

**Law and Lawyers in the Service of the People  
for Peace, Justice and Development**

**Report to the XVIth Congress of IADL, June 7-11, 2005**

**International Law Group of the Law Section  
of the Association of Democratic Scientists in JAPAN**

Junko Okada

Kobe University

jf-okada@maritime.kobe-u.ac.jp

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## Preface

The last Congress of the International Association of Democratic Lawyers (IADL), which was held in Havana, Cuba in October 2000, aimed to “establish a just international legal order” under circumstances in which we democratic lawyers of the world face challenges in which international law has been seriously violated, or even ignored, by the unilateral actions of certain Western countries, especially the United States. Since then, and especially since September 11, 2001, we have witnessed brutal incidents such as the wars in Afghanistan and Iraq.

It is well known that many international law scholars all over the world expressed opposition to the unlawful use of force against Iraq, faced as they were with the immediate possibility that the United States and Great Britain would attack Iraq.

In this respect, it is noteworthy that many of us scholars of international law in Japan made our first ever statement on the issue and submitted it to the Japanese Ministry of Foreign Affairs on March 18, 2003, just two days before the Iraqi War started. Our statement declared, “From our stance of being engaged daily in the research and education of international law, we think that the use of force against Iraq is impermissible under international law” (see *Revue belge de droit international*, (2003-1), p. 293).

In this report, we will examine, first, the concept of the right of self-defense when there are dramatic changes in international circumstances, focusing mainly on critical analysis of the recent assertions of so-called “just war doctrine”. Then the problem of the International Criminal Court and the Democratization of International Society will be examined. Moreover, in the context of the enactment of a series of emergency laws in Japan since the late 1990s, we study the dangerous situations in which Japan has had more active involvement in the U.S.-led war. Second, we will consider issues of globalization and human rights, focusing on the problems of transnational corporations and human rights, development and human rights in the World Bank, and revision of the Japanese Immigration and Refugee Recognition Law. Third, we examine the problems of global environmental change and its impact, and the WWII-era chemical weapons abandoned by Japan.

(IGARASHI Masahiro, Kobe University)

## Chapter 1 UN Charter, International Relations and International Institutions

### I. Fundamental Changes in International Circumstances

#### 1. Post-1945 International Society as a Bipolar System

The end of the Second World War was at the same time the completion of the transition period to establish contemporary international law, which is entirely different from traditional international law. Contemporary international law is characterized as a set of rules in a single system on the basis of the prohibition of war and use of force. On the other hand, traditional international law comprised two distinct systems: the law of peace and the law of war. Under this dual system of international law, recourse to war (*jus ad bellum*) was not regulated, and therefore States had certain freedom to resort to war. International law did not give States such a right to war, but just found the situation of war as a given fact.

However the whole picture of international law was changed by the Charter of the United Nations, which prohibits the threat or use of force by individual States for any reason. There are some exceptions to this non-use of force principle: the right of self-defense, collective measures taken by the United Nations Security Council, and measures taken by regional agencies under Security Council authorization. States were deprived of the freedom to resort to war under the Charter. At this moment, contemporary international law integrates, into the single system, its two isolated systems comprising the law of war and peace under traditional international law.

International society after 1945 reflected the shift of the power balance from that among European countries to that between the US and USSR. This bipolar system of international society was a special feature of the Cold War period. There has been no war between those two states since 1945. Instead, there are numerous wars, which occurred in the circumjacent areas of the United States and the Soviet Union, including Vietnam, Korea, and the Middle East. The two superpowers were not directly, but only indirectly involved in those conflicts.

International society had a lot of civil wars besides interstate wars. The right to self-determination was established through General Assembly resolutions such as "Declaration on the Granting of Independence to Colonial Territories and Peoples" (Res. 1514 (XV)) in 1960 and treaties such as the two 1966 International Covenants on Human Rights. Civil wars in the Cold War era were cases in which peoples under colonial control wanted to gain independence or at least autonomy from colonial states. As a result, many newly independent states joined the United Nations, forming G77, which is now dominant in number in the General Assembly. They tried to get the rules of international law democratized through conclusion of multilateral treaties including the 1982 United Nations Convention on the Law of the Sea, which lets coastal states extend their jurisdiction over their exclusive economic zones and continental shelves, and the Vienna Convention on Succession in respect of Treaties, which adopts the clean-slate principle for the state succession of independent states.

## 2. International Society since 1990 as a Unipolar System.

The bipolar system of international society abruptly came to an end in 1990 when the Soviet Union collapsed and broken into multiple states. The United States became the single "empire," which has hegemony over almost the whole world. Fortunately this new empire was friendly to the United Nations. In 1990, when Iraq invaded Kuwait, the United States asked the Security Council to authorize its action against Iraq and it answered in the affirmative under Resolution 678. The Gulf War was an example showing the change of the international settings for the United Nations and the rules of international law, because in the cold war era, it would have been impossible for the Security Council to avoid a veto of either faction of permanent members.

As for the legality of Resolution 678, the United Nations cannot find any legal grounds in the Charter to authorize allied forces including US forces. Article 42 might be a provision relied upon for such an authorization. Nevertheless, Article 43 requires that a special agreement be concluded in order to use forces of member states for collective measures taken under Article 42, and there is no such agreement between the United Nations and other member states even now. Therefore Article 42 cannot be a legal basis to authorize allied forces to use necessary measures.

Article 51 might be another possible basis for the resolution. It provides for the right of collective self-defense in cases in which armed attack occurs, and the victim state makes such a declaration and requests the assistance of other states. However the right of self-defense cannot

be exercised once the Security Council takes the necessary measures to recover international peace. In the case of the Gulf War, the Security Council had taken some economic measures, and then the states had to stop exercising the right of self-defense. Therefore Article 51 cannot be regarded as a proper legal basis.

It is quite interesting to look at the Resolution 678 from the viewpoint of privatization of collective measures. Without any United Nations Forces, the United Nations had to rely on the military forces of member states. Without any special agreements for making the forces of member states available to the United Nations, however, it had to devise new scheme to take collective measures. The Korean War possibly gave it a hint to use forces of member states by recommendations. Such a device has opened the way to privatize the collective measure of the United Nations. This process has blurred the distinction between collective measures of the United Nations and unilateral actions of individual states.

In 1999, NATO bombed the former Yugoslavia for humanitarian purposes. There was no authorization given by the Security Council. It is correct to say that the action was an absolutely unilateral action of individual states, although it was taken by a regional organization. In that the Security Council did not authorize NATO to mount a military campaign against the former Yugoslavia, it was impossible to consider that campaign as collective measures of the United Nations. However, it appeared to be collective measures by NATO. Again it was an opportunity in which the single power blurred the distinction between collective measures and unilateral measures. Now collective measures are being privatized and confused with the unilateral or private actions of individual states.

### 3. Impacts of September 11 on International Society

On September 11, 2001, international society suffered a tremendously shocking event. Many people watched two airplanes crash into the twin towers of the World Trade Center on TV. It was a series of attacks by terrorists of the group called Al-Qaeda under the leadership of Usama bin Ladin. Nobody imagined that a civilian airplane could become a weapon of mass destruction. As a matter of fact, it killed and injured many people aboard the airplanes and in the targeted buildings. The death toll jumped up to almost three thousand.

The United States launched a military operation against Afghanistan almost four weeks later, because Usama bin Ladin was given shelter by the Taliban government of Afghanistan. It declared that the action was the exercise of the right of self-defense. The war was named the "war on terror." The Taliban regime lost effective control over Afghanistan. In 2002, US President Bush declared a new doctrine of national defense and proclaimed to be ready for anticipatory self-defense. At that time, he called Iraq, Iran, North Korea, and Libya the "axis of evil." This meant that they might be the next targets of preventive self-defense by the United States.

In 2003 two years after the Afghan war, the United States launched a military campaign against Iraq, claiming that Iraq allegedly possessed weapons of mass destruction (WMD). The Security Council did not authorize this action because France and Germany were opposed to it strongly. In many cities, rallies against the Iraq war took place and millions people throughout the world joined. But the war began and Saddam Hussein's government was overthrown after some 40 days of battle. That was the end of the war, but there were no evidence found showing that that Iraq developed WMD. It is evident that it was not a just and legitimate war after all.

Every two years, the United States joined wars and directed allied forces against the former

Yugoslavia, Afghanistan, and Iraq. It is a new phenomenon reflecting the changed international setting after September 11. The United States began to adopt policy not to rely on the United Nations for the authorization of war and not to avoid unilateral action on its own decision. Its enemy is not a state, but terrorists. For its security against terrorist attacks, the United States has to take action against an evil state, but not terrorists. There is a contradiction involved here.

The United States may be forming a new rule of international law in favor of the unilateral use of force for just causes. Article 2, paragraph 4, of the Charter of the United Nations prohibits any use of force and does not differentiate the use of force for just causes from others. However, the emerging doctrine is modern "just war" theory. War might be justified for the reasons of humanitarian purposes, anti-terrorism, and preventive action against WMD. The next chapter will discuss in detail the validity of the just war theory.

(YAMAGATA Hideo, Ritsumeikan University)

## II. Just War Doctrine and International Law

### 1. Humanitarian Intervention: 1999 Kosovo Case

In Kosovo, which enjoyed certain autonomous status in the former Yugoslavia, civil strife occurred when the new Yugoslavia (Serbia and Montenegro) deprived it of important powers. The national army was mobilized into Kosovo, and there was a gross violation of human rights called "ethnic cleansing." Many Kosovo people became refugees and crossed the border. The Yugoslavian crisis was thought of as a war in Europe. In 1999, NATO resorted to bombing for humanitarian purposes to protect people in Kosovo against assaults by Yugoslavia.

Humanitarian intervention had been a topic of international law even before this incident, because the international community had a considerable number of cases where European countries intervened in smaller states in Middle East, Latin America, and Asia. One of the grounds for intervention is that customary international law formed through state practice admitted it under certain circumstances and even today such a rule is valid for application. However the non-intervention principle is clearly enshrined in Article 2 (7) of the UN Charter on the basis of sovereign equality under Article 2 (1). The 1970 Declaration of Friendly Relations among States reaffirmed this principle in considerable detail.

The second ground is that the use of force is not purported to be directed "against the territorial integrity or political independence." This is a narrow interpretation of Article 2 (4) of the UN Charter, which prohibits the "threat or use of force against the territorial integrity or political independence." This phrase was inserted into that provision during the drafting process at the San Francisco Conference in 1945 because small states wanted to strengthen sovereign rights. The Covenant of the League of Nations had an independent article on respect for territorial integrity and political independence, while the Dumbarton Oaks Proposal did not have a similar provision. That is why small states invited at the Conference suspected that their sovereignty would be weaker in the UN than in the League of Nations. They did not want to restrict the prohibition of the use of force. Therefore the narrow interpretation cannot be sustained by the study of the *travaux preparatoire* of the UN Charter.

The third ground is that respect of fundamental human rights is one of the purposes of the United Nations provided for in Article 1 (2) and therefore the use of force for the purpose of human rights is not "inconsistent with the Purposes of the United Nations" in Article 2 (4).

Since the Second World War, human rights have been one of the important issues for which the United Nations has been struggling and on which an increasing number of treaties, such as International Covenant on Civil and Political Rights, have been concluded with certain monitoring machinery created to implement their provisions. Some categories of human rights have attained universal applicability, since they have become rules of customary international law. However, states are not in position to coerce the enforcement of human rights because human rights provisions shall be implemented basically through the treaty mechanism and because customary rules on human rights will be the basis for the 1503 procedure within the UN. More importantly, the first purpose of the UN is to maintain international peace and security as proclaimed in Article 1 (1). If one takes into consideration the fact that the use of force always includes gross violations of human rights on the battlefield, where it is often difficult to make distinction between civilian population and combatants, what third states are allowed to do is to raise issues at the Human Rights Committee or the Security Council, and not to take unilateral military measures.

The fourth ground is that states can resort to force for humanitarian purposes when the Security Council is paralyzed because of the exercise of the veto power by a permanent member or the failure to get nine votes out of 15 members. This theory presupposes that the provision regulating use of force in Article 2 (4) depends upon the affectivity of the collective measures under Chapter VII. Actually the UN Charter provides a provision concerning the measures to be taken in such a case. It is Article 51. Before the Security Council takes necessary measures, states are allowed to resort to the use of force in self-defense on conditions that requirements given in that provision are satisfied. There are no other measures available to be taken by individual states.

Humanitarian intervention cannot find any proper legal grounds in the UN Charter. It might be possible to argue from a moral or political point of view that the limited use of force with the single goal of humanitarian assistance is legitimate though it may be illegal under present international law. Of course, in the future, rules of international law may be changed for humanitarian intervention, but it is possible to say that the legitimacy of certain activities does not guarantee its legality and that moral values cannot override the rules of international law recognized to be as such.

## 2. War on Terror : 2001 Afghan War

The war on terror against Afghanistan was justified by the United States on self-defense under Article 51 of the UN Charter. It presumed that the terrorist attacks on September 11 were almost regarded as an attack by Afghanistan itself, because it gave asylum within its territory to Usama bin Ladin, a leader of the terrorist group seemingly responsible for that incident. The NATO took the same line of argument and based its action on collective self-defense. However it was difficult to sustain the argument for the United States.

First, Article 51 requires that an armed attack occurs for the exercise of the right of self-defense. The issue here is whether the terrorist attacks on September 11 constituted an armed attack for self-defense. Actually there was no attack of Afghanistan forces. The attack was undertaken by private persons using civil airliners, and not by soldiers of Afghanistan national forces using regular weapons. Indeed Article 51 does not clearly mention attack of regular forces, but it is commonly understood that armed attack as a requirement of self-defense should be taken by military forces.

In some cases, although armed attack is carried out by private individuals, it may be considered to be attributable to a state. In the *Nicaragua* case, the International Court of Justice held that armed attack included "the sending by or on behalf of a State of armed force against another State" or "its substantial involvement therein." Plainly the Afghanistan government did not send the terrorists against the United States, and they did not attack on behalf of Afghanistan. Then it should be examined whether the Afghan government was involved substantially in the attacks.

The United States and allied forces did not demonstrate positively that the Afghan government was substantially involved in the incidents. Two tests for substantial involvement in the armed attack are claimed by some jurists. One test is whether involvement is considerably heavy or not. The other test is whether it is tantamount to effective control over the attack. It is impossible to say that giving asylum to terrorists constitutes heavy involvement or exercise of control over the terrorists. Neither test is cleared. The United States did not produce any evidence that the Taliban government was substantially involved in the September 11 attacks.

Second, the United States was too late in launching a military campaign with United Kingdom against Afghanistan. One of the requirements of self-defense is necessity to do so. The requirement of necessity means immediate response to illegal attack. The purpose of the right of self-defense is to repel a present attack to recover the security of the victim state, and not to take revenge some time after the incident. The United States began to exercise the right of self-defense four weeks later. This fact shows that the incident did not demand a "instant" response and left the United States considerable "moment for deliberation." Therefore the requirement of self-defense which came into existence in the *Caroline* case was not met by the United States.

Third, it was an excessive response for the United States to destroy the Taliban government of Afghanistan. The action for self-defense shall be proportionate to the first armed attack. This is the requirement of proportionality in customary international law. It cannot be denied that the overthrow of the government is beyond proportional response for self-defense, because self-defense is attained when the victim State succeeds in repelling the ongoing attack.

Lastly, according to the provisions of Article 51, the victim state shall stop its action immediately after the Security Council takes necessary measures. The Security Council had already taken some measures before the United States began the military operation. Resolution 1368 ordered member state not to support the terrorist acts. Although it recognized the right of self-defense generally, it did not refer to the United States as a victim state enjoying the right of self-defense and to Afghanistan as target State of self-defense action. It is difficult to say that the Security Council authorized the United States to use force for self-defense.

The US actions are not consistent with the provisions of the Charter of the United Nations and rules of customary international law. However some people would say that it was legitimate because there were moral justifications like legitimate war against terrorists. Actually the Bush administration called the campaign the "new war on terror." It might be arguable that there was a lacuna in international law in this area and it was necessary for international society to fill the gap by creating new rules of international law for legitimate use of force.

### 3. War against WMD: 2003 Iraq War

Iraq war in 2003 was another case of a "just war." The United States began an air campaign against Iraq and a subsequent land campaign since it thought that Iraq was ready to use some WMD developed already with carrying vehicles, allegedly including nuclear and chemical weapons. An investigation by UNMOVIC was undertaken, but no such weapons were found. But the war was commenced unilaterally without any authorization of the Security Council.

The United States and the United Kingdom argued that this action had already been authorized by some resolutions of the Security Council. Resolution 1441 affirmed that Resolution 687 was not observed by the Iraq Government. Resolution 687 was a decision taken by the Security Council to order for Iraq to receive inspections by the competent body of the United Nations and IAEA responsible for the peaceful use of nuclear energy as a condition for the cease-fire of the Gulf War in 1991. Therefore the Gulf War could be resumed on the basis of Resolution 678 in 1990. This legal logic of the US and UK was the "domino" theory. A series of resolutions by the Security Council authorized their actions against Iraq. This theory shows clearly that one of those resolutions did not authorize the military operation, if isolated from the other resolutions. Resolution 678 was an instrument to give member states of the UN freedom to choose actions in order to repel the Iraq forces from Kuwait and to recover peace and security in the region. Its purpose and object were achieved at the end of the Gulf War. The causes of the Iraq War in 2003 were entirely different from those of war in 1990. Therefore Resolution 678 does not cover the new Iraq War.

Another possible justification is based on anticipatory self-defense. In 2002 the Bush doctrine said this concept would be operative in US foreign policy. However, it is clearly rejected in Article 51, because it provides the factual requirement that armed attack occurs. As already discussed above in the context of the Afghan War, the *Nicaragua* case dealt with the issue and took a narrow interpretation on that Article. In the *Oil Platforms* case, the International Court of Justice reaffirmed its premise of the right of self-defense. As a matter of fact, there is not the slightest doubt that Iraq was not preparing to launch a military attack against the United States.

### 4. Just War Theory Advanced in the United Nations

The arguments for the Kosovo intervention, the Afghan War, and the Iraq War drew their idea from modern just war theory. The United States raised various legitimate grounds for a "just war." For example, military measures for the purpose of suppressing terrorist actions, humanitarian intervention to stop gross violations of human rights, the use of force for police action to check ships supposedly carrying WMD on the high seas (PSI), and so on. All these actions are impermissible under Article 2, paragraph 4 of the UN Charter, which prohibits any use of force besides some exceptions irrespective of any just causes. In addition, the principle of non-use of force is usually regarded as a rule of *jus cogens* or peremptory norm. It is very difficult for the just war theory to overcome the argument of *jus cogens*, because a rule of *jus cogens* may only be superseded by a new rule of the same character.

International law reflects the minimum values of international society, but not those of some countries, especially some developed countries. No illegal action shall be seen as a legitimate or just action. The Afghan and Iraqi wars might be considered to be just wars by some states, but not by many other states. Insofar as a rule of international law is a product of universally recognized values of international society, seemingly legitimate but actually illegal actions are

definitely illegal and illegitimate in the standard of the whole society of nations. It might be arguable that international society is becoming generous toward illegal but just wars and creating a new rule of international law to permit such just wars, but such a society would be dominated by the power of strong states, and not by the rule of law.

In the United Nations, there is debate concerning UN reform. A report of the Secretary General, titled "In Larger Freedom" in 2005 said that imminent armed attack, though it has not yet occurred, constitutes sufficient ground for self-defense. Moreover the International Committee on Intervention and State Sovereignty sponsored by the Canadian Government issued a report titled "Responsibility to Protect" in 2001 maintaining that, in certain ultimate cases, unilateral military action by a third states might not be precluded from options to satisfy the responsibility to protect the civil population under attack by a government or other powerful entities. It should be asked whether such a movement in and out of the United Nations is creating a new rule of international law to limit the regulation of the use of force.

The Security Council is now becoming a "legislative body" within the United Nations, since it tends to adopt resolutions with wider application and with binding force on member states. It has recently adopted an agenda that is not directly concerned with the maintenance of peace and security, like "protection of civilians in civil wars," "children and war," and so on. Even the problem of HIV is now under the purview of the Security Council. It is clear that the concept of "affirmative peace" in contrast with negative peace, which means peace without war, and "human security" are taking the place of the traditional concept of peace to support the just war theory. But caution must be paid to the fact that the Security Council has only 15 members and does not represent the whole of international society, and that just war theory only justifies the use of force by big powers against small states. This double standard is applied to every agenda in the Security Council.

Just war theory just serves the freedom of big states to use force unilaterally. It does not guarantee the sovereignty of other states. However, international society is composed of equal states under international law. Unless such a structure is changed, international law shall be based on sovereignty and equality because the rules of international society are created in principle by agreement, explicit or implied. It is necessary to promote international peace and security on the basis of that basic principle.

(YAMAGATA Hideo, Ritsumeikan University)

### III. The International Criminal Court and the Democratization of International Society

#### 1 Working toward New International Criminal Justice

The Rome Statute of the International Criminal Court was adopted in 1998 and entered into force in July 2002. Following this, the International Criminal Court (ICC) came was created in February and April 2003, when the Judges and the Prosecutor were elected by the First Assembly of States Parties. Bearing in mind the potential impact the ICC may have on the basic structure of international society, we hold it to be an extraordinary development that the ICC was established in the relatively short period from 1998 to 2003.

The process of founding the ICC was prompted by the creation of two ad hoc international criminal tribunals (ICTY and ICTR) based on United Nations Security Council Resolutions 827(1993) and 955(1994). And for the first time in history, a permanent international criminal court was created on the basis of a treaty. The legal foundation of the Court is solid in contrast

to the above-mentioned ad hoc tribunals.

The establishment of the ICC might be seen as positive for the democratization of international society in the 21<sup>st</sup> century. The ICC will contribute to this development if it exerts power effectively to deter the most serious crimes of international concern, as referred to in the Rome Statute. Moreover, it might be very important that the ICC perform its function in fairness, especially in a manner consistent with the Purposes and Principles of the United Nations Charter.

Until now, March 2005, there are known cases which include referrals of a situation to the Prosecutor by States Parties or the UN Security Council, and investigations by the Prosecutor, done in accordance with Article 13 of the Rome Statute. At this first stage of functioning of the ICC, it might be too early to make an overall and proper estimation. Only a few remarks will be made here regarding some basic problems.

## 2. Declarations Made upon Ratification of the Rome Statute

When signing or ratifying the Rome Statute, many States have made various types of declarations, some of which are interpretative and pose serious questions. One State Party that is a nuclear power made interpretative declarations, one of which reads, *inter alia*: “the provisions of article 8 of the Statute, in particular paragraph 2 (b) thereof, relate solely to conventional weapons and can neither regulate nor prohibit the possible use of nuclear weapons.” The quotation excludes the use of nuclear weapons by that Party from the list of war crimes. Strong objections were raised toward this declaration, and one State Party, citing the Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons (ICJ, Reports, 1996), declared that “it would be inconsistent with principles of international humanitarian law to purport limit the scope of article 8... to events that involve conventional weapons only.”

Another State Party, also a nuclear power, declared that it understands the term “the established framework of international law” used in Article 8 (2)(b) and (e), to include customary international law, and that it “confirms and draws to the attention of the Court its views as expressed, *inter alia*, in its statements made on ratification of relevant instrument of international law, including the Protocol Additional to the Geneva Conventions” (Protocol I) of 1977. The crucial point is that the said statements include, in effect, a reservation on belligerent reprisals, which relates to Articles 51 to 55 of the Protocol I (Protection of the Civilian Population). Belligerent reprisals against the civilian population are prohibited by Article 51, para. 6 of the Protocol, but reservations to the Articles of the Protocol are not prohibited. But the Rome Statute prohibits reservations. The reservation on belligerent reprisals makes the definition of war crimes so ambiguous that the reservation should be considered null and void.

It should be understood that the ICC has an extremely important role to be played so as to establish an international public order through the administration of criminal justice. In a case in which the ICC had to exercise jurisdiction over the use of nuclear weapons, we were hoping that the ICC would unequivocally condemn the nuclear tragedy.

## 3 Geography of States Parties

The number of States Parties of the Rome Statute as of 31 March 2005 is 98. The geographical distribution is as follows: Africa 27, Asia 6, Pacific 7, South America 10, North America 10, NIS 2, Europe 36. The largest component is European States (37%) and the second

is African States (27%); the total number of these areas (63) is nearly two-thirds of the total.

The relationship between Africa and Europe had been, most generally speaking, before the age of decolonization in the 1960s, that Africa was the target area of colonial rule while Europe was the home of colonial empires. Have such former relations been totally dissolved today?

Currently, the Prosecutor of the ICC is conducting investigations in Uganda, Democratic Republic of Congo, and the Central African Republic after having received referrals from the government of each State. This state of affairs appears to be an intervention into the disintegrating condition of developing countries, whose governments have no choice but to surrender to the complementary jurisdiction of the ICC. The intervention is propelled by powerful criminal sanctions machinery designed mainly by Western developed countries. Is this not reality? Answers will be given in different ways.

Anyway, it seems to us only a reiteration of the ICTR to intervene in inhumane situations of civil wars in Africa by means of international criminal justice. Is it not one-sided justice for an international criminal court to start surgical operations only after a great number of people become victims of genocide or crimes against humanity in perpetually chaotic countries? We wonder if the ICC was created only to confront the rule of law with internal wars and disorder in African States.

On 31 March 2005, the UN Security Council, acting under Chapter VII of the UN Charter, decided in Resolution 1593 (2005) to refer the situation in Darfur since 1 July 2002 to the Prosecutor of the ICC. This action represents the unilateral and unfair treatment of the matter by the Security Council, which on the one hand imposes criminal sanctions because of the situation in a non-party State, while on the other hand excluding nationals from a contributing State outside that State, which is also not a party to the Statute.

#### 4. The Demand of the Super Power for Unprecedented Prerogatives

In May 2002, the United States government declared it would not ratify the Rome Statute, and subsequently it began to demand as a non-party State its exemption from the jurisdiction of the ICC. This demand has been done through two channels: one is the United Nations Security Council, and other is a kind of international agreement referred to in Article 98, para. 2.

Security Council Resolution 1422 (2002) requested the ICC not to commence or proceed with investigation or prosecution concerning personnel of the UN, and authorizes or establishes operations belonging to a contributing State not a Party to the Rome Statute. This request was based on Article 16 of the Statute, according to which such request was valid for 12 months, and renewed a year later by the Resolution 1487 (2003). But it was extremely questionable if these Resolutions had sound legal basis, firstly because there was not any present threat to international peace and security, a prerequisite for action by the Security Council under Chapter VII of the Charter, and secondly because Article 16 of the Statute did not cover blanket immunity in relation to unknown, future situations. A further attempt to renew the request failed in 2004.

Another kind of exemption was made in Resolution 1497 (2003). In this case, the Security Council decided that a contributing State not a Party to the Rome Statute shall have exclusive jurisdiction over personnel from a contributing State participating in Multinational Forces or the United Nations stabilization force in Liberia. It is astonishing that the exclusion of jurisdiction applies not only to the ICC but also every State other than such a contributing

State. This might be an *ultra vires* act of the Security Council.

So called Article 98 Agreements purport to block surrendering nationals belonging to contracting Parties of such Agreements to the ICC. The United States has concluded such Agreements with many States since the Rome Statute entered into force in 2002. It is said that International Agreements mentioned in Article 98, paragraph 2 originally presupposed Status of Force Agreements (SOFA) and other similar agreements, which were already concluded before the entry into force of the Statute.

It is a controversial question whether the obligations under Article 98 Agreements are compatible with the obligations under the Rome Statute to cooperate with the ICC (Articles 86, 89, 90, and other relevant Articles). Does the United States have a free hand in creating obstacles to the function of the ICC after declaring that it rejects ratification of the Statute?

The fundamental thinking of the United States that underlies its hostile attitude to the ICC might be seen in the words by Ambassador Scheffer, who led the United States delegation to the Rome Diplomatic Conference in 1998, which read as follows:

"It is simply and logically untenable to expose the largest deployed military force in the world, stationed across the globe to help maintain international peace and security and to defend U.S. allies and friends, to the jurisdiction of a criminal court the U.S. Government has not yet joined." Complementarity "is not a complete answer, to the extent that it involves compelling states (particularly those not yet party to the treaty) to investigate the legality of humanitarian interventions or peacekeeping operations that they already regard as valid official actions to enforce international law." "There will be significant new legal and political risks in such interventions, which up to this point have been mostly shielded from politically motivated charges." (93 *A.J.I.L.*(1999) 18-19)

Basic problems surrounding the United States' hostile attitude to the ICC seem to come from its peculiar ideas deeply rooted in its politically motivated understanding of international law. The United States insists that the largest military force deployed helps maintain international peace and security, and that the legality of humanitarian interventions or peacekeeping operations are regarded as valid official actions to enforce international law.

And the United States insists on the nationality principle of criminal jurisdiction of States over the most serious crimes of international concern. This attitude seems to be politically motivated by the demand to put the highest priority on its national interest.

Is the ICC such a dangerous system that the United States cannot trust the complementarity principle of ICC jurisdiction? Is the United States so isolated in international society that it has to prepare to use force for the purpose of bringing about the release of its nationals detained by the ICC (American Servicemembers' Protection Act of 2002, Sec. 2008)?

It may be impossible to imbue international society with a democratic structure in the 21<sup>st</sup> century on the basis of justice without bringing the isolated Super Power back into the fair network of international law, and without eliminating the contradiction that the United Nations cannot prevent the Super Power from prosecuting an illegal war and destroying the whole system of a sovereign state, while on the other hand intervening in civil wars only after a heavy toll in human lives has resulted.

(OKADA Izumi, Nanzan University)

#### IV. Enactment of a series of emergency laws in Japan since the late 1990s and more dangerous Japanese involvement in U.S.-led wars

It could be said that the Government of Japan and ruling parties, the Liberal Democratic Party in particular, have long wished to amend Article 9 of the Constitution of Japan which clearly prohibits the Japanese Government from having a resort to war as a method for settling international disputes and it abandons all kinds of military force, and which provides further that the right of belligerency will not be recognized. Although the Japanese Government has constantly sought to expand the activities of the Japan Self-Defense Force (JSDF) (three services of the JSDF have 253,000 personnel at present), even to dispatch it abroad, by disregarding Article 9 of the Constitution or intentionally misleading it, it is very clear that Article 9 has been a serious obstacle for the Government.

The 1990-91 Gulf War was a turning point in the domestic situations on emergency laws, and in 1992, the Law Concerning Cooperation for United Nations Peacekeeping Operations and Other Operations was enacted. It is said that this 1992 law was a forerunner of the emergency laws enacted in the late 1990's and the early 2000's (see A. Mayama, "Japan's New Emergency Legislation and International Humanitarian Law", 47 *Japanese Annual of International Law* (2004), p.70)

The end of the "Cold War" has inevitably changed the Japan-U.S. security relationships, because the Soviet Union, which used to be the potential enemies both for Japan and the U.S., disappeared, on the one hand, and the emergence of the active United Nations promoted Japan and the U.S. to enlarge the scope of mutual military cooperation, on the other. Hence, the 1978 Guidelines for Japan-U.S. Defense Cooperation were replaced by the 1997 new "Guidelines" which greatly expanded the scope of military cooperation among them. Then between 1999 and 2000, the following bills and agreement were approved by the Diet to implement the 1997 new "Guidelines": Law Concerning Measures to Ensure the Peace and Security in Situations in Areas Surrounding Japan (Surrounding Areas Law); Ship Inspection Operation Law; and Agreement to Amend the Acquisition and Cross-Serving Agreement between Japan and the U.S. (Amended ACSA). (see H. Yamagata, "A New Century of the Japan-US Defense Cooperation for the Far Eastern Security: An Analysis of the New "Guidelines" in the Light of International Law", 20 *Ritsumeikan Journal of Int'l Relations and Area Studies* (2002), pp.49-50; Mayama, op. cit., pp.70-73).

A commentator doubted whether Article 9 of the Japanese Constitution would be compatible with the 1997 new "Guidelines", and pointed out the worst scenario under this 1997 new "Guidelines" that "Japan has to give rear area support even when the United States begins an aggressive war against a state which situated in the area surrounding Japan" (Yamagata, op. cit. p.58).

Soon after the Sept. 11 attacks, the Diet of Japan passed the Anti-Terrorism Special Measures Law on October 29, 2001, which would enable to "contribute actively and on its own initiative to the efforts of the international community for the prevention and eradication of terrorism" (Press Statement, Embassy of Japan, "Diet of Japan passed the Anti-Terrorism Law", Washington, D.C., October 29, 2001). A researcher at the Heritage Foundation welcomed this Anti-Terrorism Law as interpreting that "under this new law, Japan's ships, even Aegis destroyers, could be deployed to the Persian Gulf to become part of the U.S. air defense umbrella, ready to use their missiles to defend U.S. forces should they come under attack" (L. Wortzei, "Joining Forces Against Terrorism: Japan's New Law Commits More Than Words to U.S. Effort", Backgrounder #1500, November 5, 2001). In fact, a supply ship and a destroyer of

the JSDF left Japan on November 25 for Indian Ocean to supply fuel to the U.S. and U.K. vessels under military operations against Afghanistan, and the mission has continued to date.

In June 2003, the Law Concerning Measures to Ensure National Independence and Security in the Situation of Armed Attack (Armed Attack Situation Law), which is intended to cope with both an armed attack situation and a *situation where an armed attack is imminent or anticipated*, was adopted (emphasis added).

Then, in July 2003, the Iraq Reconstruction Assistance Special Measures Law was adopted as being valid for four years. The law permits to dispatch the JSDF to the “non-combat areas” in Iraq in order to engage in humanitarian and reconstruction efforts as well as to provide “logistic support” for U.S. and U.K. forces. This is the first time for the JSDF to support US forces in an area where war has not yet ended. There has been a lot of debates in the Diet as to whether the “non-combat areas” could exist in Iraq, because Article 9 of the Constitution of Japan recognizes in no way the right of belligerency.

In June 2004, a series of emergency laws was further adopted by the Diet as follows: Law Related to the Measures to Protect Nationals in an Armed Attack Situation (Nationals Protection Law), Restriction of Maritime Transportation of Foreign Military Suppliers in an Armed Attack Situation (MTR Law), Law Related to the Treatment of Prisoners of War in an Armed Attack Situation (POW Law), Law Related Measures for Ensuring Effective Activities of the U.S. Forces (U.S. Military Actions Measures Law), Law Concerning the Utilization of Specific Public Facilities in an Armed Attack Situation, Law Concerning the Punishment of Grave Breaches of International Humanitarian Law (PGB Law), Amended Self-Defense Law. The Diet also approved the accession of the two 1977 Additional Protocols to the 1949 Geneva Conventions at the same session. These laws, supplementing laws enacted the previous year, were to complete the whole body of war legislation, in order even to make enable civilian population “voluntary, obligatory cooperation”.

Now, we stand at the cross-road whether we can maintain our “Peace Constitution” or abandon it in order to step forward more dangerous involvement in U.S.-led war.

However, we confidently believe that Article 9 of our Constitution is a “treasure of human being”, being able to lead the world ever-lasting peace. As shown in the Hague Appeal for Peace, in 1999, “Every Parliament should adopt a resolution prohibiting their government from going to war, like the Japanese article number nine.”

(IGARASHI Masahiro, Kobe University)

## Chapter 2 Globalization, Human Rights and Social, Economic and Political Rights of the People

The word globalization is often used in different ways. Some people think that it means “internationalization,” while others take it to mean “universalization.” Since there is no space here for considering the definition of the word, we focus on globalization as liberalization. First, we discuss the gaps between countries created by trade liberalization. Second, we examine the activities of transnational corporations, which enjoy considerable benefits from the liberalization of the world economy. Third, we examine the World Bank’s neo-liberal economic policy and suggest ways to improve the international and domestic systems.

## I. Globalization and human rights

It is said that economic indicators, per capita GDP, life expectancy, literacy, and other conditions in the developing countries have improved since the early 1980s and the number of people who live on less than \$1 a day decreased by 3 million between 1981 and 2001. The World Bank praised this rapid economic growth the reduction of poverty in its paper. Yet, at the same time, it admitted that there are "highly uneven distributions of those gains" (World Bank, "Development and Poverty Reduction, Looking Back, Looking Ahead").

That inequality is one of most serious problems created by globalization. GDP growth in Eastern and Southern Asia marked 4.5% in 2003 but it was only 1.7% in Latin America and the Caribbean (UN ECA, Economic Report of Africa 2004). Still, in Eastern and Southern Asia, we can also see unequal development. China and India increased their rates with growth of 9.1% and 6.5% in 2003.

This disproportionate economic growth widens the quality of life gaps. According to the statistics by UNICEF, Mali had a 2.4% GDP per capita average annual growth rate between 1990 and 2003, and decreased its mortality rate for children under five years of age from 500 to 220 between 1960 and 2003. The amount of ODA flowing into Mali was \$472 million. However, China achieved not only good economic growth performance (8.5% GDP per capita average annual growth rate between 1990 and 2003) and decreased its under-five mortality rate (from 225 in 1960 to 37 in 2003), but also received \$1,476 millions in ODA in 2002.

During the Cold War, the superpowers tried to take countries into their orbits so they disbursed foreign aid all over the world. It could be said that ODA policy was controlled by political strategies. Yet, political intentions did not disappear after the collapse of the Soviet Union. However, the lone superpower, the USA, needs not to send ODA everywhere and can select recipient countries as it sees fit. As a result, there are many developing countries which get little or no attention from developed countries just because they are not seen as important to the world economy. Developed countries invest capital in countries where they can increase profitability and provide ODA for infrastructure, education, and poverty reduction in order to manage their investments with efficiency, develop capable workers, and make the society secure.

Poverty often causes violence. The World Bank reported that conflicts affect some 35 of the world's poorest countries, destroying economies, keeping millions of people in poverty, and disrupting their access to services ("Development and Poverty Reduction, Looking Back, Looking Ahead"). Unless the vicious circle of poverty is cut, millions of people will be left in despair.

(OKADA Junko , Kobe University)

## II. The UN Global Compact : Its Significance and Some Issues

### 1. Introduction: globalization and transnational corporations

It is obvious that transnational corporations (TNCs) benefit most from globalization and that they are also major promoters of globalization. So their influences upon governments and our lives are becoming much bigger than before. But because they are not subject to international law, there are many difficulties with imposing responsibility for their behavior.

### 2. The UN Global Compact as a new challenge

## *History*

There is nothing new about various problems being raised about the behavior of TNCs in the international arena. Since the 1960s, developing countries have insisted on the necessity of international regulations on TNCs. So far, in various international organizations such as UNCTAD, OECD, and ILO, many abortive attempts have been made. Furthermore, in the age of globalization more effective measures are required.

## *Outline*

At the World Economic Forum in January 1999, United Nations Secretary-General Kofi Annan advocated a new initiative in which business society, labor, and civil society work with UN agencies with the intention of making businesses comply with universally recognized principles such as the protection of human rights, conservation of the environment, and respect of labor rights. Thus a new challenge started in July 2000, and that is the UN Global Compact. Ten principles are presented in the Compact.

### Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

### Labor Standards

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labor;

Principle 5: the effective abolition of child labor; and

Principle 6: the elimination of discrimination in respect of employment and occupation.

### Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

### Anti-Corruption (added in July 2003)

Principle 10: Businesses should work against all forms of corruption, including extortion and bribery.

## *Feature*

According to the UN Global Compact website (<http://www.unglobalcompact.org/>), the Compact is a purely voluntary initiative with two objectives: to mainstream the 10 principles in business activities around the world, and to catalyze actions in support of UN goals. It is not a regulatory instrument, but a voluntary network whose core consists of the United Nations itself, the Global Compact Office and six UN agencies: the Office of the High Commissioner for Human Rights (HCHR), the United Nations Environment Programme (UNEP), the International Labour Organization (ILO), the United Nations Development Programme (UNDP), the United Nations Industrial Development Organization (UNIDO), and the United Nations Office of on Drugs and Crime. A company which participates in the Compact pursues the principles by the following means: First, "global policy dialogues" to produce solutions to contemporary problems. Second, "learning" to share examples of practices on the website. Third, the creation of "local networks" at the country or regional level. And fourth, the participation of

“partnership projects” to meet the UN Millennium Development Goals (MDG) (<http://www.un.org/millenniumgoals/>) by the year 2015.

In this way, the Global Compact intends to deal with problems involving the behavior of TNCs by voluntary and participatory means, not by the regulatory means commonly employed until now. It is pointed out that this change means the UN accepts the globalization process as a reality and on this premise the UN chose an alternative way to solve the problems by imposing a kind of responsibility (not compulsory) upon TNCs. The notions “corporate social responsibility (CSR)” or “good corporate citizenship” are on the same level with these events.

### 3. Issues

Now more than 2000 companies from 76 countries, including 35 Japanese companies, are participating in the Compact. So it seems to have gotten off to a smooth start.

But there is something to consider carefully. Generally a company decides to undertake some responsibility because it has something to gain by doing so. In this case, a company participates in the Compact because by doing so it is telling consumers that this company acts with due regard to universally recognized values (if not economically profitable). If that is true, it becomes important to establish a mechanism to verify the compliance of participants. But now there is no effective mechanism. Thus some effective compliance procedures must be developed.

And it may also be important to more concretely express the principles to which participants commit. One of the reasons why companies in developing countries chose to commit to the Compact is that it is much better than imposing values such as human rights or environmental protection unilaterally by economic measures. As is known from this, it is essential for the Compact to ensure the universality of the values.

Furthermore, if the UN accepts the globalization process as a reality, it needs to promote some mechanism whereby civil societies make their views or interests heard. It is civil society that is most vulnerable to the negative effects of globalization.

(ITAKURA Minako, Shizuoka University)

## III A Critique of the Good Governance Support by the World Bank

### 1. Recent activities of the World Bank

The World Bank, like the IMF, was established at the end of the Second World War as an intergovernmental organization. It is formally named “The International Bank of Reconstruction and Development.” This fact shows that it was designed to provide money to assist in reconstruction and development projects in Europe and other regions. In the 1950s the World Bank began to shift its activities from the reconstruction of Europe to development assistance in non-European regions. Nowadays, the World Bank declares that its mission is to help the poorest peoples and the poorest countries. The activities of the Bank have much influence on economic development and economic policies in the age of globalization.

Good governance support by the World Bank is one of the activities that influence the social and economic systems of developing countries. In the early 1990s the World Bank began to support the building or reconstruction of good governance in developing countries. The Bank learned that the policies and resources for development are the efficiency and transparency of the institutions that carry out the policies. It is also said that the realization of good governance

serves to rebuild a state's institutional capacity, which is essential to the promotion of human rights.

## 2. Two prerequisites for good governance support

Apart from the inconsistency of the IBRD's Articles of Agreement (article 4, section 10), good governance support by the Bank presumes two things.

First, good governance presupposes neoliberal economic policy. It contributes to top-down institutional reform based on the neoliberal market economy modeled by the Euro-American governmental system. Note that the system has made Third World people poorer and has widened inequalities among them.

Second, good governance support, like structural adaptation loans, presupposes the belief that the cause of economic failure of a state is a result of mismanagement by that government. This contrasts with the presumption underlying the resolution on the New International Economic Order (NIEO) that the UN General Assembly adopted in 1974. That resolution said that it had proved impossible to achieve equal and balanced development of the international community under the existing international economic order. The gap between the developed and the developing countries continues to widen.

## 3. Toward improvement of international and domestic systems

Even if it is recognized that the reform of the state system is a starting point, it is always necessary to examine whether the reform contributes to realizing the human rights of vulnerable peoples. At the same time, it is claimed that reform will achieve a fair and equitable order in the global system, including inter-governmental organizations. It is noted that the international system and domestic systems are interconnected not only in the economic sphere but also in the political one. Here, suggestions for improvement offered here concern only World Bank activities.

The broadening and enhancement of international human rights law may have a strong influence on the development of World Bank policies. It is therefore necessary to examine whether Bank policies conflict with current human rights norms or not. The World Bank established an Inspection Panel in 1993 to serve as an independent mechanism to ensure accountability in Bank-supported projects with respect to its own policies. Under the present system, the Inspection Panel reviews cases in terms of Bank policies, but not under local or international law. Improving the Panel mechanism is one of our proposals.

Required is the participation of NGOs in World Bank activities, particularly the elaboration of Bank policies and procedures to carry out Bank-supported projects. The Bank is ready to establish a participation mechanism which is in effect practiced sometimes. It is also noted that NGOs based in both developing and developed countries must be required to take part in the Bank's work equally.

Needless to say, the first thing to be done is reform the unequal decision-making procedure of the World Bank, which is symbolized by a weighted vote system. It is essential to realize an equitable organization for all stakeholders.

(KIRIYAMA Takanobu, Osaka City University)

## IV.. Revision of the Japanese Immigration and Refugee Recognition Law

The tendency toward a 'panopticon' modelled society on the pretext of necessity of security measures against 'terrorists', 'criminals' and 'rough states' could be founded in the recent revision of the Immigration Control and Refugee Recognition Act (ICRRA). Made by the Law No.73 of 2 June 2004, this amendment became into force fully on 16 May 2005.

Although the ICRRA had been frequently amended, the amendment at this time contained a considerable amount of changes. Neutrally speaking, it could be characterised by efficiency and effectiveness. And certainly, much of advancement could be founded in the parts relating to status of and procedure for refugees or asylum-seekers in the light of international standards (See: Syuichi FURUYA, "Implementing International Refugee Law through a National Legal System: Practice in Japan", *Japanese Annual of International Law* [hereinafter, cited as: *JAIL*], No.47, 2004 (2005), p.1ff.)

First, it established the system for permitting provisional stay for the persons applying the recognition of their status as refugees. Before the amendment, procedures for detention or deportation could not have been suspended for persons without legal status of residence, even if they have been applying recognition as refugees

Second, the recognised refugees shall be granted the permission of stay with the status of 'Long Term Resident'. Such linkage of refugee recognition with granting of status of residence had never existed in legal terms before the amendment.

Third, the refugee examination counsellors shall be appointed to participate, as third parties, in the procedure for examination of appeals. The opinions of the counsellors shall be duly regarded for the decision by the Minister of Justice on the question whether objection by an applicant be accepted or rejected.

Of course, many criticisms have been raised by NGOs and practicing lawyers. The provisional stay or automatic grant of status of residence do not extended to those who have not directly entered Japan from a territory where they had been to be endangered. Judging from the actual situation of past asylum seekers in Japan, such restriction will reduce the number of beneficiaries of new systems to the minimum. We could, however, accept the view that the changes in the refugee law are positive in total sum, if we accept them at their face value.

Immediate concerns are felt for the parts relating to the immigration control in proper sense.

First, the amendment raised the amount of fines by 10 times for illegal entry, illegal stay etc. The upper limit of fines for such acts is now 3 million yen besides 3 years' imprisonment at maximum.

Second, for persons who have past record of deportation, the permission for entry (landing) in Japan shall be denied for 10 years instead of 5 years.

Third, for more efficient and sooner exclusion of foreigners in 'illegal' situations from Japan, the departure order system was created in addition to the traditional deportation system.

Last and not least, status of residence is now revocable, even before the permitted period for stay does not expired.

These measures against foreigners in irregular situations or stable life of every foreigner were legitimated by the interest of public security. The Ministry of Justice, the authority in charge of the immigration control and refugee recognition, explained background of the amendment in the following terms:

In recent years, Japanese people have become increasingly concerned about the deterioration of public security, and one of the causes, the issue of illegal foreign residents has

been pointed out and countermeasures to resolve this issue have been requested from various quarters. In order to decrease the number of such illegal foreign residents, currently estimated at about 250,000, it is necessary to strictly implement immigration control and fundamentally reinforce detection of illegal foreign residents. It is also necessary to take measures to encourage illegal foreign residents to terminate their illegal stay in Japan and go home voluntarily, and eliminate foreign residents who pretend to be legal residents after entering Japan with permission for landing obtained by illegal means." (An explanatory document entitled "Law for Partial Amendment of the Immigration Control and Refugee Recognition Act (Law No.73 of June 2, 2004) Enacted at the 159<sup>th</sup> Diet Session", the text available at: <http://www.moj.go.jp/ENGLISH/IB/ib-78.html>, last visited on 19 May 2005)

This statement attributes the whole responsibility for deterioration of public security to 'illegal' foreign residents, whose number is approximately 0.2 % only of the total population in Japan. Such holding has never supported by reliable information. The newly introduced tough measures are based upon, at least, biased views, and would certainly promote prejudices and feeling of suspicions toward (look-like) foreigners. It would be a typical policy of flaming fear among people in order to consolidate a police state.

The fact that they are coupled with such a policy would be a sufficient reason why we take a cautious approach to the improvements of the refugee law, explained above. Anyway, we have to examine the history and context around the revision.

Certainly criticisms on the Japanese system for refugee recognition had been voiced, in particular by the Amnesty International (*Japan: Inadequate Protection for Refugees and Asylum-seekers*, March 1993), and by the Nanmin Mondai Kenkyu Forum [Forum on Refugee Studies] (*Nihon no Nanmin Nintei Tetsuzuki: Kaizen he no Teigen* [Refugee Recognition Procedure in Japan: Proposals for Reformation], Gendai Jinbun Sya, Tokyo, 1996), a voluntary group composed by leading professors and practicing lawyer interested in refugee law. However, these actions had never succeeded to persuade the government and the ruling parties to launch work for improvement.

The turning point was an incident in May 2002, when five people from North Korea attempted to run into the Japanese Consulate General in Shenyang, China. The Chinese police arrested all of them, including those who had been present at a room in the Consulate (for an account of the incident and exchanges of views between the Japanese and Chinese governments, see: "Chronology of Japanese Foreign Affairs, January 1 – December 31, 2002", *JAIL*, No.46, 2002 (2003), p.301). The ruling parties reacted soon. The Liberal Democrats Party, the major partner of the ruling coalition, "being prompted by the Shenyang incident", established a Study Group on Exiles, Refugees etc. (Daily Jiyu Minshu, 30 July 2002, at: <http://www.jimin.jp/jimin/main/daily.html>, last visited on 19 May 2005) and issued a document "Basic Policy for Measures on Refugees" on 30 July 2002 (Wagakuni ga Torubeki Nanmin Taisaku no Kihontekina Hoshin, a summary provided in: *Jiyu Minshu* [Newspaper Liberal Democrats], joint issue of 13 and 20 August 2002, p.3). The New Komeito Party, a minor, but important partner of the coalition, also published a "Suggestion for Revision of the Refugee Policy" on 2 July 2002, which referred to the incident at its first sentence (Nanmin Seisaku no Minaoshi ni Kansuru Seisaku Teigen, text provided in: *Komei Shinbun* [The Komei Newspaper], 3 July 2002, p.2). Both of documents suggested positive measures for exiles from North Korea or "asylum-seekers running into the Japanese Embassies or Consulates" as well

as revision of the procedure for refugee recognition.

In these circumstances, delayed revision of the refugee law was stimulated and finally accomplished. We may, therefore, wonder whether the revision was motivated by genuine humanitarian considerations. Note should be taken to the fact that the Minister of Justice remains totally free in legal terms to refuse "Special Permissions of Residence" for foreign families in irregular situation even when the minors are being taught at Japanese schools (for a vivid account of the problem, see: Gaikokujin no Kodomotachi no "Zairyu Shikaku Mondai" Renrakukai [The Network Group on the "Matter of Residence Status" for Foreign Children] (ed.), *Sensei! Nihon de Manabasete!* [Teachers! Let Us Study in Japan!], Gendai Jinbun Sha, Tokyo, 2004).

In this context, it should be remembered that the post WWII refugee law had functioned as a tool for the Western Countries in the straggle against East Europeans. By labelling the regime of "persecution", and by inducing exiles, the former had destabilised the latter's position.

Voices for unilateral economic sanction against North Korea are heard loudly in Japan recently. Many of leading politicians are provoking hostile attitude towards that country. It would be likely that the newly overhauled refugee law system be used as a tool even for war propaganda against North Korea. For these reasons, we have to watch closely the implementation of the revised ICRRA, and promote an immigration policy based on regard for co-existence.

(OBATA Kaoru, Nagoya University)

#### V. Persons who are provided for international protection other than the "refugees" defined in the 1951 Refugee Convention

International Human Rights Laws, like ICCPR, oblige states to protect human rights of persons under its jurisdiction, but it does not mean persons should be admitted to and enjoy their human rights in other countries when their human rights are at risk (I will call this latter case "international protection"). Refugees defined in 1951 Convention relating to the status of refugees and its 1967 Protocol, who "owing to well fear-founded fear of being persecuted for reasons of race, region, nationality, membership of a particular social group or political opinion, is outside the country if his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country...(Art,1 of the Convention)", have special status by Article 33 of the Convention which says "no Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". It can be said that as far as they should not be sent back to their county, they are given international protection.

In today's world there are much more people who are displaced from their countries to other countries than those who are admitted to other countries as a 1951 Convention refugee and many states admit those persons by reason of humanity. In "Agenda for Protection" of 2003, UNHCR pointed as one of 12 objectives for goal 1(Strengthening implementation of the 1951 Convention and 1967 Protocol), "Provision of complementary forms of protection to those who might not fall within the scope of the 1951 Convention but require international protection" and mandated "Excom to work in a Conclusion containing guidance on general principles upon which complementary forms of protection should be based, on the persons who might benefit

from it, and on the compatibility of these protections with the 1951 Convention and other relevant international and regional instruments". So it is the time for us to think about other category of persons eligible for international protection.

In the following of this paper I will look existing international and regional schemes for the international protection of persons other than 1951 Convention refugees. Among those are (1)refugees provided in Convention governing the specific aspect of refugee problem in Africa in 1969(AU Convention) and Cartagena Declaration on Refugees in 1984, (2) persons protected for being sent back to their own countries for fear of serious violation of human rights by Convention against torture and other cruel, inhuman or degrading treatment or punishment(CAT) in 1984, ICCPR or Convention for the protection of Human Rights and Fundamental Freedoms(ECHR) in 1950 and (3)persons eligible for subsidiary protection provided in Council Directive 2004/83/EU on minimum standards for the qualification and status of third country nationals or persons as refugees or as persons who otherwise need international protection and the content of the protection granted of European Union in 2004. I will also think about the situation of refugees in Japan and significance of this new international framework to Japan.

In two instruments of the first group, the scope of refugees is wider defined. In article 1(2) of AU Convention "person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his county of origin or nationality, is compelling to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality" is defined as a refugee in addition to the refugees of 1951 Convention in Article 2. Cartagena Declaration says "the definition or concept of refugees to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order"

AU Refugee convention was made in the course of decolonization and the refugee crisis in Latin American countries bore the Cartagena Declaration. Different from the definition by 1951 Convention, which targets the persons who are individually persecuted or have fear of persecution, situation in those two regions necessitated persons to be recognized as refugees by objective situation and in group.

The second group includes international human rights instruments. Article 3(1) of the CAT provides that "No State Party expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". Although CAT deals with other cruel, inhuman or degrading treatment or punishment, it is only torture that international protection is provided for.

On the other hand, ICCPR does not have such a provision of non-refoulement, General Comment No.20 of Human Rights Committee in 1992 says "States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion, or refoulement". In the first place this norm was adopted in the cases of extradition (Kindler in 1993, Ng in 1993, Cox in 1994) following the similar case of ECHR (Soreing in 1989) and later in the cases of expulsion (A.R.J., T. both in 1997, Byhauranga in 2004). Death penalty under Article 6(2) and Second

Protocol is also included in the issue.

The third instrument we take up is the EU Council Directive 2004/83/EC. The Directive provides both on refugees and subsidiary protection. Art.2(e) defines “□person eligible for subsidiary protection□ means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15...”, and Article 15 says “serious harm consist of (a)death penalty or execution; or (b)torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c)serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict”. This includes both categories established in the first group and the second group of instruments. After the end of the Cold War, the mass influx of displaced persons is not a monopoly of Africa any more. The rights provided for them are less than that of refugees, but considerably the same.

These international and regional movements tell us that refugees are not the only exception to be given international protection now. In Japan, the number of asylum applications lodged is very small compared to other industrial countries every year (eg.336 in 2003, 250 in 2002, 353 in 2001) and, therefore, the number of recognized refugees is also very small(10 in 2003, 14 in 2002, 26 in 2001). Out of 336 applicants of 2003, 16 persons are allowed to stay for humanitarian reasons (40 in 2002, 67 in 2001). These are also small numbers, but at the same time it shows that we have more persons admitted to stay in Japan other than Convention Refugees. Currently, there is no legal standard for this category of persons and it is up to the Minister of Justice with his wide discretionary powers vested upon by Immigration Control and Refugees Recognition (concerning special residence permits by Art.50 of the Act). UNHCR Japan Office says that out of 130 persons who are recognized as Persons of Concerns (persons found to flee wars/stateless) by it from 1996-2002, 25% of them are granted either refugee status or humanitarian status in Japan. UNHCR have also condemned Japan for sending back Mandate Refugees. It would be right that the state have power to decide who is a Convention Refugee, but it is not enough just to protect Convention Refugees if Japan should do its duty. What we need is the clear standard for humanitarian protection and that should be accomplished together with the international society.

(NAKASAKA Emiko, Hiroshima University)

### Chapter 3 Protection of environment and right to health

#### I. Climate change and our challenges

##### 1. Climate change and its impact on our life, society, and ecosystem

Climate change has become one of the top issues on the international environmental agenda over the last 10 years. Human activities are releasing greenhouse gases (GHGs) such as carbon dioxide (CO<sub>2</sub>) into the atmosphere, and rising GHG levels are already changing the climate. Observations show that global temperatures have risen by about 0.6°C over the 20th century. There is stronger evidence that most of the observed warming over the last 50 years is

attributable to human activities.

According to the Third Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), climate models predict that the global temperature will rise by 1.4 to 5.8°C by the year 2100. This change would be much larger than any climate change experienced over at least the last 10,000 years. Because of the delaying effect of the oceans, surface temperatures do not respond immediately to GHGs, so climate change will continue for hundreds of years after atmospheric concentrations have stabilized.

Climate change is likely to have a significant impact on the global environment. The mean sea level is expected to rise 9 to 88 cm by the year 2100, flooding low-lying areas and causing other damage. Other effects could include an increase in global precipitation and changes in the severity or frequency of extreme climate events. Climatic zones could shift poleward and vertically, disrupting forests, deserts, rangelands, and other unmanaged ecosystems. As a result, many will decline or fragment, and individual species could become extinct (see UNEP and UNFCCC (2002), *Climate Change Information Kit*).

Climate change will thus make human society face new risks and pressures, which are predicted to be very serious. Some regions are likely to experience food shortages and starvation. Water resources will be affected as precipitation and evaporation patterns change around the world. Economic activities, human settlements, and human health will experience many direct and indirect effects. The poor and disadvantaged are the most vulnerable to the negative consequences of climate change.

## 2. Brief history of international responses to climate change

The international community is tackling this problem first with the United Nations Framework Convention on Climate Change (UNFCCC). Adopted in 1992 and now boasting over 185 members, the UNFCCC seeks to stabilize atmospheric concentrations of GHGs at safe levels (Art. 2). It commits all countries, based on the principle of common but differentiated responsibilities, to limit their emissions, gather relevant information, develop strategies for adapting to climate change, and cooperate on research and technology. It also requires developed countries to take measures aimed at returning their emissions to 1990 levels (Art. 4.2).

In 1997, the Parties to the Convention agreed by consensus that developed countries should accept a legally binding commitment to reduce their collective emissions of six GHGs by at least 5% compared to 1990 levels by the period 2008-2012 (Art. 3.1). The Kyoto Protocol would thus require developed countries to take even stronger action. The Protocol also establishes market-based mechanisms called the Kyoto mechanisms (joint implementation (Art. 6), the clean development mechanism (CDM) (Art. 12), and emissions trading (Art. 17)). Considering provisions of the Protocol too general to decide whether to ratify, the Parties continued their work to elaborate detailed implementation rules. Following the breakdown in talks at COP6 in the Hague in November 2000 and the subsequent US drop-out from the Kyoto negotiations, in 2001 the Parties finally successfully agreed on a body of implementing rules for the Protocol, known as the Bonn agreement and the Marrakesh Accords. More than three years later, in February 2005, the Protocol finally entered into force with more than 140 countries ratifying.

After adoption of the Marrakesh Accords and even before the Kyoto Protocol's entry into force, the focus of climate negotiations was shifting toward what kind of regime should be adopted in the post-2012 period, after the protocol's first commitment period. Many different

ideas and proposals on a possible post-2012 climate regime have already been presented mainly from European and American researchers and research institutions (see Yasuko Kameyama, "The Future Climate Regime: A Regional Comparison of Proposals" in *International Environmental Agreements, Law and Economics*, vol. 4 (4), pp. 307-326 (2004)).

### 3. Position and strategies of the key actors: the United States, the EU, and Japan

This section explores the positions and strategies of the key actors, the U.S., the EU, and Japan. These three actors have played and will play a key role in climate negotiation in light of the size of their historic and on-going emissions, competitiveness, capacity to pay for mitigation and adaptation actions and, for these reasons, the influence their positions exert on international negotiations.

As regard the U.S., President George W. Bush announced in March 2001 that the U.S. would not ratify the Protocol and that they would walk away from Protocol negotiations. He expressed in his letter to Senator Hagel and others dated on 13 March 2001 that he opposes the Kyoto Protocol "because it exempts 80 percent of the world, including major population centers such as China and India, from compliance, and would cause serious harm to the U.S. economy" and that "the Kyoto Protocol is an unfair and ineffective means of addressing global climate change concerns" (see at <http://www.whitehouse.gov/news/releases/2001/03/20010314.html>, as of 24 May 2005). Instead of joining efforts under the Kyoto Protocol, it appears that the U.S. strategy comprises two main elements. First is to focus on research and new and innovative technology development. In February 2002 the president announced a new approach to the challenge of global climate change. He recognized that the climate change problem is real and needs action, but he exclusively focused on long-term research and new technological innovation without making any commitments for short-term mitigative actions. In the February 2002 announcement, the administration declared that U.S. will reduce the GHG intensity (the ratio of GHG emissions to economic output) of the U.S. economy by 18% over the next 10 years. It said that this sets the U.S. on a path to slow the growth of GHG emissions, a goal that is comparable to the average progress that nations participating in the Kyoto Protocol are required to achieve. However, this plan was quickly and severely criticized because it actually will lead to an increase in emissions by 14.3% above the 2002 emission level without any efforts for mitigation (for instance, see World Resource Institute (2002), *Analysis of Bush Administration Greenhouse Gas Target*, February 14, 2002 at [http://pubs.wri.org/wri\\_bush\\_climate\\_analysis\\_2003.pdf](http://pubs.wri.org/wri_bush_climate_analysis_2003.pdf)).

The second element is to conclude bilateral and regional agreements while opposing the multilateral framework of the Kyoto Protocol. The U.S. administration has concluded bilateral agreements with around 20 countries and the EU (see at <http://www.state.gov/g/oes/rls/fs/2004/38641.htm>, as of 24 May 2005) mainly on cooperation in research and technology development, which the U.S. would apparently use as a means of negating the multilateral framework.

It is often said that the U.S. position has been very much influenced by U.S. oil and energy industries, which supported the president's election and which desire business as usual. This lack of effort by the U.S. is very problematic for two reasons. First, in terms of climate effectiveness, because U.S. emissions constitute one quarter of world emissions and continue to increase, the ultimate objective of the UNFCCC could not be achieved without the U.S. emissions reduction. Second, in terms of fair conditions for international competition, under the

current situation, American industries do business without paying the adaptive cost of adverse impacts or the cost of preventive measures. That will give them an unfair advantage (or at least make it appear so) in terms of international competitiveness vis-à-vis other countries, including the EU and Japan, which will be discouraged from taking further actions.

Two big economic rivals, the EU and Japan, still remain in the Kyoto Protocol framework, but they have quite a different position toward implementation of the Protocol. The EU, under its European Climate Change Programme, is promoting policies and measures that include the introduction of an Emissions Trading Scheme, thereby making progress towards its Kyoto target of 8% below its 1990 level, which will be not without difficulty. Its aim is of course to mitigate climate change as much as possible, which will have a great influence on life, health, and the welfare of their people. But also the EU is dealing with the issue of energy security by securing stable supplies of energy that is not too expensive. Legislative proposals on energy efficiency and renewable energy have been prepared in collaboration with Directorate Generals of the EU commission dealing with energy and industry. The EU position is very much linked with its future vision, as the Lisbon Strategy adopted in 2000 shows, a vision of ensuring “the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress and a high level of protection and improvement of the quality of the environment” (see Commission of the European Communities, *Communication to the Spring European Council, Working together for growth and jobs A new start for the Lisbon Strategy*, 02.02.2005 COM (2005) 24). Thus, for the EU, climate change policy has been very much integrated into other policies, especially competition policy, and it also constitutes a means of making Europe competitive in the future.

On the other hand, although Japan ratified the protocol, it is behind in implementing it. Even since adopting the protocol, Japan's emissions have not decreased despite economic stagnation in recent years. An emissions reduction of around 14% is needed to achieve the Kyoto target (6% below 1990 level). Although a plan to achieve the Kyoto target was adopted last April, no new measures — neither a carbon tax nor a national emissions trading scheme — have been clearly planned. Japanese industries have been strongly opposed to any regulatory measures. At the same time, some people insist that a different regime from the Kyoto Protocol should be established after the year 2012. A good example is a report issued by the Ministry of Economy, Trade and Industry (see Global Environment Subcommittee and Special Committee to Study Future Framework Industrial Structural Council (2004), *Interim Report on a future climate regime*, Ministry of Economy, Trade and Industry).

#### 4. The Kyoto Protocol: its achievements and challenges

To consider a climate regime for after 2012, it is necessary to consider what the Kyoto Protocol has achieved and what challenges it faces.

First, the UNFCCC and the Kyoto Protocol signify a complete change from laissez-faire policy (emit-as-much-as-you-like policy) to cooperation among countries in order to reduce emissions. Taking mitigation actions imposes costs on countries and affects their competitiveness, so assuring cooperation among principal competing countries is critical to level the playing field. Such cooperation would thus encourage those countries to undertake emissions reduction under the regime without fearing that other countries will get a free ride.

Second, the UNFCCC and the Kyoto Protocol have also shown the intention of countries to

tackle climate change despite some uncertainty about the climate change issue. Countries successfully agreed to take steps to tackle climate change in a precautionary way in light of the seriousness and irreversibility of climate change impacts.

Third, the Kyoto Protocol introduced market-based mechanisms, the Kyoto mechanisms into a multilateral environmental agreement for the first time. Such market-based mechanisms can provide countries with more cost-effective reduction opportunities and encourage the private sector to invest in such mitigation. In addition, especially CDM project activities can promote the transfer of funds and technologies necessary for developing countries to make mitigation efforts, thereby supporting their sustainable development. However, there is also a danger that the use of such mechanisms would deter developed countries' mitigative actions by achieving their targets without reducing emissions within their territories, i.e., developed countries could simply buy or acquire credits which are generated through emission reduction efforts occurring in developing countries.

Although the UNFCCC and the Kyoto Protocol have made quite considerable achievements, it should be noted that there are still quite big challenges. First is the climate challenge. Implementing the Kyoto target by all developed countries is expected to reduce their emissions by 5.2% below the 1990 level for the first commitment period. Without the U.S. and Australia, which would not ratify, a much lower emissions reduction will be achieved, although the Kyoto target is quite hard and ambitious to achieve in light of the projected increase in their emissions for the coming decade. In addition, emissions from developing countries are projected to increase because of their economic development, and are expected to exceed emissions from developed countries in a couple of decades. In light of scientific findings presented in the IPCC Third Assessment Report, the international community must reduce emissions globally by 50-60% by the middle of this century in order to achieve the ultimate objective of the UNFCCC. Whether we continue our efforts under the Kyoto structure or not, we definitely need some additional devices in a future climate regime to make such deep emission cuts possible.

The second challenge is "global participation." In order to achieve deep cuts in global emissions and to respond to competitiveness concerns in doing so, it is vital to assure that the U.S. and some developing countries with large emissions such as China make mitigation efforts. As for the U.S., it seems unlikely to come back to Kyoto and to undertake its first commitment period target. However, we have to see the U.S. from multiple angles. Unlike the Bush administration, mitigation efforts are actually in progress at the state level and in the private sector. About a dozen states, mainly in the northeast, are cooperating in short-term actions for mitigation using target levels similar to that of Kyoto. Also, companies have voluntarily established an emissions trading scheme at the Chicago Climate Exchange. Some dozen states and environmental NGOs are now suing the Environmental Protection Agency about its decision not to regulate emissions from vehicles. Also they have brought an action in court against five main power producers by claiming these companies should make reduction efforts (see Pew Center on Global Climate Change (2004), *Learning from State Action on Climate Change*, Pew Center on Global Climate Change, December 2004). From this perspective, it is important that some additional devices to support and cooperate with such efforts at the local and state level should be incorporated. As regards developing countries, it is important to encourage them to make efforts to limit their emissions because they are increasing as mentioned above, and because only these countries, definitely not others, have competence to take mitigation measures within their own territory. But in determining developing countries'

targets, it is necessary to pay due attention to their capacity to pay for mitigation costs. And it is also necessary to have some mechanism to support their mitigation costs.

Finally, structural change in our economy and society is probably the biggest and most difficult challenge. Without addressing this, we'll not able to find a solution for the climate change problem. It implies that we have to find another development path decoupling economic growth from GHG emissions, a path different from the one developed countries have taken so far. For this, we have to look into what are necessary conditions for such structural change, including reforming the international economic system and improving global governance and how to realize goals. These are likely challenges for lawyers.

(TAKAMURA Yukari, Ryukoku University)

## II. Abandoned WWII-Era Chemical Weapons of Japan

Imperial Japanese Forces abandoned chemical weapons and chemical warfare agents in various places after WWII. Some were buried underground and others were dumped into water to conceal the evidence of their war criminality. Apparently, in disposing toxic chemicals, no consideration was paid to safety or to leakage into the natural environment. Furthermore, the locations of disposal sites were never recorded. As a result, since immediately after the war there have been a number of accidents caused by Japanese chemical weapons in Japan and other countries, mainly China.

From 1945 to 2003, according to the recent surveys conducted by the Japanese Ministry of the Environment, there were a reported 823 cases relating to the discovery of abandoned chemical weapons. For example, in late September 2002 at a highway construction site in Samukawa (about 40 km Northwest of Tokyo), workers inadvertently dug up old beer bottles containing an unknown liquid. A few days later some of the workers noticed rashes on their arms and legs. The liquid was mustard gas, a chemical warfare agent that had been widely used since WWI. Though the exact origin of the bottles is still unknown, the accident might have something to do with a defunct chemical weapons facility operated by the Imperial Japanese Navy at the construction site before and during the WWII. In March of the next year, there was another poisoning incident suspected to have been caused by abandoned chemical weapons in which over a dozen residents of Kamisu (Ibaragi Prefecture) including children developed symptoms of arsenic poisoning. An unusually high concentration of the arsenic compound dipheyl cyanoarsenic acid was detected in wells of the town. This substance is a derivative of diphenyl cyanoarsine, the sneezing agent stockpiled by the Imperial Japanese military. The Ministry of the Environment has been conducting an investigation with the help of related local authorities, but its conclusion has yet to be publicized.

Moreover, abandoned Japanese chemical weapons have also injured Chinese people. Though the use of chemical weapons had been prohibited under the law of war, the Imperial Japanese Army used various chemical warfare agents in China. They hid the evidence of their illegal activities before fleeing to Japan. The Japanese government estimates that Japanese forces had left about 700 hundreds chemical munitions (2 million by the Chinese government's estimate). In a recent case in August 2003, in Qiqihar of China's Heilongjiang Province, one person was killed and 42 were injured by mustard gas in canisters that were accidentally dug up by construction workers. The Japanese government expressed its condolences to the victims and paid 300 million yen to the Chinese government as a "a cooperative fund." Some Chinese

victims of abandoned chemical weapons filed a lawsuit in 1996 seeking reparations from the Japanese government for their injuries. In its judgment of 29 September 2003, the Tokyo District Court found the Japanese government at fault for not providing information on abandoned chemical weapons in a timely manner and ordered it to pay compensation to the victims (the Japanese government is appealing in Tokyo Appellate Court).

Under the Chemical Weapons Convention, to which both Japan and China are parties, the Japanese government is obliged to dispose of its abandoned chemical weapons in a safe manner. Both nations agreed in 2004 on the location for the construction of a disposal facility where weapons are to be incinerated. With regard to the abandoned chemical weapons in Japan, the Japanese government conducted a second nationwide survey (the first one was conducted in 1972) and released the result in November 2003. The Ministry of the Environment provided financial support for patients in Kamisu and established the Poison Gas Information Center in December 2003.

Judging from the foregoing, the Japanese government has become more positive in facing its duty to resolve the abandoned chemical weapons issue. Nevertheless, as Prime Minister Junichiro Koizumi pledged at this year's Asian-African Summit, if it has really determined to squarely face the facts of history "in a spirit of humility," there will be many more things to do. As a first step, it might be advisable to initiate joint international research together with Chinese researchers on the history of chemical warfare in China. Sharing a common historical perspective will create a sound foundation for improving the friendly relationship between the two countries.

(SUGISHIMA Masaaki, Asahi University)