

## ACTIVITIES

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

THE TWENTYSIXTH ACADEMIC CONFERENCE  
(2019)

Date: April 27, 2019

Place: Faculty of Law, University of Tokyo

Theme: The Birth of International Legal Studies in Japan

Chair: Toshiya Ueki, Professor, Tohoku University

Speaker: Kinji Akashi, Professor, Kyushu University

Chair: Masaharu Yanagihara, The Open University of Japan

Speaker: Koichi Morikawa, Professor, Senshu University

Speaker: Seiko Mimaki, Associate Professor, Takasaki City University of Economics

Speaker: Yoshiaki Sakurada, Professor, Konan University

A History of the Science of International Law in Japan:  
From the Viewpoint of EducationKinji Akashi  
Professor, Kyushu University

The establishment of two national institutions for legal education, Kaisei-Gakkou in 1868 and Meihou-Ryou in 1871, marked the formal commencement of lecturing international law (IL) in Japan. In those days, foreign professors generally taught legal education, either in English or in French, and IL was no exception. The reason is obvious; the Japanese lacked expertise in legal terms while corresponding to those in European languages.

A change occurred in the 1880s when some private schools with the aim "to teach law in our native language" (but what they taught was still foreign law) were founded and the law faculty of Tokyo University, a unified body of the two pioneering national institutions, also embarked on giving IL lectures in Japanese. Yet, the new situation needed further progress since the lecturers were not specialists in terms of their professions.

There was a new development in 1895, when the newly created chair of IL in Tokyo University appointed the first full-time professor, who specialized in IL from Europe. With him, some of his compatriots sharing similar experiences took a leading role in educating IL since the mid-1890s.

The "Japanization" of legal education was achieved with improvement in the comprehension of European ideas of law, and of the translation of legal terms as well, and the process of Japanizing IL education reflected this improvement. While

the Japanization indubitably contributed to the "birth" of the science of IL in the country, it is not unexacting to determine the moment when it was "born", simply because we are unable to single out the sole decisive factor for its "birth."

Sakue Takahashi (1867-1920):

His Contribution to the Development of International Law of War in Japan

Koichi Morikawa  
Professor, Senshu University

Sakue Takahashi is one of the prominent scholars and practitioners of international law from the Meiji-Taisho era in Japan. Though there have not been detailed studies on his contribution to the development of international law of war in Japan, it is generally believed that Takahashi left an enduring achievement by publishing the treatises in English in the world which introduced Japan's practices in conformity with international law of war during the Chino-Japanese War and the Russo-Japanese War.

Did his contribution go no further than introducing the cases of Japan's compliance of international law of war, which was developed by the practices in European countries, by publishing the treatises in English for the world? Did not he achieve a more positive role in the development of international law of war?

In this presentation, first, I have introduced the profile of Sakue Takahashi. Second, I have portrayed how Takahashi himself recognized the development of studies on international law in Japan based on his main article. Third, I have selected typical cases from the Chino-Japanese War and the Russo-Japanese War. These are cases in which Takahashi served as a legal advisor, and I have examined how he interpreted and applied the international law of war in such concrete cases by specially focusing his methodology of international law and, as the result, how he contributed to the development of international law of war in Japan.

Finally, I have also examined the impact his interpretation and application of international law of war had in the world.

Mineichiro Adatci and Outlawry of War

Seiko Mimaki  
Associate Professor  
Takasaki City University of Economics

Mineichiro Adatci (1869-1934) was a devoted internationalist, who strongly endorsed the League of Nations, the Pact of Paris and the Permanent Court of International Justice (PCIJ) at Hague, while suspicious opinions on them were widely prevailing among the Japanese. Adatci served as a representative of Japan at the General Assembly of the League of Nations in the 1920s, and then became the

first Asian President of the PCIJ serving from 1931 until 1934. Through his activities at the League of Nations and the PCIJ, Adatci nurtured his own visions of peace, which laid emphasis on conciliatory dialogues between conflicting parties rather than punitive measures against aggressors. Adatci was one of the few contemporary Japanese who understood an outlawry of war idea crystallized in the Pact of Paris. Responding to people who expressed their doubts on the Pact for its lack of provisions for economic and military sanctions against an aggressor country, Adatci continuously insisted that the Pact should not be dismissed as a useless enterprise, since it could provide an important focal point toward rallying international public opinion to prevent future aggression. Certainly, Adatci did not oppose Japan's expansion in China after the Manchurian Incident in 1931. Nevertheless, even in the midst of the heightened international crisis, Adatci never entirely discarded his hope for international cooperation. After Japan's withdrawal from the League of Nations, Adatci supported Japan's continued membership of the PCIJ, and expressed his conviction that the role of the PCIJ was to look ahead to the future.

#### State Sovereignty and Private International Law

Yoshiaki Sakurada  
Professor, Konan University

State sovereignty affects conflict of laws system quite ambivalently. Without this doctrine there exists no diversity of state laws and due to their territorial limits, no collision of laws exists. Only the practical need to meet the international intercourse leads to the existence of Private International Law (PIL). On the other hand, PIL, particularly the application of foreign laws could hardly be possible, because it could harm the state's sovereignty.

In the middle of 19th Century, most European States monopolized legislation under the state's sovereignty system, which the transboundary human activities were suffered from. According to the strict state territoriality principle, the laws of every state have force only within its territory and the people who are found within its territory are to be deemed thereof. What is valid by the laws of one state should become without the effect.

Ulrik Huber (1636-1694) then introduced comity of nations based on jus gentium to avoid this inconvenient result in the commerce and general intercourse of nations. However, Huber denied personal law in general.

Where the comity notion could not be furnished though a sufficiently solid basis of conflict of laws, there Friedrich Carl von Savigny (1779-1861) tried to find the new basis to encounter this situation. He acknowledged the sovereignty principle on which international law was based. However, "[t]o carry out the principle of the independent sovereignty of the state to the utmost possible extent with regard to aliens, would lead to their complete exclusion from legal rights." As, on

the contrary, the complete legal equality between natives and foreigners should be recognized according to the growing international custom, the reciprocity among nations in dealing with cases should be established. "The conflict rules should be of universal application based on the international community of nations with each other," and the method to resolve the collision of state laws should be "for each legal relationship that legal system must be ascertained to which this legal relationship pertains or is subject to, having regard to its particular nature." "The legal relationship and its seat were thus made the elements of all rules of PIL. It was only necessary to give formal expression to the tests (now known as connecting factors) according to which the seat was determined by the community of nations." This method by Savigny had been gradually recognized in the European world, but it was still waiting for national codification based upon it.

Pasquale Stanislao Mancini (1817-1888) later succeeded in the national codification of PIL and laid the foundation for bilateral rules in the national PIL, especially for nationality principles, which according to him, was based upon the international law principle. Although many continental nations accepted nationality principles in the course of the latter half of 19th century, it failed to become an international law principle. On the other hand, Savigny's method also found general acceptance among western nations, with modification due to the nationalization of PIL. That is, his method became no based on the continental concept including Roman law, but neutralized as the closest connection. While the "seat" of the legal relationship, that is, connection through submission to local laws could be plural, "there can be never be more than one local law applicable." Instead of the "seat," the closest connection was required, which found roots in the Anglo-American world, as well.

Although the *Horei* (the Act on the General Rules of Application of Laws) in Japan was codified in 1898, modeled after the western general principles of PIL, in spite of lacking its real necessity at that time, as for the foreign elements or vigorous intercourse with foreigners or foreign countries were still underdeveloped and especially as private law was quite immature. The many possible cases were therefore resolved by consular jurisdiction. The real reason of its codification was to revise "unequal treaties" with western powers since 1858, especially to rescind its extraterritoriality, which had amounted to extraterritoriality.

In the treaty revision negotiation, western powers demand to open the whole of Japan to them, as the foreigners could live and do business principally only within the settlements, and to afford codification of civil and commercial law and the judicial system, which could meet the western principles to protect trade and western nationals. In place of consular jurisdiction, Japan should codify such private laws and judicial systems to protect the commerce with treaty countries. Nobushige Hozumi, the main drafter of the *Horei*, explained that since Japan would accept the European common principles, so long as it does not infringe

Japan's fundamental national interests. As the national conflict of laws in Europe at that time could be usually found in the civil code, the *Horei* followed this tradition, though enacted as a single Act along with Civil Code. Over hundred western enactments, resolutions such as of *Institut de Droit International*, the Hague Conventions on PIL were referred, but after the revision of treaties, Japan has established its own jurisdiction, and then, under bilateral conflict rules, foreign laws could be applied and this could infringe Japanese sovereignty. For example, Yatsuka Hozumi asserted, that, under Japanese constitutional law, "law" means only legal norms, enacted by *Tenno* [Emperor] in Japan.

To apply foreign law as the applicable "law" under the bilateral conflict rules, the *Horei*, could then infringe the Japanese sovereignty. Nobushige Hodumi denied this assertion, with the explanation, that according to the *Horei* the possible foreign law is deemed to be a "mere fact", because foreign law has no effect within the Japanese territory. Therefore, the *Horei* determines e.g. that the ability of a person shall be "governed" by the national law of the person. *Massgeblich* in German is the foreign national law, not applied. Besides, due to the nationality principle in place of consular jurisdiction, the personal law of foreigners could be their national law. To avoid practical diversity of the reliance of national laws in Japan, *renvoi* is introduced, so it could maintain Japanese sovereignty (territoriality principle). On the other hand, Savigny's method, except his international community concept, in a modified form through the theory-reception, and partly through German influence over the *Horei*, has been accepted. Then particularly "the most closest connection" concept, which has become in the meanwhile a global standard to meet the real necessity of the global intercourse, is released from the state sovereignty.

#### OFFICE ACTIVITIES IN 2018

1. The General Meeting of the Japanese Branch was held on April 28, 2018 in the Fukutake Hall at the University of Tokyo.
  - a. The following were details of the fiscal year 2017:
    - (i) The financial account of the Japanese Branch for the fiscal year 2017, 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) Professor Kazuhiro Nakatani, Secretary-General reported the general affairs of the Branch during this term;
    - (iii) Professor Masaharu Yanagihara, Director of Planning reported the academic activities of the Branch during this term; and
    - (iv) Professor Koichi Morikawa, Editor-in-Chief reported the publication of

Volume 60 of the *Japanese Yearbook of International Law*.

- b. The following were the details of the fiscal year 2018:
  - (i) The budget for the fiscal year 2018, as prepared by Mr. Yoshio Kumakura, Treasurer, was submitted and approved at the Meeting;
  - (ii) Professor Kazuhiro Nakatani, Secretary-General presented the general affairs scheduled for this term;
  - (iii) Professor Masaharu Yanagihara, Director of Planning presented the academic activities scheduled for this term; and
  - (iv) Professor Koichi Morikawa, Editor-in-Chief, presented the progress of the editorial work for Volumes 61 and 62 of the *Japanese Yearbook of International Law*.
  - (v) The following nine people were admitted as new members of the Branch:
    - Masahiro Mikami, Director-General, International Legal Affairs Bureau, Ministry of Foreign Affairs
    - Yohei Okada, Associate Professor, Kobe University
    - Akiyuki Asatsuma, Professor, Rikkyo University
    - Yasuo Kita, Associate Professor, Teikyo University
    - Hynck-Soo Yoo, Professor, Yokohama National University
    - Daizo Sakurai, Professor, Gakushuin Women's College
    - Tomohiro Mikanagi, Minister, Head of Political Section, Embassy of Japan in the United Kingdom
    - Toshinobu Kawai, Professor, Nihon University
    - Yasuhiro Kitaura, Director, Law of the Sea Division, International Legal Affairs Bureau, Ministry of Foreign Affairs
  - (vi) The following twenty-five people were admitted as Council members of the Branch: Jun'ichi Akiba, Masahiko Asada, Masato Dogauchi, Shuichi Furuya, Kazuya Hirobe, Yuji Iwasawa, Atsuko Kanehara, Shigeru Kozai, Yoshio Kumakura, Yosiro Matsui, Masahuro Mikami, Tadashi Mori, Koichi Morikawa, Kazuhiro Nakatani, Naoya Okuawki, Hisashi Owada, Hironobu Sakai, Shigeki Sakamoto, Yoshiaki Sakurada, Koji Teraya, Junko Torii, Kimio Yakushiji, Koresuke Yamauchi, Masaharu Yanagihara, and Shunji Yanai
2. Three Council Meetings were held during the fiscal year 2018 and dealt with the following matters:
  - a. At the First and Second Council Meetings held on April 28, 2018 in the Fukutake Hall at the University of Tokyo:
    - (i) The financial account of the Branch for the fiscal year 2017 and its budget for the fiscal year 2018 were presented;
    - (ii) The general affairs of the Branch for the fiscal year 2017 and the program

for the fiscal year 2018 were approved;

- (iii) The academic activities of the Branch during the fiscal year 2017 and the program for the fiscal year 2018 were approved; and
- (iv) The publication of Volume 60 of the *Japanese Yearbook of International Law* and the progress of the editorial work for Volumes 61 and 62 of the *Japanese Yearbook of International Law* were reported
- (v) The Branch officers were elected as follows:
  - Chairman of the Council: Shunji Yanai
  - Vice Chairman of the Council: Naoya Okuwaki
  - Treasurer: Yoshio Kumakura
  - Secretary General: Kazuhiro Nakatani
  - Editor-in Chief: Koichi Morikawa
  - Director of Planning: Masaharu Yanagihara

b. At the Third Council Meeting held on December 16, 2018 in Shigaku Kaikan, Tokyo the following topics were discussed and presented:

- (i) The financial condition of the Branch;
- (ii) The general affairs of the Branch;
- (iii) The academic activities of the Branch; and
- (iv) The progress of the editorial work for Volumes 61 and 62 of the *Japanese Yearbook of International Law*.

\*The Japanese Branch hosts the 79th ILA Biennial Conference from 23 to 27 August 2020 at Kyoto International Conference Center. For details, please visit <<http://ila2020kyoto.org/>>.

Kazuhiro Nakatani