

## INTERNATIONAL LAWYER

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# A Dialogue with Judicial Wisdom

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Ambassador Yamada Chusei

## INTRODUCTION

The Journal of East Asia & International Law was honored to hold an interview with Ambassador Yamada Chusei, one of the most highly renowned international lawyers of our time. Born in 1931 in Kobe, Japan, he studied law and politics at the University of Tokyo, Swarthmore College and the Fletcher School of Law & Diplomacy. Ambassador Yamada was a career diplomat as well as international law practitioner. He joined the Japanese Foreign Service in 1954. Over his 40 years of his diplomatic service, Ambassador Yamada mainly worked in the international law and organizations sections of the Ministry of Foreign Affairs, where he served as Director of International Conventions Division, Director-General of the United Nations Bureau and many other high-ranking foreign service positions. In his final posts, he served as the Ambassador Extraordinary and Plenipotentiary of Japan to the Conference on Disarmament, and to Egypt and India. Ambassador Yamada has also had a successful career as an international legal scholar publishing numerous significant and critical articles. He taught international law at Waseda University and participated in many international lawmaking processes as the leader of the Japanese delegation. In particular, Ambassador Yamada served as a member of the UN International Law Commission and as the Special Rapporteur on the topic of Shared Natural Resources between 2002 and 2008 completing the formulation of the Draft Articles on the Law of Transboundary Aquifers. He is now a Special Assistant to the Minister of Foreign Affairs of Japan and a Board Member of the International Law Association, Japan Branch. He is married to Ms. Michiko Yamada and they have two children, Ruri Yamada and Kosei Yamada. He may be contacted at: [chuyama@gakushikai.jp](mailto:chuyama@gakushikai.jp)

The following is an edited transcript of the interview held at the University of Tokyo Law Building on September 15, 2009 with the generous support of Professor Nakatani Kazuhiro. A video of part of the interview may be viewed at the YUJIN Institute of International Law website: <http://www.yijuninstitute.org>

## QUESTIONS & ANSWERS

*1. I am very delighted and honored to hold this interview with one of the most highly renowned international lawyers as well as career diplomat in Japan. In order to understand someone's present, we have to know about his past first. So I would like to first listen to your personal background. Would you briefly introduce your family? Could you tell me about your parents and their education?*

I was born in 1931, in Kobe, Japan. My grandfather was a merchant in Osaka. He traded rice and wanted my father to succeed him, but my father did not want to be a merchant. In those days, there was a sort of thinking that higher education is not good for a merchant, like if you get higher education you will lose money. But my father wanted better education to become an engineer. So, he didn't obey my grandfather and got an engineer education. He first joined one of two big merchant marine companies in Japan at that time. He worked as an engineer on the ship and travelled around the world. In fact, when I was born, he wasn't in Japan. He was travelling near Argentina. Just before the war broke out, he was recruited by a Japanese electric company, which was, after the war, divided into nine regional companies. He was mainly handling the construction of power stations. So we moved around Japan. My mother was just a housewife, but she was also very much interested in educating me. Even before I went to kindergarten, she took me to English lessons.

But the war broke out. I was just a young boy. I didn't know what was going around. At that time, I was very interested in science and hoped to be a scientist. At the end of the war, when I was attending middle school in Hiroshima, two things changed my life. One is what happened in Hiroshima on August 6, 1945 - the atomic bomb. Fortunately, at that time, I was not in the town. We were out of Hiroshima, evacuating the school's experimental equipments to the countryside. We went back to the city after a week and it was really a shock. Then, there were two famous nuclear scientists who came to Hiroshima. One was professor Nishina. He was a sort of pioneer in nuclear science in Japan. He was investigating the result of the atomic bomb. The other was a very young professor Tomonaga who later received the Nobel Prize. Professor Tomonaga taught me, and he influenced me a lot. He told me that it is not the role of scientists to get rid of nuclear weapons or put any kind of limitations on nuclear weapons. It is the politicians and diplomats who are responsible for that. I realized that scientists couldn't control those things and wanted to be someone who does such work. In my family there was no bureaucrat at all, so I was the first one to become a

bureaucrat. I gave up science and then entered the University of Tokyo to study law.

Another reason why I joined the foreign services was the influence of my mother. Right after the end of the war, she told me that because of Japan's defeat and the economic situation, her dream to send me to the United States for study would not be realized. I told her, "Don't worry! I'll find my own way to go to the United States." I thought joining the Japanese Foreign Service was the easiest way, so I did. Finally, the ministry provided me with a chance to study in the United States for two years.

*2. Most of your childhood took place when Japan was expanding its militarism. How did that environment influence your future life?*

I was too young to understand militarism during the war. But what I learnt after the war, particularly in the university and also in the United States, has a significant influence on my life. During the Meiji Restoration, our ancestors did a great job to learn from Western Europe as they realized how backward Japan was. For instance, Japan became one of just a few countries where you can get higher education in your own national language. We, the Japanese, owe that to our ancestors. But this process took place during colonialism. To catch up with the Western Europe, Japan also became a colonial power. For the Japanese, this big development of becoming the power in the world was a glory. But on the other hand, we did not understand that the glory of one country means a tragedy for other countries. In the present world, we should not always focus on the past in the course of looking forward. But still in doing so, we should not forget what happened in the past.

*3. You studied law at the University of Tokyo which was quite prestigious at that time as well as today. Who taught you international law at Tokyo University? What did you think of their teachings? What did they say about Japan's past and future in the international community?*

As far as international law is concerned, I took lectures from Professor Saburo Yokota. I think he was a very prestigious professor. Also, there was a special course on international organizations by Professor Yuichi Takano. But to be very frank, after joining the foreign services, what helped me most in dealing with international law was not international law lectures but more basic legal studies such as Professor Odaka's lecture on philosophy of law, Professor Miyaza's lecture on the constitution, Professor Dando's lecture on criminal law, and Professor Wagatsuma's lecture on civil law during the University of Tokyo. Those are basic legal concepts. International law, for

practitioners like me, is something like procedural law. For instance, you cannot understand international criminal procedure unless you know national criminal law or constitution itself. You cannot really understand international law without knowing basic legal concepts. I'm not detracting any influence from Professor Yokota or Professor Takano, but still, to develop legal thinking you should have overall legal education. When I went to the Fletcher School I took an international law course by Professor Leo Gross. Here in the University of Tokyo in those days, the lectures were just lectures, it was one-way education. In the United States, however, it was two-way education with the so-called case law method. It wasn't really dealing with minor things, but through case law studies, they taught the real foundation of international law and that was very useful.

*4. After you joined the Ministry of Foreign Affairs you had an opportunity to study at the Fletcher School of Law and Diplomacy. Could you tell me about any special memories during your years there?*

I went to the University of Tokyo in 1950 when the Korean War broke out. Japan was still under occupation. When I joined the Ministry of Foreign Affairs in 1954, it was just after we recovered independence. As soon as I joined the Ministry, they sent me straight to the United States. In the first year, I went to the Swarthmore College in Pennsylvania because I thought it would be better to get used to American life instead of taking specific courses. And then I went to the Fletcher School. The Fletcher School at that time was a very small, but professional institution. It had totally about 30 students; half of them were diplomats mainly from various Asian countries. American students went to foreign services or to international trade, and some became teachers after their graduation. The good memory I had was that it was such a small community. We had breakfast, lunch and dinner together in the dormitory. So we became really close to each other like family members. Good things happen particularly after we left the school, because wherever I go, I met alumni members who could assist each other in those posts. It is really a good result.

*5. Harmony is one of the most important concepts of Japanese society. Do you think Japan has been well harmonized with other East Asian nations in the postwar period? In your view, what was the best and worst policy of Japan toward East Asia?*

Harmony and understanding each other is very important. In the world, however, you

have to admit that there are a lot of constraints. While Japan was occupied by the allied forces, the Korean War broke out. Although the conflict between the East and the West was originated in Europe, this part of Asia was another frontier between the East and the West. The occupation forces in Japan were mainly US forces. For Japan there was no alternative other than to join the Western camp and Japan was in the front line of this confrontation. The allied parties had the policy in the beginning not to let Japanese have any armaments. After the Korean War, however, their policy changed. But the Japanese placed lots of restrictions on their armaments. So we had to depend on the alliance.

We used to say that there are three main objectives in Japanese diplomacy. One is the Japan - United States alliance. The second is cooperation with the United Nations. The third is cooperation with Asia. When we talk about Asia, it is mainly northeast and southeast Asia. Central Asia and west of India are a little bit different. Anyhow Japan pursues these policies, but the Japan-U.S. alliance occupies such a dominant factor. The relations with Asian countries have not been so smooth. Those Asian countries suffered from the Japanese occupation. The factor of the East-West confrontation now has decreased. However, the tension from North Korea has been escalating.

The Japan-U.S. military alliance was, to some extent, directed at the potential threat from China. This aspect is also changing now. There is an improving relation between the United States and China. Although China's military power is expanding so rapidly, it is not a threat to Japan at the moment. So we have to increase efforts towards Asia. But we cannot just imitate Europe which is marching towards a unified Europe.

Abstractly, we may know Asia well, but if we take a close look at each country, they are so different. Thus, Japan has to be very pragmatic, listen to them, and do whatever it can to respond.

*6. You said Japan should increase its air forces but many East Asian countries feel uncomfortable seeing Japan is increase its armed forces budget. Many people regard it as a symbol of Japan's re-militarism. What do you think about that?*

I think we should have a dialogue on this. It is true that, excluding nuclear weapons, the conventional forces of Japan are now becoming larger. It is very difficult for us to convince others on the necessity of Japan's defense. When you look at Japanese self-defense force structure, however, you would realize that we have very strict constraints. For instance, our air forces are not allowed to possess any long range attack aircraft. Some of our jet fighters have midair refilling facilities. This has caused lots of discussions in Japan's Parliament. According to American specification, all the jet fighters have this midair refilling system in order to extend their ranges. To change this

specification is rather difficult. So what we are taking as an explanation is that even if our jet fighters have the midair refilling system, they are not allowed to use it in midair. When they come back to the base and refill their aircrafts, if they use two refilling systems, the refilling process could be done much faster.

It is a Japanese logic and others may not believe it. But still I want to show that the Japanese have a very strong inclination to put various constraints on the armed forces not to be used for attack but only for self-defense. We may have air carriers for helicopters but not for fighter planes. If military experts look at the equipment of our self-defense forces, they will surely realize that our forces would not be able to operate for a long period outside Japan during a time of conflict. But it is very difficult for others to believe us.

*7. Japan and Korea have often been inconsistent with each other in resolving and compensating past wrongdoing. Japan used to express apologies about the past annexation of Korea in general, while denying its legal responsibilities in actual critical points at issue such as comfort women, cultural heritage, human and material exploitation, and dreadful massacres during the occupational period. Has Japan been legally exempted from those responsibilities?*

I think we have to distinguish between the legal aspect and the moral aspect. When Japan restored formal relations with other States after the war, we always concluded treaties. They are the San Francisco Peace Treaty and bilateral treaties, including one with the Republic of Korea. They all settled the questions of claims. When you had a war or similar situation, of course there are so many questions including the settlement of damages. But you may not really solve everything. As far as legal questions are concerned, those peace or normalization treaties are supposed to have settled the questions.

*8. I would like to shift the topic to Japan-Korea relations. There are many debates lying between the countries, especially relating to the past. In your perspective, what is the most crucial and urgent problem between the two? I would say the apology should be bound and implemented by law if Japan truly tries to apologize to the people who suffered and are suffering from its past occupation. Do you agree with my opinion? Would you please give your own opinions as frankly as possible?*

Let's take a look at Japan and Korea relations. When we tried to establish normal relations, we concluded a basic agreement. With the agreement, the question of

compensations for damages was solved in a way that Japan would provide assistance. It doesn't really mean that Japan shouldn't do anything more. When you have negotiations for an agreement, you think everything would be resolved with it. But still, there are some cases which both parties did not do at that time. So it is really up to the parties concerned to solve if there are any unsolved questions. For instance, on the question of comfort women, I really do not know if the whole picture was known to both parties at the time of the basic agreement. If not, there are both ways to argue about it. One is whether you knew it or not, the basic agreement settles everything. If it does not settle everything, your relations become unstable. On the other hand, it is perfectly alright for both parties to work on another settlement. As far as I understand, however, the Government of Korea has not officially asked any amendment of the basic agreement or any new agreement on this question. They also know what the Japanese are doing to help those victims. As I know there is also another question, that is, what Japan is doing with private funds, not with Japanese national funds. Personally I do not really see the difference. If the Japanese people are willing to do something in the form of a private fund why can it not be accepted? The others may have different views. But this is certainly the point which still stands in the way.

*9. There are many other disagreements between the two countries. Could you give your ideas to resolve these problems in a most efficient way?*

There are many other problems lying between the two nations. Many Koreans suffered during the war. Particularly, in some work places in Japan, even if they were private companies, during the war that was a total mobilization of the whole Japanese society. But I think those things shouldn't be brought up as a case to accusing each other. If we sit together and try to resolve it, I think we can do it better. Actually, in many cases, I feel they were used for political reasons. I do understand the feeling of grievances, but there are reactions from some sectors from the Japanese side.

*10. Japan is now trying to be a permanent member of the UN Security Council. Is Japan truly entitled to be a permanent member of the Security Council which takes a primary responsibility for maintaining peace and security of the international community? This project is not, however, fully supported by some neighboring countries. What are the main reasons for that disagreement? And what should Japan do to overcome such objections?*

I would say that one thing is clear. The composition of the Security Council at the

moment is not representative. It's heavily unbalanced. They have to do something to it. On the other hand, we should fully understand the difficulty of solving this issue in order to avoid some particular problems for Japan. Just take India for example. India is a big country, it is a democratic country and its economy is growing rapidly. Personally, I think India is qualified as a permanent member. But it would not be so easy for India to join the Council. Some countries such as Pakistan are not supportive because it is not just the question of making India a member. They want to know the whole picture. The same thing happens in Latin America. Mexico and Argentina can be good candidates, but some cannot agree upon that.

In the case of Western Europe, the problem is different. There are too many western permanent members. Perhaps Germany is more eligible than current members, but for Germany to become a permanent member, they have to convince the Italians. If you accommodate all those views, the Security Council would become around 40 members or so and it will not be an efficient organization.

So whether Japan should be a permanent member under the current system is not a question of the Japanese point of view, but that of international society's view. If the United Nations wants to have a representative and an equitable distribution in the Security Council, those who are already permanent members of the Council have to make another drastic change to the whole system. I do not see they are ready for that, however.

*11. What are the grounds for Japan to be eligible to be a permanent member of Security Council? There are some grounds for the Japanese government. Why should Japan join the U.N Security Council as a permanent member?*

It must be from a Japanese point of view. Today is not 1945. Japan has come back to the international society. It has become relatively a dominant factor in the world politics. Japan bears lots of, now around 20 percentages, of contributions. Japan does not have its own voice comparing with its contribution and ability.

*12. Japan is always advocating that it is fully qualified as a permanent member of the Security Council considering it is the second donor of the UN budget. Does this imply, then, if other nations pay for the UN more than Japan, could it be also eligible to be a permanent member of the Security Council? What are other elements that differentiate Japan from them?*

In very general terms, it is possible if any country becomes an economically big nation

and contributes a lot to the United Nations. There must be a democratic principle, “No Taxation without representation” should be applied. But it also depends on the will of that nation. If they are satisfied with paying a lot and contributing a lot but not seeking for representation, that's up to that country.

*13. You were a member of the International Law Commission and worked as a special rapporteur for drafting the Shared Natural Resources. Would you please tell me about your ILC membership and the future direction of the codification of international law?*

As a practitioner of international law, when we learn international law, the major source is treaties and customary law. But to me, treaty is not law at all. It is just a contract that binds only the parties and, in many cases, it doesn't reflect any legal norm. It is just an agreement. But customary international law is the real law because it binds everybody. Whether you accept it or not, it binds everybody. But the problem with customary international law is that it is so difficult to understand what customary international law is. Each state has a different interpretation of customary international law, so that is why the codification process by the United Nations is so important for establishing the stable rule of law. Thus the International Law Commission as the subsidiary organ of the United Nations to provide the basic document to the General Assembly has a very important function.

It is true that major fields of international law have been codified. The International Law Commission might now have a sort of trouble in finding the area where they have to act from now on. There are very fragmented areas now left, but still it is very important for the Commission to establish a good program to have this new restatement of customary international law. There is also another factor. That is, when customary law was developing in the international community, they have been developed by Western Christian countries. Most of them are for their benefits and not for the newly emerging nations. When the International Law Commission started in 1957, the members were mostly western professors. There were, of course, some African and Asian members but they were mostly educated in Western Europe. It is often said that the golden time of the International Law Commission was up to the 1960s. By that time, they had completed many codifications. But the problem was that in those codifications, the voices of the newly emerging nations have not been reflected. So the International Law Commission expanded its size. We now have 34 members. But even now, their voices are not fully reflected. Maybe the problem is African and Asian nations; they used to complain only afterward, not during the session. So now it is very important for

the Commission to invite more comments and views from Asia and Africa. So I have been saying that we also have to utilize an Asian-African Legal Consultative Organization. Because Asian and African countries are really handicapped as they do not have the facility. So we need to encourage them to make active participations.

#### *14. Do you have any frustrations in your diplomatic life?*

It is closely related to Korea-Japan relations. There are about 800 thousand Korean residents in Japan who do not possess Japanese nationality. However, the problem should arise while having such a large population living for generations without Japanese nationality. I have been talking about this problem with my Korean colleagues, but it still looks so early to get any solution. We have to go back to 1945. When the war was ended, there were about four million Koreans living in Japan. The Cairo Declaration of 1943 provides that Korea, "mindful of enslavement of its people," should be free and independent from Japanese rule in due course. When the occupation forces came to Japan, their basic position was to take out the Japanese nationality from those Korean residents and send them all back to Korea. The occupation forces took the indirect way of controlling Japan. They executed most of the policies through the Japanese government. The Japanese government should have resisted this policy, fully respecting the will and intention of those people. If they wish to stay in Japan for generations, their nationality of Japan should not have been taken away.

Before the Korean War in 1950, many of those Korean people were repatriated to South Korea, and some of them who did not have their living base there tried to come back. However, they were treated as illegal aliens and unfortunately detained in Omura detention camp until they were deported back. In the case of North Korea, their repatriation started much later. There were also lots of problems. They thought that North Korea was a paradise but they were soon disillusioned. Those Korean residents who opted to remain in Japan lost their Japanese nationality, and their children, now fourth generation, do not get Japanese nationality unless they apply for naturalization. It is not a good system to have an alien who decided to live in Japan forever not becoming Japanese. Japan would of course protect their culture and their language in accordance with the International Covenant which requires us to protect the culture of minorities.

There is obviously a difference between the right of aliens and nationals such as the right to vote or to become an official and so forth. So I am really hoping that the time would come that if they decide to live here forever for generations, they would become Japanese. When the Japanese go to America to live as immigrants, we do not want them to stay as Japanese. What we want for them is to become good Americans acting as a

bridge between Japan and the United States. I also hope that Koreans living in Japan will become in a sense good Japanese and then act as a bridge between both countries.

After I retired from active duty in the Japanese Foreign Service, I once taught at the law faculty of Waseda University, Tokyo. There were brilliant Korean students. Some of them wanted to become Japanese diplomats. However, they could not because they did not have Japanese nationality. The Foreign Service Law provides that you have to be Japanese in order to be a diplomat of Japan. A similar situation would be found in such administrations like police or defense agencies. They do not take non-nationals. Some of those students came to me and said they wanted to be Japanese but there is such a pressure from the Korean society here against it. It is very unfortunate. You do not notice this so much now but for instance, 10 to 20 years ago, there was a competition between North and South Korea in order to get their people on each side. That kind of thing influenced Korean society in Japan. Even now there are only about 20,000 naturalization cases every year. According to the 3rd and the 4th generation students, they should have a lot of courage to naturalize to Japanese.

*15. Would you give a piece of advice to the succeeding generation or the younger generation of lawyers in East Asia for peace and co-prosperity in East Asia?*

The best way is to have contact among youngsters in Asia. We have what is called the "Asia Cup." It is the international moot court on International Humanitarian Law which is run by Professor Wakamizu Tsutsui, a former professor at the University of Tokyo, and under the auspices of the Japanese Foreign Office. Every August for the past six years, we hold this moot court event. I have been asked to be a Chief Justice at the final round. Unfortunately, the Korean team has participated only once. This year we had a team from around nine or ten countries including mainland China, Singapore, the Philippines, Indonesia, Vietnam, and Thailand. We had two teams from Japan. When they get together, it is very good. It is so important for the younger generation of Asia to get together, to know each other, and then to create a sense of affinity. I do not have much advice on what kind of study they should do, but the important thing is to know each other and share thoughts and values together.

**Interview by Eric Yong Joong Lee with the support of Professor Nakatani Kazuhiro.**

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