

TOKYO
INTERNATIONAL
LAW
SEMINAR



Tokyo International Law Seminar 2023

Programme

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Tokyo International Law Seminar - Schedule
21-24 August 2023, at United Nations University

	Mon, Aug. 21st	Tue, Aug. 22nd	Wed, Aug. 23rd		Thu, Aug. 24th
Lecture 1	Opening Session Video Message by Mr. HAYASHI Yoshimasa Minister for Foreign Affairs Rule of Law Mr. MIKANAGI Tomohiro, Legal Adviser, Director-General International Legal Affairs Bureau, MOFA	International Humanitarian Law Prof. Kubo MAČÁK University of Exeter	Current Challenge to International Law: the Role of AALCO Dr. Kamalinne PINITPUVADOL Secretary-General Asian African Legal Consultative Organization (AALCO)		Effective Written and Oral Advocacy in International Arbitration Mr. Gary BORN Partner, WilmerHale
Lecture 2	International Litigation Mr. Paul REICHLER International Lawyer, 11KBW	International Law Applicable to Cyber Operations Prof. Kubo MAČÁK University of Exeter	Key Note Lecture Prof. Dapo AKANDE University of Oxford, ILC member		
Lecture 3	International Law Commission Prof. ASADA Masahiko Doshisha Univeristy, ILC member	Law of the Sea, Territories Prof. NISHIMOTO Kentaro Tohoku University	Special Lecture "Enforcement of International Law" Judge IWASAWA Yuji International Court of Justice (ICJ)		ISDS and International Investment Law Prof. TAMADA Dai Kyoto University
Lecture 4	Responsibility of States Prof. HAMAMOTO Shotaro Kyoto University	International Criminal Law Ms. KAWASHIMA Saeko Former Legal Officer of UN International Criminal Tribunal for the former Yugoslavia (ICTY)	Asia Cup International Law Moot Court Competition for future international lawyers in Asia Final Round	Capacity Building of Legal Systems Ministry of Justice, UNAFEI (@MoJ)	Domestic Application of WTO Agreement Prof. FUKUNAGA Yuka Waseda University
Lecture 5	Immunity and Diplomatic/Consular Relations Prof. Philippa WEBB King's College London	International Environmental Law Prof. TAKAMURA Yukari University of Tokyo			Treaty Making and Domestic Application Mr. KATAHIRA Satoshi, Director-General Economic Affairs Bureau, MOFA
	Welcome Reception hosted by Mr. TAKEI Shunsuke State Minister for Foreign Affairs	—	Asia Cup Awards Ceremony, Reception	—	Completion Ceremony

OPENING SESSION “RULE OF LAW”

MIKANAGI Tomohiro

Legal Adviser, Director-General,
International Legal Affairs Bureau,
Ministry of Foreign Affairs of Japan



PROFILE

2022- Legal Adviser, Director-General, International Legal Affairs Bureau, MOFA

2019-2022 Deputy Director-General, International Legal Affairs Bureau, MOFA

2017-2019 Minister, Head of Political Section, Embassy of Japan in UK

2013-2017 Director, International Legal Affairs Division, MOFA

LL.M. (international law), Robinson College, University of Cambridge

Visiting Fellow (2017-2019), Lauterpacht Centre for International Law (LCIL), University of Cambridge

OVERVIEW OF THE LECTURE

The inaugural lecture of the first Tokyo International Law Seminar focuses on the "Rule of Law among Nations" and the vital role of international lawyers in promoting peace. As the opening remark to welcome lawyers and practitioners interested in public international law, the lecturer highlights the significance of the rule of law for international peace and security, recalling the Friendly Relations Declaration adopted by the UN General Assembly in 1970. International lawyers should be "stabilizers" in international relations, providing advice based on their expertise in international law. Sound knowledge of international law and good working relationship with the policy side are important in this regard. They should foster cooperation and networking among themselves across borders, creating a safety net during times of political tension and addressing new challenges together. The lecture identifies two areas of cooperation among international lawyers: (i) Ukraine, and (ii) cyber operations.

REFERENCE (RECOMMENDED READING LIST)

- Vaughan Lowe, *International Law*, Ch 1 (2007, OUP).
- Priya Urs, Talita Dias, Antonio Coco, Dapo Akande, *The International Law Protections against Cyber operations: Targeting the Healthcare Sector*. <https://www.elac.ox.ac.uk/>
- Tomohiro Mikanagi, *Establishing a Military Presence in a Disputed Territory: Interpretation of Article 2(3) and (4) of the UN Charter*, ICLQ, Vol 67, 2018.

INTERNATIONAL LITIGATION

Paul REICHLER

Associate Member,

11 King's Bench Walk Chambers, London



PROFILE

2023- Associate Member, 11 King's Bench Walk Chambers, London

1998-2022 – Partner, Foley Hoag LLP, Washington, DC

1984-1998 – Partner, Reichler, Milton & Medel, Washington DC

1981-1984 – Partner, Powell Goldstein, Frazer & Murphy, Washington DC

Juris Doctor, Harvard Law School, 1973

OVERVIEW OF THE LECTURE

This lecture is about the practice of public international law, with a focus on strategy and tactics, based on 40 years of representing States before international courts and tribunals. It will address, inter alia, the decisions of a State to initiate judicial or arbitral proceedings against another State, and on the selection of the forum, the framing of the application and claims, the composition of the legal team, whether to seek provisional measures, and whether to raise objections to jurisdiction and admissibility. It will then address the different phases of the proceedings, with special emphasis on development and use of evidence, and the basic elements of successful written and oral presentations. Time will be reserved for questions and answers.

REFERENCE (RECOMMENDED READING LIST)

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INTERNATIONAL LAW COMMISSION

ASADA Masahiko

Professor, Doshisha University

Member, UN International Law Commission (ILC)



PROFILE

2023- Member, UN International Law Commission (ILC)

2021- Membre associé, Institut de droit international (IDI)

2021- Professor, Doshisha University; Professor Emeritus, Kyoto University

2009-2010 Member, Panel of Experts on DPRK sanctions, UN Security Council

1999-2021 Professor, Kyoto University

LL.D (International Law), Kyoto University

OVERVIEW OF THE LECTURE

This lecture aims to provide an overview of the UN International Law Commission (ILC) and its work. It will begin by delving into the historical background, composition, membership and working methods of the Commission, followed by an examination of two specific topics from the Commission's past and current agendas. The first topic will be the issue of reservations to treaties. Specifically, the lecture will explore the legal implications of interpretative declarations (amounting to reservations) to a treaty in which reservations are explicitly prohibited. The second topic to be addressed is sea-level rise, which currently holds significant practical importance in the Commission's considerations. The lecture will examine the implications of rising sea levels on the law of the sea, including the questions of regression of coastlines and submergence of maritime features. By discussing these topics, the lecture aims to offer a general understanding of the ILC and its vital work in creating and advancing international law.

REFERENCE (RECOMMENDED READING LIST)

- "Reservations to Treaties," in *Yearbook of the International Law Commission*, 2011, Vol. II, Pt.3.
- "Sea-level Rise in relation to International Law," UN Doc. A/CN.4/740, 28 February 2020.

RESPONSIBILITY OF STATE

HAMAMOTO Shotaro

Professor of the Law of International
Organizations, Graduate School of Law,
Kyoto University



PROFILE

2009- Professor, Kyoto University

2019 Professeur invité, Université de Strasbourg

2012 Professeur invité, Sciences Po de Paris

2009 Professeur invité, Université de Paris I

2006-2009 Professor, Kobe University

2000-2006 Associate Professor, Kobe University

LL.M. (international law), Kyoto University, Docteur en droit, Université de Paris II

OVERVIEW OF THE LECTURE

Various provisions of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), adopted by the International Law Commission and taken note of by the United Nations General Assembly in 2001, are today widely referred to and relied on by States and international courts and tribunals. The major virtue of the ARSIWA is its clarity and simplicity, represented by the separation between what are called “primary” and “secondary” norms. However, despite its apparent clarity, the ARSIWA leaves a number of questions unanswered. The present lecture attempts to uncover often contradictory policy considerations involved in such unanswered questions. Examples to be dealt with are the police powers doctrine applied to indirect expropriation (the distinction between primary and secondary norms), acts of members of UN peace-keeping forces (attribution), rules of compensation applicable to private parties (Article 33(2) ARSIWA), and third-party countermeasures (Article 54 ARSIWA).

REFERENCE (RECOMMENDED READING LIST)

- Draft articles on responsibility of States for internationally wrongful acts, with commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II, Part 2, pp. 26.

- Hamamoto, Shotaro., “Compensation standards and permanent sovereignty over natural resources”, in Marc Bungenberg and Stefan Hobe eds., *Permanent sovereignty over natural resources*, Cham, Springer, 2015, pp. 141-154.
- Jacob, Patrick., « Les sanctions de l’UE contre la Russie comme mesures de réaction à un fait internationalement illicite », *Revue générale de droit international public*, t. 127, 2023, pp. 71-97.
- Kenehara, Atsuko., “Reassessment of the acts of the State in the law of State responsibility”, *Recueil des cours de l’Académie de droit international*, vol. 399, 2019, pp. 9-266.
- Okada, Yohei., “Effective control test at the interface between the law of international responsibility and the law of international organizations: Managing concerns over the attribution of UN peacekeepers’ conduct to troop-contributing nations”, *Leiden Journal of International Law*, vol. 32, 2019, pp. 275-291.
- Paparinskis, Martins., “Crippling compensation in the International Law Commission and investor-State arbitration”, *ICSID Review*, vol. 37, 2022, pp. 289-312.
- Pellet, Alain., “Police Powers or the State’s Right to Regulate”, in Meg Kinnear et al. eds., *Building International Investment Law: The First 50 Years of ICSID*, Alphen aan den Rijn, Kluwer Law International, 2015, pp. 447-462.

IMMUNITY AND DIPLOMATIC/ CONSULAR RELATIONS

Philippa WEBB

Professor, King's College London



PROFILE

2019- Professor of Public International Law, King's College London; Director of the Centre for International Governance and Dispute Resolution

2016- Barrister specializing in Public International Law, Twenty Essex, London

2015-2019 Associate Professor in Public International Law, King's College London

2012-2015 Lecturer in Public International Law, King's College London

2009-2012 Visiting Assistant Professor, Leiden University and legal adviser on international law

2006-2009 Legal Officer and Special Assistant to President Higgins GBE QC, International Court of Justice

J.S.D. (International Law), Yale Law School, USA

OVERVIEW OF THE LECTURE

This lecture will explore a dynamic and fascinating area of international law: the law of immunities. The topic will be addressed in three parts: (i) the immunity of the State and its officials from the jurisdiction of foreign and international courts; (ii) the immunity of the State from execution against its property; (iii) diplomatic and consular immunities. Under each of these parts, the lecture will review the key principles and discuss some contemporary challenges. This will be an interactive lecture in which we consider the question of whether there is a human rights exception to immunity, a State's immunity from the use of spyware abroad, the debate over confiscation of Russian Central Bank assets, and exceptions to diplomatic immunity related to allegations of modern slavery and the leaking of documents by third parties.

REFERENCE (RECOMMENDED READING LIST)

- International instruments

[1961 Vienna Convention on Diplomatic Relations](#)

[1963 Vienna Convention on Consular Relations](#)

[2004 United Nations Convention on Jurisdictional Immunities of States and their Property](#)

ILC Draft Articles on the Immunity of State Officials from Foreign Criminal Jurisdiction

■ International case law and decisions

2012, International Court of Justice, Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)

2014, European Court of Human Rights, Jones and others v United Kingdom

2022 International Court of Justice, New Germany v Italy case

2023 ICC issues arrest warrant for President Putin and Ms Lvova-Belova

■ National case law

2018 United Kingdom Supreme Court, Bancoult (No. 3)

2021 Brazilian Supreme Court, Changri-La case

2021 Dutch Court of Appeal, Gaza case

2021 German Federal Court of Justice, Afghan army officer case

2021 French Cour de Cassation, George W. Bush case

2022 United Kingdom Supreme Court, Basfar v Wong

2022 High Court of England & Wales, Al-Masarir v Saudi Arabia

■ Scholarship

Anne Peters et al (eds) (2015), *Immunities in the Age of Global Constitutionalism* (Leiden: Brill)

Hazel Fox and Philippa Webb (2015), *The Law of State Immunity* (3rd rev edn, Oxford: Oxford University Press)

Tom Ruys and Nicolas Angelet (eds) (2019), *The Cambridge Handbook of Immunities and International Law* (Cambridge: Cambridge University Press)

■ Commentary on Russian Central Bank Assets

Multilateral Asset Transfer: A Proposal for Ensuring Reparations for Ukraine, New Lines Institute for Strategy and Policy, June 2023.

Peters T., Financing Ukraine recovery, EPRS, June 2023.

Keitner C., Expert Q&A on Asset Seizure in Russia's War in Ukraine, April 2023.

Kamminga M., Confiscating Russia's Frozen Central Bank Assets: A Permissible Third-Party Countermeasure?, April 2023.

Runde E., Why the European Commission's Proposal for Russia State Asset Seizure Should be Abandoned, March 2023.

Franchini D., Ukraine Symposium, Seizure of Russian State Assets: State Immunity and Countermeasures, Lieber Institute, March 2023.

Kokott J., Confiscation of Russian Assets to Rebuild Ukraine? February 2023.

Noonan E., Confiscating Russian sovereign assets to fund Ukraine's reconstruction: Mission impossible?, EPRS, October 2022.

Moiseienko A., Frozen Russian Assets and the Reconstruction of Ukraine, Legal Options, World Refugee & Migration Council, July 2022.

Anderson R., Keitner C., The Legal Challenges Presented by Seizing Frozen Russian Assets, Lawfare, Foreign Relations & International Law, May 2022.

Stephan P., Giving Russian Assets to Ukraine, Freezing is Not Seizing, Lawfare, Foreign Relations & International Law, April 2022..

INTERNATIONAL HUMANITARIAN LAW

Kubo MAČÁK

Professor of International Law,
University of Exeter Law School



PROFILE

2023- Professor of International Law, University of Exeter, Exeter, UK

2019-2023 Legal Adviser, International Committee of the Red Cross, Geneva, Switzerland

2019-2023 Associate Professor, University of Exeter, Exeter, UK (in part on leave)

2016-2019 Senior Lecturer in Law, University of Exeter, Exeter, UK

2013-2016 Lecturer in Law, University of Exeter, Exeter, UK

DPhil (international law), Somerville College, University of Oxford

General editor of the [Cyber Law Toolkit](#)

OVERVIEW OF THE LECTURE

The lecture provides an introduction to international humanitarian law (IHL) as a body of international law that governs the conduct of parties to armed conflicts. In the first part, the lecture covers the two main sources of IHL: international treaties such as the 1949 Geneva Conventions and their Additional Protocols, and customary international humanitarian law. In the second part, it explores the scope of application of IHL in its material, personal, temporal, and geographic dimensions. In the third part, the lecture covers the main rules governing the conduct of hostilities during armed conflicts, including distinction, proportionality, and precautions. Finally, it closes with an assessment of some of the current challenges facing IHL, with a focus on the question of ensuring compliance with IHL.

REFERENCE (RECOMMENDED READING LIST)

- Nils Melzer, [International Humanitarian Law: A Comprehensive Introduction](#), ICRC, 2022, ch 1–3.
- Yoram Dinstein, [The Conduct of Hostilities under the Law of International Armed Conflict](#) (4th edn, Cambridge University Press, 2022, ch 1.
- ICRC, [International Humanitarian Law and the Challenges of Contemporary Armed Conflicts](#), ICRC, 2019.
- Kubo Mačák, [Internationalized Armed Conflicts in International Law](#), Oxford University Press, 2018, ch 1.
- Michael N. Schmitt, 'Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance' (2010) 50 *Virginia Journal of International Law* 795.

INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS

Kubo MAČÁK

Professor of International Law,
University of Exeter Law School



PROFILE

2023- Professor of International Law, University of Exeter, Exeter, UK

2019-2023 Legal Adviser, International Committee of the Red Cross, Geneva, Switzerland

2019-2023 Associate Professor, University of Exeter, Exeter, UK (in part on leave)

2016-2019 Senior Lecturer in Law, University of Exeter, Exeter, UK

2013-2016 Lecturer in Law, University of Exeter, Exeter, UK

DPhil (international law), Somerville College, University of Oxford

General editor of the [Cyber Law Toolkit](#)

OVERVIEW OF THE LECTURE

The use of cyber operations on the international plane can cause grave human harm and affect States' essential interests. This lecture explores the extent to which international law presents constraints on the conduct of such operations. First, it discusses the treaty and customary law applicable to cyber operations, and it draws a distinction between international law and the so-called norms of responsible State behaviour. Second, it delves into some of the key legal questions concerning cyber operations, including attribution, sovereignty, non-intervention, use of force, and international humanitarian law. Third, it discusses possible future developments in this area, such as the trend of adopting national positions on the application of international law in cyberspace and the prospects of a global cyber treaty.

REFERENCE (RECOMMENDED READING LIST)

- Michael N Schmitt (ed), [Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations](#), Cambridge University Press, 2017.
- François Delerue, [Cyber Operations and International Law](#), Cambridge University Press, 2020.
- Dapo Akande, Antonio Coco, and Talita de Souza Dias, '[Drawing the Cyber Baseline: The Applicability of Existing International Law to the Governance of ICTs](#)', *International Law Studies*, Vol. 99, 2022.
- Tomohiro Mikanagi and Kubo Mačák, '[Attribution of Cyber Operations: An International Law Perspective on the Park Jin Hyok case](#)' *Cambridge International Law Journal*, Vol. 9, 2020.
- Kubo Mačák, '[Unblurring the lines: military cyber operations and international law](#)', *Journal of Cyber Policy*, Vol. 6, 2021.

LAW OF THE SEA, TERRITORIES

NISHIMOTO Kentaro

Professor, Tohoku University



PROFILE

2020- Professor, Arctic Observation Center, National Institute of Polar Research

2019- Professor, School of Law, Tohoku University

2012-2019 Associate Professor, School of Law, Tohoku University

2011-2012 Project Lecturer, Graduate School of Public Policy, University of Tokyo

Ph.D. (Law), Graduate Schools for Law and Politics, University of Tokyo.

OVERVIEW OF THE LECTURE

The lecture will cover two fields of international law relating to the spatial ordering of the world: the law of territory and the law of the sea. A common feature of the two fields is that the jurisprudence of international courts and tribunals has played a significant role in the development and operation of the law. After introducing the audience to basic rules and principles of the law of territory and the law of the sea, the lecture will discuss how they have been translated into practice. The discussion on the law of territory will focus on frequently invoked rules and principles and the approach adopted by international courts and tribunals in resolving territorial disputes. The discussion on the law of the sea will take up recent developments in international courts and tribunals and in State practice that have an impact on the existing legal framework its further development.

REFERENCE (RECOMMENDED READING LIST)

- Robin Churchill, Vaughan Lowe and Amy Sander, *The Law of the Sea*, 4th ed., Manchester: Manchester University Press, 2022).
- Rozemarijn J. Roland Holst, *Change in the Law of the Sea: Context, Mechanisms and Practice* (Leiden: Brill, 2022).
- Marcelo G. Kohen and Mamadou Hébié (eds.), *Research Handbook on Territorial Disputes in International Law* (Cheltenham: Edward Elgar, 2018).

INTERNATIONAL CRIMINAL LAW

KAWASHIMA Saeko

former legal officer of UN International Criminal Tribunal for the former Yugoslavia (ICTY)



PROFILE

2018- Legal Consultant (freelance)

2009-2017 Legal Officer, Appeals Chamber, UN International Criminal Tribunal for the former Yugoslavia (2014- Team leader / sub-team leader of judgment-drafting teams)

2010 Legal Officer, Trial Chamber, International Criminal Court (secondment)

2005-2009 Associate Legal Officer, Trial and Appeals Chambers, UN International Criminal Tribunal for the former Yugoslavia

Admitted to the New York State Bar (2007), LL.M. (International Legal Studies), School of Law, New York University, LL.M. (Public Law), Graduate School of Law and Politics, University of Tokyo

OVERVIEW OF THE LECTURE

Since the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993, international criminal law has dramatically developed, as part of the global efforts to judicially address individual criminal responsibility for war crimes, crimes against humanity, and crimes of genocide. The establishment of the International Criminal Court (ICC) in 2002, accelerated this development.

Subsequently, this field of law experienced a certain degree of stagnation due to numerous practical difficulties encountered in its operations. However, the war in Ukraine re-boosted the international society's interest in this field. Keeping this history in mind, and in view of similarities between the war in Ukraine and the war in the former Yugoslavia (in contrast to the mostly African cases dealt with in the ICC), this lecture will shed some light on ICTY precedents (in comparison with ICC) and discuss, in concrete terms, what it takes to adjudicate large-scale international crimes committed in a massive modern war.

REFERENCE (RECOMMENDED READING LIST)

- [Stanišić & Simatović Appeal Judgement \(ICTY\)](#)
- [Stanišić & Simatović Second Trial Judgement \(Re-trial\) \(IRMCT\)](#)

- [Stanišić & Simatović Second Appeal Judgement \(Re-trial\) \(IRMCT\)](#)

- [Perišić Trial Judgement \(ICTY\)](#)
- [Perišić Appeal Judgement \(ICTY\)](#)

- Karadžić Trial Judgement (ICTY) [Vol I](#), [Vol II](#), [Vol III](#), [Vol IV](#)
- [Karadžić Appeal Judgement \(IRMCT\)](#)
- [Full Reasons for Oral Decision to Acquit Laurent Gbagbo and Charles Blé Goudé \(ICC\)](#)

INTERNATIONAL ENVIRONMENTAL LAW

TAKAMURA Yukari

Professor, Institute for Future Initiatives
University of Tokyo



PROFILE

After receiving Master of Laws (Public International Law) from Hitotsubashi University, Tokyo, she was appointed Associate Professor at Shizuoka University. Before joining the University of Tokyo in 2018, she worked as Professor at Ryukoku University, Kyoto, and Professor at Nagoya University, Japan. She also studied at Graduate School of University of Paris II (Panthéon-Assas), France and was Visiting Researcher at University of London, U.K. She serves as member of governmental advisory bodies, among others, Central Environmental Council as President, and Procurement Price Calculation Committee for Feed-in Tariff Scheme for Renewable Energy as chair. She also serves as Vice President of the Science Council of Japan. She is member of Advisory Group on Climate Change and Sustainable Development of ADB. She received Environmental Conservation Merit's Minister of the Environment Award in 2018.

OVERVIEW OF THE LECTURE

Humanity has been now facing serious environmental degradation all over the planet, which could undermine even the foundation of our life and well-being. International community has been strengthening its efforts to address these challenges. International environmental law (IEL), an evolving branch of international law aimed at protecting the environment, provides a legal framework for addressing transboundary environmental challenges through international cooperation. The lecture briefly introduces historical developments, basic concepts and principles, features of international environmental law. The lecture then explores features and challenges of international environmental law more specifically by taking up international climate change law as a case study: focusing on three climate change treaties (United Nations Framework Convention on Climate Change, Kyoto Protocol and Paris Agreement) as well as looking into recent developments of climate law after the adoption of the Paris Agreements.

REFERENCE (RECOMMENDED READING LIST)

- U. Beyerlin and T. Marauhn (2011). International Environmental Law, Hart Pub.
- P. Sands and J. Peel (2018). Principles of International Environmental Law, Fourth edition, Cambridge University Press.

- P. Birnie, A. Boyle and C. Redgwell (2021). *International Law & the Environment*, Fourth edition, Oxford University Press.
- L. Rajamani and J. Peel eds. (2021). *The Oxford Handbook of International Environmental Law*, Second edition, Oxford University Press.
- Yukari TAKAMURA, 'Release of radioactive substances into the sea and international law: the Japanese experience in the course of nuclear disaster', in David D. Caron, Michael J. Kelly and Anastasia Telesetsky eds., *The International Law of Disaster Relief*, pp. 89-110 (Cambridge University Press, 2014);
- Yukari TAKAMURA, 'Climate Change and Small Island Claims in the Pacific', in Oliver C. Ruppel, Christian Roschmann & Katharina Ruppel-Schlichting eds., *Climate Change: International Law and Global Governance*, Volume I: Legal Responses and Global Responsibility, pp. 657-682 (Nomos, October 2013);
- Yukari TAKAMURA, Chapter Japan in Richard Lord, Silke Goldberg, Lavanya Rajamani and Jutta Brunnée eds., *Climate Change Liability: Transnational Law and Practice*, pp. 206-241 (Cambridge University Press, December 2011)

CURRENT CHALLENGE TO INTERNATIONAL LAW: THE ROLE OF AALCO

Kamalinne PINITPUVADOL

Secretary-General, Asian-African Legal Consultative Organization (AALCO)



PROFILE

2022- Secretary-General, Asian-African Legal Consultative Organization (AALCO)

2019-2022 Advisor to the National Security Council of Thailand and Senior Legal Expert on international law, Department of International Economic Affairs, Ministry of Foreign Affairs

2015-2019 Executive Director of the International Institute for Trade and Development (ITD)

2008-2014 Deputy Executive Director, Knowledge Network Institute of Thailand, Ministry of Education

Doctorate in international law (Docteur en Droit), University of Strasbourg (the French Republic)

OVERVIEW OF THE LECTURE

Seventy-eight years after the establishment of the UN, humanity is confronted with new challenges to peace and security as well as political and economic instability. International Law and multilateralism are at the cross roads today.

AALCO is the sole organization of Asian-African States for harmonizing their actions in addressing important international legal issues. It embodies the spirit of the 1955 Bandung Conference of Asian-African States, where they agreed upon ways and means to achieve fuller co-operation. It continues to promote the rule of law in Asia and Africa, and supplements the work of the International Law Commission (ILC) on the development and codification of international law.

The presentation highlights the role of AALCO in: carving out a universal character for international law; strengthening the rule of law in global governance; and promoting multilateralism. Other highlights are: the genesis, structure, and decision-making of AALCO; how it addresses the contemporary global challenges; and the need for strengthening its role in channeling the views of its Member States in other multilateral fora.

REFERENCE (RECOMMENDED READING LIST)

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KEY NOTE LECTURE

Dapo AKANDE

Professor of Public International Law,

University of Oxford

Member, UN International Law Commission (ILC)



PROFILE

Dapo Akande is Professor of Public International Law at the University of Oxford and a Member of the United Nations International Law Commission. He is one of the authors of the Oppenheim's International Law: The United Nations (2017) which was awarded the Certificate of Merit by the American Society of International Law, and an editor of the Oxford Guide to International Humanitarian Law (2020). He is one of the editors of the scholarly blog - EJIL:Talk! and has served on the editorial boards of several leading international law journals including the American Journal of International Law & the European Journal of International Law. He has acted as counsel or adviser in cases before the International Court of Justice, the International Tribunal for the Law of the Sea, the European Court of Human Rights, and World Trade Organization panels. He regularly provides advice on international law issues to states, international organizations and civil society organizations.

OVERVIEW OF THE LECTURE

In order to safeguard the independence and sovereign equality of states, international law provides that certain state officials are immune from the criminal jurisdiction of foreign states. While it is clear that international law immunities are accorded to some officials on the basis of their status, and to others because they have acted in their official capacity, it remains unclear whether there are any exceptions to such immunity. This lecture will examine whether (i) international law immunities apply in the case of prosecutions for international crimes and (ii) such immunities apply to prosecutions undertaken by international tribunals? The lecture will consider the recent work of the International Law Commission on the topic, as well as developments at the International Criminal Court (ICC) with regard to the immunity of heads of state. With regard to the latter, the lecture will consider immunity before the ICC but also immunity of state officials with respect to states who are acting at the request of the ICC.

REFERENCE (RECOMMENDED READING LIST)

- Akande, D and Shah, S, 'Immunities of State Officials, International Crimes, and Foreign Domestic Courts' (2010) 21 *European Journal of International Law* 815

- Akande, D, “The Immunity of Heads of States of Nonparties in the Early Years of the ICC”, (2018) 112 *American Journal of International Law Unbound* 172
- Akande, D, “International Law Immunities and the International Criminal Court”, (2004) 98 *American Journal of International* 407-433.
- Kress, C, “Article 98: Cooperation with respect to waiver of immunity and consent to surrender, in *Rome Statute of the International Criminal Court Article-by-Article Commentary* (Kai Ambos, ed., 4th ed. 2021).
- Jacobs, D, *You have just entered Narnia: ICC Appeals Chamber adopts the worst possible solution on immunities in the Bashir case, Spreading the Jam* (May 6, 2019),
- O’Keefe, *International Criminal Law*, Ch 10 (2015, OUP)
- Wickremasinghe, C, ‘Immunities Enjoyed by Officials of States and International Organizations’ in M Evans (ed), *International Law* (5th edn, Oxford: Oxford University Press, 2018)
- Wood, M, ‘The Immunity of Official Visitors’ (2012) 16 *Max Planck Yearbook of United Nations Law* 35

SPECIAL LECTURE “ENFORCEMENT OF INTERNATIONAL LAW”

IWASAWA Yuji

Judge

International Court of Justice



PROFILE

2018- Judge, International Court of Justice

2016- Vice-Chairperson, International Law Association

2005-2018 Professor of International law, Faculty of Law, University of Tokyo

2007-2018 Member, Human Rights Committee (ICCPR) (Chairperson, 2009-11, 2017-18)

2004-2013 Judge, Administrative Tribunal, Asian Development Bank (Vice-President, 2010-13)

S.J.D. (University of Virginia), LL.M. (Harvard University), LL.B. (University of Tokyo)

Member, Institut de droit international

OVERVIEW OF THE LECTURE

In the special lecture, Judge Iwasawa will examine the various means of enforcement that are available under international law to help secure compliance. Before turning to these various means, he will first address the criticism levelled against international law that it does not qualify as law because it lacks sanctions. International law has sanctions in forms different from those available in municipal law, and its legal nature can be affirmed. Judge Iwasawa then will explain in turn the seven means available in international law to help secure compliance: the domestic implementation and application of international law; the enforcement actions of the U.N. Security Council; self-help; the law of State responsibility; international dispute settlement; compliance control; and the enforcement of international criminal law through domestic courts and international criminal courts and tribunals.

REFERENCE (RECOMMENDED READING LIST)

- Yuji Iwasawa, Domestic Application of International Law (2022)
- Yuji Iwasawa, International Law, Human Rights, and Japanese Law: The Impact of International Law on Japanese Law (1998)
- Abram Chayes & Antonia Handler Chayes, The New Sovereignty: Compliance with International Regulatory Agreements (1995)
- Masahiko Asada (ed.), Economic Sanctions in International Law and Practice (2020)

CAPACITY BUILDING OF LEGAL SYSTEMS

SUDA Hiroshi

Ministry of Justice



MORINAGA Taro

United Nations Asia and Far East Institute
for the Prevention of Crime and the
Treatment of Offenders (UNAFEI)



PROFILE

SUDA Hiroshi

2021 Deputy Director, ICD

2018 public prosecutor, Tokyo District Public Prosecutors Office

2015 Chief Advisor and Long-Term Expert, JICA Laos Legal Cooperation Project (Vientiane)

2013 faculty member of the International Cooperation Department (ICD), RTI, MOJ Japan

2001 public prosecutor (district offices of Tokyo, Sendai, Hiroshima, Osaka, Matsue, Chiba, and Tokyo (Tachikawa Branch))

MORINAGA Taro

2021 Director, UNAFEI

2017 Director, ICD

2014 Deputy Director, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI)

2012 Deputy Chief Prosecutor, Saga District Public Prosecutors Office

2008 head faculty member, ICD

2007 public prosecutor, Tokyo District Public Prosecutors Office

2004 Chief Advisor and Long-Term Expert, JICA Vietnam Legal Cooperation Project (Hanoi)

2003 faculty member of the International Cooperation Department (ICD), RTI, MOJ Japan

1994 public prosecutor (district offices of Fukuoka, Niigata, Tokyo, Yokohama and Utsunomiya)

OVERVIEW OF THE LECTURE

Lecture by SUDA Hiroshi

The speaker will explain about an overview of Japan's Legal Technical Assistance for developing countries especially in Asian region that has been provided by the Ministry of Justice of Japan, including its history, implementation institutions and scheme, and underlying principles. The explanation includes the role of ICD, the characteristics of Japan's Legal Technical Assistance ("yorisoi-gata-shien") as well as its current activities. Further, the speaker will touch on the challenges that Japan's Legal Technical Assistance faces recently.

Lecture by MORINAGA Taro

The speaker will explain about UNAFEI's organization, mandate and position in the Japanese government and in the UN system as well as its current activities. The explanation includes the characteristics of UNAFEI's activities and the areas which it is focusing on. Further, the speaker will touch upon the current theoretical and practical issues that have to be addressed in the global efforts aimed at improvement of crime prevention and criminal justice, especially in developing countries.

REFERENCE (RECOMMENDED READING LIST)

- [Website of the International Cooperation Department, Ministry of Justice](#)
- [Website of UNAFEI](#)

EFFECTIVE WRITTEN AND ORAL ADVOCACY IN INTERNATIONAL ARBITRATION

Gary B. BORN

Partner

Wilmer Cutler Pickering Hale and Dorr LLP



PROFILE

1988 - Partner, Wilmer Cutler Pickering Hale and Dorr, LLP, London and Berlin

International arbitration both as counsel (more than 675 matters) and arbitrator (co-arbitrator, presiding or sole arbitrator in more than 250 matters), in commercial, investor-state and state-to-state disputes; international litigation in U.S. and European forums.

1984 – 1988 Associate, Wilmer, Cutler & Pickering

1982 – 1983 Law Clerk, William H. Rehnquist, then Associate Justice U.S. Supreme Court

1981 – 1982 Law Clerk, Henry J. Friendly, Circuit Judge U.S. Court of Appeals for the Second Circuit

Juris Doctor, University of Pennsylvania Law School, 1981

Visiting Professor of Law, National University of Singapore; Honorary Professor of Law, University of St. Gallen, Switzerland; Visiting Professor of Law, Tsinghua University School of Law

OVERVIEW OF THE LECTURE

This lecture aims to provide practical advice on advocacy in investor-state arbitrations, with an emphasis on written and oral advocacy. The lecture will first introduce the key procedural steps, players and types of advocacy in a typical investor-state arbitration. It will then discuss specific points on how to practice effective written and oral advocacy in key stages of a case, including: (i) developing your case at the outset; (ii) written statements (both opening and closing submissions); and oral hearings (opening statements, cross-examination and closing statements). For each point, the lecture will draw on concrete examples to illustrate best practices.

REFERENCE (RECOMMENDED READING LIST)

N/A

ISDS AND INTERNATIONAL INVESTMENT LAW

TAMADA Dai

Professor of international law

Graduate School of Law, Kyoto University



PROFILE

2021- Professor, Kyoto University

2014-2021 Professor, Kobe University

2009-2014 Associate Professor, Kobe University

2005-2009 Associate Professor, Okayama University

1998 LL.B. (Kyoto), 2000 M.A. (Kyoto), 2014 Ph.D. (Kyoto), 2022-2023 Visiting Professor, Queen Mary University of London

OVERVIEW OF THE LECTURE

This lecture focuses on investment disputes arising from Russia's invasion of Ukraine (2022), in four categories: i) disputes between Ukrainian investors and Russia arising from Russia's invasion and the annexation of Crimea in 2014 (i.e., Ukrainian investors v. Russia); ii) disputes arising from Russia's measures to prevent foreign investors from withdrawing from Russian business (i.e., foreign investors v. Russia); iii) disputes arising from measures taken by Ukraine against Russian investments (i.e., foreign investors v. Ukraine); and iv) disputes which may arise from the measures of Japan, taken as the financial sanction, to freeze the assets of Russian nationals and organizations (i.e., Russian investors v. Japan). It is necessary to analyze these categories of disputes in light of each applicable BIT and then discuss the relevant legal issues, such as the 'effective control' of territory, the balance between sanction and energy security, and the legal status of the central bank under BIT.

REFERENCE (RECOMMENDED READING LIST)

- Cameron Miles, '[Lawfare in Crimea: treaty, territory, and investor-state dispute settlement](#)', *Arbitration International*, 2022
- Tobias Ackermann and Sebastian Wuschka, '[The Applicability of Investment Treaties in the Context of Russia's Aggression against Ukraine](#)', *ICSID-Review* 2023

DOMESTIC APPLICATION OF WTO AGREEMENT

FUKUNAGA Yuka

Professor, School of Social Sciences,
Waseda University



PROFILE

2011 - Professor, School of Social Sciences, Waseda University,
2002-2010, 2014 Lecturer, capacity building seminars on the World Trade Organization (WTO) law for government officials from the Asia-Pacific Region

Member, International Centre for Settlement of Investment Disputes (ICSID) Panel of Arbitrators;
Member, Japan Association of Arbitrators (JAA); Co-Chair, Japan Chapter, Energy Related Arbitration Practitioners (ENERAP); Co-Secretary, Society of International Economic Law (SIEL); Editorial Board Member, Journal of International Economic Law (JIEL); JIEL Book Review Editor;
-LL.D., Graduate Schools for Law and Politics, University of Tokyo

OVERVIEW OF THE LECTURE

This lecture explores the domestic implementation and application of the World Trade Organization (WTO) agreements. It consists of four parts. The first part gives a brief introduction to the domestic implementation and application of international law in general, with a focus on practice in Japan. The second part explains the basic rules of the WTO agreements and discusses issues involving their implementation and application. It focuses on rules related to trade remedies such as safeguards, anti-dumping, and counter-vailing measures. The third part analyzes some Japanese court cases related to the domestic application of the WTO agreements: Kyoto Necktie Case and Gate Price System for Pork Cases. The fourth and last part puts the subject into perspective and considers its broader implications for the enforcement of international economic rules.

REFERENCE (RECOMMENDED READING LIST)

- Peter Van den Bossche and Denise Prévós, “Essentials of WTO Law” (2nd ed., CUP, 2021)”
- Daniel Bethlehem, Donald McRae, Rodney Neufeld, and Isabelle Van Damme, “The Oxford Handbook of International Trade Law” (2nd ed., OUP, 2023)
- Yuji Iwasawa, “Domestic Application of International Law: Focusing on Direct Applicability” (Brill, 2022)

TREATY MAKING AND DOMESTIC APPLICATION

KATAHIRA Satoshi

Director-General, Economic Affairs Bureau,
Ministry of Foreign Affairs of Japan



PROFILE

2023- Director-General, Economic Affairs Bureau, MOFA

2022-2023 Deputy Assistant Minister, Deputy Director-General, Foreign Policy Bureau and International Legal Affairs Bureau, MOFA

2019-2022 Minister, Embassy of Japan in United Kingdom

2017-2019 Director, Economic Treaties Division, International Legal Affairs Bureau, MOFA

OVERVIEW OF THE LECTURE

The concluding lecture of the Tokyo International Law Seminar focuses on "Treaty Conclusion and Domestic Implementation" in Japan. This lecture will focus on the position of treaties in Japan's legal system, and in particular, how the relationship between treaties and Diet approval should be considered. In this regard, there is a standard called the Ohira Three Principles, which crystallizes the Japanese practice of seeking Diet approval of treaties, and the lecture will delve deeply into these three principles. In the course of the lecture, this lecture will discuss the relationship between amendment of treaties and Diet approval, an issue that is not explicitly addressed by the Ohira Three Principles, and how it should be considered in the Japanese legal system, and what kind of provisions in individual treaties should be considered as delegation to the administration with respect to amendment of treaties.

REFERENCE (RECOMMENDED READING LIST)

- Tadayasu Mori, "The Making and Application of Treaties and Other International Agreements", Discussion Paper at the *Duke-Japan Conference on Comparative Foreign Relations Law* on October 10, 2016
- Masataka Okano, "The Changing Role of Treaties in Foreign Policy" the *Journal of International Law and Diplomacy*, 2020, Vol.119, pp 134-162

JAPAN'S INITIATIVE ON THE RULE OF LAW AMONG NATIONS

GENERAL DEBATE SPEECH AT THE UN GENERAL ASSEMBLY BY PRIME MINISTER KISHIDA

On September 20, 2022, [Prime Minister Kishida stated at the 77th Session of the United Nations General Assembly](#) that Japan is fully committed to the realization of a United Nations that promotes the rule of law in the international community. In his statement, he made the following three points:

- Break away from “rule by force” and pursue “rule of law” through observing international law in good faith;
- Do not allow any attempts to change the status quo of territories and areas by force or coercion; and
- Cooperate with one another against serious violations of the principles of the UN Charter



(Photo: Cabinet Public Affairs Office)

OPEN DEBATE OF THE UN SECURITY COUNCIL ON THE "RULE OF LAW AMONG NATIONS" HOSTED BY FOREIGN MINISTER HAYASHI



On January 12, 2023, [Foreign Minister Hayashi stated at the open debate of the UN Security Council on the theme of “Rule of Law among Nations”](#) that the rule of law among nations is about returning to the unshakable principles that the Member States have built upon since 1945, and called upon all Member States “Uniting for the rule of law.” (See also the [concept note for the open debate](#))

G7 JAPAN 2023 FOREIGN MINISTERS’ MEETING IN KARUIZAWA, NAGANO

G7 Foreign Ministers’ Communiqué

On April 18, 2023, G7 Foreign Ministers met in Karuizawa, Japan, and issued [Communiqué](#) containing the following paragraph relating to the rule of law among nations:

“The prohibition of threats or the use of force against the territorial integrity or political independence of any state, in accordance with the provisions of the UN Charter, constitutes the cornerstone of the post-war international system. Yet, territorial ambition is again driving some states to return to rule by force, so we have redoubled our efforts to uphold peace guided by the rule of law. The prohibition on the acquisition of territory resulting from the threat or use of force, reaffirmed in the Friendly Relations Declaration of 1970, should be observed in good faith. We strongly oppose any unilateral attempts to change the peacefully established status of territories by force or coercion anywhere in the world. In this regard, sending regular or irregular forces to unilaterally annex a territory is prohibited.”

G7 HIROSHIMA SUMMIT

G7 Hiroshima Leaders' Communiqué

On May 20, 2023, [G7 Leaders met in Hiroshima, Japan, and issued Communiqué](#) containing the following paragraphs relating to the rule of law among nations:

“We will champion international principles and shared values by:

- upholding and reinforcing the free and open international order based on the rule of law, respecting the UN Charter to the benefit of countries, large and small;
- strongly opposing any unilateral attempts to change the peacefully established status of territories by force or coercion anywhere in the world and reaffirming that the acquisition of territory by force is prohibited;”

G7 Hiroshima Summit Session 9 "Toward a Peaceful, Stable and Prosperous World"



(Photo: Cabinet Public Affairs Office)

On May 21, 2023, the G7 Hiroshima Summit Session 9 “Toward a Peaceful, Stable and Prosperous World” was held. The G7 leaders along with the leaders of 8 invited countries and Ukraine’s President Volodymyr Zelenskyy, who attended as a guest, discussed how to respond to the challenges to peace and stability that the international society is facing.

The leaders had a discussion on various challenges to peace and stability that the international society is facing, including in the Indo-Pacific and Africa, and shared the recognition that the following points are important:

- “All countries should adhere to the principles of the United Nations (UN) Charter, including respect for sovereignty and territorial integrity.
- Confrontation should be resolved peacefully through dialogue, and we support a just and durable peace that is based on respect for international law and the principles of the UN Charter.
- Any unilateral attempt to change the status quo by force is unacceptable anywhere in the world.
- We strive to uphold the free and open international order based on the rule of law.”

[Note] 8 invited countries are Australia, Brazil, Comoros (African Union Chair), Cook Island (Pacific Islands Forum (PIF) Chair), India (G20 Presidency), Indonesia (ASEAN Chair), Republic of Korea and Vietnam.

FRIENDLY RELATIONS DECLARATION

“The rule of law among nations” is a term used in the preamble of the Friendly Relations Declaration (GA res 2625 (XXV) “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,” 1970). Some of the relevant parts of the Declaration are as follows:

“The General Assembly,

Reaffirming in the terms of the Charter of the United Nations that the maintenance of international peace and security and the development of friendly relations and co-operation between nations are among the fundamental purposes of the United Nations,(...)

Bearing in mind also **the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations, (...)**

Considering that **the faithful observance of the principles of international law concerning friendly relations and co-operation among States and the fulfillment in good faith of the obligations assumed by States, in accordance with the Charter, is of the greatest importance for the maintenance of international peace and security** and for the implementation of the other purposes of the United Nations, (...)

1. Solemnly proclaims the following principles:

The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. **Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues. (...)**

Every State has **the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States. (...)**

The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. **The territory of a State shall not be the object of**

acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal. (...)

The duty of States to co-operate with one another in accordance with the Charter

States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order **to maintain international peace and security** and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences.

To this end:

a. **States shall co-operate with other States in the maintenance of international peace and security;**
(...)

The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter,

Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter of the United Nations.

Every State has the duty to fulfil in good faith its obligations under the generally recognized principles and rules of international law.

Every State has the duty to fulfil in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law. (...)"



外務省

Ministry of Foreign Affairs of Japan