
MAJOR LEGISLATION & TREATIES

Jan.–Dec., 2009

1. Constitutional Law

Law on Punishment of and Operation against Piracy

Law No. 55, June 24, 2009 (Effective on July 24, 2008). 13 clauses and 4 supplementary ones.

Background:

In recent years, acts of piracy in the Somalian Sea have dramatically increased. The sea is a line linking Europe with Asia, so it is one of the most important lanes for international trade. Many countries are worried about this situation. Traditional international law has admitted any states to have criminal jurisdiction over acts of piracy, because pirates are viewed as ‘common enemy for humans’. Since ancient times, most countries have taken a strong attitude toward them. However, today we have the very same problem, which threatens security all over the world.

In the light of this international background, many countries have rapidly created a strong policy. The Law on Punishment of and Operation against Piracy was enacted on June 24, 2009, and is a fundamental legislation defining the basic policy of Japan on this problem. It provides for the

criminal punishment of acts of piracy and empowers the Japan Coast Guard and Self-Defense Forces to cope with them.

Main Provisions:

Article 1:

The purposes of the law are to ensure the security of nautical sailing and to maintain public safety and order on the seas.

Article 2:

The law defines what ‘piracy’ means. For example, it is to seize freight with violence or to threaten or abduct anybody within the purpose of taking them hostage.

Articles 3 & 4:

These articles provide criminal punishment for an act of piracy. Examples are life imprisonment, a prison sentence of five years, or capital punishment.

Article 5:

The Japan Coast Guard can take necessary actions against piracy.

Article 6:

The law also grants permission for the usage of weapons when there is a reasonable ground to believe that the Japan Coast Guard could not stop the piracy without using them. However, they may not do so in a way that exceeds the extent of that necessity.

Article 7:

The law empowers the Minister of Defense to order the Self-Defense Forces to take any actions necessary for operations against piracy. The Minister should receive the approval of the Prime Minister concerning the scale, composition, equipment and term of the Forces.

Article 8:

The article provides for the powers of the Self-Defense Forces in operations against piracy.

Article 9:

Laws in Japan are applied to any actions obstructing Japanese official's operations.

Article 10:

All chiefs of relevant departments should cooperate with the Director General of the Japan Coast Guard and the Minister of Defense.

Article 11:

The government should try to collect and analyze information on piracy.

Article 12:

The government should obey established international law in enforcing this law.

Article 13:

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

Editorial Note:

This law is the first legislation concerning piracy in Japan. Until now, there has been no urgent necessity to enact any special legislation for operations against piracy. However, as exemplified by the increasing acts of piracy in the Somalian sea, frequent piracy actions are a serious problem all over the world. Thus, the Japanese government decided to define its basic policy on this problem and to extend the authorities granted to relevant institutions.

We have to focus on the content of the law, because it empowers the Self-Defense Forces to use arms in any necessary situations. Especially, the law on the Self-Defense Forces permits the Self-Defense Forces to protect only vessels with Japanese registration. This new legislation enlarges the Self-Defense Forces operations to the protection not only of Japanese vessels, but also foreign ones. The Standard for the usage of weapons is provided in the law (articles 6 & 8), which permits using arms when officials could not stop the piracy without using them, without exceeding the

extent of that necessity.

To be sure, we should take a strong attitude against this ‘common enemy of humans’. However, the Constitution of Japan prohibits any arms, so that we should be careful about the unconscious expansion of the Self-Defense Forces.

2. Administrative Law

The Fundamental Act on the Public Service

Law No. 40, May 20, 2009 (Effective on July 1, 2009) 11 provisions

Background:

The division of roles between the private sector and the public sector has been changing under the climate of regulative, administrative and financial reforms. In other words, several reforms have been introduced to allow the provision of public services by private agencies. Examples include the foundation of an independent administrative agency, the Marketing Test System (the Act on the Reform of Public Services by Introduction of Competition Law No. 51, June 2, 2006), PFI (Private Finance Initiative), Designated Manager System in Local Government Act. In Japan, the reform of public service provision has been carried out toward deregulation and privatization.

However, a few concerns have been raised concerning the reforms with regard to the unclarity of the responsibilities and duties between the government and the private sector, and to the worsening of working conditions for employees who work in public service provision. These problems will result in a deterioration of service quality, which will dampen the right of access to public services by the citizens.

Under these circumstances the Fundamental Act on the Public Services has been passed, as an ideal legislation for public services, taking the standpoint of the citizens who are entitled to receive civil services, by legislation introduced by a Diet member of the House of Representatives.