

Towards a New Legislation on Jurisdiction (summary)

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Japanese courts have followed the judgment of the Supreme Court rendered on November 11, 1997 as precedent on international jurisdiction. The Court reaffirmed its previous judgment of October 16, 1981 which had, by analogy, deduced the rules of international jurisdiction from the relevant provisions of the Code of Civil Procedure which are designed to allocate internal venues among the local courts and, at the same time, yielded a kind of exception clause which would allow the courts to decline jurisdiction in view of particular circumstances of a case. Regrettably, the Supreme Court did not specify precisely when Japan might be a contractual *forum destinatae solutionis* in the international context, giving even the impression that the Court might be satisfied with searching a 'natural forum' within the framework of the exception clause. The call for legal certainty and predictability militated in favour of the first enactment of the rules on international jurisdiction.

Those who will embark upon drafting rules of jurisdiction are expected to address the three problems of general nature, namely, those relating to the exception clause, the *lis alibi pendens* rule and the rule on forum of necessity. Firstly, they should decide whether an exception clause should be adopted alongside hard and fast rules enumerating heads of jurisdiction. While it is very unlikely that the drafters would take into consideration the English type of *forum non conveniens*, they might be inspired either by that of the Australian type or by Article 22 of the Preliminary Draft Convention adopted by the Special Commission of the Hague Conference on 30 October, 1999. Secondly, Japanese courts, mostly, have not declined jurisdiction merely because of parallel proceedings being conducted abroad. While the recourse to the *lis alibi pendens* rule as such is obviously more compatible with the system of recognition of foreign judgments, it seems necessary to bear in mind practical difficulties the *lis alibi pendens* rule would lead to. Thirdly, without such a provision as provided by Article 3 of Swiss Private International Law, Japanese courts, undoubtedly, would never refuse jurisdiction when its refusal is likely to be tantamount to *déni de justice*

in a particular case. Certain judgments of foreign jurisdictions such as Switzerland, France and Quebec seem to suggest that a provision on forum of necessity is required in relation to family law matters which the future legislation will not envisage.