

Japan's Constitutionally Constrained International Cooperation: The Case of UN Peacekeeping Operations

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Introduction

Japan's foreign relations have long been limited to economic and cultural cooperation because of the so-called "Peace Constitution". After the end of the Cold War, however, the need for international humanitarian and military contributions have increased, which made Japan reconsider its role in these areas. This paper analyzes the reasons why Japan couldn't participate in a full range of international cooperation and then discusses how Japan changed its policy regarding foreign cooperation from only engaging in economic and cultural activities to a more comprehensive effort, especially by dispatching its military overseas in UN PKO activities.

1.What are UN Peacekeeping Operations?

At first, let us begin by reviewing the fundamentals of UN Peacekeeping operations (PKO). UN PKO is undertaken by the UN to ensure international peace and security. The UN's success in resolving conflicts in various areas of the world is now widely recognized.⁶

In traditional PKO, peacekeeping forces composed of national contingents of troops and cease-fire observer missions (unarmed military

⁶ *Japan's contribution to International Peace* - Web site.

(http://www.pko.go.jp/PKO_E/pko/index2_e.html)

personal in principle) perform such tasks as monitoring cease-fires, separating hostile forces, and maintaining buffer zones.

More recently, PKO have expanded to include such administrative assistance activities as election and human rights monitoring, reconstruction and development, and organization and institution building, carried out by civilian personnel.

The UN PKO was not a task of the United Nations stipulated in the UN Charter. Rather, having been invented as practical and concrete means for helping solve disputes, UN PKO has proved successful in many cases.⁷ From the first PKO established in 1948, more than 520,000 personnel from more than 80 countries have participated in the UN PKO. In 1988 the Nobel Peace Prize was awarded for their efforts. It is worth noting that out of a total of 28 PKO established in the past, 15 were set up after 1988. This indicates the rising demand for PKO in the post-Cold War world.

While the tasks of the UN PKO were initially limited to maintaining cease-fires and preventing the recurrence of conflicts, they are recently performing a wide range of tasks. For example, some new types of operations are emerging that involve complex assistance in post-conflict nation building, including conducting elections and monitoring administrations during transitional periods. Along with the diversification of tasks, the scale of PKO has grown. Thus, the UN PKO has recently developed both quantitatively and qualitatively and has come to play a central role in the efforts of the United

⁷ *DIPLOMATIC BLUEBOOK 1992, Japan's Diplomatic Activities, Ministry of Foreign Affairs.*

(<http://www.mofa.go.jp/policy/other/bluebook/1992/1992-2-1.htm#4.%20The%20Role>)

Nations for international peace and security.

2.Postwar Constitution and International Cooperation in Japan

Japan's security policy has been circumscribed not to participate in UN collective security efforts because of several factors. These are Japan's postwar constitution, domestic politics, and public opinion. These constraints prevented Japan from providing military personnel in international realm, too. In the following section, we will learn about these constraints and then go into the details how Japan has overcome them.

2-1 Three Constraints

(1) Constitutional and Legal Constraints

After WWII, GHQ, which was occupying Japan, had three policies called 3D policy-De-centralization, De-militarization, and Democratization. Under these policies, a new postwar constitution was established. Especially, article 9, corresponding De-militarization, requires a tricky interpretation and strongly limits the scope and sphere of activities of the Japan's Self Defense Force (SDF).

*[Article 9]*⁸

Aspiring sincerely for 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.

⁸ The National Diet Library's online exhibition "Birth of the Constitution of Japan".(<http://www.ndl.go.jp/constitution/e/etc/c01.html#s2>)

(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.

During the Korean War, GHQ changed the De-militarization policy, allowing the establishment of Japan's SDF without amending the article. After that, the Japanese government has struggled with interpreting the article. In the Charter of the United Nations, member countries have a right of collective defense, but the Japanese government couldn't approve of that legally. The Japanese government's official stance on collective defense, clarified in May 1981, is as follows: "It is natural that Japan, being a sovereign state, should have this right of collective defense from the standpoint of international law. The government, however, interprets that the right of self-defense permitted under Article 9 of the constitution should be used within the minimum range of need to defend Japan, and believes that the exercise of the right of collective defense exceeds the range and thus is not allowed constitutionally".⁹

This interpretation implies that dispatching the SDF overseas cannot be permitted. Thus, not only participating in international military operations under the UN, but even having the right to exercise armed force in foreign countries has been difficult for Japan because of this interpretation.

⁹ Soeya, Yoshihide, "Japan: Normative Constraints Versus Structural Imperatives," in Muthiah Alagappa (ed.) *Asian Security Practice: Material and Ideational Influence*, (Stanford: Stanford University Press, 1998), p.229. Cited from White paper on defense (Boei Hakusho).

Therefore, Japan could hardly decide to participate in International PKO.

(1) Strong Anti-militarism in domestic politics

Other constraints came from opposition parties, especially the Japan Socialist Party (JSP) and the Japan Communist Party (JCP), which strongly opposed the constitutionality of the SDF. Their slogan was 'unarmed neutralism,' so they also opposed the Japan-U.S. security treaty. Even in the ruling party, Liberal Democratic Party (LDP), more than a few legislators had negative feelings about national security issues.

(2) Public opinion

In the early postwar years, social uprisings by leftists and challenges by pacifists to the government's conservative, pro-US policies were major sources of domestic instability.¹⁰ Public opinion was dominated by deep remorse that the military was the root of all evil, which caused the Pacific War during WWII. This is the reason why the Japanese public resists debating issues related to military, security, and war.

What is more, the teachers union and major newspaper has helped to maintain this position even now.

2-2 Japan's effort to adjust to International standard

(1) Failure in Gulf War

The Gulf War in 1991 was the watershed for Japanese foreign policy. At the time, major countries had warned Iraq that they would attack if it did

¹⁰ Soeya, *Ibid.*, p.210.

not withdraw from Kuwait. While waiting for Iraq's response, the UN Security Council had decided to deploy a multinational force led by the U.S. In Japan, political argument on international cooperation was still confused. As a ruling party, the LDP submitted to the Diet a "UN peace cooperation bill," which allowed the SDF's dispatch to the Gulf area, but of course limited the task to rear-guard support. However, the opposition party, especially JSP and JCP, strongly opposed the bill, arguing that Japan should not be engaged in military activities; sending troops overseas is not constitutional; that rear support might be involved in combat; and so on.¹¹ The other opposition parties, Komeito and the Democratic Socialist Party (DSP) also opposed the bill, so the LDP had to drop the legislation at that time. But the LDP did that in exchange for an agreement with Komeito and the DSP to introduce new legislation regarding international cooperation because by adding the LDP, Komeito and the DSP force represented the legislative majority. This agreement was called 'Three parties' agreements'.

In the end, Japan could contribute \$1.3 billion toward the war effort but it was never appreciated by Kuwait or the international community. Then Japan realized the importance of contributing personnel, not just money. That was Japan's big lesson from the war.

(2) Establishment of PKO Law

The three parties' agreements became the International Peace Cooperation Law in 1992 and was a big step toward world peace. But the

¹¹ Yanai, Shunji, "Japan's PKO: Decade long history of Law and Politics," *The Chuo Law Review*, March 2003, p.441.

process was quite difficult because of opposition mainly from the SDP.

In accordance with the agreements, the government submitted a new bill to the Diet in September 1991 concerning cooperation in UN PKO and other operations with a view to establishing a domestic framework to participate in UN PKO and humanitarian international relief activities on a full-fledged scale.

The debate in the Diet regarding the International Peace Cooperation Law varied greatly, but resulted in a convergence of five principles. Another focus was on freezing the main part of Peace-keeping Forces.¹² With regard to the constitutionality, participation in UN PKO conformed with the principle of the Constitution which calls for permanent peace and international cooperation: It does not, in any sense, run counter to these principles. Further, since Japan's participation is based on the "five principles," even the troops of the SDF to be dispatched to the U.N. Peace-keeping Operations could not use force in a manner that is prohibited by the Constitution.

The Five Principles

- (1) Agreement on a cease-fire shall have been reached among the parties to armed conflicts.
- (2) Consent for the undertaking of UN peacekeeping operations as well as

¹² *DIPLOMATIC BLUEBOOK 1992, Japan's Diplomatic Activities, Ministry of Foreign Affairs.*

(<http://www.mofa.go.jp/policy/other/bluebook/1992/1992-2-1.htm#Note%20:%20The%20basic>)

Japan's participation in such operations has been obtained from the host countries as well as the parties to armed conflicts.

- (3) The operations shall strictly maintain impartiality, not favoring any of the parties to armed conflicts.
- (4) Should any of the requirements in the above-mentioned guidelines cease to be satisfied, the Government of Japan may withdraw International Peace Cooperation Corps.
- (5) The use of weapons shall be limited to the minimum necessary to protect the personnel's lives, etc.

The Diet debate was an exceptionally long one just to pass one bill, stretching over three Diet sessions. This bill was approved by the Diet in June 1992 after almost 90 hours of deliberations in the House of Representatives and more than 100 hours in the House of Councilors. The Diet revised the law to separate PKO (operation) and PKF (force) so that the participation of the SDF in the main part of the peace-keeping forces could not be realized. The law allows only the former and not the latter. That means to establish the PKF force would require another law or a further revision. It is fair to say that the International Peace Cooperation Law reflects broad public opinion and has gone through careful deliberations.

With the law's enactment, the legal grounds for Japan's international cooperation maintained Japan's constraints regarding its participation in the PKF.

(3) End of the Cold War

During the Cold War, the Japan's particular attitude that debating

security had been taboo or denying the SDF as an indispensable force didn't cause any problems due to its protection by the US. When the Cold War was over, however, unconditional protection also ended, so security was no longer taken for granted. This reality has also gradually changed public opinion.

3.Success in UNTAC and beyond

The SDF's first dispatch was to Cambodia in 1992-93 and 1993-94. Inside MOFA (Ministry of Foreign Affairs), officials had reached a consensus that the first place to participate in PKO was Cambodia.¹³ They anticipated that the public would accept sending the SDF to Cambodia, and not to the Middle East or other distant area.

The PKO's operations in Cambodia was called the "UN Transitional Authority in Cambodia (UNTAC)" and was the first major UN peacekeeping operation that Japan participated in significantly by providing military and civilian personnel in such areas as civilian policing and electoral monitoring as well as engineering units and cease-fire observers.¹⁴

Unfortunately two victims, one policeman and a civilian volunteer, lost their lives, which increased public criticism against the government's participation, but Prime Minister at the time, Kiichi Miyazawa, didn't change

¹³ "Key person's testimony on 90s: Vol. 6 Yanai, Shunji (ex-vice minister of foreign affairs) (1)," *Ronza*, March 2006, pp.245-256.

¹⁴ Kozai, Shigeru, "Japan and PKO; Japanese Experiences and its Policy," *The Journal of International Studies (Osaka Gakuin University)*, Vol.12 No.2 December 2001, pp.85-109.

the policy. Finally, the mission successfully finished, giving the public a positive impression of the PKO.

After UNTAC, Japan has continued to take part in many PKO activities (See Figure 1). Since the International Peace Cooperation Law was enacted in 1992, Japan has been carrying out many forms of international peace cooperation based on this law, including the dispatch of a cumulative total of 5,607 personnel overseas (as of February 2006).

The International Peace Cooperation Law has been amended twice in 1998 and 2001 to enable Japan expand the sphere of the activities.¹⁵ Especially, the 2001 amendment removed the freeze on participation in Certain UN Peace Keeping Force duties, including monitoring of the disarming of combatants, stationing of personnel in buffer zones, and collection and disposal of abandoned weapons. Then the pillar of Japan's international peace cooperation was completed – UN PKO, international humanitarian relief operations and international election monitoring activities.

As of January 2006, 45 the SDF personnel have been dispatched to join the UN Disengagement Observer Force (UNDOF), which supports the Middle East peace process through such means as ceasefire monitoring in the Golan Heights (a total of approximately 900 personnel have been dispatched since 1996). Furthermore, in October, an official from the Ministry of Foreign

¹⁵ These are “Amendment expanding international election monitoring activities” (1998), “Amendment enabling contributions in kind to international humanitarian relief operations” (1998), and “Amending removing the freeze on participation in certain UN peacekeeping force duties” (2001).

Affairs (MOFA) was recruited to take part in the UN Mission in Sudan (UNMIS). Thus, Japan intends to continue to put forth efforts in the development of a structure for international contribution and to actively offer international peacekeeping efforts in countries suffering from conflicts.¹⁶

¹⁶ *Diplomatic Bluebook 2006, Ministry of Foreign Affairs.*
(<http://www.mofa.go.jp/policy/other/bluebook/2006/10.pdf>)

Figure 1: Japan's Participation in UN PKO¹⁷

UN Angola Verification Mission II (UNAVEM II)
International Peace Cooperation Assignment in Angola (1992)
UN Transitional Authority in Cambodia (UNTAC)
International Peace Cooperation Assignment in Cambodia (1992–93) Contributions in Kind to UNTAC (1992)
UN Operation in Mozambique (ONUMOZ)
International Peace Cooperation Assignment in Mozambique (1993–95) Contributions in Kind to ONUMOZ (1994)
UN Observer Mission in El Salvador (ONUSAL)
International Peace Cooperation Assignment in El Salvador (1994)
UN Disengagement Observer Force (UNDOF)
International Peace Cooperation Assignment in the Golan Heights (1996) Contributions in Kind to UNDOF (1995)
UN Mission in East Timor (UNAMET)
International Peace Cooperation Assignment in East Timor (1999)
UN Transitional Administration in East Timor (UNTAET)
International Peace Cooperation Assignment in East Timor (2002)

Conclusion

Japan's foreign cooperation has been bound by its constitution article9,

¹⁷ Japan's Contributions to International Peace - website.

(http://www.pko.go.jp/PKO_E/pko/h_japan_e.html)

but international conflicts forced Japan into international cooperation, not only in terms of financial assistance, but also in dispatching military personnel. In the future, Japan may play a more active role in international peacekeeping efforts.

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