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# MAJOR LEGISLATION

Jan. — Dec., 1990

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## 1. Constitutional and Administrative Law

### a. Constitutional Law

#### **The United Nations Peace Cooperation Bill.**

Submitted to the Diet by the Cabinet on October 16, 1990.

#### *[Background of the Bill]*

After Iraq's invasion of Kuwait on August 2, 1990, the Japanese government was urged to take proper and prompt action to cope with the Gulf Crisis as "one of the nations that has most benefited from international peace." Although by the end of the summer the government had implemented economic sanctions against Iraq and contributed 2 billion dollars to the multinational forces, most of which were dispatched by the United States to defend Saudi Arabia and to police a United Nations embargo against Iraq, the government feared criticism in the international community that Japan should contribute to efforts to keep world peace not only through its economic power but also by some "visible measures". The United Nations Peace Cooperation Bill was prepared to al-

low Japan's Self-Defense Forces to join United Nations forces for peace-keeping purposes under the United Nations Charter and resolutions. Although the government emphasized that the dispatch of Self-Defense Forces units and personnel was limited to non-military United Nations missions, this bill was widely thought to pave the way for the future dispatch of armed Self-Defense Forces units abroad. Therefore, fierce criticism against the proposed bill arose both inside and outside the country.

***[Main Points of the Bill]***

The purpose of this Bill is to enable to Japan to contribute in an appropriate and prompt manner to the efforts and activities of the United Nations undertaken under U.N. resolutions for the maintenance of international peace and security by setting up a system for dispatching Peace Cooperation Corps abroad, taking measures for extending material assistance, and providing for cooperation by the government and by the private sector (Article 1).

The dispatch of the Corps shall not involve the threat or use of force (Article 2).

The Corps dispatched abroad may engage in the following activities:

(a) surveillance of ceasefire; (b) advice or guidance on administrative matters; (c) surveillance of management of elections, referenda, etc.; (d) transportation, telecommunication, and repair and maintenance of materials and equipment; (e) medical care (including disease prevention); (f) activities for the relief of the afflicted; (g) repair of damage caused by conflict; (h) other matters to be provided for in government ordinances analogous to those in (a) to (g) above (Article 3).

The Self-Defense Forces will send their units and/or personnel to join the Corps (Article 22).

In case of special necessity for their personal physical protection, small arms may be issued to the members of the Corps (Article 27).

**[Comment]**

Article 9 of Japan's postwar Constitution provides: "Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. 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." Although the Self-Defense Forces (SDF) were created and have been enlarged in spite of this provision, the government has repeatedly made it clear that the SDF cannot participate in any operations for collective defense due to the Constitution and also that under the Constitution the SDF cannot send its personnel abroad to engage in military action. This bill would change the previously held interpretation of collective defense and allow the overseas deployment of the SDF. A heated controversy broke out over the constitutionality of the bill.

First, the government argued that participation in U.N. approved security measures is permissible under the Constitution unlike prohibited participation in any operations for collective self-defense. However, the government's novel attempt to distinguish between the concept of collective self-defense and that of "collective security measures based on U.N. resolutions" is unpersuasive. In addition to this, there was criticism even within the ruling party that the government should not have taken such an evasive manner if it really wanted to change the previous policy.

Second, the bill allowed the Corps members to carry "small firearms." However, because it is impossible to guarantee that the Corps would not be involved in combat on the battlefield, this provision permits some possibility that the Corps could take part in military activities.

Third, the work that the SDF would be sent abroad to conduct under the bill is not work that should be carried out by the military. This cast sufficient suspicion on the government's promise that it would not send the SDF itself abroad in the future.

As a result of the fierce criticism against the bill itself as well as frequently inconsistent explanations by the government, the controversial bill was dropped. However, the ruling party succeeded in reaching a backroom agreement with two centrist parties on further deliberation of future United Nations peace cooperation. Future developments of this problem warrant further attention.

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## **b. Administrative Law**

### **The Lifelong Learning Act.**

Promulgated on June, 29, 1990. Ch. 71. Effective as of July 1, 1990.

#### ***[Background of the Legislation]***

With the improvement of the standard of living, the increase of free time, and the development of an aging society, the need for lifelong study has become increasingly recognized. In order to meet this demand of the times, the state must provide various opportunities for learning and take measures to promote spontaneous individual activities. This Act was enacted to make preparations to support lifelong learning and take necessary measures for administrative adjustment.

#### ***[Main Points of the Act]***

The Board of Education of each city and town shall make an effort to: (a) collect, arrange, and provide information concerning opportunities for learning and cultural activities; (b) research the resident demand for learning and examine methods of assessing the results of learning; (c) develop a learning system appropriate for local circumstances; and (d) train leaders and advisers concerning learning (Article 3).