Japanese Peacekeeping Legislation and Recent Developments in U.N. Operations

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Japanese Peacekeeping Legislation and Recent Developments in U.N. Operations

Akiho Shibata†

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I. INTRODUCTION

On June 15, 1992, the Japanese Diet\(^1\) adopted the Law Concerning Cooperation in U.N. Peacekeeping and Other Operations (Peacekeeping Law). The law, which came into force on August 10 of that year,\(^2\) amended the Self-Defense Forces Law\(^3\) to allow the Self-Defense Forces (SDF) to participate in U.N. peacekeeping.\(^4\) Thereafter, Japan took a significantly more active role in U.N. activities. The Japanese government sent three electoral monitors to Angola to participate in the U.N. Angola Verification Mission (UNAVEM II),\(^5\) more than 680 personnel including a 600-member SDF ground unit to Cambodia to participate in the U.N. Transitional Authority in Cambodia (UNTAC),\(^6\) and a 48-member SDF transport unit to Mozambique to participate in the U.N. Operations in Mozambique (ONUMOZ).\(^7\)

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1. The Diet, the legislative body of Japan, consists of an upper house, the House of Councilors, and a lower house, the House of Representatives. A bill can be proposed by the Cabinet, individual members of the Diet, or Diet committees. A government-proposed bill originates in the Cabinet and is usually drafted by government bureaucrats. Bills can be introduced in either house, where a committee will discuss the bill. If the committee votes for adoption, it passes the bill to the plenary house. The same process is repeated in the other house of the Diet, and a bill becomes law on passage by both houses. The lower house, the House of Representatives, takes precedence over the upper house in that it may override an unfavorable vote by the House of Councilors with a two-thirds majority. See generally SATÔ KÔI, KENFÔ [THE CONSTITUTION] 140-41, 158-59 (1990).


4. Peacekeeping Law, supra note 2, supplementary provisions, art. 8 (adding Article 100(7) to SDF Law and stipulating that Director-General of Defense Agency may order SDF units to carry out International Peace Cooperation Assignments (IPCA) and other functions provided for in Peacekeeping Law).


6. See Cambodia Kokusai Heiwa Kyôryoku Gyômu Jisshi Keikaku [Cambodia International Peace Cooperation Assignments Implementation Plan], 1011 JURISUTO [JURIST] 43 (1992) (authorizing dispatch of eight SDF personnel to participate in cease-fire monitoring, 75 police personnel to participate in police assistance, and a 600-member SDF ground unit to participate in logistical support and road construction). In addition, a 400-member SDF navy unit and a 120-member SDF air force unit transported personnel and materials to Cambodia.


The Peacekeeping Law was adopted through deliberate political compromise. Accordingly, an analysis of the law must take into account the domestic political and legal environment of Japan, as well as the international context in which Japan must operate. Japan faces formidable pressure to play a more prominent role in international fora, especially the United Nations. The degree of such pressure is evident from the argument that Japan should only obtain a permanent seat on the U.N. Security Council after it accepts increased responsibility in U.N. military operations. Tugging in the opposite direction are historical constraints on the expansion of Japan's international role, particularly in military operations. Other Asian nations have vivid memories of Japanese atrocities during the Second World War and generally look upon proposals for a greater Japanese role in international affairs with suspicion and apprehension. For example, the governments of South Korea and China expressed discomfort when Japan introduced domestic legislation that would expand its role in U.N. peacekeeping.

Domestically, the then-ruling Liberal Democratic Party (LDP) and the Ministry of Foreign Affairs (MFA) had long studied the possibility of Japanese participation in U.N. operations and had been waiting for the right opportunity to initiate such participation. Opposition political parties, led by the Japan Socialist Party (JSP), and the Japanese public, however, remained wary of government attempts to expand their nation's role. As a rule, the people of Japan have opposed any buildup of the SDF, and have watched closely over government policies concerning international security in general and the role of the SDF in particular. After the Gulf War, however,

8. See generally Aurelia George, Japan's Participation in U.N. Peacekeeping Operations: Radical Departure or Predicable Response?, 33 ASIAN SURV. 560 (1993) (describing domestic and international political environment affecting Japan at time Peacekeeping Law was adopted). In the summer of 1993, the Liberal Democratic Party's thirty-eight years of rule came to an end, drastically changing the political environment in Japan. Even so, the basic government policies concerning Japanese participation in U.N. peacekeeping operations have not changed. The Hosokawa government and the newly installed Hata government have yet to announce an official view of Japan's role in U.N. peacekeeping.


11. The MFA began studying the possibility of Japanese participation in U.N. military operations as early as 1966. See generally KOZAI SHIGERU, KOKUREN NO HEIWA JI KATSUJO [U.N. PEACEKEEPING OPERATIONS] 494-95 (1991). In 1966, the Tokyo Daily reported that the government had completed the outline of a draft U.N. cooperation law. Even though the government denied the existence of such a draft, it acknowledged that it had been studying the issue. In 1982, the MFA asked a private group of seven experts, among them Saito Shizuo, a former U.N. Ambassador, and Professor KOZAI SHIGERU of Kyoto University, to examine U.N. peacekeeping functions. The group's final report proposed active participation of Japanese personnel in U.N. peacekeeping operations, although it did not specifically mention SDF participation. Id. at 502.


13. See KOZAI, supra note 11, at 496-98.
Japan’s domestic political environment changed dramatically. Although the government of Japan paid $13 billion to support coalition forces, it encountered harsh criticisms from the international community for failing to send military personnel to the Gulf. The Japanese people thus began to realize that their nation could not fulfill its expected international role through financial contributions alone.14

Japan’s laws have constituted the most significant restraints on expanding its international, and especially its military, role. The Japanese government sought to circumvent these restraints in drafting the Peacekeeping Law. Its unusually complex and detailed text is carefully worded to minimize questions of constitutionality. Accordingly, to fully appreciate the significance of the Peacekeeping Law, one must first understand the legal framework, particularly the constitutional framework, within which it was promulgated.

The Japanese government is facing new challenges. During and since the adoption of the Peacekeeping Law, U.N. operations have changed profoundly.15 Not only has the number of operations and personnel involved in each operation increased dramatically in recent years, but the nature of operations has also changed significantly. For example, there seems to be a trend toward the combining of peacemaking and peacekeeping functions on the one hand, and, more controversially, of peace-enforcing and peacekeeping functions on the other.16 Moreover, almost all recent U.N. operations have dealt with civil conflict, an especially troublesome area.17 To make matters worse, parties to civil conflicts have increasingly become hostile to the United Nations and defied its authority and legitimacy. General Aidid in Somalia, the Serbian forces in Bosnia-Herzegovina, the Khmer Rouge in Cambodia, and UNITA in Angola are but a few examples of those who have challenged the United Nations’ authority. In the future, Japan may be asked to participate in these new and more dangerous peacekeeping operations. But can Japan participate? This Article attempts to answer this question through an objective legal evaluation of the scope and limits of the Peacekeeping Law.

In Part II of this Article, I set forth the constitutional and legal framework within which the Peacekeeping Law was drafted. I then discuss the impetus for the law — how the government came to realize the inadequacy of existing laws and the need for new legislation to respond effectively to international

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17. U.N. operations to restore law and order between factions within a state are more difficult than operations to create a buffer zone between conflicting states. JAMES A. STEGENGA, THE UNITED NATIONS FORCE IN CYPRUS 94 (1968); Brian E. Urquhart, Peacekeeping: A View from the Operational Center, in PEACEKEEPING: APPRAISAL AND PROPOSALS 163, 166-67 (Henry Wiseman ed., 1983) [hereinafter WISEMAN].
expectations and domestic criticism. In Part III, I examine the substantive provisions of the Peacekeeping Law against the backdrop of the practice of U.N. peacekeeping operations. This analysis reveals significant inconsistencies, actual and potential, between the Peacekeeping Law and U.N. practice. In Part IV, I consider whether Japan, under the Peacekeeping Law, would be able to participate in modern U.N. operations. This examination suggests several issues that the Peacekeeping Law does not adequately address. In Part V, I recommend ways in which the Japanese government, when it reviews the law in 1995, should improve the Peacekeeping Law so as to make it more effective.

II. THE LEGAL FRAMEWORK GOVERNING JAPANESE PARTICIPATION IN U.N. FORCES

A. The Japanese Constitution, Related Laws, and Practice

The Japanese constitution is the supreme law of the nation. Thus, Japanese participation in U.N. operations must always accord with the constitution's provisions. The key provision of the Japanese constitution related to peacekeeping is Article 9, which states:

1. 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.
2. 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. 

Article 9's prohibition on military forces calls into question the constitutionality of the SDF's very existence. Many Japanese academics contend that maintaining the SDF is unconstitutional. The government, however, interprets Article 9 as not denying Japan the right to defend itself or the right to maintain a minimum force necessary to exercise that right. It argues that the SDF constitutes a minimum force and its existence therefore does not violate Article 9. The government has consistently maintained, however, that the SDF cannot constitutionally join the armed forces of other nations in collective self-defense, as Article 9 permits the exercise of self-
defense only to the extent necessary to defend the nation of Japan.21

Even assuming the constitutionality of the SDF’s existence, the legality of dispatching the SDF to a foreign country remains controversial. In 1954, when the SDF was established, the House of Councilors passed a resolution prohibiting foreign dispatch of the SDF.22 This resolution did not, however, necessarily bar Japan from all U.N. operations. At the time the House of Councilors passed the resolution, the Japanese government interpreted the phrase “dispatch abroad” narrowly, to mean the dispatch of troops with the intent to exercise fully the right of belligerency.23 The 1954 resolution, therefore, does not speak to SDF participation in U.N. operations that do not presuppose belligerent activities.

The government first confronted the issue of Japanese participation in 1958, when U.N. Secretary-General Dag Hammarskjold asked Japan to send ten SDF officers to the U.N. Observation Group in Lebanon. Although the Japanese government denied the request,24 citing incompatibility with domestic law, the incident spawned active discussion about the constitutionality of the SDF’s participation in U.N. forces.25 During this debate, the government distinguished between different types of U.N. operations. While leaving open the possibility of Japanese participation in U.N. peacekeeping activities, the government opposed involvement in enforcement activities like those undertaken during the Korean War.26 Prime Minister Ikeda, for example, stated that the constitution may permit SDF participation in U.N. military activities when those activities do not involve

21. For an analysis of the government’s interpretation of Article 9, see Satō Isao, Dai Kya Jo no Seifu Kaishaku no Kiseki to Ronten, [The Locus and Issues of the Government’s Interpretation of Article Nine] (pts. 1 & 2), 1001 JURitsuTo [JURIsT] 72 (1992), 1003 JURitsuTo [JURIsT] 38 (1992). According to Satō, the Japanese government interprets Article 9 to allow self-defense, although only with the minimum of necessary force. Maintenance of offensive war potential is prohibited, however. The dispatch abroad of the SDF with the purpose of using force is outside the scope of self-defense and is therefore prohibited. The constitution also prohibits collective self-defense. Participation in U.N. forces is not per se unconstitutional, but if their purpose and duties involve the use of force, participation is not permitted. Participation in a force formed under Article 43 of the U.N. Charter would also raise constitutional questions.
22. KOZAI, supra note 11, at 477-78.
23. Id. at 478-80. Since Article 9 already prohibited such activity, the resolution had little real significance. Id.
24. Id. at 485.
25. In 1961, U.N. Ambassador Matsudaira said to the press:
   "I was deeply troubled when the Government turned down the U.N. request to send troops to the conflict in Lebanon in 1958. Japan’s pledge of cooperation with the United Nations and its attitude of rejecting any participation in U.N. forces are inconsistent. In the future, at least observers should be deployed."
   Id. at 486. In the ensuing political furor, opposition parties demanded Matsudaira’s resignation until the Diet and the government formally recognized that his statement was inappropriate and reaffirmed its intention not to dispatch the SDF abroad. Id.
26. Id. at 486-87. Professor Koizai, writing in 1965, concluded that while participation in the collective enforcement units envisaged in Article 42 of the U.N. Charter may be unconstitutional, participation in peacekeeping operations — because of their non-belligerent and international character — is allowed under the constitution. Shigeru Koizai, Japanese Participation in United Nations Forces: Possibilities and Limitations, 9 JAPANESE ANN. OF INT’L L. 10, 17 (1965) [hereinafter Koizai, Japanese Participation].
the use of force and are conducted under U.N. command. The JSP, the newly formed Democratic Socialist Party, and the Komei (Clean Government) Party all opposed this interpretation, arguing that it opened the way for SDF dispatch in less limited circumstances. The debate continued throughout the 1960s and 1970s as U.N. peacekeeping activities expanded.

In 1980, the government presented to the Diet its official position paper on the issue of Japanese participation in U.N. operations. The government distinguished between peacekeeping operations and the kind of forces formed under Article 39 of the U.N. Charter for the purpose of carrying out military objectives during the Korean War. It then subdivided U.N. peacekeeping operations into two types: (1) cease-fire observation groups, which are charged with observing cease-fires and reporting any breach to the Security Council; and (2) peacekeeping forces, which are charged with preventing conflict, disengaging troops, and restoring and maintaining internal security. By making this distinction, the government implicitly took the position that since the activities of U.N. observation groups do not involve the use of force, participation in them is constitutionally possible.

The government, refraining from making any generalized statements regarding participation in U.N. peacekeeping operations, contended that they vary with respect to their purposes and duties. Instead, it specified the conditions under which participation could be deemed constitutional: If the purpose and duties of a particular U.N. operation involved the use of force, the SDF could not participate under the constitution. If a U.N. operation did not involve the use of force, however, the SDF could participate, but only if explicit legislation entrusted such a duty to the SDF. Since the SDF Law did not provide such a mandate, the SDF could not participate in these operations either, at least not without further action in the Diet.

At present, Japan adheres to the interpretation set forth in its 1980 position paper. This view, along with its narrow interpretation of the phrase “dispatch abroad,” forms the foundation of and the justification for the

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27. Kozai, supra note 11, at 488-89.
28. Id. at 489-99.
29. See id. at 490-500.
30. Id. at 500-01. Usually, the government presents unified official views after it is requested to do so by the Diet or an individual Diet member.
31. Id. at 501.
32. The SDF is charged with defending Japan’s peace and independence against direct and indirect aggression, and, when necessary, maintaining public order. SDF Law, supra note 3, art. 3. Supplementary tasks that allow the SDF to work beyond the territory of Japan include scientific research in Antarctica, id. art. 100(4), transportation of the Prime Minister or other national dignitaries, id. art. 100(5), and international emergency rescue operations, id. art. 100(6).
33. The legal force of the government’s position on Article 9 has been disputed. Compare Robert B. Funk, Japan’s Constitution and U.N. Obligations in the Persian Gulf War: A Case for Non-Military Participation in U.N. Enforcement Actions, 25 Cornell Int’l L.J. 363, 379 (1992) (arguing that government’s official interpretations acquire force of law under certain circumstances, even without formal constitutional amendment) with Sato, supra note 1, at 566 (criticizing such view). The government’s interpretation of Article 9, especially with respect to the participation of the SDF in U.N. forces, is but one among many; it is neither ipso facto unconstitutional nor ipso facto legally binding.
1992 Peacekeeping Law. It also explains why the Diet had to amend the SDF Law at the time it adopted the Peacekeeping Law — only a legislatively imposed duty would permit Japan to send the SDF to a foreign territory. But the Peacekeeping Law did not follow directly from the position paper. Rather, it was a reaction to growing international challenges and the several unsuccessful attempts to alter domestic law to meet those challenges.

B. The Gulf War and the Japanese Response

The Japanese government has proclaimed its desire to follow a United Nations-centered diplomacy. The Gulf War and the quick response of the United Nations to the crisis tested Japan’s commitment and ability to follow through on this diplomatic goal. Pressure to participate in U.N. efforts mounted from Japan’s most important ally, the United States. During a meeting with Prime Minister Kaifu on September 29, 1990, President Bush reportedly requested that the SDF provide background support, transportation, and medical assistance. The government’s various measures in response demonstrated that legislative constraints were preventing Japan from dealing effectively with the situation. Failed efforts at legislative change and the debates accompanying them eventually helped establish the political consensus and legal foundation necessary to pass the Peacekeeping Law.

1. The 1990 Draft Law Concerning Peace Cooperation with the United Nations

Faced with increasing pressure from the international community, the
Japanese government introduced a bill on October 16, 1990 to enable the SDF to cooperate not only with the United Nations, but also with United States-led coalition forces in the Gulf.\(^{37}\) The bill, the Draft Law Concerning Peace Cooperation with the United Nations (Draft Law), sought to circumvent constitutional constraints on the use of the SDF, and therefore met with strong criticism from opposition parties and the public. It was dropped without a vote for several reasons.\(^{38}\) First, permissible activities for the SDF were defined as those based on or those ensuring the effectiveness of U.N. resolutions for the maintenance of international peace and security.\(^{39}\) Permissible activities under the Draft Law included not only those carried out by the United Nations and other international organizations, but also those carried out by other states. This provision was intended to allow Japan to cooperate with coalition forces engaged in activities beyond those specifically based on U.N. resolutions or carried out by the United Nations, and clearly conflicted with the government's 1980 position paper.\(^{40}\)

Second, although the Draft Law stated that activities carried out under it would not constitute threats of or the use of force,\(^{41}\) the government could not guarantee that the SDF would not use force while participating in the United States-led coalition.\(^{42}\) Attempting to assuage these concerns, the Director of the Cabinet Legislative Bureau, Kudō Atsuo, rationalized that to participate in coalition forces that are intended for the use of force is unconstitutional, but to cooperate while remaining outside the command of such forces is permissible under Article 9 of the constitution.\(^{43}\) Not surprisingly, this acrobatic interpretation failed to convince the opposition parties or the public of the Draft Law's constitutionality.

Third, the text of the Draft Law did not clearly distinguish the activities of the coalition forces\(^{44}\) from traditional peacekeeping activities such as cease-fire monitoring, electoral monitoring, and logistical support.\(^{45}\) The Peacekeeping Law introduced in 1991, in some respects, was a carefully crafted rejoinder to these criticisms.

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38. Funk, supra note 33, at 387-88.
40. See Draft Law, supra note 37, art. 22 (providing for participation of SDF units and SDF personnel in International Peace Cooperation Assignments), supplementary provisions, art. 4. (amending SDF Law).
41. Id. art. 2(2).
42. WANGAN SENSO TO KAIKAI HAHEI [THE GULF WAR AND FOREIGN TROOP DISPATCH] 232-34 (Kenmochi Kazumi et al. eds., 1991) [hereinafter KENMOCI]. To downplay this concern during the Diet debate on the new Peacekeeping Law, the government emphasized the peaceful nature of U.N. peacekeeping operations and the existence of cease-fires.
43. Id. at 205.
44. Draft Law, supra note 37, art. 3(1).
45. Id. art. 3(2); see also KozAI, supra note 11, at 503.
2. The Attempted Dispatch of SDF Aircraft to the Gulf Area

After the Draft Law failed, the Japanese government adopted a special Cabinet ordinance enabling it to dispatch SDF aircraft to transport refugees in the Gulf area if a competent international organization requested such aid from Japan. The ordinance was based on Article 100(5) of the SDF Law, which permits the use of SDF aircraft to transport the Prime Minister and other national dignitaries. The government explained that sending SDF aircraft in accordance with this ordinance would be purely humanitarian and non-military in nature and therefore would not violate the constitution.

Apart from the question of constitutionality, the application of Article 100(5) to the transportation of refugees in foreign countries was clearly a distortion, if not a direct violation, of the article. Recognizing this, the public criticized the measure. In the end, no actual dispatch resulted because no competent international organization requested the assistance of SDF aircraft. This Cabinet ordinance is nevertheless noteworthy insofar as it evidences the desperation of the Japanese government and reveals the inadequacy of contemporary laws to deal effectively with contingencies like the Gulf War. Not coincidentally, the 1992 Peacekeeping Law explicitly provides for the SDF to use its aircraft to transport refugees affected by conflicts.

3. The Dispatch of SDF Minesweepers to the Persian Gulf

On April 24, 1991, after the Gulf War, the Japanese government decided to send SDF marine minesweepers to the Persian Gulf in response to a request from the United States. It found authority for this in Article 99 of the SDF Law, which permits the removal and disposal of explosive and dangerous materials from the sea. This time the Japanese government actually sent a minesweeping squadron, which disposed of thirty-four mines in the Persian Gulf between late April and October of 1991. The government defended the constitutionality of the mission on the grounds that a formal cease-fire had been in effect, and that the purpose of the mission — to dispose of abandoned

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46. KENMochi, supra note 42, at 281-82.
47. See supra note 32.
49. Id. at 330-32.
50. Id. at 328; Purrington, supra note 14, at 165-66.
51. Yamauchi, supra note 10, at 328.
52. Peacekeeping Law, supra note 2, art. 3(3)(k).
53. Yamauchi, supra note 10, at 341.
54. SDF Law, supra note 3, art. 99.
55. Yamauchi, supra note 10, at 341-42.
Japanese Peacekeeping Legislation

mines — did not require any use of force.\textsuperscript{56}

Even if the constitution permitted the government to send SDF minesweepers to the Persian Gulf, the measure nevertheless was an unacceptably expansive interpretation of Article 99 of the SDF Law. Although Article 99 allows mine removal activities “in the sea” without expressly defining a geographical region, the legislative intent behind the provision was clearly to limit minesweeping to the seas surrounding Japan.\textsuperscript{57} This narrower interpretation is consistent with the SDF’s basic duty to defend the territory of Japan and with the limited activities that the SDF may carry out beyond Japan’s territory.\textsuperscript{58} The opposition parties, except for the Democratic Socialist Party, and a plurality of public opinion opposed the government’s broader interpretation of the SDF Law.\textsuperscript{59} Again, this measure shows that the Japanese government had to engage in strained interpretations of statutes in order to meet international expectations.

The debates over the measures taken by the government during the Gulf War had a significant impact on the domestic political environment. They helped the Japanese people understand U.N. peacekeeping operations and generated popular support for U.N. efforts.\textsuperscript{60} On November 8, 1990, two opposition parties agreed with the LDP that Japan needed to provide human, as well as material and financial, assistance to U.N. operations.\textsuperscript{61} Prompted by its recent experience in the Gulf War and favorable domestic developments, but still constrained by the constitutional and statutory framework described above, the Kaifu Cabinet submitted the Peacekeeping Law to the Diet in September 1991.\textsuperscript{62} The main objective of the law was to

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\textsuperscript{56} Id. at 341. In 1987, the Japanese government considered the dispatch of SDF minesweepers to the Persian Gulf during the Iran-Iraq war, but decided against it for a number of reasons. First, the Gulf was still a belligerent area. Second, opposition from Asian countries was strong, and finally, other non-military cooperation was possible. At the time, Prime Minister Nakasone stated that minesweeping on the high seas around Japan was clearly permitted under the constitution, and therefore minesweeping on the high seas in the Persian Gulf would also be constitutional. Hamaya Hidehiro, \textit{Kokuren no Heiwa Iji Katsudo to Jieitai no Sanka} [U.N. Peacekeeping Operations and the Participation of the Self-Defense Forces], 18 \textit{SHIN BÔEI RONSHU} [JOURNAL OF NATIONAL DEFENSE] 52, 59-60 (1990).

\textsuperscript{57} YAMAUCHI, \textit{supra} note 10, at 344.

\textsuperscript{58} See \textit{supra} note 32.

\textsuperscript{59} Purrington, \textit{supra} note 14, at 173.

\textsuperscript{60} KOZAI, \textit{supra} note 11, at 503. One poll indicates that the end of the Gulf War was a turning point in Japanese attitudes toward foreign dispatch of the SDF. While 58% of those polled opposed the SDF’s foreign dispatch in November 1990, by April 1991, 56% supported it. At that time, only 24% of citizens polled opposed the SDF’s foreign dispatch, 47% supported SDF participation in non-military activities abroad, and 20% supported SDF participation in military aspects of U.N. peacekeeping operations. \textit{PKO Hôan: Nihon no Tenkanten: Kenpô Keishi no Kangai Sodatsu} [Draft Peacekeeping Law: A Turning Point for Japan: The Growing Trend to Neglect the Constitution], \textit{ASAHI SHINBUN}, May 31, 1992, at 1.

\textsuperscript{61} For the text of the agreed-upon memorandum among the LDP, Komei Party, and the Democratic Socialist Party, see KENMÖCHI, \textit{supra} note 42, at 290.

enable the SDF, for the first time in Japan's history, to participate in military operations abroad. Part III of this Article examines the scope and limits of the Peacekeeping Law to determine whether the government has succeeded in achieving this objective.

III. THE 1992 PEACEKEEPING LAW: A CRITICAL ANALYSIS

A. Principles and Organization

The stated purpose of the Peacekeeping Law is to "enable Japan to contribute actively to United Nations-centered efforts for international peace" through cooperation in U.N. peacekeeping and humanitarian relief operations.63 Contributing activities are called International Peace Cooperation Assignments (IPCA). Article 3(3) of the Peacekeeping Law enumerates specific tasks that qualify as IPCA.64 The fundamental principle of the Peacekeeping Law is that IPCA "shall not be tantamount to the threat or use of force."65

The Peacekeeping Law creates an International Peace Cooperation Headquarters (Headquarters), headed by Japan's Prime Minister.66 For each U.N. operation, Headquarters is to draft and revise an implementation plan (Implementation Plan) that enunciates the basic policy behind Japanese participation and specifies the content, scope, and duration of IPCA, as well as the equipment to be used.67 The Cabinet must approve the Implementation Plan,68 and report its approval to the Diet.69 In addition, Headquarters is to draft operating procedures (Operating Procedures) that contain more detailed and confidential directions to Japanese personnel in the field.70 The Operating Procedures must be prepared and revised to conform with the commands of the Secretary-General of the United Nations.71

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63. Peacekeeping Law, supra note 2, art. 1.
64. The following qualify as IPCA: (a) monitoring of cease-fires and of withdrawal and demobilization of armed forces; (b) stationing in and patrolling of buffer zones; (c) inspection of weapons; (d) collection, storage, and disposal of abandoned weapons; (e) assisting in designation of cease-fire lines; (f) assisting in exchanges of prisoners of war; (g) supervision and management of elections; (h) advising in police administration; (i) advising in other administrative matters; (j) provision of medical services; (k) rescue of people affected by conflicts and assisting in their repatriation; (l) distribution of food and other materials to affected people; (m) installation of facilities in areas damaged by conflicts; (n) repair or maintenance of facilities or equipment damaged by conflicts; (o) restoration of natural environment; (p) transportation, communication, and construction assignments not already specified; and (q) performance of other tasks, as prescribed by Cabinet ordinance. Id. art. 3(3). The government was careful to exclude disarmament from the list.
65. Id. art. 2(2).
66. Id. arts. 4(1), 5(1).
67. Id. arts. 4(2), 6.
68. Id. art. 6(1)-(2).
69. Id. art. 7.
70. Id. art. 8(1); HC, 123d Sess., Special Comm. No. 6, at 25 (May 11, 1992) (statement of Cabinet Councilor Nomura Kazunari).
71. Peacekeeping Law, supra note 2, art. 8(2).
IPCA are to be carried out by an International Peace Cooperation Corps (Corps) comprised of civil servants, individual SDF personnel, and others employed by Headquarters. The Corps is under the direction and supervision of the Prime Minister. SDF units, while institutionally separate from the Corps, can also participate in carrying out IPCA. SDF units, however, remain under the direction and supervision of the Director-General of the Defense Agency. Six of the IPCA that require relatively high military capacities must be discharged by SDF personnel, acting either as individuals or in units.

B. Command Structure

The Peacekeeping Law contains numerous and potentially contradictory provisions concerning the command of Japanese participants in U.N. operations. For example, it states that peacekeeping operations are conducted “under control of the United Nations,” and Operating Procedures are to “conform with commands of the Secretary-General.” The Prime Minister of Japan, however, has power to “direct and supervise” Headquarters and administrative divisions in the implementation of IPCA.

In the initial stages of the debate, the government persistently denied that the United Nations would have command and control over Japanese Corps personnel and SDF members. It argued that the United Nations would have authority to adjust the deployment and movement of units, but that actual command and control over the operations of troops would rest with Japan.

72. SDF participants in IPCA are referred to as “SDF Corps personnel.” See id. art. 12(6). In contrast, SDF members attached to SDF units are called “SDF personnel.” See id. art. 9(5).

73. Id. arts. 11(1), 12. The Chief of Headquarters (i.e., the Prime Minister) may choose Corps personnel from those volunteering to undertake IPCA or request relevant agencies, including the Defense Agency, to assign qualified personnel to the Corps.

74. Id. art. 12(5).

75. Id. arts. 9(4) (providing that Director-General of Defense Agency may direct SDF units to undertake IPCA), 13(2); see also Shugi-in [House of Representatives], Kokusai Heiwa Kyoryoku-To ni Katsuru Tokubetsu Linkai Kihirokoku [Minutes of the Proceedings of the Special Committee on International Peace Cooperation], 122d Sess., Special Comm. No. 4, at 14 (Nov. 19, 1991) (statement of Nomura Kazunari). Minutes of the House of Representatives will hereinafter be cited as HR. Thus, the government, notwithstanding its agreement with the Komei Party and the Democratic Socialist Party that SDF personnel would cooperate with U.N. operations under a separate organization (i.e., the Corps), decided to utilize the established organization and command structure of the SDF in carrying out U.N. military activities.

KENMOCHI, supra note 42, at 290.

76. Peacekeeping Law, supra note 2, art. 12(1) (specifying that tasks enumerated in Article 3(3)(a)-(f) are to be performed by SDF).

77. Id. art. 3(1) ("kokusairengō no tōkatsu no shita ni okonawareru katsudō de ate").

78. Id. art. 8(2) ("jishihōryō no sakusei oyobi henkō wa... jimusōcho... ga okonau sashizu ni tekiyō suru yo ni okonau mono to suru").

79. Id. arts. 2(3), 5(2), 12(5) ("naikaku sori daijin wa... shiki-kantoku suru").

80. HR, 121st Sess., Special Comm. No. 3, at 20 (Sept. 25, 1991) (statement of Nomura Kazunari); see also HR, 122d Sess., Special Comm. No. 3, at 16 (Nov. 18, 1991) (statement of Nomura Kazunari) (noting that U.N. command does not presuppose hierarchical relationship or obedience, but that states customarily follow its directions). Other government explanations of the command structure differed subtly. For example, Tanba Minoru, Director of MFA’s U.N. Bureau stated that the United Nations has command over deployment, organization, conduct, or direction of an operation, but not over disciplinary
Prime Minister Miyazawa once stated that Japanese Corps personnel were not international civil servants and could not possibly come under the command of the U.N. Secretary-General. He even added that a sovereign state could never be under the command of the Secretary-General.\(^\text{81}\) This stance, however, is completely at odds with the established practice of U.N. peacekeeping operations. The United Nations has repeatedly insisted that personnel made available by participating states are under the command of the United Nations\(^\text{82}\) and makes every effort to maintain this position.\(^\text{83}\)

On November 27, 1991, the government submitted to the Diet its official position paper on the issue of U.N. command.\(^\text{84}\) It explained that personnel contributed by states are under the "command" of the United Nations. This command refers to authority over troop deployment and various other matters, as stipulated in the model agreement between the United Nations and states contributing personnel.\(^\text{85}\) The position paper stated, however, that Operating Procedures governing Japanese personnel, while drafted to conform with the Secretary-General's mandate, would not come from the Secretary-General directly.\(^\text{86}\) Thus, according to the government interpretation, the "commands" of the Secretary-General must first be filtered through the Japanese Headquarters. Headquarters then drafts Operating Procedures, taking into account the commands of the Secretary-General.\(^\text{87}\) Japan may, however, disregard those commands that, if carried out, would result in violations of the action. \(^\text{HR, 122d Sess., Special Comm. No. 4, at 12 (Nov. 19, 1991).}\)

\(^\text{81.} HR, 122d Sess., Special Comm. No. 3, at 17 (Nov. 18, 1991). Miyazawa also stated that Corps personnel are bound by Operating Procedures rather than the instructions of the Secretary-General. HR, 122d Sess., Special Comm. No. 4, at 12 (Nov. 19, 1991).\)


\(^\text{84.}\) For the full text of this document, see HR, 122d Sess., Special Comm. No. 8, at 17 (Nov. 27, 1991).

\(^\text{85.}\) See Model Agreement, supra note 82, ¶ 7. These other matters refer to the "organization, conduct and direction of [the United Nations peacekeeping operation]." Id. The contributing states, however, maintain the authority to take disciplinary actions. Under the Peacekeeping Law, the Prime Minister has shiki-kantoku over Japanese participants, which encompasses the authority to discipline. See supra note 80 and accompanying text.

\(^\text{86.}\) In presenting another government position paper submitted in May 1992, Foreign Minister Watanabe Michio stated that SDF units will implement U.N. commands in accordance with the five principles specified in Operating Procedures. HC, 123d Sess., Special Comm. No. 9, at 2 (May 18, 1992); see infra part III.F.

\(^\text{87.}\) This position is codified in Article 8(2) of the law. Peacekeeping Law, supra note 2, art. 8(2).
constitution, such as those relating to suspension of Japanese participation in U.N. operations and the use of arms. In accordance with Operating Procedures, the Prime Minister directs the activities of Corps members in the field, and the Director-General of the Defense Agency directs the SDF units. An organizational chart of this command structure would look as follows:

![Organizational Chart]

88. *HC*, 122d Sess., Special Comm. No. 3, at 21 (Dec. 5, 1991) (statement of Prime Minister Miyazawa Kiichi) (stating Japan, because of constitutional limitations, reserves right to decide on suspension of participation in operations and on use of arms); *see infra* note 165 and accompanying text. The government relied heavily on the assumption that the United Nations does not order personnel or units to use arms and only allows use of arms in certain situations. It argued that Japanese troops could therefore comply with the strict limits on the use of arms imposed by the Peacekeeping Law while participating in U.N. operations. *HC*, 123d Sess., Special Comm. No. 14, at 20 (June 1, 1992) (statement of Tanba Minoru).

89. This diagram corresponds to a description made by Diet member Tabuchi Tetsuya during the discussion. Cabinet Councilor Nomura Kazunari approved of the description. *HC*, 123d Sess., Special Comm. No. 13, at 29 (May 29, 1992). It should be noted, however, that this command structure is by no means apparent from the text of the Peacekeeping Law. The text fails to state explicitly which governmental actors are to perform the various functions. Only in the Diet debates does the government clearly set forth the command structure that the Peacekeeping Law contemplates. This failing is not unusual in the legislative scheme of Japan, where records of Diet debates are often consulted by scholars and practitioners alike in their analysis of laws.
Whether the command structure envisioned in the Peacekeeping Law has actually been implemented in the field is not known. It would be extremely cumbersome if all directions and orders from the local U.N. commander had to go through Headquarters in Tokyo and be incorporated in Operating Procedures. Acknowledging this, the government stated that Operating Procedures should be flexible enough to adapt to U.N. commands, and that the authority to prepare and revise Operating Procedures could be delegated to the captain of the Japanese Corps in the field. The Director of the MFA’s U.N. Bureau, Tanba Minoru, gave what is probably the most appropriate and practical description of the command structure when he stated, “We drafted the law to create a structure that would implement, in actual situations, all the directions of the Force Commander without change.”

C. U.N. Peacekeeping Operations

Article 3 of the Peacekeeping Law sets forth the conditions for Japanese participation in U.N. operations. Japan may participate only in operations that are based on a resolution of the U.N. General Assembly or the U.N. Security Council and carried out under the command and control of the United Nations. Article 3 also requires that there be (1) a cease-fire agreement among the parties to the conflict, (2) consent of the host state and the disputing parties to the U.N. operation and to the Japanese IPCA specifically, and (3) a showing that the U.N. operation is impartial. By strictly defining the U.N. peacekeeping operations in which Japan can participate, the Japanese government in effect acknowledged that it would not participate in the kind of multinational force established during the Gulf War. Prime Minister Kaifu confirmed this by stating that, under the Peacekeeping Law, Japan could not cooperate with coalition or other forces intending to use force. The government also stated that Japan may not participate in operations like that undertaken by the U.N. Operation in Congo (ONUC), which was authorized to use force by Security Council Resolution 161.

93. Peacekeeping Law, supra note 2, art. 3(1).
94. Id. art. 3(1).
95. Id.
96. Id. art. 6(1)(1).
97. Id. art. 3(1); see infra part III.F.3.
98. See HR, 121st Sess., Special Comm. No. 4, at 9 (Sept. 26, 1991) (statement of Prime Minister Kaifu Toshiki).
D. Humanitarian International Relief Operations

Article 3 also defines the international humanitarian relief operations (Relief Operations) in which Japan may participate. The requirements for participation in Relief Operations under Article 3 are less strict than those for peacekeeping operations. For instance, while Japan may participate in only those peacekeeping operations called for by the U.N. General Assembly or the U.N. Security Council, it may participate in humanitarian efforts initiated by the General Assembly, the Security Council, the Economic and Social Council, or any of the other U.N. organs or specialized agencies enumerated in the Peacekeeping Law. Whereas peacekeeping operations must be under the command and control of the United Nations, other international organizations and even states individually or collectively can command humanitarian missions. Peacekeeping operations require consent, a cease-fire, and impartiality, but relief operations require only consent and a cease-fire. Even a cease-fire is unnecessary if the country in which the operation takes place is not itself a party to the conflict.

Because the Diet has not extensively discussed the content of Article 3, the precise scope of Relief Operations envisaged in the Peacekeeping Law is not at all clear. This confusion is exacerbated by the fact that "humanitarian relief" has been neither defined nor firmly established in international practice. The close integration of relief operations and peacekeeping operations, as in the protection of relief convoys in Bosnia-Herzegovina and Somalia, has further complicated the situation.

In such integrated operations, unlike more traditional U.N. operations, peacekeepers/
relief-providers must move through areas of armed conflict, rather than merely keep the conflicting parties apart.110

Some may argue that the Peacekeeping Law's codification of peacekeeping and humanitarian operations in one statute evidences a government intent to participate in such an integrated operation. According to the U.N. Secretary-General, however, this kind of operation is not bound by the condition of impartiality that the Peacekeeping Law explicitly requires for Japanese participation in traditional peacekeeping.111 Moreover, the very reason for the protection of relief convoys is that an effective cease-fire and the parties' consent, two necessary conditions for Japanese participation in any peacekeeping or humanitarian relief operation,112 are lacking. Finally, Article 3(3) does not include protection of relief convoys in its list of activities that qualify as IPCA. For all these reasons, it is clear that Japan may not participate in the protection of relief convoys. The Japanese Corps may distribute food and other supplies, but it cannot protect such supplies by military means.

E. Diet Control over Japanese Participation

The Peacekeeping Law submitted by the government underwent some important changes during the Diet debates. All of the changes increased the Diet's role in decisions to participate in U.N. operations. First, before SDF units carry out any of the six tasks requiring higher military capacities,113 the Prime Minister must obtain the Diet's approval. The Diet will consider the dispatch "in light of the fivefold basic principles governing Japan's participation" in U.N. efforts.114

Second, if the SDF units are to continue performing those high military capacity tasks for more than two years from the date of the Diet's original approval, the Prime Minister must obtain Diet approval a second time.115 Thereafter, the Diet may renew its approval every two years.116 If the Diet disapproves, the government must terminate the assignments immediately.117

Third, these high military capacity tasks may not be performed by SDF

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110. The Secretary-General said this operation was "pioneering a new dimension." He added that, in convoy protection duties, U.N. forces may have to depart from the usual peacekeeping principle of impartiality towards the parties to a conflict; they may have to fight against whoever tries to block or destroy the convoys they are protecting. Doc. S/24848, supra note 83, ¶ 49.
111. Id. ¶ 49.
112. Peacekeeping Law, supra note 2, art. 3(1)-(2).
113. See text accompanying supra note 76.
114. Peacekeeping Law, supra note 2, art. 6(7); see also Yajima, Adoption, supra note 62, at 48-49. On the five principles, see infra part III.F.
115. Peacekeeping Law, supra note 2, art. 6(10); see also Yajima, Diet Discussion, supra note 62, at 51.
116. Peacekeeping Law, supra note 2, art. 6(12).
117. Id. art. 6(11).
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units until a date to be set forth by a separate law. Under this so-called “freezing provision,” the government cannot assign high military capacity tasks to SDF units until the Diet adopts legislation to “un-freeze” the above provision. The double safeguard of the freezing provision and the approval provisions reflects concern over the delicate constitutional questions raised by SDF participation in U.N. operations that involve military activities. Through these safeguards, the government sought to deflect controversy and obtain wider domestic and international support for the Peacekeeping Law.

These changes raised questions concerning which activities require Diet approval and are frozen until separate legislation is passed. A coalition of the LDP, Komei Party, and Democratic Socialist Party explained that, under certain circumstances, even low military capacity activities would require legislative approval. This would occur where any of the six frozen tasks are integral to the performance of low military capacity activities. This rule, however, may be extremely difficult to apply in concrete cases, as its contours were not clarified in either the text of the Peacekeeping Law or the Diet debates.

F. The “Five Principles” of Japanese Participation

The Peacekeeping Law established five principles to govern Japan’s role in U.N. peacekeeping efforts. Three of the principles set preconditions for Japanese participation and the rest apply during participation. These preconditions and requirements ensure that Corps and SDF participation in U.N. operations will not violate the constitution. As noted above, before the Corps or SDF can be dispatched, there must be a cease-fire agreement, consent of the parties, and a showing of impartiality. After dispatch of personnel, the use of arms must be limited to legitimate self-defense, and IPCA must be suspended or terminated if one of the other conditions no

118. Id. supplementary provisions, art. 2.
119. Yajima, Adoption, supra note 62, at 48-49.
120. Ji-Ko-Min no Hosoku Kenkai [Supplementary Views of the LDP-Komei-DSP], 1011 JURISTO [JURIST] 42 (1992). In an interesting dialogue, one member of the Diet asked whether SDF units may dispose of a mine, a frozen task, if that mine were found in the course of carrying out road construction, a non-frozen task. The three-party coalition stated that disposing of a mine in such a situation would not be a frozen activity. HR, 123d Sess., Special Comm. No. 4, at 4 (June 10, 1992) (statement of Nomura Kazunari).
121. HR, 121st Sess., Special Comm. No. 5, at 19 (Sept. 30, 1991) (statement of Kudo Atsuo); HR, 122d Sess., Special Comm. No. 3, at 4 (Nov. 18, 1991) (statement of Nomura Kazunari). The Japanese government modeled the Peacekeeping Law after Switzerland’s domestic requirements for participating in U.N. peacekeeping operations. The Swiss requirements for participation are formulated to conform with its constitutionally mandated position as a neutral state. Swiss law requires (1) consent of the parties directly involved in the conflict, (2) impartiality of the operation, (3) use of arms only in self-defense in cases of necessity, and (4) withdrawal if one of the above conditions is no longer fulfilled. HR, 122d Sess., Special Comm. No. 7(2), at 4-5 (Nov. 26, 1991) (statement of Professor Kozi Shigera).
122. See text accompanying notes 93-97.
123. Peacekeeping Law, supra note 2, art. 24(3)-(4).
longer exists.\textsuperscript{124} Article 3’s requirements of cease-fire, consent, impartiality, and the limitation of use of force to self-defense generally mirror already-established U.N. requirements for peacekeeping operations.\textsuperscript{125} A problem arises, however, because under the Peacekeeping Law the Japanese government is to make its own determinations on whether the conditions for Japanese participation have been fulfilled. Japanese determinations may not accord with those of the United Nations that govern the entire U.N. operation.

1. \textit{Cease-Fire}

Article 3 of the Peacekeeping Law requires that the parties to a conflict agree to and maintain a ceasefire. This requirement is intended to ensure that Japanese forces do not participate in combat. The government initially interpreted Article 3 strictly, as requiring a de facto as well as a de jure cease-fire before Japan could participate.\textsuperscript{126} Faced with recent developments in the former Yugoslavia, the government has retreated from this position and now requires only an “overall cease-fire.”\textsuperscript{127}

In order for the United Nations to formulate a workable mandate for a peacekeeping operation, the parties in conflict must at least agree to a ceasefire.\textsuperscript{128} The United Nations, however, does not require, as a precondition for the deployment of U.N. peacekeepers, a guarantee that the cease-fire will be completely observed.\textsuperscript{129} In fact, the mandate of many U.N. operations presupposes violations of cease-fire agreements in that the operations are entrusted with the task of restoring cease-fire conditions. For example, in considering deployment of the U.N. Protection Force (UNPROFOR) in Croatia, the Secretary-General declared that random and occasional violations of the cease-fire would not rule out deployment. Rather, evidence that parties

\begin{itemize}
\item \textsuperscript{124} \textit{Id.} arts. 6(13)(1), 8(1)(6).
\item \textsuperscript{129} \textit{BLUE HELMETS, supra} note 125, at 119-20 (noting that fighting continued while temporary headquarters for U.N. Interim Force in Lebanon was being established in March 1978); \textit{see also} 4 \textit{Rosalyn Higgins, United Nations Peacekeeping: Documents and Commentary} 306 (1981) (noting outbreak of fighting after deployment of U.N forces in Cyprus in March 1964).
\end{itemize}
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to the conflict were willing and able to implement their signed agreements would suffice.\textsuperscript{130}

The Japanese government interprets the cease-fire requirement somewhat more rigidly than does the United Nations. The text of the Peacekeeping Law supports this more rigid interpretation. Article 3(3)(a) explicitly excludes restoration of cease-fire conditions from the tasks that may be entrusted to SDF personnel and limits the SDF to monitoring whether the parties are observing their cease-fire agreement.\textsuperscript{131} The government is authorized to add other tasks to the Peacekeeping Law by Cabinet ordinance, but given its assurances during the legislative debates, it is unlikely that the Cabinet will add a duty to restore cease-fires.

In the Diet debates of May 1992, Tanba Minoru stated that although the United Nations was attempting to deploy peacekeepers to regions like the former Yugoslavia, where cease-fires were not respected, Japan would not participate in operations beyond the scope of the traditional peacekeeping functions presupposed by the draft Peacekeeping Law.\textsuperscript{132} Legally, this position was the logical result of a series of government interpretations of the constitution and of the Peacekeeping Law. This position, however, may not be sound policy. Peacekeepers are generally sent to areas where it is impossible to predict whether a cease-fire will be maintained. Should sporadic cease-fire violations occur, as they often do, and SDF and Corps personnel are not able to participate, Japan will come to be known as a very limited player in the international community. After all, if there were a complete and permanent cease-fire with no possible violations, peacekeepers would be unnecessary.

2. Consent

Under the Peacekeeping Law, Japan may dispatch peacekeeping forces only upon the consent of both the host state and other parties to the armed conflict.\textsuperscript{133} They must consent not only to the U.N. operation itself, but also to Japanese participation in the operation and to the specific IPCA.\textsuperscript{134} This additional requirement deviates from the general consensus among scholars that receiving states need not consent to the composition of a peacekeeping force.\textsuperscript{135}

\textsuperscript{131} On the other hand, it could also be argued that the Peacekeeping Law, which authorizes Japanese peacekeepers to monitor cease-fire violations, presupposes small-scale violations of cease-fires. Here, the government interpretation is somewhat more restrictive than the text of the law itself.
\textsuperscript{133} Peacekeeping Law, supra note 2, art. 3(1).
\textsuperscript{134} \textit{Id.} art. 6(1).
Since Japan has more stringent consent requirements than the United Nations, a situation may arise in which Japan refuses to participate in a U.N. operation because it disagrees with a U.N. assertion that the receiving state has given the necessary consent. Alternatively, a party to the conflict may prevent Japan from participating in a U.N. peacekeeping operation by declaring that it does not consent to Japan’s participation.

Prime Minister Miyazawa acknowledged that the Japanese government may interpret consent more stringently than the United Nations. For instance, Iraq’s consent to the deployment of the U.N. Iraq-Kuwait Observation Mission (UNIKOM) may have been inadequate to satisfy the mandates of the Peacekeeping Law. Even if Iraq’s notification of acceptance to the Secretary-General could be considered consent, Japan would not be able to continue participating in the operation if Iraq were to withdraw that consent.

The government does not universally apply this strict interpretation of consent. In the case of a preventive deployment of U.N. peacekeepers, Japan will relax stringent consent requirements. In this respect the law is very progressive and future-oriented; it explicitly recognizes Japan’s intention to participate in such operations.

Article 3(1) of the Peacekeeping Law states that if there has been no armed conflict, consent for a prophylactic operation will be required from

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*United Nations, in Legal Essays, supra, at 55, 60-61. Even though the selection of national contingents for a particular U.N. operation is to be made by the United Nations, the host state is consulted and its views reflected in the selection. See KoZai, supra note 11, at 368-69.*

Consent from the receiving state is unquestionably a fundamental prerequisite for the deployment of U.N. peacekeeping troops. See, e.g., Henry Wiseman, *Peacekeeping in the International Political Context: Historical Analysis and Future Directions, in The United Nations and Peacekeeping 32, 38* (Indar Jit Rikhye & Kjell Skjelsbaek eds., 1991). The legal consequences of consent and the role consent should play in peacekeeping operations, see Di Blase, supra note 135, at 55, however, have yet to be clarified by U.N. practice or academic writings, see Higgins, supra note 135, at 5. *Compare with* KoZai, supra note 11, at 200 (viewing consent as the most fundamental and overriding principle of peacekeeping operations) and Hirose Yoshio, *Kokuren no Heiwa II Katsudo [United Nations Peacekeeping Operations] 130-39* (1992) (emphasizing United Nations’ function of maintaining public order and therefore accepting limits on necessity of state’s consent).

136. *HR,* 122d Sess., Special Comm. No. 3, at 30 (Nov. 18, 1991); *see also* *HR,* 121st Sess., Special Comm. No. 4, at 8 (Sept. 26, 1991) (statement of Tanba Minoru).


139. *HR,* 122d Sess., Special Comm. No. 6, at 11 (Nov. 21, 1991) (statement of Tanba Minoru); *see also* *HR,* 122d Sess., Special Comm. No. 3, at 30 (Nov. 18, 1991) (statement of Tanba Minoru).

140. The Secretary-General, in his *Agenda for Peace,* declared that “the time had come to plan . . . for preventive deployment.” Preventive deployment was at the time still an innovation. Boutros Boutros-Ghali, *An Agenda for Peace,* U.N. SCOR, 47th Sess., ¶ 28, U.N. Doc. S/24111 (1992) [hereinafter Boutros-Ghali]. In 1992, preventive U.N. deployment occurred for the first time in U.N. peacekeeping history, in the former Yugoslav Republic of Macedonia, and we can expect to see similar actions in the future.
only the host country. Since there is theoretically no conflict in cases of preventive deployment, the requirements of a cease-fire and impartiality toward conflicting parties are also not necessary. However, the fiction of “no conflict” is transparent: consider, for example, the situation in and around the former Yugoslav Republic of Macedonia, where peace is tenuous at best and where political instability has left the area a powder keg waiting to blow.

The Japanese government has explained that Article 3(1) was inserted in order to permit Japan’s participation in operations like that of the U.N. Observation Group in Lebanon (UNOGIL). The Japanese Foreign Minister has stated more explicitly that Japan can participate in preventive deployments of U.N. peacekeepers. This is a progressive step for the Japanese government, especially since the conditions for preventive deployment have not yet been agreed upon in international fora.

3. Impartiality

Japan’s participation in U.N. operations may likewise be limited by Article 3’s requirement that U.N. peacekeeping operations be carried out impartially. Although all U.N. peacekeeping operations meet this requirement in theory, whether they do so in practice is debatable. Since the condition of “impartiality” may be subjective, the question of who determines whether an operation is impartial becomes important. For example, after the election in Angola, the rebel movement UNITA openly questioned the impartiality of the second U.N. Angola Verification Mission (UNAVEM II) and condemned it. In response, the Security Council passed a resolution declaring UNITA’s condemnation of UNAVEM II baseless.

The question of impartiality arose during the Diet debates, when one Diet member alleged that UNIKOM was biased, since a majority of its observers came from states forming the coalition forces during the Gulf War.
Two other members of the Diet argued that in order for a U.N. operation to be impartial it must be under the strict command and control of the United Nations. The government did not respond to this concern about UNIKOM's partiality, nor did it specifically recognize a link between U.N. command and impartiality. The government's silence on this issue makes it difficult to predict how Japan will react if the impartiality of a peacekeeping operation is ever in dispute. Japan may align with one side or the other, or it may make its own independent determination as to the impartiality of the operation. Such a unilateral determination by Japan could undermine the entire U.N. operation by weakening the credibility and legitimacy of the United Nations.

4. Self-defense

Where the prerequisites of Article 3 have been met, Japan still may be unable to carry out peacekeeping efforts effectively. The Japanese government's sensitivity to the issue of use of arms and its expectation that the possibility of the use of arms would raise controversy in the Diet (as it did), led the government to restrict the use of arms by Japanese peacekeepers to such a degree that Japanese participation is rendered at best ineffective, and at worst, damaging to U.N. operations.

Article 24 of the Peacekeeping Law provides that Corps personnel and SDF members participating in IPCA as units may use arms within the limits considered reasonably necessary to protect the life or person of themselves or other SDF or Corps personnel. The use of arms may not cause harm to persons except in cases of legitimate defense and necessity as defined in Articles 36 and 37 of the Penal Code of Japan. These limitations are considerably stricter than the U.N. policy on self-defense, which allows U.N. personnel to use force to protect their own lives and persons, other U.N. personnel, and U.N. posts, vehicles, and other U.N. facilities, and to

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147. *HC*, 122d Sess., Special Comm. No. 4, at 9 (Dec. 6, 1991) (statement of Yatabe Osamu, member of Japan Socialist Party (JSP)).
149. Peacekeeping Law, *supra* note 2, art. 24(1), (3). Corps personnel may use only small arms; no such limit applies to SDF members. SDF members working as part of units, however, may be protected only by other SDF members working as such.
150. The text of Articles 36 and 37 of the Penal Code is as follows:
   Article 36: Unavoidable acts done in order to defend the rights of oneself or another person against imminent and unjust violation are not punishable.
   Article 37: Unavoidable acts done in order to avert a present danger to the life, person, liberty or property of oneself or another person are not punishable where the injury occasioned by such acts does not exceed in degree the injury averted. According to the circumstances, however, the penalty may be reduced or remitted for acts exceeding such limits.

*Keiho* [Penal Code], Law No. 45 (Apr. 24, 1907), arts. 36, 37.
counteract attempts to prevent them from performing their U.N. duties.\textsuperscript{151} 

According to government statements, under Article 24, the judgment of when and to what extent arms are to be used rests with the individual rather than with the individual's superior officers; that is, an individual cannot be ordered to use force.\textsuperscript{152} Because the use of arms is thus restricted to self-defense, the government does not consider such use to be an unconstitutional use of force.\textsuperscript{153} Furthermore, since weapons may be used only to protect Japanese Corps personnel or SDF members,\textsuperscript{154} the government avoids the characterization of the use of weapons as collective self-defense, which is unconstitutional under the government's interpretation.

Thus, under the Peacekeeping Law, Corps personnel and SDF members may be prohibited from assisting U.N. peacekeepers from other states, even when they are in physical danger. Furthermore, Japanese peacekeepers may not use force where the objective is to safeguard property or ensure the success of the peacekeeping mission. Under these circumstances, the effectiveness and propriety of deploying Japanese peacekeepers becomes questionable.

Several government officials, perhaps recognizing the conflict between the Peacekeeping Law and U.N. practice, have suggested that Japan could use force for purposes other than self-defense, but their statements only add confusion to an already perplexing problem.\textsuperscript{155} For example, former Prime Minister Kaifu has stated that the use of arms to protect other states' personnel against an armed attack may constitute a humanitarian measure in situations of "legitimate defense" or "necessity."\textsuperscript{156} This contention is supported by Article 24's reference to Articles 36 and 37 of the Japanese


\textsuperscript{152} HR, 121st Sess., Special Comm. No. 3, at 19 (Sept. 25, 1991) (statement of Ikeda Yukihiko, Director-General of Defense Agency); see also HR, 122d Sess., Special Comm. No. 3, at 25 (Nov. 18, 1991) (statement of Hatayama Shigeru, Director of Defense Bureau of Defense Agency) (arguing that the phrase "the members of the SDF . . . may use arms" in Article 24 explicitly supports this interpretation).

\textsuperscript{153} The government position paper distinguishes between "use of force" and "use of arms" as follows: "Use of force" in Article 9 of the constitution means belligerent action by Japan using material and human institutions (butteki-jinteki soshihikatai) within an international armed conflict. On the other hand, "use of arms" as defined in Article 24 of the Peacekeeping Law means use of weapons or other destructive machinery for their intended purposes. "Use of force" includes "use of arms," but not every "use of arms" constitutes a "use of force" prohibited by Article 9 of the constitution. For example, the use of arms for self-defense or defense of other personnel does not violate the constitution. HR, 122d Sess., Special Comm. No. 3, at 19-20 (Nov. 18, 1991) (statement of Ishibashi Daikichi).

\textsuperscript{154} HR, 121st Sess., Special Comm. No. 3, at 18 (Sept. 25, 1991) (statement of Nomura Kazunari) (noting that the phrase "Corps personnel" does not include foreign members of U.N. operations).

\textsuperscript{155} A legal analysis of the scope and limits of self-defense within U.N. peacekeeping operations remains to be done. See Suy, supra note 125, at 319.

\textsuperscript{156} HR, 121st Sess., Special Comm. No. 3, at 3 (Sept. 25, 1991).
Penal Code, which allow acts to protect "oneself or another person." Similarly, Kudō Atsuo, has suggested that the constitution permits the use of arms against bandits and other private armed elements. He based this interpretation on Article 9 of the constitution, which prohibits the use of force within international, as opposed to civil, armed conflicts. Moreover, Kudō asserted that the constitution permits the use of arms to thwart forcible attempts to prevent U.N. peacekeepers from performing their duties, as this does not necessarily constitute "use of force." The government should present a consistent view on the use of arms and rectify this confusion, preferably by codifying its view in the law itself.

The Japanese government has sometimes tried to justify Japanese deployment by arguing that collective self-defense would not be necessary, as contingents from different states are deployed in separate, designated areas; thus, attacks on other states' personnel in Japan's designated area would rarely occur. This justification, however, does not accurately reflect the practice of U.N. peacekeeping operations. Designated deployment does occur from time to time, but contingents are never completely separated. Indeed, contingents from different states often work together and help one another, especially when one group is under attack.

The Peacekeeping Law's use of the domestic law concept of legitimate individual defense to legitimize the use of arms by U.N. peacekeepers is fundamentally flawed given the international character of the peacekeepers and the inherently collective nature of their actions. Furthermore, the use of arms by Japanese peacekeepers under the exclusive and direct command of the United Nations does not violate the Japanese constitution: Article 9 of the constitution prohibits war, threats of force, or use of force as a sovereign right of the nation. The use of arms for self-defense in order to carry out the mandate of the United Nations is an international action qualitatively different

157. See supra note 150 and accompanying text. Cabinet Councilor Nomura Kazunari, however, has rejected this interpretation, asserting that Article 35 of the Penal Code, not Articles 36 and 37, provides the basis for the use of arms by Japanese personnel. Article 35 defines "proper acts" for which no person may be punished as those done pursuant to a law or ordinance or in the course of legitimate business. In effect, Nomura merely restated that arms may be used to the extent permitted by the Peacekeeping Law.


159. HC, 122d Sess., Special Comm. No. 3, at 10 (Dec. 5, 1991). Precise limits on the use of force within U.N. operations were not made clear in ensuing debates. The potential for broad interpretation of statements such as Kudō's could prove very important.


161. For example, during the operation of the U.N. Interim Force in Lebanon (UNIFIL), a contingent from Ireland was surrounded by the local Christian militia. Troops from the Netherlands and Ghana came to help them, but were fired upon. The UNIFIL commander then permitted countermeasures and asked for support from Fijian and Senegalese troops.

5. Suspension and Termination

Articles 6(13)(1) and 8(1)(6) of the Peacekeeping Law require that IPCA be suspended or terminated when any one of the three conditions specified in Article 3 of the Law—cease-fire, consent of the parties, and impartiality of the peacekeeping force—is no longer fulfilled. Under U.N. practice, upon giving reasonable notice, contributing states may withdraw their troops for any reason, including domestic requirements. The problem is that by requiring Japan to make a unilateral determination regarding these three conditions, which are also the international conditions for U.N. operations, the Peacekeeping Law may undermine the entire operation.

During the Diet debates, the government argued that, if and when U.N. peacekeeping forces engage in the use of force, there is a danger that the Japanese contingent may also do so. Even if it does not actually use force, the Japanese contingent, through participation in the operation, may be constructively considered an integral part of the action involving force. The suspension and termination requirement thus ensures that Japanese Corps and SDF personnel will never be part of operations using force, and that Japanese participation in U.N. operations will comply with Article 9 of the constitution. This particular interpretation, which may be called the “participatory integration theory,” has significant legal consequence for Japanese participation in the new types of U.N. operations discussed in Part IV.

The ability to suspend or terminate Japanese participation in U.N. operations is so important to the government that, under the Peacekeeping Law, a decision on the matter is not subject to the command of the Secretary-General. Under Article 8(2), the Prime Minister decides matters concerning suspension of IPCA, and his decisions need not conform with commands of the Secretary-General. This proviso may present a significant practical problem of command conflicts since the United Nations in the past has ordered troops to remain in areas where major cease-fire violations have occurred.

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165. Peacekeeping Law, supra note 2, art. 8(2); see also HR, 122d Sess., Special Comm. No. 8, at 23 (Nov. 27, 1991) (statement of Nomura Kazunari) (stating that Prime Minister’s determination regarding suspension trumps commands of Secretary-General or of field commander); HR, 121st Sess., Special Comm. No. 3, at 3-4 (Sept. 25, 1991) (statement of Prime Minister Toshiki Kaifu) (stating that final decision on withdrawal and termination of Japanese troops rests with Prime Minister).
166. For example, when UNIFIL was informed that Israel would invade Lebanon, its commander, General Callaghan, issued instructions to all units, in case of attack by one of the parties, to block
By incorporating these five principles within the Peacekeeping Law, the government sought to structure Japanese contributions to U.N. peacekeeping operations within constitutional strictures. These principles, however, may conflict with the concept and practice of U.N. peacekeeping operations and may even call into question the effectiveness and propriety of Japanese participation in such operations. Japan should simply accept the command of the United Nations. The scope of the use of arms should conform to general U.N. practice. Likewise, the United Nations, not Japan or any other contributing state, should determine whether a cease-fire, consent, and impartiality exist with regard to a U.N. operation.

In drafting the Peacekeeping Law, the Japanese government relied heavily on discussions with U.N. Under-Secretary Goulding, who was responsible for U.N. peacekeeping operations at the time. The government claims that during those talks Goulding indicated his “understanding” that Japan would only be able to participate in operations that conformed with the five principles.6

This understanding, however, does not constitute formal U.N. recognition of Japan’s position.

In 1995, the Japanese government will have an opportunity to address conflicts between the Peacekeeping Law and U.N. practice. The Peacekeeping Law specifically requires the government to review the law’s operation three years after its entry into force.6 This provision does not necessarily require that the law be amended, but it will provide an opportunity for reconsideration of the various provisions of the Peacekeeping Law in light of U.N. practice. The government should use this opportunity to respond to recent developments in U.N. operations, which are discussed below.

advancing forces, take defensive measures, and stay in position unless their safety was “seriously imperilled.” BLUE HELMETS, supra note 125, at 142. Similarly, when fighting intensified in Angola in October 1992, the Secretary-General ordered that UNAVEM II presence be kept intact throughout the country. Further Report of the Secretary-General on the United Nations Angola Verification Mission (UNAVEM II), U.N. SCOR, 47th Sess., ¶ 36, U.N. Doc. S/24858 (1992).

The government has never clearly stated whether Goulding actually consented to the Japanese position on command of U.N. operations and suspension of Japanese participation in them. See HC, 123d Sess., Special Comm. No. 9, at 16-20 (May 18, 1992). In its discussion with Goulding, the government submitted an English translation of the five principles and explained each of them. The government also explained that Japan might consider temporarily transferring its troops if the conditions outlined in the five principles were broken, or withdrawing them if the conditions could not be quickly restored. Goulding acknowledged Japan’s authority to withdraw troops for those reasons. Id. at 16 (statement of Tanba Minoru). The government then explained that Japan did not intend to deviate from the established practice of U.N. peacekeeping operations, and that its troops would come under the command of the United Nations. Goulding responded favorably. The government also said that Japanese participation in U.N. operations would be possible if the use of arms were limited to the purpose of protecting the life of Japanese members. Goulding replied that U.N. practice allowed peacekeepers to use arms when necessary for the execution of peacekeeping activities, but that the Japanese position regarding use of arms would not pose a problem for the United Nations. Id. at 18 (statement of Tanba Minoru).

168. Peacekeeping Law, supra note 2, supplementary provisions, art. 3.
IV. RECENT DEVELOPMENTS IN U.N. PEACEKEEPING/ENFORCEMENT OPERATIONS: CAN JAPAN PARTICIPATE?

A. Difficulty of Obtaining Consent of the Parties and Use of Chapter VII of the U.N. Charter

The United Nations has recently faced difficulty securing parties’ consent for the deployment and operation of peacekeeping forces, most notably in Somalia and the former Yugoslavia. The circumstances surrounding such reluctance differed in each case, and the United Nations responded with diverse measures grounded in different legal justifications. Thus, in order to analyze the possible scope of Japanese participation in these new U.N. operations, we must distinguish among them.

1. Lack of Consent from Small Parties

Both the Peacekeeping Law and U.N. practice require the consent of the host state as a prerequisite for the deployment of U.N. peacekeeping operations. Because Japan’s determination of consent may conflict with that of the United Nations, Japan may be forced to undermine a peacekeeping operation by unilaterally withdrawing its troops. When deciding whether there is sufficient consent to participate, Japan should consider the determinations of the Secretary-General and Security Council as authoritative. Japan need not renounce its sovereign right to decide whether to participate in an operation, but its legal determination should be consistent with that of the United Nations so that a recalcitrant party would not be able to take advantage of differences in interpretation.

In practice, the United Nations has distinguished between the degree of consent necessary for a legal operation and that necessary for an effective one. The consent and cooperation of all the parties involved may not be a legal prerequisite for U.N. deployment, but universal consent and cooperation has been recognized as a key factor in the effectiveness of operations.

Three basic rules of consent have emerged from recent peacekeeping

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169. When peacekeeping operations are implemented under Chapter VII of the U.N. Charter, consent is not necessary. In general, however, operations are not undertaken pursuant to the Security Council’s Chapter VII powers. Dan Ciobanu, The Power of the Security Council to Organize Peace-Keeping Operations, in LEGAL ESSAYS, supra note 135, at 15, 27; see also BLUE HELMETS, supra note 125, at 5; KOZAI, supra note 11, at 187-91.

Neither U.N. practice nor academic writings have settled the question of whether the consent of parties other than the host state is legally necessary. Suy states that past experience shows the need for “consensus” among all the parties involved. Suy, supra note 125, at 318. Professor Kozai also argues that peacekeeping operations should be based on at least the implied consent or cooperation of the parties directly involved in a conflict, because such parties have effective control over certain territory and therefore the power to frustrate U.N. operations. KOZAI, supra note 11, at 183; see also Wiseman, supra note 135, at 41.
operations in Somalia and the former Yugoslavia. First, all major parties to a conflict must agree to a cease-fire and consent to the deployment of U.N. forces. Second, small factions involved in the fighting need not consent, presumably because these factions often have no political authority. For example, UNPROFOR was established and deployed in Croatia even though a Serbian leader in Croatia objected to its deployment. Third, in the absence of a general cease-fire or lack of consent by all factions, the United Nations may deploy peacekeepers to specific areas where consents and cease-fire agreements have been secured. Thus, the first U.N. Operation in Somalia (UNOSOM I) was deployed in Mogadishu where the two controlling factions agreed to a cease-fire and the deployment of UNOSOM.


171. In Bosnia-Herzegovina, UNPROFOR was deployed even while activities of those with no recognizable political authority posed a serious threat to the security of U.N. personnel. Report of the Secretary-General Pursuant to Security Council Resolution 752, U.N. SCOR, 47th Sess., ¶ 16, U.N. Doc. S/24000 (1992). In Somalia, a U.N. technical team was deployed in Mogadishu despite the opposition of numerous armed bandits and other elements not controlled by established political factions.

172. In the absence of a general cease-fire or lack of consent by all factions, the United Nations may deploy peacekeepers to specific areas where consents and cease-fire agreements have been secured. Thus, the first U.N. Operation in Somalia (UNOSOM I) was deployed in Mogadishu where the two controlling factions agreed to a cease-fire and the deployment of UNOSOM.


The Japanese Peacekeeping Law does not distinguish between legal prerequisites and conditions for effectiveness. As the government explained during Diet debates, the law requires consent not only from the major parties to a conflict, but also from all other conflicting parties. This requirement is more stringent than that which has evolved through U.N. practice and may inhibit Japanese participation in U.N. operations.

2. Lack of Consent from Major Parties

In order to legally deploy and continue peacekeeping operations, the United Nations must first obtain the consent of the major parties to a conflict. In the former Yugoslavia, however, the major parties were unwilling to cooperate fully with UNPROFOR. In such a situation the United Nations’ first response is to make every effort to obtain the parties’ consent. This effort proved unsuccessful in the former Yugoslavia, and the Security Council eventually invoked Chapter VII of the U.N. Charter. This measure marked a significant development in U.N. peacekeeping operations: it was the first time the United Nations maintained a peacekeeping operation without the consent of major parties to the conflict.

It is important to distinguish between two situations in the peacekeeping context where the Security Council resorts to Chapter VII. In the first, the Security Council invokes Chapter VII to extend temporarily the legal basis of a peacekeeping operation when, for technical reasons, the consent of the parties cannot be obtained. In the other situation, the Security Council invokes Chapter VII to impose its terms irrespective of acceptance by the parties involved. The former can still be characterized as a peacekeeping operation; the latter is a coercive operation with many disadvantages and difficulties.

The Security Council invoked Chapter VII in the first situation when, with Resolution 807, it decided to extend the peacekeeping mandate of UNPROFOR in Croatia without the consent of the Croatian government or the Serbian authority based in Krajina. As the mandate of UNPROFOR was nearing its end in early 1993, the major parties withdrew their support for the original peace plan on which the presence of UNPROFOR in Croatia was

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174. See supra note 136 and accompanying text.


176. See supra note 169 and accompanying text.

177. UNPROFOR was originally given a 12-month mandate starting with the adoption of Security Council Resolution 743, supra note 172, ¶ 3 (1992).
The Croatian government argued that the overall political situation upon which the United Nations relied to justify its presence had changed drastically since Croatia became a sovereign state. The Serbian authority contended that since the present peacekeeping plan was signed by the President of Serbia and the leader of the National Defense of the Socialist Federal Republic of Yugoslavia (JNA), who no longer had any locus standi in the area, the mandate had to be negotiated anew with the Republic of Serb Krajina.

Faced with this difficult situation, the Secretary-General recommended that the United Nations extend UNPROFOR’s mandate for one month in hopes that political negotiations could yield a new agreement. Responding to this recommendation, the Security Council adopted Resolution 807 and, acting under Chapter VII, demanded that the parties comply fully with the U.N. peacekeeping plan in Croatia. The Security Council also urged the parties to cooperate with U.N. political settlement efforts in order to ensure full implementation of the peacekeeping mandate in Croatia. Thus, until a new agreement was reached, the original peacekeeping plan was imposed and implemented without consent of the major parties to the conflict. The principal reason for resorting to Chapter VII was to temporarily circumvent the consent requirement. This did not, however, change the substantive nature of the operation. The parties to the conflict did not reject the United Nations’ presence outright, but rather raised technical objections like “locus standi” and “inappropriate mandate” to argue that the United Nations should leave. Further, the United Nations genuinely expected to negotiate a new mandate.

The second, more coercive use of Chapter VII occurred in Croatia after the Security Council adopted Resolution 815. The Serbian authority in Croatia was increasingly defying the United Nations. The Serbian assembly refused to accept the peacekeeping plan agreed upon by the Croatian government and the Serbian authority and thus effectively prevented the...
agreement from coming into force.\textsuperscript{187} The Serbian authority also asserted that recent developments had destroyed the Serbian population’s confidence in the impartiality of UNPROFOR and that they now viewed it as a hostile presence.\textsuperscript{188} The Serbs opposed UNPROFOR largely because the Security Council had recognized “the sovereignty and territorial integrity of Croatia” in Resolution 815,\textsuperscript{189} even though the Serbian authority claimed a separate statehood in Croatia.\textsuperscript{190} On the opposite front, the Croatian government stated that it would reject the UNPROFOR’s mandate if UNPROFOR could not effectively discharge the tasks entrusted to it.\textsuperscript{191}

The reliance on Chapter VII in Croatia under these circumstances cannot be characterized as a temporary and technical extension of the peacekeeping operation. The operation had changed into a coercive one, carried out without consent of the conflicting parties. Consent nevertheless remains an important element for the effectiveness of coercive peacekeeping operations. In May 1993, the Secretary-General suggested that UNPROFOR withdraw unless the two parties made genuine progress in political negotiations and agreed to a peacekeeping plan.\textsuperscript{192}

The invocation of Chapter VII to create certain “safe areas” in Bosnia-Herzegovina similarly marked a departure from traditional peacekeeping operations. The use of Chapter VII in Resolutions 819 (which designated Srebrenica as a safe area) and 824 (which designated Sarajevo and four other areas as safe areas) was neither a technical nor temporary measure to buy time for more political negotiations. The Security Council intended to impose terms specifically on the Bosnian Serbs.\textsuperscript{193} Even though the adoption of Chapter VII resolutions creating safe areas may lead to an agreed-upon operational plan for UNPROFOR,\textsuperscript{194} the basic character of the operation


\textsuperscript{188} Doc. S/25777, supra note 187, ¶ 15-16.

\textsuperscript{189} S.C. Res. 815, supra note 184, pmbl. ¶ 2.

\textsuperscript{190} The Secretary-General acknowledged that “the aspiration of the local Serbs to sovereignty has to a large extent determined their attitude towards the presence of UNPROFOR and the provisions of the Peace-keeping plan.” U.N. Doc. S/25777, supra note 187, ¶ 6.

\textsuperscript{191} Id. ¶ 19.

\textsuperscript{192} Id. ¶ 21.


remained a coercive measure taken without the consent of the parties.

Can Japan participate in the two types of Chapter VII operations? Under the Peacekeeping Law and ordinary U.N. peacekeeping practices, consent must be obtained from the major parties to the conflict. In situations where the Security Council resorts to Chapter VII without changing the nature of the operation, as in Resolution 807, Japan, under the present Peacekeeping Law, may need to suspend its IPCA because of the absence — however temporary — of consent of the parties. It is in such cases, however, that U.N. presence is most needed, and by suspending Japanese participation, the government may irreparably damage the entire U.N. peacekeeping operation. Thus, in these situations, the Prime Minister (who, as Chief of Headquarters, has the authority to terminate or suspend IPCA) should construe the Peacekeeping Law as allowing continued Japanese participation. Article 6 of the Peacekeeping Law provides that revisions of the Implementation Plan, including those “pertaining to the termination of dispatch . . . shall be effected” when consent is “deemed to have ceased to exist.” Article 8, however, provides that Operating Procedures are to be revised to conform with commands of the Secretary-General “unless otherwise deemed necessary” by the Prime Minister in matters concerning the suspension of IPCA.

It could be argued that this language gives the Prime Minister discretion in deciding whether to suspend the IPCA after considering all relevant factors. Therefore, if an absence of consent is not likely to persist, the Prime Minister should not suspend IPCA during a Resolution 807-type action.

Although the text of the Peacekeeping Law supports this interpretation, the political environment does not. Passage of the Peacekeeping Law was based on the premise that if consent ceased to exist, Japan would at least suspend the operation until a new agreement could be worked out. Departing from this position would discredit the government; the public would view failure to suspend IPCA during absence of consent as backpedaling. Here, too, international demands on Japan and domestic political constraints are in conflict.

Where a major party revokes consent outright, as in Croatia after the adoption of Resolution 815, withdrawal of the U.N. operation and termination of the Japanese IPCA would occur simultaneously unless the United Nations decided to invoke Chapter VII. If the United Nations thus continued its operation, the operation would change to a coercive enterprise, and, under the

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195. Peacekeeping Law, supra note 2, art. 6(13) (emphasis added).
196. Id. art. 6(13)(1).
197. Id. art. 8(2).
198. The government’s statements seem to support this interpretation. It has described termination of IPCA as the final step in a series of steps in which the government first determines that a cease-fire, impartiality, or consent has ceased to exist; suspends the operation; and, if the adverse condition continues, terminates participation. For example, Kudō Atsuo explained that if a cease-fire is violated and not restored in a short period, then the dispatch of Japanese troops will be terminated. HR, 121st Sess., Special Comm. No. 3, at 3 (Sept. 25, 1991).
present Peacekeeping Law, Japan would no longer be able to participate. Considering the disadvantages and difficulties surrounding these coercive operations, Japanese abstention from them seems legitimate. When a peacekeeping operation turns to a coercive one, the conflicting parties often become hostile to the United Nations and the hostility may ultimately culminate in actual attack on U.N. peacekeepers.199

Japan should make every effort to dissuade the United Nations from shifting into Chapter VII gear and carrying out coercive operations. Because it is not considered a military power, Japan is viewed by states hosting U.N. missions as truly impartial. This reputation for neutrality, along with the perception that Japanese Corps and SDF personnel are well disciplined and trained, makes Japanese participation in U.N. operations particularly valued. The Peacekeeping Law can thus function as a strong source of political leverage against coercive operations, and may even influence the development of U.N. peacekeeping practice.

B. "Peace-Enforcement Operations" Under Chapter VII of the U.N. Charter

   Secretary-General Boutros Boutros-Ghali, in his Agenda for Peace, proposed the creation of what he called “peace-enforcement units” to restore and maintain cease-fires to which parties have agreed but not complied.200 He also suggested that security deployments may be necessary to protect U.N. personnel where hostile factions have attempted to frustrate a U.N. operation.201 This suggestion was put into operation in Somalia. The deployment of peace-enforcement and security forces represents one of the most significant developments in U.N. operations in recent years.202

1. Co-existence of Peacekeeping and Peace-enforcement Operations

   The situation in Somalia presented a special challenge for the international

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199. For example, deliberate attacks by Serbs against UNPROFOR soldiers increased in number from late March to April of 1993. The attacks have resulted in three dead and five wounded in 13 incidents. U.N. Doc. S/25777, supra note 187, ¶ 15.
200. Boutros-Ghali, supra note 140, ¶ 44.
201. Id. ¶ 68. These security measures would not be taken under Article 43 but rather under other provisions of Chapter VII of the U.N. Charter. Id. ¶¶ 42-44.
202. Because humanitarian relief convoys were frequently frustrated by armed elements in Bosnia-Herzegovina, the Security Council, acting under Chapter VII, adopted Resolution 770, which called upon states to take all necessary measures to facilitate the delivery of humanitarian assistance. S.C. Res. 770, U.N. SCOR, 47th Sess., 3106th mtg., U.N. Doc. S/RES/770 (1992). Later, an agreement between the Secretary-General and the Security Council explained that these operations were based on established principles and practice of U.N. peacekeeping operations. Doc. S/24540, supra note 109, ¶¶ 1, 9; S.C. Res. 776, supra note 83 (authorizing expansion of UNPROFOR mandate to correspond to report of Secretary-General). Thus, the Bosnian case is not a “peace-enforcement” operation. Kozai, Conflict Management, supra note 16, at 9-10.
The armed factions, which had initially agreed to a cease-fire and consented to the deployment of the U.N. Operation in Somalia (UNOSOM I), became increasingly hostile to the United Nations and started to defy U.N. authority. The armed factions confined a 500-man Pakistani battalion to its base and thereby prevented it from carrying out its mandate. These actions threatened the relief convoys and relief distribution centers, as well as the security of U.N. personnel and other relief workers. In response, the Security Council, on the recommendation of the Secretary-General, invoked Chapter VII and passed Resolution 794, which authorized the Secretary-General and U.N. member states to use all necessary means to establish a secure environment for the humanitarian relief operation in Somalia. The resulting operation, later known as the Unified Task Force (UNITAF), was created and controlled primarily by the United States and was under U.S. central command. This distinguishes UNITAF from peacekeeping operations established by the Security Council, which are commanded and controlled by the U.N. Secretary-General.

Thus, two institutionally separate operations existed simultaneously in Somalia: UNOSOM I under U.N. command, and UNITAF under U.S. command. On the field, the two deployments complemented each other. For example, the UNOSOM I infantry battalion deployed two companies to Mogadishu airport, where they worked with UNITAF to maintain security in the area.

207. See id. ¶ 8 (welcoming U.S. offer “concerning the establishment of an operation to create such a secure environment”), ¶ 10 (authorizing “Member States cooperating to implement the offer [to use force]”).
209. Because the United States operated outside of the circle of U.N. influence during the Gulf War, the Security Council made an effort to integrate the United Nations into UNITAF. See S.C. Res. 794, supra note 206, ¶¶ 10, 12 (Secretary-General and member states authorized to make arrangements for unified command and control of UNITAF), ¶ 13 (detailing coordination with United Nations), ¶ 18 (requiring United States to submit report on regular basis).
Under the present Peacekeeping Law, Japan will not be able to participate in the kind of force established by Resolution 794. Because UNITAF was neither established nor carried out by the United Nations, Japanese participation would have directly conflicted with Article 3(1) of the Peacekeeping Law, which stipulates that Japan may participate only in peacekeeping operations under U.N. control. Moreover, since UNITAF's mandate involved the use of force, Japanese participation would have violated Article 2(2) of the Peacekeeping Law, as well as Japan's constitution.

Could Japan have participated in UNOSOM I, which carried out its peacekeeping activities together with, and under the protection of, UNITAF? The answer to this question is vitally important to determining Japan's role in the international community.

While Japan might have been able to participate in UNOSOM I if its function were not an integral part of UNITAF's mandate, the existence of close UNITAF-UNOSOM I working methods suggests that a separate function may not exist within this type of peacekeeping operation. Applying the government's rule of integration, the logistical support provided by Japanese peacekeepers for UNITAF may be characterized as an integral part of UNITAF's use of force and, therefore, an unconstitutional exercise of collective self-defense. It would be impractical, if not absurd, for Japan to insist that the SDF provide logistical support or medical services for UNOSOM I personnel but not for UNITAF personnel.

Even if these issues were resolved, it could still be argued that hostility toward U.N. involvement, which necessitated a force like UNITAF, would have excluded Japan from the beginning. Given the U.N. practice of deploying peacekeepers even where armed bandits or small factions object to U.N. involvement, operations like UNITAF may become more prevalent. If so, the implications could be far-reaching. If forceful operations like UNITAF become the norm, and the Peacekeeping Law is interpreted to prohibit Japan from participating in simultaneously existing operations that do not involve the use of force, then the entire purpose of the law will be undermined. The law was drafted, after all, to expand Japan's role in U.N. peacekeeping.


UNITAF carried out its mission until early May 1993 when the operation was transferred to the newly created U.N. Operation in Somalia (UNOSOM II). The Secretary-General referred to UNOSOM II as "the first operation of its kind to be authorized by the international community." Unlike

211. See supra part III.B.
213. See supra note 120 and accompanying text.
UNITAF, UNOSOM II remained under the exclusive command and control of the Secretary-General. The Security Council, acting under Chapter VII, authorized UNOSOM II to use any enforcement measures necessary to establish a secure environment for humanitarian operations in Somalia, enforce the cease-fire, and neutralize armed elements attacking U.N. personnel. To carry out these functions, UNOSOM II included combat forces. The Secretary-General could deploy UNOSOM II at his discretion, even without the consent of local faction leaders. Thus, Resolution 814, realizing the proposal made by the Secretary-General in his Agenda for Peace, effectively transformed the U.N. operation from peacekeeping to peace-enforcement.

The Peacekeeping Law bars Japan from participating in the kind of operation established by Security Council Resolution 814. Article 2(2) of the Peacekeeping Law prohibits the use of force by Japanese peacekeepers even under U.N. command. The United Nations' sanctioning of UNOSOM's use of force where necessary conflicts with this provision. Moreover, because UNOSOM II is allowed to act without the parties' consent, the operation may not fulfill the conditions stipulated in Article 3(1) of the law.

The question remains whether Japan can participate in a non-enforcement or non-military function incidental to a UNOSOM II-type operation if the consent of the parties is secured. According to the government's "participatory integration theory," any SDF involvement will violate the constitution and Article 2(2) of the Peacekeeping Law because, through its participation, Japan becomes integrated into the operation and is considered part of the use of force. However, the text of the Law is not dispositive of this issue, and an operation such as UNOSOM II may fit into the Peacekeeping Law's definition of a "peacekeeping operation." Perhaps the non-combat activities enumerated in Article 3(3) can also be performed by SDF personnel within an operation like UNOSOM II without that activity being "tantamount to threat or use of force" prohibited by Article 2(2). If the government does not intend for Japan to participate at all in an operation such

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216. The "Tactical Quick Reaction Force" provided by the United States remained technically outside the command structure of the United Nations but was designed to provide protection at the request of the UNOSOM Force Commander. Id. ¶ 71, 73.
217. Id. ¶ 91.
218. Id. ¶ 57.
219. Id. ¶ 71, 75-77.
220. Id. ¶ 97.
222. Consent is not impossible in such a situation. For example, if enforcement actions were to be taken against any party violating the cease-fire agreement, the parties might well consent to such an operation.
223. See supra note 164 and accompanying text; see also HR, 122d Sess., Special Comm. No. 8, at 25 (Nov. 27, 1991) (statement of Kudo Atsuo).
as UNOSOM II, it should clearly state so in the law.

The “integration theory” should not apply to civilian participation. Before the adoption of the Peacekeeping Law, civilian participation was legally permissible in any situation. Because the Peacekeeping Law was intended to broaden Japanese participation in U.N. peacekeeping operations while maintaining specific restrictions on SDF activities, it would be illogical to conclude that the Peacekeeping Law narrows the scope of Japanese civilian participation in those operations.

The Peacekeeping Law does not adequately address the permissible scope of Japanese participation in “grey-area” operations like those emerging in response to the exigencies in the former Yugoslavia and Somalia. Government interpretations, expressed during Diet debates, supplement the Peacekeeping Law’s provisions in these deficient areas. According to these interpretations, Japan may require consent from all parties to the conflict before it will participate in peacekeeping operations, despite U.N. determinations to the contrary. Japan may withdraw its troops when consent is lacking, even though such a situation may be one in which the United Nations’ presence is most urgent. And Japan may be prohibited from participating in purely “peacekeeping” tasks simply because other components of the entire operation have the authority to use force if necessary.

How effective Japanese participation in U.N. operations can be will undoubtedly depend on how Japan settles these issues. Resolving these issues will not be easy; domestic consensus has not yet been reached on whether Japan should participate in more dangerous operations. The Japanese government must clarify, preferably in the text of the law itself, the precise scope of participation under various circumstances.

V. CONCLUSION

Japan, fifty years after the Second World War, has expressed a desire to participate actively in U.N. operations for the purpose of maintaining international peace and security. The Japanese government codified this noble aspiration into concrete law when it passed the Peacekeeping Law. In doing so, however, the government was constrained by the forces of history, law, and domestic and international politics. The result was a clearly opportunistic piece of legislation, more concerned with domestic political problems than

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with Japan's effective participation in U.N. operations.\footnote{225}

The Peacekeeping Law conveyed a clear message: Japanese participation in U.N. operations will be limited. The government decided that Japan will only participate in "peacekeeping operations," not "United Nations-authorized" forces like the coalition deployed during the Gulf War or UNITAF in Somalia. Nor will Japan participate in new types of peace-enforcement or coercive measures undertaken without the consent of the major parties involved in the conflict.

The Japanese policy of participating only in purely peacekeeping operations can be a positive force in global politics. History shows that coercive enforcement measures often extend and prolong a conflict, increasing the number of human casualties.\footnote{226} The recourse to forceful measures must be a last resort and must be based on a discreet decision of the United Nations. Japan should present its domestic commitment to peace as an example and use it as political leverage to persuade the United Nations to exhaust all available measures before resorting to Chapter VII.\footnote{227}

The Peacekeeping Law is ambiguous in many ways. Where it does speak clearly, it often deviates from the established practices of U.N. peacekeeping. Japan must clarify these ambiguities and resolve these differences before it can effectively discharge its peacekeeping duties. Moreover, Japan must establish firm policies with respect to several issues raised by recent U.N. operations. This policy clarification must be achieved before Japan decides to "un-freeze" SDF units and allow their participation in military-type peacekeeping activities. Because this policy clarification is a political decision, it should be based on popular consensus. The statutorily mandated Diet review of the Peacekeeping Law, to be conducted in 1995, is an excellent opportunity to clarify Japan's peacekeeping policy.\footnote{228} Once it has clearly defined the scope of the military operations in which it intends to participate, Japan should strive to become a permanent member of the Security Council. By doing so, Japan can effectively voice its concerns over developments in U.N. peacekeeping practices.

The government should emphasize several areas when clarifying its peacekeeping policies. First, Japan must demand that the United Nations control all U.N. peacekeeping operations. U.N. command gives the operations the legitimacy that the Japanese government can rely upon to justify to the

\footnotetext[225]{The Peacekeeping Law was drafted to avoid the problems encountered by the draft U.N. cooperation law in the Diet. Tsutsui Wakamizu, \textit{Reisen Shoketsu to Kokuren Kyoryoku: PKO Kyoryoku Ho no Kokusai Ho-Teki Shiten} [The End of Cold War and U.N. Cooperation: The Peacekeeping Law and its International Law Aspects], 1011 JURISUTO [JURIST] 27, 29 (1992).}

\footnotetext[226]{\textit{Handbook}, supra note 82, at 1; \textit{Doc. S/23900}, supra note 128, ¶ 27, 30.}

\footnotetext[227]{\textit{Kenkyukai: PKO Kyoryoku Hoan no Hodo-Teki Imi} [Symposium: The Legal Significance of the Draft Peacekeeping Law], 991 JURISUTO [JURIST] 60, 78 (1991) (statement of Professor Tsutsui).}

\footnotetext[228]{The government also views 1995, the year in which Peacekeeping Law will be reviewed, as an opportunity to discuss these issues.\textit{GAIMUSHO [MINISTRY OF FOREIGN AFFAIRS], GAIKO SEISHO: TENKANKI NO SEKAI TO NIPPON: 1992 [BLUE BOOK ON DIPLOMACY: 1992] 58-60 (1992).}}
public its dispatch of troops abroad. Moreover, U.N. control assures that peacekeeping operations will remain impartial and international in character, which is explicitly required by the Peacekeeping Law. In addition, where the United Nations is in command, Japanese personnel may use force for self-defense without violating Article 9 of the constitution. The language of the Peacekeeping Law should be revised to explicitly require U.N. command and control of peacekeeping operations.

Second, Japan should rely on U.N. determinations on whether conditions like a cease-fire and party consent have been satisfied. This is not to say that Japan should have no power to decide whether or not to participate in a peacekeeping operation.\(^{229}\) The Prime Minister should make the decision to participate, preferably after the Diet considers the question. Reliance on U.N. determinations on legal issues, however, avoids the unnecessary confusion created by Japanese unilateral determinations. Strict adherence to the U.N. determination is presupposed by the purpose of the Peacekeeping Law to "contribute actively to United Nations-centered efforts for international peace."\(^{229}\) When it questions the United Nations’ judgement on legal issues, Japan disregards this basic premise behind its participation in U.N. peacekeeping operations.

Third, the government’s "official interpretations," which currently define the precise scope and limits of the Peacekeeping Law, should be integrated into the text. Both the government’s interpretation of the "use of arms" by the Japanese SDF and its “integration theory” are fundamental in determining the constitutionality and effectiveness of Japanese participation in U.N. operations. Yet, because they have not been codified in the law, they are of dubious legal force.

Fourth, since the recent development of U.N. peacekeeping operations clearly demonstrates that larger and more comprehensive operations will be deployed in the future, Japan should diversify and increase its contribution. The trend combining peacekeeping and peace-making opens wide a door for Japan to diversify its non-military contribution to U.N. comprehensive operations.\(^{231}\) For example, Japan could contribute its valuable expertise in electoral management and administrative assistance. The United Nations must actively utilize political settlement mechanisms outside of peacekeeping operations, and Japan should continue to increase its participation in and

\(^{229}\) No state is internationally obligated to participate in U.N. peacekeeping operations. Furthermore, a state can limit its participation to comply with domestic legal requirements. KOZAI, supra note 11, at 183.

\(^{230}\) Peacekeeping Law, supra note 2, art. 1.

\(^{231}\) A comprehensive operation will not only involve a military component, but also require efforts directed to restoration of a functioning political, electoral, and police administration, and an emphasis on observance of human rights. The U.N. Transition Assistance Group (UNTAG) in Namibia, UNTAC in Cambodia, UNAVEM in Angola, and ONUMOZ in Mozambique are all comprehensive operations that have included, to varying degrees, electoral and police administration and political restructuring.
support for these non-military components. Toward this end, the government may need to relax the present cap of 2000 IPCA personnel. While there may be policy reasons for maintaining a maximum number of SDF personnel, these reasons do not apply equally to civilian and police personnel since their participation does not raise constitutional problems on the domestic front and does not raise fear of reemergence of militarism on the international front. Japan should facilitate greater participation in these expanded, non-military U.N. operations.

Finally, the Japanese government should encourage interdisciplinary study of U.N. peacekeeping operations. This will increase Japan's understanding of the content and evolution of U.N. operations and enable the government to make sound policy decisions when asked to participate in an operation. To facilitate this understanding, the government should allow publication of Operating Procedures and correspondence with the United Nations. The use of Chapter VII and its influence on peacekeeping, the relation between enforcement units and peacekeeping forces, the conditions for preventive deployment, and the scope and limits of self-defense during peacekeeping are all areas that require more detailed examination.

Japan's participation in and support for U.N. operations should be based on a long-term strategy for influencing the direction of the United Nations. Japan should work within the United Nations to influence its practices in accordance with this strategy. The 1992 Japanese Peacekeeping Law, if implemented properly, can be an effective tool in this endeavor.

Freed from the confinements of the Cold War, the United Nations is experiencing a period of immense growth. Its matured form will greatly depend upon the nourishment that member states provide. Japan must not miss "the moment for seizing."