

Volume 51 (2008)

CONTENTS

On Launching the Japanese Yearbook of International Law  
..... *Shigeru Oda* 1  
*President, International Law Association of Japan*

ARTICLES

Reconceptualization of the International Rule of Law in a Globalizing World  
..... *Hisashi Owada* 3

**THE LAW OF THE SEA: ENDURING PRINCIPLES AND CONTEMPORARY CHALLENGES**

Challenging the Fundamental Principle of the Freedom of the High Seas  
and the Flag State Principle Expressed by Recent Non-flag State Measures  
on the High Seas..... *Atsuko Kanebara* 21

International Measures to Combat Illegal, Unreported and Unregulated  
(IUU) Fishing and Japan..... *Moritaka Hayashi* 57

Piracy *Jure Gentium* Revisited —For Japan's Future Contribution—  
..... *Akio Morita* 76

Japan-China Dispute Over Maritime Boundary Delimitation  
—From a Japanese Perspective— ..... *Shigeki Sakamoto* 98

Legal Issues Concerning the East China Sea Delimitation  
—A Chinese Perspective on the Sino-Japanese the East China Sea Dispute—  
..... *Haiwen Zhang* 119

The Settlement of Disputes Before the International Tribunal for the Law of  
the Sea —A Progressive Development of International Law or Relying on  
Traditional Mechanisms?— ..... *Rüdiger Wolfrum* 140

The Basic Act on Ocean Policy and Japan's Agendas for Legislative  
Improvement ..... *Naoya Okuwaki* 164

**DIVERGENCE AND UNIFICATION OF CHOICE OF LAW RULES FROM A GLOBAL PERSPECTIVE**

Comparative Analysis of Recent Developments in Private International Law in Japan and Europe from a Japanese Perspective.....	<i>Toshiyuki Kono</i>	217
The New Japanese Private International Law Act from a European Perspective .....	<i>Peter Mankowski</i>	241
An American Perspective on the New Japanese Act on General Rules for Application of Laws.....	<i>Ronald A. Brand and Tabitha Fish</i>	298
A Comparative Law Analysis on Some Recent Developments in the Conflict of Law Rules of Contract in Japan and China.....	<i>HUANG Renting</i>	314
On the Korean Private International Law.....	<i>Moonsook Kim</i>	327
Harmonization and Diversification of Contract Conflicts .....	<i>Yoshiaki Nomura</i>	341

**ACCESSION OF JAPAN TO THE INTERNATIONAL CRIMINAL COURT**

Japan's Accession to the ICC Statute and the ICC Cooperation Law .....	<i>Kyo Arai, Akira Mayama and Osamu Yoshida</i>	359
Participation in the ICC and the National Criminal Law of Japan .....	<i>Kanako Takayama</i>	384
Japan's Entry to the International Criminal Court and the Legal Challenges It Faced.....	<i>Yasushi Masaki</i>	409

**SPECIAL LECTURE**

International Court of Justice: Its Myth and Reality.....	<i>Shigeru Oda</i>	427
---	--------------------	-----

**JAPANESE DIGEST OF INTERNATIONAL LAW**

The 88th <i>Hosbinmaru</i> Case and the 53rd <i>Tomimaru</i> Case: Application to the International Tribunal for the Law of the Sea by Japan for Prompt Release .....	<i>Junichi Hosono and Junko Iwaishi</i>	438
---	---	-----

*Arrest and Detention of Fishing Vessels and Its Crew in EEZ by Coastal State — Grounds for Demands for the Prompt Release — Reasonableness of Bond — Disappearance of Object of Prompt Release Procedure — Impact by Progress of Domestic Judicial Procedures upon the Prompt Release Procedure*

Japan's Retaliatory Action Against the United States' Continued Dumping and Subsidy Offset Act of 2000 (Byrd Amendment)..... *Junji Nakagawa* 454

*World Trade Organization — Dispute Settlement Procedure — Compensation and Suspension of Concessions or Other Obligations as Temporary Measures Available in the Event That the Recommendations and Rulings Are Not Implemented within a Reasonable Period of Time — Principles and Procedures to Be Applied by the Complaining Party in Considering What Concessions or Other Obligations to Suspend — The Level of the Suspension of Concessions or Other Obligations Authorized by the Dispute Settlement Body — Arbitration to Determine the Level of Such Suspension — Domestic Procedure for the Suspension of Concessions or Other Obligations*

Recent Legislative and Administrative Measures Against Human Trafficking in Japan..... *SHIN Hae-Bong* 471

*Human Trafficking — Sexual Exploitation — Forced Labor — International Labour Organization — The Penal Code — Organized Crimes — Passport Law — Entertainment Business Law — Immigration Control and Refugee Recognition Law — Entertainer Visa — Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*

#### CASES AND ISSUES IN JAPANESE PRIVATE INTERNATIONAL LAW

State Immunity from Civil Jurisdiction..... *Dai Yokomizo* 485

#### BOOK REVIEWS

*21 Seiki Kokusaibo no Kadai — Ando Nisuke Sensei Koki Kinen* [Agenda for International Law in the 21st Century: Festschrift in Honour of Professor Nisuke Ando's 70th Birthday], edited by Masahiko Asada. Tokyo: Yushindo Kobun Sha, 2006. .... *Kazubiro Nakatani* 496

*America Kokusaishihō no Kiso Riron* [Basic Theory on American Private International Law], by Hiroshi Matsuoka. Osaka: Osaka University Press, 2007. .... *Yoshibisa Hayakawa* 500

*Jieiken no Gendaiteki Tenkai* [The Right of Self-Defence in the Contemporary Context], edited by Shinya Murase. Tokyo: Toshindo, 2007. .... *Tadasbi Mori* 503

x CONTENTS

*Anti-Dumping Laws and Practices of the New Users*, edited by Junji Nakagawa.  
London: Cameron May, 2007. .... *Joel P.Trachtman* 506

*Resolving the Russo-Japanese Territorial Dispute: Hokkaido-Sakhalin Relations*  
(*The Nissan Institute/Routledge Japanese studies series*), by Brad Williams.  
London: Routledge, 2007. .... *Sookyeon Hub* 508

*The WTO in the Twenty-first Century : Dispute Settlement, Negotiation, and*  
*Regionalism in Asia*, edited by Yasuhei Taniguchi, Alan Yanovich, and Jan  
Bohanes, Cambridge: Cambridge University Press, 2007.  
..... *Hyuck-Soo Yoo* 510

**JUDICIAL DECISIONS IN JAPAN**

**I. Public International Law**

Supreme Court, Judgment, March 27, 2007 ..... 512  
*Treaty of Peace between Japan and the Republic of China — Joint Communiqué*  
*between Japan and the People's Republic of China — Recognition of Government*  
*— Succession of Government — Incomplete or Partial Succession — Transfer*  
*of Ownership and Capacity to Sue and to Be Sued after Switch of Government*  
*Recognition*

Supreme Court, Judgment, April 27, 2007 ..... 518  
*Article 14(b) of the Treaty of Peace with Japan — Article 11 of the Treaty of*  
*Peace between Japan and the Republic of China — Paragraph 5 of the Joint*  
*Communiqué between Japan and the People's Republic of China — The Right to*  
*Claim Compensation for Damages for People Brought to Japan Against Their Will*  
*and the Renunciation Clause in the Joint Communiqué*

Tokyo District Court, Ruling, January 24, 2007 ..... 533  
*State Immunity from Civil or Administrative Jurisdiction — Restrictive Theory*  
*of Immunity — Distinction between Acts jure imperii and Acts jure gestionis —*  
*Consent by a Foreign State to be Subjected to Dispositions by an Administrative*  
*Agency of the Forum State*

Tokyo District Court, Judgment, February 2, 2007 ..... 544  
*Article 1 A(2) of the Convention Relating to the Status of Refugees (1951) —*  
*Definition of the Term “being persecuted” — Persecution by Non-State Actors*

**II. Private Interantional Law**

Supreme Court, Judgment, March 23, 2007 .....	552
<i>Surrogate Pregnancy — Surrogate Mother — Effect of a Judgment of a Foreign Court — Recognition of a Foreign Court Judgment — Final Judgment of a Foreign Court — Public Policy Exception — Legal Status of Parent-Child Relationship</i>	
Tokyo High Court, Judgment, October 30, 2006 .....	556
<i>Child Support and Alimony Payments Between Chinese Nationals — International Adjudicatory Jurisdiction — Applicable Law in Child Support Cases — Applicable Law Concerning Preliminary Questions of the Age of Majority — Effect of Chinese Divorce Judgments — Recognition of Foreign Judgment</i>	
Tokyo District Court, Interlocutory Judgment, March 20, 2007 .....	561
<i>International Jurisdiction — General and Special Forum — Fairness Between the Parties and Due and Prompt Administration of Justice — International Concurrent Litigation — lis pendens — Meaning of ‘court’ in Code of Civil Procedure Article 142 — Abuse of Rights, Good Faith</i>	
Osaka District Court, Judgment, March 29, 2007 .....	567
<i>International Adjudicatory Jurisdiction — Foreign Patent Rights — Applicable Law of Settlement Agreement</i>	
<b>CHRONOLOGY OF JAPANESE FOREIGN AFFAIRS IN 2007</b> .....	570
<b>CHRONOLOGICAL LIST OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS CONCLUDED BY JAPAN IN 2007</b> .....	586

**DOCUMENTS****I. Treaties****BELGIUM**

1. Agreement Between Japan and the Kingdom of Belgium on Social Security ..... 591

**CHILE**

2. Agreement Between Japan and the Republic of Chile for a Strategic Economic Partnership ..... 603

xii CONTENTS

EAEC

3. Agreement Between the Government of Japan and the European Atomic Energy Community for the Joint Implementation of the Broader Approach Activities in the Field of Fusion Energy Research ..... 619

FRANCE

4. Accord de sécurité sociale entre le Gouvernement du Japon et le Gouvernement de la République française..... 630
5. Avenant à la Convention entre le Gouvernement du Japon et le Gouvernement de la République française en vue d'éviter les doubles impositions et de prévenir l'évasion et la fraude fiscales en matière d'impôts sur le revenu..... 642

REPUBLIC OF KOREA

6. Treaty Between Japan and the Republic of Korea on Mutual Legal Assistance in Criminal Matters..... 661

MEXICO

7. Protocol Between Japan and the United Mexican States Related to Improvement of Market Access Conditions Based on Paragraphs 3 and 5 of Article 5 of the Agreement Between Japan and the United Mexican States for the Strengthening of the Economic Partnership..... 669

SINGAPORE

8. Protocol Amending the Agreement Between Japan and the Republic of Singapore for a New-age Economic Partnership ..... 670

THAILAND

9. Agreement Between Japan and the Kingdom of Thailand for an Economic Partnership..... 676

**II. National Legislation**

- Basic Act on Ocean Policy..... 731

**III. Contemporary Practice and Opinion**

- The Views of the Government of Japan on the Interpretative Declaration Made by the Islamic Republic of Iran upon Its Accession to the International Convention Against the Taking of Hostages ..... 739

**ACTIVITIES**

**I.    Activities of the International Law Association.....**    741

**II.   Activities of Related Academic Associations in Japan.....**    741

**INSTRUCTIONS FOR SUBMISSIONS TO THE JAPANESE YEARBOOK OF  
INTERNATIONAL LAW.....**    748

**TABLE OF CASES .....**    750

**TABLE OF TREATIES AND OTHER INSTRUMENTS .....**    755