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**THE CONSTITUTION OF JAPAN:
UNFIT FOR A SOVEREIGN NATION**

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When Iraq invaded and occupied Kuwait in August 1990, the United States, Great Britain and other countries dispatched armed forces to the Middle East with the sanction of the United Nations Security Council. When war actually broke out, They defeated the Iraqi forces and liberated Kuwait in only 43 days.

Most major countries took immediate and concerted action liberating Kuwait. The Japanese government , however, waited until October 1990 to hold an extraordinary session to discuss the issue and even after two months of discussions failed to pass a " United Nations Peace Cooperation Law". This was internationally regarded as quite half-hearted.

Moreover, the \$ 9 billion in assistance to the multi-national forces promised in January 1991 was approved by the Diet only after the fighting ended.

Not surprisingly Japan found itself in disrepute for its lack of substantial contributions during the war.

Why the foot-dragging?

The fundamental reasons lies in Article 9 of the Japanese Constitution which states the renunciation of war. The government taking the article's provisions for granted, opposition parties and the mass media all used Article 9 to justify their positions of non-military action. such attitude is a far cry from the rest of the world thinks.

A long-standing misperception leads most Japanese to think the so-called "Peace Constitution" centering on Article 9, is an excellent one. They wrongly believe that in all the world only their concept of a constitution is correct. I have written this booklet as a warning that unless Japan discards its misconceptions, It will someday find itself left out of world affairs. I sincerely hope that the Japanese will work to understand the essential nature and framework of their constitution. My task is to offer a detailed verification that the Peace Constitution is not as noble as most Japanese believe but rather is unqualified as the constitution of an independent country: it is in fact a colonial constitution imposed by another country or a trust territory of the United Nations.

I will present my idea for amending the constitution in the form of provisions in four articles to make it essentially suitable for an independent country with my own analysis added.

Most people shy away from the problem of the constitution thinking it beyond their comprehension. I would like to explain and analyze it here as clearly and easily as possible. I hope that people will read this booklet to deepen their understanding of this issue simply because it is so crucial for Japan's existence.

I am General Secretary of the Diet Members' League for Enacting an Autonomous Constitution, which is composed of the members of the Diet who support the amendment of the constitution, and National Congress for Enacting an Autonomous Constitution, a civil organization supporting the League. Constitutional problems, especially those surrounding Article 9, are tangled and complex. Some say that scholars can interpret Article 9 in 18 different ways, which, if true, makes it very difficult to present a unified view. Therefore I must emphasize that the ideas presented here are my own and not of the organization itself.

While my discussion centers on Article 9, I would like the reader to understand that the constitution has many flaws. In today's rapidly changing world many nations have amended their constitutions to make them conform to reality. The Japanese Constitution has reached its limits and its problems will not be solved by interpretative sleight-of-hand.

I would be grateful if readers would join our movement to amend the constitution and so restore a proper world order.

Introduction

Debate over Persian Gulf Crisis Fundamentally Flawed

1. The Perception Gap between Japan and the Rest of the World

The invasion and incorporation of Kuwait by Iraq , which began at midnight August 2 , 1990, delivered a nasty shock to those basking in the promise of peace brought about by warmer US.-Soviet relations.

Note carefully how the reactions of the leading nations were so similar. The United States began to deploy military forces within a few days and Great Britain and France took immediate action against Iraq after the United Nations Security Council concluded that the movement by Iraqi forces was indeed an invasion. All three countries moved swiftly to deploy and reinforce troops. These operations were based on Chapter 7 of the UN. Charter which stipulated the duties of member nations. The speed of their reactions indicates a well organized system for crisis management.

The government of Japan, however, just idled away time without holding a security conference. Only after repeated requests by Europe and the United States did Japan extend \$ 4 billion in aid in three installments for the end of August to the middle of September and only in October did Japan finally hold an extraordinary session of the Diet to consider the contribution to the alliance against Iraq, the United Nations Peace Cooperation Law, which other nations regarded as half-hearted.

However, resistance from the opposition parties kept even such a mild bill from being passed. The proposal was dropped at the beginning of December .

What is strange about this affair is that throughout the Diet's war of words on aid to the multi-national forces, politicians of all parties presented their ideas as if assuring that war would not break out. Consequently, most TV. viewers who witnessed the debate came to believe that a war would not happen.

At that time the number of people who thought that war might break out , making it necessary to dispatch military forces was about 60% in major UN. member countries while the percentage of people who thought that war

would never break out was about 60% in Japan. The figure in Japan was opposite to that of other countries.

So when the Gulf War broke out on January 17, 1991, most Japanese were taken by surprise. Pinning their hopes on peace negotiations led by former Soviet President Gorbachev, many contended that an armistice would be concluded as soon as possible. I must say that such people do not understand the harsh reality of strategy and international politics. When the ground offensive started the end of February, opinion polls in Europe and America showed that more than 70% of the people polled favored a total Iraqi defeat while most Japanese were clamoring for an armistice. This gap in perception between Japan and other nations exasperated Europe and the United States.

In this contentious environment the Japanese government proposed to extend \$9 billion in aid in January but fierce resistance from the opposition party delayed authorization from the Diet until late February 1991.

Japanese politicians should have clearly understood the intentions of the United States and Great Britain when they dispatched troops to the Middle East so soon after the Iraqi invasion. It is regrettable that by counting too strongly on peace they had misled the Japanese people, blinding them to the severity of real politics.

Politicians have a responsibility to understand the harsh reality of international politics so that they can prepare for any situation while striving toward peace. They must also bring people euphoric about pacifism around to a clear-eyed appreciation of reality. If politicians themselves became entranced with the illusion of peace and echo pacifist sentiments they cannot fulfill their role as leaders of the nation.

2.A Missed Opportunity for Change

Observing the debates over the bill for cooperation with the United Nations Peacekeeping Effort held between the Government and the Opposition party at the extraordinary Diet Session held immediately after the invasions well as the ordinary diet session after the outbreak of the war (including essays and analyses in newspapers, magazines and on television), most argued that Japan cannot make any active contribution to the Gulf War except for financial assistance simply because of the Peace Constitution, particularly Article 9.

In short, Article 9 is regarded as the golden rule, the absolute and unchangeable rule that should be respected by all. Apparently, the average citizen, the Democratic Socialist Party (DSP) and the government (LDP) all share the same notion. No matter what happens, what is impermissible in constitutional interpretation cannot be enforced.

How the Constitution is manifested in daily affairs is crucial. There is in Japan almost no sense of active political positions or international strategy, for example, working with the major powers to punish Iraq for its wrong doings, making sacrifices for international justice or making Japan's voice heard in international politics instead of merely handing out huge sums to win a say in the new international order.

A mistaken notion of individualism, on which democracy is based, took root in Japan during the postwar process of establishing a democratic society. With the constitution emphasizing individual rights, people took individualism to mean that every person is free to do and say as he or she pleases. The Japanese have so far failed to understand the essence of individualism, that rights and obligations are two sides of the same coin and that self-assertion that violates the rights of others and the interests of society cannot be allowed.

Popular individualism is also plagued by a misleading concept of individualism, namely egoism which has resulted in the prevalence of a passive, ascetic, closed pacifism to the effect that as long as Japan enjoys peace everything is alright. That is because the Japanese constitution is based on pacifism with Article 9 stipulating the following three points:

- 1) Forever to renounce war as a sovereign right of the nation and the threat of use of force as a means of settling foreign dispute

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

Consequently, Article 9 has wrongly led Japan into pacifism without the means to secure it, a conceptual pacifism that has led people to advocate the illusion that crying for peace will create it. This sort of pacifism has nothing to do with pacifism that actively contributes to true world peace.

Japan today is different from Japan of the 1940's and 50's when everybody looked down on Japan as a third or fourth class people simply because they were shattered by defeat.

Now Japan has become an economic giant and a leader in technology and must consider contributing to international society. Instead of confining itself within the framework of a passive, closed and ascetic pacifism, Japan should now face reality and change its idea of pacifism into one that is active and universal.

The Gulf War ended with the easy defeat of Iraq and a great victory for the multi-national forces. Despite a second donation of \$9 billion to the multi-national forces on top of the initial \$4 billion, Japan was internationally criticized for its tardiness and lack of perception. Japan should examine the reasons why it is out of touch with world affairs now dominated by the collapse of the Soviet bloc and the new international order emerging after the Gulf War and, and why it is unable to exercise international influence. Japan must fully consider why it misread and mishandled the Gulf War situation, thus finding itself an outcast among the family of nations.

Here we should look at fundamentals. Japan's Gulf War fumbling resulted from the wording of Article 9 which put everybody, the government, the parliamentarians, scholars and commentators, into an interpretative strait-jacket.

A constitution should be respected as the fundamental law of a nation. However, as I will discuss in detail later, the provisions of Article 9 are unsuitable for the constitution of a sovereign nation. Rather, they are appropriate for the constitution of a colony or a non-independent country. If

Japan wishes to maintain its status as a sovereign nation, it should interpret the provisions from the viewpoint of an independent country.

Article 9 should have been promptly amended after the San Francisco Peace Treaty took effect in 1952. However, the strict procedure for amending the constitution, requiring a two-thirds majority in both Houses, and a lack of knowledge of the constitution by the opposition parties made any amendment impossible.

Nevertheless, the government at that time was right to say that if Japan entrusts the rights of diplomacy and military capability to other countries, it cannot be called an independent country. So the government tried its best by putting the words "in order to accomplish the aim of the preceding paragraph" at the beginning of Article 9's second provision. (It did no more than that and was satisfied). It called the armed forces the " Self-Defense Forces", the soldiers" uniformed members of the Self-Defense Forces and battleships " Defense ships". In this way, without actually amending the constitution, the government tried to maintain "Self-Defense Forces" which are the military potential that a strict interpretation of the constitution prohibits.

The problem is whether Japan is really an independent nation and whether the wording of its constitution resembles that of an independent nation. If it is so difficult to amend the Japanese constitution, we must compensate for its defects with an interpretation proper to a sovereign nation..

On the contrary, since we often try to interpret this inappropriate constitution even without attempting to amend it, as we have seen in the argument over the Gulf crisis, strange logic is presented and other countries even wonder whether Japan is an independent nation. As long as the constitution is the fundamental law of an autonomous nation its wording must be discussed by the people of the country as a problem of the nation's very existence before addressing the proposition of respecting those words.

In this sense, I expected that in the midst of the Gulf crisis, the government and the opposition parties would rectify the fundamental precepts of the Japanese state. No such argument took place. Not only the opposition parties but also the government avoided enacting an autonomous constitution and merely brandished an abstract concept of the Peace Constitution and the essential point of Article 9. I expected that the government at least would revise the conventional opinions. Instead, the

government merely repeated them. I regret that no argument was held that delved into the fundamental aspects of national autonomy. To clarify, the Japanese constitution lacks the form proper to an independent country and should be amended and the constitution as it is should be interpreted in a manner befitting a sovereign state.

The framework of law is not well understood in Japan, perhaps because Japan was late in modernizing. For a minister or government official to present discussion on the constitution was to provoke an uproar. For ministers and bureaucrats alike, avoiding debates on constitutional issues has become axiomatic.

However, consider past examples such as Minister of Law Osamu Inaba, who pointed out the necessity of amending the constitution, and the Chairmen of the Joint Staff Council of the Defense Agency Hiromomi Kurisu and Goro Takeda who said that it was impossible to defend Japan with an exclusively defensive system. They did not say that they would not observe the constitution, merely that from a legal point of view the constitution was flawed and should be amended. They simply said what they had to say. From a legal perspective, it is natural to amend any law once some defects are found after decreeing it. The constitution is no exception. But in Japan it is impossible to have a legislative discussion on the constitution. I must say that in legal affairs, Japan lags behind other countries, many of which have amended their constitution many times since World War II. Switzerland has amended their constitution 34 times, West Germany 35 times and the Soviet Union 55 times. Even the United States, where precedents play an important role, has amended its constitution five times since the end of World War II. In Germany, when people sense a gap between law and reality, all political parties will advocate a constitutional amendment. Japan's constitution has remained unchanged in the 45 years since its enactment. Japan has a perverse antipathy to both amending the law of the land to make it fit the times and even allowing debates on constitutional amendments. The Japanese must learn that this aversion keeps Japan on the sidelines of world affairs.

Still, discussions of the Gulf War crisis in the Diet and the mass media seem to have made Japan acknowledge that the rest of the world regards their behavior as grotesque. In this connection, in the following chapter I

will discuss whether or not Japan's constitution is proper to an independent country and demonstrate that it is not.

Chapter 1: The Japanese Constitution as a Typical Example of a Colonial Constitution.

1 The Essence of the Constitution and its Types

Following the outbreak of the Gulf War all arguments by the government, the Diet and the media were consistent in declaring that as long as the constitution renounces war, Japan could neither join the fighting nor send Self-Defense Forces to the Persian Gulf. Donating financial aid, however, was permissible. Japan bases its logic on the constitution and is constrained by it.

The discussions held at the Diet meeting have striking similarities to that of the so-called "Odawara Hyotei" (The Hojo clan, surrounded by the army of the Toyotomi clan, stayed indoors in Odawara castle where they debated at length whether or not to surrender. Without reaching any conclusion they lost their chance to surrender and the Hojo clan was destroyed.)

A very long discussion was held for many days. At the extraordinary Diet session in autumn 1990, the UN Peace Cooperation Law was not passed. \$ 9 billion aid followed by \$ 4 billion aid was decided on only after the end of the Gulf War. Therefore, in spite of the financial aid of \$13 billion, Japan failed to make any real contribution and could not share in the victory. Presumably, Japan will have no say in the new international order that is evolving in the wake of the Gulf War and the US.- Soviet reconciliation. The situation of Japan is miserable.

This shows the large gap between Japanese perception and that of its international counterparts. Failure to recognize and rectify this gap will mean a decline in Japan's international status and increasing isolation in global affairs. Japan is still indulging in fanciful pacifism. The strategy and tactics of international society, however, are not so indulgent. To rectify this discrepancy between Japan and the rest of the world the Japanese must reconsider essential points

The following chapters will clarify the essential points of the problem.

Here, I wish to clarify the essence of the constitution as a prerequisite for my discussion.

The constitution is the highest law, the legal system that is placed at the highest position. While other general laws have the significance of positive laws, a constitution has the traditional ideals and the principles of political and moral leadership in addition to the positive law. Therefore a constitution is commonly called political law.

Since constitutions are influenced by religion and moral standards, the contents of a constitution vary from country to country depending on the religion advocated, such as Islamic countries, countries based on Buddhism like Thailand and countries spiritually based on Christianity. In Japan people tend to believe that European and American type constitutions are correct. However, in Islamic countries there is an Islamic logic. Buddhist countries have the racial characteristics and traditions of Buddhism. To make sweeping condemnations of them is wrong.

In the West, the French Revolution, caused by the influence of modern thought, produced so-called modern countries. These countries have some things in common such as the separation of administrative, legislative and judiciary powers and respect for fundamental human rights. In Europe, however, countries based on monarchies differ considerably from countries that adopted republican systems. Among the former are Great Britain which has no written constitution but where the tradition of common law (domestic law evolved from precedents honoring customs and traditions throughout Great Britain) is respected, and Sweden, whose constitutional design is grounded in tradition. Among the latter, countries such as France and Germany give prominence to laws that are expressly stated. This is academically known as the Continental system of law.

The constitutions differ between countries due to national character, history, religion and influence from other countries. Here, I wish to focus on the classification of constitutions into those of sovereign nations and those of colonies.

2. Constitutions of Independent Nations Differ from Colonial Constitutions

Most Japanese think that any country with a constitution is independent .

This is not the case. Formerly, Great Britain dispatched governors to directly rule its colonies. To suppress independence movements while withholding sovereignty for themselves, countries such as Great Britain, the United States, France and Holland allowed colonies to enact their own constitution .

Such a ruling style is called indirect rule in which a formal system, represented by a constitution, is given to a colony while sovereignty is reserved for the ruling nation. This ruling style was seen in South and Central America and in Asia at the end of the colonial period. Some scholars called the constitution of a colony where such an indirect rule is adopted, a semi-independent constitution. As long as they are colonies, it is strange to call them semi-independent countries. (In principle it should be the alternative between a colony or an independent country. It sounds rather strange to call it a semi-independent country. It must have been called a constitution of a semi-independent country because they came to have a constitution during a preparatory period before the actual independence or the constitution was quite similar to that of an independent country while reserving the sovereignty on the side of the sovereign state.)

The common characteristics of semi-independent constitutions are the restrictions on sovereignty, centering around rights of diplomacy and military affairs. The suzerain state adopted a system in which local people living in the colony have to receive ultimate permission from it while conceding various rights to the colonial people by adopting the system of indirect rule. More importantly, the rights of diplomacy and military affairs were to be used by the suzerain state as distinctive right, therefore no provisions for those were stipulated in the colonial constitutions. Even if such provisions were stipulated to some extent, they are clearly stipulated as a right of the suzerain state as a matter of course.

3. Possible Violation of International Law in the procedure of Enacting the Constitution

World War II in the Pacific ended on August 15, 1945 when Emperor Showa declared on the radio that Japan would accept the terms of the Potsdam Declaration. The instrument of surrender was signed on the battleship Missouri on September 2 in Tokyo Bay officially marking Allied occupation of Japan. Consequently, Japan lost its independence. On the

basis of the Potsdam Declaration, an order dissolving the military power of Japan was issued. Then on October 31, instructions were given prohibiting all diplomatic activities by the Japanese government. Thus the rule by General MacArthur started, both nominally and substantially. However, the Allied Forces did not directly rule Japan. They acknowledged the existence of the Japanese government and adopted the indirect rule method. The Imperial Constitution of Japan (the constitution enacted during the Meiji period) functioned within the limits permitted by the Allied Headquarters (GHQ). Even the authority of the Emperor, which had been great under the Meiji Constitution was made subject to the will of the Allied Forces.

On October 4, 1945, General MacArthur asked Count Konoe to develop a new constitution to replace the old one. Next year, when he saw that the process of amending the constitution did not proceed as he expected, he presented the so-called MacArthur draft, which he had his subordinates develop. Finally he succeeded in letting the government of Japan form a new constitution on the basis of the draft.

I am afraid such a high-handed attitude of MacArthur's General Headquarters lacked the appropriate legislative process in forming the constitution.

In the 19th century many wars were fought between European countries. The victors imposed new constitutions on the defeated but the defects of such deeds were keenly felt in many countries in Europe. They held an International Peace Conference in The Hague, Netherlands in 1907 and as a result the Hague Treaty was signed stating that any nation that occupies another should respect the laws of the country occupied. Several years after the conference both the United States and Japan ratified the treaty. Therefore when Germany, which was defeated in World War II, was strongly requested by the Allied Forces to amend the Hitler constitution, it refused to comply on the grounds of the Hague Treaty and the division of the country in two. Former West Germany took a position that they would establish an official constitution after the divided country was reunited and only enacted the Bonn Fundamental Law which was regarded as temporary during the period of occupation.

Italy, another loser of the war, also refused to amend its constitution on the same grounds. Only 6 months later, after the Paris Peace Conference in 1946, did it agree to some amendments.

Incidentally, Article 94 of the Constitution of the French Fourth Republic, enacted in 1946, states that when all or part of the country is occupied by foreign troops, no procedure for amending the constitution shall be initiated or conducted.

Since Japan ratified the Hague Treaty like Germany and Italy, it could have refused to amend the constitution. The government was upset at that time and the Far East Committee formed by the Allied Forces was hinting at the possibility of the Emperor's responsibility for the war and the abolition of the Imperial system. The Japanese government accepted MacArthur's draft simply because it protected the position of the Emperor. However, I must say that the imposing of MacArthur's constitution may have violated the Hague Treaty.

4. Similarity between the Philippine Constitution during the Colonial Period and the Current Constitution of Japan

The problem is not restricted to the process of enacting the current constitution. More serious is the problem in the provisions of the current constitution enacted by MacArthur. After serving as Chief of Staff of the US Army, MacArthur went to the Philippines in 1935 to serve as military adviser. For six years, until the outbreak of war between the US and Japan he was in charge of the military administration there as General. There are common elements in the current constitution of Japan and in that of the Philippines during MacArthur's administration.

Section 3, Article 2 of the Philippine Commonwealth Constitution, generally called the Third Constitution of the Philippines, stated that the Philippines shall renounce war as a means of national policy and shall adopt as part of the domestic law various principles of international law.

The first half of the article prescribing the renunciation of war closely resembles the provision in the current constitution of Japan. However, Section 2 of the same Article stipulated that the defense of the nation is the government's principle duty and that the government shall be able to demand that all Philippine people serve in public duty. Thus even the Philippines under colonial rule were allowed an army. Appendix 12 of the constitution stipulated that when ordered by the President of the United States, the Filipino people shall be permitted the right to mobilize their

armed or military forces organized by the Federal Government of the Philippines. Moreover, Appendix 1 of the constitution stipulates that all Filipinos shall have a duty to be loyal to the United States. The sovereignty of the US was clearly asserted.

Furthermore, for all the provisions in the latter half of the article stipulating that the Philippines shall adopt various principles of the international laws generally accepted worldwide as part of the domestic law, the Philippine government had no right of diplomacy because of the provision in Appendix 1 to the effect that matters relating to various foreign countries would be subject to the direct supervision of the United States.

Thus the United States permitted its own colony, the Philippines, to enact the constitution but quite naturally did not recognize the sovereignty of the Filipino people. The rights of military affairs and diplomacy, which were characteristic to an independent country were vested with the suzerain state, the United States.

After long experience in the Philippines it was natural for MacArthur, who occupied and ruled Japan as the Supreme Commander of the Allied Forces to think of indirect rule with a colonial constitution.

In other words, the very constitution MacArthur imposed on Japan was based on the colonial constitution. That is because it was thought natural to adopt such a method to rule Japan which was defeated in World War II and had lost its sovereignty. It was also thought natural to restrict the rights of military affairs and diplomacy.

However, one point in which the case of Japan differs from that of the Philippines is that no concrete provision was provided for in the constitution of the Philippines as a result of many years of colonial rule; it had been a colony of Spain and then after the victory of the United States it became a US colony. It is only stipulated in the Appendix 1 that matters relating to various foreign countries shall be subject to the direct supervision of the United States. It was all sufficient for the Philippines during the colonial period.

In the case of Japan, the colonial era was almost over and colonialism had come to be criticized. It was impossible to rule Japan as a colony forever. The Potsdam Declaration clearly stated that an occupying army would withdraw when the purpose of occupation was attained. Besides, as the independence of Japan was expected in the future, the right of diplomacy

was recognized under the occupation constitution although the General Headquarters ordered the Japanese government not to indulge in diplomatic activities.

Let us now compare in terms of military affairs the constitution of the Philippines during the colonial period to the current constitution of Japan. Considering the opposition to colonialism at the time, the Philippines had to become independent sooner or later. Besides, it was very likely that after winning independence the Philippines would be a US ally. Thus the Philippine army was permitted under the command of the United States.

Japan presents a different case. The Allied Forces won the war only after a bitter struggle with the Japanese army. Fearing the threat of Japanese military might they advocated a superficial, idealistic and eternal pacifism that demanded the total renunciation of military power. The provisions of Article 9 express that pacifism.

5. A Nation that Entrusts Another Country with the Rights of Diplomacy and Military Affairs cannot be called Independent

However, what should be considered here is a country which entrusts the military rights and the rights of diplomacy to other countries cannot be called independent. It is a colony. Even if such a colony has a constitution it is a colonial constitution or the constitution of a semi-independent country. These are the facts as seen from the viewpoint of international law.

The sine qua non of a sovereign country are a right of diplomacy independent of other countries and a system of self-defense.

Japan's constitution provides for the right of diplomacy. Although diplomatic activities were suspended during the Occupation, diplomatic rights were legally reinstated with the issue of the Peace Treaty in 1952.

The other requirement of sovereignty, the right of military affairs, could not be easily settled. MacArthur handed down the 9th Statement of the Potsdam Declaration that the Japanese army shall be sent back to their families after a complete disarmament. In the 1946 constitution, MacArthur demanded that even the right of belligerency which is recognized in international law be denied in addition to the renunciation of war and the denial of land, sea and air forces and other war potential.

MacArthur adopted a completely different system in Japan. In the Philippines he established a system that allowed military forces while the authority to command them was vested in the suzerain state. In the case of Japan, instead of recognizing the military forces even the right of military forces was eliminated and the right of engaging in war, naturally recognized to an independent country was clearly denied. Japan is not an independent nation but a colony, or a nation protected by the United States. Therefore, if Japan is invaded by another country, the United States will take full responsibility for military affairs and defense. The Japanese people do not have to focus on defending the country. The Article 9 is a provision which has clarified the colonial nature of Japan more than the Philippines.

One requirement of an independent nation is to have a system of self-defense. Considering that a country which entrusts its safety to another country is a colony or a semi-independent country, the provision of Article 9 of the Japanese constitution is not for an independent nation.

6. What makes a Nation Independent: Do the Japanese know?

Then the situation changed when the reconciliation between the United States and the Soviet Union ended and a struggle for hegemony started. On top of that a war broke out on the Korean peninsula very close to Japan. MacArthur was faced with reality and began to reconsider the rearmament of Japan. The Police Reserve Force was established as a first step.

Well-informed Japanese felt that Article 9 was not suitable for an independent nation and fortunately an attempt was made to relax the strict provision of Article 9 at the Subcommittee on the Amendment of the Constitution. It succeeded in receiving consent from the United States to add the wording "to accomplish the aim of the preceding paragraph" in Section 2 of the article referred to as the Ashida Amendment. On the basis of the wording the article can be interpreted that the provision in the article denied only wars of invasion and could permit armament for defense. On the basis of such an interpretation, the Police Reserve Force was established, which then became the Security Forces and later the Self-Defense Force.

Such a movement was natural for people who understood what an independent country was. During the Occupation it was a necessary preparation for future independence. The Japanese, who are weak in legal

theory compared with Europeans and Americans do not understand the concept of an independent nation. Rather, they take refuge in an emotional and conceptual pacifism and regard the current constitution which in the West would be considered colonial as the ideal constitution for Japan. And so the voices calling for a sovereign state were suppressed.

This was especially so when Japan formally became independent on April 28, 1952 with the enactment of the Peace Treaty . As long as the current constitution is a colonial constitution with the provision of Article 9 entrusting the safety of the nation to another nation without admitting the military forces of the nation, all people should try their best to amend it.

However, with ideological opposition to amending the current constitution no constitution suitable for an independent country has yet been established. This is the result not only of ideological opposition but also of the national character of the Japanese people weak in legal theory.

Apparently, when Prime Minister Kishi met MacArthur in later years the latter was surprised that the constitution had remained unchanged. Considering that MacArthur fashioned a draft of the current Japanese constitution from the constitution of the Philippines during the colonial period, it is natural that MacArthur thought it strange that the Japanese constitution had not been amended.

Actually Prime Minister Kishi had declared the amendment of the constitution before the assumption of office of prime minister. He set up the Committee on the Research of the Constitution during his term of office to investigate the establishment of a autonomous constitution or the amendment of the current constitution. After that, from 1970 to his death in 1988 , he served as chairman of the Congressional League for enacting an Autonomous Constitution. I had occasion to hear his views which can be summarized thus:

1. The constitution of Japan, deprived of the right of military affairs is unfit for an autonomous country.
2. As a result, when the San Francisco Peace Treaty was completed in 1951, the first US-Japan Security Treaty was concluded. It was a unilateral treaty concluded under the protection of the United States. Although Japan became

formally independent in 1952 it cannot be called an independent country in the true sense of the term without amending the unilateral treaty.

3. Japanese people should remember that the Meiji Government was hard pressed to amend the unfair treaty the Edo Shogunate concluded with various countries out of sheer ignorance of international affairs.

4. Prime Minister Kishi worked to establish equal relations with the United States and finally succeeded in amending the US-Japan Security Treaty but he deeply regretted that he could neither enact an autonomous constitution nor amend the current constitution.

5. It is very important to have pride as an independent country even if the country was defeated in war. Few Japanese people have felt proud after World War II. Japan cannot amend the constitution to establish a constitution suitable for an independent country. I hope politicians of all parties have such pride and make an effort to attain such a goal. A true politician should make such an effort for Japan and the people with a noble ideal in mind, even if it is impossible to amend the constitution immediately.

7. Conclusion

Constitutions cannot be identical among all countries simply because they have a strongly idealistic nature. They are strongly affected by history, ideology, customs, tradition and religion and contain the specific characteristics of a nation. The constitution of a nation is built on such a basis. It is natural that once the constitution is established it should be observed as basic law of the nation.

However, before observing it, it is necessary to determine clearly whether it is the constitution of an independent country or a colony. The constitution can be one for a republic within the federation and the sovereignty is restricted. It can be a colonial constitution in which sovereignty is vested in the suzerain state. Therefore it is necessary to see if it is a constitution of a completely independent nation or a colony.

Even if a country has a constitution, it can be a colonial constitution or the constitution of a republic within a federation in which the right of military

affairs and diplomacy are entrusted to another country. Therefore a country cannot be an independent country simply because it has a constitution. To judge whether a nation is independent or not one must determine whether it has an unlimited right of diplomacy and a system of self-defense. It follows from this fact that an independent country can have a complete constitution and it doesn't mean that a country is independent because it has a constitution.

How can one appraise the current Japanese constitution when judged by the standards of an independent country. So long as we honestly read the provision of Article 9 such as to "renounce war and the use of war potential forever" and "land, sea, air and other war potential will never be maintained" the current constitution never ensures a system of defending itself and cannot be regarded as the constitution of a sovereign country. We must say that it is a colonial constitution.

Japan became an independent country with the San Francisco Peace Treaty but to maintain a system of an independent nation without amending the constitution, the army, navy and air force are called the Self-Defense Forces, soldiers are called members of the Self-Defense Force and the battleships the ships of the Self-Defense Force. Although I admire the dexterity of the administrators who tried to preserve the structure of an independent nation within the framework of the current constitution, I regret that no administrator or politician who tried to amend the constitution to provide a complete system as an independent country appeared in later years.

As long as Japan continues to have a constitution unsuitable for an independent nation though it is one, Japan will find itself isolated in the international community. As we saw during the Gulf War while other nations took action based on the United Nation Resolution, Japan wasted time discussing the interpretation of the constitution and failed to pass even a very half-hearted United Nations Peace Cooperation Act. Japan has come under fire for avoiding the risk of combat and preferring instead to dole out financial aid. Without changes in perception and behavior Japan will find itself an outcast among nations.

I hope that all Japanese fully understand that this situation is the result of the colonial constitution established during the Occupation.

The procedure for amending the constitution requiring a two thirds majority of both Houses of the Diet is so stringent that it is extremely difficult to amend. To interpret the provisions of Article 9 as proper to the constitution of a sovereign power and not of a colony is no easy task. Some say that scholars have given 18 different interpretations depending on which part is modified by the phrase "in order to accomplish the aim of the preceding paragraph". So it is no surprise that the government's interpretation differs from that of the opposition parties.

I will go so far as to say that while past governments and the party in power have employed an interpretation that preserves the dignity of an independent nation, opposition parties have echoed self-complacent idealism riding on the national sentiment of aversion to war instead of having a constitution suitable for an independent nation because they do not recognize that it is a colonial constitution.. They have fallen into absolute pacifism, passive, closed and ascetic pacifism.

After World War II Japan was confined to limited territory, territorial waters and space. Under a very rigid foreign exchange rate and trade limitations Japan remained a third or fourth class country for years. More than 40 years after the war, however, Japan has become an economic giant. Japanese and Japanese enterprises are actively conducting business worldwide. Now is the time for change.

I sincerely request that the Japanese people awake to reality by learning the lessons of the Gulf War, reconsidering the essential points I have reiterated regarding the constitution of Japan and its suitability for an independent nation and reforming the passive, ascetic and closed pacifism of the past into an active and forward-looking pacifism with some value to the world.

Chapter 2: What is Wrong with Article 9 ?

As an actual process of investigating the problems in the constitution, I would like to present the provision of Article 9 to explain issues in this chapter and present my amendment and explain it in the next chapter.

The Provisions of Article 9

Article 9 (Renunciation of War): 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.

Commentary

The provisions of Article 9 can be summarized thus:

(1) The phrase "aspiring sincerely to an international peace based on justice and order" sounds quite natural at first. There is a reason for providing for a natural thing in the constitution. When reading between the lines we can see that it can be read as an apology that since Japan has been disturbing the international peace by behaving against justice and order, it will "sincerely aspire" to an international peace based on justice and order. That such an apology is provided in the constitution in which noble spirit should be expressed makes people very servile. Actually the Japanese people has become servile. We can say that this apology was integrated into the constitution because it was enacted just after World War II on the basis of the US draft.

(2) Immediately after the expression, three points 1) the renunciation of war and the use of force, 2) land, sea and air forces as well as other war potential will never be maintained, and 3) the right of belligerency of the state will not be recognized, were provided for in the constitution. It means that Japan does not have to maintain military forces and can entrust its security to the international society simply because an international peace based on justice and order will be realized. Although it can be interpreted as praising a well-intended ideal, it is none other than a system of entrusting the security of the country to another country like colonial constitutions of

the past. In this sense the constitution of Japan is a colonial constitution or the constitution of a trust territory.

(3) The next point is the expression " the Japanese people forever renounce war as sovereign right of the nation and the threat or use of force as means of settling international disputes." The word "Kokken" is not familiar to most Japanese people and is expressed in English as " the sovereign right of a nation ". It means the fundamental right of the country. Although many scholars in Japan say it has no particular meaning it is just an ornament to the expression related with wars. In international law any country may engage in war so long as it abides by certain procedures. It has been interpreted that the right of belligerency is the most fundamental right of a nation.

Article 9 clearly states that " 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" meaning that Japan has no such right. It clearly shows that Japan is not treated as an independent nation but as a colony or a trust territory.

The expression " the threat of force" means to threaten other countries by showing an attitude that it will actually use force if the contention of one's own country is not accepted by them even if force is not used. It was often used by countries during the colonial era. It was then reconsidered that it is a means of aggression. Countries whose constitutions prohibit the threat of force are increasing.

It is rational that the use of force is also prohibited, considering that the war was started without declaring war against the enemy. justified by using terms such as incident or event (The Japanese referred to the attacks as events or incidents. It is not called war when a will of fighting is not declared). However without restricting the renunciation of the use of war to wars of aggression, even the use of force for the purpose of self-defense and sanctions based on the determination at the General Assembly of the United Nations will probably be denied.

(4) In the phrase "renounce forever as a means of settling international dispute", the final clause is an abstract expression. Some scholars interpret that Japan can rely only on diplomatic negotiations or international arbitration and cannot even engage in a war of self-defense and war for sanctions against other nations, let alone a war of aggression simply because

no provisions exist that assume a war of self-defense and military preparedness in the current constitution. It might have been the real intention of the United States when it imposed the current Japanese constitution .

However, Article 1 of the so-called Anti-war pact of 1928 stipulates a provision to the effect that signatories shall regard the act of engaging in a war as a means of settling international disputes as being illegal, and through mutual relations renounce war as a means of national policy. Most of the 63 signatory nations agreed with the intention of the treaty on the presupposition that the expressions " war for settling international disputes" and "war as a means of national policy" included only war for aggression, while war for self-defense and for sanctions are not restricted. In the interpretation of the Charter of the United Nations, " war for settling of international disputes" shall be restricted to wars of aggression. It is not necessary that only Japan should take a different interpretation.

Therefore a means of settling international disputes stipulated in the first section of Article 9 of the constitution should be interpreted to mean being "restricted to war of aggression."

(5) The first half of the second section of the Article, which states that land, sea and air forces as well as other war potential shall not be maintained, speaks for itself. Japan was an enemy of the United States during World War II. It is natural for the United States to restrict Japanese power so that it would not become a military rival in the Pacific again. It was natural that the United States imposed on Japan the constitution which provides for the denial of maintaining military forces considering that there was no consciousness of an alliance.

MacArthur might have included such a provision in the constitution with a view to colonizing Japan with the Philippine constitution in mind. In any case, it is not appropriate to amend the constitution of the defeated nation immediately after the war simply because of unpleasant feeling. In 19th century Europe, wars often broke out and the victors revised the constitutions of the countries they defeated but this had adverse effects and in 1907 European nations gathered at an international conference in The Hague where it was agreed that victors should not revise the laws of the defeated countries.

Both Japan and the United States participated in the Hague Treaty and ratified it. Fortunately or unfortunately both Japan and the US did not have the experience of victory or loss in a war, unlike the European nations. Therefore the United States demanded the amendment of the constitution and Japan accepted it without difficulty.

Then around 1932 when the San Francisco Peace Treaty took effect, the Japanese government decided that as an independent nation, Japan could not help possessing military force. It called the army the Self-Defense Force. The land, sea and air forces are respectively called the Ground Self-Defense Force, the Maritime Self-Defense Force and the Air Self-Defense force instead of being called the army, navy and air force. The expressions are still in use today.

(6) The problem can be detected in the expression "as well as other war potential will never be maintained". There are different interpretations of "other war potential". Generally speaking other war potential can be interpreted as military capability that can be immediately converted into armed force when needed, though not officially called an army or potential armed force.

It seems that such a provision is stipulated in the constitution to prevent Japan from founding a military capability that can be converted into an army, let alone official army, navy and air force in the future. Soon after the constitution was established the cold war between the United States and the Soviet Union began. Full-scale war broke out on the Korean Peninsula. MacArthur felt the necessity of reinforcing the defense of Japan after sending troops to the Korean Peninsula and for that purpose he immediately ordered the foundation of the Police Reserve Force. It grew into the Security Forces and is now the Self-Defense Force. Thus America had to break the limitations of Article 9 with its own hands.

Some Japanese scholars interpret "other war potential" as both human and material capabilities that can be used to conduct war. In such a broad interpretation, many factories, institutions, airports and vessels are very likely to be included. Since it is against our common understanding we do not have to adopt such a broad interpretation.

In the process of establishing the Police Reserve Force, Security Force and the Self-Defense Force, discussion was held on what war potential is at the Diet meeting. The Japanese government once explained that war

potential in Article 9 of the Japanese constitution means the capability of engaging in a modern war. According to the explanation, as long as the Self-Defense Forces do not reach that level, it cannot be called war potential. Such a discussion still remains. It is actually a nagging problem for our country.

The above mentioned argument can be attributed to the very fact that the Allies imposed a constitution on Japan that does not make Japan a truly independent nation with the clear intention of punishing Japan at a time when strong anti-Japan sentiments had not disappeared. Besides in Article 96 (Amendment) the procedure of the amendment is made very strict under the leadership of MacArthur. It has been impossible to amend such an irrational article up to now. The Japanese government had to recognize the war potential on the basis of the principle that an independent nation must defend itself with its own hands even by adopting a very unnatural interpretation.

(7) The provision in the article that the right of belligerency of the state will not be recognized shows that Japan is not an independent nation.. It even suggests that Japan is a colony or a trust territory.

The interpretation of the right of belligerency is interpreted in three different ways: 1) it means all the rights recognized for countries engaging in war such as offensive, inspection and capture of war prisoners authorized by the international law, 2) it simply means a right authorized for a country to engage in wars, and 3) the combination of the above-mentioned two points. Generally speaking, the second view seems to be dominant, but considering the provision in Article 9, the first view seems to be more valid as an interpretation of the right of belligerency.

This is apparent that America's intention of the occupation of Japan is clearly expressed in the provision of Article 9. We can understand that never letting Japan possess an army, never letting Japan rearm was the intention when the constitution was established.

Many foreign reporters come to my office. Most say that they can interpret that the Japanese constitution does not permit Japan to have armed forces as long as they read it in English.

(8) Here the problem lies in the expression " in order to accomplish the aim of the preceding paragraph". The expression was not found in the original draft made by the United States. It is said that it was later added by

Kin Ashida (he was a member of the House of Representatives and later became Prime Minister), chairman of the Subcommittee on the Amendment of the Constitution held in 1946 to leave a possibility to open a way for the rearmament of Japan. However, Kiyoshi Mori, member of the House of Representatives investigated the history in 1983. As far as he investigated, he could not find any evidence that proved the above-mentioned explanation in the official records. Therefore the facts remain unclarified on that point.

However the expression " in order to accomplish the aim of the preceding paragraph" as well as the expression " as a means of settling international disputes" both have a significant meaning in the interpretation of the provision.

The expression " as a means of settling international disputes" can be interpreted as suggesting a means of settling wars of aggression. Then the expression " in order to accomplish the aim of the preceding paragraph" at the beginning of the second section can be interpreted as being provided for on the basis of the preceding expression. On such a basis the remaining part of the provision which goes "land, sea and air forces as well as other war potential will never be maintained". "The right of belligerency will not be maintained" can be interpreted as suggesting that except for wars of aggression, even land, sea and air forces as well as other war potential can be maintained for wars of self-defense and for sanctions. Thus the interpretation of the Japanese government can be supported by the expression " in order to accomplish the aim of the preceding paragraph". In this sense the expression is very significant.

However the expression can be interpreted in many different ways. Particularly different views are presented on which part the expression "in order to accomplish the aim of the preceding paragraph" modifies. According to a certain scholar there are eighteen different views on the point.

But it is absurd so long as the constitution is the fundamental law of the nation to have eighteen interpretations of it. The constitution must be clear and intelligible to people with an elementary school education. Before discussing how Article 9 should be amended we must clearly explain its contents.

Chapter 3: How should the Provision of Article 9 be Revised

1. The Current Provisions of Article 9 Require a Four Point Revision

In the preceding chapters I showed how Japanese perspectives differed from those of other countries. For all its \$13 billion in financial aid Japan was not treated as a member of the multi-national forces simply because Japan would not send troops to the Persian Gulf and would not participate in actual fighting. Immediately after the Gulf War President Bush's visit to Japan was canceled. Japan was given lesser priority during Baker's visit to extend gratitude for cooperation in the war than other countries. As the power of the Soviet Union declines and the international order centered on the United States under its leadership is in the offing, Japan finds itself lagging behind other countries in the trend and the future of Japan is apprehended if not getting isolated from the rest of the world.

Although most Japanese are under the influence of idealistic pacifism or rather illusory pacifism, the world is not that simplistic. As long as human nature remains unchanged, the Japanese consider that current international affairs are not so different from Japan's own Warring States period when military commanders maneuvered adroitly to protect their own territories.

Why did Japan misjudge the Gulf War, fumble its diplomatic efforts and alienate itself from the rest of the world? The main reason surely lies in Article 9 of the constitution on which the Prime Minister, the government of Japan, members of the Diet and non-government scholars base their argument.

I have tried my best to show that this so-called "peace constitution" even if it pleases Japanese sensibilities lacks provisions that an independent nation requires. Rather, it is a colonial constitution for a territory under the trusteeship of the United Nations in which Japan's security is entrusted to another country.

The essential cause of Japan's divergent perspective lies with the Japanese themselves. We believe that by decorating with the euphoric words Peace what in reality is a colonial constitution we have created an ideal document. To make matters worse most Japanese people are unaware of their own reasoning.

Granting the idea the next problem is how the characteristically colonial provisions of the constitution, particularly those of Article 9 should be revised to make them appropriate for a sovereign country.

Ideas differ on how Article 9 should be revised. Let us consider four points that should be part of a new article that would replace the current Article 9.

The goal of the revision is to abolish the constitution's colonial character which says in effect that Japan cannot defend itself and refashion it into the constitution of an independent nation which provides that Japan shall have the right of self-defense. To this purpose the constitution should provide that Japan shall have war potential, land, sea and air forces suitable for a sovereign nation while the constitution should clearly state that Japan shall not engage in aggressive military actions. It also should announce that as an independent country Japan shall have the right to defend itself against attack or invasion by a foreign power or powers. Furthermore it should clearly provide that Japan shall be able to participate in a sanction war on the basis of a decision by the United Nations as a natural act of an independent nation.

Next, a new article should be added concerning the right of command which is clearly stated in the constitution of an independent nation. Another new article should set forth the requirements under which the army, navy and air force can mobilize for security purposes and military action.

Also as long as the current constitution lacks crisis-control provisions and provisions for coping with crisis, provisions for crisis should be stipulated as well as an article that stipulates the case the prime minister does not exist in a crisis.

2. Provision in the Current Article 9 should be Corrected

Article 9 (Possession and Exercise of the Land, Sea and Air Forces and Other War Potential)

1) Japan shall possess army, sea and air forces and other war potential to defend itself as an independent nation.

2) Japan shall forever deny any war of aggression

3) When the United Nations determines that an action by a specified nation is aggressive, Japan as a member of the UN shall be able to dispatch army, navy and air force and other war potential to punish the aggressor.

4) When requested by the United Nations to engage in surveillance of armistice, relief actions and the transportation, medical treatment and relief of refugees, Japan shall be able to dispatch army, navy and air force personnel and other war potential overseas for that purpose.

5) Japan's rights of self-defense shall include the rights to individual and collective self-defense.

Commentary

1) Before discussing the actual provisions, common sense requires that we judge whether Japan's constitution is that of an independent nation or of a non-independent nation such as a colony or a republic within a federation.

The standard of judgment is whether or not the country has independent military and diplomatic rights. That is, a nation that has a means of defending itself is sovereign while a nation that entrusts its own security to another suzerain state is not independent but a colony. The same also applies to diplomatic rights. As I discussed in the preceding chapters an apology is provided in the preface and at the beginning of Section 1, Article 9 of the current constitution. Besides, even the provisions on the right of diplomacy contain a nuance suggesting that Japan is a trust territory.

2) As mentioned in the commentary of Article 9 there are three points: 1) Japan forever renounces war as a sovereign right of the nation. 2) land, sea and air forces as well as other war potential will never be maintained 3) the right of belligerency of the state will not be recognized. The Japanese government declaring that Japan is an independent country takes an interpretive position that it is possible to possess the self-defense force.

However, the constitution lacks a provision permitting Japan to defend itself. In this sense the Japanese constitution is not that of an independent nation.

Despite its defects, the government, the Diet and the nation will not revise it and even praises it as a peace constitution. This is exactly pernicious logic. While declaring this, it tries to decide its position in international society according to the literal interpretation of a colonial constitution, Japan gets alienated from the common recognition of the world. As a consequence it will reveal an ugly attitude to the world as it did during the Gulf War. It is quite natural that people do not willingly deal with various problems

including international affairs and a very uncomfortable atmosphere is created in the country.

3) For the reasons mentioned above Japan should awaken to reality and abandon its colonial nature. Japan should immediately declare that it will possess land, sea and air forces and other war potential to defend itself like other independent countries and begin preparations for revising the current constitution.

Incidentally in the provisions of constitutions and other legal documents the very first section followed by one and more sections in each article constitute the basic principle while the second and other sections constitute either supplements, exceptions or interpretations to the basic principle.

Therefore, the provision of the article can be sufficient in principle with the following stipulation: the country shall maintain land, sea and air forces and other war potential.

However, considering that Japan has so far adored what other countries consider a colonial constitution as an ideal constitution, I added in the draft of new provisions such expressions as " independent nation" with a clear view to make people aware that the constitution is for an independent country and not a colony.

Besides, such expressions as " for defending itself" might be able to be described in sections after the very first section.

However, considering that most Japanese are extremely allergic to military affairs and wars, the provision reads "Japan shall possess army, sea and air forces and other war potential to defend itself as an independent nation" Thus the expression " to defend itself" is added. As long as Japan is an independent country it has the right to self-defense and should have that capability. It is also natural to engage in war to defend the country.

Incidentally in terms of legal interpretation, sanction wars mentioned later are generally included in war for self-defense.

4) The provision of Article 9 Section 2 of the revised draft which reads "the country shall deny any war of aggression" might be regarded as a natural provision particularly after the anti-war pact of 1928 concluded in Paris. Since Japanese strongly oppose wars of aggression the provision stipulates that Japan shall forswear such wars.

At the end of the era of colonial rule many Japanese shrink from revising the peace constitution fearing the restoration of militarism in Japan. Some

politicians oppose the revision because of the popular opposition. This is putting the cart before the horse.

As long as the constitution is the backbone of the nation, the inherent nature of the country should be decided in the constitution. Japan should make it clear that as an independent country it will have army, navy and air forces. On the other hand, it should explain to the world that it will renounce wars of aggression and will never have a constitution with an aggressive nature. From the first, Japan should explain the inherent nature as an independent nation to the rest of the world and clarify that it will deny any war of aggression in the operation of the constitution. In such a role both politicians and diplomats should play an important role. If Japan would not explain the inherent nature and the operation of the constitution considering that other countries will fear Japan, such an attitude is none other than putting the cart before the horse.

5) The current constitution stipulates that the Japanese people forever renounce war as a sovereign right of the nation and threat or use of force as means of settling international disputes. But the draft of the new constitution would stipulate that Japan shall forswear any war of aggression. Japanese people accept the renunciation of war is a provision that is natural from a legal point of view because it is provided in the current constitution. This attitude is misleading.

This is because in Japan "houki" (renunciation) can usually be applied, from a legal point of view, to the case of giving up a right that is lawfully given to a person, for example renunciation of an inheritance. On the other hand, "hinin" (deny) means the act of not recognizing from the very beginning that which is not a legal right.

It is often said that the word "war" in Article 9 means war of aggression. As long as war is recognized in international laws a valid right, it should not be described as renunciation of war but rather as "denial" of war. In the constitution of other countries, it is usually provided as the denial of war of aggression. Such legal errors can be found in 28 places in the current constitution. Such errors were made in the process of enacting the constitution. The draft was written by laymen of the constitution who were members of the General Headquarters under the leadership of General MacArthur. The Japanese government then recognized the draft without carefully investigating its provisions.

6) The draft of the revised constitution states that if the United Nations determines that an action by a specified country is aggressive, Japan under its obligation as a member of the UN shall be able to dispatch army, navy and air forces as well as other war potential to punish the aggressor. This section is included in the article as a result of considering the discussion held this year on the Gulf War. Both the government and Prime Minister Kaifu, largely due to opposition from the opposition parties declared that it is impossible to send the Self-Defense Forces overseas because of the regulation stipulated in Article 9.

However, as long as Japan does not recognize the existence of military forces as stated in the constitution under which the existence of the Self-Defense Forces is barely justified by interpretative means, it is natural that in times of emergency Japan cannot take a means suitable for an independent nation. Here lies the essential reason why the Japanese attitude appear strange to other nations.

Moreover, Japan decided to become a member of the United Nations and officially joined without making any special stipulation that it would never dispatch its military forces overseas at the 13th session of the Diet in 1952. As long as Japan is recognized as a member of the UN in the position of an independent nation at this moment, Japan should quite naturally fulfill the obligations stipulated in sections of Chapter 7 of the Charter of the United Nations (Action with Respect to Threat to Peace, Breaches of Peace and Acts of Aggression). For all the fact, Japan, which had been proudly declaring that it would contribute to the world, showed an attitude indecisive incomprehensible from the viewpoint of the thirty nations that participated in the Gulf War and cooperated with the multi-national forces. Japan cannot blame those countries that treated Japan as a traitor who disturbs international cooperation.

Therefore I stated clearly in the draft of the revised constitution a provision natural for an independent nation to the effect that when the United Nations determines that an action by a specific country is aggressive Japan shall be able to dispatch army, navy and air forces as well as other war potential to retaliate against the aggressor as an obligation of the UN member nations. There are certainly countries which express apprehension when Japan discusses the overseas dispatch of Self-Defense Forces without clear provisions in the current constitution. However if the constitution

spelled out conditions for dispatching the Self-Defense Forces, Asian countries will feel reassured about the action. Moreover it will be much easier for Japanese politicians and diplomats to explain the purpose of sending Self-Defense Forces overseas.

7) The next section of the article of the revised constitution which states that when requested by the United Nations to engage in surveillance of armistice, relief actions, transportation, medical treatment and relief of refugees the country shall be able to dispatch personnel of army, navy and air force as well as other war potential overseas for the purpose, is a provision natural for a member of the United Nations.

However, the Gulf War revealed that what would be normally considered a natural action is difficult to be implemented and therefore, to avoid repetition of futile discussion the provision was included as a note to remind the Japanese people of what they should do in such a case. However considering the apprehension of the people regarding a possible expansion of dispatched Self-Defense Forces, the case is clearly restricted like the preceding paragraph to the case when requested by UN adding that the purpose is restricted with a provision "for the purpose".

8) The section 5 of the article of the revised constitution which states that the self-defense right of Japan shall contain both individual and collective self-defense rights like other countries is added for the following reason. In Japan from the very beginning of the current constitution, heated discussion is held whether or not Japan has both individual and collective self-defense rights. Quite recently while dividing the individual and collective self-defense rights opposition parties declare that Japan has only an individual self-defense right and not a collective self-defense right or even if Japan should have a collective self-defense right Japan should not exercise it. Even the Japanese government and the party in power tend to agree with such an idea.

Even if it is possible to divide individual and collective self-defense rights in theory or in academic discussions it is natural for a country to have both on an actual level. Article 51 of the United Nations Charter stipulates that **"nothing in the present Charter shall impair the inherent right of individual or collective self-defense"** if an armed attack occurs against a member of the UN until the Security Council takes measures necessary for maintaining international peace and security. Here it is clearly stipulated that

both individual and collective self-defense rights are recognized as an inherent right of a nation.

The argument that Japan has only an individual self-defense right only underscores that fact that Japan is not an independent country. Therefore it is absolutely necessary to revise the constitution as soon as possible to have a system suitable for an independent nation so that no arguments differing from the global common-sensical perception will be made. Although such a provision is natural from the common sense of the world. However, as the Japanese people get accustomed to very strange logic, this provision is included here to correct such a strange idea.

Chapter Four: Authority to Command the Army, Navy, and Air Force: Requirements for the dispatch of Military Forces and New Provisions for Dealing with Emergencies

1) Clarification of Authority to command Army, Navy and Air force
Article 9 Section 2 Authority to Command Army, Navy and Air Force)

1) The Prime Minister shall be the supreme commander of the army, navy, air force and other war potential.

2) In the case of military actions or the dispatch of military forces for maintaining security, the Prime Minister shall command land, sea and air forces as well as other war potential.

3) When necessary the Prime Minister shall be able to entrust another minister in charge of national security with the authority to command.

Commentary

1) Generally a new provision or a complete revision of one provision is provided as one article in the constitution. Here, however, the argument concentrates on Article 9 of the current constitution. New provisions are provided as sections 1, 2 and 3 of Article 9 above.

2) This section states who has the authority to command Japan's military forces. This kind of section is stipulated in the provision as is natural for a constitution of an independent country. Opinions vary on the source of the renunciation of war set forth in the current constitution. Some say it was

proposed by General MacArthur, others say then Foreign Minister Kijuro Shigemitsu or even Emperor Hirohito himself. Whatever the source, the idea is an idealistic and delusive pacifism that ignores world history or the structure of authority and power. It strains credibility to believe that General MacArthur, a military officer and veteran of many wars would conceive of such an illusory idea. Even supposing that MacArthur proposed the idea, his intention may have been different, for example he might have intended to impose sanctions against Japan so that it could not emerge again as a military power. He also may have intended that when Japan's security was threatened, the United States would deal with the threat. It is reasonable to say that this is a policy for the colonization of Japan.

3) If Japan is an independent nation it must have the means to defend itself as mentioned in the revised draft of the constitution. Furthermore, it is necessary to designate who shall have the authority to command the military forces. This would be an improvement over the current situation in which the law of the Self-Defense Forces instead of the constitution stipulates that the Prime Minister shall have the authority .

My draft of the revised constitution provides that the Prime Minister shall be the supreme commander of the land, sea and air forces as well as other war potential. In emergencies that require military action or the dispatch of military forces for maintaining security the revision states that the Prime Minister shall command land, sea and air forces as well as other war potential. This clarifies who has the authority and responsibility.

4) Section 3 of the Article provides that when necessary the Prime Minister shall be able to entrust a minister in charge of national security with the authority to command. This is made because it is inappropriate for the Prime Minister to go far away to exercise the authority to command depending upon the scale, remoteness and other conditions. In such cases it is more reasonable to entrust local command to a specialist who has experience in military affairs.

However, in such a case the Prime Minister must be informed by the local commander and must pass the judgment. Therefore the final responsibility lies with the Prime Minister.

2) Requirements for Military Actions and dispatch of Military Forces

Section 3 Article 9 (Requirements for Military Actions and Dispatch of Military Forces)

1) When the dispatch of land, sea and air forces and other war potential for security and battle is required beyond the scope of routine, the Prime Minister shall order their dispatch as a rule with the consent of the Diet.

2) In an emergency, the Prime Minister shall be able to order the dispatch of military forces for security and battle without the consent of the Diet.

However in such a case the Prime Minister must convene the Diet as soon as possible to obtain consent.

3) The Prime Minister shall be able to declare war order armistice and conclude peace treaties from the viewpoint of international law, in the case of war for self-defense and sanctions.

However, in this case the Prime Minister must obtain the consent of the Diet or authorization of the Emperor either prior to or after the emergency.

Commentary

1) Even if Japan already possesses armed forces to protect its freedom and sovereignty and has clarified the persons entrusted with the command including the exercise of military forces we must also set forth the requirements for military actions and the dispatch of military forces.

As a strong coercive force works in the exercising of the military forces, it is very dangerous to rely entirely on the Prime Minister and the persons entrusted by him with the authority of passing a judgment on important affairs. As long as the Prime Minister can attempt to establish military dictatorship using an emergency we must provide the means to prevent such an attempt.

The current constitution does not do this. If the Prime Minister wishes to abuse the current Self-Defense Forces he can presently do so. In this sense it is necessary to revise the constitution and stipulate a provision for checking it

2) From such a view point this provision of the revised article is easy to understand. Therefore it is provided in the section of the revised article that when the dispatch of land, sea and air forces and other war potential for security and battle is required beyond routine, the Prime Minister shall order the dispatch of military forces in principle with the consent of the Diet. That

is because it is most reasonable to get consent of the Diet constituted by the representatives of the nation in the case mentioned above.

3) It is provided in this provision of the revised article that in emergency the Prime Minister shall be able to order the dispatch of military forces for security and battle without the consent of the Diet. If, in the case of emergency the Prime Minister must obtain prior consent he will have insufficient time to deal with an emergency such as a missile attack. As an exception to the previous provision it is therefore provided that in an emergency the Prime Minister shall be able to order the dispatch of military forces for security and battle without the Diet's consent. But some means of checking the Prime Minister's actions are needed even after such an action.

4) The third provision states that the Prime minister shall be able to declare war, order armistice and conclude peace treaties when recognized as being necessary in the terms of international law, in the case of war for self-defense and sanctions. However in this case the Prime Minister shall have to obtain consent of the Diet or authorization from the Emperor either in advance or afterwards. This provision is added considering that it is provided in the constitutions of other countries that the authority for declaration of war, order of armistice and the conclusion of peace treaties shall reside with the head of state or the responsible figure in the administrative organ. Thus they are regarded as an important authority of an independent country.

The current constitution does not contain such a provision perhaps because Article 9 proclaims that the Japanese people forever renounce war (as a sovereign right of the nation) and the threat or use of force as the means of settling international disputes. If Japan becomes an independent country revising Article 9, the above mentioned third provision should be newly stipulated.

Incidentally in other countries the authority to declare war, order armistice and conclude peace treaties are vested in the head of state. In present day nations, the administrative and legislative bodies have a structure of passing an actual decision. Therefore in my idea, on that basis, such an authority resides in the Prime Minister, the head of an administrative body instead of the Emperor, who only authorizes decisions made by the cabinet. This system would ensure that the Emperor bears no responsibility for military actions. Even if the authority is vested in the

Prime Minister, it is not in his power alone. It must be discussed at a cabinet meeting and either prior to or ex post facto authorization must be obtained as a condition.

3. Dealing with Emergencies and Preparation of the system of Crisis Control

Section 4, Article 9: (Crisis Control System and Preparation of the System for Dealing with Emergencies)

1) Japan shall have to prepare for the crisis control system and the method of dealing with emergencies to prepare for the case of emergency such as war and disasters

2) In an emergency the Prime Minister shall be able to urgently dispose of financial affairs with prior or ex post facto consent of the Diet.

3) In the absence of Prime Minister when time does not allow the designation of a new Prime Minister, under the provision of the constitution, either the Deputy Prime Minister or a Minister previously designated shall carry out the duties of the Prime Minister.

4) In the absence of the Minister or when no one is previously designated as temporary Prime minister the Speaker of the House of Representatives shall fulfill the duties of temporary Prime Minister. Should the office of Speaker of the House of Representatives also be vacant the President of the House of Councilors shall assume the Prime Minister's duties.

Commentary

1) Most countries have a well-prepared system of crisis control and a method of dealing with emergencies. They actually take a swift measures to cope with emergencies such as hijackings and the Gulf War, while Japan's attitude appears very slow and inconsistent. Many people regard Japan's attitude with great amazement.

It seems that such a wide gap with other countries is derived from the fact that crisis control and regulations for coping with emergencies are clearly provided for in the constitutions of other independent countries while not provided for in the Japanese constitution. Some might say that the rules for

emergency meetings of the House of Councilors found in Article 54 of the current constitution are sufficient to cope with emergency. However, this provision permits the House of Councilors to deliberate on urgent matters when the House of Representatives is adjourned. Regulations for dealing with an emergency can be applied when even an urgent meeting of the House of Councilors cannot be held. The degree of urgency in the two cases are qualitatively different.

Japan has enjoyed peace without civil war or social upheavals. No one can say for certain what the future holds. Besides civil wars and large-scale riots a powerful earthquake might strike in the Kanto area. Since it is necessary to set up a system of crisis control and a method for dealing with emergencies in the daily life of the nation, it is provided in Section 1 of the revised article that Japan shall be required to establish such a system to be prepared for emergencies and natural disasters.

3) The second section of the revised article stipulates that during the emergency the Prime Minister shall be able to quickly dispose of financial affairs with prior or ex post facto approval of the Diet. This section is related with the previous section. It is provided because expenditure is needed beyond the scope of the national budget such as preliminary expenses in order to cope with an emergency. Even in such a financial disposal prior authorization of the Diet shall be obtained. In the case of an emergency in which prior authorization cannot be obtained ex post facto authorization must be obtained.

4) The new provisions in the revised article provide for the case in which a person who can fulfill the duty and authority of the Prime Minister is required. It stipulates that when the Prime Minister who wields great authority as head of the administration dies from disease or is assassinated in office and a new prime Minister cannot be nominated in the new session of the Diet due to restricted time (a new prime minister shall be nominated by the Diet according to Section 1 Article 67 of the current constitution) , the Deputy Prime Minister shall succeed the Prime Minister and should the office of Deputy Prime Minister be vacant a minister designated by the Prime Minister in advance shall fulfill the duty.

In Japan when Prime Minister Masayoshi Ohira died, the office of Deputy Prime Minister was vacant. Then Minister of State and Chief Cabinet Secretary Masayoshi Ito, who had been designated by Prime

Minister Ohira from his sickbed temporarily succeeded him. However, considering the importance of the office and the authority of the Prime Minister the constitution should clearly stipulate who will act as Prime Minister if the position suddenly becomes vacant. The constitution of other nations state the order of offices that can assume the leadership of the government.

5) Section 4 of the article stipulating that in absence of the minister in the previous section or when no one has been previously designated as temporary Prime Minister the speaker of the House of Representatives shall fulfill the duties of the Prime Minister, looks rather strange in that the head of legislature functions as the head of the administration.

However the case in which the Prime Minister and all the other Ministers are killed in a large earthquake or in a bomb accident by a terrorist are possible. In these cases the President of the Upper House or the Speaker of the Lower House act as head of the government in many countries. The provision shown here is derived from such examples.

In other countries these provisions are stipulated assuming all the possible causes on the basis of past incidents. Thanks to such a system the crisis control system and the method for dealing with emergencies work very well in an actual case. The situation in Japan is rather calm compared with Europe.

Under the US-Japan Security Treaty Japanese people have got accustomed to peace thus losing awareness of the need for crisis control and dealing with emergencies. As an independent nation it is absolutely necessary for Japan to revise the current constitution and establish a system.

I have shown that based on Article 9 the Japanese constitution is not that of an independent country but rather that of a colony. I have also made concrete criticism about Article 9 and have proposed revisions appropriate for a sovereign nation.

Furthermore I have explained that the current Japanese constitution is lacking in many aspects compared with the constitution of other countries and have presented some examples of possible revisions. The current provisions are ambiguous enough to be interpreted in many different ways. I think that presenting the requirements for the authority to command armed forces and other war potential while clarifying the essence of an independent

nation is less dangerous. Being an independent nation while supporting pacifism will enable Japan to make an international contribution.

I sincerely hope that all Japanese will educate themselves in these matters, abolish the current constitutional system and rise up to establish the true constitution of a sovereign nation.