

Sanakawa Case

(Sunakawa jiken). A criminal trial in which seven Japanese, indicted for trespassing on an American army base, challenged the stationing of the United States Security Forces in Japan on the grounds that it violated Article 9, the controversial RENUNCIATION OF WAR clause, of the Constitution.

The facts of the case are undisputed. The United States desired to extend a runway at its Tachikawa air base in the village of Sunakawa, Tōkyō Prefecture, and had won permission from the Japanese authorities to procure adjoining private farmland. When it was surveyed in July 1957, more than 1,000 opponents of the American military presence gathered to protest. Seven rioters broke down part of the fence and entered the base. They were accused of having violated a special law that, in accord with the Administrative Agreement between the two nations, set more severe penalties for such trespassing than the general law did with regard to other property.

The Tōkyō District Court, composed of three judges under the presidency of Judge Date Akio, on 30 March 1959 reached a verdict of not guilty and acquitted all defendants.

The court ruled that the stationing of United States Forces (USF) in Japan did violate Article 9 of the Constitution. It held that Article 9 prohibits "war potential" even for self-defense. Japan retains a right of self-defense, but may exercise it only by resorting to the United Nations. It argued further that Article 9 derives from the will of the Japanese people, who, in the spirit of the Preamble and in "self-reflection on the past," aim at being pioneers of eternal world peace.

As to the stationing of the USF, the court ruled that the United States-Japan Security Treaty permits the United States to deploy its forces also in areas outside Japan. The treaty therefore may involve Japan in a war that has no bearing on her and so runs counter to the pacifism of the Constitution. Moreover, even the use of the USF for the defense of Japan would make Japan a belligerent, since the treaty's Administrative Agreement provides that in the event of hostilities in the area of Japan the two governments shall consult together and take necessary joint measures for the area's defense. Although Japan has no command or control over the USF, their stationing was the result of a mutual agreement and therefore also an act of the Japanese government.

On the basis of these considerations, the court concluded that since the stationing of the USF ^{in Japan} is unconstitutional, their privileged treatment by the special Law for ~~the~~ violation of which the defendants were prosecuted was null and void under the due-process-of-law principle of Article 31 of the Constitution.

The decision was rendered in the explosive atmosphere of the ^{national debate over} ~~dispute about~~ the revision of the Security Treaty, ^{which} ~~that~~ the Japanese ^(then re) Government was negotiating with the United States. The leftist parties, ^{with the support of} ~~some~~ some other groups, were bitterly opposed to any renewal of the treaty and advocated neutrality and non-alignment. Soviet Russia and China supported this stand. The acquittal of the defendants was therefore hailed as a great victory by all antagonists of the ^{renewal} ~~revision~~. It also made the troubled Government even ^(to its political critics) ~~politically~~ more vulnerable. Hence, the public procurator, omitting the middle instance of the high court, ^(for judicial review) ~~the law of~~ appealed directly to the Supreme Court (Japanese law permits appeals of the state even from acquittals). The prosecution was confronted with ^{(a defense council consisting of} a huge ⁾ ~~with~~ battalion of lawyers and other jurists.

In its verdict of 16 December 1959 the Grand Bench of the Supreme Court quashed the first-instance decision and remanded the case to the Tōkyō District Court for retrial. The judgment was unanimous, but ¹⁰ ~~for~~ justices ~~part~~

submitted supplemental opinions, either elaborating the majority ruling or objecting to its reasoning.

The majority opinion held that Article 9 embodies the spirit of pacifism in the Constitution. Although it renounces war and prohibits the maintenance of war potential, it in no way denies Japan of the right of self-defense that she inherently possesses as a sovereign nation. It never requires defenselessness or non-resistance. The Preamble recognizes that "all peoples of the world have the right to live in peace." That includes Japan, which therefore has the right to maintain her own peace and security and take the measures necessary for her self-defense. Since under paragraph 2 of Article 9 the Japanese people are not allowed to maintain war potential and are thereby practically disarmed, they are free to select any means deemed suitable for self-defense and not at all limited to the United Nations, as the District Court believed. The selection depends upon the prevailing international conditions.

What Article 9 bans, the court ruled, is the devising of aggressive war through the maintenance of war potential, as well as the exercise of command and control over it, by Japan herself. This ban does not extend to foreign military forces retained in Japan,

since Japan's agreement in a treaty to their retention does not make them Japanese war potential.

Nonetheless, the court felt that to decide whether such retention violated the Constitution would require an examination of the constitutionality of the ~~Peace~~ ~~Treaty~~ Security Treaty on which it was based. That ~~treaty~~ treaty is closely connected with the ^{(SAN FRANCISCO} ~~Peace~~ Peace Treaty (1952) signed by ⁴⁰ ~~many~~ of the then ⁶⁰ ~~many~~ members of the United Nations, ~~or~~. The Peace Treaty explicitly permits the stationing or retention of foreign military forces on Japanese ^{soil} ~~territory~~. Hence, Japan was justified ^{in entering} ~~to enter~~ into collective security arrangements with the United States. The Security Treaty was duly executed by the ^{(Japanese} Cabinet, and after careful consideration, ^{including discussion} ~~and~~ of the question of constitutionality, it was approved by both houses of the Diet. In view of the highly political nature of the treaty, the court, as a judicial ^{body} ~~court~~ is not authorized to render a legal decision on its constitutionality "unless there is clearly obvious unconstitutionality or invalidity." That decision must be primarily left to the two other branches of government. ^{The court's} ~~the~~ examination, ~~by the court leads~~ ^{led it} however, to the conclusion that the retention of USF, the

main ~~substance~~^{purpose} of the Security Treaty, "must certainly be in accord with the intent of Article 9^{and of} Article 98^{graph} para 2 (which requires faithful observation of treaties and established laws of nations), and it absolutely cannot be admitted that it is in violation of the said provisions or that it is clearly obvious that it is unconstitutional and invalid." The same conclusion was reached with regard to the ^{treaty's} Administrative Agreement. The principal ~~motivation~~^{reasoning} behind this judgment appears to be ~~the points~~ that the USF are not war potential of Japan, since command and control over them are left completely to the United States, and that the ~~objective~~^{purpose} of their retention ~~is in~~^{is} the maintenance of peace and security in ~~the Far East~~^{East Asia} in view of the ~~inefficiency~~^{inadequacy} of Japan's defensive strength.

Some of the supplemental opinions took issue with the majority ruling's profession of self-restraint in view of the political nature of the Security Treaty. Others made the criticism that, while judicial review of the Treaty is limited to clearly obvious unconstitutionality, the majority opinion nevertheless thoroughly reviewed and judged it as if this self-imposed limitation did not exist. Justice Otani Katsushige characterized this departure from the self-restraint principle as "a self-consoling excuse." Chief

Justice TANAKA KŌTARŌ, a prominent teacher and advocate of natural law, elaborated on the international spirit of the Constitution and on the interdependence of nations as reflected in the Preamble. He believed that self-defense in its strict meaning no longer was possible, since self-defense is the defense of others, and the defense of others is self-defense.

The Tōkyō District Court, to which the case was remanded, was bound by the Supreme Court's ruling of constitutionality. It had to accept the legal validity of the special law under which the defendants had been indicted, and its role was restricted to merely determining the appropriate punishment. The trespassers were punished with a fine.

The legal and political significance of the Supreme Court's decision at home and abroad can hardly be overstated. For the first time Japan's highest tribunal had interpreted the problematic war-renunciation clause and made a ruling on judicial review of international treaties. Although a finding on the constitutionality of the Japanese Self Defense Forces was explicitly omitted from the Supreme Court's ruling, it is not difficult to deduce from the Court's reasoning how this hotly disputed question will be finally decided. While dealing with this issue in the early 1970s, the Sapporo

High Court evidently used the Sunakawa ruling as a precedent in the NAGANUMA CASE.

With its reversal of the first-instance court decision, the Supreme Court had deprived Japanese and foreign opponents of Japan's alliance with the United States of their major legal weapon. Still, the political crisis brought on by the revision of the Security Treaty continued and culminated in mass demonstrations, an assassination attempt against Prime Minister KISHI NOBUSUKE, who had been accused of pushing the Treaty through the Diet, and his resignation and replacement by Ikeda Hayato. In this climate of unrest the visit of President Eisenhower planned for the Tōkyō signing of the revised treaty had to be cancelled. This embarrassment to the conservative government was insignificant compared to the incalculable domestic and international damage it would have suffered had the Supreme Court upheld the original decision.

Bibliography. Alfred C. Oppler, "The Sunakawa Case: Its Legal and Political Implications," Political Science Quarterly 76 (1961). John Maki, Court and Constitution in Japan (1964).

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