8. International Law

1. A case in which it was held that Japanese fishing laws and regulations are applicable to fishing operations conducted in the vicinity of the Northern Territories by Japanese nationals under the pretense of a Japanese-Soviet joint venture.

Judgment by the Third Criminal Division of the Sapporo High Court on April 16, 1992. Case No.57 (*u*) of 1992. A case concerning a violation of the Hokkaido Ocean Fishing Regulations. 801 *Hanrei Taimuzu* 251.

[Reference: Fishery Act, Article 65 (1); Marine Resources Conservation Act, Article 4 (1); Hokkaido Ocean Fishing Regulations (prior to amendment by the 1991 Hokkaido Rule No. 13), Articles 5 (xv), 55 (1) (i), and 57.]

[Facts]

The facts and decision of the first instance are reported in volume 12 of this *Bulletin* (pp. 93–102, 1991). The main points are briefly restated here.

Defendant X is the president of A Corp., a company engaged in fishing and seafood processing and sales. In June, 1989, A Corp. established a Japanese-Soviet Union joint venture (B Corp.) with a Soviet public corporation. B Corp. is a Soviet company.

In October and November 1989, the captain and crew of a fishing vessel chartered by A Corp. from another company engaged in basket-fishing for crabs in the vicinity of Shikotan Island (one of the islands of the so-called Northern Territories) with permission of the Soviet Fisheries Ministry, but without permission of the Governor of Hokkaido, which is required under the Hokkaido Ocean Fishery Regulations (hereinafter cited as 'Fishery Regulations'). The defendant was accused of having violated the Fishery Regulations.

In the first trial, decided by the Kushiro District Court, the defendant made the following assertions: The fishing operations in question were conducted by B Corp., a Soviet legal entity, under a contract

with A Corp., based on permission granted by the Soviet Fisheries Ministry, and were not the operations of A Corp. Since, under the legal system of Japan, the Fishery Regulations do not apply to B Corp., a Soviet legal entity, there is no basis for the defendant to be accused of having violated the Regulations, and therefore he is innocent. The Kushiro District Court denied these assertions; it held that since the fishing operations in question were actually conducted by A. Corp. itself as A Corp's operations, the defendant violated Article 5, (xv) and Article 55 (1) of the Fishery Regulations. The defendant was sentenced to five months imprisonment with a five-year stay of execution. (See also 35 *Japanese Annual of International Law* (1992), 158 ff.)

The defendant made a *kōso* appeal based on the following assertions; (1) at the trial, the court made an error in fact-finding as the fishing operations in question were not conducted by A Corp. but B. Corp.; (2) even if the operations were conducted by A Corp., the court made an error in fact-finding as the defendant considered that permission of the Governor of Hokkaido for conducting the fishing operations was not required because permission was given by the Soviet Fisheries Ministry and did not recognize the wrongfulness in conducting the operations; and (3) the application of the Fishery Regulations in the original decision was an error in applying the law because the area in which the fishing operations were conducted is governed by the Soviet Union and is actually beyond the Japanese jurisdiction.

[Opinions of the Court]

Kōso appeal dismissed.

Concerning assertion (1), the evidence available "is sufficient to find that the fishing operations in question were conducted by A. Corp. itself. It was correct, therefore, for the District Court to find the author of the operations to be A Corp., and the error in fact-finding claimed by the defendant does not exist."

Concerning assertion (2), "considering various circumstances, it can be assumed that the defendant recognized correctly that the author of the operations was A Corp. and also recognized that it was

prohibited by Japanese fishing laws and regulations to conduct the operations in question without permission. The defendant recognized wrongfulness."

Concerning assertion (3), the Territorial Sea Act 1977 has no special provisions concerning the waters of the Northern Territories, so "it is acknowledged that Japan considers the four northern islands to be its own territory and waters within 12 miles of them to be its own territorial sea." For the purposes of the Provisional Measures on Fishing Zones Act 1977, there are no special provisions concerning the four northern islands, so "it is acknowledged that Japan considers the seas in the vicinity of the islands to be its own fishing zone, the base line of which is the coast of the islands." Therefore, "it is clear that the area in which the fishing operations in question were conducted is within the area over which, under the administrative authority of Japan, including fisheries administration, Japan may exercise legal regulation of fisheries."

Japan does not in fact exercise jurisdiction over the four northern islands at the present time, but, "as mentioned above, the area in which the operations in question were conducted is within the area provided as Japanese territorial sea or fishing zone under the Japanese legal system, and, in connection with Japanese nationals, belongs to the area over which Japan may exercise its fisheries control." It can be understood, therefore, that Article 5 (xv) of the Fishery Regulations prohibits Japanese nationals from conducting basket-fishing for crabs in those areas, and that persons who violate this prohibition can be punished under Article 55 (1) of the Regulations.

Moreover, even if the area in question is considered to be one similar to the territorial sea or economic zone of a foreign state from the fact that the area is factually beyond Japanese legal control, the aforesaid conclusion would be unchanged since the area is within the area where Article 5 (xv) of the Fishery Regulations applies to Japanese nationals under the personal jurisdiction of Japan.

The permission issued by the Soviet Fisheries Ministry was, in respect of its basis and purposes, different from the permission required by Article 5 (xv) of the Fishery Regulations, and "such permission issued by a foreign authority of different basis from

that issued by a Japanese authority does not naturally exclude personal application of the Regulations to Japanese nationals, and it can not justify the non-permission operations in question."

For the reasons mentioned above it was right for the lower court to apply Article 5 (xv) and Article 55 (1)(i) (and Article 57) to the basket-fishing for crabs in question. It follows that "there is no such error in the application of law as the defendant asserts."

[Comment]

1. The point of contention in this case

The point of contention in this case is, as mentioned in this *Bulletin* vol. 12, at 95, whether the Hokkaido Fishery Regulations are applicable to the fishing operations in question, conducted in the vicinity of the Northern Territories. Current Japanese law should not regulate, whether territorially or personally, fishing operations in the area conducted by foreign nationals, however the legal status of the Northern Territories may be constituted (Article 2 (1) of the Act on Regulation of Foreign Fishing 1967, and Article 1 of its Enforcement Rule). This is why both courts in first instance and this *kōso* appeal allowed space to solve the problem whether the author of the operations in question was A. corp., a Japanese legal entity, or not.

The issue is, supposing that the author was A. Corp., whether Japanese fishing laws and regulations are applicable to the fishing operations conducted by A. Corp. in the vicinity of the Northern Territories, territorially and/or personally. In this *kōso* appeal the court affirmed not only personal application but also territorial application.

2. The problem of legal attribution of the Northern Territories and precedents of Japanese courts

It can be said that it is established in judicial decisions that Japanese fishing laws and regulations are *personally* applicable to fishing operations in the vicinity of the Northern Territories (see this *Bulletin* vol.12, at 95). The original decision in this case seems to follow the precedents. As to *territorial* applicability, however, in the past the courts avoided making a determination, for it relates to the

problem of the attribution of the Northern Territories. It sufficed to say that the fishing laws and regulations were personally applicable and there was no need for the courts to consider the issue of territorial applicability. In other words, as to the problem of legal attribution of the Northern Territories, the courts did not express their opinion.

In this *kōso* appeal the court, on the contrary, made its opinion clear; it is clear that the court considered the Northern Territories and waters in their vicinity to be Japanese territory, territorial sea and fishing zone, since the court held that "it is acknowledged that Japan considers the four northern islands to be its own territory and waters within 12 miles of them to be its own territorial sea," and also held that "the sovereignty or fisheries jurisdiction over the vicinity of the four northern islands" and "the area in which the operations in question were conducted is within the area which is recognized to be Japanese territorial sea or fishing zone under the Japanese legal system." That is to say, the court expressed its opinion that the fishing laws and regulations are applicable under the territorial jurisdiction of Japan (only to Japanese nationals; see the Act on Regulation of Foreign Fishing 1967). This opinion has attracted a great deal of attention as it is much more encompassing than any other decision in the past.

3. The issue of the Northern Territories

There is little space to argue in detail the issue of the Northern Territories and to which state the territories should be attributed; the circumstances between Japan and the Soviet Union (Russian Federation) concerning the territories, are briefly explained below.

The Japanese Government asserts that the Northern Territories are inherent territory to Japan. The main international documents concerning this issue are the 1855 Japan-Russia Treaty on Commerce, Navigation and Delimitation, the 1875 Treaty of Exchange of the Island of Sakhaline for the Kurile Islands, the 1945 Potsdam Declaration, the 1951 Peace Treaty, and the 1956 Japan-Soviet Joint Declaration, upon which the Japanese Government bases its assertion. While this issue is one of the most important diplomatic issues for Japan following the Second World War, the Soviet Government,

at first, denied the existence of the issue. In clause 9 of the 1956 Japan-Soviet Joint Declaration the Soviet Union recognized formally the existence of the issue (as to the Habomai Islands and the island of Shikotan only), but later, resisting the conclusion of the 1960 Japan-U.S. Security Treaty, the Soviet Government changed its attitude and asserted that the issue of the territories had been already solved. The Japan-Soviet Joint Statement of April, 1991 mentioned the names of the four islands of Northern Territories, and Tokyo Declaration of October, 1993, made on the occasion of President Yeltsin of Russia visiting Japan, clearly stated the names of the four islands, and declared that this issue is to be solved based on law and justice. At the present time the issue of the Northern Territories is still unsolved.

4. The problem of the decision in this *kōso* appeal

In this *kōso* appeal the court made a determination different from the decisions of the Supreme Court in the past, which treated fishing operations in the vicinity of the Northern Territories as offences outside Japan. Though it is in conformity with the official opinion of the Japanese Government, the decision in this *kōso* appeal contains some problems. First, in this decision the court considered that fishing laws and regulations are applicable under Japanese territorial jurisdiction, but when considering that the courts in the past avoided a determination of territorial applicability, the decision in this case seems to be somewhat abrupt. As the court said, the laws and regulations could be applicable under Japanese personal jurisdiction and the issue in this case could have been solved without arguing the problem of territorial applicability. Second, now that the court found positively the Northern Territories to be Japanese territory, it should have shown, as a judicial organ, the legal basis of that finding. While in this *kōso* appeal the court examined, on the premise that the Northern Territories are Japanese territory, whether the fishing operations in question fell under the exceptional case of non-application of the relevant laws and regulations, it did not show the international legal basis for considering the Northern Territories to be Japanese territory. The court should at least interpret the Peace Treaty and

Japan-Soviet Joint Declaration (see Ko Nakamura, "Case Note", 1024 *Jurisuto* (1993), 278, at 280).

Prof. TOKUSHIRO OHATA
AKIRA SAKOTA

2. A case concerning claims for war compensation by Taiwanese nationals who were soldiers or civilian components of the Japanese Imperial Army and Navy.

Decision by the Third Petty Bench of the Supreme Court on April 28, 1992. Case No. 1427 (*o*) of 1982. 1422 *Hanrei Jihō* 91, 787 *Hanrei Taimuzu* 58.

[Facts]

Taiwan came under Japanese rule as a result of the Sino-Japanese War (1894–95) and remained so until 1945. In 1938, the year following the outbreak of war between Japan and China, many Taiwanese, who were considered Japanese subjects, were pressed into military service as civilian laborers and sent to mainland China. Following the outbreak of full-scale war numerous Taiwanese were sent to front line area to work for the military as farmers, engineers, interpreters, and prisoner-of-war camp guards. On April 1, 1942 a special army enlistment system was implemented, and a special navy enlistment system was implemented on July 1, 1943. Furthermore, the Military Service Act came into force in Taiwan on September 1, 1944. As a result, a total of 208,183 Taiwanese served the Japanese military, 80,433 as soldiers, and the others 127,750 as civilian components; by the end of the war more than 30,000 of them were killed.

The Imperial Japanese government had planned to pay compensation to those injured and the families of those killed in battle under the Veterans' Pension Law, the Employee Aid Decree, and the Lower Employee Aid Decree, but following Japan's defeat this compensation system collapsed. In 1946 the Veterans' Pension Law was amended, and payments to veterans, civilian components, and their families were suspended. In 1951 the Employee Aid Decree and the Lower Employee Aid Decree were repealed. In their place the Law