

## ACTIVITIES

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

#### THE TWENTY-EIGHTH ACADEMIC CONFERENCE (2022)

Date: April 23, 2022

Mode: Online

Theme: International Legal Issues Between Japan and her Neighboring Countries

Chair: Kimio Yakushiji, Professor Emeritus, Ritsumeikan University

Speaker: Yuji Miyamoto, Former Japanese Ambassador to the People's Republic of China.

Speaker: Kentaro Wani, Professor, Osaka University

Speaker: Hiroyuki Banzai, Professor, Waseda University

Speaker: Kiyoshi Aoki, Professor, Nanzan University

#### International Law from the Front Lines of Diplomacy: Its Reality and Creative Evolution

Yuji Miyamoto

Former Japanese Ambassador to the People's Republic of China

Since the Meiji era, the tradition of Japanese diplomacy has been an emphasis on international law, which became even more pronounced in the post-World War II period. Even in cases where diplomatic interests and legal positions have conflicted, Japan has acted in accordance with the requirements of international law. However, in the field of diplomacy, the most important issues are often handled through political documents, and diplomatic issues cannot always be resolved based on legal discipline. In a situation where the right to refer international disputes to a court is not guaranteed, it is not necessarily sufficient for a diplomatic attitude to concern oneself only with compliance with the law.

For example, Japan has taken the position that there is no legal dispute with China over the Senkaku Islands because Japan's territorial rights to the islands are unquestionable under international law. While this is correct in legal logic, the diplomatic scene must deal with the actual tensions that exist between the two States. Diplomatic efforts to mitigate tensions and facilitate cooperation should be much more appreciated and promoted than before. If there is a strong diplomatic and political initiative, we could even pave the way for the establishment of a principle of conduct in East Asia that would settle territorial conflicts in international courts based on law.

Although the international community has developed the rule of law since the end of World War II, power still exerts influence in the diplomatic arena. Numerous cases of injustice and unfairness still prevail. Rather than taking the international rule of law as given, Japan must show that it is committed to creating and strengthening the rule of law in international society. Japan should demonstrate this attitude through consistent and concrete actions, and encourage other States to share the idea of the rule of law.

#### The War Claims Settlement Between Japan and China and Basic Issues of International Law

Kentaro Wani

Professor, Osaka University

Much has been discussed about the war claims settlement between Japan and China. In 2015, a highly accomplished monograph was published by Professor Masahiko Asada on this subject. Professor Asada's work is of high quality and covers all international law aspects of this subject. Nevertheless, some issues need further discussion. Such issues include the nature of the recognition of governments; the treaty-making power of governments in exile; the limits of the operation of the principle of identity of the State; so-called "dispositive" treaty provisions; the criteria for distinguishing treaties and non-binding agreements; and peculiarities of the peace treaty and the war claims settlement. While these issues are basic, unexpectedly, our understanding of these issues is not complete. Therefore, I have re-examined those issues.

The main points of my argument may be summarized as follows: the 1952 Peace Treaty between Japan and the Republic of China does not bind China, which is now represented by the government of the People's Republic of China; the 1972 Joint Communique of Japan and the People's Republic of China is not a treaty but a non-binding State-to-State agreement; no formal peace treaty has been concluded between Japan and China; this gap concerning the peace settlement between Japan and China should be filled by the principle of amnesty, a presumptive principle regarding peace settlement in international law.

#### Reissuing the Claims of the Former Civilian Workers from the Korean Peninsula: International Law Perspective

Hiroyuki Banzai

Professor, Waseda University

Since 2012, a series of decisions of South Korean courts have been held for the damages of the former civilian workers from Korean Peninsula caused by Japanese companies in the era of colonization. From the underlying theory of their

decisions, it can be indicated that the re-evaluation of law is closely linked to the re-evaluation of history. But international law is not considered sufficiently matured to provide an effective solution to the problem of how far the law must deal with the past. How we face the past depends on why we face the past. In 1965, the purpose to face the past was to normalize the relationship of Japan and South Korea. As a final mark of diplomatic efforts of Cairo Communiqué, Potsdam Declaration and San-Francisco Peace Treaty, 1965 Claims Agreement forms a legal basis of two nations after normalization. In recent practice of normalization between Israel and Arab nations, it is often criticized to be the loss of international law to open full diplomatic ties without settling the ongoing violations of international humanitarian law and illegal occupation of territories such as West Bank. It is important to emphasize that unlike this contemporary practice, the normalization of 1965 has not raised the loss of international law in that two nations lawfully agree to settle the claim issues stemming from the colonization of Korean Peninsula by Japan, according to the international norms of the UN Charter and San-Francisco Peace Treaty.

#### Judgments of the Supreme Court of Korea for Korean Wartime Forced Laborers and Private International Law

Kiyoshi Aoki  
Professor of Law, Nanzan University

In October 2018, the Supreme Court of Korea ordered the Japanese company Nippon Steel Co., to pay four Korean men ₩100 million each as compensation for damages due to forced labor during World War II. In the next month, the Supreme Court ordered another Japanese company, Mitsubishi Heavy Industries, to provide compensation for the same kind of damages. These are called "Cho-yo-ko [forced laborers'] Judgments" in Japan.

In the case of Nippon Steel Co., two Korean men among the plaintiffs originally brought a case in Japan against the company and the Japanese government, but it was dismissed. After that, the plaintiffs, whom other Korean men had joined, brought a case in Korea against Nippon Steel Co. The trial court and appellate court decided against the plaintiffs on the grounds that the Japanese judgment should be recognized under the Korean Civil Procedure Act, and that the defendant is not the same legal entity as the company, where the plaintiffs were forced to work during World War II.

In 2012, the Supreme Court overturned the lower court's decision; that is, it refused to recognize the Japanese judgments and denied to apply Japanese law as the *lex loci delicti* and as the personal law of corporations because of the *order public* of Korea. In 2018, the Supreme Court confirmed the judgment of the Seoul High Court, to which the case had been remanded, and admitted the

indemnification for damages for the forced laborers. It was suggested that the decision should be based on the legal system of the Korean Constitution.

#### OFFICE ACTIVITIES IN 2021

1. The General Meeting of the Japan Branch was held on May 1, 2021 at AP Ichigaya, Tokyo.
  - a. With regard to fiscal year 2020:
    - (i) The financial account of the Japan Branch for fiscal year 2020, 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 by Professor Kazuhiro Nakatani, Secretary-General.
    - (iii) The academic activities of the Branch during this term, as prepared by Professor Masaharu Yanagihara, Director of Planning, was reported by Professor Kazuhiro Nakatani, Secretary-General.
    - (iv) The publication of Volume 63 of the Japanese Yearbook of International Law, as prepared by Professor Koichi Morikawa, Editor-in-Chief, was reported by Professor Kazuhiro Nakatani, Secretary-General.
  - b. Regarding fiscal year 2021,
    - (i) The budget for fiscal year 2021, 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, as prepared by Professor Masaharu Yanagihara, Director of Planning, was reported by Professor Kazuhiro Nakatani, Secretary-General.
    - (iv) The progress of the editorial work for Volumes 64 and 65 of the Japanese Yearbook of International Law, as prepared by Professor Koichi Morikawa, Editor-in-Chief, was reported by Professor Kazuhiro Nakatani Secretary-General.
    - (v) Eleven persons were admitted as new members of the Branch: Professor Akira Sakota, Seinan Gakuin University; Assistant Professor Jo Toriyabe, Setsunan University; Professor Ai Murakami, Hokkai-Gakuen University; Ambassador Makio Miyagawa, Special Advisor on National Security; Associate Professor Hitoshi Nishitani, Kinki University; Associate Professor Shohei Ono, Shibatagakuen University; Professor Ikuko Sato, J.F. Oberlin University; Professor

Keigo Fuchi, Kobe University; Associate Professor Chisato Nakamura, Kansai University; Associate Professor Aasko Matoba, Kyoto Women's University; Professor Satoshi Kodera, Seinan Gakuin University.

2. Two Council Meetings were held by mailing method due to the spread of Covid-19 during fiscal year 2021 and dealt with the following matters:
  - a. At the First Council Meetings held in April 2021,
    - (i) The financial account of the Branch for fiscal year 2020 and its budget for fiscal year 2021 were presented;
    - (ii) The general affairs of the Branch for fiscal year 2020 and the program for fiscal year 2021 were approved;
    - (iii) The academic activities of the Branch during fiscal year 2020 and the program for fiscal year 2021 were approved; and
    - (iv) The publication of Volume 63 of the Japanese Yearbook of International Law and the progress of the editorial work for Volumes 64 and 65 of the Japanese Yearbook of International Law were reported on.
  - b. At the Third Council Meeting held in November 2021:
    - (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 64 and 65 of the Japanese Yearbook of International Law was presented.
3. On January 27, 2022, at the Centennial Celebration of ILA American Branch held online, Judge Shunji Yanai, President of the Japan Branch, delivered a congratulatory address, as given below:
 

President Leila Sadat, distinguished members of the American Branch of the ILA, ladies and gentlemen, it is a distinct privilege and pleasure for me to congratulate the American Branch of the ILA on its Centennial Celebration. I do this in two capacities: one as President of the International Law Association (ILA) until the next Biennial Conference in Lisbon in June, the other as President of the Japan Branch. Let me express my heartfelt congratulations on your reaching this milestone. The American Branch is one of the ILA's oldest. I have always greatly appreciated the invaluable contributions it has made to the development of international law over the years. Through these years in which peace has been interrupted by two World Wars, the cold war and other conflicts, the American Branch has made strenuous efforts to help establish and strengthen the rule of law in international relations. These, of course, are the main goals of the ILA. I

have enjoyed working closely with Professor James Nafziger, the former President of the American Branch and ILA Vice-Chair, in the Executive Council and other ILA meetings. On behalf of the Japan Branch, I would like to take this opportunity to once again thank the American Branch for its great assistance in connection with the Kyoto Biennial Conference. We had planned to host the Conference in Kyoto in 2014. However, the disruptions caused by the 2011 earthquake and tsunami made the original schedule unfeasible. When we were facing this crisis and desperately trying to overcome multiple difficulties, the American Branch kindly volunteered to host the 2014 Conference in our stead. As a result, we were able to postpone the Kyoto Conference to August of 2020. Just as we were preparing for that event, however, the 2 COVID-19 pandemic struck, making it impossible to operate in an in-person format. The unavoidable move online made many of the preparations moot and created difficulties in finance and conference organization. The American Branch gave us generous financial assistance, which allowed us to go forward with the 2020 Kyoto Conference and into the future. Although the COVID-19 created many challenges for the Japan Branch in hosting the Conference online, I have to say there were some positive aspects too. We were afraid the meeting would turn out to be quite modest. However, everything worked out fine. Five hundred participants registered, and I think this experience opened new digital possibilities for the ILA. The Kyoto Conference was held online in November and December. The Closing Session was held on December 13, 2020, coinciding with the 100th anniversary of the founding of the Japan Branch. We were thus able to celebrate our centennial in the presence of many ILA members joining online from all over the world. Next year we will celebrate the 150th anniversary of the ILA. I look forward to the commemoration to be held in Paris. Once again, congratulations on your Centennial Celebration. I look forward to continuing to work closely with the American Branch under the leadership of President Leila Sadat. Thank you.

Kazuhiro Nakatani and Kazuyori Ito

On December 14, 2022, Ambassador Masaki Orita, a former auditor, passed away. The Japan Branch expresses its sincere condolences.