

Paper:

Study on Disaster Emergency Provisions in the Constitution of Japan as a Measure Against Huge Disasters

– A Discussion Based on Initial and Emergency Responses to the Great East Japan Earthquake (Earthquake and Tsunami) –

Akira Kotaki^{*,†} and Fumio Takeda^{**}

^{*}Research Institute of Disaster Management and Emergency Medical System, Kokushikan University
7-3-1 Nagayama, Tama-City, Tokyo 206-0025, Japan

[†]Corresponding author, E-mail: kotaki-a@r06.itscom.net

^{**}National Graduate Institute for Policy Studies, Tokyo, Japan

[Received August 21, 2017; accepted January 11, 2018]

The Great East Japan Earthquake, which occurred on March 11, 2011, was the greatest disaster in Japan since World War II. The establishment and operation of the Extreme Disaster Management Headquarters left various lessons about initial and emergency responses against future huge disasters. It is hoped that these lessons will be heeded in measures against huge disasters in Japan in the future. Based on this recognition, this study examines a specific direction in the discussion on introducing Disaster Emergency Provisions in the Constitution of Japan with a view toward huge disasters, such as Tokyo Inland Earthquake and Nankai Trough Earthquake. From the viewpoint of responses against huge disasters, there is a need to discuss what kind of Disaster Emergency Provisions are necessary in order to protect the people from huge disasters that were not considered when the Constitution of Japan was enacted. These provisions should possess a certain specificity, comprehensiveness, and flexibility, and address response measures when there is no time to await legislation by an extraordinary session of the Diet or when such measures cannot be addressed by legislation enacted during normal times. We hope that these lessons culled from initial and emergency responses to the Great East Japan Earthquake will further the discussion on special Constitutional rules on the relationship between the Cabinet and Diet or the national and local governments.

Keywords: Great East Japan Earthquake, Extreme Disaster Management Headquarters, declaration of a state of disaster emergency, Constitution of Japan, Disaster Emergency Provisions

1. Introduction

1.1. Risks of Huge Disasters that Confront Japan After the Great East Japan Earthquake

The Great East Japan Earthquake, which occurred on March 11, 2011, was the greatest disaster in Japan dur-

ing the post-World War II period. The hypocenter region, centered at a location off the Sanriku coast, was 450 km long and 200 km wide, had a M9.0 magnitude and a maximum seismic intensity of 7. The confirmed damage consisted of 19,533 deaths (including disaster-related deaths), 2,585 missing persons, and 121,768 collapsed buildings [1], with the total damage estimated to be approximately 16.9 trillion yen [2].

The Great East Japan Earthquake awakened Japan to the need to address risks of future huge disasters and the urgency of preparations for huge disaster. Following the earthquake, the Central Disaster Management Council has undertaken a reevaluation of the presumed scale of disaster events (natural phenomena) by considering possible earthquakes and tsunamis of the maximum-scale for major large-scale disasters expected to occur in the future (Nankai Trough Earthquake and Tokyo Inland Earthquake) and a revision of damage estimations.

As a result, for the Tokyo Inland Earthquake, it is estimated that an M7-class earthquake (M7.3 earthquake directly beneath southern Tokyo on a winter evening with an average wind speed of 8 m/s), which is projected to occur with a 70% probability in the Southern Kanto area in the next 30 years, is estimated to cause up to 23,000 deaths, 610,000 collapsed or burned buildings, property damage of approx. 47.4 trillion yen, and economic losses of 47.9 trillion yen [3]. Furthermore, an earthquake of the 1923 Great Kanto Earthquake class (M8 class), which is projected to occur with a 0–5% probability in the next 30 years, is estimated to cause up to 70,000 deaths, 1.33 million collapsed or burned buildings, property damage of approx. 90 trillion yen, and economic losses of approx. 70 trillion yen [3].

Meanwhile, under a scenario in which the Tokai region is severely affected by a Nankai Trough Earthquake (inland earthquake on a winter evening with an average wind speed of 8 m/s), of which an M8–9 class earthquake is projected to occur with a 70% probability within the next 30 years, it is estimated that up to 323,000 deaths, 2,382,000 collapsed or burned buildings, property damage of approx. 169.5 trillion yen, and economic losses of



approx. 44.7 trillion yen due to reduced production and services and approx. 6.1 trillion yen resulting from severance of railway lines and roads, will result [4].

As this shows, the presumption that a huge disaster resulting in damage exceeding that of the Great East Japan Earthquake will occur has become a scientifically-based common recognition in Japan.

1.2. State-of-Emergency Provisions in Constitutions of Various Countries

According to Osamu Nishi, “a provision of a state of national emergency” (hereafter referred to as “state-of-emergency provision(s)”) is “a provision that allows special measures including temporary restrictions of basic human rights so that a country can protect its existence as well as the lives and safety of its people during times of national emergencies that cannot be dealt with through the normal governance system, including war, armed attack from abroad, internal strife, organized acts of terrorism, serious cyber-attack, severe economic depression, large-scale natural disaster, and pandemic.” He also notes that “all the constitutions that were enacted since 1990 of 103 countries include provisions of a state of national emergency” [5].

1.3. Outline of This Study

The present paper discusses a specific direction for the discussion on introducing Disaster Emergency Provisions in the Constitution of Japan with huge disasters in mind such as Tokyo Inland Earthquake and Nankai Trough Earthquake based on lessons from the initial and emergency responses of the Great East Japan Earthquake.

In this paper, the term “Disaster Emergency Provisions” is used as the expression meaning provisions for a state-of-emergency related to disasters instead of those for any type of state-of-emergency, because this paper is discussing about disaster emergency.

First, this paper reviews the initial and emergency responses to the Great East Japan Earthquake and the discussion on state-of-emergency provisions that has taken place since the disaster. We then review the discussion on “emergency powers” during the legislative process of establishing the Constitution of Japan and examine why state-of-emergency provisions were not included. With this understanding, we point out concrete issues in relation to disaster emergency provisions on special rules on the relationship between the Cabinet and Diet (authority to enact Emergency Cabinet Order, ex-post-facto Diet approval of budget expenditures, considerations regarding information disclosure and explanation to the Diet and parties) or between the national and local governments. This discussion will be conducted within a framework based on a problem-solving approach, in which we first identify points that require strengthened measures premised on situations during huge disasters and then discuss the direction of solution, based on initial and emergency responses during the Great East Japan Earthquake.

2. Initial and Emergency Responses to the Great East Japan Earthquake and Subsequent Discussions on State-of-Emergency Provisions

2.1. Review of Initial and Emergency Responses to the Great East Japan Earthquake

When the Great East Japan Earthquake occurred, one of the authors (Kotaki*), who at the time was the Director for Disaster Management in the Disaster Management Bureau of the Cabinet Office (hereafter referred to as “Cabinet Office Disaster Bureau”), was among those who assembled in the Office of the Prime Minister immediately following the disaster, and charged to establish and operate the Extreme Disaster Management Headquarters (hereafter referred to as “Emergency Headquarters”) and carried out overall coordination of the government’s initial and emergency responses (related to the earthquake and tsunami; same applies in the remaining text).

Prior to the Great East Japan Earthquake, various systems for initial and emergency response and the victim’s livelihood support had been introduced to respond to large-scale earthquakes, which occur suddenly with no lead time, based on the experience of the January 1995 Great Hanshin-Awaji Earthquake (hereafter referred to as “Hanshin-Awaji”). These systems were fully utilized in the government’s initial and emergency responses following the Great East Japan Earthquake.

However, the Great East Japan Earthquake was a huge disaster that exceeded the scale (equivalent to Hanshin-Awaji) assumed for disaster management measures up to that time, and preparedness against future huge disasters (Tokyo Inland Earthquake and Nankai Trough Earthquake) was recognized as an urgent issue. The disaster experience showed that there are limitations to preventing and overcoming damage in huge disasters of the greatest class, which occur extremely rarely but produce tremendous damage, and for which it is not possible to predict a clear occurrence mode or disaster image. Among the lessons it left was recognition of the need to assemble assorted “soft” and “hard” measures from the standpoint of “disaster mitigation,” which is to accept but mitigate damage.

Since the major events related to the overall coordination of the government’s initial and emergency responses and the lessons concerning such responses for future huge disasters are discussed in detail in [6] and [7], we shall here review the facts centering on issues relevant to this study in the course of the government’s initial and emergency responses following the Great East Japan Earthquake.

Although the initial assembly was delayed in the case of Hanshin-Awaji, for which the Major Disaster Management Headquarters was established about four hours after the disaster occurred, emergency assembly was prompt in the case of the Great East Japan Earthquake, and the Emergency Headquarters was established by Cabinet decision 28 minutes after the disaster had occurred, the first

such case since enactment of the Disaster Countermeasures Basic Act (hereafter referred to as “Disaster Act”). The Emergency Headquarters held twelve sessions up to March 17. And based on its decisions, the Government undertook such measures as application of the Disaster Relief Act to ten prefectures (March 11–12), designation of Extreme Severe Disaster based on the “Law Concerning Special Fiscal Aid for Coping with Severe Disasters” (March 12), application of the Act on Support for Livelihood Recovery of Disaster Victims to eleven prefectures (March 12), designation of Specified Disaster based on the “Act Regarding Special Measures to Weigh the Preservation of Rights and Profits of the Victims of Specified Disasters” (March 13), and the Cabinet decision to use the Reserve Fund for government-controlled emergency supply relief (March 14), as well as the various mechanisms adopted since Hanshin-Awaji.

On the evening of March 11, a Task Management Team (consisting of 30 members in accordance with the post-Hanshin-Awaji manual) was established within the Emergency Headquarters Secretariat and began carrying out overall coordination of governmental responses related to supply coordination, transport activity coordination, regional medical transport, and acceptance of support from abroad. However, the team was too small and increased gradually to 70 members by March 20. But this was still insufficient and, partly due to the need to establish a clear contact point for citizens, the team was up-scaled to the Special Headquarters for Measures to Assist the Lives of Disaster Victims (consisting of 100 members), with the participation of political government officials, on March 20.

Among these tasks, supply procurement and transport support had been specified in the post-Hanshin-Awaji manual to be performed by prefectures, but it was judged that it was difficult for Miyagi, Iwate and Fukushima Prefecture to procure and transport supplies because warehouses and businesses along the Sendai Bay coast, the largest distribution base in the Tohoku region, had been decimated by the tsunami on the night of March 11, while the prefectural office was also damaged. Therefore, an undertaking without an institutional framework or precedent was begun in which the Government (Cabinet Office) directly procured supplies and transported them to temporary supply bases set up by these prefectures, and the local prefecture and municipality transported them to evacuation centers. Since expenses for this were not included in the original budget, slightly after 2:00 PM on March 12, the Task Management Team made an inquiry to a senior official of the Emergency Headquarters Secretariat asking “how the expenses were to be allocated for procuring supplies from private businesses, since they are not included in the original budget.” After deliberation among senior officials, it was decided to leave the details to be straightened out at some later date, and the team was instructed at 2:30AM to “proceed with haste with the procurement and transport of supplies with no concern for their cost allocation.” At the same time, the official charged with budget issues was directed to begin the required adjust-

ments related to the use of FY2010 Reserve Funds. As a result, a 30.2 billion yen allotment was additionally secured from the Reserve Fund and assigned (decided by the Cabinet around daybreak on March 14). This scheme of supply procurement and transport support directly by the Government was transitioned into one implemented by the prefectures on April 20, when the prefectures had recovered its functions.

Meanwhile, the acting organizations did their utmost to carry out victim-rescue and emergency-disaster-recovery efforts under the given conditions, including (1) dispatch of Disaster Medical Assistance Teams (DMATs) (193 teams during peak periods), (2) regional medical transport (13, 92, and 16 patients from Iwate, Miyagi, and Fukushima Prefectures, respectively); (3) government-controlled emergency relief supply (26.21 million meals, 7.94 million bottles of drinking water, 16.03 million liters of fuel, 4.38 million masks, 380,000 rolls of toilet paper); (4) dispatch of units (107,000 personnel during peak periods by the Ministry of Defense, 307,500 officers by the National Police Agency, 103,600 workers by the Fire and Disaster Management Agency, and 4,400 vessels by the Japan Coast Guard); (5) rescue and relief of over 27,000 victims; (6) acceptance of support from overseas (rescue teams from 29 countries, regions, and organizations; relief goods from 64 countries, regions, and organizations; donations from 95 countries, regions, and organizations; Operation Tomodachi conducted by the U.S. Armed Forces, involving 20 aircraft carriers and warships, 160 aircraft, and over 20,000 personnel); and (7) dispatch of Technical Emergency Control Force (TECFORCE) by the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) (16,900 personnel) (see [1] and [10]).

The response of the acting bodies was highly rated internationally, so that disaster management came to be recognized as one of the most important areas of international cooperation by Japan.

Following such responses, members of the Emergency Headquarters Secretariat helped set up and operate the Special Headquarters for Measures to Assist the Lives of Disaster Victims (March 20), entrusted relief efforts to the new Headquarters, and withdrew from the Office of the Prime Minister on March 22 based on the recognition that the initial responses had come to a closure. Subsequently, the members engaged in overall coordination work of initial and emergency responses at Central Gov’t Bldg. No.5 or in disaster-affected areas until the “Reconstruction Headquarters in Response to the Great East Japan Earthquake” was established in June 2011.

2.2. Circumstances Surrounding Declaration of State of Disaster Emergency

We next review the process concerning the “declaration of a state of disaster emergency” (Article 105 of the Disaster Act), which is closely related to the debate on introducing state-of-emergency provisions in the Constitution of Japan.

Beginning on the afternoon and into the night of March 16, the Office of the Prime Minister and the government party inquired the Emergency Headquarters Secretariat about its views on “declaration of a state of disaster emergency.” Provision 1, Article 105 of the Disaster Act, stipulates that, in the event an irregular disaster has struck and the resulting damage is so abnormal and severe that it can seriously affect the nation’s economy and public welfare, the Prime Minister has the authority to “declare a state of disaster emergency” “when there is a special necessity to promote disaster emergency measures related to the disaster, maintain the order of the national economy, and address important issues related to the disaster.” Furthermore, Article 109 of the Act stipulates that the following emergency measures, which under normal conditions require legislation, can be decreed when “the Diet is in recess etc.”: (1) restriction and ban on supplying, assigning, and transferring basic necessities, (2) decision on the maximum price of goods, and (3) payment deferral of financial liabilities and extension of preservation period of rights. These provisions were introduced assuming emergency disasters of the Great Kanto Earthquake class when the Disaster Act was enacted (1961) [11].

While the declaration is stipulated to be issued considering the special necessity of promoting disaster emergency countermeasures, a state of disaster emergency was not declared in response to the Great East Japan Earthquake, based on the overall assessment including the view that the necessity should be judged from the perspective of actual need for emergency measures as set forth in Article 109, and the fact that the disaster did not occur when “the Diet was in recess.”

It was subsequently pointed out, however, that rescue and relief activities and transportation of emergency supplies may have been hindered because the declaration was not issued, and this recognition has been used in some cases as grounds for the necessity of state-of-emergency provisions (see [12] and [13]). Therefore, we review the discussions surrounding this issue below.

Immediately after the occurrence of the Great East Japan Earthquake, most areas hit by the tsunami were devastated, including warehouses and distribution bases in the Sendai Bay coastal region, the largest distribution base in the Tohoku region, as well as retail stores and gasoline stations in the region. The commodities required by victims were mostly lost in the disaster-struck areas, while supplies stored in warehouses, distribution bases, and retail stores were also lost. Thus, commodities disappeared from the affected areas so that the trading of commodities itself ceased to exist, which created a condition in which “restrictions on trading” or “price” as stipulated in above (1) and (2) did not pose any issue to begin with.

Meanwhile, in the Tokyo Metropolitan Area, daily necessities such as food and commodities became scarce in stores after the disaster occurred. With regard to this problem, the Consumer Affairs Agency hosted a “meeting to exchange views on stockpiling daily commodities” on March 17, where it was noted that although “there is an adequate supply and stock of daily necessities from

the viewpoint of the entire nation,” “necessities will not reach the people in affected areas if distribution becomes chaotic and there is a shortage of products due to consumer stockpiling or buying sprees,” and that “the consumers must act calmly and refrain from stockpiling or buying sprees in order to reconstruct the disaster-stricken areas at the earliest date.” The Agency then requested the Ministry of Economy, Trade and Industry to enlist the cooperation of businesses in relation to consumer stockpiling of daily necessities. Thus, conditions were such that the “restrictions on trading” and “pricing” stated in (1) and (2) did not pose an issue from a wider geographical perspective as well.

It thus became apparent that the top priority was to provide emergency supplies as soon as possible to affected areas faced with a serious shortage of supplies. It was under such conditions that the Emergency Headquarters Secretariat carried out Government-controlled emergency supply support beyond the scope of the post-Hanshin-Awaji manual, transporting emergency supplies consisting of 26.21 million meals, 7.94 million bottles of drinking water, and 16.03 million liters of fuel. Although the transport of these supplies did in fact encounter various difficulties, it was not because the declaration was not issued. Rather than such juridical constraints, it was mainly road blockages due to tsunami rubble and fuel shortage that hindered the transport of emergency supplies. While the Government supplies had reached the prefectural supply bases for the most part, the terminal distribution from the prefectural bases to evacuation centers was dysfunctional due to the combination of the devastation of municipalities, impaired administrative functions due to damage to prefectural offices, road blockages, and fuel shortage. The supplies began arriving at evacuation centers as road obstacles were cleared and transportation routes recovered (Operation “Comb Teeth” conducted by the Tohoku Regional Bureau, MLIT).

In this connection, there are those who point out that air and marine transport should perhaps have been used to resolve the delayed arrival of supplies immediately following the disaster (see [12]). However, air transport was not suited for mass transportation owing to constraints such as packing and unpacking, the access time to landing and takeoff areas, and limited transport capacity, and so was used in a pinpoint manner when there were special needs. Meanwhile, marine transport was difficult immediately after the disaster because vessels were unable to reach ports unless the sea lanes were cleared of floating debris while piers that were not earthquake-proof had collapsed. On land, the main transport route was secured by allowing trucks to pass roads as soon as they were inspected or cleared of obstacles, since road damage and rubble had disrupted passage at many locations. There are also those who, in regard to the fuel shortage, questioned whether fuel reserves could not have been used, but the fuel in question basically consists of crude oil and needs to be refined, while the distribution of fuel was difficult since many gasoline stations had been damaged.

In addition, there are those who argue that the Japan

Self-Defense Forces could have been assigned to transport supplies to the 20–30 km radius zone centered at Fukushima Daiichi Nuclear Power Plant if a state-of-emergency had been declared (see [12] for instance). This was based on the fact that commercial trucks carrying emergency supplies had turned back at the 30 km line because an evacuation advisory had been issued to areas within 20 km from the power plant (18:25, March 12), and an indoor standby advisory to areas lying from 20 km to 30 km from the power plant (11:00, March 15). However, in response to this situation, the Emergency Headquarters Secretariat had in fact begun transporting supplies with the cooperation of the Self-Defense Forces after coordination among relevant government ministries and offices, and there is no evidence to support the view that the absence of a declaration of emergency resulted in the loss of opportunity of supply transportation by the Japan Self-Defense Forces.

While the facts related to the measures stated in (1) and (2) are as stated above, the measures of (3), i.e., payment deferral of financial liabilities and extension of preservation period of rights, did not become an issue.

In addition to the above items, in terms of juridical consequences, while the above three measures can be put into effect by decree when the Diet is in recess (paragraph 1, Article 109), the Diet was in session at that time, so that the measures stipulated in the Act would not have come into force even if a state-of-emergency had been declared.

It was under these circumstances that it was decided not to activate this law.

Subsequently, based on the above history, the following stipulations were added in the partial amendment of the Disaster Act (June 2013) based on the final report (July 2012) of the Committee for Policy Planning on Disaster Management established within the Central Disaster Management Council: (1) When a state of disaster emergency has been declared, the overall policies related to dealing with the state of disaster emergency and Government policies related to important items regarding disaster emergency measures and the maintenance of order of the national economy are to be determined by the Cabinet. The Prime Minister must supervise all administrative branches representing the Cabinet based on the determined policy (Article 108). (2) When municipalities or prefectures which have the jurisdiction over those municipalities, are unable to carry out all or most of the administrative work due to the occurrence of a disaster, the Government may perform all or part of emergency measures (particularly urgent measures such as the removal of obstacles that hinder rescue and relief activities) as provided by the laws and ordinances or disaster prevention plans (Article 78-2).

While those involved are certain to have expended great efforts in drawing up the amendment, huge disasters are always accompanied by unforeseen events. Therefore, it is the authors' belief that we must continually examine and revise the amendment by checking whether it is adequate to prepare for future huge disasters (particularly, Tokyo Inland Earthquake and Nankai Trough Earth-

quake). In particular, since this amendment process was premised upon the framework of the current constitution, we believe that the recent discussions surrounding constitutional amendments (on introducing state-of-emergency provisions) will require a fresh examination.

2.3. Discussions on State-of-Emergency Provisions in the Constitution Following the Great East Japan Earthquake

Since the “Draft for Amendment of the Constitution of Japan” ([14], hereafter referred to as the “Constitutional Amendment Draft”), released by the Liberal Democratic Party (LDP) on April 27, 2012, the year following the Great East Japan Earthquake, discussions have taken place on the necessity of introducing state-of-emergency provisions in the Constitution of Japan.

Prior to the Great East Japan Earthquake, The Yomiuri Shimbun (newspaper publisher) had proposed a draft amendment to the Constitution of Japan ([15], hereafter referred to as “Yomiuri Draft”) concerning the introduction of state-of-emergency provisions. While the first Yomiuri Draft of 1994, whose main purpose was to strengthen the leadership of the Prime Minister, did not include state-of-emergency provisions, the second Yomiuri Draft of 2000, which was after Hanshin-Awaji (1995), included three state-of-emergency provisions in Chapter 7 “The Cabinet”: Article 89 (declaration and supervision of state-of-emergency), Article 90 (Diet approval and removal of declaration), and Article 91 (emergency measures of the Prime Minister and restrictions of basic human rights). These contents were retained in the third Yomiuri Draft of 2004.

Subsequently, the Constitutional Amendment Draft released by the LDP following the Great East Japan Earthquake included the so-called “state-of-emergency provisions” in Chapter 9, stipulating that “The Prime Minister, in the event of armed attacks on our nation from abroad, disturbances of the social order due to internal strife, etc., large-scale natural disasters due to earthquakes, etc., or other states of emergency as determined by law, may, when deemed particularly necessary, issue a declaration of a state-of-emergency through a Cabinet meeting, as provided by law” (paragraph 1, Article 98) and “For the declaration of a state-of-emergency, prior or subsequent approval of the Diet must be obtained, as provided by law” (paragraph 2, Article 98). The effects of the declaration of a state-of-emergency are set forth as follows: “When the declaration of a state-of-emergency has been issued, the Cabinet, as provided by law, may enact Cabinet Orders having an effect equivalent to that of law, and in addition, the Prime Minister may make necessary expenditures or other dispositions and may issue necessary orders to heads of local governments” (paragraph 1 Article 99); “In the case that a declaration of a state-of-emergency has been issued, every person shall be subject to the orders of the State and other public organs issued to protect the lives, bodies and properties of the people, as provided by law. Even in this case, Article 14, Arti-

cle 18, Article 19, Article 21 and other provisions relating to fundamental human rights shall be respected to the fullest extent” (paragraph 3, Article 99); “In the case that a declaration of a state-of-emergency has been issued, the House of Representatives shall not be dissolved, and exceptions for the terms of office and election dates of members of both Houses shall be established, as provided by law” (paragraph 4, Article 99).

Meanwhile, since April 2012, when the LDP’s Constitutional Amendment Draft was released, constitutional amendments including state-of-emergency provisions have been discussed in the Commission on the Constitution of both Houses (see [17, 18]). In the Commission of the House of Representatives held on May 23, 2013, the Liberal Democratic Party, the Democratic Party of Japan, the Japan Restoration Party, Komeito, Your Party, the Japanese Communist Party, and the People’s Life Party expressed their views on the introduction of state-of-emergency provisions. Subsequently, in the Commission on the Constitution of the House of Representatives held on November 6, 2014, the Liberal Democratic Party, the Democratic Party of Japan, the Japan Restoration Party, Komeito, the Party for Future Generations, Your Party, and the Japanese Communist Party expressed their views on the introduction of state-of-emergency provisions. In the Commission on the Constitution of the House of Councilors held on May 27, 2015, the Liberal Democratic Party, the Democratic Party of Japan, Komeito, the Japan Restoration Party, the Japanese Communist Party, the Assembly to Energize Japan and Assembly of Independents, the Party of Future Generations, Independents Club, and the Social Democratic Party expressed their views on the introduction of state-of-emergency provisions.

Along with this trend, the pros and cons of introducing state-of-emergency provisions have come to be actively voiced in various settings outside the Diet since around 2015. Particularly with regard to the LDP’s Constitutional Amendment Draft, against the view that the state-of-emergency provisions are an urgent issue necessary to promote measures against huge disasters (see for instance [13]), there are those who view that (1) it is dangerous since it shifts the legislative function from the Diet to the Cabinet to continue the state-of-emergency with the purpose of preserving the makeup of the Diet without an election, (2) it harbors an extremely high risk of allowing frequent human-rights violations since it is not subject to judicial checking, but only confirmation by the majority ruling party, and (3) various legislation related to disaster measures are already in place, making it possible to address many items (see [19–23]).

Subsequently, the Japan Restoration Party announced its constitutional amendment draft in March 2016, consisting of three provisions on providing free education, reforming the government structure, and establishment of a Constitutional court, with no state-of-emergency provisions. Furthermore, in April 2017, Goshi Hosono, acting leader of the Democratic Progressive Party, released a private constitutional amendment draft (see [24]), in which he proposed extension of the terms of office of Diet mem-

bers in a section entitled “Establishment of constitutionalism in times of emergency.”

In sum, an active debate has taken place since the Great East Japan Earthquake on introducing state-of-emergency provisions into the Constitution of Japan, and this debate continues to this day.

3. Discussions on Emergency Powers in the Enactment Process of the Constitution of Japan and Framework of Discussion for the Introduction of Disaster Emergency Provisions

Yet, in view of the urgency and importance of measures against huge disasters, it is undesirable to spend an excessive amount of time on such discussions while a directionless state continues.

In light of this view, rather than engaging in open-ended discussions starting from a blank state, it is preferable to further discussions along the axis of examining why provisions on a state-of-emergency were not included in the process of enactment of the Constitution of Japan, and how the decision at that time should be modified under the changed circumstances where there exists a heightened recognition of the importance of preparedness for huge earthquakes (such as the Tokyo Inland and Nankai Trough Earthquake) which are expected to occur in the near future.

From this perspective, we attempt to provide a direction for the framework of discussions on the introduction of Disaster Emergency Provisions into the Constitution after reviewing the discussions on emergency powers in the enactment process of the Constitution of Japan.

3.1. Discussions on Emergency Powers in the Enactment Process of the Constitution of Japan

The Constitution of the Empire of Japan (proclaimed February 1889, came into force November 1890) stipulated an emergency imperial ordinance (Article 8), prerogative to declare a state of siege (Article 14), emergency prerogative (Article 31), and extraordinary financial imperial ordinance (Article 70) as the emergency powers of the Emperor.

Emergency powers are considered to be the “powers of the state to temporarily suspend the constitutional order and introduce emergency measures to preserve the state during an emergency that cannot be addressed through the governmental system of normal times, such as war, internal strife, financial panic, and large-scale natural disaster” (see [25]). These are the powers of government to attempt to maintain and restore order during an emergency that threatens the nation’s peace and independence, such as wars and huge disasters, by emergency measures such as suspension of the constitutional order, granting of significant power to some organ, and suspension of regulations to protect human rights.

Such emergency powers were not stipulated when the Constitution of Japan was enacted. The reason for this was given by Tokujiro Kanamori, who was Minister of State in the Yoshida Cabinet at the enactment of the Constitution of Japan, at the Committee on Amendment of the Constitution of the Empire of Japan (House of Representatives): “Emergency imperial ordinances and extraordinary financial imperial ordinances are very convenient for the administrative authorities. However, the reverse side of being convenient is that they are institutions that allow the will of the people to be forcibly neglected for a certain period. Thus, they represent a dividing line between respecting convenience and respecting the basic principles of democracy. Yet, it is a fact that a nation can undergo various vicissitudes, so that it cannot be maintained that there will be no problem without such institutions. However, when we review Japan’s experience through its several decades of constitutional politics, there have been no urgent situations that called for immediate action, and even in such cases, it is possible to take measures as the occasion demands” (July 2, 1946). “To thoroughly uphold democracy and sufficiently protect the people’s rights, such measures which can be undertaken at the government’s own discretion must be avoided as much as possible. If a wide avenue is kept open based upon the pretext of the word ‘emergency,’ I feel that we cannot maintain that there will be no risk that even the most elaborately worded constitution can be destroyed. Therefore, in the present Constitution (of Japan), it was decided to curtail such emergency exemptions, in other words, the room for free judgment by the administrative powers, as much as possible. Therefore, if a special necessity arises, an extraordinary session of the Diet shall be convened to undertake the necessary measures, and if the House of Representatives has been dissolved at that point so that it cannot undertake any measures, an emergency session of the House of Councilors shall be convened to undertake temporary measures. Meanwhile, at the same time, in regard to those concrete provisions necessary to respond to actual special cases, we feel that it is appropriate to prepare adequate provisions in a manner in which there will be no risk of them being abused” (July 15, 1946).

To sum up, emergency powers or state-of-emergency provisions were not introduced in the Constitution of Japan because (1) measures undertaken by the government’s own discretion (free judgment) must be curtailed in order to protect the principles of democracy and the rights and interests of the people, (2) exceptional cases can be dealt with by an extraordinary Diet session or legislation enacted during normal times; and (3) there were no urgent situations in Japan’s experience in the preceding several decades which required immediate action.

However, if the situation changes in a manner that had not been foreseen at the time so that it becomes necessary to reevaluate the Constitution, while still preserving the intentions at the time of its enactment, this should not deny any room to introduce the relevant provisions. Thus, it would not be improper to discuss introduction of such

provisions if (1) they are necessary in the interests of the people and do not possess an unlimited comprehensiveness based on the government’s free discretion (free judgment), (2) they address situations difficult to deal with by an extraordinary session of the Diet or legislation enacted during normal times, and (3) their need is newly recognized in situations since the Constitution was originally enacted.

Since the experience of the Great East Japan Earthquake, it has become a common recognition among the people of Japan that they face the risk of huge disasters that can cause damage far in excess of that of the Great East Japan Earthquake. From today’s perspective, it must be noted that the assessment at the time of enactment that “exceptional cases can be dealt with by an extraordinary Diet session or legislation enacted during normal times” or that “there were no urgent situations in Japan’s experience in the preceding several decades which required immediate action” was based on insufficient scientific grounds in an era when there was insufficient information on the risks of huge disasters. We thus believe that it is essential to confront the risks of huge disasters today, and seek a common direction in the discussion on Disaster Emergency Provisions in the Constitution. Based on this recognition and premised on situations arising after a huge disaster has occurred, this study identifies points in which the measures should be strengthened and presents specific items related to Disaster Emergency Provisions in view of the initial and emergency responses to the Great East Japan Earthquake.

3.2. Framework of Discussion on Disaster Emergency Provisions

In Japan, which is one of the world’s most disaster-prone countries, the urgency and importance of measures against huge disasters, awakened by the Great East Japan Earthquake, are commonly recognized by its people. It is desirable to determine a direction that truly suits the interests of the people as soon as possible regarding such an important issue concerning the foundation of national safety and security. In this sense, it is desirable to further the discussion on Disaster Emergency Provisions based on the following recognition.

Firstly, it is desirable to further discussions on what kind of measures are presumed to be necessary in order to protect the people from huge disasters that were not considered when the Constitution of Japan was enacted, keeping in mind that those presumptions should possess a certain specificity, comprehensiveness, and flexibility, and address response measures when there is no time to await legislation by an extraordinary session of the Diet or when such measures cannot be addressed by legislation enacted during normal times. From this perspective, suggestions from the initial and emergency responses to the Great East Japan Earthquake, which was the largest disaster in post-war Japan, are important. The starting point of the discussion must rest on an empirical and utilitarian approach premised on situations arising during huge disasters, to

identify the points that need to be strengthened based on initial and emergency responses to the Great East Japan Earthquake as well as their solutions. We believe that, by adopting this problem-solving approach, it will be possible to quickly identify a direction suited to the people's true interests.

Secondly, there will be elements (constitutional provisions), in terms of legislative policy, that can be realized only after the Constitution has been amended since we are engaging in a discussion on constitutional amendments. Those issues that can be met by amending the laws and regulations (so-called legislative provisions) should be addressed by the Disaster Act and other assorted legislation, and do not fall under constitutional provisions. It is thus necessary to concretely identify those elements that arise as a result of bottlenecks due to defects in the stipulations of the Constitution or to the stipulated passages themselves, and that cannot be addressed by legislation.

Thirdly, it is necessary to adopt proportionality (principle requiring balance between the purpose and the restriction of rights and interests) as the basic policy evaluation axis. In other words, how can we balance the people's safety and security against protection of their rights and interests during a huge disaster? It will be necessary, in terms of this balance, to identify a direction that can gain the understanding and support of the people.

4. Specific Issues Related to Disaster Emergency Provisions in View of Initial and Emergency Responses to the Great East Japan Earthquake

From the viewpoint presented above, we point out what we believe are important specific issues in the response against future huge disasters in the light of the initial and emergency responses to the Great East Japan Earthquake. All of these issues possess a certain specificity, comprehensiveness, and flexibility, and address response measures when there is no time to await legislation by an extraordinary session of the Diet or when such measures cannot be addressed by legislation enacted during normal times. All these measures are on the assumption that, as the effect of the declaration of a state of disaster emergency, the Prime Minister is given special powers for a limited period after the declaration.

It should be pointed out that these issues are representative ones suggested from the facts surrounding the initial and emergency responses to the Great East Japan Earthquake that have come to the attention of the authors, and are not intended to be comprehensive.

4.1. Need for Special Rules Related to Initial and Emergency Responses to Huge Disasters

The Constitution of Japan sets forth the basic rules of democracy and, on this basis, provides stipulations on Diet control of the Cabinet and local government. The

objective of these stipulations is to secure the people's interests through the system of democracy.

On the other hand, initial and emergency responses to huge disasters such as evacuation guidance, rescue and relief efforts, emergency supply support, and emergency recovery require the quickest possible responses, while any delay in the responses can extend damage and make it even more difficult to respond. Yet, it is difficult to completely predict the occurrence mode and scale of huge disasters and establish the necessary initial and emergency responses in advance. Therefore, in addition to those responses set out in terms of rules, it is necessary to be aware that there will arise items which must be planned and executed on an ad hoc basis.

Yet, there is the risk that situations will arise in which initial and emergency responses may not be carried out properly when Diet control of the Cabinet or the basic rules of local autonomy, which are premised on normal times, are directly applied. In other words, a special situation may occur in which two requirements in the people's interest – “the execution of prompt and appropriate initial and emergency responses” and “requirement for the Diet's democratic control of the Cabinet” – come into conflict.

Initial and emergency responses during huge disasters are basically directly connected to the rescue and relief of human beings and, by their nature, must be given the highest priority as the objective of democratic administration. Thus, priority must be placed on “the execution of prompt and appropriate initial and emergency responses” in order to maximize the people's interest under such situations.

From this viewpoint, we feel that the discussion on introducing special rules related to initial and emergency responses to huge disasters should be based on the following recognition.

First, it is necessary to set forth clearly, since they are specially introduced in view of the urgency and importance of initial and emergency responses to a huge disaster, that, as a basic principle, such rules are to be applied limitedly against items that are necessary to properly carry out initial and emergency responses to huge disasters.

Secondly, it is necessary to set forth clearly that such special rules are to be applied in situations of special urgency for the initial and emergency responses to huge disasters and that, as the effect of the declaration of a state of disaster emergency, the Prime Minister shall be given special powers for a limited period after such declaration. While this period will vary depending on the actual disaster, it will be necessary to secure a period considered to be appropriate for giving special powers to the Prime Minister so that he or she can properly carry out the initial and emergency responses to a huge disaster. In regard to this point, the Yomiuri Draft stipulates in the second paragraph of Article 90 that “the Prime Minister . . . must cancel the declaration as soon as it becomes unnecessary.” Furthermore, when the LDP Constitutional Amendment Draft was being drawn up, there were those who expressed the view during in-party discussions that

“the period of authorization should be specifically stipulated in the Constitution since the declaration gives immense power to the Prime Minister,” and the third paragraph of Article 99 of the LDP Constitutional Amendment Draft stipulates that “The Prime Minister must cancel the declaration of a state-of-emergency through a Cabinet meeting, as provided by law, when . . . the Diet resolves to cancel the declaration of a state-of-emergency, it is no longer deemed necessary to continue the said declaration of a state-of-emergency due to changes of the situation. Moreover, when intending to continue a declaration of a state-of-emergency for more than one-hundred (100) days, prior approval of the Diet must be obtained for each one-hundred (100) days” [15].

Thirdly, with regard to the basic rules related to Diet control of the Cabinet, it is necessary to obtain ex-post-facto approval of the validity of the initial and emergency responses at the earliest date after such responses have been carried out to some extent, as a measure of compensation for the relaxed control of Diet in view of the urgency immediately after huge disasters.

Based on these basic recognition, we present below points which we consider to be the important issues in view of the initial and emergency responses to future huge disasters following the Great East Japan Earthquake.

4.2. Special Rules on the Relationship Between Cabinet and Diet

The first item is the special rules on the relationship between the Cabinet and Diet required to mobilize the initial and emergency responses immediately after a huge disaster has struck.

Diet control of the Cabinet is an institution intended to grant democratic legitimacy to the execution of administrative duties and secure the people’s interests by the resolution of laws and budgets through majority decision on the basis of information disclosure and explanation and the subsequent process of consensus-building. This is the basis of democracy, and in itself is not something that can be questioned. Therefore, even after a huge disaster, the basic procedure for the government is to perform administrative duties related to initial and emergency responses based on the laws and budgets resolved by the Diet.

Yet, one aspect of huge disasters is that it is difficult to completely predict their occurrence mode and scale and establish the necessary initial and emergency responses in advance. Accordingly, it is necessary to be aware that there will arise items which must be planned and executed on an ad hoc basis in addition to response items presumed beforehand. Furthermore, it is highly likely in the undertaking of such ad-hoc initial and emergency responses that there will arise sections that cannot be dealt with within the framework of existing laws and budgets, and that will urgently require additional legislation or budgetary measures.

However, if the government is tasked at the stage immediately after a huge disaster to carry out information disclosure and explanation to the Diet or other sets of pro-

cedures necessary for such legislation and budgetary measures, there is the possibility that the execution of the initial and emergency responses, for which those measures were intended, will be delayed. The initial and emergency responses following huge disasters such as evacuation guidance, rescue and relief efforts, emergency supply support, and emergency recovery require the quickest possible responses, and any delay in the responses can extend damage and make it even more difficult to respond. For this reason, it cannot be denied that there is something irrational about demanding the government to expend a great amount of human resources and time for procedures related to legislation and budgetary measures needed for initial and emergency responses immediately after a huge disaster.

In sum, with regard to initial and emergency responses immediately after huge disasters, the possibility exists that a special situation will arise in which two elements called for in the people’s interests – “the execution of prompt and appropriate initial and emergency responses” and “requirement for the Diet’s democratic control of the Cabinet” – will come into conflict.

Since most initial and emergency responses to huge disasters are directly related to the rescue and relief of human beings, which properly should be given the highest priority as the goal of democratic government, priority must be placed on “the execution of prompt and appropriate initial and emergency responses,” and it is necessary to allow the exemption of “requirement for the Diet’s democratic control of the Cabinet” after huge disasters so as to maximize the people’s interest under such circumstances.

In clearer terms, we feel that a discussion should take place on introducing into the Constitution the concept of suspending democratic control of the Cabinet by the Diet and giving the Cabinet the authority and responsibility so that it can execute prompt and appropriate initial and emergency responses in the initial and emergency response phases immediately after a huge disaster, and mandating ex-post-facto approval by the Diet.

Furthermore, we hope that, in terms of concrete institutions that can be advanced from this standpoint, this discussion will concern the following three items.

(1) Authority to issue emergency Cabinet order

It is highly possible that the need will arise to execute measures that fall outside the framework of existing laws and regulations in the initial and emergency responses to a huge disaster. Yet, it is likely to take time if the government is tasked with briefing the Diet with regard to the necessary legislation and carrying out other sets of procedures, and the Diet must deliberate and enact the relevant legislation, so that execution of the appropriate initial and emergency responses following the disaster may be delayed.

Therefore, we feel that a discussion should take place on relaxing democratic control of the Cabinet by the Diet under such circumstances, and introducing special rules into the Constitution that authorize the Cabinet to enact and execute the necessary provisions in the form of an

“emergency Cabinet order” even when such provisions are considered to require statutory provisions during normal times.

Since such rules are to be introduced as special rules in view of the urgency and importance of initial and emergency responses to a huge disaster, they are to apply only to matters necessary for the execution of prompt and appropriate initial and emergency responses, give special powers to the Prime Minister, as the effect of a declaration of a state of disaster emergency, for a limited time period after he or she has issued such declaration, and ex-post-facto approval of their validity must be obtained at the earliest date after such responses have been carried out to some extent, as mentioned earlier.

Incidentally, the first paragraph of Article 109 of the Disaster Act stipulates that “the Cabinet may enact a Cabinet order to implement the necessary measures with regard to the following items when there is an urgent need to maintain the nation’s economic order and secure public welfare during a state of disaster emergency in case the Diet is in recess or the House of Representatives has been resolved and there is no time to determine to convoke an extraordinary session of the Diet or request an emergency session of the House of Councilors and await legislation.” And as the “necessary measures,” this paragraph provides the limitative listing of the three items mentioned here on (1) restriction and ban on supplying, assigning, and transferring basic necessities, (2) decision on the maximum price of goods, and (3) payment deferral of financial liabilities and extension of preservation period of rights. Moreover, the first paragraph of Article 109-2, further stipulates that “in cases when support from overseas related to the rescue of disaster victims cannot be quickly and smoothly received within the provisions of the law during a state of disaster emergency, and the Diet is in recess or the House of Representatives has been resolved and there is no time to determine to convoke an extraordinary session of the Diet or request an emergency session of the House of Councilors and await legislation, the Cabinet may enact a Cabinet order to implement the necessary measures with regard to reception of such support.” These provisions may appear to be similar in nature to the Constitutional provision on an emergency Cabinet order being discussed here. However, such Cabinet orders based on laws, as the natural consequence of democracy (the principle setting forth the rule that administration must be based on laws enacted by a parliamentary assembly), are necessarily limited in that (1) they are inevitably limited in scope and (2) they apply only under situations such as when the Diet is in recess etc.

Meanwhile, the Constitutional provision for an emergency Cabinet order discussed here is a mechanism for responding to unforeseen circumstances and gives special powers to the Prime Minister under a given set of preconditions without being limited to situations such as periods when the Diet is in recess. and in this regard is different in essence.

Incidentally, Article 8 of the Constitution of the Empire of Japan stipulated as one of the emergency powers of the

Emperor, regarding the authority to enact an Urgency Imperial Ordinance, that “The Emperor, in consequence of an urgent necessity to maintain public safety or to avert public calamities, issues, when the Imperial Diet is not sitting, Imperial Ordinances in the place of law” (paragraph 1) and that “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” (paragraph 2).

(2) Ex-post-facto approval of budget expenditure by the Diet

The next item is the provision on the ex-post-facto approval of budget expenditures exceeding the Reserve Fund by the Diet.

Immediately after the Great East Japan Earthquake, the largest distribution base in the Tohoku region (Sendai Bay coast) had been decimated while the local prefectural government and municipalities had become dysfunctional, and so procurement and transportation of emergency supplies to evacuation centers were hastily initiated under direct control of the national government. Such operations had been specified in the post-Hanshin-Awaji manual to be performed by prefectures, and there had been no budgetary allocations for this operation in the original national budget. Therefore, the Task Management Team made an inquiry to senior officials asking “how the expenses were to be allocated for procuring supplies from private businesses, since they are not included in the original budget.” It was then decided to leave the details to be straightened out at some later date, and the team was instructed to “proceed with haste with the procurement and transport of supplies with no concern for their cost allocation.” Meanwhile, the required adjustments related to the use of Reserve Funds were begun. With regard to the government-controlled procurement and transportation of emergency supplies, the expenses amounting to 90 million yen incurred during the three-day period following the disaster, from March 11 to March 13, were covered by Expenses to Promote Disaster Prevention Policy, while those amounting to 7.59 billion yen incurred on and after the day of the Cabinet decision to use the Reserve Funds (March 14) came from the 30.2 billion yen Reserve Fund, so that the required expenses were covered entirely by the original budget.

Yet, it is possible that the initial and emergency responses immediately following a huge disaster in the future may require urgent and unforeseen operations for which no preparations had been made, and whose costs cannot be covered by Reserve Funds or await the necessary measures to be covered by a supplementary budget.

Article 11 of the Public Accounting Act stipulates that “The action to oblige an expenditure shall be conducted as provided by the laws or the budget,” requiring any action to oblige an expenditure (concluding a contract or placing an order) to have budgetary backing. This derives from the democratic control exercised by the Diet on public finance (financial democracy) as set forth in the

Constitution of Japan: “The power to administer national finances shall be exercised as the Diet shall determine” (Article 83), “No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet” (Article 85), and “The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year” (Article 86).

We hope that, in regard to expenditures essential for emergency responses during a state of disaster emergency, an deeper discussion will take place on the necessity of introducing provisions into the Constitution that will authorize the Cabinet to decide on emergency expenditures without prior approval of the Diet when such expenditures cannot be covered by Reserve Funds and measures to obtain supplementary budget cannot be awaited, and to obtain ex-post-facto approval by the Diet as soon as it becomes possible.

Incidentally, Article 70 of the Constitution of the Empire of Japan included the “right of emergency financial measures” as part of the emergency powers of the Emperor, stipulating that “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” (paragraph 1) and “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” (paragraph 2).

(3) Consideration regarding information disclosure and explanation to the Diet and parties

Following the Great East Japan Earthquake, the Emergency Headquarters Secretariat received requests from political parties to brief them of the situation, but it was impossible to respond to them. Although these requests began arriving on the night of March 11, it was impossible to secure suitable personnel who would visit and brief them under a situation in which every spare moment had to be spent to respond to the situation, which changed from moment to moment, immediately after the disaster. Instead, the parties were notified only that “We are currently spending all of our efforts for emergency response actions. We will be providing information on the damage status by fax communication for the time being,” while the situation continued for some time in which it was quite impossible to respond to those requests for briefing. Shortly after, as the result of consultation between secretary-generals of the ruling and opposition parties and government representatives, we were able to obtain an understanding of the situation from the Diet and parties, and the response to the parties was consolidated by the establishment of the “joint party/government meeting on earthquake disaster response,” composed of secretary-generals of the ruling and opposition parties and government representatives, so as to lessen the burden on the government. The Diet also decided to suspend deliberations until the budget committee of the House of Councilors scheduled for March 22^{1),2)}.

While confusion was avoided after the Great East Japan Earthquake in this manner, it is a fact that an understanding of the situation came to be shared only after the passage of some time. We feel that the question of whether it is sufficient to expect such considerations when a huge disaster occurred in the future should be examined.

Although the Emergency Headquarters compiled and released the damage status and government response actions in the form of Emergency Headquarters Bulletins (so-called Emergency Headquarters Reports), this consisted of data confirmed up to that point and its coverage immediately after the disaster fell quite short of a comprehensive damage status. Furthermore, the Emergency Headquarters received a continuous stream of fragmentary damage information immediately after the earthquake, while the totality of information was enormous, chaotic, and could be described as an ever-changing torrent. Since the Emergency Headquarters was in such a state, the highest priority was given to assessing the damage status, including estimations, based on the limited information available and expending all efforts on initial and emergency responses, so that it was next to impossible to secure the time to compile damage status and dispatch personnel to interested outside parties to brief them.

We hope that a discussion will take place on the pros and cons of introducing the concept in the Constitution that the Diet should make suitable considerations, in regard to making demands for information disclosure and explanation, so as not to hinder the Cabinet in its execution of prompt and appropriate initial responses in the initial response phase immediately following a huge disaster.

4.3. Special Rules Concerning the Relationship Between National and Local Governments

In addition to the special rules regarding the relationship between the Diet and Cabinet, those regarding the relationship between the national and local governments may be necessary.

While many of the local governments that engaged in support activities for the disaster-affected areas did so with firm resolve and good intentions, there is a possibility that independent support activities will lack mutual coherence and overall optimization, making the overall disaster response extremely inefficient.

When the situation calls for wide-area, large-scale support activities conducted by one local government for another local government, in terms of emergency response to a huge disaster, we feel that it may be necessary to establish the authority of the national government to instruct local governments in order to optimize the overall support activities.

Although, under the existing laws, Article 28-6 of the Disaster Act gives the head of the Emergency Headquarters (Prime Minister) the authority to instruct local public bodies, we feel that it is necessary to examine the introduction of a stipulation in the Constitution that provides a clear basis for the Cabinet to instruct local governments

when necessary.

Article 92 of the Constitution of Japan stipulates that “regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy,” and the weight placed on respect for local autonomy may increase in the discussion on future constitutional amendments. In this context, we feel that it is necessary to investigate what kind of institutional design is possible that will allow the formulation of special rules concerning the relationship between the national and local governments, and allow adjustment between “respect for local autonomy” and “emergency response,” in terms of the initial and emergency responses to a huge disaster.

5. Conclusion

Although it has become a common recognition among the people of Japan that they face the risks of huge disasters, the psychological tendency is to ignore those risks or to avoid taking effective measures, even if the risks are recognized, especially when those risks are enormous.

We believe that conducting a nationwide discussion on Disaster Emergency Provisions in the Constitution of Japan, can provide a first step for the Japanese people to address a national difficulty and confront the risks of huge disasters, which comprise an urgent national concern.

It is the authors' sincere wish that a broad, open discussion on the issues presented in this study will take place to help form a common recognition among the people of Japan, and point out a clear direction for measures in preparation of huge disasters, such as the Tokyo Inland Earthquake and Nankai Trough Earthquake. We would be gratified if this study can make a contribution, however slight, to this end.

Notes:

- 1) On March 18, a lawmaker-initiated bill to extend the deadline of Act on Special Measures for Earthquake Disaster Prevention which was expected to expire at the end of FY2010 was established. It is customary for the minister in charge of the implementation of the lawmaker-initiated bill to attend the plenary session's adoption at each House. The Minister of Disaster Management, who was in charge of the initial and emergency response to the earthquake at that time, attended the House of Representatives plenary session wearing an emergency suit with a Diet member's badge. Also, concerning the House of Councilors, the Minister attended the plenary session with not only badges but also tie on an emergency suit.
- 2) The Budget Committee of the Councilors House decided to carry out the first Diet deliberations on the Great East Japan Earthquake (reports from the government side and general questions on disaster situations and responses) at 10:00-17:00 in March 22.
As attendees, Minister of Finance and Related Minister were invited (Ministers were expected to attend as much as possible. Substitute attendance by the Deputy Minister, Parliamentary Secretary and government officials were admitted). Attendees of the government side were allowed to attend wearing

an emergency suit.

As for the Cabinet Office Disaster Bureau, the Minister of Disaster Management and Director General for Disaster Management etc. had no choice but to respond to the affected areas even at that timing. Accordingly, it was decided that the disaster situation is to be reported by the Deputy Minister for Disaster Management, and that the answer to the questions from Diet member is to be done by Vice Minister and a government official (the Director for Disaster Management).

The fact that a government official of director-level answered to the questions in the Budget Committee was a quite exceptional case which was a symbol of an extraordinary situation.

References:

- [1] Emergency Headquarters Bulletins, 14:00, March 8, 2017 (in Japanese).
- [2] Cabinet Office press release material. “Estimation of damage by the East Japan Earthquake,” June 24, 2011 (in Japanese).
- [3] Central Disaster Management Council, Working group for countermeasures against Tokyo Inland Earthquake, “About the damage estimation and countermeasures concerning the Tokyo Inland Earthquake (Final Report),” December, 2013 (in Japanese).
- [4] Central Disaster Management Council, Working group for countermeasures against Nankai Trough Earthquake, “Damage estimation concerning the Nankai Trough Earthquake, About the Nankai Trough Earthquake (Final Report),” Annex2, May, 2013 (in Japanese).
- [5] O. Nishi, “Some Comparative Constitutional Considerations on Powers during a State of National Emergency : Focusing on the OECD Countries,” *Nihon Hogaku (Journal of Law)*, Vol.82, No.3, pp. 1772-1745, 2016 (in Japanese).
- [6] A. Kotaki, “Initial Responses of the Government of Japan to the Great East Japan Earthquake (Earthquake and Tsunami) and Lessons Learned from Them,” *J. of Disaster Research*, Vol.10, pp. 728-735, 2015.
- [7] A. Kotaki, “90days of Extreme Disaster Management Headquarter for the Great East Japan Earthquake,” Gyosei, 2013 (in Japanese).
- [8] F. Takeda, H. Hayashi, and S. Sato, “Considerations on the developing legislation of catastrophic disaster reduction systems: focused on Tokyo Metropolitan Earthquake Disaster Reduction Special Act,” *J. of Japan Society for Natural Disaster Science*, Vol.30, No.1, pp. 105-122, 2011 (in Japanese).
- [9] F. Takeda, K. Takeuchi, T. Mizuyama, and H. Ikeya, “Research on Issues of Reviewing Legal System against Huge Disaster,” GRIPS Discussion Papers, 16-06, 2016 (in Japanese).
- [10] White Paper on Disaster Management 2011, July, 2011 (in Japanese).
- [11] Clause by clause commentary on Disaster Countermeasures Basic Act (Revised 3rd Edition), p. 654, Gyosei, 2016 (in Japanese).
- [12] Proc. of the 177th House of Councilors Budget Committee, No.7, pp. 7-8, 2011 (in Japanese).
- [13] H. Hamaya, “The Necessity of Establishing a Legal System for a State-of-Emergency : How to introduce an Emergency Clause into the Constitution of Japan in order to provide for a Huge Natural Disaster,” *J. of world affairs*, Vol.64, No.11, pp. 75-91, 2016 (in Japanese).
- [14] Liberal Democratic Party, “A draft amendment to the Constitution of Japan,” April, 2012 (in Japanese).
- [15] Q&A for “A draft amendment to the Constitution of Japan” of Liberal Democratic Party (augmented version): 2013 (in Japanese).
- [16] The Yomiuri Shimbun, “A draft amendment to the Constitution of Japan 2004,” Chuokoron-Shinsha, Inc., 2004 (in Japanese).
- [17] M. Mitsumata and T. Arai, “East Japan Great Earthquake and the Constitution of Japan – Looking back at the discussion of the House of Councilors Constitutional Review –,” Office of the House of Councilors Planning and Coordination Unit, Rippo to Tyousa, No.331, 2012 (in Japanese).
- [18] House of Representatives Constitutional Review Board Secretariat: Material on “State-of-Emergency,” 2013 (in Japanese).
- [19] K. Nagai, “Are the Emergency Provisions necessary in the Constitution of Japan?” Iwanami Booklet, 2016 (in Japanese).
- [20] K. Nagai, “Easy to understand the Emergency Provisions Q&A,” Akashi Shoten, 2016 (in Japanese).
- [21] Kansei Gakuin University, Institute of Disaster Area Revitalization, Regrowth and Governance, “What's the matter with the emergency provision?” Iwanami Shoten, 2016 (in Japanese).

- [22] H. Murata, "Manners of argument on the amendment of the Constitution and Emergency Provisions," Nihon Kikanshi Syuppan Center, 2016 (in Japanese).
- [23] K. Nagai, "The Effective Legal Systems for Disaster Control : In Relation to the Emergency Provision," REAJ, Vol.38, No.5, 2016 (in Japanese).
- [24] G. Hosono, "Present a realistic constitutional amendment plan," Chuokoron, Vol.131, No.5, 2017 (in Japanese).
- [25] N. Ashibe, "The Constitution (6th edition)," Iwanami Shoten, p. 376, 2015 (in Japanese).



Name:
Akira Kotaki

Affiliation:
Researcher, Research Institute of Disaster Management and Emergency Medical System, Kokushikan University

Address:
7-3-1 Nagayama, Tama-City, Tokyo 206-0025, Japan

Brief Career:
1982 Joined Ministry of Construction (succeeded to Ministry of Land, Infrastructure, Transport and Tourism in 2001)
2010-2012 Director for Disaster Management ,Dispatched to Cabinet Office
2015 Inspector-General, Minister's Secreariat Ministry of Land, Infrastructure, Transport and Tourism
2017 Special Corporate Advisor, PanaHome Corp.
2017 Reseacher, Research Institute of Disaster management and Emergency medical system, Kokushikan University

Selected Publications:
● "90 days of Government's Extreme Disaster Management Headquarters: How initial responses by the Government of Japan to the Great East Japan Earthquake have done;" Gyosei, Aug. 2013.

Academic Societies & Scientific Organizations:
● Architectural Institute of Japan (AIJ)
● Association of Urban Housing Sciences (UHS)



Name:
Fumio Takeda

Affiliation:
Professor, Nationl Graduate Institute For Policy Studies

Address:
7-22-1 Roppngi, Minato-ku, Tokyo 106-0032, Japan

Brief Career:
1975 Joined the Ministry of Home Affairs
2000- Director, General Affairs Division, Fire and Disaster Management Agency
2002- Vice-Governor, Fukuoka Prefecture
2005- The Cabinet Office Minister's Secretariat commissioner (in charge of disaster prevention)
2008- Visiting Professor, Kyoto University
2010- Professor (Special Assignment), Kyoto University
2012- Professor, National Graduate Institute for Policy Studies

Selected Publications:
● "Disaster Risk Management in Japan," Gyosei, Sep. 2006 (in Japanese).

Academic Societies & Scientific Organizations:
● Japan Society for Natural Disaster Science (JSNDS)
● Institute of Social Safety Science (ISSS)