THE CONSTITUTION OF JAPAN, 1946*

Promulgated on November 3, 1946; Put into effect on May 3, 1947.

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

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

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

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

CHAPTER I. THE EMPEROR

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

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

Article 3. The advice and approval of the Cabinet shall be re-

* The following is the official translation.

quired for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

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

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

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

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

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

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

(i) Promulgation of amendments of the constitution, laws, cabinet orders and treaties;
(ii) Convocation of the Diet;
(iii) Dissolution of the House of Representatives;
(iv) Proclamation of general election of members of the Diet;
(v) Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers;
(vi) Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights;
(vii) Awarding of honors;
(viii) Attestation of instruments of ratification and other diplomatic documents as provided for by law;
(ix) Receiving foreign ambassadors and ministers;
(x) Performance of ceremonial functions.

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

CHAPTER II. RENUNCIATION OF WAR

Article 9. Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as a means of settling international disputes.

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

CHAPTER III. RIGHTS AND DUTIES OF THE PEOPLE

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

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

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

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

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

(2) Peers and peerage shall not be recognized.

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

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

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

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

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

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

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

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

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

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

(2) No person shall be compelled to take part in any religious acts, celebration, rite or practice.

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

Article 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

(2) No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

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

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

Article 23. Academic freedom is guaranteed.

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

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

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

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

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

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

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

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

(3) Children shall not be exploited.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER IV. THE DIET

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

House of Representatives to constitute a rejection of the said bill by the House of Councillors.

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

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

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

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

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

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

(2) Matters relating to impeachment shall be provided by law.

CHAPTER V. THE CABINET

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

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

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

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

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

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

Article 68. The Prime Minister shall appoint the Ministers of

State. However, a majority of their number must be chosen from among the members of the Diet.

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

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

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

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

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

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

(i) Administer the law faithfully; conduct affairs of state;
(ii) Manage foreign affairs;
(iii) Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet;
(iv) Administer the civil service, in accordance with standards established by law;
(v) Prepare the budget, and present it to the Diet;
(vi) Enact cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law.
(vii) Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

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

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

CHAPTER VI. JUDICIARY

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

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

(3) All judges shall be independent in the exercise of their con-

science and shall be bound only by this Constitution and the laws.

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

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

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

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

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

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

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

(4) Matters pertaining to review shall be prescribed by law.

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

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

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

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

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

Article 82. Trials shall be conducted and judgment declared publicly.

(2) Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein

the rights of people as guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly.

CHAPTER VII. FINANCE

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

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

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

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

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

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

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

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

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

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

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

CHAPTER VIII. LOCAL SELF-GOVERNMENT

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

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

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

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

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

CHAPTER IX. AMENDMENTS

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

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

CHAPTER X. SUPREME LAW

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

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

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

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

CHAPTER XI. SUPPLEMENTARY PROVISIONS

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

(2) The enactment of laws necessary for the enforcement of this Constitution, the election of members of the House of Councillors and the procedure for the convocation of the Diet and other preparatory procedures for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph.

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

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

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

CONSTITUTION OF THE EMPIRE OF JAPAN, 1889
[Meiji Constitution]*

Promulgated on February 11, 1889; Put into effect on November 29, 1890 (based upon the 4th paragraph of the Edict); Superseded by the Constitution of Japan on May 3, 1947.

Imperial Oath Sworn in the Sanctuary in the Imperial Palace (*Tsuge-bumi*)

We, the Successor to the prosperous Throne of Our Predecessors, do humbly and solemnly swear to the Imperial Founder of Our House and to Our other Imperial Ancestors that, in pursuance of a great policy co-extensive with the Heavens and with the Earth, We shall maintain and secure from decline the ancient form of government.

In consideration of the progressive tendency of the course of human affairs and in parallel with the advance of civilization, We deem it expedient, in order to give clearness and distinctness to the instructions bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors, to establish fundamental laws formulated into express provisions of law, so that, on the one hand, Our Imperial posterity may possess an express guide for the course they are to follow, and that, on the other, Our subjects shall thereby be enabled to enjoy a wider range of action in giving Us their support, and that the observance of Our laws shall continue to the remotest ages of time. We will thereby to give greater firmness to the stability of Our country and to promote the welfare of all the people within the boundaries of Our dominions; and We now establish the Imperial House Law and the Constitution. These Laws come to only an exposition of grand precepts for the conduct of the government, bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors. That we have been so fortunate in Our reign, in keeping with the tendency of the times, as to accomplish this work, We owe to the glorious Spirits of the Imperial Founder of Our House and of Our other Imperial Ancestors.

We now reverently make Our prayer to Them and to Our Illustrious Father, and implore the help of Their Sacred Spirits, and make to Them solemn oath never at this time nor in the future to fail to be an example to Our subjects in the observance of the Laws hereby established.

May the heavenly Spirits witness this Our solemn Oath.

Imperial Rescript on the Promulgation of the Constitution

Whereas We make it the joy and glory of Our heart to behold the prosperity of Our country, and the welfare of Our subjects, We do hereby, in virtue of the supreme power We inherit from Our Imperial Ancestors, promulgate the present immutable fundamental law, for the sake of Our present subjects and their descendants.

* The following is the semi-official translation, which appeared in Count H. Itō, COMMENTARIES ON THE CONSTITUTION OF THE EMPIRE OF JAPAN (M. Itō transl. 1889).

The Imperial Founder of Our House and Our other Imperial Ancestors, by the help and support of the forefathers of Our subjects, laid the foundation of Our Empire upon a basis, which is to last forever. That this brilliant achievement embellishes the annals of Our country, is due to the glorious virtues of Our Sacred Imperial Ancestors, and to the loyalty and bravery of Our subjects, their love of their country and their public spirit. Considering that Our subjects are the descendants of the loyal and good subjects of Our Imperial Ancestors, We doubt not but that Our subjects will be guided by Our views, and will sympathize with all Our endeavours, and that, harmoniously cooperating together, they will share with Us Our hope of making manifest the glory of Our country, both at home and abroad, and of securing forever the stability of the work bequeathed to Us by Our Imperial Ancestors.

Preamble [or Edict] (*jōyu*)

Having, by virtue of the glories of Our Ancestors, ascended the Throne of a lineal succession unbroken for ages eternal; desiring to promote the welfare of, and to give development to the moral and intellectual faculties of Our beloved subjects, the very same that have been favoured with the benevolent care and affectionate vigilance of Our Ancestors; and hoping to maintain the prosperity of the State, in concert with Our people and with their support, We hereby promulgate, in pursuance of Our Imperial Rescript of the 12th day of the 10th month of the 14th year of Meiji, a fundamental law of the State, to exhibit the principles, by which We are guided in Our conduct, and to point out to what Our descendants and Our subjects and their descendants are forever to conform.

The right of sovereignty of the State, We have inherited from Our Ancestors, and We shall bequeath them to Our descendants. Neither We nor they shall in the future fail to wield them, in accordance with the provisions of the Constitution hereby granted.

We now declare to respect and protect the security of the rights and of the property of Our people, and to secure to them the complete enjoyment of the same, within the extent of the provisions of the present Constitution and of the law.

The Imperial Diet shall first be convoked for the 23rd year of Meiji and the time of its opening shall be the date, when the present Constitution comes into force.

When in the future it may become necessary to amend any of the provisions of the present Constitution, We or Our successors shall assume the initiative right, and submit a project for the same to the Imperial Diet. The Imperial Diet shall pass its vote upon it, according to the conditions imposed by the present Constitution, and in no otherwise shall Our descendants or Our subjects be permitted to attempt any alteration thereof.

Our Ministers of State, on Our behalf, shall be held responsible for the carrying out of the present Constitution, and Our present and future subjects shall forever assume the duty of allegiance to the present Constituion.

CHAPTER I. THE EMPEROR

Article 1. The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal.

Article 2. The Imperial Throne shall be succeeded to by Imperial male descendants, according to the provisions of the Imperial House Law.

Article 3. The Emperor is sacred and inviolable.

Article 4. The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitutions.

Article 5. The Emperor exercises the legislative power with the consent of the Imperial Diet.

Article 6. The Emperor gives sanction to laws, and orders them to be promulgated and executed.

Article 7. The Emperor convokes the Imperial Diet, opens, closes, and prorogues it, and dissolves the House of Representatives.

Article 8. The Emperor, in consequence of an urgent neccessity to maintain public safety or to avert public calamities, issues, when the Imperial Diet is not sitting, Imperial Ordinances in the place of law.

(2) Such Imperial Ordinances are to be laid before the Imperial Diet at its next session, and when the Diet does not approve the said Ordinances, the Government shall declare them to be invalid for the future.

Article 9. The Emperor issues or causes to be issued, the Ordinances necessary for the carrying out of the laws, or for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects. But no Ordinance shall in any way alter any of the existing laws.

Article 10. The Emperor determines the organization of the different branches of the administration, and salaries of all civil and military officers, and appoints and dismisses the same. Exceptions especially provided for in the present Constitution or in other laws, shall be in accordance with the respective provisions (bearing thereon).

Article 11. The Emperor has the supreme command of the Army and Navy.

Article 12. The Emperor determines the organization and peace standing of the Army and Navy.

Article 13. The Emperor declares war, makes peace, and concludes treaties.

Article 14. The Emperor declares a state of siege.

(2) The conditions and effects of a state of siege shall be determined by law.

Article 15. The Emperor confers titles of nobility, rank, orders and other marks of honor.

Article 16. The Emperor orders amnesty, pardon, commutation of punishments and rehabilitation.

Article 17. A Regency shall be instituted in conformity with the provisions of the Imperial House Law.

(2) The Regent shall exercise the powers appertaining to the Emperor in His name.

CHAPTER II. RIGHTS AND DUTIES OF SUBJECTS

Article 18. The conditions necessary for being a Japanese subject shall be determined by law.

Article 19. Japanese subjects may, according to qualifications determined in laws or ordinances, be appointed to civil or military or any other public offices equally.

Article 20. Japanese subjects are amenable to service in the Army or Navy, according to the provisions of law.

Article 21. Japanese subjects are amenable to the duty of paying taxes, according to the provisions of law.

Article 22. Japanese subjects shall have the liberty of abode and of changing the same within the limits of the law.

Article 23. No Japanese subject shall be arrested, detained, tried or punished, unless according to law.

Article 24. No Japanese subject shall be deprived of his right of being tried by the judges determined by law.

Article 25. Except in the cases provided for in the law, the house of no Japanese subject shall be entered or searched without his consent.

Article 26. Except in the cases mentioned in the law, the secrecy of the letters of every Japanese subject shall remain inviolate.

Article 27. The right of property of every Japanese subject shall remain inviolate.

(2) Measures necessary to be taken for the public benefit shall be provided for by law.

Article 28. Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief.

Article 29. Japanese subjects shall, within the limits of law, enjoy the liberty of speech, writing, publication, public meetings and associations.

Article 30. Japanese subjects may present petitions, by observing the proper forms of respect, and by complying with the rules specially provided for the same.

Article 31. The provisions contained in the present Chapter shall not affect the exercises of the powers appertaining to the Emperor, in times of war or in cases of a national emergency.

Article 32. Each and every one of the provisions contained in the preceding Articles of the present Chapter, that are not in conflict

with the laws or the rules and discipline of the Army and Navy, shall apply to the officers and men of the Army and of the Navy.

CHAPTER III. THE IMPERIAL DIET

Article 33. The Imperial Diet shall consist of two Houses, a House of Peers and a House of Representatives.

Article 34. The House of Peers shall, in accordance with the Ordinance concerning the House of Peers, be composed of the members of the Imperial Family, of the orders of nobility, and of those who have been nominated thereto by the Emperor.

Article 35. The House of Representatives shall be composed of Members elected by the people, according to the provisions of the Law of Election.

Article 36. No one can at one and the same time be a Member of both Houses.

Article 37. Every law requires the consent of the Imperial Diet.

Article 38. Both Houses shall vote upon projects of law submitted to it by the Government, and may respectively initiate projects of law.

Article 39. A Bill, which has been rejected by either the one or the other of the two Houses, shall not be brought in again during the same session.

Article 40. Both Houses can make representations to the Government, as to laws or upon any other subject. When, however, such representations are not accepted, they cannot be made a second time during the same session.

Article 41. The Imperial Diet shall be convoked every year.

Article 42. A session of the Imperial Diet shall last during three months. In case of necessity, the duration of a session may be prolonged by the Imperial Order.

Article 43. When urgent necessity arises, an extraordinary session may be convoked in addition to the ordinary one.

(2) The duration of an extraordinary session shall be determined by Imperial Order.

Article 44. The opening, closing, prolongation of session and prorogation of the Imperial Diet, shall be effected simultaneously for both Houses.

(2) In case the House of Representatives has been ordered to dissolve, the House of Peers shall at the same time be prorogued.

Article 45. When the House of Representatives has been ordered to dissolve, Members shall be caused by Imperial Order to be newly elected, and the new House shall be convoked within five months from the day of dissolution.

Article 46. No debate can be opened and no vote can be taken in either House of the Imperial Diet, unless not less than one-third of the whole number of Members thereof is present.

Article 47. Votes shall be taken in both Houses by absolute majority. In the case of a tie vote, the President shall have the casting vote.

Article 48. The deliberations of both Houses shall be held in public. The deliberations may, however, upon demand of the Government or by resolution of the House, be held in secret sitting.

Article 49. Both Houses of the Imperial Diet may respectively present addresses to the Emperor.

Article 50. Both Houses may receive petitions presented by subjects.

Article 51. Both Houses may enact, besides what is provided for in the present Constitution and in the Law of the Houses, rules necessary for the management of their internal affairs.

Article 52. No Member of either House shall be held responsible outside the respective Houses, for any opinion uttered or for any vote given in the House. When, however, a Member himself has given publicity to his opinions by public speech, by documents in print or in writing, or by any other similar means, he shall, in the matter, be amenable to the general law.

Article 53. The Members of both Houses shall, during the session, be free from arrest, unless with the consent of the House, except in cases of flagrant delicts, or of offenses connected with a state of internal commotion or with a foreign trouble.

Article 54. The Ministers of State and the Delegates of the Government may, at any time, take seats and speak in either House.

CHAPTER IV. THE MINISTERS OF STATE AND THE PRIVY COUNCIL

Article 55. The respective Ministers of State shall give their advice to the Emperor, and be responsible for it.

(2) All Laws, Imperial Ordinances, and Imperial Rescripts of whatever kind, that relate to the affairs of the State, require the countersignature of a Minister of State.

Article 56. The Privy Councillors shall, in accordance with the provisions for the organization of the Privy Council, deliberate upon important matters of State, when they have been consulted by the Emperor.

CHAPTER V. THE JUDICATURE

Article 57. The Judicature shall be exercised by the Courts of Law according to law, in the name of the Emperor.

(2) The organization of the Courts of Law shall be determined by law.

Article 58. The judges shall be appointed from among those, who possess proper qualifications according to law.

(2) No judge shall be deprived of his position, unless by way of criminal sentence or disciplinary punishment.

(3) Rules for disciplinary punishment shall be determined by law.

Article 59. Trials and judgments of a Court shall be conducted publicly. When, however, there exists any fear, that such publicity may be prejudicial to peace and order, or to the maintenance of public morality, the public trial may be suspended by provisions of law or by the decision of the Court of Law.

Article 60. All matters, that fall within the competency of a special Court, shall be specially provided for by law.

Article 61. No suit at law, which relates to rights alleged to have been infringed by the illegal measures of the administrative authorities, and which shall come within the competency of the Court of Administrative Litigation specially established by law, shall be taken cognizance of by a Court of Law.

CHAPTER VI. FINANCE

Article 62. The imposition of a new tax or the modification of the rates (of an existing one) shall be determined by law.

(2) However, all such administrative fees or other revenue having the nature of compensation shall not fall within the category of the above clause.

(3) The raising of national loans and the contracting of other liabilities to the charge of the National Treasury, except those that are provided in the Budget, shall require the consent of the Imperial Diet.

Article 63. The taxes levied at present shall, in so far as they are not remodelled by a new law, be collected according to the old system.

Article 64. The expenditure and revenue of the State require the consent of the Imperial Diet by means of an annual Budget.

(2) Any and all expenditures overpassing the appropriations set forth in the Titles and Paragraphs of the Budget, or that are not provided for in the Budget, shall subsequently require the approbation of the Imperial Diet.

Article 65. The Budget shall be first laid before the House of Representatives.

Article 66. The expenditures of the Imperial House shall be defrayed every year out of the National Treasury, according to the present fixed amount for the same, and shall not require the consent thereto of the Imperial Diet, except in case an increase thereof is found necessary.

Article 67. Those already fixed expenditures based by the Constitution upon the powers appertaining to the Emperor, and such

expenditures as may have arisen by the effect of law, or that appertain to the legal obligations of the Government, shall be neither rejected nor reduced by the Imperial Diet, without the concurrence of the Government.

Article 68. In order to meet special requirements, the Government may ask the consent of the Imperial Diet to a certain amount as a Continuing Expenditure Fund, for a previously fixed number of years.

Article 69. In order to supply deficiencies, which are unavoidable, in the Budget, and to meet requirements unprovided for in the same, a Reserve Fund shall be provided in the Budget.

Article 70. When the Imperial Diet cannot be convoked, owing to the external or internal condition of the country, in case of urgent need for the maintenance of public safety, the Government may take all necessary financial measures, by means of an Imperial Ordinance.

(2) In the case mentioned in the preceding clause, the matter shall be submitted to the Imperial Diet at its next session, and its approbation shall be obtained thereto.

Article 71. When the Imperial Diet has not voted on the Budget, or when the Budget has not been brought into actual existence, the Government shall carry out the Budget of the preceding year.

Article 72. The final account of the expenditures and revenues of the State shall be verified and confirmed by the Board of Audit, and it shall be submitted by the Government to the Imperial Diet, together with the report of verification of the said Board.

(2) The organization and competency of the Board of Audit shall be determined by law separately.

CHAPTER VII. SUPPLEMENTARY RULES

Article 73. When it has become necessary in future to amend the provisions of the present Constitution, a project to the effect shall be submitted to the Imperial Diet by Imperial Order [=command].

(2) In the above case, neither House can open the debate, unless not less than two-thirds of the whole number of Members are present, and no amendment can be passed, unless a majority of not less than two-thirds of the Members present is obtained.

Article 74. No modification of the Imperial House Law shall be required to be submitted to the deliberation of the Imperial Diet.

(2) No provision of the present Constitution can be modified by the Imperial House Law.

Article 75. No modification can be introduced into the Constitution, or into the Imperial House Law, during the time of a Regency.

Article 76. Existing legal enactments, such as laws, regulations, Ordinances, or by whatever names they may be called, shall, so far as they do not conflict with the present Constitution, continue in force.

(2) All existing contracts or orders, that entail obligations upon the Government, and that are connected with expenditure, shall come within the scope of Article 67.

A VERY BRIEF INTRODUCTION TO THE JAPANESE LANGUAGE

Japanese is a unique language. The nearest group of languages in terms of grammar includes the Korean and the Mongolian languages and those of the Siberian natives. They are very different, however, in terms of pronunciation and some other aspects of the language. Contrary to an assumption held by many in the West, the Japanese language is fundamentally different from Chinese in terms of grammar and pronunciation, although the Japanese writing system utilizes Chinese characters.

1. Letters

The Japanese use both Chinese characters (*kanji*) and a system of phonetic signs called *kana*.

(a) *Kanji* were introduced to Japan during the sixth and seventh centuries from China via Korea.

One of the peculiarities of the Japanese use of Chinese characters is that the same character may be pronounced in a number of different ways, which may be classified into two major groups. One retains the old Chinese pronunciation (*on*), the other is the new pronunciation given to the character by the Japanese (*kun*). Let me give an example. When they imported a Chinese character 犬 (=dog), they learned that it was then pronounced as *ken*. They also found that it denoted a species of animals which they had called *inu*. Thus they pronounced this character either as *ken* or as *inu*.

The Chinese pronunciation changed historically by usage. Consequently, some Chinese characters have acquired more than one *on* reading. Also, a single Chinese character could have denoted several things for each of which there was a distinct word in Japanese. Thus the same *kanji* may now have several *on* and/or several *kun* readings.

(b) *Kana* are phonetic signs invented by the Japanese to adapt the *kanji* to Japanese, which has a complex pattern of grammatical endings not encountered in Chinese.

There are two sets of *kana*, *hira-gana* and *kata-kana*. One set is

[II.] THE SDF'S ROLE IN, AND RESPONSE TO, INTERNATIONAL CONTRIBUTION

Under new international conditions following the end of the Cold War, the situation is heading for one in which higher expectations are pinned on the United Nations than ever before to perform its function of maintaining peace and security of the international society. As regards U.N. peacekeeping activities, Japan has been making contributions mainly in financial terms. In order to maintain peace and prosperity of the international community into the future, however, it is indispensable for this country to make contributions not only in financial terms but also in terms of personnel. It is this country's international obligation to make such contributions in international society, and the maintenance of peace and security of international society thus rendered by U.N. peacekeeping activities is, in return, conducive to Japan's own security.

With the [1991] Gulf crisis as an opportunity, Japan dispatched its minesweeping force to the Persian Gulf, and after a cease-fire was formally enforced, Japanese minesweepers conducted removal and disposal of the remaining mines in the Persian Gulf. This was the SDF's first international contribution in terms of personnel, and it helped Japan to win certain understanding and appreciation, at home and abroad, for its attitude on contributions to international peace. Furthermore, Japan made statutory preparations in order to contribute more positively than before to international efforts for the cause of peace in the international community. . . .

1. Statutory Framework for International Contribution

(1) International Peace Cooperation Law

Japan has long been cooperating with the United Nations in its peacekeeping activities, but its cooperation has chiefly been limited to the financial aspect except when it dispatched election monitors to Namibia and Nicaragua in terms of cooperation by personnel.

Since the Gulf crisis, the Japanese government, with the aim of contributing more positively than before to the international community, particularity in terms of personnel, submitted to the extraordinary session of the Diet in the fall of 1992 the "Bill Concerning Cooperation for United Nations Peacekeeping Operations and Other Operations" (International Peace Cooperation Bill). The bill was designed to consolidate a domestic setup so that Japan could cooperate in United Nations peacekeeping operations and others appropriately and promptly. The bill was enacted in the ordinary session of the Diet in June 1992, and was put in force in August of the same year.

In the course of Diet deliberations, there were discussions as to whether dispatches of SDF units abroad for cooperation in U.N. peacekeeping operations might constitute "use of force," which is prohibited by the Constitution. However, U.N. peacekeeping operations are not intended to restore peace by forceful means but to secure cease-fires through the authority and persuasion of the U.N., from a neutral and non-compulsory standpoint, in precondition that an agreement on the cease-fire has been reached among the parties to a conflict and that they have agreed on the activities of the peacekeeping operations. On the basis of this recognition, the International Peace Cooperation Law was legislated in line with the basic guidelines concerning participation in peacekeeping forces (the so-called Five Principles). The SDF's cooperation for U.N. peacekeeping operations conducted under the Law, therefore, will never entail the possibility of the "use of force" or the "dispatch of armed forces to foreign countries for the purpose of using force" as prohibited under Article 9 of the Constitution.

Japan *v.* Sakata (The Sunakawa Case)*

89 Hanrei taimuzu 79; 99 Hanrei taimuzu 72
(Tokyo D. Ct, March 39, 1959)
Translated by Charles R. Stevens and Kazunobu Takahashi

Judgment

The defendants, Sakata Shigeru, Sugano Katsuyuki, Takano Yasutarō, Eda Fumio, Tsuchiya Gentarō, Mutō Gunichirō, and Shiino Tokuzō are hereby found to be not guilty with respect to all charges brought against them.

Reasons

The gist of the allegations against the defendants in this case is as follows: That at about 5:30 A.M., July 8, 1957, the Tokyo Procurement Agency, after having properly obtained the permission of the Prime Minister to use land in accordance with the Special Measures Law concerning Uses of Land to Implement the Administrative Agreement under Article III of the Security Treaty between Japan and the United States of America[1] and the Land Expropriation Law,[2] began a (land) survey of the private lots within the Tachikawa Airfield (located in Town of Sunakawa, District of Kitatama, Tokyo) which was being used by the United States Air Force; that from the early morning of the same day, more than one thousand people constituting the members of Sunakawa Alliance Against Base-Expansion and the members of various labor unions, student organizations and other groups who supported the Alliance, had assembled outside the fence of the northern boundary of said air field and staged a vigorous demonstration against the intended expansion of the base; that some of the demonstrators had destroyed the fence at the northern tip of the runway for several tens of meters; that between approximately 10:40 A.M. and approximately 11:30 A.M. of the same day, the defendants Sakata Shigeru, Sugano Katsuyuki, Takano Yasutarō, Eda Fumio, Tsuchiya Gentarō, and Mutō Gunichirō, without due cause, in concert with approximately 300 other participants, through the hole in the fence entered 4-5 meters into the said Tachikawa Airfield which was an area in use by the United States Armed Forces, entrance into which was prohibited; that between approximately 10:30 A.M. and approximately 11:50 A.M., the defendant Shiino Tokuzō, who participated in the demonstration as a member of the National Railway Labor Union, without due cause, entered 2.3 meters through the same broken part of the fence into said Airfield, which was an area in use by the United States Armed Forces, the entrance into which was prohibited.

In consideration of [the testimony in court of many witnesses, the testimony of defendants, the spot inspection records and other evidence including a document submitted by the Commander of the United States Military Police to the Chief of the Tachikawa Police, and various kinds of photographs and motion pictures, a description of which is omitted] this court finds that between approximately 10:30 or 10:40 A.M. and approximately 11:00 A.M., the defendants Sakata Shigeru, Sugano Katsuyuki, Takano Yasutarō, Eda Fumio, Tsuchiya Gentarō, and Mutō Gunichirō without cause, in cooperation with each other, entered 4-5 meters into the Tachikawa Airfield located in Town of Sunakawa, District of Kitatama, Tokyo, said Airfield being an area in use by the United States Armed Forces, the entrance into which was prohibited; and that between approximately 10:30 A.M. and approximately 11:30 A.M. the defendant Shiino Tokuzō, without due cause, entered 2.3 meters into said Airfield.

The abovementioned facts fall within the purview of Article 2 of the Special Criminal Law to Implement the Administrative Agreement under Article III of the Security Treaty between the United States of America and Japan (hereinafter referred to as the

*Reprinted by permission of the translators.
1. Law No. 140, 1952.
2. Tochi Shūyōhō, Law No. 219, 1951.

"Special Criminal Law").[3] This article purports to punish the act of entering or not leaving when requested to do so a place where entrance is prohibited in order to secure [non-interference with] actions, living conditions and other activities of United States troops and their support personnel within certain facilities and areas used by the United States Armed Forces stationed in our country as the result of the U.S.–Japan Security Treaty. A general criminal law provision corresponding to the Special Criminal Law Article is Article 1 (32) of the Minor Offences Law which purports to punish a person who has entered a place where entrance is prohibited.[4] Hence, it can be seen that Article 2 of the Special Criminal Law has a special law/general law relationship with the above mentioned provision of the Minor Offenses Law. Moreover, comparing the relative weight of punishment imposed by the two laws, we find that the Minor Offenses Law imposes only detention or minor fine (both punishments may be remitted or combined, according to the circumstances), whereas Article 2 of the Special Criminal Law imposes imprisonment for not more than one year or a fine of not more than 2,000 yen or a minor fine. Thus, the latter law imposes a heavier punishment than the former. This difference in weight of punishment can be viewed as a result of an intention to provide more adequate protection for the legal interest of noninterference with the facilities or areas in use by the United States Armed Forces than for the same kind of interest of the general public, based on the premise that the former legal interest is more important than the latter. If the stationing of American troops in our country is not in conflict with our Constitution, the different legal treatment between the facilities and areas occupied by the United States Armed Forces and those of the general public is hardly worth consideration, but if such stationing is impermissible under the provisions of the Constitution, Article 2 of the Special Criminal Law will be an improper provision imposing, without due cause, a heavier punishment upon our people than in the general case provided for in the Minor Offenses Law. If such be the case, we can only declare that Article 2 of the Special Criminal Law violates the applicable provision of the Constitution and, consequently, also violates Article 31 of the Constitution which provides that no person shall be punished except according to procedure established by law. Therefore, we will proceed to examine these points below.

In Article 9, the Japanese Constitution not only renounces war and the threat or use of force forever as a means of carrying out a national policy, but also rejects the right of belligerency [*kōsenken*] of the state. To give substance to these aims, it provides that land, sea and air forces, as well as other war potential, will never be maintained. That is to say, this Article, although not denying the right of self-defense, is intended (aside from prohibiting wars of aggression) to prohibit using war potential for self-defense and also the maintenance of war potential for self-defense. The provision is based upon the desire of our people that "never again shall we be visited with the horrors of war through the action of government," that "[w]e, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationships (namely, the ideal of international cooperation for world peace that is the goal of the Charter of the United Nations) and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world." Japanese Const. Preamble. In other words, it is based on a determination by our people that war is an offense against international peace organizations, that our security and existence will be preserved by relying on military measures taken by the international police forces of such organizations, or, at least, that, making the utmost compromise with reality, our security and existence would be preserved by relying on military security measures undertaken by the Security Council, an organ of the United Nations which has as its purpose becoming such an international peace organization. It must be said, therefore, that this provision not only performs the negative function of assuring foreign nations of our reconsideration of our past militaristic and aggressive policies, but also represents a lofty ideal and an heroic resolve that we will be the vanguard in realizing ever-lasting world peace based on justice and order. Consequently, interpretation of Article 9 should be based upon a full consideration of these Constitutional principles, and not upon the basis of a merely formalistic and conceptualistic understanding of its language. Furthermore, its interpretation should not, of course, be affected by the policy consideration that the stationing of United States troops in our country is necessary to protect our country's security and existence against a "vacuum" situation without armed forces resulting from the withdrawal of the Allied Occupation Forces after the coming into force of the Treaty of Peace, and therefore, that such stationing is necessary for purposes of our self-defense.

Now, we will examine the relationship between the stationing of the United States troops and Article 9 of the Constitution. If such stationing is based upon a recommendation or order from an organ of the United Nations with which, as mentioned above, our country has actually entrusted the preservation of its security and existence, and if such stationing is for the purpose of defending our country against armed attack from without, it may not fall within the meaning of the maintenance of war potential, which is forbidden under the first sentence of Article 9(2) of the Constitution. United States Armed Forces, however, are stationed in our country as the result of a request by our country, which request was accepted by the United States of America, to the effect that America dispose its armed forces to defend against an armed attack upon our country. Such forces have the purpose of contributing to the maintenance of international peace and security in the Far East and to the security of Japan against armed attack from without, including assistance to put down large-scale internal riots and disturbances in Japan, caused through instigation or intervention by an outside power or powers. Security Treaty with Japan art. I (1952).[8] Our country provides the United States with the facilities and areas necessary to carry out such purposes. Administrative Agreement with Japan art. II (1) (1952).[9] Consequently, United States troops stationed in Japan might not merely be used for defense against armed attacks upon our country or for assisting in putting down internal riots and the like, but might also be ordered outside the territorial limits of Japan to contribute to the maintenance of interna-

3. . . . Law No. 138, 1952, as amended:

Article 2. A person who, without due cause, enters any place the entrance into which is prohibited or does not leave any place when requested to do so, within facilities or areas in use by the United States Armed Forces (facilities or areas as defined in paragraph 1, Article II of the Agreement) shall be sentenced to penal servitude (chōeki) for not more than one year or a fine of not more than 2,000 yen or a minor fine, provided that the Criminal Code (Law No. 45, 1907) shall apply when it contains provisions punishing the same offense.

"Penal servitude" in Japanese law consists of confinement in a prison and the performance of forced labor for a term of from one month to fifteen years. Criminal Code art. 12.

4. Keihanzaihō, Law No. 39, 1948. Article 1 (32) reads as follows:

Article 1. A person referred to in the following items shall be punished with penal detention or with a minor fine: . . .

(32) a person who without due cause has entered into a place the entrance into which is prohibited or onto the rice paddies or fields of another person.

Other acts prohibited by the same Article include hiding in uninhabitable buildings, carrying dangerous weapons, vagrancy, disorderly conduct or annoying others in public, nuisance conduct related to noise, explosions, and pollution, mistreatment of animals, exhibitionism, peepingtomism, etc. "Penal detention" (kōryū) in Japanese law is confinement in a house of detention for one day or more but less than thirty days. Criminal Code art. 16.

8. (1952) 3 U.S.T. at 3331, T.I.A.S. No. 2491 at 5. Article I of the Security Treaty with Japan (1952) reads as follows:

Japan grants, and the United States of America accepts, the right, upon the coming into force of the Treaty of Peace and of this Treaty, to dispose United States land, air and sea forces in and about Japan. Such forces may be utilized to contribute to the maintenance of international peace and security in the Far East and to the security of Japan against armed attack from without, including assistance given at the express request of the Japanese Government to put down large scale international riots and disturbances in Japan, caused through instigation or intervention by an outside power or powers.

9. Feb. 28, 1952 (1952) 2 U.S.T. 3341, T.I.A.S. No. 2492 at 4. Article II (1) of the Administrative Agreement with Japan reads as follows:

1. Japan agrees to grant to the United States the use of the facilities and areas necessary to carry out the purposes stated in Article I of the Security Treaty. Agreements as to specific facilities and areas, not already reached by the two Governments by the effective date of this Agreement, shall be concluded by the two Governments through the Joint Committee provided for in Article XXVI of this Agreement. "Facilities and areas" include existing furnishings, equipment and fixtures necessary to the operation of such facilities and areas.

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tional peace and security in the Far East when in the opinion of the United States a situation is developing into an armed attack. Thus, to use such troops outside the territory of Japan will be necessary from a strategic viewpoint. Needless to say, once this happened, the facilities and areas provided by our country within its territory will be used for the military activity of the United States Armed Forces, and it cannot be said that there is no danger of our country being involved in an armed conflict with which it has no connection or that there is no danger of the horrors of war being visited upon our country. Therefore, the question has arisen whether this action of our government in permitting in the Security Treaty the stationing of the United States troops (which involves the possibility of courting such a danger) is contrary to the spirit of the Constitution to the effect that we are "resolved that never again shall we be visited with the horrors of war through the action of government."

Putting this point aside, however, let us consider the case upon which our country premised its entry into the Security Treaty, a case in which United States Armed Forces were used to contribute to the security of our country against armed attack from without. Since the United States Armed Forces bear, under the Security Treaty, no legal obligation to defend our country against armed attack from without (it goes without saying that our country has no right to exercise command and control over the United States troops), there is probably no legal guarantee that our country's request will necessarily be heeded. When we consider, however, the motives leading to the conclusion of the Treaty, the process of negotiation, the political, economic and military close partnership between the two countries and their common interest, we can safely expect that there is actually a very real possibility of an immediate deployment by the United States of its troops to defend our country in response to our country's request. This may be fully expressed in Article 24 of the Administrative Agreement (1952) which provides that "in the event of hostilities, or imminently threatened hostilities, in the Japan area, the Governments of the United States and Japan shall immediately consult together with a view to taking necessary joint measures for the defense of that area and for carrying out the purposes of Article I of the Security Treaty."

The stationing in our country of United States troops in the fashion described above is based not on a unilateral intent on the part of the United States but on a mutual meeting of the minds, namely, the request of our Government and the acceptance of the United States Government. Consequently, it can be said that the stationing of the United States troops results from the action of our Government. This is because the stationing of the troops is not possible until our country requests it, provides facilities and areas, shares expenses, and renders other cooperation. When we consider the real substance of these matters, we cannot help but conclude that to allow the United States Armed Forces to be stationed in our country for purpose of our self-defense against armed attacks from without is equal to the maintenance of land, sea and air forces and other war potential which is prohibited under the first sentence of paragraph 2 of Article 9 of the Japanese Constitution, regardless of whether or not our country has the right to exercise command over them, and whether or not they have a duty to go into action. We cannot refrain from holding that the stationing of United States Armed Forces in our country is not permissible under the Constitution.

Needless to say, to the extent that the Security Treaty and the Administrative Agreement continue in force, our country bears an international law obligation to let the United States station its troops in our country, to provide them with the necessary bases, and to secure tranquillity with their facilities. But since, as pointed out above, the stationing of the United States troops in our country violates the first clause of paragraph 2 of Article 9 of the Constitution and is impermissible and since there is no logical reason why legal interests concerning tranquillity within the facilities and areas occupied by them should receive more civil and criminal protection than does the same kind of legal interest of the general public, the provisions of Article 2 of the Special Criminal Law which impose upon the people criminal sanctions which are heavier than those imposed by the Minor Offenses Law must be said to be void by reason of their violation of Article 31 of the Constitution which provides that no person shall receive criminal punishment except according to procedure established by law.

Wherefore, each and every one of the allegations against the defendants does not constitute the alleged crime specified in the counts of the information; and this court declares said defendants to be not guilty in accordance with Article 336 of the Code of Criminal Procedure.

Judgment entered as stated above.
March 30, 1959

Tokyo District Court, 13th Crim. Dept.

Chief Judge	Date Akio
Judge	Shimizu Shunzō
Judge	Matsumoto Ichirō

Sakata *v.* Japan (The Sunakawa Case)*

13 Keishū 3225

(Supreme Ct., Grand Bench, 1959)

Translated by Charles R. Stevens and Kazunobu Takahashi

Whereas, an appeal[1] has been lodged by the Prosecutor against the decision in the first instance pronounced by the Tokyo District Court on March 30, 1959 in the case of the alleged violation of the Special Criminal Law Enacted in Consequence of the Administrative Agreement under Article III of the Security Treaty between Japan and the United States of America, brought against the above-mentioned defendants, therefore, this court renders its decision as follows:

Judgment

The decision below is vacated.

The case is remanded to the Tokyo District Court.

Reasons

Regarding the reasons for appeal [*jōkoku shūi*] submitted by Nomura Satao, Chief Prosecutor, Tokyo District Prosecutor's Office:

The substance of the decision below is that Article 2 of the Special Criminal Law Enacted in Consequence of the Administrative Agreement under Article III of the Security Treaty between Japan and the United States of America is null and void, as it contradicts Article 31 of the Constitution on the premise that the stationing of United States armed forces in Japan contravenes the provisions of the first part of paragraph 2, Article 9 of the Constitution and, therefore, cannot be permitted to stand.

1. The Court will first examine the meaning of the first part of paragraph 2, Article 9 of the Constitution. It may be stated at the beginning that Article 9 of the Constitution was promulgated with a sincere desire for lasting peace by the people of Japan who, in consequence of the acceptance of the Potsdam Declaration as a result of the defeat of our country and reflecting upon the errors of militaristic activities committed by the government in the past, have firmly resolved that never again shall we be visited with the horrors of war through the action of the government. . . .

Thus, this Article renounces the so-called war and prohibits the maintenance of the so-called war potential, but certainly there is nothing in it which would deny the right of self-defense inherent in our nation as a sovereign power. The pacifism advocated in our Constitution was never intended to mean defenselessness or nonresistance. . . .

In view of this it is only natural for our country, in the exercise of powers inherent in a state, to maintain peace and security, to take whatever measures may be necessary for self-defense, and to preserve its very ex-

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1. When a law is declared unconstitutional at the District Court level, a direct appeal is available to the Supreme Court without the need of first appealing to the intermediate High Court of Appeals. See Rules of Crim. Proc. Art 254(1).

istence. We, the people of Japan, do not maintain the so-called war potential provided in paragraph 2, Article 9 of the Constitution, but we have determined to supplement the shortcomings in our national defense resulting therefrom by trusting in the justice and faith of the peace loving people of the world, and thereby preserve our peace and existence.

This, however, does not necessarily mean that our recourse is limited to such military security measures as may be undertaken by an organ of the United Nations, such as the Security Council, as stated in the original decision. It is needless to say that we are free to choose whatever method or means deemed appropriate to accomplish our objectives in the light of the actual international situation, as long as such measures are for the purpose of preserving peace and security of our country. Article 9 of the Constitution does not at all prohibit our country from seeking a guarantee from another country in order to maintain the peace and security of the country. . . .

2. The next point in issue is whether the stationing of the United States armed forces in Japan is contrary to the purport of Article 9, paragraph 2, Article 98 and the Preamble of the Constitution. Insomuch as the stationing of the United States troops in Japan is predicated upon the Security Treaty between Japan and the United States, now under consideration, determination of the constitutionality of this treaty must of necessity precede the determination of this point.

The Security Treaty was concluded on the same day as the Treaty of Peace with Japan (Treaty No. 5, 23 April 1952) and it maintains a very close and inseparable relationship with that treaty. That is to say, under the proviso contained in Article 6(a) of the Treaty of Peace, it is stated that "Nothing in this provision shall, however, prevent the stationing or retention of foreign armed forces in Japanese territory under or in consequence of any bilateral or multilateral agreements which have been or may be made between one or more of the Allied Powers," thus, recognizing the stationing of foreign troops within the territorial limits of Japan. The Security Treaty is a treaty concluded between Japan and the United States regarding stationing of the United States armed forces, the foreign armed forces recognized in the above provision of the Treaty of Peace. This provision was approved and signed by a majority of forty countries out of sixty United Nations countries.

According to the Preamble of the Japan-United States Security Treaty, the Treaty of Peace recognizes that in consideration of the fact that Japan will not have the effective means to exercise its inherent right of self-defense at the time of coming into force of the Treaty of Peace, and since there is a necessity of coping with the danger of irresponsible militarism, that Japan, as a sovereign nation, has the right to enter into collective security arrangements. Further, the Charter of the United Nations recognizes that all nations possess an inherent right of individual and collective self-defense. It is clear, therefore, that the purpose of the Japan-United States Security Treaty is to provide, as a provisional arrangement, for the defense of Japan, and to stipulate matters necessary to insure the safety and defense of our country, such as granting of the right to the United States to deploy its armed forces in and about Japan to guard against armed attack upon the country. . . .

In the formulation of the treaty, the Cabinet of the Japanese Government then in power, negotiated with the United States on a number of occasions in accordance with the Constitutional provisions, and finally concluded the same as one of the most important national policies. It is also well-accepted public knowledge that, subsequent thereto, the question of whether the treaty was in accord with the Constitution was carefully discussed by both Houses and finally ratified by the Diet as being a legal and proper treaty.

The Security Treaty, therefore, as stated before, is featured with an extremely high degree of political consideration, having bearing upon the very existence of our country as a sovereign power, and any legal determination as to whether the content of the treaty is constitutional or not is in many respects inseparably related to the high degree of political consideration or discretionary power on the part of the Cabinet which concluded the treaty and on the part of the Diet which approved it. Consequently, as a rule, there is a certain element of incompatibility in the process of judicial determination of its constitutionality by a court of law which has as its mission the exercise of the purely judicial function. Accordingly, unless the said treaty is obviously unconstitutional and void, it falls outside the purview of the power of judicial review granted to the court. It is proper to construe that the question of the determination of its constitutionality should be left primarily to the Cabinet which has the power to conclude treaties and the Diet which has the power to ratify them; and ultimately to the political consideration of the people with whom rests the sovereign power of the nation. . . .

3. Accordingly, the Court in proceeding to deliberate over the Security Treaty relating to the stationing of the United States armed forces and the provisions of the Administrative Agreement based on Article 3 of the said treaty, finds that these Security Forces are foreign troops, and naturally they are not a war potential of our country. All command and supervisory authorities are vested in the United States, and furthermore, it is clear that our country has no right to command or supervise such armed forces as we do over our own armed forces. . . . It can readily be seen that the reason for permitting the stationing of these forces was none other than to supplement the lack of our own defense power, by trusting in the justice and faith of the peace loving people of the world.

If such be the case, it cannot be acknowledged that the stationing of the United States armed forces is immediately, clearly unconstitutional and void, contravening the purport of Article 9, paragraph 2 of Article 98, and the Preamble of the Constitution. . . . This is true, regardless of whether the provisions of paragraph 2 of Article 9 were intended to prohibit the maintenance of war potential even for self-defense. . . .

The original decision, which adjudged that the stationing of the United States armed forces cannot be permitted as it contravenes the first part of paragraph 2, Article 9 of the Constitution, went beyond the scope of the right of judicial review, and constituted an error in interpreting the Preamble of the Constitution and other constitutional provisions cited above. The original court also committed an error when it ruled that Article 2 of the Special Criminal Law was unconstitutional and void, based on the assumption that the stationing of the US troops was illegal. . . .

Ito *v.* Minister of Agriculture, Forestry and Fisheries*

(The Naganuma Nike Missile Site Case I)

712 Hanrei jihō 24

(Sapporo D. Ct., Sept 7, 1973)

Translated by Richard Briggs and Lawrence Beer

Editorial Note

. . . The plaintiffs challenged the government's decision to build a Nike anti-aircraft missile base within a forest reserve near Naganuma in Hokkaido, Japan's large northern island. They argued that they benefited directly from preservation of the forest reserve, and that farmers and other residents whose supply of irrigation and drinking water and protection from floods are adversely affected by the Minister of Agriculture's cancellation of forest reserve designation. They also claimed that the base is illegal because it violates quasi-pacifist Article 9 of the Constitution. The Sapporo District Court . . . held that the plaintiffs had standing to sue and that the base does indeed violate the "no war" provision of the Constitution.

The Sapporo High Court . . . agreed with the district court that the plaintiffs had valid legal interests in the water supply and flood control assured by the forest preserve, but held that the dikes and other substitute facilities provided

*From Lawrence W. Beer & Hiroshi Itoh, eds., *The Constitutional Case Law of Japan, 1970 through 1990*, 83–112 (Seattle: University of Washington Press 1996).

adequately protected these interests and thus removed the basis for their standing to sue. Since the district court had found the substitute measures inadequate, the high court went into considerable civil engineering data (not translated here) to establish their adequacy. The appellate court also differed with the district court on whether the Preamble and Article 9 provide a "right to peace" violated by the Self-Defense Force, and whether the law creating the Self-Defense Force involves a "political question" not susceptible to judicial review.

The Naganuma plaintiffs appealed to the Supreme Court. . . . Whether they had standing turned on interpretation of the words "a direct interest" in the Forest Law. The three decisions in the Naganuma case admirably display many of the wide range of arguments, strategic and political as well as constitutional and legal, which have characterized debate on peace and war potential in Japan since 1945. Their importance is underlined by common reference to the document as "the Peace Constitution." . . .

Judgment

1. The official act cancelling designation of the forest reserve cited below, which the defendant accomplished July 7, 1969, by means of Ministry of Agriculture, Forestry, and Fisheries Ordinance No. 1023, is revoked. . . .

Reasons

1. Facts Undisputed by Parties

A. Background on the Umaoiyama Forest Reserve

Lying at the upper reaches of a tributary of the Yubari River, the Umaoiyama Forest Reserve forms a boundary area between the towns of Naganuma and Yuni in Yubari District. . . . It is one of several forest preserves for water conservation, that is, for regulating the water that the trees receive and thereby ensuring irrigation water and preventing floods. . . .

In 1949 and 1952, a portion of the reserve was released. As a result, the area of forest reserve land was 1,096 hectares [a hectare is 2.47 acres] in Naganuma and 412 hectares in Yuni. In June 1968, sixty-seven hectares of the forest reserve in Naganuma was transferred to the jurisdiction of the Defense Agency. The official act in question released thirty-two hectares of that land and three hectares of forest under the jurisdiction of the Forestry Agency. . . .

3. With Regard to Plaintiffs' Interest to Sue

The defendant maintains that the plaintiffs have no interest to sue in this case. However, for reasons stated in A(2), B(2), and C(2), the court cannot accept the defendant's arguments. For those reasons and that in D, it must be concluded that the plaintiffs do have a legal interest in this suit.

A(2). The forest reserve system prescribed in Chapter 3, Section 1 of the Forest Law is intended not only to protect the individual interests of the proprietor of the forest in question or other appropriate persons, but also to protect the lives, property, health, and security of livelihood of the residents of the forest. . . .

This is [ ] clear from the procedures for designation or release of a forest reserve. Article 27, 1 prescribes that individual(s) "with a direct interest in that designation or cancellation of a forest reserve" have the right to apply to the Minister to effect designation or cancellation. . . .

What the Forest Law tries to protect by the forest reserve system are the residents' interests of life, property, health, and the security of livelihood. These are not simply indirect interests, as the defendant claims, but are interests protected by the Forest Law.

. . . [A]ll plaintiffs reside in Naganuma, Yubari district, where the Umaoiyama Forest Reserve is located. Consequently, with regard to the request to rescind the official act releasing the forest preserve, the plaintiffs are "persons having a legal interest" as specified by Article 9 of the Administration Litigation Law. . . .

C(2). From the evidence which the defendant submitted as the basic plan for the aforementioned construction and the results of the same; and from evidence which the plaintiffs submitted and from their oral arguments, the following can be recognized: with regard to the plan for construction of the Fujido Number 1 Dike, insufficient data exists on the frequency and amount of rainfall for a one-hundred-year

period, and considerable doubt remains about the estimates of the rate of flow and the comparative total flow of flood water. As for the erosion control dikes, considerable doubt also exists about the calculations of the quantity of soil which will be lost. Consequently, even with the substitute construction, because the danger of flooding has not been completely eliminated, the plaintiffs' interest to sue for revocation of the official act still exists.

D. In addition, considering the Forest Law as located within the constitutional order, the purpose of the forest reserve system should not be understood as limited to those separate purposes listed in Article 25, 1 [of the Constitution]. Rather, it is natural to see the individual provisions as intended to safeguard the "right to live in peace" (The Preamble of the Constitution) in order to realize the basic principles of the Constitution, which are democracy, respect for fundamental human rights and pacifism. Accordingly, if the right of the area residents to a peaceful existence is infringed upon by the defendant's official act, or as long as there is a danger of such an infringement, those residents have a legal interest in contesting the errors of that action.

The reason for the official act cancelling designation of the reserve was, as noted in 1 above, construction of facilities for the Third Anti-Aircraft Group. This is a Nike J missile base, and from the testimony of witnesses . . . this base, with its anti-aircraft facilities, radar, and so forth, would be the first target of an attack from another country at the time of an emergency. Consequently, the danger exists that the plaintiffs' right to live in peace is being infringed upon. Moreover, since with this kind of infringement, once an incident occurs relief means nothing or is remarkably difficult to obtain, the plaintiffs have a legal interest to contest the official act and to seek its annulment.

4. Order for Deciding Causes of Action

. . . The view is frequently presented that when arguments maintaining a violation of the Constitution and arguments maintaining a violation of a statute are presented together as reasons to revoke an official act, the court will not venture to pass on the constitutional issues if it can decide the suit by considering only the statutory questions. There is appropriate basis for this opinion . . .

However, this principle does not mean that the courts should at all times and under all circumstances wait to the last to judge the constitutional issues. Our country is a constitutional state and all three branches of government must exercise power within the constitutional framework. Since only the judiciary has the authority and obligation to ultimately pass on the constitutionality of laws, orders, and so forth, a court has the obligation to forsake its passive position and to examine the constitutionality of the government's actions: [a] when, in the process of investigating a concrete legal dispute, the court thinks that state power exceeds that established by the constitutional framework, that because of this situation a grave violation of constitutional principles which cannot be overlooked is developing, and that as a result the rights of the people are being infringed upon or there is a danger of this; and [b] when the court feels that it can fundamentally resolve the dispute at hand only by considering the constitutional issue.

If, even in situations such as those described above, the court were to dispose of the case only on statutory grounds, although this disposition would provide relief for the party of that suit, this would be only a formal, superficial relief, and would not be a real or substantial solution. (The same issue will arise later in a different form.) In addition, such a disposition would invite a result showing that the court had overlooked a situation in which State power actually went beyond the constitutional framework, and that it had consequently permitted this unconstitutional situation to become larger and more serious. This would make the exercise of judicial review, which is provided to protect constitutionalism, increasingly difficult and would render vacuous the judicial obligation to uphold the Constitution, which Article 99 assigns to all governmental personnel, including the courts.

In this case, in the plaintiffs' arguments concerning

a violation of Article 9 of the Constitution and a deficiency in the public welfare [grounds] as specified in Article 26, 2 of the Forest Law, doubt appears that the SDF may violate one of the basic principles of the Constitution, that of pacifism. The possibility exists that the right of the plaintiffs to live in peace and other rights have been infringed upon, because the official act cancelling the forest reserve status was closely tied to the creation of the Air SDF base. Therefore, in such a situation, for the reasons stated above, it is impermissible for the court to avoid a constitutional judgment and the court must be positive in its exercise of judicial review. . . .

III. The Pacifism of the Constitution and Interpretation of Article 9

A. Meaning of the Preamble

1. In a constitution, the origins, motives and purpose for the establishment of the Constitution or its basic principles are often proclaimed and made clear in a preamble, as a preface to the individual articles which comprise it. . . . Our Constitution, in its Preamble of four paragraphs, has set down certain fundamental principles which should be called the "Constitution of the Constitution." These principles are pacifism, popular sovereignty, and respect for fundamental human rights.

2. This pacifism is not negative in nature [because] Japan was made to renounce war and not maintain armament because of its defeat in World War II and its forced acceptance of the Potsdam Declaration. Rather, it is positive in that, as stated in the Preamble, we resolve that "we shall secure for ourselves and our posterity . . . the blessings of liberty throughout this land and . . . that never again shall we be visited with the horrors of war . . ." Specifically, on the one hand, this resolve for peace did not just derive from the feeling of abhorrence of war resulting from the calamitous experience of World War II. Rather, it is a rational determination for peace. . . .

3. This pacifism in the Preamble is inextricably linked with two other principles, popular sovereignty and respect for fundamental human rights.

(1) That the first paragraph of the Preamble ties pacifism and popular sovereignty together is clear . . . This interrelationship is one in which we try to establish a perfect peace by prescribing that government action originates from the authority of the people, thereby eliminating as a cause for war the arbitrariness of a government supported by a few. On the other hand we believe that pacifism must be established perfectly for the actual benefits of popular sovereignty for the people to exist.

(2) . . . [T]he second paragraph of the Preamble states, "All peoples of the world have the right to live in peace, free from fear and want." These words proclaim that the right to live in peace is itself a fundamental human right common to all people of the world. That people can live in peace is not an extra benefit resulting from the government's adoption of pacifism as a policy. Rather, the government itself adopted pacifism as one of its fundamental principles in order to establish the right to live in peace for our people and all peoples of the world. In other words, the only way to establish this right was to adopt pacifism.

These ideas of pacifism and fundamental human rights are pointed out in the Preamble of the United Nations Charter and in the Preamble of the "Universal Declaration of Human Rights." . . . Our Constitution conforms with these ideas and explains them more fully.

The separate fundamental rights in Chapter III of the Constitution make real each individual's rights to live in peace and to pursue happiness. Here too, the two fundamental constitutional principles of pacifism and respect for fundamental human rights are inextricably joined.

B. Interpretation of Article 9 of the Constitution

1. Each article and paragraph of the Constitution, including Article 9, simply makes concrete and separately manifests those basic principles. . . .

(2) "Land, sea, and air forces, as well as other war potential, will never be maintained." Land, sea and air forces can be said to mean a type of military force in the usual sense of the term, or to attempt a definition,

"an organized structure of men and material which has as its purpose combat activity involving physical power against a foreign threat." For this reason, "land, sea and air forces" are separate from the police which exist for internal security. "Other war potential" is a military force other than land, sea and air forces, or an organization of men and material which has physical power comparable to and equivalent to a military even though that term may not be used, and which, when necessary, can be converted to war purposes. Facilities producing munitions exclusively for the conduct of war are included in this term. However, to interpret "other war potential" more broadly to mean all human or material capability useful for war is inappropriate, as this would include a considerable portion of the financial and industrial structure indispensable to modern society.

Thus, as long as we pledge in this paragraph not to maintain any type of "war potential," the actual conduct of wars of self-defense and wars to implement sanctions by means of a military force or other war potential becomes impossible.

(3) The defendant maintains that "the minimum level of self-defense power necessary to prevent aggression or illegal attack by force from abroad does not correspond to the war potential of Article 9, paragraph 2."

If we agree with the position of the defendant that "self-defense power is not war potential," we are forced to the curious conclusion that because each country of the world maintains a military force and military power considered necessary for its own defense, none maintains war potential. In the end, regardless of whether it may be used for wars of self-defense and wars to enforce sanctions or illegal wars and wars of aggression, "war potential" must be determined by objective standards, as was done above. . . .

D. The Right of Self-Defense and Acts of Self-Defense Not Based on Military Power

The possession and exercise of the right of self-defense are not directly related to self-defense based on military power. First, the security of a State (this ultimately means the preservation of the life, property, and livelihood of each person) is of course related to the social, economic and political concerns of the country and to international concerns such as its international position and its diplomacy; considering these matters together, the country is able to achieve that scrutiny. Furthermore, the foundations for maintaining national security are: that each individual, firmly resolving to attain peace, recognizes and understands correctly the nature of national peace; that each individual, always excluding self-righteousness and intolerance, relies on the good faith and impartiality of neighboring countries, at the same time looking beyond differences in social structure to maintain friendship; that each citizen by considering the above domestic and foreign concerns judges correctly the ways to achieve security; and that the whole populace comes together and cooperates in this venture. It is obvious that the present Constitution of our country stands on this ideal.

Looking at the exercise of the right of self-defense from this perspective, we can see that the following measures can be taken, based on the evidence, part A, number 179 and the testimony of Shigejiro Tabata: reliance on peaceful diplomacy to avoid aggression; use of the police force, which is mainly for internal security, to repel aggression; mass uprisings in which the people take up arms and resist; confiscation of the property held by citizens of the aggressor country, or deportation of those individuals. All these can be recognized as in exercise of the right of self-defense. We see from the testimony of Naoki Kobayashi that there are many non-military methods of resistance. In addition, we know of many instances in the history of the human race in which nationals or tribal peoples employed their wits and resisted those who had committed aggression. Consequently, in the future, depending on the time and situation, various methods of resistance will be found through the efforts and intelligence of the people. Moreover, we can add to these the fact that the United Nations, since its founding over twenty years ago, has taken appropriate police action several times and has thus prevented the outbreak of bilateral conflicts. . . .

VI. The Unconstitutionality of the Self-Defense Force and Related Laws and Regulation, and the Deficiency in Reasons of Public Welfare for the Official Act Cancelling the Designation of the Forest Reserve

1. Viewed in terms of its organization, scale, equipment and capabilities, the SDF is a military force, since it is clearly "an organization of men and material which has as its purpose combat activity involving physical force against a foreign threat." Accordingly, the Ground, Maritime, and Air SDF correspond to the "war potential" of "land, sea and air forces," maintenance of which is forbidden by Article 9, 2 of the Constitution. The Defense Agency Establishment Law (Law 164 of 9 June 1954) and the Self-Defense Force Law (Law 165 of the same date), which prescribe the structure, organization, equipment, activities, and other matters regarding each branch of the SDF and other laws and regulations related to the SDF all are alike in violating the above constitutional provision and have no validity under Article 98 of the Constitution.

2. In order to constitute "reasons of public welfare" as stipulated by Article 26, paragraph 2 of the Forest Law, the purpose for cancelling a forest reserve designation must be recognized by the legal system, the apex of which is the Constitution. Therefore, insofar as the SDF and the related law and regulations violate the Constitution, the construction of defense facilities for the SDF is not in the public welfare as prescribed by the Forest Law. Similarly, defense of the State by military power is deficient as a reason of public welfare. . . .

3. The official act cancelling designation of the forest reserve, which the defendant carried out on July 7, 1969, by means of Ministry Ordinance No. 1023, provided land for launching facilities and for a road for the Eleventh Firing Battery of the Third Anti-Aircraft Artillery Group of the Air SDF, a part of the Self-Defense Force structure. Accordingly, this official act is illegal for deficiency in "reasons of public welfare" and cannot but be revoked. . . .

Judges Shigeo Fukushima (presiding), Takao Inamura, and Ryuki Inada

Minister of Agriculture, Forestry and Fisheries *v.* Ito*
(The Naganuma Nike Missile Site Case II)

27 Gyōsai reishū 1175
(Sapporo High Ct., Aug 5, 1976)
Translated by Theodore McNelly

Judgment

The decision below is reversed.

The suit of the appellees is on all points dismissed. The costs for both the first instance trial and this trial shall be borne by the appellees. . . .

[Reasons]

In view of the preceding confirmed facts, the areas affected by a shortage of water for farming and drinking are properly seen as limited to the areas within the oblique line and the broken line on page. . . . From the standpoint of conserving water, all the above areas must be recognized as zones directly affected. Because of the close connection between the above land and the people's livelihood and the importance of their livelihood, the interest of the farmers and residents of the above sixty-four households in conserving water for farming and drinking at the time of designation of the forest reserve was realistically seen to be directly affected. It had to be regarded as a concrete, particular interest deserving [protection]. Also, since those with this interest feared direct harm from the [administrative] cancellation at issue in this case, they should be recognized as having a legal right to contest the cancellation. . . .

With the circumstances described above, damage resulting from the cancellation of part of the forest reserve to the safety of livelihood and person among the appellees named . . . has been compensated for by means of the Fujito No. 1 Dike and other flood prevention devices, so that the appellees have lost their concrete interest for contesting the said cancellation. Therefore, the suit of the appellees must be dismissed as not justifiable. . . .

The SDF Law provides that the primary duty of the SDF is the defense of the nation, determines the particular structure and composition of the SDF, and stipulates that the SDF will maintain arms and use them against aggression; in practice the SDF maintains armaments based on the SDF Law and a structure and composition as determined by the law. . . . Therefore, it is clear that the SDF is exclusively for self-defense within the limits of the purposes which have been determined. The question of whether or not the organization, composition, and equipment of the SDF as provided in the SDF Law, or as these exist in actuality, are for the purpose of aggressive war may not be determined solely from the above-cited purposes; rather the question is whether or not, objectively speaking, our country's ability to carry on war is clearly sufficient for aggression as compared with other countries. The comparison of the capacity to wage war must be considered and evaluated relatively from the standpoint of broad, high level, specialized technical knowledge, with attention not only to the individual organization, composition, and armaments of the countries, but also to the economic power, geographic factors, and future prospects of every element of other countries' war-making capacity. Because such evaluation cannot be settled upon objectively and unequivocally in the present situation, we cannot say that the SDF is at first sight and most clearly aggressive.

6. Conclusion

In view of the foregoing, the problem of whether or not the existence, and so on, of the SDF conforms to Article 9 of the Constitution is a decision concerning state governance, and as a political act of the Diet and Cabinet would ultimately be entrusted to the political judgment of the entire people. It should not be construed to be a matter that courts are to determine.

Judges Yasoji Ogawa (presiding), Takeshi Ochiai, and Hiroshi Yamada

Uno v. Minster of Agriculture, Forestry and Fisheries*
(The Naganuma Nike Missile Site Case III)

36 *Saihan Minshū* 1679
(Supreme Ct., Sept. 9, 1982)
Translated by Douglas Payne

1. The Standing of the Plaintiffs . . .

In the Forest Law (hereafter the Law) the Minister of Agriculture, Forestry, and Fisheries (hereafter the Minister) can designate forests as forest reserves when necessary in order to conserve water resources or to achieve the other objectives set out in each item of Article 25, paragraph 1 of the law. If a forest reserve is designated, the felling of standing timber or bamboo in that forest, damage to standing timber, grazing of domestic animals, gathering of wild grasses under the trees, fallen leaves or branches, or the excavation of rocks or removal of tree stumps, cultivation of the land, or other changes to the shape or nature of the land [therefore] is prohibited in principle, and the owners of a relevant forest are subject to various restrictions including replanting after the felling of standing trees [Article 34 and 34–2 of the law]. The governors of the prefectures may supervise these measures (Article 38) and prescribe punishments against violators under penal provisions [Article 206, items 3 to 5 and Article 209]. On the one hand, dispositions of designated forest reserves have a negative impact on owners of forests and other designated persons in the form of limitation of a private right. On the other hand, the implementation of the aims of each item of Article 25, paragraph 1 of the Law, by a disposition designating a forest reserve, is of advantage to the neighboring residents and other unspecified majorities whose lifestyle is enhanced by continuation of the relevant forest. Further, the Law in setting out to prevent natural disasters, preserve the environment, and conserve the scenic beauty of the forest area, establishes these objectives as general public interests and it must be considered that these interests justify a disposition limiting private rights inasmuch as designation of a forest reserve is made for the purpose of protecting and promoting the public interest. . . .

In summary, the court below recognized that standing to sue is limited to people who lived in the water basin area, and that the argument that nonresidents whose life style also was influenced by the threat of flood should also have standing is a mistaken interpretation of Article 9 of the Administrative Litigation Law. As explained above, the interests of nonresidents are included within the general public interest and do not exist as independent, individual, guaranteed interests. The rights of these people are covered by the rights of the heads of municipal bodies in these areas who can sue representatives of the interests of residents of that area who have responsibility for asserting this public interest. Accordingly it is not possible to adopt the list "A" [a designation of appellants who were not resident within the area of the water basin] as appellants argue.

2. The Extinguishment of the Interest to Sue

Even those people who live within the limits of the water catchment area (defined above) and who qualify for standing as plaintiffs who are in list "B" (omitted) of parties appended to the judgment below, (hereinafter called the Group B appellants) may lose their standing in a situation in which the injurious state of affairs relating to their independent, practical, individual interest in the disposition, on which their standing as plaintiffs was based, is to be cancelled by a change of circumstances after the disposition cancelling the designation of the forest reserve. Accordingly, an interest to sue which has the objective of restoring a damaged interest may be lost if there is no injury in fact. In other words, because it is based on damage to their interest in preventing floods and water shortages by preserving water reserves, which would be directly affected by any lowering of water control attendants to the felling of standing timber and bamboo, based [in turn] on the disposition cancelling part of the forest reserve in this case, the standing to sue of Group B appellants would be lost if the threat of flood and water shortages was eliminated by the implementation of substitute facilities in the present case. Once it is acknowledged that the necessity for the continuation of the reserve in this case had disappeared, it must also be said that Group B appellants' interest to sue to demand cancellation of the disposition would be lost.

It follows that we must examine the judgment below in relation to whether the risk of flood was eliminated by the substitute facilities. This becomes the main point of the appeal. [There follows a detailed examination of the facts relating to rainfall and other conditions from which a majority of the Supreme Court concluded that the court below had reached the correct conclusion that there was no remaining threat.]

*From Lawrence W. Beer & Hiroshi Itoh, eds., *The Constitutional Case Law of Japan, 1970 through 1990*, 122–24, 126–27 (Seattle: University of Washington Press 1996). Copyright © 1996. Reprinted by permission of the University of Washington Press.

C. *Freedom of Religion*

Kakunaga v. Sekiguchi*
(The Shinto Groundbreaking Ceremony Case)

31 *Saihan minshū* 533
(Supreme Ct. July 13, 1977)
Translated by Frank K. Upham

Editorial Note

On the occasion of constructing a city gymnasium on January 14, 1965, Tsu City of Mie Prefecture had a Shinto *groundbreaking ceremony* (jichinsai) *conducted by four* Shinto *priests. Prior to this, the city had appropriated 4,000 yen as stipends for the priests and 3,663 yen to cover other expenses of the groundbreaking. The plaintiff, a city assemblyman who attended the ceremony at the mayor's invitation, later filed suit against the mayor contending that the city, a local public entity, conducted a groundbreaking in the* Shinto *manner and spent public money for the ceremony. He sought the return of the funds unlawfully expended and 50,000 yen as compensation for mental suffering caused by his coerced attendance.*

The Tsu District Court dismissed the suit, on the grounds that the ceremony was secular and customary, not religious in substance; it might appear to be Shinto *religious activity but it was not held to propagate the religion. The ceremony did not violate the Constitution; the expenditures were not for the purpose of assisting any particular religious organization. The plaintiff was not forced to attend the ceremony; so his freedom of religion was not violated.*

In reversing the district court ruling, the Nagoya High Court held that Shinto *is indeed a religion and that the groundbreaking ceremony was not secular or quasi-religious activity, but rather a religious act in the meaning of the Constitution. The High Court noted that with one exception, the Tsu ceremony had strictly adhered to the directives issued by the Home Ministry in 1907, in the prewar era of enforced unity between* Shinto, *the State, and modern nationalism. The judges concluded that the state or a local public entity violates the separation of religion and the state when it sponsors activities of a particular religion as in the present case. Thus, the groundbreaking ceremony was unconstitutional and the spending of public funds was also unlawful. . . .*

*From Lawrence W. Beer & Hiroshi Itoh, eds., *The Constitutional Case Law of Japan, 1970 through 1990*, 478–83 (Seattle: University of Washington Press, 1996). Copyright © 1996. Reprinted by permission of the University of Washington Press.