

## ACTIVITIES

### I. ACTIVITIES OF THE INTERNATIONAL LAW ASSOCIATION OF JAPAN

#### THE THIRTEENTH ACADEMIC CONFERENCE

(2005)

Date: April 9, 2005

Place: Sanjo Kaikan, Tokyo

The Common Theme of the Afternoon Session: **Globalization of the International Financial Market and State Sovereignty**

Morning Session:

Chair: Professor Teruo Komori, Hokkaido University

Speaker: Professor Junji Nakagawa, University of Tokyo

Afternoon Session:

Chair: Emeritus Professor Kazuaki Sono, Hokkaido University,  
Tezukayama University

Speaker: Professor Hideki Kanda, University of Tokyo

Commentator: Professor Takashi Kubota, Waseda University

Speaker: Professor Tetsuo Morishita, Sophia University

Commentator: Professor Akira Kotera, University of Tokyo

Speaker: Mr. Akira Ariyoshi, Ministry of Finance

Commentator: Professor Yoo Hyucks Soo, Yokohama National University

State Sovereignty, International Organization and Globalization  
— The Impact of Globalization on the Sovereign State System —  
Junji Nakagawa, University of Tokyo

Economic globalization (hereinafter “globalization”) were promoted both in trade and international financial transactions. However, normative/institutional frameworks for the promotion of globalization showed a striking contrast in these two fields. While the liberalization of world trade took place through international law and international organizations, namely the GATT and the WTO, liberalization of international financial transactions was realized through voluntary initiatives by a small group of developed countries, with weak normative and institutional framework. As a result, the impacts of globalization on the sovereign states system, which is the prevailing structure of the modern international society, were different in these two fields, so are the challenges to the contemporary normative/institutional frameworks. In trade, under the strengthened legal discipline of the WTO with enlarged coverage, major challenges are in its effectiveness (developing country members’ difficulty in implementation, abuse of antidumping), legitimacy

(coordination of trade liberalization and other national goals such as environmental protection, food security), and efficiency (slowness of multilateral trade negotiation, low level of agreement). In international financial transactions, a group of norms were recently created in order to achieve stability of international financial system, such as Basel Accord and Basel II. They are legally non-binding, and were drafted and are being implemented through intimate cooperation between the financial regulatory authorities and the financial sector. They, therefore, do not fall within the traditional normative/institutional framework of sovereign state system. The challenge, then, is how to legitimize them. Can they claim legitimacy without sovereign consent? Can their legitimacy be based on the endorsement of the Financial Stability Forum, IMF and the World Bank? Or, can it be based on the "international common interest" of avoiding financial crises?

#### Rulemaking in International Finance: Basel II

Hideki Kanda, University of Tokyo

In June 2004, The Basel Committee on Banking Supervision ("Committee") released the International Convergence of Capital Measurement and Capital Standards: A Revised Framework, the new capital adequacy framework commonly known as Basel II. In this Article, I examine its legal nature, and ask whether and why this will be successful in the international financial community.

There are different patterns of rulemaking in international finance. These are, for example, conventions, rules issued by international organizations and soft law. The "Basel Accord" is intended to be soft law, because the Committee explicitly states that it should serve as best practice, not a binding law. Nevertheless, the Basel Accord I (in 1988) has been implemented in more than 100 countries (far beyond the member countries of the Committee), and the Basel II is expected to be implemented in a similarly wide basis.

The success can be attributed to speed, expertise and power of implementation associated with bank supervisors and regulators which are the parties to the Committee. This, however, is not the sufficient condition for the success to happen. Politics aside, two matters seem to be the key from a legal perspective - that is, rulemaking is made within the scope with which participating supervisors have power of regulation in their jurisdictions and there is an implicit agreement as to the relationship between the home country and host country of financial institutions. Supervisors in a host country exercise their power to regulate financial institutions while they assume that those institutions are adequately regulated in their host country. Without these conditions, rulemaking such as Basel I or Basel II would probably not have been successful.

## International Monetary Law and Jurisdiction

Tetsuo Morishita, Sophia University

There are two issues which attract recent academic interest in international monetary law: Dollarization/Euroization and extraterritorial jurisdiction.

On Dollarization/Euroization, European Central Bank has showed its position that it does not welcome unilateral adoption of the Euro by a country not belonging to the European Monetary Union, while the United States tends to connive such use of US dollars by another country. Though IMF opines that there is no basis of international law for issuing country to prohibit the use of its currency by another country, the issuing country should be recognized its right under international law to request another country to use its currency under certain conditions, which are necessary to avoid adverse effect on the monetary policy of the issuing country.

Article 319 of US Patriot Act, which aims to combat terrorism, enables US authorities to forfeit funds held for a foreign bank in a US interbank account at US bank under certain conditions, by deeming the funds deposited at the foreign bank in the foreign country to have been deposited into the interbank account in the US. There are strong arguments that this provision violates the principle of international law on jurisdiction.

The issue of jurisdiction is also important for economic sanctions such as disputed in the famous Libyan Arab Foreign Bank case. Though different views have been showed on how to evaluate that case, it is still unclear how international law works on governmental interventions in international financial transactions. It is important to develop rules of international law which may control unreasonable extraterritorial assertion of jurisdiction.

## Evolution of the IMF – Role and Function

Akira Ariyoshi, Ministry of Finance

Originally set up as an institution to provide the framework for the international monetary system, the role and function of the IMF has evolved considerably over time. The Fund was conceived with four main functions set out in its Articles of Agreement: Forum for international monetary cooperation; facilitating trade through elimination of exchange controls for current transactions; promotion of exchange rate stability; and provision of financial support for balance-of-payments adjustment. However, by the 1980's, the Fund's role had diminished in all areas except the last: It had become generally accepted that exchange controls were not a viable policy instrument in an era of globalization, while national governments had become increasingly unwilling to explicitly subjugate domestic policy freedom to maintaining exchange rate parity.

The Fund continued to play a useful role in facilitating financial restructuring for indebted countries, but globalization of capital markets began to limit the Fund's ability to play such a role. Asian currency crisis brought to focus Fund's limitations and shortcomings. In the wake of the debate on the reform of international monetary architecture that followed, the Fund's role seems to again be shifting, lowering its reliance on lending and shifting increasingly to improving transparency of information on countries' economic and financial conditions.

With the Fund's originally envisaged role significantly diminished, the world appears to be turning to unilateral and regional arrangements to achieve stability of exchange rates. These include dollarization and regional arrangements including the establishment of the Euro and the emerging monetary cooperation in Asia.

#### ACTIVITIES OF THE OFFICE IN 2005

1. The General Meeting of the Japan Branch was held on April 9, 2005 at Sanjo Kaikan, Tokyo.
  - a. With regard to the fiscal year 2004:
    - (i) The financial account of the Japan Branch for fiscal year 2004, audited by Mr. Shunji Yanai, Auditor, as prepared by Mr. Yoshio Kumakura, Treasurer, were submitted and approved by the meeting.
    - (ii) The general affairs of the Branch during this term were reported by Professor Shinya Murase, Secretary-General.
    - (iii) The academic activities of the Branch during this term were reported by Professor Naoya Okuwaki, Director of Planning.
    - (iv) Publication of Number 47 of *The Japanese Annual of International Law* was reported by Professor Akira Kotera, Editor-in-Chief.
  - b. With regard to the fiscal year 2005:
    - (i) The budget for fiscal year 2005, as prepared by Mr. Yoshio Kumakura, Treasurer, was submitted and approved by the meeting.
    - (ii) The general affairs scheduled for this term were presented by Professor Shinya Murase, Secretary-General.
    - (iii) The academic activities of the Branch scheduled for this term were presented by Professor Naoya Okuwaki, Director of Planning.
    - (iv) The Progress of the editorial work for Numbers 48 and 49 of *The Japanese Annual of International Law* was reported by Professor Akira Kotera, Editor-in-Chief.
2. Council Meetings were held twice for fiscal year 2005 and dealt with the following matters.
  - a. At the first Regular Council Meeting of 2005 held on April 9, 2005 at Sanjo

Kaikan, Tokyo:

- (i) The financial account of the Branch for fiscal year 2004 and its budget for fiscal year 2004 were approved.
- (ii) The general affairs of the Branch during fiscal year 2004 and the program for fiscal year 2005 were approved.
- (iii) The academic activities of the Branch during fiscal year 2004 and the program for fiscal year 2005 were approved.
- (iv) The publication of Number 47 of *The Japanese Annual of International Law* and the progress of the editorial work for Numbers 48 and 49 were reported on.
- (v) The following persons were admitted as new regular members of the Branch.
  - Hiroshi Mitoma, Associate Professor, University of Tokyo
  - Hiroyuki Banzai, Lecturer, Surugadai University
  - Naoki Iwatsuki, Lecturer, Rikkyo University
  - Yuka Fukunaga, Lecturer, Waseda University
  - Tetsuya Nakano, Associate Professor, Kansai University
  - Takashi Kubota, Professor, Waseda University
  - Dai Kaneko, Professor, Yamanashi Gakuin University
  - Jun Tsuruta, Lecturer, Japan Coast Guard Academy
  - Suzu Tokue, Solicitor, Herbert Smith
  - Atsuko Nishimura, Professor, Tohoku University
  - Hiroshi Oe, Professor, University of Tokyo

b. At the second Regular Council Meeting of 2005 was held on November 11, 2005 at Gakushi Kaikan Bunkan, Tokyo:

At the outset of the meeting, it was reported with deep regret that Mr. Masatsugu Mitsuki, who had served as auditor of the Association for a number of years, died on May 26, 2005. Mr. Mitsuki was a brilliant practicing lawyer and a great expert of private international law.

- (i) The financial condition of the Branch was reported on.
- (ii) The general affairs of the Branch was reported on.
- (iii) The academic activities of the Branch were reported on.
- (iv) The progress of the editorial work for Number 48 and 49 were reported on.
- (v) The following persons were admitted as new members of the Branch.
  - Akira Kawamura, Attorney at Law, Anderson, Mori & Tomotsune
  - Etsuro Kuronuma, Professor, Waseda University
  - Mika Okochi, Associate Professor, Tokyo University of Marine Science and Technology
  - Yoshinori Abe, Associate Professor, Gakushuin University

(Shinya Murase, Kazuhiro Nakatani)