



## JCAA Activities for Fiscal Year 2002

### Review of 2001

The year 2001 was a significant year for JCAA in that during it Japan took a major step forward in the creation of a new judicial system (see Newsletter Nos. 11 and 12). The Recommendations of the Judicial Reform Council were submitted to the cabinet in June 2001, and based on its arguments towards the provision of a more accessible, user-friendly judicial system and the strengthening of the function of justice, in December the government launched the Office for Promotion of Justice System Reform. In January 2002, the consultation groups of experts were established in the office to work on the issues, and these included establishment of new arbitration law, reinforcement and vitalization of ADR.

In such a favorable environment, JCAA also sees evidence of an increasing interest in arbitration and ADR. Although the number of arbitration cases dealt with by JCAA is still small compared to other arbitration institutions, there was an upward tendency for the past several years. In 2001, 17 cases were filed with JCAA -- a record high to date. JCAA also organized several forums and seminars related to arbitration and ADR. The Arbitration Forum 2001 held in Tokyo and Osaka in November was a remarkable event. The first instance of a mock commercial arbitration in Japan, it attracted nearly 1,000 participants.

### Ahead for 2002


With the movement toward reinforcement and vitalization of ADR, JCAA will continue its promotional activities for arbitration, and domestic ADR in particular.

To promote wider use of arbitration and ADR, JCAA will keep people informed of the current sit-

uation of ADR through our web site, brochures and periodicals, which include the JCA Newsletter.

Forums and seminars on arbitration and ADR will be held, and a mock mediation is being planned for November 2002 in cooperation with other ADR organizations. Such an event will no doubt attract a lot of attention.

In order to promote domestic ADR, JCAA has strengthened its ties with local chambers of commerce and industries so that comprehensive information on ADR can be provided wherever it is needed throughout Japan. As a first step, JCAA, together with other ADR experts, has prepared guidelines for local chambers regarding the possible measures available to them in the resolution of disputes that are brought to their notice. Seminars, including consultation services on ADR and legal advice from lawyers, will be hosted in local cities in cooperation with local chambers. In order to share information on needed human resources, a List of Arbitrators/Mediators is now being drawn up by a study group, with the aim of being able to provide it to local public bodies by the end of 2002.

Concrete study to frame new arbitration law has been started by the consultation group of experts (see JCA Newsletter No. 13). The first meeting was held in February and the members will meet about once a month thereafter in order to submit a bill to the ordinary Diet session in 2003. We expect drastic reforms in Japan's legal scheme for a few years ahead. JCAA will continue to provide detailed updates regarding all new developments in law in Japan in the JCA Newsletter. 

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## Teaching ‘ Conflict Management ’ in Japan

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In April 2001, I started teaching a course on the theories related to conflict at Kyushu University in Fukuoka. These theories are widely known as ‘ Conflict Management ’ and being practiced in the United States. Yet, some of the readers may wonder how a Japanese university came to recognize the need for such a course. The answer is simple; both judicial and educational systems in Japan have not been delivering results that satisfy the public for some time. Like the United States in the 1970s and ‘ 80s, the decades when the said theories began to attract the attention of American public, today in Japan voices for a complete overhaul of those systems are being heard everywhere.

Creation of the course is one of the answers, which The Law Faculty of Kyushu University is trying to offer to the Japanese public. The course is a four-credit elective, open to sophomores and seniors in the spring semesters and to graduate students in the fall. The university has a two-semester system, and the fall semester just came to a close last month, in February 2002. There is a short break before the spring semester, and I am using the time to review the courses I have conducted so far. Judging from evaluations from the students; more than 95 percent of students in each class rated the course as highly satisfactory and useful; the discipline of ‘ Conflict Management ’ seems to be getting off to a smooth and positive start.

The course is the first of this kind in Japan. Naturally I was excited when I received the offer from the university. Yet my excitement did not come alone, but with one critical concern of how applicable were the theories, which had been conceived and developed largely in the U.S. and Western Europe. Needless to say, the core of ‘ Conflict Management ’ is a direct negotiation between conflicting parties; but the Japanese have a reputation of being less litigious, more cooperative, and hesitant to speak their minds. What happens when people with nothing to argue about or discuss are encouraged to practice

‘ Conflict Management ’? This concern was originally presented to me by Professor Morton Deutsch whom I consider as a father of the theory, when I visited him last summer in his office at Columbia University in New York. The way he put it was more universal and he did not mean particularly Japanese. Nonetheless, his point was important and it induced me to re-examine what I really wanted to tell to my students.

Ultimately, I decided that in my class I would put more emphasis on explaining the theories than on practicing them. Given that the concept was still new to Japanese, this emphasis was inevitable. And while a skill tends to tarnish with passing time, a theory, once understood, will remain in our minds for a long time. Some day when my students contend with future conflict, I hope that they will be able to dig deep into their memories and excavate theories they learned in my class to help them resolve the conflicts. Another reason to place theory above practice is the lack of opportunities for Japanese students to engage in hands-on experience. Unlike the law schools in New York where students have plenty of opportunities to practice mediation in real settings, two factors prevent this in Japan: (1) the law prohibits strictly non-lawyers to perform any kind of conflict resolution activities, and (2) the majority of Japanese seniors prefer to be respected by young Japanese rather than to see them taking initiatives in various social arenas.

I introduced the theories as a radically new way of thinking that could help us deescalate conflict. While all of the other methods including trials, focus only on how to end conflicts, ‘ Conflict Management ’ examines the entire process of conflict, how it begins, why it escalates, and how ends. In my class I repeated the same messages that all conflicts aren’t bad; that there are cooperative and competitive elements in conflict; that destructive conflicts can be avoided by minimizing the competitive elements, so on. From the course evaluation, I can see that my students understood the course objectives and

that my aim was achieved. However, I have to confess that in the same evaluation, surprisingly many students wanted more skill-practice than learning the theories.

Returning to the point about the Japanese being less litigious, let me aver that it is not true. As a Japanese I can assure you that we are no more tolerant than any other people in the world. We get annoyed and upset when pushed around. We argue and fight when our rights are violated. To support my argument, let me introduce two books, one is *The Japanese Perceptive of Law*<sup>2</sup> by Takeyoshi Kawashima and *The Japanese Concept of Law*<sup>3</sup> by Masao Ohki. Both books say that it is not Japanese character but the absence of an effective judicial system, which led Japanese to practice more mediation than litigation. However, the absence of an effective judicial system does not imply an absence of logical thinking in the Japanese mind.


Prof. Ohki wrote that by as early as the 12<sup>th</sup> century, Yasutoki Houjyo created *Goseibai-Shikimoku*, a law consisting of 51 articles, to resolve primarily disputes over land as fairly and logically as possible. The problem was its implementation. Unfortunately, until very recent times, the laws of Japan were often ignored or distorted by the power holders of the time. Further, in feudal Japan, the offices designated to hold hearings were few in number and open only to aristocrats. But according to Prof. Ohki, there were nonethe-

less many disputes throughout our history, especially between the declining group and raising group over lands and various business rights during the shifts of political power. The group coming into power tried to snatch land and rights from those losing power, and the resistance by the latter could be fierce. They brought their cases to the attention of the authorities whose judgments often were in favor of the group coming into power. Gradually the Japanese gave up on law and started to exhort mediation to end their disputes.

There are disputes in Japan and as such there is a need for ' Conflict Management '. Japanese society is undergoing a huge transformation. As information technologies and heavy internationalization progress, the traditional values are being abandoned or significantly changed. People are searching for new method that enables them with different values to co-exist in one society. Even traditional mediation cannot remain unchanged. It is really about the time for Japanese to learn about the theories of ' Conflict Management '.

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<sup>2</sup> Kawashima, Takeyoshi, ' *Nihonjin-no-Houishiki* '; Tokyo, Iwanami Shoten (1967).

<sup>3</sup> Ohki, Masao, ' *Nihonjin-no-Houkannen* '; Tokyo, Tokyo University Press (1983). 

## International Arbitration Symposium in Singapore

On January 24 and 25, 2002, a symposium on international arbitration was held in Singapore, organized by a Singapore-based law firm, Rajah & Tann, together with its global strategic alliance partners Weil, Gotshal & Manges LLP (New York) and Derains & Associés (Paris). Mr. Masaharu Onuki, General Manager of the Osaka office of JCAA, participated in the symposium as a guest panelist and gave presentations on the current arbitration environment in Japan.

The two-day event covered a broad range of current issues in international arbitration, particularly in Asia, where many companies are increasingly turning to arbitration in order to resolve

their international business disputes. Around 200 people, including business people, government officials and lawyers, attended.

Mr. Onuki delivered two presentations, titled " Arbitration in Asia " and " Enforcement of the Arbitral Award " respectively, in the first session and the fourth session on the second day of the conference.

His first presentation centered on the Japanese system of arbitration and current various promotional activities of arbitration and other ADR in Japan. He provided the audience with a highly informative explanation on the ways in which Japan is becoming a place that is conducive to

arbitration.

Arbitration law reform and other ADR law is underway in Japan, he noted. Based on the Law on Promotion of Judicial Reform, he said, the Office for Promotion of Justice System Reform, headed by Prime Minister, Junichiro Koizumi, has been established to create a new judicial system appropriate to the needs of modern Japan, which will include establishment of appropriate and modern legal schemes for arbitration and other ADR. He predicted that new arbitration laws and other ADR law would be enacted soon. He also noted the special measures law concerning the handling of legal business by foreign lawyers, the amendment act of 1996. The amendment act allows foreign lawyers to represent parties in arbitration proceedings in Japan. He gave an outline of JCAA 's practices of arbitration procedures and noted that JCAA has already experienced arbitration cases on cross-border disputes conducted in the English language by arbitrators of foreign nationalities and with representation by foreign lawyers residing outside Japan, using modern and internationally reliable practices in arbitration proceedings. He also outlined the current promotional activities for arbitration, noting the mock arbitration held in Tokyo and Osaka last November, co-organized by JCAA, the Japan Federation of Bar Associations, the Japan Chamber of Commerce and Industry, and other organizations, a highly successful event with audiences amount-

ing to around 1,000 people.

In his second presentation, Mr. Onuki, in the fourth session, talked about enforcement of arbitral award in Japan. The arbitral award, he said, will have the same effect between parties as a final and conclusive judgment of the court and can be enforced when the court declares in an enforcement judgment that enforcement is permissible according to the existing arbitration law. As for foreign arbitral award, he also noted that Japan is a signatory country of the New York Convention and also has bilateral treaties with several countries regarding the recognition and enforcement of foreign arbitral awards, and that Japanese courts show willingness to abide by such conventions and bilateral treaties. He introduced several cases in Japan such as the cases of enforcement of Chinese arbitral awards under the New York Convention and US arbitral awards under Art. IV (2) of the Treaty of Friendship, Commerce and Navigation between Japan and USA. He also gave a short comment on setting aside the arbitral award and its grounds in Japan, an issue that also came up for much discussion among the panelists.

The present lack of sufficient information in English on the Japanese arbitration system made Mr. Onuki 's speech very welcome to the audience. As one of the organizations for ADR in Japan, JCAA will continue making every effort to inform the world of the current features of the Japanese system of international arbitration. \_\_\_\_\_

## The Japan Commercial Arbitration Association

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