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## Discussions on Constitutional Amendments Opinion Piece

### Momentum and Issues

By Naoki Takiguchi

#### Introduction

This year's ordinary Diet session has been convened here in Japan. The COVID-19 response unsurprisingly remains the core topic of discussion, while the Economic Security Promotion Bill will also be another focal point. However, this writer attaches particular significance to the discussions on constitutional amendments. The main opposition Constitutional Democratic Party (CDP), which takes a cautious stance on constitutional revision, had been reluctant to hold the Diet committee responsible for such discussions, the Commission on the Constitution, until after the recent general election had been held. However, the CDP changed its stance, agreeing to hold the Commission "on its scheduled days insofar as is possible"<sup>1</sup>. Meanwhile, other opposition parties, the Japan Innovation Party (JIP), as well as the Democratic Party For the People (DPFP) and the Yushi no Kai, which had just formed a new In-House Group (caucus) after the general election, took the position of the ruling side (Ruling Parties and Cooperative In-House Group Consultation Body: 与党及び協力会派懇談会) in the House of Representatives' (HR) Commission on the Constitution.

These moves were brought about by the new political situation that emerged after last year's general election. This paper summarises the positions of each party and discusses future prospects and issues surrounding the discussions on constitutional amendments. The writer would like to emphasise that constitutional reform will continue to require time, great

effort, and great patience from each party and In-House group, as well as public understanding.

### I. In-House Strength after the General Election

Following last year's general election, the JIP and the DPFP both increased the number of seats they hold in the HR. On the other hand, the CDP and the Japanese Communist Party (JCP), both of which played a central role in the electoral cooperation among the opposition parties, lost seats. As this writer mentioned in a previous paper last year<sup>2</sup>, momentum for constitutional reform has increased, with those parties in favour of constitutional revision increasing their total number of seats in the HR.

After the additional endorsement of independent candidates by the Liberal Democratic Party (LDP), as well as the formation of a new In-House group, the composition of the HR is as follows.

<b>Strength of the In-House Groups in the HR</b> <b>As of December 22, 2021</b>	
<b>In-House Groups</b>	<b>Number of Seats</b>
Liberal Democratic Party	263
The Constitutional Democratic Party of Japan and the Independent	97
Nippon Ishin (Japan Innovation Party)	41
Komeito	32
Democratic Party For the People	11
Japanese Communist Party	10
Yushi no Kai	5
REIWA SHINSENGUMI	3
Independents	3
Vacant	0
<b>MEMBERSHIP</b>	<b>465 (45)</b>

Source : HR website<sup>3</sup> Partly modified by the author

Amendments to the Constitution must have the approval of two-thirds or more of both Houses of the Diet and shall be put to a national referendum. This would require 310 seats in the HR and 164 seats in the House of Councillors (HC). Since the number of seats in the HC will increase by three following the next election, the requirement for a two-thirds majority will become 166 seats after the HC election this summer. In this case, the definition of 'all the members of each House' stipulated in Article 96 of the Constitution<sup>4</sup> is the same as that of the membership of each House.

### II. Positions of Major Political Parties

Japanese political parties can roughly be divided into three groups: (1) those who are in favour of constitutional amendment, "Kaiken", (2) those who want to protect the current Constitution as it is, "Goken", (3) and those who take a position between these two opposing camps. Although there are differing historical circumstances and degrees of interest in the issue within each group, conservative parties are generally in favour of

amending the Constitution, while liberal parties wish to protect the Constitution. The positions of the major political parties are as follows.

Since its establishment in 1955, the ruling LDP has long been aiming at revisions to achieve an "autonomous Constitution" for Japan<sup>5</sup>. This proposal was in line with the projected withdrawal of Allied Forces that were stationed in Japan at that time, but the context for constitutional amendments underwent a major change due to changes in the international situation. When in opposition, the LDP compiled a draft of amendments to the Constitution<sup>6</sup>, which, for example, were to change the role of the Emperor from the symbol to the head of state and also included clarification of the exercise of the right to self-defence as well as the establishment of a national defence force. At present, four items are picked as their priority themes<sup>7</sup>: (1) Specifically mentioning the Self-Defense Forces (SDF), (2) Emergency response, (3) Elimination of combined electoral districts consisting of multiple prefectures / Clarification of local authorities, and (4) Enhancement of education. At the first HR Commission on the Constitution session held after the general election, LDP's Yoshitaka Shindo, the Commission's Lead-Director for the ruling side, stated that they would like the four items to be used as a basis for future discussions and called for the Commission to be held on a regular basis.

(1) Specifically mentioning the SDF in the Constitution is aimed at eliminating the argument that the SDF is unconstitutional, as well as at specifically mentioning Japan's right to self-defence, in the case that Japan's possession of these is not clear enough from the current wording of the Constitution. However, some point out that the full-fledged use of the right to collective self-defence would be permissible, based on the expression "taking necessary self-defence measures" in the proposed draft of the article<sup>8</sup>. (2) Emergency responses were originally intended for large-scale disasters, but later, responses based on the recent spread of COVID-19 have become a new issue. In an interview<sup>9</sup> with the Yomiuri Shimbun, Toshimitsu Motegi, the LDP Secretary-General, said the establishment of an emergency clause should be a priority. At the end of last year, the LDP reorganised its HQs for Promoting Constitutional Reform into a HQs for the Realization of Revision of the Constitution, under the direction of Prime Minister Fumio Kishida as the party president.

The largest opposition party, the CDP, takes an intermediate position called "Ronken" (discussing the Constitution). According to their 'Party Guidelines for Constitutional Discussions<sup>10</sup>', the CDP opposes the LDP's proposal to clarify Japan's possession of the SDF in the Constitution, saying it could allow the SDF to exercise Japan's right to collective self-defence without any limitation. At the same time, the paper says that the party will "proceed with discussions" on issues such as, (1) Strengthening civilian control, (2) Introducing a deadline for requests to convene an extraordinary Diet session under Article 53 of the Constitution, (3) Setting restrictions on the Cabinet's right to dissolve the HR. Lastly, the CDP argues that the Diet should first discuss further revisions to the National Referendum Act to regulate commercial advertisement prior to referendums at the Commission on the Constitution, rather than conduct discussions on the Constitution itself.

The JIP has been proactive towards revising the Constitution and has suggested that a national referendum should be held along with the upcoming HC election in summer. Specifically, their draft amendments are based on the following three pillars<sup>11</sup>: (1) Enhancement of free education, (2) Reform of the governing system, and (3) Establishment of a constitutional court. In addition, Co-Leader Nobuyuki Baba has stated that the party will discuss Article 9 of the Constitution, including the Taiwan Strait crisis, as well as emergency provisions that take into account the relationship between restrictions on private rights and public welfare<sup>12</sup>.

Komeito takes a position of "Kaken" (making additions to the current Constitution) to introduce new values such as the environment, privacy, and local autonomy. While adhering to Article 9 of the Constitution, which stipulates pacifism, they continue to discuss the existence of the SDF and how Japan can contribute to the international community<sup>13</sup>. Regarding the LDP's idea to clarify the SDF's status in the Constitution, Komeito executives have reiterated, "Is there really a need to specifically mention the SDF?"<sup>14</sup>. On the other hand, Kazuo Kitagawa, Deputy Chief Representative of Komeito, has proposed (1) Strengthening the functions of the Diet during emergencies, (2) Protection of human rights and democracy in a digital society, and (3) Preservation of the global environment as topics for discussion. While Komeito is a junior coalition partner and advocates "Kaken" the party does not necessarily appreciate being labelled as proponent of Constitutional amendment.

The DPFP announced its comprehensive agenda for constitutional amendment<sup>15</sup> at the end of 2020. The main items are (1) Updating human rights, (2) Development and strengthening of local autonomy, (3) Restructuring of governing system, (4) Confirmation of the three main principles of the Constitution (popular sovereignty, respect for fundamental human rights, and pacifism) and establishment of national objectives. Specifically, they call for "respect for individuals" including in cyberspace, basic principles of local autonomy, clarification of the deadline for convening an extraordinary session, pacifism (clarification of exercise of the right to self-defence and the control of the SDF), and the establishment of a constitutional court. Yuichiro Tamaki, DPFP President, has proposed that the HR Commission on the Constitution adopt a subcommittee system that focuses on certain points of the discussion<sup>16</sup>.

The JCP and the Social Democratic Party (SDP) take the position of "Goken", and oppose constitutional amendment.

The positions and current stance towards discussions on constitutional amendments of each party are as explained above. The differences between the three groups are obvious. Likewise, there are differences even within the group that favours Constitutional amendment over which items each party advocates revising. In particular, there is a large gap between the LDP and Komeito regarding the status of the SDF and the right to self-defence under Article 9 of the Constitution (pacifism), which is the core issue of constitutional revision.

### **III. Breaking Away from Ruling and Opposition Confrontations**

In recent years, the Commissions on the Constitution of both Houses of the Diet have rarely been held regularly, and it even took three years to

revise the National Referendum Act. In 2000, the Research Commission on the Constitution<sup>17</sup> was established in both chambers, and Taro Nakayama, who served as the first Chairman of the Research Commission of HR, poured his efforts into managing both the ruling and opposition parties harmoniously under the so-called 'Nakayama Rules', which were also intended to give consideration to the opposition. Though the 'Nakayama Rules' do not remain overtly in force, the Commission on the Constitution, unlike other committees, is not held ex-officio by the Chairperson without an agreement between the ruling and opposition parties. Thus, even convening regular sessions of the Commission has been difficult. Against this backdrop, even the former PM Shinzo Abe Cabinet, whose ruling parties long-held a two-thirds majority in both Houses, found it difficult to manage the Commission (as the largest party, but not as PM). Very importantly, discussions on the Constitution do not necessarily reflect the balance of power in terms of numbers of seats as the opposition parties can influence the Committee from the abovementioned practice of the 'Nakayama Rules.'

As mentioned at the beginning of this paper, the DFPF and Yushi no Kai joined the ruling side in the Commission on the Constitution in addition to the JIP. The fact that the DFPF switched to the ruling side in this Commission from the viewpoint of engaging in "active discussion<sup>18</sup>" is a move beyond the usual framework of the ruling and opposition camps. This shift, however, can be regarded as a part of the party's strategy to distance itself from the CDP-led framework of the opposition parties since around the time of the general election.

#### **IV. Conclusions / Outlook and Issues**

As mentioned above, the momentum toward constitutional amendment was built through the recent general elections. So could Constitutional revision be achieved? First of all, one important indicator is whether the ruling parties and other proponents of amending the Constitution (the LDP, Komeito, the JIP, the DFPF) can secure at least a two-thirds majority in the upcoming HC election. At present, the four parties (on an In-House group basis) hold 169 seats in the HC, and it will be an important factor whether they can maintain this number. Half of the HC seats are up for election every three years, so these four parties need to win 83 seats<sup>19</sup>. Even if the two-thirds majority is maintained, it would not be possible to quickly amend the Constitution. After the HC election, there will be a certain period of time, perhaps as long as three years, until the next HC election, but Komeito is quite negative about the LDP's proposal to specifically mention the SDF, and if Article 9 is to be a theme of discussion, coordination will be difficult even between the two coalition partners.

In this sense, it is more realistic to first seek further revisions to the National Referendum Act, which the CDP is requesting, and then to discuss issues other than Article 9, such as "Enhancement of education," "Emergency provisions," and "Local autonomy," as a prelude. If a subcommittee system is introduced, it will facilitate discussions. In addition, any strengthening of cooperation between the JIP and the DFPF<sup>20</sup> could affect future discussions, and could serve as a restraint for Komeito. If both chambers of the Diet can initiate amendments without Komeito, that party may reconsider its position to some extent. However, it is inconceivable

that the LDP will proceed without Komeito's agreement as their relationship with Komeito is very important not only as a framework for the coalition government but also in terms of electoral cooperation. This is because the add-on votes from Komeito, which are said to number some tens of thousands in each single-seat constituency, are crucial. Whatever position Komeito takes, their stance on the constitutional debate is an extremely important factor.

On the other hand, the CDP has maintained its position that "they do not join discussions aimed at Constitutional revision itself<sup>21</sup>" even after the recent general election, whilst they agree to hold regular sessions of the Commission on the Constitution. It would also be a positive factor for constitutional debate if the CDP reconsiders its electoral cooperation with the JCP and is thereby released from its obligations to pay consideration to the JCP, which is against even holding sessions of the Commission on the Constitution. By distancing itself from the JCP, the CDP will be able to take a more proactive position than before the election. However, it will still be difficult for them to separate themselves from their liberal power base. Although the number of seats held by the CDP in the HR has decreased, they still occupy the position of largest opposition party in both Houses, and as an In-House group with the Lead-Director for the opposition camp, the party can maintain and exercise a strong influence over whether or not the Commission is held.

Keiji Furuya, Chairperson of the LDP HQs for the Realization of Revision of the Constitution, said in an interview with the Nikkei Shimbun, " [We will ] focus on arousing public opinion without setting particular priorities or goals for constitutional amendments" and admitted that the party's previous position of pressing urgently for the Commission to be held, in fact stalled the debate<sup>22</sup>. During the time of former PM Abe's Cabinet, the LDP took the initiative in trying to lead the debate, but the opposition parties, in return, hardened their positions. The fact that PM Kishida and Chairperson Furuya agreed that "the Commission on the Constitution is the main battlefield" is also extremely important from the perspective of acknowledging that the Commission should be the main forum for discussion. Separating the Commission from the ruling and opposition parties' Diet affairs issues (if possible), and seeking discussions thereof in a quiet environment will deepen the debate over the Constitution. That is to say, separation from any political turmoil is of high significance. In his general policy speech to the Diet, PM Kishida made only limited reference to the Constitution and expressed his hope that active debate would take place. Compared to former PM Abe's last general policy speech<sup>23</sup>, Kishida's gives a bland impression, but it is aimed at creating a calm environment. It is important for the ruling parties and other parties in favour of Constitutional amendment to exceed a certain number of seats in the upcoming HC election in order to maintain and enhance momentum. However, it is even more important to create a suitable environment for discussion.

This writer believes that constitutional amendments should be discussed in the Diet and be put to a national referendum. If there is more than one amendment, votes will be cast for each relevant amendment<sup>24</sup>. According to a 2021 Yomiuri Shimbun opinion poll, the number of people in favour of revising the Constitution rose to 56%<sup>25</sup>, but it should be noted that various opinion polls have been conducted. With regard to the issue of

Article 9 of the Constitution, Japan should maintain its pacifism and construct a realistic security policy in light of the changes in the security environment surrounding Japan. This should be appropriately stipulated in the Constitution. To this end, this writer hopes that all the parties involved, regardless of their opinions, sincerely address the Constitution in a calm and peaceful environment and respect the positions of every political party or In-House group. Taro Nakayama, former Chairman of the HR Research Commission on the Constitution, said, "the debate on the Constitution should be a matter of responsibility for and under the authority of the Diet, but not of the Cabinet; it should be a debate representing all the people, and distinct from the debate between the ruling and opposition parties, which is a fight for governmental power; and it should not be a debate based only on asserting one's unilateral ideal image of the Constitution; it should be a debate aimed at achieving a great compromise, a bipartisan debate aimed at eventually forming a two-thirds majority or more<sup>26</sup>". This writer sincerely hopes that the debate deepens to reach out for that "great compromise" over the coming years.

This article reflects the sole opinion of the author and does not present the official standpoint of KAS.

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Note: The links are not necessarily available in English.

- <sup>1</sup> Nippon Hoso Kyokai (NHK – National Broadcaster) Commission on the Constitution held for first time after general election (衆院選後初めて衆議院憲法審査会が開催) December 9, 2021 <https://www.nhk.or.jp/politics/articles/last-week/73645.html>
- <sup>2</sup> Naoki Takiguchi General Election Outlook 2021 Results and Implications November 2, 2021 <https://www.kas.de/en/web/japan/laenderberichte/detail/-/content/general-election-2021>
- <sup>3</sup> HR Strength of the In-House Groups in the HR December 22, 2021 [https://www.shugiin.go.jp/internet/itdb\\_english.nsf/html/statics/english/strength.htm](https://www.shugiin.go.jp/internet/itdb_english.nsf/html/statics/english/strength.htm)
- <sup>4</sup> The Constitution of Japan November 3, 1946 <http://www.japaneselawtranslation.go.jp/law/detail/?id=174>
- <sup>5</sup> LDP Party's Mission / Party Policy Platform (党の使命・党の政綱) November 15, 1955 <https://www.jimin.jp/aboutus/declaration/>
- <sup>6</sup> LDP Draft Amendments to the Constitution of Japan (日本国憲法改正草案) April 27, 2012 [https://jimin.jp-east-2.storage.api.nifcloud.com/pdf/news/policy/130250\\_1.pdf](https://jimin.jp-east-2.storage.api.nifcloud.com/pdf/news/policy/130250_1.pdf)
- <sup>7</sup> LDP Status on Discussions on Constitutional Amendments (憲法改正に関する議論の状況について) March 26, 2018 [https://jimin.jp-east-2.storage.api.nifcloud.com/pdf/constitution/news/20180326\\_01.pdf](https://jimin.jp-east-2.storage.api.nifcloud.com/pdf/constitution/news/20180326_01.pdf)
- <sup>8</sup> Shiori Yamao and Masahiro Sakata Rikkenteki Kaiken (立憲的改憲) Shiori Yamao August 10, 2018
- <sup>9</sup> Yomiuri Shimbun Emergency Response Top Priority LDP Toshimitsu Motegi (緊急事態条項「創設を優先的に、自民・茂木氏が方針…改憲論議を加速」) November 13, 2021 <https://www.yomiuri.co.jp/politics/20211112-OYT1T50355/>

- 10 CDP Guidelines for Discussions on the Constitution (憲法論議の指針) November 20, 2020 [https://cdp-japan.jp/news/20201119\\_0277](https://cdp-japan.jp/news/20201119_0277)
- 11 JIP Draft Amendments to the Constitution (憲法改正原案) March 24, 2016 <https://o-ishin.jp/news/2017/im-ages/90da581ba24723f77027257436ab13c1cec1a1ed.pdf>
- 12 JIP Co-Leader Nobuyuki Baba's Press Conference January 12, 2021 <https://o-ishin.jp/news/2022/01/12/11655.html>
- 13 Komeito Komeito's Constitutional Amendments (公明党の憲法改正) 2013 <https://www.komei.or.jp/campaign/sanin2013/ig/kp.html>
- 14 Mainichi Shimbun Komeito Chief Representative Yamaguchi: "Is there really a need to specifically mention the SDF in the Constitution?" (公明・山口代表「憲法に自衛隊、あえて書く意味があるのか」) July 21, 2019 <https://mainichi.jp/articles/20190721/k00/00m/010/435000c>
- 15 DPFP Discussion Points towards Constitutional Amendments (憲法改正に向けた論点整理) December 4, 2020 <https://new-kokumin.jp/wp-content/uploads/2020/12/a496a30ca55082bede1b85480540c5f4.pdf>
- 16 HR Minute of Commission on the Constitution December 16, 2021 <https://kokkai.ndl.go.jp/txt/120704183X00220211216>
- 17 HR Commission on the Constitution History of Establishment of the Commission (衆議院憲法調査会の設置の経緯) [https://www.shugiin.go.jp/internet/itdb\\_kenpou.nsf/html/kenpou/chosa/keii.htm](https://www.shugiin.go.jp/internet/itdb_kenpou.nsf/html/kenpou/chosa/keii.htm)
- 18 DPFP President Yuichiro Tamaki's Press Conference December 9, 2021 [https://new-kokumin.jp/news/business/2021\\_1209-3](https://new-kokumin.jp/news/business/2021_1209-3)
- 19 Half of total seats in the House will be 124, but there will be one additional seat up for election in the Kanagawa Prefectural Constituency to fill a vacancy. This makes a total of 125 seats up for election in summer 2022. This also assumes LDP wins a by-election in Ishikawa prefecture in April 2022.
- 20 At present, the DPFP is proceeding with strengthening its relationship with the Tomin First no Kai (Tokyoites First Party) for the HC election in the summer, but the Tokyoites First Party does not have any seats in the Diet at present.
- 21 CDP Secretary-General Chinami Nishimura's Press Conference December 14, 2021 [https://cdp-japan.jp/news/20211214\\_2735](https://cdp-japan.jp/news/20211214_2735)
- 22 Nikkei Shimbun Newspaper LDP Keiji Furuya Interview (自民・古屋圭司氏「国民投票、次期衆院選までに」 憲法改正を聞く①) January 14, 2022 <https://www.nikkei.com/article/DGXZQOUA125D20S2A110C2000000/>
- 23 PM Office PM Fumio Kishida's Address on General Policy for 208<sup>th</sup> Diet Session (第 二百八回国会における岸田内閣総理大臣施政方針演説) Jan 17, 2022 [https://www.kantei.go.jp/jp/101\\_kishida/statement/2022/0117shiseihoshin.html](https://www.kantei.go.jp/jp/101_kishida/statement/2022/0117shiseihoshin.html)
- 24 Article 47 of Act on National Referendum to Amend the Constitution (日本国憲法の改正手続に関する法律) September 18, 2021 (revised) <https://elaws.e-gov.go.jp/document?lawid=419AC1000000051>
- 25 Yomiuri Shimbun Opinion Poll (憲法改正「賛成」上昇56%、緊急事態対応「明記を」6割…読売世論調査) May 3, 2021 <https://www.yomiuri.co.jp/election/yoron-chosa/20210502-OYT1T50187/>
- 26 HR Minutes of the Committee on Rules and Administration April 27, 2009 <https://kokkai.ndl.go.jp/txt/117104024X03120090427/8>

(All the links accessed on February 3, 2022)



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