

Chapter 11

The Internationalisation of Dispute Resolution in Japan

*Masato Dogauchi**

I. INTRODUCTION

This chapter primarily intends to identify the facts about the internationalisation of Japanese law and practice in the field of litigation and arbitration. The recent rapid 'kokusaika' (internationalisation) of Japan in nearly all aspects is generally recognised, and the field of dispute resolution is no exception. Every Japanese lawyer feels that Japanese individuals and companies are involved increasingly in litigation and arbitration in foreign countries and that litigation and arbitration in Japan also involve more foreign individuals and companies than before.

One of the reasons for the amendment of the Code of Civil Procedure, presently underway, is the international-

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Japanese language versions of this paper are found in *Kokusaishojihomu*, Vol. 20, No. 4, p. 355 (1992), the title of which is 'Soshō Chusai wo tujite mita Nippon no Kokusaika'.

isation of civil disputes.¹ However, nobody knows how much Japanese practice is internationalised in comparison with other countries—nor is it known how the degree of such internationalisation has changed historically.

Generally speaking, it is very difficult to describe the real situation in the social sciences. In the field of dispute resolution, it is not an easy task to identify the amount of litigation and arbitration. The information used in this chapter results from an elementary survey of the situation. Needless to say, the information and data are not 'scientific' from a statistical point of view. With regard to litigation, one of the reasons for this shortfall is that there is no scientific basis for the selection of cases for publication. Cases that are relatively unusual and involve new points of law tend to be selected and therefore, the published cases do not necessarily represent the real situation as regards litigation as a whole.

Nevertheless, it may be worthwhile to produce tables in order to test the author's impression regarding the internationalisation of dispute resolution in Japan involving Japanese parties abroad. Such information and data may be limited and unscientific, but they do offer a starting point.

Data which seems to demonstrate the internationalisation of dispute resolution in Japan is produced in the next section. This indicates historical changes in the total number of cases involving different jurisdictions, foreign parties in cases held in Japanese courts and international commercial arbitrations in Japan. Japanese participation in contentious cases in foreign countries will be discussed in the third section. This section covers Japanese parties in litigation in the United States courts and data on Japanese parties in ICC arbitration.

¹ See, Ministry of Justice (Civil Law Bureau), *Explanatory Note on the Issues Concerning Civil Procedure*, Tokyo, 1991, p. 70. It says 'With the advance of international trade and international intercourse, international disputes have rapidly increased in Japanese courts, and this trend is considered to develop in the future'.

II. THE INTERNATIONALISATION OF DISPUTE RESOLUTION IN JAPAN

A. Volume of International Litigation in Japan

Professor Sueo Ikehara wrote in 1967 that, although only some French and other European court cases were mentioned in the lectures on private international law before World War II, the situation had changed dramatically because international litigations had come before the Japanese courts after 1945.² Such a conclusion seems to be shared by nearly all other Japanese private international lawyers; they also seem to think that the speed of growth has been accelerating. However, are such impressions a true reflection of reality?

Table 11.1 and Figure 11.1 below are based on the index of the *Hanrei Taikei: Kokusaishiho*, which is a compilation containing almost all private international law cases reported in Japan.

It is clear that during the 1950s the number of cases increased remarkably, but since the end of that decade the number of cases has been declining. Recent average figures indicate 30 cases per year. In any event, notwithstanding the imperfect sources, it is not true that the number of international conflicts reaching the courts has been increasing rapidly.

B. Foreign Parties in Litigation in Japanese Courts

How frequently are foreign parties involved in litigation in Japan and what countries are they from? It is difficult to

² Ikehara, S. *Shogai-Hanrei Hyakusen (100 Selected Cases in Private International Law)*, Tokyo 1967, p. 6. The same observation is found in the Forewords in *Hanrei Taikei: Kokusaishiho (Systematized Compilation of Cases, Private International Law)*, (looseleaf), 1965, edited by Professor Hidefumi Egawa.

Table 11.1: Number of private international law cases in Japanese courts from 1891–1990. (Source: Hanrei Taikei: Kokusaishihō, February 1992).

1891–95	0
1886–1890	2
1901–5	23
1906–10	54
1911–15	9
1916–20	37
1921–25	13
1926–30	26
1931–35	22
1936–40	20
1941–45	2
1946–50	27
1951–55	131
1956–60	245
1961–65	194
1966–70	187
1971–75	146
1976–80	133
1981–85	114
1986–90	94
Total	1479

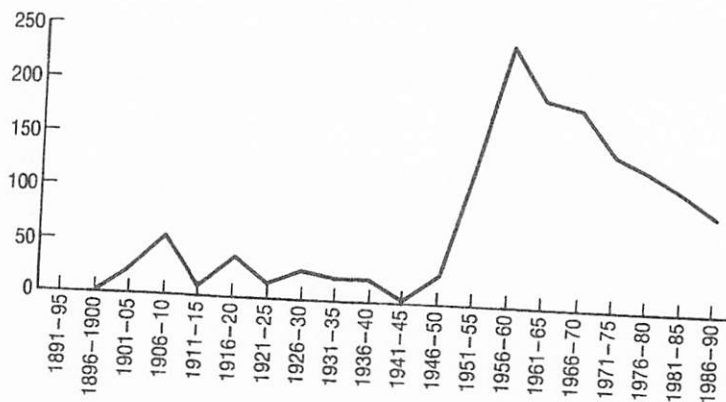


Figure 11.1. Number of private international law cases in Japanese courts from 1891 to 1990. Source: Hanrei Taikei: Kokusaishihō, February 1992.

define this 'involvement'. Table 11.2 and Figure 11.2 are based on a word-search carried out against judgments filed in the database of Japanese judgments. This database includes both civil and criminal cases.³ The words used in the search were 'United States' or 'America', 'England' or 'English', 'German' or 'Germany', and 'Korea' or 'Korean'. The search, therefore, includes not only those cases where the parties were foreign, but also where the cases arose from disputes involving, for example, torts committed in those countries even if both parties were Japanese. If the designated words were not mentioned in the text of a judgment where, in fact, one of the parties was a foreign national, such a case is neglected here.

The most frequent country mentioned was the United States (as expected). But, considering more than 700,000 Korean nationals live in Japan, the number of occasions where the word 'Korea' or 'Korean' was found is unexpectedly low. The results are therefore subject to considerable qualification.

C. International Commercial Arbitrations in Japan

It is generally believed that the numbers of international commercial arbitrations held in Japan have been increasing with the expansion of Japanese business activity. For example, in *Mitsubishi Motor Corp. v. Soler Chrysler-Plymouth, Inc.* of 1985,⁴ which is a celebrated US case acknowledging the arbitrability of antitrust claims, the arbitration was to be held in Tokyo under the auspices of the Japan Commercial Arbitration Association, which is one of the two major arbitral institutions in Japan. Also, the arbitration between the *Nissan Motor Company v. Nissan UK*, the former dealer for Nissan cars in England, was held in Japan.⁵ In addition, the Japan Shipping Exchange, which is another arbitral

³ The database used here is LEX/DB of TKC, which include 88,700 cases from 1947 through the present. The search was done on 30 October 1991.

⁴ 473 US 614 (1985).

⁵ *Japan Economic Journal (Nikkei)*, 21 May, 1991.

Table 11.2. Number of Japanese cases mentioning United States or America, England or English, German or Germany, and Korea or Korean from 1946-1990. Source: Database: LEX/DB of T.K.C., Japan, 30 October, 1991.

	United States or America	England or English	German or Germany	Korea or Korean
1946-50	39	10	1	3
1951-55	180	24	14	29
1956-60	306	32	33	83
1961-65	247	38	46	74
1966-70	209	51	70	110
1971-75	223	43	71	104
1976-80	206	57	69	173
1981-85	301	78	108	161
1986-90	310	94	108	143

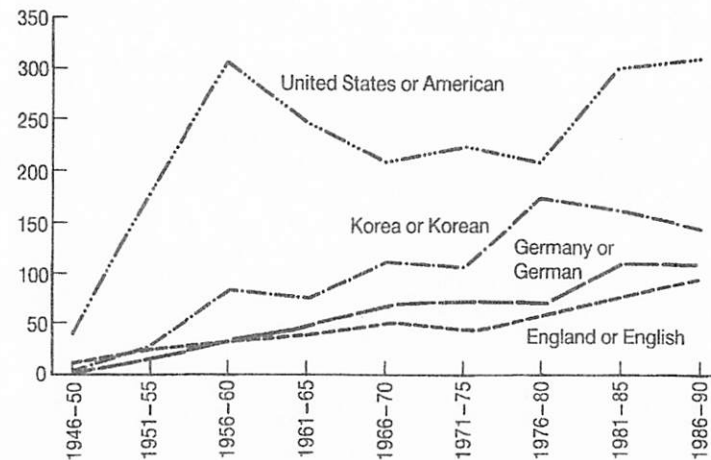


Figure 11.2: Number of Japanese cases mentioning United States or American, England or English, German or Germany and Korea or Korean from 1946-1990. Source: Database: LEX/DB of T.K.C., Japan, 30 October 1991.

institution, also frequently appears in the field of arbitration on maritime cases.⁶

⁶ With regard to the practice of arbitral institutions in Japan, see Sawada, T. 'International Commercial Arbitration', *Japanese Annual of International Law*, No. 30, (1987), p. 69.

However, as far as the numbers in Table 11.3 and Table 11.4 are concerned, there is no meaningful change during the ten years with regard to the number of cases of institutional arbitration held in Japan. Though there are no

Table 11.3. Number of cases under the auspices of the Japan Commercial Arbitration Association from 1980 to 1990.

	Newly filed cases	Awards	Settled	Withdrawn	Pending
1980	6	2	5	0	13
1981	5	2	1	2	13
1982	7	2	0	0	18
1983	3	1	2	1	17
1984	4	3	6	2	10
1985	7	1	2	3	11
1986	7	4	4	0	10
1987	5	2	0	0	13
1988	4	3	0	1	13
1989	8	4	1	0	16
1990	9	5	3	0	17
Total	65	29	24	10	

Table 11.4. Number of cases under the auspice of the Japan Shipping Exchange from 1980 to 1990.

	Newly filed cases	Awards	Settled	Withdrawn	Pending
1980	20	6	10	0	15
1981	20	3	12	0	20
1982	12	3	11	0	18
1983	16	4	5	0	25
1984	8	6	11	0	16
1985	11	7	7	0	13
1986	12	1	8	0	16
1987	11	3	8	0	17
1988	11	5	8	0	16
1989	6	3	5	0	13
1990	10	2	11	0	10
Total	137	43	96	0	

statistics on ad-hoc arbitrations because of their nature, it is also safe to say that recent changes in the numbers of arbitrations in Japan are not so significant.

III. JAPANESE PARTIES IN DISPUTE RESOLUTION IN FOREIGN COUNTRIES

A. Japanese Parties in the Litigation in the United States Courts

It seems that Japanese parties have become more and more involved in international commercial disputes in foreign countries. Besides the *Mitsubishi Motor* case, two US cases, *Matsushita Electric Industrial Co. Ltd. v. Zenith Radio Corp.*, in 1986,⁷ which is a judgment on antitrust law, and *Asahi Metal Industry Co. Ltd. v. Superior Court of California*, in 1987,⁸ which is a recent important judgment on jurisdiction in product liability litigation, are examples of this trend. *Nippon Yusen Kaisha v. Karageorgis*,⁹ which is the first case on 'Mareva Injunctions'¹⁰ in England, is another example.

In order to produce some statistical evidence, a database from the United States was used. The outcome of the search is the basis for Table 11.5 and Figure 11.3. The numbers include not only civil cases but also criminal cases. The adopted method is similar to that used in preparing Table 11.2 and Figure 11.2. The search words were 'Japan' or 'Japanese', 'England' or 'English', 'German' or 'Germany', and 'Korea' or 'Korean'.¹¹

⁷ 475 US 574 (1986).

⁸ 480 US 102 (1987).

⁹ [1975] 1 W.L.R. 1093 (C.A.).

¹⁰ This name is adopted from the second case on this type of injunction, that is *Mareva Compania Naviera S.A. v. International Bulkcarriers S.A.*, [1975] 2 Lloyd's Rep. 509 (C.A.). As to this injunction, see Hetherington M. (ed.), *Mareva Injunction* (1983); Hoyle, M. *The Mareva Injunction and Related Orders* (1985); Jackson, D. *Enforcement of Maritime Claims*, Ch. 10 (1985).

¹¹ The database used here is WESTLAW. The search was done on 30 October 1991.

Table 11.5. Number of US cases mentioning Japan!, England or English, German! and Korea!* (from 1940 to 1990). Source: Database: WESTLAW, 30 October 1991

		Japan!	England or English	German!	Korea!
1946-50	Allfeds**	288	1080	662	17
	Allstates***	213	3137	1419	11
	Total	501	4217	2081	28
1951-55	Allfeds	270	1079	580	137
	Allstates	139	3211	1442	156
	Total	409	4290	2022	303
1956-60	Allfeds	194	1362	684	228
	Allstates	129	3186	1453	135
	Total	323	4548	2137	363
1961-65	Allfeds	208	1424	743	170
	Allstates	125	3496	1519	89
	Total	333	4920	2262	259
1966-70	Allfeds	368	1987	929	83
	Allstates	126	3978	1602	85
	Total	494	5965	2531	168
1971-75	Allreds	476	2746	1228	160
	Allstates	148	5348	1894	97
	Total	624	8094	3122	257
1976-80	Allfeds	606	3222	1416	206
	Allstates	197	6860	2187	121
	Total	803	10082	3603	327
1981-85	Allfeds	1108	4730	2254	368
	Allstates	286	5559	2973	150
	Total	1394	11289	5227	518
1986-90	Allfeds	1609	6846	3045	599
	Allstates	367	6799	3093	197
	Total	1976	13645	6138	796

*Japan! includes Japan, Japan's and Japanese.

German! includes German and German's and Germany.

Korea! includes Korea, Korea's and Korean.

**Allfeds mean all federal case reporters.

***Allstates means all states case reporters.

Although the above method is not sophisticated, it is possible to perceive the general picture. Here again, the internationalisation of dispute resolution in Japan is not so significant in comparison with England and Germany in the US courts, and the change over time in the number of cases mentioning Japan or Japanese is not so striking.



Figure 11.3. Number of US cases mentioning Japan!, England or English, German! and Korea!. Source: Database: WESTLAW, 30 October 1991.

B. Japanese Parties in ICC Arbitration

With regard to international commercial arbitration held in foreign countries, data from the International Chamber of Commerce (ICC) seems to be appropriate as an indication of the general situation. Table 11.6 sets out the order of the frequency of involvement of countries whose nationals or companies are the parties to arbitration under the auspices of the ICC. The ranking of Japan is 19th, among Middle Eastern countries.

IV. CONCLUDING REMARKS

It is dangerous to draw a definite conclusion from the data used here. However, the tables and figures concerning litigation and arbitration seem to suggest that the internationalisation of Japanese practice in the field of dispute resolution has not developed that much. The impression shared by Japanese lawyers may be just an illusion. This

may imply that alternative dispute resolution devices work well such as conciliation as regards disputes involving Japanese companies. In any event, it would be necessary to have more reliable materials and to scrutinise them more scientifically in order to get some accurate conclusions.

Table 11.6. Nationality of parties to arbitrations filed to International Chamber of Commerce (ICC) arbitration from 1980 to 1988—top 31 countries (total parties = 5676). Source: L. Craig/W. Park/J. Paulsson, *International Chamber of Commerce Arbitration*, 2nd ed. [1990], Appendix I.

		Claimant	Defendant	Total
1	France	506	386	892
2	USA	301	333	634
3	Germany	239	286	522
4	Italy	146	151	297
5	UK	142	133	275
6	Switzerland	144	108	252
7	Yugoslavia	85	60	145
8	Netherlands	77	66	143
9	Belgium	81	60	141
10	Egypt	35	87	122
11	Spain	34	52	86
12	Austria	35	44	79
13	Sweden	41	35	76
14	Rumania	32	44	76
15	Greece	32	42	74
16	Algeria	19	43	62
17	Libya	10	45	55
18	Syria	20	33	53
19	Japan	11	41	52
19	Lebanon	32	20	52
21	India	11	29	49
21	South Korea	26	23	49
23	Iran	21	27	48
24	Denmark	29	18	47
25	Panama	38	8	46
26	UAE	20	24	44
27	Kuwait	18	25	43
28	Turkey	9	29	38
29	Liechtenstein	27	10	37
30	Tunisia	15	21	36
31	Australia	12	23	35
Following Countries are omitted.				