

## ACTIVITIES

### I. Activities of the International Law Association of Japan

#### THE NINETEENTH ACADEMIC CONFERENCE (2012)

Date: April 21, 2012

Place: Sanjo Kaikan, University of Tokyo

The Common Theme: Activities of the United Nations: Developments and Problems

Morning Session:

Chair: Professor Naoya Okuwaki, Meiji University

Speaker: Professor Shinichi Kitaoka, National Graduate Institute for Policy Studies

Afternoon Session:

Chair: Professor Ryuichi Ida, Doshisha University

Speaker: Professor Tadashi Imai, Utsunomiya University

Speaker: Professor Yasunobu Sato, University of Tokyo

Speaker: Professor Yasue Mochizuki, Kwansei Gakuin University

Speaker: Professor Toshiki Mogami, Waseda University

#### The Political Dynamics of the Security Council Reform

Shinichi Kitaoka, Professor,  
National Graduate Institute for Policy Studies

The most serious effort to reform the United Nations Security Council (hereinafter the "Security Council") was started in December 2004 when the High-Level Panel on Threats, Challenges and Change presented its report for the reform of the United Nations. It included two models for the Security Council reform: Model A was to add six permanent seats and three non-permanent seats, while Model B was to create eight re-electable four-year seats (commonly called semi-permanent seats) and one non-permanent seat.

Those models were already known in August 2004. Japan decided to support Model A, formed the G4 alliance (hereinafter "G4") with Germany, India, and Brazil, and argued that the Security Council should be expanded in both permanent and non-permanent categories in the General Assembly in September. More than 110 member states expressed the same idea.

However, Italy, Pakistan, Korea, and other countries organized Uniting for Consensus (UFC) in March 2005. China began a strong opposition to Japan's aspiration to the permanent seat in April, and the US expressed its concern with any expansion that would make the Security Council ineffective.

In May 2005, G4 completed the draft resolution, but African countries decided to pursue an independent position from G4 in June. G4 tried to persuade AU instead of

going to the vote and failed in early August.

Needless to say, reforming the Security Council is an extremely difficult task. However, if Prime Minister Junichiro Koizumi had not continued his visit to Yasukuni Shrine, Chinese opposition would have been weaker. If Koizumi had tried to persuade US President George W. Bush, the US might have supported or abstained from the G4 resolution. Because of the failures on those two fronts, G4 did not have the support of two-thirds of the member states (128).

Still, at least 100 to 110 members were supportive of G4. If the G4 resolution had been voted on, the result would have been approximately 105-35-50 (yes, no, and abstention, respectively). It would have been a failure, but would have become a solid basis to the next step. In that sense, Japan lost a big opportunity by its misjudgements.

**The Possibility and Challenge of the UN Human Rights Council:  
Addressing Situations of Violations of Human Rights**

Tadashi Imai, Professor, Utsunomiya University

The Human Rights Council's (hereinafter the "Council") mandate requires it to "address situations of violations of human rights, including gross and systematic violations" in the operative paragraph three of GA resolution 60/251. Among shortcomings of the former Commission on Human Rights that were to be fixed in the new Council were the politicization and selectivity that characterized much of the Commission's consideration of country situations. The newly established Universal Periodic Review (UPR) has been a valuable addition to the UN human rights machinery, but the UPR was never intended to be a principal vehicle for addressing situations of chronic or emergent gross and systematic human rights violations.

Five years after its creation, the Council's action on Libya was the first of several recent, bold steps in response to gross human rights violations across the globe. The development of the Council's more positive approach took place almost in parallel with the Arab Spring. However, it is too difficult to judge whether the Council's action will be durable. The Council should establish independent trigger mechanisms to prompt consideration of situations that require its attention. For example, the High Commissioner for Human Rights, the Secretary-General, Special Procedures, and the president of the Council should be empowered to initiate the Council's discussion of situations requiring attention.

The great challenge for the Council is to find a way to eliminate double standards and politicization, while at the same time addressing specific human rights situations. For these purposes, as the former Secretary-General strongly believes, the Council must preserve and strengthen the system of Special Procedures — the system's crown jewel — while also developing a robust UPR.

**Corporate Peace Responsibility (CPR) for Human Security:  
Possibilities and Limitations of the United Nations Global Compact**

Yasunobu Sato, Professor, University of Tokyo

The United Nations Global Compact (hereinafter the "UNGC") was established by initiatives of former UN Secretary-General Kofi Annan and endorsed by the UN General Assembly in July 2000. As soft law, it aims at complementing the UN-sponsored international law regime for the UN principles and mandates its implementation beyond the nation-state system. Non-state members to the UNGC commit themselves to respect ten principles on human rights, labor rights, the environment, and anti-corruption. They are also expected to contribute to the fulfillment of the Millennium Development Goals (hereinafter the "MDGs"). This would be considered a new approach to the private sectors by means of a market mechanism. Like new *Lex Mercatoria*, the UN principles are prevailing as *erga omnes*.

Nevertheless, peace has not been listed in the UNGC's principles. This is because peace is too fundamental, and thus too difficult to define without considering the context. Furthermore, political elements would not be ignored. Most advanced countries supporting the UNGC could not help considering the influence of the military industry. However, the UNGC has a project called "Business and Peace," in which policy dialogue has produced analytical papers, assessment documents, and guidance documents for business in the context of conflicts since 2001. Referring to the UNGC's work to promote peace, even the UN Security Council discussed the role and responsibility of business in 2004.

Human Security, promoting a paradigm shift in international law, has been mentioned in the UNGC documents on peace. This concept suggests the proactive involvement of the private sector beyond the nation-state system. As a synergetic effect, self-regulation of business, such as the Kimberly Process on conflict diamonds, was established. Like ISO 26000, the UN Human Rights Council's report on business and human rights can also be a reference for responsible business in conflict-affected areas. Thus, Corporate Peace Responsibility (CPR) has been gradually developed as transnational law, although its contents are still controversial and double-edged for now.

**The Evolution and Challenges of the United Nations' Activities:**

**The Application of Responsibility to Protect**

Yasue Mochizuki, Professor, Kwansai Gakuin University

The concept of responsibility to protect (R2P) was invented to address mass atrocities or serious human rights violations when the international community could not or was not willing to terminate such circumstances. While the concept initially indicated the revitalization of the Security Council (SC), member states agreed on the following at the World Summit (2005): an individual state had the R2P; the international com-

munity encouraged and helped states to exercise the R2P; it was prepared to take collective actions in accordance with the Charter of the United Nations (UN); and member states found it necessary to continue consideration of the concept at the General Assembly (GA). The Outcome Document has changed the context and the meaning of the R2P, which has led to some confusion about its interpretation and application in specific cases.

While the states agreed to and are discussing the concept, the SC applied it in the situations of Sudan, Libya, Côte d'Ivoire, and Syria. These applications of the concept at the SC varied, with no criteria applied in all the situations. The debate at the GA and the applications at the SC facilitate an active role for the Secretary-General as a "norm entrepreneur" to advocate, interpret, and institutionalize the concept of the R2P. By actively upholding the concept, the UN Secretariat demonstrates its capacity to address the issues surrounding the R2P. Moreover, this helps strengthen the function of the Secretariat regarding the issues of the R2P, whereas incoherent approaches to and interpretations of the concept by different organs may undermine the function of the UN.

### The UN System and International Constitutionalism:

#### A Note on *Jus Contra Oligarchiam*

Toshiki Mogami, Professor, Waseda University

Despite the eclipse of the arguments about the reform of the UN, particularly the so-called Big Ticket reform involving Charter revisions, discussions on international constitutionalism are flourishing. It is not a theoretical fad, for it is derived from the inherent teleology of international law: that is, it aims to overcome the state of anarchy and/or disorder with various means starting from the authentication of just war, the establishment of a collective security system, down to the "war against terror." It could summarily be termed *jus contra anarchiam*. Part of this legal system has been the institution whereby a few (self-) chosen states assume primary responsibility for the maintenance of order and are endowed with strong (sometimes extraordinary) powers. Typified by the powers of the UN Security Council, such a legal system could be characterized as an international oligarchy. Although this system was, in a way, historically necessitated, it is increasingly becoming more difficult to sustain its legitimacy with the influx of universal values like democracy or human rights into international law. Thus, it ought to be critically examined, under the rubric *jus contra oligarchiam*. The examination includes the (presently obscure) possibility of the judicial review of Security Council resolutions and critical overview of the Council's "legislative" powers. Referring at the same time to the linkages between international oligarchy and unilateralism, it is suggested that alternative means to overcome anarchy should be searched as *jus contra oligarchiam*.

## ACTIVITIES OF THE OFFICE IN 2011

1. The Regular General Meeting was held on April 16, 2011 at Sanjo Kaikan, Tokyo.
  - a. With regard to fiscal year 2010:
    - (i) The financial account of the Japan Branch for fiscal year 2010, audited by Mr. Masaki Orita and Mr. Akira Kawamura, Auditors, as prepared by Mr. Yoshio Kumakura, Treasurer, was submitted and approved by the Meeting.
    - (ii) The general affairs of the Branch during this term were reported by Professor Kazuhiro Nakatani, Secretary-General.
    - (iii) The academic activities of the Branch during this term were reported by Professor Yuji Iwasawa, Director of Planning.
    - (iv) The publication of Volume 53 of the *Japanese Yearbook of International Law* was reported by Professor Koichi Morikawa, Co-Editor-in-Chief.
  - b. With regard to fiscal year 2011:
    - (i) The budget for fiscal year 2011, 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 Kazuhiro Nakatani, Secretary-General.
    - (iii) The academic activities scheduled for this term were presented by Professor Yuji Iwasawa, Director of Planning.
    - (iv) The progress of the editorial work for Volumes 54 and 55 of the *Japanese Yearbook of International Law* was reported by Professor Koichi Morikawa, Co-Editor-in-Chief.
2. Regular Council Meetings were held twice for fiscal year 2011 and dealt with the following matters:
  - a. At the first regular Council Meeting of 2011 held on April 16, 2011 at Sanjo Kaikan, Tokyo:
    - (i) The financial account of the Branch for fiscal year 2010 and its budget for fiscal year 2011 were reported.
    - (ii) The general affairs of the Branch for fiscal year 2010 and the program for fiscal year 2011 were approved.
    - (iii) The academic activities of the Branch during fiscal year 2010 and the program for fiscal year 2011 were approved.
    - (iv) The publication of Volume 53 of the *Japanese Yearbook of International Law* and the progress of the editorial work for Volumes 54 and 55 of the *Japanese Yearbook of International Law* were reported.
    - (v) The following persons were admitted as new members of the Branch:  
Ryu Kojima, Associate Professor, Kyushu University

Kentaro Nishimoto, Assistant Professor, University of Tokyo  
Koichi Miki, Professor, Keio University  
Yurika Yamauchi, Assistant Professor, National Defense Academy

- b. At the second regular Council Meeting of 2011 held on November 25, 2011 at Shigaku Kaikan, Tokyo:
  - (i) The financial condition of the Branch was reported.
  - (ii) The general affairs of the Branch were reported.
  - (iii) The academic activities of the Branch were reported.
  - (iv) The progress of the editorial work for Volumes 54 and 55 of the *Japanese Yearbook of International Law* was reported.
  - (v) The following person was admitted as a new member of the Branch:  
Kae Oyama, Associate Professor, Chukyo University.
3. Temporary General and Council Meetings were held on March 24, 2012. On April 1, 2012, the Branch was authorized as a General Incorporated Association (*Ippan Shadanhojin*).

Kazuhiro Nakatani