

**THE
JAPANESE ANNUAL
OF
INTERNATIONAL LAW**

**No. 47
2004**

THE INTERNATIONAL LAW ASSOCIATION OF JAPAN

THE JAPANESE ANNUAL OF INTERNATIONAL LAW

No.47 (2004)

CONTENTS

Articles

- Implementing International Refugee Law through a National Legal System:
Practice in Japan*Shuichi Furuya* 1
- A New or Pathological Tendency in the International Regulation of Sovereign
States — From the Perspective of the International Regulation of Whaling —
.....*Atsuko Kanehara* 34
- Japan's New Emergency Legislation and International Humanitarian Law
.....*Akira Mayama* 69
- International Commercial Arbitration under the New Arbitration Law of
Japan*Shunichiro Nakano* 96

The Japanese Digest of International Law

- Legal Interests of Japan that are Reflected in the Recent Japanese Domestic
Measures Taken Concerning Its Coastal Water Zones and Port Areas (1999-
2004).....*Atsuko Kanehara* 119
- Legal Interests to be Protected in Territorial Sea and Inland Sea — Prevention of
illegal Entry into and Landings on Territory — Combating International Terrorism
— Coastal and Water's Edge Guarding — Law Enforcement or Police Measures
and National Security Strategy — Safety of Maritime Shipping*
- Legal Issues Concerning Japan's Participation in United Nations Peace-
Keeping Operations (1991-2003)*Ryo Yamamoto* 136
- Basic Characteristics of UN Peace-Keeping Operations — Distinction among UN
Forces, Coalition Forces and UN Peace-Keeping Operations — Distinction between
UN Peace-Keeping Operations and Peace-Keeping Forces — Relationship between
International Law and Domestic Law — Constitutionality of the Dispatch of Japan
Self-Defense Forces to UN Peace-Keeping Operations — Article 9 of the Constitution
of Japan and Use of Force by Japan Self-Defense Forces — Difference between Use of
Force and Use of Weapons by Japan Self-Defense Forces — Relationship between
National Command and UN Command over Units of Japan Self-Defense Forces*

Book Reviews

- 21-seiki no Kokusai Kiko: Kadai to Tenbō* (International Organizations in the
21st Century — Problems and Prospects: Essays in Honor of Professor
Shigeru Kozai on His Seventieth Birthday). Edited by Nisuke Ando, Osamu
Nakamura and Ryuichi Ida*Tetsuo Sato* 168

<i>Chikujo Chukai Kokuseki-ho</i> (Commentary on the National Law) by Shoichi Kidana	<i>Akibiko Kunitomo</i> 171
<i>Jinken Ho to Jindo Ho no Shinseiki: Takemoto Masayuki Sensei Tsuito Kinen Ronbunshu</i> (The New Century of Human Rights Law and Humanitarian Law: Essays in Memory of the Late Professor Masayuki Takemoto). Edited by Hisakazu Fujita, Yoshiro Matsui and Shigeki Sakamoto	<i>Maki Nishiumi</i> 175
<i>Jouyakubou no Riron to Jissai</i> (Theory and Practice of the Law of Treaties), by Shigeki Sakamoto	<i>Teruo Komori</i> 178
<i>Kokusaijinkenbo to Mainoriti no Chi'i</i> (Minorities under International Law of Human Rights), by Kim Dong-hoon.....	<i>Toshiaki Sonohara</i> 182
<i>Kokusai Jinken no Itsudatsu Fukanou-sei: Kinkyu Jitai ga Terasu Hob, Kokka, Kojin</i> (Nonderogability of International Human Rights: Law, States, and Individuals in the Light of State of Emergency), by Koji Teraya	<i>Kaoru Obata</i> 184
<i>Kokusai Rippon — Kokusaibo no Hougenron</i> (International Law-Making: Theory on Sources of International Law), by Shinya Murase	<i>Hisakazu Fujita</i> 186
<i>Kokusaibakai no Hokozō: sono Rekishi to Genjyō</i> (The Legal Structure of International Society — Its History and Present Situation—). <i>Gendaikokusaibo ni okeru Jinken to Heiwa no Hosyo</i> (The Guarantee of Human Rights and Peace in Present International law). Edited by Haruyuki Yamate and Shigeru Kozai	<i>Kazuya Hirobe</i> 191
<i>Senso no Ho kara Heiwa no Ho e: Senkannki Amerika no Kokusaibohgakusha</i> (Forgotten Crusade: The American Scholars of International Law in the Interwar Period), by Hatsue Shinohara.....	<i>Hirokazu Miyano</i> 194
<i>Trilateral Perspectives on International Legal Issues: Conflict and Coherence</i> . Edited by Chi Carmody, Yuji Iwasawa and Sylvia Rhodes	<i>Toshiya Ueki</i> 197
Judicial Decisions in Japan	
I. Public International Law	
Tokyo High Court, Decision, February 18, 2003	200
<i>The Convention Relating to the Status of Refugees — Recognition of Refugees — Article 61-2 (2) [Sixty-day Rule] of the Immigration Control and Refugee Recognition Act and Its Saving Clause</i>	

Tokyo High Court, Decision, July 22, 2003	202
<i>Article 2(1) of the Agreement between Japan and the Republic of Korea (ROK) — Article 2(3) of the Agreement between Japan and the ROK — Article 1 of the Law Concerning the Measures for the Property of ROK, etc., in Order to enforce Article 2 of the Agreement between Japan and the ROK — Renunciation of Claims by Treaty and Its Effectiveness</i>	
Nagoya District Court, Decision, September 25, 2003	204
<i>The Convention Relating to the Status of Refugees — Recognition of Refugee Status — Article 61-2(2) and Its Proviso of the Immigration Control and Refugee Recognition Act [Sixty-day Rule] — The Principle of Non-refoulement</i>	
Tokyo District Court, Decision, September 29, 2003	206
<i>The Hague Convention on Land Warfare — Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (Geneva Protocol) — Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction — Article 1 of the State Redress Law — Liability for Compensation by the State for Abandonment of Poison Gases</i>	
II. Private International Law	
Supreme Court, Judgment, February 27, 2003	209
<i>Trademark Rights — Claim of Infringement — Parallel Importing — Lack of Illegality</i>	
Supreme Court, Judgment, March 27, 2003	211
<i>Reasonable Causation — Letter of Credit — Claim for Damages — Advising Bank — Modification of Conditions — Amendment — Shipping Date</i>	
Supreme Court, Judgment, June 12, 2003	214
<i>Parents and Child — Paternity — Acknowledgment by Biological Father — Nationality — Presumption of Legitimacy</i>	
Tokyo High Court, Judgment, May 28, 2003	218
<i>Copyright — Substantive Characterization of Contract under the Governing Spanish Law — Spanish <i>cesión</i> — Cession in Trust in Spanish Law — Internal Relationship — External Relationship — Mandate — Civil Code of Spain — Law Applicable to Obligation — Law Applicable to Transfer of Quasi-property Rights — Law Applicable to Copyright — <i>lex loci protectionis</i> (Law of the Country in which Protection Is Claimed) — the Berne Convention for the Protection of Literary and Artistic Works — the Paris Convention — Japanese Law of Copyright — Opposability — Registration</i>	

Chronological List of Treaties and Other International Agreements Concluded by Japan in 2003	228
Documents	
I. Treaties	
EUROPEAN COMMUNITY	
1. Agreement Between the Government of Japan and the European Community Concerning Cooperation on Anticompetitive Activities.....	229
KOREA	
2. Agreement between the Government of Japan and the Government of the Republic of Korea for the Liberalisation, Promotion and Protection of Investment.....	239
II. Contemporary Practices and Opinions.....	253
1. Written Statement of the Government of Japan Regarding the Request for an Advisory Opinion on the Question of the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory	
2. Joint Committee Agreement on Criminal Jurisdiction Procedures under the U.S.-Japan Status of Forces Agreement	
3. The Views of the Government of Japan on the Lawsuit against Japanese and Other Companies, Regarding the Sherman Act's Reach under the Foreign Antitrust Improvements Act (FTAIA)	
4. The Views of the Government of Japan on the Lawsuit by a Japanese Company, Regarding the Practice of Zeroing by the United States Department of Commerce (USDOC)	
5. The Views of the Government of Japan on the Lawsuit against Tokyo Kikai Seisakusho, Ltd., and TKS (U.S.A.), Inc., Regarding a Manner to Construe the Anti-Dumping Act of 1916	
Chronology of Japanese Foreign Affairs.....	288
Activities	
I. Activities of the International Law Association of Japan	296
II. Activities of Related Academic Associations in Japan.....	303
List of Members.....	309