

## E

## EFFORTS TOWARD INTERNATIONAL RULE-MAKING

**(a) Overview**

In the current international community, countries are constantly engaged in international rule-making in various areas which affect the lives of ordinary people such as politics and security, economy, human rights and environment. Japan is making efforts to reflect its own ideals and views, when formulating international rules by actively participating in the rule-making process from its initial stage. The aim of these efforts is to create an international legal order which contributes to Japan's national interest; in other words, to securing the safety and prosperity of Japan and its people. In addition, Japan intends to become a party to such international rules without delay, securing its people's understanding so as to facilitate activities by Japan and its citizens in the international community. It is of great significance for Japan to implement properly international agreements it has concluded, since it maintains the continuity and consistency of Japan's diplomacy, thus raising the confidence in Japan's diplomacy.

International law can be divided into two categories: customary international law (unwritten law), which can be viewed as the basic legal principles of the international community, and conventions, which are concluded by various countries. The codification (institutionalization) of customary international law is also being carried out. It is important for Japan to be actively involved in the formation of international law through efforts including the participation in such codification work, which serves to strengthen the foundation of international legal order, not only to reflect Japan's ideas in such a legal framework but also to strengthen the rule of law in the international community. Moreover, Japan is playing an active role in international judicial bodies such as the International Court of Justice (ICJ) and various kinds of international conferences concerning international law with a view to the peaceful settlement of international disputes and the establishment of international legal order that will benefit Japan's national interest.

**(b) Japan's Effort****Creating a Basic Framework of Japanese Diplomacy and Security**

With regard to the preparation of legislation for responding to emergency situations of Japan, the Japanese Government, under the Koizumi Cabinet's policy of "be prepared and have no regrets," submitted the Bill concerning Responses to Armed Attack to the ordinary session of the Diet in 2002. In addition, the Ministry of Foreign Affairs is making constant effort for the smooth and effective implementation of the Japan-US Security Treaty in order to ensure Japan's security. The Foreign Ministry will also advance the necessary examinations toward the conclusion of the first and second additional protocols to the Geneva Conventions of 12 August 1949, which are the international humanitarian laws relating to the protection of prisoners of war and civilians in armed conflict.

It is important to maintain the stable environment surrounding Japan from the viewpoint of security. Japan, therefore, continues to address post-World War II issues that remain unresolved, such as the normalization of relations between Japan and North Korea and the conclusion of a Japan-Russia peace treaty.

In addition, after the terrorist attacks on September 11, 2001, in the United States (US), the fight against terrorism continues to be a serious issue for the international community in 2002. Hence, Japan is striving to create an international framework for preventing and eradicating terrorism. Japan is involved not only in negotiations of the Comprehensive Convention on International Terrorism and the Convention for the Suppression of Acts of Nuclear Terrorism, which have been discussed from before, but also in negotiations of amendments of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation as well as the Convention on the Physical Protection of Nuclear Material, which have nearly started. Furthermore, Japan concluded the International Convention for the Suppression of the Financing of Terrorism in June, thereby having concluded all 12 counter-terrorism conventions.

### Creating a Framework for Maintaining and Expanding Free Trade

Full-scale negotiations of the World Trade Organization (WTO) New Round began in January 2002. As vigorous discussions were being held in various areas, Japan, whose economy depends greatly on trade and investment, played an active role in leading the discussions in areas such as anti-dumping. Furthermore, in light of the fact that there has been rapid progress in the establishment of free trade agreements (FTAs) around the world, Japan concluded an economic partnership agreement (EPA) with Singapore in November 2002, which represented the first FTA for Japan from the perspective of actively advancing the strength of economic partnerships. Japan also began EPA negotiations with Mexico the same month, and progress was made in considerations for building economic partnerships between East Asian countries as well as the East Asian region.

### Participating in International Rule-Making in Areas Where a Global Response Is Necessary

Due to the advancement of globalization as well as science and technology, creating a legal framework to resolve international issues has become of vital importance in various areas beyond politics, security as well as the economy. Facing such developments, Japan is actively participating in efforts toward this end. In particular, in the area of the environment, Japan continues to urge the early entry into force of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) that was adopted at the Third Meeting of the Conference of Parties to the UNFCCC held in Japan in 1997, and which Japan concluded in June 2002. Such effort constitutes a pillar of Japan's initiative in the field of climate change for establishing a series of common rules in which all countries participate, including the US and developing countries. Concerning

#### Topic

### Various Topics of International Law

#### Customary International Law

Laws are usually associated with documents, but in the context of international law, "customary international law," which represents laws that have not been put into statutory form, holds an important position. In the international community, there are no legislative bodies such as national assemblies, so the binding power of international law depends on the agreement of states. Yet, for certain actions, when international customs (general customs, *consuetudo*) are recognized as obligatory or legitimate by many countries (legal conviction, *opinio juris*), customary international law is established and binds all states in the international community.

#### Official Relations

People often say, "Japan does not have 'official relations' with North Korea," but this does not mean that "official relations" is a concept established under international law. When the term "official relations" is used, it appears that in most cases it is referring to diplomatic relations between two countries (formal relationships between the governments that officially represent the state). As of January 2003, of the 190 United Nations member states other than Japan, Japan has diplomatic relations with 188 countries, excluding North Korea and Monaco. In addition, there is an act called the "recognition of states" which means recognizing an entity as a state. This is an act separate from the establishment of diplomatic relations. Since diplomatic relations cannot be established between entities other than states, an entity is recognized as a state before or at the same time as the establishment of diplomatic relations. In this connection, Japan does not recognize North Korea as a state.

#### Inviolability of Premises

It has been asked, "Are the overseas establishments of the Ministry of Foreign Affairs extraterritorial?" Extraterritoriality, however, is a concept based on an old way of thinking, which is that for a state the places where its diplomatic missions are located are considered an extension of its territory and are outside the jurisdiction of host countries. Today, however, the territorial rights of host countries extend even to the overseas establishments of sending countries, and so-called extraterritoriality does not apply. Therefore, in recognizing the "inviolability of premises" under the "Vienna Convention on Diplomatic Relations" and other international laws, the correct understanding is that the executive jurisdiction such as the exercise of police authority by host countries cannot be extended in the overseas establishments of sending countries.

the protection of intellectual property rights, Japan is making progress in its participation in international framework. For example, Japan concluded the WIPO Performances and Phonograms Treaty, which aims toward improving the protection of copyright-related rights. In the area of culture, Japan was not able to conclude for a long time the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which establishes a response to illegal cultural property transactions, due to the lack of a relevant domestic legal system. As a result of the establishment of necessary domestic laws, however, it was concluded in September 2002.

### Creating a Framework that Can Respond to a Globalized Society

As the number of Japanese people and companies active in the international community has increased significantly, Japan is making efforts for establishing an international legal framework with a view to protecting and promoting the interests of Japanese citizens living abroad as well as Japanese companies. In February 2003, Japan concluded the Convention on the Transfer of Sentenced Persons, with the purpose of facilitating correction, rehabilitation and reintegration into society of Japanese persons sentenced abroad as well as foreign persons sentenced in Japan. In addition, Japan concluded the Extradition Treaty and the Investment Agreement with the Republic of Korea (ROK) in June 2002 and January 2003, respectively.

Furthermore, due to an increase in international commercial transactions and other developments, work is undertaken in various international fora to establish unified rules in the area of international private law. For example, the Convention on International Interests in Mobile Equipment was adopted at the International Institute for the Unification of Private Law (UNIDROIT) in November 2001, the United Nations Convention on the Assignment of Receivables in International Trade was adopted at the United Nations Commission on International Trade Law (UNCITRAL) in December 2001. Japan had actively participated in the deliberations from the draft creation stage and is contributing to the establishment of these treaties.

### Codifying and Interpreting International Law

Japan is actively contributing to the progressive development and codification of international law in the United Nations (UN). As a result of international codification

work, conventions to date, including the Vienna Convention on the Law of Treaties, the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations have been adopted, and progress is also made in codification of such areas as state responsibility. In the field of international private law, Japan has contributed to the work of adopting conventions and model laws in meetings of UNCITRAL and other organizations.

International law is a legal system with dynamic nature that is steadily developing. Thus, in interpreting international law, a strategy must be designed through an accurate comprehension of the latest trend in respective areas of international law. It is also required to be a step ahead in foreseeing any new developments. Being mindful of such challenges, the Japanese Government has been engaged in a broad exchange of views with Japanese scholars on aspects of international law on recent issues such as humanitarian law, suspicious vessels operating around Japan and the abduction of Japanese citizens so as to be able to become more responsive in its legal analysis.

### Promoting the Peaceful Settlement of International Disputes

In order to maintain the peace and stability of the international community, it is necessary to strengthen the rule of law and promote the peaceful settlement of international disputes. Japan is contributing to the strengthening of the rule of law through personnel contributions to various international courts, including Judge Shigeru Oda of the ICJ, Judge Soji Yamamoto of the International Tribunal for the Law of the Sea (ITLOS) and Ad Litem Judge Chikako Taya of the International Criminal Tribunal for the former Yugoslavia (ICTY). In addition, candidate Hisashi Owada was voted into office in the election of ICJ judges held in October 2002, and will serve nine years beginning in February 2003.

Furthermore, Japan has consistently supported the establishment of the International Criminal Court (ICC) from the viewpoint that it will help prevent the occurrence of the most serious crimes in the international community thus contributing to the promotion of peace and stability in the international community. The ICC Statute entered into force on July 1, 2002 and Japan, with a view to concluding the Statute, is diligently advancing its work concerning the relation and consistency between the Statute and its national laws.