
MAJOR LEGISLATION & TREATIES

Jan.–Dec., 2004

1. Constitutional Law

The Law Concerning Measures for the Protection of the People in the Event of Military Attacks or Imminent Ones

Law No.112, June 18, 2004 (Effective on September 17, 2004). 195 clauses & 16 supplementary ones.

Background:

In recent years, the security environment inside and outside Japan has changed remarkably. Whereas there has been less probability of an outbreak of a global armed clash since the end of the Cold War, there have been complicated and diverse regional conflicts arising from differences of ethnicity or religion sporadically. One of the reasons for increasing concern for security in Japan in particular is a series of incidents related to North Korea, such as the Taepo Dong missile launches in August 1998, intrusions by North Korean spy ships in March 1999, and the abductions which have been verified recently. The September 11, 2001, terrorist attacks on the United States also helped to accelerate a broad consensus in favor of establishing a legal system for national defense.

As a result of this emerging atmosphere, where ensuring the security and safety of the nation in preparation for new dangers is at the top of the political agenda, three contingency-related bills have been passed by over 80% of the Diet members, including the Democratic Party of Japan, the largest opposition group, at the 156th ordinary session in 2003: “The Law Concerning Ensuring the Peace and Independence of Japan, and the Security of Japan and the People in the Event of Military Attacks or Imminent Ones” (Law No.79 of 2003, hereinafter referred to as the “Countering Attacks Law”), “The Law Partially Revising the Law Establishing the Security Council of Japan” (Law No.78 of 2003), and “The Law Partially Revising the Self-Defense Forces [hereinafter referred to as the “SDF”] Law and the Law Concerning the Salary and Others of the Staff of the Defense Agency” (Law No.80 of 2003). The Countering Attacks Law is a legal framework for other contingency laws, which provides basic ideas, obligations of the national government and local authorities and so forth in the event of armed attacks from outside. In addition, the law directs that the government should frame supplementary laws which provide various measures for protecting the lives, bodies and property of the people and minimizing the effects on the national life, and facilitating effective military operations between the SDF and U.S. Forces. The members of the Diet adopted a supplementary resolution to the Countering Attacks Law ordering that they should enact the law protecting the people within a year, which puts the former task into effect.

On March 9, 2004, seven contingency-related bills together with three related treaties were determined at the Cabinet meeting and submitted to the 159th ordinary session of the Diet. After due deliberation, the Diet passed the seven bills and approved the three treaties on June 14. These seven laws are as follows: “The Law Concerning Measures for the Protection of the People in the Event of Military Attacks or Imminent Ones” (Law No.112 of 2004, hereinafter referred to as the “People Protection Law”), “The Law Concerning Measures Taken by the Japanese Government in Conjunction with U.S. Military Forces Operation in the Event of Military Attacks or Imminent Ones” (Law No.113 of 2004) that would facilitate smoother operations by U.S. military forces, “The Law Concerning the Use of Designated Public

Facilities in the Event of Military Attacks or Imminent Ones” (Law No.114 of 2004) that would give the SDF priority in the use of airports and harbors, “The Law Concerning Penalties for Actions in Major Violation of International Humanitarian Law” (Law No.115 of 2004) that would set penalties for acting inhumanely during a period of armed conflict, “The Law Concerning Shipping Military Supplies by Sea in the Event of Military Attacks or Imminent Ones” (Law No.116 of 2004) that would permit the interdiction of ships on the high seas and allow forcible stops and searches of ships suspected of carrying weapons or military supplies to an enemy country, “The Law Concerning the Treatment of Prisoners in the Event of Military Attacks or Imminent Ones” (Law No.117 of 2004) that would ensure they are handled in accordance with the Geneva Conventions, and “The Law Partially Revising the SDF Law” (Law No.118 of 2004) that would allow the SDF to provide supplies to U.S. military forces. Among others, the People Protection Law serves as the core of the contingency legislation and has the largest volume.

Main Provisions:

1. Structure

The law consists of 195 clauses, 11 chapters, which provide the main rules, and 16 supplementary clauses. The title of each chapter is as follows: (1) General Rules (Arts. 1–43), (2) Measures Concerning the Evacuation of Residents (Arts. 44–73), (3) Measures Concerning the Rescue of the Evacuated Residents (Arts. 74–96), (4) Measures Concerning Countering Military Attack Disasters (Arts. 97–128), (5) Necessary Measures Concerning the Stabilization of National Life (Arts. 129–140), (6) Measures for Restoration, Stock, and Others (Arts. 141–158), (7) Necessary Measures for Financial Affairs (Arts. 159–171), (8) Measures Countering the State of Emergency (Arts. 172–183), (9) Miscellaneous Rules (Arts. 184–187), (10) Penal Regulations (Arts. 188–194), (11) A Partial Amendment to the Countering Attacks Law (Art. 195).

The framework of this law is provided in the General Rules (Ch. 1) and various measures prepared for protecting the people in the event of military attacks or imminent ones are enumerated in chapters 2 to 6. For

the purpose of putting the law into practice, the central government has to decide a “Basic Guideline for the People’s Protection” (Art. 32), and following this guideline, local governments and other designated public institutions shall be required to draw up concrete “Plans” or “Working Plans” to protect the people (Arts. 33–36). The Koizumi Cabinet determined the Basic Guideline on March 3, 2005.

2. Outline

(1) Purpose:

For the purpose of both protecting the lives, bodies and property of the people and minimizing the effect on national life and the economy in the military attacks or imminent ones, through stipulating obligations of the central government and local governments, and necessary measures for people’s cooperation, evacuation of residents, and the rescue of evacuated residents and others, this law aims at making thoroughgoing preparations for military attacks and enforcing those obligations and measures properly and promptly, in conjunction with the Countering Attacks Law (Art. 1).

(2) Obligations of the Central Government and Local Governments, and People’s Cooperation:

By deciding a basic guideline in advance, the central government must make thoroughgoing provisions in preparation for military attacks in enforcing the guideline (Art. 3 [1]). The local governments must synthetically advance measures for protecting the people in their territory following the guideline (Art. 3 [2]). The central government, local governments and designated public institutions shall be in close coordination with one another in enforcing measures for protecting the people properly and promptly (Art. 3 [4]).

The people shall make all possible efforts to afford necessary cooperation required for enforcing the measures for protection (Art. 4 [1]), and they should do so only of their own free will, but never be compelled to (Art. 4 [2]).

(3) Considerations:

In enforcing people protection measures, all the persons and institutions in charge shall be required to consider various matters, such as the principle of respecting the fundamental human rights guaranteed by the

Constitution (Art. 5), a prompt implementation of compensation for loss, complaint procedures and other suits (Art. 6), respect for the autonomy of the Japanese Red Cross Society (Art. 7 [1]), concerns for freedom of speech of the broadcasting industry (Art. 7 [2]), providing the people with accurate information in a timely and proper way (Art. 8).

(4) The Division of Roles between the Central Government and Local Governments, and Enforcement System:

The central government shall issue a warning, order governors of designated prefectures to take measures for evacuating, rescuing and countering military attack disasters, secure facilities related to daily life, and prevent military attack disasters involving hazardous or radioactive substances and so forth (Art. 10). Prefectures shall order their residents to evacuate via the chief elected officials of cities, towns, and villages, rescue evacuated residents, make an emergency alert, define warning zones, and enforcing necessary measures for extermination of military attack disasters or prevention against expansion of those disasters and so forth (Art. 11). And cities, towns and villages shall enforce the transmission of a warning to residents, lead evacuation, and carry out temporary measures for defining warning zones and others related to military attack disasters, and fighting a fire and so forth (Art. 16). These obligatory roles of the central government and local governments are enumerated in detail in chapters 2 to 6.

In the event of military attacks or imminent ones, “the Counter-measures Headquarters” whose chief is the Japanese prime minister, shall be established under the framework provided by the Countering Attacks Law (see the Countering Attacks Law Art. 10), and the measures for protecting the people shall be implemented synthetically under the supervision of the Headquarters (Art. 24).

(5) Penal Regulations:

In order to make sure that people protections measures are implemented without interruption, the law shall inflict a penalty, which is equivalent in severity to one provided by the current laws such as the Disaster Countermeasures Basic Law, on those who do not obey the order of avoiding risk related to a nuclear power plant, keeping certain substances, traffic regulations, or trespass in an off-limits area (Arts. 188–194).

Editorial Note:

Firstly, on the seven laws designed to supplement Japan's war-contingency legislation in general, historical reasons lie behind Japan's haste in the establishment of a package of contingency bills now. Article 9 (1) of the Constitution provides: "Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as a means of settling international disputes." And Article 9 (2) provides: "In order to accomplish the aim of the preceding paragraph, land, sea, and air forces as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized." These provisions represent a deep reflection on Japan's past conduct during the Second World War which caused immense damage within as well as outside the country. However, the Liberal Democratic Party (L. D. P.) long in power has been reluctant to ponder the state crime of invasion or the status of defeated nations during the war, and have been striving to break away from the limitation on maintaining an army as provided in the constitution. The sixth plank in the L. D. P. platform expresses their aspiration for the creation of an independent constitution, which in fact aims at the revision of Article 9 of the Constitution. As Japan has been growing into a major economic power since the 1980s, politicians in the L. D. P. began to confess more and more explicitly their real intention of transferring Japan into a "normal state" backed by the military. While the Japanese economy has been struggling with recession since the early 1990s, the governmental power in politics has paradoxically got much larger. It is true that ordinary people in Japan have cherished its peaceful and war-renouncing constitution. But thanks to those recent incidents in succession as mentioned above which triggered fears about safety and security among the people, the Japanese Prime minister Junichiro Koizumi, who won overwhelming support in the 2001 election, and his cabinet, were able to pass the contingency laws one after another. The rationale by which Mr. Koizumi justified the contingency legislation was "Providing is preventing."

Moreover, U.S. demands and support are major external forces that pushed the contingency legislation forward. After the end of the Cold

War, the United States has demanded Japan should play a bigger role in its global military strategy. When being asked for help by its ally during the Gulf War in 1991, the Japanese Government raised the question of this assistance via financial or military means, which was hotly debated. Since then, the issue of revising legal procedures and actively cooperating with U.S. military operations has dominated public debate. Taking advantage of the Gulf War, Afghanistan war and Iraq war, the Japanese Government has given military assistance to and cooperated with the United States.

The problem of the contingency legislation in general is that it will violate Article 9 of Japan's peace constitution. The successive Japanese governments have explained that the nation by nature possesses the right of self-defense of its homeland at a time of invasion, and the Self-Defense Forces are justified even under the Constitution because they simply are organizations for minimal self-defense forces, not for fighting ones. According to the contingency laws, however, the Japanese prime minister is authorized to decide to dispatch troops and participate in war with the excuse of assisting U.S. forces, protecting nationals and fighting terrorism, no matter whether the nation is confronted with a foreign invasion or not. This will arguably extend beyond the scope of the individual right of self-defense, and thus must be inconsistent with the conventional interpretation of Article 9 by the Japanese Government. In other words, contingency laws have substantially amended "the supreme law of the nation" (Art. 98 of the Constitution), which runs counter to the spirit of constitutionalism. Moreover, contingency legislation will certainly have adverse effects on other countries in East Asia, including China and South and North Korea, which were invaded by Japan in the past. These once-defeated countries have been always anxious about Japan becoming again a military power and have always been opposed to the contingency legislation. To make matters worse, the fact that Prime Minister Koizumi continues to visit *Yasukuni Jinja* (the Yasukuni Shrine) in his official capacity against fierce opposition from those countries will prove their apprehensions are not groundless.

Secondly, on the People Protection Law in particular. If the contingency laws in general enable Japan to become the very country which does not maintain the war-renouncing constitution, but conducts war, it

is doubtful that the People Protection Law will be able to adequately protect the Japanese People in wartime. Whereas the law stipulates that the people shall make all possible efforts to afford the necessary cooperation required for enforcing the measures for the protection (Art. 4 [1]), and they should do so only of their own free will, but never be compelled to (Art. 4 [2]), it also provides that they shall be punished under the penal regulations when they do not follow certain requirements from the government (Sec. 10). All things considered, the People Protection law, deliberately or incidentally, has an effect of “nurturing” the “cooperative” people who will faithfully “support” Japan conducting a war. The law might be called the “Mobilizing and Unifying” the People Law instead of the “Protecting” the People Law. Those who obstruct military operations will be eliminated indirectly in the name of “evacuation” or directly through penal regulations, and only those who cooperate with the government will be protected. The latter, however, will be protected tentatively since a top priority of the Japanese government is to keep cooperating with U.S. military operations even at the cost of the people.

The Constitution guarantees that “the people shall not be prevented from enjoying any of the fundamental human rights” (Art. 11) and provides that these “freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people” (Art. 12). War is the most typical thing that oppresses freedoms and rights, and therefore Article 9 of the Constitution renounces war forever. If that is the case, the “Providing” in “Providing is preventing” has been made not at this time of enacting contingency legislation, but in establishing the Constitution including Article 9 in 1946. Considering that successive Japanese Governments have made little diplomatic and non-military efforts to promote peace and stability carrying the banner for the peace and war-renouncing constitution, not only the People Protection Law but also all the war-contingency laws would best be left unused.