

## Japan and the United Nations Forces

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### I. Introduction-Enhancement in 1982

In 1982, both the Japanese Prime Minister and the Foreign Minister emphasized Japanese active cooperation in strengthening the peace-keeping operations of the United Nations.

Firstly, Zenko Suzuki, as the first Japanese Prime Minister to address a United Nations session on disarmament, quoting nation's "peace" Constitution and three non-nuclear principles of not possessing nuclear weapons, not producing them and not permitting their introduction in Japan, on 9 June 1982, urged as follows:<sup>1)</sup>

In order to reinforce the peace-keeping functions of the United Nations, Japan has advocated strengthening the fact-finding functions of the United Nations in international disputes and has made proposals on the functions of the Secretary-General in this field and on restriction of the use of the veto. On this occasion, I request that the United Nations speedily carry forward its studies on the following three points; first, on the role of the United Nations in the prevention of international disputes and their peaceful settlement; second, on the system of cooperation among Member States in the peace-

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1) *The Japan Times*, 3 October 1982, p. 1.

keeping operations of the United Nations; and third, on the possibility of establishing a mechanism whereby both global and regional military situations can be monitored and made public as deemed proper. Japan, for its own part, would like to extend full cooperation in carrying out these studies.

Japan will also increase its cooperation in reinforcing and strengthening the peace-keeping operations of the United Nations.<sup>2)</sup>

Secondly, at the 37th Session of the United Nations General Assembly, Foreign Minister Yoshio Sakurauchi, speaking in the general debate at the plenary meetings on 1 October 1982, insisted as follows:

.....peace-keeping operations have been playing an invaluable role, but it cannot be denied that they suffer from the absence of a clear provision in the Charter regarding their activities, which means that they have to be set up each time a conflict occurs. In these times when conflicts between nations occur frequently, it is necessary to re-examine the peace-keeping operations with a view to enabling them to be deployed with sufficient speed and efficiency. A number of points could be considered, such as a system of prior registration and organization of the personnel, equipment and materials which Member States are ready to contribute to future operations; the holding by the United Nations of study and training exercises

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2) United Nations Bureau, Ministry of Foreign Affairs, Japan, *Statements Delivered by Delegates of Japan during the 37th Session of the General Assembly of the United Nations*, 1983, pp. 313-314.

relating to peace-keeping operations ; and the securing of effective financial backing. In his annual report the Secretary-General too suggests that the Security Council should urgently undertake a study of how to strengthen the peace-keeping operations of the United Nations. I earnestly hope that a study on the strengthening of the peace-keeping functions of the United Nations will be made taking the Secretary-General's suggestions into consideration.

Japan, for its part, is ready to cooperate more actively in the strengthening of the peace-keeping operations of the United Nations.<sup>3)</sup>

The year 1982 should be remembered in so far as not only the Foreign Minister but also the Prime Minister emphasized Japanese active cooperation in strengthening the peace-keeping operations of the United Nations. However, there is not always a consensus about this problem in Japan. The purpose of this paper is to try to survey the fluctuations of relation between Japan and the United Nations Forces.

## II. The proposal of 1983

As soon as a proposal got nationwide news coverage on 19 September 1983, controversy arose.<sup>4)</sup>

The proposal was worked out in response to the report of the Secretary-General Pérez de Cuéllar for 1981 / 82 dated 7 September

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3) *Ibid.*, pp. 15-16.

4) See *The Japan Times*, 19 September 1983, p. 1.

5) Shizuo Saito, *Kokusai Rengo no Atarashii Choryu* (New Trends of the United Nations, revised edition, Shinyudo, 1984), pp. 250, 251.

1982 and paragraph 7 of General Assembly resolution 37 / 67 of 3 December 1982.<sup>5)</sup> The Secretary-General said in his report: "I recommend that Member States, especially the members of the Security Council, should again study urgently the means by which our peace-keeping operations could be strengthened."<sup>6)</sup> And paragraph 7 of General Assembly resolution 37 / 67 reads: "The General Assembly ..... [u]rges that efforts to this end continue, taking into account the views expressed by Member States during the thirty-seventh session of the General Assembly as well as those which Member States may wish to offer, while views of institutions and eminent persons may also be taken into consideration as appropriate."<sup>7)</sup>

So the Japan Study Group on Strengthening the United Nations Peace-keeping Functions was made up of seven eminent persons from the private sector. Although the proposal should not be construed as the official position of the Japanese Government, the most important passages were introduced at the Special Political Committee of the General Assembly on 17 October 1983 as follows:<sup>8)</sup>

As is well known, the peace-keeping operations of the United Nations are extremely effective means by which the United Nations can intervene directly for the solution of regional conflicts and have proved very successful in maintaining and restoring the peace. Accordingly, the further cooperation of the United Nations and the member states should be obtained for strengthening these peace-keeping operations in order to

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6) *Yearbook of the United Nations* 1982, p. 6.

7) *Ibid.*, p. 1387.

8) General Assembly, *Official Records*, A/SPC/38/SR. 5, 17 October 1983, para. 6.

strengthen the peace-keeping function of the Organization.

Firstly, the countries concerned should give the peace-keeping operations a more clearly defined mission and enhanced mandate to enable them to function effectively. In the present situation where the peace-keeping operations could operate only under the "consent principle", the success of these operations is largely determined by the mission and mandate agreed upon by the countries concerned.

Secondly, the Member States should extend every possible cooperation to the peace-keeping operations. While it goes without saying that financial support is the crux of such cooperation, other forms of cooperation such as the provision or lending of supplies are also highly valued. Not only should the Member States be ready with financial support in order to put the peace-keeping operations into action promptly, it is desirable that the United Nations and its Members begin to work on measures such as equipment standardization, build-up, and registration which are relatively easy to achieve and will enable the peace-keeping operations to act smoothly. It will be impossible to secure the personnel for the peace-keeping operations from a wide geographic representation unless adequate preparations are made which are particularly tailored for the peace-keeping operations. Accordingly, it is imperative that the personnel be organized and exercises be conducted in advance.

Thirdly, the parties to a conflict should faithfully observe the ceasefire and other international agreements so as not to impair the effectiveness of the peace-keeping operations. Should there be a violation of such ceasefire, the Security Council should begin deliberations on a due response immediately. Only

when there is such backing can the peace-keeping operations effectiveness be assured.

Fourthly, the parties to a conflict should make the maximum self-help efforts for the conflict's settlement. Simply because the peace-keeping operations maintain a temporary peace is no excuse for the parties to the conflict to neglect their responsibility for self-help efforts for a settlement. There are, in fact, cases in which it is feared that the peace-keeping operations presence may be unnecessarily prolonged, and it is hoped that the parties to each conflict will make even greater efforts so that peace can be maintained even after the completion of the peace-keeping operations' mission. Not only does prolonged deployment of the peace-keeping operations impose an excessive burden on the United Nations and its Member States, it further delays the fundamental resolution of dispute.<sup>9)</sup>

The proposal aroused controversy because it suggested in the section of "The Roles Japan Should Play" Japanese participation in such United Nations peace-keeping activities as policing, logistics and patrolling activities, prohibited under the Self-Defense Forces Law, which bans the dispatch of military personnel abroad. Its controversial section was excluded from the proposal when it was submitted to the United Nations Secretary-General at the end of September, through Foreign Minister Shintaro Abe.<sup>10)</sup>

At the 38th Session of the United Nations General Assembly,

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9) United Nations Bureau, Ministry of Foreign Affairs, Japan, *Statements Delivered by Delegates of Japan during the 38th Session of the General Assembly of the United Nations*, 1985, pp. 118-120; Saito, *op. cit.*, pp. 254-255.

10) *The Japan Times*, 23 September 1983, p. 1; Saito, *op. cit.*, pp. 256-257.

the Foreign Minister, speaking in the general debate at the plenary meetings on 28 September 1983, said only about the peace-keeping operations as follows:

The United Nations cannot succeed in discharging its peace-keeping functions without the active support and cooperation of all member states.<sup>11)</sup>

Compared with the statements of the Prime Minister and the Foreign Minister in the previous year, this statement toned down obviously.

### III. Situation before Japan's Admission to the United Nations in 1956

Japanese participation in the United Nations Forces is controversial because it touches upon the fundamental principles of the Constitution of Japan of 1946.

The Preamble of the Constitution states as follows:

We, the Japanese people,.....resolved that never again shall we be visited with the horrors of war through the action of government,.....

We, the Japanese people, desire peace for all time.....and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world.....

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11) United Nations Bureau, Ministry of Foreign Affairs, Japan, *supra* n. 9, p. 17.

And Article 9 of the Constitution provides as follows:

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 potentials, will never be maintained. The right of belligerency of the state will not be recognized.

From the beginning of 1949 to the outbreak of the Korean War, there was a strong tendency in Japan to insist on a policy of neutrality. A major impetus to this development was the statement by General MacArthur in March 1949 that the United States wished Japan to be "the Switzerland of the Pacific." But, when the north Korean Army launched its aggressive military action in June 1950, many Japanese discovered that neutrality without military power was just a paper plan, merely impractical idealism.<sup>12)</sup>

In the Treaty of Peace with Japan, which entered into force on 28 April 1952, Japan undertook to act in accordance with the purposes and principles of the Charter of the United Nations (Preamble and Article 5).

The Treaty of Peace stipulates as follows:

All occupation forces of the Allied Powers shall be withdrawn from Japan as soon as possible after the coming into

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12). Japanese Association of International Law, *Japan and the United Nations*, 1957, pp. 199, 200.

## Japan and the United Nations Forces

force of the present Treaty,.....Nothing in this provision shall, however, prevent the stationing or retention of foreign armed forces in Japanese territory under or in consequence of any bilateral or multilateral agreements which have been or may be made between one or more of the Allied Powers, on the one hand, and Japan on the other (Article 6, para.(a)).

In accordance with these terms, the Security Treaty between Japan and United States was signed on the same day as the Treaty of Peace, and thereby United States forces continued to be stationed in Japan. In addition, Notes Exchanged between Prime Minister Shigeru Yoshida and Secretary of State D. G Acheson in connection with the Security Treaty arranged that Japan would permit and facilitate the support in and about Japan, by the member or members of the force engaged in any United Nations action in the Far East.<sup>13)</sup>

In the result, an Agreement Regarding the Status of the United Nations Forces in Japan was signed on 19 February 1954. Its parties are the Government of Japan, the Government of the United States acting as the Unified Command, and the Governments of other States sending forces to Korea pursuant to the United Nations resolutions. The United Nations as such is not a party.<sup>14)</sup> In any case, before its admission to the United Nations, Japan was brought contact with the United Nations Forces.

As we have seen, in view of Article 9 of the Constitution of Japan, Japan does not in principle possess regular army, navy or

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13) Yuichi Takano, "Foreign Armed Forces and Criminal Jurisdiction of Japan," *The Japanese Annual of International Law*, No. 2, 1958, p. 20.

14) C. W. Jenks, *International Immunities*, 1961, pp. 104-105.

air forces. On the other hand, Article 2(5) of the Charter of the United Nations sets forth the obligations of the Members to assist in any United Nations action. A question was raised as to whether Article 9 of the Constitution consisted with the obligations under the Charter of the United Nations. Someone maintained as follows:

Since Japan is to be under the protection of the United Nations, it is only natural for us to co-operate with the United Nations for the maintenance of international peace and security. It is a selfish and wrong idea for a nation to expect protection from the United Nations, if it is not willing to contribute to it. On this point, it is my opinion that the Japanese Constitution itself must be revised.<sup>15)</sup>

Although Japan is not a neutralized state, there occurred the same problem as a neutralized state. But, this problem had individually been resolved by the conclusion of the Security Treaty between Japan and the United States. And, it was generally resolved by Austria's admission to the United Nations. On 16 December 1956, about one year later of Austria's admission, Japan was admitted to the United Nations. As the neutrality of Austria was not discussed in the United Nations, so was not discussed the Constitution of Japan in the United Nations.<sup>16)</sup>

#### IV. Situation in 1958 and 1961

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15) Expressed by Naotake Sato, President of the United Nations Association of Japan. Japanese Association of International Law, *op cit.*, p. 213.

16) Shigeru Kozai, "Kokusai Shakai to Nippon (International Society and Japan)" in Yuichi Takano(ed.), *Gendaiho to Kokusai Shakai* (Present Law and International Society, Iwanami Shoten, 1965), pp. 358-359, 367 n. 4.

Ever since its admission, Japan has made the United Nations a central pillar of its foreign policy. But, Japan has taken the passive position concerning the dispatch of Self-Defense Forces to the peace-keeping operations.

For example, on 21 July 1958 Japan proposed in a revised draft resolution that the United Nations Observation Group in Lebanon (UNOGIL) be strengthened "so as to make possible the withdrawal of United States forces from Lebanon." Secretary-General D. Hammar-skjöld announced on 22 July that he intended to increase the members of the UNOGIL despite the fact that the Soviet Union had vetoed the Japanese resolution in the Security Council.<sup>17)</sup>

The Secretary-General asked for the UNOGIL of 10 captains and majors of Japanese Self-Defense Force. The bid to Japan was a link in his heavy task of increasing the UNOGIL from its strength of 125 men to 200. But, the Japanese Government turned down the request by the Secretary-General. Japan's Ambassador to the United Nations Koto Matsudaira was instructed to inform the Secretary-General that if civilians would be of any use in the observer task, then Japan would be ready to consider any such request. Japan's "No" was based on the Government's interpretation that the Japan's domestic law-including the Constitution of Japan-do not allow the dispatch of "troops" abroad.<sup>18)</sup>

And, on 21 February 1961 Matsudaira said Japan should send members of the Self-Defense Forces to the Congo as observers. He made the statement at a press conference in Tokyo. He said

17) M. W. Zacher, *D. Hammar-skjöld*, Columbia U. P., 1970, p. 100; Security Council, *Official Records*, S/PV. 838, 22 July 1958, paras. 9-15.

18) *The Japan Times*, 1 August 1958, p. 1.

19) *Ibid.*, 22 February 1961, p. 1.

Japan should take a positive step in co-operating with the Opération des Nations Unies pour le Congo (ONUC) since it was following a foreign policy centered on diplomacy through the United Nations.<sup>19)</sup>

The suggestion by Matsudaira caused a storm of controversy in the Diet on 22 February. The Opposition Socialist and Democratic Socialist parties demanded a direct explanation by Matsudaira in Diet. Liberal-Democratic Party leaders claimed the suggestion was strictly a personal opinion and the Government could not be held responsibility for it.<sup>20)</sup>

Ichio Asukata, who spearheaded Socialist interrogation at House of Representatives Budget Committee, demanded Matsudaira to testify to the committee. Asukata charged Matsudaira's suggestion was entirely contradictory to Foreign Minister Zentaro Kosaka's view and requested the Government to explain the conflict of views.<sup>21)</sup>

In reply Kosaka said Matsudaira's statement was not made in his capacity as Japan's Ambassador to the United Nations but was merely a personal opinion. Kosaka assured the committee that the Government would not dispatch troops overseas. Kosaka said Matsudaira had not meant sending troops to the Congo as observers but had in mind technicians and doctors. The Foreign Minister emphasized that the Constitution does not allow use of troops except in self-defense.<sup>22)</sup>

Director-General of the Cabinet Legislation Bureau Shuzo Hayashi, however, said the interpretation of the Constitution can differ

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20) *Ibid.*

21) *Ibid.*

22) *Ibid.*, pp. 1-2.

according to the character of United Nations troops, that can be either military, police or observers in nature. Hayashi said that although the Constitution could be interpreted in several ways, there was no possibility of sending the Self-Defense Forces abroad under the present Self-Defense Forces Law.<sup>23)</sup>

On 23 February Zentaro Kosaka told the Diet that he had strictly warned Koto Matsudaira against making his inappropriate statement made at an inappropriate place. The Foreign Minister said the Government would like to cooperate with the United Nations by sharing expenses and offering technical help instead. He explained the special circumstances which prevent Japan from sending troops to the Congo. Kosaka made these Statements in reply to a question from Naotake Sato of the Doshikai at the House of Councillors Foreign Affairs Committee.<sup>24)</sup>

Koto Matsudaira totally retracted his earlier statement that Japan should send Self-Defence Force units to the Congo as observers. He made the retraction during a press conference held at his request at the Ministry Foreign Affairs. There was no doubt that his statement was based on Japan's "NO" in 1958. In any event, the uproar over Matsudaira's statements provided opportunities for examining the Japanese cooperation to the United Nations.<sup>25)</sup>

#### V. Conclusion-Recent Situation

As we have seen, Japanese Government has refused to send the Self-Defense Forces to the peace-keeping operations of the

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23) *Ibid.*, p. 2.

24) *Ibid.*, 24 February 1961, p. 1.

25) *Ibid.*

United Nations.

Indeed, at the 42nd Session of the United Nations General Assembly, Prime Minister Yasuhiro Nakasone, speaking in the general debate at the plenary meetings on 21 September 1987, mentioned as follows:

The United Nations must become a true united nations. Above all is the need to strengthen its peacekeeping functions. For its part, my country has been making active efforts to support United Nations peacekeeping operations, mainly through financial assistance.<sup>26)</sup>

On the next day Foreign Minister Tadashi Kuranari also informed Secretary-General de Cuéllar of Japanese intention to contribute 20 million dollars as financial assistance to the peace-keeping operations.<sup>27)</sup>

Will Japan continue to confine itself to financial assistance in future? Recently there is a growing tendency among international lawyers and scholars of constitutions to maintain the participation of the Self-Defence Forces in the peace-keeping operations. This tendency is marked, for instance, in the case of Professor Hatano's statement and found expression also in the works of Professor Hirose and Professor Fukase.

Ribot Hatano, Professor of International Law, uttered as follows:

Even neutralized Austria enacted a Bundesverfassungsge-

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26) Gaimusho (Ministry of Foreign Affairs), *Gekkan Kokusai Seikei Joho* (Monthly Information of International Politics and Economics), October 1987, p. 28.

27) *Yomiuri Shimbun* (evening edition), 24 September 1987, p. 2.

setz in order to participate in the peace-keeping operations. It is contrary to logic in international society that "peace" state Japan does not participate in the United Nations Forces because of the Self-Defense Forces Law.<sup>28)</sup>

Yoshio Hirose, Professor of International law, insisted as follows :

In view of internationalism contained in the Constitution of Japan it is necessary that Self-Defense Forces should participate in the peace-keeping operations, provided that the peace-keeping operations should not be military enforcement measures.<sup>29)</sup>

And, Tadakatsu Fukase, Professor of Constitution, proposed as follows :

The Self-Defense Forces should be reformed into peace troops in strengthening the peace-keeping functions of the United Nations. Japan should establish the North European type stand-by forces.<sup>30)</sup>

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28) Utterance at a discussion meeting concerning "Funso Shori Kikan toshi-teno Kokuren (The United Nations as a Dispute Settlement Organ)", *Kokusai Mondai* (International Affairs), July 1984, p. 66.

29) Yoshio Hirose, "Zoku Kokusai Shakai no Komyunitika no Joken" (The Conditions for Changing International Law into International 'Community' Law (continued)) (1), *Meiji Gakuin Ronso Hogaku Kenkyu* (The Meiji Gakuin Law Review), No. 33, 1985, pp. 18-19.

30) Hideo Wada, Naoki Kobayashi, Tadakatsu Fukase and Atsushi Furukawa (eds.), *Heiwa Kenpo no Sozoteki Tenkai* (A Comprehensive Peace Strategy of the Japanese Constitution, 1987, Gakuyo Shobo), pp. 461-473.