

JAPANESE CONSTITUTION AND GOVERNMENT

PART II

In the preceding discussion, there has been depicted for the Tribunal, in some detail, the chief organs and the salient features of the Japanese governmental system. To stop the analysis at this point would be to leave the picture half painted and given an incomplete view of the incidence of responsibility for governmental function and action in the Japanese state. Particularly we would be likely to fail to grasp the basic responsibility of the defendants, or of the great majority of them, for the crimes with which they stand charged in the indictment. In order to fix responsibility for governmental function and action in the Japanese state and in order to fully comprehend the responsibility of the defendants for the crimes charged against them, it is not sufficient to outline the structure of the various constitutional organs and to analyze their respective functions.

A most cursory examination of the Japanese Constitution and the documents with respect to the several governmental organs established thereunder, as well as the analysis already made, discloses that there exists in the Japanese governmental setup (1) areas of divided jurisdiction, (2) areas of jurisdiction which have not been assigned to

any constitutional organ whatsoever and (3) areas of conflicting and overlapping jurisdiction. To meet the needs occasioned by these problems, it became necessary for the Japanese government to make use of certain extra-constitutional and extra legal bodies to fill the gaps and to coordinate the activities of the several organs having jurisdiction over the whole or part of the same sphere of governmental activity. It is, therefore, necessary in order to fix governmental responsibility and to obtain some idea of the governmental mechanism in operation, to ascertain the areas of division, gap and conflict, and to examine the extra-constitutional bodies created to meet the problems engendered thereby.

I. The areas of Divided Responsibility, conflicts of jurisdiction, and gaps in jurisdiction and Mechanism

For the purpose of properly clarifying the issues involved, this problem will be considered separately with respect to two of the main functions of government, namely the legislative and the executive.

A. The Legislative Conflicts

1. The nature of the Japanese legislative function.

The allocation of legislative powers in the Japanese government is to be found in Articles IV to X inclusive, and Articles LXXVII and LXXIV of the Constitution (Kempo), which provide as follows:

Article IV. The Emperor is the head of the Empire, combining in himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitution.

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

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

Article VII. The Emperor convokes the Imperial Diet, opens, closes and prorogues it, and dissolves the house of representatives.

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

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

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

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

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

Article LXXIV. No modification of the imperial household law shall be required to be submitted to the deliberation of the Imperial Diet.

From these provisions of the Constitution, the following general principles may be deduced with respect to legislative responsibility and division of function.

(A) The legislative power is vested in the Emperor subject to the assent of the Diet with respect to the enactment of laws.

(B) When the Diet is not in session, the Emperor, or rather his ministers as his advisors, may exercise the legislative power by Imperial Ordinance. If these Ordinances are later disapproved of by the Diet, they are invalid for the future. However, the Ordinances and all actions taken thereunder are completely valid for the period between their promulgation and the date of disapproval by the Diet. Such legislation may and does alter existing law.

(C) The Diet has no relation whatsoever to the Imperial household law. By the Constitution, Imperial household affairs are placed beyond the reach of the Diet, and a separation is drawn between the affairs of the Court and those of the state. However, within the prerogatives over the Imperial household are included matters which are not strictly internal matters of the Court but of vital concern to the people and to the state as well, such as

those relating to the succession to the throne, the institution of regency and to the Imperial household law.

With respect to these matters which belong to the general affairs of state, the cabinet may be consulted, but the Diet has no means of questioning responsibility for the cabinet's advice. The Ministers of State have always refused to answer interpellations in the Diet on Imperial household affairs, maintaining they have no responsibility for such matters.

(D) Even as to matters within the competence of the Diet, the exercise of its functions are limited by the controls set up for its regulation wherein the power to open, close and prorogue both houses of the Diet, or to dissolve the house of representatives is vested in the Emperor or in other organs delegated by him.

(E) By reason of the general ordinance powers reserved to the Imperial Throne by articles 1X and 2 of the Constitution, the Diet is excluded from participation in many matters which are strictly within the legislative sphere in all western countries. Thus the Imperial Ministers as agents for the Emperor alone may establish the entire administrative hierarchy, and it is significant to note that the documents which will be produced in evidence establishing the various organs and departments of government are without exception Imperial Ordinances and Rescripts and not enactments of the Diet. With respect to the Ordinance power reserved to the Emperor under

Article IX, with the exception of "ordinances necessary for the carrying out of the laws", which may be termed administrative, the remaining power, namely that of issuing ordinances for the maintenance of the public peace and order and for the promotion of the welfare of the subjects, involves matters which are purely legislative in content and are customarily left to the legislature for enactment into law. However, under the Japanese system they are retained in the hands of the Emperor and exercised by the Ministers.

(F) In addition to the limitations mentioned before the Diet is precluded from any participation with respect to certain other matters customarily considered part of the legislative function. The organization of the army and navy is determined by the Emperor (Article XII). The Emperor declares war, makes peace and concludes treaties (Article XIII). In these functions neither house of the Diet plays any direct role.

While the legislative power in all its ramifications is vested in the Emperor, he, or rather his Ministers, exercises this power not directly but through delegation to other organs of the government. It is therefore necessary to examine the legislative powers of each of these organs with respect to each other and to the Diet.

2. The Area of Conflict between the Cabinet and the Diet.

Before we can adequately assess the legislative function of the Diet, we must first understand:

(A) The position of the Cabinet in the Japanese Constitutional system.

Although the Cabinet is the chief executive organ of the government, there is no specific reference to the Cabinet in the Constitution. If included at all, it is only by implication. The only Article which may be said to have application to that body is Article LV which provides:

"The respective Ministers of State shall give their advice to the Emperor, and be responsible for it. All laws, imperial Ordinances and Imperial Rescripts of whatever kind, that relate to the affairs of the State, require the counter-signature of a Minister of State."

Yet notwithstanding these facts, the Cabinet exists as a collective body composed of departmental ministers under the presidency of a minister president for the purpose of initiating, directing and carrying out the general policies of the government and to serve as a channel through which the imperial prerogative over general affairs is placed in operation. This body owes its origin to the Imperial Rescript on Functions of the Cabinet of December 22, 1885 establishing a cabinet system, and its composition powers, duties and functions are set forth in that instrument and in the Imperial Ordinance Relating to General Rules Concerning the Organization of the Ministries of 1893 and not in the Constitution itself. Article I of the Imperial Rescript on the Functions of the Cabinet states: "The Cabinet is composed of the various Ministers of State."

According to Article LV of the Constitution, the Cabinet Ministers, or Ministers of State, are responsible for the advice which they give to the Emperor. The Constitution, however, as Prince Ito in his Commentaries explains, is silent about the person or persons to whom they are responsible and for what they are responsible, and the nature of the responsibility.

(1) Person to whom responsible.

There is unanimity among the constitutional jurists that in legal principle, the ministers of state are primarily directly responsible to the Emperor and that no other organ of the State may question their legal responsibility or remove them from office.

Although the responsibility of the Cabinet is thus agreed to be due primarily to the Emperor, the Diet has certain legal powers of control over the Cabinet. By means of parliamentary interpellations or asking questions, the passage of resolutions, the presentation of resolutions to the Throne (Article XLIX), the voting approval of emergency imperial ordinances (Article VIII) and by its budgetary power (Article LXIV and LXV) the Diet is able to have some measure of control over the Cabinet.

On occasion, the Cabinet has adopted the parliamentary device of resigning or dissolving the House and having the matter decided by the electorate upon a resolution of lack of confidence being voted in the Lower House.

(2) Matters for which the Cabinet is responsible.

Since under the Japanese Constitution, the Emperor is inviolable and has no responsibility for his acts and since he exercises his prerogatives only upon the responsible advice of organs of the State, and since it is only upon the advice of a minister of state that the imperial prerogative over general affairs of state may be exercised, the scope of ministerial responsibility is as broad as the imperial prerogative over state affairs. This primary responsibility to the Emperor is inescapable as to matters of state, even though the Emperor has sought out the advice of other constitutional and extra-constitutional bodies.

(3) The nature of the responsibility.

While there has been some dispute as to whether cabinet responsibility is an individual responsibility or a collective one, and the majority of experts have tended to regard the responsibility as that of the individual minister of state, in practice the Cabinet has usually assumed collective responsibility under the leadership of the Premier.

(B) The Legislative Powers of the Cabinet

The Cabinet as the chief administrative organ with respect to general affairs of state has wide legislative powers, a portion of which is exercised in conjunction with other governmental bodies. Under the provisions of Article LV of the Constitution, the Cabinet

exercises the legislative powers of the Emperor under Articles V, VII, VIII, IX, and X of that instrument.

(1) Legislative Powers exercised by the Cabinet together with the Diet.

Article XXXVIII of the Constitution provides that "Both houses shall vote upon projects of law submitted to it by the Government, and may respectively initiate projects of law." The Imperial Rescript on the Functions of the Cabinet of December 22, 1885, contains the following provisions with respect to the legislative function of the Cabinet.

"Article IV. All laws and all Imperial Ordinances affecting the administration as a whole, shall bear the countersignature of the Minister President as well as that of the Minister from whose Department they directly emanate. All Imperial Ordinances affecting a Special Department only shall be countersigned by the Minister of the Department alone."

"Article V. The following matters shall be submitted for deliberation by the Cabinet.

1. Draft of laws, financial estimates, and settled accounts.
2. Treaties with foreign countries and all national questions of importance.
3. Ordinances relating to Administration, or to the carrying out of regulations and laws."

It is clear from an examination of the foregoing provisions that the Cabinet exercises the legislative power conferred upon the Diet together with the Diet

in one of the following manners:

1. Through initiation of legislation.

Since the elimination of political parties, initiation by the Cabinet has been the sole method used for the introduction of legislation.

2. Through the exercise of the power to approve or disapprove legislation introduced by a member of the Diet.

In addition the Cabinet exercises control over the legislative power of the Diet by the provisions of the Constitution wherein the Diet is denied the power to convene of its own accord and wherein the Diet may be prorogued, or in the case of the House of Representatives, dissolved by the Cabinet.

(2) Legislative Power Exercised by the Cabinet by itself or in Conjunction with Governmental Organs other than the Diet.

When the Diet is not in session, the Cabinet exercises the legislative power through the issuance of imperial ordinances as provided in Article VIII of the Constitution. This power is an extensive one and is shared in part with the Privy Council. As the Diet session ordinarily does not exceed three months in length (Const. Article XLII), the Cabinet exercises the legislative power without Diet concurrence for the greater part of the year. Although the Diet has the power of disapproval of Imperial Ordinances, the power has been rarely exercised, and even if exercised can be obviated by the reissuance of the

disapproved ordinance immediately after the adjournment of the Diet.

In addition the Cabinet has legislative powers over and above those of the Diet in the treaty making power, which is in no way shared with the Diet, and through the general ordinance power.

(C) The Respective Financial Powers of the Cabinet and the Diet.

The Constitution contains the following provisions with respect to governmental finances:

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

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

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

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

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

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

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

"Article LXVII. Those already fixed expenditures based by the Constitution upon the powers appertaining to the Emperor, and such expenditures as may have arisen by the effect of law, or that appertain to the legal obligations of the government, shall be neither rejected nor reduced by the Imperial Diet, without the concurrence of the government."

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

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

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

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

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

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

An examination of the foregoing provisions will disclose that while generally the Diet has legislative power with respect to finances, that of the Cabinet is much broader. The following important conclusions can be drawn:

(a) The Diet, except in the case of an increase, cannot touch the funds allotted to the Imperial Household.

(b) The Cabinet can prevent the Diet from reducing or rejecting any of the following items:

(i) Expenditures based by the Constitution upon the powers appertaining to the Emperor.

(ii) Expenditures as may have arisen by the effect of law such as treaty obligations.

(iii) Expenditures that appertain to the legal obligations of the Government.

(c) The Cabinet has wide financial powers not subject to prohibitory control of the Diet in the following instances.

(i) The use of a Continuing Expenditure Fund which may be set up by a friendly Diet for use in adverse times.

(ii) A reserve fund which the Diet must mandatorily provide.

(iii) The right to make expenditures in excess of the Budget subject to the subsequent approbation of the Diet, which is of little value after an expenditure has been made.

(iv) The right to issue an Imperial Ordinance for all financial measures in the event the Diet is

not in session and cannot be convoked subject only to subsequent approval by the Diet which is of little value in the case of a fait accomplis.

(v) The right to always use the Budget and appropriations of the previous year regardless of the decision of the Diet.

3. The Overlapping Sphere of the Cabinet and the Privy Council.

By Article VI of the Imperial Ordinance Creating and Regulating the Privy Council as amended (Imperial Ordinance No. 22,1888 as amended by Imperial Ordinance No. 216,1890) the Privy Council is granted the following powers:

"Upon His Majesty's submission for advice, the Privy Council shall hold deliberations and report its opinions upon the following matters:

1. Matters which are under its jurisdiction according to the provisions of the Constitution and laws and ordinances supplementary thereto.
2. Drafts of laws and doubtful points relating to the provisions of the Constitution and laws and ordinances supplementary thereto.
3. Proclamation of martial law under Article XIV and the Imperial Ordinances to be issued under Articles VIII and LXX of the Constitution, as well as all other imperial ordinances having penal provisions.
4. International treaties and agreements.
5. Matters relating to the amendment of the organization of the Privy Council and to the rules for the conduct of its business.
6. Matters specially submitted to its deliberation for advice, in addition to those above mentioned.

Under the foregoing enumeration of powers, the Privy Council shares with the Cabinet a vast part of the legislative power. On the one hand it has in conjunction with the Cabinet the powers exercisable when the Diet is not in session, including the approval of imperial ordinances under Articles VIII and LXX of the Constitution; and on the other hand exercises the legislative powers, exercisable irrespective of the sitting of the Diet, including international treaties and agreements, declarations of martial law, and imperial ordinances having penal provisions. In addition, every project of law (bill) introduced into the Diet by the Cabinet is previously submitted to the Privy Council for its approval.

While the Council has no power to initiate legislation it has a wide veto and amending power. On bills which have been introduced by a Diet member and have passed the Diet it can only recommend approval or disapproval in toto. On the other hand, with respect to projects of law submitted to it by the Cabinet before introduction in the Diet, it may not only veto but freely exercise its amending power.

Since the members of the Cabinet are all ex-officio members of the Privy Council, the realm of disagreement between the two bodies, as a matter of practice in the period covered by the indictment, has been small.

B. The Executive Gaps and Conflicts

Like the legislative branch of the government,

the executive department of the Japanese government is not a single agency. Basically, all executive power is vested in the Emperor. It is exercised, in fact, by the Cabinet and its agencies, the composite of the military and naval agencies known as the "Supreme Command" and the Privy Council. Conflicts of jurisdiction exist within and between these bodies.

1. Area of Conflict Within the Cabinet

While the Cabinet exercises the chief governmental functions of formulating general policy, determining the modes of the exercise of the authority vested in the throne, formulating the legislative program and by leading the Diet, its effectiveness as the chief governing organ of Japan is severely limited by its dual nature. This "duality" of the Cabinet is due to two factors: (1) the peculiar position held by the ministers of war and navy within the Cabinet; and (2) the nature of the personnel holding the ministries of war and navy.

The ministers of war and navy possess the important right of iaku joso or the right of direct access to the Throne. In this respect it should be noted that all Cabinet Ministers have the right of access to the Throne. However, the right of the war and navy ministers to approach the Throne is greater than that of other ministers and is coequal with that of the Prime Minister.

While the other ministers of state are responsible in every way to the cabinet for the carrying out of their duties and for advice given to the Throne, the Cabinet does not have such complete control over the war and navy ministers since they have the right of access to the Throne on matters which are kept secret from the other members of the Cabinet except the premier. This superior right is recognized in Article VII of the Imperial Ordinance on The Functions of the Cabinet which provides:

"Such matters as concern military secrets and military orders and are reported to the Emperor, unless referred to the Cabinet by the Emperor, shall be reported to the Prime Minister by the Minister of War and the Minister of the Navy."

The importance of the right is further intensified by the fact that the premier is limited by law in the choice of qualified personnel in the filling of these positions. By Imperial Ordinance 193 of May 9, 1900, the war minister must be a general or lieutenant general and the navy minister must be an admiral or vice-admiral in active service. On June 13, 1913, Admiral Yamamoto succeeded in widening the qualification to include those on the reserve lists, but since the administration of Premier Hirota in 1936 the qualifications have been limited to those in active service. Because of the requirement of active service, the army and navy have control of the appointment of the respective persons to the war and navy ministries. This power is exercised for the army by

a triumvirate consisting of the outgoing Secretary of War, the Chief of the General Staff and the Director General of Military Education; and for the navy by a similar group holding the correlative offices in that branch of the service.

The results of this duality of organization have been as follows:

1. By failing to appoint a war minister or a navy minister, either the army or navy may prevent the formation of a cabinet or control the naming of the personnel thereof.

2. By compelling the war or navy ministers, subject to the orders of the high command because of their active service status, to resign, either the army or the navy can bring about the resignation of the Cabinet.

3. Through the use of the right of direct access to the Throne, the war and navy ministers have been able to obtain the establishment of policy which is contrary to the opinions of the premier and the other members of his cabinet or which is kept entirely secret from them.

2. Area of Conflict Between the Cabinet and the High Command.

The conflict between the military members of the cabinet and the other members of that body is but one phase of the divided and overlapping authority between the cabinet and the high command. According to the Constitution the Emperor has the following powers with respect to the

armed services:

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

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

Based on these two articles the imperial prerogative over military affairs has in practice been divided into the prerogative over the supreme command and the prerogative over the administration of the armed forces. The former covers the power of using the armed forces for the protection of the state from attack from both without and within, and other powers directly relating to military operations. The latter includes the organization of divisions and of fleets, and all matters relating to military districts and sub-districts, to the storing up and distribution of arms, to education, inspections, discipline, modes of salute, uniforms, guards, fortifications, naval defenses, preparation for expeditions and fixing the annual number of recruits. This division has been constantly maintained since the cabinet system was started in 1885. In the exercise of the former power, that of the supreme command, the Emperor does not exercise it through the cabinet but through the minister of war, the minister of the navy, the chiefs of the general staff and the chief aide-de-camp to the Emperor, all of whom have direct access to the Emperor and who are directly responsible to him. The Emperor is thus assisted in the exercise of the

prerogative of the Supreme Command by organs which are separate from, and independent of, those which advise the Throne over general affairs of state.

In practice, the line of demarkation between matters of general affairs of state and supreme command has not been clear. Entrusted with the defense of the nation, the supreme command has challenged the power of the cabinet over many matters on the ground that they were matters of national defense. They have thus claimed and exercised the right to advise the Emperor and to formulate policy on matters relating to the declaration of war, foreign relations, treaty negotiation and ratification and many internal matters because of their relation, actual or supposed, to the subject of national defense. In fact, in the field of foreign relations the Supreme Command has authority to play an independent role. For example, Article 10 of the Imperial Ordinance relating to the organization of the Naval General Staff Office specifically provides:

"There shall be instituted, at the Japanese Embassies and Legations abroad, Combatant Officers as Embassy and Legation Naval Attaches and Assistant Naval Attaches, and the Chief shall control them."

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There exists as a result of this separation of the supreme command from the other organs of government, a sphere of divided responsibility and overlapping function with respect to the major governmental powers in the Japanese Constitutional System.

In addition to the conflicts pointed out, there are gaps in the constitutional executive setup. One is the administration of the Imperial household. Since, as pointed out before, the Diet is precluded from passing on questions relating to the Imperial household and since the Ministers of State, even though they may be and are consulted with respect to matters of the Household, have no responsibility for such matters, and since no other constitutional provision is applicable to the governance of the Imperial Household, a gap exists which has been filled by the creation of extra-constitutional offices and bodies. Likewise a similar situation has existed with respect to the organization of which is known as the Supreme Command.

II. The Extra-Constitutional Organs and Offices.

A. The Military Offices and Boards.

1. The Chiefs of Staff

The "supreme command" function, while resting as all other governmental functions in Japan do, in the Emperor, is in fact exercised by the Chiefs of Staff of the Army and Navy. Their power is grave and extensive. Under the second provision of the Regulation of the General Staff Office, the powers of the Army Chief of Staff are defined:

"A general or a lieutenant-general is appointed by the Emperor to the post of the Chief of the General Staff, and is placed under the direct command of the Emperor, attends the war council, takes charge of the formation of plans for national defense and strategy and supervises the General Staff Office."

Using somewhat different language, Articles I, 2 and 3 of the Imperial Ordinance relating to the organization of the Naval General Staff Office states the powers of that office as follows:

Article 1.

The Naval General Staff Office shall take charge of matters concerning national defense and the use of armed strength.

Article 2.

There shall be the Chief of the Naval General Staff Office. He shall be personally appointed

by the Emperor. The Chief shall be directly subordinate to the Emperor, take part in the confidential affairs of the Emperor's headquarters and control the Naval General Staff Office.

Article 3.

The Chief shall take charge of plans for national defense and for the use of armed strength, and shall transmit matters concerning the use of armed strength.

The powers outlined for both Chiefs of Staff, while differing in wording, assigns them the duty which has been aptly described in the Ordinance of Daihonei (Imperial General Headquarters) as taking "part in the highest momentous affairs" of the nation.

2. The Boards.

In addition to the primary offices of the Chief of Staff, there are several military boards which play a part in the exercise of the supreme command.

(A) The Board of Field Marshals and Fleet Admirals (Gensuifu).

This Board was originally created in 1898, and its membership is limited to field marshals and fleet admirals. Theoretically this body is supposed to be the highest advisory body to the Throne on army and navy matters but it is in fact purely an honorary body with little or no power.

(B) Supreme War Council (Gunji Sangiin)

This Council was created by Imperial Ordinance No. 294 of 1903. Its membership consists of the members of the Board of Field Marshals and Fleet Admirals, the Minister of War and Navy, the Chiefs of the Army and Navy General Staffs and other generals and admirals nominated by the Emperor.

Its function is to advise on all military and naval policy generally and to coordinate all administrative and tactical organizations. It plays no part with respect to tactics and strategy.

It is organized into two divisions - the Army Councillor's Conference and the Navy Councillor's Conference.

(C) Imperial General Headquarters (Daihonei)

This organization exists only at the time of war or at the time of an incident resembling war. For present purposes it was set up on November 20, 1937, and existed throughout the remainder of the period. It is headed by the Emperor, and its members consisted of the two chiefs of staff, the vice chiefs of staff, and the heads of all staff bureaus, the ministers of war and navy, the vice ministers and certain bureau chiefs from those ministries, the inspector-generals of military training and the Inspector-General of Army Aviation.

This organization was divided into two sections - the army section and the navy section - and met both separately in sections and jointly.

Its function is best described in the Ordinance of Daihonei (Imperial General headquarters) as follows:

"....to take part in the highest momentous affairs, to make plan of operations and considering last object, to arrange the cooperation and the united action of Army and Navy."

3. The Chief Aide-de-camp to the Emperor.

While this officer, a full general, has no connection with the Supreme Command, he has full access to it. All military memorials and requests for audiences with the Throne are submitted through him and all Imperial orders for the army and navy are transmitted by him.

B. The Imperial Household Offices.

The offices set up for the administration of the Imperial Court are divided into two categories: the Outer Court and the Inner Court

1. The Outer Court - The Minister of the Imperial Household (Kunai Daijin).

This office was established by the same ordinance under which the Cabinet was created and this official has the duty of administering the household affairs and the properties of the Imperial Household. For the purposes of this trial this office is of no consequence.

2. The Inner Court.

(A) The Grand Chamberlin (Jijuchō)

This official is in a sense the Emperor's adjutant. He is a civil official with no visible connection with the civil government or the supreme command. Appointments for audiences with the Emperor are arranged through his office and he is in charge of all ceremonial matters.

(B) Lord Keeper of the Privy Seal (Naidaijin)

Under Article II of the Regulations for the Lord Keeper of the Privy Seal the duty of the Lord Keeper is to assist and advise the Emperor in administering the affairs of state, constantly attending upon him. All bills and petitions go through his office for imperial sanction. He is the custodian of the imperial seals and the great state seals which must be affixed to all documents for purposes of promulgation.

His most important function in late years has been that of recommending to the Emperor a successor premier upon the resignation of a Cabinet. In prior years, his sole function in this regard was to transmit the decision of the Elder Statesmen or Genro to the Emperor. In 1935, as Prince Saionji grew older, upon the resignation of the Hayashi Cabinet, the Lord Keeper himself was asked to and did himself make the recommendation after consultation with Saionji. This

precedent was followed until January, 1940, when the Lord Keeper first determined upon the successor premier after consultation with the individual ex-premiers and thereafter obtained Saionji's views. Upon the establishment of the Third Konoye Cabinet, the Lord Keeper held a conference with the ex-premiers and president of the Privy Council, they acting as advisors to him, and himself made the recommendation. This latter procedure was used at all times thereafter.

There exists one other body with respect to the governance of the Imperial Household.

3. The Imperial Family Council

The members of this group consist of the male members of the Imperial Family who have reached the age of majority, the Lord Keeper of the Privy Seal, the President of the Privy Council, the Minister of the Imperial Household, the Minister of State for Justice and the President of the Court of Cassation. (Article LV of the Imperial House Law).

By Article IX of the Imperial House Law this Council and the Privy Council, when the Imperial heir is suffering from an incurable disease of mind or body, or when any other weighty cause exists, may change the order of succession. It also in the same way participates in the appointment of a regency and may change the order of regency (Articles XIX and XXV) appoint or remove an Imperial Governor for the education and bringing up of

a minor Emperor, if none has been appointed by the preceding Emperor (Article XXVII). The Council likewise acts on matters of disciplinary punishment of members of the Imperial Family and preservation of their property (Articles LII, LIII, LIV).

C. The Extra-legal Bodies.

1. The Genro

The body of elder statesmen called the Genro was an extra-constitutional and extra-legal institution. This body was more or less informally constituted from among the councillors and leaders of the Meiji Restoration and had no status within the constitution, laws or ordinances. However, there gradually developed the custom that those statesmen who played leading roles in the Restoration of 1868 and in the early period of the Constitutional history of Japan were to be consulted on matters of paramount importance in domestic and foreign matters including the naming of a new cabinet, war declarations, conclusion of peace and negotiation of treaties and international agreements of importance. For many years one or another from among the Genro occupied the important governmental positions of Prime Minister, President of Privy Council or Lord Keeper of the Privy Seal. Beginning informally, the group began to be recognized as a governmental institution and finally in December 1926, when Prince Saionji was appointed a Genro, the institution was formally recognized by an

Imperial Rescript making the appointment.

The group met and functioned on direct order from the Emperor that they should meet and advise on the solution of the question submitted. While they advised on grave matters of state such as the declaration of war, conclusion of peace and matters involving international relations, their most important function was in serving as the medium through which a new cabinet was named, thus filling up one of the major gaps in the Japanese Constitutional system occasioned by the fact that as a matter of legal principle the cabinet is responsible only to the Emperor. Upon the death of Prince Saionji in 1940, the Genro disappeared as an institution.

2. Jushin

With the passing of the function of advising the Emperor on the matter of the selection of a new cabinet from the Genro to the Lord Keeper of the Privy Seal, the Lord Keeper instituted the practice of consulting individually with the ex-premiers and the President of the Privy Council. This group of elder statesmen came to be known as the Jushin. In July of 1940, this body was officially formalized by being convoked and meeting as a group to advise the Lord Keeper on the selection of a new premier. While the conference of ex-premiers has the primary function of advising on the selection of a premier, on occasion it has been summoned to advise the Emperor on matters of state of grave importance.

D. The Liaison Bodies

1. Renraku Kaigi - Liaison conference.

With the intensification of the situation following the outbreak of the China War in 1937, the need for a device to coordinate the activities of the ministers of state and the high command in their overlapping spheres of authority became readily apparent. Several devices were set up to meet this need. First the "Four Minister" meeting of the premier, war, navy and foreign ministers was established. Later the finance minister was added to this group making a "Five Minister" Conference. In these meetings the views of the Supreme Command were transmitted through the war and navy ministers. However, the situation developed in such a manner that the Chiefs of Staff came to the conclusion that this method of working through the war and navy ministers was unsatisfactory and the liaison conference plan was adopted to adjust the difference between the civil government and the high command.

This group which met more or less regularly, consisted of the premier, foreign minister, war minister, navy minister, home minister, chiefs of staff, vice chiefs of staff and the directors of the military affairs and naval affairs bureaus. In addition at times, the President of the Cabinet Planning Board and the Chief Cabinet

Secretary attended.

Inasmuch as the personnel of these meetings was, with the exception of the Emperor, practically identical with the personnel of the Conference before the Throne discussed later, and since liaison conferences always preceded Conferences before the Throne, the decisions reached in the liaison conference were of the utmost importance in relation to the decisions of the more formal conference.

2. Saiko Shido Kaigi - Conference for the Supreme Direction of the War.

This body came into existence during the Koiso Cabinet during the war, and was in fact the old liaison conference under a new name.

3. Dai Honei Kaigi - Imperial headquarters Conference.

When, during the course of the war, the Liaison Conference and the Conference for the Supreme Direction of the War failed to adequately meet the problems involved, the premier began attending meetings of Imperial Headquarters but without participating in strategic or tactical matters. These meetings were known as Imperial Headquarters Conferences.

4. Gozen kaigi - Conferences before the Throne.

Although no authority can be found in the Constitution laws or ordinances for the Gozen kaigi

or Conference before the Throne, it has existed as an institution in the Japanese Government for hundreds of years. It has continued to function as the organ for reconciling the conflicts arising from the division of authority in various spheres. As a body it meets only under the gravest of conditions to determine matters of gravest policy.

The membership of the conference in addition to the Emperor has varied both in size and in the nature of the membership. During 1940 and 1941, when five such conferences were held, the membership consisted of the Premier, the President of the Privy Council, the Navy Minister, the War Minister, the Foreign Minister, the Finance Minister, the President of the Cabinet Planning Board, the Chief and Vice-Chief of the Army General Staff, the Chief and Vice-Chief of the Navy General Staff and the Directors of the Military Affairs Section of the Army and the Naval Affairs Section. Occasionally other cabinet ministers attended.

Such conferences did not meet at regular intervals but only at times of grave national importance. Some meetings were publicized and others have been kept secret. During the year preceding the outbreak of war on December 7, 1941, the conference met on petition for such meeting from the liaison conference. The interested parties would agree on a subject and plan which was

presented to the liaison conference, which would in turn request a Conference before the Throne. Ordinarily, in practice, no formal decision was made at the time of the conference but the consensus of the conference is made the formal decision of the cabinet.

This discussion, together with the preceding one and the evidence now to be introduced, has been presented for the purpose of explaining the framework of the Japanese governmental system, to serve as a guide for assaying the actions of the defendants in the light of the evidence which will be presented. The operation of these offices and bodies will be repeatedly demonstrated throughout the course of these proceedings.