

ACTIVITIES

I. Activities of the International Law Association of Japan

THE TWENTY-FIFTH ACADEMIC CONFERENCE
(2018)

Date: April 28, 2018

Place: Fukutake Hall, University of Tokyo

Theme: Legal Regulations on International Flow of Funds

Chair: Professor Masato Dogauchi, Waseda University

Speaker: Yujiro Hayashi, Director, International Safety and Security Cooperation Division, Ministry of Foreign Affairs

Speaker: Kenzo Tada, retired Senior Legal Advisor, Japan Bank for International Cooperation (JBIC)

Speaker: Professor Takashi Kubota, Waseda University

Speaker: Associate Professor Yurika Ishii, National Defense Academy of Japan

Combating Money Laundering and the Financing of Terrorism
in the International Community: from a Practitioner's PerspectiveYujiro Hayashi,
Director, International Safety and
Security Cooperation Division,
Ministry of Foreign Affairs

The Financial Action Task Force (FATF), an intergovernmental body established by the G7 Summit in 1989, has played a key role as the international standard-setting body in the fields of anti-money laundering. Its mandate has expanded to combatting the financing of terrorism and the proliferation of weapons of mass destruction. Mutual evaluations based on the FATF Recommendations are instrumental in urging compliance among members. FATF-style regional bodies also play an important role in extending its implementation to a broader membership. The FATF Recommendations do not create legal obligations; rather they are non-binding rules or instruments. Yet, practices among countries demonstrate that a number of countries, including Japan, have striven to meet the requirements of the Recommendations.

Anti-money laundering and countering the financing of terrorism (AML/CFT) have been high on the G7 and G20 agenda in recent years. These fora recognize the important role of the FATF and the leaders have reiterated their political commitments to enhancing their efforts in this area.

Focusing on how the FATF ensures the implementation of its standards, the

lecture provides an overview of the development of norms on AML/CFT and its interplay with international fora, including the UN, G7, and G20 from a practitioner's perspective. It also attempts to illustrate how Japan's measures have evolved in response to the global AML/CFT efforts.

Legal Regulations on International Flow of Funds:

Law and Practice of International Finance — from a Practitioner's Perspective

Kenzo Tada, retired Senior Legal Advisor,
Japan Bank for International Cooperation (JBIC)

The Report illustrated how rule and decision-making trends could impact on legal regulations regarding the current international flow of funds, from the most basic level to the advanced practice of international finance.

Since the 1990s, the world economy needed to reconstruct the international financial architecture against currency, financial, and fiscal crises. There have been complaints about the uneven distribution of wealth, tax evasion, injustice, and unfairness revealed by the Panama and Paradise papers.

Some opinions highlighted the fact that opportunities to allot funds to attempt to raise human rights levels worldwide had, indirectly, been lost.

In addition to the roles and functions of traditional "Hard Law", the report focused on the roles and functions of "Soft Law" and "International Society", especially in the fields of International Private Law and International Agreements.

First, the introduction of the JBIC, the Japanese governmental bank, its role and function, and the basic and specific practices or mechanisms of its international banking were explained.

Following a summary of the well-known book, Wood's *Law and Practice of International Finance*, the discussion focused on some issues such as: "boilerplate clauses" as professional legal terms (including representation and warranty clauses, default clauses, and proceeding enforce agreement clause).

Finally, the issue of how JBIC's unique rule and decision-making systems could impact on legal regulations regarding the current international flow of funds, from basic levels to the advanced practice of international finance, was discussed, including various kinds of significant impacts on debtors and creditors.

Written materials were also distributed highlighting details of specific practices and examples of specific international banking transactions involved.

Legal Issues Arising from Blockchain

Takashi Kubota, Professor, Waseda University

In my presentation, I illustrated how Blockchain can impact on current international fund-transfer laws and regulations, from the basic to the most advanced.

First, I explained the basic mechanism of Blockchain and its typical product, Bitcoin, compared with traditional money and bank transfers. Cryptocurrencies like Bitcoin have their pros and cons: there have been some thefts (e.g. the Mt. Gox Case) and illegal trading on the Dark Web (e.g. the Silk Road Case). Though China banned cryptocurrency trading in 2017, Japan wants it to grow. Then I illustrated why the "Japanese Paradox" happened. Though 60% of Bitcoin is traded in JPY thanks to the world-leading Japanese law, the Reformed Payment Services Act of April 2017, the world-biggest-ever digital currency theft, the Coincheck Case, occurred in January 2018. The theft was perpetrated from overseas and the authorities could not catch the criminals due to loopholes in the international justice system. Finally I gave a summary and update on my book, *Blockchain: Practice, Policy and Law* (Takashi Kubota ed., *Blockchain: Practice, Policy and Law (2018)*) and focused on some issues such as: 1) possible international cooperation and role-sharing in integration and competition; 2) legal nature of cryptocurrencies (property or not, etc.); 3) additional regulatory reforms (ICOs, leverage ratio regulations); 4) demarcation of similar businesses; 5) cryptocurrencies issued by central banks and private banks; 6) possible distribution of collateralized Bitcoin based on the UNCITRAL Model Law on Secured Transactions; 7) AML/CFT, personal data protection, and tax and accounting issues.

Cross-Border Flow of Funds and Protection of Fundamental Rights:
from an International Law Perspective

Yurika Ishii, Associate Professor,
National Defense Academy of Japan

This presentation examined the scope of the fundamental rights of an individual who is designated under terrorism sanction regimes, including both the sanctions regimes under the United Nations Security Council (UNSC) and autonomous sanctions of individual states.

There is a significant gap between scholarly writings and practices regarding the standard of proof and the scope of the rights of the defense. In particular, the sanction committee mechanism under the UNSC has provoked a series of criticisms because of a lack of due process.

A number of scholars claim that (1) a factual basis beyond reasonable doubt should exist to support the designation, and (2) the rights of the defense, including full access to the information that supports the decision and the exclusion of tainted materials, should be guaranteed to the individual.

On the other hand, since the sanction is not a punishment but rather a preventive measure, the Financial Action Task Force (FATF) proposes that (1) reasonable grounds or basis should exist to support the decision, and (2) states should be able to justify the designation based on the facts that are disclosed to the indi-

vidual, but do not have to unveil all the materials.

This presentation pays close attention to the nature of the sanction regimes as well as the significance and the limits of international human rights law. Endorsing the heterarchical conception, which is based on pluralism and accepts that there is no single common legal standard, it argues that there is a minimum obligation under international human rights law regarding due process and that state practices are consistent with the FATF standard.

OFFICE ACTIVITIES IN 2017

1. The General Meeting of the Japan Branch was held on April 22, 2017 in Sanjo Kaikan, Tokyo.
 - a. With regard to fiscal year 2016:
 - (i) The financial account of the Japan Branch for fiscal year 2016, audited by Mr. Masaki Orita and Mr. Akira Kawamura, Auditors, as prepared by Mr. Yoshio Kumakura, Treasurer, was submitted and approved at the Meeting;
 - (ii) The general affairs of the Branch during this term were reported on by Professor Kazuhiro Nakatani, Secretary-General;
 - (iii) The academic activities of the Branch during this term were reported on by Professor Masaharu Yanagihara, Director of Planning; and
 - (iv) The publication of Volume 59 of the *Japanese Yearbook of International Law* was reported on by Professor Koichi Morikawa, Editor-in-Chief.
 - b. With regard to fiscal year 2017:
 - (i) The budget for fiscal year 2017, as prepared by Mr. Yoshio Kumakura, Treasurer, was submitted and approved at 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 Masaharu Yanagihara, Director of Planning;
 - (iv) The progress of the editorial work for Volumes 60 and 61 of the *Japanese Yearbook of International Law* was presented by Professor Koichi Morikawa, Editor-in-Chief; and
 - (v) The following 12 persons were admitted as new members of the Branch:
 - Chie Sato, Associate Professor, Meiji University
 - Akira Kato, Associate Professor, Kindai-University
 - Masami Maruyama, Associate Professor, Yamagata University
 - Jun Takahashi, Researcher/Advisor for International Law, Japanese Consulate, Hamburg, Germany
 - Takayo Ando, Professor, Nihon University
 - Chisa Ishizuka, Associate Professor, Toyo University

Kazumochi Kometani, Counsel, Nishimura & Asahi
Machiko Kanetake, Assistant Professor, Utrecht University
Hitomi Kimura, Associate Professor, Otsuma Women's University
Souichirou Kozuka, Professor, Gakushuin University
Keiko Hayashi, Attorney at Law, Matsuo & Kosugi
Zhi-an Wang, Professor, Komazawa University

2. Two Council Meetings were held during fiscal year 2017 and dealt with the following matters:
 - a. At the First Council Meeting of 2017 held on April 22, 2017 in Sanjo Kaikan, Tokyo:
 - (i) The financial account of the Branch for fiscal year 2016 and its budget for fiscal year 2017 were presented;
 - (ii) The general affairs of the Branch for fiscal year 2016 and the program for fiscal year 2017 were approved;
 - (iii) The academic activities of the Branch during fiscal year 2016 and the program for fiscal year 2017 were approved; and
 - (iv) The publication of Volume 59 of the *Japanese Yearbook of International Law* and the progress of the editorial work for Volumes 60 and 61 of the *Japanese Yearbook of International Law* were reported on.
 - b. At the Second Council Meeting of 2017 held on November 20, 2017 in Shigaku Kaikan, Tokyo:
 - (i) The financial condition of the Branch was presented;
 - (ii) The general affairs of the Branch were presented;
 - (iii) The academic activities of the Branch were presented; and
 - (iv) The progress of the editorial work for Volumes 60 and 61 of the *Japanese Yearbook of International Law* was presented.

Kazuhiro Nakatani