

ACTIVITIES

I. Activities of the International Law Association of Japan

THE TWENTY-NINTH ACADEMIC CONFERENCE (2023)

Date: April 22, 2022

Place: Faculty of Law, University of Tokyo (also delivered online)

Theme: Responding to International Crimes

Chair: Akira Mayama, Professor, Osaka Gakuin University

Speaker: Shuichi Furuya, Professor, Waseda University

Speaker: Kyo Arai, Professor, Doshisha University

Speaker: Tetsuo Morishita, Professor, Sophia University

Speaker: Masatsugu Odaira, Director, International Legal Affairs Division, Ministry of Foreign Affairs

The "Criminalization" of International Law:

The Development of International Relations Based on Justice and Punishment
Shuichi Furuya
Professor, Waseda University

The discourse of "ending the culture of impunity" functions not only as a slogan to promote international criminal trials; it also succinctly represents the general trends in international relations over the past 30 years, bringing about changes in the normative content or implementation in other fields of international law. This has given rise to the criminalization of international law. The term "criminalization" here refers to a situation in which the characteristics or image of criminal law, along with the prosperity of international criminal justice, are projected onto general international law.

When we overview the reactions of various States and international organizations to the Russia-Ukraine conflict, we can clearly observe that this criminalization trend has even accelerated. Conference documents related to Ukraine, including United Nations General Assembly resolutions, frequently mention "just peace", strongly suggesting a peace that is achieved not through compromise but through the realization of justice and the proper punishment of those responsible.

However, while implying the refinement of normative content and the strengthening of enforcement measures, criminalization also deprives international law of its inherent flexibility, such as the choice of conflict resolution methods tailored to individual situations and the presentation of diverse means for that

purpose. As the international legal system that pursues justice becomes more robust and actively enforced, this paradoxically leads to the continuation of armed conflicts and an increase in the number of people losing their lives in the process. The Russia-Ukraine conflict is considered a pivotal point that determines the direction of such developments in contemporary international law.

The Russo-Ukrainian War as the Crisis of the Law of Armed Conflict?

Kyo Arai
Professor, Doshisha University

The Russo-Ukrainian War shocked the world with the numerous reported cases of violations of the Law of Armed Conflict (LOAC). Both the number and severity of such violations indicate that LOAC is in crisis. However, the "crisis" here can be segmented into several different kinds of crises, each posing a different challenge.

First, the most severe crisis was evoked by the rampant killing and ill-treatment of the "protected persons", violating the absolute obligations under the Geneva Conventions, not conditioned by military necessity or reciprocity. This war demonstrated that, despite such obligations being as vital as *jus cogens*, only a few measures have been prepared to ensure their fulfillment and deter their violation.

The second crisis was the resurgence of issues unresolved in the development of the LOAC after the Second World War, culminating in the 1977 Additional Protocol I. These include the legal status of resistance in occupied territories, the legality of siege warfare, and the shared responsibility of the attacker and the attacked for minimizing incidental harm to civilians. This large-scale war between peer or near-peer parties has severely tested the precarious balance around the issues and compromises that characterized the drafting process.

The third crisis stems from technological developments that enabled civilians to quickly access and share meaningful military information. Everyone's one-click participation in hostilities may blur the distinction between civilians and combatants, and undermine the rationale for protecting civilians.

Legal Issues Around Economic Sanctions

Tetsuo Morishita
Professor, Sophia University

The most controversial issue around economic sanctions is the legality of economic sanctions imposed by third countries, which are not based on the resolutions of the United Nations Security Council. Some argue that economic sanctions not based on UNSC resolutions violate the obligation of non-interference and other obligations, and are therefore illegal under international law. However, economic

sanctions play an important role as political tools in the real world, and it is not realistic or reasonable to say that economic sanctions cannot be imposed unless they are based on UNSC resolutions. The discussion about the conditions under which economic sanctions by third countries should be permitted must be deepened.

Whether the frozen assets of the Russian Central Bank may be used for Ukraine's reconstruction has been a hot issue. Although the current law imposes high hurdles, we should discuss the possibility of using frozen assets to compensate for damages considering that the ongoing invasion and the damages it is causing and that most countries in the UN General Assembly demand a halt to the invasion.

It is not always clear at what point economic sanctions will be lifted, and if this is not clear, there is little incentive for the targeted countries to take action to lift them. The timing of the lifting becomes more difficult if it is considered that the illegal situation continues until the obligation to compensate for the damages caused by the illegal act is fulfilled.

**Response to Russia's Aggression Against Ukraine:
Diplomacy Using International Law**

Masatsugu Odaira
Director, International Legal Affairs Division, Ministry of Foreign Affairs

Russia's ongoing war of aggression against Ukraine constitutes a grave violation of international law, including the United Nations (UN) Charter, and undermines the very foundation of the international order based on the rule of law. Japan, in collaboration with the other G7 members and its partners, is committed to supporting Ukraine's efforts to achieve a comprehensive, just, and lasting peace that upholds the rule of law in the international community. This presentation highlights how Japan and its partners use international law, notably by reconciling their own legal positions with the need to respond to Russia's aggression and address issues related to accountability.

The first part of the presentation offers an analysis of Japan's referral notification to the International Criminal Court (ICC) regarding the situation in Ukraine. It describes several distinctive aspects that allowed Japan to conform the content of the referral to its legal perspective.

The second part focuses on the topic of the creation of a Special Tribunal, through which the Ukrainian state is prosecuting the crime of aggression by Russia against Ukraine. In April 2023, the G7 Foreign Ministers expressed their support for "exploring the creation of an internationalized tribunal based in Ukraine's judicial system", while some countries jointly called upon the international community to engage in discussions on the establishment of "an international tribunal,

before which the immunities granted by international law to the most senior leadership of a state do not apply" through decisions of the UN General Assembly. This presentation provides an overview of the potential legal issues associated with the establishment of such a tribunal.

Note: The views expressed in this presentation do not represent the official position of the Japanese government.

OFFICE ACTIVITIES IN 2022

1. The General Meeting of the Japan Branch was held on April 30, 2022, at AP Ichigaya, Tokyo.
 - a. With regard to fiscal year 2021:
 - (i) The financial account of the Japan Branch for fiscal year 2021, 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, as prepared by Professor Masaharu Yanagihara, Director of Planning, were reported on by Professor Kazuhiro Nakatani, Secretary-General.
 - (iv) The publication of Volume 64 of the *Japanese Yearbook of International Law*, prepared by Professor Koichi Morikawa, Editor-in-Chief, was reported by Professor Kazuhiro Nakatani, Secretary-General.
 - b. With regard to fiscal year 2022:
 - (i) The budget for fiscal year 2022, 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, were reported on by Professor Kazuhiro Nakatani, Secretary-General.
 - (iv) The progress of the editorial work for Volumes 65 and 66 of the *Japanese Yearbook of International Law*, prepared by Professor Koichi Morikawa, Editor-in-Chief, was reported by Professor Kazuhiro Nakatani, Secretary-General.
 - (v) The following 12 persons were admitted as new members of the Branch: Miku Koike, Lecturer, Kwansai Gakuin University; Yuri Matsubara, Professor, Meiji University; Hinako Takata, Associate

Professor, Osaka University; Miharu Hirano, Assistant Professor, Ritsumeikan Asia Pacific University; Atsuko Owada, Attorney at Law, Innoventier Legal Professional Corporation; Akira Watanabe, Attorney at Law, Nakamura & Partners; Hidehisa Horinouchi, Japanese Ambassador to the Netherlands; Hiroyuki Namazu, Director-General, International Legal Affairs Bureau, Ministry of Foreign Affairs; Masatsugu Odaira, Director, International Legal Affairs Division, Ministry of Foreign Affairs; Kiyoyuki Sugahara, Director, Treaties Division, Ministry of Foreign Affairs; Shin'ichi Onishi, Director, Economic Treaties Division, Ministry of Foreign Affairs; and Yuriko Kuga, Director, Social Treaties Division, Ministry of Foreign Affairs.

- (vi) The following 27 persons were admitted as Council Members of the Branch: Jun'ichi Akiba, Masahiko Asada, Masato Dogauchi, Shuichi Furuya, Kazuya Hirobe, Kazuyori Ito, Yuji Iwasawa, Atsuko Kanehara, Yoshio Kumakura, Yosiro Matsui, Tadashi Mori, Koichi Morikawa, Kazuhiro Nakatani, Hiroyuki Namazu, Yūmi Nishimura-Tsukahara, Naoya Okuwaki, Hisashi Owada, Shigeki Sakamoto, Yoshiaki Sakurada, Masatsugu Suzuki, Koji Teraya, Junko Torii, Toshiya Ueki, Kimio Yakushiji, Koresuke Yamauchi, Masaharu Yanagihara, and Shunji Yanai.
- (vii) Upon the resignation of Mr. Masaki Orita, Auditor, Ms. Naoko Saiki was appointed as Auditor for the remainder of Mr. Orita's term (until the end of the 2024 General Meeting).

2. Three Council Meetings were held by mailing method due to the spread of COVID-19 during fiscal year 2022. They dealt with the following matters:

- a. At the First Council Meetings held in April 2022,
- (i) The financial account of the Branch for fiscal year 2021 and its budget for fiscal year 2022 were presented;
 - (ii) The general affairs of the Branch for fiscal year 2021 and the program for fiscal year 2022 were approved;
 - (iii) The academic activities of the Branch during fiscal year 2021 and the program for fiscal year 2022 were approved; and
 - (iv) The publication of Volume 64 of the *Japanese Yearbook of International Law* and the progress of the editorial work for Volumes 65 and 66 of the *Japanese Yearbook of International Law* were reported on.
- b. At the Second Council Meeting held in May 2022 after the General Meeting, the following branch officers were elected:
Chairman of the Council: Shunji Yanai

Vice Chairman of the Council: Masato Dogauchi

Treasurer: Yoshio Kumakura

Secretary-General: Kazuhiro Nakatani

Editor-in-Chief: Koichi Morikawa

Director of Planning: Masaharu Yanagihara

- c. The Third Council Meeting held in November 2022 included presentations on the following:
- (i) The financial conditions 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 65 and 66 of the *Japanese Yearbook of International Law*.

Kazuyori Ito