

งานวิจัยพื้นฐานเกี่ยวกับพระราชบัญญัติ: วิเคราะห์ปัญหาและพิจารณาความน่าจะเป็นต่อไป

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งานวิจัยนี้จัดทำขึ้นเพื่อวิเคราะห์สภาพปัจจุบันและปัญหาของพระราชบัญญัติในญี่ปุ่น รวมทั้งบ่งชี้ถึงความน่าจะเป็นต่อไปในอนาคต อย่างที่ทราบกันดีว่าสถาบันนิติบัญญัติเป็นหน่วยงานของประเทศที่มีหน้าที่ดำเนินกิจกรรมต่างๆ ด้านนิติบัญญัติแทนประชาชน ซึ่งหน้าที่หลักๆ ดังกล่าวก็คือการเสนอพิจารณาและอนุมัติร่างกฎหมายนั่นเอง ทว่าตั้งแต่เข้าสู่ศตวรรษที่ 20 เป็นต้นมา สถาบันนิติบัญญัติได้ถูกลดบทบาทและหน้าที่ลงเนื่องจากความนิยมในแนวคิดรัฐสวัสดิการที่เพิ่มมากขึ้น โดยเฉพาะในประเทศที่พัฒนาแล้ว ปัจจุบันได้เกิดสภาพการบริหารประเทศที่เรียกว่า “รัฐบริหาร (administrative state)” ส่งผลให้กิจกรรมด้านนิติบัญญัติทั่วไปที่ควรจะเป็นหน้าที่ของสถาบันนิติบัญญัติกลับถูกดำเนินการโดยสถาบันบริหารโดยการ “มอบอำนาจนิติบัญญัติ (legislation by cabinet)” แทน สภาพเช่นนี้ไม่เพียงตีความได้ว่าสถาบันนิติบัญญัติถูกควบคุมโดยสถาบันบริหารเท่านั้น แต่ยังหมายความว่าสถาบันนิติบัญญัติกำลังสูญเสียอำนาจในการตรวจสอบสถาบันบริหารอีกด้วย ดังนั้นในงานวิจัยนี้จึงจะนำกรณีของประเทศญี่ปุ่นเป็นกรณีตัวอย่าง เพื่อวิเคราะห์สภาพปัจจุบันของพระราชบัญญัติและพิจารณาหาแผนรับมือเพื่อให้ประเทศญี่ปุ่นได้พัฒนาการร่างกฎหมายแห่งชาติอย่างแท้จริง

คำ

สำคัญ

พระราชบัญญัติ, การร่างกฎหมายแห่งชาติ, การควบคุมโดยพลเรือน, กระบวนการสร้างนโยบาย

A Basic Study on Legislation by House Members: Focusing on the Issues and Prospects

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Abstract

This paper aims to consider the current situations and issues related to legislation by House members in Japan, and presents future prospects of the legislation. The Legislature in most countries is the government organ that governs through legislation public and civil activities. Therefore, its main role is the drafting and deliberations of bills. However, since the 20th century, the role of the Legislature has become lessened as a result of the rise of welfare state theory. Consequently, especially in developed countries, a situation called “the administrative state” has appeared, and this has given rise to much room for “legislation by cabinet”, which means that the Executive has begun to perform legislation activities that the Legislature would normally perform. This situation would mean that not only does the Executive predominate the Legislature, but also that the supervisory functions toward the Executive by the Legislature are no longer required. Therefore, in this paper, we survey, based on the theories of preceding studies and using Japan as an example, the actual situation of legislation by House members in Japan and consider the prospects of the development of Japan as a legislative state.

Key words

Legislation by House members, Legislative state, Civilian control, Policymaking process

1. Introduction

1.1 Aims of this paper

This paper aims to consider the current situations and issues relating to legislation by House members in Japan, and present future prospects.

As is widely known, the Legislature is the government organ that governs through legislation public and civil activities. So, its main role is the drafting and deliberations of bills. However, since the 20th century, the role of the Legislature in this respect has become lessened as a result of the rise of welfare state theory. Consequently, especially in developed countries, a situation called “the administrative state” has appeared, and this gave rise to much room for “legislation by cabinet”, which means that the Executive has begun to perform legislative activities that the Legislature normally perform. This situation would mean that not only does the Executive predominate the Legislature, but also that the supervisory functions toward the Executive by the Legislature are no longer required. These trends may jeopardize the principle on the separation of (political) powers that was theorized by James Harrington, John Locke and Charles-Louis de Montesquieu.

Therefore, in this paper, we survey, based on the theories of preceding studies

and using Japan as an example, the actual situation of legislation by House members in Japan and consider the prospects of the development of Japan as a legislative state.

The Legislative Bureau of the House of Representatives, which supports the legislation by House members explains that legislation by House members are related to Article 41 of the Constitution of Japan, which says “the Diet shall be the highest organ of state power, and shall be the sole law-making organ of the state,” and that it may receive bills submitted by House members. On the other hand, when the cabinet drafts a bill and submits it to the Diet, cabinet uses the expression “legislation by cabinet”. The Bureau suggests that “legislation by House members means that members of the Diet who are representatives elected directly by the people are allowed to form laws that will bring their policies to fruition”. Recently, the number of legislation by House members has increased because of various complicated, social, and economic situations, and the importance of these legislations has increased more and more” (The Legislative Bureau of the House of Representatives Official Website).

1.2 Background of this paper

The Legislative Bureau of the House of Councillors, which also supports the legislation of the House members, which is the upper House in Japan, explains that “the legislation is created by the Diet, which is the only legislative institution of Japan, and the cabinet and members of the Diet (committees and research committees of the Diet may submit drafts of proposed laws) can submit a draft of a proposed law to the Diet.” In particular, legislation created through the submission of drafts of proposed laws by members of the Diet is called “general legislation by house members”. The Bureau also suggests that “our lives are ruled by various laws and ordinances; however, today, when the needs and the sense of values of the nationals are diversified, the legislation by House members, who are the representatives of the people, is becoming more and more important” (Legislative Bureau House of Councillors Official Website).

In this way, based on the situation of the Legislature, the importance and the need for legislation by House members are clear. However, the volume of legislation by cabinet is greater than the total volume of legislation by both Houses and this trend has been further strengthened since the end of the World War II [Table 1].

Kazuo Kojima, who was engaged in legislation work for the Legislative Bureau of the House of Councillors, gave the following as the reason why the volume of legislation by cabinet has increased. Various reasons are suggested but, looking at the actual numbers, there are many bills submitted by the cabinet while, conversely, there is relatively less legislation by House members; as a result, this factor may be significant. This difference in number relates to the fact that not a few bills submitted by the cabinet involve minor revisions of existing laws. For example, the revision to give an effect to change in fees stipulated in an existing law, which quite often happens, is a kind of such minor revisions (Kojima 1983).

[TABLE 1] Number of Submitted bills in Japan (as of 30/05/2016)

The Imperial Diet (1889-1947)		The Diet (1947-present)	
Submission by	Number of bills	Submission by	Number of bills
Cabinet	3,421	Cabinet	9,814
Members of HR (※ 1)	2,916	Members of HR (※ 1)	3,889
Members of HP (※ 2)	63	Members of HC (※ 3)	1,520

※ 1 :The House of Representatives ※ 2 :The House of Peers ※ 3 : The House of Councillors
Compare with Japan’s Laws and regulations index

The fact that the number of bills submitted by cabinet far exceeds that of bills submitted by House members does not negate the importance of the latter as can be seen in the explanations by the Legislative Bureaus of both Houses. So, in this paper, we will survey a process of legislation by House members that led to enactment of the Basic Act on Ocean Policy in the next section.

2. Method

In this paper, to achieve the above-mentioned purpose, we refer to the preceding studies concerning legislation by House members in Japan (the article by one of the authors (Komori 2014), the Ocean Policy Research Institute (Former Ocean Policy Research Foundation) studies and “Japan’s Laws and Regulations Index.” In this paper, “legislation by House members” means “(1) the legislative activities of both houses of the Diet (including committees, research committees, and commissions on the constitution)”. or “(2) the laws which passed as a result of these activities.” In contrast, we use the word “legislation by cabinet” when the cabinet (government) acts as a main actor in the legislative process (Chino 2015). In addition, we translated the names of documents such as laws and ordinances without access to the appropriate English translation in this paper.

And, in this paper firstly, we will focus on the establishment of the Basic Act on Ocean Policy as a case study, in order to clarify the particularity and universality of policy making (legislation) process in Japan. Based on its results, secondly, we will present the prospects of the development of Japan as a “legislative state”.

3. Research

3.1 Social needs for legislation by House members

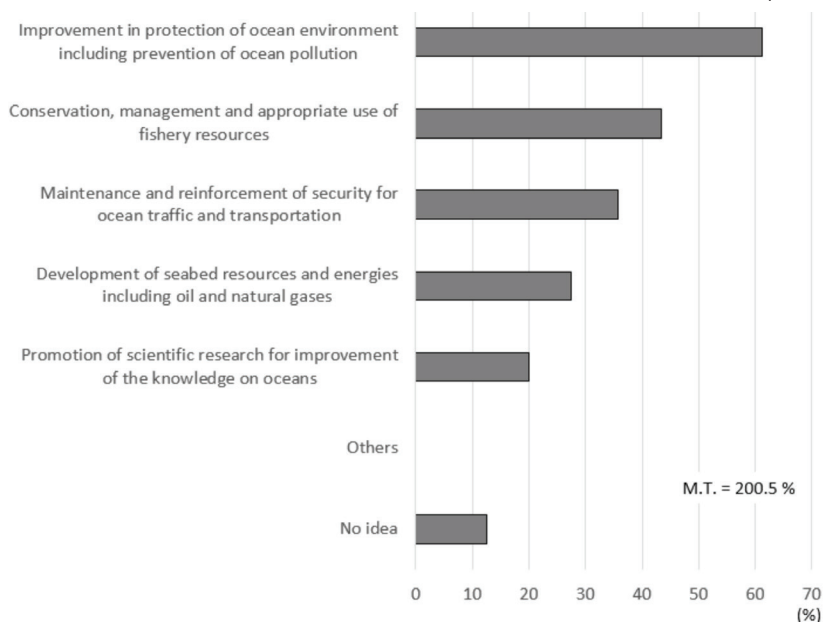
In 1992, Principle 4 of the “Rio Declaration on Environment and Development” (Rio Declaration) announced the following in the United Nations Conference on Environment and Development (UNCED/the Earth Summit): “In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it”. In addition, in Agenda 21, which is the action plan for this declaration, Chapter 17 prescribes protecting the oceans-including enclosed and semi-enclosed seas and coastal areas-and protecting the rational use and development of living resources based on the importance of the oceans to sustainable development. It also highlights the importance of protecting the oceans. This thinking is including in Part 12 (Protection and Preservation

of the Marine Environment) of the United Nations Convention on the Law of the Sea (UNCLOS) which took effect in 1994.

Ocean policy in each country with a coastline, including Japan, has become more visible since UNCLOS took effect in 1994. The public opinion poll on diplomacy discussed in this paper has been conducted approximately every year since 1975 by the prime minister's office public-relations department (In 2001, the cabinet office took over that role and has been conducting the poll since then). In October 2001, the public opinion poll on diplomacy was carried out, where the questions on ocean policy were set for the first time (The Cabinet Office). The authors translated the result of the poll into English.

When the poll was carried out, 5 years had passed since UNCLOS' ratification in Japan. The poll asked “Priorities concerning ocean policy for Japan as an oceanic state”, and “improvement in protection of ocean environment including prevention of ocean pollution” received the highest response rate at 61.3%. This was followed by “Conservation, management and appropriate use of fishery resources” at 43.4%; “Maintenance and reinforcement of security for ocean traffic and transportation” at 35.7%; “Development of seabed resources and energies including oil and natural gases” at 27.4%; and “Promotion of scientific research for improvement of the knowledge on oceans” at 20% [Figure 1].

[Figure 1] Priorities concerning ocean policy for Japan as an oceanic State
(More than 1 answer possible)

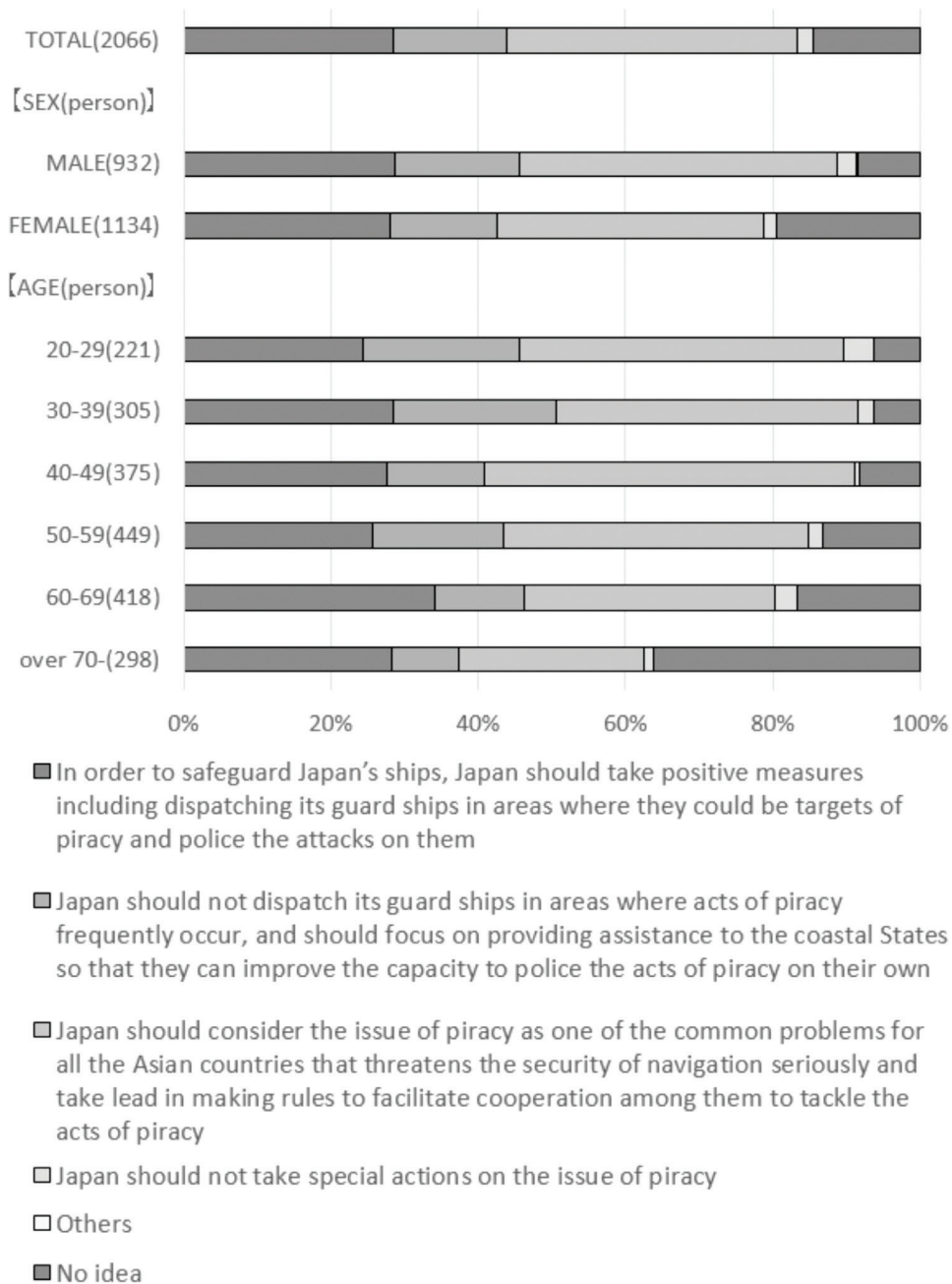


Inquired about “Japan’s responses to piracy”, 15.5% believed that “Japan should not dispatch its guard ships in areas where acts of piracy frequently occur, and should focus on providing assistance to the coastal States”. In addition, 28.4% believed that “In order to safeguard Japan’s ships, Japan should take positive measures including dispatching its guard ships in areas where they could be targets of piracy and police the attacks on them”. Furthermore, 2.1% answered that “Japan should not take special actions on the issue of piracy”, while 39.4% answered that “Japan should consider the issue of piracy as one of the common problems for all the Asian countries that threatens the security of navigation seriously and take lead in making rules to facilitate cooperation among them to tackle the acts of piracy”. Regarding the percentage that replied that “Japan should consider the issue of piracy as one of the common problems for all the Asian countries that threatens the security of navigation seriously and take lead in making rules to facilitate cooperation among them to tackle the acts of piracy”, responses by males were higher than those from females, accounting 50% of total. On the

other hand, the ratio that replied that “In order to safeguard Japan’s ships, Japan should take positive measures including dispatching its guard ships in areas where they could be targets of piracy and police the attacks on them” is around 30% for each group [Figure 2].

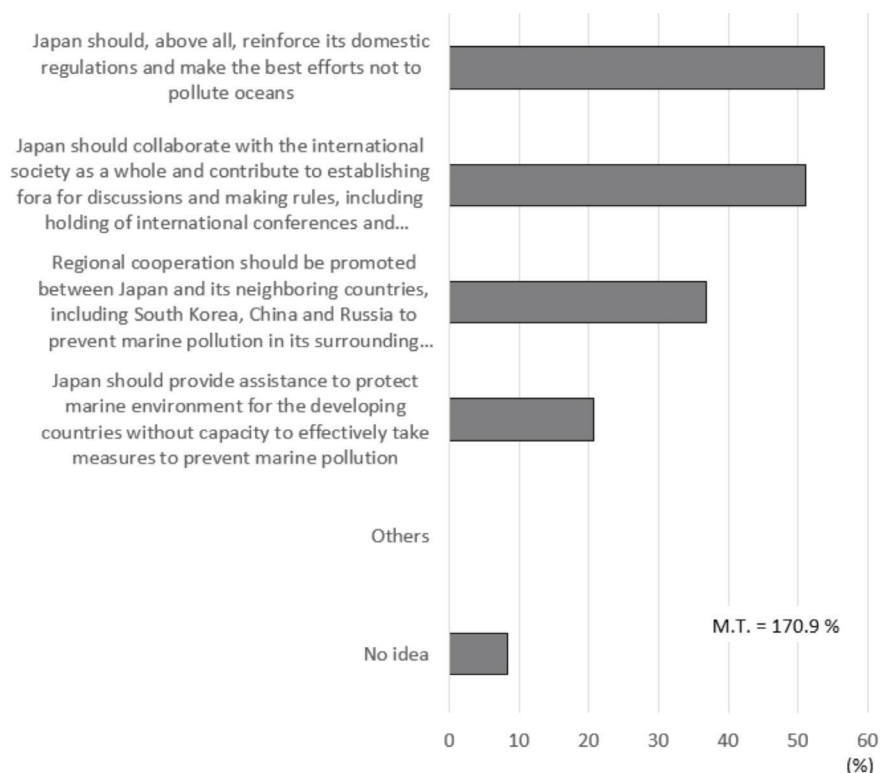
With regard to “Priorities concerning ocean environmental issues” 53.7% responded that “Japan should, above all, reinforce its domestic regulations and make the best efforts not to pollute oceans”. In addition, 20.8% felt that “Japan should provide assistance to protect marine environment for the developing countries without capacity to effectively take measures to prevent marine pollution”. 36.9% of the respondents answered that “Regional cooperation should be promoted between Japan and its neighboring countries, including South Korea, China and Russia to prevent marine pollution in its surrounding oceans”. 51.1% responded that “Japan should collaborate with the international society as a whole and contribute to establishing fora for discussions and making rules, including holding of international conferences and conclusion of treaties for prevention of ocean pollution” [Figure 3].

[Figure 2] Japan's responses to piracy



[Figure 3] Priorities concerning ocean environmental issues

(More than 1 answer possible)



In regard to the question concerning Japan's roles in international society, 50.3% (increased 8.5%) of respondents prioritized "Contributing to the maintenance of international peace", 38.2% (decreased 2%) "Contributing to the solution of global issues", and 30.9% (increased 2.8%) "Providing humanitarian support for refugees" respectively. [Figure 4].

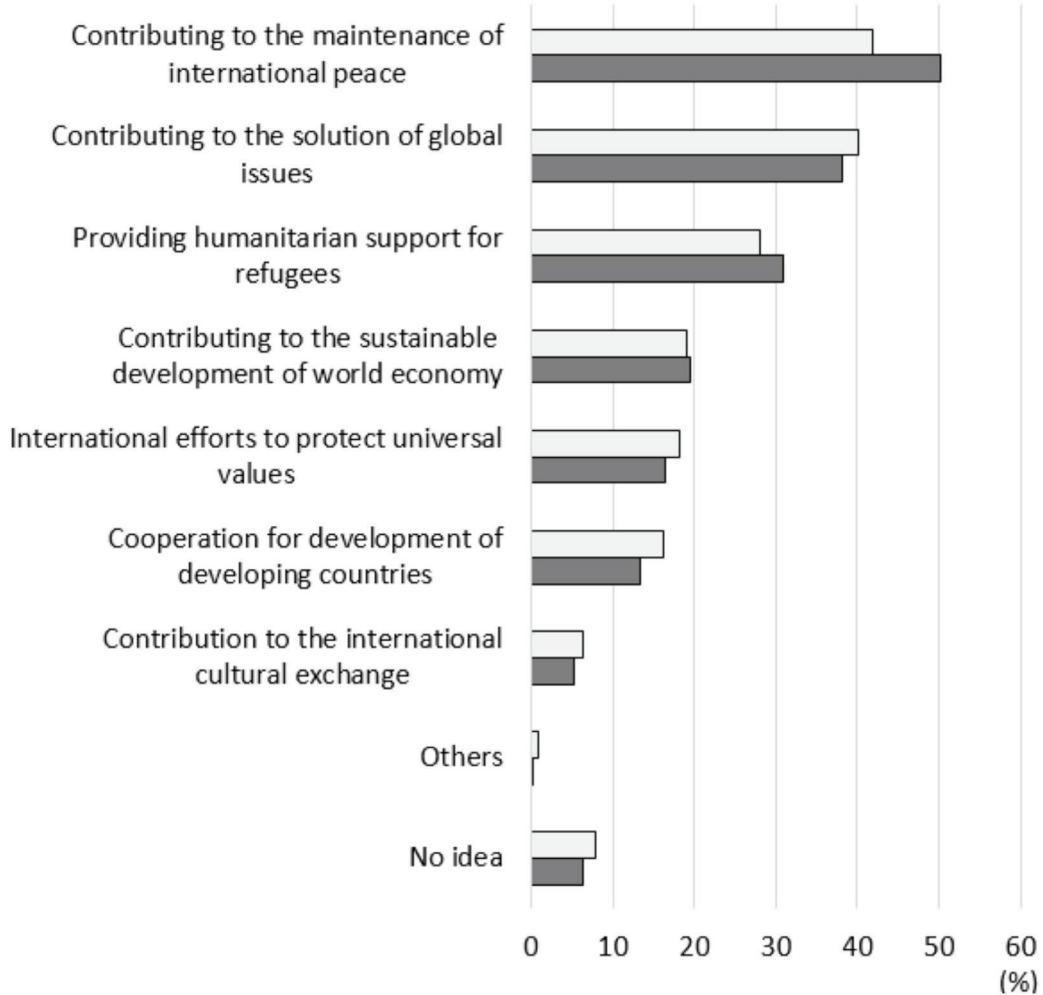
3.2 Efforts for the legislation

Despite the public opinion as the survey revealed the ratification of

UNCLOS led only to the responses by each ministry and did little to revise Japan's overall ocean policy according to it. The issues on the ocean have many aspects including security affairs and resource management to environmental protection of the ocean, which are mutually closely connected. However, the ministries of Japan are basically hierarchical, and general office-dealing with issues that take a wide perspective on ocean-related issues do not exist (Koike 2007).

[Figure 4] Japan's roles in international society

(Less than 2 answers possible)



Under this situation, in April 2006, “the Study Group for a Basic Act on Ocean Policy”, which consisted of bipartisan Diet members and experts on ocean affairs, was set up, and consideration of the Basic Act on Ocean Policy commenced. “The Ocean Policy Recommendation”, which included

the establishment of the Basic Act on Ocean Policy and administrative organizations to promote basic concepts, was put forward in December of that year to develop a basic plan on ocean policy. Based on the Recommendation, the Liberal Democratic Party, the New Komeito, and the

Democratic Party submitted and a bill for the Basic Act on Ocean Policy, which was finally proposed for deliberation at the Diet. Consequently, the bill was unanimously approved by the House of Representatives' Committee on Land, Infrastructure, Transport, and Tourism and was approved by a majority in the House of Representatives plenary session on the same day. In addition, the bill was deliberated by the House of Councilors' Committee on Land, Infrastructure, Transport and Tourism on April 19 of the same year and was approved by a majority. On the 20th, the following day, a majority of the House of Councilors plenary session approved the bill, and it was enacted. The Basic Act on Ocean Policy was established on April 27, 2007 (The Ministry of Land, Infrastructure, Transport and Tourism, Seino 2008 and Ushio 2008).

4. Discussion

We surveyed the legislation process of the Basic Act on Ocean Policy. In the fields such as ocean affairs where many Ministries and government offices have competing jurisdiction and the possibility of legislation by cabinet is slight, legislation by House members could be most fruitful.

The bureaucrats constituting the Executive are generally chosen through

examinations and are appointed without having passed a democratic test such as elections. In addition, governmental bureaucracy composed of bureaucrats is one of the techniques for management of large-scale institutions, such as a state, efficiently and these bureaucrats are “the servants” of the monarch, voters, and the politicians, who were chosen by voters. The bureaucrats have a position to support making and executing policies. Therefore, we suggest that the legitimacy of legislation made by the cabinet, which the Executive leads, is problematic.

On the other hand, politicians are “representatives of the voters” and constitute the Legislature. Their legislation activities have legitimacy. However, the Executive has overwhelming predominance in information-processing abilities, including intelligence and analysis, and it is difficult for the Legislature, to be equally active.

For the Basic Act on Ocean Policy, “the Follow-up Group for the Basic Act on Ocean Policy,” consisting of bipartisan Diet members and experts on ocean affairs, was set up and succeeded to the efforts for establishment of the law, and developed the 1st Basic Plan on Ocean Policy (March, 2008). It contributes to the developments and enforcements on ocean affairs in Japan based on the plan,

and authored “a proposal concerning important matters that should be included in the Basic Plan on Ocean Policy in the next term” in order to assist the development of the next plan (April, 2013). In February 2012, the group created “the Strategic Group for the Basic Act on Ocean Policy” and began carrying out follow-up efforts to create legislation (Hiroshi Terashima’s Official Blog).

Through this kind of follow up efforts, legislation by house members can develop into effective laws. As explained above, the Basic Act on Ocean Policy, which was enacted through legislation by House members has been gradually elaborated as a result of continuous efforts by concerned people such as politicians and experts.

5. Conclusion

In this paper, we considered the present situations and issues of legislation by house members in Japan, and examined future prospects. The true issue seem to be not the volume of legislation but the preparation and follow-up process concerning legislation. Drawing on the experience of the preparation of the Basic Act on Ocean Policy and its follow-up process, we reconfirmed the significance of legislation by House members, though it is currently overwhelmed in volume by

legislation by cabinet in Japan. Below, we will provide further thought on this point.

Notwithstanding the importance and the need for legislation by house members, it is just as we discussed in this paper; however, legislation by house members is not without problems either. A typical issue is the possibility that the contents of a bill created by the house members become altered by populism-like activities. For example, in Japan, a bill to reduce parliamentary apportionments in the Diet was submitted through legislation by house members, but this legislation may reduce the powers of the Legislature and is very dangerous as it may jeopardize the separation of administrative powers (Komori 2016).

Secondly, the legislation by house members in predominant-party system seems to be meaningless. However, like establishment of the Basic Act on Ocean Policy, legislation by house members is the effective method of legislation relevant especially when difficult coordination on between ministries is required. And legislation by house members on bipartisan has advantage in that it can avoid the inconsistency of policymaking resulting from the change of government. Therefore, in predominant-party system such as Japan, legislation by house members is effective method of policymaking, as we can see in example of the establishment

of the Basic Act on Ocean Policy is good example. Therefore, we must not only appreciate legislation by house members but also consider it critically

and constructively. These issues are very important and difficult, and we hope to examine them continuously in future.



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