

# Unconditional Surrender, the Emperor and the Tokyo Trial: Implications for the Present-Day Japan-US Alliance

Kazuhiko TOGO

無条件降伏・天皇・東京裁判：  
現在の日米同盟に対して有する意味合い

東郷和彦

## <Abstract>

In August 1945, when Japan was on the brink of total defeat, opinions among Japanese top leaders on when and how to surrender were divided, although everyone agreed that one condition would have to be met before any surrender: the preservation of the Imperial House. The Potsdam Declaration had been formulated in such a manner that this issue was left ambiguous. The final US reply, however, allowed sufficient room for the interpretation that the Imperial House would be preserved. So the Japanese Government surrendered. Since the surrender was only based on this interpretation, the defeated Government's immediate efforts were concentrated on realizing this condition through the establishment of a new Constitution (Article One) and the Tokyo Trial (not indicting the Emperor). Thus the final and only condition of the falling Empire was met. However, the crucial aspect of "honoring the commitment" was forgotten through a prevailing notion that Japan had made an unconditional surrender and that the US occupation was using the Emperor for the expediency of its occupation policy. After the signing of the San Francisco Peace Treaty even the Japanese Government itself began to acknowledge that Japan had indeed made an unconditional surrender. It is time to go back into history and recall this forgotten commitment in order to consolidate the contemporary Japan-US alliance.

## Introduction

How and why did Japan surrender to the Allied Powers in August 1945, and what were the implications for post-WWII politics in Japan and the international situation in Asia and the Pacific? This is an issue still hotly

debated among politicians, opinion leaders, intellectuals and the general public in Japan, the US and indeed around the world. “Who argued what, what was the cause of their contentions, and what were the political consequences of their thinking?”—these unresolved issues are all connected to WWII. The memory of war does not wane easily in any country, and the way it is remembered may have a serious impact on contemporary politics, as we will examine in this paper.

This paper first addresses the way in which the Japanese Government, while accepting surrender, refuted *unconditional* surrender, and thus tried to preserve its *kokutai* (the term *kokutai* is commonly translated as “national polity” in English. For the purpose of this paper, however, it will be understood as signifying the role of the Imperial House in Japanese politics).

We will then investigate how the Japanese Government in the first year of the post-war period fought for the preservation of the imperial system and the protection of Emperor Showa’s honor, while preparing the Tokyo Trial (or the “International Military Tribunal for the Far East”, as it was officially known; 1946–1948) and formulating the Constitution. The occupation forces, in turn, adopted a policy of preserving the imperial system and Emperor Showa, despite their widely accepted notion that Japan had made an unconditional surrender. The protection of the Emperor came with the dual aspect of the “expediency” of the occupation and the “acknowledgment of the commitment” made. This paper focuses on the subtlety of this duality.

Following this, the paper will look at the concluding period of the occupation, when the most honorable aspect of this acknowledgment was forgotten by both Japan and the US.

The paper concludes by highlighting the importance of recalling this forgotten commitment for the consolidation of the contemporary Japan-US alliance.

## **1. Japan’s Surrender and the Preservation of the National Polity**

### ***1.1. US and Japanese Positions on Unconditional Surrender***

President Roosevelt had made clear at the Casablanca Conference held from 14 to 23 January 1943 that Japan would have to accept unconditional surrender. Nothing was said about this in the communiqué, but at the press conference Roosevelt stated that the Allies should demand unconditional surrender, requesting that the press corps refer to this conference as the “conference of unconditional surrender”. Apparently this presidential decision came as a surprise to the State Department. Secretary of State Cordell Hull was principally against unconditional surrender. Still, the State Department had to follow the President’s approach, while trying to persuade him to explain the underlying meaning of unconditional surrender.<sup>1)</sup>

There is no evidence that President Roosevelt provided any clear guidance on this issue to the State Department before he passed away in April 1945. Professor of Japanese history Robert Butow analyzed that the State Department had paid special attention to influencing the enemy's psychology, so that the majority of Japanese leaders would accept the unconditional surrender, even if a minority in the military would resist it. As a matter of fact, when President Truman pronounced his message on May 8, 1945, to commemorate the German surrender, he confined his statement to: "until the Japanese Army and Navy accept unconditional surrender and leave their weapons we will keep on fighting."<sup>22</sup> So it was "the Army and Navy" which had to surrender, not "the state of Japan". For the Japanese leaders, this was much easier to swallow than the state of Japan being forced to surrender. Thus began the process of defining unconditional surrender in US terms. Still, the exact meaning of unconditional surrender was left vague. Especially the key issue of Japanese polity was not touched upon. A Japanese MOFA research paper dated to December 1949 wrote that Colonel Zakharias, a spokesman of the US Government broadcast fourteen messages vis-à-vis Japan since President Truman's statement on May 8, to the effect that "unconditional surrender is a way of ending the war by accepting the terms without allowing one to make a counterargument. The content of the terms has already been made clear by the Atlantic Charter or the Cairo Declaration."<sup>23</sup>

All Japanese documents from the Spring of 1945 up to the surrender indicate that the issue of unconditional surrender was seen as extremely important and highly sensitive. The Suzuki Cabinet had begun to gather their thoughts toward surrender. Tense debates followed on May 11, 12 and 14, in an exclusive meeting of six top leaders, namely Prime Minister Kantaro Suzuki, Foreign Minister Shigenori Togo, Minister of War Korechika Anami, Minister of Navy Mitsumasa Yonai, Chief of Staff of the Army Yoshijiro Umezu, and Chief of Staff of the Navy Toyojiro Toyoda. Their principal theme of deliberation was preventing a Russian intervention in the war, and, if possible, mediation by the Soviet Union. Based on their agreement, negotiations started between Hirota, the former Prime Minister who had been appointed as Japan's special representative, and Soviet Ambassador Malik in early June. On June 22, a special meeting of the six top leaders convened by the Emperor was held, during which the latter expressed his wish to end the war as soon as possible. This move culminated in the dispatch of a confidential cable on July 13 about sending former Prime Minister Fimimaro Konoe to Moscow on behalf of the Emperor to discuss surrender. Foreign Minister Shigenori Togo wrote in his memoir that everyone in Tokyo was seeking surrender, which may be "close to unconditional, but preferably with some conditions."<sup>24</sup> Togo further left in his memoir an unfinished part within brackets underlying the importance of the issue of unconditional surrender: "The US repeatedly broadcast that it shall seek unconditional surrender or that Japan will soon ask for unconditional surrender. But Japan was not in a position to make an unconditional surrender (There

is a need to expand in detail that unconditional surrender became an obstacle for surrender)".<sup>5)</sup> Before sending Konoe to Moscow, Togo told him that "unconditional surrender does not suit, but there is no option but to agree to something close to it." Konoe agreed.<sup>6)</sup>

When trying to determine the nature of Japanese thinking on unconditional surrender, much can be learned from the cables exchanged between Foreign Minister Togo and Ambassador Sato in Moscow. Having received the instruction to send Konoe to Moscow on July 13, Sato sent back a very important cable to Tokyo on July 15, indicating that there were no prospects for a negotiated peace through the Soviet Union and that "since Japan genuinely wants to end the war, there is no other option than accepting peace by unconditional surrender or by conditions close to it."<sup>7)</sup> This message seems to have irritated Togo and he replied on July 17 that "if the US and Great Britain will acknowledge the honor and existence of Japan, Japan is prepared to end the war, but if the enemy dares to insist on unconditional surrender, Japan in its entirety is determined to fight resolutely."<sup>8)</sup> Sato replied back on July 18 that "there is no problem that what I refer to as peace based on unconditional surrender or something close to it will exclude the issue of the preservation of national polity, and in our demarche toward the Soviet Union, the issue of national polity must without fail be conveyed as an absolute desire of seventy million Japanese."<sup>9)</sup> The historic cable written by Sato on July 20 that Japan should make an all-out effort to surrender stated again that "the peace that I propose is to accept practically all conditions other than those related to the preservation of national polity."<sup>10)</sup> According to the analysis by Tsuyoshi Hasegawa Togo's intention was to end the war with the sole condition to preserve the Imperial House, but due to the faulty translation of his cable in the Magic decoding system the message was interpreted as if Togo refused the unconditional surrender as qualified by Sato.<sup>11)</sup> If that were the case, this was simply unfortunate, to say the least. All in all, the Japanese leadership pushing Japan toward surrender was united in the viewpoint that the preservation of national polity would be the sole condition which Japan was going to insist on at the surrender.<sup>12)</sup>

### ***1.2. The Potsdam Declaration and Japan's Initial Reaction***

How the drafting of the Potsdam Declaration came about is now well known.<sup>13)</sup> Why it happened this way is less known. On July 2 Secretary of War Henry Stimson forwarded his proposal to make Japan surrender. This proposal included the famous sentence that "This [responsible government] may include a constitutional monarchy under the present dynasty if it be shown to the complete satisfaction of the world that such a government will never again aspire to aggression."<sup>14)</sup> His view was supported by Joseph C. Grew, James Forrestal, William D. Leahy, John J. McCloy, and possibly George C. Marshall.<sup>15)</sup> But the Joint Strategic Survey Committee did not approve Stimson's draft and the final version of the Declaration further undermined the impression that Japanese national

polity would be preserved. According to Hasegawa the source of this initiative to undermine Stimson's draft remains a mystery.<sup>16)</sup> The Potsdam Declaration was finalized on July 24 and issued on July 26. The key three paragraphs read as follows: "(5) Following are our terms. We will not deviate from them. There are no alternatives. We shall brook no delay. (12) The occupying forces of the Allies shall be withdrawn from Japan as soon as these objectives have been accomplished and there has been established in accordance with the freely expressed will of the Japanese people a peacefully inclined and responsible government. (13) We call upon the Government of Japan to proclaim now the unconditional surrender of all Japanese Armed Forces, and to provide proper and adequate assurances of their good faith in such action. The alternative for Japan is prompt and utter destruction."

Did the Potsdam Declaration demand Japan's unconditional surrender? From the point of view of the US Government, and in accordance with the definition that unconditional surrender means to accept unconditionally those terms (i.e. conditions) which are specified, the Potsdam Declaration did indeed demand unconditional surrender. But this was a mild formulation that avoided the statement that Japan *as a state* should explicitly accept unconditional surrender. According to Paragraph 5 Japan only had to accept the specified terms in the Declaration. Paragraph 13 was the sole paragraph using the term "unconditional surrender", referring only to the Armed Forces. Thus, from the perspective of a strict interpretation of international law, one might argue that the surrender to be made on the basis of the Potsdam Declaration was contractual in nature (or rather, this was argued by the defense counsel during the Tokyo Trial; see below). But since the Potsdam Declaration the US continued to publicly broadcast that it was urging Japan to make an unconditional surrender. From the political perspective this suited US fundamental policy objectives, namely to let the world know that "Japan made an unconditional surrender."

In the Japanese perspective the approach taken by the US to demand from Japan that it would accept the terms prescribed in the Declaration was crucial. The formulation allowed, or at least the Tokyo leadership thought so, that the Declaration did not legally demand Japan to accept explicitly an unconditional surrender *as a state*, and that it just asked Japan to accept what was written in the Declaration, in which the term "unconditional surrender" was used only in relation to the Armed Forces. This not only saved Japan from legal humiliation, but also the fact that it did not legally bind Japan with unconditionality provided the space to put forward the crucial issue of national polity. Thus it was interpreted by the Tokyo leadership, specifically among those fighting to end the war.

Togo immediately saw that the Declaration did not insist on unconditional surrender: "What I immediately felt

was that the phrase ‘Following are our terms’ (Paragraph 5) made it quite clear that it was not requesting unconditional surrender.”<sup>17)</sup> A MOFA analysis written at the time the Declaration was issued pointed toward Paragraph 1, in addition to Paragraphs 5 and 13, which stated that “Japan shall be given an opportunity to end this war,” and that a term such as “surrender”—not to mention “unconditional surrender”—had been avoided.<sup>18)</sup> Since Togo did not believe that the terms offered were non-negotiable, he tried to seek room for improving the terms of surrender, while waiting for a response from Moscow.<sup>19)</sup> In other words, there was no immediate sense of urgency to accept the Declaration.

The confusion that overwhelmed the Japanese Government from July 27 onward in dealing with the Potsdam Declaration is well known. Togo sought to underplay it and buy more time. But on July 28 Suzuki apparently held an ill-fated press conference, stating that he was going to ignore (*mokusatsu*) the Declaration. The Anglophone media then reported that Japan rejected the Declaration. The first atomic bomb was dropped on Hiroshima on August 6. Three days later the Soviet Union attacked, and a second atomic bomb was dropped on Nagasaki.

During the Tokyo Trial Kiyose Ichiro argued that the Declaration was drafted in such a way as to have in substance the appearance of an unconditional surrender; therefore it was hardly possible to consider it as an unconditional surrender in itself. He further quoted a State Department document saying that “the Declaration compels to modify the position previously maintained that the unconditional surrender means a unilateral surrender which has no contractual character, but the “good faith” in Paragraph 13 presupposes the existence of a Japanese Government with contractual responsibility to implement the terms of the Declaration.”<sup>20)</sup> Kiyose also acknowledged that seen from a political perspective US public opinion required the government to press for Japan’s unconditional surrender, and consequently the appearance of “unconditional surrender” was needed.

### ***1.3. The First Imperial Decision to Surrender on August 10, 1945***

In the Japanese historical literature on the Asia-Pacific War August 9, 1945 is commonly known as one of the two “longest days” in Japan’s surrender overture. They refer to the two days when most important decisions concerning the surrender were taken, as the result of imperial decision-making: on August 9 the Potsdam Declaration was accepted, with one condition, and on August 14 James Byrnes’ response was also accepted; Japan surrendered.<sup>21)</sup>

The outline of the key events on August 9 can be summarized as follows:

- The news that the Soviet Union had attacked Manchuria reached Tokyo in the early morning. The Emperor

instructed Koichi Kido, the Lord Keeper of the Privy Seal to talk to Kantaro Suzuki, the Prime Minister, on ending the war at 9:55 AM, and Kido met Suzuki at 10:10 AM.<sup>22)</sup> Everybody was on alert, and the top six meeting began at 10:30 AM,<sup>23)</sup> lasting for about three hours. All agreed to accept the Potsdam Declaration, but there was no agreement on the precise conditions. Togo argued that the conditions should be limited to an absolute minimum, namely the issue of national polity, or more precisely “the preservation of the Imperial House”. Suzuki and Yonai agreed. Anami insisted that three more conditions—limitation of occupied territories, voluntary disarmament, and the punishment of war criminals by Japan—should also be included. Toyoda and Umezu concurred. No agreement was reached.<sup>24)</sup> During this meeting a report came in that a second atomic bomb had hit Nagasaki.<sup>25)</sup>

- In the afternoon, two Cabinet Meetings were held, from 2:30 to 5:30, and from 6:00 to 10:00. Positions varied between those who asserted one condition and those who proposed four.<sup>26)</sup> Meanwhile, outside the Cabinet an important development was taking place among key figures. At 1:30 PM Suzuki met Kido and reported that the meeting had agreed on four conditions, which was quite extraordinary, because there had been no consensus. Still, Kido became convinced that the six top leaders had concluded that Japan should insist on four conditions.<sup>27)</sup> But at 2:45 PM Kido received a phone call from Prince Takamatsu and at 4:00 PM was visited by former Foreign Minister Mamoru Shigemitsu. Both told Kido that insisting on four conditions would lead to the collapse of negotiations. Kido then met with the Emperor from 4:35 till 5:10 PM, and this appears to be the crucial meeting, during which a scenario of ending the war on one condition was finalized.<sup>28)</sup>
- Between 10:50 and 11:50 PM Suzuki and Kido met the Emperor together or separately, possibly more than once. The Emperor must have been fully informed when an extended top six meeting with him being present was held at 12:03. Hisatsune Sakomizu, Chief Secretary to the Prime Minister, has left a vivid account on how the text of the Potsdam Declaration, the proposal regarding one condition and the one listing four conditions were displayed on the table.<sup>29)</sup> Togo maintained that the only crucial condition was the “Emperor’s status within national laws”. When and how this expression was modified from “the preservation of the Imperial House” is not clear. Hasegawa speculated that the modification could have taken place at the 4:35–5:10 PM meeting between the Emperor and Kido.<sup>30)</sup> Anami kept insisting on four conditions. Kiichiro Hiranuma, President of the Privy Council, after asking many questions, proposed that the sole condition to be attached should be “the prerogatives of the Emperor as a sovereign ruler”. This was accepted. Finally an imperial decision was taken in support of the Foreign Minister’s view.
- Thus the Potsdam Declaration was accepted in the early morning of August 10, “on the understanding that it would not compromise any demand which would prejudice the prerogatives of the Emperor as a sovereign

ruler.”

Revisiting the complex and tense developments on August 9–10, two things clearly come to the surface. First, not one man in the room was ready to accept unconditional surrender. MOFA’s experts in formulating Japan’s acceptance of the Declaration avoided the use of the word “condition”, writing “understanding” instead. They must have felt that the use of the word “condition” could have been seen as provocative. However, what they essentially intended to propose was a “condition” after all. In a situation where the Soviets were advancing relentlessly, and there existed the imminent risk of a third nuclear bomb, Japanese leadership still insisted on one condition, namely the preservation of national polity. Second, in formulating this national polity, three expressions were considered: “the preservation of the Imperial House”, “the Emperor’s status within national laws”, and “the prerogatives of the Emperor as a sovereign ruler”. Ultimately the last and most encompassing formulation was used, but in the mind of at least some of Japan’s leaders the bare minimum was “the preservation of the Imperial House”.

#### ***1.4. The Second Imperial Decision to Surrender on August 14, 1945***

The US response to Japan’s reply to the Potsdam Declaration was first broadcast in the early morning of August 12. As is well known, it consisted of two major points: “from the moment of surrender the authority of the Emperor and the Japanese Government to rule the state shall be subject to the Supreme Commander of the Allied Powers (Paragraph 2)”, and: “the ultimate form of government of Japan shall be established by the freely expressed will of the Japanese people (Paragraph 4)”. In discussing Japan’s reply Hasegawa maintained that Stimson, Forrester, and Leahy had argued for the immediate acceptance of Japan’s reply. Byrnes, however, ventured the opinion that the Potsdam Declaration should be accepted unconditionally. Forrester then suggested a compromise: “We might in our reply indicate willingness to accept, yet define the terms of surrender in such a manner that the intents and purposes of the Potsdam Declaration would be clearly accomplished.” This compromise was accepted.<sup>31)</sup> Forrester’s compromise was a critically important initiative that would define the nature of Byrnes’ response. As was explained by Hasegawa, Byrnes’ response “did not rule out the possibility of retaining the Emperor, but also remained silent on the fate of the Emperor and the Imperial House.”<sup>32)</sup> It did not accept Japan’s reply, but it did not deny the reply either. In fact, it prepared the ground to dissociate Japanese fundamentalists and to leave room for Japanese leaders who advocated surrender to defend the Declaration, while preserving minimum honor.

In this connection Yutaka Sugawara gave an interesting background analysis of US policy formation. At the State



Department the pro-China leftists such as Owen Latimore and others maintained that the imperial system should be abolished, but they were opposed by the Japan-hands led by Grew, who asserted that the imperial system would not become an obstacle to Japan's democratization and therefore should be preserved. At the time of Japan's surrender the first group was more influential. However, at the War Department Stimson and others asserted that the preservation of the imperial system and the position of the Emperor would be the most effective way toward Japan's surrender. The Potsdam Declaration and Byrnes' response were the result of a compromise reached between the two departments.<sup>33)</sup>

When we look at Japan's final reply to Byrnes' response, we can now see that it produced exactly the expected result.

- Byrnes' reply was first aired in the morning of August 12, and Umezu and Toyoda briefed the Emperor at 8:40 AM that this was tantamount to unconditional surrender and therefore must be rejected.<sup>34)</sup> Togo, after consulting the MOFA leadership, briefed the Emperor at 11:05 AM, and the latter agreed to accept the reply as transmitted. The Emperor met with Kido for a short while at 11:47 AM,<sup>35)</sup> and again at 2:37 PM, apparently stating that "there is no problem in accepting Paragraph 4."<sup>36)</sup> At 3:00 PM on August 12 a provisional Cabinet Meeting was held. Togo's main contention was that "it cannot be helped that the ruling right of the Japanese Government will be subject to the occupying forces. The most contentious part is Paragraph 4, but if the future of Japan's political form is decided by the will of the Japanese people, I cannot believe that the majority of the Japanese people would want to modify the essence of national polity."<sup>37)</sup> Anami argued that Byrnes' reply could not be accepted. Togo objected, but Suzuki sided with Anami, whereupon Togo exploded. In this confusion the men agreed to wait until the arrival of the official reply. In the evening Kido spoke to Suzuki and they reached an agreement that accepting Byrnes' reply was the only solution.<sup>38)</sup>
- The official reply arrived in the evening of August 12, but MOFA officials made it appear to have arrived only in the early morning of August 13. The top six meeting was held at 8:30 AM. As in the previous debate on the Potsdam Declaration, Suzuki-Togo-Yonai favored the acceptance of Byrnes' reply, whereas Anami-Umezu-Toyoda maintained its rejection. The Cabinet met from 4:00 PM to 7:00 PM. Of the fifteen members twelve agreed with Togo. Three members disagreed. Suzuki concluded that he would seek the Emperor's view.<sup>39)</sup>
- On August 14 the second "longest day" started. At 8:30 AM the Emperor met with Kido and firmly stated that it was his will to end the war. Another meeting between the Emperor and Suzuki-Kido followed, and an arrangement was made to hold a full Cabinet Meeting at 10:30, at which the Chiefs of Staff of the Army and

Navy as well as the Emperor would be present. The meeting began at 11:02 AM.<sup>40)</sup> At this last conference Suzuki introduced Togo's views and of those of his opponents, giving the floor to Umezu, Toyoda and Anami, and asking the Emperor to decide.<sup>41)</sup> The latter decided to accept the Byrnes' reply and then stated the following on the question of national polity: "It is argued that there are several doubts on the issue of the national polity, but through my reading of the intention of this reply, I interpret that the other side has a fair amount of good will. There is a reason to consider that there exists a slight uncertainty in their position, but I do not want to doubt. The essence is the conviction and determination of our people, and therefore I think that we can accept their reply. I expect that all of you shall consider the same."<sup>42)</sup> In his analysis Suzuki Tamon emphasizes the trust felt in the American Government and the Japanese people as well as the distrust of the Japanese military.<sup>43)</sup>

Thus the entire internal process of surrender finally boiled down to the issue of national polity. Again, as was the case with the first decision on August 10, nobody agreed on unconditional surrender. The Emperor and the Japanese leadership were aware that the expression used in Byrnes' reply was not a clear-cut guarantee of the preservation of the Imperial House. But they managed to convince themselves that the future of national polity would be preserved, because if the Japanese people would be given the opportunity to freely express their will, they would not choose otherwise. However, since Byrnes' reply was indirect, would the outcome of the freely expressed will of the Japanese people not remain ambiguous? Assuming that they would choose the preservation of national polity, what exactly would this mean: "the preservation of the Imperial House", "the Emperor's status within national laws", or "the prerogatives of the Emperor as a sovereign ruler"?

### ***1.5. Final Surrender on August 14 and September 2, 1945***

At 11:00 PM on August 14, 1945 the Imperial Prescript was declared. The term "national polity" appears twice in the last paragraph: "Having preserved the national polity and trusting the sincerity of loyal citizens, I shall be always with you trusted citizens." Having outlined the task for the future, the Prescript concluded that "[we must] express in full the essence of national polity and ensure that we will not retard from the development of the world." Simultaneously a cable was dispatched from Foreign Minister Togo to the Japanese Ambassador in Switzerland to convey the following to the US Government and hence to the Governments of GB, the SU and China: "...1. His Majesty the Emperor has issued an Imperial Prescript regarding Japan's acceptance of the provisions of the Potsdam Declaration. 2. His Majesty the Emperor is prepared to authorize and ensure the signature by His Government and the Imperial General Headquarters of the necessary terms for carrying out the provisions of the Potsdam Declaration...." The Imperial Prescript, as recorded by the Emperor himself, was

broadcast at noon of August 15, 1945.<sup>44)</sup>

The Imperial Prescript thus became the key document for Japan's surrender. Re-reading it today, the underlying message seems to be clear. It was pronounced with the conviction that national polity would be preserved in the process of surrender, and also after the surrender.

The formal Instrument of Surrender was signed on September 2, but it did not embody the conviction pronounced in the Imperial Prescript of August 14. It reflected rather the process leading toward capitulation on the US side, as we discussed above. The Instrument was signed by Shigemitsu and Umezumi, and accepted and signed by Douglas MacArthur and other representatives of the Allies. The key paragraphs of the Instrument read as follows: "We hereby proclaim the unconditional surrender to the Allied Powers of the Japanese Imperial General Headquarters and of all Japanese Armed Forces and all Armed Forces under Japanese control wherever situated (Paragraph 2)", "The authority of the Emperor and the Japanese Government to rule the state shall be subject to the Supreme Commander for the Allied Powers who will take such steps as he deems proper to effectuate these terms of surrender (Final Paragraph)". The dual nature of the Potsdam Declaration was therefore reflected well in the Instrument of Surrender. On the one hand, the term "unconditional surrender" was solely used in relation to the Japanese Armed Forces. There was nothing which explicitly bound Japan to "unconditional surrender" *as a state*. The Potsdam Declaration itself was an assembly of "terms", and MacArthur's authority was limited to effectuate these terms, as was explicitly stated. Thus the legal contention that the Japanese surrender was not unconditional was not negated. But on the other hand, the key part related to Japan's national polity, namely that the future of Japan would be decided by the freely expressed will of the Japanese people, was not quoted directly. Because the Instrument of Surrender did not include any additional conditionality other than the "terms of the Potsdam Declaration", it left room for the political interpretation that "Japan had unconditionally accepted the Potsdam Declaration". This is probably the moment that the duality of the Potsdam Declaration became irreversible. Hence, the occupation period of seven years, particularly the first year, became crucial to determine whether the question of national polity would be resolved in a way to satisfy the final will of Imperial Japan.

## **2. The Initial Year under Occupation**

### ***2.1. Unconditional Surrender or Not***

Seen from the Japanese side the US occupation policy seems to have been implemented exactly on the basis of what they had achieved at Japan's surrender on September 2, 1945. That was to maintain, in a legalistic sense, the

nature of the surrender, which might be interpreted as contractual, in the sense that Japan accepted the “terms” of the Declaration and that the existence of the Japanese Government was not denied (this was precisely the argument advanced by the defense counsel at the Tokyo Trial). As we will see below, whether Japan’s national polity would be preserved, as requested by the surrendering Japanese Government, or not, remained to be seen. But from the theoretical and legalistic point of view, the contractual nature of the Potsdam Declaration was not negated. In fact, in its strive to bring justice to the war criminals, the State Department apparently utilized the contractual nature of the Potsdam Declaration to create the basis for the Tokyo Trial. Higurashi has argued that “in the analysis of the State Department as a result of Japan’s acceptance of the Potsdam Declaration “contractual relations” had been created between Japan and the Allied Powers in accordance with international law. The State Department interpreted that within the category “all war criminals” described in Paragraph 10 of the Potsdam Declaration, in addition to the traditional war criminals, those responsible for starting the war should also be included. For Japan, the basis for accepting this view would be the contractual nature of the Potsdam Declaration.”<sup>45)</sup>

At the same time, Charles Louis Kades, Deputy-Chief of the Government Section, later testified that there was no one working at the Government Section of the GHQ who considered that post-war political reform was based on contractual relations, because everyone thought that Japan had made an unconditional surrender. From the point of view of an effective US occupation a surrender that had been made unconditionally suited much better.<sup>46)</sup> In fact, on September 6, 1945, immediately after the signing of the Instrument of Surrender, Truman sent a confidential instruction to MacArthur (JCS1380/6=SWNCC18/12), stating that “our relationship with Japan does not stand on a contractual basis, but is based on unconditional surrender. Your power is supreme, and you shall not be subject to any objection from the Japanese side.”<sup>47)</sup> The political image of “unconditional surrender” was fully amplified in order to show the Japanese people that Japan was defeated with no power available to oppose the occupying forces.

## ***2.2. The Role of the Emperor during the Occupation***

On the US side, and unconditional surrender or not, the occupation forces under General MacArthur began to exploit the utility and underlying power of the Emperor. Brigadier General Bonner Fellers, Chief of Psychological Operations, became the architect for MacArthur’s operation. Herbert Bix described how this occupation policy came to be formulated prior to the occupation: “A month earlier, between April and July 1945, MacArthur and Fellers had worked out their own approach to occupying and reforming Japan....Japanese military leaders alone bore responsibility for the war, and the Emperor, the “moderates” around the throne, and the people had been

totally deceived by them....Code-named Operation Blacklist, the plan turned on separating Hirohito from the militarists, retaining him as a constitutional monarch but only as a figurehead, and using him to bring about a great spiritual transformation of the Japanese people....as MacArthur was under Potsdam Declaration orders to mete out stern punishment to war criminals, Hirohito's innocence should be established before the machinery for implementing that aspect of the Declaration was set up....Thus at the very beginning of the occupation the Japanese defensive strategy for protecting *kokutai* and MacArthur's occupation strategy coincided.<sup>48)</sup> The same view had been developed during the last stage of arranging Japan's surrender, when Colonel De Forest Van Slyck submitted a Memorandum to Secretary of War Stimson on August 2, 1945, clearly recommending that the Emperor and the civil administration must be preserved. Stimson applauded this memorandum and circulated it to Marshall, McCloy and Grew to ensure that its content would be reflected in US occupation policy.<sup>49)</sup>

On October 2 Fellers submitted a key memorandum to MacArthur which outlined their policy for protecting and using the Emperor. Since this document is a clear reflection of the thoughts entertained by the occupation forces, John Dower reproduced it in full in his seminal work *Embracing Defeat*. The gist of this memorandum can be summarized as follows: "The Emperor is the living symbol of the race and loyalty to him is absolute. To try him as a war criminal would not only be blasphemous but also a denial of spiritual freedom. It is a fundamental American concept that the people of any nation have the inherent right to choose their own government. Were the Japanese given this opportunity, they would select the Emperor as the symbolic head of state. To the Japanese, to try him for war crimes would amount to a breach of faith. Moreover, the Japanese feel that unconditional surrender as outlined in the Potsdam Declaration meant preservation of the structure of the State, which includes the Emperor. If the Emperor were tried for war crimes, the governmental structure would collapse and a general uprising would be inevitable. The people will uncomplainingly stand any other humiliation. In the long run it is of paramount, national importance that Japan harbor no lasting resentment."<sup>50)</sup> Hisahiko Okazaki also made a succinct summary in his narrative of *Yoshida Shigeru and his Era*, qualifying it as a brilliant analysis.<sup>51)</sup>

On the Japanese side Sakomizu, though resentful from the perspective of the occupied side, gave a parallel analysis of the situation: "the contractual nature of the Potsdam Declaration was ignored and an impression that Japan had made an unconditional surrender overwhelmed the minds of the occupiers and occupied; but in reality some gist of the Japanese Government was preserved and the American side mostly used the format of "recommendations" rather than "orders"; the US tried to create a new Japan completely cut off from the past as if they were reborn from scratch, but it vehemently opposed the abolition of the imperial system."<sup>52)</sup>

But how did the Japanese people react? This is an issue which requires careful analysis. On the one hand, the pre-war societal consensus that the Emperor was an absolute existence completely beyond any criticism was

gone. An entirely new social phenomenon emerged, namely that people started to talk freely about the Emperor, in some cases accusing him of not taking responsibility for Japan's defeat. Dower's *Embracing Defeat* probably provides one of the most compelling narratives of the dramatic changes that had occurred among the Japanese people.<sup>53)</sup> Eiji Oguma, in his seminal work *Minshuto Aikoku*, introduced the diary of young soldier, Kiyoshi Watanabe, from September 1945 till June 1946, when his view toward the Emperor changed from absolute respect to disappointment and eventually a sense of betrayal, because he was not taking any responsibility for the defeat.<sup>54)</sup>

And yet, despite these extraordinary changes, the general and overall mood of the Japanese public was still one of respect and affection toward the Emperor. Herbert Bix, who is probably one of the most serious critics of Emperor Showa's not taking any responsibility for the misery that had occurred during his reign, vividly described how Hirohito generally commanded wide support not only among the Japanese leadership, but also among the people. Bix reported on the Emperor's first trip to Ise and Kyoto on November 12-14, where he was warmly received: "Wherever the Emperor appeared in Ise and Kyoto, he was warmly welcomed....Even though the mystique of the throne had been punctured by defeat, his subjects remained loyal, and many still regarded him as sacred and inviolable."<sup>55)</sup> On January 1 Hirohito announced his first-ever New Year's Prescript to the nation, popularly known as the "Declaration of Humanity". Some basic ideas laid down in the Prescript were first formulated by the GHQ, and transmitted to Prime Minister Kijuro Shidehara, who then conferred with Hirohito, and discussed it at the Cabinet, after which it was finalized. The most important contribution made by Hirohito was a reference to the Five Oath Principles.<sup>56)</sup> Though some extremist Shinto theologians loathed the Declaration,<sup>57)</sup> it was generally received positively both in Japan and the US. Shidehara wrote a powerful commentary on the Prescript in *Asahi*, explaining how the democratic tradition which started from the early Meiji had been hampered by the reactionaries, and would now be revived in a society built on democracy, pacifism and rationalism. "A way now opened for the Japanese people to see their relationship with their sovereign in a different light. The New Year's Prescript made a deep impact and contributed to reshaping the Emperor's image."<sup>58)</sup> In the April 1946 edition of *Sekai* Sokichi Tsuda wrote an article that was widely read, and came to be recognized as the earliest full-blown defense of the new monarchy. Tsuda argued that the Emperor was compatible with democracy, and that throughout most of Japanese recorded history, power and authority had always been divided between the Emperor and the ruling class: "The Japanese Imperial House was generated from within the Japanese and unified them."<sup>59)</sup> Bix concluded that "at the deepest levels of national identity, emperorism retained its hold over the minds of many Japanese."<sup>60)</sup>

One of the rare public opinion polls was taken from January 23 to February 15, 1948 by the Prime Minister's office about the establishment of national holidays. Out of 6,097 responses 5,285 (86.7%) favored the Emperor's

birthday as a national holiday, which was the second highest figure next to the one for the supporters of the new year holiday (6,094, or 99.9%), followed by state founding day, which commanded 5.4% less support (4,985, or 81.3%).<sup>61)</sup>

The major trend among the leadership and the public was to maintain the imperial system. Esteem for the Emperor was generally shared. However, in the initial half year or so after the surrender the question of Emperor Showa's abdication, viewed as distinct from the preservation of the system, was seriously considered and discussed. Some maintained that Emperor Showa should abdicate to maintain the imperial system, e.g. within the imperial family itself and among scholars, including Prince Konoe and Shigeru Nanbara. Others strongly disagreed with this view. Many in the Japanese Government were against.<sup>62)</sup> The Emperor himself often did speak of his abdication, a month and half or so after the August 15 surrender.<sup>63)</sup> But the debate on abdication gradually gave way to another concern: how would the Emperor be treated at the forthcoming trial of the war criminals? Despite everything that happened at the concluding period of the war from July to August, would he be really spared from persecution? This issue, as well as the status he would acquire in the new Japanese political system, the foundation of which was to be determined in the Constitution, became the focal point of attention during the initial year of the occupation.

### ***2.3. The Tokyo Trial and the Emperor: September 1945-January 1946***

As was seen above MacArthur, Fellers and the occupation staff which was working under him utilized the imperial authority for the smooth implementation of the occupation. Herbert Bix described how Operation Blacklist started: "Immediately on landing in Japan, Fellers went to work to protect Hirohito from the role he had played during and at the end of the war....Fellers conducted private interrogations of about forty Japanese war leaders, including many who would later be charged as the most important Class A war criminals....Soon the prosecuting attorneys found the war leaders all saying virtually the same thing. The Emperor had acted heroically and single-handedly to end the war."<sup>64)</sup> The Japanese record shows that—Operation Blacklist or not—there was unanimity among the leadership to protect the Emperor: "Naturally the ministers and bureaucrats who belonged to the so-called Emperor First (*Gyokutaiha*), General Hatsutarō Haraguchi, friend of General Robert Laurence Eichelberger, General Kichisaburo Nomura, former Ambassador to the US, Major-General Ryukichi Tanaka, who approached the prosecution; everyone did his best to protect the Emperor in person....All those who were indicted had made a desperate plea that the trial should not affect the Emperor....Later General Toshiro Obata, who was deeply concerned about this issue, often told me that: 'Every spirited former members of the Armed Forces keep quiet like silent wood. But they are watching how the situation is developing. Should the prosecution lay their

hand on the Emperor, Japan shall return to the pre-occupation period and an uncontrollable situation would arise.”<sup>65)</sup>

The Emperor’s meeting with General MacArthur on September 27 was another decisive moment that helped the latter decide to keep the Emperor away from the Tokyo Trial. Later comments on this crucial meeting are numerous, yet none appears to be perfectly authentic, although authors seem to agree that after the meeting MacArthur’s feeling toward the Emperor had improved considerably. What is written in his memoir is telling, at least from the point of view of gauging MacArthur’s view on the meeting: “The Emperor spoke: ‘I, as a person who is solely responsible for what my people did on political and military fronts, have come to see you to entrust myself to the judgment of the countries which you represent.’ I was deeply moved.”<sup>66)</sup> Fellers’ memorandum (for which see above) was formulated on October 2.

But the justice to be brought to the war criminals was an issue which went beyond the expediency of the occupation policy. The position of the Emperor in the context of the forthcoming trial was not that certain. Despite the preparatory work by Colonel Van Slyck (as described above) Washington’s position on dealing with the Emperor was more cautious. Yuma Totani has argued that Washington’s policy regarding the Emperor was based on the same ambiguity that was seen in the process of finalizing the Japanese surrender, namely not to say “yes” or “no” to the request made by the surrendering Japanese Government to preserve Japan’s national polity. Therefore as early as September 12, 1945 the Subcommittee for the Far East (SFE) under the State-War-Navy Coordinating Committee (SWNCC) issued a directive to MacArthur, stating that: “You will take no action against the Emperor as a war criminal pending the receipt of a special directive concerning his treatment.”<sup>67)</sup> This policy of ambiguity at the initial stage of the occupation played an important role in determining the Emperor’s fate at the Tokyo Trial.

The US position on the structure of the Tokyo Trial was formulated by the SFE under the SWNCC in DC, whereas the position of the Allies was discussed in London by the United Nations War Crime Commission (UNWCC). After two months of consideration and debate whether the Tokyo Trial should be conducted in principle under the single direction of the US or by the Allies as a whole, the US perspective prevailed, namely that it should direct the entire process. On October 2 the US SWNCC adopted SWNCC57/3, which consisted of two documents: “US policy on the arrest and punishment of war criminals in the Far East” and “Joint Chief of Staff (JCS) Instruction on confirmation, arrest and trial of suspects of war crimes”. The SWNCC57/3 conferred on MacArthur the right to install the International Military Tribunal for the Far East (IMTFE), establishing its procedure, prosecution, and obligation to execute the judgment. In Paragraph 17 of the JCS Instruction, it was confirmed that until specific



order was given “no measures be taken in relation to the Emperor.”<sup>68)</sup> On October 22 SWNCC approved SWNCC55/6, which authorized MacArthur to collect information confidentially, and report whether Hirohito was responsible for the violation of international law and should be prosecuted as a war criminal or not.<sup>69)</sup> Totani reiterated that on October 29 a message embodying the precise content of SWNCC55/6 was sent to Tokyo.<sup>70)</sup> The American prosecution team arrived in Tokyo on December 6. Kentaro Awaya has analyzed that before their arrival the members of this team were of the opinion that one should prosecute Hirohito, but sometime after they had arrived “there emerged a tacit understanding of not to prosecute the Emperor among the prosecutors.” However, Awaya did not indicate exactly when and how their minds changed. Joseph B. Keenan, the prosecutor representing the US, met MacArthur on December 7, and wrote a letter afterwards. In it he acknowledged the useful role of the Emperor in implementing the occupation policy, so one may speculate that Keenan had accepted MacArthur’s view, which in that case may have been conveyed during this December 7 meeting.<sup>71)</sup>

On January 19, 1946 MacArthur issued a Special Declaration which established the IMTFE, authorized by the SWNCC57/3.<sup>72)</sup> Article 6 prescribed that the official function of the accused should not exempt him from liability. The equivalent clause of the Nuremberg Trial—“whether the Head of State or not”—was omitted, and the omission of this clause was clearly one step toward alleviating the Emperor’s responsibility.<sup>73)</sup> But on January 22, 1946 the JCS transferred to MacArthur a list which was presented at the UNWCC by Australia of sixty-two war criminals, including the Emperor.<sup>74)</sup> The Australian list was originally presented to the UNWCC on January 9, 1946, but member countries could not come to an agreement.<sup>75)</sup> So the list was transmitted to MacArthur through the American channel. Three days after he had received the Australian list, on January 25, 1946, MacArthur sent his famous cable to Eisenhower, Army Chief of Staff, expressing his conviction that Emperor Hirohito was not guilty: “No specific and tangible evidence has been uncovered with regard to [the Emperor’s] exact activities which might connect him in varying degree with the political decisions of the Japanese Empire during the last decade. I have gained the definite impression from as complete a research as was possible to me that his connection with affairs of state up to the time of the end of the war was largely ministerial and automatically responsive to the advice of his councillors...”<sup>76)</sup> It took nearly another three months before the Emperor’s non-indictment was put on a much firmer basis by the Far Eastern Commission (FEC) on April 3.<sup>77)</sup> Still, MacArthur’s position taken on January 25 was a turning point, when people started to consider the issue of the Emperor’s position in the constitutional debate.

#### ***2.4. The Tokyo Trial, the Constitution, and the Emperor: January-April 1946***

In December 1945 the US, Great Britain and the Soviet Union Foreign Ministers met in Moscow, and decided to

establish the FEC as the highest organ to determine the occupation policy of Japan. It was scheduled to be inaugurated in Washington on February 26, 1946, with eleven member countries, namely those countries which had sent judges to the Tokyo Trial.<sup>78)</sup> The Soviet Union, Australia, and New Zealand argued that the imperial system would have to be abolished.<sup>79)</sup> In order to establish a Constitution in which the Imperial House would maintain a hereditary system under MacArthur's exclusive authority, the fundamental structure of this Constitution would have to be established before the FEC could start its operation. There was very little time left for MacArthur.

Recent scholarship has indicated that the meeting between Shidehara and MacArthur on January 24, 1946 played a decisive role in shaping the fundamental structure of the Constitution. Some scholars believe that during this meeting Shidehara proposed that the Constitution should guarantee the imperial system and also include a fundamentally pacifist clause and that MacArthur wholeheartedly agreed.<sup>80)</sup> Others argue that Shidehara could never have proposed such a clause, and that MacArthur may well have told Shidehara that a pacifist Constitution was really necessary to protect the Emperor.<sup>81)</sup> Whatever happened between MacArthur and Shidehara on January 24, on the following day MacArthur sent his cable to Eisenhower not to prosecute the Emperor.

On February 1 Kades sent a memo to MacArthur saying that prior to the inauguration of the FEC, he had full authority to help Japan establish a new Constitution. On the same day a Japanese draft prepared by the Matsumoto Committee was leaked to Mainichi, but the GHQ believed that the Japanese side would not be able to come up with a Constitution incorporating a radical pacifist change.<sup>82)</sup> On February 3 MacArthur handed to Courtney Whitney, Chief of Government Section, three principles to be incorporated in the Constitution:

1. The Emperor shall be Head of State. The throne is hereditary. The Emperor's right and obligation shall be implemented based on the Constitution and be responsible to the fundamental will of the people as prescribed by the Constitution;
2. War as sovereign right of belligerency shall be abolished;
3. Japanese feudalism shall be abolished.<sup>83)</sup>

Between February 3 and 10 the GHQ worked out its own draft. Kades redrafted the second principle on pacifism to just the relinquishment of war of aggression. His draft was transmitted to Joji Matsumoto, Minister of State and Chairman of the Constitutional Problems Investigation Committee, and Foreign Minister Shigeru Yoshida on February 13.<sup>84)</sup> Kades also changed the Emperor's position from MacArthur's "Head of State" to "Symbol", apparently trying to find an expression which would be easier to accept for those Allies who maintained that the

imperial system should be abolished.<sup>85)</sup> This “symbolization” of the Emperor shocked even Shidehara, and the Cabinet discussion went rough on February 19. Shidehara saw MacArthur again on February 21, and finally a new Japanese draft was formulated on March 2, and—after full approval by the Emperor on March 5—published on March 6.<sup>86)</sup> According to this promulgated draft of the Constitution the preservation of the hereditary imperial system would be guaranteed, which was still a controversial viewpoint at the time.

On the side of the Tokyo Trial the FEC, after having been established on February 26 as scheduled, decided to examine the “policy paper” of the SWNCC57/3. On April 3 the FEC met in Washington DC for an important discussion. The New Zealand representative, Sir Carl Berendson, raised the issue of Emperor’s culpability and stated that, although he personally had no doubt about his guilt, the New Zealand Government would be willing to support the US policy currently in force. The American representative and Chairman of the FEC, John McCloy, agreed.<sup>87)</sup> Thus, the Excerpt from the Minutes of the Seventh Meeting of the Far Eastern Commission, April 3, 1946, reads as follows: “The Commission approved FEC 007/3, with the understanding that the directive to be forwarded by the US Government to the Supreme Commander would be so worded as to exempt the Japanese Emperor from indictment as a war criminal without direct authorization.”<sup>88)</sup> But on April 8 in Tokyo the Australian Prosecutor Allan Mansfield insisted on indicting the Emperor, and he formally brought up this issue to the International Prosecution Section (IPS). However, the Australian Government then instructed him on April 9 to not formally object, even if the Prosecution decided not to indict the Emperor.<sup>89)</sup> The combined prosecutors chose to defer any conclusive decision, because it was deemed inadvisable to take a vote.<sup>90)</sup> The Soviet prosecution team arrived on April 13, but did not raise the issue of the Emperor’s indictment. Aleksei Kirichenko later analyzed that this was because the Politburo had decided “not to raise the issue of Hirohito’s indictment, but to support any other country’s proposal to that effect.”<sup>91)</sup>

Although the issue was not conclusively resolved, the Emperor’s indictment at the Tokyo Trial became even less plausible from January to April. At the same time the people who were concerned about the protection of the Emperor spared no energy. It is now known that people very close to the Emperor, encouraged by Fellers, visited him five times between March 18 and April 8, soliciting his views on the war, Japanese ruling and his own functioning during his pre-war reign. According to the Emperor he had acted as constitutional monarch except for two occasions, namely the mutiny of February 26, 1936, and the two imperial decisions to end the war in 1945. In a sense, the ensuing monograph was written to answer the question why the Emperor, who could end the war, could not have prevented the war from happening. In 1941 he had acted on advice by others, whereas in 1945 a unique opportunity was offered to him to end the war. This monograph has long been unknown, and it was finally

published only in 1990.<sup>92)</sup> The prosecution finalized the list of the accused on April 21. The Emperor was not included, meaning that MacArthur's intention to save the Emperor from indictment had prevailed.

### 3. The Occupation Period 1946–1952

#### 3.1. *The Constitution Declared*

On November 3, 1946 the Constitution was promulgated and on May 3, 1947 it was implemented. The new Constitution decisively guaranteed the preservation of the Imperial House. In the Sugamo Prison Kido and Shigemitsu had the following conversation, after reading newspaper articles on the Emperor being hailed by the crowd on November 3: "Shigemitsu stated: 'It has now become safe,' at which Kido replied: 'Yes, now it has become all right, I feel that today finally the long struggle is over.'"<sup>93)</sup>

If one defines the gist of Japan's national polity as "the safety or the preservation of the Imperial House" it is hard to deny that the Constitution became the decisive guarantor of the national polity. From the time of the adoption of the new Constitution, many in the Government and Academia have argued that the most important part of Japan's national polity had been preserved under the new Constitution. Sakomizu vividly concluded: "The new constitution has not changed the national polity. It was so indeed....under the Meiji Constitution, the Prime Minister was responsible for the actual policy implementation and the Emperor also followed what was recommended by the Chiefs of Staff of the Army and the Navy....There is no substantive difference between the two Constitutions. The Emperor stays as the tradition of the country. Japan shall stand again as a people with history and tradition."<sup>94)</sup> Masayasu Hosaka has quoted statements by Tokujiro Kanamori, Minister in charge of the Constitution, Tatsuo Sato, a renowned constitutional scholar, and Michio Kinoshita, Emperor's Grand Chamberlain, who all expressed the same view, namely that the new Constitution had succeeded in preserving the true sense of national polity.<sup>95)</sup>

There were diametrically opposing views from two directions, however. One came from the fundamentalists, who asserted that the prerogatives of the Emperor as a sovereign ruler as prescribed by the Meiji Constitution had now been completely denied. Sugawara argued: "Clearly the system of imperial ruling prescribed by the Meiji Constitution was now changed to a new system of people's sovereignty. What Japan requested as the sole and absolute condition in accepting the Potsdam Declaration was totally ignored by the new Constitution and three millennia of Japanese polity had been temporarily extinguished by that Constitution."<sup>96)</sup> Practically the same conclusion was drawn by liberal constitutional scholars who enthusiastically supported the Constitution: "National polity should be understood as the fundamental principle of the imperial system as part of the state

system embodied in the Meiji Constitution. At the time of the surrender the surrendering Government endeavored to maintain the prerogatives of the Emperor as a sovereign ruler, but the new Constitution has completely altered this.<sup>97)</sup> At present, both views may be considered as those of a minority.

### ***3.2. Would the Emperor Be Indicted in the End?***

As discussed above, despite the FEC007/3 dated April 3, 1946, and the exclusion of the Emperor from the list of Class A war criminals on April 21, 1946, the move by the prosecutors to indict the Emperor did not come to a full stop. The final probe into the issue whether the Emperor should be indicted or not in the context of Class A war criminals emerged during the interrogation of Hideki Tojo on December 31, 1947. When asked whether Kido had ever taken action against the Emperor's peaceful will, Tojo replied: "Of course not. To the extent that I know, there was not. Furthermore, it is impossible that Japanese citizens act against the will of the Emperor. It is particularly so if one is an important Government official." This statement carried the potential to shift the attention to the Emperor's responsibility, and by extension, his culpability. On January 5, 1948 Takahiko Kido, son of Kido (who was in prison), explained to Tojo the full risk of this situation and Tojo agreed to modify his statement. On January 6, 1948 Tojo responded to Keenan's question: "In reality His Majesty unwillingly consented to my recommendation and the recommendation from the General Headquarters. The Emperor maintained his peace-loving spirit until the last moment..." MacArthur invited William F. Webb, President of Judges, and Keenan to the GHQ on January 8, 1948, where the decision was made that Tojo's statement should not lead to the indictment of the Emperor.<sup>98)</sup>

### ***3.3. Changing Interpretation of Unconditional Surrender***

In the perspective of those who argued that the preservation of national polity was the sole non-concessionary condition of surrender, the situation toward the end of the year 1946 was reasonably satisfactory. The Emperor was not included in the list of Class A war criminals who were indicted in April. The Constitution promulgated in November guaranteed the continuation of the Imperial House as the symbol of the state. Any further indictment of or appearance by the Emperor at the trial as a witness might not have been entirely excluded, but this possibility was now very remote, particularly after Tojo's reversed statement in January 1948. The Japanese Government and the people who had worked to protect the Emperor and the Imperial House could have argued that Japan was not subdued to unconditional surrender, and that what they achieved was the result of their strenuous fight to realize what they had asked for in August 1945.

But the sequence of events during the occupation period did not move in their direction. Somewhat surprisingly,

the Japanese Government began to acknowledge that Japan had made an unconditional surrender. Prime Minister Yoshida stated during a debate in the Diet on November 26, 1949 that: “Japan has made an unconditional surrender. The US Government thinks that in view of the Potsdam Declaration and other documents, Japan, which has made an unconditional surrender, has no right to assert claims based on the Potsdam Declaration.”<sup>99)</sup> How this statement came about is still unclear. However, one analytical paper from MOFA dated December 14, 1949, provides an interesting insight in the underlying thinking at the Foreign Ministry in this period. The relevant points can be summarized as follows: “[At the time Japan surrendered] a number of retired diplomats and top scholars gathered and debated the reality of surrender by Japan several times. Some argued that Japan’s acceptance of the Potsdam Declaration had been a unilateral action and therefore could be viewed as a new type of unconditional surrender; whereas others argued that it had been a surrender based on contractual agreement. No clear conclusion was drawn. But the US Joint Chief of Staff instructed MacArthur on September 6, 1945 that: ‘your relations with Japan are based on unconditional surrender and not on contractual agreement.’<sup>100)</sup> In the forthcoming Peace Treaty there is no doubt that Japan’s unconditional surrender would be phrased in line with the Italian example.”<sup>101)</sup>

It is interesting to note that MOFA’s thinking was influenced by two factors: Washington’s instruction to MacArthur that Japan’s surrender was unconditional and the Italian example. The same MOFA paper succinctly analyzed the case of Italy: “At the conclusion of the armistice and the submission of the Instrument of Surrender in 1943, not a single notion of “unconditional surrender” was mentioned, but in the Peace Treaty signed three years and a half later it was written that “Italian State had made an unconditional surrender.”<sup>102)</sup> Whatever the process of deliberation, on October 24, 1951 Director General of the Treaties Bureau Kumao Nishimura explained in more detail in the Diet that Japan had made an unconditional surrender: “Unconditional surrender means that Japan made a surrender without attaching any condition to the terms which the victors have proposed. There were many arguments that Japan wanted to surrender with various conditions. But given the situation that the Allies insisted on unconditional surrender in its basic policy of fighting Japan, Japan accepted their proposed conditions without attaching any conditions. This is what unconditional surrender means.”<sup>103)</sup>

## Conclusion

Seen from the perspective of those who considered that Japan had made an unconditional surrender, and that the occupation policy unfolded accordingly, it is fair to argue that the occupation was conducted reasonably successfully. In fact, it was so successful that the Japanese Government itself came to acknowledge that it had made an unconditional surrender. The point so vehemently asserted at the time of surrender, that there was one condition,

namely the preservation of national polity, was withdrawn by the Japanese themselves in retrospect. This could be interpreted as a complete moral victory of the Allies during the latter part of the occupation period, 1949–1951, after their physical victory in 1945.

However, from the point of view of those who insisted that Japan's national polity should be preserved, it is also fair to argue that what they had so ardently sought was realized as well. There was of course the definitional problem of what was national polity. At least for those who defined it as "the preservation of the Imperial House", the new status which the Imperial House had acquired under the 1946 Constitution fulfilled their expectation. The dreaded nightmare, namely that the Emperor would be taken to the seat of the accused or of a witness at the Tokyo Trial, did not materialize. The acknowledgement of "unconditional surrender" by Yoshida and Nishimura was impermissible, but their views were nothing but retroactive historical interpretations. The most important point, the preservation of the Imperial House, was unshakably achieved.

But as the years passed to the sixties and onwards, the inherent contradiction between the two historical interpretations mentioned above began to be unveiled. In an article at the end of the 1970s Jun Eto vehemently claimed that the acceptance of the Potsdam Declaration had not been tantamount to unconditional surrender.<sup>104</sup> This author, Kazuhiko Togo, wrote another article in *Tokyo Shinbun* in August 2009, stating that the surrender which was made in August 1945 simply could not be considered as the acceptance of unconditional surrender.<sup>105</sup> The main motive of Eto's articles, as I see it, or clearly this is my contention, was to probe historical reality and examine how it took shape. However, this approach could easily lead to political consequences. If raising this issue would result in seeding mistrust between the Japanese and US Governments, that is certainly not my intention, and this author believes that this was not the intention of Jun Eto either.

In my opinion there is another fruitful way of looking at the historical events taking place between Japan and the United States between 1945 and 1951. For this, it is fundamental to return to the situation in 1945–1946, when many Japanese only wished to protect the Emperor, having the firm conviction that the acceptance of the Potsdam Declaration had taken place based on the understanding that the Imperial House would be preserved. In this sense the surrender was conditional. Raising this issue is not meant as criticism of the US occupation policy, or to portray Japan's surrender as unconditional. Rather it underlines the main feature of the occupation policy, namely that in reality the Imperial House was preserved and that the Emperor was not indicted at the Tokyo Trial. There was the expediency of the occupation policy, but also, there were such conscious efforts by the victors' side, such as Fellers, Van Slyck and others (for which see above), to honor the commitment which the US had made at a

difficult time when Japan had to decide about surrender.<sup>106</sup> Even if the preservation of the imperial system was the result of the efforts by Japanese leadership, at the same time there is no denial that the occupation forces made it all possible.

Seen from the US perspective, there may not be many in the US now who believe that Japan's surrender was not unconditional, although researchers or lawyers may argue that it was not an unconditional surrender after all. For Americans it may be difficult to apprehend why this issue is so important to Japanese scholars and opinion leaders. For this reason it may be worthwhile for Americans to realize that, at least for some Japanese intellectuals, this issue still has a lively contemporary implication. In the end, national pride and identity do count, and the way Japan was treated at the time of its defeat is still something many Japanese still find difficult to accept. I argue that for contemporary Japan, the sole fact that the US stayed true to its commitment, even if this was not so perceived in the US, has been of crucial importance for the formation of the Japan-US alliance established afterwards. Japan learned to trust the US, which maintained its commitment at the time of Japan's greatest difficulty. This is the underlying, hidden psychology which has kept the alliance intact for nearly seventy years. An appreciation of this fact from both sides should open a new perspective of mutual trust on which to further build the alliance in the 21<sup>st</sup> century.

#### Notes

- 1) Robert Butow, *Japan's Decision to Surrender* (translated to Japanese), (Tokyo, Jiji, 1958), p. 191-192.
- 2) Butow, p. 192-193.
- 3) Treaty Division, "Nichi, Doku, I no 'Mujoyouken Koufuku' no Jittainituite", (MOFA, December 14, 1949), p. 7-8.
- 4) Togo Shigenori, *Jidaino Ichimen*, (Tokyo, Chukobunko, 1989), p. 497.
- 5) Togo, p. 489-90.
- 6) Eto Jun ed., *Shusenkosakuno Kiroku II*, (Tokyo, Kodansha, 1986), p. 222.
- 7) MOFA, *Shusenshiroku 3*, (Tokyo, MOFA, 1977), p. 174.
- 8) *Shusenshiroku 3*, p. 175-176.
- 9) *Shusenshiroku 3*, p. 196.
- 10) *Shusenshiroku 3*, p. 199.
- 11) Hasegawa Tsuyoshi, *Anto* (Japanese version of *Racing the Enemy*), (Tokyo, Chuokoron, 2006), p. 245.
- 12) Marius Jansen described these last four months' efforts by the Japanese with some emphasis on Konoe's personal role (Marius Jansen, *The Making of Modern Japan*, (Cambridge, The Belknap Press of Harvard University Press, 2000).
- 13) Iokibe Makoto made a detailed analysis of the US policy formulation leading toward the announcement of the Potsdam Declaration: two themes ran parallel and ultimately formed a whole; the major theme formulated by the highest political leaders of the US Government was to make Japan accept unconditional surrender; the second theme was proposed by the Japan-hands who knew the internal situation of Japan and were aiming to rehabilitate the country after the war (Iokibe Makoto, *Beikokuno Nihonsenryō Seisaku*, Tome I and II, (Tokyo, Chuokoron, 1985), p. V, Tome I). Okazaki Hisahiko concurs with Iokibe's analysis (Okazaki Hisahiko, *Yoshida Shigeruto Sono Jidai*, (Tokyo, PHP, 2002), p. 11.
- 14) Hasegawa Tsuyoshi, *Racing the Enemy*, (Cambridge, Harvard, 2005), p. 117-118.



- 15) Hasegawa, *Racing the Enemy*, p. 290.
- 16) Hasegawa, *Racing the Enemy*, p. 147.
- 17) Togo, p. 505.
- 18) Treaty Division, 1949, p. 8.
- 19) Togo, p. 506–507.
- 20) Kiyose Ichiro, *Hiroku Tokyo Saiban*, (Tokyo, Chukobunko, 1986), p. 37–39.
- 21) Hando Kazutoshi, *Seidan*, (Tokyo, PHP Bunko, 2006), p. 472 and p. 510.
- 22) Hasegawa, *Anto*, p. 344.
- 23) Suzuki, *Seijishi*, p. 167.
- 24) Togo, p. 511–513.
- 25) Hasegawa, p. 357.
- 26) Hando Kazutoshi, *Showashi*, (Tokyo, Heibonsha, 2004), p. 477–478.
- 27) This statement by Suzuki has been a source of confusion to this day. It was originally reported by Kido, for which see *Nikki II*, (Tokyo, Todai, 1966), p. 1223. Early analysis suggested that it was difficult to tell whether Kido had misunderstood Suzuki or that Suzuki really believed that the majority of the top six was inclined to propose four conditions (*Shusenshiroku 4*, p. 109). Hasegawa’s analysis equally shows that it is difficult to tell why this happened (Hasegawa, p. 358). Suzuki Tamon is dismissive, however: “Prime Minister Suzuki was not a four conditions’ supporter. He was a man who respected “balance” and had experienced some difficulty in hearing because of his old age. This presumably may have caused some miscommunication with Kido” (Suzuki Tamon, *Seijishi*, Note 79, p. 203).
- 28) Kido *Nikki II*, p. 1223; Hasegawa, *Anto*, p. 358–362.
- 29) Sakomizu Hisatsune, *Dainihonteikoku Saigono Yonkagetsu*, (Tokyo, Kawadabunko, 2015, originally published in 1973), p. 204.
- 30) Hasegawa, *Anto*, p. 361–366.
- 31) Hasegawa, *Racing the Enemy*, p. 220.
- 32) Hasegawa, *Racing the Enemy*, p. 221.
- 33) Sugawara Yutaka, *Tokyosaianno Shotai*, (Tokyo, Toshokankokai, 1961), p. 197–204.
- 34) Hasegawa, *Anto*, p. 399, and Kunaicho, *Showatenno Jitsuroku*, Volume 9, (Tokyo Shoseki, 2018), p. 761.
- 35) Kunaicho, *Jitsuroku*, p. 761.
- 36) Suzuki Tamon, *Seijishi*, p. 178.
- 37) Togo, p. 522.
- 38) Butow, p. 268–273; Togo, p. 521–524, *Shusenshiroku 3*, p. 238–239; Kunaicho, *Jitsuroku*, p. 761–762.
- 39) Hasegawa, *Anto*, p. 409–411; Suzuki Tamon, *Seijishi*, p. 180–183.
- 40) *Shusenshiroku 5*, p. 47–49; Kunaicho, *Jitsuroku*, p. 764–765; Sakomizu Hisatsune, p. 239–243; Suzuki Tamon, *Seijishi*, p. 183–184.
- 41) Togo, p. 529.
- 42) Togo, p. 530; *Shusenshiroku 5*, p. 54–55.
- 43) Suzuki, *Seijishi*, p. 186.
- 44) *Shusenshiroku 5*, p. 69–74.
- 45) Higurashi Yoshinobu, *Tokyo Saiban*, (Tokyo, Kodanshabunko, 2008), p. 52–53.
- 46) Higurashi, p. 52.
- 47) Okazaki p. 23–24.
- 48) Herbert Bix, *Hirohito and the Making of Modern Japan*, (New York, Perennial, 2000), p. 544–545.
- 49) Iokibe, Tome II, p. 252.
- 50) Dower, p. 298–299.
- 51) Okazaki, p. 51.
- 52) Sakomizu Hisamasa, “*Sakomizu Hisatsune, Koen Danwashu*, (Kokkai Toshokan, 2002) p. 70–71.
- 53) Dower, p. 302–319.

- 54) Oguma, p. 108–118.
- 55) Bix, p. 554.
- 56) Hosaka Masayasu, *Showa Tenno*, (Tokyo, Chuokoron, 2005), p. 225–227.
- 57) Sugawara, p. 192–196.
- 58) Bix, p. 563.
- 59) Bix, p. 564.
- 60) Bix, p. 578.
- 61) Ukeda Shinkichi, *Nihonno Atarashii Shukujitu*, (Tokyo, Korin Shoin, 1948), p. 20.
- 62) Sugawara, p. 196.
- 63) Iokibe Makoto ed., *Sengo Nihon Gaikoshi*, (Tokyo, Yuhikaku, 2006), p. 38–39.
- 64) Bix, p. 583.
- 65) Sugawara, p. 209–212.
- 66) Hosaka, p. 219.
- 67) Yuma Totani, *The Tokyo War Crimes Trial*, (Cambridge, Harvard University Asia Center, 2008), p. 52 and p. 272 footnote 20.
- 68) Higurashi, p. 54–61.
- 69) Awaya Kentaro, *Tokyosaibanhenno Michi I*, (Tokyo, Kodansha, 2006), p. 150.
- 70) Totani, p. 53 and p. 272 footnote 22.
- 71) Awaya, p. 151–152.
- 72) Higurashi, p. 52; Awaya, p. 153.
- 73) Awaya, p. 153.
- 74) Awaya, p. 150–151.
- 75) Totani, p. 54.
- 76) Bix, p. 567.
- 77) Higurashi, p. 74.
- 78) Higurashi, p. 69–70.
- 79) Sato Isao, *Nihonkokukenpo Gaisetsu*, (Tokyo, Gakuyoshobo, 1990), p. 53.
- 80) Iokibe, p. 45–46.
- 81) Okazaki, p. 115–116.
- 82) Iokibe, p. 48.
- 83) Sato, p. 49.
- 84) Iokibe, p. 49–50.
- 85) Sugawara, p. 188–89.
- 86) Hosaka, p. 247–248; Iokibe, p. 50.
- 87) Totani, p. 55–56.
- 88) FEC 007/4, 4 April 1946, SWNCC 57 Series, National Library, Kensei-Shiryoshitsu.
- 89) Higurashi, p. 97–99.
- 90) Totani, p. 56.
- 91) Higurashi, p. 99.
- 92) Terasaki hidenori and Mariko Terasaki Miller ed., *Showatano Dokuhakuroku*, (Tokyo, Bungei Shunju, 1995), p. 3, 23, and 159–161.
- 93) Higurashi, p. 101.
- 94) Sakomizu Hisamasa, p. 72–73.
- 95) Hosaka, p. 249–250.
- 96) Sugawara, p. 187–188.
- 97) Sato, p. 319.
- 98) Kojima Noboru, *Tokyo Saiban II*, (Tokyo, Chuokoron, 1971), p. 121–125.

- 99) Diet Website, November 26, 1949, House of Representatives, Budget Committee.
- 100) This instruction is undoubtedly the JCS1380/6=SWNCC18/12 referred to above.
- 101) Treaty Division, 1949, p. 13-14.
- 102) Treaty Division, 1949, p. 5-6.
- 103) Diet Website, October 24 1951, House of Representatives, Special Committee on the Peace Treaty and the Japan-US Security Treaty.
- 104) *Sankei Shinbun*, August 10, 1978.
- 105) Togo Kazuhiko, *Mujyokenkofukuwomeguru Omowaku*, (*Tokyo Shinbun*, August 14, 2009).
- 106) Iokibe quotes Blakeslee making the same argument “to honor the commitment” in September 1945 when discussing what should the occupation policy be among top leaders in Washington (Iokibe, Tome II, p. 256).