

**THE
JAPANESE ANNUAL
OF
INTERNATIONAL LAW**

**No. 45
2002**

THE INTERNATIONAL LAW ASSOCIATION OF JAPAN

Copyright © 2003
By
The International Law Association of Japan
(The Japan Branch of the International Law Association)

Printed by The Japan Times, Ltd.
(Printed, 2003)
5-4, Shibaura 4-chome, Minato-ku, Tokyo 108-0023, Japan

Price: ¥9,000

Address all inquiries to THE INTERNATIONAL LAW ASSOCIATION OF JAPAN, c/o Prof. Dogauchi, Faculty of Law, University of Tokyo 7-3-1, Hongo, Bunkyo-ku, Tokyo 113-0033, Japan.
Fax +81-3-5841-3161 E-mail ila@j.u-tokyo.ac.jp

For subscriptions to this Annual and purchases of back numbers, please apply to its sole agent, Yushodo Co., Ltd., 29 San-eicho, Shinjuku-ku, Tokyo 160-0008, Japan.
Phone +81-3-3357-1411 Fax +81-3-3351-5855

This publication is financially supported by Japan Society for the Promotion of Science, Grant-in-Aid for Publication of Scientific Research Result for 2002.

THE INTERNATIONAL LAW ASSOCIATION OF JAPAN
(The Japan Branch of the International Law Association)

OFFICERS

<i>President:</i>	Yasuo Ishimoto
<i>Vice-President:</i>	Toshijiro Nakajima
<i>Treasurer:</i>	Yoshio Kumakura
<i>Secretary General:</i>	Shinya Murase
<i>Auditor:</i>	Masatsugu Mitsuki
<i>Secretary:</i>	Masato Dogauchi
<i>Honorary Councillor:</i>	Masahiko Takeda

EXECUTIVE EDITORS

Editors-in-Chief:

Soji Yamamoto Akira Kotera

Supervising Associate Editor:

Kazuhiro Nakatani

Associate Editors:

William Feullan	Atsuko Kanehara
Tadashi Kanzaki	Naoya Kasai-Okuwaki
Yoshiro Matsui	Koichi Morikawa
Akio Morita	Junji Nakagawa
Yumi Nishimura	Yoshiaki Nomura
Naoko Saiki	Shigeki Sakamoto

Views expressed herein are to be attributed to their authors and not to this publication, its editors nor to International Law Association of Japan.

COUNCIL MEMBERS

Jun'ichi Akiba	Nisuke Ando	Masato Dogauchi
Ribot Hatano	Kazuya Hirobe	Yasuo Ishimoto
Naoya Kasai-Okuwaki	Ichiro Kato	Yoshiya Kawamata
Akira Kotera	Shigeru Kozai	Yoshio Kumakura
Shigeki Miyazaki	Shinya Murase	Yasuharu Nagashima
Toshijiro Nakajima	Ko Nakamura	Shigeru Oda
Tsuneo Ohtori	Yuichi Takano	Yoshio Tameike
Hisashi Uchida	Chusei Yamada	Ryoichi Yamada
Soji Yamamoto		

Director-General of Treaties Bureau, Ministry of Foreign Affairs

AUDITOR

Masatsugu Mitsuki

PLANNING COMMITTEE

Director of Planning:

Naoya Kasai-Okuwaki

Masato Dogauchi	Yuji Iwasawa	Shinya Murase
Yoshiaki Sakurada	Kimio Yakushiji	Masaharu Yanagihara

(Translators)

Kent Anderson, Masaharu Miyawaki, Mika Nishimura, Yuko Nishitani, Tamitomo Saito, Paul Shepard, Sunao Takasugi, Keisuke Takeshita, Tetsuya Toyoda, Jun Tsuruta, Tsunehisa Yamada

THE JAPANESE ANNUAL OF INTERNATIONAL LAW

No. 45 (2002)

CONTENTS

Articles

- The Social Science of International Law: Its Evolution in Japan
.....*Yoshiro Matsui* 1
- Japan's Legal Responses to United Nations Security Council Resolutions
.....*Koichi Morikawa* 34

Notes

- Parallel Imports and Intellectual Property Rights in Japan*Naoki Koizumi* 53
- Japanese Law in the Era of the Internet — The New and Coming Legislation
in Japan.....*Yoshihisa Hayakawa* 61

The Japanese Digest of International Law

- The Case of Provisional Safeguard Measures Concerning Several Imported
Agricultural Products from China (2000-2002).....*Junji Nakagawa* 78
*Investigation on and Resort to a Provisional Safeguard Measure — The Lawfulness of
China's Countermeasure under WTO Agreement on Safeguards and Japan-China Trade
Agreement of 1974 — Negotiation and Settlement of the Japan-China Agricultural
Trade Dispute — The Japan-China Agricultural Products Trade Council*
- Anti-Terrorism Special Measures Law (2001)*Kazubiro Nakatani* 92
*The Anti-Terrorism Special Measures Law — Constitutionality — Use of Weapons —
Definitions of Terrorism, Terrorists, Use of Force and Combat — Military Objectives —
Applicability of the Geneva Conventions of 1949 — Terrorist Attacks and the Charter
of the United Nations — Right of Self-Defense — Validity of the Rules on Neutrality
— Basic Plan regarding Response Measures*
- The Incident of an Unidentified Vessel in Japan's Exclusive Economic Zone
.....*Atsuko Kanehara* 116
*Determination of Unidentified Vessels — Measures Taken by the Japan Coast Guard
against Unidentified Vessels — The Hot Pursuit — The Use of Force during the
Hot Pursuit — The Legal Grounds under UNCLOS and Japanese Laws for the Use
of Force during the Hot Pursuit*

Book Reviews

Associated Statehood in International Law by Masahiro Igarashi.....Masaji Ie 127

Claims for Contribution and Reimbursement in an International Context: Conflict-of-Law Dimensions of Third Party Procedure by Koji Takahashi.
.....Tetsuo Morishita 128

Kokusaibo Kara Sekai wo Miru — Shimin no Tameno Kokusaibo Nyumon (A World Vision in an International Law Perspective — Prolegomena to International Law for Citizens) by Yoshiro Matsui.....Atsuko Kanebara 132

Kokusaibo no Keizaitteki Kiso (The Economic Basis of International Law) by Shinya MuraseJunji Nakagawa 135

Mancini und die Parteiautonomie im Internationalen Privatrecht — Eine Untersuchung auf der Grundlage der neu zutage gekommenen kollisionsrechtlichen Vorlesungen Mancinis (Mancini and Party Autonomy in Private International Law — A Study Based on the Newly Discovered Lectures of Mancini Concerning the Conflict of Laws), by Yuko Nishitani
.....Yasubiro Okuda 139

Judicial Decisions in Japan

I. Public International Law

Tokyo High Court, Judgment, February 8, 2001 142
Article 3 of the Hague Convention on Land Warfare (1907) — Rights of Individuals to File Claims for Compensatory Damages

Tokyo High Court, Judgment, October 11, 2001 144
Article 3 of the Convention Respecting the Laws and Customs of War on Land — Right of an Individual to File a Suit — Article 14(b) of the Peace Treaty of San Francisco — Claim of an Individual

Tokyo District Court, Judgment, October 6, 2000 146
The State's Jurisdictional Immunity — the Granting of the Right of Permanent Residence and the Jurisdictional Immunity

Tokyo District Court, Decision, November 5, 2001	147
<i>The Principle of Non-Refoulement — Article 33(1) of the Convention Relating to the Status of Refugees — Article 31(2) of the Convention Relating to the Status of Refugees — Refugees and Compulsory Deportation Procedures</i>	
Tokyo District Court, Decision, March 1, 2002	148
<i>The Principle of Non-Refoulement — Article 33(1) of the Convention Relating to the Status of Refugees — Article 31(2) of the Convention Relating to the Status of Refugees — Refugees and Compulsory Deportation Procedures</i>	
II. Private International Law	
Supreme Court, Judgment, June 8, 2001	151
<i>Copyright — Jurisdiction — Tort — Damages — Jurisdictional Facts — Degree and Items of Proof — Lex Loci Delicti — Ownership of Copyright — Lex Loci Rei Sitae — Jurisdiction over Joined Claims — Requirement of a Close Relationship</i>	
Tokyo High Court, Judgment, January 25, 2001	155
<i>Tort — Material law of Japan Relating to Foreign Nationals — Claim for Damages — Calculation of the Amount of Death Consolation Money</i>	
Tokyo High Court, Judgment, July 18, 2001	157
<i>Trademark — Validity of Registration — Trademark Consisting of a Foreign Company's Name — Construction of "Name" under Section 4(1)(viii) of the Japanese Trademark Law</i>	
Nagoya District Court, Judgment, November 24, 1999	159
<i>Divorce — Petition by a Japanese Husband against His American Wife — Appointment of a Parent to Exercise Parental Authority over Their Children — International Jurisdiction to Adjudicate — Recognition of Foreign Judgment</i>	
Tokyo District Court, Judgment, September 25, 2000.....	164
<i>The Applicability of Warsaw Convention — the Governing Law of Contract and Torts — the Convention for the Unification of Certain Rules Relating to International Carriage by Air (Warsaw Convention) of 1929 Modified by the Hague Protocol of 1955 — the Horei (Application of Laws (General) Act [1898 Law No. 10]) — Aircraft Crashed in Katmandu (Nepal) — Damages Proper to the Bereaved Family — Succession of Damages — Solatium</i>	
Tokyo District Court, Judgment, November 24, 2000; H.T.(1077) 282[2002].	168
<i>Freight Forwarder Loan — Private International Law — Jurisdiction — Exclusive Jurisdiction (forum selection) Clauses — Code of Civil Procedure (Article 11); Application of British International Freight Association Standard Trading Conditions — Jurisdiction Created by Response to Action — Constructive Statements — Code of Civil Procedure (Article 12)</i>	

Tokyo District Court, Judgment, May 31, 2001	172
<i>Action for Damages — Claimed by Financial Administrators (as Intervenors) of Failed Financial Institutions Against an Former Manager and Heirs of the Deceased Former Chief Director of a Bankrupt Credit Cooperative — Validity of a Renunciation by Intestate Heirs of the Foreign Decedent Who Was Resident in Japan.</i>	
Chronological List of Treaties and Other International Agreements Concluded by Japan in 2001	175
Documents	
I. Treaties	
UNITED KINGDOM	
1. Agreement Between Japan and the United Kingdom of Great Britain and Northern Ireland on Social Security	178
USA	
2. 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	185
Chronology of Japanese Foreign Affairs	188
Activities	
I. Activities of the International Law Association of Japan	201
II. Activities of Related Academic Associations in Japan	211
List of Members	216