

ACTIVITIES

I. Activities of the International Law Association of Japan

THE THIRTIETH ACADEMIC CONFERENCE (2024)

Date: April 27, 2024

Place: Faculty of Law, University of Tokyo (also delivered online)

Theme: Principles of Economic Security

Chair: Takao Suami, Professor, Waseda University

Speaker: Junji Nakagawa, Professor, Chuo Gakuin University

Speaker: Yoichi Iida, Director-General for Economic Security, Cabinet Office of
Japan

Speaker: Yuka Fukunaga, Professor, Waseda University

Speaker: Takuya Shima, Professor, Hokkaido University

Promotion of Economic Security: An Overview

Junji Nakagawa
Professor, Chuo Gakuin University

The promotion of economic security has become a major theme in Japan's external economic policy. Changes in the world's geopolitical structure, resulting mainly from the rise of China as an economic, political, and military competitor to the US, were the primary reason for this phenomenon. By focusing on the Economic Security Promotion Act of 2022, this presentation provides an overview of Japan's policies for promoting economic security and examines the legal authority for these policies both under Japan's domestic law and public international law.

The term "economic security" can refer either to "security of the economy" or "security via economic means". Japan's policies to promote economic security fall into either of these two categories. Policies falling into the first category include (i) systems for ensuring a stable supply of critical products, (ii) systems for enhancing the development of specified critical technologies, (iii) systems for ensuring the stable provision of essential infrastructure services, and (iv) the IPEF Supply Chain Agreement for the resilience of supply chains. Policies falling into the second category include (i) export controls, (ii) inward foreign investment controls, and (iii) a system for the non-disclosure of selected patent applications.

This presentation examines the legal authority for these policies under Japan's domestic law, focusing on the principle of proportionality, and under public

international law, focusing on the law of the WTO and international investment law. It calls on the government of Japan to implement these policies according to the rules and principles of WTO law and international investment law.

Recent Developments in Japan Concerning Economic Security

Yoichi Iida

Director-General for Economic Security,
Cabinet Office of Japan

Guided by the National Security Strategy, the Japanese government is actively promoting economic security policies aimed at enhancing Japan's autonomy and ensuring its superiority and indispensability in the most severe and complex security environment. Therefore, Japan must strengthen government policies and systems, cooperate with allies and other countries, and coordinate with the private sector. New legal systems have been developed to that end.

The first was the Economic Security Promotion Act, which was enacted in May 2022. Under this law, systems were established to strengthen supply chains for critical products, support the research and development of critical technologies for economic security, ensure stable provision of essential infrastructure, and introduce a non-disclosure system for certain patent applications.

Subsequently, the Japanese government submitted to the Diet a bill for the protection and utilization of critical economic security information, including a so-called security clearance system that would allow the sharing of government-held critical economic security information with businesses that promote economic security, subject to strict protection measures and confirmation of the trustworthiness of those who handle the information. The bill was passed on May 10, 2024, and promulgated on May 17, 2024.

The enhancement of Japan's economic security measures was not limited to these efforts. The Japanese government will continue to monitor the possible risks to its industries and infrastructure, and if new issues arise, it will promptly formulate and implement measures necessary to resolve them, including reviewing existing systems.

Responses to Economic Coercion: An Assessment Under International Law

Yuka Fukunaga

Professor, Waseda University

The G7 countries have expressed concern over the growing use of economic coercion and the need to address it collectively, and if necessary, individually. The National Security Strategy of Japan has echoed this concern and urged Japan to make efforts to counter economic coercion. Under these circumstances, it is critical

to clarify what “economic coercion” means, whether it is inconsistent with international law, and what measures can be taken against it under international law.

There is a suggestion that “economic coercion” is a violation of the principle of non-intervention. However, the term “economic coercion” is often used to encompass acts that do not necessarily involve an element of coercion, which, according to the ICJ, “defines, and indeed forms the very essence of, prohibited intervention”. The broad scope of the term is illustrated by the EU’s new regulation, the Anti-Coercion Instrument (ACI), which presupposes that “economic coercion” does not necessarily violate international law. An act of “economic coercion” that does not violate the principle of non-intervention may nevertheless violate substantive obligations under the WTO Agreements.

When an act of a foreign State violates obligations under the WTO Agreements, an affected State should be cautious about labeling it as “economic coercion” and instead seek to resolve the matter through WTO dispute settlement. However, if an act of a foreign State that does not violate the WTO Agreements exerts pressure on another State to interfere in its legitimate sovereign choices, the targeted State may be justified in taking unilateral measures to respond to such an act.

**The Study of Economic Aspects of National Security
from the Standpoint of Conflict of Laws and International Transaction Laws**

Takuya Shima
Professor, Hokkaido University

This presentation consists of four topics: (1) legal issues of the virtual economy; (2) financial regulations, such as asset-freezing measures; (3) reconstruction of cross-border supply chains; and (4) protection of intellectual property rights in an international context.

The primary focus of topic (1) is the relationship between cyberspace and the principles of state jurisdiction theory. Although recent debate has focused on the issue of enforcement jurisdiction, the tension between cyberspace and legislative and judicial jurisdiction is more important. Japan should seek to exercise its legislative and judicial jurisdiction more broadly to secure its own national interests in cyberspace as well.

Regarding topic (2), Japan already has the legal basis necessary to implement asset-freezing measures despite doubts about whether they are sufficiently effective. First, asset-freezing measures apply to Japanese banks’ overseas branches but not to their local subsidiaries. Second, even asset transfers that violate Japan’s asset-freezing measures are recognized as valid under its private law. Third, when an asset transfer that violates Japan’s asset-freezing measures is challenged in a foreign court, the court could refuse the application of Japan’s measures on the grounds they are public law regulations.

The main argument for topic (3) is that Japan is trying to rebuild the supply chain of materials important for its national security, but companies and other business entities are acting based on economic rationality; therefore, it is necessary to provide them with economic incentives to reconstruct their existing supply chains. One effective measure would be to wrap such economic incentives in the veneer of social justice and spread them globally as *de facto* or *de jure* standards.

Regarding topic (4), until recently, intellectual property rights have been strictly governed by the principle of territoriality; however, recent Japanese court judgments have slowly but steadily shown a tendency to loosen this principle. The interpretation should be reconsidered so that civil liability can be pursued based on Japanese intellectual property law when a person intentionally commits certain acts that infringe Japanese intellectual property rights in a foreign country, such as when a foreign actor colludes with a Japanese one to infringe on Japanese intellectual property rights.

OFFICE ACTIVITIES IN 2023

1. The General Meeting of the Japan Branch was held on April 22, 2023, at the Faculty of Law, University of Tokyo.
 - a. With regard to fiscal year 2022:
 - (i) The financial account of the Japan Branch for fiscal year 2022, audited by Mr. Akira Kawamura and Ms. Naoko Saiki, as prepared by Mr. Yoshio Kumakura, Treasurer, was submitted and approved at the meeting.
 - (ii) The Secretary-General, Professor Kazuhiro Nakatani, reported on the general affairs of the Branch during this term.
 - (iii) Professor Masaharu Yanagihara, Director of Planning, reported on the academic activities of the Branch during this term.
 - (iv) Professor Koichi Morikawa, Editor-in-Chief, reported on the publication of Volume 65 of the *Japanese Yearbook of International Law*.
 - b. With regard to fiscal year 2023:
 - (i) The budget for fiscal year 2023, prepared by Mr. Yoshio Kumakura, Treasurer, was submitted and approved at the meeting.
 - (ii) The Secretary-General, Professor Kazuhiro Nakatani, presented on the general affairs scheduled for this term.
 - (iii) The Director of Planning, Professor Masaharu Yanagihara, presented on the academic activities scheduled for this term.
 - (iv) The Editor-in-Chief, Professor Koichi Morikawa, presented on the progress of the editorial work for volumes 66 and 67 of the *Japanese Yearbook of International Law*.

- (v) The following 11 persons were admitted as new members of the branch: Jun'ichi Suzuki, Professor, Dokkyo University; Yusuke Kaide, Associate Professor, Hokkaido University; Michiko Nishijima, Associate Professor, Kurume University; Taku Kumagai, Associate Professor, Niigata University of International and Information Studies; Moonsook Kim, Professor, Konan University; Yota Negishi, Associate Professor, Seinan Gakuin University; Tokuko Munesue, Professor, Waseda University; Kuniko Ozaki, Specially Appointed Professor, Chuo University; Tomohiro Mikanagi, Director-General, International Legal Affairs Bureau, Ministry of Foreign Affairs; Satoshi Katahira, Deputy Director-General, International Legal Affairs Bureau, Ministry of Foreign Affairs; Teppei Kanda, Director, Economic Dispute Settlement Division, Ministry of Foreign Affairs.
 - (vi) The following two persons were admitted as council members of the Branch: Tomohiro Mikanagi and Akira Watanabe.
2. Two Council Meetings were held by mail during fiscal year 2023. They dealt with the following matters:
 - a. At the First Council Meeting held in April 2023,
 - (i) The financial account of the Branch for fiscal year 2022 and its budget for fiscal year 2023 were approved;
 - (ii) The general affairs of the Branch for fiscal year 2022 and the program for fiscal year 2023 were approved;
 - (iii) The academic activities of the Branch during fiscal year 2022 and the program for fiscal year 2023 were approved; and
 - (iv) The publication of Volume 65 of the *Japanese Yearbook of International Law* and the progress of the editorial work for Volumes 66 and 67 of the *Japanese Yearbook of International Law* were reported.
 - b. At the Second Council Meeting, held in November 2023, the following presentations were included:
 - (i) The financial conditions of the Branch;
 - (ii) The general affairs of the Branch;
 - (iii) The academic activities of the Branch; and
 - (iv) The progress of the editorial work for Volumes 66 and 67 of the *Japanese Yearbook of International Law*.
 3. The Japan Branch expresses its congratulations to our Honorary President Judge Shigeru Oda on his 100th birthday. He was born on 22 October 1924.

Kazuyori Ito