
MAJOR LEGISLATION & TREATIES

Jan.–Dec., 2008

1. Constitutional Law

Law on Special Measures Concerning Supporting Operations of Supply for Operations of Ocean Intercepts for Antiterrorism

Law No. 1, January 11, 2008 (Effective on January 16, 2008). 9 clauses and 5 supplementary ones.

Background:

After the 9.11 attack, the world order changed dramatically. The conception of the Bush administration was the achievement of peace through fighting terrorism. Its top agenda was ‘the war on terror’, which was a key phrase to justify all governmental actions, whether rational or not. It required all allies to accept its agenda and to support its military actions.

Japanese Prime Minister Junichiro Koizumi, who was a special friend of President Bush and had sympathy with him, immediately issued a strong message of support for his actions. In 2001, the Cabinet headed by Koizumi proposed a law allowing the Self Defense Forces to supply operating corps with materials, and the Diet passed it. At first, the law had validi-

ty only for two years, but the term was extended three times until 2007. The ruling party and Prime Minister Shinzo Abe hoped for a further continuation of it, but this became impossible because of a defeat in the 2007 senate elections. However, Koizumi left a legacy, enabling them to overcome the minority parties' opposition in the Senate. Article 59(2) provides that "A bill which is passed by the House of Representatives, and upon which the House of Councilors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present". The legacy was over two-thirds of the seats in the House of Representatives, which were a result of a historical victory in the 2005 election.

The new cabinet headed by Yasuo Fukuda proposed a new bill to enable the Self Defense Forces to operate on supplementary missions on October 17, 2007. The House of Representatives passed it on November 13, but the Senate rejected it on January 11, 2008. Then the House of Representatives passed it by a majority of two-thirds or more of its members on the same day. This is the Law on Special Measures Concerning Supporting Operations of Supply for Operations of Ocean Intercepts for Antiterrorism. It became effective on January 16, 2008 and the Self Defense Forces started their mission in the Indian Ocean on February 21, 2008.

Main Provisions:

Article 1:

The purpose of the law is to support ocean military missions against terrorism by supplying of some resources necessary for those actions. It is also to play a role in the fight against terrorism and to keep peace all over the world.

Article 2:

The government shall execute the mission to support military actions for eradicating terrorism and maintaining world peace. However, any missions according to the law shall not be a threat or use of force and their actions shall be limited to a 'non-fighting area'. Furthermore, a 'non-fighting area' means the Indian Ocean.

Article 3:

What Self Defense Forces can do is to refuel and supply water to foreign corps engaging in ocean military missions against terrorism.

Article 4:

The Prime Minister shall decide a plan about the size, organization and equipment of dispatched corps and its terms in the Cabinet meeting.

Article 5:

The Minister of Defense shall make guidelines according to the plan decided in the Cabinet meeting. They shall be approved by the Prime Minister. The Minister has to order the dispatched corps to stop its mission when the area in which it operates is not a 'non-fighting area'. And a chief shall order the suspension or cessation of the mission or retreat from the area.

Article 6:

Self Defense Forces can donate resources to foreign corps engaging in ocean military missions against terrorism.

Article 7:

The Prime Minister shall report to the Diet on the decision or alteration of the plan and the expiration of the mission immediately.

Article 8:

Use of weapons shall be limited to critical situations and be the minimum necessary for justifiable self-defense or legitimate refuge from those.

Article 9:

Detailed procedures on the implementation of the law shall be provided in a government ordinance.

Supplementary Clause 3:

The law shall lose its effect after one year.

Editorial Note:

The political circumstances in Japan have greatly changed. The conservatives have realized their long-standing desires. Especially, the Abe administration, whose goal was to get rid of the post-war regime, set the amendment of the Constitution as its top agenda. However, his party and its coalition lost their majority in the 2007 senate elections. The minority parties completely control the House of Councilors. This prevents the majority party implementing its policy. The first ordeal that they faced was to enact the law to extend the term of missions supporting the fight against terrorism. They used Article 59(2) to overcome the minority's opposition in the Senate. But its term is coming to an end and general election will be called in 2009. Before the term is over, the administration passed the law to revise supplementary clause 3, which limited the valid term of the law to one year, and the law will be effective until 2010.

Article 9 of the Constitution provides that "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 means of settling international disputes". This means that no military actions can be allowed at all. In the Diet, the opposition argued that article 8 of the law, which permits the use of weapons for self-defense, is unconstitutional. Moreover, it is said that the Constitution prohibits any military actions including supporting ones "as means of settling international disputes". Thus, it is quite doubtful that the law consists with the Constitution.

Finally, I would like to point out that this kind of legislation has highly dangerous aspects. Though this is a special legislation, it is likely to allow the Self Defense Forces to enlarge its activities in the name of the necessity for making an international contribution. If any, reconnaissance would be a role in the future. Or requirements for the use of weapons would be relaxed in the name of the protection of human lives.

A constitution is the fundamental framework for governmental actions. The difficulty of amendment is to make it hard for the government to alter the basic principles arbitrarily. We have to respect constitutional principles, simply because this is the best way to maintain liberal democracy. I believe that it is the time to drop distorting them by stopgap mea-

sures.

2. Administrative Law

Basic Act on Reform of the National Public Service System (23provisions)

Law No. 68, June 13, 2008 (Effective on the day of the promulgation laid down, but the regulations in the third chapter will be effective on the day which a year after the day of the promulgation laid down by Government order)

Background:

This act is a basic act concerning the reform of the Japanese national public service system. The purpose of this act is, firstly, to stipulate the basic principle and the basic policy which makes each national public servant execute his work with confidence, a sense of responsibility, and an improvement in ability, secondly, by establishing a Headquarters for the Promotion of the National Public Service System Reform, to accomplish the reform of the Japanese national public service system.

In Japan, the administrative operation have traditionally been carried out in such a way that the drafting of a plan for a policy has been entrusted to a bureaucrat. However, such an administrative custom has caused a vertically structured administration to develop in which each ministry forces them to give priority to the profit and the policy remote from the national needs, as is symbolized by the pension problem, the waste of the budget, the “bureaucrat’s descent from heaven” (in Japanese, “*AMAKU-DARU*”, this means that a bureaucrat is given a high post in an affiliated organization or private enterprise, etc, over which the government office to which he belonged formerly has jurisdiction) and so on, so that distrust of the government or the Liberal Democratic Party (LDP), which is the government party, has formed.

After the Cabinet decision concerning the reform of the Japanese national public service system in April in 2007, the bill for this act was submitted to the House of Representatives in April in 2008 under the Fukuda