

**THE  
JAPANESE ANNUAL  
OF  
INTERNATIONAL LAW**

**No. 48  
2005**

THE INTERNATIONAL LAW ASSOCIATION OF JAPAN

THE JAPANESE ANNUAL OF INTERNATIONAL LAW

No.48 (2005)

CONTENTS

Articles

- The United Nations and the Maintenance of International Peace and Security  
— The Current Debate in the Light of Reform Proposals —.....*Hisashi Owada* 1
- Nationality of Children Born out of Wedlock under Japanese Law — Recent  
Developments in the Case Law — .....*Yasubiro Okuda* 26
- International Corporate Law in Japan — Recent Developments —  
.....*Tomotaka Fujita* 44
- The Legal Basis of Missile Defense — An Examination of the Japanese  
Situation — .....*Tomohiro Mikanagi* 65
- Intellectual Property in Japanese Private International Law .....*Yuko Nishitani* 87

The Japanese Digest of International Law

- Fisheries Law Enforcement by Japan in Its Exclusive Economic Zone and Hot  
Pursuit from the Exclusive Economic Zone onto the High Seas of a Foreign  
Vessel Which Failed to Obey an Order to Heave to .....*Atsuko Kanehara* 109  
*Fisheries by Foreigners in the Japanese Exclusive Economic Zone — Fisheries Law  
Enforcement over a Foreign Vessel by a Coastal State of the Exclusive Economic Zone —  
Hot Pursuit — Requirements for Commencement of Hot Pursuit — Hot Pursuit from  
Exclusive Economic Zone onto Exclusive Economic Zone of the State Whose Flag the  
Targeted Vessel is Flying. — Prompt Release with Posting a Cash Bond — A  
“Reasonable” Cash Bond*
- The Incident of a Submarine Navigating Underwater in Japan’s Territorial Sea  
.....*Yukiya Hamamoto* 123  
*Submerged Navigation of a Foreign Submarine in Territorial Sea — Demands for  
Apology, Explanation and Non-Repetition — Apology and Regret — Measures to be  
Taken by a Coastal State of Territorial Sea against a Foreign Submarine Conducting  
an Underwater Navigation*

## Book Reviews

- East Asian and European Perspectives on International Law*, edited by Michael Stolleis and Masaharu Yanagihara ..... *Taira Nishi* 130
- Heiwa-Kochiku to Ho no Sibai — Kokusai-Heiwa-Katsudo no Rironteki Kinouteki Bunseki* (Peace-building and the Rule of Law — Theoretical and Functional Analyses of International Peace Operations), by Hideaki Shinoda ..... *Hironobu Sakai* 133
- Jinshubetsu Teppai Jōyaku to Nihon* (An Analysis of the International Convention on the Elimination of All Forms of Racial Discrimination, and Implication of the Convention on Japan), by Masanao Murakami ..... *Shin Hae Bong* 134
- Kaiyoho no Rekishiteki Tenkai* (Historical Development of the Law of the Sea), edited by Tadao Kuribayashi and Takane Sugihara ..... *Atsuko Kanehara* 136
- Kokusai “Go’i”ron Josetsu — Hotekikosokuryoku wo Yushinai Kokusai “Go’i” ni tsuite* (On International Agreements — The Function of Non-legally Binding Agreements in the International Community), by Koichiro Nakamura ..... *Ryo Yamamoto* 139
- Kokusekiho to Kokusaioyakobo* (Nationality Law and International Family Law), by Yasuhiro Okuda ..... *Shoichi Kidana* 142
- Kokusai Torihiki ni okeru Shibo no Touitsu to Kokusai-shibo* (Unification of Private Law and Private International Law for Cross-border Transactions), by Akira Takakuwa ..... *Kazuaki Sono* 146
- Ryokai Keibi no Hokozō* (The Legal Structure of the Defense of Territorial Waters), by Reizou Murakami ..... *Norio Tanaka* 148

## Judicial Decisions in Japan

## I. Public International Law

- Tokyo High Court, Judgment, June 8, 2004..... 151  
*Sovereign Immunity — Exemption from Taxation — Paragraph 1 of Article 183 of the Income Tax Law — Income Tax Law Basic Circular 121-5 — Liability for Withholding Income Tax on Wages Paid to Locally Hired Employees of Foreign Missions in Japan*

Hiroshima High Court, Judgment, July 9, 2004 .....	154
<i>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 of People Brought to Japan against Their Will and the Renunciation Clause of the Right to Make Such Claims in the Joint Communiqué</i>	
Tokyo District Court, Judgment, February 25, 2004 .....	160
<i>Article 1 A(2) of the Convention Relating to the Status of Refugees (1951) — Definition of the Term 'Refugee' — Eligibility of a Homosexual Person for Refugee Status</i>	
Osaka District Court, Judgment, March 9, 2004 .....	164
<i>Article 14(3)(b) of the International Covenant on Civil and Political Rights — Right to a Fair Trial — Right to Communicate with Counsel — General Comments of the Human Rights Committee — United Nations Resolutions on the Right to Communicate with Counsel — Articles 31(3) and 32 of the Vienna Convention on the Law of Treaties — Invocation of the General Comments in Domestic Courts</i>	
II. Private International Law	
Supreme Court, Judgment, July 8, 2004 .....	168
<i>Child of a Japanese Mother — Acknowledgment by Korean Father — New Nationality Act — Effect of the Treaty of Peace with Japan — Loss of Japanese Nationality Denied</i>	
Osaka High Court, Judgment, April 9, 2003 .....	171
<i>Recognition of Foreign Judgment — Judgment of a People's Republic of China People's Court — Reciprocity Lacking in the Sense of Article 118 (iv) of the Code of Civil Procedure — Effect Not Recognized in Japan</i>	
Tokyo High Court, Judgment, January 29, 2004 .....	176
<i>Reasonable Remuneration — Assignment Contract — Foreign Patent Rights — Right to Obtain a Foreign Patent — Employee Invention — Applicable Law — Principle of Territoriality — Succession of Patent Rights</i>	
Tokyo High Court, Judgment, March 30, 2004 .....	184
<i>Letter of Credit — Post-Payment Negotiation Method — Uniform Customs and Practice for Documentary Credits (UCP 500) — Discrepancy — Meaning of 'Giving of Value'</i>	
Tokyo District Court, Judgment, January 30, 2004 .....	186
<i>Jurisdiction — Divorce — Domestic Violence — French Husband — Japanese Wife</i>	

Tokyo District Court, Judgment, February 24, 2004 .....	191
<i>Employee Invention — Right to Obtain a Patent — Patent Rights — Assignment of Rights — Claim for Remuneration — Appropriate Remuneration — Applicable Law — Principle of Territoriality</i>	
Chronological List of Treaties and Other International Agreements Concluded by Japan in 2004 .....	198
Documents	
I. Treaties	
USA	
1. Convention Between the Government of Japan and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income.....	200
2. Agreement Amending the 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.....	233
UZBEKISTAN	
3. Agreement Between Japan and the Republic of Uzbekistan for Air Services....	238
VIET NAM	
4. Agreement Between Japan and the Socialist Republic of Viet Nam for the Liberalization, Promotion and Protection of Investment .....	249
II. National Legislation	
The Immigration Control and Refugee Recognition Act.....	265
Chronology of Japanese Foreign Affairs .....	323
Activities	
I. Activities of the International Law Association of Japan .....	329
II. Activities of Related Academic Associations in Japan .....	334
Supporting Members .....	339