
MAJOR LEGISLATION

Jan. — Dec., 1992

1. Constitutional and Administrative Law

a. Constitutional Law

Law concerning Cooperation with United Nations Peace-keeping Operations.

Passed on June 15, 1992. Ch. 79. Effective as of August 10, 1992.

[Background of the Legislation]

The United Nations Peace Cooperation Bill, which was submitted to the Diet during the Persian Gulf War to allow participation by the Japanese Self-Defense Forces (SDF) in the multinational force, did not pass. Although the bill died, the government promulgated and executed a “special government ordinance” to send SDF aircraft for the ostensible purpose of transporting evacuees in the Gulf region. The government also reinterpreted the Self-Defense Forces Act to send mine sweepers to clear mines in the Persian Gulf. As these events unfolded, three political parties—the Liberal Democratic Party (LDP), Komeito, and the Democratic Socialist Party—reached an agreement under which the preparation of the Bill concerning

Cooperation with United Nations Peace-keeping Operations (Peace-keeping Operations Bill) proceeded. Despite strong resistance from the Socialist, Communist and other Parties, the bill was submitted to the Diet on September 19, 1991, and was passed with revisions to which the three aforementioned parties had agreed.

[Main Points of the Law]

According to Article 1, the purpose of the Law is to provide appropriate and prompt cooperation for United Nations peace-keeping operations and humanitarian international relief operations. Among the conditions for operations to be qualified as peace-keeping operations are the existence of “cease-fire agreements among the parties to an armed conflicts,” “consent by the parties to the undertaking of such operations,” and “impartiality to the parties” (Article 3 (1)), while the conditions given for humanitarian international relief operations are “consent to the said operations by host countries” and “a cessation to the dispute in the involved region and agreement on the cessation among the disputants” (Article 3 (2)).

Duties conducted in other countries are termed international cooperation duties. These consist in: duties pertaining to the monitoring of cease-fires and agreements (1–6), duties pertaining to elections (7), monitoring of, and advice and guidance pertaining to government administration (8 and 9), duties pertaining to medical care and to the rescue of disaster victims (10–15), transport, storage, communications, and the maintenance of facilities (16), and other similar duties established by government ordinance (17).

SDF personnel engaging in international peace cooperation duties will be provided with small arms when necessary (Article 23), and the Law states that personnel may use the said small arms to defend their own lives or well-being and those of their compatriots “within limits deemed reasonably necessary” when there is “considerable reason to regard [the use of arms] as unavoidably necessary.”

[Comment]

As is generally known, Article 9 of the Japanese Constitution calls for a renunciation of war, prohibits the threat or use of force,

and proscribes the maintenance of war potential. However, the government claims that as these provisions do not renounce the right of self-defense itself, the Constitution does not prohibit the maintenance of “the minimum military forces necessary for self-defense,” and has consistently taken the stand that the existence of the SDF is constitutional. The government’s position until now has been that since sending SDF personnel abroad would constitute the use of force, the Constitution does not allow such overseas deployment. The government has gotten around this by explaining that sending SDF personnel abroad without the purpose of using force is to be distinguished from sending troops with the purpose of using force, and that there is no constitutional violation in the former case.

The government previously stated that even if SDF personnel are sent abroad, it would not be constitutionally possible for them to participate in United Nations peace-keeping operations, particularly peace-keeping forces; this was the government’s official interpretation in 1990. After the Persian Gulf War, however, the government emphasized that participation by SDF personnel in peace-keeping operations would not violate the constitution if the so-called Five Peace-keeping Operation Principles (1. consent to a cease-fire among disputants; 2. acceptance by involved governments; 3. impartiality; 4. immediate withdrawal should any of the foregoing three principles be violated; and 5. the minimum use of weapons for the protection of life) were observed.

Public opinion for the most part responded to this government explanation with opposition to a military contribution to peace-keeping operations. The government therefore decided, to freeze in Article 2 of the Law’s supplementary provisions, the implementation of the peace-keeping forces’ principal duties, i.e., the aforementioned duties 1–6 (duties pertaining to the monitoring of cease-fires and agreements) and 17 (other similar duties established by government ordinance), until they are established by a separate law. However, the government did not freeze support duties, which are distinguished from principal duties. Clearly, this measure was meant to facilitate sending the SDF to participate in Cambodian peace-keeping operations.

Criticism of this Law by constitutional scholars includes the following: (1) the very existence of the SDF is unconstitutional; (2) since the end of the Cold War and the Persian Gulf war, the character of United Nations peace-keeping operations has changed considerably, particularly in terms of participation by the superpowers and the use of military force, and (3) it will now be very difficult to abide by the so-called Five Peace-keeping Operation Principles with active SDF participation in qualitatively changing peace-keeping operations.

b. Administrative Law

Special Law on Curbing Emissions of Nitrogen Oxides from Automobiles in Designated Areas.

Passed on June 3, 1992. Ch. 70. Effective as December 1, 1992.

[Background of the Legislation]

According to data from measurements of air pollution in major urban areas, pollution by nitrogen oxides (NO_x) has been exceptionally pronounced, thus posing the urgent task of ameliorating the situation and preserving the environment. The aim of this law is therefore to gradually reduce the number of commercial vehicles (motor vehicles engaged in business activities) that do not satisfy the latest standards restricting emissions of nitrogen oxides from motor vehicles.

[Main Points of the Law]

Articles 3 through 5 of this law define the responsibilities of the national government, local governments, businesses, and citizens in preventing air pollution by emissions of nitrogen oxides from motor vehicles. Article 6 stipulates that the national government is to determine a basic policy for reducing the total volume of nitrogen oxides emitted by motor vehicles in areas (specified areas) in which vehicular traffic is concentrated, and where it appears difficult to attain environmental quality standards (EQS) with the controls previously employed, while Article 7 states that prefectural governors are