

Some Social, Political, and Legal Aspects in Japan

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This time, among many social, political and legal problems I would like to pick out three problems (Emperor System, Family System, and Self-Defense Forces) which have now characterized the Japanese society.

1 . Emperor System

Recently there were several ceremonies inside the Imperial Palace where the ancestral Sun-Goddess was enshrined according to the *Shinto* rituals.

On January 7, 1989, the late Emperor (*Showa* Emperor) died of cancer and his funeral ceremony (*Taiso-no-Rei*) took place on February 24, 1989. He was eighty-seven years old.

At a moment when the *Showa* Emperor died, the Imperial Throne, without any legal actions, was succeeded by the present Emperor, *Akihito*, who is the eldest son of the late Emperor. According to the Article 2 in the Constitution of Japan prescribes that "The Imperial Throne shall be dynasty and succeeded to in accordance with the Imperial House Law passed by the Diet." The Imperial House Law stipulates that it shall be succeeded by the male descendants in the male-lineal lineage. Its order is like the following : (1) the eldest son of the Emperor (2) the eldest son of the Emperor's eldest son — etc. He is the 125th consecutive descendant from the first Emperor.

The Ceremony of Enthronement took place on November 12, 1990 and Great Food Offering ceremony (*Daijo-Sai*) was performed inside the Palace on November 22 and 23, 1990.

Somewhat later, the Crown Prince (the eldest son of the present Emperor) conducted a special ceremony to mark his status as the heir to the Imperial Throne (*Ritaishi-no-Rei*) on February 31, 1991.

In this paper we will examine the Japanese Emperor System in this homogeneous society from its historical background to its present era.

(A) Ancient and Traditional Emperor

The origin of the first Emperor (*Tenno*) appears in the mythological legend as the chief priest of the Shinto, considered to be legendary and religious rather than historical.

According to the historical chronicles, "*Kojiki*" in 712 and "*Nihon Shoki*" in 720, the

Sun Goddess, “*Amaterasu Omikami*” as the chief deity of the Shinto gave a rescript to the heavenly descendant of Prince *Ninigi* (the grandchild of *Amaterasu Omikami*.)

According to legend, Prince *Ninigi* descended from heaven on to the sacred Mt. *Takachiho* in *Kyushu*. Since then the Imperial Throne has been succeeded by his descendants who must be male in the lineal-male-line with some exceptions. The first Emperor of Japan, *Jimmu*, who established the Imperial Dynasty in *Yamato* region, was enthroned on the 11th of February, 660 B.C. (It’s now the national holiday, the Day of Foundation, in Japan.) At the beginning of the Imperial Dynasty in *Yamato* region he was called *Oogimi* and then from the 6th century he was called Emperor.

In the past, the Emperor had played a role as the chief Shinto priest with mythological divinity. Through the 7th and the 8th century under much influence from the Chinese state, the Emperor in the most brilliant ages of the Japanese Dynasty was not only a Shinto priest but also a strong advocate of Buddhism.

In the *Heian* Period (794-1192), the Emperor was able to delegate his political powers to the Regent. The Regency was established to protect the Emperor who was an infant. In 887 a *Kampaku* for the Emperor, who was an adult, exercised true political power in the name of Emperor. This was called the Regent Government. (The present Regency shall be established in cases where the Emperor is infant, or in case of his serious mental or physical illness, or in case of his grave accident in accordance with the Article 16 of the Imperial House Law under the Constitution of Japan.)

The period from 1192-1868 was known as the era of the Warrior Government. In this age the Emperor was separated from the effective part of the Government and had no influence on the practical and actual policy. He performed the Imperial rituals as the ceremonial function in accordance with mainly Shintoism and Buddhism. Publication of the Japanese lunar calendar was made by the Emperor who supervised the time according to the Chinese tradition. The tradition of giving the reign of each Emperor different name by the late Emperor’s death or some historical events continued before the Meiji era from one thousand and three hundreds years ago. After the Meiji era, each Emperor has its own age today. It now counts two hundreds and forty-eight ages and still remains in our homogenous society. The present era is called the “*Heisei Era*” (But we are never called him Heisei Emperor while his life-time. We are simply called him the Emperor.), immediately following to the “*Showa Era*” when the late Emperor was still alive.

After three hundred years of Feudalism under the *Tokugawa* Shogunates Japan headed in the direction of the European Constitutional Monarchies. However, this was only superficial ; in reality, under the *Meiji* Restoration, Japan was an absolute monarchy.

(B) Emperor in the *Meiji* Constitution

The *Meiji* Constitution was enforced by the Emperor *Meiji* beginning on the date of 11th of February, 1889 (the same date as when the first Emperor, *Jimmu*, began his reign over Japan.) But this time the Emperor appeared in the garments of an absolute monarchy like the Prussian style by European theory, the divine right of kings, in

addition to his own ancient, religious, traditional and mythological garments. Under the *Meiji* Constitution of Japan the sovereign power of the state resided with the Emperor who was also “sacred and inviolable” beyond the rule of law. And the Emperor as the head of the state had the supreme command of the army and navy. He declared war, made peace and conclude treaties.

In cases where he exercised his political power, Shinto rites might be performed by the Emperor ; not his own will but in accordance with the will of the ancestor the sun goddess, in the mythological legend. So the Shinto Shrine was especially advocated by the state. Thus the Emperor performed his divine right of government function in accordance with his religious function.

(C) Emperor in the Constitution of Japan in 1947

Defeat caused by the World War II compelled the Emperor to take off those garments of militarism, Shintoism, the absolute monarchy of the *Meiji* Constitution and the mythological legend. Now he put on the peaceful and democratic suit ordered by the Japanese people and the constitution of Japan that came effect on the 3rd of May, 1947. This time, of course, the sovereign right of the nation resides with the Japanese peoples. At that time the Emperor declared that he was not a living God but merely a human being. But the Emperor System still remains albeit only as a symbol of the state and unity of the people. So he never exercises the act of government. He performs only the matters of state provided in this Constitution (Article 3, 4, 6, and 7). But the Imperial Throne is still dynastic and succeeded at the time of his death (He cannot retire at free will.) in accordance with the Imperial House Law which is also prescribed in case of enthronement, Regency, marriage and other matters.

There was the opinion that the *Showa* Emperor should have been prosecuted as a war-criminal at the end of the World War II. There were the other important leaders who were punished by the military court of the Allied Forces in the Tokyo Trial in 1948. Under the occupation policy of the General Head Quarter of the Allied Forces, the G.H.Q. supported the Emperor System without prosecuting his war-criminal because of being able to maintain social order in Japan quite smoothly.

In 1988 the mayer of Nagasaki city who stated the Late Emperor’s responsibility on war-criminal was injured by the right-extremist.

Today the Emperor System from the sociological and psychological viewpoint is still supported by the majority of the people’s will to continue and to keep our homogeneous society. Or it might be said that our homogeneous society would be kept by the Emperor System. And the practices and rituals of the Imperial Court from the old ages still remain inside the Court in actually, but not legally.

According to the social survey in 1946, immediately after the W.W.II was over, 73.8% of those respondents supported the Emperor System and 4.5% of those opposed it, and 21.5% of those didn’t touch it. In 1956, 48% of those supported the Emperor System and 23% of those approved the more authoritative power put on it in the social survey by the Government.

According to the social survey by *The Mainichi Shinbun* (Press), April 29, 1989, 83%

of those respondents want to support that “the Emperor is a symbol of our unity”, and 9% of those want “to abolish the present Emperor System”. 35% think that “he is not responsible for the war-criminal” and 31% think that “he is responsible for the war-criminal”. And 40% do not think that “his funeral ceremony in accordance with Shintoism in 1989 was not against the Constitution of Japan”, because they felt that his Shinto funeral was independent of his state funeral. However, 11% think that “his funeral was unconstitutional”, because it overlapped Shinto and the State. The national expense for his funeral of the late Emperor cost about more than 12 billion yen. The expense on the ceremony for Enthronement and the Great Food Offering of the present Emperor cost about 8.1 billion yen. And also the same question for the constitutional separation between the religious Shinto-Rites and the State matters is still unclear and controversial.

Article 20 in the Constitution of Japan prescribes that :

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

I remember in the past ages that the Emperor who was the head of the State and also a chief priest of the State-Shinto tied together. The absolute belief and value which Japanese leaders at that time inspired into the Japanese people’s mind had been more effective for planting such loyalty and chauvinism to the Emperor’s state in the Pacific War. So the state-shinto was the most convenient and suitable tool for furthering such spiritual background as devoted service sacrificing individualism for the Emperor’s State.

2 . Family System

(A) Stem Family (*Ie* in Japanese) in the old ages

Before the World War II under the primogeniture from Feudalism and the ideological reconstruction by the *Meiji* Constitution in the national scale, the stem family functioned as a continuing unit of kin which consisted of close relatives by the legal force. Among them the old son of the male lineage got the position of the headship by succession and exercised control and supervision over all members of the family. And an absolute obedience to him was necessary for its function as a unit. So marriage usually took place under the control of the head of the family system as a transaction between two families, not a union of two individuals. (You can see in Christendom marriage is defined as the voluntary union for life of one man and one woman.)

In the old ages in Japan, young couples rarely had the opportunity to meet by their own free decision. So we had the custom of arranged-marriage by the match-maker (*Nakodo*) from the old times (*Miai* in Japanese). It still exists in our society but its

percentage, compared with that of the love-marriage, has been decreasing from 70% in the immediate post-war, to 30% today. Regarding the arranged-marriage, the couple met together after both families had examined all aspects of the personal records. The match-maker had arranged for both families to correspond from the standpoint of their economical, social, educational position and family origin to make an effort to tie both sexes together through “*En*” in Japanese (some inward antenna, not an explicit expression.)

You could already observe the ideological function of the Emperor as a chief-priest of the Shinto religion and also the head of the nation in accordance with the lineal descendants from a view-point of the national scale. The national and family system, having a similar structure of her vertical construction, contributed an interrelationship of harmony and stability. Family units worked in a synchronized way creating a national sense of a unified unit under the head of the family. Thus, these social structures of the Emperor system rooted by its absolute obedience were a typical one of its character in old Japan. They were deeply cultivated by Shintoism, Confucianism and Buddhism for maintaining our homogeneous society.

(B) Family System of the Civil Code in 1947 after the World War II and Family Problems

(a) Marriage in the present family is based upon the mutual consent of both sexes and is maintained from the equal right of each individuals dignity (Article 24 in the Constitution of Japan). Young couples can open the door to marriage by a voluntary act of love at school, at work, or social activities. They live together and cooperate with each other, of course. And their children have the equal right of access to the parents' property in the case of inheritance (Paragraph 1, Article 887 in the Civil Code). In the old ages, according to the Old Civil Code (which had been already abolished), the succession for the eldest son of male-line excluded the younger sons and daughters. Now the spouse always inherits one-half of the other partner's property after his or her death (Item I, Article 900 in the Civil Code). Before that amendment the spouse got one-third of it. So today we can say that the Japanese family is a nuclear family.

(b) Regarding to divorce we are quite free to get divorce by mutual agreement without going to the Court (Article 763 in the Civil Code). And 90% of those divorces are based upon the mutual agreement, free from all bonds of matrimonial relations. (Our Old Civil Code had prescribed this consensual agreement. though the divorce was actually due to the coercion by the husband.)

(c) We are quite free to get married and divorced by mutual consent through notification of Registration. But when in case of divorce no agreement can be reached, then either party may apply to the Court. In this case the party must first apply for conciliation to the Family Court. It consists of judges, conciliation commissioners, and they have the investigators who examine the actual facts. This mutual consent to divorce through conciliation has been showing about 9% of all total divorces for these several years. This conciliation has the same binding authority as a judgement by the family court or a decision of the district court which has been showing about 1% of

them for these several years.

We also have the option of non-fault divorce according to Article 770 in the Civil Code. So the divorce rate has been increasing year by year, but still rather low. The following figures show its rate with numbers of marriage and divorce.

marriage, divorce and its rate per 1000 persons

1986	710982	166070	(1.37)
1987	696173	158243	(1.30)
1988	708000	154000	(1.26)
1989	708304	157820	(1.29)
1990	722460	157640	(1.28)
1991	742281	168974	(1.37)

Recently, September 2, 1987, the Supreme Court changed their former decision and approved the breakdown of a marriage by judicial divorce. In this case the plaintiff (husband) who was at fault and responsible for his matrimonial offense after their separation of thirty-six years.

(d) Concerning divorce in the majority of cases the ex-wife would be able to demand her distribution of the property received from their mutual contribution during the duration of their marriage. It'll also involve her maintenance and compensation damages for her mental loss, if it exists.

According to judicial statistics on the mutual consent of divorce (not the judicial divorce) the ex-wife got more than three million yen as an average on those above-mentioned demands in 1982. It was compared with about two million yen in 1981 and before. Usually the ex-husbands neglected to maintain their dependent children's care. However the spouse (the ex-husband) who had lived together for more than 20 years paid six million and ninety-five thousand yen.

Nowaday, the percentage of divorce case between spouse in their 60s has increased from 2.9% of all total divorce cases in 1979 to 4.6% of those in 1988.

According to the Japan Times, November 10, 1991, the ruling of the Supreme Court defined the minimum period of separation as being ten years to seven and half years filed by the spouse responsible for ending marriage now.

And also nowaday a job transfer makes divorce increasing. Husband compelled to leave his family and to live alone. 15% of some 2,000 cases of divorce applicants was recorded (the Japan Times April 28).

We have also faced other family problems on domestic violence, cohabitation, illegitimate children, artificial insemination, surrogate mother, committing suicide, and the aged persons in our society.

(e) Now I have our survey on matrimonial life between those in the U.S. and those in Japan, cooperated with Dr. L. Cargan and Dr. Sakai. It seems to us in our conclusion that Japanese wives and husbands in Okayama may not be as happy in their marriage as American counterparts in Dayton in terms of the "happiness" of family life.

Also, according to the Survey by the Cabinet Secretary Office in 1983, despite

changing from the arranged marriage to the love-marriage type, already the above-mentioned matters, 71% of Japanese women as compared to 34% of her American women believed that taking care of family matters was more important than creating their own happiness. And also the survey reported that 25% of the Japanese wives were very satisfied with their family life as compared to 60% of the American wives, quite contrary to the divorce rate, 4.96 per 1000 persons in U.S., and 1.39 per 1000 persons in Japan (both data in 1985).

(f) Concerning the other items, there is a special procedure for adopting children younger than six years. Under this allowance (required by the Family Court) the foster parents are treated as if they were the natural parents. This amendment was effective January 1, 1988 in addition to the present adoption contract.

(g) Regarding the requirements of Japanese nationality under the Law before January 1, 1985, child born from a Japanese mother and a foreign father (*Jus sarguiris a matre*) could not acquire Japanese nationality. But child born from a Japanese father and a foreign mother (*Jus sarguiris a patre*) could acquire Japanese nationality. Now under the amendment child born in both cases can acquire Japanese nationality.

(h) Concerning another angle on family matters, 65.3% of survey respondents (Japanese housewives) want to earn less than one million yen in order avoid excess tax on income. Some 58.4% of the respondents want to earn supplement for their husbands' income.

Let's see the woman's view on marriage, and job for her single life.

Among those survey respondents 76% (in their 20s) do not care if they are married and 64% of those do not want to get married for the time being. However 90% of those desired to get married in the future.

Among those pregnant women who were single, 14.7% want an abortion and 42.2% want to keep their child.

Concerning job, birth, and marriage of single women in Japanese society, women are very nervous about single mother status and they are very conscious to obey the Japan's legal order (the *Mainichi Shinbun* July 16-17).

(i) Among child abuse and husband's abuse, there are psychological and physical damages or sexual abuse. In 1990, 778 cases among 5214 cases shows husband's violent acts and his misconduct by alcoholic which are the top ranking of the domestic violence. It seems to be violation of human right (the *Mainichi Shinbun* June 27, 1992, p. 12).

(j) Regarding artificial insemination, the first baby by artificial insemination was born on October, 1983. A total numbers of such 657 babies were born from 1983 (when) to 1988.

In Japan surrogate mother (The embryo by artificial insemination under contract borrows other woman's womb.) would be controversial from legal point now in case of being registered as the legitimate child after birth for a legal marriage-couple. There are two cases. One is done by artificial insemination of a couple's egg and the other is done by that of surrogate mother's egg and husband's sperm. The former case was

occurred among Japanese. So nowadays a couple with her in order to avoid its controversy in Japan went to abroad (the U.S. or Korea) for the purpose of her being pregnancy by obstetric treatment (the Mainichi Shinbun April 17, 1992).

The frozen fertilized eggs for artificial insemination began at the end of 1989. But it is a legal and ethical controversial problem of how to treat the frozen embryos which can be stored for donating it to other couple, and whether or not it is under the wife's custody.

(k) Now we are facing the aged society of more than 65 years old. It showed 12% (14.88 million) of all total population in 1990. And at the present (September 15, 1992) it shows 13.0% (16.22 million) of all total population according to the survey by Government.

(l) There has been legislative movement on another issue. The present law prescribes that husband and wife may assume either the husband's surname or wife's one under their agreement at the time of marriage (Article 750 in the Civil Code). But it is said that each husband and wife should be able to assume each own surname even after their marriage.

3 . Self-Defense Forces and Rearmament

Now Japan faces the most serious problem on how we contribute and cooperate with the United Nations for world peace. How should Japan play an important role in this international community, not only for financial aid but also for human resources (military personnel involved)? Such measure was needed during the U.S.-led multinational forces deployed in the Persian Gulf War under the U.N. Security Council which authorized the use of forces on January 15, 1991.

Suppose we join the U.N. peace-keeping operation or we take part in the world police force in future.

Though we have maintained land, sea, and air forces for self-defense only in accordance with the Self-Defense Force Law of 1954 for security of national interest and the 1954's decision in the House of Councillors prohibited the dispatch of the SDF abroad. We were not yet prepared to take proper measures and to determine whether or not we would send our troops abroad formerly in case of the international crises which might happen in the future. It is very hard to take steps and adopt concrete measures within Japan's legislative framework prior to these occasions, because of our constitutional constraint.

Now in a long process of its controversial dispute *the Law on Cooperation of the U. N. Peace-Keeping Operations* (Law No. 79 in the Heisei 4th year) was passed by the Diet on June 15, 1992 and it was enforced on August 10, 1992, this year.

According to Asahi Evening News, "U.N. formally asks Japan to send 683 personnel to PKO in Cambodia." "A belief letter from U.N. Secretary-General Boutros Boutros-Ghali calling for Japan to provide assistance in the form of manpower to the U.N. Transitional Authority in Cambodia was delivered late Wednesday afternoon to the Japanese mission in New York." (September 3, 1992). "Japan plans to send 1,803

personnel, carrying 677 hand-guns and rifles, to participate in peacekeeping operations under the United Nations Transitional Authority in Cambodia (Asahi Evening News, September 5, 1992).

The Cabinet meeting made a decision on its exercise plan and the cabinet-order on this law which is promulgated and enforced on September 11 after approved by the security council. And Japanese government must give an explanation of these to the Diet. The one is to send Japanese missions to Angola for election surveillance and the other is to dispatch the self-defense personnel, not its troop, to Cambodia for its cease-fire monitoring and other rear-echelon activities by the self-defense forces (Mainichi Shinbun, September 9, 1992). Those plans were submitted to the Cabinet by the International Peace Cooperation Headquarters.

But beside rear-echelon support Japanese Government must get the Diet approval before sending its Self-Defense Forces abroad under the U.N. command. But the five conditions which might be accepted by the U.N. are necessary. The five conditions are following :

- 1 . the ceasefire-agreement by both parties in conflict
- 2 . the ceasefire-agreement by the U.N. resolution for using UNPKF is accepted by both parties in armed conflict
- 3 . keeping neutrality while its operation
- 4 . withdrawal in case of the ceasefire broken
- 5 . use of weapons for self-defense and his colleague

Now this military force activities for the UNPKF is suspended until this ban is lifted by another law.

How should we do? The following is my view-point on this problem.

(A) We have incorrigibly headed toward rearmament with our Self-Defense Forces without drying up our tears for “No More Hiroshima’s” after the World War II.

The principle of eternal and international peace is prescribed in the preface of the Constitution of Japan :

(……Never shall we be visited with horror of war through the action of Government……. We recognize that all peoples of the world have the right to live in peace free from fear and want……)

This legal expression is in harmony with the spirit of the preface in the U.N. Charter “……to save succeeding generations from scourge of war……”.

And also we declare “renunciation of war” in the Article 9 of this Constitution :

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

In order to accomplish the aim of the preceding paragraph, sea, land, and air forces as well as other war potential will never be maintained.

The right of belligerency of the state will not be recognized.)

(B) Now I would like simply to pick up two typical views which are quite contrast among several ones on the controversial issue of “Renunciation of War” in the Article 9 of our Constitution.

There is the one view that we negate any wars exercised by the military forces regardless of whether it is aggressive or defensive according to the above-mentioned pacifism. The Constitution of Japan has no any clause for declaration of war or for concluding peace treaty. But, of course, we have the right of self-defense without using any weapons to protect our security. This view (absolute pacifism) came from the original idea of the Late General MacArthur who suggested.

Also, there is the other view on this point that the right of self-defense by means of using the defense forces is permitted within its scope of self-defense only. The Article 9 does not deny the inherent right of self-defense as a sovereign right of nation. The Japanese Government seems to support this interpretation but they interpret that the SDF is not correspondent to term, “*war-potential*” in the Paragraph 2 of Article 9 in this Constitution. But it might be said that its Self-Defense Forces are permitted the use of conventional weapons for its self-defense, but not nuclear weapons.

However, year by year Japan’s defense expenses have been increasing. In 1987 about 3.5 trillion yen, in 1988 about 3.7 trillion yen, in 1989 about 3.9 trillion yen, in 1990 about 4.1 trillion yen, in 1991 about 4.3 trillion yen and in 1992 about 4.5 trillion yen were appropriated by the Diet for national defense. And in 1989 Japan’s military budget is the sixth highest in the world, and the equipments of its defense forces is the largest one in Asia with the exception of China.

Now the Self-Defense Forces have become fixed among the Japanese people now. I am afraid that Japan is marching towards constructing again the military pavement wearing the rearmament uniform instead of marching towards the peaceful pavement wearing the disarmament suit of this Constitution.

According to the Asahi Shinbun (Newspaper) a public opinion poll conducted on May 24 and 25, 1984 showed that 61% of those respondents approved the Self-Defense Forces at the present level, and that 5% were for its abolition.

According to the Public Opinion Survey of the Self-Defense Forces & Defense Issues, conducted in Feb., 1991 by Prime Minister’s Office, 67.3% of those respondents were interested in SDF and defense issues, and 30.2% were not interested in it. And 62.4% maintained the U.S. Security Treaty & Japan’s security as is now.

However, the Government approval of the Self-Defense Forces is limited only to the scope of the defense principle. But the degree to which Japan may defend its 1000 miles of sea-lane supply routes under the Japan-U.S.A. joint strategy is a problem. Japan takes part in RIMPACC (five nations rim of the Pacific naval maneuver) with the U. S.A.’s submarines and warships carrying nuclear tripped Tomahawk. It would be difficult to admit that they call in Japan and enter into Japanese territorial watert in cooperation with the U.S.A. without violating the three non-nuclear principles in Japan (prohibition of the manufacture, the possession, and the introduction of nuclear weapons).

Japan never exported military weapons and materials abroad after the second World War. And also Japan ratified the Treaty of the Non-Proliferation of Nuclear Weapons in June, 1976.

This year, Tokyo Declaration of January 9, 1992 was made by Prime Minister Kiichi Miyazawa and President George Bush during his visit in Japan for furthering the U. S.-Japan alliance as friendly partnership. I hope that this Tokyo Declaration is inclined to take a step for promoting our peaceful pavement.

(C) Needless to say, nothing is better than avoiding bloodshed by military force or terrorism. However, the International Judicial Court and bodies such as the United Nations Security Council are limited in their ability to effectively settle international military conflicts.

Now, a member of the United Nations has the inherent right of individual or collective self-defense (Article 51 in the Charter of the United Nations). However, Japanese Government doesn't interpret that we have its collective self-defense outside the country). Thus each nation has her sovereign power backed by her military forces, though now the world is taking steps in the process of arms reduction, as demonstrated by prestroika in the old Soviet Union, and by U.S.-Soviet Summit talks on Arms Control and START (Strategic Arms Reduction Talk) in Malta and in Washington. In Japan the conference of the arms reduction committee by the United Nations took place in Kyoto, 1990, 1991 and in Hiroshima, 1992, this year also.

In my view, suppose more authoritative power and functions (such as a world police force) of the U.N. are delegated by the members of the U.N. based on trust in international justice and faith of peace-loving peoples. Then it would be for Japan to take more positive step and to obey such international rules for human relationship in this global society. In this case, we will be able to shift the Self-Defense Force under control and supervision of the U.N. And this would not be unconstitutional.

"An Agenda for Peace" which strengthens the U. N.'s Power was proposed by U. N. Secretary-General Ghali in the U. N. Security Council on June, 1992.

(D) But the Constitutionality of the Self-Defense Forces has not yet been considered in the Supreme Court. On the issue of Foreign Forces stationed in Japan under the Japan-U.S.A. Security Treaty the Supreme Court decided that such Security Treaty was a high political matter. It was not within the judicial review scope of Article 9 unless there was an obviously clear miss and error on it. And also the Supreme Court ruled on "war-potential" in the Paragraph 2 of Article 9 of the Constitution of Japan that "the provision of paragraph 2 does not include foreign armed forces even if they are to be stationed in our country." (Dec. 16, 1959).

In the decisions of the Inferior Court, the Sapporo District Court made its decision on the Naganuma Case that the SDF was unconstitutional (September 7, 1973).

In this case the national forest reserve area was dismissed by the Government order for the purpose of constructing the NIKI missile base of the SDF. The inhabitants (the plain tiff) filed an injunction to prevent it to the District Court. The court ruled that :

the first paragraph of Article 9 renounced war of aggression and that its second paragraph renounced all war potential, including the self-defense forces and the state's right to belligerency.

In the light of this interpretation, the SDF which consists of Ground, Maritime, and Air Self-Defense Forces are unconstitutional in terms of scale, equipment and capability because they fall under the stipulation in the second paragraph of Article 9 (the Japan Times, September 8, 1973, p. 5).

But afterward the Sapporo Appeal Court dismissed this decision because of its being a political question, not within the sphere of the judicial interpretation (August 5, 1976).

(E) Regarding my legal interpretation of this "Renunciation of War", we need a strong determination with human dignity without killing others by means of rearmament under this "Renunciation of War". We are not animals who need to have conventional or nuclear weapons in our hands. Through our speaking capacity we are capable of communicating with our minds. We might say that those who choose the means of force are no longer human beings.

So my view stands on its absolute pacifism applicable to the strict limitation of rear echelon support for non-military activities in the UNPKO under the current international and domestic situation for the time being. We get its absolute peace in our mind with our conscientious refusal against any wars, involved such an invasive war as we had done in Asia.

According to a certain report, the number of casualties during and immediately after the W.W.II showed about fifty-nine million two hundred and thirty thousand peoples.

I quote the Late General MacArthur's speech on "the Renunciation of War" on April 5, 1946 at the Far East Committee that :

I therefore commend Japan's proposal for the renunciation of war to the thoughtful consideration of all of the peoples of the world. It points the way — the only way. The United Nations Organization, admirable as is its purpose, great and noble as are its aim if it is accomplishes as to all nations just what Japan proposes unilaterally to accomplish through this constitution — abolish war as a sovereign right

Such a renunciation must be simultaneous and universal.

and it continues that :

Thereby may we further universal adherence to that higher law in the presevation of peace which finds full and unqualified approval in the enlightened conscience of all of the peoples of the earth.

In the future we believe that a human being recognizes this wisdom and spiritual reason in an exacting test. "The pen is mightier than sword!"

In my final opinion I would like to say this : The Renunciation of War is mightier than any weapon. We express it in the form of the legal manifestation and appeal to

the world for preventing conventional, nuclear, and high-tech war.

We should realize that Democracy in the true meaning is a universal principle of mankind and that all the peoples have an inalienable and equal right to exist in this international community led by the above-mentioned peace-spirit.

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