

Volume 58 (2015)

CONTENTS

ARTICLES

**"CRIMINALIZATION" OF INTERNATIONAL LAW:
IMPACTS OF INTERNATIONAL CRIMINAL JUSTICE ON OTHER FIELDS OF
INTERNATIONAL LAW**

- The "Criminalization" of International Law: A Critical Overview
..... *Shuichi Furuya* 1
- Immunity in the Era of "Criminalisation":
The African Union, the ICC, and International Law *Dire Tladi* 17
- International Human Rights Law and "Criminalization"
..... *Michael O'Flaherty and Noelle Higgins* 45
- Human Rights in Fancy Dress? The Use of International Criminal Law
by Human Rights Council Commissions of Inquiry in Pursuit of Accountability
..... *Catherine Harwood* 71
- Criminalization of the Security Council *Kyo Arai* 101
- The Impact of "Criminalization" on the Implementation of International
Humanitarian Law
— Judicial Advances of the Law of War Crimes as Salutory Osmosis? —
..... *Yutaka Arai-Takahashi* 129

PARTY AUTONOMY IN CONTEMPORARY PRIVATE INTERNATIONAL LAW

- Party Autonomy in Global Context:
The Political Economy of a Self-Constituting Regime
..... *Horatia Muir Watt* 175
- Critical Analysis of Party Autonomy: From a Theoretical Perspective
..... *Keisuke Takeshita* 196
- Party Autonomy in Dispute Resolution:
Implied Choices and Waiver in the Context of Jurisdiction
..... *Mary Keyes* 223

ICJ JUDGMENT ON WHALING IN THE ANTARCTIC:
ITS SIGNIFICANCE AND IMPLICATIONS

The *Whaling in the Antarctic* Case from a Japanese Perspective
..... Shigeaki Sakamoto 247

The Legal Nature of Resolutions of Intergovernmental Organizations:
The Contribution of the *Whaling in the Antarctic* Case Erik Franckx 275

ICRW as an Evolving Instrument:
Potential Broader Implications of the *Whaling* Judgment
..... Akiko Shibata 298

NOTE

The *Sui Generis* Nature of Flag State Jurisdiction Sondre Torp Helmersen 319

State Jurisdiction and Immunity of Warships in the *ARA Libertad* Case
..... Massimo Lando 336

JAPANESE DIGEST OF INTERNATIONAL LAW

Criminal Jurisdiction Under the Japan-US SOFA Tomonori Mizushima 356
Japan-US SOFA — Criminal Jurisdiction — Japan-US Joint Committee Agreements — Transfer of Custody Prior to Indictment — Exercise of Criminal Jurisdiction over Members of the Civilian Component — Scope of "Official Duty" — Framework for Reciprocal Report of Judicial or Other Dispositions

Implementing International Norms to Fight Against Terrorism
— The 2014 Amendment of the Act on the Punishment of Financing of
Offences of Public Intimidation — Mari Takeuchi 369
Act on the Punishment of Financing of Offences of Public Intimidation — Broadening of the Range of Prohibited Assets — Accordance between the Broadening and the Terrorist Financing Convention — Safeguards against the Unlimited Broadening — Expansion of the Scope of Prohibited Conduct — Accordance between the Expansion and the Terrorist Financing Convention — Safeguards against the Unlimited Expansion — Related Issues

CASES AND ISSUES IN JAPANESE PRIVATE INTERNATIONAL LAW

Law Applicable to Choice-of-Court Agreements Koji Takabasbi 384

BOOK REVIEWS

Yuka Fukunaga, *Kokusaikeizai no Jyunshu Kakubo to Funsosyori — WTO Funsosyoriseido to Toshichusaiseido no Igi to Genkai* [Securing Compliance with International Economic Agreements and Dispute Settlement: Achievements and Limits of the WTO Dispute Settlement System and the Investment Arbitration System]. Tokyo: Yuhikaku, 2013. Taro Hamada 397

Chiteki Zaisan no Kokusai Shibo Gensoku Kenkyu — Higashi Azia karano Nikkan Kyodo Tetan [Studies on the Principles of Private International Law on Intellectual Property Rights — A Japanese-Korean Joint Proposal from an East Asian Point of View], edited by Shoichi Kidana. Tokyo: Seibundo, 2012. Eonsuk Kim 400

Kokusai Keizai Ho Koza I — Tsusho, Toshi, Kyoso [International Economic Law I: Trade, Investment and Competition], edited by Japan Association of International Economic Law, represented by Shinya Murase. Tokyo: Horitsu Bunka Sha, 2012. Tomobiko Kobayashi and Chizuru Ikeda 404

Kokusai Keizai Ho Koza II — Toribiki, Zaisan, Tetsuzuki [International Economic Law II: Transactions, Property and Procedure] edited by Japan Association of International Economic Law, represented by Noboru Kashiwagi. Kyoto: Horitsu Bunka Sha, 2012. Yusuke Tanemura 409

Enerugi Toshi Chusai: Zitsurei-Kenkyu — ISDS no Zissai [Energy Investment Arbitration: Analysis of the Practice — The Reality of ISDS], edited by Akira Kotera and Kozo Kawai. Tokyo: Yuhikaku, 2013. Dai Tamada 414

New Technologies and the Law of Armed Conflict, edited by Hitoshi Nasu and Robert McLaughlin. Canberra: T.M.C. Asser Press, 2014. Seigo Iwamoto 417

Hokkyokukai no Gabanansu [Governing the Arctic Ocean], edited by Naoya Okuwaki and Hideaki Shiroyama. Tokyo: Toshindo, 2013. ... Taisaku Ikeshima 420

Kokusaijinkenhou — Kokuaijijun no Dainamizumu to Kokunaibou tonu Kyouchou [International Human Rights Law — Dynamism of International Standards and Coordination with Domestic Law] by SHIN Hae Bong. Tokyo: Shinzansha, 2013. Naoko Maeda 424

Filling Regulatory Gaps in High Seas Fisheries: Discrete High Seas Fish Stocks, Deep-sea Fisheries and Vulnerable Marine Ecosystems, by Yoshinobu Takei. Leiden: Martinus Nijhoff Publishers, 2013. Yasubiko Kagami 427

The South China Sea Arbitration: A Chinese Perspective, edited by Stefan Talmon and Bing Bing Jia. Oxford: Hart, 2014. Kentaro Nishimoto 430

| | |
|--|-----|
| JUDICIAL DECISIONS IN JAPAN | 436 |
| I. Public International Law | |
| Tokyo High Court, Judgment, November 27, 2013 | 437 |
| <i>Tax and Customs Evasion — Direct Applicability of WTO Agreement — Validity of Domestic Act Conflicting with International Treaty — Article 98(2) of the Constitution — Discretion of Legislative and Administrative Powers</i> | |
| Tokyo High Court, Judgment, December 18, 2013..... | 440 |
| <i>Conformity of the Act on Punishment of Piracy to the Constitution of Japan — Articles 100 and 105 of the UNCLOS and the Universal Jurisdiction — Exercise of Jurisdiction over the Pirates by a State Other Than the Seizing State — Surrender of the Accused and Alleged Infringement of Article 6(1) of the ICCPR — Normative Value of the View Taken by the Human Rights Committee</i> | |
| Osaka High Court, Judgment, July 8, 2014 | 450 |
| <i>Hate Speech — Tort — Racial Discrimination — Articles 1(1), 2(1), and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination</i> | |
| Tokyo District Court, Judgment, April 25, 2013 | 455 |
| <i>Deportation — Violation of the Stimulants Control Act — Conditions to Grant Special Permission to Stay in Japan — Separation from Children — Article 10(1) ICESCR — Article 23(1) ICCPR — Article 9(1) CRC</i> | |
| II. Private International Law | |
| Supreme Court (1st Petty Bench), Judgment, April 24, 2014 | 463 |
| <i>Action for Enforcement of Judgment — Recognition of Foreign Judgments — Indirect Jurisdiction Based on Place of Tort — Unauthorized Use of Trade Secrets</i> | |
| Osaka High Court, Judgment, February 20, 2014 | 466 |
| <i>Exclusive Jurisdiction Clause — Formal Validity of Exclusive Jurisdiction Clause — Reasonableness of Exclusive Jurisdiction Clause — Public Policy Considerations</i> | |
| Tokyo District Court, Judgment, December 20, 2013 | 470 |
| <i>Damages for Copyright Infringement — Third-Party Standing — Law Applicable to Copyright Transfer</i> | |
| CHRONOLOGY OF JAPANESE FOREIGN AFFAIRS IN 2014..... | 474 |
| CHRONOLOGICAL LIST OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS CONCLUDED BY JAPAN IN 2014 | 488 |

DOCUMENTS

I. National Legislation

| | |
|--|-----|
| Act on Facilitation of Exhibition of Overseas Works of Art in Japan..... | 492 |
|--|-----|

II. Other Documents

| | |
|---|-----|
| 1. The Three Principles on Transfer of Defense Equipment and Technology.. | 494 |
| 2. <i>Amicus Curiae</i> Brief of the Ministry of Economy, Trade and Industry of Japan Regarding the United States Extraterritorial Application of Competition Law | 498 |
| 3. Cabinet Decision on the Development Cooperation Charter | 502 |
| Correction..... | 518 |

ACTIVITIES

| | |
|---|-----|
| I. Activities of the International Law Association of Japan..... | 519 |
| II. Activities of Related Academic Associations in Japan | 528 |
| 1. Kokusaiho Gakkai (Japanese Society of International Law, JSIL) | 528 |
| 2. Kokusai Shihō Gakkai (Private International Law Association of Japan) | 535 |
| 3. Sekaiho Gakkai (Japanese Association of World Law)..... | 538 |
| III. Others | |
| International Symposium on the Law of the Sea hosted by the Ministry of Foreign Affairs of Japan..... | 540 |

xiv CONTENTS

| | |
|--|-----|
| INSTRUCTIONS FOR SUBMISSIONS TO THE JYIL | 551 |
| TABLE OF CASES | 554 |
| TABLE OF TREATIES AND OTHER INSTRUMENTS | 560 |