterized as follows: (1) it has a large load of final appeal cases; (2) few cases are referred to the Grand Bench; (3) the Court has ruled a statute unconstitutional only six times, in cases of five types; (4) the Court sometimes attempts to resolve cases at the level of the relevant laws, without bringing the provisions of the Constitution to the fore; (5) with regard to the guarantee of the right to trial, which forms a premise of constitutionality trials, there has been no new development at the precedent theory level since 1960. He also stated: qualifications for appointment to the Supreme Court comparing with the legal systems of other countries; and reasons for the low level of constitutionality review activity.

He then went on to evaluate different proposals, including: (1) restrictions on appeals to the Supreme Court; (2) the debate over whether to create a constitutional court; and (3) attempts to vitalize constitutionality review such as Canada's advisory opinion system. Following this, he explained his own proposals for structural reforms by separating the Supreme Court's "appellate functions" and "constitutionality review functions." In view of the stagnation of the constitutionality review system, the informant advocated the need for legislative reform to the Supreme Court and, assuming a substantial reduction in the caseload on the Supreme Court from structural reforms, said there should be a multipronged plan that would include the establishment of an advisory council on appointments of Supreme Court justices and reform of the system for popular review of appointments to the Supreme Court.

Secretary General TAKESAKI and Professor IGUCHI were then questioned on matters such as issues in the Japanese judicial system, the pros and cons of establishing a constitutional court, and ways to reform the judicial system.

In the course of the free discussion based on the interpellation of the Supreme Court representative and the informant, the following were among the points about which comment was made: ways to reform the structure of the Supreme Court, the need for sound judicial functions, the need to establish a constitutional court, and the intentions of Article 81.

159th Diet Session, Fourth Meeting, April 22, 2004
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- On "Matters concerning the ideal Constitution as the supreme law (the Constitution and international law)," questions were put to him, and a free discussion followed.

**SAITO Masaaki, Informant (Associate Professor, School of Economics, Hokusei Gakuen University)**

Professor SAITO began by providing a general explanation of the relationship between the Constitution and international law, highlighting: (1) in considering the issue of how treaties should be incorporated into the domestic legal system, in recent years the mainstream view has been that analysis should be focused intensively on such areas as the constitutional provisions of individual nations and the actual practices of their state institutions; (2) traditionally, the contradictions between the Constitution and treaties, and cases where they conflict have been important points of

debate, but that there are not necessarily very many points on which the Constitution and international human rights treaties are fully inconsistent or conflicting because both seek to ensure human rights; and (3) it is consistent to interpret the precedence accorded to treaties over laws as a result of an attempt to harmonize the “internationalism” of the Constitution with other constitutional principles, while treating the former as the keynote.

Achieving the principles of international human rights treaties will require domestic application of treaty provisions by domestic courts, but the informant argued that domestic courts are not necessarily active in applying treaties. Therefore, in the opinion of the informant, domestic application of international human rights treaties will require reconciliation with the judicial review system so that treaty content is incorporated within the judicial review framework. This in turn will require: (1) incorporation of international human rights treaties into standards for Constitutional interpretation, such as making constitutional interpretation in accordance to such treaties; and (2) acceptance of appeals to the Supreme Court based on alleged violations of international human rights treaties.

An issue in recent years has been the relationship between domestic courts and the opinions and interpretations of the Human Rights Committee under the International Covenant on Civil and Political Rights. He said that it would meet the requirements of Article 98, Paragraph 2 of the Constitution to faithfully respect treaties if domestic courts were to take the Committee’s opinions into consideration wherever possible.

Professor SAITO was then questioned on matters such as methods of resolving inconsistencies between the Constitution, domestic law and treaties, whether or not Diet approval of treaties is required and the locus of the authority to judge whether to withhold assent or not, and the need for direct domestic application of international human rights treaties.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the need for central government-led judgments when ratifying international human rights treaties and concerns regarding the current international situation in which treaties are not necessarily complied with.

## **(2) Subcommittee on Security and International Cooperation**

156th Diet Session, First Meeting, February 6, 2003
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- On “Matters concerning security and international cooperation (states of emergency and the Constitution),” questions were put to them, and a free discussion followed.

**MORIMOTO Satoshi, Informant (Professor, Faculty of International Development, Takushoku University)**

**IGARASHI Takayoshi, Informant (Professor, Faculty of Law, Hosei University)**

Professor MORIMOTO spoke about the need to respond to terrorism, which is becoming

increasingly complex and extreme, with a comprehensive system that organically links together defense, diplomacy, information and immigration control under a unified policy. Achieving this will require: (1) enhancements to domestic laws, (2) establishment of national and social systems, and (3) the fostering of public awareness and the implementation of public training exercises. He expressed the following opinions in relation to enhancements to domestic law: (1) Fundamental items regarding the responses, rights, and obligations of the state, the government and the people during states of emergency should be explicitly stated in the Constitution. (2) To facilitate a comprehensive response to emergency circumstances, the first step should be the rapid enactment of a “basic law on security,” followed by the enactment of subsidiary “emergencies laws” to stipulate Japan’s response to armed attacks by foreign nations and an “emergency circumstances response law” to stipulate the response to terrorism, natural disasters and other emergencies. (3) Japan should no longer follow its past stance of reacting to terrorism based on self-defense, but should rather adopt a strategy of deterring terrorism by upgrading its states of emergency legislation.

Professor IGARASHI said that one must face squarely the potential for colossal damage to cities, which are “dependent societies,” if disaster strikes, and emergency provisions must be considered in this light. In his opinion: (1) the centralization of authority is important for responding to emergencies, but subsequent checks should also be emphasized; (2) Japan should view the U.S. Federal Emergency Management Agency (FEMA) as a reference for designing a national emergency response organ; and (3) Japan should establish an emergency management system using as reference the German Basic Law in which authority is centralized in the German prime minister, but who is in turn subject to strict checks by the Federal Assembly. Additionally, military activity should be kept to the absolute minimum, and Japan should do everything in its power to prevent emergencies via active engagement in the United Nations-centered security system and its own diplomatic efforts. Finally, he proposed: (1) that Japan enact a comprehensive emergency management law, and (2) that Japan establish an “emergency management agency” formed from the Cabinet Secretariat, the Cabinet Office, the Ministry of Public Management, Home Affairs, Posts and Telecommunications, the Ministry of Land, Infrastructure and Transport, the Ministry of Health, Labour and Welfare, the National Police Agency, the Fire and Disaster Management Agency, the Japan Coast Guard, the Self-Defense Forces and other concerned bodies, and this “emergency management agency” be made responsible for the nation’s overall emergency management.

Professor MORIMOTO and Professor IGARASHI were then questioned on matters such as the need for emergency provisions in the Constitution, protection of the rights of the people during times of emergency, how the Diet should be involved in emergency situations, methods for international cooperation in combating terrorism, and the relationship between emergency legislation and U.S. Armed Forces stationed in Japan.

In the course of the free discussion based on the interpellation of the informants, the following were among the points about which comment was made: the responsibilities of the Diet regarding the

enhancement of emergency-response systems and the importance of the debate on national security.

156th Diet Session, Second Meeting, March 6, 2003

- On “Matters concerning security and international cooperation (states of emergency and the Constitution),” questions were put to him, and a free discussion followed.

**OGAWA Kazuhisa, Informant (international politics and military analyst)**

Mr. OGAWA said that in Japan, legislation tends to be enacted for the sake of enactment. In order to raise the standards of the legal system, constant efforts must be made to revise existing laws. The same applies for the Constitution; it is necessary to rectify the “state of unconstitutionality” while also raising the level of perfection of the Constitution. On the question of whether Japan has acted in accordance with the spirit of the Constitution as expressed in the principles of “pacifism” which implies actively working to achieve world peace and “UN-centeredness” as the means for doing so, he said: (1) from the perspective of the national right to existence, we must be aware of Japan’s inability to assert its presence during the Gulf War. As the linkage between terrorist groups and nations developing weapons of mass destruction poses a threat to Japan’s defense, we must recognize that Japan can legitimately respond to this threat based on the right to individual self-defense but that it should work towards the achievement of peaceful solutions; (2) from the perspective of the people’s right to life, a framework for emergency shelter and guidance in the event of armed attack should be developed from the standpoint of the response of the police, firefighters, and local governments. He also stated that the failure to develop medical helicopter services for use in traffic accidents represents a “state of unconstitutionality.” He then argued that for the Constitution to function in this regard it is first necessary to solve problems in such basic areas as disaster prevention, health and medical services, and traffic accidents, and then after that to deal with the more complicated problems of foreign relations and security.

Mr. OGAWA was then questioned on matters such as the need for constitutional provisions regarding emergencies, how to divide the roles of the Self-Defense Forces, firefighters, police and other agencies in times of disaster, how to build communities that are prepared for disaster, and the ideal Japan-U.S. relationship.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the Japan-U.S. Security Treaty and the Japan-U.S. Status of Forces Agreement, and the relationship between response to natural disasters and right to life provisions.

156th Diet Session, Third Meeting, April 3, 2003

- On “Matters concerning security and international cooperation (international cooperation),” questions were put to them, and a free discussion followed.



## **Keynote Speakers: NODA Takeshi and SUTO Nobuhiko**

Mr. NODA spoke from a basic position that international cooperation is essential for the peace and development of the international community and Japan itself. Security Council reforms and more effective dispute resolution systems are required in order to ensure compliance with UN resolutions. As it considers constitutional amendments to provide for security and international contributions, Japan should seek a permanent seat on the Security Council and should be actively involved in UN activities in economic and social areas. As specific components of future ODA policies, he listed: (1) greater strategic emphasis, (2) incorporation of “human security” concepts, (3) revision of “request-based” aid to allow implementation of ODA on Japan’s own initiative, (4) greater effort to gain the understanding of citizens, and (5) better collaboration among relevant government ministries and agencies. He also proposed that April 28 be designated “Recovery of Independence Day” because on that date Japan recovered its independence and said it was the duty of politicians to clearly stipulate in the Constitution Japan’s right to defend itself as a matter of course as an independent nation.

Mr. SUTO argued that the constitutional grounds for ODA can be found in the Preamble which seeks the security of all people within global society and that the values of the Preamble should be actively spread when implementing ODA according to the new needs arising in the international community. Based on this, he said that transformation and reorganization of international institutions are required so that they are suited to the dramatic changes taking place in the post-Cold War world, and that Japanese international cooperation should be based on: (1) the correlation between security and economic cooperation, (2) the changes taking place in nation-states and national borders, (3) global perspectives, (4) human security, (5) the concepts of “governance” and “democracy” underlying the response of the international community to poverty and other issues, and (6) elements that were not envisioned when the Constitution was formulated, including the relationship between the roles expected of civic organizations and Article 89. He then expressed the opinion that there should be explicit statements in the Constitution regarding principles of foreign assistance, the involvement of the legislature in foreign assistance, the value standards to be used in balancing national interests and global interests, and third-party checks.

Mr. NODA and Mr. SUTO were then questioned on matters such as the ideal state of the United Nations, evaluation of ODA to China, the importance of ODA in humanitarian areas, and orientations for the reform of ODA.

In the course of the free discussion based on the interpellation of the keynote speakers, the following were among the points about which comment was made: the need to debate the relationship between United Nations and security, the ideal state of the United Nations, and orientations for ODA reform.

156th Diet Session, Fourth Meeting, May 8, 2003
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- On “Matters concerning security and international cooperation (international organizations and

the Constitution),” questions were put to them, and a free discussion followed.

**SUGANAMI Shigeru, Informant (President, AMDA International [Association of Medical Doctors of Asia])**

**SATO Yukio, Informant (President, The Japan Institute of International Affairs)**

Dr. SUGANAMI discussed three basic principles: (1) NGOs working for peace on their own judgment and at their own risk may be considered pacifists; (2) forming ties with the “People of the Book” (monotheists) based on taking actions that are consistent with one’s words is essential to achieve thorough cooperative internationalism, which involves avoiding war, providing financial assistance and conveying a message; and (3) today’s world demands that “public interest” be achieved through collaboration between government organizations, which operate on the basis of positive lists, and NGOs, which operate on the basis of negative lists. He went on to argue that Japan should promote collaboration between government organizations and NGOs and pursue diplomatic initiatives aimed at achieving human security through citizen participation in humanitarian aid and otherwise establish a system capable of responding to rapidly changing times. He said that doing so would enable Japan to show initiative as society diversifies. While terrorism conveys its message through murder, it is vital that we analyze this message.

Mr. SATO said that, unlike the image popularly held in Japan, the United Nations is an imperfect organization in which the Security Council is under the thumb of the victors in World War II, and working from this basis he explained the current status of the Secretary-General, the General Assembly, the Economic and Social Council, and the Security Council, and Japan’s involvement with these institutions. He then argued that Japan should emphasize the importance of the United Nations and do all in its power to improve the organization. Regardless of whether Japan becomes a permanent member of the Security Council, it should take the lead in the Security Council reform aimed at improving the functioning of the UN, including: expanding the Security Council framework, selecting new permanent members, and reviewing the exercise of veto powers. He concluded by requesting that the Research Commission on the Constitution send a fact-finding mission to the United Nations so as to better understand its current situation.

Dr. SUGANAMI and Mr. SATO were then questioned on matters such as the reasons for the continued existence of the “enemy states clause,” the pros and cons of Japan having a permanent seat on the Security Council, future orientations for the United Nations, and the ideal form of collaboration between NGOs and governments.

In the course of the free discussion based on the interpellation of the informants, the following were among the points about which comment was made: Japan’s security in the event of a dispute among permanent members of the Security Council, how the UN should be reformed and what Japan’s role should be in that, and the need for a realistic foreign policy.

- On “Matters concerning security and international cooperation (Article 9 of the Constitution),” questions were put to them, and a free discussion followed.

**Keynote Speakers: KONDO Motohiko and FUJII Hirohisa**

Mr. KONDO spoke on the need to improve the defense system and promote international cooperation, potentially involving amendments to the Constitution, in order to respond to changing international conditions. From this perspective he made three specific proposals regarding amendments to Article 9: (1) to firmly uphold the ideals of Article 9, Paragraph 1 that renounce wars of aggression, but to acknowledge that it may be necessary to use force to ensure peace and safety, and therefore to present the approach of “human security from a humanitarian perspective,” which focuses on ensuring the security of each individual, in the concrete terms of a tenacious and future-oriented “pacifism” and demonstrate Japan’s active stance toward making an international contribution; (2) to delete Article 9, Paragraph 2 and explicitly state the rights of individual and collective self-defense and the existence of the Self-Defense Forces; 3) to add new provisions stipulating the response to emergency situations, such as invasion or major natural disasters. He also expressed the opinion that there should be an in-depth debate directed toward enacting a Constitution for the people, a Constitution suited to the 21st century, and that at the same time, Japan should put in place a national referendum law for constitutional amendment and other necessary measures.

Mr. FUJII said that the basis for establishing peace for the nation should be presented to the public by stating it in the Constitution, or at least by enacting a basic law on security, and he pointed to the need to gain the trust of the international community, especially neighboring countries, in this regard. From that basis he expressed three opinions: (1) that the Constitution should clearly state that Japan possesses the right to self-defense, which comprises both the rights of individual and collective self-defense, and should exercise it with restraint, and that the prime minister has the right of command and supervision over the Self-Defense Forces; (2) assuming that the right of self-defense is exercised with restraint, Japan should emphasize the importance of the Japan-U.S. joint defense structure; and (3) the Constitution should explicitly state that Japan will be actively involved in United Nations peacekeeping activities, including the peacekeeping operations that form the basis for the peace and security of Japan and the international community.

Mr. KONDO and Mr. FUJII were then questioned on matters such as the disparities between the Constitution and reality and how to solve them, the relationship between Japan and United Nations, and the relationship between Japan and United States.

In the course of the free discussion based on the interpellation of the keynote speakers, the following were among the points about which comment was made: the pros and cons of the attack on Iraq and the special measures bill for Iraq, the need for international cooperation in non-military fields, and the importance of United Nations reform.

- On “Matters concerning security and international cooperation (Article 9 of the Constitution),” questions were put to them, and a free discussion followed.

**Keynote Speakers: NAKATANI Gen and MATSUMOTO Takeaki**

Mr. NAKATANI said that while Article 9 had played a significant role after the war, changing international conditions have created a gap with reality which is in turn resulting in the Constitution not being taken seriously and reducing it to a mere formality. He also noted the difficulties that Self-Defense Forces have defending themselves when they are dispatched overseas under Article 9. From this basis he argued that the Constitution should be amended so as to enhance the security environment, highlighting the inability of Japanese troops: (1) to escort forces of other nations; (2) to use weapons to carry out their duties; (3) to respond to attacks on U.S. forces in the vicinity of Japan; and (4) to participate in UN forces; and also noting: (5) restrictions on Japanese participation in an Asian security organization; and (6) the fact that any defense treaty with the Republic of Korea would be unilateral in nature. He also advocated: that Japan have a permanent seat on the Security Council and take the initiative in United Nations; that Japan participate in and provide cooperation for UN security policies, which are becoming multifaceted in nature; that a new constitution explicitly state the country’s right to self-defense, the role of the Self-Defense Forces, and the authority for international contributions; and that pacifism and UN-centeredness be enshrined as the core principles in Article 9.

Mr. MATSUMOTO said that while politics should respond to the needs of the times, from the perspective of the “rule of law,” laws should be enacted as they are required and should not be overstepped. Regarding the Iraq War, he noted the need to verify its justification including grounds for the attack from the perspective of international law and the pros and cons of preemptive strikes as a means of self-defense and said that the Special Measures Law for Iraq which was used by the government to send Self-Defense Forces to Iraq while avoiding a constitutional debate was unreasonable. In relation to the United Nations, he advocated facing reality squarely but choosing paths that most closely match ideals. To enable broad participation in United Nations forces, multilateral forces, peacekeeping operations, and other collective security activities, he proposed: (1) interpreting these activities as being beyond the scope of Article 9, (2) formulating a basic law on security, and (3) exercising the option to amend the Constitution. With regards to the right of collective self-defense, he noted the ideal form of the Japan-U.S. Security Treaty and the need to consider its future review, and said that when one considers the establishment of a security network in the Pacific and East Asia, Japan’s inability to exercise this right may hinder it diplomatically. The right of collective self-defense is an inherent right of sovereign nations, and the government interpretation requires theoretical verification, he said.

Mr. NAKATANI and Mr. MATSUMOTO were then questioned on matters such as the pros and cons of explicitly stating in the Constitution that Japan will maintain and exercise the right of collective self-defense, ways for the Diet to approve the dispatch of Self-Defense Forces overseas, the relationship between the dispatch of Self-Defense Forces to Iraq and the denial of the right of

belligerency, and the relationship between “personnel dispatch” and “troop deployment” overseas.

In the course of the free discussion based on the interpellation of the keynote speakers, the following were among the points about which comment was made: the position in international law of the right of collective self-defense, the pros and cons of constitutional provisions regarding collective self-defense and collective security, standards for the use of weapons by Self-Defense Forces dispatched overseas, and the pros and cons of dispatching Self-Defense Forces to Iraq in terms of international law and the Constitution.

159th Diet Session, Second Meeting, March 4, 2004

- On “Matters concerning security and international cooperation (integration of nation-states, accession to international organizations, and the accompanying transfer of sovereign powers),” questions were put to him, and a free discussion followed.

**Bernhard ZEPTER, Informant (Ambassador and Head of Delegation of the European Commission in Japan)**

Mr. ZEPTER explained that European unification was guided by the key lesson learned in two world wars: “Never again war between us.” Unification has brought peace and economic prosperity to Europe, with European countries pooling parts of national sovereignty in some fields while simply carrying on intergovernmental cooperation in others. The EU is therefore a hybrid between a nation-state and an international organization. There is no preordained “blueprint” setting goals in its development processes. The development of the EU is a “bottom-up” process built on common interest in certain policy areas. He explained that the driving forces in unification are cooperation, competition, and solidarity. EU legislation gives priority to the EU law over the domestic laws of member countries, and is based on the principle of having decision-making take place at a level as close to the citizens as possible. Large amounts of financial assistance are provided in order to rectify the economic gaps within the region. Attempts have been made to act in common on foreign policy issues, but they have not been a success. Integration and enlargement of the EU required a process of constitutional adaptation on the part of member states, which was made possible by a political and social culture that accepted the transfer of a part of sovereignty. The draft of the Treaty Establishing a Constitution for Europe is now being debated. This draft would strengthen the democratic legitimacy of the EU, emphasize the need for a European identity, and furnish a transparent and comprehensive legal system. He noted that the European experience will not translate directly into a model for other regions, but may serve as reference concerning the method and procedure of integration.

Mr. ZEPTER was then questioned on matters such as the orientation of the EU security and defense policy, the Charter of Fundamental Rights, the national referendum system, the “European Ombudsman” system, personal information protection, the nature of European identity, lessons learned from the lack of a unified stance among European countries towards the Iraq war, and changes in views of the state and of constitutions with the signing of the Treaty Establishing a

Constitution for Europe.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the need for regional security arrangements in Asia as compared to Europe and matters to be aware of as they are constructed, the need for security dialogue in Northeast Asia based on the principles of pacifism, and the relationship among regional security, collective security and the right to collective self-defense.

159th Diet Session, Third Meeting, March 25, 2004

- On “Matters concerning security and international cooperation (states of emergency and the Constitution),” questions were put to them, and a free discussion followed.

**KOBARI Tsukasa, Informant (Professor, Faculty of Policy Studies, Iwate Prefectural University)**

**MATSUURA Kazuo, Informant (Associate Professor, National Defense Academy)**

Professor KOBARI expressed the opinion that the present Constitution is very restrained when it comes to national emergencies and made four points regarding the relationship between emergency powers and constitutions: (1) emergency powers may suspend the legal force of the Constitution; (2) emergency powers may suspend the legal force of certain articles; (3) the legal force of certain articles may be modified, without being suspended, under a power to take extraordinary measures for which the Constitution provides; and (4) states of emergency may have to be addressed without any relevant constitutional provisions. Japan’s existing Constitution comes under the heading of (4). The only legal principle that can be taken as a basis for restricting human rights is “the public welfare,” he said. The increasingly manifold and complex nature of human rights guarantees must be taken into account when designing legislation to govern states of emergency, and giving the individualistic worldview expressed in the current Constitution, the state can only justify the control it exercises over individuals if it first protects their lives, limbs, and property. He concluded by noting that there is a need to shift the defense hierarchy from the national government at the top to local governments and then the people at the bottom to one with the people at the top to local governments to the national government at the bottom. Any new legislation on emergency response will only prove its worth in an actual emergency when the need arises to protect the people’s lives, limbs, and property and ensure the security of the nation, and there should therefore be explicit provisions on responding to states of emergency in the Constitution.

Professor MATSUURA noted that in other countries civil defense is viewed as a field that combines military defense with peacetime disaster aid, and provided an overview of legislation to protect the people in European countries. In Germany, in particular, the Basic Law (the German constitution) refers to “defense, including protection of the civilian population,” and therefore Germany’s emergency response laws are based on the concept of comprehensive defense consisting of military defense and non-military defense, which includes civil protection. Germany’s Law for the Reorganization of Civil Protection regards “self-protection” as the basis of civil protection with

public agencies playing a complementary role. It assigns volunteer organizations to support the government's disaster relief programs and gives them an important role in civil protection during military emergencies as well. He stated that this is something that Japan should learn from. More recently, Germany formulated a "New Strategy for Protecting the Population of Germany" in 2002 that establishes a Federal Office for Civil Protection and Emergency Response. The legislature is now considering an aviation security bill designed to prevent suicide attacks by terrorists using commercial aircraft.

Professor KOBARI and Professor MATSUURA were then questioned on matters such as the need for explicit constitutional provisions regarding states of emergency and how they would be formulated, evaluations of the proposed law for the protection of the people and the constitutional rationale for restricting personal liberties, and the need to bear in mind the constitutional and other conditions at work in other countries when considering the legal systems for states of emergency.

In the course of the free discussion based on the interpellation of the informants, the following were among the points about which comment was made: the need for explicit constitutional provisions regarding states of emergency, the effectiveness of the proposed law for the protection of the people, the monitoring and control of the Self-Defense Forces by the Diet, and the need for a debate on civil security.

159th Diet Session, Fourth Meeting, April 22, 2004
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- On "Matters concerning security and international cooperation (regional security)," questions were put to him, and a free discussion followed.

**KIKUCHI Tsutomu, Informant (Professor, School of International Politics, Economics and Business, Aoyama Gakuin University)**

Professor KIKUCHI said that the following points are important in considering regional security in the Asia-Pacific: (1) placing emphasis on joint cooperative relationships with other members of the international community; (2) taking an integrated approach that includes elements in addition to military strength, such as economic activity; and (3) dealing with new threats such as terrorism. Nations in the Asia-Pacific region fall into three groups: (1) stable, fully modernized states; (2) states in the process of modernizing; and (3) states that are structurally fragile. The second and third categories are faced with issues such as: (1) problems arising from the fragility of their domestic systems; (2) disputes with other nations; and (3) new problems created by terrorism and economic issues. He stated that these are the chief security issues for this region. To respond to these issues, the countries of the region should: (1) strengthen the role of alliances so as to prepare the environment for regional security, (2) expand intergovernmental and joint public and private sector dialogues on regional security, and (3) engage in joint interventions and joint engagements in domestic affairs by regional states. On the impact that FTAs will have on regional security, he said that while FTAs had positive aspects such as the stabilization of regional economies and the sharing of interests beyond national borders, they also had negative aspects in stirring domestic

political conflict because of imbalances in the interests among signatory states. Thus, while some effect can be expected, it would not do to be overly optimistic.

Professor KIKUCHI was then questioned on matters such as the ideal form of security in the Asian region, how other Asian countries will view the increased economic presence of Japan that results from signing FTAs, the role of friendship and cooperation treaties with Southeast Asia, the need to emphasize collaborative, multilateral security, and the relationship between the six-party talks on the North Korean issue and regional security.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the promotion of FTAs from a regional security perspective, the need to enhance peaceful diplomatic tools in the post-Cold War world, and the need to balance environment and food concerns in security programs.

### **(3) Subcommittee on Guarantee of Fundamental Human Rights**

156th Diet Session, First Meeting, February 13, 2003

- On “Matters concerning the guarantee of fundamental human rights (the right to receive an education),” questions were put to them, and a free discussion followed.

**TORII Yasuhiko, Informant (Executive Advisor for Academic Affairs, Keio University; President, The Promotion and Mutual Aid Corporation for Private Schools of Japan)**  
**OKAMURA Ryoji, Informant (Professor, Waseda University)**

Mr. TORII began by noting: (1) the Japanese translation for “education,” *kyoiku*, does not contain the nuance of “development of abilities,” but the aspect of developing abilities should be emphasized in the future; and (2) education includes “character formation,” “basic and specialized knowledge,” “learning, learning techniques and learning assistance,” and “support for growth and life planning,” and these can only be realized through education. He then proceeded to discuss (3) the differences between the current and former constitutions on the “right to receive an education” and the nature of the “right to receive an education” in the Japanese Constitution. Having done so, he noted (4) that in other countries (U.K., France, South Korea) there are explicit provisions in the basic education laws saying that individuals possess the right to lifelong learning, but there has traditionally been very little awareness of this point in Japan although it is a point that must be emphasized in the future.

Professor OKAMURA argued that rights come into being only when the appropriate values are acquired and in that sense rights are accompanied by duties. The scope of human rights has grown in incremental layers, from civil liberties to social rights. Regarding the “right to receive an education,” he made four points: (1) The Fundamental Law of Education was enacted based on the requirements of the Constitution, taking its authority from Article 26. (2) The issues between “equality of opportunity to receive an education” and “inequality of the results” are issues of actual practice. (3) To express the nature of rights more proactively, Article 26 should be reinterpreted in



terms of the right to “engage in” an education. And (4) from the perspective of providing “an equal education,” an article stipulating the right to receive equal education is desirable. He repeatedly emphasized that respect for human rights means respect for all activities that make the lives of individuals more fully human. He argued that what is necessary at the present time is to verify the degree to which the ideals of the Fundamental Law of Education are being achieved. We should not take the easy approach of amending it as a way to cover its “shortcomings.” Inasmuch as the Law takes its authority from the Constitution, amending it separately from the Constitution would distort the nature of the Fundamental Law of Education (educational ideals, principles, guarantee of rights) and would undermine the spirit of the Constitution itself, he argued.

Mr. TORII and Professor OKAMURA were then questioned on matters such as on the relationship between the Fundamental Law of Education and the Imperial Rescript on Education, the need for amending the Fundamental Law of Education and the need for education on the rights of others.

In the course of the free discussion based on the interpellation of the informants, the following were among the points about which comment was made: the importance of being aware of the formulation process of the Constitution and the Fundamental Law of Education, amending the Fundamental Law of Education and the significance of the resolution invalidating the Imperial Rescript on Education.

156th Diet Session, Second Meeting, March 13, 2003
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- On “Matters concerning the guarantee of fundamental human rights (fundamental labor rights),” questions were put to them, and a free discussion followed.

**SUGENO Kazuo, informant (Professor, The University of Tokyo)**

**FUJII Ryuko, Informant (member of the Cabinet Office Information Disclosure Review Board; former Director-General of the Women’s Bureau, Ministry of Labour)**

Professor SUGENO discussed the importance of studying the process by which the framework of restrictions on fundamental labor rights was put in place in the creation of the public servant system, and noted two schools of thought that provided its theoretical foundations: (1) American “sovereignty theory” which provided the basis for the early doctrine of “servants of the whole community” and the later verdict in the MAF workers’ union case; and (2) the Dreyer Report and the Tokyo Central Post Office decision which followed its doctrine. He also expressed his concerns that debate was being delayed on the important points in the present Guidelines for Reform of the Public Servant System. The ILO interim report should be read as a message that a full discussion regarding the building of labor-management relations is required, and the government’s rebuttal, which is based in the “sovereignty theory,” is unconvincing. He concluded by noting the need to fully re-examine the labor-management relations in the postwar system of public employees in the current major reform, and the need to emphasize a process that collects a wide range of opinions on these matters.

Ms. FUJII described the significant impact that the Constitution had in raising the status of women

in the workplace thanks to its explicit provisions regarding gender equality, and reviewed the process by which the Basic Law for a Gender-Equal Society was formulated. She then noted several distinguishing trends among working Japanese women: (1) continuing discrimination in hiring although women are becoming a mainstay of the workforce; (2) the pronounced trend in Japan, compared with other countries, for women to leave the workplace during their childbearing years and return after they have raised their children to a certain age; (3) the increasingly diverse forms of employment; and (4) the trend towards later marriage and the rise in the ratio of unmarried women. To provide for equal opportunity in the workplace, she advocated: (1) enhancement of relief measures by, for example, establishing a body with the power to issue compulsory relief orders ; (2) expansion of programs to facilitate reemployment for women entering/returning to the workforce after raising their children to a certain age; and (3) creation of environments that allow both home and work duties to be fulfilled.

Professor SUGENO and Ms. FUJII were then questioned on matters such as on the evaluation of the Constitution from the perspective of public servant system reform and realization of a gender-equal society, the response of the Japanese government to the ILO interim report, and the meaning of “equality” as envisioned in the gender-equal society.

In the course of the free discussion based on the interpellation of the informants, the following were among the points about which comment was made: issues related to the fundamental labor rights of public employees, the background to the ILO interim report, and the need to create an environment in which society recognizes and tolerates different forms of family arrangements.

156th Diet Session, Third Meeting, May 15, 2003
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- On “Matters concerning the guarantee of fundamental human rights (right to know, right of access, right to privacy),” questions were put to him, and a free discussion followed.

#### **HORIBE Masao, Informant (Professor, Faculty of Law, Chuo University)**

Professor HORIBE described the history of the debate on the right to know and information disclosure in Japan, highlighting five periods: (1) the period in which the right to know was perceived as a right that was a restructuring, from the recipient side, of freedom of expression and its institutionalization was advocated (late 1940s–early 1970s); (2) the period in which information disclosure systems were advocated as a result of Japan’s Lockheed scandals and were first established by local governments (late 1970s and beyond); (3) the period in which Kanagawa Prefecture enacted its Ordinance Concerning the Disclosure of Public Documents, marking the start of the operation of local government information disclosure systems and information disclosure legislation was studied (early 1980s and beyond); (4) the period in which a draft of the information disclosure law was published and its institutionalization was clarified while the information disclosure systems already in place in local governments began to be overhauled (1996 and beyond); and (5) the period in which the Information Disclosure Law was formulated and came into force (2001 to present).

He also reviewed the history of the debate on privacy and personal information protection in Japan, dividing it into four periods: (1) the period in which the right to privacy was perceived in America as the “right to be left alone” and the “right to control personal information” and system building was advocated regarding the right (1950s to mid-1970s); (2) the period in which local governments institutionalized privacy protections, the OECD published guidelines and institutionalization was studied; (3) the period during which the formulation of legislation concerning protection of personal information held by administrative organs was studied (formulated in 1988) and government ministries and agencies published personal information protection guidelines while at the same time prefectural governments issued ordinances on personal information protection (mid-1980s and beyond); and (4) the period up to the present Diet deliberations when the bill concerning the protection of personal information was proposed and discussed in the Diet (1999 and beyond).

It can be seen from the English translations of information-related legislation in other countries that right to access is viewed as an integrated set of rights of citizens to information which include the right to know and the right to control personal information.

Professor HORIBE was then questioned on matters such as the pros and cons of explicit provisions in the Constitution regarding the right to privacy, ways to regulate privacy infringements by the mass media, and the pros and cons of the content of the bill concerning the protection of personal information.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the pros and cons of mass media regulation, and an ombudsman system to protect privacy rights of the people.

156th Diet Session, Fourth Meeting, June 5, 2003
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- On “Matters concerning the guarantee of fundamental human rights (fundamental human rights and the public welfare),” questions were put to him, and a free discussion followed.

**KOBAYASHI Masaya, Informant (Associate Professor, Faculty of Law and Economics, Chiba University)**

Professor KOBAYASHI discussed the principles of communitarianism, which emerged as a critique of liberalism and libertarianism, two dualistic approaches that recognize only the public and the private spheres and that rapidly developed as the radicalization of liberal thought, bringing with them expansions in the gap between rich and poor, market failures, declining morals, and a dilution of human relations. Communitarianism draws on the traditions of liberal thought, but emphasizes the need for good, community, tradition, virtue, and duty and sees the family and the community as the sources of these values. It is, however, different from social conservatism, which argues for a return to the traditional communities of old.

In the debate between liberals and communitarians in the United States, communitarians argue the

need for concepts of duty and obligation, but not so as to tear down the modern constitutional framework whose cornerstone is the limitation of state power and the protection of rights. Nor do communitarians argue for constitutional amendments that would add duty provisions.

The fundamental human rights and “public welfare” provisions of the Japanese Constitution can be interpreted in communitarian terms so that the public dimensions and responsibilities that have received too little attention in the prevailing liberalist interpretation can be derived directly from the text of the existing Constitution (a text which by now has almost become a dead letter). Moreover, one can read into the Constitution the pursuit of public happiness (which is a tenet of public philosophy), the non-absolute nature of the state and a global frame of reference, all of which will be needed in the new era. Therefore, from a communitarian perspective, the Constitution of Japan has human rights provisions that are superior to those of the Constitution of the United States, and there is no need for any amendment to the Constitution in the foreseeable future.

Professor KOBAYASHI was then questioned on matters such as the significance of the “tradition” and “morality” emphasized by communitarianism, concern about whether the “individual” had been overemphasized to the detriment of the “public,” and the evaluation of current party politics, education, community building, and mass media from communitarian perspectives.

156th Diet Session, Fifth Meeting, July 10, 2003
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- On “Matters concerning the guarantee of fundamental human rights (social security and the Constitution),” questions were put to them, and a free discussion followed.

**NAKAMURA Mutsuo, Informant (President, Hokkaido University)**

**OSHIO Takashi, Informant (Associate Professor, Faculty of Education, Tokyo Gakugei University)**

Dr. NAKAMURA said that the provisions for a minimum standard of living in Article 25, Paragraph 1 were not present in the SCAP draft but were inserted at a later stage during deliberations in the House of Representatives and can therefore be seen as an idea original to Japan, and he noted that the right to a minimum standard of living has established itself among the people as evidenced by public opinion surveys. From this basis, he discussed: (1) the legal nature of the right to a minimum standard of living, which has been argued from the program provision doctrine, the abstract right doctrine, and the concrete right doctrine, although the ruling in the Asahi case appears to be based on the abstract right doctrine; (2) the fact that while Supreme Court rulings allow the constitutionality of legislative conduct, including legislative nonfeasance, to be contested under the State Compensation Law only in limited, exceptional circumstances, in recent years lower courts have attempted to interpret the Supreme Court’s requirements more flexibly for cases that do not involve the right to a minimum standard of living, and that there is room to contest the constitutionality of legislative nonfeasance even in regard to cases concerning the right to a minimum standard of living. He concluded by commenting on the principles and design of a new social security system for the 21st century, which must be done in a way that enhances social

security and social welfare by ensuring that the people or citizens, who are the participants, play an active and self-governing role and, moreover, bear their share of the costs.

Professor OSHIO noted that the public pension system, which is the nucleus of the social security system, is an important means of giving concrete form to Article 25, because it guarantees a minimum standard of living in old age. However, there are problems presented by: (1) the aging of society and declining birthrates, which are undermining the soundness of public finances, and (2) expanding gaps between the generations. He therefore discussed a proposed reform that would slim down the public pension system by limiting it to the basic pension portion that guarantees a minimum income in old age and giving the individual responsibility for the wage-linked portion in excess of that, rather than the public sector. He also presented three issues and solutions in the implementation of these reforms: (1) to use the present level of livelihood assistance benefits and basic pensions as a general guideline for basic pension benefits. (2) to employ uniform benefit payments for basic pensions regardless of income levels. And (3) from the perspective of intragenerational fairness, funding should come from income-linked premiums or, as a second-best, from consumption tax.

Dr. NAKAMURA and Professor OSHIO were then questioned on matters such as on how to provide social security and guarantee a minimum standard of living in an aging society with a declining birthrate, the need for “social solidarity” as a new principle of social security, the optimal way to allocate the cost burdens of social security, and the need for pension system reform.

In the course of the free discussion based on the interpellation of the informants, the following were among the points about which comment was made: the need for the entire population to view itself as supporting the government in tackling the social security financing crisis, the need for global perspectives in designing the social security system, and the issue of the declining birthrate and the aging of society which is at the root of the social security problems.

159th Diet Session, First Meeting, February 19, 2004
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- On “Matters concerning the guarantee of fundamental human rights (equality under the law),” questions were put to him, and a free discussion followed.

**UCHINO Masayuki, Informant (Professor, Office for the Establishment of Chuo Law School, Chuo University)**

Professor UCHINO expressed the opinion that there is little need for constitutional revision in the area of human rights (including the enactment of explicit provisions on such matters as privacy), but that programs under the current Constitution should be enhanced. He explained that when reading the equality provisions of the Constitution: (1) the items enumerated in Article 14, Paragraph 1 should be regarded as examples and not as an exhaustive list; and (2) the Constitution’s prohibition of discrimination is not absolute, but allows for reasonable distinctions. On this basis, he argued that there are two concepts of equality: “formal equality,” which requires that individuals be treated uniformly on the same basis regardless of any factual differences, and “substantive

equality,” which seeks to make the outcomes more nearly equal by giving preferential treatment to those who, in reality, are in an inferior position. In the view of the informant, Article 14 calls for formal equality (allowing for reasonable distinctions), and the role of realizing substantive equality is expected to be played mainly by legislative measures. As examples of problems with formal equality, he pointed to the imbalances in the allocation of Diet seats and discrimination against children born out of wedlock. Substantive equality, he argued, should be promoted through legislative and administrative measures, including affirmative action. Next, (1) in relation to discrimination against women, he discussed the Treaty on the Elimination of All Forms of Discrimination Against Women and stated that realization of a gender-equal society will be an important issue in the future; and (2) in relation to equality and discrimination in the private sector, he described the gradual progress that is being made in arriving at legal resolutions to problems in the corporate sector through the Equal Employment Opportunity Law and the Labor Standards Law and praised the Osaka High Court for the breakthrough settlement achieved in the Sumitomo Electric Industries sex discrimination suit. In theory, discrimination in the private sector can be dealt with adequately by indirect application of the Constitution’s human rights provisions, but there is a need to create rules prohibiting discrimination by private persons. It is from this perspective that either the human rights protection bill should be reviewed and resubmitted or a law to prohibit discrimination should be considered.

Professor UCHINO was then questioned on matters such as on constitutional requirements for formal equality and substantive equality, the theoretical rationale for differences in the handling of imbalances in Diet seats between the upper and lower houses, and the pros and cons of single-sex education at national and public schools.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the need, in contrast with the informant’s opinion that there was little need to amend the Constitution in the area of human rights, to explicitly state new human rights such as the protection of personal information as the transition is made to electronic government; the introduction of U.S. and German doctrine regarding efficacy between private persons; and affirmative action as a measure to achieve substantive equality.

159th Diet Session, Second Meeting, March 11, 2004
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- On “Matters concerning the guarantee of fundamental human rights (civil and political liberties),” questions were put to him, and a free discussion followed.

**NOSAKA Yasuji, Informant (Dean, Department of Law, Gakushuin University)**

Professor NOSAKA explained that freedom of thought and conscience are fundamental to human existence and provision was made for them in the Constitution because a bitter lesson had been learned from the repression of freedom of thought under the Meiji Constitution. He went on to discuss the contents of freedom of thought and conscience, including the Mitsubishi Plastics case and the heavier penalties imposed by the United States against hate crimes. He noted that a key

question involving freedom of thought and conscience is the issue of compulsory display of the national flag and singing of the national anthem.

Freedom of religion stands alongside freedom of thought as the most important human right in the Universal Declaration of Human Rights. Freedom of religion is guaranteed absolutely as a freedom to hold private beliefs, but actions based on religious belief may be subject to minimum restrictions necessary to achieve an essential public good. The separation of religion and state is a principle designed to promote and reinforce guarantees of religious freedom and there is no room to doubt that the Constitution demands a “strict separation.” The “purpose and effect standard” found in precedent cases is problematic in terms of objectivity and should be subject to a full review, he argued. Using the visits of the prime minister to Yasukuni Shrine as an example, he discussed the acts of state that are permitted under the principle of separation of religion and state.

Professor NOSAKA was then questioned on matters such as the relationship between the “purpose and effect standard” and the prime minister’s visits to Yasukuni Shrine, the need to consider from a legislative policy perspective the creation of a system similar to the civil suit system that would enable suits to be brought for violations of the principle of separation of religion and state, and evaluation of the practice that allows people to decline to serve as lay judges on the basis of thought and religious belief.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the principle of separation of religion and state and institutional guarantees, the potential to set certain limits to freedom of thoughts such as the “fighting democracy” in Germany, and the prime minister’s visits to Yasukuni Shrine.

159th Diet Session, Third Meeting, April 1, 2004
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- On “Matters concerning the guarantee of fundamental human rights (the public welfare),” questions were put to him, and a free discussion followed.

**MATSUMOTO Kazuhiko, Informant (Professor, Graduate School of Law, Osaka University)**

Professor MATSUMOTO explained that the controversy over the relationship between human rights and public welfare has been a battle over how to define the issue, and said that in the commonly accepted definition is posed as a binary opposition between “human rights” versus “the public welfare.” He then posed two questions: (1) Can human rights be restricted by the public welfare? and (2) what is the “public welfare” which limits human rights? and went on to express his opinions on these issues.

Regarding the first question, he argued that the Supreme Court has ruled that even fundamental human rights are not absolute and unrestricted but may be restricted for the sake of public welfare and that legal scholars generally accept this opinion. However, there is some dissent over whether the binary opposition is itself correct.

Regarding the second question, he said that the Supreme Court has not addressed the issue head on but only provided ad hoc responses to individual cases, and in recent years scholars have ceased to define the issue as it is defined in the second question. Reconciling the public welfare and human rights is a delicate business, and it is not enough to ask “What is the public welfare?” The question is becoming instead, “How should we go about reconciling the public welfare and human rights?” he explained. In his opinion, recasting the issue from a binary opposition to “What restrictions are a legitimate means to a legitimate end?” and considering the objectives and means of such restrictions in detail will enable us to respect human rights while placing importance on the public welfare.

In conclusion, regarding who is to answer these questions, he underlined the significance of the fact that it is the legislature which reconciles human rights and the public welfare in the form of laws.

Professor MATSUMOTO was then questioned on matters such as reconciling the mass media’s freedom of expression with the individual’s right to privacy, the rebuilding of the theory of legal reservations; and the “theory of essential nature.”

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: reconciling public welfare programs that achieve safety and order for citizens with the human rights of citizens, whether it is possible for the legislature to reconcile rights through legislation, and whether the Supreme Court has the capacity to reconcile rights in the face of the rapid advances being made in science and technology.

159th Diet Session, Fourth Meeting, May 20, 2004
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- On “Matters concerning the guarantee of fundamental human rights (economic, social and cultural freedoms),” questions were put to him, and a free discussion followed.

**NORO Mitsuru, Informant (Professor, School of Law, Kansai University)**

Professor NORO said that land ownership involves placing special, universal restrictions on land as a form of property, making it a special case that is not entirely covered by the general theory of economic freedoms. He then compared property right practices in Japan and Germany as they relate to the three topics of urban planning legislation, legislation to protect urban landscapes, and property right guarantees. From this he made the following observations: (1) With regard to urban planning legislation, the control of new development and construction in Germany is based on the principle of “no development without planning,” whereas in Japan the principle is “freedom of development and construction.” (2) With regard to legislation to protect urban landscapes, Germany has a two-tiered system of controls made up of bans on changes that disfigure the landscape without regard to specific geographical limitations (based on national laws) and active protection and creation of landscapes (based on municipal ordinances), whereas Japan has a system to designate scenic zones as part of its City Planning Law, but does not adequately make use of it because it is not based on the same “no development without planning” principles as are employed



in Germany. He mentioned that in the future, it will be necessary to reform the system in Japan to bring it at least a little closer to this principle. And (3) with regard to constitutional guarantee of property rights and urban planning, there are differences in the approaches taken by Article 29 of the Japanese Constitution and Article 14, Paragraph 2 of the Bonn Basic Law. Although these differences do not have much effect on substantive issues; nonetheless, it is an important point that German precedent restricting ownership emphasizes “social restrictions on land ownership” and is based on a situational view of constraints. In contrast to Japan, Germany’s legislation to protect scenic views is legally binding and, as reasons for this power, he presented a tentative argument that the special character of the right to own land is defined in the fact that the right to construct a building of a specific design in a specific place is not absolute but dependent upon circumstances in Germany.

Professor NORO was then questioned on matters such as changes in the concept of “public welfare” as relates to property rights, whether there is a need to explicitly stipulate “urban planning rights” in the Constitution, differences in the decentralization of authority in Japan and Germany in relation to urban planning, and the potential to use Article 20a of the Bonn Basic Law, which sets forth responsibilities for environmental protection, as a reference point for transforming human rights concepts in Japan.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: appreciation and criticism of the Tokyo District Court ruling on the Kenodo highway case, and the need to consider the “public welfare” in Article 29 as including restrictions on human rights that accompany urban planning.

159th Diet Session, Fifth Meeting, May 27, 2004
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- On “Matters concerning the guarantee of fundamental human rights (rights during criminal proceedings, human rights of crime victims),” questions were put to him, and a free discussion followed.

**TAGUCHI Morikazu, Informant (Professor, School of Law, Waseda University; Professor, Waseda Law School)**

Professor TAGUCHI discussed the significance of constitutional norms regarding human rights concerning criminal proceedings, noting that there are 10 articles having to do with criminal proceedings in the Constitution, which is unusual from the perspective of comparative constitutional studies and an indication of the emphasis that the Constitution places on norms of criminal proceedings. In the future, he said, an important issue for human rights in criminal proceedings will be to provide “positive” human rights by respecting the self-determination of suspects and other parties in concrete ways.

From this basis, he discussed (1) in relation to the human rights of suspects, the significance of due process provisions (Article 31 of the Constitution), the constitutionality of emergency arrests (Article 210 of the Code of Criminal Procedure), the introduction of a public defender system for

suspects, wiretapping procedures under the Communications Interception Law, and response to cyber crime (high-tech crime) with improvement of procedures for the seizure of magnetic records; (2) in relation to the human rights of the accused, the introduction of a “lay judge” system and the acceleration of trials, the introduction of a system of immunity from prosecution and arraignment (in which a guilty plea would be sufficient basis for conviction), provisions guaranteeing “right of access to the courts” (Article 32 of the Constitution) and how they affect the constitutionality of the “lay judge” system; (3) in relation to the human rights of convicts, the constitutionality of the death penalty and issues related to correctional policy; and (4) in relation to the human rights of victims, the need for victim protection, victim participation in proceedings, and relief for victims. These are the three points that need to be considered in relation to the legal status of victims and steps have been taken to improve them mainly by amending relevant laws, but he advocated caution about incorporating them into the Constitution.

He also expressed the opinion that judicial system reform is an issue that affects the “form (constitution) of the nation” and not just the judicial system; it can be seen as a movement in which, through the democratization of state power, the people are becoming the subject of government instead of its object.

Professor TAGUCHI was then questioned on matters such as whether the death penalty should be retained or eliminated, the “lay judge” system, the right of suspects to have legal counsel present during interrogation, and the human rights of victims.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: whether the death penalty should be retained or eliminated, gaps between the perceptions of judges and the perceptions of the people and the need to reeducate judges, fears concerning the thinking behind the judicial reform advocated by the Judicial Reform Council, and the importance of the process by which provisions for criminal proceedings in the Constitution were formulated and the significance of the provisions themselves.

#### **(4) Subcommittee on Ideal Government and Organizations**

156th Diet Session, First Meeting, February 13, 2003
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- On “Matters concerning ideal government and organizations (local autonomy),” questions were put to him, and a free discussion followed.

#### **MASUDA Hiroya, Informant (Governor of Iwate Prefecture)**

Governor MASUDA explained the results achieved in a wide-area partnership of the three prefectures of northern Tohoku (Aomori, Iwate, and Akita) in the areas of tourism, environment and industrial waste disposal.

He then expressed the following opinions: (1) To thoroughly pursue “self-determination” and “self-responsibility” which are the basic concepts for local government, it is necessary to achieve economic independence and also to radically review the division of roles between central and local

governments based on the principle of complementarity in which government administration is preferentially conducted at the municipal level that is closest to the residents and what cannot be done by the municipality is done by prefectures, and what cannot be done by the prefectures is done by the national government. Prefectures should emphasize support for small-scale local governments, liaison and coordination services between municipalities and the central government, and response to broad regional issues. (2) In view of the changes that are taking place in social and economic conditions, the creation of wide-area local government systems is a national-level issue. It is important to design systems from the perspective of a “one nation, multiple systems” approach and in collaboration with local residents while fully reflecting the opinions of those involved at a practical level, and to ensure economic independence, share functions among prefectures, and perform a collective transfer of authority, financial resources and personnel from the central government to local governments. (3) With regard to the *do-shu* system and prefectural mergers, this should not be uniform nationwide but rather a diverse array of options should be presented and the regions should be offered a choice among them. There are many possible measures that could be adopted within the scope of the present Constitution.

Governor MASUDA was then questioned on matters such as the relationship between the *do-shu* system, prefectural mergers and the Constitution; ideal approaches to municipal mergers and basic units of local government; and the outlook for local self-financing.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the best form of administrative and fiscal reform at the national and local levels, the need to introduce the *do-shu* system, the relationship between the central and local governments under the “principle of local autonomy,” and modalities for central and prefectural governments as the world becomes increasingly borderless.

156th Diet Session, Second Meeting, March 13, 2003
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- On “Matters concerning ideal government and organizations (local autonomy),” questions were put to him, and a free discussion followed.

#### **ABE Manao, Informant (Mayor of Kameda Town, Niigata Prefecture)**

Mayor ABE explained that Kameda Town has a close relationship to the city of Niigata, both geographically and in terms of day-to-day life.

He then described the history of the plan to merge with Niigata City. Seeking to achieve city status, Kameda had proposed the “50,000-Person City Concept” that involved merger with the neighboring town of Yokogoshi. Later as the Comprehensive Decentralization Law and the Special Law on Mergers of Municipal Authorities took force, in response to demands from various organizations within the town, discussion from 2001 advanced toward the merger of Niigata, Kameda, and Yokogoshi. By 2002 a Council on the Niigata District Merger Issue had been formed to pursue a wider-scale merger involving adjacent towns and villages that would create a designated city.

He expressed his opinion to use population and geographical advantages after the designated city status was achieved to pursue further development by expanding the airport, enhancing ties with neighboring prefectures and attracting commerce, and said that Kameda wanted to function as a secondary core within the new city.

Mayor ABE was then questioned on matters such as the reasons for seeking to achieve designated city status with a wide-area merger, the role of prefectures and the introduction of the *do-shu* system, and the reflection of the opinions of local residents in the merger plans.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the relationship between direct/indirect democracy and resident self-government and the need to rethink the relationship between local autonomy and decentralization on the one hand and constitutional provisions on the other.

156th Diet Session, Third Meeting, May 15, 2003
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- On “Matters concerning ideal government and organizations (the judicial system and a constitutional court),” questions were put to them, and a free discussion followed.

**TSUNO Osamu, Informant (attorney at law; former Director-General of the Cabinet Legislation Bureau)**

**YAMAGUCHI Shigeru, Informant (former Chief Justice, Supreme Court)**

Mr. TSUNO explained that by unifying the government’s interpretation on such matters as constitutional interpretation through its functions of legislative examination and statement of opinions, the Cabinet Legislation Bureau directly assists the Cabinet in ensuring that functions related to the submission of legislative bills by the Cabinet and the faithful application of laws are appropriately undertaken according to the principles of the rule of law. Furthermore, the Cabinet Legislation Bureau directly assists the Cabinet to ensure that the obligation of Ministers of State to respect and uphold the Constitution is being appropriately met. He then made two observations: (1) it is the function of the judiciary to finalize constitutional interpretations, but the government needs to formulate *ex-ante* interpretations of the Constitution in order for it to be applied in administration; and (2) the constitutional interpretations of the government are the result of logical processes and the government cannot therefore freely modify its interpretations. Finally, he noted three points that need to be given full consideration in any discussion of the pros and cons of establishing a constitutional court: (1) the relation between popular sovereignty and the separation of powers, (2) the implications for the position of the Diet as the sole lawmaking organ, and (3) the risk that the political sector may go too far in restricting itself in fear of rulings of unconstitutionality.

Mr. YAMAGUCHI explained the constitutional court systems in the United States, Germany, and France before listing five areas in which the judicial environment is significantly different in Japan: (1) whether the country is multiethnic; (2) whether it is federal or centralized; (3) whether there are government administration changes; (4) whether bills are subject to checking in the legislative

process; and (5) whether there is a discretionary appeals system. He noted that the low number of laws judged unconstitutional in Japan has given rise to criticism of judicial passivity, but explained that the cause could be found in the judicial environment in Japan and it is a natural outcome of the system. With regards to the future prospects for constitutionality decisions, he said that the firm establishment of an appeals acceptance system would enable cases requiring judgments of constitutionality to be addressed earlier and additionally would result in more active constitutional review by the Supreme Court and would form a new constitutional order worthy of the new era.

Mr. TSUNO and Mr. YAMAGUCHI were then questioned on matters such as the state of authoritative interpretations of the Constitution, the possibility of changing government interpretations of the Constitution, the pros and cons of establishing a constitutional court, and the form the Legislative Bureaus of the two Houses of the Diet should take.

In the course of the free discussion based on the interpellation of the informants, the following were among the points about which comment was made: the appropriateness of the courts refraining from issuing judgments on political questions, the need for systems that involve the people in the judiciary, strengthening the Legislative Bureaus of the Diet, and the constitutionality of reducing the compensations paid to judges.

156th Diet Session, Fourth Meeting, June 5, 2003
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- On “Matters concerning ideal government and organizations (public finances),” questions were put to them, and a free discussion followed.

**KUBOTA Yoshio, Informant (Associate Professor, Department of Law, Faculty of Law, Kobe Gakuin University)**

**SAKURAUCHI Fumiki, Informant (Associate Professor, Niigata University)**

Professor KUBOTA pointed to three factors that have raised awareness of policy evaluations in recent years: (1) emphasis on accountability, (2) the need to make policy decisions amid uncertainty as to the effects of policies, and (3) the importance of administrative oversight, etc. He then explained the process of the submission and rejection of the Democratic Party of Japan’s proposal for an Administrative Oversight Board (1997) to strengthen the Diet’s policy evaluation functions. For the Diet to evaluate policies from an independent position, the Diet must collect its own data and must analyze data provided by ministries and agencies from the unique perspective of the legislature at the helm of national affairs. This must be done, according to the informant, by both the opposition and the ruling parties and there should therefore be an institution attached to the Diet that would play an adjunct, expert role in policy evaluations by Diet members. In relation to the proposed reform to make the House of Councillors responsible for auditing and therefore policy evaluation, he advocated caution in approaching this proposal in light of the Upper House electoral system and the relationship between decentralization and the bicameral system.

Professor SAKURAUCHI noted that the people are simultaneously trustors who pay taxes to the government (“the trustee”) and also beneficiaries of the fiscal activities of the government. Formal

application of fiscal constitutionalism by itself is unable to protect the interests of the people as beneficiaries, including future generations, and he therefore expressed the opinion that public governance should be strengthened by making clear the fiduciary responsibilities of those making decisions on fiscal administration (the current generation) so as to protect the interests of the people. More specifically, he discussed the need for: (1) improvements in the public accounting system; (2) the achievement of fiscal discipline in tandem with evaluations of administration; (3) the introduction of a multiple accounts system that divides the budget into a current account and a capital account, the latter having significant medium- to long-term effects; and (4) explicit provisions for national emergency rights in the area of public finances. In relation to the bicameral system and the audit system, he said that, from the perspective of reflecting the interests of future generations: (1) the House of Councillors should be an independent body without a specific constituency; (2) the budgetary powers of the House of Councillors should be strengthened in regard to fiscal management from a medium- to long-term perspective; and (3) the Board of Audit should be attached to the Diet as an auxiliary body which retains a certain degree of neutrality.

Professor KUBOTA and Professor SAKURAUCHI were then questioned on matters such as audits and reforms to the House of Councillors, the desirable form of the Board of Audit, the ideal form of the budgeting system, policy evaluation institutions, and evaluation of ombudsman systems.

In the course of the free discussion based on the interpellation of the informants, the following were among the points about which comment was made: the need for policy evaluations, and the need to review public finance systems, and the need to improve the functions of the bicameral system.

156th Diet Session, Fifth Meeting, July 10, 2003
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- On “Matters concerning ideal government and organizations (relationship between the Diet and the Cabinet),” questions were put to them, and a free discussion followed.

**TAKAMI Katsutoshi, Informant (Senior Specialist, Politics and Parliamentary Affairs Research Service, Research and Legislative Reference Bureau, National Diet Library)**

**Keynote Speakers: FURUKAWA Motohisa and INOUE Kiichi**

Professor TAKAMI explained that the key criteria separating parliamentary cabinet systems from presidential systems lie in the ability of the legislative branch to remove the administrative branch via a vote of no confidence, and in the accountability of the executive branch to the legislative branch. The Japanese parliamentary cabinet system is close to the British model whereby the prime minister has the right to dissolve the parliament at any time. In the bicameral system, the Upper House is elected by popular vote and its legitimacy rests on its being chosen by the people in direct elections the same as the Lower House. Because it is based in electoral democracy, a question that has been examined since the formulation of the Constitution is how to define the Upper House’s role.

Mr. FURUKAWA said that the stipulations of the Constitution call for a parliamentary cabinet system that is led by the prime minister but that, in practice, the prime minister's political leadership is severely restrained by interpretations and administration that attempt to eliminate political influence from government administration wherever possible. In today's society, the Cabinet should be considered the focal point of politics because it is comprised of a prime minister who has executive power over the administration of policy objectives and ministers of state who assist him. The Diet has two important roles: to control policy decisions made by the Cabinet and to communicate points of dispute to the people (redefinition of the "highest organ of state power"). He also expressed three further opinions on: (1) the need to create explicit constitutional provisions on the separation of powers; (2) the need for a bold reform of the House of Councillors; and (3) the need to enact a political parties law after stipulating the status of political parties in the Constitution.

Mr. INOUE argued the need for significant institutional reforms and prompt responses in all fields in order to adapt to changing domestic and international environments. Based on this awareness, he said: (1) It will be necessary to strengthen the functions of the Diet (enhanced committee deliberations, stronger Diet staff functions, redefining of the form of question time, use of preliminary research, etc.) in line with strengthening the functions of the Cabinet (explicit statement of the locus of responsibility, politically-led policy administration, unification of the government and ruling party, and phased-in introduction of a political appointment system), and it will also be necessary to clarify the constitutional status of political parties. (2) A unicameral system should be introduced. (3) The electoral system should switch to a single-seat constituency system under which changes of government among two or three large political parties would be possible, and discrepancies in the weight of a single vote should be rectified. (4) A constitutional court should be established within the Diet and given jurisdiction over acts of government. (5) The special majority system for passing bills a second time should be reviewed and the requirements for initiating constitutional amendment procedure should be relaxed. And (6) crisis management organizations should be given explicit status in the Constitution.

Professor TAKAMI, Mr. FURUKAWA and Mr. INOUE were then questioned on matters such as the unification of the Cabinet and the ruling party, the leadership of the prime minister, reflection of the will of the people and electoral systems, and the status of advisory councils.

In the course of the free discussion based on the interpellation of the informants, the following were among the points about which comment was made: the ideal constitutional amendment procedures, the need to adopt a unicameral system, and the need to enhance the policy secretary system.

159th Diet Session, First Meeting, February 19, 2004
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- On "Matters concerning ideal government and organizations (the judicial system)," questions were put to him, and a free discussion followed.

**ICHIKAWA Masato, Informant (Professor, College of Law, Ritsumeikan University)**

Professor ICHIKAWA explained the significance of judicial power and of the requirements for “concrete cases and disputes,” before expressing the opinion that the “right of access to the courts” means the right to be judged according to due process, including substantive guarantees of access to the courts, and to avail oneself of effective relief against infringements of rights by public authority. He then expressed opinions regarding the background to the judicial system reforms and the importance of enhancing the personnel basis in implementing such judicial reforms.

To make justice more readily accessible, he advocated enhancing access to the courts and reforming the administrative litigation system, which he said required bold reform.

He did not have any basic objections to the use of a “lay judge” system to encourage public participation in the judiciary and interpreted it as constitutional, but in light of the “undemocratic” nature of the administration of justice he noted the need to consider the nature of a trial as an impartial process in which decisions are reached by relying only on the Constitution and the laws. He also noted that the system could trigger a major change in criminal trials, but could also serve merely as a “fig leaf” for judicial severity; that he was cautious towards the idea of establishing a constitutional court; and that the present reforms of the judicial system will help activate the existing incidental system of constitutionality review.

Professor ICHIKAWA was then questioned on matters such as ways to ensure the quality of legal professionals, guaranteeing the accused the right to a trial under the “lay judge” system and its relationship to the social fabric of Japan, the nature of the “judiciary” sought under the current Constitution, ways to activate the existing incidental system of constitutionality review, whether it is possible to allow abstract constitutionality review under the current Constitution, and the need for prompt resolution of administrative litigation.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the “lay judge” system, in which three points were raised: (1) that it is a revolutionary system, (2) that it should be approached cautiously, and (3) that efforts must be made to secure the understanding of the people prior to its introduction. In addition, comments were made on the need to clarify the issues surrounding the Supreme Court and the potential to give the House of Councillors a role similar to that of a constitutional court.

159th Diet Session, Second Meeting, March 11, 2004
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- On “Matters concerning ideal government and organizations (human rights commissions and other quasi-judicial bodies; the ombudsman system),” questions were put to him, and a free discussion followed.

**UTSUNOMIYA Fukashi, Informant (Professor, School of Political Science and Economics, Tokai University)**

Professor UTSUNOMIYA discussed the development of the ombudsman system around the world,



the large number of parliamentary ombudsman systems, the potential for the introduction of an ombudsman system through legislation, and the reasons that ombudsman systems have spread since the 1950s. He went on to explain efforts that had been made in Japan, including studies at the national level and introduction of ombudsman systems at the local level. Following this, he observed several characteristics of the ombudsman system: (1) that ombudsmen are officers of the legislature; (2) that ombudsmen are impartial investigators who are independent of the legislature in terms of political influence; (3) that ombudsmen do not have the power to issue binding rulings but only have the authority to express opinions and make non-binding recommendations and maintain their influence through the objectivity of their investigations; (4) that ombudsmen possess investigative powers *ex officio* and this functions effectively to control the administration; and (5) that ombudsmen process complaints in a manner that is direct, fast, and free of charge. The ombudsman's main functions are: (1) control and oversight of the administration; (2) receiving and handling of complaints; and (3) amelioration of the administration. There is an increasing need to introduce an ombudsman system to Japan and its introduction would be possible with legislation rather than constitutional amendments. Both parliamentary ombudsman and executive ombudsman systems are possible, but the parliamentary system is preferred because it will function effectively to oversee administration. A parliamentary ombudsman would also be suitable both as a way to strengthen the Diet's function of overseeing the executive branch and also because it would help protect the citizenry from arbitrary action by the administration. He also said that the creation of a parliamentary ombudsman would be permitted by the existing Constitution as an embodiment of the right of petition (Article 16).

Professor UTSUNOMIYA was then questioned on matters such as the need to establish an ombudsman system, the merits and demerits of explicitly providing for it in the Constitution, the potential to eliminate partisanship in appointments, the status of the ombudsman under the Constitution, the relationship with the information disclosure system, the specific vision for an ombudsman, and the ideal form of the ombudsman organization.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the relationship with the administrative counseling system, the need to strengthen the functions of the administrative oversight committees of both Houses and the need for the ombudsman system, and the need to balance stagnation of the executive against individual rights and public interests.

159th Diet Session, Third Meeting, April 1, 2004
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- On “Matters concerning ideal government and organizations (public finances),” questions were put to them, and a free discussion followed.

**USUI Mitsuaki, Informant (Professor, Graduate School of Law and Politics, The University of Tokyo)**

**HIROI Yoshinori, Informant (Professor, Faculty of Law and Economics, Chiba University)**

Professor USUI noted the need to provide information on public finances to the people in order to achieve public control of public finances, which is a part of popular sovereignty and the need to change from systems that relied on painless fiscal mechanisms to systems that enable the public to feel the pain. He then made two observations on the relationship between public finance and the Constitution and laws: (1) most fiscal matters can be left to the discretion of the legislature, and (2) there is no constitutional principle requiring a “balanced budget,” and it is therefore possible to issue deficit bonds by enacting exceptional-case laws, but it would be in practice difficult to address this weakness even with constitutional provisions.

With regards to the budget system, he argued: (1) the single-year budget is a necessary principle in order to ensure the soundness of public finances; (2) public finances should not be managed in a way that does not permit their control by matching expenditures and revenues; (3) multiple-year budgets should not only be permitted but encouraged; (4) greater flexibility should be provided for budget carryovers so as to avoid the impediments raised by single-year budgeting; and (5) there are constitutional problems with reserve funds that have only loosely-specified uses.

In relation to private school subsidies, he noted the need to consider the deletion of the latter half of Article 89.

Following this, he turned to fiscal control by non-Diet institutions, saying: (1) the Ministry of Finance plays a significant role in providing control from the executive branch itself; (2) the Constitution does not envision the Board of Audit as an auxiliary institution to the Diet; and (3) it would be worth studying a system to provide the national equivalent to the existing system of citizens’ lawsuits for malfeasance against authorities at the local level. He closed by expressing the opinion that the Diet itself should continue to study systems for fiscal control and make the effort to publish reports.

Professor HIROI noted that the Japanese social security system is characterized by its small scale and its bias towards pensions rather than welfare. Most of the funding comes from social insurance contributions, but insurance premiums and taxes are completely joined together. He noted that the reason why Japan has been able to keep its social security benefits low is due to: (1) the invisible safety net provided by employers and (nuclear) families (an “informal” system of social security), and (2) the existence of “social security in the form of public works spending.” He then explained the relative status of Japan’s social security system by presenting an international comparison.

Discussing the basic principles of social security, he said that it should provide an institutional guarantee of the freedom (i.e., opportunity for self-realization) of the individual guaranteed by Article 13 of the Constitution. Regarding future avenues, he said, because the risks for health and welfare are less predictable than those related to pensions, a system that emphasizes healthcare and

welfare, making generous public provision for these while expanding the role of the private sector with regard to pensions, would be appropriate, and that consumption taxes, inheritance taxes and environmental taxes should be considered as revenue sources.

He concluded by saying that the basic challenge for social security was the achievement of a “sustainable welfare state/society,” with division of roles between the public sector, mutual assistance, and the private sector, and harmony with the environment in view.

Professor USUI and Professor HIROI were then questioned on matters such as the need for multiple-year budgeting, the need for explicit constitutional provisions on balanced budget, the ideal form of constitutional provisions regarding social security, the current level of public contribution to social security and the levels that should be allowed in the future, and the model for the welfare state that Japan should seek to achieve.

159th Diet Session, Fourth Meeting, May 20, 2004
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- On “Matters concerning ideal government and organizations (the ideal division of powers between the central and local governments),” questions were put to him, and a free discussion followed.

**TSUJIYAMA Takanobu, Informant (Senior Research Fellow, Japan Research Institute for Local Government)**

Mr. TSUJIYAMA began by describing the effects of the Comprehensive Decentralization Law, although there were cases in which it had served to reinvigorate local legislatures and inspire the active participation of residents in the formulation of ordinances, local governments still continue to be bound by notifications and advisories (taking the place of directives) as well as Cabinet orders, ministerial ordinances and notifications from central government ministries. With regards to the ideal division of authority between the central and local governments, he advocated self-government rights which would: (1) include, in principle, the right to regulate all local affairs; (2) be granted primarily to the basic units of local government; and (3) include the right to decide which tasks to perform and which powers to exercise. This right should be explicitly stated in laws and the Constitution, and tasks that are not to be administered and implemented by the basic units of local government should, in accordance with the principle of complementarity, be allocated to wider-area government institutions.

Following this, he noted that local governments face a number of problems, including the density of statutory regulation, centralized administrative control, and problems in the tax and fiscal systems, but he did not, as a general rule, perceive that the development of local autonomy was being hindered by deficiencies in the Constitution. If the Constitution is to be amended at all, he advocated considering changes to Article 93 to allow local bodies a choice as to whether or not they adopt the dual system of representation, in which both the chief executive officer and the assembly are chosen by direct popular election. With regards to the organizational structures, duties and tax levies, etc. of local governments, he said that it would be possible to introduce a system

similar to that used by U.S. states in which the local government drafts a charter that is approved by the legislature. However, in as much as Japan does not use a federal system, the central government must inevitably take responsibility for adjusting revenues and guaranteeing a national minimum standard of living. Regarding the question of the appropriate size of local governments, he said that the key question was the extent to which a local entity could become self-governing in terms of authority, financial resources, and responsibilities, and expressed concerns about the promotion of municipal mergers without clearly stating the concept of the *do-shu* system.

Mr. TSUJIYAMA was then questioned on matters such as the pros and cons of allowing local governments discretion over local tax rates, the need for a new constitution, not amendments, in order to adopt a federal system, the pros and cons of introducing a city manager system, the role of provisions for local autonomy in the Constitution, the significance of the proposed “Concept of a Basic Law for Local Autonomy” and the authority and functions of *do* and *shu* within the *do-shu* system.

In the course of the free discussion based on the interpellation of the informant, the following were among the points about which comment was made: the need to study a variety of styles of local government, the need to consider ways to prohibit a head of local government from serving multiple terms, the emergence of spheres of living that cross prefectural borders due to advances in transportation and telecommunications and the need for decentralization to control government administration.

159th Diet Session, Fifth Meeting, May 27, 2004
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- On “Matters concerning ideal government and organizations (bicameralism and the audit system),” questions were put to them, and a free discussion followed.

**MORISHITA Nobuaki, Informant (President, Board of Audit)**

**TADANO Masahito, Informant (Associate Professor, Graduate School of Law, Hitotsubashi University)**

Mr. MORISHITA provided four explanations: (1) Independence is the key to the Board of Audit’s performing its duties rigorously and fairly, and the right of independent personnel management, possession of rule-making powers, and a two-tiered system for determining its budget are in place to guarantee its independence. (2) Although an independent agency, the Board has a close relationship with the Diet in several respects, including: appointments of auditors require the Diet’s consent; the Board’s statements of audit of the final accounts are submitted to the Diet; each House and the committees of each House can request the Board to audit particular items and submit reports of its findings. (3) In order to reflect audit results in institutions, the budget, and other areas, the Board reports its audit results to the Diet, follows up on the subsequent disposition of items for which it has requested that action be taken and reports them to the Diet, and holds liaison meetings with the Ministry of Finance’s Budget Bureau. (4) The status of audit boards in other leading countries was described.

Professor TADANO explained that in other unitary states with bicameral systems, the independence of the second house becomes an issue, discussed methods for classifying the second house, and noted that while unicameral systems were adopted by the majority of countries, the tendency around the world is to adopt bicameral systems once the population reaches a certain size. Like Japan, France is a unitary state with a bicameral system, and while it has been unable to avoid partisanship in its Senate (second house), the Senate has played a valuable role even when the political composition of the two chambers was similar. The House of Councillors has been seeking a distinct identity, but has not necessarily been successful. For the House to display a unique character, reforms to the party-based electoral system must be re-examined and the chamber organization must be determined by means of House rules rather than the Diet Law. The roles of the House of Councillors are expected to include reflecting the diversity of public opinion, carrying out long-term research activities, and exercising control over the executive branch. It would not be advisable to put the Lower House in charge of budget deliberations and the Upper House in charge of reviewing the final accounts because of concern as to whether the Upper House, with its weak powers, could exercise control effectively. He also expressed the opinion that the existing bicameral system can be affirmed in terms of constitutional policy.

Mr. MORISHITA and Professor TADANO were then questioned on matters such as electoral systems for members of the two chambers; the significance of having a House of Councillors; the ideal form of the bicameral system and the reflection of the will of the people; the division of roles between the two chambers; the positioning of the Board of Audit as an adjunct to the Diet; the auditing perspectives used by the Board of Audit; and the independence of the Board of Audit.

In the course of the free discussion based on the interpellation of the informants, the following were among the points about which comment was made: the need to maintain the bicameral system, the need to view the current situation in terms of constitutional norms, and the need to make better use of the merits of bicameralism.

## Section 3 Open Hearings

### 1) 159th Diet Session, First Open Hearing (May 12, 2004)

(Morning)

Main points of statements by speakers
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#### **INOGUCHI Kuniko (Professor, Faculty of Law, Sophia University)**

Professor INOGUCHI expressed the following opinions. (1) In its multilateral diplomacy in the field of international security, Japan is well regarded. (2) Our starting point in examining the Constitution should be a positive evaluation of the efforts of the postwar Japanese state and society and a deep awareness of the valuable presence in the world earned by those efforts. (3) The ideas proclaimed in Article 9, Paragraphs 1 and 2 are widely known in the international community, and they have gained a special regard. Japan should not undervalue its own place in the world; indeed, we should actively communicate our message, trusting in its ability to inspire the international community, and we should place a higher value, in our diplomacy, on the willingness to accept diversity that other nations have shown by affirming Japan's stance. If public opinion ever turns in favor of revising the Constitution, while maintaining the basis of Article 9 it would be worth studying the possibility of adding a concise reference to an armed organization for self-defense purposes which would be maintained by Japan as a peace nation. But we should be cautious about incorporating into the Constitution matters more properly handled in separate laws and making complex revisions based on predictions of the future international situation or UN operations.

#### **KAWAMOTO Yuko (Professor, Graduate School, Waseda University)**

Professor KAWAMOTO stated that restrictions on economic freedoms have so far been applied without serious mistakes and went on to express the following opinions. (1) The Constitution should not regulate economic policy in detail. (2) Rather than stipulating in the Constitution that there will never be a budget deficit, we should stipulate that a budget deficit will never be concealed. (3) We should make clear provision in the Constitution for the government's duty to disclose information about any actions it takes that could ultimately place a burden on the public. (4) Since the existence of a major discrepancy in the weight of a single vote means that the Diet does not meet the necessary conditions to be the organ responsible for public policy-making, we should take steps to review the imbalance of Diet seats.

#### **INOKAWA Kinzo (former Secretary General, Gunma Forestry Improvement and Extension Association)**

Mr. INOKAWA stated that, with regard to reviewing the bicameral system, we need to start by considering what should be done to enable the Diet to function efficiently, particularly the issue of what form the House of Councillors should take. Accordingly, he expressed the following opinions. (1) We should divide the powers of the two chambers so that deliberations on the budget are the sole

prerogative of the House of Representatives and the audit is the sole prerogative of the House of Councillors. (2) We should shift certain powers relating to the judiciary to the Upper House, such as the appointment of the Chief Justice of the Supreme Court and the attestation of general and special amnesty and related dispensations. (3) Unless we can rework the system along lines that give the Upper House an identity of its own, we will have no choice but to adopt a unicameral system. (4) In the event that we shift to a *do-shu* system, the Upper House could be replaced by a new second chamber composed of representatives of each of the *do-shu*.

#### Main points of questions to speakers

The following were the matters about which members asked speakers to give their opinions: the position of "human security" in the Constitution; pros and cons of making explicit provisions in the Constitution concerning sound public finances; the relationship between the bicameral system and a decentralized state of the federal type; the relationship between collective security under the UN and the Constitution; pros and cons of stipulating the government's duty or responsibility to release information to the public; the relationship between multilateralism and the unilateralism of the United States; and views on the right to live in peace.

#### (Afternoon)

#### Main points of statements by speakers

##### **OGUMA Eiji (Assistant Professor, Faculty of Policy Management, Keio University)**

Professor OGUMA expressed the following opinions. (1) Although the Occupation forces took a strong initiative in its enactment, most of the conservative camp at the time welcomed the Constitution, so we should not regard it as having been "imposed." (2) Spurred by the Cold War and the Korean War, the United States switched from its policy of disarming Japan to rearming it as an ally against communism. This American demand for rearmament provoked the reaction, not only from reformists but also from some conservatives, that we were becoming mercenaries for the Americans. In view of this, revision of Article 9 could (1) cause an escalation of military demands on Japan by the U.S. government, (2) provoke a strong negative reaction among the American public and neighboring countries, which are wary of Japan becoming a military superpower; and (3) unsettle the other Asian nations. He also expressed his hope that the nation will pursue a thoughtful constitutional debate, taking into account such factors as trends in the international community, and not an emotional debate about "enacting a constitution of our own."

##### **FUNABIKI Takeo (Professor, Graduate School, The University of Tokyo; cultural anthropologist)**

Professor FUNABIKI expressed the following opinions. (1) Article 9 can be described as a product

of U.S. interests combined with the idealism of humankind. As a result, it presents an unusual scheme, that is, nonrecognition of the "right of belligerency," which is a right possessed ipso facto by all independent states. (2) Article 9 was designed to be meaningful as part of a package, the other part of which is the Japan-U.S. Security Treaty. Thus, it is a fallacy to think that Japan's "Peace Constitution" was the sole factor that served as a deterrent to war. (3) With the end of the Cold War, the circumstances in which the defense of Japan by the United States was an unchallengeable premise no longer exist. At this point, the debate over Article 9 has taken on real substance. He further expressed the view that, as a result of dramatic improvements in military technology, wars are already effectively impossible, at least among advanced nations. The right to belligerency is not only useless but it is also dangerous in that it might lead to wars other than a war for self-defense. Therefore, while the revision of Article 9 is logically consistent with "the way of warfare and the nation-state in the initial period of industrial civilization" over the last two centuries, it would not benefit Japan in the future. The debate over Article 9 that we have persevered in carrying on is a great asset, and the continuation of such discussions on this basis is a way of ensuring that Japan is a nation that can be truly respected by the rest of the world.

**YAMAZAKI Masakazu (President, Toa University)**

Dr. YAMAZAKI expressed the view that ideological confrontations ("postwar democracy versus prewar patriotism," "a Constitution written by the Occupation forces versus a Constitution of our own," and so on) must not be superimposed on the constitutional revision debate. He stated the view that the two urgent issues that face Japan are: (1) whether Japan should state explicitly that it possesses the right of self-defense and (2) whether we should declare that we are prepared to contribute to the maintenance of world peace. The debate should focus on these two points and should be conducted in practical and concrete terms. To that end, we should avoid an across-the-board debate on revision of the whole Constitution. We should revise legislation so as to facilitate constitutional amendments and open the way to the passage of individual constitutional amendment clauses, as is done in the United States.

Main points of questions to speakers
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The following were the matters about which members asked speakers to give their opinions: provisions in the Constitution concerning the Diet and election of its members; pros and cons of making explicit provision concerning patriotism in the Constitution; issues to be addressed in the formation of an East Asian regional community; the ideal form of Japan's future foreign policy; views on the establishment of an international defense alliance against terrorism; and the possibility of building peace and security from a position of multilateralism in Europe and Asia.



## 2) 159th Diet Session, Second Open Hearing (May 13, 2004)

Main points of statements by speakers
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### **YOSHIDA Kenichi (lawyer)**

Mr. YOSHIDA expressed the following opinions. (1) The war launched in Iraq by the United States is an illegal war. (2) The dispatch of Self-Defense Forces to Iraq for the purpose of cooperating in this illegal war is a violation of Article 9 and Article 98, Paragraph 2. (3) The government has even cast aside its own explanation that the overseas dispatch of the Self-Defense Forces is constitutional because it does not engage in use of force. Moreover, by transporting supplies for the U.S. and British armies that are engaged in warfare and by transporting U.S. soldiers carrying weapons, it is abetting the use of military force. This shows a disregard for the very foundation of constitutional government, which is simply unacceptable. The challenge for Japan is to realize the pacifist principles of its Constitution and to strive to achieve peaceful international relations without relying on military means. There are moves to make express provision for such new rights as environmental rights and the right to privacy by means of constitutional "amendments," but we should think first about implementing the existing Constitution by making the fundamental human rights that are guaranteed therein more substantial and putting those provisions into practice.

### **ANBO Katsuya (lecturer, Japan Electronics College)**

Mr. ANBO expressed the opinion that rapid technological advances are changing the world and that, when discussing a constitution for the new era, we first need to gather information about the progress of technology. In view of this, he made the following proposals. (1) Article 21 should be revised together with the improvement of legislation for gathering, analyzing, and storing information. (2) Taking cyber war also into account, we should revise Article 9 so that Japan can possess a military organization with "the mission of guaranteeing the sovereignty and independence of Japan, protecting its territory, and safeguarding the fundamental human rights of the people." (3) In the Preamble of the Constitution, we should incorporate statements to the effect that the peace of the nation shall be guaranteed and the welfare of the people promoted, that Japan renounces wars of aggression, and that Japan shall contribute to international peace cooperation in keeping with the nation's strength.

### **HIDAKA Sayaka (former graduate student, Shikoku Gakuin University)**

From the standpoint that it is important to ensure that the ideals proclaimed in the Preamble take root, Ms. HIDAKA expressed the following opinions. (1) The Preamble's statement about the "right to live in peace" points toward what is now known as "human security" and is a provision that was ahead of its time. (2) Today, the pacifist principles set forth in the Preamble and Article 9 are becoming powerful ideals guiding the international community, and the realization of these ideals is the greatest task of government. Accordingly, she stated that (1) Japan can make active contributions to the peace and stability of the world for the very reason that it has proclaimed the right to live in

peace in its Constitution. We cannot build a peaceful society by revising the Preamble or Article 9. (2) Rather, we should be proud of the fact that Japan was right to clearly renounce war, ahead of the rest of the world. Our only proper path is to value the spirit of the Constitution and hand it on to future generations.

Main points of questions to speakers
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The following were the matters about which members asked speakers to give their opinions: the enactment of a national referendum law for constitutional amendment and relaxation of the requirements in the constitutional amendment procedures; pros and cons of establishing a constitutional court; the relationship between the Japan-U.S. alliance and the principle of international cooperation; pros and cons of explicit provision concerning international contributions in the Constitution; the relationship between a cyber force and conventional military forces; the status and role of the Constitution of Japan in the world; the relationship between the public nuisance created by U.S. military bases and human rights such as environmental rights; and ideas of a vision for Japan in the 21st century.

### **3) 161st Diet Session, First Open Hearing (November 11, 2004)**

**(Morning)**

Main points of statements by speakers
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#### **ASAOKA Mie (President, Kiko Network; lawyer)**

Ms. ASAOKA expressed the following opinions. (1) Human rights that have only recently come to be recognized, including environmental rights and the rights of consumers have been treated as new human rights in judicial precedents and legislative measures based on constitutional provisions such as Article 13, although this treatment is inadequate. (2) To hold a referendum on a package of constitutional amendments which includes two mutually incompatible items, namely, the revision of Article 9 and the addition of environmental rights and other human rights provisions, is not acceptable as it would interfere with the people's freedom of choice, among other reasons. (3) Environmental rights should be achieved by concrete legislative or administrative measures, not by amending the Constitution. Any provision that might be made in the Constitution would inevitably be abstract, giving rise to concerns about the expansion of the discretionary powers of the legislative and executive branches. She also said that (1) the argument that we should revise Article 9 in order to facilitate international cooperation is dangerous, as this would mean recognizing uses of force that exceed the limits of self-defense and that even verge on acts of aggression; (2) we should maintain Article 9 also for the reason that war has a great impact on environmental rights, as it does on other human rights; and that (3) to change the principle of pacifism, which is a fundamental element of the Constitution, would exceed the bounds of constitutional revision.

**UEMATSU Haruo (President, Japan Medical Association)**

Mr. UEMATSU expressed the following opinions. (1) Over recent years, harmful effects have resulted from excessive respect for the individual, such as the rising suicide rate. Under these social conditions, we should make the principle of respect for life the foundation of the Constitution. (2) As part of the right to a certain standard of living, the universal health insurance system should be firmly maintained in the future, and we should make the same health care available to illegal foreign residents as to citizens. (3) Measures should be taken to improve the working conditions of health care personnel and to provide a safe environment free from medical mishaps. (4) There is a growing awareness of human rights among those directly involved in medical care, but there is still room for improvement. We need to educate people about human rights, and we might also consider including a declaration of the principle of reverence for life in the Constitution or in legislation. (5) The limits within which patients make their own decisions on terminal care should not be expanded indefinitely. Active euthanasia and assisted suicide should not be permitted, and that “death with dignity” should be recognized only under strict conditions. (6) Since scientific advances such as the analysis of the human genome bring with them a risk of creating new forms of discrimination, we need to provide education that recognizes human diversity. He further stated (1) as a medical worker, he is opposed to the use of force and to medical personnel being required to cooperate in a military emergency and (2) we should aim to interpret the Constitution as impartially as possible within the existing framework and then actively think about modifying it in part, but only in those instances where a result compatible with social realities cannot be obtained solely by interpretation of existing provisions. We should also consider making explicit provision for a comprehensive concept of “the dignity of life and the body.”

**TERUOKA Itsuko (Professor Emeritus, Saitama University)**

Professor TERUOKA expressed the following opinions. (1) We have the Peace Constitution to thank for the fact that the guarantee of human rights, etc. has been achieved, albeit imperfectly. The guarantee of human rights and Article 9 form an integral whole. (2) It is those nations that know how to preserve peace and protect human rights at home that have the most to contribute to others. (3) The government should assist the people to become self-reliant, but instead it has encouraged competition in economics and education in a way that has widened social inequalities. (4) Article 9 has not lost its substance. It bars the way to Japan’s joining the United States to make war, resulting in a human rights culture that promotes disclosure of information and political participation. (5) If Article 9 is revised, there is also a danger of losing civilian control over the Self-Defense Forces. Regarding the “summary of points for discussion” of the Liberal Democratic Party’s Project Team for Constitutional Revision, she stated that (1) saying that Article 24, which stipulates the essential equality of the sexes, should be reviewed from the perspective of emphasizing the values of family and community, goes against the trend to eliminate discrimination against women, and (2) The Project Team’s summary proposes to amend “the public welfare” to “the public interest,” but an “interest” tends to be short-term and is liable to be interpreted to suit the authorities.

Main points of questions to speakers
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The following were the matters about which members asked speakers to give their opinions: pros and cons of providing for environmental rights in the Constitution; the relationship between the progress of science and technology and the dignity of life; the requirements for constitutional amendments and the mechanism for referendums; the ideal form of provisions regarding the right to a minimum standard of living and medical treatment; the rights of children as autonomous subjects; the advisability of restricting the freedom of overseas travel; the current state of public finances and the ideal form of the social security system; the relationship between stipulating duties in the Constitution and modern constitutionalism; and the relationship between international contributions and Article 9.

**(Afternoon)**

Main points of statements by speakers
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**NAKASONE Yasuhiro (former Prime Minister)**

Mr. NAKASONE proposed the following amendments to the present Constitution. (1) The Preamble should set forth an ideal vision for the future of the nation of Japan, based on the lessons of the past. (2) The Emperor should be made “symbolic head of state under the sovereignty of the people.” (3) Paragraph 1 of Article 9 should be maintained as it is, provision should be made in Paragraph 2 for a defense force that would provide self-defense, Paragraph 3 should provide for participation in international cooperation activities, which may include the use of force, as stipulated in a basic law on security; and Paragraph 4 should provide for civilian control. (4) Under the rights and duties of the people, new provisions should be established setting forth, among other things, rights concerning the environment, academic and creative freedom, and the responsibility to protect the peace and independence of the nation. (5) We should provide for popular election of the prime minister and for executive power to be vested in the prime minister. (6) We should establish a constitutional court. (7) We should establish a provision for emergency situations. (8) We should establish a provision calling for the realization of balanced budgets. (9) The requirement for initiating a constitutional amendment in the Diet should be changed to a simple majority. He also stated that, for the first round of constitutional revision, there is a need for a compromise proposal capable of winning the support of a two-thirds majority. He pointed out that, considering that the Constitution was enacted under abnormal conditions under the Occupation and that the Cold War had ended, coupled with the changes that have occurred in the international situation since September 11 and the fact that defects have been revealed in the existing Constitution, there is a growing movement in favor of constitutional revision. He expressed his hope that Diet members would fulfill their responsibility in this national undertaking.

### **MIYAZAWA Kiichi (former Prime Minister)**

Looking back over the five and a half decades since the Constitution of Japan was promulgated, Mr. MIYAZAWA expressed the following opinions. (1) The enacted Constitution was clearly created at the initiative of the Occupation forces, but we might have escaped the criticism that it was enacted under the Occupation if we had provided an opportunity for the people to express their will again after Japan's independence was restored. (2) At the time, although the Constitution of Japan was written in a strange Japanese, or what one might call translationese, many Japanese have grown up accepting the words of the Constitution as their own, and it is not only the language that has changed, but Japan itself. (3) The Supreme Court has played an important role in the interpretation and application of the Constitution. (4) Japan owes the growth that it has been able to achieve to the existence of the present Constitution. In view of the above, he summed up his position as follows. (1) Since the Constitution of Japan is written flexibly, problems can be dealt with in terms of how it is applied. (2) Situations may arise in which we have no choice but to change the Constitution; in that case, the matter should be decided by the people.

### **TAKEMURA Masayoshi (former Governor of Shiga Prefecture; former Minister of Finance)**

Mr. TAKEMURA stated his view that the Constitution, based on the principles of popular sovereignty, respect for fundamental human rights, and the pacifist ideal of the renunciation of war, has made Japan what it is over the past 60 years. In particular with regard to security, he expressed the following opinions. (1) Since Article 9 is the image that Japan presents to the world, we should not change it lightly. (2) Even if explicit provision for a self-defense is made, we should limit ourselves to the minimum possible self-defense capacity. (3) Participating in international collective security is a concrete way to realize the ideal of international cooperation declared in the Preamble of the Constitution, but the use of force should still be avoided. In view of the above, he made the following proposals for a new Constitution. (1) The Japanese traditional ideal of "environmentalism" should be enshrined in the Preamble and in the main text as an element of national identity that ranks beside the Emperor-as-symbol system. (2) As a non-military international contribution, Japan should make "environmental security," pledging active engagement on behalf of the global environment, the image of Japan, together with pacifism. (3) In order to rein in debt caused by irresponsible finances, clear provision should be made regarding the responsibility to conduct ongoing sound fiscal administration. (4) Local autonomy should be established.

<b>Main points of questions to speakers</b>
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The following were the matters about which members asked speakers to give their opinions: reasons why the Constitution has never been revised from its enactment to the present day; the ideal vision of Japan in the event that a constitution were to be created which sets forth a vision for the nation of

Japan in the 21st century; the significance of Article 9 and what politicians and the public should do to ensure that the Article is put into practice; doubt concerning the view that it is necessary to revise the Constitution in response to the “great transformation that society is undergoing”; and the need to form a grand coalition between ruling and opposition parties in order to revise the Constitution.

#### **4) 161st Diet Session, Second Open Hearing (November 18, 2004)**

**(Morning)**

Main points of statements by speakers
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##### **TAKATAKE Kazuaki (Executive Director [2004] and President [2005], Junior Chamber International [JCI] Japan)**

According to Mr. TAKATAKE, the greatest problem presented by the Constitution is the fact that, psychologically, the Japanese people, do not fully acknowledge it as their own. He stated that although we should not reject the existing Constitution on the grounds that it was “imposed” by the GHQ, he hardly thinks that a constitution, with no consideration whatsoever of Japan’s customs, traditions, and culture, is suitable to be the constitution of the nation. In view of this, he expressed the following opinions. (1) We need an active, wide-ranging constitutional debate on an ideal vision for Japan in the 21st century, taking in such topics as new rights. (2) In order to create a “constitution by popular consensus,” constitutional debate should take place on a national scale. (3) JCI Japan is attempting to stimulate discussion from the perspective of the people in order to help realize the ideals of world peace and the creation of an independent Japan. (4) Rather than take the half-baked approach of modifying the American-made Constitution, we should create a new constitution that embodies the traditional Japanese value system and strikes a proper balance between world peace and the national interest.

##### **TERANAKA Makoto (Secretary General, Amnesty International Japan)**

From the standpoint that Amnesty International is an international organization for the protection of human rights and its core values are impartiality and nonviolence, Mr. TERANAKA stated that we should place importance on synergy between international human rights standards and the human rights provisions in the Japanese Constitution, particularly in view of the following: (1) Japan has signed the principal international treaties, but its negative attitude concerning implementation and restrictive interpretations are a cause for serious concern. (2) In view of a recent incident, which was the first case involving “prisoners of conscience” in Japan, the freedom of speech of persons who oppose decisions of public authority should be fully guaranteed. (3) Since the human rights of foreigners are not adequately guaranteed in the existing Constitution, there is an urgent need to put legislation in place to ban blatant racial discrimination. In addition, he stated that (1) those in power have a duty to protect rights and (2) it is necessary to view human rights according to various categories to keep sight of whose rights are at stake.

**HINOHARA Shigeaki (Chairman of the Board and Honorary President, St. Luke’s International Hospital)**

Dr. HINOHARA stated that, as a doctor, he is aware that everybody on earth is put together in the same way and that, particularly in this time of rapid scientific and technological advances, we must remember how precious life is and learn to live in harmony with all other living creatures and with other peoples. However, the actual international situation today is very different from the international society envisaged in the Preamble of the Constitution. Japan has been diplomatically passive as a defeated nation, and the United States and terrorist groups have become caught up in a chain reaction of hatred. The Japanese people should be asked whether they are prepared to pursue a campaign of nonviolence in the international community, provide leadership, and realize the “honored place” stated in the Preamble. To this end, a system should be set up whereby college graduates serve for a certain length of time in a developing nation. Such a system would help form character and would enable Japan to contribute human resources to the international community, just as many people from other countries worked selflessly to assist Japan after the war.

Main points of questions to speakers

The following were the matters about which members asked speakers to give their opinions: pros and cons of introducing the popular election of the prime minister; problems related to freedom of expression, such as publication of names of criminal suspects in the media; the relationship between the Constitution and Japan’s history, traditions, and culture; the form Japanese leadership for world peace should take; pros and cons of including provisions concerning bioethics in the Constitution; the position of the human rights of foreign nationals in the Constitution; the status of implementation of international human rights treaties in Japan; and the relationship between the home and family and the Constitution.

**(Afternoon)**

Main points of statements by speakers

**EBASHI Takashi (Professor, Faculty of Law, Hosei University)**

Professor EBASHI expressed the following opinions. (1) With the restoration of diplomatic relations with China, the element of reflection on the fact that Japan had invaded other Asian nations and committed crimes was added to the Constitution’s pacifist ideals. In this way, Japanese society and the citizens of Japan breathed new life into the Constitution. As pacifist ideals for the 21st century, reflection on the war and reconciliation, friendship, and cooperation in East Asia should be incorporated in the Constitution. (2) The Occupation forces presented human rights to the Japanese bureaucracy, and the bureaucracy in turn presented them to the citizens. However, citizens went to

court to pursue the state's responsibility to put human rights into effect and, against a background of civic activism, progress has been made in the actualization of human rights in government policies. In view of this, it is necessary to stipulate in the Constitution that the government is responsible for putting human rights into effect and that the responsibility for guaranteeing human rights lies with the national administration and the courts. (3) The failure of the system of national administration led by the central bureaucracy in Japan has been overcome by decentralization, and local autonomy under heads of local government is increasing thanks to citizen activism. In this way, citizen movements have breathed new life into the Constitution's provisions for local autonomy. It is to be hoped that this Commission will draw on the body of research that has been produced by citizens and will establish the responsibility to take the quality of citizens' lives into consideration at the municipal government level and then at the central government level. In addition, he stated that in an age where the public sphere is shared among the government, the market, and civil society, and the central and local governments cooperate as equals, the Constitution should be a set of fundamental principles, including a statement of values which can be held in common by all three of these sectors—the government, the market, and civil society.

**PEMA Gyalpo (Professor, Faculty of Law, Toin University of Yokohama; Professor Emeritus, Gifu Women's University; Head Officer, Tibet Culture Centre International)**

Professor PEMA stated that Japan is a democratic nation under the rule of law and that he believes that he has Constitution to thank for the comfort, convenience, and freedom that he has enjoyed while living in Japanese society. He stated his view that (1) in some ways, Article 9 is unrealistic as a basis for Japan's existence in the international community of the future in that it is a unilateral renunciation of war and amounts to a mere declaration in the absence of an international community prepared to respect it and a body of international law to guarantee it and (2) the international community today is founded on power and on *faits accomplis*. He also expressed the following opinions: (1) Viewed in the light of the Constitution's text, the existence of the Self-Defense Forces can only be called unconstitutional. We must make efforts ourselves to protect peace if we are to enjoy its blessings, and that will necessitate the revision of Article 9. (2) Now that the Cold War structure has collapsed, if Japan wishes to maintain its existing Constitution, it must help to create the appropriate international environment. (3) It is the Japanese people with whom sovereignty resides and the Diet members who represent them who should consider the constitution as something that can contribute to the future of Japan, Asia, and all humanity, bearing in mind that it is their descendants who will enjoy its benefits and be subject to its constraints.

**MURATA Hisanori (Professor, Kansai University School of Law)**

Professor MURATA pointed out that constitutional democracy is the highest form of government known to humankind. As a set of authorizing norms, it legitimates government authority and as a set of restrictive norms it sets limits to government authority. The Constitution is the supreme law in that it contains the highest values of the nation and the society. He went on to express the following opinions. (1) Regarding the faithful reflection in the Diet of the will of the people, which is a



prerequisite for the democratic interpretation and application of the Constitution, there are a number of problems, such as the fact that the single-seat constituency system is not designed to reflect public opinion when it is diverse. (2) Article 9 and the principle of the separation of religion and state have been interpreted in ways which ignore the Constitution's normative nature as a compilation of authorizing norms and restrictive norms. (3) Since the Constitution is a set of restrictive norms whose purpose is to restrain "authority" and a general provision on human rights already exists in Article 13, new human rights can be recognized even in the absence of explicit provisions, so there is no need to revise the Constitution for their sake. (4) The Constitution authorizes the state to make contributions to peace by means that do not involve force, and such efforts will lead to increasing ties of friendship within the international community. (5) What is needed at this time is not revision but democratic interpretation and application of the Constitution.

Main points of questions to speakers
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The following were the matters about which members asked speakers to give their opinions: the position of the Self-Defense Forces in the Constitution; the relationship between the Emperor-as-symbol system and the head of state; the problem of the imbalance of Diet seats; the necessity of guaranteeing the human rights of foreign nationals in the Constitution; pros and cons of inserting the concept of responsibility in the Constitution; the historical background of the Constitution's pacifist principles; and the significance of the right to live in peace.

## 5) 161st Diet Session, Third Open Hearing (November 25, 2004)

### (Morning)

Main points of statements by speakers
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#### **SHIRAISHI Masateru, (member, Adachi Ward Assembly [Tokyo])**

Mr. SHIRAISHI expressed the following opinions. (1) The Constitution should stipulate clearly that the Emperor represents the nation as its head of state, and there is no need to limit the Imperial succession to males, since the public today regards gender equality as a matter of course. (2) We should stipulate the maintenance of war potential for the purpose of self-defense in Article 9, Paragraph 2, and add a third paragraph to Article 9 stating that force may be used at the request of the United Nations. (3) The words "The right to own or to hold property" in Article 29, Paragraph 1, should be changed to "The right to own or to hold property which is essential to the livelihood of the people," and property rights should be allowed to be restricted not only by laws but also by "basic ordinances." (4) To establish local autonomy, the powers of local governments should be clarified and a *do-shu* system should be introduced. We should clearly state the right of local governments to enact their own legislation and permit them to establish "basic ordinances" which would take precedence over laws and over ordinances enacted by the *do-shu*, to the extent that they did not

infringe powers proper to the national government and the *do-shu*. (5) The requirement of a concurring vote of two-thirds or more of all the members of each House to initiate a constitutional amendment should be reduced to one-half.

**SHINOHARA Hiroaki (company employee)**

Mr. SHINOHARA expressed the opinion that in regard to the Diet's legislative activity, Cabinet-sponsored bills should be presented in a simpler form with the expectation that they will be amended in the Diet, and that since a longer deliberation period will be needed for this purpose, the Diet should remain in session year-round. Regarding members' bills, he argued that they should be utilized in areas where it is difficult for the government to make proposals and that they are suited to programmatic contents which lay out a broad framework. As for the Diet's administrative oversight, he stated the view that the Diet should carry out investigations in conjunction with the Board of Audit and that we should also consider the possibility of making the Board of Audit an auxiliary of the Diet. Furthermore, he pointed out that, since it has been left to the Cabinet Legislation Bureau to interpret the Constitution, a constitutional court should be created and that political responsibility should be made clear by appointing the heads of the Cabinet Legislation Bureau and the Legislative Bureaus of both Houses from among members of the Diet. On the condition that the two Houses continue to deliberate independently, their supporting organs should be merged as far as possible. He also stated his view that those parts of the Constitution that have become divorced from reality should be revised, with priority given to revisions on clerical parts.

**HIRATSUKA Akifumi (personnel director of an electrical equipment manufacturer)**

Mr. HIRATSUKA expressed the following opinions. (1) The possibility of discussing constitutional revision in the Diet should not be ruled out. (2) With regard to holding a national referendum on constitutional amendments, it is necessary the Diet to consider in advance such matters as who should be eligible to vote, the voting method, and the validity of approval in the event of a low voter turnout, and to give these matters concrete form. (3) Before we can revise the Constitution, we need to know its contents and what they mean. The government should endeavor on a daily basis to ensure a deeper understanding of the Constitution among the public, and the public also have a duty to inform themselves. (4) Sufficient opportunities for learning about the Constitution should be secured as part of compulsory education to ensure that the younger generation takes an interest in the Constitution and acquires a fundamental understanding of issues that we should all think about, such as the duties of the people and the public welfare.

Main points of questions to speakers
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The following were the matters about which members asked speakers to give their opinions: pros and cons of use of the right of collective self-defense; restriction of property rights; pros and cons of keeping the Diet in session all year long; pros and cons of establishing a constitutional court; the

ideal form of education on the Constitution as part of compulsory education; the meaning of providing for the Emperor as head of state; the relationship between Article 9 and international contributions; pros and cons of extending the deployment of the Self-Defense Forces in Iraq; the strengthening of administrative oversight functions and the Board of Audit; the reasons why courts do not exercise the power of judicial review adequately; and evaluation of the provisions for constitutional amendments.

**(Afternoon)**

Main points of statements by speakers
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**YAMADA Junpei (association staff member)**

Mr. YAMADA expressed the following opinions. (1) Rights that were not foreseen when the Constitution was enacted, such as the right to privacy, should be given explicit constitutional protection. (2) The powers of the House of Councillors should be strengthened and full play given to the House's special nature as "the seat of common sense." (3) It is too early to introduce popular election of the prime minister because of the risk that elections would become a popularity contest. (4) By strengthening the power of the judiciary, the judicial branch could actively decide constitutional questions without creating a constitutional court. (5) If the *do-shu* system is introduced, there is a risk that people will lose their love of their local heritage. This would be a step backwards in terms of both resident self-government and self-government by local entities. In addition, he stated his view that, because the Constitution is the most important basic law for the people, it takes a national referendum to revise it and that the Japanese people are looking to the Research Commission on the Constitution to perform the role of providing information and a forum for debate.

**SEIRYU Miwako (university student)**

Ms. SEIRYU expressed the opinion that war is indiscriminate murder and should not be condoned for any reason. She pointed out that Article 9 is imbued with the wisdom and the prayers of many victims of war, in other Asian countries and in Japan, and that if every nation observed the principle that "war potential will never be maintained" in Article 9, Paragraph 2, a world without war could become a reality. The fundamental solution to war provided by Article 9 is the right path. In view of this, she argued that operations of the Self-Defense Forces in Iraq violate Article 9 and Japan is coming closer to engaging in war. As reflected by discussions at the UN Disarmament Conferences, in the context of the international community's desire for peace, Article 9, Paragraph 2 is a beacon of hope. As Japan is the only nation to have experienced atomic attack, the role that our country is being called on to play in the world is to seek peaceful negotiated solutions, not to resort to force. Our ideal should be to rid the world of war and we should not change Article 9 without first trying make this ideal a reality.

**MORI Nobuyuki (retired)**

Mr. MORI stated that constitutional provisions such as Article 9 and Article 25 often come up in conversation among older people because they affect the social security system, and that the Constitution is of immediate personal concern to them. In view of the experience of World War II, which took the lives of so many people, the Constitution was welcomed with joy as a peace constitution. Accordingly, he expressed the following opinions. (1) The Constitution is underpinned by the desire for peace and democracy and by efforts to achieve these things. Today, it shines even brighter than it did when it was created. (2) Recently, there have been moves to change the Constitution, but its ideals, especially those of Article 9, are deeply rooted among the Japanese people and are shining more brightly than ever on the international scene. We must maintain Article 9 so as never again to involve the people of Japan and the world in the tragedy of war. (3) Before advocating revision, we should first check to see how far the ideals and goals of the Constitution have been realized. That is our duty as stated in Article 99 (the obligation to respect and uphold the Constitution). (4) The 21st century should be a century in which the ideals and goals of the Constitution are made real. We should move forward, learning from history so that we do not repeat the same mistakes.

Main points of questions to speakers
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The following were the matters about which members asked speakers to give their opinions: the level of public awareness of the Commission's activities; pros and cons of providing for the Self-Defense Forces in the Constitution; methods of constitutional amendment such as voting on all amendment clauses in a single referendum or voting on each one separately; the problem of the threat of a missile attack by North Korea or an intrusion of a Chinese submarine into Japan's territorial waters; the differences in the constitutional debate between the generations and the necessity of handing on the ideals of the Constitution to future generations; and that the realization of new human rights should be pursued through legislation.

## Section 4 Local Open Hearings

### 1) Sendai Open Hearing (April 16, 2001)

Main points of statements by speakers
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**TEJIMA Norio (Chairman, Sendai Association of Corporate Executives)**

Conditions in Japan and overseas have changed substantially since the Constitution was formulated, and the Constitution should address them.

**KANO Fuminaga (Mayor of Kashimadai Town, Miyagi Prefecture)**

Fostering the development of municipalities firmly rooted in decentralization is what will preserve and nurture the Constitution.

**SHIMURA Kensuke (Professor Emeritus, Tohoku University)**

As regards environmental issues, we should not take a human-centered approach, but also take co-existence with other forms of life into consideration.

**TANAKA Hidemichi (Professor, Faculty of Arts and Letters, Tohoku University)**

Based on an outlook rooted in Japan's traditional thinking, the Constitution should be revised to enable Japan to devote its energies to world peace.

**ODANAKA Toshiki (Professor, School of Law, Senshu University; Professor Emeritus, Tohoku University)**

The ideological and idealistic structure of the present Constitution gives it a systematic coherence, and the Constitution plays a role in coping with contemporary issues.

**KUBOTA Manaе (Representative, Women's Net to Support 1946 Constitution)**

The ideals of the Constitution should be protected, given that it recognizes the rights of women, and includes the internationally acclaimed Article 9.

**YONETANI Mitsumasa (Associate Professor, Tohoku Fukushi University)**

We should not create a constitution which transcends society; we need to revise the Constitution into something more familiar and accessible.

**HAMADA Takehito (instructor, Hirosaki Gakuin Seiai High School)**

Article 9 is a source of dreams and ideals for teachers who wish to reach out seriously to their students.

**ENDO Masanori (instructor, Senshu University Kitakami Senior High School; Representative, Shimin Study Association)**

For the people to become the true sovereigns of the nation, the procedure for revising the Constitution should be improved quickly.

**SAITO Takako (Chairwoman, Peace Activity Committee, Miyagi Consumers' Co-operative Society)**

What should be done now is not to revise the Constitution, but to abide by it faithfully.

Summary of questions by members
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The following were among the matters about which members asked speakers to give their opinions: the relationship between the Constitution's provision that public officials have the obligation to respect and uphold it, and its provision for procedures for its amendment; Article 9; environmental rights; the public disclosure of information; the popular election of the prime minister; and a constitutional court system.

After the questions by members, the following were among the comments made from the floor: the view that "I would like to ask the Commission to inform the public more widely of its proceedings," and the view that "I would like more opportunities to be provided for direct discussion between Diet members and the public about fundamental national issues."

**2) Kobe Open Hearing (June 4, 2001)**

Main points of statements by speakers
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**KAIHARA Toshitami (Governor of Hyogo Prefecture)**

In the 21st century, Japan should make an international contribution by providing the "art of peace" for resolving problems in such areas as medical care, welfare, and disaster prevention, and decentralization should be pursued.

**SHIBAO Susumu (Mayor of Kawanishi City, Hyogo Prefecture)**

It is important that the Constitution be put into practice in local government administration, and we should take steps to protect children's human rights and to cooperate with the international community for the attainment of peace and human rights.

**SASAYAMA Kazutoshi (Mayor of Kobe City, Hyogo Prefecture)**

A lesson learned from the Great Hanshin-Awaji Earthquake is the importance of giving adequate powers to mayors of municipalities in times of disaster, and of assisting disaster victims based on the right of livelihood contained in the Constitution.

**OHMAE Shigeo (Chairman of the Board of Trustees, Ohmae Gakuin)**

The good qualities of the Japanese people that are highly regarded worldwide should be looked at again, and the Constitution should be amended in such ways as to make express mention of the fact that Japan is a constitutional monarchy, and to include provisions concerning obligations.

**URABE Noriho (Vice President, Kobe University; Professor, Graduate School of Law, Kobe University)**

From the perspective of “human security,” instead of allocating huge amounts to military preparedness, Japan should play a leadership role worldwide in tackling situations such as large-scale disasters and food and energy problems.

**NAKAKITA Ryutaro (lawyer)**

Overcoming the mistakes of the 20th century, Japan should implement policies to give life to its Peace Constitution, including by enacting into law the Kobe-formula nuclear-free policy, and transforming the Japan-U.S. Security Treaty into a friendship treaty.

**HASHIMOTO Akio (Chairman, Hyogo Prefecture Medical Association)**

The Constitution should include provisions concerning the duties of the state in times of major disaster, should improve the guarantee of the right to livelihood, and should make express provision to guarantee the people’s “right to health.”

**KOKUBO Masao (Mayor of Hokudan Town, Hyogo Prefecture)**

The Constitution should be revised in line with changes in the times, and should include explicit mention of such matters as that the Emperor is the head of state, that Japan has the right of belligerency in self-defense, and that it can maintain military forces for defensive purposes.

**TSUKAMOTO Hideki (corporate executive)**

In view of changes in social conditions, Japan should embark upon constitutional revision, dividing the process into the stages: “items to be revised immediately,” “items to be added,” and “items to be discussed in the future.”

**NAKATA Narishige (Associate Professor, Osaka Institute of Technology)**

The Constitution provides the foundation for citizens’ actions, and so constitutional revision must not be discussed hastily, and the government should not make light of the Constitution, but should shift reality closer to its ideals.

Summary of questions by members
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The following were among the matters about which members asked speakers to give their opinions: the popular election of the prime minister, the desirable form of local autonomy, the necessity for including in the Constitution explicit provisions for natural disasters, the allocation of powers between the national and local governments in the event of natural disasters, the advisability of stipulating that the Emperor is the head of state, the question of public assistance for disaster victims from the standpoint of the Constitution, and the constitutional suitability of strengthening the Japan-U.S. Security Arrangements.

After the questions by members, the following were among the comments made from the floor: the inadequacies of the legal system for times of natural disaster and the relationship with the

Constitution, the enactment of a Constitution that embodies Japan's national history and traditions, and the method of conducting the open hearings.

### **3) Nagoya Open Hearing (November 26, 2001)**

Main points of statements by speakers
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#### **TAGUCHI Fukuji (Professor Emeritus, Nagoya University)**

The Constitution does not envision the making of an international contribution of a military nature. Japan should continue to make contributions of a non-military nature through such channels as the UN High Commissioner for Refugees and UNICEF.

#### **NISHI Hideko (housewife)**

Japan should play a role in the international community that lives up to the ideals of the Preamble of the Constitution, such as the guarantee of the right to live in peace. When giving economic aid to developing countries it is essential to take care that help reaches the poor strata, and that it does not lead to the destruction of traditional lifestyles and the natural environment.

#### **NOHARA Kiyoshi (teacher, Gifu Prefectural High School)**

Given that data show that adults are failing to teach rules and manners to the young, there is a problem with the Preamble and Article 9, which leave our national security in the hands of others. The Constitution should make clear mention of right of self-defense that any normal nation possesses, and we should revise the Preamble to give it a dignified style with a clearly Japanese identity.

#### **KAWABATA Hiroaki (doctoral student, Graduate School of Law, Nagoya University)**

Based on my encounter with terrorist bombings at the time I worked at the Japanese embassy in Peru, I believe we should resolve terrorism not with violence but with dialogue.

#### **KOIDO Yasuo (lawyer)**

Japan should consider its role in the international community not in terms of how it is regarded by that community, but in terms of its national interest. Japan's international contributions should not focus on financial assistance, but should also give importance to the international contribution of personnel; for that it is necessary to develop the human resources.

#### **KATO Masanori (university student)**

Japan should become a permanent member of the UN Security Council and show leadership in the elimination of nuclear weapons. For that Japan should introduce a system of popular election of the prime minister, through which we could expect to choose a prime minister with strong leadership qualities.



Summary of questions by members
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The following were among the matters about which members asked speakers to give their opinions: the specific methods Japan should adopt to deal with terrorism, the rights and wrongs of making express mention in the Constitution of environmental rights and obligations, the advisability of having the Self-Defense Forces participate in UN policing operations, the role of the United Nations in dealing with the problem of terrorism, the relationship between the Anti-Terrorism Special Measures Law and the Constitution, and the actual state of education concerning the Constitution in classrooms.

After the questions by members, the following were among the comments made from the floor: the view that “The ideals of the Peace Constitution must be realized in concrete ways,” the view that “The Constitution should be taught more thoroughly in junior and senior high schools,” the view that “In light of the circumstances of the formulation of the Constitution, the Japanese people should discuss and revise it,” and the view that “There should be more women speakers.”

#### **4) Okinawa Open Hearing (April 22, 2002)**

Main points of statements by speakers
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##### **YAMAUCHI Tokushin (President, Research Institute on Japan’s Peace Constitution and Local Autonomy)**

Article 9 of the Constitution is the life-blood of the Japanese people, and politicians should respect and uphold it. As a model peace-loving nation, Japan should spread the spirit of Article 9 to the world.

##### **ARAKAKI Tsutomu (lawyer)**

A lesson from the Battle of Okinawa is that military force cannot protect the lives of the people, and from the standpoint of the dignity of the individual we should protect Article 9, given that it embodies unarmed pacifism.

##### **MEGUMI Ryunosuke (business school president)**

The right of belligerency is a natural right of states, and the independence and peace of states cannot be maintained without the backing of military strength. Therefore, Article 9 should be revised.

##### **KAKINOHANA Hojun (Professor, College of Law, Okinawa International University)**

Diet members, teachers, and others should respect and uphold the dignity of the individual espoused by the Constitution, in order to ensure that respect for the dignity of the individual, a fundamental ideal of the Constitution and the Fundamental Law of Education, is spread and adhered to thoroughly.

##### **INAFUKU Erika (university student)**

Learning is not an obligation but a right, and thus service activities should not be made compulsory.

It is important that volunteer activities be supported by the community, and there be a relationship of living in harmony with the community.

**ASHITOMI Osamu (member, Okinawa Prefectural Assembly)**

While retaining the ideal of the renunciation of war, the Constitution should make explicit provision for the minimum armed force necessary for Japan to defend itself, and for direct civilian control in those circumstances. Express provision should also be made for the complete separation of legislative and executive powers, and for the realization of local autonomy.

Summary of questions by members
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The following were among the matters about which members asked speakers to give their opinions: Japan's system of security, the constitutionality of the Self-Defense Forces and the Japan-U.S. Security Treaty, whether or not provisions other than Article 9 should be revised, the role of the Self-Defense Forces in times of disaster, the desirable form of the state's protection of the people's security, international contributions in the non-military sphere, the revision of the Japan-U.S. Status of Forces Agreement, problems with the emergency response legislation, and education problems.

After the questions by members, the following were among the subject of comments made from the floor: the importance of the Peace Constitution, the necessity for establishing national sovereignty, the fact that the Constitution has not been observed adequately in Okinawa, and problems with the emergency response legislation.

**5) Sapporo Open Hearing (June 24, 2002)**

Main points of statements by speakers
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**INATSU Sadatoshi (Managing Director, Daitoa Shoji Co., Ltd.)**

We should enact a new Constitution whose fundamental principles are universal values based on Japan's traditions and culture, and make an active contribution to maintaining the world order at the beginning of the 21st century.

**ISHIZUKA Osamu (farmer)**

Japan should persist with the staunchly pacifist ideals in the Preamble and Article 9 of the Constitution, and become an independent country both politically and economically.

**TANAKA Hiroshi (Chairman, Hokkaido Federation of Bar Associations)**

Rather than revise Article 9 of the Constitution and study the emergency-response legislation, the government should reflect on its past treatment of the Ainu and develop more benign ethnic policies towards them.

**SATO Satomi (university student)**

To ensure that the guarantee of the equality of the sexes in Article 14 is realized, there is a further need to improve legislation and change attitudes, so as to guarantee women their due rights.

**YUKI Yoichiro (Professor, Otaru University of Commerce)**

Article 9 of the Constitution is something that Japan can proudly display as a model to the world, and should be maintained, but there is scope for improving the Constitution with respect to, for example, the introduction of a referendum system, the establishment of a constitutional court, and the introduction of a presidential system.

**MASUGI Eiichi (lawyer)**

The ideal of pacifism in the present Constitution should show its worth more than ever in the 21st century. It is essential to reform the judicial system in order to protect the Constitution and human rights.

Summary of questions by members
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The following were among the matters about which members asked speakers to give their opinions: the question of internationalization in Hokkaido, Article 9 and the Self-Defense Forces, the form that Japan's international contributions should take, Japan's non-nuclear policy, the reform of the judicial system, the increasing participation in society by women, education reform, and agricultural policy.

After the questions by members, the following were among the subject of comments made from the floor: the significance of Article 9, problems with the emergency-response legislation, and the fear that the holding of open hearings will lead to the revision of the Constitution.

**6) Fukuoka Open Haring (December 9, 2002)**

Main points of statements by speakers
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**KUSAKABE Yasuhisa (local government employee)**

In light of my experience as a local public servant, I believe that the Constitution, which stipulates human rights such as the right to minimum living standards and the right to work, should be thoroughly applied to citizens' daily lives, and that Article 9 is a precious jewel that should continue to be treasured in the future.

**GOTO Yoshinari (lawyer)**

To realize citizens' right of access to the courts, (a) the number of judges should be greatly increased to secure the right a speedy trial, and (b) the legal subsidy system to defray legal expenses should be greatly improved and expanded.

**NISHIZA Seiki (company employee)**

I think it is necessary to change the Self-Defense Forces into a defense corps to protect the nation in order to defend citizens' lives and property; to implement education according to the unique history and culture of each region in order to foster a sense of justice and other foundations of humanity; and to promote "town building" in Kyushu from a prefecture-wide perspective.

**HAYASHI Chikara (former Professor, Kyushu Sangyo University)**

I am opposed to any change in Article 9 because human rights cannot be ensured without peace. Also, considering the discrimination that has occurred under the present Constitution against members of the *Burakumin* minority and leprosy patients, I would like to see a national debate regarding how the efforts of the state and the people have been insufficient to guarantee human rights.

**MIYAZAKI Yuko (housewife)**

I think that people should read the Interim Report of the Research Commission on the Constitution because it shows what is being deliberated, but the contents of the report should have been easier to understand. I also think the government should take greater advantage of the opportunities open hearings provide to directly listen to citizens' voices, and govern in ways that are more closely in line with the ideas of average citizens.

**ISHIMURA Zenji (Professor Emeritus, Fukuoka University; former President, Nagasaki Prefectural University)**

I think the Preamble to the Constitution and Article 9, which state the ideal of pacifism, should not be revised. Article 13 stipulates that "All of the people shall be respected as individuals," but "all of the people" should be revised to "every person." I also think the "right to know" should be explicitly stated and that the title of Chapter I should be changed to "The Sovereignty of the People."

Summary of questions by members
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The following were among the matters about which members asked speakers to give their opinions: the best way of guaranteeing Japan's national security; measures to ensure that human rights abuses such as discrimination towards Hansen's disease patients are not repeated; the best way of implementing the judicial review of constitutionality; the orientation of decentralization of government authority; the relationship between Japan's support for the U.S. war with Iraq and the Constitution; and the pros and cons of stipulating new human rights in the Constitution.

After the questions by members, the following were among the subjects of comments made from the floor: the necessity of revising the Preamble and Article 9 in light of the issue of the abductions by North Korea; the importance of the peace ideals of the Constitution; and the danger of revising the Constitution so that it matches present realities.

## 7) Kanazawa Open Hearing (May 12, 2003)

Main points of statements by speakers
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### **YAMAMOTO Toshio (retired)**

Revision of the Constitution should include: (1) removal from the Preamble of a passage that goes against the law of nature; (2) stipulation of patriotism, love of one's native place, and altruism; and (3) revision of procedures for amending the Constitution on a priority basis ahead of all other revisions.

### **SHIMADA Yoichi (Professor, Fukui Prefectural University)**

The kidnapping of Japanese nationals by North Korea is a gross violation of human rights. In order to resolve this issue, a strong approach should be taken in which use of military force can be invoked as an ultimate threat and, in order to be able to do this, the Preamble and Article 9 should be deleted.

### **IWABUCHI Masaaki (lawyer)**

The times demand that we should now affirm and bring to life the ideals of the Constitution within the realities of Japan and the world. We should try to find a way of resolving the North Korean issue by peaceful means in accordance with the Constitution. Revising Article 9 would incur a great danger that Japan would then embark on an unstoppable rearmament path, so we must resolutely oppose its revision.

### **MATSUDA Tomomi (lawyer)**

Since it is possible to guarantee "new human rights" through the right to pursue happiness stipulated in Article 13, this aim can be achieved by specifically stipulating the human rights guaranteed by Article 13 through legislation. The bill to protect personal privacy currently being deliberated by the Diet should be reconsidered from the perspective of whether or not it can truly protect citizens' privacy.

### **KAMONO Yukio (university professor)**

Since local self-government derives from the residents' right to self-determination, which is a principle for the preservation of human rights, and from popular sovereignty, local government has the authority to cooperate on an equal footing with the national government for the benefit of the citizenry. If the current legal system is insufficient in terms of these rights, these shortcomings must be overcome through positive law.

\*Note: Mrs. **HASUIKE Hatsui**, who was scheduled to speak, was unable to attend for personal reasons. The written opinion she submitted during the selection of speakers was summarized and read aloud by an Office staff member:

My son was kidnapped by North Korea and I have waited for 24 years for him to come home. The kidnapping of Japanese nationals by North Korea is the ultimate violation of human rights and a violation of national sovereignty. It is also an unforgivable heinous crime, and it is state terrorism. If

it is the duty of the state to protect fundamental human rights, it is no exaggeration to say that Japan has failed to uphold its own Constitution.

#### Summary of questions by members

The following were among the matters about which members asked speakers to give their opinions: the ideal form of education; policies to resolve the North Korean kidnapping and nuclear development issues; policies to ensure peace in Northeast Asia; reforms toward the decentralization of authority; the best way to approach municipal mergers; and the guarantee of new human rights and the pros and cons of stipulating them in the Constitution.

After the questions by members, the following were among the subjects of comments made from the floor: the necessity of revising the Constitution in view of the many problems in its stipulations; the necessity of resolving the kidnapping issue from the pacifist stance of the Constitution; the necessity of dealing with international infringements of human rights by international law, not by force; and the necessity of developing the ideals of the Constitution based on regret for past wars.

### **8) Takamatsu Open Hearing (June 9, 2003)**

#### Main points of statements by speakers

##### **KUSANAGI Junichi (lawyer)**

Maintaining peace requires the rule of law, which is orderly and backed by force. Japan's security should be guaranteed by a United Nations military force to be created in the future, and we should create a regional security structure in Northeast Asia as part of the process leading to the creation of such a UN force. I am also opposed to any revision of Article 9.

##### **NEMOTO Hirotoshi (Professor, Shikoku Gakuin University)**

The way to guarantee "new human rights" is to embody them in concrete legislation. It is important that the public welfare develops by giving the greatest respect to human rights rather than by limiting them. Furthermore, the sufficient guarantee of human rights at home will make a positive contribution to their international guarantee.

##### **TAKAGI Kenichi (student)**

Japan owes its postwar peace not to Article 9 but to the Japan-U.S. Security Treaty. Because the presence of U.S. forces in Japan poses a problem of compatibility with Article 9, we should revise the Constitution. We should officially clarify the status of the Self-Defense Forces as an army through revision of Article 9.

##### **NISHIHARA Kazuie (former junior high school social studies teacher)**

The right to an education is important as a basis for guaranteeing the right to equality and for

exercising the sovereign rights of citizens. However, problems such as truancy and worsening academic results occur as a result of insufficient observance of the Constitution and the Fundamental Law of Education. Rather than revising the Constitution, we should make efforts to ensure that it is upheld.

**SAKAGAMI Hatsuko (housewife)**

With the great changes in the national security environment surrounding Japan, the contradiction between the Constitution and reality has grown deeper. In areas such as national security where urgent revision is required, we should rely on reinterpretation for the time being but later revise the Constitution based on public opinion, etc.

**KAGOSHIMA Hitoshi (Associate Professor, Faculty of Law, Kagawa University)**

Even if the expansion of municipalities through mergers is necessary in some cases in view of fiscal problems, etc., from the viewpoint of effective self-government by residents, concrete provisions for this and the principle of direct democracy in local government should be stipulated in the Constitution. From the viewpoint of strengthening the basic units of local government, the relationship between laws and ordinances and the right of local governments to levy their own taxes should be stipulated in the Constitution and local governments should be granted the right to determine, to some extent, their own form of administrative organization.

Summary of questions by members
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The following were among the matters about which members asked speakers to give their opinions: the ideal form of social security; the meaning of “the principle of local autonomy”; the course Japan should take in the future; the pros and cons of stipulating “new human rights” in the Constitution; the causes of educational problems; the best way of dealing with the Iraq issue in view of the pacifist ideals of the Constitution; the relationship between local autonomy and the prime minister’s right of “executive proxy” stipulated in Japan’s Law Concerning Response to Armed Attack; and the relationship between the current situation of education and attitudes to work.

After the questions by members, the following were among the subjects of comments made from the floor: the necessity of independent diplomatic efforts based on the ideals of the Constitution; the necessity of self-defense by diplomacy and building trust rather than by military force; concerns about losing sight of Japan’s national interests through following the lead of the United States; the need to conduct politics based on the Constitution and to place importance on it as the common property of the world.

## 9) Hiroshima Open Hearing (March 15, 2004)

Main points of statements by speakers
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### **SATO Shuichi (civil servant)**

The current serious unemployment situation contravenes Articles 27 and 25 of the Constitution. Economic recovery should be promoted through measures that realize the provisions of these articles. Prior to debating revision of the Constitution, it is the role of the Diet to ensure that the government abides by the Constitution and that it does not violate human rights. Since war is the greatest violation of human rights, Article 9 absolutely must not be altered if human rights are to be guaranteed.

### **HIDE Michihiro (Professor, Graduate School, Hiroshima University; physician)**

We need to be prepared for violations of national sovereignty and make a clear statement in the Constitution of Japan's history, traditions and culture as our national identity. Based on the need to take positive action for the promotion of peace, the Preamble should be completely revised and Paragraph 2 of Article 9 should be deleted.

### **TAKAHASHI Akihiro (former Director, Hiroshima Peace Memorial Museum)**

I was able to overcome the pain and grief of being a victim of the atomic bomb due to the Constitution with its proclamation of pacifism and renunciation of war. Japan must firmly uphold Article 9 and courageously develop an omnidirectional foreign policy with peace diplomacy as its keynote. I am strongly opposed to revision of the Constitution, particularly Article 9.

### **HIRATA Kanako (NGO employee)**

More than half a century ago, Japan invaded other nations in Asia and caused a great war. I believe that the Constitution came into being out of remorse for those actions and as a commitment never again to wage war, but the dispatch of the Self-Defense Forces to Iraq and other actions by the government have made light of that commitment. There is no need whatsoever to change the Constitution, which embodies personal experience of that tragic war and is the end point of a struggle toward freedom for humanity.

### **OKADA Takahiro (President, Midori no Machi social welfare corporation)**

In promoting local autonomy, we must establish a spirit of independence and self-responsibility, reconsider the division of duties between the national and local governments and reconstruct local public finances, and simplify the multi-tiered structure of local government. The constitutional provisions on local autonomy should be revised to express that ideal in more concrete form, and the introduction of a *do-shu* system, and ultimately a federal system, should be studied.

### **ODA Haruto (member, Okayama Prefectural Assembly)**

The Constitution should be revised for two reasons: (1) there were problems in the process by which it was enacted and (2) nearly 60 years have passed since it came into force. In particular, regarding the structure of government, it is necessary to reconsider the bicameral system, in which the election systems for the two Houses are very similar, to abolish the popular review of appointments of



Supreme Court justices which has become a more formality, and set forth the “principle of local autonomy” in the Constitution in a more concrete form.

Summary of questions by members
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The following were among the matters about which members asked speakers to give their opinions: the ideal form of education; the division of roles between the national government and local governments; the relationship between the *do-shu* system and the bicameral system; the development of a theory to overcome the doctrine of nuclear deterrence; thoughts on the pacifist ideals of the Constitution; and the relationship between Japan’s identity and Article 9.

After the questions by members, the following were among the subjects of comments made from the floor: the necessity of making explicit provision in the Constitution for the possession of an army and for the rights of individual and collective self-defense; the necessity of fully applying the Constitution by establishing ideal conditions for labor and education; and the fear that, in the event of military emergency, people might be placed in a life-threatening situation.

## **Section 5 Overseas Survey Missions**

### **1) Survey Mission by the House Delegation on the Constitutions of European Nations (September 10 to 19, 2000)**

From the 10th to the 19th of September, 2000, the above members' delegation was dispatched by the House of Representatives under the leadership of NAKAYAMA Taro, Chairman of the Research Commission on the Constitution. As outlined below, the delegation surveyed the actual situation of the constitutions of five nations: Germany, Switzerland, Italy, France, and Finland.

The Federal Republic of Germany
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#### **(1) Meeting with Prof. Dr. Jutta LIMBACH, President of the Federal Constitutional Court, and one colleague**

At the Federal Constitutional Court, a question-and-answer session was held with its president, Prof. Dr. LIMBACH, and one colleague.

First, the Federal Constitutional Court's structure and its work were explained. The main points were as follows: (1) The selection of the judges who sit on the Court can sometimes be politically contentious, but care has been taken to guarantee their political neutrality; in particular, half the judges are elected by the Bundestag (the directly elected lower house) and half by the Bundesrat (the upper house made up of representatives from the state governments), and in both cases the judges are elected by a two-thirds majority. (2) Each year, the Court handles about 5,000 cases brought by the general public (although it proceeds to an examination of the merits in only about 2.7 percent of these cases). Hearing these "complaints of unconstitutionality" is one of the characteristics of the Court's work. (3) Past decisions that have attracted particular attention have included: (a) the decision that the deployment of German military forces outside of NATO territory is constitutional, and (b) the decision that the Maastricht Treaty, which partially cedes State sovereignty to a supranational organization, the European Union, is constitutional; another area of public concern is (c) cases concerning the relationship between privacy and the mass media or criminal investigations.

Regarding other issues related to Germany's constitution or Basic Law (Grundgesetz) as a whole, it was learned that: (1) The Basic Law has undergone 46 revisions; about four of these were what could be called major revisions, dealing with rearmament and the introduction of military conscription, legislative provisions for states of emergency, and legislative provisions on German reunification and the integration of the EU. (2) Conscription is seen as an important system, with compulsory military service forming a node that connects the military and democracy.

#### **(2) Informal discussion with Dr. Ingolf REIMER, leader of the Albrecht Tuckermann Wohnanlage, and three conscientious objectors**

At the Albrecht Tuckermann Wohnanlage (an institution for handicapped children), the delegation heard views on the state of the alternative civilian service system from the institution's leader, Dr.

REIMER, and from three young conscientious objectors who were performing their alternative civilian service there.

They commented in particular that (1) lately, an increasing number of people have been refusing military service; (2) people doing alternative civilian service play an important role in the welfare sector.

### **(3) Meeting with Bundestag member Mr. Alfred HARTENBACH**

At the Bundestag Building, Mr. HARTENBACH explained the record of revisions of the Basic Law and described the Law's provisions for the guarantee of human rights, especially social rights; this was followed by a question-and-answer session.

The major points of Mr. HARTENBACH's explanation were as follows: (1) One reason why the Basic Law has been revised so many times is that it contains provisions reconciling the interests of the federal government and those of the Lander or states, and these provisions have been subject to frequent revision. (2) Fundamental social rights are construed not as specific entitlements but as rights to demand certain actions by the State. (3) With regard to the Basic Law's framework for states of emergency, (a) in an "external emergency," the Federal army acts within the framework of NATO, the Organization of Security and Cooperation in Europe (OSCE), and the United Nations; (b) in an "internal emergency," the Federal police take action; (c) in the case of a natural disaster affecting more than one Land, the federal government empowers the Lander ministries for internal affairs and the Federal defense ministry to carry out relief operations. (4) Provisions of the Basic Law that were enacted at the time of EU integration allow EU nationals to vote in local elections under the principle of reciprocity.

The Republic of Finland
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### **Explanation by a Secretary of the Embassy of Japan to Finland**

Mr. SUZUKI, Secretary of the Embassy of Japan to Finland, was invited to the residence of the Japanese Ambassador to Germany, in Berlin, in order to explain the process leading to the March 2000 enactment of the new Finnish constitution, which combines four older basic laws, and the features of the new constitution. A question-and-answer session followed.

Mr. SUZUKI explained that the key points of the revisions (i.e., the enactment of the new constitution) can be reduced to the following three essentials: the four basic laws were (1) integrated and (2) simplified by reducing the number of articles, in order to make the constitution easier for the people to understand, and (3) it was decided to strengthen the powers of the national assembly and limit those of the president, which had previously been very extensive.

Responding to questions, Mr. SUZUKI described how, based on the new constitution's provisions for the right of information access, efforts are being made to expand the scope of application of the

Freedom of Information Act, to disclose information at the deliberation stage to the public, and to make information accessible on-line.

The Swiss Confederation
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**(1) Meeting with Dr. Remo GYSIN (Social Democratic Party), member of the Foreign Affairs Committee and former member of the Constitutional Reform Committee, and four colleagues**

At the Parliament Building, Dr. GYSIN and his colleagues explained the process of enactment and the features of the new Swiss constitution, which entered force in January 2000 as the result of a complete revision. A question-and-answer session followed.

It was explained that the key points of the constitutional revision are as follows: (1) Switzerland is a confederation of cantons that have strong powers; (2) the people have a strong influence on government (through the initiative and referendum systems); (3) cultural and linguistic diversity is protected.

In response to questions, in addition to further explaining these points, Dr. GYSIN and his colleagues noted that: (1) the constitution contains detailed provisions on bioethics; (2) in connection with Switzerland's unique system of universal national service, there is controversy over various issues, including whether or not to develop a professional army.

**(2) Meeting with Prof. Dr. Luzius MADER, Vice Director, Federal Office of Justice, Federal Department of Justice and Police, and two colleagues**

Also at the Parliament Building, the delegation heard an explanation from Prof. Dr. MADER and two of his colleagues, followed by a question-and-answer session.

It was explained that reform of the old constitution by the recent revision (enactment of a new constitution) was part of a package of five constitutional reforms, together with judicial reform, reforms concerning the rights of the people, reforms of the federalist system, and reforms of the system of government.

During the question time, among other points, it was explained that: (1) The provisions in the chapter on "social goals" (which stipulate, for example, that the Federation and the cantons should strive to supply housing) are only guidelines, but because they set goals for the State, they gave rise to a national debate at the deliberation stage. (2) With regard to the relationship between the cantons and the Federation, under the new federalism, the constitution explicitly sets forth the principles of complementarity, mutual respect and cooperation between the cantons and the Federation, and the participation of the cantons in foreign policy, among other matters. (3) With regard to compulsory military service, the people are not free to choose between military and alternative service, and when a person refuses military service on religious or similar grounds, there is a strict investigation of the validity of those grounds.

**(1) Meeting with Prof. Cesare MIRABELLI, President of the Constitutional Court, and five colleagues**

At the Constitutional Court, its president, Prof. MIRABELLI, and his colleagues explained the Court's organization, its exercise of its powers, and related matters, followed by a question-and-answer session.

With regard to the Court's organization and exercise of its powers, it was learned in particular that: (1) The Court does not accept cases brought by the general public; instead, cases are referred to it by judges in the regular courts when they find the constitutionality of a law doubtful, but the Court can also act directly in cases of suspected conflicts between State laws and regional laws or in jurisdictional disputes between State agencies. (2) About 800 to 900 cases are instituted annually, of which about 250 are heard and about 50 result in rulings of unconstitutionality. (3) In selecting judges for the Constitutional Court, five highly qualified persons are chosen by each of the legislative, executive, and judicial branches, and their neutrality is ensured by prohibiting them from concurrently holding political office.

In response to questions, in addition to further clarification of the above points, it was explained that alternatives to military service are recognized against the background of a changing public perception of compulsory military service, as the duty to defend the nation is being increasingly viewed as a duty to perform community service or a duty of social solidarity, rather than as a duty to defend the nation militarily.

**(2) Meeting with the Hon. Rosa RUSSO JERVOLINO, President of the First Commission of the Chamber of Deputies (the Lower House), and one colleague**

At the Chamber of Deputies, an explanation was received from Ms. JERVOLINO and her colleague, followed by a question-and-answer session.

Among the points covered were the following: (1) Italy, like Japan, was defeated in the war, but in a 1946 referendum the Italian people abolished their monarchy and chose a republican system. (2) Unlike Japan, Italy has carried out rearmament from the beginning of the postwar era, as neither the peace treaty with the Allies nor the 1946 constitution prohibited this.

In answer to questions, it was explained, in particular, that: (1) The republic is understood to be one and indivisible; thus, although Italy may be moving toward a decentralization of powers that strengthens the autonomy of the regions, it is not moving toward a federal system, in which the State is subdivided. (2) Current debate over constitutional revision concerns the structure of the republic, rather than rights and duties, and revision is being pursued starting with small reforms on which consensus is readily obtained.

### **(3) Informal discussion with Ms. SHIONO Nanami**

Ms. SHIONO Nanami, who currently resides in Italy, was invited to the official residence of the Japanese Ambassador to Italy and her views on constitutional issues were heard, followed by questions and answers.

First, Ms. SHIONO made the following comments: (1) With regard to the concept of law in ancient Rome, in contrast to the Judaic view of law as a sacred, God-given thing to which human beings should adapt, the Romans viewed the law as a man-made thing which should be changed when necessary or, in other words, adapted to human beings. (2) In this context, Ms. SHIONO argued that the Constitution of Japan should be made into a “normal constitution” that can be revised easily when necessary, and that, to that end, revision of the constitution should be focused on the amendment procedures stipulated in Article 96, and the possibility of initially revising this article alone should be studied.

During the question time, in addition to comments on the above points, there was an exchange of views on such matters as (1) the system of government and the state of welfare and education in the Roman Empire; (2) an ideal vision for Japan in the 21st century.

The French Republic
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#### **(1) Meeting with Ms. Christine LAZERGES, Vice President of the National Assembly, and one colleague**

At the Palais Bourbon, an explanation was received from Ms. LAZERGES and her colleague, followed by a question-and-answer session.

With regard to the aims of the constitutional amendment to shorten the President’s term of office, which is now under debate, it was explained that: (1) a seven-year presidency is not sufficiently responsive to changes at home and abroad; (2) by making the president’s term the same as that of members of the National Assembly, the proposed amendment aims to avoid the politically unstable arrangement known as cohabitation, in which a president from one party shares power with a prime minister from an opposing party.

During the question-and-answer session, the thirteen previous constitutional revisions were explained in outline. In addition, the following main points were covered: (1) With regard to the constitutional implications of European integration, (a) all the EU members had to revise their constitutions because the integration of the EU under the Amsterdam Treaty entailed certain restrictions on State sovereignty; (b) however, there are various levels of EU decision-making, not all of which require a constitutional revision. (2) With regard to the rights and duties of the people, rights and duties are two sides of the same coin, and they are at once civic, political, and social in nature. The schools provide civic education, which teaches respect for others, the *raison d’être* of human rights, and so on. Two further points were of special note: (a) Until now, compulsory military service has been a duty of the people (a duty prescribed by law, not the constitution), but due to the

cost-benefit ratio and other problems, France is presently in the process of abolishing compulsory service in favor of an all-professional force. (b) Although the French Constitution does not make provision directly for human rights, the Preamble establishes a constitutional guarantee of human rights by proclaiming the French people's "attachment" to the Rights of Man as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of the Fourth Republic. (3) While bioethical issues are recognized as important, French public opinion is fairly cautious in this area at present, and there appears to be a general perception that gene manipulation and related techniques should be used only for purposes of medical treatment.

## **(2) Meeting with Mr. Yves GUENA, President of the Constitutional Council, and two colleagues**

At the Constitutional Council, an explanation was received from its president, Mr. GUENA, and his colleagues, followed by a question-and-answer session.

Among other points, it was explained that: (1) The Council's two major roles are reviewing the constitutionality of laws and treaties, and monitoring presidential elections and various other domestic elections. (2) To guarantee the Council's impartiality, three each of its nine members are appointed by the President of the Republic, the President of the Senate (the Upper House), and the President of the National Assembly (the Lower House).

Among the points explained during the question time were the following: (1) matters related to concrete procedures for the review of constitutionality of laws and treaties, etc.; (2) the fact that, since deciding that the criteria for its reviews of constitutionality include not only the main text of the present constitution (the Constitution of the Fifth Republic) but also its Preamble, which refers to the 1789 Declaration of the Rights of Man and the Preamble of the Constitution of the Fourth Republic, the Council has also conducted reviews of compliance with these human rights provisions, and has thus come to function as a body that protects democratic freedoms and human rights.

## **2) Survey Mission by the House Delegation on the Constitutions of Russia, Several Other European Nations, and Israel (August 28 to September 7, 2001)**

From August 28 to September 7, 2001, the above members' delegation was dispatched by the House of Representatives, under the leadership of NAKAYAMA Taro, Chairman of the Research Commission on the Constitution. As outlined below, the delegation surveyed the actual situation of the constitutions of eleven nations: Russia, four Eastern European nations including Hungary, five monarchies including the Netherlands and Spain, and Israel.

**(1) The State Duma**

**A. Meeting with Mr. Mikhail Mikhaylovich ZADORNOV, Member of the State Duma, and three colleagues**

At the State Duma Building, an explanation was received from Mr. ZADORNOV and his fellow members, followed by a question-and-answer session.

In addition to (1) an account of the process that led from the Soviet-era “Stalin Constitution” (1936) to the December 1993 enactment of a new post-Soviet constitution, the following main points were covered: (2) A constitutional court empowered to interpret the constitution and review the constitutionality of laws and ordinances has been established. (3) The Russian people can be said to be very interested in the present constitution, in view of the growing number of human rights cases being brought before the Constitutional Court and the level of public attention to constitutional debates in the Duma. (4) With regard to the relationship between the central and local governments, the economic and political influence of the center is increasing; for example, in the past four years, 15 percent of the State budget has been transferred from local to central government jurisdiction. (5) Constitutional provisions on “the family” are reflected in various policies with the goal of placing “the family” under State protection.

**B. Meeting with Mr. Vladimir Petrovich LUKIN, Deputy Chairman of the State Duma**

Also at the State Duma Building, a general explanation of the Russian constitution was heard from Mr. LUKIN.

He described the present Russian constitution as very strongly president-centered, citing among other reasons the facts that: (1) the Audit Chamber does not have the power to bring a case to court; (2) parliamentary committees have limited powers; and (3) appointments of Cabinet members other than the prime minister do not require parliamentary approval. Further, he expressed the view that the powers of the legislature to check and supervise the executive branch are still inadequate.

**C. Meeting with Mr. Anatoly Ivanovich LUKYANOV, Chairman of the State Structure Committee**

Also at the State Duma Building, Mr. LUKYANOV described the organization and work of the State Structure Committee, which is responsible for various constitutional issues, and gave a general explanation of the Russian constitution. This was followed by a question-and-answer session.

Among other points, (1) Mr. LUKYANOV explained that a constitution’s relationship to the changing times can take more than one form. Russia and the Eastern European nations took the approach of destroying their old constitutions and enacting new ones, but an alternative method is to build up a new constitution gradually by design. (2) He also commented that the active work of the Research Commission on the Constitution, particularly in a nation as tradition-centered as Japan with its Emperor-as-symbol system, surely makes it a unique entity.



In response to questions, Mr. LUKYANOV's explanation covered the following main points: (1) With regard to the problem of scientific progress and social change, commentators have long emphasized the "atomization" or "nuclearization" of present-day Russian society due to scientific and technological progress; this is considered contrary to Russian tradition and incompatible with it. (2) With regard to the problem of the limitation or transfer of State sovereignty due to ongoing globalization, because State sovereignty is a fundamental principle of every nation, and because the world is richer when it is multipolar, it is not appropriate for principles of international law to take precedence over those of domestic law. (3) The "superpresidential powers" given to the Russian president by the constitution make him a kind of "fourth branch" combining the powers of the legislative, executive, and judicial branches. In Mr. LUKYANOV's view, this is due to a contradiction in the constitution itself, but the debate about this situation is making no progress. (4) With regard to the relationship between the central and local governments, agencies of the Russian Federation's members (regional governments) act both in the capacity of the State and, simultaneously, in the capacity of local governments, and the relationship between Russia's central and local governments should be adjusted economically, not politically. (5) The system of "plenipotentiary representatives for human rights" is an adaptation of the Scandinavian ombudsman system, but it remains to be seen whether it will take root in Russia.

## **(2) Meeting with Mr. Vyacheslav Borisovich EVDOKIMOV, State Secretary and First Deputy of the Ministry of Justice, and six colleagues**

At the Ministry of Justice, Mr. EVDOKIMOV and his colleagues described the Ministry's history and role and also gave a general explanation of the Russian constitution, followed by a question-and-answer session.

Among other matters, it was explained that: (1) While it is true that the Russian Federation had no constitution of its own in the period of constitutional vacuum between the Soviet Union's collapse in 1991 and the enactment of the new constitution in 1993, the old constitution of its member state Russia remained in effect. (2) With regard to the relative power of laws and presidential decrees, the president is allowed to issue presidential decrees without a basis in law for matters relating to states of emergency and to the military, and for matters on which no law has been enacted. (3) In the area of judicial reform, matters under debate include: (a) the restoration of a system to deal with minor crimes according to simple trial proceedings; (b) the introduction of a jury system for crimes carrying heavy penalties; and (c) the introduction of limited terms of office for high court judges.

## **(3) Meeting with Mr. Boris Aleksandrovich STRASHUN, Deputy Head of the Scientific-Analytical Center of Constitutional Justice, Constitutional Court of the Russian Federation, and one colleague**

At the Scientific-Analytical Center of Constitutional Justice, an explanation was received from Mr. STRASHUN and his colleague, followed by a question-and-answer session.

The explanation covered the following points, among others: (1) In the Soviet era, the Supreme Soviet functioned as a constitutional court, and the Russian Federation Constitutional Commission

played this role during perestroika. After the collapse of the Soviet Union, the Constitutional Court was established as a separate body in 1991. (2) Over 3,000 cases have been brought in the past decade, a large proportion of which concern human rights. These cases most commonly deal with (in descending order): (a) criminal proceedings, (b) social rights, and (c) economic rights.

Points explained in response to questions included the following: (1) The Constitutional Court's powers extend even to presidential decrees; in fact, the Court has ruled unconstitutional a presidential decree concerning state organizations, and the president accepted this ruling. (2) Although there have been allegations of "politicized" judges on the Constitutional Court, such fears are completely groundless as appointments are decided by the Council of Federation and the president cannot dismiss a judge.

The Republic of Hungary, the Republic of Poland, the Czech Republic, and Romania
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**Explanations by staff of the Embassies of Japan to Hungary, Poland, the Czech Republic, and Romania**

Secretaries from the Japanese Embassies to the above four Eastern European nations (Mr. YASUDA, Ms. OSUGI, Mr. SATO, and Mr. YOSHII, respectively) were invited to the official residence of the Japanese Ambassador to Hungary to explain the process by which these nations enacted new constitutions or revised existing ones as part of the wave of democratic reforms after the collapse of the Soviet Union, together with the characteristics of their present constitutions, among other topics. The explanations were followed by question-and-answer sessions.

**A. Hungary**

It was explained that: (1) With regard to the process that led to the current Hungarian constitution, there was initially no time to draft a new constitution in view of the need to expedite the change of political system; thus, it was decided to amend the old constitution of the Hungarian People's Republic, which had been revised 37 times, and subsequently there was a movement to enact a new constitution. (2) The constitution is characterized by, on the one hand, a provision stipulating that the Parliament is the supreme body of State power and popular representation, and on the other hand, a system of national referendums; in practice, when Hungary joined NATO, the referendum system was utilized and efforts were made to obtain a national consensus.

**B. Poland**

Next, it was explained that: (1) With regard to the process that led to the current Polish constitution, the approach of revising the old constitution was adopted in the period directly after the change of political system in 1989, because it was difficult to enact a new constitution while President Lech Walesa and the former United Workers' Party government were sharing power. Aspects remaining from the days of the old constitution were then gradually removed by repeated amendments. The rise of the current president, Aleksander Kwasniewski, paved the way for the enactment of a new constitution in 1997 following a national referendum. (2) One characteristic of the new constitution is its reference, in the Preamble, to Poland's Catholic heritage.

### **C. The Czech Republic**

It was further explained that: (1) The work of enacting the Czech constitution was initially pursued on the assumption that the federation with Slovakia would be maintained, but it was eventually decided that the two republics would separate. (2) The Czech Republic's constitutional order is characterized by having three components, each in a different legal form. That is, in addition to the Constitution of the Czech Republic, which chiefly lays down the system of government, there are (1) the Charter of Fundamental Rights and Freedoms, which provides for the rights of the people, and (2) the Constitutional Law of the Czech National Council, which is equal in value to the Constitution and stipulates the organization and activities of the State and the rights and freedom of the people.

### **D. Romania**

Lastly, it was explained that: (1) In the enactment process of the Romanian constitution in 1991, there was a debate over whether to make the post-Ceausescu system a republic or a monarchy. (2) Among the constitution's characteristics are political pluralism and an emphasis on protecting the rights of national minorities.

The Kingdom of the Netherlands
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#### **(1) Courtesy visit to Mr. F. Korthals ALTES, Chairman of the First Chamber (Upper Chamber)**

At the First Chamber (Upper Chamber), the delegation paid a courtesy visit to Mr. ALTES and discussed topics including: (1) the relationship between the upper and lower chambers of the Dutch parliament; (2) the legal status of the Dutch constitution under German occupation during World War II.

#### **(2) Meeting with Mr. Felix Edurd Robert RHODIUS, Director of the Cabinet of the Queen**

At the Cabinet of the Queen, an explanation was received from Mr. RHODIUS.

In particular, it was learned that: (1) Two characteristics of the Dutch monarchy which emerge from its history (from its inception in 1813 to the present day) are: (a) the Dutch people chose to adopt a monarchy while they were under a republican system; and (b) the limits that have always been imposed on the powers of the monarch by the constitution are considered to be a major reason for the monarchy's continued existence to the present day. (2) With regard to the monarch's status and powers under the constitution: (a) the monarch, with the Cabinet ministers, is a member of the government, but the ministers bear responsibility for all of the monarch's acts; (b) however, the monarch exercises at his or her discretion the right to be consulted, the right to encourage the people, and the right to warn, which are said to be powers of the sovereign according to unwritten law.

**(3) Meeting with Dr. Jit A. PETERS, Director, Constitutional Affairs and Legislation Department, Ministry of the Interior and Kingdom Relations, and one colleague**

At the Ministry of the Interior and Kingdom Relations, an explanation was received from Dr. PETERS and his colleague, followed by a question-and-answer session.

In particular, the explanation covered the following points: (1) Although not politically accountable, the monarch is a member of the government and plays a certain role in forming a Cabinet, which includes advising the heads of political parties and the speakers of both Chambers. (2) The Dutch parliament is characterized by the fact that the Second Chamber (the lower chamber) has the right to conduct prior deliberation of proposed legislation and the right to amend bills and budget proposals, and it can also force the Cabinet to resign by passing a no-confidence motion, while the First Chamber (the upper chamber) is no more than a reviewing body which has the right to veto bills sent to it by the Second Chamber. (3) With regard to the executive branch, parliamentary approval is required before the monarch appoints Cabinet ministers, and the ministers cannot simultaneously be members of parliament, so that the Cabinet is separated from the Parliament. (4) The Dutch constitution is fairly rigid; the amendment procedure requires, first, the consent of a simple majority in both Chambers, and then, after dissolving parliament and holding elections for the Second Chamber, the consent of a two-thirds majority in both Chambers of the newly convened parliament.

The Kingdom of Sweden, the Kingdom of Denmark, and the Kingdom of Belgium
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**Explanations by staff of the Embassies of Japan to Sweden, Denmark, and Belgium**

Staff members of the Japanese Embassies to the above three European monarchies (Mr. KAJIMOTO, Secretary of the Embassy to Sweden; Mr. FUJITA, Councillor of the Embassy to Denmark; and Mr. OTSUKI, Secretary of the Embassy to Belgium) were invited to the official residence of the Japanese Ambassador to the Netherlands to explain the constitutional status of the respective monarchies, including the powers and status of the monarch, and the actual operation of their systems, among other topics. The explanations were followed by question-and-answer sessions.

**A. Sweden**

First, it was explained that in the Swedish monarchy: (1) The monarch is the titular head of State, according to the provision that “the King or Queen . . . shall be the Head of State” which, together with popular sovereignty and the parliamentary Cabinet system, forms one of the basic principles of Sweden’s fundamental laws; however, the monarch has a purely representative and ceremonial function, with no actual political power. (2) Female succession was recognized in 1979. (3) The public is fond of the royal family, and a proposal to abolish the monarchy that was presented to the Riksdag this March was overwhelmingly rejected.

**B. Denmark**

Next, it was explained that in the Danish monarchy: (1) The Danish constitution, which dates back over 150 years to its enactment in 1849, has consistently adopted a constitutional monarchy system.

(2) Female succession was recognized in a 1953 amendment. (3) Because a strict procedure must be followed to amend the constitution, it has not been revised in almost half a century, nor is there currently any national debate about the possibility of revision.

In the question-and-answer session, among other topics, there was an exchange of views on the fact that the constitution provided for steps toward decentralization as early as 1849.

### **C. Belgium**

Lastly, it was explained that in the Belgian monarchy: (1) The constitution states that the King's person is inviolable and his ministers are responsible. (2) The constitution clearly stipulates the principle of popular sovereignty, stating "All power emanates from the nation"; thus, the system is not based on the precedence of the monarch, but takes the position that the people came first and delegated their power to the monarch. (This is also clear from the historical record. When Belgium gained its independence from the Netherlands in 1830, there was a debate over whether to adopt a republican or monarchist system, and the nation accepted a king after first creating a constitution on the basis of a constitutional monarchy.) (3) Female succession was recognized in a constitutional amendment of 1991.

In the question-and-answer session, there was an exchange of views on topics including: (1) the 1993 constitutional amendment that clearly establishes that Belgium is a federal State; (2) the Court of Arbitration, which is equivalent to a constitutional court was established in 1980; in addition to constitutional review of statutes, the Court also decides disputes over rights that arise between the federal government, the communities, and the regions due to the transformation of Belgium into a federal State.

The State of Israel
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#### **(1) Meeting with Mr. Joshua SCHOFFMAN, Deputy Attorney General**

In a hotel conference room, Mr. SCHOFFMAN gave a general explanation of: (1) the structure of Israel's Basic Law; and (2) the process by which direct popular election of the prime minister was introduced and then abolished.

(1) With regard to the structure of Israel's Basic Law, it was explained that the legal format of a "basic law" was adopted in preference to a constitution (code) because the latter would have been difficult to create in the early years of the nation's founding, due to broad differences of opinion on issues of security, human rights, and religion. This led to the approach of first enacting a number of "basic laws" and then, at some time in the future, creating a constitution or code by integrating them.

(2) Next, the following main points were explained in regard to popular election of the prime minister: (a) The system was introduced to establish a stable foundation for government after many tiny parties arose in the 1980s and early 1990s, leading to the regular formation of coalition governments, accompanied by such practices as "horse-trading" of Knesset seats for Cabinet posts by small parties. (b) However, in the new system voters cast two ballots, one for a member of the

Knesset and one for the prime minister, and it became common to vote for a prime ministerial candidate from a major party and a Knesset member from a small party more closely identified with one's interests. As a result, contrary to expectations, all the major parties lost strength, and the prime minister, who is the head of the executive branch, was in fact weakened. Thus, the introduction of direct election of the prime minister was judged by the majority of the public to be a failure. (c) It was therefore decided to abolish the system in 2001, immediately after the third direct election, in which Prime Minister Ariel Sharon was elected. An amendment to the Basic Law was passed accordingly, essentially reinstating the previous system.

## **(2) Meeting with Mr. Meir SHEETRIT, Minister of Justice**

At the Ministry of Justice, Mr. SHEETRIT explained the process that led to introduction and then abolition of direct popular election of the prime minister, and other matters. This was followed by a question-and-answer session.

The main points covered were as follows: (1) Because Israel has a nationwide proportional representation system, new political parties arise before every election, and the Knesset had become highly fragmented. (2) Further, Israel has a parliamentary Cabinet system. With so many small parties in the Knesset, coalition governments are inevitable, but the small parties were demanding specific policy measures or Cabinet posts before they would join a coalition, and prime-ministerial candidates were forced to accept these conditions. (3) In light of this situation, direct election of the prime minister was introduced to ensure the stability of the government. However, in every one of the three elections held under this system, the electorate voted differently in the prime ministerial election and the election for the Knesset, with the result that the prime ministers came to act on their own initiative rather than taking the wishes of their party into consideration. (4) At present, the possibility of changing from proportional representation to small constituencies in order to curtail the excessive influence of small parties is being discussed.

## **(3) Meeting with Mr. Shlomo SHOHAM, Legal Advisor to the Constitution Law and Justice Committee of the Knesset**

In a hotel conference room, Mr. SHOHAM gave an explanation of the process leading to the introduction and then abolition of direct popular election of the prime minister.

The following points were among those explained: (1) The three direct elections that were held did nothing to improve the situation in which the large parties are "held hostage" by small parties; in fact, the situation became more serious. (2) As a result, Prime Minister Sharon decided to abolish direct election, and, during a short period of discussion, preparations were made to return to the original electoral system. In drawing up the repeal bill, however, care was taken not to merely return to the previous system, but to improve its shortcomings.

#### **(4) Meeting with Mr. Ophir PINES, M.K., Chairman of the Constitution Law and Justice Committee of the Knesset**

Also in a hotel conference room, a question-and-answer session was held with Mr. PINES on matters including the process from introduction to abolition of the direct election of the prime minister by popular vote.

The main points covered in this session were as follows: (1) When asked about the relationship between the positions of the popularly elected prime minister and president, Mr. PINES explained that the powers of Israel's president have always been ceremonial in nature, and he therefore does not expect any particular problems to arise in the president's relationship with a popularly elected prime minister. (2) In introducing popular election, more consideration was given to the risk that granting strong powers to a popularly elected prime minister might lead to dictatorial rule. (3) Under the system in which voters cast one ballot for the prime minister and one for a Knesset member, there was an even greater proliferation of tiny parties than before, and they have come to have even more power. (4) The public supported popular election of the prime minister, hoping for political stability, but because it turned out to have the opposite effect, most people are now opposed to such a system. (5) The Basic Law was revised in a very short time after it was decided to repeal the system, but, in effect, at least five years had been spent drafting the amendment and making other preparations for repeal.

#### **(5) Meeting with Mr. Shimon PERES, Minister of Foreign Affairs and Deputy Prime Minister**

At the Ministry of Foreign Affairs, Mr. PERES began by explaining how the direct election system had made both the prime minister and the Knesset ineffective, and how the system of checks and balances had ceased to function properly.

Next, there was an exchange of views on topics such as the ideal conduct of politics and the future outlook for world affairs. Mr. PERES's comments included the following: (1) Discussing his political ideals as an elder statesman, he acknowledged that, on the positive side, politics in the television era makes absolutist rule impossible, but he noted that we must also beware of its negative side, such as the fact that it allows one almost no time to think. (2) With regard to building future peace in Asia and the Middle East, he said that, just as the European Union is now a reality even though 50 years ago it was dismissed as a dream, we, too, must create something new without being preoccupied by the past.

#### **(6) Meeting with Dr. Arye Z. CARMON, President of the Israel Democracy Institute**

In a hotel conference room, Dr. CARMON explained matters including the process that led to introduction and then abolition of direct popular election of the prime minister. This was followed by a question-and-answer session.

The explanation covered the following main points: (1) Direct election was introduced because the public, growing increasingly frustrated with political paralysis, hoped to see the impasse broken by

enabling the prime minister to exercise strong political leadership. However, as a result, the basis of legitimacy for taking the helm of State affairs was split in two, and a situation arose in which the makeup of the governing coalition was renegotiated almost every week. (2) The public's support for the system turned to disapproval, and it was this public backing for repeal that made it possible to quickly reverse the change and reinstate the original system.

At the end of the meeting, Dr. CARMON summed up by saying that, in his opinion, the parliamentary Cabinet system makes possible compromises and concessions, and that it contains intrinsic elements necessary for democracy to succeed.

### **(7) Meeting with Prof. Zeev SEGAL, School of Government and Policy, Faculty of Social Sciences, Tel Aviv University**

At a hotel conference room, the delegation concluded its studies on the system of popular election of the prime minister with an overview provided by Prof. SEGAL, followed by a question-and-answer session.

The explanation covered the following main points: (1) Direct election of the prime minister was introduced for the dual purpose of strengthening the prime minister and curbing the power of small parties. (2) The reasons for its failure were that voters cast their two ballots for candidates from different parties, and that the law that created the system was flawed because it was prepared in a short time. (3) Ideally, proportional representation in elections for the Knesset should have been replaced with a small constituency system, but it was impossible to pass a reform bill to that effect because opposition in the Knesset was too strong at the time. (4) Under these circumstances, in introducing direct election of the prime minister, the possibility of striking a balance between the legislature and the executive with an American-style system should have been considered, as such a system (a) results in an efficient government by granting extensive powers to the prime minister, (b) decides the prime ministership solely on the basis of election results, and (c) is a form of participatory democracy. (5) If Japan were to consider introducing a system of direct election of the prime minister, Prof. SEGAL would advise: (a) giving the prime minister as many powers as possible by law but, at the same time, not allowing him or her to exercise powers in excess of those provided by law; (b) taking precautions such as ensuring that the check functions of the parliament work well.

Spain
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### **(1) Meeting with Mr. Iñigo CAVERO LATAILLADE, President of the Council of State, and three colleagues**

At the Council of State, an explanation was received from Mr. CAVERO and his colleagues, followed by a question-and-answer session.

The explanation included the following main points: (1) Many different political forces collaborated in the process of drafting the present constitution, while finding points of agreement. (2) One of the



features of the present constitution is the fact that it contains ample provisions for human rights, since various human rights standards, and especially the European Convention on Human Rights, were consulted in the drafting process. (3) With regard to local autonomy, some of the autonomous communities into which Spain is divided have been granted extensive powers of self-government while others have not, and this disparity has become a problem. (4) The Constitutional Court is a major force in curbing autocratic rule; as a body independent of the national assembly and regular courts, it has been entrusted with the protection of democracy.

Among the points explained in answer to questions, it was learned that, since the death of General Franco, the present King, Juan Carlos, has won broad popular support through his consistent stance of respecting and upholding the constitution, as shown by his decisive actions as a champion of reforms including the liberalization of political parties.

## **(2) Meeting with Ms. Margarita MARISCAL DE GANTE, President, Constitutional Commission of the Congress of Deputies, and six colleagues**

At the Congress of Deputies, Ms. MARISCAL and her fellow Commission members from several parties explained the process of drafting the present constitution, among other matters, followed by a question-and-answer session.

It was explained that the draft of the present constitution was written entirely by the national assembly, and that it was realized on the basis of a consensus among many political parties. For example, the sections concerning fundamental human rights by and large reflect the views of parties on the Left, while those concerning the system of government largely reflect the thinking of the Union of the Democratic Center.

In answer to questions, explanations were received on such points as: (1) the difference between the Council of State, an advisory body which the government consults on matters including the constitutionality of laws, and the Constitutional Court, which rules on constitutionality cases; (2) the actual workings of the “constructive no-confidence vote,” which is similar to the German system.

## **3) Survey Mission by the House Delegation on the Constitutions of the United Kingdom and Several Asian Nations (September 23 to October 5, 2002)**

From September 23 to October 5, 2002, the above members’ delegation was dispatched by the House of Representatives, under the leadership of NAKAYAMA Taro, Chairman of the Research Commission on the Constitution. As outlined below, the delegation surveyed the actual situation of the constitutions of eight nations: the United Kingdom, five Southeast Asian nations including Thailand and Singapore, the People’s Republic of China, and the Republic of Korea.

**(1) Meeting with Mr. Paul EVANS, Commons Committee Clerk, Joint Committee on Human Rights**

At the Houses of Parliament, Mr. EVANS provided an explanation of Britain's guarantees of human rights. This was followed by a question-and-answer session.

The following main points were explained: (1) After ratifying the European Convention on Human Rights when it was enacted shortly after World War II, for many years Britain took no steps to incorporate its provisions into its own laws, contending that the issues raised could be dealt with by existing legislation centered on common law. Then, Prime Minister Blair's Labour government studied the possibility of enacting specific legislation and, in 1998, passed the Human Rights Act. (2) Before the Act was passed, there was debate over what the relationship should be between Britain's traditional doctrine of parliamentary sovereignty and the binding force of decisions by the courts. It was decided that the courts may declare that a statute contravenes the Convention, but that it is Parliament that decides whether or not to amend it accordingly. (3) The Joint Committee on Human Rights is a parliamentary body established to secure the implementation of the Human Rights Act. Its full program of activities includes preparing reports on bills that might infringe the Human Rights Act.

**(2) Office of the Deputy Prime Minister**

**A. Meeting with Mr. Ian SCOTTER, Head of the Regional Assembly Division, Regional Policy Unit**

At the Office of the Deputy Prime Minister, Mr. SCOTTER explained regional policy under the Blair administration, followed by a question-and-answer session.

The explanation covered the following main points: (1) The Blair administration is promoting the devolution of authority via the creation of regional assemblies in Scotland, Wales and Northern Ireland, and now in England. (2) The White Paper it has already published on the subject considers how to increase opportunities for residents to participate in regional politics, e.g., by establishing popularly elected "regional assemblies" in eight regions of England and selecting the executives responsible for local government from the assemblies. (3) Whether or not to establish regional assemblies will ultimately be decided by local referendums, but some regions are not enthusiastic about the proposal. (4) In many parts of England, there is a two-tiered system of local government at present, and critics say that to establish regional assemblies while retaining the two-tiered system would merely add another layer of bureaucracy.

**B. Meeting with the Rt. Hon. Nick RAYNSFORD, MP, Minister of State for Local Government and the Regions**

Mr. RAYNSFORD joined the above meeting with Mr. SCOTTER for an exchange of views with the delegation.

The main points learned from this discussion were: (1) The public are concerned not only that government be efficient but also that it be participatory, and creating regional assemblies in England is a way of responding to these expectations. (2) The reforms will allow the regions considerable discretion in spending the budgets allocated to them by the central government, but it is intended to stop short of devolving the right to levy taxes.

### **(3) Meeting with Prof. Robert HAZELL, Director of the Constitution Unit, School of Public Policy, University College London**

At his office at University College London, a question-and-answer session was held with Prof. HAZELL, centering on reform of the House of Lords and the relationships between elected officials and civil servants.

Prof. HAZELL gave the following explanations: (1) With regard to House of Lords reform, Britain's Speaker of the House of Lords has a role in all three branches of government, being (a) a Cabinet member (Minister of Justice), (b) Speaker of the House of Lords, and (c) the head of the Law Lords, Britain's equivalent of a Supreme Court. This arrangement has come under challenge as defying the doctrine of the separation of powers. (In particular, there is a strong trend of opinion that the Lord Chancellor should customarily exercise his authority with restraint.) (2) With regard to the relationships between elected officials and civil servants, the British traditionally expect their civil service to be impartial and politically neutral, but there are signs of dissatisfaction with the way this operates in practice. (In this connection, the Blair administration has created a growing number of politically appointed "special advisors.") (3) With regard to the possibility of Britain adopting a written constitution, although there seems to be a movement seeking this among some sectors of the public, in light of Britain's constitutional history, it is unlikely ever to come about.

### **(4) Meeting with Mr. David BEAMISH, Clerk of Committees, Joint Committee on House of Lords Reform**

In a conference room at the Embassy of Japan, Mr. BEAMISH gave an explanation of House of Lords reform as seen from Parliament's perspective, followed by a question-and-answer session.

Among other matters, it was explained that: (1) There have been three previous attempts to reform the House of Lords, but they ended in failure as no consensus could be reached. (2) The Blair government has adopted a two-stage approach consisting of (a) abolishing the hereditary peerage, and (b) studying long-term reforms of the House of Lords. For the present, a certain amount of progress has been made with (a), on which consensus can be reached with relative ease. (3) Debate on (b) is now under way, and the forum has shifted from the government to Parliament (the Joint Committee), drawing on the report of the Royal Commission on House of Lords Reform (the Wakeham Report). (4) There are a number of sticking points in the debate, including concerns in the Commons that popular election of the House of Lords might lead to a loss of status for the House of Commons.

**(5) Meeting with Ms. Judith SIMPSON, Head of the House of Lords Reform Team, Lord Chancellor’s Department, and three colleagues**

Following the above session, in a conference room at the Japanese Embassy, Ms. SIMPSON and her colleagues gave an explanation of House of Lords reform from the perspective of the government, followed by a question-and-answer session.

Among other points, it was learned that: (1) There is concern that an elected House of Lords might detract from the House of Commons’ dominant status, but public opinion supports election to the Lords by popular vote. (2) At present, the government team is awaiting a study by the Joint Committee.

**(6) Meeting with Mr. Charles COCHRANE, Secretary, Council of Civil Service Unions**

In a conference room at the Japanese Embassy, Mr. COCHRANE provided a general explanation of the relationships between elected officials and the civil service, followed by a question-and-answer session.

The main points covered were as follows: (1) British civil servants are proud of their political neutrality, and the transition from a Conservative to a Labour administration in 1997 was carried out smoothly. (2) With regard to the relationships between elected officials and civil servants, (a) civil servants are considered to serve particular ministers in their roles as Cabinet members and not to be permitted to do any work of a party-political nature; (b) “special advisors” who are political appointees are available for work of a political nature. (3) Despite these customary practices, civil servants are sometimes criticized by the media and others for acting in an excessively political way. (4) The “agency system” separates the planning of policies from their execution, but it tends to lead to friction during Britain’s frequent reorganizations of its ministries, particularly as the agencies are established under separate ministries and have different pay scales and other conditions.

The Kingdom of Thailand
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**(1) Meeting with Prof. Suchit BUNBONGKARN, Judge of the Constitutional Court, and one colleague**

At the Constitutional Court, a question-and-answer session was held with Prof. BUNBONGKARN on the subject of the Court’s actual exercise of its powers, among other matters.

The main points explained were as follows: (1) The powers of the Constitutional Court include (a) judicial review of statutes, (b) final review of the veracity of politicians’ asset statements submitted to the National Counter Corruption Commission, and (c) deciding jurisdictional disputes among State agencies. (2) The Court is actively exercising its powers of judicial review of statutes, having examined over 200 cases to date. Recently, it reviewed the question of whether land ownership rights extend to a depth of 100 meters below ground. (3) Last year, the Court acquitted Prime

Minister Thaksin of a charge of falsely reporting his assets, but Prof. BUNBONGKARN himself returned a guilty verdict.

### **(2) Meeting with Prof. Dr. Borwornsak UWANNO, Secretary General, King Prajadhipok's Institute, and two colleagues**

At King Prajadhipok's Institute, Prof. Dr. UWANNO gave an explanation of the Thai electoral system and other matters, followed by a question-and-answer session.

The explanation covered the following main points: (1) Three problems of political corruption are cited in Thailand: (a) there is no limit on the amount or methods of political donations; (b) candidates for Parliament need to spend enormous sums to win election; (c) the public, in its turn, has the idea that it can beg favors from Parliament members. (2) With regard to the role of the king, Thailand's monarch, like Japan's, has no political powers but plays a social role and enjoys the respect and affection of the people.

### **(3) Meeting with Prof. Marut BUNNAG, former Speaker of the House of Representatives, and one colleague**

At the Marut Bunnag International Law Office, Prof. BUNNAG explained Thailand's constitutional history, followed by a question-and-answer session.

Among other points, it was explained that: (1) Since enacting its original constitution in 1932, Thailand has experienced many coups d'etat, and each time it has been forced to revise the constitution. However, the present 1997 constitution was the result of a growing popular movement for the enactment of a democratic constitution, and it has the solid support of the people. (2) Politically, there is a movement to revise the existing constitutional ban on concurrently holding a Cabinet post and a parliamentary seat, but there is little need for this.

The Republic of the Philippines, Malaysia, and the Republic of Indonesia
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### **Explanations by staff of the Embassies of Japan to the Philippines, Malaysia, and Indonesia**

Staff members of the Japanese Embassies to the above three Asian nations (Mr. YOSHIDA, Minister of the Embassy to the Philippines, Mr. USHIO, Secretary of the Embassy to Malaysia, and Messrs. WADA and TANI, Councillor and Secretary of the Embassy to Indonesia) were invited to the official residence of the Japanese Ambassador to Singapore to explain the constitutional affairs of the respective nations. This was followed by question-and-answer sessions.

#### **A. The Philippines**

First, it was explained that: (1) The Constitution of the Philippines contains strong checks on the executive branch, including an impeachment system for certain public officers and an ombudsman system, due to the nation's experience under the Marcos dictatorship. (2) There are many provisions concerning the rights of the people, but few concerning their duties. (3) As basic principles, the

constitution declares the sovereignty of the people, a pacifist stance renouncing wars of aggression, civilian authority over the military, freedom from nuclear weapons, and social justice, with a call for the equitable distribution of wealth. (4) The Constitution also prohibits, in principle, the stationing of foreign combat troops and the establishment of foreign military bases on Philippine territory.

## **B. Malaysia**

Further, it was explained that: (1) The Malaysian constitution stipulates Islam as the national religion, and there are districts where Islamic law applies; nevertheless, the constitution is the highest law of the land and its provisions take precedence. (2) The constitution stipulates a special status for the Malay community and gives them preference in appointments to the public service and certain other areas. (3) Provisions on sensitive issues exist as a constitutional restraint, and it is forbidden to question the designation of Malay as the national language or the prerogatives and powers of sultans.

## **C. Indonesia**

Lastly, it was explained that: (1) Democratizing institutional reforms, including placing limits on the powers of the president, have been under way since the collapse of the Suharto regime; the constitution has been revised four times in successive years, and these efforts were essentially completed with this year's revision. However, at present, the official text of the revised constitution has not been released. (2) There is serious corruption among the judiciary, and the rule of law has not yet been established.

The Republic of Singapore
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### **(1) Meeting with Mr. Jeffrey CHAN Wah Teck, Principal Senior State Counsel, Civil Division, Attorney-General's Chambers**

At the Attorney-General's Chambers, Mr. CHAN provided an overview of Singapore's constitutional system, followed by a question-and-answer session.

The explanation covered the following main points: (1) Many of Singapore's political and legal institutions were inherited from Britain, but others are homegrown and unique. The "group election system" is one such institution, designed to promote racial harmony in Singapore's multiracial population of Chinese, Malays, and Indians. To ensure that ethnic minorities can always gain representation in Parliament, in each electorate a fixed number of candidates (from three to six people) per party stand as a group, and one of them is always from an ethnic group other than the Chinese majority, who make up over 70 percent of the population. (2) With regard to "Asian values" such as public trust in government, it was suggested that these are the result of a historical experience different from that of Europe, which has known government oppression of the people.

### **(2) Informal discussion with Prof. S. JAYAKUMAR, Minister for Law and Minister for Foreign Affairs, and one colleague**

At the Ministry of Foreign Affairs, the delegation exchanged views with Prof. JAYAKUMAR on the international situation and the Singaporean constitution as a whole.

The following main points were covered: (1) Singapore has adopted a “total defense” framework with compulsory national service, in which all of the people serve the cause of national defense. However, amid the changing world situation, Singapore is adjusting its capability to meet new security threats, such as terrorism, in addition to conventional threats. (2) With regard to family-related legislation, a law stipulating the obligation to support one’s elderly parents has been enacted, but Prof. JAYAKUMAR considers that such issues are a question of education, and that the constitution and laws should play a limited role in this regard.

### **(3) Meeting with Dr. THIO Li-ann, Associate Professor, Faculty of Law, National University of Singapore**

At the Japanese Embassy in Singapore, a question-and-answer session was held with Prof. THIO on the Singaporean constitution as a whole.

The following main points were explained: (1) The “group election system,” which the government describes as a form of protection for ethnic minorities, is actually advantageous to the ruling People’s Action Party and cannot be said to be democratic; in Prof. THIO’s opinion, a simple system based on single-seat constituencies should be adopted. (2) From the viewpoint of constitutional law, a field based on skepticism toward and restraint of State power, one cannot give unqualified assent to “Asian values,” according to which the people should trust and depend on the government in keeping with the Confucian doctrine of the fundamental goodness of human nature. An adequate body of law should always be available to deal with the advent of a “worst-case” government.

The People’s Republic of China
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### **(1) Meeting with Prof. ZENG Xianyi, Dean and Professor of Law, Renmin University of China, and seven colleagues**

At the School of Law, Renmin University of China, the delegation received an explanation from Prof. ZENG and his colleagues regarding the Chinese constitutional system as a whole, followed by a question-and-answer session.

The explanation covered the following main points: (1) The 1982 Constitution currently in force is the culmination of all the Chinese constitutions since the first, which was enacted in 1954. The will of the people has been distilled therein by a system of popular representation under “democratic centralism.” (2) With regard to the “socialist market economy,” the introduction of a market economy is necessary and inevitable for advancing China’s reform and market-opening policies, and the socialist market economy is a form of development to that end.

### **(2) Meeting with Prof. LIU Junjie, Social Development Institute, Central Party School, Communist Party of China, and one colleague**

At a hotel conference room, a question-and-answer session on the Chinese constitutional system overall was held with Prof. LIU and his colleague.

Among other points, it was learned that: (1) As a theoretical issue related to revision of the constitution, discussions are taking place regarding how private property should be protected, and China is also addressing the protection of intellectual property rights as an important issue from its standpoint as a nation founded on science and technology. (2) With regard to the relationship between the Communist Party and the constitution, even though it is the ruling party, the Communist Party is required to act within the framework of the constitution.

**(3) Meeting with Mr. ZHANG Chunsheng, Vice Chairman, Legislative Affairs Commission of the Standing Committee of the National People's Congress, and three colleagues**

At the Great Hall of the People, Mr. ZHANG and his colleagues gave an explanation of the historical process leading to the present (1982) Constitution, among other matters. This was followed by an exchange of views with Mr. NAKAYAMA on behalf of the delegation.

(1) First, Delegation Leader NAKAYAMA noted that, with regard to Article 9 of the Constitution of Japan, the Japanese public's interest is focused on the question of whether the existence of the Self-Defense Forces should be made compatible with the provisions of the Constitution. In response, Mr. ZHANG praised Japan's pacifist constitution as having made major contributions not only to Japan's economic development but also to peace in Northeast Asia and throughout the world. (2) Next, Mr. NAKAYAMA asked how China, as a permanent member of the Security Council, viewed Japan's international cooperation based on requests by the United Nations, and Mr. ZHANG responded that the Chinese saw no problem whatsoever with Japanese participation in peacekeeping operations based on UN resolutions. (3) Lastly, the two sides reaffirmed their common recognition of the need for close talks to promote friendship and mutual trust between China and Japan.

The Republic of Korea
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**(1) The National Assembly**

**A. Informal discussion with Mr. PARK Kwan-yong, Speaker of the National Assembly, and three colleagues**

At the National Assembly Building, an exchange of views took place between Mr. PARK and Mr. NAKAYAMA on behalf of the delegation.

Mr. PARK commented that: (1) In the Republic of Korea (ROK), there is an ongoing debate over a constitutional amendment to make the president's term four years, the same as that of members of the National Assembly. (2) The ROK praises Japan's peace constitution and Japan's other international contributions in accordance with its status as an economic power, and also firmly supports Article 9 of the Japanese Constitution as a neighboring Asian country. (3) With regard to the situation on the Korean Peninsula, it is important that the ROK, Japan, and the United States, on a basis of trilateral cooperation, hold ongoing talks with China and Russia.



**B. Meeting with Mr. KIM Jong-du, Director General, Legislative Counseling Office of the National Assembly, and seven colleagues**

Also at the National Assembly Building, the delegation received an explanation from Mr. KIM regarding the status of member-sponsored bills in the National Assembly, the role of the Legislative Counseling Office in the drafting process, and related matters, followed by a question-and-answer session.

**(2) Meeting with Mr. PARK Yong-sang, Secretary General of the Constitutional Court, and six colleagues**

At the Constitutional Court, an explanation was received from Mr. PARK, followed by a question-and-answer session.

The explanation covered the following points: (1) The ROK's Constitutional Court was created by the 1987 Constitution based on the German and Austrian models. As of August 31, 2002, it had received about 8,000 cases and had processed over 7,500 of these. (2) With strong public support, it has been carrying on productive work that includes rulings of unconstitutionality on many statutes, especially those enacted under the former military governments. (3) The "constitutional petition" system, which permits ordinary citizens to submit cases directly to the Constitutional Court, was based on a German model but is developing in a way unique to the ROK.

**(3) Meeting with Mr. KIM Chang-kuk, President, National Human Rights Commission, and four colleagues**

At the National Human Rights Commission, an explanation was received from Mr. KIM, followed by a question-and-answer session.

The explanation covered the following main points: (1) President Kim Dae-jung pledged to establish a National Human Rights Commission in his presidential campaign, in light of the human rights violations that were committed under the military governments, and after many complications the Commission became a reality on November 25, 2001. (2) There was a debate over whether to make it an independent body or an agency of the Ministry of Justice, but in the end it was established as an independent body. (3) As measures to redress human rights violations, the Commission is limited to making non-binding recommendations to the State agencies that it oversees, but in actual practice it has considerable influence.

**4) Survey Mission by the House Delegation on the Constitutions of the United States, Canada and Mexico (August 31 to September 13, 2003)**

From August 31 to September 13, 2003, the above members' delegation was dispatched by the House of Representatives under the leadership of NAKAYAMA Taro, Chairman of the Research

Commission on the Constitution. As outlined below, the delegation surveyed the actual situation of the constitutions of the United States, Canada and Mexico.

The United States of America
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**(1) Meeting with Mr. Barry KEENE, former member of the California State Senate, and Mr. Scott KEENE, political consultant to the Consulate General of Japan in San Francisco**

In Sacramento California, explanations were received from Mr. Barry KEENE and Mr. Scott KEENE regarding California politics and the Constitution of the State of California. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The significance and issues regarding the Constitution of California, which stipulates direct democratic systems with citizen participation provisions, etc. (2) The political conditions in the State of California, where a gubernatorial election is underway following a successful recall of the governor.

Regarding the present heavy use of direct democratic systems in California, Mr. Barry KEENE expressed a negative opinion stating that the constitutional provisions are inviting political confusion, while Mr. Scott KEENE stated that the systems are being used as relief measures by minority parties in opposition to dictatorial government control by the Democratic Party.

**(2) University of California at Berkeley**

**A. Lecture by Mr. NAKAYAMA**

At the University of California at Berkeley, Delegation Leader NAKAYAMA presented a lecture entitled “Activities of the Research Commission on the Constitution of the House of Representatives, and the Japanese Constitution in the 21st Century,” which was followed by a question-and-answer session with the audience.

First, the main points of the lecture were as follows: (1) The GHQ was deeply involved in the formulation of the Constitution of Japan. (2) Japan is now really questioning if its present constitution is still appropriate, despite the changes in domestic and overseas conditions over the half-century since the war ended. (3) Research Commissions on the Constitution were established in the House of Representatives and House of Councillors under these conditions in January 2000, at which time letters were sent to all the ambassadors to Japan explaining “NAKAYAMA’s Three Principles” (“protecting democracy,” “respecting the fundamental human rights of individuals,” and “ensuring that Japan never again invades foreign countries”) and asking for their understanding of the Research Commission’s activities. (4) The items deliberated by the Research Commission have included (a) the history of the formulation of the Constitution of Japan, (b) the system for judicial review of constitutionality by the courts, and the establishment of a constitutional court, (c) the Emperor-as-symbol system, (d) the right of collective self-defense and the Japan-U.S. Security Treaty, and (e) new attempts at regional economic integration.

Then, during the question-and-answer session, audience members asked questions regarding: (1) the selection of judges if a constitutional court were introduced, (2) the effect on neighboring countries if Article 9 were revised, and (3) the reasons for maintaining the Emperor system.

Finally, at the request of the MC, Deputy Leader SENGOKU Yoshito spoke about how Japan should support the establishment of a peaceful world order, including security contributions, and about the importance of the perspectives of establishing constitutionalism and the rule of law, and Member YAMAGUCHI Tomio spoke about the wealth of the process whereby the Constitution of Japan was formulated and about the importance of building up a society where Article 9 is actively embraced for the peace and stability of Asia and the entire world.

### **B. Meeting with Associate Professor Steven VOGEL, Department of Political Science, and three colleagues**

Also at the University of California at Berkeley, explanations were received from Associate Professor VOGEL and his colleagues regarding their understanding and evaluation of current U.S.-Japan relations in connection with the war in Iraq. These were followed by a question-and-answer session.

Views were exchanged on the following matters: (1) The debate over the war in Iraq at the UC Berkeley campus. (2) U.S.-Japan relations if Japan were to oppose the war in Iraq. (3) The establishment of order following the war in Iraq. (4) The response of Asian nations to the deliberations on revising the Constitution of Japan.

### **C. Meeting with Professor Stephen BARNETT, School of Law, and three colleagues**

Also at the University of California at Berkeley, explanations were received from Professor BARNETT and his colleagues regarding revision of the U.S. Constitution, revision of the Constitution of California, and the present implementation of direct democratic systems. These were followed by a question-and-answer session.

The main points explained were as follows: (1) Examples of revisions to the U.S. Constitution. (2) The states play the most important role in revisions to the U.S. Constitution, while the U.S. Supreme Court plays virtually no role. (3) The Constitution of California has been revised over 400 times since amendment of the state constitution by popular initiative became possible in 1911, and the Constitution now contains a huge volume of provisions. (4) The reasons why the human rights provisions of the U.S. Constitution have not been revised for over 200 years include the stringency of the amendment procedures and the fact that there is a consensus in principle among U.S. citizens regarding human rights provisions. (5) Direct democracy systems, including the recall of the governor, are being heavily used in California because of distrust of the state's legislative and executive branches. (6) Regarding the relationship between the U.S. Constitution and international law, while recent U.S. foreign policy has been criticized as unilateralism, this policy is based on the constitutional interpretation of the present administration that U.S. forces cannot be placed under the command of foreign countries, based on concerns that this would lead to a loss of U.S. authority.

### **(3) Meeting with Mr. David WALKER, Comptroller General, General Accounting Office (GAO)**

At the U.S. Capitol, explanations were received from Comptroller General WALKER. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The duties of the General Accounting Office (GAO) [which has subsequently been renamed the Government Accountability Office] are to audit the correctness of federal government expenditures and report to the Congress, and the GAO contributes to the effective administration of fiscal policy by the federal government. (2) While the GAO is only legally obliged to conduct investigations based on formal requests from congressional committees and subcommittees, customarily the GAO also responds to requests for investigations by individual congressmen to contribute to investigations initiated by minority factions, and the number of such investigations is increasing year by year. (3) The Comptroller General has an unusually long term of office of 15 years to ensure that the GAO executes its duties in a neutral and effective manner.

### **(4) Meeting with Mr. Douglas HOLTZ-EAKIN, Director, Congressional Budget Office (CBO)**

Also at the U.S. Capitol, explanations were received from Congressional Budget Office Director HOLTZ-EAKIN. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The duties of the Congressional Budget Office (CBO) include conducting analyses on the outlook for the federal budget and the influences of public spending, and conducting investigations on legislative initiatives with budgetary implications. (2) CBO investigations are conducted based on requests from Congress, present facts, and are politically neutral.

### **(5) House of Representatives**

#### **A. Meeting with Congressman Thomas REYNOLDS (Chairman of the National Republican Congressional Committee)**

At the House of Representatives, explanations were received from Congressman REYNOLDS regarding the U.S. Constitution and an outline of the discussions in the U.S. Congress. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The greatest points of contention in the 2004 presidential election are likely to be (a) combating terrorism, (b) national security, and (c) the economy and business conditions. (2) Recent legislative developments concerning the U.S. election system, including the Help America Vote Act and the Bipartisan Campaign Reform Act of 2002.

#### **B. Meeting with Congressman Steven CHABOT (Chairman of the House Subcommittee on the Constitution, Committee on the Judiciary)**

Also at the House of Representatives, explanations were received from Congressman CHABOT

regarding the U.S. Constitution and an outline of the discussions in the U.S. Congress. These were followed by a question-and-answer session.

The main points explained were as follows: (1) Constitutional amendment proposals are always being deliberated at the House Subcommittee on the Constitution, Committee on the Judiciary, but such proposals are rarely approved. (2) Two constitutional revisions that should be implemented are stipulation of (a) a balanced federal budget and (b) the rights of crime victims. (3) The Office of the Legislative Council functions as an organ to confirm the constitutionality of legislation, but ultimately constitutionality is the responsibility of the congressmen who draft the legislation, and there are congressional staff to support such activities by congressmen as well as the various organs that assist the Congress.

### **C. Meeting with Congressman Robert NEY (Chairman of the Committee on House Administration)**

Also at the House of Representatives, explanations were received from Congressman NEY. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The U.S. has a replete system compared with those of other countries as U.S. Congressmen can employ a total of 22 publicly paid secretaries (legislative staff) and are supplied with an average of \$1 million each for activity expenses over their two year terms. (2) The Congress bears a portion of the expenses of the nonprofit C-SPAN cable television network which provides live broadcasts of the sessions of Congress.

### **(6) Informal Discussions with Mr. Richard ARMITAGE, Deputy Secretary, U.S. Department of State**

At the Department of State, Deputy Secretary ARMITAGE and the survey mission exchanged opinions regarding Japan-U.S. relations, etc.

During these discussions, the main points explained by Deputy Secretary ARMITAGE were as follows: (1) U.S.-Japan relations are presently at their best, and while the Japanese economy which was stagnant is now gradually recovering, there are still too many things to be addressed between the U.S. and Japan, including the North Korea issue. (2) The actions first taken by Japan at the start of the 21st century of “showing the flag” and putting “boots on the ground” are really fantastic for U.S.-Japan relations. While Japan has supported the U.S. in the war in Iraq, the U.S. is supporting Japan’s bid to gain a permanent seat at the UN Security Council. (3) The issue of becoming a permanent member of the UN Security Council will remain difficult if Japan fails to reach a fundamental decision regarding the right of collective self-defense. (4) Japan’s Cabinet Legislation Bureau could be more flexible in its interpretation of Article 9. Japan is just restricting itself from exercising the right of collective self-defense, which Japan possesses as a sovereign nation. The fact that a debate on lifting this self-imposed restriction is emerging within Japan is very important and most welcome. (5) Nevertheless, this is an issue that should only be decided by Japan and the Japanese people. Regardless of the decision that is reached, the U.S. will respect it as an ally. (6) Regarding the North Korea issue, the U.S. values that all the parties involved have been cooperating

and firmly fulfilling their respective roles in the six-party talks on North Korea's nuclear development. While nothing certain can be said about North Korea, the U.S. expects further progress to be made in the six-party talks. (7) There are ample works and settings for Japan to play an active part in the international community. Such roles await Japan after the Research Commission on the Constitution reaches its conclusions and the Japanese people make their decisions based on those findings.

### **(7) Informal Discussions with Justice Antonin SCALIA, Associate Justice, U.S. Supreme Court**

At the U.S. Supreme Court, explanations were received from Justice SCALIA regarding the U.S.-style case-based system for judicial review of constitutionality. These were followed by a question-and-answer session.

The main points explained were as follows: (1) About 15% of cases heard by the Supreme Court involve constitutional issues, while most of the other cases concern the interpretation of federal law. (2) Under European-style constitutional court systems, there are concerns that the judiciary may wind up entering the domain of the legislative branch and may even get caught up in debates among politicians. (3) While the interpretations of the U.S. Constitution and laws by U.S. courts are final decisions in the contexts of suits between plaintiffs and defendants, these definitely do not constitute the highest and final authority in the U.S., as they may not be accepted by the Executive Office of the President or by Congress. U.S. interpretations are in accordance with the division of powers among the three branches of government, so the U.S. system may be called superior to constitutional court systems. (4) While the lifelong terms of U.S. Supreme Court Justices are an extreme system for ensuring judicial independence, the appointment process is highly political with nomination by the President and confirmation by the Senate.

Canada
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### **(1) Meeting with Chief Justice Beverly McLACHLIN, Supreme Court of Canada, and one colleague**

At the Supreme Court of Canada, explanations were received from Chief Justice McLACHLIN and her colleague. These were followed by a question-and-answer session.

The main points explained were as follows: Regarding the "reference" system which permits the Supreme Court to respond to abstract questions of constitutionality while fundamentally taking a case-based system for constitutional review, (1) this is a system whereby the Cabinet may ask the Supreme Court, through the Governor General, for its opinions on constitutional interpretations, government powers and other important questions of law; and (2) provincial governments can, through the Deputy Governor General, seek opinions in the province's Court of Appeal, and appeal to the Supreme Court of Canada if they disagree with the findings.

Regarding administration, (1) the courts refuse to hear political issues, even when questions are referred to the courts; and (2) there have been only four questions referred to the Supreme Court over the past six years but these concern important issues such as the secession of Quebec, and the Supreme Court is presently hearing a case about a law which recognizes the marriage of same-sex couples. Regarding the protection of personal information and the ombudsman system, (1) in Canada, the protection of personal information is stipulated by the Access to Information Act and the Privacy Act; (2) the Access to Information Act protects the right to demand information disclosure, and obliges the government to respond within a set period of time and to present reasons when it refuses to disclose information; and (3) the Privacy Act establishes an ombudsman called the Privacy Commissioner of Canada, establishes a system whereby individuals can petition the Privacy Commissioner for relief regarding requests for the disclosure of personal information, and stipulates procedures for ultimate appeal to the Supreme Court of Canada in cases when issues cannot be resolved by the Privacy Commissioner.

### **(2) Meeting with Mr. Drew ROBERTSON, Director General, International Security Policy Department, Department of National Defence, and one colleague**

At the Department of National Defence, explanations were received from Director General ROBERTSON and his colleague. These were followed by a question-and-answer session.

The main points explained were as follows: (1) Because Canada has a very small army the absolute number of personnel dispatched for UN peacekeeping operations is small, but in terms of the ratio of personnel dispatched to the total number of military personnel Canada ranks second behind the U.S. (2) Under the decision-making process for dispatching military forces for UN peacekeeping and other activities, the government negotiates with the party requesting the dispatch via the Department of Foreign Affairs and International Trade, and final decisions are then made through consultations with the Department of National Defence and the Parliament. (3) The Department of National Defence's internal decision-making guidelines for the dispatch of military personnel emphasize "mission transparency."

During the question-and-answer session, it was explained that because Canada and the U.S. have close military relations, there are many information exchange routes ranging from those between the Prime Minister of Canada and the President of the U.S. to those between generals from both countries, and wide-ranging bilateral discussions are taking place on such issues as National Missile Defense and international terrorism.

### **(3) Meeting with Mr. Don BOUDRIA, Minister of State and Leader of the Government in the House of Commons**

At the House of Commons, explanations were received from Minister of State BOUDRIA regarding the conditions of the Constitution of Canada. These were followed by a question-and-answer session.

The main points explained were as follows: (1) Major revisions to the constitutional system were implemented in 1982 under what was called the “Patriation of the Constitution” which established the Canadian Charter of Rights and Freedoms (the so-called Human Rights Charter) within the constitutional system. (2) Because the Canadian constitutional revision procedure is difficult and complex, since 1993 “fiscal reform” and “modernization of the Parliament” have been accomplished through methods other than constitutional revisions.

During the question-and-answer session, it was explained that (1) the Privacy Commissioner has jurisdiction over items related to the protection of privacy under the computerization of the government; and (2) while individuals who are not MPs can become ministers of state, in those cases they must become MPs through a process whereby the prime minister has a serving MP resign and a special election is conducted.

#### **(4) Meeting with Mr. Keith CHRISTIE, Deputy Secretary, Privy Council Office**

At the Privy Council Office, explanations were received from Deputy Secretary CHRISTIE. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The federal government and the provinces are equals. (2) Regarding “diversity” and “decentralization” which are distinctive characteristics of Canada’s federal system, the former is evident not only in language and peoples, but also in such areas as the populations, percentages of native French speakers, dependence on foreign trade, and per capita GDPs in the different provinces, while the latter is evident in the low percentage of the federal government’s share in the total national budget and the high percentage of independent funding sources in the provincial budgets, thereby illustrating that decentralization is advancing in Canada. (3) The government of the Province of Quebec has declared that it will remain part of Canada, and this is welcomed as an indication that the Quebec independence movement is moving in the correct direction of federalism.

During the question-and-answer session, it was explained that (1) the conclusion of FTAs is seen as bringing about good conditions with the expansion of trade and investment and the shift of the industrial structure toward higher value added, but the influence varies somewhat among provinces which do and do not have abundant natural resources; and (2) in addition to direct federal expenditures in provinces with insufficient funds, systems for rectifying imbalances in funding among provinces include the equalization payment system, which transfers taxes and other government revenues and was stipulated by The Constitution Act of 1982.

The United Mexican States
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#### **(1) Meeting with Dr. Fernando SERRANO, Dean, Faculty of Law, Universidad Nacional Autonoma de Mexico (UNAM)**

At the Universidad Nacional Autonoma de Mexico (UNAM), explanations were received from Faculty of Law Dean SERRANO regarding an outline of the Constitution of Mexico and the



conditions of revising the constitution. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The major themes in Mexican politics since the Mexican War of Independence, including the struggle between the federalists and those who favor a strong centralization of power, and the successive constitutional systems. (2) In Mexico fundamental human rights are protected by the *amparo* (petition for protection) case system. (3) Revisions of the constitution require procedures in the National Congress and approval by 16 state assemblies (a majority of Mexico's 31 state assemblies). (4) The relation between FTAs and national security. (5) Regarding the structure of the Constitution, the reasons why human rights provisions appear at the very beginning while labor and social security rights are stipulated in Title VI, Article 123. (6) Major constitutional revisions including the 1953 addition of a provision granting women the right to vote. (7) That while the Constitution of Mexico does stipulate a federal system, Mexican states have less independence than states in the U.S. because unlike the history of the U.S., Mexico first became independent as a single country and was then divided into individual states. (8) The regional security of Latin American nations.

## **(2) Meeting with Professor Ignacio BURGOA, Emeritus Professor, Faculty of Law, Universidad Nacional Autonoma de Mexico (UNAM)**

Explanations were received from UNAM Emeritus Professor BURGOA at his home regarding the *amparo* system. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The *amparo* system was first established in the State of Yucatan in 1840 and was later incorporated into the Constitution. (2) *Amparo* has the meanings to protect, to preserve, and to defend. Under this system, all governed persons have the right to file an *amparo*, and *amparos* may be filed against all sorts of actions by the authorities including laws, court decisions, and decisions reached by public-sector organizations. (3) Several thousand *amparos* are filed each year.

## **(3) Meeting with Justice Genaro GONGORA, Justice, Supreme Court of the United Mexican States**

At the Supreme Court of the United Mexican States, explanations were received from Supreme Court Justice GONGORA. These were followed by a question-and-answer session.

The main points explained were as follows: (1) Mexico has three systems for the protection of rights (a) *amparo* claims for individuals to protect their own rights against the authorities, (b) "constitutional conflicts" for resolving conflicts among organs, and (c) "lawsuits of unconstitutionality" which address pleadings by National Congress legislators, political parties and the Attorney General alleging that specific laws are unconstitutional. (2) The number of "constitutional conflicts" has been increasing since the constitutional revisions of 1995, reflecting the collapse of single-party control.

#### **(4) Meeting with Mr. Fernando SOLANA, former foreign minister**

Explanations were received from former foreign minister SOLANA at his home. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The formulation of the Constitution of Mexico. (2) Mexico does not dispatch troops for UN peacekeeping activities, and the reason for this is to build up an equal relation with the U.S., which has a 3,000 km long border with Mexico. (3) Mexico's present status of concluding FTAs and expectations toward forming an FTA with Japan.

#### **5) Survey Mission by the House Delegation on the Constitutions of the European Union, Sweden and Finland (September 5 to 17, 2004)**

From September 5 to September 17, 2004, the above members' delegation was dispatched by the House of Representatives under the leadership of NAKAYAMA Taro, Chairman of the Research Commission on the Constitution. As outlined below, the delegation surveyed the actual situation of the constitutions of the European Union, Sweden and Finland.

The Kingdom of Sweden
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##### **(1) Meeting with Ms. Alison BAILES, Director, Stockholm International Peace Research Institute (SIPRI), and three colleagues**

At the Stockholm International Peace Research Institute (SIPRI), explanations were received from Director Alison BAILES and her colleagues regarding European security policies, etc. These were followed by a question-and-answer session.

The main points explained were as follows: (1) SIPRI's activities, research fields and relationship with the government of Sweden. (2) European security and disarmament issues. (3) Analyses of armed conflicts under arms control and conflict management programs.

During the question-and-answer session, it was explained: (1) Regarding terrorism and minority peoples issues, since 9/11 the U.S. has been taking a strong anti-terrorist stance amid the internationalization and ideologization of terrorism, but as most terrorist acts and regional conflicts have their own social, political and economic backgrounds, such terrorism and conflicts can only be resolved by improving social, political and economic conditions, and particularly by granting greater rights to minorities. (2) Regarding Turkey's entry into the EU and understanding of the Islamic world, the EU presently comprises not only [Western] Christians, but also followers of Judaism, Islam and the Greek Orthodox Church, and Turkey could function as a bridge for cooperation with the Arab world. (3) The six-party talks may possibly set a course toward resolving the security problems of Northeast Asia, including the North Korea issue. (4) Article 9 of the Constitution of

Japan can be praised for contributing to regional peace and stability, but it has also had the indirect influence of drawing the U.S. into the region, so any change to Article 9 would not just be a domestic issue for Japan but rather should be seen as an issue for all of Asia and the entire world. (5) The role now expected of military forces to counter both international terrorism and all new enemies whether domestic or foreign is not just to end conflicts, but also to build peace; and peacebuilding must include economic and political assistance, and not be limited to only military efforts.

## **(2) Parliament of Sweden**

### **A. Meeting with Member Tommy WAIDELICH, Chairman of the Parliament's Advisory Committee on EU Affairs, and five colleagues**

At the Parliament of Sweden, explanations were received from Committee Chairman WAIDELICH and his colleagues regarding such issues as why Sweden entered the EU, the significance of the Treaty Establishing a Constitution for Europe, and its problem points. These were followed by a question-and-answer session.

The main points explained were as follows: (1) Sweden, which had long firmly maintained a policy of neutrality, entered the EU because European security conditions drastically changed so that the EU was no longer an organ of the Western bloc with the collapse of the Warsaw Treaty Organization around 1990 and the collapse of the Berlin Wall. (2) The relationship between Sweden and the EU is complex. Sweden has not yet joined the Economic and Monetary Union or adopted the unified currency. This is because of citizen concerns over transferring the powers of the Parliament of Sweden to the EU too quickly, and Sweden is unlikely to switch to the euro for the time being. (3) Sweden intends to ratify the Treaty Establishing a Constitution for Europe through a parliamentary resolution alone, without holding a plebiscite, because this treaty is essentially a summation of the various prior treaties concerning the EU and an attempt to make the EU's policymaking procedures more open.

### **B. Meeting with Member Per WESTERBERG, First Deputy Speaker, Parliament of Sweden**

Also at the Parliament of Sweden, explanations were received from First Deputy Speaker WESTERBERG regarding such issues as the background to Sweden's shift from a bicameral to a unicameral system. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The Parliament of Sweden changed to a unicameral system in 1971 to realize a system that is thoroughly democratic and whereby the composition of Parliament quickly reflects changes in the will of the people. (2) The change to a unicameral system has not necessarily shortened the time required for deliberation in the Parliament since the examination of bills used to take place in parallel in both houses, but it has made it easier to vote on bills as the complexity of forming majorities under the former bicameral system has disappeared.

### **C. Meeting with Mr. Jan PENNLOV, Deputy Parliamentary Ombudsman (and former Parliamentary Ombudsman), Parliament of Sweden, and one colleague**

Also at the Parliament of Sweden, explanations were received from Deputy Parliamentary

Ombudsman (and former Parliamentary Ombudsman) PENNLOV and his colleague regarding the powers and functions of the parliamentary ombudsmen in Sweden. These were followed by a question-and-answer session.

The main points explained were as follows: (1) While parliamentary ombudsmen and the parliament's Constitution Committee are both responsible for administrative oversight in Sweden, the Constitution Committee mainly oversees the cabinet and ministers while the parliamentary ombudsmen oversee the personnel of all government organs, including those working for local government bodies, as well as the employees of courts and military-related organs. (2) Sweden has four parliamentary ombudsmen who each execute their duties independently while dividing their work, which includes investigations resulting from petitions filed by regular citizens and self-initiated inspections of the propriety of works implemented by local government bodies. (3) When parliamentary ombudsmen discover improper execution of duties as a result of their investigations, they may issue warnings to take corrective actions, and they also have the same powers to file charges as public prosecutors.

**D. Meeting with Member Bo KONBERG (former Minister of Health and Social Affairs), Parliament of Sweden, and meeting with Member Gote WAHLSTROM, Parliament of Sweden, and one colleague**

Also at the Parliament of Sweden, explanations were received from Member KONBERG regarding the specific arrangements of Sweden's pension and other social security systems. These were followed by a question-and-answer session.

The main points explained were as follows (1) Sweden's social security system is the responsibility of (a) national, (b) county and (c) municipal governments, and each level of government has autonomous taxation powers. (2) Sweden maintains a high fertility rate of 1.7 children born per woman despite the high participation of women in the workforce because of replete social welfare policies including birth and child-care leaves and child allowances. (3) The new pension system placed into effect from 1999 was enacted with the agreement of the majority of political parties, and adopts a "notional defined contribution" format which has a clearer relationship between contributions and benefits compared with the prior system.

During the question-and-answer session, it was explained: (1) It is more effective to collect social security contributions together with taxes. (2) Sweden has a long tradition of protecting privacy.

Next, explanations were received from Member WAHLSTROM outlining Sweden's immigration policy, and these were followed by a question-and-answer session.

The main points explained were: (1) A century ago, Sweden was a nation which many people emigrated from because of poverty, but today Sweden is a nation that takes in immigrants, with over 30,000 refugees presently applying for residence. (2) The various parties in Parliament are all generally in agreement on immigration policy, but have some differences of opinion regarding the details. (3) There is a great deal of debate in Sweden regarding education of immigrants and the increase in crimes by immigrants.

### **(3) Meeting with Minister of Justice Thomas BODSTROM, and three colleagues**

At the Ministry of Justice, explanations were received from Minister BODSTROM and his colleagues regarding such issues as female succession to the throne. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The organization of the Ministry of Justice, the process of enacting laws in Sweden, and the procedures for revising the four fundamental laws which constitute the Constitution of Sweden. (2) As for the issue of female succession to the throne, the Act of Succession was revised in 1979 making Sweden the first European monarchy adopting equal primogeniture. The law was amended considering that the King's first child was a daughter born in 1977, and from the perspective of advancing equality among the sexes. (3) Sweden's response to Internet crime and prohibition on child pornography.

The Republic of Finland
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### **(1) Meeting with Member Matti VAISTO, Chairperson, Administration Committee, Parliament of Finland, and two colleagues**

At the Administration Committee Room inside Parliament House, explanations were received from Chairperson VAISTO and his colleagues regarding Finland's systems for information disclosure and the protection of personal information. These were followed by a question-and-answer session.

The main points explained were as follows: (1) Citizens' access to information is guaranteed by the Constitution of Finland. The Act on the Openness of Government Activities was enacted based on these constitutional provisions and stipulates that in principle all government activities must be disclosed. (2) The protection of "private life" stipulated by the constitution is ensured by the Personal Data Protection Act and the Act on the Openness of Government Activities, and the Data Protection Ombudsman monitors the execution of the Personal Data Protection Act. (3) While the mass media may freely gather news materials, there is a law which stipulates control over the leakage of information subject to personal data protection through after-the-fact examinations, and the constitution serves as the criteria for the application of that law.

### **(2) Meeting with Member Jukka GUSTAFSSON, Chairperson, Employment and Equality Committee, Parliament of Finland, and three colleagues**

At a restaurant, explanations were received over lunch from Chairperson GUSTAFSSON and his colleagues regarding the actual conditions of an aging population with a declining birthrate and of a gender-equal society. These were followed by a question-and-answer session.

The main points explained were as follows: (1) As countermeasures to an aging society with a declining birthrate, Finland is working at pension reform, improved social welfare for the elderly, and the advance of youth and education policies. (2) The background to the high female labor participation rate in Finland includes government child-raising support with both institutional

childcare and a flexible system for home-based childcare. (3) The background as to why Finnish children are superior in international comparisons of academic abilities include (a) the high quality of the school teachers, and (b) a consensus transcending party lines that education is a priority issue.

### **(3) Meeting with Member Arto SATONEN, Member, Constitutional Law Committee, Parliament of Finland, and four colleagues**

At the Grand Committee Room inside Parliament House, explanations were received from Chairperson SATONEN and his colleagues, followed by a question-and-answer session.

The main points explained were as follows: (1) The Constitutional Law Committee not only functions as an internal parliamentary organ to confirm that laws are constitutional, but is also charged with overseeing the actions of the government, the Chancellor of Justice (who is also responsible for administrative oversight), and the parliamentary ombudsman. (2) The Chancellor of Justice (who monitors and directs from inside the Cabinet) and the parliamentary ombudsman (who conducts the same works from the Parliament's side) have some overlapping powers regarding the constitutionality of government actions and the respect of human rights, but they have functioned well together down through history. (3) The Committee for the Future holds deliberations on the future outlook and issues such as how the development of science and technology may contribute to health and medical care.

### **(4) Meeting with Member Kimmo KILIJUNEN, National Parliamentary Delegate to the European Constitutional Convention**

Also at the Grand Committee Room inside Parliament House, explanations were received from National Parliamentary Delegate KILIJUNEN. These were followed by a question-and-answer session.

The main points explained were as follows: (1) Keeping in mind the presence of Russia, the great power of the East, while the EU is an economic organ Finland also emphasizes the EU's role as a security organ, and although the expansion of the EU into Eastern Europe creates an economic burden it is also highly significant. (2) Finland positively approves the Treaty Establishing a Constitution for Europe because it makes the EU policy decision-making process stronger and more transparent, and also contributes to the democratization of the EU, but Finland does not aim at the creation of a federal European state. (3) Out of its historical experience of being caught up in great power struggles, Finland adopted a neutral stance of averting military alliances following World War II, but since the end of the Cold War Finland has been participating in the EU common foreign and security policy and advancing cooperation with NATO.

**(1) Council of the European Union, European Parliament, and European Commission (Belgium)**

**A. Meeting with Mr. Jean-Claude PIRIS, Legal Adviser, Council of the European Union**

At the Council of the European Union, explanations were received from Legal Adviser PIRIS regarding the Treaty Establishing a Constitution for Europe overall. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The integration of the EU has advanced amid a division of opinions in each EU nation as to whether the EU should move toward a federal system or stress the individual sovereignty of its member states. (2) The integration of the EU has been implemented as a staged process, including the introduction of a common currency, the EU common foreign and security policy, and advances in coordination and cooperation in the police and criminal justice field. (3) The Treaty Establishing a Constitution for Europe aims at being easily understood by European citizens, and its contents include (a) strengthening the powers and control function of the European Parliament, (b) strengthening the control authority of the national parliaments of the member states, (c) introducing participation initiatives by European citizens, and (d) introducing the Charter of Fundamental Rights into the Treaty Establishing a Constitution for Europe and granting related authority to the European Court of Justice. (4) While the ratification of the Treaty Establishing a Constitution for Europe would lead to cooperation in certain fields equivalent to that under a federal state, other areas would remain under the independent sovereignty of the individual member states, including security and national defense.

**B. Meeting with MEP Jean-Luc DEHAENE, Vice President, Constitutional Convention, European Parliament**

At the European Parliament, explanations were received from Constitutional Convention Vice President DEHAENE regarding the process of drafting the Treaty Establishing a Constitution for Europe overall. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The Convention in charge of drafting the Treaty Establishing a Constitution for Europe was made up not only of representatives from each member state government but also included representatives from each member state parliament, the European Parliament, and the European Commission, so the Treaty is based on the sound foundation of the entire EU. (2) While the existing treaties were concluded via negotiations among the governments of the member states, the Treaty Establishing a Constitution for Europe was drafted by a Convention comprised of diverse representatives, so it incorporates the interests of the EU as a whole, and not those of each member state. (3) During the process of deliberations, the relations between the members from the parliaments of each EU state and the members of the European Parliament grew closer, enabling the works to progress with a common spirit.

### **C. Meeting with Mr. Fernando VALENZUELA, Deputy Director-General, External Relations, European Commission**

At the European Commission, explanations were received from Deputy Director-General VALENZUELA regarding the EU common foreign and security policy. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The EU common foreign and security policy plays an important role in responding to the global issues facing the EU. (2) The EU security and defense policy now focuses on addressing problems such as terrorism and international disputes. (3) EU law takes precedence in certain fields while domestic laws take precedence in others, and both EU law and the laws of each member state share authority in the field of foreign policy.

### **D. Meeting with Mr. Pieter VAN NUFFEL, Head of the Task Force on the Future of the Union, European Commission**

Also at the European Commission, explanations were received from Task Force Head VAN NUFFEL. These were followed by a question-and-answer session.

The main points explained were as follows: (1) While the Treaty Establishing a Constitution for Europe takes the format of a treaty, it differs from normal treaties because its contents include the division of powers among various organs, etc. (2) The administration of the EU under the Treaty Establishing a Constitution for Europe is not based on elections, but its legitimacy is guaranteed by the understanding of all EU citizens through the consensus of the Council of the European Union. (3) The Treaty Establishing a Constitution for Europe summarizes the powers of the EU, which were spread out among the existing treaties. (4) The Treaty Establishing a Constitution for Europe incorporates the EU Charter of Fundamental Rights, which directly concerns EU citizens and the parliaments of each member state.

During the question-and-answer session, it was explained: (1) The constitutions of each member state and the Treaty Establishing a Constitution for Europe are in different dimensions, so the governments of each member state are not obliged to revise their constitutions to make them consistent with the contents of the Treaty Establishing a Constitution for Europe. (2) Accordingly, the functions of the European Court of Justice are not the same as those fulfilled by the U.S. Supreme Court regarding violations of fundamental rights.

## **(2) European Court of Human Rights and European Parliament (France)**

### **A. Meeting with President Luzius WILDHABER, President, European Court of Human Rights**

At the European Court of Human Rights, explanations were received from President WILDHABER regarding the European Court of Human Rights system. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The European Court of Human Rights was established under the Council of Europe. (2) Individuals can file petitions against their own



governments at the European Court of Human Rights alleging violations of the Convention for Protection of Human Rights and Fundamental Freedoms, but only after they have exhausted all of the domestic judicial proceedings and relief measures available in their own countries. (3) Member states can also file petitions against one another.

During the question-and-answer session, it was explained: (1) Many of the petitions concern violations of Article 6 (right to a fair trial) or of Article 5 (right to liberty and security of person) of the Convention for Protection of Human Rights and Fundamental Freedoms. Countries generating thousands or tens of thousands of such petitions have structural problems with their domestic laws, and the domestic laws of such countries need to be amended. (2) The governments of all member states are bound by the rulings of the European Court of Human Rights, and countries which lose their cases are obliged to submit reports on the status of the implementation of corrective measures. (3) The Court's judgments demand that member states provide monetary or nonmonetary relief to their citizens, and the relief sometimes requires making revisions to domestic laws. (4) The Court can accept petitions regarding EU administrative affairs, but at the present time suits regarding violations of human rights by EU organs cannot be filed at the Court.

#### **B. Meeting with Commissioner Antonio VITORINO, European Commissioner for Justice and Home Affairs, European Commission**

At the European Parliament, explanations were received from Commissioner VITORINO. These were followed by a question-and-answer session.

The main points explained were as follows: (1) Some nations are submitting the Treaty Establishing a Constitution for Europe to popular referendums in their ratification procedures. Although most European citizens may be said to support the Treaty, many feel distance from EU issues and providing sufficient explanations is an important task. (2) The Treaty Establishing a Constitution for Europe does not change the relative powers of the EU and the member states, but it clarifies the locus of authority. (3) The Treaty establishes the new posts of an EU president and an EU foreign minister. The former would have no executive powers, while the latter would have status as the external representative of the EU.

#### **C. Meeting with Mr. P. Nikiforos DIAMANDOUROS, European Ombudsman, European Parliament**

Also at the European Parliament, explanations were received from Ombudsman DIAMANDOUROS regarding the European ombudsman system. These were followed by a question-and-answer session.

The main points explained were as follows: (1) Ombudsman systems exist in countries with both democracy and the rule of law, and are established as supplementary systems to independent and robust judicial systems and are supported by citizens' law-abiding spirit. (2) The establishment of systems like ombudsman systems together with judicial systems provides various means of resolving disputes and appeals, which are becoming more and more diverse, and expands citizens' freedom of choice. (3) Precisely because the measures that ombudsmen may implement are limited to recommendations which are not legally binding, ombudsmen must be independent both in name and

in fact, and in that sense it is desirable that ombudsman and similar systems be stipulated by superior domestic law, that is to say, by national constitutions.

#### **D. Meeting with MEP Georg JARZEMBOWSKI, Vice Chairman of Delegation for Relations with Japan, European Parliament**

Also at the European Parliament, explanations were received from Vice Chairman JARZEMBOWSKI regarding popular referendums for ratification of the Treaty Establishing a Constitution for Europe. These were followed by a question-and-answer session.

The main points explained were as follows: (1) Several nations are conducting popular referendums to ratify the Treaty Establishing a Constitution for Europe, but this is an extremely dangerous process because, for example, domestic political parties may use these plebiscites for political purposes. (2) Two important points of the Treaty Establishing a Constitution for Europe are (a) it expedites the Council of the European Union decision-making process by introducing the “double majority” format [approval by the majority of the member states and the majority of the population of the EU], and (b) it renders the Charter of Fundamental Rights legally binding. (3) When presenting the Treaty to citizens, rather than sending the draft itself to the people (as previously happened in Denmark), the important points should be extracted and presented with easily understood explanations.

#### **E. Meeting with MEP Inigo MENDEZ de VIGO, President, European Parliamentary Delegation to the Convention, European Parliament**

Also at the European Parliament, explanations were received from Delegation President MENDEZ de VIGO regarding the status of the European Parliament and the EU’s world strategy, etc. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The Treaty Establishing a Constitution for Europe stipulates an “early warning system” whereby the parliaments of each of the member states will hold deliberations on whether or not European Commission proposals lie within the authority of the EU in cases when such proposals clash with the wills of the member states’ parliaments. (2) When the EC was launched 50 years ago it was an economic market, but the EU is no longer just an economic market and the Treaty Establishing a Constitution for Europe stipulates EU values. (3) The objective of the EU is not to become a superpower, but rather to maintain amicable relations with the U.S., Japan, neighboring countries, etc.

#### **F. Meeting with MEP Klaus HANSCH, Vice President, European Parliamentary Delegation to the Convention, European Parliament**

Also at the European Parliament, explanations were received from Delegation Vice President HANSCH regarding the developments until the Treaty Establishing a Constitution for Europe is adopted, its characteristics, etc. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The Treaty Establishing a Constitution for Europe was drafted at the convention – legally it is an “international treaty” among nations, but politically it is a constitution. (2) The European Parliament’s personnel and budget, the financial contributions of

each member state, etc. (3) NGOs and NPOs were invited and public hearings were held when the constitution was drafted, and recommendations from important NGOs were prudently incorporated.

#### **G. Meeting with MEP Jo LEINEN, Chairperson, Committee on Constitutional Affairs, European Parliament**

Also at the European Parliament, explanations were received from Chairperson LEINEN regarding the process of drafting the Treaty Establishing a Constitution for Europe and the EU common foreign and security policy. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The Treaty Establishing a Constitution for Europe has provisions stipulating a common security and defense policy in the fields of security and diplomacy, and indicates that the EU was established with the objective of promoting peace. (2) Regarding relations with NATO, while NATO addresses global-scale and large-scale conflicts, the EU conducts peacekeeping activities and conflict prevention activities, particularly conflict prevention activities in neighboring countries. (3) In preparing the draft, the Committee on Constitutional Affairs of the European Parliament was a leading force behind the decision to establish a convention format, and also proposed the inclusion of the Charter of Fundamental Rights as well as granting the EU legal status as a corporate body. (4) After the Treaty on establishing a Constitution for Europe is ratified, the Committee on Constitutional Affairs will still be responsible for arranging the various systems and for making future revisions.

#### **H. Meeting with MEP Andrew Nicholas DUFF, Vice President, European Parliamentary Delegation to the Convention, European Parliament**

Also at the European Parliament, explanations were received from Delegation Vice President DUFF regarding the expansion of the EU and the Treaty Establishing a Constitution for Europe overall. These were followed by a question-and-answer session.

The main points explained were as follows: (1) The Treaty Establishing a Constitution for Europe expresses a clear orientation toward a federal type constitution, so while expanding the EU it also successfully deepens the EU. (2) The Treaty Establishing a Constitution for Europe exercises self-restraint in maintaining the powers of the EU within the existing framework and not anticipating new policies, so consequently the Treaty fully reflects contemporary European society, incorporates the hopes, ideals and concerns of European citizens, and builds up the foundations for the further development of common policies in the future and for the development of parliamentary democracy.

During the question-and-answer session, it was explained: (1) The U.K. took a positive stance toward the establishment of the EU convention following the coordinated terrorist attacks on the U.S. (2) The U.K. Parliament was initially skeptical regarding strengthening the powers of the EU, especially the powers of the judicial branch.

#### **I. Meeting with MEP Elmar BROK, Chairperson, Committee on Foreign Affairs, European Parliament**

Also at the European Parliament, explanations were received from Chairperson BROK regarding the

ratification process of the Treaty Establishing a Constitution for Europe. These were followed by a question-and-answer session.

The main points explained were as follows: (1) When the war in Iraq began, it became clear that the EU was unable to stop unilateral action by the U.S. because of the weakness of the EU's multilateralism, and this led to the drafting of the common foreign and security policy to address diplomatic and security issues. (2) The conclusion of the Treaty Establishing a Constitution for Europe will establish an EU foreign minister as a unified voice for EU diplomacy, and strengthen cooperation among the military forces of the member states.



## **Chapter 3**

### **The Discussions in the Research Commission on the Constitution**

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## **Chapter 3**

### **The Discussions in the Research Commission on the Constitution**

#### **Introduction**

With the aim of presenting a clear and impartial overview of the discussions on the Constitution conducted over a five-year period by the Research Commission, this chapter has been compiled according to the following three principles:

1. It should provide a fair and unbiased record of the wide range of opinions which emerged among the Commission's members.
2. In order to present a clear overview of the voluminous body of research, members' opinions should be summarized and organized according to the issues discussed.
3. It should be indicated which opinions were expressed most frequently during the five years of research; however, this does not mean that they are majority opinions as determined by a decision-making process in the Commission.

For reference purposes, at the end of each item the key points of relevant statements by informants, speakers at open hearings, and others (hereafter, "informants and others") have been summarized.

## **Section 1 Outline**

In order to provide an overview, this section is a summary of the members' opinions presented in Section 2, "The Formulation Process of the Constitution of Japan"; Section 3, "Opinions Concerning Specific Articles of the Constitution of Japan"; and Section 4, "The Future of the Constitutional Debate and Related Matters."

### **Subsection 1 The Formulation Process of the Constitution of Japan**

In discussing the significance of the enactment of the Constitution of Japan, there were expressions of high regard for the Constitution's statement of principles such as the sovereignty of the people, respect for fundamental human rights, and pacifism. On the other hand, among other comments, it was suggested that the formulation of the Constitution had an aspect that undervalued or denied Japanese traditions and culture.

With regard to the formulation process, among other matters, there was discussion of the involvement of the General Headquarters of the Supreme Commander of the Allied Powers (GHQ) through a series of actions which started with the Government Section of GHQ presenting its own draft to the Japanese side and instructing them to draw up a draft Constitution based thereon. Some members viewed the GHQ's involvement in the formulation of the Constitution of Japan as "imposition" and therefore problematic, but there were many comments to the effect that this question should not receive undue emphasis.

The formulation process for specific items in the Constitution of Japan and related matters were also discussed.

### **Subsection 2 Opinions concerning Specific Articles of the Constitution of Japan**

#### **I. General Discussion**

##### **1) Overall Evaluation of the Constitution of Japan**

Many members spoke in favor of maintaining the basic principles of the Constitution of Japan, namely, the sovereignty of the people, pacifism, and respect for fundamental human rights.

##### **2) The Role of the Constitution**

Two views of the Constitution's role were expressed. One view emphasized the Constitution's role of limiting the exercise of public authority, based on the principles of modern constitutionalism; the other emphasized, in addition, its role in establishing national goals and providing a set of behavioral norms for the people. This difference in emphasis gives rise to differences of opinion concerning the substance of certain items of the Constitution; for example, whether the Preamble should set forth

uniquely Japanese values; whether there should be more provisions on the duties of the people; and whether the obligation to protect and uphold the Constitution should be addressed to the people as well as to public officials.

### **3) The Distance between the Constitution and Reality**

Several matters were discussed in terms of a distance between the Constitution and reality, especially the existence and overseas activities of the Self-Defense Forces, viewed in relation to Article 9's renunciation of war, its declaration that war potential will not be maintained, and its nonrecognition of the right of belligerency; and the differential in the weight of a single vote between different electorates, viewed in relation to Article 14's stipulation of equality under the law.

Members expressed concern that the use of constitutional interpretation to account for perceived gaps between the Constitution and reality might reduce the Constitution to a mere formality without substance, resulting in constitutional norms being disregarded and thus harming the Constitution's inherent stability. Opinions differed as to how the gaps should be eliminated.

One position was that the Constitution should be revised to bring it into accord with reality; the opposing position was that the reality should be rectified and brought into accord with the Constitution. This disagreement was most apparent with regard to the question of eliminating the distance between Article 9 and reality.

### **4) How the Constitution Is Affected by Changes in Conditions since Its Enactment**

There have been marked changes in the situation surrounding the Constitution since its enactment. Examples discussed included: (1) the rising expectations of international contributions by Japan; (2) advances in science and technology; (3) the emergence of environmental problems.

The question of whether it is necessary to reflect these changes in the text was discussed in relation to several areas of the Constitution. Some members called for the establishment of constitutional provisions in response to the changed conditions, while others saw no need for constitutional revision, believing it more important to respond by legislation or other measures based on the ideals of the Constitution.

## **II. Detailed Discussions**

### **1. The Preamble**

#### **1) Contents**

The main topics of discussion regarding the Preamble were: whether a Preamble is necessary; its relationship with the individual articles; its normative nature; and its content, style, and wording.

With regard to the Preamble's relationship with the individual articles, the view that they are closely related was expressed.

The discussion of content centered on what matters should be provided for in the Preamble. In this connection, there was debate over whether the Preamble should contain explicit provisions concerning Japan's unique history, traditions, and culture, but opinion on this question was divided.

Some members, noting that history, traditions, and culture are inherently diverse, expressed the view that any stipulation of a particular set of values should be avoided, but many members expressed the view that the Preamble should make explicit reference to Japan's unique history, traditions and culture.

Other topics discussed with regard to the Preamble were: setting forth the three basic principles of the Constitution, and making provision for Japan's approach to the global environment.

## **2) Style and Wording**

With regard to the Preamble's style and wording, some members commented that the style has gained acceptance among the public and there is no need to change it, but many took the position that, because it is written in a kind of "translationese" based on English syntax, it should be rewritten in readily understandable Japanese based on Japanese modes of thinking, or it should be rewritten more simply.

## **3) Comments on the Preamble in Relation to Specific Items of the Constitution**

There was some discussion of the Preamble in relation to specific items of the Constitution, focusing mainly on pacifism and the right to live in peace. The pacifist spirit of the Preamble was the subject of both positive evaluation and criticism. The provision on the right to live in peace was also evaluated positively by some members, while others commented that this right should be stated more clearly.

## **2. The Emperor**

### **1) Evaluation of the Emperor-as-Symbol System**

Many members called for the present Emperor-as-symbol system to be maintained in the future, mainly on the grounds that it has popular support and has taken root among the people, and that, historically, it is consistent with the essence of the Emperor system. No members viewed the question of whether the system should be retained or abolished as an immediate constitutional issue.

The status of the Emperor system under popular sovereignty was also discussed.

## **2) The Status of the Emperor**

With regard to the Emperor's status, the question of the head of state was taken up. Opinion was divided over whether the Emperor should be considered head of state. Opinion was also divided over whether to establish a constitutional provision designating the Emperor head of state, but many members expressed the view that this is not necessary.

The case that explicit designation is unnecessary was based mainly on the following reasons: (1) it would be difficult to establish such a provision because of the Emperor's present status, which excludes powers related to government; (2) the majority of the public have expressed no objection to the present Emperor-as-symbol system; (3) not designating the Emperor head of state is more suited to the Emperor-as-symbol system. On the other hand, those in favor of explicit designation argued that the Emperor can presently be considered head of state and that this status should therefore be clearly defined.

## **3) Succession to the Throne**

Succession to the throne was discussed primarily as a matter to be addressed in the Imperial Household Law. The main issue was female succession. While there were some expressions of caution, many members stated that female succession should be recognized.

The case for recognizing female succession was based mainly on the following reasons: (a) the Constitution does not limit the right of succession to males; (b) there are concerns that the Imperial line will come to an end if succession continues to be limited to males; (c) there is a trend in public opinion toward accepting a female Emperor; (d) recognizing female succession would also be in keeping with the present trend toward equality of the sexes and creating a gender-equal society. On the other hand, those who called for caution did so mainly on the grounds that succession by male descendants in the male line is a Japanese tradition.

## **4) The Emperor's Official Acts**

With regard to the Emperor's official acts, among other points, there was debate on what acts should constitute "acts in matters of state" and how they should be implemented, and on whether approval should be given to other categories of acts by the Emperor, apart from acts in matters of state and private acts.

# **3. Security and International Cooperation**

## **1) Security**

### **(1) Evaluation of Article 9**

With regard to security, there were many positive evaluations of the role that Article 9 has played in ensuring Japan's peace and prosperity to date. There were also many comments to the effect that pacifism should be maintained in the future by firmly upholding, at the least, the principle of

renunciation of war in Paragraph 1 of Article 9.

Positive evaluations of Article 9 were as follows: (1) the existing Constitution is excellent, and it has contributed greatly to Japan's postwar peace, stability, and development; (2) Article 9 is not merely an ideal, but serves as a check preventing Japan from becoming a military power; (3) pacifism based on Article 9 and the Preamble, together with the people's commitment thereto, have contributed greatly to peace in Japan, as is clearly shown by the support and positive evaluation that Japan's pacifism has received from other Asian nations; (4) the Constitution rejects security by military means and aspires to fully realized "human security." Among opposing comments, one expressed the view that, although it is argued that Japan has not caused any conflicts nor been invaded by another nation because of the existence of Article 9, in reality, Japan has enjoyed peace and economic prosperity because of the existence of the Japan-U.S. Security Treaty and the Self-Defense Forces.

## **(2) The Right of Self-Defense and the Self-Defense Forces**

With regard to whether the use of force can be recognized as an exercise of the right of self-defense, some members were opposed to recognition even as an exercise of the right of self-defense, but many members spoke in favor of recognizing the minimum necessary use of force as an exercise of the right of self-defense.

### **(i) The Relationship between the Right of Self-Defense, the Self-Defense Forces, and the Provisions of the Constitution**

As stated above, many members were in favor of recognizing the minimum necessary use of force as an exercise of the right of self-defense. Their views can be broadly divided into the following three positions regarding the relationship between the right of self-defense, the Self-Defense Forces, and the provisions of the Constitution: (a) the position that steps should be taken to clarify the constitutional basis for the right of self-defense and the Self-Defense Forces; (b) the position that provisions concerning the exercise of the right of self-defense and/or legal control of the Self-Defense Forces should be established in the Constitution; (c) the position that Article 9 should be firmly maintained while recognizing the minimum necessary use of force for self-defense. The latter category includes the position that there should be further debate on whether to add provisions concerning the Self-Defense Forces.

A fourth position, (d), opposed the use of force as an exercise of the right of self-defense and the existence of the Self-Defense Forces.

Although opinion was divided as seen above, many members did not oppose taking some sort of constitutional measure with regard to the right of self-defense and the Self-Defense Forces.

Advocates of position (a) emphasized clarification of the constitutional status of the right of self-defense and the Self-Defense Forces, while advocates of position (b) emphasized bringing the

exercise of the right of self-defense, which is a powerful exercise of public authority, under legal control in order to ensure that it is limited and restrained, by stipulating the requirements for its exercise, the limits thereof, principles of conduct for the Self-Defense Forces, and so on. Position (c) is based on the view that because the Self-Defense Forces exist as a guarantee of the right of individual self-defense, they can be construed as not constituting “war potential” under Article 9, Paragraph 2.

Advocates of position (d), on the other hand, stated that Article 9 should be firmly upheld and that, in accordance with its principles, Japan should make efforts to prevent conflicts and to achieve peaceful settlement when conflicts arise. Further, advocates of this position took a negative view of the Self-Defense Forces and proposed, among other things, that they should be reconstituted as a different organization for disaster response, or that they should be phased out.

## **(ii) The Right of Collective Self-Defense**

Opinion regarding the exercise of the right of collective self-defense was more or less divided into three positions: those who favored recognition without discussing limits; those who favored limited recognition; and those who opposed recognition.

The main reasons cited in favor of recognizing the exercise of the right of collective self-defense were as follows: (1) Japan carries out its defense and international cooperation in surrounding areas jointly with the United States, and recognition would enable it to do so more smoothly and effectively, or to build an equal partnership with the United States; (2) the right of collective self-defense is a natural right of sovereign states, recognized under the United Nations Charter, and its exercise by Japan can therefore be recognized.

Comments on limits to the exercise of the right of collective self-defense included the view that limits should not be set *a priori* in the Constitution as this could interfere with conducting joint operations with other countries, and that policy should instead be decided as and when the situation requires; and the view that the right of collective self-defense should be exercised with restraint, establishing prior limits such as: (1) limiting its exercise to joint action with allied nations, or (2) limiting its exercise to the East Asian region, or (3) limiting its exercise to cases having a serious impact on the vital interests of Japan.

The main reasons cited by those opposed to recognizing the exercise of the right of collective self-defense were as follows: (1) the right of collective self-defense in the United Nations Charter is an exceptional and interim measure, and in reality it forms the basis for military alliances; (2) recognition would open the way to unrestricted participation by the Self-Defense Forces in wars fought by the United States, which are conducted on a global scale; (3) recognition would threaten other Asian nations and cause them to distrust Japan.

With regard to the legal basis for recognizing the exercise of the right of collective self-defense,

among the advocates of recognition, some expressed the view that it could be achieved by changing the interpretation of the Constitution, but many stated that it should be done by revising the Constitution.

The view that recognition should be based on constitutional revision was divided into subgroups similar to positions (a) and (b) in a-2-1 above.

Those who stated that the exercise of the right of collective self-defense can be recognized by a change in interpretation of the Constitution contend that the state possesses and can exercise the right of self-defense (whether individual or collective) as an inherent right, and that it is therefore unnecessary to state explicitly in the Constitution that the exercise of the right of collective self-defense will be recognized.

### **(3) The Japan-U.S. Security Treaty**

Some members made comments predicated on the continued existence of the Japan-U.S. Security Treaty, while others expressed a negative view of the Treaty.

The comments premised on the Treaty's continued existence were not uniform. On the one hand, there were positive comments such as the view that the Japan-U.S. alliance is a highly realistic security policy, since if Japan were to deal with situations such as the nuclear threat on a unilateral basis it would cause tensions in the Asian region. On the other hand, there were comments that regarded the Treaty's continued existence as inevitable, such as the view that, while in reality Japan has no choice but to make its alliance with the United States a premise of national security, it should place importance on the centrality of the United Nations, partly for the sake of its own independence.

Among comments by those opposed to the Japan-U.S. Security Treaty was the view that the Treaty, which contradicts Article 9, should be dissolved in keeping with the spirit of the Article.

### **(4) The Question of U.S. Military Bases in Japan**

The discussion of U.S. military bases in Japan covered the present and future status of the base question and its relationship with the Constitution, among other points. One comment was that, since its reversion to Japan, Okinawa remains to this day under conditions which violate the ideals of the Constitution due to the presence of a large number of U.S. military bases and the existence of the Japan-U.S. Status of Forces Agreement, and the spirit and ideals of the Constitution should be realized.

### **(5) The Elimination of Nuclear Weapons and Other Nuclear-Related Matters**

Comments concerning the elimination of nuclear weapons and other nuclear-related matters included the following: (1) the elimination of nuclear weapons should be stipulated in the Constitution, together with the three non-nuclear principles; (2) there will always be a danger of nuclear proliferation as long as the doctrine of nuclear deterrence holds sway, and Japan cannot recognize



the doctrine of nuclear deterrence, which is incompatible with the elimination of nuclear weapons; (3) Japan cannot ensure its security solely by means of the right of self-defense, whose exercise is permitted only to the minimum extent necessary, unless it relies on the United States' nuclear deterrent capability.

## **2) International Cooperation**

### **(1) Promoting International Cooperation**

On the whole, there was a common understanding that Japan should continue actively carrying out international cooperation in future, but there was a wide range of views as to what kind of international cooperation Japan should pursue.

### **(2) The Relationship between Promoting International Cooperation and the Constitution**

Some members favored establishing provisions on international cooperation in the Constitution; others saw no need to do so.

The main views expressed by those in favor were as follows: (1) provisions should be established as a basis for international cooperation activities; (2) provisions should be established as a basis for overseas dispatch of the Self-Defense Forces; (3) provisions should be established to permit international cooperation involving the use of military force in cases where it is unavoidable.

On the other hand, the views expressed by those who saw no need to establish provisions on international cooperation included the following: there is no need to revise the Constitution because, under Article 9, Japan should carry out support activities in non-military sectors.

### **(3) Participation in UN Collective Security Operations**

With regard to UN collective security operations, which are one type of international cooperation, some members stated that Japan's participation should be limited to non-military sectors, but many stated that Japan should participate without limiting its role to non-military sectors.

The main reasons cited by those in favor of not limiting participation to non-military sectors were as follows: (1) as Japan benefits greatly from international peace and security, it should play a role in international cooperation commensurate with its status as an economic power; (2) Japan should leave behind "one-nation pacifism" and share risks with other countries. With regard to the legal basis, some members who favored not limiting participation to non-military sectors expressed the view that participation is possible even under the existing Constitution, but many expressed the view that the legal basis should be set forth explicitly in the Constitution. The main reasons cited for this position were as follows: (1) there is a need to make it possible under the Constitution for Japan to participate actively in operations including those of UN forces and multinational forces; (2) there is a need to establish provisions to limit the use of force involved in such participation. Further, the views expressed from the standpoint that participation is possible even under the existing

Constitution included the following: collective security operations do not constitute the use of force as a sovereign right of the nation, which is prohibited by Article 9, but are based on the principle of international cooperation which is declared in the Preamble, and therefore the existing Constitution can be construed as permitting collective security operations separately from the use of force to the minimum extent necessary for self-defense.

On the other hand, the main reasons cited for the position that participation should be limited to non-military sectors were as follows: (1) the use of force is unconstitutional even in the context of participation in UN collective security operations; (2) to take part in military sanctions would risk threatening other Asian nations and causing them to distrust Japan.

#### **(4) International Cooperation Activities by the Self-Defense Forces**

With regard to whether the Self-Defense Forces should conduct international cooperation activities, there were comments from two viewpoints: that full use should be made of the Self-Defense Forces for this purpose, and that it is not appropriate to do so.

Comments by those in favor of making full use of the Self-Defense Forces included the following: (1) explicit provisions on international cooperation by the Self-Defense Forces should be established in the Constitution because the world expects Japan to provide international cooperation that includes personnel contributions, and the approach of enacting the legislation required to dispatch the Self-Defense Forces on each occasion has reached its limit; (2) a permanent law should be enacted to lay down general principles governing the overseas dispatch of the Self-Defense Forces.

On the other hand, comments from the position that it is not appropriate to make full use of the Self-Defense Forces in international cooperation included the following: (1) overseas dispatch of the Self-Defense Forces is not permissible under the Constitution; (2) ways of contributing personnel from organizations other than the Self-Defense Forces, such as NGOs, should be considered.

#### **(5) Regional Security**

Regional security matters, including the creation of a framework for regional security in Asia, were discussed, and many members saw a need for a framework of some kind. The main comments from this viewpoint were as follows: (1) in view of the need for joint action against international terrorism, together with the regional situation in Northeast Asia, it is important that the Asian nations make ongoing efforts to ensure their security, including regular diplomacy, consultation, and confidence-building, and a regional security framework should be created for that purpose; (2) Japan's approach to security should include maintaining and developing the Japan-U.S. Security Arrangements, but we should not merely depend on this; instead, we should consider the creation of a collective security mechanism in Asia as a diplomatic option.

However, on the question of what form the framework should take, opinion was divided between those who envisioned it as including the use of force and those who called for a framework of non-

military security dialogue.

The relationship between regional security and economic liberalization was also discussed.

### **3) Other Comments**

Other topics discussed included various matters relating to the United Nations, and the transference of state sovereignty.

## **4. Rights and Duties of the People**

### **1) General Discussion of the Rights and Duties of the People**

#### **(1) Modern Constitutionalism and Its Development**

Two views were expressed regarding the fundamental question of the proper stance of the Constitution toward the rights and duties of the people. One view emphasized the approach of modern constitutionalism, according to which the Constitution's purpose is to protect the fundamental human rights of the people from abuses of state power, and its essence is freedom from the state; the other view, while taking modern constitutionalism into account, also emphasized an active role for the state in guaranteeing fundamental human rights.

Those who emphasized the modern constitutionalist approach placed importance on the aspect of the Constitution which forms a set of norms limiting the exercise of public authority.

On the other hand, those who also emphasized an active role for the state, especially in guaranteeing human rights, pointed to the emergence of situations that are not readily explained or resolved solely in terms of freedom from the state, such as environmental problems, the need to reconcile different human rights, and the consequences of scientific and technological advances.

#### **(2) Reconciliation of Fundamental Human Rights**

Various topics were taken up in relation to the reconciliation of fundamental human rights, including the question of what constitutes the public welfare, but the key issue was how to ensure that the aims and means adopted in adjusting or restricting human rights are reasonable. The main views expressed were as follows: (1) the Constitution should state concretely what constitutes the public welfare in relation to each type of right; (2) decisions as to what constitute reasonable aims and means in adjusting or restricting human rights should be made primarily in the form of laws enacted by the Diet. The intent of position (2) is to prevent the Diet from delegating legislation too readily to the executive branch when it involves deciding whether the said aims and means are reasonable, which is an essential matter of state. However, positions (1) and (2) are not mutually exclusive, and it was suggested that constitutional provisions as advocated in position (1) are necessary as guidelines for the Diet to make correct judgments.

### **(3) The Human Rights of Foreign Nationals**

In relation to the question of who are the possessors of human rights, the human rights of foreign nationals were taken up and discussed from various angles. Some members were in favor of granting permanent foreign residents the right to vote in local elections, mainly on the grounds of promoting resident self-government, while others expressed caution, mainly on the grounds that voting rights should be granted to Japanese nationals only.

### **(4) “New Human Rights”**

There was a common understanding in favor of actively recognizing the rights known collectively as “new human rights.” On the basis of that understanding, there was debate as to whether it is necessary to make express provision for them in the Constitution.

The case in favor of stipulating new human rights in the Constitution was based mainly on the following reasons: (1) rights that were not foreseen when the Constitution was enacted have subsequently been recognized; (2) express provisions in the Constitution would help guarantee the fundamental human rights of the people; (3) express provisions in the Constitution would serve as criteria for legislation and the courts; (4) while it may be true that the Constitution is a highly abstract set of norms, there are limits to the approach that regards new human rights as already included under the right to the pursuit of happiness in Article 13 or other existing provisions.

On the other hand, those who saw no need to stipulate new human rights in the Constitution contended that the Constitution’s human rights provisions have sufficient depth to accommodate not only the new human rights already in existence (for example, the right to privacy, which has been recognized through interpretation of Article 13, and the right to know, which has been recognized through interpretation of Article 21), but also any that may arise in the future. They also argued that the real need is not to establish provisions in the Constitution but to take legislative measures that concretely embody the spirit of the Constitution.

Environmental rights were the main example of “new human rights” for which constitutional provisions were advocated. Some members expressed the view that there was no need to provide for environmental rights in the Constitution, but many members favored establishing some sort of environmental provisions in the Constitution, though there remains the question of whether they should take the form of environmental rights or the duty of the state to protect the environment.

Further, many members expressed the view that the right to know (or the right of information access) and the right to privacy, among others, should be stipulated in the Constitution.

### **(5) The Duties of the People**

Opinion was divided on the question of whether there should be more provisions concerning the duties of the people.

The case for more duty provisions was based mainly on the following reasons: (1) in every sector of Japanese society, awareness of the duties that are a corollary of rights has diminished greatly in the postwar period; responsibilities or duties to the nation, society, the family and the home are regarded lightly, and this has led to such ills as unrestrained assertion of personal rights, violation of the rights of others, and social disorder; (2) the exercise of rights entails the fulfilment of duties. Some of those who called for more duty provisions aspired to go beyond modern constitutionalism and restructure the Constitution in a form that provides for the state and the people to work together. Among additional duty provisions proposed by those who favored an increase were the duty to defend the nation, the duty to preserve the environment, and the duty to vote.

On the other hand, those who opposed additional duty provisions took the modern constitutionalist concept of a constitution as their premise and based their position mainly on the grounds that constitutional norms are addressed to public authority, and a constitution should not impose a large number of duties or responsibilities on the people. They also argued that adding more duty provisions to the Constitution would not solve social problems.

## **(6) Bioethics and the Constitution**

Opinion was divided over whether provisions on bioethics should be established in the Constitution.

Those in favor held that the Constitution should provide expressly for the principle of human dignity and the sanctity of life as concepts superordinate to the dignity of the individual, thereby serving to provide a guideline for the Japanese people's sense of ethics, to foster balanced perspectives and to bring individual dignity and academic freedom into harmony.

Those who expressed caution stated that, as in other fields, the Constitution is already able to accommodate bioethical concerns adequately.

## **2) Detailed Discussions of the Rights and Duties of the People**

In the discussion of individual articles on the rights and duties of the people, there were two main positions. One position, while noting that due weight must be given in the interpretation of each article to its historical background and the circumstances that led to its enactment, and while affirming each article to a certain extent, was nevertheless in favor of making necessary revisions such as stipulating new human rights. The other position held that there is no need for revision since the Constitution's human rights provisions have taken on ample substance with the development of academic theory and case law, and that the real need is to put the existing provisions into practice.

### **(1) Equality under the Law**

There was discussion of whether the equality under the law stipulated in Article 14 is "equality in form," which requires that individuals be treated uniformly on the same basis regardless of actual differences, or "equality in substance," which seeks to make outcomes more nearly equal by giving preferential treatment to those who are in an inferior position in society. Views were expressed with

regard to affirmative action, which is one method of seeking substantive equality.

In addition, there was debate on the Civil Code's provision concerning the legal portion of inheritance of an illegitimate child, and on the constitutionality of the disparity in the weight of a vote between different electorates.

## **(2) Freedom of Religion and the Separation of Religion and State**

With regard to the fact that, in addition to guaranteeing freedom of religion, the Constitution also stipulates the principle of separation of religion and state, there was debate on the limits of acts of the state that are permitted under this principle. The debate focused on opposing interpretations regarding the constitutionality of visits by the prime minister and other public officials to Yasukuni Shrine. Some members regarded the visits as constitutional, mainly on the grounds that their purpose is to mourn the war dead and they do not have the effect of promoting a particular religion, while others construed the principle of separation of religion and state as intending a strict separation and argued that repeated visits to a particular religious facility violate the principle both in their purpose and in their effect.

When the issue was discussed in terms of constitutional revision, some members favored revising the Constitution to allow participation by the prime minister and other public officials in social observances or customary events, together with expenditure of public funds, while others favored laying down criteria in the Constitution to ensure strict separation of religion and state.

## **(3) Freedom of Expression**

It was suggested that, in contemporary society, freedom of expression must be reconstituted to include the perspective of the right to know.

There was also discussion of how the freedom of the press should be reasonably reconciled with the right to privacy, in light of observed violations of human rights by the news media, such as invasions of privacy.

## **(4) Property Rights**

Comments on the guarantee of property rights included the view that in Japan today there is a strong belief that property rights are absolute, making it difficult to restrict them, and the view that it should be stated explicitly in the Constitution that property rights are accompanied by responsibilities and duties.

On the other hand, it was also argued that property rights are already under social constraints in the Constitution against the background of the trend toward the state control of society.

## **(5) Items concerning the Family and the Home**

In relation to the family and the home, there was discussion of whether an optional system allowing

married couples to use different surnames should be introduced. Views were expressed both in favor of such a system, mainly on the grounds that it would contribute to women's right to work, and against it, mainly on the grounds that it could lead to the breakdown of the family.

There was also discussion of whether provisions calling for respect for the family and the home or respect for the community should be established in the Constitution. Opinion was divided on this point.

The case for establishing such provisions in the Constitution was based mainly on the following grounds: (1) the observation that, in some respects, Article 24 has undeniably led to an excessive tendency toward individualism; (2) the need to reaffirm the importance of the family and the home as the basis of society and to recreate functions they have long performed, such as mutual support within the family and education in the home, in order to solve the social problems that have surfaced.

The case against establishing such provisions in the Constitution was based mainly on the following grounds: (1) the argument that there is no need to take a negative view of Article 24, as it is unrelated to self-interest; (2) the argument that the solution to social problems like the breakdown of the family should be sought in concrete policies to protect home life, rather than in establishing constitutional provisions; (3) concern about the wisdom of institutionalizing values such as respect for the family and the home; (4) fears that establishing provisions on the family could lead to a return to the prewar family system.

## **(6) Other Comments**

Other specific topics discussed in relation to the rights and duties of the people included the right to life, liberty, and the pursuit of happiness; freedom of thought and conscience; the right to a minimum standard of living; the right to receive an education; fundamental labor rights; rights relating to criminal procedures; and the rights of crime victims.

## **5. The Political System**

### **1) The Diet**

The main topics discussed in relation to the Diet were the question of whether to retain a bicameral system or adopt a unicameral system; and, assuming that a bicameral system is retained, issues concerning reforms of the powers, electoral systems, and other characteristics of the two chambers.

#### **(1) The Question of Bicameralism**

Some views were expressed in favor of adopting a unicameral system, but many members favored retaining a bicameral system.

The case for retaining a bicameral system was based mainly on the following grounds: (1) two

chambers are necessary to reflect the diversity of opinion among voters and to ensure a hearing for minority voices; (2) careful deliberations should be conducted through the multilayered discussion of bills and other measures that a bicameral system allows.

On the other hand, the case for adopting a unicameral system was based mainly on the following grounds: (1) in practice, the two chambers conduct the same debate, and this is an impediment to timely decision-making as a nation; (2) the government of the nation is paralyzed when the two chambers have a different party composition or stance on bills.

## **(2) Discussion of Reforms Predicated on a Bicameral System**

On the assumption that a bicameral system is to be retained, ways of reforming the existing system were discussed. The topics discussed can be classified as follows: (i) clarifying the division of roles between the two chambers; (ii) reforming the systems for electing members to the two chambers; (iii) reducing the powers of the House of Councillors or calling for self-restraint by the House of Councillors in the exercise of its powers.

### **(i) Clarifying the Division of Roles between the Two Chambers**

Many members advocated clarifying the division of roles between the two chambers. Concrete proposals included the following: (1) the House of Representatives should focus on reviewing the budget and the House of Councillors should focus on reviewing the final accounts in order to strengthen the Diet's function in the latter area; (2) the House of Councillor's roles of overseeing the administration and carrying out investigations with a long-term perspective should be strengthened.

### **(ii) The Electoral Systems of the Two Chambers**

Many members expressed the view that the members of the two chambers should be elected by different systems so that they would represent the people in different ways. This view is based on the perception that the present electoral systems of the two chambers are too similar and that this renders the bicameral system less meaningful. A number of electoral reforms were proposed.

### **(iii) Reduction of the House of Councillors' Powers or Self-Restraint in Their Exercise**

A number of views were expressed based on concerns that the government of the nation becomes paralyzed when the House of Councillors rejects an important bill passed by the House of Representatives, and on concerns that the House of Councillors, while lacking the power to pass a motion of no confidence in the Cabinet, can pass a de facto motion of no confidence in the form of a motion of censure of ministers of state. Among these comments were the following: (1) the requirements in Article 59, Paragraph 2 for repassage of a bill by the House of Representatives should be relaxed; (2) the House of Councillors should adopt a practice of voluntary restraint with regard to motions of censure. Opinions expressed from an opposing viewpoint included the following: (1) the role of the House of Councillors should not be underestimated, since the meaning of the bicameral system lies in its pluralistic reflection of the will of the people, and there is significance in the ability of the double check provided by two chambers to lead to revision or



abandonment of bills; (2) the House of Councillors also represents the people, and it cannot reasonably be expected to voluntarily restrain the exercise of its powers.

## **2) Political Parties**

The question of whether to establish explicit provisions concerning political parties in the Constitution was discussed.

The case for making explicit provision for political parties in the Constitution was based mainly on the following reasons: (1) political parties should be given a constitutional status as they are the foundation of parliamentary democracy, with an important position and role in reflecting the will of the people in government; (2) it is important to establish a structure to ensure the fairness and transparency of political parties.

On the other hand, the case that there is no need to make explicit provision for political parties in the Constitution was based mainly on the following reasons: (1) Article 21 guarantees the freedom of association of political parties; (2) the various problems relating to political parties will not be solved merely by establishing provisions in the Constitution; (3) there is a risk that establishing provisions concerning political parties might hinder their freedom of activity and, by extension, the freedom of association.

## **3) The Parliamentary Cabinet System**

The main topics of debate regarding the parliamentary cabinet system were strengthening the leadership of the prime minister and strengthening the Diet's function of overseeing the executive branch.

### **(1) Strengthening the Leadership of the Prime Minister**

Many members spoke of the need to move from bureaucratic to political control if Japan is to achieve a more mature democracy, and the consequent need to strengthen the prime minister's leadership. Concrete proposals with those objectives included the following: (1) the Cabinet's leadership in controlling the administration should be secured by first making a clear distinction between the power to decide policy and its implementation by administrative agencies, with the prime minister being the main locus of decision-making power, and then unifying policy-making by having senior members of the ruling party hold Cabinet posts, while strictly limiting the involvement of Diet members who are not Cabinet ministers in administrative affairs; (2) Japan should aim towards a "national cabinet system," a mode of the parliamentary cabinet system having elements of direct democracy, in which the voters, in effect, directly choose a single package consisting of a policy program and a prime minister who is responsible for implementing it.

### **(2) Strengthening the Diet's Function of Overseeing the Administration**

Many members expressed the view that the Diet's function of overseeing the administration should be strengthened. The main reasons cited were as follows: (1) this is a necessary accompaniment to

stronger prime-ministerial leadership; (2) the check function of the legislative body needs to be strengthened, in part because checks by the judiciary are not functioning adequately, while administrative power has expanded due to the growth of the “administrative state.”

#### **4) Popular Election of the Prime Minister**

There was debate on the question of whether to introduce a system of direct popular election of the prime minister as a way to strengthen prime-ministerial leadership. Although some members were in favor of the idea, many were opposed.

The case against popular election of the prime minister was based mainly on the following reasons: (1) accepting a prime minister who lacked a majority in the Diet as his or her base would lead to a negation of party politics; (2) it could produce a divided government in which the legislature and the executive branch are at odds; (3) there is a risk of mob rule or a dictatorial prime minister.

The case in favor of popular election of the prime minister was based mainly on the following reasons: (1) direct popular election would make it possible for the prime minister to exercise leadership and would speed up decision-making; (2) creating a structure in which the people decide the prime minister by direct election would enable the will of the people to be reflected directly in government.

#### **5) An Ombudsman System**

Discussion of an ombudsman system revolved around whether such a system should be introduced. While some members expressed caution, many were in favor.

The case in favor of introducing an ombudsman system was based mainly on the following reasons: (1) given the present bloated state of the administration, such a system is necessary to provide redress for the rights of the public and to control and oversee the administration from an independent perspective, thereby ensuring fairness and transparency in administrative affairs and establishing the rule of law and democracy; (2) there is a need to complement existing systems of administrative oversight; (3) in the EU nations, such systems are widespread and perform a variety of functions.

On the other hand, those who took a cautious view of introducing an ombudsman system argued mainly on the following grounds: (1) it would duplicate existing systems of administrative oversight; (2) it is doubtful whether an ombudsman with the strong powers, neutrality, and independence associated with the office in other countries would function successfully in Japan; (3) there is a risk that the introduction of such a system would have an inhibiting effect on public servants; (4) a more urgent priority is giving real substance to the right of petition and the right of Diet members to investigate state affairs.

There was also debate as to whether, if an ombudsman system were introduced, it should be given a

status in the Constitution, but opinion was divided on this point.

## **6) Constitutional Interpretation in the Political Branch**

Many members expressed the view that there is no justification for the political branch of government effectively leaving the interpretation of the Constitution to the Cabinet Legislation Bureau, which is part of the executive branch. Other views expressed included the position that there is nothing wrong with the Cabinet Legislation Bureau interpreting the Constitution, but the problem is that the Diet accepts its interpretations without question; and the position that the Cabinet Legislation Bureau's strict screening of bills prior to their introduction is based on the obligation to respect and uphold the Constitution stipulated in Article 99. In light of the present situation, there was discussion of topics such as the creation of a Constitutional Court and the establishment of a standing committee in which the Diet would make its own determinations of constitutionality.

## **7) Other Comments**

Other topics discussed included the electoral system and policy evaluation.

## **6. The Judicial System**

### **1) The System of Judicial Review**

Debate on the system of judicial review centered on two topics: the present situation regarding the exercise of the power of judicial review, and guarantee of the Constitution by a Constitutional Court.

#### **(1) The Present Situation regarding the Exercise of the Power of Judicial Review**

With regard to the exercise of the power of judicial review, many members expressed the view that the judiciary is passive on matters of constitutionality and is not adequately fulfilling the role entrusted to it in guaranteeing the Constitution; examples included the small number of Supreme Court rulings that have found statutes to be unconstitutional.

On the other hand, some members expressed the view that the judiciary involvement in acts of state should be a limited one.

#### **(2) Measures to Improve the Judicial Review System, Including the Creation of a Constitutional Court**

In light of the present situation regarding the exercise of the power of judicial review, as described above, there was debate on whether to create a Constitutional Court. Some members were opposed, but many were in favor.

The case for creating a Constitutional Court was based mainly on the following reasons: (1) the Supreme Court cannot be expected to play an active role as guardian of the Constitution with the incidental power of judicial review that it has under the present system; (2) it is problematic that the

Cabinet Legislation Bureau is treated as if it had the effective right of final interpretation of the Constitution; (3) there is a need for a court mechanism to carry out abstract norm control.

On the other hand, the case against creating a constitutional court was based mainly on the following reasons: (1) there is a risk of inviting a transfer of the political process into the courts and a transfer of the judicial process into the political arena (i.e., in enacting laws, legislators would be highly conscious of constitutional court rulings); (2) judicial review could become entirely abstract and conceptual as a result of no longer being linked to concrete cases; (3) abstract judicial review could impose serious restrictions on the status and powers of the Diet, which is the highest organ of state power; (4) a constitutional court could become an organ whose function is granting constitutionality to government policies and measures.

A number of possible ways to improve judicial review without creating a constitutional court were discussed. They included establishing a Constitutional Department of the Supreme Court, which would handle only constitutionality cases; and establishing one or more Special High Courts, midway between the High Courts and the Supreme Court, which would select constitutionality cases while also serving as courts of final appeal.

Another idea put forward in connection with the debate on a constitutional court was that of creating a Constitutional Committee in the Diet to conduct prior screening of bills and related measures to determine their constitutionality.

## **2) The System of Popular Electoral Review of Supreme Court Justices**

There were comments that the system of popular electoral review of Supreme Court justices has become a mere formality and should be abolished. Some members who expressed this view explored alternative systems for reviewing the fitness of appointees; for example, it was suggested that: (1) another method of determining popular opinion should be employed; (2) appointments to the Supreme Court should be included among the personnel matters that require the approval of the Diet.

On the other hand, there were also expressions of caution about reconsidering the system of popular review of Supreme Court justices; one concern expressed was that the existing system was introduced because the Supreme Court is the court of last instance which exercises the power of judicial review.

## **3) Other Comments**

Other topics discussed included public participation in the administration of justice; new courts such as the Administrative Court; judicial appointments, the guarantee of judges' status, and related matters; and the ban on reduction of judges' compensation.

## **7. Public Finances**

### **1) Fiscal Democracy**

Measures to make fiscal democracy more substantial were discussed. The following were among the views expressed: (1) information on public finances, including the present and future contributions of the people to social security, should be made available to the public in a readily understandable form; (2) the rules governing public accounting should have a high level of transparency; (3) the Constitution should stipulate that the prime minister is accountable for the budget and final accounts; (4) a system should be created to enable the results of the Diet's review of final accounts to be reflected effectively in subsequent budgets; (5) to strengthen the Diet's function of control over public finances, either the Board of Audit should be attached to the Diet, or an auxiliary agency such as an Administrative Oversight Board should be created in the Diet.

### **2) The Principle of Fiscal Balance**

The view that the principle of fiscal balance should be stipulated in the Constitution was expressed, in light of the need to rein in bloated public finances and the present generation's responsibility to future generations in fiscal management. Some of those who favored establishing such provisions proposed that they should be "program provisions" calling for a shift to fiscal balance over the medium to long term, because mandating a balanced budget over the short term would give rise to problems such as an inability to take flexible measures to stimulate the economy.

On the other hand, critics of the view that the principle of fiscal balance should be stipulated in the Constitution commented that the proposal fails to consider the fiscal management practiced by governments to date and that it is irresponsible.

### **3) The Constitutionality of Private School Subsidies**

Many members expressed the view that Article 89 should be revised, mainly on the grounds that its provisions give rise to uncertainty as to the constitutionality of the subsidies granted to private schools now. On the other hand, some members expressed the view that revision of Article 89 is unnecessary as private school subsidies are clearly constitutional under the existing provisions in light of the right to receive an education stipulated in Article 26.

### **4) Other Comments**

Other topics of discussion included whether to adopt a budget system extending over more than one fiscal year; continuing expenditures; and strengthening the functions and independence of the Board of Audit.

## **8. Local Self-Government**

### **1) General Discussion of the Chapter on Local Self-Government**

The chapter on local self-government was discussed in terms of a general evaluation. While some members evaluated the chapter positively, many pointed to inadequacies and called for the existing provisions to be improved. The following were the main matters related to local autonomy which it was suggested, by members who took the latter position, should be provided for in the Constitution: (1) the allocation of basic powers between the state and local public entities; (2) a statement that the central and local governments are on a basis of equality; (3) the “principle of complementarity,” which holds that, as a general rule, the duties for which the public sector is responsible should be carried out with priority by public entities which are most closely in touch with residents’ lives; (4) the right of local public entities to levy independent taxes.

### **2) The Need for Decentralization and the Issues Involved**

The following were among the views expressed on the need for decentralization: (1) decentralization is necessary in order to promote the development of democracy, which occurs through the process whereby issues that affect residents’ everyday lives are decided at the local level; (2) decentralization is necessary in order to put an end to the dominance of the central government and establish a separation of central and local authority.

The following were among the views expressed on the issues involved in decentralization: (1) there should be an extensive transfer of powers and fiscal resources to the regions, the national government’s role should be limited, and local matters should be decided at the local level; (2) with ongoing decentralization, disparities in fiscal strength among local public entities are becoming evident, and this is likely to have adverse effects on balanced national development and equality of opportunity in education.

### **3) The Ideal Form of Local Public Entities**

The debate on the ideal form of local public entities revolved around the question of whether to introduce a *do-shu* system, which would consolidate the prefectures into larger units. While some members expressed caution, many were in favor of introducing such a system.

The case in favor of introduction was based mainly on the following grounds: (1) after promoting municipal mergers and transferring powers and tax resources to the basic units of local government, the prefectures (which are intermediate between these basic units and the central government) should be consolidated to create an efficient structure for national governance; (2) a *do-shu* system is needed to take on the powers that will be devolved to the regions; (3) Japan’s central government has grown too large, and transferring powers to the *do-shu* and giving them effective sovereignty will make it possible to achieve bold administrative reforms.

On the other hand, those who expressed caution argued mainly that increasing the scale of local

public entities would make it more difficult to reflect the voices of residents; in other words, they expressed concerns about a weakening of resident self-government.

#### **4) Other Comments**

Other topics discussed included: the power to enact ordinances; local public finances; the promotion of municipal mergers; whether residents' referendums should be institutionalized; and special laws applicable to only one local public entity.

### **9. Constitutional Amendments**

The requirements in the amendment procedure set forth in Article 96 were discussed, mainly with regard to whether they should be relaxed. Opinion was divided on this question.

The case in favor of relaxing the requirements was based mainly on the following grounds: (1) there is a need to allow for review of the Constitution in keeping with the changing times; (2) there is a need to provide more opportunities for the people to closely examine and consider the contents of the Constitution.

On the other hand, the case against relaxing the requirements was based mainly on the following grounds: (1) the requirement of a concurring vote of two-thirds or more of all the members of each House is appropriate since the Constitution is a set of rules for the exercise of public authority based on a broad consensus; (2) the procedure for national referendums is founded on the fact that the people possess the right to enact a Constitution, and it would be contrary to reason to abolish this procedure by exercising the right of amendment.

### **10. Supreme Law**

In regard to the chapter entitled "Supreme Law," there was discussion of the significance and basis of the Constitution's role as the supreme law of the nation; the relationship between the Constitution and treaties in terms of their legal force and other issues; and the obligation to respect and uphold the Constitution.

With regard to the obligation to respect and uphold the Constitution, which, as set forth in Article 99, is addressed to public officials, there was debate over whether it should also be addressed to the people. Views were expressed in favor of this idea by members who argued that there is a need to provide in the Constitution for the ideal mode of conduct of the people, while opposing views were expressed by members who emphasized that the Constitution is a set of norms which impose limits on state authority in order to prevent its abuse.

## **11. Direct Democracy**

In regard to direct democracy, there was debate over whether to introduce a system of national referendums in which the people would vote on specific issues. Opinion was divided on this question.

The case in favor of introducing such a system was based mainly on the grounds that a channel should be established that would reflect diverse needs and opinions while complementing parliamentary politics.

On the other hand, those who expressed caution argued mainly on the following grounds: (1) to appeal directly to public opinion, despite the fact that the essence of democracy lies in the process of deliberation, is dangerous because the public does not always have the means to judge the merits of a policy; (2) it is important to make parliamentary democracy function soundly.

## **12. States of Emergency**

Members discussed how the fact that the existing Constitution contains no provisions for states of emergency should be assessed. Some expressed the view that the absence of such provisions was meaningful and its significance should be taken into account, while others pointed to problems due to the lack of such provisions. Debate ensued on whether items concerning states of emergency should be established in the Constitution, in other words, whether there is a need to establish provisions as an exception to the constitutional order that prevails under normal conditions. While some members were opposed to establishing such provisions, many were in favor.

The case in favor of establishing such provisions was based mainly on the following grounds: (1) a state of emergency may necessitate a centralized response with powers concentrated in the hands of the prime minister and with more restrictions on human rights than under normal conditions, and the requirements and procedures for invoking such measures, together with their effects, are matters for the Constitution; (2) there are various risks inherent in present-day society, including regional conflicts, the deterioration of the global environment, interlinkage due to increasing globalism and other factors, and the spread of terrorism, and the Constitution is deficient in not making provision for states of emergency despite the presence of these risks; (3) since states of emergency tend to lead administrators to take suprallegal measures in response, provisions are needed to prevent this in order to guarantee the Constitution.

On the other hand, comments by those opposed to establishing such provisions included the view that the absence in the existing Constitution of explicit provisions on the response to states of emergency is significant, that is, the view that a standard exists which requires that efforts be made to ensure that states of emergency do not arise.



### **Subsection 3 The Future of the Constitutional Debate and Related Matters**

#### **1) Concerning a Permanent Body to Handle Constitutional Questions in the Diet**

There was discussion of whether a permanent body should be established in the Diet to continue handling constitutional questions after the Commission submits its report. While some members opposed the creation of a permanent body, many were in favor.

The following views were expressed by those in favor of creating a permanent body: (1) based on the discussions conducted over a five-year period by the Research Commission on the Constitution, a permanent body should continue the research and also serve as the committee to which a constitutional amendment procedure bill (national referendum bill) is referred; (2) the said permanent body should serve as the committee to which bills relating to the Constitution, such as proposed constitutional amendments and a constitutional amendment procedure bill, are referred; (3) the said permanent body should be made responsible for primary authoritative interpretation of the Constitution by the Diet; (4) the said permanent body should be made responsible for the handling of all constitutional questions, including the above roles.

On the other hand, opponents of creating a permanent body expressed the view that constitutional debate in the Diet should be conducted in the various standing committees and other existing bodies, mainly through deliberation on laws under their jurisdiction.

#### **2) Concerning a Constitutional Amendment Procedure Law**

In relation to Article 96 (Amendments), the preparation of a constitutional amendment procedure law was discussed. While some members saw no immediate need to enact such a law, many expressed the view that it should be put in place without delay.

The case for immediate enactment was based mainly on the grounds that failure to enact a constitutional amendment procedure law—a basic law ancillary to and anticipated by the Constitution—is a legislative deficiency.

On the other hand, the case that there is no immediate need was based mainly on the grounds that preparing a constitutional amendment procedure law is not an important issue as there is no popular consensus on constitutional revision.

Further, in connection with (1) “Concerning a Permanent Body to Handle Constitutional Questions in the Diet” and (2) “Concerning a Constitutional Amendment Procedure Law,” discussions were held among the Commission’s directors taking into account the views expressed by many members of the Commission. As a result, many directors expressed the view that it is desirable, while maintaining the basic framework of the present House of Representatives Research Commission on

the Constitution, to authorize a reconstituted body to draft and review a constitutional amendment procedure law (Bill Concerning Procedures for a National Referendum, Etc., as Stipulated in Article 96, Paragraph 1 of the Constitution of Japan).

## **Section 2 The Formulation Process of the Constitution of Japan**

Regarding the formulation process of the Constitution of Japan, members discussed from an overall perspective the significance of the establishment of the Constitution of Japan, and from specific perspectives the involvement of the General Headquarters of the Supreme Commander of the Allied Powers (GHQ) in the process of establishing the Constitution of Japan as well as the relationship between the acceptance of the Potsdam Declaration and the enactment of the Constitution of Japan. Many opinions were also given regarding the formulation process of specific items in the Constitution of Japan.

### **1. Evaluation of the Formulation Process**

In evaluating the formulation process of the Constitution of Japan, discussions were held regarding the significance of the enactment of the Constitution, the involvement of the GHQ in the formulation process of the Constitution, the relationship between the acceptance of the Potsdam Declaration and the establishment of the Constitution, and the relationship between the establishment of the Constitution and the Hague Convention (IV) Respecting the Laws and Customs of War on Land.

#### **1) Significance of the Enactment of the Constitution of Japan**

Some members highly evaluated the significance of the enactment of the Constitution of Japan because the Constitution stipulates such principles as popular sovereignty, respect for fundamental human rights, and pacifism. Other members, however, voiced opinions that the Constitution of Japan was established with aspects that belittle or deny Japanese traditions and culture.

##### **A. Opinions Expressing High Regard for the Significance of the Enactment of the Constitution of Japan**

Members holding this viewpoint noted, from first-hand experience and investigations, that the new principles brought about from the enactment of the Constitution of Japan received great sympathy and support from the Japanese people, and expressed the following opinions.

- a. The enactment of the Constitution of Japan was probably received positively by virtually all Japanese people. This was because when the Constitution was established (1) the Japanese people were overjoyed at the arrival of peace, amid a sense of liberation brought on by the conclusion of the war; (2) while sovereignty had not previously resided in the people, the Japanese were given the right to lead their own lives as sovereigns; and (3) the conditions shifted from being bound by state power to a focus on the respect of fundamental human rights, and the people were excited about this more than might be expected for a universal principle.
- b. There is no question that the enactment of the Constitution of Japan was greatly welcomed by the Japanese people, especially by many women. This Constitution gave women, who had no legal status under the Constitution of the Empire of Japan (the Meiji Constitution), equal status to men, at least in law, and it is a fact that women's actual lives then subsequently gradually

improved with the enactment of new legislation.

- c. It is an indisputable fact that many Japanese citizens, who had suffered the cruel experience of the history of war, felt positive about the Constitution of Japan, and this should be recognized as important in terms of the historical process.
- d. The Japanese people accepted the Constitution of Japan because the Constitution's principles were consistent with those which had been sought by the people in the struggle against tyranny since the Meiji Freedom and People's Rights Movement, and because it served as a mutual confirmation of the term "renunciation of war" following the great sacrifices made by the Japanese people during the war.
- e. The three principles of the Constitution of Japan, which are sovereignty of the people, pacifism, and respect for fundamental human rights, brought about great achievements in the building up of a democratic and pacifist nation.
- f. The contents of the Constitution of Japan, such as making war illegal, the sovereignty of the people, and respect for fundamental human rights, were all created in the process of developing a just world history.

## **B. Opinions Noting Problems Caused by the Enactment of the Constitution of Japan**

Members holding this viewpoint noted that the enactment of the Constitution of Japan may have disregarded or denied Japanese traditions and culture and exerted a harmful influence on Japanese foreign policy, and expressed the following opinions.

- a. The present Constitution may have aspects that deny precious items which have been accumulated through Japan's long history. Popular sovereignty, fundamental human rights, internationalism and pacifism are all Western democratic concepts.
- b. The Constitution of Japan was clearly imposed on Japan by the occupying powers with the objectives of ensuring that Japan would never rise again and, if possible, of rendering Japan into a permanently friendly vassal state.
- c. It is a fact that the U.S. made major suggestions when the preliminary draft of the Constitution of Japan was written, and we should be thankful for that explicit expression of extremely valuable words. However, the spell cast by the U.S. was so strong that the independent spirit of the Japanese people themselves was cut out. There seem to be frequent cases still today where Japan had no independent national strategy but simply sought to gain the approval of the U.S. Until that aspect is removed, it will remain impossible for Japan to maintain any independent foreign policy or economy.

## **2) Involvement of the GHQ in the Formulation Process of the Constitution of Japan**

It is a fact that the GHQ was involved in the establishment of the Constitution of Japan: The Government Section of the GHQ prepared an initial draft based on the three basic points stipulated by General MacArthur (in the MacArthur Notes), and presented this to the Japanese side with instructions to prepare a draft Constitution of Japan based on this initial draft. The GHQ also excluded individuals deemed "undesirable" based on their prewar background from public office (the GHQ directive ordering the removal and exclusion of "militarists" from public office).

Moreover, through prior censorship of all publications (the press code), they covered up their involvement in the formulation of the Constitution. Many Research Commission members expressed the opinion that this should not be excessively emphasized. In contrast, other members expressed the opinion that the Constitution of Japan really was imposed on Japan by the occupying powers.

#### **A. Opinions That the Involvement of the GHQ in the Formulation of the Constitution of Japan Should Not Be Excessively Emphasized**

Members holding this viewpoint acknowledged the fact that the GHQ was involved in the formulation process of the Constitution of Japan, but insisted that the domestic and foreign developments at the time the Constitution was established need to be taken into consideration, and expressed the following opinions.

- a. The viewpoint for examining the formulation process of the Constitution of Japan should not focus solely on the one aspect of whether or not the GHQ “imposed” the Constitution on Japan, but must also pass judgment in light of the relative relationship between the domestic developments within Japan and the developments in the GHQ at that time.
- b. Since the Constitution was established under the Occupation, it was established under restricted sovereignty as a matter of course. The arguments that the Constitution was imposed on Japan are apparently based on the personal experiences of then Minister of State MATSUMOTO Joji, and may not accurately recognize the overall image of the formulation of the Constitution. The Constitution of Japan clearly enjoyed the overwhelming support of the Japanese people when it was enacted and when sovereignty was returned following the conclusion of the Treaty of Peace with Japan (the San Francisco Peace Treaty), and in that sense the Constitution of Japan was a people’s constitution right from the time it was enacted.
- c. The Constitution of Japan was enacted as a revision to the Meiji Constitution following deliberations of the Imperial Diet, so procedurally the Constitution may be said to have been created by Japanese. The argument that the Constitution was “imposed” on Japan originates from the history whereby the GHQ presented the initial draft, but by itself that does not constitute any reason for revising the Constitution.
- d. There is no doubt that the GHQ prepared the initial draft of the Constitution. It then changed into the Japanese government’s draft, and during the Diet deliberations additions were made such as the phrase “aspiring sincerely to an international peace based on justice and order” in Paragraph 1 of Article 9 and the right to a minimum standard of living as stipulated in Article 25. Also, while the government draft was being prepared, the unicameral system in the GHQ’s initial draft was changed into a bicameral system and thus deeply significant discussions were held regarding important areas of the Constitution.
- e. Surprisingly, the private drafts of the constitution prepared prior to the enactment of the Meiji Constitution, for example by the Risshisha and Kojunsha democratic political groups, included substantial human rights provisions that would be considered acceptable in today’s world. The draft constitution prepared by the private Constitution Investigation Association after the war was based on one of these private drafts of the constitution which had been prepared by UEKI Emori. It is said that since this was incorporated into the GHQ’s initial draft, in practical terms

the conditions at that time in Japan were included. Considering this point, an independent citizen's awareness was actually handed down from the time when private drafts of the constitution were prepared through to the enactment of the Constitution of Japan.

- f. The Constitution of Japan has areas that strongly reflect the GHQ's occupation policies, with Article 9 and the Preamble as typical examples. At that time, however, Japan had been defeated in war, was primarily focused on the approach to reconstruction, and did not have much direct involvement with international relations. Also, the GHQ was then intending to completely disarm Japan, so in a sense the conditions in Japan and the approach of the GHQ were consistent at that time, and therefore the Constitution of Japan was formulated without contradiction.
- g. I would like the individuals who assert that the Constitution was imposed on Japan, and that therefore we need to enact an autonomous constitution, to tell me which they think is preferable for human existence and activities: popular sovereignty, fundamental human rights, pacifism, and other systematic guarantees that we presently enjoy, or a state system characterized by popular oppression under Imperial sovereignty, the Peace Preservation Law and the Imperial Rule Assistance Association, judicial officers who freely ignored legal procedures, and women being bound by the family system without a guarantee of any political rights under the Meiji Constitution.
- h. The pressures exerted by the GHQ were directed toward the authorities of that time, and not toward the Japanese people, who became sovereign.
- i. The Legislative Government of the Ryukyu Islands, which was then the legislative body of Okinawa Prefecture, unanimously voted to observe Constitution Day (May 3) as an official holiday in 1965, years before Okinawa reverted to Japan in 1972. In that sense, in Okinawa the Constitution was positively chosen by the will of the people.

In addition to the opinions cited above, members holding this viewpoint expressed the opinion that while the involvement of the GHQ in the formulation of the Constitution of Japan may have included actions that could be interpreted as "imposing," excessive emphasis on this involvement should not be maintained because (1) the Constitution has already become firmly established among the Japanese people, and (2) discussions should focus on the outlook for the future, rather than the past.

#### **B. Opinions That View GHQ's Involvement in the Establishment of the Constitution as "Imposed", and See This as Problematic**

Members holding this viewpoint see GHQ's involvement in the establishment of the Constitution as "imposed," noted this as problematic, and expressed the following opinions.

- a. Reviewing the process whereby the Constitution of Japan was enacted, one must say that the draft was an order by the Occupation forces imposed against the will of the people.
- b. The Constitution of Japan was drafted by the Occupation forces based on the MacArthur Notes and adopted by the Imperial Diet. In the general election for the House of Representatives, the Occupation inspected credentials to determine which candidates would be permitted to stand for office, and at that time sovereignty resided in the Supreme Commander of the Allied Forces.

Moreover, under the prior censorship system, there was none of the freedom of speech or expression extolled by the Constitution, and criticism of the Occupation policies was not allowed.

- c. Looking at how the Constitution was formulated, some view the Constitution as a joint work between Japan and the U.S., but in some aspects it is difficult to believe that the Constitution was enacted based on the will of the Japanese people.
- d. Some people are taking a positive stance toward the Constitution, for example, because it has become firmly established among the Japanese people, but as a nation ruled by law we must recognize that there were very great problems or flaws with its origins.

### **3) Relationship between the Acceptance of the Potsdam Declaration and the Enactment of the Constitution of Japan**

Regarding this point, some members expressed the opinion that with the acceptance of the Potsdam Declaration the revision of the Meiji Constitution (the enactment of the Constitution of Japan) was inevitable, while other members said the acceptance of the Potsdam Declaration did not directly lead to the enactment of the Constitution of Japan.

#### **A. Opinions That with the Acceptance of the Potsdam Declaration the Enactment of the Constitution of Japan Was Inevitable**

Members holding this viewpoint stated that the acceptance of the Potsdam Declaration meant accepting the dissolution of Japan's armed forces, the removal of obstacles to the revival and reinforcement of democracy, and the establishment of fundamental human rights as international obligations, and that the enactment of the Constitution of Japan was no more than the process for fulfilling these international promises.

#### **B. Opinions That the Acceptance of the Potsdam Declaration Did Not Directly Lead to the Enactment of the Constitution of Japan**

Members holding this viewpoint stated that the enactment of the Constitution of Japan cannot be derived from the acceptance of the Potsdam Declaration. Specifically, they said (1) even at that time it was not clear if the acceptance of the Potsdam Declaration included the demand for popular sovereignty, and even if it did it is difficult to conclude that radical reform of domestic laws occurred simultaneous to the acceptance of the Declaration; and further (2) in his response to the Government of Japan's request regarding the Potsdam Declaration, Secretary of State James Burns said that the ultimate form of the Japanese government must be determined by a free expression of the will of the Japanese people, and thus the legitimacy of the Constitution of Japan enacted under the initiative of the GHQ cannot be derived from the Potsdam Declaration.

### **4) Relationship between the Establishment of the Constitution of Japan and the Hague Convention (IV) Respecting the Laws and Customs of War on Land**

Members discussed whether or not the series of actions by the GHQ in the formulation process of the Constitution of Japan violated the Hague Convention (IV) Respecting the Laws and Customs of

War on Land, which stipulates that the occupying state respect the laws in force of the occupied country. Some members expressed the opinion that the actions of the GHQ were not in violation of the Convention, while others asserted that the actions of the GHQ were in violation of the Convention.

#### **A. Opinions That the Actions of the GHQ Were Not in Violation of the Convention**

Members holding this viewpoint noted that the Hague Convention (IV) Respecting the Laws and Customs of War on Land applies to occupied areas during wartime, and said that the Convention did not apply in this case because Japan had already accepted the Potsdam Declaration and had already signed the instrument of surrender when the Constitution of Japan was formulated.

#### **B. Opinions That the Actions of the GHQ Were in Violation of the Convention**

Members holding this viewpoint stated that the formulation of the Constitution of Japan under the initiative of the GHQ was in violation of the Convention, which affirms constitutional self-determination and is a customary international law, maintaining that sovereign nations have an inviolable right to freely choose their political, economic and cultural systems without the interference of other nations.

### **5) Relationship between the Enactment of the Constitution of Japan and the Meiji Constitution**

Members expressed the following opinions regarding the legal continuity between the Constitution of the Empire of Japan (the Meiji Constitution) and the Constitution of Japan, which was enacted under the constitutional revision procedures stipulated by Article 73 of the Meiji Constitution.

- a. It is more appropriate to view the enactment of the Constitution of Japan as the enactment of an entirely new constitution, rather than as a revision to the Meiji Constitution.
- b. Because the Preamble to the Constitution of Japan states that the Japanese people reject all constitutions, laws, ordinances, and rescripts that are in conflict with the principles of pacifism and democracy stipulated therein, it may be said that establishment of the Constitution of Japan disavowed the Meiji Constitution.
- c. Some argue that even though the Constitution of Japan was enacted via the constitutional revision procedures stipulated by Article 73 of the Meiji Constitution, the Constitution of Japan moves the locus of sovereignty from the Emperor to the people and that this exceeds the boundaries of constitutional revision, but there are actually no limits to constitutional revision as long as the revision procedures are strictly observed.
- d. In format, jurisprudence, and procedure the Constitution of Japan is a constitution granted by the Emperor, and will only become a democratic constitution from the next revision.
- e. There is a discontinuity between the Meiji Constitution and the Constitution of Japan with the revolution of August 1945.
- f. It is impossible to believe that the Meiji Constitution was functioning normally under the Occupation following the acceptance of the Potsdam Declaration. Despite this, the Constitution of Japan was enacted under the constitutional revision procedures of the Meiji Constitution. The



grounds for explaining this are tenuous.

## 6) The Validity of the Constitution of Japan

Regarding this point, members voiced the following opinions regarding why the Constitution of Japan cannot be viewed as invalid even if there were problems with the formulation process of the Constitution of Japan.

- a. Even if the acceptance of the initial draft from the GHQ constituted a type of expression of will under coercion, that defect has been cured by numerous subsequent general elections that have, in effect, confirmed the law.
- b. Regardless of whether or not the Constitution was “imposed” by the GHQ, the Constitution should have been revised after the restoration of Japanese sovereignty in accordance with the changing conditions, and the fact that it has not been revised must be viewed as a kind of confirmation of the Constitution.

### (Comments by Informants and Others)

#### <Significance of the Establishment of the Constitution of Japan>

- I was 10 years old when the war ended that summer. My heart was filled with shock, sadness and disappointment at the sight of Japan utterly destroyed. Encountering the Constitution at such a time through a booklet called *Atarashii kenpo no hanashi* (About the new Constitution), it was like finding a silver lining amid the harsh darkness. To this very day, I still vividly remember how moved I was. The ideals of the Constitution of renouncing war and building up a nation of peace and culture cast images of the future of Japan a bright light. Yet the reality of devastated Japan was a long way from the ideal of a nation of culture, and for that reason the brilliant light cast forth by the Constitution of Japan filled my youthful heart all the more with hopes and dreams. (KANO Fuminaga, Speaker)
- I did not feel much delight initially when the Constitution of Japan was promulgated. The following year, however, the Ministry of Education published the book *Atarashii kenpo no hanashi* (About the new Constitution), and when I read this it really became easy to understand. The direction for living was made clear by the individual provisions of the Constitution. At that moment, I felt utterly renewed. I felt that I really had to take responsibility myself for the war, but I also had a solid realization of exactly what I now had to do. (MORI Nobuyuki, Speaker)
- From an international perspective, I think the Constitution of Japan may be considered as one natural stop in the long history of humanity of democratization, demilitarization and decolonization. At the same time, I think the Constitution may also be viewed as a starting point for the path we should follow in the 21st century. (SHINDO Eiichi, Informant)
- The Constitution of Japan has played an extremely important role as it showed the rest of the world how based on the Japanese people’s deep self-reflection over the national behavior that led up to the World War II, Japan will never again engage in such acts of aggression. (TANAKA Akihiko, Informant)
- If one views the formulation process of the Constitution of Japan in light of what the U.S. is now advancing in Iraq, that is in relation with the Americanization of the world, the interpretation

may be that the U.S. intervened to arrest Japan's war of aggression against China, toppled Japan's militaristic government, and implemented Americanization by force. If the Americanization that is presently underway proves successful and U.S.-style justice comes to dominate the world, postwar Japan will then become viewed as a brilliant precedent, as a fact in the philosophy of history. Thus, there are two different issues to consider: whether this Americanization is good or bad, and how this phenomenon should be grasped in the broader context of the philosophy of history. (NAGAO Ryuichi, Informant)

#### **<Involvement of the GHQ in the Formulation Process of the Constitution of Japan>**

- As an emotional argument, it may be true that some aspects of the formulation of the Constitution were humiliating. Regardless, the Constitution of Japan was adopted through legitimate procedures stipulated by the Meiji Constitution. It was enacted through approval under those procedures. Therefore making the emotional argument public is not necessarily appropriate in forming a national consensus. (KOSEKI Shoichi, Informant)
- It is certainly a fact that the GHQ took a strong initiative in preparing the initial draft of the Constitution, but it is also true that the conservative political circles and business circles at that time generally welcomed the Constitution, so it is not right to just emphasize the aspects whereby the Constitution was "imposed" on Japan. (OGUMA Eiji, Speaker)
- The GHQ had no direct contact with the private Constitution Investigation Association, which published a draft constitution that the GHQ highly regarded. That was because the Occupation adopted an indirect format for ruling Japan via the Japanese government. Consequently, the GHQ urgently needed to bring the Japanese government as close to its own side as possible. The term "imposed" has appeared within that context, but conversely one could describe this as an effort by the GHQ to avert giving the initiative to the opposition parties and individuals who were opposed to the Japanese government. (KOSEKI Shoichi, Informant)
- In some respects the formulation process of the Constitution of Japan resembled the process of concluding a treaty. When treaties are concluded, first efforts are made to coordinate the interests of the two parties, and ultimately compromises are reached considering their mutual positions. At that point, when one party is strong the other party is pushed to make substantial compromises. Nevertheless, when the treaty is submitted to the legislature for ratification, the government shifts to the side of advocating the treaty. (KITAOKA Shinichi, Informant)
- The GHQ submitted its initial draft of the Constitution to the Government of Japan as the GHQ's draft after consulting with SUEHIRO Izutaro, MIYAZAWA Toshiyoshi, and NAMBARA Shigeru, who may be considered as key opinion leaders of that time, to gauge the likely public reaction. (KOSEKI Shoichi, Informant)
- There were extremely strong pressures placed on the government of Japan and the Diet, which enacted the Constitution of Japan. The Constitution was formulated from a draft prepared by the GHQ, under the supervision of the Far East Commission, and was not formulated autonomously. (NISHI Osamu, Informant)

### **<Relationship between the Acceptance of the Potsdam Declaration and the Establishment of the Constitution of Japan>**

- As Japan accepted the Potsdam Declaration, this provided the legal basis for the Allied Powers to seek the restoration and reinforcement of Japan's democratic trends. Thus the enactment of the Constitution of Japan should be viewed from the perspective of fulfilling the duties that arose from accepting the Potsdam Declaration. (MURATA Koji, Informant)
- The acceptance of the Potsdam Declaration did not immediately link to the revision of the Meiji Constitution, but I think without constitutional revision the limitations would eventually have been revealed. (NISHI Osamu, Informant)
- The Potsdam Declaration sought Japan to revive and reinforce its democratic tendencies and to establish a responsible government with a peaceful orientation. The Potsdam Declaration sought constitutional revision in substance, rather than constitutional code per se, and thus did not actually demand the enactment of the Constitution of Japan. (AOYAMA Takenori, Informant)

### **<Relationship between the Establishment of the Constitution of Japan and the Hague Convention (IV) Respecting the Laws and Customs of War on Land>**

- The Hague Convention (IV) prescribed principles for occupation during wartime. If we take it that the Occupation of Japan by the Allied Powers did not take place during wartime, the problem of violation of the Convention would not necessarily occur. (SAITO Masaaki, Informant)
- MacArthur was fully aware of the Hague Convention (IV), and that is why he chose to rule Japan indirectly and to not nullify the Meiji Constitution, and rather used the Meiji Constitution's revision procedures. The Hague Convention (IV) adopts "the occupying state" as its subject, and has nothing to do with the actions of the state that is occupied. (KOSEKI Shoichi, Informant)
- Japan accepted the Potsdam Declaration and was occupied. In light of the principle whereby individual laws take supremacy over general laws, the Potsdam Declaration, which is an individual law for the occupation of Japan by the Allied Powers, should be viewed as having supremacy over the Hague Convention (IV), which is a law regarding occupations in general. (MURATA Koji, Informant)
- The provisions of the Hague Convention (IV) should be interpreted as applying not only during acts of combat but also over any period of occupation until a peace treaty is concluded. Therefore the actions of the GHQ regarding the enactment of the Constitution of Japan were in violation of the Convention. (AOYAMA Takenori, Informant)

### **<Relationship between the Formulation of the Constitution of Japan and the Meiji Constitution>**

- MacArthur placed great stress on procedural continuity. He wanted to avoid creating any discontinuity between the Meiji Constitution and the Constitution of Japan, as much as possible. Reportedly he thought that would both avert any problems with international law by not contravening the Hague Convention (IV) and also make it easy for Japanese to accept the

Constitution of Japan. Thus, in form as well, the Constitution of Japan follows the Meiji Constitution with the exceptions of Chapter II “Renunciation of War” and Chapter VIII “Local Self-government.” (KOSEKI Shoichi, Informant)

- Under the theory that there are limitations to the scope of constitutional revisions, it is not possible to explain the fact that a constitution stipulating Imperial sovereignty was revised and a constitution stipulating popular sovereignty was enacted, even though extremely awkward explanations assuming an “August revolution” have been devised in an attempt to overcome this weakness. The shift in sovereignty, however, can easily be explained under the theory that there are no limitations to constitutional revisions. (NISHI Osamu, Informant)
- By accepting the Potsdam Declaration, Japan’s status as a state was shaken and the government shifted from Imperial sovereignty to the sovereignty of the Allied Powers, or of General MacArthur himself. Under those conditions, the Meiji Constitution became GHQ’s administrative ordinances and was revised into the Constitution of Japan. Subsequently, the Occupation ended with the conclusion of the peace treaty, and Japan regained its status as a normal state. Japan became a nation with popular sovereignty, and with that the Constitution of Japan rose beyond its [initial] character as administrative ordinances under the Occupation. (TAKAHASHI Masatoshi, Informant)

#### **<The Validity of the Constitution of Japan>**

- If one accepts the argument that the enactment of the Constitution under the Occupation was invalid, then the Constitution of Japan has been illegal ever since its enactment. The Diet itself was established under the Constitution, and if Diet deliberations determine that the Constitution is invalid, then we fall into a self-contradiction as all Diet deliberations would then also be invalid. (MURATA Koji, Informant)
- The people of Japan have managed to defend the Constitution for more than half a century through the daily efforts of the Diet, the government and individuals, and have striven to achieve as goals the ideals presented therein. Considering the weight of that historical span of time, the Constitution belongs to the Japanese people and any effort to deny that would belittle the efforts of countless Japanese citizens who lived sincerely since the end of the war. (INOUCHI Kuniko, Speaker)
- Tradition is considered something with such dignity that it cannot be disavowed by majority vote in future generations. As a practical issue, however, there are older traditions and newer traditions, and those include new traditions that were created by the present Constitution of Japan. As contemporary constitutions arise from popular revolutions, they are by definition the products of actions which disavow traditions. Japan has traditions that have been established over the decades since the Constitution was enacted, and these are important in terms of maintaining legal stability. It would, however, be self-contradictory to suddenly insist on traditionalism when we find that the new traditions established by our revolutionary constitution are in jeopardy. (NAGAO Ryuichi, Informant)
- The Constitution of Japan is illegitimate as the basic law of the nation because its enactment did not take place under the initiative of Japanese people. Therefore the Diet should pass a

resolution disavowing the Constitution of Japan, and then set about enacting a new constitution. (ISHIHARA Shintaro, Informant)

## **2. Formulation Process of Specific Items in the Constitution of Japan**

The following opinions were expressed regarding the formulation process of specific items in the Constitution of Japan.

### **1) Preamble**

- a. The Constitution of Japan is said to strongly reflect thought concerning politics and the economy in vogue at the time when it was enacted. For example, portions of the Preamble are said to have been drafted drawing upon the Preamble to the U.S. Constitution and speeches made by Abraham Lincoln, and also, some have noted, taking reference from the 1943 Teheran Declaration of the Three Powers (by the leaders of the U.S., U.K., and USSR) as well as the 1941 Atlantic Charter (issued by the leaders of the U.S. and the U.K.). Moreover, GHQ staff are said to have been influenced by New Deal policies, and there is no doubt that the Constitution of Japan was drafted with a strong awareness of the new expectations around the establishment of the United Nations in October 1945.
- b. The Constitution of Japan was formulated at a time, as extolled in the Preamble to the Charter of the United Nations, when the world which had twice suffered the horrors of war sought to cooperate in constructing a framework to maintain international peace, centered around the UN. Amid this trend, the Preamble to the Constitution of Japan loudly proclaimed that ideal of building up peace by declaring Japan's renunciation of war and its pledge to contribute to world peace.
- c. The ideals praised in the Preamble to the Constitution of Japan must have been strongly influenced by the global spirit of the times when the Constitution was enacted, that is, the idealistic approach of resolving war, as well as the poverty and discrimination which cause it, via a global framework.
- d. The Preamble to the Constitution of Japan declares that the Japanese people have resolved never again to be "visited with the horrors of war through the action of government." It should be said that this declaration clearly showed a transformation in Japan's vision of the nation from a pseudo-modern state to a true modern state.
- e. The Preamble is kind of a Japanese-style letter of apology for the war. At the time when the Constitution was enacted, the international community held high expectations toward the UN, and the feeling was that world peace would be achieved as long as Japan did not commit any wrongdoings.
- f. If the Preamble is read together with the Imperial edict that was issued when the Constitution was promulgated, it may be seen as a historical document whereby the Emperor – who is the symbol of the Japanese people, a uniquely Japanese presence, and the representative of the nation's traditions and culture – accepts the universal principles extolled in the Preamble of his

own free will.

- g. To express the renunciation of war, which was one of the three basic points stipulated in the MacArthur Notes, the Constitution first has Article 9, which is then supplemented by the declaration in the Preamble that the Japanese people have “determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world.” Together, I think Article 9 and this passage from the Preamble do achieve the renunciation of war.

## **2) The Emperor System**

- a. The “basic principles” at the beginning of the draft constitution outline prepared by the private Constitution Investigation Association express the principle of popular sovereignty by stating that sovereignty derives from the people, and also recognize the continuance of the Emperor system by stating that the Emperor is to preside over national ceremonies. This implies an Emperor-as-symbol system, and it probably influenced the GHQ’s initial draft.
- b. The GHQ was probably considering giving the Emperor the status of representative of the nation because the MacArthur Notes specified that “The Emperor is at the head of state.”
- c. The Constitution of Japan strictly prohibits the political use of the Emperor because of the deep regret over the use of the Emperor system under the Meiji Constitution.
- d. As Minister of State KANAMORI Tokujiro said in the Diet, the Emperor was made the “symbol” of the state rather than the “head” of state because the term “head of state” normally denotes a nation’s sovereign or the head of its government. If the Constitution had defined the Emperor as the “head of state” without that conventional meaning, the Japanese people would have formed an image of the Emperor as “head of state” without reading the Constitution, and consequently come to view the Emperor as having more power than implied, so the term “symbol” of the state rather than “head” of state was chosen to avert that sort of bad image.

## **3) Renunciation of War**

- a. I think when the Constitution was enacted, much more than today, the Japanese people, whose relatives had died in the war, felt a strong revulsion toward war and directly intuited that there is no distinction between just and unjust wars to begin with.
- b. When the Constitution of Japan was enacted U.S. policy was consistent with the overall policies of the Allied Powers and with public opinion in the Asian nations that had been invaded by Japan, and so there was no particular contradiction in formulating a constitution which stipulated that Japan would completely abandon militarism, renounce war, and not maintain any armed forces, all to ensure that Japan would never again engage in a war of aggression.
- c. The MacArthur Notes stipulated that Japan should entrust its national defense and security to the noble ideals that were then starting to move the world. This must have been because MacArthur placed great faith in the security function centered around the United Nations.
- d. Article 9 picks up the conceptual flow from the Kellogg-Briand Pact of 1928, and develops this further by not only outlawing war as a means of conflict resolution but also prohibiting the use of force and the threat of force, which has been emerging as an international rule throughout the

20th century and now in the present day. Moreover, Article 9 has great significance as a forerunner in going even further to renounce the maintenance of armed forces.

- e. MacArthur judged it best for Japan to adopt complete pacifism to regain the trust of the international community, and daringly refrained from addressing the issue of the right to self-defense.
- f. When the Constitution of Japan was formulated, the idealistic expectations toward the role of the UN were included. We must recognize the fact that the Constitution was enacted with the content of the UN Charter in mind.
- g. If it is true that after the House of Representatives made its revisions the Far East Commission demanded the insertion of a civilian provision concluding that Japan could again possess armed forces for its own defense, then the Ashida Amendment really had great significance.

#### **4) Rights and Duties of the People**

- a. The Constitution of Japan has detailed human rights provisions, and the background to that includes regret for not having human rights provisions during the first half of the 20th century. Also when the Constitution was enacted there was a positive effort to incorporate the social rights that were then becoming recognized worldwide. We should recognize that it was within this context that the Constitution came to incorporate human rights provisions that are still of great value today in the 21st century.
- b. The phrase “public welfare” is used to express the principle of limitations on individual rights in Articles 12, 22 and 29 of the Constitution. In the GHQ initial draft, however, the phrases “common welfare,” “general welfare”, and “public interest” were used, respectively, making distinctions among them. In preparing its draft, the Japanese side changed the GHQ’s wording to “public welfare” and “law and order,” and made revisions to allow for some areas to be entrusted to subsequent legislation, but the GHQ refused to accept the phrase “law and order” or the stipulation of entrustment of some areas to subsequent legislation, so only the very vague phrase “public welfare” remained.
- c. Article 20 had to clearly stipulate the principle of separation of religion and state because of harsh regret regarding how Japan became caught up in the war under a national mobilization system based on the prewar State Shinto and divine right Emperor worship which referred to Japan as the Land of the Gods and the Eternal Nation.
- d. The Constitution of Japan makes exceptionally detailed provisions regarding criminal procedures, to an extent that is unprecedented in other nations, in Articles 31 through 40. The background to this includes the extremely cruel and barbaric violations of human rights and oppression under the Peace Presentation Law system through the first half of the 20th century. In understanding the constitutional norms, along with interpreting the provisions of articles, it is very important to fully grasp the historical background leading to the express stipulation of these provisions, especially for having Articles 31 through 40 provide stability to the legal order.

#### **5) National Governing Organs**

- a. In the formulation process of the Constitution of Japan, the way of thinking based on the

application of the Meiji Constitution was incorporated without properly adjusting it, and I think that is one cause of confusion. From that perspective, some of the present constitutional provisions need to be revised, such as Article 76, Paragraph 2. Articles 68, 72 and 73, which concern the relation between administration and execution, should also be reconsidered.

- b. The fiscal provisions of the Constitution of Japan are based on regrets over how, amid the severe restriction of the Diet's involvement with public finances, the government drove the nation into bankruptcy by the massive issuance of government bonds to pay for a war of aggression. These fiscal provisions must also be said to have further developed the principles of fiscal constitutionalism and fiscal parliamentarism, dating from the 1215 Magna Carta, into fiscal democracy.
- c. Along with the change in the Emperor's status from ruler under the Meiji Constitution to the symbol of the state under popular sovereignty, Article 88 is very important because it stipulates that all property of the Imperial Household belongs to the state, and thus makes the Emperor-as-symbol system real.

## **6) Local Self-Government**

Chapter VIII of the Constitution of Japan on Local Self-government was created in reflection over how prefectural governors were appointed by the central government under the Meiji Constitution and how near the end of the war the Ministry of the Interior had arranged a mobilization framework for the war of aggression reaching all the way down to neighborhood associations and other residents' organizations, coupled with the belief that the establishment of local self-government is an indispensable factor for democratization.

## **7) Amendment Procedures**

As for the Constitution of Japan's amendment procedures, it is well known that the GHQ initial draft stipulated that the Constitution could not be amended for 10 years, but that the Constitution should then be reviewed once every 10 years. In the process whereby these stipulations were changed to the present amendment procedures, however, the unicameral system in the GHQ initial draft was changed to a bicameral system, and consequently the proposal of constitutional amendments came to require the agreement of at least two-thirds of the votes in each house, resulting in a Constitution that is exceptionally rigid.

## **(Comments by Informants and Others)**

### **<Preamble>**

- The Preamble clearly reflects the conditions of the era when it was written in 1946. At that time, the wording "we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world" meant that Japan was entrusting its security to the countries that constituted the Allied Powers. (OGUMA Eiji, Speaker)

### **<The Emperor System>**

- The choice of the Emperor-as-symbol system had extremely great import to both MacArthur and



the Japanese government as the backbone for the formulation process of the Constitution. (KOSEKI Shoichi, Informant)

- The GHQ decision not to prosecute the Emperor as a war criminal was not just for considerations related to the GHQ's governing of Japan. At that time, most Japanese worshipped the Emperor. Some were preparing for guerrilla warfare if the Emperor were endangered. Under those conditions, the Emperor-as-symbol system was chosen as an utmost compromise of a democracy that would still retain the Emperor. (YOKOTA Kouichi, Informant)

#### **<Renunciation of War>**

- The second basic principle in the MacArthur Notes prohibited wars for self-defense along with all other wars, but when the Government Section of the GHQ prepared its initial draft Lieutenant Colonel Charles Kades intentionally deleted that section stating that to deny even the right to self-defense was going too far and that such a constitution would be impossible. (KITAOKA Shinichi, Informant)
- When the Constitution of Japan was formulated, awareness of the common points and differences between the Constitution and the UN Charter was insufficient. There were, however, a very small number of people who were conscious of the potential problems. For example, at a time when the absolute pacifism interpretation was dominant, Diet Member NAMBARA Shigeru asked if such interpretation might become problematic if Japan were to become a UN member in the future. (ONUMA Yasuaki, Informant)
- The Far East Commission noted that the Ashida Amendment made it possible to interpret the Constitution as recognizing the maintenance of armed forces for the purpose of self-defense. For that reason the Commission demanded the stipulation of a new article requiring that the prime minister and other ministers of state be civilians. (NISHI Osamu, Informant)

#### **<Rights and Duties of the People>**

- The GHQ considered that the human rights of all people residing within Japan should be guaranteed, but the Japanese side disagreed. So when the Japanese government was preparing its draft, it revised the GHQ's initial draft by (1) changing the phrase "all natural people" to "Japanese people," (2) changing the prohibition against discrimination based on "cast or national origin" to prohibiting discrimination based on "family origin," and (3) deleted the provisions regarding the human rights of foreigners. Additionally, during the Diet revisions, the Article 10 stipulations regarding the conditions necessary to be a Japanese national were introduced just as they had been stated under Article 18 of the Meiji Constitution. Together, these revisions greatly changed the nature of the Constitution's human rights provisions. (KOSEKI Shoichi, Informant)
- Article 19 is based on reflection over the bitter experience whereby freedom of thought was oppressed under the Meiji Constitution. From the start, the Meiji Constitution lacked any provision guaranteeing freedom of thought. That was because the view of human rights under the Meiji Constitution was that of rights granted by the state based on the principle that the state preceded its people in importance, and this had an entirely different logical structure from that of

natural, inherent rights of man. In that sense, Item 10 of the Potsdam Declaration, which sought to establish freedom of thought, and the GHQ's directive for the abolition of all laws and ordinances that restricted the freedom of thought had a historical basis, and Article 19, which reads "Freedom of thought and conscience shall not be violated," should be seen as a declaration of Japan's departure from its past. (NOSAKA Yasuji, Informant)

- Article 20 guarantees freedom of religion, without any reservations whatsoever, and also stipulates the separation of religion and state in detail because of Japan's unique experience whereby freedom of religion was oppressed under the prewar State Shinto. It was not an introduction of principles that do not match the actual conditions of Japan. (NOSAKA Yasuji, Informant)
- In as much as Japan has a society where authoritarian feudal elements remained, the drafters of the Constitution wanted to make the nation freer and more democratic. They were appropriate in setting such objectives, at least as far as the results regarding political parties. The Article 21 stipulations, which give complete freedom to political parties in the form of freedom of association, were in accordance with the demands of the times. (TAKADA Atsushi, Informant)
- The Constitution of Japan can be said to have exerted a great influence in boosting the status of women in the workplace. Prior to the war, women were not independent legal persons – they did not have the right to vote, and their marriages required approval from the heads of their households. Thus for the women of that time, Articles 14 and 24 which gave them equal legal status to men must have been like a golden boon. (FUJII Ryuko, Informant)
- Provisions in Article 25, Paragraph 1 did not exist in MacArthur's draft, but were added during the House of Representatives deliberations after MORITO Tatsuo and SUZUKI Yoshio emphasized that the right to a minimum standard of living had become the most important right in the 20th century. (NAKAMURA Mutsuo, Informant)
- As for the right to work, the Socialist Party of Japan and the Cooperative Democratic Party proposed amendments to the draft. The Socialist Party of Japan proposal was to add provisions regarding just compensation, equal opportunity, the prevention of unemployment, the right to rest, and the designation of the maximum length of the working day at eight hours, and among these the right to rest was incorporated into Article 27. The Cooperative Democratic Party proposal was to add the obligation to work. The Socialist Party of Japan was of the same opinion regarding this, and the draft was revised accordingly. (KUSANO Tadayoshi, Informant)
- Members on the Japanese side saw the GHQ's initial draft for the criminal procedures stipulations in Articles 31 through 40 and presented their opinion that these provisions were lacking balance and were too detailed, and that it would be sufficient for most of them to be stipulated in the Code of Criminal Procedure, but the GHQ completely refused their request, emphasizing the need to completely eradicate the kinds of human rights violations that occurred under the Meiji Constitution. Moreover, I understand that because the Imperial Diet was also greatly concerned with eradicating human rights violations, these provisions were accepted and approved all at once, without debating the specific details. (TAGUCHI Morikazu, Informant)

### <National Governing Organs>

- As for where the present way of thinking regarding the relationship between the Diet and the Cabinet came from, I think actually the schema of the relationship under the Meiji Constitution between the Imperial Diet and the Emperor's sovereignty and executive power was taken over, just as it was. While there was leeway for the design of diverse systems under the Constitution of Japan, at that time it seems the drafters just had a two-dimensional relationship between the Diet and the executive branch in mind. (MORITA Akira, Informant)

### <Local Self-Government>

- The main pillars of the U.S. occupation policy were the demilitarization and democratization of Japan, and decentralization of authority was conceived as part of democratization. Regarding the chapter on local self-government in the GHQ initial draft, the Japanese government also seems to have been aware of continuity with the experience of local self-government under the Meiji Constitution, and the provisions were accepted without any sense of incompatibility. (AMAKAWA Akira, Informant)
- In the chapter on local self-government, the GHQ initial draft included (1) direct election of mayors, etc., (2) resident self-governance, and (3) procedures for the enactment of a special local self-government law, but the Japanese government draft changed these into a statement of general provisions at the beginning of the chapter. (AMAKAWA Akira, Informant)
- When the Constitution of Japan was being formulated, it seems there was a large conceptual gap regarding the model to be adopted for the local government system. The GHQ thought in terms of a division between national government business and local government business, while the Japanese side was thinking in terms of local government bodies that conduct both local administration and national administration. (AMAKAWA Akira, Informant)

### <Amendment Procedures>

- At the 90th session of the Imperial Diet, Minister of State KANAMORI Tokujiro gave an explanation regarding the referendum system stipulated in Article 96. KANAMORI said it is the people who have the right to enact the Constitution, and that there is a conceptual distinction between the right to establish the constitution and legislative powers, which is exercised via the Diet. He said that it was thus appropriate for the people to directly express their will in determining the fundamental core of the nation's system, and that this was why the system was adopted whereby the amendments to the Constitution are initiated by the Diet and then decided by a vote of the people. (TAKAMI Katsutoshi, Informant)

## **Section 3**

### **Opinions concerning Specific Articles of the Constitution of Japan**

#### **Subsection 1 General Discussion**

This subsection presents a cross-section of the opinions expressed in the Commission's discussions, over a five-year period, concerning the overall evaluation of the Constitution of Japan, its role, the distance between the Constitution and reality, and how the Constitution is affected by changes in conditions since its enactment.

#### **1) Overall Evaluation of the Constitution of Japan**

There were the following views on the overall evaluation of the Constitution of Japan. In particular, many members stated that the basic principles of the Constitution of Japan should be maintained in the future.

- a. While encouraging the spread of the universal values shared by humanity, such as popular sovereignty, pacifism, and respect for fundamental human rights, which form the three basic principles of the Constitution of Japan, we should discuss a new Constitution for the 21st century based on a sound spiritual culture whose values and moral sense are native to Japan.
- b. The basic principles of the Constitution of Japan—popular sovereignty, pacifism, and respect for fundamental human rights—must be maintained in the years to come. We must discuss how to make them a concrete reality as part of an ideal vision for the nation, and what form the Constitution should take in order to guarantee their realization. We must continue working to bring this debate to a conclusion in a concrete form.
- c. The Constitution of Japan is a very fine constitution, and its three principles of pacifism, fundamental human rights, and popular sovereignty are fresh, exciting, and real to the public. Though this is still true today, we should discuss the fact that structural fatigue is beginning to appear in a number of areas.
- d. We should, basically, firmly maintain certain things that are enshrined in the existing Constitution: the Emperor, fundamental human rights, popular sovereignty, international cooperation, and peace.
- e. It is my firm belief that the principles of peace and democracy proclaimed in the Constitution of Japan embodied, in a pioneering and progressive way, the fruits of the 20th-century history of human progress, which included the shift from monarchism to popular sovereignty, the development and growing richness of human rights, and the outlawing of war.
- f. The existing Constitution sets forth the concepts of Western democracy, such as popular sovereignty, respect for fundamental human rights, pacifism, and internationalism; but I suggest that there is another aspect to this, namely, that it excludes Eastern concepts, such as the spirit of harmony and the family community, along with the traditions, culture, and history of Japan.
- g. The existing Constitution may have been the supreme law in Japan under the Occupation, but it bears no resemblance to the basic law or supreme law of the nation that should have existed once Japan regained its sovereignty and independence. It does not represent the will of the people.

### **(Comments by Informants and Others)**

- It is widely known in the international community that Japan, in witness of its sincere aspiration to international peace, renounces war as a sovereign right of the nation in Paragraph 1 of Article 9, and declares in Paragraph 2 that it will never maintain land, sea and air forces or other war potential. That aspiration and those ideals have won special regard in the eyes of the world, attesting to the Japanese people's dedication and the nation's wise choice to come seriously to terms with a history scarred by the horrors of war. That high regard was further elevated by postwar Japan's economic success and its contributions to the development of the world economy and relief for low-income nations. (INOBUCHI Kuniko, Speaker)
- The present Constitution was: a condition of Japan's admission to the international community after it had waged a war of aggression; a base for reducing the burden of military spending and supporting postwar Japan's economic prosperity; grounds for taking a moral stance before the world by refusing to profit economically from conflicts between other nations; and a basis for sending a message to the international community as a peace state. However, there are contradictions and gaps between the absolute pacifism it aspires to and the Japan-U.S. Security Arrangements, and these have led to public cynicism toward the Constitution and an extremely self-centered idea of peace which is linked with favoritism toward the Japanese. (ONUMA Yasuaki, Informant)
- The Constitution of Japan has done its work well amid a volatile international environment and changing domestic conditions. Japan owes the growth that it has been able to achieve to the existence of the present Constitution. Some people say that its provisions are unable to adapt sufficiently to current changes at home and abroad, but the Constitution of Japan is written flexibly enough, and it can respond to change in terms of how it is applied. There are, however, limits to this; situations may arise in which we have no choice but to change the Constitution, and I do not oppose revision in such cases. Ultimately, the matter should be decided by the people. (MIYAZAWA Kiichi, Speaker)

## **2) The Role of the Constitution**

Two views of the Constitution's role were expressed. One view emphasized the Constitution's role of limiting the exercise of public authority, based on the principles of modern constitutionalism; the other emphasized, in addition, its role in establishing national goals and providing a set of norms for the conduct of the people.

### **A. Comments Emphasizing the Constitution's Role in Limiting the Exercise of Public Authority Based on the Principles of Modern Constitutionalism**

There were the following comments that emphasized the Constitution's role in limiting the exercise of public authority based on the principles of modern constitutionalism:

- a. The Constitution is a set of norms limiting the exercise of public authority, and a basic difference between the Constitution and other laws is the fact that human rights are protected by these limits.

- b. The relationship between the state and the people is one of opposition, and freedom from the state is fundamental to the Constitution's guarantee of human rights.
- c. The Constitution of Japan has the purpose of guaranteeing the freedom and rights of the individual. It is part of the trend of modern constitutionalism, which aims to curb and limit the power of the state.

**B. Comments Also Emphasizing the Constitution's Role in Setting National Goals or as a Set of Norms for the Conduct of the People**

There were the following comments that emphasized, in addition, the Constitution's role in setting national goals or as a set of norms for the conduct of the people:

- a. In addition to the aspect of democratic control over state power, the Constitution also has the aspect of a set of norms for the conduct of the people.
- b. The Constitution sets forth a vision of the nation as a goal for the people and serves as an indicator of national values.
- c. The school of constitutional thought that sees a binary opposition between the state and the individual is not suited to the Japanese. A constitution should be seen as an agreement on forming a nation by mutually granting rights and fulfilling duties, and thus it is meaningful to stipulate national goals and the duties and responsibilities of the people in the Constitution.

This difference in emphasis regarding the role of the Constitution gives rise to differences of opinion concerning the substance of certain items of the Constitution, especially the contents of the Preamble and the rights and duties of the people. Specifically, among others, it gives rise to differences of opinion as to whether the Preamble should set forth uniquely Japanese values; whether there should be more provisions on the duties of the people; and whether the obligation to protect and uphold the Constitution should be addressed to the people as well as to public officials. The following comments can be cited as examples:

**(i) Whether the Preamble Should Set Forth Uniquely Japanese Values:**

- a. The Preamble should clearly state a direction and goals for which the nation and the people will aim. Specifically, we need to declare to the international community that Japan continues to embrace pacifist principles, and to make it clear that we aim to become a better society and a better nation while placing importance on the uniqueness and particularity of Japan.
- b. History, traditions, and culture, being inherently diverse, cannot be stipulated in the Constitution and imposed on the people.

**(ii) Whether There Should Be More Provisions on the Duties of the People:**

- a. We should include more duty provisions because, in postwar Japanese society, there is very little awareness of the duties that are the corollary of rights, and the tendency to assert one's rights prevails, owing in part to the fact that the Constitution contains a great many provisions on rights and very few provisions on duties.
- b. Since the basic framework of the Constitution consists of a guarantee of human rights by the

government, we should not stipulate such things as traditions and the duties of the people in the Constitution.

**(iii) Whether the Obligation to Protect and Uphold the Constitution Should Be Addressed to the People as well as to Public Officials:**

- a. In carrying out the work of constitutional revision, we should clearly formulate a vision for the nation and the people, together with their respective responsibilities. The fact that the obligation to protect and uphold the Constitution is not stipulated for the general public is the first item that we should examine.
- b. Since the Constitution is a means of controlling the exercise of power, it is only proper that the obligation to protect and uphold the Constitution is addressed solely to public officials and not to the people.

**(Comments by Informants and Others)**

- The Constitution is a norm for the structure of the state and the conduct of public officials, not the citizenry. However, in Japan there is a misapprehension that the text and spirit of a constitution are a norm of conduct for the people, and the mood is such that the Constitution tends to be cited as a moral standard of conduct. This is a misunderstanding. The Constitution is addressed strictly to the state and does not, as a rule, govern acts between private citizens. (SAKAMOTO Masanari, Informant)
- Because the constitutions of modern states today are restrictive legal norms which primarily curb state authority, to insert into the Constitution new duties that are moral but not legal obligations would run counter to the prevailing liberalist view and would be an attempt to radically alter the nature of the constitutional code. In any case, because a constitution is by nature a mandatory legal norm, we must ensure that it does not pose the risk of oppression. (KOBAYASHI Masaya, Informant)
- Japan's identity crisis stems from the fact that the reforms carried out after the war were a structural change in which all of our institutions and traditions—both good and bad—were discarded, with the exception of the Emperor system. The Japanese can overcome the present identity crisis by incorporating a clear Japanese identity in the Preamble of the Constitution. There are five possible roles that a new Preamble might be expected to play: (1) setting forth a vision for the nation based on Japanese tradition and culture; (2) charting Japan's future course; (3) energizing the nation to break out of the present impasse; (4) clearly showing the coordinate axes of Japan's position in the world; (5) declaring Japan's all-embracing and universal ideals. (HANABUSA Masamichi, Informant)
- In creating a new Constitution, the key point is whether we can use it to set forth, at home and abroad, a basic framework and guidelines for the nation, answering such questions as what kind of nation we aim to become, what sort of people the Japanese must be to achieve this, what values the Japanese state and people should hand down, what new rights will be responsive to social change, and how we should define the relationships between the state and the individual and between Japan and the international community. (TAKATAKE Kazuaki, Speaker)

### **3) The Distance between the Constitution and Reality**

Several matters were discussed in terms of a distance between the Constitution and reality. Members commented on whether or not constitutional interpretation should be used to account for the perceived gaps, and on ways of eliminating them.

#### **(1) Matters Discussed in Terms of a Distance between the Constitution and Reality**

The following are examples of matters that were discussed in terms of a distance between the Constitution and reality:

- a. the existence and overseas activities of the Self-Defense Forces, viewed in relation to Article 9's renunciation of war, its declaration that war potential will not be maintained, and its nonrecognition of the right of belligerency;
- b. the differential in the weight of a single vote between different electorates, viewed in relation to Article 14's stipulation of equality under the law;
- c. the stipulation in the Civil Code that, for an illegitimate child, the legal portion of an inheritance shall be one-half that of a legitimate child, viewed in relation to Article 14's stipulation of equality under the law;
- d. the prime minister's visits to Yasukuni Shrine, viewed in relation to the principle of separation of religion and the state set forth in Article 20, Paragraph 3 and elsewhere;
- e. reductions in the compensation of judges implemented in accordance with the revision of salary scales for government employees in general, viewed in relation to the prohibition on decreasing the compensation of judges in Article 79, Paragraph 6, and Article 80, Paragraph 2;
- f. subsidies to private schools, viewed in relation to the restriction on expenditure of public funds for enterprises not under the control of public authority stipulated in Article 89.

#### **(2) Whether Constitutional Interpretation Should Be Used to Account for the Matters Discussed in Terms of a Distance between the Constitution and Reality**

There were comments both for and against the use of constitutional interpretation to account for the matters discussed in terms of a distance between the Constitution and reality.

##### **A. Comments Opposing the Use of Constitutional Interpretation**

Criticisms of the use of constitutional interpretation to account for perceived gaps included the following:

- a. The government has avoided direct constitutional debate and instead has created a number of *faits accomplis* through makeshift constitutional interpretations, an approach which reduces the Constitution to a mere formality without substance and ultimately harms the public's trust in the Constitution.
- b. Where the existing Constitution is no longer adequate in light of social conditions and other factors, there have been makeshift adjustments through repeated use of government interpretations and final interpretations by the Cabinet Legislation Bureau, but frequent use of interpretation could reduce the inherent stability of the Constitution.



- c. Actively changing the interpretation of the Constitution could eventually leave it with no authority as law.
- d. Throughout the postwar period, *faits accomplis* have been steadily amassed through arbitrary constitutional interpretation by the Cabinet Legislation Bureau. This is improper and indefensible.
- e. If the approach of accumulating constitutional interpretations through case law is applied to human rights issues and similar areas instead of enacting laws and solving the problems by legislative means, there is a danger that the courts will come to exercise legislative power.
- f. The approach of making the Constitution fit the realities by means of interpretation has reached its limits. As a result, Japan's national will is no longer apparent to the international community.
- g. Reducing the compensation of judges is explicitly prohibited by Article 79, Paragraph 6, and Article 80, Paragraph 2, and yet their compensation was reduced in accordance with the revision of salary scales for government employees in general. If that was not unconstitutional, one has to wonder whether the provisions are necessary.

## **B. Comments in Favor of the Use of Constitutional Interpretation**

Comments in favor of the use of constitutional interpretation to account for perceived gaps included the following:

- a. The Constitution is not an immutable code and should be revised when necessary, since it contains an amendment procedure; nevertheless, as it is the supreme law and fundamentally normative in nature, it is only proper to allow a certain breadth of interpretation.
- b. In its application and interpretation, there is always a healthy tension between the Constitution and reality.
- c. I agree that the opinion of the Cabinet Legislation Bureau should be changed, but I say this because I want to see Article 9 interpreted correctly.
- d. On the question of subsidies for private schools, there is no need to regard the existing provisions as hard-and-fast rules. We should naturally take an approach that leaves some room for interpretation on this point.

## **(3) Ways of Eliminating the Gaps**

Members who opposed the use of constitutional interpretation to account for perceived gaps between the Constitution and reality argued that it is necessary to eliminate the gaps. With regard to ways of doing so, one position was that the Constitution should be revised to bring it into accord with reality; the other was that the reality should be rectified and brought into accord with the Constitution.

### **A. The Position That the Constitution Should Be Revised to Bring It into Accord with Reality**

There were the following comments arguing that the Constitution should be revised to bring it into accord with reality:

- a. There are areas where gaps have arisen between the Constitution and reality due to major changes in society since the Constitution was enacted; there are also areas where gaps have

- arisen due to the way the Constitution has been applied. In some areas it is necessary to apply the Constitution exactly, but in others it is divorced from social realities and must be revised.
- b. As a result of responding to the international situation through repeated constitutional revisions by means of interpretation, there are distinct gaps between the Constitution's provisions and their interpretation and application; this is problematic in light of the principle of the rule of law. Politicians are responsible for how the Constitution is interpreted, and when there are distinct gaps between the text and reality, it is proper for politicians to ask whether the Constitution should be revised.
  - c. The provisions of the articles on fundamental human rights have not always been put into practice. Conversely, for those new human rights that are recognized by interpretation but have not been stipulated in the text, I suggest that it would provide a judicial standard if they were stated explicitly.
  - d. Properly speaking, government should be conducted in accord with the Constitution, but where that is difficult, the Constitution should be revised. We should take the approach of revising the actual text instead of dealing with problems by means of revision through reinterpretation, as is currently done in Japan; that would also be more readily comprehensible to other countries.
  - e. We should study the individual provisions of the Constitution and revise any portions that are out of touch with reality due to changes in the international situation, advances in the concept of rights, and other factors.
  - f. As Japan now has a greater role and responsibility in the international community, we have to adopt a responsible attitude in matters of international security. As a result, the Self-Defense Forces now operate overseas, but they are being dispatched without having been granted a constitutional status and related measures. The public are aware of the changes in the international situation and they find the current defense policy unconvincing and inappropriate, as the Self-Defense Forces are being sent overseas under the existing Constitution without closing the gap between Article 9 and the realities of the international community.
  - g. While it is possible to adopt the position that subsidies for private schools are constitutional according to a certain interpretation of Article 89, we should delete or revise this article so as not to leave the constitutionality of subsidies open to controversy.

## **B. The Position That the Reality Should Be Rectified and Brought into Accord with the Constitution**

There were the following comments arguing that the reality should be rectified and brought into accord with the Constitution:

- a. A situation that contravenes the Constitution has been created, resulting in a gap between the Constitution and reality. As a way to close that gap, we should rectify the realities to conform with the Constitution in accordance with the ideal of the rule of law.
- b. When one examines the arguments for revising the Constitution, one sees an aspect of putting unconstitutional realities first and changing the Constitution to fit them, instead of rectifying the realities to bring them into accord with the Constitution. As administrators widen their interpretations, the Constitution increasingly becomes a mere formality. Changing the

- Constitution to fit realities that contradict it can only be called revision for the worse.
- c. There is a disconnect with the principles of the Constitution, as seen, for example, in the existence of two legal systems, one embodied in the Constitution and the other in the security laws. The Self-Defense Forces were established and now operate overseas in contravention of Article 9, and as a result the relationship with Article 9 has reached breaking point. The way to put the Constitution into practice is to bring the realities closer to its principles, in other words, to reform the present conduct of government.
  - d. The Constitution has democracy as its basic principle, and it has adopted indirect democracy. In terms of equality under the law, however, it is inappropriate to have a disparity in the weight of electors' votes, the equality of which is the premise underpinning the legitimacy of indirect democracy. We must consider how to create a system that can correct the disparity in the weight of a single vote.
  - e. When we think about the declining birthrate from the perspective of the principle of equality stated in Article 14, the problem of the legal status of illegitimate children is important. Discrimination against illegitimate children is unacceptable, given that children come into the world regardless of their own will.

#### **(Comments by Informants and Others)**

- In view of the fact that Japan is now, and will continue to be, a member of the international community, the present Constitution is not perfect. Article 9, in particular, is very unrealistic in some ways. Unfortunately, the UN Charter has not been applied according to the original ideals, and Article 9's renunciation of war amounts to a mere declaration. There is no guarantee within the international community for such a unilateral renunciation of war, nor is there an environment in which it is respected. (PEMA Gyalpo, Speaker)
- The freedom of expression is a right which is stipulated in the Constitution of Japan and which must be protected worldwide. I feel a strong sense of crisis when I see incidents where simply exercising the freedom of expression, even by nonviolent means, has led to arrest and prosecution. (TERANAKA Makoto, Speaker)
- The nation of Japan has been shaped under the present Constitution for over 50 years since it was promulgated, and the Constitution, in its turn, has been interpreted flexibly according to necessity in conducting state affairs. I feel that the Japan we know today and the Constitution we know today have taken shape while mutually influencing each other. The role played by the Supreme Court during this time in the interpretation and application of the Constitution must be evaluated highly. (MIYAZAWA Kiichi, Speaker)
- It is hardly to be wondered at if there is a gap between the contents of legal norms and the realities, given that the law aims to achieve justice. In looking at the gap between the Constitution and reality, however, the first consideration should be where the responsibility lies for creating the gap, in other words, what the public officials who are obligated to respect and uphold the Constitution have done or failed to do. We would be getting ahead of ourselves if we changed the Constitution simply because it does not match the realities. The real question is how much effort has been made to put its ideals into practice. (MURATA Hisanori, Speaker)

- The gap between the existing Constitution and reality has widened due to successive governments' attitude toward the Constitution. I believe that what we especially need now is for each political party and each Diet member to go back to the idea of putting the Constitution into practice, which is the logical point of origin in a nation under the rule of law. (KOBAYASHI Takeshi, Informant)
- If there is a large gap between the Constitution and reality, it must be eliminated somehow. The best way to do this would be to revise the Constitution, but the situation today is that we have not yet reached that point because the present Constitution lays down a very strict amendment procedure. (TSUNO Osamu, Informant)
- It is only natural that there is a distance between the law and reality; if they coincided exactly, the law would have no reason to exist. Some distance from reality is an essential element of the law, but there are limits. If the distance grows too great and a reality obviously different from the Constitution persists, widespread cynicism toward the Constitution will develop among the public. As I see it, since the 1990s or thereabouts, the present Constitution has been entering a danger zone. (ONUMA Yasuaki, Informant)
- With regard to sex discrimination viewed in relation to Articles 14 and 24, the Constitution is incompatible with reality, in the sense that there has never been a human society with no inequality between the sexes. However, sexual inequality has been gradually decreasing in Japan, and that trend will continue. In reality, we cannot expect an immediate end to sex discrimination, but, as I understand it, the Constitution looks ahead a 100 years or more. (FUNABIKI Takeo, Speaker)
- The proper course, politically, is to implement fully whatever should be implemented in the present Constitution; only then, after making greater efforts in this direction, should we revise those portions where revision proves unavoidable. Taking the basic principles of the existing Constitution as a given, the points in need of improvement can be divided into two categories: (1) those where the Constitution's provisions need to be changed, and (2) those where additions or modifications are advisable to clarify the intent. Specific examples of (1) include: re-examining the principle of popular sovereignty, especially through the introduction of procedures of a direct-democracy type; rethinking the system of judicial review by establishing a constitutional court; and reconsidering the principle of separation of powers, especially through the introduction of a presidential system. Specific examples of (2) are reviewing the use of the phrase "the public welfare" as a general principle limiting human rights; making explicit provision for the right of resistance; making explicit provision for new human rights such as the right to privacy; granting voting rights in local elections to permanent foreign residents; and clarifying the provisions on criminal procedures. (YUKI Yoichiro, Speaker)

#### **4) How the Constitution Is Affected by Changes in Conditions since Its Enactment**

There have been marked changes in the situation surrounding the Constitution since its enactment, amid ongoing internationalization, advances in science and technology, and so on. Some members called for revision of the Constitution in response to the changed conditions, while others saw no need for revision, believing it more important to respond by legislation or other measures based on

the ideals of the Constitution.

### **A. Comments Calling for Revision of the Constitution in Response to Changed Conditions**

There were the following comments calling for revision of the Constitution in response to changed conditions:

- a. The pacifist principles of the existing Constitution are immutable and should be firmly upheld in the future. However, in light of the present international situation and internationally accepted ideas, it is questionable whether we can protect the security of the nation and the people by determining, in the words of the Preamble, to “preserve our security . . . , trusting in the justice and faith of the peace-loving peoples of the world.” It is also problematic that, due to constitutional constraints, Japan cannot make the personnel contributions in keeping with its national strength which are expected by the international community.
- b. The typical modern conflict, often rooted in poverty, does not fit into a framework of sovereign states. Accordingly, we will need a new value system based on greater efforts by the international community to transcend the framework of the sovereign state and act in unison against various threats to human survival, livelihoods, and dignity. Japan must show an active willingness to participate in efforts to maintain international peace and security, offering as a future-oriented and enduring form of pacifism the approach of "human security from a humanitarian perspective," which focuses on the security of individual human beings. If we are to put an international contribution of this kind into practice, revision of the Constitution will be unavoidable.
- c. We must utilize Japan’s various domestic resources, for example, the capacity that local governments have developed in such fields as environmental issues and election monitoring, in order to contribute to the world. It seems to me that the world is seeking such contributions. In this connection, we need to set forth the ways in which Japan will contribute fairly explicitly in the Constitution.
- d. One hears the argument that there is no need to make provision in the Constitution for such things as the right to know, the right of access to information, and the right to privacy, as long as we provide for them in legislation. If, however, this argument has political overtones reflecting unwillingness to revise the Constitution, then, it is misguided. If certain rights (for example, environmental rights, stewardship of the environment by the state and local bodies, the right to know, the right to privacy, or the right of local public bodies to levy independent taxes) have become important principles because of current conditions, the international situation, or public opinion, then they should be written into the Constitution, because the Constitution stands at the apex of the entire legal system.
- e. In modern society, with its advanced science and technology, it has become very easy for confidential matters concerning the personal lives of individuals to be disclosed. The right to privacy—the right to have exclusive control over information relating to our personal affairs—is essential to our pursuit of happiness. Together with stating the right to privacy explicitly in the Constitution, we should also make it clear that, in principle, the privacy of public figures is not

protected. In other words, since the right to privacy is extremely important in present-day society but also requires complex handling, we need to make a fairly specific statement in the Constitution regarding its content and limits, rather than continuing to deal with it through an interpretative approach whose basis in the text is unclear.

- f. We are now facing environmental degradation as a result of the pursuit of unlimited scientific and technological progress in the interests of a more convenient lifestyle. To halt that trend, it is necessary to provide for environmental rights in the Constitution. Particularly in cases where actual environmental violations arise and the victims and offenders live in the same area, it is difficult to set the scope of the environmental territory for the environmental rights. Therefore, it is necessary to determine who should have environmental rights, together with their contents and their scope, on the basis of a full national debate.
- g. In the 60 years since the Constitution was enacted, one of the areas of greatest change has been advanced bioscience and biotechnology. If Japan, which lacks resources, is to make its way as a nation founded on scientific and technological creativity, is Article 13's provision on respect for the individual sufficient? I think we should include the dignity of human beings and the dignity of life in Article 13. This also would be a statement of how we as a nation view human life.
- h. In a postwar era of over half a century, such measures as the Universal Declaration of Human Rights, the International Covenants on Human Rights, and the Convention on the Rights of the Child have been put in place, and various foreign countries have revised their own constitutions in response to international trends. However, the Constitution of Japan, including its rights provisions, has never been reviewed since it was enacted. In the field of new human rights, in particular, Japan's response has been criticized in some cases as passive. We should therefore consider adopting new human rights such as the right to privacy, the right to control the use of one's image, the right to know, and environmental rights, in addition to the traditional rights.
- i. Sixty years have gone by since the Constitution was enacted, and during that time the situation affecting Japan has altered completely; among other changes, the U.S.-Soviet confrontation has ended, and new issues such as dealing with international terrorism and the ideal form of international contributions have arisen. Countries with written constitutions need to modify them continually as the times change. Today, as decentralization proceeds, there is a pressing need to review the relationship between central and local government and our vision for the nation, and we cannot meet the demands of the times with just the four articles of Chapter VIII, "Local Self-Government."

## **B. Comments Arguing That There Is No Need for Constitutional Revision, and That It Is More Important to Respond by Legislation or Other Measures Based on the Ideals of the Constitution**

There were the following comments arguing that there is no need for constitutional revision, and that it is more important to respond by legislation or other measures based on the ideals of the Constitution:

- a. I reaffirm the fact that not only can the human rights provisions of the Constitution of Japan accommodate environmental rights, the right to privacy, the right to know, and other rights that

are a current focus of attention, but they have the depth to accommodate any new human rights that may arise in the future. The real constitutional issue before the Diet today is the legislative work of bringing out the latent power of the existing Constitution.

- b. Some people argue that we should incorporate into the Constitution such things as environmental rights, the right to privacy, bioethics provisions, the rights of crime victims, the right to protect one's reputation, the right to know, the right of self-determination, and the rights of children. However, I doubt whether the lack of explicit provisions in the Constitution is an impediment to the realization of new human rights. In fact, in order to realize new human rights, we first need to make steady efforts to legislate provisions in positive law dealing with specific circumstances.
- c. We need to think about how to realize new human rights in legislation in light of the ideals of the Constitution.

#### **(Comments by Informants and Others)**

- The need has arisen to recognize rights that were not foreseen when the Constitution was enacted 60 years ago, such as the right to privacy. It is not enough to recognize them on the basis of interpretation of Article 13 alone. Rights that deserve to be protected should be given explicit constitutional protection. While it might be sufficient to recognize their nature as rights by legislation or interpretation, the Constitution is a basic law to restrain abuses of state authority and protect the rights of the people, and it is the supreme law in the nation's legal system. Given these characteristics of the Constitution, recognizing these rights therein would be very meaningful, because it would be relatively easy for a right that is recognized by legislation or interpretation alone to lose that recognition due to an amendment of the law or a change in interpretation. (YAMADA Junpei, Speaker)
- What provision we make in the Constitution for the dignity of the individual or the dignity of life is very important. In reproductive medicine and genetic technology, there is a need to set the boundary between the proper exercise of rights and their abuse, and to that end, it is necessary to proclaim the dignity of human beings and the dignity of life as an ultimate ideal somewhere in the Constitution. (MURAKAMI Yoichiro, Informant)

## **Subsection 2 The Preamble**

The main topics of discussion regarding the Preamble were: whether a Preamble is necessary; its relationship with the individual articles; its normative nature; and its content, style, and wording. Members also commented on the relationship between the Preamble and topics covered by the Constitution.

### **1. General Comments on the Preamble**

#### **1) Whether a Preamble Is Necessary**

No members stated categorically that a preamble is unnecessary, except for the comment that a preamble is unnecessary because a constitution must consist of effective provisions having normative value.

#### **2) The Relationship between the Preamble and Individual Articles**

Members commented as follows on the close relationship of the Preamble with the individual articles:

- a. The Preamble sets forth the concepts of the Constitution as a whole, and if we change the Preamble, especially its basic principles, we cannot avoid revising individual articles.
- b. A good grasp of the contents of the Preamble also enables one to understand the individual articles properly.
- c. There is an inseparable relationship between the Preamble's statement of the right to live in peace and Article 9, which derives from reflections on having waged a war of aggression.

The view that the presence of a preamble gives rise to needless controversy over its relationship with the individual articles was also expressed.

#### **3) The Normative Nature of the Preamble**

Opinions were expressed on (1) whether the Preamble can be deemed to have the nature of a legal norm, and (2) if so, whether it can be deemed to have a role as a judicial norm.

##### **(1) Whether the Preamble Has the Nature of a Legal Norm**

First, some members agreed that the Preamble can be deemed to have the nature of a legal norm, noting that it is an important characteristic of the Preamble of the Constitution of Japan that it takes on the nature of a legal norm by clearly declaring the will of the people as the Constitution's enactors, together with the basic constitutional principles. Other members did not agree that the Preamble is normative in nature, noting that it sets forth the historical background to the Constitution's enactment and the ideals on which it is based.



## **(2) Whether the Preamble Has the Nature of a Judicial Norm**

Some members agreed that, if the Preamble is deemed to have the nature of a legal norm, it can also be deemed to have a role as a judicial norm, noting that the right to live in peace laid down by the Preamble has been the basis of civic movements to change realities that violate Article 9, and that it was recognized as a fundamental human right with the force of a judicial norm in the ruling of the court of first instance in the Naganuma Nike missile site case; other members disagreed, arguing that the right to live in peace is too abstract to be a judicial norm.

## **4) The Contents of the Preamble**

Most of the comments on the contents of the Preamble concerned the three basic principles of the Constitution; Japan's unique history, traditions, and culture; and Japan's commitment to the global environment.

### **(1) The Three Basic Constitutional Principles (with Special Reference to Making Explicit Provision for Respect for Fundamental Human Rights)**

With regard to the contents of the Preamble, there was debate as to whether respect for fundamental human rights should be stipulated explicitly in addition to popular sovereignty and pacifism, which are proclaimed in the Preamble of the existing Constitution. Some members took the view that respect for fundamental human rights should be stipulated in the Preamble, thereby making all three of the basic constitutional principles explicit; others commented that the Preamble expresses the goals and ideals of the Constitution as a whole clearly and concisely and there is no need to change it.

The main comments in favor of setting out the basic constitutional principles clearly in the Preamble were as follows:

- a. "Fundamental human rights" is one of the three great principles of the present Constitution, and yet those words are nowhere to be found. If it is truly an important principle, shouldn't it be cited in the Preamble?
- b. Universal values like popular sovereignty, the quest for peace, and respect for fundamental human rights must, of course, be incorporated in the text of the Preamble.

### **(2) The History, Traditions, and Culture Unique to Japan**

There was debate on whether explicit provision should be made in the Preamble for the history, traditions, and culture unique to Japan. Many members took the view that explicit provision should be made for these in the Preamble, but some members saw no need to do so.

Further, among those in favor of making explicit provision, some commented that the history, traditions, and culture unique to Japan should be harmonized with universal values such as the three basic constitutional principles.

### **A. The View That Explicit Provision Should Be Made in the Preamble for the History, Traditions, and Culture Unique to Japan**

First, many members expressed the view that explicit provision should be made in the Preamble for the history, traditions, and culture which represent values unique to Japan.

There were the following comments from that position concerning the specific contents of the history, traditions, and culture unique to Japan:

- a. We should declare the form of the nation, namely, a democratic state with the Emperor—who has played a major role in the stability of the nation during its long history—at its apex as a symbol of the unity of the people.
- b. We should make provision in the Preamble for the ideal of living together, an ideal which has ensured the maintenance of the home and community through warm human bonds.
- c. Explicit provision should be made for the importance of the family and the home in light of Japanese history and tradition in which a sense of social solidarity among its people has been developed through the medium of the family and the home.
- d. We should make reference to the spiritual culture that Japan has developed while blending the spirit of Shinto, Buddhism, and Confucianism.
- e. We should make provision for fostering patriotism.

It was also noted that in considering the ideals embodied in history, tradition, and culture, it is necessary to take into account the philosophy of humanism and respect for life, rather than nationalist thinking.

### **B. The View That There Is No Need to Make Explicit Provision in the Preamble for the History, Traditions, and Culture Unique to Japan**

There were the following comments from the position that there is no need to make explicit provision in the Preamble for the history, traditions, and culture unique to Japan:

- a. Setting forth a vision of the nation in the Preamble runs counter to the world historical trend in terms of modern constitutionalism.
- b. As the Preamble actively incorporated the most advanced international and domestic principles at the time when the Constitution was enacted, it is mistaken to say that we cannot have confidence or pride because no provision is made for history or culture.
- c. History, traditions, and culture are inherently diverse; by their very nature, they cannot be imposed on the people by writing them into the Constitution.
- d. The morality which places importance on the family and the home is formed as a part of our everyday attitudes. What we need to do urgently is not to state in the Preamble that the family is to be valued, but to examine concretely the actual family conditions of children.
- e. Unless it is very carefully written, a provision calling for values which emphasize the family and the home will cause pain to people who want a family but cannot have one.

### **(3) Japan's Commitment to the Global Environment**

There was debate on the proposal that Japan's responsibility toward the global environment should be explicitly stated in the Preamble. Some members saw a need to make clear provision for Japan's responsibility toward the global environment, but others said that the spirit of preventing destruction of the global environment is already clearly stated in the Constitution, especially the Preamble.

The main comments in favor of making clear provision for Japan's responsibility toward the global environment in the Preamble were of the following types: (1) Japan's responsibility for environmental security should be stipulated, thus making a clear commitment to contribute positively to the global environment; (2) the Japanese spirit of protecting the nation's beautiful natural environment should be clearly expressed, thus giving the Constitution a specifically Japanese identity rather than a stateless one.

### **(4) Other Comments**

There were the following comments on other topics related to the contents of the Preamble:

- a. If the Constitution is to be revised, I suggest that there is room to consider writing a preamble to introduce the revised text, since the existing Preamble deserves to be kept as a historical declaration.
- b. If the Constitution is revised, it will be the first time in the history of Japan that a constitution will have been enacted by popular vote, and this fact should be clearly stated in a new Preamble.
- c. The Preamble should declare the dignity and value of life and of human beings, together with our resolve that any scientific or technological enterprise which threatens the dignity of life must be absolutely rejected.
- d. In the face of society's lack of understanding, discrimination, and prejudice toward people with disabilities, the Preamble should declare unequivocally that all are equal before the Constitution, thus proclaiming the maturity of Japanese society.
- e. As Japan is a nation poor in natural resources, we should declare in the Preamble that importance will be placed on education to cultivate human resources and intellectual assets.

### **5) The Style and Wording of the Preamble**

Many members took the position that the existing Preamble's style and wording should be revised. Typical comments included the following: (1) because it is written in a kind of "translationese" based on English syntax, it should be rewritten in readily understandable Japanese based on Japanese modes of thinking; (2) it should be rewritten more simply and should not be too long. However, some members commented that the style is familiar to the public and there is no need to change it.

### **(Comments by Informants and Others)**

#### **<The Relationship between the Preamble and the Individual Articles>**

- Democracy can take root and develop only when accompanied by sound development of Japan's pacifist principles, whose keynotes are Article 9 and the Preamble; they are two sides of the same coin. (YAMAUCHI Tokushin, Speaker)

- There is less need for consistency between the Preamble and the individual articles than for consistency among the articles themselves. (HANABUSA Masamichi, Informant)

#### **<The Normative Nature of the Preamble>**

- The Preamble has been laid down as a set of policy guidelines for the nation, and Japan's policies in both foreign and domestic affairs must therefore take it as a standard and be implemented in a way consistent with it. (URABE Noriho, Speaker)
- The importance of the right to live in peace lies in peace being understood in terms of a subjective right of the people themselves, not merely an object of management from a policy point of view. It is highly significant that the Sapporo District Court recognized the right to live in peace as an element of the interests involved in the Naganuma Nike missile sites case. (MURATA Hisanori, Speaker)

#### **<The Contents of the Preamble>**

- The concept of innate or fundamental human rights is not as universally recognized as the Japanese believe it to be. There is nothing odd about the fact that the Preamble of the existing Constitution does not provide for fundamental human rights; this merely reflects the thinking of those who drew up the Preamble. (HASEGAWA Masayasu, Informant)
- The existing Preamble is written mainly from the perspective of a legal technician; it lacks an overall vision of the nation of Japan, its ideals, and its spirit. The Preamble must set forth an ideal vision for the nation of Japan as a whole, based on the lessons of history and encompassing the future. It must present an image of the Japanese nation as a whole, a nation with a living history. (NAKASONE Yasuhiro, Speaker)
- We should enshrine "environmentalism" in the Preamble as an ideal of the Japanese, who have a long tradition of cherishing and living in harmony with nature. (TAKEMURA Masayoshi, Speaker)

#### **<The Style and Wording of the Preamble>**

- Even if one agrees with the ideals stated in the Preamble, the Japanese style is ugly because the text was conceived in English and not at the initiative of the Japanese. This leads to a lack of respect and insensitivity toward their own language among the Japanese. (ISHIHARA Shintaro, Informant)
- At the time when it came into effect, I felt that the Constitution of Japan was written in a strange, foreign-sounding Japanese; but the language of the Constitution has since come to be accepted as normal, and today none of the public finds it strange. Many Japanese have grown up accepting the words of the Constitution as their own, and it is not only the language that has changed, but Japan itself. The Japan we know today and the Constitution we know today have taken shape while mutually influencing each other. (MIYAZAWA Kiichi, Speaker)
- Although the text is not difficult to understand, it might be better to rewrite it in a less stiff and formal style. But since the Preamble sets down our common ideals or philosophy, the text must be internally consistent when it embodies these in concrete form. (HINOHARA Shigeaki,

Speaker)

## **2. Main Comments on the Preamble in Relation to Specific Items of the Constitution**

### **1) The Emperor**

In discussing the Preamble in relation to the Emperor system, the following views were expressed on the relationship between the people, with whom it is stated that sovereign power resides, and the Emperor:

- a. The Preamble proclaims that sovereign power resides with the people, and Article 1 states that the Emperor derives his position as a symbol from the will of the people with whom resides sovereign power; according to this structure, the primary source of authority is the Japanese people, with whom sovereignty resides, and the symbol exists with a secondary, derivative status.
- b. Although the Preamble contains a general declaration in which the people are the grammatical subject, in legal terms, the actual norms are located in the individual articles. The only stipulation of popular sovereignty in the main body of the Constitution is found in Article 1, which, in the course of defining the Emperor's position, states that sovereign power resides with the people; the wording of this article makes it clear that the Emperor is the representative of the state and the people.
- c. The Emperor undeniably possesses authority, since the Preamble states "the authority for [government] is derived from the people," and the Emperor system is based on their will; at the same time, the Preamble states that "the powers of [government] are exercised by the representatives of the people." It seems important to make it clear that the present Emperor does not carry out political acts in light of this position stated by the Preamble.

### **2) The Renunciation of War (Pacifism)**

The main focus of comments on the Preamble in relation to specific items of the Constitution was the topic of pacifism. In these evaluations, as in the debate on Article 9, the pacifist spirit of the Preamble was the subject of both positive comments and criticisms.

#### **A. Positive Evaluations of the Pacifism Declared in the Preamble**

The following positive evaluations of the pacifism declared in the Preamble were expressed:

- a. When we look at the world of the 21st century, it is clear that the pacifist principles of the Preamble offer the potential for Japan to play a positive role. It is important to change the realities that violate the Constitution and to work actively for world peace.
- b. The Preamble has already set forth the ideals of a civilization in which all peoples of the world can coexist.
- c. The Preamble's declaration that "never again shall we be visited with the horrors of war through the action of government" is an expression of Japan's resolve to transform itself into a truly modern state. We must adopt this as a common understanding in thinking about the Constitution.

- d. Although there are no explicit provisions on overseas cooperation in the body of the Constitution, the Preamble calls for actively carrying on such cooperation.

## **B. Criticisms of the Pacifism Declared in the Preamble**

The following criticisms of the pacifism declared in the Preamble were expressed:

- a. We should reform our passive pacifism and provide explicitly for defense consciousness, or the readiness to protect our nation ourselves, and for an active pacifism in which we play a positive role in UN peacekeeping and peacebuilding operations.
- b. The international community is a place where national interests clash, and it is questionable whether we should base our security arrangements on the worldview of the Preamble, which assumes that the world will be at peace as long as Japan itself does not commit any wrong.
- c. In thinking about Japan's security, it is dangerous to rely on a UN-centered policy.

It should be noted, however, that views concerning the pacifism of the Preamble do not fall neatly into the above two categories, as some comments evaluated the Preamble positively while also expressing criticisms. Examples include: (1) the comment that, while the Preamble contains very noble ideals, in reality, the peoples of the world have seen continuous fear and want for 60 years; (2) the comment that the Preamble establishes lofty spiritual principles, but the Constitution does not necessarily make clear, in concrete terms, how we can maintain and build peace in the real world.

## **3) The Guarantee of Fundamental Human Rights**

In discussing the Preamble in relation to the guarantee of fundamental human rights, views were expressed on the relationship between rights and duties and on the right to live in peace.

### **(1) Rights and Duties**

With regard to the relationship between rights and duties, the view was expressed that the guarantee of fundamental human rights should be firmly upheld, but the Preamble should also state clearly that we must be aware that rights are accompanied by duties and freedoms are accompanied by responsibilities, and that rights and freedoms may therefore be adjusted to protect the public interest.

On the other hand, the view was also expressed that, while it seems inconsistent with the nature of the Constitution to state the duties or responsibilities of the people in the Preamble, it might be possible to make such a statement in the Preamble if the subject was the people, not the state; for example, "we the people recognize our responsibilities."

### **(2) The Right to Live in Peace**

In examining the guarantee of fundamental human rights in relation to the pacifist principles discussed above, various comments made reference to the concepts of "the right to live in peace" and "human security." Some comments expressed a positive evaluation of the right to live in peace declared in the Preamble, while others called for a clearer statement of the right to live in peace to be made in the Preamble.

### **A. Positive Evaluations of the Right to Live in Peace Declared in the Preamble**

There were the following comments expressing a positive evaluation of the right to live in peace declared in the Preamble:

- a. The right to live in peace is the most fundamental human right in the Constitution, and maintaining peace in accordance with Article 9 is, in itself, directly related to the guarantee of human rights.
- b. “Fear and want” are great challenges facing the world, not only when the Constitution was enacted but in the present day, and human security is a principle that represents a further development of the right to live in peace stated in the Constitution.
- c. The concept of human security is already present in the Preamble, and contributing actively to human security is one possible mission for Japan in the international community of the 21st century.

### **B. Comments Calling for a Clearer Statement of the Right to Live in Peace in the Preamble**

The following comments called for a clearer statement of the right to live in peace to be made in the Preamble:

- a. Taking the position that it would be possible for Japan, as a last resort, to use armed force to guarantee peace and security, we need to revise both Article 9 and the Preamble and to offer the approach of “human security from a humanitarian perspective” as a future-oriented and enduring form of pacifism.
- b. It is important not to shun responsibility for poverty, conflicts, and other problems in the international community, but, instead, to show a positive commitment to building peace on the basis of human security, declaring our willingness to contribute to the peace and stability of the international community as a responsible nation.
- c. We should declare the position of the Japanese regarding the abolition of nuclear weapons.

## **4) The Organization of Government**

In discussing the Preamble in relation to the organization of government, the following views were expressed:

- a. At the opening of the Preamble, the Constitution of Japan adopts the ideas of modern constitutionalism by stating that the principle of popular sovereignty is the foundation of the nation’s governance; hence, in thinking about the Constitution, it is essential to give more substance to this principle.
- b. The word “trust” in the first paragraph of the Preamble can be read as a reference to Rousseau’s theory of the social contract; this reflects a philosophy developed in a number of countries, especially Europe and the United States.
- c. Local self-government should be included as one of the topics addressed in the Preamble, since its importance is agreed on by almost all of the public.
- d. An important issue is how to incorporate in the Preamble the idea of creating a decentralized

society to meet the needs of the new era, in place of the centralized system that led the drive to catch up with and overtake the industrialized nations.

- e. The Preamble contains the words “acting through our duly elected representatives in the National Diet.” Residents’ referendums, which are a system of direct democracy, are a misoperation of democracy.

## **5) The Guarantee of the Constitution**

In discussing the Preamble in relation to the guarantee of the Constitution, the view that there are limits to constitutional revision was expressed, citing as grounds the Preamble’s statement that the principle of popular sovereignty “is a universal principle of mankind upon which this Constitution is founded,” and its stipulation that “[w]e reject and revoke all constitutions ... in conflict herewith.”

### **(Comments by Informants and Others)**

#### **<The Renunciation of War (Pacifism)>**

- It is not altogether clear what, specifically, is meant by the Preamble’s words “the justice and faith of the peace-loving peoples of the world.” Even if such things exist, as a matter of national policy, it is a mistake to depend on others for the peace and security of the nation, and this passage should be extensively rewritten. (MURATA Koji, Informant)
- The Preamble definitely reflects contemporary conditions in 1946, and thus it met with a very difficult situation during the Cold War. However, it is more attuned to the times now that the Cold War has ended, the United States and Russia have returned to a cooperative structure up to a point, the United States and China have restored diplomatic relations, and there is a structure of cooperation among the members of the United Nations, headed by the permanent members of the Security Council. (OGUMA Eiji, Speaker)
- Since we have a fine Preamble which says that no nation is responsible to itself alone, why doesn’t Japan spend money on such things as personnel exchanges with other countries and assistance for social security? (TERUOKA Itsuko, Speaker)

#### **<The Guarantee of Fundamental Human Rights>**

- In the international community, there is currently a strong trend away from the concept of national security toward that of human security. When we look at the Constitution of Japan from this perspective, it is very significant that the Preamble proclaims the right to live in peace. The Preamble is, in fact, setting forth the concept of human security. (URABE Noriho, Speaker)
- In the Preamble, the phrases “the right to live in peace” and “we desire to occupy an honored place in an international society” are interrelated, for “peace” must be enjoyed by the whole world, not one nation alone. The concept of “human security” is a creative development of the “right to live in peace” embraced by the Preamble, and if we call for “human security” in the international arena, we should also call for it in domestic affairs. (MUSHAKOJI Kinhide, Informant)
- The right to live in peace is the most basic and important human right. It is granted equally, not only to the Japanese people, but to every citizen of the world. Together with the concept of



human security, pursuing the right of each individual to live in peace is an aspiration that is probably shared by all of the Japanese people. (INOUCHI Kuniko, Speaker)

- Since the subject of the right to live in peace proclaimed in the Preamble is “all peoples of the world,” the statement is strongly suggestive of a political declaration. Hence, it is not necessarily a guarantee of the same character as the guarantee of human rights laid down concretely in Article 13 and subsequent articles. (UCHINO Masayuki, Informant)

#### **<The Organization of Government>**

- The basic character of a constitution is that it primarily lays down the relationship between the government and the people. There is therefore no need to provide in the Preamble for the relationship between the central and local governments. (KAIHARA Toshitami, Speaker)

#### **<The Guarantee of the Constitution>**

- The Preamble states that the Japanese people, with whom sovereignty resides, do firmly establish this Constitution, and Article 96 is a declaration that the people themselves will, when necessary, amend the Constitution that they have created. This makes it basically difficult to revise Article 96. (TAKAMI Katsutoshi, Informant)

### **Subsection 3 The Emperor**

The main topics of discussion regarding the Constitution's provisions on the Emperor were: evaluation of the Emperor-as-symbol system and related matters; what form the succession to the throne should take; and the Emperor's official acts, especially acts in matters of state.

#### **1. Evaluation of the Emperor-as-Symbol System and Related Matters**

Many members evaluated the present Emperor-as-symbol system positively and called for it to be maintained in the future. At the same time, some members spoke of a need to discuss the relationship between popular sovereignty and the Emperor system.

With regard to the Emperor's status, some members expressed the view that he should be designated head of state, while others saw this as unnecessary.

##### **1) Evaluation of the Emperor System**

With regard to the Emperor-as-symbol system (under which, as stipulated in Chapter I, the Emperor is 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, performing only acts in matters of state on behalf of the people and with the advice and approval of the Cabinet, and having no powers related to government), many members expressed the view that the present system has popular support and has taken root among the people, that, historically, it is consistent with the essence of the Emperor system, and that it should be maintained in the future. Other comments included: (1) the view that the Emperor system itself forms part of Japanese tradition, culture, and identity, and we must preserve it in the future; (2) the view that the present Emperor system exists strictly in conjunction with constitutional principles which include popular sovereignty, democracy, and respect for human rights.

##### **2) Popular Sovereignty and the Emperor System**

The following views were expressed regarding the relationship between popular sovereignty and the Emperor system:

- a. We should discuss the proper position, in relation to popular sovereignty, of the Emperor system and the Emperor as a symbol of the unity of the Japanese people.
- b. The concept of sovereignty is thought by some to be unnecessary, but it is important as a way to emphasize that the Emperor, who was formerly the sovereign, now exists in a symbolic role and it is the people who are the protagonists.
- c. In democracy, which is associated with popular sovereignty, essentially, everything can be decided by the will of the majority. But traditionalism, which is associated with the Emperor system, places importance on tradition and culture, and, to my mind, this means recognizing that there are some things that even the will of the majority cannot change. As an extension of this

thinking, this means that we must discuss how to define the nature of the Emperor-as-symbol system theoretically, that is, whether Japan's system is a constitutional monarchy or a republic.

- d. We should think about the status of the Emperor system while reaffirming that sovereign power resides with the people. From that perspective, in the 21st century, it is important to think about what efforts we should make to bring the Emperor closer to the people, rather than to set him apart.

### **3) The Status of the Emperor**

#### **(1) Whether the Emperor Should Be Considered Head of State**

The first question taken up with regard to the Emperor's status was whether he should be considered head of state. Some members suggested that this was appropriate, while others foresaw difficulties. It was also suggested that it is possible to view the role of head of state as divided between the Emperor and the Cabinet.

#### **A. The View That It Is Appropriate to Consider the Emperor Head of State**

- a. If we define a "monarch" as a person who inherits the position of head of state of a nation, the view that the Emperor is the head of state holds even under the existing Constitution, in that he represents the nation externally, he embodies the symbol of the Japanese state and the unity of the Japanese people, and he has important powers in the governance of the nation.
- b. Strictly speaking, there are difficulties in designating the Emperor head of state in light of internationally accepted conventions. When we take the historical background into account, however, I would argue that, even today, by representing the nation in performing acts in matters of state with the advice and approval of the Cabinet, the Emperor is fulfilling the functions of an honorary head of state.

#### **B. The View That It Is Difficult to Consider the Emperor Head of State**

- a. I would argue that it is the prime minister who exercises the authority of a head of state, in light of his constitutional powers, and that the Emperor is a figure above the prime minister who performs acts appropriate to his own constitutional powers or otherwise befitting his symbolic status.
- b. Under the Constitution, sovereignty clearly belongs to the people; the Emperor is not the sovereign, nor does he combine in himself the rights of sovereignty, and in that sense, the symbolic Emperor is not the head of state.

#### **C. The View That the Role of Head of State Is Divided between the Emperor and the Cabinet**

Members who took this view argued that the words of the Preamble regarding government, "the authority for which is derived from the people, the powers of which are exercised by the representatives of the people," can be construed to mean that the "authority" and "powers" of a head of state are divided between the Emperor and the Cabinet, in a similar way to the British system.

## **(2) Whether the Emperor Should Be Designated Head of State in the Constitution**

Some members expressed the view that the Emperor should be designated head of state, based on the position outlined in A above, but many members considered this unnecessary.

### **A. Comments in Favor of Designating the Emperor Head of State**

- a. Setting aside the question of whether to use the term “head of state,” since it is the Emperor who appoints the prime minister and receives foreign ambassadors and ministers, it would be preferable to clarify his status as representative of the people.
- b. As part of the ideal form of the nation, the Emperor’s status should be clarified. In other words, we should clearly and firmly establish the ideal form of the nation by affirming that the Emperor is Japan’s head of state; that he embodies aspirations for the peace and prosperity of the nation and the happiness of its people as a symbol of its history, its traditions, its culture, and the unity of the people; and that he derives this position from the will of the Japanese people, with whom resides sovereign power.

### **B. Comments Arguing That Explicit Designation Is Unnecessary**

- a. In practice, the Emperor is recognized internationally as head of state, but a head of state is generally a figure who possesses all or some of the powers of sovereignty. We should therefore be cautious about making explicit provision to that effect, since Article 4, Paragraph 1 states that the Emperor’s present position shall not have powers related to government.
- b. It cannot be denied that the Emperor’s present status has an aspect equivalent to head of state. But we must beware of focusing too narrowly on the title “head of state,” which might lead us, for example, to establish new powers appropriate to that title which exceed the boundaries of the Emperor-as-symbol system.
- c. I suggest that there is no point in stipulating the status “head of state” explicitly—indeed, it is truer to the meaning of Japan’s Emperor-as-symbol system to let it remain implicit—because (a) as one of the requirements of the position, a head of state is empowered to represent the nation externally, but in the case of Japan, what the Emperor does in this respect consists solely of formal and ceremonial acts, that is, attestation of diplomatic documents and receiving foreign ambassadors and ministers; (2) today, the position of head of state is becoming titular in many countries; (3) the Emperor, acting of his own accord, already performs the external role of a head of state superbly.
- d. If a national debate arose and the status of the Emperor had to be resolved, it might be appropriate to use the term “head of state.” But 80 percent of the public have no particular objection to the present Emperor-as-symbol system. Shouldn’t this question be decided by examining what flaws there are in the existing provisions, or how many instances of specific difficulties have been clearly identified? In any case, it seems to me that, at the present time, there is little in the way of social phenomena that make it necessary to designate the Emperor head of state.

It was also suggested that the debate on this point is proceeding without a clear definition of “head of

state.”

#### **4) The Future of the Emperor System**

No members viewed the question of whether the system should be retained or abolished as an immediate constitutional issue. However, the view was expressed that the Emperor system should probably be abolished at some time in the future as it is fundamentally incompatible with the principle of popular sovereignty.

#### **(Comments by Informants and Others)**

##### **<Evaluation of the Emperor System>**

- Under the Constitution of Japan, the Emperor is no longer sovereign, his official relationship with Shinto has been severed due to the principle of separation of religion and the state, and not only has he ceased to combine in himself the rights of sovereignty, but he is not recognized as having any powers related to government. As a result, the Emperor appears at first glance to be a figure entirely unrelated to politics. Nonetheless, in effect, he performs the social function of unifying the people, either in his person or through his actions, and, in that sense, the Emperor can be said to have played a political role of a high order. (YOKOTA Kouichi, Informant)
- The Emperor possessed sovereign power for little more than 50 years. In the history of Japan, the Emperors were guardians of the culture who had no power; thus, the “Emperor-as-symbol” system actually has a long tradition shaped by Japanese history. (MATSUMOTO Kenichi, Informant)

##### **<Popular Sovereignty and the Emperor System>**

- The Emperor-as-symbol system has been retained in the present Constitution as a form that is in harmony with popular sovereignty, which is a universal principle of modern constitutions. (KOBAYASHI Takeshi, Informant)
- The ideal qualities of the Emperor as symbol are “hoping for the happiness of the people” and “observing the Constitution” “together with the people,” and it seems to me that these phrases constitute the first requirement of a symbolic Emperor. (TAKAHASHI Hiroshi, Informant)

##### **<The Status of the Emperor>**

- Scholarly opinion is divided on the question of who is the head of state under the Constitution of Japan. From a strictly legal standpoint this is a rather fruitless debate, since the fact that one or another state organ is the head of state does not, by itself, mean that that organ must be granted powers of some sort. (HASEBE Yasuo, Informant)
- The Emperor’s activities as the nation’s external representative and its internal “head of state” should be understood as part of his symbolic role, and I would not like to see the symbolism abandoned in favor of making him head of state outright. But his role does, undeniably, contain an aspect of his being head of state. (SONOBE Itsuo, Informant)
- Whereas Article 1 of the Meiji Constitution stated “The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal,” Article 4 imposed restraints on

the Emperor's powers by stating "The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitution." As this example shows, when people in the Meiji, Taisho, and Showa periods used the term *genshu* ("head" in Article 4 above), they did so with the basic intention of setting restraints on arbitrary action by the Emperor or the military. In my view, to revive that term now as a basis for strengthening the Emperor's existing powers would, at the least, run counter to the significance that it carried in the prewar period. (BANNO Junji, Informant)

#### <The Future of the Emperor System>

- The position of the Emperor in the Constitution of Japan derives from the will of the people, with whom sovereignty resides. Thus, if the people wished to do so, the Constitution could be amended either to grant the Emperor greater powers or to abolish the Emperor system by political means. But more than 80 percent of the public today are satisfied with the Emperor system; in that sense, the present Emperor-as-symbol system could be said to be the most stable form of the Emperor system in history. (YOKOTA Kouichi, Informant)

## 2. Succession to the Throne

Succession to the throne was discussed primarily as a matter to be addressed in the Imperial Household Law. The main issue was whether female succession should be recognized.

### 1) Whether Female Succession Should Be Recognized

#### A. Views in Favor of Recognizing Female Succession

Many members expressed the view that female succession should be recognized. The case for recognition was based mainly on the following reasons:

- a. Unlike the Meiji Constitution, the Constitution of Japan does not limit the right of succession to male descendants.
- b. There are concerns that the Imperial line will come to an end if succession continues to be limited to male descendants.
- c. A majority of public opinion accepts a female Emperor.
- d. Recognizing female succession would also be in keeping with the present trend toward equality of the sexes and creating a gender-equal society.
- e. There have been female emperors in the past.
- f. Although the Imperial Household Law presently deems only male members of the Imperial Family to have the right of succession, even in its present form the Law recognizes the assumption of regency by female members of the Imperial Family.
- g. European countries with royal families recognize female succession to the throne.

## **B. The View That Recognizing Female Succession Should Be Considered with Caution**

Some members, while certainly not rejecting female succession, expressed the view that its recognition should be considered with caution, as importance should be placed on the tradition that has always limited the succession to male descendants in the male line.

### **2) Eligibility of Female Members of the Imperial Family to Succeed**

Opinion was divided on the question of which female members of the Imperial Family should be eligible to succeed to the throne in the event that female succession is recognized. One view was that the right of succession should be recognized for female descendants in the male line on an exceptional basis, that is, only when there is no suitable heir among the male members of the Imperial Family; the opposing view was that if the right of succession were extended only to female descendants in the male line, female succession would amount to no more than a temporary regency, and that it is necessary also to recognize female succession in the female line in order to ensure the continuity of the Emperor system. Further, several issues were raised for consideration in connection with this question, including the effect on the Imperial Household's finances if female descendants establish new collateral branches of the Imperial Family, and the status of the consort of a female Emperor.

#### **(Comments by Informants and Others)**

- The present Imperial Household Law states that male descendants in the male line shall succeed to the Imperial throne, but this is a problem area since, in actual fact, the young members of the Imperial Family have only female children. In addition to the problem of succession to the throne, there is a similar problem regarding succession to the princely titles in each of the collateral branches of the Imperial Family. In light of this situation, I suggest that it is necessary to revise the present Imperial Household Law. (TAKAHASHI Hiroshi, Informant)
- Possible ways to avoid the risk of extinction of the Imperial line while holding fast to the tradition of male succession in the male line would be: (1) to restore the Imperial status of former members of the Imperial Family who lost that status in 1947; or (2) to recognize the right of succession of illegitimate sons, as was done under the Meiji Constitution. However, (1) it would be difficult to restore the status of former members of the Imperial Family more than 50 years after they relinquished it, and public sentiment probably would not accept this; and (2) the social conditions that would permit succession by an illegitimate son have probably also ceased to exist. Hence, the only way to avoid the risk of extinction of the Imperial Family is to break with tradition and recognize succession, not only by female descendants in the male line, but also by male descendants in the female line and/or female descendants in the female line. This may be going against tradition, but there is no other way. (YOKOTA Kouichi, Informant)

### 3. The Emperor's Official Acts

Comments with regard to the Emperor's official acts included the view that consideration should be given to reviewing the implementation of acts in matters of state. Among other points discussed, some members expressed the view that certain acts not included in the acts in matters of state should be deemed public acts, while other members argued that all acts not included in the acts in matters of state should be regarded as private acts.

#### 1) Acts in Matters of State

The following views were expressed regarding the proper form of the Emperor's existing acts in matters of state (on the premise that these are passive and ceremonial acts performed "with the advice and approval of the Cabinet") and related matters:

- a. Given that the Emperor is entrusted with acts in matters of state by the people, with whom sovereignty resides, these acts should be conducted with complete openness before the people; this would also be beneficial in terms of making the Emperor's symbolic status more secure.
- b. It would not be desirable to add more acts in matters of state to those already stipulated in the Constitution, as this would impose strenuous duties on the Emperor.
- c. It is important to strictly observe the constitutional norm which stipulates that the Emperor "shall not have powers related to government." We should not add more categories of acts in matters of state to the existing ones.
- d. The documents used to attest the appointment and dismissal of ministers of state and other officials contain the words "*migi tsutsushinde saika wo aogimasu* (we respectfully submit the above matter for Imperial sanction)." It seems to me that the word *saika* (Imperial sanction or approval) wrongly implies that the Emperor has the power to make appointments.
- e. I believe that the form of the honors system, in which ranked awards are granted by the Emperor, is relevant to the persistent discrimination problem in this country. We should reform the honors system accordingly, for example, by eliminating all ranks from the decorations.
- f. Court religious rites are presently deemed private acts of the Emperor due to the principle of separation of religion and the state, but the Daijosai (the festival of thanksgiving after the enthronement of an Emperor), at least, is a Japanese cultural tradition, and I do not see it as religious in character. Hence, the Daijosai, as an important national ceremony, should be added to the acts in matters of state.

#### 2) Acts of the Emperor Other than Acts in Matters of State

On the question of what other categories of acts by the Emperor should be recognized, apart from acts in matters of state, two views were expressed: (1) acts of a public character should be recognized as quasi acts in matters of state or complementary to acts in matters of state (the "three category" theory, comprising acts in matters of state, public acts, and private acts); (2) all acts other than acts in matters of state should be considered private (the "two category" theory, comprising acts in matters of state and private acts).

- a. To strengthen the symbolic nature of the Emperor, we should make explicit provision in the



Constitution for “public acts” on the condition that they are performed with the advice and approval of the Cabinet and that the Cabinet accepts responsibility for them. There are two possible types of public acts: (1) “symbolic acts,” such as attending the opening of the Diet, the National Athletics Meet, and similar events; overseas visits; visits to disaster areas, etc.; (2) “acts of the Imperial Household,” such as various ceremonies performed within the Imperial Household, court religious rites, etc.

- b. It is not necessary to add to the acts in matters of state; however, some of the acts that the Emperor actually performs can hardly be called private, and it seems to me that we should recognize these as public acts, once the advice and approval of the Cabinet are received.
- c. I suggest that we should make express provision in the Imperial Household Law or elsewhere for acts that contribute to carrying on Japanese traditions and culture, such as the Imperial New Year’s Poetry Reading and the Harvest Festival.
- d. If the principle of popular sovereignty is to be made a concrete reality, it is essential that the stipulation that the Emperor has no powers related to government be strictly observed. Accordingly, acts other than acts in matters of state should be considered private acts with no symbolic character.

The view was also expressed that a background factor in the debate over the classification of the Emperor’s acts is the fact that the Emperor, being an individual person, engages in various activities besides acts in matters of state, and that there is a close relationship between those activities and the fact that he is the symbol of the nation.

#### **(Comments by Informants and Others)**

##### **<Acts in Matters of State>**

- Historically, the Emperor had the authority to confer legitimacy to power. Because of the adoption of the symbolic Emperor system, together with this historical background, the Emperor’s powers under the present Constitution should be interpreted to mean that this “authority to confer legitimacy” has been delegated by the people to the Emperor. (SONOBE Itsuo, Informant)
- I do not feel that the existing acts in matters of state should be either increased or decreased. But if, in actual practice, there is any problem concerning the Imperial Household in performing these acts, surely it should be discussed. Also, we must pursue a more in-depth debate on the scope of “ceremonial functions,” which are one of the existing acts in matters of state, as a question of interpretation. (SONOBE Itsuo, Informant)

##### **<Acts of the Emperor Other than Acts in Matters of State>**

- Regarding public acts, while I believe it is necessary to define the status of such acts within the system as befits their meaning, due caution is called for. It would not be fitting to try to develop a finite list of public acts of the Emperor by means of legislation. (SONOBE Itsuo, Informant)
- It is important for the Emperor to express himself as the symbol of the nation through public acts as well as acts in matters of state. Naturally, the Cabinet must accept responsibility for the

performance of such acts of the Emperor. (SONOBE Itsuo, Informant)

- Scholars have put forward three theories in favor of accepting public acts by the Emperor, other than acts in matters of state, as constitutional: (1) the theory that they are quasi acts in matters of state; (2) the theory that they are acts performed as a symbol; (3) the theory that they are acts performed as a public figure. However, each of these carries a strong risk that the Emperor's acts will be expanded without limit. Further, these theories were developed with the aim of placing the Emperor's acts other than acts in matters of state under the control of the Cabinet, but at present there is a greater risk of the Cabinet exploiting the Emperor politically than of the Emperor taking arbitrary action. (YOKOTA Kouichi, Informant)
- The Emperor-as-symbol system has existed for 50 years, and one comes across various instances where its basic form has become distorted and has departed from the original intent. The acts of the Emperor are laid down in the Constitution as acts in matters of state, and all other acts are deemed private or public acts. Among the latter, a problematic area is Imperial diplomacy. The Emperor's overseas tours are arranged at the discretion of the government, and it cannot be denied that this fact, in itself, gives them a political hue. Any political overtones in the selection of an entourage and related matters should be removed as far as possible. (TAKAHASHI Hiroshi, Informant)

## **Subsection 4 Security and International Cooperation**

### **I. Security**

On the subject of security there was lively discussion on a diverse range of topics, including the evaluation of Article 9, the right of self-defense and the Self-Defense Forces, the right of collective self-defense, the Japan-U.S. Security Treaty, the problem of the U.S. military bases in Japan, and the elimination of nuclear weapons.

#### **1. Evaluation of Article 9**

In the discussions on security there were many positive evaluations of the role that Article 9 has played in ensuring Japan's peace and prosperity to date. There were also many comments to the effect that pacifism should be maintained in the future by firmly upholding, at the least, the principle of renunciation of war in Paragraph 1 of Article 9.

The evaluations of Article 9 included the following opinions.

- a. The existing Constitution is excellent, and it has contributed greatly to Japan's postwar peace, stability, and development.
- b. Article 9 is not merely an ideal, but also serves as a check preventing Japan from becoming a military power. Pacifism has made a major contribution to the preservation of peace for Japan.
- c. Pacifism based on Article 9 and the Preamble, together with the people's commitment thereto, have contributed greatly to peace in Japan, as is clearly shown by the support and positive evaluation that Japan's pacifism has received from other Asian nations.
- d. Both diplomatic and military means can be used to attain security, but the Constitution rejects security by military means and aspires to fully realize "human security."
- e. Although it is argued that Japan has not caused any conflicts nor been invaded by another nation because of the existence of Article 9, in reality Japan has only enjoyed peace and economic prosperity because of the existence of the Japan-U.S. Security Treaty and the Self-Defense Forces.
- f. Article 9 played an historic role for Japan when it passed through its reconstruction phase and period of rapid economic growth, and contributed to Japan's development and to world peace by virtue of its noble principles, in particular its renunciation of war reflecting the ideals in the immediate postwar period and the international situation at that time. Today, however, Article 9 and the realities of international society have diverged, and resorting to interpretation to patch over that fact is devaluing the Constitution and reducing it to an empty formality.

#### **(Comments by Informants and Others)**

- Article 9 is pioneering in aspects such as its dedication to pacifism and the manner of its composition to unite peace and human rights. As a result, it is regarded highly around the world. In light of this, the revision of Article 9 to permit acts such as the keeping of a standing army

and the dispatch of troops overseas will destroy the Constitution's excellent systematic consistency and thoroughness. That may have the unintended effect of impeding tasks such as the resolution of regional conflicts. (ODANAKA Toshiki, Speaker)

- We live in an age characterized by the implementation of a unilateral security policy by the United States, and by progressive globalization. In such an era Japan should hold up human security and the right to live in peace--its legal underpinning--as a national ideal. It should also endeavor to reform the United Nations and change U.S.-centered security, at the same time establishing regional security. In doing so it will be important to give concrete form to human security in such ways as the elimination of armaments, the establishment of nuclear-free zones, dispute-prevention, and support for social development. Also, it is meaningless to regard national security and human security as being mutually exclusive; national-security policy should be framed on the basis of human security. (MUSHAKOJI Kinhide, Informant)
- Paragraph 2 of Article 9 permits a self-defense capability, but on the other hand the article sets out a kind of demilitarization in which international relations are not formed by means of military force, but by building a cooperative structure through the reduction of armaments, and strengthening interdependence by the lowering of barriers between nations. (SHINDO Eiichi, Informant)
- Japan's peace has been sustained not by Article 9, but by the Japan-U.S. Security Treaty. Given that Japan is surrounded by countries with powerful military strength, it would be difficult for it to enjoy peace while being totally demilitarized. I believe that Japan's security has been conditional upon the Japan-U.S. Security Treaty. (KITAOKA Shinichi, Informant)

## **2. The Right of Self-Defense and the Self-Defense Forces**

With regard to whether the use of force can be recognized as an exercise of the right of self-defense, many members spoke in favor of recognizing the minimum necessary use of force as an exercise of the right of self-defense in order to protect the lives and property of the country and its people, but some members were opposed to recognition even as an exercise of the right of self-defense.

### **1) The Relationship between the Right of Self-Defense, the Self-Defense Forces, and the Provisions of the Constitution**

As stated above, many members were in favor of recognizing the minimum necessary use of force as an exercise of the right of self-defense. Their views can be broadly divided into the following three positions regarding the relationship between the right of self-defense, the Self-Defense Forces, and the provisions of the Constitution: (a) the position that steps should be taken to clarify the constitutional basis for the right of self-defense and the Self-Defense Forces; (b) the position that provisions concerning the exercise of the right of self-defense and/or legal control of the Self-Defense Forces should be established in the Constitution; (c) the position that Article 9 should be maintained firmly, while recognizing the minimum necessary use of force for self-defense. The latter category includes the position that there should be further debate on whether to add provisions

concerning the Self-Defense Forces.

A fourth position, (d), opposed the use of force as an exercise of the right of self-defense and the existence of the Self-Defense Forces.

Although opinion was divided as seen above, many members did not oppose taking some sort of constitutional measure with regard to the right of self-defense and the Self-Defense Forces.

#### **A. The Position That Steps Should Be Taken to Clarify the Constitutional Basis for the Right of Self-Defense and the Self-Defense Forces**

The following were among the grounds for the position that steps should be taken to clarify the constitutional basis for the right of self-defense and the Self-Defense Forces.

Given the actual circumstances that exist in international society, including the United Nations, and real threats such as the problems of terrorism and missiles, it is inappropriate to believe that peace will reign if Japan does not use force, or to rely on "peace-loving peoples of the world," and it is essential to develop a defense system to protect the lives and property of the country and its people. However, the Constitution lacks basic provisions relating to defense, and therefore this should be stated expressly in the Constitution. Specifically, the principle of the renunciation of war in Paragraph 1 of Article 9 should be retained, and Paragraph 2 of that article should be deleted or express provision should be made in the Constitution with regard to the right of self-defense, in order to make it clear that Japan may have and exercise the right of individual self-defense and the right of collective self-defense, whose maintenance and exercise are recognized internationally as the right of self-preservation as a nation. With regard to the Self-Defense Forces, their status is vague under the Constitution, evoking misgivings as to whether they may be in violation of Article 9, and for that reason they should be given the explicit status in the Constitution as the organization responsible for the defense of Japan.

As part of this stance, the following were among the opinions expressed on such matters as the limitation of the exercise of the right of self-defense.

- a. The use of force as the exercise of the right of self-defense should be limited to cases in which it is indispensable to the country's defense, and should be restrained.
- b. The status of the Self-Defense Forces must be set out explicitly in the Constitution, as must the principle of civilian control in the form of command by the prime minister and the involvement of the Diet.

#### **B. The Position That Provisions concerning the Exercise of the Right of Self-Defense and/or Legal Control of the Self-Defense Forces Should Be Established in the Constitution**

The following were among the grounds for the position that provisions concerning the exercise of the right of self-defense and/or legal control of the Self-Defense Forces should be established in the Constitution.

- a. The invocation of the right of self-defense, a major exercise of public power, is not stipulated in the Constitution with regard to its nature and its limits, and from the perspective of constitutionalism and the rule of law it is problematic to invoke it purely on the basis of interpretation. To be true to the Article 9 principle of not waging aggressive warfare, and ensure that the exercise of the right of self-defense, including the right of individual self-defense and the right of collective self-defense, is limited and restrained, the conditions for, and limits on, the invocation of the right of self-defense and the principles for the operation of the Self-Defense Forces should be provided for in the Constitution, and they should be subject to civilian control.
- b. The Constitution is susceptible to arbitrary interpretation, owing to the lack of clarity as to the intentions of its drafters, which constitute the guidelines for its interpretation, and to the possibility of highly diverse interpretations of its wording. The dangers of this ambiguity should be recognized. The status of, and restraints on, the right of self-defense should be set out clearly in a manner comprehensible to other countries. In addition, it is possible that the present text could not be interpreted as meaning that the force the Self-Defense Forces is able to maintain is the minimum necessary for self-defense, and therefore that purport should be stated explicitly.

### **C. The Position That Article 9 Should Be Firmly Maintained, while Recognizing the Minimum Necessary Use of Force for Self-Defense**

The following were among the grounds for the position that Article 9 should be firmly maintained, while recognizing the minimum necessary use of force for self-defense.

The present Constitution has played a major role in Japan's peace and socioeconomic development, and the spirit of Article 9, with its espousal of an exclusively defensive capacity, the renunciation of aggressive war, and non-maintenance of war potential, has given peace of mind to the rest of Asia. In view of this, although the Constitution should be reinforced by supplementary provisions relating to problems that have arisen with the passage of time, Article 9 and permanent pacifism should be regarded as immutable and be maintained firmly. The exercise of the minimum force necessary for self-defense is recognized, and the Self-Defense Forces exist to guarantee the right of individual self-defense. With regard to the relationship between the Self-Defense Forces and the prohibition by Article 9, Paragraph 2, of the maintenance of war potential, the arms maintained by the Self-Defense Forces can be construed as not constituting the "war potential" referred to in that paragraph, since they are the minimum required for self-defense. Therefore, both paragraphs of Article 9 should be retained, but the question of whether provisions relating to the Self-Defense Forces should be added to the Constitution is to be dealt with in later discussion.

The view was also expressed that the two paragraphs of Article 9 together outlawed warfare of any kind, and the article should be maintained unamended, without making any mention of provisions relating to the Self-Defense Forces.

#### **D. The Position Opposing the Use of Force as an Exercise of the Right of Self-Defense, and the Existence of the Self-Defense Forces**

The following were among the grounds for the position opposing the use of force as an exercise of the right of self-defense, and the existence of the Self-Defense Forces.

- a. Peace is not achieved through the use of force. The content of the present Constitution is something in which to take pride internationally with regard to its espousal of permanent pacifism, including in Article 9 with its provisions for the renunciation of war, non-maintenance of war potential, and nonrecognition of the right of belligerency. That article is ahead of its time. Article 9 serves as a check to prevent Japan from becoming a military power, and Japan should endeavor to prevent disputes from arising or, if they have already arisen, seek peaceful solutions in line with its principles.
- b. Article 9 does not deny the right of self-defense, but from the perspective of the article we should seek neutrality or self-defense that does not resort to military force.
- c. I do not deny that a sovereign nation has the right of self-defense, but invoking it is prescribed by each country's constitution, and in Japan's case it is prescribed by Article 9.
- d. The exercise of the right of self-defense by means of warfare will mean sacrificing the lives and property of the people, and therefore any confrontation should be by means of nonviolent resistance.
- e. The Japanese people are united in recognizing that the basis of Article 9 is Japan's remorse for having waged aggressive war. In addition, the direction of security, which under the present Constitution is totally non-military, was a public pledge made at the time Japan was resuming its place in international society. We should avoid a situation in which the revision of Article 9 gives rise to military tensions in the Asian region, and as for the divergence of present-day realities from the Constitution, we should correct those realities in line with the Constitution.
- f. Armed conflicts around the world have not gone away, but nevertheless the value of Article 9's provisions for the renunciation of war, non-maintenance of war potential, and nonrecognition of the right of belligerency has not been diminished in the slightest.
- g. According to opinion surveys, the majority of Japanese people are not in agreement with revising Article 9.

From this same standpoint, the following were among the views expressed about the Self-Defense Forces.

- a. The Self-Defense Forces are clearly in violation of the Constitution. The common opinion among constitutional scholars is that the Self-Defense Forces are unconstitutional. If there is a divergence between the current situation and the Constitution, from the perspective of constitutionalism the situation should be corrected on the basis of the Constitution, which requires the phased elimination of the Self-Defense Forces.
- b. At present people regard the Self-Defense Forces as necessary for emergency deployment when disasters occur and for homeland security, but their activities overseas in recent years have diverged from the principles of the Peace Constitution, and they are increasingly assuming the character of a regular military.

- c. The United States, in the knowledge that it violates the Constitution, is trying to make Japan create armed forces and adopt the right of collective self-defense. This is equivalent to imposing Constitution revision.
- d. The Self-Defense Forces are constitutional, but should be brought closer in line with the principles of the Constitution, for example, by being reduced and reorganized into a different organization for disaster countermeasures. We should aim in future to become a demilitarized state.
- e. The people accept the Self-Defense Forces on the basis of principles such as their exclusively defensive nature, Japan's development as a major demilitarized nation, the three non-nuclear principles, and civilian control, but the possession of cluster bombs can only indicate that the forces have gone beyond the bounds of being exclusively defensive. The size of defense expenditure raises the concern that there is nothing to restrain Japan from becoming a military power.

## **2) Other Comments**

### **(1) Right of Self-Defense**

In addition, the following were among the views expressed about the right of self-defense.

- a. The exercise of the right of self-defense by means of a preemptive strike is not permitted under international law, and interdiction or counterattack by force should be confined to cases of imminent and unlawful attack by force.
- b. Japan should exercise the right of self-defense to preserve its own territory, but the use of force in other countries' territories or elsewhere overseas should not be permitted. Japan's security is protected in accordance with the Japan-U.S. Security Treaty: Japan playing the role of the shield, and the United States acting as the halberd.
- c. Study should be given to making express provision in Article 9 for the thinking that force is exclusively for defensive purposes.
- d. In order to deal with threats such as the launching of missiles, it is necessary to raise Japan's defense capability to include the ability to attack missile bases.
- e. The role of the state to protect the lives and property of the people should be stated expressly in the Preamble.
- f. In part to gain the trust of international society, the basic principles of security should be established, and the fundamentals of the right of self-defense should either be stated expressly in the Constitution, or be set out in a basic law on security.
- g. Paragraph 2 of Article 9, which can be interpreted as both renouncing the maintenance of war potential for self-defense as well as the right of belligerency, is inappropriate as a provision of the constitution of a sovereign nation.
- h. In today's times of committing acts of war without issuing a declaration of war, it is rather meaningless to deny a country's rights as a belligerent country. Paragraph 2 of Article 9 does at least not impede the exercise of the right of self-defense and participation in collective security activities conducted by the United Nations.



## **(2) The Self-Defense Forces**

In addition, the following were among the views expressed about the Self-Defense Forces.

- a. Given that the people think highly of the international activities of the Self-Defense Forces, the Self-Defense Forces should be given the constitutional status of an organization to undertake international cooperation.
- b. In order to make the existence of the Self-Defense Forces constitutional, the government is going to violate a number of the principles that it has itself been espousing, for example, that they be exclusively for defense, the principle of civilian control, and the Three Principles on Arms Exports. While the Self-Defense Forces have become more militarized since the time when they were established, there has been less and less debate in the Diet of the kind that will convince the Japanese people.
- c. Taking note of Germany's system of laws for emergency situations, in which there is total control by the parliament, there should be adequate supervision and regulation of the Self-Defense Forces, and the survey powers of members of minority parties in the Diet should be strengthened, thereby making civilian control effective. What is particularly necessary is for the Diet to have a voice in the dispatch of Self-Defense Forces personnel overseas, for example by means of advance or retrospective authorization.
- d. From the perspective of the rule of law, the existence of the Self-Defense Forces should be set out expressly in the Constitution and be controlled by it, but if Japan acts together with the unilateralist United States, and such action is not in accordance with the principles of international law, it will be difficult to recognize the existence of the Self-Defense Forces constitutionally.

## **(Comments by Informants and Others)**

### **<Right of Self-Defense>**

- The protection of the people in the event of an armed attack is the duty of the government, and accepted wisdom internationally. Therefore, study should be given to retaining Paragraph 1 of Article 9, which repudiates aggressive war, and revising Paragraph 2 in one of the following ways: (1) deleting it, (2) including an express provision sanctioning self-defensive war, (3) including an express provision sanctioning participation in joint action in relation to international security, and (4) deleting the latter portion. (IOKIBE Makoto, Informant)
- The right of self-defense is in essence a concept that includes the elimination of imminent, unlawful attack. If the right of self-defense can indeed be understood in that sense, then I believe the Constitution denies the right of self-defense. (URABE Noriho, Speaker)
- The right of self-defense is a right of the state. The rights and wrongs and the methods of exercising it are left to the independent judgment of each country within the purview of what is acceptable under international law. Therefore, there is no inconsistency between the stipulation in the Constitution not to exercise the right of self-defense through the use of armed force, and the possession of the right of self-defense under international law. (MATSUI Yoshiro, Informant)
- The Constitution does not repudiate the right of self-defense, which is a natural right and an

integral part of a sovereign state. However, with regard to the manner in which public power exercises the right of self-defense, Article 9 prohibits the use of armed force, etc., and stipulates that war potential not be maintained. In view of this, nonviolent resistance and civil disobedience, even in the event of an invasion, constitute the pure form of the exercise of the right of self-defense envisaged by the Constitution. (KOBAYASHI Takeshi, Informant)

### <The Self-Defense Forces>

- The right of self-defense exists unless it has been explicitly repudiated by the Constitution, and since the absence of a military organization for self-defense is contrary to the essential nature of a state, the existence of the Self-Defense Forces is constitutional. Therefore, the Constitution should make express provision for the maintenance of armed forces of a certain scale, and for their operating policy. (KITAOKA Shinichi, Informant)
- Article 9 has no clear statement as to the existence of an organization to protect the nation and its people. In order to make that clear, Article 9 should have a third paragraph providing expressly for the maintenance of self-defense forces. This would not be contrary to the ideals of the Peace Constitution. (MATSUMOTO Kenichi, Informant)
- As for the Self-Defense Forces, we should provide expressly in the Constitution matters such as their existence and their maintenance of self-defense capacity up to the minimum necessary level. Also, they should be placed under the direct control of the people. (ASHITOMI Osamu, Speaker)
- Taking the intentions of the Ashida amendment into consideration, Article 9 can be interpreted as permitting the maintenance of the minimum level of military strength necessary for self-defense, and therefore, the existence of the Self-Defense Forces is not unconstitutional. In addition, their existence is recognized by the majority of the Japanese people, and I believe there is no need to revise Article 9. Nevertheless, the present scale of the Self-Defense Forces is anomalous. We must consider the form that Japan's military strength should take, doing so in line with the principle of demilitarization and from the perspective of the state and of the people. (SHINDO Eiichi, Informant)
- The existence of the Self-Defense Forces is unconstitutional. However, we must debate questions such as how to use the Self-Defense Forces as they exist today in Japan's national interest, and how to bring them closer to the true intent of the Constitution. I do not believe that Article 9 should be revised, but if there is a consensus among the people in favor of revising it, perhaps it should provide for the use of military force in the same form as other countries' constitutions. That is, limit it to self-defense and to mandatory United Nations operations. (MATSUI Yoshiro, Informant)
- In view of the thinking of the legislators and on a literal interpretation of Article 9, the interpretation that Article 9 recognizes the maintenance of war potential for purposes of self-defense and wars of self-defense is incorrect. The maintenance of war potential for self-defense is unconstitutional, although it is not realistic to disband the Self-Defense Forces instantly. They should be reduced in scale and transformed in stages into a non-military organization with duties in such areas as disaster relief and UN peacekeeping operations. (YUKI Yoichiro, Speaker)

### **3. Right of Collective Self-Defense**

With regard to the right of collective self-defense, the discussion covered such issues as the propriety of exercising it and the legal grounds for recognizing its exercise.

#### **1) Rights and Wrongs of Exercising the Right of Collective Self-Defense**

Opinion regarding the exercise of the right of collective self-defense was more or less divided into three positions: those who favored recognition without discussing limits; those who favored limited recognition; and those who opposed recognition.

#### **(1) The Position That the Exercise of the Right of Collective Self-Defense Should Be Recognized**

##### **(i) Grounds for the Position That It Should Be Recognized**

The following were among the grounds for the position that the exercise of the right of collective self-defense should be recognized.

- a. Given the recent tensions in the international situation, it is essential to enable Japan to carry out its defense and international cooperation in surrounding areas jointly with the United States more smoothly and effectively, and to build an equal partnership with the United States.
- b. The right of collective self-defense is a natural right of sovereign states, recognized under the United Nations Charter, and its exercise by Japan can therefore be recognized.
- c. It is accepted wisdom internationally to regard the right of individual self-defense and the right of collective self-defense as being as one, and therefore it would be inappropriate to isolate the right of collective self-defense alone, and arrive at an interpretation in which it can be maintained but not exercised.

In addition, with regard to the framework of regional security in the Asian region, the opinion was expressed that the inability to exercise the right of collective self-defense could narrow the options for Japan's national security policy and hamper Japan's diplomacy, and therefore should be discussed on that basis.

##### **(ii) Limits on the Exercise of the Right of Collective Self-Defense**

From the standpoint that the exercise of the right of collective self-defense should be recognized, the following were among the opinions expressed with regard to the limits on the exercise of that right.

- a. Limits should not be set *a priori* in the Constitution, as this could interfere with conducting joint operations with other countries; that policy should instead be decided as and when the situation requires.
- b. The right of collective self-defense is a fundamental natural right of the state, and to ensure that Japan's defense and cooperative international peace activities are undertaken organically and effectively, we should enable this right to be exercised, although decisions on the types of situation in which it should be exercised should be decided each time such an occasion arises.

- c. The exercise of the right of collective self-defense should be subject to geographical conditions such as the situation in the area around Japan, enshrined in a basic law on security.
- d. The exercise of the right of self-defense, including both the right of individual self-defense and the right of collective self-defense, should be limited to cases in which it is indispensable to the defense of Japan or would have a serious impact on Japan's vital interests, and its exercise should be conducted with restraint.
- e. The exercise of the right of collective self-defense should be recognized subject to limits such as (1) limiting its exercise to joint action with allied nations, (2) limiting its exercise to the East Asian region, and (3) limiting its exercise to cases in which it is indispensable to the defense of Japan.
- f. As long as we adhere firmly to the principles of Paragraph 1 of Article 9, the unlimited exercise of the right of collective self-defense is unacceptable. The scope of its exercise should be classified as being no more than an extension of the exercise of the right of individual self-defense.

## **(2) The Position That the Exercise of the Right of Collective Self-Defense Should Not Be Recognized**

The following were among the grounds for the position that the exercise of the right of collective self-defense should not be recognized.

- a. The present Constitution does not recognize the right of collective self-defense. The view that the interpretation of Article 9 is that there is no right of collective self-defense is considered obvious, even by constitutional scholars.
- b. Successive governments have set forth the consistent view that Japan, as a sovereign state, has the right of collective self-defense under international law, but that because of Article 9 it is not able to exercise it. Changing that through reinterpretation is giving rise to confusion, so there should be a return to the starting point represented by that consistent view. We should not simply think that Article 9 is used by Japan alone as an exceptional case, but should make it the norm for international society. To do that it is essential for us ourselves to show the determination first to make the effort towards building a world that renounces war and the maintenance of armed forces.
- c. In view of the Constitution's principle of not using force, Japan should engage in international cooperation in non-military fields, and should not revise the Constitution so as to recognize the exercise of the right of collective self-defense.
- d. In the United Nations Charter the right of collective self-defense is an exceptional and interim measure. In reality it is used as the basis for military alliances, and is identical to a right of attack. Importance should be attached to the fact that many countries around the world are not participating in military alliances, something that is now an international trend.
- e. Recognition of the exercise of the right of collective self-defense would open the way to unrestricted participation by the Self-Defense Forces in wars fought by the United States, which are conducted on a global scale.
- f. Recognition of the exercise of the right of collective self-defense would have the effect of

threatening other Asian nations and causing them to distrust Japan. A major issue for the type of country that Japan should be is the creation of a framework that ensures that force is not used and that not only Japan but all the countries of Asia do not initiate warfare; that will put Article 9 to good use in practice.

## **2) Legal Basis for Recognizing the Exercise of the Right of Collective Self-Defense**

With regard to the legal basis for recognizing the exercise of the right of collective self-defense, many expressed the view that it should be achieved by revising the Constitution, but some stated that it should be done by changing the interpretation of the Constitution.

### **A. The Position That Recognition Should Be Achieved by Revising the Constitution**

The following were among the grounds for the position that the exercise of the right of collective self-defense should be achieved by revising the Constitution.

- a. In order to make it clear that Japan is able to maintain and exercise the right of self-defense, irrespective of whether it be individual or collective, either Paragraph 2 of Article 9 should be deleted, or express provisions regarding the right of self-defense should be added.
- b. It is essential for the conditions for invoking the right of self-defense, and the limits on it, to be stipulated in the Constitution, and for it to be subject to civilian control. In order to make clear the limits on the exercise of the right of self-defense, including the right of collective self-defense, they should be stated expressly in the Constitution.

From this position, two other views were also stated. (1) The view that it is also possible to recognize the right of collective self-defense by means of interpretation, but that it should be stated expressly in writing and the limits on its exercise made clear, taking into consideration that it was originally based on the thinking that it would only be permitted within the ambit of the vital interests of the nation. (2) The view that the distinction between the right of individual self-defense and the right of collective self-defense was essential for laying down the limits on the exercise of the right of self-defense, so long as the Constitution contains no provisions concerning the way of exercising the right of self-defense, but that if the conditions for, and limits on, the exercise of the right of self-defense are prescribed in the Constitution, there will be little need to make a distinction between the two types.

- c. The key issue of the exercise of the right of collective self-defense should not be carried out by means of a change of interpretation, and to enable it to be exercised on constitutional grounds with the agreement of the people, it should be recognized by means of the revision of the Constitution.

### **B. The Position That Recognition Should Be Achieved by a Change in the Interpretation of the Constitution**

The following were among the grounds for the position that recognition of the exercise of the right of collective self-defense should be achieved by revising the Constitution.

- a. A state has the inherent right to possess and exercise the right of self-defense, irrespective of

whether it be individual or collective, and therefore there is no necessity for the Constitution to contain an express provision recognizing the exercise of the right of collective self-defense.

- b. The government's interpretation is that the exercise of the right of collective self-defense cannot be recognized because it exceeds the limit of the minimum necessary for self-defense, but since that limit changes with the times, its exercise is possible without revising the Constitution.
- c. In parallel with the debate on the revision of the Constitution it is also possible to enact a basic law on security that includes recognition of the exercise of the right of collective self-defense.

### **3) Other Comments**

Other opinions expressed concerning the exercise of the right of collective self-defense included the following.

- a. I do not agree with the recognition of the right of collective self-defense at this time, either by revising the Constitution or changing its interpretation. We should make pacifism the most important principle, and based on that should study regional security, including its economic, diplomatic, and political aspects, and only consider the exercise of the right of collective self-defense in cases of very great necessity in light of the international situation.
- b. It is generally considered that the right of individual self-defense entails greater self-restraint than the right of collective self-defense, but that view may not necessarily be accurate, depending upon the degree to which it is exercised. In addition, the relationship between the "participation in activities that support the use of force" argument and the right of collective self-defense should be studied.

### **(Comments by Informants and Others)**

#### **<Rights and Wrongs of the Exercise of the Right of Collective Self-Defense>**

- The government's interpretation with regard to the right of collective self-defense could be considered the correct judgment in the circumstances at the time. However, considering this issue in the context of the international situation in which Japan finds itself today, and the future form of the Japan-U.S. alliance, the state should be enabled to exercise the right of self-defense normally, making no distinction between the right of individual self-defense and the right of collective self-defense. (MORIMOTO Satoshi, Informant)
- In a global society that is moving in the direction of the joint building of security structures, with a constitution that does not clearly provide for the possession of the right of self-defense, it will not be possible to build a structure that includes the exercise of the right of collective self-defense. (MATSUMOTO Kenichi, Informant)
- In the event that the right of collective self-defense is exercised, there is a danger of its escalating endlessly if there is not some kind of restraint mechanism. I would have difficulty agreeing to a stance in favor of affirming the exercise of that right unconditionally. (TAKEMURA Masayoshi, Speaker)
- The issues concerning Japan's security relate not only to its national territory but also to the surrounding areas and the international community as a whole. Therefore, this makes it doubtful whether it would be effective to impose narrow limits in advance on the scope of the exercise of

the right of collective self-defense. (KIKUCHI Tsutomu, Informant)

- The right of collective self-defense is a form of "defense of other nations," so if its exercise is recognized, it would lead to a situation in which, based on the Japan-U.S. alliance, Japan participated in a war that was necessary to the United States, thereby wrecking the Constitution. (KUSANAGI Junichi, Speaker)
- The government's interpretation regarding the exercise of the right of collective self-defense repudiates the exercise of that right, thereby braking the process of becoming a military power. (TAGUCHI Fukuji, Speaker)

#### **<Legal Grounds for Recognizing the Exercise of the Right of Collective Self-Defense>**

- The government's interpretation relating to the right of collective self-defense is illogical, and because it is also possible to exercise the right of collective self-defense without the use of force, even under the present Constitution the exercise of the right of collective self-defense is possible if the prime minister makes a formal declaration to that effect. In addition, the exercise of the right of individual self-defense and the right of collective self-defense will naturally be recognized by setting forth provisions relating to self-defense forces and self-defense measures. (NAKASONE Yasuhiro, Speaker)
- If the interpretation is changed to make the exercise of the right of collective self-defense possible, then it will be necessary to revise Article 9 totally from the bottom up. Whether it is possible to deal with through interpretation while maintaining conformity with the present interpretation is a very difficult question. (TSUNO Osamu, Informant)

#### **<Other Comments>**

- A common threat is restrained more effectively if it is opposed by multiple countries rather than by just one, so the government's interpretation that the exercise of the right of collective self-defense cannot be recognized is unsound. (IOKIBE Makoto, Informant)

### **4. The Japan-U.S. Security Treaty**

Some members made comments premised on the continued existence of the Japan-U.S. Security Treaty, but others expressed a negative view of the Treaty.

#### **A. Opinions Premised on the Continued Existence of the Japan-U.S. Security Treaty**

The following were among the opinions premised on the continued existence of the Japan-U.S. Security Treaty.

- a. The role played by the Constitution in Japan's postwar peace and prosperity is laudable, but at the same time it should be recognized that Japan's security has been assured by the Japan-U.S. Security Treaty and the Self-Defense Forces. Given the actual circumstances that exist in international society, rather than expect too much of the United Nations, where national interest

clash sharply, it would be more suitable for our national interest to build a security structure by means of continuing and strengthening the Japan-U.S. alliance relationship.

- b. The Japan-U.S. alliance is a highly realistic security policy, since if Japan were to deal with situations such as the nuclear threat on a unilateral basis, it would cause tensions in the Asian region.
- c. The Japan-U.S. Security Treaty is a unilateral treaty, and therefore it is essential to recognize the right of collective self-defense and to build an equal and bilateral Japan-U.S. relationship.
- d. In reality Japan has no choice but to make its alliance with the United States a premise of its national security, but it should place importance on the centrality of the United Nations, partly for the sake of its own independence.
- e. First, we ourselves should act in a way that enables us to assure our security, and based on that we should then think multilaterally about the form the Japan-U.S. alliance should take, and the peacekeeping functions of the United Nations.
- f. With regard to the direction of Japan's diplomacy and security, the United Nations, the United States and Asia should be the three pillars, and while placing importance on the Japan-U.S. Security Treaty, importance should also be given to the centrality of the United Nations, in line with the principle of international cooperation.
- g. One of the conditions of the United Nations Charter is that regional agreements are in conformity with the objectives and principles of the United Nations, and therefore it is inappropriate to give greater importance to the alliance relationship with the United States than to international cooperation.
- h. The Japan-U.S. Security Treaty stipulates compliance with the United Nations Charter. In view of this, the Japan-U.S. Security Arrangements should not be viewed as antagonistic towards the system of international cooperation centered on the United Nations.
- i. We should not lay disproportionate emphasis on the alliance relationship with the United States, and follow in the footsteps of U.S. unilateralism, but instead should endeavor to strengthen the capabilities of the United Nations, so that the international order centered on the United Nations is maintained.

## **B. Opinions Negative towards the Japan-U.S. Security Treaty**

The following were among the opinions negative towards the Japan-U.S. Security Treaty.

- a. The Constitution with its espousal of pacifism is inconsistent with the Japan-U.S. Security Treaty. The treaty should be annulled, in keeping with the spirit of Article 9.
- b. Having an alliance relationship with the United States, which espouses a strategy of preemptive strikes, will not protect the lives and security of the Japanese people. The U.S. forces in Japan are being used as a means of resolving disputes in other countries.
- c. The Japan-U.S. Joint Declaration on Security and new Guidelines broadened the scope and changed the nature of the Japan-U.S. Security Treaty, and the principles of the Constitution have been emptied of their substance by the system of laws relating to security, including the Japan-U.S. Security Treaty.
- d. In view of the spirit of the Constitution, Japan should direct its focus towards the United Nations.



Expectations of the United Nations have mounted further since the end of the Cold War, so, as opposed to the unilateralism adopted by the United States, what is required is to build a peaceful order centered on the United Nations.

**(Comments by Informants and Others)**

- It would be dangerous to entrust Japan's security to the United Nations, a forum in which national interests can clash. Given that in the postwar era Japan has not been attacked under the Japan-U.S. Security Treaty, it is desirable for Japan to contribute as a member of the international community in cooperation with the United States. (ANBO Katsuya, Speaker)
- The recognition that the Japan-U.S. alliance plays a major role in the public interest as a means of restraining the outbreak of military conflicts in Asia is becoming commonly accepted in the countries of the Asian region. (KIKUCHI Tsutomu, Informant)
- The Japan-U.S. relationship should be put on the footing of a "normal" relationship by building multilateral security, which will enable Japan to make judgments about U.S. policies from an independent perspective. (KANG Sanjung, Informant)
- It is not necessary to change the basis of the Japan-U.S. Security Treaty. However, the present one-sided relationship must be changed, and a rapid shift made towards full bilateralism based on a relationship of trust. Once Japan possesses armed forces that are able to engage in combat, the Japan-U.S. alliance's deterrent potential vis-à-vis neighboring countries will be enhanced. (TAKUBO Tadae, Informant)
- Based on how other countries assess the presence of U.S. forces on Japanese soil, we should revoke the Japan-U.S. Security Treaty, a military-centered treaty, and conclude a "Japan-U.S. Treaty of Peace and Amity" in its place. If a military relationship is necessary, we should consider it subsequently. (ODA Makoto, Informant)
- The conclusion of a military relationship in the form of the Japan-U.S. alliance and the acceptance of the stationing of foreign troops within the country are unconstitutional. This is in light of Article 9, which stipulates the non-maintenance of war potential. (KOBAYASHI Takeshi, Informant)

**5. The Question of U.S. Military Bases in Japan**

The discussion of U.S. military bases in Japan covered the present and future status of the base question and its relationship with the Constitution, among other points, bearing in mind the concentration of a large number of U.S. military bases on Okinawa. The following were among the opinions expressed.

- a. Okinawa has had a special status within Japan since before World War II until the present day, and currently is a strategic hub in which U.S. military bases are concentrated. It is important to consider security issues on the basis of that fact.
- b. Okinawa bears a heavy burden, given the concentration of U.S. military bases there, but it is also necessary to maintain the Japan-U.S. Security Treaty and preserve the security of East Asia. It

would be worth giving study to alleviating that burden by transferring training by U.S. forces to Guam and the Philippines, while keeping Okinawa's core role in place. Also, if a genuine partnership between Japan and United States is desired, the Japan-U.S. Status of Forces Agreement should be revised.

- c. The current reality is that Japanese and U.S. national security is being given precedence in a way that violates the principles of Article 9, for example the existence of U.S. military bases throughout Japan, the granting and expansion of privileges to the U.S. forces in Japan, and the overseas dispatch of the Self-Defense Forces effectively to support U.S. forces. This certainly constitutes a divergence of current realities from the pacifism of the Constitution. Also, from the perspective of guaranteeing fundamental human rights it is obvious that the unequal Status of Forces Agreement should be revised.
- d. As long as Japan espouses demilitarization through the Constitution, the Japan-U.S. security relationship should be abolished quickly. History shows clearly that troops stationed at U.S. bases in Japan have been used as a means of resolving conflicts in other countries.
- e. Since its reversion to Japan, Okinawa remains to this day under conditions that violate the ideals of the Constitution, a state of affairs that has become a daily reality owing to the presence of a large number of U.S. military bases and the existence of the Japan-U.S. Status of Forces Agreement. Realization of the spirit and ideals of the Constitution are called for.
- f. Hitherto, no one has thought seriously that there is a risk of foreign military forces

Hitherto, no one has thought seriously about the risks to which Japan is exposed by having foreign military forces reside in Japan. The constitution of the Philippines contains a provision that the residence of foreign forces cannot be sanctioned, and some people are of the view that when the Constitution is revised, a similar provision should be included in it.

#### **(Comments by Informants and Others)**

- The compatibility of Japan's national security with human security in Okinawa is a major issue. If human security is threatened, then thorough steps must be taken to improve the situation, and making Okinawa a place where human security is not threatened in any way will be the first step towards safeguarding the spirit of the Constitution. (INOUCHI Kuniko, Speaker)
- Seventy-five percent of U.S. bases have been concentrated in Okinawa for more than half a century. Throughout that time the pledge of “no nuclear weapons; the same conditions as on the mainland,” given when the islands reverted to Japan, has not been honored. That represents a mistaken political posture, and the thought of establishing new bases is an anachronism. (YAMAUCHI Tokushin, Speaker)
- The consensus of opinion in Okinawa is that the U.S. bases here should be reorganized and reduced, but the presence of U.S. forces on Okinawa contributes to the peace and security of the East Asia-Pacific region. Given these facts, it is essential to engage in more serious discussions on Okinawa's problem with respect to peace and the bases. These must be from perspectives that include the Preamble's ideal of peace for all time, Article 9's renunciation of war, and the problem of human rights in relation to the Status of Forces Agreement. (ASHITOMI Osamu,

Speaker)

## **6. The Elimination of Nuclear Weapons and Other Nuclear-Related Matters**

The discussion covered such matters as the express mention in the Constitution of the elimination of nuclear weapons and the three non-nuclear principles, and the form that policy relating to nuclear weapons should take, and its relationship with the Constitution.

The following were among the opinions expressed in favor of the elimination of nuclear weapons.

- a. The possession of nuclear weapons by Japan is unconstitutional. True to the spirit of the Constitution, with its espousal of pacifism, steps should be taken to eliminate nuclear weapons.
- b. The elimination of nuclear weapons and the three non-nuclear principles should be stipulated in the Constitution.
- c. There will always be a danger of nuclear proliferation as long as the doctrine of nuclear deterrence holds sway. Japan cannot recognize the doctrine of nuclear deterrence, given that it is incompatible with the elimination of nuclear weapons.
- d. The elimination of nuclear weapons has become the consensus in the international community, while support for the doctrine of nuclear deterrence is vanishing.
- e. We should translate into reality the concept of a nuclear-free zone in Northeast Asia.

The following were among the opinions expressed in relation to the nuclear deterrent capability.

- a. As Japan is the only country to have suffered a nuclear attack, it is questionable for it to advocate the elimination of nuclear weapons while at the same time relying on the United States' nuclear deterrent capability. Therefore, we should establish a defense structure that is not dependent on a nuclear deterrent capability.
- b. Japan cannot ensure its security solely by means of the right of self-defense, whose exercise is permitted only to the minimum extent necessary, unless it relies on the United States' nuclear deterrent capability.

### **(Comments by Informants and Others)**

- As a victim of nuclear bombing, it is essential to fulfill our responsible to build a world in which we can live in peace. We must not start another appalling war, and must without any delay eliminate nuclear weapons as an absolute evil. (TAKAHASHI Akihiro, Speaker)
- The government must endeavor actively to make pacifism a reality by political and economic means, not resorting to the exercise or threat of force. Methods of achieving that could include the rigid adherence to the three non-nuclear principles at home and the enactment of a nuclear-free law, and internationally the conclusion of nuclear-free zone treaties, in particular a treaty establishing Asia as a nuclear-free zone. (ISHIMURA Zenji, Speaker)
- Japan should spell out clearly the fact that the elimination of weapons of mass destruction and nuclear weapons is something that not only Japan but the entire world aspires for. (SHIRAISHI Masateru, Informant)

## **II. International Cooperation**

The Self-Defense Forces have been engaging in operations overseas as a result of the enactment of the International Peace Cooperation Law on the occasion of the Gulf War, followed by other laws such as the Anti-Terrorism Special Measures Law and the Law Concerning the Special Measures on Humanitarian and Reconstruction Assistance in Iraq. These circumstances formed the basis for vigorous discussion of the relationship between Article 9 and the desirable form that Japanese international cooperation should take, including the overseas activities of the Self-Defense Forces.

On the whole there was a common understanding that Japan should continue actively carrying out international cooperation in future, but there was a wide range of views as to what kind of international cooperation Japan should pursue. Specifically, subjects discussed included participation in collective security activities led by the United Nations and international cooperation activities by the Self-Defense Forces.

There was also discussion on the building of a framework for regional security, and the relationship between the Constitution and the transfer of national sovereignty to international institutions.

### **1. The Relationship between Promoting International Cooperation and the Constitution**

With regard to whether provisions of some kind relating to international cooperation should be inserted in the Constitution, some members were of the opinion that such provisions should be inserted, but others saw no need to do so.

#### **A. Opinions That Provisions of Some Kind Should Be Inserted in the Constitution**

With regard to international cooperation, the following were among the opinions favoring the inclusion of provisions of some kind in the Constitution.

- a. In order to make contributions of the kind required by international society, clear provisions should be inserted in the Constitution to set out the grounds for international cooperation and the authority for carrying out activities.
- b. In order to put human security into practice and make an even greater international contribution than at present, the Constitution should contain express provisions for active engagement in international cooperation, and provisions setting out matters such as Japan's role and responsibilities in international society.
- c. The Constitution should make express provision for active participation in activities to maintain the peaceful order centered on the UN as a fundamental principle of national security.
- d. Provisions stipulating the grounds for the dispatch of the Self-Defense Forces overseas should be stated in the Constitution. This is preferable to enacting a law to ensure compatibility with the constraints of Article 9 every time the need to send forces abroad arises, and then dispatching

the Self-Defense Forces overseas.

- e. It would be desirable to add a provision to the Constitution to provide the grounds for international cooperation, and when doing so it will be essential to set out clearly the principles relating to peacekeeping and other cooperative activities for the preservation of international peace, including that (1) they be based on United Nations resolutions, and (2) they not have the objective of using armed force.
- f. The criteria on which Japan should participate in international cooperation, for example the criteria for participation in international peacekeeping activities and the modes of involvement in peacekeeping and peacebuilding, should be set out to some extent in the Constitution.
- g. The Constitution as it stands has insufficient details with regard to the competent organization to take charge of international cooperation, and the use of weapons when exercising force, and therefore these should be prescribed in the Constitution. In addition, the Constitution should be revised to allow international cooperation even in the event that international cooperation by means of the use of military force is unavoidable.
- h. I recognize that the use of force in international cooperation activities is a possibility, but the fields in which Japan may participate should be limited to post-conflict efforts for peacebuilding. This should be stated expressly in the Constitution.
- i. When considering the agreement of the people and the conditions for revising the Constitution, for the time being only international cooperation in peaceful fields should be stipulated, and for other fields efforts should be made to shape opinion over the long-term.
- j. Having inherited and further developed the ideals of pacifism, the assumption of an active role in working for the peace and development of the international community should be proclaimed in the Constitution.
- k. With regard to overseas aid in such forms as official development assistance (ODA), the ideal of international cooperation is stated in the Preamble and is recognized despite not being expressly provided for in the Constitution, but it would be desirable to stipulate it. At the same time, the involvement of the Diet in the sphere of overseas assistance should also be stipulated.
- l. In the field of international cooperation we are now in an era in which NGOs play an active part, and therefore the obligations and role of the Japanese people in international peace should be stated expressly in the Constitution.

## **B. Opinions That No New Provisions Should Be Inserted in the Constitution**

With regard to international cooperation, the following were among the opinions that there is no necessity for the inclusion of new provisions in the Constitution.

- a. In promoting international cooperation it is important to make active efforts that give effect to both the United Nations Charter and the Constitution, and since Japan should carry out support activities in non-military fields under Article 9, there is no need to revise the Constitution.
- b. It is perfectly possible to engage in international cooperation without military forces or the use of military force. We can contribute to the world by giving life to Article 9 and giving it concrete form. Specifically, we should implement international cooperation in such forms as emergency disaster relief, cooperation in social development in developing countries, diplomacy

- to prevent disputes, post-conflict election monitoring, and humanitarian assistance.
- c. Some were of the view that it is desirable to include express provisions with regard to ODA and other forms of overseas assistance, but since the principle of international cooperation is guaranteed by Article 9, Paragraph 2 of Article 98, and other existing provisions, there is no need to add provisions stipulating the grounds for it.

#### **(Comments by Informants and Others)**

- The Preamble and Article 9 do not constrain Japan from participation in United Nations activities or activities that reflect the communality of international society. However, because of the existence of Paragraph 2 of Article 9 there is concern that participation in this kind of activity is connected with the right of collective self-defense and is therefore restricted. Therefore, this paragraph should either be deleted, or be deleted and then provisions laid down for the active promotion of international cooperation. (TANAKA Akihiko, Informant)
- Japan should not limit its international cooperation to the field of peacekeeping operations. Keeping in mind that such concepts as peace, social and economic development, human rights, and democracy are inextricably linked, Japan must build its own unique vision of international cooperation, and call on the United Nations for its realization. The departure point for this is the pacifism, dedication to international cooperation, and equal sovereignty espoused by the Constitution, which are consistent with the ideology that underlies the international cooperation of the United Nations. (MATSUI Yoshiro, Informant)
- The Constitution requires Japan to contribute actively to international cooperation, not through military means, but through peaceful ones. The constitutional grounds for that can be found in the Preamble. (KOBAYASHI Takeshi, Informant)

## **2. International Cooperation for the Maintenance of International Peace and Security**

### **1) The Maintenance of International Peace and Security and the United Nations Charter**

The following were among the opinions expressed concerning the relationship between the maintenance of international peace and security and the United Nations Charter.

- a. The focus on the United Nations and peace diplomacy are important, but international law is not always able to cope with international terrorism and weapons of mass destruction.
- b. The fact that Japan is supporting the use of armed force not based on a UN resolution is most likely incompatible with the stipulation in Article 98 of the Constitution to observe treaties and international law faithfully, and further is in violation of the stipulation in Article 99 that ministers of state have an obligation to uphold the Constitution.
- c. The taking of military action to overthrow the administration of a sovereign state has no rational grounds in international law, including the United Nations Charter.
- d. As shown by the reaction of other countries to the U.S. attack on Iraq, countries accept rules of peace and the United Nations Charter which does not condone illegal invasion and holds to the

principle that international disputes are to be resolved by peaceful means. Japan is strongly called not to dispatch the Self-Defense Forces overseas, but to firmly maintain Article 9 which renounces war, and to play an active role in the promotion of peace and stability in the world and Asia.

## **2) Participation in UN Collective Security Operations**

With regard to the propriety of participation in UN collective security operations, some members stated that Japan's participation should be limited to non-military fields, but many stated that Japan should participate without limiting its role to non-military fields. From the latter standpoint, many expressed the view that the legal basis should be set forth explicitly in the Constitution, while some were of the view that participation is possible even under the existing Constitution. A view was also expressed concerning participation in international joint operations accompanying the use of force outside the framework of the United Nations.

### **(1) Opinions That Participation in UN Collective Security Operations Should Not Be Limited to Non-Military Fields**

#### **(i) Grounds for Participation in UN Collective Security Operations**

The following were among the grounds stated for the opinion that participation in UN collective security operations should not be limited to non-military fields.

- a. Japan's peace and prosperity benefits greatly from international peace and security. Since international cooperation is a prerequisite for Japan's peace and prosperity, it should play a role commensurate with its status as an economic power.
- b. Japan would make a bigger contribution by leaving behind "one-nation pacifism" and share risks with other countries in participating in international cooperation.
- c. Recent peacekeeping activities conducted under the auspices of the United Nations have been by multinational forces and been self-contained, conducting composite activities ranging from ceasefire monitoring to assistance with law and order and in the humanitarian and economic spheres. In view of this, Japan should be able to participate in and extend cooperation to these activities.
- a. Member countries are under an obligation to participate in UN activities for maintaining peace and order, and therefore Japan should take an active part, including in UN forces and multinational coalitions.

From this standpoint the following were among the opinions expressed with regard to the desirable form of Japan's participation in UN collective security operations.

Japan should participate in collective security operations, but should do so with restraint, not placing the use of armed force at the forefront of activities.

#### **(ii) Whether It Is Necessary to Make Express Mention in the Constitution of Participation in UN Collective Security Operations**

##### **A. Opinions That There Should Be Express Mention in the Constitution**

The following were among the opinions favoring the express mention in the Constitution of the legal basis for participation in UN collective security operations.

- a. Based on the government's interpretation of the Constitution, it is not possible for Japan to participate in UN forces and multinational coalitions and engage in activities that involve the use of force. Therefore, the Constitution should be revised to permit Japan to participate actively in UN collective security operations.
- b. The principle of international cooperation in the Preamble is an abstract provision, and therefore a clear-cut provision regarding participation in collective security operations should be laid down.
- c. It is possible to interpret the use of force as part of international cooperation as being possible under the existing Constitution, but Japan should not participate in such activities if they are solely military under that interpretation. Accordingly, it should be stated expressly that the use of force is an extreme and final measure.
- d. Japan should participate in UN collective security operations and recognize the possibility that force may be used, but to ensure that it does not participate in activities of the kind that involve preemptive strikes, clear provision should be made in the Constitution to the effect that its participation will be limited to activities such as post-conflict peacebuilding activities, for example the maintenance of public order, and that its equipment will be limited to the minimum necessary.

Other opinions expressed were (1) the view that participation in UN collective security operations is possible even under the existing Constitution, but that it would nevertheless be desirable for the Constitution to make express mention of that fact, and (2) the view that whereas Article 9 is a provision relating to the exercise of national sovereignty, because participation in UN forces, multinational coalitions and peacekeeping operations is conducted as a UN member country based on Security Council resolutions and can be said to limit national sovereignty, provisions should be laid down in an article separate from Article 9.

#### **B. Opinions That Participation Is Possible Even under the Existing Constitution**

The following were among the opinions that participation in UN collective security operations is possible even under the existing Constitution.

- a. UN collective security operations do not constitute the use of force as a sovereign right of a nation prohibited by Article 9, but are based on principle of international cooperation espoused by the Preamble. They can therefore be construed as being recognized under a separate framework to that for the use of force to the minimum extent necessary for self-defense.
- b. Collective security operations in general are possible on legal or constitutional grounds, but the extent of involvement in them is a policy choice at the time in question.

#### **(iii) Participation in International Joint Operations Accompanying the Use of Force Outside the Framework of the United Nations**

The view was also expressed that Japan should participate in international joint operations that are



broader in scope than UN collective security operations, entailing the maintenance of international peace and security and humanitarian assistance based on international agreement, and that for that purpose the Constitution should be revised. The basis for this opinion was that Japan should give practical effect to (1) human empowerment aimed at bringing out the abundant potentialities within every individual human being, and helping them to lead meaningful lives, and (2) flexible yet strong, future-oriented pacifism, that is, a "humanitarian human security" which encompasses protection through assistance that includes the provision of military force in cases where nations are unable to function adequately to ensure the maintenance of social order in the beneficiary region. A contrasting opinion held that the use of force as a form of international cooperation must be carried out under the UN framework.

## **(2) Opinions That Participation in UN Collective Security Operations Should Be Limited to Non-Military Fields**

The following were among the grounds stated for the opinion that participation in UN collective security operations should be limited to non-military fields.

- a. Even with respect to UN collective security operations, which recognize the use of force for the common benefit of the international community, the Constitution does not recognize Japan's participation and use of force. Japan became a member of the United Nations after making it clear that, owing to Article 9, it would not participate in military sanctions provided for by the United Nations Charter. Changing this line of thinking would nullify Japan's public pledges to Asia and the world as a whole, and taking part in military sanctions would risk threatening other Asian nations and causing them to distrust Japan.
- b. The interpretation of successive Japanese cabinets has been that even if force were used for the purpose of enforcing UN sanctions, the dispatch of the Self-Defense Forces overseas would constitute use of force in excess of the minimum necessary for self-defense, and thus would not be permitted by the Constitution. There is no need to change the Constitution to make participation in collective security operations possible.
- c. Japan should adopt a cautious stance towards UN collective security operations, since if they are conducted within the framework of the United Nations, the use of force of all kinds is possible. Japan should engage in multilateral international cooperation in which support activities in non-military fields in the form of peacekeeping operations, ODA, and activities by NGOs are combined in an integrated manner.

## **3) International Cooperation Activities by the Self-Defense Forces**

### **(1) The Rights and Wrongs of International Cooperation Activities by the Self-Defense Forces**

With regard to whether the Self-Defense Forces should conduct international cooperation activities, there were comments from two viewpoints: that use should be made of the Self-Defense Forces for this purpose, and that their use is not appropriate. From the first of these viewpoints it was stated that international cooperation by the Self-Defense Forces should either be provided for in the Constitution, or that a permanent law should be enacted to lay down general principles to govern the

overseas dispatch of the Self-Defense Forces, and the opinion was also expressed that grounds could be found in the present Constitution. Opinions were also expressed with respect to the use of organizations other than the Self-Defense Forces.

#### **A. Opinions from the Standpoint That the Self-Defense Forces Should Be Used**

The following were among the opinions expressed from the standpoint that the Self-Defense Forces should be used for the conduct of international cooperation activities.

- a. As a major economic power, Japan should engage actively in international cooperation, and the world expects Japan to undertake cooperation that includes contributing personnel. However, the approach of enacting the legislation required to dispatch the Self-Defense Forces on each occasion, without revising Article 9, has reached its limit, and in view of this the Constitution should include explicit provisions concerning the participation of the Self-Defense Forces in international cooperation activities.
- b. From the perspective of the acceptance of the central role of the United Nations, the Self-Defense Forces should participate actively in UN international cooperation activities. To make this clear, provisions for it should be incorporated into the Constitution or, instead of enacting an individual law every time the forces are to be dispatched, a permanent law to govern the overseas dispatch of the Self-Defense Forces should be enacted.
- c. Provisions giving grounds for the overseas dispatch of the Self-Defense Forces for international cooperation activities can be found in the third paragraph of the Preamble and the powers given by Article 73 to the cabinet to manage foreign affairs.
- d. Given the criticism that humanitarian assistance operations overseas by the Self-Defense Forces goes beyond the sphere of being exclusively for defensive purposes, it is essential to enact a law such as a basic law on security to give it legal grounds.
- e. The Japanese people are in full agreement that Japan should participate actively in UN peacekeeping operations. What is more, the deployment of the Self-Defense Forces to provide support in non-military fields in post-conflict situations based on Security Council resolutions does not overstep the bounds of being exclusively for defensive purposes, and is thus constitutional.

#### **B. Opinions from the Standpoint That It Is Inappropriate to Use the Self-Defense Forces**

The following were among the opinions expressed from the standpoint that it is inappropriate to use the Self-Defense Forces for the conduct of international cooperation activities.

- a. The dispatch of the Self-Defense Forces overseas is not recognized by the Constitution. Emergencies such as the 9/11 attacks that lead to the overseas dispatch of the Self-Defense Forces occur repeatedly, but developments such as these may destroy the fundamentals of the Constitution.
- b. The roles to be fulfilled by Japan, with its Peace Constitution, should be diverse. With regard to contributions of personnel, we should not focus on the problem of the dispatch of the Self-Defense Forces, but rather study should be made on forms of such contributions other than the

Self-Defense Forces. For example, the pacifism of the Constitution would be given practical effect by pursuing a foreign policy that incorporates activities by bodies such as NGOs instead of the Self-Defense Forces.

- c. UN peacekeeping operations include military aspects, but participating in those aspects is unacceptable constitutionally. Japan should cooperate in the non-military fields after studying the details of each case of peacekeeping operations.
- d. Constitutionally, participation in UN peacekeeping operations should be confined to activities that do not require personnel to bear arms. The Self-Defense Forces should not participate in such operations.

### **C. Opinions Referring to the Use of Organizations Other than the Self-Defense Forces**

The following were among the opinions referring to the use of organizations other than the Self-Defense Forces for the conduct of international cooperation activities.

- a. Study should be given to the establishment of an "international cooperation force," separate from the Self-Defense Forces, for undertaking international cooperation.
- b. The establishment of an organization separate from the Self-Defense Forces for participation in collective security operations would be wasteful in terms of personnel and costs.

### **(2) Other Opinions concerning International Cooperation Activities by the Self-Defense Forces**

In addition to the opinions set out above, the following are among other opinions expressed about international cooperation activities by the Self-Defense Forces.

- a. The question of whether international cooperation activities are possible is judged solely on the criterion of "participation in activities that support the use of force," but the question should be examined not on the basis of that criterion, but based on whether the essential objectives of the activities can be achieved.
- b. So long as international cooperation activities by the Self-Defense Forces are conducted jointly with other countries, the criteria for the use of weapons should match international standards.
- c. The question of whether it is possible to go to the aid of other countries' troops if they are attacked should be examined, including the constitutional issues involved.
- d. The duties involved in UN international peacekeeping operations have recently been expanding and changing in character, and in some cases have entailed the use of heavy weapons and the coercive use of force. Given this, at the same time as being an active participant in such activities, Japan should rectify any activities likely to involve military sanctions or the coercive use of force.

## **4) Matters Relating to the United Nations**

### **(1) Whether Japan Should Become a Permanent Member of the Security Council**

With regard to whether Japan should become a permanent member of the Security Council, some members were of the opinion that Japan should become a permanent member, and others took the

view that it would be inappropriate.

#### **A. Opinions That Japan Should Become a Permanent Member of the Security Council**

The following were among the opinions favoring Japan's becoming a permanent member of the Security Council.

- a. By becoming a permanent member, Japan should participate actively and take a leading role in UN decision-making in relation to the maintenance of international peace and security.
- b. If Japan becomes a permanent member, it should implement Security Council decisions. Therefore, the Constitution should be revised to enable Japan to participate in the collective security activities, including the use of force.
- c. Even if Japan becomes a permanent member, Japan will be able to carry out its role adequately by making contributions in non-military spheres.

Another view expressed was that if, by becoming a permanent member of the Security Council, Japan would be required to contribute to collective security activities by means of military force, it would have to revise the Constitution. But if the reform of the United Nations were to make the roles, functions, and obligations of Security Council permanent members less stringent, and there were no longer a strict requirement to make a military contribution, it would not be impossible to become a permanent member without revising the Constitution.

#### **B. Opinions from the Standpoint That It Is Inappropriate for Japan to Become a Permanent Member of the Security Council**

The following were among the opinions expressed from the standpoint that it is inappropriate for Japan to become a permanent member of the Security Council.

- a. If Japan were to become a permanent member it would be required to make a military contribution to the United Nations, but that would be in violation of Article 9.
- b. Given that Japan proclaimed strict adherence to non-military functions when it joined the United Nations, I oppose this because revising Article 9 and becoming a permanent member of the Security Council would be a breach of international faith and would lead to Japan's becoming a major military power.

### **(2) Whether a Permanent Armed Force in the United Nations, Etc. Should Be Established**

With regard to matters such as the establishment of a permanent armed force in the United Nations to take responsibility for its collective security measures, some members considered this desirable, but others expressed caution.

#### **A. Opinions Expressing the Desirability of Establishing a Permanent Armed Force in the United Nations, Etc.**

The following were among the opinions expressed from the standpoint of the desirability of

establishing a permanent armed force in the United Nations, etc.

- a. It is desirable that a United Nations police force be established as part of the strengthening of the United Nations, and that Japan both maintain the pacifism of its Constitution and at the same time cede a part of its sovereignty to the United Nations and participate in the force.
- b. The future international order should be one in which individual countries scrap or reduce their armaments and the United Nations establishes a United Nations army or police force to carry out the role of the world's sole policeman.

## **B. Opinions Expressing Caution towards the Establishment of a Permanent Armed Force in the United Nations, Etc.**

With regard to matters such as the establishment of a permanent armed force in the United Nations, those expressing caution were of the view that even if a United Nations army were to be formed, it would act for U.S. causes that may not correspond with what Japan considers to be just causes.

### **(3) Strengthening the Functions of the United Nations**

The following were among the opinions expressed with respect to strengthening the functions of the United Nations.

- a. As the country that provides nearly 20 percent of all contributions to the United Nations, Japan should demand, among other things, the establishment of a democratic decision-making process in the Security Council, including the revision of the right of veto, the deletion of the clause in the charter referring to "enemy state," and the revision of the way in which contributions to the United Nations are borne.
- b. The playing of a leadership role in UN reform is in line with the ideal of international cooperation. Japan should be more active in putting forward proposals concerning such matters as the revision of the right of veto.
- c. A deterioration in the functioning of the United Nations was pointed to during the run-up to the war in Iraq, but in fact the United Nations is to be praised for exercising its proper functions in seeking to avoid war.

## **5) Other Comments**

### **(1) Dealing with International Terrorism**

The following were among the opinions expressed with regard to dealing with international terrorism.

- a. Police action between states for the purpose of eradicating international terrorism should take the form of creating a union of states, and Japan should study having not only the Self-Defense Forces, but also the Japan Coast Guard and the police, participate.
- b. To prevent international terrorism it is important to eliminate the problems that cause the terrorism, and therefore Japan should play an international role from a non-military and civilian standpoint.

## **(2) Dealing with the North Korea Abduction Issue**

The following were among the opinions expressed with regard to addressing the issue of the abductions by North Korea.

- a. The abductions were crimes that violated Japan's sovereignty, and there is no greater violation of human rights than this. We should not normalize diplomatic relations with North Korea or provide them with economic cooperation or other assistance unless this issue is resolved. At the same time it is important to impress upon the international community the fact that human rights, a universal principle for humankind, were violated.
- b. The abductions were state crimes of an absolutely intolerable nature, but nevertheless it is necessary to resolve them one by one by making efforts to open negotiations in such areas as the issue of postwar reparations and investigations of the facts.

## **(Comments by Informants and Others)**

### **<The Maintenance of International Peace and Security and the United Nations Charter>**

- The United Nations Charter and the Constitution have many elements in common, and if Article 9 is construed as providing grounds for Japan's self-defense and participation in the international community's security structure, then the differences between the United Nations Charter and Article 9 are extremely small. However, because the use of force in pursuit of the national interest as a sovereign right of the nation and the use of force for realizing the common good of the international community have been discussed without making a sharp distinction between them, and the interpretation by the Cabinet Legislation Bureau is still adhered to, a large gap has arisen between what is sought by the Constitution and what is sought by the United Nations Charter. (ONUMA Yasuaki, Informant)
- In order to create a new international order in the aftermath of the collapse of the Cold War structure, when considering the kind of international society appropriate for that, if the present Constitution is retained, in conjunction with that Japan must contribute to the creation of an international environment. Perhaps that should begin with revising the United Nations Charter itself. (PEMA Gyalpo, Speaker)
- Around the world we are seeing the emergence of regional solidarity and increasing moves to resolve problems peacefully by means of mutual cooperation, and I believe this is also increasing the opportunities for Japan, with its Article 9, to play a role. Many nations worldwide are voicing criticism that the war in Iraq contravenes the United Nations Charter, and the attitude of such countries in appealing for matters to be resolved by means of consultations and the building of relationships of mutual trust indicates that Article 9 is in tune with current realities and with what is a global trend. (SEIRYU Miwako, Speaker)
- Japan should make international contributions by non-military means in conformity with the spirit of Constitution and the United Nations Charter. We should work toward nuclear disarmament, establish a cooperative form of security in the Asia-Pacific region, utilize our diplomatic experience with Iran and Central Asia, increase our cooperation with such agencies as the UN High Commissioner for Refugees (UNHCR) and UNICEF, and coordinate our efforts

closely with those of NGOs. (TAGUCHI Fukuji, Speaker)

#### **<Participation in UN Collective Security Operations>**

- If Article 9 is construed as permitting the use of force to realize international common values, participation by Japan in a multinational force would not be in violation of that article. (ONUMA Yasuaki, Informant)
- If there is a Security Council resolution, Japan should cooperate with a multinational force within certain limits, but such a situation was not envisioned at the time the Constitution was enacted. (IWAMA Yoko, Informant)
- We should include a provision in Paragraph 2 of Article 9 for the establishment of defense forces for self-defense, and in a third paragraph in that article lay down a provision permitting participation in United Nations and international cooperation activities for humanitarian, human-rights and peace purposes. Then, we must enact a basic law on security that will enable the defense forces to participate in international cooperation activities, and permit the use of force under certain conditions. (NAKASONE Yasuhiro, Speaker)
- There are limits to the extent to which the United Nations can put sanctions into effect, leaving no choice but to resolve issues within the framework of cooperation between states. I believe that peace will be maintained not by a focus on the United Nations, but by deterrence and the balance of power. (KITAOKA Shinichi, Informant)
- In the event of operations by UN forces or peacekeeping operations accompanied by the use of force, such activities do not constitute “war as a sovereign right of the nation,” and therefore if we set aside consideration of the constitutional debate about the existence of the Self-Defense Forces, their participation in such activities presents no problem as far as the Constitution is concerned. For the use of force by member nations under the authorization of the Security Council to be recognized as a United Nations activity, it is necessary for the United Nations to exercise control over it. Cooperation extended to activity not under UN control is not cooperation with UN activity but with individual countries that have UN authorization, and is therefore unconstitutional. (MATSUI Yoshiro, Informant)
- Japan should not use force overseas. That should remain a fundamental of the Constitution, even if it is revised. (MIYAZAWA Kiichi, Speaker)
- Participation in international collective security activities is permissible, since it gives concrete form to the ideal of international cooperation in the Preamble. Nevertheless, the use of force should be avoided. (TAKEMURA Masayoshi, Speaker)

#### **<International Cooperation Activities by the Self-Defense Forces>**

- We must change the stance of absolute pacifism in which it is believed that if Japan is at peace, that is all that matters. Japan should reflect on events in its own past, such as its waging of wars of aggression, gain the understanding of neighboring countries, and play an active role in sustaining the peaceful order of the world, including through the dispatch of the Self-Defense Forces overseas. (ONUMA Yasuaki, Informant)
- In the period from immediately after a conflict to the time at which it becomes possible for

contributions to be made by the local people themselves, only an armed force can be expected to make an effective contribution, and therefore the Self-Defense Forces can play a major role during this period. (INOUCHI Kuniko, Speaker)

- United Nations peacekeeping operations are in reality closely linked with the issue of war, and since participation in those operations constitutes participation in warfare conducted overseas, it is unconstitutional. (GOTO Yoshinari, Speaker)
- If a case were to arise in which, during the course of UN peacekeeping operations, a ceasefire agreement were abandoned and it became necessary to use weapons, I believe that the use of weapons by Self-Defense Forces personnel would not fall into the category of “the use of force” renounced in Article 9. (ONUMA Yasuaki, Informant)

#### **<Matters Relating to the United Nations>**

- It is not realistic to envision that the United Nations could have a standby force able to take action rapidly in the initial stage of a conflict, including through the use of force. A realistic policy for responding to such events would be that of deploying a multinational force approved by a resolution of the Security Council. (ONUMA Yasuaki, Informant)
- In order to make active use of the United Nations as a tool and acquire decision-making powers as regards the policies to which Japan should give priority in the international community, it is important to aim to become a permanent member of the Security Council. (INOUCHI Kuniko, Speaker)
- From the standpoint of democratizing the Security Council I support Japan’s becoming a permanent member, but it will be essential to have full discussions about how to deal with requests to make military contributions. (MATSUI Yoshiro, Informant)
- The United Nations is one of the world’s few truly legitimate organizations, but its activities have limits. Therefore, our expectations of the United Nations must be based on those limits. (KIKUCHI Tsutomu, Informant)

### **3. Regional Security**

With regard to the creation of a framework for regional security in Asia, the subjects discussed included the need for a framework and the form that it should take, and the relationship between regional security and economic liberalization.

#### **1) The Need for a Framework for Regional Security in Asia, and the Form It Should Take**

##### **(1) The Need for a Framework**

Many members saw a need for a framework of some kind, such as the creation of a framework for regional security in Asia or the establishment of a cooperative structure in the field of security. The main comments from this viewpoint were as follows.

- a. In view of the need for joint action against international terrorism, together with the regional



situation in Northeast Asia, it is important that the Asian nations make ongoing efforts to ensure their security, including regular diplomacy, consultation, and confidence-building, and a regional security framework should be created for that purpose.

- b. Japan's approach to security should include maintaining and developing the Japan-U.S. Security Arrangements, but we should not merely depend on this; instead, we should consider the creation of a collective security mechanism in Asia as a diplomatic option.
- c. There are limits to the peacekeeping capabilities of the United Nations, and it is dangerous for national security to rely solely on the Japan-U.S. Security Treaty. Therefore, we should build a regional security structure in Asia.
- d. We should endeavor to move in the direction of establishing a cooperative structure for the security of Northeast Asia, keeping in mind a basic stance of shifting from bilateral security to a system of multilateral cooperation.

## **(2) The Form the Framework Should Take**

With regard to the form that the framework for regional security in Asia should take, some members expressed the opinion that a framework that includes the use of force should be created, while others were of the view that a framework for non-military security dialogue should be created.

### **A. Opinions That a Framework That Includes the Use of Force Should Be Created**

The following were among the opinions from the position favoring the creation of a framework that includes the use of force.

If a collective security structure were to be established in Asia, Japan should also examine how it can be enabled to take initiatives in addressing problems in the Asian region, premised upon its exercise of the right of collective self-defense and participation in collective security activities. Of particular importance is that if Japan concludes security treaties with other Asian countries, it must assume the same responsibilities as those countries.

### **B. Opinions That a Framework for Non-Military Security Dialogue Should Be Created**

The following were among the opinions from the position favoring the creation of a framework for non-military security dialogue.

- a. For regional security we should build a framework for the security dialogue for peace that is firmly rooted in the pacifist ideals espoused by Article 9.
- b. Since the end of the Cold War, greater importance has been placed on cooperative multilateral security in regional areas than on bilateral alliances, but it is not military force that has constituted the substance of these groupings, but the fostering of mutual trust. In view of this, it is important to use diplomatic means to enhance the substance of regional security frameworks, including a multilateral cooperative security structure.

## **(3) Other Comments**

Other opinions expressed concerning the form that the framework for regional security in Asia should take included the following.

- a. Asia contains a diversity of countries that differ from one another in terms of factors such as their economic circumstances and political systems, and their history and culture. Accordingly, it cannot be regarded as being similar to the European Union in regard to regional integration.
- b. With regard to the six-party talks on the North Korea problem, a conceivable option is to expand them into the sphere of security and move towards a security structure.
- c. Pipeline security and the way in which spent nuclear fuel is disposed of will emerge in future as issues very closely related to regional security issues.
- d. When promoting a multilateral cooperative structure, the handling of the nuclear issue will be of great significance in the sphere of energy and resources.
- e. In view of issues such as the problem of settling accounts for aggression in the past, in some cases it may be inappropriate for Japan to advocate the building of cooperative relations in Asia.

## **2) Economic Liberalization and Regional Security**

The following were among the opinions expressed concerning the relationship between economic liberalization, for example in the form of free-trade agreements (FTAs), and regional security.

- a. There is an inseparable relationship between economic liberalization and security. Relationships of trust should be fostered by building cooperative relationship in the economic and environment fields, based on which a security structure should be built.
- b. The promotion of FTAs is expected to have the effect of lowering security costs. In this sense, FTAs constitute a kind of "economic security" that can be regarded as forming a component of the framework of national security.
- c. When considering Japan's national security we should not give disproportionate emphasis to peace diplomacy and military and economic issues, but also address aspects such as the environment, human security, and food security in a well-balanced manner.
- d. The deepening of interaction with other Asian countries in the economic field, by means of FTAs for example, is an important pillar of security, and can be expected to function more effectively than military security.
- e. Given the historical background, there are also some who expressed caution about Japan's promoting FTAs. We must bring to life the pacifist, democratic, and other ideals of the Constitution that were based on self-reflection and remorse about past domination of colonies and wars of aggression, and give consideration to economic sovereignty, equality, and reciprocity.

### **(Comments by Informants and Others)**

#### **<The Need for a Framework for Regional Security in Asia, and the Form It Should Take>**

- Dependence on the Japan-U.S. Security Treaty was unavoidable up to a certain period, but now that the situation has changed it is essential for Japan to take active steps to create a framework in which the question of security in Northeast Asia could be resolved on a multilateral basis. (IWAMA Yoko, Informant)
- Japan should undertake the phased rebuilding of the Japan-U.S. Security Arrangements which

constitute the country's pivotal security structure, into an equal relationship, at the same time building a multipolar, comprehensive collective-security structure encompassing neighboring Asian countries, so as to position itself to deal with threats arising from factors outside the ambit of relationships between individual nations. However, this structure's character as a military alliance, for example through collective maintenance of military strength, should be kept to modest proportions. (KANG Sanjung, Informant)

- Japan should establish a comprehensive security structure in East Asia encompassing factors such as military power, energy, and food. (SHINDO Eiichi, Informant)
- It is essential for Japan to make the effort to bring the present Constitution to life, sending a message that it is actively creating a framework for achieving peace together with the other countries of Asia. (YOSHIDA Kenichi, Speaker)
- Even with Japan's present Constitution, with its provisions such as for the non-maintenance of war potential, it would be possible to build a regional community. Nevertheless, if we were to enact a constitution that places emphasis on a philosophy of international cooperation encompassing the entire world, I believe that we would be able to contribute more to the establishment of a regional community in East Asia. (NAKAMURA Tamio, Informant)

#### **<Economic Liberalization and Regional Security>**

- FTAs are beneficial from the perspective of security, but at the same time the economic imbalances they give rise to may cause problems between countries and domestically. Therefore, we cannot expect too much from FTAs. (KIKUCHI Tsutomu, Informant)
- For resource-poor Japan, the peace and stability of countries and regions that supply resources are vital. We need to pursue international cooperation actively, going beyond the concept of one-nation pacifism. (SHIRAISHI Masateru, Speaker)

#### **4. The Relationship between the Transfer of National Sovereignty and the Constitution**

In recent years there have been a number of cases in which, as happened in the European Union, the joining of a supranational institution has led to the partial limitation and transfer of national sovereignty. With these facts in mind, members expressed views such as those set out below with regard to the relationship between the possibility of a transfer of national sovereignty and the Constitution, envisaging Japan's future participation in a regional security framework in Asia and in United Nations collective security activities.

- a. In the event that we build a collective security framework in Asia, or engage in peacekeeping activities under the auspices of the United Nations, situations can be expected to arise in which it becomes necessary to make provision in the Constitution for transferring or limiting national sovereignty.
- b. While retaining the pacifism of the Constitution, Japan should endeavor to strengthen the functions of the United Nations, including by such means as the establishment of a United

Nations police force. If Japan participates in that force, it would be desirable to do so in a manner in which there is a partial transfer of sovereignty.

- c. In tandem with the promotion of FTAs and the evolution of a unitary market economy, national sovereignty is expected to be transferred to supranational institutions in military, judicial, and other spheres. Therefore, study must be given as to whether or not it is necessary to lay down provisions in the Constitution relating to the transfer of national sovereignty.
- d. In today's climate of internationalization and decentralization of power, national sovereignty is being transferred to supranational institutions and regions; this marks the end of the era in which nations strengthened their sovereignty.
- e. Since ethnic conflicts and regional disputes are difficult for a single country to resolve alone, the significance of supranational institutions is increasing. This necessitates discussion of a kind that transcends the United Nations Charter, given that it is premised on the existence of sovereign states.
- f. Since the integration of the European Union was accompanied by the transfer of sovereignty, it is likely that it had a major impact on the traditional views of nations and views of constitutions that had been held until then. Surely it would be unconstitutional for portions that have been protected by sovereignty to be transferred to a supranational institution without following the proper procedure of revising the Constitution.
- g. Given the disputes between countries in Asia that are still occurring at present, I think that the concept of the "nation" remains important.

**(Comments by Informants and Others)**

- The concept of a world federation to which military power and so on would be transferred should be pursued as an ideal, but would be difficult to realize. (MATSUI Yoshiro, Informant)

## **Subsection 5 Rights and Duties of the People**

### **I. General Discussion of the Rights and Duties of the People**

#### **1. Modern Constitutionalism and Its Development**

Regarding the human rights provisions of modern constitutions and the human rights provisions of the Constitution of Japan, members discussed the historical developments that generated the concept of human rights.

##### **1) Modern Constitutionalism and Freedom from the State**

Members voiced the opinion that the philosophy that the Constitution aims at protecting citizens' fundamental human rights from abuse by state power originated from the concept of natural rights and the social contract theory, and is an important factor in modern constitutionalism, which was established via modern citizens' revolutions, and that the Constitution of Japan is also an extension of this modern constitutionalism. Members also stated that under this modern constitutionalism, "freedom from the state" is the basis for the guarantee of human rights, and that constitutional norms must be addressed to the power of the state.

##### **2) Socialization of Human Rights Declarations**

Members voiced the opinion that from the 20th century the contents of human rights developed into social-state type human rights declarations that guarantee social rights, and that the Constitution incorporated these social rights and came to contain abundant human rights provisions through the stipulations of Article 25, etc.

##### **3) Role of the State in the Protection of Human Rights**

Members noted that today there are a great many issues that should be free from the influence of the state, but that with environmental problems, the conflict between freedom of expression and the protection of honor and privacy, and the dramatic advances in science and technology, conditions may be emerging that are difficult to explain or resolve based solely on freedom from the state, and expressed the following opinions.

- a. We should positively evaluate the German theory regarding the state's obligation to protect fundamental rights (which assumes a tripartite structure among the state, the violator of fundamental rights and the individual whose fundamental rights are violated, and whereby the state must not only not violate each person's fundamental rights, but is also obliged, when someone's fundamental rights are violated, to control the violator's actions and protect the rights of the victim).
- b. We should positively evaluate Article 20a of the German Basic Law which stipulates that the state is obliged to protect the natural bases for life (the environment) via legislation and other means, in mind of the state's responsibility toward future generations. Also, considering this article, among the new human rights there are rights like "environmental rights," that should be

stipulated not as a right of the people but rather as an obligation of the state to the people.

#### **4) Internationalization of Human Rights**

Members noted how after World War II efforts toward the international guarantee of human rights grew active, and there was a trend toward the internationalization of human rights, for example, with the adoption of the Universal Declaration of Human Rights and the conclusion of the International Covenants on Human Rights, and voiced the following opinions.

- a. The UN Charter should be highly regarded for positioning the protection of fundamental human rights and the raising of living standards as the foundations for eternal peace, arranging systems for monitoring the observance of human rights covenants in their signatory nations, and adopting means whereby the level of guarantee of human rights demanded by such covenants can be realized in their signatory nations.
- b. As for the approach to implementing, within Japan, the various human rights covenants, Japan must guarantee human rights on a level which matches the standards of the international community via the swift ratification of such covenants.
- c. It is not necessary to go so far as to ratify human rights covenants that cannot be aligned with domestic law. From first to last, Japan must autonomously work at coordination between domestic law and human rights treaties.
- d. Environmental rights and other new human rights need to be expressly stipulated in the Constitution from the perspective of establishing a level of guarantee of human rights which matches that of the international community.

#### **5) Other Comments**

Members also expressed the following opinions.

- a. To resolve recent social problems such as the epidemic of heinous crimes, disorderly classrooms, and the lack of corporate ethics, we must take modern constitutionalism as the starting point, overcome the opposition between the state and the people, and reconstruct the Constitution as a document stipulating cooperation between the state and the people. Moreover, respect of traditions and culture should be incorporated into the Constitution, and the number of provisions stipulating the duties of the people should be increased.
- b. The type of opinion expressed in “a” above deviates from the trend of modern constitutionalism and has the danger of potentially degrading human rights.

#### **(Comments by Informants and Others)**

##### **<Modern Constitutionalism and Freedom from the State>**

- Modern constitutions place rights as the basis and have few provisions regarding duties, and this is because of the history whereby European nations won declarations of rights from absolute despots. As an exception Article 2 of the French Constitution of 1795 stipulates a moral obligation equivalent to the Golden Rule, and has other provisions stipulating such duties as observing the law, paying taxes, and rendering military service. Regardless, liberal constitutional studies position restricting state power as the main pillar and do not view

constitutions as moral documents, and in that respect they can be considered restrictive norms. (KOBAYASHI Masaya, Informant)

- Democracy can be broadly divided into two paths: fighting democracy, like that of postwar Germany, and the democracy of the U.S. and Japan whereby the strengths of a democratic society are sought in the recognition of freedoms, even if they are heretical. Germany developed its fighting democracy not only in regret over the Nazi catastrophe; it was also the choice the state made to impose specific values on the people, amid the unique geographical conditions that West Germany was placed in after the war. However, values stipulated by a constitution have the potential danger of binding the people more than binding the state, and while this was an unavoidable choice in Germany it is not appropriate for Japan. (NOSAKA Yasuji, Informant)

#### **<Role of the State in the Guarantee of Human Rights>**

- Constitutions give authority to the state, but they also function to control state power. Constitutional rights cannot get away from this issue of control of state power. In that sense, the German theory that the state is obliged to protect fundamental rights comes from the viewpoint that such obligation should be imposed on the state from the perspective of controlling the state, and is thus no exception to the framework of modern constitutionalism. (MATSUMOTO Kazuhiko, Informant)
- In that constitutions are addressed to the state, they have the meaning of recognizing the people's rights and giving the state the duty to realize those rights, as well as the meaning of giving the state the responsibility to realize the public interest. Such duties and responsibilities of the state should be clearly stipulated in the Constitution. (EBASHI Takashi, Speaker)

#### **<Internationalization of Human Rights>**

- Invoking international human rights treaties as standards to interpret the Constitution constitutes using treaties, which are subordinate in the national legal order, as standards to interpret the Constitution, which has superior legal status, so this draws strong criticism under certain theories. There are, however, constitutional-level decisions to faithfully observe the treaties that Japan has concluded, and therefore the contents of international human rights treaties should be viewed as indirectly acquiring constitutional status as they are drawn up and incorporated into the Constitution through constitutional interpretation. (SAITO Masaaki, Informant)

#### **<Other Comments>**

- The aim of modern constitutions is to establish a system where the state prevents the violation of the rights of the individual. Advancing beyond this framework and restructuring the Constitution to stipulate cooperation between people and the state cannot be achieved by just adding and changing certain constitutional provisions. Rather, this would be a grand undertaking of fundamentally reformulating the principle of the modern state – an ambitious attempt to conceive not just the form of the state but a new civilization. Accordingly this work would require appropriate conceptual, academic and political preparation, and at least at the present point in time it must be said that the timing is premature. (KOBAYASHI Masaya, Informant)

## **2. Reconciliation of Fundamental Human Rights**

Regarding the reconciliation of fundamental human rights, members discussed public welfare under the human rights provisions and the reconciliation of human rights among private persons.

### **1) Public Welfare**

#### **(1) Can Human Rights Be Restricted by the Public Welfare?**

Members expressed the following opinions regarding whether human rights can be restricted by the public welfare.

- a. Human rights are not absolutely unlimited.
- b. The constitutional provisions on the right of mental freedom (composed of academic freedom and the freedom of thought and conscience, religion, and expression) do not expressly stipulate that this freedom is restricted by the public welfare, yet it must be subject to the public welfare. In view of the fragility of this right, consideration was given when the Constitution was formulated.

#### **(2) What Is the Public Welfare that Can Restrict Human Rights?**

Members expressed the following opinions regarding what is the public welfare that can restrict human rights.

- a. The interpretation has gone beyond the public welfare theory of the early case precedents and theories which focused on limitations for the public interest, and there is a deepening understanding of the public welfare as the principle of mutual reconciliation of human rights.
- b. The public welfare cannot be explained just by the principle of mutual reconciliation of human rights. There is public interest that cannot be reduced to individuals' human rights, and such public interest can also be a legitimate reason for restricting human rights.

Other members also stated that to clarify the meaning of public welfare, its specific contents should be expressly stipulated in the Constitution.

#### **(3) Judgment on What Constitutes Reasonable Aims and Means in the Adjustment and Restriction of Human Rights**

Regarding the judgment on the rationality of the aims and means in adjusting and restricting human rights, members presented the following opinions regarding the four entities (1) the formulators of the Constitution (the revisers of the Constitution), (2) the Diet, (3) the executive branch, and (4) the judiciary.

- a. Decisions as to what constitutes reasonable aims and means in adjusting or restricting human rights should be made, in accordance with the type of rights, by incorporating a more specific definition of the contents of "public welfare" into the Constitution.
- b. Decisions as to what constitutes reasonable aims and means in adjusting or restricting human rights should be made primarily in the form of laws enacted by the Diet. This process should



take place referring to the so-called “theory of essentiality” precedent set by the German Federal Constitutional Court whereby the decision of essential matters of state is retained by the Diet, and regarding certain of these essential matters the Diet must make its own decision without readily delegating these matters to the executive branch.

- c. For the Diet to make appropriate judgments regarding the reconciliation of human rights via legislation, and also to present a guideline for the Diet, the right to privacy and the other new rights that meet the current conditions and the present era should be incorporated into the Constitution.
- d. The executive branch should not make essential decisions as to what constitutes reasonable aims and means in adjusting or restricting human rights. For the Diet to take responsibility for the mutual reconciliation of human rights, when passing legislation it should not give cabinet and ministerial ordinances a blank check to stipulate the regulatory requirements, etc.
- e. The courts use “double standards” to conduct after-the-fact examinations regarding decisions as to what constitute reasonable aims and means in adjusting or restricting human rights. These double standards do not establish precedents setting values on human rights, but rather give deep consideration to mental freedom and other subtle rights in making examinations. Therefore, these should be referred to as “two types of standards” rather than as “double standards,” and this has recently advanced one step further to establish not only two types of standards but even more detailed standards.

## **2) Reconciliation of Human Rights among Private Persons (Application of the Constitution among Private Persons)**

Members expressed the following opinions regarding the reconciliation of human rights among private persons.

- a. Originally constitutions were established through historical developments with freedom from the state as the keynote theme, but today more serious than the violation of human rights by the state is the violation of human rights among private individuals and the violation of human rights by huge private-sector organizations, and we must recognize that how to contend with this is the major constitutional theme.
- b. The legal theory of state action developed in the U.S. should be actively introduced into Japan, and a more powerful guarantee of human rights could be achieved by having the Constitution directly address the guarantee of human rights among private individuals.
- c. We should make the guarantee of human rights among private individuals more effective in practice, while referring to the position that the state should more actively guarantee human rights, as under the German theory of the state’s obligation to protect fundamental rights.

### **(Comments by Informants and Others)**

#### **<Can Human Rights Be Restricted by the Public Welfare?>**

- The public welfare seeks legislation by the Diet on the mutual reconciliation of rights. It does not seek to make the people not violate the public welfare. In other words, the public welfare is a rule to restrict the state when it places limitations on human rights, and not a rule for restricting

the people. (SAKAMOTO Masanari, Informant)

- When discussing the limitation of human rights by the public welfare, a clear distinction must be made between what are and what are not human rights, because if things that are not human rights are viewed as human rights we will end up making a reconciliation between what are human rights and what are not really human rights and thus restricting real human rights. Furthermore, it is important to exercise care because what are and what are not human rights will be determined based on the definition of human rights and that then will determine the extent of the concerned limitations. (MATSUMOTO Kazuhiko, Informant)

#### **<What Is the Public Welfare That Can Restrict Human Rights?>**

- As for whether, in addition to the principle of reconciliation among human rights, public welfare that cannot be reduced to individuals' human rights can be a legitimate reason for limiting human rights, the opinions denying this possibility have traditionally been dominant, but recently there have been a growing number of opinions in academic theory, as seen in Supreme Court rulings, viewing the protection of public welfare which cannot be reduced to other people's human rights as a legitimate reason for limiting human rights. (MATSUMOTO Kazuhiko, Informant)
- The question of what is the public welfare that can restrict human rights tends to move away from concrete reality into abstract and impractical discussions, so I think we should rather focus on detailed examinations of what constitutes reasonable aims and means in restricting human rights. In doing so, academic theories regarding who should determine what constitutes reasonable aims and means assert that the courts should make these judgments using the "double standard," but I particularly want to emphasize the significance of having these judgments made by the Diet in the form of legislation. (MATSUMOTO Kazuhiko, Informant)

#### **<Judgment on What Constitutes Reasonable Aims and Means in the Reconciliation and Limitation of Human Rights>**

- I think the approach of explicitly stipulating in the Constitution mutual reconciliation of human rights or the conditions whereby human rights are restricted would be meaningless since it would remain impossible for the formulators of the Constitution (the revisers of the Constitution) to cover all of the fine adjustments and reconciliation outside the Constitution would still be necessary. (MATSUMOTO Kazuhiko, Informant)

#### **<Reconciliation of Human Rights among Private Persons>**

- The relations between the rights of a private person and those of another private person should be viewed as a three-way relationship including the state as the third party. Specifically, when the rights of a private person are violated from the exercise of another private person's rights, the state bears a "duty to protect fundamental rights" and is obliged to protect the rights of the private person whose rights have been violated. On the other hand, to fulfill this duty, the state would have to intervene in the exercise of rights by the individual who was the violator, and with this a relationship of opposition between the individual and the state emerges whereby the

individual will emphasize freedom from the state. Now the state will be charged with the “duty to prevent the violation of fundamental rights,” which is an obligation not to violate the rights of private persons. So the state simultaneously bears two obligations – the duty to protect fundamental rights and the duty to prevent the violation of fundamental rights – and it has to reconcile the two of them. This is the theory that the state is obliged to protect fundamental rights, and it is becoming the dominant theory. (MATSUMOTO Kazuhiko, Informant)

### **3. Possessors of Human Rights**

Members discussed the issue of the possessors of human rights, primarily the issue of the human rights of foreigners.

#### **1) The Human Rights of Foreign Nationals (General Discussion)**

##### **(1) Basic Understanding regarding the Human Rights of Foreign Nationals**

The following opinions were voiced regarding the basic understanding regarding the human rights possessed by foreign nationals.

- a. There are four theories regarding how the Constitution guarantees the human rights of foreign nationals: (1) the guarantee disavowal theory which holds that the Constitution does not guarantee the human rights of foreigners whatsoever; (2) the provision distinction theory that makes a distinction between those provisions that refer to “the people” citizens versus those that refer to “every person”; (3) the rights characteristic theory which holds that the presence or absence of guarantees depends on the nature of the specific right; and (4) the application theory which holds that all persons who lead their lives in the same manner as citizens enjoy the same rights as citizens. The interpretation of how the Constitution guarantees the rights of foreigners depends on which theory the interpretation is based on.
- b. All people who live in Japan should be considered as possessing human rights, regardless of whether they are Japanese citizens or foreign nationals. Japanese citizens and foreign nationals should not be treated differently.
- c. The Supreme Court decisions have ruled that while foreign nationals possess equivalent human rights to those enjoyed by Japanese citizens, the Constitution’s guarantee of the fundamental human rights of foreign nationals is ultimately given within the context of residence status, and this system needs to be reconsidered in light of the trend of the internationalization of human rights.

##### **(2) Should Some Stipulation of the Human Rights of Foreign Nationals Be Established in the Constitution?**

As for whether or not some sort of provision on the human rights of foreign nationals should be established in the Constitution, some members voiced the opinion that such a provision should be established, while others stated that it should be possible to address this via interpretation and application of the Constitution, without explicitly establishing such a provision.

## **2) The Human Rights of Foreign Nationals (Detailed Discussions)**

### **(1) Granting Permanent Foreign Residents the Right to Vote in Local Elections**

As regards the human rights of foreign nationals, members discussed whether or not permanent foreign residents should be granted the right to vote in local elections. Some members stated that this right should be granted while others stated that it should not.

#### **A. Opinions in Favor of Granting Permanent Foreign Residents the Right to Vote in Local Elections**

Members presented the following reasons as grounds for their opinions that permanent foreign residents should be granted the right to vote in local elections.

- a. From the perspective of resident self-government, it is desirable that local issues be determined autonomously by local residents.
- b. As a mature democratic nation, local government should also reflect the opinions of foreign residents who have especially close relationships with the local community. No harm will come of this, as long as a clear distinction is made versus involvement in national government.
- c. Individuals with a special historical background such as South and North Korean nationals who reside in Japan should be treated, as far as possible, identically to Japanese citizens.
- d. Supreme Court rulings hold that the Constitution does not legally prohibit granting foreigners the right to vote in local elections.
- e. Individuals who fulfill their obligation to pay taxes should be given the right to vote.
- f. In our country where the population is declining, we need to build up an open society as a strategy to draw forth the vitality of the nation.

#### **B. Opinions Opposed to Granting Permanent Foreign Residents the Right to Vote in Local Elections**

Members presented the following reasons as grounds for their opinions that permanent foreign residents should not be granted the right to vote in local elections.

- a. The right to vote determines the fate and the future of the nation, and should be granted only to citizens, who share the fate of the nation.
- b. Since local politics and national politics are closely related, granting foreign nationals the right to vote in local elections means that individuals who are not Japanese citizens would become involved, albeit indirectly, in national politics, and that is undesirable.
- c. Suffrage is a right that should only be given to citizens, and permanent foreign residents should exercise the right to vote after they obtain Japanese citizenship. The issue of giving foreign nationals the right to vote should be addressed by easing the requirements for acquiring citizenship.

### **(2) Other Opinion regarding the Human Rights of Foreign Nationals**

Additionally, members also expressed the following opinions regarding the human rights of foreign nationals.

- a. The prevailing theory holds that the right of foreign nationals to enter into Japan is not guaranteed by the Constitution. However, considering the right to leave any country and the right to return to one's own country stipulated in Articles 12-2 and 12-4 of the International Covenant on Civil and Political Rights, guaranteeing the right to leave any country and the right to return to one's own country is the trend of international human rights guarantees. Therefore, Japan should permit, as widely as possible, the freedom of movement of foreign nationals, including the freedom to take temporary overseas trips and to reenter Japan.
- b. The nationality requirement for public servants should be eliminated.
- c. From the standpoint of the national interest, giving foreign nationals the right to work in all sorts of civil service positions is going too far.
- d. Japan's treatment of refugees is inferior. We should bring new life into the ideals of the Constitution and improve the conditions of treatment for refugees. And to improve such conditions also, the rights of foreign nationals, including the right to a minimum standard of living and the right to live under conditions similar to those of Japanese, should be stipulated in the Constitution.
- e. I feel the need to provide humanitarian support to refugees, but we must address this considering the reality that Japan is a nation with no history of immigration.

**(Comments by Informants and Others)**

**<Basic Understanding regarding the Human Rights of Foreign Nationals>**

- The Supreme Court ruling in the Ronald Alan McLean case – which stated that under the legal system for the residence of foreign nationals, the various rights should be recognized also for foreign nationals, when this is possible based on the nature of the human rights – is supported by the legal theory. However, as in this ruling, if the constitutional rights are recognized only within the legal framework of the residence status system for foreign nationals, it is tantamount to stating that foreign nationals essentially have no constitutional rights, and thus this precedent and the theory are both self-contradictory. Conversely, the interpretation that foreign nationals have no constitutional rights because they do not have the right to enter and reside in Japan is more appropriate. Regardless, even if foreign nationals do not have any constitutional rights, they could still be granted the same treatment as Japanese nationals via legislation. (ANNEN Junji, Informant)
- Even if the status of foreign nationals were to be stipulated in the Constitution, the stipulation would inevitably have to be abstract, and that would leave specific judgments up to the courts, so it would be a better approach for the Diet, which is the representative of the people, to make the guarantees concrete via legislation. (ANNEN Junji, Informant)

**<Granting Permanent Foreign Residents the Right to Vote in Local Elections>**

- As for giving permanent foreign residents the right to vote in local elections, one way would be for Japan and South Korea to grant this right reciprocally. Another possibility would be to establish a dual nationality system between the two countries. (KANG Sanjun, Informant)
- Many permanent foreign residents have already met most of the requirements to become

Japanese citizens, so naturalization should first be considered. I do not agree with the idea of giving foreigners the right to vote through legislation. (ANNEN Junji, Informant)

- Article 93 stipulates that local public officials shall be elected “within their several communities,” and that leaves room to grant foreign nationals the right to participate in local elections. Because local elections are votes at the level of improving the living environment of local residents, in Europe foreign nationals have widely been granted the right to vote in local elections since the 1980s. I think this distinction whereby local residency is adopted as the standard for the right to vote in local elections and citizenship as the standard for the right to vote in national elections is a good system. (EBASHI Takashi, Speaker)

#### **4. “New Human Rights”**

Based on active recognition of the rights known collectively as “new human rights,” there was debate as to whether it is necessary to make express provision for these new rights in the Constitution, and if so specifically what kind of new human rights should be so stipulated.

##### **1) “New Human Rights”**

###### **(i) Creation of “New Human Rights”**

There was common understanding that to contribute to the guarantee of the human rights of Japanese citizens, Japan should positively recognize the “new human rights,” which have come into existence relatively recently compared with classic human rights.

###### **(ii) Should “New Human Rights” Be Expressly Stipulated in the Constitution?**

Under the premise that new human rights should be positively recognized, some members voiced the opinion that these rights should be expressly stipulated in the Constitution, while others voiced the opinion that expressly stipulating these rights in the Constitution is unnecessary.

##### **A. Opinions in Favor of Expressly Stipulating New Human Rights in the Constitution**

Members presented the following reasons as grounds for their opinions that new human rights should be expressly stipulated in the Constitution.

- a. As nearly 60 years have passed since the end of the war, rights have come to be recognized that were not foreseen when the Constitution was enacted.
- b. Writing new human rights into the Constitution would be beneficial in securing the human rights of the people, and this would also be consistent with the purport of the Constitution as the basic law which restricts the power of the state and protects citizens’ rights.
- c. Expressly stipulating new human rights in the Constitution would serve as criteria for legislation by the Diet and rulings by the courts.
- d. If the basis for new human rights can be found in Article 13, then the provisions stipulating specific human rights can easily be seen as unnecessary. While the Constitution may be a highly abstract set of norms, there are limits to the approach that regards new human rights as already

included under the right to the pursuit of happiness in Article 13 or other existing provisions.

## **B. Opinions That There Is No Need to Expressly Stipulate New Human Rights in the Constitution**

Members presented the following reasons as grounds for their opinions that expressly stipulating new human rights in the Constitution is unnecessary.

- a. New human rights that are not expressly stipulated in the Constitution are already recognized through constitutional interpretation such as the right to privacy based on Article 13 and the right to know based on Article 21. Moreover, the human rights provisions of the Constitution have sufficient depth to accommodate not only the new human rights already in existence but any that may arise in the future.
- b. We need to investigate whether or not the absence of express provisions on new human rights in the Constitution is actually an impediment to the realization of these rights. I think that the lack of constitutional provisions on new human rights is not the issue, that the real problem is the negative attitudes of politicians and bureaucrats toward the realization of these rights, and that expressly stipulating these rights in the Constitution would not solve the problem at all.
- c. Because new human rights can be recognized based on the existing provisions, what is being sought is not constitutional revision, but rather efforts to create a legal system that realizes the spirit of the Constitution in a concrete manner.

## **2) The Various Types of New Human Rights**

Members who spoke in favor of expressly stipulating new human rights in the Constitution cited the following as items that should be expressly stipulated.

### **(1) Environmental Rights and the Duty to Preserve the Environment, Etc.**

#### **(i) Express Stipulation of Environmental Rights and the Duty to Preserve the Environment, Etc.**

Many members stated that such items as environmental rights and the duty to preserve the environment should be clearly specified in the Constitution. Members who spoke in favor of this presented the following reasons as grounds for their opinions.

- a. Environmental problems are unique in that those who cause them and those who suffer from them live in the same environment, and when problems actually occur the scope of the environment affected is not clear. Also, in constituting environmental rights, the required redress when they are violated varies greatly from cases where simply eliminating and preventing environmental harm is sufficient to cases where measures must be taken to actively restore the environment to its prior state. For that reason, just advancing the interpretation approach when the text of the provisions is vague will not be sufficient to guarantee these rights. Therefore environmental rights need to be given a firm basis by expressly stipulating them within the constitutional code.
- b. The vision of Japan and its identity in the 21st century as an environmental nation must be clearly defined.

- c. Looking at the examples in foreign countries, multiple countries have stipulated environmental rights in their constitutions since the 1980s.

### **(ii) Contents of “the Environment”**

Members discussed what the contents of “the environment” should be if environmental rights and the duty to preserve the environment are to be stipulated in the Constitution. Regarding this point, there were comments that in general “the environment” is understood as the right to enjoy and control a good environment which provides the conditions required to maintain a healthy and comfortable life. Further, under this general understanding, comments were made that in addition to the view that the concept of the environment should be limited to the air, water, sunshine, scenery and other items that constitute the natural environment, there is also the view that the concept should also include the cultural and social environment encompassing historic sites, temples, parks, schools, etc.

### **(iii) Format for Stipulating Environmental Rights and the Duty to Preserve the Environment, Etc.**

Members voiced the following opinions regarding the format that should be adopted for the stipulations, if environmental rights are to be stipulated in the Constitution.

- a. Environmental rights should be stipulated as the citizens’ rights to enjoy a good environment.
- b. When environmental rights are grasped as “citizens’ rights” their contents are unclear, given that rights restrict the power of the state in modern constitutionalism. Accordingly, rather than positioning environmental rights as citizens’ rights, they should be stipulated as national objectives (the state’s duty and responsibility to protect the environment) as they are in Article 20a of the German Basic Law.
- c. They should be stipulated as the citizens’ duty and responsibility to protect the environment.
- d. Establishing Japan as an environmental nation should be stipulated as a basic national policy in the Preamble or within the main body of the Constitution.

## **(2) The Right to Know, the Right of Access, and the Right to Privacy**

Many members expressed the opinion that the right to know and the right of access should be stipulated in the Constitution because the right to know is a precondition to self-government, whereby citizens are involved in the political decision-making process of the state, and the right of access is imperative because mass media is becoming huge and information is becoming an oligopoly.

Also, many members stated that the right to privacy should be stipulated in the Constitution because of the outstanding advance of the information society and other reasons.

## **(3) Rights of Crime Victims**

Members voiced the opinion that “crime victim rights” – which include public assistance to crime victims and the victims’ involvement with criminal proceedings – should be stipulated in the



Constitution because the present provisions in the Constitution are biased toward the rights of suspects and defendants.

#### **(4) Intellectual Property Rights**

Members voiced the opinion that for Japan to seek competitiveness and future vitality, the protection of intellectual property rights should be explicitly stipulated in the Constitution, separate from the protections of general property rights, because a national strategy is required that would set up a system for protecting, managing and utilizing intellectual property rights, which are the aggregation of human thought, and because other nations have stipulated the protection of intellectual property rights in their constitutions.

#### **(5) Sanctity of Life and Dignity of Humanity**

Members voiced the opinion that while “the dignity of the individual” is stipulated in Article 13, the “sanctity of life” and “human dignity” which are superordinate concepts should also be expressly stipulated in the Constitution.

#### **(Comments by Informants and Others)**

##### **<Should “New Human Rights” Be Expressly Stipulated in the Constitution?>**

- Regarding “new human rights,” “the right to information” and “environmental rights” may be expressly stipulated in the Constitution after carefully considering their contents and clarifying their range and content. (ITO Tetsuo, Informant)
- Items that can be addressed by legal disposition under private law, by enacting private laws, or by prescribing the obligations of the state in such laws should not be unnecessarily categorized as “fundamental human rights.” Facilely defining such items as “human rights” will invite human rights inflation and the state control of society. (SAKAMOTO Masanari, Informant)
- As for both environmental rights and the right to privacy, these can and should be advanced via environmental protection policies and privacy protection policies, without amending the Constitution. (UCHINO Masayuki, Informant)
- First, we need to think about the changes in constitutional rights and the trend whereby the concept of human rights is becoming richer as separate issues. Constitutional rights cannot be removed from the issue of control of state power, and if the discussion on making human rights more replete advances in separation from the control of state power, that may cause injury to the most important area of the Constitution, so conversely we should exercise caution toward addressing these as constitutional rights issues. (MATSUMOTO Kazuhiko, Informant)

##### **<The Various Types of New Human Rights>**

- While the question of whether to establish explicit provisions in the Constitution remains an outstanding issue, environmental rights could take the form of an extension of the right to maintain “minimum standards of wholesome and cultured living.” (NAKAMURA Mutsuo, Informant)
- When environmental rights are stipulated as “human rights,” the bodies that enjoy

environmental rights and the contents of environmental rights are unclear. I agree that the environment should be addressed in the Japanese Constitution via the stipulation of national environmental goals, as they do in Germany. (SASADA Eiji, Informant)

- I think the environment, more than being an individual right, has a stronger aspect as a public interest, so I am not necessarily positive about the point of incorporating environmental rights into the Constitution. If there is a need to stipulate some sort of environmental standards in the Constitution, I think the approach should be to stipulate in the Constitution that the state bears the duty to protect the environment and, based on this, to enact various environmental protection laws to fulfill this duty. (MATSUMOTO Kazuhiko, Informant)
- The Preamble should praise the environmentalism of the Japanese people, who have lived with respect for nature and in harmony with nature. Then in the main body of the Constitution, I would like to see Japan's "environmentalism," the state's duty to guarantee the people a sound environment, as well as the citizens' environmental responsibilities stipulated together with pacifism. (TAKEMURA Masayoshi, Speaker)
- The bases for environmental rights include the rights to life, liberty and the pursuit of happiness stipulated in Article 13, the right to maintain the minimum standards of wholesome and cultured living stipulated in Article 25, the right of the people to live in peace stipulated in the Preamble, and the state's obligation to secure peace stipulated in Article 9. I think it is possible to argue by bringing all of these together that the present Constitution does guarantee environmental rights. (KOBAYASHI Takeshi, Informant)
- Just as the right to know is treated in terms of the state's obligation to provide explanations in the Information Disclosure Law, it is sufficient to address the right to know not as a rights issue but rather as an obligations issue. (SAKAMOTO Masanari, Informant)
- The opinion that the concept of freedom of expression should be reconceived not only from the perspective of those sending out information but also from the perspective of those that receive it is persuasive. In that sense, the discussion of the right to know is important, but even if the phrase "the right to know" is explicitly stated in the Constitution, it is difficult to foresee the extent to which that would draw forth productive discussions. Rather I think the better approach would be to break down the right to know into the specific rights of the right to receive information, the right to collect information, and the right to request information, and then examine how each of those rights can be realized in concrete form. (MATSUMOTO Kazuhiko, Informant)
- If there is an opportunity to revise the Constitution then the right to privacy should be stipulated. In doing so, the logical order should be made clear, that is, privacy is directly connected to the dignity of the individual and that it is only after this respect is present that freedom of expression and other human rights can be established. (MUNESUE Toshiyuki, Informant)
- It is sufficient to deal with privacy, in the sense of protection from having others come to know confidential items that one does not want others to know, as a right under private law. Moreover, requests to view personal information in terms of the right to control information regarding oneself should be understood as a new right that came into being through the enactment of new laws and ordinances. (SAKAMOTO Masanari, Informant)

## **5. The Duties of the People**

Members discussed whether new provisions on the duties of the people should be added to the existing provisions, as well as what sort of duties should be added if additional stipulations are to be made.

### **1) Constitutional Stipulations of the Duties of the People**

Some members stated that the duties provisions of the Constitution should be increased, while others said that they should not be increased.

#### **(i) Opinions That the Duties of the People Provisions of the Constitution Should Be Increased**

##### **A. Bases for the Opinions that the Duties of the People Provisions of the Constitution Should Be Increased**

Members presented the following reasons as grounds for their opinions that the duties of the people provisions of the Constitution should be increased.

- a. Since the end of World War II the awareness in all sectors of Japanese society of the duties that lie behind rights has become extremely thin; the responsibilities and duties to the state, society, the home and the family have been belittled; there has been a rampant emphasis solely on asserting one's rights; and this is causing violations of others' human rights and social chaos. To resolve these problems, duties must be expressly stipulated in the Constitution, which is the basic law, and we must work at rebuilding awareness of duties and responsibilities.
- b. Rights and duties are two sides of the same coin, and it needs to be explicitly stipulated that the exercise of rights is accompanied by the exercise of duties. If the so-called new human rights are to be stipulated, then it is necessary to also clarify the duties that come with them as their other side.
- c. We should overcome the contemporary constitutionalism which guarantees the people's freedom by restricting the power of the state, and restructure the Constitution to provide for the people and the state to work together. To those ends, new duties provisions should be established in addition to the existing duties provisions.
- d. Those who are opposed to increasing the "duties of the people" provisions hold that modern constitutionalism is addressed to state power and that it is odd to establish duties stipulations that are addressed to the people, but since, in fact, the Constitution stipulates three duties, that argument does not hold.

##### **B. Contents of the Duties of the People Provisions That Should Be Increased**

Members holding the opinion that the duties of the people provisions should be increased cited the following items as duties that should be added.

- a. Duty to Defend the Nation and Military Conscription System

Some members were of the opinion that the duty to defend the nation should be explicitly stipulated in the Constitution from the perspective of public responsibility, while others expressed reservations about this because they felt prescribing the duty to defend the nation would lead to a military conscription system.

b. Duty to Preserve the Environment

Members expressed the opinion that rights and duties are two sides of the same coin, and that if the people's environmental rights are to be stipulated in the Constitution then the people's duty and responsibility to preserve the environment must also be stipulated in the Constitution.

c. Duty to Vote

Members expressed the opinion that for the development of sound democratic government, the Constitution should expressly stipulate that the people have a duty to vote, as the reverse side of their right to vote.

d. Other Duties

Additionally, members expressed the following opinions regarding the duties of the people.

- (a) The Constitution should stipulate the duty of parents to raise their children and the duty of family members to help each other.
- (b) The right to own property is an extremely important factor in our social activities and there are diverse problems concerning this, so the responsibility to socially utilize this right should be added. We should examine some means of writing the responsibilities and duties of property owners into the Constitution.
- (c) In relation with the argument for placing limitations on property rights, because citizens have recently come to emphasize comfort and beauty in leading a pleasant life, we should recognize the value of scenery, and add the rights and duties to preserve scenery.
- (d) As for making voluntary service activities obligatory, even if this were stipulated through some sort of constitutional revision, the direction of making voluntary activities obligatory is not desirable. Rather, it is important to create an atmosphere in which people can participate of their own free will.

**(ii) Opinions That the Duties of the People Provisions of the Constitution Should Not Be Increased**

Members presented the following reasons as grounds for their opinions that the duties of the people provisions of the Constitution should not be increased.

- a. Modern constitutionalism works to protect the people's freedoms and rights by restricting state power, and the Constitution of Japan falls within this lineage. So the provisions of the Constitution should be addressed to state power and administrators at any given moment, and should not address and impose a large number of duties and responsibilities on the people.
- b. As modern constitutionalism works to protect the freedoms and rights of the people by restricting state power, if the Constitution does not prohibit the state from imposing a given duty

on the people, then that duty may be freely imposed via laws. Therefore, if a duty needs to be imposed it can be imposed via law, and even if duties provisions are established in the Constitution they should have no legal significance whatsoever.

- c. Going beyond the two-dimensional opposition between the individual and the state and devising ways to reconstruct the community and the family are certainly important in resolving contemporary social problems, but adding duties provisions to the Constitution will not solve those social problems, and will conversely have an adverse or distortive effect.
- d. The perspective of stipulating not only duties but also rights is already fully addressed by Article 12.

## **2) Other Comments**

Members also expressed the following opinions.

- a. Items such as environmental preservation should be stipulated not as rights and duties but rather as the responsibilities of the state and of the people toward the environment.
- b. If the provisions on duties and responsibilities are a declaration of the people's own will within the constitutional code, and are declaratory provisions in the sense of providing a guideline for the exercise of public power, these provisions and the trend of modern constitutionalism can both be upheld, and it is possible to stipulate provisions regarding certain key items such as bioethics and the natural environment within the Constitution.

### **(Comments by Informants and Others)**

- The Constitution has many rights provisions but is weak from the perspective of the duty to protect society, so while increasing the duties provisions, language concerning duties should also be added to the Preamble to realize a balance with the language concerning rights. (NISHIZAWA Junichi, Informant)
- As pressure from the Eurasian Continent is now expected to increase, we need to think about a state framework that can stand up to such pressure, so we have to think about the duty to defend the nation. In considering this, we must examine whether or not a constitutional provision is necessary, and if so, whether an abstract provision stipulating that Japanese citizens bear the duty of national defense is sufficient. If a constitutional provision is not required, we need to consider whether, when emergencies arise, this could be dealt with under the concept of "public welfare." (SAKAMOTO Takao, Informant)
- The state could not exist without "duties of the people" and defending one's own nation by oneself is a basic principle of democracy, so the Constitution should include provisions concerning the "duty to defend the nation." This "duty to defend the nation" is distinct from the "duty to render military service." (ITO Tetsuo, Informant)
- Globally, Germany and Switzerland have already begun experiments that represent a departure from the concept of modern constitutionalism, under which constitutions restrain the power of the state. In the German Basic Law, the Preamble and Article 20a stipulate certain provisions, such as those regarding the responsibility of the state toward future generations, as national objectives. (KOBAYASHI Masaya, Informant)

- The duties provisions in the present Constitution are sufficient. If the Constitution extols a large number of duties, it will become a system of duties that is separate from the guarantee of rights. (SAKAMOTO Masanari, Informant)
- Even with a basis in modern constitutionalism, there is inevitably a duty to observe the laws of the state to protect the human rights of individuals. That sort of duty is not denied by the existing Constitution, and in fact the Constitution stipulates three duties. However, this fact is in a different dimension from the issue of what type of duties should be provided for in the Constitution. In response to those who note that the Constitution of Japan stipulates duties even though modern constitutionalism denies the stipulation of duties in a constitution, I would like to respond that as for the provision of specific duties those presently stipulated are sufficient. (KOBAYASHI Masaya, Informant)
- U.S. Communitarianism indeed seeks the causes of contemporary social problems in the breakdown of the community and the family and in the lack of awareness of personal duties and responsibilities, and asserts the need to reconstruct these, but it does not go so far as to call for them to be stipulated in the Constitution. Legislating duties and responsibilities that are not backed up by the morality of the people will not lead to the fulfillment of duties and responsibilities, and entails the danger of heightened state authoritarianism. We should aim at solidifying the concept of morality which upholds duties and responsibilities in the social sphere. (KOBAYASHI Masaya, Informant)
- Under modern constitutionalism, a constitution is primarily a document that binds the state, and in as much as a state has been formed, it is only natural for constitutions to include means to maintain the state, such as stipulating obligations as to how the state will be defended. Obligations stipulated in modern constitutions are at that level, and not at the level of specifying that rights are accompanied by duties. So it is odd to hold constitutional deliberations which view these two items, which are at different levels, as if they were at the same level. (YOKOTA Kouichi, Informant)

## 6. Bioethics and the Constitution

There have recently been outstanding developments in “advanced bioscience and biotechnology research” such as genetic modification experiments and other genetic technologies, in vitro fertilization, organ transplants and other medical technologies, and considering the importance and dangers of these advances, questions have arisen as to whether such research should be regulated by law. Such regulation of research is an issue that conflicts and requires reconciliation with academic freedom, and the discussions primarily took place from that viewpoint.

### 1) Need for Regulation of Advanced Bioscience and Biotechnology Research

Members expressed the following opinions regarding whether advanced bioscience and biotechnology research needs to be regulated.

- a. With the development of advanced bioscience and biotechnology research, there might be cases

which could lead to violation of human dignity and harm to life and health, so areas may emerge where academic freedom must be restricted by the public welfare.

- b. The principle of “human dignity” is frequently cited as grounds for restricting advanced bioscience and biotechnology research. While we should refrain from facilely adopting this argument, the principle of human dignity is one of the fundamental principles of human rights, and it is important as a legitimate reason justifying the imposition of legal restrictions on advanced bioscience and biotechnology research.

## **2) Bioethics and the Constitution**

With the development of advanced bioscience and biotechnology research, specific restrictions on this research are called for, and such restrictions are actually being imposed in various formats. Members also discussed whether it is necessary to go as far as to make explicit provisions concerning bioethics in the Constitution. Some members stated that such explicit constitutional provisions are needed, while others expressed the opinion that they are not.

### **A. Opinions That Bioethics Provisions Should Be Stipulated in the Constitution**

Members presented the following reasons as grounds for their opinions that bioethics provisions should be stipulated in the Constitution.

- a. Genetic engineering, cellular engineering, developmental engineering and other biotechnology research fields are closely related with bioethics and the sanctity of life, and a provision stipulating the grounds for prohibiting any manipulation of life forms that violates the sanctity of life and restricting access to genetic information should be specified in the Constitution.
- b. While the German Basic Law has a provision regarding human dignity and the French Constitution does not have any explicit provision but implies the principle of human dignity, the U.S. Constitution does not adopt that principle. Given these various conditions in each nation, Japan should explicitly stipulate human dignity and the sanctity of life in the Constitution as concepts superordinate to the dignity of the individual, thereby serving to provide a guideline for the Japanese people’s sense of ethics, to foster balanced perspectives, and to bring individual dignity and academic freedom into harmony.

### **B. Opinions That Bioethics Provisions Should Not Be Stipulated in the Constitution**

As grounds for their opinions, members who agreed that bioethics provisions should not be stipulated in the Constitution said the Constitution has abundant human rights provisions which are sufficient to address areas related to bioethics, and that what is needed is not the incorporation of new provisions into the Constitution but rather efforts to bring the Constitution to life and to enact the required laws based on existing constitutional provisions.

### **(Comments by Informants and Others)**

- The format for stipulating individual dignity and the sanctity of life in the Constitution is extremely important. It is necessary to establish boundaries between the legitimate exercise of rights and the abuse of rights in fields such as reproductive medicine and genetic technologies,

and human dignity and the sanctity of life must be extolled somewhere as the ultimate principles. (MURAKAMI Yoichiro, Informant)

- Regarding the attitude toward regulating advanced bioscience and biotechnology research in the industrialized nations, in the U.S. while guaranteeing the freedom of research to the greatest possible extent is one trend, the political climate does not permit the establishment of legislation on the use of embryos. On the other hand in Europe, particularly in Germany, human dignity is explicitly stipulated in Article 1 of the Basic Law in remembrance of the history of Nazi despotism. Japan lies along the path of seeking harmony between the freedom of research and human dignity. I myself believe that the basic way of thinking of protecting human dignity should be stipulated within the Constitution. (KIMURA Rihito, Informant)
- In today's society with the development of sophisticated science and technology and the diversification of people's values, perhaps we should consider drafting a new constitution that incorporates expressions which can address new ways of thinking and new things. For example, what about incorporating stipulations on the dignity of the human body itself into the Constitution as a basic principle of the nation. (UEMATSU Haruo, Speaker)



## **II. Detailed Discussions concerning Rights and Duties of the People**

Members held lively detailed discussions on rights and duties of the people regarding each provision.

Some members held the opinion that in interpreting the individual provisions on rights and duties of the people the historical background and process whereby they were formulated must be emphasized, and while giving some respect to the existing provisions, they stressed that the necessary constitutional revisions must be made to clearly stipulate new human rights, etc. Other members stated that the human rights provisions of the Constitution have developed over time together with the theory and case precedents and become more replete, that there is no need to revise the Constitution, and that what is being sought is rather the realization of the constitutional stipulations.

### **1. Right to Life, Liberty and the Pursuit of Happiness**

Regarding the right to life, liberty and the pursuit of happiness, members held discussions on the dignity of the individual and the right to the pursuit of happiness among others.

#### **1) Dignity of the Individual (Article 13, Sentence 1)**

Regarding the provision on the dignity of the individual in the first sentence of Article 13, members noted that this stipulates the respect of each citizen as an autonomous individual, and is therefore an important stipulation from the viewpoint of the Constitution as a whole.

Members also expressed the following opinions regarding the dignity of the individual.

- a. To indicate guiding principles for the bioethical and other issues emerging along with the progress of advanced bioscience and biotechnology research, the “sanctity of life” and the “human dignity” should be adopted as superordinate concepts above the “dignity of the individual.”
- b. The principle of human dignity can already be found in Article 11 and Article 13, so there is no need to make a new stipulation on human dignity in the Constitution.

#### **2) Right to the Pursuit of Happiness (Article 13, Sentence 2)**

Members expressed the following opinions regarding the right to the pursuit of happiness stipulated in the second sentence of Article 13.

- a. As a comprehensive right giving the basis for rights that are not explicitly stipulated elsewhere in the Constitution, the right to the pursuit of happiness stipulated in the second sentence of Article 13 is an important right which can be interpreted as providing the grounds for “new human rights.”
- b. Even if the second sentence of Article 13 can provide the basis for new human rights, clarifying those as rights by explicitly stipulating them in the Constitution would contribute to the guarantee of human rights.

- c. As new human rights can already be derived from Article 13 and other parts of the Constitution, what is really called for is to establish the laws.

### **3) Right to Live in Peace**

As for the stipulation in the Preamble “all peoples of the world have the right to live in peace, free from fear and want” (the “right to live in peace”), members stated that this is guaranteed as a fundamental right not only in the Preamble and Article 9 but in multiple sections of the Constitution such as Article 13 and Article 25, and said that this is one of the great characteristics of the Constitution.

#### **(Comments by Informants and Others)**

- There are two ways of thinking regarding the interpretation of the right to the pursuit of happiness. The “theory of a general guarantee of personal interests” views people as personal entities with character and morality and defines the right to the pursuit of happiness as the guarantee of the interests essential to the personal existence of human beings, while the “theory of general freedom of action” holds that human beings are ignorant and irrational, and recognizes what is important to an individual as a right provided that it does not impose harm upon others. The former way of thinking is the precedent and common theory in Japan, while the latter is the precedent and common theory in Germany. (SAKAMOTO Masanari, Informant)
- As for the right to life, liberty and the pursuit of happiness, the wording is extremely abstract and does not contain a clearly defined meaning itself, but rather this provision is believed to have been made to provide grounds for rights that are not explicitly stipulated in the Constitution. This right should be positioned as the basis for comprehensive human rights, after judging it from the perspectives of whether it can be interpreted consistently with the constitutional provisions overall and whether it has equivalent importance to the Constitution’s other human rights provisions. (MATSUMOTO Kazuhiko, Informant)

## **2. Equality under the Law**

As for Article 14 which stipulates equality under the law, members held discussions from the perspective of the equality sought by that article, followed by discussions regarding the roles of the Diet and the administration in realizing equality in fact. Members also discussed the system allowing married couples the option of using different surnames, and the imbalance in the allocation of Diet seats.

### **1) Meaning of Equality under the Law**

#### **(1) Concept of “Equality”**

Members voiced the following opinions regarding the concept of “equality” in the “equality under the law” stipulated by Article 14.

- a. The concept of “equality” includes “equality in form” which requires that individuals be treated

uniformly on the same basis regardless of actual differences and “equality in substance” which seeks to make outcomes more nearly equal by giving preferential treatment to those who are in an inferior position in society. Article 14 stipulates equality in form, while legislative policy is primarily expected to fulfill the role of realizing equality in substance.

- b. As for the right to a minimum standard of living, the right to receive an education, and the right to work, Article 14 can be interpreted so broadly as to be seeking equality in substance.

## **(2) Positive Measures to Rectify Discrimination (Affirmative Action)**

Members voiced the following opinions regarding affirmative action to seek substantive equality via preferential measures for the socially disadvantaged and those who suffer from discrimination.

- a. There are areas where substantive equality must be secured even at the sacrifice of equality in form. Affirmative action to rectify discrimination is sometimes necessary.
- b. When taking affirmative action, caution is needed to ensure that such measures do not go too far and become reverse discrimination.

## **2) Specific Contents of Equality**

Members expressed the following opinions regarding the latter part of Article 14, Paragraph 1.

### **(1) Sex**

#### **(i) Equality between the Sexes**

Regarding sex, members voiced the following opinions concerning equality between the sexes.

- a. From the perspective of equality between the sexes, we have yet to achieve the equality stipulated in the Constitution, and we must strive to realize the rights of women as stipulated by the Constitution.
- b. The “equality” under equality between the sexes does not designate equality of results between the sexes in all fields, but rather emphasizes equality of opportunity or of competitive conditions.
- c. Because only a few women have so far advanced to the Diet, we may need to devise some sort of measures to gradually promote this.

#### **(ii) Whether the System Allowing Married Couples the Option of Using Different Surnames Should Be Introduced**

In addressing issues related to sex, members also discussed the merits and demerits of introducing a system allowing married couples the option of using different surnames. Some members spoke in favor of introducing such a system, while other members spoke against it.

### **(2) Social Status and Family Origin**

Members discussed social status and family origin issues, primarily the legal portion of inheritance of illegitimate children, and expressed the following opinions.

- a. Regarding inheritance, the proviso of Article 900(4) of the Civil Code which awards illegitimate children only one-half the inheritance received by legitimate children has no rational basis. This has been criticized by the UN Commission on Human Rights and other international organs, and

violates Article 14 of the Constitution.

- b. The social discrimination against illegitimate children requires an urgent solution.

### **(3) Other Comments**

Members also expressed the following opinions regarding the specific contents of equality.

- a. The latter part of Article 14, Paragraph 1 needs to be revised to incorporate examples that match the present era.
- c. The Constitution does not include any provisions directly stipulating the rights of people with disabilities. The rights of people with disabilities to equality, prohibition of discrimination, and social participation should be clearly stipulated.

### **3) Constitutionality of the Imbalance in the Allocation of Diet Seats**

Members discussed whether the imbalance in the allocation of Diet seats, whereby the values of constituents' voting rights (the weight of a single vote) are unequal, violates Article 14 of the Constitution, and expressed the following opinions.

- a. The equality of suffrage goes beyond "the principle of one person one vote" to include "the equality of the value of voting rights," so Diet members have a responsibility to ensure that the differential in the weight of a single vote approaches 1 to 1.
- b. As for the apportionment of House of Councillors seats representing specific constituencies, I do not agree with the Supreme Court ruling that considering their function in representing prefectures, the equality of voting rights for those seats may be interpreted more loosely than the equality of voting rights for the House of Representatives because I think greater emphasis should be placed on the role of Diet members stipulated in Article 43 as representatives of all the people.

### **4) Other Comments**

Members also expressed the following opinions.

- a. While the Constitution does not have any provisions prohibiting age discrimination, the principle of equality stipulated in Article 14 has the purport of not allowing any type of discrimination, so of course age discrimination should not be permitted.
- b. Article 14, Paragraph 2 and Article 14, Paragraph 3 reflect the background of the time when the Constitution was formulated, so in the future if revising Article 14 becomes an issue it would be possible to revise Article 14, including the removal of those two paragraphs.
- c. It takes too long for Japan to ratify human rights covenants, beginning with the principle of equality. We must make greater efforts toward the domestic enforcement of international human rights covenants.
- d. The various policies regarding equality should be enhanced via legislative measures.

### **(Comments by Informants and Others)**

#### **<Meaning of Equality under the Law>**

- Freedom and equality are issues at the starting line. The subsequent differential that emerges via

competition is important because it provides an incentive for individuality. This should not be denied using the spurious argument of the law of the jungle. (SAKAMOTO Masanari, Informant)

- As for promoting affirmative action in Japan, there are concerns that affirmative action measures may institutionalize discrimination. (MUNESUE Toshiyuki, Informant)

#### **<Specific Contents of Equality>**

- Under the constitutional framework, individual citizens have the right to political participation, and it is essential to treat all citizens equally. From that perspective, irrational discrimination should not be permitted, and the discrimination in the inheritance rights of illegitimate children violates Article 14. (MATSUI Shigenori, Informant)
- Regarding the imbalance in the allocation of Diet seats, there is a constitutional requirement that the discrepancy in the weight of a single vote in the House of Representatives be held to within a ratio of 1 to 2, but I think the same cannot be said for the House of Councillors. That is because of the requirement for an even number of seats under the procedures whereby half of the seats in the House of Councillors are contested during each term. (UCHINO Masayuki, Informant)

### **3. Mental Freedom (Part I) – Freedom of Inner Thought**

Regarding the freedom of inner thought, an aspect of mental freedom, members discussed the guarantees and limits on the freedom of thought and conscience, the freedom of religion, and the principle of the separation of religion and state, as well as academic freedom and the self-government of universities.

#### **1) Freedom of Thought and Conscience**

##### **(1) Guarantees and Limits on Freedom of Thought and Conscience (General Discussion)**

Members expressed the following opinions regarding the guarantees and limits on freedom of thought and conscience.

- a. The provision that “freedom of thought and conscience shall not be violated” means that people are free to hold whatever private beliefs they wish, and that the state may not restrict or prevent them from doing so. Even the power of the state is not allowed to trespass on people’s inner thoughts.
- b. Even in the case of inner thoughts, the Constitution cannot be interpreted as permitting thoughts that deny democracy, so to some extent should not limits be set?
- c. While I agree with the point that modern constitutions are derived from protecting individuals’ human rights from the power of the state, considering how the freedom of thought and conscience is apt to cause friction among private persons, deeper research is required on how the Constitution should be applied among private persons.

## **(2) Guarantees and Limits on Freedom of Thought and Conscience (Detailed Discussions)**

Members discussed the following points as individual examples where guarantees and limits on freedom of thought and conscience become problematic.

### **(i) Prohibition of Disadvantages or Discriminatory Treatment Based on Personal Beliefs**

As for the issue of prohibition of disadvantages or discriminatory treatment based on personal beliefs, members primarily discussed the treatment of teachers who refused to raise or salute the national flag and to sing the national anthem at official functions at public schools, as well as ideological discrimination at private enterprises, and expressed the following opinions.

- a. The efforts of the state to integrate the citizenry using symbols such as the national flag and the national anthem are accepted and necessary.
- b. Forcing people to raise and salute the national flag or to sing the national anthem is absolutely unacceptable, and punishing teachers for refusing to do so under the pretext that they are violating work orders is impermissible under the constitutional imperatives.
- c. There are doubts as to whether the Constitution recognizes unlimited individual freedoms that may impede, in a certain sense, the integration of the state, and I think we have to seek some sort of order.
- d. The imposition of disadvantages and discriminatory treatment based on personal beliefs tends to occur at private enterprises, and such treatment is illegal in light of Articles 14 and 19.

### **(ii) Prohibition on Forcing Individuals to Act against Their Own Beliefs or Conscience**

Concerning the prohibition on forcing individuals to act against their own beliefs or conscience, members primarily discussed the participation of citizens as lay judges in the quasi-jury system. Members stated that in certain cases participation as lay judges could force individuals who advocate the prohibition of the death sentence to participate in capital cases, and otherwise force individuals to act against their own beliefs or conscience, and that therefore citizens with sincere reasons should be allowed to refuse to participate in the quasi-jury system.

### **(Comments by Informants and Others)**

- The freedom of thought and conscience is a freedom which concerns the heart of human existence, and it is the greatest natural right enjoyed based on the concept of people as free human beings. For that very reason, it is highly significant that the freedom of thought and conscience is guaranteed in the Constitution. (NOSAKA Yasuji, Informant)
- In the constitutions of other nations, there are not many cases where the freedom of thought and conscience is separately stipulated as it is in Article 19. Many Western constitutions stipulate freedom of conscience together with freedom of religion, and that trend is probably the result of a world view and view of life which place religious belief at the core. In those countries, moreover, freedom of conscience is not restricted to a religious meaning and there is a growing

interpretation that this freedom is guaranteed in a secular context as well. In that sense, there is no problem with the stipulation of the freedom of thought and conscience in Article 19, separate from Article 20. On the contrary, the separate stipulation may be considered appropriate. (NOSAKA Yasuji, Informant)

- As for the issue of saluting the national flag and singing the national anthem, in the Barnett case the U.S. Supreme Court ruled that individuals have the right not to salute the national flag based on their own religious conscience. This ruling shows America's true worth as a free society. (NOSAKA Yasuji, Informant)

## **2) Freedom of Religion**

### **(1) Background the Enactment of Articles 20 and 89**

As for the background to the enactment of Articles 20 and 89, members stated that the Constitution guarantees freedom of religion, without any reservations whatsoever, and also stipulates the separation of religion and state in detail because of Japan's unique experience whereby the freedom of religion was oppressed under the prewar system of State Shinto.

### **(2) Significance of the Separation of Religion and State**

Members voiced the following opinions regarding the significance of the separation of religion and state.

- a. The principle of separation of religion and state was enacted because the linkage of state power and religion is a threat to the freedom of religion of the individual that cannot be prevented just by positioning the freedom of religion as a freedom from the state, and the principle is significant as a means to ensure the guarantee of the freedom of religion.
- b. There is an academic debate regarding whether or not the principle of separation of religion and state should be considered as an institutional guarantee. As confirmed by the Supreme Court Grand Bench Ruling in the Tsu groundbreaking case, this principle is a systematic guarantee which promotes and reinforces the guarantee of freedom of religion.

### **(3) Presence of Violations of the Principle of Separation of Religion and State**

#### **(i) Criteria for Judging Violations of the Principle of Separation of Religion and State**

Regarding criteria for judging violations of the principle of separation of religion and state, members stated that the meaning of the principle is a strict separation between the state and religion, and that to achieve this strict separation criteria for judging whether or not the separation of religion and state has been violated should be stipulated in the Constitution.

#### **(ii) Limits to Permissible Acts of State under the Principle of Separation of Religion and State**

Members discussed the limits to permissible acts of state under the principle of separation of religion and state, primarily the issue of visits to Yasukuni Shrine by the prime minister and other government officials. Some members stated that such visits are constitutional, while other members said that they violate the Constitution.

### **A. Opinions That Visits to Yasukuni Shrine by the Prime Minister and Other Government Officials Are Constitutional**

As grounds for their opinions that visits to Yasukuni Shrine by the prime minister and other government officials are constitutional, members stated that the “purpose” of such visits is to mourn the war dead and the “effect” does not aid or encourage any specific religion, so in light of the purpose and effect standard these visits do not violate the principle of separation of religion and state. Members also cited the national consensus behind such visits.

### **B. Opinions That Visits to Yasukuni Shrine by the Prime Minister and Other Government Officials Are Unconstitutional**

Members presented the following reasons as grounds for their opinions that visits to Yasukuni Shrine by the prime minister and other government officials are unconstitutional.

- a. These visits constitute repeated religious actions by the prime minister and other government officials at a specific religious institution, and their “purpose” is religious has the “effect” of aiding and encouraging a specific religion, and therefore in light of the purpose and effect standard they violate the principle of separation of religion and state.
- b. To say that there is no problem with visits made in a private capacity, and that such visits are permissible if no expenditure of public funds and no use of public vehicles are made, is evasion of the principle of separation of religion and state.

### **C. Other Opinions concerning Visits to Yasukuni Shrine by the Prime Minister and Other Government Officials**

Members also expressed the following opinions regarding visits to Yasukuni Shrine by the prime minister and other government officials.

- a. The issue of visits to Yasukuni Shrine by the prime minister and other government officials should be resolved by constructing another facility to pay tribute to the war dead.
- b. It is pointed out that even if the Class A war criminals interred at Yasukuni Shrine are enshrined elsewhere, their spirits will still remain at the shrine, so from the perspective of Shinto that would not resolve doubts about violation of the separation of religion and state. Yet while separate enshrinement would not have any religious meaning or meaning under Shinto, I think they would still be politically significant.
- c. From the perspective of constitutional guarantees, we should consider resolving this through the introduction of a citizens’ lawsuit against the government or an objective litigation, or via legislative policy such as the establishment of a constitutional court.

### **(iii) Other Opinions concerning the Presence of Violations of the Principle of Separation of Religion and State**

Members also expressed the following opinions regarding the presence of violations of the principle of separation of religion and state.

- a. The expenditure of public funds should be permitted for the participation of the prime minister



and other public servants as a public act in very common customs, provided that such participation cannot be recognized as support to any specific religious group. Also, the articles of the Constitution should be amended to resolve any doubts regarding the constitutionality of such actions.

- b. Because the Constitution establishes the Emperor system, public involvement in ceremonies conducted by the Imperial Household is recognized as an exception to the principle of separation of religion and state.

### **(Comments by Informants and Others)**

- Freedom of religion is the most important human right which forms the core of the Universal Declaration of Human Rights. (NOSAKA Yasuji, Informant)
- Regarding the principle of separation of religion and state, prohibition of government assistance for the religious activities of non-religious groups is not explicitly stipulated, so as a legal theory there is room to consider adding this point to the Constitution. (NOSAKA Yasuji, Informant)
- As recognized by Supreme Court rulings, we should confirm that the separation of religion and state is not an absolute separation, and the provisions should be revised to clearly stipulate the purposes and effects standard. Only a small number of foreign nations stipulate the separation of religion and state. (ITO Tetsuo, Informant)
- I believe that the standard for determining violations of the separation of religion and state need to be fundamentally reconsidered. Specifically, the purposes and effects standard under case law is vague and imprecise, but the purposes and effects standard advocated by academic theory also does not necessarily function as a strict standard, so we need to construct a standard that meets the conditions in Japan. (NOSAKA Yasuji, Informant)

## **3) Academic Freedom**

### **(1) Academic Freedom**

Members expressed the following opinions regarding academic freedom.

- a. Along with the development of science and technology in recent years, especially the progress of advanced bioscience and biotechnology research, some aspects are expected to violate human dignity and to harm life and health, so in certain instances it will become necessary to give precedence to the public welfare over academic freedom as an individual right.
- b. We need to examine whether the existing stipulations under Article 23 are sufficient to respond to the development of science and technology, discuss bioscience and other areas involved with the dignity of human beings, and indicate some sort of direction in the Constitution.
- c. Regarding the reconciliation of academic freedom and the dignity of the individual, the principle of human dignity can already be found, for example, in Articles 11 and 13, and it is also important to address this by enacting the requisite laws based on the Constitution's human rights provisions.

## **(2) University Autonomy**

Members expressed the opinion that while academic freedom includes the autonomy of universities, there have been aspects where the interpretation to date has been confused because there is no express stipulation of university self-government, and that therefore university autonomy should be clearly stipulated in the Constitution as an institutional guarantee.

## **4. Mental Freedom (Part II) – Freedom of Expression**

Members stated that freedom of expression is an important right as the origin of democracy, and held discussions on the right to know, the right to access the mass media, the right to privacy and other rights concerning information as contemporary issues in freedom of expression.

### **1) Meaning of Freedom of Expression**

#### **(1) Value of Freedom of Expression**

Members stated that freedom of expression is an extremely important constitutional freedom which contributes to democratic government since it enables the people to be involved with political decision-making via engagement in free speech and other expression.

#### **(2) Freedom of Expression and the Right to Know**

##### **(i) Significance of the Right to Know**

Members stated that freedom of expression is the right to announce and convey thoughts and information, but that in today's advanced information society this concept needs to be restructured to make allowance for the perspective of "the right to know," and made following comments.

- a. Today, with the advanced centralization of information, freedom of expression cannot function effectively without the people's right to know as a prerequisite, and the right to know should also be guaranteed as a right prerequisite to participation in government.
- b. The legal nature of the right to know is both the traditional civil liberty of "freedom from the state" and is also a right having the function of the right to vote. However, the Information Disclosure Law and other legislation are necessary for the right to know to become a specific right of claim.

##### **(ii) Necessity of Expressly Stipulating the Right to Know**

Members were divided in their opinions regarding the necessity of expressly stipulating the right to know. While both advocates and opponents recognized the possibility that the right to know may be guaranteed under Article 21 and other existing constitutional provisions, they disagreed as to whether or not this right should nevertheless be stipulated.

#### **A. Opinions That the Right to Know Needs to Be Expressly Stipulated**

Members presented the following reasons as grounds for their opinions that the right to know needs to be expressly stipulated.

- a. Considering the importance of the role fulfilled by the right to know in citizens' political participation and government participation, the citizens' right to know should be stipulated in the Constitution, and not addressed at the level of laws as the government's accountability to the citizenry.
- b. When the Constitution was formulated it was not possible to envision that the information society would advance this far, and considering the vital role played by the right to know in the information society, the right to know should be expressly stipulated in the Constitution.
- c. Even though the right to know can be recognized based on existing provisions, that approach has limitations. For example, if the right to know is recognized based on Article 21, then the right to know is limited as a reflective effect of freedom of expression. Given such limitations, to guarantee the right to know in its inherent meaning, it should be expressly stipulated in the Constitution.

## **B. Opinions That the Right to Know Does Not Need to Be Expressly Stipulated**

As grounds for their opinions that the right to know does not need to be expressly stipulated, members said that even without an express stipulation Article 21 and other parts of the Constitution already provide grounds for recognizing the right to know, and that what is actually required is legislation to guarantee this right.

### **(3) Right to Access Mass Media**

#### **(i) Should the Right to Access Mass Media Be Explicitly Stipulated in the Constitution?**

Members expressed the following opinions as to whether or not the right to access mass media should be explicitly stipulated in the Constitution.

- a. The right to access mass media should be expressly stipulated in the Constitution along with other rights concerning information.
- b. The right to access mass media is already recognized on the grounds of existing provisions, so it is not necessary to explicitly stipulate this right in the Constitution.

#### **(ii) Other Comments**

Members noted that the contents of the right to access mass media include the right to request placement of paid advertising and the right to counterargument. However, members said, the "right to access" should also be recognized as including the right to control one's personal information held by the mass media, a right corresponding to the right to know including the right to control one's personal information held by the state.

## **2) Contents of Freedom of Expression**

Members presented the following opinions regarding the contents of freedom of expression.

- a. Among the freedoms of speech and publication which constitute the core of freedom of expression, freedom of the press has great significance as it serves the people's right to know and ultimately protects the people from the power of the state.

- b. Because the influence of the mass media today is rising as mass media develop and grow larger, and because mass media tends to be carried away by commercialism, there are concerns regarding the present conditions whereby the rights of those who are reported on are given a low priority, resulting in many violations of human rights.

### **3) Limits to Freedom of Expression**

#### **(1) Clash between Freedom of Expression and the Right to Privacy**

As for the issue of limits to freedom of expression, members primarily discussed how limits to freedom of expression should be approached in cases where there is a clash between freedom of expression and the right to privacy.

- a. When freedom of expression and the right to privacy collide, it is a universal principle that greater emphasis should be given to freedom of expression, which is one of the spiritual freedoms that must be given the highest respect in democratic countries.
- b. Freedom of expression is certainly important, but when that refers to the freedom of the press of the mass media, certain consideration must be given to protecting the privacy rights of individuals as the weaker party, because in relations between the mass media and individual citizens, the mass media is by nature the stronger party and individuals are in a weaker position.

#### **(2) Approaches to Reconciliation between Freedom of Expression and the Right to Privacy**

Members discussed concrete approaches to reconciliation when there is a clash between freedom of expression and privacy rights, primarily the reconciliation between the freedom of the press of the mass media and individuals' right to privacy.

##### **(i) Constitutional Reconciliation between Freedom of Expression and the Right to Privacy**

Concerning reconciliation between freedom of expression and the right to privacy, members stated that if the right to privacy is to be explicitly stipulated in the Constitution, then the stipulations on freedom of expression must be reinforced to retain a proper balance. Members cited the example of the Spanish Constitution which guarantees honor, privacy and the right of likeness, but together with freedom of expression stipulates the rights to freely disseminate and receive true information.

##### **(ii) Other Reconciliation between Freedom of Expression and the Right to Privacy**

Members also expressed the following opinions regarding reconciliation between freedom of expression and the right to privacy.

- a. Restriction of freedom of expression, which is one of the most important constitutional rights, requires great prudence. In particular, because freedom of the press supports citizens in exercising their right to know, legal restriction of the mass media is absolutely unacceptable, and must be left up to independent judgment.
- b. Self-regulation by the mass media is required, as a matter of course, to harmonize freedom of expression with the right to privacy, and to protect freedom of the press while simultaneously

protecting individuals' right to privacy. Checks by a third-party organ voluntarily established by the mass media would be effective to these ends.

- c. In principle, self-regulation should be used as the means for regulating freedom of the press, but it is now difficult for self-regulation to function because the mass media has become huge and commercialized in contemporary society. Therefore, self-regulation by itself is not sufficient to guarantee individuals' right to privacy.
- d. Together with self-regulation, a third-party organ that is independent from the government should be established, based on law, to work at both guaranteeing freedom of the press and protecting individuals' privacy.
- e. In considering a third-party organ, we should refer to the ombudsman systems seen in the Scandinavian countries.
- f. A so-called punitive damages system should be introduced for after-the-fact reconciliation by the courts in cases where there is a clash between freedom of expression and the right to privacy.

#### **4) Privacy of Communications**

Regarding the privacy of communications, members noted that with the expansion of cyberspace accompanying the recent development of the Internet, (1) communications have changed from the conventional concept of one-to-one communications to include communications capable of one-to-many and many-to-many; and (2) communications are undergoing both quantitative and qualitative changes. Considering this, members expressed the opinions that the approach to protecting privacy of communications also needs to be changed and along with that the wording of constitutional provisions protecting privacy of communications needs to be slightly altered.

#### **(Comments by Informants and Others)**

##### **<Value of Freedom of Expression>**

- The postwar interpretation and application of the Constitution have been lacking in the perspective of defining mental freedom as the civil liberties of free speech and political participation within the nation. (MUNESUE Toshiyuki, Informant)

##### **<Freedom of Expression and the Right to Know>**

- In Japan, the right to access is presently understood as being limited to the right to demand access to information held by the mass media, but in foreign countries this is already interpreted as a comprehensive right regarding information, including the right to access to information held by the state and the right to control one's personal information. Japan should also consider advancing in this direction from now on. (HORIBE Masao, Informant)
- As for providing legal grounds for granting the right of access to the mass media, in the relationship between individual citizens and the mass media the citizens are certainly in the weaker position, but if we establish legal rights for the individuals and impose duties on the mass media various problems would arise in relation to the freedom of expression stipulated in Article 21. Rather, we should think in terms of having the mass media voluntarily respond to demands for access by individuals. (HORIBE Masao, Informant)

### <Limits to Freedom of Expression>

- Privacy is considered as the foundation for freedom of expression and the free political participation of the citizenry. Therefore grasping privacy rights as being in opposition to freedom of expression is mistaken, and limits should be imposed on freedom of expression to protect privacy. (MUNESUE Toshiyuki, Informant)
- The press plays an important role in providing citizens with information regarding opaque organizations, so a framework for providing the greatest possible respect to freedom of expression by the press is necessary. In Japan, there is a bias toward excessive respect of privacy. (SAKAMOTO Masanari, Informant)
- As for reconciliation of the freedom of the press of media organs and individuals' right to privacy, it is desirable that mass media voluntarily create a third-party agency. In doing so, voluntary restraint by an industry-wide third-party agency is desirable rather than having each company take their own voluntary actions. (HORIBE Masao, Informant)
- The extremely low level of compensatory damages in Japan has been viewed as problematic for some time. Recently there has been a trend toward higher awards, and the courts are making rulings after thoroughly considering the appropriate damages. This trend of awarding higher damages for violations of privacy and honor is highly significant. (HORIBE Masao, Informant)

## 5. Economic Freedom

Regarding economic freedom, members primarily discussed the restriction of property rights.

### 1) Property Rights

#### (1) Guarantee and Restriction of Property Rights

Members expressed the following opinions regarding the guarantee and restriction of property rights.

- a. Property rights were deemed absolute at the end of the 18th century, but ever since the Weimar Constitution economic freedom has been viewed as having social constraints amid the trend toward the state control of society, and the Constitution of Japan also reflects this historical trend.
- b. I think that property rights are viewed, more than need be, as absolute in Japan today, and that their restriction has become difficult.
- c. The Constitution should stipulate that ownership rights are accompanied by responsibilities and duties.
- d. The Land Expropriation Law does not recognize the expropriation of land for military or defense purposes, and that is to retain consistency with Article 9. However, the Law for Special Measures for Land Expropriation for U.S. Military Bases allows the use of privately held land without following the normal land expropriation procedures, as long as the land is provided for the purposes of U.S. military bases in Japan. This places the Japan-U.S. Security Treaty above the Constitution, and is a manifestation of the violation of property rights.

## **(2) Restriction of Property Rights and Compensation**

Members expressed the following opinions regarding restriction of property rights and compensation.

- a. Case law recognizes that when private property is expropriated or its use is restricted for public use, the requirement for “just compensation” in Article 19, Paragraph 3 provides direct grounds for the owner to demand compensation, even in cases where there are no laws stipulating such compensation. Article 14, Paragraph 3 of the German Basic Law states that when land is expropriated this must be based on a law that determines the nature and extent of compensation. I think it would be desirable if the Japanese Constitution also had this sort of provision because in cases where laws have no provisions for compensation, it would clearly become unconstitutional, and could place restraints on legislation.
- b. Two different theories interpret “just compensation” as either full compensation or reasonable compensation, and from the standpoint of the people whose assets are expropriated, I believe complete compensation should be the basic principle. However, the “upon just compensation” stipulation of the present Constitution provides no details, and discussions should be held regarding as to whether or not this present wording is appropriate.

## **2) Protection and Formation of Good Scenery**

In relation with limitations on property rights, members discussed the protection and formation of good scenery, and expressed the following opinions.

- a. We should stipulate explicitly in the Constitution the rights and duties concerning the protection and formation of good scenery, also because values, such as pleasant and beautiful scenery that facilitates comfortable living for citizens, are starting to be emphasized.
- b. It is important to foster the ideal of cherishing Japan’s history, traditions and spiritual culture, and I think stipulating this in the Constitution would launch a nationwide movement to preserve good scenery.
- c. The root cause of the destruction of scenery is not the Constitution itself but rather how the constitutional provisions have been trampled down. The Constitution has to be properly administered.

## **(Comments by Informants and Others)**

### **<Restriction of Property Rights and Compensation>**

- In Article 29, Paragraph 2, the Constitution recognizes that the way in which property rights are adjusted shall be defined by law. Moreover, there are many different kinds of property rights, and their reconciliation demands a delicate balance and complicated judgments. The only way to realize this is for the legislative branch to conduct sufficient deliberations and realize it through the enactment of laws, and I think it would be rather difficult to stipulate more specific constitutional provisions than those presently in the Constitution. (NORO Mitsuru, Informant)
- There are two approaches to property rights: the Germanic law approach in which certain restrictions and duties are included within the concept of ownership rights from the start and the Roman law approach which first posits absolute ownership rights under civil law and then that

restrictions can be added from the outside via public statues, etc. My impression is that in Japan the Romanic law term “absoluteness of ownership rights” has taken on a life of its own, and is hindering the effective restriction of property rights. (NORO Mitsuru, Informant)

- Article 14, Paragraph 2 of the German Basic Law stipulates that ownership rights are accompanied by duties, while the Japanese Constitution has no such explicit provision. However, the German stipulation simply emphasizes a matter of common sense to make doubly sure, and as a conclusion this does not result in any decisive difference between Germany and Japan in the actual specific legal systems or constitutional interpretation. (NORO Mitsuru, Informant)

#### **<Restriction of Property Rights and Compensation>**

- There are two ways of thinking regarding the restriction of property rights and compensation – one idea is that even when laws do not stipulate compensation they are not considered unconstitutional and compensation can still be demanded directly based on the Constitution, while under the German system, laws which permit the expropriation of assets without stipulating compensation are deemed unconstitutional – and no immediate judgment can be made about which approach is superior. Under the German system, laws which do not stipulate compensation are deemed unconstitutional and invalid, and must be remade, which results in extremely unstable conditions. While it is good that such laws are deemed unconstitutional and invalid, this creates the difficult issue of how to provide compensation when damages have already occurred. (NORO Mitsuru, Informant)

#### **<Protection and Formation of Good Scenery>**

- Even if the protection and formation of good scenery and the protection of cultural assets were to be stipulated in the Constitution, I think they would not fit well as traditional rights, which restrict the power of the state, and would rather have to take the form of non-binding targets of state efforts. The specific issues of how the state would assist the protection and formation of good scenery and the protection of cultural assets must inevitably be addressed at the level of legislation. (NORO Mitsuru, Informant)

## **6. Rights under Criminal Proceedings**

Regarding rights under criminal proceedings, members discussed such items as the significance of rights under criminal proceedings, the right to have an attorney present when one becomes a suspect, the maintenance or abolition of capital punishment, and the rights of crime victims.

### **1) Significance of Rights under Criminal Proceedings**

Members expressed the following opinions regarding the significance of rights under criminal proceedings.

- a. The Japanese Constitution has as many as 10 articles concerning criminal proceedings, and guarantees the rights under criminal proceedings in great detail. While this is unusual in



comparative law, the Constitution emphasizes criminal proceedings out of regret over the serious violations of human rights that occurred under the Meiji Constitution, and this historical background must be considered when examining the rights under criminal proceedings.

- b. The objective of criminal proceedings is to guarantee appropriate procedures as a system to ensure that innocent persons are not found guilty, by allowing those who are charged by the state to present necessary and sufficient arguments and counter-evidence regarding the facts of their alleged crimes.
- c. The rights under criminal proceedings guaranteed by the existing criminal proceedings provisions may be viewed as “negative human rights” (the aspect of not unduly violating the rights of suspects and defendants), but it is also worth considering the future incorporation into the Constitution of the arraignment system (whereby defendants, during the procedure to enter plea, who plea guilty then skip the findings and proceed directly to the sentencing issues) and other systems which are part of “positive human rights” (the aspect of having the state respect the autonomous self-determination of suspects and defendants).

## **2) Rights Related to Criminal Proceedings**

### **(1) Rights of Suspects**

Members expressed the following opinions regarding the rights of suspects.

- a. To achieve complete transformation to an adversary system, efforts are needed to make criminal investigations more transparent, for example, by reviewing the restrictions on a suspect’s rights of private access to legal representation, mitigating the long-term detention of suspects, and granting the right to have counsel present when one becomes a suspect. Positive action should also be implemented to develop a system of public defenders at the suspect stage. In particular, while Articles 31 and 34 can be seen as providing the grounds for granting the right to have counsel present when one becomes a suspect, this right should be explicitly stipulated if and when the Constitution is revised.
- b. While Western nations recognize the right of individuals to have counsel present when they become suspects, that is because these nations also recognize the long-term detention of suspects. Considering this, we should examine granting the right to have counsel present for a limited period, such as for a certain part of the detention period.
- c. If we are to work toward making investigations more transparent from the perspective of guaranteeing the human rights of suspects, we must also simultaneously work toward strengthening investigative authority or this will not constitute the guarantee of human rights in the true sense from the perspective of guaranteeing the human rights of the public as a whole.

### **(2) Rights of Criminal Defendants**

Regarding the rights of criminal defendants, members primarily discussed the lay judge system in relation to the substantive guarantee of the right of access to the court, and expressed the following opinions.

- a. The introduction of the lay judge system should be positively evaluated in that it advances citizen participation in the administration of justice.

- b. We must take a cautious stance toward the introduction of the lay judge system from the perspective of the guaranteed rights of criminal defendants to receive a prompt public trial in an impartial court of law.

### **(3) Capital Punishment**

Members discussed the maintenance or abolition of capital punishment. Some members voiced the opinion that capital punishment should be maintained, while others stated that it should be abolished.

#### **A. Opinions for Maintaining Capital Punishment**

Members presented the following reasons as grounds for their opinions for maintaining capital punishment.

- a. Retributive punishment is an important aspect of the essence of punishment. Support for abolishing capital punishment is by no means great from Japan's cultural and religious perspective. Following the many foreign nations that have abolished capital punishment would result in a gap versus the awareness of the Japanese people.
- b. The essence of punishment includes the effect of crime prevention which maintains social order. Considering the declining effect in deterring criminal activity, especially among the younger generation, of punishments that deprive convicts of their freedoms, the effectiveness of capital punishment in preventing crime cannot be denied.
- c. Those who are in favor of abolishing capital punishment stress the irreversibility of capital punishment in cases where executed convicts are subsequently proven to be innocent, but the same can be said of fixed-term imprisonment sentences which also irreversibly deprive those falsely imprisoned of portions of their invaluable lives.

#### **B. Opinions for Abolishing Capital Punishment**

Members presented the following reasons as grounds for their opinions for abolishing capital punishment.

- a. The crime deterrent effect of capital punishment has not been proven.
- b. Capital punishment cannot be reversed in cases where the convicted are subsequently proven to be innocent.
- c. The abolition of capital punishment is the worldwide trend. Globally, there are now more nations that have abolished capital punishment than nations that still maintain it.
- d. The Council of Europe and other bodies treat capital punishment as a human rights problem, and the Treaty Establishing a Constitution for Europe lauds the abolition of capital punishment as a human right, but in Japan the awareness of capital punishment is belated and capital punishment is discussed as a criminal policy issue.

#### **C. Other Comments**

Members also expressed the following opinions regarding the abolition of capital punishment.

- a. Considering that the awareness of the Japanese people changes, we absolutely should not consider the abolition of capital punishment as a fixed issue.

- b. We should consider the introduction of life imprisonment (imprisonment with no possibility of parole) as a substitute for the death penalty.

### **3) Rights of Crime Victims**

Members expressed the following opinions regarding the rights of crime victims.

- a. From an international perspective, Japan is belated in providing relief to crime victims, and establishing their rights is important. To those ends, the rights of crime victims should be explicitly stipulated in the Constitution.
- b. For crime victims it is important not only to address the criminal justice aspects, but rather to advance comprehensive measures for crime victims as human rights issues, including the economic and psychological aspects.
- c. Measures for crime victims should not only include relief by improving criminal justice, but we should also consider preventative measures and rehabilitation measures as relief for crime victims whose human rights are violated by media reporting.
- d. Comprehensively, while the right to the pursuit of happiness stipulated in Article 13 provides constitutional grounds supporting the rights of crime victims, the perspective of Article 25 is also necessary when addressing this as a social solidarity issue. Because these articles provide grounds for deriving the rights of crime victims, there is no need to establish a new provision on the rights of crime victims in the Constitution.

#### **(Comments by Informants and Others)**

##### **<Significance of Rights under Criminal Proceedings>**

- Articles 31 to 40 stipulate passive human rights, how to position active human rights will become a major issue in future criminal proceedings. (TAGUCHI Morikazu, Informant)

##### **<Rights Related to Criminal Proceedings>**

- The function of capital punishment in maintaining society is more important than its role as the “absolute retribution” of the state, as advocated by Kant. Just as there may be states where society cannot be maintained without capital punishment and others where it can, there may be societies and nations where capital punishment is needed and others where it is not. From that perspective, the position could be taken that capital punishment might not be an absolute necessity to maintain the public peace and order of Japan. (TAGUCHI Morikazu, Informant)

##### **<Rights of Crime Victims>**

- Some argue that the rights of crime victims should be explicitly stipulated in the Constitution, but given the problem in defining the range of crime victims, the issue of comparing crime victims with other groups of people that need protection, and the perspective of the basic legal nature of the Constitution itself, we must take a cautious stance toward the appropriateness of stipulating such rights in the Constitution. Legally, various policies may be conceived for protecting crime victims based on Article 13, and such efforts should be made. Rather than stipulating provisions in the Constitution, it may be more appropriate as advocated by the

restorative justice theory to advance settlements with the perpetrators of the crimes, and have those reflected in the criminal proceedings. (TAGUCHI Morikazu, Informant)

## **7. Items regarding the Family and the Home**

Regarding the family and the home, members discussed whether a system allowing married couples the option of using different surnames should be introduced, as well as whether provisions on the family and the home should be established in the Constitution.

### **1) Whether a System Allowing Married Couples the Option of Using Different Surnames Should Be Introduced**

As for the introduction of a system allowing married couples the option of using different surnames, some members spoke in favor of introducing such a system, while other members spoke against it.

#### **A. Opinions That a System Allowing Married Couples the Option of Using Different Surnames Should Be Introduced**

Members presented the following reasons as grounds for their opinions that a system allowing married couples the option of using different surnames should be introduced.

- a. Article 24 guarantees the dignity of the individual and the essential equality of the sexes.
- b. Under the present conditions whereby the optional use of different surnames by spouses is not recognized, inevitably women's working rights are sometimes violated, and there are practical demands from women to continue using their maiden names after they marry.
- c. Opponents to introducing a system allowing married couples the option of using different surnames emphasize the breakdown of the family and other harmful influences, but those actually result from problems with how couples form their homes and raise their children, and have nothing to do with the introduction of this system.

#### **B. Opinions That a System Allowing Married Couples the Option of Using Different Surnames Should Not Be Introduced**

As grounds for their opinions that a system allowing married couples the option of using different surnames should not be introduced, members stated that having couples use the same surname is a good Japanese tradition, and cited concerns that introducing such a system would induce the collapse of the family, etc.

### **2) Whether Items regarding the Family and the Home Should Be Stipulated in the Constitution**

Some members voiced the opinions that stipulations regarding respect for the family and the home or respect for the community should be established in the Constitution, while other stated that they should not.

### **A. Opinions That Stipulations regarding Respect for the Family and the Home and Respect for the Community Should Be Established in the Constitution**

Members presented the following reasons as grounds for their opinions that stipulations regarding respect for the family and the home and respect for the community should be established in the Constitution.

- a. To resolve emerging social problems, we must reconfirm the importance of the family and the home as the basis of society and rebuild the roles that have been played by the family and the home, such as home education and family mutual assistance. To those ends, we need to stipulate respect and preservation of the family and the home in the Preamble and articles of the Constitution.
- b. We should first expressly stipulate respect for the family and the home in the Constitution, and then develop specific policies in accordance with those Constitutional guidelines.
- c. The aspect whereby Article 24 has brought forth a trend toward excessive individualism cannot be denied.
- d. The trend of modern constitutionalism is important, but in addition to that the Constitution also has the function of providing behavioral norms for the people.
- e. The Western perspective on the Constitution and human rights, based on opposition between the individual and the power of the state, does not conform with the Japanese and Asian perspective of emphasizing the family, the home, and the community over the individual.

### **B. Opinions That Stipulations regarding Respect for the Family and the Home and the Community Should Not Be Incorporated in the Constitution**

Members presented the following reasons as grounds for their opinions that stipulations regarding respect for the family and the home and the community should not be incorporated in the Constitution.

- a. In light of the trend of modern constitutionalism, items with moral objectives such as respect for the family and the home should not be written into the Constitution.
- b. Values that are written into the Constitution must be universal, so values such as respect for the family and the home which cannot be called universal should not be written into the Constitution.
- c. The U.S. experience with Prohibition demonstrates how efforts to stipulate values and morals such as respect of families and households in law have an adverse effect, and legislators must take heed of this point.
- d. In the American liberal versus communitarianism debate, communitarianism focuses on the role of intermediary groups such as the family, the home, and local communities, and works to rebuild the social order by reviving these groups, but communitarianism does not go as far as to assert that values and morals should be stipulated by law.
- e. There is criticism that the Constitution is excessively biased toward individualism, but individualism is not the same as self-interest. Individualism is mutual respect among individuals, so there is no need to take a negative view toward Article 24.
- f. To resolve social problems such as the collapse of the family, rather than take the ideological

approach of stipulating protection of the family in the Constitution we should realize practical policies to defend family life, such as eliminating excessively long working hours, from the perspective of children's rights.

- g. There are concerns that stipulating family provisions in the Constitution would lead to a reversion to the prewar family system.

### **3) Other Comments**

In other comments on the family and the home, members expressed the opinions that rather than stipulating moral objectives such as respect for the family and the home, it would be acceptable to make provisions in the Constitution, for example, the right for people to demand policies whereby they can share and enjoy family values or stipulating the government's responsibility to implement such policies.

#### **(Comments by Informants and Others)**

##### **<Whether a System Allowing Married Couples the Option of Using Different Surnames Should Be Introduced>**

- Freedom means that the wider the range of choices the better, so it is important to allow the use of whatever surname the individual prefers. Some say that introducing a system allowing married couples the option of using different surnames would lead to the collapse of the family, but even before the issue of surnames, the collapse of the family has substantive causes, so the superficial argument that the use of different surnames would lead to the collapse of the family has absolutely no credibility. (SAKAMOTO Masanari, Informant)

##### **<Whether Items regarding the Family and the Home Should Be Stipulated in the Constitution>**

- The family is the building block of society and its ultimate foundation. "Respect of the family" should be expressly stipulated in the Constitution, and efforts should be made to protect the family. In drafting such a provision, we should refer to the constitutions of other nations that have similar provisions and to other documents such as the Universal Declaration of Human Rights. (ITO Tetsuo, Informant)
- Since World War II, the "self" has been greatly stressed in opposition to the sacrificing of one's personal interests for the public good. This "self" has tended to be interpreted as egoism and self-interest, and that has led to all kinds of decay and the decline of morality. (KOBAYASHI Masaya, Informant)
- The rise of free-marketism like libertarianism and neo liberalism, and egotistical, rights-centered individualism in the U.S. during the 1980s resulted in greater disparity between the rich and the poor, a bubble economy, environmental degradation and other market economic problems, as well as a decline in morality, rising crime, a declining birthrate with the resulting aging of society, a weakening of human relations, and other grave social problems. Communitarianism responds to these problems by stressing the necessity of ethics, morality and community, and aims at a revival of society with the community as its core. Rather than legislating values,

however, communitarianism seeks to pursue the potential for ethical behavior within the existing Constitution and to boost social morality as its primary principle. (KOBAYASHI Masaya, Informant)

- The Constitution of Japan is not so influential that the existence of the Constitution has made human relations stiff, and blaming the Constitution for the decline in filial piety also overestimates the power of the Constitution. (ANNEN Junji, Informant)

## **8. Social Rights**

### **1) Right to a Minimum Standard of Living**

Regarding Article 25 which stipulates the right to a minimum standard of living, members discussed their assessments of Article 25 and the legal character of Article 25, and then discussed the social security system ideal for realizing the right to a minimum standard of living.

#### **(1) Assessments of Article 25**

Members expressed the following opinions regarding their assessments of Article 25.

- a. Article 25 was incorporated at the time when social rights were born in human rights history, and has exceptionally replete contents compared with the constitutional provisions in other countries as it stipulates the state's social security obligations.
- b. The phrase "the minimum standards of wholesome and cultured living" in Article 25, Paragraph 1 emerged reflecting the era when the Constitution was enacted, so there are doubts as to whether this phrase is still appropriate today.
- c. Even though the social security system is supported by mutual aid and reciprocal cooperation among people, these concepts are not even mentioned within the text of Article 25.
- d. In the present era, consideration has come to be given for example to privacy, the right to self-determination and freedom of choice, so we must go beyond guaranteeing merely the minimum standards of living and seek a 21st century style right to a minimum standard of living provisions.
- e. We should develop Article 25, Paragraph 1 as the grounds for public assistance as a national minimum and Paragraph 2 as the grounds for the pension, medical and nursing care systems as social security via mutual assistance and revise their wording as appropriate. At the same time, the provisions for "social welfare" and "public health" presently stipulated in Paragraph 2 should be greatly expanded and established anew as articles adopting a separate perspective from the right to a minimum standard of living.

#### **(2) The Legal Character of the Right to a Minimum Standard of Living**

Members expressed the following opinions regarding the legal character of Article 25.

- a. Article 25 is a program provision which stops at imposing only a political and moral obligation on the state to secure the people's existence, and does not guarantee the specific rights of individual citizens.

- b. Academic theory on Article 25 has developed from program provision into abstract rights and then into concept rights. Legislation has been enacted in accordance with this, and substantive rights have been created via the judiciary's checks on such legislation. Henceforth, efforts are needed to further develop these substantive rights.

### **(3) The Concept of the Social Security System**

Various social security systems have been constructed based on the Article 25 stipulations, and members expressed the following opinions regarding the concept of the social security system.

- a. When considering social security, we should emphasize mutual aid and reciprocal cooperation from the social solidarity ideal. We should carefully reexamine culture and customs that have long been nurtured in Japan, including the spirit of mutual assistance.
- b. I agree with the ideal of social solidarity in social security, but we should emphasize the rights aspect of the Article 25 provisions, as well as the responsibility of the state in social security which corresponds to the right to a minimum standard of living.

### **(Comments by Informants and Others)**

- Having the Constitution hold up the ideal of the welfare state a bit more is one option. However, this is very much a policy judgment, and as the will of the people may change along with the changing times, the present approach of limiting the constitutional stipulations to those in Articles 13 and 25 and leaving the manifestation of the concrete form of the welfare state up to the level of individual laws is also conceivable. (HIROI Yoshinori, Informant)
- As for whether or not the wording of Article 25 needs to be changed in rebuilding the social security system from the standpoint of social solidarity, the concept of social solidarity cannot be directly derived from Paragraph 1, but it can be derived from Paragraph 2. Accordingly, the interpretation that there is no need to revise the wording of Article 25 is entirely feasible. (NAKAMURA Mutsuo, Informant)
- I believe that Article 25 is not a program provision, but is a provision stipulating abstract rights. There is also a theory of concrete rights which holds that a constitutionality lawsuit on legal nonfeasance could be filed in the absence of legislation to make Article 25 concrete, but because under the existing laws there is no such type of litigation, this remains a minority opinion. (NAKAMURA Mutsuo, Informant)

## **2) The Right to Receive Education**

Regarding Article 26 which stipulates the right to receive education, members discussed their assessments of Article 26 as well as the article's relation with the Fundamental Law of Education.

### **(1) Assessments of Article 26**

Members expressed the following opinions regarding their assessments of Article 26.

- a. Article 26 is a well-made provision, and it is also an important provision that stipulates equal educational opportunity and free compulsory education.
- b. As for Article 26, considering the differences in the conditions surrounding education between



the time when the Constitution was enacted and today, one idea would be to adopt expressions which expand the article's range to encompass lifelong education.

## **(2) Relation with the Fundamental Law of Education**

Members expressed the following opinions regarding the relation between the Constitution and the Fundamental Law of Education.

- a. As long as the three principles of the Constitution are respected, it would be only natural to review the Fundamental Law of Education from the perspective of how to reform the approach to education and then to revise the Law accordingly.
- b. The Fundamental Law of Education lacks important provisions regarding the role of education in handing down history, tradition and culture to subsequent generations. To rebuild the family, society and morality, we need to reaffirm the traditions, customs and mutual support as good communities that are firmly rooted in Japanese society, and promptly revise this law.
- c. Because the cultivation of religious sentiment is extremely important in school education, the Constitution and the Fundamental Law of Education should be revised so that it can be definitively implemented.
- d. While I do not deny the need for revising the Fundamental Law of Education, that law has a semi-constitutional status and incorporates many philosophical clauses, so the revision requires ample time and exhaustive discussions.
- e. Considering that the Fundamental Law of Education was enacted under the principles of the Constitution as a basic law concerning education, the Fundamental Law of Education and the Constitution together constitute a unified entity and both have abundant contents, so there is no need for any revision, and rather it is important to put their principles into practice.
- f. No particular moral codes or views of the human being should be brought into the Fundamental Law of Education.

## **(Comments by Informants and Others)**

- While all people each equally have one vote based on equality under the law and equality in political rights, individual citizens are required to have a solid knowledge base as a standard of judgment to exercise that one vote in our complex contemporary society. Under the present conditions, compulsory education is the only place where that knowledge base can be created. (KARIYA Takehiko, Informant)
- The Fundamental Law of Education has its direct grounds in Article 26 of the Constitution, and the two are closely related, so we must take a cautious stance toward revising the Fundamental Law of Education by itself. (OKAMURA Ryoji, Informant)

## **3) The Right and Obligation to Work and Fundamental Labor Rights**

Regarding Articles 27 and 28 which stipulate the right and obligation to work and fundamental labor rights, members discussed their assessments of these provisions as well as the restrictions on the fundamental labor rights of public employees.

### **(1) Assessment of Articles 27 and 28**

Members expressed the following opinions regarding their assessments of Articles 27 and 28.

- a. Articles 27 and 28 should be praised because they stipulate the right to work, that working conditions will be fixed by law, fundamental labor rights and the other necessary items, and because they can be applied flexibly and elastically in enacting legislation.
- b. Unemployment, the difficulty members of the younger generation face in finding employment, and the other present social problems concerning labor are not due to any problems with Articles 27 and 28, but rather exist because the ideals of the Constitution are not realized.
- c. Fundamentally there are no problems with Articles 27 and 28, but perhaps additions should be made to the present stipulations to incorporate such perspectives as the joy of work, self-realization through work, and lifelong work.

### **(2) Restrictions on the Fundamental Labor Rights of Public Employees**

Members expressed the following opinions regarding the restrictions on the fundamental labor rights of public employees.

- a. The present restrictions on the fundamental labor rights of public employees are just considering the “sovereignty theory,” on which precedent the case of the Ministry of Agriculture and Forestry workers’ union strike to protest planned revisions to the Law Concerning the Performance of Police Functions is grounded, and the constitutional principles of parliamentary democracy and fiscal democracy. Strikes and other labor actions by public employees that affect the budget and the contents of government services distort the democratic political process.
- b. The fact that Japanese public employees are not granted fundamental labor rights is in violation of International Labour Organisation (ILO) Convention No. 87 (Freedom of Association and Protection of the Right to Organise), and the ILO has issued recommendations to Japan in this regard.
- c. Restriction of the fundamental labor rights of public employees is an issue of how to balance the demands of Article 28 with the demands of Articles 41 and 83. The present public servants system attempts to reach a balance by stipulating working conditions by law and the National Personnel Authority recommendation system is a trade-off for the restrictions. Sufficient discussions must be held on how to achieve this balance in revising the public employees system.

### **(Comments by Informants and Others)**

- I fundamentally approve of Articles 27 and 28. There are also opinions that we should defend Article 27, Paragraph 3, which prohibits the exploitation of children, and further enhance the constitutional provisions for children. (KUSANO Tadayoshi, Informant)
- At the time when the Constitution was enacted, the Diet made revisions to the sections of the government draft concerning labor rights and social rights, adding guarantees of “rest” to the working rights and “the rights to maintain the minimum standards of wholesome and cultured living” to the social rights. The debate at that time is highly suggestive even for the present day. (KUSANO Tadayoshi, Informant)
- The present constitutional provisions regarding labor are extremely systematic, abstract, flexible

and elastic. They will not constitute an impediment to enacting legislation in the future to match the changing times. As the world changes, however, the social security system established under Article 25 has come to an impasse and the radical revision of the social security system is called into question. The extent to which the state should guarantee social equality or if the state should instead adopt a laissez-faire stance is an issue. Whether or not the Constitution should include stipulations that counteract social inequality will also become an issue. (SUGENO Kazuo, Informant)

- One of the merits of the decision on the case of Ministry of Agriculture and Forestry workers' union strike to protest planned revisions to the Law Concerning the Performance of Police, Functions which ruled that restrictions on the fundamental labor rights of public employees are constitutional by altering the precedent, is that it clarified that the fundamental labor rights of public employees are not conclusively defined in Article 28, but rather that the Constitution has various principles that conflict with the principle of collective bargaining, and that the Article 28 rights must by necessity be relative and flexible. (SUGENO Kazuo, Informant)

## **Subsection 6 The Political System**

Concerning the political system, members discussed the bicameral system, the electoral system, and the administration, procedures and other items related to political parties and the Diet as “items regarding the Diet;” the parliamentary cabinet system and the direct popular election of the prime minister as “items regarding the Cabinet;” and the ombudsman system, policy evaluation and the interpretation of the Constitution by the political branch as “other items.”

### **I. The Diet**

#### **1. The Bicameral System**

Regarding the bicameral system, members mostly discussed the issue of whether to retain the bicameral system or adopt a unicameral system, and reforms assuming that the bicameral system will be maintained.

##### **1) Should Japan Maintain the Bicameral System or Adopt a Unicameral System?**

Regarding the issue of whether to retain the bicameral system or adopt a unicameral system, most members expressed the opinion that the bicameral system should be maintained, but some members advocated adopting a unicameral system.

##### **A. Opinions in Favor of Maintaining the Bicameral System**

Members presented the following reasons as grounds for their opinions that the bicameral system should be maintained.

- a. It is necessary to reflect the diverse will of the electorate and secure opportunities for minorities to express their opinions.
- b. To check and balance both Houses, careful deliberations should be conducted through overlapping debate on legislative bills and the budget, keeping in mind the coverage provided by mass media and the maturation of public opinion. Oversight of the administration also functions adequately because it is duplicated by the two Houses.
- c. The bicameral system has been firmly established in Japan for a long time.
- d. It is possible to address affairs of state from a long-term perspective in the House of Councillors, whose members have long terms of office and which is not dissolved.
- e. Abrupt political changes can be averted because only half of the House of Councillors members are elected each time.
- f. If urgent national issues arise while the House of Representatives is dissolved, it is possible to call for an emergency session of the House of Councillors.

##### **B. Opinions That a Unicameral System Should Be Adopted**

Members presented the following reasons as grounds for their opinions that a unicameral system should be adopted.

- a. The House of Councillors is meaningless as it has become criticized as a carbon copy of the

House of Representatives and both Houses engage in similar debates.

- b. With the advance of internationalization, we must work at swift national decision making.
- a. On the other hand, some have expressed concerns that by over-emphasizing the necessity for quick decisions, the Diet may devolve into an organ that merely confirms government policy.
- b. There are concerns that government may come to a standstill when the compositions of the two Houses and their stances towards bills differ.
- c. Over 60% of nations worldwide adopt unicameral systems. Many nations with bicameral systems have a federal system, but Japan is a unified state.
- d. In practice, it would be difficult to reform the existing House of Councillors.

## **2) Discussion of Reforms Predicated on a Bicameral System**

Regarding reforms assuming that the bicameral system will be maintained, members discussed clarification of the division of roles between the two Houses and review of the methods of electing the members of each House as reforms in response to criticisms that the House of Councillors has become a carbon copy of the House of Representatives, and many members advocated clarification of the division of roles between the two Houses and review of the electoral methods. As reforms in response to the criticism of concern that government may come to a standstill when the majorities in the two Houses differ, members discussed the merits and demerits of reducing the powers of the House of Councillors as well as self-restraint in the exercise of its power.

### **(1) Clarification of the Division of Roles between the Two Houses**

Members expressed the following opinions for the concrete division of roles.

- a. To strengthen the Diet's function of reviewing the final accounts, the House of Representatives should focus on reviewing the budget and the House of Councillors on reviewing the final accounts, or each House should specialize even exclusively on these respective functions. The Board of Audit and other bodies should then be attached to the House of Councillors, assuming this type of division of roles.

In response to this, other members voiced (1) opinions that as Japan has adopted a bicameral system, from the perspective of fiscal constitutionalism both Houses should review the budgets and final accounts, and (2) opinions that exclusive specialization in each role would obstruct the function whereby review of final accounts in each House is utilized to eliminate wasteful expenditures in the compilation of subsequent budgets.

- b. The House of Councillors' role of overseeing the administration and its investigative function from a long-term viewpoint should be reinforced. Also, a format for examining laws from a policy evaluation perspective should be introduced in the House of Councillors.
- c. The House of Councillors should deliberate bills that stipulate basic policy items in specific fields (basic laws) prior to the House of Representatives.
- d. The House of Councillors should be given exclusive authority or supremacy over the House of Representatives for the Diet confirmation of government personnel appointments. Also, the House of Councillors should be given the authority to nominate Supreme Court justices in place

of the system of popular electoral review of Supreme Court justices.

- e. To avert confusion when the majorities in both Houses differ, the House of Representatives should be given precedence over legislative bills, but in fields such as diplomatic matters the House of Councillors, with its longer terms of office, is better suited and should be given precedence.

In response to this, other members voiced opinions that because areas such as diplomacy, security and the judiciary will be central issues in government administration in the future society of decentralized authority, and to strengthen democratic control over diplomacy, the House of Representatives should be in charge of diplomacy.

- f. The bicameral system should be restructured so that the House of Representatives bears the legislative function and the House of Councillors determines the constitutionality of laws.

## **(2) The Bicameral System and Methods of Selecting the Members of Each House**

Regarding the bicameral system and methods of selecting the members of each House, members criticized the similarity of the present electoral systems of the two Houses because different forms of representative functions are expected under a bicameral system, and expressed the following opinions regarding the methods of selecting members of each House.

- a. For the House of Representatives to aggregate the will of the people, its members should be elected under a single-seat constituency system only, while for the House of Councillors to reflect the will of the people its members should be elected under a proportional representation system only or under a large-sized, multiple-seat constituency system only at the level of individual prefectures or *do-shu*.
- b. The House of Representatives should comprise regional representatives, and we should consider a framework whereby the heads of local government bodies would simultaneously serve as members of the House of Councillors.

In response to this, other members expressed opinions that we must realize the spirit of Article 43, Paragraph 1 which stipulates that every Diet member shall be “representative of all the people.”

- c. Assuming that the *do-shu* system will be introduced in the future, the members of the House of Councillors should be *do-shu* representatives.
- d. House of Representatives members should be elected under a smaller-sized, multiple-seat constituency system, and House of Councillors members should be elected under a large-sized, single-seat constituency system.
- e. The constituencies for House of Councillors members should be nationwide constituencies only.
- f. We should consider the introduction of recommendation, vocational representation and other systems for selecting House of Councillors members.

## **(3) Whether the Power of the House of Councillors Should Be Reduced**

Regarding whether the power of the House of Councillors should be reduced, some members expressed the opinion that its power should be reduced and the House of Councillors should be

positioned as a secondary House with complementary functions, while other members expressed opposition to this.

#### **A. Opinions in Favor of Positioning the House of Councillors as a Secondary House with Complementary Functions by Reducing Its Power**

Members presented the following reasons as grounds for their opinions in favor of positioning the House of Councillors as a secondary House with complementary functions by reducing its power.

- a. Under the present system whereby the House of Councillors has essentially equivalent power to the House of Representatives in areas such as the passage of laws, in practice it is difficult to administer the government without holding a majority in the House of Councillors. To avert a standstill in government affairs when the ruling party holds a minority in the House of Councillors, the requirements for the House of Representatives to repass a bill rejected by the House of Councillors (Article 59, Paragraph 2) should be changed from the present “majority of two-thirds or more” to a simple majority.
- b. Is it necessary to maintain the present bicameral system whereby the two Houses have essentially equivalent power in areas aside from the nomination of the prime minister, the ratification of treaties and the approval of budgets? Rather, we need to deliberate positioning the House of Councillors as a complementary second House.

#### **B. Negative Opinions toward Reducing the Power of the House of Councillors**

Members presented the following reasons as grounds for their negative opinions toward reducing the power of the House of Councillors.

- a. The significance of the bicameral system lies in careful deliberations and the pluralistic reflection of the will of the people. The modification and rejection of bills which results from the formation of the will of the people via deliberations of bills in both Houses is significant. Arguments that belittle the role of the House of Councillors result in having the Diet itself setting its function as an organ that merely confirms government policy.
- b. It is difficult to agree with reforms that would weaken the influence of the House of Councillors.
- c. It is inappropriate to consider the bicameral system solely from the aspect of government stability despite the fact that the two Houses have different roles, etc.

#### **(4) Self-Restraint by the House of Councillors in Its Exercise of Power**

Regarding the exercise of power by the House of Councillors, some members expressed the opinion that for the House of Councillors to avoid partisan politics and truly become the “House of common sense,” the practice of voluntary restraint should become established in areas such as issuing censure motions against the prime minister, but other members stated that in as much as House of Councillors members are directly elected by the people it would be difficult to request the House of Councillors to exercise self-restraint in its exercise of power.

#### **(5) Other Comments**

Members also expressed the following opinions regarding reform of the bicameral system.

- a. Hypothetically, if the bicameral system is to be maintained, we will need to implement reforms such as making no party impose party-mandated binding votes in the House of Councillors.
- b. The holding of joint committees of both Houses should be made obligatory when the opinions of the two Houses differ.
- c. We should consider enhancing the House of Councillors' investigative authority from a long-term perspective and its advisory function.
- d. We should consider establishing a Board of Administrative Oversight within the House of Councillors.
- e. We should abandon the system whereby only half of the House of Councillors members are elected each time, and change the term of office to two or three years.

### **3) Other Comments**

Members also expressed the following opinions regarding the bicameral system.

#### **(1) Partisanship in the House of Councillors**

With the understanding that political parties have gained control over the present House of Councillors, some members expressed negative opinions toward such a partisan House of Councillors, while other members stated that the House of Councillors must inevitably be partisan for stable government administration.

#### **(2) Whether House of Councillors Members Should Become Ministers of State**

Members expressed the opinion that House of Councillors members should not be appointed as ministers of state so that the House of Councillors can exercise its function of checking the government as the "House of common sense."

#### **(3) Adoption of a Unicameral System and Other Reforms Requiring Constitutional Revision, and the Approval of the House of Councillors**

Because the adoption of a unicameral system and some other reforms would require the revision of the Constitution, members expressed the following opinions regarding the approval of the House of Councillors.

- a. I doubt that the approval of the House of Councillors could be gained for the proposal to abolish the House of Councillors and adopt a unicameral system.
- b. Because it will not be possible to gain the approval of the House of Councillors for a reform that abolishes the House of Councillors to adopt a unicameral system, a unicameral system should be realized by combining both Houses.
- c. If constitutional revisions are to be made regarding the division of roles between the two Houses, to gain the approval of the House of Councillors, the House of Representatives must consider which authority to relinquish and give precedence to the House of Councillors.



### **(Comments by Informants and Others)**

#### **<Whether the Bicameral System Should Be Maintained or a Unicameral System Be Adopted>**

- In nations like Japan with a large population, I doubt it would be possible to aggregate the diverse will of the electorate in a single House, so the bicameral system should be maintained. (OISHI Makoto, Informant)
- Regarding careful deliberation which is one of the reasons for the existence of the second House, the question is the extent to which this adds useful perspectives. The significance of the House of Councillors may be sought in how it catches changes in public opinion and adds a different perspective to prior deliberations. (TADANO Masahito, Informant)
- The House of Councillors exists to avert the tyranny of the majority and reflect the diverse opinions and interests of the people via careful deliberations, so it should not be abolished. (YAMADA Junpei, Speaker)
- Considering the national conditions in Japan, with its highly homogeneous citizens, I do not object to a unicameral system. If the bicameral system is maintained, the methods of selecting members of each House should be changed, for example by adopting indirect elections or an appointment system for the House of Councillors, and the powers of each House should be reconsidered. (ODA Haruto, Speaker)

#### **<Clarification of the Division of Roles between the Two Houses>**

- Regarding the review of budgets and final accounts, if the House of Representatives specializes exclusively in reviewing the budgets and the House of Councillors in reviewing the final accounts, there may be no feedback from the final accounts review in the House of Councillors to the subsequent budget review in the House of Representatives. (KUBOTA Yoshio, Informant)
- Regarding the review of budgets and final accounts, if the right to approve budgets were given only to the House of Representatives and the review of final accounts were conducted only by the House of Councillors, there are doubts as to whether the House of Councillors could exercise effective control over the government because it would be cut out from the budget process. (TADANO Masahito, Informant)

#### **<The Bicameral System and the Methods of Selecting the Members of Each House>**

- For the House of Councillors to function as the House of reason, it should secure means of casting votes whereby members are not restrained by the organizations they belong to and political parties do not exert much influence, with frank deliberations in an open forum aimed at realizing the objective public interest. To those ends, a certain number of members with highly diverse backgrounds should be selected. (HASEBE Yasuo, Informant)
- Aside from regional representatives, another idea is group interests and vocational representation reflecting factors aside from individuals, such as social classes, economic activity units and groups with professional expertise, but that poses very great problems. It is difficult to imagine how group interests and vocational representation could be harmonized with the

principles of universal suffrage and equal suffrage, including the criteria for appropriate representatives. (TADANO Masahito, Informant)

- I have doubts about having vocational representatives and persons with expert knowledge and experience make up the membership of the House of Councillors. The classification of vocations and the determination of the number of representatives would be extremely difficult, and the definition of “persons with expert knowledge and experience” is vague. (YAMAZAKI Masakazu, Speaker)
- Because it is desirable for both Houses to respectively have their own individual functions, it is important that the organizational methods stipulating the election of members of each House should, as far as possible, be organized on different principles. (OISHI Makoto, Informant)

### **<Self-Restraint by the House of Councillors in Its Exercise of Power and Reducing the Power of the House of Councillors>**

- I think the Constitution stipulates a high hurdle for the second passage of bills by the House of Representatives because it aims to promote compromise and cooperation between the two Houses. In the case of Japan, both Houses have democratic legitimacy and the members of both Houses are chosen under similar electoral systems, so it is difficult for the compositions of the two houses to differ, but I think the second House still has plenty of leeway to add diverse adjustments in the fine points to the first House. (TADANO Masahito, Informant).
- The House of Representatives is the chamber that supports the administration and creates the laws and budget. In contrast, the critical, think-tank type function of the House of Councillors in overseeing the administration, independent from the logic of the ruling party which upholds the government, should be reinforced. To that extent, its legislative power and the power to nominate the prime minister should be reduced. (YAMAGUCHI Jiro, Informant)
- To make the most of the advantages of a bicameral system, the compositions and functions of the two Houses must differ. At present, however, the House of Councillors has substantially strong power to pass legislative bills, and to run the government the ruling party must secure a majority in the House of Councillors as well, so the advantages of a bicameral system are not fully realized. That could be achieved by such measures as reducing the constitutional power of the House of Councillors, but amending the Constitution requires the consent of at least two-thirds of the members of the House of Councillors, which would be difficult in reality. Accordingly, we need to establish a practice in which the House of Councillors voluntarily restrains its exercise of power. (HASEBE Yasuo, Informant)
- There are examples where the bicameral system is functioning well. In the United States joint committees of both Houses function very positively, and in European nations governments have an established practice of revising bills to reflect Upper House opinions to get the bills passed. (OISHI Makoto, Informant)

## **2. The Electoral System**

Regarding the electoral system, members discussed items such as how the electoral system should be handled in the Constitution and what sort of electoral system is desirable.

### **1) The Electoral System and Constitutional Provisions**

Regarding the electoral system, as the provisions on elections in the present Constitution are simple, members expressed opinions that the Constitution should stipulate more concrete and detailed electoral provisions, and that the Constitution should expressly stipulate that the disparity in the weight of a single vote may not exceed two-to-one.

### **2) What Sort of Electoral System Is Desirable?**

Regarding what sort of electoral system is desirable, from such perspectives as reflecting and aggregating the will of the people and influence on the political party system, members voiced the differing opinions that the single-seat constituency system is desirable, that the smaller-sized, multiple-seat constituency system is desirable, and that the proportional representation system is desirable, and also stated that the principles of representation should differ between the two Houses.

#### **A. Opinions That the Single-Seat Constituency System Is Desirable**

Members voiced opinions that to energetically make changes of government and revitalize the parliamentary cabinet system, from the perspective of orientation toward two major political parties, a complete single-seat constituency system is desirable.

In response to this, other members stated that the Constitution seeks not the aggregation of the popular will but the reflection of the popular will, and because there are many wasted votes under the single-seat constituency system that system is inappropriate from the perspective of reflecting the will of the people.

#### **B. Opinions That the Smaller-Sized, Multiple-Seat Constituency System Is Desirable**

Regarding the electoral system for the House of Representatives, from the perspectives of reducing the number of Diet members and rectifying the disparity in the weight of a single vote, members voiced opinions that, for example, smaller-sized, multiple-seat constituencies with 150 electorates with three seats each may be appropriate.

In response to this, other members expressed opinions that smaller-sized, multiple-seat constituencies would make the people's choice difficult because of their structure whereby candidates from the same parties compete against one another in the same constituencies, which strips political parties of their content and makes distinctions between the pledges of parties and individual candidates inevitable.

### **C. Opinions That the Proportional Representation System Is Desirable**

Members expressed opinions that fundamentally the proportional representation system is desirable given the demands to pluralistically reflect the will of the people.

### **D. Opinions That the Principles of Representation Should Differ between the Two Houses**

Specifically, members expressed opinions that (1) the members of the House of Councillors should be *do-shu* representatives or regional representatives; (2) the members of the House of Representatives should all be elected under the single-seat constituency system while the members of the House of Councillors should all be elected under the proportional representation system or under the large-sized, multiple-seat constituency system; (3) the members of the House of Representatives should be elected under the smaller-sized, multiple-seat constituency system while the members of the House of Councillors should be elected under a large-sized, single-seat constituency system; and (4) the introduction of a recommendation system or a vocational representation system into the House of Councillors should be considered.

### **3) Rectifying the Disparity in the Weight of a Single Vote**

Regarding the disparity in the weight of a single vote, members expressed the opinions that efforts should be made to rectify this disparity and bring the weight of a single vote as close to one-to-one as possible, and that it is necessary to establish a framework within the electoral system that would automatically rectify the disparity in the weight of a single vote.

### **4) Other Comments**

Members also expressed the following opinions regarding the electoral system.

- a. It is the global trend to set the age requirement for voting rights at 18, and because many people are working and paying taxes at age 18, it is a constitutional requirement to realize the right to vote from age 18.
- b. I have doubts about calling individuals chosen in elections with low voter turnout “representatives.” We need to investigate what can be done to boost voter participation, including the issue of whether or not voting should be made mandatory.
- c. Low voter participation is not a problem with the system stipulated by the Constitution, but rather indicates problems with the conduct of politics and the Diet.
- d. We need to think about the electoral system in light of technological innovations, such as Internet election campaigns and electronic voting, and about the approach that media should take.
- e. The present constituencies are too large for the proportional bloc representatives. It is also worthwhile considering increasing the number of representatives as an electoral system more closely linked with local areas.
- f. It would be rational to limit the dissolution of the House of Representatives and then hold joint Upper and Lower House elections every three years.

### **(Comments by Informants and Others)**

- Regarding the electoral system for the House of Representatives, I am opposed to both a complete single-seat constituency system and a complete proportional representation system. Under single-seat constituencies, policies become similar and electoral battles shift from policies to the individuals themselves. Moreover, the elections become closely tied to the individual districts and inevitably are required to reflect local interests even more. Conversely, the gap between the people and the political parties is too great under the proportional representation system, with its nationwide constituencies. It may also be inappropriate because it gives advantages to candidates backed by nationwide organizations and prominent figures. (TAKADA Atsushi, Informant)
- Under vocational representation theory, the electoral body takes a completely different form from that under the democratic system, that is, by vocation and by interest group, but today it is becoming extremely difficult to grasp people by occupation, and vocational representation is also incompatible with popular sovereignty. (TAKADA Atsushi, Informant)
- Because the present electoral system is mostly based on single-seat constituencies, under this structure the number of seats does not reflect the diverse will of the people, and it is also far from realizing equality in the influence that each vote has on election results. As for the weight of each vote, ideally the disparity should be eliminated since votes should be equally reflected in election results as much as possible. The proportional representation system is the most desirable means of rectifying that disparity. (MURATA Hisanori, Speaker)

## **3. Political Parties**

Regarding political parties, members discussed whether to establish explicit provisions concerning political parties in the Constitution, and if so, how political party provisions should be stipulated.

### **1) Whether Political Parties Should Be Stipulated in the Constitution**

Some members voiced opinions that political parties should be stipulated in the Constitution, while other members said that is unnecessary.

#### **A. Opinions That Political Parties Should Be Stipulated in the Constitution**

Members presented the following reasons as grounds for their opinions that political parties should be stipulated in the Constitution.

- a. Political parties are the foundation of parliamentary democracy, and they have an important position and role in mediating and reflecting the diverse will of the people in politics.
- b. It is important to correct the various problems concerning political parties and to establish a framework that ensures their fairness and transparency.
- c. Stipulating political parties in the Constitution would also contribute to the unification of the government and the ruling party toward clarifying the responsibility for policy decisions and

their implementation.

- d. There are examples of constitutions, such as the German Basic Law, that position political parties as constitutional organs.

In response, some members voiced opinions that due to historical differences, there are substantially different constitutional values between the German Basic Law, which adopts a “fighting democracy,” and the Japanese Constitution, which implicitly includes political parties within “freedom of assembly.”

## **B. Opinions That It Is Not Necessary to Establish Provisions concerning Political Parties in the Constitution**

Members presented the following reasons as grounds for their opinions that it is not necessary to stipulate political parties in the Constitution.

- a. While political parties are not stipulated in the Constitution, Article 21 implicitly guarantees the freedom to form political parties, and via guaranteeing freedom of association the Constitution expects political parties, which are originally private associations, to manifest their public nature of participating in politics.

In response, other members expressed opinions that it is inappropriate to view political parties in the same way as normal “associations.”

- b. Conversely, there are concerns that stipulating political parties in the Constitution might violate the freedom of political party activities and even the freedom of assembly guaranteed by Article 21, which was stipulated out of regret over the prewar oppression of political parties and associations and the political parties’ degeneration into mere supporting organs, and could place small-scale political parties at a disadvantage.
- c. The people’s trust in political parties can be revived not by stipulating political parties in the Constitution, but only via popular supervision of elections, etc. We should also give priority to establishing a recall system and other systems whereby the people can check the government.

## **2) The Types of Political Party Provisions That Should Be Stipulated**

Members expressed the following opinions regarding the types of political party provisions that should be stipulated if provisions on political parties are to be stipulated in the Constitution.

- a. Caution should be exercised because depending on the contents of the political party stipulations, there are concerns that the stipulations might obstruct the freedom to form political parties as well as political parties’ activities.
- b. The contents of the political party provisions should include the significance and roles of political parties, freedom to form political parties and conduct activities, a multiple party system, and the bases for enacting a political parties law.
- c. To ensure free, fair and transparent political parties, the contents of the political party provisions should include the internal order of political parties, intra-party democracy, and public disclosure of party finances.

- d. If intra-party democracy is to be stipulated, because that concept is not uniform, in practice majority parties will make decisions, and minority parties may be placed at a disadvantage in terms of numbers of persons, platforms, rules and administration.
- e. It would be troublesome and complicated to stipulate requirements, duties and other details concerning political parties in the Constitution, so that should be left to a political parties law and other laws.
- f. “Fighting democracy” type stipulations such as the provision prohibiting unconstitutional parties in the German Basic Law are incompatible with the ideal of freedom of assembly.

### **3) The Political Party System**

Regarding the political party system, some members expressed opinions that Japan should aim at a two major party system from such perspectives as the ability of the people to choose the administration, while others expressed opinions that Japan should aim at a multi-party system from such perspectives as the diversity of the will of the people.

### **4) Other Comments**

Members also expressed the following opinions regarding the ideal and roles of political parties.

- a. The parliamentary system under democracy inevitably requires party politics.
- b. Political parties exist to achieve policies, and because respect of individual Diet members’ opinions stands in opposition to electoral systems based on political parties, party-line voting is the general rule. Diet members’ exercising their right to vote individually is an exception.
- c. Political parties should establish think tanks because of the demands to increase the legislative powers of political parties in response to the decrease in the administration’s ability to draft plans.
- d. Making the procedures for determining the heads of political parties more transparent will bring about a transformation from “parties of legislators” to “people’s parties,” and this will also make the procedures for selecting the prime minister transparent.

### **(Comments by Informants and Others)**

- It is unwise to make advisory provisions, citing the importance of political parties in the democratic political process as the reason. That it because this would give rise to interpretations that the special mention of political parties in the Constitution gives legislators the discretion to grant political parties preference over normal associations, and could weaken judicial control over the political party legislation. (TAKADA Atsushi, Informant)
- The greatest criticism against the German political party system and political party legislation is that existing political parties are firmly protected like fortresses under the present legal system while new political forces are blocked so they cannot enter the Bundestag. Based on this criticism, proposals are being made to limit political party subsidies. (TAKADA Atsushi, Informant)
- The representative function should be totally fulfilled within the democratic system, and strengthening party-line voting would shrink political communication. We should also consider

changing our view that party-line voting is a basic principle. (TAKADA Atsushi, Informant)

#### **4. Diet Administration and Procedures**

##### **1) Diet Administration and Procedures**

Members expressed the following opinions regarding Diet administration and procedures.

- a. The debate among members in the Diet should be made more vibrant.
- b. The requirements for introducing bills in the House of Representatives, which presently demand the agreement of at least 50 members for budget-related bills and at least 20 members for other bills, should be reduced to at least 20 members and at least 10 members, respectively.
- c. The Constitution should have a stipulation limiting the right to introduce bills to the Diet to Diet members, including ministers of state.
- d. It is necessary to utilize minority party factions' right to investigate state affairs to realize politics where changes in government are possible and to improve and expand the function of overseeing the administration.
- e. Because the House of Representatives is first to vote on the budget and other important bills, and the House of Councillors' deliberations become concentrated around the end of the session, we should consider abolishing the session system so that the House of Councillors can conduct thorough deliberations.
- f. Because the contents of deliberations are what are important, the Article 56, Paragraph 1 provisions stipulating a quorum should be deleted.
- g. The Diet deliberations of bills should take the form of article-by-article reviews, and the bill revision process and other aspects should also be made more transparent.

In response, some members expressed opposition to limiting the right to submit bills to Diet members only because this would make it difficult to utilize the expert knowledge of the administration.

Additionally, other members voiced opinions that for bills submitted by the Cabinet the deliberations should be held in the Diet, without prior reviews within the ruling party.

- h. To make the best use of various direct democratic systems, we should not be too rigidly bound by the provisions of Article 41.

##### **2) Auxiliary Bodies of the Diet**

Members expressed the following opinions regarding auxiliary bodies of the Diet.

- a. The Board of Audit should be attached to the Diet or to the House of Councillors.
- b. A policy evaluation body should be established as an auxiliary to the Diet.

In response, some members expressed opinions that because Japan and the U.S. have different budget systems, it is only natural that in the U.S. the General Accounting Office (GAO), which has



supervisory and evaluation functions, is located within the Congress, but that placing an organ similar to the GAO within the Diet in Japan would be inappropriate.

c. An ombudsman office should be created as an auxiliary body of the Diet.

**(Comments by Informants and Others)**

- While it is necessary to pose questions to the administration and follow up on the administration in the Diet, assuming an increase in political appointments whereby ruling party executives become leaders in each ministry, is it not necessary to hold active deliberations among ruling party and opposition party Diet members during deliberations on legislative bills? (YAMAGUCHI Jiro, Informant)
- The authority of the Diet to check the Cabinet must be strengthened. At that time, considering that the majority faction in the Diet has the same stance as the Cabinet, we should establish a system from the perspective of giving preferential treatment to minority factions. (YAMAGUCHI Jiro, Informant)
- The opinion that the Cabinet should be granted the right to introduce bills to the Diet is dominant, but considering that the Diet is the sole legislative organ, I think only Diet members should be allowed to submit bills. (MATSUI Shigenori, Informant)
- There are problems regarding the administration of the Diet that must be greatly revised, such as abolishing or revising the principle of not carrying bills over to the next session. (SASAKI Takeshi, Informant)
- Because the forces within the House of Representatives fundamentally remain unchanged from one election until the next election, the basis for the administration of the Diet and the House should be based on that unit of time. We should revise the session system and the accompanying principle of not carrying bills over to the next session, and adopt the concept of a “legislative assembly term.” (OISHI Makoto, Informant)

## **II. The Cabinet**

### **1. The Parliamentary Cabinet System**

Regarding the parliamentary cabinet system, members discussed the need to strengthen the leadership of the prime minister and the Diet's function of overseeing the administration.

#### **1) Strengthening the Leadership of the Prime Minister**

Many members expressed opinions that Japan must work toward a shift from bureaucratic control to political control in order for Japan to achieve a more mature democracy, and that toward those ends the leadership of the prime minister must be strengthened.

In response, other members expressed opinions that while the present Constitution positions the prime minister as the head of the Cabinet, the Cabinet Law and other regulations do not coincide with this, as well as opinions that rather than strengthening the leadership of the prime minister as an individual the functions of the entire Cabinet need to be strengthened. Members also voiced opinions that to enhance control of the administration, oversight by the people should be guaranteed, and that rather than strengthening the functions of the Cabinet Japan needs to develop the concept of a parliamentary cabinet system centered around the Diet as the representatives of the people.

As specific means of strengthening the leadership of the prime minister, members deliberated such measures as popular election of the prime minister (which is addressed as a separate item in this report), unifying the policymaking of the ruling party and the Cabinet, and a national cabinet system.

#### **(1) Unifying the Policymaking of the Ruling Party and the Cabinet**

Members expressed opinions that Article 65 should be revised to secure the Cabinet's leadership in controlling the administration by first making a clear distinction between the power to decide policy, with the prime minister being the main locus of decision-making power, and the power to implement policy held by administrative agencies, and then unifying policy-making by having senior members of the ruling party hold Cabinet posts, while strictly limiting the involvement of Diet members who are not Cabinet ministers in administrative affairs.

In response, other members expressed opinions that the existing system for prior review of bills by the ruling party should be maintained, assuming that the government and the ruling party make policy decisions separately, as at present.

#### **(2) A National Cabinet System**

Members expressed opinions that Japan should aim at a "national cabinet system" which is a mode of the parliamentary cabinet system having elements of direct democracy, in which voters, in effect, directly choose a single package consisting of a policy program, and a prime minister who is responsible for implementing it.

### **(3) Other Comments**

Members also expressed the following opinions as policies for strengthening the leadership of the prime minister.

- a. The authority of the prime minister should be stipulated more clearly.
- b. Under a direct interpretation of Article 6 of the Cabinet Law, the prime minister cannot control and supervise government agencies and ministries via ministers without going through the process of making a Cabinet decision. This provision is a problem, and needs to be revised.
- c. Under constitutional interpretations, Cabinet decisions do not have to be unanimous.
- d. Political appointments of public servants need to be increased.

In response, members expressed opinions that, while taking note of the division of roles between politicians and bureaucrats, bureaucrats should more actively express their opinions regarding government policies and hold deliberations with politicians.

### **2) Strengthening the Diet's Function of Overseeing the Administration**

Regarding strengthening the Diet's function of overseeing the administration, many members expressed opinions that this is necessary. As reasons, members cited the need to strengthen the administrative oversight function as the obverse side of strengthening the leadership of the prime minister, and that the check function of the legislative body needs to be strengthened, in part because checks by the judiciary are not functioning adequately, while administrative power has expanded due to the growth of the administrative state.

Regarding the body within the Diet for administrative oversight, some members stated that this function should be fulfilled by the opposition parties, while others stated that the body to exercise control over the Cabinet should include not only opposition parties but the ruling party as well.

Members also expressed the following opinions regarding upgrading systems to strengthen the administrative oversight function.

- a. To allow minority factions to manifest their rights to investigate state affairs is most important in order to realize politics where change in political administrations is possible, and to enhance the administrative oversight function.
- b. In principle we should eliminate explanations of the purport of bills and questions regarding bills in plenary sessions, and enhance committee deliberations.
- c. We need to make use of the committees for administrative oversight in each House and a system for preliminary investigations.
- d. There are many problems with discretionary administration in nations governed by the rule of law. We need to stipulate all the required items in laws and minimize Cabinet and ministerial ordinances as much as possible.
- e. We need to establish a policy evaluation organ and a Board of Administrative Oversight as auxiliary bodies of the Diet.

- f. The Board of Audit should be attached to the Diet or to the House of Councillors.
- g. We should reinforce the Legislative Bureaus and the Investigative Bureaus of both Houses.

This opinion included the abolition of the Cabinet Legislation Bureau.

- h. The fact that the key posts at bodies attached to the Diet are held by individuals who previously worked for the executive branch undermines the Diet's position as the sole legislative organ.
- i. We should establish a parliamentary ombudsman system.
- j. The number of policy secretaries needs to be increased. We should also establish a leave system so that company employees and public servants can serve as political staff.

### **3) Other Comments**

Members also expressed the following opinions regarding the parliamentary cabinet system.

- a. There is no problem with the parliamentary cabinet system itself. Rather, there are problems with its administration.
- b. To clarify political responsibility and vigorously advance policies, the terms of office of the prime minister and Diet members should be made the same, so government will be administered under the principle of one election one Cabinet.

In response, other members expressed opinions that it is not necessary to adhere to the thought that the terms of office of the prime minister and Diet members have to be the same.

- c. Diet members who become Cabinet ministers should renounce their party and faction affiliations so as to conduct their work as government leaders from a neutral standpoint.
- d. Having contended for political power by presenting a platform and prime minister candidate, in principle, the head of the ruling party should be appointed as the prime minister and fulfill the people's mandate for a period of four years based on the campaign pledges. Also, the Article 7 provision on dissolution of the House of Representatives should be reconsidered.
- e. As for Article 63, the obligations of ministers of state to appear before the Diet should be eased, for example, by first defining vice-ministers and other officials in the Constitution and then stipulating that appearances by vice-ministers and other officials are sufficient in cases when it is difficult for ministers of state to appear.
- f. Article 68, Paragraph 1 should be revised to stipulate that all ministers of state must be chosen from among Diet members.

In response, some members expressed opposition to having ministers of state chosen only from among Diet members, and voiced opinions that it is effective to utilize private-sector individuals with expertise for limited terms, and that the appointment of private-sector individuals to the Cabinet should be permitted provided that the strong leadership of the prime minister is guaranteed.

- g. Under coalition administrations, the parliamentary cabinet system should be administered so that the ruling party and the Cabinet are unified and the policies of the ruling party are realized more.
- h. Measures must be secured for the Cabinet to oppose the House of Councillors, which can effectively pass a motion of no confidence in the Cabinet by voting down bills and by passing

censure motions.

- i. Something like the “Tomorrow’s Cabinet” of the opposition parties should be institutionalized, so the opposition parties can acquire expertise, for example, by drafting policies before they come into power.

### **(Comments by Informants and Others)**

#### **<Strengthening the Leadership of the Prime Minister>**

- The issues for realizing government led by politicians centered around the Cabinet system are not necessarily constitutional or legal problems, but rather almost all concern political practices. (SASAKI Takeshi, Informant)
- In Japan, there is a duplicate process whereby policies are determined by the ruling party and also by the government. In contrast, in the U.K. system, which I regard highly, many ruling party parliamentarians enter the government, the policymaking process is unified, the political leadership of the prime minister is strengthened, and policies are determined rapidly. (HASEBE Yasuo, Informant)
- Revising the locus of executive power in Article 65 from the Cabinet to the prime minister would have the effects whereby (1) the leadership of the prime minister could be strengthened and clarified in the Cabinet with a pyramid-shaped organizational structure unlike the collegiate structures of the Diet and the courts, and (2) political parties would feel more tension when selecting their prime minister candidates. (YAMAGUCHI Jiro, Informant)
- In “positive states” like those today, strong political leadership is required for the conduct of policy, so the Cabinet and the policy programs implemented by the Cabinet require clear support from the majority of the people. To those ends, I think that a “national Cabinet system,” a mode of the parliamentary cabinet system having elements of direct democracy, in which the voters, in effect, directly choose a single package consisting of a policy program and a prime minister who is responsible for implementing it, is the appropriate model. (TAKAHASHI Kazuyuki, Informant)
- Because the only Cabinet member who is selected by the Diet is the prime minister, the prime minister’s leadership should be strongly recognized, and Article 6 of the Cabinet Law, which stipulates the relationship between the prime minister and the other ministers whereby the prime minister directs and supervises the ministers under policies decided at the Cabinet meetings, needs to be reexamined. (MORITA Akira, Informant)
- Compared with other industrialized nations Japan takes a unique approach whereby the administrative structure is determined by law and the Diet severely restricts the form administrative structure takes. From the perspective of viewing the Diet and the Cabinet as a single body, we should release the Cabinet from the restrictions on the Diet, allowing it to flexibly rearrange its administrative structure. (MORITA Akira, Informant)

#### **<Strengthening the Diet’s Function of Overseeing the Administration>**

- The Diet, primarily the opposition parties, should be responsible for overseeing the Cabinet. Since the nature of Cabinet policies is that they are formed based on deliberations within the

ruling party, with questions and alternative policies posed by the opposition, to ensure that ruling party and Cabinet policies will truly be accepted by the people the authority of the opposition should be reinforced, for example, by granting ample time for opposition parties to pose questions and having the opposition take the initiative in exercising the right to investigate state affairs. (TAKAHASHI Kazuyuki, Informant)

- In creating a strong Cabinet, it is necessary to simultaneously arrange a framework to check that strong Cabinet, and the authority of the Diet should be reinforced toward those ends. Specifically, the system should be constructed from the perspective of giving precedence to minority factions, considering that the majority in the Diet holds the same position as the Cabinet. (YAMAGUCHI Jiro, Informant)
- The relationship between the Diet and the Cabinet should not be understood as the traditional prevailing theory of checks and balances which places them in opposition to each other. Rather, since the Cabinet is “collectively responsible to the Diet,” the Diet and the Cabinet should be viewed as unified bodies with collective responsibility for supervising all areas of the administration. More than the Diet and the Cabinet, the bodies that should be viewed as standing in confrontation are the ruling party and the opposition, so we should reexamine the significance of differences of opinion between the government and the ruling party and of having the ruling party pose questions to the Cabinet. We should also reconsider the right of dissolution and the form the House of Councillors should take from this perspective. (MORITA Akira, Informant)

#### **<Other Comments>**

- When a political administration does not win the confidence of the people and changes during the terms of members of the House of Representatives, the continuation of that Cabinet is undesirable for the administration of the parliamentary cabinet system. The will of the people should be consulted whenever administrations change. (TAKAHASHI Kazuyuki, Informant)

## **2. Popular Election of the Prime Minister**

Members discussed whether the system of popular election of the prime minister, whereby the people would directly elect the prime minister should be introduced. Many members expressed opinions that this system should not be introduced, but some members expressed opinions in favor of introducing this system.

### **A. Opinions That the System of Popular Election of the Prime Minister Should Not Be Introduced**

Members presented the following reasons as grounds for their opinions that the prime minister direct election system should not be introduced.

- a. Recognizing a prime minister not based on the majority in the Diet is tantamount to denial of party politics.
- b. There are concerns that popular election of the prime minister could result in a government

standstill because of opposition between a directly elected prime minister and the majority in the Diet.

- c. There are concerns that direct election of the prime minister could become a popularity contest, unrelated to the prime minister's qualifications, and lead to mob rule (populism).
- d. There are concerns that direct election could lead to dictatorship by the prime minister.
- e. With support from the people the prime minister would take on the characteristics of a head of state, and the relationship with the Emperor system would become a problem.
- f. That approach was introduced in Israel, but failed.
- g. The prime minister can also manifest leadership under the parliamentary cabinet system.
- h. More than manifesting the prime minister's leadership, policymaking should be conducted having the Diet sufficiently deliberate the diverse will of the people.

## **B. Opinions That the System of Popular Election of the Prime Minister Should Be Introduced**

Members presented the following reasons as grounds for their opinions that direct election of the prime minister should be introduced.

- a. Direct election of the prime minister would facilitate strong leadership by the prime minister as well as swift decision making.
- b. By having the people directly involved with the selection of the prime minister, politics could directly reflect the will of the people.

### **(Comments by Informants and Others)**

- Even if the prime minister direct election system is introduced, that will not necessarily result in swift and accurate governance or strengthen political leadership. Moreover, with ingenuity, those points can also be realized under the parliamentary cabinet system. (HASEBE Yasuo, Informant)
- To ensure Cabinet leadership, rather than introducing the prime minister direct election system it would be easier to administer a "national cabinet system" type parliamentary cabinet system, and that is entirely feasible. (TAKAHASHI Kazuyuki, Informant)
- Because introducing a system of popular election of the prime minister would conversely weaken the role of political parties of fusing diverse social interests and opinions into coherent policies and combining these in single sets together with prime minister candidates, it would not move party politics in a better direction. (HASEBE Yasuo, Informant)
- Introducing a system of popular election of the prime minister would give the people a sense of satisfaction and responsibility of being able to get directly involved in determining the basic policies of the nation, but there are concerns that it would become an impractical system if the prime minister lacked a stable base of support in the Diet and were unable to have the Diet pass legislative bills and the budget needed to execute policies. (HASEBE Yasuo, Informant)
- There are three conceivable relationships between the Diet and the prime minister under a system of popular election of the prime minister: (1) the Diet and the prime minister could have an equal relationship; (2) the prime minister could have a dominant position over the Diet; and

(3) the Diet could have a dominant position over the prime minister. Under (1), there are concerns that the government could come to a standstill if the Diet and prime minister come to oppose one another. Under (2), there are concerns that the prime minister might use his or her strong position to become dictatorial, in which case the means of forcing the prime minister to resign would become a problem. Under (3), there are concerns that the prime minister would be unable to manifest leadership. So, under every scenario, I cannot agree with the proposal to introduce a system of popular election of the prime minister. (MORITA Akira, Informant)

- I am opposed to introducing a system of popular election of the prime minister because (1) it would not produce good results without radical reflection on the conventional way of politics; (2) it entails the dangers of a “divided government” with the prime minister and the Diet majority at cross-purposes and of an “all ruling-party government;” and (3) there are concerns that it could lead to a decline in the internal cohesion of political parties as they lose the tension of choosing the nation’s top leader, and to the breakdown of party politics. (YAMAGUCHI Jiro, Informant)
- The parliamentary cabinet system was originally a system under constitutional monarchy. If a popular election of the prime minister were introduced under the present conditions, the elected prime ministers would be compared to presidents under republican systems, and contradict the presence of the Emperor. We should not call for the introduction of a popular election of the prime minister until we find a solution to that issue. (YAGI Hidetsugu, Informant)
- If a system of popular election of the prime minister is introduced, one arrangement would be for the Emperor to fulfill ceremonial and formal functions, with the publicly elected prime minister bearing the substance of governing activities. As for the role of the symbol of the nation, if the publicly elected prime minister has a certain charisma backed by the will of the people, competition with the Emperor who has a charisma conferred by tradition would become a problem, but the question of who is the symbol of the nation is an issue for each individual’s conscience, and not a problem of the system. (HASEBE Yasuo, Informant)
- A system of popular election of the prime minister cannot be introduced without revising the Constitution, and designing such a system would require a great deal of time and energy as it would demand examinations of diverse points, beginning with the issues regarding the dissolution of the House of Representatives. Considering the costs involved, introducing a system of popular election of the prime minister would be impossible. (YAMAGUCHI Jiro, Informant)
- Because a system of popular election of the prime minister is a type of national referendum, if it is written into the Constitution it would eliminate the people’s apathy (disregard of politics) and give citizens an awareness of their own responsibilities toward Japanese politics. (MATSUMOTO Kenichi, Informant)
- The positive aspect of a popular election of the prime minister is that it is a system which facilitates the direct reflection of the will of the people in politics. In contrast, the negative aspect is that this approach can easily fall into mob rule or popularity contests. Additionally, the type of confusion seen in the U.S. presidential elections could appear in the process of selecting the prime minister, but those negatives are all just the costs of the democratic system.



(MATSUMOTO Kenichi, Informant)

- The success or failure of a system of popular election of the prime minister all depends on how it is administered. Specific points of importance include (1) always unifying the prime minister and Diet elections, and (2) taking measures to secure political parties' responsibility for politics.

(TAKAHASHI Kazuyuki, Informant)

### **III. Other Comments**

#### **1. Ombudsman System**

Members discussed whether an ombudsman system should be introduced, in which an ombudsman appointed by the Diet or by the administration would listen to people's complaints, protect the rights of the people from the government, and oversee the administration, as well as whether or not the ombudsman system should be stipulated in the Constitution if it were to be introduced.

##### **1) Whether an Ombudsman System Should Be Introduced**

Regarding the question of whether an ombudsman system should be introduced, many members expressed opinions in favor of introducing an ombudsman system, but other members expressed caution about introducing such a system.

##### **A. Opinions in Favor of Introducing an Ombudsman System**

Members presented the following reasons as grounds for their opinions in favor of introducing an ombudsman system.

- a. With the present bloated state of the administration, an ombudsman system is needed (1) to provide redress for the rights of the public and to control and oversee the administration from an independent perspective, (2) to work toward fairness and transparency in administrative affairs, and (3) to establish the rule of law and democracy. A parliamentary ombudsman system would play a great role from the perspective of reinforcing the Diet's functions of checking and overseeing the administration.
- b. It is difficult for the Diet to receive, select and investigate a large number of complaints. Moreover, the procedure required for the people to contact the administrative oversight committees of both Houses is cumbersome, and this constitutes a weakness in that their check on the administration is not taking place within the view of the people, so it would be effective to reinforce these committees with an ombudsman system.
- c. Ombudsman systems are spreading throughout EU countries. Furthermore, their activities are not limited to oversight of how taxes are being spent, but are expanding to include the function of checking the constitutionality of the actions of the administration.
- d. Administrative counselors are difficult for the people to use because of their inability to respond to incidents in specialized fields and problems in working for swift resolutions. Moreover internal government checks and external checks are fundamentally different so an ombudsman system, which provides an external check, is needed.
- e. The U.S. type approach where everything is decided via lawsuits seems to be unsuitable for Japan, and out-of-court conflict resolution through an ombudsman would be appropriate in our country.
- f. An ombudsman system is needed to eliminate the people's distrust of politics and government.
- g. The ombudsman system should be introduced because checks on the administration provided by the Diet and the judiciary are insufficient.

## **B. Opinions Expressing Caution about Introducing an Ombudsman System**

Members presented the following reasons as grounds for their opinions expressing caution about introducing an ombudsman system.

- a. Overlapping systems should be avoided, also in consideration of the expenditures. To begin with, we should examine and enhance the functions under the existing system of administrative oversight committees in both Houses and the system of administrative counselors under the Ministry of Internal Affairs and Communications. An ombudsman system is not required, as long as the Diet fulfills its proper role of checking the administration.
- b. If we introduce an ombudsman with strong power, neutrality and independence, as commonly seen in other countries, I doubt whether it will function in Japan.
- c. There are concerns that public servants will atrophy out of fear of criticism if we introduce an ombudsman system and that this will lead to governmental standstill. In particular, the public interest which is borne by the national administration is grave, and we need to examine the introduction of an ombudsman system very prudently from the perspective of balancing the public benefit with individuals' protected legal interests.
- d. More than introducing an ombudsman system, we should give precedence to realizing the right of petition stipulated in Article 16 and the right to investigate state affairs stipulated in Article 62.
- e. From the perspective of strengthening the functions of the Diet, the administrative oversight committees in both Houses correspond to the ombudsman systems in foreign countries.

## **2) Stipulating the Ombudsman System in the Constitution**

If an ombudsman system is to be introduced, some members expressed opinions that its legal basis should be stipulated in the Constitution, while other members expressed opinions that this would not be necessary, and still other members expressed intermediate opinions.

### **A. Opinions in Favor of Stipulating the Ombudsman System in the Constitution**

Members expressed the following reasons as grounds for their opinions that the legal basis for the ombudsman system should be stipulated in the Constitution.

- a. Expressing the ombudsman system in the Constitution is necessary to secure the authority of the ombudsman within the view of the people, to secure neutrality, fairness and independence, and to promote the understanding of the people.
- b. This is necessary so that the ombudsman can fulfill the functions of administrative control, in addition to addressing complaints.
- c. This is necessary, for example, to clarify the authority of the ombudsman.

### **B. Opinions that Stipulating the Ombudsman in the Constitution is Unnecessary**

Members expressed the following reasons as grounds for their opinions that it is unnecessary to stipulate the legal basis for the ombudsman system in the Constitution.

- a. Because the ombudsman system has the constitutional bases of the right to petition and the right

to investigate state affairs, it is not necessary to stipulate any new provisions in the Constitution, and legislative bases are sufficient.

- b. There are concerns that this would lower the status of citizen ombudsmen.
- c. The systematic arrangements have already been made by the Information Disclosure Law and the Administrative Litigation Law, so introducing the system via legislation is sufficient.

### **C. Intermediate Opinions regarding Stipulating the Ombudsman System in the Constitution**

Members expressed the following opinions that lie in between the opinions in favor of stipulating the ombudsman in the Constitution, mentioned above in A., and the opinions that stipulating the ombudsman in the Constitution is unnecessary, mentioned above in B.

- a. The priority of introducing the system is low and there is no need to stipulate the system if the Constitution is to be partially revised, but the system should be stipulated if the Constitution is to be completely revised because (1) the checks by the Diet and the judiciary on the government are not functioning sufficiently, (2) proper results are in fact being realized by the ombudsman systems in other countries, and (3) we must guarantee in the Constitution a system for prompt redress when a citizen's rights are violated by the government.
- b. One approach is to first introduce an ombudsman system via legislation for special fields where redress is necessary and then position the system in the Constitution after gaining the citizens' understanding.

### **3) Parliamentary Ombudsman**

Members expressed opinions that a parliamentary ombudsman should be introduced for such reasons as there are natural limitations to the administrative oversight function that can be exercised by an ombudsman who has been appointed by the government, and because administrative oversight should be exercised based on the authority of the Diet.

### **4) Special Ombudsmen**

Members expressed opinions that special ombudsmen are required in fields where there are great concerns regarding the violation of rights and in fields where specialized expertise is required. Specific examples raised included the fields and organizations of medicine, police, prisons and the military.

### **5) Relationship between an Ombudsman and the Administrative Oversight Committees of Each House**

Concerning the relationship between an ombudsman and the administrative oversight committees of each House, members expressed opinions that if an ombudsman system is to be introduced, the ombudsman should have a close relationship with these committees and that cooperation can be sought between the two entities by explicitly stipulating that these committees can entrust investigations to the ombudsman.

## 6) Other Comments

Members also expressed the following opinions concerning the ombudsman system.

- a. The interpretation of the Local Autonomy Law is that only an executive ombudsman can be introduced at municipal governments, so the Local Autonomy Law should be revised to clarify that parliamentary ombudsman can be introduced.
- b. People may have some confusion between the citizen ombudsman and the public ombudsman, so distinctions have to be drawn between the two. It will be important to foster accurate understanding regarding the ombudsman system among the people to ensure its success.
- c. Linkage between the information disclosure system and the ombudsman system will be important to realize better administrative oversight.
- d. If a parliamentary ombudsman is selected one issue will be how to secure the ombudsman's neutrality.

### (Comments by Informants and Others)

- It is important to design the ombudsman system from the viewpoint of the people. Making the system visible and the authority that derives from that are important. I agree with stipulating the basis for the ombudsman system in the Constitution. Ideally, the basis should be stipulated in the Constitution and the details specified via legislation. Regardless, the system can be introduced without revising the Constitution. The ombudsman system can be introduced under the present Constitution via legislation. (UTSUNOMIYA Fukushima, Informant)
- I agree with strengthening the administrative oversight committees in the Diet, but I do not agree with the argument that if those committees are enhanced then a Diet ombudsman is unnecessary. The ombudsman is significant in playing an important role in expanding and reinforcing the Diet's oversight authority, and in holding specialized abilities, knowledge and information. The system would become more effective by linking the Diet administrative oversight committees and the Diet ombudsman. (UTSUNOMIYA Fukushima, Informant)
- It would be possible to establish either a parliamentary ombudsman or an executive ombudsman in Japan. While the latter provides internal control, the former provides external control and has the advantages of fairly implementing the administrative oversight function from a neutral standpoint that is independent of the executive branch. Appointing an ombudsman, however, entails the problems of how to eliminate political party and political influence, secure the independence of the ombudsman's office, and arrange a staff organization with investigative capabilities. Because the administrative oversight function would work more effectively under a parliamentary ombudsman than under an executive ombudsman, I am in favor of adopting a parliamentary ombudsman system. And it is feasible to create a parliamentary ombudsman system without revising the present Constitution. (UTSUNOMIYA Fukushima, Informant)

## 2. Policy Evaluation

Members expressed the following opinions regarding policy evaluation.

- a. Given the rising importance of policy evaluation in recent years, it is worth considering a constitutional provision stipulating that the Cabinet must evaluate the policies of each administrative unit and report their findings to the Diet.
- b. The Board of Audit is an organ which examines budget implementation on an individual fiscal year basis, but I think we need to conduct evaluations with a decisive influence on policies, including evaluations of abandoning public works projects, etc.
- c. A policy evaluation organ should be established as an auxiliary body of the Diet.

**(Comments by Informants and Others)**

- As for the proposed reforms to make the House of Councillors the House responsible for reviewing the final accounts and evaluation of policies, as shown by the actual performance of the Diet's Committees on Audit and Oversight of Administration, this will not function sufficiently unless an auxiliary body of the Diet is created to supplement the policy evaluation by Diet members from a neutral and specialized perspective. (KUBOTA Yoshio, Informant)
- We should clearly distinguish between the uncovering of government improprieties and the evaluation of policies, and have these conducted by separate organs. We should have the Board of Audit responsible for examining the accuracy and statutory correctness of budget execution, and need to establish an organ in the Diet that Diet members, including minority factions, can use to investigate the effects, expenses and harmful aspects of policies. Also, even if the Board of Audit is to be an auxiliary body of the Diet, the part responsible for examining the accuracy and statutory correctness of budget execution should be separated from the part responsible for policy evaluation. (KUBOTA Yoshio, Informant)
- Policy evaluation is conducted for the purpose of improving future policies, and it is by no means wise to place the primary focus on pursuing responsibility. Because Diet members need support from experts to grasp policy effects, we need an organ for policy evaluation attached to the Diet. (KUBOTA Yoshio, Informant)
- The concept of having Diet members and committees conduct evaluations via the activities of the Committees on Audit and Oversight of Administration is correct in and of itself, but the evaluations taking place in those committees have become evaluations based on particular values regarding policies. Moreover, the members of the Committees on Audit and Oversight of Administration themselves are not conducting sufficient activities toward discovering and investigating policies that should be seen as problematic. To supplement the activities of the members in these sorts of areas, a policy evaluation organ attached to the Diet is needed. (KUBOTA Yoshio, Informant)

**3. Constitutional Interpretation by the Political Branch**

Many members expressed opinions that there is no justification for the political branch of government effectively leaving the interpretation of the Constitution to the Cabinet Legislation Bureau, which is part of the executive branch. Other views expressed included (1) the position that

there is nothing wrong with the Cabinet Legislation Bureau interpreting the Constitution, but the problem is that the Diet accepts its interpretations without question; and (2) the position that the Cabinet Legislation Bureau's strict screening of bills prior to their introduction is based on the obligation to respect and uphold the Constitution stipulated in Article 99.

As arguments for reform based on the current conditions described above, members expressed opinions that a constitutional court should be established, and that given the need for the Diet to conduct its own constitutional judgments a Committee on the Constitution should be established as a standing committee.

**(Comments by Informants and Others)**

- Some believe that the opinions of the Cabinet Legislation Bureau constitute final constitutional interpretations but that is not the case. Rather when the Cabinet interprets the Constitution, it considers the opinion of the Cabinet Legislation Bureau and if that opinion is deemed appropriate by the Cabinet it is then adopted as the government opinion. That is its status. (TSUNO Osamu, Informant)
- I agree with the opinion that the Diet should indicate its constitutional interpretations. As for how the Diet indicates its interpretations, these should become clear through the deliberation and passage of bills, and in that sense it is only natural that the Diet has the right to interpret the Constitution. (TSUNO Osamu, Informant)
- Japan emphasizes an abstract body of law, and the authority of the Supreme Court to judge constitutionality is only exercised when specific lawsuits are filed. In practice, therefore, there is no other choice than to entrust authoritative interpretation of the Constitution to the Cabinet Legislation Bureau. If revising the Constitution is being considered, then a constitutional court should be established. (SHINOHARA Hiroaki, Speaker)

## **Subsection 7 The Judicial System**

In regard to the judicial system, the debate centered mainly on judicial review, but there was also some discussion relating to the system of popular review of Supreme Court justices and to public participation in the administration of justice, among other topics.

### **1. Judicial Review**

The discussion of judicial review dealt with its role, how the power of judicial review is presently being exercised, and ways to improve the system, especially the creation of a constitutional court.

#### **1) The Role of Judicial Review**

Views expressed regarding the role of judicial review included the following: the system is designed to guarantee human rights and the Constitution; it is very important to constitutional democracy to maintain an appropriate tension between the judicial and political branches through the medium of judicial review; and judicial review also serves to stimulate constitutional debate.

#### **2) How the Power of Judicial Review Is Being Exercised**

##### **(1) Evaluation of the Incidental System of Judicial Review**

With regard to the incidental system of judicial review, some members questioned the adequacy of deciding the constitutionality of laws and other measures after the fact and in conjunction with litigation on specific cases.

##### **(2) “Judicial Passivism”**

Many members, citing evidence such as the rarity of Supreme Court rulings that find statutes unconstitutional, expressed the view that the judiciary is reluctant to decide questions of constitutionality (“judicial passivism”) and suggested that it is not adequately fulfilling the role entrusted to it in guaranteeing the Constitution. Some members also criticized the courts’ tendency to avoid rendering a decision by invoking the “act of state” doctrine on the grounds that the case is highly political in nature. On the other hand, some members expressed the view that the judiciary should have a limited involvement in acts of state, leaving decisions in that area to the political branch, while others commented that whether the courts rule on constitutionality is a question that affects the autonomy of the judicial branch, and the legislative branch should not intervene.

The following views were expressed regarding the causes of “judicial passivism.”

- a. Supreme Court justices, with their large caseload of final appeals, are too busy to decide questions of constitutionality.
- b. The passive stance of the judiciary may be attributed in large part to: (1) the restraints on judicial review due to the fact that Japan’s system is construed as being a U.S.-style system of incidental review; (2) the influence of the idea that the executive branch takes precedence; (3) the fact that, in the absence of free debate on constitutional revision, any Supreme Court



decision on the constitutionality of a high-level matter of governance risked drawing intense scrutiny as a political issue.

- c. An environment in which the Constitution could be amended when a law was ruled unconstitutional was lacking, mainly due to the strict amendment procedure laid down by Article 96.
- d. The problem lies in the political coloration of appointments of Supreme Court justices and other judges, and in the judicial bureaucracy, which does not adequately ensure their freedom and independence.

### **3) Measures to Improve the Judicial Review System, including the Creation of a Constitutional Court**

The discussion of ways to improve judicial review focused mainly on whether to create a constitutional court. Other measures discussed included the idea of creating a Constitutional Department in the Supreme Court and making it responsible for concrete norm control, and the idea of creating one or more Special High Courts and giving them the functions of a court of final appeal.

#### **(1) Whether to Create a Constitutional Court**

Many members were in favor of creating a constitutional court, but some were opposed to the idea.

##### **A. The Case in Favor of Creating a Constitutional Court**

The case in favor of creating a constitutional court was based mainly on the following reasons.

- a. In a democracy, the rule of law must be fully realized, but because of judicial passivism the judicial branch is not fulfilling its role of providing a check on the executive branch. Further, the Supreme Court cannot be expected to play an active role as guardian of the Constitution with the incidental power of judicial review that it has under the present system.
- b. Because of the Supreme Court's passivity in deciding questions of constitutionality, the Cabinet Legislation Bureau, which is an arm of the executive branch, has been given the de facto power to interpret the Constitution, and its interpretations are treated as if they were final; as a result, constitutional interpretations tend to be arbitrary.
- c. It is necessary to take steps to lighten the workload of the Supreme Court justices, as they are kept too busy hearing final appeals.
- d. It is meaningless to reform the system in a way that allows only concrete norm control based on specific cases. We need to create a mechanism for abstract norm control.
- e. In an ideal separation of powers, the relationship between the branches of government would be such that if a law that was necessary for policy reasons was ruled unconstitutional by a constitutional court, the Diet would consider amending the Constitution in order to carry out the policy.
- f. Germany has a constitutional complaints system which allows citizens to file a complaint directly with the Constitutional Court. Japan, too, should consider a system in which citizens can raise questions of constitutionality directly.
- g. There is some concern that an enormous number of cases might be brought before a

- constitutional court, but this can arguably be resolved by proper design of the system; for example, the support of a certain number of Diet members could be required to initiate an action.
- h. The objection that, depending on the composition of the bench, a constitutional court might not eliminate judicial passivism can be met by having the Diet appoint the judges.

## **B. The Case against Creating a Constitutional Court**

The case against creating a constitutional court was based mainly on the following reasons.

- a. If we create a constitutional court, we risk undermining parliamentary democracy by inviting a transfer of the political process into the courts and a transfer of the judicial process into the political arena, as legislators would be highly conscious of constitutional court rulings when they enacted laws.
- b. As it would no longer be linked to concrete cases, debate in a constitutional court could become completely abstract and conceptual.
- c. If the laws enacted by the Diet were subject to abstract judicial review, this could impose serious restrictions on the status and powers of the Diet, which is the highest organ of state power.
- d. We need to take into account the historically and culturally rooted differences that exist, both in their societies and in their systems of governance, between Japan and the countries that have established constitutional courts.
- e. Depending on the composition of the bench, there is some doubt as to whether a constitutional court would function effectively; for example, it might avoid ruling on political questions.
- f. A constitutional court could become an organ whose function is to grant constitutionality to government policies and measures; for instance, it might quickly rule statutes constitutional without awaiting a constitutional debate in the Diet.
- g. The problems with the system of judicial review result from problems not in Article 81 but in its application. We need to improve the application of the existing system by reforming the Supreme Court to ensure that the system is actively utilized, among other measures.
- h. Creating a constitutional court would put an end to opportunities for the lower courts, which are recognized as having the power of judicial review, to rule actively on questions of constitutionality.

## **(2) Other Views concerning a Constitutional Court**

In addition, the following views were expressed concerning a constitutional court.

- a. In countries that have a constitutional court, not only is it the guardian of the constitution, but it also plays an important role in government. In addition to providing protection and redress for human rights by reviewing the constitutionality of statutes, including laws and administrative orders, it also has such functions as overseeing national referendums, preventing corruption, and carrying out impeachment proceedings against the President.
- b. We should stipulate in the Constitution that the legislature must repeal or revise a law that is ruled unconstitutional by the constitutional court.
- c. It is not appropriate to strengthen the power of judicial review on its own while maintaining a strict amendment procedure.

In response to this point, there were comments that the question of creating a constitutional court should not be linked with the question of the strictness of the amendment procedure.

- d. Because the judges of a constitutional court will be required to have a high level of insight, neutrality, and independence, they should be appointed based on recommendations by the Diet, the Cabinet, and the courts.

### **(3) Other Measures to Improve the Judicial Review System**

Several possible ways to improve judicial review without creating a constitutional court were discussed. They included establishing a Constitutional Department of the Supreme Court, and establishing one or more Special High Courts.

#### **(i) The Idea of Creating a Constitutional Department of the Supreme Court**

The following views were expressed regarding the idea of creating a “Constitutional Department” of the Supreme Court, to which, when a general court ruled that a law applicable to a concrete case was unconstitutional, the case would be transferred for review of the law’s constitutionality.

- a. Creating a Constitutional Department is realistic in view of the drawbacks to creating a constitutional court.
- b. A Constitutional Department might also use arguments like the “act of state” doctrine to avoid ruling on constitutionality.
- c. There is no need to create a body such as a Constitutional Department in the Supreme Court, since the lower courts actively rule on questions of constitutionality even at present.

#### **(ii) The Idea of Creating Special High Courts**

The following views were expressed regarding the idea of creating one or more “Special High Courts” situated midway between the existing High Courts and the Supreme Court to serve as courts of final appeal, while the Supreme Court would hear only cases transferred from the Special High Courts when a ruling on constitutionality was required.

- a. It would be realistic to create Special High Courts since, among other advantages, they could carry out judicial review in relation to specific cases, unlike the abstract norm control that a constitutional court would provide.
- b. The Supreme Court’s role as the court of final appeal should be separated from its role of judicial review and greatly reduced.
- c. There is a risk of prolonging trial proceedings as, among other problems, there would be a four-instance system of hearings for cases involving constitutional questions.

#### **(iii) The Idea of Creating a Constitutional Committee in the Diet**

The view was expressed that, because of the importance of the guarantee of the Constitution provided by the Diet, a parliamentary Committee on the Constitution should be created to conduct prior screening of the constitutionality of bills and related measures.

#### **(iv) Improving the Application of the Existing System**

The view was expressed that the application of the existing system needs to be improved by, for example, reforming the Supreme Court to ensure that the system is actively utilized, because the problems with the system of judicial review result from problems not in Article 81 but in its application.

#### **(Comments by Informants and Others)**

##### **<The Role of Judicial Review>**

- The judiciary has been granted the power of judicial review based on the idea that checks and balances among the three branches of government are necessary to ensure the full realization of democracy and the rule of law. The Supreme Court is the “guardian of the Constitution” in that it is the organ that judges the constitutionality of laws, orders, and other state acts in the last instance. (CHIBA Katsumi, Official, Supreme Court)
- While adopting majoritarian democracy, which reflects the will of the majority, the Constitution also guarantees the human rights of minorities. There are times when, in order to guarantee constitutional rights, the courts respect the will of the minority even if it is contrary to the will of the majority expressed by the Diet. This is done through the power of judicial review. (HATAJIRI Tsuyoshi, Informant)
- As a system of checks against the executive branch becoming too powerful, the Constitution has adopted a parliamentary cabinet system and has granted the judiciary the powers of administrative jurisdiction and judicial review, among other measures. The power of judicial review is also regarded as a check on the legislative power of the Diet. This high degree of systematic coherence and thoroughness is unparalleled elsewhere in the world. (ODANAKA Toshiki, Speaker)
- Constitutional interpretations are determined in the last instance by the Supreme Court. However, the Court must await a specific suit before rendering a ruling on a constitutional matter “after the event.” (TSUNO Osamu, Informant)

##### **<How the Power of Judicial Review Is Being Exercised>**

- Since the process of reconciling diverse views in politics and determining the ideal form of government can be regarded as a political rather than a constitutional question, the courts should be seen as having a limited role, and we should not expect too much of them. (MATSUI Shigenori, Informant)
- In light of the principle of separation of powers, there is a basic question as to whether it is appropriate for the judiciary to decide important political issues. (CHIBA Katsumi, Official, Supreme Court)
- Because one political party has held a stable majority in the Diet for the greater part of the postwar period, and because we have a parliamentary cabinet system, the Cabinet and executive agencies have been politically stable and the legal structure has taken on coherence and continuity. As a result, there have been very few instances of major political problems becoming deadlocked and remaining unresolved in the political arena, and political problems are very

seldom referred to the courts for a solution. (YAMAGUCHI Shigeru, Informant)

- As long as one government remains in power, because the party that forms the Cabinet appoints persons that it considers suitable to the Supreme Court, inevitably, justices who affirm the status quo will be appointed. (ICHIKAWA Masato, Informant)
- By adopting a system of professional judges in preference to appointing judges from the legal profession or introducing a jury system or joint judge-jury system, Japan has created a homogeneous judiciary with the Supreme Court at its apex. This system has handled cases efficiently with a small number of judges, but it was designed with civil and criminal cases in mind. In constitutionality cases, where the individual character of those who interpret the Constitution inevitably emerges, it has had an inhibitory effect. (SASADA Eiji, Informant)
- Some areas of constitutional interpretation are properly handled by the courts, while in others the decisions of the Diet should be respected. No area should be considered beyond the scope of judicial review on the grounds that it is highly political; the distinction should be based on whether the matter belongs to the proper domain of the courts, that is, whether it involves protecting rights that are essential to the democratic process. (MATSUI Shigenori, Informant)
- Since the judiciary, unlike the Diet, was not directly elected by the people, there are inherent limits to its powers. The “act of state” doctrine must also be examined from the viewpoint of whether it is consistent with this inherent nature of the judiciary. (YAMAGUCHI Shigeru, Informant)
- If we adopt a system of abstract judicial review, there is quite a high risk of political confrontations being carried into the judicial arena. (YAMAGUCHI Shigeru, Informant)
- While the Supreme Court justices may have a heavy caseload, I think that most of the justices currently serving on the Supreme Court would say that, however busy they may be, questions of constitutionality can always be decided. (TAKESAKI Hironobu, Official, Supreme Court)

#### **<Whether to Create a Constitutional Court>**

- The following are among the points to be considered in thinking about creating a constitutional court: (1) a system and a procedure that will improve the present situation; (2) the possibility that quick decisions on constitutionality would actually be used as a way to affirm the status quo; (3) the ill effects of prolonging trials; (4) ways to draw upon the highly developed awareness of human rights found among judges in the lower courts; (5) ways of bringing out the strengths of both professional judges who handle legal cases and constitutional court judges who handle issues of constitutionality; (6) preventing the politicization of the judiciary; (7) the side effects of creating a constitutional court. (HATAJIRI Tsuyoshi, Informant)
- As academic study of judicial concepts progresses, few scholars today interpret “judicial power” in Article 76, Paragraph 1 (together with Article 81, which is based on it) to mean that it is absolutely impossible to create a constitutional court system. (HATAJIRI Tsuyoshi, Informant)
- The creation of a constitutional court should be considered from the following three viewpoints: (a) whether it is appropriate, in terms of popular sovereignty and the separation of powers, for a constitutional court to rule on constitutionality where political questions are involved; (b) how a constitutional court would stand in relation to Article 41, which stipulates that the Diet is the

highest organ of state power and the sole law-making organ, as the Court could potentially become the highest organ of state power with the power to establish new case laws through its rulings; (c) the risk that the executive branch may restrain itself excessively lest the constitutional court rule its actions unconstitutional, thus impeding the smooth conduct of government. (TSUNO Osamu, Informant)

- Even if we created a constitutional court, it would not decide constitutionality for every issue, and on politically contentious matters it might delay its decision or otherwise avoid a clear declaration of intent by invoking legal principles. (HATAJIRI Tsuyoshi, Informant)
- A look at the situation in Germany's Federal Constitutional Court shows that the judicial process is being transferred into the political arena, as the legislature, with the advice of legal experts, anticipates decisions of the Constitutional Court when preparing bills. Harmful effects of this kind occur when the solution of political questions is left entirely to a constitutional court. (SASADA Eiji, Informant)
- In theory, the courts can actively exercise the power of judicial review even under a U.S.-style incidental system. Further, it is indeed meaningful to review the constitutionality of a law within the limits of its application to a specific case, since the courts are considered to derive their legitimacy from the trial process, which in this instance means that the constitutionality of a law is reviewed in order to resolve a concrete case in an adversary proceeding. (MATSUI Shigenori, Informant)

#### **<Other Measures to Improve the Judicial Review System>**

- To reduce the burden on Supreme Court justices, we considered the approach of separating the Court's work of handling final appeals from its work of handling constitutional questions, with the result that in the great majority of cases decisions are now reached through a less onerous process. This change has been very significant for the justices. (TAKESAKI Hironobu, Official, Supreme Court)
- Improving the application of the existing system to bring out its strengths is vital to the guarantee of human rights which is the essential role of the judiciary. Those strengths include the following points: (1) constitutional questions are judged based on concrete cases; (2) citizens can take a leading role in initiating reviews; (3) the lower courts also have the power of judicial review. The basic steps needed to bring out this potential for action are to improve the method of appointing judges, so that the independence of the Supreme Court and the civic freedom of judges can be adequately secured, and to open the way for broader citizen participation in trials. (KOBAYASHI Takeshi, Informant)
- We should create a Constitutional Trial Department in the Supreme Court to handle constitutional trials only, separately from the department that handles final appeals, and grant it the power of concrete norm control. These reforms should be made by revising the Court Organization Law, not the Constitution. (HATAJIRI Tsuyoshi, Informant)
- It would be possible to establish two Special High Courts with about 30 judges each, one in eastern and one in western Japan, and have them transfer to the Supreme Court only those final appeal cases that required its decision. Selecting cases at that level would reduce the Supreme

Court's load considerably. This idea can be introduced without revising the Constitution. (SASADA Eiji, Informant)

- To reform the structure of the Supreme Court, I propose that we: (1) split its function as the court of final appeal from its function of judicial review and make it the court of last resort for judicial review, while also making the judicial review system semi-abstract; (2) reduce its functions as court of final appeal, retaining only those of altering judicial precedents and ruling on new legal issues; (3) reduce the fifteen justices to nine and have the Court sit as a single collegiate body, in view of its judicial review function. (SASADA Eiji, Informant)

## **2. The System of Popular Electoral Review of Supreme Court Justices**

There were comments that the system of popular electoral review of Supreme Court justices has become a mere formality and should be abolished. Members who expressed this view explored new methods for reviewing appointments. Proposals included: (1) employ another method of determining popular opinion by means of a vote held separately from national elections; (2) include Supreme Court appointments among the personnel matters that require the approval of the Diet; (3) create a body in the House of Councillors to review the fitness of Supreme Court appointees.

There were further comments that a system for democratically reviewing the fitness of appointees should be considered carefully while allowing for the political neutrality of judges.

On the other hand, there were also expressions of caution toward rethinking the system of popular review of Supreme Court justices. One such view focused on the intent of the system, that is, the fact that the existing system was given special recognition because the Supreme Court is the court of last instance which possesses the power of judicial review; another focused on the system's historical background, that is, the fact that after the war a committee set up under the prime minister to decide appointments to the Supreme Court did not gain acceptance. There were also comments that information about the justices which would serve as a basis for popular review of their appointments should be released more actively to the public.

### **(Comments by Informants and Others)**

- The popular review of Supreme Court justices has become a mere formality. To make the system work, perhaps we should consider a democratic method of appointing Supreme Court justices. (ISHIMURA Zenji, Speaker)

## **3. Public Participation in the Administration of Justice**

The discussion of public participation in the administration of justice focused on whether proposals for that purpose should be pursued, with particular reference to the "lay judge" system. Members

also noted issues that need to be addressed in promoting public participation in the administration of justice.

### **1) Whether to Promote Public Participation in the Administration of Justice**

Some members were in favor of promoting public participation in the administration of justice, while others expressed caution.

#### **A. Views in Favor of Promoting Public Participation in the Administration of Justice**

The case in favor of promoting public participation was based mainly on the following reasons.

- a. The administration of justice should be conducted in such a way that, by reflecting the accepted beliefs of the general public, it is open to and trusted by them.
- b. Court proceedings and the criminal investigation process will become transparent and it will be possible to arrive at just solutions.
- c. Public participation in the administration of justice is significant in terms of the spirit of popular sovereignty, and it should be provided for explicitly in the Constitution.
- d. It would also increase public interest in the administration of justice and help revitalize the system of popular review of Supreme Court appointments.
- e. Even if unsuitable persons participate in the administration of justice, there is no need for undue concern as their views will be modified in the consultative process, which includes judges, and also at trial in a higher court.
- f. The lay judge system does not violate the defendant's right to trial or infringe the independence of judges in exercising their authority.

#### **B. Views Expressing Caution about Promoting Public Participation in the Administration of Justice**

The case for a cautious approach to promoting public participation was based mainly on the following reasons.

- a. The lay judge system will make findings of facts constituting an offence and apply punishment in a simplified and rapid process; among other things, it will do away with institutional guarantees of the presumption of innocence and it will suppress the defendant's right of defense and right to counsel. We should think about guaranteeing the people's right to trial before we think about public participation in the administration of justice.
- b. The lay judge system is not readily compatible with the independence, specialized knowledge, and objectivity of the courts.
- c. The lay judge system will force members of the public to judge persons accused of crimes, and it will impose new duties such as strict confidentiality on them.
- d. Compared to the United States, with its jury system, the Japanese public has a different legal consciousness, and the lay judge system has not won the consensus of the nation.
- e. If judges lack the sensibility of an ordinary citizen, they should be retrained.



## **2) Making Explicit Provision in the Constitution for Public Participation in the Administration of Justice**

Some of its proponents called for making explicit constitutional provision for public participation in the administration of justice, mainly on the grounds that public participation is likely to be effective in reforming the undemocratic character of the judiciary.

## **3) Comments on Issues to Be Addressed in Public Participation in the Administration of Justice**

The following views were expressed concerning issues that need to be addressed in public participation in the administration of justice and related topics.

- a. To ensure that those who serve as lay judges do not bear too great a burden, we need to consider carefully such aspects as a system of leave for lay judge duty and the rules governing confidentiality.
- b. We should take steps to encourage the public to be aware of their role, including giving the lay judge system the widest possible publicity.
- c. We should make all procedures for investigations, granting of bail, and discovery of evidence transparent to ensure that the lay judge system does not lead to heavier penalties.
- d. For the sake of defendants who wish to be tried by professional judges only, I suggest we introduce a system which offers this as an alternative to trial by the lay judge system.

### **(Comments by Informants and Others)**

- In light of the spirit of popular sovereignty, the Constitution of Japan can actually be seen as anticipating a role for the public. (TAGUCHI Morikazu, Informant)
- The Constitution of Japan does not explicitly prohibit a joint judge-jury system or a lay judge system, and a number of other countries have adopted a joint judge-jury system without making explicit provision in their constitutions. Hence, Japanese citizens could participate in the administration of justice even under the existing Constitution, if we interpret it as permitting this. (ICHIKAWA Masato, Informant)
- Opinion is divided over whether the lay judge system will trigger a major change in criminal trials as we know them or merely become a catalyst for greater judicial severity. Its introduction can be described as a “high-risk, high-return” reform. (ICHIKAWA Masato, Informant)
- I support the influential minority view that under certain conditions, such as having the judge take on a certain role in ensuring that the jury conducts an appropriate fact-finding process, it would be permissible under the Constitution for the jury’s verdict to be binding on the judge. (ICHIKAWA Masato, Informant)

## **4. Miscellaneous Topics concerning the Judicial System as a Whole**

The following topics were also discussed in connection with the judicial system: new courts; judicial appointments, the guarantee of the status of judges, and related matters; and the ban on reduction of

judges' compensation.

### **1) New Courts (Administrative Courts, Labor Courts, Human Rights Courts, Etc.)**

The following views were expressed regarding the creation of new types of court.

- a. As the present Constitution's provisions on the independence of the judicial branch have already taken root, and because there is a need to speed up administrative litigation, among other reasons, we should delete Article 76, Paragraph 2, and create new tribunals such as administrative courts and labor courts.
- b. As the times are changing, we should establish a human rights court or similar tribunal to guarantee redress against violations of human rights.

### **2) Judicial Appointments, the Guarantee of Judges' Status, and Related Matters**

The following views were expressed regarding judicial appointments, the guarantee of judges' status, and related matters.

- a. The judiciary's passivism on questions of constitutionality is due to the political coloration of Supreme Court appointments and to a judicial bureaucracy which does not sufficiently ensure the freedom and independence of judges. Another factor behind the weakness of judicial independence is the tight control that the judicial administration maintains over lower-court judges.
- b. The procedure for appointing Supreme Court justices should be made transparent.
- c. We should strengthen judicial independence by integrating the legal and judicial professions, in other words, appointing judges from among persons with experience as lawyers.
- d. Reforms are needed to make active use of specialists with expert knowledge of constitutional issues; for example, we should establish an advisory council on appointments of Supreme Court justices, and change the system of appointing a fixed number of justices from certain career fields, such as judges and prosecutors.
- e. We should give constitutional status to the system of part-time judges.
- f. Personnel exchanges between the bench and the prosecutors' office are contrary to the intent of Article 78, which guarantees the status of judges, and they undermine the independence of the judiciary. We should establish a provision explicitly rejecting such exchanges.
- g. The small number of judges is problematic as it results in a heavy caseload for each judge.
- h. Judicial conferences of the Supreme Court are supposed to evaluate judges and deliberate on personnel matters, but at present they exist in name only.
- i. In judicial research and training, adequate opportunity to come to grips with the Constitution should be provided.

### **3) The Ban on Reduction of Judges' Compensation**

Some members argued that the reduction of judges' compensation which was carried out to maintain a balance with that of public servants in general was a violation of Article 79, Paragraph 6 and Article 80, Paragraph 2. Others argued that pay reductions should be allowed to the extent that they do not impair the independence of judges, and that the relevant provisions should be amended to

dispel any doubts over the constitutionality of such measures.

**(Comments by Informants and Others)**

**<New Courts>**

- The question of judicial decisions relating to science and technology has become a major problem around the world. Some countries have created “science courts.” Japan, too, needs to improve its administration of justice in scientific and technological areas. (KIMURA Rihito, Informant)

**<The Ban on Reduction of Judges’ Compensation>**

- There are two views of whether it is constitutional to reduce judges’ compensation together with that of all public servants. One view is that Article 79, Paragraph 6 and Article 80, Paragraph 2, which state that judges’ compensation “shall not be decreased during their terms of office,” are not an impediment since they are intended to guarantee the independence of the judicial branch and its judges, and a pay reduction as part of a uniform reduction for all public servants does not target the judiciary or particular judges. The other interpretation is that it is unconstitutional because the result, from the point of view of an individual judge, is a reduction in compensation. When the question was studied internally by the Supreme Court, the general understanding was that, on closer logical examination, the former position was correct. (YAMAGUCHI Shigeru, Informant)

## **Subsection 8 Public Finances**

In the area of public finances, there was discussion of fiscal democracy, especially the control of public finances by the Diet; the principle of fiscal balance; restrictions on the expenditure of public assets; and the Board of Audit.

### **1. Fiscal Democracy**

The discussion covered the significance of fiscal democracy; measures to give it more substance; the principle of no taxation without law; and the principle of single-year budgets.

#### **1) The Significance of Fiscal Democracy**

The view was expressed that the present provisions for fiscal democracy stem from the lessons learned under the Meiji Constitution, whose strict limitation of the Diet's involvement in fiscal matters ultimately led to the collapse of public finances, and that the present provisions incorporate the idea of fiscal democracy, which developed from the fiscal constitutionalism and fiscal parliamentarianism that date back to the Magna Carta.

#### **2) Measures to Give More Substance to Fiscal Democracy**

Some members called for rethinking the existing constitutional provisions in order to give more substance to fiscal democracy, since the Diet's control over public finances has been weakened by factors including the increasing complexity of the budget and accounting systems, but other members contended that the fiscal democracy provisions still hold good and there is no need to change them.

With regard to concrete measures to give more substance to fiscal democracy, in addition to control of public finances by the Diet (which is discussed under a separate heading), views were expressed on the following points.

- a. Only when it is made easier for the Diet and the people to understand the true state of public finances can they exercise control. Because of the complexity of the fiscal system today, information on public finances, including the present and future contributions of the people to social security, should be made available to the public in a readily understandable form.
- b. The public accounting system should be improved by introducing corporate-style accounting methods for public finances, among other measures. Further, the Constitution should state the basic principles that govern public accounting, namely, a high degree of transparency in the rules and oversight by an impartial third-party agency.
- c. The Constitution should specify the items to be included in the Cabinet's reports on the state of national finances, which are required by Article 91. It should also stipulate that these reports be readily understandable to the public.

On this point, there were also comments that the provision of fiscal information and related requirements can be adequately covered by legislation.

- d. The Constitution should stipulate that the prime minister (1) shall have sole responsibility for the submission of the budget and final accounts, and (2) shall be accountable to the Diet at every stage, from setting the guidelines for budget compilation onward.
- e. We need to establish a system that will allow the report on the final accounts to be utilized effectively in compiling the budget for the next fiscal year.

### **3) The Principle of No Taxation without Law**

The following were among the views expressed regarding Article 84, which states the principle that there shall be no taxation except by law: (1) there is no need for revision, and moreover, with this article as a basis, we should explore a taxation system consistent with an ideal vision for society; (2) in consideration of the right of local bodies to levy independent taxes, the article should state that national taxes shall be imposed by law and local taxes shall be imposed by ordinance.

### **4) The Principle of Single-Year Budgets**

In regard to the principle of single-year budgets, the question of whether to adopt a multiyear budget system and the subject of continuing expenditures were discussed.

#### **(1) Whether to Adopt a Multiyear Budget System**

Some members favored adopting a system of budgets extending over more than one fiscal year, while others were in favor of maintaining the present single-year system.

##### **A. Views in Favor of Adopting a Multiyear Budget System**

The case in favor of adopting a multiyear budget system was based on the following reasons.

- a. The single-year budget system has had various ill effects, including the rigidity of budgets that are compiled along the same lines year after year, and the rush to implement the budget that it leads to at the end of each fiscal year.
- b. If we manage public finances from a medium- to long-term perspective, clearly setting out our fiscal policy goals, how we plan to achieve them, the costs of present policies, the burden they will impose in subsequent fiscal years, and so on, and if we then analyze and evaluate the results, we will be able to establish fiscal discipline, make public finances more transparent, and make the government more accountable.

##### **B. Views in Favor of Maintaining the Single-Year Budget System**

The case in favor of maintaining the single-year budget system was based on the grounds that it is necessary in order to maintain fiscal balance and ensure that the Diet has control over public finances in accordance with the principle of fiscal democracy. To avoid the ill effects of single-year budgets, some proponents of retaining the system favored permitting partial carrying-over in cases where a plan or revenue source for one part of the budget extends over more than one fiscal year.

## **(2) The Proper Form of Continuing Expenditures**

The following views were expressed with regard to continuing expenditures.

- a. Under the existing Constitution, continuing expenditures should not be recognized, mainly for the following reasons: (1) the Meiji Constitution's recognition of continuing expenditures weakened the Diet's right to deliberate and allowed funds to be misappropriated for purposes of war; (2) it would violate Article 86, which stipulates a separate budget for each fiscal year; (3) it would make it more difficult to maintain fiscal discipline and achieve fiscal balance.
- b. There is an obvious need for continuing expenditures in such areas as budget allocations for public works, and they should be provided for explicitly in the Constitution as an exception to the principle of single-year budgets.

## **(Comments by Informants and Others)**

### **<Measures to Give Fiscal Democracy More Substance>**

- It may seem a little questionable in light of democratic principles to strengthen public governance by making clear the fiduciary responsibility of the present generation, who are the decision-makers in the management of public finances, thus protecting the interests of the people (including future generations) as beneficiaries, but this would, in fact, complement fiscal constitutionalism. (SAKURAUCHI Fumiki, Informant)
- Allowing the Cabinet to authorize spending at its discretion, in the form of a reserve fund, for needs which were already foreseen when the budget was compiled may overstep the bounds of the reserve fund system laid down in the Constitution. (USUI Mitsuaki, Informant)
- We could strengthen public governance over the Cabinet and the Diet by making available to the public, as financial statements, those portions of Cabinet policies that can be translated into monetary terms. (SAKURAUCHI Fumiki, Informant)
- The mechanisms we rely on at present, such as government bond issues, treasury investments and loans, and the local allocation tax, make it difficult for the public to gain a real sense of the financial burden; thus, we need to change to mechanisms which will allow the public to have a real awareness and experience of the financial burden. To achieve this, first of all, it will be necessary to release accurate financial information to the public before the Diet makes decisions. (USUI Mitsuaki, Informant)
- In Article 91, the requirement for reporting on the state of national finances should be radically strengthened by specifying the matters to be reported, among other changes. (KAWAMOTO Yuko, Speaker)

### **<The Principle of Single-Year Budgets>**

- We should establish explicit provisions in the Constitution to permit the introduction of multiyear budgets and a dual account system. (SAKURAUCHI Fumiki, Informant)
- As for how much provision should be made in the Constitution for fiscal matters, many aspects can be left to the discretion of the legislature. I would think that such matters as multiyear fiscal plans and the preparation of balance sheets can be dealt with adequately by legislation. (USUI Mitsuaki, Informant)

- Although the Constitution does not directly mandate independent annual budgets, it should always be possible to control public finances by comparing revenues and expenditures; and any method of management that does not allow this would undermine the very foundations of the budget system. (USUI Mitsuaki, Informant)
- The prohibition on carrying over expenditures is often cited as part of the principle of independent annual budgets, but it is only the unfunded carrying-over of expenditures, which relies on revenues in later years, that should be banned or curbed. Carrying over expenditures together with the necessary funds does no harm to fiscal balance. (USUI Mitsuaki, Informant)
- Continuing expenditures enable expenditure covering multiple fiscal years and are an exception to the principle of single-year budgets. If possible, they should be given constitutional status. (USUI Mitsuaki, Informant)

## **2. Control of Public Finances by the Diet**

Members discussed improving the control of public finances by the Diet, and how the two Houses should review the budget and final accounts.

### **1) Improving the Control of Public Finances by the Diet**

The following were among the views expressed regarding the control of public finances by the Diet: (1) we must create conditions that facilitate the Diet's control of the budget and public finances, including making these areas more transparent to the Diet; (2) it is necessary for the Diet not only to deliberate and decide on budgets and bills, but also to ascertain the results that these measures achieve when implemented and to utilize this information in drawing up subsequent policies and budgets.

Further, the following concrete measures to improve the control of public finances by the Diet were suggested.

- a. The Constitution should lay down a basic principle that allows for the Diet to check the budget even during the compilation process.
- b. We should make it clear that the Diet can revise the budget.
- c. The Diet should carefully review the special accounts.
- d. We should consider creating a body in the Diet similar to the U.S. Congressional Budget Office (CBO).
- e. We should establish a new Board of Administrative Oversight in the Diet and stipulate in the Constitution that it will oversee, investigate, and make recommendations on the state of execution of the budget and administrative affairs.
- f. The Board of Audit should be attached to the Diet on the model of the U.S. General Accounting Office (GAO), after taking steps to ensure its impartiality and to clarify where responsibility lies.
- g. Either House should be able to request an inspection by the Board of Audit if the request is made by a certain number of members.

- h. To strengthen cooperation between the Board of Audit and the Diet, we should require the statement of audit of final accounts specified in Article 90, Paragraph 1, to be submitted to the Diet directly instead of via the Cabinet, thus ensuring closer liaison with the administrative oversight committee in each House.
- i. We need to improve the Diet's review of the budget. To do this, besides digesting the information on the final accounts that the Diet receives, we should encourage the administrative oversight committee in each House to work more closely with the Board of Audit and to commission external investigations, among other measures.

## **2) Review of the Budget and Final Accounts by the Two Houses**

Some members favored a clear division of roles between the two Houses in their review of the budget and final accounts, proposing, for example, that the House of Representatives focus on reviewing the budget and the House of Councillors on reviewing the final accounts; others expressed caution towards this idea.

### **(Comments by Informants and Others)**

- In light of the stipulation in Article 90, Paragraph 1, that statements of audit be submitted to the Diet through the Cabinet, it seems that the present Constitution does not foresee making the Board of Audit an auxiliary of the Diet. (USUI Mitsuaki, Informant)
- If the Board of Audit were in close contact with the political arena—for instance, if it were attached to the Diet—its neutrality would most likely be affected to some extent. (MORISHITA Nobuaki, President, Board of Audit)
- Perhaps we should consider attaching the Board of Audit to the Diet, as its counterparts in various countries are attached to their national assemblies. (SHINOHARA Hiroaki, Speaker)
- I suggest the following division of roles between the Diet and the Board of Audit: the Board should check the final accounts for basic accuracy and so on, and the Diet should investigate the results of policy measures in order to evaluate the policies. (KUBOTA Yoshio, Informant)

## **3. The Principle of Fiscal Balance**

The view that the principle of fiscal balance should be stipulated in the Constitution was expressed, in light of the need to rein in bloated public finances and the present generation's responsibility to future generations in fiscal management. Some of those who favored establishing such provisions proposed that the duties of the government and others should be laid down as "program provisions" advocating fiscal balance over the medium to long term, because mandating a balanced budget over the short term would give rise to problems such as an inability to take flexible measures to stimulate the economy.

On the other hand, critics of the view that the principle of fiscal balance should be stipulated in the Constitution commented that the proposal fails to consider the fiscal management practiced by



governments to date and that it is irresponsible.

#### **(Comments by Informants and Others)**

- To ensure that the present generation does not shift its debt unfairly onto future generations, the responsibility to administer public finances soundly should be stated clearly in the Constitution. (TAKEMURA Masayoshi, Speaker)
- It is not appropriate to ban budget deficits under all fiscal circumstances and enforce a completely balanced budget, as this would be too rigid. From a macroeconomic viewpoint, it is desirable to ease fiscal conditions during a recession. I am opposed to mandating a balanced budget in the Constitution; instead, as a move toward fiscal balance, we should stipulate that the government will never conceal a budget deficit but will disclose it to the public. (KAWAMOTO Yuko, Speaker)
- Even if we incorporated fiscal balance in the Constitution, it would be a constitutional norm of a non-binding kind, but this would create a principle of fiscal balance that contained loopholes. (USUI Mitsuaki, Informant)

#### **4. Restrictions on the Expenditure of Public Assets**

In regard to restrictions on the expenditure of public assets, the discussion focused mainly on the constitutionality of private school subsidies and the handling of Article 89.

##### **1) The Constitutionality of Private School Subsidies**

Views were expressed both for and against the position that private school subsidies violate Article 89.

##### **A. The View That Private School Subsidies Do Not Violate Article 89 and Are Constitutional**

Members who held that private school subsidies do not violate Article 89 and are constitutional made the following comments.

- a. Private school subsidies should be recognized under the Constitution in light of the right to receive an education, which is stipulated in Article 26.
- b. Private school subsidies are recognized as constitutional according to the government's opinion, judicial precedent, and the views of scholars.
- c. The Private School Promotion Subsidy Law was enacted and is applied on the premise that, by interpretation of the Constitution, private school subsidies are constitutional.

##### **B. The View That Private School Subsidies Violate Article 89 and Are Unconstitutional**

Some members contended that private school subsidies violate the letter of Article 89 and are therefore unconstitutional.

## **2) The Handling of Article 89**

Many members expressed the view that Article 89 should be revised, mainly for the sake of establishing clearly in the text of the Constitution that private schools can be subsidized, but some argued that revision is unnecessary.

### **A. The View That Article 89 Should Be Revised to Make It Clear That Private Schools Can Be Subsidized**

Members commented that Article 89 should be revised to clear up any uncertainty about the constitutionality of private school subsidies, because there is a disconnect between the wording of the article and the reality that such subsidies are granted, and because relying on interpretation to recognize subsidies as constitutional has serious adverse effects.

### **B. Views That Article 89 Should Be Revised on Other Grounds**

Members made the following comments on the need to revise Article 89 on other grounds.

- a. We should also consider whether to state in the Constitution the principles governing the expenditure of public assets, such as the public nature of the enterprise, fairness, and transparency.
- b. In interpreting Article 89, we should construe “the control of public authority” loosely and recognize private school subsidies as constitutional, but the article needs to be revised nonetheless in order to clarify its intent, which is to prevent the misuse of public funds.
- c. We should revise Article 89 to permit the expenditure of public funds when the prime minister or other public official takes part in a general or customary function, recognizing this as an act of a public nature even if the function has a partly religious coloration, provided that the official’s participation is not deemed to support a particular religious association.
- d. There is a need to recognize public subsidies for NPOs, NGOs, and similar organizations.

### **C. The View That There Is No Need to Revise Article 89**

Some members expressed the view that there is no need to revise Article 89 since private school subsidies clearly do not violate its provisions, and that it is important to improve the Private School Promotion Subsidy Law so as to give substance to the people’s “right to receive an equal education correspondent to their ability” which is guaranteed in Article 26, Paragraph 1.

## **3) Other Comments**

The following views were also expressed regarding Article 89.

- a. Article 89 envisions public services being operated by nonprofit foundations with the support of donations from the public, not with funds distributed by public authority in the form of subsidies. The problem is that the Japanese legal system does not provide for this situation in an organized way.
- b. To realize the intent of Article 89 fully, we should establish a clear division of roles between the public and private sectors; that is, the public sector should manage those works on which taxes

are spent, while the private sector should be free to carry out all other enterprises without being subject to the control of public authority. We should not allow public funds to be spent on works carried out by the private sector without the control of public authority; support for these should be limited to preferential tax measures.

### **(Comments by Informants and Others)**

- In addition to Article 89, in Article 26 the Constitution declares that all people shall have the right to receive an equal education, which it defines partly in economic terms, and the private school subsidy system exists in answer to this principle. (KOBAYASHI Takeshi, Informant)
- Private school subsidies are clearly unconstitutional when viewed in light of Article 89. (ENDO Masanori, Speaker)

## **5. The Board of Audit**

In addition to the topics of attaching the Board of Audit to the Diet or strengthening liaison between them, which were mentioned under “Control of Public Finances by the Diet,” discussion of the Board of Audit focused mainly on the proper form of the system and on how to strengthen the Board’s functions and increase its independence.

### **1) The Proper Form of the Board of Audit System**

The following views were expressed regarding the proper form of the Board of Audit system.

- a. The Board of Audit is a stabilizer built into the system, and it helps give substance to popular sovereignty. However, it is questionable whether it has been functioning adequately, and there are calls for the Board to fulfill its expected functions.
- b. We should set the relevant constitutional items in order after considering the whole picture, including the need for a mechanism by which the public can request audits by the Board.

### **2) Strengthening the Board of Audit’s Functions, Increasing Its Independence, and Related Matters**

The following views were expressed with regard to strengthening the Board of Audit’s functions, increasing its independence, and related matters.

- a. We need to take bold measures to emphasize the Diet’s function of oversight and control “after the fact,” which has been neglected until now. For example, when waste or fraud occurs, the budget for the next fiscal year could be automatically cut by the amount involved. To achieve these goals, we need to strengthen the functions of the Board of Audit still further.
- b. We should empower the Board to recommend corrective actions to the Cabinet or the prime minister.
- c. The Board of Audit should employ certified public accountants and other specialists by making them government employees for a fixed term.
- d. The right to decide the Board of Audit’s personnel and revise its budget should be taken away

from the executive branch.

- e. Exchanges of personnel between the Board of Audit and other government departments should be banned, and we should also prohibit retiring or former employees of the Board from accepting employment with any entity that the Board audits.

**(Comments by Informants and Others)**

- If the Board of Audit's role as a kind of court is to be strengthened further in such areas as examination of liability for reparations or review and judgment at the request of interested parties, its powers should be set out expressly in the Constitution. (USUI Mitsuaki, Informant)
- In the United States, the GAO has a broad role which includes detailed examination of policies. Perhaps Japan's Board of Audit should establish a similar system. (UTSUNOMIYA Fukashi, Informant)

## **Subsection 9 Local Self-Government**

In addition to a general discussion of the chapter on local self-government, other topics discussed included: the need for decentralization and the issues involved; the ideal form of local public entities; the power to enact ordinances; local public finances; residents' referendums; and special laws applicable to only one local public entity.

### **1. General Discussion of the Chapter on Local Self-Government**

The chapter on local self-government was discussed and evaluated as a whole. Many members called for improvements to the existing provisions, pointing to inadequacies in the chapter and suggesting items that should be newly established.

#### **1) General Evaluation of the Chapter on Local Self-Government**

Some members gave the chapter on local self-government a positive evaluation overall, while others cited inadequacies.

##### **A. Positive Evaluations of the Chapter on Local Self-Government**

Those who evaluated the chapter positively argued mainly on the following grounds.

- a. Chapter VIII is intended to institute and establish the major principles of local self-government, and its provisions will serve as guidelines for local autonomy in the future.
- b. Chapter VIII has played a major role in the postwar development of local self-government.
- c. Chapter VIII was enacted because it was recognized, based on the lessons of the prewar years, that establishing local autonomy would be essential to postwar democratization, and it still has the support of the public today.
- d. Chapter VIII is a very concise statement of the relationship between the central and local governments. It is important to ask whether subordinate laws are in keeping with its spirit.
- e. As provisions on local self-government, the existing four articles are adequate, particularly from the point of view of allowing flexibility in the system's design, and it is appropriate that they leave the details to be specified in laws or ordinances.
- f. The development of local self-government is not being held back by inadequacies in the relevant provisions of the Constitution. Decentralization can be furthered by adjusting the system, for example, by enacting a basic law for local autonomy.

##### **B. Comments Citing Inadequacies in the Chapter on Local Self-Government**

Those who cited inadequacies in the chapter argued mainly on the following grounds.

- a. The present chapter consisting of only four articles is too simple; it needs to be improved by adding more detailed provisions, among other things.
- b. The present chapter has little concrete substance and leaves a great deal to legislation.

## **2) “The Principle of Local Autonomy” in Article 92**

The following views were expressed regarding the phrase “the principle of local autonomy” in Article 92.

- a. “The principle of local autonomy” is too abstract and abstruse; it should be reworded more clearly.
- b. “The principle of local autonomy” is a concept of importance to the Constitution, and there is no need to revise it.
- c. “The principle of local autonomy” consists of self-government by local entities and resident self-government; this meaning has become clearly established as the Constitution has been applied and as case law has been formed.
- d. Resident self-government, which is part of the “principle of local autonomy,” is essential to the creation of a diverse and harmonious community as a prerequisite for living together. Further, self-government by local entities functions as a system to adjust the interests of the community’s members.
- e. With regard to the relative importance of resident self-government and self-government by local entities, it is important to emphasize resident self-government, and for local residents to form a consensus on governance within the community.
- f. The current trend is toward emphasizing resident self-government, but we also need to realize the importance of self-government by local entities.
- g. We should affirm that “the principle of local autonomy” consists of a concept of self-government characterized by autonomy, which means that certain principles of local self-government are inviolable even by the state.

## **3) Matters Related to Local Autonomy for Which the Constitution Should Provide**

The following views were expressed, mainly by those who cited inadequacies in Chapter VIII, about matters related to local autonomy for which the Constitution should provide.

- a. Rather than relying entirely on the interpretation of the phrase “the principle of local autonomy,” we should set out the basic division of powers between the state and local authorities in the Constitution.
- b. The principle that the central and local governments are on a basis of equality should be stated explicitly in the Constitution.
- c. The Constitution should state the “principle of complementarity,” which holds that, as a general rule, the duties for which the public sector is responsible should be carried out by public entities as close as possible to the local level, which are most closely in touch with residents’ lives.
- d. In keeping with the redistribution of powers between the central and local governments, the latter need a constitutional guarantee of certain exclusive or preferential legislative powers.
- e. We need to lay down the basic principles of taxation and public finances at the local level, which are not provided for in the existing four articles of Chapter VIII.
- f. The right of local governments to levy independent taxes should be stated explicitly in the Constitution.
- g. We should stipulate the principle of fiscal balance at the local level in the Constitution, as it is

necessary that local governments, as well as the central government, maintain sound fiscal discipline.

- h. If we introduce a *do-shu* system, we should make provision for it in the Constitution.
- i. It is important to establish a provision in the Constitution stating that the central and local governments will cooperate to promote the welfare of their citizens and residents.

### **(Comments by Informants and Others)**

#### **<General Evaluation of Chapter VIII>**

- When the present Constitution was enacted, there was little precedent anywhere in the world for providing an institutional guarantee of local autonomy in a nation's constitution, and it was thus a very significant move. (MORITA Akira, Informant)
- Perhaps the greatest impact of Chapter VIII came from its adoption of popular election for heads of local government—the feature which caused Japanese leaders the greatest hesitation at the time. They feared that direct voting by residents would threaten political stability, but the public seems to have welcomed this system as a step toward democratization. (AMAKAWA Akira, Informant)
- Although the Meiji Constitution had no provisions on local autonomy, that does not mean that the subject was ignored; in fact, local self-government has been making quiet progress since the Meiji Period, beginning with the system of municipalities. I see the present Constitution as an advance, as it stated the principles of local self-government explicitly and thus marked a fresh start. (IWASAKI Mikiko, Informant)
- The establishment of provisions on local autonomy in the Constitution marked the coming of a new era, compared with the prewar years when people were led to believe that local public entities governed themselves naturally based on the community. (JINNO Naohiko, Informant)
- The development of local autonomy has been held back, not by the Constitution's deficiencies, but by the density of statutory regulation, that is, the amount of detail contained in statutes, and by the fact that both administrative control and the taxation and fiscal systems remained centralized for many years. (TSUJIYAMA Takanobu, Informant)
- In a federal state, the relationship between the federal and state governments is laid down in considerable detail. In a unitary state like Japan, however, even the creation of a local government system comes under the jurisdiction of the central government, and thus it is not unnatural that the system was left to be decided by law. (MORITA Akira, Informant)
- The present Constitution does not establish the status of local self-government adequately. The four articles of Chapter VIII are simply worded, leaving much to be decided by law, and the key phrase, "the principle of local autonomy," is very abstract and unclear. The present provisions should be revised to express the basic ideals of local autonomy. (OKADA Takahiro, Speaker)

#### **<The Principle of Local Autonomy>**

- The phrase "the principle of local autonomy" in Article 92 is a statement that, at a minimum, there is a domain in which local authorities exercise certain inherent powers of self-government. The problem is that the precise boundaries of that domain have yet to be clearly established.

(MORITA Akira, Informant)

- “The principle of local autonomy” is a very unclear phrase that can be interpreted however one likes, but I personally see it as an institutional guarantee of the process of creating a government by taking into account residents’ hopes, desires, and grievances. (KATAYAMA Yoshihiro, Informant)

#### **<Matters Related to Local Autonomy for Which the Constitution Should Provide>**

- It is not appropriate to stipulate matters relating to local government in detail in the Constitution, as it would leave us unable to respond flexibly to the changing times. (IWASAKI Mikiko, Informant)
- Japan, too, should adopt the principle of complementarity which is stated in the World Charter of Local Self-Government. (KAMONO Yukio, Speaker)
- Perhaps the basic principles of public finance should be set forth either in the Constitution or in a “Charter of Local Self-Government,” which would be similar to a basic law. (JINNO Naohiko, Informant)
- It is necessary to set forth the principles and general rules of self-government clearly among the constitutional norms, thus providing solid guidelines for lawmakers to follow. (KAGOSHIMA Hitoshi, Speaker)

## **2. The Need for Decentralization and the Issues Involved**

The discussion of decentralization focused on whether it is necessary and on the issues involved.

### **1) The Need for Decentralization**

The following views were expressed regarding the need for decentralization.

- a. Decentralization is necessary to further democracy, as democracy develops when issues that affect residents’ daily lives are decided at the local level.
- b. Decentralization is necessary to end the central government’s dominance and establish a separation of powers between central and local authorities.
- c. Extreme centralization has caused the regions to become overly dependent on the central government and to lose their autonomy and self-responsibility. We should do away with this centralized structure which is under the control of the bureaucracy.
- d. Decentralization is necessary to the national land development policy, which seeks to relieve such problems as the concentration of population in the major urban areas and to enable people to enjoy cultural and economic benefits in every part of the country.
- e. Because facilities are constructed according to uniform nationwide standards decided by the central government, the distinctive character that comes from each community’s history and locale has been lost.



## **2) The Issues Involved in Decentralization**

The following views were expressed regarding the issues involved in decentralization.

- a. Decentralization has not made adequate progress; among other problems, even after the Comprehensive Decentralization Law came into effect, the execution of administrative work by local governments has remained under centralized control, and tax revenue sources have not been transferred on a large enough scale.
- b. The relationship between the central and local governments and the division of roles between them should be clarified; that is to say, powers and fiscal resources should be transferred in large measure to the regions, the central government's role should be limited, and local matters should be decided at the local level.
- c. At present, the national government sets the standards, in the form of statutes, for work executed by local governments, but we should change this to enable each local government to set its own standards by ordinance.
- d. As decentralization proceeds, obvious disparities in fiscal strength are emerging among local governments. This is likely to have adverse effects on balanced national land development and equality of educational opportunity.

In response to this point, there were comments that imbalances between regions should be regarded as healthy differences.

- e. For decentralization to be effective, it is necessary that economic centers be dispersed throughout the country.
- f. Local governments need to develop and secure human resources so that they can exercise the powers transferred to them by the central government. Securing personnel will also require understanding on the part of the central government.
- g. Local governments need to adopt a system that allows them to work together with volunteers and NPOs.
- h. It is important to give local residents access to information and have them participate in government.

### **(Comments by Informants and Others)**

#### **<The Need for Decentralization>**

- Until now, Japan has achieved great success by creating a society that is easily controlled by centralized authority, but if we are to accommodate an increasingly diverse and pluralistic array of values which take the form of self-realization, instead of pursuing economic efficiency alone, we will need to work toward decentralization. (KITAGAWA Masayasu, Informant)
- Some people fear that if powers are transferred to the regions, special interests will prevail and policy-makers will make mistakes, but the regions cannot expect to grow as long as they remain dependent on the central government, with no self-determination and no self-responsibility. Furthermore, the prefectures should not hold back the independence of the municipalities by wielding centralized authority. (KITAGAWA Masayasu, Informant)

### <The Issues Involved in Decentralization>

- Decentralization will mean the end of egalitarianism. If we cannot accept diversity, with some regions being inferior to or different from others, then decentralization will not be right for Japan. Historically, however, Japan once had a regionally diverse culture, and although we became accustomed to centralization as the nation modernized, I believe that the acceptance of diversity is encoded in our DNA. (IWASAKI Mikiko, Informant)
- As decentralization proceeds, the following aspects of the central government's relationship with local governments will be at issue: (1) the division of work and jurisdiction; (2) the distribution of revenue sources; (3) what form the central government's control over the execution of work should take; (4) personnel affairs at the local government level. (MORITA Akira, Informant)
- In the era of decentralization, local governments should take a form which enables residents to play a part in the public sphere. This is possible at all four stages of local government programs: planning, decision-making, implementation, and evaluation. How resident participation is built into the system and made effective determines what form local communities take in a decentralized society. (IWASAKI Mikiko, Informant)

### 3. The Ideal Form of Local Public Entities

With regard to the ideal form of local public entities, there was discussion of a *do-shu* system, which would consolidate the prefectures into larger units; municipal mergers; the present two-tiered system of local public entities; and the proper organization and structure of local public entities.

#### 1) The *Do-shu* System

While many members were in favor of introducing a *do-shu* system, some expressed caution toward this idea.

Some members took the position that it is possible to introduce a *do-shu* system under the existing Constitution, while others expressed the view that it will be necessary to establish explicit constitutional provisions.

Further, some members expressed views in favor of a decentralized federal state, but others expressed caution toward introducing a federal system.

#### A. Views in Favor of Introducing a *Do-shu* System

The case in favor of introducing a *do-shu* system was based mainly on the following grounds.

- a. After encouraging municipal mergers and transferring powers and tax resources to the basic units of local government, we should consolidate the prefectures (which are midway between the basic units and the central government) in order to create an efficient structure for national governance.

- b. We should introduce larger geographical units of local government so as to streamline administrative organization at both the national and local levels and thus cut down greatly on administrative costs.
- c. A *do-shu* system is needed to take on the powers devolved to the regions by the central government.
- d. Transferring powers from Japan's excessively large central government to the *do-shu* and giving them effective sovereignty will make it possible to achieve bold administrative reforms.
- e. The *do-shu* is a unit of a suitable size not only for coordinating the work of the basic units of local government over a large area, but also as an economic unit.
- f. We should consider introducing a *do-shu* system as a transitional step between the present two-tiered system and a one-tiered system consisting only of municipalities.

## **B. Views Expressing Caution about Introducing a *Do-shu* System**

Those who expressed caution about introducing a *do-shu* system argued mainly on the following grounds.

- a. Increasing the scale of local bodies may weaken resident self-government, mainly by making it more difficult to reflect residents' voices.
- b. The way to achieve true local autonomy is to adopt a single-tiered system, with the basic units of local government dealing directly with the national government, and a *do-shu* system is therefore unnecessary.
- c. There is concern that local administration and finances might become too remote from residents due to prefectural mergers or the adoption of a *do-shu* system. Wide-area administrative needs can be met by mutual cooperation and regional partnerships among prefectures. It is more important to realize further decentralization while retaining the existing two-tiered system.

## **2) Municipal Mergers**

In connection with determining the right size for the basic units of local government, the question of whether municipal mergers should be promoted was discussed. Some members were in favor of more mergers, while others expressed caution.

### **A. Views in Favor of Promoting Municipal Mergers**

The case in favor of promoting municipal mergers was mainly based on the following reasons.

- a. The basic units of local government should be enlarged in order to cope with the fiscal crisis and changes in the social structure.
- b. To provide services to residents, basic units of local government must have a fiscal base that reaches a certain minimum size.
- c. We should introduce larger geographical units of local government so as to streamline administrative organization at both the national and local levels and thus cut down greatly on administrative costs.
- d. Regarding the right size for municipalities, basic units of local government need a population in the 200,000 to 300,000 range, or in the 300,000 to 600,000 range. Further, the right number of

municipalities nationwide is around 300, to enable them to operate autonomously in such areas as implementing public works projects.

## **B. Views Expressing Caution about Promoting Municipal Mergers**

Those who expressed caution about promoting municipal mergers argued mainly on the following grounds.

- a. Measures which effectively force municipalities to merge or deny small communities recognition as independent municipalities are contrary to the principles of self-government by local entities and resident self-government, and thus they violate the Constitution.
- b. We should respect regional diversity and the autonomy of local governments.
- c. As local bodies grow larger, it becomes difficult for residents to participate in local self-government.
- d. When mergers are too extensive, they actually result in a decline in services to residents.
- e. Mergers among sparsely populated districts merely increase their total area without strengthening their fiscal base.
- f. Before promoting municipal mergers, a more urgent priority should be transferring powers and sources of tax revenue to local governments.

## **C. Other Comments on Municipal Mergers**

The following views regarding municipal mergers were also expressed.

- a. Municipal mergers are currently being pursued for the sole purpose of achieving greater size, with no overview of how roles should be divided between the national and local governments. Residents are not sufficiently aware of the prefectures' efforts to encourage municipal mergers because the mergers lack clear principles and goals.
- b. Municipal mergers began in response to the transfer of powers under the Comprehensive Decentralization Law, but their focus has now shifted to the problem of fiscal resources.
- c. The wishes of residents should be respected in deciding municipal mergers.
- d. Unless a municipal merger is preceded by a residents' referendum or similar process, it cannot be said that a true consensus of residents has been obtained. Viewed on a national scale, however, there is not always adequate consensus-building.
- e. Properly speaking, the assembly or the chief executive should be accountable for important matters such as municipal mergers, and thus they are not suited to residents' referendums.
- f. From the point of view of local autonomy, it is problematic to effectively force municipalities to merge by imposing limits on the powers and functions of local public entities with a population of less than 10,000, or to induce them to merge by offering grants.
- g. Municipal mergers should be directed by the central government.
- h. In thinking about the right size for municipalities, we should discuss not only small local bodies but also large ones. Large local governments, such as those of the government-designated cities, have exceeded a manageable size and reached their limits, especially in terms of maneuverability. We should discuss the arguments for splitting up larger entities as well as those for merging smaller ones.

### **3) The Two-Tiered System of Local Public Entities**

Some members favored streamlining the two-tiered system of local public entities, while others argued for its retention.

#### **A. Views in Favor of Streamlining the Present Two-Tiered System**

The following views were expressed in favor of streamlining the present two-tiered system.

- a. The two-tiered system should be reviewed in light of the system of government-designated cities, whose powers are almost equal to those of the prefectures, and improvements in the information and transportation networks. The prefectural system, in particular, should be streamlined, taking into account the ongoing municipal mergers and the prospect of a *do-shu* system being introduced.
- b. The way to achieve true local autonomy is to adopt a single-tiered system, with the basic units of local government dealing directly with the national government.

#### **B. Views in Favor of Maintaining the Present Two-Tiered System**

The following views were expressed in favor of maintaining the present two-tiered system.

- a. The two-tiered system conforms with the Constitution since, if it were abolished, all work not handled by the municipalities would have to be implemented directly by the national government.
- b. The prefectures have a role to play, given that there has not yet been enough progress in municipal mergers and the municipalities remain weak.
- c. Below the basic unit of local government we should establish the “community” as a third tier where resident self-government is fully realized, and consensus should be sought among residents at this level.

### **4) The Proper Organization and Structure of Local Public Entities**

The following views were expressed concerning the proper organization and structure of local public entities.

- a. Local governments throughout the country have a uniform dual system consisting of a chief executive officer and an assembly, as laid down in Article 93. To allow local governments to adopt diverse structures in keeping with their size or other features, we should establish a constitutional provision permitting a variety of formats, such as a parliamentary cabinet system, a city manager system, or a council system.
- b. As the chief executive officers of local governments have extensive powers which will become even stronger as decentralization and municipal mergers proceed, we should set term limits for these offices.
- c. To reduce the number of seats in local assemblies would decrease resident self-government under Article 93.

## **(Comments by Informants and Others)**

### **<The *Do-shu* System>**

- The essential difference between a *do-shu* system and a federal system is that, in the latter, the separation of legislative powers at the national and state levels is clearly set forth in the Constitution. Accordingly, if Japan adopts a federal system, it will be necessary to revise the Constitution. (IWASAKI Mikiko, Informant)
- In introducing a *do-shu* system, the following issues will have to be addressed: (1) the geographical boundaries of the *do-shu*; (2) the design of the system, including the method of electing the chief executive officer; (3) whether to retain a two-tiered system or introduce a three-tiered system. (IWASAKI Mikiko, Informant)
- There are two possible approaches to a *do-shu* system: (1) transferring the national government's powers and tasks to the *do-shu* or, conversely, (2) taking regional tasks that the prefectures cannot handle and transferring them to a higher level by creating the *do-shu*. After sorting out the above points, we need to think carefully about whether it is necessary to create another "public sphere" above the prefectures. (JINNO Naohiko, Informant)
- I am afraid that some very heavy-handed reforms are going on; that is, small towns and villages are being consolidated and a *do-shu* system is being created before it is clear what it will ultimately consist of. (TSUJIYAMA Takanobu, Informant)
- The following points need to be addressed before introducing a federal system: (1) it would require a constitutional revision; (2) it would require a bicameral system with one chamber consisting of regional representatives; (3) even if we adopted a federal system, there is no guarantee that power would be devolved to the basic units of local government. (IWASAKI Mikiko, Informant)

### **<Municipal Mergers>**

- Critics of the current policy of promoting municipal mergers argue that the promotion of mergers by the central government runs counter to the principle of local autonomy and destroys local communities, and that instead of merging to create a single very large local authority, it is better for a number of municipalities to form a regional federation or for the prefectures to carry out certain tasks on behalf of small towns and villages. In response, one can argue that: (i) it is necessary for the central and prefectural governments to make adjustments among municipalities to ensure that, on average, they all gain stronger administrative and fiscal capacities; (ii) it is also important to maintain administrative services to residents, and we need to find a form of local government that strikes a balance between different values; (iii) federations should be utilized only where mergers are not sufficient, and for the prefectures to take over the work of municipalities would run counter to decentralization. (MORITA Akira, Informant)
- In relation to the merger issue, there are two conflicting values: (1) proponents of mergers believe that as many tasks as possible should be carried out by the basic units of local government; (2) opponents of mergers believe that the existing basic units of local government should do as much as they can and leave the rest to larger regional bodies. Taking into account

the situation in Japan in the past, the views of the municipalities, and the wishes of residents, we should adopt the first position and pursue mergers to increase the administrative and fiscal capacity of municipalities. (MORITA Akira, Informant)

- Municipal mergers are focused on solving financial problems and enabling social welfare and other administrative services to be maintained in future in communities with declining populations. In the case of remote islands or hilly and mountainous districts, however, a municipality must cover a quite enormous area if it is to attain the size necessary for a certain level of efficiency, and it is highly questionable whether it is actually desirable, in terms of what a local community should be, for such an entity to constitute one basic unit of local government. Thus, I would say that in hilly and mountainous districts we must consider structuring local bodies in a different way from the past. (MORITA Akira, Informant)
- Japan should emulate the Scandinavian system, that is, a two-tiered system in which large basic units of local government provide public services according to the welfare-state model. To achieve this, it will be essential to reorganize the municipalities. (IWASAKI Mikiko, Informant)
- One cannot say that the ideal size for a municipality is so many tens of thousands of people. The ideal size varies from one locality to another, and it is contrary to the spirit of local autonomy to set a uniform figure for the whole country. (IWASAKI Mikiko, Informant)

#### **<The Two-Tiered System of Local Public Entities>**

- Cost-benefit relationships are easy to see in the municipalities, the basic units of local government, but not at the prefectural level, where work is commissioned by the national government and carried out via the municipalities. The question in future is how to streamline this three-tiered system made up of the national government, prefectures, and municipalities. (KITAGAWA Masayasu, Informant)
- As decentralization progresses and the number of government-designated cities grows, the latter will have powers rivaling those of the prefectures, and the prefectural assemblies will have an increasing proportion of members elected from designated cities, leading to a difficult relationship between these cities and the prefectures. In view of their autonomous nature, one option would be for the designated cities to leave the prefectures. (MORITA Akira, Informant)

#### **<The Proper Organization and Structure of Local Public Entities>**

- The organization and structure of local public entities are subject to formal and detailed rules prescribed by law by the national government, mainly in the Local Autonomy Law. In pursuing decentralization, however, we should permit local bodies, including municipalities both large and small, to decide their own organization and structure, thus allowing scope for diversity, local character, and flexibility. (KATAYAMA Yoshihiro, Informant)
- A city manager system would not violate Article 93 as long as the manager was not empowered to represent the local body, but revising Article 93 would make it possible to adopt a city manager system with fewer problems. However, the option of appointing a mayor by popular election should also be retained. (TSUJIYAMA Takanobu, Informant)

#### 4. The Power to Enact Ordinances

The following views were expressed regarding the power to enact ordinances.

- a. In keeping with the redistribution of powers between the central and local governments, the latter need a constitutional guarantee of exclusive or preferential legislative powers instead of the existing right “to enact their own regulations within law.”
- b. To make diverse forms of local autonomy possible among the basic units of local government, we should adopt a charter system, in which each local authority enacts an ordinance setting forth the principles governing its representative body, the duties for which it will be responsible, who will bear the costs, and so on, and this charter is recognized by the Diet.

In response to this point, there were comments that a charter system would be problematic because each local body would organize basic matters according to a different system.

- c. We should enact a basic law for local autonomy which provides for exceptions, so that local bodies can choose to be exempted from certain laws by enacting an ordinance.
- d. Because the Constitution leaves the respective roles of the national and local governments to be determined by law, we need to enact legislation that sets limits on the national government’s powers, and to adopt a new approach in which the Diet decides only the broad outlines of each measure by law, and more detailed standards are set by local ordinances rather than Cabinet orders or ministerial ordinances.
- e. Even in areas relating to the duties of local governments, the national government is naturally expected to set legal restrictions which take into account the interests of the nation as a whole and those of other local bodies. Where laws and ordinances conflict, it is possible to resolve the legality of supplementary ordinances (which are stricter than the relevant laws) or additional ordinances (which cover areas not covered by the relevant laws) in an appropriate way by turning to the precedent set by the Supreme Court, which has stated that an ordinance should be judged not solely on the basis of its wording but by taking its intent and other factors into account.

#### (Comments by Informants and Others)

- We should enact a basic law for local autonomy which provides for exceptions, so that local bodies can choose to be exempted from certain laws by enacting a “basic ordinance for self-government.” By analogy with Article 95, these basic ordinances would have to be approved in a residents’ referendum to take effect. One example of a statute from which a local body might be exempted is the provision in the Public Offices Election Law which determines the voting age in elections for the mayor and local assembly. (TSUJIYAMA Takanobu, Informant)
- If the central government decides all the details, practices become standardized throughout the country and ill-adapted to local conditions, which leads to dysfunctionality. In future, the central government should engage with local governments by allowing them a degree of freedom, flexibility, and choice. (KATAYAMA Yoshihiro, Informant)



- There are no particular rules about the level of detail the national government can provide for in the laws it enacts. Thus, when it establishes detailed provisions, the government effectively leaves less latitude for local bodies to pass legislation of their own. The question then becomes finding a system to control the density of statutory regulation. Basically, the most realistic approach is for the Diet to control this itself. (MORITA Akira, Informant)

## **5. Local Public Finances**

With regard to local public finances, the discussion focused on: the right of local governments to levy independent taxes; the transfer of sources of tax revenue; and a system of fiscal adjustment among local governments to correct disparities and guarantee financial resources.

### **1) The Right of Local Governments to Levy Independent Taxes**

The following views were expressed regarding the right of local governments to levy independent taxes.

- a. Since fiscal independence is essential to ongoing decentralization and the self-sufficiency of local governments, it is necessary to effectively guarantee their right to levy independent taxes. To ensure this, we should explicitly stipulate the right of local governments to levy independent taxes in the Constitution.
- b. There is no need to make special provision in the Constitution for the right to levy independent taxes, as this right is automatically recognized as part of “self-government by local entities” and “resident self-government,” which together constitute “the principle of local autonomy” referred to in Article 92.
- c. If we are going to argue that local governments require the right to levy independent taxes, we need to reach a consensus about taxes at the local level that exceed the standard tax rate.
- d. The trend toward taxes originating at the local level, especially those not prescribed in the Local Tax Law, can be seen as positive since it stimulates the public’s interest in taxation. We need to create a system that will enable local bodies to take innovative taxation measures.
- e. There are obvious limits to the right to levy independent taxes, since the taxable items are already fixed by law for most tax sources. Decentralization reforms will make no progress until the central government transfers sources of tax revenue to the local governments.
- f. A *do-shu* system can be introduced and powers such as the right to levy independent taxes can be strengthened, even under the existing Constitution, by enacting, revising, or repealing the appropriate laws. Instead of just discussing whether to make provision for these things in the Constitution, we need to give them real substance by means of legislative efforts.

### **2) The Transfer of Sources of Tax Revenue**

The following views were expressed regarding the transfer of sources of tax revenue from the national to local governments.

- a. More spending takes place at the local level, but more tax revenue is received at the national

level. Thus, we need to transfer sources of tax revenue in order to enable local governments to obtain sufficient revenue to meet their expenses.

- b. In promoting decentralization, we need to transfer not only tasks and powers, but also sources of tax revenue.

In response to this point, it was argued that, because of the risk of increasing the disparities in fiscal strength among local governments, local taxes should be limited to resident taxes, fixed property taxes, and the like, with the national government levying all other taxes and distributing a fixed amount of the revenue to local governments.

### **3) A Fiscal Adjustment System**

The following views were expressed regarding a fiscal adjustment system.

- a. It is certainly important to transfer sources of tax revenue to local governments, but to correct disparities between regions, a redistribution mechanism, like a local allocation tax, will also be important in the future.
- b. The local allocation tax operates in two ways, to guarantee revenue sources and to adjust them, and the national government has a responsibility to ensure that it performs these functions adequately.
- c. There are a number of problems in the present system local allocation tax, including the following points: (1) the formula is extremely complex; (2) the system hinders local governments' own tax collection efforts; and (3) the special allocation tax is a cause of *amakudari* (golden parachuting of high-ranking bureaucrats into the corporate elite). Hence, there is a need for a grant system in which the amounts are calculated automatically and mechanically.
- d. Even when sources of tax revenue have been transferred to local governments, the existing disparities in fiscal strength among the regions will persist or become even worse. We will therefore need a new horizontal fiscal adjustment system to reconcile these differences.
- e. It would be possible to have the basic units of local government levy their own taxes first, and to put in place a horizontal fiscal adjustment system which uses the revenues from these taxes to make adjustments among local governments.

### **4) Other Comments**

The following views were expressed regarding other aspects of local public finances.

- a. The traditional subsidy-based administration has led local governments into a condition of moral hazard, and it is one cause of their huge fiscal deficits.
- b. The national government should secure revenue sources for that portion of the work performed by local governments that relates to the national minimum standard of living.
- c. The Constitution should explicitly state the principle of fiscal balance at both national and local levels.
- d. We need to combine the tax collection systems at the national and local levels into a unified system.

- e. There are certain conditions that make it difficult for local governments to perform their tasks efficiently and to adopt a variety of methods, and there is also not enough disclosure of information to residents. The fiscal situation at the local level has worsened because local governments were restricted to agency-delegated tasks and limited in terms of revenue sources, and also because they have been serving as enforcers for the national government's economic stimulus programs.

### **(Comments by Informants and Others)**

- It is difficult for local bodies to secure independent revenues by levying their own taxes. The significance of local taxes not stipulated by the Local Taxation Law lies in their effectiveness in raising environmental awareness. (KATAYAMA Yoshihiro, Informant)
- To increase residents' awareness as local taxpayers, rather than introducing taxes not stipulated in the Local Taxation Law, it is more important that local governments be allowed to freely decide the rates of the fixed property tax and the resident tax. (KATAYAMA Yoshihiro, Informant)
- As we promote decentralization, public finances need to be adjusted in two ways: (1) "vertical financial equalization," or the transfer of powers and revenue sources from the central government to local governments to adjust how administrative tasks and the power to levy taxes are divided between them; (2) "horizontal financial equalization," or the adjustment of fiscal disparities among local bodies by the central government. As decentralization is promoted by allocating many administrative tasks to local authorities as part of vertical financial equalization, disparities in fiscal strength will arise among local governments, and hence there will be an increasing need for horizontal financial equalization to correct these. (JINNO Naohiko, Informant)
- It is the national government's duty to carry out horizontal fiscal adjustment by means of a system such as equalizing subsidies, which are equivalent to local allocation tax. (IWASAKI Mikiko, Informant)

## **6. Residents' Referendums**

Residents' referendums are a mechanism of direct democracy in which local governments ask residents to vote directly on specific measures or policies. Members discussed whether they should be institutionalized and, if so, what points would require special attention.

### **1) Whether to Institutionalize Residents' Referendums**

Some members were in favor of institutionalizing residents' referendums, while others expressed caution.

#### **A. The Case in Favor of Institutionalizing Residents' Referendums**

The case in favor of institutionalizing residents' referendums was based mainly on the following

reasons.

- a. Direct resident participation in government is consistent with the principles of democracy.
- b. Residents' referendums are very meaningful in terms of making local government more relevant to residents, given that elections for local assemblies are not always fought over policies.
- c. Many matters in local politics are intimately related to residents' daily lives; as the parties whose interests are at stake, quite often it is appropriate to ask them to decide an issue, or to take their judgment into account.
- d. Residents' referendums can complement the indirect democracy based on a representational system adopted by modern states; the two are not mutually exclusive.
- e. The residents' referendums held by local governments on such topics as the siting of nuclear power plants are very important in reflecting residents' wishes in local politics, and they are necessary in order to guarantee residents the opportunity to express their wishes on a stable and universal basis.
- f. Referendums have immediacy and make it possible to learn residents' wishes on particular issues.

## **B. Views Expressing Caution about Institutionalizing Residents' Referendums**

Those who expressed caution about institutionalizing residents' referendums argued mainly on the following grounds.

- a. There are concerns that the voting will be accompanied by what amounts to coercion, agitation, and obstruction.
- b. Residents may not sufficiently understand the matters on which their judgment is sought in referendums.
- c. Residents' referendums are not consistent with the Constitution, which, both in the Preamble and in the main text, takes indirect democracy as its foundation.
- d. If the head of a local government implements a referendum to appeal directly to public opinion, this could deny the elected assembly a role.
- e. If referendums are employed for every controversial issue, the "resident self-government" component of local autonomy will become too strong.

## **2) Points Requiring Special Attention If Residents' Referendums Are Institutionalized**

The following views were expressed regarding points that will require special attention if residents' referendums are institutionalized.

- a. Some topics, such as security, are not suited to residents' referendums.
- b. In some cases, like the siting of facilities considered undesirable to have in one's environs, such as nuclear power plants, the issue will reach a deadlock if it is rejected in a residents' referendum.
- c. There must be fair disclosure of information on issues which residents are asked to decide.

### **(Comments by Informants and Others)**

- One aspect of residents' referendums is that they embody the principle of people making their

own decisions on matters that affect them personally; another aspect is that they convey the wishes of local residents to the central authorities. (IGUCHI Shusaku, Informant)

- In order to fulfill two conditions, namely, that the bar for holding residents' referendums should not be set too high, and that deliberations by local assemblies should be improved, there are two possible avenues to be explored: either revise the Local Autonomy Law, or enact a new law on residents' referendums. However, misuse of residents' referendums should be avoided. (IGUCHI Shusaku, Informant)
- While I believe that deliberation in local assemblies is fundamental, issues of some types, depending on their substance, may be suited to residents' referendums. But it is important to tell the residents clearly how the results of a referendum will be used. (MASUDA Hiroya, Informant)
- The fullest possible use should be made of residents' referendums in order to revitalize popular sovereignty. (KAMONO Yukio, Speaker)
- If we are to strengthen local autonomy and resident self-government, we should reassess residents' referendums in a positive light by changing our conventional understanding of representative democracy to one more oriented toward direct democracy. It would be advisable to establish constitutional provisions for that purpose. In making political decisions at important junctures, representatives or administrators should listen to the actual voices of the people. In essence, the ideals of popular sovereignty and resident sovereignty are direct-democratic in nature, and we must not let the many practical problems involved in holding residents' referendums become an excuse for failing to realize them. (OHKUMA Yoshikazu, Informant)
- Behind the demand for residents' referendums, there seems to be dissatisfaction with the orthodox routes—the assembly and the administration—because they do not reflect residents' wishes fully. In that sense, residents' referendums are good for democracy, as they reflect public opinion, but decisions made by this system carry a great deal of weight, since the results speak for all residents, and once made they are difficult to overturn; thus, it is dangerous to make use of the system too lightly. In my view, our first priority should be to improve the mechanisms for resident participation via the orthodox routes, that is, the local assemblies and local executive agencies. (MORITA Akira, Informant)
- There are a great many problems to be worked out in holding residents' referendums, including: (1) whether to make them legally binding; (2) what situations they should be held in; (3) what relationship there should be between residents' demands and the resolutions of the local assembly or decisions of the head of local government; (4) the proper timing; (5) whether a minimum turnout should be required for a referendum to be valid; and (6) who should be eligible to vote and how eligibility criteria should be set. (OHKUMA Yoshikazu, Informant)

## **7. Special Laws Applicable to Only One Local Public Entity**

The following views were expressed regarding Article 95, which stipulates that a residents' referendum is required to enact a special law applicable to only one local public entity.

- a. Local government has stronger elements of direct democracy than the national system, and the system provided in Article 95 is an expression of direct democracy.
- b. The system requiring residents' referendums on special laws applicable to only one local public entity is set forth clearly in the Constitution (Article 95) and was concretely realized in the years after the war, but in recent years it has typically not been applied when it should have been, as, for example, in the case of revision of the Law for Special Measures for Land Expropriation for U.S. Military Bases, which in practice applies only to Okinawa Prefecture.
- c. While it is important to respect residents' wishes, there are certain constraints where matters such as national security are concerned.

## **8. Other Comments**

The following views regarding local autonomy were also expressed.

- a. In this era of decentralization and regional sovereignty, politicians have a responsibility to think about a policy of "one nation, many systems" within the framework of the Constitution.
- b. We should establish the status within local autonomy of entities such as NPOs, intermediate corporations, and the community.
- c. We should place importance on revitalizing the community because that is where self-government originates, where Japanese traditions and culture are kept alive, and where the productive and social activities of the people take place.

## **Subsection 10 Constitutional Amendments**

In regard to the chapter entitled “Amendments” (Chapter IX), the constitutional amendment procedure and the limits to revision of the Constitution were discussed.

### **1. The Amendment Procedure**

With regard to the constitutional amendment procedure, there was discussion of general items relating to the amendment procedure set forth in Article 96, and of such questions as who has the right to propose constitutional amendments and whether the requirements in the amendment procedure should be relaxed, among other topics.

#### **1) General Comments on the Amendment Procedure in Article 96**

The following general views were expressed regarding the amendment procedure set forth in Article 96:

- a. It is important to understand that the provisions of Article 96 are: (1) concerned with the stability of the Constitution; in other words, since the Constitution is the foundation of the nation’s legal order, its revision should be approached with caution; (2) rooted in the principle of popular sovereignty, which can be equated with the power to enact a Constitution; and (3) concerned with intergenerational constraints, while having an aspect that counterbalances them.
- b. The expression “as an integral part of this Constitution” in Article 96, Paragraph 2 anticipates the idea of “adding to the Constitution,” that is, maintaining the existing Constitution’s provisions and adding clauses which form an integral part of the whole.
- c. Because constitutional revision is an important question that affects the very foundation of the nation, it would be better to avoid touch-and-go national referendums where the outcome is unpredictable until the issue is put to the vote. Diet members have a responsibility to work toward a process in which, as far as possible, a common understanding is fostered among the public, so that the referendum becomes a formality to confirm the will of the people.
- d. The term “amendments” in Article 96 refers to recognizing changes for the better, as the word itself suggests; it does not admit of changes for the worse. “Amendments” are positive changes in the direction of historical progress. Retrograde changes that run counter to history are not called “amendments.”
- e. The opening words of the Preamble cite the Diet as “our duly elected representatives,” and therefore the Diet must have the public’s trust. Thus, if we view the amendment procedure in Article 96 from the perspective of the public, who in a national referendum are voting on whether they agree to an initiative of the Diet, it cannot be said that the conditions for a referendum are satisfied if the people do not trust the Diet which initiated the amendment.

#### **2) Who Has the Right to Propose Constitutional Amendments**

On the question of who has the right to propose constitutional amendments (original drafts), the view

was expressed that only Diet members can do so, for reasons including: (1) the Diet is the highest organ of state power, and (2) it is not appropriate to construe the “bills” which the prime minister submits under Article 72 as including proposals for constitutional amendments. However, it was also suggested that both Diet members and the Cabinet can make proposals.

In addition to the above, the following views were expressed:

- a. To help develop the principle of popular sovereignty further, we should allow members of the public to make proposals.
- b. If a *do-shu* system is introduced, we should recognize three types of proposals: by the Diet, by the public, and by the *do-shu* assemblies.

### **3) Relaxing the Requirements in the Amendment Procedure**

Many views were expressed both for and against relaxing the requirements in the Constitution’s amendment procedure.

#### **A. Views in Favor of Relaxing the Requirements**

The case in favor of relaxing the requirements was based mainly on the following grounds.

- a. It is necessary to revise the Constitution in tune with the changing times; this is not a matter that should be dealt with forever by means of interpretation. We should relax the requirements and create a Constitution in keeping with the times.
- b. Relaxing the requirements will provide more opportunities for the public to weigh the Constitution’s contents, submit them to national debate, and create a Constitution that reflects the voice of the people, and thus it will enhance the Constitution’s value. Moreover, we have a responsibility in this regard to the people, with whom the right to enact a constitution lies.
- c. No amount of debate on the Constitution will stimulate public opinion in regard to revision as long as the possibility of actually initiating an amendment is assumed to be virtually nil.
- d. Many rulings of unconstitutionality could be issued as a result of such steps as introducing a constitutional court system or strengthening the power of judicial review, but this would be meaningless under the present amendment procedure, which makes it all but impossible to amend the Constitution.
- e. Since man-made rules should be constantly checked as times change, a flexible Constitution is better than a rigid one.
- f. If we were to try to pass an amendment concerning the powers of the House of Councillors or other matters affecting the Upper House, nothing could be done under the present procedure, which requires the consent of two-thirds of its members.

A number of concrete proposals for relaxing the requirements were also mentioned. The main proposals were as follows.

- a. (1) State explicitly that both the Diet and the Cabinet have the right to propose amendments; (2) eliminate the requirement for a national referendum when an amendment receives the consent of two-thirds or more of the members of both Houses; (3) as a proviso to (2), retain the requirement



for a national referendum in the case of amendments concerning the rights and duties of the people; (4) state clearly that a “majority” in a national referendum means a majority of all valid votes cast.

- b. The consent of a simple majority in each House should be required to initiate an amendment.
- c. The consent of a simple majority in the House of Representatives should be required to initiate an amendment.
- d. The consent of two-thirds or more of the members of one House and a simple majority in the other should be required to initiate an amendment.
- e. The consent of three-fifths or more of the members of either House should be required to initiate an amendment.
- f. The consent of a simple majority of the members present, with a quorum consisting of two-thirds of the members of each House, should be required to initiate an amendment.

## **B. Views Opposed to Relaxing the Requirements**

The case against relaxing the requirements was based mainly on the following grounds.

- a. The question of the amendment procedure should be considered from the viewpoint of the people, with whom sovereignty resides; it is not a matter of whether or not the procedural bar is set too high.
- b. Amending the Constitution is an important question that affects the very foundation of the nation, and it is therefore important to adopt a careful process, that is, one in which we endeavor in good faith to reach a consensus in the Diet, let the public see that process, gain the broadest consensus possible, and then confirm the will of the people in a national referendum based on the principle of popular sovereignty. Since it is the highly rigid nature of the amendment procedure that guarantees this process, relaxing its requirements would be contrary to the original intent of the Constitution.
- c. In light of the fact that the U.S. Constitution is considered more rigid than the Constitution of Japan and yet it has been amended many times, we cannot say categorically that the amendment requirements of the existing Constitution present too high a hurdle.
- d. As the Constitution lays down rules for the exercise of state power, an important perspective when we think about revising it is the need to create a set of common rules which remain steady even when there is a change of government. To that end, it is important to obtain a broad consensus in the Diet, and thus the requirement of a two-thirds majority to initiate an amendment is reasonable.
- e. Critics say that the bar is set too high at two-thirds, but I question whether that is really so, considering that election turnout runs at around 60 percent, so that the Diet as a whole has a 60 percent vote of confidence, and two-thirds of that is 40 percent.
- f. When we want to change the Constitution amid diversifying public attitudes, international conditions, and so on, we should try to achieve an “intersubjective” unity of purpose, and the requirement of the consent of two-thirds or more of the members of both Houses should therefore be retained.
- g. A national referendum on constitutional amendments is a concrete embodiment of the principle

of popular sovereignty; deleting the referendum provision cannot be permitted as it would ride roughshod over the principles of the existing Constitution.

- h. The fact that the existing rigid Constitution makes the amendment procedure difficult means that it approaches the notion of constitutional revision with caution. Thus, a revision that relaxed the amendment procedure would not only ignore the nature of the Constitution as supreme law, but would override the historical course of modern constitutionalism and the existence of modern constitutions; furthermore, it would violate Article 98, Paragraph 1, which states that the Constitution is the supreme law of the nation, and Article 99, which states that public officials have an obligation to respect and uphold the Constitution. Hence, it is not permissible under the principles of law.
- i. If we relax the requirements for the Diet to initiate an amendment, there could be a national referendum on constitutional amendments every time there is a change of government, and in some cases the amendments might be voted down. That could lead to a loss of trust in politics and, ultimately, in the parliamentary system.

There were also comments that it makes no sense to argue about whether the existing Constitution's amendment requirements are rigid when there has never been a genuine attempt to revise the Constitution.

#### **(Comments by Informants and Others)**

##### **<General Comments on the Amendment Procedure in Article 96>**

- The fact that the revision process involves a national referendum is a concrete embodiment of the idea that only the people, who have the power to establish a constitution (sovereignty), are permitted to revise it, and that ordinary assemblies, which possess only legislative powers created by the Constitution, do not have the final power to decide. (TAKAMI Katsutoshi, Informant)
- One reason for the Constitution's rigidity is the doctrine of "natural rights," which holds that the basic rights of the individual cannot be restricted by laws even if they have the consent of 99 percent of the people. However, there is the question of whether the doctrine of natural rights is applicable to every society. Looking at the problem from a different aspect, a society that always respects minority views, instead of suppressing dissent, is a society that will never go out of control and destroy itself. A society that creates opportunities for ongoing dialogue between the majority and minorities will likely be a stable society. Thus, I suggest, the significance of a rigid constitution lies in the fact that it demarcates and sets a kind of limit to what can be decided by a simple majority, thereby protecting minorities. (NAGAO Ryuichi, Informant)
- If decisions on constitutional amendments are entrusted to the people, I suggest that they will end up deciding on the basis of the current climate of opinion, influenced by a media blitz and incomplete information, and it will be difficult to obtain a truly judicious decision. It is therefore the duty of the state to take measures to increase the public's understanding, while ascertaining through repeated and continuous surveys what proportion of voters have the knowledge and ideas that they need to judge for themselves on constitutional matters; the public also have a

duty to inform themselves. (HIRATSUKA Akifumi, Speaker)

#### **<Who Has the Right to Propose Constitutional Amendments>**

- The case for the Cabinet having the right to propose amendments is a rather half-hearted argument derived from (1) the notion that the Cabinet can probably make proposals since it is, of course, involved in implementing the Constitution; and (2) the supposition that even if the Cabinet is not recognized as having that right, considering that most of its members hold Diet seats, it could make proposals in the Diet by acting through these members. (TAKAMI Katsutoshi, Informant)
- The Constitution provides for the initiation of amendments, but it says nothing about the stage before that, namely, proposals. Therefore, one could say that, in addition to Diet members, who naturally have the right to make proposals, the Cabinet or the public could also be given the right if legislative provision were made for proposals. (TAKAMI Katsutoshi and NAGAO Ryuichi, Informants)

#### **<Relaxing the Requirements in the Amendment Procedure>**

- In a hypothetical situation where it is not difficult for the Diet to initiate constitutional amendments, each political party will have to take on political risks and be prepared to face the consequences if it wishes to tackle concrete amendment issues that have an impact on the national life, because the amendment will stand a good chance of becoming a reality. In other words, as it becomes increasingly possible to initiate amendments, each party will be forced, more and more, to address the issues with caution and a degree of tension. Conversely, repeatedly discussing the Constitution under conditions where there is virtually no realistic chance of initiating an amendment may have a negative effect and could even prolong the stagnation of the political process itself. Thus, relaxing the requirements for initiating amendments would be one way to restore a healthy tension between politics and the Constitution. (SASAKI Takeshi, Informant)
- The Constitution was revised into its present form in accordance with the provisions of the Meiji Constitution, and now, in Article 96, it naturally contains provisions of its own for an amendment procedure. Although the matter might look different to a legal expert, to me, as a layman, it seems only proper to partially amend Article 96 by following its own amendment provisions. (YAMAZAKI Masakazu, Speaker)
- As it says in the Preamble, the Constitution of Japan was created by the people, who have the power to establish a constitution. The people have a presence in the Constitution in the form of national referendums on constitutional amendments, as set forth in Article 96. In other words, the article declares that the people themselves will, when necessary, change the constitution that they have created. Accordingly, there is a fundamental difficulty in amending the provisions of Article 96. (TAKAMI Katsutoshi, Informant)
- Although the Constitution of Japan does have a high degree of rigidity compared to other constitutions, it cannot be called exceptionally high. However, in discussing the degree of difficulty or the frequency of constitutional revisions, one should take an overall view of the

character of the constitution and the conditions in the country concerned, as shown by the example of Switzerland, whose highly rigid constitution has been amended at the rate of about twice yearly. It is problematic to argue solely in terms of whether the formal hurdles presented by the amendment procedure are high or low. (TAKAMI Katsutoshi, Informant)

- The requirement of the consent of two-thirds or more of the Diet's members to initiate an amendment cannot be met without considerable debate and persuasion of the public. That is to say, the consent of two-thirds or more of the Diet's members is probably achievable if the debate process is open to the public and the contents of the amendment genuinely warrant changing the Constitution, and it is therefore an important condition. (HAMADA Takehito, Speaker)
- Regarding the system of national referendums on constitutional amendments, while national referendums are certainly a concrete embodiment of popular sovereignty, it is not my understanding that eliminating them would be a denial of popular sovereignty and that such a revision would not be permissible. However, as a matter of constitutional policy, I am not entirely in favor of establishing provisions that would do away with national referendums, not only because it is the Japanese way to avoid altering the Constitution if at all possible, but also because, as popular revolutions have taught us, an amendment truly belongs to the people when it is one that they themselves have decided on. (IGUSHI Shusaku, Informant)

## **2. The Limits to Constitutional Revision**

There was discussion of whether there are limits to constitutional revision, that is, whether the Constitution can be amended in any way whatsoever, provided the established procedure is followed. The following views were expressed for and against this position:

### **A. Comments Arguing That There Are Limits to Constitutional revision**

- a. Revising the amendment procedure in Article 96 to do away with national referendums on constitutional amendments would negate the principle of popular sovereignty and exceed the limits of constitutional revision.
- b. The Constitution can be read as setting limits on constitutional revision with respect to: (1) the principle of popular sovereignty declared in the Preamble; (2) the renunciation of war in Article 9, Paragraph 1; (3) the eternal inviolability of fundamental human rights declared in Article 11.

### **B. Comments Arguing That There Are No Limits to Constitutional Revision**

We need to reconsider the idea that there are limits to constitutional revision, that certain portions cannot be changed even with the consent of 99 percent of the people. It is wrong for a previous generation to have absolute power over later generations.

In addition to the above views, on the question of how the rigid amendment procedure is related to the limits to constitutional revision, the view was expressed that, given a situation where politicians

and the public lack a deep understanding of the limits to constitutional revision, that is, the fact that the basic norms of the Constitution cannot be revised, the rigidity of the amendment procedure serves, in effect, to protect these limits.

**(Comments by Informants and Others)**

- The farsighted and unique nature of the basic principles of the Constitution of Japan is seen in six themes that are truly “fruits of the age-old struggle of man”: (1) the guarantee of fundamental human rights; (2) popular sovereignty; (3) permanent pacifism; (4) the separation of powers; (5) the guarantee of local autonomy; and (6) the principle of international cooperation. While it is possible to develop these further, we cannot permit any backsliding, even in the name of constitutional reform. (KAMONO Yukio, Speaker)
- The right to revise the Constitution means, in theoretical terms, that the Constitution contains a basic expression of the will of the people who created it, and to change its major principles would lead to changing the Constitution itself. In that sense, there are theoretical limits to constitutional revision. (TAKAMI Katsutoshi, Informant)
- The argument that there are limits to constitutional revision seems quite mistaken when one considers that, among other objections: (1) it is a prime example of intergenerational constraint, and (2) revisions which exceeded the limits of the right of amendment in the Meiji Constitution were carried out according to the amendment procedure of the latter, and their validity has not been challenged. (NAGAO Ryuichi, Informant)

## **Subsection 11 Supreme Law**

In regard to the chapter entitled “Supreme Law” (Chapter X), there was general discussion of the significance and basis of the Constitution’s role as the supreme law of the nation. One area that was discussed in detail was Article 98, which stipulates both that the Constitution is the supreme law and that treaties and the laws of nations shall be faithfully observed; the discussion focused on the relationship between the Constitution and international law, with special reference to the status of treaties in the nation’s legal structure. Among the topics discussed in relation to Article 99, which stipulates that public officials have an obligation to respect and uphold the Constitution, were whether the same obligation should be imposed on the people, and how the obligation relates to the constitutional revision debate.

### **1. The Nature of the Constitution as Supreme Law**

The following views were expressed regarding the significance and basis of the Constitution’s role as supreme law.

- a. The “supreme law” provision is a concrete guarantee of the character of the Constitution, that is, the fact of its being supreme among domestic laws, as the basic law which lays the foundation for the existence of the state.
- b. Article 98, Paragraph 1, which states that the Constitution is the supreme law, was established as part of a system to guarantee the Constitution by guaranteeing the effectiveness of its norms. Other provisions forming part of this system include: (1) the three articles concerning the separation of powers, namely, Article 41 (the legislative branch), Article 65 (the executive branch), and Article 76, Paragraph 1 (the judicial branch); (2) Article 81, which establishes the system of judicial review; (3) Article 96, Paragraph 1, which establishes the amendment procedure that makes the Constitution rigid; (4) Article 97, which expresses the principle of the rule of law; and (5) Article 99, which imposes on public officials the obligation to respect and uphold the Constitution.
- c. The nature of the Constitution as the supreme law has an effective basis in the guarantee of human rights, as can be seen in the fact that Article 97, which declares that human rights are to be held for all time inviolate, is situated in the chapter on “Supreme Law.”

### **2. The Constitution and International Law**

Views expressed regarding the Constitution and international law focused on how treaties are related, in terms of legal force, to the Constitution and to laws; the status of treaties in the domestic legal order was also discussed. Other topics included the handling of recommendations made to the government by international agencies.

### **1) The Relationship between the Constitution and Treaties in Terms of Legal Force**

With regard to the relationship between the Constitution and treaties in terms of legal force, some members took the position that the Constitution prevails, expressing support for the doctrine of precedence or conditional precedence of the Constitution (the latter being the view of the government) or similar views. Some who took this position argued, in regard to the relationship between the Japan-U.S. Security Treaty and the Constitution, that the doctrine of precedence of the Constitution should be clearly stated, thereby establishing a logical basis for the Japan-U.S. Security Treaty to exist on the level of a subordinate concept under the principle of international cooperation, which is enshrined in the Constitution.

An opposing view was that because domestic and international law have different sources, the question of which is superior does not arise.

### **2) The Relationship between Laws and Treaties in Terms of Legal Force**

With regard to the relationship between laws and treaties in terms of legal force, some members took the position that treaties prevail over laws. Some of those who expressed this view added the proviso that the government should not make use of the ratification or nonratification of treaties for its own purposes.

### **3) Clarifying the Status of Treaties in the Domestic Legal Order**

In connection with the discussion of the relationship between the Constitution and treaties in terms of legal force mentioned in 1) above, some members expressed the view that the status of treaties in the domestic legal order should be clarified in the Constitution, but others commented that it is already clear from existing provisions that the Constitution prevails over treaties, based on the interpretation that concluding a treaty, as an official act, comes under the purview of judicial review set forth in Article 81.

Further, the following concrete proposals were made from the viewpoint that the status of treaties in the domestic legal order should be clarified in the Constitution:

- a. The Constitution should state clearly that Japan cannot conclude treaties that violate the Constitution, and/or that when it wishes to conclude a treaty that conflicts with domestic law, the relevant domestic law must be revised immediately.
- b. We should revise Article 98 itself, as its parallel presentation of two different positions—with Paragraph 1 declaring the Constitution the supreme law of the nation and Paragraph 2 stating that the laws of nations shall be faithfully observed—leads to confusion in its interpretation.

### **4) The Handling of Recommendations by International Agencies**

Two views were expressed on how recommendations issued to Japan by international agencies such as the ILO and the UN Human Rights Committee should be handled: (1) they should be fully respected, mainly on the basis of Article 98, which stipulates that treaties shall be faithfully observed; (2) these are matters to be decided independently by each nation, based on its sovereignty,

and recommendations should be treated as one element to be taken into consideration in doing so.

## **5) Other Comments**

The following views were also expressed regarding the relationship between the Constitution and international law.

- a. Article 98, Paragraph 2, which states that treaties and the laws of nations shall be faithfully observed, gives concrete expression to Article 9's stance of committed pacifism and to the Preamble's stance of international cooperation.
- b. If we revise the Constitution, we need to strive to incorporate the provisions of internationally recognized human rights treaties as far as possible.
- c. While efforts are needed to ratify international human rights treaties, each country views the history of civilization, including its religious and historical aspects, in a different way and has its own perspective on human rights; hence, each country should make its own decisions about ratifying treaties.
- d. The present state of Diet review of treaties is problematic in that, despite the fact that treaties affect the provisions of domestic law, (1) not all treaties are subject to the Diet's approval, and (2) the Diet has no role in decisions on attaching reservations to treaties.

### **(Comments by Informants and Others)**

#### **<The Relationship between the Constitution and Treaties in Terms of Legal Force>**

- The fact that treaties are subject to judicial review obviously means that, in the order of legal precedence, the Constitution prevails over treaties. (HATAJIRI Tsuyoshi, Informant)
- In the domestic legal order the Constitution is the supreme law, and to the extent that treaties apply to domestic law, they cannot violate the Constitution. (MATSUI Shigenori, Informant)
- It is not possible to judge across the board which takes precedence, the Constitution or an authoritative treaty like the UN Charter. Importance should be attached to internationally established norms, in accordance with the Constitution's stipulation that treaties shall be faithfully observed. (KITAOKA Shinichi, Informant)
- The question of which prevails, the Constitution or treaties, is not especially important, considering that the treaties that Japan enters into must be faithfully observed based on Article 98, and even those that it has not entered into are binding on Japan under international customary law. (ANNEN Junji, Informant)

#### **<The Relationship between Laws and Treaties in Terms of Legal Force>**

- A coherent explanation is to construe the precedence given to treaties over domestic law as the result of an attempt to harmonize "internationalism" with other constitutional principles while treating the former as a keynote, since it forms part of the Constitution's basic stance. However, as is clear from the fact that the Supreme Court has no role in ensuring that domestic laws conform with treaty obligations because, under the Codes of Criminal and Civil Procedure, the only ground for a final appeal to the Supreme Court is a violation of the Constitution, the precedence of treaties cannot be said to be such a general principle that it is self-evident.



(SAITO Masaaki, Informant)

#### **<The Handling of Recommendations by International Agencies>**

- The ILO's recommendations and reports are international standards issued by an international body of which Japan is a member, and under the Constitution we should therefore respect them to the fullest possible extent. (SUGENO Kazuo, Informant)

#### **<Other Comments>**

- One possible means of implementing international human rights treaties domestically is to give them an indirect constitutional status by using them as a standard for interpreting the Constitution in judicial review by the courts. (SAITO Masaaki, Informant)
- In recent years there have been cases where international agreements, whatever their form, are binding on domestic law, and it is therefore important that the Diet monitor the government's conduct of external affairs more broadly and exercise the necessary control. (SAITO Masaaki, Informant)
- The government's opinion that the Diet is not permitted to attach reservations during the procedure for its approval of treaties is not necessarily correct. While there is a certain logic to this position in the case of bilateral treaties, when it comes to multilateral treaties, where attaching a reservation does not alter the text of the treaty itself, the power to decide whether to attach reservations can be seen as falling within the competence of the Diet. (SAITO Masaaki, Informant)

### **3. The Obligation to Respect and Uphold the Constitution**

With regard to the obligation to respect and uphold the Constitution, there was debate over "acts of the prime minister which allegedly amount to a violation of this obligation." There was also debate over whether this obligation, which is presently addressed to public officials, should be addressed to the people as well. The question of how the debate on constitutional revision is related to the obligation to protect and uphold the Constitution was also discussed.

#### **1) Acts of the Prime Minister Which Allegedly Violate the Obligation to Respect and Uphold the Constitution**

There was debate over whether the following acts of the prime minister violate the obligation to respect and uphold the Constitution.

- a. continuing visits to Yasukuni Shrine;
- b. the announcement of support for the attack launched on Iraq by U.S., British and other forces without a UN Security Council resolution.

Those who held that act (b) above violates the obligation to respect and uphold the Constitution argued that it is a violation of the UN Charter to use force without a UN Security Council resolution,

and that announcing support for such a use of force is a violation of the obligation to faithfully observe treaties in Article 98, Paragraph 2, and therefore also a violation of Article 99.

## **2) Whether the Obligation to Respect and Uphold the Constitution Should Be Addressed Explicitly to the People**

There was some discussion of whether the obligation of the Emperor and all public officials to respect and uphold the Constitution, as set forth in Article 99, should be expanded and addressed explicitly to the people as well. Views were expressed both for and against this proposal.

### **A. Views in Favor of Addressing the Obligation to Respect and Uphold the Constitution to the People**

Proponents argued that the duties of the people, as well as their rights, should be set forth explicitly from the perspective that the Constitution should provide a clear model for the conduct of the people, and also that, from the viewpoint of responding to military or other emergencies, imposing a duty to protect the constitutional system on the people will help foster the development of a duty to defend the nation.

### **B. Views Opposed to Addressing the Obligation to Respect and Uphold the Constitution to the People**

Opponents argued from the viewpoint of the rule of law and constitutionalism, stressing that the Constitution is a set of norms to prevent infringement of the rights of the people by state authority.

## **3) The Relationship between the Obligation to Respect and Uphold the Constitution and the Debate on Constitutional Revision**

There was discussion of whether it was permissible for public officials such as Diet members, who are obligated to respect and uphold the Constitution, to debate constitutional revision. Those who considered it permissible argued mainly on the following grounds: (1) while public officials and politicians should, naturally, abide by the Constitution, that obligation has no bearing on studying the question of constitutional revision; (2) while Diet members are obligated to respect and uphold the Constitution under Article 99, they also have a duty to discuss constitutional revision because they have a role in the amendment procedure as set forth in Article 96.

Comments from the opposing viewpoint included the following: (1) proponents of constitutional revision cite problems such as the need to stipulate new human rights or to improve the provisions on local autonomy, but since these problems can be solved by respecting the provisions of the existing Constitution and putting them into practice, and since the prime minister and others in government are obligated to respect and uphold the Constitution, their first priority should be to strive to make its principles a reality, not to talk about revising them; (2) the proposition before this Commission, in light of the stated purpose for which it was established, is not to discuss constitutional revision but to investigate the extent to which the obligation to respect and uphold the

Constitution set forth in Article 99 has been implemented.

**(Comments by Informants and Others)**

- If the people are to protect their own lives and property in an emergency situation, it is necessary to establish clearly, by some form of constitutional provision, that the people, too, have duties and responsibilities toward the Constitution. (OGAWA Kazuhisa, Informant)
- I think that the posts listed in Article 99, such as “the Emperor” and “members of the Diet,” were specified when the Constitution was enacted because these were seen as the people most likely to advocate constitutional revision in the future. (YAMAUCHI Tokushin, Speaker)
- In advocating constitutional revision, the first duty of those who are obligated to respect and uphold the Constitution is to determine and make clear to the public how far the ideals and goals of the existing Constitution have been realized. (MORI Nobuyuki, Speaker)

## **Subsection 12 Direct Democracy**

Topics discussed with regard to direct democracy included direct democracy in the Constitution of Japan; the relationship between direct and representative democracy; whether to introduce a national referendum system; the legal effect of national referendums; who should have the right to initiate a national referendum; appropriate subjects for national referendums; problems involved in introducing a national referendum system, and measures to address them.

### **1. The Meaning of Direct Democracy**

#### **1) Direct Democracy in the Constitution of Japan**

With regard to the status of direct and representative democracy in the Constitution of Japan, the view was expressed that the Constitution, while founded on representative democracy, adopts limited institutions of a direct-democracy type.

#### **2) The Relationship between Direct and Representative Democracy**

##### **(1) General Discussion**

The following views were among those expressed in the general discussion of the relationship between direct and representative democracy: (1) the relationship is complementary, rather than a trade-off in which the will of the people is reflected in politics by direct democracy whenever representative democracy does not function well; (2) the Constitution of Japan is designed to give substance to popular sovereignty by combining the functions of representative democracy and direct democracy.

##### **(2) The Relationship between Platform-Based Elections (Representative Democracy) and a National Referendum System (Direct Democracy)**

The general discussion of the relationship between representative and direct democracy was followed by a more detailed discussion taking up the relationship between platform-based elections (representative democracy) and a national referendum system (direct democracy). Views were expressed both for and against using national referendums to complement platform-based elections.

#### **A. Comments in Favor of Using National Referendums to Complement Platform-Based Elections**

According to this position, platform-based elections (in which the public is asked to choose a government from among a number of political parties, each of which presents a policy package based on its ideals) can be compatible with the holding of national referendums to seek the public's judgment on issues which arise after an election. The following views were expressed:

- a. Some parts of a party's platform are more essential than others; that is to say, some parts are directly linked to the party's ideals and philosophy, while others are more peripheral. For these less essential parts of the platform, there is room for revisions to be made through a national

referendum.

- b. Opinions on matters that were not contested in a general election could be sought, for advisory purposes, in a national referendum.
- c. Given that the Japanese system is based on indirect democracy and we are aiming for a bipartisan system, we must gain acceptance for the idea of complementing this with direct democracy.

## **B. Comments Opposing the Use of National Referendums to Complement Platform-Based Elections**

According to this position, platform-based elections and national referendums are not considered compatible, mainly on the grounds that seeking decisions on individual issues in a national referendum could conflict with policies that were chosen as part of an election platform. The following views were expressed:

- a. The choice made by the public in an election, after the parties have made campaign promises, has a weight that cannot be ignored. I question whether that important choice can be swayed by means of a referendum.
- b. If a party platform is a body of policy with a unified philosophy, and in a general election each party's platform is presented to the voters as a package deal, I cannot agree to taking individual policies that were published in a party's platform and submitting them to a referendum.
- c. We should not establish a national referendum system, because introducing such a system in the Constitution would not only be redundant with respect to parliamentary democracy, but would also duplicate existing means of condensing public opinion, especially elections to the two Houses of the Diet.

### **(Comments by Informants and Others)**

#### **<The Relationship between Direct and Representative Democracy>**

- In Japan, critics contend that local governments cannot hold residents' referendums because we have adopted parliamentary democracy. But if one understands that the fundamental element of parliamentary democracy is democracy, and that this is closely associated with popular referendums, then, at least, the argument that we cannot have referendums because we have parliamentary democracy does not hold up. (IGUCHI Shusaku, Informant)

#### **<The Relationship between Platform-Based Elections and a National Referendum System>**

- I believe that a national referendum system is not permitted under the existing Constitution, and that even if such a system were implemented under a "national cabinet" system, because basic policies are decided in elections, a national referendum would probably amount, in effect, to the prime minister asking the public for a vote of confidence. On the other hand, national referendums on important issues that are independent of government policies could possibly function well. (TAKAHASHI Kazuyuki, Informant)

## **2. A General System of National Referendums**

Three direct democracy systems are adopted by the Constitution of Japan: (1) national referendums on constitutional amendments (Article 96); (2) residents' referendums on the enactment of special laws applicable only to one local public entity (Article 95); (3) popular review of the appointment of Supreme Court justices (Article 79). The question of whether a general system of national referendums should be introduced in addition to these was discussed.

### **1) Whether to Introduce a National Referendum System**

Some members were in favor of introducing a system of national referendums, while others took a cautious approach.

#### **A. Comments in Favor of Introducing a System of National Referendums**

The following views were expressed in favor of introducing a system of national referendums:

- a. As values diversify, a national referendum system should be introduced to reflect the diversity of needs and opinions.
- b. A national referendum system should be introduced as it would also complement parliamentary politics.
- c. Popular sovereignty is an extension of the sovereignty of residents. Thus, because the Constitution already provides for residents' referendums, which have proved their effectiveness, after closely examining them we should situate national referendums on the same continuum, on the responsibility of the Diet.

#### **B. Comments Taking a Cautious Approach to the Introduction of a System of National Referendums**

The following views taking a cautious approach to the introduction of a system of national referendums were expressed:

- a. The essence of democracy lies in debate. It is undemocratic to try to reach a conclusion on an issue which has barely been discussed by suddenly asking a large number of residents to vote yes or no.
- b. As voters lack consistency in policy matters and do not have think tanks to provide them with the information necessary to judge the merits of a policy, I cannot help wondering how meaningful their proposals and their votes can be.
- c. National referendums should be limited to such matters as the popular review of appointments of Supreme Court justices and constitutional amendments.
- d. It is important to make the present Diet and parliamentary democracy function soundly.

### **2) The Legal Effect of National Referendums**

The following views were expressed on the question of what legal effect should be recognized for the results of national referendums, in the event that such a system is introduced. These comments

could also be said to explore ways of introducing a national referendum system from the viewpoint of its legal effect under the existing Constitution.

- a. Establishing a legally binding referendum system would require amending the Constitution, and I am not in favor of this. If we do establish a referendum system, we should limit it to a system that is advisory in nature.
- b. Direct referendum systems that are advisory in nature may be possible, but, at least where binding national referendums on the enactment of laws are concerned, it would be difficult to introduce such a system solely by interpretation of the existing Constitution, without an amendment, because Article 41 clearly says that the Diet shall be the sole law-making organ of the state, and Article 59 clearly says that a bill becomes a law on passage by both Houses.

### **3) Who Should Have the Right to Initiate a National Referendum?**

The following views were expressed on the question of who should have the right to initiate a national referendum:

- a. If we introduce national referendums, it should be a precondition that the Diet will decide which issues are to be put to the vote.
- b. If we introduce a system of national referendums, they should not be initiated by the Cabinet. One possibility would be to give that power to the House of Councillors, after determining its ideal form and considering its makeup and nature.
- c. To develop the principle of popular sovereignty, perhaps we could consider a procedure for constitutional amendments by means of petitions or proposals put forward by the public.

### **4) Appropriate Subjects for National Referendums**

With regard to the subjects of national referendums, members indicated that certain subjects would be suitable while others would not.

#### **A. Comments on Subjects Suitable for National Referendums**

Examples of suitable subjects for national referendums were cited in the following comments:

- a. I suggest that it would be appropriate to ask the public whether to recognize a female Emperor in a national referendum.
- b. We should expand the system of national referendums to allow us to seek the will of the people directly, for example, in cases where Japan proposes to join an international organization and a transfer of sovereignty is involved, or in cases where a proposed special law will affect the future of a specific region, but it is applicable to more than one local public entity.

#### **B. Comments on Subjects Not Suitable for National Referendums**

Examples of subjects not suitable for national referendums were cited in the following comments:

- a. In addition to issues of foreign policy and defense, issues that require organized debate, as in the field of bioethics, for example, are not necessarily suited to national referendums.
- b. A national referendum is not necessarily a suitable format to resolve issues in specialized fields such as treaties or taxation.

- c. I doubt that appropriate decisions would be made on measures that are disadvantageous to the public in the short term but necessary in the medium to long term, such as the introduction of a new tax.
- d. Properly speaking, elected assemblies and administrators have a duty to explain important issues such as municipal mergers, and these are not suited to national referendums.

## **5) Problems Involved in Introducing a National Referendum System, and Countermeasures**

The following views were expressed with regard to problems likely to occur if a national referendum system were introduced:

- a. It is not permissible to infringe the human rights of a minority through a national referendum system. We need to create a mechanism such as a constitutional court to exercise control and ensure that legislative measures sanctioned by a national referendum do not violate the human rights of a minority.
- b. It will be necessary to overcome problems posed by national referendums, including the declining election turnout and the potential manipulation of public opinion by an “initiative industry.”
- c. If we establish legislation for a national referendum system, in order to encourage free debate, our thinking should not be limited by the framework of the existing election system, which restricts the distribution of documents and images.
- d. On issues which are difficult even for Diet members to decide, such as whether to recognize brain death as the end of life, a national referendum will be meaningful only after considerable debate and marshalling of the arguments have created the conditions in which the public can make a judgment, rather than the question being put directly to a vote.

### **(Comments by Informants and Others)**

#### **<Whether to Introduce a National Referendum System>**

- The introduction of direct democracy systems does not, in itself, conflict with the representative democracy declared by the Preamble. In fact, even in the present Constitution, while the Preamble states “acting through our ... representatives,” the use of a referendum to ratify constitutional amendments is recognized in Article 96. Thus, increasing the use of national referendums on other occasions would not necessarily conflict with the Preamble. (IGUCHI Shusaku, Informant)
- While electing people to represent us is important to democracy, I suggest that it is also important to include elements of deciding issues for ourselves. To that end, it seems appropriate to pursue debate in the direction of introducing a direct democracy system, such as referendums or initiatives, thereby increasing self-determination. (OISHI Makoto, Informant)
- I believe that, behind the opposition to entrusting policy decisions to a system of direct popular democracy, there is a tendency to regard the public as ignorant. In my view, if the public cannot see beyond short-term advantages, they will have only themselves to blame, and it would be better to let them decide so that, over time, they learn by experience to take responsibility for the



consequences of their decisions. (YUKI Yoichiro, Speaker)

- One method of exercising control over specialized policies in a way that reflects public opinion is a national referendum system, in which the will of the people is expressed directly, together with access to information, which is a precondition of such a system. But one could also say that it is the role of Diet members to grasp the wishes of the public accurately and relate them to policy. (MORITA Akira, Informant)

#### **<The Legal Effect of National Referendums>**

- A general system of binding national referendums on legislation would violate Articles 41 and 59, and thus cannot be introduced unless the Constitution is amended first. (IGUCHI Shusaku, Informant)

#### **<Who Should Have the Right to Initiate National Referendums>**

- Ideally, in a national referendum, the parliament leaves the final decision to the public after conducting a thorough debate, and then abides by their decision. This suggests that we should give the right to initiate national referendums of an advisory type to the minority. Otherwise, the majority might call a national referendum at an early stage and close off debate in the Diet. (IGUCHI Shusaku, Informant)

#### **<Appropriate Subjects for National Referendums>**

- It is very difficult to foresee what particular subjects would be suited to national referendums. We probably have no choice but to gradually build up a concept of which issues can be put to a national referendum. (IGUCHI Shusaku, Informant)
- The question of whether Article 9 should be revised could be put to an advisory national referendum; the Diet would probably be obliged to respect the resulting political judgment. (IGUCHI Shusaku, Informant)

#### **<Problems Involved in Introducing a National Referendum System, and Countermeasures>**

- While it is worthwhile to discuss the introduction of direct democracy, it is actually more important to create a political party system and a system of representative democracy that are equal to the demands of direct democracy. To do this will mean fulfilling the ideals of the existing Constitution. (IGUCHI Shusaku, Informant)
- As for whether it is possible to review the constitutionality of laws enacted through national referendums, this would probably not be possible given the Japanese Supreme Court's position on "acts of state." Thus, the introduction of national referendums would actually pose the risk that minorities would not be protected, because judicial review would not extend to the laws enacted. In Italy, a Constitutional Court reviews proposed laws in advance, but this is unsuited in some ways to Japan, which has a system of incidental review. We need to be aware that not everything can be decided by national referendum and that it will be necessary to consider appropriate safeguards. (IGUCHI Shusaku, Informant)

## **Subsection 13 States of Emergency**

Although the existing Constitution contains no provisions that clearly define the concept of a state of emergency, members discussed the topic with reference to situations which require special response measures, such as an external armed attack, major terrorist attack, or major natural disaster. Debate focused mainly on whether items concerning states of emergency should be established in the Constitution, in other words, whether there is a need to establish provisions as an exception to the constitutional order that prevails under normal conditions. There was also debate on what sort of provisions, if any, should be established.

### **1. States of Emergency and the Constitution**

Members discussed how the fact that the existing Constitution contains no provisions for states of emergency should be assessed. Some expressed the view that the absence of such provisions was meaningful and its significance should be taken into account, while others pointed to problems due to the lack of such provisions. Debate ensued on whether items concerning states of emergency should be established in the Constitution.

#### **1) Whether to Establish Provisions in the Constitution**

While many members expressed views in favor of establishing provisions for states of emergency in the Constitution, some members were opposed.

##### **A. Views in Favor of Establishing Provisions in the Constitution**

The case in favor of establishing provisions for states of emergency in the Constitution was based mainly on the following grounds:

- a. States of emergency, including major natural disasters, may necessitate a centralized response, with powers concentrated in the hands of the prime minister and more restrictions on human rights than under normal conditions. The requirements and procedures for invoking such measures, together with their effect, are matters for the Constitution.
- b. It is the primary duty of the state to protect the lives, limbs, and property of the people, and in states of emergency it should fulfill this duty before all others. Hence, important matters concerning the response to states of emergency should be stipulated in the Constitution.
- c. Recently, threats to Japan's security from nearby countries and other quarters have emerged, including terrorism and incursions by suspicious vessels. The Constitution should set forth the basic response to these threats.
- d. There are various risks inherent in present-day society, including regional conflicts, the deterioration of the global environment, interlinkage due to increasing globalism and other factors, and the spread of terrorism, and the Constitution is deficient in not making provision for states of emergency despite the presence of these risks.
- e. After establishing provisions for states of emergency in the Constitution, it will be necessary to

strike a balance of legal interests between them and the protection of fundamental human rights. However, if we were to lean so far toward protecting human rights that we could not protect the nation, a situation could arise in which the status quo could never be restored.

- f. It is important to establish provisions for states of emergency in order to guarantee the Constitution. That is to say, since states of emergency tend to lead administrators to take supralegal measures in response, provisions for states of emergency are necessary to prevent this.

## **B. Views Opposed to Establishing Provisions in the Constitution**

Views expressed by those opposed to establishing provisions for states of emergency in the Constitution included the comment that the absence in the existing Constitution of explicit provisions on the response to states of emergency is significant, in other words, that a standard exists which requires that efforts be made to ensure that states of emergency do not arise. Other views included the comment that the Constitution should not be changed, in light of the tragic wartime experience which resulted because Japan did not have a peace constitution, and the comment that, in studying legislation for states of emergency from the viewpoint of comparative law, it is necessary to keep in mind the constitutional and geopolitical conditions of the individual countries concerned.

### **2) Items that Should Be Provided for or Considered If Provision Is Made**

In addition to the basic items set forth in 1-A-a above, the following views were expressed with regard to items that should be provided for or taken into consideration in the event that provision is made for states of emergency in the Constitution:

- a. In making provision for items concerning states of emergency in the Constitution, it is necessary to clarify the principles relating to the duties of the state and protection of the rights of the people.
- b. Together with items concerning states of emergency, it is necessary to establish items providing for the return to normal conditions from a state of emergency.
- c. While it may be necessary to centralize authority in an emergency, it is also necessary to consider after-the-fact checks, together with procedures to restore the status quo and provide compensation for losses where human rights have been violated without good cause.
- d. In designing a response system, we should classify states of emergency into (1) those involving an armed attack, and (2) other situations, such as major terrorist attacks and natural disasters.
- e. We should consider what level of detail is appropriate in the provisions, using as a reference the very detailed provisions seen, for example, in Germany's Basic Law.
- f. If the system for states of emergency is too strict, there will be little leeway for discretionary measures. The system needs to be carefully designed to ensure that the interests of the people are not actually harmed as a result.
- g. Among the fundamental human rights, in particular, those stipulated in Articles 18, 19, 20, 21, and 23, and the right of physical freedom stipulated in Article 31 and subsequent articles must be fully guaranteed.

## **(Comments by Informants and Others)**

### **<Whether to Establish Provisions in the Constitution>**

- The absence in the Constitution of a power to take extraordinary measures means that the emergency-response legislation has no explicit constitutional basis; thus, there remains the perennial problem that there are no clear grounds as to why the people should ever have to obey a different set of laws from those that apply in peacetime. Further, it goes without saying that powers to take extraordinary measures can demonstrate their effectiveness in protecting the people's lives, limbs, and property only when an actual emergency occurs. The power to take extraordinary measures should be provided for explicitly in the Constitution. (KOBARI Tsukasa, Informant)
- The Constitution contains no provisions on national emergency powers, but they can basically be provided by legislation. (TAKAMI Katsutoshi, Informant)

### **<Items That Should Be Provided for or Considered If Provision Is Made>**

- We should state a number of broad principles governing emergency situations in the Constitution. The detailed regulations should all be provided, as far as possible, in a single law. (IWAMA Yoko, Informant)
- Due to concerns about restrictions on human rights and the involvement of the Diet, it would be best to establish constitutional provisions that lay down the measures for emergency situations in the form of general principles, and then, in subordinate laws, to classify states of emergency according to the type of crisis and address each accordingly. (MATSUURA Kazuo, Informant)
- In establishing provisions for states of emergency in the Constitution, we should make a distinction between those that can be dealt with by exercising the right of self-defense, such as military emergencies, and those that cannot be dealt with in this way, such as natural disasters. (MORIMOTO Satoshi, Informant)

## **2. Other Comments**

In addition, the following views with regard to states of emergency were expressed.

- a. We could consider creating a centralized organization like the U.S. Department of Homeland Security to deal with terrorism and natural disasters. This body should not be merely a coordinating agency but should be organized in such a way that responsibility is clearly allocated by assigning powers of command and control, possibly to the prime minister.
- b. Instead of passing new laws to deal with situations as they arise, we should clearly define the response to major terrorist attacks and other emergencies and enact an authorizing law.
- c. Local governments, being closest to the residents, should be deeply involved in the protection of their lives and welfare.
- d. For assistance and relief in disasters, it is more important to improve the firefighting capacity than the operations of the Self-Defense Forces. In light of constitutional principles, it would be more effective and more practical, for example, to scale back the Self-Defense Forces and create

a separate organization for disaster response.

- e. Measures against natural disasters are currently inadequate from the viewpoint of the right to live. We should carry out adequate measures in accordance with the Constitution's requirements.

**(Comments by Informants and Others)**

- In emergency situations, a certain amount of restriction of private rights is inevitable, but this requires a national consensus. Also, it is important to ensure the healthy functioning of democracy in order to prevent any abuse of restrictions on private rights. (OGAWA Kazuhisa, Informant)
- Article 9 establishes that Japan will not wage war, but the response to external attack does not come under the scope of the Constitution. It is the role of the state to protect the people's lives, limbs, and property from unforeseen situations, and it is possible to enact legislation for the protection of the people under the existing Constitution. (MATSUURA Kazuo, Informant)
- If establishing the power to take extraordinary measures in the Constitution means that its provisions on human rights and related areas will be affected in emergencies, we need to weigh the legal interests represented by human rights against the power to take extraordinary measures and reconcile the two. (KOBARI Tsukasa, Informant)

## **Section 4 The Future of the Constitutional Debate and Related Matters**

When the Research Commission on the Constitution was established, it was mutually agreed by the Executive Meeting of the Committee on Rules and Administration that the Commission would not have the power to submit legislative proposals and that the research period would be about five years, and the Commission's work has been conducted on this basis. In light of these points, members discussed whether a permanent body should be established in the Diet to continue handling constitutional questions after the present report is submitted to the Speaker, and also whether it is necessary to prepare a constitutional amendment procedure law, together with related matters.

Further, in connection with 1. "Concerning a Permanent Body to Handle Constitutional Questions in the Diet" and 2. "Concerning a constitutional amendment procedure law" below, discussions were held among the Commission's directors taking into account the views expressed by many members of the Commission. As a result, many of the directors expressed the view that it is desirable, while maintaining the basic framework of the present House of Representatives Research Commission on the Constitution, to authorize a reconstituted body to draft and review a constitutional amendment procedure law (Bill Concerning Procedures for a National Referendum, Etc., as Stipulated in Article 96, Paragraph 1 of the Constitution of Japan).

### **1. Concerning a Permanent Body to Handle Constitutional Questions in the Diet**

There was discussion of whether a permanent body should be established in the Diet to handle constitutional questions. While many members were in favor of creating a permanent body, some were opposed.

#### **A. Views in Favor of Creating a Permanent Body in the Diet**

Proponents held that a forum devoted to constitutional debate will continue to be necessary after the Commission submits its report, and a permanent body should therefore be established in the Diet to handle constitutional questions. The following views were expressed regarding the powers that should be granted to the permanent body and related matters:

- a. Based on the discussions conducted over a five-year period by the Research Commission on the Constitution, a permanent body should continue the research and also serve as the committee to which a constitutional amendment procedure bill (national referendum bill) is referred.
- b. The said permanent body should serve as the committee to which bills relating to the Constitution, such as proposed constitutional amendments and a constitutional amendment procedure bill, are referred.
- c. The said permanent body should be made responsible for primary authoritative interpretation of the Constitution by the Diet.
- d. The said permanent body should be made responsible for the handling of all constitutional questions, including the roles listed in b. and c. above.

Views were also expressed that it may be necessary to establish a committee in the Diet to give concrete form to constitutional revisions, but there is no need for it to be a permanent body.

### **B. Views Opposed to Creating a Permanent Body in the Diet**

Opponents held that constitutional debate on interpretation of the Constitution and related questions should be conducted in the various standing committees and other existing bodies, in connection with matters under their jurisdiction, and there is therefore no need to establish a permanent body devoted to handling constitutional questions.

#### **(Comments by Informants and Others)**

- Matters relating to constitutional revision should not be left to third parties such as advisory councils; further, the Diet cannot present proposals to the public until it has narrowed down the debate to some extent. It should therefore establish a body such as a committee (whether permanent or not) to discuss the Constitution, and should deliberate therein on proposed amendments and other matters relating to initiatives. (SASAKI Takeshi, Informant)
- Ordinary committees are, basically, kept busy with day-to-day dealing with bills submitted by the government, and there are very few places in the Diet where the Constitution can be discussed from a medium- to long-term perspective. Thus, it would be a good thing to have a forum for constitutional debate in a committee, which forms the political backbone of the Diet and can exercise the right to investigate state affairs. (SHINOHARA Hiroaki, Speaker)

## **2. Concerning a Constitutional Amendment Procedure Law**

Members discussed whether a constitutional amendment procedure law should be prepared, together with the matters that should be considered in enacting such a law.

### **1) Whether a Constitutional Amendment Procedure Law Should Be Prepared**

While many members expressed the view that a constitutional amendment procedure law should be put in place without delay, some members saw no immediate need for this.

#### **A. Views in Favor of Immediate Enactment of a Constitutional Amendment Procedure Law**

The case in favor of immediate enactment of a constitutional amendment procedure law was based mainly on the following grounds:

- a. Failure to enact a constitutional amendment procedure law—a basic law ancillary to and anticipated by the Constitution—amounts to “legislative nonfeasance” by the Diet.
- b. That the Constitution should be revised is now the mainstream of opinion in the Research Commission’s discussions, and it is necessary to prepare a concrete constitutional amendment procedure law.

- c. Putting in place a constitutional amendment procedure law will make the public aware that they can take part in the debate on the Constitution, and it will broaden into a truly national debate.
- d. If we are to make Japan's democracy and constitutionalism more solid, we must fulfill our duty as Diet members to initiate proposals for the constitutional amendments required by the times and to present them to the people, with whom sovereignty resides. To that end, it is essential to put in place a constitutional amendment procedure law.
- e. The argument that the lack of the required legislation is not a problem because constitutional revision has not become a reality is an insult to the principle of popular sovereignty and to the people, who have the power to enact a Constitution.

**B. Views Holding That There Is No Immediate Need to Enact a Constitutional Amendment Procedure Law**

The case that there is no immediate need to enact a constitutional amendment procedure law was based mainly on the following grounds:

- a. The important thing in the debate on constitutional revision is to distill opinions on an ideal vision for the country through discussion, and it is meaningless to prepare a constitutional amendment procedure law before that has been done. Conversely, there will be no particular inconvenience if we consider a constitutional amendment procedure law once opinions have been distilled.
- b. With regard to new rights that were not anticipated when the Constitution was enacted, rather than preparing a constitutional amendment procedure law and attempting to realize these rights by amending the Constitution, the first priority is to consider whether they can be realized by legislative and other means in light of the principles of the existing Constitution.
- c. The question of constitutional revision should not be made a focus of ideological struggle. Viewed in that light, if we were to consider a national referendum bill for constitutional amendments before conducting a more in-depth debate on constitutional revision, it would only encourage ideological confrontation.
- d. A national referendum on constitutional amendments consists only of a yes-or-no vote on initiatives put forward by the Diet. But the Diet has been acting in ways that erode the three basic constitutional principles, and it has lost the public's trust. What the Diet must attend to, first and foremost, is not preparing a constitutional amendment procedure law but winning back the trust of the people.
- e. It is wrong to claim that the lack of a constitutional amendment procedure law is "legislative nonfeasance." That term is used in connection with lawsuits seeking redress from the state, and it denotes a problem that arises when the rights of the sovereign people have been violated because of the lack of a particular law. The people's right to amend the Constitution has not, to date, been violated.

In response to this view, there were comments that to cite lawsuits seeking redress from the state as grounds for contending that this issue does not constitute "legislative nonfeasance" reduces a question of providing basic legislation anticipated by the Constitution to the level of issues involved



in court litigation proceedings.

- f. In the absence of a demand for constitutional revision or a consensus on the concrete details of revision among the people, with whom sovereignty resides, preparing a constitutional amendment procedure law is not a pressing priority. Indeed, when the case for enactment is being advanced in the political context of efforts to smooth the way for revising the Constitution with the focus on changing Article 9, it would actually be against the wishes of the people to enact such a law.

## **2) Matters That Should Be Considered in Enacting a Constitutional Amendment Procedure Law**

The following views were expressed regarding matters that should be considered in enacting a constitutional amendment procedure law.

- a. To avoid combining discussion of a constitutional amendment procedure law with discussion of the detailed contents of amendments, the law should be enacted separately in the calm environment of normal debate.
- b. In a national referendum on constitutional amendments, it is important to generate a national debate with a diversity of voices from multiple perspectives being heard. Thus, if we enact a national referendum law for constitutional amendments, one precondition must be to secure quite a broad range of freedom of political activities relating to referendums.
- c. If a national referendum is held on constitutional amendments, we should take steps to ensure a deeper understanding of the proposed amendments among the public, such as publicizing their significance, aims, detailed contents, and so on in a clear, concise form.
- d. National referendums on constitutional amendments should not be held at the same time as national elections, because asking whether to amend the Constitution has a different significance from asking for a vote of confidence in the government, and the two must not be mixed.
- e. We will need a system designed to ensure that the results of a national referendum are finalized in a timely manner.
- f. We should make the eligibility requirements to vote in national elections and national referendums effectively the same.
- g. The right to vote in national referendums could be granted to all who have completed compulsory education. I say this because it is the younger generation who will live under the amended Constitution, and, moreover, if we are going to make explicit provision for the rights of young people, people in their late teens, being personally affected, should be involved in the decision.
- h. In a national referendum, proposed constitutional amendments should be put to the vote article by article.
- i. We should consider adding the requirement that a certain turnout must be exceeded for a national referendum to be valid.

### **(Comments by Informants and Others)**

- It is debatable whether the lack of a constitutional amendment procedure law amounts directly to

“legislative nonfeasance.” “Legislative nonfeasance” is a term used in lawsuits seeking redress from the state, and according to its definition in that context, in this instance it would refer to a situation where a proposal for a constitutional amendment has actually been presented to the Diet and yet the people cannot exercise their right to amend the Constitution for lack of an amendment procedure. Viewed in that perspective, it seems to me quite difficult to make a case for enacting legislation on the grounds that the present situation amounts to “legislative nonfeasance.” (TAKAMI Katsutoshi, Informant)

- While revision of the present Constitution may require legislative measures in certain technical areas, the use of a term like “legislative nonfeasance,” which suggests that the Constitution cannot be revised without them, is overstating the case. Even if there are technical problems, as long as they are relatively minor, it would be sufficient to establish a simple procedure by Cabinet order or similar means. Thus, I cannot judge whether the lack of a procedural law for constitutional amendments is a significant problem. (NAGAO Ryuichi, Informant)
- That the Constitution is determined by the will of the people is a major principle of popular sovereignty. What matters is that each member of the public gives the decision serious thought, and that administrators pose clear questions to elicit their wishes. When constitutional amendments are proposed, each article and paragraph should be voted on individually, except in cases where two or more items are particularly inseparable. Adopting proposed amendments as a package would clearly be contrary to this principle and to the aims. (YUKI Yoichiro, Speaker)
- The question of voter turnout in national referendums on constitutional amendments is ultimately a matter of how we interpret staying away from the polls. This can be viewed in two ways: either citizenship is something that exists only when it is actively exercised, or the citizenry are essentially passive. The former view regards non-voters as having waived their right to make a statement and ignores them accordingly; thus, if there is a 30 percent turnout, the results are interpreted using only the votes cast. The latter view determines the outcome by requiring active expressions of support to reach a certain threshold, and regards abstention as an expression of a lack of active support for the proposal. It is not easy to say which view of the people the Constitution of Japan is based on. (NAGAO Ryuichi, Informant)
- A major question in designing a system of national referendums, including those on constitutional amendments, is whether the consent of one-half of those who cast a vote is sufficient in the event of a very low turnout. Italy, for example, does not consider a national referendum valid unless a certain voter turnout is attained. We should design the system in such a way that a national referendum will be invalid if it fails to reach a certain turnout, even if one-half of those who vote consent to the proposal. (IGUCHI Shusaku, Informant)

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## **Part 4 Reference Material**

### **1) The Diet Law (Excerpt), Regulations of the Research Commission on the Constitution of the House of Representatives**

#### **The Diet Law (Law No. 79 of 1947)**

#### **Chapter XI-II. Research Commission on the Constitution**

**Article 102-VI.** In order to conduct broad and comprehensive research on the Constitution of Japan, a Research Commission on the Constitution shall be set up in each House.

**Article 102-VII.** Matters related to the Research Commission on the Constitution, except for the matter provided for in the preceding article, shall be decided by each House.

#### **Regulations of the Research Commission on the Constitution of the House of Representatives (Passed July 6, 1999) (Promulgated January 20, 2000)**

##### **(Objects of setting up the Commission)**

**Article 1.** The Research Commission on the Constitution shall conduct broad and comprehensive research on the Constitution of Japan.

##### **(Written Report)**

**Article 2.** Upon completion of the research mentioned in the preceding article, the Research Commission on the Constitution shall prepare a written report on the process and the result of the research, and the Chairman of the Commission shall submit it to the Speaker.

2. The Research Commission on the Constitution may prepare an interim written report on the process of its research, and the Chairman of the Commission may submit it to the Speaker.

3. The Speaker shall have the written report mentioned in Paragraph 1, and any interim report, printed and distributed to each Member of the House.

##### **(Number of members)**

**Article 3.** The Research Commission on the Constitution shall consist of 50 members.

##### **(Members)**

**Article 4.** Members of the Commission shall be appointed by the House at the beginning of a session, and shall hold their membership until their term of office as Members of the House expires.

2. Membership shall be allocated to political parties and groups in the House in proportion to their numerical strength.

3. If, after members have been appointed in accordance with the provision of the preceding paragraph, there arises a need for redistribution of the membership so allocated by reason of a change in the numerical strength of the political parties and groups, the Speaker may alter the

membership with the consent of the Committee on Rules and Administration, notwithstanding the provision of Paragraph 1 above.

4. With respect to members, the provisions of Articles 37, 39 and 40 of the Rules of the House of Representatives shall apply mutatis mutandis.

**(Chairman)**

**Article 5.** The Chairman of the Commission shall be elected by its members from among themselves.

2. With respect to the chairman, the provisions of Articles 101 and 102 of the Rules of the House of Representatives shall apply mutatis mutandis.

**Article 6.** The chairman shall arrange the business of the Commission, maintain order in it, and represent it.

**(Directors)**

**Article 7.** The Commission shall have one or more directors who are elected by its members from among themselves.

2. The chairman may hold a meeting of directors to consult on the management of the Commission.

3. With respect to directors, the provision of Paragraph 2, Article 38 of the Rules of the House of Representatives shall apply mutatis mutandis.

**(Subcommittees)**

**Article 8.** The Commission may set up subcommittees.

2. With respect to subcommittees, the provision of Article 90 of the Rules of the House of Representatives shall apply mutatis mutandis.

**(Meetings)**

**Article 9.** The Commission may hold a meeting regardless of whether the Diet is in or out of session.

**Article 10.** The chairman shall fix the date and the time for a meeting of the Commission.

**(Quorum)**

**Article 11.** No business may be transacted and no decision taken in the Commission unless at least one half of its members are present.

**(Commission members' speech)**

**Article 12.** Commission members may freely ask questions and express opinions on the subject under consideration.

**(Hearing opinions from Members not on the Commission)**

**Article 13.** With respect to a measure or matter under research, the Commission may request the attendance of any Member not on the Commission to hear his or her opinion, when the Commission

deems it necessary or when a Member not on the Commission asks to speak.

**(Sending Commission members)**

**Article 14.** When the Research Commission on the Constitution desires to send out Commission members for investigation, the approval of the Speaker must be obtained.

**(Presence of Minister(s) of State to give explanation)**

**Article 15.** The Research Commission on the Constitution may request, through the Speaker, when the Commission deems it necessary, a Minister of State, the Chief Justice of the Supreme Court or the President of the Board of Audit to attend its meeting and give an explanation.

**(Submission of reports or records)**

**Article 16.** The Commission is authorized to demand through the Speaker that the Cabinet, offices of government and public entities, and others, produce necessary reports or records.

**(Open Hearings)**

**Article 17.** The Commission may hold an open hearing, when it deems this necessary for its research.

2. With respect to open hearings, the provisions of Articles 78 and 79 of the Rules of the House of Representatives shall apply *mutatis mutandis*.

**(Informants)**

**Article 18.** The Commission may, if necessary for its research, request the attendance of an informant to hear his or her views.

**(Maintenance of Order)**

**Article 19.** If a member conducts himself or herself in a disorderly manner at a meeting of the Research Commission on the Constitution, or impairs the dignity of the House, the chairman shall restrain him or her or cause him or her to retract his or her remarks. If the chairman's order is not obeyed, the chairman may forbid the member to speak until the day's Commission meeting is over, or cause him or her to leave the Commission's meeting room.

**(Recess and Adjournment)**

**Article 20.** The chairman may declare a recess or adjourn the meeting, if the business of the Commission goes out of control or if a case for discipline occurs.

**(Report and Other Measures on a Disciplinary Case)**

**Article 21.** If the chairman considers that a disciplinary case has occurred in a meeting of the Commission, the chairman shall report it to the Speaker for disciplinary action.

2. With respect to a disciplinary case that has occurred in a meeting of the Commission, the provision of Article 235 of the Rules of the House of Representatives shall apply *mutatis mutandis*.

**(Opening to the Public, and Admission of Visitors)**

**Article 22.** Meetings of the Research Commission on the Constitution shall be public. However, the

Commission may hold closed meetings if it so decides.

2. For the maintenance of order, the chairman may limit the number of visitors to be admitted, or order any of the visitors to leave the meeting room.

**(Minutes of Proceedings)**

**Article 23.** The Research Commission on the Constitution shall produce minutes of the proceedings, and keep them in the House after the chairman and the directors have put their names to them.

2. The minutes of a meeting shall bear the names of those present, the titles of the measures or matters submitted to the meeting, the Order of the Day and other important details.

3. The minutes shall be printed and distributed to each Member of the House. However, any remarks which the chairman has ordered to be retracted under the provisions of Article 19 shall be excluded.

**(Office for the Research Commission on the Constitution)**

**Article 24.** An Office shall be established in the Research Commission on the Constitution to handle the Commission's business.

2. There shall be one Director General of the Office and other necessary personnel.

3. The Director General of the Office shall administer the business of the Office under the direction of the Chairman of the Commission.

**(Detailed Rules)**

**Article 25.** Besides the matters provided for under these Regulations, the Order of the Day and other necessary matters related to the administration of the Commission's business and others shall be provided for by the decision of the Research Commission on the Constitution.

**Supplementary Provision**

These Regulations shall become effective on the day of enforcement of the Law to Amend Part of the Diet Law (Law No. 118 of 1999).

**(For reference)**

**Report of the Chairman of the Subcommittee on Amendment to the Diet Law (145th Diet Session, July 6, 1999, House of Representatives Committee on Rules and Administration, NAKAGAWA Hidenao, Subcommittee Chairman)**

In my capacity as Chairman of the Subcommittee on Amendment to the Diet Law, I hereby present my report with respect to the matter of the partial amendment of the Diet Law and the matter of the formulation of the Regulations of the Research Commission on the Constitution.

I will first describe the background to the amendment.

On March 2 the secretaries general of the Liberal Democratic Party, Democratic Party of Japan, New Komeito, Liberal Party, and Reformers' Club requested that discussions be conducted with a view to

reaching a conclusion within the current Diet Session to make possible the establishment of a research commission on the Constitution of Japan without authority to submit bills to the House of Representatives. In response to this, over the two months since March 24, five meetings have been held within the Council on the Parliamentary System on the subject of the establishment of the Research Commission on the Constitution, but unanimous agreement has not been reached within the Council.

The chairman reported to that effect to the Speaker, whereupon the Subcommittee on Amendment to the Diet Law was once again requested to conduct very careful deliberations. Since June 8 the subcommittee has convened five times and engaged in careful and intense discussions, and has formulated and agreed upon the draft that you have before you today.

Next I will describe the content of the reform, in order.

First, with respect to the bill to partially amend the Diet Law, the Research Commission on the Constitution will be established in the House of Representatives for the purpose of conducting broad-ranging and comprehensive research relating to the Constitution.

Matters relating to the Commission will be determined by means of decisions taken by the House of Representatives.

The amendment bill will be put into effect on the date of the convening of the next ordinary Diet Session.

Next, the draft Regulations of the Research Commission on the Constitution will provide for the following.

First, upon completion of its research the Commission will prepare a written report on the process and the result of the research, and submit it to the Speaker, and may also submit an interim written report.

Second, the Commission will consist of 50 members, and membership will be allocated to political parties and groups in the House in proportion to the number of their Members.

Third, the Chairman of the Commission will be elected by its members from among themselves, and a number of directors will also be appointed. To discuss the management of the Commission, meetings of directors may be held, and the Commission may also establish subcommittees.

Fourth, the Commission may meet at any time, irrespective of whether or not the Diet is in session.

In addition, the Commission may request the attendance of any Member not on the Commission to hear his or her opinion if the Commission deems it necessary, or if a Member not on the Commission asks to speak, and regulations as to the quorum and other matters will be laid down.

Fifth, meetings of the Commission will be public, but it may hold closed meetings if it so decides.

Other requisite regulations will be laid down with respect to such matters as the relationship with the



government, admission of visitors, the keeping of minutes, and the Office, and other detailed rules will be laid down by decisions by the Commission itself.

These draft regulations will be applied as of the day on which the bill to partially amend the Diet Law is put into effect.

That ends my report, and I also report hereby that at a meeting of directors held today on the basis of the course of the discussions, the following three points were agreed upon.

1. Confirmation that the Commission shall not have the authority to submit bills.
2. The Commission shall conduct its research for a period of approximately five years.
3. The Commission Chairman shall appoint a deputy chairman from among the Directors of the largest opposition party.

**Explanation of Purport of the Bill to Partially Amend the Diet Law and the Draft Regulations of the House of Representatives Research Commission on the Constitution (145th Diet Session, July 6, 1999, House of Representatives Committee on Rules and Administration, NAKAGAWA Hidenao, Chairman)**

I will now give you an explanation of the purport of the two proposals that have just been placed on the agenda.

I will first describe the background to the amendment.

On March 2 the secretaries general of the Liberal Democratic Party, Democratic Party of Japan, New Komeito, Liberal Party, and Reformers' Club requested that discussions be conducted with a view to reaching a conclusion within the current of the Diet Session to make possible the establishment of a research commission on the Constitution of Japan without authority to submit bills to the House of Representatives. In response to this, over the two months since March 24, five meetings have been held within the Council on the Parliamentary System on the subject of the establishment of the Research Commission on the Constitution, but unanimous agreement has not been reached within the council.

The chairman reported to that effect to the Speaker, whereupon the Subcommittee on Amendment to the Diet Law was once again requested to conduct very careful deliberations. Since June 8 the subcommittee has convened five times and engaged in careful and intense discussions, and has devised a definite plan.

Next I will describe the content of the reform, in order.

First, with respect to the bill to partially amend the Diet Law, the Research Commission on the Constitution will be established in the House of Representatives for the purpose of conducting broad-ranging and comprehensive research relating to the Constitution.

Matters relating to the Commission will be determined by means of decisions taken by the House of Representatives.

The amendment bill will be put into effect on the date of the convening of the next ordinary Diet Session.

Next, the draft Regulations of the Research Commission on the Constitution will provide for the following.

First, upon completion of its research the Commission will prepare a written report on the process and the result of the research, and submit it to the Speaker, and may also submit an interim written report.

Second, the Commission will consist of 50 members, and membership will be allocated to political parties and groups in the House in proportion to the number of their Members.

Third, the Chairman of the Commission will be elected by its members from among themselves, and a number of directors will also be appointed. To discuss the management of the Commission, meetings of directors may be held, and the Commission may also establish subcommittees.

Fourth, the Commission may meet at any time, irrespective of whether or not the Diet is in session.

In addition, the Commission may request the attendance of any Member not on the Commission to hear his or her opinion if the Commission deems it necessary, or if a Member not on the Commission asks to speak, and regulations as to the quorum and other matters will be laid down.

Fifth, meetings of the Commission will be public, but it may hold closed meetings if it so decides.

Other requisite regulations will be laid down with respect to such matters as the relationship with the government, admission of visitors, the keeping of minutes, and the Office, and other detailed rules will be laid down by decisions by the Commission itself.

These draft regulations will be applied as of the day on which the bill to partially amend the Diet Law is put into effect.

That ends my report.

Within the Committee on Rules and Administration, by majority vote today by the Liberal Democratic Party, Democratic Party of Japan, New Komeito, Reformers' Club, and Liberal Party, the two proposals were compiled as drafts and submitted.

I commend the drafts to all Members for their approval.

**Explanation of Motion to Amend in the House of Councillors (145th Diet Session, July 26, 1999, House of Councillors Committee on Rules and Administration, UENO Kohsei)**

On behalf of the Liberal Democratic Party, Democratic Party of Japan and Shin-Ryokufukai, New Komeito, and Liberal Party, I hereby submit a motion to amend the bill to partially amend the Diet Law.

As is set out in the draft before you, the amendment provides for the establishment of a research commission on the Constitution in the House of Councillors for the purpose of conducting broad-ranging and comprehensive research relating to the Constitution, and for all matters relating to the said commission to be determined by means of decisions taken by the House of Councillors.

In addition, with respect to the amendment of the provisions of laws relating to the annual allowances, travel expenses, and other allowances of Diet Members and to the travel expenses and daily allowances of informants and others requested to appear at a meeting in the House, necessary amendments will be made.

That is the purport of the draft amendment.

I commend the proposal to all Members for their approval.

## 2) Allocation of Commission Directorships to Each Political Party and Group and Changes of Directors

Date of change	No. of Directors
	Appointed
	Name
	Resigned

Jan. 20, 2000	LDP: 5					---	DPJ: 2		NK-RN: 1	LP: 1
Jan. 20, 2000	Jan. 20, 2000	Jan. 20, 2000	Jan. 20, 2000	Jan. 20, 2000	Jan. 20, 2000	---	Jan. 20, 2000	Jan. 20, 2000	Jan. 20, 2000	Jan. 20, 2000
	AICHI Kazuo	SUGIURA Seiken	NAKAGAWA Shoichi	HANASHI Nobuyuki	YASUOKA Okiharu	---	KANO Michihiko	SENGOKU Yoshito	HIRATA Yoneo	NODA Takeshi Apr. 5, 2000
Apr. 7, 2000	LDP: 5					---	DPJ: 2		NK-RN: 1	JCP: 1
	AICHI Kazuo	SUGIURA Seiken	NAKAGAWA Shoichi	HANASHI Nobuyuki	YASUOKA Okiharu	---	KANO Michihiko	SENGOKU Yoshito	HIRATA Yoneo	Apr. 20, 2000 SASAKI Rikukai

### House of Representatives Dissolved (June 2, 2000)

July 4, 2000	LDP: 4				---	DPJ: 3			NK: 1	LP: 1
July 5, 2000	July 5, 2000	July 5, 2000	July 5, 2000	July 5, 2000	---	July 5, 2000	July 5, 2000	July 5, 2000	July 5, 2000	July 5, 2000
	ISHIKAWA Yozo	TAKAICHI Sanae	NAKAGAWA Shoichi	HANASHI Nobuyuki	---	EDANO Yukio Sept. 28, 2000 Sept. 28, 2000 SHIMA Satoshi Feb. 8, 2001	KANO Michihiko	SENGOKU Yoshito	AKAMATSU Masao	SHIOTA Susumu Feb. 8, 2001
Jan. 31, 2001	LDP: 5				---	DPJ: 3			NK: 1	---
	ISHIKAWA Yozo	Feb. 8, 2001	NAKAGAWA Shoichi	HANASHI Nobuyuki	Feb. 8, 2001	Feb. 8, 2001	KANO Michihiko	SENGOKU Yoshito	SAITO Tetsuo	---
	Feb. 7, 2002	Feb. 7, 2002	NAKAGAWA Shoichi	HANASHI Nobuyuki	Feb. 7, 2002	Feb. 7, 2002	NAKANO Kansei	SHIMA Satoshi	AKAMATSU Masao	---
	TAKAICHI Sanae	YASUOKA Okiharu	NAKAGAWA Shoichi	HANASHI Nobuyuki	MOTEGI Toshimitsu Mar. 11, 2002 Mar. 19, 2002 NUKAGA Fukushima Oct. 24, 2002	NAKAGAWA Masaharu	NAKANO Kansei	SHIMA Satoshi	AKAMATSU Masao	---
	Oct. 2, 2002						Oct. 24, 2002	Oct. 17, 2002		

	Oct. 24, 2002				Oct. 24, 2002	NAKAGAWA Masaharu	Oct. 24, 2002	Oct. 24, 2002		
	SUGIURA Seiken	YASUOKA Okiharu	NAKAGAWA Shoichi	HANASHI Nobuyuki	NISHIDA Mamoru	NAKAGAWA Masaharu	SENGOKU Yoshito	OIDE Akira	AKAMATSU Masao	---
					Jan. 21, 2003					
					Jan. 30, 2003	Jan. 30, 2003				
			Sept. 22, 2003							
			Oct. 2, 2003		HIRABAYASHI Kozo	FURUKAWA Motohisa				
			NAKAYAMA Masaaki							

House of Representatives Dissolved (Oct. 10, 2003)

Nov. 19, 2003	LDP: 5					DPJ: 3			NK: 1	---	
	Nov. 20, 2003	Nov. 20, 2003	Nov. 20, 2003	Nov. 20, 2003	Nov. 20, 2003	Nov. 20, 2003	Nov. 20, 2003	Nov. 20, 2003	Nov. 20, 2003	---	
	ONO Shinya	KONDO Motohiko	FUNADA Hajime	FURUYA Keiji	YASUOKA Okiharu	OIDE Akira	SENGOKU Yoshito	FURUKAWA Motohisa	AKAMATSU Masao	---	
								Jan. 22, 2004			Jan. 22, 2004
								Jan. 22, 2004			Jan. 22, 2004
	May 20, 2004							KINOSHITA Atsushi			
	June 3, 2004							Mar. 23, 2004			
	FUKUDA Yasuo					YAMAHANA Ikuo	May 24, 2004	Mar. 23, 2004			
								June 3, 2004	SUZUKI Katsumasa		
							EDANO Yukio	Oct. 14, 2004			
								Oct. 14, 2004			
								NAKAGAWA Masaharu			

### **3) Chairman NAKAYAMA's Speech upon Assuming Office and Other Speeches to the Research Commission on the Constitution**

#### **(1) Speech upon Assuming the Chairmanship**

##### **147th Diet Session, First Meeting, Research Commission on the Constitution (January 20, 2000)**

I am pleased to welcome you here today.

It is both an honor and a responsibility for me to assume office as chairman of the Research Commission on the Constitution.

As you are well aware, Research Commissions on the Constitution have been set up in both the House of Representatives and the House of Councillors, under the amended Diet Law, to conduct broad and comprehensive research on the Constitution of Japan.

The Diet debated constitutional revision very briefly under the occupation of the Allied Forces after Japan accepted the Potsdam Declaration, which contained the terms of unconditional surrender, on August 15, 1945 at the end of the last World War.

To be specific, a draft Constitution of Japan was presented to the 90th Imperial Diet session on June 20, 1946 as a Government-sponsored bill to revise the Constitution of the Empire of Japan. In the House of Representatives, the bill was put to interpellations after an explanation on its purport was given in the plenary sitting on June 25. The interpellation session was closed on June 28. On the same day, the bill was referred to a 'Committee on Revision of the Constitution of the Empire of Japan' composed of 72 members appointed by the Speaker. Committee consideration lasted from July 1 to 23. Thereafter, a subcommittee made up of 14 members, including Chairman ASHIDA Hitoshi, worked on adjusting draft amendments to the bill proposed by political parties and groups in the House, and then the Committee on Revision of the Constitution approved joint amendments on August 21. The amended bill was approved in the plenary sitting on August 24. The bill to revise the Constitution was finalized when the House of Representatives assented in its plenary sitting to the bill sent back by the House of Peers on October 7. Thus, the present Constitution of Japan was promulgated on November 3, 1946. This story about the enactment of the new Constitution is well known.

Over 50 years have passed since that day. During this period, both domestic and international affairs have undergone immensely great changes, to an extent far beyond what could have been imagined at the time of the enactment. On the threshold of a new century, the National Diet is required, as the highest organ of the state power, to conduct debates on the fundamental framework of our state.

It is very important for us to research and study, through discussions in this Research Commission, a future vision of Japan as a new state seen from the viewpoint of the entire nation, while facing up to the changed reality and holding firm to the ideals of respect for the human rights of individuals and the sovereignty of the people; and to determine not to become a state of aggression. Therefore, I

believe that the task entrusted to this Research Commission is of great moment.

I will count on all colleague members of the Commission for valuable advice and cooperation, and pledge to do all in my power to manage the business of this Commission so that it proceeds in a smooth and equitable way, and I look forward to your contributions.

**148th Diet Session, First Meeting, Research Commission on the Constitution  
(July 5, 2000)**

On this occasion, I would like to make a short comment.

Upon the recommendation of members of the Research Commission on the Constitution, I again assumed the responsibility of chairman of this Commission prior to the election. This is a great honor for me.

As you are well aware, Research Commissions on the Constitution were set up in both the House of Representatives and the House of Councillors in the 147th session of the Diet in order to conduct broad and comprehensive research on the Constitution of Japan.

In the 147th session, after hearing the basic positions regarding the Constitution of members representing the different political groups, we heard from 10 informants concerning the formulation of the Constitution of Japan in order to reach a common understanding of the historical facts. A total of 103 persons from all the parties made statements, issues related to the formulation of the Constitution were discussed, and our research on this theme was completed.

Next, we heard an explanation from an official of the Supreme Court concerning the major postwar judgments of unconstitutionality, a question-and-answer session was held, and the system of judicial review of the constitutionality of legislation in Japan and its operation were clarified.

In the course of these discussions, a total of 151 members stated their opinions and total length of the meetings was over 37 hours. These were essentially preliminary discussions and full-scale research will be conducted by all the members of this Commission from this session onwards.

As in the previous session, I pledge to do all in my power to manage the business of the Commission so that it proceeds in a smooth and equitable way and I count on all colleague members for their advice and cooperation.

**158th Diet Session, First Meeting, Research Commission on the Constitution  
(November 20, 2003)**

I would like to say a few words before we start today.

Upon the recommendation of members of the Research Commission on the Constitution, I again assumed the responsibility of chairman of this Commission prior to the election. This is a great

honor for me.

As you are well aware, Research Commissions on the Constitution were established during the 147th session of the Diet in both the House of Representatives and the House of Councillors to conduct broad and comprehensive research on the Constitution of Japan. Thus far, this Commission of the House of Representatives has conducted research on the formulation and enactment of the Constitution of Japan, major postwar judgments of unconstitutionality, and a vision for Japan in the 21st century. Following this, the subcommittees of the Commission researched specific questions and comprehensively reviewed all the chapters and articles of the Constitution. Additionally, local open hearings were held in eight locations throughout Japan in order to hear opinions directly from people in all walks of life.

The results of this research were summarized in an Interim Report submitted to the Speaker of the House of Representatives on November 1, 2002.

During this period, four delegations were sent overseas by the House of Representatives to conduct research on matters related to the constitutions of various countries.

It was agreed in the directors' meeting of the Committee on Rules and Administration that the period of research of this Commission would be about five years. This means that we have a little more than a year's time left. While endeavoring to further develop our research, we must now work toward compiling and summarizing our discussions in preparation of a final report. These tasks will devolve on the members gathered here. This certainly will be a very difficult and trying task, but I believe that we must overcome these difficulties and present the fruits of our labor to the people in order to fulfill our responsibility as members of the Diet.

I look forward to your continued assistance and cooperation, and pledge myself to a fair and well-rounded management of the Commission.

## **(2) Explanation of the Purport of the Draft Interim Report**

### **155th Diet Session, Second Meeting, Research Commission on the Constitution (November 1, 2002)**

I would like to explain the purport of the draft Interim Report and to summarize its contents.

This Research Commission on the Constitution was established in the House of Representatives on the day that the 147th session of the Diet was convoked, and was entrusted with the task of conducting broad and comprehensive research on the Constitution of Japan. The responsibilities of this Commission are to conduct research in accordance with its stated purpose and to prepare and submit to the Speaker a report of its proceedings and findings.

This Commission met for the first time and began to function on January 20, 2000, the date of its



establishment. Since then, the Commission has steadily advanced its research on the Constitution of Japan.

Research was conducted in the following order: “Formulation and enactment of the Constitution of Japan,” “Major postwar judgments of unconstitutionality,” and “A vision for Japan in the 21st century.” During the 154th session of the Diet convened in January 2002, four subcommittees were formed to pursue effective and specialized investigation of certain issues that had come up in our discussions.

These research activities covered such key areas as constitutional scholarship and political science and other social sciences, but also extended to such subjects as demographics, the human genome and information technology. Expert informants were invited to address the Commission on these subjects, followed by questions and answers and free discussion among members.

During this period, local open hearings were held in various locations throughout Japan in order to receive opinions on the Constitution directly from people in all walks of life. On several occasions, Constitutional Research Delegations comprising the members of the Commission were dispatched on overseas survey missions to research the constitutions of various countries from a comparative perspective. The findings from such activities have been reflected in the research conducted by this Commission.

The research period of the Commission is “regarded as approximately five years.” The mid-point of this period, two and a half years, fell during the 154th session of the Diet. On this occasion the Commission prepared an Interim Report containing its proceedings and deliberations to date to be submitted to the Speaker of the House.

Every effort was made to include the proceedings and findings of the overseas survey missions conducted during the 154th session of the Diet in this draft Interim Report. In its final form, the Interim Report covers the research activities of this Commission conducted between the 147th session of the Diet and October 24, 2002 of the 155th session of the Diet. The draft Interim Report is organized into the following four parts: Part 1: Background to the establishment of the Commission; Part 2: Purpose, Organization, and Operation of the Commission; Part 3: Progress and Contents of Research Conducted by the Research Commission on the Constitution; Part 4: Reference Material. The core of the draft Interim Report appears under Chapters 2 and 3 of Part 3, which summarize the research conducted by the Commission.

Chapter 2 of Part 3 contains summarizations of the deliberations of the Commission and its subcommittees, as well as summarizations of local open hearings and overseas research missions. On the other hand, Chapter 3 of Part 3, comprising most of the Report, is a compilation based on the themes of discussion over two years and a half, following the order of the chapters and articles of the Constitution, with various statements and opinions of informants and the Commission members. Here, I would like to make a summary of the principal themes, which were discussed by the Commission.

First, our research on the “Details of how the Constitution was formulated” centered on examinations of the historical facts pertaining to the enactment of the current Constitution. Japan entered World War II in December 1941, and in August 1945 surrendered to the Allied Powers by accepting the Potsdam Declaration. Accordingly, Japan came under the indirect rule of General Headquarters, which in effect wielded supreme power during the Occupation of Japan. Under indirect rule, in March 1946 the Government of Japan announced its “Outline of a Draft for a Revised Constitution” based on the draft of the GHQ. In the following month of April, elections were held for the House of Representatives. During the 90th session of the Imperial Diet convoked after the elections, a “Bill to Amend the Imperial Constitution,” following the pattern of the “Outline of a Draft for a Revised Constitution,” was submitted. After deliberation in both Houses, the Constitution of Japan was promulgated in November of the same year.

My understanding here is that the members of the Commission have come to a generally common perception regarding the series of objective and historical facts surrounding the enactment of the Constitution, regardless of how we evaluate them.

At the same time, we should remember that Okinawa, where we held a local open hearing this year, had to wait to come under the Constitution of Japan until 1972 when the islands reverted to Japan.

Next, we moved on to research “Major postwar judgments of unconstitutionality,” where we examined cases of judgments of unconstitutionality handed down by the Supreme Court regarding the application of the Constitution from its enactment to the present day. In so doing, we also clarified the operation and application of the review system for the determination of the constitutionality of legislation. Indications are that there are many issues to be considered in this area. This has become apparent from our overseas research missions that featured a comparative study of the activities of the constitutional courts of several countries.

We conducted vigorous discussions on “A vision for Japan in the 21st century.” This was supplemented by specialized and effective subcommittee discussions pertaining to the Constitution of Japan as expressed from a wide range of viewpoints.

One of the viewpoints expressed was how, or whether, the dramatic and unforeseen changes that have occurred since the Constitution was enacted more than 50 years ago can be reflected in the Constitution. Among the many changes, to cite just a few, are changes pertaining to the framework of the nation and the guarantee of human rights, both of which have an impact on the fundamental ideas that support the Constitution.

For instance, the concept of security has undergone a great deal of change, first starting with the concept of security of the nation-state, then moving on to include regional security, and finally extending to cover human security. This change has a serious influence on what kind of security and what form of international cooperation Japan should contemplate.

As for developments in science and technology, innovations in information technologies have brought into being the information-intensive society of today. The other side of the coin is that these

innovations have led to serious encroachment on personal privacy. Furthermore, technical advances and innovations in bioscience and medical fields are coming perilously close to undermining the foundations of human dignity and life ethics. As such, technological innovations are exerting a very large impact on the guarantees of human rights.

These points were repeatedly voiced by members of the Commission as well as by informants.

On three occasions, members of the Commission were sent overseas to conduct a wide range of fact-finding research on the constitutions of various countries. The countries researched included Western nations with monarchies and others that have maintained a policy of neutrality, former communist countries such as Russia and the Eastern European countries, Israel in the Middle East, Southeast Asian countries, and the People's Republic of China and the Republic of Korea, both neighbors of Japan.

One of the points that impressed us was that every one of these countries had offered its people a chance to discuss constitutional amendment in light of ongoing changes in the domestic and international societies. And all of these countries have actually amended their constitutions from time to time.

Another point that gave us food for thought was the system of constitutional courts that many countries have adopted for the purpose of facilitating the review of the constitutionality of laws, statutes and administrative ordinances. The institution of constitutional courts not only contributes to checks and balances of power, but also functions as a bastion of human rights by directly hearing from the people their appeals for the restitution of rights that have been compromised or abused.

A system for the popular election of the prime minister attracted much attention when Prime Minister KOIZUMI took office. To investigate such a system, we visited Israel to meet leaders of the administration and the Knesset as well as scholars, and made a detailed study of the popular election of the prime minister. Our research focused on the process by which Israel introduced such a system and later came to abolish it, and extended to the evaluation and other matters pertaining to this issue. Drawing on the results of our research in Israel, the Commission engaged in active discussion of the pros and cons of such a system from various perspectives. The outcome of these discussions indicated that the majority view in the Commission tended in the direction of a cautious or negative attitude toward the introduction of the popular election of the prime minister.

This concludes my explanation of the purport of the draft Interim Report and its contents. The Commission will continue to pursue broad and comprehensive research on a new vision of Japan from the perspective of the people in general, while bearing in mind the cardinal principles of respect for human rights, popular sovereignty, and the solemn affirmation that Japan will never revert to being an aggressor country.

### **(3) Other Key Speeches**

#### **147th Diet Session, Eighth Meeting, Research Commission on the Constitution (April 27, 2000)**

#### **(Speech regarding the Conduct of Brainstorming Discussions on “Towards Constitution Day”)**

I would like to make a short comment before we begin our discussion.

As all members are aware, May 3 is the first Constitution Day since the Research Commission on the Constitution was set up in both the House of Representatives and the House of Councillors. Today, in advance of Constitution Day, I think it will be particularly significant to hear the candid opinions of members regarding the Constitution of Japan, which is the basic law of our country.

Since this House of Representatives Research Commission on the Constitution was set up on January 20 at the beginning of this Diet session, we have heard the views of representatives of all the political groups as we embark upon our deliberations and have exchanged opinions with the 10 informants invited to these meetings. Through the question-and-answer sessions with the informants at each meeting, although evaluations have differed according to members' different political stances, we are reaching a common understanding of the objective facts about how the Constitution of Japan was formulated.

Fifty-three years have already passed since the formulation and enactment of the Constitution of Japan. During this time, the three basic ideals of the Constitution - respect for individual human rights, sovereignty of the people, and the commitment never again to become an aggressor state - have become widely diffused and taken firm root among the Japanese people. However, it is also true that the situation inside and outside Japan has changed more than could possibly have been imagined when the Constitution was enacted.

Since the end of the Cold War, the world has entered an era of fierce borderless competition and market expansion through free trade. Amid the rapid emergence of an aging society with fewer children and the breaking down of economic borders, the Japanese economy remains in recession. We now have to discuss very seriously basic issues such as how we can achieve the regeneration of Japan, what kind of global peacekeeping role Japan should play as a member of the United Nations, and how it should respond as a nation in Northeast Asia in the event that a guarantee of collective security in this region is formed.

Regarding these issues it is the mission of the Diet, the supreme organ of the national constitution, to conduct broad and comprehensive research on the Constitution of Japan and to promptly report the results of this research to the Japanese people,

As general questions that we should research and investigate, the 10 questions put forward by the research commission on the Constitution set up in the Cabinet in the late 1950s and early 1960s have lost none of their importance. These questions were: (1) What kind of constitution should the Constitution of Japan be? (2) What attitude should be taken regarding the revision of the current

Constitution? (3) What approach should be taken toward the Emperor system? (4) What system of self-defense should Japan have? (5) What approach should be taken toward fundamental human rights? (6) What should be the fundamental and organizational role of politics? (7) How should judicial power be organized and limited? (8) What approach should be taken toward local autonomy? (9) What kind of system should there be to deal with national or international emergencies? (10) What attitude should the Constitution take toward the political parties and elections that form the basis of the political system?

In addition to these questions, there is one other thing that we must not forget. This is that the Constitution belongs to the people.

As chairman of the Research Commission on the Constitution, I have aimed to realize a Commission that is in step with the people. In this Research Commission, as members of the Diet, we have to recognize that, based on the premise of the sovereignty of the people, Article 96 of the Constitution states that if two-thirds of Diet members elected by the people vote for a proposal to amend the Constitution, its acceptance shall depend on the result of a referendum of the people. We members of the Diet therefore have a great responsibility.

I very much hope we will have a fruitful meeting today and would now like to ask you to commence this open discussion.

**147th Diet Session, 10th Meeting, Research Commission on the Constitution  
(May 25, 2000)  
(Speech on the Explanation by the Supreme Court on “Postwar Judgments of  
Unconstitutionality”)**

I would like to make a short comment concerning the explanation we are going to hear today from the Supreme Court.

With the enactment of the Constitution of Japan, Japan’s court system underwent major reforms. Particularly important were the introduction of the system of judicial review of the constitutionality of legislation and the judgment of administrative cases by judicial courts. These reforms radically enhanced judicial authority but, having been implemented during the chaos of the postwar period and under the U.S. Occupation without sufficient examination from a theoretical standpoint, they were, as Yoshitaka Watanabe wrote in his book *Contemporary Issues in Administrative Litigation*, “the result of transplanting the system of redress in Anglo-American law into the existing soil which was based on Continental law, like sticking bamboo onto wood.”

It should be noted that the Supreme Court is the only government organ that has not been changed at all since the Constitution was enacted more than 50 years ago. Of course, the Supreme Court has sufficiently played the role expected of it in the Constitution, but it is currently being subjected to more than a little criticism.

It would be no exaggeration to say that many people today share the view that constitutional hearings of the Supreme Court are not sufficiently positive. It is often pointed out, not only the academic quarters and the media but also in economic circles, that the attitude of the judiciary in Japan in cases concerning legislative discretion and administrative discretion is self-constraining compared to that of the U.S. Supreme Court or the Federal Constitutional Court of Germany.

Now we will hear the explanation from the Supreme Court.

**147th Diet Session, 10th Meeting, Research Commission on the Constitution  
(May 25, 2000)  
(Comments upon the Closing of the Diet Session)**

On this occasion, I would like to make a short comment.

With 24 days to go until the current Diet session closes, our Research Commission on the Constitution has come to hold its 10th meeting. So, I would like to review and report on the course which our research has been following so far.

The Commission was set up on January 20 (2000 throughout) upon the convening of a Diet session. The first meeting was held on the same day to elect its chairman and directors from among Commission members.

On February 17, to start its research activities, this Commission heard opinions from six members representing different political groups in the House.

Since February 24, we have been conducting research by hearing the views of invited informants, and having question-and-answer sessions, to ascertain the details of how the Constitution of Japan was formulated and enacted.

So far 10 informants have been invited to our meetings, and in the five Commission meetings held on February, March 9, March 23, April 6 and April 20, a total of 64 Commission members put questions to the informants.

The main points of statements presented by the 10 informants concern wide-ranging matters as will be seen in the following examples:

From what points of view should the details of formulating the Constitution be evaluated? Is there any indication that the GHQ imposed the Constitution in the course of its formulation and enactment?

Was the enactment of the Constitution of Japan under the occupation of the Allied Forces, among other matters, contrary to the provisions of the Hague Convention clauses on the laws and customs of war on land? Questions were raised about the relationship between the purport of the Ashida amendment and the insertion of a civilian clause by the Far Eastern Commission.

On May 11, our Commission had a members-only brainstorming discussion on the basis of what we had obtained from hearing views from and conducting question-and-answer sessions with 10 informants in the preceding five meetings on the details of how the Constitution of Japan came into being. In this discussion 39 members freely expressed their opinions. With this, the Commission concluded its discussions on the formulation of the Constitution.

Through these discussions at our Commission meetings, I trust that members from different political groups in the House have reached a common understanding of the objective facts about the details of how the Constitution was drawn up, setting aside their different evaluations stemming from their different political stances.

On April 27, in advance of Constitution Day on May 3, the first since the Research Commissions on the Constitution were inaugurated in both Houses, members expressed their opinions freely. A total of 34 took the floor to express their free views in the session.

In this session, members made statements covering a wide range of topics. The opinions expressed are, among others:

In what ways should the Commissions proceed in their future deliberation and research? What principles should be adopted in the Constitution of a modern state? What is a reasonable understanding of the relations between democracy and traditionalism? and comments on pioneering values carried by the Constitution of Japan.

And today, we have heard from an official of the Supreme Court an account of major cases of Supreme Court judgments of unconstitutionality in the postwar days, and put questions to him after his exposition. Eight members, including myself, took the floor in the question-and-answer session.

Up to date, the total number of members who spoke in the Commission meetings came to 151, spending over 37 hours in total.

Since the Constitution belongs to the people, I believe that we should continue to conduct broad and comprehensive research on the Constitution, seeking an ideal vision of Japan for the 21st century and holding firm to the principles of respect for human rights, the sovereignty of the people, and not becoming again an aggressor state.

Last but not least, I offer most sincere gratitude to the directors and observers as well as all members of the Commission for your valuable advice and cooperation, without which this Commission would never have been able to proceed in such an equitable and smooth way as we have witnessed right up to today. Thank you very much.

I declare the meeting adjourned for today.

**149th Diet Session, First Meeting, Research Commission on the Constitution  
(August 3, 2000)  
(Speech regarding the Conduct of Brainstorming Discussions on “Future  
Proceedings of the Research Commission on the Constitution”)**

Before we commence our discussion, I would like to make a short comment.

This Research Commission on the Constitution was set up with the convening of the Diet on January 20 this year. Since then, we have conducted research mainly on the formulation of the Constitution of Japan and postwar judgments of unconstitutionality by the Supreme Court, and have now completed our research on how the Constitution was formulated. Please refer to the outline of the research so far that has been distributed to you.

The Commission members newly appointed after the general election will continue with this research and, based on the results we have achieved so far, I hope you will take the discussions to an even deeper level.

As you are aware, since the end of the Cold War, the world has entered an era of fierce borderless competition and market expansion through free trade.

However, the future of the Japanese economy remains unclear, and citizens cannot rid themselves of anxiety about the future.

In particular, with the simultaneous aging of the population and the declining birthrate, it is estimated that Japan's population structure in 50 years' time will be that of a super-aging society in which roughly one third of the population are aged 65 or over. If this trend continues, economic growth will be further slowed down by the resulting decrease of the labor force and decline in the savings rate, the burden on the working generation through taxes and social insurance will increase, basic living services will fall into decline, and local communities will suffer serious adverse effects. This is clearly a very urgent problem that could even lead to the disintegration of Japan as a nation in the 21st century.

With the progress of globalization, Japan has also had to face problems such as the horizontal division of labor with countries in the same region and the protection of domestic corporations. We are under considerable pressure to implement radical economic structural reforms to strengthen industrial competitiveness, create employment and reform the labor market, and review policies regarding SMEs, including support for the establishment and development of creative SMEs.

Apart from this, there are countless other vital issues that require a precise and speedy grasp of the situation and sound political judgment. For instance, we have to consider what kind of global peacekeeping role Japan should play as a member of the United Nations and how it should respond as a nation in Northeast Asia in the event that a guarantee of collective security of this region is formed, what approach it should take to national crisis management, and how it should respond to the issue of the protection of individual privacy in the information society. In addition, we have to consider how to educate people so that human sensibilities are fostered in this information society.



We also must deal with the question of bioethics in relation to reproductive and genetic technology, as a result of the amazing pace of progress made in science and technology, respond to global environmental problems, and examine how a society in which men and woman can support each other and participate equally should be formed.

As chairman of this Commission, I strongly hope that you will conduct broad and comprehensive research and discussions on the Constitution from the standpoint of the Japanese people as a whole, bearing in mind the current situation of Japan I have just outlined.

The directors of this Research Commission on the Constitution have agreed that we research the theme “A vision for Japan in the 21st century” from September onwards. Bearing this agreement in mind, I would also like to hear today members’ candid opinions on how this Commission should proceed from now on.

**150th Diet Session, Seventh Meeting, Research Commission on the Constitution  
(December 21, 2000)  
(Speech on the Last Meeting Day in 2000 for the Research Commission)**

On this occasion, I would like to make a short comment.

Today is the final day for the Research Commission to sit this year. So I would like to report on the course which our research has been following so far.

The Commission was set up on January 20 (2000 throughout) upon the convening of the 147th Diet session. The first meeting was held on the same day to elect its chairman and directors from among Commission members.

Then on February 17, to start its research, this Commission heard opinions from six members representing different political groups in the House. From February 24 to April 20, the Commission held five meetings to hear views from 10 invited informants and to have question-and-answer sessions on the details of how the Constitution of Japan was formulated and enacted. Then on May 11 we had a members-only brainstorming discussion to conclude the Commission’s deliberation on that theme.

Through these discussions, I believe that members from different political groups in the House have reached a common understanding of the objective facts about precisely how the Constitution was formulated, setting aside their different evaluations stemming from their different political stances.

On April 27, in advance of Constitution Day on May 3, the first since the Research Commissions on the Constitution were set up in both Houses, members expressed their opinions freely. On May 25, we heard from an official of the Supreme Court an account of major cases of Supreme Court judgments of unconstitutionality in the postwar days, and put questions to him after his exposition in order to verify, in light of the judgments of unconstitutionality, the course followed by the Constitution since its enactment.

Thereafter, at its meeting on July 5 in the 148th special Diet session convened in the wake of the 42nd general election for the House of Representatives, the Commission's chairman and directors were elected from among Commission members. Then, at a meeting held on August 3 during the 49th extraordinary Diet session, a brainstorming discussion was held to hear opinions freely expressed by Commission members newly-appointed after the general election. A total of 20 members presented their opinions on how the Commission should proceed in its future business.

Since September 28, or at the outset of the 150th extraordinary Diet session, the Commission has been conducting research on an ideal vision of Japan for the 21st century by hearing views from, and having question-and-answer sessions with, invited informants.

In discussing this theme, the Commission held seven meetings—September 28, October 12, October 26, November 9, November 30, December 7 and today (December 21, 2000)--with 12 invited informants present altogether. A total of 88 members, including myself, took the floor in the question-and-answer sessions.

The main points of statements presented by the 12 informants covered enormously wide-ranging topics, spurring ardent discussions in the question-and-answer sessions:

- >> What kinds of change will the world undergo in the 21st century and what will be the course for the states to follow by modifying their roles to cope with such changes?
- >> What duties should Japan fulfill for the benefit of the world, and to meet this requirement, what should the Japanese think about and carry out?
- >> How should Japan's politics and society be transformed?
- >> How will the Constitution become involved in these issues mentioned above, or how should the Constitution be?

Up to date, a total of 260 Commission members took the floor to give their opinions, and 22 invited informants and a Supreme Court official made their statements, with a total of over 75 hours spent on the meetings.

From September 10 to 19, a House delegation was dispatched to European countries, namely Germany, Finland, Switzerland, Italy and France, on a mission to conduct research on the situation surrounding the Constitutions of these countries. A résumé report on the results of this mission was presented to the meeting of this Commission on September 28. The content is carried in a written report on the mission, copies of which were distributed at the Commission meeting of November 9. The report drew attention from, among others, colleges and universities, and mass media.

From the current Diet session, as part of the House's public relations activities, the Commission started publishing newsletters of the Research Commission on the Constitution of the House of Representatives. We have sent them either by fax or e-mail to over 1,000 people and distributed to members of the public who attended our Commission meetings as observers. In this way we are making efforts for easier access to House information.

I believe that, while keeping in mind that the Constitution belongs to the people and holding firm to

the principles of respect for human rights, the sovereignty of the people, and not becoming again an aggressor state, we should continue to conduct broad and comprehensive research on the Constitution in the new century, seeking ways in which Japan should cope with various issues coming up in the 21st century; for instance, the role Japan should play in maintaining world peace as a member of the United Nations, how crisis management should be carried out in the state, questions of how to protect individuals' privacy in the information society, the issues of bioethics, ways of coping with the problems of the global environment, and ways of creating a gender-equal society.

Last but not least, I offer most sincere gratitude to the directors and observers as well as all members of the Commission for your valuable advice and cooperation, without which this Commission would never have been able to proceed in such an equitable and smooth way as we have witnessed right up to today. I am very happy to see our Commission close its final session for this century in this manner. Thank you very much.

I declare the meeting adjourned for today.

**151st Diet Session, Third Meeting, Research Commission on the Constitution  
(March 8, 2001)**

**(Speech Prior to the Hearing with Informant SON Masayoshi)**

The increasing utilization of telecommunications technology is leading to rapid and extensive changes on a global scale in a wide range of areas, including individual pursuits, lifestyles, social and economic activities, and administrative practices.

In Finland, disclosure of and the right of access to public information are now subject to provisions in the constitution and, as a result of the use of telecommunications technologies, methods of providing and managing information have been improved.

The comprehensively amended Constitution of Finland came into force in March 2000. Section 12 stipulates as follows: "Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings." The situation in Finland has been studied by a delegation dispatched in September last year. For further details, please refer to the report distributed to members of this Commission last October.

Now let us proceed to our research today on the theme of a vision for Japan in the 21st century.

**151st Diet Session, Seventh Meeting, Research Commission on the Constitution  
(June 14, 2001)**

**(Comments upon the Closing of the Diet Session)**

There are only two weeks left until the 151st Diet session closes. Here, I would like to review and

report on the activities of the Research Commission on the Constitution.

During the current Diet session, our main activities were, just as in the previous Diet session, questions and answers with informants under the theme of “A vision for Japan in the 21st century”. From February 8 to May 17, we had met five times, heard the opinions of invited informants, and held question-and-answer sessions. So far nine informants have been invited to our meetings, and a total of 71 Commission members, including myself, put questions to the informants.

The main points presented by individual informants were as follows: the role and task of science and technology, globalization and the Nation-State, the progress in identification of the genome and ethical considerations in the application of the life sciences, the advent of an aging society with fewer children and the problem of the declining labor force, the ideal social insurance system, dealing with changes in human society caused by the IT revolution, the concept of a nation and the need for restructuring of its concept, the role of Japan in Northeastern Asia, the relationship of the national government and the local governments, and others. Our Commission conducted serious discussions of wide range on the relationship of all these issues with the Constitution, or an ideal form of the Constitution.

Furthermore, during the current session of the Diet, in order to hear opinions on the Constitution from various levels of the people, one open hearing was held in Sendai City, Miyagi Prefecture, on April 16 and a second one in Kobe City, Hyogo Prefecture, on June 4, 2001. These two hearings were reported in summary form by Deputy Chairman KANO Michihiko on April 26 and on June 14. Opinions on the Japanese Constitution were heard from 20 speakers including members of the public who responded to an open invitation, and 18 members of the Commission including myself participated in presenting questions and comments. Opinions and comments from the floor were also heard from seven persons during the hearings.

Today, in relation to the Constitution of Japan, we held brainstorming discussions without setting an agenda. A total of 19 members of the Commission presented their statements.

Under the recognition that the constitution belongs to the people, I think that we still need to have further discussions on a great many themes, among them, the global environment, the public election of the prime minister, the maintenance of national security, bioethics in genetic engineering, and cooperation with the United Nations. I would like to consult our directors about these issues in directors’ meetings. Whilst we hold firm to the principles of respect for human rights, the sovereignty of the people, and not becoming an aggressor nation, I believe that we should continue to conduct broad and comprehensive research.

Last but not least, I offer my most sincere gratitude to the directors and observers as well as all members of the Commission for your valuable advice and cooperation, thanks to which this Commission has been able to proceed in such an equitable and smooth manner up until today. Thank you very much.

I declare the meeting adjourned for today.

**153rd Diet Session, Fifth Meeting, Research Commission on the Constitution  
(December 6, 2001)  
(Speech on the Last Meeting Day in 2001 for the Research Commission)**

Today is the final day for the Research Commission on the Constitution to sit this year. So I would like to sum up our proceedings by looking back at what we have achieved this year.

During the 151st Diet session which started in January, we pursued the main theme 'A vision for Japan in the 21st century,' a theme carried over from last year, largely in question-and-answer sessions with invited informants. In five meetings from February 8 to May 17, we received opinions from nine informants altogether and conducted question-and-answer sessions: 71 questions were put by myself and other members.

Statements presented by the informants included many points in regard to the Constitution, setting in motion a variety of activated discussions with particular focus on the ideal form of the Constitution: What kind of impact and mission does the development of science and technology have? What reforms does education in Japan need? What sort of influence does globalization have on the status of the nation-state? As biotechnology and especially genome research advances, what sort of life ethics should we establish? What kind of social security and problems will confront us and how shall we cope with them, as the low birthrate and the aging society result in a dwindling workforce? What sort of social response should humanity take in the face of the IT revolution? Should the concept of the nation-state be reconfigured in today's world, and if so, in what form? What role should Japan play in Northeast Asia? What should be the relationship between the central and local governments in the operation of executive power?

On June 14, we had a brainstorming discussion without setting any theme, where nineteen members expressed their opinions regarding the Constitution.

In the same way as last year, we dispatched a Parliamentary delegation from late August through early September to a total of 11 countries to take a closer look at their respective constitutions: Israel, Eastern European countries like Russia and Hungary, and five monarchies such as Holland and Spain.

The delegation's findings were reported to the October 11 meeting of the Commission, and the official report was submitted last month to the Speaker with a copy distributed to all Commission members. The contents of the report included: the formative process of the Russian Constitution and the extent to which it has spread through the people; the strong power of the President and the checks of the Parliament; the actual state of judicial review by constitutional court; the enactment of constitutions in the Eastern European countries following the series of democratic reforms at the end of the Cold War as well as amendment procedures and constitutional characteristics; the status and power of monarchs as well as the constitutional definition and operation of the monarchic system in the monarchies visited, and; introduction and abolition of the popular election of the prime minister.

The features we found in common in each nation concerned were: First, the people need to be given ample information on the themes of discussion concerning the constitution, no matter what the political system is, and it is the people who make the final judgment on what the ideal form should be for each country. Furthermore, confidence in their leaders is essential to such a judgment.

In the extraordinary session of the 153rd Diet which started in September, while continuing further research on ‘A vision for Japan in the 21st century,’ we put emphasis and energy in our research focusing on three perspectives: the United Nations and security, various issues regarding the executive power versus the other two powers, and the guarantee of human rights. We invited six informants, and altogether 50 follow-up questions were asked by the members including myself.

Points presented by the informants were: a statement on constitutional revision from a protectionist standpoint that each generation of the people should determine and conduct the national affairs according to its own ideas; foreign and security issues which call for restructuring based on clear-cut national strategies; reconciliation between the general and special interests through “deliberative democracy”; the benefits of reexamining the relationship between the parliament and the cabinet from the standpoint of public administration; the actual guarantee of human rights in Japan, required establishment of human security and the right to live in peace; and a proposal for a constitutional court to be set up for effective constitutional review by a judicial power without going through a constitutional revision.

We also took up the issue of popular election of the prime minister initiated by Prime Minister KOIZUMI, and other pressing issues, both foreign and domestic, in the wake of the September 11 terrorist attack; resulting in lengthy and productive deliberations on domestic and international changes brought about by the current events.

We also held three open hearings to hear opinions on the Constitution from different levels of the people. The first was held on the theme, “The Constitution of Japan” in Sendai City, Miyagi Prefecture on April 16; the second on the theme “A vision for Japan in the 21st century” in Kobe City, Hyogo Prefecture, on June 4, and the third on the theme “Japan’s role in the international community” in Nagoya City, Aichi Prefecture, on November 26. Question and answer sessions followed the presentation of opinions from 26 speakers including 11 members of the public who responded to an open invitation, joined by 12 persons who responded to an invitation to express their opinions from the floor.

Although there was a certain amount of disruption, I think it is of paramount importance that we Diet members, as representatives of the people, provide occasions where we can directly hear their voices. Getting opinions from members of the people also gives credibility to our research activities.

As a final effort, we held a brainstorming session today where, in reflecting over our endeavors of the past year, we summarized the issues deliberated during the 153rd Diet to conclude the Commission’s activities. A total of 27 members voiced their opinions during the meeting.

In regard to research themes, methods and schedules for the coming year and beyond, directors of

the Commission will continue to consult over coordination in their meetings, with reference to what we discussed today. Here, we hold firm to the recognition that the Constitution belongs to the people. Put another way, the principles we must firmly maintain are: respect for human rights, popular sovereignty, and the solemn affirmation that Japan will never revert to being an aggressor country. With these principles in mind, we intend to continue to pursue broad and comprehensive research.

Now, I would like to conclude my speech in the last meeting of this year by offering most sincere gratitude to the deputy chairman, directors, those who took part in meetings, and all Commission members for valuable guidance and cooperation. Without them, we would never have been able to proceed in such an equitable and smooth manner in our operation of the Commission.

I declare the meeting adjourned for today.

### **154th Diet Session, Third Meeting, Research Commission on the Constitution**

**(April 25, 2002)**

**(Speech regarding the Conduct of Brainstorming Discussions on “The Security of Japan”)**

As we have just heard in the report from our dispatched members, many opinions were stated at the Open Hearing in Okinawa regarding national security and Japan’s emergency response legislation in relation to the three bills submitted to the Diet regarding Japan’s response to armed attacks.

According to the report of the 1964 Cabinet Research Commission on the Constitution, an outline of which was distributed to you at the beginning of this Diet session, the members of that Commission agreed unanimously that it was necessary that measures should be promptly taken in response to a national emergency, including not only wars but also natural disasters and economic chaos. However, while some thought that a basic provision stipulating such measures should be included in the Constitution, others believed that such a provision was not necessary.

Now, almost 40 years after this report of the Cabinet Research Commission on the Constitution was submitted, the world situation has changed considerably. Based on the discussions at the Okinawa Open Hearing and other materials, I hope that we will have a lively discussion today, focusing in particular on Japan’s national security.

### **154th Diet Session, Fifth Meeting, Research Commission on the Constitution**

**(July 25, 2002)**

**(Comments upon the Closing of the Diet Session)**

We have only one week left until the 154th Diet session closes. Here, I would like to review and report on the activities of the Research Commission on the Constitution.

During the current Diet session, we established four subcommittees in the Commission in order to

make an effective and specialized investigation into specific issues regarding the Constitution. They are: Subcommittee on Guarantee of Fundamental Human Rights, Subcommittee on Fundamental and Organizational Role of Politics, Subcommittee on Japan's Role in International Society, and Subcommittee on Local Autonomy.

What we discussed in the subcommittees was briefed today by each subcommittee chairperson. From February 14 to July 11, a total of 20 informants have presented their statements and we put questions to them and made comments at length.

Furthermore, during the current session of the Diet, in order to hear opinions on the Constitution from various levels of the people, we held two open hearings that were the fourth and fifth hearings of the Commission: in Nago City, Okinawa, on April 22, and in Sapporo City, Hokkaido, on June 24.

Both hearings were reported in summary form by Deputy Commission Chairman NAKANO Kansei on April 25 and today. Opinions on the Japanese Constitution were heard from 12 speakers comprised of members of the public who responded to an open invitation, and 16 members of the Commission including myself participated in presenting questions and comments. Opinions and comments from the floor were also heard from seven persons during the hearings.

In the two hearings, some members of the audience made persistent demands to speak, causing disruptions to the order of business from time to time. Such behavior goes against the rules and is not appropriate for a forum of discussion where we have an opportunity to share thoughts on the Constitution with the people, and I find these actions deplorable and reprehensible.

Based in part on the report of the Open Hearing in Okinawa, we held brainstorming discussions on Japan and the Constitution in the 21st century including the security of Japan in the April 25 Commission meeting. Today, based in part on the report of the Open Hearing in Sapporo and the reports of four subcommittee chairpersons, we held brainstorming discussions on the Constitution of Japan.

For the next session of the Diet and beyond, I think it necessary to continue to conduct detailed investigations into the Constitution through subcommittees, bearing in mind the principles of respect for human rights, popular sovereignty, and the solemn affirmation that Japan will never revert to being an aggressor country. The directors of the Commission will continue to consult over research themes and other matters.

In my opinion, it will be very useful for the Commission in its broad and comprehensive research to take up in its discussion the current interests of various national issues in the press and other media while investigating the Constitution.

From the perspective of comparison with other constitutions, discussion based on the findings of the Diet delegations sent overseas by the House of Representatives will provide a more effective investigation.



For example, the issue of legislation in case of national emergency became a focus of debate during the current session of the Diet. In case of national emergency, how can we safeguard the security of the country and the people? What legislative framework do we need for this? In the Commission's discussion of these issues, I think that we may learn a lot from referring to the German Basic Law (Grundgesetz) that sets constitutional stipulations for rescue and relief in times of natural disaster, contingencies for riots, and the defense in the event of military attack by a foreign country.

To be more specific, the stipulations for emergency cases in the Basic Law are as follows: Article 35, paragraph 3, stipulates: "Where a natural disaster or accident endangers a region larger than a provincial state, the Government may, to the extent necessary to effectively deal with such a danger, instruct the provincial state government to place their police forces at the disposal of other provincial states, and may use units of the Federal Border Guard or the Armed Forces to support the police forces." Article 91, paragraph 1, stipulates: "In order to avert any imminent danger to the existence or to the free democratic basic order of the Federation or a provincial state, a provincial state may request the services of the police forces of other states, or of the forces and facilities of other administrative authorities and of the Federal Border Guard." The other stipulation provides a total of 11 articles with detailed procedural definitions, that begins with the sentence "The determination that federal territory is being attacked by armed force or that such an attack is imminent is made by the Bundestag (Federal Assembly) with the consent of the Bundesrat (Federal Senate) (Article 115a, paragraph 1).

In another issue under debate, that of personal information protection, as seen in implementing the Basic Residential Registers Network System, or Juki Net, we can refer to a relevant stipulation such as Article 10, paragraph 1, of the Netherlands constitution, which says, "Everyone shall have the right to respect of his privacy, without prejudice to restrictions laid down by or pursuant to Act of Parliament." Paragraph 3 also makes stipulations for privacy rights: "Rules concerning the rights of persons to be informed about data recorded concerning them and of the use that is made of such data, and to have such data corrected, shall be laid down by legislation." The Finnish Constitution stipulates the right to access information in Article 12, paragraph 2: "Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by legislation. Everyone has the right of access to public documents and records."

We can also refer to the following stipulations in regard to far-reaching technological innovations and ethics issues in recent years, as prominently seen in the fields of genetic engineering and organ transplant. The Swiss constitution stipulates in Article 119, paragraph 1: "Persons shall be protected against the abuse of medically assisted procreation and gene technology." In addition, Article 119a, paragraph 1, stipulates: "The Confederation shall legislate on the use of human organs, tissues, and cells. In the said case, it shall pay due consideration in order not to harm human dignity, personality and health." We may proceed with our discussion in part by making references to the above.

Last but not least, I offer my most sincere gratitude to the subcommittee chairpersons, directors, and observers as well as all members of the Commission for their valuable advice and cooperation,

thanks to which this Commission has been able to proceed in such an equitable and smooth manner up until today.

In concluding my reflections on the Commission's activities, I reiterate my appreciation for all the cooperation extended by all of you during the present session of the Diet. Thank you very much.

I declare the meeting adjourned for today.

**155th Diet Session, Fourth Meeting, Research Commission on the Constitution  
(December 12, 2002)  
(Speech on the Last Meeting Day in 2002 for the Research Commission)**

Today is the final day for the Research Commission on the Constitution to sit this year. So I would like to sum up our proceedings by looking back at what we have achieved in the year 2002.

During the 154th and the 155th Diet sessions which started in January and in October respectively, we established four subcommittees to conduct specialized and effective research into specific themes regarding the Japanese Constitution. We have just heard the reports of the chairpersons of those four subcommittees.

The contents of the discussions held in each subcommittee were reported by the subcommittee chairperson to the Commission in the meetings of July 25 and today. We received opinions from 24 informants altogether and held robust discussions.

Statements presented by the informants set in motion a variety of lively discussions on many points with particular focus on their relationship with, and the ideal form of, the Constitution. They were, among other things, guarantee of human rights in a new age, human rights of foreign residents, new human rights, fundamental labor rights and employment measures, a widening class division regarding education and fundamental human rights, the ideal form of parliamentary cabinet system, perspectives from which to review the system of governance, bicameral and election system, ideal judiciary review system, governance structure under the Meiji Constitution, constitution and political parties, the ideal form of international cooperation centering on peacekeeping operations and peacekeeping forces, an ideal vision for Japan in international society with regard to Free Trade Agreements, ideal security of Japan, development of the EU Constitution as well as national constitutions, history and background of rearmament and emergency legislation in Germany, regional decentralization reform and a *do-shu* system, various tasks of decentralization reform including mergers of villages and municipalities, local self-rule and regional finances, various tasks for realizing decentralization, a perspective in Mie Prefecture centering on people in their daily lives as the starting point, roles of a local (basic-unit) government for decentralization, and measures taken by Shiki City.

In the same way this year as last, the House of Representatives dispatched a Diet delegation comprising the Commission's members from the end of September through early October to a total

of eight countries to get firsthand information on their respective constitutions: the United Kingdom, Thailand, Singapore, China and Republic of Korea as well as the Philippines, Malaysia and Indonesia.

The outline of the delegation's findings was reported to the November 7 meeting of the Commission. The contents of the report included: situation of guarantee of human rights in the United Kingdom, the current status of the House of Lords reform, the relationship between U.K. politicians and bureaucrats, regional policy of the Blair Administration led by the Labour Party; in Thailand, the activities of the Constitutional Court and measures against political corruption; main constitutional characteristics and socio-political trends regarding the constitutions of the Philippines, Malaysia and Indonesia; Singapore's election system from the standpoint of multi-racial harmony; China's socialist concept of the market economy as well as trends toward constitutional revision; in Korea, the activities of the Constitutional Court and the National Human Rights Committee as well as legislation sponsored by parliament members.

One distinctive feature caught our attention. Amid, and in response to various situations arising from, the rapid change of society, these countries have conducted national debate on an ideal form of constitution, based on which they have amended their constitutions.

The research period of the Commission is regarded as approximately five years as a time framework according to what was agreed in the directors' meeting of the House Standing Committee on Rules and Administration. The closing of the 154th session of the Diet has passed the turning-point of this period, two and a half years.

On November 1 to mark this occasion, the Commission produced an Interim Report containing its proceedings and deliberations to date, and presented it to the Speaker of the House of Representatives on the same day. On November 29, we reported to the plenary sitting of the House on the history of submitting the Interim Report along with its outline.

This year too, we held local open hearings to hear opinions on the Constitution from residents in regional cities from all walks of life.

The first was held in Nago City, Okinawa Prefecture on April 22; the second in Sapporo City, Hokkaido, on June 24, and the third in Fukuoka City, Fukuoka Prefecture, on December 9, all on the same theme "Japan and Constitution of the 21st century." Question-and-answer sessions followed the presentation of opinions from 18 speakers. Eleven persons who attended the hearings took the occasion to express their opinions from the floor. We believe that this kind of opinion-gathering directly from the people is very important to the Diet members who are representatives of our people. This also led to trust-building among the people with regard to the activities and contents of our ongoing research.

Occasionally, however, there was a certain amount of disruption at the local open hearings from some attendees who persisted in taking the floor. I believe that such flouting of the rules is unfitting to forum like ours where we hold constitutional debate with the people. I strongly condemn this kind

of behavior.

As a final effort, we held a brainstorming session today when, reflecting on our endeavors of the past year, we summarized the issues that were deliberated this year to conclude the Commission's activities.

In regard to research for the coming year and beyond, the directors of the Commission will continue to consult over coordination in their meetings, with reference to what we discussed today.

Recognizing that the Constitution belongs to the people, we must firmly maintain the principles: respect for human rights, popular sovereignty, and the solemn affirmation that Japan will never revert to being an aggressor country. Holding firm to these principles, we intend to continue to pursue broad and comprehensive research into the Constitution of Japan in future.

Lastly I would like to offer my deep gratitude to the deputy chairman, directors, those who took part in meetings, and all Commission members for valuable guidance and cooperation. Without them, we would never have been able to proceed with our operation of the Commission in such an equitable and smooth manner.

**156th Diet Session, First Meeting, Research Commission on the Constitution  
(January 30, 2003)**

**(Speech regarding the Conduct of Brainstorming Discussions on “The Current International Situation and International Cooperation; with special reference to constitutional matters related to the Iraq problem and the North Korean problem”)**

The deliberations of this Commission are now entering their second half. The four subcommittees appointed today will undertake effective and specialized research on all chapters and articles of the Constitution. The Commission will regularly meet in plenary meetings to discuss subcommittee findings and to thereby deepen our deliberations. I believe it will also be extremely meaningful for the Commission to discuss matters of keen public interest from the perspective of the Constitution.

Following on consultations held in the directors' meeting, today we shall discuss the current international situation and international cooperation, which have attracted very strong public interest. The floor will be open to members of the Commission to express their views on this subject, with special reference to constitutional matters related to the Iraq problem and the North Korean problem.

The current international situation surrounding Japan is extremely opaque and uncertain.

Following the submission of the report of the UN Monitoring, Verification, and Inspection Commission, the tension surrounding Iraq has risen to levels unprecedented in recent years. It should be borne in mind that UN Resolution 1441, calling for Iraq's acceptance of the UN inspection teams, was unanimously adopted by the Security Council. The report that full Iraqi cooperation has not been forthcoming is highly regrettable. Iraq's development and possession of

weapons of mass destruction in violation of the 1991 resolution of the Security Council has a grave impact on international relations and cannot be permitted. Moreover, the possibility that these weapons of mass destruction may fall into the hands of terrorists is a source of special concern for the international community. Parallel to the process of economic globalization, it appears that terrorist activities have also become globalized.

The terrorist attacks on the United States that took place in September 2001 must not be allowed to be repeated, and terrorist activities must be eradicated. I believe that all members of this Commission strongly subscribe to similar beliefs.

The international situation surrounding North Korea is also an extremely difficult and severe one. In the past, suspicions abounded that North Korea was developing nuclear weapons. But last October, it was reported that North Korea had admitted to the United States that it was developing nuclear weapons.

Subsequently, at the end of last year, North Korea announced that it was reopening its nuclear facilities. It thereupon removed the surveillance cameras and seals that had been put in place and deported the IAEA inspectors. The IAEA responded with an expression of regret, and has passed a resolution calling for a return to the original state and the abandonment of all nuclear weapons development programs by North Korea. Notwithstanding the IAEA resolution, North Korea announced on the 6<sup>th</sup> of this month that it was withdrawing from the Treaty on the Non-proliferation of Nuclear Weapons. There are indications that North Korea is moving toward lifting the ban on missile firing tests, an act that would violate the Pyongyang Declaration signed last year by Japan and North Korea. For Japan, these are matters of extreme concern.

Japan's territorial waters have been frequently breached by suspicious vessels. In December 2001, one such vessel was fired upon and sunk by the Japan Coast Guard. It has now been confirmed that this was a North Korean vessel. During the Japan-North Korea summit meeting held last year, North Korea admitted the abduction of Japanese citizens, retracting its long-standing position that claims concerning abduction were false and groundless. This admission establishes that the human rights of Japanese citizens have been unlawfully violated.

In a growing number of cases, North Korean refugees in China have sought the protection of the Japanese Government. Just yesterday, a so-called "Japanese wife" held in custody by police authorities in the Chinese province of Jilin was permitted to return to Japan. Because of the great variation in individual cases, I believe similar incidents will have to be considered on a case-by-case basis. However, there are many factors here that merit further examination and thought. Some factors relate to our domestic laws, and other factors pertain to our diplomatic relations with China.

In light of these international developments, I believe it is highly necessary for this Commission to confront each of these instances and to discuss the form Japan's national security and international cooperation should take from the perspective of the Constitution. I am convinced that these discussions will contribute importantly to the research of this Commission.

I would like to state that the following decision has been made in the directors' meeting. Beginning with the present session, the discussions of the Commission shall be compiled into a memorandum to be arranged according to subject. It is hoped that the availability of such a memorandum will promote greater precision in our deliberations.

You will find before you the following reference materials prepared by the Office of the Commission pertaining to the subject of our discussions today: materials concerning the Iraq problem and the North Korean problem; extracts from related statements and responses of the Government of Japan; and, a collection of related laws and treaties including the Constitution, the San Francisco Peace Treaty, and the Self-Defense Forces Law.

Article 5 (c) of the San Francisco Peace Treaty states the following. "The Allied Powers for their part recognize that Japan as a sovereign nation possesses the inherent right of individual or collective self-defense referred to in Article 51 of the Charter of the United Nations and that Japan may voluntarily enter into collective security arrangements." This provision is not only of historical interest, but I believe it is also linked to some contemporary issues.

I would ask the members of the Commission to refer to this and other reference materials before you as we start our discussions.

**156th Diet Session, Sixth Meeting, Research Commission on the Constitution  
(April 17, 2003)  
(Speech in Commemoration of Constitution Day)**

On May 3, we shall be commemorating Constitution Day for the fourth time since the establishment of this Commission. Following on the very active discussions that we had today, I would like to say a few words before closing the session.

Concerning the course of our research, since its establishment on January 20, 2000, this Commission has been engaged in broad and comprehensive research on the Constitution of Japan. Thus far, we have researched the details of the formulation and enactment of the Constitution of Japan, and a vision for Japan in the 21st century.

Last year, four subcommittees were formed to undertake specialized and effective research on individual questions. The commission has also held local open hearings and dispatched research missions to foreign countries. A total of seven local open hearings have been held throughout Japan, with a decision reached today to hold the eighth one in Takamatsu. One additional local open hearing remains to be arranged for the Chugoku Region. As for our overseas missions, during 2000 and 2001, delegations were sent to Russia, Europe including Eastern Europe, and to Israel for research on constitutional problems pertaining to the popular election of the prime minister. Last year, missions undertook research on constitutional matters in the United Kingdom and various Asian countries, revealing that most countries have instituted some form of constitutional court.

Drawing on these research results, the Commission completed its Interim Report in November last year. In light of the research period that is left to us, the following actions will be taken during the current session of the Diet. The subcommittees will be reorganized to facilitate comprehensive research on all of the 103 articles of the Constitution of Japan. Each subcommittee will formulate a prior agenda of research subjects. To further improve the quality of research, the Commission will receive regular research reports from subcommittee chairpersons and will submit these to discussion in plenary meetings.

As a further step, extraordinary meetings were held upon consent of the directors' meeting as was done on March 20. Extraordinary meetings were dedicated to topical issues of grave concern to the public, such as the Iraq problem and the North Korean problem, from the perspective of the Constitution. I believe that these free and unfettered discussions have contributed to the improvement of our research.

Today we find the public troubled and distressed by a series of international and domestic problems. These include the decline of Japan's national power, the declining birthrate and the aging of society, fiscal difficulties for maintaining the social security system, and difficulties related to the proper home training of children. What emerges from the examination of these and other issues is the question of how Japan should engage itself in the United Nations. I would like to take this opportunity to outline my views on this matter.

To begin with, the preamble of the San Francisco Peace Treaty makes explicit reference to its relation to the UN Charter. Likewise, the Constitution of Japan was formulated with the UN Charter in mind. Thus, the Constitution of Japan, the San Francisco Peace Treaty and the UN Charter can be said to constitute an inseparable trinity. Japan's foreign and diplomatic policies have been formulated and pursued in conformity to the principles enunciated in these documents. Japan has served as a non-permanent member of the Security Council on eight occasions. Japan has participated in peacekeeping operations and other cooperation through the provision of personnel in a wide range of fields. And, as you well know, the headquarters of the UN University and various other UN agencies are located in Japan. The use of seven U.S. military facilities and installations located in Japan are permitted to the countries of the UN Forces in Korea under the provisions of the UN Status of Forces Agreement. Furthermore, staff members of the UN Forces Rear Command and liaison officers are stationed in Japan.

During the long Cold War years, the United Nations was unable to function fully as a result of the exercise of veto powers by the Soviet Union and permanent members in the Security Council. It was hoped that the situation would change after the Cold War. A series of Security Council resolutions were passed in the Gulf War culminating in a ceasefire agreement, which seemed to indicate that the UN would be able to recover its full functions. However, in the 12 years that followed, Iraq repeatedly ignored the UN resolutions, finally leading to the current situation. In the process leading up to the recent attack against Iraq, France indicated that it would exercise its right of veto. This effectively rendered it impossible for the Security Council to pass a resolution calling for the use of force against Iraq. We cannot help but say that the dysfunction of the United Nations

has once again emerged at this point. I believe the members of the Commission are in broad agreement on this matter.

The United Nations was formed after World War II for the purpose of reconstructing the international order. At its founding, the United Nations counted 51 member states, which today has increased nearly fourfold to 191 member states. However, the basic structure of the United Nations remains unchanged with the United States, the United Kingdom, France, China and Russia—the victor nations of World War II—being the only permanent members of the Security Council and the only countries with veto power. Because the UN continues to strongly reflect the conditions of the world at the end of the war, it has been experiencing increasing difficulty in coping with the highly complicated contemporary international situation. As the contributor of roughly 20 percent of the UN budget, Japan has taken every available opportunity to emphasize the need for UN reform. However, adequate reforms have yet to be implemented. Regarding this matter, a reading of Articles 108 and 109 of the UN Charter makes it immediately clear that any form of revision is subject to extremely demanding conditions and rigorous procedures. Due attention must be paid to this fact.

The principle of UN-centeredness is certainly an important principle when considering the status of Japan's national security. However, given the current status of the United Nations, the pursuit of foreign policy based solely on UN-centeredness has definite limitations. It seems that this problem has repeatedly emerged in the past discussions of this Commission.

I believe the focus of discussion in the Iraq problem will now move on to matters pertaining to reconstruction assistance, the creation of a provisional government and the enactment of a new constitution. How does postwar Iraq compare to postwar Japan under Allied Occupation? A very interesting article on this question written by Mr. HASEGAWA Hiroshi appears in the April 5 issue of *Aera*. I would like to briefly introduce the contents of this article.

The Potsdam Declaration, consisting of 13 points and calling for the surrender of Japan, was drawn up by the leaders of the United States, Great Britain and the Republic of China on July 26, 1945 in the city of Potsdam in a Germany already defeated in war.

Ultimately, Japan accepted the Potsdam Declaration and the Japanese military conceded to an unconditional surrender. Japan's occupation by the Allied Forces under the provisions of the Potsdam Declaration continued for six years and eight months. The Occupation started with the arrival of the advance party of the U.S. military on August 28, 1945 and lasted until April 28, 1952 when the provisions of the Peace Treaty went into force and Japan regained its independence. At the end of the war, sovereign power was transferred to the Supreme Commander of the Allied Forces, General Douglas MacArthur. The General Headquarters of the Supreme Commander of the Allied Forces was virtually tantamount to the headquarters of the U.S. military, which had single-handedly defeated Japan.

As soon as the Occupation began, both Supreme Commander MacArthur and the General Headquarters issued to the Government of Japan a large number of verbal and written orders,



instructions and memoranda. These came in very quick succession and were intended to push through a fundamental change in the form of Japan as a nation-state. A chronological listing of just a few of these initiatives include the following: dismantling of the Imperial Army and Navy; arrest of former Prime Minister TOJO Hideki and others suspected of war crimes; the abolition of restrictions on political, civil and religious freedoms; zaibatsu dissolution; abolition of the Imperial Rescript on Education; removal of shrines from schools; suspension of teaching of ethics, geography and history courses; agricultural reform; separation of the state and Shinto; the purging of unacceptable persons from public office; and, the issuance of the draft of the Constitution of Japan. Censorship of newspapers was also started. The purge included the indictment and trial of suspects of war crimes, and extended to the ban of a total of 206,000 people from all forms of public office. Those purged were classified into seven categories from “Category A,” which included career soldiers, to “Category G.”

The *Aera* article continues as follows.

The author states that, while a nation may use the constitution of other countries as a reference point, a constitution is the result of the debates and deliberations of a people who have used their own minds in putting together a document that is representative of their wisdom, and that a constitution must be continuously adjusted and amended. Only through such a process is it possible to create a constitution that contains universal elements common to a significant number of countries, while also embodying the history, traditions and the positive customs of the country itself.

As mentioned in this article, I believe the events surrounding the formulation of the Constitution of Japan under Allied Occupation can serve as a crucial reference point in considering Iraq’s postwar reconstruction. I believe this provides us with an excellent opportunity to look back objectively on the process of the formulation of the Constitution of Japan and to consider the involvement of the Japanese government in the Iraqi provisional government in this light.

What direction should our future research take? Nearly 56 years have passed since the formulation and promulgation of the Constitution of Japan. In the intervening years, domestic and international conditions have changed so dramatically that it would have been impossible to imagine then. Just to mention two examples, consider the drop in Japan’s birthrate and the aging of society, and the global trend toward the conclusion of free trade agreements. Given this situation, it is the mission of the Diet as the highest organ of state power to undertake broad and comprehensive research on the Constitution and to present its findings to the people. The research period of this Commission is regarded to be approximately five years as per the agreement reached in the directors’ meeting of the Committee on Rules and Administration. Hence, we now have a year and a half left. This fact makes me painfully aware of the need to further deepen our research and investigations.

The current session of the Diet is already two-thirds over. The various subcommittees of the Commission are scheduled to conduct research on the following subjects during the remainder of the current session: the Meiji Constitution and the Constitution of Japan; international organizations and the Constitution; the right to information and the right to privacy; and the judicial system and

constitutional court systems.

Medical services and pensions constitute two of the problems that are closest to the people. The fiscal foundations of these systems are now in crisis due to declining birthrates and the aging of society. We must deliberate in greater detail on how the provisions of Article 25 of the Constitution should be translated into reality. There are many other constitutional issues that require examination, such as: the relation between the central and local governments; the bicameral system and other structures of government seen from the perspective of the relation between the central and local governments; fiscal support of private education and Article 89 of the Constitution; and, the reduction of the compensations of judges and Articles 79 and 80 of the Constitution. As has always been true, the Constitution shall continue to belong to the people. Discussions of the Constitution must not be conducted in separation from the people. With this awareness in mind, this Commission shall continue to conduct broad and comprehensive research on the Constitution of Japan, while strictly abiding by the three cardinal principles of respect for human rights, sovereignty of the people, and the solemn affirmation that Japan will never revert to being an aggressor country.

In concluding my reflections on Constitution Day, I once again request the continued cooperation of the deputy chairman, the directors, observers and the members of this Commission.

**156th Diet Session, Ninth Meeting, Research Commission on the Constitution  
(July 24, 2003)  
(Comments upon the Closing of the Diet Session)**

I would like to take this occasion to make a speech here.

Today is the final sitting of the Research Commission on the Constitution in the 156th National Diet session. As you are aware, during this National Diet session, we established four subcommittees in the Commission and conducted specialized and effective research for the purpose of comprehensively examining the Preamble and the 103 articles of the Constitution of Japan. The subcommittees were the Subcommittee on Ideal Constitution as Supreme Law; the Subcommittee on Security and International Cooperation; the Subcommittee on Guarantee of Fundamental Human Rights, and; the Subcommittee on Ideal Government and Organizations.

Every month each subcommittee chair made a summary report of what had been discussed in his or her subcommittee. A total of 25 informants presented statements to the subcommittee members, who also conducted active discussions among themselves.

In addition to informants, we also adopted a method of hearing keynote statements in which two subcommittee members present their opinions. The statements were followed by questions and comments, as well as discussion among the members. In this manner, we discussed the following themes in a total of three sessions: firstly, international cooperation and the ideal form of ODA in particular, secondly, Article 9 (war renunciation, nonpossession of war potential, and denial of belligerency) in the Subcommittee on Security and International Cooperation, and lastly, the

relationship between the Diet and the cabinet, the ideal and fundamental form of the popular sovereignty and government in general in the Subcommittee on Ideal Government and Organizations.

I felt that the broad but insightful discussions among subcommittee members based on the research reported by keynote speakers were extremely significant, and made a great contribution to our research.

In the meetings of the Commission, our research was mainly based on free discussion. We held free discussions as occasions arose, and during the current Diet session we additionally heard the chair of each subcommittee present a report on his or her subcommittee proceedings, followed by discussion across the board on the themes presented. This method made our research more substantial.

In the increasingly tense atmosphere of the international situation, discussion of current affairs that become national topics should lead to a further contribution to our broad and comprehensive research on the Constitution of Japan. From this perspective and based on decisions of the Commission's directors' meetings, we have conducted free discussions on constitutional aspects involved in the Iraq issue and the North Korean problem three times.

In the free sessions, first of all we discussed the ideal security and international cooperation of Japan in the unpredictable and unclear international situation surrounding the country. We also discussed very actively the Constitution's relationship with the San Francisco Peace Treaty, the UN Charter, and the Japan-U.S. Security Treaty.

Article 5 (c) of the San Francisco Treaty says, "The Allied Powers for their part recognize that Japan as a sovereign nation possesses the inherent right of individual or collective self-defense referred to in Article 51 of the Charter of the United Nations and that Japan may voluntarily enter into collective security arrangements." This paragraph not only carries historic significance, but has relevance today. I believe that this is one of premises that we should bear in mind without fail in discussing the security of Japan today.

The major features of our research during the current Diet session were that we now extended our research to the Emperor system and Article 9, specific discussion of which had hitherto been avoided.

We can say that the research that has been conducted in regard to the Constitution of Japan has been broad and comprehensive in the true sense of the words. I have been impressed with the way the discussion has been conducted quietly and earnestly throughout the sessions. The repeated debate both in the subcommittees and the Commission is bringing about points which the political parties can consent to or agree on. This is one of the great results we have achieved through our research in the current Diet session. I am very pleased to note that each political party has come to evince consensus on the continuation of the Emperor-as-symbol system and the existence of the Self-Defense Forces.

During this current Diet session too, we held two local open hearings to hear views on the

Constitution from residents in regional cities from all walks of life in order to reflect public opinion in our future research in the Commission. The first, the seventh such local open hearing, was held in Kanazawa City, Ishikawa Prefecture on May 12th; the second, the eighth hearing, in Takamatsu City, Kagawa Prefecture on June 9th.

The gist of the discussion in both hearings was reported to us by Deputy Chairman SENGOKU Yoshito on May 29th and June 12th respectively. Opinions on the Constitution of Japan were heard from 11 speakers who responded to an open invitation, and 15 members of the Commission including myself participated in presenting questions and comments. Opinions and comments from the floor were also heard from eight persons during the hearings.

Needless to say, constitutions belong to the people. However, I cannot help but say that Japan has taken a rather easy way of interpreting the Constitution through virtual revision, without squarely confronting many issues whose constitutionality is under doubt. Among them are the issue that arose immediately after the war, of private-school subsidies involving Article 89 which prohibits the Government from appropriating public funds for private institutions that are not under the control of public authority, and the pay cut for judges introduced last year in relation to Articles 79 and 80 that prohibit the decrease of judges' compensation.

The Research Commission on the Constitution, established in the highest organ of state power, is a unique and most suitable institution where we can discuss such contentious issues from constitutional viewpoints and with high and broad perspectives. I think it a work of great importance for Diet members, representatives of the people, to talk from the variety of standpoints that they hold in order to seek common ground.

We have conducted broad and comprehensive investigations into the Constitution of Japan for three and a half years while holding firm to the three principles: respect for human rights, popular sovereignty, and the solemn affirmation that Japan will not revert to being an aggressor country.

The total time spent on research amounts to well over 310 hours including the work of the subcommittees. The number of informants invited during this period is 89. The research period of the Commission which is regarded as approximately five years has just a year and half to go. We would like to conduct substantive research on the remainder of the tasks. In particular, national issues of high interest such as social security including public pensions, medical services and welfare, as well as the introduction of e-government with regard to the Constitution, demand a lot of research. I hope such specific items will continue to be investigated in the next Diet session after discussions in the directors' meeting.

I would like to express my deep gratitude to the deputy chairman, subcommittee chairpersons, directors, those who attended meetings as observers, and the Commission members for valuable guidance and cooperation. Without them, we would never have been able to proceed with our operation of the Commission in such an equitable and smooth manner. I would like to conclude my speech by expressing my thanks and hoping for continued support and cooperation from every one of you.

**157th Diet Session, First Meeting, Research Commission on the Constitution  
(October 2, 2003)  
(Comments upon the Closing of the Diet Session)**

I would like to take this occasion to say a few words.

This Commission was established on January 20, 2000, for the purpose of conducting broad and comprehensive research into the Constitution of Japan. We started with research into the formative process of the Constitution, followed by the major postwar judgments of unconstitutionality. Then we moved to examining the ideal form of Japan in the 21st century. Since the 154th session of the National Diet, we have established four subcommittees to work on specific themes and now are in the midst of research that covers the Preamble and all 103 articles of the Constitution of Japan.

In our research of the formative process of the Constitution, including a series of historical facts related to its enactment, I believe that the members of the Commission have come to share a common understanding regardless of their evaluation of these facts. In examining the major judicial decisions on unconstitutionality, we elucidated the postwar system of judicial review of constitutionality as well as its actual operation in Japan. We felt that the judicial review system of unconstitutionality left a lot for further study. When we made our exhaustive research into the ideal form of Japan in the 21st century in the Commission as well as through specialized and effective discussions in the subcommittees, we looked at the theme from various perspectives. They ranged from the domestic and international matters which have a great influence on Japan's security and international cooperation, to the advancement of science and technology which greatly affects the guarantee of fundamental human rights, just to name a few.

Since the 156th session of the National Diet, we have conducted, in addition to consolidating the contents of our study, extensive research making use of various forms of investigation such as putting emphasis on the discussion process in each subcommittee. In the Commission itself, we conducted discussions based on the results of the subcommittees' work as well as holding free discussions on current issues from constitutional standpoints.

In the 155th session of the National Diet we passed about the midway point of the research period of the Commission, which was envisioned as approximately five years. Accordingly, we put together an Interim Report comprising the outline of the Commission's research activities as well as an objective compilation of the discussions based on the chapters and articles of the Constitution. The report was submitted to the Speaker of the House of Representatives on November 1, 2002.

Our research was extended to fields whose discussion we had hitherto avoided such as the Emperor system and Article 9. I believe that research into these fields has been conducted in a level-headed and earnest manner throughout the sessions. In my observation of our repeated deliberations, some issues such as the continuance of the Emperor-as-symbol system have evinced collective consensus among the political parties, whereas other issues have remained divided with differing opinions. In

any case, I am very pleased that the Commission has considerably deepened the discussion on the Constitution.

On top of the research of the Commission and the subcommittees, we have conducted research into the constitutional situation in other countries by sending delegations of our Diet members every year on overseas missions, four times to date. We have visited 17 countries and have investigated the constitutions of 27 countries in total. They are Western European countries such as the monarchies and neutral countries such as Switzerland which has maintained its own policy of neutrality; Russia and Eastern European countries which belonged to the former communist bloc; Israel that is situated in the Middle East; Southeast Asian countries; our neighbors such as the People's Republic of China and the Republic of Korea; and the North American countries which I mentioned in my report earlier.

I gained the impression that those countries, against the backdrop of the changing international society and the domestic circumstances facing each nation, are amending their constitutions in response to changing situations, as the occasion arose through national dialogue after arguments on constitutional revision have been presented to the citizens.

Constitutional courts instituted in many countries gave us many insights not only on their importance in the judicial review of the constitutionality of laws and regulations through checks and balances of powers, but on the way they function as the last resort for the guarantee of human rights by receiving appeals directly from citizens for help in safeguarding their rights.

We also looked into the issue of the popular election of the prime minister in Israel, one of our overseas research objectives. We learned about how it was introduced and later abolished, how it was evaluated, and this research led to lively discussions in the Commission. This issue, in connection with its relationship with the Diet, the Emperor system and other governing frameworks, requires a great amount of consideration from broad perspectives. Accordingly, our overriding conclusion seems to be that we should take a cautious or negative stance on this issue.

Within Japan as well, we conducted local open hearings to hear opinions on the Constitution from people in all walks of life in eight cities, leaving the Chugoku region the only part of Japan that is yet to host a hearing.

Needless to say, the Constitution belongs to the people. However, I have to say that Japan has opted for finding solutions through interpretation of the Constitution, in dealing with many issues that are constitutional. Among them are the relation between the Self-Defense Forces and Article 9; the issue that arose immediately after the war, of private-school subsidies involving Article 89 which prohibits the Government from appropriating public funds for private institutions that are not under the control of public authority; and the reduction of judges' salaries in relation to Articles 79 and 80 that prohibit the decrease of judges' compensation. Seen in the right perspective that we should secure the trust of the people in the Constitution, we should face the stipulations of the Constitution squarely with careful consideration for further debate.

The Research Commission on the Constitution, established in the highest organ of state power, is the most suitable forum where we can discuss such issues from constitutional viewpoints and with high and broad perspectives. I think it bears a great deal of significance that Diet members, representatives of the people, talk from a variety of standpoints in order to seek common ground.

We have conducted broad and comprehensive investigations into the Constitution of Japan for three years and nine months while holding firm to the three principles: respect for human rights, popular sovereignty, and the solemn affirmation that Japan will not revert to being an aggressor country.

The total time spent on research amounts to well over 310 hours including the work of the subcommittees. The number of informants invited during this period is 89. The research period of the Commission which is regarded as approximately five years has just a year and three months left.

We aim to conduct substantive research on many remaining tasks. They include national issues of high interest such as social security including public pensions and burden sharing as well as the introduction of e-government, whose legal framework is under way, that accompanies the legal issues of privacy protection with regard to the Constitution. We also discussed today the conclusion of FTAs and the guarantee of regional security. We have many other issues that remain to be considered, which I hope will continue to be investigated in the next Diet session after discussions in the directors' meeting.

I would like to express my deep gratitude to the deputy chairman, subcommittee chairpersons, directors, those who attended meetings as observers, and all the Commission members for valuable guidance and cooperation. Without them, we would never have been able to proceed with our operation of the Commission in such an equitable and smooth manner. I would like to conclude by expressing my thanks and hoping for continued support and cooperation from every one of you.

**159th Diet Session, First Meeting, Research Commission on the Constitution  
(January 22, 2004)  
(Comments on the Beginning of the Diet Session)**

Since its establishment, the Research Commission on the Constitution has conducted research on the formulation and enactment of the Constitution of Japan, major postwar judgments of unconstitutionality, and a vision for Japan in the 21st century. In the course of this research, we have abided by the three cardinal principles of respect for human rights, sovereignty of the people, and the solemn affirmation that Japan will never revert to being an aggressor country. Following on this research, subcommittees were formed to research specific questions and comprehensively review all chapters and articles of the Constitution. Additionally, local open hearings were held in eight locations throughout Japan in order to hear opinions concerning the Constitution of Japan directly from people in all walks of life.

The results of this research were summarized in an Interim Report submitted to the Speaker of the House of Representatives on November 1, 2002.

During this period, the House of Representatives dispatched four overseas research missions to investigate matters related to the constitutions of various countries.

This Commission has conducted research on matters that were frequently avoided in past discussions. These include the Emperor system and problems associated with Article 9. It is my feeling that we have been able to maintain a calm but enthusiastic attitude throughout our discussions of these subjects.

The cumulative mass of our discussions, both in subcommittee and plenary meetings, points to certain conclusions. On some matters, it is my understanding that a general consensus has emerged among all parties: for example, concerning the continuation of the “Emperor-as-symbol” system. On other matters, cautious or negative views prevailed: for example, concerning the popular election of the prime minister. Yet on other matters, a clear conflict of views was seen: for example, concerning national security. In any case, however, it is a source of great satisfaction that discussions concerning the Constitution have been significantly deepened.

Needless to say, the Constitution belongs to the people. Various problems exist where unconstitutionality is suspected, such as the relation between the Self-Defense Forces and Article 9 of the Constitution. Other similar problems have been pointed out, including the following: the relation between fiscal support for private education, which began shortly after the war, and the provisions of Article 89 prohibiting the expenditure of public money in support of associations not under the control of public authority; and, the relation between the reduction in the salaries of judges, which was implemented pursuant to the recommendations of the National Personnel Authority, and the provisions of Articles 79 and 80, which prohibit the reduction of compensation paid to judges during their terms of office. In the case of Japan, it cannot be denied that we have opted for the easy path of trying to resolve these problems through interpretation.

Regarding the procedures for the amendment of the Constitution contained in Article 96, the failure to enact a national referendum system has been criticized as representing legislative nonfeasance. For this reason, enactment of a law for a national referendum system and the partial revision of the Diet Law have attracted much attention.

On the 20th of this month, the advance party of the Ground Self-Defense Force participating in Assistance for the Reconstruction of Iraq arrived in Samawa, Iraq. The media has reported on this daily. In light of this development, I believe it is necessary for the Commission to carry forward the past debate and to further deepen its discussion of what can be done to ensure that the actions taken by the Self-Defense Forces are not interpreted to be in violation of the Article 9 ban on the use of force and what Japan can do in the area of international cooperation under the provisions of Article 9 of the Constitution, including the importance of international cooperation within the UN framework.

There are many other issues in the areas of human rights and governance that await further discussion from the perspective of the Constitution. These include the following: current social security systems, such as the pension system, medical and health services and welfare, and their



relation to the Constitution; constitutional guarantees of privacy, which is being threatened by the development of electronic government; whether the bicameral system should be preserved or changed to a unicameral system; discussions of the form of organization that the Diet should adopt; local tax resources; and, the introduction of a *do-shu* system. Regarding these unresolved issues, in order to maintain public confidence in the Constitution, we must fully examine the pertinent provisions of the Constitution in a straightforward fashion.

It was agreed in the directors' meeting of the Committee on Rules and Administration that the period of research of this Commission would be about five years. This leaves us with only about one more year. Therefore, during the current session of the Diet, it is essential that we research those above-mentioned issues that have not been properly examined and those areas where constitutional debate has not been fully developed.

As we move toward preparing the final report of the Commission, I believe it is now necessary for us to engage in our deliberations with an eye to compiling and summarizing the discussions of the Constitution. This will not be an easy task. But as members of the Diet, we must overcome the difficulties before us and present the people with the fruits of our labor so that we may fulfill the obligation of our office.

The Liberal Democratic Party, the leading party in the Diet, will fete its 50th anniversary in November 2005, and intends to finalize its draft proposal for a new constitution by that date. As the second party in the Diet, the Democratic Party of Japan intends to present the public with an outline for a new constitution during 2006. Both parties have adopted a very positive stance on constitutional revision, an indication of the growing interest in constitutional debate. In light of these developments, I believe this Commission will be able to deepen its discussions of constitutional issues and to engage in more constructive discussions of the Constitution.

As I have mentioned in several previous occasions, I believe that this Commission's research of the Constitution of Japan should be complemented with discussions concerning timely and topical issues that have generated nationwide concern and debate. It is my conviction that discussions of such matters will make an invaluable contribution to our broad and comprehensive research on the Constitution.

With this in mind, and with an eye to recent events and developments, our session today will focus on several timely issues related to problems of the Constitution that have attracted keen national attention. These are: problems related to Japan's national security; problems related to social security and the contribution of the people to the social security; and, problems related to decentralization and the three-in-one reform program. I hope that we will have a lively discussion today.

**159th Diet Session, Eighth Meeting, Research Commission on the Constitution  
(June 10, 2004)  
(Comments upon the Closing of the Diet Session)**

I would like to take this occasion to say a few words.

As it stands now today is the final meeting we have for the Research Commission on the Constitution during the 159th Diet session.

During the current session we have continued our research, in particular through four subcommittees which we set up to carry out research that encompasses the Constitution's Preamble and all 103 articles and stipulations that we studied before.

Every month the main points of discussion in the subcommittees were reported by each subcommittee chairperson to our main meeting, and all of the four subcommittees' discussions were lively and active.

The Commission itself made research into specific themes such as "The Constitution and the progress of science and technology" in addition to the reports from the subcommittee chairpersons and the free discussions that followed.

Besides this, in order to hear views on the Constitution from the public in all walks of life to reflect public opinion in our future research, we held the ninth local open hearing in Hiroshima on March 15, which concluded a round of hearings nationwide that started with the local open hearing in Sendai, Miyagi Prefecture in April 2001. We also held two open hearings in Tokyo on May 12th and 13th.

The active and smooth manner in which we conducted our research during the current Diet session was made possible only by the enthusiasm and cooperation of the Commission's members. I am very grateful to you all.

Now that we are at the end of the Commission's research in the current Diet session that we have all taken part in together so actively, I as chairman of the Commission would like to look back and make some comments, following a decision in the directors' meeting of the Commission, on points that particularly impressed me during the course of our research.

One of the most impressive points I would like to mention first was the relationship between the Constitution and the progress of science and technology.

The progress of science and technology in the postwar years has been astounding. The progress in science and technology has not been confined to natural sciences alone, but has more conspicuously strengthened the possibility of having a serious impact on the national legal framework including the constitution of a nation.

For instance, in recent years a new field called gene technology, a field totally unforeseen at the time of the Constitution enactment, has now surfaced. With unpredictable harm to ethics and the

environment from the misuse of cloning and genetic engineering technology, we need to recognize this problem as one which may inevitably have a serious bearing on the human dignity of an individual, the highest value upheld by the Constitution of Japan.

When taken in the specific context of a constitutional theme, the issue will become whether we should provide stipulations for what are called life ethics, as well as the right of access to the environment and the obligation to maintain the environment. In 1996, in fact, Dolly, a cloned sheep, was born in England; and within three years, the Swiss Federal Constitution was amended with a provision prohibiting human cloning.

Besides this, the rapid progress of information and communication technology has had a new impact on society in the form of innovative communication methods as seen in the launching of communications satellites, broadcasting satellites and others; and the global spread of the Internet. I fear that the recent murder of a pupil that involved the Internet use between her and her classmate in Sasebo was only on the fringe of this problem. Following that incident, there is an ongoing discussion on protection of the privacy of an individual and the people's right to know. Protecting the intellectual property rights that stem from high technology is also a pressing task to be tackled in countries throughout the world. More than 40 countries have already put a provision relating to these fields in their constitutions.

Surely a legal system is building up measures gradually also in Japan in step with the progress of scientific technology as seen in the enactment of a Fundamental Law on Science and Technology, and preparations for establishing a higher court of intellectual property. However, although cases related to medical malpractice, pollution, and intellectual property rights brought to district courts now number about 1,700 per year, the number of judges with a background in science and technology capable of dealing with this kind of case is only eight among 3,000 or so throughout the nation's courts. This testifies to an insufficient number of personnel to uphold the system.

It was very significant that we conducted discussion from various viewpoints as to whether we should institute fundamental provisions in the Constitution to underpin the legal framework in line with the progress of science and technology, while seeking references in examples of other countries.

Another salient research item was that relating to Article 9 and international cooperation.

Spurred by the Gulf War Crisis in 1990 and its aftermath, vigorous discussions and questions centered on an ideal form of Japan's personnel contribution to international cooperation and Japan's inadequate preparation within its internal system.

The International Peace Cooperation Law was enacted in 1992, followed by the Law Concerning Measures to Deal with Situations Surrounding Japan, the Anti-Terrorism Special Measures Law, and the Special Measures Law for Iraq. On each occasion of specific and concrete system designing, we discussed again and again how to interpret Article 9 involving a combined topic of the prohibition of collective defense exercises and military exercises in relation to the maximum extent of international

cooperation possible under the present Constitution.

In the course of such discussions I believe that a debate will naturally emerge to determine whether fundamental differences should be stipulated in the basic law of the nation clearly without any doubt between what Japan as a nation under rule of law can accomplish in the international community and what it cannot. At the same time, the Commission members and other participants in its debates may have shared a common understanding about the political necessity of constitutional democracy based on a constitution regardless of what position they may take.

I have a question that is constantly in my mind about constitutionalism or the rule of law in conjunction with Article 9. The gap between constitutional stipulation and reality is not limited to Article 9 alone. As we previously discussed, there is the relation between private-school subsidies and Article 89, which is often quoted as an example. And that is not the only one. For instance, today Ms. MORIYAMA referred to another anomaly, the reduction of judges' salaries in relation to Articles 79 and 80 that prohibit the decrease of judges' compensation. It may be possible that such disparities could be interpreted as not unconstitutional in the realm of scholars or bureaucrats, but is by no means a clear-cut interpretation that we can present to the people with whom sovereignty resides. Another reason for the constitutional interpretation and application that are difficult for the people to understand is negativism in the Supreme Court for constitutional judgment where a ruling is sought on state authority but the decision is not to the point.

I would like to point out my impression that constitutional interpretation and application that are difficult for the citizens to understand are in themselves a problem from the viewpoint of a country under the rule of law and constitutionalism. Moreover, constitutional application that the citizens find difficult to understand may usher in a lax attitude to norms among citizens as well as a lack of confidence in the Constitution. Isn't this a most serious problem? On the matter of amendments, we have another problem. The procedural law stipulated in Article 96 for amendment of the Constitution has been left unenacted for the past 60 years. That is to say, a law that was envisaged at the time of the constitutional drafting has not been put into force in the past 60 postwar years. Both sides arguing aggressively for and against enacting a procedural law for constitutional amendment made a deep impression on me.

Lastly I would like to say one thing about the discussions on the Emperor system.

I felt that we never talked so extensively and at such length in this Commission about the Emperor-as-symbol system which had been considered a taboo in the past. The discussion we had was most enthusiastic and to the point.

In the course of such discussion, I am convinced that the continuing existence of the Emperor-as-symbol system per se is an issue which has no opponents among the political parties and groups. During the current Diet session one of the points we focused on was the female Emperor issue that was talked about also today. This issue is being argued on whether it is a constitutional matter or a legal matter relating to the Imperial Household Law. This is in any case closely related to the Emperor system where the Emperor is the symbol of state, and deserves a continued discussion

as an important theme in the future.

Those are my comments on the discussions held within the Commission during the current Diet session. Needless to say, the Commission as an institution established within the highest organ of state power is a unique and most appropriate forum for discussing a wide range of domestic and international issues facing Japan in terms of constitutional points from broad and bird's-eye view perspectives. Diet members as representatives of the citizens discuss from various standpoints, and, while respecting each other's different opinions, come to produce and share a common understanding; and this is an extremely important process.

While holding firm to the three principles of respect for human rights, popular sovereignty, and the pledge of not becoming an aggressor nation again, the Commission has conducted wide and comprehensive research on the Constitution. Little time is left of the five years or so that were allotted to our research. We would like to continue and exert our efforts in making a final report while upholding the three principles in future too. In my opinion, political parties and groups may have a great interest as to what kind of response that the Diet should take once the Commission finishes its research on the Constitution. Last but not least, I offer my most sincere gratitude to the Deputy Commission Chairman, subcommittee chairpersons, Commission directors and observers as well as all members of the Commission for your valuable advice and cooperation, thanks to which this Commission has been able to proceed in such an equitable and smooth manner during the current session. And I would like ask once again for your continued cooperation. Thank you very much.

I declare the meeting adjourned for today.

**160th Diet Session, First Meeting, Research Commission on the Constitution  
(August 5, 2004)**

**(Speech regarding Hearings on Summarization of Issues and Proposals on the  
Constitution Made by the Constitutional Research Committees of the Liberal  
Democratic Party, Democratic Party of Japan and New Komeito)**

During a short period immediately before and after the closing of the ordinary session of the Diet in June 2004, the Constitutional Research Committees of the Liberal Democratic Party, the Democratic Party of Japan and the New Komeito each released statements concerning the summarization of issues and proposals on the Constitution. Today, we shall conduct hearings on these statements, to be followed by discussion.

The Constitution of Japan was promulgated nearly 60 years ago. For the purposes of our future deliberations, I believe it is extremely meaningful for this Commission to hear the outline of the constitutional discussions that have been undertaken by each of the political parties and to record those discussions in the proceedings of this Commission. It is my conviction that the research that this Commission has energetically carried out over the course of the past four and a half years will

be significantly promoted and deepened by the deliberations that we will engage in today.

As agreed upon in the meeting of the directors, I will like to preface our research with some comments as chairman.

Since its establishment in January 2000, the Research Commission on the Constitution has conducted research on the formulation and enactment of the Constitution of Japan, major postwar judgments of unconstitutionality, and a vision for Japan in the 21st century. In the course of this research, we have abided by the three cardinal principles of respect for human rights, sovereignty of the people, and the solemn affirmation that Japan will never revert to being an aggressor country. Following on this research, four subcommittees were formed in February 2002 to research specific questions and comprehensively review all the chapters and articles of the Constitution. Additionally, local open hearings were held in nine locations throughout Japan and two open hearings in Tokyo in order to hear opinions concerning the Constitution of Japan directly from people in all walks of life.

The results of this research were summarized in an Interim Report submitted to the Speaker of the House of Representatives on November 1, 2002. Following this, on November 29, 2002, I presented the background and outline of the Interim Report in a plenary session of the House of Representatives.

During this period, the House of Representatives dispatched four research missions consisting of members of the Diet to foreign countries for the purpose of investigating matters related to the constitution in those countries.

This Commission has conducted research on subjects that were generally avoided in the past, and in areas where strong ideological differences and conflict exist. These include the Emperor system and problems associated with Article 9. We have also earnestly discussed issues in the areas of human rights and governance, such as the following: problems related to the progress of science and technology and the Constitution; problems related to social security in an aging society with a low birthrate and the Constitution; constitutional protection for privacy in the information-based society; the pros and cons of popular election of the prime minister; pros and cons of a bicameral legislature; method of election and powers of members of the upper and lower Houses of Diet; and, problems pertaining to local autonomy, including the right to levy independent taxes and the introduction of a *do-shu* system.

I understand that an international symposium was held the other day in Tokyo on the subject of the system of constitutional courts. The deliberations of this Commission clearly indicate that various problems exist in the application of the Constitution. Our research has identified the following areas of concern: the extremely passive stance adopted by the Supreme Court in its rulings on unconstitutionality; and, the tendency to avoid rulings on unconstitutionality particularly in cases pertaining to acts of government and administrative agencies.

Broad and comprehensive research on such issues has served to create a common awareness of the importance of constitutional democracy as a political framework based on the Constitution.

While this Commission has continued to make progress in its research, the period of research allowed to it by the directors' meeting of the Committee on Rules and Administration of the House of Representatives is to be about five years. As such, we have very little time left to us.

As we move toward preparing the final report of the Commission, we must identify those issues on which our deliberations have contributed to the development of certain mutually held understandings and common perceptions. On the other hand, there are areas in which members have retained conflicting opinions. Of course those differences must be fully respected. But at the same time, we will need to proceed with the necessary research, while also taking time to organize our past deliberations. This certainly will be a very difficult and trying task, but I believe that we must overcome these difficulties and present the fruits of our labor to the people in order to fulfill our responsibility as members of the Diet.

I hope our discussions today will lend fresh impetus and depth to the research of the House of Representative's Research Commission on the Constitution as we proceed toward preparing our final report. I earnestly hope that the constitutional discussions being carried out within the individual political parties will also become further activated, as will the public debate on the Constitution. I believe these discussions external to the Commission will be fed back to the Commission and will further stimulate our own deliberations. Our session today represents a step in this direction, and I am firmly convinced that our findings today will make a significant contribution to our future discussions of the Constitution.

**161st Diet Session, Second Meeting, Research Commission on the Constitution  
(October 21, 2004)  
(Speech regarding the Conduct of Brainstorming Discussions on "Parliamentary  
Ombudsmen and Other Checks on the Administration")**

I would like to say a few words before we start.

In the past, we have conducted broad research on checks on the administration, including ombudsman systems, the current status of fiscal controls, and the current status of the administrative litigation system. While mainly focused on ombudsmen systems and drawing extensively on the overseas research conducted in Sweden and the EU regarding their ombudsman systems, the purpose of this research was to re-examine the status of a broad range of mechanisms adopted as checks on the administration.

First, I would like to briefly outline the various checks on the administration that are currently functional in Japan. Through the legislation, revision and abolition of laws, the Diet endows the administration with certain powers, or places restrictions on those powers. In addition, the Diet routinely applies checks on the Cabinet and the administration through the passage of resolutions, through questions asked in committee, and through the exercise of the right to conduct investigations in matters related to the government. The key question is how to render these checks

more effective. In addition to discussions on the introduction of a parliamentary ombudsman system, it will be necessary for us to examine a broad range of ideas pertaining to the question of effectiveness.

As the tax and social security contributions ratio increases in the future, taxpayers can be expected to exhibit a far keener interest in how their taxes are being spent. As the representative of taxpayers, the Diet will face growing demands that it not only check the lawfulness of the activities of the administration but also to more rigorously monitor the efficiency of these activities. The Board of Audit of Japan must certainly play a major role in such undertakings. While a new system was introduced in 1997 allowing the Houses of the Diet to instruct the Board of Audit to undertake investigations, I believe it is necessary for us to further examine the collaboration between the Diet and the Board of Audit.

The judicial branch exercises checks on the administration through such means as administrative litigation and litigation for state compensation. In this regard, last week a Supreme Court ruling was handed down ordering both national and prefectural governments to compensate victims in the Kansai Minamata case. With regard to administrative litigation, the number of suits filed has always been significantly lower than in other countries. It has also been pointed out that the ratio of compensation paid to the amount claimed by defendants is low in Japan. As part of the recent judicial reforms, the Administrative Litigation Law was amended to facilitate the use of this judicial venue. The effectiveness of administrative litigations must be verified and the system must be constantly examined to determine what revisions are needed to ensure effective restitution of the rights of the people.

In addition to these external checking mechanisms, various internal mechanisms exist within the administration, including administrative evaluation and assessment systems and the administrative counseling system. In particular, the administrative counseling system may be viewed as a Japanese model of the ombudsman system. This means that due attention must be paid to the relation between the administrative counseling system and ombudsman systems when considering the introduction of the latter.

On the local government level, local-resident suits and requests for investigation filed by local residents with auditing boards primarily provide checks on fiscal and accounting matters. However, they do also function as a check on administrative activities in general. Furthermore, local governments have introduced external audit systems. Beginning with Kawasaki City in 1990, some 30 local governments have adopted executive-type ombudsmen systems. I understand that in the case of Kawasaki, ombudsmen handle about 160 cases per year.

The most important question here is whether Japan should or should not adopt an ombudsman system. When this Commission discussed this issue in March 2004, the views expressed included both positive and somewhat cautious ones.

The following arguments were made in favor of adopting an ombudsman system. Because government administration has become bloated and oversized, a system independent of the



administrative agencies is needed for restitution of the rights of the people, and for effective monitoring and control of the administration. An ombudsman system can play a crucial role in strengthening the function of the Diet in the area of administrative oversight and control.

Those who took a more cautious stance presented the following arguments. Because of the costs involved, a new system should not be added to the current structure. Instead, measures should be taken to bolster the existing mechanisms and organizations. These would include the House of Representative's Committee on Audit and Oversight of Administration, other committees of both Houses of the Diet, and the administrative counseling system of the Ministry of Internal Affairs and Communications. In the first place, an ombudsman system would not be necessary if the Diet were properly fulfilling its responsibilities for checking the administration.

Informants appearing before the Subcommittee on Ideal Government and Organizations explained the factors contributing to the global development of ombudsmen systems as follows. The emergence of big government in the modern state has heightened the demand for control and has promoted the development of ombudsmen systems. I believe it is no coincidence that ombudsmen systems were developed in the high-welfare and high tax-burden Scandinavian countries. Rather, this reflects strong public demand for oversight of big government.

If an ombudsman system is to be introduced, the question that inevitably arises is what legal grounds should the system be given.

On this point, the comments made by the European Ombudsman, Mr. DIAMANDOUROS, whom we met during an overseas research mission, are lodged in my memory. He stated that from the perspective of ensuring the independence of ombudsmen, provision for an ombudsman system should preferably be made in the text of the nation's constitution. I believe this matter requires serious consideration and discussion.

With this, I end my comments for the start of this session.

**161st Diet Session, Fourth Meeting, Research Commission on the Constitution  
(December 2, 2004)  
(Speech on the Last Meeting Day in 2004 for the Research Commission)**

As permitted by the meeting of directors, I would like to say a few words.

Today marks the last meeting of the Commission during 2004.

During 2004, comprehensive research was continued on the Preamble and all of the 103 articles of the Constitution of Japan in the plenary meetings of the Commission. To facilitate this research, four subcommittees were maintained under the Commission. During the extraordinary session of the Diet convoked after the election of the House of Councillors, before proceeding with its discussions, this Commission heard from various members representing the political parties that have undertaken to summarize the issues and or make proposals on the Constitution. Furthermore,

during the current ordinary session of the Diet, the Commission conducted research while drawing on the results of an overseas research mission charged with investigating the EU Constitutional Treaty and other matters.

Also during the current ordinary session of the Diet, the ninth local open hearing of the Commission was held in Hiroshima City. During the ordinary session and current session of the Diet, open hearings in Tokyo were held over a total period of five days.

This record shows that the Commission was actively engaged in moving forward on its research during this year. I believe the steady progress made reflects the enthusiasm and cooperation of the members of the Commission for research on the Constitution, and I take this opportunity to extend to you my heartfelt gratitude.

Regarding the research that the members of the Commission have so energetically pursued, as this marks our last meeting during 2004, I would like to express my personal views concerning some matters that emerged in our research. These represent some of the findings that have left the most indelible mark on my mind.

First of all, research conducted on the advances in science and technology and their relation to the Constitution has left a deep impression.

Our research clearly showed that the dramatic postwar advances in science and technology can have a very serious impact on the nation's legal system, including the Constitution. The abuse of cloning and genetic engineering technologies may cause unforeseen ethical harm and environmental damage. By extension, these are problems that may exert a gravely negative influence on human dignity, the supreme value enunciated in the Constitution of Japan. These problems are linked with the question of whether or not the Constitution should include explicit provisions concerning bio-ethics, environmental rights and obligations to preserve the environment. The rapid advances in information and communication technologies are also affecting society in a very significant manner. In this regard, this Commission discussed the protection of individual privacy and the people's right to know. I believe it was extremely significant that this Commission was able to deliberate on whether or not certain basic provisions should be included in the Constitution to correspond to the advances in science and technology. In the course of this discussion, we were able to draw from the examples of other countries and to examine the pertinent issues from a number of different perspectives.

Our discussions of checks on the administration were also very edifying. Reflecting the importance of checks on the administration, one of the primary objectives of the overseas research missions conducted this year was to investigate the ombudsman systems of Sweden and the EU. Looking back on this research, it is obviously not a coincidence that ombudsman systems developed in the Scandinavian countries and other countries with highly developed welfare systems and high tax burdens. Rather, I have come to see that the ombudsman system emerged in response to strong public demand for oversight of big government. There was general agreement among the members of the Commission that it is necessary to develop more effective checks on the administration, and

that such efforts should include the positive use of existing mechanisms, such as the administrative oversight function of the Diet.

I believe our research concerning national security and international cooperation reached new depths during the past year.

Regarding Japan's international cooperation, the Gulf Crisis of 1990 and subsequent developments revealed critical weaknesses in Japan's international contribution of human resources and the poorly developed status of domestic systems. The so-called PKO Law was enacted in 1992, followed by such legislation as the Law Concerning Measures to Deal with Situations in Areas Surrounding Japan, the Anti-Terrorism Special Measures Law, and the Iraq Special Measures Law. The design of the specific and concrete systems embodied in these laws sparked repeated debate on the interpretation of Article 9 and the form and range of international cooperation that can be engaged in under the current provisions of the Constitution of Japan.

In light of the direction that this debate took, the Commission actively discussed the question of whether or not explicit and unambiguous provisions should be included in the basic law of the land to fundamentally define what Japan, as a country functioning under the rule of law, can and cannot do in international society. Notwithstanding the different positions taken on this question, a common understanding was affirmed among members of the Commission to the effect that constitutional democracy demands the politics of a nation to be based on the principles and norms enunciated in its constitution.

Some of the principles and norms of the Constitution have come to stand in variance with contemporary reality. Article 9 presents the classic case of this gap, but it is not the only example. Other cases include fiscal assistance to private education and the Article 89 prohibition of expenditure of public money in support of charitable, educational or benevolent enterprises not under the control of public authority, and the reduction of the salaries of judges and the Articles 79 and 80 prohibition of the reduction of compensation paid to judges during their terms of office.

If it were to be argued that these actions are not unconstitutional, the constitutional interpretations needed to support such contentions would not be easy to understand for the people in whom sovereignty resides. A related problem is that the Supreme Court has taken a very passive stance on constitutional rulings. The failure to obtain unambiguous and authoritative rulings on constitutional disputes is one of the reasons why recourse has been taken in abstruse interpretations and applications of the law, which the people find very difficult to understand. From the perspective of a constitutional democracy functioning under the rule of law, it is highly problematic to have to rely on abstruse interpretations and applications of the law, which the people find difficult to comprehend. However, the most serious problem is that this state of affairs can undermine the people's confidence in the Constitution.

During our overseas mission, we had an opportunity to hear from a European legal expert who explained that one of the reasons for enacting the Treaty Establishing a Constitution for Europe was based on the need to come directly face-to-face with the citizens. This has left a strong impression

on me. Ambassador Bernhard ZEPTER of the Delegation of the European Commission in Japan, who was invited to speak before the Subcommittee on Security and International Cooperation, made a related statement. Ambassador ZEPTER explained that the rights of EU citizens were explicitly written into the Treaty Establishing a Constitution for Europe with the intention of creating a document that was easy for citizens to read and to understand, and easy for them to appreciate that the document in fact belonged to them. I find this to reflect the same basic philosophy that I have repeatedly stated: the Constitution belongs to the people.

The European Union has created a framework whereby national sovereignty is partially ceded, and it functions in this framework to cope with the common problems of the region. In this connection, this Commission conducted research on the following subjects from the perspective of Japan: the development of the multilateral trade framework, including the conclusion of free trade agreements; and, the outlook for further developing Japan's ties with Asian and other countries through the formation regional security arrangements. These lines of action will have various impacts, such as to increase the international movement of people. This in turn will generate important constitutional questions, such as how to provide for the human rights of foreign citizens residing in Japan.

Regarding the ratification of the Treaty Establishing a Constitution for Europe, I understand that about 10 countries are expected to refer this matter to a national referendum. There are some obvious problems and difficulties associated with any national referendum system. For example, how should the matter to be submitted on the ballot be presented? What about the risk that the matter in question may become confused with a vote of confidence or nonconfidence for the government in power? Notwithstanding these drawbacks, the exciting thing is that a national referendum system is functioning in Europe that allows the people to participate directly in determining the course of their nations.

In the case of Japan, procedural law for constitutional amendments as provided for under Article 96 has yet to be enacted. One of the features of our research this year was that the continued absence of a legal system clearly provided for in the Constitution nearly 60 years after the promulgation of the Constitution was discussed, with opinions expressed both for and against enactment.

The local open hearing in Hiroshima City offered us a very significant opportunity to hear the opinions of persons who, although sharing a common desire for peace, subscribed to differing positions. The Commission's open hearings in Tokyo provided us with an opportunity to receive the views of persons with experience in representing Japan in international society, persons who were witnesses to historic events, persons with scholarly expertise and experience, and some very young persons. The views that were received from persons from all walks of life provided an important impetus toward deepening the discussions of the Commission. I hope that the public debate on the Constitution will be stimulated further.

During this past year, Japan was visited by a number of natural disasters, including typhoon No. 23 and the Niigata-Chuetsu Earthquake. In light of the provisions contained in the German Basic Law concerning responses to disaster situations, these events have reiterated the need to consider various

systems and frameworks for facilitating a more effective response to natural disasters.

I have taken this opportunity to make some personal comments concerning the discussions and activities of the Commission during 2004. Needless to say, as an adjunct to the highest organ of state power, this Commission stands as the only and most appropriate forum for engaging in comprehensive discussions of domestic and international problems from the perspective of the Constitution. I believe what we have done in this Commission is extremely significant. That is, as representatives of the people, members of the Diet have engaged in discussions from broadly varied positions. While paying due respect to any differences in opinion expressed, the Commission has moved forward toward developing certain common understandings.

This Commission has been engaged in broad and comprehensive research on the Constitution of Japan while bearing in mind the cardinal principles of respect for human rights, popular sovereignty, and the solemn affirmation that Japan will never revert to being an aggressor country. Very little time is now left in the five-year research period of this Commission. We must now redouble our efforts and work toward the completion of the Commission's final report while continuing to abide by the three cardinal principles.

In closing, I would like to express my heartfelt gratitude to the vice chairman, the directors, observers and members of the Commission for their support and cooperation, which has permitted the fair and smooth management of the Commission. I would add that I earnestly look forward to your continued cooperation. Thank you.

**162nd Diet Session, Fourth Meeting, Research Commission on the Constitution  
(February 24, 2005)  
(Comments at the Conclusion of Brainstorming Discussions on “Overall  
Summarization and Conclusions”)**

As permitted by the meeting of directors, I would like to say a few words.

This Commission was established in the House of Representatives on January 20, 2000 for the purpose of conducting broad and comprehensive research on the Constitution of Japan. The mission of this Commission is to conduct research in line with its stated purpose and to prepare a report of its research and findings to be submitted to the Speaker of the House of Representatives. It was agreed in the directors' meeting of the Committee on Rules and Administration that the research period of this Commission would be about five years. Today we completed our brainstorming discussions on the overall summarization and conclusions of the Commission. Hereafter, we shall be working toward preparing our final report.

I would like to take this opportunity to express my personal views concerning some matters that have emerged in our research since the launching of this Commission. These represent some of the findings that have left the most indelible mark on my mind.

In order to fulfill its mission, since its inception, this Commission has conducted research on the formulation and enactment of the Constitution of Japan, major postwar judgments of unconstitutionality, and a vision for Japan in the 21st century.

Later in its term, the Commission established several subcommittees to undertake effective and specialized investigation of all parts of the Constitution, bringing us up to the present time. In the course of its work, the Commission has engaged in research from the perspective of various social sciences, such as constitutional law and political science, as well as from the perspective of various natural sciences, such as demographics, the human genome and information technologies. As we have done today, the Commission has also engaged in free and active discussions among its members.

During this period, the Commission held open hearings in Tokyo over a total period of five days. Similarly, local open hearings were held in nine locations throughout Japan. The purpose of these hearings was to directly receive the views of the people concerning the Constitution. Furthermore, Constitution Research Missions comprised of the members of the Commission were dispatched overseas to conduct research on the constitutional issues of various countries from a comparative perspective.

This Commission has made use of the results of these research efforts in the conduct of its research.

A number of salient features have emerged from the earnest discussions engaged in from the perspective of the public. One such feature has been the relation between the Constitution and scientific and technological progress.

Our research has made it clear that the dramatic progress achieved in science and technology in the postwar era has the possibility of seriously impacting the nation's legal system. For instance, abuse of cloning and genetic engineering technologies may cause unforeseen ethical harm and environmental damage. By extension, these are problems that may exert a gravely negative influence on human dignity, the supreme value enunciated in the Constitution of Japan. Similarly, advances in information and communication technologies may have an unfathomable impact on society and our legal system. For instance, the introduction of electronic government and the development of personal information databases by the private sector pose daunting challenges. The protection of privacy in a ubiquitous network society will gain tremendous urgency, while the debate over the public's right of access to information will be hotly debated.

These represent only some of the changes in domestic and international conditions that could not have been imagined at the time of the promulgation of the Constitution.

Since the end of the Cold War, the world has frequently experienced ethnic conflicts and acts of international terrorism. By the same token, Japan's national security environment has undergone major changes. North Korea's firing of its Tepodon missile without any prior notification or warning poses a threat to the airspace over Japan. Moreover, this is a missile capable of reaching the waters off the United States. The deployment of nuclear missiles in the countries surrounding

Japan is a source of concern and insecurity to a great part of the Japanese public. In response to these developments, Japan has deployed Aegis-equipped destroyers. There is ongoing debate on the need to develop missile defense systems and spy satellites as a means to protecting the people in the event of an emergency.

Against this backdrop, the whole concept of security has undergone fundamental changes. Newly emerging concepts run the full gamut from national and regional security to social, economic and cultural security, and further down to ensuring the security of the individual. Today, Japan finds itself being pressed to become engaged in a diverse range of initiatives in the areas of both national security and international cooperation.

Beginning in the Gulf Crisis of 1990, the question of international cooperation has become the subject of intense debate in Japan. The enactment of the so-called PKO Law in 1992 sparked repeated debate on the interpretation of Article 9 regarding the form and range of international cooperation that can be engaged in under the current Constitution of Japan.

As for changes that have occurred within Japan, our attention is turned to the frequency of murders committed by minors, and to the decline in Japan's educational standards by international comparison. I am well aware that there are very strong voices responding to these developments and calling for the revision of the Fundamental Law of Education, which is said to give shape to the spirit of the Constitution through the institution of education.

Declining birthrates and the aging of society, combined with advances in medical technologies, have caused a sharp increase in the health and medical expenditures of the nation. This has created very serious problems concerning the future of the social security system and the balance between benefits and contributions. The average age of marriage is being pushed back as young people spend more years in school and birthrates are declining, both of which are serious issues. The free trade agreements that will be eventually concluded with neighboring countries will inevitably look toward allowing the influx of foreign workers. This entails the very important constitutional problem of how to deal with the protection of the human rights of foreigners residing in Japan.

Japan must seriously consider its future in light of these critical domestic and international changes. In this regard, this Commission has actively discussed whether or not to include explicit and unambiguous provisions in the basic law of the land concerning what Japan can and cannot do under the rule of law. Notwithstanding the different positions taken on this question, a common understanding was affirmed among members of the Commission to the effect that constitutional democracy demands the politics of a nation to be based on the principles and norms enunciated in its constitution.

One of the focal issues in our discussions of the Constitution was the gap between the norms and principles of the Constitution and contemporary reality. Article 9 presents the classic case of this gap, but it is not the only example. Other cases include fiscal assistance to private education and the Article 89 prohibition of expenditure of public money in support of charitable, educational or benevolent enterprises not under the control of public authority, and the reduction of the salaries of

judges and the Articles 79 and 80 prohibition of the reduction of compensation paid to judges during their terms of office.

To argue that these conditions do not present a constitutional problem requires interpretations of the Constitution that are not easy to explain to the people in whom sovereignty resides. A related problem is that the Supreme Court has taken a very passive stance on constitutional rulings. The failure to obtain unambiguous and authoritative rulings on constitutional disputes is one of the reasons why recourse has been taken in abstruse interpretations and applications of the law, which the people find very difficult to understand. From the perspective of a nation under constitutionalism, it is highly problematic to have to rely on such abstruse interpretations and applications of the law. In the context, the most serious problem is that this state of affairs can undermine the people's confidence in the Constitution.

In the course of the five overseas missions of the Commission, we found that all the countries researched had amended their constitutions several times. This was true for the Western democracies, former communist countries as well as for countries that remain under communist rule. I was particularly impressed by a statement made by a European legal expert during the mission last year. The expert explained that one of the reasons for enacting the Treaty Establishing a Constitution for Europe was to come directly face-to-face with the citizens. In this connection, I am reminded of statement made in the Subcommittee on Security and International Cooperation by an informant who explained that the rights of EU citizens were explicitly written into the Treaty Establishing a Constitution for Europe with the intention of creating a document that was easy for citizens to read and to understand, and easy for them to appreciate that the document in fact belonged to them.

I find this to reflect the same basic philosophy that I have repeatedly stated: the Constitution belongs to the people.

Regarding the ratification of the Treaty Establishing a Constitution for Europe, I understand that about 10 countries are expected to refer this matter to a national referendum. Just a few days ago, Spain became the first country to hold its referendum. I find it very exciting that a national referendum system is functioning in Europe that allows the people to participate directly in determining the course of their nations.

In the case of Japan, procedural law for constitutional amendments as provided for under Article 96 has yet to be enacted. Some Commission members argued that the failure to enact a legal system clearly provided for in the Constitution nearly 60 years after the promulgation of the Constitution has in effect restricted the sovereignty of the people. One of the notable features of our recent deliberations has been the very active debate that was carried out on this subject, with opinions expressed both for and against the enactment of such legislation.

Our overseas mission allowed us to observe the consensus-building process for the Treaty Establishing a Constitution for Europe.



In this connection, Vice Chairman EDANO made a statement in the afternoon session of the February 17 meeting of the Commission that a constitution sets forth the rules for the exercise of state power, and that those rules must be founded on a broadly based consensus.

I believe that constitutional debates among the political parties will be a very important theme.

I have taken this opportunity to briefly review the past research of this Commission and to append some personal comments. Needless to say, as an adjunct to the highest organ of state power, this Commission stands as the only and most appropriate forum for engaging in comprehensive discussions of domestic and international problems from the perspective of the Constitution. Our discussions have extended to issues that in the past have avoided as taboo. For instance, I believe that this Commission's discussions of the Emperor system have been more comprehensive and detailed than any discussion conducted elsewhere. This I take to be an indication of the enthusiasm and the specificity of our discussions. I believe what we have done in this Commission is extremely significant. That is, as representatives of the people, members of the Diet have taken part in discussion and debate from broadly varied positions.

This Commission has been engaged in broad and comprehensive research on the Constitution of Japan while bearing in mind the cardinal principles of respect for human rights, popular sovereignty, and the solemn affirmation that Japan will never revert to being an aggressor country. Today, we completed our brainstorming discussions on the overall summarization and conclusions of the Commission. Hereafter, we shall be concentrating our efforts on the preparation of our final report.

In closing, I would like to express my heartfelt gratitude to the vice chairman, the directors, observers and members of the Commission for their support and cooperation. Certainly we are acutely aware of the tremendous importance of the mission with which we are entrusted. With this in mind, I earnestly look forward to your continued cooperation. Thank you.

#### **4) Reports by Subcommittee Chairpersons on the Progress of Research, with Summaries of Findings**

##### **(1) 154th Diet and 155th Diet Session**

##### **A. Reports of the Subcommittee on Guarantee of Fundamental Human Rights**

##### **154th Diet Session, Fifth Meeting, Research Commission on the Constitution (July 25, 2002; SHIMA Satoshi, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Guarantee of Fundamental Human Rights, with a summary of its findings.

The subcommittee has met five times so far, and on each occasion an informant was invited to attend.

The opinions of the informants were heard on the following subjects. On February 14, the first meeting, MUNESUE Toshiyuki, Professor, Faculty of Law, Seijo University, commented on the subject of the guarantee of human rights in the new era; on March 14, the second meeting, ANNEN Junji, Professor, Seikei University, commented on the human rights of foreign nationals; on April 11, the third meeting, SAKAMOTO Masanari, Dean of the Faculty of Law, Hiroshima University, commented on new human rights; on May 23, the fourth meeting, ITO Tetsuo, Director, Japan Policy Institute, commented on the guarantee of fundamental human rights; and on July 4, the fifth meeting, KUSANO Tadayoshi, General Secretary, RENGO (Japanese Trade Union Confederation), commented on fundamental labor rights and employment measures.

Details of the statements of opinion by informants at each meeting can be found in the subcommittee minutes, and I will now give a brief summary.

Professor MUNESUE Toshiyuki expressed the opinion, with respect to the characteristics and limits of the present Constitution, that the Constitution combines the ideals of classical Western liberalism with provisions on social rights characteristic of the 20th century, but does not succeed in integrating the two systematically; that with regard to economic freedoms, judicial precedent and scholarly opinions have tolerated active government regulation, with the result that the original ideal of liberalism has not been realized; that spiritual freedom has not been regarded as a civil right, and the correlation with democracy has been weak; that the guarantee of human rights is an internal one between the state and people only lacking an international dimension; and that the guarantee of human rights in relationships between private persons is inadequate.

As issues to address in respect of the present Constitution, in his view these include the necessity for freedoms provided by the state, or positive freedoms in which the state actively guarantees freedoms; the necessity for a compound human-rights ideal that transcends the conventional categories of human rights; the necessity for linkage between international and domestic guarantees of human rights; and the necessity for the Constitution to guarantee the three-sided relationship between the state, civil society, and the individual.

Professor ANNEN Junji stated the opinion that both judicial precedent and scholarly opinion hold that foreign nationals enjoy rights under the Constitution, but they are granted only within the scope of the system for the sojourn of foreign nationals, but since foreign nationals do not have the right to enter the country or to stay, it is proper to conclude that they do not possess rights under the Constitution. He was further of the opinion that it is possible to treat foreign nationals equally with Japanese citizens under the law, and since nationality is determined according to the law, even the status of Japanese people is vague in the Constitution; for this reason, foreign nationals should be recognized as having the same rights as Japanese people to the greatest extent possible.

He also stated the view that even if the Constitution were amended to make express provision for the status of foreign nationals, any such provision would inevitably be abstract, and its substance would be determined by a judge. However, if the status were determined by legislation, that determination would be made by the Diet, and it would be preferable to entrust such a determination to elected representatives in the Diet, rather than to judges who have qualified for the bench by passing examinations.

Professor SAKAMOTO Masanari first explained that modern constitutionalism retains the sharp distinction between public law, which governs the public sphere, and private law, which governs the private sphere, and therefore the resolution of issues in the private sphere should be dealt with by private law, and civil liberties in the public sphere, meaning the right to complain of governmental nonfeasance or to claim relief against nuisance from the state, should be regarded as forming the nucleus of human rights. Premised on this perception, he expressed the view that the benefit and protection of the law in such forms as the right to privacy and the right of self-determination, which are known generally as new human rights, can be protected by dealing with them legally based on private rights or private law, and therefore there is little need to claim that they are fundamental human rights.

He indicated points to be borne in mind if new human rights are to be codified in the constitution, including the following. If the state intervenes and seeks constitutional solutions for issues that could be left to private autonomy, that may give rise to ills such as human rights inflation, excessive government, and the statalization of society. For that reason, the benefit and protection of the law should be sought by means of private rights or the workings of private law, and if there are cases in which that kind of legal handling is not possible, the first priority should be to resolve them by enacting laws. For a new human right to be recognized as a constitutional right, a number of conditions must be satisfied, including that the right has a high degree of precedence, its denotation and connotations are clear, and it does not improperly restrict the constitutional freedoms of other parties.

Mr. ITO Tetsuo criticized the generally held view that fundamental human rights are rights that all individuals are born with as a matter of course, constituting natural rights that precede the state, and that the Constitution of Japan is premised on this. He stated the view that rights should be understood as being generated gradually in the context of a community's history, culture, and traditions, in the background to which there exists that community's own unique spirit of the law,

and in view of this we must move away from the natural-rights argument. In his opinion, rights can only be guaranteed if a peaceful and orderly state exists, and therefore in interpreting public welfare it is essential that well-defined status is given to state and public benefit, and to morality.

He also expressed his opinion that a fundamental principle of democracy is that the people protect their own country themselves, and therefore the Constitution should include express provision for the duty to defend the country, while for the protection of the family there should also be express provision concerning respect for the family.

Mr. KUSANO Tadayoshi expressed the view that Article 28 of the Constitution guarantees the right to organize, to bargain collectively, and to strike, therefore it is problematic that public employees are legally prohibited from striking, and the government's stance of not addressing this is drawing international criticism.

He further stated the view that Article 27, Paragraph 1, of the Constitution can be interpreted as obligating the government to create a structure that enables the people to have full employment, provide job opportunities for the unemployed, and pay a living allowance to the unemployed, and therefore the government should implement employment measures accordingly.

He stated opinions as to the necessity for legislation to prevent abuses such as gender inequality, sudden death from overwork, sexual harassment, and other workplace issues. He stated his belief as to the necessity to study such matters as new forms of the right to work, such as gender equality and the development of professional skills, and called upon the Commission to give full consideration to the right to work and social rights.

Based upon these opinions expressed by the informants, there were vigorous interpellation sessions and free discussions among the subcommittee members.

As chairperson of the subcommittee, I would sum up these comments as follows. They indicated that the provisions of the Constitution relating to the guarantee of fundamental human rights are abundant relative to other countries, both in qualitative and quantitative terms, and have pioneering significance. On the other hand, the framework of the nation and society is currently undergoing rapid change against the backdrop of remarkable development in such spheres as science and technology and the economy, and of swift globalization. I believe that a point that was made very frequently was that the desirable ways in which to guarantee the fundamental human rights of the people who make up the nation and society should be studied from many angles, not merely from conventional perspectives.

For example, there was considerable discussion about matters such as the right to know, environmental rights, and the right to privacy.

As for these fundamental human rights, in the Constitution there are two chapters for human rights and government. From now on we will proceed to give careful and separate study as far as possible to each human-rights provision. There have been discussions to date that fundamental human rights include such rights as environment rights and the right to know. However, we have now reached the

stage of making a scrupulous examination of each human-rights provision, and discussing whether or not the provisions really do incorporate those rights.

The feeling that I derived from the discussions among committee members was that we should further deepen the level of discussion of the desirable ways in which to guarantee human rights in the 21st century, and that although the Constitution is an excellent one, we should engage in a step-by-step discussion about it in a manner suited to the times, and we may well have reached the stage of giving close consideration to revising it.

**155th Diet Session, Fourth Meeting, Research Commission on the Constitution  
(December 12, 2002; OIDE Akira, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Guarantee of Fundamental Human Rights, with a summary of its findings.

The subcommittee met on November 28, called upon KARIYA Takehiko, Professor, Graduate School of Education, The University of Tokyo, as an informant, and listened to his opinions regarding the expanding stratification of education and fundamental human rights.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

First, Professor KARIYA Takehiko noted that when examining the meaning of the guarantee that all people shall have the right to receive an equal education correspondent to their ability stipulated in the Constitution and in the Fundamental Law of Education, discussions need to be based on the actual conditions on the front lines of education, after clarifying the issues not only of the content of ability but also of ability at what point in time.

He then stated his opinions that subsequent to the 1992 reform of the education ministry curriculum guidelines, which emphasized flexible and lenient education:

1. The basic academic abilities of students with low grades have declined further even though the acquisition of basic academic abilities in primary and middle school is extremely important for students' subsequent learning and living abilities; and
2. A stratification of education is emerging whereby the children of parents with higher education achieve higher education themselves, and in the end the policy of emphasizing flexible and lenient education has downplayed the firm establishment of basic academic abilities without considering statistical data, and expanded the gap in abilities among children.

He also stated that equality of results should be interpreted as striving to minimize the abilities gap as much as possible so that students can take advantage of equal opportunities, and that the educational system should guarantee, as much as possible, that children have the abilities to compete fairly at the time they complete their compulsory education.

Based upon these opinions expressed by the informant, subcommittee members posed questions to

the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. Many members expressed concerns that the introduction of flexible and lenient education is one of the causes of the decline in academic abilities, breakdown in classroom discipline and other recent problems in the nation's classrooms. Other members, however, stated that educational issues should not be approached solely from the perspective of academic abilities, and that the perspectives of flexibility and zest for living are also important.

Members also expressed opinions about various educational problems beginning with the issues regarding revising the Fundamental Law of Education, the merits and demerits of the present education ministry curriculum guidelines, and the meaning of equality in education.

Henceforth I think we must further deepen our discussions regarding education and the guarantee of human rights from such diverse perspectives.

## **B. Reports of the Subcommittee on Fundamental and Organizational Role of Politics**

### **154th Diet Session, Fifth Meeting, Research Commission on the Constitution (July 25, 2002; TAKAICHI Sanae, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Fundamental and Organizational Role of Politics, with a summary of its findings.

The subcommittee has met five times so far, and on each occasion an informant was invited to attend.

The opinions of the informants were heard on the following subjects. On February 14, the first meeting, TAKAHASHI Kazuyuki, Professor, Faculty of Law, University of Tokyo, commented on the subject of the desirable form of parliamentary cabinet system; on March 14, the second meeting, YAMAGUCHI Jiro, Professor, Graduate School of Law, Hokkaido University, commented on viewpoints for reexamining the mechanism of government; on April 11, the third meeting, OISHI Makoto, Professor, Kyoto University, commented on the desirable forms of bicameral system and electoral system; on May 23, the fourth meeting, MATSUI Shigenori, Professor, Graduate School of Law, Osaka University, commented on the ideal form of the system of judicial review; and on July 4, the fifth meeting, YAGI Hidetsugu, Associate Professor, Takasaki City University of Economics, commented on the mechanism of government under the Meiji Constitution.

Details of the statements of opinion by informants at each meeting can be found in the subcommittee minutes, and I will now give a brief summary.

Professor TAKAHASHI Kazuyuki stated the following opinion. In the making and conduct of policy in an active state such as present-day Japan, political leadership is required within a schema in which

the Cabinet governs, and that process is controlled by the Diet. To carry that out, it would be valuable to introduce a national cabinet system which, in effect, the people directly choose through election of a single package composed of both the policy program and the prime minister, who is the main agent of implementing the program.

He pointed out that in introducing this system it would be necessary to study (1) the desirable form of an election system that would make clear the will of the majority, (2) the role of political parties in devising policy programs that receive majority support, and (3) the mental attitude of the people with respect to seeking to express their will clearly through elections and other means with the intention of forming a majority.

He also expressed the view that a constitutional amendment would not be necessary for introducing a national cabinet system, though constitutional conventions, for example requiring the House of Councillors to practice self-restraint in the exercise of its powers, should be established.

Professor YAMAGUCHI Jiro pointed out some of the problems inherent in the operation of Japan's parliamentary cabinet system, namely (1) the unrestrained dominance of the governing parties and the frequent changes of leader, (2) the weakening of the Cabinet accompanying the excessively large growth of the bureaucracy, and (3) the lack of transparency in the relationship between the Cabinet and the ruling parties. In his view Japan should try to emulate the parliamentary cabinet system in Britain by (1) integrating the Cabinet and the ruling party, (2) realizing policy through participation in the administration by the ruling party, and (3) establishing a relationship in which politicians direct the bureaucracy. In doing so it would be essential to create new constitutional conventions, etc. suited to the system and to consider the desirable form of government administration from the viewpoint of popular sovereignty.

He put forward the following proposals for reform with respect to institutions, and then practices. With respect to institutions, (1) supersede the principle whereby each minister of state has charge of a specific share of administrative affairs in the Cabinet, (2) integrate the policy-making process, and (3) strengthen the Diet's function as a check on the executive branch. With respect to practices, (1) have elections in which a political party, leader, and policies can be chosen as a single package, (2) conjoin the ruling parties' decision-making bodies with the Cabinet, (3) operate the ruling parties in such a way that Diet members who belong to those parties shape policy through membership of the Cabinet, and (4) make the ruling parties' selection of their leaders transparent and open.

Professor OISHI Makoto stated his belief that the bicameral system should be maintained, since it is doubtful that the will of a diverse electorate can coalesce under a unicameral system. Based on this understanding, he stated the view that to ensure that each House performs independent functions, thereby making the bicameral system meaningful, the method of organization of the two houses should be organized on principles that differ as much as possible, giving consideration to ensuring that the interests and opinions of the people are reflected fairly and effectively in the administration.

He further expressed the view that (1) it is important to ensure that the role expected of the House of Councillors, namely acting as a moderating influence on the dynamism of the House of

Representatives, be reflected in the election system, and (2) the present powers of the House of Councillors should be revised, the repassage of bills by the lower house by a majority should be recognized, and only the lower house should have the right to designate the prime minister.

Professor MATSUI Shigenori stated his understanding that the provisions of Article 81 of the Constitution confirm the power of judicial review exercised in conjunction with the exercise of judicial powers based on a legal dispute or suit, but that since at present there are very few rulings of unconstitutionality, and it is difficult for the public to petition for judicial review, the power of judicial review is not being exercised properly.

Based on this understanding, he set out a process-based theory of judicial review. This theory holds that the courts have the responsibility to preserve and protect, through rigorous review, the rights that are indispensable to the democratic process, and with respect to rights other than these, laws duly enacted by the Diet, which is composed of the representatives of the entire people, should be respected. If it happens that these harm the interests of the people, this should be corrected through elections. He contended that in order to prompt the courts to take an active stance in exercising their judicial powers in line with the responsibilities referred to above, it is essential to undertake a reform of the system, coupled with consciousness-raising. This would include rectifying the rigidity of the personnel system at the Supreme Court, and by flexible interpretation of matters deemed to be a legal dispute or suit, making it easier to file suits for the confirmation of the unconstitutionality of laws and for their suspension.

Professor YAGI Hidetsugu began by stating his view that the constitutional debate must first be a discussion about the constitution in the sense of meaning the character of the nation, and that we should learn a lesson from the importance that was placed on discussing the character of the nation during the process of formulating and enacting the Meiji Constitution.

He expressed the following opinions with respect to the system established by the Meiji Constitution. (1) With regard to the relationship between the Cabinet and the Emperor there was a lack of clarity in interpretation and application regarding the question of who will play the central role in politics. (2) In the actual practice of government administration the prime minister was central, but he could exercise only weak control. (3) The Emperor's advisory bodies had separate spheres of influence, and as the elder statesmen responsible for coordinating them died off, a void developed at the center of government. (4) The Emperor was the nominal chief executive, and therefore the system of government was that of a constitutional monarchy.

In his view, the Emperor-as-symbol system in the Constitution of Japan does not simply mean that the British-style concept of the ruler as the visible symbol of unity was adopted, but that it was a continuation of the system of constitutional monarchy under the Meiji Constitution.

Based upon these opinions expressed by the informants, there were interpellation sessions and free discussions among the subcommittee members, and on each occasion there was a lively exchange of views between members and informants. I will now describe the impressions I have gained from five meetings as chairperson.



Today we live in an era in which the public's interest in participating in politics and people's awareness of their rights as taxpayers is high relative to the time when the Constitution was formulated. Also, as a result of the development of the mass media, a large number of people are able to share government-related information instantaneously, and public opinion can create major trends. Given that in our modern society it is necessary to respond swiftly to new issues that arise both domestically and overseas, such as economic conditions and diplomatic problems, I felt keenly the necessity to consider anew, from the perspective of political leadership, the desirable form of the parliamentary cabinet system and of the bicameral system, and the desirable form of the electoral system, which secures people's political rights, and of political parties.

In addition, I felt it was necessary to continue to deepen the discussion with respect to the ideal form of the system of judicial review of constitutionality, while bearing in mind factors such as the tension that characterizes the relationship between democracy and constitutionalism.

The subcommittee also researched the mechanism of government under the Meiji Constitution, touching on issues such as the system of constitutional monarchy, and in future research I intend to deepen the level of discussion of what the fundamental structure of politics in the 21st century should be, including issues such as the ideal form of the Emperor system, taking into account the history and traditions that lie behind the Constitution.

**155th Diet Session, Fourth Meeting, Research Commission on the Constitution  
(December 12, 2002; YASUOKA Okiharu, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Fundamental and Organizational Role of Politics, with a summary of its findings.

The subcommittee met on November 14, called upon TAKADA Atsushi, Associate Professor, Faculty of Integrated Human Studies, Kyoto University, as an informant, and listened to his opinions regarding the Constitution and political parties.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

Professor TAKADA Atsushi expressed opinions that political parties are positively founded as the essential presence bringing rationality to the democratic system based on diversity; fulfill an important function in each stage of forming the democratic system including clarification of points of dispute, creating and presenting choices, making tentative decisions and accepting decisions; and play a definitive role in forming the prerequisites to democracy of recruiting and fostering political leadership and drafting policies.

He then stated his understanding that the influence of political parties is presently declining as society and individuals become more complex and more fragmented; that in Japan as well political parties no longer sufficiently reflect citizens' political opinions, and the pathology whereby political

parties tend to cater to particular special interests is worsening; and that to resolve these problems political parties and the political party system need to be equipped with sufficient complexity and fragmentation.

Additionally, he stated that what the future legal system for political parties can do for political parties to fulfill their proper roles are:

1. To remove obstacles that prevent political parties from fulfilling their proper roles; and
2. To generate the prerequisite conditions for political parties to fulfill their proper roles.

Specifically:

1. To eliminate the obstacles which hinder political parties in discovering and fostering the development of human resources; and
2. To secure the transparency and openness of political parties.

Regarding the stipulation of political parties in the Constitution, however, he said that a cautious approach is warranted because when securing judicial controls to prevent abuse of the legal system for political parties by legislators is considered, there is a strong likelihood that this could, conversely, have a negative effect.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant. Diverse opinions regarding such issues as the ideal election system and legal system for political parties, and the relationship between party discipline and the free political activities of Diet members were expressed.

As chairperson of the subcommittee, I will summarize my impressions of the opinions expressed as follows. In our contemporary society where we need to reflect the will of the people regarding new domestic and foreign issues and respond swiftly and accurately, the role of political parties, which function as a pipeline linking the Diet and the people, is becoming more and more important, and I strongly feel the need to think deeply about the ideal image for political parties, including how they make campaign pledges and their internal decision-making procedures.

Henceforth, based on the deliberations so far, I think we must further deepen our discussions regarding the ideal governing structure before the great goal of examining the Constitution for 21st century Japan and for the next generation of Japanese citizens who will play active roles in the 21st century.

### **C. Reports of the Subcommittee on Japan's Role in International Society**

#### **154th Diet Session, Fifth Meeting, Research Commission on the Constitution (July 25, 2002; NAKAGAWA Shoichi, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Japan's Role in International Society, with a summary of its findings.

The subcommittee has met five times so far, and on each occasion an informant was invited to attend.

At the first meeting, on February 28, Professor MATSUI Yoshiro of Graduate School of Law, Nagoya University stated his opinions on the desirable form of international cooperation, focusing on PKO and PKF.

Professor MATSUI Yoshiro's statement included the opinions that Japan should undertake international cooperation actively on the basis of the principles enshrined in the Constitution, and that spheres in which Japan's active cooperation is both possible and necessary are the implementation of measures to prevent the outbreak of conflicts, peaceful resolution of conflicts, and support for post-conflict social and economic development.

At the second meeting, on March 28, Mr. HATAKEYAMA Noboru of the Japan External Trade Organization (JETRO) made a statement of his opinions on the desirable stance for Japan in an international community centered on free-trade agreements.

Mr. HATAKEYAMA Noboru's statement included the opinions that it is essential for Japan to shift to a multilayered structure in which free-trade agreements complement the WTO, and that Japan should assume international leadership by taking the initiative in negotiating free-trade agreements.

At the third meeting, on May 9, Mr. TERASHIMA Jitsuro, President of the Mitsui Global Strategic Studies Institute, presented an overall view of the desirable position for Japan in the international community.

Mr. TERASHIMA Jitsuro's statement included the opinions that the form of the Japan-U.S. Security Arrangements should be reviewed, and that while maintaining an exclusively defensive capacity, Japan should seek to create a multilateral forum in the East Asian region, based on the principle of preventive diplomacy.

At the fourth meeting, on June 6, Professor TAKUBO Tadae of Kyorin University made a statement of his opinions on the desirable form that Japan's security should take.

Professor TAKUBO Tadae's statement included the opinions that with respect to the form that Japan's security should take, Japan should follow the example of Germany in the way it has responded to changes in the international environment, and should outgrow its former self and become a normal democratic nation. As regards Japan-U.S. security relations, Japan should gradually shift them from being one-sided towards being truly bilateral in character.

At the fifth meeting, on July 11, Associate Professor NAKAMURA Tamio of the University of Tokyo made a statement of his opinions concerning developments with respect to the European Union constitution and the constitutions of individual countries.

Professor NAKAMURA Tamio's statement included the opinion that factors that may have implications for Japan based on the experience of the European Union in the course of its integration were that, given that today cooperation across national borders has become essential, Japan should

study EU mechanisms, and that the process of formation of the European Union, in which a public order is developed by repeated consultation between the member states, is instructive for Japan for shaping the principles of international cooperation.

Based upon these opinions expressed by the informants, there were interpellation sessions and free discussions among the subcommittee members, and on each occasion there was a lively exchange of views between members and informants.

As the subcommittee chairperson I would sum up the statements expressed at meetings as follows. It was pointed out that with respect to the desirable form of Japan's security and international cooperation, Japan should endeavor to translate into reality the spirit of the Constitution, with its espousal of pacifism, and of the United Nations Charter, whose purpose is the maintenance of peace through international cooperation. It was also pointed out frequently that for Japan to take the initiative in dealing with international circumstances, in which change has been proceeding at a remarkable pace, examples being the end of the Cold War and the progress of globalization, it is essential to study ways to enable it to do that not purely through a conventional framework, but from a broader perspective from a variety of angles, also encompassing the possibility of revising the Constitution.

Based on these suggestions I hope to go on deepening the level of our discussions on the desirable position for Japan in the international community.

Details of the meetings can be found from page 97 of the discussion memorandum.

**155th Diet Session, Fourth Meeting, Research Commission on the Constitution  
(December 12, 2002; NAKAGAWA Shoichi, Chairperson)**

The subcommittee met on November 14, called upon IWAMA Yoko, Associate Professor, National Graduate Institute for Policy Studies, as an informant, and listened to her opinions regarding the rearmament of Germany and the background and progress of Germany's legal system for states of emergency.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

Professor IWAMA Yoko stated that in Germany following the defeat in World War II, for rearmament within the framework of European integration, the Basic Law was revised in 1954 by the ruling coalition, and in 1956 through cooperation between the ruling and opposition parties, and major revisions to the Basic Law were implemented under the broad coalition government in 1968, giving a legislative basis for states of emergency. Professor IWAMA noted that during the Cold War it was assumed that the military forces of West Germany would only act within NATO territory, but that to respond to international disputes after the end of the Cold War, in 1994 the Constitutional Court ruled that dispatches of German military forces outside of NATO territory with the prior

approval of the Bundestag are constitutional, and since that time the German military has been widely developing overseas activities.

She also explained, for example, that to respond to changes in the post Cold War security environment the German military has been advancing reforms toward performing new duties of crisis management and conflict prevention outside of NATO territory.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves.

I will summarize the opinions expressed as follows.

At this meeting in particular the free discussions among the subcommittee members were deeply significant with a lively exchange of opinions regarding the ideal future for the security of Japan and the response to states of emergency. I think that our research will become more fruitful by taking greater advantage of these kinds of free exchanges of opinion among the subcommittee members in the future deliberations of the Commission.

Because the various factions hold different opinions regarding the ideal for Japan's security and for arranging the legal system for responding to states of emergency, I feel that, based on the government's duty to protect the lives and property of Japanese citizens, we need to continue to deepen our discussions, and to work toward the formation of a consensus that transcends party and faction boundaries.

Henceforth, based on the deliberations so far, I think we need to further deepen our discussions on Japan's ideal role in the international community from the perspective of having Japan independently respond to the rapidly changing international conditions with the end of the Cold War and the advance of globalization.

#### **D. Reports on the Subcommittee on Local Autonomy**

##### **154th Diet Session, Fifth Meeting, Research Commission on the Constitution (July 25, 2004; YASUOKA Okiharu, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Local Autonomy, with a summary of its findings.

The subcommittee has met five times so far, and on each occasion an informant was invited to attend.

The opinions of the informants were heard on the following subjects. On February 28, the first meeting, IWASAKI Mikiko, Professor, University of Tsukuba, commented on the subject of decentralization reform and the *do-shu* system and federal system; on March 28, the second meeting, MORITA Akira, Professor, Graduate School of Law and Politics, University of Tokyo, commented on problems of decentralization reform, including the merger of municipalities; on May 9, the third

meeting, JINNO Naohiko, Professor, University of Tokyo, commented on local autonomy and local public finances; on June 6, the fourth meeting, KATAYAMA Yoshihiro, Governor of Tottori Prefecture, commented on various issues involved in achieving decentralization; and on July 11, the fifth meeting, KITAGAWA Masayasu, Governor of Mie Prefecture, commented on action being taken in Mie Prefecture from the standpoint of the citizens.

Details of the statements of opinion by informants at each meeting can be found in the subcommittee minutes, and I will now give a brief summary.

Professor IWASAKI Mikiko indicated that following the recent decentralization reforms, among whose cornerstones was the abolition of the delegation of tasks by the government to agencies, issues to be addressed include the transfer of powers in the tax and fiscal spheres, the broadening of the geographical scope of local governments, and the participation of civil society in local government. She expressed the view that after classifying and examining the configuration of basic local government in certain foreign countries, Japan should aim for the type of system in northern Europe, the scale of which had been expanded after the reorganization of basic local government to give it the capability of providing social services.

After mentioning issues arising in the event of the adoption of the *do-shu* system of integrating prefectures into states or provinces, or a federal system, she stated her opinion that Japan could achieve decentralization by recognizing the discretion of local governments in policy execution, and establishing a system under which local governments could influence central decisions and that these measures would not require adopting a federal system which necessitates constitutional revision.

Professor MORITA Akira expressed the opinion that reforms by the Committee for the Promotion of Decentralization had achieved results to a certain extent pursuant to the Comprehensive Decentralization Law, for example the abolition of the delegation of tasks by the government to agencies, but because of inadequacies in the fiscal reform, local finances are on the brink of a crisis, and therefore steps such as the transfer of taxation and financial resources to local governments need to be taken.

He also stated the view that it is essential to promote municipal mergers for reasons that include the need to maintain the current level of administrative services, changes in the extent of the geographical areas in which residents conduct their daily lives, population decline, and the aging of society, but that in carrying these out the government should avoid such stances as promoting uniform mergers and attaching too much significance to numerical goals such as a required number of municipalities; an approach finely tuned to the circumstances of each local government is needed.

He pointed out that criticisms include those that central-government-led measures to promote municipal mergers run counter to the principle of local autonomy, and that such mergers destroy local communities. His counterarguments were that the promotion of mergers in the future must be undertaken not solely from the perspective of the individual municipalities, but also from the perspective of the region and country as a whole, and therefore it will be necessary for the central and prefectural governments to coordinate mergers, always respecting the principle of local

autonomy. He was also of the opinion that it will be essential to give very careful study to the desirable forms of municipality and prefecture that will eventually emerge from the merger process.

Professor JINNO Naohiko expressed the opinion that in order to promote decentralization it is essential to transfer taxation and financial resources to local governments and to correct the disparities in fiscal strength between local governments. This is in light of lessons from the past in the form of the Taisho Democracy movement and the Shoup Report, and of the advance of globalization and the parallel advance of localization in recent years in certain other countries, evidenced by events such as the enactment of the European Charter of Local Self-Government.

With respect to issues that Japan must address in the future, he was of the opinion that the recent abolition of the delegation of tasks by the government to agencies under recent decentralization reforms has transferred numerous administrative responsibilities and decision-making powers to the local level, but adequate tax-raising powers have not yet been transferred. To overcome this it will be important to transfer the taxation of personal income and the consumption tax to local governments, thereby shifting from the present centralized dispersion system, in which local authorities have no tax-raising or decision-making powers, to a decentralized dispersion system, in which local authorities do have those powers.

Governor KATAYAMA Yoshihiro stated that, based upon his experience as a governor, he considered the following to be among the principal issues to address in order to achieve decentralization. The uniform provisions of the Local Autonomy Law should be revised in order to ensure, among other things, that the organization of local governments has diversity and localized character. Independent administrative commissions do not function adequately, because they lack expertise and the relevant capabilities. Therefore, in order to introduce democratic principles, consideration should be given to measures such as the popular election of commission members. Local government assemblies characterized by diversity and independence should be lauded, and changes should be made to allow for businessmen and others with close contact with ordinary life to serve as members of assemblies while retaining their own jobs. Local finances should be neutral towards the policy choices of local governments, for example as to whether they place emphasis on policy for developing infrastructure through public works, or give more importance to policy in less tangible spheres, such as human-resource development. To stabilize prefectural government tax revenues, such means should be taken as incorporating tax assessments based on business size into corporate enterprise taxation, or allocating corporate enterprise taxation to the national government, and transferring personal income taxation to local governments.

Governor KITAGAWA Masayasu premised his remarks on the perception that in future it will be important for government administration to adopt the viewpoint of the people who pay taxes, and consider their satisfaction to have first priority. From his own experience he gave examples of how this was being put into practice in Mie Prefecture. Information on the outcome of decision-making is not made public only on request; the prefecture provides information actively of its own accord, including information on the process through which policy is shaped. The prefecture has introduced New Public Management incorporating private-sector corporate management methods, and conducts

administration that is based on performance-evaluation, switching from a budget-oriented approach to one oriented towards financial results.

He also expressed the view that Japan should change from the centralization of powers and bureaucratic control—by which he appears to mean that the bureaucracy rules—to decentralization and local autonomy, with the aim of creating a mosaic nation that takes best advantage of the distinctive features of each region, and of pursuing the development of those regions.

Based upon these opinions expressed by the informants, there were interpellation sessions and free discussions among the subcommittee members, and on each occasion there was a lively exchange of views between members and informants. In my capacity as subcommittee chairperson I would sum up the opinions expressed at the meetings as follows.

Informants and members reached a common understanding that in order to further enhance the local autonomy that is institutionally guaranteed in the Constitution, the on-going decentralization reform must be promoted and that a prerequisite for achieving that is the transfer not only of powers, but also of taxation and revenue sources from the central government to local governments.

Numerous other views encompassing the entire mechanism of government were also expressed on such matters as the proper form of municipal mergers, the future of the prefectures, and the need to study the introduction of a *do-shu* system.

Based upon the points that have been expressed hitherto, and focusing on a vision for Japan in the 21st century, I intend to pursue a more in-depth debate from the perspective of further improving the system of local self-government.

**155th Diet Session, Fourth Meeting, Research Commission on the Constitution  
(December 12, 2002; NISHIDA Mamoru, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Local Autonomy, with a summary of its findings.

The subcommittee met on November 28, called upon HOSAKA Kunio, the Mayor of Shiki City, as an informant, and listened to his opinions regarding the fundamental role of local government bodies under decentralization and the approaches being adopted in Shiki City.

Details of statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

Mayor HOSAKA Kunio, based on his experience with local government, expressed opinions related to Chapter 8 of the Constitution that:

1. The division of roles between the national government and local governments should be clarified and their respective powers recognized; and
2. The discretionary power of local government bodies is presently circumscribed by various laws



and regulations including the Local Autonomy Law; in the future, I would like local governments' ability to freely implement government administration to be better recognized based on clearly stipulated authority.

He then stated his opinions that in advancing decentralization the division of roles between the national government and local governments must first be determined; that tax revenue sources should be automatically allocated to local governments in accordance with the quantity of their works; and that simplicity and transparency are important.

He also expressed his understandings that:

1. Fostering person-to-person contacts via the community and preserving the local culture and natural environment are important missions of local government bodies;
2. The various localities should aim at diverse ways of being based on self-responsibility; and
3. Citizen participation and respect of the will of the people are important in the mergers of cities, towns and villages.

Additionally, he explained that based on this kind of understanding, Shiki City has adopted an approach aimed at becoming a new 21st century style local public body, which includes advancing the Regional Independence Plan whereby government administration is collaboratively implemented by the city and its residents.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant.

As chairperson of the subcommittee I will summarize the opinions expressed as follows. To further realize the local autonomy guaranteed by the Constitution, the ongoing decentralization measures should be further advanced, and when implementing these reforms it will be necessary to reconfirm the various existing systems regarding local governments as well as the roles of basic units of local governments.

Members also expressed many opinions regarding the approaches to mergers of cities, towns and villages and to further advancing decentralization.

Based upon the points that have been expressed hitherto, and focusing on a vision for Japan in the 21st century, I think we need to pursue a more in-depth debate from the perspective of further improving the system of local self-government.

## **(2) 156th Diet and 159th Diet Session**

### **A. Reports of the Subcommittee on Ideal Constitution as Supreme Law**

#### **156th Diet Session, Second Meeting, Research Commission on the Constitution (February 27, 2003; YASUOKA Okiharu, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Constitution as Supreme Law, with a summary of its findings.

The subcommittee met on February 6, called upon TAKAHASHI Hiroshi, Lecturer, Kokugakuin University, Lecturer, Tokyo Keizai University, and former staff writer of Kyodo News, as an informant, and listened to his opinions regarding the Emperor-as-symbol system, particularly regarding the status of the Emperor and the Imperial succession.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

First, regarding the Imperial succession, Mr. TAKAHASHI Hiroshi expressed opinions that under the present provisions of the Constitution and Imperial Household Law only male descendents in the male line are eligible for succession and if conditions remain unchanged the Imperial Household will have no successor in the future, so the Imperial Household Law should be revised to allow female succession. He said in that case the Imperial succession will shift from the male to the female line of descent, but the tradition whereby the status of the Imperial throne is hereditary would remain unchanged. He stated that while current provisions dictate that female members leave the Imperial Family upon marriage, the establishment of princely households upon the marriage of female members of the Imperial Household should be recognized while taking care that the number of Imperial Family members does not increase too greatly. He also said that the right to succeed to the throne should go to the eldest child, regardless of sex.

Next, regarding the Emperor-as-symbol system, he noted that from ancient times Japan's Emperors have largely been symbolic, and only very few Emperors have worn military attire like the Meiji Emperor. He expressed the opinion that the present Emperor has been seeking the ideal approach to the Emperor-as-symbol system ever since he was the Crown Prince, and in that sense he has created the traditional form of the Emperor and may be considered the first symbolic Emperor to accede to the throne under the present Constitution.

As requests to the government, he expressed opinions that the political hue to foreign visits by the Emperor and other members of the Imperial Household, which are sometimes referred to as Imperial diplomacy, should be eliminated; that the Diet should hold thorough deliberations on the Emperor-as-symbol system and what this essentially means; and that the Imperial Household Law should be revised to bring greater stability to the issue of succession.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among

the members and the informant.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. First regarding the Emperor-as-symbol system in general, while members expressed differing opinions regarding whether or not the Emperor is the head of state, whether or not the point that the Emperor is the head of state should be stipulated, and whether or not the Emperor system should be continued in the future, all parties apparently held the common understanding that Chapter 1 of the present Constitution should generally be maintained.

Next, most members expressed opinions that female succession should be allowed, but some members expressed reservations against this. Also, assuming that female succession is allowed, members expressed differing opinion as to whether the order of succession should stipulate the eldest child, regardless of sex, or give priority to male heirs.

I felt that henceforth, as the informant, Mr. TAKAHASHI noted, we need to deepen our deliberations regarding the existing Emperor system including the issue of revising the Imperial Household Law.

**156th Diet Session, Fifth Meeting, Research Commission on the Constitution  
(March 27, 2003; YASUOKA Okiharu, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Constitution as Supreme Law, with a summary of its findings.

The subcommittee met on March 6, called upon SONOBE Itsuo, former Supreme Court Justice, as an informant, and listened to his opinions regarding the Emperor-as-symbol system, particularly regarding the authority of the Emperor and the Emperor's acts in matters of state.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

Mr. SONOBE Itsuo stated that the Emperor-as-symbol system is stipulated based on the principles of the present Constitution, but it is also a unique system reflecting history and tradition, and noted that under the Emperor-as-symbol system, the Emperor's role as the foundation for the organs of government and conferring legitimacy to power, which is one aspect of the function the Emperor has historically fulfilled, is entrusted to the Emperor by the people.

Next, he stated that the functions and acts of the Emperor should be examined from the perspective of the "positive symbol" position in which certain situations are required for the Emperor to function as a symbol of the state, while considering the actual conditions. He also stated that as a categorization of the acts of the Emperor he advocates the five-category theory based on an analysis of the value of the actual act derived from, among others, the symbolic nature of the Emperor.

Additionally, he expressed opinions that while it is important for the Emperor to manifest his role as symbol of state through acts in matters of state and public acts, it is necessary to define the status of

public acts as befits their meaning with due caution.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant.

As chairperson of the subcommittee I will summarize the opinions expressed as follows. First regarding the Emperor's acts in matters of state, all parties apparently held the common understanding that these acts are entrusted by the people, who are the sovereign, to the Emperor via the Constitution, that the responsibility for them lies with the Cabinet, and that they are formal and ceremonial in character.

Next, regarding the categorization of the acts of the Emperor, while members agreed that these include acts in matters of state and actions aside from acts in matters of state, members disagreed on whether or not the actions aside from acts in matters of state should be broken down into subcategories such as public acts and private acts, and on whether or not some sort of criteria should be established for public acts, assuming that public acts are recognized.

Finally, based on the statements by the informants at the last two sessions, I believe that, in order to conduct a debate on the Emperor-as-symbol system as it stands, with regard to the Emperor's acts we need to pursue research in such areas as how those acts are performed in actual practice, looking at concrete examples

**156th Diet Session, Sixth Meeting, Research Commission on the Constitution  
(April 17, 2003; YASUOKA Okiharu, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Constitution as Supreme Law, with a summary of its findings.

The subcommittee met on April 3, called upon TAKAMI Katsutoshi, Senior Specialist, Politics and Parliamentary Affairs Research Service, Research and Legislative Reference Bureau, National Diet Library, and Professor Emeritus, Hokkaido University, and upon NAGAO Ryuichi, Professor, College of Law, Nihon University as informants, and listened to their explanations of constitutional revision procedures in various nations and their opinions regarding the procedures for revisions of rigid constitutions, including the ideal form of referendum systems.

Details of the statements of opinion by informants at each meeting can be found in the subcommittee minutes, and I will now give a brief summary.

Professor TAKAMI Katsutoshi first expressed opinions that the constitutional revision procedures in various nations are usually structured to meet the demands that arise from constitutional stability and popular sovereignty, and that these demands take diverse formats in the constitutions of each nation, and then presented four categories of constitutional amendment procedures based on the bodies that determine and approve the revisions: parliaments, referendums, special constitutional assemblies,

and the governing units that comprise federal states.

Regarding the history of Article 96, he explained that the first draft of the Constitution prepared by the GHQ stipulated an obligation to convene an extraordinary session of the Diet to consider constitutional revisions once every 10 years, but based on the belief that the Constitution must be a document with both permanence and flexibility, with simple and clear revision procedures, the GHQ draft was ultimately changed to the initial form of Article 96 stipulating that constitutional amendments must be initiated by the concurring vote of at least two-thirds of the members of a unicameral Diet, ratified by the people, and promulgated by the Emperor. He explained that after the final GHQ draft was submitted to the Japanese government the adoption of a bicameral system rendered the requirements for initiating constitutional amendments more severe. He said that the original intent of Article 96, according to Diet statements by Minister of State KANAMORI Tokujiro, was that there is a conceptual distinction between the right to enact a constitution which is held by the people and the right to enact legislation which is held by the Diet, with the former exercised through a direct expression of the people's will and the latter expressed by the Diet, and that this is why Article 96 stipulates that the Diet has the right to propose constitutional amendments while the people must ratify such amendments.

Finally, based on this, he expressed opinions that while the Article 96 hurdles are high they are not the highest from an international standpoint, and that in foreign countries the actual frequency of constitutional revisions cannot be directly derived from the height of the formal hurdles to constitutional revisions.

Professor NAGAO Ryuichi expressed opinions that from the standpoint of legal philosophy, the requirement for a special majority for constitutional revisions is just the egotism of the legislators; that the reasons why constitutions are considered paramount to regular laws include the traditionalist belief that traditions have a prestige that cannot be changed by majority votes of subsequent generations, as well as the theory of resolve amid dramatic change which gives precedence to decisions made during emotional times, such as Japan's defeat in World War II, over decisions made during normal times, but that most of these justifications lack validity.

On the other hand, however, he expressed opinions that prudent consideration is still required before approving constitutional revisions by a simple majority, and that the significance of rigid constitutions includes the natural rights position which holds that some things cannot be changed by majority opinion, and the protection of minorities which is derived from the perspective of a self-critical society that always respects minority opinions.

Additionally, he expressed opinions that according to the ideas of John Locke constitutions are ultimately derived from the philosophy of the Enlightenment, that history is a repetition of confrontation between the Enlightenment and tradition, and that there is a need to work toward harmony between the Enlightenment and tradition in the 21st century.

Based upon these opinions expressed by the informants, subcommittee members posed questions to the informants and held free discussions among themselves, with lively exchanges of views among

the members and the informants.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. First regarding a national referendum law for constitutional revision, all factions apparently held the common understanding that such a law would have to be enacted if the Constitution is actually to be revised.

As for the timing for the enactment of a referendum law, some members expressed opinions that efforts should be made to enact such a law as soon as possible to prepare for future constitutional revisions and that the present failure to enact such a law constitutes nonfeasance on the part of the Diet, while other members expressed opinions that it is not necessary to enact a national referendum law at the present point in time because there are presently no concrete proposals to revise the Constitution and because there are many items that should be examined first including the locus of the authority to propose constitutional revisions.

In discussing the Constitution, members also expressed various opinions that it may no longer be possible to respond to the changing times via constitutional interpretations only: opinions regarding which provisions of the existing Constitution should be revised to advance institutional reforms, that is, opinions that such perspectives on the vision for the nation are important; and opinions that it may be necessary to investigate whether or not the ideals of the existing Constitution are being reflected in the subordinate laws and regulations.

Finally, based on the opinions expressed by both Professor TAKAMI and Professor NAGAO, I felt it is important to first deepen our understanding of the procedures for revising the Constitution, which is highly rigid, and to then conduct active deliberations on such issues as a referendum law for revising the Constitution.

**156th Diet Session, Seventh Meeting, Research Commission on the Constitution  
(May 29, 2003; YASUOKA Okiharu, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Constitution as Supreme Law, with a summary of its findings.

The subcommittee met on May 8, called upon BANNO Junji, Professor Emeritus, The University of Tokyo, as an informant, and listened to his opinions regarding the Meiji Constitution and the Constitution of Japan, especially regarding the formulation process of the Meiji Constitution.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

First, Professor BANNO Junji stated that there are problems with the conventional history of the development and enactment of the Meiji Constitution because to date it has failed to consider the mutual relationship between the democratic rights camp which emphasizes the role of the Freedom and People's Rights Movement and the pro-establishment camp which emphasizes the roles played

by ITO Hirobumi and others in the work of enacting the Constitution, and because the conventional history has also failed to consider the relation between the formulation process of the Meiji Constitution and the problems that arose in the actual application of the Meiji Constitution.

He then explained that based on such materials as ITO Hirobumi's *Commentaries on the Constitution of the Empire of Japan* and MINOBE Tatsukichi's *Kenpo Kowa* (Lectures on the Constitution), there were highly diverse interpretations of the Meiji Constitution ranging from those based on the doctrine of the divinity of the Empire to liberal interpretations, and that the reasons for this concern the process of drafting the Meiji Constitution whereby the April 1881 Personal Proposals for a Constitution prepared by FUKUZAWA Yukichi and other members of Kojunsha, which adopted a British-style parliamentary cabinet system, was revised to make it more conservative by INOUE Kowashi in July of that year, and the Meiji Constitution was then drafted based on the Fundamentals of the Constitution announced by IWAKURA Tomomi.

He also explained that from 1890 when the Meiji Constitution came into effect, while the Liberal Party of ITAGAKI Taisuke held the majority in the Diet there was no concept at that time that the majority party should control the government, so even though IWAKURA Tomomi's Fundamentals of the Constitution based on the liberal Kojunsha's Personal Proposals for a Constitution was already prepared in 1881 it took over 33 years until the parliamentary cabinet system idea was revived and realized under the Taisho Democracy, specifically until the establishment of the 2nd Okuma Cabinet in 1914.

He expressed the opinion that this is why the liberal forces lost the temporal leeway to revise the constitutional interpretation of the independence of the supreme command, which was considered as an exceptional provision under the Meiji Constitution, and restrain the military.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant.

As chairperson of the subcommittee I will summarize the opinions expressed as follows. To begin with, as points that we need to reconfirm, first for the Constitution to be supreme law there is great political responsibility in how we go about interpreting and applying the Constitution. Second, we need to examine the formulation process of the Constitution and its actual application in light of the regrets over the approach to the guarantee of human rights and structure and administration of government organs under the Meiji Constitution system.

Then, as points that we should newly recognize, we should not consider the formulation process of the Meiji Constitution in the traditional terms of the Freedom and People's Rights Movement against the pro-establishment camp. It is necessary to adopt a perspective that integrates the two sides. Furthermore, we must develop a new awareness of why the Meiji Constitution established the Emperor as the head of state. That is, the intent was not so much to endow the Emperor with vast powers but to apply restrictions on that power.

Finally, in relation with future research on the formulation process and actual application of the Constitution, it must be asked why Japan walked the path of war although the Meiji Constitution was amenable to liberal interpretations and application. This leads to the realization that politics plays an important role in the interpretation of various constitutional matters. Moreover, as we reflect on the guarantee of human rights and the structure of government and its management under the Meiji Constitution, we are led to reaffirm the need to examine the formulation process of the Constitution of Japan and the reality of its application.

**156th Diet Session, Ninth Meeting, Research Commission on the Constitution  
(July 24, 2003; YASUOKA Okiharu, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Constitution as Supreme Law, with a summary of its findings.

The subcommittee met on July 3, called upon HANABUSA Masamichi, Advisor to the Chairman, Kajima Corporation, as an informant, and listened to his opinions regarding the Preamble to the Constitution.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

First, Mr. HANABUSA Masamichi expressed opinions that the present Preamble to the Constitution realized great achievements in firmly rooting the concept of popular sovereignty in postwar Japan and establishing various democratic systems, but that because the Preamble is stateless and like political distilled water it is now believed to be drawing forth an identity crisis, and therefore incorporating Japanese values and new ideals into the Preamble would be highly significant.

He then expressed opinions that we should gain experience in revising the Constitution by our own hand to give the Constitution legitimacy and in so doing it would be ideal to begin with a Preamble that everyone can easily discuss; and that if it is decided to revise the Preamble, I hope that the public will be involved to the maximum extent in the drafting process.

He then enumerated the following roles that the new Preamble should fulfill, and explained a draft proposal for a new Preamble that would incorporate them.

- Setting forth a vision for the nation based on Japanese traditions and culture
- Charting Japan's future course
- Energizing the nation to break out of the present impasse
- Clearly showing the coordinate axes of Japan's position in the world
- Declaring Japan's all-embracing and universal ideals

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant [and held free discussions among themselves], with lively exchanges of views among the members and the informant.



As chairperson of the subcommittee I will summarize the opinions expressed as follows. First, it was the common understanding of all the parties that the Preamble and the individual articles of the Constitution are inseparably united, and that the Constitution should be interpreted by treating them as an integral whole.

Second, with regard to the ideals contained in the existing Preamble, there was a nearly unanimous appreciation of the fact that they led to the establishment of the concepts of popular sovereignty and democracy in Japan, but it seems that there is still a gap between the parties with regard to the ideal of pacifism. In passing, I would like to note that at the meeting of the Subcommittee on Security and International Cooperation which took place on the afternoon of the same day Liberal Democratic Party Member KONDO Motohiko proposed presenting an approach of human security from a humanitarian perspective as a pacifism oriented toward the future.

Third, an issue that remains to be addressed is how to achieve harmony between what is universal, in the form of modern constitutionalism, and what is uniquely Japanese, as represented by the nation's history and culture.

Finally, I was reminded of the need to pay attention to the relationship between the Preamble and the individual articles as we pursue in-depth discussions in our future research on the Constitution, and also of the importance of deciding what kind of message to Japan and the rest of the world should be embodied in the Preamble in the event that it is decided to revise the Constitution in the future.

**159th Diet Session, Second Meeting, Research Commission on the Constitution  
(February 26, 2004; YASUOKA Okiharu, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Constitution as Supreme Law, with a summary of its findings.

The subcommittee met on February 5, called upon YOKOTA Koichi, Professor, Faculty of Law, Ryutsu Keizai University, and Professor Emeritus, Kyushu University, as an informant, and listened to his opinions regarding the Emperor system, and particularly concerning the Imperial Household Law and other laws concerning the Imperial Family.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

Professor YOKOTA Koichi stated that the Emperor system must also be understood in line with the constitutional norm, and traditions which violate the provisions of the Constitution must be rejected. He explained the main points of dispute to date in the interpretation of constitutional norms including the relation between the basic principles of the Constitution and the Emperor-as-symbol system from the standpoint that there must be a sharp distinction between the public and private acts of the Emperor; the Emperor's status and powers, and the bases thereof in terms of constitutional norms; whether or not the Emperor is the head of state; whether or not Japan is a monarchy; and

whether public acts of the Emperor exist or if the Emperor's public and private acts are mixed.

He then said the present Emperor is not a head of state, has no government functions, but does conduct high-level political functions, but nevertheless the trends in recent years toward treating the Emperor and Imperial Family as celebrities and the steps taken to change or abolish traditions, thereby diminishing the bases for the Emperor's authority, are leading to a weakening of the Emperor's ability to unify the people.

He then expressed opinions that an Empress could be recognized by revising the Imperial Household Law, which is subordinate to the Constitution, in line with the Constitution's norms, but in view of the continuing existence of sexism, recognizing female succession might lead to a further weakening of the capacity to unify the people that is vested in the throne.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant.

As chairperson of the subcommittee I will summarize the opinions expressed as follows. First, there seems to be a consensus among all parties that among the provisions regarding the Emperor-as-symbol system Article 2, which stipulates that the Imperial throne shall be dynastic, is an exceptional provision that is permitted by the Constitution itself, which is positioned as an orthodox document within modern constitutionalism. However, I felt there was still a difference of opinion as to whether this provision should be read as an embodiment of Japanese history and tradition, or whether the principle of gender equality set forth in Article 14 should be applied.

As for how to work toward reconciling modern constitutionalism with Japanese history and traditions, as made clear by the research so far, this has been an issue ever since the enactment of the Meiji Constitution.

The meeting gave me a renewed awareness that finding a solution to this problem will continue to be a major challenge, not just in the matter of succession to the throne, but in formulating a vision for the nation.

**159th Diet Session, Third Meeting, Research Commission on the Constitution  
(March 18, 2004; YASUOKA Okiharu, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Constitution as Supreme Law, with a summary of its findings.

The subcommittee met on March 4, called upon IGUCHI Shusaku, Associate Professor, Faculty of Human Environment, Osaka Sangyo University, as an informant, and listened to his opinions regarding systems of direct democracy.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and

I will now give a brief summary.

Professor IGUCHI Shusaku stated that direct democracy systems include pure direct democracy and quasi-direct democracy and the latter is usually what becomes problematic; that while referendums have enjoyed an international popularity that is sometimes referred to as a boom, this needs to be viewed as a relative increase given such factors as its regional bias; and that what is increasing is the number of countries where bottom-up referendums which are held by popular demand are becoming institutionalized; and then explained the various types of referendums.

He expressed opinions that as for the introduction of a direct democracy system into Japan, there is no leeway to adopt a constitutional principle into the present Constitution with the characteristic of excluding the direct democracy system, and that the difficulties involved in direct democracy have been overcome to a considerable extent. He said that if a direct democracy system is introduced, in relation with constitutionalism there is a danger that minorities may not be protected given the current conditions whereby the constitutionality review system is not functioning sufficiently; that as for how democracy relates to political parties, there is a risk that holding referendums might, depending on their outcomes, make it less meaningful to choose a government based on the parties' policy manifestoes; but that in relation with deliberative democracy, referendums encourage public debate.

Additionally, he stated that under the existing Constitution, it would be possible to make better use of local referendums to introduce advisory national referendums and to give the public the right to introduce bills under certain conditions. He said that direct democracy is a means of concretely realizing popular sovereignty and strengthening democracy, but that it is only one means of doing this, albeit an important one. He also stated that while there is no reason to avoid discussing the introduction of direct democracy, we should not count on it to solve all our problems; that it is necessary to create a Diet, political parties and a judiciary that are equal to the demands of direct democracy and to do this will mean realizing the ideals of the Constitution of Japan.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. First, I think there was consensus among all the parties that systems of direct democracy are systems in which the sovereign people express their will directly, and that these systems have functions which complement parliamentary democracy. However, there were both positive and negative views on the introduction of this system, and opinion was also divided over whether this would require a constitutional amendment.

During the free discussions, members addressed the various systems of direct democracy in connection with the declining voter turnout in national elections. We reaffirmed the importance of discussing questions that have a bearing on the essentials of the Constitution, such as the questions concerning what form popular sovereignty and democracy should take, of which this issue is one

example.

**159th Diet Session, Fifth Meeting, Research Commission on the Constitution  
(April 8, 2004; YASUOKA Okiharu, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Constitution as Supreme Law, with a summary of its findings.

The subcommittee met on March 25, requested the attendance of the Supreme Court officials, and called upon SASADA Eiji, Professor, School of Law, Hokkaido University, as an informant, and listened to the explanations of the Supreme Court officials and the opinions of the informant regarding constitutional guarantees, particularly on the constitutionality trial system and the role of the Supreme Court.

Details of the statements of opinions by the informants can be found in the subcommittee minutes, and I will now give a brief summary.

The Supreme Court officials first explained the Supreme Court's system for hearing cases, noting that each Supreme Court justice is involved with about 2,000 cases per year so the justices are unquestionably very busy, but added that the rearrangement of the appeals system under the 1998 revision to the Code of Civil Procedure is contributing to a reduction in the burden placed on Supreme Court justices. The officials also expressed opinions that while the Supreme Court is busy, that does not mean the court is unable to render proper judgments on constitutional issues, given the grave importance of such issues.

The officials then presented explanations on the appointment of Supreme Court justices, the personnel and physical resources of the courts, and the guarantees of the independence of judges. The officials explained that comparing Japan's judicial budget with those in other nations is not always an effective approach given the great differences in systems and other factors, and that rather it is essential to examine the functions of the judicial system by analyzing and examining whether the requirements of the law are being met with regard to individual items. The authorities said the claim that merely 20% of disputes in Japan are settled by the courts is a theory with very little empirical evidence, so it is inappropriate to get too fixed to this idea. Nevertheless, the officials said efforts must be made to reinforce and improve Japan's judicial system so it can be utilized more easily and relied upon by Japanese citizens, and that such improvements constitute a major idea supporting the present judicial system reform efforts. From that standpoint, they said, reforms must be realized that are truly for the benefit of the people.

Next, Professor SASADA Eiji stated as his present understanding of the Supreme Court that the court has a large load of final appeal cases, that few cases are referred to the Grand Bench, that to date the court has ruled a statute unconstitutional only six times in five types of cases, that the court sometimes attempts to resolve cases at the level of the relevant laws without bringing the provisions of the Constitution to the fore, and that as for the guarantee of the right to trial which forms a

premise of constitutionality trials, the level of case law theory has remained at a standstill since 1960. He then said that the qualifications for appointment to the Supreme Court in Japan are unusual from the standpoint of comparison with legal systems of other countries and are also a reason why the constitutionality review system has not been actively implemented. He expressed his approval of the limitations on Supreme Court final appeals, arguments for establishing a constitutional court, the Canadian advisory opinion system and diverse other attempts to vitalize constitutionality review, and explained the unique structural reform proposal that would separate the Supreme Court's functions into a court of final appeal and a court of constitutionality review.

Also, regarding the stagnation of the constitutionality review system, he expressed opinions that efforts must be made to reform the Supreme Court via legislation, and that assuming a substantial reduction of the Supreme Court's caseload via organizational reforms, multipronged plans should be developed including the creation of an advisory council on appointments of Supreme Court justices and reform of the system of popular electoral review of Supreme Court justices.

Based upon these explanations by the Supreme Court authorities and opinions expressed by the informant, subcommittee members posed questions to the authorities and informant and held free discussions among themselves, with lively exchanges of views among the members, the Supreme Court authorities and the informant.

As chairperson of the subcommittee I will summarize the opinions expressed as follows. First, I think there was consensus among all parties that constitutionality review is considered the most effective way of guaranteeing the Constitution. To increase the level of constitutional review activity, it is essential to ensure that the judiciary functions soundly. However, it seems further debate is needed to decide how to reform the judicial system, especially on whether to establish a constitutional court.

During the free discussions, opinions were expressed that the establishment of quasi-judicial bodies such as an ombudsman's office should be considered to enhance the guarantee of human rights. Henceforth, based on these kinds of opinions, I felt we need to conduct additional deliberations on further enhancing the guarantee of human rights.

**159th Diet Session, Seventh Meeting, Research Commission on the Constitution  
(June 3, 2004; YASUOKA Okiharu, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Constitution as Supreme Law, with a summary of its findings.

The subcommittee met on April 22, called upon SAITO Masaaki, Associate Professor, School of Economics, Hokusei Gakuen University, as an informant, and listened to his opinions regarding the Constitution and international law, particularly regarding international guarantees of human rights.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and

I will now give a brief summary.

Professor SAITO Masaaki first presented a general theory explanation of the relationship between the Constitution and international law, including comments that in recent years the mainstream view has been that analysis should be focused intensively on such areas as the constitutional provisions of individual nations and the actual practice of their state institutions. He said that to date the contradictions between the Constitution and treaties, and cases where they conflict have been important points of debate, but that the Constitution and international human rights treaties have the common goal of guaranteeing human rights, so absolute contradictions and conflicts between the two are not all that common. He said it is consistent to interpret the precedence accorded to treaties over domestic law as the result of an attempt to harmonize internationalism of the Constitution of Japan with other constitutional principles while treating the former as a keynote.

Next, he noted that while domestic implementation by domestic courts is important to realize the contents of international human rights treaties, at present the Japanese courts cannot be said to be taking an active stance toward utilizing international human rights treaties. Then, he expressed opinions that in the domestic implementation of international human rights treaties, combination and reconciliation of the content of the international human rights treaties with the system of constitutionality review, which are implemented under the framework of constitutionality review systems, must be considered, and incorporation of international human rights treaties into standards for Constitutional interpretation, such as making constitutional interpretation in accordance to such treaties, is necessary. In addition, approval to make appeals to the Supreme Court in the case of violations of international human rights treaties is required.

Also, regarding the recent issue of the opinions and views of the UN Human Rights Committee established under the International Covenant on Civil and Political Rights, concerning the relation between those opinions and domestic courts, he said that having domestic courts give the greatest possible consideration to applicable opinions meets the demands of Article 98 Paragraph 2 of the Constitution, which stipulates the faithful observance of treaties concluded by Japan.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. First, I think there was consensus among all parties that incorporating international human rights treaties into the Constitution is an effective way to give more substance to the constitutional guarantee of human rights. However, opinions diverged as to whether Japan's ratification of international human rights treaties and its domestic application are satisfactory at present.

Members also discussed whether or not Diet approval procedures are required for treaties, whether the Cabinet should continue to maintain the authority to withhold assent on treaty content, and other issues concerning the relations between treaties and the legislature and between treaties and the administration, as well as whether or not domestic courts can directly apply treaties and other issues

concerning the relations between treaties and the judiciary.

Through these discussions, I recognized that in thinking about the ideal relationship between the Constitution and international law, in order to realize the Constitution's stance of respect for international law more concretely, there is a need to study how each branch of government should engage with international law, comprehensively and from a broad perspective encompassing all three branches.

## **B. Reports of the Subcommittee on Security and International Cooperation**

### **156th Diet Session, Second Meeting, Research Commission on the Constitution (February 27, 2003; NAKAGAWA Shoichi, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Security and International Cooperation, with a summary of its findings.

The subcommittee met on February 6 to hear the opinions of MORIMOTO Satoshi, Professor of the Faculty of International Development, Takushoku University, and IGARASHI Takayoshi, Professor of the Faculty of Law, Hosei University, concerning emergencies and the Constitution, with special reference to responses to terrorism.

Details of the statements of opinion by the informants can be found in the subcommittee minutes, and I will now give a brief summary.

Professor MORIMOTO Satoshi expressed the following views.

Terrorist activities have become increasingly complex and extreme in recent years, and cannot be dismissed as a something that does not concern Japan. To preserve national sovereignty and to protect the life and property of the people, each national agency must be operated in a comprehensive and organically coordinated manner under a unified policy. To this end, it is important to develop domestic legislation, establish national and social systems, and foster public awareness.

Regarding the development of domestic legislation, he stated the following.

First, basic principles concerning rights and obligations during states of emergency should be clearly stipulated in the Constitution.

Second, to facilitate comprehensive responses to states of emergency, for the time being a basic law on security should be enacted. An emergencies law stipulating Japan's responses to armed attack by foreign countries and an emergency circumstances response law stipulating the response to terrorism, natural disasters and other emergencies should be enacted as subsidiary legislation under the basic law.

Third, Japan should no longer follow its past stance of reacting to terrorism based on self-defense,

but should rather adopt a strategy of deterring terrorism by upgrading its states of emergency legislation.

Professor IGARASHI Takayoshi expressed the following views.

States of emergency occurring in urban areas, which are dependent societies, could result in colossal damage. We must face this prospect head on when considering emergency situations. While centralization of authority is important for responding to emergencies, subsequent checks should also be emphasized. Japan should consider the U.S. Federal Emergency Management Agency (FEMA) as a reference for designing a national emergency response organ. Japan should establish an emergency management system using as reference the German Basic Law in which authority is centralized in the German prime minister, but who is in turn subject to rigorous checks by the Federal Assembly.

In emergency situations, military activities should be kept to a minimum, and Japan should do everything in its power prevent emergencies via active engagement in the United Nations security system and through its own diplomatic efforts.

Japan should enact a comprehensive emergency management law. Furthermore, to facilitate a comprehensive approach to emergency management, Japan should establish an emergency management agency formed from related ministries and agencies.

The statements made by the two informants were followed by questions to the informants and free discussion among the members.

To summarize, the members of the subcommittee came to share a common perception of the need to implement some forms of measures, including preventive measures, to correspond to various types of emergency situations. However, views varied on the specific measures to be taken. Some emphasized the need to enact national emergency legislation, while others expressed the view that efforts should be made to avoid emergencies in line with the spirit of the Preamble and Article 9 of the Constitution.

Widely varied views were expressed concerning what form antiterrorism measures should take in an international framework, including the pros and cons of deterrence and Japan's participation in cooperative undertakings.

The international situation has changed dramatically as terrorist activities have become more extreme and international in character. This turn of events demands an active response. Moreover, it is the responsibility of the political system to act to protect the life and property of the people. Taking these requirements into consideration, I felt the need to act quickly on consensus building on this and related matters by continuing to engage in discussions from a comprehensive viewpoint.

The next subject of this subcommittee's discussion will be emergencies and the Constitution, with special reference to natural disaster response. I believe it will be necessary for us to further deepen our discussions of Japan's security and international cooperation, while taking into account the results of our past and forthcoming research.



**156th Diet Session, Fifth Meeting, Research Commission on the Constitution  
(March 27, 2003; NAKAGAWA Shoichi, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Security and International Cooperation, with a summary of its findings.

The subcommittee met on March 6 to hear the opinions of OGAWA Kazuhisa, international politics and military analyst, concerning emergencies and the Constitution, with special reference to responses to natural disasters.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

Mr. OGAWA Kazuhisa expressed the following opinions.

There is a tendency in Japan for legislation to be enacted for the sake of enactment. In order to raise the standards of the legal system, constant efforts must be made to revise existing laws. The same applies to the Constitution. It is necessary to rectify the state of unconstitutionality, while also raising the level of perfection of the Constitution.

On the issue of whether Japan has acted in accordance with the principle of pacifism, which implies actively endeavoring to realize world peace, and in the spirit of the Constitution as expressed in the principle of UN-centeredness, which is a means to this goal, he gave the following explanation.

From the perspective of the national right to existence, we must face up to the fact that Japan was unable to assert its presence in the Gulf War. As the linkage between terrorist groups and nations developing weapons of mass destruction poses a threat to Japan's defense, Japan must recognize that it can legitimately respond to this threat based on the right to individual self-defense. Having recognized this, it should then work toward achieving a peaceful solution to the situation.

From the perspective of the people's right to life, systems should be put in place for shelter and guidance of the public in case of military attack. These systems should be developed from the perspective of the response of police, firefighters and local government organizations to such emergencies. He also stated that the failure to develop medical helicopter services for use in traffic accidents represents a state of unconstitutionality.

He then argued that to allow the Constitution to function properly, it is important to begin by resolving such basic problems as disaster prevention, health and medical services, and traffic accidents before moving on to coping with the more complicated problems of foreign relations and security.

The statements made by the two informants were followed by questions to the informants and free discussion among the members.

As chairperson of the subcommittee, I would like to summarize as follows the statements of and

questions posed to the informant in this session and the two informants in the previous session on responses to terrorism, and the discussion that ensued among members of the subcommittee.

The informants argued in favor of including specific provisions on emergencies in the Constitution. The forthright comments made concerning the responsibility of the Diet to develop emergency systems must be taken to heart.

A review of the questions posed to informants and comments made by members indicates that common understandings were reached on the following points. Responses to terrorism and natural disasters share the common objective of protecting the life and property of the people. It is the responsibility of the government to thoroughly examine and prepare responses to such emergencies.

Various opinions were expressed concerning specific responses. Some members advocated the inclusion of explicit provisions in the Constitution concerning the exercise of state power and restrictions on the rights and obligations of the people during a state of emergency, while others were of the view that emergency legislation should be established including laws regarding resident evacuation and acts of U.S. military forces. Others expressed the view that efforts should be concentrated on avoiding emergencies in line with the spirit of the Preamble and Article 9 of the Constitution, while some argued that responses to disasters should be considered from the perspective of the guarantee of the right to life.

It will be necessary to further deepen our discussions of these and other problems related to Japan's security and international cooperation. Once again, I was made acutely aware of the need to act with due speed to develop a viable consensus based on common understandings.

**156th Diet Session, Sixth Meeting, Research Commission on the Constitution  
(April 17, 2003; NAKAGAWA Shoichi, Chairperson)**

The subcommittee met on April 3 to discuss Japan's international cooperation, with special reference to official development assistance (ODA). The session opened with keynote statements delivered by Member NODA Takeshi and Member SUTO Nobuhiko. This was followed by questions posed to the speakers and discussion among members.

Details of the keynote statements can be found in the subcommittee minutes, and I will now give a brief summary.

The main points of Mr. NODA Takeshi's statement were as follows.

Based on the recognition that international cooperation is indispensable to the peace and development of Japan and of the international community, progress must be made on Security Council reform and the effectiveness of conflict resolution systems must be improved to ensure compliance with UN resolutions. Japan should seek a permanent seat on the Security Council, with consideration given to revising the Constitution for Japan's own security and international contribution, and should be actively engaged in the economic and social programs of the United

Nations.

Regarding the future of Japan's ODA, the following were proposed: greater strategic emphasis; incorporating human security and other concepts in ODA programs; revising request-based ODA to allow for greater exercise of initiative by Japan; greater efforts to gain the understanding of the Japanese public; and, improving liaison among concerned organizations.

He suggested that April 28 be proclaimed Recovery of Independence Day to mark Japan's postwar recovery of independence. He stated that it was the responsibility of politicians to stipulate in the Constitution Japan's natural right to defend itself as an independent nation.

The main points of Mr. SUTO Nobuhiko's statement were as follows.

Constitutional grounds for ODA are found in the Preamble, which refers to the security of all people in the global society. When using ODA to respond to new needs in the international community, the values enunciated in the Preamble should be adhered to. Given the dramatic changes that the post-Cold War world is undergoing, international organizations must be transformed and reorganized. Japan's international cooperation needs to be reviewed from the perspective of the following considerations that were not anticipated at the time of the enactment of the Constitution: correlation between national security and economic cooperation; transformation of nation-states and their national boundaries; the global perspective; the concept of human security; the concepts of governance and democracy underlying the response of the international community to poverty and other problems; the role expected of civil society and Article 89 of the Constitution.

In closing, he stated that the main body of the Constitution should contain provisions concerning the ideal for foreign aid, the involvement of the Diet in foreign aid, and value standards for properly balancing national interests and global interests in ODA, including modes of third-party verification.

As chairperson of the subcommittee, I would like to summarize as follows the statements of and questions posed to Members NODA and SUTO, and free discussion that ensued among members of the subcommittee. While centering on ODA, the views expressed covered a broad range of issues pertaining to international cooperation.

Regarding ODA, a variety of positions were taken on the question of whether new provisions should be added to the Constitution to serve as grounds for the implementation of ODA. Japan's current ODA programs are subject to various forms of criticism on the following points. Has Japanese ODA been implemented in a manner that conforms to certain universal values while at the same time satisfying Japan's national interests? Has the public lost faith in ODA programs because of a lack of transparency and absence of ideals? Is enough aid being provided toward humanitarian needs? While keeping these points in mind, I believe a common understanding did emerge among subcommittee members on the need to implement ODA with a multifaceted approach that conforms to real needs.

On the subject of international cooperation in general, many views were expressed on the ideal state of the United Nations and the form Japan's involvement in the United Nations should take including views emphasizing the need for the following initiatives. The UN should be strengthened, as it was

rendered dysfunctional in the attack on Iraq; Japan should become a permanent member of the Security Council; the enemy state clause of the UN Charter should be deleted; security systems should be created to complement the United Nation's peacekeeping function; and regional security frameworks should be created.

Needless to say, Japan must continue to contribute to the peace and prosperity of the world through ODA and other forms of international cooperation. On this issue, Mr. NODA stated that Japan must avoid the type of ODA that is seen as an indiscriminate scattering of money, which is founded on the conceit of rich nations and accepted by recipient countries as their rightful due. Instead, Japan should consider its own national interests in designing its ODA programs. I felt that this comment must be earnestly taken into consideration.

It is impossible to separate the issue of Japan's international cooperation from such questions as the role of the United Nations and Japan's national security. With these points in mind, we look forward to further deepening our discussions of Japan's security and international cooperation from a comprehensive perspective.

**156th Diet Session, Seventh Meeting, Research Commission on the Constitution  
(May 29, 2003; NAKAGAWA Shoichi, Chairperson)**

The subcommittee met on May 29 to hear the views of SUGANAMI Shigeru, President of AMDA International (Association of Medical Doctors of Asia), and SATO Yukio, President of the Japan Institute of International Affairs, concerning international organizations and the Constitution in the area of security and international cooperation.

Details of the statements by the informants can be found in the subcommittee minutes, and I will now give a brief summary.

Dr. SUGANAMI Shigeru expressed the following opinions.

NGOs working for peace on their own judgment and at their own risk may be considered pacifists. Cooperative internationalism implies avoiding war, providing financial assistance and conveying a message. To go all the way with this approach, it is absolutely necessary to form partnerships with "people of the Book" based on the trust that comes from maintaining a consistency between our words and our actions. We are in an era where we must secure the public interest via linkages between government organizations which act based on the positive list and NGOs which act based on the negative list.

Based on this recognition, he stated that Japan must promote partnership between government agencies and NGOs, and pursue diplomatic initiatives aimed at achieving human security through citizen participation in humanitarian aid. By creating systems that correspond to the needs of a rapidly changing age, Japan will be able to launch initiatives in a wide range of societies. Terrorism conveys its message through murder. Any response to terrorism absolutely requires that we carefully

analyze that message.

Mr. SATO Yukio expressed the following opinions.

There is a serious gap between reality of the United Nations and the image that is commonly held in Japan. The Security Council is controlled by the victors of World War II, and the UN is an organization that remains incomplete. Predicating his statement on these points, he proceeded to explain the current situation of the Secretary-General, the General Assembly, the Economic and Social Council, and the Security Council. He went on to comment on Japan's involvement in these bodies.

Against this backdrop, he argued that Japan should emphasize the importance of the UN and work toward its reform. Regardless of whether it joins the Security Council, Japan should take a leadership position in realizing the following Security Council reforms aimed at improving the function of the UN: increase membership in the Security Council; select new permanent members of the Security Council; and, review the right of veto.

He also recommended that the Research Commission on the Constitution dispatch a study mission to the UN to investigate its actual situation.

The informants' statements were followed by questions to the informants and free discussion among members. These can be summarized as follows.

A general consensus emerged among the members of the subcommittee on the following points. The contributions of the UN and NGOs in the area of international cooperation can be appreciated. But the situation is more nebulous in the area of security, including countermeasures to terrorism. The Iraq problem has revealed an aspect of the UN as a forum where national interests collide. In light of this development, the state of the UN is being brought into question.

On the other hand, a variety of views were expressed on the following questions. How can the security functions of the United Nations be improved and how should Japan involve itself in this process of reform? What status should NGOs be given in the Japanese social system?

Given the North Korean situation and the general international conditions affecting Japan, countermeasures against terrorism must be developed as quickly as possible. NGOs can be expected to play increasingly important roles. In light of these matters, we felt the urgent need to build consensus on issues in the Constitution pertaining to these concerns.

We believe it is necessary to further deepen our discussions of these and other problems related to Japan's security and international cooperation.

**156th Diet Session, Ninth Meeting, Research Commission on the Constitution  
(July 24, 2003; NAKAGAWA Shoichi, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on

Security and International Cooperation, with a summary of its findings.

The subcommittee met on July 3 to hear and discuss keynote statements delivered by Member KONDO Motohiko and Member FUJII Hirohisa on Article 9, with special reference to constitutional problems related to the overseas dispatch of Self-Defense Forces.

The keynote statements are briefly summarized here.

The main points of the keynote statement delivered by Mr. KONDO Motohiko are the following.

He proposed certain concrete revisions to Article 9 as follows. In response to changes in the international situation, Japan should consolidate its defense system and promote international contributions. For this purpose, revision of the Constitution should be considered. First of all, the renunciation of wars of aggression, enunciated in Paragraph 1 of Article 9, should be firmly upheld. The position should be taken that peace and security may require the use of force. Having done that, Japan should promote human security from a humanitarian perspective as a principle focused on ensuring the security of each individual. Japan should present this as a tenacious and future-oriented vision of pacifism, and adopt an active stance toward international cooperation and contribution. Secondly, Paragraph 2 of Article 9 should be deleted. In its place, the rights of individual and collective self-defense should be explicitly established, and the existence of the Self-Defense Forces should be acknowledged. Thirdly, new provisions should be added to Article 9 to establish Japan's response to emergency situations, such as military attack and large-scale natural disasters.

He closed by stating that in-depth debate should be pursued toward enacting a Constitution suited to the 21st century that functions for the people, and that a national referendum law for constitutional amendment should be enacted.

The main points of the keynote statements delivered by Mr. FUJII Hirohisa are the following.

The fundamental approach to securing peace for the nation should be explicitly contained in the Constitution, or at least presented to the public in the form of a basic law on security. It will be necessary to gain the trust of the international community, especially Japan's neighboring countries, on this matter. Against this backdrop, he advocated the inclusion of the following matters in the Constitution. First of all, the Constitution should state that the Japan has the right to self-defense, which comprises the indivisible rights of individual and collective self-defense, and that this right will be exercised with due restraint. The Constitution should also contain explicit provisions establishing the prime minister's command and control over the Self-Defense Forces. The importance of the Japan-U.S. joint defense structure should be emphasized, but predicated on due restraint in the exercise of the right to self-defense. Finally, the Constitution should contain provisions concerning Japan's active participation in peacekeeping operations and other UN peace activities, which provide the foundation on which the peace and security of Japan and the international community are based.

The two keynote statements were followed by questions, comments and free discussion by subcommittee members, which are summarized here.

At the start, Chairman NAKAYAMA noted that it was extremely significant that issues pertaining to Article 9 had been discussed above party lines in a very calm manner.

The discussions indicated that a common understanding existed among subcommittee members to the effect that the principle of the renunciation of wars of aggression contained in Paragraph 1 of Article 9 should be firmly upheld. However, differences in opinion persisted on the following questions. Should the Preamble's principle of pacifism and the provisions of Paragraph 2 of Article 9 stipulating the non-maintenance of war potential and the denial of the right of belligerency be maintained as indicators of the direction that Japan should take in its security and international cooperation in the 21st century? Or, given the changes in domestic and international conditions, should the nation's defense system be developed to protect the life and property of the people, which is the most important responsibility that politicians have toward the people, and should new ideals be developed concerning international cooperation? It appears that the focus of our debate is being narrowed down in the direction of these questions.

We believe it is necessary to further deepen our discussions on the form Japan's security and international cooperation should take. At the same time, in light of the dramatic changes that are occurring in the international situation, we are aware of the need to act with due speed to reach consensus on the constitutional issues pertaining to these problems.

**159th Diet Session, Second Meeting, Research Commission on the Constitution  
(February 26, 2004; KONDO Motohiko, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Security and International Cooperation, with a summary of its findings.

The subcommittee met on February 5. The session opened with keynote statements delivered by Member NAKATANI Gen and Member MATSUMOTO Takeshi concerning Article 9 of the Constitution, with special reference to the deployment of the Self-Defense Forces to Iraq, collective security, and the right of collective self-defense.

This report presents a summary of the two keynote statements, details of which are recorded in the minutes of the subcommittee.

The main points of Mr. NAKATANI Gen's statement were as follows.

Due to the changes that have occurred in the international situation, Article 9, which played an important role in the postwar period, has become dissociated from contemporary realities. As a result, the Constitution has come to be disregarded and reduced to a mere formality. Dispatching the Self-Defense Forces overseas under the provisions of Article 9 makes it very difficult for them to defend themselves. Furthermore, the present Constitution restricts the Self-Defense Forces from engaging in the following activities: the escort of foreign forces; the use of arms in the execution of duties; responding to attacks on U.S. forces in the areas surrounding Japan; participation in UN

forces; and, participation in Asian security organizations. Even if Japan were to conclude a defense treaty with the Republic of Korea, it would inevitably be unilateral in nature. Therefore, the Constitution should be revised so that Japan's security environment can be improved. Japan should obtain a permanent seat on the Security Council and should take the initiative in the United Nations. Japan should participate and cooperate in all aspects of the United Nation's security policies, which have become increasingly complex. He concluded with the following statements. The new constitution should include explicit provisions concerning the right of self-defense, the role of the Self-Defense Forces, and authority pertaining to international contributions. Article 9 should be centered on the principles of pacifism and UN-centeredness.

The main points of Mr. MATSUMOTO Takeshi's statement were as follows.

The political system must respond to the needs of the times, but not by leaping over legal strictures. From the perspective of the rule of law, new legislation must be enacted when needed. Regarding the war in Iraq, its justification needs to be verified: did just cause exist for the attack under international law; and, can the exercise of the right of self-defense through preemptive attack be justified? Regarding the dispatch of Self-Defense Forces to Iraq, He stated that the government's avoidance of constitutional debate in formulating the Special Measures Law for Iraq was not a reasonable approach.

Regarding the United Nations, Japan should choose the course of trying to approach the ideals of the UN while squarely facing the reality of the present situation. He stated that there were three possible options for allowing Japan to engage in a wide range of collective security activities, such as participation in UN forces, multinational forces, or other peacekeeping operations. These options are: adopt an interpretation of the Constitution that places collective security operations outside the scope of Article 9; enact a basic law on security; and, revise the Constitution. Regarding the right of collective self-defense, the ideal form of the Japan-U.S. Security Treaty and its future review should be considered. If the establishment of security networks in the Pacific and East Asia is to be considered, it should be understood that Japan's inability to participate in the exercise of collective self-defense could hamper its diplomatic efforts. Finally, the right of collective self-defense is an inherent right of sovereign nations, and the theoretical foundations of the government's interpretations on this matter need to be verified.

The keynote statements were followed by questions, comments and free discussion among subcommittee members.

As chairperson of the subcommittee, I would like to summarize the comments that were made. Since last year, the Research Commission on the Constitution has been discussing Article 9, and general consensus exists on the need to firmly uphold the principle of the renunciation of wars of aggression, enunciated in Paragraph 1. However, differences of opinion persist on whether the Preamble's principle of pacifism and the ideals of Paragraph 2 of Article 9 stipulating the non-maintenance of war potential and the denial of the right of belligerency be maintained, or whether new principles should be established concerning international cooperation. The same differences in opinion



surfaced in this research session of the subcommittee on the right of collective self-defense, collective security, and the dispatch of Self-Defense Forces to Iraq.

Opinions were voiced to the effect that Japan should be able to exercise the right of collective self-defense, both for the purpose of defending Japan and for developing security networks in Asia. Some countered that Japan did not have the right of collective self-defense under Article 9. Among those advocating collective self-defense, a variety of opinions were heard regarding whether this right should be secured through the inclusion of explicit provisions in the Constitution, whether it is worth considering making changes in constitutional interpretation to secure the right, and the degree to which the exercise of this right should be allowed.

The following opinions were expressed regarding collective security under the UN. The Constitution should be revised or other frameworks developed to allow Japan to participate in a wide range of such activities, or the principle of international cooperation expressed in the Preamble allows Japan to participate in such activities. On the other hand, some advocated that Japan should strictly restrict itself to the realization of pacifism and UN-centeredness based on the provisions of Article 9.

Regarding the dispatch of Self-Defense Forces to Iraq, some argued that this action was based on a UN resolution and did not violate Article 9. Others argued that the action should be rescinded because it violated both Article 9 and international law, and that the reconstruction of Iraq should be implemented within the framework of the United Nations. Views were also expressed on the need to review the current criteria for weapons use from the perspective of ensuring the security of the Self-Defense Forces.

I believe the points of contention regarding Article 9 have gradually emerged in the course of our ongoing discussions. It is necessary to further deepen our discussions of these and other problems related to Japan's security and international cooperation, and to act with due speed to arrive at a consensus on the constitutional problems related to these points of contention.

**159th Diet Session, Third Meeting, Research Commission on the Constitution  
(March 18, 2004; KONDO Motohiko, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Security and International Cooperation, with a summary of its findings.

The subcommittee met on March 4 to hear from informant Ambassador Bernhard ZEPTER, Head of Delegation of the European Commission in Japan, regarding integration of nation-states, accession to international organizations, and the accompanying transfer of sovereign powers, with special reference to the European Constitution, the constitutions of EU member states, and an "EU force."

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

Ambassador Bernhard ZEPTER provided the following explanations. European integration was

prompted by the will to prevent the recurrence of war among the countries of Europe, and has brought both peace and economic prosperity to Europe. The EU is a hybrid between a nation-state and an international organization, pooling parts of national sovereignty in some fields while simply carrying on intergovernmental cooperation in others. The EU has no pre-ordained blueprint that defines its future developmental path and goals. The EU has developed through a “bottom up” process built on the common interest of member states in certain policy areas.

The driving forces in EU integration are cooperation, competition, and solidarity. EU legislation may be characterized as follows. EU laws have precedence over the domestic laws of member states. Steps are taken to ensure that legislative decisions are made as closely as possible to the level of the citizen. The EU allocates large amounts of financial assistance to reduce intra-regional economic disparity. While efforts have been made to act in common on foreign policy issues, this has not been successfully realized.

Integration and enlargement of the European Union required a process of constitutional adaptation on the part of member states. This was made possible by a political, social and cultural context that accepted the partial transfer of national sovereignty. The draft EU Constitution currently under consideration will strengthen the EU’s democratic legitimacy, will draw attention to the need for a European identity, and will provide a more transparent and comprehensive legal structure.

In conclusion, he stated that the European experience could not directly serve as a model for other parts of the world, but it did offer an important reference concerning the methods and procedures for integration.

The informant’s statement was followed by questions and free discussion among subcommittee members.

As chairperson of the subcommittee, I would like to summarize the views expressed in the discussion as follows. Asian regional security was discussed in comparison to the European case. Support was expressed for the creation of a regional security system for Asia, with the proviso that this required the development of a common basis for security and the promotion of trust in the economic field. Views were also expressed on the need to clarify our thinking on how regional security is related to collective security and the right of collective self-defense. On the other hand, views were expressed emphasizing the need for security dialogue in Northeast Asia based on the principle of pacifism, and pointing out that the North Atlantic Treaty Organization (NATO), which affirms the right of collective self-defense, was a product of the Cold War.

As was explained by the informant, the European experience is closely linked to the region’s history, geography and cultural foundations, and therefore cannot directly serve as a model for other parts of the world. However, there is much to be learned from the EU method of building regional political stability and working on challenges that countries acting alone cannot efficiently cope with. This approach can be applied to wide range of problems, which not only include security, and response to terrorism and international crime but also challenges in such areas as energy and the environment.

**159th Diet Session, Fifth Meeting, Research Commission on the Constitution  
(April 8, 2004; KONDO Motohiko, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Security and International Cooperation, with a summary of its findings.

The subcommittee met on March 25 to hear the opinions of KOBARI Tsukasa, Professor of the Faculty of Policy Studies, Iwate Prefectural University, and MATSUURA Kazuo, Associate Professor of the National Defense Academy, regarding states of emergency and the Constitution, including legislation to protect human rights.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

The main points of Professor KOBARI Tsukasa's statement were as follows.

The present Constitution is modest and very restrained in its provisions for national emergencies. The relation between emergency powers and a nation's constitution may be categorized as follows. Emergency powers may be established to (1) suspend the legal force of the constitution; (2) suspend the legal force of certain articles of the constitution; (3) modify the legal force of certain articles of the constitution in accordance with emergency powers stipulated in the constitution, while avoiding the suspension of those articles. Finally, (4) a nation may find it necessary to address states of emergency in the absence of any relevant constitutional provisions. The present Constitution places Japan in the fourth category. The only legal grounds that can be found in the Constitution for restricting human and civil rights in an emergency pertains to provisions concerning "welfare of the public."

Another matter that must be kept in mind when designing legislation to govern states of emergency is that the guarantee of human rights has become very diverse and complex in contemporary society. Given the individualistic worldview underlying the present Constitution, the state can only derive its legitimacy of control over individuals from its protection of the life, limb and property of the individual.

In closing, he stated the following. Instead of placing the national government at the top of our vision of national defense, followed by local government organizations and then finally the people, the priority should be reversed to place the people at the top, followed by local government organizations and finally the national government. Any new legislation on emergency response will only prove its worth in an actual emergency when the need arises to protect the life, limb and property of the people and to ensure the security of the nation. For this reason, explicit provisions for responding to states of emergency should be set forth in the Constitution.

The main points of Professor MATSUURA Kazuo's statement were as follows.

He outlined the legislation to protect the people in European countries and explained that civil

defense combines military defense and peacetime disaster relief in many countries.

In the case of Germany, the Basic Law (constitution) treats military defense and civil protection as an inseparable unit. Germany's emergency response laws are thus based on the concept of comprehensive defense consisting of military defense and non-military defense, which includes civil protection.

Germany's Law for the Reorganization of Civil Protection is founded on the principle of self-protection, with public agencies playing a complementary role. Volunteer organizations are accorded an important position throughout the emergency response system. For instance, volunteer disaster relief organizations support the government's disaster relief system and are designed to engage in civil protection in the event of a military emergency. He stated that the German model could serve as a useful model for Japan.

In 2002, a decision was made to establish a Federal Office for Civil Protection and Emergency Response as part of the country's New Strategy for Protecting the Population of Germany. An aviation security bill designed to counter terrorist attacks using commercial aircraft is being deliberated upon in the Bundestag.

The informants' statements were followed by questions and free discussion among subcommittee members.

As chairperson of the subcommittee, I would like to summarize the views expressed in the discussion as follows.

The following opinions were voiced on whether or not to include explicit provisions in the Constitution for states of emergency.

Members in favor presented the following arguments. The proliferation of weapons of mass destruction, terrorism and other developments have brought home the real security threats that Japan is exposed to today, and explicit provisions should be included in the Constitution from the perspective of protecting the life and property of the people. The absence of explicit provisions for states of emergency is inappropriate. Provisions should be added to the Constitution, and laws should be enacted on the basis of those provisions. Provisions regarding states of emergency should be added to the Constitution, and a balance of legal interests should be sought between those provisions and the rights protected under the human rights provisions of the Constitution. When adding provisions for states of emergency to the Constitution, it will be necessary to clarify such matters as the responsibilities of the government and the individual rights to be protected.

Other members argued that the Constitution should not be tampered with, considering Japan's grievous wartime experiences that occurred due to the absence of a Peace Constitution, and emphasized the positive significance of the absence of explicit emergency response provisions in the present Constitution.

Regarding the proposed law for the protection of the people, which was submitted to the current

session of the Diet, both informants stated that the proposed legislation was too restrained compared to the systems in operation in other countries. The following comments were made on this point. The practical effectiveness of the proposed legislation should be examined. The Constitution acts as a brake on measures set forth in the proposed law, and that is where the significance of the Constitution lies. The proposed legislation will force the people to cooperate in the war effort.

Other comments emphasized the need for the Diet to oversee and restrict the Self-Defense Forces, and referred to the relation between the United Nations and Japan's foreign relations and security.

This session of the subcommittee was dedicated to discussions of important constitutional issues pertaining to states of emergency. Our discussions covered the question of whether or not explicit provisions for states of emergency should be included in the Constitution, and the relation between emergency measures and human rights. In light of the responsibility of the government to protect the life and property of the people, I hope that this subcommittee will further deepen its discussions of the ideal form for Japan's security and international cooperation.

**159th Diet Session, Seventh Meeting, Research Commission on the Constitution  
(June 3, 2004; KONDO Motohiko, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Security and International Cooperation, with a summary of its findings.

The subcommittee met on April 22 to hear from KIKUCHI Tsutomu, Professor of the School of International Politics, Economics and Business, Aoyama Gakuin University, on the subject of regional security, including free trade agreement (FTA) issues as seen from a constitutional viewpoint.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

The main points of Professor KIKUCHI Tsutomu's statement were as follows.

In considering regional security in the Asia-Pacific, Japan's emphasis should not rest only on such matters as military strength and cooperation and harmonization with the international community. Beyond that, it is important for Japan to take an integrated approach, which includes economic activities and countermeasures to terrorism and other new threats.

The Asia-Pacific region contains stable and fully modernized countries, countries currently in the process of modernization, and countries with fragile structures of governance. Countries in the latter two categories face problems rooted in the fragility of their structures of governance. They are also plagued by international conflicts, terrorism, economic problems and other new types of challenges. These problems jeopardize the security of the region.

He explained that the following measures could be taken by the countries of the region to address

these challenges: strengthen alliances to create an environment conducive to regional security; expand inter-governmental and joint private and public sector dialogue on regional security; and, undertake joint intervention and engagement in domestic affairs by countries of the region.

Finally, he addressed the question of the impact of free trade agreements on regional security. FTAs have both positive and negative aspects. On the plus side, FTAs can promote regional economic stability and the development of shared cross-border interests. On the minus side, FTAs can give rise to internal political conflict by generating imbalances in the interests of participating countries. Thus, while FTAs can be expected to have some positive impact, it would be wrong to expect too much from them.

The informants' statements were followed by questions and free discussion among subcommittee members.

As chairperson of the subcommittee, I would like to summarize the views expressed in the discussion as follows.

Views concerning the ideal form of regional security were expressed from a variety of angles. Prominent among these were the following comments. When considering a regional security framework for Asia, the question of whether the exercise of the right of collective self-defense should be recognized comprises a crucial issue and whether such recognition should be subject to certain conditions must also be considered. Time should be taken to discuss the actions that Japan can take in the event of a military emergency in Asia. Since the end of the Cold War, emphasis has shifted from bilateral alliances to multilateral cooperative security arrangements. As the Constitution prohibits the use of military means, Japan should concentrate on upgrading its peaceful diplomatic initiatives. The six-party talks on North Korea should be used to promote Asian regional security.

The following views were expressed regarding the form that Japan's foreign relations and security should take. Given that the UN is not fully functional, coordination with the United States is essential; nevertheless, Japan should work actively to ensure that the United Nations functions properly. Japan's ODA must be examined. The heightened Japanese economic presence resulting from the conclusion of FTAs may be seen as a threat by Asian countries. When considering Japan's role in Asia, special thought must be given to the position of China.

The subcommittee has conducted multifaceted research on Japan's security and international cooperation, while taking into consideration the following features of the current global situation: the proliferation of weapons of mass destruction; frequent incidents of international terrorism; recent changes in the international situation, including the problem of North Korea's nuclear weapons; and the dysfunction of the UN in its role of maintaining international peace and security. In the course of its research, the subcommittee has delved deeply into a wide range of issues pertaining to the Preamble and Article 9 of the Constitution, including the following: the exercise of the right of self-defense and the constitutional position of the Self-Defense Forces; the relation between international cooperation and Article 9 and the Preamble; whether or not Japan should participate in UN collective security operations; whether or not to include provisions concerning international

cooperation in the Constitution; and, the relation between the overseas activities of the Self-Defense Forces and the Constitution.

The subcommittee has also conducted research on the relation between emergency situations and the Constitution. Last year, this research was focused on the response to terrorism and natural disasters. This year, this research was continued with civil protection legislation as a sub-theme.

I would like to comment briefly on the subcommittee's latest research on regional security in light of our past discussions. I recognize that it is an urgent task for Japan to ensure its own security with an eye encompassing the entire Asian region, which includes unstable elements. Further, I recognize that military defense is not the only means by which this can be done, and that there is a wide range of initiatives that Japan can take including the strengthening of economic ties and the development of trust through dialogue with the countries of the region.

In relation to the ideal form of Japan's security and international cooperation, I think that it has gradually become clear where the constitutional problems lie with regard to the points of contention in Article 9 and the Preamble. We hope that Research Commission on the Constitution will continue to deepen its discussions on these points.

### **C. Reports of the Subcommittee on Guarantee of Fundamental Human Rights**

#### **156th Diet Session, Second Meeting, Research Commission on the Constitution (February 27, 2003; OIDE Akira, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Guarantee of Fundamental Human Rights, with a summary of its findings.

The subcommittee met on February 13, called upon TORII Yasuhiko, Executive Advisor for Academic Affairs, Keio University and President, The Promotion and Mutual Aid Corporation for Private Schools of Japan, and upon OKAMURA Ryoji, Professor, Waseda University, as informants, and listened to their opinions regarding the right to receive education overall, including the revision of the Fundamental Law of Education.

Details of the statements of opinion by the informants can be found in the subcommittee minutes, and I will now give a brief summary.

Mr. TORII Yasuhiko first noted:

1. The word "*kyoiku*" which is the Japanese translation of "education" does not incorporate the nuance of developing abilities, and the aspect of developing abilities must be emphasized from now on; and
2. The contents of education include character formation, basic knowledge, specialized knowledge, learning, learning techniques, learning assistance, support for growth, and support for life planning, and these can only be realized with education.

Furthermore:

3. He introduced the differences in the right to receive education under the former and present constitutions, and explained the contents of the right to receive education under the present Constitution.

Then:

4. He pointed out that while the basic education laws in the U.K., France and South Korea all stipulate the right to lifelong learning, the laws in Japan have always had a weak recognition of that point, and that they need to emphasize that point in the future.

Professor OKAMURA Ryoji stated that rights are accompanied by duties in the sense that rights are born by acquiring values befitting their essence; presented his understanding that human rights have expanded over time building up from civil liberties to social rights; and expressed the following opinions regarding the right to education:

1. The Fundamental Law of Education was enacted based on the requirements of the Constitution, taking its authority from Article 26;
2. Problems such as those concerning equality of opportunity to receive an education and inequality of results are practical-level issues;
3. If the nature of rights is to be actively demonstrated, Article 26, for example, needs to be reinterpreted as the right to engage in an education; and
4. From the perspective of educational equality, an article stipulating the right to receive equal education is desirable.

He also expressed opinions that what is now needed is to verify the extent to which the ideals of the Fundamental Law of Education are being realized; that we should not take the easy approach to revision of compensating for what is lacking; and that since the Fundamental Law of Education is based on the Constitution, revisions that are completely separated from the Constitution would distort the character of the law and also belittle the spirit of the Constitution.

Based upon the opinions expressed by the informants, subcommittee members posed questions to the informants and held free discussions among themselves, with lively exchanges of views among the members and the informants.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. First regarding Article 26 itself, while some members expressed opinions that its nature as a right should be further reinforced, in general, there was a common consensus among the parties that it is well written.

Then regarding the Fundamental Law of Education, which was enacted more than 50 years ago, it was suggested that there are points on which it fails to provide fully for education in today's increasingly complex society. There was lively debate on such topics as the relationship between the decline in moral standards and education on the human rights of other people. I felt the need for further in-depth discussion in order to resolve various problems relating to education.



**156th Diet Session, Fifth Meeting, Research Commission on the Constitution  
(March 27, 2003; OIDE Akira, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Guarantee of Fundamental Human Rights, with a summary of its findings.

The subcommittee met on March 13, called upon SUGENO Kazuo, Professor, The University of Tokyo, and upon FUJII Ryuko, Member, Cabinet Office Information Disclosure Review Board and former Director-General, Women's Bureau, Ministry of Labour, as informants, and listened to their opinions regarding fundamental labor rights from the viewpoint of reform of the public servant system and gender equality.

Details of the statements of opinion by the informants can be found in the subcommittee minutes, and I will now give a brief summary.

Professor SUGENO Kazuo first explained that in constructing a public servants system it is important to consider the process whereby frameworks that restrict public servants' basic labor rights are established, and he then introduced the two main streams of thought that serve as the theoretical bases for such frameworks.

He explained that the first stream of thought is the American sovereignty theory and based on it the earlier "servants of the whole community" theory and the later decision in the Ministry of Agriculture and Forestry workers' union case, while the second stream of thought is the 1965 ILO Dreyer Report and the decision in the Tokyo Central Post Office case which followed its logic.

He then expressed concern that discussion of many important points of dispute is being put off in the present reform of the public servants system, and that the ILO interim report should be read as a message indicating that ample deliberations on building labor-management relations are needed.

He said that the re-examinations of labor-management relations under the postwar public servant system should be as thorough as other parts of the present major reform, and that overall importance should be placed on the process of seeking a wide spectrum of opinions.

Ms. FUJII Ryuko expressed her recognition that the Constitution, which stipulates gender equality, has had a great influence on raising the status of women in the workplace; introduced the history leading up to the enactment of the Basic Law for a Gender-Equal Society; noted that employment discrimination still remains in Japan even though women are becoming a mainstay of the workforce; and pointed out the distinctive trend, which is more conspicuous in Japan compared with other countries, whereby Japanese female workers tend to leave the workplace to give birth and then seek reemployment after they have raised their children to a certain age.

She then offered the following three proposals for equal opportunity of workplaces, etc.:

1. Expansion and improvement of relief measures, including establishment of a body with the power to issue compulsory relief orders;
2. Expansion and improvement of reemployment measures after children are raised to a certain

age;

3. Building up an environment for working while taking care of children.

Based upon these opinions expressed by the informants, subcommittee members posed questions to the informants and held free discussions among themselves, with lively exchanges of views among the members and the informants.

As chairperson of the subcommittee I will summarize the opinions expressed as follows. While I believe the general view was that there is no particular problem in the Constitution's provisions on equal rights and fundamental labor rights, opinion was divided regarding the evaluation of matters that are not provided for in the Constitution, such as the home and the family. .

With regard to reform of the public servant system, opinion was especially divided on how to evaluate the ILO interim report and members held lively discussions. With regard to gender equality, there was an exchange of views on what kind of measures would be needed to realize the three recommendations put forward by the informant.

I felt that in order to realize the ideals of the Constitution, in-depth debate is needed on reform of the public servant system, especially the proper form of labor-management relations for public servants and gender equality in the workplace.

**156th Diet Session, Seventh Meeting, Research Commission on the Constitution  
(May 29, 2003; OIDE Akira, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Guarantee of Fundamental Human Rights, with a summary of its findings.

The subcommittee met on May 15, called upon HORIBE Masao, Professor, Faculty of Law, Chuo University, as an informant, and listened to his opinions regarding the right to know, the right to access information and the right to privacy, including the legislation concerning information disclosure and protection of personal information.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

Professor HORIBE Masao explained that the development of the discussion of the right to know and information disclosure in Japan can be divided into the following five periods: (1) period when the right to know was recognized as a right that was a restructuring, from the recipient's side, of freedom of expression, followed by advocacy of the institutionalization of this right; (2) period when active advocacy to institutionalize information disclosure was made following the Lockheed incident, and when information disclosure systems were established at local governments; (3) period when information disclosure legislation was studied by the national government, while information disclosure systems were being operated by local governments; (4) period when the national government announced the summary draft of the information disclosure law and the contents of the

system were hammered out while local governments engaged in reviewing the operation of their information disclosure systems; and (5) period when the Information Disclosure Law was enacted and administered.

He also explained that the development of the discussion of privacy and protection of personal information can be divided into the following four periods: (1) period when in the U.S. the right to privacy was recognized as a right to be left alone and as the right to control personal information, and the institutionalization of this right was advocated; (2) period when in Japan privacy right protection systems were first realized at local governments, and when institutionalizing this right at the national level was advocated following the announcement of the OECD guidelines; (3) period when the legislation concerning protection of personal information held by administrative organs was studied, when personal information protection guidelines were formulated by the relevant ministries and agencies, and when laws for the protection of personal information were enacted by the prefectures; and (4) period up to the present Diet deliberations when the bill concerning the protection of personal information has been submitted to the Diet.

Finally, regarding the right of access, he said that in Japan this is presently only understood as the rights of the individual against violations of privacy rights by the mass media, but he proposed that in the future deliberations should be deepened toward understanding this right, as seen in foreign countries, as an integrated set of rights of citizens concerning information and its use, including the right to know and the right to control personal information.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant.

As chairperson of the subcommittee I will summarize the opinions expressed as follows. The question was considered whether explicit provisions concerning the right to know, the right of access and the right to privacy should be included in the Constitution. While some supported the inclusion of explicit provisions, others argued that this was not necessary because these rights were fully supported by the provisions of Articles 13 and 21, and that greater importance should be attached to actualizing these rights through the enactment of necessary laws.

Members also held lively deliberations about issues concerning the protection of personal information, especially in relation with the mass media. Some members argued that since the mass media wields enormous power as the transmitter of information and citizens are in a weak position as recipients of information, while giving due consideration to freedom of expression, some sort of measures are required to prevent violations of privacy rights and other damage by the mass media. Other members, however, expressed opinions that the freedom of expression should be respected and preserved and the mass media should not be regulated. Regarding the question of how to harmonize the freedom of the press and citizens' right to privacy, the view was voiced that some form of nongovernmental, third-party agency, such as an ombudsman system, should be given the task of checking the media.

The right to know, the right of access, and the right to privacy constitute what have been called the new human rights. These are rights that have been actively discussed since the end of the war. They are apparently closely linked to the lives of the people and are the subject of intense interest. Therefore, it was felt that discussions concerning these rights must be deepened from the perspective of actualizing the principles of the Constitution.

**156th Diet Session, Eighth Meeting, Research Commission on the Constitution  
(June 12, 2003; OIDE Akira, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Guarantee of Fundamental Human Rights, with a summary of its findings.

The subcommittee met on June 5, called upon KOBAYASHI Masaya, Associate Professor, Faculty of Law and Economics, Chiba University, as an informant, and listened to his opinions regarding fundamental human rights and public welfare, especially from the perspective of rebuilding the relationships between the state, the community, the family and the individual.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

Professor KOBAYASHI Masaya stated that because liberalism, which has conventionally emphasized a dualistic theory of the state and the individual, has extremely radicalized liberal thoughts it has brought on the adverse effects of a widening gap between the rich and poor, market failures, moral decline and the weakening of human relationships. He explained that to address these adverse effects, in its criticism of liberalism, communitarianism has emphasized ethics, morality, tradition, responsibility and the necessity of the community, and sought foundations in neither the state nor the individual, but rather in the family, community, NGOs, NPOs and other community bodies. He explained that this is the debate between liberalism and communitarianism, and that rebuilding the relationships between the state, the community, the family and the individual is one of the main themes of communitarianism.

Nevertheless, he noted, communitarianism does not tear down the modern constitutional framework whereby constitutions prescribe the relations between the state and the individual centered around rights, and communitarianism also does not imply that moral and duty provisions should immediately be incorporated into the Constitution, which is a legal norm.

He then expressed opinions that efforts to interpret the Constitution from the viewpoint of communitarianism enable interpretations that respond to the demands of the new era – such as the pursuit of happiness, the relativity of the state within the community, and global identity – that were impossible under the prior liberal school approach to constitutional interpretation.

Moreover, he expressed opinions that the way in which provisions are stipulated in the Constitution is close to communitarianism; that no need will be found to revise the Constitution's provisions for

the time being; and that if we are to rebuild the relationships between the state, the community, the family, and the individual, the important thing is not to revise the constitution but to bring out its latent meanings to the fullest extent, make them concrete, and bring them to life.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. There were discussions noting that problems have arisen in present-day Japan because, in the opposition between public and private, too much emphasis is placed on the private sphere. There were also discussions looking at the answers that communitarianism provides to these problems and the meaning of such concepts as "the public sphere" and "morality" in communitarianism.

In particular, views were expressed on the following points: (1) the argument that, in thinking about the content of "the public sphere" and "morality," we must not overlook the difference in religious attitudes that exists between Japan and the West; (2) the application of communitarian ideas to educational issues and to the ideal form of party politics; and (3) making provisions for "environmental rights" and "the right to create beautiful cities" in the Constitution.

In the past, the Constitution of Japan was interpreted mainly in terms of liberalism, but an interdisciplinary approach known as public philosophy, which transcends the public/private dichotomy seen in liberalism, has begun to be adopted in such areas as the interpretation of the public welfare provided for in the Constitution and I think it worth paying attention to this. In considering the interpretation of the public welfare and positioning of the family, although many aspects remain to be studied, I think that the introduction of this new perspective made for a very meaningful discussion.

**156th Diet Session, Ninth Meeting, Research Commission on the Constitution  
(July 24, 2003; OIDE Akira, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Guarantee of Fundamental Human Rights, with a summary of its findings.

The subcommittee met on July 10, called upon NAKAMURA Mutsuo, President, Hokkaido University, and upon OSHIO Takashi, Associate Professor, Faculty of Education, Tokyo Gakugei University, as informants, and listened to their opinions regarding social security and the Constitution.

Details of the statements of opinion by the informants can be found in the subcommittee minutes, and I will now give a brief summary.

First, Dr. NAKAMURA Mutsuo said that provisions for a minimum standard of living in Article 25, Paragraph 1 were not present in the initial GHQ draft, but were an original idea from the Japanese

side created during the House of Representatives deliberations, and expressed the opinion that this right has become firmly established in the national consciousness.

He then explained that three academic theories have been stressed regarding the legal character of the right to a minimum standard of living: the program provision doctrine, the abstract right doctrine, and the concrete right doctrine. He said that the ruling of the trial court in the Asahi case was based on the abstract right doctrine, and that the Supreme Court ruling recognized, as an exception, that legislative conduct including legislative nonfeasance can be contested under the State Compensation Law. He said that lower courts have recently been experimenting with flexible interpretation of Supreme Court requirements in cases other than those of the right to a minimum standard of living, and expressed his opinion that there is room to test the constitutionality of legislative nonfeasance in cases of the right to a minimum standard of living.

Additionally, he expressed opinions that social solidarity is important as an ideal of social security in the 21st century, that designing the future social security system demands enhancement of social security and social welfare by ensuring that the people or citizens, who are the participants, play an active and self-governing role, and, moreover, bear their share of the costs.

Professor OSHIO Takashi said that while the public pension system is an important means of giving concrete form to Article 25 of the Constitution in that it guarantees a minimum standard of living in old age, given the two problems of worsening government finances and the growing intergenerational gap accompanying the declining birthrate and aging of society, Professor OSHIO proposed a slimming down of the pension system as a necessity whereby public pensions would be limited to the basic pension and the additional part of the pension that is proportional to earnings would be eliminated.

Additionally, as issues and solutions when implementing this reform, he made the following three proposals:

1. The present level of livelihood assistance benefits and basic pensions should be used as a general guideline for basic pension benefits;
2. The basic pension benefit payment should be uniform, regardless of income levels; and
3. With regard to funding the pension system, a larger burden should be imposed on high-income earners by linking contributions to income in order to ensure fairness within each generation, but if it is difficult to identify income levels for that purpose, consumption taxes could be used as the next-best policy.

Based upon these opinions expressed by the informants, subcommittee members posed questions to the informants and held free discussions among themselves, with lively exchanges of views among the members and the informants.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. First, the social security systems of the Scandinavian countries, where the share of taxes and social security contributions exceeds 70% and the citizens receive replete social welfare services, were discussed to provide a perspective for reform of Japan's social security system, but opinion as to their evaluation

was divided.

Some speakers stressed the need to rebuild the social security system in terms of social solidarity rather than administrative measures provided to the people by the state.

Meanwhile, members expressed opinions that the declining birthrate, which is seen as one of the causes of the social security fiscal crisis, should be resolved through a system that enables society as a whole to provide support for child-rearing and by promoting a gender-free society; that it could be instructive to study Scandinavian social security systems since although they impose a high burden these systems have gained credibility and become a solution to the problem of declining birthrates; and that the values of the family and the home need to be re-examined.

Although the social security system constitutes an important system that gives concrete form to the right to a minimum standard of living, today when expanding intergenerational inequity and the worsening of pension finances caused by the declining birthrate and aging of society are becoming serious problems, the Diet is expected to deepen its discussions toward building a more sustainable social security system and to maintain and develop the Article 25 guarantees in a concrete manner.

In so doing, based on the principle of Article 25, which guarantees "the right to maintain the minimum standards of wholesome and cultured living," I think that we should take the discussion of the right to a minimum standard of living to a higher level, suited to the 21st century, in order to ensure that people can live fully human lives with pride and a sense of meaning.

**159th Diet Session, Second Meeting, Research Commission on the Constitution  
(February 26, 2004; YAMAHANA Ikuo, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Guarantee of Fundamental Human Rights, with a summary of its findings.

The subcommittee met on February 19, called upon UCHINO Masayuki, Professor, Chuo University, as an informant, and listened to his opinions regarding equality under the law, as an important issue involving the principle of equality.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

Professor UCHINO Masayuki first expressed opinions that there is little need for constitutional revision in the area of human rights, and that we should improve the measures taken under the existing Constitution. Under that premise, he said, the concept of equality includes formal equality which requires that individuals be treated uniformly on the same basis regardless of their actual differences, and substantive equality which seeks to make the outcomes more nearly equal by giving preferential treatment to those who, in reality, are in an inferior position. He expressed opinions that Article 14 calls for formal equality, and the role of realizing substantive equality is expected to be played mainly by legislative measures.

He then introduced imbalance in the allocation of Diet seats and the discrimination against children born out of wedlock as examples of problems with formal equality, and argued that substantive equality should be actively promoted through legislative and administrative measures, including affirmative action. Additionally, he expressed opinions that the realization of a gender-free society will be an important issue in the future for discrimination against women; that in theory equality and discrimination in the private sector can be dealt with adequately by indirect application of the Constitution's human rights provisions; that there is a need to create rules prohibiting discrimination by private persons; and to that end, the human rights protection bill needs to be reviewed and a law to prohibit discrimination should be considered.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. First some members supported the view of the informant that there is little need for constitutional revision in the area of human rights, but others contended that there is a need to make explicit provision in the Constitution for new rights such as the protection of privacy, as the need to protect personal information is increasing, because of the rapid advances in information technologies and the progress of electronic government in recent years among others.

Next, with regard to the meaning of "equal" in Article 14, while the informant stated the view that Article 14 requires only formal equality and does not require the realization of substantive equality, it was also argued that the article should be construed as a guarantee of substantive equality as well as formal equality. Other members, however, agreed with the informant and had no objection to his interpretation.

Next, concerning the application of constitutional principles to acts by private persons, many members expressed the view that today when corporations and other private legal persons that have huge social power exert, like the government, great influence on the human rights of the people, we should conduct discussions of a theoretical structure to ensure that the intent of the Constitution applies adequately to private persons.

Additionally, regarding the principle of equality, lively discussions were held on many issues including affirmative action, sexual discrimination inside enterprises, and imbalance in the allocation of Diet seats, that is, the discrepancy in the weight of a single vote.

Together with liberty, the ideal of equality is historically significant as the driving force behind the abolition of class-based societies and the establishment of modern constitutionalism. In the Constitution of Japan, equality is stipulated in Article 14 as a key principle which has the effect of a general rule in the area of human rights. Since the enactment of the Constitution, the spirit of Article 14 has been very important in guaranteeing the human rights of the people, and we must respond to the needs of the times by more fully realizing this spirit. I think we must further advance our investigations on fundamental human rights considering this point.



**159th Diet Session, Third Meeting, Research Commission on the Constitution  
(March 18, 2004; YAMAHANA Ikuo, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Guarantee of Fundamental Human Rights, with a summary of its findings.

The subcommittee met on March 11, called upon NOSAKA Yasuji, Dean, Department of Law, Gakushuin University, as an informant, and listened to his opinions regarding civil and political liberties, especially freedom of thought and conscience, freedom of religion, and the separation of religion and state.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

First, regarding freedom of thought and conscience, Professor NOSAKA Yasuji explained that this is a freedom fundamental to human existence, and that provision was made in the Constitution for freedom of thought and conscience because a bitter lesson had been learned from the repression of thought under the Meiji Constitution. He then explained the contents of freedom of thought and conscience in greater detail, including the Mitsubishi Plastics case and the imposition of a heavier penalty for hate crimes in the U.S.

As for issues related to the national flag and national anthem, he said these are among the most important issues concerning thought and conscience; that state use of symbols like the flag and national anthem to unify citizens in democratic countries should not be denied; but that there are constitutional problems with denying individuals who are opposed to these symbols and refuse to participate in ceremonies for reasons of conscience.

Next, regarding freedom of religion, he explained that together with freedom of thought this is one of the most important human rights at the core of the Universal Declaration of Human Rights; that freedom of religion is guaranteed absolutely as freedom to hold private beliefs; but that, to achieve essential public good, minimal restrictions may be placed on the freedom to act based on religious belief.

He pointed out that the principle of separation of religion and state exists to supplement and promote the guarantee of freedom of religion, and that there is no doubt that the Constitution demands a strict separation. However, he noted that there are problems with the objectivity of the purpose and effects standard set by judicial precedent as the criteria for judging whether an action violates the separation of religion and state, so this needs to be fundamentally reconsidered.

He also examined the acts of state that are permitted under the principle of separation of religion and state, using the prime minister's visits to Yasukuni Shrine as an example. Regarding the issue of the prime minister's visits to Yasukuni Shrine, he said that if the prime minister visits Yasukuni Shrine as a central facility to worship the war dead in his official capacity, then such visits are

unconstitutional as constituting specific ties to a specific religion.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. Regarding freedom of thought and conscience, it was suggested that these are unconditionally guaranteed by the Constitution as long as they are held as private beliefs, but certain limits should be set, as in Germany's fighting democracy, rather than protecting absolutely any idea.

Concerning freedom of religion, on the one hand, the view was expressed that the principle of separation of religion and state is stipulated as an institutional guarantee based on regret over Japan's history whereby this freedom was not sufficiently guaranteed and left to the mercy of politics, and that problems like those concerning the visits to Yasukuni Shrine should be examined giving full consideration to this perspective. On the other hand, it was suggested that a national debate must be called forth while furthering the case precedents, since the controversy surrounding Yasukuni Shrine and related issues could be seen as a fruitless debate based on misconceptions. Members also held discussions concerning how there are no Supreme Court constitutional judgments related to issues like the visits to Yasukuni Shrine because of the limits of the incidental review system, and how in relation to this it might be worth considering, as legislative policy, the establishment at the national level of a system similar to that which allows citizens to bring lawsuits for malfeasance against municipal authorities under the Local Autonomy Law.

Freedom of thought and conscience and freedom of religion are freedoms that have a great historical significance gained through resisting the religious oppression of the Middle Ages and overcoming a history of harsh tribulations, and they are liberties fundamental to human existence. In the present day, this spirit has been inherited and is clearly stipulated in human rights declarations and the constitutions of many nations as the most fundamental freedom of human beings. We must recognize how in Japan, based on the harsh history whereby these two freedoms in particular were oppressed by the power of the state prior to World War II, the Constitution makes especially strong demands to guarantee these freedoms.

However, there still remain many problems involving the freedom of thought and conscience and freedom of religion in areas that impinge people's lives. Henceforth I would like to conduct further debate on fundamental human rights, taking into account, in particular, the actual or potential influence of the Constitution's human rights provisions on specific cases.

**159th Diet Session, Fifth Meeting, Research Commission on the Constitution  
(April 8, 2004; YAMAHANA Ikuo, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Guarantee of Fundamental Human Rights, with a summary of its findings.

The subcommittee met on April 1, called upon MATSUMOTO Kazuhiko, Professor, Graduate School of Law, Osaka University, as an informant, and listened to his opinions regarding public welfare, with special reference to reconciling it with the freedom of expression and academic freedom.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

First Professor MATSUMOTO Kazuhiko explained that the controversy over the relationship between human rights and the public welfare has been a battle over how to define the issue, and that in the commonly accepted definition, it is posed as a binary opposition, human rights versus the public welfare.

He then posed the two issues of can human rights be restricted by the public welfare and what is the public welfare that limits human rights, and presented his opinions in line with those issues.

As for the topic of whether human rights can be restricted by the public welfare, he explained that in its decision on the *Lady Chatterley's Lover* case, the Supreme Court ruled that even fundamental human rights are not absolute and unlimited, but are subject to limits for the sake of the public welfare, and the legal scholars generally received this opinion favorably.

As for the topic of what is the public welfare which limits human rights, he explained that these days, the question is no longer posed in the same terms, that is to say, reconciling the public welfare and human rights is a delicate business, and it is not enough to ask what is the public welfare, and the question is becoming instead, how should we go about reconciling the public welfare and human rights. He expressed opinions that recasting the issue from a binary opposition to what restrictions are a legitimate means to a legitimate end and considering the goals and means of human rights restrictions in detail will enable us to respect human rights while placing importance on the public welfare.

Finally, regarding who is to answer these issues, he said that the reconciliation between human rights and the public welfare should take the form of laws enacted by the Diet, and emphasized the significance of the Diet to reconcile human rights and the public welfare in the form of laws.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. Regarding the goals of restricting human rights by the public welfare, in response to Professor MATSUMOTO's opinion that in addition to protecting the human rights of others there is also the goal of protecting the public welfare which cannot be reduced to human rights, members expressed opinions that the public welfare should be recognized broadly and effectively in order to deal with contemporary problems, while other members expressed opinions that the public welfare was held to be strictly a principle to be applied in reconciling conflicting human rights.

Also, members expressed agreement with Professor MATSUMOTO's opinion that the legislature should play an important role when human rights are restricted for the sake of the public welfare. Members also said that since stipulations of the contents of rights in the Constitution would make it easier for the legislature to render such judgments on the public welfare, positive steps should be taken to provide explicitly for new human rights such as the right to privacy and environmental rights in the Constitution.

The deliberations on public welfare issues at this meeting began from the opposite topic that fundamental human rights are inviolable but not unlimited, and on further reflection establishing the theoretical grounds for restricting human rights is a major question which has implications for the ideal form of fundamental human rights. In particular, freedom of expression is at the core of fundamental human rights, and it is a freedom of great significance, an essential premise of democracy, and any restriction of this freedom must be approached with caution.

Finally, I think that the informant Professor MATSUMOTO's view that human rights and the public welfare should be reconciled in the form of laws enacted by the legislature was very thought-provoking. To begin with, I believe that human rights, which have universal value, should not be restricted at the discretion of the executive branch, but that restrictions can only be justified if the essentials are laid down by legislation in the Diet, which is the sole law-making organ and which rests on the basis of democracy. In that sense, we must recognize anew the great expectations held toward the Diet and the gravity of the burden which the Diet bears in the guarantee of fundamental human rights.

I feel that we must continue to deepen our deliberations regarding fundamental human rights based on these points.

**159th Diet Session, Seventh Meeting, Research Commission on the Constitution  
(June 3, 2004; YAMAHANA Ikuo, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Guarantee of Fundamental Human Rights, with a summary of its findings.

The subcommittee met on May 20, called upon NORO Mitsuru, Professor, School of Law, Kansai University, as an informant, and listened to his opinions regarding economic, social and cultural freedom, especially the freedom to choose one's occupation and the right to own or hold property.

Details of the statements of opinion informant can be found in the subcommittee minutes, and I will now give a brief summary.

First, Professor NORO Mitsuru said that because of its special character the right to own land is not entirely covered by the general theory of economic freedoms, since land as a form of property is subject to special limits that are, in a sense, universal. He then expressed his opinions regarding property rights, presenting a comparison between Japan and Germany in the three areas of town

planning legislation, legislation to protect the urban landscape, and the constitutional guarantee of property rights.

First, regarding town planning legislation, he said that for the control of new development and construction, in Germany the principle of no development without planning applies, while in Japan the operative principle is freedom of development and construction.

Second, regarding legislation to protect the urban landscape, he said that Japan has scenic zones and other systems as stipulated under the City Planning Law but these are not fully utilized because they are not subject to the principle of no development without planning, as under the practices in Germany, and that in the future, it will be necessary to reform the system in Japan to bring it at least a little closer to this principle.

Third, regarding the relations between urban development and the constitutional guarantee of property rights, he said that the differences between the stipulations of Article 29 of the Constitution and Article 14, Paragraph 2 of the Bonn Basic Law do not have much effect on substantive issues, but it is an important point that in actual cases involving the limits of ownership rights, German courts' decisions emphasize social restrictions on land ownership and are based on a situational view of constraints.

Then, as his opinions regarding the reasons why the system of laws for the protection of scenic value in Germany has legally binding power unlike that in Japan, he introduced the tentative theory that in Germany the right to own land has a unique character, that is, the right to construct a building of a specific design in a specific place is not absolute but dependent upon the circumstances.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. First, there seemed to be a consensus that a national emphasis on economic values, efficiency and functionality has left Japan's landscape in disarray and made it uniform and characterless. However, opinion was divided on whether provisions for scenic value and city planning should be established in the Constitution as a means to preserve or create good scenery.

Concerning this point, some members expressed opinions that a new framework must be established for cultural properties and scenic value given their public nature, and that therefore provisions regarding scenic value and town planning should be added to the Constitution.

In relation with this, regarding Article 20a of the Bonn Basic Law which stipulates the state's responsibilities to future generations, members expressed opinions that this article provides an extremely valuable reference in the attempt to reconstruct the concept of human rights as it defines environmental preservation as a national goal, brings forth a transformation from the conventional view of constitutions as a norm restricting the power of the state.

In response to these opinions, other members questioned the significance of establishing provisions that just express the goals of national efforts, and as seen for example in the lawsuit opposing a high-rise condominium in Kunitachi City, whereby scenery that was preserved by local residents for many years was destroyed in an instant in the name of the economic freedom of developers, what is important is to rectify the present conditions whereby the principles of the Constitution are not being manifested correctly, and there is absolutely no need to revise the Constitution for the purpose of preserving scenery.

Meanwhile, the importance of decentralization in city planning and creating scenic value was also noted, as it was pointed out that behind the difference between Japan and Germany lies the fact that the Bonn Basic Law gives town planning authority to Germany's basic units of local government as part of the right of self-government.

Economic freedom was originally established as freedom from the state, and was strongly defended in the past as an inviolable right. With the development of the concept of the social state, however, today economic freedom has come to be viewed as having social restraints and as a human right that is broadly regulated by law, as demonstrated by the freedom from want in Roosevelt's "Four Freedoms" speech.

In Japan, however, there has been an excessive emphasis on economic freedom. Developers have been allowed to freely conduct economic activities without restraint, and this has undeniably become a hindrance to the formation of scenic value and to city planning.

The informant described Germany's comprehensive and detailed system for city planning and landscape protection, together with the decentralization which underpins it, and especially the way of thinking which gives prime importance to the basic units of self-government. This analysis, I feel, provides valuable points of reference for the protection and creation of scenic value in Japan.

**159th Diet Session, Seventh Meeting, Research Commission on the Constitution  
(June 3, 2004; YAMAHANA Ikuo, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Guarantee of Fundamental Human Rights, with a summary of its findings.

The subcommittee met on May 27, called upon TAGUCHI Morikazu, Professor, School of Law, Waseda University, and Professor, Waseda Law School, as an informant, and listened to his opinions regarding rights during criminal proceedings and the human rights of crime victims, including issues of correctional policy.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

First, Professor TAGUCHI Morikazu stated, regarding the significance of the constitutional norms concerning human rights in criminal proceedings, that the Constitution is unusual compared with

other constitutions in having 10 articles on criminal proceedings, that the Constitution emphasizes these norms for criminal proceedings, and that when considering human rights in future criminal proceedings, providing guarantees of positive human rights of respecting the self-determination of suspects and other related parties in concrete ways will be a major issue.

He expressed opinions regarding the human rights of suspects concerning the significance of the provision on due process in Article 31 of the Constitution, the constitutionality of emergency arrests without warrants stipulated by Article 210 of the Code of Criminal Procedure, the introduction of a public defender system for suspects, the interception procedures under the Communications Interception Law, and improvement of the procedures for seizure of magnetic records to respond to cyber crimes and high technology crimes. Then regarding the human rights of defendants, he expressed his view on the introduction of a lay judge system and the expedition of trials, the introduction of an immunity from prosecution system and a guilty plea system, the constitutionality of the lay judge system, and regarding the human rights of convicts, the constitutionality of the death penalty system, and the approach to correctional policy. He then noted three problems regarding the human rights of crime victims considering their legal status: the necessity of protecting victims, the participation of victims in the proceedings, and redress for victims. He said efforts are being made to improve these points by revising the relevant laws, but stated that the idea of writing new provisions on these issues into the Constitution should be approached with caution.

He also expressed opinions that judicial system reform is an issue that affects not only the administration of justice but the very nature, or constitution of the nation; that through the democratization of state power, the people are becoming the subject of government instead of its object.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. First, some members expressed opinions that if the Constitution stipulates replete criminal proceedings provisions based on the historical experience of the cruel violation of human rights under the Meiji Constitution, the problem we should be concerned with is the gap that exists between the Constitution and its actual implementation. Other members expressed opinions that provisions concerning new judicial systems such as citizen participation in judicial proceedings and the guilty plea system need to be incorporated into the Constitution.

In their deliberations on provisions on criminal proceedings, first concerning the rights of victims, some members expressed opinions that suspects' human rights are still not sufficiently guaranteed because, for example, their right to have counsel present during questioning is not yet recognized, while other members expressed opinions that, from the perspective of the human rights of the people overall, efforts should be made to strengthen investigative authority.

Next, regarding the lay judge system, while recognizing that introducing such a system would have

some merits, most members expressed opinions that this requires further study because it would impose new duties on the people, could violate defendants' rights to defense and to receive a trial, and because the Constitution does not stipulate the people's participation in the judiciary.

Regarding the death penalty system, some members expressed opinions that it should be abolished and proposed establishing life imprisonment without parole as a substitute for the death penalty, while other members expressed opinions that the death penalty system should be retained because punishment is essentially retributive, and because it has not been proven that the deprivation of civil liberties has the same deterrent effect as the death penalty.

As for guaranteeing the human rights of crime victims, members noted that Japan is behind other nations in this respect and that the deliberations on such guarantees should be deepened.

The provisions on human rights in criminal proceedings that were discussed are highly detailed and unprecedented among the constitutions of other nations, as they comprise about one-tenth of all the articles and about one-third of all the human rights articles in the Constitution of Japan. These provisions are based on deep regret over the harsh history whereby under the previous constitution people unjustly had their physical freedom violated by the state's illegal arrests, imprisonment and torture, and were compiled in an effort to eliminate such inhumane abuse of authority, which violates human dignity.

At this juncture, as part of the reform of the judicial system, progress was made in the introduction of a lay judge system and revision of criminal proceedings. There is a growing interest in the human rights of victims in response to the increase in heinous crimes, while correctional policy reforms are also being advanced, in part, to address the human rights issues of convicts inside prisons. These two trends are both closely related to the daily lives of the people, and may also be viewed as trends that give concrete substance to the provisions on physical freedom. In these points also, I think we can say that they show the importance of applying the Constitution in this area of physical freedom with a focus on guaranteeing the fundamental human rights of the people.

#### **D. Reports of the Subcommittee on Ideal Government and Organizations**

##### **156th Diet Session, Second Meeting, Research Commission on the Constitution (February 27, 2003; SUGIURA Seiken, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Government and Organizations, with a summary of its findings.

The subcommittee met on February 13, called upon MASUDA Hiroya, Governor of Iwate Prefecture, as an informant, and listened to his opinions regarding local autonomy, especially the *do-shu* system and the mergers of prefectures.

Details of the statements of opinion by the informant, which are extremely meaningful, can be found in the subcommittee minutes, and I will now give a brief summary.



First, Governor MASUDA Hiroya explained the results of the wide-area collaboration among three prefectures of the northern Tohoku region, Aomori Prefecture, Iwate Prefecture and Akita Prefecture, in such fields as tourism, the environment, and industrial waste.

He then expressed the following opinions:

1. Complementarity is the concept that government administration should be preferentially conducted at the municipal level that is closest to the residents and what cannot be done by municipalities should be done by the prefectures and what cannot be done by the prefectures should be done by the national government. Based on this principle, the division of roles between the national and local governments needs to be radically reviewed and economic independence achieved, and the prefectures should emphasize such functions as providing support to small local governments, liaison and coordination between the municipalities and the central government, and addressing broad regional issues to pursue self-determination and self-responsibility, which constitute the basic approach to local autonomy.
2. Given the background of changes in socioeconomic conditions, a system of wide-area government needs to be constructed as a national task. While fully respecting local opinions, the system should be designed from the concept of one nation, multiple systems and from the perspective of working together with residents. It is also important to consider economic independence, the division of functions among prefectures, and the lump-sum transfer of authority, revenue sources, and personnel from the central government to local governments.
3. Regarding the *do-shu* system and the mergers of prefectures, this should not be uniform nationwide but rather a diverse array of options should be presented and the regions should be offered a choice among them. There are many possible measures that could be adopted within the scope of the present Constitution.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant. Members expressed diverse opinions regarding the *do-shu* system; the relationship between the Constitution and merger of prefectures; municipal mergers; ideal form of the basic units of local government; and having local governments secure their own revenue sources.

As chairperson of the subcommittee, I will summarize my impressions of the meeting as follows. I felt that in order to further improve the local autonomy that is guaranteed as a system in the Constitution, we must go forward with the decentralization reforms that are already under way. To that end, it is vital to secure and allocate tax revenues in amounts worthy of the name of decentralization, and to carry out reforms of the municipalities and prefectures, which are the chief players in decentralization. The possibility of adopting larger regional units of local government, including the possibility of introducing a *do-shu* system, should be studied from that viewpoint. I believe that this would also facilitate a major reduction of administrative costs and the streamlining of administrative structure at both national and regional levels, which is presently a pressing issue of the country.

Actually, I serve as the secretary-general of a voluntary group of about 100 Liberal Democratic Party members working toward the realization of the *do-shu* system. Our group is conducting diverse studies and making various proposals since we believe that municipal merger and introduction of the *do-shu* system will redraw the map of Japan making it suitable for the 21st century. In that sense, I felt that Governor MASUDA's testimony was deeply significant.

As for trimming administrative costs substantially, according to trial calculations based on a tentative proposal that our group has compiled, the central and regional governments could save a total of at least ¥10 trillion. The Democratic Party of Japan is also examining these issues, and under their proposal the central and regional governments could save ¥30 trillion. In any event, I think that savings of between ¥10 trillion and ¥30 trillion are possible.

The next meeting of the subcommittee will focus on the theme of the actual conditions at small local governments. I hope to conduct in-depth discussions of what form the municipalities and the prefectures should take, and also of what system of organization the national government should adopt in the future, while taking into account the progress of municipal mergers and related developments.

**156th Diet Session, Fifth Meeting, Research Commission on the Constitution  
(March 27, 2003; SUGIURA Seiken, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Government and Organizations, with a summary of its findings.

The subcommittee met on March 13, called upon ABE Manao, Mayor of Kameda Town, Niigata Prefecture, as an informant, and listened to his opinions regarding local autonomy, especially the actual situation at small local governments.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary. First, Mayor ABE Manao explained in detail how Kameda Town is closely tied with Niigata City both geographically and in terms of the people's daily lives.

He then explained the history behind the concept of merging with Niigata City and other municipal bodies, as follows. He said the initial idea was to make Kameda Town into a city and a 50,000-Person City Concept was developed which involved merging with Yokogoshi Town which borders Kameda Town. Subsequently, with the enforcement of the Comprehensive Decentralization Law and the Special Law on Mergers of Municipal Authorities, and in response to demands from various groups within Kameda Town, from 2001 discussions advanced toward the merger of one city [Niigata] with two towns [Kameda and Yokogoshi]. Then, in 2002 with the participation of a wider range of adjacent cities, towns and villages, the Council on the Niigata Merger Issue was formed, bringing together four cities, four towns and four villages, that is, a total of 12 municipalities, centering around Niigata City, with the aim of forming a government-ordinance designated city.

He stated that the realization of a government-ordinance designated city is aimed at achieving further development capitalizing on geographical and population advantages, expanding the airport and other related facilities, promoting ties with neighboring prefectures, and building up trade and that Kameda Town would like to develop as a secondary core within the newly created city.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant. Members expressed diverse opinions regarding the reasons for working to establish government-ordinance designated cities through wide-area mergers, the roles of the prefectures and the introduction of the *do-shu* system, and the reflection of local residents' opinions in municipal mergers.

As chairperson of the subcommittee, I will summarize my impressions of the meeting as follows. Regarding small municipal government bodies, under the current conditions of harsh regional public finances, even relatively affluent towns like Kameda are unable to exploit economies of scale and find it rather difficult to improve the efficiency of their administrative operations.

Along with the development of transportation and information technology, people's social and economic activities expand into an ever-wider sphere, and the municipalities have come to seem too small. Under such circumstances, it is necessary to vigorously promote municipal merger. I think the concept of turning Niigata into a government-ordinance designated city with the merger of four cities, four towns, and four villages (a total of 12 municipalities) is groundbreaking. I think that expanding the scales and capacities of municipalities through advancing those kinds of mergers is necessary.

Municipal mergers are now advancing nationwide, and through the discussions I deeply felt that, when the scales and capacities of municipalities expand, it is also necessary to examine the ideal form of the prefectures, including such approaches as introducing the *do-shu* system. Through this, I feel we also need to consider the ideal form of the organization of the national government.

The next meeting of the subcommittee will focus on the themes of the judicial system and the constitutional court from the perspective of the authority to interpret the Constitution. Overall, I would like the subcommittee to consider its vision for this country in the 21st century from various angles.

**156th Diet Session, Seventh Meeting, Research Commission on the Constitution  
(May 29, 2003; SUGIURA Seiken, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Government and Organizations, with a summary of its findings.

The subcommittee met on May 15, called upon TSUNO Osamu, attorney-at-law and former Director-General of the Cabinet Legislation Bureau, and upon YAMAGUCHI Shigeru, former Chief

Justice of the Supreme Court, as informants, and listened to their opinions regarding the judicial system and the constitutional court from the perspective of the authority to interpret the Constitution.

Details of the statements of opinion by the informants can be found in the subcommittee minutes, and I will now give a brief summary.

Mr. TSUNO Osamu explained that by unifying the government's interpretation on such matters as constitutional interpretation through its functions of legislative examination and statement of opinions, the Cabinet Legislation Bureau directly assists the Cabinet in ensuring that functions related to the submission of legislative bills by the Cabinet and the faithful application of laws are appropriately undertaken according to the principles of the rule of law. Furthermore, the Cabinet Legislation Bureau directly assists the Cabinet to ensure that the obligation of Ministers of State to respect and uphold the Constitution is being appropriately met.

He then noted that while it is the function of the judiciary to finalize constitutional interpretations, to ensure a unified execution of administrative functions in conformity with the Constitution, the government needs to formulate *ex ante* interpretations of the Constitution. He also stated that the constitutional interpretations of the government are the result of a logical process, and cannot be freely modified by the government.

He expressed opinions that in considering the pros and cons of establishing a constitutional court, it is necessary to fully consider such aspects as its relation with popular sovereignty and the separation of powers, the position of the Diet as the sole law-making organ, and the risk that the political sector may go too far in restricting itself in fear of making rulings of unconstitutionality.

Mr. YAMAGUCHI Shigeru first explained the constitutional review systems in the U.S., Germany, and France, and noted the following differences and similarities between the judicial environments in those nations and Japan: first, multiethnic country or not; second, country with a federal system or a centralized state; third, whether there are changes of government administration; fourth, the existence of a check function in the legislative process; and fifth, problems with the discretionary appeals system.

He then expressed the opinion that the fact that there are only a few rulings of unconstitutionality regarding laws and ordinances in Japan has been criticized as judicial passivism, but this is due to the environment surrounding Japan's courts and is a natural outcome of the system.

Then, concerning the future direction in rulings on constitutionality, he expressed the outlook that through the firm establishment of the *Jokoku* appeal system, cases requiring constitutional judgments will be addressed earlier, the constitutional judgments of the Supreme Court will otherwise become more active, and a constitutional order will be formed that is appropriate for the new era.

Based upon these opinions expressed by the informants, subcommittee members posed questions to the informants and held free discussions among themselves, with lively and extremely interesting exchanges of views among the members and the informants.

While it is very difficult to summarize the opinions expressed, I will attempt to do so as follows. Should the courts hand down constitutional rulings on political issues? Views were heard both for and against such rulings. In this connection, many questions were asked and various views expressed on where the authority to interpret the Constitution resides, and the pros and cons of adopting a constitutional court system. Furthermore, questions were asked and various views expressed concerning whether the government can alter its constitutional interpretations, and concerning the status of the Cabinet Legislation Bureau and the status of the Legislative Bureaus of the Diet. The legislative, executive and judiciary branches each engage in interpreting the Constitution from their own positions. I believe the question of what to make of the interrelation of these interpretations certainly constitutes an important issue that is linked directly to the question of ideal government and organizations.

The next meeting of the subcommittee will focus on the theme of public finances, especially the relation between the Diet and the Board of Audit system. We intend to continue discussing, from various angles, the ideal government and organizations for the 21st century, and furthermore, what we want our country to be in the future.

**156th Diet Session, Eighth Meeting, Research Commission on the Constitution  
(June 12, 2003; SUGIURA Seiken, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Government and Organizations, with a summary of its findings.

The subcommittee met on June 5, called upon KUBOTA Yoshio, Associate Professor, Department of Law, Faculty of Law, Kobe Gakuin University, and upon SAKURAUCHI Fumiki, Associate Professor, Niigata University, as informants, and listened to their opinions regarding public finances, especially regarding the relationship between the audit system and the Diet.

Details of the statements of opinion by the informants can be found in the subcommittee minutes, and I will now give a brief summary. Professor KUBOTA Yoshio first noted the emphasis on accountability, the need to make policy decisions amid uncertainty as to the effects of policies, and the importance of administrative oversight as reasons for the recent prominence of policy evaluation. He explained how the Democratic Party of Japan submitted an Administrative Oversight Board bill in an effort to strengthen the Diet's policy evaluation function in 1997, and how that bill was rejected.

He then said that for the Diet to conduct policy evaluation from its own position, it must collect data itself and analyze the data provided by ministries and agencies from its unique perspective of steering national affairs overall, and that this is necessary not only for the opposition but also for the ruling parties. He expressed the opinion that there is a need to establish a body auxiliary to the Diet to provide expert assistance for members' work in the area of policy evaluation.

Furthermore, regarding the proposed reform to make auditing and policy evaluation the role of the

House of Councillors through constitutional amendment, he stated that it requires careful study in light of such considerations as what election system is desirable for the House of Councillors and the relationship between decentralization and the bicameral system.

Professor SAKURAUCHI Fumiki expressed opinions that while the people, as trustors, pay taxes to the government (their trustee), the people are at the same time, beneficiaries of the government's fiscal activities. But we cannot protect the interests of the people as beneficiaries, including future generations, merely by the formal application of fiscal constitutionalism, and we should strengthen public governance and protect people's interests by making clear the fiduciary responsibilities of those who make fiscal management decisions in the present generation.

Specifically, he expressed opinions that Japan needs to improve its public accounting system, achieve fiscal discipline in tandem with evaluation of the administration, introduce a dual account system or similar system that divides the budget into a current account and a capital account, which has large medium- to long-term effects, and make explicit provision for national emergency rights in the area of public finances. He then expressed opinions that regarding the relationships with the bicameral system and the audit system, from the perspective of reflecting the interests of future generations, there are several possibilities, including making the House of Councillors a body without specific constituency, strengthening the budgetary powers of the House of Councillors in regard to fiscal management from a medium- to long-term perspective, and attaching the Board of Audit to the Diet as an auxiliary body which retains a certain degree of neutrality.

Based upon these opinions expressed by the informants, subcommittee members posed questions to the informants and held free discussions among themselves, with lively exchanges of views among the members and the informants. Members expressed diverse opinions regarding the reform of the House of Councillors and auditing, the ideal form of the Board of Audit, the ideal form of the policy evaluation organ, and the necessity of revising public finances.

As chairperson of the subcommittee, I will summarize my impressions of the meeting as follows. The importance of reviewing the systems for policy evaluation and public finances was recognized anew, given that, in an era of growing demand for policy-making that addresses complex social and economic conditions with timely and appropriate measures, the national government and local authorities currently face rigorous policy choices under stringent fiscal conditions. Under these circumstances, we took note of the heavy responsibility borne by Diet members, who are charged with making policy decisions, and we felt the need to study the ideal form of the Diet secretariats from the viewpoint of supporting policy evaluation.

The question of public finances, which is the theme of this meeting, has a direct bearing on the ideal form of government, and we will continue to consider a vision for Japan from many different angles.

**156th Diet Session, Ninth Meeting, Research Commission on the Constitution  
(July 24, 2003; SUGIURA Seiken, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Government and Organizations, with a summary of its findings.

The subcommittee met on July 10 and researched the relationship between the Diet and the Cabinet. First, the subcommittee listened to an explanation presented by TAKAMI Katsutoshi, Senior Specialist, Politics and Parliamentary Affairs Research Service, Research and Legislative Reference Bureau, National Diet Library. The subcommittee next listened to keynote statements by Member FURUKAWA Motohisa and Member INOUE Kiichi, and then held free discussions.

Details of the keynote statements and other comments can be found in the subcommittee minutes, and I will now give a brief summary.

Regarding the parliamentary cabinet system, Professor TAKAMI Katsutoshi first explained that the key criteria separating parliamentary cabinet systems from presidential systems lie in the ability of the legislative branch to remove the administrative branch via a vote of no confidence, and in the accountability of the executive branch to the legislative branch. He explained that the Japanese parliamentary cabinet system is close to the British model whereby the prime minister has the right to dissolve the parliament at any time. Next, regarding the bicameral system, he explained that in Japan where the Upper House is elected by public vote, the basis for the legitimacy of the House of Councillors is the same as that of the House of Representatives, that is, electoral democracy whereby members are selected by the people through direct elections, so how to stipulate the role of the House of Councillors has been under debate ever since the Constitution was enacted.

Mr. FURUKAWA expressed his understanding that while the stipulations of the Constitution of Japan call for a parliamentary cabinet system that is led by the prime minister, in practice the government is run in line with the interpretation that the Constitution demands every effort should be made to eliminate political influence from government administration and the prime minister's political leadership was greatly limited. He then expressed opinions that in contemporary society the center of politics should be viewed as the prime minister, who has the executive powers to direct and supervise the government administration for political purposes, together with the Cabinet which comprises ministers of state who assist the prime minister. Regarding the roles of the Diet, he said that the two functions of exercising control over policymaking by the Cabinet and placing points of dispute before the people are particularly important. He also expressed opinions that the separation of powers should be clearly stipulated in the Constitution; that revision of the nature of the House of Councillors should be boldly examined; and that a Political Parties Law should be enacted after stipulating the status of political parties in the Constitution.

Mr. INOUE said that recognizing the need to promptly tackle pressing issues and to implement major systems reforms to deal with the changes in the domestic and foreign environment, numerous measures are needed including strengthening the functions of the Cabinet (clarifying the loci of responsibility, realizing political leadership driven policy implementation, unifying the government

and the ruling party, adopting a political appointment system through a gradual introduction, etc.); strengthening in a corresponding fashion the functions of the Diet (expanding and improving committee deliberations, reinforcing the functions of Diet staff, redefining the form of question time, making more use of preliminary research, etc.); clarifying the constitutional status of political parties; introducing a unicameral system; adopting a single-seat electorate system under which changes of government among two or three large political parties would be possible; rectifying the discrepancies in the weight of individual votes; establishing a constitutional court responsible for acts of government in the Diet; revising the House of Representatives special majority system for passing bills a second time when the House of Councillors reaches a different decision; easing the conditions for initiating the procedures for revising the Constitution; and stipulating a crisis management organization in the Constitution.

Based upon these two keynote statements, subcommittee members posed questions and held free discussions among themselves, with lively exchanges of views. Members expressed diverse opinions regarding such topics as the unification of the Cabinet and the ruling party, the leadership of the prime minister, reflecting the will of the people and electoral systems, the merits and demerits of the bicameral system, and expanding the policy secretary system.

As chairperson of the subcommittee I will summarize my impressions of the meeting as follows. I recognized anew that, in an era when the need to respond promptly and appropriately to complex social and economic conditions means that we are called on to implement a wide array of policy measures as the circumstances demand, it is important not only to reflect but focus the popular will in order to strongly promote policies that will be supported by the majority of the people.

From this viewpoint, I was made strongly aware of the need to study the pros and cons of the bicameral system, the ideal form of the House of Councillors, and the ideal form of the parliamentary cabinet system. Also, the role of political parties in focusing and reflecting the will of the people is becoming increasingly important in view of the broad spectrum of public opinion in present-day society, and I felt that we should think deeply about what form political parties should take, including their campaign pledges, or manifestoes, and internal decision-making procedures.

### **159th Diet Session, Second Meeting, Research Commission on the Constitution (February 26, 2004; KINOSHITA Atsushi, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Government and Organizations, with a summary of its findings.

The subcommittee met on February 19, called upon ICHIKAWA Masato, Professor, College of Law, Ritsumeikan University, as an informant, and listened to his opinions regarding the judicial system, with a focus on reforms to enable public participation in the administration of justice to make the system more accessible.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and



I will now give a brief summary.

Professor ICHIKAWA Masato first explained the significance of judicial power and the significance of the requirements for concrete cases and disputes. He then said that the right of access to the courts means the right of access to the courts according to due process including substantive guarantee of access and the right to receive effective relief from infringement of rights by public authority, and expressed opinions regarding the background to judicial system reforms and the importance of expanding the personnel basis in implementing such reforms.

Then he expressed opinions that better access to the courts and reform of the administrative litigation system are necessary to make justice readily accessible, and that he hopes for bolder reform of the administrative litigation system.

He also stated that he has no fundamental objection to promoting public participation in the administration of justice by introducing a quasi-jury system of lay judges; that while this is constitutional, given the non-democratic nature of the administration of justice, the introduction of such a system must give consideration to the nature of a trial as an impartial process in which a judgment is reached by relying only on the Constitution and the laws; and that this system could trigger a major change in the present conditions of criminal trials or could also serve as a fig leaf for judicial severity; that he takes a cautious stance toward the establishment of a constitutional court; and that the present judicial system reforms will help activate the existing incidental system of constitutionality review.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant. Members expressed diverse opinions regarding the form of administrative lawsuits, and regarding the relation between the lay judge system and the Constitution.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. A number of views were put forward based on the perception that the system of constitutional review is presently being implemented in a passive way and that it should be made to function more actively. The proposed solutions included recognizing abstract review of constitutionality under the existing Constitution, and establishing a constitutional court. Wide-ranging views were also expressed with regard to the lay judge system. Among other points, the speakers discussed how the system relates to the judiciary, with its undemocratic nature, independence, and objectivity; how the system would affect the guarantee of the accused's right to trial; how it relates to the Japanese social environment; and the measures needed to ensure that the system takes root.

From the viewpoint of the rule of law, I felt the need for further in-depth discussion, taking into account the overall picture, particularly in light of our responsibility as politicians to put in place a judicial system that will enable the public to obtain effective redress when their rights are violated.

**159th Diet Session, Third Meeting, Research Commission on the Constitution  
(March 18, 2004; KINOSHITA Atsushi, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Government and Organizations, with a summary of its findings.

The subcommittee met on March 11, called upon UTSUNOMIYA Fukashi, Professor, School of Political Science and Economics, Tokai University, as an informant, and listened to his opinions regarding an ombudsman system, a human rights commission and other quasi-judicial organs.

Details of the statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

Professor UTSUNOMIYA Fukashi first explained the global development of ombudsman systems, the large number of parliamentary ombudsmen, the feasibility of introducing an ombudsman system via legislation, and the reasons for the spread of ombudsman systems since the 1950s. He also explained the Japanese approach of examining such systems at the national level and introducing them at the local level.

Next, he pointed out the following characteristics of ombudsmen: they are officers of the legislature; they are impartial investigators who are also independent of the legislature in terms of political influence; they do not have the authority to reverse the acts of the executive branch, but only have the authority to express opinions and make recommendations and maintain their influence through the objectivity of their investigations; they possess investigative powers *ex officio* and this functions effectively to control the administration; and they process complaints directly, swiftly, and free of charge. He also noted that the functions of ombudsmen include administrative control and oversight, the receiving and handling of complaints, and the improvement of administration.

Additionally, he expressed opinions that the need to introduce an ombudsman system is greatly increasing in contemporary Japan; that such a system can be introduced by enacting laws, without revising the Constitution; and that a parliamentary ombudsman and an executive ombudsman would both be possible, but that the parliamentary type would be preferable as it functions more effectively in overseeing the administration.

He also expressed opinions that a parliamentary ombudsman would be suitable both as a way to strengthen the Diet's function of overseeing the executive branch, and because the office serves a function like that of the tribune in ancient Rome, who protected the citizenry from arbitrary action by the magistrates; and the creation of a parliamentary ombudsman would be permitted by the existing Constitution as an embodiment of the right of petition.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant. Members expressed diverse opinions regarding the necessity of introducing an ombudsman system, and the merits and demerits of stipulating the basis for such a system in the Constitution.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. The main views expressed were as follows: there is a need to establish a parliamentary ombudsman; provision should be made for this in the Constitution; before doing so, we should take steps to fully utilize the existing administrative counseling system and to strengthen the functions of the administrative oversight committees of both Houses.

A wide range of views was expressed on such matters as the constitutional status of an ombudsman, whether special and local ombudsmen are necessary, matters that will require attention in introducing an ombudsman, how the office will be related to the information disclosure system, the ideal form of an ombudsman's organization, and the possibility of excluding partisanship from appointments to the office.

I feel that further in-depth, comprehensive debate on this subject is needed, especially in light of the fact that whether to introduce an ombudsman system is a controversial question in modern administrative states.

Based on the discussions to date, the subcommittee will continue to pursue further deliberations on ideal government and organizations for the future.

**159th Diet Session, Fifth Meeting, Research Commission on the Constitution  
(April 8, 2004; SUZUKI Katsumasa, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Government and Organizations, with a summary of its findings.

The subcommittee met on April 1, called upon USUI Mitsuaki, Professor, Graduate School of Law and Politics, The University of Tokyo, and upon HIROI Yoshinori, Professor, Faculty of Law and Economics, Chiba University, as informants, and listened to their opinions regarding public finances, with special reference to their control by the Diet and the question of social security funding, including the problem of the social security burden on taxpayers and the relationship between the pension system and national finances.

Details of the statements of opinion by the informants can be found in the subcommittee minutes, and I will now give a brief summary.

Professor USUI Mitsuaki said that to realize the principle of public control of public finances, which is a part of popular sovereignty, it will be necessary to provide the people with information on public finances and to switch from the past painless fiscal mechanism to one whereby the people will feel the pain of the fiscal burden. Regarding the relations between public finances and the Constitution and legislation, he said that many aspects of provisions on public finances can be left to the discretion of the legislature. He said that because there is no constitutional principle that requires a balanced budget, it is possible to issue deficit-financing bonds by simply enacting exceptional-case laws, and so public finance system is vulnerable, but that it would be difficult in practice to restrict

them by making constitutional stipulations.

Next, regarding the budget system, he expressed opinions that the principle of the single-year budget should be adopted to ensure the soundness of public finances; that public finances should not be managed in a way that does not permit their control by matching expenditures and revenues; that tacking on multi-year budgets is not only permissible but is desirable; that the harmful effects of the single-year budget should be averted through flexibility in carrying over budget allocations to subsequent years; and that there are constitutional problems with reserve funds whose purposes are only loosely specified.

He said it is necessary to examine deleting the latter part of Article 89 of the Constitution in relation with providing government subsidies to private schools, etc. He then expressed opinions that as for control of public finances by organs other than the Diet, the Ministry of Finance plays a large role in terms of control by the executive branch itself; that the Constitution does not assume the Board of Audit as an auxiliary agency of the Diet; and that a system for citizen lawsuits for malfeasance against authorities at the national level equivalent to the existing system of resident lawsuits at the municipal level is worth considering. Furthermore, he said that he hopes that the Diet itself will make ongoing efforts to study the ideal institutional form of fiscal control and release a report of its findings.

Professor HIROI Yoshinori first explained that the Japanese social security system is characterized by its small scale, the fact that pension outweigh welfare, and the fact that it is funded mainly by social insurance contributions but that its revenue sources are actually a mixture of contributions and taxes. He said that Japan has been able to keep its social security payments low due to an informal system of social security provided by employers and nuclear families and the existence of social security in the form of public works spending. He then explained the relative status of Japan's social security system by presenting an international comparison.

He said that the basic principle of social security is the institutional guarantee of the opportunity for self-realization, which is guaranteed by Article 13 of the Constitution. For future direction, he said, because the risks for health and welfare are less predictable than those related to pensions, a system that emphasizes healthcare and welfare, making generous public provision for these while expanding the role of the private sector with regard to pensions, would be appropriate, and that as revenue sources consumption taxes, inheritance taxes and environmental taxes should be considered.

Furthermore, he expressed opinions that a basic challenge for social security is to pursue a sustainable welfare state and welfare society, while considering harmony with the environment and the division of roles among the public sector, mutual assistance, and the private sector.

Based upon these opinions expressed by the informants, subcommittee members posed questions to the informants and held free discussions among themselves, with lively exchanges of views among the members and the informants. Members expressed diverse opinions regarding the ideals for Japan's future social security system and control of public finances.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. Comments on the control of public finances included the view that a multi-year budget system should be considered, and the view that we should make explicit provision in the Constitution for balancing the budget. With regard to social security, attention was drawn to the importance of the fact that Article 25 of the Constitution sets forth the government's responsibility regarding social security, welfare and public health. A wide variety of views was expressed on a number of other points, including what form the constitutional provisions regarding social security should take, the present level of the public's contribution to social security and the permissible future level, the appropriate level of the corporate tax burden, how compulsory education should be funded from the national treasury, an assessment of Sweden's pension reforms, and the welfare state model which Japan should aim to achieve.

I feel that continued in-depth discussion from a comprehensive viewpoint is needed, especially in light of the fact that fiscal issues, such as control of public finances by the Diet and the problem of funding social security, can be expected to take on still greater importance in this country in the future.

Based on the discussions to date, the subcommittee will continue to pursue further deliberations on ideal government and organizations for the future.

**159th Diet Session, Seventh Meeting, Research Commission on the Constitution  
(June 3, 2004; SUZUKI Katsumasa, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Government and Organizations, with a summary of its findings.

The subcommittee met on May 20, called upon TSUJIYAMA Takanobu, Senior Research Fellow, Japan Research Institute for Local Government, as an informant, and listened to his opinions regarding the ideal division of powers between the central and local governments, with special reference to the right to levy taxes.

Details of the statements of opinion by the informant, which are extremely meaningful, can be found in the subcommittee minutes, and I will now give a brief summary.

Mr. TSUJIYAMA Takanobu first spoke about the present conditions of the effects of the Law Concerning the Decentralization of Government Authority. He said that while there have been cases where this law has led to revitalization of local assemblies and active citizen participation in the drafting of legislation, advice (instead of directives), recommendations, Cabinet orders, ministerial ordinances and notifications still continue to restrict the freedom of local government bodies.

Next, regarding the ideal division of authority between the central and local governments, he said that the right of self-government that includes, in principle, the right to regulate all local affairs, that is granted primarily to the basic units of local government, and that includes the right to decide

which tasks to perform and powers to exercise, should be clearly established both by law and in the Constitution. Tasks that a local government decides not to perform should go to a broader regional level according to the principle of subsidiarity.

He then said that local governments today face a number of problems: the density of statutory regulation, centralized administrative control, and problems in the tax and fiscal systems. As a general rule, however, the development of local autonomy is not being held back by any deficiencies of the Constitution. He said that if he had to revise some part of the Constitution, in Article 93 there is room to consider allowing local bodies a choice as to whether or not they adopt the dual system of representation, in which both the chief executive officer and the assembly are chosen by direct popular election; and that it would be possible to introduce a system in which the organization of the local entity, the tasks for which it is responsible, the taxes it levies, and related matters are set forth in a charter, like those adopted by states in the United States, and the charter is approved by the Diet. He also said that as Japan does not adopt a federal system, the central government must inevitably take responsibility for adjusting revenues among local governments so as to guarantee a national minimum standard of living.

Furthermore, regarding the proper size of local governments, he expressed opinions that the feasible contents of self-government should be considered together with the powers, revenue sources, and the amount of work for which the entity is responsible, and he expressed concern regarding the current situation whereby municipal mergers are being promoted without clarifying the concept of the *do-shu* system.

Based upon these opinions expressed by the informant, subcommittee members posed questions to the informant and held free discussions among themselves, with lively exchanges of views among the members and the informant. Members expressed diverse opinions regarding the ideal division of powers between the central and local governments.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. A wide range of views was expressed on topics including diverse forms of local autonomy, term limits for heads of local governments, the fact that people now live their lives in a geographical zone larger than the prefecture due to advances in transport and communications, and the importance of decentralization as a means of controlling government.

Considering how the issues concerning the ideal division of powers between Japan's central and local governments will become increasingly important as decentralization progresses, I felt we need to continue to discuss these problems in depth and from a comprehensive viewpoint.

Based on the discussions to date, the subcommittee will continue to pursue further deliberations on ideal government and organizations for the future.

**159th Diet Session, Seventh Meeting, Research Commission on the Constitution  
(June 3, 2004; SUZUKI Katsumasa, Chairperson)**

I hereby present my report on the progress of the research conducted by the Subcommittee on Ideal Government and Organizations, with a summary of its findings.

The subcommittee met on May 27, requested the attendance of the Board of Audit authorities, and called upon TADANO Masahito, Associate Professor, Graduate School of Law, Hitotsubashi University, as an informant, and listened to the explanations of the Board of Audit authorities and the opinions of the informant regarding the bicameral system and the Board of Audit system.

Details of the explanations by officials of the Board of Audit and statements of opinion by the informant can be found in the subcommittee minutes, and I will now give a brief summary.

The officials of the Board of Audit explained that guaranteeing independence is key for the Board of Audit to strictly and fairly perform its duties; and that the Board of Audit has a right of independent personnel management, rule-making powers and a two-tiered system for determining its budget; that while the Board of Audit is an independent organ, it has close relationships with the Diet as appointments of auditors require the Diet's consent, the Board submits its statement of audit of the final accounts to the Diet, and each House and the committees of each House can request the Board to audit particular items and submit reports of its findings; and that to have the results of audits reflected in institutions, the budget and other areas, the Board reports its audit results to the Diet, follows the subsequent disposition of items it has requested to take action on and reports them to the Diet, and holds liaison meetings with the Budget Bureau and other relevant departments of the Ministry of Finance. The officials of the Board of Audit also explained the status and other information regarding the supreme audit institutions in major countries.

Professor TADANO Masahito said that in a bicameral system in a unitary state what distinguishes the second chamber from the first becomes an issue, and explained the different ways of classifying the second chamber. He said many of the world's nations have unicameral systems, but that nations tend to adopt a bicameral system when their population exceeds a certain level.

He said that in France, which like Japan is a unitary state with a bicameral system, in the Senate – which is the second chamber – there is party politics, but it actually plays a valuable role even when the political composition of the two chambers is similar.

He then expressed opinions that while the House of Councillors has been seeking a distinct identity, it has not necessarily succeeded; that to manifest such originality, reforming the House of Councillors' electoral system with emphasis on parties should be reexamined; that the organization of the House should be prescribed by House rules, and not by the Diet Law; and that the House of Councillors is expected to reflect the diversity of public opinion, carry on research activities with a long-term perspective, and exercise control functions over the government.

He also expressed opinions that it would not be advisable to put the House of Representatives in charge of budget deliberations and the House of Councillors in charge of reviewing the final

accounts, because of concerns as to whether House of Councillors with its weak powers can exercise effective control, and that the existing bicameral system can be affirmed in terms of constitutional policy.

Based upon these explanations provided by the officials of the Board of Audit and opinions expressed by the informant, subcommittee members posed questions and held free discussions among themselves, with lively exchanges of views among the members, the authorities and the informant. Members expressed various opinions regarding such items as the ideal bicameral system and the relationship between the Board of Audit and the Diet.

As chairperson of the subcommittee, I will summarize the opinions expressed as follows. A wide range of opinion was expressed on topics including the need to maintain the bicameral system; the electoral systems and division of roles between the two Houses; and making the Board of Audit an auxiliary body of the Diet.

I felt a need for continued comprehensive, in-depth discussion, considering that issues related to bicameralism, especially establishing a unique identity for the House of Councillors and the status of the Board of Audit, will become increasingly important in the future.

Based on the discussions to date, the subcommittee will continue to pursue further deliberations on ideal government and organizations for the future.



## 5) Open Hearings Data

		159th Diet Session		161st Diet Session		
		1st Open Hearing	2nd Open Hearing	1st Open Hearing	2nd Open Hearing	3rd Open Hearing
Date		May 12, 2004	May 13, 2004	Nov. 11, 2004	Nov. 18, 2004	Nov. 25, 2004
Date of request for approval to hold open hearing		Mar. 23, 2004		Oct. 14, 2004		
Press release		Mar. 23, 2004		Oct. 14, 2004		
Government gazette insert		Mar. 24, 2004		Oct. 15, 2004		
Deadline for submission of applications for speakers selected based on applications received from the public		Apr. 12, 2004		Nov. 4, 2004		
Speakers	Total no.	9		18		
	Recommended by meeting of directors	5	1	6	6	---
	Selected based on applications received from the public	1	2	---	---	6
	No. of applications received from the public	17		30		

## 6) Local Open Hearings: Data and Reports by Members Participating

### (1) Data on Local Open Hearings

		1	2	3	4	5
Location		Sendai City, Miyagi Prefecture	Kobe City, Hyogo Prefecture	Nagoya City, Aichi Prefecture	Nago City, Okinawa Prefecture	Sapporo City, Hokkaido
Venue		Hotel Sendai Plaza	Hotel Okura Kobe	The Westin Nagoya Castle	Bankoku Shinryokan	Hotel New Otani Sapporo
Date		Apr. 16, 2001	June 4, 2001	Nov. 26, 2001	Apr. 22, 2002	June 24, 2002
Application for approval for dispatch of members		Feb. 22, 2001	Apr. 26, 2001	Oct. 25, 2001	Mar.19, 2002	May 16, 2002
Press announcement		Feb. 23, 2001	Apr. 27, 2001	Oct. 26, 2001	Mar. 19, 2002	May 17, 2002
Government gazette insert		Feb. 23, 2001	May 1, 2001	Oct. 29, 2001	Mar. 22, 2002	May 20, 2002
Deadline for invitation to public	Speakers	Mar. 22, 2001	May 21, 2001	Nov. 12, 2001	Apr. 8, 2002	June 10, 2002
	Visitors	Mar. 22, 2001	May 21, 2001	Nov. 12, 2001	Apr. 8, 2002	June 10, 2002
Selection of Speakers		Mar. 30, 2001	May 24, 2001	Nov. 15, 2001	Apr. 11, 2002	June 13, 2002
Members dispatched	Total no.	10	11	10	10	10
	Composition	LDP 2, DPJ 2, NK 1, LP 1, JCP 1, SDP 1, NCP 1, Club 21 1	LDP 3, DPJ 2, NK 1, LP 1, JCP 1, SDP 1, NCP 1, Club 21 1	LDP 3, DPJ 2, NK 1, LP 1, JCP 1, SDP 1, Club 21 1	LDP 3, DPJ 2, NK 1, LP 1, JCP 1, SDP 1, NCP 1	LDP 3, DPJ 2, NK 1, LP 1, JCP 1, SDP 1, NCP 1
Speakers	Total no.	10	10	6	6	6
	Recommended by political parties and groups	7	8	---	---	---
	From invitation to public ( /No. of applicants)	3/18	2/61	6/57	6/25	6/62
No. of visitors		152	276	173	192	231
Date of report		Apr. 26, 2001	June 14, 2001	Nov. 29, 2001	Apr. 25, 2002	July 25, 2002

		6	7	8	9
Location		Fukuoka City, Fukuoka Prefecture	Kanazawa City, Ishikawa Prefecture	Takamatsu City, Kagawa Prefecture	Hiroshima City, Hiroshima Prefecture
Venue		Hotel New Otani Hakata	ANA Hotel Kanazawa	Takamatsu Kokusai Hotel	ANA Hotel Hiroshima
Date		Dec. 9, 2002	May 12, 2003	June 9, 2003	Mar. 15, 2004
Application for approval for dispatch of members		Nov. 7, 2002	Mar. 18, 2003	Apr. 17, 2003	Jan. 22, 2004
Press announcement		Nov. 8, 2002	Mar. 19, 2003	Apr. 17, 2003	Jan. 22, 2004
Government gazette insert		Nov. 11, 2002	Mar. 24, 2003	Apr. 21, 2003	Jan. 26, 2004
Deadline for invitation to public	Speakers	Nov. 25, 2002	Apr. 15, 2003	May 13, 2003	Feb. 17, 2004
	Visitors	Nov. 25, 2002	Apr. 15, 2003	May 13, 2003	Feb. 17, 2004
Selection of Speakers		Nov. 29, 2002	Apr. 23, 2003	May 22, 2003	Feb. 24, 2004
Members dispatched	Total no.	9	9	10	8
	Composition	LDP 3, DPJ 2, NK 1, LP 1, JCP 1, SDP 1	LDP 3, DPJ 2, NK 1, LP 1, JCP 1, SDP 1	LDP 3, DPJ 2, NK 1, LP 1, JCP 1, SDP 1, NCP 1	LDP 3, DPJ 2, NK 1, JCP 1, SDP 1,
Speakers	Total no.	6	6 (of which, 1 was absent)	6	6
	Recommended by political parties and groups	---	---	---	---
	From invitation to public ( /No. of applicants)	6/53	6/52	6/41	6/45
No. of visitors		228	253	212	218
Date of report		Dec. 12, 2002	May 29, 2003	June 12, 2003	Mar. 18, 2004

## **(2) Meeting Reports**

### **Sendai Local Open Hearing**

**(151st Diet Session, Fifth Meeting, Research Commission on the Constitution, April 26, 2001)**

**Report by KANO Michihiko, Deputy Chairman**

On behalf of the members assigned to participate in the meeting, I am acting for the head of the mission in presenting this report summarizing the proceedings.

The participating members were NAKAYAMA Taro, head of mission and chairman; HANASHI Nobuyuki, director; SENGOKU Yoshito, director; SAITO Tetsuo, director; FUJISHIMA Masayuki, member; HARUNA Naoaki, member; KANEKO Tetsuo, member; KOIKE Yuriko, member; KONDO Motohiko, member; and me, KANO Michihiko, making a total of 10.

Local assembly members SUGAWARA Kijuro and KANNO Tetsuo also participated.

The meeting was held on April 16 in a conference room at the Hotel Sendai Plaza in Sendai City. Head of Mission NAKAYAMA began the proceedings with an address in which he explained the purpose of holding the hearing and gave a summary of the past discussions of the Commission, introduced the members and speakers, and explained the order of the proceedings.

Statements of opinion were then heard from the following 10 speakers: TEJIMA Norio, Chairman, Sendai Association of Corporate Executives; KANO Fuminaga, Mayor of Kashimadai Town, Miyagi Prefecture; SHIMURA Kensuke, Professor Emeritus, Tohoku University; TANAKA Hidemichi, Professor, Faculty of Arts and Letters, Tohoku University; ODANAKA Toshiki, Professor, School of Law, Senshu University and Professor Emeritus, Tohoku University; KUBOTA Manae, Representative, Women's Net to Support 1946 Constitution; YONETANI Mitsumasa, Associate Professor, Tohoku Fukushi University; HAMADA Takehito, Instructor, Hirosaki Gakuin Seiai High School; ENDO Masanori, Instructor, Senshu University Kitakami Senior High School, and Representative of the Shimin Study Association; and SAITO Takako, Chairwoman, Peace Activity Committee, Miyagi Consumers' Co-operative Society.

The following is a brief summary of the opinions expressed by speakers.

TEJIMA Norio said that conditions in Japan and overseas have changed substantially since the Constitution was formulated, and the Constitution should address them.

KANO Fuminaga said that fostering the development of municipalities firmly rooted in decentralization is what will preserve and nurture the Constitution.

SHIMURA Kensuke said that as regards environmental issues, we should not take a human-centered approach, but also take co-existence with other forms of life into consideration.

TANAKA Hidemichi said that, based on an outlook rooted in Japan's traditional thinking, the Constitution should be revised to enable Japan to devote its energies to world peace.

ODANAKA Toshiki said that the ideological and idealistic structure of the present Constitution gives it a systematic coherence, and the Constitution plays a role in coping with contemporary issues.

KUBOTA Manaë said that the ideals of the Constitution should be protected, given that it recognizes the rights of women, and includes the internationally acclaimed Article 9.

YONETANI Mitsumasa said that we should not create a constitution that transcends society; we need to revise the Constitution into something more familiar and accessible.

HAMADA Takehito said that Article 9 is a source of dreams and ideals for teachers who wish to reach out seriously to their students.

ENDO Masanori said that for the people to become the true sovereigns of the nation, the procedure for revising the Constitution should be improved quickly.

SAITO Takako said that what should be done now is not to revise the Constitution, but to abide by it faithfully.

After expressing their opinions, the speakers were asked by each of the members to give their views and other comments on various matters. These included questions concerning the relationship between the Constitution's provision that public officials have the obligation to respect and uphold it, and its provision for procedures for its amendment; Article 9; environmental rights; the public disclosure of information; the popular election of the prime minister; and a constitutional court system.

After this question session, Mission Head NAKAYAMA asked for comments from the floor, and the following were among the comments made by members of the audience.

The view that the Commission should inform the public more widely of its proceedings, and the view that more opportunities should be provided for direct discussion between Diet members and the public about fundamental national issues.

A stenographic record of the proceedings was made, so would you please refer to that for full details. I request that when that record is transcribed, it be included in the minutes of the Commission for future reference.

That completes my report, but I would like to add that it was thanks to the efforts of everyone involved that the meeting proceeded very smoothly. I wish to express my most sincere gratitude to them.

## **Kobe Local Open Hearing**

**(151st Diet Session, Seventh Meeting, Research Commission on the Constitution, June 14, 2001)**

**Report by KANO Michihiko, Deputy Chairman**

On behalf of the members assigned to participate in the meeting, I am acting for the head of the mission in presenting this report summarizing the proceedings.

The participating members were NAKAYAMA Taro, head of mission and chairman; NAKAGAWA Shoichi, director; HANASHI Nobuyuki, director; NAKAGAWA Masaharu, director; SAITO Tetsuo, director; SHIOTA Susumu, member; HARUNA Naoaki, member; KANEKO Tetsuo, member; KOIKE Yuriko, member; KONDO Motohiko, member; and me, KANO Michihiko, making a total of 11.

Local assembly members OKUTANI Toru, SUNADA Keisuke, ISHII Hajime, AKAMATSU Masao, FUJIKI Yoko, and KITAKAWA Renko also participated.

The meeting was held on June 4 in a conference room at the Hotel Okura Kobe in Kobe City. Head of Mission NAKAYAMA began the proceedings with an address in which he explained the purpose of holding the hearing and gave a summary of the past discussions of the Commission, introduced the members and speakers, and explained the order of the proceedings.

Statements of opinion were then heard from the following 10 speakers: KAIHARA Toshitami, Governor of Hyogo Prefecture; SHIBAO Susumu, Mayor of Kawanishi City; SASAYAMA Kazutoshi, Mayor of Kobe City; OHMAE Shigeo, Chairman of the Board of Trustees of Ohmae Gakuin; URABE Noriho, Vice President of Kobe University and Professor, Graduate School of Law, Kobe University; NAKAKITA Ryutaro, lawyer; HASHIMOTO Akio, Chairman of Hyogo Prefecture Medical Association; KOKUBO Masao, Mayor of Hokudan Town, Hyogo Prefecture; TSUKAMOTO Hideki, corporate executive; and NAKATA Narishige, Associate Professor, Osaka Institute of Technology.

The following is a brief summary of the opinions expressed by the speakers.

KAIHARA Toshitami said that in the 21st century, Japan should make an international contribution by providing the "art of peace" for resolving problems in such areas as medical care, welfare, and disaster prevention, and that decentralization should be pursued.

SHIBAO Susumu said that it is important that the Constitution be put into practice in local government administration, and that we should take steps to protect children's human rights and to cooperate with the international community for the attainment of peace and human rights.

SASAYAMA Kazutoshi said that a lesson learned from the Great Hanshin-Awaji Earthquake is the importance of giving adequate powers to mayors of municipalities in times of disaster, and of assisting disaster victims based on the right of livelihood contained in the Constitution.

OHMAE Shigeo said that the good qualities of the Japanese people that are highly regarded

worldwide should be looked at again, and the Constitution should be amended in such ways as to make express mention of the fact that Japan is a constitutional monarchy, and also to include provisions concerning obligations.

URABE Noriho said that from the perspective of human security, instead of allocating huge amounts to military preparedness, Japan should play a leadership role worldwide in tackling situations such as large-scale disasters and food and energy problems.

NAKAKITA Ryutaro said that in overcoming the mistakes of the 20th century, Japan should implement policies to give life to its Peace Constitution, including by enacting into law the Kobe-formula nuclear-free policy, and transforming the Japan-U.S. Security Treaty into a friendship treaty.

HASHIMOTO Akio said that the Constitution should include provisions concerning the duties of the state in times of major disaster, should improve the guarantee of the right to livelihood, and should make express provision to guarantee the people's right to health.

KOKUBO Masao said that the Constitution should be revised in line with changes in the times, and should include explicit mention of matters such as that the Emperor is the head of state, that Japan has the right of belligerency in self-defense, and that it can maintain military forces for defensive purposes.

TSUKAMOTO Hideki said that in view of changes in social conditions, Japan should embark upon constitutional revision, dividing the process into the stages: items to be revised immediately, items to be added, and items to be discussed in the future.

NAKATA Narishige said that the Constitution provides the foundation for citizens' actions, and so constitutional revision must not be discussed hastily, and the government should not make light of the Constitution, but should shift reality closer to its ideals.

After expressing their opinions, the speakers were asked by each of the members to give their views and other comments on various matters. These included questions concerning the popular election of the prime minister, the desirable form of local autonomy, the necessity for including explicit provisions for natural disasters in the Constitution, the allocation of powers between the national and local governments in the event of natural disasters, the advisability of stipulating that the Emperor is the head of state, the question of public assistance for disaster victims from the standpoint of the Constitution, and the constitutional suitability of strengthening the Japan-U.S. Security Arrangements.

After this question session, Mission Head NAKAYAMA asked for comments from the floor, and the following were among the comments made by members of the audience: the inadequacies of the legal system for times of natural disaster and the relationship with the Constitution, the enactment of a Constitution that embodies Japan's national history and traditions, and the method of conducting the local open hearings.

A stenographic record of the proceedings was made, so would you please refer to that for full details. I request that when that record is transcribed, it be included in the minutes of the Commission for future reference.

That completes my report, but I would like to add that it was thanks to the efforts of everyone involved that the meeting proceeded very smoothly. I wish to express my most sincere gratitude to them.

### **Nagoya Local Open Hearing**

**(153rd Diet Session, Fourth Meeting, Research Commission on the Constitution, November 29, 2001)**

#### **Report by KANO Michihiko, Deputy Chairman**

On behalf of the members assigned to participate in the meeting, I am acting for the head of the mission in presenting this report summarizing the proceedings.

The participating members were NAKAYAMA Taro, head of mission and chairman; HANASHI Nobuyuki, director; HATOYAMA Kunio, member; SHIMA Satoshi, member; SAITO Tetsuo, director; TSUZUKI Yuzuru, member; HARUNA Naoaki, member; KANEKO Tetsuo, member; UDAGAWA Yoshio, member; and me, KANO Michihiko, making a total of 10.

Local assembly members KOBAYASHI Kenji, MAKI Yoshio, SEKO Yukiko, and OSHIMA Reiko also participated.

The meeting was held on November 26 in a conference room at the Westin Nagoya Castle in Nagoya City. Head of Mission NAKAYAMA began the proceedings with an address in which he explained the purpose of holding the hearing and gave a summary of the past discussions of the Commission, introduced the members and speakers, and explained the order of the proceedings.

Statements of opinion were then heard from the following six speakers: TAGUCHI Fukuji, Professor Emeritus, Nagoya University; NISHI Hideko, housewife; NOHARA Kiyoshi, teacher, Gifu Prefectural High School; KAWABATA Hiroaki, doctoral student, Graduate School of Law, Nagoya University; KOIDO Yasuo, lawyer; and KATO Masanori, university student.

The following is a brief summary of the opinions expressed by the speakers.

TAGUCHI Fukuji said that the Constitution does not envision the making of an international contribution of a military nature. Japan should continue to make contributions of a non-military nature through such channels as the UN High Commissioner for Refugees and UNICEF.

NISHI Hideko said that Japan should play a role in the international community that lives up to the ideals of the Preamble of the Constitution, such as the guarantee of the right to live in peace. When giving economic aid to developing countries it is essential to take care that help reaches the poor strata of society, and that it does not lead to the destruction of traditional lifestyles and the natural



environment.

NOHARA Kiyoshi said that, given the data that show that adults are failing to teach rules and manners to the young, there is a problem with the Preamble and Article 9, which leave our national security in the hands of others. The Constitution should make clear mention of right of self-defense that any normal nation possesses, and we should revise the Preamble to give it a dignified style with a clearly Japanese identity.

KAWABATA Hiroaki said that, based on his encounter with terrorist bombings when he worked at the Japanese embassy in Peru, he believes that we should resolve terrorism not with violence but with dialogue.

KOIDO Yasuo said that Japan should consider its role in the international community not in terms of how it is regarded by that community, but in terms of its national interest. Japan's international contributions should not focus on financial assistance, but should also give importance to the international contribution of personnel; for that it is necessary to develop the human resources.

KATO Masanori said that Japan should become a permanent member of the UN Security Council and show leadership in the elimination of nuclear weapons. For that Japan should introduce a system of popular election of the prime minister, through which we could expect to choose a prime minister with strong leadership qualities.

After expressing their opinions, the speakers were asked questions by each of the members on various matters. These included questions concerning the specific methods Japan should adopt to deal with terrorism, the rights and wrongs of making express mention in the Constitution of environmental rights and obligations, the advisability of having the Self-Defense Forces participate in UN policing operations, the role of the United Nations in dealing with the problem of terrorism, the relationship between the Anti-Terrorism Special Measures Law and the Constitution, and the actual state of education concerning the Constitution in classrooms.

After this question session, Mission Head NAKAYAMA asked for comments from the floor, and the following were among the comments made by members of the audience.

The view that the ideals of the Peace Constitution should be realized in concrete ways, and that there should be more women speakers.

The view that children should be taught about the importance of the Constitution.

The view that in light of the circumstances surrounding the formulation of the Constitution, it should be discussed and revised by the Japanese people themselves.

The view that Japan has lost credibility by such behavior as building up military strength despite the provisions of Article 9. We should strive to keep alive the Constitution's peaceful ideals.

The view that the Constitution was enacted through a process of encapsulating worldly wisdom and being considered in the Diet; the perspective of this Peace Constitution should be shown to the

world.

A stenographic record of the proceedings was made, so would you please refer to that for full details. I request that when that record is transcribed, it be included in the minutes of the Commission for future reference.

That completes my report, but I would like to add that it was thanks to the efforts of everyone involved that the meeting proceeded very smoothly. I wish to express my most sincere gratitude to them.

### **Okinawa Local Open Hearing**

**(154th Diet Session, Third Meeting, Research Commission on the Constitution, April 25, 2002)**

#### **Report by NAKANO Kansei, Deputy Chairman**

On behalf of the members assigned to participate in the meeting, I am acting for the head of the mission in presenting this report summarizing the proceedings.

The participating members were NAKAYAMA Taro, head of mission and chairman; HANASHI Nobuyuki, director; KYUMA Fumio, member; SHIMA Satoshi, director; AKAMATSU Masao, director; FUJISHIMA Masayuki, member; HARUNA Naoaki, member; KANEKO Tetsuo, member; INOUE Kiichi, member; and me, NAKANO Kansei, making a total of 10.

Local assembly members AKAMINE Seiken and TOMON Mitsuko also participated.

The local open hearing was held on the afternoon of April 22 at the Bankoku Shinryokan in Nago City, Okinawa Prefecture, on the subject of Japan and its constitution in the 21st century. Prior to the meeting, on the afternoon of April 21 at the Okinawa Prefectural Office, Governor INAMINE Keiichi of Okinawa Prefecture and prefectural officials presented explanations of matters such as the draft of the Okinawa Development Plan, the problem of U.S. military bases in Okinawa, and the state of the tourism industry in Okinawa, and on the morning of April 22, we made an inspection tour to the Okinawa Peace Memorial Park, the National Okinawa War Dead Cemetery, and the Cornerstone of Peace.

At the local open hearing, Head of Mission NAKAYAMA began the proceedings with an address in which he explained the purpose of holding the hearing and gave a summary of the past discussions of the Commission, introduced the members and speakers, and explained the order of the proceedings.

Statements of opinion were then heard from the following six speakers: YAMAUCHI Tokushin, President of the Research Institute on Japan's Peace Constitution and Local Autonomy; ARAKAKI Tsutomu, lawyer; MEGUMI Ryunosuke, president of a business school; KAKINOHANA Hojun, Professor, College of Law, Okinawa International University; INAFUKU Erika, university student; and ASHITOMI Osamu, member of the Okinawa Prefectural Assembly.

The following is a brief summary of the opinions expressed by the speakers.

YAMAUCHI Tokushin said that Article 9 of the Constitution is the life-blood of the Japanese people, and politicians should respect and uphold it. As a model peace-loving nation, Japan should spread the spirit of Article 9 to the world.

ARAKAKI Tsutomu said that a lesson from the Battle of Okinawa is that military force cannot protect the lives of the people, and from the standpoint of the dignity of the individual we should protect Article 9, given that it embodies unarmed pacifism.

MEGUMI Ryunosuke said that the right of belligerency is a natural right of states, and the independence and peace of states cannot be maintained without the backing of military strength. Therefore, Article 9 should be revised.

KAKINOHANA Hojun said that Diet members, teachers, and others should respect and uphold the dignity of the individual espoused by the Constitution, in order to ensure that respect for the dignity of the individual, a fundamental ideal of the Constitution and the Fundamental Law of Education, is spread and adhered to thoroughly.

INAFUKU Erika said that learning is not an obligation but a right, and thus service activities should not be made compulsory. It is important that volunteer activities be supported by the community, and there be a relationship of living in harmony with the community.

ASHITOMI Osamu said that while retaining the ideal of the renunciation of war, the Constitution should make explicit provision for the minimum armed force necessary for Japan to defend itself, and for direct civilian control in those circumstances. Express provision should also be made for the complete separation of legislative and executive powers, and for the realization of local autonomy.

After expressing their opinions, the speakers were asked questions by each of the members on matters such as Japan's system of security, the constitutionality of the Self-Defense Forces and the Japan-U.S. Security Treaty, whether or not provisions other than Article 9 should be revised, the role of the Self-Defense Forces in times of disaster, the desirable form of the state's protection of the people's security, international contributions in the non-military sphere, the revision of the Japan-U.S. Status of Forces Agreement, problems with the emergency response legislation, and education problems.

After this question session, Mission Head NAKAYAMA asked for comments from the floor, and the following were among the comments made by members of the audience: the importance of the Peace Constitution, the necessity for establishing national sovereignty, the fact that the Constitution has not been observed adequately in Okinawa, and problems with the emergency response legislation.

A stenographic record of the proceedings was made, so would you please refer to that for full details. I request that when that record is transcribed, it be included in the minutes of the Commission for future reference.

That completes my report, but I would like to add that it was thanks to the efforts of everyone

involved that the meeting proceeded very smoothly. I wish to express my most sincere gratitude to them.

### **Sapporo Local Open Hearing**

**(154th Diet Session, Fifth Meeting, Research Commission on the Constitution, July 25, 2002)**

#### **Report by NAKANO Kansei, Deputy Chairman**

On behalf of the members assigned to participate in the meeting, I am acting for the head of the mission in presenting this report summarizing the proceedings.

The participating members were NAKAYAMA Taro, head of mission and chairman; HANASHI Nobuyuki, director; NAKAGAWA Shoichi, director; NAKAGAWA Masaharu, director; AKAMATSU Masao, director; TAKEYAMA Yuriko, member; HARUNA Naoaki, member; KANEKO Tetsuo, member; INOUE Kiichi, member; and me, NAKANO Kansei, making a total of 10.

Local assembly member YAMAUCHI Keiko also participated.

The local open hearing was held on the afternoon of June 24 in a conference room at the Hotel New Otani Sapporo in Sapporo City, Hokkaido, on the subject of Japan and its constitution in the 21st century.

Head of Mission NAKAYAMA began the proceedings with an address in which he explained the purpose of holding the hearing and gave a summary of the past discussions of the Commission, introduced the members and speakers, and explained the order of the proceedings.

Statements of opinion were then heard from the following six speakers: INATSU Sadatoshi, Managing Director, Daitoa Shoji Co., Ltd.; ISHIZUKA Osamu, farmer; TANAKA Hiroshi, Chairman, Hokkaido Federation of Bar Associations; SATO Satomi, university student; YUKI Yoichiro, Professor, Otaru University of Commerce; MASUGI Eiichi, lawyer.

The following is a brief summary of the opinions expressed by the speakers.

INATSU Sadatoshi said that we should enact a new Constitution whose fundamental principles are universal values based on Japan's traditions and culture, and make an active contribution to maintaining the world order at the beginning of the 21st century.

ISHIZUKA Osamu said that Japan should persist with the staunchly pacifist ideals in the Preamble and Article 9 of the Constitution, and become an independent country both politically and economically.

TANAKA Hiroshi said that, rather than revise Article 9 of the Constitution and study the emergency-response legislation, the government should reflect on its past treatment of the Ainu and develop more benign ethnic policies towards them.

SATO Satomi said that to ensure that the guarantee of the equality of the sexes in Article 14 is realized, there is a further need to improve legislation and change attitudes, so as to guarantee women their due rights.

YUKI Yoichiro said that Article 9 of the Constitution is something that Japan can proudly display as a model to the world, and should be maintained, but that there is scope for improving the Constitution with respect to, for example, the introduction of a referendum system, the establishment of a constitutional court, and the introduction of a presidential system.

MASUGI Eiichi said that the ideal of pacifism in the present Constitution should show its worth more than ever in the 21st century. It is essential to reform the judicial system in order to protect the Constitution and human rights.

After expressing their opinions, the speakers were asked questions by each of the members on matters such as internationalization in Hokkaido, Article 9 and the Self-Defense Forces, the form that Japan's international contributions should take, Japan's non-nuclear policy, the reform of the judicial system, the increasing participation in society by women, education reform, and agricultural policy.

After this question session, Mission Head NAKAYAMA asked for comments from the floor, and the following were among the comments made by members of the audience: the significance of Article 9, problems with the emergency-response legislation, and the fear that the holding of local open hearings will lead to the revision of the Constitution.

A stenographic record of the proceedings was made, so would you please refer to that for full details. I request that when that record is transcribed, it be included in the minutes of the Commission for future reference.

That completes my report, but I would like to add that it was thanks to the efforts of everyone involved that the meeting proceeded very smoothly. I wish to express my most sincere gratitude to them.

### **Fukuoka Local Open Hearing**

**(155th Diet Session, Fourth Meeting, Research Commission on the Constitution, December 12, 2002)**

**Report by SENGOKU Yoshito, Deputy Chairman**

On behalf of the members assigned to participate in this meeting, I am acting for the head of the mission in presenting this report summarizing the proceedings.

The participating members were NAKAYAMA Taro, head of mission and chairman; HANASHI Nobuyuki, director; YASUOKA Okiharu, director; OIDE Akira, director; EDA Yasuyuki, member; TAKEYAMA Yuriko, member; HARUNA Naoaki, member; KANEKO Tetsuo, member; and me, SENGOKU Yoshito, making a total of nine.

Local assembly member OZAWA Kazuaki also participated.

The meeting was held in the afternoon of December 9 in a conference room at the Hotel Otani Hakata in Fukuoka City, Fukuoka Prefecture. The subject of the hearing was Japan and its constitution in the 21st century. Head of Mission NAKAYAMA began the proceedings with an address in which he explained the purpose of holding the hearing and gave a summary of the past discussions of the Commission, introduced the members and speakers, and explained the order of the proceedings.

Statements of opinion were then heard from the following six speakers: KUSAKABE Yasuhisa, local government employee; GOTO Yoshinari, lawyer; NISHIZA Seiki, company employee; HAYASHI Chikara, former Professor, Kyushu Sangyo University; MIYAZAKI Yuko, housewife; and ISHIMURA Zenji, Professor Emeritus, Fukuoka University, and former President, Nagasaki Prefectural University.

The following is a brief summary of the opinions expressed by the speakers.

KUSAKABE Yasuhisa said that, in light of his experiences as a local public servant, he believed that the Constitution should be fully applied to the daily lives of the people because of its human rights provisions, such as the right to minimum living standards and the right to work. He stated that Article 9 was a precious jewel that should continue to be treasured.

GOTO Yoshinari said that measures should be taken to realize the people's right of access to the courts. These should include a significant increase in the number of judges to secure the right to speedy trial, and a significant improvement and expansion of the legal subsidy system to help defray legal expenses.

NISHIZA Seiki said that the following measures should be taken: in order to protect the life and property of the people, the Self-Defense Forces should be reorganized into a defense army for the protection of the country; in order to nurture moral values and human development, education should be reformed allowing individual regions to implement their own educational programs based on local history and culture; and, "town building" initiatives should be promoted in Kyushu from a prefecture-wide perspective.

HAYASHI Chikara said that he opposed the revision of Article 9 because peace is a prerequisite for the guarantee of human rights. In light of the discrimination that has occurred under the present Constitution against members of the *Burakumin* minority and against leprosy patients, he stated that he looked forward to a national debate on the failure of the state and of the people to take adequate steps to guarantee human rights.

MIYAZAKI Yuko said that the Interim Report of the Research Commission on the Constitution should be read widely because it explains what is being discussed and considered, but added that the contents of the report should have been made easier to understand. She stated that the government should take greater advantage of local open hearings, which provide opportunities to listen directly to the voice of the people, and govern in ways that are more closely in line with the

ideas of average citizens.

ISHIMURA Zenji advocated the following: the Preamble of the Constitution and Article 9, which uphold the ideals of pacifism, should not be revised; Article 13 stipulating respect for individuals, which in the present wording is confined to the Japanese people, should be revised to read “every person shall be respected as individuals;” the Constitution should contain explicit provisions for the right to know; and, Chapter 1 of the Constitution should be renamed “The Sovereignty of the People.”

After expressing their opinions, the speakers were asked by the members to give their views and other comments on various matters. These included questions concerning the following: the form Japan’s security and international cooperation should take; the government’s stance on the abolition of nuclear weapons; measures to ensure that human rights violations, such as discrimination against leprosy patients, are not repeated; the best way of exercising the right to determine unconstitutionality; directions to be taken in reforms for decentralization; Japan’s assistance to the United States in the war in Iraq and its relation to the Constitution; and, the pros and cons of establishing new human rights as constitutional rights.

After this question session, Mission Head NAKAYAMA asked for comments from the floor, and the following were among the comments made by members of the audience: that the Preamble and Article 9 should be revised in light of the abduction of Japanese citizens by North Korea; that the pacifist ideals of the Constitution are very important; and, that efforts to revise the Constitution to bring it into line with contemporary reality was cause for concern.

A stenographic record of the proceedings was made, so please refer to that for full details. I request that when that record is transcribed, it be included in the minutes of the Commission for future reference.

This completes my report, but I would like to add that it was thanks to the efforts of everyone involved that the meeting proceeded very smoothly. I wish to express my most sincere gratitude to them.

**Kanazawa Local Open Hearing  
(156th Diet Session, Seventh Meeting, Research Commission on the Constitution,  
May 29, 2003)  
Report by SENGOKU Yoshito, Deputy Chairman**

On behalf of the members assigned to participate in this meeting, I am acting for the head of the mission in presenting this report summarizing the proceedings.

The participating members were NAKAYAMA Taro, head of mission and chairman; HANASHI Nobuyuki, director; NAKAGAWA Shoichi, director; KUWABARA Yutaka, member; ENDO Kazuyoshi, member; ICHIKAWA Yasuo, member; HARUNA Naoaki, member; KANEKO Tetuso,

member; and me, SENGOKU Yoshito, making a total of nine.

Local assembly member OKUDA Ken also participated.

The meeting was held in the afternoon of May 12 in a conference room at the Kanazawa ANA Hotel in Kanazawa City, Ishikawa Prefecture, on the subject of the Constitution of Japan, with special reference to states of emergency and the Constitution; the form governing structures should take; and, the ideal form of the guarantee of fundamental human rights. Head of Mission NAKAYAMA began the proceedings with an address in which he explained the purpose of holding the hearing and gave a summary of the past discussions of the Commission, introduced the members and speakers, and explained the order of the proceedings.

Statements of opinion were then heard from the following five speakers: YAMAMOTO Toshio, retired; SHIMADA Yoichi, Professor, Fukui Prefectural University; IWABUCHI Masaaki, lawyer; MATSUDA Tomomi, lawyer; and, KAMONO Yukio, university professor. Note that HASUIKE Hatsui, who was scheduled to speak, was unable to attend due to the death of a family member. The written opinion submitted by her for the selection of speakers was summarized and read aloud by an Office staff member.

The following is a brief summary of the opinions expressed by the speakers.

YAMAMOTO Toshio said that the Constitution should be revised, including the following changes: the unnatural wordings of the Preamble should be deleted; explicit references should be made to patriotism, love of one's native place, and the spirit of altruism; and, Article 96 and its provisions for constitutional amendment procedures should be revised on a priority basis ahead of all other revisions.

SHIMADA Yoichi said that the abduction of Japanese citizens by North Korea represents a gross violation of human rights and that Japan should adopt a very strong stance on this matter, going so far as to be prepared to opt for the use of military force for the ultimate resolution of the problem. He stated that, for this purpose, the Preamble and Article 9 should be deleted.

IWABUCHI Masaaki said that the times demand that Japan and the world affirm and bring to life the ideals of the Constitution. Regarding the North Korean issue, he stated that a peaceful and nonviolent solution as required by the Constitution should be sought. Regarding the revision of Article 9, he said that its revision absolutely could not be allowed because revision could very well lead Japan to embark on a path of unstoppable rearmament.

MATSUDA Tomomi said that various "new human rights" could be guaranteed under the current provisions of Article 13 that ensures the right to the pursuit of happiness, and that the purpose of preserving these "new human rights" could be served by creating specific legislation on the rights guaranteed under Article 13. Regarding the bill to protect personal privacy currently being deliberated upon in the Diet, she stated that the bill should be re-examined from the perspective of whether it is truly capable of protecting the right to privacy of the people.



KAMONO Yukio said that local self-government derives from the people's right to self-determination contained in the principles of the guarantee of human rights and popular sovereignty. He stated that, for this reason, local governments stood on an equal footing with the national government and that local governments have the authority to work with the national government as equals in cooperating for the benefit of the citizenry. He stated that if the current legal structure was inadequate in supporting this status of local governments, these shortcomings should be overcome through the enactment of positive legislation.

The written statement submitted by HASUIKE Hatsui for the selection of speakers was summarized as follows. My son was abducted by North Korea and I awaited his return for 24 years. From this experience I can say that the abduction of Japanese citizens by North Korea represents the ultimate violation of fundamental human rights, a violation of national sovereignty, an unforgivable heinous crime and an act of national terrorism. If it is the duty of the state to protect fundamental human rights, it would be no exaggeration to say that Japan fails to uphold its own Constitution.

After expressing their opinions, the speakers were asked by the members to give their views and other comments on various matters. These included questions concerning the following: the ideal form of education; solutions to the North Korean problems of the abduction of Japanese citizens and nuclear development; policies for the establishment of peace in the Northeast Asian region; reforms for the decentralization of government authority; the best way to approach municipal mergers; and, the guarantee of new human rights and the pros and cons of explicit provisions in the Constitution.

After this question session, Mission Head NAKAYAMA asked for comments from the floor, and the following were among the comments made by members of the audience: that the Constitution needed to be revised in light of the numerous problems contained in its current provisions; that the problem of abductees should be resolved in a manner conforming to the Constitution's principle of pacifism; that international violations of human rights should be resolved not by force but through recourse to international law; and, that the ideals of the Constitution should be further developed based on a lasting sense of regret for past wars.

A stenographic record of the proceedings was made, so please refer to that for full details of the proceedings. I request that when that record is transcribed, it be included in the minutes of the Commission for future reference.

This completes my report, but I would like to add that it was thanks to the efforts of everyone involved that the meeting proceeded very smoothly. I wish to express my most sincere gratitude to them.

## **Takamatsu Local Open Hearing**

**(156th Diet Session, Eighth Meeting, Research Commission on the Constitution, June 12, 2003)**

**Report by SENGOKU Yoshito, Deputy Chairman**

On behalf of the members assigned to participate in this meeting, I am acting for the head of the mission in presenting this report summarizing the proceedings.

The participating members were NAKAYAMA Taro, head of mission and chairman; HANASHI Nobuyuki, director; HIRAI Takuya, member; FURUKAWA Motohisa, director; ENDO Kazuyoshi, member; TAKEYAMA Yuriko, member; HARUNA Naoaki, member; KANEKO Tetsuo, member; YAMATANI Eriko, member; and me, SENGOKU Yoshito, making a total of 10.

Local assembly member KONDO Motohiko also participated.

The meeting was held in the afternoon of December 9 in a conference room at the Takamatsu International Hotel in Takamatsu City, Kagawa Prefecture, on the subject of the following: the Constitution of Japan, with special reference to states of emergency and the Constitution; governing structures; and, the guarantee of fundamental human rights. Head of Mission NAKAYAMA began the proceedings with an address in which he explained the purpose of holding the hearing and gave a summary of the past discussions of the Commission, introduced the members and speakers, and explained the order of the proceedings.

Statements of opinion were then heard from the following six speakers: KUSANAGA Junichi, lawyer; NEMOTO Hirotohi, Professor, Shikoku Gakuin University; TAKAGI Kenichi, student; NISHIHARA Kazuie, former junior high school social studies teacher; SAKAGAMI Hatsuko, housewife; and, KAGOSHIMA Hitoshi, Associate Professor, Faculty of Law, Kagawa University.

The following is a brief summary of the opinions expressed by the speakers.

KUSANAGA Junichi said that maintenance of peace requires the rule of law, which is orderly and backed by force. He argued that Japan's security should be guaranteed by a United Nations military force to be created in the future and that as part of the process leading to the creation of a UN force a regional security framework should be established in Northeast Asia. He stated that he opposed the revision of Article 9.

NEMOTO Hirotohi said that for the guarantee of "new human rights," it was more important to enact specific laws than to include explicit provisions in the Constitution. He stated that the public welfare resulting from paying maximum respect to human rights was more important than the public welfare resulting from limitation placed on human rights, and concluded that the improvement of the guarantee of human rights in Japan would make a positive international contribution.

TAKAGI Kenichi said that Japan owes its postwar peace not to Article 9 but to the Japan-U.S. Security Treaty. He argued that because the presence of U.S. forces in Japan is incompatible with

the provisions of Article 9, the Constitution should be revised. He stated that Article 9 should be revised to stipulate the Self-Defense Forces as a formal military force.

NISHIHARA Kazuie said that the right to education was a precondition for the guarantee of the right to equality, and was also important as a precondition for the exercise of the right of popular sovereignty. He stated that indifference and neglect of the Constitution and the Fundamental Law of Education was causing such problems in education as truancy and declining academic performance, and argued that instead of revising the Constitution greater efforts should be made to bring the provisions of the Constitution to life.

SAKAGAMI Hatsuko said that the contradictions between the Constitution and contemporary reality were becoming more serious due to major changes in Japan's security environment, and that there was an urgent need to review the nation's security. She argued that in light of this urgency, Japan should rely on the reinterpretation of the Constitution for the time being and consider the possibility of constitutional revision later on based on public opinion.

KAGOSHIMA Hitoshi said that the expansion of municipalities through mergers may be necessary from the perspective of solving fiscal difficulties but that, from the perspective of realizing self-government by residents, the Constitution should be revised to include explicit provisions concerning the structures of self-government and an affirmation that local self-government is founded on the principle of direct democracy. He stated that the following revisions should be made in the Constitution for the purpose of strengthening the basic units of local government: include provisions concerning the relation between laws and local ordinances; include provisions concerning the right of local governments to levy their own taxes; and, empower local governments to decide, within certain limits, the form of administrative organization they wish to adopt.

After expressing their opinions, the speakers were asked by the members to give their views and other comments on various matters. These included questions concerning the following: the ideal form of future social security; the meaning of "the principle of local autonomy;" a vision for the future of Japan; the pros and cons of including explicit provisions concerning "new human rights" in the Constitution; the cause of current problems in education; how we should deal with the Iraq problem in light of the Constitution's principle of pacifism; the relation between local autonomy and the right of "executive proxy" of the prime minister as provided for in the Law Concerning Response to Armed Attack; and, the relation between contemporary conditions in education and the work ethic.

After this question session, Mission Head NAKAYAMA asked for comments from the floor and the following were among the comments made by members of the audience: that it was necessary to pursue an independent foreign policy in line with the Constitution; that it was necessary to defend the country through diplomacy and the development of trust, rather than through military power; that Japan's national interests were being lost sight of because Japan follows the lead of the United States; and, that it was necessary to conduct politics on the basis of the Constitution and to cherish the Constitution as a common legacy of the entire world.

A stenographic record of the proceedings was made, so please refer to that for full details of the proceedings. I request that when that record is transcribed, it be included in the minutes of the Commission for future reference.

This completes my report, but I would like to add that it was thanks to the efforts of everyone involved that the meeting proceeded very smoothly. I wish to express my most sincere gratitude to them.

**Hiroshima Local Open Hearing  
(159th Diet Session, Third Meeting, Research Commission on the Constitution,  
March 18, 2004)  
Report by SENGOKU Yoshito, Deputy Chairman**

On behalf of the members assigned to participate in this meeting, I am acting for the head of the mission in presenting this report summarizing the proceedings.

The participating members were NAKAYAMA Taro, head of mission and chairman; FUNADA Hajime, director; TOKAI Kisaburo, member; YAMAHANA Ikuo, director; SAITO Tetsuo, member; YAMAGUCHI Tomio, member; DOI Takako, member; and me, SENGOKU Yoshito, making a total of eight.

The meeting was held in the afternoon of March 15 in a conference room at the Hiroshima ANA Hotel in Hiroshima City, Hiroshima Prefecture, on the subject of the Constitution of Japan, with special reference to states of emergency and the Constitution; governing structures; and, the guarantee of fundamental human rights. Head of Mission NAKAYAMA began the proceedings with an address in which he explained the purpose of holding the hearing and gave a summary of the past discussions of the Commission, introduced the members and speakers, and explained the order of the proceedings.

Statements of opinion were then heard from the following six speakers: SATO Shuichi, civil servant; HIDE Michihiro, Professor, Graduate School, Hiroshima University; TAKAHASHI Akihiro, former Director, Hiroshima Peace Memorial Museum; HIRATA Kanako, NGO employee; OKADA Takahiro, President, Midori no Machi social welfare corporation; ODA Haruto, member, Okayama Prefectural Assembly.

The following is a brief summary of the opinions expressed by the speakers.

SATO Shuichi said that current serious unemployment situation contravenes the provisions of Articles 27 and 25, and that effective measures must be implemented to ensure economic recovery so that these provisions can be properly realized. He advocated that before discussing the revision of the Constitution, it was the duty of the Diet to ensure that the Constitution is upheld by the government and human rights violations are effectively prevented. He stated that war represented the gravest form of violation of human rights and that revision of Article 9 must absolutely be

prevented in order to guarantee human rights.

HIDE Michihiro said that the nation must be prepared to respond to violations of national sovereignty. He stated that the following revisions should be made to the Constitution: the Constitution should contain explicit references to Japan's national identity, including its history, traditions and culture; and, on the condition that Japan positively pursues peace activities, the Preamble should be completely revised and Article 9, Paragraph 2 should be deleted.

TAKAHASHI Akihiro said that he was able to overcome the sufferings of being a victim of the atomic bomb only because of the principle of pacifism enunciated in the Constitution. He stated that Japan must firmly uphold Article 9 and courageously develop an omnidirectional foreign policy with peace diplomacy as its basis. He reiterated that he was very strongly opposed to the revision of the Constitution and in particular the revision of Article 9.

HIRATA Kanako said that the Constitution was born out of Japan's remorse for invading Asia and starting a big war more than half a century ago, and out of the pledge never again to wage war. She stated that the dispatch of Self-Defense Forces to Iraq negated all of this, and concluded that the Constitution needed absolutely no changes as its text reflects the experiences of that tragic war and represents the culmination of mankind's struggle for freedom.

OKADA Takahiro said that the following matters should be considered in regard to local autonomy: the key issue in local autonomy is the need to establish the spirit of independence and self-responsibility; the division of responsibilities between the national and local governments must be reviewed; local finances must be reconstructed; the multi-tiered structure of local government must be simplified; the provisions of the Constitution concerning local autonomy must be rewritten to be more specific; and, the introduction of a *do-shu* system and eventually a federal system should be examined.

ODA Haruto said that the Constitution needed to be revised for the following two reasons: the process through which the Constitution was formulated was problematic; and, nearly 60 years have passed since the promulgation of the Constitution. Regarding the structure of government, he advocated the following revisions of the Constitution: the bicameral system should be reviewed because the Upper and Lower Houses have very similar election systems; the popular review of appointments of Supreme Court justices should be abolished because the process has become a mere formality; and, the principle of local autonomy must be rewritten to be more specific.

After expressing their opinions, the speakers were asked by the members to give their views and other comments on various matters. These included questions concerning the following: the ideal form of education; the division of responsibilities between the national and local governments; the relation between the *do-shu* system and the bicameral legislature; the development of a theory to overcome the doctrine of nuclear deterrence; personal feelings concerning the principle of pacifism in the Constitution; and, the relation between Japan's identity and Article 9.

After this question session, Mission Head NAKAYAMA asked for comments from the floor and

the following were among the comments made by members of the audience: that it was necessary to include explicit provisions in the Constitution concerning the maintenance of a military force, and the rights of individual and collective self-defense; that it was necessary to bring the provisions of the Constitution to life by improving current conditions in labor and education; and, that the thought that the lives of family members and neighbors would be threatened in the event of a military emergency was cause for fear and concern.

A stenographic record of the proceedings was made, so please refer to that for full details of the proceedings. I request that when that record is transcribed, it be included in the minutes of the Commission for future reference.

This completes my report, but I would like to add that it was thanks to the efforts of everyone involved that the meeting proceeded very smoothly. I wish to express my most sincere gratitude to them.

## **7) Report on the Overseas Survey Missions**

### **Report on the Survey Mission by the House Delegation on the Constitutions of European Nations (150th Diet Session, First Meeting, Research Commission on the Constitution, September 28, 2000)**

#### **NAKAYAMA Taro, Commission Chairman and Leader of Delegation**

I will now present a report on behalf of the House delegation dispatched to survey the constitutions of several European nations.

We recently conducted a survey of the state of the constitution in five European nations: Germany, Finland, Switzerland, Italy, and France.

A full official report of the survey is currently being prepared for submission to the Speaker of the House. However, as our delegation was made up of members of this Commission, I will present a brief overview here for your information.

The House delegation was composed of nine people: myself as the leader, Deputy Chairman KANO Michihiko as deputy leader, HANASHI Nobuyuki, ISHIKAWA Yozo, NAKAGAWA Shoichi, SENGOKU Yoshito, AKAMATSU Masao, HARUNA Naoaki, and TSUJIMOTO Kiyomi. We were accompanied by staff from the Commission's Office and the National Diet Library, and by a party of four reporters.

We arrived at our first destination, Karlsruhe in Germany, on the morning of September 11. There, at the Federal Constitutional Court, we received a general explanation of Germany's Constitutional Court system from its president, Prof. Dr. Jutta LIMBACH, and Justice Udo STEINER. The explanation focused on points of interest that we had sent in advance, and it was followed by a question-and-answer session.

Germany's Basic Law has been revised 46 times since World War II. In addition to a summary of the main revisions and their background, the discussion touched on a wide array of topics, including the question of how neutrality is ensured among the judges of the Constitutional Court, which makes judgments of political importance; the Court's ruling that the deployment of German military forces outside of NATO territory is constitutional; and the actual operation of compulsory military service and alternative service for conscientious objectors.

I was particularly struck by Prof. Dr. LIMBACH's unequivocal statement that majority rule is not the only form of democracy, and that in some cases the judges of the Court are in a better position than legislators to think about the best future for the nation.

On the way from Karlsruhe to Frankfurt, we called at Langen to visit a facility for handicapped children where conscientious objectors perform alternative civilian service, and to hear comments from its leader, Dr. Ingolf REIMER, and three young people. We were very interested to learn that conscientious objectors make up 35 percent of the 430,000 Germans eligible for military service each year, and that this figure is expected to exceed 40 percent within a decade; that the alternative

civilian service they perform is a valuable source of labor in the social welfare sector, and that this is a major political issue.

The next day, September 12, we traveled to Berlin. We went directly to the residence of the Japanese Ambassador, where a secretary of the Japanese Embassy in Finland had been invited to give an explanation of the Finnish constitution. A completely revised constitution entered into force in Finland this March, and we studied the background to the revision and the process involved.

We learned that the complete revision was carried out to systematize the constitutional amendments that had been made almost annually since the early 1990s, and that its main focus was strengthening the powers of the national assembly and limiting those of the president. In addition, we received an explanation of various provisions, including those for the right of information access and those concerning states of emergency.

When we asked about compulsory military service and the system for conscientious objection in order to make a comparison with Germany, we learned that there is a system of conscription from the age of 18, and that about 8 percent of those eligible conscientiously object to military service.

That afternoon, we visited the Bundestag, where Mr. Alfred HARTENBACH, Bundestag member and chairman of the Legal Affairs Department of the ruling Social Democratic Party (SPD), explained the record of revisions of Germany's Basic Law and how it operates in practice.

Here, too, we asked questions actively, making comparisons with issues of concern in Japan. In addition to the background and outline of the 46 revisions of the Basic Law and the issue of deploying German military forces outside of NATO territory, the topics of discussion included the separation of church and state, national security, the right of asylum (the State's right to protect a political refugee or other person who has sought refuge in its jurisdiction after being persecuted in another country; e.g., the right to refuse extradition requests), and voting rights for foreign nationals in local elections.

After the meeting, we proceeded that night to Bern. The next day, the 13th, was devoted to explanations of the overview and characteristics of Switzerland's new constitution, which entered into force in January 2000 as the result of a complete revision. The morning session was hosted by Dr. Remo GYSIN of the Federal Assembly National Council and four colleagues, all members of the Constitutional Reform Committee or officials of the parliamentary secretariat. The afternoon session was hosted by Prof. Dr. Luzius MADER, Vice Director, Federal Office of Justice, Federal Department of Justice and Police, who was involved in drafting the constitutional revisions.

We focused on the Swiss constitution because of its historical background. The old constitution, enacted in 1874, had been amended 140 times—an average of more than once per year—but a complete revision which consolidated these amendments was passed last year and entered into force this January.

In Switzerland, the main points that gave rise to discussion were: (1) the significance and problems of the national referendum system, which is a manifestation of direct democracy; (2) the actual operation of universal conscription for all men until age 42; (3) the fact that the constitution contains



detailed provisions concerning bioethics, which have been established from the 21st century viewpoint of ensuring human dignity amid scientific and technological advances.

The following day, September 14, at the residence of the Japanese Ambassador in Rome, we heard comments from Ms. SHIONO Nanami, who resides in Italy. She spoke of (1) the concept of “law” in ancient Rome, and (2) her own views regarding the Japanese Constitution, followed by informal discussion.

(1) Ms. SHIONO stated that, in contrast to the Judaic view of law as a God-given, sacred and inviolable thing to which human beings should adapt, the Romans’ concept of law was that it should be adapted to human beings, i.e., Roman law was what might be called “normal” law. (2) She then emphasized that, in her personal opinion, the Constitution of Japan should be revised, not because it was imposed or to make Japan a “normal country,” but to create a “normal constitution,” and that, to that end, it would be realistic to focus revision efforts on one point, namely, relaxing the strict amendment procedures in Article 96.

The delegation members responded with many questions on topics including (1) the actual system of government of the Roman Empire, and (2) the pros and cons of limiting revision to Article 96, and the discussion that followed was cordial but nonetheless intense.

The following day, the 15th, we visited the Italian Constitutional Court and the First Commission of the Chamber of Deputies (the Lower House). Italy’s current constitution, which came into force in 1948, has been revised 10 times to date.

At the Constitutional Court, we received an explanation of the Court’s system and how it operates from its president, Prof. Cesare MIRABELLI, and four colleagues, followed by a question-and-answer session. The discussion, which continued beyond the scheduled time, covered such matters as (1) persons eligible to bring cases before the Court, and the criteria for rulings of unconstitutionality; (2) the problem of ensuring that Constitutional Court judges are political neutral; and (3) national perceptions of the duty to defend the nation.

I found especially noteworthy the comments that the duty to defend the nation is being increasingly viewed as a duty of social and public solidarity rather than as a duty to defend the nation militarily, that this change in national perceptions was prompted in part by the Constitutional Court’s recognition of civilian alternatives such as social welfare service, and that the military today has taken on the status of an instrument for peacekeeping and protection of human rights.

We then visited the Hon. Rosa RUSSO JERVOLINO, President of the First Commission of the Chamber of Deputies, and a colleague.

In addition to dealing with security issues under the postwar constitution, the questions posed at this session were of a specific and specialized nature. For example, delegation members asked about the relationship between Italy’s constitutionally guaranteed system of local autonomy and the system that empowers the central government to oversee regional governments, and about the issue of partial transfer of State sovereignty, as symbolized by European integration, and especially by monetary union. Questions bearing on the most practical aspects of politics, such as current trends of

proposed constitutional amendments, were also raised, and a very animated explanation was received from Ms. JERVOLINO.

On the last day of the mission, Monday, September 18, we visited the National Assembly and the Constitutional Council of France.

France's current constitution, which was enacted in 1958, has been revised 13 times.

First, at the National Assembly, which we visited in the morning, we met with its Vice President, Ms. Christine LAZERGES, and a member, Mr. Etienne PINTE. The discussion covered topics including: (1) the process of constitutional revision in France, including the highly topical issue of the national referendum on a constitutional amendment to reduce the president's term, which was about to take place on the 24th; (2) the issue of harmonizing human rights with duties to society and the public good (a fitting topic in France, home of the Declaration of the Rights of Man); (3) the question of what sort of constitutional education should be provided from the perspective of the preceding point. With regard to the system of government, the discussion also covered topics such as (4) the constitutional limits on the legislative powers of the National Assembly, and (5) the dual nature of executive power in the arrangement known as *cohabitation*, in which a president from one party shares power with a prime minister from an opposing party.

A lively discussion then followed, lasting well over the scheduled time, in which we compared the systems of Japan and France on such points as bioethical issues, the actual state of France's statutory 35-hour workweek, and various problems relating to a declining birthrate and an aging population.

During this discussion, Ms. LAZERGES made a comment that I found particularly memorable. In connection with the increasing number of murders committed by teenagers in Japan, I had asked her about the education of youth and the nation's future. She replied that young people cannot be expected to obey the law unless they have some guarantee of hope for the future, and that we politicians, while making sure that troubled young people learn the importance of obeying the law, also have a responsibility to show them a brighter future and to devise social and economic policies to that end.

In the afternoon, our last call was to the French Constitutional Council, where we held an informal discussion with its President, Mr. Yves GUENA, who is France's leading authority on constitutional issues, and two members of the Council, Ms. Simone VEIL and Mr. Jean-Claude COLLIARD. From the explanations and answers to our questions, we learned that the Council's review of constitutionality is limited to prior review of legislation before it is enacted, and that ordinary citizens do not have the right to bring cases before it; that there is a division of jurisdiction with other courts including the Conseil d'Etat (Council of State) and the Cour de Cassation (the French Supreme Court); that features of France's present constitution such as its invocation of the 1789 Declaration of the Rights of Man have a background in French history; and that, after recent major changes, the Constitutional Council now exercises the function of guaranteeing human rights.

Having completed the above very full schedule, the House delegation returned to Japan on September 19.

Since the mission was very brief and our agenda in each country covered a wide variety of issues, I cannot begin to offer anything like a conclusion here. However, if I may say a few words concerning my own personal impressions, I was struck by the fact that Germany's constitution, the Basic Law, has been revised 46 times, Switzerland's old constitution was revised 140 times, Italy's current constitution has been revised 10 times, and France's 13. In all the countries we visited, I believe that we achieved a common understanding, transcending the differences in our standpoints, to the effect that a constitution is not a code immutable for all time but a living thing situated in the real world, and that, moreover, concrete political issues are debated fairly and openly in relation to the articles of the constitution.

As soon as the detailed report of the survey has been submitted to the Speaker of the House, it will be distributed to all the members of this Commission, and I hope that you will find it informative in our future debates.

In closing, I would like to express my sincere appreciation to everyone who cooperated in any way in the survey, together with my heartfelt gratitude that we were able to successfully complete such a full program. Thank you all very much.

This concludes my brief summary of the recent overseas study mission.

**Report on the Survey Mission by the House Delegation on the Constitutions of Russia, Several Other European Nations, and Israel (153rd Diet Session, First Meeting, Research Commission on the Constitution, October 11, 2001)**

**NAKAYAMA Taro, Commission Chairman and Leader of Delegation**

I will now present a report in my capacity as head of the House delegation that was recently dispatched to survey the constitutions of Russia, several other European nations, and Israel.

From August 28 to September 7, we conducted a survey of the state of the constitution in a total of 11 nations: Russia, Hungary, and three other Eastern European nations, for a total of five members of the former Communist bloc; five European monarchies, including the Netherlands and Spain; and Israel.

A full official report of the survey is currently being prepared for submission to the Speaker of the House. However, as our delegation was made up of members of this Commission, I will present a brief oral report of the survey here, to serve as a reference point in our future investigations.

The House delegation was composed of nine people: myself as the leader, Deputy Chairman KANO Michihiko as deputy leader, HANASHI Nobuyuki, YASUOKA Okiharu, SENGOKU Yoshito, SAITO Tetsuo, YAMAGUCHI Tomio, KANEKO Tetsuo, and KONDO Motohiko. We were accompanied by staff from the Commission's Office and the National Diet Library, and by two reporters.

On the morning of August 29, at our first destination, Moscow, we attended three meetings at the State Duma, which corresponds to Japan's House of Representatives. We met first with Mr. Mikhail Mikhaylovich ZADORNOV, a member of the State Duma, and three colleagues; then with Mr. Vladimir Petrovich LUKIN, Deputy Chairman of the State Duma; and then with Mr. Anatoly Ivanovich LUKYANOV, Chairman of the State Structure Committee, which handles issues relating to the constitution. At each of these meetings, our hosts made various comments from the perspective that the Russian Constitution of 1993, which was the result of a complete constitutional revision after the collapse of the Soviet Union in 1991, is a landmark in the constitutional history of the Soviet Union—which includes the “Stalin Constitution” of 1936, the approximately 40 revisions that followed, and the enactment of the 1977 Constitution—and that it will create a new Russia.

The topics raised included, first, in our meeting with Mr. ZADORNOV and his colleagues, the degree to which awareness of the new Russian Constitution has spread among the public, and the relationship between the individual and society, as symbolized by the status given to the family in the constitution. In our meeting with Mr. LUKIN, we discussed the relationship between the executive branch and the Duma under the new constitution's strongly president-centered framework and, in particular, the problem of what kind of control the Duma should exercise over the president's power to appoint ministers. In our meeting with Mr. LUKYANOV, we spoke of the relationship between the family or the individual and society or the community amid the trend to nuclear families, the importance of maintaining traditions in a changing society, and the issue of how the Duma can best serve as a check on the strong powers of Russia's president, whose “superpresidential” powers make him a kind of “fourth branch” over and above the legislative, executive, and judicial branches.

I was particularly struck by the following comments by Mr. LUKYANOV.

He noted that, while constitutions consist of stiff and formal texts, the social environment is in a state of flux, as symbolized by globalization and the development of the Internet, and that there are two ways to keep pace with these changes: either a new constitution can be created whole, as Russia and many Eastern European nations have done, or it can be created incrementally. Whichever method is used, there is a need to create a new constitution attuned to the changing world.

Further, I was struck by his remark that both Russia and Japan are nations that have always cherished tradition. He described Japan as especially unique in that, on the one hand, it has a symbolic Emperor, and, on the other, it has a vigorous popularly elected Diet. He expressed the view that, in light of these national traits, we have taken exactly the right course in establishing the Research Commission on the Constitution and studying a new constitution, investigating the issues steadily and without haste.

In the afternoon, we met first with Mr. Vyacheslav Borisovich EVDOKIMOV, State Secretary and First Deputy of the Ministry of Justice, and six other top government officials, and then with Mr. Boris Aleksandrovich STRASHUN, Deputy Head of the Scientific-Analytical Center of Constitutional Justice, Constitutional Court of the Russian Federation.

The meeting at the Ministry of Justice covered the process that led from the collapse of the Soviet Union in 1991 to the enactment of the new constitution in 1993, together with specialized and

practical questions such as the treatment of foreign nationals' voting rights under the new constitution, and the present state of judicial reform in Russia. In the meeting at the Scientific-Analytic Center of Constitutional Justice, we discussed the state of reviews by the Constitutional Court, the system for appointing judges and the problem of politicization, among other matters. It was explained that over 3,000 cases have been filed in the decade since the Constitutional Court was established, and that Russian citizens have submitted as many as 2,000 cases to the European Court of Human Rights. It seemed to me that these figures attest to the growing interest in human rights issues in Russia.

The next day, August 30, we made a brief visit to Budapest. At the residence of the Japanese Ambassador to Hungary, secretaries invited from the Japanese Embassies in four Eastern European countries, Hungary, Poland, the Czech Republic, and Romania, gave explanations of these nations' constitutions, detailing their characteristics and the process by which they were newly enacted or revised as part of the wave of democratic reforms after the collapse of the Soviet Union. The explanations were followed by question-and-answer sessions.

Here, I will report briefly on the enactment and revision processes and the characteristics of these nations' constitutions. First, with regard to the process that led to the current Hungarian constitution, there was initially no time to draft a new constitution in view of the need to expedite the change of political system; thus, it was decided to amend the old constitution of the Hungarian People's Republic, which had been revised 37 times, and subsequently there was a movement to enact a new constitution. The constitution is characterized by, on the one hand, a provision stipulating that the Parliament is the supreme body of State power and popular representation, and on the other hand, a system of national referendums; in practice, when Hungary joined NATO, the referendum system was utilized and efforts were made to obtain a national consensus.

Next, with regard to the process that led to the current Polish constitution, the approach of revising the old constitution was adopted in the period directly after the change of political system in 1989, because it was difficult to enact a new constitution while President Lech Walesa and the former United Workers' Party government were sharing power. Aspects remaining from the days of the old constitution were then gradually removed by repeated amendments. The rise of the current president, Aleksander Kwasniewski, paved the way for the enactment of a new constitution in 1997, following a national referendum. One characteristic of the new constitution is its reference, in the Preamble, to Poland's Catholic heritage.

With regard to the process of enacting the Czech constitution, the work was initially pursued on the assumption that the federation with Slovakia would be maintained, but it was eventually decided that the two republics would separate. The Czech Republic's constitutional order is characterized by having three components, each in a different legal form. That is, in addition to the Constitution of the Czech Republic, which chiefly lays down the system of government, there are (1) the Charter of Fundamental Rights and Freedoms, which provides for the rights of the people, and (2) the Constitutional Law of the Czech National Council, which is equal in value to the Constitution and stipulates the organization and activities of the State and the rights and freedom of the people.

Lastly, in the enactment process of the Romanian Constitution in 1991, there was a debate over whether to make the post-Ceausescu system a republic or a monarchy. Among its characteristics are political pluralism and an emphasis on protecting the rights of national minorities.

In addition to the above points, what I personally found most noteworthy in the explanations was the fact that many countries have established constitutional courts or similar institutions as specialized organs to prevent authoritarian rule and to guarantee human rights.

In May of last year, this Commission investigated the major postwar judgments of unconstitutionality in Japan by asking the bureau director in charge of constitutionality cases within the General Secretariat of the Supreme Court to attend as an informant. On behalf of the Commission, I opened the question session by pointing out that there have been cases in which the Supreme Court did not reach a decision on constitutionality for reasons such as the so-called “act of State” doctrine, and I asked why no decision was reached in these cases. Mr. CHIBA, who is director of the Administrative Affairs Bureau, replied as follows: “In its rulings, the Supreme Court judged that acts of State of a highly political nature that have a direct bearing on the foundations of national government lie outside the scope of the Court’s right of review, and that the power to make decisions thereon should be understood to be entrusted to the government and the Diet, which are politically accountable to the people, with whom sovereignty resides, and ultimately to be a matter for political decision by the people.”

It seemed to me that the institutions that were explained to us at the hearing in Budapest offer food for thought when we reflect on where the right of constitutional interpretation in Japan has effectively been located until now, and on related questions including how the role of interpreting the constitution should be divided between the Diet (where the outcome is basically a majority decision) and an independent constitutional court.

After the hearing in Budapest, our delegation continued on to Amsterdam that night. The following day, August 31, at The Hague, we studied the state of the constitution of the Netherlands, together with those of several neighboring countries that have monarchies.

In the morning, we first paid a courtesy call to Mr. F. Korthals ALTES, Chairman of the First Chamber, and discussed topics including the relationship between the upper and lower chambers of the Dutch parliament and the legal status of the Dutch constitution under the German occupation during World War II.

The discussion included an interesting account of how the Dutch constitution effectively lost its force when the Queen and the government went into wartime exile in London, and how all the actions of the government-in-exile therefore had to be examined after the war, since parliamentary controls had not been able to function while the government was in exile. Mr. ALTHES noted the importance of checking the constitutionality of a government’s actions, even if, as in this case, the actions occurred during a wartime emergency and the check was made after the fact.

We then met with Mr. Felix Edurd Robert RHODIUS, minister of the Dutch government and Director of the Cabinet of the Queen, and heard a detailed explanation of the evolution of the Dutch

monarchy, from the fall of Napoleon to the present day. This was followed by an informal discussion of such topics as the Queen's present status and role in the government.

In the afternoon, we visited the Constitutional Affairs and Legislation Department, Ministry of the Interior and Kingdom Relations, and met its director, Dr. Jit A. PETERS. We were given overviews of the three features said to characterize the Dutch constitution—the monarchy, democracy, and decentralization—after which we asked questions on topics including the legislative procedure in Parliament, the Queen's role, sources of independent revenue for the regions, and other decentralization issues.

Then, as we had done in Hungary, we held a hearing at the Japanese Embassy in which staff from the Japanese Embassies in the neighboring countries of Sweden, Denmark, and Belgium (all of which have monarchist systems) explained these nations' constitutions. The explanations covered such matters as the constitutional status of the respective monarchies, including the powers and status of the monarch, and the actual operation of the systems.

I personally was most impressed by what we learned about the history of the Dutch monarchy. After the Napoleonic Wars in the early 1800s, the Netherlands, which until then had been a republic, chose by popular consensus to become a monarchy. Under the resulting constitutional monarchy, the monarch's powers have always been strictly prescribed by the constitution, and at times they have been further restricted at the monarch's own initiative. This adaptability to historical change on the part of the kings and queens themselves, together with their longstanding role as patrons of the fine arts and the performing arts, are among the underlying reasons for the Dutch people's abiding respect and affection for the royal family—sentiments which go beyond mere support for the monarchy as a system. This, we were told, is why the Dutch monarchy has survived while its counterparts in many other countries have been abolished.

I was also particularly impressed by what we heard of the trend toward decentralization in Denmark. As long ago as 1849, provision was made in the Danish constitution for introducing decentralization. Full-scale devolution began in the 1960s, and Denmark today has achieved a high degree of decentralization by world standards. Basically, services that are an integral part of daily life are delegated to local governments: the cities (the basic unit of self-government) handle the major tasks of providing the water supply, gas utilities, kindergartens, elementary schools, etc.; the counties (the broader regional units) are mainly responsible for hospitals, national health insurance, arterial roads, secondary schools, and so on, and the national government is in charge of such areas as the police force, foreign policy, and defense. To support this allocation of duties, a substantial portion of national tax revenues is granted to the regions with no strings attached, to be used as they wish. To cite the actual figures, the breakdown of tax revenue sources is 64:36 between the national and regional levels, whereas the budget is divided in a ratio of 37:63. I found this information very interesting when viewed in conjunction with the present situation here in Japan, where promoting decentralization is an important task.

On September 1, we traveled from Amsterdam to Jerusalem. Although this was before the September 11 terrorist attacks in the United States, security at the airport and other locations was

very strict in the wake of a series of suicide bomb attacks and other incidents. Nevertheless, the actual meetings took place in a very calm and cordial atmosphere.

In Israel, one of the main objectives of our study mission was to learn about the system of popular election of the prime minister that was in use until recently. Accordingly, we met with a total of eight government officials and experts over the course of two days and conducted detailed research on the system, focusing on the process that led to its introduction and then to its abolition.

On the first day, September 2, we met with Mr. Joshua SCHOFFMAN, the Deputy Attorney General; Mr. Meir SHEETRIT, the Minister of Justice; and Messrs. Shlomo SHOHAM and Ophir PINES, M.K., who are, respectively, the legal advisor and the chairman of the Constitution Law and Justice Committee of the Knesset (which corresponds to the Diet in Japan). On the second day, September 3, we met with Foreign Minister Mr. Shimon PERES, and also with two academic experts who favored abolition of popular election of the prime minister, Dr. Arye Z. CARMON, and Prof. Zeev SEGAL of Tel Aviv University. We also had an informal discussion with Mr. Moshe ARENS, Chairman of the Israel-Japan Parliamentary Friendship League.

Speaking for myself, these meetings and discussions brought home to me the realization that, in short, whether to introduce a system of popular election of the prime minister is a question that requires careful study of a wide range of issues pertaining to the system of government, such as the prime minister's relationship with the Diet and with the Imperial system. It is not a step to be taken casually.

We were told almost unanimously by everyone we met that Israel's adoption of popular election of the prime minister, which was meant to bring stability to the government, missed the mark completely and instead allowed small parties to proliferate. We were also told that the main priority now is to reform the electoral system while retaining a parliamentary Cabinet, and, above all, to resolve the problem of too many tiny parties gaining seats in the Knesset, for example, by raising the threshold from 1.5 to 3 percent, or by introducing a system of electoral districts. Our hosts also commented that, while Israel and Japan have different constitutional and electoral systems and a different political, social, and cultural environment, they would advise us to learn from their mistake and approach the question more cautiously.

It was also explained that financial assistance from Jewish supporters overseas contributed greatly to the campaigns that were conducted when the system was adopted and then abolished. When compared with the restrictions on political funds in Japan, I felt that this pointed to a special characteristic of Israel, that is, the ties among the Jewish community that have existed since Israel's establishment as an independent state.

In our meetings, we were also able to exchange opinions with statesmen such as Mr. SHEETRIT, the Minister of Justice, and Mr. PERES, the Minister of Foreign Affairs, on their views of the nation and their political beliefs. I personally was particularly struck by a comment by Mr. SHEETRIT to the following effect.

When the Oslo Accords came before the Knesset, Mr. SHEETRIT said, he rebelled against the policy of his own party, the Likud, and accepted the Accords in the interests of peace. He has



opposed his party in various other ways, he noted, and yet he survives as a politician, for a politician can survive even if he swims against the tide, rather than just clinging to the legacy of the past or going with the tide. In his own case, he concluded, one could say that he has survived because he has always stood with his supporters and with the public.

The following comments by Mr. PERES also made a strong impression on me: Opinion polls are like perfume, nice to smell, but dangerous to swallow. Many people are attracted by them, but they need to be handled with care—you could make yourself sick if you swallowed them. Mr. PERES also commented that he has been in politics for a long time and received more criticism than any other politician, and this has taught him that, even in the television era with its highly developed mass media, it is not your image but your character that counts. He told us that the reason he is still one of his country's most popular politicians, despite having made many mistakes over the years, is not because he is good-looking, nor because he has become a moderate, but because he has worked for the good of the nation, and many of the public understand this position.

The following comments in answer to a question of mine on the outlook for the world situation were also very noteworthy.

Mr. PERES said that he was basically optimistic about the future world outlook, including peace in the Middle East and Asia. If anyone had predicted just after the end of World War II that a new Europe and a new Japan would be born in the near future, he continued, they would have been laughed at, and yet that is what happened. But it happened as the result of economics, not politics. It is sometimes said that the European integration conceived of by Jean Monnet has changed the continent more than Napoleon ever imagined, and this is very true, Mr. PERES said. Further, he noted, wars used to be fought for land and resources, but there is no longer any need to fight over these things. What will become increasingly important in the future is competition to seek new knowledge, as in high-tech industries, and this takes place in an area without limits. The Middle East is still preoccupied with the past, but we should let go of that way of thinking. We cannot change our ages, he said, but we can change our way of thinking.

The next day, September 4, the delegation left Jerusalem for Madrid.

On the 5th, in the morning, we visited the Council of State, an advisory body to the Spanish government which plays a part in the judicial review of legislation, and met with four senior officials including its president, Mr. Iñigo CAVERO LATAILLADE. In the afternoon, we met with Ms. Margarita MARISCAL DE GANTE, President of the Constitutional Commission of the Congress of Deputies, and six of her colleagues from the national assembly.

Mr. CAVERO and his colleagues gave us an overview of the current Spanish constitution, which was enacted in 1978, focusing on the process that led to the adoption of a parliamentary monarchy after the fall of the Franco regime, the degree to which the constitution provides for rights, including new rights, and problems in the system of autonomous communities. The explanation was followed by a question-and-answer session. In the afternoon meeting, we heard the views of Ms. MARISCAL and her colleagues, who represented several political parties, on the process leading to the enactment of the current constitution, followed by a question-and-answer session.

In this meeting, I was particularly struck by a comment from Mr. Jordi JANE I GUASCH, the first secretary of the Constitutional Commission. He stated that the stability of the Spanish constitution is underpinned by the consensus that was eventually reached in talks among many different political parties during the enactment process, and that a basic national law like a constitution must be created, not by one party, but by many parties consulting together to build a consensus in the national assembly as a whole.

Another memorable comment, with regard to the Spanish monarchy, was the explanation that in the process that resulted in the present constitution after the fall of the Franco regime, King Juan Carlos, who had been designated to succeed General Franco, himself became a champion of reform and played a decisive role in democratization, including the liberalization of political parties.

That is, King Juan Carlos has won popular support by, first, demonstrating his commitment to democracy when pro-Franco forces attempted a coup d'état in 1981, and then showing a clear awareness of his position as a constitutional monarch by applying himself steadily to his official duties without intervening in politics when a Socialist government came to power, replacing the center-right. In fact, opinion polls regularly rate the royal family very high in terms of public trust and esteem—higher than the national assembly and other institutions.

After successfully completing the above very full schedule, our delegation returned to Japan on September 7.

Since the mission was very brief and our agenda in each country covered a wide variety of issues, I cannot begin to offer anything like a conclusion here. However, if I may say a few words about my own personal impressions, it seems to me that in the debate over a nation's constitution, regardless of whether the nation is a republic or a monarchy and whether it has a president, a parliamentary Cabinet, or a popularly elected prime minister, the crucial thing is to make materials for discussion fully available to the public. Even in establishing and abolishing a monarchy, it is the people who choose. In other words, it is ultimately the people who decide the basic vision of the nation. And it is crucial that their decision be founded on public trust and confidence, whether in a monarch as a symbol of authority, or in a political leader such as a president or prime minister, who is a center of authority.

Also, I was reminded that the possibility of an EU constitution has aroused a good deal of controversy in connection with the question of ceding sovereign rights, and the framework of the nation-state itself is very unsettled.

Thinking about these points and comparing Japan with the countries we visited, I felt anew a great regard for our own Imperial Family with its history of over a millennium, the popular trust that it enjoys, and the fact that the Emperor so admirably performs his symbolic role without becoming involved in politics.

Also, as this Commission conducts thorough research on a vision for Japan in the 21st century that transcends political affiliations and also takes into account concrete policies to address the various problems presently facing the nation, I am all the more convinced that what we must do is to present a model of Japan as it should be, and thus to gain the public's trust.

As soon as the detailed report of the survey has been submitted to the Speaker of the House, it will be distributed to all the members of this Commission, and I hope that you will find it informative in our future debates.

Together with the five European countries (Germany, Finland, Switzerland, Italy, and France) covered by the Report of the Overseas Mission distributed to members last year, we have now surveyed the state of the constitution in a total of 16 countries, mainly in Europe but also including Israel. These surveys have brought home to me the fact that, in every country, the ideal form of the constitution is directly linked to the ideal vision of the nation, and it is the subject of national debate.

In closing, I would like to express my sincere appreciation to everyone who cooperated in any way in the survey, together with my heartfelt gratitude that we were able to successfully complete such a full program. Thank you all very much.

This concludes my brief summary of the recent overseas study mission.

**Report on the Survey Mission by the House Delegation on the Constitutions of the United Kingdom and Several Asian Nations (155th Diet Session, Third Meeting, Research Commission on the Constitution, November 7, 2002)**

**NAKAYAMA Taro, Commission Chairman and Leader of Delegation**

I will now present a report on behalf of the House delegation dispatched to survey the constitutions of the United Kingdom and several Asian nations.

From September 23 through October 5, we conducted a survey of the state of the constitution in a total of eight nations: the United Kingdom, Thailand, Singapore, China and Korea; and the Philippines, Malaysia and Indonesia.

A full official report of the survey is currently being prepared for submission to the Speaker of the House. However, as our delegation was made up of members of this Commission, I will present a brief overview here for your information.

The House delegation was composed of four people: myself as the leader, HANASHI Nobuyuki, NAKAGAWA Masaharu, and HARUNA Naoaki. We were accompanied by staff from the Commission's Office, the Legislative Bureau and the National Diet Library, and by a party of two reporters.

At our first destination London (United Kingdom), we held six meetings over the two days September 24 and September 25.

First on the morning of September 24, at the Houses of Parliament, we received explanations from Mr. Paul EVANS, the Commons Committee Clerk of the Joint Committee on Human Rights, regarding the guarantee of human rights in the United Kingdom; and at the Office of the Deputy Prime Minister we received explanations from Mr. Nick RAYNSFORD, the Minister of State for

Local Government and Regions, and from Mr. Ian SCOTTER, the Head of the Regional Assembly Division of the Regional Policy Unit, regarding regional policy under the Blair Labour Party administration. These explanations were followed by question-and-answer sessions.

We learned that the Human Rights Act was enacted in 1998 as a measure to make U.K. law consistent with the European Convention on Human Rights, and that at that time the relation with the U.K.'s traditional doctrine of parliamentary sovereignty was an issue. Regarding regional policy, we learned that decentralization is being advanced by the Blair Labour Party administration, that this has included the establishment of regional assemblies in Scotland, Wales, North Ireland and then England, and that these developments are expected to not only improve government efficiency but also meet to the expectations of citizens who have interest in participating in government.

That afternoon, we visited Prof. Robert HAZEL at his office at University College London and held a question-and-answer session regarding the Constitution of the United Kingdom overall, especially reform of the House of Lords and the relationship between elected officials and civil servants.

Regarding reform of the House of Lords, Prof. HAZEL explained that the Speaker of the House of Lords' three powers as Minister of Justice, Speaker of the House of Lords, and Lord Chancellor as the head of the Law Lords are considered problematic. Regarding the relationship between elected officials and civil servants, Prof. HAZEL explained that the United Kingdom has traditionally maintained fair and neutral civil services, but that dissatisfaction has recently emerged with its administration.

On the following day, September 25, at the Embassy of Japan in the United Kingdom, we received explanations from Mr. David BEAMISH, Clerk of Committees of the Joint Committee on House of Lords Reform, and from the government's House of Lords Reform Team regarding reform of the House of Lords, followed by explanations from Mr. Charles COCHRANE, Secretary of the Council of Civil Service Unions, regarding the relationship between elected officials and civil servants overall. These explanations were followed by question-and-answer sessions.

We learned that the first stage of reforms in the House of Lords, primarily a decrease in the number of hereditary peers, has already been completed, and that examinations of a long-term second stage of reforms are presently moving forward. With the publication of the so-called Wakeham Report by the Royal Commission on House of Lords Reform, the focus has now shifted to the Joint Committee of the Parliament where deliberations are taking place, including concerns about a decline in the status of the House of Commons if a popular election system were introduced for the House of Lords.

Regarding the relationship between elected officials and civil servants, in the U.K. there is an understanding that civil servants work for ministers as members of the Cabinet, and not for politicians as individuals. For political aspects, advice is provided by "special advisors" who are political appointees.

Following these meetings, we immediately set forth for Bangkok (Thailand), where we held three

meetings on September 27.

First on the morning of September 27, at the Constitutional Court of the Kingdom of Thailand, we received explanations from Judge Suchit BUNBONGKARN regarding the activities of the Constitutional Court. Then at King Prajadhipok's Institute, we received explanations from Secretary General Borwornsak UWANNO regarding the election system in Thailand. These explanations were followed by question-and-answer sessions.

Judge BUNBONGKARN explained that since it was established, the Constitutional Court has ruled on the constitutionality of more than 200 laws and also examined politicians' asset statements for any falsehoods to prevent corruption. Secretary General UWANNO explained that the Thai election system was organized using Japan's system of single-seat constituencies combined with proportional representation as a reference. He also explained the actual conditions of political corruption in Thailand.

That afternoon at the Marut Bunnag International Law Office, of former Speaker of the House of Representatives Marut BUNNAG, we received explanations from former Speaker BUNNAG regarding the history of the Constitution of Thailand through a large number of coups d'état. These explanations were followed by a question-and-answer session.

On the following day September 28, we travelled to Singapore. We went directly to the residence of the Japanese Ambassador, where a minister, councillor and first secretary invited from their respective embassies explained the actual conditions of the constitutions in the three nations the Philippines, Malaysia and Indonesia. These explanations were followed by question-and-answer sessions.

The main points regarding the constitutional conditions in each country can be simply summarized as follows. First, the Constitution of the Philippines imposes strong restrictions on the executive branch based on the experience under the Marcos dictatorship, adopts sovereignty of the people, pacifism and the abolition of nuclear weapons as basic principles, and includes provisions banning, in principle, the stationing of foreign forces and the establishment of foreign military bases in the Philippines. Next, the Constitution of Malaysia stipulates Islam as the national religion, positions the constitution as the supreme law, recognizes special status for Malays, and includes provisions restricting freedom of speech, such as that on the position of the Malay language. Finally, the Constitution of Indonesia has been revised four times in the past four years to limit the powers of the president and otherwise move toward democratization following the collapse of the Suharto dictatorship, and this year's changes complete this round of revisions. As for domestic systems, however, the establishment of the rule of law is still an issue.

On September 30, we held three meetings regarding the Constitution of Singapore.

First that morning at the Attorney-General's Chambers, we received explanations from Mr. Jeffrey CHAN, Principal Senior State Counsel, regarding Singapore's constitutional system overall. These were followed by a question-and-answer session.

Principal Senior State Counsel CHAN explained that out of consideration for the non-Chinese minorities, the Constitution of Singapore adopts a unique group election system to ensure that minority groups will always have seats in the parliament.

That afternoon at the Ministry of Foreign Affairs, we held informal discussions with S. JAYAKUMAR, Minister for Law and Minister for Foreign Affairs, and exchanged opinions regarding Singapore's national defense system which stipulates mandatory military service. Then at the Embassy of Japan in Singapore we held a question-and-answer system with Associate Professor THIO Li-ann of the National University of Singapore who stated that the group election system is advantageous for the ruling People's Action Party and gave her personal opinion that a simple single-seat constituency electoral system would be desirable.

We then departed Singapore for Beijing (China), where we held three meetings over the two days October 2 and October 3.

First on the morning of October 2, at the School of Law of Renmin University of China, we received explanations from Dean ZENG Xianyi regarding China's constitutional system overall. That afternoon, at a hotel, we received explanations regarding the same topic from Professor LIU Junjie of the Central Party School.

The discussion first focused on the concept of a socialist market economy based on China's constitutional history leading to the present 1982 Constitution of the People's Republic of China, and we learned that the introduction of market oriented economics is both necessary and inevitable as China advances its reforms and open policy, and the socialist market economy is actually a pattern of development to those ends. We also learned that the protection of intellectual property rights is an important issue for China as well, as a nation of science and technology, and that there is a debate taking place about how to best protect private property as a theoretical issue for constitutional reform.

On the following day, October 3 at the National People's Congress, we received explanations from ZHANG Chunsheng, Vice Chairman of the Legislative Affairs Commission of the Standing Committee of the National People's Congress, regarding the formulation of the present Constitution of the People's Republic of China. These were followed by an exchange of opinions.

Mr. ZHANG praised Japan's peace constitution, saying that it has made great contributions to peace in Northeast Asia and to world peace, and he stated that there is no problem whatsoever with Japan's participation in peacekeeping activities based on UN resolutions.

We travelled from Beijing to Seoul (South Korea) that same day, and held four meetings there the following day, October 4.

First on the morning of October 4 at the National Assembly, we paid a courtesy call on Speaker PARK Kwan-yong and exchanged opinions about constitutional conditions. Speaker PARK explained that there are discussions of revising the Constitution of the Republic of Korea so that the term of the president will become four years to match the terms of the members of the National

Assembly, that he praises Japan for making international contributions as appropriate for an economic superpower, centered around Japan's peace constitution, and that as an Asian nation Korea expresses its approval of Article 9 of the Constitution of Japan.

Next, also at the National Assembly, we received explanations from Mr. KIM Jong-du, Director General of the Legislative Counseling Office, and his staff regarding the conditions of member-sponsored bills in South Korea and the role of the Legislative Counseling Office in the process of their drafting. These were followed by a question-and-answer session.

That afternoon at the Constitutional Court of the Republic of Korea we received explanations from Secretary General PARK Yong-sang, and at the National Human Rights Commission of Korea we received explanations from President KIM Chang-kuk. These were followed by question-and-answer sessions.

We learned that with the strong support of the citizenry the Constitutional Court of the Republic of Korea has judged many of the laws enacted under former military governments to be unconstitutional, that the constitutional petition system whereby common citizens can directly bring cases to the court is actively utilized, and that the court's vibrant activities are highly esteemed both inside South Korea and overseas. We also learned that the National Human Rights Commission of Korea was just established last year as an independent organ separate from the government in light of the violations of human rights that occurred under authoritarian military rule, and that it is expected to energetically fulfil its mandate.

Having completed this very busy schedule, the House delegation returned to Japan on October 5.

Since the mission was extremely brief and our agenda in each country covered a very wide variety of issues, I cannot possibly offer anything like a conclusion here. However, if I may say a few words concerning my own personal impressions, in light of the experiences in the U.K. which is continuing with constitutional revisions to reform the House of Lords and advance decentralization, in China which has revised its constitution as required to move forward with its reforms and open policy, and in Thailand, the Philippines, Indonesia and South Korea where democratic constitutions were enacted under people's movements, we see how national constitutional debates repeatedly emerge in line with sudden changes in social conditions in each country, and how constitutions have been revised based on those debates.

As soon as the detailed report of the survey has been submitted to the Speaker of the House, it will be distributed to all the members of the Commission, and I hope that you will find it informative in our future deliberations.

In closing, I would like to express my sincere appreciation to everyone who cooperated in any way with the survey, together with my heartfelt gratitude that we were able to successfully complete such a full program. Thank you all very much.

This concludes my brief summary of the recent overseas study mission.

**Report on the Survey Mission by the House Delegation on the Constitutions of the United States, Canada and Mexico (157th Diet Session, First Meeting, Research Commission on the Constitution, October 2, 2003)**

**NAKAYAMA Taro, Commission Chairman and Leader of Delegation**

I will now present a report on behalf of the House delegation dispatched to survey the constitutions of the United States, Canada and Mexico.

From August 31 through September 13, we travelled to the U.S. (the State of California and the national capital Washington D.C.), Mexico and Canada to conduct a survey of the state of the constitution in those nations. I will present a brief oral report of the survey here, to serve as a reference point for our future investigations.

The House delegation was composed of four people: myself as the leader, Deputy Chairman SENGOKU Yoshito as deputy leader, NAKAGAWA Shoichi, and YAMAGUCHI Tomio. We were accompanied by staff from the Commission's Office and the National Diet Library, and by a party of two reporters.

On September 1 at our first destination Sacramento (California), we toured the California State Capitol Building and then held discussions with Mr. Barry KEENE, a former member of both the California State Assembly and the California State Senate who also served as the Director of the California Department of General Services, and with Mr. Scott KEENE, a lobbyist at the California legislature, and exchanged opinions regarding the political conditions in California where a gubernatorial election is taking place following a successful recall of the governor, and about the significance and issues surrounding the Constitution of the State of California with its citizen participation provisions which are greatly influencing the political situation.

Then on the following day September 2 at the University of California at Berkeley, which is one of the top centers for Japanese studies in the entire U.S., I presented a lecture entitled "Activities of the Research Commission on the Constitution of the House of Representatives, and the Japanese Constitution in the 21st Century" which was followed by a question-and-answer session with the audience. The House delegation then held discussions with Associate Professor Steven VOGEL and other political scientists and with Professor Stephen BARNETT and other constitutional scholars.

In my speech I explained that the GHQ was deeply involved in the formulation of the Constitution of Japan, and that Japan is now really questioning if its present constitution is still appropriate, despite the changes in domestic and overseas conditions over the half-century since the war ended. From that perspective, I said, the Research Commission on the Constitution has reached an agreement among all factions on maintaining the Emperor-as-symbol system, but is still vigorously debating the merits of Article 9 and of introducing a constitutional court.

During the question-and-answer session, audience members asked questions regarding: politics in



the appointment of judges if a constitutional court were introduced, the effect on neighboring countries if Article 9 were revised, and the reasons for maintaining the Emperor-as-symbol system.

Finally, at Associate Professor VOGEL's request, Deputy Chairman SENGOKU Yoshito and Member YAMAGUCHI Tomio both spoke.

Deputy Chairman SENGOKU noted that the path of light armament and economic growth which Japan has followed since World War II is already becoming unacceptable, and then raised the three issues: considerations of international relations in security and other fields, the shift away from the centralized government structure that has been Japan's basic governance system to date, and arrangements to guarantee human rights which bring greater richness to democracy, specifically, the establishment of frameworks such as a constitutional court, a human rights commission and a GAO. He also stated that as a nation founded on the rule of law Japan should not revise its constitution via new interpretations any further.

Member YAMAGUCHI spoke about the wealth of the process whereby the Constitution of Japan was formulated, with alternative drafts presented by each party, deliberations during the Diet which established the Constitution, and the overwhelming support of the people. He said the Emperor-as-symbol system contradicts popular sovereignty and that this should eventually be resolved, but for the time being the constitutional provisions regarding the Emperor-as-symbol system should be strictly enforced. Member YAMAGUCHI said that Article 9 is important for the peace and stability of Asia and the entire world and will be defended, and that there are public opinion polls indicating a majority of Japanese people think Japan should withdraw from the Japan-U.S. Security Treaty.

During the discussions with political scientists and constitutional scholars, opinions were exchanged regarding a truly wide range of issues including understandings and evaluations of present Japan-U.S. relations in light of the war in Iraq and the conditions in North Korea, as well as assessments of the frequently amended Constitution of the State of California and its characteristics. In particular, participants expressed critical opinions of the Bush administration's present foreign policies which strengthen unilateralist tendencies one after another, and this may have reflected the local nature of California where the Democratic Party is dominant. From a constitutional perspective, my strongest recollection is of the negative opinions voiced concerning the exercise of the initiative (people's participation) provisions which are considered to be the most distinctive characteristic of the Constitution of the State of California.

The Constitution of the State of California has frequently been amended by citizen initiatives ever since the initiative system was introduced through a constitutional amendment in 1911. The system has been used for numerous constitutional revisions, for example, to stipulate an upper limit on property tax rates within the constitution, and to require a special two-thirds majority in the California legislature for the passage of budgets and all bills stipulating tax increases. The terms of the governor and state legislators have also been limited. The governor and state senators can serve a maximum of two terms for a total of eight years, and the members of the state assembly can serve a

maximum of three terms for a total of six years. Initiative proposals have been put forth one after another, such as those restricting the provision of welfare services to illegal immigrants or demanding the abolition of affirmative action. While this trend is based on citizen distrust in the governor and the legislature, some noted that citizen initiatives are also being used for political purposes, as a means whereby minority parties are opposing the state government and legislature. Former Director of the California Department of General Services Barry KEENE noted this during the previous day's discussions in Sacramento, and had even referred to this phenomenon as a Californian constitutional crisis.

There have been calls for citizen participation in Japan as well, especially at the local government level. From the perspective of local self-government, I strongly felt the need if such a system were introduced to carefully consider the system design including the appropriate fields for this sort of direct democracy, how to achieve the best mix between this and the indirect democracy whereby decisions are entrusted to the Diet, and how to incorporate a check function such as that provided by a constitutional court.

In Mexico, we held a series of vibrant discussions in the capital Mexico City on September 4 from the morning through lunch and until nearly eight o'clock in the evening with Dean of the Faculty of Law at Universidad Nacional Autonoma de Mexico (UNAM) Fernando SERRANO, UNAM Emeritus Professor Ignacio BURGOA, Justice and former Chief Justice of the Supreme Court of the United Mexican States Genaro GONGORA, and former Foreign Minister Fernando SOLANA.

Dean SERRANO first reviewed the history of the Constitution of Mexico during the 19th century, with the repeated vicissitudes and mutual opposition between the federalists and those who favored a strong centralization of power, and between the conservatives and the liberals. He then explained the significance of the present 1917 Constitution which was enacted following the Mexican War of Independence at the start of the 20th century. Emeritus Professor BURGOA, who is known as the father of the *amparo* system, provided a truly spirited and detailed explanation of the history and significance of this "petition for protection" system.

In particular, Emeritus Professor BURGOA stressed that the *amparo* system (1) covers all sorts of actions by the authorities that are thought to be unconstitutional, (2) allows all parties who claim to have had their rights violated to file petitions, regardless of whether they are individuals or corporate persons, (3) and therefore this system is not limited to the protection of human rights but also guarantees the constitution overall.

This *amparo* system whereby individuals can petition the judiciary when their rights have been violated also came up as a constitutional guarantee system in our discussion with Supreme Court Justice GONGORA. He explained that the Constitution of the United Mexican States also permits abstract constitutional examinations by the Supreme Court with procedures to hear constitutional conflicts and lawsuits of unconstitutionality.

The Research Commission on the Constitution has also engaged in vigorous debates in light of the reluctant stance the Supreme Court of Japan has taken toward exercising its right to examine

constitutionality, including deliberations on the merits of introducing a constitutional court, and I felt the need to examine this Mexican system in somewhat greater detail, together with the U.S. and Canadian systems that are presented later in this report.

Finally, the main topics during our discussions with former Foreign Minister SOLANA were the philosophy behind Mexico's nonparticipation in UN peacekeeping activities, which also came up in our discussions with Dean SERRANO, and the nation's basic stance of coexistence with the U.S. as an equal partner.

Dean SERRANO had explained that Mexico will not enter any international treaty which limits its sovereignty in the field of national defense, and therefore Mexico does not send any military personnel for peacekeeping activities from the standpoint that Mexican military personnel will not act under the command of other nations, even within the UN framework. He said the reason why, is that this is the only way for Mexico to build up an equal relation with the U.S., its superpower neighbor with which it shares a 3,000 km long border. I wanted to raise this same issue with former Foreign Minister SOLANA, who was my counterpart when I served as Foreign Minister of Japan.

Former Foreign Minister SOLANA (1) said that the present world order is tending toward a regime of unilateral hegemony as characterized by the U.S. war in Iraq, and that while the decision-making of each nation ought to be respected, Mexico should say no to the U.S. at those times when it must say no; (2) noted that in bilateral relations Mexico and Japan are presently advancing negotiations on concluding an FTA, that the time will come when an Asia-Pacific region FTA spanning the Pacific Ocean will become realistic, and that relations with Japan will likely gain more and more political importance as well; and (3) with this background, said that he would like to propose regular bilateral meetings between parliamentarians from Japan and Mexico.

At our next destination Washington D.C. we held lively discussions with a total of seven individuals involved with the legislative, executive and judicial branches over the two days September 8-9. Specifically, from the legislative branch we met with David WALKER, the Comptroller General of the General Accounting Office (GAO) (a legislative branch agency), Douglas HOLTZ-EAKIN, the Director of the Congressional Budget Office (CBO), and the three Congressmen from the House of Representatives Thomas REYNOLDS, Chairman of the National Republican Congressional Committee, Steven CHABOT, Chairman of the House Subcommittee on the Constitution, Committee on the Judiciary, and Robert NEY, Chairman of the Committee on House Administration. From the executive branch we met with Deputy Secretary Richard ARMITAGE of the U.S. Department of State and from the judicial branch we met with Supreme Court Associate Justice Antonin SCALIA.

First in our conversations with Comptroller General WALKER and CBO Director HOLTZ-EAKIN we received explanations regarding the actual operating conditions at these organs which assist legislative activities and congressional investigations and provide the Congress with information that could be used to oppose the executive branch. During these conversations we learned that the GAO and CBO: (1) make every effort to provide objective and accurate information; (2) are only legally

obliged to conduct investigations based on formal requests from congressional committees and subcommittees, but customarily also respond to requests for investigations by individual congressmen to contribute to investigations initiated by minority factions, and the number of such investigations is increasing year by year; and (3) but nevertheless give priority to those investigations they are obliged to conduct by law when multiple requests overlap. I found this information most interesting when considering how to make the works conducted in Japan by the parliamentary legislative bureaus, research bureaus and research offices and by the National Diet Library's Research and Legislative Reference Bureau stronger and more replete.

Comptroller General WALKER also explained that the Comptroller General has an unusually long term of office of 15 years to ensure that the GAO executes its duties in a neutral and effective manner. He added in passing that while this is longer than the 14 year term of the Chairman of the Federal Reserve Board and the 10 year term of the Director of the FBI, Supreme Court justices are appointed for life. While the independence of congressional support organs must of course be guaranteed, I was still surprised by this unusually long term of office.

We then proceeded to our discussions with the three Congressmen, National Republican Congressional Committee Chairman REYNOLDS, House Subcommittee on the Constitution (Committee on the Judiciary) Chairman CHABOT, and Committee on House Administration Chairman NEY.

Committee Chairman REYNOLDS expressed the opinion that the greatest point of contention in next year's presidential election is likely to be the economy and business conditions. I vividly remember his statement that Americans vote their pocketbooks. Subcommittee Chairman CHABOT explained that while amendments to the constitution are constantly being proposed and deliberated, they are only very rarely approved, and that discussions are presently taking place on two proposed constitutional amendments stipulating a balanced budget and the rights of crime victims. Committee Chairman NEY explained that U.S. House of Representatives congresspersons can employ a total of 22 publicly paid secretaries (legislative staff) and are provided with an average of \$1 million each for activity expenses over their two year terms, including legislative staff salaries.

In greeting our mission, U.S. Department of State Deputy Secretary Richard ARMITAGE stated that it is deeply significant for him to meet our delegation from the Japanese Research Commission on the Constitution including Member YAMAGUCHI of the Japanese Communist Party, that the composition of our delegation indicated the importance of the Research Commission on the Constitution, that he has watched over the Commission with great interest ever since it was founded, and that he is paying great attention to the Commission's findings.

We then entered into the substantive discussions with a friendly and lively exchange of opinions, mostly between Deputy Secretary ARMITAGE and myself as the representative of our delegation, regarding Japan-U.S. relations centered around Article 9 of the Constitution of Japan, assessments of the six-party talks on the North Korea issue and their outlook, and the political conditions in Japan with the election for party president, dissolution of the Lower House, and general election. Deputy

Secretary ARMITAGE's comments during these discussions can be summarized as follows.

First, Deputy Secretary ARMITAGE noted that U.S.-Japan relations are presently at their best, and that while the Japanese economy which was stagnant is now gradually recovering, there are still too many things to be addressed between the U.S. and Japan, including the North Korea issue. He said the actions first taken by Japan at the start of the 21st century of "showing the flag" and putting "boots on the ground" are really fantastic for U.S.-Japan relations. He said that while Japan has supported the U.S. in the war in Iraq, the U.S. is supporting Japan's bid to gain a permanent seat at the UN Security Council, and yet the issue of becoming a permanent member of the UN Security Council will remain difficult if Japan fails to reach a fundamental decision on exercising the right of collective self-defense. Deputy Secretary ARMITAGE also said he has long believed that Japan's Cabinet Legislation Bureau could be more flexible in its interpretation of Article 9, and that Japan is just restricting itself from exercising the right of collective self-defense, which it naturally possesses as a sovereign nation. He said the fact that a debate on lifting this self-imposed restriction is emerging within Japan is very important and most welcome, but nevertheless, this is an issue that should only be decided by Japan and the Japanese people and that regardless of what decision is reached, the U.S. will remain Japan's friend and ally.

Then reading from a prepared paper, Deputy Secretary ARMITAGE quoted the following paragraph from the so-called "Armitage-Nye Report" ["The United States and Japan: Advancing Toward a Mature Partnership"] which was released in 2000.

"Japan's prohibition against collective self-defense is a constraint on alliance cooperation. Lifting this prohibition would allow for closer and more efficient security cooperation. This is a decision that only the Japanese people can make. The United States has respected the domestic decisions that form the character of Japanese security policies and should continue to do so. But Washington must make clear that it welcomes a Japan that is willing to make a greater contribution and become a more equal alliance partner."

Regarding the North Korea issue, Deputy Secretary ARMITAGE said that at the recent six-party talks on North Korea's nuclear development, Japan, the U.S., South Korea and Russia cooperated and all solidly performed their respective missions, and in particular China is fulfilling an appropriate role and must be urged to keep performing a role befitting its status. He said he thought that North Korea is also starting to grasp the realities of the other five parties, as characterized by its restraint in not displaying any new types of missiles at the recent military parade commemorating the 55th anniversary of the founding of North Korea's ruling communist party. He indicated that while nothing certain can be said about North Korea, the U.S. expects further progress of the six-party talks.

Finally, I revealed that I had sent an English translation of my formal greetings upon assuming office as Commission Chairman to the U.S. Embassy in Japan. These greetings declared what have come to be known as the "NAKAYAMA's Three Principles" expressing my stance for the operation of the Research Commission on the Constitution (which I have repeatedly referred to during our activities)

which are “protecting democracy,” “respecting the fundamental human rights of individuals,” and “ensuring that Japan never again invades foreign countries.” In response, Deputy Secretary ARMITAGE expressed his deep understanding of these principles.

Then Member YAMAGUCHI stated that he holds a different opinion from Deputy Secretary ARMITAGE regarding collective self-defense and other issues, but that this difference of opinion will not hinder future exchanges.

At our meeting with Justice SCALIA, the focus of our discussion was the comparison of the U.S.-style judicial review of constitutionality which is solely based on actual cases and the German-style constitutional court system whereby constitutional judgments can be made apart from specific cases.

Taking the position that the U.S.-style system is superior from start to finish, Justice SCALIA explained that under constitutional court systems such as the one in Germany the courts venture outside the proper field of the judiciary of interpreting the law to infringe on the domain of the legislative branch, and may even get caught up in hot debates among politicians. Justice SCALIA said that while judicial interpretations of the U.S. Constitution and laws by U.S. courts are final decisions in the contexts of suits between plaintiffs and defendants, these definitely do not constitute the highest and final authority in the U.S., as they may not be accepted by the Executive Office of the President or by Congress since the Congress may theoretically pass other laws that fail to respect the judicial opinions and repeat the same errors, and this demonstrates the separation of powers.

To understand the real meaning of this statement, I think we must assume a strict separation of powers under a presidential system together with a Supreme Court that very actively exercises its right to address constitutional issues, and I would say that Justice SCALIA’s statement should be considered as one opinion.

I was particularly impressed by Justice SCALIA’s last statement that while the lifelong terms of U.S. Supreme Court Justices are an extreme system for ensuring judicial independence whereby once the justices are appointed they remain in office until they resign or die, the system is balanced because the appointment process is highly political with nomination by the President and confirmation by the Senate.

On September 11 in Ottawa (Canada), we held discussions at the Supreme Court of Canada with Chief Justice Beverly McLACHLIN and Justice Michel BASTARACHE, at the Department of National Defence with International Security Policy Department Director General Drew ROBERTSON, at the Canadian Parliament with Leader of the Government in the House of Commons Don BOUDRIA, and at the Privy Council Office with Deputy Secretary Keith CHRISTIE.

In our discussions with Chief Justice McLACHLIN and Justice BASTARACHE we spoke about the exercise of the right to examine constitutionality in Canada, and I was impressed by her explanations of the “reference” system (advisory opinions) which is a unique power of the Supreme Court of

Canada.

Under this system, the Supreme Court can announce its interpretations of the Constitution of Canada, federal law, provincial law and constitutionality to requests for opinions and enquiries from the federal government even when no specific case has been filed and even before proposed laws have been enacted. One well-known example was a 1998 Supreme Court reference regarding the 1995 referendum on the independence of the province of Quebec in which the court found that the government of Quebec does not have the right to unilaterally secede from Canada. Chief Justice McLACHLIN said that the Supreme Court of Canada is presently hearing a reference regarding a bill which would recognize the marriage of same-sex couples. She explained that the Supreme Court does not respond to all references, but only to those which are appropriate for the court, and that the court refuses to hear political issues.

While I felt that this system whereby a supreme court which has jurisdiction over concrete cases is also granted some constitutional court type functions is more transparent than the present Japanese system for constitutional interpretation by the Cabinet Legislation Bureau which lies inside the executive branch, I also keenly felt the difficulties of administering such a system.

During the question-answer-session, we noted the high percentage of female justices on the Supreme Court of Canada, where three out of nine justices are women beginning with Chief Justice McLACHLIN, and the percentage of female justices in Canadian courts came up as a topic. We were surprised to learn that in general one-third of all Canadian justices are women, with even a higher percentage of women among court clerks.

Next at the Department of National Defence we received explanations regarding the activities of the Royal Canadian Army and its participation in UN peacekeeping operations from International Security Policy Department Director General ROBERTSON (who is a military officer) and from Ms. Carolyn KEELER (who is a civilian employee), and this was followed by a question-and-answer session.

Director General ROBERTSON explained that because Canada has a very small army with only 60,000 troops the number of personnel dispatched for UN peacekeeping operations is small, but in terms of the ratio of military personnel dispatched to total military personnel Canada ranks second behind the U.S.

I was particularly impressed by the response given by Director General ROBERTSON, who has engaged in joint actions with Japan's Self-Defense Forces as a member of the armed services, when I made the following final inquiry. I asked him if he views Japan's Maritime Self-Defense Forces as a navy or strictly as a self-defense force. Director General ROBERTSON said that responding as a navy officer, naval activities take place on the open seas and the only requirement for any nation's navy or self-defense force is that it has sufficient ability to act in the open seas. He said based on his experience, he would like to engage in joint actions with an organization that has the kinds of capabilities maintained by Japan's navy.

In our discussions with Leader of the Government in the House of Commons BOUDRIA, he explained the significance of the “Patriation of the Constitution” through the 1982 constitutional revisions, as well as the fiscal reform and modernization of the parliament (making the parliament more democratic and reforming electoral methods and electoral finances) that are the fruits of the present administration which has been in power since 1993. I was interested to learn during the question-and-answer session that a system for a Privacy Commissioner, who is a type of ombudsman, has been established by law in relation with the advance of electronic government in Canada.

Regardless, the central topic of conversation was the relationship between the government and the ruling party under Canada’s parliamentary cabinet system. This is typified by Minister of State BOUDRIA’s title “Leader of the Government in the House of Commons.” In Japan, that would be like condensing the government positions of Minister of State and Chief Cabinet Secretary with the ruling party positions of Chairman of the Diet Affairs Committee and Secretary-General all into a single job.

I particularly remember his explanation that in Canada while individuals who are not MPs are not explicitly prohibited from becoming ministers of state, in those cases customarily they must run for and become MPs during the next general election or special election. Typically the prime minister exercises his or her leadership by having a serving MP resign so the new minister of state can stand in the special election held to replace the MP. Generally, the prime minister appoints the MP who is forced to resign to the Senate of Canada or names the MP as an ambassador. Meanwhile, if the new minister of state loses the special election, he or she normally resigns his or her post as minister of state.

At our last destination in Canada, the Privy Council Office, we held discussions with Deputy Secretary CHRISTIE and received explanations regarding an outline of the Intergovernmental Affairs section of the Privy Council Office, which is his responsibility, and about the diversity which characterizes Canada. Deputy Secretary CHRISTIE explained that in addition to Canada’s well-known diversity in languages, cultures and peoples, the provinces are also diverse in such areas as population and Canada’s population is not highly centralized at any single location. He used concrete figures to explain Canada’s actual conditions in detail, and to show how Canada is also a nation where the decentralization and dispersion of power is highly advanced.

Having completed this very busy schedule, the House delegation returned to Japan on September 13.

Since the mission was extremely brief and our agenda in each country covered a very wide variety of issues, I cannot possibly offer anything like a conclusion here. As soon as the detailed report of the survey has been submitted to the Speaker of the House, however, it will be distributed to all the members of the Commission (as have the reports of the three prior surveys), and I hope you will find it informative in our future deliberations, for which just over a year now remains.

Including this fourth overseas survey mission, delegations from our Commission have now surveyed the constitutional conditions in a total of 27 nations. Through these missions I myself have gained a renewed awareness of how the national discussions taking place in each country about the state of



the constitution are directly tied to the conditions of each country.

In closing, I would like to express my sincere appreciation to everyone who cooperated in any way with the survey, together with my heartfelt gratitude that we were able to successfully complete such a full program. Thank you all very much.

This concludes my brief summary of the recent overseas study mission.

**Report on the Survey Mission by the House Delegation on the Constitutions of the European Union, Sweden and Finland (161st Diet Session, First Meeting, Research Commission on the Constitution, October 14, 2004)**

**NAKAYAMA Taro, Commission Chairman and Leader of Delegation**

I will now present a report on behalf of the House delegation dispatched to survey the constitutions of the European Union (EU), Sweden and Finland.

From September 5 through September 17, we travelled to Sweden and Finland to conduct a survey of the state of the constitution in both nations, and to Brussels (Belgium) and Strasbourg (France) to survey the Treaty Establishing a Constitution for Europe, etc. I will present a brief oral report of the survey here, to serve as a reference point for our future investigations.

The House delegation was composed of a total of seven people: myself as the leader, FUNADA Hajime, YASUOKA Okiharu, NAKATANI Gen and KONDO Motohiko from the Liberal Democratic Party (LDP), and EDANO Yukio and SENGOKU Yoshito from the Democratic Party of Japan and Club of Independents. We were accompanied by staff from the Commission's Office, the House of Representatives Legislative Bureau and the National Diet Library, and by a party of three reporters.

On the initial day of our survey September 6 at our first destination Stockholm (Sweden), we received explanations and exchanged opinions at meetings with Director Alison BAILES and three of her colleagues at the Stockholm International Peace Research Institute (SIPRI), which is renowned as a leading international research organ on global peace and security issues, regarding recent security issues; with Chairman of the Parliament's Advisory Committee on EU Affairs Tommy WAIDELICH regarding the Swedish viewpoint on the expansion of the EU, the significance of the Treaty Establishing a Constitution for Europe, and its problems; with First Deputy Speaker Per WESTERBERG regarding the background to Sweden's change from a bicameral to a unicameral legislature; and with former Parliamentary Ombudsman and present Deputy Parliamentary Ombudsman Jan PENNLOV regarding the powers and functions of parliamentary ombudsmen in Sweden.

On the following day September 7, we received explanations and exchanged opinions at meetings with former Minister of Health and Social Affairs Bo KONBERG and Member Gote WAHLSTROM regarding Sweden's social security system, especially an outline of the national

pension system and immigrant policies; and with Minister of Justice Thomas BODSTROM (who has jurisdiction over the four fundamental laws which form the Constitution of Sweden) regarding the issue of female secession to the throne, etc.

I will now present a brief report of those survey meetings. First at the Stockholm International Peace Research Institute (SIPRI), Director BAILES began by explaining that SIPRI is an independent research organ established by the government of Sweden in 1966 to contribute to world peace. She said SIPRI advances its surveys and research while an independent Governing Board sets the research themes, and SIPRI operates under the principle that while the government of Sweden provides funds it does not interfere with SIPRI's affairs. Director BAILES explained that SIPRI's activities are not limited to theoretical research but extend to research on actual, concrete political themes, and that SIPRI's research findings are released as the *SIPRI Yearbook* each year. She explained that SIPRI has an international staff of researchers, and that she herself is from the U.K. After Director BAILES presented this outline of SIPRI's organization and activities, we had a truly enthusiastic exchange of opinions which continued beyond the scheduled time interspersed with explanations from her colleagues regarding various security issues.

I will now cite several comments from those discussions that I found to be particularly impressive.

One was the response when Member NAKATANI asked for an opinion regarding the attitude of the state toward terrorism and minority peoples, for example, Russia's attitude toward the Chechens, Israel's attitude toward the Palestinians, Iraq's attitude toward the U.S., and China's attitude toward Tibet.

Director BAILES responded that since 9/11, the U.S. has been taking a strong anti-terrorist stance amid the internationalization and ideologization of terrorism, but as most terrorist acts and regional conflicts have their own social, political and economic backgrounds, such terrorism and conflicts can only be resolved by improving social, political and economic conditions. She said that speaking as a U.K. citizen, for example, she thinks the resolution of the troubles in Northern Ireland will be gained by granting greater political rights to Northern Ireland and improving economic conditions, and not by killing terrorists.

Another impressive comment was the answer given when Member FUNADA asked Director BAILES her opinion regarding the issue of Turkey entering the EU and the understanding of the Islamic world.

Director BAILES responded that the EU is based on Christian culture and some say Turkish membership would constitute a step beyond that foundation, but she disagrees because reports indicate that 30 million followers of Islam presently live within the EU, and that the EU is already a mixed region with followers of Christianity, the Greek Orthodox Church, Islam, Judaism, etc.

The response when Member YASUOKA asked about the European view on Article 9 of the Constitution of Japan was also most interesting. Member YASUOKA asked how Article 9, which has been interpreted in a very restrained fashion as not permitting the exercise of collective

self-defense, is seen from the perspective of building up international peace and security.

Director BAILES responded that while this is an extremely delicate question, responding abstractly, arguments could be made from a few different directions. First, she said the restrained policy that Japan has observed over the past 60 years can be praised for contributing to regional peace and stability, but at the same time it has also had the indirect influence of drawing the U.S. into the region, so any change to this restrained policy would not just be a domestic issue for Japan but rather should be seen as an issue for all of Asia and the entire world.

On the other hand, she said that in looking at the national defense policies of each country under recent international conditions several broad changes are occurring. Director BAILES said as symbolized by Sweden's need to reconsider its long-standing policy of neutrality, to oppose new enemies such as international terrorists who act without regard to borders, armies can no longer respond using conventional concepts of defending national boundaries. In other words, she said, the role of armed forces is no longer just to stop conflicts but also to build peace. She said that of course peacebuilding is not limited to military efforts alone, but must be combined with the types of economic and political assistance provided by Japan.

Additionally, Director BAILES said that as the U.S. is placing greater emphasis on mobility, it is losing interest in defending the territories of its friends and allies, so the U.S. is successively withdrawing its forces from Europe and from Asia as well, and thus the democratic nations of Europe and Asia can no longer depend on the U.S. as they have in the past but must now reconstruct their own security policies.

I found her comments deeply impressive, as valuable opinions expressed by a European.

We then proceeded to our discussions with Chairman of the Parliament's Advisory Committee on EU Affairs WAIDELICH.

Committee Chairman WAIDELICH explained that the reason why Sweden, which long firmly maintained a policy of neutrality, entered the EU was that with the collapse of the Warsaw Treaty Organization around 1990 and the collapse of the Berlin Wall security conditions drastically changed so that the EU was no longer an organ of the Western bloc. On the other hand, he said that the relationship between Sweden and the EU is complex, and that, as you know, Sweden has not yet joined the Economic and Monetary Union or adopted the unified currency. He said this is because of citizen concerns over transferring the powers of the Parliament of Sweden to the EU too quickly, and that Sweden is unlikely to switch to the euro for the time being.

Committee Chairman WAIDELICH also explained that Sweden intends to ratify the Treaty Establishing a Constitution for Europe through a parliamentary vote alone, without holding a plebiscite, because this treaty is essentially a summation of the various prior treaties concerning the EC and the EU and an attempt to make the EU's policymaking procedures more open.

Next, I will summarize our discussions with First Deputy Speaker WESTERBERG and with Deputy Parliamentary Ombudsman PENNLOV. First Deputy Speaker WESTERBERG explained the

organization of the Parliament of Sweden moving back through its history. He explained that under Sweden's former bicameral system, there was a lower house with representatives directly elected by the people and an upper house whose members were chosen indirectly by provincial assemblies, and that MPs served eight-year terms with one-eighth of the MPs standing for election each year. He explained that the Parliament of Sweden changed to a unicameral system in 1971 to realize a system that is thoroughly democratic and whereby the composition of Parliament quickly reflects changes in the will of the people.

In response to a question asking if the change to a unicameral system shortened the time required for the examination of bills, First Deputy Speaker WESTERBERG said that it did not since examination used to take place in parallel in both houses. He did say, however, that the change has made it easier to vote on bills as the complexity of forming majorities under the former bicameral system has disappeared.

At our next meeting, Deputy Parliamentary Ombudsman PENNLOV explained Sweden's parliamentary ombudsmen system, which has a long tradition spanning 200 years.

He said that while parliamentary ombudsmen and the parliament's Constitution Committee are both responsible for administrative oversight in Sweden, the Constitution Committee mainly oversees the cabinet and ministers, while the parliamentary ombudsmen oversee the personnel of all government organs including those working for local government bodies, as well as the employees of courts and military-related organs. He said Sweden has four parliamentary ombudsmen who each execute their duties independently while dividing their work, which includes investigations resulting from petitions filed by regular citizens and self-initiated inspections of the propriety of works implemented by local government bodies. He said that when parliamentary ombudsmen discover improper execution of duties as a result of their investigations, they may issue warnings to take corrective actions, and they also have the same powers to file charges as public prosecutors.

Then at our meetings with former Minister of Health and Social Affairs KONBERG and Member WAHLSTOM, we received explanations regarding the specific arrangements of Sweden's pension and other social security systems and about the nation's immigration policy including the education and crime rates of foreign immigrants. From our side, I explained the various social security issues in Japan using concrete data showing the changes in average life expectancies, total fertility rates and the burden ratio (the share of taxes and social security contributions), and we exchanged opinions regarding common problems in Sweden and Japan.

Finally, although time was limited, we also met with Minister of Justice BODSTROM who has jurisdiction over the four fundamental laws which form the Constitution of Sweden, and we discussed such as issues as female secession to the throne and Internet crime with Minister BODSTROM and other high government officials

Regarding the issue of female secession to the throne, we learned that the Act of Succession was revised in 1979 considering that the present King's first child was a daughter born in 1977, and from the perspective of advancing equality among the sexes, making Sweden the first European monarchy

adopting equal primogeniture regardless of sex. So even after the birth of a prince later on, Crown Princess Victoria has the right to secede to the throne, and there was a somewhat in-depth exchange of opinions between Minister BODSTROM, Member KONDO and Member EDANO regarding the order of secession and the legal status of the Queen's husband.

We expressed Japanese concerns that if a princess were to secede to the throne in Japan it would be difficult to find someone who would marry her and asked about that situation in Sweden, and were told that there would be no problem since a great many Swedish men would be interested in becoming the Queen's husband.

With this comment, I was keenly reminded of how the position of the Imperial Family is defined within the context of the history and traditions of each country.

At our next destination Helsinki (Finland), on September 8 we received explanations and exchanged opinions at a meeting with Administration Committee of the Parliament of Finland Chairperson Matti VAISTO and Vice Chairperson Veijo PUHJO regarding information disclosure in Finland and the various issues involved with the protection of personal information.

On the following day, September 9 we received explanations and exchanged opinions at meetings with Employment and Equality Committee Chairperson Jukka GUSTAFSSON and three members regarding the actual conditions of a gender-equal society in Finland; with Constitutional Law Committee Member Arto SATONEN and his colleagues regarding the role of the Constitutional Law Committee; and with Member Kimmo KILIJUNEN who served as Finland's national parliamentary delegate to the European Constitutional Convention which as you know drafted the Treaty Establishing a Constitution for Europe under the chairmanship of former French President Giscard d'Estaing, regarding Finland's viewpoint on the expansion of the EU and the significance of the Treaty Establishing a Constitution for Europe and its related issues.

I will now present a brief report of those survey meetings. First at our meeting with Administration Committee Chairperson VAISTO and Vice Chairperson PUHJO we learned that the Constitution of Finland, which was completely revised in 2000, includes an article stipulating the right of access to information held by public bodies, and also stipulating that provisions on restrictions relating to pictorial programs that are necessary for the protection of children may be established by law. Keeping in mind that Finland is a nation of high-technology industries and the home of Nokia which holds the top global share in mobile telephones, we exchanged opinions regarding diverse issues ranging from an outline of Finland's basic system for information disclosure to the use of wiretaps for investigations of heinous crimes.

Next we had a sociable and enthusiastic exchange of opinions with Employment and Equality Committee Chairperson GUSTAFSSON and his colleagues over lunch regarding the issue of an aging population with a declining birthrate, the actual conditions of a gender-equal society, and various education-related issues.

In particular, I remember the question-and-answer session after we were informed that Finland was

ranked number 1 in both mathematics and literacy in an international assessment of student academic achievement conducted by the OECD. When we asked about the reasons for this success, Chairperson GUSTAFSSON and his colleagues explained that in Finland many superior students aim to become teachers, and Finland also has excellent teacher education. As the background to this, they mentioned a broad national consensus across party lines that priority should be given to all items related to children's education.

I was keenly reminded of how education lies at the root of issues regarding the state of the nation.

Next at our discussions with Member SATONEN and two other members and two parliamentary staff at the Constitutional Law Committee, we received explanations that the Constitutional Law Committee functions as an internal parliamentary organ to examine if laws are constitutional, and is also charged with overseeing the actions of the government, the Chancellor of Justice (who is also responsible for administrative oversight), and the parliamentary Ombudsman. During the question-and-answer session, we discussed the differences between the Chancellor of Justice and the parliamentary Ombudsman, as well as the position of the Parliament under the Constitution of Finland. Regarding the differences between the Chancellor of Justice and the parliamentary Ombudsman, we learned that the Chancellor of Justice attends Cabinet meetings and independently monitors and directs the constitutionality of government action from inside the Cabinet. In contrast, the parliamentary Ombudsman monitors the constitutionality of government action and the respect of human rights from the Parliament's side. We learned that while these two organs have some overlapping powers, they have functioned well together down through history. During these discussions we also learned that Finland maintains a Committee for the Future which always thinks about the future of Finland from a broad perspective, which we found most interesting. Unfortunately, we did not have sufficient time to ask about the details of this committee's detailed powers and organizational structure.

Finally, in discussions with Member KILIJUNEN who participated in the European Constitutional Convention as Finland's national parliamentary delegate, Member KILIJUNEN noted that many people in Sweden are slightly more cautious toward the EU compared with their neighbors in Finland. He said this is because people in Sweden evaluate the EU as an economic body, while those in Finland emphasize the roles of the EU both as an economic body and as a security organ. Member KILIJUNEN said that World War II was highly traumatic for Finland as it was for Japan, and that the presence of Russia, the great power of the East, is strongly felt in Finland. He said that the recent expansion of the EU into Eastern Europe is highly significant in that respect.

Member KILIJUNEN also commented on the significance of the Treaty Establishing a Constitution for Europe, saying that Finland positively evaluates the Treaty because it makes the EU policymaking process stronger and more transparent, and thus contributes to the democratization of the EU. He also made the following highly interesting comments regarding the future direction of the EU. Member KILIJUNEN said his understanding is that the Treaty Establishing a Constitution for Europe does not aim at the establishment of a federal state like the U.S. He repeatedly stressed that Europe is not moving forward 200 years behind the U.S, and that they are not working to

establish a European America but rather moving to resolve new problems with new approaches.

Next, regarding the Treaty Establishing a Constitution for Europe which was one of the mission's main survey themes, we held vibrant conversations and exchanged opinions at meetings with a total of 13 people and their staff members over the five days from September 10 through September 16 (excluding Saturday and Sunday). These meetings were held with individuals who participated in the European Constitutional Convention which drafted the Treaty; with officials at the three key EU organs the Council of the European Union, the European Commission and the European Parliament; with the European Ombudsman which is a special EU organ; and with the European Court of Human Rights which is independent of the EU but fulfills an important role in the guarantee of human rights in Europe.

Specifically, regarding the European Constitutional Convention we met with former Prime Minister of Belgium Jean-Luc DEHAENE who served as Vice President of the Convention (assisting Convention President Giscard d'Estaing, former President of France); regarding the Council of the European Union we met with Mr. Jean-Claude PIRIS who serves as the Council's Legal Adviser; regarding the European Commission we met with European Commissioner for Justice and Home Affairs Antonio VITORINO, with the Commission's Deputy Director-General for External Relations Fernando VALENZUELA (who was deeply involved with the process of drafting the Treaty Establishing a Constitution for Europe as a high official of the European Commission secretariat), and with Head of the Task Force on the Future of the Union Pieter van NUFFEL; regarding the European Parliament we met with President of the European Parliamentary Delegation to the Constitutional Convention Inigo MENDEZ de VIGO and with the Vice Presidents of the European Parliamentary Delegation Klaus HANSCH and Andrew Nicholas DUFF; regarding the European Parliament we met with three members, Chairperson of the Committee on Constitutional Affairs Jo LEINEN, Chairperson of the Committee on Foreign Affairs Elmar BROK, and Vice Chairman of Delegation for Relations with Japan Georg JARZEMBOWSKI; we also met with European Ombudsman P. Nikiforos DIAMANDOUROS; and with President of the European Court of Human Rights Luzius WILDHABER.

We only had about 30 to 60 minutes for each of these meetings, so some were limited to courtesy calls while others were characterized by in-depth exchanges of opinions. Nevertheless, we did manage to interview a large number of concerned individuals regarding the one key theme of the constitutional and political significance of the Treaty Establishing a Constitution for Europe. I think this rather highlighted the significance of the Treaty and their future stances toward EU integration as well as the subtle differences in their statements regarding such issues.

It is not possible to fully report on all of those discussions here, so I will just share those points which I found to be particularly impressive. My comments will be supplemented by subsequent statements from the other members of the mission, and you can refer to the full official report of the survey that will be distributed later on for the details.

To start, our greatest point of concern was whether the Treaty Establishing a Constitution for Europe

is actually a constitution or a treaty.

Everyone we met with stated that the Treaty Establishing a Constitution for Europe is an international treaty concluded among sovereign states. However, they stressed that the Treaty has certain characteristics that differ from those of a normal international treaty. For example, its contents differ from those of conventional treaties as it stipulates that resolutions adopted by a qualified majority of the EU can restrict the policies of each member government in fields where the EU has direct control, such as common trade policy, and the Treaty also incorporates the Charter of Fundamental Rights, which is equivalent to the human rights declarations found in the constitutions of individual nations, and renders it legally binding.

This issue is also related with the question of the future image of EU integration, either aiming at the creation of a federal state or remaining as a federation of sovereign states.

In line with the above comments by Parliament of Finland Member KILIJUNEN that Europe is not moving forward 200 years behind the U.S., most of the parties we met with resolutely insisted that the EU is not moving toward a federal state and will not gain the status of a state in the future. They noted, nevertheless, that there are two camps within the EU – the federalists who say that a federal system framework should be established as early as possible and the inter-governmentalists who say that ties should be strengthened within the framework of relations among governments – and frankly admitted that it was the federalists who positively advanced the Treaty Establishing a Constitution for Europe.

Incidentally, the Treaty Establishing a Constitution for Europe gives the EU status as an independent juridical person, and establishes the new posts of a permanent EU president and an EU foreign minister.

On the other hand Vice President of the European Parliamentary Delegation to the Convention DUFF, who is from the U.K., said that while the Parliament of the U.K. is in favor of expanding the EU, it is opposed to deepening it. This I believe suggested, among others, that there are diverse opinions regarding the future of the EU.

In a report presented at a meeting which took place in London last year to discuss whether the EU will become like a federal state, Council of the European Union Legal Adviser PIRIS said he thought the EU would not become a federal state, but that it will come to incorporate some federal elements.

Our mission also wanted to know what was the greatest reason behind compiling all the prior treaties concerning the EC and the EU into this single document, the Treaty Establishing a Constitution for Europe. In other words, we were interested in why the Treaty was formulated at this time.

In general, it is said that the Treaty was formulated to make the EU's internal policymaking procedures stronger and more transparent, to avert future difficulties that are expected to accompany the expansion of the EU beforehand. All the parties we held discussions with, however, emphasized the point that the Treaty was formulated to make the constitution easily understood by European



citizens. We who believe that constitutions belong to the people and who have tried to advance constitutional discussions in a manner that is easily understood by the citizenry were able to sympathize with this way of thinking.

We were also able to listen to valuable opinions regarding the means used to draft the Treaty Establishing a Constitution for Europe, that is, regarding the Constitutional Convention which prepared the draft to be submitted to an intergovernmental assembly.

The especially distinctive feature of this method was the composition of the members attending this Convention who included not only of representatives from each member state government but also representatives from each member state parliament, and further representatives from the European Parliament and the European Commission, who may be viewed as representing the interests of the EU as a whole also participated. Furthermore, representatives of NPOs and NGOs both large and small also attended as observers.

Former Prime Minister of Belgium DEHAENE who served as Vice President of the Constitutional Convention noted that because of this composition, the Convention was based on the sound foundation of the entire EU and was able to directly address the diverse issues. Especially, he said the relations between the members from the parliaments of each EU state and the members of the European Parliament grew closer during the process of deliberations, enabling them to move the works forward with a common spirit.

I felt that this approach to realizing common ideals in a region characterized by different histories, traditions and cultures, economic gaps, and the complexly intertwined interests of each member state can serve as a valuable reference for our efforts in Japan.

In relation with the contents and procedures of the EU Constitution, I think Member SENGOKU spoke for our entire mission when he praised the adoption of the Treaty Establishing a Constitution for Europe as the crystallization of human reason and wisdom. He said such efforts toward realizing the ideal of eliminating national borders and military forces among nation states, even if only within Europe, are truly wonderful, and expressed his respect to the states involved for transferring parts of their national sovereignty and creating the novel concept of the joint exercise of national sovereignty toward achieving those goals. Member SENGOKU said he was very deeply moved upon seeing how democracy has developed and evolved to this level.

Nevertheless, the concerned parties must now face the difficulty of determining how to present and explain the purport and overall image of the Treaty Establishing a Constitution for Europe, which is burning with these ideals, to the citizens of Europe, gain their understanding, and win their de facto political choice.

In particular, all of the parties we met with noted that the Treaty must pass through ratification procedures by 25 member states within the next two years, and that eight or nine of these are likely to hold referendums. For example, according to European Commissioner VITORINO, these will include France, the U.K., Ireland, Denmark, Spain, Portugal and the Netherlands, and the results are

unpredictable. Commissioner VITORINO said it is particularly significant that France and the U.K. are included in this list because referendums in these countries are typically affected by internal political issues and become expressions of citizens' approval or opposition to their governments at any given point in time, so the results may not simply reflect the merits of the Treaty itself.

Vice Chairman of Delegation for Relations with Japan JARZEMBOWSKI, who has strong insight and extensive experience as a politician, said in the citizen referendums it will be important for governments to try and present citizens with easily understood explanations of the characteristics and goals of the Treaty Establishing a Constitution for Europe, and that citizens will not understand the types of explanations provided by legal experts examining its provisions. He said it would be an utter mistake to distribute the full text of the Treaty to every household, as the government of Denmark did for its referendum on ratifying the Maastricht Treaty. He strongly emphasized that it would be impossible to gain citizens' understanding by distributing the actual text of the Treaty which even lawyers find difficult to understand. I think his opinions provide a valuable reference for Japan, where a referendum will have to be held if it were to revise the Constitution of Japan in the future.

This concludes my outline of our investigations centered around the EU Treaty Establishing a Constitution for Europe. Finally, I would now like to present a brief report on our exchanges of opinions when we visited the European Ombudsman and the President of the European Court of Human Rights.

First in our discussions with European Ombudsman DIAMANDOUROS we exchanged opinions and questions and answers regarding the linkages between the European Ombudsmen and ombudsmen in each nation, and about the activities of the European Ombudsman. Mr. DIAMANDOUROS stressed that ombudsman systems exist in countries with both democracy and the rule of law, and are established as supplementary systems under independent and robust judicial systems in societies with law-abiding citizens. He said that the establishment of ombudsman and other systems together with judicial systems provides various means of resolving disputes and appeals, which are becoming more and more diverse, and expands citizens' freedom of choice. He added that ombudsman systems are typically limited to issuing advisory opinions that are not legally binding and for that very reason ombudsmen absolutely must be independent both in name and in fact, as ombudsmen can only gain authority and function effectively once their neutrality is clearly recognized by citizens at large. In that sense, he added, it is desirable for ombudsman and similar systems to be stipulated by superior domestic law, that is to say, by national constitutions.

Then in our discussions with European Court of Human Rights President WILDHABER we exchanged opinions and questions and answers regarding the relations between the European Court of Human Rights and the courts in each member state; the enforceability of judgments rendered by the European Court of Human Rights, particularly their observance by the governments of each member state, and the relationship between the European Court of Human Rights and the European Court of Justice.

Having completed this very busy schedule, the House delegation returned to Japan on September 17.

Since the mission was extremely brief and our agenda in each country covered a very wide variety of issues, I cannot possibly offer anything like a conclusion here. As soon as the detailed report of the survey has been submitted to the Speaker of the House, however, it will be distributed to all the members of the Commission (as have the reports of the four prior surveys), and I hope you will find it informative in our future deliberations, for which very little time now remains, and in the compilation of the Commission's final report.

Including this fifth overseas survey mission, delegations from our Commission have now surveyed the constitutional conditions in a total of 28 nations and international bodies. Through these missions I myself have gained a renewed awareness of how the national discussions taking place in each country about the state of the constitution are directly tied to the conditions of each country, and how in the EU these types of wide-ranging discussions are transcending national boundaries to take place from the perspectives of European citizens and of Europe as a whole.

In closing, I would like to express my sincere appreciation to everyone who cooperated in any way with the survey, together with my heartfelt gratitude that we were able to successfully complete such a full program. Especially, I would like to express my gratitude to Ambassador Bernhard ZEPTEK, Head of the Delegation of the European Commission in Japan, who kindly spoke before this Commission in March to share his opinions regarding the Treaty Establishing a Constitution for Europe, for his great efforts on our behalf which included arranging many of the appointments for our survey mission in Europe. Thank you very much.

This concludes my brief summary of the recent overseas study mission.

## 8) Meetings of the Research Commission on the Constitution and the Subcommittees

### (1) Research Commission on the Constitution

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
147th Diet Session				
Thurs., Jan. 20, 2000	First Meeting	Internal election of Chairman	NAKAYAMA Taro (LDP) was elected as chairman. Chairman NAKAYAMA Taro made a speech upon assuming the chairmanship.	0h05
		Internal election of Directors	The following members were elected as directors: AICHI Kazuo (LDP) SUGIURA Seiken (LDP) NAKAGAWA Shoichi (LDP) HANASHI Nobuyuki (LDP) YASUOKA Okiharu (LDP) KANO Michihiko (DPJ) SENGOKU Yoshito (DPJ) HIRATA Yoneo (NK-RN) NODA Takeshi (LP)	
Thurs., Feb. 17, 2000	Second Meeting	Matters relating to the Constitution of Japan	Opinions from the following members were heard: HANASHI Nobuyuki (LDP) KANO Michihiko (DPJ) HIRATA Yoneo (NK-RN) NODA Takeshi (LP) SASAKI Rikukai (JCP) ITO Shigeru (SDP)	0h31
		Matters relating to the Constitution of Japan (Details of how the Constitution was formulated)	A decision was reached, after discussion, concerning requests for attendance of informants.	
			Chairman NAKAYAMA Taro announced that KANO Michihiko (DPJ) had been appointed deputy chairman.	
Thurs., Feb. 24, 2000	Third Meeting	Matters relating to the Constitution of Japan (Details of how the Constitution was formulated)	After statements were heard from informants, questions were put to them. Informant: NISHI Osamu, Ph.D. Professor of Constitutional Law, Faculty of Law, Komazawa University; Dean, Division of Law, Graduate School, Komazawa University Members who put questions to him: YASUOKA Okiharu (LDP) AICHI Kazuo (LDP) EDANO Yukio (DPJ) ISHIDA Katsuyuki (NK-RN) ABE Motoo (LP) HIGASHINAKA Mitsuo (JCP) FUKADA Hajime (SDP) Informant: AOYAMA Takenori, Professor, College of Law, Nihon University Members who put questions to him: AICHI Kazuo (LDP) YASUOKA Okiharu (LDP) SENGOKU Yoshito (DPJ) OTA Akihiro (NK-RN) ABE Motoo (LP) SASAKI Rikukai (JCP) FUKADA Hajime (SDP)	5h03

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Mar. 9, 2000	Fourth Meeting	Matters relating to the Constitution of Japan (Details of how the Constitution was formulated)	<p>After statements were heard from informants, questions were put to them.</p> <p>Informant: KOSEKI Shoichi, Professor, Faculty of Law, Dokkyo University</p> <p>Members who put questions to him: NAKAGAWA Shoichi (LDP) ISHIGE Eiko (DPJ) KURATA Eiki (NK-RN) NAKAMURA Eiichi (LP) SASAKI Rikukai (JCP) ITO Shigeru (SDP)</p> <p>Informant: MURATA Koji, Assistant Professor, Faculty of Integrated Arts and Sciences, Hiroshima University</p> <p>Members who put questions to him: SUGIURA Seiken (LDP) FUJIMURA Osamu (DPJ) FUKUSHIMA Yutaka (NK-RN) NAKAMURA Eiichi (LP) SASAKI Rikukai (JCP) ITO Shigeru (SDP)</p>	5h41
Thurs., Mar. 23, 2000	Fifth Meeting	Matters relating to the Constitution of Japan (Details of how the Constitution was formulated)	<p>After statements were heard from informants, questions were put to them.</p> <p>Informant: HASEGAWA Masayasu, Emeritus Professor, Nagoya University</p> <p>Members who put questions to him: ISHIBA Shigeru (LDP) NAKANO Kansei (DPJ) HIRATA Yoneo (NK-RN) FUTAMI Nobuaki (LP) HIGASHINAKA Mitsuo (JCP) HOSAKA Nobuto (SDP)</p> <p>Informant: TAKAHASHI Masatoshi, Professor, Faculty of Law, Kagawa University</p> <p>Members who put questions to him: HOZUMI Yoshiyuki (LDP) DOI Ryuichi (DPJ) ISHIDA Katsuyuki (NK-RN) FUTAMI Nobuaki (LP) SASAKI Rikukai (JCP) HOSAKA Nobuto (SDP)</p>	5h52

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Apr. 6, 2000	Sixth Meeting	Matters relating to the Constitution of Japan (Details of how the Constitution was formulated)	<p>After statements were heard from informants, questions were put to them. Informant: KITAOKA Shinichi, Professor, Faculty of Law, The University of Tokyo Members who put questions to him: FUNADA Hajime (LDP) SHIMA Satoshi (DPJ) KURATA Eiki (NK-RN) ABE Motoo (NCP) SASAKI Rikukai (JCP) ITO Shigeru (SDP) Informant: SHINDO Eiichi, Professor, College of Social Sciences, University of Tsukuba Members who put questions to him: YOKOUCHI Shomei (LDP) YOKOMICHI Takahiro (DPJ) OTA Akihiro (NK-RN) ABE Motoo (NCP) HARUNA Naoaki (JCP) ITO Shigeru (SDP)</p>	5h48
Thurs., Apr. 20, 2000	Seventh Meeting		SASAKI Rikukai (JCP) was appointed as a director.	5h43
		Matters relating to the Constitution of Japan (Details of how the Constitution was formulated)	<p>After statements were heard from informants, questions were put to them. Informant: IOKIBE Makoto, Professor of Political Science (political history/political process in Japan), Graduate School of Law, Kobe University Members who put questions to him: HIRANUMA Takeo (LDP) TARUTOKO Shinji (DPJ) FUKUSHIMA Yutaka (NK-RN) SASAKI Rikukai (JCP) NAKAMURA Eiichi (NCP) FUTAMI Nobuaki (LP) TSUJIMOTO Kiyomi (SDP) Informant: AMAKAWA Akira, Professor of Political Science (postwar history in Japan), International Graduate School of Social Sciences, Yokohama National University Members who put questions to him: MORIYAMA Mayumi (LDP) KANO Michihiko (DPJ) HIRATA Yoneo (NK-RN) HARUNA Naoaki (JCP) NAKAMURA Eiichi (NCP) FUTAMI Nobuaki (LP) TSUJIMOTO Kiyomi (SDP)</p>	

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Apr. 27, 2000	Eighth Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held. Members who made comments: MITSUZUKA Hiroshi (LDP) SENGOKU Yoshito (DPJ) KURATA Eiki (NK-RN) HIGASHINAKA Mitsuo (JCP) NAKAMURA Eiichi (NCP) FUTAMI Nobuaki (LP) ITO Shigeru (SDP) OKUDA Mikio (LDP) TAKAICHI Sanae (LDP) YOKOMICHI Takahiro (DPJ) OTA Akihiro (NK-RN) ISHIBA Shigeru (LDP) OKUNO Seisuke (LDP) SHIMA Satoshi (DPJ) ISHIKAWA Yozo (LDP) SATO Megumu (LDP) MATSUZAWA Shigefumi (DPJ) KYUMA Fumio (LDP) HIRANUMA Takeo (LDP) ISHIGE Eiko (DPJ) ISHIDA Katsuyuki (NK-RN) FUKADA Hajime (SDP) FUNADA Hajime (LDP) NAKASONE Yasuhiro (LDP) HOZUMI Yoshiyuki (LDP) ABE Motoo (NCP) NAKANO Kansei (DPJ) MORIYAMA Mayumi (LDP) TASSO Takuya (LP) SASAKI Rikukai (JCP) YOKOUCHI Shomei (LDP) SUGIURA Seiken (LDP) EDANO Yukio (DPJ) AICHI Kazuo (LDP)	3h02
Thurs., May 11, 2000	Ninth Meeting		Report on the results of the call for essays "What I Expect of the Research Commission on the Constitution."	3h27

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
		Matters relating to the Constitution of Japan (Details of how the Constitution was formulated)	A brainstorming discussion was held. Members who made comments: YASUOKA Okiharu (LDP) ISHIGE Eiko (DPJ) HIRATA Yoneo (NK-RN) SASAKI Rikukai (JCP) NAKAMURA Eiichi (NCP) TASSO Takuya (LP) FUKADA Hajime (SDP) HANASHI Nobuyuki (LDP) FUJIMURA Osamu (DPJ) SUGIURA Seiken (LDP) ISHIDA Katsuyuki (NK-RN) ISHIBA Shigeru (LDP) TANAKA Makiko (LDP) TAKAICHI Sanae (LDP) SHIMA Satoshi (DPJ) YANAGISAWA Hakuo (LDP) NAKASONE Yasuhiro (LDP) NAKANO Kansei (DPJ) HOZUMI Yoshiyuki (LDP) YOKOUCHI Shomei (LDP) HARUNA Naoaki (JCP) OKUNO Seisuke (LDP) OTA Akihiro (NK-RN) KOIZUMI Junichiro (LDP) HIRANUMA Takeo (LDP) MAEHARA Seiji (DPJ) NAKAGAWA Shoichi (LDP) NISHIDA Takeshi (NCP) ABE Shinzo (LDP) HIGASHINAKA Mitsuo (JCP) FUNADA Hajime (LDP) OKUDA Mikio (LDP) IWAKUNI Tetsundo (DPJ) YAMASAKI Taku (LDP) FUTAMI Nobuaki (LP) ITO Shigeru (SDP) MITSUZUKA Hiroshi (LDP) KANO Michihiko (DPJ) ISHII Hajime (DPJ)	
Thurs. May 25, 2000	Tenth Meeting	Matters relating to the Constitution of Japan (Major postwar judgments of unconstitutionality)	After an explanation was heard from an official of the Supreme Court, questions were put to him. Informant: CHIBA Katsumi, official, Supreme Court Members who put questions to him: NAKAYAMA Taro (Chairman) YASUOKA Okiharu (LDP) SENGOKU Yoshito (DPJ) KURATA Eiki (NK-RN) SASAKI Rikukai (JCP) NAKAMURA Eiichi (NCP) ITO Shigeru (SDP) FUTAMI Nobuaki (LP)	2h04
148th Diet Session				
Wed., July 5, 2000	First Meeting	Internal election of Chairman	NAKAYAMA Taro (LDP) was elected as chairman. Chairman NAKAYAMA Taro made a speech upon assuming the chairmanship.	0h05



Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
		Internal election of Directors	The following members were elected as directors: ISHIKAWA Yozo (LDP) TAKAICHI Sanae (LDP) NAKAGAWA Shoichi (LDP) HANASHI Nobuyuki (LDP) EDANO Yukio (DPJ) KANO Michihiko (DPJ) SENGOKU Yoshito (DPJ) AKAMATSU Masao (NK) SHIOTA Susumu (LP)	
			Chairman NAKAYAMA Taro appointed KANO Michihiko (DPJ) as deputy chairman.	
			Decisions were reached concerning requests for attendance of informants and dispatch of members when the Diet is not in session.	
149th Diet Session				
Thurs., Aug. 3, 2000	First Meeting	Matters relating to the Constitution of Japan (Future proceedings of the Research Commission on the Constitution)	A brainstorming discussion was held. Members who made comments: NAKAYAMA Taro (Chairman) TAKAICHI Sanae (LDP) KANO Michihiko (DPJ) AKAMATSU Masao (NK) SHIOTA Susumu (LP) HARUNA Naoaki (JCP) HARA Yoko (SDP) KONDO Motohiko (Club 21) NODA Takeshi (NCP) YAMASAKI Taku (LDP) SUGIURA Seiken (LDP) KANEKO Tetsuo (SDP) OKUNO Seisuke (LDP) YAMAGUCHI Tomio (JCP) SHIMA Satoshi (DPJ) YANAGISAWA Hakuo (LDP) ISHIGE Eiko (DPJ) YAMAHANA Ikuo (LDP) HATOYAMA Kunio (LDP) MORIYAMA Mayumi (LDP) OTA Akihiro (NK)	1h47
			A decision was made, after discussion, on matters relating to requests for attendance of informants when the Diet is not in session.	
Sun., Sept. 10 to Tues., Sept. 19, 2000		(A House delegation was dispatched to European nations to survey the constitutions of those nations.)		
150th Diet Session				
Thurs., Sept. 28, 2000	First Meeting		A director was appointed to replace an ongoing director. Director who resigned: EDANO Yukio (DPJ) Newly appointed director: SHIMA Satoshi (DPJ)	6h26
		Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	A decision was reached, after discussion, concerning requests for attendance of informants.	

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
			<p>After statement was heard from an informant, questions were put to him. Informant: TANAKA Akihiko, Professor, Graduate School of Interdisciplinary Information Studies, The University of Tokyo Members who put questions to him: KYUMA Fumio (LDP) IGARASHI Fumihiko (DPJ) SAITO Tetsuo (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) ABE Tomoko (SDP) KONDO Motohiko (Club 21) MATSUNAMI Kenshiro (NCP)</p>	
		Matters relating to the Constitution of Japan	Chairman NAKAYAMA Taro presented a brief report on the findings of the House delegation dispatched to survey the constitutions of European nations.	
		Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	<p>After statement was heard from an informant, questions were put to him. Informant: ODA Makoto, author Members who put questions to him: TAKAICHI Sanae (LDP) HOSONO Goshi (DPJ) AKAMATSU Masao (NK) TAKEYAMA Yuriko (LP) YAMAGUCHI Tomio (JCP) HOSAKA Nobuto (SDP) KONDO Motohiko (Club 21) MATSUNAMI Kenshiro (NCP)</p>	
Thurs., Oct. 12, 2000	Second Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	<p>After statements were heard from informants, questions were put to them. Informant: SONO Ayako, writer; Chairperson, The Nippon Foundation Members who put questions to her: HORI Kosuke (LDP) AKAMATSU Masao (NK) KONDO Motohiko (Club 21) MATSUNAMI Kenshiro (NCP) Informant: KONDO Motohiro, Professor, Graduate School of Social and Cultural Studies, Nihon University Members who put questions to him: YANAGISAWA Hakuo (LDP) OTA Akihiro (NK) KONDO Motohiko (Club 21) MATSUNAMI Kenshiro (NCP)</p> <p>Note: Due to the state of disorder of the Diet, the meeting was held without the attendance of members belonging to the DPJ, LP, JCP, and SDP.</p>	4h38

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Oct. 26, 2000	Third Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	After a statement was heard from an informant, questions were put to him. Informant: ICHIMURA Shinichi, Director, The International Centre for the Study of East Asian Development (ICSEAD) Members who put questions to him: HATOYAMA Kunio (LDP) YAMAHANA Ikuo (DPJ) AKAMATSU Masao (NK) SHIOTA Susumu (LP) YAMAGUCHI Tomio (JCP) UEDA Munenori (SDP) KONDO Motohiko (Club 21) MATSUNAMI Kenshiro (NCP)	3h05
Thurs., Nov. 9, 2000	Fourth Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	After statements were heard from informants, questions were put to them. Informant: SASAKI Takeshi, Professor, The University of Tokyo Members who put questions to him: SHINDO Yoshitaka (LDP) KANO Michihiko (DPJ) AKAMATSU Masao (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) HIMORI Fumihiko (SDP) KONDO Motohiko (Club 21) Informant: KOBAYASHI Takeshi, LL.D., Professor, Nanzan University Members who put questions to him: MIZUNO Kenichi (LDP) MAEHARA Seiji (DPJ) OTA Akihiro (NK) FUJISHIMA Masayuki (LP) YAMAGUCHI Tomio (JCP) YOKOMITSU Katsuhiko (SDP) KONDO Motohiko (Club 21) MATSUNAMI Kenshiro (NCP)	6h18

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Nov. 30, 2000	Fifth Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	<p>After statements were heard from informants, questions were put to them.</p> <p>Informant: ISHIHARA Shintaro, Governor of Tokyo</p> <p>Members who put questions to him: YANAGISAWA Hakuo (LDP) SHIMA Satoshi (DPJ) AKAMATSU Masao (NK) TAKEYAMA Yuriko (LP) YAMAGUCHI Tomio (JCP) ABE Tomoko (SDP) KONDO Motohiko (Club 21) KOIKE Yuriko (NCP)</p> <p>Informant: SAKURAI Yoshiko, journalist</p> <p>Members who put questions to her: TAKAICHI Sanae (LDP) EDANO Yukio (DPJ) EDA Yasuyuki (NK) FUJISHIMA Masayuki (LP) HARUNA Naoaki (JCP) YAMAGUCHI Wakako (SDP) KONDO Motohiko (Club 21) KOIKE Yuriko (NCP)</p>	5h24
Thurs., Dec. 7, 2000 (Diet not in session)	Sixth Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	<p>After statements were heard from informants, questions were put to them.</p> <p>Informant: MATSUMOTO Kenichi, Professor, Reitaku University; commentator</p> <p>Members who put questions to him: HIRASAWA Katsuei (LDP) NAKANO Kansei (DPJ) AKAMATSU Masao (NK) TAKEYAMA Yuriko (LP) YAMAGUCHI Tomio (JCP) HIMORI Fumihiko (SDP) UDAGAWA Yoshio (Club 21) KOIKE Yuriko (NCP)</p> <p>Informant: WATANABE Shoichi, Professor, Sophia University</p> <p>Members who put questions to him: TANAKA Makiko (LDP) MAKINO Seishu (DPJ) OTA Akihiro (NK) TASSO Takuya (LP) HARUNA Naoaki (JCP) TSUJIMOTO Kiyomi (SDP) UDAGAWA Yoshio (Club 21) KOIKE Yuriko (NCP)</p>	6h37

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Dec. 21, 2000 (Diet not in session)	Seventh Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	After a statement was heard from an informant, questions were put to him. Informant: MURAKAMI Yoichiro, Professor, College of Liberal Arts, International Christian University Members who put questions to him: NAKAYAMA Taro (Chairman) MIZUNO Kenichi (LDP) SHIMA Satoshi (DPJ) SAITO Tetsuo (NK) SHIOTA Susumu (LP) HARUNA Naoaki (JCP) HOSAKA Nobuto (SDP) KONDO Motohiko (Club 21) KOIKE Yuriko (NCP)	3h25
151st Diet Session				
Thurs., Feb. 8, 2001	First Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	New directors were appointed to replace outgoing directors Directors who resigned: SHIMA Satoshi (DPJ) SHIOTA Susumu (LP) Newly appointed directors: SHINDO Yoshitaka (LDP) YASUOKA Okiharu (LDP) NAKAGAWA Masaharu (DPJ) SAITO Tetsuo (NK)  A decision was reached, after discussion, concerning requests for attendance of informants. After statements were heard from informants, questions were put to them. Informant: NISHIZAWA Junichi, President, Iwate Prefectural University Members who put questions to him: HANASHI Nobuyuki (LDP) TSUTSUI Nobutaka (DPJ) SAITO Tetsuo (NK) FUJISHIMA Masayuki (LP) SHIOKAWA Tetsuya (JCP) KANEKO Tetsuo (SDP) KOIKE Yuriko (NCP) KONDO Motohiko (Club 21) Informant: TAKAHASHI Susumu, Professor, The University of Tokyo SHIMOMURA Hakubun (LDP) EDANO Yukio (DPJ) UEDA Isamu (NK) SHIOTA Susumu (LP) HARUNA Naoaki (JCP) YAMAUCHI Keiko (SDP) KOIKE Yuriko (NCP) KONDO Motohiko (Club 21)	6h18

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Feb. 22, 2001	Second Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	<p>A decision was reached, after discussion, on a motion for approval of dispatch of members.</p> <p>After statements were heard from informants, questions were put to them.</p> <p>Informant: HAYASHIZAKI Yoshihide, Project Director, Genome Exploration Research Group, Genomic Sciences Center, Institute of Physical and Chemical Research (RIKEN)</p> <p>Members who put questions to him: MITSUBAYASHI Takashi (LDP) NAKAGAWA Masaharu (DPJ) SAITO Tetsuo (NK) FUJISHIMA Masayuki (LP) HARUNA Naoaki (JCP) KITAGAWA Renko (SDP) KONDO Motohiko (Club 21)</p> <p>Informant: OGAWA Naohiro, Professor, College of Economics, Nihon University; Deputy Director, Nihon University Population Research Institute (NUPRI) NAKAYAMA Taro (Chairman) ITO Kosuke (LDP) KANO Michihiko (DPJ) UEDA Isamu (NK) SHIOTA Susumu (LP) SEKO Yukiko (JCP) HARA Yoko (SDP) KOIKE Yuriko (NCP) KONDO Motohiko (Club 21)</p>	5h53
Thurs., Mar. 8, 2001	Third Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	<p>After a statement was heard from an informant, questions were put to him.</p> <p>Informant: SON Masayoshi, President and Chief Executive Officer, Softbank Corporation</p> <p>Members who put questions to him: ITO Tatsuya (LDP) HOSONO Goshi (DPJ) KOIKE Yuriko (NCP) FUJISHIMA Masayuki (LP) HARUNA Naoaki (JCP) OSHIMA Reiko (SDP) SAITO Tetsuo (NK) KONDO Motohiko (Club 21)</p>	3h24

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Mar. 22, 2001	Fourth Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	After statements were heard from informants, questions were put to them. Informant: SAKAMOTO Takao, Professor, Faculty of Law, Gakushuin University Members who put questions to him: YASUOKA Okiharu (LDP) OIDE Akira (DPJ) UEDA Isamu (NK) FUJISHIMA Masayuki (LP) SHIOKAWA Tetsuya (JCP) KANEKO Tetsuo (SDP) KOIKE Yuriko (NCP) KONDO Motohiko (Club 21) Informant: KANG Sanjung, Professor, Institute of Socio-Information and Communication Studies, The University of Tokyo Members who put questions to him: NAKATANI Gen (LDP) OISHI Hisako (DPJ) OTA Akihiro (NK) SHIOTA Susumu (LP) YAMAGUCHI Tomio (JCP) SHIGENO Yasumasa (SDP) KOIKE Yuriko (NCP) KONDO Motohiko (Club 21)	6h49
Mon., Apr. 16, 2001		Constitution of Japan	First local open hearing was held in Sendai City, Miyagi Prefecture.	3h33
Thurs., Apr. 26, 2001	Fifth Meeting	Matters relating to the Constitution of Japan	A decision was reached, after discussion, on a motion for approval of dispatch of members. Report was heard on the investigations concerning the Constitution of Japan from KANO Michihiko (DPJ) on behalf of the dispatched members.	0h06
Thurs., May 17, 2001	Sixth Meeting		A director was appointed to replace an outgoing director. Newly appointed director: TSUSHIMA Yuji (LDP)	5h57

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
		Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	After statements were heard from informants, questions were put to them. Informant: KIMURA Yoko, member, Local Finance Council Members who put questions to her: NAKAYAMA Taro (Chairman) NISHIKAWA Kyoko (LDP) KOBAYASHI Mamoru (DPJ) UEDA Isamu (NK) FUJISHIMA Masayuki (LP) HARUNA Naoaki (JCP) ABE Tomoko (SDP) KONDO Motohiko (Club 21) Informant: OHKUMA Yoshikazu, Professor, Graduate School of Law, Kyushu University Members who put questions to him: NISHIKAWA Kyoko (LDP) UBUKATA Yukio (DPJ) OTA Akihiro (NK) SHIOTA Susumu (LP) YAMAGUCHI Tomio (JCP) HIMORI Fumihiko (SDP) KONDO Motohiko (Club 21)	
Mon., June 4, 2001		The Constitution of Japan (A vision for Japan in the 21st century)	Second local open hearing was held in Kobe City, Hyogo Prefecture.	3h42
Thurs., June 14, 2001	Seventh Meeting	Matters relating to the Constitution of Japan	A report on the investigations concerning the Constitution of Japan was heard from KANO Michihiko (DPJ) on behalf of the dispatched members. A brainstorming discussion was held. Members who made comments: HANASHI Nobuyuki (LDP) SENGOKU Yoshito (DPJ) OTA Akihiro (NK) FUJISHIMA Masayuki (LP) HARUNA Naoaki (JCP) TOMON Mitsuko (SDP) MATSUNAMI Kenshiro (NCP) KONDO Motohiko (Club 21) TSUSHIMA Yuji (LDP) NAKAGAWA Masaharu (DPJ) UEDA Isamu (NK) TANIKAWA Kazuo (LDP) TSUTSUI Nobutaka (DPJ) SHIOTA Susumu (LP) OKUNO Seisuke (LDP) YAMAGUCHI Tomio (JCP) NAKAYAMA Masaaki (LDP) KANEKO Tetsuo (SDP) HOSONO Goshi (DPJ)	2h37
152nd Diet Session (No meetings were held.)				
Tues., Aug. 28 to Fri., Sept. 7, 2001		(A House delegation was dispatched to European nations, including Russia, and to Israel to survey the constitutions of those nations.)		
153rd Diet Session				
Thurs., Oct. 11, 2001	First Meeting		A director was appointed to replace an outgoing director. Director who resigned: SENGOKU Yoshito (DPJ) Newly appointed director: HOSOKAWA Ritsuo (DPJ)	1h11



Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
		Matters relating to the Constitution of Japan	Chairman NAKAYAMA Taro presented a brief report on the findings of the House delegation dispatched to survey the constitutions of Russia, several other European nations, and Israel; the report was followed by discussion. Members who made comments during discussion: SENGOKU Yoshito (DPJ) SAITO Tetsuo (NK) YAMAGUCHI Tomio (JCP) KANEKO Tetsuo (SDP) HARUNA Naoaki (JCP) ITO Kosuke (LDP) FUJISHIMA Masayuki (LP) HANASHI Nobuyuki (LDP) NAKAYAMA Masaaki (LDP)	
		Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	A decision was reached, after discussion, concerning requests for attendance of informants.	
Thurs., Oct. 25, 2001	Second Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century—The United Nations and national security)	A decision was reached, after discussion, on a motion for approval of dispatch of members.  After statements were heard from informants, questions were put to them. Informant: ONUMA Yasuaki, Professor, The University of Tokyo Members who put questions to him: NAKAGAWA Shoichi (LDP) NAKAGAWA Masaharu (DPJ) SAITO Tetsuo (NK) TSUZUKI Yuzuru (LP) YAMAGUCHI Tomio (JCP) IMAGAWA Masami (SDP) MATSUNAMI Kenshiro (NCP) KONDO Motohiko (Club 21) Informant: MORIMOTO Satoshi, Professor, Faculty of International Development, Takushoku University Members who put questions to him: ITO Kosuke (LDP) KOBAYASHI Kenji (DPJ) UEDA Isamu (NK) FUJISHIMA Masayuki (LP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) MATSUNAMI Kenshiro (NCP) KONDO Motohiko (Club 21)	6h20

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Nov. 8, 2001	Third Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century— Matters relating to ideal government and organizations)	After statements were heard from informants, questions were put to them. Informant: HASEBE Yasuo, Professor, Faculty of Law, The University of Tokyo Members who put questions to him: NAKAYAMA Taro (Chairman) YASUOKA Okiharu (LDP) YAMADA Toshimasa (DPJ) SAITO Tetsuo (NK) FUJISHIMA Masayuki (LP) HARUNA Naoaki (JCP) HARA Yoko (SDP) MATSUNAMI Kenshiro (NCP) KONDO Motohiko (Club 21) Informant: MORITA Akira, Professor, Graduate School of Law and Politics, The University of Tokyo Members who put questions to him: NAKAYAMA Taro (Chairman) SAKAI Takanori (LDP) TSUTSUI Nobutaka (DPJ) OTA Akihiro (NK) TSUZUKI Yuzuru (LP) SHIOKAWA Tetsuya (JCP) KANEKO Tetsuo (SDP) MATSUNAMI Kenshiro (NCP) KONDO Motohiko (Club 21)	5h55
Mon., Nov. 26, 2001		Japan's role in the international community	Third local open hearing was held in Nagoya City, Aichi Prefecture.	3h26
Thurs., Nov. 29, 2001	Fourth Meeting	Matters relating to the Constitution of Japan	Report was heard on the investigations concerning the Constitution of Japan from KANO Michihiko (DPJ) on behalf of the dispatched members.	6h06
Matters relating to the Constitution of Japan (A vision for Japan in the 21st century—Matters relating to guarantee of human rights)	After statements were heard from informants, questions were put to them. Informant: MUSHAKOJI Kinhide, Director, Chubu Institute for Advanced Studies, Chubu University Members who put questions to him: MORIOKA Masahiro (LDP) HOSOKAWA Ritsuo (DPJ) UEDA Isamu (NK) FUJISHIMA Masayuki (LP) SHIOKAWA Tetsuya (JCP) UEDA Munenori (SDP) MATSUNAMI Kenshiro (NCP) UDAGAWA Yoshio (Club 21) Informant: HATAJIRI Tsuyoshi, Professor, Department of Economics, Josai University Members who put questions to him: IMAMURA Masahiro (LDP) NAKAMURA Tetsuji (DPJ) OTA Akihiro (NK) TSUZUKI Yuzuru (LP) YAMAGUCHI Tomio (JCP) KANEKO Tetsuo (SDP) MATSUNAMI Kenshiro (NCP) UDAGAWA Yoshio (Club 21)			

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Dec. 6, 2001	Fifth Meeting	Matters relating to the Constitution of Japan (A vision for Japan in the 21st century)	A brainstorming discussion was held. Members who made comments: HATOYAMA Kunio (LDP) SAITO Tetsuo (NK) HOSOKAWA Ritsuo (DPJ) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) TSUZUKI Yuzuru (LP) MATSUNAMI Kenshiro (NCP) NAKAYAMA Masaaki (LDP) ITO Kosuke (LDP) YAMADA Toshimasa (DPJ) MORIOKA Masahiro (LDP) NAKAMURA Tetsuji (DPJ) SUGA Yoshihide (LDP) UEDA Isamu (NK) IMAMURA Masahiro (LDP) AKAMINE Seiken (JCP) NAKASONE Yasuhiro (LDP) SUTO Nobuhiko (DPJ) KONNO Azuma (DPJ) KOBAYASHI Kenji (DPJ) HARA Yoko (SDP) SHIMOMURA Hakubun (LDP) OIDE Akira (DPJ) SHIMA Satoshi (DPJ) FUTADA Koji (LDP) FUJISHIMA Masayuki (LP) NAKAGAWA Masaharu (DPJ)	3h13
154th Diet Session				
Thurs., Feb. 7, 2002	First Meeting		New directors were appointed to replace outgoing directors. Directors who resigned: ISHIKAWA Yozo (LDP) SAITO Tetsuo (NK) Newly appointed directors: TAKAICHI Sanae (LDP) MOTEGI Toshimitsu (LDP) SHIMA Satoshi (DPJ) NAKANO Kansei (DPJ) AKAMATSU Masao (NK)	0h03
			Chairman NAKAYAMA Taro appointed NAKANO Kansei (DPJ) as deputy chairman.	
			It was decided, after discussion, to establish the Subcommittee on Guarantee of Fundamental Human Rights, the Subcommittee on Fundamental and Organizational Role of Politics, the Subcommittee on Japan's Role in International Society, and the Subcommittee on Local Autonomy.	
			A decision was reached, after discussion, concerning requests for attendance of informants at subcommittee meetings.	
Tues., Mar. 19, 2002	Second Meeting		A director was appointed to replace an outgoing director. Newly appointed director: NUKAGA Fukushima (LDP)	0h01
			A decision was reached, after discussion, on a motion for approval of dispatch of members.	

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Mon., Apr. 22, 2002		The Constitution of Japan (Japan and its constitution in the 21st century)	Fourth local open hearing was held in Nago City, Okinawa Prefecture.	3h57
Thurs., Apr. 25, 2002	Third Meeting	Matters relating to the Constitution of Japan	Report was heard on the investigations concerning the Constitution of Japan from NAKANO Kansei (DPJ) on behalf of the dispatched members; this was followed by discussion among members. Members who made comments during discussion: HANASHI Nobuyuki (LDP) SHIMA Satoshi (DPJ) AKAMATSU Masao (NK) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) NAKANO Kansei (DPJ) TAKAICHI Sanae (LDP) MATSUZAWA Shigefumi (DPJ) SUTO Nobuhiko (DPJ) YAMAGUCHI Tomio (JCP) FUJISHIMA Masayuki (LP) KOBAYASHI Kenji (DPJ) NAKAMURA Tetsuji (DPJ) SAITO Tetsuo (NK) NAKAGAWA Masaharu (DPJ) KONNO Azuma (DPJ) BANNO Yutaka (DPJ) TSUCHIYA Shinako (LDP) UEDA Munenori (SDP)	1h47
Thurs., May 16, 2002	Fourth Meeting		A decision was reached, after discussion, on a motion for approval of dispatch of members.	0h01
Mon., June 24, 2002		The Constitution of Japan (Japan and its constitution in the 21st century)	Fifth local open hearing was held in Sapporo City, Hokkaido.	3h51
Thurs., July 25, 2002	Fifth Meeting	Matters relating to the Constitution of Japan	Report was heard on the investigations concerning the Constitution of Japan from NAKANO Kansei (DPJ) on behalf of the dispatched members. Reports were heard from the chairpersons of the subcommittees: SHIMA Satoshi (DPJ), the Subcommittee on Guarantee of Fundamental Human Rights; TAKAICHI Sanae (LDP), the Subcommittee on Fundamental and Organizational Role of Politics; NAKAGAWA Shoichi (LDP), the Subcommittee on Japan's Role in International Society; and YASUOKA Okiharu (LDP), the Subcommittee on Local Autonomy.	2h38

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
			<p>A brainstorming discussion was held.</p> <p>Members who made comments:</p> <p>HANASHI Nobuyuki (LDP)  YAMADA Toshimasa (DPJ)  AKAMATSU Masao (NK)  HARUNA Naoaki (JCP)  KANEKO Tetsuo (SDP)  INOUE Kiichi (NCP)  ITO Kosuke (LDP)  OIDE Akira (DPJ)  KONNO Azuma (DPJ)  YAMAGUCHI Tomio (JCP)  KITAGAWA Renko (SDP)  BANNO Yutaka (DPJ)  FUJISHIMA Masayuki (LP)  SHIMA Satoshi (DPJ)  OKUNO Seisuke (LDP)  SUTO Nobuhiko (DPJ)  YASUOKA Okiharu (LDP)  NAGAI Eiji (DPJ)  TANIKAWA Kazuo (LDP)  SAITO Tetsuo (NK)</p>	
Mon., Sept. 23 to Sat., Oct 5, 2002		(A House delegation was dispatched to the United Kingdom and several Asian nations to survey the constitutions of those nations.)		
155th Diet Session				
Thurs., Oct. 24, 2002	First Meeting		<p>New directors were appointed to replace outgoing directors.</p> <p>Directors who resigned:</p> <p>NUKAGA Fukushima (LDP)  NAKANO Kansei (DPJ)</p> <p>Newly appointed directors:</p> <p>SUGIURA Seiken (LDP)  NISHIDA Mamoru (LDP)  OIDE Akira (DPJ)  SENGOKU Yoshito (DPJ)</p> <p>Chairman NAKAYAMA Taro appointed SENGOKU Yoshito (DPJ) as deputy chairman.</p>	0h02
Fri., Nov. 1, 2002	Second Meeting	Matters relating to the Interim Report	<p>After Chairman NAKAYAMA Taro explained the purport of the draft Interim Report, comments were heard from representatives of each political party or group, and then the Interim Report was adopted.</p> <p>Members who made comments:</p> <p>YASUOKA Okiharu (LDP)  NAKAGAWA Masaharu (DPJ)  OTA Akihiro (NK)  TAKEYAMA Yuriko (LP)  HARUNA Naoaki (JCP)  KANEKO Tetsuo (SDP)  INOUE Kiichi (NCP)</p>	0h47
Thurs., Nov. 7, 2002	Third Meeting		<p>A decision was reached, after discussion, on a motion for approval of dispatch of members.</p> <p>It was decided, after discussion, to establish the Subcommittee on Guarantee of Fundamental Human Rights, the Subcommittee on Fundamental and Organizational Role of Politics, the Subcommittee on Japan's Role in International Society, and the Subcommittee on Local Autonomy.</p> <p>A decision was reached, after discussion, concerning requests for attendance of informants at subcommittee meetings.</p>	0h44

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
		Matters relating to the Constitution of Japan	Chairman NAKAYAMA Taro presented a brief report on the findings of the House delegation dispatched to survey the constitutions of the United Kingdom and several Asian nations; the report was followed by discussion. Members who made comments: HANASHI Nobuyuki (LDP) NAKAGAWA Masaharu (DPJ) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP)	
Mon., Dec. 9, 2002		The Constitution of Japan (Japan and its constitution in the 21st century)	Sixth local open hearing was held in Fukuoka City, Fukuoka Prefecture.	3h23
Thurs., Dec. 12, 2002	Fourth Meeting	Matters relating to the Constitution of Japan	<p>Report was heard on the investigations concerning the Constitution of Japan from SENGOKU Yoshito (DPJ) on behalf of the dispatched members.</p> <p>Reports were heard from the chairpersons of the subcommittees: OIDE Akira (DPJ), the Subcommittee on Guarantee of Fundamental Human Rights; YASUOKA Okiharu (LDP), the Subcommittee on Fundamental and Organizational Role of Politics; NAKAGAWA Shoichi (LDP), the Subcommittee on Japan's Role in International Society; and NISHIDA Mamoru (LDP), the Subcommittee on Local Autonomy.</p> <p>A brainstorming discussion was held. Members who made comments: SUGIURA Seiken (LDP) NAKAGAWA Masaharu (DPJ) SAITO Tetsuo (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) ITO Kosuke (LDP) SENGOKU Yoshito (DPJ) NAKAGAWA Shoichi (LDP) YAMAGUCHI Tomio (JCP) HANASHI Nobuyuki (LDP) AKAMATSU Masao (NK) NAKAYAMA Masaaki (LDP) YAMAUCHI Keiko (SDP)</p>	2h28
156th Diet Session				
Thurs., Jan. 30, 2003	First Meeting		<p>New directors were appointed to replace outgoing directors. Director who resigned: NAKAGAWA Masaharu (DPJ) Newly appointed directors: HIRABAYASHI Kozo (LDP) FURUKAWA Motohisa (DPJ)</p> <p>It was decided, after discussion, to establish the Subcommittee on Ideal Constitution as Supreme Law, the Subcommittee on Security and International Cooperation, the Subcommittee on Guarantee of Fundamental Human Rights, and the Subcommittee on Ideal Government and Organizations.</p>	3h04

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
		Matters relating to the Constitution of Japan (The current international situation and international cooperation)	<p>A decision was reached, after discussion, concerning requests for attendance of informants at subcommittee meetings.</p> <p>A brainstorming discussion was held. Members who made comments: NAKAGAWA Shoichi (LDP) SHIMA Satoshi (DPJ) AKAMATSU Masao (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) HANASHI Nobuyuki (LDP) SUTO Nobuhiko (DPJ) YAMAGUCHI Tomio (JCP) SENGOKU Yoshito (DPJ) OIDE Akira (DPJ) KONNO Azuma (DPJ) KITAGAWA Renko (SDP) SUGIURA Seiken (LDP) SUEMATSU Yoshinori (DPJ) ITO Kosuke (LDP) FURUKAWA Motohisa (DPJ) KUWABARA Yutaka (DPJ)</p>	
Thurs., Feb. 27, 2003	Second Meeting	Matters relating to the Constitution of Japan	<p>Report was heard from YASUOKA Okiharu (LDP), the chairperson of the Subcommittee on Ideal Constitution as Supreme Law; this was followed by a brainstorming discussion.</p> <p>Members who made comments: MORIOKA Masahiro (LDP) YAMAGUCHI Tomio (JCP) SENGOKU Yoshito (DPJ) SHIMA Satoshi (DPJ) KANEKO Tetsuo (SDP) OKUNO Seisuke (LDP) NAKAGAWA Shoichi (LDP) HIRAI Takuya (LDP) TANIKAWA Kazuo (LDP) NODA Takeshi (LDP) FUJISHIMA Masayuki (LP) KITAGAWA Renko (SDP) HANASHI Nobuyuki (LDP) NAKAGAWA Masaharu (DPJ) KONDO Motohiko (LDP) INOUE Kiichi (NCP)</p>	3h16

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
			<p>Report was heard from NAKAGAWA Shoichi (LDP), the chairperson of the Subcommittee on Security and International Cooperation; this was followed by a brainstorming discussion.</p> <p>Members who made comments:  FUJISHIMA Masayuki (LP)  SHIMOJI Mikio (LDP)  TANIKAWA Kazuo (LDP)  OKUNO Seisuke (LDP)  SHIMA Satoshi (DPJ)  BANNO Yutaka (DPJ)  KANEKO Tetsuo (SDP)  HARUNA Naoaki (JCP)  OIDE Akira (DPJ)  KONNO Azuma (DPJ)  AKAMATSU Masao (NK)  INOUE Kiichi (NCP)  KOBAYASHI Kenji (DPJ)  SUGIURA Seiken (LDP)  TANIMOTO Tatsuya (LDP)  NODA Takeshi (LDP)  SENGOKU Yoshito (DPJ)</p> <hr/> <p>Report was heard from SUGIURA Seiken (LDP), the chairperson of the Subcommittee on Ideal Government and Organizations; this was followed by a brainstorming discussion.</p> <p>Members who made comments:  SAITO Tetsuo (NK)  HIRABAYASHI Kozo (LDP)  NAKAGAWA Masaharu (DPJ)  TANIKAWA Kazuo (LDP)  FURUKAWA Motohisa (DPJ)  YAMAGUCHI Tomio (JCP)  NAKAYAMA Masaaki (LDP)  INOUE Kiichi (NCP)  NAKANO Kansei (DPJ)  TAKEYAMA Yuriko (LP)</p> <hr/> <p>Report was heard from OIDE Akira (DPJ), the chairperson of the Subcommittee on Guarantee of Fundamental Human Rights; this was followed by a brainstorming discussion.</p> <p>Members who made comments:  HIRABAYASHI Kozo (LDP)  TANIKAWA Kazuo (LDP)  HANASHI Nobuyuki (LDP)  AKAMATSU Masao (NK)  OHATA Akihiro (DPJ)  HARUNA Naoaki (JCP)  KITAGAWA Renko (SDP)  OKUNO Seisuke (LDP)  OIDE Akira (DPJ)</p>	
Tue., Mar. 18, 2003	Third Meeting		A decision was reached, after discussion, on a motion for approval of dispatch of members.	0h02



Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Mar. 20, 2003	Fourth Meeting	Matters relating to the Constitution of Japan (Treaties and the Constitution)	<p>A brainstorming discussion was held.</p> <p>Members who made comments:</p> <p>TANIKAWA Kazuo (LDP)  MAEHARA Seiji (DPJ)  AKAMATSU Masao (NK)  FUJISHIMA Masayuki (LP)  HARUNA Naoaki (JCP)  UEDA Munenori (SDP)  INOUE Kiichi (NCP)  HANASHI Nobuyuki (LDP)  SUGIURA Seiken (LDP)  SHIMA Satoshi (DPJ)  NAKAGAWA Masaharu (DPJ)  NAKAGAWA Shoichi (LDP)  MORIOKA Masahiro (LDP)  YAMAGUCHI Tomio (JCP)  KANEKO Tetsuo (SDP)  OIDE Akira (DPJ)  SUEMATSU Yoshinori (DPJ)  OHATA Akihiro (DPJ)  SENGOKU Yoshito (DPJ)  OKUNO Seisuke (LDP)  NODA Takeshi (LDP)  SUTO Nobuhiko (DPJ)  NAKAYAMA Masaaki (LDP)  KURATA Masatoshi (LDP)  NAKANO Kansei (DPJ)</p>	2h36
Thurs., Mar. 27, 2003	Fifth Meeting	Matters relating to the Constitution of Japan	<p>Report was heard from YASUOKA Okiharu (LDP), the chairperson of the Subcommittee on Ideal Constitution as Supreme Law; this was followed by a brainstorming discussion.</p> <p>Members who made comments:</p> <p>HIRAI Takuya (LDP)  YAMAGUCHI Tomio (JCP)  NAKAYAMA Masaaki (LDP)  KITAGAWA Renko (SDP)  OKUNO Seisuke (LDP)  SENGOKU Yoshito (DPJ)  NAKANO Kansei (DPJ)  SAITO Tetsuo (NK)</p> <hr/> <p>Report was heard from SUGIURA Seiken (LDP), the chairperson of the Subcommittee on Ideal Government and Organizations; this was followed by a brainstorming discussion.</p> <p>Members who made comments:</p> <p>SHIMA Satoshi (DPJ)  OIDE Akira (DPJ)  FURUKAWA Motohisa (DPJ)  OKUNO Seisuke (LDP)  BANNO Yutaka (DPJ)  YAMAGUCHI Tomio (JCP)  KANEKO Tetsuo (SDP)</p>	3h17

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
			<p>Report was heard from OIDE Akira (DPJ), the chairperson of the Subcommittee on Guarantee of Fundamental Human Rights; this was followed by a brainstorming discussion. Members who made comments: TANIMOTO Tatsuya (LDP) KONNO Azuma (DPJ) SHIMA Satoshi (DPJ) HARUNA Naoaki (JCP) MIZUSHIMA Hiroko (DPJ) KANEKO Tetsuo (SDP) HIRABAYASHI Kozo (LDP) OIDE Akira (DPJ)</p> <p>Report was heard from NAKAGAWA Shoichi (LDP), the chairperson of the Subcommittee on Security and International Cooperation; this was followed by a brainstorming discussion. Members who made comments: SUTO Nobuhiko (DPJ) TANIKAWA Kazuo (LDP) NAKAYAMA Masaaki (LDP) HARUNA Naoaki (JCP) NAKAGAWA Shoichi (LDP) SUGIURA Seiken (LDP) KANEKO Tetsuo (SDP) KONNO Azuma (DPJ) OHATA Akihiro (DPJ) NAKAYAMA Taro (Chairman) OIDE Akira (DPJ) SHIMA Satoshi (DPJ) YAMAGUCHI Tomio (JCP) HANASHI Nobuyuki (LDP) AKAMATSU Masao (NK) KITAGAWA Renko (SDP)</p>	
Thurs., Apr. 17, 2003	Sixth Meeting	Matters relating to the Constitution of Japan	<p>A decision was reached, after discussion, on a motion for approval of dispatch of members.</p> <p>Report was heard from YASUOKA Okiharu (LDP), the chairperson of the Subcommittee on Ideal Constitution as Supreme Law; this was followed by a brainstorming discussion. Members who made comments: HANASHI Nobuyuki (LDP) SENGOKU Yoshito (DPJ) NAKAGAWA Shoichi (LDP) YAMAGUCHI Tomio (JCP) TANIKAWA Kazuo (LDP) HARA Yoko (SDP) HIRABAYASHI Kozo (LDP) ENDO Kazuyoshi (NK) HARUNA Naoaki (JCP)</p>	3h06

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
			<p>Report was heard from NAKAGAWA Shoichi (LDP), the chairperson of the Subcommittee on Security and International Cooperation; this was followed by a brainstorming discussion.</p> <p>Members who made comments:  AKAMATSU Masao (NK)  SAITO Tetsuo (NK)  KANEKO Tetsuo (SDP)  SUTO Nobuhiko (DPJ)  HARUNA Naoaki (JCP)  HIRABAYASHI Kozo (LDP)  SENGOKU Yoshito (DPJ)  NODA Takeshi (LDP)  ENDO Kazuyoshi (NK)  NAKAGAWA Shoichi (LDP)</p> <hr/> <p>A brainstorming discussion was held.</p> <p>Members who made comments:  HANASHI Nobuyuki (LDP)  FURUKAWA Motohisa (DPJ)  ENDO Kazuyoshi (NK)  TAKEYAMA Yuriko (LP)  HARUNA Naoaki (JCP)  KANEKO Tetsuo (SDP)  YAMATANI Eriko (NCP)  NAKANO Kansei (DPJ)  BANNO Yutaka (DPJ)  OKUNO Seisuke (LDP)  AKAMATSU Masao (NK)  MORIOKA Masahiro (LDP)  YAMAGUCHI Tomio (JCP)  OIDE Akira (DPJ)  SENGOKU Yoshito (DPJ)  MIZUSHIMA Hiroko (DPJ)</p>	
Mon., May 12, 2003		The Constitution of Japan (States of emergency [including security] and the Constitution, the ideal government and organizations [including local autonomy], and the guarantee of fundamental human rights)	Seventh local open hearing was held in Kanazawa City, Ishikawa Prefecture.	3h09
Thurs., May 29, 2003	Seventh Meeting	Matters relating to the Constitution of Japan	<p>Report was heard on the investigations concerning the Constitution of Japan from SENGOKU Yoshito (DPJ) on behalf of the dispatched members.</p> <hr/> <p>Report was heard from NAKAGAWA Shoichi (LDP), the chairperson of the Subcommittee on Security and International Cooperation; this was followed by a brainstorming discussion.</p> <p>Members who made comments:  KANEKO Tetsuo (SDP)  OKUNO Seisuke (LDP)  NAKAGAWA Shoichi (LDP)  HARUNA Naoaki (JCP)  AKAMATSU Masao (NK)  SENGOKU Yoshito (DPJ)  NAKANO Kansei (DPJ)  SHIMA Satoshi (DPJ)</p>	2h42

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
			<p>Report was heard from YASUOKA Okiharu (LDP), the chairperson of the Subcommittee on Ideal Constitution as Supreme Law; this was followed by a brainstorming discussion. Members who made comments: HANASHI Nobuyuki (LDP) YAMAGUCHI Tomio (JCP) KITAGAWA Renko (SDP) ENDO Kazuyoshi (NK)</p> <p>Report was heard from OIDE Akira (DPJ), the chairperson of the Subcommittee on Guarantee of Fundamental Human Rights; this was followed by a brainstorming discussion. Members who made comments: KOBAYASHI Kenji (LDP) ITO Kosuke (LDP) HARUNA Naoaki (JCP) KITAGAWA Renko (SDP) SENGOKU Yoshito (DPJ) HANASHI Nobuyuki (LDP) SAITO Tetsuo (NK) KURATA Masatoshi (LDP)</p> <p>Report was heard from SUGIURA Seiken (LDP), the chairperson of the Subcommittee on Ideal Government and Organizations; this was followed by a brainstorming discussion. Members who made comments: TANIKAWA Kazuo (LDP) NAKANO Kansei (DPJ) SUGIURA Seiken (LDP) SUEMATSU Yoshinori (DPJ) OKUNO Seisuke (LDP) YAMAGUCHI Tomio (JCP) INOUE Kiichi (NCP) KANEKO Tetsuo (SDP)</p>	
Mon., June 9, 2003		The Constitution of Japan (States of emergency [including security] and the Constitution, the ideal government and organizations [including local autonomy], and the guarantee of fundamental human rights)	Eighth local open hearing was held in Takamatsu City, Kagawa Prefecture.	3h55
Thurs., June 12, 2003	Eighth Meeting	Matters relating to the Constitution of Japan	<p>Report was heard on the investigations concerning the Constitution of Japan from SENGOKU Yoshito (DPJ) on behalf of the dispatched members.</p> <p>Report was heard from SUGIURA Seiken (LDP), the chairperson of the Subcommittee on Ideal Government and Organizations; this was followed by a brainstorming discussion. Members who made comments: INOUE Kiichi (NCP) SHIMA Satoshi (DPJ) HIRAI Takuya (LDP) SENGOKU Yoshito (DPJ) SAITO Tetsuo (NK) SUGIURA Seiken (LDP)</p>	2h39

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
			<p>Report was heard from OIDE Akira (DPJ), the chairperson of the Subcommittee on Guarantee of Fundamental Human Rights; this was followed by a brainstorming discussion.</p> <p>Members who made comments:  HARUNA Naoaki (JCP)  SHIMA Satoshi (DPJ)  KITAGAWA Renko (SDP)</p> <p>A brainstorming discussion was held.</p> <p>Members who made comments:  HIRAI Takuya (LDP)  SUTO Nobuhiko (DPJ)  ENDO Kazuyoshi (NK)  FUJISHIMA Masayuki (LP)  HARUNA Naoaki (JCP)  KANEKO Tetsuo (SDP)  INOUE Kiichi (NCP)  NAKAYAMA Taro (Chairman)  OIDE Akira (DPJ)  KONNO Azuma (DPJ)  NAKAYAMA Masaaki (LDP)  SHIMOJI Mikio (LDP)  TANIKAWA Kazuo (LDP)  KUWABARA Yutaka (DPJ)  HANASHI Nobuyuki (LDP)  SUEMATSU Yoshinori (DPJ)  MIZUSHIMA Hiroko (DPJ)  FURUKAWA Motohisa (DPJ)</p>	
Thurs., July 24, 2003	Ninth Meeting	Matters relating to the Constitution of Japan	<p>Reports were heard from the chairpersons of the subcommittees: YASUOKA Okiharu (LDP), the Subcommittee on Ideal Constitution as Supreme Law; NAKAGAWA Shoichi (LDP), the Subcommittee on Security and International Cooperation; OIDE Akira (DPJ), the Subcommittee on Guarantee of Fundamental Human Rights; and SUGIURA Seiken (LDP), the Subcommittee on Ideal Government and Organizations.</p> <p>A brainstorming discussion was held.</p> <p>Members who made comments:  HANASHI Nobuyuki (LDP)  SENGOKU Yoshito (DPJ)  AKAMATSU Masao (NK)  TAKEYAMA Yuriko (LP)  HARUNA Naoaki (JCP)  KANEKO Tetsuo (SDP)  INOUE Kiichi (NCP)  OKUNO Seisuke (LDP)  NAKAGAWA Shoichi (LDP)  KONNO Azuma (DPJ)  NAKAYAMA Masaaki (LDP)  ITO Kosuke (LDP)  TANIKAWA Kazuo (LDP)  MIZUSHIMA Hiroko (DPJ)  HIRAI Takuya (LDP)</p>	3h07
Sun., Aug. 31 to Sat., Sept. 13, 2003		(A House delegation was dispatched to the the United States, Canada, and Mexico to survey the constitutions of those nations.)		
157th Diet Session				
Thurs., Oct. 2, 2003	First Meeting		<p>A director was appointed to replace an ongoing director.</p> <p>Newly appointed director:  NAKAYAMA Masaaki (LDP)</p>	2h19

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
			<p>It was decided, after discussion, to establish the Subcommittee on Ideal Constitution as Supreme Law, the Subcommittee on Security and International Cooperation, the Subcommittee on Guarantee of Fundamental Human Rights, and the Subcommittee on Ideal Government and Organizations.</p> <p>A decision was reached, after discussion, concerning requests for attendance of informants at subcommittee meetings.</p>	
		Matters relating to the Constitution of Japan	<p>Chairman NAKAYAMA Taro presented a brief report on the findings of the House delegation dispatched to survey the constitutions of the United States, Canada, and Mexico; this was followed by discussion among the members. Members who made comments: SENGOKU Yoshito (DPJ) YAMAGUCHI Tomio (JCP)</p> <p>A brainstorming discussion was held. Members who made comments: YASUOKA Okiharu (LDP) FURUKAWA Motohisa (DPJ) AKAMATSU Masao (NK) HARUNA Naoaki (JCP) KITAGAWA Renko (SDP) NISHIKAWA Taichiro (NCP) OIDE Akira (DPJ) OHATA Akihiro (DPJ) HIRAOKA Hideo (DPJ) SENGOKU Yoshito (DPJ) KANEKO Tetsuo (SDP) HIRABAYASHI Kozo (LDP) TANIKAWA Kazuo (LDP) SAITO Tetsuo (NK) KONNO Azuma (DPJ)</p>	
158th Diet Session				
Thurs., Nov. 20, 2003	First Meeting	Internal election of the chairman	<p>NAKAYAMA Taro (LDP) was elected as chairman.</p> <p>Chairman NAKAYAMA Taro made a speech upon assuming the chairmanship.</p>	0h04
		Internal election of the directors	<p>The following members were elected as directors: ONO Shinya (LDP) KONDO Motohiko (LDP) FUNADA Hajime (LDP) FURUYA Keiji (LDP) YASUOKA Okiharu (LDP) OIDE Akira (DPJ) SENGOKU Yoshito (DPJ) FURUKAWA Motohisa (DPJ) AKAMATSU Masao (NK)</p>	
			<p>Chairman NAKAYAMA Taro appointed SENGOKEU Yoshito (DPJ) as deputy chairman.</p>	
159th Diet Session				
Thurs., Jan. 22, 2004	First Meeting		<p>New directors were appointed to replace outgoing directors.</p> <p>Director who resigned: OIDE Akira (DPJ)</p> <p>Newly appointed directors: KINOSHITA Atsushi (DPJ) YAMAHANA Ikuo (DPJ)</p>	3h00

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
			<p>It was decided, after discussion, to establish the Subcommittee on Ideal Constitution as Supreme Law, the Subcommittee on Security and International Cooperation, the Subcommittee on Guarantee of Fundamental Human Rights and the Subcommittee on Ideal Government and Organizations.</p> <p>A decision was reached, after discussion, concerning requests for attendance of informants at subcommittee meetings.</p> <p>A decision was reached, after discussion, on a motion for approval of dispatch of members.</p> <p>A brainstorming discussion was held. Members who made comments: FURUYA Keiji (LDP) SENGOKU Yoshito (DPJ) FUKUSHIMA Yutaka (NK) YOSHII Hidekatsu (JCP) DOI Takako (SDP) NAKATANI Gen (LDP) AKAMATSU Masao (NK) TSUJI Megumu (DPJ) FUNADA Hajime (LDP) OIDE Akira (DPJ) TOKAI Kisaburo (LDP) OMURA Hideaki (LDP) NAGAOKA Yoji (LDP) MORIOKA Masahiro (LDP) SUZUKI Katsumasa (DPJ) MASUKO Teruhiko (DPJ) IWANAGA Mineichi (LDP) ITO Kosuke (LDP) KANO Michihiko (DPJ) KUSUDA Daizo (DPJ)</p>	
Thurs., Feb. 26, 2004	Second Meeting	Matters relating to the Constitution of Japan	<p>Report was heard from YASUOKA Okiharu (LDP), the chairperson of the Subcommittee on Ideal Constitution as Supreme Law; this was followed by a brainstorming discussion. Members who made comments: HAKARIYA Keiko (DPJ) FUNADA Hajime (LDP) YAMAGUCHI Tomio (JCP) ONO Shinya (LDP) SHIMOMURA Hakubun (LDP)</p> <p>Report was heard from KONDO Motohiko (LDP), the chairperson of the Subcommittee on Security and International Cooperation; this was followed by a brainstorming discussion. Members who made comments: TAKEMASA Koichi (DPJ) SENGOKU Yoshito (DPJ) NAKATANI Gen (LDP) TOKAI Kisaburo (LDP) FUNADA Hajime (LDP) DOI Takako (SDP) KONDO Motohiko (LDP) YAMAGUCHI Tomio (JCP) ONO Shinya (LDP) AKAMATSU Masao (NK) YAMAHANA Ikuo (DPJ) TANAHASHI Yasufumi (LDP)</p>	2h36

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
			<p>Report was heard from YAMAHANA Ikuo (DPJ), the chairperson of the Subcommittee on Guarantee of Fundamental Human Rights; this was followed by a brainstorming discussion. Members who made comments: HIRAI Takuya (LDP) FURUKAWA Motohisa (DPJ) FUNADA Hajime (LDP) YAMAGUCHI Tomio (JCP) TSUJI Megumu (DPJ) YAMAHANA Ikuo (DPJ) DOI Takako (SDP)</p> <p>Report was heard from KINOSHITA Atsushi (DPJ), the chairperson of the Subcommittee on Ideal Government and Organizations; this was followed by a brainstorming discussion. Members who made comments: IWANAGA Mineichi (LDP) SHIMOMURA Hakubun (LDP) FURUKAWA Motohisa (DPJ) TSUJI Megumu (DPJ) YAMAGUCHI Tomio (JCP) TOKAI Kisaburo (LDP) NAGAOKA Yoji (LDP) MASUKO Teruhiko (DPJ)</p>	
Mon., Mar. 15, 2004		The Constitution of Japan (States of emergency [including security] and the Constitution, the ideal government and organizations [including local autonomy], and the guarantee of fundamental human rights)	Ninth local open hearing was held in Hiroshima City, Hiroshima Prefecture.	3h20
Thurs., Mar. 18, 2004	Third Meeting	Matters relating to the Constitution of Japan	<p>Report was heard on the investigations concerning the Constitution of Japan from SENGOKU Yoshito (DPJ) on behalf of the dispatched members.</p> <p>Report was heard from KONDO Motohiko (LDP), the chairperson of the Subcommittee on Security and International Cooperation; this was followed by a brainstorming discussion. Members who made comments: KUSUDA Daizo (DPJ) NAKATANI Gen (LDP) SAITO Tetsuo (NK) YAMAGUCHI Tomio (JCP) FUNADA Hajime (LDP) ITO Chuji (DPJ) SENGOKU Yoshito (DPJ) TAKEMASA Koichi (DPJ) DOI Takako (SDP) KONO Taro (LDP) OIDE Akira (DPJ)</p>	2h57



Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
			<p>Report was heard from YASUOKA Okiharu (LDP), the chairperson of the Subcommittee on Ideal Constitution as Supreme Law; this was followed by a brainstorming discussion. Members who made comments: OIDE Akira (DPJ) AKAMATSU Masao (NK) FUNADA Hajime (LDP) YAMAGUCHI Tomio (JCP) GEMBA Koichiro (DPJ)</p> <p>Report was heard from KINOSHITA Atsushi (DPJ), the chairperson of the Subcommittee on Ideal Government and Organizations; this was followed by a brainstorming discussion. Members who made comments: NAGAOKA Yoji (LDP) YAMAGUCHI Tomio (JCP) SUZUKI Katsumasa (DPJ) TSUJI Megumu (DPJ) FUNADA Hajime (LDP) TAKEMASA Koichi (DPJ) YAMAHANA Ikuo (DPJ)</p> <p>Report was heard from YAMAHANA Ikuo (DPJ), the chairperson of the Subcommittee on Guarantee of Fundamental Human Rights; this was followed by a brainstorming discussion. Members who made comments: ONO Shinya (LDP) TSUJI Megumu (DPJ) YAMAGUCHI Tomio (JCP) YAMAHANA Ikuo (DPJ) FUNADA Hajime (LDP) SONODA Yasuhiro (DPJ)</p>	
Tues., Mar. 23, 2004	Fourth Meeting		<p>A director was appointed to replace an outgoing director. Director who resigned: KINOSHITA Atsushi (DPJ) Newly appointed director: SUZUKI Katsumasa (DPJ)</p> <p>A decision was reached, after discussion, on a motion for approval of holding open hearings.</p>	0h01
Thurs., Apr. 8, 2004	Fifth Meeting	<p>Matters relating to the Constitution of Japan (The progress of science and technology and the Constitution)</p> <p>Matters relating to the Constitution of Japan</p>	<p>It was decided, after discussion, to hear the statements of informants.</p> <p>Report was heard from YASUOKA Okiharu (LDP), the chairperson of the Subcommittee on Ideal Constitution as Supreme Law; this was followed by a brainstorming discussion. Members who made comments: HAKARIYA Keiko (DPJ) FUNADA Hajime (LDP) YAMAGUCHI Tomio (JCP) TANAHASHI Yasufumi (LDP) SUGIURA Seiken (LDP) AKAMATSU Masao (NK) SENGOKU Yoshito (DPJ) YAMAHANA Ikuo (DPJ) ONO Shinya (LDP) NAGAOKA Yoji (LDP) MORIOKA Masahiro (LDP)</p>	2h53

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
			<p>Report was heard from KONDO Motohiko (LDP), the chairperson of the Subcommittee on Security and International Cooperation; this was followed by a brainstorming discussion. Members who made comments: OIDE Akira (DPJ) TAKEMASA Koichi (DPJ) FUNADA Hajime (LDP) YAMAGUCHI Tomio (JCP) AKAMATSU Masao (NK) NAKATANI Gen (LDP) TSUJI Megumu (DPJ) MASUKO Teruhiko (DPJ) YASUOKA Okiharu (LDP)</p> <p>Report was heard from YAMAHANA Ikuo (DPJ), the chairperson of the Subcommittee on Guarantee of Fundamental Human Rights; this was followed by a brainstorming discussion. Members who made comments: ONO Shinya (LDP) NAKATANI Den (LDP) KURATA Masatoshi (LDP) YAMAGUCHI Tomio (JCP) TSUJI Megumu (DPJ) AKAMATSU Masao (NK) YAMAHANA Ikuo (DPJ)</p> <p>Report was heard from SUZUKI Katsumasa (DPJ), the chairperson of the Subcommittee on Ideal Government and Organizations; this was followed by a brainstorming discussion. Members who made comments: FURUYA Keiji (LDP) KANO Michihiko (DPJ) YAMAGUCHI Tomio (JCP) FUNADA Hajime (LDP) NAGAOKA Yoji (LDP)</p>	
Thurs., Apr. 15, 2004	Sixth Meeting	Matters relating to the Constitution of Japan (The progress of science and technology and the Constitution)	<p>After a statement was heard from an informant, questions were put to him. Informant: KIMURA Rihito, former Professor, Waseda University; former Director, Waseda University International Institute of Bioethics and Bio-Law Members who put questions to him: NAKAYAMA Taro (Chairman) MIZUSHIMA Hiroko (DPJ) SAITO Tetsuo (NK) YOSHII Hidekatsu (JCP) ABE Tomoko (SDP)</p>	3h03

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Wed., May 12, 2004	First Open Hearing	Matters relating to the Constitution of Japan	<p>After statements were heard from speakers, questions were put to them.</p> <p>Speakers: INOUCHI Kuniko, Professor, Faculty of Law, Sophia University KAWAMOTO Yuko, Professor, Graduate School, Waseda University INOKAWA Kinzo, former Secretary General, Gunma Forestry Improvement and Extension Association</p> <p>Members who put questions to them: YASUOKA Okiharu (LDP) OIDE Akira (DPJ) OTA Akihiro (NK) SHIOKAWA Tetsuya (JCP) TERUYA Kantoku (SDP)</p> <p>Speakers: OGUMA Eiji, Assistant Professor, Faculty of Policy Management, Keio University FUNABIKI Takeo, Professor, Graduate School, The University of Tokyo; cultural anthropologist YAMAZAKI Masakazu, President, Toa University</p> <p>Members who put questions to them: MORIYAMA Mayumi (LDP) TSUJI Megumu (DPJ) AKAMATSU Masao (NK) ISHII Ikuko (JCP) DOI Takako (SDP)</p>	6h12
Thurs., May 13, 2004	Second Open Hearing	Matters relating to the Constitution of Japan	<p>After statements were heard from speakers, questions were put to them.</p> <p>Speakers: YOSHIDA Kenichi, lawyer ANBO Katsuya, lecturer, Japan Electronics College HIDAKA Sayaka, former graduate student, Shikoku Gakuin University Graduate School</p> <p>Members who put questions to them: OMURA Hideaki (LDP) TAKEMASA Koichi (DPJ) FUKUSHIMA Yutaka (NK) YOSHII Hidekatsu (JCP) DOI Takako (SDP)</p>	2h52
Thurs., June 3, 2004	Seventh Meeting		<p>A director was appointed to replace an ongoing director.</p> <p>Director who resigned: FUKUDA Yasuo (LDP)</p> <p>Newly appointed director: EDANO Yukio (DPJ)</p> <p>Chairman NAKAYAMA Taro appointed EDANO Yukio (DPJ) as deputy chairman.</p>	2h57

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
		Matters relating to the Constitution of Japan	<p>Report was heard from KONDO Motohiko (LDP), the chairperson of the Subcommittee on Security and International Cooperation; this was followed by a brainstorming discussion. Members who made comments: KUSUDA Daizo (DPJ) TANAHASHI Yasufumi (LDP) FUNADA Hajime (LDP) YAMAGUCHI Tomio (JCP) NAKATANI Gen (LDP) AKAMATSU Masao (NK) DOI Takako (SDP) KONDO Motohiko (LDP)</p> <p>Report was heard from YASUOKA Okiharu (LDP), the chairperson of the Subcommittee on Ideal Constitution as Supreme Law; this was followed by a brainstorming discussion. Members who made comments: OIDE Akira (DPJ) SHIMOMURA Hakubun (LDP) TAKEMASA Koichi (DPJ) YAMAGUCHI Tomio (JCP) DOI Takako (SDP)</p> <p>Report was heard from YAMAHANA Ikuo (DPJ), the chairperson of the Subcommittee on Guarantee of Fundamental Human Rights; this was followed by a brainstorming discussion. Members who made comments: FUNADA Hajime (LDP) YAMAGUCHI Tomio (JCP) IWANAGA Mineichi (LDP) SAITO Tetsuo (NK) FURUYA Keiji (LDP) TOKAI Kisaburo (LDP)</p> <p>Report was heard from YAMAHANA Ikuo (DPJ), the chairperson of the Subcommittee on Guarantee of Fundamental Human Rights; this was followed by a brainstorming discussion. Members who made comments: KURATA Masatoshi (LDP) TSUJI Megumu (DPJ) TANAHASHI Yasufumi (LDP) SHIMOMURA Hakubun (LDP) YAMAGUCHI Tomio (JCP)</p> <p>Report was heard from SUZUKI Katsumasa (DPJ), the chairperson of the Subcommittee on Ideal Government and Organizations; this was followed by a brainstorming discussion. Members who made comments: NAGAOKA Yoji (LDP) OMURA Hideaki (LDP) YAMAGUCHI Tomio (JCP) TSUJI Megumu (DPJ)</p>	

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
			Report was heard from SUZUKI Katsumasa (DPJ), the chairperson of the Subcommittee on Ideal Government and Organizations; this was followed by a brainstorming discussion. Members who made comments: FUNADA Hajime (LDP) ITO Kosuke (LDP) OMURA Hideaki (LDP) YAMAGUCHI Tomio (JCP) TSUJI Megumu (DPJ) MASUKO Teruhiko (DPJ)	
Thurs., June 10, 2004	Eighth Meeting	Matters relating to the Constitution of Japan	A brainstorming discussion was held. Members who made comments: YASUOKA Okiharu (LDP) YAMAHANA Ikuo (DPJ) OTA Akihiro (NK) YAMAGUCHI Tomio (JCP) DOI Takako (SDP) HIRANUMA Takeo (LDP) MORIYAMA Mayumi (LDP) TOKAI Kisaburo (LDP) TSUJI Megumu (DPJ) ITO Chuji (DPJ) FUTADA Koji (LDP) NODA Takeshi (LDP) EDANO Yukio (DPJ) TAKEMASA Koichi (DPJ) NAGAOKA Yoji (LDP) SHIMOMURA Hakubun (LDP) KONO Taro (LDP) SONODA Yasuhiro (DPJ) OMURA Hideaki (LDP) ITO Kosuke (LDP) SUZUKI Katsumasa (DPJ) KUSUDA Daizo (DPJ) MORIOKA Masahiro (LDP) IWANAGA Mineichi (LDP) AKAMATSU Masao (NK) KURATA Masatoshi (LDP) NAKATANI Gen (LDP) MATSUNO Hirokazu (LDP) HIRAI Takuya (LDP) FURUYA Keiji (LDP) SHIBAYAMA Masahiko (LDP) MASUKO Teruhiko (DPJ) FUNADA Hajime (LDP)	3h34

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
160th Diet Session				
Thurs., Aug. 5, 2004	First Meeting	Matters relating to the Constitution of Japan	After comments are heard from members YASUOKA Okiharu (LDP), EDANO Yukio (DPJ), and OTA Akihiro (NK) on the summary of the issues by the LDP's project team for constitutional amendment, the DPJ's Interim Report on its constitutional proposal titled "Toward Creation of the Constitution," and the summary of the issues by NK's research committee on the Constitution, respectively, statements were heard from representatives of each political party or group. Members who made comments: KONDO Motohiko (LDP) YAMAHANA Ikuo (DPJ) AKAMATSU Masao (NK) YAMAGUCHI Tomio (JCP) DOI Takako (SDP)	1h46
Sun., Sept. 5 to Fri., Sept. 17, 2004	(A House delegation was dispatched to the European Union, Sweden and Finland to survey the constitutions of those nations.)			
161st Diet Session				
Thurs., Oct. 14, 2004	First Meeting	Matters relating to the Constitution of Japan	A director was appointed to replace an outgoing director. Director who resigned: SUZUKI Katsumasa (DPJ) Newly appointed director: NAKAGAWA Masaharu (DPJ)  A decision was reached, after discussion, on a motion for approval of holding open hearings.  Chairman NAKAYAMA Taro presented a brief report on the findings of the House delegation dispatched to survey the constitutions of the European Union, Sweden, and Finland; the report was followed by discussion among the members. Members who made comments: SENGOKU Yoshito (DPJ) FUNADA Hajime (LDP) EDANO Yukio (DPJ) YASUOKA Okiharu (LDP) SHIBAYAMA Masahiko (LDP) TSUJI Megumu (DPJ) YAMAGUCHI Tomio (JCP) TANAKA Makiko (DPJ) NAKAYAMA Taro (Chairman) HANASHI Yasuhiro (LDP) DOI Takako (SDP) AKAMATSU Masao (NK) YAMAHANA Ikuo (DPJ) TOKAI Kisaburo (LDP)	1h52

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Oct. 21, 2004	Second Meeting	Matters relating to the Constitution of Japan	<p>A brainstorming discussion was held on parliamentary ombudsmen and other checks on the administration.</p> <p>Members who made comments:            SHIBAYAMA Masahiko (LDP)            TSUJI Megumu (DPJ)            AKAMATSU Masao (NK)            YAMAGUCHI Tomio (JCP)            DOI Takako (SDP)            EDANO Yukio (DPJ)            FUNADA Hajime (LDP)            TOKAI Kisaburo (LDP)            HANASHI Yasuhiro (LDP)            KANO Michihiko (DPJ)            NAKAGAWA Masaharu (DPJ)            NAKANE Yasuhiro (DPJ)            YAMAHANA Ikuo (DPJ)            OIDE Akira (DPJ)            MABUCHI Sumio (DPJ)            SUZUKI Katsumasa (DPJ)            KATO Katsunobu (LDP)            SONODA Yasuhiro (DPJ)            WADA Takashi (DPJ)            MIHARA Asahiko (LDP)</p>	4h44
			<p>A brainstorming discussion was held on international organizations and the Constitution.</p> <p>Members who made comments:            HANASHI Yasuhiro (LDP)            NAKAGAWA Masaharu (DPJ)            SATO Shigeki (NK)            YAMAGUCHI Tomio (JCP)            DOI Takako (SDP)            FUNADA Hajime (LDP)            EDANO Yukio (DPJ)            AKAMATSU Masao (NK)            NODA Takeshi (LDP)            TOKAI Kisaburo (LDP)            MIHARA Asahiko (LDP)            SHIBAYAMA Masahiko (LDP)            TSUJI Megumu (DPJ)            YASUOKA Okiharu (LDP)            OIDE Akira (DPJ)            KANO Michihiko (DPJ)            NAGASHIMA Akihisa (DPJ)</p>	

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Oct. 28, 2004	Third Meeting	Matters relating to the Constitution of Japan	<p>A brainstorming discussion was held on a national referendum system.</p> <p>Members who made comments:</p> <p>YASUOKA Okiharu (LDP)  TANAKA Makiko (DPJ)  OTA Akihiro (NK)  YAMAGUCHI Tomio (JCP)  DOI Takako (SDP)  EDANO Yukio (DPJ)  SHIBAYAMA Masahiko (LDP)  HANASHI Yasuhiro (LDP)  SAKAMOTO Goji (LDP)  YAMAHANA Ikuo (DPJ)  TSUJI Megumu (DPJ)  NAGAOKA Yoji (LDP)  KATO Katsunobu (LDP)  OIDE Akira (DPJ)  NAKAGAWA Masaharu (DPJ)  TOKAI Kisaburo (LDP)  SONODA Yasuhiro (DPJ)  ITO Kosuke (LDP)  AKAMATSU Masao (NK)  WADA Takashi (DPJ)</p>	2h47
Thurs., Nov. 11, 2004	First Open Hearing	Matters relating to the Constitution of Japan	<p>After statements were heard from speakers, questions were put to them.</p> <p>Speakers:</p> <p>ASAOKA Mie, President, Kiko Network; lawyer  UEMATSU Haruo, President, Japan Medical Association  TERUOKA Itsuko, Professor Emeritus, Saitama University</p> <p>Members who put questions to them:</p> <p>KATO Katsunobu (LDP)  MABUCHI Sumio (DPJ)  FUKUSHIMA Yutaka (NK)  SASAKI Kensho (JCP)  YAMAMOTO Kiyohiro (SDP)</p> <p>Speakers:</p> <p>NAKASONE Yasuhiro, former Prime Minister  MIYAZAWA Kiichi, former Prime Minister  TAKEMURA Masayoshi, former Governor of Shiga Prefecture; former Minister of Finance</p> <p>Members who put questions to them:</p> <p>EDANO Yukio (DPJ)  AKAMATSU Masao (NK)  YAMAGUCHI Tomio (JCP)  DOI Takako (SDP)  NODA Takeshi (LDP)</p>	5h03



Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Nov. 18, 2004	Second Open Hearing	Matters relating to the Constitution of Japan	<p>After statements were heard from speakers, questions were put to them.</p> <p>Speakers: TAKATAKE Kazuaki, Executive Director (2004) and President (2005), Junior Chamber International (JCI) Japan TERANAKA Makoto, Secretary General, Amnesty International Japan HINOHARA Shigeaki, Chairman of the Board and Honorary President, St. Luke's International Hospital</p> <p>Members who put questions to them: MATSUNO Hirokazu (LDP) TSUJI Megumu (DPJ) SATO Shigeaki (NK) YAMAGUCHI Tomio (JCP) DOI Takako (SDP)</p> <p>Speakers: EBASHI Takashi, Professor, Faculty of Law, Hosei University PEMA Gyalpo, Professor, Faculty of Law, Toin University of Yokohama; Professor Emeritus, Gifu Women's University; Head Officer, Tibet Culture Centre International MURATA Hisanori, Professor, Kansai University School of Law</p> <p>Members who put questions to them: MATSUMIYA Isao (LDP) NAGASHIMA Akihisa (DPJ) OTA Akihiro (NK) YAMAGUCHI Tomio (JCP) TERUYA Kantoku (SDP)</p>	5h53
Thurs., Nov. 25, 2004	Third Open Hearing	Matters relating to the Constitution of Japan	<p>After statements were heard from speakers, questions were put to them.</p> <p>Speakers: SHIRAISHI Masateru, member, Adachi Ward Assembly (Tokyo) SHINOHARA Hiroaki, company employee HIRATSUKA Akifumi, personnel director of an electrical equipment manufacturer</p> <p>Members who put questions to them: SHIBAYAMA Masahiko (LDP) MABUCHI Sumio (DPJ) FURUYA Noriko (NK) YAMAGUCHI Tomio (JCP) TERUYA Kantoku (SDP)</p> <p>Speakers: YAMADA Junpei, association staff member SEIRYU Miwako, university student MORI Nobuyuki, retired</p> <p>Members who put questions to them: HANASHI Yasuhiro (LDP) WADA Takashi (DPJ) FUKUSHIMA Yutaka (NK) YAMAGUCHI Tomio (JCP) DOI Takako (SDP)</p>	5h45

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Dec. 2, 2004	Fourth Meeting	Matters relating to the Constitution of Japan	<p>A brainstorming discussion was held on the Diet and the Cabinet.</p> <p>Members who made comments:</p> <p>NAGAOKA Yoji (LDP)  SUZUKI Katsumasa (DPJ)  SATO Shigeki (NK)  YAMAGUCHI Tomio (JCP)  DOI Takako (SDP)  MORIYAMA Mayumi (LDP)  FURUKAWA Motohisa (DPJ)  NAKAGAWA Masaharu (DPJ)  FUNADA Hajime (LDP)  HANASHI Yasuhiro (LDP)  TSUJI Megumu (DPJ)  NAKATANI Gen (LDP)  OIDE Akira (DPJ)  AKAMATSU Masao (NK)  SHIBAYAMA Masahiko (LDP)  MIHARA Asahiko (LDP)  YAMAHANA Ikuo (DPJ)  EDANO Yukio (DPJ)  TOKAI Kisaburo (LDP)  SAKAMOTO Goji (LDP)  KANO Michihiko (DPJ)  YASUOKA Okiharu (LDP)</p>	5h45
			<p>A brainstorming discussion was held to conclude the Commission's research this year.</p> <p>Members who made comments:</p> <p>FUNADA Hajime (LDP)  EDANO Yukio (DPJ)  OTA Akihiro (NK)  YAMAGUCHI Tomio (JCP)  DOI Takako (SDP)  NODA Takeshi (LDP)  SAKAMOTO Goji (LDP)  FURUYA Keiji (LDP)  TOKAI Kisaburo (LDP)  NAKAGAWA Masaharu (DPJ)  SHIBAYAMA Masahiko (LDP)  TANAKA Makiko (DPJ)  AKAMATSU Masao (NK)  HANASHI Yasuhiro (LDP)  FUTADA Koji (LDP)  MATSUNO Hirokazu (LDP)  MIHARA Asahiko (LDP)  MATSUMIYA Isao (LDP)  KATO Katsunobu (LDP)  HIRAI Takuya (LDP)  OMURA Hideaki (LDP)  ITO Kosuke (LDP)  KONO Taro (LDP)  NAGAOKA Yoji (LDP)  KONDO Motohiko (LDP)  SONODA Yasuhiro (DPJ)  WADA Takashi (DPJ)  NAKANE Yasuhiro (DPJ)  AOKI Ai (DPJ)  YAMAHANA Ikuo (DPJ)  WATANABE Hiromichi (LDP)  RYU Hirofumi (DPJ)  SATO Shigeki (NK)</p>	

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
162nd Diet Session				
Thurs., Feb. 3, 2005	First Meeting	Matters relating to the Constitution of Japan	<p>A brainstorming discussion was held on the Emperor.</p> <p>Members who made comments:</p> <p>FUNADA Hajime (LDP)  OIDE Akira (DPJ)  SAITO Tetsuo (NK)  YAMAGUCHI Tomio (JCP)  DOI Takako (SDP)  AKAMATSU Masao (NK)  HAYAKAWA Chuko (LDP)  HANASHI Yasuhiro (LDP)  SHIBAYAMA Masahiko (LDP)  YASUOKA Okiharu (LDP)  IKENOBO Yasuko (NK)  FURUYA Keiji (LDP)  EDANO Yukio (DPJ)  NAGAOKA Yoji (LDP)  YAMAHANA Ikuo (DPJ)  TAKAGI Yosuke (NK)  NAKAGAWA Masaharu (DPJ)  KATO Katsunobu (LDP)  SONODA Yasuhiro (DPJ)  KANO Michihiko (DPJ)  MATSUNO Hirokazu (LDP)  MATSUMIYA Isao (LDP)  MIHARA Asahiko (LDP)  NAKAYAMA Taro (Chairman)</p> <p>A brainstorming discussion was held on security, international cooperation, and states of emergency.</p> <p>Members who made comments:</p> <p>KONDO Motohiko (LDP)  NAKAGAWA Masaharu (DPJ)  OTA Akihiro (NK)  YAMAGUCHI Tomio (JCP)  DOI Takako (SDP)  HAYAKAWA Chuko (LDP)  OMURA Hideaki (LDP)  TAKAGI Yosuke (NK)  FUNADA Hajime (LDP)  EDANO Yukio (DPJ)  HANASHI Yasuhiro (LDP)  FURUYA Keiji (LDP)  FUKUSHIMA Yutaka (NK)  SHIBAYAMA Masahiko (LDP)  OIDE Akira (DPJ)  NAGAOKA Yoji (LDP)  SONODA Yasuhiro (DPJ)  TANIGAWA Yaichi (LDP)  AKAMATSU Masao (NK)  KANO Michihiko (DPJ)  KATO Katsunobu (LDP)  YASUOKA Okiharu (LDP)  HIRAI Takuya (LDP)</p>	5h08

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Feb. 10, 2005	Second Meeting	Matters relating to the Constitution of Japan	<p>A brainstorming discussion was held on rights and duties of the people.</p> <p>Members who made comments:</p> <p>HORI Kosuke (LDP) SONODA Yasuhiro (DPJ) FUKUSHIMA Yutaka (NK) TAKAHASHI Chizuko (JCP) DOI Takako (SDP) EDANO Yukio (DPJ) IKENOBO Yasuko (NK) HAYAKAWA Chuko (LDP) YASUOKA Okiharu (LDP) HANASHI Yasuhiro (LDP) NODA Takeshi (LDP) FUNADA Hajime (LDP) TAKAGI Yosuke (NK) NAGAOKA Yoji (LDP) KANO Michihiko (DPJ) MIHARA Asahiko (LDP) SUZUKI Katsumasa (DPJ) AKAMATSU Masao (NK) OIDE Akira (DPJ) NAKAGAWA Masaharu (DPJ) HIRAI Takuya (LDP) OMURA Hideaki (LDP) KATO Katsunobu (LDP) MATSUNO Hirokazu (LDP) INAMI Tetsuo (DPJ)</p> <hr/> <p>A brainstorming discussion was held on the Diet, the Cabinet, and related matters.</p> <p>Members who made comments:</p> <p>FURUYA Keiji (LDP) KANO Michihiko (DPJ) TAKAGI Yosuke (NK) SHIOKAWA Tetsuya (JCP) DOI Takako (SDP) HAYAKAWA Chuko (LDP) HANASHI Yasuhiro (LDP) TSUJI Megumu (DPJ) YAMAHANA Ikuo (DPJ) NAKAGAWA Masaharu (DPJ) EDANO Yukio (DPJ) SHIBAYAMA Masahiko (LDP) OTA Akihiro (NK) MATSUMIYA Isao (LDP) NAGAOKA Yoji (LDP) OMURA Hideaki (LDP) MIHARA Asahiko (LDP) NODA Takeshi (LDP) TANAKA Makiko (DPJ) YASUOKA Okiharu (LDP) NAKAYAMA Taro (Chairman)</p>	5h21

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Feb. 17, 2005	Third Meeting	Matters relating to the Constitution of Japan	<p>A brainstorming discussion was held on public finances and local autonomy. Members who made comments: HAYAKAWA Chuko (LDP) FURUKAWA Motohisa (DPJ) YAMANA Yasuhide (NK) YOSHII Hidekatsu (JCP) DOI Takako (SDP) OMURA Hideaki (LDP) EDANO Yukio (DPJ) HANASHI Yasuhiro (LDP) MASUYA Keigo (NK) FUNADA Hajime (LDP) NAKAGAWA Masaharu (DPJ) KANO Michihiko (DPJ) SUZUKI Katsumasa (DPJ) SHIBAYAMA Masahiko (LDP) OIDE Akira (DPJ) YAMAHANA Ikuo (DPJ) AKAMATSU Masao (NK) YASUOKA Okiharu (LDP) TSUJI Megumu (DPJ) INAMI Tetsuo (DPJ) KATO Katsunobu (LDP) NAGAOKA Yoji (LDP) MIHARA Asahiko (LDP)</p> <hr/> <p>A brainstorming discussion was held on the judiciary, amendments, supreme law, and related matters. KONO Taro (LDP) YAMAHANA Ikuo (DPJ) OGUCHI Yoshinori (NK) SHIOKAWA Tetsuya (JCP) DOI Takako (SDP) HAYAKAWA Chuko (LDP) FUNADA Hajime (LDP) NAKAGAWA Masaharu (DPJ) HANASHI Yasuhiro (LDP) EDANO Yukio (DPJ) SHIBAYAMA Masahiko (LDP) TSUJI Megumu (DPJ) NODA Takeshi (LDP) YASUOKA Okiharu (LDP) KANO Michihiko (DPJ) NAGAOKA Yoji (LDP)</p>	5h15

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Feb. 24, 2005	Fourth Meeting	Matters relating to the Constitution of Japan	<p>A brainstorming discussion was held on the Preamble and other matters.</p> <p>Members who made comments:</p> <p>FUKUDA Yasuo (LDP)  KANO Michihiko (DPJ)  AKAMATSU Masao (NK)  YAMAGUCHI Tomio (JCP)  DOI Takako (SDP)  HAYAKAWA Chuko (LDP)  ISHIDA Noritoshi (NK)  MARUYA Kaori (NK)  NAKANE Yasuhiro (DPJ)  FUNADA Hajime (LDP)  TAKAGI Michiyo (NK)  SAKAMOTO Goji (LDP)  HANASHI Yasuhiro (LDP)  NAGAOKA Yoji (LDP)  SHIBAYAMA Masahiko (LDP)  KATO Katsunobu (LDP)  MATSUMIYA Isao (LDP)  HIRAI Takuya (LDP)  SUZUKI Katsumasa (DPJ)  KONO Taro (LDP)  NAKAGAWA Masaharu (DPJ)  TSUJI Megumu (DPJ)  EDANO Yukio (DPJ)  MIHARA Asahiko (LDP)  YASUOKA Okiharu (LDP)  NAKATANI Gen (LDP)  OIDE Akira (DPJ)</p> <hr/> <p>A brainstorming discussion was held on the conclusion of the Commission's research on the Constitution.</p> <p>Members who made comments:</p> <p>YASUOKA Okiharu (LDP)  EDANO Yukio (DPJ)  OTA Akihiro (NK)  YAMAGUCHI Tomio (JCP)  DOI Takako (SDP)  FUNADA Hajime (LDP)  HANASHI Yasuhiro (LDP)  KONO Taro (LDP)  OMURA Hideaki (LDP)  SHIBAYAMA Masahiko (LDP)  MATSUNO Hirokazu (LDP)  HAYAKAWA Chuko (LDP)  WADA Takashi (DPJ)  HIRAI Takuya (LDP)  MORIYAMA Mayumi (LDP)  OIDE Akira (DPJ)  ITO Kosuke (LDP)  MAGAOKA Yoji (LDP)  NAKAGAWA Masaharu (DPJ)  FUTADA Koji (LDP)  YAMAHANA Ikuo (DPJ)  KATO Katsunobu (LDP)  FURUYA Keiji (LDP)  NAKATANI Gen (LDP)  MIHARA Asahiko (LDP)  WATANABE Kozo (DPJ)  AKAMATSU Masao (NK)  KANO Michihiko (DPJ)</p>	5h36

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Fri., Apr. 15, 2005	Fifth Meeting	Matters relating to the Final Report		

**(2) Subcommittees**

**A. 154th and 155th Diet Session**

**a. Subcommittee on Guarantee of Fundamental Human Rights**

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
154th Diet Session				
Thurs., Feb. 14, 2002	Human Rights Subcommittee First Meeting	Matters concerning the guarantee of fundamental human rights	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: MUNESUE Toshiyuki, Professor, Faculty of Law, Seijo University Members who put questions to them: MATSUSHIMA Midori (LDP) OIDE Akira (DPJ) OTA Akihiro (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) KONDO Motohiko (LDP) KONNO Azuma (DPJ) Members who made comments during discussion: NAKAYAMA Taro (Chairman) MATSUSHIMA Midori (LDP) HARUNA Naoaki (JCP) KONNO Azuma (DPJ) KANEKO Tetsuo (SDP) MOTEGI Toshimitsu (LDP) KOBAYASHI Kenji (DPJ) OIDE Akira (DPJ) HANASHI Nobuyuki (LDP)	2h59
Thurs., Mar. 14, 2002	Human Rights Subcommittee Second Meeting	Matters concerning the guarantee of fundamental human rights	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: ANNEN Junji, Professor, Seikei University Members who put questions to them: HANASHI Nobuyuki (LDP) KONNO Azuma (DPJ) OTA Akihiro (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) NAGASE Jinen (LDP) OIDE Akira (DPJ) KONDO Motohiko (LDP) Members who made comments during discussion: KONNO Azuma (DPJ) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) OIDE Akira (DPJ)	2h13



Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Apr. 11, 2002	Human Rights Subcommittee Third Meeting	Matters concerning the guarantee of fundamental human rights	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: SAKAMOTO Masanari, Dean, Faculty of Law, Hiroshima University Members who put questions to them: ISHIBA Shigeru (LDP) KOBAYASHI Kenji (DPJ) OTA Akihiro (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) HARA Yoko (SDP) INOUE Kiichi (NCP) TSUCHIYA Shinako (LDP) OIDE Akira (DPJ) HIRAI Takuya (LDP) Members who made comments during discussion: HANASHI Nobuyuki (LDP) TSUCHIYA Shinako (LDP) HARA Yoko (SDP) TAKEYAMA Yuriko (LP) NAKAYAMA Taro (Chairman) KONNO Azuma (DPJ) HARUNA Naoaki (JCP)	2h57
Thurs., May 23, 2002	Human Rights Subcommittee Fourth Meeting	Matters concerning the guarantee of fundamental human rights	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: ITO Tetsuo, Director, Japan Policy Institute Members who put questions to them: NAGASE Jinen (LDP) KONNO Azuma (DPJ) OTA Akihiro (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) UEDA Munenori (SDP) INOUE Kiichi (NCP) ISHIBA Shigeru (LDP) KOBAYASHI Kenji (DPJ) HANASHI Nobuyuki (LDP) Members who made comments during discussion: NAKANO Kansei (Deputy Chairman) HANASHI Nobuyuki (LDP) KONNO Azuma (DPJ) UEDA Munenori (SDP) HARUNA Naoaki (JCP)	2h56

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., July 4, 2002	Human Rights Subcommittee Fifth Meeting	Matters concerning the guarantee of fundamental human rights	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: KUSANO Tadayoshi, General Secretary, Japanese Trade Union Confederation (RENGO) Members who put questions to them: ISHIBA Shigeru (LDP) KOBAYASHI Kenji (DPJ) OTA Akihiro (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) KONDO Motohiko (LDP) OIDE Akira (DPJ) HIRAI Takuya (LDP) Members who made comments during discussion: TSUCHIYA Shinako (LDP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) NAKAYAMA Taro (Chairman) KONNO Azuma (DPJ)	2h40
155th Diet Session				
Thurs., Nov. 28, 2002	Human Rights Subcommittee First Meeting	Matters concerning the guarantee of fundamental human rights	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: KARIYA Takehiko, Professor, Graduate School of Education, The University of Tokyo Members who put questions to them: TANIKAWA Kazuo (LDP) KONNO Azuma (DPJ) OTA Akihiro (NK) TAKEYAMA Yuriko (LP) YAMAGUCHI Tomio (JCP) YAMAUCHI Keiko (SDP) INOUE Kiichi (NCP) KONDO Motohiko (LDP) KOBAYASHI Kenji (LDP) KURATA Masatoshi (LDP) Members who made comments during discussion: YAMAUCHI Keiko (SDP) YAMAGUCHI Tomio (JCP) TANIKAWA Kazuo (LDP)	2h37

**b. Subcommittee on Fundamental and Organizational Role of Politics**

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
154th Diet Session				
Thurs., Feb. 14, 2002	Politics Subcommittee First Meeting	Matters concerning the fundamental and organizational role of politics	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: TAKAHASHI Kazuyuki, Professor, Faculty of Law, The University of Tokyo Members who put questions to him: OKUNO Seisuke (LDP) MATSUZAWA Shigefumi (DPJ) SAITO Tetsuo (NK) FUJISHIMA Masayuki (LP) YAMAGUCHI Tomio (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) TANIGAKI Sadakazu (LDP) SHIMA Satoshi (DPJ) NAKAYAMA Masaaki (LDP) Members who made comments during discussion: NAKAMURA Tetsuji (DPJ) OKUNO Seisuke (LDP) SHIMA Satoshi (DPJ) NAKAYAMA Taro (Chairman) YAMAGUCHI Tomio (JCP) MATSUZAWA Shigefumi (DPJ) SAITO Tetsuo (NK) BANNO Yutaka (DPJ) KANEKO Tetsuo (SDP) NAKANO Kansei (Deputy Chairman)	2h56
Thurs., Mar. 14, 2002	Politics Subcommittee Second Meeting	Matters concerning the fundamental and organizational role of politics	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: YAMAGUCHI Jiro, Professor, Graduate School of Law, Hokkaido University Members who put questions to him: NUKAGA Fukushima (LDP) SHIMA Satoshi (DPJ) SAITO Tetsuo (NK) FUJISHIMA Masayuki (LP) YAMAGUCHI Tomio (JCP) KITAGAWA Renko (SDP) INOUE Kiichi (NCP) ITO Kosuke (LDP) BANNO Yutaka (DPJ) OKUNO Seisuke (LDP) Members who made comments during discussion: MATSUZAWA Shigefumi (DPJ) KITAGAWA Renko (SDP) OKUNO Seisuke (LDP) YAMAGUCHI Tomio (JCP) ITO Kosuke (LDP) SAITO Tetsuo (NK) INOUE Kiichi (NCP) NAKAYAMA Taro (Chairman) NAKANO Kansei (Deputy Chairman)	2h58

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Apr. 11, 2002	Politics Subcommittee Third Meeting	Matters concerning the fundamental and organizational role of politics	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: OISHI Makoto, Professor, Kyoto University Members who put questions to him: OKUNO Seisuke (LDP) MATSUZAWA Shigefumi (DPJ) SAITO Tetsuo (NK) FUJISHIMA Masayuki (LP) YAMAGUCHI Tomio (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) NAKAYAMA Masaaki (LDP) BANNO Yutaka (DPJ) ITO Tatsuya (LDP) Members who made comments during discussion: FUJISHIMA Masayuki (LP) NAKAYAMA Taro (Chairman) YAMAGUCHI Tomio (JCP) KANEKO Tetsuo (SDP) NAKANO Kansei (Deputy Chairman) SHIMA Satoshi (DPJ) SAITO Tetsuo (NK)	2h36
Thurs., May 23, 2002	Politics Subcommittee Fourth Meeting	Matters concerning the fundamental and organizational role of politics	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: MATSUI Shigenori, Professor, Graduate School of Law, Osaka University Members who put questions to him: ITO Tatsuya (LDP) SHIMA Satoshi (DPJ) SAITO Tetsuo (NK) FUJISHIMA Masayuki (LP) YAMAGUCHI Tomio (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) NUKAGA Fukushiro (LDP) BANNO Yutaka (DPJ) Members who made comments during discussion: SHIMA Satoshi (DPJ) NAKAYAMA Masaaki (LDP) OKUNO Seisuke (LDP) SENGOKU Yoshito (DPJ) YAMAGUCHI Tomio (JCP) KANEKO Tetsuo (SDP) FUJISHIMA Masayuki (LP)	2h37

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., July 4, 2002	Politics Subcommittee Fifth Meeting	Matters concerning the fundamental and organizational role of politics	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: YAGI Hidetsugu, Associate Professor, Takasaki City University of Economics Members who put questions to him: OKUNO Seisuke (LDP) BANNO Yutaka (DPJ) SAITO Tetsuo (NK) FUJISHIMA Masayuki (LP) YAMAGUCHI Tomio (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) NAKAYAMA Masaaki (LDP) SHIMA Satoshi (DPJ) Member who made comments during discussion: NAKAYAMA Masaaki (LDP)	2h19
155th Diet Session				
Thurs., Nov. 14, 2002	Politics Subcommittee First Meeting	Matters concerning the fundamental and organizational role of politics	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: TAKADA Atsushi, Associate Professor, Faculty of Integrated Human Studies, Kyoto University Members who put questions to him: NAKAYAMA Masaaki (LDP) BANNO Yutaka (DPJ) SAITO Tetsuo (NK) FUJISHIMA Masayuki (LP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) MATSUNAMI Kenshiro (NCP) FUKUI Teru (LDP) SENGOKU Yoshito (DPJ) Members who made comments during discussion: OKUNO Seisuke (LDP) HARUNA Naoaki (JCP) SENGOKU Yoshito (Deputy Chairman)	2h37

**c. Subcommittee on Japan's Role in International Society**

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
154th Diet Session				
Thurs., Feb. 28, 2002	International Society Subcommittee First Meeting	Matters concerning Japan's role in international society	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: MATSUI Yoshiro, Professor, Graduate School of Law, Nagoya University Members who put questions to him: KONDO Motohiko (LDP) SUTO Nobuhiko (DPJ) AKAMATSU Masao (NK) FUJISHIMA Masayuki (LP) YAMAGUCHI Tomio (JCP) OSHIMA Reiko (SDP) NISHIKAWA Taichiro (NCP) HIRAI Takuya (LDP) YAMADA Toshimasa (DPJ) TSUCHIYA Shinako (LDP) Members who made comments during discussion: NAKANO Kansei (Deputy Chairman) YAMAGUCHI Tomio (JCP) HANASHI Nobuyuki (LDP) OSHIMA Reiko (SDP) NAKAYAMA Taro (Chairman) AKAMATSU Masao (NK) YAMADA Toshimasa (DPJ)	2h46
Thurs., Mar. 28, 2002	International Society Subcommittee Second Meeting	Matters concerning Japan's role in international society	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: HATAKEYAMA Noboru, Chairman, Japan External Trade Organization (JETRO) Members who put questions to him: ISHIKAWA Yozo (LDP) NAKAGAWA Masaharu (DPJ) AKAMATSU Masao (NK) TAKEYAMA Yuriko (LP) YAMAGUCHI Tomio (JCP) KANEKO Tetsuo (SDP) NISHIKAWA Taichiro (NCP) HIRAI Takuya (LDP) YAMADA Toshimasa (DPJ) ITO Shintaro (LDP) NAKAGAWA Shoichi (Chairman of the Subcommittee) Members who made comments during discussion: ITO Shintaro (LDP) SUTO Nobuhiko (DPJ) YAMAGUCHI Tomio (JCP) KANEKO Tetsuo (SDP) NAKAMURA Tetsuji (DPJ) HIRAI Takuya (LDP) YAMADA Toshimasa (DPJ)	2h43

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., May 9, 2002	International Society Subcommittee Third Meeting	Matters concerning Japan's role in international society	<p>After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members.</p> <p>Informant: TERASHIMA Jitsuro, President, Mitsui Global Strategic Studies Institute</p> <p>Members who put questions to him: HIRAI Takuya (LDP) NAKAMURA Tetsuji (DPJ) AKAMATSU Masao (NK) FUJISHIMA Masayuki (LP) YAMAGUCHI Tomio (JCP) ABE Tomoko (SDP) INOUE Kiichi (NCP) ISHIKAWA Yozo (LDP) SUTO Nobuhiko (DPJ) TSUCHIYA Shinako (LDP)</p> <p>Members who made comments during discussion: AKAMATSU Masao (NK) NAKAMURA Tetsuji (DPJ) YAMAGUCHI Tomio (JCP) INOUE Kiichi (NCP) NAKAYAMA Taro (Chairman) NAKAGAWA Masaharu (DPJ)</p>	3h01
Thurs., June 6, 2002	International Society Subcommittee Fourth Meeting	Matters concerning Japan's role in international society	<p>After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members.</p> <p>Informant: TAKUBO Tadae, Professor, Faculty of General Policy Studies, Kyorin University</p> <p>Members who put questions to him: KOMURA Masahiko (LDP) YAMADA Toshimasa (DPJ) AKAMATSU Masao (NK) FUJISHIMA Masayuki (LP) YAMAGUCHI Tomio (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) KONDO Motohiko (LDP) SUTO Nobuhiko (DPJ) HIRAI Takuya (LDP)</p> <p>Members who made comments during discussion: KANEKO Tetsuo (SDP) AKAMATSU Masao (NK) FUJISHIMA Masayuki (LP) NAKAYAMA Taro (Chairman)</p>	2h38

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., July 11, 2002	International Society Subcommittee Fifth Meeting	Matters concerning Japan's role in international society	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: NAKAMURA Tamio, Associate Professor, Institute of Social Science, The University of Tokyo Members who put questions to him: KONDO Motohiko (LDP) YAMADA Toshimasa (DPJ) AKAMATSU Masao (NK) FUJISHIMA Masayuki (LP) YAMAGUCHI Tomio (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) ISHIKAWA Yozo (LDP) SUTO Nobuhiko (DPJ) Members who made comments during discussion: AKAMATSU Masao (NK) NAKANO Kansei (Deputy Chairman) NAKAYAMA Taro (Chairman)	2h27
155th Diet Session				
Thurs., Nov. 14, 2002	International Society Subcommittee First Meeting	Matters concerning Japan's role in international society	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: IWAMA Yoko, Associate Professor, National Graduate Institute for Policy Studies Members who put questions to him: YAMAGUCHI Taimei (LDP) YAMADA Toshimasa (DPJ) AKAMATSU Masao (NK) FUJISHIMA Masayuki (LP) YAMAGUCHI Tomio (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) KONDO Motohiko (LDP) NAKAGAWA Masaharu (DPJ) HIRAI Takuya (LDP) Members who made comments during discussion: AKAMATSU Masao (NK) YAMAGUCHI Tomio (JCP) KANEKO Tetsuo (SDP) NAKAYAMA Taro (Chairman) SENGOKU Yoshito (Deputy Chairman) SHIMOJI Mikio (LDP)	2h50



#### d. Subcommittee on Local Autonomy

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
154th Diet Session				
Thurs., Feb. 28, 2002	Local Autonomy Subcommittee First Meeting	Matters concerning local autonomy	After a statement was heard from an informant, questions were put to her; this was followed by discussion among the members. Informant: IWASAKI Mikiko, Professor, University of Tsukuba Members who put questions to her: HANASHI Nobuyuki (LDP) NAKAMURA Tetsuji (DPJ) EDA Yasuyuki (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) HIMORI Fumihiko (SDP) KOIKE Yuriko (NCP) HIRAI Takuya (LDP) TSUTSUI Nobutaka (DPJ) WATANABE Hiromichi (LDP) Members who made comments during discussion: HARUNA Naoaki (JCP) NAKAYAMA Taro (Chairman) MORIOKA Masahiro (LDP) NAGAI Eiji (DPJ) HANASHI Nobuyuki (LDP) NAKAGAWA Masaharu (DPJ) NAKANO Kansei (Deputy Chairman)	2h50
Thurs., Mar. 28, 2002	Local Autonomy Subcommittee Second Meeting	Matters concerning local autonomy	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: MORITA Akira, Professor, Graduate School of Law and Politics, The University of Tokyo Members who put questions to him: ITO Kosuke (LDP) NAKAGAWA Masaharu (DPJ) EDA Yasuyuki (NK) FUJISHIMA Masayuki (LP) HARUNA Naoaki (JCP) YOKOMITSU Katsuhiko (SDP) WATANABE Hiromichi (LDP) NAKAMURA Tetsuji (DPJ) MORIOKA Masahiro (LDP) Members who made comments during discussion: ITO Kosuke (LDP) NAKAMURA Tetsuji (DPJ) HARUNA Naoaki (JCP) NAKAGAWA Masaharu (DPJ) NAGAI Eiji (DPJ) HIRAI Takuya (LDP) YOKOMITSU Katsuhiko (SDP)	2h40

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., May 9, 2002	Local Autonomy Subcommittee Third Meeting	Matters concerning local autonomy	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: JINNO Naohiko, Professor, The University of Tokyo Members who put questions to him: ITO Kosuke (LDP) NAGAI Eiji (DPJ) EDA Yasuyuki (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) MORIOKA Masahiro (LDP) TSUTSUI Nobutaka (DPJ) HIRAI Takuya (LDP) Members who made comments during discussion: KANEKO Tetsuo (SDP) HARUNA Naoaki (JCP) NAGAI Eiji (DPJ)	2h42
Thurs., June 6, 2002	Local Autonomy Subcommittee Fourth Meeting	Matters concerning local autonomy	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: KATAYAMA Yoshihiro, Governor of Tottori Prefecture Members who put questions to him: ITO Kosuke (LDP) NAKAGAWA Masaharu (DPJ) EDA Yasuyuki (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) NISHIKAWA Taichiro (NCP) MORIOKA Masahiro (LDP) NAGAI Eiji (DPJ) WATANABE Hiromichi (LDP) Members who made comments during discussion: NISHIKAWA Taichiro (NCP) NAKANO Kansei (Deputy Chairman) KONNO Azuma (DPJ) ITO Kosuke (LDP) HIRAI Takuya (LDP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) TAKEYAMA Yuriko (LP)	2h56

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., July 11, 2002	Local Autonomy Subcommittee Fifth Meeting	Matters concerning local autonomy	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: KITAGAWA Masayasu, Governor of Mie Prefecture Members who put questions to him: WATANABE Hiromichi (LDP) YAMADA Toshimasa (DPJ) EDA Yasuyuki (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) ITO Kosuke (LDP) NAKAMURA Tetsuji (DPJ) YASUOKA Okiharu (Chairman of the Subcommittee) Members who made comments during discussion: ITO Kosuke (LDP) MORIOKA Masahiro (LDP) NAKANO Kansei (Deputy Chairman) NAKAGAWA Masaharu (DPJ) NAGAI Eiji (DPJ) YASUOKA Okiharu (Chairperson of the Subcommittee) HARUNA Naoaki (JCP)	2h39
155th Diet Session				
Thurs., Nov. 28, 2002	Local Autonomy Subcommittee First Meeting	Matters concerning local autonomy	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: HOSAKA Kunio, Mayor of Shiki City, Saitama Prefecture Members who put questions to him: MORIOKA Masahiro (LDP) TSUTSUI Nobutaka (DPJ) EDA Yasuyuki (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) HIRAI Takuya (LDP) NAKAMURA Tetsuji (DPJ) SATO Tsutomu (LDP) Members who made comments during discussion: HARUNA Naoaki (JCP) NAKAMURA Tetsuji (DPJ) HIRAI Takuya (LDP) NAKAGAWA Masaharu (DPJ) KANEKO Tetsuo (SDP)	2h38

## B. 156th to 159th Diet Session

### a. Subcommittee on Ideal Constitution as Supreme Law

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
156th Diet Session				
Thurs., Feb. 6, 2003	Supreme Law Subcommittee First Meeting	Matters concerning the ideal Constitution as the supreme law (Emperor-as-symbol system)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: TAKAHASHI Hiroshi, Lecturer, Kokugakuin University; Lecturer, Tokyo Keizai University; former staff writer of Kyodo News Members who put questions to him: MORIOKA Masahiro (LDP) BANNO Yutaka (DPJ) AKAMATSU Masao (NK) FUJISHIMA Masayuki (LP) YAMAGUCHI Tomio (JCP) KITAGAWA Renko (SDP) YAMATANI Eriko (NCP) KONDO Motohiko (LDP) OHATA Akihiro (DPJ) HIRAI Takuya (LDP) Members who made comments during discussion: OKUNO Seisuke (LDP) NAKAYAMA Taro (Chairman) YAMAGUCHI Tomio (JCP) KITAGAWA Renko (SDP) AKAMATSU Masao (NK) SENGOKU Yoshito (Deputy Chairman) NAKANO Kansei (DPJ)	2h52
Thurs., Mar. 6, 2003	Supreme Law Subcommittee Second Meeting	Matters concerning the ideal Constitution as the supreme law (Emperor-as-symbol system)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: SONOBE Itsuo, former Justice, Supreme Court Members who put questions to him: HIRAI Takuya (LDP) NAKANO Kansei (DPJ) SAITO Tetsuo (NK) FUJISHIMA Masayuki (LP) YAMAGUCHI Tomio (JCP) KITAGAWA Renko (SDP) INOUE Kiichi (NCP) MORIOKA Masahiro (LDP) BANNO Yutaka (DPJ) KONDO Motohiko (LDP) Members who made comments during discussion: OKUNO Seisuke (LDP) SHIMA Satoshi (DPJ) YAMAGUCHI Tomio (JCP)	2h31

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Apr. 3, 2003	Supreme Law Subcommittee Third Meeting	Matters concerning the ideal Constitution as the supreme law (Procedures for revisions of rigid constitutions)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: TAKAMI Katsutoshi, Senior Specialist, Politics and Parliamentary Affairs Research Service, Research and Legislative Reference Bureau, National Diet Library; Professor Emeritus, School of Law, Hokkaido University NAGAO Ryuichi, Professor, College of Law, Nihon University Members who put questions to them: KONDO Motohiko (LDP) BANNO Yutaka (DPJ) ENDO Kazuyoshi (NK) FUJISHIMA Masayuki (LP) YAMAGUCHI Tomio (JCP) KITAGAWA Renko (SDP) INOUE Kiichi (NCP) HIRAI Takuya (LDP) SHIMA Satoshi (DPJ) MORIOKA Masahiro (LDP) Members who made comments during discussion: FUJISHIMA Masayuki (LP) HIRAI Takuya (LDP) YAMAGUCHI Tomio (JCP) OHATA Akihiro (DPJ) ENDO Kazuyoshi (NK) KITAGAWA Renko (SDP) SENGOKU Yoshito (Deputy Chairman) OKUNO Seisuke (LDP)	3h14
Thurs., May 8, 2003	Supreme Law Subcommittee Fourth Meeting	Matters concerning the ideal Constitution as the supreme law (Meiji Constitution and the Constitution of Japan)	After a statement was heard from an informant, questions were put to him. Informant: BANNO Junji, Professor Emeritus, The University of Tokyo Members who put questions to him: MORIOKA Masahiro (LDP) NAKANO Kansei (DPJ) ENDO Kazuyoshi (NK) FUJISHIMA Masayuki (LP) YAMAGUCHI Tomio (JCP) KITAGAWA Renko (SDP) INOUE Kiichi (NCP) HIRABAYASHI Kozo (LDP) SENGOKU Yoshito (DPJ) HIRAI Takuya (LDP)	2h26

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., July 3, 2003	Supreme Law Subcommittee Fifth Meeting	Matters concerning the ideal Constitution as the supreme law	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: HANABUSA Masamichi, Advisor to the Chairman, Kajima Corporation Members who put questions to him: HIRAI Takuya (LDP) SENGOKU Yoshito (DPJ) ENDO Kazuyoshi (NK) FUJISHIMA Masayuki (LP) HARUNA Naoaki (JCP) KITAGAWA Renko (SDP) INOUE Kiichi (NCP) MORIOKA Masahiro (LDP) NAKANO Kansei (DPJ) HANASHI Nobuyuki (LDP) Members who made comments during discussion: OKUNO Seisuke (LDP) HARUNA Naoaki (JCP) SENGOKU Yoshito (Deputy Chairman)	2h45
157th Diet Session (No meetings were held.)				
158th Diet Session (No subcommittees were set up.)				
159th Diet Session				
Thurs., Feb. 5, 2004	Supreme Law Subcommittee First Meeting	Matters concerning the ideal Constitution as the supreme law (Emperor system)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: YOKOTA Kouichi, Professor, Faculty of Law, Ryutsu Keizai University; Professor Emeritus, Kyushu University Members who put questions to him: MORIOKA Masahiro (LDP) OIDE Akira (DPJ) AKAMATSU Masao (NK) YAMAGUCHI Tomio (JCP) DOI Takako (SDP) SHIMOMURA Hakubun (LDP) HAKARIYA Keiko (DPJ) ONO Shinya (LDP) Members who made comments during discussion: FUNADA Hajime (LDP) YAMAGUCHI Tomio (JCP) ONO Shinya (LDP) OIDE Akira (DPJ) MORIOKA Masahiro (LDP)	2h33

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Mar. 4, 2004	Supreme Law Subcommittee Second Meeting	Matters concerning the ideal Constitution as the supreme law (Systems of direct democracy)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: IGUCHI Shusaku, Associate Professor, Faculty of Human Environment, Osaka Sangyo University Members who put questions to him: FUNADA Hajime (LDP) OIDE Akira (DPJ) AKAMATSU Masao (NK) YAMAGUCHI Tomio (JCP) DOI Takako (SDP) SHIMOMURA Hakubun (LDP) KOBAYASHI Kenji (DPJ) MORIOKA Masahiro (LDP) Members who made comments during discussion: FUNADA Hajime (LDP) YAMAGUCHI Tomio (JCP) NAKAYAMA Taro (Chairman) OIDE Akira (DPJ) MASUKO Teruhiko (DPJ)	2h21
Thurs., Mar. 25, 2004	Supreme Law Subcommittee Third Meeting	Matters concerning the ideal Constitution as the supreme law (Constitutional guarantees)	After an explanation was heard from a representative of the Supreme Court and a statement was heard from an informant, questions were put to them; this was followed by discussion among the members. Informants: TAKESAKI Hironobu, Secretary General, Supreme Court SASADA Eiji, Professor, Graduate School of Law, Hokkaido University Members who put questions to them: NAKAYAMA Taro (Chairman) FURUKAWA Motohisa (DPJ) AKAMATSU Masao (NK) YAMAGUCHI Tomio (JCP) DOI Takako (SDP) ONO Shinya (LDP) YAMAHANA Ikuo (DPJ) SHIMOMURA Hakubun (LDP) Members who made comments during discussion: FUNADA Hajime (LDP) SENGOKU Yoshito (Deputy Chairman) ONO Shinya (LDP) YAMAGUCHI Tomio (JCP) YAMAHANA Ikuo (DPJ) HAKARIYA Keiko (DPJ) DOI Takako (SDP) NAKAYAMA Taro (Chairman)	3h06

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Apr. 22, 2004	Supreme Law Subcommittee Fourth Meeting	Matters concerning the ideal Constitution as the supreme law (The Constitution and international law)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: SAITO Masaaki, Associate Professor, School of Economics, Hokusei Gakuen University Members who put questions to him: ONO Shinya (LDP) TAKEMASA Koichi (DPJ) AKAMATSU Masao (NK) SHIOKAWA Tetsuya (JCP) DOI Takako (SDP) SHIMOMURA Hakubun (LDP) OIDE Akira (DPJ) MORIOKA Masahiro (LDP) Members who made comments during discussion: FUNADA Hajime (LDP) TAKEMASA Koichi (DPJ) DOI Takako (SDP) OIDE Akira (DPJ)	2h30

#### b. Subcommittee on Security and International Cooperation

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
156th Diet session				
Thurs., Feb. 6, 2003	International Cooperation Subcommittee First Meeting	Matters concerning security and international cooperation (States of emergency and the Constitution)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: MORIMOTO Satoshi, Professor, Faculty of International Development, Takushoku University IGARASHI Takayoshi, Professor, Faculty of Law, Hosei University Members who put questions to them: SHIMOJI Mikio (LDP) SUTO Nobuhiko (DPJ) AKAMATSU Masao (NK) FUJISHIMA Masayuki (LP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) KONDO Motohiko (LDP) KUWABARA Yutaka (DPJ) TANIMOTO Tatsuya (LDP) Member who made comments during discussion: NAKAYAMA Taro (Chairman)	2h53



Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Mar. 6, 2003	International Cooperation Subcommittee Second Meeting	Matters concerning security and international cooperation (States of emergency and the Constitution)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: OGAWA Kazuhisa, international politics and military analyst Members who put questions to him: YAMAGUCHI Taimei (LDP) SHIMA Satoshi (DPJ) AKAMATSU Masao (NK) FUJISHIMA Masayuki (LP) HARUNA Naoaki (JCP) IMAGAWA Masami (SDP) INOUE Kiichi (NCP) SHIMOJI Mikio (LDP) SUEMATSU Yoshinori (DPJ) KONDO Motohiko (LDP) Members who made comments during discussion: NAKAYAMA Masaaki (LDP) AKAMATSU Masao (NK) SHIMOJI Mikio (LDP) NAKANO Kansei (DPJ) IMAGAWA Masami (SDP) HARUNA Naoaki (JCP)	2h56
Thurs., Apr. 3, 2003	International Cooperation Subcommittee Third Meeting	Matters concerning security and international cooperation (International cooperation)	After statements were heard from Subcommittee members NODA Takeshi (LDP) and SUTO Nobuhiko (DPJ), questions were put to them, together with comments; this was followed by discussion among the members. Members who put questions or made comments: KONDO Motohiko (LDP) KONNO Azuma (DPJ) AKAMATSU Masao (NK) FUJISHIMA Masayuki (LP) HARUNA Naokai (JCP) IMAGAWA Masami (SDP) Members who made comments during discussion: NAKAYAMA Taro (Chairman) NAKANO Kansei (DPJ) KUWABARA Yutaka (DPJ) NAKAYAMA Masaaki (LDP) KONNO Azuma (DPJ) HARUNA Naoaki (JCP)	2h15

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., May 8, 2003	International Cooperation Subcommittee Fourth Meeting	Matters concerning security and international cooperation (International organizations and the Constitution)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: SUGANAMI Shigeru, President, AMDA International (Association of Medical Doctors of Asia) SATO Yukio, President, The Japan Institute of International Affairs Members who put questions to them: KONDO Motohiko (LDP) KUWABARA Yutaka (DPJ) ENDO Kazuyoshi (NK) FUJISHIMA Masayuki (LP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) TANIMOTO Tatsuya (LDP) SUTO Nobuhiko (DPJ) SHIMOJI Mikio (LDP) NAKAYAMA Taro (Chairman) Members who made comments during discussion: NAKAYAMA Masaaki (LDP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) NAKAGAWA Shoichi (LDP) SENGOKU Yoshito (Deputy Chairman)	3h27
Thurs., July 3, 2003	International Cooperation Subcommittee Fifth Meeting	Matters concerning security and international cooperation (Article 9 of the Constitution)	After statements were heard from Subcommittee members KONDO Motohiko (LDP) and FUJII Hirohisa (LP), questions were put to them, together with comments; this was followed by discussion among the members. Members who put questions or made comments: TANIKAWA Kazuo (LDP) KONNO Azuma (DPJ) ENDO Kazuyoshi (NK) HARUNA Naoaki (JCP) UEDA Munenori (SDP) INOUE Kiichi (NCP) Members who made comments during discussion: SENGOKU Yoshito (Deputy Chairman) KONDO Motohiko (LDP) ENDO Kazuyoshi (NK) INOUE Kiichi (NCP) SUTO Nobuhiko (DPJ) NAKANO Kansei (DPJ) UEDA Munenori (SDP) SHIMOJI Mikio (LDP) HARUNA Naoaki (JCP) NAKAYAMA Masaaki (LDP) HANASHI Nobuyuki (LDP) KUWABARA Yutaka (DPJ) FUJISHIMA Masayuki (LP) NAKAYAMA Taro (Chairman)	3h01
157th Diet Session (No meetings were held.)				
158th Diet Session (No subcommittees were set up.)				

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
159th Diet Session				
Thurs., Feb. 5 2004	International Cooperation Subcommittee First Meeting	Matters concerning security and international cooperation (Article 9 of the Constitution)	After statements were heard from Subcommittee members NAKATANI Gen (LDP) and MATSUMOTO Takeaki (DPJ), questions were put to them, together with comments; this was followed by discussion among the members. Members who put questions or made comments: OMURA Hideaki (LDP) TAKEMASA Koichi (DPJ) FUKUSHIMA Yutaka (NK) YAMAGUCHI Tomio (JCP) DOI Takako (SDP) Members who made comments during discussion: KONO Taro (LDP) TOKAI Kisaburo (LDP) ITO Kosuke (LDP) YAMAGUCHI Tomio (JCP) TANAKA Makiko (DPJ) DOI Takako (SDP) MATSUMOTO Takeaki (DPJ) TAKEMASA Koichi (DPJ) NAKATANI Gen (LDP) OMURA Hideaki (LDP)	2h28
Thurs., Mar. 4, 2004	International Cooperation Subcommittee Second Meeting	Matters concerning security and international cooperation (Integration of nation-states, accession to international organizations, and the accompanying transfer of sovereign powers)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: Bernhard ZEPTER, Ambassador and Head of Delegation, European Commission in Japan Members who put questions to him: NAKAYAMA Taro (Chairman) SENGOKU Yoshito (Deputy Chairman) SAITO Tetsuo (NK) YAMAGUCHI Tomio (JCP) DOI Takako (SDP) Members who made comments during discussion: NAKATANI Gen (LDP) ITO Kosuke (LDP) TAKEMASA Koichi (DPJ) KUSUDA Daizo (DPJ) YAMAGUCHI Tomio (JCP) SENGOKU Yoshito (Deputy Chairman) DOI Takako (SDP) NAKAYAMA Taro (Chairman)	3h39

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Mar. 25, 2004	International Cooperation Subcommittee Third Meeting	Matters concerning security and international cooperation (States of emergency and the Constitution)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: KOBARI Tsukasa, Professor, Faculty of Policy Studies, Iwate Prefectural University MATSUURA Kazuo, Associate Professor, National Defense Academy Members who put questions to them: ITO Kosuke (LDP) MATSUMOTO Takeaki (DPJ) FUKUSHIMA Yutaka (NK) YAMAGUCHI Tomio (JCP) TOMON Mitsuko (SDP) KONO Taro (LDP) OIDE Akira (DPJ) HIRAI Takuya (LDP) Members who made comments during discussion: HIRAI Takuya (LDP) TOKAI Kisaburo (LDP) OIDE Akira (DPJ) TOMON Mitsuko (SDP) MATSUMOTO Takeaki (DPJ) NAKAYAMA Taro (Chairman)	3h02
Thurs., Apr. 22, 2004	International Cooperation Subcommittee Fourth Meeting	Matters concerning security and international cooperation (Regional security)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: KIKUCHI Tsutomu, Professor, School of International Politics, Economics and Business, Aoyama Gakuin University Members who put questions to him: ITO Kosuke (LDP) SHINOHARA Takashi (DPJ) FUKUSHIMA Yutaka (NK) SHIOKAWA Tetsuya (JCP) DOI Takako (SDP) HIRAI Takuya (LDP) KUSUDA Daizo (DPJ) NAKATANI Gen (LDP) Members who made comments during discussion: OMURA Hideaki (LDP) DOI Takako (SDP) SHINOHARA Takashi (DPJ) OIDE Akira (DPJ)	2h23

**c. Subcommittee on Guarantee of Fundamental Human Rights**

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
156th Diet session				
Thurs., Feb. 13, 2003	Human Rights Subcommittee First Meeting	Matters concerning the guarantee of fundamental human rights (The right to receive an education)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: TORII Yasuhiko, Executive Advisor for Academic Affairs, Keio University; President, The Promotion and Mutual Aid Corporation for Private Schools of Japan OKAMURA Ryoji, Professor, Waseda University Members who put questions to them: KURATA Masatoshi (LDP) MIZUSHIMA Hiroko (DPJ) OTA Akihiro (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) YAMAUCHI Keiko (SDP) INOUE Kiichi (NCP) NODA Seiko (LDP) KONNO Azuma (DPJ) NAGASE Jinen (LDP) Members who made comments during discussion: HIRABAYASHI Kozo (LDP) HARUNA Naoaki (JCP) KOBAYASHI Kenji (DPJ) YAMAUCHI Keiko (SDP) SENGOKU Yoshito (Deputy Chairman) MIZUSHIMA Hiroko (DPJ) KONNO Azuma (DPJ)	3h27
Thurs., Mar. 13, 2003	Human Rights Subcommittee Second Meeting	Matters concerning the guarantee of fundamental human rights (Fundamental labor rights)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: SUGENO Kazuo, Professor, The University of Tokyo FUJII Ryuko, member, Cabinet Office Information Disclosure Review Board; former Director-General, Women's Bureau, Ministry of Labour Members who put questions to them: NODA Takeshi (LDP) KOBAYASHI Kenji (DPJ) OTA Akihiro (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) HIRABAYASHI Kozo (LDP) MIZUSHIMA Hiroko (DPJ) TANIMOTO Tatsuya (LDP) Members who made comments during discussion: KURATA Masatoshi (LDP) HARUNA Naoaki (JCP) HIRABAYASHI Kozo (LDP) KANEKO Tetsuo (SDP) KONNO Azuma (DPJ) OIDE Akira (Subcommittee Chairperson)	3h05

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., May 15, 2003	Human Rights Subcommittee Third Meeting	Matters concerning the guarantee of fundamental human rights (Right to know, right of access, right to privacy)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: HORIBE Masao, Professor, Faculty of Law, Chuo University Members who put questions to him: KURATA Masatoshi (LDP) KOBAYASHI Kenji (DPJ) OTA Akihiro (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) KITAGAWA Renko (SDP) TANIMOTO Tatsuya (LDP) KONNO Azuma (DPJ) NAGASE Jinen (LDP) INOUE Kiichi (NCP) Members who made comments during discussion: HARUNA Naoaki (JCP) KONNO Azuma (DPJ) HIRABAYASHI Kozo (LDP) KITAGAWA Renko (SDP) KURATA Masatoshi (LDP) NAKAYAMA Taro (Chairman)	2h58
Thurs., June 5, 2003	Human Rights Subcommittee Fourth Meeting	Matters concerning the guarantee of fundamental human rights (Fundamental human rights and the public welfare)	After a statement was heard from an informant, questions were put to him. Informant: KOBAYASHI Masaya, Associate Professor, Faculty of Law and Economics, Chiba University Members who put questions to him: HANASHI Nobuyuki (LDP) MIZUSHIMA Hiroko (DPJ) OTA Akihiro (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) KITAGAWA Renko (SDP) YAMATANI Eriko (NCP) HIRABAYASHI Kozo (LDP) KONNO Azuma (DPJ) NODA Takeshi (LDP)	2h25

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., July 10, 2003	Human Rights Subcommittee Fifth Meeting	Matters concerning the guarantee of fundamental human rights (Social security and the Constitution)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: NAKAMURA Mutsuo, President, Hokkaido University OSHIO Takashi, Associate Professor, Faculty of Education, Tokyo Gakugei University Members who put questions to them: KURATA Masatoshi (LDP) MIZUSHIMA Hiroko (DPJ) OTA Akihiro (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) KITAGAWA Renko (SDP) INOUE Kiichi (NCP) NODA Seiko (LDP) SENGOKU Yoshito (DPJ) TANIMOTO Tatsuya (LDP) Members who made comments during discussion: HARUNA Naoaki (JCP) HANASHI Nobuyuki (LDP) SENGOKU Yoshito (Deputy Chairman) TAKEYAMA Yuriko (LP) KURATA Masatoshi (LDP)	2h58
157th Diet Session (No meetings were held.)				
158th Diet Session (No subcommittees were set up.)				
159th Diet Session				
Thurs., Feb. 19, 2004	Human Rights Subcommittee First Meeting	Matters concerning the guarantee of fundamental human rights (Equality under the law)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: UCHINO Masayuki, Professor, Office for the Establishment of Chuo Law School, Chuo University Members who put questions to him: ONO Shinya (LDP) RYU Hirofumi (DPJ) OTA Akihiro (NK) YAMAGUCHI Tomio (JCP) DOI Takako (SDP) MATSUNO Hirokazu (LDP) TSUJI Megumu (DPJ) FUNADA Hajime (LDP) Members who made comments during discussion: NAKAYAMA Taro (Chairman) SONODA Yasuhiro (DPJ) TANAHASHI Yasufumi (LDP) ONO Shinya (LDP) MURAKOSHI Hirotami (DPJ) YAMAGUCHI Tomio (JCP) KURATA Masatoshi (LDP) DOI Takako (SDP) FUNADA Hajime (LDP)	2h44

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Mar. 11, 2004	Human Rights Subcommittee Second Meeting	Matters concerning the guarantee of fundamental human rights (Civil and political liberties)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: NOSAKA Yasuji, Dean, Department of Law, Gakushuin University Members who put questions to him: TANAHASHI Yasufumi (LDP) RYU Hirofumi (DPJ) OTA Akihiro (NK) YAMAGUCHI Tomio (JCP) DOI Takako (SDP) KURATA Masatoshi (LDP) MURAKOSHI Hirotami (DPJ) ONO Shinya (LDP) Members who made comments during discussion: TSUJI Megumu (DPJ) ONO Shinya (LDP) FUNADA Hajime (LDP) DOI Takako (SDP) MATSUNO Hirokazu (LDP) SONODA Yasuhiro (DPJ) NAKAYAMA Taro (Chairman)	2h47
Thurs., Apr. 1, 2004	Human Rights Subcommittee Third Meeting	Matters concerning the guarantee of fundamental human rights (Public welfare)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: MATSUMOTO Kazuhiko, Professor, Graduate School of Law, Osaka University Members who put questions to him: HIRAI Takuya (LDP) RYU Hirofumi (DPJ) OTA Akihiro (NK) YAMAGUCHI Tomio (JCP) DOI Takako (SDP) MATSUNO Hirokazu (LDP) SONODA Yasuhiro (DPJ) FUNADA Hajime (LDP) Members who made comments during discussion: FUNADA Hajime (LDP) SONODA Yasuhiro (DPJ) ONO Shinya (LDP) DOI Takako (SDP) NAKAYAMA Taro (Chairman)	2h31



Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., May 20, 2004	Human Rights Subcommittee Fourth Meeting	Matters concerning the guarantee of fundamental human rights (Economic, social and cultural freedoms)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: NORO Mitsuru, Professor, School of Law, Kansai University Members who put questions to him: ONO Shinya (LDP) MURAKOSHI Hirotami (DPJ) OTA Akihiro (NK) YOSHII Hidekatsu (JCP) DOI Takako (SDP) FUNADA Hajime (LDP) SONODA Yasuhiro (DPJ) HIRAI Takuya (LDP) Members who made comments during discussion: KURATA Masatoshi (LDP) FUNADA Hajime (LDP) SONODA Yasuhiro (DPJ) YOSHII Hidekatsu (JCP)	2h23
Thurs., May 27, 2004	Human Rights Subcommittee Fifth Meeting	Matters concerning the guarantee of fundamental human rights (Rights during criminal proceedings and the human rights of crime victims)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: TAGUCHI Morikazu, Professor, School of Law, Waseda University; Professor, Waseda Law School Members who put questions to him: KURATA Masatoshi (LDP) TSUJI Megumu (DPJ) OTA Akihiro (NK) YAMAGUCHI Tomio (JCP) TERUYA Kantoku (SDP) MATSUNO Hirokazu (LDP) KANETA Seiichi (DPJ) TANAHASHI Yasufumi (LDP) Members who made comments during discussion: MURAKOSHI Hirotami (DPJ) TANAHASHI Yasufumi (LDP) YAMAGUCHI Tomio (JCP) KANETA Seiichi (DPJ) FUNADA Hajime (LDP) TERUYA Kantoku (SDP) TSUJI Megumu (DPJ) KURATA Masatoshi (LDP) NAKAYAMA Taro (Chairman)	2h35

**d. Subcommittee on Ideal Government and Organizations**

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
156th Diet session				
Thurs., Feb. 13, 2003	Government Subcommittee First Meeting	Matters concerning ideal government and organizations (Local autonomy)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: MASUDA Hiroya, Governor of Iwate Prefecture Members who put questions to him: TANIKAWA Kazuo (LDP) NAKAGAWA Masaharu (DPJ) SAITO Tetsuo (NK) TAKEYAMA Yuriko (LP) YAMAGUCHI Tomio (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) SATO Tsutomu (LDP) FURUKAWA Motohisa (DPJ) FUKUI Teru (LDP) Members who made comments during discussion: ITO Kosuke (LDP) KANEKO Tetsuo (SDP) TANIKAWA Kazuo (LDP) FURUKAWA Motohisa (DPJ) YAMAGUCHI Tomio (JCP) SAITO Tetsuo (NK) NAKAYAMA Taro (Chairman)	2h54
Thurs., Mar. 13, 2003	Government Subcommittee Second Meeting	Matters concerning ideal government and organizations (Local autonomy)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: ABE Manao, Mayor of Kameda Town, Niigata Prefecture Members who put questions to him: FUKUI Teru (LDP) FURUKAWA Motohisa (DPJ) SAITO Tetsuo (NK) TAKEYAMA Yuriko (LP) YAMAGUCHI Tomio (JCP) KITAGAWA Renko (SDP) INOUE Kiichi (NCP) SATO Tsutomu (LDP) NAKAGAWA Masaharu (DPJ) ITO Kosuke (LDP) Members who made comments during discussion: SHIMA Satoshi (DPJ) TANIKAWA Kazuo (LDP)	2h26

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., May 15, 2003	Government Subcommittee Third Meeting	Matters concerning ideal government and organizations (The judicial system and a constitutional court)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: TSUNO Osamu, attorney at law; former Director-General, Cabinet Legislation Bureau YAMAGUCHI Shigeru, former Chief Justice, Supreme Court Members who put questions to them: TANIKAWA Kazuo (LDP) SUEMATSU Yoshinori (DPJ) SAITO Tetsuo (NK) TAKEYAMA Yuriko (LP) YAMAGUCHI Tomio (JCP) KANEKO Tetsuo (SDP) SATO Tsutomu (LDP) NAKAGAWA Masaharu (DPJ) FUKUI Teru (LDP) INOUE Kiichi (NCP) Members who made comments during discussion: NODA Takeshi (LDP) FURUKAWA Motohisa (DPJ) KANEKO Tetsuo (SDP)	3h15
Thurs., June 5, 2003	Government Subcommittee Fourth Meeting	Matters concerning ideal government and organizations (Public finances)	After statements were heard from informants, questions were put to them; this was followed by discussion among the members. Informants: KUBOTA Yoshio, Associate Professor, Department of Law, Faculty of Law, Kobe Gakuin University SAKURAUCHI Fumiki, Associate Professor, Niigata University Members who put questions to them: HANASHI Nobuyuki (LDP) FURUKAWA Motohisa (DPJ) SAITO Tetsuo (NK) TAKEYAMA Yuriko (LP) YAMAGUCHI Tomio (JCP) KANEKO Tetsuo (SDP) INOUE Kiichi (NCP) ITO Kosuke (LDP) SHIMA Satoshi (DPJ) FUKUI Teru (LDP) Members who made comments during discussion: TANIKAWA Kazuo (LDP) SENGOKU Yoshito (Deputy Chairman) FURUKAWA Motohisa (DPJ) NAKAYAMA Taro (Chairman) SUGIURA Seiken (Subcommittee Chairperson)	3h15

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., July 10, 2003	Government Subcommittee Fifth Meeting	Matters concerning ideal government and organizations (Relationship between the Diet and the Cabinet)	An explanation was heard from an officer of the National Diet Library. Officer of the National Diet Library: TAKAMI Katsutoshi, Senior Specialist, Politics and Parliamentary Affairs Research Service, Research and Legislative Reference Bureau, National Diet Library After statements were heard from Subcommittee members FURUKAWA Motohisa (DPJ) and INOUE Kiichi (NCP), questions were put to them, together with comments; this was followed by discussion among the members. Members who put questions or made comments TANIKAWA Kazuo (LDP) NAKAGAWA Masaharu (DPJ) SAITO Tetsuo (NK) TAKEYAMA Yuriko (LP) HARUNA Naoaki (JCP) KANEKO Tetsuo (SDP) Members who made comments during discussion: NAKAYAMA Taro (Chairman) FURUKAWA Motohisa (DPJ) INOUE Kiichi (NCP) HANASHI Nobuyuki (LDP) ITO Kosuke (LDP) HARUNA Naoaki (JCP) SENGOKU Yoshito (Deputy Chairman)	2h35
157th Diet Session (No meetings were held.)				
158th Diet Session (No subcommittees were set up.)				
159th Diet Session				
Thurs., Feb. 19, 2004	Government Subcommittee First Meeting	Matters concerning ideal government and organizations (Judicial system)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: ICHIKAWA Masato, Professor, College of Law, Ritsumeikan University Members who put questions to him: FUTADA Koji (LDP) TSUJI Megumu (DPJ) SAITO Tetsuo (NK) YAMAGUCHI Tomio (JCP) YAMAMOTO Kiyohiro (SDP) NAGAOKA Yoji (LDP) SUZUKI Katsumasa (DPJ) MORIYAMA Mayumi (LDP) Members who made comments during discussion: HAYAKAWA Chuko (LDP) NAKAYAMA Taro (Chairman) KANO Michihiko (DPJ) SUZUKI Katsumasa (DPJ)	2h24

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., Mar. 11, 2004	Government Subcommittee Second Meeting	Matters concerning ideal government and organizations (Human rights commissions and other quasi-judicial bodies; the ombudsman system)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: UTSUNOMIYA Fukashi, Professor, School of Political Science and Economics, Tokai University Members who put questions to him: SUGIURA Seiken (LDP) KANO Michihiko (DPJ) FUKUSHIMA Yutaka (NK) YAMAGUCHI Tomio (JCP) ABE Tomoko (SDP) TSUJI Megumu (DPJ) ETO Seishiro (LDP) Members who made comments during discussion: FURUYA Keiji (LDP) SUGIURA Seiken (LDP) GEMBA Koichiro (DPJ) TSUJI Megumu (DPJ) ABE Tomoko (SDP) KANO Michihiko (DPJ) SUZUKI Katsumasa (DPJ) NAGAOKA Yoji (LDP)	2h35
Thurs., Apr. 1, 2004	Government Subcommittee Third Meeting	Matters concerning ideal government and organizations (Public finances)	After statements were heard from informants, questions were put to them. Informants: USUI Mitsuaki, Professor, Graduate School of Law and Politics, The University of Tokyo HIROI Yoshinori, Professor, Faculty of Law and Economics, Chiba University Members who put questions to them: NAGAOKA Yoji (LDP) GEMBA Koichiro (DPJ) SAITO Tetsuo (NK) YAMAGUCHI Tomio (JCP) DOI Takako (SDP) MORIYAMA Mayumi (LDP) TSUMURA Keisuke (DPJ) IWANAGA Mineichi (LDP)	2h20
Thurs., May 20, 2004	Government Subcommittee Fourth Meeting	Matters concerning ideal government and organizations (The ideal division of powers between the central and local governments)	After a statement was heard from an informant, questions were put to him; this was followed by discussion among the members. Informant: TSUJIYAMA Takanobu, Senior Research Fellow, Japan Research Institute for Local Government Members who put questions to him: NODA Takeshi (LDP) GEMBA Koichiro (DPJ) SAITO Tetsuo (NK) YAMAGUCHI Tomio (JCP) TERUYA Kantoku (SDP) FUTADA Koji (LDP) INAMI Tetsuo (DPJ) NAGAOKA Yoji (LDP) Members who made comments during discussion: TERUYA Kantoku (SDP) MASUKO Teruhiko (DPJ) SAITO Tetsuo (NK) NAKAYAMA Taro (Chairman) TSUJI Megumu (DPJ)	2h19

Date	Meeting	Meeting Agenda	Proceedings (Members who put questions or made comments listed in order of speaking, excluding duplication)	Duration
Thurs., May 27, 2004	Government Subcommittee Fifth Meeting	Matters concerning ideal government and organizations (Bicameralism and the audit system)	After explanations were heard from an official of the Board of Audit and a statement was heard from another informant, questions were put to them; this was followed by discussion among the members. Informants: MORISHITA Nobuaki, President, Board of Audit TADANO Masahito, Associate Professor, Graduate School of Law, Hitotsubashi University Members who put questions to them: NAKAYAMA Taro (Chairman) KANO Michihiko (DPJ) SAITO Tetsuo (NK) YAMAGUCHI Tomio (JCP) DOI Takako (SDP) IWANAGA Mineichi (LDP) MABUCHI Sumio (DPJ) FURUYA Keiji (LDP) Members who made comments during discussion: TSUJI Megumu (DPJ) YAMAGUCHI Tomio (JCP) FUNADA Hajime (LDP) DOI Takako (SDP)	2h47

### (3) Total Duration of Meetings

Research Commission on the Constitution	222h 48min
Open Hearings	25h 45min
Local Open Hearings	32h 16min
Subcommittee on Guarantee of Fundamental Human Rights	44h 15min
Subcommittee on Fundamental and Organizational Role of Politics	16h 03min
Subcommittee on Japan's Role in International Society	16h 25min
Subcommittee on Local Autonomy	16h 25min
Subcommittee on Ideal Constitution as Supreme Law	24h 18min
Subcommittee on Security and International Cooperation	26h 04min
Subcommittee on Ideal Government and Organizations	26h 50min

Grand Total: 451h 09min

Note: The total duration of meetings and the grand total do not include the duration of the meeting held on April 15, 2005, in the 162nd Diet Session.

## 9) Opinions Received in the Commission's Public Forum

(1) Total Opinions Received: 2,541 (as of March 31, 2005)

### (2) Opinions by Age Group

Teens	20's	30's	40's	50's	60's	70's	80's	90's	D/K
13	63	35	33	40	276	91	30	6	1,954

### (3) Opinions by Medium (Monthly)

	FAX	Postcard	Letter	E-Mail	Total
February 2000	12	8	23	0	43
March	21	32	51	1	105
April	9	4	10	15	38
May	12	13	21	18	64
June	3	6	6	7	22
July	5	2	7	1	15
August	3	2	12	11	28
September	6	62	4	3	75
October	3	147	3	3	156
November	5	84	12	16	117
December	3	91	10	12	116
January 2001	5	81	8	4	98
February	3	62	5	4	74
March	4	81	13	7	105
April	8	35	10	3	56
May	9	43	5	6	63
June	10	17	13	2	42
July	1	10	9	3	23
August	6	11	10	4	31
September	4	7	7	0	18
October	10	178	6	3	197
November	5	45	7	5	62
December	4	9	3	2	18
January 2002	4	8	4	0	16
February	3	12	0	1	16
March	3	4	2	3	12
April	24	20	44	1	89
May	6	7	30	3	46
June	4	3	5	2	14
July	6	3	15	2	26

	FAX	Postcard	Letter	E-Mail	Total
August	4	1	4	1	10
September	3	1	4	0	8
October	3	3	4	1	11
November	4	14	6	2	26
December	5	39	5	2	51
January 2003	4	26	5	4	39
February	5	39	8	4	56
March	5	73	5	1	84
April	3	7	7	1	18
May	5	19	10	1	35
June	3	2	2	3	10
July	6	1	6	1	14
August	8	7	0	2	17
September	6	19	3	0	28
October	6	9	0	2	17
November	9	50	1	2	62
December	7	1	0	2	10
January 2004	7	6	3	1	17
February	4	4	5	1	14
March	7	4	12	2	25
April	7	4	2	1	14
May	7	2	5	1	15
June	3	2	3	0	8
July	3	1	5	2	11
August	7	0	2	2	11
September	5	3	5	1	14
October	4	1	7	2	14
November	7	0	8	16	31
December	6	0	2	13	21
January 2005	10	3	4	5	22
February	8	1	8	5	22
March	10	0	5	6	21
Total	382	1,429	501	229	2,541



**(4) Opinions by Subject (Pro: in favor of revision; Con: against revision)<sup>1</sup>**

	Pro	Con		Pro	Con
Preamble	36	189	Ch. 6: Judiciary	16	3
Ch.1: The Emperor	87	19	Ch.7: Finance	14	3
Ch.2: Renunciation of War	115	1,484	Ch.8: Local Self-Government	12	3
Ch.3: Rights and Duties of the People	54	18	Ch.9: Amendments	18	7
Ch. 4: The Diet	39	3	Ch.10: Supreme Law	9	4
Ch.5: The Cabinet	32	8	Other	104	1,231

**(5) Opinions by Position<sup>2</sup>**

Revise the Constitution (Pro)	Maintain the Constitution as is (Con)
294	1,539

## Notes:

1. One communication counts as more than one opinion if the person expresses views on discrete subjects in one communication. For example, one communication counts as two opinions if the person is against revising Article 9 but in favor of having provisions for new human rights.
2. One communication counts as only one opinion even though the person expresses one view for or against revision on more than one subject. For example, one communication counts as one if a letter expresses support for constitutional revision in favor of provisions for new human rights and popular election of the prime minister.
3. Totals in (4) may not add up to those in (5), because of 1. and 2. above.
4. Figures may not add up to the total received in (1), because of unclassifiable and incomprehensible opinions, in addition to as explained in 1. to 3. above.

### 10) Numbers of Visitors to the Commission's Website

		Visitors	
		Japanese Website	English Website
2000	March	2,718 (88)	- (-)
	April	3,853 (128)	- (-)
	May	8,332 (269)	- (-)
	June	4,172 (139)	- (-)
	July	4,047 (131)	344 (12)
	August	3,321 (107)	393 (13)
	September	3,192 (106)	337 (11)
	October	4,056 (131)	443 (14)
	November	4,955 (165)	577 (19)
	December	4,562 (147)	228 (7)
	<b>Total</b>	<b>43,208 (141)</b>	<b>2,322 (13)</b>
2001	January	3,826 (123)	181 (6)
	February	4,297 (153)	286 (10)
	March	3,651 (118)	265 (9)
	April	3,367 (112)	274 (9)
	May	5,957 (192)	331 (11)
	June	5,190 (173)	315 (11)
	July	3,482 (112)	256 (8)
	August	3,101 (100)	263 (8)
	September	2,721 (91)	250 (8)
	October	3,833 (124)	376 (12)
	November	4,103 (137)	424 (14)
	December	3,097 (100)	321 (10)
	<b>Total</b>	<b>46,625 (128)</b>	<b>3,542 (10)</b>
2002	January	4,240 (137)	392 (13)
	February	4,326 (155)	429 (15)
	March	4,478 (144)	421 (14)
	April	5,365 (179)	547 (18)
	May	5,294 (171)	412 (13)
	June	4,795 (160)	373 (12)
	July	5,607 (181)	449 (14)
	August	3,161 (102)	515 (17)
	September	3,316 (111)	489 (16)
	October	5,154 (166)	543 (18)
	November	7,232 (241)	567 (19)
	December	4,453 (144)	500 (16)
	<b>Total</b>	<b>57,421 (157)</b>	<b>5,637 (15)</b>

		Visitors	
		Japanese Website	English Website
2003	January	5,989 (193)	457 (15)
	February	5,219 (186)	552 (20)
	March	4,387 (142)	814 (26)
	April	4,627 (154)	807 (27)
	May	8,591 (277)	662 (21)
	June	5,953 (198)	451 (15)
	July	5,483 (177)	456 (15)
	August	3,486 (112)	586 (19)
	September	4,055 (135)	566 (19)
	October	6,083 (196)	672 (22)
	November	6,763 (225)	801 (27)
	December	4,542 (147)	697 (22)
	<b>Total</b>	<b>65,178 (179)</b>	<b>7,521 (21)</b>
2004	January	8,023 (259)	635 (20)
	February	6,730 (232)	768 (26)
	March	6,440 (208)	822 (27)
	April	6,447 (215)	643 (21)
	May	7,693 (248)	779 (25)
	June	7,245 (242)	736 (25)
	July	6,393 (206)	582 (19)
	August	6,477 (209)	837 (27)
	September	5,572 (186)	621 (21)
	October	6,346 (205)	763 (25)
	November	7,819 (261)	838 (28)
	December	6,314 (204)	853 (28)
	<b>Total</b>	<b>81,499 (223)</b>	<b>8,877 (24)</b>
2005	January	7,524 (243)	686 (22)
	February	9,373 (335)	724 (26)
	March	7,811 (252)	809 (26)
	<b>Total</b>	<b>24,708 (275)</b>	<b>2,219 (25)</b>
<b>Total</b>		<b>318,639 (172)</b>	<b>30,118 (17)</b>

Note: Counted from March 2000 to March 2005.

Numbers in parenthesis indicate the average number of visitors per day.

## 11) Documents Distributed at the Commission Meetings

### (1) Summaries of Statement

#### A. Research Commission on the Constitution Meetings

<b>Members</b>	<b>Document Title</b>
MATSUZAWA Shigefumi (DPJ)	Discussion on the Creation of a New Democratic Constitution
SUTO Nobuhiko (DPJ)	Comments at the Research Commission on the Constitution
HANASHI Nobuyuki (LDP)	Summary of the Initial Round of Comments in the Brainstorming Discussion Held on July 24, 2003
SENGOKU Yoshito (DPJ)	Brief Comments regarding the Constitutional Debate in the 156th Diet Session
KANEKO Tetsuo (SDP)	Summary of Statement at the Research Commission on the Constitution Held on July 24, 2003
SENGOKU Yoshito (DPJ)	An Unconstitutional Lawsuit against the Bipartisan Campaign Reform Act
YASUOKA Okiharu (LDP)	“Summary of the Issues” by the LDP Project Team for Constitutional Amendment
EDANO Yukio (DPJ)	“Toward Creation of the Constitution,” DPJ’s Interim Report on its Constitutional Proposal (Summary)
OTA Akihiro (NK)	“Summary of the Issues” by NK Research Committee on the Constitution
<b>Informants</b>	<b>Document Title</b>
NISHI Osamu	An Informant’s View on the Formulating Process of the Constitution of Japan
AOYAMA Takenori	Issues Relating to the Formulation of the Constitution of Japan
KOSEKI Shoichi	Understanding the Formulating Process of the 1947 Constitution of Japan: Approaches to an “Imposed” Constitution
MURATA Koji	The Political Process of Formulating the 1947 Constitution of Japan
HASEGAWA Masayasu	Constitutions: A Brief History
TAKAHASHI Masatoshi	The Historical Circumstances Surrounding the Formulation of the 1947 Constitution of Japan and a Jurisprudential Analysis of the Constitution
KITAOKA Shinichi	The Constitution of Japan in Historical Context
SHINDO Eiichi	The Formulation of the 1947 Constitution of Japan and Its Global Significance: The Implications of the Constitution
IOKIBE Makoto	The Formulation of the Constitution of Japan and Its Aftermath
AMAKAWA Akira	“Local Self-Government” in Chapter VIII of the Constitution: Its Drafting Process and the Political Atmosphere of the Day
TANAKA Akihiko	A Vision for Japan in the 21st Century
SONO Ayako	A Vision for Japan in the 21st Century
KONDO Motohiro	The Search for a Self-Portrait of Japan and the Japanese in the Postwar Public Debate
ICHIMURA Shinichi	A Vision for Japan in the 21st Century: Japan and Its Constitutional Issues in the World of the 21st Century
SASAKI Takeshi	A Vision for Japan in the 21st Century: Drawn from Japan’s Political Outlook
KOBAYASHI Takeshi	A Vision for Japan in the 21st Century That This Commission Should Consider
SAKURAI Yoshiko	A Vision for Japan in the 21st Century
MATSUMOTO Kenichi	A People’s Constitution and A “Third Opening” of Japan to the World
WATANABE Shoichi	A Vision for Japan in the 21st Century
MURAKAMI Yoichiro	Japanese Society in the 21st Century: From the Viewpoint of the History of Science and Technology
NISHIZAWA Junichi	A Vision for Japan in the 21st Century
TAKAHASHI Susumu	Globalization and the Nation-State
HAYASHIZAKI Yoshihide	A Vision for Japan in the 21st Century: International Competitiveness and Technological Clout
OGAWA Naohiro	Ultra-Long-Term Projections for Japan from the Perspective of Population Composition
SON Masayoshi	A Vision for Japan in the 21st Century and the Constitution

<b>Informants</b>	<b>Document Title</b>
SAKAMOTO Takao	A Vision for Japan in the 21st Century: How the State Should Be Viewed
KANG Sanjung	A Vision for Japan in the 21st Century: Toward Creating a “Common House” in Northeast Asia
KIMURA Yoko	A Vision for Japan in the 21st Century: Ageing Society, Social Security, and the Decentralization of Government
OHKUMA Yoshikazu	A Vision for Japan in the 21st Century: Central-Local Government Relationship
ONUMA Yasuyuki	(On Amending the Constitution)
MORIMOTO Satoshi	A Vision for Japan in the 21st Century
HASEBE Yasuo	(On Popular Election of the Prime Minister)
MORITA Akira	Issues Concerning Government Organization: the Cabinet
MUSHAKOJI Kinhide	Issues Pertaining to Human Rights Protection in Japan and Possible Solutions to Those Issues
HATAJIRI Tsuyoshi	Establishing a Constitutional Court as Possible Option
KIMURA Rihito	The Progress of Science and Technology and the Constitution: From a Bioethics Perspective

## **B. Open Hearings**

<b>Speakers</b>	<b>Document Title</b>
INOBUCHI Kuniko	Summary of Statement
KAWAMOTO Yuko	The Constitution and the Japanese Economy: Expectations for Constitutional Debate
OGUMA Eiji	Historical Background of Article 9 of the Constitution
FUNABIKI Takeo	Discussion on Strategic Peace Concerning Article 9 of the Constitution
YAMAZAKI Masakazu	Report on Issues Surrounding Constitutional Amendment
YOSHIDA Kenichi	Summary of Statement at the Open Hearing
ANBO Katsuya	Renunciation of War: Thoughts Concerning New Wars
ASAOKA Mie	The Constitution and Revision of Human Rights Provisions
UEMATSU Haruo	Summary of Statement at an Open Hearing of the Research Commission on the Constitution
TERUOKA Itsuko	(Summary of Statement)
TAKATAKE Kazuaki	Statement of Japan Junior Chamber, Inc.
TERANAKA Makoto	Summary of Statement at an Open Hearing of the Research Commission on the Constitution
EBASHI Takashi	Statement at an Open Hearing of the Research Commission on the Constitution
PEMA Gyalpo	Personal Opinion regarding the Constitution of Japan
MURATA Hisanori	The Constitution, Popular Sovereignty, and Constitutionalism

## **C. Subcommittee Meetings (154th and 155th Diet Session)**

### **a. Subcommittee on Guarantee of Fundamental Human Rights**

<b>Informants</b>	<b>Document Title</b>
MUNESUE Toshiyuki	The Guarantee of Human Rights for a New Era
ANNEN Junji	Human Rights Guaranteed for Foreign Nationals
SAKAMOTO Masanari	New Human Rights
ITO Tetsuo	The Guarantee of Fundamental Human Rights
KUSANO Tadayoshi	Fundamental Labor Rights and Measures Concerned with Employment
KARIYA Takehiko	A Greater Class Stratification in Education and the Guarantee of Fundamental Human Rights

## b. Subcommittee on Fundamental and Organizational Role of Politics

Informants	Document Title
YAMAGUCHI Jiro	Reevaluating the mechanism of Government: The Parliamentary Cabinet System
OISHI Makoto	The Bicameral System and Election Systems
MATSUI Shigenori	On Judicial Review
YAGI Hidetsugu	The Structure of Government under the Meiji Constitution
TAKADA Atsushi	On Political Parties

## c. Subcommittee on Japan's Role in International Society

Informants	Document Title
MATSUI Yoshiro	Japan's Role in International Society: Approach to International Cooperation Centering on United Nations Peacekeeping Operations and Peacekeeping Forces
HATAKEYAMA Noboru	Japan's Role in International Society: Free Trade Agreements
TAKUBO Tadae	Japan's Role in International Society
NAKAMURA Tamio	Issues Surrounding the Enactment of an EU Constitution and Its Relationship with Constitutions of Member State
IWAMA Yoko	The Constitution and Crisis Management: Germany

## d. Subcommittee on Local Autonomy

Informants	Document Title
IWASAKI Mikiko	(On Local Autonomy)
MORITA Akira	Issues Concerning Decentralization Reforms
JINNO Naohiko	Local Autonomy and Local Public Finance
KATAYAMA Yoshihiro	Issues Pertaining to the Realization of Local Autonomy
HOSAKA Kunio	Statement regarding Basic Units of Local Governments

## D. Subcommittee Meetings (156th and 159th Diet Session)

### a. Subcommittee on Ideal Constitution as Supreme Law

Informants	Document Title
SONOBE Itsuo	The Emperor-as-Symbol System Part 2: Emperor's Authority and Acts in Matters of State
TAKAMI Katsutoshi	Outline of Regulations for Constitutional Amendments and the History of Article 96 of the Constitution
NAGAO Ryuichi	Ideological Problems with Rigid Constitutions
BANNO Junji	Enactment and Development of the Meiji Constitution
HANABUSA Masamichi	Summary of Statements at the Subcommittee on Ideal Constitution as Supreme Law of the Research Commission on the Constitution
YOKOTA Kouichi	(On the Emperor-as-Symbol System)
IGUCHI Shusaku	On Direct Democracy
SASADA Eiji	Increasing Judicial Review Activity
SAITO Masaaki	The Constitution and International Laws: International Guarantees of Human Rights

## b. Subcommittee on Security and International Cooperation

Members	Document Title
NODA Takeshi (LDP)	Keynote Statement on International Cooperation: ODA
SUTO Nobuhiko (DPJ)	Keynote Statement at the Research Commission on the Constitution: ODA
KONDO Motohiko (LDP)	Keynote Statement on Article 9 of the Constitution (Renunciation of War, Non-maintenance of War Potential, and Nonrecognition of the Right of Belligerency): Constitutional Issues Surrounding Overseas Dispatch of the Self-Defense Forces
FUJII Hirohisa (LP)	Summary of Keynote Statement at the Research Commission on the Constitution (Subcommittee on Security and International Cooperation)
NAKATANI Gen (LDP)	Keynote Statement on Security at the Research Commission on the Constitution
MATSUMOTO Takeaki (DPJ)	Summary of Keynote Statement at the Research Commission on the Constitution
Informants	Document Title
MORIMOTO Satoshi	States of Emergency and the Constitution: Response to Terrorism and Other Emergency Circumstances
IGARASHI Takayoshi	The Constitution and States of Emergency
OGAWA Kazuhisa	States of Emergency and the Constitution: Response to Natural Disasters and Other Emergencies
SUGANAMI Shigeru	(On International Cooperation and Humanitarian Aid Diplomacy)
SATO Yukio	The United Nations and Japan
Bernhard ZEPTER	The European Integration Process and the Draft Constitution
KOBARI Tsukasa	States of Emergency and the Constitution, Including Legislation to Protect the People
MATSUURA Kazuo	States of Emergency and the Constitution, Including Legislation to Protect the People: Other Countries' Legislation to Protect the People, with a Focus on Legislation in Germany
KIKUCHI Tsutomu	Regional Security: Asia-Pacific

## c. Subcommittee on Guarantee of Fundamental Human Rights

Informants	Document Title
TORII Yasuhiko	The Right to Receive an Education
OKAMURA Ryoji	Statement on the Right to Receive an Education, Including Revision of the Fundamental Law on Education
SUGENO Kazuo	Fundamental Labor Rights of Public Employees in Relation to the Reform of the Public Servant System
FUJII Ryuko	Fundamental Labor Rights (the Right to Work) from the Viewpoints of Gender Equality
HORIBE Masao	Discussions of the Right to Know and Information Disclosure in Japan and the World Discussions of Privacy and Protection of Personal Information in Japan and the World Right of Access, Right to Know, Right to Privacy in Japan and the World
KOBAYASHI Masaya	Thoughts from the Perspective of Communitarian Public Philosophy
NAKAMURA Mutsuo	Social Security and the Constitution
OSHIO Takashi	Summary of Informant's Statement at the Research Commission on the Constitution
UCHINO Masayuki	Promotion of Measures to Eliminate Discrimination under the Current Constitution
NOSAKA Yasuji	Freedom of Thought and Conscience, Freedom of Religion, and the Principal of Separation of Religion and the State
MATSUMOTO Kazuhiko	Freedom of Expression and Academic Freedom, and the Public Welfare: Reconciling Principle

<b>Informants</b>	<b>Document Title</b>
NORO Mitsuru	Economic Freedoms: Limitation on Property Rights in Relation to Town Planning and Preserving Scenic Value
TAGUCHI Morikazu	Rights during Criminal Proceedings (Articles 31 to 40), Including Issues of Correctional Policy, and the Human Rights of Crime Victims

#### **d. Subcommittee on Ideal Government and Organizations**

<b>Members</b>	<b>Document Title</b>
FURUKAWA Motohisa (DPJ)	Relationship between the Diet and the Cabinet
INOUE Kiichi (NCP)	Summary on the Relationship between the Diet and the Cabinet: People's Sovereignty and Ideal Fundamental Political Organizations
<b>Informants</b>	<b>Document Title</b>
MASUDA Hiroya	Local Autonomy Centering on Government and Organizations
ABE Manao	Summary of Statement at the Research Commission on the Constitution
TSUNO Osamu	Organization of the Cabinet Legislation Bureau and Its Constitutional Interpretations
YAMAGUCHI Shigeru	Japan's Constitutional Review System and Exercise of Judicial Review by Japan's Supreme Court
KUBOTA Yoshio	Relationship between the Board of Audit and the Diet
SAKURAUCHI Fumiki	State's Decision-making and Fiscal System
ICHIKAWA Masato	Judicial Power in Relation to Judicial Reform
UTSUNOMIYA Fukashi	Special Features and Functions of the Ombudsman System: The Need for an Ombudsman System and the Issues Involved
USUI Mitsuaki	Control of Public Finances
HIROI Yoshinori	Issues Surrounding Japan's Social Security
TSUJIYAMA Takanobu	Statement on Decentralization and Local Autonomy
TADANO Masahito	Discussion on the Bicameral System

#### **E. Local Open Hearings**

<b>Speakers</b>	<b>Document Title</b>
TEJIMA Norio	Summary of Statement
SHIMURA Kensuke	On Environmental Issues
TANAKA Hidemichi	We Want an Outward-looking, not Inward-looking, Constitution
ODANAKA Toshiki	Summary of Statement
ENDO Masanori	Japan's Sovereign in the 21st Century
NAKATA Narishige	Summary of Statement: The Constitution of Japan (A Vision for Japan in the 21st Century)
NISHI Hideko	Japan's Role in International Society
KOIDO Yasuo	Japan's Role in International Society
YAMAUCHI Tokushin	(Summary of Statement)
KAKINOHANA Hojun	The Japanese Constitution in the 21st Century
INATSU Sadatoshi	Japan and Its Constitution in the 21st Century
MASUGI Eiichi	Summary of Statement at the Open Hearing in Sapporo
YAMAMOTO Toshio	The Guarantee of Fundamental Human Rights
KAMONO Yukio	Local Autonomy: Establishment of a Decentralization-oriented Fiscal and Administrative System
KUSANAGI Junichi	Summary of Statement
NISHIHARA Kazuie	Summary of Statement



## **(2) Reports of Overseas Survey Missions**

Survey Mission by the House Delegation on Constitutions of European Nations

Survey Mission by the House Delegation on Constitutions of Russia, Several Other European Nations, and Israel

Survey Mission by the House Delegation on Constitutions of Russia, Several Other European Nations, and Israel  
(Supplement: Constitutions of Russia, the Netherlands, Israel, Spain, Hungary, Poland, Czech Republic, Romania, Sweden, Denmark, and Belgium)

Survey Mission by the House Delegation on Constitutions of the United Kingdom and Several Asian Nations

Survey Mission by the House Delegation on Constitutions of the United Kingdom and Several Asian Nations  
(Supplement: Constitutions of the United Kingdom, Thailand, Singapore, China, South Korea, the Philippines, Malaysia, and Indonesia)

Survey Mission by the House Delegation on Constitutions of the United States, Canada and Mexico

Survey Mission by the House Delegation on Constitutions of the European Union, Sweden and Finland

Survey Mission by the House Delegation on Constitutions of the European Union, Sweden and Finland  
(Supplement: Constitutions of the EU, Sweden, and Finland)

## **(3) Document Submitted by the National Diet Library**

Composition and Authority of Constitutional Courts in Selected Countries

The Parliamentary System and the Bicameral System in Selected Countries (July 10, 2003, Explanatory Materials)

Political-Administrative Organizations in Selected Countries: Reference Materials on the Parliamentary System (1)

Political-Administrative Organizations under the Constitution of Prussia, the Constitution of the Empire of Japan, and the Constitution of Japan: Reference Materials on the Parliamentary System (2)

Reference Materials on the Bicameral System

## **(4) Document Submitted by the General Secretariat of the Supreme Court**

Exhibit 1: Major Constitutional Cases in Chronological Order

Exhibit 2: Supreme Court Judgments of Unconstitutionality

Exhibit 3: Outline of the Constitutional-Court System in Japan and Selected Countries

Exhibit 4: Trends in Number of Civil Cases and Average Period for Disposition (District Courts [First Instance])

Exhibit 5: Trends in Number of Criminal Cases and Average Period for Disposition (District Courts [First Instance])

Exhibit 6: Trends in Number of Cases Required More Than Three Years for Disposition Due to Complexity of Case: Civil Cases in First Instance

Exhibit 7: Trends in Number of Cases Required More Than Three Years for Disposition Due to Complexity of Case: Criminal Cases in First Instance

Exhibit 8: Trends in Number of Judges

Exhibit 9: Trends in Number of Cases Taken by Supreme Court

Items Explained by the Supreme Court

Exhibit 1: Number of Civil Appeal Cases by Fiscal Year and by Cause of Appeal

Exhibit 2: Judicial Budgets of Courts in Selected Countries

## **(5) Document Submitted by the Board of Audit of Japan**

Items Explained by the Board of Audit

Exhibit 1: Diagram of State Organizations

Exhibit 2: Date, etc. of Submission of Final Accounts to the Diet

Exhibit 3: Requests for Inspection Based on Article 105 of the Diet Law and Reports of the Results

Exhibit 4: Status of the Board of Audit in Selected Countries

## **(6) Documents Prepared by the Office for Research Commission on the Constitution**

### **A. Digests of Proceedings**

#### **a. Digests of Proceedings (147th to 151st Diet Session)**

- Volume 1: 147th Diet Session (No. 1 to No. 5)
- Volume 2: 147th Diet Session (No. 6 to No. 10)
- Volume 3: 148th, 149th, and 150th Diet Sessions (No. 1 to No. 3)
- Volume 4: 150th Diet Session (No. 4 to No. 7)
- Volume 5: 151st Diet Session (No. 1 to No. 3)
- Volume 6: 151st Diet Session (No. 4 to No. 7)
- Volume 7: Reports of Survey Mission by the House Delegation on Constitutions of European Nations (November 2000)
- Volume 8: Index of Speakers and Reference Materials

#### **b. Digests of Proceedings (153rd to 154th Diet Session)**

- Volume 1: 153rd Diet Session (No. 1 to No. 5)
- Volume 2: 154th Diet Session (No. 6 to No. 10)
- Volume 3: 154th Diet Session, Subcommittee on Guarantee of Fundamental Human Rights (No. 1 to No. 5)
- Volume 4: 154th Diet Session, Subcommittee on Fundamental and Organizational Role of Politics (No. 1 to No. 5)
- Volume 5: 154th Diet Session, Subcommittee on Japan's Role in International Society (No. 1 to No. 5)
- Volume 6: 154th Diet Session, Subcommittee on Local Autonomy (No. 1 to No. 5)
- Volume 7: Reports of Survey Mission by the House Delegation on the Constitutions of Russia, Several Other European Nations, and Israel (November 2001)
- Volume 8: Index of Speakers and Reference Materials

### **c. Digests of Proceedings (155th to 157th Diet Session)**

- Volume 1: 155th Diet Session (No. 1 to No. 4, Subcommittees)
- Volume 2: 156th Diet Session (No. 1 to No. 9), 157th Diet Session (No. 1)
- Volume 3: 156th Diet Session, Subcommittee on Ideal Constitution as Supreme Law  
(No. 1 to No. 5)
- Volume 4: 156th Diet Session, Subcommittee on Security and International Cooperation  
(No. 1 to No. 5)
- Volume 5: 156th Diet Session, Subcommittee on Guarantee of Fundamental Human Rights  
(No. 1 to No. 5)
- Volume 6: 156th Diet Session, Subcommittee on Ideal Government and Organizations  
(No. 1 to No. 5)
- Volume 7: Reports of Survey Mission by the House Delegation on the Constitutions of the United Kingdom  
and Several Asian Nations (March 2003)
- Volume 8: Index of Speakers and Reference Materials

### **d. Digests of Proceedings (158th to 160th Diet Session)**

- Volume 1: 158th Diet Session (No. 1), 159th Diet Session (No. 1 to No. 8, Open Hearings No.1, No. 2),  
160th Diet Session (No. 1)
- Volume 2: 159th Diet Session, Subcommittee on Ideal Constitution as Supreme Law  
(No. 1 to No. 4)
- Volume 3: 159th Diet Session, Subcommittee on Security and International Cooperation  
(No. 1 to No. 4)
- Volume 4: 159th Diet Session, Subcommittee on Guarantee of Fundamental Human Rights  
(No. 1 to No. 5)
- Volume 5: 159th Diet Session, Subcommittee on Ideal Government and Organizations  
(No. 1 to No. 5)
- Volume 6: Reports of Survey Mission by the House Delegation on the Constitutions of the United States,  
Canada and Mexico (February 2004)
- Volume 7: Index of Speakers and Reference Materials

## B. Documents Prepared by the Office for Research Commission on the Constitution

No.	Document Title
No.1	Outline of Drafts Proposed during the Formulation Process of the 1947 Constitution of Japan
No.2	Summary of the Subcommittee's Report on the Formulation of the Constitution
No.3	Summary of the Statements by Informants on the Formulation of the Constitution
No.4	Glossary of Terms: Constitutional Cases
No.5	Reference Materials for Overseas Delegation: Constitutions & Other Documents
Appendix 1 to No. 5	Constitutions of Germany, Switzerland, Italy, and France
Appendix 2 to No. 5	The Constitution of Finland (Provisional Translation)
No.6	Reference Materials for Overseas Delegation: Constitutions & Other Documents
Appendix to No. 6	Constitutions of Eleven Countries
No. 7	Reference Materials on Constitutions of Monarchies and East European Nations
Appendix to No. 7	Constitutions of Monarchies and East European Nations
No. 8	Summary of Views on Revision of the Constitution at the Cabinet Research Commission on the Constitution
No. 9	United Nations Peacekeeping Operations
No. 10	Outline for Review of Statements by Members and Informants at Subcommittee Meetings
No. 11	Reference Materials for Overseas Delegation: Constitutions & Other Documents
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No. 14	Basic Materials on States of Emergency and the Constitution
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No. 15	Basic Materials on the Right to Receive an Education
Appendix to No. 15	Collected Laws & Regulations Relating to the Right to Receive an Education
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Appendix to No. 16	Collected Laws & Regulations Relating to Local Autonomy
No. 17	(Consigned Research Report) The Constitution of the Republic of China: Outline and Translation

No.	Document Title
No. 18	(Consigned Research Report) The Constitution of the Republic of Korea: Outline and Translation
No. 19	(Consigned Research Report) The Constitution of the Republic of the Philippines: Outline and Translation
No. 20	(Consigned Research Report) The Constitution of India: Outline and Translation
No. 21	(Consigned Research Report) The Constitution of the Kingdom of Thailand: Outline and Translation
No. 22	Basic Materials on Fundamental Labor Rights: From the Viewpoints of Gender Equality and Reform of the Public Servant System
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No. 25	Basic Materials on International Cooperation: ODA
No. 26	Basic Materials on International Organizations and the Constitution: Security and International Cooperation
Appendix to No. 26	Collected Laws & Regulations Relating to International Organizations and the Constitution: Security and the International Cooperation
No. 27	Basic Materials on the Meiji Constitution and the Constitution of Japan: Formulation Process of the Meiji Constitution
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Appendix to No. 33	Collected Laws & Regulations Relating to Article 9 of the Constitution (Renunciation of War, Non-maintenance of War Potential, and Nonrecognition of the Right of Belligerency): Constitutional Issues Surrounding Overseas Dispatch of the Self-Defense Forces
No. 34	Basic Materials on Social Security and the Constitution
No. 35	Basic Materials on the Relationship between the Diet and the Cabinet: People's Sovereignty and Ideal Fundamental Political Organizations Overall
No. 36	Basic Materials on the Emperor system, Including Research on the Imperial Household Law and Other Laws Related to the Imperial Family

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No. 37	Basic Materials on Article 9 of the Constitution: The Deployment of the Self-Defense Forces to Iraq, Collective Security, and the Right of Collective Self-defense
Appendix to No. 37	Collected Laws & Regulations Relating to Article 9 of the Constitution: The Deployment of the Self-Defense Forces to Iraq, Collective Security, and the Right of Collective Self-defense
No. 38	Basic Materials on Equality under the Law: Important Issues Involving the Principle of Equality, such as the Discrepancy in the Weight of a Single Vote and the Inheritance Portion of Illegitimate Children, with a Discussion of Business Corporations and Human Rights
No. 39	Basic Materials on the Judicial System: Reforms to Enable Public Participation in the Administration of Justice and to Make the System More Accessible
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No. 40	Basic Materials on Integration of Nation-states, Accession to International Organizations, and the Accompanying Transfer of Sovereign Powers: A European Constitution, the Constitutions of EU Member States, and an "EU Force")
Appendix to No. 40	The Draft Treaty Establishing a Constitution for Europe (Translation)
No. 41	Basic Materials on Systems of Direct Democracy
No. 42	Basic Materials on Human Rights Commissions and Other Quasi-judicial Bodies; the Ombudsman System
Appendix to No. 42	Collected Laws & Regulations Relating to Human Rights Commissions and Other Quasi-judicial Bodies; the Ombudsman System
No. 43	Basic Materials on Civil and Political Liberties (Articles 15 to 21, 23): Freedom of Thought and Conscience (Article 19), Freedom of Religion, and the Separation of Religion and the State (Articles 29, 89)
No. 44	Basic Materials on Constitutional Guarantees: The Constitutional Review System and the Role of the Supreme Court
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No. 52	Basic Materials on Economic, Social and Cultural Freedoms: The Freedom to Choose One's Occupation (Article 22) and the Right to Own or Hold Property (Article 29)

No.	Document Title
No. 53	(Consigned Research Report) Limitation on Property Rights in Relation to Town Planning and Creating Scenic Value in Japan and Germany
No. 54	Basic Materials on Rights during Criminal Proceedings (Articles 31 to 40), Including Issues of Correctional Policy, and the Human Rights of Crime Victims
No. 55	Basic Materials on the Bicameral System and the Audit System
No. 56	(Consigned Research Report) Treaty Establishing a Constitution for Europe: Description and Translation
No. 57	Basic Materials on Parliamentary Ombudsmen and Other Checks on the Administration
Appendix to No. 57	Outlines of the Ombudsman System of Local Public Entities Outlines of the Ombudsman System of Local Governments (other than those listed in the above material) Status of Operations of the Citizen Ombudsman System in Kawasaki City
No. 58	Basic Materials on International Organizations and the Constitution: The UN Charter
No. 59	Basic Materials on a National Referendum System
Supplement to No. 59	Supplement to Basic Materials on a National Referendum System
No. 60	Basic Materials on the Diet and the Cabinet: The Bicameral System and Political Parties
No. 61	Past Discussions on the Emperor at the Research Commission on the Constitution
No. 62	Past Discussions on Security, International Cooperation, and States of Emergency at the Research Commission on the Constitution
No. 63	Past Discussions on Rights and Duties of the People at the Research Commission on the Constitution
No. 64	Past Discussions on the Diet, the Cabinet, and Related Matters at the Research Commission on the Constitution
No. 65	Past Discussions on Public Finances and Local Autonomy at the Research Commission on the Constitution
No. 66	Past Discussions on Judiciary, Amendments, Supreme Law, and Related Matters at the Research Commission on the Constitution
No. 67	Past Discussions on the Preamble of the Constitution at the Research Commission on the Constitution
No. 68	(Consigned Research Report) Description on <i>Amparo</i> , a System of “Court for Petition for Human Rights Protection” in Mexico

### C. Document Prepared by Informant (HATAKEYAMA Noboru)

On Free Trade Agreements

### D. References for Research Commission Members

Collected Documents on the Background to the Formulation of the 1947 Constitution of Japan

Collected Laws & Regulations Relating to the Constitution of Japan and the Diet

Collected Laws & Regulations for the Subcommittee on Guarantee of Fundamental Human Rights

Collected Laws & Regulations for the Subcommittee on Fundamental and Organizational Role of Politics

Collected Laws & Regulations for the Subcommittee on Japan’s Role in International Society

Collected Laws and Regulations for the Subcommittee on Local Autonomy

## **E. Booklets Prepared for Open Hearings**

“The Research Commission on the Constitution of the House of Representatives”  
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“The Research Commission on the Constitution of the House of Representatives”  
January 2000 to May 2001 (June 2001 version)

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## **Appendix The Constitution of Japan**

## **Appendix**

The Constitution of Japan is not included in the Japanese-language [interim report](#), but is included here for reader convenience.

### **The Constitution of Japan**

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 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.