

**THE
JAPANESE ANNUAL
OF
INTERNATIONAL LAW**

**No. 40
1997**

THE INTERNATIONAL LAW ASSOCIATION OF JAPAN

THE JAPANESE ANNUAL OF INTERNATIONAL LAW

No. 40 (1997)

CONTENTS

In Memoriam Dr. Takeo Suzuki (1905-1995)	<i>Shigejiro Tabata</i>	1
Articles		
International Law of Territorial Acquisition and the Dispute over the Senkaku (Diaoyu) Islands	<i>Yoshiro Matsui</i>	3
International Court of Justice: Hamlet and Portia — Some Aspects of the Discussions Regarding the Court's Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons —	<i>Terumi Furukawa</i>	32
Revitalization of the UN Codification Process of International Law — A Case of the Convention of the Law of the Non-Navigational Uses of International Watercourses —	<i>Chusei Yamada</i>	44
Note		
Draft Articles on the Law Applicable to Contractual and Non-Contractual Obligations (2)	<i>The Study Group of the New Legislation of Private International Law</i>	57
Contemporary Practices and Opinions		
The Guidelines for U.S.-Japan Defense Cooperation		80
Book Reviews.....		95
Judicial Decisions in Japan		114

I. Public International Law

Supreme Court, July 12, 1996		114
<i>Immigration Control and Refugee Recognition Act — Legal Merit in an Action Demanding Revocation of the Disposition of Issuance of a Deportation Order and an Action Demanding Revocation of a Disposition of Non-Recognition as a Refugee Undertaken by a Foreign National No Longer in Japan</i>		

Tokyo High Court, August 7, 1996.....	116
<i>Existence of International Customary Law on the State's Responsibility for War Compensation toward Individuals — The Hague Convention Concerning Laws and Customs of War on Land</i>	
Tokushima District Court, March 15, 1996.....	118
<i>The Prison Act and its Rules of Implementation — The Rights of Prisoners — The Japanese Constitution and the Interpretation of Treaties — Interpretation of the International Covenant on Civil and Political Rights — The Vienna Convention on the Law of Treaties — The European Convention on Human Rights — The UN General Assembly Resolution on the Principles for the Protection of Prisoners — The Interpretation of the Prison Act and Its Rules of Implementation — Non-pecuniary Damages</i>	
Niigata District Court, March 19, 1996	123
<i>Article 37 (1) of Local Public Service Act — Article 28 of the Constitution — The Convention Concerning Freedom of Association and Protection of the Right to Organize (ILO Convention, No. 87) — The Convention Concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (ILO Convention, No. 98) — Article 98 (2) of the Constitution — Administrative Action for Revocation of the Disciplinary Disposition — The Right to Dispute Matters with Employers of Local Public Service Employees — Subsequent Interpretation by Concerned Organs of ILO</i>	
Tokyo District Court, May 10, 1996	125
<i>Claims for Compensation because Japan's Financial Contribution and Dispatch of Minesweepers to the Persian Gulf War Affected the Peaceful Existence and Fundamental Rights of Japanese Taxpayers — Article 9 of Japan's Constitution — The Preamble to Japan's Constitution</i>	

II. Private International Law

Supreme Court, January 27, 1995	129
<i>Declaration of Japanese Nationality of a Child — Meaning of "Both Father and Mother Are Unknown" in the Nationality Law, Article 2(3) — Burden of Proof of this</i>	
Supreme Court, June 24, 1996	132
<i>Action for Divorce — International Jurisdiction to Adjudicate —</i>	

<i>Recognition of Foreign Judgment</i>	
Sendai High Court, September 19, 1994	134
<i>Applicable Law — Collision on the High Seas — Tort — Law of the Flag</i>	
<i>— Limitation of Shipowner's Liability — Lex Fori — Foreign Currency</i>	
<i>Obligations — Date for Conversion</i>	
Sendai High Court (Akita Branch), January 29, 1996	136
<i>Damages for Pain and Suffering Accompanying Divorce — Assessment of</i>	
<i>Damages — Factors to be Considered — Time for Assessment</i>	
Nagoya Family Court, March 25, 1994	138
<i>Distribution of the Decedent's Property — Rights of a Nonmarital Partner</i>	
<i>— International Jurisdiction to Adjudicate — Choice of Law</i>	
Tokyo Family Court, January 26, 1996	139
<i>Adoption Effected by Chinese Form — Law Applicable to Form — Lex Loci</i>	
<i>Actus — Effect in Japan — Law Applicable to Substance — Lex Causae —</i>	
<i>Special Adoption under Japanese Law</i>	
Chronological List of Treaties and Other International Agreements Concluded by Japan in 1996	143
Documents	
I. Treaties	
FRANCE	
1. 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	146
MEXICO	
2. Convention Between Japan and the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income	179
POLAND	
3. Agreement Between the Government of Japan and the Government of the Republic of Poland for Air Services.....	205

USA	
4. Agreement Between Japan and the United States of America Concerning New Special Measures Relating to Article XXIV of the Agreement under Article VI of the Treaty of Mutual Cooperation and Security Between Japan and the United States of America, Regarding Facilities and Areas and the Status of United States Armed Forces in Japan	213
USA	
5. Agreement Between the Government of Japan and the Government of the United States of America Concerning Reciprocal Provision of Logistic Support, Supplies and Services Between the Self-Defense Forces of Japan and the Armed Forces of the United States of America	216
Chronology of Japanese Foreign Affairs	221
Activities	
Activities of International Law Association of Japan	231
Activities of Related Academic Associations in Japan	234
List of Members	238