After this decision the appellant reportedly went to South Korea.

b. Private International Law

A claim for compensation between foreign juridical persons and Japan's jurisdiction.

Decision by the Thirty-First Civil Division of the Tokyo District Court on Feb. 15, 1984. Case No. (*wa*) 5812 of 1981. A case demanding compensation. 525 *Hanrei Taimuzu* 132.

[Reference: The Code of Civil Procedure §§4, 5 and 15.]

[Facts]

The plaintiffs X, a juridical person under the law of Panama, had its registered place of business in Japan. X brought an action demanding ¥1,500,000,000 in compensation from Y, a Californian corporation, on the ground that Y had unduly arrested X's ship in the port of San Meteo, California, in April 1980. X insisted that the Court should have jurisdiction in the present case in accordance with the Code of Civil Procedure §§4 (3), 5 and 15 (1).

[Opinions of the Court]

Action dismissed.

(1) Although it was not contended that the plaintiffs had their registered place of business in Japan, the Court would not be able to infer that the defendants are within its jurisdiction only by reason of the fact that the plaintiffs have their place of business in Japan.

(2) Claims based on the same grounds as those of the present case are being litigated in California. It is clear that California is an appropriate forum not only for the defendants but also for the plaintiffs because of greater convenience in collecting evi-

dence and other procedural matters. Moreover, if the Court assumed jurisdiction in the present case, there would occur the risk of rendering a judgment which might be in conflict with that of the Californian court and the cumulation of actions would become a very heavy burden for the defendants. Therefore, in light of such basic ideas of our jurisdiction as being equitable among the parties concerned and the need for adequacy and promptness of a trial, the Court cannot assume jurisdiction solely on the ground that the defendants have their place of business in Japan.

(3) According to Article 484 of the Civil Code, the place of performance of obligations arising from an unlawful act is regarded as the place where the creditor resides. Thus it is arguable that Japanese courts should have competence in the present case because the creditor resided in Japan and the test of the place of performance as laid down in that provision was satisfied.

Notwithstanding, with regard to the kind of case involved, the Court should reject jurisdiction as a *forum loci solutionis* (the court in the place of performance). Where an action is founded on a tort, the Code of Civil Procedure specifically allows the *forum delicti* (the court in the place where an illegal act is committed) to assume jurisdiction. If the defendants were, in an international case, sued at a place other than the *locus delicti commissi*, the result would conflict with their interests as they would be sued in a forum which is not easily predictable.

Moreover, even if Japanese courts decline to exercise jurisdiction as a *forum loci solutionis*, there will be no serious disadvantage for the plaintiffs in this case.

(4) It is reasonable to allow the *forum delicti* to assume jurisdiction because of better access to evidence, the availability of the court to the victim, the fact that the wrongdoer has a reasonable chance to predict the amount of damages and the fact that the public policy is enhanced. However, the place in which the effects of the wrongful act are felt is not an appropriate place for this case. This is because the defendants could not have foreseen with certainty that the suit would take place there. Further-

more, the Court does not find it necessary to accept jurisdiction in order to protect the interests of the victims. Nor is Japan found to be the place where the parties have easy access to the evidence on the alleged wrongful act.

[Comment]

This case involves: a) the problem of international jurisdiction — whether our courts assume jurisdiction over a case when foreign elements are involved; and b) the problem of concurrent litigations (*lis alibi pendens*) in international civil procedure — how we should treat a case in which the plaintiff takes proceedings in another country against the same defendant for the same subject-matter and arising out of the same cause of action. These problems are discussed below.

a) The problem of international jurisdiction

In a previous case, the Supreme Court decided to accept international jurisdiction based on the existence of an office within the jurisdiction (Malaysian Airlines case, decision by the Supreme Court on Oct. 16, 1981). But that decision was severely criticized and many differing views were aired in relation to the case. According to one commentator, jurisdiction should be assumed only when the action concerns the business of the office within the jurisdiction (Sueo Ikehara, International Jurisdiction, New Lecture Series of Law of Civil Procedure (1982), vol. 7, p. 23). Another commentator points out that jurisdiction can be assumed when the action has a substantial connection with the forum, even if it doesn't concern the business of the office (Kazunori Ishiguro, Modern Conflict of Laws in Japan (1986), vol. 1, p. 312).

The decision in the present case was that the Japanese court did not have jurisdiction. The Court did not use so simple a test as the court in the Malaysian Airlines case had done, but considered the possibility of concurrent litigation. The decision, considering tests other than that of the business of the office, showed a synthetic approach and, therefore, may be understood to be

close to the view of the latter commentator (ibid. 630). In addition the Court denied independent jurisdiction at the place of performance which was not *locus delicti*. Moreover the Court's decision stood on the premise that the place where the effects of the wrongful act were felt could be recognized as the *locus delicti*, and held that the effects of this case were in California. It is submitted that these two findings may be readily accepted as correct (Makoto Hiratsuka, 838 *Jurisuto* 289).

b) The problem of concurrent litigation in international civil procedure

In our country it is generally accepted that we should not adjudicate on a matter which is pending in a foreign court. In other words, we should recognize a pending suit in a foreign court. The problem then arises as to how we should decide whether a matter is actually pending in a foreign court. According to a predominant opinion, we can rely on the test of the possibility of our recognition of a future foreign judgment (Takao Sawaki, Concurrent Litigations in International Civil Procedure, New Lecture Series of Law of Civil Procedure (1982), vol. 7, p. 116ff.). However, it is difficult to make predictions about the possibility of our recognizing foreign judgments which have not yet been handed down. In addition, such an approach encourages so-called forum shopping, it is submitted. Thus, one commentator suggests that we should consider international concurrent litigations as a factor when we judge whether there is jurisdiction to hear an action (Makoto Hiratsuka, op. cit. 289). In this regard the decision "reduces the problem of international concurrent litigations to one of jurisdiction and the interests of the parties when the action would be brought before Japanese courts, and puts the problem in the proper perspective." (Kazunori Ishiguro, op. cit. 628-31). With respect, the current decision should be of value for reference.

By Prof. TOKUSHIRO OHATA
JUNICHI ETO