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甲山 田四

對外關係ニ關聯スル憲法草案上ノ諸問題
昭、二十一、四、九

一、條約ノ締結ニ付
イ、締約國

天皇ヲ條約ノ締約國トスベキヤ内閣ヲ締約國トスベキヤ、國
際慣行ニ徴スルモ元首ヲ締約國トスルヲ常トシ内閣ヲ締約國
トシタル例ヲ見ズ、列ハス英國ト條約ヲ締結スル場合英國側
ハ國王ヲ締約國トスルニ對シ我方ガ内閣ヲ締約國トスルハ
合上モ適當ナラザルベシ
條約ノ商議、締結ハ實質的ニハ内閣之ニ當ルコト當然ナルモ
英、白ノ國王ト同様「天皇ハ國家ノ象徵タルベシ」トアルヲ
以テ天皇ヲ條約國ノ締約國トシ差支ナキガ如シ、此ノ點特ニ
憲法中ニ明白ナラシムルヲ適當トスベキヤ
ロ、批准書及全權委任狀

外務省

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條約締結ニ先テ全權委員ニ對シテハ元首ノ署名アル全權委任

狀ヲ交附シ全權委員ハ對手方署名者ニ之ヲ提示ス
又條約ガ批准ヲ要スルモノナルトキハ國內手續トシテ其ノ批
准ニ國會ノ協贊ヲ要スルコト勿論ナルガ、批准書ハ元首ニ依
リ署名セラレ交換又ハ寄託セラルルモノトス
日本ニ於テモ純然タル形式ノ問題トシテ天皇此等ニ署名セラ
ルルヲ適當トスルモノト認メラル、然リトセバ憲法草案第七
條中ニ「條約批准書、全權委任狀、聘任狀其ノ他法律ノ定ム
ル外交上ノ文書ノ署名」ヲ加フルコト適當ナルベシ
ニ條約ノ國會ニ依ル協贊ニ付
國會ノ協贊ヲ經ベキ條約例ハス
イ、立法事項ヲ含ム條約
ロ、財政的負擔ヲ伴フ條約
ハ、締和條約、領土變更條約等特殊重要ナル條約

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等一定ノ範圍ニ限定セズシテ、一切ノ「條約、國際協定及協定」
(草案第六十九)ニ付議會ノ協賛ヲ必要トスル立法例ハ諸外國
ニモ存セス、例ヘハ米國ニ於テハ立法府ト關係ナク行政府ノ首
長ニ於テ國際協定ヲ締結スルコト許サレ居レリ(行政取憲ト稱
ス)、舊條約ハ國會閉會中ト雖モ其ノ締結ノ必要ヲ生ズルモノ
ナルヲ以テ國會ニ常置委員會ノ設置セラレルコト此ノ見地ヨリ
モ望シキ次第ナリ

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外務省

對外國係ニ關聯スル憲法草案上ノ諸問題
一 條約ノ締結ニ關スル問題

(a) 締約國

對外的形式トシテ條約面ニ於テ 天皇ヲ條約ノ締約國トスベ
キヤ内閣ヲ締約國トスベキヤ、諸外國ノ例ニ徵スルキ英白等
ノ立憲君主國ニ於テハ皇帝、米佛等ノ共和國ニ於テハ大統領
ノ締約國トスル慣例ニシテ此等諸國トノ條約締結ニ當リ條約
面ニ日本ノ締約國ヲ内閣總理大臣トスルハ國際慣例ト乃至
擬合ト適當ナラザルベシ(瑞西、「ソ」聯ニ於テ聯邦議會及
聯邦最高會議ヲ締約國トスル例アルモ右ハ之等方國ノ最高機
關ナルニ依ル)

條約ノ締結ハ實質的ニハ内閣之ニ當ルコト當然ナルモ新草案
第一條ハ「天皇ハ國家ノ象徵タルベシ」トアルヲ以テ
天皇ヲ條約面ノ締約國トシ差支ナキガ如シ、此ノ點特ニ明白

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外務省

法政部長

第九〇條の條約
ロソフの条約
五又(五又三)

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立法事項
財政の処理
條約の締結

ニスル要アリヤ
(b) 批准書及全權委任狀
條約締結ニ先テ全權委員ニ對シ締結權者ヨリ全權委任狀ヲ交
附シ對手國之ヲ提示ス
又條約ノ批准ハ其ノ國內手續トシテハ國會ノ協贊ヲ經ルコト
當然ナルガ、之ヲ國內的ニ公布スルト共ニ對手國ニ表示スル
要アリ、之ガ爲批准書ヲ交換又ハ寄托ス
全權委任狀及批准書ハ委任狀ト同様諸外國ノ例ニ依レバ皇帝
又ハ大統領之ニ署名ス、日本ニ於テキ形式ノ問題トシテハ
天皇之ニ署名スルヲ適當トスベキカ、然リトセバ第七條中ニ
天皇ノ權限トシテ「條約批准書、全權委任狀、委任狀其ノ他
法律ノ定ムル外交トノ文書ノ署名」ヲ加フルコト適當ナルベ
シ
ニ條約ノ國會ニ依ル協贊ニ關スル問題

外務省

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國會ノ協贊ヲ經キ條約ヲ
(1) 立法事項ヲ含ム條約
(2) 財政的負擔ヲ伴フ條約
(3) 締結條約、尙士變更條約等特殊重要ナル條約
等一定ノ範圍ニ限定セム一切ノ條約、協定等ニ付議會ノ協贊ヲ
求ムル立法例ハ諸外國ニモ存セム、米國ノ如ク行政府限リニテ
行政取極ヲ締結シ得ルコトスルモ、猶條約ハ國會ノ會期ト無
關係ニ其ノ締結ノ必要ヲ生スルモノナルヲ以テ國會ニ常置委員
會ノ設置セフルコト此ノ見地ヨリモ望シキ次第ナリ

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手書きの文字

其ノ根本的疑問ハ對外的意義ニ於ケル日本ノ條約締結權者ハ何人トシヤノ問題ニ在リ草案ハ條約ノ締結ハ内閣ノ「事務」ニ關セシメタル處右ノ種ニ條約案ノ作成、對手國トノ商議、署名等締結ニ關聯スル實務ハ之ヲ内閣ヲシテ行ハシメントスルヲ止ムルモノトシヤ又ハ現行憲法第十三條ノ如キ條約締結權其ノモノトシヤ内閣ニ賦與セントスルモノトシヤ不明ナリ(立案者ノ意圖ハ後者ニ在リ且米大統領ガ行政府ノ首長トシテ所謂行政取極ヲ締結シ得ルノ制ヲ模倣セルモノニ非ズヤト推測セラル、然リトセバ草案ノ規定ノ位置、字句、表現ハ適當ニ非ズ且米大統領ガ正式ノ條約(議會ノ同意ヲ要スル條約)ニ締結スルハ行政府ノ首長トシテニ非ズ國ノ元首トシテナル點ヲ無視セラルト謂ハセラルベカラス)

外務省

0020

表シテ條約ヲ締結スルノ權限ヲ有スルモノハ我國ニハ存セザルニ至リ、又若シ後者トシテ解スル場合ハ我國ニ於テハ元首ニモ非ズ又國家ノ最高機關ニモ非ズ而シテ國內政情ニ依リ顯繁ニ更送ヲ免レザル内閣(キヤビネツト)ガ對外的條約締結權ヲ有スルコトトシ、國際法及國際慣行上ノ通則ニ反シ而シテ又我國ノ國際的信用ニモ利ルコトナラズ

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前記根本的機關より派出スルモノトシテ次ノ如キ問題アリ
 (一) 從來既述ノ締結スル條約ノ「締約國」(コントラクタイン
 グ・パーティ)ハ國際慣習ニ從ヒ二國間條約ニ於テハ相手國ガ元
 首トルトキハ我方ハ「天皇」又或手續ガ政府トルトキハ我
 方ハ「政府」トシ、又多數國條約ニ在リテハ概ネ「天皇」
 「締約國」トシ來リタル或改正草案ノ下ニ於テハ我方ノ「締
 約國」ヲ何者トスベキヤ(列國ノ君主、大統領等ガ「締約國」
 トシテ肩ヲ負フル國際條約ニ於テ若シ我方ノ元首ニモ非ズ
 又或高級機關ニモ非ザル内閣總理大臣ノ名ヲ列ヨルコトトナル
 モノトキハ右ノ點ル奇妙ナル事類ニ非ズヤ)
 (二) 條約締結ノ爲メ金權委任狀ハ現行制度ノ下ニ於テハ天皇ニ依
 リ發給、署名セラルル所且斯ノ權金權委任狀ハ外交使節ノ繼
 任狀等ト共ニ重要ナル外交文據トシテ元首親野署名スルノ國
 際慣習アル或改正草案ノ下ニ於テハ天皇ハ最早條約締結權ト

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キ結果トシテ金權委任狀ノ下附ナル授權行爲ヲ屬シ得ザルヤ
 屬シ得ストモレハ何人ガ金權委任狀ヲ發給スベキヤ
 國改正草案ハ條約ノ批准ニ付關ルルトコロトキ或批准ハ何人ガ
 之ヲ爲スヤ、議會ノ權限、「協贊」ニ限定セラルル所以テ
 内閣ガ自由締結スル條約ヲ自由批准スルモノト解スベキヤ、
 又之ニ附隨シ從來天皇ノ署名ナル批准權ハ今後何人ガ署名ス
 ルコトトナルハキヤ
 一 條約締結制度ノ決定ニ當リテハ國內法の觀點ノミナ
 ラズ廣ク國際法的乃至國際慣習的觀點ヨリモ考慮ヲ必要トス
 スキ處今次草案ハ其ノ立案當時ノ環境ヨリ國內制度トシテノ民
 主主義化ヲ求ムルニ依リテ後者ノ觀點ヲ稍々時隨ニ附セル所
 アリ、故上諸問題ノ發生モ之ニ起因スルモノト觀ハザルハカ
 ズ

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三條約締結ノ所在

前記諸問題ノ解決策トシテハ次ノ如キモノ考案セラル

一、現行憲法通り條約ノ締結權ヲ天皇ニ歸屬セシムルコト但シ權

密院附屬ノ觀ハ之ヲ廢シ改正草案通り條約ノ締結ニハ國會ノ

協賛ヲ要スルコトトスルコト

現行憲法ト改正草案トノ折衷案ナリ、國民ノ意思ニ反スル

條約ノ締結ハ之ヲ禁止シ得ル點ニ於テ民意ノ尊重トナルモ

實質上ノ國體ヲ天皇ヨリ分離セルトスル今次草案ノ全般的

弊害ニハ反ス、本案ニ依レバ前記諸問題ハ悉ク解決ス

二、條約ノ締結、協賛、公布ニ關スル改正草案ノ規定ハ其ノ條ト

別ニ左ノ如レカクノ立法措置ヲ講スルコト

一、改正草案中ニ天皇ニ國家ノ對外的代表權ヲ認ムル規定ヲ

追加スルコト(例ヘバ草案第一ノ第二項トシテ「天皇ハ

日本國ヲ對外的ニ代表スルコト」ヲ追加スルカ又ハ同草案

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第七天皇ノ權限中ノ第八項ヲ「國家ヲ對外的ニ代表シ外國

ノ使節ヲ接受スルコト」ト改ム

本案ハ天皇ノ實質的權限ノ増大ヲ求メテ今次草案ノ

條約ニ依リテ本條ニ依レバ前記「締結權」ノ問題

全體委任狀ノ問題、批准權ノ問題ハ実行勅令ヲ廢止スル

ノ根據ヲ失ハラルコトナリ自然解決スヘク唯批准ノ

問題ハ本案以下ノ案ニテハ解決セズ

ロ、改正草案中ニ天皇ノ權限トシテ條約批准權、全體委任狀

ノ署名ヲ追加規定スルコト(例ヘバ草案第七ニ新ニ「條約

批准書、全體委任狀、親任狀其ノ他外交上ノ親書ノ署名」

ノ一項ヲ設ク)

天皇ノ權限ノ實質的増大トナラサルコトイ、案ト關シ、

イ案及後記ロ案ニ比シ問題ヲヨリ明確化ス、但シ本案ニ

依リテハ「締結權」ノ問題ヲ解決シ得サルモノ之ニ付テハ

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後記ハ、ノ(四)ノ解釋論ヲ併用シ得ベシ
 ハ、改正草案ニ何等ノ修正、追加ヲモ應サズ專ラ其ノ解釋論
 ト憲法附屬法令ノ立法ニ依リ解決スルコト
 (四)「締約國」ノ問題ハ天皇ヲ以テ「日本國及其ノ國民統合
 ノ象徵」ト爲ス草案第一ノ規定ヲ以テ天皇ニ國家ノ對外的
 代表權ヲ與フルモノト解釋シ條約圖ノ「締約國」ヲ從來
 通り「天皇」トスルコト
 (四)金權委任狀ノ問題ハ草案第七ノ五ニ天皇ノ權限トシテ「通
 務大臣、大使及法使ノ定ムル其ノ他ノ官吏ノ任免ノ認證」
 ヲ舉ケ居ルニ盡シ、金權委員ヲ右ニ稱フ官吏ニ包含セン
 ムル設立法條應ヲ認スルコト(此ノ場合天皇ハ認證行爲
 トシテ金權委任狀ニ署名スルモノニシテ授権行爲トシテ
 ニ非ストノ解釋ヲ執ル)

(三)批准書ノ問題ハ草案ハ天皇ニ條約締結ノ權ナキニ拘ラス

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其ノ公布(對内的意思表示)ノ權限ヲ認メ居ルニ盡シ、
 天皇ニ批准ノ權ナキモ對手續ニ交付スベキ批准書ハ、署
 名(對外的意思表示)ノ權ヲ認ムルハ條約ナキノミナラ
 ス均權ト妥當ナリトノ解釋ヲ執リ、右條附屬法令ニテ定
 ムルコト

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① 協定
② 協定
③ 協定

三條約締結ニ對スル國會ノ協贊

今次憲法改正草案ハ一方ニ於テ條約ノ締結ニ付國會ノ協贊ヲ要スルモノトセル虞右ハ我國ニトシテ全ク新ナル制度ナルヲ以テ左ノ問題トナルベキ諸點ニ付各國ノ先例ヲ參酌シ立法的見地ニ檢討ヲ試ムベシ

〔協贊ノ範圍ノ問題〕

草案ハ内閣ガ國會ノ協贊ノ下ニ締結スベキモノトシテ「條約ノ國際約定及協定」ノ名ヲ稱スルニ就テ第六十九ノ三ノ右ハ「條約」「約定」又ハ「協定」ノ名稱ヲ有スル條約ニ付テハ國會ノ協贊ヲ要シ、然ラズ「例」ハ「協約」「約定」等ノ名稱ヲ有スルモノニ付テハ國會ノ協贊ヲ要セザルモノト爲シ、非テ「例」ト勿論ナリト解スベク又草案ハ一切ノ條約ハ其ノ種類ヲ問ハズ總テ國會ノ協贊ヲ經ルヲ要スルモノト解スルニキ實情ニ即セズ、之ノ草案ノ規定ノミヲ以テ

シテハ協贊ヲ經ルニキ條約ノ範圍ハ明カニシテ、過去ニ於テ樞密院ニ附屬スルニキ條約ノ範圍ニ付政府ト同院トノ關係々問題ヲ生ジ、之ヲ整理スルニ際シ、且國會協贊ノ下ニ於テハ新ノ權問題一層紛糾スルノ可能性ヲ有ス、故テ憲法ノ下ニ於テハ本件範圍ノ問題ニ付極力發生ノ餘地ヲ示シ、明確ニ立法手段ヲ講ズルニ可ク、

立法論トシテハ本件範圍ノ問題ハ(一)國民ノ代表者タル國會協贊ノ本質ト(二)外交運管ノ擔當者タル政府ノ同意トノ兩面ニテ考慮ヲ必要トスベク、此ノ點ニ付民主主義諸國ノ例ヲ參照シ

例ハズ

一、國民ノ權利義務ニ關係スル條約(立法事項)含ム條約

二、國家又ハ國民ニ對シテ、負擔スル義務ニ關係スル條約

三、海和條約、領土變更條約、條子、通商航海條約等國家ニ重大ナル義務ノ課スル條約

0029

外務省

協定
口除
署名

三條約締結ニ對スル國會ノ協贊

今次憲法改正草案ハ一方ニ於テ條約ノ締結ニ付國會ノ協贊ヲ要スルモノトセル虞右ハ我國ニトシテ全ク新ナル制度ナルヲ以テ左ノ問題トナルベキ諸點ニ付各國ノ先例ヲ參酌シ立法的見地ニ檢討ヲ試ムベシ

〔協贊ノ範圍ノ問題〕

草案ハ内閣ガ國會ノ協贊ノ下ニ締結スベキモノトシテ「條約ノ國際約定及協定」ノ名ヲ稱スルニ就テ第六十九ノ三ノ右ハ「條約」「約定」又ハ「協定」ノ名稱ヲ有スル條約ニ付テハ國會ノ協贊ヲ要シ、然ラズ「例」ハ「協約」「約定」等ノ名稱ヲ有スルモノニ付テハ國會ノ協贊ヲ要セザルモノト爲シ、非テ「例」ト勿論ナリト解スベク又草案ハ一切ノ條約ハ其ノ種類ヲ問ハズ總テ國會ノ協贊ヲ經ルヲ要スルモノト解スルニキ實情ニ即セズ、之ノ草案ノ規定ノミヲ以テ

シテハ協贊ヲ經ルニキ條約ノ範圍ハ明カニシテ、過去ニ於テ樞密院ニ附屬スルニキ條約ノ範圍ニ付政府ト同院トノ關係々問題ヲ生ジ、之ヲ整理スルニ際シ、且國會協贊ノ下ニ於テハ新ノ權問題一層紛糾スルノ可能性ヲ有ス、故テ憲法ノ下ニ於テハ本件範圍ノ問題ニ付極力發生ノ餘地ヲ示シ、明確ニ立法手段ヲ講ズルニ可ク、

立法論トシテハ本件範圍ノ問題ハ(一)國民ノ代表者タル國會協贊ノ本質ト(二)外交運管ノ擔當者タル政府ノ同意トノ兩面ニテ考慮ヲ必要トスベク、此ノ點ニ付民主主義諸國ノ例ヲ參照シ

例ハズ

一、國民ノ權利義務ニ關係スル條約(立法事項)含ム條約

二、國家又ハ國民ニ對シテ、負擔スル義務ニ關係スル條約

三、海和條約、領土變更條約、條子、通商航海條約等國家ニ重大ナル義務ノ課スル條約

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七十二條

ノ三種ニ付國會ノ協贊ヲ要スルモノトシ、右以外ノ條約ハ内
國ノ專權ヲ以テ締結シ得ルコト恰キ米大統領ガ專權ヲ以テ行
政取極メ締結シ得ル細クナラシムルコト適當ナリト認メラル
尤キ改正草案第六十八ハ内閣總理大臣ノ職權トシテ「外交關
ノ狀況ヲ國會ニ報告」スルコトヲ限ラシメ居ルヲ以テ例ハ内
國ノ專權ヲ以テ締結セル條約ト雖モ外交報告ノ意味ニ於テ之
ニ關シ國會ニ説明ヲ行フヲ妥當ノ措置トスベシ

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0030

二 協贊ノ時期、問題

改正草案（第六十九、三）ハ條約ノ締結ニ付「時宜ニ依リ事
前又ハ事後ニ於テ國會ノ協贊ヲ得ルコト」ト爲シ事後協贊ヲ
明文ノ規定ヲ以テ認メタリ（現在樞密院ニ對スル事後諮詢ヲ
認ムルノ明文上、根據ナシ）右ハ常時國會ノ限制ニ在ラザル
國會ノ性質上當然、措置ト謂フベキ處如何ナル條約ニ付事後
協贊ヲ認ムベキヤ、點ニ付問題ヲ生ズ
批准條項ヲ有スル條約ニ付テハ既ニ締結セラレタルモノノ批
准ニ付國會ノ協贊ヲ得ルモノナルヲ以テ事後協贊トナルハ當
然ナリ、問題トナルハ批准條項ヲ有セザル條約ナルガ草案ハ
斯ノ種條約ハ總テ事前協贊ヲ得ベシト爲ヌ、趣旨ニ非ザルコ
ト「時宜ニ依リ」ナル字句ノ解釋上ヨリスルモ當然ナリ、從
來樞密院ニ對シ事後諮詢ノ行ハレタルハ（イ）締結前外部ヘノ漏
洩ヲ極度ニ防止スル要アリタル條約及（ロ）緊急實施ヲ要スル條

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約、場合、極、テ少数、事例ニ限ラレタリ、今後我國トシテ
ハ斯、種條約時ニ(イ)、種類ノモノハ減少スベク一見事後協贊
ノ範圍ヲ廣ク認ムルノ要ナキガ如シト雖モ、歐戰ノ協贊ハ其
ノ附屬ノ時期及其ノ活動ノ積極性ニ依リ制約ヲ受クルヲ免カ
レサルニ依リ、事後協贊ノ範圍ハ寧ロ借密院ニ附屬セル時代
ヨリモ之ヲ遙カニ廣ク定ムルコト適當ナリト思考セラル、又
假令批准條項アル條約、事後協贊ト雖モ次回會期迄ニ猶時日
アル場合又ハ衆議院解散サレタル場合ノ如キ條約ノ批准在再
遲延シ其ノ間信ヲ失ヒ又ハ對テ手堅ノ態度ノ變更ヲ招
クノ危険アルヲ以テ、之ヲ防止スル爲メ國會ノ議事制度ニ付適
當ノ手段ヲ講ジ置ク要アルベシ

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三 協贊手續ノ問題

イ、審議手續

國會ニ於ケル條約ノ審議手續トシテハ法律ノ場合ノ如ク
會ノ手續ヲ經ベキヤ、國會ニ修正權ヲ認ムベキヤノ問題アリ、
條約ハ法律ノ如ク國民ノ權利義務ニ直接ノ影響ヲ及ボ
スロト雖キモ以テ法律案ノ審議ノ場合ノ如ク第一、第二、
第三、~~議案~~會ノ手續ヲ經ルノ實益少ク寧ロ少數有識者ニ依リ組
織セララル委員會ノ活用ノ途ヲ開キ議會省略ノ餘地ヲ認ム
ルヲ可トスヘシ、而シテ右委員會ハ法律案審議ノ場合ノ如
ク議案毎ニ人選ヲ異ニシ組織サルルモノトスルヨリ當ニ同
一「メムバー」ニ依リ組織サルル外交委員會ノ如キモノト
スルハ外交政策ノ安定性及國家ノ對外的信用ノ見地ヨリ適
當ナリト認めラル

條約ノ内容ニ對スル議會ノ修正權ハ諸外國ニ於テモ之ヲ認

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及
議
案

メザルヲ通例トス、蓋シ外交交渉ノ所産タル條約ハ法律案ト異リ國內手續ノ段階ニ於テ、之カ變更ヲ認ムルコト國際政治ノ常識ニ反スルヲ以テナリ
尙條約締結ノ發議權ニ至リテハ諸外國ニ於テモ議會ニ之ヲ認ムル例ナク右ハ條約締結ノ衝ニ自ラ當ルノ地位ニナキ議會トシテ當然ノ次第ナリ、唯佛國ニ於テハ議會ハ政府ニ對シテ斯々ノ趣旨ノ條約ヲ締結スベシトノ勸告ヲ爲シ得ルモノトセラル、改正草案ハ國會ノ發議權ニ關スル規定ヲ含ミ居ラザルモ國會ガ右ノ如キ趣旨ノ議決ヲ爲スハ何等差支ナキモノト認メヌラル
ロ、兩院ノ意見不一致ノ場合
草案第五十六ハ條約ノ協贊ニ際シ衆議院、參議院ノ意見一致セザルトキハ豫算ノ場合ト同様衆議院ノ意見ヲ優先セシムルコトトセリ

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右ハ二重ノ意味ニ於テ異例ノ立法ト目サルベキモノナリ、即チ第一ニ條約ノ締結ノ如キ國際問題ニ付當初ヨリ兩院ノ意見不一致ヲ豫見シ、特ニ憲法中ニ斯カル規定ヲ設クルコト必要ナリヤ又適當ナリヤニ付疑問ナキ能ハザルノミナラス第二ニ假リニ其ノ必要アリト假定スルモ其ノ場合今次草案ノ如ク豫算審議ニ際シ兩院ノ意見一致セザル場合ノ規定（第五十五）ヲ準用スルヲ適當トスベキヤ疑問ナルヲ以テナリ、蓋シ條約ノ締結モ又立法行爲ニ外ナラザルヲ以テ若シ他ノ規定ヲ準用セントセバ豫算ヨリ學口法律案ニ關シ兩院ノ意見一致セザル場合ノ規定（第五十四ノ第二項）ヲ準用スルコト、即チ機械的ニ衆議院ノ意見ヲ優先セシメズ參議院否決シタル後衆議院更ニ三分ノ二以ヒノ多數ヲ以テ再度可決シタル場合當該條約ノ締結ニ付國會ノ協贊アリタルモノトスルノ眞重ノ取扱ヲ爲スコト適當ナルベキヲ以テナ

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Problems involved in the Draft
Constitution relating to Foreign
Relations

1. Conclusion of Treaties.

(a) Contracting Party

Who is to be the Contracting Party? Emperor?

or the Cabinet? Under the international usage and practice, it appears usual to make the Sovereign Contracting Party and the Cabinet representing the State as Contracting Party has never been practiced in any countries. For example, in concluding a treaty with Great Britain the King of England will be the Contracting Party for Great Britain. If the Cabinet were to be the Contracting Party for Japan, this would look odd in view of usual reciprocity.

All treaties are to be negotiated by and decided upon by the Cabinet but as the Emperor being "the symbol of the state", as in the cases of the King of England and the King of Belgians, it appears in order to make him the Contracting Party. It may be preferable to make this point clear in the Constitution?

(b) Instruments of Ratification and "Full Powers"

Prior to the conclusion of a treaty, the plenipotentiary of one country is given a document called "Full Powers" signed by the head of state in order to be presented to the other signatory party.

Again.

0037

リ、尤モ條約問題ニ付兩院ノ意見截然ト岐レ對立ヲ來スガ如
如キ事感ハ我國情ヨリシテ近クハ豫想シ得ザルガ故ニ本案
ノ規定ハ悉ク有名無實ノモノト化ス可能性アルモ、出來
得レバ之ヲ削除スルコト望シキ次第ナリ

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Again, if the treaty is to be ratified, it requires of course the approval of the Diet, but "instruments of ratification" signed by the head of state are to be exchanged or deposited.

It seems proper also for the Emperor of Japan to sign them as purely a matter of form. If so, it appears proper to have an additional paragraph in Article 7 of the Constitution.

"Signing of instruments of ratification, full powers, credentials and other diplomatic documents as provided for by law."

II. Approval of treaties by the Diet.

There is no legislative precedent for requiring the approval of the legislative for all "Treaties, international conventions and agreements" (Draft Constitution, Article LXIX), instead of limiting them to, for instance,

- a. Treaties involving legislative matters
- b. Treaties imposing financial burdens
- c. Treaties of peace, or treaties for territorial changes, or other treaties of special importance.

for example in U. S. A. the Chief Executive is authorized to make international agreement without consulting the Legislative (called "Executive Agreement" in U. S. A.)

Necessity of concluding a treaty may arise when the Diet is not in session. Another reason is here to be found for the desirability of setting up a standing committee in the Diet.

0038

手帳
信

新憲法草案修正ニ關スル會談ノ件(第一、二、三、四、五、六、七、八、九、十、十一、十二、十三、十四、十五、十六、十七、十八、十九、二十、二十一、二十二、二十三、二十四、二十五、二十六、二十七、二十八、二十九、三十、三十一、三十二、三十三、三十四、三十五、三十六、三十七、三十八、三十九、四十、四十一、四十二、四十三、四十四、四十五、四十六、四十七、四十八、四十九、五十、五十一、五十二、五十三、五十四、五十五、五十六、五十七、五十八、五十九、六十、六十一、六十二、六十三、六十四、六十五、六十六、六十七、六十八、六十九、七十、七十一、七十二、七十三、七十四、七十五、七十六、七十七、七十八、七十九、八十、八十一、八十二、八十三、八十四、八十五、八十六、八十七、八十八、八十九、九十、九十一、九十二、九十三、九十四、九十五、九十六、九十七、九十八、九十九、百)

本件ニ關シテハ、四月二日、閣下、於テ第一、二次會談ヲ行ヒ、
ルカ具ノ後、檢對ノ結果、尙修正ヲ要スル箇所ヲ生ジ、タルヲ以テ、四月
九日午後入江法調局長、佐藤同次、及加藤連絡局長、閣下、於テ、四月
部「ワ」デイス、大佐、及「ハ」ツシ、中佐、ト、別添第二、及第三、質問
書ニ關シ、第二次會談ヲ行ヒ、タル、據具ノ要點、左ノ通
一、同日午前本會談ト、ハ、別個ニ、別添第一「對外關係ニ關スル憲法
草案上ノ諸問題」ニ付、白根中央連絡事務局次長、及萩原條約局長、ト
閣下、於テ、政治部、ハ、「ワ」イ、ト、ニ、イ、一、推將ト、ノ、間ニ、會談、行、ハ、レ、タル
處、先ツ、右ニ、付、「ワ」イ、ヨリ、「ウ」イ、ト、ニ、イ、一、推將ト、ノ、間ニ、會談、行、ハ、レ、タル
一、天皇ヲ、條約ノ、締約國ト、スルコト、ハ、單ニ、條約、前文ニ、於テ、ノ、ミ
締約國、事、元、首ト、並、ベテ、大、日、本、國、
天皇トシ、條約、本文ニ、於テ、

終戰連絡中央事務局政治部

0039

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0026

ハ大日本國ト疆ヲ限リニ於テ單ニ形式的問題ナルヲ以テ一向
 差) 支ナシ新憲法ノ大權事項ヲ實質的ニ擴張スルコトナクシ
 テ 天皇ノ尊嚴ヲ高ムルカ如キコトナレハ何ナリモ反對ノ
 理由ナク之ヲ接受スルニ此ノ點ニ於テハ現在ノ習慣 (Present
 Practice) 一ヲ踏襲シテ差支ヘナシ
 〔二〕批准書及全權委任狀ノ署名ニ付テハ 天皇カ之等ニ署名セラ
 ルベキコトヲ第七條ニ加フルモ差支ヘナシ
 〔三〕條約締結ヲ秘密ニシ置ク要ニ關シテハ午前ノ會議ニ於テ御話
 アリタルモ寧ロスルコトナカラシムルコトガ第六十九條ノ目
 的ナリ
 ト述フ
 仍ツテ〔二〕ニ關シテハ協議ノ結果
 第七條第五號ヨリ「大使」ヲ削リ「法律ノ定ムル所ニ依リ其ノ
 他ノ官吏ノ任免」ノ次ニ「及大使ノ全權委任狀効ニ信任狀」

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---other officials and of full powers and credentials of
 Ambassadors as provided for by law)
 加ノ關係第七號榮典ノ授與ノ次ニ第八號トシテ批准書及法律
 ノ定ムル其ノ他ノ外交文書ノ認證 (Attestation of instruments
 of ratification and other diplomatic documents as provided for by law)
 ト規定スルコトナレリ
 〔四〕次ニ一切ノ「條約、國際約定及協定」ニ付議會ノ協議ヲ必要
 トスル點 (第六十九條) ニ關シテハ當方ヨリ日本ニ於テハ條
 約ト協定ノ間ニ米國ニ於ケルカ如キ明確ナル區別ヲ設ケ居ラ
 ザ例ヘハ防共協定ノ如キ明ニ所謂行政取極ニ非ザルモノモ條
 約ト謂ハズ協定ト呼バルコトアリ何ヲ以テ行政取極 ()
 (何ヲ以テ然ラザル協定) agreement)
 Executive agreement
 トスルカハ判定ニ困難ナル點ヲ指摘セル處「竹」ハ米國ニ於
 テハ議會ノ協議ヲ必要トセザル協定ハ行政府限リニ於テ之ヲ

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締結シ居リ本憲法ノ下ニ於テ何故右ノ如キ協定廷議會ノ協
 ヲ必要トスルヤ了解ニ苦シムモ單ナル用語上ノ困難アレバ
 協定一ナル語ヲ用ルモ差支ヘナカルベシト述ベタルヲ以テ右
 ノ如キ解釋ヲ下シ得ルナレハ別ニ其ノ必要ナシト答フ
 尙一ハ第五十六條條約締結ニ對スル議會ノ承諾ノ手續ニ
 付何故法律案ノ議決ノ手續ヲ採リタルヤ右ハ日本政府自身ノ
 案ニシテ自分等トシテモ之ニ異議ヲ唱フルモノニ非ザルモ次
 ノ議會ニ於テ右ガ問題トナリタル場合ニ備ヘ十分ノ理由ヲ用
 意シ備ク要アルベシト述ブ

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ニ次テ別添第二質問書ニ付逐條審議ニ入レル處其ノ結果左ノ通
 (一) (第八條) 解釋トシテ先方ハ
 (1) 本條ハ皇室ニ對シテ國民ノ爲ス贈與ヲモ含ム
 (2) 個人トシテノ 天皇ニ對スル贈與ハ考ヘラレス若シ之ヲ認
 ムレバ三井財團カ全財産ヲ個人トシテノ 天皇ニ贈與シ得
 ルコトトナル悞アルヲ以テ凡ユル贈與ハ議會ニ依リ議決セ
 ラレザルベカラズ
 (3) 皇室トハ皇族ヲ含ム又本條ハ個人トシテノ皇族ニ對スル贈
 與モ含ム
 (4) 天皇ト皇族ノ間ノ一切ノ贈與ハ議會ノ議決ノ要ナシト述ブ
 尙本條中「」又皇室ハ如何ナル受領及支拂ヲモ行フコ
 トヲ得ス」(「」) and no receipts and disbursements can
 be made thereby,)「」又皇室ハ如何ナル下賜ヲモ

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行ノコトヲ得ス」(--- and no gifts can be made thereby

)ト改ム

三(第二十三條)本條キ「自由、正義並ニ民主主義」ヲ削

三(第二十八條)(新)「刑罰」ノ前ニ「其、他ノ」(any

other criminal penalty)ヲ加フ

四(第三十五條)(新)其ノ儘トス

五(第四十三條)(新)本條但書第一期ノ任期ヲ了セル議員

半數ノ除キ「ヲ削リ補則ニ第九十九條トシテ」此ノ憲法ニ依

ル第一期ノ參議院議員ノ中其ノ半數ノ者ノ任期ハ三年トシ其

ノ議員ハ法律ノ定ムル所ニ依リ之ヲ定ム」ト規定ス

(註)舊方提出ノ案ニハ「法律ノ定ムル所ニ依リ抽籤

ヲ以テ之ヲ定ム」トアリタルヲ「抽籤ヲ以テ」ヲ削ル

六(第四十八條)(新)「國會ハ少クとも毎年一回之ヲ召集ス

外務省

0044

ルコト」トアルヲ「國會ノ常會ハ毎年一回之ヲ召集ス」ト改

七(第五十一條)(新)本條第二項ヲ第一項但書トス

八(第五十三條)(新)留保

九(第五十四條)(新)本條ヨリ "regulations"ル語ヲ削リ「其

ノ他ノ手續」ノ後ニ「及内部ノ規律」ヲ加フ

十(第五十八條)(新)留保

十一(第七十三條)留保

十二(第七十五條及第七十六條)兩條中一裁判官ハ滿七十歳ニ達

シタル後ハ「」ヲ削リ「法律ノ定ムル年齡」ト

改メ第七十六條ニ於テハ之ヲ第二文ノ但書トシ第二文後段ヲ

第二項トス

外務省

0045

RA'-0083

0029

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留 (第八十條) 本條第二項ヲ削ル
留 (第八十四條) 留保

(註) 先方ハ本條ニ關シテハ經濟科學部長「マクアイト」少將及
宮内省代表トノ間ニ世襲財産ノ限界ニ付交渉中ナルヲ以テ
右決定セバ明瞭トナルベシト述ブ

留 (第九十四條) 本條第一項ヲ第九十三條(新)トシ第九十三
條(舊)ヲ第九十四條(新)トシ本條第二項ヲ獨立ノ條文ト
シ第九十五條(新)トシ以下一條宛ヲ増ス

(註) 先方ハ當方ノ提案通本條第二項ヲ獨立ノ條文トセバ第一項
ノ意義ナクナルベク而モ本項ハ本草案中ノ傑作トシテ米國
ニ於テモ評判良ク之ヲ削ル譯ニ行カザルヲ以テ之ヲ第十章
最高法規ノ冒頭ニ移スベキコトヲ提定シ右ノ如ク決定ス

留 (第九十六條) (新) 留保

外務省

0046

留 (第九十七、八、九條) (新) 別添第二ノ通決定ス
留 (第一百條) (新) 留保

以上ニ於テ逐條審議ヲ終了セル處留保セラレタル諸點ニ關シテ
ハ「ケ」ハ「ウイトニイ」准將ト協議ノ上明後日返答スベシト
述ブ

外務省

0047

RA'-0083

0030

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三、次デ當方ヨリ別添第三質問書ヲ提示先ツ議會解散中ニ於ケル議
會職能代行措置ノ必要ニ付第一次會議ノ際行ヒタル議論ヲ重ネ
併セテ別添第一條約締結ニ際シテモ右措置ノ必要ナルコトヲ說
明セル處先方ハ議會解散中内閣ニ非常權力ヲ與フト謂フヘ勿論
法律ニ依リ議メ之ヲ定ムルヲ要シ別ニ憲法ヲ超越スルガ如キ非
常權力謂フニ非ズ又第八十三條ノ豫備金ハ必スシモ制限付トハ
限ラズ議會ガ内閣ニ對シ其ノ解散中ノ不慮ノ災害ニ備ヘ豫メ白
紙小切手ヲ切ルモ本憲法違反トヘナラズ更ニ豫算成立キズシテ
議會解散トナルガ如キコトヘ考ヘラレス蓋シ豫算ナクハ内閣ガ
困惑スルノミナルヲ以テ内閣ヘ之ガ成立スル迄解散ヲ見合スベ
シ之ヲ要スルニ本憲法ニ禁止シ居ラサル限り議會ハ法律ヲ以テ
何事ヲモ定メ得ベク右ノ如キ懸念ノ要ナカルベシト答フ
四、第八十七條第二項中縣知事公選ヲ間接選舉トスベシトノ當方提
案ハ能フレバ其ノ他ノ地方吏員公選ニ付テモ間接選舉トシ擬シ

外務省

0048

ト述フニ對シテ「ケ」ハ實ハ地方自治ノ問題特ニ縣制度ノ
民主化問題ハ自分等トシテハ總司令官ヨリ最重要課題トシラレ
居リ又極東委員會ニ於テモ聯合各國ハ均シク本問題ヲ日本民主
化ノ重要課題ト看做シ居ル次第ニシテ輕々ニ即答シ難シト前置
キシ乍ラ先ツ第一ニ直接選舉トシテ費用ヲ要スト云フ點ニ關シ
テハ選舉運動費ヲ制限スルカ又ハ政府ガ其ノ費用ヲ支辨スル方
法ヲ考ヘ得ベシ次ニ政黨ガ分散スル可能性ニ付テハ必スシモ絶
對多數トスル要ナカルベク又當方ハ政黨狀態不安定ヲ云々サレ
ルモ日本ノ政黨ガ永久ニ不安定狀態ニ置カルル見込シニモアラ
ザルベシト述ブ仍ツテ當方ヘ右ハ理論的ニ斯塔云ヒ得ルト云フ
ヨリ現在ノ地方ノ實情ニ照シ斯ル可能性アリト云フ縣ニシテ例
ヘバ府縣知事ガ次點ノ者ト僅カニ、三縣ノ差ヲ以テ選出セラル
ルコトハ面白カラズ又實際府縣知事立候補十數名ニ及ブ場合僅
カ全投票ノ十分ノ一ヲ以テ當選スルコトモ有リ得ベシ、從ツテ

外務省

0049

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0031

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先ツ候補者數名ヲ府縣會議員又ハ之ニ市町村會議員ヲ加ヘ之等
 ヲシテ選出セシメ之等ヲ更ニ一般國民ヲシテ選舉セシメル方法
 ヲトルコトモ考慮中ナリト述ブ「ケ」ハ純然タル自治團體タル
 府縣乃至市町村會議員カ間接選舉ノ仲介トナルナレバ話ハ全然別
 ナリト稱シ急ニ乘氣ヲ示シ併シ其ノ場合ニモ寧ロ一般市民ニ依
 ル投票ヲ先ニ行ヒ法定得票數ニ充タザル首位ヨリ第三、四位迄
 ノ者ノ中ヨリ府縣會議員ヲシテ更ニ選舉セシムル方ガヨリ民主
 的ナリ斯ル例ハ舊米國憲法ノ下ニ於ケル大統領選舉ニ付認メラ
 レタル所ナルモ（舊米憲法第二條第一項第二號參照）右ハ其ノ
 後改正セラレタリ（改正ノ理由ハ米大統領及副大統領ヲ同一政
 黨ヨリ選出スル必要ヲ生シタルコトニアリ別ニ右方法ガ反民主
 的ナリト理由ニハ非ザリキ）自分トシテハ本憲法草案ノ下ニ於
 テモ右ノ如キ方法ヲ法律ヲ以テ定ムルコトハ違憲ニアラズト考
 フト述フ當方ヨリ然ラバ第八十條條ニ「選舉方法ハ別ニ法律ノ
 定ムル所ニ依ルベキコト」ヲ規定スル要ナキヤト質セルニ對シ
 「ケ」ハ別ニ其ノ要ナカルベシト答フ

外務省

0050

第三次會議
 以上第二次會議ニ引續キ四月十二日佐藤次長及加藤連絡官總司令
 部ニ於テ前掲ノ如ク第二次會議ニ於テソノ返答ヲ留保ヤツレタル
 質問及別添第四及第五質問書ニ關シ第三次會議ヲ行ヘル處其ノ要
 點左ノ通

一先ツ留保ヤツレタル諸點ニ付テハ次ノ通決定ナキ
 二（第五十三條）（新）第一項「秘密會ハ之ヲ開カザルコト」
 ヲ削リ本項但書トシテ「但シ出席議員ノ三分ノ二以上ノ多數
 ニヨリ議決ニ依リ秘密會ヲ開クコトヲ得」ト規定シ、第二項
 「本記帳ハ、ノ、ノ、ノ、公衆ニ配布ヤツルベキコト」ハ This

record shall be -----distributed to the public
 「ノ、ノ、ノ」ハ「ノ、ノ、ノ」ニ依リ配布ヤツルベキコト」ハ -----given
 general circulation
 一ト修正シ、其ノ後「秘密會ノ記
 録ノ中等ニ秘密ヲ與スルト認メラルモノヲ除キ」ハ -----

外務省

0051

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0032

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circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy.) 加ノ

(註)「ケ」ハ議會自身ガ之ヲ決スル限リニ於テハ秘密會モ 差支ヘナシト述フ

(一)第五十八條(新)第二文「右ノ場合各院ハ、、」以下ヲ全部削ル

(註)議會ニ於ケル證人ノ召喚及宣誓ニ關シ各院ニ處罰權ヲ 與ヘズ裁判所ヲシテ之ヲ處罰ヤシムコトトヤハ第三十條 (新)ニ於テ何人モ裁判所ニ依ル裁判ヲ受クル權利ヲ保 證ヤツレ層ルヲ以テ別ニ何等ノ規定ヲ要セズトノ趣旨ニ 依リ之ヲ削ルコトニ決定ス

(三)第八十四條「ケ」ハ 天皇ノ私有財産ノ意味ガ ^{private} property ニアラスシテ ^{personal belongings} 其ノ他ノ器具 ^{private property} 國家ノ意ナレバ右ハ所謂「世襲財産」ニモ「世襲財産以外ノ

0052

外務省

「世襲財産」ニモ含マレズト解釋シテ可ナルモ ^{private property} 其ノ他ノ器具 ^{private property} 國家ノ意ナレバ右ハ所謂「世襲財産」ニモ「世襲財産以外ノ

0053

外務省

RA'-0083

0033

三次ニ別添第四ニ載シテ、次、如ク決定ス

(一) 第七條 第二次會議、條ノ決定ヲ更ニ變更シ「大使」ノ後ニ「公使」ヲ加ヘ「法律、定ムル所ニ依リ」ヲ「其、他、官吏」ニシカ、ル如クス (--- other officials as provided for

by law, and of full powers and credentials of Ambassadors and Ministers)

(二) 第八十四條 其ノ條トス

【ケ】 Hereditary estates タル語ハ二語ニシテ始マ

テ英語ニ時有タル蘇木ヲ有スル語ニシテ茲ニ estates ナル

語ノシマ切雜シテ編スル、適當ナラス英語ニテ、 hereditary

estates ト、例ヘバ皇室ノ御料林、如キモノヲ指ス場

合多キモ實方、云ノ如ク三種、神祇、如キ勅諭モ古ムベキ

モノトナス日本語ニ於テ、其、條ニ翻譯スルモ其文ヘナシ

也シ之ヲ hereditary property トナス例ヘバ大皇ノ所有

セラルル止金銀行、保、如キ夫ニヨリ收入ヲ齎ス (revenue

外務省

0054

issuing 一 財產迄ヲ言ムガ如ク廣ク解セラルル限レ
アリ新ウチノ收入ヲ齎スガ如キ皇室財產ヲ該單ニ編入セシ
トスル本條、總旨ニ特ルコトトタルベシト述ブ

外務省

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0034

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第十一條補則（第九十六條—第一百條）ヲ別條第五ノ如ク規定ス
 (註)
 (一) 第九十六條ニ關シテハ開羅ナク唯本憲法ノ實施ヲ公布ノ日ヨリ起算シテ六ヶ月後トスルコトニ付第二次會議ニ於テ留保セラルル次第ナリ
 (二) 第九十七條ニ關シテハ第二次會議ノ決定ニテハ尙不備ノ點アリシテ以テ更ニ之ヲ修正セリ
 (三) 第九十八條ニ關シテハ第九十五條ノ規定ニ於テハ憲法實施ノ時ニ於テ國務大臣、國會議員、裁判官等ノ職務ニ一其ノ職ニ留ムルベシトアリテ留保ノ一其ノ職ヲ失フコトナカレシム「ト修正スルコトニ係リ之等ノ者ヲ辭職セザルニ地位ヲ喪スト共ニ」本憲法ニ其ノ地位ニ相當スル地位カ取メラレ居ル者ノ他ノ官更「ト留ム規定スルコトニ依リ何ハ」福澤諭吉、如ク新憲法ニ全ク適當地位ナキ者ハ新憲法實

外務省

0056

施ト共ニ當然其ノ職ヲ喪失スベキコト並ニ府縣知事ノ如ク新憲法ノ下ニ於テ其ノ地位ヲ全ク同一ニハ非ズルニ相類似ル者ハ當然其ノ職ヲ喪失セザルセトスル要アリ然レ當方ヨリ說明先方ニ請求セリ
 最後ニ當方ヨリ開シコトヲ何處ニ轉送セザルナリト考ヘラレルニ如何カト思ハルガト前置キ申テ會議解散中總理死亡ノ場合又ハ天災發生ノ場合若ハ緊急ニ條約締結ヲ要スル場合新憲法ノ下ニ於テ如何ニ處理セザルヤ未ダニ疑問解クヌ甚ク困難ニ思ハ大膽ナリト指出シタル邊先方ハ總理死亡ノ場合ハ第六十七條ニテ處理セザル條約締結ノ場合ハ何處ノ國ニ於テモ條約ニ批准セザルモノニアラザルヲ以テ簽文ハナカレバシト述ベタルヲ以テ當方ハ例ハ條約ニ依リテハ署名關印ノ日ヨリ十日以内ニ批准スルベキコトヲ規定スルモノアリ日本ハ右ノ如ク條約ヲ締結シ得ザルコトニナルベシト述ブレバ先方ハ右ノ如ク條約ハ

外務省

0057

RA'-0083

0035

轉發セザルニ照會ナリ又輔手國トシテ日本ト、條約締結ニ際
 シテハ右ノ如キ規定ヲ設ケザルニシテ遂ニ大ニテ以テ各方ハ然
 ヲスル國勢對峙ニ對シ、知テ多角的條約、場合ハ如何多クハ關ハ米
 國ニ對シテ強クシテニ對シテハ此種ノ如キニ對シテハ米國ハ關
 ノ際句章ハ右ノ如キ場合ニ對シ、新ク、知テ規定ヲ設ケテハ如何
 ト、後述ノ條ノ如キ者ナリト別條第六條ニ對シテ先方
 ニ對シ「一」ハ一國、上列ノ國會解散ニ對シ、條ノ規定ヲ對
 必與トシテ「二」ハ一國、國會解散ニ對シ、條ノ規定ヲ對
 ハ、各國議會ニ對シ、條ノ規定ニ對シ、國會解散ニ對シ、條ノ規定ヲ對
 最遲トシテ國會召集ノ之ハ、自今、政府ニ對シ、國會召集ノ十分
 九十分ノ時限、上ノ條ノ規定ニ對シ、國會召集ノ十分
 十九條（一）「一」ハ一國、上列ノ國會解散ニ對シ、條ノ規定ヲ對
 第五十條（一）「一」ハ一國、上列ノ國會解散ニ對シ、條ノ規定ヲ對
 、條ノ規定ニ對シ「一」ハ一國、上列ノ國會解散ニ對シ、條ノ規定ヲ對

外 務 省

0058

〔一〕被閉鎖、except that the Cabinet may in time of national emergency
 convoke the House of Councillors in emergency session.)
 〔二〕被閉鎖、except that the Cabinet may in time of national emergency
 convoke the House of Councillors in emergency session.)
 〔三〕被閉鎖、except that the Cabinet may in time of national emergency
 convoke the House of Councillors in emergency session.)
 〔四〕被閉鎖、except that the Cabinet may in time of national emergency
 convoke the House of Councillors in emergency session.)
 〔五〕被閉鎖、except that the Cabinet may in time of national emergency
 convoke the House of Councillors in emergency session.)
 〔六〕被閉鎖、except that the Cabinet may in time of national emergency
 convoke the House of Councillors in emergency session.)
 〔七〕被閉鎖、except that the Cabinet may in time of national emergency
 convoke the House of Councillors in emergency session.)
 〔八〕被閉鎖、except that the Cabinet may in time of national emergency
 convoke the House of Councillors in emergency session.)
 〔九〕被閉鎖、except that the Cabinet may in time of national emergency
 convoke the House of Councillors in emergency session.)
 〔十〕被閉鎖、except that the Cabinet may in time of national emergency
 convoke the House of Councillors in emergency session.)

外 務 省

0059

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0036

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離シテモ總司令部ニ對シテ非公式ノ了解ヲ求ムルニ止メ且、發見ニ
 際シテモ總司令部ノ名ハ出サザルコトトセリ（尤モ「ケ」ハ「ウ」
 イトニイ）惟將ノ意見トシテ發シ日本政府ニ對テ之ヲ欲スルナレ
 バ「總司令部」ノ發見ノ非公式會議ノ結果必與ナル修正ヲ加ヘ云
 ヲト云フ如ク發見スルモ發見ヘナシト云ヒ居リタリ）
 四月十五日日本文新憲法草案ト共ニ英文原文ニ修正ヲ施セルモノ
 ヲ日本文編輯トシテ總司令部宛提出セル處其ノ際更ニ修正ヲ加ヘ
 タル點左ノ通

(第十三條)「凡ハベテ自然人ハ一」(All natural persons are
 アルヲ「凡ハベテ國民ハ一」ト改ム

(註)右ノ點ハ先方ノ了解ヲ得ス當方限リニ於テ修正シタル點
 ナルガ「ケ」ハ第三條國民ノ權利義務ニ於ケル
 人語ト person ナル點ハ嚴格ニ區別セラレ居リ現ニ「國民」
 員會ヨリ之等ノ語ガ日本語ニ於テ如何ニ譯サレ居ルヤニ

外務省

0062

離シテモ總司令部ニ對シテ非公式ノ了解ヲ求ムルニ止メ且、發見ニ
 際シテモ總司令部ノ名ハ出サザルコトトセリ（尤モ「ケ」ハ「ウ」
 イトニイ）惟將ノ意見トシテ發シ日本政府ニ對テ之ヲ欲スルナレ
 バ「總司令部」ノ發見ノ非公式會議ノ結果必與ナル修正ヲ加ヘ云
 ヲト云フ如ク發見スルモ發見ヘナシト云ヒ居リタリ）
 四月十五日日本文新憲法草案ト共ニ英文原文ニ修正ヲ施セルモノ
 ヲ日本文編輯トシテ總司令部宛提出セル處其ノ際更ニ修正ヲ加ヘ
 タル點左ノ通

外務省

0063

RA'-0083

0038

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定ニ非スト了解シ得リタリト認ムレバ「ヤ」ハ其ノ善ニ
 適合セタル「モルドン」少尉(日本醫事門家)ニ編メテ
 ル上右ノ點ニ關シテハ本草案總論ニ載セ日本側代表ト相
 談ノ上本軍中隊人ノ善本酌權利(Rights of half)ニ關スル
 規定ハ外國人ニモ適用アル知テ決定セラレタルモノナリ
 ト主張シ善ニ第三章ノ波羅ガクニ相懸セスト云フニ於テ
 ハ波羅ヲ變更スルノ權ナシト述フ

(第二十四條) 本條中「何人モ」(every person) トフルヲ「凡ハキ
 國民」(all people) ト修正ス

(第二十五條) 「何人モ」(all persons) トフルヲ「凡ハキ國民」
 (All people) ト修正ス

(註) 以上二箇條ハ之ヲ日本國民ノニニ限定スルモ差支ハナシ
 トノ理由ニ基ク

(第五十七條及第六十九條) (新) 兩條ヨリ「條約約定及協定」

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外務省

International Conventions
 and agreements

(註) 第一大會議ニ於テ「ヤ」ハ列ニ右ノ修正ト議シ美議ナシ
 ト述(ナリ)

(第九十二條) 「議會ノ定ムル選舉ニ善キニ修投票ノ一」(一)
 all votes cast thereon at such election as the) トフルヲ「修議ノ
 議決投票又ハ議會ノ定ムル投票」(一) --votes cast at a special re-
 ferendum thereon or at) ト修正ス

(註) 右ニ關シ修議方第七十五條第二項ノ如キ議決權修議ナル
 ヲ特別ノ議決投票ナルヲ明瞭ナラサシメ修議ト修正セリ
 以上ノ以テ一應ノ修正ヲ全部終了シ新議第七ノ先方ニ提出シ新草
 案修議ニ付議司令部ノ了解ヲ待テ修議ト不會議決ヲ終了ス

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外交内閣の起草

Problems involved in the Draft Constitution relating to Foreign Relations

I. Conclusion of Treaties.

(a) Contracting Party

Who is to be the Contracting Party? Emperor? or the Cabinet? Under the International usage and Practice, it appears usual to make the Emperor ^{Contracting Party} and the Cabinet representing the State as Contracting Party has never been practiced in any countries. For example, in concluding a treaty with Great Britain ^{the King of} England will be the Contracting Party for Great Britain ^{under the present draft} and the Cabinet for Japan. This procedure does look odd in view of usual reciprocity.

All treaties are to be negotiated by and decided upon by the Cabinet but as the Emperor being "the symbol of the State", as in the cases of the King of England and the King of Belgians, it appears in order to make him the Contracting Party. (Would it be necessary to make this point clear in the Constitution?)

(b) Instruments of Ratification and Full Powers

Prior to the conclusion of a treaty, the plenipotentiary of one country is given a document called "full Powers" signed by the head of state in order to be presented to the other signatory party.

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Again, if the treaty is to be ratified, it requires of course the approval of the Diet, but "instruments of ratification" ~~presented to~~ signed by the head of state are to be exchanged or deposited.

It seems proper also for the Emperor of Japan to sign them as ^{purely} ~~partly~~ a matter of form. If so, it appears proper to have an additional paragraph in Article 7 of the Constitution, "Signing of instruments of ratification, full powers, credentials and other diplomatic documents as provided for by law."

II. Approval of treaties by the Diet.

There is no legislative precedent for requiring the approval of the legislative for all "Treaties, international conventions and agreements" (Draft Constitution, Article LXIX), instead of limiting them to, for instance,

- a. Treaties involving legislative matters
- b. Treaties imposing financial burdens
- c. Treaties of peace, or treaties for territorial changes, or other treaties of special importance.

^{For example in} In a country like U.S.A. ^{China} the Executive is authorized to make international agreement without consulting the Legislative (called "Executive Agreement" in U.S.A.)

Necessity of concluding a treaty may arise when the Diet is not in session. Another reason is here to be found for the desirability of setting up a standing committee in the Diet.

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1. The Japanese Government hereby submits to the General Headquarters the Draft Constitution, as re-written and whipped into form, with its certified English translation. It will be submitted to the coming session of the Diet.

2. The new text has been put in the spoken style so to render the Constitution familiar, and easier to understand to the people. As for the contents, there are no changes except those on which you have already been consulted, and certain minor alterations in wording without any material change in meaning, all of which are indicated in red ink in the English translation. There may be made later some alterations in the provisions of Article LXXXIV, regarding the Imperial properties subsequently to the consultation now being carried on.

3. The present Draft will be, as required by law, first referred to the Privy Council for its deliberation, and it is expected to be submitted to the Diet in the middle of May. There is a period of nearly a month before its submission to the Diet so that as a result of further study by the Government as well as by the people, it may be found desirable to make further modifications or rearrangements of articles, in which case the General Headquarters will be consulted.

4. The present Draft will be published immediately for examination and free criticism by the general public as well as the newly elected members of the House of Representatives.

(N. Kawanishi)
Chief Secretary
of the Cabinet

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Problems involved in the Draft Constitution
relating to Foreign Relations

I. Conclusion of Treaties.

(a) Contracting Party

Who is to be the Contracting Party? Emperor? or the Cabinet? Under the International usage and Practice, it appears usual to make the Sovereign Contracting Party and the Cabinet representing the State as Contracting Party has never been practiced in any countries. For example, in concluding a treaty with Great Britain the King of England will be the Contracting Party for Great Britain. If the Cabinet were to be the Contracting Party for Japan, this would look odd in view of usual reciprocity.

All treaties are to be negotiated by an "aide" upon by the Cabinet but as the Emperor being "the symbol of the State", as in the cases of the King of England and the King of Belgians, it appears in order to make him the Contracting Party. It may be preferable to make this point clear in the Constitution.

(b) Instruments of Ratification and "Full Powers"

Prior to the conclusion of a treaty, the plenipotentiary of one country is given a document called "Full Powers" signed by the head of state in order to be presented to the other signatory party.

Again, if the treaty is to be ratified, it requires of course the approval of the Diet, but "instruments of ratification" signed by the head of state are to be exchanged or deposited.

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It seems proper also for the Emperor of Japan to sign them as purely a matter of form. If so, it appears proper to have an additional paragraph in Article 7 of the Constitution.

"Signing of instruments of ratification, full powers, credentials and other diplomatic documents as provided for by law."

II. Approval of treaties by the Diet.

There is no legislative precedent for requiring the approval of the legislative for all "Treaties, international conventions and agreements" (Draft Constitution, Article LXIX), instead of limiting them to, for instance,

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- c. Treaties of peace, or treaties for territorial changes, or other treaties of special importance, for example in U.S.A. the Chief Executive is authorized

to make international agreement without consulting the Legislative (called "Executive Agreement" in U.S.A.)

Necessity of concluding a treaty may arise when the Diet is not in session. Another reason is here to be found for the desirability of setting up a standing committee in the Diet.

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Further Observations on the Draft Constitution

CHAPTER 1

- Article 8. (a) Does this article apply to gifts by the people to the Emperor?
- (b) It is interpreted that the article does not apply to gifts to the Emperor as a private individual.
- (c) Does "Imperial House" include members of the Imperial Family? Even if it does, it is understood that the provisions of the article does not apply to gifts to the members of the Imperial Family as private individuals.
- (d) How about gifts between the Emperor and the members of the Imperial family?

CHAPTER 3

Article 23. Are not "(Social) Security" and "public health" covered by "social welfare"? When listed side by side with "freedom, justice and democracy" these two words seem somewhat unbalanced. Would not "social welfare" alone be sufficient here?

Article 28. As regards "deprived of life" it is unthinkable except for by criminal penalty. It is, therefore, desired to revise the present Article to read as follows:

"No person shall be injured, nor shall any person be deprived of liberty, nor shall any criminal penalty be imposed, except according to procedure established by law."

Article 35. We would like to delete the word "convicted" in paragraph 3 from the point of view of translation technique. The deletion would make no substantial difference.

CHAPTER 4

Article 43. We would like to delete the clause "except for half the members serving in the first term" and to put the following provi-

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sion among the Supplementary Provisions, as it is a temporary provision.

"The term of office for half the members of the House of Councillors serving in the first term under the present Constitution shall be three years. Members falling under this category shall be determined by lot as provided for by Law.

Article 48. In order to clarify the relation with the next Article, would it not be better to revise the present Article to read "An ordinary session of the Diet shall be convoked once per year"?

Article 51. As in the case of the 2nd paragraph of Article 51, it is desired to make the 2nd paragraph the 2nd sentence of the 1st paragraph and to revise it to read "However, in order to deny a seat to any member, it is necessary....."

Article 53. (a) Would it not be better to alter the 2nd sentence to read, as in the case of Article 78, "However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor"?

(b) In the 2nd paragraph, the phrase "distributed to the public" is understood to be covered by the word "published". Accordingly it is desired to omit the phrase. It would be necessary, if the alteration in (a) is made, to add after the word "published", the following clause: "excepting such parts as may be deemed to require secrecy".

Article 54. It is desired to alter the phrase "its rules and regulations pertaining to meeting and proceedings" in the 2nd paragraph to read "its rules pertaining to meetings and proceedings, and internal discipline".

Article 58. We would like to alter the 2nd sentence to read "In such cases, those who do not comply with the demands shall be punished in accordance with law".

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Note: It is considered better to let a court rather than the Diet to punish them.

CHAPTER 6

Article 73. Could not the phrase "and such other matters...." in the 1st paragraph be deleted as all the necessary items are enumerated in the first half of the paragraph?

Article 78. (a) In order to match the style of the present Article with that of the preceding Article, we would like to revise the 2nd and 3rd sentences to read as follows:

"All such judges shall hold office.....reappointment, provide that they shall be retired upon the attainment of the age of 70 years.

The judges of the inferior court shall receive, at regular stated intervals,....."

(b) It is desired to alter the phrase "The age of 70 years" in Article 75 and 76 to read "the age as fixed by law."

CHAPTER 7

Article 80. As for the 2nd paragraph, we would like to omit it, since it is considered as a matter of course.

Article 84. (a) The phrase "the hereditary estates" in the present Article is understood to mean the property, personal or real among the property of the Emperor to be handed down with the hereditary Imperial Throne.

(b) If so, can this phrase be interpreted not to include the private property of the Emperor (cars, furnitures, scrolls and paintings and villas, etc. for the daily use of the Emperor)?

(c) Furthermore, can the phrase "All property of the Imperial Household, other than the hereditary estates" in the present Article be interpreted not to include the private property of the Emperor?

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CHAPTER 10

Article 94. We would like to make the 2nd paragraph an independent article (Article XCV).

CHAPTER 11

SUPPLEMENTARY PROVISIONS

It is desired to add a new provision and transfer provisions from other Chapters and rearrange them as follows:

Article XCVI. 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.

Laws necessary for the enforcement of this Constitution may be enacted, the election of members of the House of Councillors and the procedures for the convocation of the Diet and other preparatory procedures necessary for the enforcement of this Constitution may be taken before the day prescribed in the preceding Paragraph.

Article XCVII. No peerage shall extend beyond the lives of those now being, nor right of peerage shall from this time forth embody within itself any national or civic power of government.

Article XCVIII. If the House of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall sit as the Diet on that date and until such time as the House of Councillors shall be constituted.

Article XCIX. 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 C. The Ministers of state, members of the House of Representatives and all other public officials in office at the time of the enactment of this Constitution shall not forfeit their offices automatically on the effective date of this Constitution unless

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otherwise specified by law.

When, however, successors are elected or appointed under the provisions of this Constitution they shall forfeit their offices as a matter of course.

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At our last conference, in regard to the dissolution of the House of Representatives in cases of unexpected calamities we understood that you recognized that such cases could be disposed of by the emergency powers of the Cabinet. This could be interpreted to mean:

- (a) Without particular delegation of law a power superseding the constitution or
- (b) By a delegation of the law to assign such power beforehand to the cabinet

If we are to accept the first interpretation (a) it would be a formal contravention of the constitution and might be construed further as trampling on the constitution and to give rise to the dangers of a dictatorship. So long as the necessity for steps against unexpected natural calamities are expected, the setting down of the methods of such steps under stringent terms in the provisions of the constitution must be considered to be constitutional as well as democratic. Against such queries what is the answer?

If however the second interpretation (b) is to be accepted although the delegation of power by law is possible in regard to general laws, there is an opinion rather than delegating law on a large scale it would be more appropriate to provide regulations in the Constitution for meeting such cases and to reserve stern limitations in the interpretation thereof.

In financial measures there are a few doubtful points. For example, what steps should be taken when cases arise which necessitate the disbursing of relief expenditure for war-sufferers in excess of the budget?

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In respect of the regulations pertaining to the budget in this draft Constitution it is considered that such assignment of power cannot be effected even by law. In the Draft Constitution there are regulations concerning the reserve fund but here again there are limitations, and what can be done when necessity arises of disbursement in excess of the amount?

Again when the House of Representatives is dissolved without the budget being formed, how will the budget be drawn up? Advice is sought in seeking solutions to these problems.

CHAPTER 6

Art. 87, Paragraph 2.

In regard to the election by direct popular vote of Prefectural Governors, in view of the present state of this country which has not seen the firm establishment of political parties as yet, there is an opinion that for the following difficulties which can foreseen indirect election is desirable that is to say:

- (a) Large expenses are required to carry out election campaign among several millions of electors. Persons cannot run for candidacy unless considerably wealthy. This will mean that it would be difficult to expect persons of high character to run for elections.
- (b) In this election although it is considered that persons obtaining an absolute majority of votes should be elected, in large prefectures, the votes will be widely scattered over the respective candidates and in many cases would require re-elections. In such a case complicated procedures will be repeated over a wide area.

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Further Observations on the Draft Constitution

Article VII. We would like to revise Item 5 to read as follows:

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.

Article LXXXIV. At our last conference, we understood that the word "estates" should be interpreted to include personal property. In the Japanese text, therefore, we have to use an expression to that effect. However, as it appears the word "estates" is slightly ambiguous here, we would like to use the word "property" in its stead.

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CHAPTER 11
SUPPLEMENTARY PROVISIONS

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

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

Article XCVII. As regards those who hold peerage on the effective date of this Constitution, their title shall remain valid for their lives, but no right of peerage shall from this time forth embody within itself any power of government.

Article XCVIII. If the House of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall sit as the Diet on that date and until such time as the House of councillors shall be constituted.

Article XCIX. 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 C. 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

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corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on the effective date 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.

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(a) When it is impossible to convoke the Diet as a result of the dissolution of the House of Representatives or under other unavoidable circumstances, the Cabinet may take emergency measures provisionally under such conditions as law may prescribe regarding the matters which require the decision of the Diet. In this case the Cabinet shall obtain the approval of the Diet for such provisional measures at the following session.

(b) In case where it is impossible to convoke the Diet as the result of the dissolution of the House of Representatives or under other unforeseen circumstances the Cabinet may, in accordance with such conditions as are prescribed by law, take emergency measures regarding the matters for which the decision of the Diet are required.

Such measures 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.

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